

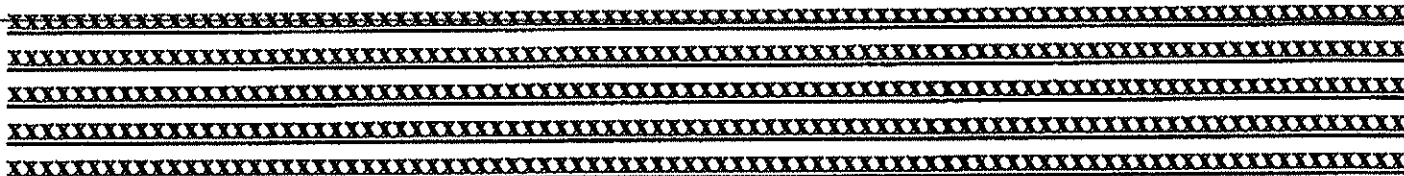
MASSACHUSETTS SCHOOL OF LAW

REAL ESTATE FINANCING AND CONVEYANCING

PROFESSOR CARMEN R. CORSARO

FINAL EXAM

May 16, 2013



READ INSTRUCTION BELOW CAREFULLY
DO NOT OPEN EXAM OR READ QUESTIONS UNTIL TOLD TO DO SO

This is a three hour open book exam. There are eight questions. The questions are equally weighed towards your final mark. It is recommended that you spend your time accordingly answering each section (approximately twenty-two minutes per question). A pocket calculator is recommended to help you through the first question. Do not identify yourself other than by your **IDENTIFICATION NUMBER (not social security number)** (your exam ID no. is the last 6 digits of your SS# and 59) on your blue book, this cover sheet, and any other accompanying materials.

The questions are to be answered in the space provided beneath each question. A blue book should be used for outlines, notes and/or scrap paper. If your answer to any question exceeds the space provided on the exam sheet please continue same on the back of the preceding page opposite your answer.

Be careful not to discuss the examination with anyone who may be taking same at a later time for any reason. In taking this examination, you are required to comply with the law school rules and procedures for final examinations. Although this is an open book exam, electronic devices, other than pocket calculators, are not permitted. Do not under any circumstances reveal your identity on your examination papers other than by your identification number. Actions by a student to defeat such policies are a matter of academic dishonesty.

Remember that spotting issues is a key to success in this exam. Read questions carefully. Be sure to answer the question asked rather than give a general treatise on the subject matter. Express your answers in a scholarly manner. Each answer should demonstrate power of legal analysis, capacity to express ideas clearly, as well as familiarity with subject matter.

Legibility of script is essential, please think before answering, numerous cross outs are distracting and detracting..

Write your ID NUMBER here _____.

When finished, place exam questions and any blue books used inside first blue book and hand in all. Take care not to discuss this exam with any student who may be taking this exam at a later time for any reason.

1. On May 16, 2013, Trevor and Kristen Lincoln signed a Greater Boston Real Estate Board Purchase and Sale Agreement to buy from Leah Davis a single family home in Andover, Massachusetts. Leah had purchased the property with her deceased husband, Ryan, who died intestate in 2011. Examination of the deed indicates that the Davis's took title before they were married as "Ryan Davis and Leah Lee, both of 11 Main Street, Andover, MA". The Lincoln's have obtained a conventional 30 year mortgage loan commitment with Big Bank. Closing is scheduled for August 20, 2013.

The Purchase and Sale Agreement provides as follows:

Purchase Price	\$349,000.00
Deposit	\$ 17,450.00
Real Estate Broker's Commission	6%

The Mortgage Commitment provides the following:

Loan Amount	\$280,000.00
Loan Origination Fee	2.5%
Application Fee	\$250.00
Interest Rate	6.5%
Title Insurance	\$2.00 per thousand
Mortgage Survey	150.00

The First Mortgage Payment is Due October 1, 2013

You Title Examination Reveals:

Yearly Municipal Taxes (paid to June 30, 2013)	\$8,000.00
Next Tax Bill Due August 1, 2013	
Taxes Payable Quarterly	
Seller's Mortgage Pay off (as of August 20, 2013)	\$166,234.52
Seller's per diem Mortgage Interest	\$32.50

Recording Fees:

Deed	\$125.00
Mortgage	\$175.00
Mortgage Discharge	\$75.00

Based on the above information, calculate any prepaid interest payable at closing to lender, tax payments which should be made at closing, tax adjustments to be made between buyer and seller at closing, and any tax escrow amount to be collected at closing to be held in reserve by the lender, indicating your reasoning for same.

Handwritten notes on lined paper, including a large '1' at the top left and several closing parentheses ')' on the left margin.

4. George and Martha were having marital problems due to George's extravagant spending habits. Their home in Andover, MA was inherited by Martha from her parents and Martha had made him a co-owner shortly after their marriage. There is no mortgage on this property which is worth \$400,000. George has run up over \$100,000 in credit card debt and creditors are threatening to place liens on the home to satisfy the debts. Martha takes care of their four young children and is unemployed. George's credit rating is horrendous and they can't get a loan. Martha is afraid they will lose the house and has consulted with you. Advise her.

