

# **STATUTES**

## **HISTORICALLY SIGNIFICANT ENGLISH STATUTES**

## **SIGNIFICANT U.S. FEDERAL LEGISLATION AND REGULATIONS**

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## HISTORICALLY SIGNIFICANT ENGLISH STATUTES

### ***De Donis Conditionalibus* 1285**

Statute of Westminster II (13 Edw. I) (*De Donis Conditionalibus* being the opening of chapter I which dealt with **conditional fee** estates). The statute provided that when a person made a gift of land to “A and the heirs of his body” (or a similar devise) with the express condition that should the donee die without issue the land will then revert to the donor, this is to be construed as expressing an intention to retain land within the family. Prior to the statute, once the donee acquired the land, he could acquire an absolute estate by a process of selling and simultaneously buying back the land. This practice as prohibited by the statute, so that the grantee who received such a limited estate was no longer free to alienate the estate outside the family (except for his own lifetime) and, if there were no further issue of A, the estate did revert back to the donor or his heir. “The result of this statute was the appearance of a new kind of fee or inheritable estate, called a **fee tail**, or in Latin *feodum talliatum*, and so called because the quantum of the estate was, ‘cut down’ in the sense that, unlike the case of the fee simple, the right to inherit was restricted to the class of heirs specially mentioned in the gift, and was not available to the heirs-general of the donee.” *Cheshire and Burn’s Modern Law of Real Property* (17th ed. 2007), pp. 482–3.

### **Statute of *Quia Emptores* 1290**

‘For as much as the purchasers’. The Statute of Westminster III (18 Edw. I, Stat. 1, c. 1), which commenced with the words *Quia emptores terrarum et tenementorum de feodis magnatum*, ‘For as much as Purchasers of Lands and Tenements of the Fees of great Men’. This statute was passed to limit the number of forms of **tenure** that could be granted on the same land. It provided that, when a new tenure was granted, the original grantor dropped out and the new grantee took his place, thereby limiting fee simple tenure to one person, i.e. it abolished **subinfeudation**. It also permitted a free man to sell land to whom he pleased, without the consent of the superior lord: “from henceforth it shall be lawful to every Freeman to sell at his own pleasure his Lands and Tenements, or part of them; so that the Feoffee shall hold the same lands or Tenements of the chief Lord of that same Fee, by such Service and Customs as his Feoffor held before”. The statute did not apply to the Crown, who thus remained the chief Lord of the land. See also **feudal system**.

Am.Jur.2d., Desk Book, Document 105.

A.K.R. Kiralfy. *A Source Book of English Law* (1957).

### **Statute of Uses 1536**

A statute enacted in 1536 (27 Hen. VIII, c. 10) that effectively prevented the transfer of land from one person to another (the *feoffee to uses*) in such a way that the land was to be held for the ‘use’ and benefit of a third party (the *cestui que use*), i.e. it abolished a transfer of land to one person to be held simply ‘on behalf of’ (or *ad opus, ad oeps* or *ad eops*, ‘to the use of’) another. A ‘use’ was a means in the late Middle Ages of transferring property to another in order to avoid ‘escheat’, i.e. the land falling back into the hands of a lord upon the death of the true owner, or it was used to prevent the King or superior lord from obtaining incidents of tenure or revenues from the land. The statute provided that “where any person or persons shall be seised of any lands or other hereditaments to the **use**, confidence or trust of any other person, in every such case such person . . . shall stand and be seised . . . in lawful **seisin**, estate and **possession** of the same lands and hereditaments in such like estate as they had or shall have in the use, trust and confidence of or in the same.” Thus, the Statute of Uses converted most ‘uses’ into legal estates so that the entire legal estate was transferred to the *cestui que use* or beneficiary (and not to the *feoffee to uses*). The statute only applied to passive uses, i.e. where the legal titleholder was given no obligations with respect to the subject land, other than to hold the paper title. Where there was an

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active use, with the feoffee having duties to perform, such as the collection of rents and profits from the land, this transfer came to be recognised by the courts as outside the scope of the Statute of Uses, because the feoffee had to retain an estate in the land in order to be able to perform those duties. Also, the Statute could be circumvented by granting the land to the use of one party who in turn held it to the use of another (a ‘use upon a use’). Thus, these exceptions to the rule paved the way for the creation of the modern **trust**; the *cestui que use* becoming the equivalent of a **beneficiary** and the *feoffee to uses* the equivalent of a **trustee**. See also **land trust**.

<sup>1</sup> Thompson on Real Property, § 4.07(f).

A.W.B. Simpson. *A History of the Land Law* (Oxford: 2nd ed. 1986), Ch. VIII ‘Uses and the Statute’.

W.S. Holdsworth. *A History of English Law* (London: 3rd ed. 1923), vol. iv, pp. 449–480.

## Statute of Frauds 1676

“An Act for the Prevention of Frauds and Perjuries”, 29 Car. II (1676), c. 3. An English statute that became effective from 1677 to prevent the use of **fraud** and perjury as a means of enforcing supposed agreements. The statute provided that certain types of contracts or engagements could not be brought before a court of law unless evidenced by some **note** or **memorandum in writing** that was duly signed. In particular, the statute provided that “All leases, estates, interests of freehold, or terms of years, or of any uncertain interest of, in to or out of any messuage, manor, lands, tenements or heritages, made or created by livery of seisin only, or by parol, and not put in writing, and signed by the parties so making or creating the same, or by their agents thereto lawfully authorised by writing, shall have the force and effect of leases and estates at will only”, sec. 1. The statute excluded leases for three years or less made at a rent of more than two-thirds of the market rental value. However, any assignment or surrender of a lease had to be made by deed or put in writing. The purpose of the Statute of Frauds was not to overturn contracts between parties merely on the ground of a lack of proper formality, but to prevent a claim to the benefit of a contract that has been brought about by perjury, fraud or similar action. Thus, contracts could still be enforced in equity if there was a sufficient act of **part performance** to support the agreement. In English law, this statute has been largely repealed or replaced by other enactments, notably: (a) for leases *not exceeding three years* by the Law of Property Act 1925, s. 54(2); (b) for contracts for the sale or other disposition of land or an interest in land made prior to 27 September 1989 by the Law of Property Act 1925, s. 40; (c) for such contracts made since that date by the Law of Property (Miscellaneous Provisions) Act 1989, s. 2.

The English statute became effective in the American colonies and in some states has been accepted as part of the common law. All the states, except Louisiana and New Mexico, have adopted a similar statute, with some variations in language to extend or limit the provisions. The principle of such enactments is the same, namely that “the statute of frauds renders unenforceable oral executory agreements for the creation, transfer, or surrender of estates in land, the object of the statute being to avoid unsettling titles to land by unreliable testimony”, 68 C.J.S., Frauds, Statute of, § 68. In most jurisdictions, leases for a term of one year or less are excluded from the provisions of the statute (but not a lease that includes a right to be extended for more than one year) (e.g. NY RPP, §§ 5–703). In a few jurisdictions, the provision applies to leases for more than three years (e.g. 68 Pa. Stat., Sec. 250.203) and in Ohio all leases must be in writing (Ohio Rev. Code, Sec. 1335.04). Most rights, restrictions or covenants relating to land are affected by the Statute of Frauds and, therefore, must be in writing to be enforceable; however, in some jurisdictions an equitable restriction may be enforced even though it is not in writing, and some jurisdictions do not apply the statute to covenants or restrictions as they are not considered ‘interests in land’.

In addition, the Statute of Frauds may be applicable to certain contracts for the administration of an

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estate, contracts for debts or guarantees, contracts in consideration of marriage, and “any agreement that is not to be performed within the space of one year from the making thereof”, sec. 4. The later provision applies to most contracts that are to be performed in whole or in part after a period of one year from the making of the contract. See also **declaration of trust, earnest, estoppel, interest, joinder, doctrine of part performance, listing agreement<sup>(US)</sup>, parol contract, signature, will.**

Anno: 16 ALR2d 621: Lease—Terms—Statute of Frauds.

Anno: 23 ALR2d 6: Statute of Frauds—Sufficiency of Description.

Anno: 110 ALR5th 277: Statute of Frauds—E-mail.

Anno: 12 ALR6th 123: Sufficiency of Description of Terms and Conditions of Lease, or Lease Provisions, so as to Comply with Statute of Frauds.

