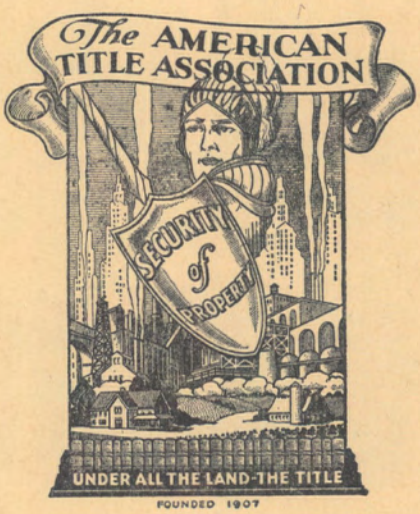
TITLE NEWS

Official Publication

THE AMERICAN TITLE ASSOCIATION



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Official Publication of

THE AMERICAN TITLE ASSOCIATION

3608 Guardian Building — Detroit 26, Michigan

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3608 Guardian Building — Detroit 26, Michigan

VOLUME XXVI JUNE, 1947 NUMBER 4

Report of National President

(1945-1946 Term)

A. W. SUELZER

President, Kuhne and Company, Inc., Fort Wayne, Indiana

At this time the agenda calls for a report on his stewardship by the President.

My report will be brief—not because the year was uneventful—because it was in fact very eventful—but because I deem it sufficient that I touch only in the most general way on matters that will be reported in detail by those more directly charged with duty and responsibility in them.

The new dues schedule, an issue of primary importance and a major accomplishment, was put into effect during the year.

I am gratified to be able to report to you that the schedule has placed the finances of the Association on a self sustaining basis for the first time and eliminated the necessity of a continuation of the highly unsatisfactory policy of annual sustaining fund drives to meet deficits.

You will be pleased to hear that the schedule was received by the membership without notable opposition.

When the schedule was presented to you for adoption it was urged that the additional revenue it would provide would enable the Association to increase its benefits to the membership.

To exploit and promote those potential new benefits I appointed a planning committee on your adoption of the new dues schedule, under the chairmanship of William Gill, Sr., to study and report on ways and means to further that purpose. That committee produced an exceptionally able report which was unanimously approved by your Board of Governors and the members attending our last meeting in Chicago and it will be published in Title News.

The report, as you will recall, was very comprehensive and presented an ambitious program of long range objectives which, it was understood, could not be achieved in one year or even in several years.

However, a good start was made during this year and you will note in detailed reports to be made at this meeting considerable progress towards the objectives of the Planning Committee's report.

There has been a substantial increase in the number of all publications. New duplicating facilities in the Secretary's office have enabled us to bring you material of great practical value in reproduced forms of all kinds, tested by actual use in the offices of members, and in the form of advertising copy.

The Title Course, of which each of you received a free copy, deserves special mention. William Gill, so conspicuous through the years in devoted service to the Association and its members, wrote it and delivered it as a free offering to the Association. It is a monumental piece of work. It came at a time when training employees for title services was a desperate necessity. So well were its merits recognized by our membership that demand for extra copies came from all over the country.

The additional resources also made it possible for the Secretary to attend more State Association meetings, to bring to the members in attendance at them the overall National picture and to strengthen their allegiance to the National Association.

The staff at headquarters has been increased, notably by employment of an assistant to the Secretary, a man of experience and ability.

In general I am happy to be in a position to report to you that the affairs of your Association are in a most desirable condition.

Our finances as you will note from the reports of the Chairman of the Finance Committee and of the Treasurer, despite the substantially greater

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Certain of the papers and addresses delivered at the Coronado convention were delayed in transit to National Headquarters. We regret the delay in presenting these in Title News.

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expenditures made necessary by the expanded program during the year, reflect a more secure position than ever before in the history of the Association and afford the means for such further expansion as the best interests of the Association might require.

We are happily completely free from factional disturbance of any kind within the Association. A spirit of harmony and satisfaction with its policies prevails in its several sections as attested by many voluntary commendatory letters. An inspiring willingness to cooperate meets every request for services. We have not been required to combat any adverse National legislation or adverse National publicity.

One of the outstanding problems is still the difficulty of meeting the great demand for our services in this post war reconstruction era. This problem is specially acute among our abstracters, in whose case the time required in producing long abstracts is complicated by an unusual demand and a shortage of help. It must be anticipated that with the removal of the government controls that slowed down our normal processes of production, this demand may be very substantially increased. While the problem is difficult it cannot be too strongly stressed that not only in the interests of the individual member but also in the interests of the entire profession, a solution must be found if sanctions detrimental to all of us are to be avoided.

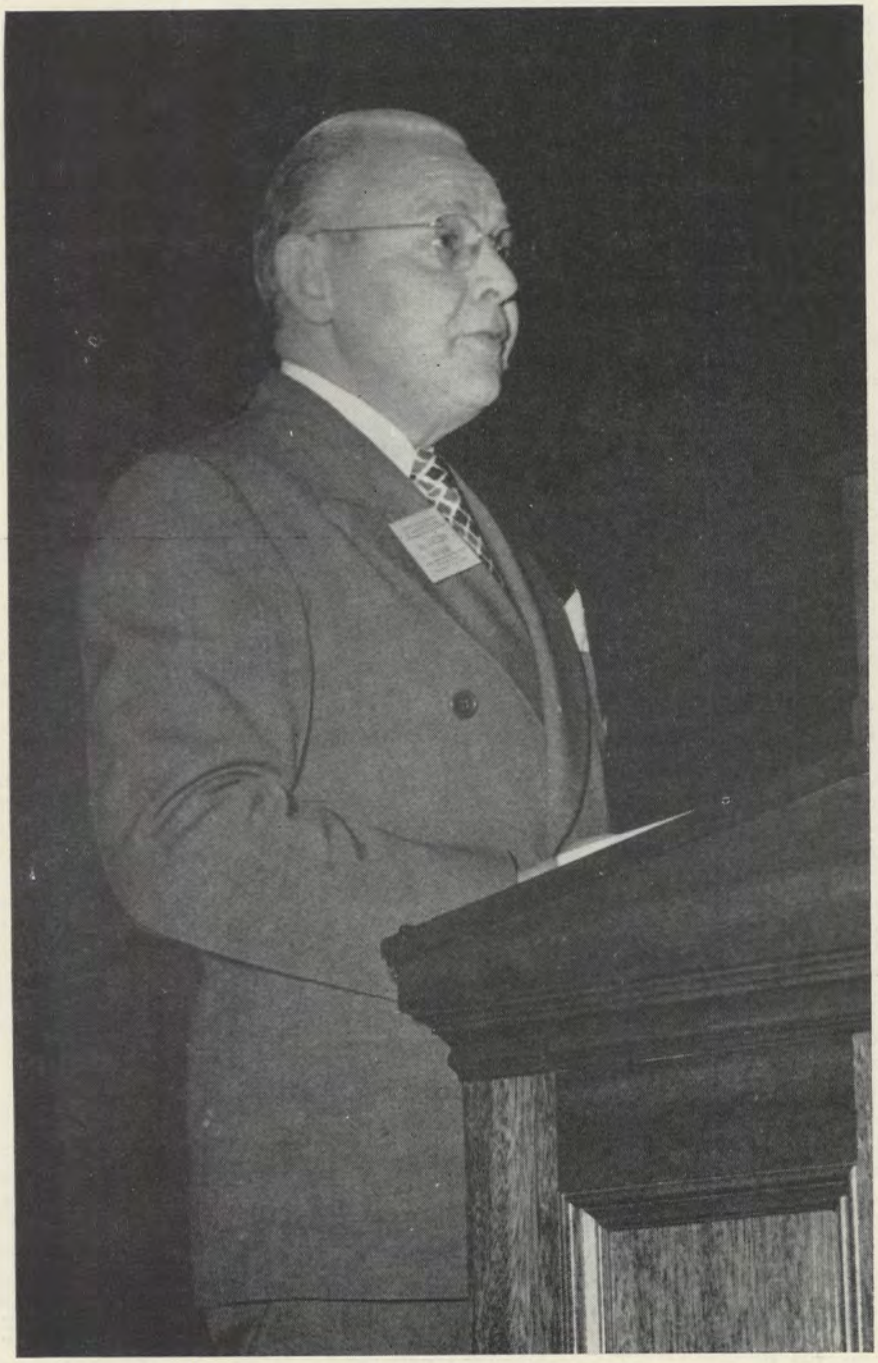
I desire very much to add a few words of recognition for those whose services produced the desirable status as I have reported it: Kenneth E. Rice, Charles H Buck and H. Laurie Smith, whose ability and effort contributed so much to the adoption of the dues schedule; William Gill whose term of membership over many years offers a continuing record of devoted service and whose major contributions this year were the report of the Planning Committee and the Title Course; Bill McPhail whose work as Chairman of the Abstractors Section during the past two years has instilled new life and vigor into that Section; Jim Sheridan, with whom it has been my pleasure and inspiration to work in close harmony this year, whose capacity for sustained and enthusiastic effort and intimate knowledge of all angles in the title profession, and ability to promote harmony and cooperation in all groups in the Association have contributed so much to its status as I have reported it.

To these men and to many others who worked less conspicuously, perhaps, but nonetheless devotedly for you and for me in this Association, I present my thanks and appreciation. Without their help my small efforts would have been fruitless.

A great amount of time and energy has been spent in building the program—both business and entertainment—to make this a successful meeting. We approached those who shall speak to you with reluctance, knowing how occupied they were with the affairs of their respective companies. Those gentlemen who have prepared papers, who have informed themselves on subjects assigned for panel discussions, and for committee reports, have given generously of their time and talent.

To them all, I voice my deep appreciation of their efforts.

As for myself, my renewed thanks are due to you for singling me out for the undeserved honor of the presidency of this great Association. In return, I can only offer my sincere willingness to have you command my services in its behalf whenever you may find them useful.



A. W. SUELZER

Immediate Past-President, American Title Association
President, Kuhne & Company, Inc.
Fort Wayne, Indiana

Advertising and Publicity

A PANEL DISCUSSION

(1946 Annual Convention, Coronado, California)
under Auspices
Committee on Advertising and Publicity
John G. McGregor, *Chairman*
Vice-President Union Title Insurance and Trust Company, San Diego

MEMBERS OF PANEL:

William W. Harvey, Los Angeles, Calif. Vice-President, Frank Oxarart Co., Advertising-Merchandising.

John B. Knight, Los Angeles, Calif. Partner, Knight & Parker, Market Research Consultants, Offices in Los Angeles and San Francisco, Calif.

Robert Lee, Los Angeles, Calif. Manager, Los Angeles Office, Buchanan & Co., Inc., National Advertising Agency. Offices in New York, Chicago, San Francisco, Los Angeles and Beverly Hills.

Norman W. Tolle, San Diego, Calif. President, Allied Business Builders, Advertising and Public Relations.

Moderator: John G. McGregor.

PRESIDENT SEULZER: It is our privilege to listen to a report of the Committee on Advertising and Publicity with John G. McGregor as Chairman. Mr. McGregor is Vice President of the Union Title Insurance and Trust Company of San Diego, California. He will be Moderator of a Panel Discussion. John did such a magnificent job last year there was no question of his reappointment by me as Chairman of our Advertising Committee. He gave us last year a comprehensive survey of all different forms of advertising used by members of this Association—magazine ads, newspaper ads, give-aways. That survey is available to members by writing the office of the Secretary. Mr. McGregor.

MR. McGREGOR: Last year, your Committee delivered a report which was a result of a questionnaire we sent to 630 members of the American Title Association. The title of that questionnaire was, "How do you tell men about your business?" We received many answers. That report, as Al said, is now in the hands of the Secretary.

This year, we sent out some questions to see if we couldn't solve some problems in advertising. With that in mind, we have brought together four specialists. We are going to use questions you submitted. These men are going to try to tell you the answers.

Before I introduce the members of the panel, I would like to thank those who sent to this Committee this fine bunch of advertising on display at the Convention. I also want to thank W. W. Robinson of the Title Insurance Co. who was not a member of my Committee but who volunteered to help us. I also wish to thank Edgar Anderson of Phoenix. I am just a little fellow handling some of that big stuff. It might have been quite a job without your help.

We have a lot of questions. We will make them snappy and won't dwell on them too long. Before we finish this panel, I desire each panel member to speak on his particular phase of business. We will then have had a little talk on radio, public relations, research, and house organs.

Here is something I should have said before: If we had made a survey similar to the one made a year ago, from all reports I got, there would be just three changes. The first notable change is the number of firms that today are using radio. The second is the number of firms today that are using a house organ that had not done it prior to our research in 1946; and the third is the decline in novelty advertising,—as we call it, give-aways. This might be because the manufacturers of that type of advertising have harder work getting material.

Now, boys, let's use our brains—your brains, not mine. The first question is, "What is the difference between Publicity, Public Relations, and Advertising?" Let's start down the line with Mr. Lee.

Publicity, Public Relations, Advertising

MR. LEE: I would say briefly, because others are going to make their own comments, that Publicity is telling your story through some means in which you do not buy the medium that does it for you, whether it is a newspaper, radio or magazine. Advertising is something that you spend your money for and you tell your story exactly the way you want it. Public Relations is reflected in both and certainly should influence both. I would define it as the overall policy or strategy in all of a company's contacts with the public and with its employees, stockholders, and other interested parties.

MR. KNIGHT: I think those definitions by Mr. Lee are good. My thought is that Publicity is a much narrower field than Advertising. We think of Publicity as a visible means of getting the message over, usually in newspapers, billboards, and other media of that type. It also includes radio. Advertising Counsellors' duties are broad and involve application of company policy. Public Relations is a specialized field, dealing with a specialized public depending upon the nature of the item being advertised. I think it confines itself to either the public opinion or some particular group, such as industry or a field of endeavor to which the client is aiming his publicity or advertising.

