Monthly Bulletin

of the

American Association of Title Men

Vol. 2 JANUARY, 1923 No. 2

Meeting of Executive Committee and State Officers, February 9

Vice-President Wedthoff, Chairman of the Executive Committee, has issued an invitation to the Presidents and Secretaries of all State Associations to attend a joint meeting of them with the Executive Committee on the date above mentioned.

All state officers are urged to attend and come prepared to give ideas and suggestions for better and bigger work of the State and National Associations, and how they may better serve the Title profession.

Place of Meeting—La Salle Hotel, Chicago.

If you are planning to attend, please notify Chairman Wedthoff of your intention.

The work of the Association is made possible by the Sustaining Fund. The scope of its activities and the benefits given the profession are governed entirely by the funds available to carry on its program.

Contributions to this are voluntary, but great things could be accomplished if every member would help with some amount.

WHAT A TITLE POLICY SHOULD CONTAIN.

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

No outsider can tell a title company the form of contract it should adopt for insuring titles. No outsider should suggest to a title company the form of title policy it should adopt. It is not my purpose in this article to attempt either of these things. I shall have fully accomplished my aim if I open up a few avenues of thought to those charged with the duty of preparing forms of title policies.

There are four sources from which assistance may be obtained in the preparation of a title policy; one, present forms in use by title companies; two, testimonials of officers of title companies; three, construction by the courts of words and provisions which may be employed in title policies; and four, a study of the aim and purpose of title insurance. In examining the policies of some of the title companies it has occurred to me that they were compiled in much the same way as my company's first policy form was drafted. We obtained the title policies of practically all of the companies then engaged in insuring or guaranteeing titles, and from these forms compiled a title policy. I use the word "compiled" advisedly, for our policies were a compilation of the forms of the other companies. We incorporated every clause which was favorable to our company. We did not issue many of these policies. The public would not accept our product. I am now thoroughly satisfied that they were justified in their refusal to accept it.

It is never safe to follow the forms of any title company unless the officers of that company are asked if there are any changes they would like to make in their forms if they could do so without "shocking" their customers. When our company was preparing actively to insure titles I inspected the plants of a number of the larger title companies and discussed with their officers their forms and methods of doing business and asked

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for suggestions. The president of one of these companies advised me to adopt forms different from those used by his company. I asked him why they did not change their forms. He replied that they could not "shock" their customers; that the public had become familiar with their forms and would not take kindly to any change. Officers of other companies made similar recommendations, including suggestions that we adopt lines of procedure different from those their companies were following, and gave the same reasons.

I believe that the officers of practically every title company would like to make changes in their forms and in their methods of doing business if they could do so without "shocking" their customers. The experience of these men emphasizes the necessity of every title company which contemplates engaging in the guaranteeing and insuring of titles to "start right." When the business is once started, and the public has become accustomed to the name of the product adopted and the forms of the policies or guaranties it is not easy to make a change.

Court Decisions.

There are but few decisions construing title insurance. It was said by the Supreme Court of Washington in the case of Northwestern Title Insurance Company vs. State Insurance Commissioner, 188 Pac., 469:

"The court may take judicial notice of the fact observed by Vance, page 590: 'The thoroughness which characterizes the work of these companies (title insurance) is attested by the remarkably small number of cases involving title insurance that are to be found in the reports.'"

In the two articles on title insurance by F. C. Hackman, associate editor of the Lawyer and Banker, published in the May-June and July-August, 1920, numbers of that magazine, are collected, I believe, every decision on title insurance rendered by the courts of the United States. A study of these articles and the leading decisions cited therein will be of incalculable benefit to any one interested in any phase of title insurance.

Of course we are not limited to decisions construing title insurance in selecting words and provisions which have had a judicial interpretation. For instance, the word "insure" had been defined by courts long before title insurance was thought of. So have many other words and provisions which are or may be used in title insurance policies.

