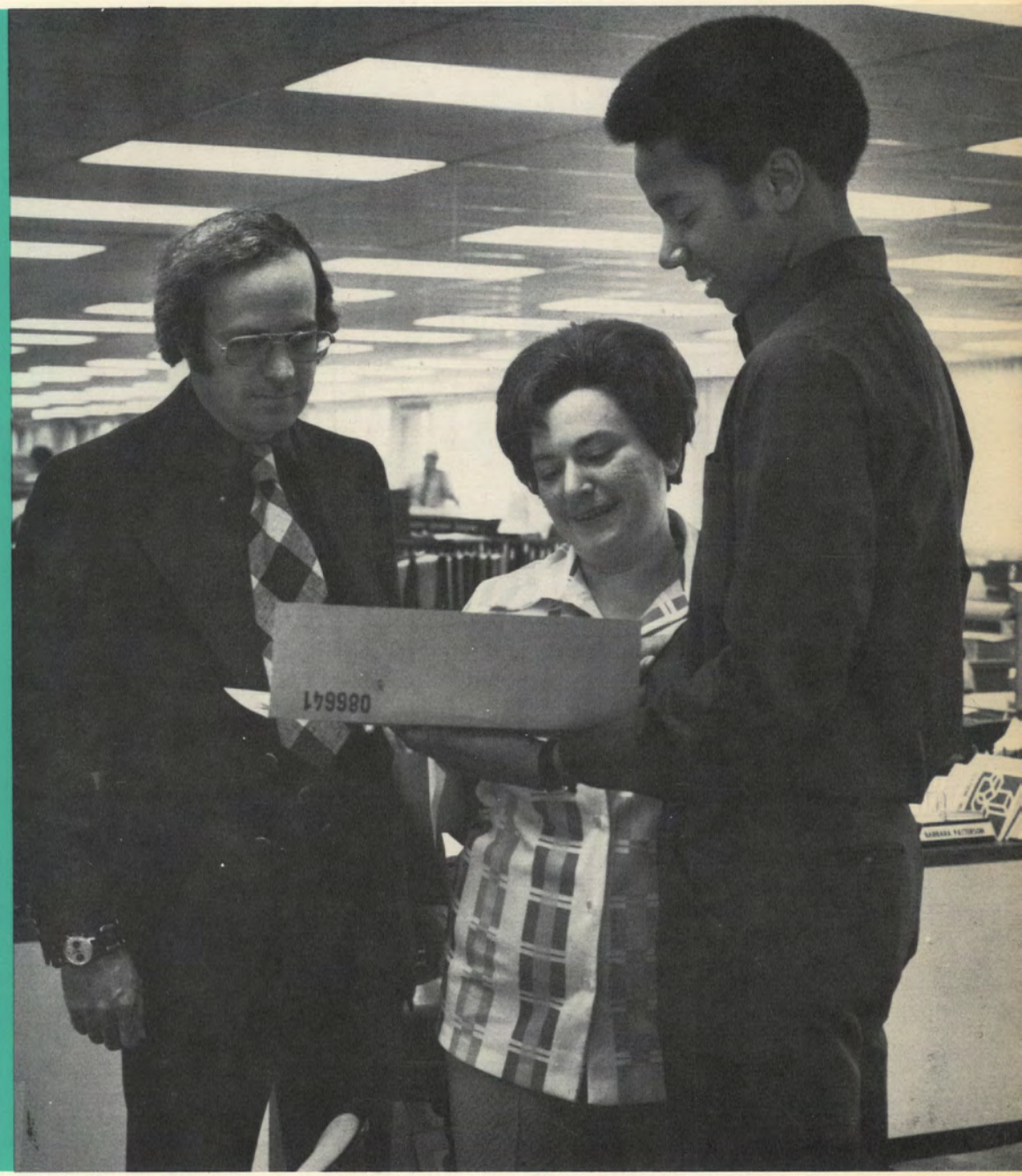
Title News

the official publication of the American Land Title Association



Teams Speed
Work
For St. Paul

October, 1975

A Message from the Chairman, Title Insurance and Underwriters Section

OCTOBER, 1975

Congratulations to Dick Howlett on being installed as president of the American Land Title Association at the Chicago convention this month. It should be another great year of progress under this leadership.

The whole industry owes Bob and Sally Jay much appreciation for the outstanding job they did this past year in representing ALTA. Members attending the convention banquet at the Palmer House gave them an enthusiastic ovation in acknowledgement of the great year they had.

The hospitality of the convention committees was great . . . the program outstanding. The proceedings will be reported in a future issue of *Title News*. Many of the observations made by Sandy Witkowski and Tom Finley are of considerable interest since they relate to current activities in Congress involving settlement charges and possible legislative amendments to RESPA.

The August issue of *Title News* included some very interesting statistics secured from members of the Abstracters and Title Insurance Agents Section. For instance, 66 per cent of the responding members of that section have between one to four employees and 67 per cent are located in counties having a population of less than 50,000 people. These statistics give credence to the oft repeated statement that individually our members speak with a soft voice; however, collectively, we can be most effective and can be heard in the halls of Congress and elsewhere.

But it does require that we work together—and are willing to be involved—or we are just another splintered group to whom Congress pays no heed. You may be called upon in this coming year to contact your Congressman and Senators. If you heed that call, we may be able to preserve our part of the free enterprise system as it now exists. If you do not—if you prefer to let "others" shoulder the burden of this responsibility—our industry will have to live with the negative effects of this inaction in the years to come.

In that context, we should remember that famous phrase, "United we stand . . . divided we fall," which certainly applies to our industry today.

Sincerely,

C. J. McConville

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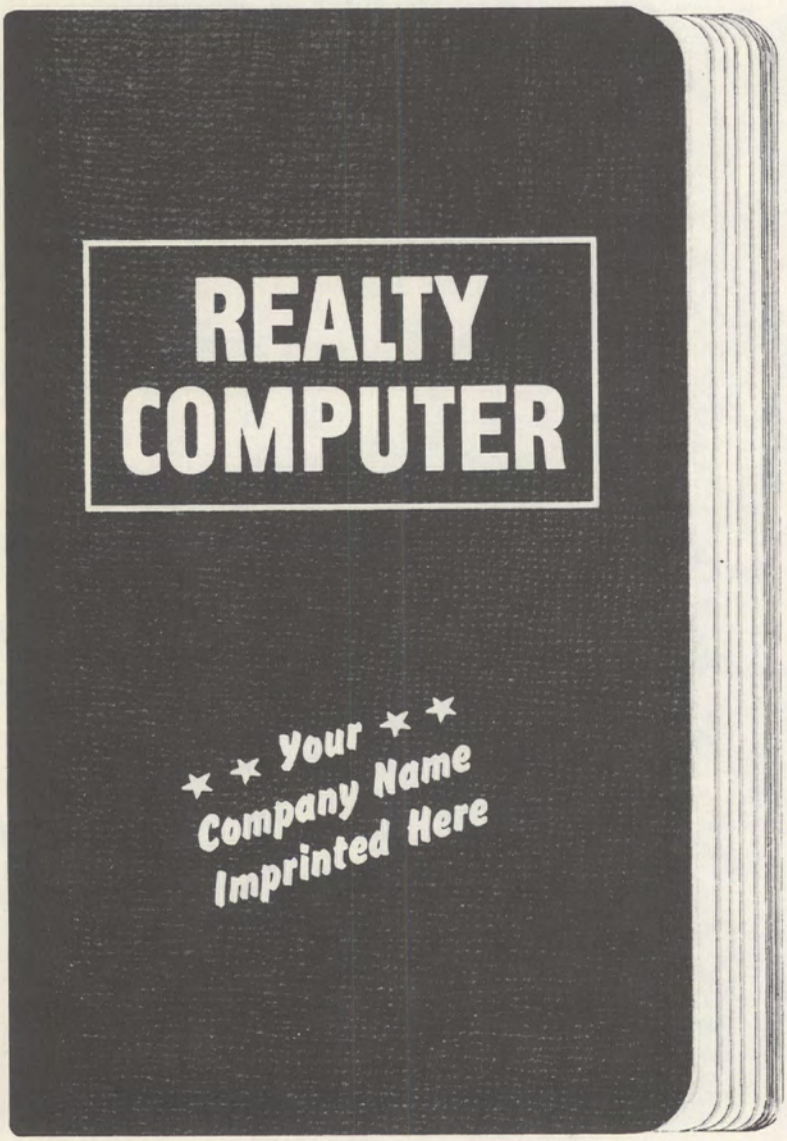

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ALTA Abstracters and Title Insurance Agents Section Chairman Philip D. McCulloch will be a speaker at the Indiana Land Title Association Convention October 26-28 in Indianapolis.

