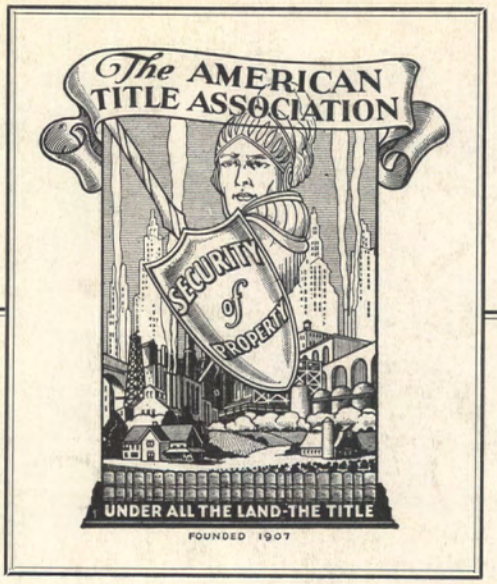

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Officers and Committees—1940

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5.	1911-12	George Vaughan	Fayetteville, Ark.
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16.	1922-23	Mark B. Brewer	Oklahoma City, Okla.
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25.	1931-32	James S. Johns	Pendleton, Ore.
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28.	1934-35	Benjamin J. Henley	San Francisco, Calif.
29.	1935-36	Henry R. Robins	Philadelphia, Pa.
30.	1936-37	McCune Gill	St. Louis, Mo.
31.	1937-38	William Gill	Oklahoma City, Okla.
32.	1938-39	Porter Bruck	Los Angeles, Calif.

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— *of the* —

AMERICAN TITLE ASSOCIATION

August 21, 22, 23 and 24, 1939 — — San Francisco, California

Report of Chairman of Abstracters Section

JOHN W. DOZIER
Secretary, Columbian Abstract Co., Topeka, Kansas

The Abstracters Section began this last year with a very sad experience. We elected as our Chairman the late C. B. Vardeman of Kansas City, Missouri, who shortly after the beginning of the year passed on to his reward. Mr. Vardeman was a man of very strong character and many abilities, and I am sure had he lived he would have been one of our outstanding Chairmen.

Shortly after Mr. Vardeman's death I was notified that I was to carry on as Active Chairman, and not having had the opportunity to discuss Association matters with the late Chairman I was without knowledge of his program. Consequently I sent out a questionnaire to all the Secretaries of the various State Associations, which questions were based primarily on the 14 Point Program offered to this Section by Mr. Cill of Oklahoma City during his term as Chairman. We received 19 answers and out of the 19 only two states have completed the entire program. Many points of the program have been completed by almost all of the states. Yet one point which to me seems to be one of the most important has been sadly neglected, *and that is the appointment and functioning of Public Relations Committees.* Only four of the states have such committees. In this connection I proposed to the Board of Governors of the Association and of this Section the thought of possibly a National contest connected with various State contests to offer a prize for the best address prepared and delivered before any group by a member of the State and National Associations. Through such a contest we would partly solve the problem of public relations and in addition gather some material in the way of prepared addresses to send out among our membership. I received very favorable reaction to such a program. However, as was suggested in some of the replies it would be a difficult undertaking, and in view of the fact that we had only about three months before this Convention to complete such a program, and those months being summer months when most local civic clubs, real estate boards, etc., adjourned for the season, we felt that it would be an inopportune time to attempt it.

Improve Public Relations

I would like to recommend to the succeeding officers of this Section that some thought be given to such a program or some program touching upon public relations. Our business is in desperate need of a better public understanding. It is inexcusable that a service as important as ours is rarely, if ever sold, but is used principally because it is required, and seldom understood by the party who has to pay the bill. We will rid ourselves of many attacks and other ills that beset us when we give the public a better understanding of the service we render.

JOHN W. DOZIER
Topeka, Kansas
Secretary, Columbian Abstract Co.

During the past few months we have attempted further to find some solution to the ever present problem of the Abstracter to avail himself of some protection against unavoidable errors which result in losses. We have contacted Scarborough & Company of Chicago who has given some thought to offering some kind of insurance of this nature although they have not definitely decided on any definite program at this time. I have a recent letter in this connection which I will read at a later time on this program.

Due to the time of year in which this Convention is being held there have been very few State Conventions and we have not had an opportunity to offer much to the State Association through Conventions.

During the year we have had very few complaints regarding the service of the Abstracter. Although they are few they are always a disturbing problem for the officers of the association as they are usually the cause of trouble for the many others who render the best of service. We also encountered some adverse legislation in a few states during the early part of this year, and I am happy to report that in every instance that has come to my attention the State Associations have been successful in defeating them. Some attempts were made to pass legislation offered by the State Associations most of which were unsuccessful for one cause or another.

The proper kind of legislation for the Abstracter is a problem that is many times asked of the National officers. However, in every such instance the Association has referred it back to the State organizations because it is a problem that can best be solved by the States, each of whom operate under different circumstances. I would recommend, however, that the State Associations have a legislative committee to keep in touch with legislative matters of other states as well as their own so

that they may be prepared to offer legislation if the State Association is agreed on such a program, or to resist unwarranted and unjust legislation which may be offered at any session of the various legislatures.

In going through my correspondence file *preparatory* to writing this report, I found much had accumulated during the few months of my experience as Acting Chairman. Most of it was individual inquiries for information or assistance in individual matters, which I am happy to say that in some instances I was able to be of assistance. I am sure that at all times you will find the Officers of this Section and all National Officers ready and willing to give you assistance or advice on any matter that is within their possibilities.

I hope that in the coming year you will give your support and assistance to the new Officers that will be elected at this Convention, and that you will feel free to call on them for advice and assistance in such matters with which they may be conversant.

Abstracters' License Laws

CLAUDE B. WHITE

President, Jefferson County Abstract, Real Estate and Investment Company, Golden, Colorado

I notice my assignment is "Abstracters' License Laws," which is a rather broad subject for me as I am only familiar with the Colorado Abstracters' law. This law was passed by the Colorado Legislature in 1929 and has been in operation now practically ten years. This document is not tediously long and perhaps it would be interesting to a great many in this meeting to have it read.

I shall proceed to read a copy of the Colorado law and perhaps representatives from some states who are contemplating legislation along this line, will wish to take notes at some certain points. If such is the case and anyone wishes to interrupt for the purpose of asking questions, I shall be glad to answer any questions which I am able to answer. Of course, I realize that my batting average will be low when it comes to answering questions.

AN ACT . . .

To Regulate and License Abstracters of Real Estate Titles; to Create an Abstracters' Board; to Create an Abstracters' License Fund, and Providing Penalties for the Violations Hereof.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF COLORADO:

SECTION 1. It shall be unlawful for any person, firm, partnership, association or corporation from and after July 1, 1929, to engage or continue in the business of making, compiling or selling abstracts of title to real estate, without first obtaining a license from the Abstracters' Board of Examiners hereinafer provided for.

SECTION 2. There is hereby created a board of three members, to be appointed by the Governor, which shall be known as the Abstracters' Board of Examiners. This board shall consist of individuals who have been actively engaged in the making of abstracts to real estate titles in the State of Colorado for a period of five years prior to their appointment. The Governor shall appoint one member for a term of two years, one member for a term of four years and one member for a term of six years. Thereafter, upon the expiration of the term of office of any member, the Governor shall appoint a member for the term of six years; vacancies on said board caused by death, resignation or otherwise shall be filled by appointment of the Governor.

SECTION 3. Immediately after its appointment said board shall organize by the election of a chairman and secretary-treasurer. It may adopt such rules and regulations as it shall deem necessary for the proper administration of its powers and duties and the carrying out of the purposes of this act; the board shall have a seal and shall have power to compel the attendance of witnesses; the chairman and secretary-treasurer of said board shall have the power to administer oaths; each member of said board shall receive their actual expenses while absent from home upon business connected with the board.

CLAUDE WHITE

Golden, Colorado

Executive Committee, Abstracters Section

Manager, Jefferson Co. Abstract, Real Estate & Investment Co.

SECTION 4. The annual fee for each abstracter's license shall be $15.00. Such fee shall accompany the application for such license and shall be returned to the applicant if the license be not issued. Every license issued under the provisions of this act shall expire on the first day of July of each year. In the absence of any reason or condition which might warrant the refusal of the granting of a new license, the board shall issue a new license each year upon receipt of a written request of the applicant with the annual fee therefor. In case of a firm, partnership, association or corporation, such license shall issue to such firm, partnership, association or corporation as such and it shall not be necessary for any individual member or employee of such firm, partnership, association or corporation to obtain such license. No license herein provided for, however, shall be issued until the bond hereinafter provided for be filed and approved.

SECTION 5. Every person, firm, partnership, association or corporation who is, upon the date this act goes into effect, actively engaged in the business of making, compiling and selling abstracts of title to real estate and has been so engaged for a period of at least two years in the State of Colorado, prior to the date that this act goes into effect, shall be issued such license upon the filing of bond and payment of the fee provided without further requirement or examination. Such board shall have the power to make all necessary investigations and requirements to satisfy itself that such person, firm, partnership, association or corporation comes within the provisions of this section.

SECTION 6. No license shall be issued to any such person, firm, partnership, association or corporation until the applicant file with the board a bond conditioned for the payment by such applicant of any and all actual damages that may be sustained by or accrue to any person having a cause of action by reason of or on account of any error, deficiency or mistake in any abstract or continuation thereof made and issued by such applicant. Such bond shall be satisfactory to the board as to form, sufficiency of amount and sufficiency of surety, and no such license shall issue until such bond has been approved by said board. Such bond shall be in the minimum penal sum of five thousand dollars. If the total population of all

counties in which such applicant does business exceeds twenty-five thousand and does not exceed fifty thousand such penal sum shall be ten thousand dollars. If such total population exceeds fifty thousand then such penal sum shall be fifteen thousand dollars. Such popuation shall be determined by the official federal census taken last prior to the filing of such bond. If such bond be in full force and effect at the time such applicant applies for a renewal license then the board at its discretion may not require a new bond to be filed. No personal bonds shall be accepted under the provisions of this section. Any license issued under the provision of this act shall be in a form approved by such board except that such form of license shall recite that such bond has been duly filed and approved.

SECTION 7. For every county in which such licensee does business, every abstracter licensed under this act shall have for use in the business of compiling abstracts of title to real estate a set of abstract books or other system of indexes or records showing in a brief, comprehensive form all instruments of record or on file affecting real estate in the office of the recorder of deeds as indicated by the reception book therein. And for that purpose such licensee shall have access to any of the records in the public offices of this state or any county thereof, such access to be had during the ordinary office hours.

SECTION 8. Any person, firm, partnership, association or corporation desiring to obtain a license under the provision of this act and not able to qualify under section five hereof, may obtain such license by complying with the provisions of this act and also by passing a satisfactory examination conducted by such Abstracters' Board of Examiners. The fee for such examination shall be the sum of $25.00 to be paid to said board at the time application is made for such examination. In the case of a firm, partnership, association or corporation, such examination need only be taken by the active manager or one of the active managers of such firm, partnership, association or corporation. If in the opinion of the board such applicant does not pass a satisfactory examination a license shall be refused and said fee of $25.00 shall be retained by the board. Such applicant failing to pass such examination may upon payment of an additional examination fee of $25.00 again apply and take such examination after a period of six months has elapsed from the date of such last examination.

SECTION 9. The board may at any time in its discretion revoke a license issued hereunder for a violation of the provisions of this act. Such license may also be revoked upon the conviction of the holder thereof of a crime, or upon the board finding such holder guilty of habitual carelessness, habitual inattention to business or fraudulent practices. No such license may be revoked except upon 30 days' notice to the licensee and after a full and complete hearing before such board at which time such licensee may appear with witnesses and give testimony. Such board may also at any time upon giving thirty days' notice require any licensee to give a new or additional bond and to show cause why any bond shall not be held and declared insufficient and invalid. And in the event such new or additional bond so required be not given the board may revoke the license of such licensee.

SECTION 10. The decision of the board in revoking a license issued under the provisions of this act shall be subject to review; and all licensee feeling aggrieved by such decision may within ten days from the date of such decision

RALPH C. BECKER

St. Louis, Missouri

Chairman, National Underwriters, American Title Association

President, Lawyers' Title Company of Missouri

appeal therefrom to the district court in the county where such licensee resides or has a place of business, by serving upon any member of said board a notice of such appeal and a demand in writing for a certified transcript of all the papers filed and all actions of the board in the proceedings resulting in such decision. Thereupon, the board shall within thirty days thereafter, make and certify such transcript and the appellant shall within five days after receiving such transcript file the same and the notice of appeal with the clerk of such district court. Upon the hearing of such appeal which shall be tried *de novo*, the burden of proof shall be upon the appellant and the court shall receive and consider any pertinent evidence, oral or documentary, concerning the decision of the board from which such appeal is taken. Pending all appeals hereunder, such license shall stand revoked unless the appellant shall file with the clerk of such district court a good and sufficient bond to be approved by the judge or one of the judges of such court and in an amount to be fixed by such judge, conditioned upon the performance of all obligations of such appellant as such licensee.

SECTION 11. Any district court may upon applications of said board issue an order compelling the attendance and testimony of witnesses at any hearing before such board and compelling the productions of books, papers or records.

SECTION 12. All fees and charges collected under this act, shall be paid by the board within a period of 30 days after receipt of same together with a detailed statement thereof to the treasurer of the State of Colorado who shall place 25 per cent of such sums remitted to the credit of the general fund of the State and 75 per cent to the credit of the Abstracter's License Fund which fund is hereby expressly created. All moneys so paid into the State Treasury and credited to said fund, or so much thereof as may be needed, are hereby appropriated to the use of said board under its direction for the payment of all expenses and expenditures incurred under the provisions of this act, which expenses shall include expense of necessary clerk hire and fees and mileage of witnesses called to testify before the board. The State Auditor shall draw warrants against said fund, upon request of said board, for such expenses and expenditures and the State Treasurer shall pay the same out of said fund. No expenditures under this act shall be made except out of moneys in such fund. Any unexpended moneys remaining in such fund at the end of each fiscal year shall be paid into and become a part of the general fund.

SECTION 13. Any licensee under the provisions of this act shall provide a seal, which seal shall have stamped thereon the name of such licensee and shall deposit with said board an impression of such seal and the names of all persons authorized to sign on behalf of such licensee, certificates to abstracts.

SECTION 14. Any person, firm, partnership, association or corporation desiring to engage in the business of making abstracts of title to real estate to lands in any county where there is no abstracter licensed under the provisions of this act, may be issued a license upon the compliance with all the provisions of this act even though such person, firm, partnership, association or corporation does not at the time of making application for such license be provided with such abstract books or indexes as required under section 7 hereof, provided, however, that the provisions of this act shall not apply to county clerks and recorders in counties where there is no abstracter licensed under the provisions of this act.

SECTION 15. Any person, firm, partnership, association or corporation violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof

shall be punished by a fine, not exceeding $100.00 nor less than $25.00 for each such offense.

SECTION 16. This act shall not apply to any county of the State of Colorado which owns and operates its own abstracting plant.

As I stated before, our law has been in operation practically ten years and we feel that we took a great step forward with the enactment of this law. We have had no occasion to prosecute under this law, in fact, have had no difficult except in one or two instances when an appeal was made to our Board by some aggrieved person, in which cases, the difficulties were worked out by arbitration. Any suggestions made to any Abstracter in our State by the Board have always been taken with good grace and there never has arisen any ill feelings, to my knowledge, caused by differences of opinion between the individual Abstracter and the Abstracters' Board.

Revocation of License

You will note that a provision is made in this law for revoking the license of any Abstracter for violation of the provisions of the law. Just what power or powers this Board might have should it be called upon to take drastic action, I do not know. However, like all other laws, it produces a certain psycological effect; in other words, if anyone wilfully violates this law, they are subject to the punishment as provided in said law. An Abstracter with this thought in mind, would not know what might be the result if drastic action were taken and therefore, would not feel safe in experimenting.

Our license law has brought the membership of our State Association closer together and undoubtedly has a tendency to create more respect for our profession among the attorneys and real estate dealers, who of course, are our best customers. They feel that they are not dealing with individuals entirely and also feel that the Abstracter is necessarily a little more responsible by reason of the law which makes it compulsory for him to have a license and give a bond.

Our law has not been amended or changed in any way nor do I know of any changes which would be desirable, however, we realize that it is not perfect. The policy of our State Association has always been that of not asking the Legislature to tamper with the Abstracters' law for the reason that if they started tampering, some of those who are not really friendly to us would probably ask for further tampering and eventually, our law would lose its potency or perhaps be amended in such a way as to work an injustice on the Abstracter.

On October 1, 1937, the Abstracters in Denver and those in the Counties surrounding Denver, raised prices. This raise was quite drastic and brought a storm of protest from such powerful organizations as the Real Estate Exchange and others. I have always felt that had we not been organized and protected by law to the extent of being required to pass an examination and have a complete set of records, our raise in prices would not have withstood the storm. However, this feeling of resentment has subsided until now we seldom contact it.

No doubt while our law operates successfully in Colorado, the same law would not operate so well in some states. As conditions and practices are different, it would be my judgment that any state contemplating the passage of an Abstracters' law, should carefully study conditions and practices in that state and not copy the law from any other state too literally.

Should the Small Community Abstracter Incorporate?

J. C. CREEL, JR.
President, Kansas Title Association; Owner, C. A. Wilkin & Company, Parsons, Kansas

The subject, "Should the Small Community Abstracter Incorporate?" reminds me of the fellow who went out to play golf. He very carefully teed up his ball, took a firm stance and swung hard. He missed. He got back, swung again and missed. He tried it again, with the same luck. Shaking his head, he turned to the friend with whom he was playing and said, "this is a tough course."

Now to get the opinion of the small community abstracter, your program committee went right down to the grass roots. No half way measures with them. They went to the end of the trail, down to the short grass country of southeast Kansas, where it corners with Missouri, Arkansas and Oklahoma. That's down in the neighborhood of Grandpa Snazzy and Bill Gill.

They found me back there making up a shirt-tail abstract in fancy form, with many a flourish of that old quill pen. I told them that I didn't know anything about corporations or much about abstracting for that matter, but they said that it wouldn't make any difference, because most of you wouldn't either; and that those that did would be thinking about going to see, or having seen Sally Rand and her gals, or something.

It's a funny world we live in. If a man gets money, he's a grafter. If he keeps it, he's a capitalist. If he spends it, he's a playboy. If he doesn't get it, he's a ne'er do well. If he doesn't try to get it, he lacks ambition. If he gets it without working for it, he's a parasite. And if he accumulates it by a lifetime of hard work, he's a universal target.

So, on the assumption that you are all willing to be universal targets, and in the hope that these remarks may aid you in so doing, let us first consider certain accepted economic factors having to do with the individual proprietorship and the partnership, as compared to the corporate type of organization or operation.

