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# Monthly Bulletin

of the

## American Association of Title Men

Vol. 2

DECEMBER, 1922

No. 1

### MEETING OF OFFICERS OF STATE ASSOCIATIONS CALLED FOR FEBRUARY 9, CHICAGO.

Vice President Geo. E. Wedthoff, Chairman of the Executive Committee, has arranged for and issued an invitation to the Presidents and Secretaries of the various State associations to attend a joint meeting of these officers with the Executive Committee of the American Association.

This will be held on the date above-mentioned at the LaSalle Hotel. All state officers are urged to attend.

This is the first time such a meeting has been planned and much good will come from it. Matters of general interest will be discussed, but State officials are especially requested to bring their ideas, suggestions and criticisms of the Association and how it can be of more benefit to their organizations.

The American Association will likewise tell them of its plans and program and how the different Associations can help. The value of this meeting cannot be estimated and it is hoped there will be a good attendance.

All those who can attend are asked to so notify Chairman Wedthoff of their intention.

### MEETING OF THE EXECUTIVE COMMITTEE IN FEBRUARY.

A meeting of the Executive Committee has been called for February 8-9, 1923, at LaSalle Hotel, Chicago. The work of the Association since the convention will be reviewed and further plans for its continuance made. New matters will also be considered and details worked out for the Omaha Convention.

### NEW DIRECTORY UNDER CONSIDERATION.

A new directory for the members of the American Association of Title Men is being planned. Requests have been made for a revised and up-to-date list of the members of all State associations. Those who are arrears in their dues will not be considered as members and their names will not appear.

This directory will be arranged first by states, then alphabetically by coun-

ties with name of company, officials or manager, and city.

It will be given a wide circulation. Copies will be sent to all land banks, loan companies and members of the National Association of Real Estate Boards and Farm Mortgage Bankers' Associations; in fact, to all who would be interested in such a directory. Copies will also be furnished to all members.

### ASSOCIATION REPRESENTED AT LEGISLATIVE HEARING.

The following item in the New York Tribune of December 7 shows that Mr. Chittick, Chairman of the Legislative Committee, has been keeping in close touch with Legislative matters and getting representation for the Association.

The bill referred to is the one discussed in the report of the Legislative Committee as shown in the 1922 proceedings.

*From The Tribune's Washington Bureau.*

Washington, Dec. 6.—Before the Senate Interstate Commerce Committee today a hearing was conducted on the bill of Representative Dennison, of Illinois, known as the blue sky bill. Representative Dennison strongly advocated the bill and Edward P. Doyle, representing the Real Estate Board of New York and also speaking for the *American Association of Title Men*, appeared before the committee in opposition to it in its present shape.

Mr. Doyle said the wording of Paragraph H, of Section 4, would interfere seriously with the marketing of participating mortgages or trust certificates, or mortgage bonds.

The Real Estate Board of New York doubts the wisdom, Mr. Doyle said, of all legislation of this character, but if the bill must pass it should be so changed as to exempt from its operation mortgage bonds or trust certificate issued for building operations or on vacant land for suburban development, or on improved real property, whether there is income from rental of such property or the property is for the sole use of the owner. There should be no limit to the mortgage except the fair market value of the property mortgaged.

### 1923 MEMBERSHIP CARDS NOW IN HANDS OF STATE SECRETARIES.

The new membership cards for the new year, 1923, have been sent to all state organizations for distribution to their membership. If you should not receive yours soon, write your State Secretary for it.

### ARRANGEMENTS MADE FOR SUPPLEMENTAL BULLETINS.

As another step towards more efficiently serving the members and rendering more benefits, supplemental bulletins will be issued from time to time from now on. These will be to call your attention to important matters and bring them more directly to your attention. It will pay to read and consider all matter coming to you from the Association.

### COMPLETE INFORMATION ON TORRENS SYSTEM BEING COMPILED.

The Association is now preparing a complete brief on the workings of the Torrens Land Title System. This will contain a history of the law, its purpose, how it has worked in foreign countries and its success in our own. The subject will be covered thoroughly and in all its phases, with citations of actual facts and instances.

The map compiled by Mr. Stelle and being exhibited in the National Association Exhibit will be reproduced on convenient size sheets.

All of this will be printed in pamphlet form and copies available for distribution by State associations or individual members.

### A Good New Year's Resolution

To attend the Convention of 1923 in Omaha next fall.

## MONTHLY BULLETIN

of the

## American Association of Title Men

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DECEMBER, 1922.

## THE POLITICAL RELIGION OF THE NATION.

Let every American, every lover of liberty, every well-wisher to his posterity, swear by the blood of the Revolution never to violate in the least particular the laws of the country and never to tolerate their violation by others. As the patriots of '76 did to the support of the Declaration of Independence, so to the support of the constitution and the laws, let every American pledge his life, his property and his sacred honor; let every man remember that to violate the law is to trample upon the blood of his fathers and to tear the charters of his own and his children's liberty. Let reverence for the laws be breathed by every American mother to the lisping babe that prattles on her lap. Let it be taught in schools, in seminaries and in colleges. Let it be written in primers, spelling books and almanacs. Let it be preached from the pulpits, proclaimed in legislative halls and enforced in courts of justice. In short, let it become the political religion of the nation.  
—[Abraham Lincoln.]

Be a Booster.

## THE PURPOSE AND SCOPE OF THIS BULLETIN—SUGGESTIONS INVITED.

Every organization, both trade and fraternal, issue some sort of publication. There are many reasons for this, and different bodies have different purposes back of their publications.