* * *

The Standard Title Insurance Accounting Committee recently met in Boston. One of the key topics discussed was the proposed revision of NAIC Form 9. Robert A. Bailey, actuary, staff project director of NAIC data base, National Association of Insurance Commissioners, participated in the discussions.

Committee members include Chairman Ervin W. Beal, C. L. Coffman, George E. Hursig, R. L. Smith, R. L. Baker, Gordon M. Burlingame, Jr., Richard S. Norseth, Carlyle G. Schumann, Carl R. Ekstrom, J. Morton Matrick, John A. Mueller, Jr., and H. James Sheetz. William J. McAuliffe, Jr., and Richard W. McCarthy, ALTA executive vice president and director of research, respectively, were also present for the meeting.

* * *

ALTA action

Members of the ALTA Federal Legislative Action Committee recently met in Washington to discuss possible amendments to RESPA that may come before Congressional hearings this fall and ALTA response to proposed HUD amendments to RESPA Regulation.

In attendance at the meeting were Chairman James G. Schmidt; member Bruce H. Zeiser; H. Eugene Tully, representing member John E. Flood, Jr.; J. Mack Tarpley, representing member Robert C. Bates; ALTA General Counsel Thomas S. Jackson; Sheldon E. Hochberg, Esquire; and William J. McAuliffe, Jr., Gary L. Garrity, and Richard W. McCarthy of ALTA staff.

* * *

ALTA General Counsel Thomas S. Jackson reports that Chief Judge Harold Greene of the Superior Court of the District of Columbia has dismissed an action of the Association of American Homeowners against all of the title insurance companies in the District, in which it was alleged that they were engaging in the unauthorized practice of law. The basis of Judge Greene's decision is that, as to past actions, the petitioners had not alleged facts giving them a standing to maintain a claim action. Regarding future matters, the judge specifically relied upon a statement of principles defining the role of the lawyer and the title insurance company, which recently was adopted by the District of Columbia Bar and by title insurance companies operating in the District (published in the July, 1975, *Title News*), and upon the amendment to the Rules of the District of Columbia Court of Appeals referring thereto.

It presently is not known as to whether this decision will be appealed.

As this is written, a decision has not been handed down in a similar Maryland case by the same plaintiffs against substantially all land title companies operating in that state, which is before the Circuit Court for Prince Georges County.

* * *

A recent Chamber of Commerce of the United States seminar on effective association motion pictures included presentation of the award-winning ALTA film, "1429 Maple Street". ALTA Director of Public Affairs Gary L. Garrity delivered a commentary on production of the film and subsequently joined other program participants on a related question-and-answer panel.

Title News

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Features

Departments

ON THE COVER: St. Paul Title Insurance Corporation Vice President Frank Hagan, left, looks over a title report prepared by Unit #2 team members Julee Ann Mercurio, senior order clerk, and Arther Lee Porter, abstracter. To find out how the team concept has been successfully adopted by St. Paul's Troy, Michigan, office, please turn to page 4.

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GARY L. GARRITY, Editor *RICHARD W. RONDER, Managing Editor*

Joyce L. May
St. Paul Title Insurance Corporation

Teams Speed Work for St. Paul

(Editor's note: Ms. May is assistant editor of *The Search,* St. Paul Title's employee newspaper.)

* * *

In the spring of 1974, Robert J. Wilson, Jr., divisional vice president of the Detroit metro division of St. Paul Title Insurance Corporation, and his management team knew that some changes had to be made in their Troy office. Burton Abstract and Title, as St. Paul Title is known in Michigan, faced a decreasing housing market in the Detroit area that challenged Wilson and his staff to re-examine its operation.

According to Wilson, the situation suggested we "find better methods to combat a depressed real estate market with consistently faster service while at the same time, creating more interesting jobs for the employees."

The Troy office of the Detroit metro division is presently the company's largest office, servicing the nation's fifth largest real estate market. It houses operations for Wayne, Oakland, and Macomb counties, each of which were formerly located in separate facilities. The 1971 consolidation of the three offices in Troy was done to increase efficiency of operation.

In the consolidated facility, work was set up on a production line basis, with everyone doing a small part of the overall task. Some efficiency in production did result, but a number of problems also arose out of the system. These included the following:

- —There was inconsistency in the number of days to process an order.
- —Orders sometimes became hung up in any one of the departments.
- —No one person was responsible for knowing where an order was at all times.
- —When an order was delayed on the assembly line, it was often hard to locate it.
- —Customers calling did not know to whom they could direct questions about a particular order. It could be anywhere in the title plant.
- —It was almost impossible to track mistakes back to the source.
- —Employees did not see the end product of their work.
- —There was little or no opportunity for cross-training of employees, resulting in little versatility.
- —Very few employees had contact with customers and thus did not know what the customer wanted.
- —Employees had no concept of how we were doing in relation with the competition.

Author May

Management noted that small offices of 10 to 12 people were seldom troubled with these problems. People in small offices were cross-trained, working in several facets of the production of title policies, and often found their jobs more interesting than the one-skill jobs common in the production line being used in the Troy office. Also, employees in small offices were often more aware of company successes and failures in profit and competition.

Burton Abstract management decided to move ahead with the changes. Frank Hagan, vice president-production, was assigned the task of reorganizing the operation to encompass the versatility and enthusiasm of a small office while not losing the efficiency of the large operation.

The team concept was chosen. The first team of nine people was formed and made operative in August, 1974, and, by December, four teams had been organized, each operating as a small office. Supervisors were chosen from different job categories, for their supervisory and management potential. Each nine-member team includes an order department and examination department and a commitment/policy production department. All supervisors, through training programs, are expected to become well versed in the entire process of turning out an order and in management skills.

The teams were formed from existing employees already located in the Troy office. In fact, the office is now operating with 10 per cent fewer people. Employees qualify for new positions once their abilities are developed.

Not all employees in the office are organized into the teams. The four production units (teams) work with the support of people in underwriting, accounting, taxes, court house and title plant (records). The major difference between the line and team system is that now an order stays in the production unit from start to finish. The production unit is responsible for the order at all times and must be able to account for it and answer customer inquiries.

Each unit has a name of its own choosing. Specific customers are assigned to the various units. Employees get to know the customers' needs and customers feel they are being given special attention, which indeed they are.

In addition, formal training programs are in progress. Classes are held during the working day on the various areas of the title business. Unit employees have taken a course in billing and rates. Courses in underwriting and the other areas are planned. One of the first priorities of the training program is to assure that each employee in the office has the ability to take an order. In this way, a customer will never be kept waiting if an order clerk is away from the phone.

The immediate benefit of the training is to insure versatility, although the full impact will not be seen until the training program is completed. An absence will not cripple a team. Moreover, the long term benefits to the employees are just as important. A person may explore many areas and find those which are most interesting. The number of supervisory positions is increased, giving more employees the opportunity to move into them. Also, team supervisors can be trained to become office managers.

A monthly progress report is printed and made available for each employee to study. The report shows how many orders each unit has processed during the month and what percentage of those orders is turned out in two days or less. This production report highlights the natural competition which exists between the teams.

