



VANDERBILT
UNIVERSITY

Discover Archive

Vanderbilt University's Institutional Repository

HEINONLINE

Citation: 10 Stetson L. Rev. 1 1980-1981

Content downloaded/printed from
HeinOnline (<http://heinonline.org>)
Thu Dec 13 12:19:13 2012

- Your use of this HeinOnline PDF indicates your acceptance of HeinOnline's Terms and Conditions of the license agreement available at <http://heinonline.org/HOL/License>
- The search text of this PDF is generated from uncorrected OCR text.
- To obtain permission to use this article beyond the scope of your HeinOnline license, please use:

[https://www.copyright.com/ccc/basicSearch.do?
&operation=go&searchType=0
&lastSearch=simple&all=on&titleOrStdNo=0739-9731](https://www.copyright.com/ccc/basicSearch.do?&operation=go&searchType=0&lastSearch=simple&all=on&titleOrStdNo=0739-9731)



Retrieved from DiscoverArchive,
Vanderbilt University's Institutional Repository

This work was originally published as Jon W. Bruce, An Overview
of the Uniform Land Transactions Act and the Uniform
Simplification of Land Transfers Act, 10 Stetson L. Rev. 1
1980-19810

ARTICLES

AN OVERVIEW OF THE UNIFORM LAND TRANSACTIONS ACT AND THE UNIFORM SIMPLIFICATION OF LAND TRANSFERS ACT

Jon W. Bruce*

Introduction

The Uniform Land Transactions Act (ULTA) and the Uniform Simplification of Land Transfers Act (USLTA) recently were approved by the National Conference of Commissioners on Uniform State Laws and recommended to the several states for adoption. The symposium which follows this article thoroughly analyzes ULTA and USLTA in light of current Florida law. The purpose of this article is to review the development of these acts and place them in general perspective. Thus, the reader will have a rough framework within which the more specialized and detailed student analysis may be placed.

I. HISTORICAL BACKGROUND

A historical note is initially in order. The Commissioners began work in this area in 1969 by appointing a special committee to draft an act that would revolutionize and standardize real property law in the way the Uniform Commercial Code (UCC) accomplished that task for personal property law.¹ The special committee responded with an original draft

* Visiting Professor, Vanderbilt University School of Law; on leave of absence from Stetson University College of Law. B.A. 1966, Hanover College; J.D. 1969, College of William and Mary.

1. ULTA, Prefatory Note (1977 version); *id.* § 1-102, Comment. See Kratovil,

entitled ULTA, which covered the gamut of real property issues including contracts, conveyances, mortgages, condominiums, recording, priorities, mechanics' liens and land records. After considerable deliberation the Commissioners decided in 1975 that the original draft was unwieldy and should be broken into three separate acts. The material dealing with contracts, conveyances, and mortgages was retained and approved in 1975 under the ULTA label.² The portion of the original draft dealing with recording, priorities, mechanics' liens, and land records was separated for further consideration. It was redrafted as USLTA and approved by the Commissioners in 1976.³ The portion of the original draft dealing with condominiums was also separated for further consideration. It was redrafted as the Uniform Condominium Act and approved by the Commissioners in 1977.⁴ Because the Uniform Condominium Act deals with a highly specialized area and approaches that area in a manner that is significantly different from the ULTA and USLTA approach, it is not treated in this article.⁵

State legislatures did not immediately react to the Commissioners' approval of ULTA in 1975 and USLTA in 1976. One reason for this legislative reticence was that the American Bar Association withheld its approval of the acts pending a thorough review of each of them. Committees appointed by the Real Property Division of the Section of Real Property, Probate and Trust Law of the ABA studied ULTA and USLTA and suggested numerous drafting changes to each act. The Commissioners met with the ABA committees and as a result formally amended ULTA and USLTA in 1977.⁶ The ABA in turn approved both acts as amended in February, 1978. The current versions of ULTA and USLTA are the sub-

The Uniform Land Transactions Act: A First Look, 49 ST. JOHNS L. REV. 460 (1975).

2. ULTA, Prefatory Note (1977 version).

3. USLTA, Prefatory Note (1977 version).

4. Uniform Condominium Act, Prefatory Note.

5. See generally, Jackson & Colgan, *The Uniform Condominium Act from a Local Government Perspective*, 10 URB. LAW. 429 (1978); Judy & Wittie, *Uniform Condominium Act: Selected Key Issues*, 13 REAL PROP., PROB. & TR. J. 437 (1978); Rohan, *The "Model Condominium Code"—A Blueprint for Modernizing Condominium Legislation*, 78 COLUM. L. REV. 587 (1978).

