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# Monthly Bulletin

of the

## American Association of Title Men

Vol. 1

MAY, 1922

No. 6

### SOME THOUGHTS ON TITLE INSURANCE.

(The following article on title insurance was written by Chas. C. White, Title Officer, The Land Title Abstract and Trust Co., Cleveland, Ohio (Chappie's Company) and recently appeared in the Ohio Law Reporter. It is printed here because of the concise and practical manner in which it explains this subject.)

One of the things which distinguish this modern age of ours from the extreme individualism of our fathers is the prevalence of various sorts of co-operation under the name of insurance. For, after all, any kind of insurance is a form of co-operation—a means whereby the various risks that accompany present-day society are assumed not by the individual, but by an aggregate mass of individuals, known as a corporation. And until that Golden Age pictured by the dreamers arrives wherein all such risks will be assumed by society as a whole, it will be necessary to have organizations whose business it is to assume the manifold risks connected with our complex civilization.

One such form of risk is the liability to loss through defects in the title to real estate, and it is to meet this risk that the modern organization known as the Title Insurance or Title Guaranty Company has grown up.

What is Title Insurance? How does it differ from other forms of Insurance? What are its advantages over other kinds of evidences of title?

Title Insurance is in reality a form of Casualty Insurance, but it differs from Casualty Insurance in that it is not a promise of indemnity against something which may happen in the future, but rather against already existing defects in the title to real property, the existence of which may not be discovered until some future time. The liability of a Title Insurance Company is analogous to that of the grantor in a Warranty Deed, and Title Insurance puts the resources of a responsible company behind the warranty of title.

Title Insurance also differs from all other forms of insurance in that only one premium is paid at the time of the issuance of the policy and the liability of the company is thereby forever fixed and no further premiums are required.

There are three forms of title papers used—abstracts, statements of title—popu-

larly known as certificates—and Title Insurance.

The abstract of title is a short, methodically-written history of the title to a designated parcel of land, containing a brief of each recorded instrument. The object of the abstract of title is to show the entire history or recorded evidence of title from its source to the present time, with the view of having such title passed upon by some one well versed in title law.

A statement of title is an attorney's interpretation of the evidence as shown by the abstract. In this form of title paper the title company combines the functions of abstractor and examining attorney, and the statement of title gives the result of the examination of title without showing the record evidence upon which it is based. The liability of a title company under a statement of title is the same as that of an abstractor and an attorney. It is bound to find whatever is of record and it is liable for negligence as an attorney would be liable; but under a statement of title it is not a guarantor, and is no more liable for a misinterpretation of the recorded evidence of title than is an examining attorney.

Title Insurance goes a step further and combines the functions of abstractor, attorney and insurer. It puts an absolute guarantee behind the title company's work. There is no quibble as to the title company's liability—"It is nominated in the bond"—absolutely fixed by the condition of the policy. It is the modern form of title paper and is practically universal in all the large cities of the country.

While Title Insurance is primarily based upon the record title—no policy being issued without a thoroughly expert examination of title—there are many defects which a search of the records do not disclose, against which Title Insurance, unlike other evidences of title, is a protection.

A prolific source of unmarketable titles is their descent through estates, and one writer upon title law has said that any title which has come through a series of estates is apt to have become absolutely unmarketable.

Under a statement of title a title company may assume without liability, in the absence of anything to put it upon notice to the contrary, that the list of heirs as shown by the administration proceedings is correct; under Title Insurance it guarantees that it is correct and cannot hide behind the record.

In the history of title law in the United States there are many instances of forged deeds, and it is an elementary principle of the law that no title can be taken under a forged instrument. Under a statement of title a title company is justified in relying upon the record and a forged deed looks no different than the genuine upon the record. Title Insurance guarantees the genuineness of every recorded instrument.

Deeds executed by minors and persons of unsound mind are invalid; deeds executed by married persons, the consort not joining therein, leave the dower interest of the consort undisposed of, and a recital in the deed that the grantor is unmarried means nothing unless true; deeds by a corporation not properly authorized by the directors are defective; a serious question often arises as to whether the John Doe who conveys property is the John Doe who acquired the same; another serious matter with reference to titles passing during the World War is whether or not the grantor may have been an alien enemy and therefore incompetent to convey.

In all the above cases a Title Company issuing its statement of title may rely upon the record; under Title Insurance it guarantees the validity of all instruments, that they are executed by the proper parties and that the parties are competent.