Wilson and Hagan are pleased with the teams thus far. While long term benefits and problems are not yet apparent, some of the observed benefits include:

- —Enthusiasm among the employees. The employees take pride in their units and are anxious to see how they stack up in relation to the other units.
- —Ninety per cent of the orders are processed in sixty per cent less time than was required under the former method.
- —Customers have expressed their appreciation for the personal service they are receiving.
- —Versatility. The long term benefits of this will not be seen until the training programs are completed.
- —Employees feel that a complete work product is now traceable to their efforts and they are no longer lost in the shuffle.

Employees, in their comments, confirm these conclusions. Connie Kirsten, junior examiner, Production Unit III, was a typist before she joined the production unit. "I used to type all day and that often got boring. In the unit I have learned to do a little of everything. My days are more interesting now that I have variety in my work."

John Cislo, who was a title examiner, is the supervisor of Production Unit I. He is pleased with the new system, not only because it has given him an opportunity to move into supervision, but because there is better control of the orders and less confusion. He maintains that when an office has better control of the location of an order, there is a better chance for faster service. "And we do give faster service."

Alice Beard, who expedited rush orders under the former system, is a title examiner in Production Unit II. "I had a hard time keeping track of orders before and I worried about rush orders sitting in various departments too long. Now when an order is to be rushed, everyone on the team knows it and we all work together to send it out as soon as possible."

When asked about the biggest problem he has had to face so far, Hagan answered, "Setting up the units so fast. Once the first team was formed, the production line was crippled from the loss of people. We had to get the other three teams into operation faster than we had originally anticipated."

R. J. Wilson, Jr., added, "Government and industry leaders have repeatedly registered deep concern for the ability of our country to compete in the world-market unless we can increase our productivity here at home on every level. This problem of productivity, along with job enrichment and cross-training, has always carried a high priority with our company's human resources and operations people. The unit system seemed to be the ideal experimental vehicle to accomplish these goals. After eight months operation, we are satisfied that this production unit system will meet the above challenges." □

Unit #3 team members pictured above include, clockwise starting at front, Judy Rzeppa, senior order clerk; Susan Popma, title typist; Eleanor Lemmon, extractor, Ange Cedilnik, production manager; and Connie Kirsten, junior examiner.

Robert Kratovil
Professor of Law
John Marshall Law School

The Uniform Land Transactions Act: A First Look

(Editor's Note: The author is a retired vice president of Chicago Title Insurance Company and a former chairman of the ALTA Committee on the Commission on Uniform Laws. This article first appeared in the Spring, 1975, issue of the *St. John's Law Review,* and is reprinted with the approval of that publication.)

* * *

Introduction*

The Uniform Land Tansactions Act (ULTA)[1] is designed to accomplish for real estate transactions what the Uniform Commercial Code (UCC) accomplished for personal property. Work began on this project in 1970. At the August, 1974 meeting of the National Conference of Commissioners, the Committee of the Whole gave its approval to articles I to V of the Act. They are: article I, General Provisions; article II, Contracts and Conveyances; article III, Secured Transactions; article IV, Condominiums; and article V, Construction Liens.[2] A special committee of Commissioners charged with the task of drafting the ULTA meets periodically to consider materials drafted by Allison Dunham (Chairman), Marion Benfield (Reporter-Draftsman), and Peter B. Maggs (Reporter-Draftsman). Meeting with them is an Advisory Committee composed of representatives of consumers and various interested trade groups, *e.g.,* bankers, mortgage bankers, title insurers, and life insurance companies. When materials are deemed ready for submission to the National Conference, a line-by-line reading takes place in the National Commissioners Committee of the Whole and motions to amend, strike, or approve are voted upon by that Committee. In this fashion articles I to V were finalized.

The stated purposes of the Act are set forth in section 1-102(b) as follows:

(1) to simplify, clarify and modernize the law governing real estate transactions;

(2) to promote the interstate flow of funds for real estate transactions;

(3) to protect consumer buyers and borrowers against practices which may cause unreasonable risk and loss to them; and

(4) to make uniform the law among the states enacting it.

Of course, the ULTA has other objectives. Principal among these, although unstated, is that a code of real estate law should be modeled after the UCC. This objective rests on the possibly questionable assumption that real estate transactions do not differ greatly from chattel transactions. In accordance with this underlying assumption, presumably case law developed in connection with the UCC would be applicable to the ULTA. This observation was often repeated by Professor Dunham.

Another objective was to make possible the development of simple mortgage documents. These simple mortgages could be quickly and inexpensively foreclosed by typical power of sale procedures[3] rather than by judicial foreclosure, although the latter would still be permitted. Redemption would be virtually abolished. The philosophy behind this portion of the ULTA is given in the introductory comment to article III, which reads, in part, as follows:

> It is not really necessary to remind the reader that this Article covers the portion of real estate law where the need and desirability of uniformity is most pressing. Thus in H.R. 10688 and S. 2507, 93rd Cong. 1st Sess., a federal proposal to establish a uniform foreclosure system for mortgages insured, guaranteed or owned by federal agencies, there is a proposed Congressional finding which sets forth important reasons for uniformity;

Congressional Findings

"Sec. 402. The Congress finds –

(1) that disparate State laws relating to the foreclosure of real estate mortgages and deeds of trust have inhibited the free flow of mortgage money to homeowners at reasonable rates in many States and regions of the Nation have burdened Federal programs involving real estate mortgages made, owned, insured or guaranteed by the United States;

(2) that delays in completing real estate foreclosures have increased the risks of vandalism, fire loss, depreciation, damage and waste and that resulting losses have burdened Federal programs involving real estate mortgages;

(3) that delays in foreclosure generally and delays in the transfer of

* Footnote references cited in this article may be found beginning on page 13.

title due to redemption periods observed in some States have encouraged the practice known as "equity skimming" with consequent financial loss to the Government, homeowners, and mortgagees generally. . . ."[4]

The Article on Condominiums[5] is basically intended to modernize and make uniform the law on this subject. The rapid growth of condominiums during the past ten years and the projection that they are to become the dominant form of home ownership demand that the multiplicity of state condominium acts be brought under a single unified body of law.

The Article on Construction Liens[6] is intended to attract money to the mortgage market by giving a construction mortgage total priority over mechanics' liens arising during the course of construction. This article will most probably generate a good deal of controversy.

Another important objective of the ULTA is to simplify title searching, hopefully making the process less expensive. This is to be accomplished by enactment of a uniform Marketable Title Act and a number of short limitations statutes to cure title defects.[7] In this regard, the Act anticipates the ultimate utilization of computers in modernizing the entire process of recording and searching titles.

It is quite evident that the ULTA purports to introduce revolutionary change in the law of real property. The discussion of the ULTA herein is limited to articles I and II. Hopefully this will serve to introduce the Act to the bar, which now appears to be largely unaware of the existence of this important proposed legislation. Additionally, an analysis of the thinking which went into the preparation of these two articles should provide an insight into the manner in which the ULTA hopes to achieve its stated objectives. Selected sections of the Act will be fully quoted as an aid to placing this commentary in its proper perspective.

Article I

Construction

The UCC has found application to transactions falling outside of its scope. As early as 1951 the Court of Appeals for the Third Circuit, in *Fairbanks, Morse & Co. v. Consolidated Fisheries Co.*,[8] drawing upon a rule of law stated in the Code, said, in a footnote, "(w)e think provisions of the Uniform Commercial Code which do not conflict with statute or settled case law are entitled to as much respect and weight as courts have been inclined to give to the various Restatements. It, like the Restatements, has the stamp of approval of a large body of American scholarship."[9] Thus, like the peasant who was startled to find that he had been speaking prose all his life, we find that large portions of the legislation the Commissioners are struggling to frame are already "on the books," so to speak.

Since much of the ULTA is taken from the UCC, both the Comments and

Author Kratovil

case law relevant to the UCC are equally relevant to the ULTA. Indeed, this was one of Professor Dunham's expressed goals.

