

AALS SECTION ON REAL ESTATE TRANSACTIONS

FALL 2017
NEWSLETTER

A NOTE FROM THE CHAIR

For the January 2018 meeting, the Real Estate Transactions section is pleased to partner with the Commercial and Related Consumer Law section to offer a cutting edge program on real estate development. The session will be held on **January 4, 2018 from 1:30p.m. - 3:15p.m.** at the AALS 2018 Annual Meeting in San Diego. We will convene in the Pacific Ballroom 17, North Tower/Level 1 at the San Diego Marriott Hotel & Marina. The title of our program is *Exploring New Frontiers in Real Estate Development*.

It is an opportune moment, following the financial crisis, to examine the diverse issues associated with real estate development. Real estate development projects include assisted living facilities, hospitals, mixed-use urban sites, office buildings, shopping centers, planned residential communities, and low-income housing. The legal issues that may accompany these projects range from initial financing, refinancing, accompanying credit transactions and leases, and default and restructuring in bankruptcy. Recent years have seen specific legal developments regarding the Fair Housing Act, an uptick in municipal bankruptcy filings, and more



KRISTEN BARNES
UNIVERSITY OF AKRON
SCHOOL OF LAW

SECTION CHAIR

generally, an evolving economic and regulatory landscape.

This panel brings together scholars working in the expansive area of real estate development to discuss emerging issues from a variety of legal perspectives, including real estate finance, commercial law, bankruptcy and restructuring, fair housing, and related consumer protection laws.

Confirmed speakers are: Professor David Reiss (Brooklyn Law School), Professor Jennifer Taub (Vermont Law School), Professor Andrea J. Boyack (Washburn University School of Law), Professor Robin Paul Malloy (Syracuse University College of Law), and Professor Carol Zeiner (St. Thomas University School of Law).

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Professors' Corner*A free webinar for RPTe members***Uniform Fiduciary Principal and Income Act***OCT. 10 @ 11:30 CST***Developments in the Law of Waste***NOV. 14 @ 11:30 CST***Sustainable Housing***DEC. 12 @ 11:30 CST*

Registration for the webinars is available at:
http://www.americanbar.org/groups/real_property_trust_estate/events/ce/professors_corner.html

SECTION OFFICERS:**CHAIR:**

Kristen Barnes
University of Akron School of Law

CHAIR-ELECT:

Christopher K. Odinet
Southern University Law Center

SECRETARY:

Donald J. Kochan
Chapman University Fowler School of Law

EXECUTIVE COMMITTEE:

Andrea J. Boyack
Washburn University School of Law

Pamela Foohey
Indiana University Maurer School of Law

Tanya D. Marsh (Past-Chair)
Wake Forest University School of Law

Gregory M. Stein
University of Tennessee College of Law

CONFERENCE ANNOUNCEMENTS**OCTOBER 21-23, 2017****STATE & LOCAL GOVERNMENT LAW****WORKS-IN-PROGRESS AND ADVOCACY CONFERENCE**

Golden Gate University School of Law will be hosting the 6th Annual State & Local Government Law Works-in-Progress Conference on Friday October 21, Saturday October 22, and Sunday October 23, 2017. Scholars and practitioners writing and advocating in areas related to state and local government law are invited to attend and/or present works in progress. The conference will provide an opportunity for state and local government law scholars and practitioners to present works-in-progress, receive feedback from colleagues, and network with scholars and practitioners writing and advocating for state and local government interests. Questions should be directed to Kathleen Morris at kmorris@ggu.edu.