Individual Proprietorship

The individual proprietorship has several advantages that make it a popular type of business organization. The individual proprietor can ordinarily undertake almost any kind of business enterprise. Outside of those business activities which are assumed by the government, are forbidden entirely or are permitted by license only, the individual is free to enter into any business enterprise, conduct it as long as he likes and retire from it whenever he has completed all the contracts that he has entered into. The ability of the individual to enter into business without formality, and to retire in the same way, is an important factor in promoting business enterprise and in keeping business activity evenly developed.

The individual proprietor, having no one but himself to consult, can act in emergencies with greater speed than the more complex forms of organizations. He may take advantage of business opportunities that may not be possible in the case of a partnership or corporation. And for the same reason he may also avoid certain hazards that ordinarily surround, and which may destroy business enterprise. However, the ability to act promptly is not an unmixed business blessing. Hasty action may be the direct cause of business failure. Where deliberation and the combined judgment of several men is desirable, the individual may be at a disadvantage. The individual then, having the power to act on his own responsibility, must be a man of sound business judgment, in order to maintain his business existence in competition with organizations that are able to use the combined ability and judgment of several men.

The individual proprietor can keep his own affairs to himself. While the

value of the element of secrecy may be of questioned importance as the rules of business become better known, still the more competitors know of the plans and operation of the business, the less are the chances of greatest success. And since every business has its own particular risks, and those who undertake individual operation reap the profits, it must follow that those same parties must suffer the natural penalties that result from unsuccessful management. Individuals prosper who manage their business well; those who do not soon fail. The law of the survival of the fittest applies with relentless certainty to individual business enterprise.

There are, however, several particulars in which the individual may fail to provide successful business organization. Owing to the demands of a large organization, a large investment and large scale production, the capital at the command of any one individual may be insufficient for the construction or purchase and operation of an adequate plant; making necessary that several individuals combine their capital. In like manner, large organizations often require business judgment, skill and ability beyond the capacity of any one man to provide.

Other disadvantages are that the individual bears alone the responsibility for the success or failure of the business, and is thus limited in his activities. As his business grows it may be difficult to induce men that he has trained and developed to remain with him, as they can expect no part of the ownership.

Perpetuation

And there is the matter of perpetuation in case of the owner's death. Many difficulties may arise from this occurrance, that may threaten the life of the business. The market value of the business may be seriously affected, because of the necessity of finding a satisfactory successor. This may be particularly true with a highly technical business such as ours.

Often too, the one man business may be restricted in its growth. Lacking the counsel of others interested in the business, it may suffer from the lack of attention to details necessary to growth and expansion.

However, individual proprietorship means undivided control, and this appeals to a large number who look forward to an independent career.

The Partnership

The most simple form of organization for combining the skill and capital of two or more men is the partnership. The partnership has been defined as "the result of a contract between two or more parties to combine their money, property, skill and labor for the prosecution of some lawful business for profit." Each of the partners ordinarily has equal rights. In the case of the dormant or special partner, these rights may be limited by agreement. In the partnership, each partner is agent for the others. The management is in the control of the several members, acting jointly and severally. Since each of the members has equal rights, a partnership business cannot be conducted by a selected board of directors.

A partnership is terminated by the death or retirement of any one partner, and thus is always an organization of limited duration. A partner cannot sell his interest to a third party, without consent of the other partners. The partnership is not recognized in legal theory as a business unit. In case of litigation, suits are brought against one or more of the individual partners, and not against the firm itself. All property of any partner may be attached

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and sold to pay the debts of the partnership. In case of insolvency, each partner is personally liable for all the partnership debts.

Good Faith

In the partnership much must depend upon the good faith of the parties to the partnership agreement. And owing to the right of each member of the partnership to take part in the management of the business, this form of organization is best used in those businesses of small size where only a few men cooperate. The credit of the partnership being limited to the capital or credit of the individual partners, its operations must be confined to those fields where small plants and small establishments operate with the greatest economy.

For larger undertakings, those which require a larger investment, it appears that the corporate form of organization is better adapted.

The Corporation

The corporation combines the best features of the individual proprietorship and the partnership. It is an individual from the business and legal point of view; and yet it may be composed of a group of individuals, whose capital and skill have been united into one organization.

According to Blackstone, "the corporation is an artificial person created for preserving in perpetual succession certain rights which, being conferred on natural persons only, would fail in the process of time."

Chief Justice Marshall, in the case Marshall, Dartmouth College vs. Woodward, 4 Wheat 518, defines a corporation as: "A corporation is an artificial being, invisible, intangible, and existing only in contemplation of law. Being the mere creature of law, it possesses only those properties which the charter of its existence confers upon it, either expressly or as incidental to its very existence. These are such as are supposed best calculated to effect the object for which it was created. Among the most important are immortality, and, if the expression may be allowed, individuality; properties by which a perpetual succession of many persons are considered as the same, and may act as a single individual. They enable a corporation to manage its own affairs, and to hold property without the perplexing intricacies, the hazardous and endless necessity, or perpetual conveyances for the purpose of transmitting it from hand to hand."

The general idea is that of an artificial personality or legal entity, making the corporation an abstract, artificial creature of the law, entirely disassociated from the human beings that organized it.

The advantages resulting from incorporation are limitation of liability of the individual stockholder, permanence of the corporate existence, transferability of rights in the corporation, and its centralized control. In addition, it has the advantage of great flexibility in the number of those interested or participating, and in the amount of capital employed. A corporation can be formed in many states, having as few as three stockholders, or it may have any number. Some states, I believe, permit incorporation with only one stockholder.

Owing to its flexibility in numbers, the corporation may have either a small capital or a large capital, according to the nature of the business that it is formed to operate. It may compete with the individual and the partnership in its economy in the use of capital, or it may comprise a sufficient number of people to gather together any required amount of capital.

A corporation, composed as it is by one or more stockholders, who are usually liable only for their individual investment, has greater appeal to investors, and its perpetuity of existing safeguards the future of the business.

Directors

The directors, if interested as owners, naturally take a keen personal interest in the corporation's affairs, and each one is more or less familiar with the

business. In theory, at least one is fitted to take over the management whenever necessity demands it. A corporation need never stop because of the passing of the executive. It may continue as before with a duly appointed successor in charge. In this sense it is subject to none of the limitations of the partnership or individual operation.

In contrast with the advantages of the corporation, there are certain disadvantages that necessarily belong to this form of organization. As the corporation is a creature of the state, it is usual to charge certain fees for incorporation of a business enterprise. The fees charged vary in different states, from a merely nominal amount to an amount that may constitute a tax upon the business. Most states also charge an annual license fee, usually small in amount, which must be paid in order that the corporation may continue in business. In addition to fees for incorporation and for continued existence, some states provide a special form of taxation for corporations, and thus discriminate against this form of organization, as compared to the individual and the partnership.

The states usually require corporations to make reports to the secretary of state or some other officer, showing their financial condition and other details in regard to the organization. In most cases these reports may be prepared directly from the annual statement.

The credit of the corporation depends entirely upon its capital and its business. The credit of the individual depends not upon the financial strength of the business, but upon the individual's own resources. The credit of the partnership is dependent upon the entire resources of all the partners combined. Consequently, in comparison with these forms of organization, the small corporation may be unable to extend its credit to the extent that is possible in the case of the individual or partnership. While this limitation of credit is, as a whole desirable, it may be a disadvantage to individually owned corporations.

And finally, corporations have been found to be a convenient vehicle for the imposition of taxes of a myriad and substantial nature, which will be enumerated later in this discussion.

We now get down to the case of the small community abstracter. If an individual, one particular advantage of that type of operation is the matter of exemptions.

Let us see to what extent, if any, the books used by an abstracter in his business are exempt from forced sale on execution. We find that it is entirely a matter of local law and statutory construction. In those states where the statutes exempt the necessary tools and instruments of "any person" used in his trade or business, or by other general terms includes all kinds of occupations and the means whereby such occupations are pursued, the books of an abstracter will be exempt.

In Kansas we find that the law exempts "The necessary tools and instruments of any mechanic, miner or other person, used and kept for the purpose of carrying on his trade or business, and, in addition thereto, stock in trade, the library, implements, and office furniture of any professional man."

An interesting interpretation at point is that of Davidson vs. Sechrist, 28 Kansas 232, wherein the Supreme Court held: "Exemption: Instruments. A resident of Kansas, not married and not the head of a family, carried on as his sole business that of "an insurance agent and abstracter of titles," and in doing so used the following articles of property: "one iron safe, and one set of abstracts, and one cabinet and table." Held that, under subdivision 3 of Section 4 of the exemption laws the abovementioned articles are "instruments" within the meaning of said subdivision 3, and are exempt from execution. This was an action of replevin, brought by W. T. Davidson to recover certain goods and chattels claimed by him, but which had been taken in execution by the defendants. The sole question involved is whether such goods and chattels were exempt from the execution levied upon them.

We think the property in controversy is exempt from execution under the 3rd subdivision of the foregoing section, as being tools and instruments used by the owner in carrying on his business. As often stated by this court, the exemption laws must receive a liberal construction for the purpose of carrying out their object and design, and one of the main objects of exemption laws is that every person shall have the means of carrying on some useful business and thereby of obtaining an honest livelihood. If the property in the present case is not exempt, then the plaintiff will be stripped of all means of carrying on his business, and of thereby procuring a livelihood, and will be compelled to seek some other mode of obtaining a subsistence. This would not be in accordance with the beneficial design of the exemption laws. The judgment of the court below will be reversed, with judgment in favor of the plaintiff." All the justices concurred.

On the other hand, in those states where the exemption privilege is specifically confined to certain classes of occupations, unless the business of abstracting distinctly falls within one of the enumerated classes, the books used in such business are not distinguishable from other non-exempt property, and may be seized and sold to satisfy a judgment against the owner. (Cited are: Tyler vs. Coulthard 95 Iowa 705; Bank vs. Abstract Co. 15 Washington 487.)

However, in order to secure the stated advantages of corporate operation, let's say that I, as an average small community abstracter in an average abstract state, should determine to incorporate my business.

Kansas has just this year adopted a new General Corporation Code, which I understand to be similar to the corporation codes of a majority of the states.

In Kansas we find that the code provides that any number of natural persons, not less than three, may associate to establish a corporation for the transaction of any lawful business, other than the practice of any learned profession, or to engage in agriculture.

The code provides that the business of such corporation shall be managed by a board of directors, consisting of not less than three persons; that the directors need not be stockholders unless the articles of incorporation so require, and that a majority of the directors shall constitute a quorum. The board of directors may, by majority resolution, create or designate various committees, which committees shall: (1) consist of two or more of the directors, and (2) have and exercise the powers of the board in the management of the business, and (3) have power to authorize the seal of the corporation to be affixed to all papers which may require it.

A Kansas corporation has the power to issue one or more classes of stock, and one or more series of stock within any class thereof. Such stock may be with or without par value, with such voting powers, full or limited, or without voting powers, and in such series and with such designations, preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions as are stated in the articles of incorporation or provided in the resolution providing for the issuance of such stock.

The articles of incorporation shall include the location and nature of the business, the number of shares and classes of stock, an express grant of such authority to be given the board of directors, the minimum capital which shall not be less than $1,000.00, the duration of its corporate existence which shall not exceed fifty years, and the number of directors.

The articles of incorporation may set out whether the private property of the stockholder shall be subject to the payment of corporate debts; provisions creating, defining, limiting and regulating the powers of the corporation; provisions limiting or denying to the stockholders the preemptive right to subscribe to any or all additional issues of stock or classes thereof; a provision that no stockholder shall own, or vote as owner or by proxy, or both, to exceed a certain per cent of the capital stock; a provision reserving to the corporation and existing stockholders the right to purchase or acquire the stock of a selling stockholder before sale to a non stockholder; and the manner of adoption, alteration and repeal of the by-laws.

The articles shall be signed and acknowledged by all incorporators, and filed in the office of the secretary of state, who shall furnish a certified copy

under seal, and this copy shall be recorded in the office of the Register of Deeds of the county where the registered office of the corporation is located.

A fee of $25.00, known as an application fee, shall be paid to the secretary of state on filing of the articles of incorporation; and also a fee of $2.50 for filing and recording the articles of incorporation.

A fee of one-tenth of one per cent of the authorized capital, with a $10.00 minimum, and known as a Capitalization fee, shall be paid to the secretary of state, on filing of the articles of incorporation.

An annual report of each corporation must be filed with the secretary of state, on or before March 31 of each year, showing the condition of the corporation at the close of business on the 31st day of December preceding. These reports show a summary of the corporate set up, a statement of condition, the authorized capital and the amount paid up, and a list of the stockholders and their addresses. Fees for this report are $10.00 wherein the paid up capital does not exceed $10,000.00; $25.00 for paid up capital to $25,000.00; $50.00 for capital up to $50,000.00, etc.

With respect to taxation in Kansas we find that "all property at its true value in money" must be listed for taxation, and with respect to the taxation of corporate stock, we find the requirement that the full amount of stock paid in and remaining as capital stock, shall be listed at its true value in money. Such stock shall be taxed as other personal property, provided however, that the amount of personal property owned and listed separately for taxation, shall be deducted from the amount of such capital stock.

As I now have two title plants in Labette County, which are listed for taxation at $1,995.00 for the two, and on which I pay an annual tax of $92.38, it follows that were I to incorporate and continue to return my plants separately, that my taxation locally would be increased by the amount of corporate assets that were set up.

The necessity of a balance sheet showing for corporations, usually results in the payment of a higher relative local tax, as the property of an individual is not subjected to the same scrutiny; statements of assets and liabilities not being required of them.

Corporate Taxes

Let us now consider the Federal Corporation tax rates. We find that under the new 1939 act, effective Jan. 1, 1940, that a rate of 12½% applies to income of $5,000 or less, 14% on the next $15,000 and 16% on the next $5,000. If the net income is over $25,000 a flat rate of 18% applies. There are no exemptions.

And in this connection, if any might consider that corporate profits could be paid out in salaries and thus escape these rates, it has been held that the salaries paid must be reasonable for the business and services performed, and that any excess over a reasonable salary may be considered as dividends and taxed accordingly.

The individual income tax rates begin at 4% for the first $4,000, and 8% on all income in excess thereof. The surtax begins at $4,000, with 4% tax on the first $2,000 of income above $4,000 and graduates up to 75%. The exemption of $2,500 for the married individual is continued, with additional exemption for dependent children.

The Federal Capital stock tax provides that for each year ending June 30, beginning with the year ending June 30, 1939, there shall be imposed upon every domestic corporation, an excise tax of $1.00 for each $1,000 of the adjusted declared value of its capital stock. The adjusted declared value shall be determined with respect to

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three year periods, beginning with the year ending June 30, 1938 and each third year thereafter.

In addition, an Excess Profits Tax is imposed upon the net income for the taxable year on excess profits equal to the sum of 6% of the net income that is in excess of 10% and not in excess of 15%, and 12% of the net income in excess of 15% of the adjusted declared value.

Title VIII of the Social Security Act requires a 2% tax on all employees wages paid, of which the employer pays 1% and deducts 1% from the employee's salary. This tax is payable quarterly, and is the same in the case of the individual employer and with the corporation. These rates have recently been continued to January 1. 1943 and apply to salaries up to $3,000 per year.

As an individual, I am not now required to pay this tax on my income. However, if I were to incorporate, I would then become an employee, and both my salary and the business would then be subject to the additional tax.

Social Security Act

Title IX of the Social Security Act imposes a uniform tax on employers of eight or more persons, certain types of employment being exempted. The tax is at the rate of 2.7% of total wages paid, and may not be deducted from the wages of the employees. Employees need not work full time to require employer compliance, nor does a person have to work a full day to be counted as an employee, the rule being eight or more workers in each of 20 days within the calendar year, each day being in a different calendar week. Thus an employer usually employing less than eight workers but always employing eight on Saturday, would be subject to the act at the end of the first 20 weeks of the year.

While this act would not affect the average abstracter, it is mentioned here for the reason that if he should incorporate, and elect members of his family, other than employees, to various offices, all officers would be considered as employees, in addition to the regular and part time employees, for the purpose of the act.

Income Tax—State

I believe that about half the states have Income Tax Laws. In Kansas these rates apply as follows: Corporations shall pay annually a tax of 2% on the entire net income, derived from property located and business transacted within the state during the taxable year. Individual income tax rates begin at 1% for all income up to $2,000, 2% on amounts from $2,000 to $3,000, 2½% on amounts from $3,000 to $5,000, 3% on amounts from $5,000 to $7,000 and 4% on all income over $7,000. Individual exemptions are $1,500 for the head of a family and $200 each for dependents.

Of no legal status, but worthy of consideration, as it refers to the small community abstracter, is the question of a possible abstract error that involved a considerable sum, one that the abstracter might have trouble in satisfying promptly and one that might give rise to an action for damages.

I will leave to your own experience and opinion the relative consideration that would be given to you, the defendant, if you appeared as an individual or if you appeared for a corporation.

Now what do those other than abstracters think about this question. I always like to get the other fellow's viewpoint, as it may be more important than my own, particularly the viewpoint of a customer.

I didn't attempt to get the viewpoint of the man in the street, for if I had, after first explaining to him what an abstract was, I would have been late

for this meeting. Possibly you will think I should have made the attempt.

However, I did ask the question of a District Judge, who is well qualified to speak on the subject, as his judicial career follows many years of private practice, title examination and building and loan experience. His opinion follows: "You have propounded to me, and asked me to answer the following question: SHOULD THE SMALL COMMUNITY ABSTRACTER INCORPORATE? You do not state whether or not this question should be answered from the point of view of the small community abstracter or of the public that he serves, and I shall therefore attempt to give you a brief answer from the viewpoint of both the abstracter and the public.

"In the first place, if I was a small community abstracter, whose assets consisted of a limited training or experience, a typewriter and a ream of paper, and whose object was either to make a meager living or to supplement a meager income from some other line of business, such as a real estate and insurance office, and was execution-proof, and expected to continue to be execution-proof in the future, I can see no advantage for the small community abstracter to incorporate.

"On the other hand, if I was a small community abstracter with proper training and experience, and competent to do the work for my clients, and expected to give the business of abstracting my personal attention and build up a reputation in the community as a competent, efficient abstracter, enjoying the confidence and patronage of the public, and the personal relationship that should exist between the professional man and his client, I can see no advantage in incorporating. And in fact, would consider it a disadvantage, not only from the point of view of expenses and taxation, but from the professional ethics and business point of view.

"On the other hand, in answering your question from the viewpoint of the public or client of the abstracter, I would personally prefer to do business with an individual in this line of business than I would with a corporation. The professions, and I consider abstracting a profession, should maintain a close personal contact with its clientele. Those who are ill become the patient of a physician of their own choice because of their confidence in his honor, integrity and skill as a physician, and this is largely inspired by their acquaintance and knowledge of the physician and their confidence in his ability to give them the relief sought, and this confidence is not inspired by a corporation where changes of ownership frequently occur by the transfer of stock, and where those who are in responsible and managerial positions frequently change at the whim of the owners of such stock.