In those instances where the present draft of the ULTA differs from prior drafts, the inference is warranted that a meaningful change was intended. At one time the UCC contained a provision that "prior drafts of text and comments may not be used to ascertain legislative intent."[10] This language vanished, no doubt because it was devoid of logic and because legislatures ought not go about telling courts how the latter should perform their functions.[11] Accordingly, variations in the various UCC drafts have frequently been utilized in order to construe the UCC.[12]

Originally the UCC provided that the Comments could be consulted as an aid to construction of the text, but warned that text controls in the event of conflict between the two.[13] In the process of revision, this provision was removed.[14] To the extent that the Comments were not laid before legislatures adopting the UCC, they lack official status. And to the extent that they were prepared after the UCC was written, they may or may not be legislative history.[15] In point of fact, however, the courts always consider the Comments.[16] But, it is important to note that the Comments can be misleading at times.[17] In the case of the ULTA, some Comments appear in the August 1974 Draft but others will follow. Because not all legislatures will be in a position to fully review the so-called "Official Comments," it should be emphasized that they are not really official, nor are they part of the statute.

Definitions and General Provisions

As was stated above, a proper understanding of the ULTA requires some familiarity with the UCC. Indeed, much of article I will be seen to follow conceptually the 1962 Official Text of the UCC. However, in keeping with one of its stated objectives, *i.e.*, consumer protection, article I introduces a new concept, that of a protected party. The protected party is one "who contracts to give a real estate security interest in, or to buy, or to have improved residential real estate all or a part of which he occupies or intends to occupy as a residence."[18] Residential real estate is defined so as to limit such real estate to a structure of not more than four dwelling units (an FHA concept) and to land containing not more than three acres.[19] The protected party, as will be seen, receives a number of special safeguards in the ULTA. Favored treatment in the foreclosure process,[20] and prohibitions against certain waivers of warranties[21] and modification of remedies[22] provide immediate examples.

This concept of protected party, however, is likely to provoke some controversy since it will bring within its ambit seemingly unintended individuals. For example, it applies regardless of value. The owner of a million-dollar

mansion is a protected party. In addition, it applies not only to one's principal home but to his summer and winter home as well.[23] Finally, since it applies to one who acquires a residence subject to a mortgage placed thereon by a protected party,[24] a large corporation acquiring a mortgaged home from an employee in an employee-transfer program is a protected party.

Good Faith and Unconscionability

> Section 1-201. (*General Definitions.*) Subject to additional definitions contained in subsequent Articles which are applicable to specific Articles or Parts thereof, and unless the context otherwise requires, in this Act the following definitions apply.
>
> . . . .
>
> (h) "Good faith" means honesty in fact and the observance of reasonable standards of fair dealing in the conduct or transaction involved.
>
> Section 1-301. (*Obligation of Good Faith.*) Every contract or duty within this Act imposed an obligation of good faith in its performance or enforcement.
>
> Section 1-311. (*Unconscionable Agreement or Term of Contract.*)
>
> (a) If the court as a matter of law finds that a contract or contract clause was unconscionable at the time it was made, the court may refuse to enforce the contract, enforce the remainder of the contract without the unconscionable clause, or limit the application of any unconscionable clause in order to avoid any unconscionable result.
>
> (b) Whenever it is claimed or appears to the court that a contract or any contract clause may be unconscionable, the parties in order to aid the court in making the determination, shall be afforded a reasonable opportunity to present evidence as to
>
> (1) the commercial setting of the negotiations,
>
> (2) whether the seller, lessor, or lender has knowingly taken advantage of the inability of the other party reasonably to protect his interests by reason of physical or mental infirmities, ignorance, illiteracy, or inability to understand the language or meaning of the agreement, or similar factors.
>
> (3) the effect and purpose of the contract or clause, and
>
> (4) if a sale, any gross disparity, at the time of contracting, between the amount charged for the real estate and value of the real estate measured by the price at which similar real estate was readily obtainable in similar transactions.

The definition of good faith in section 1-201(h) will be seen to follow closely that of article II (Sales) in the UCC[25] and that of the Restatement of Contracts.[26] It is important that the good faith and unconscionability provisions be read in conjunction with one another. Together, they operate with a "push-pull" force on every contract. The good faith definition enables the court to "push" into a contract a provision the court finds necessary to accomplish a fair result. The unconscionability section enables the court to "pull" from the contract provisions that tend to lead to an unfair result. The courts, it is clear, will play a highly activist role in making, remaking, and unmaking contracts.

This is not to say, of course, that the contemplated judicial role is something new. Courts have always done something akin to this. Equity often did so openly, while law courts used imaginative flanking devices. They found failure of consideration, lack of consideration, lack of mutual assent, duress or fraud, or resorted to strained interpretation — all toward the end of achieving a just result. It is almost as if courts were ashamed of their normal and natural role, the seeking of justice. The oddity of this attitude becomes even more apparent when one remembers that in their early struggles with contracts, both law courts and equity courts refused to enforce unfair contracts.[27]

Corbin recognized this process long ago. In contract law, he said, we must recognize the presence of "constructive conditions." These conditions are not to be found in the terms of the contract or any implication therefrom. Rather, they are put there by the courts to make the contract conform to the mores and practices of the community.[28] For example, if *V* contracts to sell Blackacre to *P*, and nothing is said about the quality of the title to be furnished by *V*, every court will read into the contract a requirement that seller furnish a marketable title free from encumbrances. Once it is recognized that this process is a timeworn practice, courts will accustom themselves to resorting to it freely. The great contribution of Corbin, the UCC, the Restatement of Contracts Second, and the Restatement of Property Second is that they bring this process out into the open, something the first Restatement of Contracts seemed unwilling to do. The concept of a "constructive condition," however, is to be shelved in favor of the notion of "good faith."[29] Nevertheless, it is important to remember that the constructive condition has not disappeared. It has merely acquired a new name. In passing, one notes that the urge to get rid of the word "constructive" is not likely to have much success.[30]

The unconscionability section, like that governing good faith, follows its counterpart in the UCC.[31] In addition, it borrows from the Restatement of Contracts[32] and the Uniform Consumer Credit Code.[33] Of particular interest is section 1-311(b)(4). This section will create consternation for the real property bar. In chattel transactions, establishing the market value of consumer goods presents few difficulties. But in large-scale real estate transactions the problems are formidable indeed. The results of appraisals can vary greatly. Particularly in land assemblies there is a wild variation in price between the first parcels acquired and those acquired in the last stages after news of the assembly has leaked out.[34] Moreover, there is a subjective aspect in land acquisition. The land investor values land differently from the land developer.[35] Theoretically, an option given for $1 can be enforced.[36]

It might be preferable to add the following language to subsection 4:

> *provided however,* a disparity between the contract price and the value of the real estate measured by the price at which similar real estate was readily obtainable in similar transactions does not, of itself, render the contract unconscionable.

The subsection would then be more

consistent with Professor Corbin's views.[37] Options would then be accorded specific performance even though only nominal consideration was given. A parallel commentary, however, could elaborate that gross disparity could well render the contract unconscionable if accompanied by inequalities in the sophistication of the parties or the other circumstance mentioned by Corbin. Land assemblies would have to be separately discussed. These simply do not lend themselves to solution by the phrase "similar real estate was readily obtainable in similar transactions." Each transaction in a land assembly is different from every other transaction. Also, a party paying a grossly inflated price for land because he expects inflation to push the price higher ought not to be relieved of his bargain if deflation occurs. This applies as well to the buyer who guesses wrong as to the existence of a project that would push price upward.

There are two matters this section leaves unaddressed. One is the effect of supervening unconscionability, that is, unconscionability occurring by reason of events taking place after the making of the contract. The ULTA speaks only of unconscionability at the time the contract was made. The other matter is the effort of unconscionability on executed transactions. The language of section 1-311 is couched in terms of defending an action to enforce an unexecuted contract. That executed transactions may later be challenged on grounds of unconscionability is exemplified by a recent decision upsetting a sale that had taken place in 1891. In the final analysis perhaps it is preferable to leave subsequent unconscionability to the law of restitution and unjust enrichment.[38]

Section 1-311(b) formerly contained a subdivision 5 which read as follows:

> (5) If an extension of credit, any gross disparity between the amount charged for the credit extended and the value of the credit extended measured by the charge at which similar credit is readily obtainable in similar transactions by like parties.[39]

This provision was ultimately removed. The conclusion may have been that unconscionable mortgage interest terms would be better left to policing under the law of usury.