1. On May 11, 2012, Ryan and Leah Parker contracted to purchase a townhouse condominium unit in Revere, Massachusetts from Kristen Kent, whose husband, Trevor, had recently died in a mountain climbing accident. Kristen can no longer afford to pay the mortgage on this upscale condominium unit purchased by her and Trevor before his death. The Parker's have obtained a conventional 30 year mortgage loan commitment with Seaside Bank. Closing is scheduled for August 15, 2012, the Parker's first mortgage payment will be due October 1, 2012.

The Purchase and Sale Agreement provides as follows:

Purchase Price	\$350,000.00
Deposit	\$ 17,500.00
Real Estate Broker's Commission	5%

The Mortgage Commitment provides the following:

Loan Amount	\$285,000.00
Loan Origination Fee	3.0%
Application Fee	\$150.00
Interest Rate	7.0%
Title Insurance	\$2.00 per thousand

Your Title Examination Reveals:

Yearly Municipal Taxes (paid to June 30, 2012)	\$10,000.00
Tax Bill due August 1, 2012	
Taxes Payable Quarterly	
Seller's Mortgage Pay off (as of August 15, 2012)	\$330,492.00
Seller's per diem Mortgage Interest	\$62.88

Recording Fees:

Deed	\$125.00
Mortgage	\$175.00
Mortgage Discharge	\$75.00

State Document Stamps:

\$2.28 per \$500.00 or fraction thereof of Purchase Price

Based on the above information, calculate any prepaid interest payable at closing to lender, tax payments which should be made at closing, tax adjustments to be made between buyer and seller at closing, and any tax escrow amount to be collected at closing to be held in reserve by the lender, indicating your reasoning for same.

This image shows a blank sheet of white paper with horizontal ruling lines. A vertical margin line is present on the left side. The lines are evenly spaced and extend across the width of the page. There are approximately 25 horizontal lines and one vertical margin line. The paper is otherwise empty of any text or markings.

MASSACHUSETTS SCHOOL OF LAW
REAL ESTATE FINANCING AND CONVEYANCING
PROFESSOR CARMEN R. CORSARO

FINAL EXAM
May 12, 2009

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DO NOT READ QUESTIONS UNTIL TOLD TO DO SO

This is a three hour open book exam. There are three questions. The questions are equally weighed towards your final mark. It is recommended that you spend your time accordingly answering each question. A pocket calculator is recommended to help you through the first question. Do not identify yourself other than by your **IDENTIFICATION NUMBER (not social security number)** on your blue books, this cover sheet, and any other accompanying materials.

IN TAKING THIS EXAMINATION, YOU ARE REQUIRED TO COMPLY WITH THE SCHOOL OF LAW RULES AND PROCEDURES FOR FINAL EXAMINATIONS. DO NOT UNDER ANY CIRCUMSTANCES REVEAL YOUR IDENTITY ON YOUR EXAMINATION PAPERS OTHER THAN BY YOUR IDENTIFICATION NUMBER. ACTIONS BY A STUDENT TO DEFEAT THE ANONYMITY POLICY IS A MATTER OF ACADEMIC DISHONESTY.

Remember that spotting issues is a key to success in this exam. Read questions carefully. Express your answers in a scholarly manner. Each answer should demonstrate power of legal analysis, capacity to express ideas clearly, as well as familiarity with subject matter.

Legibility of script is essential. It is desirable that you write on only one side of a page.

Write your ID NUMBER here _____.

When finished, place exam questions, settlement sheet and extra blue books used inside first blue book and hand in all. Take care not to discuss this exam with any student who may be taking this exam at a later time for any reason.

QUESTION 1

On May 8, 2009, Trevor and Kristen Parker contracted to purchase a townhouse condominium unit in Salisbury, Massachusetts from Ryan Kent whose wife, Marcella, had recently passed away in a windsurfing accident. Included with the sale are all furnishings and appliances in the unit and the balance of a yearlong membership in the complexes' gym/pool facility. Kent has agreed to pay two points towards the Parker's closing costs. The Parker's have obtained a conventional 30 year mortgage loan commitment with Seaside Bank. Closing is scheduled for August 17, 2009.

The Purchase and Sale Agreement provides as follows:

Purchase Price	\$379,000.00
Deposit	\$ 18,950.00
Real Estate Broker's Commission	5%

The Mortgage Commitment provides the following:

Loan Amount	\$304,000.00
Loan Origination Fee	3.0%
Application Fee	\$350.00
Interest Rate	7.0%
Title Insurance	\$2.00 per thousand

Your Title Examination Reveals:

Yearly Municipal Taxes (paid to June 30, 2009)	\$12,000.00
Next Tax Bill Due August 1, 2009	
Taxes Payable Quarterly	
Seller's Mortgage Pay off (as of August 17, 2009)	\$255,492.00
Seller's per diem Mortgage Interest	\$62.88

Recording Fees:

Deed	\$125.00
Mortgage	\$175.00
Mortgage Discharge	\$75.00

State Document Stamps:

\$2.28 per \$500.00 or fraction thereof of Purchase Price

Complete the accompanying Settlement Statement as fully as possible. Comment in your Blue Book on your reasoning for any particular entries you feel appropriate and further information you may require from buyer, seller, bank or other source, if any. It is **not** necessary to explain **every** entry on the settlement statement or in the Blue Book.