MR. HARVEY: That definition of Publicity and Advertising is correct. Perhaps the broadest of the three is Public Relations and it truly begins with the principles upon which a business is founded. It touches upon all of its functions and operations in various forms.

MR. TOLLE: All I can do is amplify what has been said previously. The way I would put it would be that Public Relations is the overall aspect of a company's relationship with the public,—Public Relations as being distinguished from sales by the fact sales are made to individuals or individual firms; whereas public relations has to

do with large groups of the public and the public; stockholders, customers, and general public are included.

Public Relations is more policy than Publicity. It embraces publicity and advertising. Advertising is the medium through which you disseminate a message to the largest amount of people at the lowest cost. You control your message as to when and where it is going to be said. Publicity has the advantage of having a very much larger reader interest, but you can't control how it is said. The particular publication through which it is being distributed has its own way of putting it and frequently they will reverse the message you want to convey.

Percent of Income to Advertising

MR. McGREGOR: Now, we all know what the difference is. Here is another question: "What percentage of the gross income should be devoted to advertising? What percentage to research, public relations, or public research?"

MR. TOLLE: It depends on what you are going to put into it. If you are going to pay out of the advertising budget, say, expenses of Convention delegates and all donations to charity, then you have to have a pretty elastic budget. There hasn't been, so far as I know, an established policy. If you are in a downtown location, where your building gains recognition, you can have a smaller appropriation. On the other hand, if you have only a small percentage of the business and are trying to build your business up, you are going to have to appropriate more. Generally, it seems to run for an established business, a going business, between two or four percent of your gross volume. In the Title Insurance and Abstract business, that is a rough figure.

MR. HARVEY: I would say that it depends upon the product you are selling and the volume of your sales.

MR. McGREGOR: Our people are specialists. They are not selling nylons or pickles. They are all selling Title Insurance and Abstracts.

MR. HARVEY: I was getting to that. When you are selling Title Insurance, you are selling a service, and a service must be considered in the same light as a grocery store product. You have integrity and value to sell to the public at large and a budget should be determined on how valuable public acceptance is of your particular product.

MR. McGREGOR: Here is a quote from a member: "We have two title companies. My competitor, who does about 60 percent of the business, claims both companies waste money by advertising as our two companies have a monopoly. If we both agreed to stop advertising, would we both lose and would the Title business as a whole suffer?" What do you say to that, Mr. Tolle?

MR. TOLLE: Where would the breakfast cereal business be if they all decided they weren't going to advertise? I know it is a common question, but a ridiculous one because each firm's advertising is helping to tell the overall story for the entire industry, and with more of them advertising, more will be sold of the products of the whole industry. They won't save anything by both of them cutting advertising out. They will simply cut down their overall sales.

MR. KNIGHT: A company selling a special type of transmission a number of years ago had no competition in the field at all, but they couldn't make their sales go up year after year. Their sales remained at about the same level. There was no increase in sales until a competing company developed a competing transmission. Then, the two of them, in their competition, found it necessary to advertise as a competitive

JOHN G. McGREGOR

weapon. As a result, the combined sales as well as the individual sales multiplied progressively year by year through competition and the necessity for advertising. Of course, competition meant more advertising. I think it states the point very well.

MR. McGREGOR: Here is another question: "When business is good, we are liberal advertisers. When business drops down, the first item of expense to be cut is advertising. Do you think we would get better results if we would make a long term, consistent advertising program? Some say, when we are making money, it is all right to advertise. Others say, we should advertise continuously regardless of general business. Which is right?" What do you say on that one?

MR. LEE: I would say definitely it is almost the reverse because advertising builds business. To cut down advertising when business drops just doesn't make good sense. But over and above that, or in addition to that, I would say instead of going on a cycle basis of ups and downs, it would be far better to have two types of budget: first, an annual one which is annually made up, and then one over a period of years; and secondly, spend a determined amount of money rather than to go up and down. I don't necessarily mean, in spite of McGregor's remarks, to spend a lot of money all the time. I mean to spend whatever will do the job, but to budget it so that it is spent and so that the work is carried on.

MR. TOLLE: I might add one point to that. It is a fact that when business is poor generally, fewer firms are advertising; or if they are advertising, they are not advertising in such volume. Consequently, a maintained program has a greater impact. The same appropriation has a greater impact with less competition than it would if there were more competition in the advertising field. When everyone is advertising, usually, business is good and you don't need as much to pull it along.

MR. KNIGHT: During the war period, we had a situation where most of the companies had that decision to make. It was a sellers market and many of them contemplated cutting out their advertising budgets. Some did. These were luxury or pleasure items. Those who did cut out advertising have found it extremely hard to catch up. Even Chesterfields, who cut it down in World WarI, found it hard to catch up with the market.

I would say rather than to cut down on the advertising budget, whether in good or bad times, that a steady advertising budget should be maintained. Even though advertising isn't my field, I made enough studies through market research to know that the best sales results are obtained from a steady pull.

MR. McGREGOR: Here is another: "There are two Abstract companies in our county. For a number of years, our Company has been giving out memorandum pads to customers with the name of the Company on them. We have also given out American Title Association blotters. I don't believe either one of them influences business and I am wondering if either is worth the money we spend for them?" What do you say?

MR. HARVEY: Well, with apologies to Jim Sheridan, I think blotters and pads are a waste of money. I think whatever expenditures are made by Title or Abstract Companies should be in telling the public of the services and value they receive for the money they pay them.

(NOTE: Jim Sheridan, in due time, and with due respect to Bill Harvey, will write his own comments. Ed.).

MR. KNIGHT: There is one point in connection with a question of that kind we ought to cover here. The Building

and Loan Companies some time ago decided to put on a radio program. They wanted to rebroadcast Fulton Lewis or some similar program. I remember talking to one of the Building and Loan executives in San Francisco after the program had been going on thirty days and he was "hotter than a pistol." He said that not one single person had come into his place and said they had heard that radio program. Therefore, he considered it a total flop. That may be true with blotters or any other type of advertising media. It may not be the best type, but any kind of advertising is good. It is better than none at all. You can't always trace direct sales to some particular form of advertising. It may be just a part of the general program in which you get a flexible benefit.

MR. McGREGOR: "What is the most effective appeal or copy to use in advertising Title Insurance?" What do you say, Bill?

MR. TOLLE: I can't put my finger on any one thing that would apply to all customers or all advertisers. Let me put it this way. The one thing that sells anything is the benefit it brings to the buyer. Now in the case of Title Insurance—in one instance it might be protection. In another, it might be speed.

You have to analyze your particular market to find out what the people in that particular market want and what you have to give. So, the only way I would want to answer that would be of any practical help, would be to interpret what you have to sell in terms of specific benefit to your buyers. That is the most important thing to stress. Second, would be the good qualities of the things you have to sell, in other words, the things you do, the things you put into your product. Also, there is the quality of assurance, stability, and peace of mind. Those can be all incorporated in terms of net assets, background, history or specific instances of service. But the one thing that sells anything is what the buyer is getting out of it.

MR. McGREGOR: "Should a local or regional Title Insurance office promote Title Insurance on a large scale or should each company paddle its own canoe?"

MR. KNIGHT: I think that is a question which can be answered by saying the combined effort of all the companies is good if it promotes a healthy condition for the entire industry—through their Association, as an example. Whereas, if you have a competitive situation between two companies in the same locality, then each is attempting to sell the advantages of its particular service. So, in an area where you have no competition, a program would be excellent without any competitive feature, but where there is competition, then the type of program can emphasize advantages the firm has to offer.

MR. TOLLE: May I disagree with that? That happens to be one of my pet "corns." I think industry is waking up to the fact that it is dangerous for groups of companies to join together in an Association campaign. It puts tools in the hands of people who want to run down business. Business, you know, is referred to too often as being made up of "money bags," and they say, "Well, here is a group of people going to spend a lot of money to sell something to us."

Businesses have got to learn to stand on their own feet and work as individuals while co-operating as an industry. I think there is an important lesson to be gained from it,—the way the railroads have applied that principle is that they have a central association that gets together and determines the theme of the need, the copy theme they are going to use, the overall objective, and the general approach. The association decides what they are going to say, but not how they are going to say it. Then, the individual railroads take that central theme and say it in their own individual way in the territories they serve.

The same thing applies to Title Insurance and Abstracts. You can have an association which, through its greater resources and broader field, can gather more information on what should be done, and it can "spark plug" what is done by the individual companies. But the advertising itself should be individually interpreted by individual companies.

MR. McGREGOR: I should like to have each speaker tell us about his particular branch. It is divided into four sections and each one has been covered. While I have enough cards and questions left to stay here for another hour and a half, with your approval I am going to now turn the program into a sort of lecture period and ask each one to talk on a particular phase of his business. We will start with Mr. Lee and ask him to give us a talk on "Radio."

Radio

MR. LEE: I am going to keep the time on this, too. It would be awfully easy to do a lot of talking about the program the Title Insurance and Trust Co. of Los Angeles is presenting. I might refer back to the opening question about the differences between Advertising, Publicity, and Public Relations to point out that they do overlap, and that sometimes an Advertising job can do a Public Relations job, and vice versa.

"Romance of the Ranchos" is now in its third year over KNX in Los Angeles. It has done a job for Title Insurance and Trust Company. It permits the company to explain what it does for the public and also, because it gives a very clean, interesting, and entertaining type of radio program, it builds good will for the company, which is one of the objectives of Public Relations. The program has been very successful —not in our opinion or the opinion of the sponsors, but by the Hooper Rating System which is used nationally to determine the listening audience of radio programs.

"Romance of the Ranchos" consistently averages a "Seven" Hooper rating. That is a yardstick which would have to be translated into terms of people and that is what you and the company are interested in. How many people hear it? That "Seven" rating average is sometimes higher and sometimes lower. It means about 110,000 people listen to that program every Sunday evening. Taking the accepted average of 3½ listeners per home, that is something like 350,000 people in our area who listen to the program. That is a relatively low budget show. It "delivers" for the Company and gets listeners to its message at a cost of about $1.00 for 350 persons. When you think in terms of a penny postcard, you know that is getting down awfully low.

They are not only listeners in the way you might think of the circulation of a newspaper because you don't know how many people read a given message in any newspaper. In Los Angeles, the Daily News might sell 300,000 copies, but unless you make a survey, you don't know whether 10,000 or 300,000 see your message. In the Hooper system, they know by means of telephone surveys exactly how many people hear the message. The people are exposed to it and intense interest has been demonstrated over and over again.

Whenever the Company has offered booklets,—(recently they offered one about the Angeles National Forest, written by Mr. Robinson) there were about 7,000 inquiries for that book, which is considered very good by the radio people and by all of us. In addition to that, they received many letters of appreciation from homes and from business men in the Los Angeles area.

One interesting point was that a school in Long Beach sent in letters in a group from all of the students in the class because they were studying early California history, and that is what those programs are written about. They were written about the Ranchos and the romance and color of Southern California. I would be glad to, and could talk on for many more minutes, but my time is up.

Research

MR. McGREGOR: Tell us something about research work, Mr. Knight.

MR. KNIGHT: Mr. Chairman, ladies and gentlemen: Research is purely a means of improving a business man's investment. We know that he has to be 51 percent right or he wouldn't have the money to hire us, so all we can do is to improve his judgment. That doesn't mean that the purpose of research is to prove a man is wrong or that he

is right. It is to bring in the facts and give him the confidence to know that the thing that he is doing is right; or if the thing is wrong, that he should change his program and do it right.

Research can be roughly divided into two classifications: First, statistical research is what we call "source" research, which many of you use in varied degrees; and the other is "opinion" research, such as you might use as a basis for your Public Relations program before the general public. You might want to determine the attitude or get the suggestions that the Real Estate brokers or any special public might have for the benefit of your oganization. It is our feeling in the research business (and we can prove it) that every advertising dollar can be spent more effectively if the basis is on a research program, even though limited in nature, the same as the advertising budget. We feel that a proper appropriation for research is a sum equivalent to 5% of the advertising budget. That should give you a good start on a research program.

In so far as "opinion" research is concerned, there are various kinds. You have heard Mr. Lee refer to the Hooper rating, which is a telephone survey. Many of you, perhaps, have been disturbed when listening to a radio program by somebody calling up and wanting to know what program you are hearing.

Then, there is the A. C. Nelson Audimeter which serves the same purpose. It is a device they put inside homes which tells when the radio is turned on and to what station people were listening. Neither one gives you an accurate picture or measure. There is no way of telling whether the commercial was turned down. The Audimeter says when the radio is on. The usual inquiry of the Hooper Rating is whether or not you were listening to the program. It doesn't tell you whether or not the person who was listening to the program turned the radio down when the commercial came on.

The only way to determine the effectiveness of that type of program—to overcome that objection—is to make a regular "opinion" study of an objective nature wherein you query these people directly as to the full knowledge they might have of the program you were putting on. There is nothing mysterious about "opinion" research. It is the principle of getting a representative cross-section.

Most of you know, if you have ever been stopped at the border, that the Agriculture Department stops trucks loaded with fruit and vegetables coming across the border. They don't examine every stalk of celery or every head of lettuce or every apple, nor do they examine every grain of wheat in the granary. They merely take a representative cross-section of it. The scientific approach to people is the same way—setting up a representative cross-section of the public that you intend to survey and then, of course, by means of agencies, determining the percentage of people's replies to your particular questions. It is highly scientific. It is so scientific that we can guarantee the results down to a half of one percent.

As a matter of fact, you are familiar with the Gallup polls and know that on the overall survey Mr. Gallup comes within 2% all the time,—2% of the national elections. That is what we call the maximum margin of error. Actually, he is within three-tenths of one percent, so it is a highly accurate and sensitive instrument for business. It can be used for an association or it can be used as a competitive weapon between companies in whatever industry you might select. The Title Insurance and Abstract business is no exception to the rule.

