TITLE NEWS

OFFICIAL PUBLICATION

The American Title Association

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Proceedings of the
1941 National Convention
French Lick, Indiana

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TITLE NEWS

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THE AMERICAN TITLE ASSOCIATION

VOLUME XXI NUMBER 2

Officers and Committees—1941-42

Elected at the French Lick Convention --- September 29th-30th, October 1st

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Ass't Counsel, Northwestern Mutual Life Ins. Co.

CARL P. OBERMILLER.....Philadelphia, Pa.
Title Officer, Germantown Trust Co.

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.

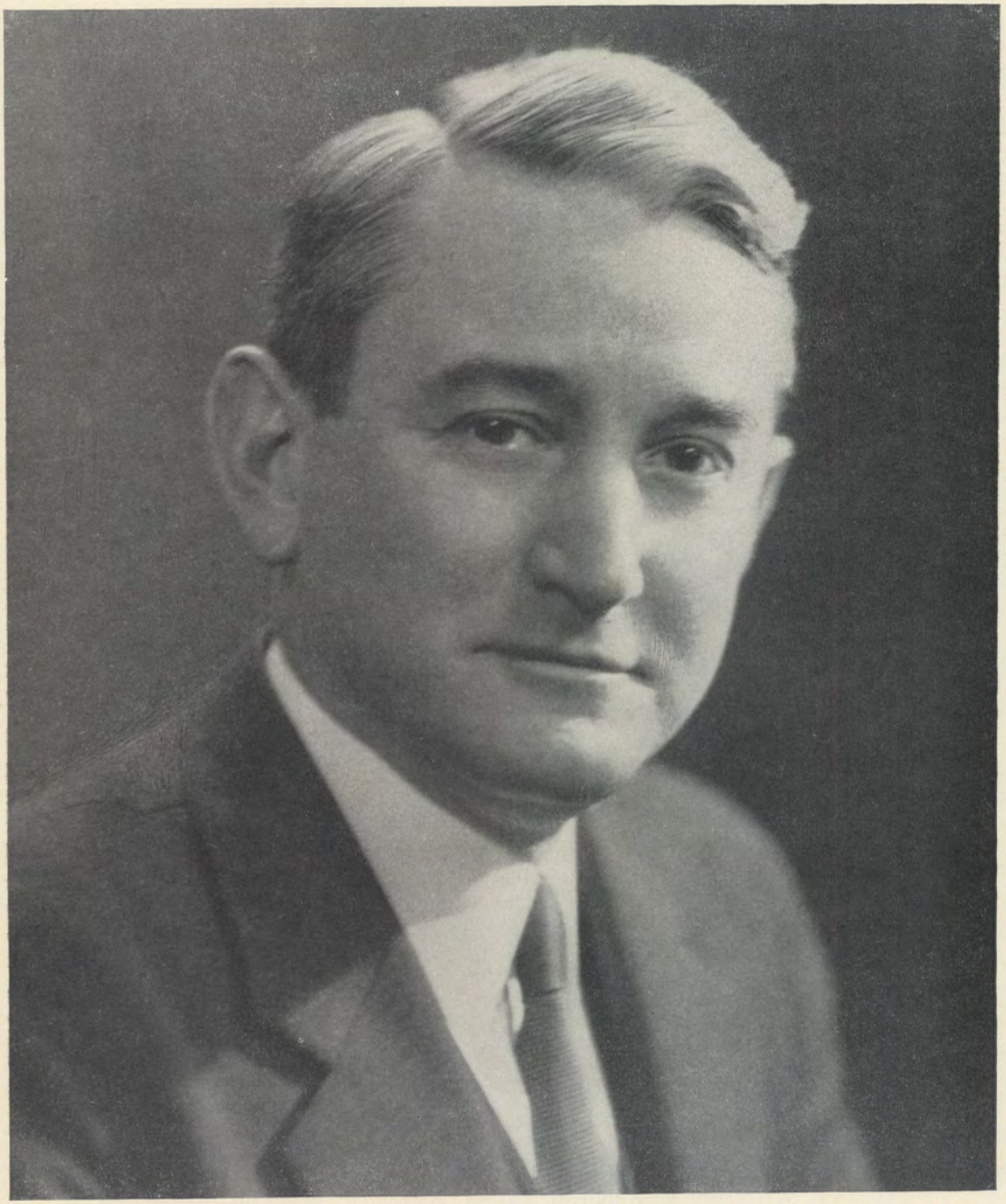
SIXTH:—We believe that every Title Man should have a lively and loyal interest in all that relates to the civic welfare of his community, and that he should join and support the local civic commercial bodies.

TABLE *of* CONTENTS

ROLL OF HONOR

Past Presidents of the American Title Association

1.	1907-08	W. W. Skinner	Santa Ana, Calif.
2.	1908-09	A. T. Hastings	Spokane, Wash.
3.	1909-10	W. R. Taylor	Kalamazoo, Mich.
4.	1910-11	Lee C. Gates	Los Angeles, Calif.
5.	1911-12	George Vaughan	Fayetteville, Ark.
6.	1912-13	John T. Kenney	Elkhorn, Wis.
7.	1913-14	M. P. Bouslog	Jerseyville, Ill.
8.	1914-15	H. L. Burgoyne	Cincinnati, Ohio
9.	1915-16	L. S. Booth	Seattle, Wash.
10.	1916-17	R. W. Boddinghouse	Chicago, Ill.
11.	1917-18	T. M. Scott	Paris, Texas
12.	1918-19	James W. Mason	Atlanta, Ga.
13.	1919-20	E. J. Carroll	Davenport, Ia.
14.	1920-21	Worrall Wilson	Seattle, Wash.
15.	1921-22	Will H. Pryor	Duluth, Minn.
16.	1922-23	Mark B. Brewer	Oklahoma City, Okla.
17.	1923-24	George E. Wedthoff	Bay City, Mich.
18.	1924-25	Frederick P. Condit	New York, N. Y.
19.	1925-26	Henry J. Fehrman	New York, N. Y.
20.	1926-27	J. W. Woodford	Seattle, Wash.
21.	1927-28	Walter M. Daly	Portland, Ore.
22.	1928-29	Edward C. Wyckoff	Newark, N. J.
23.	1929-30	Donzel Stoney	San Francisco, Calif.
24.	1930-31	Edwin H. Lindow	Detroit, Mich.
25.	1931-32	James S. Johns	Pendleton, Ore.
26.	1932-33	Stuart O'Melveny	Los Angeles, Calif.
27.	1933-34	Arthur C. Marriott	Chicago, Ill.
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.
33.	1939-40	Jack Rattikin	Fort Worth, Texas
34.	1940-41	Charlton L. Hall	Seattle, Wash.



CHARLES H. BUCK

President, American Title Association; President, Maryland Title Guarantee Co.

Baltimore, Maryland

Proceedings of the Thirty-Fifth Annual Convention
— *of the* —
AMERICAN TITLE ASSOCIATION
September 29 to October 1, 1941 — — French Lick, Indiana

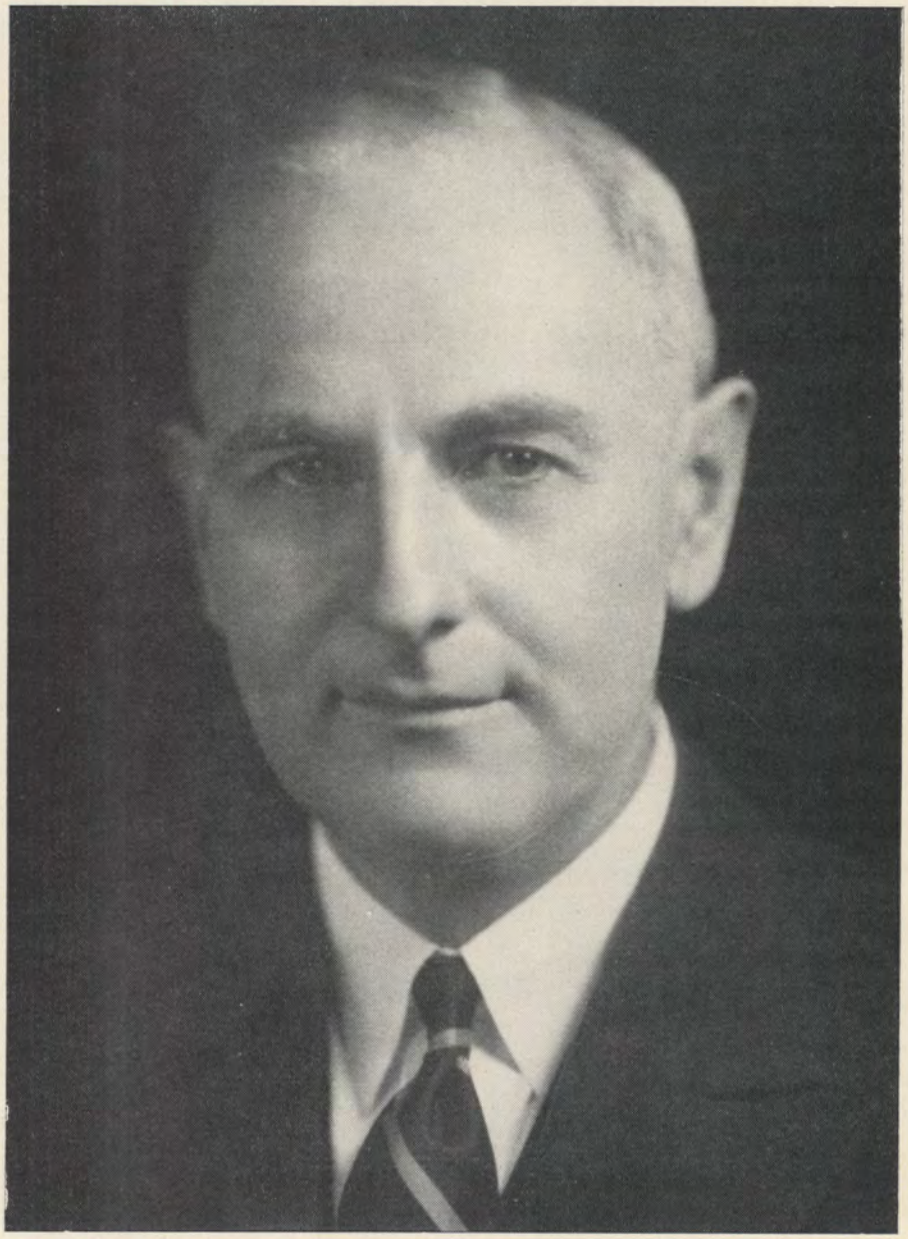
Report of the President

A year ago last June, at your 34th Annual Convention, held in New York City, you conferred upon me the highest honor I ever expect to attain. To be elected President of one's own national trade organization seems to me to be the ultimate goal to which a man should aspire and when you so honored me I was most appreciative and accepted the position, although with many misgivings as to my ability to carry on the work as it had been so ably handled by my distinguished predecessors.

However, I felt that I could get by if our efficient Executive Secretary, James E. Sheridan, could be induced to remain with us and when Jim accepted his re-election I heaved a sigh of relief, as I knew he would do most of the work **and he has.** It is right that the honorary positions should pass from one to another, but if you want real achievement in our organization you should have continuity in the office of our Executive Secretary.

And we have had real achievement this past year, largely because of the personality, ability and tireless effort of our Executive Secretary. Of course, you have furnished the money but you have had your money's worth.

In these times of National Preparedness, with our government spending hundreds of millions of dollars for real estate,I know Jim takes great pride, as I do, in being able to report that the title to every property purchased or condemned by the government (with two or three exceptions) has been evidenced by title proof from one or another of our members. During the past year Jim has spent much of his time, and some of our money, in Washington, D. C., where his contacts are such that he has received long distance calls and wires inviting him to Washington at opportune times. He has kept our Directory in the hands of all government officials who have authority to acquire lands, has suggested that bids be requested from *all* our members and now, that some of us have governmental work to do, is prodding us for speed and yet more speed. Further, he has been in contact with federal agencies elsewhere, as, for instance, the land banks in the midwest, and has made his usual calls upon representatives of the life insurance companies in the east,



CHARLTON L. HALL
Seattle, Washington

Immediate Past President, American Title Association;
Manager, Washington Title Insurance Co.,
Seattle, Washington

the midwest and the near south. Doubtless you have all heard that HOLC has moved from Washington, D. C., to New York and that the government is studying moving other agencies out of Washington.

Vice-President Frank I. Kennedy was very co-operative and helpful until he was called into government service. We are hopeful he may be able to obtain leave to attend this meeting. If he should appear, be sure to address him as "Colonel" as he is now a Lieutenant Colonel in the U. S. Army.

E. B. Southworth has done his usual good job as Treasurer and during the sessions will report to you on the state of our finances.

Every member of the Board of Governors attended the midwinter conference at Chicago last February and all have cooperated 100 per cent.

The Chairmen of Sections and Committees and Committee members have done commendable work and you will hear reports from many of them.

In these days of war or near war, with some of us operating in Defense Areas and others not, we all have more problems than usual and I know our Round Table Meetings will include discussions on Public Relations, our ever increasing cost of doing business, our price schedules, personnel replacements (now that some of our men are in the army and Defense industries and the government are bidding against us for our remaining male help and our female help as well), wages, hours, vacations, retirement pay, and last, but not least, taxes. Doubtless we will also discuss Blocked Nationals, priorities, how our businesses are affected by the Preparedness Program and what will we do after the Preparedness Program slows down. I am hopeful that every one in attendance at this convention will make it a point to attend each and every meeting and participate in the discussions. We are all here to learn and the recital of how you have solved one of our common problems may be of inestimable value to the rest of us. The various meetings will be started at the time scheduled on the printed program. So please be on time.

I have prepared notes on some of the subjects listed above and hope to participate in the Round Table discussions, but, at this time, want to call your attention to a matter which I think very important.

It seems to me that our membership generally has not taken advantage of the opportunity to give our Directory the general circulation it should have. Each year we print from ten to fifteen thousand copies of the Directory and they are distributed to our various members—some getting only one or two copies and others getting twenty or twenty-five. Our National Headquarters distributes a great many of these directories to officials of various life insurance companies and to governmental agencies having to do with land titles and such directories are used by them in obtaining the names of title firms from whom bids for title work are to be requested. Our Executive Secretary tells me that in his rounds of the government offices he invariably has a supply of directories with him and this past year, when he tried to hand out copies of the 1941 Directory and take up copies of the old one, he found several of the officials willing to accept the new directory but unwilling to give up the old because of valuable notations made therein.

Washington Title Insurance Company purchased 2,800 copies of the 1941 Directory and saw to it that one copy was delivered to each real estate man and mortgage loan man in Seattle and to the 2,000 lawyers in the State of Washington. We received many letters of thanks and one lawyer called us on the phone the day he received his copy and thanked us especially for it as on that particular day he was in process of probating an estate that also had land in Montana and, as he put it, the Directory gave him the name of the abstracter to whom he could write relative to that land. We also distributed copies of the Directory to members of the Land Division of The Bonneville Power Administration and to the United States Attorney in Seattle and his assistants.

The Directory is an advertisement for every firm listed. Scarcely a week goes by that I do not refer to the Directory so as to be able to furnish the name of a title concern in some other state and I know our telephone operator answers many more calls than I do.

I really think you have not appreciated the advertising value of a wide distribution of these Directories.

As President of your Association I have received invitations and have attended meetings of state title associations in California, Montana and Oregon as well as in my own State of Washington. It was a great pleasure to attend these conventions and I mention it as one of the compensations of the office.

I have enjoyed the year and I again thank you for the honor conferred upon me.

And, for my successor, may I ask the same whole-hearted cooperation you have given me.

Public Relations

Title Men, generally, have not paid enough attention to the subject of Public Relations. In addition to advertis-

Report of the Treasurer

STATEMENT OF RECEIPTS AND DISBURSEMENTS FROM JANUARY 1ST TO SEPTEMBER 22ND, 1941

E. B. SOUTHWORTH, *Treasurer*

Executive Vice-President, Title Insurance Company of Minnesota, Minneapolis, Minnesota

RECEIPTS

Cash on hand January 1st, 1941	$ 822.49	
Blotter Advertising	1,221.00	
Direct Members Dues	675.50	
Directory	1,276.08	
Miscellaneous	164.83	
Social Sec. Tax contributed by employees	47.36	
Social Sec. Tax contributed by Association	47.36	
State Association Dues	8,618.75	
Sustaining Fund	10,422.00	
		$23,295.37

DISBURSEMENTS

Blotter Advertising	$ 1,402.78	
Directory	2,149.91	
Mid-Winter and Annual Convention	738.63	
Miscellaneous and Supplies	690.69	
Miscellaneous	6.35	
News Bulletin	879.15	
Office Rent	840.00	
Postage	1,560.00	
Reserve paid out for Social Security Tax	94.71	
Salaries	10,028.37	
Sustaining Fund	8.00	
Telephone and Telegraph	348.74	
Title News	359.78	
Travel	2,069.29	
		$21,176.40
Cash on hand September 22nd, 1941		$ 2,118.97

Fact Finding Fund—$77.49

ing in the daily and weekly press, where a continuous program of keeping our names before the public should be carried on, all title companies should maintain memberships in the Mortgage Bankers Association of America and in local Chambers of Commerce, Real Estate Boards, Mortgage Men's Associations, Master Builders Associations and in Rotary, Kiwanis, Lions and other luncheon clubs. We should cooperate especially with our local Real Estate Boards and Mortgage Men's Associations and assist them in every way possible when they have their yearly meetings or other important functions — for contacts thus made make for friendly business relations.

Incidentally, an inexpensive method of advertising is now available through the use of a Postage Meter. All our mail matter goes through such a meter and our advertising slogan "Title Service That Protects" is printed on the face of each envelope and without additional expense.

Title Men should aid local and state organizations in obtaining readjustment of the real estate tax structure so that real estate shall pay only a fair tax and therefore should join the National Conference of Real Estate Taxpayers, 22 West Monroe Street, Chicago, Illinois, which Conference is sponsored by the National Association of Real Estate Boards and many kindred organizations.

In the State of Washington we have what is known as the "40 Mill Tax Limit Law" which was enacted by an initiative sponsored by J. W. Wheeler, one of our prominent Seattle realtors, and by our own Laurence S. Booth, who is in attendance at this meeting. Our 40 Mill Tax Limit Law was first enacted in 1932 and has since been reenacted every biennium. It is really a 20 mill tax limit law as our real estate is assessed on a basis of 50% of real value.

Realizing the importance of such legislation, our company's officers and employees spent much time and energy, without pay, in helping obtain the 50,000 signatures to the first initiative measure and thereby gained a great deal of good-will among the realtors and property owners.

The effect of this Tax Limitation Law on our tax structure is illustrated by the following figures:

HOMES and FARMS have received a reduction of fifty per cent in their annual taxes:

Real Estate Tax, 1930	$ 80,016,417
Real Estate Tax, 1940	40,492,516
Cost of government, 1931	100,714,000
Cost of government, 1938	93,473,000

COMMON SCHOOL INCOME has INCREASED by FORTY PER CENT:

School Income, 1933	$22,636,047
School Income, 1940	31,494,965

STATE, COUNTY and SCHOOL DEBTS have been REDUCED THIRTY-THREE PER CENT:

Debts, 1934	$94,000,000
Debts, 1940	63,000,000

DELINQUENT TAXES have been reduced FIFTY-NINE PER CENT:

Delinquent Taxes, 1933	$47,994,536
Delinquent Taxes, 1939	19,811,065

(One-half of present delinquency is covered by repurchase contracts.)

TAX LIMITATION has made Washington the LEADING STATE IN THE UNION in progressive tax legislation, resulting in sound real estate investments and favorable consideration for the location of large manufacturing plants thus increasing the volume of real estate transactions and the numbers of title orders.

If a movement is started in your State to enact a real estate tax limitation law, you should help out 100%, for when you help to reduce real estate taxes you make lasting friends of both the property owner and the realtor, as such a law increases the desirability and saleability of the commodity they are interested in.

Title Insurance Premiums

In order to counteract unfavorable criticism from some quarters the Title Insurance Companies should evolve a system of charges whereby the work charge and the risk charge would be separated. Although title insurance companies are classed with life, fire, casualty and all other insurance companies, title insurance companies are really in a class by themselves as none of the other kinds of insurance companies have to expend such large proportions of gross premiums on production costs.

In the State of Washington the title insurance companies operate under the supervision of and are annually examined by the State Insurance Commissioner, as in Texas, and must file with him annual statements of their receipts and disbursements, copies of all policy forms and rating schedules, which rating schedules must not be deviated from either upward or downward and no commissions may be paid except to authorized agents.

The Insurance Commissioner annually prints and distributes a report covering all the companies under his jurisdiction showing the business done by each. His 1940 Report (page 35), under the heading—

"Title Insurance Business Transacted in the State of Washington During the Year 1940" is as follows:

Name of Company	Net Premiums Written	Net Losses Paid
Commonwealth Title Insurance Co.	$ 78,646.00	$ 107.00
Lawyers & Realtors Title Ins. Co.	111,452.46	591.19
Mason County Abstract & Title Co.	6,644.60	.....
Northwestern Title Insurance Co.	127,464.30	399.30
Puget Sound Title Insurance Co.	163,032.19	2,181.64
Washington Title Insurance Company	420,784.00	8,392.71
	$908,023.55	$11,671.84

Some people have assumed that the difference between the net premiums written and the net losses paid was all profit for they did not take the trouble to turn over to pages 108 to 118 of the Report where the income and disbursements of the various companies are listed. One person, referring to a similar report for the year 1938, stated that title insurance companies collected premiums at a ratio of $86.00 to $1.00 disbursed to customers in total payment and that "this is the kind of racket that makes the slot machine operator turn green with envy".

Of course the man who made that statement was ignorant of the facts, had an ax to grind and did not want to be fair, for his statement assumed that it costs nothing to do business and that every dollar of income, except losses paid, is net profit.

A Title Insurance Company is a service organization and fully 85% of its income is immediately paid out in production costs, leaving only 15% for insurance coverage and profits.

In 1939, when the Title Insurance Companies in the State of Washington were attacked by having their business referred to as a racket, our Company prepared a chart of operations based on our 1938 report to the Insurance Commissioner which showed that out of each dollar received we expended for—

Salaries	56.01 cents
Home Office Expense	15.52 cents

(Including Employees' Life, Accident and Health Insurance; Advertising; Donations; Dues and Subscriptions; Law Library; Legal Services; Light and Janitor Supplies; Postage and Express; Printing and Stationery; Telephones and Telegrams, etc.)