NOVEMBER 13-14, 2017**HUD'S PAST, PRESENT AND FUTURE**

University of Detroit Mercy School of Law

112TH AALS ANNUAL MEETING**ACCESS TO JUSTICE****WEDNESDAY, JANUARY 3 – SATURDAY, JANUARY 6, 2018****SAN DIEGO, CALIFORNIA****THURSDAY, JANUARY 4, 2018, 1:30 pm - 3:15 pm*****Exploring New Frontiers in Real Estate Development***

Joint Program of the Section on Real Estate Transactions and the Section on Commercial and Related Consumer Law at the 2018 AALS Annual Meeting

Confirmed Panelists:

David Reiss, Professor, Brooklyn Law School

Jennifer Taub, Professor, Vermont Law School

Andrea Boyack, Professor, Washburn University School of Law

THURSDAY, JANUARY 4, 2018, 7:30 am – 8:45 am***Property Law Breakfast (Ticketed Event)*****THURSDAY, JANUARY 4, 2018, 10:30 am -12:15 pm*****Structural Facilitation of Property Markets***

Property Law Section Program

SATURDAY, JANUARY 6, 2018, 3:30 pm - 5:15 pm***New Voices in Property Law: Junior Scholars Works-in-Progress Panel***

MAY 31-JUNE 2, 2018**THE ASSOCIATION FOR LAW, PROPERTY, AND SOCIETY (ALPS)****9TH ANNUAL MEETING**

Maastricht University in the Netherlands

RECENT SCHOLARSHIP BY SECTION MEMBERS

ROGER BERNHARDT

Golden Gate University School of Law

- CALIFORNIA REAL PROPERTY LAW REPORTER, 2016-2017:
 - *Fiduciary Confusion* (dual agency)
 - *Lender Liability for Negligent Loan Modifications*
 - *Bank of N.Y. Mellon v Citibank* (equitable subrogation)
 - *Jacobs v Locatelli* (listing agreements & statute of frauds)
 - *Schellinger v Cotter* (damages for breach of purchase contract)
 - *San Francisco Apartment Assn v San Francisco* (withdrawing rental units from market)
 - *U.S. Bank v Naifeh* (Truth in Lending Act)
 - *Taylor v Nu Digital Marketing* (Contract of sale or lease of real property).

ANDREA J. BOYACK

Washburn University School of Law

- [*Limiting the Collective Right to Exclude*](#), 44 *FORDHAM URBAN LAW JOURNAL* 453 (2017).
- [*Equitably Housing \(Almost\) Half a Nation of Renters*](#), 65 *BUFFALO LAW REVIEW* 109 (2017).
- [*A New American Dream for Detroit*](#), 93 *UNIVERSITY OF DETROIT MERCY LAW REVIEW* 573 (2016).

SARA C. BRONIN

University of Connecticut School of Law

- Sara C. Bronin & Dwight H. Merriam, RATHKOPF'S THE LAW OF PLANNING AND ZONING (2017 updates), at <http://legalsolutions.thomsonreuters.com/law-products/Treatises/Rathkopfs-The-Law-of-Zoning-and-Planning-4th/p/100027828>
- REPORT FOR THE UNITED STATES ON HISTORIC PRESERVATION LAW, *Association Internationale de Droit de L'Urbanisme, Symposium on Architectural Heritage, Sites and Landscapes Seized by Urban Law*, Spring 2017
- *Rezoning the Post-Industrial City: Hartford*, PROBATE & PROPERTY, May/June 2017.

STEVEN EAGLE

Antonin Scalia Law School, George Mason University

- “‘Affordable Housing’ as Metaphor,” 44 *Fordham Urb. L.J.* 301–359 (2017).
- “Property Rights After *Horne*,” 10 *NYU J.L. & Liberty* 669–733 (2016).
- “Advancing Judicial Review of Wetlands and Property Rights Determinations: *U.S. Army Corps of Engineers v. Hawkes*,” 2015–16 *Cato Sup. Ct. Rev.* 257–77 (2016).

