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## Whatever Happened to the Uniform Land Transactions Act?

Ronald Benton Brown\*

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# Whatever Happened to the Uniform Land Transactions Act?

Ronald Benton Brown\*

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*"The report of my death was an exaggeration."*

—Mark Twain

Cable from Europe to the Associated Press<sup>1</sup>

The Uniform Land Transactions Act ("ULTA")<sup>2</sup> was approved by the National Conference on Uniform State Laws ("NCCUSL") in 1975.<sup>3</sup> The Conference proposed that every state enact it. The Act was designed to simplify, clarify, modernize, and make uniform nationwide the real estate sales and sales financing law like the Uniform Commercial Code ("UCC") had done for the law of transactions in goods. Article 1 of the ULTA paralleled Article 1 of the UCC covering general provisions. Article 2 of the ULTA covered the sales of land in a manner similar to the way Article 2 of the UCC covered the sales of goods. Article 3 of the ULTA and Article 9 of the UCC covered secured transactions. In the late 1970s, the ULTA appeared to be the wave of the future for real estate, ready to duplicate the widespread acceptance accomplished by the UCC. When I began to teach property in 1976, that was the way I presented the ULTA to students. I also remember advising an even more junior colleague to focus her scholarly efforts on the ULTA so she would be on the leading edge of Real Estate Law.<sup>4</sup> In the early 80s, my representations seemed to be justified. Law students and recent graduates eagerly anticipated the replacement of the confusing rules of the common law and maxims of equity with an easily understood code.<sup>5</sup>

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\* Professor of Law, Nova Southeastern University, Shepard Broad Law Center. B.S.M.E., 1970, Northeastern University; J.D., 1973, University of Connecticut; LL.M., 1976, Temple University.

1. THE OXFORD DICTIONARY OF QUOTATIONS 554 (3rd ed. 1979).

2. 13 U.L.A. 539-714 (1980).

3. See Norman Geis, *Introduction to UNIFORM REAL PROPERTY ACTS* (1990); U.L.S.I.A. prefatory note, 7A U.L.A. 220 (Supp. 1995), reprinted in *UNIFORM REAL PROPERTY ACTS* 558-65 (1990).

4. Amazingly, this advice was followed, a fact which this author has never been allowed to forget. See Barbara J. Britzke, *Residential Real Estate Transactions: Comparison of Uniform Land Transactions Act and Maryland Law*, 13 U. BALT. L. REV. 43 (1983). However, Professor Britzke suffered no ill effects from the advice other than developing a severe antipathy to Real Estate Law.

5. For example, students were delighted to read, at the conclusion of a section of text explaining that under traditional doctrine the contract of sale merged into the deed, that:

But widespread enactment never happened. In fact, no enactment ever occurred. The ULTA was not adopted by any state. Fifteen years later, in 1990, the NCCUSL withdrew it. Before that happened, the mortgage part, Article 3, had been extracted and fashioned into a new act of its own, the Uniform Land Security Interest Act (“ULSIA”), which was presented to the states. But ULSIA has not been enacted either. The most recent attempts to convince a state legislature to adopt the ULSIA that I know of occurred in Connecticut and Minnesota last year. In Connecticut, the bill failed to emerge from committee.<sup>6</sup> In Minnesota, an active bar committee, having developed a modified version ULSIA to deal with local concerns, is optimistic for its chances in the next session.<sup>7</sup> For simplicity sake, I will refer to both the ULTA and ULSIA as being included in the term ULTA for the remainder of these remarks.