The banks use research methods and research techniques constantly as a means of exploring public opinion and improving their service. We all know we have come to accept the theory that the public opinion of our particular business, regardless of what that business is, is important to us, and research merely gives you an opportunity to know, first, what that opinion is; secondly, whether you are doing what is going to improve the opinion of your business; and third, pointing your advertising or your effort toward Public Relations in the right direction and thereby getting more out of your advertising dollar.

MR. McGREGOR: Now, Bill Harvey, if you will try to tell us something about Public Relations. Ordinarily, you can do it in three hours. Now, you can do it in five minutes.

Public Relations

MR. HARVEY: Public Relations is too broad a subject to discuss in five minutes. Good Public Relations begins at home and takes in the very policies of your operating companies. It deals with your employee relationships, your stockholder relationships, customer relationships, and the public or community relationships. As I was driving

Left to Right: John G. McGregor, Robert Lee, John B. Knight, Wm. W. Harvey, Norman W. Tulle

down here through the rain, I tried to think of an easy way to describe it, the relationships between the Title industry and the public, and I thought the way to do it would be to describe it as a relationship between a doctor and a patient.—the patient being the Title Company and the doctor being the public.

MR. CARL BRAND, National Title Company, Los Angeles: I think you made the statement that if everybody would advertise, they would sell more of their products. We disagree. If we were selling ice cream and had Charles Boyer out here, we could get all the ladies over, and we would sell ice cream every day. But I don't see how we can sell more Title products by advertising.

MR. TOLLE: Do you sell Title Insurance policies on 100% of the deeds and transfers that you have in your area? If not, you haven't sold you entire market. Do you believe your company stimulates the market with co-operation of brokers and others? If not, you haven't entirely absorbed the market. I don't recall saying that by advertising you would necessarily increase your sales. I said that two firms in the same locality don't save anything by not advertising,—that by advertising, each of them increase the joint sales of the industry just as Mr. Knight pointed out in the case of some machinery advertisers. You have not anywhere nearly saturated your market any more than home builders have saturated their market, or the automobile makers. There are also more people you can sell in one form or another, and advertising is simply the most economical way of reaching them. Does that answer your question? I am sincerely anxious to answer it.

House Organs

MR. McGREGOR: Tell us about the value of house organs and use up the rest of your five minutes.

MR. TOLLE: Thank you, Mr. McGregor. I was going to.

Union Title Insurance & Trust Co. in San Diego has just started publication of a house organ and have already found that it is an extremely worthwhile investment. In the first place, in your business, as you know, about 90% of your business comes from 10% of the people in your market. It is certainly more logical to concentrate—I didn't say confine—but to concentrate your sales promotion effort on the 10% that produce 90% of your business.

The logical medium in most communities in that is some form of direct mail. A house organ is an ideal form of reaching the specific people you want to reach. You can give them the message you want them to get. It has the advantage of enabling you to educate them.

How many of you have found the Realtors could stand some education? It gives you the opportunity to educate them, sugar-coated, of course; it gives you opportunity to tell about new services, about personnel, to introduce the people you have, and to do something without wasting "buck shot" scattered all over the community.

A house organ should not be your only effort. It should be backed up with a backdrop—just as you can see us more clearly because we have a backdrop—your house organ or whatever specific form of advertising or public relations you use should have a backdrop of general community promotion. It would be impossible in the time allotted to go into the details, the specific things you should do in your house organ, but I am sure that I can offer the facilities of Union Title if you would like to write to John McGregor at the Union Title Insurance and Trust Co. (San Diego). I am sure he would be glad to send you specific information to answer any of your questions.

It is advisable to have an editor in charge of the publication who is really in charge. That person should be able to write and should also know what is news and what builds readers and "reader interest." Publications should be written and published from the standpoint of interest to the readers and you should know what you want to say or want to tell them. You should have an advisory committee that guides the policy, the general policy, of that publication. The number of reporters or assistant editors you have depends on the size of the publication. It can be a house organ very profitably with a circulation of 300 or 500 on up. It doesn't have to be an elaborately illustrated affair, but it enhances reader interest.

MR. McGREGOR: I want to thank you gentlemen for coming to San Diego and helping us on this panel. I don't know whether you are going to get any business out of it; but I know I appreciate the information you have given me. I will turn the meeting back to Mr. Suelzer.

PRESIDENT SUELZER: I am extremely reluctant to call the time on John McGregor's magnificent presentation. It is very timely, very interesting subject matter, and very well presented; I might say, very impressively presented.

That word "impressive" . . . if you will indulge me, I might hang a little story on it. It seems that over in Scotland they were going to get a new Dominie at a church. The new Dominie being very anxious to make a good impression, got in touch with the Sexton and said, "Sexton, I am going to deliver my first sermon next Sunday and I would like to make it very impressive. The text of my sermon is going to be 'And the Holy Ghost descended upon them in the form of a dove.' You go up to the choir loft and when I say 'And the Holy Ghost descended upon them in the form of a dove,' you release a pigeon that will fly around over the audience. It will make the sermon very impressive."

Sunday came and the Dominie got to that part of his sermon. But when he said, "And the Holy Ghost descended upon them in the form of a dove," nothing happened. He repeated, "And the Holy Ghost descended upon them in the form of a dove." Still nothing happened. When he repeated it a third time, still more loudly, the Sexton stuck his head out of the choir loft and said, "Dominie, the cat has eaten the Holy Ghost. Shall I throw down the cat?"

You will be impressed to hear this entire presentation will be printed in "Title News" and made available to each one of you.

Left to right: James E. Sheridan, A. W. Suelzer, J. J. O'Dowd

Report of Finance Committee

(1946 Convention)

Mr. President, Ladies and Gentlemen. What I have to say to you is very short, but it will be very thankfully received. You all know that we are operating under a new dues schedule, something for which the members of the Association have worked for many years and which was passed at the last Convention. As a result of that dues schedule, the Finance Committee was able to project at that last meeting a budget of approximately $50,000.00 for the year 1946. As a matter of fact, the budget figure for 1946 was $49,965.

I am pleased to be able to report to you that as of October 31, there has been actually collected in National dues, the sum of $47,803.75, and there is every reason to believe that from dues to be collected between now and the end of the year, $4,000 will be realized.

It is interesting to note further that these dues compare with very much smaller finances for 1945 which was the last year under which this Association operated by virtue of a collection of dues and sustaining fund contributions. In 1945, under the best campaign and best collections the Association had ever had, $27,539.50 was collected. So you see, about $25,000 will have been gained between the years of 1945 and 1946. All of this happens through the operation of the new dues schedule which is fair being based upon the amount of business of each of the Title Companies and Abstract Companies. In some of the

CHARLES H. BUCK, *Chairman*

Finance Committee

President,

Maryland Title Guarantee Company,

Baltimore, Md.

States, there was a substantial increase in the amounts collected and in those States where there was a decrease, the decreases were consequential.

The budget of $49,965, changed about a bit because of unusual conditions with regard to some of its items, will be in balance at the end of the year. As a matter of fact, in addition to the reserve fund which will be realized by the resolution adopting the dues schedule of 10% of the Annual Dues, and the fact that the budget was set at $50,000, there is every reason to expect that there will be a profit from the operations of the year. The Finance Committee has recommended to the Board, this profit should be added to the Reserve so that out of such reserves and profits over the years a fund can be accumulated which will stand us in good stead in the lean years which will certainly come.

There is at present, $21,000 unexpended of the budget requirements for 1946, and you earlier this morning heard the Treasurer's report which shows on hand very much more money than the Association has ever had at this time of the year. I believe that realization from the dues schedule for the year to come, 1947, will produce an increased amount of money over what we expect to collect for 1946. I recommend to the Incoming Finance Committee that the budget should not dissipate collections—that none should be wasted—and, that if collections shall have exceeded a proper budget, at the end of the year, that profit from 1947 operations be added to the Fund. I look forward to many prosperous years in the Title Industry which will naturally reflect prosperity for this Association.

Blue Print and Photo Copy Department

By WM. GILL, Sr.

Vice President,

American-First Trust Co.,

Oklahoma City, Okla.

In connection with our Abstract and Title Guaranty Departments, about 14 years ago, we discovered that necessary blue prints and photostats cost us several hundred dollars annually. Therefore, we decided to install a large size photo copy machine, dark rooms, etc., at an approximate cost of $1,800.00, to handle our own photo copy work ,and, also, take care of the needs of oil company customers who continuously asked us to secure a photostat of oil and gas leases and other mineral instruments before having same recorded. That was back in the "good old days" when help was plentiful and stockroom boy could easily handle the reproduction machine in addition to other duties. Some months this new adventure proved profitable—some months it didn't.

It was our belief that a Title Company could fill a community need by offering first class blue print and reproduction service. In the fall of 1941 we decided to do this. The decision was hastened by the outbreak of war and the necessity of building enormous defense plant. In the spring of 1942, with an old model photo copy machine, two second-hand blue print machines and other more or less thrown together equipment and a personnel of three, the adventure was started. It has proven profitable and now requires fourteen full-time employees. Our present equipment is the latest and most modern available. Gross income last year went well into a high five-figure column. To what extent a Title Company can successfully engage in the reproduction field is problematical. Oklahoma City had five or six firms engaged in this line of business. These companies were well equipped and under responsible management. None, however, conducted what I would consider a "fighting business"—none had a full-time solicitor or outside contact man—non, in my opinion, did a proper amount of "proper advertising."

You might be surprised to know there is probably no business or professional man who does not have use for the services of a responsible confidential reproduction firm. From the start, we endeavored to give faster and better service than competing com-

panies. Title guaranty and abstract customer connections and acquaintances proved a fertile potential business field. Home builders have considerable business for a blue print company as do all companies, manufacturing concerns, public utilities, contractors and others. The field of photo copy has scarcely been scratched. To build a reproduction business requires the same amount of hard work, personal contacts, pavement pounding, and advertising, required to successfully carry on a title insurance, abstract or any other type of business. Many title company customers need blue print and photo copy service. With us—the blue print and reproduction business—could hardly be called a sideline. It is more or less one of our principal activities.

The size of the city or its trade area naturally governs the extent of such an adventure, including the type and combination of equipment necessary. In other words, the potential business must be in existence. Incidentally, we receive considerable mail order business from over the State and even outside the State. For a smaller community, you might find that photo copy or photostat business would prove profitable while blue printing, etc., would be unprofitable.

Please bear in mind I do not recommend that you go into this kind of business as a sideline or that you set up such a department. What the possibilities in your community are must be decided by you. I do suggest, however, you give this activity serious thought—who knows—you may be overlooking additional revenue.

Confidential service in this line of work means CONFIDENTIAL SERVICE. There are many confidential photo copy orders such as exhibits to be used in the trial of civil and criminal cases; personal letters, contracts, geological reports, ledger sheets, income tax schedules, etc. Rest assured—this type of reproduction work will never reach the shop of a person or company of questionable reputation. It is with pride that we handle some reproduction work of several Government Agencies, including the Federal Bureau of Investigation, U. S. District Attorneys Office and Internal Revenue Department. The volume, while comparatively small, reacts favorably upon the employees in this department since they appreciate the confidence of this type of clientele.

To illustrate one use—in a recent criminal action filed by the U. S. District Attorney against certain lumber companies selling shingles, we made sufficient photo copies of the original voluminous complaint for use by the U. S. Marshal in promptly obtaining service upon the defendants. To have made sufficient copies in any other manner would have caused an undesired delay.

In another case involving alleged violation of Federal Laws by certain theater owners, operators and motion picture film distributors, we reproduced hundreds of confidential letters, documents and contracts used as exhibits in the trial thereof for both the Government and the defendants. Late one afternoon we were delivered a mass of confidential papers by the prosecution and also defense attorneys, for reproduction, to be used in court the next day. A night crew worked for both parties at the same time. There was nothing unusual in the fact that our employees were trusted by all interested parties—it should be that way. They realize we have a business reputation to sustain and a name to protect.

Our advertising program may be of interest—First, when we advertise **"Prompt Confidential Service"** — it means exactly that and nothing less.

WILLIAM GILL

Pick up and delivery service as well as twenty-four hour reproduction service is available when required.

For direct, by mail, advertising we use mostly a "Jumbo Post Card"—it's inexpensive but effective. Cards are sent out periodically to banks, oil companies, manufacturing companies, attorneys, accountants, finance companies, adjusters, transportation companies, realtors, oil lease and royalty brokers, and many others. Weekly, we mail to military dischargees, newlyweds, proud parents and newcomers, a jumbo post card. The kind of card used depends somewhat upon the type of potential customer. (See examples at conclusion of this paper.)

Another effective piece of advertising is a little booklet called "Photocopies—What they are and how they can help you." It is copyrighted and obtainable from the Photostat Corporation of New York.

We find that "Spot Announcements" on local radio stations produce results.

Another service we offer is our own "Registered Trade Mark Patented" idea—it is called "Photobiography." The idea differs from the old family album. Photobiography is the only complete way of permanently recording both the important and everyday doings of a family. It offers, at the same time, real fun for all, now and in years to come. No other method records so well the personality of a family. Each member becomes in effect a historian, recording his own life and helping others in the family group to do the same. For example—a wedding can be recorded from the first announcement of the engagement to the letters home from the honeymoon. All newspaper notices, the wedding party photograph and the names of friends written in the guest book can be preserved to form a chapter in the family history. By grouping the various items, either printed or original, a page showing the highlights, can be composed. Then it can be reduced to convenient page size for a Photobiography. News items and matters of interest concerning every member of the family from "grandpaw" down to the youngest "grandchild" can be preserved. A Photobiography book may contain numerous items — newspaper clippings, family papers, high school activities, military records, write-ups, etc. Certainly, such a record would be highly prized in years to come.

We use the following principal items of equipment. Approximate cost of same (exclusive of any tax or transportation charges) is given:

For large blue prints, blue line prints, black on white, ozalid, van dyke positives or negatives, we use a vacuum frame manufactured by the Charles Bruning Company, Chicago, New York, and Los Angeles, with carbon lights, costing approximately $2,000.00. This frame handles any print up to 56 x 122″.

