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## Teaching and Scholarship Enrichment through Involvement in Law Reform

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# TEACHING AND SCHOLARSHIP ENRICHMENT THROUGH INVOLVEMENT IN LAW REFORM

*R. Wilson Freyermuth\**

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### I. INTRODUCTION

One of the most important ways for faculty to enrich their teaching and scholarship is through meaningful connections with the practicing bar. One effective way of developing these connections is through involvement in law reform efforts. This Essay focuses on developing these connections along two dimensions—through the work of the Uniform Law Commission and through involvement with trade organizations or nonprofit groups.

### II. INVOLVEMENT IN LAW REFORM THROUGH THE UNIFORM LAW COMMISSION

One traditional avenue for academic involvement in law reform work is through the Uniform Law Commission (“ULC”), formerly known as the National Conference of Commissioners on Uniform State Laws.<sup>1</sup> The ULC is a nonprofit association comprised of state commissions from each state, as well as the District of Columbia,

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\* John D. Lawson Professor of Law and Curators’ Distinguished Teaching Professor, University of Missouri. Special thanks to Bill Henning for getting me involved in work as a reporter for the Uniform Law Commission; to Grant Nelson and Dale Whitman, whose landmark work as reporters for the *Restatement (Third) of Property: Mortgages* continues to be a model for impactful academic contribution to law reform; to Tanya Marsh for the invitation to participate in the 2017 AALS Real Estate Transactions Section panel presentation from which these essays derived; and to Greg Stein, Danny Bogart, Tanya Marsh, and Celeste Hammond for the contribution reflected in their essays.

1. See *About the ULC*, UNIFORM L. COMMISSION, <http://uniformlaws.org/Narrative.aspx?title=About%20the%20ULC> (last visited Nov. 8, 2018).

Puerto Rico, and the Virgin Islands.<sup>2</sup> Its primary objective is to provide states with nonpartisan, well-drafted legislation that can help bring clarity and stability to critical areas of state law, yet also reflect the diverse experience of the states.<sup>3</sup>

Each jurisdiction appoints its own set of commissioners through selection processes established in each state.<sup>4</sup> The commissioners can serve on study committees that investigate whether uniform or model legislation is needed with respect to a particular subject matter.<sup>5</sup> If the study process reveals that the preparation of a uniform or model act is desirable, commissioners can then serve on drafting committees that meet twice each year over the course of two (or sometimes three) years to draft an act.<sup>6</sup> These drafting committees follow a deliberative and open drafting process that draws on the expertise of commissioners but also gathers input from legal experts, advisors, and observers representing the views of other legal organizations or stakeholders. The commissioners meet annually each summer to read, revise, and approve uniform and model acts under consideration for adoption or revision (each act requires full readings at two annual meetings prior to approval).<sup>7</sup> Finally, for acts that have been approved by the ULC, commissioners often work in conjunction with legislators in their respective states to secure enactment of uniform and model acts.<sup>8</sup>

The experience and contributions of legal academics play a fundamental role in the success of the ULC's work. There are four primary ways in which academics can be involved in the work of the ULC. The first—and most significant for purposes of this Essay—is by working as a reporter for a ULC drafting committee.

#### A. *Service as a Reporter*

When the ULC appoints a drafting committee, the ULC executive director appoints a reporter to assist the drafting committee in preparing the act.<sup>9</sup> Almost without exception, the ULC selects an academic as the reporter. Typically, the reporter is a person whose

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2. *Id.*

3. *Id.*

4. See UNIFORM LAW COMMISSION CONST. art. 2, § 2.2, <http://www.uniformlaws.org/Narrative.aspx?title=Constitution>.

5. See *id.* art. 5, § 5.2.

6. *Frequently Asked Questions*, UNIFORM L. COMMISSION, <http://uniformlaws.org/Narrative.aspx?title=Frequently%20Asked%20Questions> (last visited Nov. 9, 2018).

7. UNIFORM LAW COMMISSION CONST. art. 8, § 8.1(a).

8. *Id.* art. 6, § 6.1.