QUESTION 2

John and Mary Smith, who reside in Paradise, Massachusetts, are in financial trouble. Their residence, which they purchased together in 2005 for \$400,000.00, has seen a drastic decrease in value and was recently appraised at \$340,000.00. The balance of their first mortgage to Big Bank is approximately \$360,000.00.

John, who is a self employed real estate agent, has experienced a big reduction in business and is not only having difficulty keeping up with the mortgage payments, but also with his payroll taxes for his two person office staff. He received a notice of a tax lien from the Internal Revenue service for unpaid payroll taxes in the amount of \$10,500.00.

With nowhere else to turn, and without telling his wife, Mary, he approached his Father in Law for a loan of \$15,000.00 so that he might pay off the IRS lien and try to bring his mortgage current. His father in law reluctantly loaned him the money but demanded that John sign a promissory note payable on demand at 40% interest, and further that John secure the loan with a second mortgage on the residence. The father in law downloaded a note and mortgage on the internet and had John sign both documents. His father in law placed the note and mortgage in his safe and they agreed not to tell Mary about the loan as they didn't want her to be further upset about John's financial problems. John then paid the IRS lien but hasn't been able to bring the Big Bank mortgage current.

John and Mary realize that they can no longer afford to keep the house and have listed the home on the multiple listing service. They have received an offer through a Broker to purchase the property from a Mr. Jay Hawkes for the sum of \$335,000.00, without financing contingencies, and with a closing to occur in 45 days, time being of the essence. They have also received by certified mail a notice of default stating that their Big Bank mortgage debt will be accelerated and due in full if they don't bring all payments current within 30 days, all as provided in the Big Bank promissory note they signed in 2005. They have also received notice of the commencement of a proceeding by Big Bank under the Service Members Civil Relief Act stating that if either are entitled to relief under the Act they should file an appearance with the Land Court within 30 days.

John is broke and doesn't have the money to pay his next installment of payroll taxes which are due in 45 days. John and Mary want to accept the offer from Jay Hawkes. John's Father in Law has demanded payment from John of the \$15,000.00 loan.

John and Mary have come to you for legal advice. Discuss what courses of action which may be available to them at this time, describing the pros and cons of each course of action.

QUESTION 3

Molly and Austin Powers are of retirement age and in the process of selling their home in Methuen, Massachusetts. They have decided to move to Florida in September. The Powers have listed their home with a real estate broker, Sadie Hussein. But prior to contacting Hussein, Molly, who liked to take charge of family finances, permitted Joe Stalling, a broker who they knew casually and who had heard about the planned move, to show the property to Edward and Barbara Walters. The Walters signed an offer to purchase that was subject to their selling their home in Lowell before closing. The Powers then met with Stalling, but did not sign any of the papers he urged them to sign. Stalling appeared to be a bit of an unsavory character and Molly made it clear to him that she didn't want to sign any agreement contingent on the sale of a Buyer's house, especially in such a slow real estate market.

After hiring Hussein, two months passed without any other offers. The Powers were getting increasingly worried and impatient with Hussein who didn't seem to be doing anything. Then out of the blue, the Walters contacted Molly Powers directly and stated that they would like to make another offer and would like to meet with them and discuss the matter.

The Walters and Powers met yesterday evening at Dunkin Donuts and you are informed that:

- The Walters found a buyer for their home in Lowell. It is scheduled to close on August 1, 2009 and they would like to move in on that date.
- A purchase price of \$249,000.00 has been agreed to and Molly Powers accepted a \$100.00 bill and gave the Walters a receipt for same written on the back of a napkin which said "\$100 cash received towards \$249,000.00, Powers will sell their house on August 1 and get mortgage, agreement to be signed in two days. (Signed) Molly Powers".
- The Walters stated they are prequalified for a mortgage loan of about \$205,000.00 from an institutional lender amortized over 30 years at a rate of interest no higher than 7.5% per annum.
- The Walters anticipate they will realize about \$35,000.00 from the sale of their Lowell residence and can borrow the rest of the down payment from their parents.
- Sadie Hussein, who was left a message by Molly Powers yesterday afternoon that she was fired because she was doing nothing, has just informed Molly Powers that she has found a Buyer who has signed an offer to purchase the property for \$260,000.00 without any financing contingencies.

Molly Powers has called your office and asked you to prepare a formal Purchase and Sales Agreement. Your paralegal has ascertained the above facts on the telephone with Mrs. Powers. The Powers are coming in this afternoon for their first appointment. Draft a memo to yourself outlining any issues which you feel the need to address and requesting any further information, documentation or legal research, you may wish to obtain or require from any source.

QUESTION 1

On May 8, 2008, Trevor and Kristen Parker contracted to purchase a townhouse condominium unit in Salisbury, Massachusetts from Ryan Kent whose wife, Marcella, had recently passed away in a windsurfing accident. Included with the sale are all furnishings and appliances in the unit and the balance of a yearlong membership in the complexes' gym/pool facility. Kent has agreed to pay two points towards the Parker's closing costs. The Parker's have obtained a conventional 30 year mortgage loan commitment with Seaside Bank. Closing is scheduled for August 17, 2008.