Whatever happened? I wanted to know. So did many lawyers, law students, and other law professors. I proposed to the editors of the *Nova Law Review* that we try to find out and print the results in the form of a symposium. I solicited the information by writing<sup>8</sup> directly to everyone listed in the *Uniform Laws Annotated* as having been involved at any stage with the ULTA or ULSIA. I also sent the solicitation letter to the Internet discussion groups for law professors<sup>9</sup> and real estate professionals.<sup>10</sup> I followed up leads, no matter how remote. The responses varied. I anticipated *post mortems* analyzing the causes of the ULTA’s untimely death. Many of the responses, especially the brief ones fit my expectations. Based upon those, I compiled a list of what seemed to be the “Top Ten Reasons for the Demise of the ULTA” (with apologies to David Letterman). In reverse order they are:

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“Uniform Land Transactions Act sect. 1-309 abolishes the doctrine of merger. Acceptance of a deed does not relieve any party of the duty to perform all of his obligations under the contract.” JESSE DUKEMINIER & JAMES E. KRIER, *PROPERTY* 580 (2d ed. 1988). The students concluded they no longer had to worry about the doctrine because it no longer existed. Great was their disappointment at being reminded that the ULTA was not yet the law anywhere.

6. This information was obtained from attorney William Breetz, an NCCUSL commissioner from Connecticut and an advisor to the ULSIA Drafting Committee, and Mr. David Biklen, the executive director of the Connecticut Law Review Commission.

7. See John D. Healy, Jr., *ULSIA—Modified for Minnesota*, 20 NOVA L. REV 1063 (1996).

8. See Appendix C for a copy of the solicitation letter.

9. The LawProf discussion group.

10. The Dirt discussion group.

10. Almost no one understood it.
9. It would not do for real estate what the UCC did for the sale and sales financing of goods.
8. It would do for real estate what the UCC did for the sale and sales financing of goods.
7. It was drafted by commercial law people rather than conveyancers.
6. No one ever heard of it.
5. It was only another boondoggle by law professors.
4. It was almost totally ignored by law professors.
3. Real property lawyers did not want to learn something new.
2. Real property lawyers were afraid that it might hurt them economically.
1. Real estate is too local in character for the nationwide uniformity.

Each of these had some immediate appeal to me. The responses from our distinguished panel of commentators have placed them in the proper perspective.

I start the discussion with reason number 10, that almost no one understood the ULTA. I have taught the UCC courses in Sales and Sales Financing. In many law schools, Sales and Sales Financing are two separate courses, each getting three credit hours. That means each course meets a minimum of three hours per week over a fourteen-week semester for a total of eighty-four class hours. Some schools combine the two topics into one four-credit course for a minimum of fifty-six class hours. It is apparent that law school faculties believe that it takes upper level law students, under the skilled guidance of a law professor, at least fifty-six hours to understand these acts. Of course, a prior understanding of the UCC might make it easier for a lawyer or law student to figure out the parallel parts of the ULTA, but it also might lead to confusion because the provisions are not exactly the same. Besides, not every lawyer or law student understands Articles 2 and 9 of the UCC, not even if he or she has taken the course(s). So a significant obstacle to adoption would be the time and effort required for the critical parties (e.g., study committees, legislative staffs, legislators, and interested members of the public, such as, potential lobbyists) to figure out what these acts would do.

This obstacle was probably magnified by the fact that the NCCUSL promulgated another act, the Uniform Simplification of Land Transfers Act ("USLTA"),<sup>11</sup> at the same time as ULTA. The USLTA covered the mechanics of transfer, liens, recording, and priorities. As originally

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11. This Act is also referred to as "USOLTA."

formulated, these were included in the ULTA<sup>12</sup> but they were moved to a separate act to prevent the ULTA from becoming unwieldy. Professor Maggs points out that the USOLTA generated political and economic opposition of its own. I speculate this opposition might have inured to the detriment of the ULTA. Moreover, figuring out the USOLTA would have been just as big a study project as figuring out the ULTA and would also have generated questions as to how the acts would interrelate. Being created at the same time, they were probably viewed, at least on a subliminal level, as a package since many of the authors in this *Symposium* discuss them together.<sup>13</sup> That should not have surprised me considering how often they were lumped together in prior academic discussions.<sup>14</sup> Perhaps this package was simply too big for any legislature to swallow, particularly when one remembers that being a state legislator is only a part-time job in many states and there was no emergency pressing legislators to deal with these proposals.