9. See Thomas P. Gallanis, *Trusts and Estates: Teaching Uniform Law*, 58 ST. LOUIS U.L.J. 671, 677 (2014).

teaching and scholarship demonstrate substantial expertise as to the act's subject matter.<sup>10</sup>

The reporter typically begins by gathering and providing relevant background information to the commissioners serving on the drafting committee.<sup>11</sup> This is an important function; while some of the commissioners on the drafting committee are experts on the subject of the proposed act, other commissioners may have no particular expertise in the area. For each meeting of the drafting committee and reading of an act at a ULC annual meeting, the reporter prepares a draft of the proposed text of the act. The reporter also prepares notes or comments that provide further background on the subject matter, the intended meaning of the act's provisions, or the drafting committee's rationale for policy choices reflected in the proposed act.<sup>12</sup>

Service as a reporter for a uniform or model act can enrich teaching and scholarship in important ways. In this Essay, I want to highlight the experience of Professor Thomas Mitchell (of Texas A&M University School of Law) and his work with the Uniform Partition of Heirs Property Act.

Professor Mitchell was one of several academics who, in the early 2000s, was writing about the problem of tenancy in common land loss in minority communities.<sup>13</sup> Historically, in many minority communities, access to legal and estate planning services was poor or nonexistent.<sup>14</sup> As a result, it was common for land owned by members of minority communities to pass by intestacy.<sup>15</sup> Over time, many minority-owned family parcels came to be held in highly fractionated tenancies in common by virtue of inheritance statutes.<sup>16</sup> With some frequency, either through a voluntary transfer or by the exercise of creditor remedies, the interest of one or more of the family

10. *Types of Committees*, UNIFORM L. COMMISSION, <http://uniformlaws.org/Narrative.aspx?title=Types%20of%20Committees> (last visited Nov. 9, 2018).

11. Benjamin Orzeske, *Uniform Laws Update*, 27 PROB. & PROP., May/June 2013.

12. Gallanis, *supra* note 9, at 679.

13. Others included Professors Phyllis Craig-Taylor and Faith Rivers. See, e.g., Phyllis Craig-Taylor, *African-American Farmers and the Fight for Survival: The Continuing Examination for Insights Into the Historical Genesis of this Dilemma*, 26 N.C. CENT. L.J. 21, 21 (2003); Phyllis Craig-Taylor, *Through a Colored Looking Glass: A View of Judicial Partition, Family Land Loss, and Rule Setting*, 78 WASH. U.L.Q. 737, 737 (2000); Faith Rivers, *Inequity in Equity: The Tragedy of Tenancy in Common for Heirs' Property Owners Facing Partition in Equity*, 17 TEMP. POL. & CIV. RTS. L. REV. 1, 76 (2007) [hereinafter Rivers, *Inequity in Equity*]; Faith R. Rivers, *The Public Trust Debate: Implications for Heirs' Property Along the Gullah Coast*, 15 SE. ENVTL. L.J. 147, 147 (2006) [hereinafter Rivers, *The Public Trust Debate*].

14. See Thomas W. Mitchell, *From Reconstruction to Deconstruction: Undermining Black Landownership, Political Independence, and Community Through Partition Sales of Tenancies in Common*, 95 NW. U.L. REV. 505, 517 (2001).

15. See *id.*

16. See *id.* at 517–18.

cotenants—often a cotenant who was not actually in possession—would be acquired by a land developer or speculator.<sup>17</sup> The developer would then bring an action to partition the land. Frequently, this would result in a partition sale at which the developer would obtain full title to the parcel for a price that often failed to reflect the true market value of the property.<sup>18</sup> Professor Mitchell and others posited that existing law governing partition was contributing to the problem of inherited property land loss to devastating effect in minority communities.<sup>19</sup>

During this same period, the American Bar Association Real Property, Trust and Estate Law Section appointed a task force, the Property Preservation Task Force (“PPTF”), to study this problem. Professor Mitchell—who by this point had already published two articles addressing tenancy in common land loss<sup>20</sup>—was one of the academics whose work came to the attention of the PPTF. Through the Joint Editorial Board for Uniform Real Property Acts (“JEBURPA”),<sup>21</sup> the PPTF proposed that the ULC should prepare a uniform act on partition rules and processes for inherited property.<sup>22</sup> In 2007, the ULC appointed a drafting committee and selected Professor Mitchell as reporter.<sup>23</sup> Over the next three years, Professor Mitchell served as the principal drafter for what became known as the Uniform Partition of Heirs Property Act (“UPHPA”), which the ULC approved for introduction in the states at its 2010 Annual Meeting.<sup>24</sup> To date, the UPHPA has been enacted in eleven states,<sup>25</sup>

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17. Rivers, *The Public Trust Debate*, *supra* note 13, at 153.