PAMELA FOOHEY

Indiana University Maurer School of Law

- “No Money Down” *Bankruptcy*, 90 S. CALIF. L. REV. __ (forthcoming 2017) (with Robert M. Lawless, Katherine Porter, and Deborah Thorne).
- *Attorneys’ Fees and Chapter Choice: Exploring “No Money Down” Chapter 13 Bankruptcy*, 36-6 ABIJ 20 (2017) (with Robert M. Lawless, Katherine Porter, and Deborah Thorne).
- *Calling on the CFPB for Help: Telling Stories and Consumer Protection*, 80 LAW & CONTEMP. PROBS. 177 (2017).
- *Consumer Credit in America: Past, Present, and Future*, 80 LAW & CONTEMP. PROBS. 1 (2017) (symposium introduction) (with Jim Hawkins, Creola Johnson, and Nathalie Martin).
- *Lender Discrimination, Black Churches, and Bankruptcy*, 50 HOUS. L. REV. 101 (2017).

PAULA A. FRANZESE

Seton Hall University School of Law

- [*The Implied Warranty of Habitability Lives: Making Real the Promise of Landlord-Tenant Reform*](#), 69 RUTGERS U.L. REV. 1 (2016) (with Abbott Gorin and David Guzik).
- [Tenants shouldn't be 'blacklisted' for asserting their rights](#), NJ.COM, July 21, 2017.
- [Less than 1% of N.J. tenants know their rights. Fix it this way](#), NJ.COM, Oct. 18, 2016.
- [How to stop slumlords from abusing poor tenants](#), NJ.COM, Feb. 27, 2017.

JOHN LOVETT

Loyola University New Orleans College of Law

- *Good Faith in Louisiana Property Law: Variations on a Theme by Yiannopoulos*, __78 LA. L. REV. (Forthcoming 2018).
- *Disseisin to Debate: Adverse Possession Scholarship in the U.S. (1881-1986)*, __TEX. A&M L. REV. __ (Forthcoming 2017).
- *Moving to Higher Ground, Protecting and Relocating Communities in Response to Climate Change*, 42 VT. L. REV. __ (Forthcoming 2017).
- *Precarious Possession*, 77 LA. L. REV. 618 (2017).
- *Into Centuries of Centuries: Reflections on Marc. R. Poirier (1952-2015)*, 3 J. L. PROP. & SOC. 1 (2017), available at <http://alps.syr.edu/wp-content/uploads/2017/05/JLPS-2017-04-Lovett.pdf>.
- *Tacking in a Mixed Jurisdiction*, in *ESSAYS IN HONOUR OF GEORGE GRETTON, ANDREW STEVEN ED.* (Edinburgh University Press, Forthcoming 2017).
- *Professor Longhair’s Legacy, Revindicating Movables under Louisiana Law*, in *NORTHERN LIGHTS: ESSAYS IN PRIVATE LAW IN HONOUR OF DAVID CAREY MILLER, DOUGLAS BAIN, RODERICK PAISLEY AND ANDREW R.C. SIMPSON.* EDS. (Aberdeen University Press, Forthcoming 2017), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2726062.

- *Can Charter Schools Save Cities?: Social Capital and Urban Public Education*, in *HOW CITIES WILL SAVE THE WORLD*, EDS. JOHN TRAVIS MARSHALL AND RAY BRESCIA 159-187 (Routledge 2016).

DONALD J. KOCHAN

Chapman University Dale E. Fowler School of Law

- [*I Share, Therefore It's Mine*](#), 51 UNIVERSITY OF RICHMOND LAW REVIEW 909 (2017).
- [*Deeds and the Determinacy Norm: Insights from Brandt and Other Cases on an Undesignated, Yet Ever-Present, Interpretive Method*](#), 43 FLORIDA STATE UNIVERSITY LAW REVIEW 793 (2016) (printed April 2017).
- [*Playing with Real Property Inside Augmented Reality: Pokémon Go, Trespass, and Law's Limitations*](#), 38 WHITTIER LAW REVIEW ___ (forthcoming 2017) (symposium).
- [*Incumbent Landscapes, Disruptive Uses: Perspectives on Marijuana-Related Land Use Control*](#), 3 TEXAS A&M JOURNAL OF PROPERTY LAW 35 (2016) (symposium).
- [*When Inquiring Minds Ought to Know . . .*](#), PROBATE & PROPERTY, July/August 2017, at 57-63 (with James Charles Smith).
- [*Same Base, Different Taste: The Cultural Ingredient in Property Law*](#), JOTWELL (May 3, 2017). [reviewing Taisu Zhang, "Cultural Paradigms in Property Institutions," 41 YALE J. INT'L L. 347 (2016)]

CHRISTOPHER K. ODINET

Southern University Law Center

- FORECLOSED: HOMEOWNERSHIP AND THE MORTGAGE MIDDLEMAN IN AMERICA (forthcoming 2018 with

Cambridge University Press).