Unless history fails to repeat itself the trend of the decisions will be toward holding title companies to a more and more strict accountability. Whenever corporations enter the field of rendering a service for a consideration, and particularly any form of guaranty, the courts have brushed aside many of the rules governing like undertakings on the part of individuals and held such corporations liable almost in keeping with the general public's understanding of the service to be rendered them. Take, for instance, the history of the present holding as to liability of a surety company. The courts hold that the principles governing an individual surety do not apply to a corporation surety doing business for a premium. In Atlantic Trust Company vs. Laurinburg, 163 Federal, 690, U. S. Circuit Court of Appeals, says:

"The very reason for the existence of this kind of corporations, and the strongest argument put forward by them for patronage, is that the embarrassment and hardship growing out of individual suretyship that give application for this rule is by them taken away; that it is their business to take risks and expect losses. If, with their superior means and facilities, they are to be permitted to take the risks, but avoid the losses, by the rule of strictissimi juris we may expect the courts to be constantly engaged in hearing their technical objections to contracts prepared by themselves. It is right, therefore, to say to them that they must show injury done to them before they can ask to be relieved from contracts which they clamor to execute. In this case no injury, but benefit, came to this defendant from all the changes made, and from the town's guaranteeing the material order and advancing the money for the contracting company to advance and perform the work, and its exceptions because of these are groundless."

The courts of other states may not follow the California case of Lattin vs. Gillette, 30 Pac., 545, which holds that the liability of a corporation issuing a certificate of title is the same as that of an attorney who examines the records and gives an opinion or certificate as to the condition of a title. There is one court which has found a way to hold an abstract company liable for a loss discovered after the statute of limitations had run if calculated from the time of the delivery of the abstract. In the case of Hillock vs. Idaho Title and Trust Company, 126 Pac., 612, 42 L. R. A. (NS), 178, the Idaho Supreme Court says that in none of the long line of cases holding that the cause of action against an abstracter accrues when the work was done was the question raised that the cause of action arose because of a mistake; that the statute of that state (which is the same as in most of the states) provides in substance that the right of action for relief on the ground of fraud or mistake shall not be deemed to have accrued until the discovery by the aggrieved party of the fraud or mistake; that the liability of the abstract company was because of a mistake; and that the cause of action did not accrue until the discovery of the mistake.

There are two decisions, which, to my mind, show the trend of the courts along the line I suggest: One is the Missouri case of Purcell vs. Land Title Guarantee Company, 67 S. W., 726, which holds that, notwithstanding a provision in the contract that the guaranty was only as to the correctness of the certificate, the contract taken as a whole was a guaranty of the title. In answer to the contention that the cause of action accrued at the time of the delivery of the certificate and was controlled by the decisions of that court as to when an action accrued against an abstracter, the court said that, "the cause of action against the abstracter grew out of his negligence while the action here is on an indemnity and the rule as applied by the court is very different. * * *

"A contract of insurance is an indemnity, and it should not be contended that the cause of action accrued at the date of the policy, and not at the time of the loss. A guaranty is also an indemnity similar to that of insurance and is governed by the same rule. * * * We hold that, under the contract in suit, the breach did not occur until plaintiff's eviction."

The other is the Pennsylvania case of Foehrenbach vs. German-American Title & Trust Company, 66 Atl., 561, 12 L. R. A. (NS), 465, in contrast with the New York case of Kenerson vs. Title Guarantee etc. Co., 100 Misc. 723, 166 N. Y. S. 359. In the New York case the plaintiff was asking recovery of damages because of an omission from a title policy of reference to an order of the fire de-

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INTERESTING RESULT OF QUESTIONNAIRE.

