

# The BROWARD BARRISTER

JANUARY, 1977

Volume 6

Number 1

PUBLISHED BY THE BROWARD COUNTY BAR ASSOCIATION

Executive Offices, 733 Northeast Third Avenue, 305/764-8040, Fort Lauderdale, Florida 33304

## GENERAL MEETING, THURSDAY, JANUARY 27, 1977

### SHERATON HOTEL

303 North Atlantic Boulevard (A1A), Fort Lauderdale, Florida

Cocktails: 6:30 P.M. (Cash Bar)

Dinner: 7:00 P.M.

Price — \$10.00

PROGRAM: LEGISLATIVE APPRECIATION DINNER

SPEAKER: TALBOT D'ALEMBERTE

All members of the Broward County Legislative Delegation have been invited to attend this meeting. You are urged to attend and meet your representatives in Tallahassee.

**RESERVATIONS A MUST . . . . . PLEASE CALL 764-8040**

### BROWARD COUNTY TRIAL LAWYERS ASSOCIATION MEETING

Wednesday, February 2, 1977

5:00 p.m. Case Evaluation

6:00 p.m. Workshop: Problem Solving Clinic.

(Bring your own cases and questions)

6:30 p.m. Cash Bar

7:00 p.m. Dinner — \$10.00

#### THE SHERATON HOTEL

303 N. Atlantic Blvd. (A1A)  
Fort Lauderdale, Fla.

Speaker: J. B. Spence

Topic: "Cross Examination of an Adverse Witness"

RSVP before January 31, 1977

Please send reservation with check to:

Dale Sanders, Esquire  
1500 Landmark Building  
One Financial Plaza  
Fort Lauderdale, Florida 33394  
Phone: 764-4646

PLEASE MAKE CHECK PAYABLE TO:

**BROWARD COUNTY TRIAL LAWYERS  
ASSOCIATION**

### YOUNG LAWYERS SECTION MEETING

Thursday, January 20, 1977

12:00 Noon

#### RED COACH GRILL

1200 N. Federal Highway  
Fort Lauderdale, Florida

Lunch: \$4.75

Speaker: Raymond Ray

Topic: "Personal Bankruptcy"

Reservations: William Quisenberry

Suite 1500, One Financial Plaza

Fort Lauderdale, Florida 33394

Phone: 764-4646

### OPERATION: UPDATE/TRANSITION

Sponsors: BCBA, BCTLA and Nova  
Law School

Wednesday, January 19, 1977

4:30 P.M.

"Products Liability and Warranty Cases"

Speakers: Jon E. Krupnick

Charles T. Kessler

Room 250, Broward County  
Courthouse

February 16, 1977

"Trial of Probate Matters"

— Speakers to be announced —

(\$1.00 printing donation requested)

### Broward County Legal Secretaries Legal Education Seminar

The Broward County Legal Secretaries Association's annual Legal Education Seminar will be held at Williamson Restaurant, U.S. 1 and S.E. 14th Street, Fort Lauderdale, Florida, on Saturday, March 5, 1977, from 9:00 a.m. until 4:00 p.m.

This will be a procedural seminar, covering the areas of Real Estate, Family Law (including adoption, dissolution, etc.), Corporate Law, Civil Litigation, Personal Injury, and Professional Legal Secretary (PLS) and Certified Legal Assistant (CLA) Study. There will be checklists and sample forms and documents available and discussion groups for each area.

The registration fee is \$10.00 which in-

cludes lunch and the deadline for reservations is February 18, 1977. If you wish to attend, please mail your check for \$10.00 payable to Broward County Legal Secretaries Association, together with your name, address, telephone number and the firm you work for, to:

Sharon Fornes,  
Legal Education Chairman  
6300 Northwest 74th Avenue  
Fort Lauderdale, Florida 33319

Broward County Bar Association  
733 N.E. Third Avenue  
Fort Lauderdale, Florida 33304  
764-8040

**OFFICERS**

Ray Ferrero, Jr. \_\_\_\_\_ *President*  
A. J. Thomas, Jr. \_\_\_\_\_ *President-Elect*  
Ronald P. Anselmo \_\_\_\_\_ *Secretary*  
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Norma Howard \_\_\_\_\_ *Executive Secretary*

**SCHEDULE FOR SEMINARS**

January 21, 1977 — Corporation Business and Banking Section

February 18, 1977 — Family Law Section

March 25, 1977 — Real Property, Probate and Trust Law Section

April 22, 1977 — Trial Lawyers Section

May 27, 1977 — Criminal Law Section

The Seminars will be held at Nova University from 8:30 a.m.—12:30 p.m. Registration fee for members of BCBA is \$10.00. Law Students may be admitted for \$5.00. Lawyers who are not members of Broward County Bar Association may be admitted for \$25.00.

Reservations may be made with Broward County Bar Association.