"Individuals become clients of the lawyer of their own selection because of their acquaintance with him, his reputation for honesty and integrity, and their confidence in his ability to properly represent them in the business at hand. And again this confidence is not inspired by a corporation for the reasons aforesaid, and I believe the same consideration governs as between the abstracter and his client, as exists between the physician and patient, and the lawyer and client.

"Speaking from the individual viewpoint of a member of the public served by an abstracter, it is my opinion that the small community abstracter, assuming that he is competent to serve the public well, and desires to build a permanent and enduring business, which will provide him a reasonable return and enjoy the confidence of the public throughout the years to come, will find no advantage in incorporating, and would find many disadvantages separate and apart from the question of taxation, in attempting to submerge his personality and protecting himself against his own mistakes by operating through the artificial, legal entity of a corporation."

Next I asked a banker for his opinion. He states: "In my judgment, if an abstract business consists of valuable records compiled by themselves, then the business has tangible value and should be incorporated. The financial worth of the business then becomes a matter of record and the public knows what that value is. Besides, the business is in better position to continue, after the death of an individual owner and can be more satisfactorily handled, if incorporated. It just seems to me, that I would have a little more confidence in the work of an abstract company, if incorporated, than I would have if the business is unincorporated."

And to show you what I think of the opinions of bankers, I asked another for his opinion. He states: "The country abstracter, and by that I mean an abstracter in a county of from 30,000 to 40,000 population, like the country banker, has to contend with many problems that are entirely different from those of the big city title company.

Bonding

"Many states require only a nominal bond from an inexperienced person, as the one qualification for engaging in the abstract business. A desk, typewriter and a ream or two of paper representing the total investment of the boomer abstracters, while the reputable abstracter, who either through long years of effort and hard work, has built up a good complete plant, or by paying a big price for a complete plant already in good condition, is so responsible and vulnerable, that he is at a great disadvantage as to public liability, compared with the boomer abstracter.

"This is the one big reason for the country abstracter to incorporate his business.

"On the other hand, this financial responsibility is, or should be, a big advantage to the plant owner, especially when soliciting the patronage of the more reliable users of abstracts, since they are the ones that want and realize the value of responsible service.

"Then too, if the business is owned by more than one person, incorporation is often a good thing to prevent some act of one partner involving the partnership. Or if one of the partners is quite well-to-do and the other is not, it might protect the wealthy partner from some loss resulting from an error in the abstract work, or the acts of some other partner.

"Another good reason for incorporation might be to bring into the business a number of responsible customers over the county. A number of years ago an abstracter conceived the idea of incorporating and selling a small amount of stock to an officer of each bank in the county, and had he done so, he would have shut out all competition.

"One of the bankers suggested the formation of a trust company, to take in the abstract business, two or three of the largest insurance agencies, and to render certain trust services being handled by the banks, and which they were not fully qualified to handle. A building and loan association was also planned, all to be operated together, at a substantial saving in overhead. Although this abstracter died before this plan could be worked out, many of my banker friends still think that it is a good thing, although conditions have since changed in many ways.

"Then too, the death of an individual or of a partner might cause considerable embarrassment for a short period, which would not result in the case of an incorporated business.

"From the standpoint of the public served by the abstracter, it is my opinion that a corporation has the advantage. The management may change but the corporation goes on indefinitely, ignoring the changes in management; and the public knows the name of the corporation, regardless of the management.

"However, you must not overlook the fact that the success of the corporation depends entirely on the management, and you can render just as good service as an individual, as you can operating as a corporation."

And finally I asked the secretary of a building and loan association for his opinion. He states: "You asked me to give you my opinion as a customer, as to whether or not it would be advantageous to deal with an incorporated abstracting firm, as compared to an unincorporated firm.

I do not see that it would make any difference in this respect. We are interested in prompt efficient service, and costs. If this is received, we would be inclined to patronize that firm regardless of whether or not it is privately owned or owned by a corporation."

Thus it seems that from the standpoint of the public, represented by the cross section of opinion of those with whom we deal, that the public is not

greatly concerned over whether or not the small community abstracter is incorporated.

The legal view is definitely against incorporation, that of the banker mildly in favor of incorporation, and that of the building and loan executive as being wholly unconcerned regarding incorporation, but particularly interested in the matter of costs and service. The last opinion probably expresses the opinion of the man in the street.

There you have the record. I have tried to fairly point out the advantages, together with the disadvantages of incorporation. Individual circumstances alter cases. Additional advantages or disadvantages may occur to you.

In conclusion, it would appear that incorporation of the average small abstract business, would increase the cost of operation, without commensurate benefit.

We have seen that the relative taxation is much higher in the case of corporate operation. Present taxation of corporations is responsible for the trend of small business of all lines, away from corporate operation. Many small corporations, representing individually owned businesses, are surrendering their charters.

In cases, however, where the individual is a man of wealth and wished to limit his abstract liability to his abstract business, or in cases, where, for the purpose of avoiding inheritance taxes, the individual abstracter would want to incorporate his business and set up his control thereof, then transfer his stock to his heirs, it would appear that the increased cost of operation under incorporation would be justified.

In addition, the need for refunding existing indebtedness, or for additional finance due to the growth or expansion, may, in particular cases, justify incorporation.

Report of Judiciary Committee

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All too soon the time has once more arrived when it becomes the duty, as well as the pleasure, of the Judiciary Committee of your association to make its annual report, and once more your Chairman of that Committee finds it necessary to absent himself from the valuable contacts which the Convention offers, and from the renewal of old friendships. Once more in good health and fighting trim, though now feeling somewhat like the out-moded old fire horse, he takes the liberty at this point of extending long range greeting to old friends.

May the thought be advanced to more recent attendants at this annual assembly that it is up to each individual to get full advantage of our fellowship by himself putting something of himself into the work of the association. By doing this, lasting friendships will be found, which, as we reach the period of "has beens" continue to pay large dividends of good will and pleasant memories. After all, life can be pleasant if we have good health and good friends.

When Porter Bruck, our hard working President, and one I am pleased indeed to call a friend, asked me once more to assume the Chairmanship of this Committee, I really felt that he had put one dent in his reputation for efficiency, but flattered by his request and still willing to do my bit, I agreed. The response of the other members of the Committee has permitted me to make this report, and but little of the contents can be credited to my own efforts, and I hereby express my great appreciation to all these loyal men.

The Committee has this year endeavored to get some idea of the trend of judicial opinion during the past two years; and of course the study had to take into consideration the effect of legislation upon the courts; for as we well know, the courts cannot make but only interpret the laws affecting title to real estate, with which our association is principally concerned.

The Judiciary Committee was appointed so that one member thereof would be located in each area covered by one of the Reporter Systems or Report Areas; for presumably the law reporting agencies had grouped the states in each system where system of laws were most similar.

Montana

Montana reports no decisions changing the trend of title laws; and the adoption of an Abstracter's Registration Law.

Kansas

The Kansas Title Association introduced an act designed to limit the time within which an action for damages resulting from an imperfect or false abstract might be brought; and the need of this probably resulted from some uncertainty in the case law on this subject. It only passed one house, but the Senate amendment denying the right of a bonded abstracter to give written or oral opinion of title shows the trend of the thought of the legal fraternity and its influence upon legislation; as well as the continued attempts to give the courts a foundation upon which penalties for unlawful practice of law may be based. The abstracters accepted the amendment.

Nevada

Nevada has furnished a report on legislation and decision to the Legislative Committee, and matters therein relating to legislation will therefore not be set forth herein.

HOUGH, et al v. ROBERTS MINING and MILLING Co. decided April 5, 1938, 78 Pac (2) 102, denied that the bankruptcy court had exclusive jurisdiction over a mining claim so as to bar proceeding in the state reviewing court to restrain the corporation from working mining claim pending appeal.

HOME LUMBER & COAL CO. v. HARTFORD MINING CO., et al, August 5, 1938 81 Pac (2) 1063 interprets rights of mechanic lien claimants, lessors and lessees.

FEDERAL MINING & ENGINEERING CO. LTD. v. POLLAK January 4, 1939, 85 Pac (2) 1008 deals with validity of mortgage securing directors notes given for funds to enable corporation to continue its business operations.

In Northeastern Reporter area we are referred to the case of STROTHER v. OHIO CASUALTY INSURANCE COMPANY, January 1, 1939 in Common Pleas Court where it was decided that an insurance company which by its policies contracts to defend insured in all lawsuits, even if groundless or false or fraudulent, brought against the insured within the term of its policies is not engaged in the unauthorized practice of the law by employing its own attorneys to take charge of the litigation.

Also to the case of HENRY v. COLUMBUS DEPOT COMPANY, April 26, 1939, 135 O.S. p. 311, Sup. Court, wherein it was held that when private property is appropriated for a public or quasi-public use, unless express authority is given by statute, no greater estate or interest may be taken than is necessary for such public use; and defines when easement taken shall revert to the original owner.

Also to the case of HOLLAND FURNACE COMPANY v. LOAN COMPANY, 135 O.S. page 48, Sup. Court, which decided that a fixture is an item of personal property which *was* a chattel but which has been so affixed to realty for a combined functional use that it has become a part and parcel of it; and indicates how the status as a fixture may be determined and tested, even when chattel is installed under a conditional bill of sale.

Washington

State of Washington reports no decisions handed down worth while reporting during period covered by this report.

Oklahoma

From Oklahoma comes a reference to the decision in SEAL v. BANES, 168 Okla. 550, 35 Pac (2) 704. For twenty-five years prior to this decision the established law in Oklahoma was that probate proceedings were not adversary but were in rem in their nature; that an administrator sale was of like nature; and, based thereon, together with other rules of law applicable thereto, administrators were not void and could not be collaterally attacked for failure to comply strictly with every statutory provision relating to such sale. In the above case, however, the Sup. Court departed from that rule and it is now held that administrators' sales are adversary to the heirs; that a strict compliance with the statutes relating to such sales are necessary for the court to acquire jurisdiction to order and consummate the sale. Under the change in the general concept the court held that the title to owners under the probate sale was vulnerable to collateral attack thereon. This case forces a change in the attitude guaranty companies must take toward such titles. This case should be read in full by any one interested in this new concept of the law of Oklahoma.

We are also referred to CRAWFORD v. Le Fevre, 177 Okla. 508, 61 Pac. (2) 196, which established the rule that the probate court may acquire jurisdiction to render a final decree of distribution only upon the filing of a proper petition for such distribution and the giving of the statutory notice for hearing such petition. The principle thus announced was followed in the case of In re PORTER ESTATE, 183 Okla. 511, 83 Pac. (2) 541. Prior to these cases there was a rather general practice of using a form of final accounts which reflected the balance of money or personal property in the hands of the administrator or executor, but which in many cases made no specific reference to real estate belonging to the estate; and the prayer for distribution often referred only to such money or other personal property. The result is that increased care must be taken by examining attorneys.

Oklahoma also reports that judicial construction has not as yet been given as to the constitutionality of a recent statute which places jurisdiction in the County Court (the probate court) to entertain a proceeding having for its purpose an adjudication of the death of persons owning a life estate in real estate, where such life tenants have died leaving no property subject to administration.

The case of GASSIN v. McJUNKIN, 173 Okla. 210, 48 Pac. (2) 320, establishes the fact that pretermitted children of a testator are bound by a decree of distribution entered according to statutory procedure vesting title in accordance with the will; and that unless such children assert their rights in the administration proceedings, they are barred by such decree.

The Supreme Court of Oklahoma in the case of HARJO v. JOHNSTON, decided April 18, 1939 determined that a former minor, who more than two years after the minor reaches majority instituted an action in equity to set aside a partition judgement on the ground of fraud extraneous of the record in procurement thereof could attack the former judgment, holding applicable the statute of limitation which provides that action based upon fraud may be brought two years after discovery of the fraud. Prior to this decision it had been rather generally held that a former minor could not maintain such an action after two years after his attainment of majority. This case also established the doctrine that the vendee of a purchaser at a judicial sale, such purchaser being a party to

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the suit, stands in the shoes of such vendor and is not a bona fide purchaser so as to be entitled to protection in event the decree which was the foundation of the title subsequently is vacated because of fraud extraneous of the record.

Texas

Texas reports no decision change in former trends of judicial procedure.

Utah reports no Torrens legislation this year and an attempt to repeal the present abstracters law. It also reports legislation relating to Revenue and Taxation; Assessment, Levy and Collection of Taxes, and use of abbreviated descriptions; Sales and Confirmation; Determination of Heirship; making State of Utah defendant in certain Suits, Time for Appeals; Termination of Life Estates.

It is to be conceived that these acts may influence future judicial proceedings.

A certain photograph of Susan Hayward of Paramount Pictures, which turns up in the Committee file, calls for judicious rather than judicial report. At least it may be said that it presents a very charming excuse for you who are in attendance at the Convention. Are there "many more like you," Susan?

California

Your Committee observes that the first Bulletin of the California Land Title Association, which is a memorandum of measures passed by the 53rd Session of the Legislation of 1939, and consists of some twenty-six pages (more to come) must be noted as a source of new legislative information which will no doubt be reflected in future decisions of the courts of that state. We can not attempt to predict trend of judicial opinion resulting therefrom but it looks as if the California boys must watch their decisions for some time to come.

Arizona

Arizona indicates little to report but goes on to observe that the tendency to have long term mortgages encouraged under H. O. L. C. and F. H. A. is bound to reduce the quantity of productive sources of title work. It also reports a tendency of government agencies to advise taking of title by its purchasers of foreclosed properties without examination of titles. This tendency is not sound, of course, and can be combated by legitimate argument. We lawyers are not apt to be any more of a wizard in handling of foreclosures for Uncle Sam than for our private clients; and Uncle Sam always takes good care to examine title to its purchases from private sources. This state reports that its deficiency judgment statute prohibiting the taking of deficiency judgements is under attack as being unconstitutional; the attack however being seemingly based upon its having been passed at a special session rather than as an interference with a proper contract.

The Supreme Court of Arizona also appears to have dealt with the question of personal taxes being a lien on real estate and the continuing lien of mortgage although they are "outlawed" in six years. No decisions have been quoted but the thought is there.

Our Arizona titlemen also seem to be confronted with the question as to whether or not title men should look behind the word "Trustee' when used in connection with an owner's name.

Kansas

From Kansas we are advised that the policy of their courts during the past few years to require the purchaser at foreclosure sale to bid the full amount of the judgment, costs and taxes, although in some instances of sale to holders of second mortgages the courts have permitted a deficiency judgment to be taken; but that the courts have also relented in the enforcement of this rule where no interest has been paid on first and second mortgage loans and taxes have not

been paid subsequent to dates of the mortgages. Kansas has an eighteen month redemption period. In other states the courts have approached the question of excessive deficiency judgment in other ways, but there seems to be a general judicial desire to mitigate the hardships flowing from excessive deficiency judgment.

The courts of Kansas, it is hoped, will no longer have to wrestle with the Rule in Shelley's case which was abolished by its legislature which also abolished estate tax.

California

California cases submitted to the Judiciary Committee include cases involving

I—COMMUNITY PROPERTY; Husband executed Lease alone.

MAXWELL v. CARLON (January 12, 1939) 96 A D 189.

A lease was executed on community property by the husband lessor alone. After the execution of the lease, the lessor's wife executed a quit claim deed to the property to the husband lessor.

Held: 1. Lease only voidable under the provisions of section 172a of the Civil Code.

2. The execution of the quit claim deed from the wife to the husband after the execution of the lease, enured to the benefit of the leasees Section 1106 of the Civil Code.

II—TIDELANDS; Method of ascertaining the line of demarkation between lands classed as "tidelands" and lands classed as uplands."

BOLSA LAND COMPANY v. VAQUEROS MAJOR OIL COMPANY, LTD. (February 15, 1938) 25 C A 2d 75.

The court held that in determining the mean rise of the tides and what is meant thereby, the federal government has adopted a rule which takes into consideration all of the tides, while the rule adopted by this state includes only what is ordinarily called "neap" tides, but wherever the lands are granted by the federal government, a federal question is involved and the rule adopted by the Supreme Court of the United States is controlling.

The rule of this state is that the mean of the neap tide shall be taken into consideration in determining the high-water mark, that is, it is the mean level of the tide, and not merely, the wash of the waves or the run of the sea-water upon the coast, nor the line left by the water along the shore; and tidewater is confined to the level of the rise of the tide; and not to the run or reach of the water caused by the waves or swell of the ocean, there being a clear distinction between mere sea-water and tide-water.

III—TIDELANDS: Granted to a municipality by the State, who owns the oil and gas rights.

CITY OF LONG BEACH et al. v. MARSHALL, et al. (July 28, 1938) 96 C D 100.

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Minneapolis, Minnesota

Treasurer, American Title Association.

Executive Vice-President, Title Insurance Company of Minnesota

The Court held

1. That giving the language of the act of the legislature granting tidelands to the City of Long Beach (State 1911 P. 1304) its ordinary and reasonable meaning, it is clear that the state intended to and did convey whatever title or interest in these lands to the city, in fee simple, subject to certain conditions and upon certain trust, and the conditions limiting the use of the lands to harbor purposes, and forbidding alienation of title to private persons, are entirely consistent with a conveyance of the fee simple title; and the grantee of an estate on condition subsequent takes the fee, subject only to forfeiture for breach of the condition.

2. The ownership of the land having been established in the city, and nothing in the grant purported to reserve to the state or to deny to the municipality the minerals or the right to extract them, and the city charter provision, approved by the legislature, being empowered to drill and extract oil from such lands, it had authority to do such acts, provided that such operations did not in any manner impede the use of the harbor.

IV—DIVORCE: Entry of final decree—nunc Pro Tunc, after re-marriage.

MACEDO v. MACEDO (November 22, 1938) 95 C A D 410.

This is an action to annul a marriage, the defendant was previously married and had obtained an interlocutory decree of divorce and remarried more than a year after the interlocutory decree was granted in defendant's former marriage but without defendant's obtaining her final decree of divorce, after the re-marriage a final judgment of divorce nunc pro tunc was obtained pursuant to section 133 of the Civil Code.

Held: 1. The marriage was valid upon defendant's obtaining the final judgment of divorce nunc pro tunc pursuant to section 133 of the Civil Code.

2. To give section 133 of the Civil Code a retroactive effect did not deprive plaintiff of a vested right, where the effect of its operation was to validate the marriage contract rather than impair it.

V—DECREE OF DISTRIBUTION: Nunc Pro Tunc order to correct judicial error.

ESTATE OF ALEXANDER GOLDBERG et al (February 17, 1938) 95 C D 164.

The legal question involved is whether an order nunc pro tunc can be entered to correct a decree of final distribution in the estate of a deceased person, where the will provided that certain property was to be divided among four children of decedent, and the minute order provided for distribution in accordance with the will, but the decree signed by the judge omitted the name of one of the children as a distributee.

Held: 1. Although a judgment or decree containing a judicial error is not subject to change or modification after it has become final, nevertheless when on the face of the record it appears that a clerical error has been committed and carried into the judgment or decree, the court has authority and power to correct such error.

2. The error in the omission of such names was clerical in its nature, and the court was well within its authority in ordering its correction.