Taxes and State Licenses	9.53 cents
Losses Paid	4.30 cents
Bad Debts	.0065 cts.
Rent, Furniture, Fixtures	2.87 cents
Gross Operating Profit	11.12 cents

This proved our statement that out of each dollar received we immediately expended 85 cents in production costs, but we are still in the unenviable position of finding it necessary to submit proof from time to time. Therefore, I reiterate, that in order to avoid unfavorable comment in re large gross earnings and relatively small loss payments, the Title Insurance Companies should separate their work charges from their risk charges.

Title Problems of the Out-of-Town Lender

BYRON CLAYTON

Assistant General Counsel, Metropolitan Life Insurance Co., New York City

I wish to express my thanks to the Association for inviting me to speak on this program. While I have only been a member of the American Title Association for a few years, I have known a great many members of this Association for the past twenty years through my work as an Examining Attorney and I am happy to renew my acquaintances.

It is a fine indication of your desire to promote good business relations when you invite a representative of a life insurance company to talk to you. I have accordingly selected a topic which I trust will be of mutual interest.

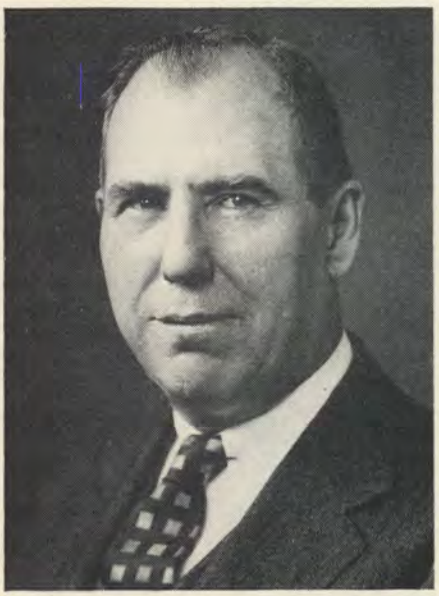
While I shall not try to tell you how to run your business or to discuss methods of limiting your risk, I will try to give you my ideas of the improvements which can be made in our business relations.

Lending companies such as I represent are generally located at a distance from the property on which a loan is made. This situation gives rise to problems which do not occur when the lender and borrower can discuss their case at the closing. The keen competition for mortgage loans has made it necessary to cut costs. Consequently, at least in closing small loans, the lending company does not have a personal representative present but relies on the title or abstract company for various services in addition to the issuance of a title policy or the preparation of an abstract. Under such conditions we must depend upon you to not only consider your own safety and send in papers in such form as meet the requirements of your title officers, but also to furnish us with sufficient information in order that we may intelligently, readily, and safely pass on the loan papers. You would be surprised if I detailed for you the number of cases in which this is not done.

When an abstract or title company has represented a lending company for a number of years, it must be familiar with its client's requirements. A more careful consideration would meet these and in many cases only a routine examination should be necessary.

In almost all cases our examining attorney at the Home Office has no information on local conditions. As aptly stated by the late Will Rogers, "All he knows is what he reads in the papers". It is therefore essential in such cases that all necessary information be furnished by the title company. Allow me to suggest the following items in which more complete, more accurate or additional information could be furnished which would improve the service.

1. The mortgage or trust deed should be on forms approved by the lender for the respective City or State. It should clearly and distinctly state the terms of the loan. The description should be accurate and tie in with the survey and title policy in every respect and should include any rights and easements. The mortgage or trust deed should cover the buildings and appurtenances, rents, issues and profits and include such other goods and chattels and personal property as are used and required for the operation of the mortgaged premises. It is preferable to have the mortgage cover personal property where the law permits it, as



BYRON CLAYTON

New York, New York

Member Executive Committee, Legal Section; Asst. General Counsel, Metropolitan Life Insurance Co.

chattel mortgages in most states have to be refiled or recorded or re-recorded at various intervals. Many difficulties are also encountered in foreclosing chattel mortgages. Provision for the appointment of a receiver wherever the State laws permit, is a desirable feature. There should be evidence that any recording or other tax on the mortgage or trust deed has been paid.

2. The note or bond should also be on forms previously approved by the lender and should be executed by the proper parties. If the note or bond is executed by more than one party it should be their joint and several obligation. Any prepayment privilege should be clearly stated and the proper amount of documentary tax stamps should be attached and cancelled. The note or bond should contain a reference to the mortgage or trust deed which is given to secure it. All of the covenants and agreements contained in the mortgage or trust deed should be incorporated in the note or bond by proper reference.

3. The survey should be complete in all respects and prepared by a civil engineer or a licensed surveyor. It should not only contain sufficient information to clearly identify the premises but should also contain sufficient information for an inspector of an out-of-town lender readily to locate the premises. The distance of the lot from the nearest intersecting street, the distances of all buildings from the street and side lines of the property, joint driveways, easements, encroachments, and waterways, the compass direction and any other matters apparent to the surveyor should be disclosed on the survey. Any exceptions mentioned in the title policy in reference to the physical condition of the property should be shown and the survey should in every particular tie in with the other papers.

Where business properties are concerned, the survey often shows overlaps, encroachments, vaults under streets, permissive overlaps of buildings on streets or adjoining properties, driveways, overhanging eaves, wires, party walls, etc. These, of course, cannot be removed and must be excepted in a preliminary opinion, and if approved by lender must appear in the policy or attorney's opinion. All documents creating such rights or obligations should not only be referred to in the policy but copies thereof should also be inserted in the policy or furnished separately.

4. The title policy should be in a form satisfactory to the lender. We still have discussions with some companies regarding the forms of their policies. We feel that where the policy insures the rights of the mortgagee, the title company should furnish the form requested by the lender, provided it reserves to itself the right of subrogation. The policy should, of course, tie in with the mortgage and survey. It should insure against mechanics' and material men's liens. Where a mortgage has been extended or assigned, that fact should be properly noted. Any exceptions should be clearly stated if they refer to physical conditions or easements to which the prop-

erty is subject or which are appurtenant to the property. All recorded leases should be disclosed. An out-of-town lender cannot be expected to have information available which would explain any exceptions of possessory rights. In any event it should not be expected to pass a title policy excepting such rights without a full explanation. The title policy should contain no sweeping exceptions; particularly none which refers to possession of the mortgaged premises.

We recently received a title policy which contained the following exception:

"Any and all drainage taxes and/or liens."

There was no explanation as to what this exception intended to cover and as to the amount of the drainage taxes and/or other liens. After considerable correspondence, in which it was developed that the drainage tax was an acreage tax which when allotted to each individual lot was very small and was paid as part of the annual taxes, this exception was changed to read as follows:

"The lien for drainage taxes, all installment of which up to and including the year 1940 have been paid."

This, of course, is an entirely different exception from the one that was first put in the title policy.

All taxes which may be due and unpaid should be disclosed in a preliminary report, which should also show any assessments against the mortgaged premises payable in the future or unmatured installments of assessments with dates of payments, amounts, and any pertinent information. The lender should be advised if the streets and improvements are not fully paid for.

If there are restrictions which have been violated or which impose a burden which the lender would have to assume if it were to become owner of the premises, it is a good practice to send the lender a copy of the restrictions and full information as to such violation for preliminary examination. If the survey indicates encroachments of any nature, it would likewise be good practice to forward for preliminary examination to the lender a copy of the survey. Many of the companies fail to do this. If the loan has to be rejected by the lender after it has been closed by the local agent or correspondent then, needless to say, all parties are placed in an embarrassing position.

If the premises are subject to covenants and restrictions these should be fully set forth in the title policy giving the book and page in which they are recorded. If they are lengthy then copies can be furnished separately from the policy. The title policy should insure that the covenants and restrictions have not been violated and that a violation would not work a reversion of title. Insurance companies organized and existing under the laws of the State of New York are prohibited by statute from lending money on properties which are subject to restrictive covenants containing reversionary clauses under which the mortgage lien can be cut off, subordinated or otherwise disturbed. If there is a forfeiture provision, which has been waived or subrogated, it should be disclosed even though a title company is willing to insure against it. If there is a violation of any of the restrictive covenants then this should be fully explained and the title policy should insure against any loss or damage by reason of the violation. The local title company is in a much better position to determine the practical effect of a minor violation of a restrictive covenant than the examining attorney for an out-of-town lender who is not familiar with the local conditions and practices.

From my remarks please do not get the idea that the out-of-town lender expects a title policy free from all exceptions. The lender prefers an honest policy rather than one that covers up or glosses over defects or obligations to the title which at the time may not seem material. If the lender subsequently becomes the owner of the property through foreclosure or otherwise, and later sells the premises, which he is in most cases obliged to do, these objections are bound to appear. In the event that the lender is advised of any defects in the title in advance he can protect himself and the title company against many losses by making proper provisions for these objections and defects in the contract of sale and by selling subject to them. I can assure you that no out-of-town lender is out to build up claims against the title companies. Law suits and delays in closings because of objections to title are expensive for all concerned.

5. If an abstract is to be used in place of a title policy it should be prepared by a competent abstract company or attorney covering the entire title, either from the government grant or if the title did not originate in a government grant, it should cover a period of at least 60 years. It should contain a proper abstract of all documents of record affecting the premises. An abstract of a satisfaction or an assignment should describe the mortgage rather than refer to it by a number in an abstract which may at any time be changed. A tax search, searches for judgments, both State and Federal, and bankruptcy, local ordinances, mechanics' or other liens, should be included in the abstract. Copies of any recorded maps should also be furnished. The abstract should, of course, be continued to cover the recording of all mortgage papers. The abstracter's certificate and final attorney's opinion should be on forms which have been approved by the lender. What I have said regarding the mortgage or trust deed, note or bond, and survey are of course applicable in cases which an abstract and attorney's opinion are used.

6. The owner's affidavit of title should be on forms furnished by the lender, executed by all owners and disclose all information which should be secured from the owner and which is not of record. If the builders are new, then in addition to the mortgagor's affidavit, an affidavit as to mechanics' liens should be furnished by the agent or correspondent or some disinterested person. If the mortgage is to be taken by assignment, an estoppel certificate should be furnished, executed by the proper parties and accurately describing the transaction.

In some sections of the country, local title companies have adopted the practice of closing titles in escrow and not issuing the title policy until all papers are recorded. Our company does not approve of this practice. Simultaneously with the delivery of its check, the lender should be furnished with a title policy or a settlement certificate providing that the title company will issue a title policy insuring the lender that the mortgage which it holds is a first lien subject only to such exceptions as have been waived by the lender. The same applies in connection with the sale of property by the out-of-town lender. The purchase price should be paid in cash or by certified check at the time the deed is delivered. The seller should not be required to place its trust funds in escrow.

These things are really all elementary and I expect that many of you feel that I have been telling you what you already know. But I assure you that in the files of my company I can show you literally thousands of cases where this information either has not been furnished or has been furnished in such a manner as to require correspondence, to title insurance and abstracts of title. wires or telephone calls before a transaction can be completed. These all cause delays, which are expensive to the lender and the title company, and which are, in many cases, embarrassing and misunderstood by the borrower. If the title companies would eliminate these things, they would do a great deal to improve their service. It is my opinion that about 60 per cent of the present correspondence, wires and telephone calls in reference to these loans, is unnecessary.

I have tried to make these remarks as brief as possible and to merely give you an outline of some of the out-of-town lender's problems as they relate I feel certain that many questions have come to your mind by this time which I have not covered. From this point on I think that we can get to know each other's problems best by having an open discussion. I shall be glad to try and answer any questions which you may have at this time.

The Bankruptcy Act As Affecting Real Estate Titles

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The numerous changes in the law effected by the Chandler Act, the first major revision of the entire bankruptcy law in forty years, call for a resume of those parts of the Act which affect titles to real estate.

The Chandler Act passed by the 75th Congress became effective on September 22, 1938.

The act now consists of fourteen chapters of which the first seven contain provisions pertaining to bankruptcy in general, the next six contain provisions for the relief of specific classes of debtors, and Chapter XIV refers to Maritime Commission Liens.

The thousands of decisions on the original Bankruptcy Act of 1898 and its amendments prior to the last one, attest the fact that seeming simplicity of statutory enactment is nevertheless the cause of conflicting constructions. Quite frequently, a much disputed law, upon its amendment, becomes subject to an increased number of legal attacks upon it because of attempts to apply former interpretations to the last expression of the legislative will. Then too, the inclusion by amendment of new matter in a statute, gives rise to new questions which require new answers.

Upon the filing of a voluntary petition by, or an involuntary petition against, a person sought to be adjudged a bankrupt, his property is placed in custodia legis for the purpose of distribution among creditors. The entry of an order of adjudication of bankruptcy constitutes a judgement in rem binding against the whole world that the bankrupt's property is subject to administration in bankruptcy by a federal district court.

TRUSTEES IN BANKRUPTCY

Appointment

Sec. 44 a. The creditors of a bankrupt shall, at their first meeting after the adjudication, or after a vacancy has occurred in the office of trustee, or after an estate has been reopened, appoint a trustee or three trustees of his estate. If the creditors do not appoint a trustee or if the trustee appointed fails to qualify the court shall make the appointment.

Bonds of Trustees

Sec. 50-b. Receivers and trustees shall qualify by entering into bond to the United States, with approved sureties.

Failure to Give Bond

Sec. 50-k. If any receiver or trustee shall fail to give bond, he shall be deemed to have declined his appointment and such failure shall create a vacancy in his office.

Evidence of Appointment

Sec. 21e. A certified copy of the order approving the bond of a trustee shall constitute conclusive evidence of his appointment and qualification.

Appointment of Trustee

If creditors fail to elect, the referee can appoint a trustee. In re White 15 Fed. (2nd) 371.

The appointment of a trustee is subject to approval of referee or judge, but trustee is removable by judge only. General Order XIII and Graham vs. Halliday 36 Fed. (2nd) 745.

Where schedules of a voluntary bankrupt show no assets and no creditor appears, the court may direct that no trustee be appointed. General Order XV.

Among Persons Who May Be Adjudged Bankrupts

Insane persons. In re Clinton 41 Fed. (2nd) 749.

Infants. In re Walrath 175 Fed. 243.

Husband and wife cannot jointly file a petition. In re Bowles, D. Ct. Kentucky 1936, 15 Fed. Supp. 353.

Death of Bankrupt

Death or insanity of bankrupt will not abate proceedings. See Sec. 8 of Bankruptcy Act.

If, however, bankrupt dies before petition is filed, proceedings are abated. In re Morgan 26 Fed. (2nd) 90.

As to Jurisdiction

Exclusively in Federal Courts. Denison Dry Goods Co. v. Simmons, 207 Mo. 524, 227 S. W. 855 and numerous other cases.

Power exists in Court to vacate adjudication where jurisdictional facts are untrue. In re Ettinger, C. C. A. 2nd Cir. 1935, 76 Fed. (2nd) 741.

Principal place of business held to determine. In re Evans C. C. A. 2nd Cir. 1936, 85 Fed (2nd) 92. As to domicile, see In re Denton Pub. Co. 10 Fed. Supp. 802.

As to corporation incorporated in one state and having its principal place of business in another state, see In re Shoe Co. 8 Fed. Supp. 681.

Missouri bankruptcy court has jurisdiction to order sale of Kansas property and order liens transferred to proceeds. Rubenstein vs. Nourse, C. C. A. 8th Cir. 1934, 70 Fed. (2nd) 482.

What determines domicile. In re Libermann, 44 Fed. (2nd) 661.

Lapse of Time

A bankruptcy court has jurisdiction over a bankrupt's petition when filed and lapse of time between filing of petition and adjudication does not destroy jurisdiction. In re Carden, U. S. C. C. A., 2nd Cir. No. 200, March 24, 1941.

In this case petition was filed February 18, *1933*, by creditors who signed the same about a year before it was filed. Same lay dormant without service on the bankrupt until December 21, *1939* when an order of adjudication was obtained. The appellant was a creditor who had a judgment lien which was voided on account of the *1939* adjudication on the *1933* petition. This case brings out clearly that *the filing of a petition* is a caveat to all the world.

RECORD OF NOTICES OF BANKRUPTCY

Filing Order Approving Trustee's Bond in Recorder's Office

Sec. 47-c. The trustee shall, within ten days after his qualification, record a certified copy of the order approving his bond in the office where conveyances of real estate are recorded in every county where the bankrupt owns real property or an interest therein, not exempt from execution.

Effect of Failure to Record Notice of Bankruptcy

Sec. 21-g. Unless a certified copy of the petition with the schedules omitted, of the decree of adjudication, or of the order approving the trustee's bond has been recorded in the office where conveyances of real property are recorded, in any county wherein the bankrupt owns or has an interest in real property *in any State whose laws authorize such recording*, the commencement of a proceeding under this act shall not be constructive notice to or affect the title of any subsequent bona-fide purchaser or lienor of real property in such county for a present fair equivalent value and without actual notice of the pendency of such proceeding; provided, however, where such purchaser or lienor has given less than such value, he shall nevertheless have a lien upon such property, but only to the extent of the consideration actually given by him.

The exercise by any court of the United States or of any State of jurisdiction to authorize or effect a judicial sale of real property of the bankrupt within any county *in any State whose laws authorize the recording aforesaid* shall not be impaired by the pendency of such proceeding unless such copy be recorded in such county, as aforesaid, prior to the consummation of such judicial sale; that provided, however, that *this subdivision shall not apply to the county in which is kept the record or the original proceedings under this act.*

Notice of Bankruptcy Proceedings

A purchaser of bankrupt's realty relying on local records acquired good title where no certified copies of order approving trustee's bond or of adjudication were recorded. Vombrack vs. Wavra 331 Ill. 508, 163 N. E. 340.

DISCHARGES AND REVOCATION THEREOF

Discharges—When Granted

Sec. 14-a. The adjudication of any person, except a corporation, shall operate as an application for a discharge, but the bankrupt may waive his right thereto; a corporation may, within six months after adjudication, file an application for a discharge.

Sec. 14-b, c, and d. After examination of the bankrupt and after notice fixing a time for the filing of objections, the court shall grant a discharge unless satisfied that the bankrupt committed certain specified acts which preclude his right thereto, including therein the transfer or concealment of any of his property with intent to hinder or defraud his creditors, at any time within one year prior to bankruptcy.

Discharges—When Revoked

Sec. 15. A discharge obtained through the fraud of the bankrupt may be revoked within one year after it was granted.

Arrangements and Plans—When Set Aside

Secs. 386, 511, and 671. Arrangements and plans procured through fraud may be set aside within six months after confirmation thereof.

Discharge of Bankrupt

Estate is deemed closed when trustee's final account is approved and trustee is discharged. Kinder vs. Scharff, 55 Southern 769.

Effect of failure to apply for discharge has same effect as a refusal thereof. In re Emery. Dist. Ct. Mich. 1934, 6 Fed. Supp. 896.

As to right to a discharge, see Spies vs. Sytsma, C. C. A. 8th Cir. 1932, 56 Fed. (2nd), 520 and In re Jacobs, Ohio 1917, 241 Fed. 620.

As to failure to seek discharge in statutory period and effect thereof, see In re Weintraub, Dist. Ct. N. J. 1905, 133 Fed. 100 and In re Schnabel, Dist. Ct. N. Y. 1909, 166 Fed. 383.

Correction of Mistakes

Court has power to vacate discharge and permit amendment to schedules to correct mistake. In re Magwood. Dist. Ct. N. Y. 1936, 13 Fed. Supp. 661.

Suits to Collect Judgements Barred in Bankruptcy

Federal court will not restrain collection of a judgment discharged in bankruptcy until after state court has refused relief. Doblin vs. Rose 119 N. J. Ch. 436 (1936).

Newly Discovered Assets

On reopening estate they belong to bankrupt and must be administered. Coal Co. vs. Coal Co. C. C. A. 8th Cir. 1933, 67 Fed. (2nd) 796.

Court entering adjudication can reopen estate at any time. In re Rochester Sanitarium, C. C. A. 222 F. 22.

TITLE TO PROPERTY

When and What Property Vests in Trustee When Petitions Are Filed Under the Act

Sec. 70-a. *The trustee of the estate of a bankrupt* and his successor or successors, if any, upon his or their appointment and qualification, *shall* in turn *be vested by operation of law with the title of the bankrupt as of the date of the filing of the petition in bankruptcy or of the original petition proposing an arrangement or plan* under this act, except insofar as it is to prop-

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erty which is held to be exempt, *to all* —(3) powers which he might have exercised for his own benefit, but not those which he might have exercised solely for some other person; (4) *property transferred by him in fraud of his creditors;* (5) *property,* including rights of action, *which prior to the filing of the petition he could by any means have transferred* or which might have been levied upon and sold under judicial process against him, or otherwise seized, impounded, or sequestered . . . ; (6) rights of action arising upon contracts, or usury, or the unlawful taking or detention of or injury to his property; (7) *contingent remainders, executory devises and limitations, rights of entry for condition broken, rights or possibilities of reverter, and like interests in real property, which were nonassignable prior to bankruptcy and which, within six months thereafter, become assignable interests or estates or give rise to powers in the bankrupt to acquire assignable interests or estates;* and (8) *property held by an assignee for the benefit of creditors* appointed under an assignment which constituted an act of bankruptcy, which property shall, for the purposes of this act, be deemed to be held by the assignee as the agent of the bankrupt and shall be subject to the summary jurisdiction of the court. *All property which vests in the bankrupt within six months after bankruptcy by bequest, devise, or inheritance shall vest in the trustee and his successor and successors, if any, upon his or their appointment and qualification, as of the date when it vested in the bankrupt, and shall be free and discharged from any transfer made or suffered by the bankrupt after bankruptcy.* All property in which the bankrupt has at the date of bankruptcy an estate or interest by the entirety and which within six months after bankruptcy becomes transferable in whole or in part solely by the bankrupt shall, to the extent it becomes so transferable, vest in the trustee and his successor and successors, if any, upon his or their appointment and qualification, as of the date of bankruptcy. *The title of the trustee shall not be affected by the prior possession of a receiver or other officer of any court.*

The provisions of Clause 7 and of Clause 8 of Section 70a extending the title of the trustee to include certain interests such as contingent remainders, etc., *vesting within six months* after bankruptcy are intended to correct abuses which are quite prevalent. Liberal credits are frequently extended by tradesmen in reliance up such interests and quite often such debtors have invoked the Bankruptcy Act in time to escape payment.—Report of House Committee on the Judiciary, July 29, 1937, page 34. (From Commerce Clearing House Bankruptcy Law Service.)