The Purchase and Sale Agreement provides as follows:

Purchase Price	\$379,000.00
Deposit	\$ 18,950.00
Real Estate Broker's Commission	5%

The Mortgage Commitment provides the following:

Loan Amount	\$304,000.00
Loan Origination Fee	3.0%
Application Fee	\$350.00
Interest Rate	7.0%
Title Insurance	\$2.00 per thousand

You Title Examination Reveals:

Yearly Municipal Taxes (paid to June 30, 2008)	\$12,000.00
Next Tax Bill Due August 1, 2008	
Taxes Payable Quarterly	
Seller's Mortgage Pay off (as of August 17, 2008)	\$255,492.00
Seller's per diem Mortgage Interest	\$62.88

Recording Fees:

Deed	\$125.00
Mortgage	\$175.00
Mortgage Discharge	\$75.00

State Document Stamps:

\$2.28 per \$500.00 or fraction thereof of Purchase Price

Complete the accompanying Settlement Statement as fully as possible. Comment in your Blue Book on your reasoning for any particular entries you feel appropriate and further information you may require from buyer, seller, bank or other source, if any. It is not necessary to explain every entry on the settlement statement or in the Blue Book.

QUESTION 2

John and Mary Jones, who reside in Paradise, Massachusetts, are in financial trouble. Their residence, which they purchased in 2005 for \$400,000.00 has seen a drastic decrease in value and was recently appraised at \$340,000.00. The balance of their first mortgage to Big Bank is approximately \$360,000.00.

John, who is a self employed real estate agent, has experienced a drastic reduction in business and is not only having difficulty keeping up with his mortgage payments, but also with his payroll taxes for his two person office staff. He received a notice of a tax lien from the Internal Revenue service for unpaid payroll taxes in the amount of \$7,500.00.

With nowhere else to turn, and without telling his wife, he approached his father in law for a loan of \$15,000.00 so that he might pay off the IRS lien and bring his mortgage current. His father in law reluctantly loaned him the money but demanded that John sign a promissory note payable on demand at 25% interest and further that John secure it with a second mortgage on his residence. The father in law downloaded a note and mortgage at a cost of \$100.00 on the internet and had John sign both documents. His father in law placed the note and mortgage in his safe and they agreed not to tell Mary about the loan as they didn't want her to be further upset about John's financial problems. John then paid the IRS lien and brought the Big Bank mortgage current.

Shortly thereafter, John and Mary decided that they could no longer afford to keep the house and John listed the home on the multiple listing service. After two months of no offers, they received an offer to purchase the property from Jay Hawkes for the sum of \$335,000.00, without financing contingencies, and with a closing to occur in 30 days, time being of the essence. John and Mary are once again falling behind in their mortgage payments and John doesn't have the money to pay his next installment of payroll taxes which are due in 45 days. John and Mary want to accept the offer.

Discuss what courses of action are available to the above parties at this time, describing the pros and cons of each course of action.

QUESTION 3

Molly and Austin Powers were of retirement age and in the process of selling their home in Methuen, Massachusetts. They decided to move to Florida in September. The Powers had listed the home with a real estate broker, Sadie Hussein. Prior to contacting Hussein, Molly, who liked to take charge of family finance, permitted Joe Stalling, a broker who had heard rumors about the planned move, to show the property to Edward and Barbara Walters. The Walters signed an offer to purchase that was subject to their selling their home in Lowell before closing. The Powers then met with Stalling, but did not sign any of the papers he urged them to sign. Stalling appeared to be a bit of an unsavory character and Molly made it clear to him that she didn't want to sign any agreement contingent on the sale of a Buyer's house, especially in such a slow real estate market.

Two months passed without any other offers. The Powers were getting increasingly worried and impatient with Hussein who didn't seem to be doing anything. Then out of the blue, the Walters contacted Molly Powers directly and stated that they would like to make another offer and would like to meet with them and discuss the matter.

The Walters and Powers met yesterday evening at Dunkin Donuts and you are informed that:

- The Walters found a buyer for their home in Lowell. It is scheduled to close on August 1, 2008 and they would like to move in on that date.
- A purchase price of \$249,000.00 has been agreed to and Molly Powers accepted a \$100.00 bill and gave the Walters a receipt for same written on the back of a napkin which said "\$100 cash received towards \$249,000.00, Powers will sell their house on August 1 and get mortgage, agreement to be signed in two days. (Signed) Molly Powers".
- The Walters stated they are prequalified for a mortgage loan of about \$205,000.00 from an institutional lender amortized over 30 years at a rate of interest no higher than 7.5% per annum.
- The Walters anticipate they will realize about \$35,000.00 from the sale of their Lowell residence and can borrow the rest of the down payment from their parents.
- Sadie Hussein, who was left a message by Molly Powers yesterday afternoon that she was fired because she was doing nothing, has just informed Molly Powers that she has found a Buyer who has signed an offer to purchase the property for \$250,000.00 without any financing contingencies.

Molly Powers has called your office and asked you to prepare a formal Purchase and Sales Agreement. Your paralegal has ascertained the above facts on the telephone with Mrs. Powers. The Powers are coming in this afternoon for an appointment. Draft a memo to yourself outlining any issues which you feel the need to address and requesting any information or documentation you may wish to review or require from any source.

QUESTION

On May 15, 2007, Trevor and Kristen Brady contracted with Ryan and Lisa Bledsoe for the purchase of a fully furnished single family home in North Andover, Massachusetts. The Brady's have obtained a conventional 30 year mortgage loan commitment with Local Bank. Closing is scheduled for July 30, 2007.