6. ULTA, Prefatory Note (1977 version); USLTA Prefatory Note (1977 version).

ject of this article and the following student comments.⁷

II. UNIFORM LAND TRANSACTIONS ACT (ULTA)

A. Coverage

ULTA covers all contractual transfers of real property including but not limited to deeds, leases, mortgages, deeds of trust, installment land contracts, easements, and restrictive covenants.⁸ It is divided into three substantive articles: Article 1—General Provisions, Article 2—Contracts and Conveyances, and Article 3—Secured Transactions.⁹

B. Purposes

The Act is multipurposed. First and foremost, it is designed to achieve uniformity in real estate sales and security transactions. Uniformity in this area is needed primarily to facilitate the operation of the national secondary mortgage market, but also to make more economic and efficient the ever increasing number of real estate sale and loan transactions involving citizens of more than one state.¹⁰

Second, ULTA was drafted to simplify, clarify, and modernize the law governing real estate transactions.¹¹ Much of real property law is rooted in the customs and practices of early common law England. In many instances the original common law rule lingers in this country long after the reason for its existence has vanished and the rule itself has been abolished in England.¹² The Act is designed to eliminate or

7. Care must be taken when dealing with previous articles on ULTA and USLTA to determine the status of each act at the time the commentary was written.

8. ULTA, Prefatory Note (1977 version). See generally, Kratovil, *supra* note 1; Murray, *The Proposed Uniform Land Transactions Act*, 7 REAL EST. REV. 64 (1977); Pedowitz, *USLTA-ULTA Perspective*, 57 TITLE NEWS 23 (1978); Special ABA Committee Report, *Summary of the Uniform Land Transactions Act*; 13 REAL PROP., PROB. & TR. J. 672 (1978).

9. ULTA also contains a fourth article that sets an effective date for the Act and provides from repeal of inconsistent statutes.

10. ULTA, Prefatory Note (1977 version); *id.* § 1-102.

11. *Id.* Prefatory Note.

12. *E.g.*, Present covenants for title could not be transferred to a subsequent grantee at early common law because of the then existing prohibition against assigning choses in action. Although the nonassignability rule was changed 100 years ago, most states continue to follow the common law principle. England, on the other

modify these outmoded concepts.

Third, ULTA is intended to add a measure of consumer protection to real property law.¹³ In this regard, the Act introduces the concept of the "protected party". A protected party is, basically, one who purchases or gives a security interest in realty that he occupies as his residence.¹⁴ He is protected in ways too numerous to detail here. As a general matter, most of the protection is by way of restrictions on the protected party's freedom to contract away rights given him by the Act.¹⁵ These restrictions are specifically designed to protect against overreaching and defeated expectations in consumer transactions.¹⁶

C. Article 1—General Provisions

Two of the most noteworthy aspects of Article 1, the statement of purposes and the introduction of the protected party concept, are discussed immediately above. Other important provisions deserve similar consideration.

The similarity between Article 1 of ULTA and Article 1 of the UCC is striking; many of ULTA's definitions and principles are borrowed directly from that source. Two significant examples should be noted. First, the related concepts of "good faith" and "unconscionability" are taken straight from the UCC.¹⁷ Thus, ULTA requires good faith in the performance and enforcement of all real estate transactions.¹⁸ It also permits a court to refuse to enforce any real estate contract or contract clause on the grounds of unconscionability.¹⁹ These two principles operate in concert on every real estate transaction. The good faith concept allows a court to add provisions

hand, abandoned it long ago when the reason for the rule ceased to exist. *Schofield v. The Iowa Homestead Co.*, 32 Iowa 317, 7 Am. Rep. 197 (1871). See J. CRIBBET, PRINCIPLES OF THE LAW OF PROPERTY, 272-73 (2d ed. 1975). See also text accompanying notes 43-51 *infra*.

13. ULTA, Prefatory Note (1977 version); *id.* § 1-102.

14. *Id.* § 1-102, Comment; § 1-203(a).

15. *Id.* § 1-203, Comment 1.

16. *Id.* Prefatory Note.

17. UCC §§ 1-203, 1-205 (1972 version).

18. ULTA, § 1-301 (1977 version).

19. *Id.* § 1-311.

to the contract to produce a just result. The unconscionability concept permits a court to remove provisions from the contract that might produce an unjust result.²⁰

Another UCC position adopted by ULTA in Article 1 is that usage and course of dealing may be used to supplement or qualify the terms of a real estate agreement.²¹ Although this provision may be less important in real estate transactions than personal property transactions, it represents a sensible recognition that business practice and custom necessarily underlie the formulation of all agreements concerning realty.²²

Article 1, however, is more than just an adaptation of UCC principles to real property. It also deals with matters peculiar to real property law. For example, the doctrine of merger by deed is abolished.²³ Under ULTA the grantee no longer gives up his rights under the contract when he accepts a deed. This approach represents an extension of the tendency of many state courts to avoid automatic application of the doctrine, particularly in cases where a contract to convey contains promises as to the fitness or condition of the property involved.²⁴

In summary, the significance of Article 1 lies in its embodiment of personal property principles expressed in the UCC, the inclusion of the protected party concept, and the elimination of the outmoded doctrine of merger by deed.

D. Article 2—Contracts and Conveyances

Article 2 applies to deeds, leases, and contracts to convey.²⁵ The principle of freedom of contract underlies this portion of the Act. Thus, the rules stated are intended primarily to be "gap-filling" rules, generally subject to contrary agreement by the parties.²⁶ Because many of these rules are

20. Kratovil, *supra* note 1 at 466.

21. ULTA § 1-303 (1977 version); UCC § 1-205 (1972 version).

22. See Kratovil, *supra* note 1 at 470.

23. ULTA § 1-309 (1977 version).

24. See Dunham, *Merger by Deed—Was It Ever Automatic?* 10 GA. L. REV. 419 (1976). (The author discusses the effect of ULTA upon existing law in this area.)