Reason number 9 reflects the idea that the UCC was intended, *inter alia*, to simplify, clarify, and modernize the law.<sup>15</sup> The ULTA was intended to do the same thing<sup>16</sup> but doing that for real estate law would be more difficult than it was for transactions in goods. Probably, this is connected to reason number 1 (i.e., real estate law is too local in nature to be suitable for a uniform act). Perhaps it is connected to the historical

12. The original vision was to have one uniform act which would cover all aspects of real estate law. Other topics which were removed and eventually became the subject of separate acts were condominiums and common interest ownership.

13. See Richard B. Amandes, *The Uniform Land Transactions Act and the Uniform Simplification of Land Transfers Act Twenty Years Later: Why Have There Been No Adoptions?*, 20 NOVA L. REV. 1033 (1996); Peter B. Maggs, *The Uniform Simplification of Land Transfers Act and the Politics and Economics of Law Reform*, 20 NOVA L. REV. 1091 (1996); Barbara Taylor Mattis, *ULTA and USLTA in Coursebooks and Classrooms*, 20 NOVA L. REV. 1095 (1996).

14. The 1981 symposium in the *Southern Illinois University Law Journal* included six articles of which three focused exclusively on USLTA and two others involved both USLTA and ULTA. The symposium in the *Stetson Law Review* was divided almost equally between USOLTA and ULTA.

The Uniform Land Security Interest Act suffered similarly by being grouped with other Uniform Real Property Acts in the Symposium on Uniform Real Property Acts, 27 WAKE FOREST L. REV. 325 (1992), with the stars of the show being the Uniform Common Interest Ownership Act and the Uniform Construction Lien Act. However, the ULSIA was the sole focus in a 1992 symposium in the *Connecticut Law Review*.

15. UCC § 1-102.

16. ULTA § 1-102(1).

nature of land law.<sup>17</sup> Even the name “real estate” has medieval roots that lawyers both enjoy and hate. It takes on an almost mystical aura which lawyers hold in awe and, deep down, may not want to exorcise with a sanitized “land” law.

Reason number 8, doing for real estate law what the UCC had done for the sale of goods, was supposed to be one of the reasons for states to adopt the Act. But many lawyers still remember the negative side of the process. It was not easy for lawyers and judges to learn the newly enacted UCC. Some lawyers and judges could afford to simply hire recent graduates who had taken one or more UCC courses to be their clerks or associates. Others struggled to understand the new code, but the struggle was often made worse by confused judges who produced tortured and baffling precedents.

I remember being a very young lawyer in Connecticut in 1973 and winning my first “big” case because the outcome was based upon the UCC. My client was being sued for failing to pay for a set of encyclopedias. Upon reading the complaint I noticed that the encyclopedias had been delivered almost six years earlier. Eureka! The statute of limitations on a contract for the sale of goods under the UCC was four years. I filed my notice of affirmative defense. My motion for summary judgment was in the typewriter when the plaintiff’s attorney called. “How can you say the statute of limitations has run when the six years aren’t up?” he demanded. I replied that under Article 2 of the UCC, the statute of limitations was four years. “What’s the UCC?,” he asked, although it had been the law in Connecticut for over twelve years (TWELVE YEARS!).<sup>18</sup> Either embarrassed or, perhaps more likely, just unwilling to look up the statute for the amount of money at issue, he agreed to dismiss the case with prejudice. He went on to explain that he had a large collection practice and the UCC had never come up before in any case. I am certain that he did his best to forget about it immediately. I heard similar stories from contemporaries who encountered lawyers and judges who neither knew nor cared that the UCC existed. Remembering or just having heard of these times, lawyers and legislators might be justified in not wanting to repeat the experience. Others might justifiably interpret this as proof that lawyers do not want to be bothered learning something new (i.e., reason number 3).

Reason number 7 was that it was drafted by commercial law people rather than conveyancers. Perhaps that was true but it sounds like an *ad hominem* argument. A number of the ULTA draftsmen had worked on parts

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17. See Geis, *Introduction*, *supra* note 3, at 3.