18. *Id.* at 155.

19. See Mitchell, *supra* note 14, at 518–19; Rivers, *Inequity in Equity*, *supra* note 13, at 3–4.

20. Thomas W. Mitchell, *Destabilizing the Normalization of Rural Black Land Loss: A Critical Role for Legal Empiricism*, 2005 WIS. L. REV. 557, 557 (2005); Mitchell, *supra* note 14.

21. The JEBURPA is an advisory group comprised of members from the ULC, the ABA Real Property, Trust and Estate Law Section, and the American College of Real Estate Lawyers as well as liaisons from the American College of Mortgage Attorneys, the Community Associations Institute, and the American Land Title Association. The JEBURPA advises the ULC as to prospective uniform law projects relating to real estate and, where appropriate, prepares interpretive commentary relating to existing uniform or model laws relating to real estate. See Thomas W. Mitchell, *Reforming Property Law to Address Devastating Land Loss*, 66 ALA. L. REV. 1, 39 (2014).

22. For a thorough narrative of the process that led to the appointment of the drafting committee, see *id.* at 36–41.

23. *Id.* at 40; UNIF. PARTITION OF HEIRS PROP. ACT (Unif. Law Comm’n 2010), [http://www.uniformlaws.org/shared/docs/partition%20of%20heirs%20property/u\\_phpa\\_final\\_10.pdf](http://www.uniformlaws.org/shared/docs/partition%20of%20heirs%20property/u_phpa_final_10.pdf) (last visited Nov. 9, 2018).

24. UNIF. PARTITION OF HEIRS PROP. ACT (Unif. Law Comm’n 2010), [http://www.uniformlaws.org/shared/docs/partition%20of%20heirs%20property/u\\_phpa\\_final\\_10.pdf](http://www.uniformlaws.org/shared/docs/partition%20of%20heirs%20property/u_phpa_final_10.pdf) (last visited Nov. 9, 2018).

25. At the time of this article, UPHPA has been enacted in: Alabama, ALA. CODE §§ 35-6a-1 to -14; Arkansas, ARK. CODE ANN. §§ 18-60-1001–18-60-1014; Connecticut, CONN. GEN. STAT. ANN. §§ 52-503f–52-503r; Georgia, GA. CODE ANN.

with additional introductions anticipated during the 2018 and 2019 legislative sessions.

By itself, Professor Mitchell's work in the drafting of the UHPHA was a significant work of scholarship and professional service. The UHPHA has created greater awareness of the heirs property problem and provided meaningful legislative solutions that will preserve family ownership of heirs property in an impactful way. But the promulgation of the UHPHA and subsequent enactment efforts have also created greater awareness of Professor Mitchell's academic work throughout the legal community and have provided him with numerous opportunities to develop and expand on this work:

- Since the UHPHA's promulgation, Professor Mitchell has published six additional articles regarding heirs property and/or the UHPHA.<sup>26</sup>
- His current CV shows four more heirs property-related articles in progress, as well as an upcoming book (to be published by the ABA) on the UHPHA.<sup>27</sup>
- Professor Mitchell has also given countless talks or panel presentations on heirs property or the UHPHA.<sup>28</sup> Many of

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§§ 44-6-180–44-6-189.1; Hawaii, HAW. REV. STAT. ANN. §§ 668A-1–668A-14; Iowa, IOWA CODE ANN. §§ 651.1–651.32; Montana, MONT. CODE ANN. §§ 70-29-401–70-29-420; Nevada, NEV. REV. STAT. ANN. §§ 39.600–39.705; New Mexico, N.M. STAT. ANN. §§ 42-5A-1–42-5A-13; South Carolina, S.C. CODE ANN. §§ 15-61-310–15-61-420; and Texas, TEX. PROP. CODE ANN. §§ 23A.001–23A.013. For a current enactment map, see *Partition of Heirs Property Act*, UNIFORM L. COMMISSION, <http://uniformlaws.org/Act.aspx?title=Partition%20of%20Heirs%20Property%20Act> (last visited Nov. 9, 2018).