In addition to the above defects which no search of the records would disclose there are various record defects, any one of which might cloud a title, or render it unmarketable, but against which, by reason of lapse of time or other reason, a title company might be justified in issuing a policy of title insurance. As instance of such defects we note: Old, unsettled estates; lack of publication of notice by administrators and executors; nor formal election by widow, or widower to take under the will; ancient mortgages, either uncancelled or improperly cancelled of record; imperfect, indefinite and ambiguous descriptions; tax titles, the validity of which depend upon the regularity of the proceedings upon which they are based; the regularity of judicial proceedings appearing in the chain of title; the rights of children born after the execution of a will; the question as to whether a will contains apt words to dispose of property acquired after its execution; the validity of deeds executed under power of attorney.

It is not our purpose to create the im-

(Continued on page 4.)

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**MAY, 1922.**

"Business, money, profits are not ends in themselves, but are the means by which men live. Man is on earth to live, not merely to make a living. The man who devotes all the days and years of his life to business and becomes so engrossed in it, or so eager for larger gains that he has no time for the joys and duties of life and no will for the responsibilities of citizenship and parenthood, may die worth many millions and be rated a financial success, but as a man he will be a failure."

**WHAT IS A "CURBSTONER?"**

The National Real Estate Journal expresses a new idea of this much discussed person as given by an Ohio Real Estate Board. It says a curbstoner is one who even though he may have a fine office and a large force and all the other ear-marks of a real fellow and a regular institution, yet takes no part in general activities, does not belong to his board and association, is not concerned in general advancement and does nothing to encourage progress nor engage in organized effort for progress and betterment, because he does not and

cannot see any of the benefits of organization. He does not and cannot conform to any rules, regulations or ethics in conducting his business.

This rather differs from the accepted idea of the "curbstoner" whether he be real estate man or abstractor, but the more you think of it the more you realize the above is the true picture, whether his office be on the street or in a room of mahogany and brass.

The real estate men are taking very energetic and advanced steps to elevate the standard of their profession and to eliminate the fellow who is a detriment to the advancement of standards and ethics. Practically every Board has adopted resolutions prohibiting members from having joint listings or permitting the sale of member's listings by non-members.

The Cleveland Board has gone a little further by organizing a public service body to advise and assist citizens in any real estate, where there is a controversy with any member of the Cleveland Real Estate Board. Citizens thinking they have a grievance are invited to consult the committee. This is going to strengthen public confidence in the association and make business more hazardous for the so-called "Curbstoner."

Such action will affect the title business, too, and will make a demand for a like degree of higher standards and ethics from the abstractor. Nearly every State Association now and then receives calls from loan companies, etc., for a list of members so that preference may be given them. It is up to us to keep abreast of the realtors and others whose business concerns real property.

**MERGER OF TITLE COMPANIES  
INCREASE ASSETS.**

The Title Insurance Bulletin, issued monthly by the Security Title Insurance and Guarantee Company, Riverside, Calif. (Glenn Schaeffer's Company), gives the following announcement in the February number:

**Merger of Title Companies Gives Combined Assets of Over \$400,000.**

A little more than a year ago, in Volume 1, No. 1, of the Title Insurance Bulletin, it was stated that title insurance companies were operating in the Southern California counties of Los Angeles, San Diego, San Bernardino, Imperial and Riverside.

Santa Barbara county is the latest to come in under the title insurance standard, the Santa Barbara Abstract and Guaranty Company having effected a merger with the Title Insurance Company of Riverside under the name of the Security Title Insurance and Guarantee Company. With its allied companies, the new corporation has combined assets of more than \$400,000.

This important step has necessitated a change of name and of personnel in the companies of both counties. Wm. S. Porter, President of the Santa Barbara Abstract and Guaranty Company, becomes Vice President and director of the Security Title Insurance and Guarantee Company, and will be manager of the Santa Barbara office.

**TENSHUN!**

Inquiry has been made by a member regarding abstracters basing their charges upon the value of the property involved. This is a point of interest and members of the association are asked to send in their ideas of this matter.

Those of you who base your charges upon any other plan than the per entry or per page plan are urged to send full details of your charge scheme. Address your communications on this subject to the Editor and a report of the same will be made through this bulletin.

The almost universal system for charging for abstract fees is by the page or entry plan.

In some localities the purchaser pays for the title work, both abstracting and examination, although it is the more practiced custom for the seller to pay the abstract fee and the purchaser just that for the examination.

In some cities the title insurance companies advocate and it is the custom for the purchaser to pay the policy fee. The argument in favor of this plan is that it eliminates negligence and expensive-in-the-long-run short-cuts in order to save expense. The purchaser is the more particular, it is his money being risked and he is therefore more willing to pay for having the transaction handled right.