Course of Dealing and Usage

Section 1-303. *(Course of Dealing and Usage.)*

(a) A course of dealing is a sequence of previous conduct between the parties to a particular transaction which is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

(b) A usage is any practice or method of dealing having such regularity of observance in a place as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of a usage are to be proved as facts. If it is established that a usage is embodied in a written trade code or similar writing the interpretation of the writing is for the court.

(c) A course of dealing between parties and any usage of which they are or should be aware give particular meaning to and supplement or qualify terms of an agreement.

(d) The express terms of an agreement and an applicable course of dealing or usage shall be construed wherever reasonable as consistent with each other; but when that construction is unreasonable express terms control both course of dealing and usage and course of dealing controls usage.

(e) An applicable usage in the place where any part of performance is to occur shall be used in interpreting the agreement as to that part of the performance.

Section 1-303, stating the ULTA position on usage and course of dealing, will again be seen to closely follow its counterpart in the UCC. This provision gives new force to prior course of dealing and usage of trade. Among other things, contractual ambiguity is no longer required—as it was in some states—before admitting evidence of trade usage to contradict the plain meaning of a contract term.[40] Moreover, general clauses may no longer suffice to divorce a contract from prior course of dealing and trade usage. Section 1-303 gives equal standing to all three factors in interpreting the contract. This means that parties wishing to be governed by the literal language of the contract must state so expressly and, better yet, expressly negate trade usage and prior course of dealing to the extent it conflicts with the express language of the parties.[41]

It seems possible, however, that usage and trade practice will play a less significant role in land transactions than in chattel transactions, although cases involving trade usage do indeed occur in land transactions.[42]

Waivers of Claims

Section 1-305. *(Waiver or Renunciation of Claim or Right After Breach.)*

(a) Subject to subsection (b), a claim or right arising out of an alleged breach of contract, including any contract creating a security interest or giving rise to a lien, may be discharged in whole or in part without consideration by a written waiver or renunciation signed and delivered by the aggrieved party.

(b) A waiver or renunciation under subsection (a), whether or not for consideration, by which a party agrees to forego rights given him by this Act or by a contract is invalid if the court as a matter of law finds the waiver or renunciation is unconscionable or that it was secured in an unconscionable manner. The competence of the aggrieved party, any material misrepresentation, failure to disclose, or over-reaching by the other party, and the value of any consideration for the waiver or renunciation are relevant to the issue of unconscionability.

Initially, this provision was intended to give a protected party relief against a waiver procured from him in an unconscionable manner. The Committee of the Whole added language that subjects the substance and effect of any waiver to examination as to unconscionability. The examination is to be made "by the court as a matter of law."[43] The concept that unconscionability is a matter for the court occurs throughout and is certainly not unique to the ULTA.[44] Since unconscionability is considered a

question of law, there is no right to a jury trial on this question. Yet determining unconscionability often involves determining land value,[45] and in condemnation cases land value is determined by a jury. Historically unconscionability played a larger role in equity cases than in law actions, which no doubt explains the role of the court in this area.

Section 1-305(a) provides that a waiver need not be supported by consideration. As originally drafted it was somewhat unclear whether this applied to a waiver of a mechanics' lien. However, the ULTA is to be construed liberally.[46] This requires the spirit to prevail over the letter of the law.[47] Under the ULTA, waiver in its broadest sense need not be supported by consideration. Thus, in the narrow field of mechanics' liens, the rule applicable to the broad field of waiver generally should apply. In the final draft it is specifically recognized that a mechanics' lien waiver need not be supported by consideration.[48]

Parol Evidence and Course of Performance

Section 1-306. *(Final Written Expression; Parol or Extrinsic Evidence.)* Terms agreed to by the parties in confirmatory memoranda or terms set forth in a writing intended by the parties as a final expression of their agreement may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement, but may be explained or supplemented:

(1) by course of dealing or usage (Section 1-303) or by course of performance (Section 1-308); and

(2) unless the court finds the writing to have been intended as a complete and exclusive statement of the terms of the agreement, by evidence of consistent additional terms.

Section 1-308. *(Course of Performance or Practical Construction.)*

(a) Whenever a contract involved repeated occasions for performance by either party and the other party has knowledge of the nature of the performance and opportunity to object to it, any course of performance accepted or acquiesced in without objection is relevant to determine the meaning of the agreement.

(b) The express terms of an agreement and any course of performance, as well as any course of dealing and usage, shall be construed whenever reasonable as consistent with each other, but whenever that construction is unreasonable, express terms control course of performance and course of performance control both course of dealing and usage.

(c) Notwithstanding subsection (b) and subject to the provisions on modification, rescission and waiver, (Section 1-310), course of performance is relevant to show a waiver or modification of any express or other term inconsistent with the course of performance.

In an earlier draft of the ULTA subparagraph (2) of section 1-306 appeared as paragraph (3) and the following appeared as paragraph (2): "by other evidence of the parties intention or understanding, and . . . ."[49]

The meaning of the change becomes clear by reference to the concurring opinion in *Smalley v. Juneau Clinic Building Corp.*,[50] which is, in part, as follows:

> The majority opinion returns to the "objective theory" of interpretation of contracts followed by the Restatement of Contracts and Professor Williston and which had been specifically adopted in Alaska prior to the case of Alaska Placer Co. v. Lee, 455 P.2d 218 (Alaska 1969). This approach requires the court to view the wording of a contract objectively to ascertain whether it is clear and unambiguous. If it is, then the obligations of the parties must be determined from the contract itself. Only if the contract is ambiguous may parol testimony be taken to ascertain the invention of the parties thereto.
>
> In *Alaska Placer Co.* this court, while citing the previous Alaska cases, relied upon the opposing theory of contractual interpretation espoused by Professors Corbin and Wigmore. This approach would require a hearing in every case where there is a dispute over contractual terms in order to ascertain the actual intention of the parties on the theory that words can mean different things to different people.[51]

When a deal gets into trouble, the documents are examined critically by litigation counsel. A lawyer who can depend on a court to give effect to the plain language of the contract can give his client rational advice. If he must indulge in conjecture as to what a judge might do with testimony by a party as to the meaning the terms of the contract had to such party, the situation becomes murky indeed. Corbin may have logic on his side, but in the catalogue of human values certainty will often rank far higher than logic. The deletion of former paragraph (2) reflects sound thinking.

The ULTA follows the UCC presumption "that even 'final' contracts are only partially integrated and that the extent of the partial integration depends upon the parties' actual intent to include within their agreement additional parol terms consistent with the writings."[52] Prior course of dealing and usages of the business give color to the terms actually employed in the writing. Even after the writing is signed, course of performance may affect the apparent meaning of the terms used in the writing. However, in case of a clear conflict between express terms and course of performance, the express terms control,[53] although course of performance may show waiver or modification. This will undoubtedly lead to extensive use of a merger clause in contract draftsmanship. The clause, moreover is likely to be an elaborate one, revealing a clear intention to detach the transaction from its setting.

Acceptance of the Deed

Section 1-309. *(Effect of Acceptance of Deed on Contract Obligations.)* Acceptance by a buyer or a secured party of a deed or other instrument of conveyance is not of itself a waiver or renunciation of any of his rights under the contract under which the deed or other instrument of conveyance is given and does not of itself relieve any party of the duty to perform all of his obligations under the contract.

Section 1-309 abolishes the rule that a contract of sale merges into the deed at closing. This section will result in the

routine insertion of merger clauses in deeds, since ULTA permits the parties to "draft around" most of the Code provisions. No doubt the pervasive rule against unconscionable terms will apply to any such merger clause.

A special rule as to marketable title, however, is found in section 2-304(d), to the effect that all questions of marketability of title end at closing. This is declarative of existing law and is an exception to the "no merger" rule of section 1-309.