26. Thomas W. Mitchell et al., *Forced Sale Risk: Class, Race, and the "Double Discount"*, 37 FLA. ST. U.L. REV. 589 (2010); Thomas W. Mitchell, *Uniform Laws Update*, PROB. & PROP., Jan./Feb. 2011, at 7; Thomas W. Mitchell, *The Uniform Partition of Heirs Property Act Would Improve Texas Partition Law for Families*, REPTL REP., May 2017; Mitchell, *supra* note 21; Thomas W. Mitchell, *Restoring Hope for Heirs Property Owners: The Uniform Partition of Heirs Property Act*, 40 ST. & LOC. L. NEWS, no. 1, Fall 2016; Thomas W. Mitchell, *New Legal Realism and Inequality*, in 1 NEW LEGAL REALISM: TRANSLATING LAW-AND-SOCIETY FOR TODAY'S LEGAL PRACTICE 203 (Elizabeth Mertz et al. eds., 2016).

27. Thomas W. Mitchell, *Thomas Wilson Mitchell CV*, TEX. A&M U. SCH. OF L., <https://works.bepress.com/thomas-mitchell/cv/download/> (last visited Nov. 11, 2018) (Thomas W. Mitchell, *African-Americans' Quest for Full Citizenship Undermined by Recurring Property Ownership Barriers*, in RACE, PROPERTY, AND DEBT (Vincent Lloyd ed., forthcoming 2018); Thomas W. Mitchell, *Exit from Common Property Ownership: An International Comparative Study*; Thomas W. Mitchell et al., *Property Valuation Beyond Numbers: The Uniform Partition of Heirs Property Act and the Sentimental, Cultural, and Historical Value of Land Owned by African-Americans in the U.S. South*; Thomas W. Mitchell, *Uniform/Model Laws and Social Justice: Combining a Social Movement and Top-Down Approach*; Thomas W. Mitchell, THE UNIFORM PARTITION OF HEIRS PROPERTY ACT: FOUNDATIONS AND PRACTICE (ABA).

28. Professor Mitchell's CV shows over 70 presentations in various forums related to his work with UHPHA and the heirs property problem. Mitchell, *supra* note 27. If Professor Mitchell is as conscientious about updating his CV as I am in updating mine, I suspect this is a healthy undercount.

these presentations were facilitated or invited by persons with whom he came into contact through the drafting and promotion of the UPHPA.

- Professor Mitchell's work on the UPHPA and its enactment has helped him build a large network of lawyers and legislators. These contacts are no doubt valuable to his students, both for how they have enriched his classroom teaching and for the networking connections they provide.
- Finally, Professor Mitchell's work on the UPHPA played an instrumental part in his 2014 selection as a Fellow of the American College of Real Estate Lawyers.

My experiences as a ULC reporter were similarly positive. I served as a reporter for four projects, including the Uniform Residential Mortgage Satisfaction Act (2004), the Uniform Assignment of Rents Act (2005), the 2014 amendments to the Uniform Common Interest Ownership Act, and the Uniform Commercial Real Estate Receivership Act (2015). Work on the first two acts led to my selection as the Executive Director of the JEBURPA, a position I have held since 2006. Not only have these efforts led to several articles and presentations,<sup>29</sup> they have also enhanced my teaching by giving me hands-on experience with the challenges associated with statutory drafting and interpretation. And while serving as a reporter is no way to get rich,<sup>30</sup> it has been rewarding in other ways; my service played a key role in my selection as a Fellow of both the American College of Real Estate Lawyers (in 2009) and the American College of Commercial Finance Attorneys (in 2017).

Each year, as the ULC initiates new study and drafting projects, it looks for dedicated and thoughtful academics as potential reporters. If you would like to be considered for such an appointment, I

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29. For articles related to my law reform work, see generally R. Wilson Freyermuth, *Modernizing Security in Rents: The New Uniform Assignment of Rents Act*, 71 MO. L. REV. 1 (2006); R. Wilson Freyermuth, *Of Hotel Revenues, Rents, and Formalism in the Bankruptcy Courts: Implications for Reforming Commercial Real Estate Finance*, 40 UCLA L. REV. 1461 (1993); R. Wilson Freyermuth, *Private Transfer Fee Covenants: Cleaning Up the Mess*, 45 REAL PROP., TR. & EST. L.J. 419 (2010); R. Wilson Freyermuth, *Putting the Brakes on Private Transfer Fee Covenants*, 24 PROB. & PROP. 20 (2010); R. Wilson Freyermuth, *Rethinking Proceeds: The History, Misinterpretation, and Revision of U.C.C. Section 9-306*, 69 TUL. L. REV. 647 (1995); R. Wilson Freyermuth, *The Circus Continues: Security Interests in Rents, Congress, the Bankruptcy Courts, and the "Rents Are Subsumed Within the Land" Hypothesis*, 6 J. BANKR. L. & PRAC. 115 (1997); R. Wilson Freyermuth, *Why Mortgagors Can't Get No Satisfaction*, 72 MO. L. REV. 1159 (2007).