Title To Property

While filing of petition is caveat to all the world and in effect an attachment and injunction and the property is in custodia legis for jurisdictional purposes, title to bankrupt's property, until adjudication, remains in bankrupt and valid transfer can be made by him. In re Retail Stores Corp., 11 Fed. Supp. 658.

As to trustee's title, its extent and when it vests, see Ricketts vs. Trust Co., C. C. A. 8th Cir. 1934, 73 Fed. (2nd) 599 and Judson vs. Judson, 228 U. S. 474 and Railroad Co. vs. Hall, 229 U. S. 511.

SALES OF BANKRUPT'S PROPERTY

Jurisdiction and Powers of Bankruptcy Courts

Sec. 2-a. The courts of bankruptcy are invested, within their respective territorial limits, with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in proceedings under this act, to—

Cause the estates of bankrupts to be collected, reduced to money and distributed, and determine controversies in relation thereto, except as herein otherwise provided, and determine *and liquidate all inchoate or vested interests of the bankrupt's spouse* in the property of any estate, *whenever under the applicable laws of the State,* creditors are empowered to compel such spouse to accept a money satisfaction for such interest.

Duty of Trustees

Sec. 47-a. Trustees shall collect and reduce to money the property of the estates for which they are trustees, under the direction of the court, and close up the estates as expeditiously as is compatible with the best interests of the parties in interest.

Notice

Sec. 58-a. Creditors shall have at least ten days' notice by mail, to their respective addresses as they appear in the list of creditors of the bankrupt or as afterward filed with the papers in the case by the credits, of . . . . (4) all proposed sales of property; provided, that the court may, upon cause shown, shorten such time or order an immediate sale *without notice;* . . . provided, that where a creditors' committee has been appointed pursuant to this act, the notice required by clause (4) of this subdivision shall be sent only to such committee and to the creditors who have filed with the court a demand that all notices under this subdivision be mailed to them.

Sec. 58-c. All notices shall be given by the referee unless otherwise ordered by the judge. Any notice required by this act may be waived in writing by any person entitled thereto.

The 1938 amendment added power to liquidate the spouse's interest in the property of the bankrupt as set forth above.

Comments

The amendment confers jurisdiction to determine and liquidate dower interests. Prior to the decision of Isaacs vs. Hobbs Tie & Timber Co. (282 U. S. 734) it was regarded as well settled that a bankrupt's estate could not be sold free of dower. See Kelly vs. Minor (252 F. 115). It is doubtful, certainly, whether the decision changed the rule. The jurisdiction granted by this clause seems essential to sell advantageously. The term "spouse" has been used to cover also any possible interest of the husband.—Report of the House Committee on the Judiciary, July 29, 1937, page 20.

Appraisers—Sale—Confirmation

Sec. 70-f. The court shall appoint a competent and disinterested appraiser and upon cause shown may appoint additional appraisers, who shall appraise all the items of real and personal property belonging to the bankrupt estate and who shall prepare and file with the court their report thereof. *Real and personal property shall, when practicable, be sold subject to the approval of the court. It shall not be sold otherwise than subject to the approval of the court for less than 75 per centum of its appraised value.* Whenever any sale of real or personal property of any bankrupt is made by or through any auctioneer employed by the court, receiver, or trustee, such auctioneer, if an individual or a partnership, shall be a bona-fide resident and citizen of the judicial district in which the property to be sold is situated, or, if a corporation, shall be lawfully domesticated and authorized to transact such business in the State in which said judicial district is located.

Conveyance by Trustee

Sec. 70-g. The title to property of a bankrupt estate which has been sold, as herein provided, shall be conveyed to the purchaser by the trustee.

Certified Copies of Orders in Bankruptcy if Recorded, Impart Notice

Sec. 21-f. A certified copy of any order or decree entered in a proceeding under this act shall be evidence of the jurisdiction of the court, the regularity of the proceedings, the fact that the order or decree was made, and the contents thereof, and, if recorded, shall impart the same notice that a deed or other instrument affecting property, if recorded, would impart.

Regarding Sale of Property

Court has power to order sale of real estate situated in its jurisdiction. Letters containing notices of sale duly mailed are presumed to have been received by the addressee. Once made, a sale is not open to collateral attack. Standley vs. Graham Co., C. C. A. 5th Circuit. 1936, 83 Fed. (2nd) 489.

Defective description of property is fatal to sale. In re Lake Champlain Corp. 20 Fed. (2nd) 425.

Sale may be ordered free and clear of liens, including tax liens. Van Huffel vs. Harkelrode, 284 U. S. 225.

As to sale free and clear of liens and sufficiency of notice, see, In re Eatsum Products Corp. 286 Fed. 447.

As to priority of Federal income

taxes, see In re Caswell Co. 13 Fed. (2nd) 667.

State Court Will Retain Jurisdiction in Some Cases

Valid liens under state law are preserved by the bankruptcy act. Such liens are not affected by a discharge of the bankrupt. A mortgage may be foreclosed in a state court or a bankruptcy court, whose jurisdictions may be concurrent. The first court acquiring jurisdiction will retain it. Loveland on Bankruptcy Section 57.

In two Ohio cases it was held that "A state court does not take judicial notice of bankruptcy proceedings by or against a party to a case pending before it, and unless the proceedings of the state court are stayed by the federal court, or the proceedings of the federal court are set up as a defense, the state court may proceed as if no bankruptcy proceedings were begun." Doyle vs. Moore 65 Ohio Appellate 409, approving Hoiles vs. Fidelity Co., 18 Ohio Appellate 332. Compare, however, the decision of the Circuit Court of Appeals (9th Circuit 1936) 83 Fed. (2nd) 139.

The only safe rule to follow in cases where proceedings in state courts are pending and bankruptcy of one of the principal defendants ensues, is to obtain permission of the bankruptcy court before proceeding further in state court; but if a state court has decreed foreclosure and ordered a sale of property and a sale has been had, then I believe the matter has proceeded so far that the state court can conclude its case without permission of the bankruptcy court.

The bankruptcy court will readily give permission to carry on, in a state court, a suit to foreclose a valid mortgage where no surplus of proceeds of sale will be realized.

Abandonment by Trustee

The courts uniformly hold that upon appointment of a trustee, title of all property vests in the trustee and the closing of the estate and discharge of the bankrupt does not revest title in the bankrupt to any unadministered assets. Unless administered or specifically abandoned, title remains in the trustee. See In re Lighthall 221 Fed. 791.

Where there is no specific abandonment and the property is not administered, it is necessary for a new trustee to be appointed, who can disclaim or abandon all interest in the property. Title will then revest in the bankrupt.

There is no specific authority in the Bankruptcy Act authorizing the trustee to abandon burdensome property. But it is recognized practice to do so. In re Zeyner, 193 Fed. 787 holds that trustees may abandon property burdened with liens, the state courts and the bankruptcy courts having concurrent jurisdiction as to foreclosure, and that the bankruptcy court can grant the trustee permission to appear in foreclosure proceedings in a state court.

There seems to be no authority, however, for a state court to compel a trustee in bankruptcy to come into a state court against his will.

I suggest that a copy of the Bankruptcy Rules of your local Federal District Court be studied, especially those rules as to sales of real estate, notice to lienholders, and provisions as to the record of sales of real estate.

Clerks of the district courts are required to make complete dockets and indexes of all bankruptcy proceedings, which at all times shall be open to inspection and examination by anyone without charge. Section 71.

Agricultural Compositions and Extensions

Chapter VIII of the present bankruptcy law is titled "Provisions for the Relief of Debtor."

Section 75 under this chapter has for its object the amelioration prior to March 4, 1940 of the plight of farmers who are insolvent or unable to meet their debts as they mature, by effecting compositions and extensions of time to pay debts.

Railroad Reorganizations

Section 77 under Chapter VIII contains provisions for the reorganization of railroads engaged in interstate commerce and provides for the filing, acceptance, and approval of plans of reorganization of such debtors.

If trustees are appointed under this section, they become vested with title to the debtor's property.

Taxing District Debt Readjustments

Chapter IX consisting of Sections 81, 82, 83, and 84 applies to the readjustment of debts of taxing districts and provides for the composition of indebtedness of taxing agencies or instrumentalities, payable out of assessments or taxes, or both, levied against and constituting liens upon property in said taxing agencies or instrumentalities, or out of property acquired by foreclosure of any such assessments or taxes or both, or out of income derived by such taxing agencies or instrumentalities from the sale of water or power or both, or from any combination thereof.

Corporate Reorganization

Sections 101 et seq. under Chapter X provide a procedure for corporate reorganization, and supersede former Section 77-B.

When a petition is filed under this chapter, the court in which it is filed, shall have exclusive jurisdiction of the debtor and its property and upon the approval of a petition, the judge may permit the rejection of executory contracts of the debtor, authorize a lease or sale of any property of the debtor, and stay until final decree the commencement or continuation of a suit against the debtor or its trustee or any act or proceeding to enforce a lien upon the property of the debtor.

A trustee, upon his appointment and qualification, shall be vested with such title as a trustee appointed under section 44 of this act would have.

Arrangements

Sections 301 et seq. constituting Chapter XI apply to arrangements. Under this chapter an arrangement means any plan of a debtor for the settlement, satisfaction, or extension of the time of payment of his *unsecured* debts, upon any terms.

Sections 401 et seq. constitute Chapter XII and apply to real property arrangements by persons other than corporations. Under this chapter an arrangement means any plan which has for its primary purpose the alteration or modification of the rights of creditors or of any class of them, holding debts *secured* by real property or a chattel real of which the debtor is the legal or equitable owner.

Petitions filed under these chapters confer exclusive jurisdiction of the debtor and his property, wherever located, upon the court in which they are filed.

Wage-Earners' Plans

Chapter XIII provides a procedure for effecting compositions or extensions, or both, of claims against wage earners. Claims, under this chapter, include all claims of whatever character against the debtor or his property, whether or not provable as debts in bankruptcy and whether secured or unsecured, liquidated or unliquidated, fixed or contingent, but *do not include claims secured by estates in real property* or chattels real.

Arrangements and Wage-Earners' Plans as Affected by Chapters I to VII

Sec. 70-i. Upon the confirmation of an arrangement or plan, or at such later time as may be provided by the arrangement or plan, or in the order confirming the arrangement or plan, the title to the property dealt with shall revest in the bankrupt or debtor, or vest in such other person as may be provided by the arrangment or plan or in the order confirming the arrangement or plan.

Sec. 21-h. A certified copy of an arrangement or wage-earner plan and of the order confirming it shall constitute evidence of the revesting in the debtor of title to the property dealt with by the arrangement or wage-earner plan, or of the vesting of title to such property in such other person as may be provided by the arrangement or wage-earner plan, and if recorded shall impart the same notice that an instrument of transfer from the trustee to the debtor or to such person if recorded would impart.

Sec. 70-h. Whenever an arrangement or wage-earner plan shall be set aside or discharge revoked, the trustee shall, upon his appointment and qualification, be vested as herein provided with the title to all of the property of the bankrupt as of the date of the final decree setting aside the arrangement or wage-earner plan or revoking the discharge.

Soldiers' and Sailors' Civil Relief Act of 1940

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Upon returning to my office Monday, September 22nd, from a brief vacation I found on my desk a copy of the program of this convention and noted that I was to prepare a paper on the Soldiers' and Sailors' Civil Relief Act of 1940. I assume you are all more or less familiar with the contents of this Act and I came to the conclusion that you would be more interested in the procedure than in the technical interpretation of the Act. Our old friend John R. Umsted and other members of this Association have prepared memoranda covering the technical parts of this Act, which I have enjoyed reading. The preparation of this paper is limited to that part of the Act which affects real estate and title insurance, and therefore it would be necessary to consider only sections 200, 201, 204, 205, 300, 301, 302, 500 and 601. Consequently I have confined myself primarily to sections 200, 201, 204, 205, 302 and 601.

Before discussing these sections, it might be well to give you a brief outline of the act or acts as enacted by Congress.

The National Guard Act became effective August 27, 1940, which ordered into active service the National Guard, Reserve and Retired Personnel.

The Selective Training and Service Act of 1940 became effective September 16, 1940, with respect to draftees ordered into active service.

Both of these acts re-enacted certain provisions of the Soldiers' and Sailors' Civil Relief Act of 1918.

The Soldiers' and Sailors' Civil Relief Act of 1940 was approved October 17, 1940, and supersedes the above mentioned re-enacted provisions of the 1918 Act and adds many other provisions, but is substantially the same as the Act of 1918, and affects persons in military service as defined by Section 101 and includes the following persons and no others:

All members of the Army of the United States, United States Navy, Marine Corps, Coast Guard and

All officers of the Public Health Service detailed by proper authority for duty either with the Army or Navy;

Any women in the above services are affected by and obtain the benefits of this act. Apparently Army nurses are are only female personnel in the U. S. Army, and these are under the jurisdiction of the Surgeon General.

The statute affords relief to those persons in military service:

(1) Who may become defendants in a court action or a party to any court proceeding;

(2) Who have dependents occupying a dwelling for which the agreed rent does not exceed $80.00 per month;

(3) Who, prior to entry into the service, may have contracted to purchase real estate or personal property upon the installment plan;

(4) Who may have obligations relative to mortgages on real estate or personal property;

(5) Who may have taxes or assessments upon real property falling due.

This Act being substantially the same as the Act of 1918, some law has been made by the Courts under that Act and may be considered and used as a guidance for questions that may arise under this Act.

Many of the provisions of the Soldiers' and Sailors' Civil Relief Act of 1940 are the same as the sections of the 1918 Act as re-enacted by the National Guard Act, and the Selective Training and Service Act, but the following changes are deemed pertinent:

1. The term "persons in military service" is broadened to cover all branches of the service, including the Coast Guard and all officers of the Public Health Service detailed for duty with either the Army or Navy.

2. The term "period of military service" for persons in active service at the date of approval of this Act begins with such date, and for persons entering active service after the approval of this Act, such period begins with the date of their entering active service. Such period terminates with the date of discharge from active service or death while in active service, but in no case later than the date when this Act ceases to be in force.

3. This Act is to remain in force until May 15, 1945, but if the United States be then at war this Act shall remain in force until six months after such war is terminated by a treaty of peace proclaimed by the President.

4. Section 300 provides that no eviction or distress shall be made during the period of military service in respect to any premises for which the agreed rent does not exceed $80 per month occupied chiefly for dwelling purposes by the wife, children or other dependents of a person in military service, except upon leave of court. (The former provision fixed a rental not exceeding $50 per month.)

5. Section 301, which deals with installment contracts for the purchase of real or personal property, contains the following new provision: "Provided, that nothing contained in this section shall prevent the modification, termination, or cancellation of any such contract, or prevent the repossession or retention of property purchased or received under such contract, pursuant to a mutual agreement of the parties thereto, or their assignees, if such agreement is executed in writing subsequent to the making of such contract and during or after the period of military service of the person concerned."

I will now proceed with the discussion of the sections of this Act mentioned above, and as to Section 200 I will read a part which is pertinent:

"In any action or proceeding commenced in any court, if there shall be a default of any appearance by the defendant, the plaintiff, before entering judgment shall file in the court an affidavit setting forth facts showing that the defendant is not in military service. If unable to file such affidavit, plaintiff shall in lieu thereof file an affidavit setting forth either that the defendant is in the military service or that plaintiff is not able to determine whether or not defendant is in such service. If an affidavit is not filed showing that the defendant is not in the military service, no judgment shall be entered without first securing an order of court directing such entry, and no such order shall be made if the defendant is in such service until after the court shall have appointed an attorney to represent defendant and protect his interest, and the court shall on application make such appointment."

There have been numerous decisions handed down by the courts under the 1918 Act which seem to hold as follows:

Failure to file an affidavit that defendant is not in military service will not nullify a judgment against a defendant who is actually not in military service. Eureka Homestead Inc. vs. Clark, 145 La. 917.

Unless defendant was in military service at time judgment was entered, judgment will not be set aside for failure to file affidavit. Howie Mining Corp. vs. McGary (N. Va.) 256 Fed 38.

No affidavit is necessary where

(1) Defendant appears in action and defends it in person. People vs. Byrne, 189 N. Y. Supp. 916.

(2) The defendant appears in open court and no showing is made that defendant is in military service. Bulgin vs. American Law Book Co., 77 Okla. 112.

(3) Defendant files an answer and no showing is made that defendant

is in military service. Wells vs. McArthur, 77 Okla. 279.

Arguments have been advanced that this section applies only to actions commenced and not to proceedings owing to fact that this section reads "if there be a default of any appearance by the defendant." The contention being that there are no defendants in proceedings.

I had this argument advanced by an attorney representing the S. E. C. in a Chapter 10 Bankruptcy proceeding, but the court appointed the attorney for the trustees to represent all persons who may be in service having an interest in bankrupt's estate, and I believe that is the procedure now followed in the Southern District of New York.

A recent decision (March 12, 1941) was handed down in New Jersey Orphans' Court by Justice Rosecrans, Warren County, In Re Estate of Cool, in respect to an executor's accounting which holds as follows:

Provisions of Act requiring affidavit to be filed showing defendant is not in military service before judgment may be entered on "default of any appearance by the defendant" is applicable to all interested parties in executor's petition for confirmation of account. No appearance was made by or on behalf of any of the interested parties, nor did the petitioner file the affidavit required by the Act (50 U. S. C. 501).

A recent decision by Mass. Sup. Jud. Ct. (Lummins, J.) In Re Institution for Savings in Newburyport, April 11, 1941, holds that Court's finding of fact in mortgage foreclosure proceeding that mortgagor is not in military service of U. S. obviates necessity, under Act, of filing affidavit relating to defendant's military service.

The following is taken from U. S. Law Week of April 29, 1941: "The foreclosure proceedings were instituted under a power of sale contained in a mortgage on real estate in Massachusetts. The mortgagor was an inmate of an institution for the care of insane persons.

"(Text) The Soldiers' and Sailors' Civil Relief Act of 1940 does not wholly prevent actions and judgments against persons in military service, within the definition of those words in Section 101 (1), much less against other persons. Under Section 200(1) a court may enter judgment against a person found not to be in military service, without requiring any affidavit that he is not in military service. . . .

"Even though the finding may conceivably be wrong, and some person in military service, who has some interest in the foreclosed land and whose rights under the Act would not be terminated by the issuance of the new certificate of title, may conceivably come to light later, that possibility should not prevent the land court from acting upon its finding made after adequate investigation. Sometimes a court, in the efficient administration of justice, must act upon its findings of some fact, usually a jurisdictional one, that cannot be so conclusively adjudicated by the judgment that it may not be questioned in subsequent proceedings. . . .

"Under the Act of 1918 a person in military service could invalidate a foreclosure sale made without previous judicial order of sale, although his interest in the property was merely equitable and did not appear of record. . . .

"The methods adopted under the Act of 1918 to obtain a foreclosure that could not be invalidated under Section 302 (3) were (a) foreclosure by entry and possession for three years, G. L. (Ter. Ed.) c. 244, Secs. 1, 2, a method to which Section 302-(3) did not apply, Bell v. Buffington, 244 Mass. 294, and (b) foreclosure by bill in equity in which an order of sale could be obtained that would satisfy Section 302 (3)."

However, I believe it is the practice of the Courts in New York not to enter a judgment without a proper affidavit being filed; these affidavits are on an approved form.

Section 200 refers to actions and proceedings and the filing of affidavits as to military service must comply with this section. For your information, the following is a synopsis of the procedure followed in New York State:

In all actions to foreclose mortgages, partition actions, bankruptcy proceedings, proceedings to probate wills, and in fact in all actions and proceedings in which any individual defendant in the action or party to the proceeding has defaulted, before a judgment is entered the plaintiff in the action or the petitioner in the proceeding must file with the court affidavits setting forth facts showing that the defaulting defendants or parties to the proceeding are not in the military service.

In 1918 the courts of New York state adopted forms of affidavits to be used under the 1918 act, and these forms are used under the 1940 act and are accepted by the court. The affidavits consist of an affidavit by an investigator and an affidavit by the attorney for the plaintiff or the petitioner. The affidavit of the investigator shows that he has been requested by the attorney for the plaintiff or the petitioner to ascertain if the defendant is at the present time in the military service of the United States. The investigator then shows that on a certain day, which must be a day just before the entry of judgment, he called on the defendant and asked him if he was in the military service of the United States, and that the defendant informed him that he was not, and from the facts set forth the investigator is satisfied that the defendant is not in the military service of the United States at the present time. The investigator must state in his affidavit that he has read and is familiar with the acts of Congress known as the Soldiers' and Sailors' Civil Relief Act of 1940, The National Guard Act of 1940, and the Selective Training and Service Act of 1940 and is familiar with the sections of said acts which define persons in the military service of the United States.

The affidavit of the attorney for the plaintiff shows that he has caused an investigation to be made, set forth in the annexed affidavit of the investigator, to ascertain if the defendant is in the military service of the United States, as defined in the Soldiers' and Sailors' Civil Relief Act of 1940, and that he is convinced that the defendant is not in the military service.

In the event that the investigation shows that the defendant is in the military service of the United States, then the attorney for the plaintiff makes application to the court for the appointment of an attorney to represent the defendant and protect his interest. This application should be made as soon as the attorney ascertains that a defendant is in the military service, but if it is not ascertained that a defendant is in the military service until after the judgment has been signed, then the attorney who is appointed should communicate with the defendant in the military service and if he has a defense to the action the attorney should so report to the court and the court may require that the plaintiff file a bond to indemnify the defendant against any loss or damage should the judgment be thereafter set aside, but if the attorney's investigation shows that the defendant has no defense, then the attorney so reports to the court and also reports that he has examined the action or proceeding and that the same is regular and that the interest of the defendant has been fully protected, and on this report the court usually makes an order directing that the judgment be entered.

In the event that the defendant has been served by publication and the plaintiff has been unable to locate the defendant and to ascertain whether he is living or dead, and distributees and devisees and other necessary parties have been made defendants in the action under an omnibus clause, the plaintiff, when the time for the defendant to answer has expired, should file with the court an affidavit setting forth that the plaintiff has been unable to determine whether the defendants are or are not in the military service and apply for the appointment of an attorney to represent any of said defendants who may be in the military service, and if the court appoints an attorney, the attorney should file with the court on the application for judgment a report showing his investigation and the court so directs that the judgment be entered.