The American Law Institute, Restatement Second, Contracts (St. Paul, MN: 1981), Ch. 5 ‘The Statute of Frauds’.

The American Law Institute, Restatement Second, Property (Landlord and Tenant) (St. Paul, MN: 1977), § 2.1 Statutory Note.

J.D. Calamari and J.M. Perillo. Contracts (5th ed. St. Paul, MN: 2003), Ch. 19 ‘Statute of Frauds’.

J.E. Cribbet et al. Cases and Materials on Property (8th ed. Westbury, NY: 2002), Ch. 23, Sec. 2 ‘Statute of Frauds’.

6A Powell on Real Property (Albany, NY: ©1997-), § 880[1].

72 & 73 Am.Jur.2d., Statute of Frauds, §§ 1-612.

37 Cor.Jur.Sec., Frauds, Statute of, §§ 1-210.

9 & 10 Williston on Contracts (4th ed. St. Paul, MN: ©1990- ), Chs. 21-29.

I.C.F. Spry. *The Principles of Equitable Remedies* (6th ed. Pyrmont, NSW: 2001).

W.S. Holdsworth. *A History of English Law* (London: 1924), vol. vi, pp. 379-397.

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## SIGNIFICANT MODERN ENGLISH STATUTES

### Housing Acts

Acts of Parliament that have been passed to regulate and control a variety of matters affecting private dwelling houses. In particular, Acts passed to give local housing authorities powers to: (a) provide public housing, especially for low-income families; (b) make grants for housing improvement; (c) to enter and inspect houses and to require the closure or demolition of some houses. The Acts also provide for the regulation of residential **overcrowding** and **houses in multiple occupation**. The first major modern Act was the Housing Act 1925 and the most recent major Acts are the Housing Acts of 1988, 1996 and 2004. Housing Acts have also been passed to deal with matters that might be considered to fall within the ambit of the **Rent Acts** and the **Public Health Acts**, e.g. rent regulation, security of tenure for residential tenants and sanitary conditions, as well as the right of public-sector tenants to purchase the houses they occupy. See also **clearance area**, **closing order**, **demolition order**, **housing action area**, **housing authority**, **Housing Corporation**, **slum clearance**.

22 *Halsbury's Laws of England*, Housing (4th ed. Reissue), § 2.

21 *Halsbury's Statutes of England and Wales* (4th ed.), pp. 1-1062.

### Land Compensation Acts

Statutes that set forth details of the basis for assessing **compulsory purchase compensation**. The principal current Acts are the Land Compensation Acts of 1961 and 1973 and the Planning and Compensation Act 1991, as amended by the Planning and Compulsory Purchase Act 2004. In addition, the procedures for **compulsory purchase** are contained principally in the Land Clauses Consolidation Act 1845, the Compulsory Purchase Act 1965 and the Local Government, Planning and Land Act 1980, as amended by the Planning and Compulsory Purchase Act 2004. See also **compensation for disturbance**, **compensation for injurious affection**, **compensation for planning restrictions**, **compensation for severance**.

*Encyclopaedia of Compulsory Purchase and Compensation*, Volume 1.

9 *Halsbury's Statutes of England and Wales*, Compulsory Acquisition (4th ed. Reissue).

See also Appendix A, Bibliography: **Compulsory Purchase**; **Condemnation and Eminent Domain**.

### Landlord and Tenant Acts

Acts of Parliament that have been passed to give the holder of a **business tenancy** a right to a new tenancy upon the expiration of his contractual tenancy, as well as a right to apply to the courts to determine the rent the tenant should pay on renewal of the tenancy or when the rent is reviewed in accordance with the terms of the contractual tenancy. These statutes also provide that, in certain circumstances, the tenant is entitled to **compensation for improvements** and **compensation for disturbance** when his tenancy comes to an end. The principal statutes currently in force are the Landlord and Tenant Act 1927, Part 1, and the Landlord and Tenant Act 1954, Part II (as amended). These statutes do not apply in Scotland.

S. Bridge. *Blackstone's Statutes on Landlord & Tenant* (3rd ed. 1999).

23 *Halsbury's Statutes of England of England and Wales*, Landlord and Tenant (4th ed. London).

### Law of Property Acts

A set of statutes passed between 1922 and 1926 with the intention of instituting a major reform of land law in England and Wales and, in particular, to abolish most remnants of the **feudal system** of land tenure. The main object of these statutes was: (a) the simplification of conveyancing; (b) the greater protection of purchasers of land, as well as those holding equitable interests; (c) the assimilation



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and amendment of aspects of the law affecting real and personal property; (d) the consolidation of enactments relating to settled land and trustees; (e) the simplification of procedure for the administration of estates of deceased persons; and (f) the extension of **land registration**. This was achieved, in particular, by (i) reducing to two the number of legal estates; (ii) codifying the number of permissible legal interests and making any other interest in land an **equitable interest** protected by registration; (iii) abolishing copyhold (or technically enfranchising it into ‘freehold held by socage tenure’) and making **freehold** the residual form of tenure; (iv) effectively establishing a **leasehold** as real property rather than personal property (or assimilating ‘chattels real’ into the law of real property); (v) creating a means by which many interests in **settled land** could be detached from land and converted to a right to the proceeds of sale primarily by introducing the **trust for sale**; (vi) extending the system for registration of titles to land, as well as most burdens, encumbrances and charges over land; and (vii) abolishing various anachronistic rules and doctrines that affected real property rights.

The statutes comprise: (a) the Law of Property Acts of 1922 and 1925 (subsequently amended by Acts of 1926, 1929, 1932, 1964 and 1969); (b) Settled Land Act 1925 (now mostly replaced by the provisions of the Trusts of Land and Appointment of Trustees Act 1996); (c) Administration of Estates Act 1925; Trustee Act 1925; (d) Land Charges Act 1925 (now replaced by the Land Charges Act 1972); and (e) the Land Registration Act 1925, now superseded by the Land Registration Act 2002. See also **doctrine of estates, legal estate, legal interest, overreached interest, trust**.

*Cheshire and Burn’s Modern Law of Real Property* (17th ed. Oxford: 2007), pp. 6-9, 81 et seq.

*Butterworths Property Law Handbook* (6th ed. London: 2005).

29 *Halsbury’s Statutes of England and Wales, Real Property* (4th ed. London).

*Statutes in Force* (London: HMSO Books).

### Public Health Acts

A series of statutes, especially the Public Health Acts 1875 and 1936, passed to control new building by providing minimum standards of design, layout, sanitary conditions and amenities.

See also **Housing Acts** (supra), **Town and Country Planning Acts** (infra).

### Rent Acts

Acts of Parliament passed to control the relationship between a landlord and a tenant of residential property; in particular, to provide **security of tenure** for the tenant and to limit the amount that a landlord can charge as rent for property that comes within the ambit of the Acts. “The policy of the Rent Acts was and is to protect the tenant in his house, whether from the threat to extort a premium for the grant or renewal of his tenancy, to increase his rent, or to evict him. ... The Rent Acts have throughout their history constituted an interference with contract and proprietary rights for a specific purpose – the redress of the balance of advantage enjoyed in a world of housing shortage by the landlord over those who have to rent their homes”, *Horford Investments Ltd v Lambert* [1976] Ch 52.

‘Rent Acts’ were passed initially to control the letting of dwelling-houses in the period of acute housing shortage that developed during the two world wars, e.g. the Increase of Rent and Mortgage Interest (War Restriction) Bill 1915 and the Rent and Mortgage Restriction Act 1939. Since World War II, a succession of Acts has been put onto the statute book with the aim of tightening the legislative controls that affect the letting of residential property (with the exception of the Rent Act 1957 which sought to ‘de-control’ such lettings—and was the first statute with the title ‘Rent Act’). The Rent Act 1965, as consolidated into the Rent Act 1977, extended the controls to most private lettings, and the Housing Act 1980, although providing some exceptions to earlier Acts, brought to most public-sector lettings a form of security of tenure similar to that which applied to private lettings. In addition, the Landlord and Tenant Act 1954, Part I, provides that, when a **long residential tenancy** comes to an end the tenant has protection similar to that provided for other tenants of residential property, and

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the Protection from Eviction Act 1977 provides that a landlord cannot obtain possession of a dwelling-house against the will of the occupier without resorting to a court for an order for possession. Also referred to as 'Rent Restriction Acts'. See also **assured tenancy, eviction, fair rent, Housing Acts** (supra), **protected tenancy, regulated tenancy, rent control, security of tenure**.