Description of Real Estate

Section 1-312. *(Sufficiency of Description.)* Except as provided in the Article on recording, notice, and priority (Article 7) any description of the real estate is sufficient whether or not it is specific, if it reasonably identifies the real estate.

Since this is an article I definition it applies to all ULTA documents, such as contracts, deeds, and mortgages. Under present law, descriptions may not be totally sufficient for all purposes between the parties to the transaction.[54] The principal exception to this general provision is in the area of recording, which as the section indicates, will eventually be provided for in article VII.

Assignments and Waivers of Defense

Section 1-313. *(Certain Assignees Subject to Defenses of Protected Party.)*

(a) Notwithstanding agreement to the contrary, with respect to a sale entered into with a protected party by a person in the business of selling real estate, an assignee or holder in due course of the rights of the seller is subject to all defenses of the protected party against the seller.

(b) Notwithstanding agreement to the contrary, with respect to a security transaction entered into with a protected party by a lender whose security interest in the protected party's residential real estate is subordinate to another person's Article 3 security interest in the real estate, an assignee or holder in due course of the rights of the lender is subject to all defenses of the protected party against the lender.

Section 1-314. *(Agreement Not to Assert Defenses Against Assignee; Modification of Sales Warranties Where Security Interest Exists.)*

(a) Subject to the provisions subjecting an assignee to defenses of a protected party (Section 1-313), an agreement by a debtor who has given a security interest in real estate, or by a buyer or lessee of real estate, that he will not assert against an assignee defenses which he may have against the assignor is enforceable by an assignee who takes his assignment for value, in good faith and without notice of a defense, to the same extent as if he were a holder in due course of a negotiable instrument under the Article on Commercial Paper (Article 3) of the Uniform Commercial Code. A buyer, lessee, or debtor who as a part of one transaction signs both a negotiable instrument and a security agreement makes such an agreement.

(b) When a seller retains a purchase money security interest in real estate the Article on Contracts and Conveyances (Article 2) governs the sale and any disclaimer, limitation, or modification of the seller's warranties.

Sections 1-313 and 1-314 set forth the ULTA position on defenses to mortgages securing negotiable notes and waivers of defenses. The majority view in this regard has been adopted to the effect that a mortgage which either secures a negotiable note or is accompanied by a waiver of defenses, travels free of any defenses.[55] Thus, an assignee who takes his assignment in good faith and for value is treated in the same fashion as a older in due course of a negotiable instrument under article 3 (Commercial Paper) of the UCC.[56]

Section 1-313, however, sets out one notable exception to this proposition, *viz.*, that of the protected party.[57] As has been discussed above, the protected party is a concept unique to the ULTA. Here, as elsewhere throughout the Act, the protected party is afforded preferred treatment. Therefore, an assignee or holder in due course of the right of a seller is subject to all defenses of the protected party against the seller. It should be noted, as the Comment to this section points out, that "(a) protected party can validly waive defenses as against assignees of first mortgages."[58] Subdivision (b) of this section is speaking specifically of the transactions between protected parties and lenders whose security interest in the real estate is *subordinate* to that of another. It was felt that to subject assignees of first mortgages to such defenses would unnecessarily dampen their sale by prime institutional lenders. Thus, assignees of a seller or second mortgagee will not take their assignments free of the protected party's personal defenses.

Finally, with respect to the assignment of contracts, the ULTA adopts the minority view that, in the absence of language or circumstance to the contrary, an assignee impliedly promises to perform the duties of the assignor.[59]

On the whole, article I introduces little that is earth-shaking, especially to those familiar with the UCC. The "protected party" provision seems rather generous, but seldom will wealthy homeowners become involved in fore-

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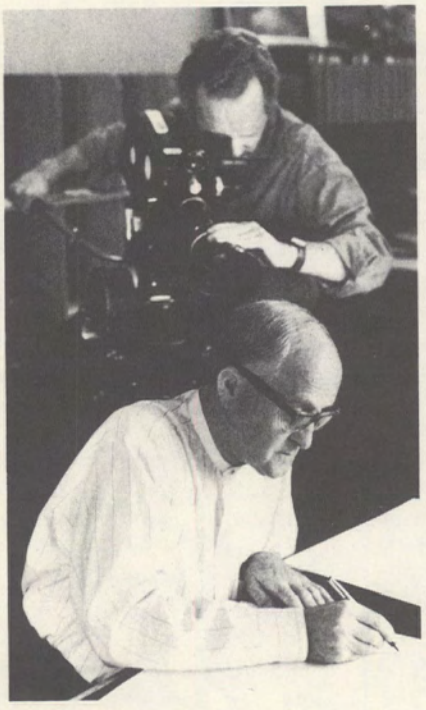

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closures. Unconscionability, as a concept, is already a part of our law. The language needs polishing, but that can easily be done. What is perhaps most significant is that the real property bar will be compelled to begin an earnest study of the UCC.

To Be Continued . . .

(The conclusion of this article will appear in the November issue of *Title News*.)

Footnotes

[1]A special committee of the National Conference of Commissioners on Uniform State Laws is in charge of preparing the working draft of the Uniform Land Transactions Act. To date, this draft has not been passed upon by the Commissioners on Uniform State Laws. Throughout this article, references and citations to sections and comments of the ULTA are to the February 1975 working draft. Since the entire draft will not be reproduced herein, those wishing to obtain a copy may contact the National Conference of Commissioners on Uniform State Laws, 645 N. Michigan Ave., Chicago, Ill. 60611.

The ULTA is primarily concerned with real estate transactions and hence the acronym is somewhat of a misnomer. This was deemed, however, to be more acceptable than the UREA.

[2]The articles yet to be approved are: article VI, Statutory Liens and Notices of Pending Proceedings; article VII, Conveyancing, Recording and Priorities; article VIII, Public Land Records; and article IX, Effective Date and Repealer.

[3]In the aftermath of Sniadach v. Family Fin. Corp., 395 U.S. 337 (1969), and Fuentes v. Shevin, 407 U.S. 67 (1972), there was considerable debate as to whether typical power of sale foreclosures were constitutional in the absence of prior notice and hearing for the benefit of the defaulting mortgagor. *See, e.g., Note, California's Nonjudicial Foreclosure Notice Requirements and the "Sniadach Progeny,"* 9 Calif. W. L. Rev. 290 (1973); Note, *Mortgages—Does Foreclosure Under Power of Sale Violate Due Process Rights?,* 4 Cum.-Sam. L. Rev. 507 (1974); Note, *Nonjudicial Foreclosure Under a Deed of Trust: Some Problems of Notice,* 49 Texas L. Rev. 1085 (1971). The problem, however, has not yet been completely resolved. *See* Northrip v. Federal Nat'l Mtge. Assoc., 372 F. Supp. 594 (E.D. Mich. 1974).

Recent case law, however, has consistently upheld state statutes authorizing nonjudicial power of sale foreclosures against such attacks. *See, e.g.,* Bryant v. Jefferson Fed. Sav. & Loan Ass'n, 509 F.2d 511 (D.C. Cir. 1974); Hoffman v. Dep't of Housing & Urban Dev., 371 F.Supp. 576 (N.D. Tex. 1974); Law v. Dep't of Agric., 366 F.Supp. 1233 (N.D. Ga. 1973); Ruff v. Lee, 230 Ga. 426, 197 S.E.2d 376 (1973).

[4]ULTA art. 3, Introductory Comment.

[5]*Id.* art 4.

[6]*Id.* art 5.

[7]*See generally* Simes & Taylor. *Improvement of Conveyancing by Legislation* (1960).

[8]190 F.2d 817 (3d Cir. 1951).

[9]*Id.* at 822 n.9. *See generally* Malcolm, *The Uniform Commercial Code: Review, Assessment, Prospect—November, 1959,* 15 Bus. Law. 348, 360-65 (1960); Note, *The Uniform Commercial Code as a Premise for Judicial Reasoning,* 65 Colum. L. Rev. 880 (1965).