There is coincidence in the matter called to your attention and pertaining to systems for basing charges. Mr. Bouslog discussed this subject in his paper given at the Oklahoma Convention and almost simultaneously Mr. Lee Powell of Stevens wrote to the association regarding the same subject. It is a matter to give consideration and a little thought will bring to one different ideas in methods of charging, and the advantages and disadvantages of the various ways. Architects, lawyers, and many others base their fees upon the amount involved—should we? The Editor wants to hear from you on this and any other subject you might want discussed.

Remember title insurance is based on the amount involved but that pays not only for a search and examination, but protection as well.

**KEEP MOVING.**

Beware the deadly sitting habit,  
Or if you sit be like a rabbit,  
Who ever keepeth on the jump,  
By springs concealed beneath the rump.  
A little ginger 'neath the tail,  
Will oft for lack of brains avail.  
Eshew a dull and slothful seat,  
And move about with willing feet.  
Man was not meant to sit a-trance,  
And press, and press, and press his pants,  
But rather with an open mind,  
To circulate among his kind.  
And so, my son, avoid the snare,  
That lurks within the easy chair;  
To run like hell, it has been found,  
Both feet must be upon the ground.

In writing copy for printed publicity be brief. Remember the story of the creation of the sun, moon and stars is told in less than 400 words.

**THAT MATTER OF FEDERAL LIENS.**

Mr. M. R. Chittick of the Lawyers Title and Trust Company, New York, and member of the Committee of Legislation, calls attention to the following bill which has been introduced in the Senate by Senator Calder and in the House by Mr. Graham of Pennsylvania.

**S. 3224.**

67th Congress, 2d Session.

In the Senate of the United States.

February 23 (calendar day, March 2), 1922.

Mr. Calder introduced the following bill; which was read twice and referred to the Committee on the Judiciary:

**A BILL**

to permit joining the United States of America as a party defendant in an action in Federal and State courts in certain actions affecting title to real property.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that the United States of America may be made a party defendant in the same manner as a private person in any action for the foreclosure of a mortgage or other lien on real property, or for partition of real property, or in any action in any other manner affecting the title to real property where the United States of America have, claim to have, or may have a lien on such real property.

Sec. 2. That such action may be brought in any state or federal court having jurisdiction of the subject matter of such action in the state, territory, or district where the real property affected thereby or any part thereof is situated.

Sec. 3. That in such case the complaint shall set forth in addition to all other matters required by law detailed facts showing the particular nature of the lien on the said real property of the United States of America, and the reason for making the United States of America a party defendant. Upon failure to state such facts the complaint shall be dismissed as to the United States of America.

Sec. 4. That in such a case the summons and copy of the complaint must be served upon the attorney general or upon the United States district attorney for the district in which such real property is situated, who must appear in behalf of the United States of America.

Sec. 5. That if any such action is brought in any state court any federal court having jurisdiction of the subject matter of such action in the district where the real property affected thereby is situated shall have power upon motion of the United States district attorney to remove such action from the state court in which it is brought to such federal court without prejudice to any of the proceedings theretofore had in the state court. Upon the entry of such order of removal a certified copy thereof shall be filed in the office of the clerk of the state court in which the action was commenced, which shall require such clerk to transmit to the clerk of the Federal court all papers filed in his office in such action. Thereafter such action shall be prosecuted in the federal court to which it is removed with

the same force and effect as if originally brought therein: Provided, however, that if such removal is made before all of the defendants have appeared or answered, and whether their time to appear and answer has expired or not, no judgment shall be entered against such nonappearing or nonanswering defendants until after summons issued out of such federal court has been served upon such defendant as required by the rules and practice of the federal court.

This bill is indeed a good one and its passage will do much to clear up the matter of federal liens as affecting titles to real estate. Our present laws and decisions appertaining to federal liens were made years ago and were enacted and made for entirely different conditions than those now existing. The Volstead and present Revenue acts have given occasion to many complicated circumstances in the matter of liens and there are only these antiquated and ill-fitted laws with which to handle them.

The longer this condition exists without the passage of laws applicable to present needs, the more complicated will the matter of these federal liens become, especially as to their effect on real estate titles.

Study this bill and if it meets with your favor, write your congressmen and senators urging their support and adoption. It is House Bill 11006 of 1922, and it should be so designated in your correspondence.

**NEW CHAIRMAN BANK COMMITTEE.**

Perry Bouslog, New Orleans, has been appointed Chairman of the Federal Farm Loan Bank Committee. He succeeds Fred Wilkin who was unable to serve. This is Perry's third, maybe more, time as the head of this important committee, so it only seems natural to have him there again. He has always been one of the most active and energetic workers for the American Association and this subject being one of especial interest to him will be well handled and the members may expect an interesting report on the activities of the Land Bank system.