1 *Hill & Redman's Landlord and Tenant Law* (London: Loose-leaf).

27(1) *Halsbury's Laws of England*, Landlord and Tenant (4th ed. Reissue), §§ 805 et seq.

Sir Robert Megarry and J.S. Colyer (gen. eds.). *The Rent Acts* (London: 1988).

## Statutes of Limitation

Statutes passed to fix a period of time within which proceedings must be instigated in order to enforce a legal right of action. If proceedings are not taken within the specified statutory time limits, a right of action is barred. It has been said "that it is a policy of the Limitation Acts that those who go to sleep upon their claims should not be assisted by the courts in recovering their property, but another, and I [Streatfield J.] think, equal policy behind the Acts is that there shall be an end of litigation, and that protection shall be afforded against stale demands", *RB Policies at Lloyd's v Butler* [1950] 1 KB 76, 81. Thus, the Limitation Acts are negative in that they bar an action, as compared to **prescription** which creates a new or substituted right to an intangible claim (e.g. an easement) over land (*Buckinghamshire County Council v Moran* [1990] Ch 623, 644, [1989] 2 All ER 225, 238).

In English law, the principal time limits for actions to be taken in connection with real property, from the "date on which the action accrued", are now consolidated in the Limitation Act 1980 and may be summarised basically as:

- (i) actions on a simple contract, for arrears of rent, to recover interest on a mortgage (except when there is a previous incumbrancer in possession), and in tort (ss. 2, 5, 19)—six years;
- (ii) actions on a contract under seal (s. 8)—twelve years;
- (iii) actions to recover any principal sum of money secured by a mortgage or charge, or to recover the proceeds of the sale of land (s. 20)—twelve years;
- (iv) actions to redeem land from a mortgagee in possession (s. 16)—twelve years;
- (v) actions to recover any interest in land, including a foreclosure action (ss. 15, 20(4))—twelve years (or in the case of actions by the Crown or the Church of England—30 years, or for actions by the Crown to recover the foreshore—60 years).

It should be noted that "where in the case of any action for which a period of limitation is prescribed by this Act either – (a) the action is based on **fraud** of the defendant, or (b) any fact relevant to the plaintiff's right of action has been deliberately concealed from him by the defendant, or (c) the action is for relief from the consequences of a **mistake**, the period of limitation shall not begin to run until the plaintiff has discovered the fraud, concealment or mistake (as the case may be) or could with reasonable diligence have discovered it", Limitation Act 1980, s. 32(1). This postponement of the running of time in cases of fraud, concealment or mistake does not apply to an "innocent third party" who purchases a property for valuable consideration (LA 1980, s. 32(3)). Also, if a party is under a disability (e.g. an infant or a person of unsound mind) the period may not be deemed to commence until that person ceased to be under the disability or died, whichever occurs first, subject to a long stop of 30 years (LA 1980, s. 28). In the case of a future interest (which includes an interest in **reversion** or **remainder**), the person entitled to the interest may have six years from the date when the interest falls into his possession to bring an action, if that is longer than 12 years from the date the adverse possession is taken (LA 1980, s. 15(2), Sch. 1, para. 4). Nonetheless, there is an increasing trend to regard **adverse possession** solely as a means of resolving disputed claims (especially in the case of boundary issues) and to bar its application for registered land. Thus, with effect from 13 October 2003,

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the Limitation Act 1980 no longer operates to extinguish the existing owner's title or right to recover possession of registered land (Land Registration Act 2002, s. 96). Title to land is dependent on registration, not possession.

P. Handford, *Limitation of Actions: The Laws of Australia* (2nd ed. Pyrmont, NSW: 2007), § 5.10.10 'Table of Limits of Action'.

A.M. Dugdale. *Clerk and Lindsell on Torts* (19th ed. London: 2006), Ch. 33 'Limitations'.

*Cheshire and Burn's Modern Law of Real Property* (17th ed. Oxford: 2006), Ch. 6 'Adverse Possession, Limitation of Actions'.

A. McGee. *Limitation Periods* (5th ed. London: 2006).

## Town and Country Planning Acts

Acts of Parliament passed to exert extensive control over the planning, use and development of land. The first major Act in respect of England and Wales was passed in 1947 (various Acts to control the use and development of land were passed before that date, the first being the Housing, Town Planning, etc. Act 1909, and the most comprehensive was the Town and Country Planning Act 1932, but these Acts did not contain a comprehensive code for town and country planning and essentially were extensions of the **Housing Acts** and the **Public Health Acts** exercising only minor controls on new development). Since 1947, a series of Acts has been passed to tighten the controls on development and extend the powers of local planning authorities (and various other authorities) over the planning of the area under their administration. The principal Acts currently in force in England and Wales are the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990, the Planning (Hazardous Substances) Act 1990, the Planning (Consequential Provisions) Act 1990, the Planning and Compulsory Purchase Act 1991, the Environment Act 1995, and the Planning and Compulsory Purchase Act 2004. The Town and Country Planning Acts cover such matters as development plans, structure plans and local plans; development control, including the grant or refusal of planning applications and the enforcement of planning laws and regulations; planning blight; conservation areas; listed buildings and tree preservation orders. See also **development, town and country planning**.

*Telling and Duxbury: Planning Law and Procedure* (13th ed. 2006), Ch. 2 'Basis and objects of modern planning law'.

Sir Desmond Heap. *An Outline of Planning Law* (11th ed. 1996), pp. 6-31.

V. Moore and D. Hughes. *Blackstone's Statutes on Planning Law* (2nd ed. 1999).

See also **Bibliography: Planning Law**.

# MAJOR US LAWS AFFECTING REAL ESTATE

## **Agricultural Foreign Investment Disclosure Act of 1978 (7 U.S.C. §§ 3501 to 3508)**

A federal law passed in 1978 to require any foreign persons to disclose to the Secretary of Agriculture a purchase or transfer of agricultural land (U.S. Department of Agriculture, ERS, 500 12th Street SW, Room 240, Washington DC 20250). The act also directs the Secretary to analyze the effects of such purchases on family farms and rural communities.

<http://usda.mannlib.cornell.edu/usda>

## **Brownfields Revitalization and Environmental Restoration Act of 2001 [BRERA] (42 U.S.C. §§ 9601, 9604, 9505, 9607, 9628)**

A federal law that was passed to encourage development of brownfield sites by, among other things, releasing “prospective purchasers from CERCLA [Comprehensive Environment, Response, Compensation, and Liability Act] liability if they comply with certain requirements” clarifying existing exemptions, and by inducing “state involvement in environmental remediation”.

Casey Cohen. The Brownfields Revitalization and Environmental Restoration Act: Landmark Reform or a “Trap for the Unwary”?, 12 N.Y.U. Env'tl. L. J. 672 (2004)

## **Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [CERCLA] (42 U.S.C. §§ 9601 to 9675)**

Popularly known as the ‘Superfund’. A federal law enacted in 1980, and amended by the Superfund amendments and Reauthorization Act of 1986 (SARA), that created a tax on chemical and petroleum industries and imposes obligations on owners, occupiers, users or operators and lenders involved with hazardous materials and the environmental remediation of land. CERCLA established prohibitions and requirements concerning closed and abandoned hazardous waste sites; provides for liability for releases of hazardous waste at these sites; and established a trust fund to provide for cleanup when no responsible party could be identified. The Act also revised the National Contingency Plan (NCP), which provided guidelines and procedures needed in response to releases and threatened releases of hazardous substances, pollutants, or contaminants. The Act, and its related regulations, provides powers for the **Environmental Protection Agency (EPA)** to limit the spread of hazardous waste from an area of land, or to clean up a contaminated site and recover the cost from the owner or operator of a contaminated site or any party who generated the contamination. All parties are jointly and severally liable for the cost of complying with the EPA’s requirements and have a strict and retrospective liability for any contamination.

5A Powell on Real Property, § 865.6[4].

8 Thompson on Real Property (1994), § 75.09.

See also Appendix A, Bibliography: **Environmental Law and Practice**.