[10]Uniform Commercial Code S 1-102(3)(g) (1953 version) (hereinafter cited as UCC). All further UCC citations are to the 1962 Official Text unless otherwise indicated. *See generally* Braucher, *The Legislative History of the Uniform Commercial Code,* 58 Colum. L. Rev. 798 (1958).

[11]It has been suggested with respect to the UCC, however, that "lawyers cannot base reliable inferences as to the intended meaning of enacted text on changes made from prior versions of that text." J. White & R. Summers, Uniform Commercial Code S 4, at 10 (1972) (hereinafter cited as White & Summers). The authors suggest that former S 1-102(3)(g), which appeared in the 1953 version should not have been deleted. *Id.*

[12]*See, e.g.,* Comment, *Future Advance Security Interests and the 1971 Revision of the Uniform Commercial Code,* 1971 U. Ill. L.F. 496.

[13]UCC S 1-102(3)(f) (1953 version).

[14]1956 Recommendations of the Editorial Board of the Uniform Commercial Code 3 (1957); *see* Skilton, *Some Comments on the Comments to the Uniform Commercial Code,* 1966 Wis. L. Rev. 597 (hereinafter cited as Skilton).

[15]*Compare* 1 N.Y. Law Reivsion Comm'n, Study of the Uniform Commercial Code 158-60 (1955) (various judicial references to the Comments seen as indication that the courts consider the Comments to be "part of the 'legislative history'"), *quoted in* Skilton, *supra* note 14, at 604 n.19, *with* Note, *Warranty Disclaimers and Limitation of Remedy for Breach of Warranty Under the Uniform Commercial Code,* 43 B.U.L. Rev. 396, 403 (1963) (suggesting that comments "do not qualify as legislative history").

[16]*See, e.g.,* cases cited in Skilton, *supra* note 14, at 598 n.3.

[17]*See* White & Summers, *supra* note 11, S 4, at 12-13.

[18]ULTA S 1-203(a)(1).

[19]*Id.* S 1-203(b).

[20]*Id.* S 3-506.

[21]*Id.* S 2-311(c).

[22]*Id.* S 2-517(d).

[23]*Id.* S 1-203, Comment.

[24]*Id.* S 1-203(a)(3).

[25]*See* UCC S 2-103.

[26]Restatement (Second) of Contracts S 231 (1972).

[27]*See* Horwitz, *The Historical Foundations of Modern Contract Law,* 87 Harv. L. Rev. 917, 923-24 (1974), where the author points out that "(t)he most important aspect of the eighteenth century conception of exchange (was) an equitable limitation on contractual obligation." *Id.* at 923. Courts of equity would not enforce contracts if the consideration was inadequate. *Id.* The law courts arrived at a similar result by the use of a "substantive doctrine of consideration which allowed the jury to take into account not only whether there was consideration, but also whether it was adequate, before awarding damages." *Id.* at 924.

[28]*See* Corbin, *Conditions in the Law of Contracts,* 28 Yale L.J. 739 (1919); 3A A. Corbin, Contracts S 632 (1963).

[29]Restatement (Second) of Contracts S 252, comment c (1972).

[30]*See* Patterson, *Constructive Conditions in Contracts,* 42 Colum. L. Rev. 904 (1942). The author analyzes judicial treatment of various implied conditions in contracts and suggests that the term "constructive condition" most aptly describes conditions found in contracts because of overriding legal principles.

[31]UCC S 2-302.

[32]*See* Restatement (Second) of Contracts S 234 (1972).

[33]*See* Uniform Consumer Credit Code S 5.108.

[34]*See, e.g.,* Hellman, *The Fine Art of Assemblage,* 4 Real Estate Rev., Summer 1974, at 101.

[35]*See, e.g.,* Kern, *The Art of Buying Land,* 3 Real Estate Rev., Winter 1974, at 38.

[36]It is not the amount of consideration which is important, but "the value of the performance to be rendered by the promisee after acceptance." 1A A. Corbin, Contracts S 263, at 501 (1963).

[37]Professor Corbin pointed out:

> It is the generally prevailing rule that mere inadequacy of consideration, unaccompanied by other facts indicating artiface *(sic),* sharp practice, hardship, advantage taken of misfortune or ignorance, and the like, is not sufficient in itself to prevent specific enforcement.

5A *id.* S 1165, at 223 (1964) (footnote omitted).

[38]*See generally* White & Summers, *supra* note 11, SS 4-1 to -8, at 112-33, wherein the authors point out that the most frequent remedy accorded upon a finding of unconscionability under the UCC is a refusal to enforce payment of the purchase price. *Id.* S 4-8, at 130-33. Indeed, it has been suggested that "(i)t is not ground for damages or for cancellation of the executed contract." D. Dobbs, Remedies S 10.7, at 706 (1973). There is, however, at least some authority for the proposition that a court could modify the terms of an executed contract properly made where payments were found to be so inadequate as to be unconscionable, and require that additional payments be made. *See, e.g.,* Sac & Fox Tribe of Indians v. United States, 340 F.2d 368 (Ct. Cl. 1964), where the court found that coercion and duress had been used by the Government to force the Indians into taking an "unconscionable" price in exchange for their land, *id.* at 374-76. The case was remanded to the Indian Claims Commission for a determination of the fair market value of the land at the time of sale, the difference between such value and the purchase price to be awarded to the petitioners, *Id.* at 374.

[39]ULTA S 1-311(b)(5) (Mar. 1, 1973 proposed draft).

[40]*See* Note, *Contract Draftsmanship Under Article Two of the Uniform Commercial Code,* 112 U. Pa. L. Rev. 564, 575 & n.97 (1964).

[41]The importance of such a provision is exemplified by Provident Tradesmens Bank & Trust Co. v. Pemberton, 196 Pa. Super. 180, 173 A.2d 780, *aff'g per curiam* 24 Pa. D & C.2d 720 (Philadelphia County Ct. 1961), wherein based on evidence of trade usage and course of dealing, the court read into the contract between plaintiff bank and defendant car dealer the requirement that the bank notify the dealer, notwithstanding a security agreement purporting to waive notice, that a customer let his insurance lapse.

[42]*See, e.g.,* Chicago Bridge & Iron Co. v. Reliance Ins. Co., 46 Ill. 2d 522, 264 N.E.2d 134 (1970).

[43]ULTA S 1-305(b).

[44]*See, e.g.,* UCC S 2-302; Uniform Consumer Credit Code S 5.108; Reinstatement (Second) of Contracts S 234, comment f (1972).

[45]*See, e.g.,* ULTA S 1-311(b)(4).

[46]*Id.* S 1-102(a).

[47]*See* 3 Sutherland, Statutory Construction S 60.01 (4th ed. C. Sands 1974).

[48]ULTA S 5-214. *See generally* Kratovil & Rohde, *Mechanics' Lien Waivers and the Requirement of Consideration,* 14 DePaul L. Rev. 243 (1965). The authors point out that the overwhelming weight of authority supports the proposition "that the waiver of a mechanic's lien must be supported by consideration." *Id.* at 243. The authors go on to suggest, however, that the rule constitutes an impediment to modern construction lending practices. The problem is said to arise because mortgage bankers frequently have such waivers disregarded and thus lose their mortgage lien priority where the primary contractor fails to tender actual consideration therefor. *Id.* at 244. It is suggested that the amount of time and paperwork required in attempts by the mortgage lender to protect its lien are invariably reflected in the increased cost of construction. *Id.* at 245.

[49]ULTA S 1-207 (May 1973 working draft).

[50]493 P.2d 1296, 1305 (Alas. 1972) (Erwin, J., concurring).

[51]*Id.* at 1305-06 (footnotes omitted).

[52]Note, *Contract Draftsmanship Under Article Two of the Uniform Commercial Code,* 112 U. Pa. L. Rev. 564, 566-67 (1964). *See also* UCC S 2-202, Comment 1; N.Y. Law Revision Comm'n, Study of the Uniform Commerical Code 598, 601 (1955).

[53]ULTA S 1-308(b).