18. 1959 Conn. Acts 133 (Reg. Sess.) (effective 1961) (codified at CONN. GEN. STAT. ANN. §§ 42a-1-101 to -10-109 (West 1990 & Supp. 1996)).

of the UCC,<sup>19</sup> but why should that disqualify them or diminish the product? The notes to the Act indicate that they received input and advice from what appears to be every facet of the real estate community.<sup>20</sup> Moreover, the act itself was approved by the NCCUSL and I have found nothing to suggest that the Conference was the captive of commercial law interests.

As indicated above, I communicated with everyone whose name I found mentioned in any reference or cross reference to the ULTA. I was pleasantly surprised by how nice people were about replying, but I was also quite surprised by how many responded that they either had not heard of it or could not recall anything about it. Land sales and financing may be an eminently forgettable topic and it was twenty years ago, but the degree of nonrecognition was astonishing. Perhaps reason number 6 does have some validity.

Reason number 5 blames the law professors, something we have learned to bear. Law students frequently respond to new assignments by asking, "Why do we have to learn this?" or "Do we really have to learn this?" (although the favorite question is still, "Will this be on the exam?"). They suspect that law professors invent the unpleasant and difficult material simply to torture them. Reason number 5 may be an extension (logical or not) of this syndrome, i.e., it was simply something dreamed up by law professors because they have nothing better to do with their days in their ivory towers than to dream up miseries for law students. I assure you that, based upon my experience, it is not so. In fact, if the ULTA had been adopted, it would eventually have made life far easier for everyone, but admittedly the transition period would have taken some enduring. Besides, if one examines the list of people involved in the drafting and consideration of the ULTA, it becomes readily apparent that these were busy, successful professionals who had no need to invent busywork to fill up their days.

Reason number 4, that professors ignored the ULTA, is in some ways the converse of number 5, but it has more basis in fact. Law professors

19. Some of these draftsmen included: professors Marion Benfield, Peter Maggs, and Fairfax Leary.

20. The prefatory note to the ULTA in the 1986 edition of the *Uniform Laws Annotated* reveals, *inter alia*, a list of advisors from the following associations: the Federal Home Loan Bank Board, the National Association of Real Estate Boards, the National Association of Home Builders of the United States, the Department of Housing and Urban Development, American Bar Association, the Mortgage Bankers Association of America, the American Land Title Association, the Public Interest Research Group, and the American Subcontractors Association.

wrote a surprisingly small number of law review articles about the ULTA despite the considerable efforts of Dean Richard Amandes to drum up scholarly interest.<sup>21</sup> Only ten articles and five student comments focused on the ULTA during the fifteen years between the Act's approval and withdrawal.<sup>22</sup> Even counting student notes, this symposium will almost double that number! Why were there so few articles on such an important subject and did that have a negative effect? Dean Amandes, in his article, explains his theories noting that the most important factor may have been that the UCC, in contrast to the ULTA, had predecessor acts to set the stage for its enactment.

Casebook authors did not ignore the Act. As Professor Mattis explains, all of the basic Property casebooks included discussions of the Act, and, as she explains, the act was used as an educational vehicle in her class. If students could have been won over to the cause of the ULTA, eventually they would have been the lawyers who would control the growth of the law. However, the Act was withdrawn before many law student who had learned about it in class could have achieved positions where they could have a significant impact. Moreover, there is no way to know how many professors gave attention to the Act in class or in reading assignments, or whether the attention was positive or negative.

Finally, reason number 2 is that many real estate lawyers were against the ULTA because it might hurt them economically. It might, for example, decrease the need for lawyers through the use of power of sale rather than judicial foreclosure. It would also involve a significant retooling of their practices. Mr. Pedowitz supports this view.<sup>23</sup> He was actively involved in what happened, so he must know.

Reason number 2 might explain why the Uniform Land Security Interest Act did not meet with success after it was spun-off from the ULTA. The ULSIA was smaller, more focused, and easier to learn than the ULTA, but even the attempts to modify it to meet local needs and expectations have

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21. The author still has in his possession a letter he received from Dean Amandes which was typical of his efforts to find law professors interested in writing about the ULTA and/or the Uniform Simplification of Land Transfers Act.