30. Under the ULC Constitution, Commissioners receive no compensation for their work. UNIFORM LAW COMMISSION CONST. art. 2, § 2.11. However, the ULC does pay a modest honorarium to the reporter at the conclusion of a project if the reporter is not a Commissioner or Member of the ULC.

encourage you to contact the ULC's Chief Counsel (currently Ben Orzeske).

### *B. Involvement in ULC Other than as a Reporter*

There are three other ways in which academics can get involved in the ULC without serving as a reporter:

- *Service as a commissioner.* Academics can serve as a commissioner from their jurisdiction, which enables them to serve as voting members of study and drafting committees and to have both voice and vote in the reading and approval of uniform and model acts.<sup>31</sup> Approximately ten percent of the commissioners are academics.<sup>32</sup> Whether this is a meaningful opportunity for you may depend upon your state, as the selection process for commissioners is left to each state.<sup>33</sup> If you have an interest, however, the ULC's Chief Counsel can discuss with you how appointments occur in your state and how to communicate your desire to serve to the relevant decisionmakers in your state.
- *Serving as an observer to a study or drafting committee.* Any interested person may register as an observer and participate (with voice, but no vote) in any meetings of a study or drafting committee.<sup>34</sup> Most observers are representatives or advocates of industry or nonprofit stakeholder groups with an interest in the subject matter of the proposed uniform or model law.<sup>35</sup> It is common for academics to serve as observers, either directly or on behalf of another professional organization.<sup>36</sup> The perspective of an academic observer (which commissioners may view as more objective or disinterested, relative to industry stakeholders) can have great influence on the committee's decision-making. For example, on the recent Uniform Commercial Real Estate Receivership Act, Professor Steve Sepinuck (of Gonzaga University School of Law) participated as a representative of the American College of Commercial Finance Attorneys and contributed

31. See *id.* art. 2, § 2.2; *id.* art. 8, § 8.2; *id.* art. 45, § 45.2.

32. See UNIFORM LAW COMMISSION REFERENCE BOOK, 2015-2016, at 15-44 (names and affiliations of all ULC commissioners).

33. See *id.*

34. See *Types of Committees*, UNIFORM L. COMMISSION, <http://www.uniformlaws.org/Narrative.aspx?title=Types%20of%20Committees> (last visited Nov. 9, 2018).

35. See *generally* UNIF. LAW COMM'N, ANNUAL REPORT 9 (2017), [http://www.uniformlaws.org/Shared/Publications/AnnRpt\\_2017web.pdf](http://www.uniformlaws.org/Shared/Publications/AnnRpt_2017web.pdf) (last visited Nov. 9, 2018) (discussing observers and their range of contributions and depth of expertise).

36. See *id.* at 20.

immeasurably to the drafting committee's discussions.<sup>37</sup> Likewise, when the ULC studied a potential uniform or model law regarding the relocation of easements, Professor John Lovett (of Loyola New Orleans College of Law) served as an observer; his background research report educated the commissioners and heavily influenced their ultimate conclusions.<sup>38</sup> Serving as an observer is a relatively low-cost<sup>39</sup> method of ULC involvement.

- *Proposing a new uniform or model law.* The last method of involvement is making a proposal that the ULC consider uniform or model legislation on a particular topic. Many of the ULC's drafting projects, like the UHPA, started out with such an outside recommendation to the ULC—either from a professor based on his or her own work, or from another organization based heavily on the academic work of one or more professors.<sup>40</sup> When working on an article, give careful thought to whether the issues involved are ones that might