## **Condominium and Cooperative Abuse Relief Act of 1980 (15 U.S.C. §§ 3601-3616)**

A federal law enacted to: (a) minimize the impact of condominium and cooperative conversions on housing opportunities for those on low incomes and the elderly and disabled; (b) ensure that fair principles are applied to the establishment of condominiums and cooperatives; and (c) provide for relief where long-term leases are entered into in respect of recreation and other condominium and cooperative-related facilities. In particular, the law proposes that states that had not already done so should make provision so that occupiers of buildings that are to be converted to condominiums or cooperatives have a right of first refusal in respect of their units. It also provides unit owners of such projects with a right to seek judicial determination that a contract entered into by the original developer and the condominium association, during the period that he controlled it, was “unconscionable”. In that event there is a right for the unit owners to terminate the agreement without penalty. See also **condominium conversion**.

## MAJOR US LAWS AFFECTING REAL ESTATE

### **Consumer Credit Protection Act of 1968 [CCPA] (15 U.S.C. §§ 1601 to 1667)**

A federal law that requires disclosure of full details of the true cost and conditions of consumer loans to enable a borrower to meaningfully compare the available credit options. In particular, Title I of the Federal Consumer Credit Protection Act of 1968 ‘The Truth-in-Lending Act’ (‘T-i-L Act’), as amended by the Truth in Lending Simplification and Reform Act (Title VI of the Depository Institutions Deregulation and Monetary Control Act of 1980), and Regulation Z issued by the Board of Governors of the Federal Reserve System pursuant to the 1968 Act. This law does not apply to credit transactions that are primarily for business, commercial, or agricultural purposes, or to government agencies or organizations, or to loans above \$25,000 (except loans that are secured on real property or personal property that is to be used as a principal dwelling). The ‘Truth-in-Lending Act’ does not control the terms upon which loans may be granted, but it requires full disclosure to ensure that an individual borrower is aware of the cost of borrowing money and is able freely to compare one loan offer with another. In particular, the lender is required to: (a) disclose the identity of the creditor, and to set out details of any “finance charge”, payable directly or indirectly, including any discount points or loan fees, service or carrying charges, credit report fees, and any insurance costs; (b) describe any security interest; (b) disclose the **annual percentage rate (APR)** (bringing into account the ‘finance charges’); (d) set out any variable rate terms or requirements for repayment of the principal, both as to the amount of each payment and the regularity of payment; (e) set down details of charges for late payment, any conditions for refinancing, details of any prepayment penalty, or any balloon payment required under the loan; (f) state whether other property acquired by the borrower will be secured by the loan; and (g) to state if any deposit, or any escrow payment, is required from the borrower for insurance, taxes, etc. In the case of a residential mortgage transaction, there must also be a statement of whether the loan is assumable.

Since 1995, additional disclosure requirements have been introduced in respect of a **reverse mortgage** loan, and any high-cost non-purchase money loan secured on a dwelling that is used as the borrower’s residence (a loan that is not a purchase loan, a reverse mortgage, or an open-end line of credit, at a rate that is more than ten points higher than the yield on Treasury securities with comparable securities or the total points in fees exceed the higher of \$400 or 8% of the total loan amount) (Home Ownership and Equity Protection Act of 1994). In particular, the lender is required to disclose details of the cost of the loan before it is consummated; to emphasize that the borrower has a right to rescind the loan for a short period after it has been executed; and to stipulate that a default on the loan may result in a loss of the mortgaged property. In addition, the lender cannot charge “other than for services actually performed”, RESPA § 8(b). (A re-pricing of a charge may be considered unlawful (Department of Housing and Urban Development policy statement 2001; *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 US 837, 104 S Ct 2778, 81 L Ed.2d 694 (1984); *Kruse v. Wells Fargo Home Mortgage, Inc.*, 383 F.3d 49 (2d Cir. 2004)). See also **usury**.

3 Powell on Real Property, Ch. 37A ‘The Impact of the “Truth-in-Lending Act” Upon Real Estate Financing’.  
Roland E. Brandel et al. Truth in Lending: A Comprehensive Guide (Upper Saddle River, NJ: 1991).

### **Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 to 1464)**

A federal law passed “to preserve, protect, develop, and where possible, to restore or enhance, the resources of the Nation’s coastal zone for this and succeeding generations”, § 1471(1). The statute aims to promote the effective management, beneficial use, protection, and development of the coastal zone and to regulate the use and development of land along the seashore and the shore of the Great Lakes. It requires states, in cooperation with the federal and local governments and other vitally affected interests, to produce management programs for land and water resources along their coastal zones, including unified policies, criteria, standards, methods, and processes for dealing with land and water-use decisions of more than local significance.

# MAJOR US LAWS AFFECTING REAL ESTATE

## **Employee Retirement Income Securities Act of 1974 [ERISA] (29 U.S.C. §§ 1001 to 1461)**

A federal statute that was passed to: (a) establish standards for the administration of retirement plans (“employee benefit plans”); (b) regulate investments made by private pension funds and other retirement benefit plans; (c) ensure disclosure and reporting to the beneficiaries of such plans as to the manner in which the institution invests the funds it holds; and (d) ensure that the plan funds are administered equitably and that the retirement plan beneficiaries are not disadvantaged in such matters as discrimination or unduly restrictive forfeiture provisions. In particular, the Act requires diversification and prudence in pension fund investment and requires that the administrator of the plan publish an annual report that includes a “financial statement” containing inter alia a statement of the assets and liabilities of the plan. This statement must be filed with the Secretary of State.

## **Fair Housing Act of 1968 [FHA] (42 U.S.C. §§ 3601 to 3619, 3631)**

The Fair Housing Act was enacted in 1968 (Title VIII of the Civil Rights Act of 1968, as amended in 1972 and 1988) to ensure, within constitutional limitations, the provision of fair housing throughout the United States. The Act constitutes a broad range of anti-discriminatory practices. In particular, the Act makes it illegal to discriminate on grounds of “race, color, religion, sex, or national origin” as well as “familial status or mental or physical handicap” when dealing with the sale or rental of residential property or land for housing (most sales or rentals of commercial property are exempt from the provisions of the Act). The FHA also prohibits discrimination in mortgage lending and makes such practices as **blockbusting** and **redlining** illegal. It expressly prohibits a refusal to represent, deal or negotiate with any person on discriminatory grounds or to use discriminatory forms of advertising, representation or misrepresentation. The Act also prohibits the practice of ‘racial steering’ whereby racial and ethnic groups are encouraged to acquire homes in areas occupied by other members of the same group and discouraged from areas occupied predominately by other racial or ethnic groups. The **Office of Equal Opportunity (OEO)** is responsible for the administration of the Federal Housing Acts. Further anti-discrimination provisions are contained in other Civil Rights Acts, notably the Civil Rights Act of 1866 and the Civil Rights Act of 1964 (Title VI, Nondiscrimination in Federal Assisted Programs). See also **dwelling**.

Anno: 115 ALR Fed 467: FHA—Refusal to Rent.

T.H. Stevenson. Fair Housing: A Guide to Non-Discriminatory Lending Practices and Regulatory Compliance (1992).

## **Financial Institutions Reform, Recovery, and Enforcement Act of 1989 [FIRREA] (12 U.S.C. §§ 1811 et seq.)**

Federal legislation passed in 1989 to: (a) provide guidelines for the regulation of financial institutions; (b) promote a safe and stable system for affordable housing finance; and (c) strengthen the capital base of the federal regulatory system. The statute was passed to resolve the financial crisis in the Thrift Industry, especially the over-provision of real estate loans, and is commonly referred to as the ‘savings and loans bail out bill’. The Savings Association Insurance Fund (SAIF) and the Bank Insurance Fund (BIF) were set up under the management of the **Federal Deposit Insurance Corporation (FDIC)**, and the regulatory functions were transferred to the newly created **Office of Thrift Supervision (OTS)**, which is an agency of the Department of the Treasury ([www.ots.treas.gov/](http://www.ots.treas.gov/)). In addition, FIRREA provided for the formation of the **Resolution Trust Corporation (RTC)** to manage and arrange for the sale of the assets of insolvent S&Ls and the Bill empowered the Appraisal Foundation to regulate the licensing of appraisers who are authorized to carry out the appraisal of properties involved in any federal real estate-related financial transaction. See also **Federal Housing Finance Board (FHFB)**, **Uniform Standards of Professional Appraisal Practice (USPAP)**.