We find a 42″ Paragon-Revolute, electrically operated, blue print machine, sold by the Paragon-Revolute Corporation, Rochester, New York, for $4,200.00, entirely satisfactory for any size print up to 42″ in width and any length desired. This is a "continuous process" operation, if desired, going over the top, the print coming out developed, washed and dryed. It takes either cut or roll paper.

For drying any type of print we use a 54″ Paragon-Revolute, electrically operated dryer, costing $975.00.

"Photo Copy" is another popular type of reproduction. One piece of equipment is a "Super Copy Machine", especially built, costing $1,500.00. It operates from the darkroom, makes duplex prints (both sides) up to 11 x 14″ or simplex prints (one side only) up to 18 x 24″. Cut paper only can be used. Film negatives are also made on this machine.

A No. 2 Photostat Recorder, offered by the Photostat Corporation of New York, costing $2,050.00 is used for making simplex or duplex reproductions up to 11 x 14" on roll paper. This machine has automatic timing, paper cutting, and reverser for duplex copies.

Still another satisfactory machine used is a No. 4 Photostat Recorder selling for $2,055.00. This is a simplex machine handling any size up to 18 x 24", using roll paper, automatic timer, paper cutter and automatic conveyor to the dark room.

It will be noted that to some extent each of these three machines do similar work. This is desirable for speed in putting out orders and convenient if another machine is out of order.

To handle another type of reproduction and to take care of "overflow orders", when other machines are in use, we use a 35 MM Graflex Photo Record Camera offered by Graflex, Inc., Rochester, New York, for $400.00. Simplex prints only can be made up to 8½ x 14" in size. This machine is especially handy in cases where repeat orders are required—the film is filed for future use.

Our Kodak Precision Enlarger, made by the Eastman Kodak Company of Rochester, New York, costing approximately $225.00 installed, etc., will enlarge either an 8-16 or 36 MM film to 8½ x 14". If a larger reproduction is desired it can be enlarged up to 18 x 24" on the Super Copy or No. 4 Photostat Recorder and, if reproduced in sections, could be enlarged to most any size desired.

For use of our abstract and title guaranty department let's briefly trace the handling of a newly platted addition. This particular addition is the "County Club Section of Nichols Hills." 1—We first make a blue line linen print for our plat book—from the blue line linen, 2—a film negative is made. This was done in two sections since an 8½ x 11" size used in abstracts would not otherwise be easily readable. Most title examiners prefer a blue line print instead of a blue print. However, if the customer wants a number of blue prints, which are less expensive than a blue line print, then we would make a reproduced tracing from the film negative. An ordinary engineer's tracing will not stand moisture while a film negative or a reproduced tracing is not affected by water and, therefore, more durable.

Another interesting and valuable service is the reproduction of old worn out or damaged tracings or tracings too expensive to have redrawn. First, there is made a Van Dyke negative from the original—from the Van Dyke negative there is made a reproduced tracing. However, if errors are to be corrected or the old original tracing needs "doctoring up", ink spots removed, etc., we make a Van Dyke positive making necessary corrections, etc., thereon and from the corrected positive make a new negative from which the reproduced tracing is made. It really isn't as complicated as it sounds.

As a matter of possible interest I have a "Log of an oil well", or perhaps I should say a picture of the various formations encountered in drilling the last 420 feet of an oil well 3376 feet deep. In recent years oil companies actually photograph all or a part of the interior of a "hole in the ground"—from the top to the bottom. This information is valuable in locating another nearby or far away well. The exact formation encountered and the depth of same is accurately recorded and preserved. Prints are then made from the film of all or any portion of the well. Here is a reproduction made by us—one is an actual size B. & W. Print—the other is a 50% Photo Copy reduction. The complete film covering a depth of 3376 feet is amout 14 feet long but could be reproduced as easily as the last 420 feet.

Perhaps you realize by now the unlimited uses and possibilities in a portion of the field of reproduction.

In addition to blue print and reproduction service, the production of this department includes LAMINATING. This type of work is done on a Glassoloid Model "C" Laminating Press, sold by Glassoloid Incorporated, New York City, for $1,500.00. This equipment is electrically operated, water cooled, capable of a maximum pressure of 5,000 pounds, thermostatically controlled, 450 degrees Fahrenheit heat.

As insurance against "breakdowns" and for overflow orders, we also use a small Willson Laminating Press costing $750.00.

By the Laminating process you can preserve any document from most any size up to 8 x 10" from wear, tear, moisture or deterioration. The item is permanently sealed. This service has proven popular, especially with military dischargees. A discharge can be reduced to billfold size and laminated. Photographs, identification, social security, credit and membership cards, passes, citations, diplomas, certificates, fish and game licenses, etc., as well as anything else desired, can be easily and economically preserved. The thickness of the material used depends upon the type of work desired. It may be either light or heavy weight and the finish smooth, rough or both. Laminating has commercial possibilities in the making of price tags, signs, etc.

If a more elaborate preservation of photographs, certificates, etc., is desired this can be had by laminating the photograph "or what have you" on either mahogany, oak, walnut, gum or any other kind of wood plaque or masonite. It makes an unusually attractive display and is not subject to breakage like a glass framed item. The plaque may be hung on the wall or displayed upon the desk, table, mantle or elsewhere. As yet we are not equipped to produce "wood laminattions"—orders we take are handled elsewhere.

The total investment, which includes developing and washing trays, miscellaneous items of every nature, office furniture and fixtures, used in this department, will not exceed $20,000.00.

As quickly as improved equipment can be obtained, we plan to add commercial microfilming. As a starter, we have on order from the Recordak Corporation, New York, one of their latest Commercial Model Recordak Machines and Reader. It is out conclusion that there is a demand for this type of service from numerous small business firms and professional offices and others who do not have sufficient need to justify the time and expense of either leasing or buying or operating such equipment. Since our Reproduction Department is equipped to reproduce, enlarge or reduce microfilm prints it is believed that microfilming should be added.

If I have painted a rather attractive and lucrative picture, please remember that this type of business contains its pro rata share of headaches and problems comparable to any other business. The "sun doesn't always shine in a reproduction plant". I repeat, this new field is worth investigating.

Title Insurance, National Title Underwriters and Legal Sections

(1946 Annual Convention, Coronado)

JOINT SESSION

PRESIDING:

Kenneth D. Rice, Chairman, Title Insurance Section; Vice-President, Chicago Title and Trust Company, Chicago, Illinois.

J. F. Horn, Chairman, National Title Underwriters Section; President, Title Insurance Company of Minnesota, Minneapolis, Minnesota.

James R. Ford, Chairman, Legal Section; Executive Vice-President, Security Title Insurance and Guarantee Company, Los Angeles, California.

REPORT OF CHAIRMAN TITLE INSURANCE SECTION

Following the lead of the President of the Association, I shall comment briefly about the inadequate service being furnished by the title industry.

KENNETH E. RICE, *Vice-President*
Chicago Title & Trust Co., Chicago

It is the greatest threat to continued favorable public acceptance of the title business.

In Chicago, our service has been somewhat unsatisfactory and we have been giving considerable attention to methods of improving it. Training schools for title examiners, abstracters, and typists have been in vogue for a year. In these times there is a scarcity of personnel trained in title procedures. The only way to improve title service is to employ and train more people.

A survey of conditions in Illinois discloses that the title service being furnished to the public is very inadequate. In many localities it is necessary to wait from six months to a year for the completion of a title order. Inquiry of lawyers and real estate men reveals extreme dissatisfaction. Lawyers and others in these localities are obliged to make their own search of the public records for purposes of closing the transaction, and the title evidence received six months after the fact fails entirely to fulfill the need for which it was intended.

Legislators are among the customers of these companies, and from their own experience and interpreting the complaints of others, are giving serious consideration to possible remedies.

It is tremendously important for the title industry to recognize the inadequacy of its service as its number one problem. The solution of the problem must be undertaken by the industry in a way which will enable individual companies to serve successfully the needs of their respective communities or we shall find that a disillusioned public will force its own solution.

REPORT OF CHAIRMAN
National Title Underwriters Section

MR. J. F. HORN: As Chairman of the National Title Underwriters Section, I don't have very much of general interest to report except to call attention to the fact that this Section is organized to furnish Title Insurance in practically any place, for any person who doesn't have other facilities to furnish it or to refurnish Insurance or Company insurance in any quantity where that seems to be indicated.

Your Committee has met once or twice during the year, simply for the purpose of ironing out the facilities for furnishing our service. Our body is going rather slowly because of the decision of the Southeastern Underwriters Case and the jumble of opinion of what is going to develop from it, but I think all of the people that want Title Insurance are having no difficulty in getting it; all of the professional Abstracters are getting Title Insurance; and any one who wants Co-Insurance or Reinsurance in any quantity or size has the facilities for getting that through any of the members of the National Title Underwriters Section.

J. F. HORN, *President*
Title Insurance Co. of Minnesota, Minneapolis, Minnesota

REPORT OF CHAIRMAN
Legal Section

MR. JAMES FORD: Gentlemen. I am reporting as Chairman of the Legal Section. The Legal Section of the Association is intended to represent the

members of the Legal Fraternity in our Association. Through this Section, it seems to me, work can be done and should be done that would bring together and aid in extending the good will of this Association to our respective communities. There are various ways in which this can be done, but it seems to me that if we can get back to a monthly publication of this Association, we can disseminate information to members of the Association bearing on matters of a legal nature that would be helpful to the members and helpful in contacting our public.

The past year has been a tremendously busy year. I talked to all of the members of my Executive Committee. I told them something of my ambitions in trying to develop the service of the Legal Section to the Association, and I had very fine responses from all. Each told me that pressure of business in their respective sections was so great, and the problems of their companies so great, that it was most difficult for them to find time to give to extra-curricular activities such as the Legal Section, however much they would like to be of service.

In my own case, I echo that experience because it has been a tremendously busy year, and it has been one in which we have had little time to give to outside activities. We have been trying to solve the problems that Kenneth Rice has mentioned—that is, the one of service. After all, service is the thing uppermost in our minds and the thing that is going to make or break us. We are right in the middle of the stream now, and we are going to have to work diligently to get our house back in order to the point where we can render the kind of service that our public has the right to expect from us.

So, what I say to you is not by way of apologizing or as an alibi. I am stating a fact. I believe we will be better organized in the years to come and that the Section will be able to bring to you a greater contribution than it has in the past.

I have tried to gather some ideas this year on our relations with Bar Associations all over the country. I have contacted members of the American Bar Association and I am closely in touch with the members of our own local Association in California. I want to say to you that I find in the Bar Associations and its members a cooperative spirit in trying to help us with our problems, but they, in turn, expect us to observe the ethics of our profession.

JAMES R. FORD, *Executive Vice-President*

Security Title Insurance & Guarantee Co., Los Angeles, California

A PANEL DISCUSSION

TOPICS:

A.T.A. and Full Coverage Policies.

Hazards arising from concealed easements in use that are not of record—underground conduits—foundation footings that encroach, etc.

Problems arising in connection with purported delivery of Deeds.

Deliveries to third persons, in escrow, in various types of settlement; deeds recorded after death of grantor.

Mortgage Policies written without knowledge (proof) of consummation of transaction by delivery of mortgage money to mortgagor.

MEMBERS OF PANEL:

Melvin B. Ogden, Vice-President and Senior Trust Officer, Title Insurance and Trust Company, Los Angeles, California.

W. R. Kinney, Chief Title Officer, The Land Title Guarantee and Trust Company, Cleveland, Ohio.

Stewart Morris, Vice-President, Stewart Title Guaranty Company, Houston, Texas.

J. W. Goodloe, President, Title Insurance Company, Mobile, Alabama.

Herbert Altstadt, Vice-President, Title and Trust Company, Portland, Oregon.

Moderator: James R. Ford, Executive Vice-President, Security Title Insurance & Guaranty Company, Los Angeles, California.

MODERATOR FORD: At this time, I want to ask the members of the panel over which I have been asked to preside to come forward:—Mr. W. R. Kinney, Chief Title Officer, Land Title Guarantee and Trust Company of Cleveland, Ohio, Mr. Stewart Morris, Vice President, Stewart Title Guaranty Company, Houston, Texas, Mr. Melvin B. Ogden, Vice President and Senior Title Officer, Title Insurance and Trust Company, Los Angeles, California, Mr. J. W. Goodloe, President, Title Insurance Company of Mobile, Alabama, and Mr. Herbert Alstadt, Vice President, Title and Trust Company of Portland, Oregon.

I want to say in selecting this panel that I had nothing to do with it from the standpoint of the Mason-Dixon line. These gentlemen were selected before November 5th, and the fact that we have two from the Deep South and three from the North has nothing to do at all, I assure you, with the majority. I submit to you that I have talent here equal to any question that this Association wants to propound, and I am sure the answers are going to be forthcoming.

At the beginning, I think it would be appropriate to say to you the ATA and Full Coverage Policies will be the major topic of discussion. These forms of Title evidence were introduced a little over a decade ago for the purpose of serving Mortgagees who had demanded of the Title industry they be given Title evidence that would be all-inclusive of both record matters and matters not of record. This resulted in a dual examination when we are issuing policies:—first, we examine the record, and secondly, it is necessary under this type of evidence that

we make a physical inspection of the properties.

The contract of indemnity under the policy issued insures against loss or damage by reason of any invalidity of the instrument insured, the Trustee or Mortgagee, as the case may be.

It is a discussion of any defect in title arising prior in time to the date the policy was issued, saving, perhaps, and excepting only some matters relative to governmental regulations and also matters which may be within the knowledge of the Insured and not in turn communicated to the Insuring Company.

With that statement in mind, you will notice now the topics we are going to discuss are, first, "Hazards arising from concealed easements in use that are not of record—underground conduits — foundation footings that encroach, etc." These particular hazards that I refer to, are more a matter of physical inspection and they are going to revolve around the practice of those in the various sections of the company in making inspections. With that understanding, I am going to ask Mr. William R. Kinney, Chief Title Officer, Land Title Guarantee and Trust Company of Cleveland, Ohio, to tell us how they protect against the hazards just enumerated.