3. When such error is apparent from the face of the record, no time limit exists as far as the right to make the correction is concerned.

VI—MORTGAGE: released and renewed continuing lien.

CORA LORD COPP v. VELLZORA MILLEN (April 4, 1938) 95 C D 336.

The case presents a question of priority as between a mortgage, which had been released of record and renewed, and a contract of sale executed by the owner to a third person between the date of the execution of the original mortgage and the date of the release and renewal thereof.

Held: 1. When one mortgage is substituted for another, equity will keep the first alive when the interests of justice require it; and, in such cases, the old mortgage, although released, must be substituted for the new one and treated as a continuing lien securing the continuing debt, unless the bar of the statute of limitations intervened to prevent it.

2. The contract of sale holder must plead the bar of the statute of limitations.

3. Whenever a mortgage is executed as a substitute or renewal of an existing mortgage and the release or discharge of the prior mortgage is intended, not as payment, but as an extension or substitution for the original debt and security, relief will be granted in accordance with the equities in each individual case, and such equitable relief is not limited to those cases wherein the mortgagee had no notice of the lien of an intervening encumbrancer.

VII—DEEDS OF TRUST: Sale by pledgee, contains of notice of default, acceptance of interest after notice of default. Sections 580a, 580b and 580c not retroactive.

BIRKHOFER v KRUMM (July 11, 1938) 94 C A D 217.

This was an action for a deficiency judgment after a sale of property under a deed of trust.

The following points of law were involved and decided:

1. That the pledges of the trust deed note as such could give the necessary notice of default.

2. The requirement of section 2924 of the Civil Code that notice of default set forth the nature of the breach was applicable to this deed of trust executed prior to its enactment, such matter being merely procedural.

3. Where the notice of default contained a proper statement of some breach or breaches sufficiently substantial in their nature to authorize the trustee or beneficiary to declare a default and proceed with a foreclosure, it was immaterial that the notice contained misstatements with respect to default in the payment of principal.

4. While there were part payments of interest made between the time that the notice of default was filed for record and the date of the sale, acceptance of such partial payment did not constitute a waiver of the notice of default nor of the other breaches therein described.

5. The provisions of sections 580a of the Civil Code for limiting the amount of deficiency judgments and sections 580b and 580c of the Civil Code providing for relief of debtors had no application to the deed of trust here involved, where the same was executed prior to the effective date of such enactments even though the sale of the security by the trustee was held after that date.

VIII — MORTGAGE — FORECLOSURE: Property subject to homestead, failure to take decree against wife.

ALBERT L. WINN, ADMINISTRATOR OF THE ESTATE OF HATTIE WINN SALES v. TORR et al. (July 19, 1938), 94 C A D 315.

This was an action to foreclose a mortgage, where a homestead was recorded by the wife prior to the commencement of an earlier action to foreclose the mortgage. The degree of foreclosure in the earlier action having been vacated by the plaintiff under section 473 of the Code of Civil Procedure.

Held: 1. The wife was a necessary party to the foreclosure suit, even though she did not join her husband in executing the note and mortgage.

2. Where by mistake or inadvertence the action was dismissed as to the wife, the judgment could be set aside upon motion, and a new action commenced to foreclose the mortgage before it was barred by the statute of limitations.

3. The remedies for relief from a judgment procured by fraud, mistake or excusable neglect, provided by section 473 of the Code of Civil Procedure, and the ordinary suit in equity are entirely distinct and cumulative. An unsuccessful resort to the first mentioned remedy does not bar an application to equity for relief.

IX—TITLE INSURANCE: Failure to include a lis pendens in policy.

SALE v. SECURITY TITLE INSURANCE AND GUARANTEE COMPANY (July 22, 1938), 94 C A D 355.

This is action on a policy of title insurance in which plaintiffs sought to recover damages for loss of their property, claiming that the reason for the loss was the failure of the Title Company to disclose a lis pendens, which lis pendens was subsequent to the issuing of the policy cleared from the record by the title company.

Held: 1. The failure of the insurance policy to include a lis pendens as an outstanding encumbrance on the property was not prejudicial to plaintiff, where the policy did not purport to recite, nor did the title company undertake to sell plaintiffs a list of possible encumbrances on their property, and it did not appear that the lis pendens constituted a defect in the title to the property, and there appeared no casual connection between plaintiff's loss of the property and the failure to so include the lis pendens.

2. The failure of the title company to institute an action within a reasonable time to clear the title to plaintiff's title was not actionable, where the contract of insurance provided for a compromise or settlement of any claims against the property which the title company in fact brought about.

X—DEED IN LIEU OF FORECLOSURE.

THE FIRST NATIONAL TRUST AND SAVINGS BANK OF SAN DIEGO v. DOUGLAS L. EDMONDS as administrator de bonis non, with the will annexed, of the Estate of John W. Mitchell, deceased. (July 29, 1938) 94 C A D 419.

This is action to quiet title to real property, where plaintiff was the bene-

ficiary of a trust deed upon the property which was constituted a part of the estate of John W. Mitchell, deceased. In settlement of the Plaintiff's claim upon its trust deed note and upon authorization of the probate court under section 718.5 of the probate Code the defendant conveyed the property with an option to repurchase to plaintiff in full satisfaction and settlement of the debt. It is the contention of the defendant that by reason of the option to repurchase that the deed should be treated as a mortgage and not as an absolute conveyance.

Held: 1. That it is well settled that a deed absolute on its face, but in fact intended to secure a debt, is a mortgage, but the fact that an option to repurchase the land conveyed is given is not, in itself, sufficient to show that the conveyance was intended to secure a debt.

2. The existence of an indebtedness is absolutely essential in order to make a deed otherwise absolute in form a mortgage.

3. That in this case the debt was extinguished and deed was an absolute conveyance and not a mortgage.

XI—DEED IN LIEU OF FORECLOSURE.

MARK MORRIS v. OTTO RICKMEYER (August 24, 1938), 94 C A D 579.

This is an action to cancel and set aside a sale of real property under a trust deed and to declare a grant deed to be an equitable mortgage securing an indebtedness which had previously been secured by the trust deed.

The grant deed recited that the conveyance was made in full payment and cancellation of the trust deed note; the deed had been placed in escrow to be delivered to defendant upon a certain date if plaintiff made certain payments due defendant on the trust deed note, but such payments were not made, and thereafter defendant commenced foreclosure proceedings under the deed of trust, several extensions of time were granted before the sale was held, and the deed was never delivered.

Held: 1. Whether a deed, absolute in form, is to be considered in equity as a mortgage is a question of intention to be inferred from all the facts and circumstances of the transaction in which the deed was executed, taken in connection with the conduct of the parties after its execution.

2. Where it appeared from the evidence, and the trial court found that the deed was placed in escrow with a bank and was never delivered to defendant, that finding was conclusive on appeal, and defendant could not successfully contend, on appeal, that because the bank held a general power of attorney for defendant which had not been revoked, the bank was the agent of defendant and that delivery to the bank constituted delivery to defendant.

3. That the parties considered the deed of trust as a continuing encumbrance, the evidence supported the findings that the contemplated delivery of the deed was abandoned and that the lien of the deed of trust continued until the time of sale.

XII—DEEDS OF TRUST — FORECLOSURE—effect of section 580a of the C. C. P.

IN THE MATTER OF THE ESTATE OF CHARLOTTE M. NAEGELY, DECEASED ET AL v. BANK OF AMERICA (March 14, 1939), 96 C A D 783.

This is an appeal by the executor and certain legatees from the decree settling the first and final account of the executor and directing the payment of a claim of the Bank of America.

Prior to her death, on January 24, 1935, decedent executed to Bank of America a promissory note in the sum of $11,689.65, which was secured by a deed of trust.

A claim on the said trust deed note was allowed and approved by the Executor and the probate court.

The trustee named in the deed of trust sold the real property to the Bank for $9,500.00, leaving an unpaid balance of $3,637.35. Subsequent to such sale, however, the Bank did not seek nor secure a judgment determining the amount of any deficiency.

Executor filed his final account, alleging all claims that were presented and allowed against the estate had been fully paid.

To this account Bank filed written objections based upon the claim that there remained due upon the trust deed note deficiency of $3,637.35 and that executor be directed to pay such balance to the Bank.

The provisions of section 580a C. C. P. had not been complied with. Section 580a C. C. P., as enacted in 1933 and in effect at the time of the execution of the trust deed note, imposes certain requirements whenever a money judgment is sought for the balance due upon an obligation after the sale of the security under a power of sale contained in a deed of trust. This provision, as originally enacted in 1933, provided that it should remain in force until September 1, 1936, but in 1935 the legislature reenacted the section in identical terms, except that the reenactment provided that the terms thereof were to remain in force without any time limitation thereon.

Held: 1. When a statute is repealed without a saving clause, and as a part of the same act the law is simultaneously reenacted in substantially the same form and substance, all rights and liabilities which had accrued under the former act will be preserved and enforced; and in this proceeding to settle the first and final account of an executor without provision for a deficiency on an obligation secured by a deed of trust, the rights and liabilities of both the maker and holder of the note and deed of trust were subject to the provisions of section 580a of the C. C. P., although said section was repealed and re-enacted subsequent to execution of the note and deed of trust and before its foreclosure.

2. In such action, while the claim of the Bank, based upon the note and deed of trust, was accepted by the executor, where the deed of trust was subsequently foreclosed and a deficiency remained, the creditor was not entitled to payment of that deficiency from the estate without compliance with the provisions of section 580a of the C. C. P. and the executor was entitled to an order of distribution as though the debt were fully paid.

XIII—DEEDS OF TRUST — Moratorium Act—Statute of Limitations—Deficiency Judgment.

EVERTS v. NEWHOUSE INCORPORATED, LTD. (September 15, 1938), 94 C A D 677.

The sole question is whether an action to recover a deficiency judgment is barred by subdivision 1, Section 337 and Section 580a of the Code of Civil Procedure, which limit the time for commencement of such actions to three months after the sale under the deed of trust; or whether, the limitation contained in the aforesaid sections were extended by the provisions of section 19 of the Moratorium Act of 1935, Stats 1935 ch. 348; Deering's 1935 Supp., Act 1054a P. 1341.

Held: The action was not barred by the statute of limitations because the action had not been commenced within three months after the sale, where the provisions of the Moratorium Act extending the time for commencement of such actions applied to written instru-

ments secured by mortgage, deed of trust or contract of purchase, even though the instrument which was the subject of this action was not at the time of action secured by a deed of trust.

XIV—HOMESTEAD—Abandonment by conveyance in trust.

PALEN v. PALEN (October 5, 1938), 95 C A D 49.

Two legal points were decided in this case.

1. Whether or not property acquired by a husband and wife is separate or community property is determined at the time of its acquisition, and if, when acquired, it was separate property of one of the spouses it so remains, regardless of the nature of the funds which thereafter pay for it.

2. Where the title to the property was in the wife, subject to a valid homestead and the wife and her husband conveyed the homestead property to a third person without intent to convey to the third person any beneficial interest in the property and without intent to abandon the homestead and the third person without consideration, reconveyed the legal title back to the wife, there was no grant of the property such as to effect an abandonment of the homestead within the meaning of section 1243 of the Civil Code, and the homestead was effective against an execution levied on the property.

XV—CONVEYANCE WITH REPURCHASE OPTION.

DAVIS v. STEWART (March 21, 1939), 96 C A D 856.

Plaintiff, owner of a roadside gas station and auto camp, was deeply indebted in 1932. She owed $6,788, secured by a mechanic's lien on the premises, to defendant. She also owed various other amounts to other parties. With advice of counsel, she and her husband entered into an agreement with defendant whereby (a) she transferred the premises in fee to him but retained a written option to repurchase for $13,479.29 plus service charges within five years, and (b) defendant dismissed his pending mechanic's lien action with prejudice and assumed plaintiff's other obligations. Plaintiff now sought to have her deed to defendant declared to be an equitable mortgage. Judgment for plaintiff. Reversed. "We have a preliminary written contract wherein the parties agree to execute a deed absolute and also agree that the transaction is intended to be an absolute transfer of title and possession and not a mortgage. This is followed by the execution and delivery of a deed absolute, by the delivery and transfer of possession. The only competent evidence of the intention of the parties at the time . . . is in harmony with that expressed in the agreement. There is no evidence of fraud, misrepresentation or unfair advantage taken of the debtors. The evidence of the secret intention of one of the parties (plaintiff), not disclosed to the other, will not have the effect of changing the character of the transaction." Defendant could not have enforced plaintiff's obligation as a mortgage. There was no requirement that plaintiff exercise her option, nor was there any definite requirement re interest payments in the event she did not exercise it. "We have nothing but a simple sale and delivery . . . with an option to repurchase. Such a transaction is not . . . contrary to public policy"; will be upheld.

In Northwestern Reporter Area we are advised that:—

Iowa

Iowa Supreme Court during 1938 determined that an emergency no longer existed but withheld the announcement of that decision until early January of 1939; and the moratorium laws were not re-enacted. Iowa courts may have to consider a legislative act creating a lien on the property of the spouse of an insane person without having to establish the lien by any procedure in any court.

North Dakota

North Dakota reports no special legislative or judicial acts or cases affecting title, although indicating that moratorium provision as to their operation and effect have to be passed by the courts; and the right to deficiency judgments does not exist.

Minnesota

Minnesota decisions in the near future will have to take into consideration new mortgage, tax and moratorium laws.

New York

The report of the Law Committee of the New York Title Association deals almost exclusively with legislation and gives nothing to set forth in this report. That Association has published its Convention Proceedings and has several excellent papers which our members might read with profit if interested in Title Insurance problems.

Missouri

From Missouri we are advised that two studies have been made that have to do with recent decisions in that State in the light of previous decisions in that State on the same subjects. We can only refer to them here. One is the Rule in Bingham's Case, or the principle of worthier title, an ancient principle which is again becoming important. The other has to do with Revival of Junior Mortgages in Missouri. These are dealt with in pamphlets entitled "The Missouri Decisions on the Rule in Bingham Case" and "Revival of Junior Mortgages in Missouri." Another pamphlet dealing with riparian properties is entitled "The St. Louis Cases on Alger Limitatus." All these are by McCune Gill and if you are interested in these topics, he will no doubt oblige with a copy of any of these pamphlets. And he has furnished the Committee with a printed list of Missouri decisions which is so numerous that rather than go into detail here, we have imposed upon his good nature and given you the tip as to where you can find the information.

The following quoted comments from his letter may well be set out here, viz:—

"I think that the most important development along the line of real property law is the attempt of the courts to modernize the ancient real property principles, or rather to depart from them without giving the proper consideration to the principles themselves. By this I mean that the Appellate Courts seem to decide these cases on general grounds of sympathy and desire to do justice and frequently neglect to refer to the previous decisions either to affirm them or overrule them.

"This leaves the position of lawyers and title companies very hazardous in that they cannot safely predict what courts will do in cases involving the well established rules of real property law, for the courts seem disposed to depart from such rules in the most unexpected manner. From the title companies' standpoint, it seems that frequently we must insist upon deeds being obtained from all parties who might be interested, not only according to the well recognized rules but also taking into consideration the fact that courts might not follow these rules.

"As you know, I keep up a rather comprehensive index of all Missouri decisions and I am sending you the sheets for 1938 and 1939, believing that you may find some decision therein demonstrating the trend which I am mentioning."

New Jersey

In New Jersey, we have a complete new statutory revision passed in 1937 which embraces all the statute laws of the State and while it was prepared by a Commission of Revision, it has in many instances restated the law in changed terms intended to reflect prior judicial determinations of the laws thus revised. It is quite probable that our judicial opinions of the next few years will determine the effect of these changes. That our courts have been concerned with protecting its citizens from the extreme hazards of depression years is true; but they have also indicated in recent decisions that the emergency supporting laws of the nature of moratorium is past.

This report is dry, of course, but we feel that it would be unfair to close it without indicating the sources of the information which has permitted of its preparation; and to thank all of these gentlemen for their kind cooperation. They are as follows:

F. E. Sullivan, Circle, Nevada.
J. C. Creel, Jr., Parsons, Kansas.
J. W. Ensign, Salt Lake City, Utah.
M. M. Sweeny, Las Vegas, Nevada.
Howard T. Tumilty, Oklahoma.
Ed. Atkinson, Phoenix, Arizona.
Leo T. Gibbons, Scott City, Kansas.
A. J. Arnot, Bismarck, South Dakota.
Ray Trucks, Baldwin, Michigan.

Verne Hedge, Lincoln, Nebraska.
A. F. Soucheray, St. Paul, Minnesota.

We hope we have omitted none of our sources of information outside the Committee membership, which has been set forth below:

Pacific Reporter Area—

Walter Home, Executive Secretary of the California Land Title Association, 411 West 5th Street, Los Angeles, California.

Northwestern Reporter Area—

S. E. Gilliland, President, Engleson Abstract Company, Sioux City, Iowa.

Northeastern Reporter Area—

C. H. Barsch, Vice-President, Title Guaranty and Trust Company, 333 Erie Street, Toledo, Ohio.

Southeastern Reporter Area—

Harry M. Paschal, Executive Vice-President of Atlanta Title and Trust Company, Atlanta, Georgia.

Southern Reporter Area—

J. Claude Coppinger, President, Dade Commonwealth Title Company, 37 N. E. First Street, Miami, Florida.

Southwestern Reporter Area—

George T. Burgess, Stewart Title Company, Dallas, Texas.

Atlantic Reporter Service—

Edward C. Wyckoff, State Wide Title Service, 744 Broad Street, Newark, N. J.

Your Committee would like in closing to suggest that we, as a national group, should be militantly concerned with opposing the growing tendency of the federal and state governments to give a lien upon lands of individuals and corporations without requiring recorded notices of the amounts of the lien to be first recorded in the proper state or county office. An example is the making of contributions of employers under Social Security Acts a lien, while at the same time refusing to give those interested in title a statement of the amount due, but saying that payments due have not been paid. We should work toward all such liens taking effect only when a proper record is made in an appropriate public record office showing the nature and the amount of the lien.

Escrows

MELVIN B. OGDEN

Assistant Title Officer, Title Insurance and Trust Co., Los Angeles, California

You have seen two boys make a trade. One has a jackknife; the other a bag of marbles. Each is magnificently sure that the other's possession is more desirable than his own. The eagerness of each to effect an exchange is tempered only by the need for concealing any outward enthusiasm which might blight the bargain and, further, by the necessity for making certain that the parting with one object and the acquisition of the other are reasonably concurrent acts. The negotiation is usually consummated with safety and dispatch by giving with one hand and taking with the other.

So it is that in the bartering of *personal property* the processes are relatively without complication.