The American Association of Title Men has never had any official publication of a pretentious nature and nothing except the bulletins issued by it, supplemented from time to time by a pamphlet on some important topic. Our bulletin service is now regularly established in what is believed the most practical form to best serve the needs for a medium of publicity to the membership. It has been issued in its present form for just a year. This is believed to be the most satisfactory, and was adopted after a great deal of experiment and investigation. Effort will quite naturally be made to continually improve it. As time and conditions demand enlargement, or change of any kind, such will be done.

Any organization such as ours needs some form of communication to the membership so that they may know what is being done, things that are occurring over the country of interest to the profession and explanations and discussion upon important subjects. The first is the most important and the prime object of the bulletin will be to tell the members of the activities and the affairs of the various State and National associations. The American Association has gone through the organization process and is now able to efficiently and profitably serve the title men of the country. The officials and members of the various committees are all working and devoting time and consideration to the Association's affairs—things for the good of your business.

Reports will be given of the activities of the various State organizations, and also of things of general interest which have been instigated or done by individuals or companies. What is being done in one place is worth while being done in others—what is good for one can be of value to all.

Space and means do not permit that the bulletin should contain long, technical discussions of weighty questions and matters, but practical reports will be made on all of them when possible and worth while papers on pertinent topics given all the time. Any one wanting more complete information than that appearing can secure it by writing the Secretary's office.

As already stated arrangements have now been completed for special bulletins to augment the service given by the regular one.

One of the most frequent questions asked is why a report of court decisions is not given. It is impossible to do this at present and is really not practical. These decisions as a rule apply only to a certain state. It would take a corps of reporters to furnish this for the national bulletin and then they would not apply generally. It would be a fine thing if every state association would have a

bulletin service of its own giving court decisions. This is being done in many states.

This bulletin should be the means of communication between the organization and the members. Those in charge of it are trying to make it everything it should be.

Your ideas, suggestions and criticisms will be welcome. Let them be known to the editor.

## NEED FOR UNIFORM NAME AND DATE OF FISCAL YEAR.

There are two points which are forever causing lost motion and effectiveness and always call for much discussion in the working of the national organization. They are a uniform name for all State associations and a uniform date for the fiscal year.

The name for all State Associations should be uniform and conform to that of the American Association. At present we are a coat of many colors. There is the "..... Association of Title Men"; "..... Abstracters Association"; "..... Land Title Association"; "..... Title Association."

They should all be changed and made uniform to conform with the National body such as "The Oklahoma Association of Title Men."

Likewise the fiscal year of all should be the same and start with that of the American Association, with all dues starting from and payable on the same date.

These are two matters which will be considered at the next Executive Committee meeting and convention, and which should also be considered by every State association and changed where necessary to conform.

## SECRETARY'S OFFICE AS EMPLOYMENT BUREAU.

The Secretary has on file names of persons wanting positions, wanting to purchase plants, plants for sale and abstracters wanting help. Write his office, if interested in any of these. A valuable service could be interested in the proper use and establishment of such a service bureau.

## OUTLINE FOR TALK IN TITLE BUSINESS AVAILABLE.

The association has prepared an outline and suggested talk on the title business for Rotary, Kiwanis, Lions, and other luncheon clubs. Also for a talk before real estate boards on the subject "Relation of the Abstracter to the Real Estate Man."

Any one desiring either or both of these can secure them by writing the Secretary.

## NEW YORK TITLE &amp; MORTGAGE COMPANY INCREASES ITS CAPITAL STOCK.

Announcement is made that the capital stock of this company has been increased from \$4,000,000.00 to \$5,000,000.00.

## LICENSE AND LARGE BOND LAWS FOR ABSTRACTERS.

The licensing and bonding of abstracters have been topics for much discussion. Most states require that a bond in some nominal amount be furnished. Other states have no bond requirement.

In states where bonds are required, some abstracters advocate the requirement of a large bond as a means of raising the standard of the abstract business and the personnel of those engaged in it.

A large bond will not help much to raise the standard of the profession or in weeding out the so-called "curbstoner." Anyone can get most any kind of a bond for most any kind of a purpose. A bond in either a small or large amount will not accomplish this result. It might help some but the purpose of having abstracters furnish a bond is many fold, and is advantageous to the county, the customers of the abstracter and the abstracter himself.

Following is the wording of a typical bonding law in a state where one is required:

### Abstracts of Title: Bond.

That it shall be unlawful for any person, firm or corporation to engage in the business of abstracting or make abstracts of title to real estate in any of the counties of the State of ———, without first having executed and filed with the county clerk of the county in which said person, firm or corporation intends to engage in the business of abstracting, a bond, executed by some surety company authorized to transact business in this state, or a bond signed by three or more good and sufficient sureties, to be approved by the Board of County Commissioners of said county, in the penal sum of five thousand dollars, conditioned that they will properly demean themselves in the business of abstracting, and will in no way mutilate, deface or destroy any of the records of the several county offices to which they may have access, and that they will not in any way interfere with, hinder or delay the several county officers in the discharge of their duties, while using said records in the prosecution of said business of abstracting; provided, however, that the records shall in no case be taken from the county office to which they belong. The person, firm or corporation who shall execute and file said bond of five thousand dollars for said purpose shall be liable on said bond: First, to the state of ———; second, to any person who shall be in any way damaged by mutilation, injury or destruction of any record or records of the several county offices to which he or they may have access, to the amount of damage actually done said person; and third, that said person, firm or corporation shall be liable on said bond for all damages caused to any person or persons by reason of any incompleteness, imperfection or error made by said person, firm or corporation, in compiling said abstract. The filing of said bond shall be a guaranty of the good faith and responsibility of said person, firm or corporation engaged in said business of abstracting, and the Board of County Commissioners of any county in which

such bond may be given and filed shall require a new bond by such abstracters once in five years.