**\*BETTER ABSTRACTS**

at

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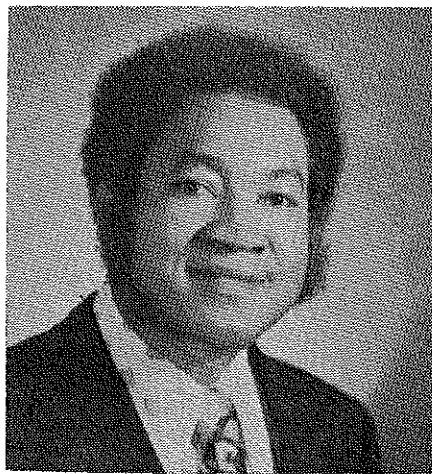
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**BROWARD COUNTY LAWYER  
APPOINTED TO  
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OF THE AMERICAN  
BAR ASSOCIATION**



W. George Allen has been appointed by the National Bar Association as its Representative to the House of Delegates of the American Bar Association. Mr. Allen is the immediate Past President of the National Bar Association.

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**SUPPORT PAYMENTS**

The Court Trustee Office is now officially known as the Broward County Division of Support Enforcement. Carl W. Christy has been appointed Director of the Division and retains the title of Court Trustee.

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**NOVA UNIVERSITY CENTER  
FOR THE STUDY OF LAW**

Ray Ferrero, Jr., Sheldon Schlesinger, Joseph A. Varon and Thomas Clark have recently been appointed to the Board of Governors of the Nova University Center for the Study of Law. Other attorneys on this board include William F. Leonard, August C. Paoli, Foy Fleming, Russell M. Gardner, Alfonso Della-Donna, H. C. Satchell, W. Tinsley Ellis, Elliot Barnett, Dwight Rogers, Jr., Robert Henry and Willard Dover.

The Center for the Study of Law earned provisional accreditation from the American Bar Association during its initial year, and with the graduation of the charter class in May, 1977, The Nova University Center for the Study of Law will be eligible to apply for permanent accreditation

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**ANNOUNCEMENT**

by

**Your Clerk of the Circuit Court and  
County Court**

For your convenience in filing the following cases effective 12/20/76 to be heard on or after 1/3/77.

**Summary Proceedings (Small Claims)  
Landlord and Tenant  
Civil Cases (Over \$1500 but not in  
excess of \$2500)**

The following new facilities will be available:  
**NORTH COURT FACILITY —**

Phone: 972-8380

1301 W. Copans Road (I-95 at Copans Road) Pompano Beach, Florida 33064 (formerly at 1661 E. Atlantic Blvd., Pompano)

**WEST COURT FACILITY —**

New Phone: 485-6510

1980 N.W. 56th Avenue (Lauderhill Police Dept.) Lauderhill, Fla. 33313

**SOUTH COURT FACILITY —**

Phone: 966-9555

3150 S.W. 52nd Avenue, (Pembroke Park City Hall) Pembroke Park, Fla. 33023



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## ANALYSIS OF THE PROPOSED UNIFORM LAND TRANSACTIONS ACT

Recently, Mr. Robert E. Rutledge, Jr., a lawyer in South Miami, who is presently Chairman of the Subcommittee of Model Conveyancing, part of the Committee on Real Property Transactions of the General Practice Section of the American Bar Association, wrote the following article.

Since many members of the Broward County Bar Association are involved in real estate transactions, either personally or in a representative capacity, Mr. Rutledge's article is pertinent and of interest. The article is published with his permission.

### GENERAL PRACTITIONERS ANALYSE THE PROPOSED UNIFORM LAND TRANSACTIONS ACT

by Robert E. Rutledge, Jr.

The Uniform Land Transactions Act, as promulgated by the National Conference of Commissioners on Uniform State Laws, if adopted, will produce dramatic changes and have a great impact on the general practice of law, as well as the real property consumer. Because of the variance in the laws of each state, it is impossible to compare the proposed code in detail without analyzing the laws of each state and how they will be affected by the Act. However, the article generally will present some of the most important aspects of the model act.

The act proposes that a protected buy-

er be granted special status to equalize the bargaining position between home buyers, real estate brokers, real estate development firms and lenders. The protected party, being the buyer, would be defined as a person buying a home as a principal residence, or borrowing money using his home as security. A protected person could also be the owner of an apartment house containing no more than four units if he lived in one of the units. Some of the liabilities of the proposed Act are as follows:

#### Implied warranty of quality

A person engaged in selling real estate as a business or investing in real estate for re-sale by improving it impliedly warrants that a home will be free from defective materials and constructed according to standard engineering and construction standards as proposed in the draft. The protected buyer could not waive this right without a written acknowledgement and a reflection in the purchase price for giving up this valuable right.

#### Interest rates

The Act proposes to free all interest rates from usury requirements except for interest rates on loans secured by residential real estate, as set out above, for a protected buyer. Where there is no fixed maximum interest rate the Act prohibits excessive rates to be determined by a court of law. An interest rate of 12% or two percentage points above the current yield on corporate bonds of a Triple A nature would not be excessive. Excessive rates above this criteria

would depend on each case and be settled in a court of law. The code proposes stringent provisions on second mortgage lending pre-payment penalties, large closing costs and discounts and excessive brokerage fees.