- *Consumer BitCredit and Marketplace Lending*, ALABAMA LAW REVIEW (forthcoming 2018). [SSRN]
- *BitProperty and Commercial Credit*, 94 WASHINGTON UNIVERSITY LAW REVIEW 649 (2017). [SSRN]
- *Of Progressive Property and Public Debt*, 51 WAKE FOREST LAW REVIEW 1101 (2016). [SSRN]
- *The Unfinished Business of Dodd-Frank: Reforming the Mortgage Contract*, 68 SMU LAW REVIEW 653 (2016) (selected for presentation at the 2016 AALS Annual Meeting). [SSRN]
- *Regulating Debt Collection*, REVIEW OF BANKING & FINANCIAL LAW (forthcoming 2017) (with Roederick White, Sr.). [SSRN]
- *Gay Marriage and the Problem of Property*, 93 WASHINGTON UNIVERSITY LAW REVIEW 847 (2016) (commentaries essay with Andrea B. Carroll). [SSRN]
- *Community Collateral: Security Rights in Common Interest Community Declarations*, PROBATE & PROPERTY (July/August 2016) (with Randy P. Roussel).

DAVID REISS

Brooklyn Law School

- PAYING FOR THE AMERICAN DREAM: HOW TO REFORM THE MARKET FOR MORTGAGES (Oxford University Press forthcoming)
- [*The Federal Housing Administration and African-American Homeownership*](#), ABA J. AFFORD. HOUS. & CMTY. DEV. (forthcoming 2017-18) (identified in an earlier report as *The Federal Housing Administration and Goldilocks Underwriting*)

- *Accessible Credit, Sustainable Credit and the Federal Housing Administration*, BANK. & FIN. SERV. POL. REP. (June 2017)
- *Sloppy, Sloppy, Sloppy: The State of the Mortgage Market*, 39 CALIFORNIA REAL PROPERTY LAW REPORTER 60-61 (2016)
- *Americans Are Better off with Consumer Protection in Place*, THE HILL (June 17, 17, 2017)
- *America's Consumer Financial Sheriff and The Horse It Rides Are Under Fire*, THE HILL (May 14, 2017)
- *The CFPB Is a Champion for Americans Across The Country*, THE HILL (Apr. 21, 2017)
- *Congress May Have Finally Found a Bipartisan Fix to Fannie and Freddie*, THE HILL (Apr. 6, 2017)
- *Where Does Judge Gorsuch Stand on Limiting The Federal Government?*, THE HILL (Mar. 22, 2017)
- *Trump's Budget Proposal is Bad News for Housing Across the Nation*, THE HILL (March 16, 2017)
- *Why Repealing Dodd-Frank is Unappealing if You Own a Home*, THE HILL (Feb. 13, 2017)
- *Gorsuch, CFPB and Future of The Administrative State*, LAW360 (Feb 10, 2017)
- *The Future of American Home Ownership Under President Trump*, THE HILL (Jan. 30, 2017)
- *Hamilton acted in good faith. Will Steven Mnuchin do the same?*, THE HILL (Jan. 13, 2017)
- *Ben Carson's Call of Duty as America's Housing Chief*, THE HILL (January 5, 2017)
- *It's Time to Expand The Credit Box for American Homebuyers*, THE HILL (December 27, 2016)
- *It's Time to Take Housing Finance Reform Through The 21st Century*, THE HILL (December 7, 2016)
- *Addressing New York City's Affordable Housing Crisis* (Statement submitted by Public Members Hilary Botein and David Reiss at the June 27, 2017 Public Hearing of the New York City Rent Guidelines Board)
- Comment on *Title Insurance Proposed Rules* (New York State Department of Financial Services) (June 19, 2017)
- Federal Housing Finance Agency *Proposed Collection for National Survey of Mortgage Originations* (November 10, 2016) (No. 2016-N-06)
- Federal Housing Finance Agency, *Update on Implementation of the Single Security and the Common Securitization Platform Comment Letter* (August 29, 2016)
- Federal Financial Institutions Examination Council, *Comment Letter on Uniform Interagency Consumer Compliance Rating System* (July 5, 2016) (Docket # FFIEC-2016-0001)