### Privileges of Abstracter.

Upon the execution and filing of the bond hereinbefore mentioned each person, firm or corporation so filing such bond shall have free access to the county records of the several county offices for the purposes of the prosecution of their said business of abstracting, and the compiling, posting, and keeping up of their abstract books necessary for the proper conduct of their said business, under the direct supervision of the county officers, having the legal custody of said records; and while handling and using said county records for any of the purposes of this act, the said abstracters shall be under the same obligation to protect and carefully keep and preserve said records as the several county officers who have the legal custody of said records, and subject to the same penalties for a violation of such duty as said officer would be.

### Misdemeanor, Certain Acts, When Bond Not Filed.

Any person, firm or corporation who shall engage in the business of abstracting, or making abstracts of title for anyone except on their own property, or as a legally constituted attorney for another person, without first having executed and filed the bond in compliance with section one of this act, shall be refused the use of the records by the officer having the custody thereof, and shall be deemed guilty of a misdemeanor, and upon conviction thereof be fined not exceeding one hundred dollars for each and every such offense.

### County Officer Preventing Use of Records by Abstracter—Penalty.

Any county officer who shall prevent or prohibit any person who has complied with the provisions of this act from a proper use of the records of their said office as hereinbefore provided, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not exceeding one hundred dollars for each and every such offense.

\* \* \* \*

From this it will be seen that a bonding law is a good law for everything and everybody. It protects the county against careless acts of the abstracter ("court house rat") and it is good for him because he knows he has a responsibility.

He is responsible for his work, and there is no denying that the abstracter should be responsible to those who depend upon his product. Large considerations are involved in the work of the abstracter and faith placed in the thing he produces. It is, therefore, only right that he have some protection to give to users of his work. Some abstracters do not have a great deal of personal responsibility. There are many cases where an abstracter has been liable in states where no bond is required and not being personally responsible and nothing back of him, the damaged party has suffered and forever cursed the present abstract system.

There should, therefore, be a nominal bonding law for abstracters in all states. It is a good thing for the abstracter, as a matter of service to his client in having some responsibility.

As seen from the second and fourth sections of the above law it works to his advantage in giving him unhampered use and access of the county records and privileges granted to none others. County officials are required to recognize this and not hamper him in his duties and work.

### Licensing.

This is another subject which has been oftentimes considered—oftentimes treated with all the way from fear to favor. The abstracter has always until very lately held to the idea of "if I never try to legislate for either good or bad, they will leave me alone"—something of the attitude of the little boy who hid under the bed because he would never be seen, therefore never caught.

No profession or trade need fear that, because it is anxious to render a service to the public by improving itself, either by legislative means or other, it will be slapped in the face by adverse legislation in return.

The licensing of abstracters will never in itself accomplish what some exponents of the thing believe it will—namely, elevate the standard of the ethics and conditions of the business over night. Such a law would help.

There are many other things just as necessary as a license law to be done to place the abstract business where it should be. These things are things which we need to do to ourselves, within ourselves and by ourselves. Every abstracter knows what they are without being told. The thoughts, actions and ethics of either individuals or professions cannot be raised or improved by legislation or force. It must be done by themselves, within themselves.

A license law would do some good and have a big effect. It will only be most useful when abstracters know they are ready for it and the profession as a profession is able to appreciate its full value.

Such a law is under consideration in three states and will be presented to the are Arkansas, Kansas and Oklahoma. These states have been carefully considering this for years and feel they are now ready to take this action.

### IN CORRECTION.

The printed proceedings of the Sixteenth Annual Convention of the American Association of Title Men, in the annual address delivered by Mr. Fehrman, President of the Title Examiners Section, is in error in stating that William A. Gretzinger, Esq., is Title Attorney for the Real Estate Title Insurance and Trust Company of Philadelphia. Mr. Gretzinger is in fact Title Attorney for the Republic Trust Company of Philadelphia, and he should have been listed in the list of new members to the Title Examiners Section as William A. Gretzinger, Esq., Title Attorney for the Republic Trust Company of Philadelphia, Pennsylvania.

# The Association's Sixteen Proposals for Uniform Land Laws

Some uniformity and simplification of our land laws have long been considered and realized as necessary. The American Association of Title Men undertook the first step in this and outlined the first definite set of proposed laws.

This work was undertaken in 1913 by the Committee on Legislation, of which Mr. H. L. Burgoyne was Chairman and J. W. Mason, J. W. Cone, S. C. Woodhull and Lee C. Gates members. There was no one more able or better prepared to do this than Mr. Burgoyne, Counsel for the Union Central Life Insurance Co., title authority and staunch friend and supporter of the Association.

The Association is now able and proposes to present these proposals and take action to get them before the public and interested organizations. A similar idea is being advanced by the Department of Commerce of the United States through the Division of Simplified Practice, W. A. Durgin, Chief.

This is a matter of our business—a duty we owe, and the American Association of Title Men is the body to initiate and propose such a reform. This is something which must come and will be given nation-wide consideration in the future. It is necessary that we therefore acquaint ourselves with the thing.

The sixteen proposals, together with Mr. Burgoyne's report and remarks on each, are shown below. The Association has adopted and approved Nos. 1 to 15. No. 16 has been discussed a great deal but not as yet adopted. It will be given further consideration from now on and discussed at the Omaha Convention next fall.