22. See Appendix A, *infra*, for articles in which the focus was the ULTA. Appendix B lists articles in which the Uniform Security Interest Act, a derivative of the ULTA, was the focus. See also Mattis, *infra*, for a complete list of articles in which the ULTA, ULSIA, and USLTA were discussed. The latter, commonly referred to as the USOLTA or USLTA, concerned recording and priorities, a subject which was part of the original concept of the ULTA but made into a separate act before the ULTA was approved by the NCCUSL.

23. See James M. Pedowitz, *Letter to the Editor*, 20 NOVA L. REV. 1029 (1996).

yet to produce adoption.<sup>24</sup> Perhaps the ULSIA had been tainted by its connection with the ULTA and USOLTA, or it is simply too late to regain the necessary momentum.

But the fact that the ULTA was never adopted by a state does not necessarily mean that it was a failure or that it had died. It has performed and continues to perform some important functions. The Act stimulated discussion over what the law should be. Professors Walsh and Siebrasse explain that it is a major influence on the Proposed New Brunswick Land Security Act.<sup>25</sup> Professor Maggs mentions it in his attempts to help Armenian jurists in their efforts to draft a civil code explaining that it has been useful in the education of an entire generation of law students and, I would add, law professors. Professor Korngold demonstrates that the Act has played a role in the process of law reform in the courts.<sup>26</sup> Some state legislatures have enacted small parts of it.<sup>27</sup> Professor Randolph explains that the Act will play a role in the next generation of legislative proposals being developed by the NCCUSL. The Act may even pave the way for eventual adoption of that next generation of uniform real estate laws.<sup>28</sup> It is obvious that we owe a great debt of gratitude to the pioneers who invested so much time, effort, and thought into the creation and presentation of the ULTA. Their dedication to the orderly development of the law and through it our common welfare is truly remarkable.

Personally, and on behalf of the Nova Law Review, I want to thank the commentators who have participated in this *Symposium*. I have enjoyed learning from them and I appreciate their efforts and insight. Thanks to them, I now have the answers to my questions and the opportunity to share this knowledge with our readers.

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24. See Healy, *infra*, for a discussion of attempts to modify the act for adoption in Minnesota.

25. Norman Siebrasse & Catherine Walsh, *The Influence of the ULSIA on the Proposed New Brunswick Land Security Act*, 20 NOVA L. REV. 1133 (1996).

26. See also Jon W. Bruce, *The Role Uniform Real Property Acts Have Played in the Development of American Land Law: Some General Observations*, 27 WAKE FOREST L. REV. 331 (1992).

27. California and Virginia have "cherry-picked" the anticlogging section and enacted it. See Norman Geis, *Escape from the 15th Century: The Uniform Land Security Interest Act*, 30 REAL PROP. PROB. & TR. J. 289, 315 n.99, 317 (1995).

28. See Amandes, *infra*, regarding the role played by the Negotiable Instruments Law, Bulk Sales Act, and Uniform Warehouse Receipts Act in paving the way for the adoption of the UCC.

## Appendix A

## Law Review Articles about the Uniform Land Transactions Act

Marion W. Benfield, Jr., *Future Advances Lender: Status Under Present Illinois Law and Under ULTA and USOLTA*, 1981 SO. ILL. U. L.J. 451.

Barbara J. Britzke, *Residential Real Estate Transactions: Comparison of Uniform Land Transactions Act and Maryland Law*, 13 U. BALT. L. REV. 43 (1983).

Ronald Benton Brown, *Article 1 of the Uniform Land Transactions Act: Is Inconsistency with the U.C.C. an Unnecessary Obstacle?* 1981 SO. ILL. U. L.J. 585.

Jon W. Bruce, *Mortgage Law Reform Under the Uniform Land Transactions Act*, 64 GEO. L.J. 1245 (1976).

Jon W. Bruce, *Overview of Uniform Land Transactions Act and Uniform Simplification of Land Transfers Act*, 10 STETSON L. REV. 1 (1980).