In Real Property

But with *real property* we immediately recognize that there are intricacies as ancient as the practice of title transfers which arise because of the body of rigid protective rules of law designed to safeguard the ownership and use of real property. Thus we have the simple case of exchanging money for a deed. The buyer cannot be expected to part with his money until he knows that the seller's title is in satisfactory condition; he should in fact have that assurance at the exact moment the money is paid. The seller cannot risk the delivery of a deed to the buyer upon any oral condition for the payment of the purchase price, for the seller knows that as to any third party who deals with the buyer, the deed is absolute and the condition is discharged. Furthermore, there may be liens which the seller expects to satisfy from the proceeds of the sale, or the buyer may need to use the property as security for a loan with which to pay part or all of the purchase price; in either of which events, we have lien holders who are unlikely to part with releases or money, as the case may be, unless the vesting and condition of title is exactly as desired at a precise moment.

Adjustments

It is obvious also that in settling the accounts between the seller and the buyer, there are adjustments to be made—taxes, insurance premiums, and others items to be prorated; insurance policies to be transferred; rent statements from tenants to be procured and approved; the title searched and objectionable flaws in the title removed. It is therefore quite apparent that considerable time will elapse between the inception and the closing of a real estate transfer. And during this period of abeyance it is often essential that the funds and documents be held by some responsible custodian; furthermore, it is frequently beneficial to one or both of the parties to bind the bargain during this time in such way that neither can withdraw without the other's consent.

It is because of these factors that there have been devised the various systems of closing title transfers. These systems vary according to the customs and experiences of the land dealers in different parts of the country. I know that many of you have found that the abstract-opinion method of assuring title, combined with perhaps a preliminary contract of sale and a simultaneous delivery by the parties of the money and documents on a fixed closing date, to be entirely adequate and suited to the needs of your community. But here in California we have utilized the escrow as a means of providing a stakeholder who delivers the money and documents — in most cases the escrow is a clearing house for all adjustments and settlements of accounts.

An Escrow

If you discuss escrows with some of our local escrow and title men, you may be irritated by their bland assumption that escrows originated in California; you may be inclined to pass this off as just more California bombast to be classified with perpetual sunshine, etc. For you know and I know that escrows have been a familiar legal figure for more than five hundred years; that the year books for the reign of King Henry the Fourth in England contain decisions of the courts on escrows. But I hope that you will be tolerant, for you will find that when we credit California as the birthplace of "escrows," we are speaking of escrows as they are used in this state for the handling of real estate transactions, and our escrows, as you will see, are practical business devices which are unique in many respects and which often differ greatly from the true or legal escrow of the common law. Permit me to emphasize these distinctions through a brief review of the legal definition and elements of an escrow.

You will recall that the escrow recognized by the law consists of a written instrument delivered to a stranger or third person as an escrow, i.e., a scroll or writing, to be held by him until the performance of a condition or the happening of an event and then to be delivered over to take effect. Some term of legal identification is needed for this written instrument while it is conditionally held; thus, in legal contemplation, when an instrument in the form of a deed is conditionally delivered to a depositary, it cannot be said to be a deed, for a deed must be an instrument which operates immediately to tran fer title, hence the term "escrow" is applied to this document during the period preceding the second delivery to the grantee. The Civil Code of California codifies the common law concept of an escrow when it defines an escrow as follows:

> "A grant may be deposited by the grantor with a third person, to be delivered on performance of a condition, and, on delivery by the depositary, it will take effect. While in the possession of the third person, and subject to condition, it is called an escrow."

This technical definition of "escrow" is not an accurate expression of the popular meaning of an "escrow" as it is commonly used in California nor, no doubt, in other regions where business

escrows are familiar. Thus a conditional delivery of an instrument is often referred to as a delivery "in escrow." And when parties "escrow a deal," or "go into escrow," or speak of "an escrow," they think, not merely of the documents deposited as "escrows," but also of the relationship that arises out of the conditional deposit of instruments and funds with the custodian and of the functions of the escrow holder in making prorations of taxes, interest, rents, in preparing instruments, and otherwise carrying out the instructions of the parties; or, among other connotations of "an escrow," it may be thought of as a device of mechanism for effecting a concurrent exchange of money and instruments.

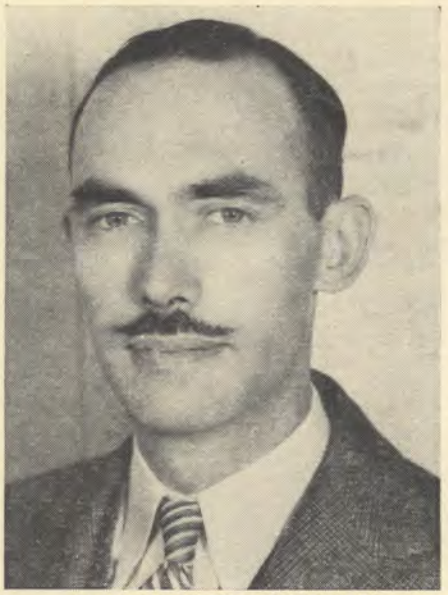
Irrevocable

A further important feature of the legal escrow is the fact that it cannot be revoked; that is, upon the performance of the condition of delivery, even though it be after the death of the grantor, or after he has become mentally disabled, the instrument takes effect as of the time of original delivery. In an early California case, the court apparently added a new requisite to an escrow by holding that an escrow must be supported by a binding written contract; for example, in the case of a sale, the court said that an actual contract of sale on one side, and of purchase on the other, is essential to constitute the instrument of conveyance an escrow; and that in the absence of such a contract, the deed which has been deposited with a third party may be revoked at any time before delivery to the grantee.

The eminent Mr. Tiffany in his standard work, "Real Property," refused to recognize this rule that an escrow must be supported by a written contract. Mr. Tiffany finds difficulty in concealing his irritation as he points out that the California court cited no authority for its position. He then asserts that in the judicial history of escrows from the earliest cases in the Fifteenth Century to the date of the decision in California there is not the slightest suggestion in any decision or law book as to the necessity of an auxiliary contract to make a delivery in escrow effective, and he concludes with this barbed comment: "It is, to say the least, somewhat extraordinary that an integral element in the doctrine dating from the commencement of the fifteenth century should have remained to be discovered by a California court in the latter half of the nineteenth."

Without disputing the soundness of Mr. Tiffany's reasoning, the fact remains that the California rule has been followed in many other jurisdictions and that it is cited as the law in Corpus Juris. I might add, however, that even in California the requirement of an extraneous contract to support an escrow is subject to an exception where the delivery of a deed is not to consummate a sale, but for the purpose of effecting a gift, and where the sole condition of delivery is the occurrence of some future event with regard to which the grantee has no causative function (i. e., death of the grantor), for in such a case, if the delivery of the deed is absolute and the grantor reserves no right of recall or revocation, our courts hold that title actually passes to the grantee immediately, subject to a life estate in favor of the grantor. Strictly speaking, this holding is not an exception to the general rule; for by giving an immediate operative effect to the deed, there is no need to consider it as an escrow.

I am not going to dwell on the origin and first use of escrows in California. Some of our older title men will recall what they believe to be the first escrows being handled by title companies in the early part of the century. But for all I know, any boasts of parenthood may be entirely without basis; perhaps



MELVIN B. OGDEN
Los Angeles, California
Assistant Title Officer, Title Insurance & Trust Co.

escrows were originally brought here by some of our imported native sons. This reminds me of a statement by Willard E. Givins, Executive Secretary of the National Education Association, which appeared in the magazine "Nation's Business," in June of this year, as follows:

> "When nearly a million people in California vote as they did for $30 every Thursday, we need to re-examine the public school system in Iowa."

Variations in Handling

With these preliminary observations, let us proceed to a consideration of the subject of "escrows," keeping in mind that we are using the term in its popular sense and that, further, we are speaking of escrows as they are understood and used in California. This consideration of escrows is rendered somewhat more difficult than is at first apparent by the fact that there is a diversity of escrow practice and procedure in several localities in California. The uniformity which has been achieved as to the form of title policies—to a large degree as to title practices—does not exist with respect to escrows. Thus we find an established method of handling the escrow business in San Francisco and other parts of Northern California, and a somewhat different method in Los Angeles and generally in Southern California. A logical division of our discussion would seem to be as follows: First, to outline the escrow procedure followed in San Francisco and in Los Angeles, giving concrete examples of simple escrow deals and commenting on certain legal and practical aspects of these escrows; second, to inquire as to the rights and obligations of escrow holders and the functions which the escrow holder is performing in the closing of real estate transactions in California; third, to inquire whether the escrow has been an effective instrumentality and what contributions, if any, it has made to title closing methods.

Edgar Rice Burroughs wrote of Africa without having seen the country, but you will remember that his early stories featured tigers, an animal unknown in Africa. I am indebted to Mr. Benjamin Henley of San Francisco for a most fortunate escape from any embarrassing position in which I might find myself if I placed tigers in the San Francisco escrow system. Mr. Henley as many of you will recall, delivered a most excellent and comprehensive talk on "The Method of Handling the Escrow Business in San Francisco" to the annual convention of the American Title Association in 1925. Mr. Henley points out that in San Francisco it is a recognized practice to make the closing of a real estate transaction conditional upon the issuance of a policy of title insurance; that there is no segregation of the title phase of a real estate transaction from the escrow phase; that the issuance of a policy and the handling of an escrow are continuous and indivisible operations furnished by title companies only and for a single fee; and to specifically illustrate the procedure Mr. Henley gives this example:

A parcel of land is to be sold for $50,000; the purchaser is to pay $25,000 in cash and execute a first mortgage to secure the balance of the purchase price. Since the purchaser pays for title services under the well-established custom in San Francisco, the first step in the closing of this sale will usually be an application by the purchaser to the title company for a search of title. This application is a brief printed form which sets forth such information as the description of the property, the name of the owner and purchaser, the liability to be assumed in the policy, and the name of the broker; no mention, however, is made of the details of the proposed escrow. The next step of the procedure is the issuance of a letter re-

port. The course of the sale from this point, as Mr. Henley states, is somewhat dependent upon the agency outside the title company which is handling it; that is, if the deal is being consummated through one of the larger real estate offices, that the office frequently prepares and deposits the necessary conveyance and money and makes the adjustments of taxes, interest, rents, and similar items. More often, however, the parties to the sale look to the title company to prepare all necessary documents, to prorate the taxes, interest, and similar items, and to work out most of the details in the title closing.

Although a large volume of real estate business is carried out in San Francisco through formal contracts in which the title company is named as escrow holder, the title companies in San Francisco do not advocate such contracts except in involved transactions, nor do they have printed forms for such contracts. Unless formal written instruments are prepared by the parties or their agents, the entire closing of the deal will be through receipts; thus as Mr. Henley illustrates the procedure in our example of a sale, the vendor would deposit a deed with the title company and the company would issue its receipt reading substantially as follows:

"Application No. 135,251
San Francisco, California,
Sept. 8, 1925.

"Received of vendor deed from vendor to vendee to be delivered upon receipt of the sum of $25,000.00 which is to be disbursed as hereinbelow set forth upon the recordation of deed described above and note and mortgage for $25,000.00 from vendee to vendor creating first lien upon property described in above deed."

To Vendor	$23,092.00
To Broker for commission.	1,000.00
Revenue stamps	50.00
Pro rata of taxes allowed..	250.00
Conveyancing	5.00
Recording mortgage	3.00
	$25,000.00

The receipt delivered to the vendee for the money and promissory note and mortgage called for by the vendor's instructions would be substantially as follows:

"Application No. 135,251
San Francisco, California,
Sept. 8, 1925.

"Received of vendee mortgage from vendee to vendor covering property described therein and the sum of $25,000, which is to be disbursed as hereinbelow set forth upon recordation of deed from vendor to vendee transferring property described in application numbered as above, subject to building restrictions contained in deed Jones to Smith recorded in 192 O. R. 625 and lien of mortgage delivered herewith.

To Vendor .....$25,000.00"

Each receipt is accepted and approved by the party to whom it is delivered. In accordance with these instructions of the parties, the papers are recorded, the policy issued, and a closing statement furnished each party which shows all of the details of adjustments, charges and disbursements.

It might seem pertinent to inquire as to the legal effect of these receipts. Has the deposit of the documents and the purchase money resulted in a legal escrow which cannot be withdrawn by the depositor without the consent of the other party to the sale? Is there a contract for sale and purchase which is enforceable in an action for specific performance? Or is the escrow holder merely an agent for each of the parties with respect to the documents or money deposited by each, so that the depositor can revoke the agency and demand the return of his property? Mr. Henley summarizes the position taken by San Francisco escrow holders where one party to an escrow attempts to withdraw his deposit, as follows:

"If a depositor in an escrow requests the return to him of documents or money, we carefully investigate the situation to determine whether or not the deposit was made with us pursuant to a contract which was not deposited with us. If we find that the transaction is evidenced by a written contract between the parties, providing for a deposit in escrow, we are unwilling to return the document without the consent of all parties. Furthermore, even though the transaction has not been recorded at the time a request for withdrawal is made, but all of the parties have substantially complied with the demands of the other parties to the escrow, we also decline to return a deposit. As a matter of fact, it is my observation that recently we find more cases where we cannot permit withdrawal than cases where we can. Where there is any doubt about the clear right of the parties to withdraw, we insist that the matter be disposed of by agreement of the parties, or by Court judgment."

In concluding his address to the convention, Mr. Henley made this final observation:

"The San Francisco escrow practice may be considered informal, but it has been found as the result of years of experience that few complications arise because of this informality. The transaction is ordinarily closed or fails within a short time following its initiation and a misunderstanding between the parties is very infrequent. Because the system does not require long technical escrow instructions and escrow agreements, which as a rule are abhorrent to a layman, it has found favor in San Francisco and has accomplished the end desired in a manner which seems to have the entire approval of those people who deal with the title companies."

With this somewhat brief, but what I trust is a reasonably accurate, picture of the San Francisco escrow, let us turn our attention to the escrow as handled in Los Angeles. Here again, as in San Francisco, one finds a universal acceptance of the belief that an exchange of money and instruments affecting real estate should be conditional upon the issuance of a policy. But here one also finds variations from the north in the mechanics of closing real estate transactions through escrows.

I believe that perhaps the best way to gain an understanding of the escrow methods in Los Angeles, which methods are followed generally throughout Southern California and in some other parts of the state, is to outline the steps in the closing of a sale of a parcel of improved property. We will assume that the sellers of this property are those ubiquitous characters of legal fiction, John Doe and Mary Doe, and that the buyers are the well-known parties of the second part, Richard Roe and Ruth Roe. Richard and Ruth orally agree to purchase the property for $15,000, payable as follows: $4,500 in cash; the assumption of an existing deed of trust with an unpaid balance of approximately $8,500; and the remainder by a purchase money deed of trust. More often than not the broker then procures the execution by the parties of "sales deposit receipt," a standard form of real estate document used in taking a deposit and expressing the agreement of the parties to purchase and sell upon the terms and conditions stated therein. This form of agreement is merely a preliminary "binder" which, because it is hastily drawn and because it is usually prepared in advance of a title search and without a definite assent as to the exact terms of the sale, rarely serves to create a binding contract of sale.

In the next phase of our sale, we see the parties agreeing to go "into escrow" with some mutually acceptable escrow holder. In most transactions which are closed in Los Angeles by an escrow, the escrow holder will be a bank, probably one of the numerous branches located in centers of population throughout the country, or it may be one of the individuals or independent corporations who act as escrow holders.

The title companies do, however, maintain active escrow departments of moderate size for the accommodation of those who prefer to deal with a title company. For the purposes of our escrow example, I am going to assume that the parties have agreed upon a title company as an escrow holder, that they have outlined their proposed sale to an escrow clerk, and that he has prepared and the parties have signed whatever is customary for closing the deal through an escrow.

Here is what Richard and Ruth, the buyers, and John and Mary, the sellers, have signed: a paper headed "Escrow

Instructions," directed to the title company, and reading as follows:

ESCROW INSTRUCTIONS
(Buyer)

Los Angeles, California,
Escrow No. 1,600,000,
August 17, 1939

A B C COMPANY:

On or before September 17, 1939, I will hand you the sum of $4,500.00, plus funds sufficient to cover my charges and expenses herein, together with the purchase money note and deed of trust set forth below, all of which you will deliver when you obtain for me a deed to the vestee named herein, covering the property described below, and when you can issue your usual form CALIF. LAND TITLE ASSN. policy of title insurance (for the benefit of owner and beneficiaries) with liability not exceeding $15,000.00 on Lot 1 in Block 1 of Tract No. 1,000, in the City of and County of Los Angeles, State of California, as per map recorded in Book 1, Page 2 of Maps, in the office of the County Recorder of said County, showing title vested in RICHARD ROE and RUTH ROE, husband and wife, as joint tenants.

SUBJECT ONLY TO:

(1) ALL taxes for the fiscal year 1939-1940, including any special district levies payment of which is included therein and collected therewith;

(2) Bond No. 101, Series No. 2, issued November 7, 1927, for paving Beverly Boulevard, with unpaid balance not exceeding $30.00, with no delinquencies thereon.

(3) Covenants, conditions, restrictions, and easements of record. (No further approval necessary.)

(4) Deed of Trust of record, securing a note for $9,000.00, executed by John Doe and Mary Doe, husband and wife, in favor of A B C Mortgage Company, with interest at five and one-half per cent per annum, principal and interest payable in installments of $80.00 per month on the 1st day of each month, with the approximate unpaid balance of $8,500.00.

(I have satisfied myself outside of escrow as to all further terms and provisions of both the note and trust deed, and no further approval is necessary through escrow.)

(5) Deed of Trust, your form, executed by above vestees, in favor of John Doe and Mary Doe, husband and wife, as joint tenants, securing a note for $1,500.00, with interest from date of note at six per cent per annum, principal and interest payable in installments of $15.00 per month, beginning September 15, 1939, and continuing until paid.

Said deed of trust is to recite that it is given to secure part of the purchase price of the property in question.

I have paid outside of escrow the sum of $500.00, applying on the purchase price of the property in question.

Draw purchase money note and deed of trust.

My execution of said purchase money note and deed of trust will evidence my approval in full of all terms, contents, and provisions thereof.

The undersigned assumes and agrees to pay the deed of trust of record, above referred to, and the deed conveying title is to so recite.

Endorse interest on purchase money note above referred to as paid to date of close of escrow.

Prorate taxes as of date of close of escrow, based on second installment of taxes for the fiscal year 1938-1939.

Prorate insurance, as handed you, and deliver to first beneficiary at the close of escrow, with first and second mortgagee's clauses attached.

WALTER M. DALY
Portland, Oregon
Chairman, Committee on Constitution and By-Laws

Prorate rents as of date of close of escrow, based upon statement to be handed you.

Adjust interest on the above note for $9,000.00 secured by trust deed of record, as of date of close of escrow.

If the amount of the existing first trust deed of record differs from the sum of $8,500.00, the purchase money second is to be increased or decreased to make the necessary adjustment.

All adjustments on the above deed of trust of record are to be based upon a statement furnished to the escrow by the beneficiary, or someone on its behalf, without further approval by me.

Deliver title insurance policy to second beneficiary.

Instruct Recorder to mail deed to me; trust deed to beneficiary.

Start search of title at once. I pay your buyer's service fee, as charged; drawing trust deed $2.50; recording deed $1.00.