The Purchase and Sale Agreement provides as follows:

Purchase Price	\$299,000.00
Deposit	\$ 2,950.00
Real Estate Broker's Commission	6%

The Mortgage Commitment provides the following:

Loan Amount	\$250,000.00
Loan Origination Fee	2.5%
Application Fee	\$250.00
Interest Rate	6%
Title Insurance	\$2.00 per thousand
Mortgage Survey	150.00

The First Mortgage Payment is Due September 1, 2007

You Title Examination Reveals:

Yearly Municipal Taxes (paid to June 30, 2007)	\$6,000.00
Next Tax Bill Due August 1, 2007	
Taxes Payable Quarterly	
Seller's Mortgage Pay off (as of July 30, 2007)	\$166,234.52
Seller's per diem Mortgage Interest	\$40.25

Recording Fees:

Deed	\$125.00
Mortgage	\$150.00
Mortgage Discharge	\$50.00

State Document Stamps:

\$2.28 per \$500.00 or fraction thereof of Purchase Price

Complete the accompanying Settlement Statement as fully as possible. Comment in your Blue Book on your reasoning for any particular entries you feel appropriate and further information you may require from buyer, seller, bank or other source, if any. It is **not** necessary to explain **every** entry on the settlement statement.

QUESTION 2

PART 1

Molly Powers is in the process of selling her home in Methuen, Massachusetts. Ms. Powers, who was an employee of the now defunct Dot Com Company, has decided to move to Paris, France in September. Powers has listed her home with a real estate broker, Ghengis Cann. Prior to her contacting Cann, she permitted Adolph Hitter, a broker who had "cold-called" all former employees of Dot Com Company to see if any were interested in selling their homes, to show the premises to Frank and Kathy Lee Gifford. The Giffords signed an offer to purchase that was subject to their selling their home in Lowell before closing. Powers then met with Hitter but did not sign any of the papers he urged her to sign. Hitter appeared to be a bit of an unsavory character and Molly made it clear to him that she didn't want to sign any agreement contingent on the sale of a Buyer's house, especially in such a slow real estate market.

Two months passed without any other offers. Powers was getting increasingly worried and impatient with Cann who didn't seem to be doing anything. Then out of the blue, the Gifford's contacted Powers directly and stated that they would like to make another offer and would like to meet with her and discuss the matter.

The Gifford's and Powers met yesterday evening at Dunkin Donuts and you are informed that:

- The Giffords found a buyer for their home in Lowell. It is scheduled to close on August 1, 2007 and the Giffords would like to move in on that date.
- A purchase price of \$249,000.00 has been agreed to and Powers accepted a \$100.00 bill and gave the Giffords a receipt for same written on the back of a napkin which said "\$100 cash received towards \$249,000.00, Giffords will sell their house on August 1 and get mortgage, agreement to be signed in two days. (Signed) Molly Powers".
- The Giffords stated they are prequalified for a mortgage loan of about \$205,000.00 from an institutional lender amortized over 30 years at a rate of interest no higher than 7.5% per annum.
- The Giffords anticipate they will realize about \$35,000.00 from the sale of their Lowell residence and can borrow the rest of the down payment from their parents.
- Ghengis Cann, who was left a message by Powers yesterday afternoon that he was fired because he was doing nothing, has just informed Powers that he has found a Buyer who has signed an offer to purchase the property for \$250,000.00 without any financing contingencies.

Molly Powers has called your office and asked you to prepare a formal Purchase and Sales Agreement for her and the Giffords. Your paralegal has ascertained the above facts on the telephone with Ms. Powers. Powers is coming in this afternoon for an appointment. Draft a memo to yourself outlining any issues which you feel the need to address and requesting any information or documentation you may wish to review or require from any source.

PART 2

As it turns out, Molly Powers is a childless widow whose home consists of ten acres of former farmland known as Pumpkin Meadow which contains a single family residence and a barn. The property is believed to have been occupied by members of the Farmer family since pre-Civil War days. Five of the ten acres are in Methuen, Essex County, Massachusetts, and the back five acres cross over the state line into Salem, Rockingham County, New Hampshire.

It was only after the recent, sudden death of her third husband, Austin Powers, from mushroom poisoning, that Molly decided to sell the farm and see the rest of world.

You are now contacted by the attorney who represents the Buyer's lender. She has examined the title to this property to see if the title is "good".

She tells you that her title search disclosed a deed to Molly entitled "Quitclaim Deed"executed and dated July 1, 1967 from Molly's first husband, Fred Farmer, which conveyed all his right, title and interest in this property to her. The deed goes on to state that it "is given pursuant to a divorce decree of the Essex County Probate Court in Molly Farmer v. Fred Farmer". There is no further information in the deed identifying the source of title to the property. Identical copies of this deed were recorded in both the Essex County, Massachusetts and the Rockingham County, New Hampshire Registries of Deeds on January 4, 1968. Through probate records, the attorney has also ascertained that Molly's first husband, Fred Farmer, was the only child of Pat and Ryan Farmer who were killed by a mad cow in 1952. Probate records filed in Essex County, Massachusetts and Rockingham County, New Hampshire in 1953, indicate that both of Fred's parents died intestate on the same day with Fred as their only heir at law. The attorney says that she cannot locate any further information as to the source of title.