SARAH SCHINDLER
University of Maine School of Law

- *The "Publicization" of Private Space*, __ IOWA L. REV. __ (forthcoming, 2018), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2960320

JAMES CHARLES SMITH

University of Georgia School of Law

- REAL ESTATE TRANSACTIONS: PROBLEMS, CASES, AND MATERIALS (Wolters Kluwer 5th ed. 2017 – with Robin Paul Malloy)
- *Green Home Standards: Information and Incentives*, 54 HOUS. L. REV. 1139 (2017).
- *Making Existing Homes Greener*, TEXAS A&M JOURNAL OF PROPERTY LAW (forthcoming)
- *Energy Efficiency, Conservation, and Fuel Switching in Existing Buildings*, in LEGAL PATHWAYS TO DEEP CARBONIZATION IN THE UNITED STATES (Michael B. Gerrard & John C. Dernbach eds.) (forthcoming)
- [*When Inquiring Minds Ought to Know . . .*](#), PROBATE & PROPERTY, July/August 2017, at 57-63 (with Donald J. Kochan)

JOHN G. SPRANKLING

University of the Pacific, McGeorge School of Law

- UNDERSTANDING PROPERTY LAW (4th ed. 2017)
- *Property Law for the Anthropocene Era*, 59 ARIZ. L. REV. (forthcoming 2017)
- *Property and the Roberts Court*, 65 U. KAN. L. REV. 1 (2016)

GREGORY M. STEIN

University of Tennessee College of Law

- STEIN, GREGORY M., MORTON P. FISHER, JR., & MICHAEL D. GOODWIN, [A PRACTICAL GUIDE TO COMMERCIAL REAL ESTATE TRANSACTIONS: FROM CONTRACT TO CLOSING](#) (American Bar Association, 3d edition 2016)

- [Reverse Exactions](#), 26 WILLIAM & MARY BILL OF RIGHTS JOURNAL ____ (forthcoming 2017)
- [What Will China Do When Land Use Rights Begin to Expire?](#), 50 VANDERBILT JOURNAL OF TRANSNATIONAL LAW 625 (2017)
- [Chinese Real Estate Law and the Law and Development Theory: A Comparison of Law and Practice](#), 25 FLORIDA STATE JOURNAL OF TRANSNATIONAL LAW AND POLICY 1 (2016)

KELLEN ZALE

University of Houston Law Center

- *Compensating City Council*, 70 STANFORD LAW REVIEW ____ (forthcoming 2018), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2968968
- *When Everything is Small: The Regulatory Challenge of Scale in the Sharing Economy*, 53 SAN DIEGO LAW REVIEW 949 (2016), available at https://papers.ssrn.com/sol3/Papers.cfm?abstract_id=2866044

CAROL L. ZEINER

St. Thomas University School of Law

- *Getting Deals Done: Enhancing Negotiation Theory and Practice Through a Therapeutic Jurisprudence/Comprehensive Law Mindset*, 21 HARV. NEGOT. L. REV. 279 (2016)
- *Should Therapeutic Jurisprudence be Used to Analyze Impact of Legal Processes on Government?*, 28 ST. THOMAS L. REV. 1 (2015) (printed late 2016)