SEVENTH ANNUAL CONVENTION  
OF THE  
AMERICAN ASSOCIATION OF TITLE MEN  
AT CEDAR POINT, OHIO  
AUGUST 26, 27 and 28, 1923

REPORT OF COMMITTEE ON LEGISLATION  
*H. L. Burgoyne, Chairman, Convention of 1913.*

Mr. President and Members of  
the Title Association:

Your Committee on Legislation begs leave to submit the following report:

We are passing through a critical period in the history of land titles in this country. There is a wide-spread feeling of dissatisfaction among lawyers and laymen, with some of the features of our present system of land transfer. The vast accumulation of records, the numerous defective instruments, the many technical requirements of the law and the conflicting decisions of courts all tend to render the abstracting and examining of titles burdensome and to render the titles themselves unsafe and uncertain.

This is doubtless the cause of the present agitation looking to the adoption of the Torrens plan of title registration. Your committee is of the opinion that the Torrens system is a fallacy; that it is based upon a wrong principle; that it is not adapted to conditions in this country; that its most vital feature is in conflict with the Federal Constitution, and finally, that in its practical results as indicated by the experience of states which have adopted it, it is a complete failure.

We believe that in its simple essentials, our present system is the best that can be devised; but it is burdened with so many useless technicalities that unless it can be greatly modified it is in danger of being crushed under its own weight.

The object of the legislative program which we are suggesting is to remove the objectionable features of the system and thus render land titles simpler and more secure.

Your committee addressed letters to the Secretaries of twenty-three State Associations, with a view to ascertaining what remedial legislation, if any, these organizations were urging. Replies were received from seventeen. There were only three associations that reported any activity along these lines. Quite a number reported that they were kept busy opposing adverse legislation and that all they asked was to be let alone. Nearly all the reports expressed the view that

aggressive action by the State Associations would react to their damage.

We are clearly of the opinion that no State Association need hesitate to advocate the proposals made in this report. They are not primarily in the interest of abstracters at all; they are in the interest of the public at large. We do not urge them as abstractors or title examiners or lawyers or real estate men, but as good citizens, who desire to preserve our American system of land transfer and save it from utter disorder and confusion.

Any action that the National Association may see fit to take with reference to the proposals made in this report, will, we take it, be merely advisory.

The real active labor of endeavoring to have them enacted into law will fall upon the State Associations. Many of the states already have on their statute books some of the laws which we propose.

No state has all of them.

The function of the National body, as we see it, is to recommend and to lend its moral support and endorsement to any movement in any State looking to the enactment of such remedial legislation.

Your committee has not deemed it wise to attempt to draft bills for introduction in any State Legislature, but merely to frame certain proposals setting out briefly the object to be accomplished. The actual drafting of bills should be left to competent attorneys in the various states in which such bills may be sought to be introduced; and this work should be done at the instance and under the supervision of the State Associations. Your committee is of the opinion that wherever possible, the cooperation of National, State and local Bar Associations should be secured in endeavoring to bring about these legal reforms.

We realize that it is not an easy matter to induce State Legislatures to make radical changes in the Statute Laws, but we deem these suggestions of sufficient importance to justify a strong and concerted effort to have them enacted into law in as many states as possible.

Your committee submits sixteen proposals as follows:

## PROPOSAL NO. 1

*In all states where the limitation on actions to recover lands is longer than ten years, reduce it to that period, and abolish the saving clause for persons under disability; or in the alternative, provide a longer limitation, say fifteen years, which will render titles absolute, regardless of disabilities.*

It is very generally conceded that a ten-year limitation

is ample. The only debatable question in this proposal is the abolition of the saving clause for persons under disability. That the elimination of the saving clause would add greatly to the security of titles is obvious. One would then be able to rely upon the mere lapse of time coupled with proof of possession, to cure defects, and would not be required to ascertain whether or not the persons against whom it was sought to establish the statutory bar were under disability and that by reason of such disability the statute was not running against them. The five disabilities are absence from the state, imprisonment, coverture, infancy and insanity. The first two need not be considered. There is nothing to prevent persons so situated from bringing suit. Coverture, as a disability, has been very generally abolished and in most of the states a married woman is permitted to maintain an action. This leaves only minority and insanity to be considered. It is believed that in the large majority of cases, persons laboring under these disabilities will have friends or relatives who will protect their property rights. It is to be remembered, too, that under present laws, the disability will not interrupt the running of the statute unless it existed at the time the disseizin took place. If the statute begins to run, it will continue to run without regard to subsequent disabilities. No doubt there would be individual cases of hardship but in most cases those would be more than balanced by the greater security of titles that would result from the elimination of the saving clause.

In view of the possible differences of opinion that there may be on this question, there can be included in the proposal an alternative, providing a longer limitation for persons under disability, but making this also a definite fixed period, not dependent in any way on the termination of the disability. Both Kentucky and Tennessee have such a law.

## PROPOSAL NO. 2.

*A Lis Pendens law in those states which have no such law, providing generally that no suit in any court shall affect the title to land unless a notice of lis pendens is filed in the office of the Recorder or Register of Deeds.*

Many states have this law, and all states should have it. In Ohio, for example, where there is no such law, a partition suit can be brought in Cincinnati, and land in Cleveland can be partitioned or sold and there will be no record at all in Cleveland to show that the land there was involved in the suit. Another advantage of a lis pendens law is that judgments in the Federal Courts can be brought under its provisions, for the Act of Congress, of August 1, 1888, 25th U. S. Statutes at Large, page 357, provides that judgments of the Federal Courts shall become a lien on the lands of the judgment debtor within the State to the same extent and under the same conditions as judgments of the State Courts.