25. ULTA §§ 2-101, 2-102 (1977 version).

26. *Id.* § 2-102, Comment; Maggs, *Remedies for Breach of Contract Under Article Two of the Uniform Land Transactions Act*, 11 GA. L. REV. 275-296 (1977).

adopted from Article 2 of the UCC,²⁷ the commercial lawyer initially may feel more comfortable with Article 2 of ULTA than will the real property lawyer.²⁸

The principles of existing real property law affected by Article 2 are too numerous to mention in this overview. Instead, only the most significant aspects of Article 2 will be touched upon in order to convey a general sense of its impact. Contract formation, performance, and remedies for breach will be treated in that order. Then the warranties that accompany a conveyance will be discussed.

With respect to contract formation, ULTA contains a liberal version of the Statute of Frauds that no longer requires all material terms of the agreement be contained in a written memorandum.²⁹ A writing is sufficient if it contains a description of the real estate, a means of fixing the price, and an indication that the parties intended to create a contract to convey.³⁰ This provision reflects the apparent philosophy that the courts should enforce the expectations of the parties if at all possible.³¹

The Act also continues the well recognized part performance exception to the Statute of Frauds. At present, there are at least five different views as to what acts are necessary to constitute part performance.³² ULTA resolves the controversy by providing that possession plus part or full payment is sufficient to satisfy the statute.³³ This provision is noteworthy primarily because it illustrates how the Act can eliminate confusion by establishing a uniform standard to take the place of a wide diversity of authority on a subject.

Once a binding real estate contract is formed, questions often arise with respect to performance. ULTA specifically

27. ULTA § 2-101, Comment (1977 version).

28. Maggs, *supra* note 26 at 276.

29. ULTA § 2-201(a) (1977 version). *See id.* § 2-203 for treatment of the open price terms issue.

30. *Id.* § 2-201(a).

31. *See id.* §§ 2-202, 2-203, and 2-204 for other manifestations of this philosophy.

32. *See* J. CRIBBET, *supra* note 12 at 131.

33. ULTA § 2-201(b) (1977 version). This section also provides *inter alia* that an oral contract is enforceable if the party seeking enforcement has changed his position in reasonable reliance on the contract and if injustice can be avoided only by enforcing the contract.

adopts the personal property doctrine of substantial performance.³⁴ In furtherance of this general theory, Article 2 provides that failure to perform at a particular time generally does not discharge the duties of the other party unless the contract expressly states otherwise.³⁵ The boiler-plate "time is of the essence" clause is not sufficient to accomplish the discharge.³⁶ The contract must provide explicitly that failure to perform at the time specified discharges the duties of the other party.³⁷

If one of the parties to a real estate contract fails to perform as required by the contract, the remedy for breach becomes an issue. ULTA's approach to this question is designed both to permit the victim of the breach to freely utilize all available remedies and to prevent the creation of a cloud on title.³⁸ The Act spells out the circumstances under which either party may cancel,³⁹ seek specific performance,⁴⁰ or recover damages.⁴¹ Much of this material is borrowed from the UCC, but the Commissioners have, in most cases, made the adjustments necessary to apply these principles properly to real property.⁴²

Even after the contract is fully performed by conveyance, important issues remain with respect to the warranties included in the conveyance. This is perhaps the area in which Article 2 makes the most important change in existing law.⁴³ ULTA deals with both warranties of title and warranties of quality.⁴⁴

34. *Id.* § 2-301.

35. *Id.* § 2-302.

36. *Id.* § 2-302(c).

37. *Id.*

38. Maggs, *supra* note 26 at 276; ULTA, § 2-502, Comment (1977 version).

39. ULTA §§ 2-502(a), 2-509(a) (1977 version).

40. *Id.* §§ 2-506, 2-511. Existing law is continued except that the seller is no longer automatically entitled to specific performance. It is available to him under ULTA only if he is unable to resell the property.

41. *Id.* §§ 2-504, 2-505, 2-507, 2-510, 2-513, 2-514, 2-515, 2-516.

42. Article 2 also continues the twin concept of the vendor's lien and the vendee's lien (§§ 2-508, 2-512) and contains a statute of limitations (§ 2-521).

43. Murray, *supra* note 8 at 66; Special ABA Committee Report, *supra* note 8 at 673.

44. See generally Note, *Real Property—Warranties in the Uniform Land Transactions Act of 1975—Progression or Retrogression for Pennsylvania?* 49 TEMP.