37. See generally Memorandum from Thomas S. Hemmendinger and R. Wilson Freyermuth to Uniform Commercial Real Estate Receivership Act ("UCRERA") Drafting Committee, Advisors and Observers (Feb. 28, 2015), [http://www.uniformlaws.org/shared/docs/Appointment%20and%20Powers%20of%20Real%20Estate%20Receivers/2015feb28\\_UCRERA\\_Summary%20of%202015%20Feb%20Meeting.pdf](http://www.uniformlaws.org/shared/docs/Appointment%20and%20Powers%20of%20Real%20Estate%20Receivers/2015feb28_UCRERA_Summary%20of%202015%20Feb%20Meeting.pdf); Memorandum from Thomas S. Hemmendinger and R. Wilson Freyermuth to Appointment and Powers of Real Estate Receivers Drafting Committee, Advisors and Observers (Mar. 18, 2014), [http://www.uniformlaws.org/shared/docs/Appointment%20and%20Powers%20of%20Real%20Estate%20Receivers/2014mar\\_MAPRER\\_Mtg%20Summary.pdf](http://www.uniformlaws.org/shared/docs/Appointment%20and%20Powers%20of%20Real%20Estate%20Receivers/2014mar_MAPRER_Mtg%20Summary.pdf).

38. Memorandum from John A. Lovett, Professor, Loyola Univ. New Orleans Coll. of Law, to R. Wilson Freyermuth, Exec. Dir., Joint Editorial Bd for Unif. Real Prop. Acts (Dec. 2, 2019), <http://docplayer.net/38250000-Memorandum-r-wilson-freyermuth-executive-director-jeburpa-john-a-lovett-professor-loyola-university-new-orleans-college-of-law.html>. When the ULC appointed a drafting committee in 2018 to prepare a uniform law governing relocation of nonutility easements, the ULC appointed Prof. Lovett as reporter.

39. ULC study committees typically conduct meetings by conference call rather than in-person meetings. Thus, observers can fully participate in committee discussions without having to incur travel expenses (or even telephone costs, as the ULC uses a toll-free line).

By contrast, ULC drafting committees do meet in person twice per year. For these meetings, while the ULC does reimburse travel and meal expenses for Commissioners on a drafting committee, it does not reimburse these expenses for observers. Thus, an academic who decided to attend a drafting committee session as an observer would have to bear these expenses, which can be nontrivial. In some cases, academics who serve as an observer may do so on behalf of a trade group or professional organization that may cover the observer's meeting expenses.

40. See *New Project Proposals*, UNIFORM L. COMMISSION, <http://www.uniformlaws.org/Narrative.aspx?title=New%20Project%20Proposals> (last visited Nov. 9, 2018) (stating that new project proposals "encourage outside groups and individuals to submit proposals"); see generally *Criteria for New Projects*, UNIFORM L. COMMISSION, <http://www.uniformlaws.org/Narrative.aspx?title=Criteria%20for%20New%20Projects>, (last visited Nov. 9, 2018).

readily be addressed in uniform or model state legislation. If so, make a proposal to the ULC that it consider further study of the issue; the ULC's Chief Counsel can advise you on submitting a recommendation.

### III. LAW REFORM EFFORTS THROUGH TRADE ORGANIZATIONS OR NONPROFIT GROUPS

Another avenue for teaching and scholarship enrichment is interaction with national trade groups or nonprofit advocacy organizations. This can provide useful opportunities for remaining connected with experienced practitioners holding leadership positions in such organizations. These practitioners can often be useful guest lecturers in class, guest speakers to student organizations, or potential employers or career mentors to students.

These relationships also provide opportunities to participate in law reform efforts. One example from my own experience was the drafting of a model statute on the enforceability of private transfer fee covenants. In the early 2000s, a Texas-based entrepreneur began marketing the concept of "freehold licensing" to developers.<sup>41</sup> Under this scheme, a developer would impose on each lot within a new development a covenant which purported to run with the land for the ensuing ninety-nine years; this covenant ostensibly obligated the seller to pay a transfer fee of one percent of the purchase price each time the lot was sold during that term.<sup>42</sup> However, the fee was not payable to the homeowners' association for common expenses; instead, the fee was paid to a "trustee" who distributed that fee between the developer, the trustee, and the entrepreneur (who collected a slice of each fee for licensing the concept and the underlying legal documentation).<sup>43</sup> Some developers found the concept appealing because they believed that the present value of the stream of future transfer fees exceeded the one to two percent price discount that the initial lot buyer would likely command to take the lot subject to the burden of the covenant.<sup>44</sup>

The private transfer fee covenant was a terrible idea for reasons I have explained elsewhere.<sup>45</sup> The imposition and attempted enforcement of these covenants created significant practical headaches for title insurance companies and realtors in closing real estate transactions.<sup>46</sup> The JEBURPA, which had written a "white

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41. See generally R. Wilson Freyermuth, *Private Transfer Fee Covenants: Cleaning Up the Mess*, 45 REAL PROP., TR. & EST. L.J. 419 (2010) (discussing private transfer fee covenants).