A.T.A. and Full Coverage Policies

Hazards arising from concealed Easements in use that are Not of Record — underground conduits — foundation footings that encroach, etc.

MR. WM. R. KINNEY: What little I know, from actual experience, about concealed easements and hidden uses can be told very quickly. When viewed as a purely theoretical proposition, the possibility of loss because of such hazards is an ever present danger in issuing A. T. A. and L. I. C. policies. Whether the combined experience of title companies in general would show this danger to be more theoretical than actual is something concerning which I lack information. In Cleveland, fortunately, we have had comparatively little experience with these matters, but such as we have had has pretty well convinced me as to three things. They are all rather obvious and very briefly are these:

The first is the fact that no measures can be devised which can be counted upon to afford one hundred per cent protection against loss. No matter how carefully surveys and inspections are made, the very nature of some types of hidden use is such as to make it practically impossible to discover that any such use exists.

To illustrate: We insured a property in one of the older sections of Cleveland which adjoined thirteen old residences. To all appearances it was an ordinary run-of-mine risk. However, it developed that when these thirteen residences were built, there were no facilities available for individual sewer connections and a common sewer to serve all thirteen was laid under the back end of the lots and across the back end of the property which we insured in order to connect with the sewer in a side street. During the years that followed, all but two of the thirteen properties had discontinued the use of this common sewer and had been provided with individual sewer connections. However, the remaining two still used the original sewer and it constituted their only sewerage outlet.

It cost us several hundred dollars to provide them with direct connections and to free the property which we had insured from the burden of this hidden use. The point is that, if a similar situation existed on a property which we were asked to insure tomorrow, I would have no hope that we would discover the true condition of affairs until it was entirely too late.

The second thing is that, even though one hundred percent protection cannot be attained, there are measures which can and should be employed which will at least greatly lessen the chance of loss. These, of course, consist of accurate surveys, careful inspections and a willingness and ability to ask inquisitive questions. So far as residential properties are concerned, and despite unfortunate experiences in one or two instances, we still follow a more or less routine procedure which goes little further than to ascertain whether there are any encroachments or building line violations. However, where commercial, business and apartment house properties are involved, we try, as far as possible, to get to the bottom of things.

We require, of course, a survey by an approved engineer. Most of the en-

Left to Right: James B. Ford, William R. Kinney, J. W. Goodloe, Herbert Alstadt, Melvin B. Ogden, Stewart Morris.

gineers whose work we use are familiar with the collateral matters in which we are interested and usually try to cover such matters in their reports.

We supplement these reports by sending out our own inspectors, who go through the property from top to bottom with the thought in mind of discovering any physical conditions which might result in complications or damage to the insured and loss to us under the terms of our policy.

Through such methods we have, from time to time, uncovered such matters as party-wall rights, beam rights, joint use of service facilities such as water, power and heat, use of subsurface areas under sidewalks, use of stairways, halls and elevators for access to adjoining properties or to the insured premises, underground equipment owned by public utility companies, and so on. Some of these are not, strictly speaking, hidden or concealed easements, but all of them constitute physical conditions which may result in argument, litigation and possible loss. When any such condition of affairs is discovered we, of course, make an appropriate exception in schedule B of our policy.

The third thing which has impressed me is the fact that, although it is obviously important to keep one's eyes open for concealed uses affecting and encumbering the premises which are to be insured, it is equally important to watch out for similar uses or easements which are appurtenant to such premises and which may seem to constitute a benefit rather than a burden. My feeling in this regard stems from the fact that the existence of such hidden use may at times involve the question of marketability of title.

Some years ago one of the eastern insurance companies acquired title through foreclosure to a private residential property where the sewer serving such property ran under and across the adjoining premises—this being the reverse of the example I have previously mentioned. When the owner of the adjoining property discovered the situation, he demanded that the sewer be removed and threatened to file an action for a mandatory injunction. We had issued an A. T. A. policy on the mortgage and the insurance company laid the matter in our lap.

At first we argued that there was no liability on our part, under the terms of the policy, because of the fact that, in Ohio, damage could not result to our insured under any future covenant of warranty. The counter-argument was immediately advanced that the question involved was not as to possible damage under covenants of warranty, but was whether damage might be suffered through possible unmarketability of title if and when our insured attempted to dispose of the property.

The matter was settled by a three-way compromise under which the adjoining owner, the insurance company and our company split the cost of installing other sewer facilities. I have sometimes wondered whether the insurance company's argument in this matter was made with tongue in cheek, because it is the first time in my experience as a title man that anyone who felt he had a title company by the throat ever relaxed his hold even long enough to get a better grip, much less pay out good money. In any event, the incident shows that an appurtenant hidden use may and, at times, does actually result in a claim for damages based upon the question of marketability of title.

The three things which I have mentioned constitute about all of my ideas concerning hidden or concealed uses. From here on, I plan to sit back and listen.

MR. FORD: Thank you, Mr. Kinney. Mr. Ogden, do you have anything to add to this?

MR. MELVIN B. OGDEN: I might cite one actual case we had involving a concealed or non-visible easement: A man purchased some acreage for subdivision purposes and we wrote a full coverage policy, that is, a policy without any exceptions other than one relating to governmental regulations. We had a survey of the land made in accordance with the usual practice, and we also had an inspection made of the land for any rights that might be disclosed by possession. No such rights were disclosed and the policy was issued free and clear of any exceptions.

In the course of putting in the streets, a bulldozer dug up the main telephone line supplying all North of Greendale and caused damage to the amount of $8,000, as I recall. There was no easement deed of record or deed of any other interest to the Telephone Company. They did have a deed which had not been recorded.

The question was whether or not the easement was enforcable. Our inspector had not observed anything on the surface of the land or observed any structure whatsoever that would have notified a purchaser of easement rights. However, upon reinspection of the land, we discovered a very small plate on a manhole with the words, "Southern California Telephone Company" on it. The inspector was sure that the plate had been covered by weeds or dirt, but nevertheless, there it was, and it should have been found by a very, very careful inspection. So, there was notice of the easement and we paid the loss.

The general rule in easements which are not visible is that the purchaser would take clear of such easements. However, in a case of easement of Public Utilities, you cannot compel the Utility Company to remove their structures. They can keep them, but it works by inverse condemnation. You have to pay them for the easement as though they condemned them.

"Problems arising in connection with purported delivery of Deeds, Deliveries to third persons; in escrow, in various types of settlement; deeds recorded after death of grantor."

MR. FORD: This is a very far reaching subject and to begin discussion, I am going to ask Mr. J. W. Goodloe, President, Title Insurance Company of Mobile, Alabama, to lead the discussion.

MR. J. W. GOODLOE: This is a very broad subject and a very broad topic. I have jotted down some of the fundamentals with the idea of bringing out some concrete cases.

The question of whether there has or has not been delivery depends on the facts; and when we start from there, practically every case will resolve itself down to the facts of the case.

The grantor must intend that the instrument is to become presently effective; and he must lose control of the property. However, he need not lose possession of the instrument itself, as a constructive delivery, if that is accomplished, is as effective as actual delivery. This is particularly true when the grantee in the case is a minor or a person under some other disability.

Getting right into our own immediate problems of today—delivery to third parties. Delivery to third persons for the use of the grantee is effectual provided the grantor intends to transfer title and parts with control over the deed. Again, the controlling element is the intent of the grantor to transfer present title.

The delivery of deed to third parties as distinguished from escrow is that the instrument is lodged to await lapse of time and not the performance of a condition which may or may not happen, and there is nothing to prevent its fulfillment.

Let us suppose the delivery of a deed has been made to a third person with instructions to deliver to grantee at grantor's death. This is not a true escrow as escrow is based on a contingency or uncertainty; and death, of course, recognizes no uncertainty. We find that the majority of the courts upholding the deeds.

On the other hand, let us suppose delivery has been made to a third person with instructions to deliver to the grantee upon the happening of some future contingency which may or may not come to pass. Where the contingency does transpire within the grantor's lifetime, we have no worry. The title passes at time of the accomplishment of the contingency. Until that moment, title remains in the grantor.

But should the grantor predecease the accomplishment of the contingency, the better reasoned cases refuse to permit the escrow contract to lapse.

Applying the "relation back" doctrine, title is considered, under such

circumstances, to have passed as of the date of the deposit with the custodian.

We have an Alabama case, Prewitt vs. Ashford, where the Court goes on to say:

> "The established rule with respect to an escrow of this nature is, that when the condition upon which it is to be delivered is performed, or happens, if it is necessary to protect the intervening rights of the grantee, the instrument will be held to relate back, and take effect from its first delivery as an escrow. This principle especially applies where either of the parties to the deed dies before the condition is performed, or before final delivery, and the condition is afterwards performed or the delivery consummated. And moreover, where the grantee dies after the first delivery and before the final one, the trustee holding it may deliver it to the grantee's heirs and it will be held, ordinarily, to have taken effect in the ancestor, so as to transmit title through him to the heirs by inheritance, where nothing intervenes to prevent."

I might add that the same doctrine of relation back has been brought into use where the grantor becomes insane prior to consummation of the escrow.

Deeds recorded after death of grantor—The matter of recording deeds after death of grantor and the effect given to registration is largely regulated by the statutes of the several states. Assuming that the deed has been properly delivered during the life of the grantor, no valid objection could be made to the recording of the deed after his death, providing nothing else intervenes.

MR. STEWART MORRIS: I would like to carry out this trend of thought here just a minute.

Along with this subject of delivery, although it is not on the program, a very pertinent point is acceptance. It is a universal rule, I believe, throughout the states.

I find it to be the general rule that there must be acceptance by the grantee. In other words, you cannot deed him something he doesn't want.

Most conveyances do convey a benefit, and it is thereby implied that there will be acceptance. Of course, as I have stated, all conveyances, possibly, do not convey a benefit.

Now, getting back to some of the discussion that my colleague advanced here, I think he covered the subject very well, but I would like to bring out some practices in our own offices.

In talking about this theory of relation back in reference to the death of a grantor or grantee, in our office we wouldn't want to depend upon the doctrine of relation back. We would require a new deed and have everything in order before we would issue our policy.

Another question arises where a single woman signs a deed, puts it in escrow, and then gets married. The doctrine of relation back would carry, and we would pass that. I don't believe there would be any question on this.

On insanity, which Mr. Goodloe mentioned, the doctrine of relation back definitely applies, but I believe that I would say "Caution." Certainly if I knew the seller had been declared insane, I would make my check payable to the guardian of the ward and not give him the money from the sale.

Another question, I think, arises on escrow. I refer to judgment creditors. Under common law, I believe the cases hold that the judgment creditor would get no more interest in the property than the grantor has.

In Texas under our registration statute, that point is specifically provided for and places the judgment creditor in the same position as a bonafide purchaser without notice; considering, of course, that the judgment creditor has no notice of a deed in escrow, and that upon examining the record, he would find nothing there that would show that the grantee in escrow has any interest. There the title company would probably get stuck if it didn't examine the records right down to the time of filing the instrument with the County Clerk.

Another question is fraudulent delivery out of escrow and a bonafide purchaser buys the property from the grantee of the deed escrowed. The courts would seem to hold in the majority of jurisdictions that the innocent purchaser would take nothing as against the grantor in the escrow unless by the doctrine of estoppel the grantor had put his deed in such an escrow that it could leak out or put it in the hands of an irresponsible person.

Another question is that of power of attorney. Where you have a power of attorney coupled with an interest, you can have no revocation but where you have a straight power of attorney and the principal in the power of attorney dies, the power of attorney is revoked. However, say you have the situation where the agent has acted within the scope of his power of attorney and placed the deed in escrow, although the principal dies before there is the final delivery, I think you would find there would be a good conveyance, due to the fact that the positive of the deed into escrow is with the consent of the principal because what is known as by the agent is known by the principal.

I believe one other question is where you have several grantors in a deed. They own an undivided interest in the property. Say you have two grantors. One signs the deed and gives it to the second grantor. The second grantor has to perform within his instructions or there will not be a delivery as to the first grantor. Now I don't think there is anything to worry about there. At least we don't pay any attention to it for this reason: We take the precaution that we always make the check payable to both grantors. We just write John Jones and John Doe on the check and then by their signing it, well, they have ratified the delivery and you have no trouble. We do find some of these fellows where each wants his own check. We got burned on that once, and we learned, and we always make them together.

MR. FORD: Thank you very much, Mr. Morris. The question of delivery is one of great importance. I think perhaps there are some states in the union where a deed may be recorded and the fact that it is recorded has been held to constitute delivery. I am going to ask Mr. Ogden if he will give a few words on the subject.

MR. OGDEN: I would like to cite one delivery case which, I think, is pertinent and interesting. An elderly lady in Pasadena in 1925 was departing for the hospital for an operation. She executed a deed in favor of her two daughters. She deposited the deed with an attorney. She did not survive the operation. We issued a policy at that time insuring title in the two daughters without any investigation as to delivery. We would make that investigation under our present practices, but we were writing mostly guarantees in those days, and we were pretty loose in our title practices.

The two daughters borrowed money from a Pasadena bank and executed a mortgage. In 1932 the mortgage was foreclosed. The bank acquired the record title. In 1938 the bank, which was insured, was conveying the property to an oil company for, as I recall, a hundred thousand dollars. Our search of title at that time, 1938 (thirteen years after the death of the grantor), revealed a petition for letters of administration in the matter of the estate of this deceased grantor, petition being filed by a creditor who had given the lady in question a gold-plated funeral costing four thousand dollars.

Well, our first thought was whether the deed was delivered—whether the delivery was valid. We talked to the attorney who had had the deed in custody and who had handed it to the grantees. His memory was somewhat hazy. To the best of his recollection, the grantor could have had the deed back had she returned from the hospital.