In the event that the defendant is an infant and also in the military service, a guardian ad litem is appointed for the infant and he represents this defendant and no other attorney is appointed to represent him.

You will note that the above procedure does not require the affidavit to be made by the plaintiff, but the affidavits may be made by an investigator and plaintiff's attorney.

Of course, other proceedings for the foreclosure of mortgages are prevalent in different states, the most common

form being a power of sale without court action. We have one in New York State which we refer to as foreclosure by advertisement. This is strictly statutory and is seldom used. But it is my opinion that if it can be definitely ascertained that the defendants are not in military service, a sale of the premises pursuant to such a proceeding will be a good and valid sale as far as marketability of title is concerned and that no affidavit need be filed. Some of the cases referred to above will sustain this opinion.

SECTION 201. This section reads as follows:

"at any stage thereof any action or proceeding in any court in which a person in military service is involved, either as plaintiff or defendant, during the period of such service or within sixty days thereafter may, in the discretion of the court in which it is pending, on its own motion, and shall, on application to it by such person or some person on his behalf, be stayed as provided in this Act, unless, in the opinion of the court, the ability of plaintiff to prosecute the action or the defendant to conduct his defense is not materially affected by reason of his military service."

I refer to this section merely for the purpose of pointing out the effect of such a stay on guarantors, endorsers and sureties as set forth in Section 103 of this Act. The following is an excerpt taken from Prentice-Hall Service, which to me was rather interesting:

"Guarantors, Endorsers, and Sureties.—Where the obligation of a service man may be stayed, postponed or suspended, a court may likewise extend the same relief to 'sureties, guarantors, endorsers, and others subject to the obligation or liability.' The construction of the terms 'sureties, guarantors, endorsers' will be of great importance, for example, in the case of a co-maker on a negotiable promissory note, who, it may be assumed, is primarily liable.

"If 'sureties, guarantors, endorsers' were considered by Congress to be parties secondarily liable on a contract, then a co-maker might conceivably be sued on the debt; for applying a rule of statutory construction that general words following the enumeration of specific classes of persons will be construed as applicable only to persons of the same general class, it could be argued that 'others subject to the obligation or liability' would apply only to others secondarily liable. And in support of such construction, reference to Sec. 101 would reveal that the term 'secondarily liable under such right' is used therein.

"On the other hand, Section 204 authorizes a court to permit or refuse a stay of action against a co-defendant in a suit also brought against a service man. In addition, it may be argued that Congress meant to include all obligees, whether primary or secondary, since in either case the liability actually accrues because of the service man's default."

SECTION 204. This section reads as follows:

"Any stay of any action, proceeding, attachment, or execution, ordered by any court under the provisions of this Act may, except as otherwise provided, be ordered for the period of military service and three months thereafter or any part of such period, and subject to such terms as may be just; whether as to payment in installments of such amounts and at such times as the court may fix or otherwise. Where the person in military service is a co-defendant with others, the plaintiff may nevertheless by leave of court proceed against the others."

The following decision may be of interest to you: An application for a stay in a foreclosure action, CORTLAND SAVINGS BANK vs. ANDREW R. IVORY, was made before Mr. Justice Wenzel, Supreme Court, New York City, who rendered a decision on April 15, 1941. The facts briefly are as follows: Defendant was in army. He and his wife in 1936 executed a bond and mortgage in sum of $4300. Mortgage was insured by F. H. A. and provided for monthly payments of $44.33. Due to husband's induction in Army, his income was materially reduced. Court considered same together with present income and expenses and granted a stay of foreclosure provided he pay a monthly sum of $26.95 instead of the $44.35 called for in the mortgage.

SECTION 205 reads as follows:

"The period of military service shall not be included in computing any period now or hereafter to be limited by any law for the bringing of any action by or against any person in military service or by or against his heirs, executors, administrators or assigns, whether such cause of action shall have accrued prior to or during the period of such service."

Question has arisen as to whether or not this section includes limitations periods created by contract as well as those fixed by statute. Some courts have held that it does. See STEINFIELD vs. MASS. BONDING & INSURANCE CO., 80 N. H. 39 (1921).

In EBERT vs. POSTON, 266 U. S. 548, the Supreme Court held that this section could not be the basis of extending the redemption period as it did not apply to transactions which are effected without judicial action. The statutory right to redeem from a sale by advertisement is not a right of action. It is a primary right as distinguished from a remedy. See also WOOD vs. VOGEL, 204 Ala. 692; OLSON vs. GOWAN - LANNING - BROWN CO., 47 N. D. 544.

Does this section affect the rights to enforce a mechanic's lien or a judgment where the same has been filed or a judgment which has been entered before or after the entry of service and the lien not expired in accordance with the statute prior to the entry of service? There are numerous other instances of like character. Your guess is as good as mine. See, however, CLARK vs. MECHANICS AMERICAN NATIONAL BANK, 282 Fed. 589, wherein the court refused to hold that Section 205 extends only to periods fixed by ordinary "statutes of limitation," ruling that it applies as well to "statutes of creation." This case was in respect to a mechanic's lien created by statute which fixed the period within which an action to enforce such a lien must be brought.

SECTION 301. Paragraph (1) reads as follows:

"No person who prior to the date of approval of this Act has received, or whose assignor has received, under a contract for the purchase of real or personal property, or of lease or bailment with a view to purchase of such property, a deposit or installment of the purchase price from a person or from the assignor of a person who, after the date of payment of such deposit or installment, has entered military service, shall exercise any right or option under such contract to rescind or terminate the contract or resume possession of the property for non-payment of any installment falling due during the period of such military service, except by action in a court of competent jurisdiction; Provided, That nothing contained in this section shall prevent the modification, termination, or cancellation of any such contract, or prevent the repossession or retention of property purchased or received under such contract, pursuant to a mutual agreement of the parties thereto, or their assignees, if such agreement is executed in writing subsequent to the making of such contract and during or after the period of military service of the person concerned.

Under this section any forfeiture of a contract, made prior to the effective date of the Act, for the purchase of real estate or any interest therein, in which a person in "military service" is interested, except by action in a court of competent jurisdiction, would be void, and if such attempted forfeiture is by action in court, such action would come within the provisions of paragraph 4 of said Section 200 and be subject to be opened up, set aside and vacated as above set forth.

SECTION 302. This section reads as follows:

"(1) The provisions of this section shall apply only to obligation originating prior to the date of approval of this Act and secured by mortgage, trust deed, or other security in the nature of a mortgage upon real or personal property owned by a person in military service at the commencement of the period of the military service and still so owned by him.

"(2) In any proceeding commenced in any court during the period of military service to enforce such obligation arising out of nonpayment of any sum thereunder due or out of any other breach of the terms thereof occurring prior to or during the period of such service the court may, after hearing, in its discretion, on its own motion, and shall, except as provided in Section

303, on application to it by such person in military service or some person on his behalf, unless in the opinion of the court the ability of the defendant to comply with the terms of the obligation is not materially affected by reason of his military service—

(a) stay the proceedings as provided in this Act; or

(b) make such other disposition of the case as may be equitable to conserve the interests of all parties.

"(3) No sale under a power of sale or under a judgment entered upon warrant of attorney to confess judgment contained in any such obligation shall be valid if made during the period of military service or within three months thereafter, unless upon an order of sale previously granted by the court and a return thereto made and approved by the court."

It is to be noted that this section applies only to obligations originating prior to October 17, 1940. As to such obligations executed prior to October 17, 1940, the mortgagee may not sell under a power of sale or under a judgment entered upon warrant of attorney to confess judgment unless upon permission of court. Entry of any such judgment against any person in military service would be void.

Foreclosure actions will be suspended only if commenced during the period of military service.

See EBERT vs. POSTON (1925), 266 U. S. 548.

The Act will give no protection to a foreclosure by advertisement which is fully completed by a sale of the property prior to the commencement of military service.

TAYLOR vs. McGREGOR STATE BANK (1919), 144 Minn. 249.

For other citations see reference under Sec. 200 ante.

SECTION 601. This section provides for the issuing of certificates as to whether or not a person is in the military service. It is to be noted, however, that it is practically impossible to obtain the certificates from either the Army or Navy and consequently a waste of time to write for same.

The following is an announcement made by the Adjutant General in April, 1941, in respect to certificates from the Army:

"Conditions governing issuance of certificates under Act as to Army service are announced.

"Section 601 of the Act (LW Stat. Sec., Oct. 15, 1940, p. 7) provides that a certificate will be prima facie evidence as to any of the following facts satted in such certificates:

"That a person named has not been, or is, or has been in military service; the time when and the place where such person entered military service, his residence at that time, and the rank, branch, and unit of such service that he entered, the dates within which he was in military service, the monthly pay received by such person at the date of issuing the certificate, the time when and the place where such person died in or was discharged from such service."

"Cooperation is sought in limiting applications for certificates to cases where other evidence as to military status is not readily available. All requests for certificates should be accompanied by the fullest information relating to the identity of the person concerned.

(TEXT) "A certificate will be issued upon the application of any person who has been or is now in military service, concerning his own service, provided he submits full information concerning the date and place of his enlistment or induction, the name under which he enenlisted or was inducted, the date and place of his birth, his serial number (if known), and designation of the court and title and number of the case in which the certificate is to be filed.

"In all other instances certificates will be issued upon the application of any person interested where they are desired for use in proceedings affected by the Act with respect to some person who is a party to such proceeding provided the application (a) embodies (to the extent known to the applicant) the following information relative to the persons concerning whose status the certificate is desired:

1. His full name;

2. If believed to be in service, the name under which it is thought that he enlisted or was inducted and the date and place of his enlistment or induction;

3. The date and place of his birth;

4. His last known address;

and (b) is accompanied by an affidavit executed by the applicant or someone on his behalf showing that:

1. There is a proceeding pending which is affected by the Act;

2. The proceeding was filed in (name the court where filed) and the number and title of the proceeding are (give the official number and short title of the case).

3. A certificate of record of military service is requested as to (naming the person or persons) and the person, or each of the persons, named is a party to the proceeding."

"Requests for certificates regarding military service of women for use in connection with the Act should be submitted directly to the Surgeon General.

"Announcement by Adjutant General, April, 1941."

This Act had a disturbing effect on title insurance when it first became a law, but, like everything, as time passes the effect wears off and business goes on as usual. We must continue to do business and therefore we must take certain risks to continue in the business of title insurance. If, however, we are diligent and careful I do not think the so-called business risks will be disturbing.

Before closing I thought you would be interested in the following opinion advanced by the Attorney General in respect to the effect on Government agencies.:

"Soldiers' and Sailors' Civil Relief Act of 1940 (LW Stat. Sec., Oct. 15, 1940) suspending enforcement of certain civil liabilities of persons serving in military and naval establishments is applicable to all agencies of Federal Government.

"Applicability of the Act to the Government is questioned by the Department of Agriculture in connection with its several lending programs.

"There is no express declaration in the Act on the part of the Government of its willingness to be included; but the canon of construction that a sovereign is presumably not intended to be bound by its own statutes, unless named therein, like all canons of construction, is merely an aid in arriving at the legislative intent, and the presumption so raised is not conclusive.

"Moreover as applied by the courts, the canon is subject to certain exceptions. The courts have generally held that a statute drawn in general terms will be construed to bind the sovereign when the burden or injury which the statute seeks to avoid may be imposed or inflicted by the sovereign as well as by private individuals. The courts in this country have also held that the sovereign is also bound by statutes which lay down general rules of procedure in civil actions.

"The Soldiers' and Sailors' Civil Relief Act of 1940 clearly falls within these principles. It is drawn in general terms and deals with burdens which may be imposed upon soldiers and sailors by the Government as well as by private individuals. While the intent of Congress to protect the rights of soldiers and sailors is evident, Section 100 states that the statute is enacted 'in order to provide for and strengthen and expedite the national defense under the emergent conditions which are threatening the peace and the security of the United States and to enable the United States the more successfully to fulfill the requirements of the national defense.' Thus, the statute shows on its face that at least one of the chief parties in interest is the Government.

(TEXT) "Other provisions of the Act support the view that the Act is applicable to the Government. Article V, which relates to taxes and to the rights and interests of soldiers and sailors under the public-land laws, is clearly applicable. I recognize that the several articles of the Act deal with separate subjects and that a holding that the Government if bound by Article V does not necessarily require a like holding with respect to Articles II and III which deal with financial obligations or liabilities other than tax obligations or liabilities. On the other hand, I see no reason why, under the present emerg-

ency conditions to which the statute is intended to apply, the Congress should grant to soldiers and sailors relief from Government tax claims and at the same time deny them relief from other Government claims of a lesser dignity but equally or more burdensome."

"The Act of 1940 was enacted for the same purpose and in substantially the same language as the Act by the same title enacted in March 1918, and the latter was administratively interpreted as being applicable to the Government. 'In passing the 1940 Act, the Congress must have presumed that it would be given the same interpretation as that given the 1918 Act."

(TEXT) "It is my opinion, therefore, that the Soldiers' and Sailors' Civil Relief Act of 1940 is applicable to all agencies of the Government, and therefore to the several lending programs of the Department of Agriculture."

(Opinion No. 18, Vol. 40, of Acting Attorney General, June 18, 1941. Released July 3, 1941.)

I thank you.

You Have More Than Title Evidence to Sell

EARLE LUDGIN
President, Earle Ludgin, Inc., Advertising Agency

Have you ever asked yourself just what it is that you are selling the public?

Is it evidence of title . . . and only evidence of title?

I come before you to say that I believe you have much, much more than title evidence to sell. And I think it is important for you—important for you as individuals and as an industry—to determine just what it is that you have to sell. And having determined it—SELL IT!

My business is advertising. In our office we prepare advertising for many different lines of business—radio and electric tools, perfume and building materials, silk stockings, household appliances—and the title guarantee business. Naturally, we can't know all these businesses. What we do know is . . . people! It is our job to find out what interests people, what they expect for the money they spend, what makes them buy the things they need, what should be done to make them satisfied customers. We then interpret the services of our clients in terms that people understand . . . because unless people understand these services, they will not buy them, or if they **do** buy them, they may not appreciate the true value of what they are getting for their money.

And that brings me to the business of compiling abstracts of title and issuing title policies—the business in which you gentlemen are, in one way or another, engaged. My connection with your kind of business is still new. About a year and a half ago, our agency was appointed to handle the advertising for Chicago Title and Trust Company and, while I realize that many of the problems facing them are not necessarily those facing each of you—nevertheless, many of the things we have learned in formulating this Company's campaign apply basically to every member of this Association. I hope you will forgive me if for that reason, I make specific reference during the course of my talk to the Chicago Title and Trust Company. I will do this only to make my points clearer may not own any property are never-

and not because our client needs advertising here.

Our first step was to try to find out just what the general public knows about the title business. To do this, we talked to property owners, to lawyers, to real estate operators and to *just plain people* who, although they

EARLE LUDGIN
Chicago, Illinois
President, Earle Ludgin, Inc.

theless, members of the community which the title company serves.

We followed the complete routine of the work involved in compiling evidence of title. We examined cases where flaws in the title brought trouble and unhappiness to sellers and to buyers of real estate. We studied cases where a timely uncovering of flaws in the chain of title *prevented* trouble and unhappiness.

The things we learned made us realize that this profession of yours is far more than a dull, methodical search through old records and dusty files. It is far more than the delivery of pieces of paper full of legal terms and phrases that no layman can understand, but that for some mysterious reason add another item of expense to the cost of buying property. We realized—and it was a very pleasant realization—that in this title business, you gentlemen are dealers in peace-of-mind, you are merchants of freedom from worry, sellers of happiness and security. That realization, gentlemen, puts this business in an entirely new light and brought to us for the first time a clear understanding of just what the public should be told.

We also learned another thing, no less important. It was, that this story of what the title business *really is*, is *not understood* by the general public! Most people have absolutely no idea of what an abstract of title is, or what a title guarantee policy is. They have no understanding of why it is so important to their ownership of property to know that the title is clear. Most people have no conception of the hidden dangers that can lurk in a simple real estate deal, nor do they realize that *honorable* people sometimes sell property they do not own. And even in cases where the need for evidence of title is realized, we learned that there isn't the slightest understanding of the vast amount of painstaking, diligent effort necessary on your part to prepare an abstract and render an opinion or issue a policy that would assure the purchaser that what he has bought is really his.

May I say candidly that much of the blame for this general ignorance is *yours?* Being professional men and women, you have devoted your time and attention to the building of your abstract plants, to the perfection of your service, and you have *assumed* that the people you serve appreciate and understand your services. That, unfortunately, is not true!

The attorney *does* understand your work—but even *he* does not understand the full extent of your service, the

costs involved and the care and training required to perform it.

Even the real estate operator only *partially* understands your work. Actually, he looks upon you as a necessary evil and a source of worry. He is afraid you will upset his deal with your findings, or cause trouble with his client over the invoice for title evidence. All *he* wants is to get the deal closed quickly.

And the man who buys the property or sells it, we found, knows little or nothing of an abstract or a title guarantee. What he wants, he thinks, is a deed—and honestly, he doesn't understand a word of what you say when you use phrases like this: "In examining an abstract we are confronted with passing upon defective descriptions, failure to show marital statutes, possible outstanding dower, construing complicated deeds, perpetuities, executory devises, death of the remainderman before the life tenant, etc."

What, then, is the answer?

It seems simple now—but let me assure you that it wasn't so simple to find a way to tell the story of the title business so that everybody could understand it. But a way was found, and judging from the comments it has aroused both in the business and on the part of the general public, there is good reason to believe that the story we have told is being understood, now.

I have brought with me some reproductions of a few of the advertisements in the campaign which the Chicago Title and Trust Company is at present running in Chicago newspapers. Let me explain that these are brought here not as an advertisement for our client or ourselves, but because these advertisements will make it easier to explain the principle which we believe is basic in achieving a better understanding between a title company and the people in the community which it serves.

In all good selling, the first effort is always to answer the customer's most important question: "What will it do for me?"

In these advertisements we have concentrated on answering this question—not in terms of the title business, but in terms of the *experience* of the customer. We talk about cases that have happened to actual people . . . about cases that can happen to **you** as a buyer of real estate. Not intangible, uninteresting generalities about integrity and dependability and years of honest service—people aren't primarily interested in things like that. They want to know "What can you do for *me* in return for my money?"

And so (reproducing first advertisement), we ask them, "Have you ever bought any property from a man named Johnson." (Read entire advertisement.)

I hope you will agree that we don't fail to **sell** the title business—but we do so from the point of view of the reader.

Let me compare the approach in this advertisement with the leaflet distributed by a well-known title company. The heading reads: "Startling Facts." The inside page goes on to say, "Complete Title Protection for Investors in real estate and real estate securities. BLANK TITLE COMPANY. Capital and Surplus over $1,750,000."

So far those Startling Facts are not very startling. Then follows the question: "Is your title safe? Among the many defects that may cause the loss of your home and other property which the abstract does not disclose nor attorney's opinion include are the following, all of which are covered by our Title Insurance Policy.

"One of the deeds in the chain of title may be a forgery.

"A deed may have been made under a power of attorney after the death of the principal, which renders it void.

"In the case of a conveyance of the homestead by the Executor or Administrator of a deceased owner, the surviving widow, minor children and unmarried daughters may have rights," and so on.

I hope my friends in that company will forgive me for using them as an example.

Gentlemen, there **are** startling facts buried in that folder. There's drama, excitement, worry, lawsuits, loss and even suicide *and murder* lurking in every paragraph. But the writer of that folder is like a ticket taker at Niagara Falls, who has heard the roar of the Falls so long it's just a murmur of noise to him. He knows to an inch how far the water drops, and he never turns to look at it any more.

That copy is, I am afraid, typical of the abstract and title guarantee business. You gentlemen know this business so well, you take it for granted that everyone else does. *They don't.* In all of this talk about titles and deeds and conveyances—you don't tell them what the average man wants to know—"What does it mean to *me*?"

But let's turn back to the advertisements which I started to show you. Here is another case:

(Reproduce second advertisement.)

"I never heard his name before . . . but he claims he owns our house!"

Can you imagine anybody who owns property or who intends to, who wouldn't be interested in this story or wouldn't understand its importance?

When I had the privilege of discussing advertising with the Illinois Title Association at Bloomington several months ago, I was asked if these advertisements don't stress the fear angle very strongly. Indeed they do. We deliberately planned them that way. Our first job is to interest a man, then to worry him if need be, and then tell him all the terrible things we save him from, with our Title Guarantee Policies. It is *fear* that sells insurance. It is *fear* that sells blowout-proof tires and safety glass. It is fear of social consequences that sells soap to prevent B. O., and mouthwash to prevent halitosis. And I leave it to the preachers if fear of hellfire hasn't been as strong a sales appeal as hope of heaven in selling religion.

(REPRODUCE TICKET.)

Here's an example of that on the screen. This is a ticket for a revival meeting in Chicago. Notice that Reverend Newell, who knows what appeal will bring an audience into the auditorium, doesn't say a word about Heaven—what **he** talks about is HELL—in bold face type.

But let's go back to the man who says he owns our house.

(Read entire advertisement.)

No one who has read these advertisements can ever again *not understand* the importance of evidence of title. He sees what it means in terms of his own peace-of-mind and security and he realizes that he is getting a careful painstaking service that is worth a lot of money and even *more* than money to him.

In that connection, I might add that we considered approaching Title advertising from the historical point of view, going back to early times and drawing upon the color and romance of the French, Spanish and Indian days of our country. Perhaps, someday, we will get to that point. Up to now, however, we feel that our urgent need is for a campaign that belongs to today, *right now*. Instead of having a man see a nice historical ad and say, "That's interesting"—we want him to say, "Gosh, did **we** get a Title Guaranty Policy with this house?"

(Reproduce several more advertisements reading as much of the copy as seems proper at the moment. The last one is: "A Man Declared Legally Dead.")

I think these are all the examples we will have time for. I hope they have not been too many even so.

One comment I would like to make as an advertising man new to this field, is that the Title Industry as a whole is not widely advertised. I have been curious to find out why. One reason appears to be that you folks in the title business seem to feel that if people need title guaranty policies, or if the mortgage companies demand them, you will get your share of the business. The impression seems to be held that advertising won't create new customers and may even help your competitors while it's helping you. Maybe that's so. But you may find out some day that your real competitor isn't the other title company down the street, but public ignorance about you and your business. If the man who votes doesn't know anything about the title business, then it's because *you* didn't tell him—and he may be asked to vote on legislation that vitally affects your business. *Then* he may be the worst competitor you ever had!

