

Basic Mortgage Law

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Basic Mortgage Law

Cases and Materials

Second Edition

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To Jane, Michael, and Jennifer
D.S.H.

To my loving parents, Allen and Valerie
C.N.B.

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Preface

It takes but a moment's reflection to recognize the importance of the subject matter of this casebook. Step outside and look around you. The vast majority of all privately owned real property in the United States is acquired through the use of borrowed money. These loans have almost invariably been secured by a mortgage of the real estate or by a device similar to the mortgage.

The concept of conveying an interest in land to secure a debt is simple. But, upon application, these conveyances can be rather complex as the cases and notes in this casebook illustrate. The real estate transaction may itself be complicated, involving multiple parties or properties and requiring extensive due diligence, for example. The complexity may also arise from the law applicable to the transaction. Property law, commercial law, family law (for instance when a necessary party to the transaction is a minor or incompetent), business and corporate law (especially important when business entities are borrowers, guarantors, or sureties, for example), and environmental law are just a few of the legal specialties that can be implicated in a complex real estate transaction.

Regardless of its complexity, at the heart of every real estate transaction is the mortgage, or a device substituted for it. The mortgage and mortgage substitutes are the subject matter of this casebook.

This casebook contains a set of traditional mortgage law materials drawn from state and federal cases, statutes, and a few secondary sources. It is designed for a three-hour course in basic mortgage law. In some ways, it is a step back in time. By this we mean it is a traditional doctrinal casebook, devoid of trendy philosophical biases. Teaching the basics of mortgage law is the exclusive focus and mission of this casebook. A number of "older" cases have been used. They have been used because they are as relevant today as when handed down and they tend to be better written and reasoned than their more contemporary counterparts. This second edition also contains some recent cases but only when they have allowed us to remain true to our mission which is, again, to explore mortgage law doctrine as straightforwardly as possible.

We have attempted to address all of the salient and presently topical issues in basic mortgage law in this new edition. Our hope is that the notes and questions will spark the interest of students and encourage them to look to resources outside of the casebook to expand their knowledge. The casebook is intended to facilitate and guide dedicated students as their professors take them on an intriguing and challenging journey through the world of mortgage law. Every student should know that the practice of law is a life-long learning process and most of what is learned must be self-taught, though hopefully with the guidance of caring professors and mentors.

We have used most of these materials for a number of years and they have proved to be very satisfactory for the purposes for which they have been assembled. We hope that those who adopt this casebook will have the same satisfying experience we have enjoyed.

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