GENERAL PROVISIONS

"All funds received in this escrow shall be deposited with other escrow funds in a general escrow account of A B C Company with the Farmers and Merchants National Bank of Los Angeles. All disbursements shall be made by check of A B C Company.

"Recordation of any instruments delivered through this escrow, if necessary or proper in the issuance of the policy of title insurance called for, is authorized.

"No examination or insurance as to the amount or payment of real or personal property taxes is required unless the real property tax is payable on or before the date of the policy of title insurance.

"Execute on behalf of the parties hereto, form assignments of interest in any insurance policies (other than title insurance) called for herein and forward them upon close of escrow to the agent with the request, first, that insurer consent to such transfer or attach loss-payable clause or make such other additions or corrections as may have been specifically required herein, and second, that the agent thereafter forward such policies to the parties entitled to them.

"Time is of the essence of these instructions. If this escrow is not in condition to close by September 17, 1939, any party who then shall have fully complied with his instructions may, in writing, demand the return of his money and/or property; but if none have complied, no demand for return thereof shall be recognized until five days after the escrow holder shall have mailed copies of such demand to all other parties at their respective addresses shown in the escrow instructions. If no such demand is made, close this escrow as soon as possible.

"Any amendment of or supplement to any instructions must be in writing."

(BUYERS):

Signature.....
RICHARD ROE
Address.....
Telephone.....

Signature.....
RUTH ROE
Address.....
Telephone.....

Los Angeles, California,
August 17, 1939

A B C Company:

I have read and approve the foregoing instructions. On or before September 17, 1939, I will hand you a deed executed by JOHN DOE and MARY DOE, husband and wife, to the vestees and covering property described on page 1 hereof,, which you will deliver when you can issue the policy of title insurance called for and obtain for the account of the parties executing said

deed, the sum of $4,500.00, and the purchase money second note and deed of trust referred to on page 1 hereof.

I have received outside of escrow the sum of $500.00, applying on the purchase price of the property in question.

Pay at the close of escrow the sum of $750.00 to John Smith, License No. 1111, as commission, and debit my account accordingly.

Draw Deed.

The foregoing GENERAL PROVISIONS are hereby incorporated in these instructions.

Pay all incumbrances of record necessary to place title in the condition called for. I will hand you any funds and instruments required for such purpose.

Deliver title insurance policy to me.

Instruct recorder to mail trust deed to me; deed to grantee.

Begin search of title at once. I pay for policy fee, as charged, escrow fee (see seller's schedule of costs and charges following).

(SELLERS):

Signature.....

JOHN DOE

Address.....
Telephone.....

Signature.....

MARY DOE

Address.....
Telephone.....

These instructions show quite clearly that the buyer is paying his money for a *deed* to the property. The June issue of "Florida Title News" reports the case of a certain negro who was buying property and who was quite positive he didn't want a deed. "Judge Brown," he said, "I'se buyin' five acres o' land, and I wants you to fix me up a mawgage on it."

"But," replied the lawyer, "if you are buying the land, you want a deed, not a mortgage."

"Naw suh, Judge," said the negro. "The last time I bought sum land I had a deed, but the fellow that had the mawgage done took the land 'way from me. This time I wants the mawgage."

In analyzing the legal nature of these writings which the parties have signed, the first question which may occur to you is this: Do we have a binding contract for sale and purchase which would be specifically enforceable in law? It is obvious that there is no mutual written contract between the buyer and seller providing for the sale and purchase of the land. All that we have are instructions given by each party to an escrow holder. The sufficiency of such instructions as a contract has been presented in several California cases and it has been held that even separately executed escrow instructions are to be considered together and when they match one another as to subject matter, terms, and conditions, a contract comes into existence between the parties. So well established and understood is this rule that in the majority of escrows in California the only contract between the parties is that which arises out of the escrow instructions.

An examination of the instructions in our escrow example discloses that they coincide on all material points and that as a consequence we seem to have a valid contract of sale and purchase. This result, however, is not achieved in all escrows. Suppose, for example, the buyer had said, "No, I don't want to approve the conditions and easements until I know what they are"; or, "the rent statement is subject to my approval." In this event, the instructions would have provided that the closing of the escrow was contingent upon the buyer's approval of the conditions and easements or of the rent statement, as the case might be. Obviously the buyer could not under such instructions be compelled to perform the contract until he had approved the items mentioned, and hence our escrow consists of merely an offer to sell upon certain terms and a qualified acceptance. Since most escrows are entered into in advance of a title search and before definite information is obtained as to the terms of mortgages, leases, taxes, and other items, it is probable that a binding contract of sale and purchase is created at the inception of the escrow in only a minority of instances. However, this offer, at least if supported by consideration, is a continuing offer for the period of time prescribed for performance in the instructions, and upon a complete acceptance within that time limit, an enforceable contract results.

Questions of Law

Many interesting questions of law are presented in those escrows where one party to the escrow attempts to cancel his end of the deal before the closing date or where a party dies or is declared incompetent; and yet it is surprising how infrequently these questions are presented for solution. It would seem that in the event of disagreement as to the terms of a deal, the parties are usually willing to mutually abandon it; and that complications from death or incompetency during the course of an escrow are an exception. The escrow holder's position is governed by the exact facts present in the particular escrow, and where conflicting demands are made upon the escrow holder, the claimants may be required to interplead in court.

The Steps

Returning to our escrow example, here briefly are the steps in the procedure which culminate in the final closing:

1. A search of title is ordered.

2. The beneficiary under the deed of trust of record is requested to forward a statement as to the unpaid balance and condition of the indebtedness. The buyer must approve the beneficiary's statement if it does not comply with the buyer's instructions.

3. Upon completion of the search, any matters disclosed thereby which are not approved in the escrow instructions are reported to the seller for clearance or to the buyer for approval.

4. The deed and purchase money deed of trust are prepared and sent to the seller and buyer, respectively, for examination.

5. If the buyer has not deposited the purchase money, he is requested to do so.

6. When all documents and funds are in the hands of the escrow holder and the escrow is in a condition to close, the necessary adjustments and prorations between the parties are made on a settlement sheet, the search of title is "run to date" as of the close of business of that day and assuming no change in title, the deed or other essential documents are recorded the following morning at 8:30. As you know, the records of title companies in California are complete at the end of each day's business, so that it is possible to file papers in the Recorder's office the following morning prior to any outside filings and with absolute assurance that there will be no intervening title matters.

7. Immediately after 8:30 the escrow holder disburses funds to the parties entitled thereto, causes any insurance policies to be transferred or amended, and presents a closing statement and bill to the parties.

You may be interested in the charges which each party in this escrow must pay.

Seller's Costs and Charges

Title policy	$57.50
Escrow fee	17.50
Revenue stamps	6.50
Drawing deed	1.50
Recording trust deed	3.50
Insurance transfers, each	.25
	$86.75

Buyer's Costs and Charges

Buyer's service fee	$7 50
Recording deed	1 00
Drawing second trust deed	2.50
	$11.00

Duties and Obligations

With this brief outline of two typical California escrows, we approach the second phase of our consideration of escrows: What are the duties and obligations of the escrow holder and what is the escrow holder's legal status? Is an escrow holder a general or a special agent? Is the escrow holder a mere robot who mechanically accepts, transcribes the instructions given him, and carries them out, or does the escrow holder actively inform and advise the parties as to their legal rights? Do his duties constitute an encroachment into the field of law? Who bears the loss

of an escrow holder's negligence or fraud?

The first of these pertinent and interesting inquiries concerns itself with the escrow holder's status as an agent. Our courts say that from the inception of an escrow and until the conditions have been performed, the escrow holder is an agent for *both* parties, but that after performance of the conditions, he is an agent or trustee for each of the parties with respect to those things placed in escrow to which each has become completely entitled. For example, if the escrow holder embezzles the purchase money in a sales escrow *before* the conditions of the escrow have been performed, the loss falls on the buyer; but if the embezzlement occurs *after* the time when the escrow is in condition to close, the loss falls on the seller.

We have said that an escrow holder is an *agent*. We know that under the general rules of agency, notice given to or possessed by an agent within the scope of his employment and in connection with and during his agency is notice to the principal. If these rules are applicable to an escrow agent, would it follow, for instance, that he is obligated to divulge to a seller knowledge that the buyer in the escrow for the sale of the property is reselling the property for a greater price through a separate escrow? This question has been answered by our courts in California; they have held that an escrow holder is not a general agent, that his obligations to each party in escrow are *limited* in accordance with the instructions given him, and that in the absence of any instruction directing him to disclose knowledge of a secret profit, he is under no duty to notify the seller-principal of the profit. There are, however, types of "secret profit" deals which are tainted with fraud and which raise questions of an escrow holder's moral responsibility. I rather imagine that the example I shall give of an agent trying to make a secret profit, while it is familiar to us in California, is not indigenous to this state and probably is encountered wherever land is bought and sold. Here is the example:

An owner employs an agent to sell property for a minimum price of $10,000, for which service the agent is to be paid a commission on a percentage basis. The agent finds a purchaser who is willing to pay $15,000. Although it is the duty of the agent to secure for the owner the best possible bargain he can, and although the agent is precluded from making a secret profit, let us assume that he arranges to defraud his principal by having his "dummy" purchase the property from the principal for $10,000 under one set of escrow instructions and by having the dummy resell the property for $15,000 under separate escrow instructions to the real purchaser, both escrows being closed concurrently so that the real purchaser's money can be used to pay the seller. In addition to making a secret profit of $5,000, the agent calls for the usual commission from the seller.

No legal duty is cast upon the escrow holder to inform the seller that his broker agent is making a secret profit; however, it has been the accepted practice of responsible escrow holders in California to refuse to handle any escrow in which it is either apparent or possible that an agent is defrauding his principal in the manner stated. "Middle man escrows," so called, are usually accepted only where the facts of the resale are disclosed to and approved by the original seller or where the middleman is not an agent for the seller or buyer and has an option or contract to purchase from the seller for a fixed price. Another possible exception might occur where the middleman has an autorization from the owner to sell property for a fixed price net to him with the understanding that the agent selling the same shall be entitled to any excess over the net price as a commission.

I have said that an escrow man is a "robot." Webster says that a robot is a "mechanically operated automaton"; one "devoid of sensibility." To classify an escrow man as a robot is neither flattering nor accurate, but the term does have this significance in its application to him: that the escrow man is mechanically operated in that he is actuated by outsides impulses, which impulses are the instructions given to him by the parties in the escrow. He cannot act beyond these instructions; he cannot do less than he is directed to do. He cannot act as a counselor who advises either party that a better bargain could be made in this or that way; he cannot decide that the closing of the escrow would be facilitated by disregarding or modifying the instructions given to him.

Its Drafting

Theoretically, the drafting of an escrow is accomplished in this way: the parties appear before the escrow man, outline the terms and conditions of their proposed transaction, state what each is to give and receive, specify the adjustments and disbursements which the escrow holder is to make, and the escrow man then writes the instructions precisely as they have been given to him. Actually, this is not what happens. You can readily visualize, from your own experiences in discussing title and escrow matters with the average layman who enters into land deals but a few times during his life, just what strange and wonderful writings would arise out of a literal transcription of the verbal directions of the parties. I recall the case of one worthy lady in an escrow who, when asked about the taxes, asserted that "naturally she wanted them probated." I can also remember the instance of a certain party in escrow who doubtless thought of an escrow as a sort of slot machine into which one put his money and received the title, for when this party was informed by the escrow man that "it will take a few days to bring the title down," he remarked: "Well, where is this title; I'll bring it down here myself."

Intent of Parties

Accordingly, in reality we see the escrow man questioning the parties to ascertain their intentions and then expressing these intentions in appropriate and understandable language in the instructions which they are to read and sign. While the escrow man would not be justified in introducing new and unconsidered angles in the proposed deal, he can, and should, make inquiry as to the disposition of those items customarily adjusted in real estate transactions, such as taxes, interest, transfer of insurance policies, and the like. In addition, the escrow man is entitled to answer those questions which are directly asked by the parties if in doing so, he is not giving purely legal advice. To illustrate the point I have in mind, the escrow man could ask whether taxes are to be adjusted and he could explain the method of proration, but he could not with propriety warn the buyer that the taxes include certain special levies which might be a detriment to the value of the property; he could ask whether a sale is to be made subject to a mortgage of record and whether a mortgagee's offset statement is required, but he could not suggest that the seller would profit if the buyer assumes and agrees to pay the encumbrance; he is entitled to inquire what form of policy is to be issued and upon request to summarize the scope and coverage of the various kinds of policies, but he cannot recommend that the buyer call for a survey and demand a full coverage policy; and while he can properly question the buyer as to the tenure in which title is to be acquired, he cannot, for example, point out that in a joint tenancy there may be certain advantages over a tenancy in common or a holding as community property and suggest that the title should therefore be taken in joint tenancy.

The Bar

I observed that when I spoke of the unlawful practice of law, traces of varying emotions appeared upon the faces of many of you at the mere mention of this delicate and vital problem. Most certainly, you may have thought, if the drafting of escrow instructions can result in a legal contract, then an escrow holder is performing the functions of an attorney; furthermore, how about the preparation of deeds and other legal instruments?

The State Bar of California is, I am sure, no less jealous of the sacred rights of those who are authorized to practice law than the bar associations of other states; unlawful encroachments by laymen and corporations upon the field of law are actively resisted. And in California, as in other states, the vigilance of the attorneys has been intensified by the economic necessity to provide a livelihood for the members of the presently overcrowded and rapidly increasing Bar. No panacea for the alleviation of this condition has appeared. Appar-

ently we lack the ingenuity of those gentlemen in Florida who introduced the bill referred yesterday in this convention to exterminate lawyers agriculturally through the seasonal plowing under of every third lawyer.

Any doubts as to the legitimate functions of escrow holders in California appear to have been resolved by a treaty with the State Bar Association which defines the limitations on duties of an escrow holder. The treaty provides that an escrow agent is entitled to prepare the escrow instructions, defining the rights, duties, and obligations of the escrow agent; it shall not draft any formal agreement between the parties other than escrow instructions for the purchase, sale or transfer of real estate; that it shall not prepare escrow instruments except where the work consists of filling in blanks in such printed instruments as are generally and commonly used in real estate transactions; and that the escrow holder shall not give legal advice concerning the respective rights and obligations of the parties, but shall advise them to consult an attorney.

Efficacy

I believe, gentlemen, that with this outline of the methods of handling escrows in California, we are now in a position to ask these questions: What contributions, if any, has this escrow system made to the business of closing real estate transfers in this state. Can we say that the escrow has fulfilled the need for a safe, quick, and economic mechanism which will effectuate an exchange of money and instruments? What are the merits of the escrow; what are its demerits?

Perhaps the first possible defect which may occur to you arises out of the fact that the escrow holder cannot actively advise either party in the escrow as to his legal rights and liabilities. The layman is apt to have the impression that the combination of title insurance and an escrow assures him of absolute protection. It must be conceded that this assumption may be unsound in many cases. Neither a policy of title insurance nor an escrow is a fool-proof devise which guarantees the land dealer against loss from all possible sources. Title hazards which spring from possessory rights, water rights, deficiencies in boundaries, and other matters not covered by standard form policies, cannot be avoided unless the land dealer has sufficient title knowledge to either take protective measures or to require a full coverage policy, or unless he is properly counseled as to the safeguards he should adopt. And similarly, the value of an escrow is somewhat dependent upon the experience and intelligence of the person utilizing it. An escrow is not intended to obviate the necessity for independent legal advice.

It cannot be said, however, that this alleged defect in our title closing procedure is in any sense attributable to the escrow. The failure of people to guard their interests through legal counsel is a human weakness that is not confined to real estate affairs and which would exist regardless of the nature of the agencies created to close title transfers. If it be argued that in every real estate deal, all functions in closing should be performed by attorneys, one is faced with the simple and undeniable fact that at least in California no agency other than the escrow has been able to meet the demands of our real estate business. Nor is there any desire on the part of the local attorneys to assume the detailed and often burdensome duties of the escrow holder. Generally speaking, when an attorney is representing a party to an escrow, as attorneys frequently do, he is quite satisfied to have the escrow holder handle the funds and documents, draw the instructions, make prorations, and perform the customary duties. The escrow may be thought of as a tool which the attorney may use in closing a deal for his client.

On the credit side of the ledger, I think we may list these apparent achievements of the escrow:

Safety

First. It assures each party in the escrow that his money or his documents will not be delivered until there has been secured for him exactly what his instructons call for, e.g., if he is a purchaser, his money will not be paid until a deed to him has been recorded and until a policy can be issued vesting title in accordance with his instructions. Briefly, the escrow as it operates in California effects a *concurrent delivery* dependent upon the issuance of a policy.

Second. The person who follows the practice of selecting a responsible corporate escrow holder knows that his money or funds are safe and that he will be compensated for any negligence, fraud, or derelictions on the part of those who handle his escrow.

Time

Third. The escrow creates a *period of abeyance* during which the title may be searched, flaws in the title removed, essential information as to taxes, rents, and other items secured, and the numerous other details of closing a real estate transfer performed. Still further, this period of abeyance enables a person to enter into negotiations with respect to the money or property he is acquiring through the escrow and to have these negotiations completed coincident with and contingent upon the closing of the original escrow; for example, escrows are not uncommon in which a man will agree to purchase, say, twenty-five parcels of property, some improved and some unimproved, some located in one county and some perhaps in other counties or even states. While the sale is in escrow, the buyer can contract for the sale or exchange of one or more of the properties; he can arrange to borrow money upon the security of all or any of the properties; in fact, there may be any number of sales, resales, exchanges, financings, refinancings, and other deals involving the buyer and those with whom he negotiates. All of these transactions may be handled in the original or in separate escrows, and all of the escrows may be made contingent upon a concurrent closing with the first sale.

Freedom from Details

Fourth. The escrow relieves the person who uses it of all burdensome bookkeeping details and offers an expert who is familiar with the prorations and adjustments customary in real estate deals; in addition, the escrow holder assists in procuring the releases, demands, and clearances necessary to close the deal.

Binding the Parties

Fifth. The escrow provides the machinery for those who desire to bind the other party to the bargain; in other words, if one who enters into an escrow desires to create a binding contract to perform from which the other party cannot withdraw, he can do so by making certain that the escrow instructions match in all material respects.

Flexible

Sixth. One of the most meritorious features of the escrow is its flexibility. The escrow is adapted for almost any kind of conditional delivery; it has in fact been used in a great variety of real estate transactions other than those familiar instances of sales, loans, and exchanges. I would like to relate a few of the unusual cases where the benefits of an escrow have been evident.

Several years ago the Federal Government made Los Angeles the proposition that it would build a new Post Office upon any central downtown location which the City would donate. The usual condemnation proceedings proved not to be popular, and it was decided that the site would be purchased outright by those surrounding property owners who would benefit by the location.

The purchase was affected through what was designated as "The Citizens Committee." A plan for voluntary assessment of the surrounding property owners was formulated on the basis of the benefits to be derived, and each property owner was assessed his prorata share of the cost of the site. The Committee could not, however, accept the subscriptions or promises of the property owners, because the sellers of the site demanded cash. On the other hand, the individual property owner did not want to put up his portion of the assessment unless the Committee was successful in obtaining all necessary funds.