When I say that the Title Industry as a whole is not widely advertised—I'm not talking about advertising intended to establish the *company's* point of view. You know the kind of ads I mean—the real estate board is giving a picnic and you run an ad in the pro-

gram—saying, "72 years of dependable service" or "Established in 1841." Nobody except you cares how long you have been in business. As a matter of fact, you don't care about the other fellow's business, either. You don't care if the bus company got its franchise in 1912 — just so long as the busses run frequently and take you where you are going. Maybe the telephone company was established in 1887 —but you don't stop to think of that every time you get a wrong number!

This, then, is the thought that I would like to leave with you today. You are engaged in a business of great importance, a business that touches in some way the life of every member of your community . . . but still a business whose nature and extent are not known or understood by the people it serves.

With this in mind, I recommend that you do more than sell title evidence. Sell your entire *profession*. Sell your service for what it is. I don't mean that you have to engage in an advertising campaign. Perhaps in your community you don't need printed advertising at all. I mean that first of all you must get the customer's point of view about your business, and then approach the customer, the lawyer, the real estate man from that point of view. In your own daily contacts with these people, and the contacts that your employees and associates may have, keep uppermost in your minds that your business is more far-reaching than most folks know.

There is nothing abstract about the abstract business. It deals with realities. It establishes a strong unbroken link between *yesterday* and *today*. It assures peace of mind to the farmer and the city dweller. It means security for the owner of commercial property. It is a vital part of the life of the community. What would the real estate man do—what would the property owner do—if you were not here today to serve him? Think that. Talk that. And you will find that the folks around you and those you meet at Rotary, Kiwanis or other group gatherings will be fascinated by the interest and romance in your business.

Report of 1941 Committee on Advertising and Publicity

WILLIAM W. HARVEY, JR.,
Chairman
Advertisng Manager, Title Insurance & Trust Co., Los Angeles, California

Usually it is the pleasant duty of your Committee on Advertising and Publicity to report to you on the work done and the progress made by members of our association in the field of advertising and publicity. This year, however, because of numerous factors which shall be touched upon later, this report includes suggestions and practical, workable illustrations of how we can utilize advertising and publicity to reflect favorable public attention to the work and services of the title insurance and abstract industry. For never before has the need for public acceptance of a business selling "service" been more important and vital.

Ours in particular, among private businesses serving almost as a public utility, has been long in awakening to the fact that we do perform a public service—that we are justified to make reasonable charges for these services—and that we do have a story to tell about our work and existence as an industry functioning in the public interest.

Probably a great deal of what I incorporate in this report will be mentioned by others during this meeting. I am sure that Bill Gill in his report will make many splendid recommendations. I am sure that Earle Ludgin, president of the advertising agency handling the account of the Chicago Title & Trust Company, will explain many of the techniques used by that company in its program to maintain public acceptances of its product—but I feel that too much stress cannot be made upon the application of good public relations—of which advertising and publicity are integral parts.

It is generally agreed that our program should fall into three general classifications, namely:

1. The employee group;
2. The middleman group, and
3. The consumer or ultimate payee of our service.

How can the potent forces of advertising and publicity best be used in bringing about acceptance of our business among these three important groups? Obviously each will have to be considered in different lights. For example, we can assume that one whose existence is dependent upon the sale of abstract and title company services is more familiar with its functions, benefits and operations than those who are not directly connected with our industry. However, work must be continued toward proper education of company personnel to the end that this knowledge can be transmitted to middlemen and customers. Employee education has been accomplished in various ways. Here are a few which are now successfully carried on by members of the A. T. A.:

1. A clear explanation of company and industry policies.

2. Distribution of company and industry information to employees so that they can effectively discuss industry problems with middlemen and consumers.

3. Among others are periodic checkups to improve working conditions; publication of handbooks on company and industry policies; frequent social activities.

These are only a few of the employee activities which should be considered by all our membership. Remember, good employee relations is the foundation of successful public relations.

The title and abstract industry becomes more concrete when the problems of the middleman are considered. To a great many of us he is the real estate broker, the escrow clerk, the bank manager, the loan representative. Here is the man who in many cases orders our service—for which someone else pays. Probably we never see the man who pays us—thus making it impossible for us to explain the extent of our work and the justification of our charges in the event they are questioned. It is therefore important that we avail ourselves of every opportunity to not only inform the middleman of new policies and regulations affecting our industry—but to go even further—to acknowledge publicly the merits of his knowledge of our industry. There are several outstanding examples as to how we can work with these men. In the case of real estate brokers in Los Angeles, the Title Insurance and Trust Company has run several large ads advising prospective purchasers of real estate to first consult a broker, because through his training and knowledge of property he is best fitted to give advice. Real estate brokers like this. They feel friendly toward the company telling the public these things and, as a result, they spend a little more time selling title protection.

Charlton Hall, our president, published a booklet which he called "The Book of Homes." It showed people a variety of representative homes to be seen around the Seattle area — who built them, who designed them. (Don't forget that builders and architects can sell our service too.) And it also told who sold them. It was a nice way to

make friends with a lot of people, and any industry with friends will continue to be in business.

In Oklahoma City, our good friend Bill Gill has done a wonderful job in establishing the abstract and title industry in a more secure position. If he's here today, I suggest you buy him a drink and get him talking about a book called "Title Guaranty Handbook" which was distributed among attorneys. It told the reason for his company's service, and it explained policies in a clear, concise way so that there was no mistaking them. It was honest and factual. It made for better understanding between his company and the all-important attorney. What is important is that it made friends—and again we say that friends are necessary to a successful company or industry.

Title Guarantee and Trust Company of Los Angeles issue a book called "California Land Titles" which I think is the finest of its kind issued by any member of our association. Ask George Reimers, who is here today, to tell you about the work that went into the publication of that book. Better still, ask him about the friends it made!

Among other activities practiced by our members in gaining good will among our middle group are: plant inspections, dinners, talks before service clubs, schools, real estate boards, and other groups consisting of leaders in business outside of our allied fields. These speakers talked on a great variety of subjects—all of which could be identified with the work of our own industry. Why even romance is being used to sell our product!

Personal contacts with the middleman are also important. Wherever possible, he should be consulted by officers of your company. In short, he should be equipped with every sales weapon at your disposal for he is, in fact, your sales force. Remember this about the real estate broker, the escrow officer, and others in this group: he usually works for himself or some company and his first duty is to sell their product—not ours. So it is up to you to keep him informed so that he can easily say the things about us we would say ourselves if we had the opportunity.

Many a company uses novelties to keep its name and product before the middleman. The Florida Title Company has a distinctive desk thermometer; Chicago Title & Trust Company and Title Insurance and Trust Company of Los Angeles use perpetual wall calendars, blotters, and realty handbooks which contain various listing forms and agreements. All these are very popular, and unquestionably build good will for the company issuing them.

Most of you have seen samples of advertising soliciting escrow business distributed by the Portland Title and Trust Company. They are exceptional pieces of sales literature, and Walter Daly is to be congratulated upon his contribution to our membership.

Finally we have our consumer group, and here, by all standards, is the most difficult and important job. Favorable public opinion today is so vital that the very existence of individual businesses and national industries depend upon it. But to operate in the public interest is only part of our job. We must follow through and tell the public of the services we perform. That is a job that falls squarely upon our individual and collective shoulders. How is this done? What techniques can be applied? Can a small company embark upon a public relations and advertising campaign?

In the case of small companies, of course, the measures to be employed are dependent upon the size of the job to be done. For instance, in small communities emphasis might be placed on employee and middleman education. In these cases, personal contact is an important weapon in selling the industry. But even in our smallest communities, abstract and title companies do some

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

advertising in newspapers—give some form of advertising novelty to customers. Have you missed such an opportunity to tell a story, simple as it may be, about your company and your industry? Put something in those white boxes you pay for. Tell of the work you do; how you fit into the growth of your community. Then people will begin to look on you as an asset to your town instead of an unnecessary charge in the transfer of real estate. In your files you have the most complete history of your community. You have names, and dates, and property values. In them are human interest stories newspapers clamor for and your customers like to read. And when they read them, they will learn of some of the work and research that goes into the making of an abstract or title policy.

This is not the time or place to talk about advertising strategy or techniques which can be employed to carry the message of our work to the attention of consumers. The fundamentals of planning a successful advertising or public relations campaign are generally known and details must be worked out to meet conditions and requirements in the localities where the advertising is to be placed. In other words, two sections of the country might be advertising the same product or service, but because of varied laws, regulations, prices and social differences, the details of the campaign would necessarily have to be worked out to meet those conditions.

Several of our members have used different techniques or approaches to tell their story. In Chicago, for example, Paul Pullen has found that newspaper advertisements are an effective method of tell the story of the Chicago Title & Trust Company. The illustrations are taken from actual case histories and are convincing messages as to the need of title protection in real estate transactions. Such headlines as the following are bound to attract attention and gain reader interest:

"I Never Heard His Name Before . . . But He Claims He OWNS OUR HOUSE!"

"The City May Have a Right to Put a Road *Through* Your House!"

"Insanity in Someone Else's Family Can Still Affect *Your* Property!"

In California a title company employs a different approach to the same subject by the use of historical pictures of the community with such headings as:

"His Salary Topped the Mayor's!"

"Today She'd Be Arrested!"

The illustration with the first headline showed a withered Indian "zanjero" or water tender, who once operated the water canals of the City and was paid a salary that "topped the Mayor's!" The copy following told of the community's phenomenal growth which complicated real estate records to the end that only through title insurance can buyers or sellers of real property have the ultimate in title protection. This newspaper campaign supplements, or is supplemented by, a half-hour weekly radio program broadcast over the main outlet of the Columbia Broadcasting System in Southern California. The theme of this program is "Romance of the Ranchos" in which the early history of the southern section of the state is dramatized. It is a splendid vehicle to show the complications of real estate transactions. The program is entertaining and educational and is receiving wide public acceptance. Because of the authenticity of the stories dramatized, it has received the recommendation of the school systems. Other supplemental promotion in connection with the radio program includes the placing of historical photographic displays in the

lobbies of banks, building and loan associations, and public libraries located in the section dramatized. These displays call attention to the program to thousands of Southern California residents and have created much interest in the early history of the communities in which the pictures have been displayed. Altogether it has made friends for the company sponsoring the program, and again I say friends are what we in the title industry need today more than ever before!

In conclusion, I want to heartily congratulate those of the association who have recognized the need of better public relations. This work should be continued and enlarged upon. Your Committee on Advertising and Publicity is ready to serve you in any capacity in which it may be called upon to act. Use it, and perhaps from it you may gain a better perspective and knowledge of the use of advertising and publicity in promoting and selling your company and our industry.

As Chairman of the Advertising and Publicity Committee for the third consecutive year, I am indeed grateful for the hearty cooperation I have received from those who have worked with me during the past year. To Paul P. Pullen, C. A. Vivian, Palmer W. Everts, and Richard Dunn, I give sincere thanks.

Maintenance and Operation of Title Plants

How to Save Money, Time, Effort

J. B. WEBBER
President, National Title Insurance Co., Los Angeles, California

You are now to be given an imitation of a broadcast by Walter Winchell —Walter Winchell in reverse!

To qualify myself, would say that my first lesson in the title business was learned working for a firm of attorneys in Los Angeles in 1887. This firm issued Certificates of Title and made Abstracts. I attended high school at a title and trust company in Chicago, graduating after seven years; then took a post-graduate course with the Title Insurance and Trust Company, Los Angeles, for twenty-seven years. In 1927 I organized the National Title Insurance Company, Los Angeles, and after thirteen years obtained the E. P. M. Degree — E. P. M. meaning Economical Plant Maintenance, and am willing to admit, without proof, that I am now an expert in title plant work.

Economies in Title Plant Maintenance and Operation

1. THE "BASE PAGE," CALLED "ORIGIN AND INDEFINITES" IN CHICAGO.

To this Base Page, preceding a subdivision, is posted indefinite descriptions, such as "my lot in Madison Heights" and instruments which cover all of the subdivision. The savings which may be made by such a page are readily discernible when I tell you that in Los Angeles there is one subdivision, containing 2500 lots, which requires the time of one poster for a whole day to post one instrument affecting the tract. There are thirteen different instruments, affecting the whole tract, relating to a trusteeship, which were posted to the whole account. This means it took a poster thirteen days to make those thirteen postings, or a half month. At $150.00 per month this would cost $75.00. The thirteen postings could be made to the Base Page at a cost of not to exceed 15c.

This Base Page need not be opened up for any subdivision unless there are postings, as outlined, which need to be made.

2. THE "SLIP" OR "TAKE-OFF," from the instruments as they are recorded in the Recorder's Office from day to day.

Ninety per cent of the instruments so recorded can be taken off on blank slips of paper 5x7 inches or 6x6 inches, showing enough data to enable a title examiner to pass on the sufficiency of the instrument.

Each instrument should be taken off on a separate slip, showing the kind of instrument, the date, the date of recording, description of the property and any provisions in the instrument which might be needed in the examination of the title to the property. The signature on the instrument should be examined, the acknowledgment passed on, and if found to be properly executed, the slip should state "execution O. K." These slips should be made in duplicate. From these slips the property plant is to be posted.

After the postings are made, the title company has, in its office, not only an index to the public records, but a real title plant. Instruments, such as oil leases, 99-year leases, and other long and complicated instruments, need not be abstracted as the instruments are filed for record. In taking off the instruments, the passing upon them at that time obviates the necessity of having to post to the Tract Index the books and pages where the instruments are spread of record. This omission, alone, saves each of the companies in Los Angeles about $200.00 per month.

It costs more to take the slip off in this way, but this additional cost is absorbed by the savings effected in the office when policies are issued, because then instruments do not have to be abstracted after the order is received.

In Los Angeles County the instruments recorded in the Recorder's Office run about 450,000 per year, and in addition there are approximately 50,000 court actions. About 10 years ago the Los Angeles companies adopted the take-off as outlined. Prior to that time, as nearly as I can figure, they had 35 people continuously employed in the Recorder's Office abstracting instruments. Now there are only five people doing this work. A saving of about $40,000 per year.

An extra copy of the slip, or take-off, could be used by an abstract company, in preparing abstracts, each slip being a page in the abstract, without having to copy from the records when an abstract is ordered.

3. THE "GENERAL" OR "IRREGULAR INDEX."

To this is posted matters affecting the title to real property which do not necessarily describe the property, such as judgments, estates, guardianships, bankruptcies, divorces, etc.

The "vowel" index is suitable for companies in counties where there is very little volume. For those companies in the largest cities would recommend the system used in Los Angeles, known as the Russell Soundex System.

Names are coded on the consonants in the name and this system is controlled by Remington-Rand, Inc. Arrangements can be made with them for the use of the system, the consideration being that the company using it will purchase its supplies, for the system, from Remington-Rand.

If that system is not used it is suggested that a strictly alphabetical index be used, arranging the names exactly as they appear in any city directory, but on a loose-leaf system. The slips which I mentioned before can be arranged, as stated, in alphabetical order, and this loose-leaf system permits the arrangement in the books in such a way that all similar names fall together, making an index that is easily and quickly run.

This loose-leaf system also permits

the taking out of all satisfied and outlawed judgments.

4. STREET ASSESSMENTS AND TAX SALES.

As a very small percentage of these result in a deed to an individual they should be carried in a separate department so as not to clutter up the property index. These tax sales and street assessments can be carried on a looseleaf system with this advantage that very often a street assessment will cover thousands of lots, and a "Base Page" can be used covering not only a number of tracts covered by the same assessment, but even whole assessment districts of a large city.

5. MAPS.

Maps for abstracts and policies, covering a whole subdivision, can be turned out at a cost of about 12 to 15c each by the off-set printing process. You can readily see what a saving this is over the cost of having the maps made by a draftsman.

6. ABBREVIATIONS

Characters and symbols can be used to effectuate a great saving. One of the companies in Los Angeles has a book of about 2000 abbreviations; also rigged up typewriter characters to fit certain of them, so that in writing a long description, by using the abbreviations and the characters, about half the space is required, with a comparable saving of time.

7. ARBITRARY ACCOUNTS

Some money can be saved in arbitrary work by using "Continuing Arbitraries." After an account is laid out into arbitrary lots, the deeding out of parcels from these arbitrary lots can be so indicated on the map, and these parcels carried forward in "continuing arbitraries" through the account by number.

8. WORKING WITH COMPETITORS.

We may not like our competitors, and think their methods and plants are inferior to our own, but we should put aside such thoughts and join with our competitors when it is to our best interest to fight "Old Unnecessary Expense"—like Great Britain joining with Russia to fight "Old Hitler."

One method is to share the cost of the take-off, thus cutting its cost in half.

Another is the starter-exchange agreement. For instance a company may issue its policy covering a certain piece of property with a long, complicated title, and make a profit of only a nominal amount, say two or three dollars. Next year its competitor has an order for a policy covering the same property, and it, in turn, makes the same long, complicated search, with its accompanying small profit. The advantage, under a starter-exchange agreement, would be that whilst the first company did the work and got only a small profit, the second company could make a good profit because it has the use of the first company's starter for its policy. Without such an agreement, should the second company have used the first company's policy for a starter, it might have found, to its sorrow, that the policy was loaded with dynamite because the first insuring company, by reason of some sufficient indemnity against loss, might have omitted showing some judgment, mechanic's lien or passed some defect in the title. A starter-exchange agreement enables each succeeding issuing company to be fully advised by the company making the search with regard to any and all matters pertaining to the title and whether or not the policy, as issued, is good for the issuance of another policy without any question.

Another step along these lines is a consolidated plant, two or more companies using one plant. If this kind of an arrangement is made to save money, in order to show that the companies are competing, this consolidated plant might be housed in a separate office from each of the other companies participating in the use of the plant. The tendency now is for companies to have consolidated plants, starter-exchange agreements, and a sharing of the take-off costs.

In conclusion would say that the National Title Insurance Company has adopted each and every one of the expense and labor-saving features presented. Over a period of thirteen years the company has issued more than 70,000 policies of title insurance and posted some six million instruments to its plant. And, with that volume of business, has never experienced any trouble of any kind, so far as the title plant is concerned.

The slips are taken off and put in the lot books (ring binders), according to lot and block and in chronological order. When a policy is issued the pages covering only the property in question may be taken out and used in the searcher's notes. This pulling of the slips culls out from the plant a large percentage of posted instruments for which you will have no further use. The National Title Insurance Company has pulled over 500,000 such slips.

If the suggestions here made are adopted by any company in the United States it can safely do business, cut its plant expense half in two, speed up its work and the work can be done with less effort.

A company desiring to use any of these methods need not dispense with its present plant, but may, at any stage, adopt the new system.

Report of Judiciary Committee

McCUNE GILL, *Chairman*
Vice-President, Title Insurance Corp. of St. Louis

Mr. Chairman and Gentlemen of the Convention:

It seems that one of the duties of the Judiciary Committee is to report periodically on the recent decisions of the Courts. It has been several years since we have reviewed the decisions of the Supreme Court of the United States as they affect real property and title law. So it has been thought proper to bring ourselves up to date in this regard by listing the decisions of our highest court during the past few years, decisions which will be found to be increasingly numerous in our particular field, and which lead us to the conclusion that there is nothing wrong with real estate law that a miracle cannot cure.

1. Bankruptcy and Sales Taxes

Title Companies in most states need not worry about sales taxes because they ordinarily are not automatically a lien on real estate. They become a lien only if suit is brought or real estate levied on. If, however, the seller of the goods goes into bankruptcy and the sales tax officials file a claim for unpaid sales taxes does such a claim create a lien? The Supreme Court has held that this is the proper construction of the Bankruptcy Act, which, no doubt, means that if a sale in the bankruptcy court is to carry title free of such lien the decree should specifically refer to the sales tax (or income or social security or other tax) and the various Tax Collectors must be made parties to the proceeding and be served with notice before the order of sale free of liens is granted. In New York City where the controversy arose, it is said that sales tax claims against bankrupts amounts to several hundred thousand dollars per year. City of New York v. Feiring, Trustee in Bankruptcy of National Studios, 61 S. Ct. 1028 (June 1941).

2. Curative Act Repealed

We have all seen many curative acts passed to make sick titles well; but few of us have ever seen other acts passed to make the same titles sick again. This happened in Arkansas. Whereupon two-thirds of the Supreme Court of the United States held that the cured titles must stay cured. And that a tax deed from the State was valid (though a mere quit claim), where it was executed after the passage of an act making the State's title valid not-

withstanding defects in the assessment and the preparation of the tax books. This majority of the Court held that such a deed was a contract by the State, the obligation of which could not be impaired by the subsequent repeal of the curative act. One would hardly expect a dissent to such a decision but the fact is that a third of the Court thought that the State's grantee should consider himself lucky to get back his money with interest (although he lost the property), and that he should not complain because of the "liberal policy" whereby States now blithely repudiate their acts. Wood v. Lovett, 61 S. Ct. 983 (June 1941).

3. Deficiency Laws

In May 1941, the Supreme Court just about answered all of our questions concerning the validity of laws regulating suits for deficiencies resulting from foreclosures of mortgages. New York in 1938 (which was reputedly after the so-called depression), passed an Act saying that the amount of deficiency which can be collected is the difference between the debt and the actual value of the property or the bid, whichever is the greater. The Act is stated to apply not only to mortgages executed after the date of the Act but also to those executed before such date. The court held that the law is constitutional even as to a prior mortgagee because, as the Court says, he has no right to have the debt paid twice. The Court does not discuss the practical aspect of the mortgage business namely, that a lender might need a profit on some foreclosed properties to compensate him for losses on others. So a mortgage lender in New York must now lose on his bad loans and cannot gain on his good ones, and must be content to be paid in property and not in money. Gelfert v. National City Bank, 61 S. Ct. 898 (May 1941).

4. "High and Low Water" Is Our Pet Name for the Next Decision

The laws of many States fix the boundary of a navigable stream at mean low water mark. If you have insured titles of riparian owners up to such a line you will, no doubt, be surprised to hear that such titles are, according to a recent ruling, subject to the right of the United States to use, or to back water upon, the land between low and high water marks, and without compensating the owner. Needless to say this strip may be of great width if the land is fairly level, thus making Uncle Sam's river much wider than the State river, as was the case as to this land in Minnesota. United States v. C. M. & St. P. R. R., 61 S. Ct. 772 (April 1941).