## PROPOSAL NO. 3.

*A statute validating defective acknowledgments that have been of record for one year, so worded as to cover future cases as well as past.*

In the vast majority of cases where there are defective acknowledgments, the law has in fact been complied with and the parties have intended to make a good conveyance, but the officer who took the acknowledgment has made a mistake in his certificate. One year is long enough period for a party to make up his mind whether or not he shall attack the title on this ground.

## PROPOSAL NO. 4.

*A statute permitting married persons to convey their lands without their consorts joining, excepting in the case of homesteads, and permit no claim of homestead to be asserted unless a homestead is designated of record by either husband or wife.*

The difficulty of ascertaining the marital status of grantors in the chain of title is a fruitful source of trouble to the abstractor and the examiner and the person dealing with land. The possibility of a dower interest outstanding may continue for many years. Many states have adopted the law here proposed excepting the part of it relating to the designation of

homestead, and a few states have adopted that. That is a good law.

## PROPOSAL NO. 5.

*Abolish inchoate dower in states where it still exists, or better still, abolish dower altogether and give a wife an interest in fee simple in lands of which her husband dies seized.*

This follows as a corollary to proposal No. 4, and has been adopted in many States.

## PROPOSAL NO. 6.

*An absolute bar to the foreclosure of mortgages ten years after their maturity (or perhaps a shorter period) unless they are renewed of record.*

The advantage of this proposal is obvious. In every county the records are encumbered with old unreleased mortgages. Nearly all of them doubtless, have been paid; but they constitute a cloud upon the title, because there is always a possibility, that although on their face they are barred, they may have been kept alive by part payment or a new promise. It does not seem to be a great hardship to require the mortgagee within ten years after the debt matures, to place of record some notice that the claim still exists.

## PROPOSAL NO. 7.

*Short statutory forms of deeds and mortgages. Providing that the form shall imply all the usual covenants.*

A number of states have adopted short statutory forms. They reduce the chances of error to a minimum and reduce the volume and bulk of the records in the Recorder's office.

## PROPOSAL NO. 8.

*Barring claims against unadministered estate, say in seven years after the death. Possibly five years would be better.*

The failure to administer upon the estate of decedents is one of the most frequent defects in titles. Many titles are rejected because of the possibility of the land being subjected to the payment of debts of the person who died seized of it. When the creditor lives in the same community as the debtor he will naturally learn of the latter's death. If the debtor lives in a different jurisdiction, even though his estate is administered, the only notice the foreign creditor has is by publication in a newspaper, which publication in most cases he never sees.

A foreign creditor who is diligent in pursuing his claim will ascertain that his debtor is dead and can take out administration and collect the debt. If he does not pursue his claim diligently it will probably be no great hardship to lose it.

## PROPOSAL NO. 9.

*Simplifying certificates of acknowledgment and abolishing separate examination of wife in states where it is still required.*

Defective acknowledgments are usually due to mistakes of the certifying officer, the parties themselves having acted in perfect good faith. Simplifying the form would reduce the chances of error to a minimum.

Only a few states retain the separate examination of the wife. It makes the certificate long and involved and is a fruitful source of error. The so-called protection that it affords to the wife is apparent rather than real. If the husband exercises coercion at all, probably the separate examination will not be effective in many cases to prevent the coercion.

## PROPOSAL NO. 10.

*Abolishing private seals and witnesses in deeds and mortgages in states where they are still required.*

Seals are a survival from the time when only the few could write. Witnesses are not necessary. The certificate of acknowledgment is sufficient to give authenticity to the instrument.

## PROPOSAL NO. 11.

*Dispensing with the necessity for words of inheritance to convey a fee simple, and providing that unless otherwise specifically*

*expressed, a deed shall convey all the estate that the grantor had.*

In the large majority of deeds the grantor owns the fee simple title and intends to convey it. In exceptional cases where he does not own the entire fee or where he means to convey less than he owns, there is no reason why he should not be required to set out specifically the estate he intends to create, and that if he fails to do so, his entire estate should pass.

#### PROPOSAL NO. 12.

*A statute abolishing the blanket lien of judgments and requiring specific description of record of the property sought to be held.*

This proposal was approved by the Association at the Detroit Convention in 1910, and the able argument of the Judiciary Committee in support of it will be found in the printed proceedings of that convention, pages 127 to 131.

#### PROPOSAL NO. 13.

*Provide that when a conveyance is made to a trustee and the powers of the trustee and the nature of the trust are not disclosed of record, the trustee's deed shall pass the full title.*

There is a conflict of authority on this question, some courts holding that a party dealing with the land is put upon inquiry as to the nature of the trust and the power of the trustee to convey. There is no reason why the question should not be determined by statute in the manner indicated in this proposal.

#### BORAH PROPOSES TO LIMIT EARNINGS OF JOINT STOCK BANKS.

The growth of the Joint Stock Bank Division of the Federal Farm Loan Act has been interesting. New ones have recently started in all parts of the country, and the amount of business done by them is little short of amazing. The report for October shows that the combined capital of these banks on that date was \$21,233,771.67.

These banks while under the Federal Land Bank System operate quite differently from the District banks. There is no limit to the number which may be started and they are organized by individuals. The earnings of some of them have been very good, so it is interesting to know of the proposed bill of Senator Borahs to limit the earnings of these banks to six per cent. This bill will certainly get much discussion and is printed here for your information:

##### "A Bill

*"To Amend Section 23 of the Act of Congress Approved July 17, 1916, Known as the Federal Farm Loan Act.*

*"Be It Enacted by the Senate and House of Representatives of the United States of America in Congress Assembled, That section 23 of the Federal Farm Loan Act, approved July 17, 1916, is hereby amended by adding a new paragraph, to read as follows:*

*"That after carrying to reserve account the amounts hereinbefore required, and after all necessary expenses of a joint-stock land bank have been paid or provided for, the stockholder shall be entitled to receive an annual dividend of six per centum on the paid-in capital stock, which dividend shall be cumulative. The expenses of joint-stock land banks shall be subject to review and regulation by the Farm Loan Board.*

After the aforementioned dividend claims have been fully met the net earnings shall be paid to the United States as a franchise tax.