#### Foreclosure rights

The Act provides that before a foreclosure could be held and the actual public sale for non-payment of a mortgage installment, a period of nine weeks must be granted for the homeowner. Should there be a peaceful repossession where a lender received title without a sale or a foreclosure, a homeowner would have more time to bring his payments current and cure his default in this manner. This provision of the Act seems to be very equitable to both the lender and the homeowner.

#### Mechanics' liens

One of the greatest changes in the Act will be the provisions relating to Mechanics' Liens A very concise observation of Articles I and II has been made by Section member, Stanley B. Balbach of Urbana, Illinois, who listed the following as some of its effects:

1. Require a contracting party to provide "assurances" that he can perform;
2. Provide that "unfair" contracts are not binding upon a "Protected Party";
3. Introduce a concept of "course of dealing" in interpreting contracts;
4. Authorize a court to decide if any contract provision is "unconscionable";
5. Require the use of words "failure to perform on the specified date will discharge the other party from his duties under the contract" in place of the words "time is of the essence";
6. Excuse performance by a party if it is impracticable because of an unexpected contingency;
7. Create seller's and buyer's lien in addition to those liens presently existing;
8. Impose obligations of "good faith, diligence, and reasonable care" which cannot be waived;
9. Allow the courts to find a contract unconscionable on the ground that consideration is "grossly inadequate";
10. Make an oral contract of sale enforceable if the other party changes his position so that it would be unreasonable not to enforce it;

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11. Provide that a seller's warranties of title run with the land for six years;
12. Abolish the doctrine of merger;
13. Abolish the requirement that the land contract stipulate the price;
14. Abolish the requirement of consideration for a change in a contract;
15. Abolish the requirement of consideration to grant an option;
16. Include in all deeds warranties of title if not excluded;
17. Include in all contracts of construction warranties of quality and use;
18. Exempt the lender from liability for any construction defect.

Article III deals with secured transactions and some of the effects of this Article would be to:

1. Permit a debtor to make 2-year leases without consent of the secured creditor;
2. Provide that a real property security does not cover rents, crops or profits unless specified;
3. Fix usury limitations applicable only to protected parties;
4. Permit the second creditor to take possession after default except as to protected parties;
5. Prohibit a secured creditor from obtaining a court appointed recovery after default without showing that he cannot take possession;
6. Permit a secured creditor after taking possession to make binding leases beyond his period of possession;
7. Allow a protected party to occupy a residence at least 10 weeks after default before the commencement of foreclosure;
8. Prohibit a deficiency judgment

against a protected party under a purchase money security interest;

9. Permit a protected party to reinstate loan terms by tendering performance (12-month limitation);
10. Define "security agreement" to include mortgage and trust deed;
11. Broaden the definition of purchase money mortgage to include home improvement loans;
12. Require the identification of a "construction security interest" as such;
13. Eliminate the distinctions between mandatory and optional advances in construction loans;
14. Permit a secure construction lender to make advances to complete a project and be protected even though not provided for in the security agreement;
15. Permit a debtor to modify his agreement with the secured creditor even though he has actual knowledge that the interest has been assigned to another lender absent notice thereof.

The primary purpose of ULTA is to provide a solution to problems such as the lack of uniformity between states, complicated and expensive financing procedures, and consumer protection. While these goals are laudable, there is some question whether the Act achieves them in the best way — or at all. This article is not meant to be a call for bar association recalcitrance and opposition to ULTA in the name of the status quo. Rather, the bar has a duty — to consumers, sellers, builders, and lenders — to subject the Act to critical and objective scrutiny before a wholesale, fundamental revision of land law is undertaken.

Members of the Section of General Practice should examine the proposed Act and advise the Committee on Real

Property Transactions of suggestions for consideration by the Committee. Likewise, these suggestions should be submitted to the appropriate state legislative committees in those states considering the adoption of the Act.

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## WELCOME, NEW MEMBERS

GORDON JAMES, III, a native of Montclair, New Jersey, received his undergraduate degree from the University of Tennessee and his law degree from Vanderbilt. He is associated with Druck, Grimmett, Norman, Weaver and Scherer, Fort Lauderdale.

FREDERICK C. HEIDGERG, a native of Sewickley, Pa., received his undergraduate degree from Wake Forest University and his law degree from the University of Florida. He is associated with Cabot, Wenkster and Casteel, Fort Lauderdale.

EDWARD PAUL KREILING, a native of Covington, Kentucky, received his undergraduate degree from the University of Kentucky and his law degree from Salmon P. Chase College of Law. He is associated with the City of Miramar.

WILLIAM H. LEFKOWITZ, a native of The Bronx, New York, received his undergraduate degree from St. University at Sunny Brook, N.Y., and his law degree from Syracuse University. He is associated with Ruden, Barnett, McClosky, Schuster and Schmerer, Esqs., Fort Lauderdale.

RONALD A. LUZIM, a native of Brooklyn, N.Y., received his undergraduate degree from Brooklyn College and his law degree from Brooklyn Law School. He is associated with Val L. Osinski, Coral Springs, Florida.

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