5. Hedge Clause

One of the best arguments to use in selling mortgagee title insurance is the fact that a mortgage company or agent is liable to its investors for defects in title either on or off the record. When apprised of this danger some of the mortgage companies added a "hedge clause" to their circulars stating that "while we do not guarantee the statements herein they are based on information which we regard as reliable." The Supreme Court of the United States held in Life Insurance Co. v. Halsey, 61 S. Ct. 623 (March 1941) as to certain property in the State of Washington, that such a statement is no protection. So our argument for title insurance is still valid, due to the alacrity with which courts jump over hedges.

6. Receivership

In passing title through a receiver's deed it is necessary for the title company's counsel to pass on the question as to whether the appointment of any receiver was proper. In Kelleam v. Maryland, 61 S. Ct. 595 (March 1941), the Supreme Court of the United

McCUNE GILL
St. Louis, Missouri
Chairman Judiciary Committee; Vice-President, Title Ins. Corp. of St. Louis

States held that such an appointment by a Federal Court is not proper merely to conserve the property where the rights of the parties are being litigated in a State Court. In this case a bonding company wanted this protection while an Oklahoma court was trying to find out whether certain relatives by the half blood had any interest. As this was an appealed case, it indicates that title should not be passed until time for appeal has elapsed. After such period the further question as to jurisdiction would be important but this was not involved in this case.

7. Declaratory Judgment

Let us suppose that the holder of one of your title policies or abstracts is sued by an adverse claimant and you are called on to defend. You are in doubt as to whether the claim is one which is covered by your policy or abstract, and hence in doubt as to whether you should defend or not. If you defend the claim, you will be put to great expense and might also thereby admit liability. If you do not defend, you will run the risk of a mediocre defense by the assured, or perhaps even actual collusion. What in the world are you to do to extricate yourself from this predicament? The case of Maryland v. Pacific, arising in Ohio, 61 S. Ct. 510 (Feb. 1941) supplies the answer. File a petition against the assured and the claimant, asking for a declaratory judgment determining your liabilities and duties. Such a petition is justified because there is a sufficient "actual controversy" to sustain your action, according to this decision. But you must hurry because you can't enjoin the prosecution of the claimant's suit.

8. Wage and Hour Act

In U. S. v. Darby, 61 S. Ct. 451 (Feb. 1941) the Court held that a producer of goods (specifically lumber) within a State, (specifically Georgia is subject to the Wage and Hour Act if some of his goods might be and usually are delivered to customers in other States. Hence title companies and abstracters are "interstate" because they do deliver to out of State customers. And we are not exempt from the Act, according to Sec. 29 of the recent "Interpretative Bulletin No. 6." The question as to whether, if more than 50 per cent ("the greater part") of our activities are intrastate, we are exempt under the provisions of the same Bulletin, Sec. 1 and Sec. 44, seems not yet to have been definitely answered.

9. Federal Fields

The Court in the case of Hines v. Davidowitz, 61 S. Ct. 399 (Feb. 1941) not only reiterated the existing principle that the Treaties of the Federal Government and the Acts of Congress are superior to any action by a State Legislature as to the rights of aliens, but even went further and held that the Pennsylvania Alien Registration law was wholly superseded and invalidated by the Federal Alien Registration Law because the United States had "occupied the field" of such activity. In view of the tendency of the Federal Government to occupy fields formerly supposed to be subject at least to the concurrent control of States, it is becoming increasingly necessary that we be careful in vesting title according to State laws in a "field" that may later be declared to have been "occupied" by the Federal Government. In short, the new principle announced is that when the Federal Government moves in, the States moves out; there just isn't room for both. (Three of the Justices thought there is room for both unless the Federal statute specifically prohibits State action which this one does not, but this view was much too conservative for the majority.)

10. Navigable Rivers

The decision in the case of United States v. Appalachian, 61 S. Ct. 291 (Jan. 1941) is important in that it re-

vises some of our ideas as to what is a navigable stream. Heretofore the United States Courts have been quite strict in insisting that a stream cannot be considered navigable unless it can actually be navigated, in its natural or improved condition, by ordinary commercial steamboats. In this case, however, the Supreme Court relaxed this rule greatly. A small stream called "New River" in Virginia was found to be capable of navigation only by a motorboat drawing two feet of water, and it was found that many years ago it was used for navigation by flat boats of similar draft. Likewise it was found that there were many rapids in the river over which the boats had to be pulled. The question involved was whether the Federal Power Commission could prohibit the owner from building a dam across the stream unless such owner agreed to sell the dam at any future time at a price less than the fair or condemnation value. The only way the Power Commission could get jurisdiction to insist upon such a license and option was to show that the stream was a navigable one, and the Court held that it was and is navigable (although three judges thought otherwise). So we must be more careful in the future in arriving at the conclusion that a stream is non-navigable, and equally careful to inspect the licenses of power companies to see whether such licenses contain these compulsory options to purchase.

11. Class Suits

In an anti-negro restriction agreement in Chicago, it was declared that the agreement should be binding only if the owners of 95% of the properties in the district should sign. It seems that as a matter of fact something less than 60% signed. However, a suit had been brought by one of the owners, alleging that he acted not ony for himself, but as the representative of the class of all other owners. The suit was against the owners of another lot and a decree by stipulation was entered to the effect that 95% of the owners had signed. Probably because of the prejudices involved, two lower courts held that this finding, in a suit based upon class representation, was binding on all of the owners signing the agreement even though the finding was contrary to the facts. The Supreme Court, however, held that class representation does not extend to such a length and that the decree was binding only on those few owners who signed the stipulation. The lesson to be derived from this decision is that we must be careful in passing decrees based on class representation, and must insist that a great majority of the actual members of the class be brought in personally, or at least that all members whose identity can be ascertained be made parties. Hansberry v. Lee, 61 S. Ct. 115 (Dec. 1940).

12. Avulsion

The next case was a little argument between the State of Arkansas and the State of Tennessee over the "thalweg" of the Mississippi River. It seems that not only is our law changing but our language as well. Thalweg is just a new way of saying filum aquae, or thread of the stream. It appears that one of the original horseshoe curves of the river created a peninsula of land extending eastwardly from Arkansas. Then about a hundred years ago Old Man River suddenly cut a new channel across the neck of the peninsula. The old bed of the river filled up and everybody thought the land was in Tennessee althought it wasn't, of course, under the doctrine of avulsion. Nevertheless the Supreme Court decided to give the land to Tennessee by holding that Arkansas had "acquiesced" too long. That is to say, the court came very near deciding that a State can be barred by adverse possession by another State or its citizens. This fable teaches that we must not be quite so sure about our next avulsion title. Arkansas v. Tennessee, 60 S. Ct. 1026 (June 1940).

13. Oil Rights

The next case was a simple attempt by an oil company to get the Supreme Court to review some allegedly obnoxious ruling of the Texas Oil Commission (or, as they naively call it, the "Railroad" Commission). The ruling had to do with the title to oil in place and the drilling of offset wells. The Court, or rather two-thirds of the Court, declined the opportunity to emulate the Statue of Liberty and enlighten the world, but remarked that it is only natural that "a brood of litigation should inevitably follow the inherent empiricism of any statute relating to such a fugacious mineral"; and further that the court did not desire to become "enmeshed in a conflict of expertise". This last noun is a legal term in use in modern France (and is pronounced "essperteese"), real property law having become so involved that one can no longer find enough English words properly to express ones' complicated thoughts. The citation to this concatenation of sesquipedalian pronunciamentos is Railroad v. Rowan, 60 S. Ct. 1021 (June 1940).

14. Statutes of Limitation

We have long known that the so called "final settlement" of an estate is a misnomer and that it is not final at all as to certain classes of claims, nor are certain claimants barred by the statutes of limitation prescribing the times within which claims must be filed. Some of these classes are those comprising contingent, future, extended and litigated claims, and those held by persons under disability; also claims by a State or by the United States. The present case arose in Florida and was to determine whether the Federal Housing Administrator represents the United States Government to the extent that the Administrator need not file a claim in the Probate Court within the usual period of limitation. The court held that this is the case, which means that not only in such an instance, but also in connection with other periods within which certain acts are ordinarily to be done, and in connection with other statutes of limitation, we must remember that we are now dealing with many Governmental Departments against which such periods and such statutes are not effective. U. S. v. Summerlin, 60 S. Ct. 1019 (June 1940).

15. Title or Abstract Company Tax

Several years ago a title and abstract company in Missouri succeeded in having approved a claim for deduction from income tax because of obsolescence of a merged title plant. The claim was not urged until five years after the merger and the request was for only a ten per cent deduction per year for ten years. The officers of the Company testified that a title plant gets obsolescent fast if not posted to date, and that "all title companies now use new and modern methods!" (The exclaimation point is ours.) Shortly after this happy ending another title company in another state put on a similar deduction campaign. But here the company made the claim immediately after the merger and wanted the whole deduction at once. Furthermore the company's officers (with pardonable but injudicious pride), testified that the merged plant was quite wonderful and that it in a very efficient manner indexed all transactions back to the days of the founder of the City, and last but not least that they wouldn't have thought of abandoning the plant except that it had become a duplicate of their other plant. As the claim was denied let this be a lesson to you; if you want "obsolescence" deduction don't forget to reiterate the magic word and don't talk about "duplicates". Title Co. v. U. S. 60 S. Ct. 371 (Feb. 1940), 46 Fed. 2nd 928.

16. Frazier Lemke Act

In March 1933 a suit to foreclose a mortgage on a farm was filed in Wisconsin. Over seven years later in May, 1940 the mortgagee, having diligently pursued his action to the United States Supreme Court and back, was still trying to get possession (and may even now be trying for aught that appears of record). All because a foreclosure proceeding though dismissed because the first Frazier Lemke Act was held unconstitutional can be "reinstated" under the new Act, and any subsequent confirmation of sale or writ of possession will thereby be rendered void. This doesn't mean that mortgages are poor investments however. It merely means that even mortgages (and title companies passing title through foreclosures), shouldn't run through Uncle Sam's stop lights. Incidentally, what "stop lights" are involved in the new Consumers Credit Regulations? Kalb v. Feuerstein, 60 S. Ct. 343 (Jan. 1940).

17. Land Trust

Land trusts involving the issuance of undivided fee ownership certificates,

leases, rents, depreciation funds and privileges to purchase, are quite popular in several States. Title attorneys are sometimes puzzled in trying to determine the categorical pigeonhole into which the complicated interests created by these instruments can be pushed. Particularly, is the transaction a sale or a mortgage, or something else? In Cincinnati one of these land trusts was held by the Supreme Court of the United States to be a plain old mortgage, at least so far as income tax deductions were concerned. So it would seem that title companies passing title through (or around) such an arrangement must get deeds from every party who would have any interest if the thing is what it says it is and also if it is what a sympathetic equity court may say it should be. Helvering v. Lazarus, 60 S. Ct. 209 (Dec. 1939).

18. Estate Tax on Joint Estates

The person in charge of a decedent's estate frequently forgets to include in the gross estate subject to Federal Estate Tax, interests in joint estates and estates by the entirety previously held in part by the decedent. So the title company calls attention to this fact and becomes a Little Helper of the Collector. All phases of this law had, it seems, been passed on by the courts except the amount to be charged. That is, if the husband had paid the entire consideration for a property must the Estate Tax be paid on the entire value, or on half of the value. In U. S. vs. Jacobs, 59 S Ct. 551 (March 1939) it was held that an Illinois joint tenancy of husband and wife, (they have long since abolished tenancies by the entirety there), must be assessed to the extent of the whole value, if the property was wholly paid for by the decedent, in this case the husband.

19. Corporate Reorganization

The effect of the dissolution of a corporation on a proceeding in bankruptcy must frequently be considered by title companies' counsel, as the business ailments causing one of these results often likewise cause the other. It seems to make a difference in the solution of the problem as to whether the dissolution occurs before or after the commencement of the bankruptcy proceeding, or before or after the sale, or whether the bankruptcy proceeding is of voluntary or involuntary character, or whether the dissolution is by forfeiture or judicial action. In solving such a delicate problem it is never safe to rely on the decisions of any but the highest court, and then only when your factual situation is precisely like that of the case decided by the Supreme Court. In Trust Co. v. Bldg. Co., 58 S. Ct. 125 (Nov. 1937) the company had been dissolved by the Superior Court of Cook County in the State of Illinois four years before the so-called "company" attempted to initiate a voluntary proceeding in reorganization in the Federal Court. Nine justices of the Supreme Court held that in this particular situation the bankruptcy court had no jurisdiction to proceed with any reorganization, as the corporation was indubitably and irrevocably dead at all times and in all courts and beyond the slightest possibility of resuscitation, leaving us with one more kind of title that we cannot insure. But three of the justices thought that if a company is alive enough to become bankrupt, it is alive enough to get into a bankruptcy court, which, one must admit, has some semblance of practicality if not of esoteric logic.

20. Alien Property

Prior to the first World War there seemed to be a constantly expanding principle of international law, expressed in Hague conventions and otherwise, to the effect that, while a nation can seize the property of an alien enemy or non-resident citizen, the property must be held in trust merely to protect the property and ultimately to turn it or its proceeds back to the alien. In a word that the possession of the officer in charge was to be only that of a "custodian," as the name of the Act of Congress indicates. And many of the subsequent actions of the Congress in returning certain properties and interests to the aliens and non-residents were in line with this enlightened view. Finally, however, in Cummings v. Bank, 57 S. Ct. 359 (Feb. 1937), the Supreme Court renounced this entire theory and declared that the taking was absolute and the former owner thereafter had no rights or equities whatsoever, and that any partial return of property was merely an act of grace on the part of our government, and that an offer to return is revocable at any time. So now we know that to the victors really belong the spoils, and that title companies needn't worry any more about policies they may have issued to purchasers from one of the Alien Property Custodians. This is particularly interesting now since the Alien Act has been revised and alien property "blocked" or "frozen", unless conveyance is licensed by general or special license.

I trust, Gentlemen of the Convention, that you have found something of interest in this report of your Judiciary Committee, which is respectfully submitted by

Charles C. White,
John L. Finck,
Edward D. Landels, and
McCune Gill, Chairman.

Losses Under Title Insurance

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The subject which has been assigned to me for today's discussion is, Losses Under Title Insurance. I do not know why this subject was selected, because details of losses appear to have been kept a deep dark secret, not to be discussed openly. No doubt the individual requesting a discussion of this subject felt as I do, and many others, that there is entirely too little knowledge of the facts and figures relating to title losses and was hopeful that this discussion would throw further light on the subject. It would have been highly desirable if I had been able to analyze losses in, let us say, a dozen states to determine the cause, extent, type and amount of losses suffered by title insurance companies, and when and how such losses were paid; as to do so would have enabled us to decide with more certainty the precautions which should be taken to prevent or lessen them, as well as to enable us to have a better understanding of the cost of doing business, but I regret that because of the short time at my disposal for proper research, and the fact that the sources of such information are not readily accessible, I can only attempt to discuss the subject in a most general manner, and based on experience of only a few title insurance companies. In the hope that further discussion will disclose some real information I will not attempt to define the different types of losses which have arisen to plague us.

First, I refer back to my statement that title losses are not openly discussed. I believe the principal reason for this attitude is fear that this would reflect on our ability or thoroughness in our work. As to losses occurring through fraud it is true we do not wish to publish details as to how they are perpetrated, as this would merely place such information in the hands of unscrupulous persons who would attempt to copy the practices of the master minds; but I think we should give due publicity to the fact that losses are paid. We are insurance companies and receive premiums for the risks we assume, and it would be well to call attention to the fact that we pay out a substantial part of such fees in losses. Probably each one of us has, at some time or other, heard the charge that title insurance companies never suffer losses, and we should not hesitate to give full publicity to the facts so as to prove the untruth of such charges. Not only do we sustain losses but some are quite substantial, as for instance, one title insurance company paid out ap-

proximately $90,000.00 because of a lien which was missed. It so happens that there will be some salvage, but the insured was made whole promptly by the title insurance company. We must bear in mind that if we could reach the point where we suffer no losses, we would then become abstracters and would have no right to be paid for insurance. This of course is not in any sense a reflection on abstracters, because it is well known by all who are familiar with title work that a title-insurer performs all the functions of an abstracter, and in addition, goes one step further, that is, insures that the title itself is good and also (generally speaking) marketable.

It may be suggested from the foregoing that I am in favor of loose practices so that we may show losses for publicity purposes, but this is definitely the farthest from my mind. My ambition is to see losses kept down to an absolute minimum with the ultimate in protection to the insured. The latter is, I think, very important, as we would give our clients as broad a coverage as is possible. Of course, the groundwork leading up to the issuance of the title insurance policy is not mechanical —no two titles are alike—so that the human element is extremely important. The quality of work is dependent upon the quality of employee and the tools with which he works. Our first step, therefore, in attempting to keep losses at the irreducible minimum is to be sure that the plant from which the employee works is accurate and complete.

In order to arrive at any conclusion, or to suggest methods of reducing losses, it might be well to attempt an analysis of the most common sources of losses. These sources may vary with location and completeness and accuracy of public records, and a great deal may depend on whether the coverage includes the question of marketability. In Pennsylvania, for instance, title policies insure marketability, while I understand this is not true in certain other states.

My brief study indicates that we must place losses arising from taxes in first position, at least first in number, although perhaps not in dollars. The reason for the existence of this condition is clear when we realize that the various taxes covering a particular piece of real estate may be collected by half a dozen different collectors, as for example, one collecting township, another county, another poor, another school, another road tax, and so forth—and, as a further contribution to confusion, many of the collectors only handle the collections as a side issue. From this it naturally follows that their systems are often crude and inefficient, and it is very obvious that any tax certification secured from such collectors is far from satisfactory. Another factor contributing to tax losses is the fact that, although certifications may be secured from the respective collectors, the certifications are not binding on the taxing authority and if found to be incorrect, no recourse can be had against the collector issuing the certification. These conditions of course do not prevail to the same extent in the larger communities where there are unified tax collection systems, although many of them leave much to be desired in the form of accurate certifications. The net result of the inefficient systems is that the title insurance company assumes a risk as to the tax status every time it issues a policy, for it must depend on the tax collector's reports, apart from those tax liens which must be publicly recorded. This risk, however, is taken with our eyes open. The insured is entitled to this protection, and if losses result, they must be charged up as a risk which is assumed as a part of our business. The various state title associations are

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probably not strong enough, or influential enough, to carry a great deal of weight in legislative reforms, but if an organized effort were made to simplify and consolidate the tax collection and certification laws and systems, it would be of great benefit, not only to the title insurance companies, but to the taxpayers generally, as such improved methods would create far more certainty, as well as economy in operation. In connection with tax losses, I think they were somewhat above average during the past decade, partly because of the many delinquencies, and partly because of the various acts postponing tax sales and extending tax liens.

The second source of title losses, that is, second in number, but perhaps first in dollars, is forgeries. One never knows when these may arise, and when they do they are generally substantial, as the loss may well be for the whole amount of the policy. I am familiar with several cases of losses arising through forgery, and as they are peculiar, I thought you might be interested in the facts. In one case a woman died and by her will, as probated, devised all her property to her son absolutely. The son mortgaged the real estate, which was made up of a number of small parcels, to the extent of about $12,000.00, the title to which mortgages were insured by several title insurance companies. It was later proved that the will, which had been probated, was not the mother's last will, but was in fact superseded by another will under which the son received a life estate only; but the son had accomplished a practical forgery by altering the date on the earlier will so as to make it appear to be subsequent to the real last will. This case has not been entirely closed, and the mortgages may or may not be declared totally invalid, depending somewhat on whether the mortgage proceeds were used to pay off existing liens on the properties.

Another forgery case is one in which the record showed that a man and wife made a deed for several properties about 1916 to a bona fide purchaser. Some of the parcels were subsequently conveyed successively to other bona fide purchasers. About 1934 a woman claimed a dower interest in the real estate, contending she was the wife of the grantor in the 1916 deed; that she had never joined in the deed; that her husband died in 1933 and as a result she was entitled to her share in the real estate sold in 1916. It was proven that the deed in 1916 was signed by the grantor-husband and his housekeeper, representing herself as the wife.

Another forgery case was one in which an individual forged the names of several trustees, both on deeds and proceeds checks, and then, being a Notary Public, took the acknowledgments on the deeds.

These are only a few of the interesting forgery cases and others, of varied types, could be cited. In some cases salvage is possible after much effort, but in others the loss is for the full amount of the insurance.

We cannot expect to entirely eliminate losses through forgery, but they will be minimized if the notaries public, taking acknowledgments insist on having the parties properly identified, and if the settlement clerks are observant they may frequently trip up and prevent forgery.

It is obviously our duty, as well as good business, to pay off our insured promptly, but we also have a duty to our stockholders to make every effort to recoup the loss from those responsible, not only from the viewpoint of financial recovery, but also with the view of punishing those responsible for the fraud, and, by such example, deter others from following similar practices. I cannot emphasize too strongly the fact that when losses are established they should be paid at once, and I think the few actions against title insurance

companies is definite evidence that we will not litigate a claim unless there is doubt as to our liability, but rather will settle at once, and then work out our salvage as best we can. Surprising as it may seem, at a conference had some time ago in attempting to work out the forgery case first above cited, a bank official expressed the opinion that it was "unmoral" for an insurance company to attempt recovery from those responsible, for the reason that they are insurance companies and receive premiums for the purpose of paying losses. He apparently never heard of the subrogation theory.

Title Loss analysis is extremely difficult due to the fact that the records are of course confidential, and there is a decided lack of public information on the subject. Probably the most comprehensive analysis and classification of title insurance losses is that made by Dr. Gage in his work "Land Title Assuring Agencies in the U. S.", published in 1937, in which he finds that taxes and assessments cause the greatest losses from record hazards, second are judgments, and third, Mechanics Liens; while foremost among the losses arising from non-record hazards he lists forgeries, encroachments, and other facts not of record, in the order mentioned. The losses arising from facts not of record are so varied that classification would be impossible. To name only a few are such as married women making deeds or mortgages as single women; consent separations of husband and wife, they then believing themselves unmarried; minority; insanity; unrecorded leases; encroachments and easements.