Based upon the above, the attorney for the lender is questioning the sufficiency of the chain of record title in Ms. Powers and is asking you for help. Comment upon the reasonableness of this attorney's concerns and any further information you may want to obtain from Ms. Powers or other sources and why.

REAL ESTATE CONVEYANCING AND FINANCING

Professor Carmen R. Corsaro

Spring Final Exam 1994

May 25, 1994
6 P.M. to 9 P.M.

This is a three hour exam. The three questions will be equally weighed and it is recommended that you spend approximately 60 minutes answering each question. Use the Blue Book for essays and to explain certain entries on the Settlement Statement if you feel it necessary. Place your Social Security Number on the Blue Book, this exam, and also the Settlement Statement. Do not identify yourself by name. This is an open book exam and you may use any materials you wish.

Remember that spotting issues is a key to success in this exam. Read questions carefully. Express your answers in a scholarly manner. Clarity of thought and expression will lead to success.

Legibility of script is essential. Write on only one side of each page.

When finished, place exam questions and Settlement Statement inside Blue Book and hand in all.

Write your Social Security Number here _____.

Question 1

On April 24, 1994, Connie Sumer contracted with Claricle Hammer for the purchase of a single family home in Andover, Massachusetts. A Greater Boston Real Estate Board Purchase and Sale Agreement was executed by the parties.

Sumer has obtained a conventional 25 year mortgage loan commitment from Community Bank. Closing is scheduled for July 25, 1994.

The Purchase and Sale Agreement provides as follows:

Purchase Price	\$259,900.00
Deposit	\$12,995.00
Real Estate Broker's Commission	6%

The Mortgage Commitment provides the Borrower is responsible for the following:

Loan Amount	\$200,000.00
Loan Origination Fee	1.5%
Application Fee	\$200.00
Interest Rate	9%
Title Insurance	\$2.00 per Thousand
Mortgage Survey	\$150.00

The First Mortgage Payment is Due September 1, 1994.

Your Title Examination Reveals:

Yearly Municipal Taxes	\$4,000.00
(Paid to 06/30/94)	
Next Tax Bill Due August 1, 1994	
Taxes Payable Quarterly	
Seller's Mortgage Pay Off	\$129,940.40
As of July 25, 1994	
Seller's Per Diem Mortgage Interest	\$40.25
Recording Fees:	
Deed	\$25.00
Mortgage	\$10.00
Mortgage Discharge	\$10.00

State Document Stamps
\$2.28 per \$500.00 or fraction thereof of Purchase Price

Complete the accompanying Settlement Statement as fully as possible. Comment in Blue Book on your reasoning for any particular entries you feel appropriate and further information you may require from buyer, seller, or bank, if any.

Question 2

One day, Brad T. Broker, a licensed real estate agent, was driving down Main Street and saw a sign in front of a house which read "For Sale By Owner". He stopped and knocked on the door and an elderly woman answered. He identified himself and said he would like to help her sell her home. Mrs. Cellar explained that she and her husband, who had recently passed away, bought the house in 1960 and her son was helping handle things for her. Broker informed her that he knew of an individual who was being transferred here from out of state for employment reasons and was looking for a home like hers in the neighborhood.

Broker handed Mrs. Cellar a form entitled "Exclusive Listing Authorization" for her to sign. She said she appreciated his help, would discuss it with her son and took the form.

Broker was aware that the prospective buyer was visiting in town and telephoned him about the house. Buyer stopped at the house, loved it, and told Mrs. Cellar he would be in touch with her through Broker.

On his way to the airport, Buyer stopped at the Broker's office and left him the following note:

"Mrs. Buyer's house on Main Street is just what I've been looking for. Offering \$150,000.00 for same. Want to close by July 1, 1994. Can you help arrange for local financing in the amount of \$75,000.00. Here is check for \$7,500.00 as deposit. Will call you from Seattle." Signed, John Buyer.

When Mrs. Cellar's son came home that evening he found Broker and his mother sitting in the living room. Ever since his father passed away, he felt very protective of his mother; he being an only child.

Sonny saw that Broker had prepared a statement which stated:

"I hereby accept John Buyer's offer to purchase my home for the sum of \$150,000.00 on or before July 1, 1994, contingent upon his obtaining a commitment for financing in the amount of \$75,000.00 from Knightly Mortgage Company on or before June 7, 1994."

Mrs. Cellar had signed it just before her son walked into the room. Sonny became very angry and asked Broker to leave, thinking that Broker was taking advantage of his mother. Broker took the statement and left the house stating he would speak with them later when Sonny calmed down.

In fact, the \$150,000.00 was more than \$7,000.00 higher than the best offer received to date by Cellar on the house.

The next day, Mrs. Cellar called Broker and said that the agreement was okay and her son was being overly cautious.

Broker contacted his friend at Knightly Mortgage Company and asked him to help Buyer obtain financing. Knightly sent a mortgage application to Buyer which was processed.

In the meantime, Broker prepared a standard Greater Boston Real Estate Board Purchase and Sale Agreement and forwarded same to Buyer for his execution. Buyer's loan was approved and a commitment letter issued dated June 6, 1994 from Knightly Mortgage for a \$75,000.00 loan for 30 years at 8 1/2% interest. Buyer signed the mortgage commitment and the Purchase and Sale Agreement and mailed them on the same day, June 11, 1994. The mortgage contingency clause read "If despite the Buyer's diligent efforts, a commitment for such loan cannot be obtained on or before June 11, 1994, the Buyer may terminate this agreement by written notice to the Seller on or before said date."