At common law and in most states today, no warranties of title are implied in a deed.⁴⁵ Even if warranties of title are expressly given, only the "future" warranties run with the land.⁴⁶ ULTA turns this approach around. Under Article 2, every deed is a general warranty deed unless the warranties of title are specifically excluded.⁴⁷ Further, all warranties of title extend to the buyers' successors in interest unless the deed provides to the contrary.⁴⁸ The former provision is founded on the logical premise that warranties are expected by the grantee. The latter provision is based on a long overdue recognition that the distinction between "present" and "future" covenants was originally made at a time when contract rights were not freely assignable.⁴⁹

ULTA also adopts and expands the recent judicial trend toward implying a warranty of quality in real estate sales where the seller is in the business of selling his own properties.⁵⁰ The warranty of quality may, however, be excluded except when the purchaser is a protected party.⁵¹ This is an appropriate move away from the antiquated *caveat emptor* doctrine.

On the whole, Article 2 represents a reasonably effective attempt to bring uniformity and certainty to real estate sales and conveyances by adopting many rules and principles of the UCC. Of greatest importance is its imposition of implied warranties of title and quality in all conveyances.

E. Article 3—Secured Transactions

The Commissioners acknowledge that Article 3 "covers the portion of real estate law where the need and desirability

L. Q. 162 (1975).

45. C. SMITH & R. BOYER, *SURVEY OF THE LAW OF PROPERTY*, 311 (2d ed. 1971).

46. *Id.*

47. ULTA § 2-306 (1977 version).

48. *Id.* § 2-312(a).

49. The primary reason why covenants of title did not extend to the grantee's successors was that a chose in action could not be assigned at common law. See note 12 *supra*. Thus, the courts were forced to develop the concept of privity of estate to enable the "future" covenants to run with the land.

50. ULTA § 2-309 (1977 version). A real estate broker acting for another is not a professional seller within the meaning of ULTA.

51. *Id.* § 2-311.

of uniformity is most pressing."⁵² The existing diversity of state law on real estate financing has created numerous problems. In fact Congress has evidenced concern that the lack of a uniform system of foreclosure alone inhibits the free flow of mortgage money, causes delay in foreclosure resulting in property depreciation and "equity skimming," and increases costs associated with foreclosure.⁵³ Thus, state legislatures should give special consideration to enacting Article 3 if they desire to avoid federal intervention in this area.⁵⁴

Article 3 applies to any transaction, regardless of form, intended to create a security interest in real estate.⁵⁵ Mortgages, deeds of trust, installment land contracts, and all other security devices are treated the same.⁵⁶ In order to avoid confusion between existing mortgage law and this new comprehensive approach, the Commissioners adopted a set of definitions based on those found in Article 9 of the UCC. For example, under ULTA a mortgage is termed a "security agreement," a mortgagor is called a "debtor", and a mortgagee is labeled a "secured creditor".⁵⁷

After establishing this new terminology, Article 3 proceeds to make significant substantive changes in several aspects of real estate finance law. Areas covered include the nature of the underlying obligation, the nature of the security agreement, the rights and duties of the parties before foreclo-

52. *Id.* Article 3, Introduction Comment. See generally, J. BRUCE, REAL ESTATE FINANCE IN A NUTSHELL 199-206 (1979); Bruce, *Mortgage Law Reform Under the Uniform Land Transactions Act*, 64 GEO. L.J. 1245 (1976); Kuklin, *The Uniform Land Transactions Act: Article 3*, 11 REAL PROP. PROB. & TR. J. 12 (1976); Sanders, *Impact of the Proposed ULTA on Florida Mortgage Law*, 52 FLA. B.J. 296 (1978); Comment, *Secured Transactions Under Article 3 of the Uniform Land Transactions Act*, 1976 Wisc. L. Rev. 899.

53. See Federal Mortgage Foreclosure Act of 1973, H.R. 10688, 93d Cong., 1st Sess. § 402 (1973). This was a proposal to establish a uniform foreclosure system for federally related mortgages. It was not enacted.

54. Federal agencies already have begun to challenge the applicability of local mortgage law to the federal government. In several cases, state law has been held to have been preempted by federal law or policy on the subject. G. OSBORNE, G. NELSON & D. WHITMAN, REAL ESTATE FINANCE LAW § 11.6 (1979) [hereinafter cited as OSBORNE.].

55. ULTA § 3-102 (1977 version). Nonconsensual liens such as mechanics' liens are covered in USLTA.

56. *Id.* § 3-102, Comment.

57. *Id.* § 3-103.

sure, and the foreclosure process. The effect of ULTA on existing law in each of these areas will be discussed briefly in the following paragraphs.

ULTA makes two significant changes in the law governing obligations secured by real property. First, the Act clears the fog that presently surrounds the security and priority status of advances made under mortgage future advance clauses.⁵⁸ Article 3 gives future advances made by the ordinary secured creditor priority over intervening liens if the advances are obligatory advances or optional advances made without knowledge of the intervening interest and if the maximum amount of the obligation secured does not exceed the amount stated in the security agreement.⁵⁹ Construction lenders are given more favorable treatment. Their future advances to complete construction are exempt from the face amount limitation and receive absolute priority over intervening liens irrespective of knowledge.⁶⁰ This approach is reasonably designed to accommodate the economic pressures placed on construction lenders to advance funds to complete a project even though the secured debtor is in default and the advances are no longer obligatory.⁶¹

The second important change in the underlying obligation area is found in the usury statute contained in Article 3.⁶² Nationwide adoption of such a uniform usury law would partially alleviate the adverse impact on the housing market that results from the almost infinite variety of state statutes on the

58. There is a complex split of authority among the states with respect to the priority of the lien for future advances over an intervening lien. Often the resolution of the question is based upon whether the future advance was "optional" or "obligatory" and whether the mortgagee had notice of the intervening lien when he made the future advance. See J. BRUCE, *supra* note 52, at 63-70; OSBORNE, *supra* note 54 at § 12.7.