Well up in the list of non-record items causing losses is that of encroachments. All of us who have spent any time in the title insurance business have been confronted with embarrassment and loss because the property we insured was found to encroach beyond the title lines, caused by a fence or wall being off lines of from fractions of an inch to substantial distances. Sometimes we find portions of buildings supposedly on the insured property are built on adjoining land for a distance of several feet. In Philadelphia we make physical inspections of the insured property, but even then it is not enough to say that our inspectors are paid to disclose such easements and encroachments. Anyone who has ever gone out on the ground with a steel tape, and attempted to locate the title lines within inches, knows that in a large number of cases complete accuracy is impossible with such an instrument. In outlying areas, where the street lines are not defined, no one except an experienced engineer can locate the lines with any degree of accuracy. The serious difficulty I see in objections relating to encroachments is that, if the encroachments are substantial, the insuring company must secure title to the land over which the encroachment exists, and as it is hornbook law that an owner cannot be compelled to sell his property, the way is at once open for such owner to hold up the title company, knowing that it must have the land. On the other hand, it places the insured in the position of being able to demand that the title company perform the impossible in attempting to perfect the title, otherwise, the only remedy is in paying the insured in full and taking over the property, which certainly is not giving the home owner what he expected.

I know of one case in which there was a variation of from one and a half to two and one-half inches in the party wall. The wall was at least fourteen inches thick, being a fifteen story building. A claim was made on account of this loss in area and the title insurance company settled for over $1,400.00. This shortage in area did not cause a penny's worth of loss in rent value or sales value. The mortgagee made the loan on the building as he saw it and was never concerned whether the building had a full width of fifty feet or fifty feet two and one-half inches, still he claimed the loss of so much rentable square foot area and settlement was made on that basis, as technically and legally the claimant was within his rights, but morally I think it was entirely wrong. This case, however, shows the unfairness of the situation which permits a mortgagee, who has suffered a loss because of general shrinkage of values, to use technical claims of this type to minimize his loss from a source which did not in any sense contribute to the loss.

As we no doubt have in this audience representatives of life insurance companies and other lending agencies, I would like to say, in the spirit of utmost friendliness, that it is unfair to the title companies to require them to insure accuracy of description and dimensions, or insure against encroachments without the production of a survey. When a lending agency makes a mortgage loan of several thousand dollars to an individual it is not unreasonable for it to request the borrower to produce a survey of the mortgaged premises. The cost of such a survey is generally not very high and will of course protect the owner and the mortgagee, as well as the title insurance company. I want to repeat and emphasize what I said at the beginning, that it is the duty of a title insurance company to give as broad a coverage as possible on risks properly pertaining to title, but it should not be asked to assume risks which can be entirely eliminated by such a simple and inexpensive a remedy as the production of a proper survey. It is a real satisfaction to note that several of the large lending agencies require the production of a survey covering each loan, and I hope more will follow suit.

A point in connection with losses, which might be of interest to us is, how soon after the issuance of the policy are claims likely to arise, or, to put it another way, are we likely to have losses arise many years after the issuance of the policy, or, can we feel reasonably safe when a policy has been outstanding for a long time. It is only natural that losses arising from judgments, mortgages or other liens which might have been missed would arise within a reasonably short time after the issuance of the title policy. On the other hand, claims arising because of encroachments, easements, missing heirs and claims of a similar nature may arise years after the policy has been issued. A very superficial analysis of losses covering a limited field indicates that the first ten years after insurance is the dangerous period. Probably a careful analysis will show that the first five years is twice as hazardous as the second five year period, but what I want to point out is, that the first ten years after assumption of risk is responsible for sixty-five per cent of the losses; between ten and twenty years, thirty per cent; and over twenty years, five per cent. These figures may not mean much in themselves, but they at least have aroused my curiosity to the extent that I intend to make a more complete study of the question to determine whether we can effect any economy in operation and expedite service by becoming a little more liberal in our consideration of the more ancient questions of title, without, at the same time, taking risks which are unjustified and which may prove embarrassing.

In the consideration of title insurance losses we are led naturally to the subject of losses with respect to premiums. Here is a wide variance in practice in the various localities. Some companies fix a flat charge based on the amount of insurance, while others divide their charges into examination and premium. Although Philadelphia companies adhere to the practice of examination and premium as separate charges, I think the flat charge has advantages. If the charges are divided the natural assumption is that examination charges carry the expense of doing business, and the premium charge is compensation for assuming the risk; but I am inclined to think that the examination fee does not cover the cost of handling the insurance, including overhead expenses, so that the deficiency must of necessity be made up from premium. There is nothing improper in this practice, but it does not reflect the true state of our charge base.

The analysis made by Dr. Gage covering fifteen states shows that the percentage of losses to premiums vary from four-tenths of one per cent to eight and twelve one-hundredths per cent. Even if the latter figure were taken as typical, the ratio would still be considerably under the ratio of losses to premiums paid by the fire and casualty companies, so that premium charges standing by themselves **appear** too high. It must be borne in mind that, even though the percentages quoted are correct, the basis on which they were computed may differ widely, in that some companies set up pre-

miums separately, others lump them with examinations, and others may have included other incidental fees, all of which means that the figures quoted are just figures and not much of an indication of how conservatively or efficiently the business is operated in any particular area. You will note I said the premiums *appear* too high based on certain facts. The charges as a whole are definitely not too high, as is evidenced by the fact that title insurance companies, at least in the Philadelphia area, and I am told elsewhere as well, operated at little or no profit for quite a number of years during the depression, and are just now beginning to yield a reasonable return on their capital investment. We know from experience that title insurance companies have a large and irreducible overhead in maintaining plants in dull periods as well as in active periods, and any attempt to skimp on proper maintenance destroys the safety and efficiency of our service, as a plant which is not complete, accurate and up to date is dangerous. My thought is that, rather than have one type of charge too high and another too low, it would be well to adjust them to conform with the facts, so that the examination charge will cover the cost of doing business and the premium will be more proportionate to loss requirements. In this way we can properly answer critics who complain that our premium charges are too high when compared with losses, and who charge that our net profit is unreasonably high. Any adjustment of rates naturally must be worked out in each locality, for it is obvious that examination of titles in Philadelphia, for example, with its indices and records running back to 1681, is vastly more cumbersome and lengthy than an examination in those areas where title is established through a government grant 75 or 100 years old. The allotment of fees, whether by way of examination or premium, is relatively unimportant to us as title men, but if more scientifically allotted to separate costs and risk charges, they would afford much less ground for criticism.

We are also interested in the question of reserves which many states require be set up in a separate fund for the protection of policy holders; and we should heartily approve of such a system, as it is only proper that our insured should have this protection. It is unfortunate that the reserve requirement was not imposed in Pennsylvania until 1929. Many of the title companies which closed during the depression had only set up reserves during that short period which, although complying with the law, were too small to afford any real protection to the policy holder.

The question of reserves I do not consider as extremely important in so far as it affects our operation as insurers of title. In Pennsylvania, and I believe in other states, the reserve is for the protection of policyholders in the event of failure of the insuring company, and is not a source from which current or even special losses may be paid, differing from the reserves generally set up by other types of financial institutions, in which the reserves are available for any unusual or contingent losses incurred in the ordinary course of business.

It is certainly true that most of the title insurance companies which weathered the recent depression are old, experienced and conservatively managed companies which have their reserves set up, and I am very doubtful if the public authorities will for a long time to come, again grant charters to title insurance companies so indiscriminately as was done in the past to groups without adequate financial strength.

When I first began to consider the subject of losses I did not anticipate how difficult it was to obtain statistics and figures outside of the Philadelphia area, but I find there is almost a complete lack of such material except that obtainable from private sources. I am confident that the compilation of the figures into some understandable tables, showing trends of losses with relation to business conditions generally, would require months of effort. I believe such effort would be worthwhile because it may show us that in some respects we are too liberal in our coverage and in others not liberal enough. The greatest difficulty a doctor generally encounters is in determining the illness from which his patient is suffering, and when that is established a remedy can then be prescribed. Although we are reasonably familiar with the ailments existing in our own organizations, we are not familiar enough with those existing throughout the industry as a whole, especially with reference to the loss situation, and a greater interchange of ideas, information and experiences would be helpful to all of us and believe this is something which should be conducted by our association so that we may have a fuller knowledge of the subject.

Report of the Committee on Federal Legislation

JOSEPH S. KNAPP, JR.
Chairman
Vice-President, Maryland Title Guarantee Co., Baltimore, Maryland

This seventy-seventh Congress from present indications, probably will be remembered by historians for passing legislation appropriating the largest sums in American history. It, and the seventy-sixth Congress, also will be remembered for the amount of legislation passed vesting discretions and authority in the President of the United States.

The legislation passed by the seventy-seventh Congress could be divided and actually does fall into two classifications. One, Appropriation Legislation, and the other, Delegation of Authority to the President.

The many defense appropriation bills are directly responsible for increased title business, resulting from expanded industrial areas (including ship building facilities), camp extensions, emergency housing developments in industrial areas and modification of the National Housing Act by the enactment of Title VI thereto.

Some of the following bills will emphasize the amount of money appropriated expressly for real estate purposes resulting in title business. They should also make us conscious of the tremendous increasing National debt.

House Bill No. 3575, generally known as the Steagall Bill, and signed by the President on March 28th, 1941, made available F. H. A. insurance on first mortgage ninety per cent loans on defense housing properties in areas designated by the President by adding Title VI to the National Housing Act. The main feature of this Act is to allow builders to execute construction mortgages for ninety per cent of the cost, including their ten per cent profit, and to sell the property subject to the mortgage and to relieve them from further liability on the mortgage upon payment by the purchaser of the ten per cent down payment, and transfer of the property.

House Bill No. 3836 made direct appropriations of $191,528,544.00 and contract authorizations of $5,794,000.00; $75,000,000.00 thereof was appropriated for National Defense Housing.

Senate Bill No. 390, approved by the President on April 5th, 1941, protects the Federal Reserve Banks, as well as other Banks for insured deposits, by giving them a defense against claims made by foreign governments on their central Banks where payments are made to persons certified by the Secretary of State.

Senate Joint Resolution No. 7 provides that the United States should not recognize, nor acquiesce, in any transfer of territory in this hemisphere from one non-American power to another.

House Bill No. 3786 fixed the permanent authorized enlisted strength of the Navy to two hundred and thirty-two thousand, with authority in the President in the case of emergency to increase the figure to three hundred

thousand. This amounts to practically a doubling of the enlisted strength.

House Bill No. 3486 authorized an appropriation of an additional one hundred and fifty million dollars for defense housing. The average cost of family dwelling units constructed under the Act could not exceed $3,500.00, the prior limitation being $3,000.00. The Act contains special provisions with regard to the installation of movable equipment and gave the Administrator discretion in regard to the same.

House Bill No. 3981 made direct appropriations of $3,415,521,750.00 plus $31,127,894.00 in contract authorizations. The above appropriations were for the Navy Department and the naval service for the fiscal year ending June 30th, 1942.

House Bill No. 4669 made direct appropriations of $173,749,630.00 to supply additional urgent deficiencies in certain appropriations for the fiscal year ending June 30th, 1941, and for other purposes. Of the above amount $15,000,000.00 was for temporary defense housing (trailer camps), and the other $150,000,000.00 acquired for the National Defense Housing under House Bill No. 3486.

House Bill No. 3536 authorized an appropriation of $50,000,000.00 for the acquisition of section bases for the use of the mosquito (small boat) fleet, including cost of land required.

House Bill No. 4926 has direct appropriations of $1,189,298,500.00 for the Departmnet of Labor and Federal Security Agency and related independent Agencies.

House Bill No. 4965 appropriates $10,384,821,624.00 for military establishment for the fiscal year ending June 30, 1942. This is an increase of $1,205,471,086.00 over the budget estimates.

House Bill No. 4839 authorized the Secretary of the Navy to acquire necessary land in connection with shore stations and bases, the cost of which was estimated at $31,115,000.00.

House Joint Resolution No. 194 made an appropriation of $40,000,000.00 for the Tennessee Valley Authority for the fiscal year ending June 30th, 1942.

House Bill No. 5256, authorized an appropriation of $588,000,000.00 to the United States Navy, the authority under which included the acquisition of land at sites approved by the Secretary of the Navy and the President.

House Bill No. 4816 authorized the President by Proclamation to declare the necessity of pipe lines for the transportation and distribution of petroleum or petroleum products in interstate commerce, and provides for the acquisition of land by the filing of a Declaration of Taking.

Senate Bill No. 1580, generally known as the Defense Highway Act of 1941 was vetoed by the President on August 2nd, 1941, and the Senate overrode the veto but was sustained by the House. A new Defense Highway Bill, known as Senate Bill No. 1840, was practically immediately introduced and passed by the Senate on August 15th, 1941.

House Bill No. 5417, which is the Revenue Bill of 1941, has been passed and due to the wide publicity which has been given it in all of the newspapers, and special pamphlets which have been published by various agencies, I do not deem it necessary to go into the details of this Bill. It should suffice to say that taxes will be payable thereunder far in excess of any previous tax levy.

In view of the generally accepted opinion, that this Country should do all within its power to assure defeat of the totalitarian powers, it would be inappropriate for this Association to express any criticism of the legislation passed; however, one cannot examine this legislation without becoming alarmed at the continued relinquishment of authority by Congress and its continued delegation of these rights to the President even during this emergency.

Valuation Charges on Abstract Certificates

CHARLTON L. HALL

President, American Title Association
Manager, Washington Title Insurance Co., Seattle, Washington

All abstracters who have not previously done so should immediately adopt a valuation charge on abstract certificates, figured on the assessed valuation of the property.

Many abstracts are prepared on cheap lots at less than cost, so it is only fair that the more valuable properties pay a higher price. That is the basis upon which title insurance rate schedules have been prepared and it is equally fair for abstracters to do the same thing.

In the State of Washington the valuation charge on abstract certificates was first made effective July 1, 1928, at a regional meeting of four counties bordering on Puget Sound, since which time it has spread to almost all the other counties in the State. Originally there was some raising of eyebrows and remonstrances by customers but, when the matter was explained to them, they saw the justice in the charge and, all in all, it can be truthfully said that there has been no real trouble anywhere in the state because of such valuation certificate charge.

Mortgage financing on the present fifteen to eighteen year plan, as compared to the former three to five year plan, has decreased possible title orders on any one piece of property by at least 50%, so it will not be long until abstracters will lack revenue to even keep up their title plants and the liability for loss on taxes, assessments, judgments, etc., on valuable property is so much greater that the valuation certificate charge is justified.

Some years ago our company issued a $16.00 continuation abstract on the New England Hotel in Seattle, in which the current taxes were shown paid in full. The purchaser relied on our abstract and closed the deal, but the second half of the current taxes, amounting to $1,100, were actually unpaid. Our company paid them.

Practically all abstracters in the State of Washington now make a valuation charge on abstract certificates, their regular certificate charge being $7.50 on property up to $1,000 in value, which charge includes the cost of the certificate itself and the cost of the tax, special assessment and judgment searches. On properties of more than $1,000 in value (based on twice the assessed value, properties in the State of Washington being presumably assessed at 50% of the real value) they add 50c per thousand to the certificate charge.

Just to show what this valuation charge on abstract certificates produces, I will cite actual 1940 figures from the books of one of our branch offices in a wheat district in Eastern Washington. Said company received a total of 717 abstract orders during 1940, the certificate charges thereon being:

Closing certificates at $3.00 each	241
Certificates without valuation charge at $7.50 each	182
Certificates with valuation charge at $7.50 plus	294
Total	717

The total additional charges made on those 294 certificates aggregated $1,221.50, an average of about $4.15 per order.

And we still receive a few orders for abstracts in Seattle too. In 1940 our Seattle office billed the following orders:

Title insurance orders	11,986
Foreclosure statement orders..	121
Abstract orders	57

Those 57 abstract orders produced $963.50 for an average of $16.91 each. The charges made for the 57 certificates (including searches for taxes, assessments and judgments) totalled $669.25 or an average certificate charge of $11.73.

Report of Legislative Committee

JAMES L. BOREN, *Chairman*
Manager, Bluff City Abstract Co., Memphis, Tennessee

Your committee has received reports from only twenty-five states this year and eleven of the states reporting either had no meeting of their state legislature or nothing was passed affecting the title and abstract industry.

Several of the fourteen states reporting matters of interest have sent in quite voluminous reports, many items of which are strictly of local interest and I would suggest that in the future all members of the legislative committee of the American Title Association make a careful study of the laws passed by their respective legislatures and send to the chairman of the committee only a digest of those laws which might be of interest to the fraternity as a whole.

A bill was introduced in the California legislature requiring the posting of title insurance fees and issuance of continuation policy for the difference in liability from the former policy. Fortunately this bill was tabled in committee. Had this gotton on the statute books, it seems that our California friends would probably have been paying their customers to take a title policy where the continuation policy was for a lesser amount than the former one.

The following are a few acts passed by the California legislature: An act to permit the State of California to be made a party to actions brought to determine conflicting claims to real property, for partition of real property, or to foreclose a deed of trust, mortgage, or other lien upon real property upon which exists a lien to secure the payment of taxes or other obligations to the State of California other than taxes upon such real property.

An act to provide for the filing of a certificate with the Secretary of State by every domestic corporation other than a bank, trust company, insurance company or corporations subject to the jurisdiction of the railroad commission, designating a natural person for the purpose of service of process.

An act to permit the holder of a mortgage, deed of trust, or lien, to purchase the encumbered real property and credit the amount due upon the purchase price even though no claim for the amount due was or could have been presented and allowed.

An act to permit a Guardian to enter into a community oil and gas lease covering property of a ward which might consist of an interest in the property less than the whole.

An act to permit executors, administrators and guardians to dedicate or convey any easement to any person or corporation.

An act providing for the demolition, closing, or repair of buildings unfit for human habitation. Among other things this act provides that upon failure of the owner to abate the conditions, the mortgagee or beneficiary under a deed of trust may comply with the requirements of the order of the enforcement agency and add the cost thereof to the lien secured by said mortgage or deed of trust; also provides that if the work is undertaken by the enforcement agency the cost thereof shall constitute a lien upon the real property which lien shall be upon a parity with the lien of state, county, and municipal taxes, and if the costs are not paid the governing body may cause to be filed in the office of the county recorder a certificate setting forth the claim of lien and from and after the date of recording of the notice, all persons shall be deemed to have notice of the contents thereof.

J. L. BOREN
Memphis, Tennessee
Chairman, Abstracters Section; Vice-President, Bluff City Abstract Co.

An act in which you will not be directly concerned but which might be of interest makes it unlawful to advertise any statement concerning real property which is untrue or misleading with the intent directly or indirectly to dispose of such property.

An act which makes it unlawful to advertise any statement concerning the extent, location, ownership, title or other characteristic quality or attribute of any real estate which is known by the advertiser to be untrue and made with the intentions of misleading.

An act to provide that divorce may be granted on the grounds of incurable insanity.

An act to permit the Commissioner to order an insurer to create a reserve against or reduce the book value of parcels of property when, after a hearing, he is satisfied that the property is carried on the books at values above market value and to permit the Commissioner to order an insured to dispose of within six months property held over five years (other than property held as principal office, requisite for convenient transaction of business or help upon written approval of the Commissioner for the protection or enhancement of other property of the insured).

An act to provide deeds and other evidences of title covering real property acquired for highway purposes need not be recorded by the Secretary of State.

An act providing for the proceedings to establish the fact of birth, marriage, or death.

If anyone is especially interested in a more complete digest of the acts of the California legislature, I am sure that this can be obtained by contacting one of our good friends from that state.

Only two acts were passed by the Kansas legislature in which you would be interested, one of which was for the purpose of curing defective releases and assignment of mortgages; purely a curative statute, curing all defective releases and assignments on record for five years.

An Abstracters License Law was also passed providing for the appointment by the Governor of a Board of State Examiners; an abstracters bond in the sum of $5,000; that new applicants must pass a satisfactory examination, and the licensing of all existing abstracters with an annual license fee of $5.00 per applicant.

A bill was introduced defining the practice of law, the purpose of which was, among other things, to prohibit any person not an attorney from drawing any kind of legal instrument. This bill was killed in committee.

A bill was also introduced which would prohibit any sort of an exhibition that consisted of the eating or pretending to eat uncooked snakes, reptiles, scorpions, centipedes, tarantulas or other reptiles. This bill failed to pass. However, Kansas already has on its statute books a bill which prohibits the eating of snakes.

In the State of Washington an act was passed defining a legal newspaper for the publication of any advertisement, notice, summons, etc. Also an act entitled "Classification of Insurance" permits incorporation of insurance companies without limit upon the time of existence of such corporations. The

previous act limited the existence of title insurance companies to a period of fifty years. Evidently the Washington lawmakers formerly thought title insurance companies were shortlived institutions.

The State of Nevada passed a subdivision map and zoning act bringing the legislation of the State of Nevada in this field into line with recent developments in other states.

There was passed a new probate act. Also an act providing that in case a person has been judicially determined to be insane, he can make no conveyances until he has either been judicially declared to be sane or has been restored to presumed legal capacity. It is further provided in this act that a certificate from the superintendent or resident physician of the insane asylum to which he had been committed showing that he has been discharged, shall establish presumptive legal capacity.

An act was passed designated as the Nevada Insurance Act on which we have no detailed information and we suggest that anyone who is interested in this act contact Mr. M. M. Sweeney, Vice President of the Pioneer Title Insurance and Trust Company of Las Vegas, Nevada.

In the State of Minnesota, a Moratorium was passed granting relief in certain cases during the emergency declared to exist on inequitable foreclosures of mortgages on real estate and execution sales of real estate and for postponing certain sales and for extending the period of redemption on certain others; and relating to jurisdiction and procedure for such relief and for the right to maintain actions for deficiency judgments. This act applies to mortgages made prior to April 18, 1933 that have not been renewed, but does not effect mortgages held by the United States Government or any of its agencies. Nine hundred and three "House Bills" and five hundred and thirty-eight "Senate Bills" were introduced in the Maryland legislature of which a total of nine hundred and thirty-seven bills were passed by the legislature. Among these was an act validating deeds, mortgages, and other papers previously defective because of improper execution, etc.

A new divorce law was enacted, the primary changes of which are the reduction of a residence from two years to one year, the reduction of abandonment in order to obtain an absolute divorce from three years to eighteen months. It is now possible to secure a divorce in the State of Maryland where either husband or wife has become permanently incurably insane, provided such person shall have been confined to an insane institution or hospital for a period of not less than three years prior to the filing of Bill of Complaint and providing that one of the parties has been an actual resident of that State for not less than two years prior to the instituting of the procedure.