# MAJOR US LAWS AFFECTING REAL ESTATE

## **Foreign Investment in Real Property Tax Act of 1980 (FIRPTA)**

A statute passed in 1980 (although largely repealed by the Deficit Reduction Act of 1984) that required foreign investors to make various disclosures and filings upon the purchase of US real estate. The primary remaining requirement is that any person purchasing property from a ‘foreign person’ must withhold 10% of the amount realized from the sale and account for this amount to the Inland Revenue Service, unless the seller has an exemption under the Act (26 U.S.C. § 1445; 26 CFR sec. 1.1445-1T et seq; 49 Fed Reg 50667 et seq.). The principle exemptions apply to (a) certain specified sales of a private residence (generally those at a price not exceeding \$3,000,000); (b) a sale to a party that has obtained a Certificate of Non-foreign Status; or (c) a party who has a Withholding Certificate issued by the IRS.

## **Home Mortgage Disclosure Act of 1975 [HMDA] (12 U.S.C. §§ 2801 to 2811)**

A federal law that requires lenders to disclose the geographic distribution of mortgage and home improvement loans, based on applications received and loans granted. The legislation is designed to enable depositors and others to ascertain whether lending institutions are meeting the needs of the community and, in particular, to prevent discrimination when lenders adopt the practice of **redlining**. The Act applies to institutions which have a net worth in excess of \$10 million and make “federally related mortgages”, i.e. those that are federally insured or regulated. The Act is governed by the Federal Reserve’s Regulation C and is administered by the regulatory agency with particular responsibility for the appropriate lending institution.

## **Housing Acts; Housing and Urban Development Acts (42 U.S.C. §§ 3531 to 3537)**

Federal laws passed to improve the provisions of the National Housing Act of 1934 and the Housing Act of 1968. These Acts aim to reinforce the objective stated in section 2 of the Housing Act of 1949 and reiterated in section 2 of the Housing and Urban Development Act of 1968, which is to realize the goal of “a decent home and a suitable living environment for every American Family”. The Housing and Urban Development Act of 1965 established the **Department of Housing and Urban Development**. The Housing and Urban Development Act of 1968 was passed to “assist in the provision of housing for low and moderate income families and to extend and amend laws relating to housing and urban development”. This Act provides, inter alia, for: (a) assistance in acquiring housing for low- and moderate-income families; (b) the insurance of mortgages made to such families; (c) interest subsidies to mortgage lenders in order to enable project owners to reduce the cost to tenants in rental and cooperative units; (d) assistance to nonprofit sponsors of low- and moderate-income housing; and (e) the **Federal Housing Administration (FHA)** to relax its credit standards for loans to low- and medium-income borrowers. It also contains provisions to encourage solutions to problems of mass transport; to facilitate more rapid renewal and urban development of urban areas; and aims to encourage neighborhood development programs by making grants available for such projects (Title V—Urban Renewal; Title VI—Urban Planning and Facilities; Title VII—Urban Mass Transportation). The 1968 Act also enacts the New Communities Act of 1968 (Title IV—Guarantees for Financing New Community Land Development); the National Flood Insurance Act of 1968 (Title XIII—National Flood Insurance); the Urban Property Protection and Reinsurance Act of 1968 (Title XI—Urban Property Protection and Reinsurance); and the **Interstate Land Sales Full Disclosure Act** (Title XIV—Interstate Sales). The Housing and Urban Development Act of 1970 provides for the establishment of a national growth policy, encourages and supports the proper growth and development of the states, metropolitan areas, cities, counties, and towns with emphasis upon new community and inner-city development, and extends and amends laws relating to housing and urban development. See also **Government National Mortgage Association (GNMA)**.

# MAJOR US LAWS AFFECTING REAL ESTATE

## **Interstate Land Sales Full Disclosure Act of 1968 [ILSFDA] (15 U.S.C. §§ 1701-1720)**

ILSFDA (Title XIV of the Housing and Urban Development Act of 1968, as amended in 1979) was enacted to ensure the better disclosure of information regarding the sale of land to private purchasers and to provide a means to prohibit and penalize fraud in land development sales and offerings. The Act provides that a **developer**, or the developer's agent, may not sell subdivision lots unless (i) it has filed a **statement of record** with the Office of Interstate Land Sales Regulation (OILSR) (which is a part of the Department of Housing and Urban Development); and (ii) it has furnished each purchaser or lessee with a "property report" at least 48 hours before he signs a contract to purchase or rent.

5A Powell on Real Property, § 758.

9 Thompson on Real Property, § 78.05.

## **National Environment Policy Act [NEPA] (42 U.S.C. §§ 4321 et seq.)**

A federal law that sets out national environmental policy and goals in order to "encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality". In particular, the NEPA established the **Environmental Protection Agency** and requires that every federal agency submit an **environmental impact statement** with every legislative recommendation or program affecting the quality of the environment.

## **National Historic Preservation Act of 1966 [NHPA] (16 U.S.C. §§ 470 et seq.)**

A federal law authorizing the Secretary of the Interior to expand and maintain the National Register of sites, buildings, etc, of historic, architectural, and archaeological interest and to make funds available to states for the survey and preservation of such properties. The act also provides for matching grant aid to that provided by the National Trust for Historic Preservation. See also **historic site etc.**

## **Real Estate Settlement Procedure Act of 1974 [RESPA] (12 U.S.C. §§ 2601-2617)**

A federal law that was passed to reform the real estate settlement process (title closings) and to ensure that lenders, mortgage brokers and servicers of home loans provide borrowers with pertinent and timely information on the nature and costs of the settlement process and are protected from unnecessarily high settlement charges. In addition, the Act aims to eliminate the payment of any fee, **kickback** or similar unearned fees for referring work in respect of real estate settlement services (especially by making them illegal on any "federally related mortgage loan"); it also seeks to reduce the amounts home buyers are required to place in **escrow** accounts for real estate taxes and insurance; and aims to reform and modernize local record keeping of land title information. The Act applies to a first or subordinated lien secured on residential real property (including individual units of condominiums and cooperatives) designed principally for occupation by one to four families, purchase money mortgages, home-equity loans, and the refinancing of such loans. The lender must be a "federally related" organization, which includes: (a) savings and loan associations and other lenders whose deposits are insured or regulated by an agency of the Federal Government; (b) lenders who are assisted by the Federal Government or whose loans are used in connection with a housing or urban development program; (c) loans insured by the Federal Home Loan Mortgage Association or guaranteed by the Veterans Administration; (d) loans administered by the **Department of Housing and Urban Development (HUD)**; (e) loans that are intended to be sold by the lender to Fannie Mae, Ginnie Mae or Freddie Mac; and (f) a financial institution that will sell the loan on to Freddie Mac. The Act also applies to a "creditor" (as defined by the Consumer Credit Protection Act (15 U.S.C. 1602(f)) who makes or invests in residential loans aggregating more than \$1 million a year (excluding an agency or instrumentality of the State). The Act is implemented primarily by Regulation X (24 CFR



## MAJOR US LAWS AFFECTING REAL ESTATE

§ 3500), which is administered by the Office of the Assistant Secretary for Consumer Affairs and Regulatory Functions at HUD. RESPA and the applicable regulations have been modified since 1974, with the most significant changes being made in 1992 to extend the Act to subordinate lien loans and include further exemptions from the Act.

The Act requires financial institutions (or the mortgage broker if the loan application is made through a broker) to supply any loan applicant with a copy of the HUD Special Information Booklet (24 CFR § 3500.6) and mandates the advance disclosure of a good faith estimate (GFE) of settlement costs that are likely to be borne by the borrower. In addition, all loan-closing information must be prepared and submitted to the borrower by the person conducting the closing (the ‘settlement agent’) on a ‘uniform settlement statement’ produced by HUD (the HUD-1 or HUD-1A Settlement Statement) (12 U.S.C. § 2603; 24 CFR § 3500.8). For loans subject to RESPA, no fee may be charged solely for preparing the Settlement Statement or the Escrow Account statement or any disclosures required by the Truth-in-Lending Act (12 U.S.C. § 261).