The attorneys for the parties felt that an escrow would solve the problem. The sellers of the proposed post office site were induced to place their deeds in escrow, accompanied by their respective demands for cash, and were further persuaded to permit the deeds to remain in escrow for a length of

time calculated to be sufficient to allow the Citizens Committee to collect the individual assessments from the surrounding property owners. These property owners were, in turn, each prevailed upon to deposit their individual assessments in escrow for use only when the entire site could be purchased.

The Government was satisfied with this arrangement and the transaction, which otherwise might have fallen down, succeeded.

Another interesting example of the use of an escrow was in connection with the dissolution of a corporation. Each of the stockholders had entered into the usual agreement for the surrender of their stock in exchange for certain assets of the corporation, but they also wanted to be positive that all of the debts of the corporation had been satisfied.

On the other hand, the attorneys for the corporation did not desire to make distribution of any of the assets of the corporation until all of the outstanding capital stock had been impounded. Again it was thought by the attorneys for the corporation, as well as the attorneys representing various groups of the stockholders, that the problem could be solved by the use of an escrow.

The corporation deposited deeds and other transfers of assets to stockholder in escrow; the stockholders deposited their stock in escrow. The condition of delivery was the final dissolution of the corporation in accordance with the law. Incidentally, it was interesting to note the various assets which many of the stockholders asked for in exchange for their stock. Some called for so many tons of steel; some for cash; one for some property located in the Hawaiian Islands, while another called for delivery of a ship.

Regardless of the varying types and locations of the properties demanded, it must be borne in mind that the escrow had to effectuate a simultaneous transfer of title to the properties, real or personal. The use of telegrams and telephones made this operation comparatively easy. All parties were protected, transfer of the assets to the property were made to the individual stockholders at the appointed hour, and the stock cancelled and delivered to the corporation. Those stockholders who were acquiring insurable interests in real property received policies of title insurance, so that they had tangible assurance as to the regularity of the dissolution proceedings.

Example

Another escrow which involved a concurrent exchange between many persons arose in connection with the reorganization of a building and loan association. It was thought by the attorneys for the building and loan commissioner that the best method of carrying out the order of the court authorizing the thousands of investors of the old association to exchange their investment certificates for new investment certificates in the newly organized building and loan association, or for cash, would be by the use of an escrow. In this instance a majority of the investors were induced to take an investment certificate in the new association, but for those who did not so agree, it was necessary that the new association borrow money on the assets which were turned over to it by the old association.

The various classes of investors deposited in the escrow their certificates, accompanied by their demand for the new Certificate or for cash. The deeds of conveyance were deposited by the old association; the trust indentures securing the new loans were deposited by the new association; and the money to cover the demands of the investors demanding cash was deposited by the lenders.

When these arrangements had been completed, at a designated hour, title to the assets of the old association passed to the new association; simultaneously the trust indentures of the new association were recorded and delivered to the lenders, the proceeds of the loan disbursed to all of the investors demanding cash, and the new certificates distributed to the investors who had agreed to take them.

The interesting point in this transaction was the fact that not only thousands of dollars were involved, but that hundreds of individual escrow instructions, each complete in themselves, were on file.

Bond Issues

Perhaps the greatest test of the flexibility and utility of an escrow occurs in those transactions which involve the foreclosing of a bond issue where a portion of the money to be used for the bidding at the sale is to be raised by a loan upon the property being foreclosed. In an escrow of this nature, the person who anticipates that he will be the successful bidder at the sale negotiates a loan upon the property which he expects to acquire. The lender deposits the loan funds in the escrow with instructions that they are to be used when a policy can be issued insuring that he has a first deed of trust. The trustee's sale is set for 11:00 a. m. The consummation of this escrow requires that at some definite moment after the bidding is opened, the following conditions exist: the highest bid is that made by our prospective new owner, his bid has been accepted and he is entitled to the trustee's deed; the title to the property bid in is free and clear except the trust indenture under which foreclosure is being had, and a release of this indenture is made available by the trustee; the deed of trust in favor of the new lender can be recorded as a first lien, and a cashier's check for the proceeds of the loan is made available for use by the bidder at the sale; and the title company must be in a position to insure title in said bidder at the sale and to insure that the new deed of trust is a first lien. To complete this escrow, it was necessary to station men in the County Recorder's office and in the offices of the clerks of the Superior, Municipal, and Federal Offices; it was further necessary to bring the title down to the moment of bidding, to establish telephone communications to all parties in order to verify the fact that there was no change of title at the time of the acceptance of the bid, and to record the documents required to vest title in the condition called for.

This concludes what, as I look back, seems to me to be a somewhat inadequate survey of the escrow. It is difficult to portray through words, spoken or written, the things we do—our experience, our daily work. Here in California we feel that the escrow is an integral part of our method of transacting the real estate business; the escrow is almost as familiar and necessary to us as the title policy. We feel that the escrow is an institution, created and fostered by necessity, and developed to meet the expanding needs of real estate investors. I hope that you will understand that in speaking of escrows I am neither contending that they are the answer to our wish for a perfect title closing device, nor am I criticizing the methods practiced elsewhere. What I have said about escrows may be considered merely as one contribution to that exchange of ideas which promotes growth and improvement.

Report of Committee on Advertising and Publicity

WILLIAM HARVEY, *Chairman*
Advertising Manager, Title Insurance and Trust Co., Los Angeles, California

During the past year your committee on advertising and public relations and your national secretary received more requests for advertising and other promotional material than ever before.

This increase, we believe, is not because our members feel that such material is available—but because more and more we recognize the necessity of a sound merchandising program for our industry.

Much of the material requested we were able to supply—or we were able to offer constructive suggestions. Many of our members we were unable to

assist—not because our committee or Association lacked the personnel capable of working out a solution to each particular problem, but because we, like many other big industries, have overlooked the importance of the job of selling ourselves and our product to our customers and consequently have not been sufficiently organized in this field to render the service to our members which they need and which they should have.

We realize that such phrases as "merchandising," "sales strategy" and "point of sale" are terms which we have heard, but the meaning of which is still vague to many of us. Actually they are very simple descriptions of the every day conduct that each and every one of us use in the course of our daily business.

The Advertising Display

Elsewhere on this floor we have a rather comprehensive display of advertising materials which have been prepared and released by our members during the past year and this exhibit is a splendid example of the progress and thought given to our advertising problem by many of our members. This advertising, for the most part, was prepared without the aid of advertising counsel—definitely proving that we are aware of the importance of "selling" and the telling of our business to our customers and to the public in general.

Our work this year, however, did not stop with the printed word. We have long realized that our message can be carried by word of mouth to club meetings, to association meetings and into the home itself. In this phase of our public relations program we have also advanced. In fact, we now have available for members a series of talks which tell about our business in an interesting and convincing way—talks designed and written to "sell" our business to every customer and every prospective buyer of an abstract or policy of title insurance. Copies of these speeches will be available at the advertising clinics which will be held tomorrow.

Importance of Advertising

Our committee has found that our members for the most part are aware of the importance of our advertising and public relations problems — and realize that concentrated effort and expert guidance are necessary for the continued existence of our industry—just as other businesses who deal in intangibles have discovered, our committee believes that your national association can point the way to a sound and sensible advertising and public relations program which will present the *real* facts of our business to our customers, actual or potential.

WILLIAM W. HARVEY
Los Angeles, California
Advertising Manager, Title Insurance & Trust Company

We believe that fundamentally our business the nation over is the same. True, our practices vary to meet local conditions and requirements, but actually we sell the same product and the same service. We recognize that the selling of these products becomes more important every day to us as individuals and to us as a group.

Why cannot our Association with the support of our members and with the aid of the counsel which we have available within our own membership *DO* something about this problem confronting us and which, because of the very nature of our business, is necessary to carry on more energetically and enthusiastically than ever before.

Your committee endorses and strongly recommends the serious consideration of the appointment and authorization of your committee on advertising and public relations to make an exhaustive study of our present problem, and to determine a program which can be beneficial to our entire membership. To carry out this plan your committee on advertising and public relations needs your wholehearted support. I solicit that support at this time.

I should like to call your attention to our advertising clinics which will be held tomorrow morning. At that time we shall discuss informally some of the troubles which now face us—and perhaps from that round table discussion we shall discover a new path—an easier path for our advertising committee to follow next year.

Report of Committee on Membership and Organization

BRIANT WELLS, *Chairman*
Secretary, Title Guarantee & Trust Company, Los Angeles, California

The honor of being selected by your President as Chairman of the Membership Committee so completely dazzled me that I said "Yes" before I realized that this was one of those "I do not choose to run" committees and that the available prospects were more cagey than I. I further forgot that it would require my arising before you in contravention of my firm belief that it is better to keep your mouth shut and let people think you are crazy than to open it and remove all doubt. But you all know Porter Bruck by now. He could sell anything. You fell for it at Oklahoma and that's my consolation for being before you now. And it will have to be yours too.

Our Purpose

To start with, I read Article II of the associartion constitution entitled "Object." You all know what that is so I'll read it to you.

"The purpose of this association shall be to promote the acquaintance, mutual advantages and general welfare of its members by the interchange of ideas, and by protective, remedial or other measures to advance the common interests of its members and the general public in harmony with their respective rights, interests and duties."

There's the answer to the first question asked, "What is the object of becoming a member of the A.T.A.?" I would lift the meat of the cocoanut from article II "To advance the common interest of its members and the general public," and make that the words for the theme song for the campaign. It would be sung to the lyric of the "Last Round-Up". How could a sufferer engaged in the title business for the nominal dues involved, resist belonging to a fraternal brotherhood that offered him in return so much? So I started writing letters, (letters beautifully worded) telling of the advantages of belonging to the Association. Names of eligible members were supplied by State Association Presidents and the results of my correspondence were far beyond all expectations. Even in the states where no association existed, I obtained names from county recorders and kept Jim Sheridan's office busy checking their applications for membership. Truly,

this *was* the last round-up for membership in the A.T.A. And then the alarm clock went off and I awakened.

I Soliloquized

Going to work that morning, I said to myself, "Wells you're a local boy. You may know Indians in a democracy like California, but what kind of a sales talk gets over in Maine or Vermont, or take the Middle West, you've never shucked corn or chewed tobacco. They will all be suspicious of you anyway, you being a title man in California." I was convinced by now that I should resign from the Membership Committee when suddenly I had a thought. "Don't frighten it," said a small voice, "It's in a strange place." "That's good advice," I whispered, "Go on." "Well," said the voice, "You have in your vicinity a community where you can talk to ex-citizens of every state in the union. Think up a plan and take it to the city park in Long Beach." But I protested, "That is not a cross section, those are ex-citizens and not typical ones, else, why would they leave happy homes and come to Southern California?" This manuscript has been altered, that was written "California." "Well then," said the voice, "Why don't you consult the Association Membership directly. This is no one committee job. It's a job for everyone to take part in; to be working on constantly. Cannot the common interest of members be best advanced by broadening the scope of the membership and would not a broad membership better serve the public in general? Do you know that you have 2163 members operating in 1327 counties in the United States and that there are 3058 counties in all, 1731 counties where the general public cannot do business with a member of the association. Less than half the counties in the United States represented in the A.T.A. and you call yourself a National Association? Don't waste time trying to get new members to compete with your present members. Go into new territory. Offer them the prestige that goes with membership." "Wait a minute," I said. "Prestige is what the public thinks of you. How are you going to get that across to the public?" "Doesn't the public know whether or not they are dealing with a member of the A.T.A.?" "No," I said, "I don't think so; at least our company has never publicized its membership."

Tell the World

The small voice fairly howled at me, "Good Lord man, no wonder you can't sell memberships. Among yourselves you know what it means to belong to the A.T.A. But your customers apparently don't. Why should they seek you out from any other company? Doesn't a member of a national realty board appeal to the public as having better standing in the community than a fly-by-night real estate operator? Yours is a national association—32 years old—one year older than the NRA. Do you mean to tell me your customers don't value your membership? Tell them about it. Put it on the front door—both doors if they are the

BRIANT H. WELLS, JR.
Los Angeles, California
Secretary, Title Guarantee and Trust Co.

swinging type—and make it stand out so every customer has to pass it every time he comes in your office. I don't see how you can expect to sell the advantages of the A.T.A. in counties where there are no members if you have created no demand for association membership in the eyes of the public. Rush to the typewriter while these thoughts are fresh in that feeble mind of yours and one more thing—set down a program and ask your 2163 members to work on it during the year. 2163 members thinking about this association and talking about it to their customers will bring results. Make your membership lift you into a preferred position in your community and the demand for membership out of your community will follow."

The voice died out, leaving me alone and worried, but one admonition kept ringing in my ears. "This is no one committee job. It's a job for everyone to take part in." For your own interests, gentlemen, and for the interest of the public with which you deal, no others.

I submit to you therefore—for each of you:

1. To make your membership campaign a part of your every day affairs, in the manner you conduct your business and your attitude towards your customers and your fellow member competitors.

2. To create a public state of mind with regard to members of the association in your own community.

3. To broaden the scope of your association by endeavoring to increase the active membership in territory not now represented.

4. To endeavor to accomplish the above

   (a) By each of you volunteering to your state or regional association to be responsible for obtaining one new member in some county close by, not now represented.

   (b) By every member using the slogan "Member A.T.A." whenever and wherever possible in all advertising copy.

   (c) By adopting a colorful emblem designed to catch the public eye and inform your customer and prospective customer of your membership in a national association; the emblem further, to provide an immediate tangible item of benefit in the solicitation of new members.

Make this emblem significant in your community and in time you will be turning down applications instead of soliciting them.

Registration, San Francisco Convention, 1939

Arizona

Eger, Mr., Mrs. Emil C.	Title Ins. & Trust Co. of Yuma	Yuma
Featherstone, Alfred	Guaranty Abst. & Title Co.	Murfreesboro
O'Dowd, Mr., Mrs. J. J.	Tucson Title Insurance Co.	Tucson
Stewart, Dugald	Surety Title & Trust Co.	Florence
Taylor, Mr., Mrs. L. J.	Phoenix Title & Trust Co.	Phoenix
Van Ness, Mr., Mrs. C. E.	Arizona Title Guar. & Trust Co.	Phoenix