An act providing that real estate acquired through foreclosure can be owned by insurance companies for a period of not more than five years, provided the Commissioner may in his discretion grant such extension or extensions not exceeding five years each, of the period within which any such real estate may be owned, provided, in his judgment, it may be necessary to serve the best interests of the company or its policy holders. The act also specifically sets forth the investments which the Company may make. Maryland also passed an act designating the type of newspaper which can qualify as having carried proper publication of legal notices.

A Mechanic's Lien law was passed reducing the Mechanic's Lien period to two years. It also provided that the execution date may be stayed by the bringing of proceedings in equity, and further provided that the owner of the property subject to the lien may within the two year period bring a proceeding to compel the complainant to prove the validity of his lien.

An act was passed requiring the recording clerks of all the Counties and the City of Baltimore to note on the margin of a mortgage or deed of trust, any reference to a long release or assignment thereof, or proceedings of foreclosure.

For many years it has been questionable as to whether a judgment rendered in the United States District Court for the District of Maryland, the office of which is located in Baltimore City, constituted a lien on property throughout the State of Maryland. This situation was clarified by an act providing that "in order to constitute liens against real estate, judgments or decrees of the District Court of the United States for the District of Maryland shall be indexed and recorded in the same manner that judgments and decrees of State Courts are now indexed and recorded." That such judgment or decree "shall constitute a lien against real estate only within the jurisdictional limits of the County or Baltimore City wherein the situs of said District Court entering or rendering said judgment or decree is located in the same manner as a judgment or decree of any State Court constitutes a lien in the County or Baltimore City wherein the judgment or decree is entered or rendered."

An act was passed relative to simultaneous death providing as to whom property shall be distributed or descend when there is no evidence of survivorship. It provides for a division of the property in equal shares in the case of tenancy by the entireties, and in equal shares as to the number of persons holding as joint tenants. In cases where beneficiaries are designated to take successively the property is divided into as many equal shares as there are successive beneficiaries and those portions are distributed respectively to those who would have taken in the event each designated beneficiary had survived.

The County Commissioners of Baltimore County were authorized to enter into any Agreement which they deem necessary to idemnify a corporation which will undertake to guarantee the validity of tax sale titles.

An act passed by the Wisconsin legislature, in which we might be interested, is a very far reaching one which provided no action affecting the possession or title of any real estate shall be commenced by any person, corporation, etc. after January 1, 1943, which is founded upon any unrecorded instruments executed more than 30 years prior to the commencement of the action, or any recorded instrument more than 30 years old or upon any transaction of any nature whatever more than 30 years old unless within a period of 30 years after the date of the instrument or recording, or date of transaction there is filed in the office of the Register of Deeds notice setting forth the name of the claimant, a description of the real estate affected, and of the instrument or transaction upon which claim is founded, with its date, and, if recorded, the volume and page of its recording. The filing of such shall extend for a period of 30 years from date of filing and notice may thereafter be renewed at each successive 30 year period.

You can readily see that if this act is held constitutional, it will be unnecessary for any abstract to cover more than a 30 year period.

The State of Ohio totally abolished the Rule in Shelley's Case. It had been abolished as to wills over 100 year ago, but the last legislature made a clean sweep of it and abolished it as to both wills and deeds.

After twenty years on the statute books with never a registration the state of North Dakota this year repealed all Torrens title law. Incidentally, this was accomplished without suggestion or help from any of the title people of that state.

The New York Mortgage Moratorium Law was further extended to July 1, 1943 by the last legislature which also passed an act reducing from twenty to six years limitation of time for action on sealed instruments.

Illinois passed an act practically the same as that passed in the State of Wisconsin except that the Illinois lawmakers were more generous and will permit action on instruments not over seventy-five years old.

In reading the many reports that have come across my desk, I hope that I have not overlooked any of importance. This report naturally could not go into very great detail and if anything has been mentioned in which any of you are interested, additional information may be obtained from the President of the State Association where such legislation was enacted. It has been a pleasure to serve as chairman of this legislative committee and I wish to personally thank all members of the committee for their splendid work and cooperation.

Registration, French Lick Convention, 1941

ALABAMA

Goodloe, Mr., Mrs. J. W.	Title Insurance Co.	Mobile
Patterson, H. S.	Etowah Abstract Co.	Gadsden

ARIZONA

O'Dowd, J. J.	Tucson Title Insurance Co.	Tucson
Pattycrew, Mr., Mrs. F.	Arizona Title Guar. & Trust Co.	Phoenix
Taylor, L. J.	Phoenix Title & Trust Co.	Phoenix
Van Ness, Mr., Mrs. C.	Arizona Title Guar. & Trust Co.	Phoenix

ARKANSAS

Greenhaw, Mr., Mrs. G. N. & daughter, Grace J.	Greenhaw Abstract Co., Inc.	Jonesboro

CALIFORNIA

Boitano, John L.	Sacramento Abst. & Title Co.	Sacramento
Bruck, Porter	Title Insurance & Trust Co.	Los Angeles
Cairns, Gordon B.	Napa County Title Co.	Napa
Edwards, Mr., Mrs. L. P.	San Jose Abst. & Title Ins. Co.	San Jose
Forward, Mr., Mrs. J. D.	Union Title Ins. & Trust Co.	San Diego
Henley, Benj. J.	California-Pacific Title & Trust Co.	San Francisco
McGregor, Mr., Mrs. J. G.	Union Title Ins. & Trust Co.	San Diego
Morton, Thomas G.	Title Insurance & Guar. Co.	San Francisco
Mullen, L. E.	Contra Costa County Title Co.	Martinez
Reimers, Mr., Mrs. G. A.	Title Guarantee & Trust Co.	Los Angeles
Smith, Mortimer	Oakland Title Ins. & Guar. Co.	Oakland
Stoney, Donzel	Title Ins. & Guar. Co.	San Francisco
Webber, J. B.	National Title Ins. Co.	Los Angeles

COLORADO

Fairfield, Mr., Mrs. G.	First National Bank Bldg.	Denver
Graham, Donald B.	The Title Guaranty Co.	Denver
Hickman, H. C.	The Boulder Cty. Abstract of Title Co.	Boulder
Houston, Mr., Mrs. M. E.	The Title Guaranty Co.	Denver
Hughes, Mr., Mrs. Lloyd	The Record Abstract Co.	Denver
King, H. H.	Kiowa County Abstract Co.	Eads
Lacher, Walter	The Montrose Cty. Abst. Co.	Montrose
Nielsen, Aksel, Mrs.	The Title Guaranty Co.	Denver
Wolf, Grace	Alamosa Abst. Co., Inc.	Alamosa

FLORIDA

Hoover, Mr., Mrs. A. W.	National Title Co.	Miami
Randal, Mrs. W. L.		Miami
Wetherington, A. B.	Title & Trust Co. of Florida	Jacksonville

GEORGIA

Paschal, Harry M.	Atlanta Title & Trust Co.	Atlanta

ILLINOIS

Bliss, V. R.	Earle Ludgin, Inc.	Chicago
Caro, J. H.	Earle Ludgin, Inc.	Chicago
Fortune, Joseph E.	Title and Trust Co.	Peoria
Fuhrmann, H. P.	Chicago Title & Trust Co.	Chicago
Gerke, Mr., Mrs. W. C.	Madison Cty. Abst. & Title Co.	Edwardsville
Goldman, Mr., Mrs. S.	Bonded Surveyors of America	Chicago
Hickox, Mr., Mrs. W. R.	Kankakee Cty. Title & Trust Co.	Kankakee
Hiltabrand, Mr., Mrs. B.	McLean County Abst. Co.	Bloomington
Jones, O. W.	Jackson Cty. Abst. & Title Guar. Co.	Murphysboro
Ludgin, Earle	Earle Ludgin, Inc.	Chicago
Mack, Mr., Mrs. Robt.	Bonded Surveyors of America	Chicago
Marriott, Arthur C.	Chicago Title & Trust Co.	Chicago
Maxson, Mr., Mrs. R. L.	Associated Abstract Co.	Champaign
McCrory, Earl W.	Lester & Webster	Marion
McKinney, M. N.	Earle Ludgin, Inc.	Chicago
Oshe, M. M.	Chicago Title & Trust Co.	Chicago
Payton, H. F.	Sangamon Cty. Abst. Co.	Springfield
Payton, J. K.	Sangamon Cty. Abst. Co.	Springfield
Pearson, Harvey	Vermilion Cty. Abstract Co.	Danville
Pettibone, Mr., Mrs. Holman D., & Daughter	Chicago Title & Trust Co.	Chicago
Riley Jr., Edward	Woodford Cty. Abst. & Title Co.	Eureka
Taylor, Harold J.	Effingham Title Co.	Effingham
Velde, Mr., Mrs. F. L.		Pekin

INDIANA

Allman, Amos D.		Crown Point
Andrews, Mrs. Louise	Anderson Abstract Co.	Kokomo
Baker, Alden H.	Wainwright Trust Co.	Noblesville
Bristor, Mr., Mrs. A. M.	Union Title Co.	Indianapolis
Clark, Chas. A.	Hendrich Abstract Co.	Terre Haute
Coppage, Mr., Mrs. W. S.	Security Abstract & Title Co.	Crawfordsville
Coval, Willis N. & Daughter Jean	Union Title Co.	Indianapolis
Ewbank, James H.	The Ewbank Abst. Office	Lawrenceburg
Furr, Mr., Mrs. R. A.	L. M. Brown Abst. Co.	Indianapolis
Harper, Floyd E.	Tipton County Abst. Co.	Tipton
Harrison, Mrs. Ray	Anderson Abstract Co.	Kokomo
Held, Mr., Mrs. J. E.	Held Abstract Co.	Williamsport
Jonas, Miss Marie	LaPorte Cty. Abst. Corp.	LaPorte
Jones, Mr., Mrs. P. S.	Columbus Abst. Co., Inc.	Columbus
Marks, W. Oliver	Marks Abstract Co.	Salem
McFall, Mr., Mrs. W. S.		Jasper
McGrew, Glen	Henry County Abst. Co.	New Castle
Meredith, Mr., Mrs. J. T.	Delaware County Abst. Co.	Muncie
Seidler, Mina E.	Johnson Abstract Co.	Kokomo
Shields, Harry B.	Vigo Abstract Co.	Terre Haute
Stockwell, Mr., Mrs. R.	Union Title Co.	Indianapolis
Suelzer, Mr., Mrs. A. W.	Kuhne & Company, Inc.	Ft. Wayne
Tharp, Mina W.	Johnson Abstract Co.	Kokomo
Wattles, Mr., Mrs. C. P.	Abstract & Title Co. of South Bend	South Bend
Wheeler, Mr., Mrs. L. L.	LaPorte County Abst. Corp.	Michigan City
Wheeler, Miss Lois	LaPorte County Abst. Corp.	Michigan City
Witcher, J. E.	Lester & Witcher	Evansville
Young, Mr., Mrs. R. C.	Elkhart County Abst. Co.	Elkhart

IOWA

Gilliland, S. E.	Engleson Abstract Co.	Sioux City
Hillis, Cyrus B.	Des Moines Title Co.	Des Moines
Johnson, Mr., Mrs. R. F.	Bankers Life Co.	Des Moines
Josephson, Melvin	Boone County Abst. & Loan Co.	Boone
Murphy, Mr., Mrs. J. A	Ida County Abstract Co.	Ida Grove
Shepard, Hugh H.	Shepard Abstract Co.	Mason City

KANSAS

Charlson, Sam C.		Manhattan
Dozier, Mr., Mrs. J. W.	The Columbian Title & Trust Co.	Topeka
Hall, Richard B.	Hall Abstract & Title Co.	Hutchinson
Jeffery, Mrs. P. K.		Columbus
Wallace, Mr., Mrs. M. W.	Cragun Abst. Co.	Kingman

KENTUCKY

Fowler, Mr., Mrs. J., Jr.	Franklin Title & Trust Co.	Louisville
Goodwyn, Wm. C.	Farm Credit Adm. of Louisville	Louisville
Graves, J. C.	Louisville Title Insurance Co.	Louisville
McIlvaine, L. W.	Louisville Title Ins. Co.	Louisville
Rogers, W. L.	Louisville Title Ins. Co.	Louisville

LOUISIANA

Adams, Mr., Mrs. Lionel	Lawyers Title Insurance Corp.	New Orleans
Felt, Miss Virginia		New Orleans
Machea, Frank	Lawyers Title Insurance Corp.	New Orleans

MARYLAND

Buck, Mr., Mrs. Chas.	The Maryland Title Guar. Co.	Baltimore
Patterson, Clarence A.	Farm Credit Admin. of Baltimore	Baltimore

MASSACHUSETTS

Brooks, Selden G.	Ellis Title Co.	Springfield

MICHIGAN

Goff, Richard H.	Lenawee County Abst. Co.	Adrian
Kennedy, Col. Mrs. F. I.	Abstract & Title Guaranty Co.	Detroit
Knol, Jacob	Guarantee Bond & Mort. Co.	Grand Rapids
Mason, Henry G.	Abstract & Title Co.	Benton Harbor
Mayfield, J. E.	Guaranty Title & Mortgage Co.	Flint
McNeil, A. A.	Van Buren Cty. Abst. Office	Paw Paw
McShane, T. Gerald	Guarantee Bond & Mort. Co.	Grand Rapids
Munro, Ed N.	Burton Abst. & Title Co.	Detroit
Murray, John	Guaranty Title & Mortgage Co.	Flint
Newton, Fred S.	St. Clair County Abst. Co.	Port Huron
Shepard, Mrs. L. M.	Berrien County Abst. Co.	St. Joseph
Sheridan, Mr., Mrs. J. E.	American Title Association	Detroit
Smith, F. W.	Borland Abstract Co.	Saginaw
Straehle, Mr., Mrs. E.	Abstract & Title Guaranty Co.	Detroit
Updyke, George	Allegan Abstract Office	Allegan
Updyke, T. S.	Allegan Abstract Office	Allegan
Wyman, Mr., Mrs. G.	Washtenaw Abstract Co.	Ann Arbor

MINNESOTA

Pryor, Mr., Mrs. W. H.	Pryor Abstract Co.	Duluth
Schmitt, Michael A.	Farm Credit Admin. of St. Paul	St. Paul
Southworth, Mr., Mrs. E.	Title Ins. Co. of Minnesota	Minneapolis

MISSOURI

Becker, Ralph C.	Lawyers Title Co. of Missouri	St. Louis
Devine, Mr., Mrs. G.	Land Title Ins. Co. of St. Louis	St. Louis
Eisenman, Edward J.	Kansas City Title Ins. Co.	Kansas City
Gill, Mr., Mrs. McCune	Title Ins. Corp. of St. Louis	St. Louis
Groom, Chas. H.		Forsyth
Head, Mr., Mrs. G. V.	Farm Credit Admin. of St. Louis	St. Louis
Hubbard, Mrs. Z.	Chariton Cty Abstract Co.	Keytesville
Kisling, Mrs. M. N.	Lawyers Title Co. of Missouri	St. Louis
Lincoln, W. A.	Lincoln Abstract Co.	Springfield
McAdams. W. M.	Missouri Abst. & Title Ins. Co.	Kansas City
McNeal, Wm. H.	Kansas City Title Ins. Co.	Kansas City
Miller, R. B.	Murdock & Newby Abst. Co.	Platte City
Murray, Mrs. B. N.	Murdock & Newby	Platte City
Readey, Bartley		Kansas City
Reppert, A. L.	Clay County Abst. Co.	Liberty
Rohan, Mr., Mrs. J. M.	Land Title Ins. Co. of St. Louis	St. Louis
Schlosser, F. X.	General American Life Ins. Co.	St. Louis

MONTANA

Dykins, C. W.	Realty Abstract Co.	Lewistown
Shields, John M.	Western Abst. & Title Co.	Butte

NEBRASKA

Leonard, Mr., Mrs. J. G.		Broken Bow

NEW JERSEY

Bartelt, Mr., Mrs. E. L.	W. Jersey Title & Guar. Co.	Camden
Carrick, Alan W.	Prudential Ins. Co. of America	Newark
Evans, Clinton I.	Lawyers Title Ins. Corporation	Camden
Wyckoff, Mr., Mrs. E. C.		Newark

NEW YORK

Burger, Albert H.	Abstract Title & Mort. Corp.	Rochester
Clark, Mr., Mrs. S. A.	Title Guar. & Trust Co.	New York City
Clayton, Mr., Mrs. B.	Metropolitan Life Ins. Co.	New York City
Dunn, Joseph	Metropolitan Life Ins. Co.	New York City
Lincoln, Leroy A.	Metropolitan Life Ins. Co.	New York City
MacEllven, David E.	Abstract Title & Mort. Corp.	Buffalo
North, Cecil J.	Metropolitan Life Ins. Co.	New York City
Smith, Everett H.	Metropolitan Life Ins. Co.	New York City
Smith, Francis M.	Metropolitan Life Ins. Co.	New York City
Trothewey, Arthur W.	Metropolitan Life Ins. Co.	New York City
Wilcox, Mr., Mrs. G. C.	Harris, Beach, Folger, Keating & Wilcox	Rochester

OHIO

Atmur, Mr., Mrs. M. A.	Title Guarantee & Trust Co.	Lima
Barsch, C. H.	The Title Guar. and Trust Co.	Toledo
Borgess, F. N.	The Title Guar. and Trust Co.	Toledo
Clay, Amos. K.	Dayton Abst. & Land Title Co.	Dayton
Gilbert, Mr., Mrs. M. R.	Ainsworth & Gilbert	Medina
Hall, Mr., Mrs. F. A.	The Land Title Guar. & Trust Co.	Cleveland
Laskey, Albert J.	The Port Lawrence Title & Trust Co.	Toledo
Loftus, Mr., Mrs. J. A.	Northern Ohio Guar. Title Co.	Akron
McDermott, Mr., Mrs. T.	The Guarantee Title Co.	Mansfield
McDowell, Mr., Mrs. H.	The Northern Ohio Guar. Title Co.	Akron
Metzger, Mr., Mrs. T. H.	Smith-Trump Abstract Co.	Canton
Place, Mr., Mrs. F. R.	The Guarantee Title & Trust Co.	Columbus
Sebring, Mr., Mrs. B. W.	The Sebring Abstract Co.	Canton
Southwick, E. B.	The Title Guar. & Trust Co.	Cincinnati
Yutzey, Mr., Mrs. C. E.		Canton

OKLAHOMA

Doss, J. R.	The Eufaula Abstract Co.	Eufaula
Gill, William	American First Trust Co.	Oklahoma City
Kirkpatrick, Mr., Mrs. G.	Guaranty Abstract Co.	Tulsa
Loyd, Mr., Mrs. J. H.	Payne County Abst. Co.	Stillwater

OREGON

Daly, Walter M.	Title & Trust Co.	Portland
Johns, J. S.	Hartman Abstract Co.	Pendleton
Minier, Walter B.	Salem Abstract Co.	Salem

PENNSYLVANIA

Kenan, Mr., Mrs. H. A.	Lawyers Title Co.	Pittsburgh
Kunkle, Mr., Mrs. J. H.	Union Title Guaranty Co.	Pittsburgh
Mecutchen, Peirce	Land Title Bank & Trust Co.	Philadelphia
Schwab, Walter C.	Commonwealth Title Co. of Philadelphia	Philadelphia
Zerfing, Lawrence R.	Land Title Bank & Trust Co.	Philadelphia
Milne, Mr., Mrs. Lynn	Security Land & Abstract Co.	Sturgis

TENNESSEE

Adams, Jno. C.	Commerce Title Gty. Co.	Memphis
Boren, J. L.	Bluff City Abst. Co.	Memphis
Hon. Mr., Mrs. C. O.	Title Guarantee & Trust Co.	Chattanooga
Milligan, Dana	Guaranty Title Agency, Inc.	Chattanooga
Walton, E. B.	The Guaranty Title Co.	Nashville
Washington, F. A.	The Guaranty Title Co.	Nashville

TEXAS

Boushall, Mr., Mrs. F. M.	Lawyers Title Ins. Corp.	Dallas
Breaker, Mr., Mrs. F. J.	American Title Guaranty Co.	Houston
Carl, Mr., Mrs. W. N.	Houston Title Guar. Co.	Houston
Gross, Mr., Mrs. L. H.	Guaranty Title & Trust Co.	Corpus Christi
Rattikin, Mr., Mrs. J.	Home Guaranty Abst. Co.	Fort Worth
Ross, Zeno C.	Commercial Stand. Ins. Co.	Fort Worth
Wyatt, Mr., Mrs. Riley	Stewart Title Guar. Co.	San Antonio

UTAH

Cardon, Mr., Mrs. L. B.	Cardon Abstract Co.	Salt Lake City
Kemp, R. G.	Intermountain Title Guar. Co.	Salt Lake City

VIRGINIA

Rawlings, Geo.	Lawyers Title Ins. Corp.	Richmond
Smith, H. Laurie	Lawyers Title Ins. Corp.	Richmond

VERMONT

Lamson, Robt. I.	National Life Insurance Co.	Montpelier

WASHINGTON

Anderson, Edgar	Lawyers & Realtors Title Ins. Co.	Seattle
Booth, Mr., Mrs. L. S.	Washington Title Ins. Co.	Seattle
Cryor, Sydney A.	Washington Title Ins. Co.	Seattle
Hall, Mr., Mrs. C. L.	Washington Title Ins. Co.	Seattle
Klepser, Kenneth C.	Puget Sound Title Ins. Co.	Seattle
Skeel, Mr., Mrs. E. L.	Washington Title Ins. Co.	Seattle
Taylor, Dinsmore	Puget Sound Title Ins. Co.	Seattle

WISCONSIN

Colwell, Mrs. M. H.	Kenosha Cty. Abst. Co.	Kenosha
Gates, John D.	Title Guar. Co. of Wisc.	Milwaukee
Giuli, Lewis E.	Title Guar. Co. of Wisc.	Milwaukee
Hardy, Mr., Mrs. E. W. and Son	Hardy-Ryan Abst. Co.	Waukesha
Jacques, James T.	Title Guar. Co. of Wisconsin	Milwaukee
Miller, Miss G. E.	Belle City Abst. Co.	Racine
Nethercut, Mr., Mrs. W. R.	The Northwestern Mutual Life Insurance Co.	Milwaukee
Westring C. A.	The Northwestern Mutual Life Insurance Co.	Milwaukee