On June 23, 1994, Knightly Mortgage Company filed for bankruptcy protection as its sources of funding dried up. It is now July 2, 1994 and the closing has not occurred. Mrs. Cellar passed away on July 2, 1994 without having signed the formal Purchase and Sales Agreement or the listing agreement.

Discuss the rights and liabilities of the parties.

Question 3

Mr. and Mrs. Smith purchased a new single family home in July of 1991 from Joe Builder for \$130,000.00. They financed \$117,000.00 of the purchase price by a conventional purchase money mortgage through Friendly Bank. The property was in Haverhill, Massachusetts.

Just prior to closing, Joe Builder convinced the Smiths to make \$3,000.00 worth of additional improvements to the property which would be paid to him after closing.

By December of 1991, Mr. Smith had left his wife and moved in with Ms. Wrecker, leaving Mrs. Smith in the home with their two young children.

During the divorce proceedings, it was stipulated that the house would be placed on the market and sold as soon as possible. In the meantime, Joe Builder, who hadn't been paid for the later improvements, filed suit against the Smiths and obtained an attachment of \$4,000.00 on the property.

Because of increasing financial pressures, the Smiths agreed that Mrs. Smith and the children would leave for Maine to live with her mother. The house could be rented pending its sale and the rent would help Mr. Smith make the periodic mortgage payments which he would assume responsibility for pending the sale of the house.

Mr. and Mrs. Renter moved into the premises and began paying rent at \$1,000.00 per month.

Over time, the highest offer received on the house was \$120,000.00 which was not enough to cover the mortgage balance, the attachment and costs of closing including realtor's commission.

In January of 1993, Mr. Smith began to pocket the rental payments and stopped paying the mortgage. In April of 1993, Mr. and Mrs. Smith each received a notice of default from Friendly Bank stating that the mortgage loan would be accelerated if payment of all arrearages was not made within seven days.

Mrs. Smith contacted her former husband who told her the tenants weren't paying him so he couldn't pay the bank. "Why don't we just sign over the house to the bank?", he suggested.

Mrs. Smith called the bank to ask if this was possible. The bank officer said he would look into it.

A week later, Mrs. Smith received a notice indicating that a proceeding in Land Court to foreclose the mortgage had been commenced. She wrote to the Court objecting to the proceeding on the grounds her husband was supposed to pay the mortgage, not her.

She also called the bank to see what was going on and was told by a bank officer that Joe Builder's lien would prevent the Smiths

from signing over the property.

Mrs. Smith called Joe Builder repeatedly, but he did not answer her calls.

In the meantime, a foreclosure sale was scheduled for December 1, 1993. In late October, Mrs. Smith was finally contacted by Joe Builder who said that if she and her ex-husband would pay him \$2,000.00 he would release his attachment on the house.

Mrs. Smith called her ex-husband who said he would come up with the money if the bank would take a deed for the property and forgive the mortgage debt. Friendly Bank agreed but stated this must be completed by November 30 or it would proceed with the foreclosure sale.

On November 30, 1993, Mr. Smith failed to come up with the \$2,000.00, and the Bank proceeded with the foreclosure on December 1, 1993.

The auction was held and only two qualified bidders attended, Joe Builder and Ms. Wrecker. The property was sold for \$84,000.00 to the highest bidder, Ms. Wrecker.

Just before taking title to the property Ms. Wrecker and Mr. Smith were married and now intend to live in the premises.

Discuss and explain the legal consequences of the various actions of the parties hereto relative to their interests in the premises. Feel free to comment upon any additional information you might wish to ascertain in assessing the position of any parties as it affects title to the premises.

R-1

REAL ESTATE CONVEYANCING AND FINANCING

Professor Carmen R. Corsaro

Spring Final Exam 1993

May 28, 1993

6 P.M. to 9 P.M.

This is a three hour exam. The three questions will be equally weighed and it is recommended that you spend approximately 60 minutes answering each question. Use the Blue Book for essays and to explain your entries on the form provided. Place your Social Security Number on the Blue Book, this exam, and also the form attached. Do not identify yourself by name. This is an open book exam and you may use any materials you wish.

Remember that spotting issues is a key to success in this exam. Read questions carefully. Express your answers in a scholarly manner. Clarity of thought and expression will lead to success. Good luck!

Question 1

On July 1, 1993, Lotty Byers contracted with Bill Derrink for the purchase of a single family home in Andover, Massachusetts. A Greater Boston Real Estate Board Purchase and Sales Agreement was executed without major amendments by the parties.