California

Anderson, Henry	Stanislaus County Title Co.	Modesto
Anderson, H. R.	Security Title Ins. & Guar. Co.	El Centro
Baker, Mr., Mrs. J. H.	Security Title Ins. & Guar. Co.	Fresno
Bancroft, James E.	Capital City Title Co.	Sacramento
Barnard, Mr., Mrs. L. D.	Security Title Ins. & Guar. Co.	Santa Barbara
Barnes, Henry D.	Union Title Ins. & Trust Co.	San Diego
Barrell, Mr., Mrs. E. C.	Colusa County Title Co.	Colusa
Blauert, O. F.	Oakland Title Ins. & Gty. Co.	Oakland
Blodgett, Mr., Mrs. C. R.	California Pacific Title Co. at Santa Cruz	Santa Cruz
Boardman, R. W.	Stanislaus Abst. & Escrow Co.	Modesto
Bomer, S. E.	Salinas Title Guar. Company	Salinas
Brand, Carl	Realty Tax and Service Co.	Los Angeles
Bruck, Mr., Mrs. Porter & daughter, Barbara	Title Insurance & Trust Co.	Los Angeles
Burke, Ray	Northern Counties Title Ins. Co.	San Francisco
Cairns, Gordon B.	Napa County Title Co.	Napa
Callister, E. J.	Security-First National Bank	Los Angeles
Chapman, Glen W.	Security Title Ins. & Guar. Co.	Riverside
Chapman, A. W.	Oakland Title Ins. & Gty. Co.	Oakland
Clark, P. W.	Title Insurance & Trust Co.	Los Angeles
Colcough, I. N.	Oroville Title Co.	Oroville
Connor, Mr., Mrs. T.		Los Angeles
Cooper, Mr., Mrs. C. K. & Son & Daughter	Pioneer Title Ins. & Trust Co.	San Bernardino
Correll, W. I.	Shasta County Title Company	Redding
Cross, Judge	National Title Ins. Co.	Los Angeles
Davis, Mr., Mrs. M. J. & Son, Melvin	Bakersfield Abst. Co.	Bakersfield
Davis, Neill	California Federal Savings—Building Loan	Los Angeles
Dearborn, Mr., Mrs. E. L.	Solano County Title Company	Fairfield
DeLisle, Frank F.	City Title Insurance Co.	San Francisco
Dinubilo, Harry J.	San Joaquin Abst. & Title Co.	Fresno
Dutcher, V. H.	Northern Counties Title Ins. Co.	San Francisco
Easley, Mrs. Julia	California Pacific Title & Trust Company	San Francisco
Edwards, Mr., Mrs. L. P.	San Jose Abst. & Title Ins. Co.	San Jose
Egan, E. J.	Northern Counties Title Ins. Co.	San Francisco
Faulkner, Nelson	Monterey County Title & Abst. Company	Salinas
Feeney, Mr., Mrs. L. J.	Glenn County Title Company	Willows
Ferrall, Mr., Mrs. D. W.	Southern Title & Trust Co.	San Diego
Ford, Mr., Mrs. James R.	Security Title Ins. & Guar. Co.	Los Angeles
Forward, Mr., Mrs. J. D.	Union Title Ins. & Trust Co.	San Diego
Galt, Roy F.	Stockton Guaranty Title Co.	Stockton
Gannon, Mr., Mrs. J. P.	Security Title Ins. & Guar. Co.	Visalia
Gauldin, Mr., Mrs. C. E.	Realty Tax & Service Co.	Los Angeles
Gaynor, David	Title Ins. & Trust Co.	Los Angeles
Glascock, W. N.	Pioneer Title Ins. & Trust Co.	San Bernardino
Gordon, E. S.	National Title Ins. Co.	Los Angeles
Govan, Mr., Mrs. W. L.	Northern Counties Title Ins. Co.	San Francisco
Gray, Mr., Mrs. R. W.	Title Insurance & Trust Co.	Ventura
Grijavla, W. F.	Alameda County—East Bay Title Insurance Co.	Oakland
Hallinan, T. J.	California Pacific Title & Trust Company	San Mateo
Handlos, Mr., Mrs. R.	Title Insurance & Guaranty Co.	San Francisco
Harvey, Mr., Mrs. Albert	Security Title Ins. & Guar. Co.	Santa Ana
Harvey, William	Title Insurance & Trust Co.	Los Angeles
Henley, Dr., Mrs. W. B.	University of Southern Calif.	Los Angeles
Henley, Mr., Mrs. R. J.	California Pacific Title & Trust Company	San Francisco
Heyneman, George	Southern Title & Trust Co.	San Diego
Hironymous, Mr., Mrs. C.	Stockton Abst. & Title Co.	Stockton
Home, Mr., Mrs. W. S.	California Land Title Assn.	Los Angeles
Humphrey, Harvey	Title Guarantee & Trust Co.	Los Angeles
Humphrey, O. W.	Abst. & Title Ins. Co.	Santa Ana
Johnson, Chas. E.	Riverside Title Co.	Riverside
Johnson, Earl E.	Title Insurance & Trust Co.	Los Angeles
Johnson, Robert	Alameda County—East Bay Title Insurance Co.	Oakland
Jones, J. D.	Sonoma County Land Title Co.	Santa Rosa
Jones, Lester A.	Abstract & Title Insurance Co.	Santa Ana
Karmel, Ike	Northern Counties Title Co.	San Francisco
Keddie, Mr., Mrs. Alex	Northern Counties Title Ins. Co.	San Francisco
Kennedy, Mr., Mrs. Rex	Orange County Title Co.	Santa Ana
Kloess, Roland A.	Abstract & Title Ins. Co.	Santa Ana
Landels, Edward D.	California Pacific Title & Trust Co.	San Francisco
Leonard, Dan	Pacific Mutual Life Ins. Co.	Los Angeles
L'Hommedieu, James H.	Alameda County—East Bay Title Insurance Co.	Oakland
Stoney, Donzel, Katherine Stoney Loker	Title Ins. & Guaranty Co.	San Francisco
Loofbourrow, Mr., Mrs. J.	Title Guarantee & Trust Co.	Los Angeles
Loughlin, Stephen J.	National Title Ins. Co.	Los Angeles
Lundell, W. P.	Los Angeles Escrow Company	Los Angeles
McArthur, R. G.	Oakland Title Ins. & Gty.	Oakland
McCarthy, Richard	Alameda County—East Bay Title Insurance Co.	Oakland
McDowell, George	Northern Counties Title Ins. Co.	San Francisco
McEuen, Mr., Mrs. W. W.	Pioneer Title Ins. & Trust Co.	El Centro
McGinnis, Mr., Mrs. M.	Braun & Company	Los Angeles
McGlynn, Mr., Mrs. T. J.	Tehama County Title Co.	Red Bluff
McIsaac, Mr., Mrs. H. I.	San Joaquin County Abst. Co.	Stockton
Mack, George T.	Simonson-Harrell Abst. Co.	Merced
Mack, J. L.	Pioneer Title Ins. & Trust Co.	San Bernardino
Mobley, Mr., Mrs. A. S.	Title Insurance & Trust Co.	San Luis Obispo
Morton, Mr., Mrs. T. G.	Title Insurance & Gty. Co.	San Francisco
Mulcrevy, Frank	California Pacific Title & Trust Co.	San Francisco
Mullen, L. E.	Contra Costa County Title Co.	Martinez
Murphy, Martin M.	City Title Insurance Co.	San Francisco
Myren, George B.	California Pacific Title & Trust Co.	San Jose
Nathan, Lee I.	City Title Insurance Co.	San Francisco
Noonan, J. W.	Title Ins. & Gty. Co.	San Francisco
Ogden, Mr., Mrs. M. B.	Title Insurance & Trust Co.	Los Angeles
Ormsby, Walter	Richmond Martinez Abst. & Title Co.	Martinez
O'Rourke, A. W.	Oakland Title Ins. & Gty. Co.	Oakland
Parker, Mrs. Hazel	California Land Title Assn.	Los Angeles
Paterson, Mr., Mrs. L. N.	San Joaquin Abst. & Title Co.	Fresno
Penter, Morris A.	Oakland Post Enquirer	Oakland
Pettijohn, L. R.	Security Title Ins. & Guar. Co.	Hanford
Phillips, Ray J.	Yuba County Title Guar. Co.	Marysville
Pierce, Mr., Mrs. R. E.	Fidelity Title Insurance Co.	Sacramento
Prather, Mr., Mrs. H. R.	Oakland Title Insurance & Gty. Co.	Oakland
Prince, John L.	Security Title Ins. & Guar. Co.	Santa Barbara
Questo, Miss Eva	Title Ins. & Gty. Co.	San Francisco
Raethke, Miss Etta	Title Ins. & Gty. Co.	San Francisco
Rankin, Mr., Mrs. M. J.	Title Guarantee & Trust Co.	Los Angeles
Raybourne, H. A.	Alameda County—East Bay Title Insurance Co.	Oakland
Reader, Mr., Mrs. A. G.	Union Title Ins. & Trust Co.	San Diego
Rebholz, George L.	Northern Counties Title Ins. Co.	San Francisco
Reimers, Mr., Mrs. G. A.	Title Guarantee & Trust Co.	Los Angeles
Robinson, Mr., Mrs. E. R.	Title Insurance & Trust Co.	Santa Barbara
Rolls, J. P.	City Title Insurance Co.	San Francisco
Russell, Fred	California Real Estate Assn.	Los Angeles
Scanlan, Eugene	National Title Ins. Co.	Los Angeles
Shearer, H. I.	Yolo County Title Abst. Co.	Woodland
Simonson, Stanley S.	Simonson-Harrell Abst. Co., Ltd.	Merced
Smith, Mr. Mrs. R. C.	Security Title Ins. & Guar. Co.	Santa Ana
Smith, Mr., Mrs. Mort.	Oakland Title Ins. & Gty. Co.	Oakland
Smith, W. H., Jr.	California Pacific Title & Trust Co.	San Francisco
Smyser, Mr., Mrs. H. O.	Security Title Ins. & Guar. Co.	Los Angeles
Spotts, Mr., Mrs. R. H.	Title Ins. & Trust Co.	Los Angeles
Stribling, Mr., Mrs. L. B.	Title Guarantee & Trust Co.	Los Angeles
Tschumy, Mr., Mrs. G. J.	Tulare County Abst. Co.	Visalia
Webber, J. B.	National Title Insurance Co.	Los Angeles
Wells, Mr., Mrs. B. H.	Title Guarantee & Trust Co.	Los Angeles
Whitney, Mr., Mrs. C. C.	Security Title Ins. & Trust Co.	San Bernardino
Wilkinson, Ferris	Security Title Ins. & Guar. Co.	San Bernardino
Wilson, Mr., Mrs. E. E.	Title Insurance & Trust Co.	Bakersfield
Willaman, Glenn D.	California Real Estate Assn.	Los Angeles
Woodhams, Clifton	San Mateo County Title Co.	Redwood City
Woodyard, Robert A.	California Pacific Title & Trust Co.	San Francisco

Colorado

Edmondson, Mr., Mrs. R.	Washington County Abst. Office	Akron
Fairfield, Mr., Mrs. G.	Title Guaranty Co.	Denver
Graham, Mr., Mrs. D. B.	The Title Guaranty Co.	Denver
Jenkins, Edgar	Arapahoe County Abst. & Title Co.	Littleton
Lacher, Mr., Mrs. W.	The Montrose County Abst. Co.	Montrose
Legre, Mrs. Irene	The Security Abst. & Title Co.	Colorado Springs
Myer, Miss Lemyra	Record Abst. & Title Ins. Co.	Denver
Nielson, Mr., Mrs. Aksel & Daughter	The Title Guaranty Co.	Denver
Painter, Charles F.	Painter Abst. & Ins. Agency Co.	Telluride

District of Columbia

Havell, Thomas C.	Department of Interior	Washington
Wolfsohn, Hon. Joel D.	Department of Interior	Washington

Florida

Coppinger, Mr., Mrs. J.	Dade-Commonwealth Title Co.	Miami
Hoover, Mr., Mrs. A. W.	National Title Insurance Co.	Miami

Idaho

Smith, R. B.	Twin Falls Title & Abst. Co.	Twin Falls
Turner, Mr., Mrs. T. J.	Bannock Title Abst. Co.	Pocatella

Illinois

Ackerman, Miss E.	Hancock County Abstract Co.	Carthage
Davis, Mae	Vermilion County Abstract Co.	Danville
Elsbury, Miss Ethel	Hancock County Abstract Co.	Carthage
Goldman, S.	Bonded Surveyors of America	Chicago
Marriott, Arthur C.	Chicago Title & Trust Co.	Chicago
McAnulty, Mr., Mrs. E. G. & Miss C. Steph'son	Hancock County Abstract Co.	Carthage
Melin, F. L. & Son	Sangamon County Abstract Co.	Springfield

Indiana

Andrews, Mrs. Louise	Anderson Abst. Co.	Kokomo
Bristor, Mr., Mrs. A. M.	Union Title Co.	Indianapolis
Furr, Russell A.	L. M. Brown Abst. Co.	Indianapolis
Taylor, J. D.	Taylor & Taylor	Danville

Iowa

Archer, Guerdon	O'Brien County Abst. Co., Inc.	Primghar
Johnson, Mr., Mrs. R. F.	Bankers Life Company	Des Moines
Momyer, John L.	C. A. Momyer & Sons	Algona
Murphy, Mr., Mrs. J. A.	Ida County Abst. Co.	Ida Grove
Simmons, W.	Simmons & Simmons	Fairfield
Weaver, Mr., Mrs. M. P.	M. P. Weaver Abstract Co.	Algona

Kansas

Bell, O. A.	The Guarantee Abst. Co.	Wichita
Creel, J. C.	C. A. Wilkin & Co.	Parsons
Dozier, Mr., Mrs. J. W.	Columbian Title & Trust Co.	Topeka
Miller, Mr., Mrs. J. I.	Montgomery County Abst. Co.	Independence
Palmer, Mr., Mrs. H. A.	Palmer & Son	Medicine Lodge

Kentucky

McIlvaine, L. W.	Louisville Title Ins. Co.	Louisville

Louisiana

Adams, Mr., Mrs. L.	Lawyers Title Ins. Corp.	New Orleans
Dugue, Mrs. Neva		New Orleans
Macheca, Frank		New Orleans

Michigan

Earp, Stanley M.	Burton Abstract & Title Co.	Detroit
Kennedy, Mr., Mrs. F.	Abstract & Title Gty. Co.	Detroit
Sheridan, Mr., Mrs. J. E.	American Title Association	Detroit

Minnesota

Southworth, Mr., Mrs. E.	Title Ins. Co. of Minnesota	Minneapolis

Missouri

Devine, Mr., Mrs. G. & Mrs. I. Sandidge	Land Title Ins. Co. of St. Louis	St. Louis
Eidson, Mr., Mrs. C. D.	Hight-Eidson Title Co.	Harrisonville
Eisenman, Mr., Mrs. E.	Kansas City Title & Trust Co.	Kansas City
Harrison, Mrs. Charlene	Harrison County Abst. Co.	Bethany
Hubbard, Mrs. T. H.	Chariton County Abst. & Title Co.	Keytesville
Gill, Mr., Mrs. McCune	Title Ins. Corp. of St. Louis	St. Louis
Lincoln, W. A.	Lincoln Abstract Co.	Springfield

Montana

Dykins, Mr., Mrs. C. W.	Fergus County Abst. Co.	Lewiston
Egan, Margaret	Judith Basin County Abst. Co.	Stanford
Garvey, Ethel M.	Gallatin County Abst. Co.	Bozeman
Johnson, H. I.	Lake County Abst. Co.	Polson
Kelly, Ruth	C. M. Kelly Abstract Co.	Lewiston
Sauser, Mr., Mrs. J. R.	Flathead County Abst. Co.	Kalispell

Nebraska

Reid, Mrs. Una E.	Weitzel Abstract Co.	Albion

Nevada

Jepson, Melvin E.		Reno

New Jersey

Amerman, John A.	Prudential Ins. Co. of America	Newark

New Mexico

Avery, Miss J. M.	Avery-Bowman Co.	Santa Fe
Bowman, Miss Grace	Avery-Bowman Co.	Santa Fe

New York

Clark, S. A.	Title Guarantee & Trust Co.	New York
Rudolph, Harold W.	Seaboard Surety Co.	New York

North Dakota

Summers, Mr., Mrs. C. S.	Burke Abstract Company	Bowbells

Ohio

Atmur, Mr., Mrs. M. A.		Lima
Chapman, J. L.		Cleveland
Hall, Mr., Mrs. F. A.	The Land Title Guar. & Trust Co.	Cleveland
Mazanac, Mr., Mrs. J. S.	The Cuyahoga Abst. Title & Trust Co.	Cleveland
Southwick, Mr., Mrs. E.	Title Guarantee & Trust Co.	Cincinnati

Oklahoma

Gill, William	American-First Trust Co.	Oklahoma City
Hutchison, Mr., Mrs. H.	American-First Trust Co.	Oklahoma City
Meyer, Mary Louise & Mr. Meyer	American-First Trust Co.	Oklahoma City

Oregon

Daly, Walter M.	Title & Trust Co.	Portland
Dwyer, Mr., Mrs. E. T.	Title & Trust Co.	Portland
Emmons, Miss Fern, Irene & Marjorie McBride	Wallowa Law Land & Abst. Co.	Enterprise
Gage, Dr. Daniel D., Jr.	University of Oregon	Eugene
Hanson, W. E.	Union Abstract Co.	Salem
Hoffman, Mr., Mrs. A. W.	Wilks Abst. & Title Company	Hillsboro
Johns, Mr., Mrs. J. S. & Dick & Dorothy	Hartman Abstract Company	Pendleton
Lynch, Frank	Salem Abstract Company	Salem
McClallen, Mr., Mrs. R.	Wallowa Law, Land & Abst. Co.	Enterprise
Peek, Donald C.	Commonwealth, Inc.	Portland
Raymond, Mr., Mrs. F. E.	Pacific Abstract Title Co.	Portland
Stickels, Fred G.	Title Abstract Co. of Eugene	Eugene
Updegraff, Mr., Mrs. G.	Sherman County Abst. Co.	Moro
Wylde, Mr., Mrs. B. F.	The Abstract & Title Co.	La Grande

South Dakota

Gray, Mrs. Pauline	Barnes & Gray Abstract Co.	Highmore
Rickert, Paul M.	Roberts County Abst. Co.	Sisseton

Tennessee

Boren, J. L.	Bluff City Abstract Co.	Memphis

Texas

Arnold, Mr., Mrs. J. E.	Arnold Abstract Co.	Henderson
Bisbey, Mr., Mrs. H. B.	Stewart Title Guaranty Co.	Galveston
Blume, C. E.		Seguin
Burns, Miss Mary	Stewart Title Guaranty Co.	Fort Worth
Collard, Miss Katherine	Elliott & Waldron Abst. Co.	Fort Worth
McMillan, T. E.	Guaranty Title & Trust Co.	Corpus Christi
Mueller, H. Eilers	Donegan Abst. Co.	Seguin
Rattikin, Mr., Mrs. J.	Stewart Title Guaranty Co.	Fort Worth
Simmons, Ira B.	Houston Title Guaranty Co.	Houston
Stehling, Mr., Mrs. A.	Stehling Abst. Co.	Fredericksburg
Willis, Mrs. Guy	Lamb County Abst. Co., Inc.	Olton
Wyatt, Mr., Mrs. M. R.	Stewart Title Guarantee Co.	San Antonio

Utah

Carr, Alex E.	Title Abstract Co.	Salt Lake City
Clawson, Mr., Mrs. J.	Inter-Mountain Title Gty. Co.	Salt Lake City
Ensign, Mr., Mrs. J. W.	Ensign Abst. Co.	Salt Lake City
Jensen, Jay C.	Salt Lake Abst. Co.	Salt Lake City
Kemp, Mr., Mrs. R. G.	Inter-Mountain Title Gty. Co.	Salt Lake City
Stanley, George B.		Heber
Zinn, C. V.	Home Abstract Co.	Ogden

Washington

Baughman, Miss Ruth	Washington Title Ins. Co.	Seattle
Bayley, Mr., Mrs. A. C.	Mason County Abst. & Title Co.	Shelton
Booth, L. S.	Washington Title Ins. Co.	Seattle
Burnham, Mr., Mrs. H. J.	Clark County Abst. & Title Co.	Vancouver
Cox, W. R.	Citizens Abst. Co.	Pasco
Cryor, Mr., Mrs. S. A.	Washington Title Ins. Co.	Seattle
Foster, Mr., Mrs. R. H.	Washington Title Ins. Co.	Seattle
Gibbons, Mr., Mrs. W.	Douglas County Title Abst. Co.	Waterville
Hall, Mr., Mrs. C. L.	Washington Title Ins. Co.	Seattle
Lefebvre, Miss Aimee		Seattle
Lefebvre, Miss Elise		Seattle
Lindahl, Miss Elsie	Washington Title Ins. Co.	Seattle
Luhman, Mr., Mrs. W. F.	Clallam County Abst. Co.	Port Angeles
Pickrell, Mrs. Mary	Washington Title Ins. Co.	Seattle
Reinert, Miss Alice	Washington Title Ins. Co.	Seattle
Sieler, Mr., Mrs. H. H.	Lewis County Abstract Co.	Chehalis
Taylor, D. & Mother	Puget Sound Title Ins. Co.	Seattle
Taylor, Mr., Mrs. F. L.	Northwestern Title Ins. Co.	Spokane
Tripple, Mr., Mrs. P. R.	Skagit County Abst. Co.	Mt. Vernon
Weatherwax, Mr., Mrs. F. B. & Daughters, Louise & Barbara	Grays Harbor Title Co., Inc.	Montesano
White, Mrs. Mayme	Washington Title Ins. Co.	Seattle
Woodford, Mr., Mrs. J.	Lawyers & Realtors Title Ins. Co.	Seattle

Wisconsin

Markham, Arleigh H.	Monroe County Abstract Co.	Sparta
McMullin, Roger E.	Monroe County Abstract Co.	Sparta
Nethercut, Mr., Mrs. W.	The Northwestern Mutual Life Insurance Co.	Milwaukee
Svanoe, H. T.	The Northwestern Mutual Life Insurance Co.	Milwaukee
Turkelson, Miss Agnes	Kenosha County Abstract Co.	Kenosha
Turkelson, Miss E. H.	Kenosha County Abstract Co.	Kenosha

Wyoming

McLaughlin, Miss Marg. & Mary A. Lerche	Capitol Abstract Co.	Cheyenne
Miller, Mrs. M. Eliz.	Wyoming Abst. & Title Co.	Cheyenne

CODE OF ETHICS

FIRST:—We believe that the foundation of success in business is embodied in the idea of service, and that Title Men should consider first, the needs of their customers, and second the remuneration to be considered.

SECOND:—Accuracy being essential in the examination of titles, Title Men should so arrange their records as to eliminate the possibility of mistakes.

THIRD:—Ever striving to elevate the title business to a plane of the highest standing in the business and professional world, the Title Man will always stand sponsor for his work and make good any loss, occasioned by his error, without invoking legal technicalities as a defense.

FOURTH:—The examination of title being to a large extent a personal undertaking, Title Men should at all times remember that fact, and endeavor to obtain and hold a reputation for honesty, promptness and accuracy.

FIFTH:—The principal part of business, coming from real estate dealers, lenders of money and lawyers, it is obvious that relations with these men should at all times be friendly. To further this friendship we declare ourselves willing to aid them in all ways possible in meeting and solving the problems that confront them.

SIXTH: We believe that every Title Man should have a lively and loyal interest in all that relates to the civic welfare of his community, and that he should join and support the local civic commercial bodies.