The Federal Land Bank of St. Paul, Minn., has a very broad-minded policy and is especially desirous of cooperating with the title men. It has offered a cup to be awarded for the best abstract submitted at the next convention of the Minnesota Abstracters' Association. This, of course, has created a great deal of interest and there have been many entries to date.

Such spirit of friendliness and desire for cooperation will result in much profit both for the bank and the title men and act as a stimulus for better workmanship and service.

Keeping a man in hot water will make him hard boiled.

The flapper can drive a limousine better than she can steer a rolling pin.

There are two species of jack-ass; the one with long ears, the other with long tongue.

**STATE NEWS.****New York.**

The first news bulletin of the New York Association was sent out calling attention to legislative matters and need for quick action upon same. All bills introduced this year have been scanned by a committee acting in the interests of the State Association and New York City Board of Title Underwriters, and this committee has reported upon them to the members of the association and suggested action for or against them.

The New York Assembly, among other things, considers several bills at every session very pertinent to the title interests. It is well that New York has these organizations to keep in touch with the legislative matters of the state, not only for their own good, but for the even greater benefit it will be to the public.

**Kansas.**

The Sixteenth Annual Convention of the Kansas Abstracters Association will be held in Wichita, June 13 and 14. The committee in charge of the arrangements for the same is composed of Lock Davidson, Guarantee Title and Trust Co., and B. F. Sadil of the Sedgwick County Abstract Co. Hospitality will reign supreme and any Kansas title man or woman who does not attend this meeting will be a big loser. This meeting is of especial importance, both because of general conditions which have materially affected the title business and its proceedings as a legislature meeting.

Mark Brewer, Vice President and Tom Scott, member of the Executive Committee of the American Association, will be present. The Kansas association extends an invitation to every one interested and able to do so to attend this meeting.

**Minnesota.**

President Southeray of the Minnesota Association reports that there is much interest being shown in that organization. Legislative and judicial matters of importance are up and organized effort is necessary to combat them. The contest started by the Federal Land Bank has also aroused much interest. The association is making a canvass of the abstracters of the state.

Many new members have been secured and this association is in better spirits and has a larger membership than ever before.

Mr. B. R. Colson, President of the Alachua County Abstract Company, Gainesville, Florida, reports that the Florida State Association will hold its convention at Bartow, June 7 and 8.

There are two classes of people—lifters and leaners. In which class are you? Do your part when called upon. Roosevelt said: "The first requisite of a good citizen in this republic of ours is that he shall be able and willing to pull his own weight; that he shall not be a mere passenger but shall do his share in the work that each generation of us finds ready to hand."

**TITLE INSURANCE.**

(Continued from page 1.)

pression that all, or even the majority of titles are defective, but we do want to impress upon the prospective purchaser, or mortgagee, that there are many pitfalls, and that there is no more reason for his assuming the risks of title defects, than that he should carry his own fire, life, accident or automobile insurance. Title Insurance is an absolute protection and he should insist upon it.

While it is not the policy of most companies to insure absolutely unmarketable titles, yet there are cases of temporarily unmarketable titles which we will insure, provided we be indemnified by means of a bond, or the deposit of money or securities, during the process of perfecting title. As an instance of such cases we cite: Estates in the process of administration, pending suits for money only, disputed mechanic's liens, titles in the process of being quieted by suit.

The great advantage of title insurance over statements of title is that it substitutes for a liability which may be called in question, a perfectly definite liability to a perfectly definite person. The liability of the company depends solely upon the conditions of the policy.

Its great advantage over an abstract of title is that its general use establishes a uniform standard of marketability. Attorneys will always disagree as to the marketability of titles, one attorney passing a title which another might reject. There is no legal standard of marketability, a marketable title being merely one which a court in a proper case would force a purchaser to take under a valid contract of purchase.

Title Insurance is the modern development of the examination of titles; it is absolutely safe; it establishes an absolutely uniform standard of marketability; it places the resources of a responsible company back of your warranty of title. Why be satisfied with less than the best form of title protection?

**FIRST CONVENTION OF PENNSYLVANIA TITLE MEN.**

The program of the First Annual Convention of the Pennsylvania Title Association shows that they will have a very profitable meeting and it makes one wish it were possible to attend and profit thereby.

The following addresses of especial interest are found on the program:

"The Place of Title Insurance in the Modern Business World," Harrison B. Riley, Chicago Title & Trust Co.

"The Duty of Title Men with Respect to Legislation Affecting Real Estate," Henry R. Robins, Land Title & Trust Co., Philadelphia.