Byers has obtained a conventional 30 year mortgage loan commitment from Fleet Bank. Closing is scheduled for July 15, 1993

The Purchase and Sales Agreement provides:

Purchase Price	\$300,000
Deposit	\$15,000
Real Estate Broker's Commission	5%

The Mortgage Commitment provides:

Loan Amount	\$200,000
Loan Origination Fee	2%
Credit Report	\$150
Interest Rate	10%
Title Insurance	\$2.00 per Thousand
Mortgage Survey	\$150
First Mortgage Payment Due	September 1, 1993

Your Title Examination Reveals:

Yearly Municipal Taxes	\$ 3,600
(Paid to 6/30/93)	
Next tax bill due	September 1, 1993
Taxes payable quarterly	
Seller's Mortgage Pay off	\$283,274.30
as of July 15, 1993	

Seller's Per Diem Mortgage Interest \$69.90

Recording Fees

Deed	\$ 25
Mortgage	\$ 20
Mortgage Discharge	\$ 10

State Document Stamps

\$2.28 per \$500 or fraction thereof of Purchase Price

"Shortly before closing" the parties agree that the rear deck will be enlarged at an additional cost to Buyer of \$3,000.00

Complete the accompanying Settlement Statement as fully as possible. Comment in Blue Book on your reasoning for any particular entries you feel appropriate and further information you may require from buyer, seller, or bank, if any.

Question 2

A young associate has presented you with the following results of a title abstract and seeks your opinion, advice, and counsel as to whether he should certify good marketable title of record. Advise your associate as to any further information which you would request and any steps which you would suggest be taken.

The abstract begins with a June 29, 1943 Administrator's Fiduciary Deed to Pete First and Pat First as Tenants by the Entirety, given pursuant to a License to Sell of the Probate Court granted to the Administrator of the Estate of John D. Seest. The Fiduciary Deed contains the following title reference: "Being the same premises conveyed to John D. Seest and Joan D. Seest by deed of I. M. Stiff dated January 3, 1908."

An abstract of John D. Seest's probate records indicates that he died intestate leaving as his only heirs three children: Francis, Frances, and Frank.

Pete and Pat First were divorced in 1950. There is no mention of the real estate in the divorce judgment, but it awards Pete custody of the parties two children, Larry and Moe.

A death certificate is recorded indicating Pat First died in 1952 in a Kansas trailer park tornado disaster. A deed of the premises from Pat First to Pete First, Trustee of the Larry and Moe Trust, dated January 5, 1951, and a Declaration of the Larry and Moe Trust, were both recorded on March 15, 1953.

Pete First died in 1954. Probate records indicate that he died intestate and left Larry and Moe as his heirs. Probate records further indicate that Uncle Ernie First was appointed Administrator of Pete's estate and guardian of Moe, a minor.

In 1960, Uncle Ernie mortgaged the premises to Tony Bookie as security for a personal debt. This mortgage is not discharged of record.

In 1962, Larry is killed in a household accident. There is no probate on Larry's estate.

In 1965, Moe deeded all his right, title, and interest in the premises to himself and his wife, Maureen First, as joint tenants. Maureen died in a household accident in 1970.

In 1971, Moe joined the French Foreign Legion and before he left, deeded the property to Uncle Ernie.

In 1985, Uncle Ernie married Lulu First and died on his honeymoon. Lulu was appointed administratrix of her husband's estate.

In 1986, Lulu married Tony Bookie and both have resided at the premises since. Lulu deeded the property to Anthony Bookie in 1987 and he simultaneously deeded the property back to both himself and Lulu as Tenants in Common. Tony and Lulu are now selling the premises to John Doe, who has obtained a mortgage commitment from Our Bank. Please advise.

Question 3

Stubby Horn is a pig farmer. The old homestead farm has been in the family for over 100 years. In 1987, Stubby granted a commercial mortgage on the farm to the Barn E. Fife Bank to secure a loan in the amount of \$250,000 and invested the money in pork belly processing equipment hoping to make a killing in the local market. When the bottom fell out of the economy, the bank, in dire need of capital, called in Stubby's note along with all other commercial loans in the bank's portfolio.

Stubby, who had depleted his life savings to keep his mortgage payments current, couldn't understand how the bank could do this to him.

When he received notice of demand for payment in full of the note, he sought advice from his friend, Rob Realtor, who told him to try to sell the property as quickly as possible before the bank foreclosed. Stubby signed an agreement with Rob Realtor as his exclusive real estate agent for the sale of the property at a selling price of \$250,000.

In the next few days, Stubby became increasingly bitter, suspicious, and paranoid. He began to brandish his trusty old shotgun whenever a stranger approached the entrance to the farm which was now posted with "no trespassing" signs. Mrs. Horn, his 20 year old bride, couldn't take the pressure, so she left Stubby and moved to her mother's.

Now alone and destitute, one day Stubby was hunting by the old abandoned railroad tracks in the rear of the farm and while shooting for some food, up from the ground came some bubbling crude; oil that is. Stubby thought his prayers were answered.

Later that day, Stubby received a written offer to purchase the farm for \$250,000.00 from Jimmy Dean. Stubby refused to accept the offer and told Rob Realtor he wanted to think it over before signing.

The following day, Jimmy Dean found out that the bank was calling in its notes and withdrew his offer thinking he could get a better deal at foreclosure.

Rob Realtor has obtained an attachment on the property based on the amount of the commission he should have received if Jimmy Dean's offer had been accepted promptly by Stubby.

The Bank's title examination reveals that in 1920, Stubby's grandfather had granted to Grand Defunct Railroad the right to pipe in and store locomotive fuel underground in the area where Stubby had been hunting for food.

You are counsel for the Bank and are aware of the above facts. Assume law in Stubby's home state is identical to Massachusetts law.

Comment upon the various courses of action (including methods of foreclosure) available to the bank. Give due consideration to specific areas of concern which may require special attention or caution on the part of the Bank.