In other words, the instructions were, "If I die, deliver this to the grantees."

Obviously, the delivery is not good. Had she said, "When I die," an event certain to occur sometime, then the rule would be delivery was complete.

Fortunately, these two daughters were the sole heirs of the grantor, so

the title was in them. The mortgage was good and title had come through to the bank, but the title would be subject to administration to pay the claims of the creditors. The property could be sold at a probate sale in the course of administration. How about this four thousand dollar funeral bill thirteen years old? The rule there, we discovered, was that the statute would not run against creditors' claims until there had been administration proceedings started. So we had to pay the claim plus a fifteen hundred dollar fee to the astute attorney who handled the proceedings.

To guard against those cases we now require, where a deed is recorded after death, the filling out of a questionnaire containing pertinent questions. Why the deed wasn't recorded,—where it has been kept,—did the grantor leave a will,—are there any other heirs. We go into the question of inheritance and Federal and state taxes.

I am not sure this questionnaire is the best system because these are all leading questions, and anyone of ordinary intelligence can get a little advice and give you the "right" answers. I think it is far better to interview the people and to say, for example, where it is a husband and wife case, "What did you do with the other deed?" The answer often is, "Well, I tore that deed up."

Our practice, at least in California, is for the husband and wife to exchange deeds and put them in the bureau drawer. When one party dies, the surviving party records the deed in his favor and tears the other one up.

MR. FORD: Thank you very much. I wish that we could develop this subject further. We have one more subject that I would like to cover and that will be the conclusion of this panel.

"Mortgage Policies written without knowledge of consummation of transaction by delivery of mortgage money to mortgagor."

MR. FORD: I think this is a rather difficult subject to handle and one on which we have not had as much experience as we have had with the other subjects that have been discussed. However, Mr. Alstadt is going to give us his ideas on this particular topic.

MR. HERBERT ALSTADT, Vice President, Title and Trust Company, Portland, Oregon: I, too, think this is a difficult subject. It was quite baffling as far as I was concerned. I came to some very definite conclusions, and that is that at the time of issuance of the policy, we, as insurers, are not interested in the delivery of the money.

The only time that it is necessary to investigate payment of the money is upon the payment of a loss, and then only if payment is made to the original mortgagee; or, if payment is made to an assignee, then only if the note, which is evidence of the debt, is a non-negotiable instrument.

In analyzing this problem I came to the conclusion that the only part of the ATA policy necessary to consider is that portion relative to the right of subrogation. If a loss is paid and the right of subrogation is invoked, then the problem must be approached in accordance with the law of negotiable instruments.

As between the original mortgagor and the original mortgagee, non-payment of the mortgage money is a valid defense; and if we, as insurers, pay a loss to the original mortgagee and are then subrogated to the rights of the mortgagee, we may find that the mortgagor may defend upon the grounds of non-payment. Therefore, before the payment of a loss, investigation should be made as to payment.

If, however, the mortgage has been assigned and the note is negotiable, no investigation need be made, because then the ordinary rule that a bonafide purchaser in due course cuts off personal defenses, applies.

MR. FORD: Gentlemen, we have covered the topics of this panel, that is, as far as the time will permit. I only wish that we had a full morning or a full afternoon in which we could engage the interest of each one of you and have your consideration on these subjects.

I don't think there is anything more interesting in our deliberations at these association meetings than to discuss the practical problems involved in the production of our policies and the treatment of losses attendant to them.

I want to make this little observation in connection with ATA policies. When we first embarked upon this we did it with a great deal of trembling and foreboding; but I believe that experience has taught us that not only have we been able to give our valued customers the ultimate in protection, but we ourselves have gained a great deal of knowledge in our own business. One thing, I believe, is outstanding. The more searching we make our investigations of title, the less hazardous we find the contract itself. I think that is a very interesting fact, and I believe it is a fact that such a result has been the experience we have had thus far with ATA and full coverage policies.

MR. LOUIS J. TAYLOR, Phoenix, Arizona: On this ATA form question, request is being made to issue policies without requiring the survey in some limited or small policies. Under what conditions is a company justified in issuing the ATA without causing an actual survey to be made in order to enable those mortgagees which require the ATA as against the standard mortgage forms to compete more successfully in getting loans?

MR. KINNEY: We may not be justified in doing so, but as far as our company is concerned, we issue you an ATA policy without a survey, provided we run in Schedule B our stereotyped exceptions that the title and our liability is subject to all rights and defects which would be disclosed by a survey. So far as the survey proposition is concerned, it just makes it a standard policy.

MR. FORD: I think Mr. Taylor wants to know if you ever issue a policy without a survey and, of course, making no mention of the fact, nor limit your policy by reason of the fact that you did not make a survey. Are there cases where you will issue an ATA policy without a survey but make no mention of it in your policy?

MR. KINNEY: No.

MR. CHARLTON HALL, Seattle, Washington: In Seattle we issue ATA full coverage policies without a survey on mortgages of five thousand dollars and less. Our inspector inspects the property to see if there has been any new improvements that may be lienable, and he also inspects the property on either side to see if he thinks there is any encroachment. If he thinks there is, we make a survey, but in many cases we make no surveys.

We have our own survey crew. They make surveys for us, and they also make the inspections. They know why they are inspecting and we believe we are safe on the smaller mortgages.

MR. OGDEN: I might add in Los Angeles County we will write an ATA policy, but not require a survey where inspection of the premises discloses that the lines can be ascertained with reasonable certainty without a survey, and where the improvements are well within those lines. If the improvements are close to the lines or if the lines cannot be ascertained due to irregularities, then we require a survey.

MR. KINNEY: That necessitates my adding a word to what I stated. I misunderstood the meaning of the word "survey." We conform to that "halfway" survey or inspection on residential properties of limited value.

MR. FORD: I would like to ask this question: Has anyone had experience in issuing ATA policies on farm lands? What do you do there about your surveys and inspections? I would also like to ask if anyone has had any experience with encroachment footings on large constructions.

MR. OGDEN: I'd like to have Earl Johnson outline a pending case we have, if he thinks it proper to mention it at this time. It is still in the process of settlement.

MR. EARL JOHNSON, Riverside, California: We had a situation in an outlying county where the common owner built two buildings. The contractor was not very careful because it was in one ownership, and the footings of the foundation encroached beyond the dividing line between the two lots. We had a survey made. This is suburban property, and the surveyor

didn't pick up this encroachment because it was buried. Then they split the properties. They conveyed the properties to separate owners, and now they are tearing down one of the buildings, find this encroachment, and have made a claim.

We have felt we were liable. There is probably an easement in favor of the building which encroaches on the other property. So, we have had that situation, and it has been difficult to solve. The only way we have felt that it can be solved is for the owner to erect his building, and we will have to pay him for any additional costs by reason of the encroachment of the footing on his property.

MR. FORD: I had a similar problem in my own company many years ago which resulted from a bulge in a building at the side. I don't know whether that bulge was a result of an earthquake or not. We always thought it was; but notwithstanding, when the adjacent property owner started to erect a building, we discovered the bulge extended out about three inches about thirty feet up. We paid for the correction of that particular item.

That brings into focus the question of plumbing the building adjacent to your property in making your survey.

A SPEAKER: We seem to be running increasingly into the question of deaths or such other disability during the course of escrow. We have heard discussion this morning about the application of the doctrine of relation back. In our own state and various other states, the decisions of the courts are not as clear as they might be. They often speak of applying the doctrine of relation back where it is what they call a "complete" escrow. Just what they mean by a "complete" escrow is perhaps not entirely clear. I am wondering if someone of the Panel from states where that situation applies could give us the assistance of some rule of thumb that they apply as a practical manner in advising escrow and title officers in connection with those exceptions.

MR. STEWART MORRIS: When we have that situation come up, we just stop in our tracks and stay out of it until we get another deed. If we didn't do that, I don't know exactly what our position would be. Of course, if we couldn't get around that, we would probably have to go ahead and issue depending on whether or not we had written a commitment promising we would issue.

MR. FORD: I would like to ask Judge Oshe what would be his opinion on that.

MR. M. OSHE, Chicago, Illinois: I am not an escrow man. It would seem to make no difference what happens if your escrow is absolutely "complete" so that neither of the parties have anything to do, and the only condition to be fulfilled is when you deliver a policy provided for in the escrow, and the purchaser receives his policy and the seller receives his money.

SPEAKER: The situation that Judge Oshe refers to is a very happy one, but one we don't run into often. That is where the courts say there is a complete escrow because nothing remains to be done except performance of ministerial duties.

MR. OGDEN: I think a good rule of thumb in California would be this: Where the conditions of the escrow are all met, the purchaser's money has been paid and there are only ministerial functions to perform, and this completion is within the time limit, then the delivery is good; that in all other cases there should be administration proceedings and an order of the court authorizing delivery of the deed in fulfillment of the escrow contract, (assuming it is a binding contract).

A PANEL DISCUSSION

TOPICS:

Insurance Against Known and Calculated Risks.

Extra-hazard fees.

Construction Loans.

Extra premium charge;

Protective steps to be taken by a Title Company;

Should a Title Company guarantee completion.

Reserve Account.

Loss Account.

Charges against Losses; Counsel Fees; Court Costs; Maintenance of Claim Department; Charge Retainer (part) of Counsel against Loss Account; Litigating expenses.

MEMBERS OF PANEL:

A. B. Wetherington, Secretary, Title and Trust Co. of Florida, Jacksonville, Florida.

E. J. Eisenman, President, Kansas City Title Insurance Company, Kansas City, Missouri.

Charles M. Fogg, Vice-President, Tacoma Title Company, Tacoma, Washington.

Charles H. Buck, President, Maryland Title Guarantee Company, Baltimore, Maryland.

Frank I. Kennedy, President, Abstract & Title Guaranty Company, Detroit, Michigan.

George Heyneman, President, Southern Title & Trust Company, San Diego, California.

Moderator: Kenneth E. Rice, Chairman, Title Insurance Section.

"Insurance Against Known and Calculated Risks"

MODERATOR RICE: We will hear first from Mr. Wetherington.

MR. A. B. WETHERINGTON: Naturally, with a subject of this broad scope, it is somewhat difficult to differentiate between unknown and uncalculated title insurance risks and known and calculated risks. In every policy that we write there exists the unknown and uncalculated risk such as: forgery, unknown and undisclosed heirs, etc. These hazards are in existence regardless of ordinary safeguards that we use to protect ourselves from loss or damage.

For the purpose of this dicussion, I divided the known and calculated risks into at least two classifications. In the first class we have the technical objections found by title examiners, such as: omission of seals, lack of necessary witnesses, irregular acknowledgments, omission of certain required statutory words, and many dozens of technical objections by reason of which, either through lapse of time, adverse possession, etc., we feel that possibility of loss is remote, if existing at all.

We all accept titles of this character in the normal course of business. Most companies maintain committees within their organizations to determine these technical objections, curative statutes, if any, possession, if existing, and, based on the facts obtained, determine whether the risk is to be assumed. Once this determination has been made, this title is classified as one accepted in the regular course of business exactly as a regular title.

In the second classification I would place tax titles. In our section of the country, and very probably in most every section of the United States, during the depression years many properties were removed from the tax assessment rolls because of failure to

pay taxes. The various political subdivisions were then faced with the necessity of raising revenue on a small portion of the land within the taxing district, which finally became unbearable to the property owners who were paying taxes and resulted in the passage of various laws whereby, after a reasonable grace period, the taxes not having been paid, the property would revert to the state, oftentimes to a drainage district, the city, or some other political subdivision, the property then being offered for sale to individual purchasers.

Title companies generally have always looked with disfavor on tax titles. They were certainly undesirable titles whether or not they were insurable. We adopted the practice, which we still follow, of attempting to retard the number of these titles offered. However, in some sections the number of these tax title properties was so great that the economic welfare of the county or community depended on those properties' being sold with a marketable title, or at least with a title that a purchaser would accept. In some sections of our state, title insurance has become the prevailing evidence of title. We soon realized that, unless we worked out some plan to handle these titles, the state would very probably do so. In fact, the threat was made by our Governor that, unless the title companies did insure certain of these titles, which he considered good and marketable, he would propose to the Legislature that the state establish a fund to pay any losses that should occur and they would assure the purchaser. Needless to say, we did not wish that to happen. We, therefore, are accepting applications on tax titles under various and sundry reversion acts.

We do not have and can not lay down a rule to follow. We consider each title on the merits surrounding the particular property under examination. Each title is examined meticulously. We determine whether the former owner could reasonably be expected to have been advised of the impending sale. We consider carefully the length of time that the former owner apparently abandoned the property by not paying the taxes thereon; we examine very carefully to see that a subsequent owner has not revived a former lien; and many other things. If this examination discloses that we can insure with the reasonable conclusion that the title will not be attacked, we will do so for an extra premium, which will be discussed later on this panel.

Mr. Chairman, that, to me, is sufficient to get the subject started for discussion. I could cite various experiences that we have had, but I want to reiterate that this tax title problem is one to be faced and it is one that the title industry must solve or it will be solved for us.

MR. RICE: Thank you, Al. Does any other member of the panel have any comments to make?

MR. EISENMAN: Is it now your practice in Florida to insure all those various kinds of tax titles provided the procedure prescribed has been followed?

MR. WETHERINGTON: Yes, generally speaking. However, most of these tax reversion acts and the procedure of selling the land after it has reverted have so many different points involved that no general answer can be made. For example, we have one tax reversion act in our state that has been to our Supreme Court on at least twelve distinct and separate points in the act. The Supreme Court has affirmed in every instance and, in one instance, was sustained by the United States Court of Appeals in New Orleans. I shall therefore state again that each title must stand on the conditions concerning that particular title.

MR. RICE: We have invited Mr. Charley Buck to sit on this panel without specific portfolio. Mr. Buck has had a wealth of experience in the title business, and I want you to feel free, Mr. Buck, on any matter which is coming up to make such comments as may occur to you.