"The Practical Effect of the Torrens System," Will H. Pryor, President, American Association.

"The Future of Title Insurance and Its Possibilities," Cyril H. Burdett, New York Title & Mortgage Co.

There will also be much discussion of matters directly affecting title conditions in Pennsylvania.

**PERSONALS.**

A most complete collection of pamphlets both of an advertising and educational nature, was received from H. W. Foster, Advertising Manager of the New York Title and Mortgage Co. The matter is very interesting and complete and cannot help but sell this company's activities to the public.

On the cover of one of the pamphlets appears the following interesting lines, said years ago by Abraham Lincoln: "Who can be more nearly a fiend than he who habitually overhauls the register of deeds in search of defects in titles to provoke litigation."

Is there such a court house rat in your county?

F. S. Carpenter, Secretary-Treasurer, of the Bankers Guarantee Title & Trust Co., Akron, Ohio, has been very generous in sending samples of their advertising matter. This company has been carrying on an ambitious campaign and its advertising has been especially attractive. Special stress is given to title insurance and guaranteed mortgages.

Worrall Wilson, Member of the Executive Committee and former President of the Association has just been elected President of the Seattle Rotary Club.

This is indeed a compliment to Mr. Wilson, but those who know him well, feel very much inclined to think that of the two, the club is to be the most congratulated on being able to have him for its leader.

**ROTARY SPECIAL.**

Suggestion has been made by Worrall Wilson that Rotarian Title Men get together while at the Rotary Convention in Los Angeles to discuss such matters as would be pertinent and interesting. Rotary Title Men should get in touch with Secretary Doherty's office and he will provide a place of meeting. It would be a fine thing to have a real good session of the title men attending this convention.

One of the features of the past few American Association of Title Men Conventions has been the Rotary banquet. Many Rotarians have been present at every meeting and this gathering has now become a custom. A permanent organization was formed at the Des Moines convention. Lewis D. Fox, Fort Worth, Texas, was elected President and Paul D. Jones, (the Admiral) Cleveland, Ohio, Secretary of Title Men's Section, Rotary International. These men certainly started things off great and the organization is one of which to be proud. "Rotary Title Tales" is published bi-monthly and it is a fine little pamphlet, as all of you who have received it will admit.

This is the only classification in Rotary which has attempted such a thing and the program should be continued. It will take some cash to do it though, as every Rotary title man is urged to send in some amount from \$1.00 to \$5.00 or more to Lewis in order that the work may go on and more "tales" be told.

There are some 300 title men who are Rotarians. This presents a fine chance for a most profitable and intermingling organization and everyone of this 300 should take a hearty interest in it. Many title men are among the leaders of their respective clubs and several have served as Presidents and Secretaries, making a record of which Rotarian title men should be proud.

Rotarians are urged to get behind this matter and also make an especially aggressive attempt to attend the Cedar Point Convention. Let's have 150 of the 300 Rotarian Title men there.

This likewise includes the Kiwanis, Lions, optimists and other similar organizations. Members of these clubs should attend the convention—get together while there and become better acquainted with those of your classification in other clubs.

**COUNTY COMMISSIONER'S PETS.**

They have several, some of them hard to understand, but it seems they occasionally take a peculiar delight in trying to put an excessive and unfair value upon title plants for the purpose of taxation. This happens in counties very often where a new board is elected. There have been many instances of this when the newly elected officers think the old board was a little lax and overlooked giving the title plants a high value. Here is just one of many instances where the association can be of value and render aid in combating such a circumstance by furnishing information and digest of experiences in like cases.

The Report of the Judiciary Committee, given at the 1921 convention by Mr. H. C. Soucheray, Chairman, gives a most interesting treatise of this matter. It may be found on page 87 of the 1921 proceedings, and it is well worth while for every title man to read this.

Mr. Soucheray reports that the Minnesota Association is greatly interested in this subject and are having a test case now over the assessment of abstract plants for taxation. The Minnesota Tax Commission has arbitrarily assessed them at their full value and the litigation in the matter will result in a decision of nationwide importance.

This should be of concern to every one in the title business for it is a matter which frequently comes up. No one knows when it will appear at his front door.

**ABSTRACT PLANT OF SKAGIT COUNTY, WASHINGTON, FOR SALE.**

The undersigned, desiring to retire from this line of business, is offering his plant for sale at the price of \$15,000.00. Will take \$8,000.00 cash and the balance can be extended over a term of seven years at the rate of \$1,000.00 per year, interest at the rate of 7 per cent per annum, payable semi-annually.

W. H. BEARD,  
Mt. Vernon, Wash.

Ad.