RESPA applies to first mortgage loans secured on one- to four-family houses, including purchase-money mortgages and home equity loans, whether made by lenders, creditors or dealers. Exceptions to the Act include: (a) a property of 25 acres or more (whether or not a dwelling is located on the property); (b) a loan primarily for business, commercial or agricultural purposes; (c) an installment land contract (‘contracts for deed’); (d) a home-equity line of credit transactions (those primarily made to finance home improvements), which are subject to the Truth-in-Lending Act and Regulation Z (see above Consumer Credit Protection Act of 1968); (e) a loan assumption, unless the mortgage instruments require lender approval for the assumption and the lender actually approves the assumption; (f) a property acquired for immediate resale; (g) a loan secured by vacant or unimproved property where no proceeds of the loan will be used to construct a one- to four-family residential structure (unless the proceeds will be used to locate a manufactured home or construct a structure within two years from the date of settlement); (h) a temporary loan, such as a construction loan (but not if the loan is for a term of two or more years—unless made by a bona fide contractor—or one that is to be converted to a permanent loan by the same institution); (i) a renewal or modification where the original obligation (note) is still in effect but modified; and (j) a bona fide transfer of a mortgage in the secondary market (although the servicer disclosure requirements apply to such transfers—see below). The exemption does not apply if there is a transfer of title to the property.

In the Act, settlement services are defined to include “any service provided in connection with a real estate settlement including, but not limited to, the following: title searches, title examinations, the provision of title certificates, title insurance, services rendered by an attorney, the preparation of documents, property surveys, the rendering of credit reports or appraisals, pest and fungus inspections, services rendered by a real estate agent or broker the origination of a federally related mortgage loan (including, but not limited to, the taking of loan applications, loan processing, and the underwriting and funding of loans), and the handling of the processing, and closing or settlement”, 12 USC 2602, § 3(3).

RESPA was amended by the National Affordable Housing Act of 1990 to require detailed disclosures concerning the transfer, sale, or assignment of the loan to another loan **servicer** and requires that a lender provides detailed information relating to its servicing of the loan. It also requires disclosures for mortgage escrow accounts at closing and annually thereafter, itemizing the charges to be paid by the borrower and what is paid out of the account by the servicer (although these disclosure requirements were reduced from May 30, 1997 by the Economic Growth and Regulatory Paperwork Reduction Act of 1996). See also **piti payment, settlement statement, reverse mortgage, usury**.

[www.ots.treas.gov/docs/4/422232](http://www.ots.treas.gov/docs/4/422232)

3 Powell on Real Property, § 37A.02.

J.H. Pannabecker. Pratt’s RESPA Manual – A Complete Guide to the Real Estate Settlement Act (Washington, DC: Loose-leaf).

John M. Pachkowski. CCH Guide to RESPA (Frederick, MD: CCH Inc., 1998).

# MAJOR US LAWS AFFECTING REAL ESTATE

## **Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) (42 U.S.C. §§ 2000cc, 2000cc-1, 2000cc-5)**

A federal law that protects individuals, houses of worship, and other religious institutions from discrimination in zoning and landmarking laws. The law that prohibits the government from imposing “substantial burdens” on “religious exercise”, unless it has a compelling governmental interest and the burden is the least restrictive means of satisfying that interest (Guru Nanak Sikh Society of Yuba City v. County of Sutter, 456 F.3d 978 (9th Cir. 2006)).

## **Securities Act of 1933 (15 U.S.C. §§ 77 et seq.)**

A federal law requiring that investors receive financial and other significant information concerning securities being offered for public sale, and prohibiting deceit, misrepresentations, and other fraud in the sale of securities. In particular, the Act requires that securities sold in the U.S. must be registered and in that way important financial information is made available to purchasers of such securities. The registration must be completed on a form issued by the Securities and Exchange Commission (SEC) that contains, inter alia: (a) a description of the company’s properties and business; (b) a description of the security to be offered for sale; (c) information about the management of the company; and (d) financial statements certified by independent accountants. Filings by U.S. domestic companies are available through the EDGAR database at the SEC website ([www.sec.gov/edgar/quickedgar.htm](http://www.sec.gov/edgar/quickedgar.htm)). Some small offerings are exempt from this filing requirement. Often referred to as the ‘Truth in Securities Act’.

## **Securities Exchange Act of 1934 (15 U.S.C. §§ 77A et seq.)**

A federal law that created the Securities and Exchange Commission ([www.sec.gov](http://www.sec.gov)), which has broad authority over all aspect of the securities industry. See also **Securities Act of 1933** (supra).

## **Sherman Antitrust Act of 1890 (15 U.S.C. §§ 1-7)**

A federal law that was passed “to protect trade and commerce against unlawful restraints and monopolies”. In particular, the Act states that “[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal”, 15 U.S.C.A. § 1. In particular, the Clayton Act prohibits price discrimination, tying and exclusive-dealing contracts, mergers, and interlocking directorates where the effect is to substantially reduce competition, or to endeavor to create a monopoly in any line of commerce. The Act has been applied to real estate brokerage activities by (i) actions against price-fixing, and (ii) controlling the creation of real estate listing services that unduly limit membership. See also **multiple-listing service, tying agreement**.

# UNIFORM CODES AND MODEL ACTS

A number of Uniform Codes and Model Acts that relate to, or affect, real estate have been promulgated and approved by the National Conference of Commissioners of Uniform State Laws, which was formed in 1892 for the purpose of promoting reforms in areas of the law where the United States might benefit from some uniformity of law among the states ([www.nccusl.org](http://www.nccusl.org)). The Conference is a non-profit unincorporated association comprising state commissions on uniform laws from each state, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands. A Uniform or Model Act is officially promulgated for consideration by the states, and legislatures are urged to adopt Uniform Acts exactly as written, in order to “promote uniformity in the law among the states.”

The Uniform Codes and Model Acts are designed to serve as guideline legislation, which states can borrow from or adapt to suit their various needs and conditions. These uniform laws have been adopted in whole or in part by many of the states, or have been adopted as the basis for state statutes. In many cases the acts are have been adopted with modifications, and the same provisions may be subject to differences of interpretation in different jurisdictions.

In total, over 200 uniform laws have been drafted, and well over 100 uniform laws have been enacted by at least one state.

The National Conference has approved a number of Uniform Acts that directly relate to real property and may be referred to collectively as ‘uniform real property acts’ (a Uniform Property Act was approved in 1938, but this was withdrawn in 1966). The most widely adopted of these Acts includes:

## **Model Eminent Domain Code**

Originally approved as the Uniform Eminent Domain Code in 1974 and changed to the Model Eminent Domain Code in 1974. The Eminent Domain Code is intended to provide “a complete and exclusive procedure and law governing all condemnations of property for public purpose and assessments of damages thereof”. The code has been adopted in Alabama and New Mexico. See also **fair market value**.

10 Nichols on Eminent Domain, App.D-3.

## **Model Land Sales Practices Act**

Originally approved as the Uniform Land Sales and Practices Act in 1966 and changed to a Model Act in 1974. This Act has been adopted in 10 states.

## **Model Marketable Title Act (MMTA)**

An Act that is derived from Article 3 of the Uniform Simplification of Land Transactions Act to limit the enforceability of interests in land that have not been asserted for over 30 years in order to clear title and improve the marketability of land.

## **Model Real Estate Cooperative Act**

Closely mirrors the Uniform Condominium Act and the Uniform Planned Community Act and contains similar provisions in respect of cooperatives. Adopted in Virginia.

## **Model Real Estate Time-Share Act**

Approved as the Uniform Real Estate Time-Share Act in 1979 and changed to a Model Act in 1980. The Model Real Estate Time-Share Act applies guidelines similar to the Uniform Condominium Act in respect of the creation, management and termination of time-share ownership. Adopted in Massachusetts, Rhode Island, and Wisconsin.

# UNIFORM CODES AND MODEL ACTS

## Uniform Arbitration Act

A model statute that was adopted in 1955 and covers voluntary written arbitration agreements. In particular, it covers many issues that would not have been anticipated by the parties when the agreement was made and for which no provision exists in the agreement, such as the process of hearings, costs and expenses, the modification or correction of an award, appeals, and the time for an award to take effect.

## Uniform Commercial Code (UCC)

This Code was first promulgated in 1951 and enacted in Pennsylvania in 1953. The Official Text, which was first published with comments in 1962 and revised in 1972, 1978 and 1987, has been adopted as the basis for a code of commercial law, in whole or in part, by all the states (except Louisiana which has adopted only a few articles) and the District of Columbia. It has also been adopted, in whole or in part, by Guam, the Northern Mariana Islands, and the US Virgin Islands. The Code is applied as a means of regulating and controlling commercial and business transactions (including sales and leases of goods; negotiable instruments and other commercial paper; bank deposits, collections and fund transfers; letters of credit; warehouse receipts and bills of lading; investment securities; and secured transactions). The Code has not been adopted with complete uniformity.