MR. O. M. YOUNG, Little Rock, Arkansas: I would like to ask if they charge an additional premium on those special hazard policies, and if so, how do you base it?

MR. WETHERINGTON: We charge an additional premium. In every instance this figure varies due to the many different reversion acts and the necessary research. Some titles in our opinion are more hazardous than others. I might further add that this extra hazard premium is retained in a special reserve account. For federal income tax purposes, however, the taxes are paid as it is construed by the income tax department to be an earning at the time collected. I therefore can't intelligently get the picture over and state any figures due to the many reversion acts.

MR. CHARLES M. FOGG: Have you noticed in the last three or four years that your examiners are becoming more and more liberal on these questions?

MR. WETHERINGTON: Not only our examiners, but our Supreme Court as well. The court decisions make our examiners more liberal.

Left to Right: Frank I. Kennedy, Charles H. Buck, A. B. Wetherington, Kenneth E. Rice, E. J. Eisenman, Chas. M. Fogg.

Extra Hazard Fees

MR. RICE: Mr. Kennedy is going to tell us something about it.

MR. FRANK I. KENNEDY: I am, perhaps, the least qualified person up here to talk about extra fees because we don't insure a title unless we think it is good. It seems to us, otherwise, it is like insuring a dead man that he is alive. We do, however, have some cases where we are satisfied that the title is good but we think for one reason or another that there is some hazard of litigation.

One of those is a particular form of tax title in Michigan. Even our Supreme Court has called it a scavenger title because the state of Michigan took back so much land in the depression days that they passed a new form of Act for the disposal of it. The basis of that Act was that the title became, by the foreclosure proceedings which are a court proceeding, perfect in the state of Michigan. The land then was offered for sale. The former owner was given a chance to match any bids, which meant the bid was kept down.

The minimum bid was twenty-five percent of the assessed value, and there were certain preferential bidding rights of parties formerly interested in the land. We were satisfied that the titles were very good. Our Supreme Court agreed, but they were fruitful of litigation for a while.

We looked over the field and saw that we were going to get a great deal of them. There were several hundreds of thousands of parcels in the state. We merely decided what we needed was a little fund to cover the cost of defending suits, because we didn't think there was much more risk involved. So we just charged an extra fee, which, I believe, was $20 for a policy, big or little. We found that the fund established was ample. We later cut the fee to $10 and found that that has been ample.

Back in the '20's when there were a great many foreclosures, we had the problem of voluntary conveyance. The Supreme Court had sustained the validity of such transactions, but there was always the possibility of them being attacked. We drew up for what it was worth some form of an estoppel certificate running to the Title Company and charged an extra premium on each file of that type for a while. The extra premium was $20.

Amusingly enough, another company that did business in that state was so afraid of it that they invited the representatives of a large eastern insurance company to Detroit to tell them and us that they didn't think we should indulge in that sort of transaction; and after the conference was over and the eastern gentlemen had gone home and the practice was continued, the competing firm decided that it could insure them without any further extra hazard charge, so they cut the $20 off the charge. And in due time, so did we.

We have had very few other types of charge than that. One reason is that our courts are very critical in their test on marketability, and we don't insure that anything in marketable unless we are sure it is.

We do have two forms of insurance for which we don't make a charge where we probably could. Some of these cases are deeds that have some rather ambiguous form of either a reverter clause or condition attached to the grant; and on many of them we are satisfied that they are unenforceable. In those cases, we say in Schedule B that the grant contains certain language, and we insure the holder of the policy against the possibility of any reversion. We don't charge extra in those cases because we are satisfied the danger of litigation is so remote we wouldn't be justified in building a defense fund.

That is about the limit of our charge for that sort of thing. I think we are neophytes in the game of extra charges. I would be glad to hear from some of these gentlemen on the panel who really make those charges.

MR. WETHERINGTON: We never make an extra charge on any title except those tax reversion titles.

MR. CHARLES H. BUCK: Mr. Chairman, I come from Maryland. In the main, the title companies operating in Maryland are in Baltimore City. Their competition comes from lawyers who represent building associations in Baltimore City. They are able to examine titles there because of the aid gotten from an Index run by the Recorder supported by the recording charges for the recording of deeds and mortgages.

We deal in marketable titles in Maryland as distinguished from good titles; and consequently, many of the lawyers who are our competitors, when they have something which worries them a bit—as to whether they believe they should assume the responsibility—they come to the title companies asking whether or not, for a so-called special fee, the title company will assume liability for marketability of the title in that one single respect.

That type of insurance falls into several classifications. By and large, tax titles without the benefit of foreclosure proceedings make up the bulk of the requests which my company has. We have, as Mr. Kennedy has stated, recently enacted in Maryland a foreclosure statute, after tax sale, which we believe, if properly followed in the Equity courts after the sale has been made, will give to the purchaser at a tax sale, title which cannot be questioned.

But it is the cases of the tax sales which did not have the benefit of that statute that we have, upon an examination of the tax proceedings and finding them in every respect regular, been willing for extra compensation to guarantee marketability of title.

Other questions, probably second in importance, of those matters which we in Maryland guarantee against are mortgages unreleased of record, though said to have been paid.

There is a leading case in Maryland cited many times which holds that if no payment has been made on interest or principal during a period of twenty years the mortgage is conclusively presumed to have been paid. That type of insurance brings us some special fees.

Questions of dedication or non-dedication of roads running through developments also produce revenue in special fees. Constructions of wills or deeds, particularly wills or deeds of trust where it is safe to make a construction without court adjudication also produce some special fees.

The amount received from special insurance in our state is not great. It is rather inconsequential, but occasionally something of major moment, which is safe under the law but which might have some nuisance value if not protected, does crop up.

I remember one many years ago in which the question involved was the status of a road running across a tract of land within the boundary of Baltimore City which, if it were to continue to run across that land, would make the land useless for the purpose for which it was being purchased. A title company in Baltimore, upon the building of a state road at the border of the land—(this was not a public road, I must mention; it was for private use) —issued a policy in fee guaranteeing title to the land within the perimeter. We believe in Maryland, particularly in our local setup, that the title companies should perform those services.

Reserve Accounts, Loss Accounts, Charges Against Losses

MR. CHARLES M. FOGG, Vice-President, Tacoma Title Co., Tacoma, Washington: When my superiors learned I had been asked to make the opening remarks on this panel discussion on the subject of losses, they immediately wanted to know if there was any connection between the position of national importance which had been conferred upon me and the number of losses that I had been making. I hastily assured them that while my title examinations had been somewhat liberal on occasion, that this did not mean that I had paid more losses than any other examiner in the United States and was therefore an authority on this subject.

The title insurance business today is being criticized because of the small amount of losses which it seems to pay in proportion to the amount of premiums which it receives. There is a question whether or not the title insurance business is really insurance when compared with other lines of insurance where losses amount to a considerable percentage of the gross premiums.

It is the general practice of many title insurance companies when a loss

is paid to the insured to charge the amount to a reserve account or to current expense. Most title men strive to keep the amount of their losses as small as possible because it signifies the high quality of their work.

The amounts shown in their financial statements as having been paid for losses very rarely include cost of investigation and the actual expense incurred in arriving at the amount of a loss. An example of this occurred in our office back in 1935.

We issued a policy covering some twelve pages of chain which included an easement for roadway over adjoining premises. Shortly thereafter, the insured complained to us that his roadway had been blocked by a fence and that his title was defective. We were compelled to buy easements over other lands to give our insured a means of access to his property. We had the new roadway surveyed, hired a man with a team of horses to put in the new road, negotiated with two property owners, securing easements from them after a careful examination of their titles. We prepared the instruments and paid for the recording of them, we paid the fees of the attorneys who represented the parties, the cost of the survey, the construction of the road, and the traveling expense of one of our men in making three inspections of the property.

Altogether, I believe this loss cost the company some $800; and as a large part of this was expense which we incurred ourselves in settling this claim, we show a small part of it as payment of a loss claim.

This, I believe, demonstrates clearly the importance of establishing a loss account which would include, first, payments made to the insured; second, costs of investigating the claim; third, actual expense incurred in negotiating, explaining or defending a loss claim, such as payment of travel expense, recording fees, court costs, and the payment to the adjustor for his time.

The cost of investigation and the incidental expense is as much of a loss to a title company as the actual payment to the insured.

In most cases the establishing of such a loss account would involve simply a bookkeeping transaction. However, the loss account would then be of sufficient size to become an important factor in the development of our rate structures. It would show also that title insurance companies do pay losses comparable to losses paid in other forms of insurance, and that title insurance is, in fact, insurance.

MR RICE: Thank you, Mr. Fogg. Has any member of the panel any comment to make on this?

MR. KENNEDY: Last year we spent perhaps more money in successfully defending titles than we paid out in compensating the insured for defective titles. Most of these were tax matters where either the books had been changed or our people went wrong.

In one case we had a title we had to defend in two separate proceedings in the Federal court. We came out with the policy holder uninjured. His title was sustained, but it cost us quite a few thousand dollars.

We spend much more money in defending titles which are sustained in their entirety than we do in compensating some insured for an actual loss.

MR. BUCK: I agree with Mr. Fogg in his statements. Counsel fees and expenses to clear our mistakes are just as much a part of our loss as the amount we pay to the policy holder to correct the difficulty.

MR. HENRY J. DAVENPORT, New York: Our experience is along your lines but more so. Our cost of defending titles and our cost of handling our claim and adjustment department is, every year, many many times the amount of dollar losses which we pay. The dollar losses are normally very small. We frequently have cases of large expenditures, amounts like ten, fifteen and twenty thousand dollars, to defend titles upon which the premium was $60 or $100.

We take a great deal of pride in those payments we have, and we insist upon having, outside counsel for all those items. So all of our charges and expenses for defending titles which get into court are reported as a part of our title losses.

At the present time under a law passed this year, the Superintendent of Insurance (New York) is requiring that we have a common method of accounting in all the title companies. In setting that up, we are endeavoring to have the total expense of our claim and adjustment department carried each year as a part of our title losses, so as to build up our loss expense in our reports to the highest possible point, to the point it accurately reflects our expense of defending titles and paying claims.

MR. BENJAMIN HENLEY, San Francisco: I should think these title companies who have no expense to pay in connection with losses except for defense of litigation would find the business somewhat monotonous. We do not specialize in that expense alone. We pay some amounts in losses themselves.

You might be interested in three experiences we have had in the last ten years. One I have mentioned at previous meetings of the Association which volved land adjacent to the principal naval base at Mare Island.

Our company and the Title Insurance and Guaranty Company of San Francisco both had policies out on the land involved. We contested the case to the Supreme Court of the United States, and the total cost to the two companies was approximately $38,000.

Last year we had a couple of experiences which were a little bit more expensive. In one case we paid a loss of $75,000; and in another case, a loss of $100,000. I might say that the hundred thousand dollar loss involved in one of these incidents that I read about here called known risks.

It was a case where in 1917 our company issued a policy after very careful consideration of counsel upon some land in the bay of San Francisco. Our counsel, knowing some risk was

MRS. J. J. O'DOWD MRS. A. W. SUELZER

involved, concluded the title to the land had passed from the state of California and was then in private ownership. Based upon the opinion of our counsel, the company, relying upon the good judgment of its employees, insured the title in private ownership; and last year, had the pleasure of paying to the state of California $100,000 to get title.

The other case involves a somewhat similar situation. In that case we paid our policy holder $75,000 to release us from any liability which might result from defective title to a portion of an area we had insured.

In that case the state was involved. You will realize in neither case could we rely upon the beneficial effects of the statute of limitations because it doesn't run against the state.

MR. ARTHUR ANDERSON, Seattle, Washington: There is one point which Mr. Fogg brought out which must be emphasized strongly. That is the fact that some parties are pointing out the low showing in losses of the title companies in our state. They complain we do not have any losses to amount to anything. They go to the Commissioners report and find there are but nominal losses. I am confident some standard system of showing complete losses, as mentioned by Mr. Fogg, should be worked out so that the true picture can be given on the total amount of loss.

We should emphasize every phase of loss involved in our loss experience, whether for defense of an action or whether for the payment of a tax or lien which was omitted from a policy. With that further education to the customers, I believe a better understanding of our title system will come to the general public.

MR. GEORGE HEYNEMAN, San Diego, California: Members of the California Land Title Association will have heard me make these comments many times before. Agreeing with Mr. Anderson, and questioning Mr. Fogg as to the purpose of title insurance and whether he is justified in questioning that losses are not large. Take the case of companies that insure boilers, —do they want all the boilers to blow up so they can say they pay losses?

Their primary purpose is to inspect the boilers so they can be safely used, so there will be no loss by boilers blowing up. I think it is important that we bear that in mind as the primary purpose of title insurance. Our purpose is to check into the background of a title to determine that the new owner can safely buy that property. The fact that we will indemnify him if we are mistaken for any reason in our judgment, is purely incidental to our job.

I should like very much to hear whether any title companies anywhere in the United States have ever taken or attempted to get any statistics as to the number of documents, and correction deeds of one sort or another we require in our daily routine for our issuance of titles. I think you would find for a large percentage of our business we require either a document or a quit claim from someone or the correction of a document that is presented to us so that we may insure those titles without loss.

MR. FOGG: I would like to make a comment on that if I may. I quite agree with the gentleman from San Diego. However, in our state of Washington, as an example, our situation up there is somewhat in a state of flux. We are gradually coming more and more into a position where we are going to have to substantiate our rate structure. That was what was in my mind when we arrived at our conclusions on this.

"Construction Loans, Extra Premium Charge, Protective Steps taken by Title Companies. Should a Title Company Guarantee Completion?"

MR. RICE: Mr. Eisenman has had experience, I am told, on those subjects, and we would be very happy to hear from you, Ed.