59. ULTA §§ 3-205(c), 3-301(b) (1977 version). The secured creditor is even protected for advances that cause the total obligation to exceed the maximum amount stated if the advance is to pay taxes or insurance or otherwise protect his security interest. *Id.* § 3-205(e)(1).

60. *Id.* § 3-205(e)(2). The question of the priority of construction loan future advances versus intervening mechanics' liens is treated in USLTA. See USLTA § 5-209 (1977 version).

61. See Note, *Future Advances Under the ULTA and the USLTA: The Construction Lender Receives a New Status*, 34 WASH. & LEE L. REV. 1027 (1977).

62. ULTA §§ 3-401 to 3-405 (1977 version).

subject. The adverse impact is particularly great when inflation causes interest rates to bump against unrealistically low usury ceilings.⁶³ The uniformity provided by ULTA is of some help in this regard, but it is no panacea. Although Article 3 contains no limit on interest rates for business and commercial loans, it allows each state to set a maximum rate for loans to protected parties.⁶⁴ Thus, individual state legislatures may continue to set and maintain unrealistically low usury limits on residential loans.

Article 3 also deals with the nature of the security agreement. As mentioned earlier, all consensual transactions intended to create a security interest in real estate are treated similarly.⁶⁵ The form of the transaction is irrelevant. Further, although a security agreement is generally effective according to its terms,⁶⁶ it is still subject to the good faith and conscientiousness requirements also discussed previously.⁶⁷

After addressing questions involving the nature of the obligation and the security agreement, Article 3 deals with the pre-foreclosure rights and duties of the parties. Two notable examples should be sufficient to convey the significance of the Act in this area. (1) ULTA realigns the relationship of the parties as to possession of the property. The Act eliminates the distinction among "lien", "title", and "intermediate" theory jurisdictions by giving the debtor the right to possession until default and the creditor the right thereafter.⁶⁸ Further, it encourages the secured creditor to take possession to protect his security rather than to seek appointment of a receiver.⁶⁹ Thus, overall costs resulting from invocation of the cumbersome receivership process are reduced.⁷⁰ (2) Article 3 recognizes "due-on-sale" clauses and permits enforcement by the lender whenever he believes that it is in his economic best in-

63. See generally Gallese, *Hope for Housing*, Wall St. J., Jan. 14, 1980, at 1, col. 6.

64. ULTA § 3-403(b) (1977 version).

65. See text at note 55 *supra*.

66. ULTA § 3-201 (1977 version).

67. See text at notes 17-19 *supra*.

68. ULTA § 3-502 (1977 version).

69. *Id.* §§ 3-503, 3-504.

70. *Id.* 3-504, Comment 1.

terest to exercise his rights under such a clause.⁷¹ The wisdom of this automatic enforcement approach, however, is questionable in light of the growing trend among state courts to permit enforcement of "due-on-sale" clauses only if the lender can demonstrate that his security will be impaired by the proposed sale.⁷²

ULTA's changes in the pre-foreclosure rights and duties of the parties are significant, but the foreclosure provision of Article 3 is the Act's reform of greatest import. Although foreclosure by judicial sale is still always available,⁷³ nonjudicial power of sale foreclosure is the preferred method for foreclosure under ULTA.⁷⁴ The detailed notice and procedure provisions that accompany the power of sale foreclosure portion of the Act are designed to streamline the process and to overcome any "due process" obstacles.⁷⁵ Thus, the Article 3 version of power of sale foreclosure provides an adequate answer to the criticism that state foreclosure techniques are generally inefficient, ineffective and costly.⁷⁶

In general, Article 3 is the most significant portion of ULTA because of its direct nationwide economic impact. Of particular importance is its promulgation of an efficient out-

71. *Id.* § 3-208(a). The Act, however, limits a creditor's power to impose a prepayment penalty at the same time he accelerates a loan under a "due-on-sale" provision. *Id.* § 3-208(b).

72. *See*, OSBORNE, *supra* note 54 at § 5.21-27. State courts, however, will play a lesser role in this regard if federal law is found to preempt the area. *See Glendale Fed. S. & L. Ass'n. v. Fox*, 459 F. Supp. 903 (C.D. Cal. 1978) where a Federal Home Bank Board resolution permitting due-on-sale clauses in mortgages originated by federal savings and loan associations was found to preempt state law on the question. *But see* First Fed. S. & L. Ass'n of Englewood v. Lockwood, No. 79-2124 (Fla. 3d DCA May 16, 1980) where it was held that federal regulations did not prevent a state court from refusing, on equitable grounds, to enforce acceleration under a due-on-sale clause contained in a federal savings and loan association mortgage.