42. *Id.* at 420.

43. *Id.* at 421.

44. *Id.* at 429.

45. See, e.g., *id.* at 419; R. Wilson Freyermuth, *Putting the Brakes on Private Transfer Fee Covenants*, 24 PROB. & PROP., no. 4, July/Aug. 2010, at 21.

46. See AM. LAND TITLE ASS'N, PRIVATE TRANSFER FEE COVENANTS AND THEIR CONSEQUENCES FOR REAL PROPERTY 1 (Feb. 2010)

paper” critical of private transfer fee covenants,<sup>47</sup> believed that a uniform law restricting private transfer fee covenants was desirable. However, the respective state constituencies of the American Land Title Association (“ALTA”) and the National Association of Realtors (“NAR”) believed that state legislation to limit private transfer fee covenants was needed more rapidly than the four years required for the ULC study and drafting process.<sup>48</sup> Thus, ALTA and NAR formed an ad hoc task group to prepare model state legislation to prohibit the enforcement of private transfer fee covenants,<sup>49</sup> along with other members of the JEBURPA, I worked with this task group to draft this model legislation. Through the efforts of ALTA and NAR constituents, more than forty states enacted legislation based on that model act during the ensuing three years.<sup>50</sup> For me, these efforts led to numerous speaking opportunities and two additional articles,<sup>51</sup> one of which received my school’s scholarship prize in 2011.<sup>52</sup>

These connections can also provide an opportunity to participate in appellate advocacy on issues of timely importance. For the past two years, I have assisted a team of lawyers on behalf of the Community Associations Institute (“CAI”) in the preparation and filing of amicus briefs involving the priority of common interest community association assessment liens. Nearly all common interest declarations contain covenants imposing an obligation on each affected lot or unit to pay periodic assessments to fund maintenance of common elements; nonpayment of the assessment results in a lien on the affected lot or unit.<sup>53</sup> Traditionally, most courts held that an association’s lien was subordinate to the lien of an otherwise first mortgage, either because (a) the association’s lien was not deemed to arise until the assessments went unpaid and did not “relate back” to the recording of the declaration,<sup>54</sup> or (b) the conflicting mortgage loan

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[https://www.texasoilandgasattorneyblog.com/files/2015/04/alta\\_TransferFeeBackground-feb2010.pdf](https://www.texasoilandgasattorneyblog.com/files/2015/04/alta_TransferFeeBackground-feb2010.pdf).

47. See JOINT EDITORIAL BD FOR UNIF. REAL PROP. ACTS, POSITION PAPER ON TRANSFER FEE COVENANTS (Apr. 2010), [http://www.uniformlaws.org/shared/docs/jeburpa/2010apr\\_JEBURPA\\_Position%20paper\\_Private%20transfer%20fee%20covenants.pdf](http://www.uniformlaws.org/shared/docs/jeburpa/2010apr_JEBURPA_Position%20paper_Private%20transfer%20fee%20covenants.pdf).

48. See *id.*

49. See *id.*

50. See *ALTA Makes Successful Push to Prevent Wall Street from Stealing Main Street’s Home Equity*, AM. LAND TITLE ASS’N (Dec. 27, 2011), <https://www.alta.org/news/news.cfm?20111227-ALTA-Makes-Successful-Push-to-Prevent-Wall-Street-from-Stealing-Main-Street’s-Home-Equity>. See generally Private Transfer Fees, 77 Fed. Reg. 15,566, 15,567 (Mar. 16, 2012) (to be codified at 12 C.F.R. pt. 1228) (discussing private transfer fee covenants and state legislation).

51. See JOINT EDITORIAL BD FOR UNIF. REAL PROP. ACTS, *supra* note 47.

52. R. Wilson Freyermuth, *Curriculum Vitae*, U. MO. SCH. L. (2018), <http://www.law.missouri.edu/freyermuth/resume.pdf>.