*"One-half of the net earnings derived by the United States from the joint-stock land banks shall be held as a guaranty fund for the payment of bonds of joint-stock land banks that may go into liquidation, and one-half of said net earnings shall, in the discretion of the Secretary of the Treasury, be used to supplement the gold reserve held against outstanding United States notes, or shall be applied to the reduction of the outstanding bonded indebtedness of the United States under regulations to be prescribed by the Secretary of the Treasury. Should a joint-stock land bank be dissolved or go into liquidation any surplus remaining, after the payment of all debts, dividend requirements as hereinbefore provided, and the par value of the stock shall be paid to and become the property of the United States and shall be similarly applied."*

#### TELLING OF LOSSES PAID GOOD ADVERTISING FOR TITLE INSURANCE.

One of the best forms of advertising for a title insurance company is to tell clients and prospective customers of losses paid.

The Title Guarantee and Trust Co., of Chattanooga, Tenn., recently paid a large loss on a title insured by it. An heir gone from the county for fifty-six years and from the state thirty-six years returned, established a claim to a one-fifth interest in two tracts and the title company paid.

This company told the world about it through very effective one-fourth and half page newspaper ads.

#### PROPOSAL NO. 14.

*Make it mandatory upon a court in granting a decree of divorce, to adjust and determine all property rights of both parties, and in the case of real estate, require a record of the decree in the office of the register of deeds.*

This proposal speaks for itself. It would obviate considerable uncertainty that now exists with reference to the rights of divorced persons in the lands of their former spouses.

#### PROPOSAL NO. 15.

*Limit the time during which a testator can suspend the alienation of land—Say twenty years.*

This proposal is no doubt debatable. Entails have been very generally abolished and all the states have statutes against perpetuities, but it is a question whether the restrictions ought not to be still further reduced. The less that land is made unmarketable, the better it is for the public at large.

#### PROPOSAL NO. 16.

*A statute requiring abstracters of titles to secure a license after a suitable examination by a competent board or commission.*

This is in the interest of the public as well as of reputable abstracters. Its object is to eliminate the incompetent, careless and irresponsible abstracters. The principle is a good one. The details would depend more or less on local conditions and could be worked out by the various State Associations.

The Kansas City Title & Trust Co. recently sustained a very heavy loss on one of its mortgage's policies by reason of a forged and otherwise fraudulent title. They likewise gave a great deal of publicity to the incident.

Title companies have established a reputation for prompt payment of claims and losses and it is certainly good business to let the public know of the real value of insurance and the attention given to losses.

In both of the instances referred to above the insured were generous in their praise and commendation of the service given.

#### RESUME OF TITLE POLICY FORMS.

By W. H. Winfree, President, Northwestern Title Insurance Company, Spokane, Wash.

The recording system is an American product. The abstractor and the modern abstract of title are the natural sequences of that system. Title insurance is the full and complete complement of that system. As the records affecting the title to real property grew something more than the name indexes became necessary to find a chain of title, resulting in tract indexes and the abstractor and his abstract of title.

Actions of the title men produced simple methods of ascertaining titles variously termed statement of title, certificate of title, guaranteed certificate of title, guaranty, title guaranty policy and title insurance policy. It would be an almost impossible task, and serve no good purpose, to explain the various methods of arrangement of these several

forms or styles of ascertaining title. They divide themselves into two general classes. Under one falls the statement and certificate of title; under the other, the guaranty and insurance of the title. The first class I shall arbitrarily designate as certificates of title, and the second as title insurance.

#### Certificates of Title.

The first aim of practically every company in issuing a certificate of title was to place its liability on the same plane as that of the examiner or searcher of the original records in the days before the abstract of title was known.

The certificate of title is a concise statement of the condition of the record certified to by the company making the same. The justification for this product is its simplicity and the fact that the cost thereof is less than the abstract and lawyer's opinion system. As far as I can ascertain the first certificate of title issued by a corporation was in California. In 1892 the Supreme Court of that state was called on, in the case of *Lattin v. Gillette*, reported in 30 Pac., 545, to consider the legal effect of such a certificate. The court held that the liability of the company was to use ordinary care and skill in the examination of the records; that the employment was the contract and the certificate but evidence of the act done in pursuance of the employment, and if an error was made the cause of action accrued at the time the service was rendered. The company's liability was placed on the same ground as that of any one performing an act requiring care and skill.

It is interesting to note that the title companies in California have voluntarily increased their liability beyond that of one who makes a certificate of title, by changing the form of their certificate to make it a contract, now called a guaranty, and by causing legislation to be enacted regulating title companies and making their product a species of insurance. And today in southern California almost all titles are ascertained by a product called guaranty, which is an insurance of the record title, and in northern California by title insurance policies.