73. ULTA § 3-509 (1977 version).

74. *Id.* §§ 3-505(c), 3-508. *See* Madway & Pearlman, *A Mortgage Foreclosure Primer: Part III, Proposals for Change*, 8 CLEARINGHOUSE REV. 473 (1974); Pedowitz, *Mortgage Foreclosure Under the Uniform Land Transactions Act (As Amended)*, 6 REAL EST. L.J. 179 (1978).

75. ULTA §§ 3-505 to 3-508 (1977 version). *See* OSBORNE, *supra* note 54 at §§ 7.23-30 for a discussion of due process issues in power of sale foreclosure.

76. *See* text at note 53 *supra*. There also is no statutory redemption period under ULTA. Hence, another delay in the foreclosure procedure is eliminated. The debtor is protected in other ways under the Act. *See e.g.* ULTA §§ 3-510, 3-513 (1977 version).

of-court foreclosure method designed to replace the existing fragmented state foreclosure procedures.⁷⁷

III. UNIFORM SIMPLIFICATION OF LAND TRANSFERS ACT (USLTA)

A. Coverage

USLTA covers conveyancing, recording, priorities, marketability of title, miscellaneous nonconsensual encumbrances, mechanics' liens, and public land records.⁷⁸ It is divided into six substantive articles: Article 1—General Provisions; Article 2—Conveyancing and Recording; Article 3—Priorities, Marketable Record Title, and Extinguishment of Claims; Article 4—Liens and Encumbrances; Article 5—Construction Liens; and Article 6—Land Records.⁷⁹

B. Purposes

USLTA is designed to complement ULTA. Thus, it serves many of the same purposes. Both acts are intended to promote the interstate flow of funds for real estate transactions and to protect consumer buyers and borrowers.⁸⁰ In addition, USLTA was drafted to further the security and certainty of land titles, to reduce the costs of land transfers, to balance the interests of all parties in the mechanics' lien area, and to create a more efficient system of public land records.⁸¹

C. Article 1—General Provisions

One of the most important parts of Article 1, the statement of purposes, is discussed above. The Article's other note-

77. See Pedowitz, *supra* note 74 at 197-98.

78. USLTA, Prefatory Note (1977 version). See generally, Pedowitz, *Uniform Simplification of Land Transfers Act—A Commentary*, 13 REAL PROP. PROB. & TR. J. 696 (1978) [hereinafter cited as *Commentary*]; Pedowitz, *supra* note 8; Comment, *The Uniform Simplification of Land Transfers Act: Areas of Departure from State Law*, 73 NW. U. L. REV. 359 (1978) [hereinafter cited as *Areas of Departure*].

79. USLTA also contains a seventh article that sets an effective date for the Act and provides for repeal of inconsistent statutes.

80. See text at notes 10-16 *supra*; USLTA § 1-102 (3) & (4) (1977 version). Although ULTA also protects sellers, USLTA does not.

81. USLTA, Prefatory Note.

worthy aspect is the general definitions section. Many of the definitions are identical to those found in ULTA.⁸² Others are borrowed from the UCC.⁸³ In any event, it is imperative that one keep these definitions firmly in mind when examining USLTA, particularly when dealing with seemingly familiar terms. Otherwise the Act may be grossly misinterpreted.⁸⁴

D. Article 2—Conveyancing and Recording

Article 2 sets forth the requirements for a valid conveyance of real property that are essentially a restatement of existing law on the subject.⁸⁵ The Act also provides that a conveyance still takes effect upon delivery.⁸⁶ However, under USLTA an innocent third party who relies on the record will no longer have his title defeated because of nondelivery between a prior grantor and grantee.⁸⁷

The portion of Article 2 dealing with recording represents an additional significant change in prior law. Virtually all restrictions on the eligibility of documents for recordation are abolished.⁸⁸ Even the lack of an acknowledgment or witnesses does not prevent recordation.⁸⁹ Although this approach promotes the efficient operation of the recorder's office, the elimination of the requirement for an acknowledgment or witnesses has been criticized on the ground that USLTA makes it simpler for dishonest persons to deal with real estate.⁹⁰ Nevertheless, the Commissioners' position is that the existing requirements are anachronisms and that the recording problems they create outweigh benefits resulting from their possible prevention of fraud.⁹¹

Several more detailed facets of recording are also covered

82. *Id.* § 1-201. The "protected party" concept is not included in the Article 1 general definition section, but is picked up in Article 5. *Id.* § 5-105.

83. *E.g., id.* § 1-202.

84. *See Commentary, supra* note 78 at 697.

85. USLTA § 2-201 (1977 version).

86. *Id.* § 2-202.

87. *Id.* §§ 3-201, 3-202; *see Commentary supra* note 78 at 701. *See also* USLTA § 2-305 (1977 version) for the presumptions that recording imparts.

88. USLTA § 2-301 (1977 version).

89. *Id.* § 2-301(b).

90. *Commentary, supra* note 78 at 702.

91. *Id.* at 701.

in Article 2. For example, the recordation of master forms and memoranda of leases is permitted so that the volume of recorded material is reduced.⁹²

The significance of Article 2 lies in its overall simplification of the recording process. Although some USLTA approaches in this area are subject to criticism,⁹³ the Article represents a reasonable step in the right direction.