Jon W. Bruce, *The Role Uniform Real Property Acts Have Played in the Development of American Land Law: Some General Observations*, 27 WAKE FOREST L. REV. 331 (1992).

Allison Dunham, *Reflections of a Statutory Draftsman: Land Transaction Acts*, 1981 SO. ILL. U. L.J. 549.

William H. Henning, *Analysis of Durrett and Its Impact on Real and Personal Property Foreclosures*, 63 N.C. L. REV. 257 (1985).

Gerald Korngold, *Construction loan advances and the subordinate purchase money mortgage: An appraisal, a suggested approach, and the ULTA perspective*, 50 FORDHAM L. REV. 313 (1981).

## Student Notes or Comments:

Comment, *Real Property-Warranties in Uniform Land Transactions Act of 1975*, 49 TEMPLE L.Q. 162 (1975).

Meredith Craig, *The Uniform Land Transactions Act and the Uniform Simplification of Land Transfers Act: Potential Impact on Florida Law*, 10 STETSON L. REV. 21 (1980).

William J. Fields, *Housing Defects: Homeowners' Remedies—A Time For Legislative Action*, 21 WASHBURN L.J. 72 (1981).

Patricia E. Rant, *ULTA and Non-judicial Mortgage Foreclosure in Texas*, 12 ST. MARY'S L.J. 1104 (1981).

Maureen M. Rayburn, *The Uniform Land Transactions Act: Pennsylvania Property Law and Sellers' Remedies for Breach of Contract for Sale of Real Estate*, 55 TEMPLE L.Q. 577 (1982).

## Appendix B

## Law Review Articles about the Uniform Land Security Interest Act

Curtis J. Berger, *ULSIA and the Protected Party: Evolution or Revolution*, 24 CONN. L. REV. 971 (1992).

Roger Bernhardt, *ULSIA's Remedies on Default—Worth the Effort*, 24 CONN. L. REV. 1001 (1992).

Marc B. Friedman, *Rentals Roulette: The Mortgagee's Rights to Rent under Connecticut Law and the ULSIA*, 24 CONN. L. REV. 1093 (1992).

Norman Geis, *Escape from the 15th Century: The Uniform Land Security Interest Act*, 30 REAL PROP. PROB. & TR. J. 289 (1995).

Jan Z. Krasnowiecki, *Uniform Land Security Interest Act and the Bankruptcy Courts: Bivergent Policies*, 24 CONN. L. REV. 1075 (1992).

Michael E. Schill, *Uniformity or Diversity: Residential Real Estate Finance Law in the 1990s and the Implications of Changing Financial Markets*, 64 S. CAL. L. REV. 1261 (1991).

John Mixon & Ira B. Shepard, *Antideficiency Relief for Foreclosed Homeowners: ULSIA section 511(B)*, 27 WAKE FOREST L. REV. 455 (1992).

### Appendix C

#### The Letter Soliciting Participation in this Symposium

Dear \_\_\_\_\_:

Whatever happened to the Uniform Land Transactions Act (and its offspring, the Uniform Land Security Interest Act)? What can be learned from its uniform lack of enactment? Did it produce any lasting effects? The answers to these questions are not currently available.

Because I would really like to learn the answers to these questions, I have convinced the editors of the *Nova Law Review* to schedule a symposium issue on the ULTA. We would like the people with the information to share it with us and the legal community. Contributions could be in the form of traditional law review articles or could be in the form of reminiscences, essays or whatever.

The editors need to plan, so please let me know no later than September 15, 1995 if you would like to participate. You may contact me by E-mail, fax, letter or telephone at the numbers listed below.

If you would like to discuss the possibility before making a commitment, feel free to call me.

Please share this information with your colleagues. If you know someone who is not on this list who was involved with the ULTA (or ULSIA) at some stage, e.g., drafting or legislative consideration, please alert them of this project.

Thanks,

Ronald Benton Brown  
Professor of Law  
Nova Southeastern University Shepard Broad Law Center  
3305 College Avenue  
Fort Lauderdale, Florida  
tel: 305-452-6165; fax: 305-452-6227; Internet: brownr@law-lib.law.nova.edu