#### Title Insurance.

There are two styles or methods of arrangement of title insurance policies. In one the contract of indemnity is set out over the signatures of the officers and reference made therein to two schedules, A and B, and to conditions, all of which are made a part of the policy. Schedule A describes the estate or interest insured and gives a description of the property covered by the policy. Schedule B contains the exceptions, and defects, incumbrances and liens not insured against. The other style is a combination of the simplicity of the certificate of title with obligations of insurance. The latter style is used almost entirely by those companies which insure the record title, and by some companies which write full insurance. The latter, or as I term it, the simple style, may be used to cover practically every insur-

able interest. The former, or elaborate form or style, has a different wording or form for practically every interest insured, such as owners, purchasers, mortgages, etc. But barring provisions because of laws peculiar to the state where the policy is written, the essentials of all policy forms are the same. Different words may be employed, differences in arrangement, but each has the same underlying purpose. Of course some companies are more cautious than others, and have more exceptions and greater restrictions in their policies than others.

Many companies require written applications, and the policy provides that such application is made a part of the policy, and the statements therein shall be construed as warranties on the part of the insured.

Every policy embraces a contract of indemnity between named parties with exceptions and conditions made a part thereof. There is set out the name of the insurer (the company), the name of the insured, the consideration or premium, sometimes actually expressed and in others stated in general terms, and the maximum amount of the liability of the company. If the insured is an individual the indemnity usually extends to his heirs and devisees; if a corporation, to its successors and assigns. The life of the policy is sometimes not stated, in which case the life is unlimited. In other forms the policy is limited to from twenty to thirty-five years. The words by which the company insures or agrees to indemnify vary, but are usually "Does hereby insure," or "Doth hereby guarantee" (the insured) \* \* \* "against all loss or damage which the insured shall sustain by reason of any defect in, or lien or incumbrance on, the title of the insured \* \* \* excepting only the defects, liens and incumbrances set out and excepted" in the policy.

The aggregate of the exceptions, which take out something which would otherwise be included, in policies of the leading companies are as follows: Rights or claims of persons in possession, or claiming to be in possession not shown of record; rights claimed under instruments not of record; material or labor liens of which no notice is of record; taxes and assessments before becoming fixed and shown of record as a lien; the existence of roads or ways not established of record or existence of county roads; dower or homestead right of the husband or wife of the party whose title is insured; loss or damage by reason of fraud of the insured, or claims undisclosed of record arising under any act done or trust relationship created, suffered or permitted by the insured, or the insured not being a purchaser for value or having contravened the bankruptcy laws of the United States. And in some sections of the country, when applicable, we find excepted: Exceptions and reservations in United States Patents; water rights, mining rights, or matters relating thereto, if any; assessments of irrigation, drainage or diking districts not shown on the general tax rolls. Some companies exclude questions of survey. Those who

do not have a survey of the premises made.

#### Marketability.

All forms of certificates of title, and policies insuring the record title, certify or insure a marketable title. It is the custom of the insurance companies on the Atlantic seaboard, which insure the entire title, to insure marketability, while most companies in the western section of the United States, which issue this class of insurance, do not insure marketability. Some companies which insure marketability require the question of unmarketability to be determined by a court of competent jurisdiction before a loss accrues; while others make the loss accrue when the title "has been rejected because of a defect or incumbrance not excepted in the policy." Marketability is generally excluded in the following language: "The company shall not be liable for any loss or damage resulting from the refusal of any party to enter into or carry out any contract to purchase, lease or loan money on the estate or interest insured."

#### Conditions.

Many exceptions are included under the heading of conditions. Strictly speaking, a condition is a requisite to the taking effect of something else, or a stipulation or covenant by either party to the contract. The conditions in practically all policies obligate the company, at its own cost, to defend the insured in all legal proceedings founded upon a claim of title, incumbrance or defect which existed, or is claimed to have existed, prior to date to the policy and not set forth therein; and require the insured to give notice to the company within a stated time of any claim of loss or of any suit for proceeding affecting the title, and that the insured shall allow the company to defend the suit and give assistance in the defense. They fix the time when a loss is payable; provide that any loss shall be indorsed on the policy, and reduce the amount thereof pro tanto; provide for subrogation and give the company the right at any time to pay the full amount of the policy, and terminate all of its liability thereunder.

(Editor's Note: This is the third of a series of articles on title insurance. The one of last month's issue told of the history of Title Insurance. In this article Mr. Winfree describes the various forms of policy. The January Bulletin will have the fourth of the series also written by Mr. Winfree, in which he discusses what a policy should contain and some of the liabilities of the company under a policy.)

#### BRIEF OF CALIFORNIA TORRENS DECISION PRINTED.

The Financial and Insurance News of Los Angeles has printed, in pamphlet form, the recent decision of the Supreme Court of California in the case of *Follette vs. P. L. & P. Corp.* Copies of this can be secured by writing to the publishers. Special prices will be given on quantity orders.

**INDIANA CONVENTION.****To List Approved Abstracters.**

The Indiana Title Association held one of its best conventions in Indianapolis. Willis N. Coval, newly elected President, advocated an Approval Board of Titlemen in his address. The object is to place the abstract business in a position to render public service by responsible men engaged in the business, both as to equipment and good financial rating. His recommendation met with popular approval and the matter was referred and left to the Executive Committee to work out details.