E. Article 3—Priorities, Marketable Record Titles, and Extinguishment of Claims

This Article contains detailed rules to govern priorities among conflicting interests in real property.⁹⁴ As a general matter a purchaser for value who records is given a favored position that has been likened to the status of a holder in due course under the UCC.⁹⁵ In this regard Article 3 provides that a purchaser for value who records his interest takes free from prior unrecorded adverse claims unless the claim fits within one of several narrowly drawn categories.⁹⁶

Article 3 also includes a complete marketable title act⁹⁷ and related curative provisions and limitations.⁹⁸ The purpose of the marketable title act is to limit title search to thirty years and extinguish any interests that antedate the root of title.⁹⁹ The curative provisions and limitations are designed to automatically correct various title defects after the defects have been on record for a specified period and to resolve other questions of title, such as adverse possession, as quickly as is reasonably possible.¹⁰⁰ Thus, this portion of the Act greatly simplifies title examination and should thereby reduce associ-

92. USLTA §§ 2-309, 2-310 (1977 version).

93. See text at note 90 *supra*.

94. USLTA §§ 3-201 to 3-214 (1977 version).

95. *Areas of Departure*, *supra* note 78 at 363-64.

96. USLTA § 3-202 (1977 version).

97. *Id.* §§ 3-301 to 3-309. USLTA's marketable record title provisions are derived from the Model Marketable Title Act. Florida has already adopted legislation based on the Model Act. See *id.* Art. 3, Part 3, Introductory Comment; FLA. STAT. §§ 712.01-10 (1979).

98. USLTA §§ 3-401 to 3-411 (1977 version).

99. *Commentary*, *supra* note 78 at 709.

100. *Areas of Departure*, *supra* note 78 at 364.

ated costs.¹⁰¹

F. Article 4—Liens and Encumbrances

Article 4 applies to miscellaneous liens and encumbrances not covered elsewhere in the Act. Included are money judgments, real estate tax liens, vendors' and vendees' liens, assessment liens, and the doctrine of *lis pendens*.¹⁰² The policy underlying this portion of USLTA is to recognize liens and encumbrances as created by other law and then provide a uniform system for their application and enforcement.¹⁰³

G. Article 5—Construction Liens

This Article deals with the knotty problem of mechanics' liens.¹⁰⁴ It is titled "Construction Liens" because the Commissioners believed that the title "Mechanics' Liens" would improperly imply that laborers were the primary beneficiaries of the law.¹⁰⁵

One is at first tempted to say that an effort to bring uniformity to this area of the law is merely an exercise in futility because two virtually insurmountable obstacles stand in the way of reform. First, the variation among state mechanics' lien laws is greater than in any other statutory area.¹⁰⁶ Thus, the USLTA approach will be totally unfamiliar to the legislatures of most states. Florida is a notable exception, because the basic structure of Article 5 was borrowed from the existing Florida mechanics' lien law.¹⁰⁷ Second, numerous groups—owners, construction lenders, general contractors, subcontractors, and material suppliers—have conflicting interests in the contest for priority. The Commissioners were forced to strike a compromise that left all parties somewhat unsatisfied.¹⁰⁸ Hence, there are numerous potential opponents

101. *Id.*

102. USLTA § 4-101 (1977 version); see *Commentary*, *supra* note 78 at 713.

103. Pedowitz, *supra* note 8 at 26.

104. See generally, OSBORNE, *supra* note 54 at 734-49; R. POWELL, *THE LAW OF REAL PROPERTY* 483-90 (1979).

105. USLTA, Art. 5, Introductory Comment (1977 version).

106. *Id.*

107. FLA. STAT. §§ 713.01-.37 (1979).

108. *Commentary*, *supra* note 78 at 715-17. The organizations representing sub-

of Article 3 in each state.

Notwithstanding these obstacles, there is some possibility that Article 5 will gain favor. The present variety of mechanics' lien laws has made the activities of national lenders, suppliers, and builders more costly. The Act's effort to indirectly reduce building costs by achieving uniformity among the states in this area is sure to attract some proponents. Further, the Florida experience can be used as an example of how Article 5 will work in practice.

With this background in mind, it is now appropriate to examine briefly the major components of Article 5: (1) construction lien claimants, (2) priority of the lien claimant over third parties, and (3) the owner's liability to the lien claimant for payment already made to the general contractor.¹⁰⁹

Under USLTA any person who furnishes materials or services for construction is allowed a lien no matter how far he is removed from the contracting owner.¹¹⁰ This approach is considerably more liberal than that taken by many state statutes which do not protect sub-subcontractors.¹¹¹ The Act also takes a liberal stance in its provision that a supplier obtains a lien whenever there is specific evidence that the supplier believed that the goods would be used on a particular site.¹¹² Unlike many existing statutes, Article 5 does not require delivery to the construction site as a precondition to the creation of a lien.¹¹³

The second area of mechanics' lien law affected by USLTA is priority of lien claimants over third parties. Article 5 rejects the popular view that claimants' liens date from the time construction actually commenced.¹¹⁴ Because the visible commencement of construction is often an ambiguous

contractors and material supplies have expressed the most dissatisfaction.

