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Letter to the Editor

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Letter to the Editor

James M. Pedowitz^{*}

September 1, 1995

Professor Ronald Benton Brown
Nova Southeastern University
3305 College Avenue
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Dear Professor Brown:

I read your letter of August 14, 1995 with extreme interest. As you may already know, at various times I acted as an advisor to the Commissioners on behalf of the American Land Title Association and later on behalf of the Real Property Probate and Trust Law Section of the American Bar Association. In addition, I was an original member of the Joint Editorial Board and remained active thereon until a couple of years ago.

I am fairly sure that all or almost all of the people that you may interview or hear from who actually worked on the promulgation of these Acts will assure you that they are both excellent products and worthy of uniform adoption. You may have some dissent with respect to portions of the Uniform Land Transactions Act ("ULTA") on the ground that it was patterned too closely to the Uniform Commercial Code and that it did not sufficiently appreciate the differences between real and personal property.

As you probably already know, the original Uniform Land Transactions Act encompassed not only what was ultimately adopted under that name but also the provisions that subsequently were spun off into the Uniform Simplification of Land Transactions Act ("USLTA"), the Uniform Condominium Act, the Uniform Common Interests Ownership Act, the Uniform Land Security Interest Act ("ULSIA"), the Uniform Construction Lien Act and the Uniform Marketable Title Act.

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Mr. Pedowitz was a Board member of the Joint Editorial Board for the Uniform Land Transactions Act/Uniform Simplification of Land Transfers Act. He has also acted as an advisor to the National Conference of Commissioners on Uniform State Laws on behalf of the American Land Title Association and the Real Property, Probate, and Trust Section of the American Bar Association.

In my opinion, both from working with the American Bar Association and the New York State Bar Association, the basic underlying resistance to ULTA and USLTA was that it made academic and practical sense but was not conceived by the Bar and other interest groups as being in their economic best interests.

Except for the Condominium Act, which found favor mainly because there was an urgent need for some guidance in this new and burgeoning field, those attorneys who practice real estate law, either as their primary practice, or as incidental to their other practice, were reluctant to discard the “old shoe” of their current practice and knowledge and undertake the learning of new terminology and new concepts, notwithstanding that they were better. As an example, when attorneys who specialize in mortgage foreclosure in New York State were approached with respect to ULSIA, the typical response was that they were far less interested in improving the antiquated process than their concern about what it might do to their income stream under the existing procedures.

Real estate law is single-stat oriented. Each of the states and local bar groups are jealously protective about their own forms, procedures and customs. The Bar, with very few notable exceptions, has been far less interested in reform and improvement than in the effect of those changes on their income.

Perhaps the best answers could be obtained from the various Commissioners who failed to arrange for the introduction of any of this legislation into their state legislatures. Many of them may tell you that they did not vote for many of these uniform Acts, and if my recollection serves me correctly, some of them passed by only narrow majorities. The plain fact seems to be that no matter how worthwhile this legislation, there never was a groundswell of support for it, nor a generally recognized need for it. Both the Bar and the business community seem to be content to leave well enough alone.

In retrospect, I have no regret with respect to all of the time and work that I put into working on and supporting these acts. If our various state legislatures and those interests that influence them could be convinced to set aside their parochial prejudices and the self-interests of certain groups, the widespread adoption of these Acts would ultimately be proved to be of tremendous benefit to a 21st century economy.

At my stage in life, I am disinclined to sit down and attempt to write a more comprehensive analysis of why these Acts were not adopted. You will certainly find literature both in support of these Acts, and critical of them. Many of the critical comments were certainly made in good faith and out of sincere conviction. However, I remain of the opinion that most of the reasons for the failure to adopt these Acts is a combination of natural inertia, and what the various bar groups conceived as their individual self-interest.

You have my permission to utilize this letter as part of your symposium.

Very truly yours,

James M. Pedowitz