53. See Freyermuth, *supra* note 41, at 421.

54. See GRANT S. NELSON, DALE A. WHITMAN, ANN M. BURKHART & R. WILSON FREYERMUTH, REAL ESTATE FINANCE LAW § 13:5, 393–402 (6th ed. 2014).

enabled the unit or lot owner to acquire the mortgaged property and thus took priority over the association lien under the “purchase-money” priority rule.<sup>55</sup> However, in states that have adopted the Uniform Condominium Act or the Uniform Common Interest Ownership Act, the association’s assessment lien is given a statutory priority even over an otherwise first-priority mortgage lien, to the extent of six months’ worth of unpaid assessments.<sup>56</sup> In states recognizing this priority, an association’s foreclosure of its assessment lien extinguishes the statutorily-subordinated first mortgage unless that mortgagee redeems its lien prior to the sale by paying the association an amount equal to the priority portion of the unpaid assessments.<sup>57</sup>

In Nevada, which grants the association this statutory priority, many lenders servicing mortgage loans that had been sold to Fannie Mae and Freddie Mac failed to take appropriate steps to redeem the mortgage liens in the face of association foreclosures.<sup>58</sup> This has triggered widespread litigation in federal court, challenging association lien foreclosure sales in Nevada as invalid on federal statutory or constitutional grounds.<sup>59</sup> In response to this litigation, CAI assembled a team to prepare and file amicus briefs as necessary to protect the integrity of the association lien’s priority. Because of my involvement in the preparation of a report on association lien priority by the JEBURPA<sup>60</sup> and my work as reporter for the 2014 amendments to the Uniform Common Interest Ownership Act, I have had the opportunity to work as a part of this team. These efforts also facilitated my advising multiple students working on law review notes or independent research papers on association lien priority.

As described above, establishing a relationship with national trade groups or advocacy organizations can present great

55. *See id.* § 9:1 (discussing the purchase-money priority doctrine).

56. UNIF. CONDO. ACT § 3-116(c) (UNIF. LAW COMM’N 1980); UNIF. COMMON INTEREST OWNERSHIP ACT § 3-116(c) (UNIF. LAW COMM’N 2014).

57. *See, e.g.*, *Twenty Eleven, LLC v. Botelho*, 127 A.3d 897, 905 (R.I. 2015); *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.*, 334 P.3d 408, 416 (Nev. 2014); *Chase Plaza Condo. Ass’n, Inc. v. J.P. Morgan Chase Bank, N.A.*, 98 A.3d 166, 174 (D.C. Ct. App. 2014); *Summerhill Village Homeowners Ass’n v. Roughley*, 270 P.3d 639, 642 (Wash. Ct. App. 2012). As additional authority for this conclusion, the *SFR* and *Chase Plaza* courts cited a report prepared by the JEBURPA which advised that a proper understanding of UCA and UCIOA § 3-116(c) mandated this result. *See* JOINT EDITORIAL BD FOR UNIF. REAL PROP. ACTS, THE SIX-MONTH “LIMITED PRIORITY LIEN” FOR ASSOCIATION FEES UNDER THE UNIFORM COMMON INTEREST OWNERSHIP ACT (2013), [www.uniformlaws.org/shared/docs/jeburpa/2013jun1\\_JEBURPA\\_UCIOA%20Lien%20Priority%20Report.pdf](http://www.uniformlaws.org/shared/docs/jeburpa/2013jun1_JEBURPA_UCIOA%20Lien%20Priority%20Report.pdf).

58. *See* R. Wilson Freyermuth & Dale A. Whitman, *Can Associations Have Priority over Fannie or Freddie?*, 29 PROB. & PROP., no. 4, July/Aug. 2015, at 27–32.

59. *See id.* (criticizing the argument that 12 U.S.C. § 4617(j)(3) provides persuasive authority to invalidate state association lien foreclosure sales).

60. *See id.*

opportunities for academics to participate in law reform efforts. One problem for academics is that getting involved in these organizations at the national level can be costly. National meetings of these organizations are expensive, academic travel budgets are small, and few of these organizations provide meaningful discounts to incentivize academic participation. As a result, you might choose to get involved through the state constituent of a larger national organization (e.g., through your local land title association rather than ALTA). This local involvement can make it easier for you to attend meetings and can provide opportunities to be involved in state-level law reform projects of particular local interest or importance. Further, state-level contacts in these organizations are often more accessible to your students as guest lecturers, speakers, adjunct professors, potential employers, or career mentors.<sup>61</sup>

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61. For example, contacts that I developed with local ALTA constituents during my efforts on the private transfer fee covenant issue ultimately led a local title underwriter to develop and teach a new course at Missouri on Title Insurance Law and Practice, and to offer student externships in conjunction with the state land title association.