The Oklahoma Association recently sent out a questionnaire, which with the answers hereto is shown below:

Recently a Questionnaire was sent out to all the members of the Association by our President, and I am giving you the questionnaire as follows, together with the ratio of answers, so that you may see the views of the abstracters of Oklahoma on these questions:

1. Are you in favor of raising the amount of the abstracters' bond to a minimum of $10,000.00?
2. Are you in favor of a graduated bond, say $10,000.00 for first 35,000 population and $5,000 for each additional 25,000 or major fraction?
3. Do you object to having a surety bond requirement?
4. Are you in favor of the requiring that each abstracter have a complete set of indexes to the record in the Recorder's office?
5. If it appears impossible to pass a law making the indexes a requirement, would you then favor a requirement that each abstracter furnish a certificate as to whether the abstract was compiled from his own index or solely from court house indexes?
6. Should an index requirement specify a minimum requirement of data carried, or be a general requirement?
7. Do you favor advocating any curative legislation, such as validating acknowledgment prior to a certain date?
8. Should every abstracter be required to pass an examination as to his moral and professional fitness?

QUESTIONS		ANSWERS
Numbers	Yes	No
1.	15	12
2.	16	7
3.	10	20
4.	28	0
5.	23	0
6.	Minimum—16	General—12
7.	25	2
8.	22	4

RULES OF OKLAHOMA CONTEST.

Many state associations have "best Abstract" contests at their annual conventions and it will therefore be interesting to note the following rules and method of grading as used in Oklahoma:

Rules Governing the Contest.

1. Entries in the contest must be made by members of the Association, whose current dues are paid.
2. Abstract must contain at least ten pages.
3. Abstract must contain at least one deed, one release, one assignment among the ten or more pages.
4. Abstract must make specific statement as to the taxes.
5. Abstract must be made in general to conform to the abstract made regularly by the company making the entry.
6. Cup to be given to the winner for the year following, and to become permanent property when won three times by the same contestant.
7. All entries to be submitted to place designated, ten days in advance of the first day of the convention.
8. Judges to be Title Examiners or Title Attorneys not engaged actively in the abstract business.
9. Judges to be named by the President, names not to be divulged to the Association.

Rules Governing the Grading of Abstracts.

1.	Method and manner of abstracting recorded instruments	25%
2.	Method and manner of abstracting Court Proceedings	20%
3.	Method and manner of arrangement of Abstract	15%
4.	Abstract Certificate	10%
5.	Caption Sheet	05%
6.	Accuracy	10%
7.	Neatness	10%
8.	Kind of Material used in making abstract	05%

PROCEEDINGS OF ILLINOIS CONVENTION OUT.

The report of the Fifteenth Annual Convention of the Illinois Abstracters Association has been printed in booklet form. Nothing could have been done to make it any more attractive and it is one of the neatest which has ever come to the editor's attention.

SOME THINGS EVERY STATE ASSOCIATION COULD DO.

Issue a bulletin as often as possible during the year. Only two or three times a year would be better than not at all.

Secure discounts from typewriter companies, etc., on equipment ordered through the Association.

Arrange with some good attorney friend to furnish digest of court decisions of interest and furnish this service to the membership.

Have your fiscal year start January 1.

Change your name to conform with that of the National Association, such as "The Oklahoma Association of Title Men."

Divide your state into districts, appoint a district captain and conduct a systematic, personal call membership campaign.

Have some rules and regulations for eligibility to membership.