The Code does not affect real property or leases of real property, with the exception of a **conditional sale contract**, and Section 9 which deals with the sale of fixtures, or goods to be severed from the realty, as well as security interests in fixtures ([www.nccusl.org/Update/uniformact\\_summaries/uniformacts-s-uccra9st1999.asp](http://www.nccusl.org/Update/uniformact_summaries/uniformacts-s-uccra9st1999.asp)). See also **bill of exchange, credit sale, financing statement, security, unconscionable bargain**.

James S. White & Robert S. Summers. Handbook of Law under the Uniform Commercial Code. 4 vols (4th ed. 1995).

Ronald A. Anderson. Anderson on the Uniform Commercial Code, 3rd ed. St. Paul, MN: West, 1981 with cumulative supplement.

Uniform Code Annotated: Uniform Commercial Code, Official Text with comments. St. Paul, MN: West, 1989 with cumulative annual pocket parts.

National Conference of Commissioners of Uniform State Laws. Uniform Commercial Code, 2007 ed. St. Paul, MN: West, with annual updates.

## Uniform Common Interest Ownership Act (UCIOA)

A uniform law adopted in 1982 to consolidate provisions of the Uniform Condominium Act, the Uniform Planned Community Act, and the Model Real Estate Cooperative Act. UCIOA is a comprehensive Act that governs the formation, management, and termination of a common-interest community, whether that community is a condominium, planned community, or real estate cooperative. It also provides for: (a) disclosure of important facts about common-interest property at sale to a buyer, including resale disclosure for any sale after the initial sale by the developer of the property; (b) warranties of sale; (c) a buyer's rescission rights in a sale contract; and (d) the treatment of escrow deposits made to secure a sale contract. The current version of this Act was approved in 1984 and the Act has been adopted in Alaska, Colorado, Connecticut, Minnesota, Nevada, Vermont, and West Virginia.

<sup>2</sup> Thompson on Real Property, § 9.03(a)(4).

<sup>4B</sup> Powell on Real Property, Appendix 54—Uniform Common Interest Ownership Act (1982).

Uniform Laws Annotated. Vol. 7 'Business and Financial Laws'. St. Paul, MN: West, 'Common Interest Ownership Act'.

## Uniform Condominium Act

A uniform law that was adopted in 1977, amended in 1980, and sets out model rules for **condominium** projects. The Act defines a condominium as "real estate, portions of which are designated for separate ownership and the remainder of which are designated for common ownership solely by the members of those portions. Real estate is not a condominium unless the divided interests in the common elements are vested in the unit owners" § 1-103(7). The Act has been adopted as the basis for

# UNIFORM CODES AND MODEL ACTS

condominium statutes in Maine, Minnesota, Missouri, Nebraska, New Hampshire, New Mexico, North Carolina, Pennsylvania, Rhode Island, Texas, Virginia, and Washington.

4B Powell on Real Property, §§ 632.2[3], 632.6[1][2].

Uniform Laws Annotated. Vol. 7 'Business and Financial Laws'. St. Paul, MN: West, 'Condominium Act'.

## **Uniform Conservation Easement Act**

A uniform law approved in 1981 (with amendments in 2007) to regulate easements that are intended to impose non-possessory restrictions on the use of land for the purposes of conservation, including scenic easements, easements designed to protect natural resources and the preservation of historic properties. For this purpose an **easement** is defined as a “non-possessory interest . . . in real property imposing limitations or affirmative obligations the purposes of which include retaining or protecting natural, scenic or open-space values of real property, assuring its availability for agricultural, forest, recreational or open-space use, protecting natural resources, maintaining or enhancing air or water quality or preserving the historical, architectural, archeological or cultural aspects of real property”. Such a **conservation easement** remains valid even though it is not **appurtenant**, and even though it imposes a negative burden. No privity of contract, or effect on a dominant estate, is required. Such easements can be held only by charitable organizations with the purpose of holding interests in land for conservation or historic preservation, or by governmental bodies empowered to hold an interest in real property. The Uniform Conservation Easement Act provides a simple, limited way to end impediments to the use of easements under the common law. The Act has been adopted in 24 jurisdictions.

3 Powell on Real Property, § 34A.01.

## **Uniform Disclaimer of Property Interests Act**

A model statute that was adopted in 1999 and has been applied in 15 states to allow beneficiaries of intestate, testamentary and nontestamentary (nonprobate) interests to execute a disclaimer of those interests and thereby extinguish the interest as if it had never been granted. Disclaimers are used to reallocate interests in estates, trusts and other kinds of property holdings in which benefits may be allocated at death. This Act makes it clearer that trustees and other fiduciaries may use disclaimers, that powers of appointment may be disclaimed, and that unfair distributions of interests are avoided when disclaimers are used.

## **Uniform Electronic Transactions Act (UETA)**

A model law that was approved by the National Conference of Commissioners on Uniform State Laws (NCCUSL) in 1999. UETA has the effect of modifying the **Statute of Frauds** provisions to include electronic “records” and “signatures” for the memorialization of all kinds of transactions, including basic transactions in real estate. Thus, if adopted by a state it is possible to have sale contracts, mortgage instruments (or similar documents) and promissory notes memorialized in electronic form with electronic signatures that will be treated as the equal of the same paper documents with manual signatures. Such signatures are required to be transmitted in an encrypted form, and then opened only by means of a secure “key” or a similar means that ensures the signature can be authenticated and would be difficult (or virtually impossible) to reproduce by another person. The enactment of such legislation does not override a requirement for original documents for recording purposes, unless the Act expressly so provides. However, several states have accepted that an electronic document that has already been used in a real-property transaction may be acceptable for recording purposes. See also **Uniform Real Property Electronic Recording Act**.

## **Uniform Environmental Covenants Act**

A uniform law that enables a state or local government to impose restrictions on the use of or activity on an area of land that has been the subject of environmental remediation. ‘Environmental

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covenants' are interests in the property and, if necessary, can be enforced in perpetuity. The Act aims to encourage transfer of ownership and property re-use by offering a clear and objective process for creating, modifying or terminating environmental covenants. Unlike common-law covenants, covenants made under the provisions of the Act are enforceable even though there is no dominant land, although to be enforceable they must be recorded.

## **Uniform Federal Lien Registration Act**

An Act that was approved in 1978 to provide a uniform system for registering liens. This Act has been adopted by 33 states, including California, Connecticut, Florida, Illinois, New York, Pennsylvania, and Texas.

ABA & NCCUSL. Uniform Laws Annotated. Vol. 7 'Business and Financial Laws: Federal Lien Registration Act'. St. Paul, MN: West.

## **Uniform Fraudulent Transfer Act (UFTA)**

An Act that was approved in 1984 as a replacement for the Uniform Fraudulent Conveyance Act which, in turn, was essentially a restatement of the **Statute of Frauds**. UFTA creates a right of action for any creditor against any debtor and any other person who has received property from the debtor in a fraudulent transfer. The Act has been adopted in some 33 states. See also **fraudulent conveyance**.

ABA & NCCUSL. Uniform Laws Annotated. Vol. 7 'Business and Financial Laws'. St. Paul, MN: West, 'Fraudulent Transfer Act'.

## **Uniform Land Transactions Act (ULTA)**

A uniform law that sets out model codes for real estate transactions, including sales, mortgages and leases. These model codes follow parts of the Uniform Commercial Code, but they have not been widely adopted.

ABA & NCCUSL. Uniform Laws Annotated. Vol. 7 'Business and Financial Laws: Land Sales Practices Act'. St. Paul, MN: West.

## **Uniform Limited Partnership Act (ULPA)**

A model statute, adopted by 14 states and used as the basis for similar statutes in a number of other states, which governs the establishment, operation and liquidation of a **limited partnership**.

H.G. Reuschlein and W.A. Gregory. The Law of Agency and Partnership, 3rd ed. St. Paul, MN: West, 2001, Appendix B, 'Uniform Limited Partnership Act'.

## **Uniform Mortgage Satisfaction Act**

A model law adopted in 2004 which stipulates that a mortgagee must provide a statement of satisfaction that is recorded in the real property records when a mortgagor has paid off the mortgage. The Act also provides that the mortgagor is entitled to a payoff letter. The Act has been adopted in North Carolina and Virginia.