[54]It should be noted in this connection that "(a) description may be sufficient for a contract though inadequate for a deed." M. Friedman, Contracts and Conveyances of Real Property 35 n.31 (2d ed. 1963). It should also be noted that courts will frequently reform a conveying instrument to conform to the actual conveyance intended by the parties but will not do so if the recorded instrument has been relied on to the detriment of intervening parties. *See, e.g.,* Thorpe v. Helmer, 275 Ill. 86, 113 N.E. 954 (1916); Lutle v. Hulen, 128 Or. 483, 275 P.45 (1929). *See generally* 1 R. Patton & C. Patton, Land Titles S 61 *et seq.* (2d ed. 1957).

[55]*See* R. Kratovil, Modern Mortgage Law and Practice S 192 (1972).

[56]UCC S 3-305.

[57]ULTA S 1-313(b).

[58]*Id.* S 1-313, Comment.

[59]*Id.* S 1-315. *See also* Rose v. Vulcan Materials Co., 282 N.C. 643, 194 S.E.2d 521, 532-34 (1975).

names in the news

Philip B. Branson has been elected senior vice president of Title Insurance and Trust and Pioneer National Title Insurance. **Branson** is national marketing manager for the combined operations of the two companies.

* * *

Billy F. Vaughn has been named senior vice president of Lawyers Title Insurance Corporation with offices in Dallas.

In addition, Lawyers Title has elected **Roy G. McLeod,** secretary, and **Hazel T. Cole,** treasurer. The posts became vacant due to the Augut 31 retirement of **Clifford B. Fleet,** vice president and secretary-treasurer.

Lowell P. Elowsky has been named company assistant vice president and manager of the Michigan outstate division. Additionally, Lawyers Title has purchased the assets of Brooks Abstract Co., Lansing, Mich., and converted it to a branch operation. **William M. Quinn,** formerly president of Brooks Abstract, has been appointed branch manager.

* * *

Stewart Title Guaranty Company has announced the following promotions: **Peter J. Waters,** division manager, midwestern division, Chicago; **Steve Carson,** president and manager of Stewart Title Insurance of Nevada, Las Vegas; **Patrick Mansfield,** company chairman of the board; **Glenn H. Clements,** manager, Galveston County (Tex.) operations; **William C. Thomson,** president of Stewart Title of Broward County, Fort Lauderdale, Fla.; **Anthony M. Alonzi,** assistant manager and director of personnel, Houston; and **Steve Robison,** manager of the company's Clear Lake City, Tex., office.

* * *

William P. Brown has been appointed chief internal auditor of Minnesota Title Financial Corporation.

* * *

The following appointments have been announced by Commonwealth Land Title Insurance Company. They are: **Robert D. McClaran,** corporate vice president and president of the metropolitan Washington, D.C., division; **Marc S. Weisberg,** assistant vice president and associate counsel; **Ralph D. Bone,** assistant vice president, San Diego office; **John B. Herron,** associate counsel; and **Richard A. Welder,** assistant counsel.

* * *

A. Lyndon Woodward has been named vice president of Continental Title Insurance Company and will head the company's North Jersey regional office.

* * *

First American Title Company has reported the following appointments within the First American organization. They include: **Tim E. Flake,** president, First American Title Company of Central California; **Thomas J. Brusca,** president, First American Title Company of Washington; **Robert M. Bowen,** president, First American Title Company of Nevada; and **A. W. "Bill" Moulton,** chairman of the board, First American Title Company of Washington, and regional counsel for the parent company.


ALONZI


ROBISON


BRANSON


VAUGHN


ELOWSKY


QUINN


BROWN


BONE


McLEOD


FLEET


WATERS


CLEMENTS


WELDER


WOODWARD

Major Realignment In TI Organization

A major realignment in the organizational structure of the Ticor Title Insurers has resulted in the creation of a new region and eight new divisions. The Ticor Title Insurers are Title Insurance and Trust Company and Pioneer National Title Insurance Company.

The largest operating unit created under the realignment is the Northwest Region, consisting of Alaska, Idaho, Montana, Oregon, Utah, Washington and Wyoming. The new region is headquartered in Seattle, Wash. Other major operating units are the Western Region, headquartered in San Francisco; Central Region based in Chicago; and the Eastern Region, with headquarters in New York.

Richard G. Mohler was named regional manager of the Northwest.

The new divisions created under the company's realignment are: Washington Division, including all of Washington State except King County; King Division, encompassing King County; Oregon State Division; San Diego and Orance County, Calif. Divisions; Central California Division; New York Division; and Florida/Caribbean Division, which includes all of Florida, Puerto Rico and the Virgin Islands.

Each of the newly-created divisions will operate under newly-promoted management. These executives, all of whom now have the title of division manager, are: Dale Dow, Washington; Harry Kinnee, King; Lem P. Putnam, Oregon; Warner L. Harrah, San Diego; Richard G. Sleight, Orange; Arvid G. Erickson, Central California; William T. Seitz, New York; and Gordon K. (Bud) Wilde, Florida/Caribbean.

Also announced was the creation of the D.C. Metro Operations area and the Tennessee State Operation. W. Dawson Cave is the manager of D.C. Metro Operations and William H. Mince has the managerial responsibilities in Tennessee.

In another organizational change, Byron J. Whitted was promoted to manager of direct operations for the South Central Division, which consists of Arkansas, Colorado, Kansas, Louisiana, Missouri, Nebraska, New Mexico and Texas.

meeting timetable

October 1-4, 1975
ALTA Annual Convention
Palmer House
Chicago, Illinois

October 12-13, 1975
Carolinas Land Title Association
Foxfire Golf and Country Club
Pinehurst, North Carolina

October 20-27, 1975
Mortgage Bankers Association of America
Conrad Hilton Hotel
Chicago, Illinois

October 26-28, 1975
Indiana Land Title Association
Rodeway Inn
Indianapolis, Indiana

November 6-7, 1975
Dixie Land Title Association
Holiday Inn
Callaway Gardens, Georgia

November 7-8, 1975
Land Title Association of Arizona
Carefree Inn
Carefree, Arizona

November 7-13, 1975
National Association of Realtors
San Francisco Hilton
San Francisco, California

November 9-13, 1975
United States League of Savings Associations
Convention Center
Miami, Florida

November 13-15, 1975
Florida Land Title Association
Fort Lauderdale, Florida

December 3, 1975
Louisiana Land Title Association
Royal Orleans
New Orleans, Louisiana

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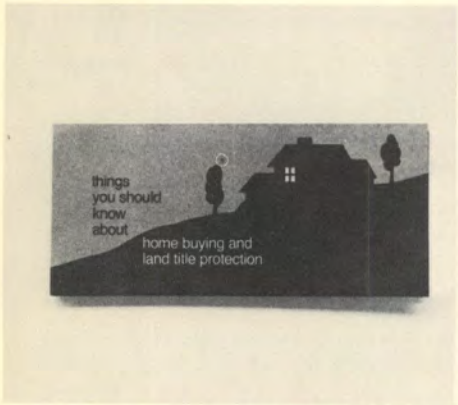

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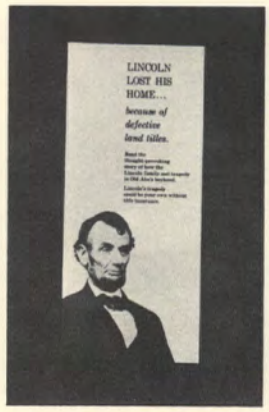

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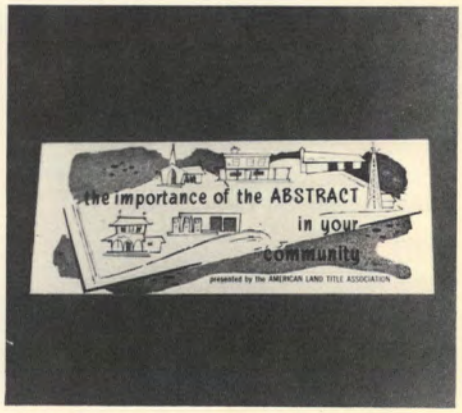

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American Land Title Association