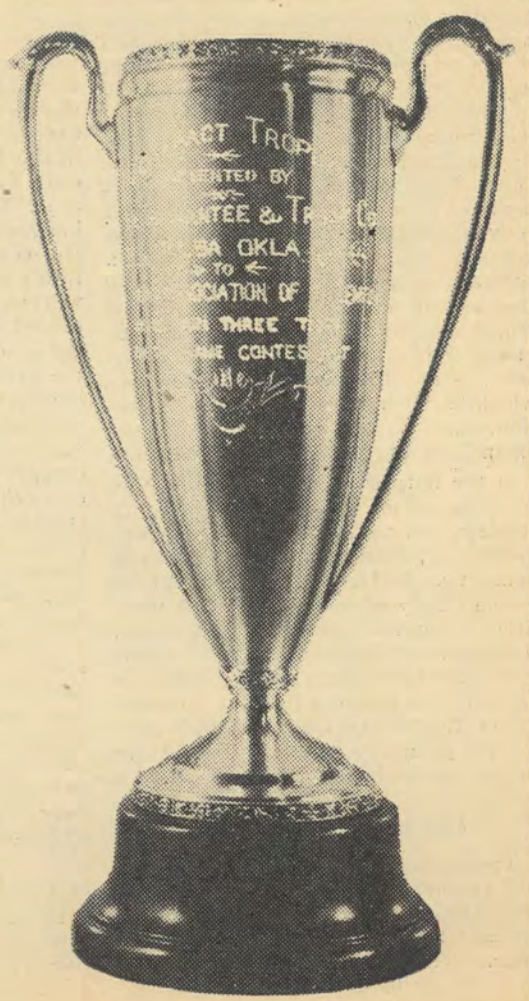
Let the public, large loan companies, etc., know it means better work and service to patronize a member of the Association.

Issue a directory of members, giving county, town, name of company, names of officers and manager and distribute to all loan company's real estate men —everyone who uses abstracts.

Cup presented to Oklahoma Association of Title Men by Title Guarantee Trust Co., Tulsa.

(Jim Woodford's Co.)

To be Awarded to Winner of Contest for Best Abstract at Oklahoma Association Convention, Oklahoma City, February 5 and 6.



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partment of New York requiring the installation of a wet sprinkler system, and the erection of fire escapes. Compliance was required with this order at a cost to the plaintiff of more than $7,000.00. Prior to the employment of the title company to examine and insure the title the plaintiff had entered into a contract with the owner of the property in which it was provided that she would purchase and take title to the premises irrespective of any violation of any orders or requirements existing or purporting to exist on the records of the fire department of the City of New York. The court held that the plaintiff could recover for failure of the title company to make an accurate certificate only if she was damaged by such inaccuracy; that the plaintiff was bound in any event to accept the title to the premises and she was not damaged by the alleged failure of the defendant, "for she is now in exactly the same position as if the defendant had certified the true facts." In the Pennsylvania case above cited the facts were that the plaintiff thought he owned the entire interest in a tract of land, and applied to the title company for insurance of his title. For a stated premium the insurance company issued its policy insuring the plaintiff that he owned the entire title. Later he was dispossessed of a half interest therein, based on claims existing at the time the title policy was issued. The lower court dismissed plaintiff's cause of action, saying, "This policy is not a guaranty of title, but a contract of indemnity. The plaintiff has lost nothing." On appeal the judgment was reversed, the court holding that the policy was a contract of indemnity in the sense that recovery could not be had until a loss actually occurred, but that it was a contract of guaranty when measuring the loss or damage which the insured might recover. This opinion contains one of the best definitions of title insurance, with statement of its purposes which has ever come under my observation, and I shall quote from it very extensively at the close of this article.

If the purpose of title insurance is to render a service only to one who is purchasing, loaning money on, or spending money on, property, then title companies may well insist that their contract is one purely of indemnity. But when title companies encourage present owners to have their titles examined and insured, and undertake for a consideration to examine and insure a title for a present owner, the title company should be held to be a guarantor, else it is not entitled to any premium for liability on such a policy.

Aim of Title Insurance.

There is no doubt but that the abstract and lawyers' opinion system does not meet the needs of the present day for the ascertainment of title in many sections. There is dissatisfaction in all parts of our land with the present system. The title men must frunish an improved method; they must furnish a better system or the people will devise a system which may relegate our business to the scrapheap. Title insurance is offered to meet this need. It is offe red to stem the tide of opposition to the American recording system. It is offered as a product better and superior to the Torrens system. It is claimed for title insurance that it is the full and complete complement of the American recording system. Such being the claims of its proponents and advocates it must measure up to these claims if it is to accomplish its purpose. If title insurance is to silence the Torrens advocate; if it is to measure up to the present-day needs of ascertainment of title, then it must truly insure, and when a loss occurs because of anything existing at the date of the policy and not excepted therefrom, or set out therein, the loss must be paid.