The addresses were by Hon. Dick Miller, President City Trust Company, Indianapolis; Mr. Lee Gibson, General Counsel, Louisville, Kentucky—"The Future of the Joint Stock Land Bank." The Federal Land Bank, same city, was represented by H. T. Huff and H. L. Moss, examiners. All the examiners favored the convention's attitude toward better abstracts and financial responsibility of the men and women back of their products. Joseph J. Schmid, Indianapolis, President, Indiana Real Estate Association, endorsed cooperation of the abstracters and realtors. Much interest was taken in the display of abstracts, certificates, title insurance policies and applications, escrow agreements, photographs of title offices and equipment, being the same exhibited at Cedar Point National Convention. The open forum where all had an opportunity of asking questions and talking about his or her everyday problems created quite a discussion. Officers for 1922-23 are:

K. C. Larwill, President, Ft. Wayne; Walter Copping, Vice-President, Crawfordsville; C. E. Lambert, Secretary-Treasurer, Rockville. Mr. Larwill, in his talk after taking the chair, said he favored some special meetings and he would call one for Indianapolis. It is to be a get-together affair and conference will be held relative to the abstracters and the next legislature. Fritz & Shriver, Rochester, and Charles McCabe, Lafayette, were elected members. A committee was appointed to cooperate with the secretary and make a survey of the state as to equipment and responsibility of abstracters now engaged in compiling abstracts.

It is estimated that it will require about 18 months to make the investigation. The Federal Land Bank examiners endorsed this advanced movement and they will accept all abstracters who are recommended by organized title. Investors, trust companies, banks, loan agents, building associations, life insurance companies have indicated same feeling toward the movement. Louis H. Williamson, President, Jennison Abstract Co., Crawfordsville, formerly of Little Rock, Arkansas, attended his first convention. He and Mark B. Brewer, newly elected President of the National Association, worked in the same office in Little Rock.

**SECRETARY OF TEXAS ASSOCIATION CHOSEN.**

This State Association has the plan of the President appointing the Secre-

tary. This places both officers in the same city.

President Love has accordingly appointed Miss Z. McKee, Love Abstract Co., Franklin, Texas, as Secretary.

**MINNESOTA MEETING IN JANUARY.**

The next convention of this Association will be held in the latter part of January, and plans are being made to have it on the same dates as that of the State Association of Registrars of Deeds.

**WISCONSIN TO HAVE A REVIVAL MEETING.**

Plans have been made for a meeting of the Wisconsin Abstracters' Association some time in January or February. This Association lapsed somewhat in its activities but it is hoped there will be an old-time revival and it will again take its rightful place in the ranks of organized title men.

It was a Wisconsin man who conceived the idea of a National organization, issued the call for the first meeting and served as first President. It has produced more Presidents and officers of the American Association than any other state and established many of its traditions.

Truly it should not live on the past but travel along on the road it blazed.

**CALIFORNIA VOTING ON NEXT MEETING PLACE.**

The Yosemite National Park Company has asked the California Land Title Association to hold its next convention at that picturesque place. The members are being asked to express their approval.

**BILL TO PROVIDE LICENSE FOR THOSE DRAWING INSTRUMENTS INTRODUCED.**

A bill will be presented to the Kansas Legislature in January designed to license all persons who engage in the preparation of instruments of writing and conveyances affecting the title to real estate.

The measure is good in theory and acceptable generally but contains some sections which would tend to place such work almost in the hands of the attorneys. It puts the examinations in the hands of the Board of Law Examiners and the licensing in the power of the Supreme Court with the further provision that any one admitted to the practice of law be granted a license without an examination.

**CONVENTION OF WASHINGTON ASSOCIATION.**

The annual meeting of the Washington Association of Title Men was held in Seattle, December 9. The attendance was large and it was an enthusiastic meeting.

The Arrangements Committee was composed of N. P. Myhre, E. C. Oggel and F. C. Hackman, and from the program it appears there were some arrangements arranged and nothing overlooked to make the meeting pleasant.

The program included the following addresses: "Washington's Tax Problem," by Albert H. Beebe; "The Country Abstracter," by E. W. Fawley; "Relation of Title Men to Federal Land Bank," Sydney A. Cryor; "Progressiveism," W. W. Gray; "Abstracting Real Estate Contracts," Henry Tremper.

There was a luncheon at noon as guests of the Seattle Title Men. Courtesies were shown the visiting ladies by having cars available in the morning for shopping, reception and luncheon at noon and a matinee in the afternoon.

A banquet and theatre party closed the session.

New officers elected were: Earl B. Warren, Spokane, President; N. P. Myhre, Seattle, Vice President; Jay A. Whitfield, Ellensburg, Vice President; Robt. W. Elwell, Olympia, Secretary-Treasurer.

**W. S. HOLT OF LITTLE ROCK RETIRES.**

The many friends of Mr. Holt will be sorry to learn that he has practically retired from the abstract business and has found it necessary to give up his duties as Secretary of the Arkansas Land Title Association.

No one was ever more interested in promoting organization among the abstractors and willing to give his time to the welfare of the business than Mr. Holt. His retirement will be a loss but everyone knows his heart will still be with us.

Geo. F. Buzbee, Bentonville, has been appointed his successor as Secretary of the Arkansas Association.

**MANY STATE ORGANIZATIONS ACTIVE.**

Many of the State associations are more active than ever before and have a larger membership than at any time in their history. There is a growing interest in organization and a greater realization that there are many advantages in an association. A few of the state bodies are a little stagnant and it is only lamentable that they are. There is a marked difference in the morale and conditions of the abstract business in the states where the associations are active and it is a shame that these dormant ones do not realize how much better off things could be.

The American Association of Title Men and the State organizations composing it are not a theoretical, up-in-the-cloud proposition but a practical, worth while and necessary matter. It is only business and mighty good business at that.

**S. M. HANES AGAIN IN ACTIVE BUSINESS.**

The many friends of Mr. Hanes will be pleased to learn that he is back in active business again and has organized the Citizens Mortgage & Bond Co., in Asheville, North Carolina. The company will negotiate farm and city loans and also have a department devoted to stocks and bonds.

Mr. Hanes was very active and interested in the Association and says he is glad to once more be able to take a part.