## **Uniform Partnership Act (UPA)**

A model statute, adopted in whole or in part by all the states, which governs the establishment, operation and liquidation of a **partnership**. In particular, this Act establishes the partnership as a separate legal entity and provides that real property can be held in the partnership's name. See also **general partner, limited partnership, tenancy in partnership**.

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H.G. Reuschlein and W.A. Gregory. *The Law of Agency and Partnership*, 3rd ed. St. Paul, MN: West, 2001, Appendix A, 'Uniform Partnership Act'.

## Uniform Probate Code

A uniform code that was adopted in 1969 and has subsequently been substantially revised, as well as incorporating various related Acts, such as the Act on Intestacy, Wills, and Donative Transfers and the **Uniform Statutory Rule against Perpetuities Act**. The code is a model for the improvement of state law relating to the succession of property at an owner's death, as controlled by will, intestacy statute, and the probate process. This code has been adopted by 19 states. See also **rule against perpetuities**.

Lawrence H. Averill. *Uniform Probate Code in a Nutshell*. St Paul, MN: West, 2000.

ABA & NCCUSL. *Uniform Laws Annotated. Vol.8, Estate, Probate and Related Laws - Uniform Probate Code*. St. Paul, MN: West.

## Uniform Real Property Electronic Recording Act (URPERA)

A model law that if adopted gives legal effect to real estate transactions that are executed electronically and allow them to be enforceable between the parties. In this model law 'electronic' means "relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities", s. 2(2). URPERA has been adopted or is being introduced for the electronic recording of real property instruments in about a quarter of the states, as well as the District of Columbia and the US Virgin Islands. See also the **Uniform Electronic Transactions Act**.

## Uniform Residential Landlord and Tenant Act (URLTA)

A model statute aimed at providing uniformity in tenancies of residential property. The URLTA was approved in 1972, based on the American Bar Foundation's 1969 Tentative Draft of a Model Residential Landlord-Tenant Code. The Act sets out a number of conditions that are implied in residential tenancies, unless there is something expressed to the contrary. In particular, that the tenancy is a periodic tenancy from week-to-week for a roomer who pays rent weekly and from month-to-month for other tenancies. URLTA provides protection for tenants against unreasonable terms imposed by landlords, e.g. limiting to one month's rent the size of a deposit that can be demanded for an unfurnished property, or one and one-half month's rent for a furnished unit, and stipulating terms for the retention or return of such a deposit. In addition, the Act: (a) requires that an inventory setting out the condition of the property is agreed between the parties at the start of the tenancy; (b) requires that the landlord will keep the premises fit for habitation; (c) requires the landlord to give the tenant proper notice to vacate; and (d) protects the tenant against an **unconscionable bargain** as well as any **exculpatory clause** that may be inserted by the landlord. The Act does not apply to transient occupancy (such as that of hostels and hotels); a proprietary lease in a cooperative; an agricultural lease; or occupancy by an employee of a landlord where the employee's right to occupy is a condition of the employment.

The Uniform Residential Landlord and Tenant Act has been adopted in 21 states (Alabama, Alaska, Arizona, Connecticut, Florida, Hawaii, Iowa, Kansas, Kentucky, Michigan, Montana, Nebraska, New Mexico, Oklahoma, Oregon, Rhode Island, South Carolina, Tennessee, Virginia, and Washington) and it has been used as the basis for statutes in other states. In addition, Delaware has adopted legislation based on the Model Code of 1969. See also **abandonment, distress, exclusive possession, exculpatory clause, warranty of habitability, week-to-week tenancy**.

49 Am.Jur.2d., Landlord and Tenant, § 2.

ABA & NCCUSL *Uniform Laws Annotated*. St. Paul, MN: West. Vol. 7 'Business and Financial Laws: Residential Landlord and Tenant Act'.

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## **Uniform Statutory Rule Against Perpetuities Act (USRPA)**

A model law that aims to unify the rules applicable to any transfer of land that is made in such a way that it seeks to limit the free use of such land for a period that is deemed to be “in perpetuity”. The USRPA was first approved in 1986 and has been adopted in 24 states. In 1990, the USRPA was amended and incorporated in the **Uniform Probate Code** and the freestanding Uniform Act on Intestacy, Wills and Donative Transfers. The Uniform Statutory Rule against perpetuities basically adopts the common-law rule against perpetuities by providing that an interest is invalid unless “when the interest is created, it is certain to vest or terminate no later than 21 years after the death of an individual then alive.” However, the USRPA also adopts a ‘wait and see’ test, so that the interest may also be invalid *unless* “the interest either vests or terminates within 90 years after its creation”. See also **rule against perpetuities**.

Jesse Dukeminier. The Uniform Statutory Rule Against Perpetuities: Ninety Years in Limbo. *UCLA Law Review*, 1023-1081, vol. 34 (Apr 1987).

5A Powell on Real Property, § 75.02.

## **Uniform Vendor and Purchaser Risk Act**

A uniform law that was first approved in 1935 and has been adopted in 12 states (California, Hawaii, Illinois, Michigan, Nevada, New York, North Carolina, Oklahoma, Oregon, South Dakota, Texas and Wisconsin). The Act makes provisions as to which party will bear the risk of loss in the event of a fire between the stage of a contract for the sale of real property and the transfer of title, as well as to liability for completion of payment after title has been transferred. In particular, the Act provides that, unless the contract provides otherwise, “(a) If, when neither a legal title nor possession of the subject matter of the contract has been transferred, all or a material part thereof is destroyed without fault of the purchaser or is taken by eminent domain, the vendor cannot enforce the contract, and the purchaser is entitled to recover any portion of the price that he has paid; (b) If, when either the legal title or possession of the subject matter has been transferred, all or any part thereof is destroyed without fault of the purchaser or is taken by eminent domain, the purchaser is not thereby relieved from a duty to pay the price, nor is he entitled to recover any portion thereof he has paid”. See also **property insurance**.

J.E. Cribbet et al. *Property Cases and Materials*, 9th ed. St. Paul: West, 2008, Ch. 23 “The Real Estate Contract”.

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Jon W. Bruce. The Role Uniform Real Property Acts Have Played in the Development of American Land Law. *Wake Forest Law Review*, vol. 27, 331-344, (1992).

2 Thompson on Real Property, Ch. 9 ‘Uniform and Model Laws Relating to Property’—lists 49 uniform and model acts with summaries of the section headings of the ‘Principal Property-Related Uniform Laws and Model Acts.



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Accommodation Agencies Act 1953, s. 1  
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11 USCA § 101(32)  
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12 USCA § 3802(1)  
12 USCA §§ 3331–3351  
15 USCA § 1602(g)  
15 USCA § 1701(6)  
15 USCA § 1702  
15 USCA § 77(b)(1) (see also §§ 78(c)(10); 79(b)(16) & 101(35))  
15 USCA § 77b(10)  
15 USCA § 79(b)(2)  
16 USCA § 3841  
16 USCA § 461 et seq.  
20 C.F.R. § 230.41(a)  
26 USCA § 2036  
26 USCA, Internal Revenue Code (1962 Amdt.) Pt III, § 1221  
26 USCA, Internal Revenue Code, § 1014  
26 USCA, Internal Revenue Code, § 1201  
26 USCA, Internal Revenue Code, § 121  
26 USCA, Internal Revenue Code, § 2501  
26 USCA, Internal Revenue Code, § 263  
26 USCA, Internal Revenue Code, § 354(a)(1)  
26 USCA, Internal Revenue Code, § 453  
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- 26 USCA, Internal Revenue Code, § 856(c)(6)(C)
- 26 USCA, Internal Revenue Code, §§ 1011, 1012
- 26 USCA, Internal Revenue Code, §§ 1361, 1366
- 26 USCA, Internal Revenue Code, §§ 163, 483, 1272
- 26 USCA, Internal Revenue Code, §§ 671–679
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- 30 USCA § 32
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- 42 USCA § 4332, Note 121
- 43 USCA § 1701 et seq.
- 43 USCA § 751
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- C. Civ., arts. 675–80
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- C. rur. L. 38-1
- C. rur. L. 411-1—481-1, R. 411-1 et seq.
- C. rur. L. 417-2, L. 417-11 et seq.
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- C. urb. L 212-1 et seq.
- C. urb. L. 111-5
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- C. urb. L. 122-1 et seq.
- C. urb. L. 122-1—122-6
- C. urb. L. 122-8, L. 122-10

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