109. USLTA Art. 5, Introductory Comment (1977 version).

110. *Id.* § 5-201.

111. *Id.* Art. 5, Introductory Comment.

112. *Id.* § 5-204(a). The materials, of course, actually must be used in the construction.

113. The delivery of materials to the site, however, is still important. Under Article 5 it creates a presumption that the materials in fact were used in the course of construction. *Id.* § 5-204(b).

114. *Id.* § 5-301.

event,¹¹⁵ the Act adopts a notice recording system, similar to that used in Florida, under which the owner records a "notice of commencement" to make third parties aware that construction liens may be claimed against the property.¹¹⁶ Under this system, construction lien claimants take priority over third parties whose encumbrances attach to the property after the notice of commencement is recorded.¹¹⁷ Thus, the integrity of the recording system is promoted and the secret lien problem is avoided.¹¹⁸

The third area of impact of Article 5 is its effect on the liability of the owner to a lien claimant when the owner has paid the general contractor in full, but the general contractor has failed to pay the lien claimant.¹¹⁹ At present some states protect the owner from double payment, others do not.¹²⁰ USLTA offers each alternative, but the Commissioners state a preference for the provision eliminating liability for double payment.¹²¹

All in all, Article 5 presents a thoughtful and well balanced answer to the problem created by the existing diversity of state mechanics' lien laws. Whether it can withstand the continuing barrage of criticism from various interest groups

115. OSBORNE, *supra* note 54 at 738. Courts disagree as to whether such things as piling lumber on the land or clearing the land constitutes visible commencement of construction. *Id.*

116. USLTA, Art. 5, Introductory Comment (1977 version); *id.* § 5-301. The Act does not totally abandon the visible commencement view. If a notice of commencement is not recorded, liens date from visible commencement of construction. *Id.*; *see also id.* § 5-207(c).

117. *Id.* § 5-209. The construction lien even has priority over all future advances made under a prior recorded security interest unless the advance is made under a construction security agreement and is for payment of the improvements, protection of the security interest or payment of a prior lien. *Id.*; *see Note, Future Advances Under the ULTA and the USLTA: The Construction Lender Receives a New Status*, 34 WASH. & LEE L. REV. 1027 (1977).

118. *See Areas of Departure supra* note 78 at 387. Among themselves, construction lien claimants on a particular site have equal priority. USLTA § 5-208.

119. USLTA Art. 5, Introductory Comment (1977 version).

120. *See Pedowitz, supra* note 8, at 26, 38: *Areas of Departure, supra* note 78 at 388.

121. USLTA § 5-206, Alternative A (1977 version) (The owner is protected from double payment); *id.* § 5-206, Alternative B (The owner, if not a protected party, is liable for double payment).

remains to be seen.¹²²

H. Article 6—Land Records

Article 6 applies to land records, the duties of local recording officers, and the duties of the state recording officer.¹²³ It envisions the continuation of the present recording system with two basic modifications: (1) the addition of a limited geographic or tract index system and (2) the creation of a state recording officer.¹²⁴

The use of a geographic or tract index would certainly ease record examination. Under such a system all documents dealing with a particular parcel of land are listed together in the index.¹²⁵ This is in stark contrast to the grantor-grantee index system where the title examiner must often examine several different indices.¹²⁶ Article 6, however, does not mandate the immediate elimination of the grantor-grantee index system.¹²⁷ Instead, a dual system of indexing is contemplated.¹²⁸ The main obstacle to a dual indexing system is a financial one. The expense of establishing and maintaining a separate tract index may cause many state legislatures to shy away from this portion of USLTA.¹²⁹

The Act's other basic modification of the existing land record system—the creation of a state recording officer—should be more readily accepted.¹³⁰ The cost of such a modification is minimal and the need for coordination of state recording procedures is great. Hence, the various state legislatures should have little hesitancy in adopting a provision of this type.

122. Pedowitz, *supra* note 8 at 38.

123. USLTA § 6-101 (1977 version).

124. *Id.* § 6-101, Comment.

125. J. CRIBBET, *supra* note 12 at 282.

126. *Id.* at 280-81.

127. USLTA § 6-207, Comment (1977 version).

128. The Commissioners' adoption of a limited geographic index to be used in conjunction with the existing method of indexing has been criticized as being too modest a reform. See *Commentary, supra* note 78 at 729.

129. See *Areas of Departure, supra* note 78 at 392.

130. USLTA § 6-302 (1977 version).

IV. CONCLUSION

This overview of ULTA and USLTA is intended to set the stage for the in depth treatment of each act which follows. Thus, analysis of detail was sacrificed here in favor of discussion of general policy matters. This approach should enable the reader to acquire a "feel" for the acts that will facilitate further study of either or both of them.

A word of caution is appropriate at this point. One who undertakes an exhaustive examination of ULTA and USLTA faces a burdensome task. Some may reject the acts for this reason alone.¹³¹ This is unfortunate, because each act presents a basically sound approach to areas of real property law that cry out for uniformity.

131. Some attorneys have an immediate negative reaction to uniform acts, apparently because they are afraid that the adoption of new legislation will make their learning obsolete.