It is well for those now engaged in title insurance or those who contemplate entering that business, to make a study of other lines of insurance. It will be found that in practically all classes of insurance the first endeavor was to give the minimum of protection for the maximum of premium return, and that as long as such a policy was pursued that branch of the insurance business showed no growth. But whenever any branch of insurance adopted a simple form of contract, and the insured was truly given insurance, that business began to grow.

Title insurance differs from all other classes of insurance in that it covers past transactions, and the risk of loss is almost nil. A careful investigation has shown that the ratio of losses to insurance written by all of the title companies in the United States is less than twelve cents for each thousand dollars of insurance. The beginner in the title insurance business imagines all kinds of dangers. He sees risks which will bring calamity to his company; he sees one loss which will bankrupt his company. But we cannot do business in any line based on the exceptional case. We have to take the average condition. If we want the business to grow, if we want it to be successful, I believe we must cease hedging our policies about with all kinds of exceptions and conditions; we must make a straight, simple, easily understood contract. One of the aims of title insurance is to do away with examinations by lawyers. We must not then make the contract so complicated that only a lawyer can interpret it and understand it. I favor a contract consisting of an orderly statement such as any well posted title man would use in describing title insurance; doing away with stilted words, high-sounding phrases, and using plain Anglo-Saxon words of one syllable as far as possible, and if we can find one word, such, for instance, as "insures," which expresses what the company does, not to use "doth hereby insure and covenant," etc.

In conclusion, I believe that title insurance is going through the same formative period as that experienced by every other class of insurance, and that title insurance will "come into its own" when a simple form of contract is adopted, a contract which "tells the story" in such simple words that any layman will understand it; that title insurance is a contract of both guaranty and of indemnity; and that it is what the Pennsylvania Court defines it to be in the Foehrenbach case above cited; and I can do no better than to close with the following quotation from that opinion, viz.:

"The sole object of title insurance is to cover possibilities of loss through defects that may cloud or invalidate titles. It is for the assumption of what ever risk there may be in such connection that the premium is paid to, and accepted by, the company which issues the policy. Title insurance is not mere guesswork, nor is it a wager. It is based upon careful examination of the muniments of title, and the exercise of judgment by skilled conveyancers. The quality of a title is a matter of opinion, as to which even men learned in the law of real estate may differ. A policy of title insurance means the opinion of the company which issues it, as to the validity of the title, backed by an agreement to make that opinion good, in case it should prove to be mistaken, and loss should result in consequence to the insured.

* * *

"The risks of title insurance end where the risks of other kinds of insurance begin. Title insurance is designed to protect the insured, and save him harmless from any loss arising through defects, liens, or encumbrances, that may be in existence, affecting the title when the policy is issued. It does not protect against any claim arising after the issuance of the policy.

* * *

"Insurance carries with it the idea of protection against some risk. If there were no risk, there would be no cause for insurance."

ADVERTISEMENTS

PLANTS FOR SALE AND WANTED TO BUY: POSITIONS WANTED, ETC.

MAN with 10 years' experience in Wisconsin wants position.

ABSTRACTER and former county officer desires position and would be interested in acquiring interest in plant.

PARTY desires to purchase plant in Eastern Nebraska and South Dakota or Northwestern Iowa.

MAN with 20 years' experience in western irrigated sections wants position.

LADY, experienced abstracter, now in northern part of country, desires to locate in south or west.

LADY, experienced in all branches of abstract business and as office manager, wants position.

PURCHASER for plant in Colorado, Wyoming or other western state.

If interested in any of the above, write the Executive Secretary.