MR. EISENMAN: You are mistaken about my having had a great deal of experience on those matters. It is true I have done considerable investigation of the system under which certain companies have performed those services and made extra charges for them, with a view of, possibly, entering the field ourselves. But as far as doing any of that particular service is concerned, we have done very little, the reason being that while I haven't made a formal presentation of it for approval or disapproval by our Board, I did n't feel I ought to go into that class of business without Board authority, and the concensus from ninety-five percent of the Board is "No." They think it is an improper field for title insurance.

My investigation was made for the purpose of determining whether we could go into it because other companies in the locality where we were doing business were doing that sort of work. Practically every company that I have talked to which is engaged in that class of service, with very few exceptions, has had some disastrous experiences. The matter of completions is one thing that is completely foreign to title work, and in my opinion is one thing that should never be indulged in.

The protective steps to be taken by a title company vary in practically every state. I don't think any state has worse lien laws than the state of Missouri. In some states we have joined other companies in insuring against liens on construction loans for the simple reason of protection.

When the bonding companies wrote completion and lien bonds, they charged $5.00 or $10 premiums per thousand, depending upon the character and financial position of the man they were bonding. The title companies have never charged over $2.50 a thousand. Most of the time they will charge less than that. It isn't enough.

Frankly, I don't believe that the insurance of completion or against liens is a proper field for a title insurance company, as such. They are entering another line of business. They are guaranteeing three things—the ability and fidelity and the continued survival of the contractor whom they are backing in the guarantee of completion and against liens in disbursing funds. That is all I have to say in the way of opening remarks.

In order to go into the matter of insurance of completion and against liens, you would have to have 48 different talks based on the different state lien laws. If any of the members of the panel have had anything to do with the insurance of construction loans, I would like to hear from them.

MR. WETHERINGTON: My company has loaned its own money on construction loans for many years, all through FHA days and again at the present time. It is our own money. We do not guarantee disbursements for someone else. Of course, when we loan our money we are in a sense guaranteeing completion because it is up to us to get the house finished. We have had a very satisfactory experience.

MR. EISENMAN: You are in the loan business as well as the title business. You do the construction financing and you do that as a separate business over which you make a separate profit. Most of the title companies are not in the loan business.

MR. BUCK: I would like to make this comment. As Mr. Eisenman says, you have a different rule in practically all of the 48 states. In my judgment, of course, title companies should not guarantee completion. I think that is almost axiomatic. It is strictly a casualty risk.

In the old days in the 20's, when I had something to do with construction loans, the bonding companies charged one and a half percent for a mortgage construction bond guaranteeing completion free of liens, and their practice was to take all of the proceeds of the loan and disburse it in accordance with a schedule agreed to between the borrower and the bonding company. All sorts of opportunity for fraud crop up in that practice.

I saw a builder take close to a hundred thousand dollars out of our office in company with the bonding company executive, and within an hour all of the funds which had been intended to be placed in the control of the bonding company were in control of the builder, and nothing was built on the premises except a few foundations. When default occurred in the mortgage the bonding company paid the entire mortgage with interest.

The question of mechanics liens, certainly in our state (and I believe in all of the states on the extent to which title companies can assume the mechanics lien risk on construction loans),

is dependent upon the mechanics lien laws of the state. Precedence of lien over mortgage is the determining factor, in my judgment. Monies advanced on a mortgage which have been advanced prior to the beginning of the construction, I think, will be safely secured by the mortgage against any mechanics liens which are a result of that construction.

Based on that interpretation of the law, we in Maryland in issuing LIC forms of policies on construction loans have caused photographs to be taken of the site prior to the recording of the paper and immediately after the recording of the security paper so as to have at least evidence that at the time the mortgage was placed on record the ground had not been broken,—and the breaking of the ground in our state is the test.

Liens in our state, in all of the state except in Baltimore City, are for material as well as labor. We don't pay a great deal of attention to the mechanics lien law where labor only is involved.

But certainly, completion is a casualty risk and should not be assumed by title companies except those with large capital and who are going to put in a department to prevent losses; and mechanics lien liability should be looked on very carefully also.

MR. RICE: We have found an open forum is a right good way to get comments from the floor. It is an opportunity for those who have any questions regarding the business to ask those questions, and the moderator can sse to it that somebody else answers the questions.

A PANEL DISCUSSION

MEMBERS OF PANEL:

Golding Fairfield, Counsel, Title Guaranty Company, Denver, Colorado.

O. M. Young, Vice-President, Kansas City Title Insurance Company, c/o O. M. Young & Company, Little Rock, Arkansas.

Harold W. Berry, Vice-President, Home Title Guaranty Company, Brooklyn, New York.

Edward D. Landels, Counsel, California Pacific Title Insurance Company, San Francisco, California.

L. J. Taylor, Secretary, Phoenix Title & Trust Company, Phoenix, Arizona.

C. H. Bonnin, Title Attorney, Metropolitan Life Insurance Company, New York, New York.

Moderator: J. F. Horn, Chairman, National Title Underwriters Section.

CHAIRMAN J. F. HORN. We have some legal lights here, and we have interesting questions to discuss. You know, they say difference of opinions makes horse racing, and I have no doubt it also makes title hazards. The difference between a merchantable and an unmerchantable one is purely a matter of opinion by attorneys.

We have six questions on title hazards. There may be some question as to the validity of the legal objections, and there certainly is a great question among title men as to whether we shall ignore, insure, or what shall we do about it. To some, certain of these questions may not seem important; to others, they are very important. These six questions were selected by the powers that be of the American Title Association, and these eminent counsel have kindy agreed to lead a discussion on them.

I am going to call on Mr. Fairfield to handle the first one.

No. 1: "A was adjudicated a bankrupt in 1930. He did not schedule the premises in question, although he owned property at that time. He was thereafter duly discharged; and an order was also entered discharging the trustee in bankruptcy. In 1945, A conveys the premises to B. What are the rights of the creditors of A, assuming that their claims were not satisfied in full in the bankruptcy proceedings? What should be required in order to guarantee the title of B?"

PROBLEM

"A" was adjudicated a bankrupt in 1930. He did not schedule the premises in question, although he owned the property at that time. He was thereafter duly discharged, and an order was also entered discharging the trustee in bankruptcy. In 1945 "A" conveys the premises to "B."

(a) What are the rights of the creditors of "A," assuming that their claims were not satisfied in full in the bankruptcy proceedings?

(b) What should be required in order to guarantee the title to "B"?

MR. FAIRFIELD: As a general rule, a bankrupt is entitled to any assets undisposed of in the bankruptcy proceedings. But we are now concerned with the application of this rule to assets which have been concealed or otherwise undisclosed, whether by fraud or inadvertence.

There would seem to be no question that, in the absence of special circumstances, a bankrupt ought not to be allowed to take advantage of his own neglect or fraud in failing to disclose some of his assets, and then come into court after his discharge and claim title to such assets as against his creditors or the trustee in bankruptcy. This rather obvious conclusion is supported by many of the cases.

Even a majority of the cases hold that a bankrupt cannot go into Court after his discharge in an attempt to recover such assets in the possession of third persons. It is said in some cases that the bankrupt by his failure to disclose such assets is estopped to assert any claim thereto; in other cases that since the trustee in bankruptcy acquires title to all assets whether disclosed or not, the bankrupt has no title thereto; and in still other cases that the creditors being the parties really entitled to the assets, the bankrupt is not the proper party in interest.

The general rule is stated by CJS as follows: "Undisposed of or unadministered property which was concealed or not scheduled by the bankrupt does not, it is usually held, revert to the bankrupt unless the trustee has had opportunity to elect not to accept such property." 8 CJS p. 1598 (a few courts have restricted this to fraudulent concealments only. id.).

A Minnesota case holds that a discharged bankrupt takes title to unscheduled and undisposed of assets subject, however, to being divested of such title in case the bankruptcy is reopened and another trustee appointed.

Stipe v. Jefferson, 192 Minn. 504, 257 N.W. 99, 111 ALR 831 with note. The above decision appears to be contrary to the general rule.

REOPENING A BANKRUPT'S ESTATE

Subdivision 8 of Section 2 of the Bankruptcy Act provides that a bankruptcy court may reopen a bankrupt's estate "for cause shown." The act, before the 1938 amendment, provided that

such estates could be reopened "whenever it appears they were closed before being fully administered." The courts have held that the amendment gives much greater discretion to the bankruptcy court in reopening estates.

In re Zimmer, 63 Fed. Supp. 488.

Ordinarily, where unscheduled assets have been found which were never administered upon, an estate is reopened upon the petition of a creditor. The procedure is for the judge to refer the matter to the proper referee, who must thereupon call a meeting of creditors to select a new trustee inasmuch as the old trusteeship is not revived by the reopening.

In re Hopkins, 11 Fed. Supp. 831.

A bankruptcy may be reopened and there is no applicable statute of limitations. There may, however, be such unreasonable delay as to constitute laches.

8 CJS, Page 1359.

Sec. 11-d of the bankruptcy act provides that "suits shall not be brought against a person who has acted as a receiver or trustee of a bankrupt estate, upon any matter in connection with the administration thereof, subsequent to two years after the estate has been closed."

There is one case which indicates that this two-year limitation applies to a petition to reopen, but the case does not represent the weight of authority.

Rice v. Chapman, 225 NYS 40.

In the absence of any limitation statute controlling the time within which a petition to reopen a bankrupt's estate may be filed, the somewhat unsatisfactory doctrine of laches may be invoked as a defense in a proper case. However, what will constitute LACHES in a given case depends on the attitude of the court. LACHES connotes undue lapse of time, negligence, and opportunity to have acted sooner, all three factors being necessary before the bar in equity is complete.

In one instance a creditor filed a petition to reopen a bankrupt's estate thirteen years after the closing. Real estate, owned by the bankrupt at the time of the bankruptcy and not scheduled by him, was found. The real estate, years later, had been conveyed to one Taylor by the bankrupt. Taylor also filed a petition alleging laches and contending that his record title could not be disturbed. The estate was ordered reopened and the property sold to pay unsatisfied creditors. The court held there was no laches because Taylor was not a bona fide purchaser, he having had notice that the real property had been omitted from the schedules. The case is cited to show that there is no apparent limit on the period of time within which a petition to reopen may be filed.

CONCLUSIONS

It is my belief that title to unscheduled real estate does not revert to the bankrupt after discharge, and therefore the former bankrupt has no interest that he can assert in court, or dispose of by deed.

In the absence of any other remedy and under the broader powers now given the court with respect to reopening estates, it should be possible for even the former bankrupt to petition to reopen for the purpose of establishing title to unscheduled real estate. Such real estate could then be sold by a new trustee or else such trustee could relinquish any claim. (Under the old statute an estate could not be reopened for this purpose.)

If a prospective purchaser of real estate has notice that an owner went through bankruptcy, acquired the title to the real estate before he took bankruptcy, and retained or disposed of the title after his discharge, I believe such purchaser is under a duty to examine the court file in the bankruptcy case, particularly for the purpose of ascertaining whether or not the real estate was scheduled.

In the absence of applicable statutes of limitation, my conclusion is that title to such real property should be acquired from a trustee in bankruptcy either directly through court approved sale or indirectly through a relinquishment by such trustee, in which latter event the bankrupt would be reinvested with title and a conveyance of title should then be obtained from him.

The bankruptcy act is typical of many Federal laws which have been passed with a disregard of fundamental principles of real property law. Problems are often created with no satisfactory solution obtainable except through the passage of another act of Congress.

MR. HORN: Thank you, Senator. Are there any questions or comments from the floor or from the members of the panel? It not, we will go on to Point No. 2. I will ask Mr. Young to take that.

Left to Right: O. M. Young, Golding Fairfield, Harold W. Berry, J. F. Horn, L. J. Taylor, C. H. Bonnin, Edward N. Landels.

No. 2: "A died intestate in 1942, owning the premises in question. His estate was dulty administered, the premises properly inventoried and all statutory requirements relative to claims fulfilled. The estate was closed in 1944. In 1945, A's heirs convey the premises to B. Thereafter, the United States files a petition to reopen the administration proceedings on the ground that A was indebted to the Government for unpaid income taxes at the date of his death. What are the rights of B?"

MR. YOUNG: This question has been pretty well settled by a statute which has been upheld by a decision of the Supreme Court so that my remarks will be rather brief.

The Internal Revenue Code provides as follows: Section 276 "Request for prompt assessment—In the case of income received during the lifetime of a decedent, or by his estate during the period of administration, or by a corporation, the tax shall be assessed, and any proceeding in court without assessment for the collection of such tax shall be begun, within eighteen months after written request therefor by the executor, administrator, or other fiduciary representing the estate of such decedent or by the corporation, but not after the expiration of three years after the return was filed."

If, as we may assume from the facts in this case, no assessment was made, then the United States claim is barred by the government's own "Statute of Limitations" not only against purchaser "B" but as against the heirs of the estate as well.

For argument, however, let us assume that the assessment was duly filed; but that the estate was closed without allowance or disallowance of the governmental claim. Then we must first consider the position of A's heirs who according to a case of similar facts—U. S. vs. Fisher et al, 57 F Supp 410—"Where, without payment of testator's outstanding income tax liability, executor made a complete distribution of all assets to the special legatees, each legatee and distributee was a 'transferee,' so as to be liable for payment of testator's income taxes under the equitable 'trust fund' doctrine."

The term "transferee" according to Federal Statute includes heirs, legatees, devisees, and distributees as well as other specifically named statutory transferees.

In the Fisher case, title to the property was taken by the heirs prior to the assessment of income tax of the decedents; so we may assume in our hypothetical case that the heirs of "A" would have held the property in trust until the running of either the eighteen months of the three state of limitations and would have been subject to collection for that period of time.

But how about "B"? When would the tax become a lien? When would such a lien become vadil against "B" as a purchaser?

I.R.C. Revised provides: "If any person liable to pay any tax neglects or refuses to pay the same after demand the amount shall be a lien in favor of the U. S. upon all property and rights to property whether real or personal unless another date is specifically fixed by law, the lien shall arise at the time the assessment list was received by the collector and shall continue until the liability is settled or becomes unenforceable by reason of lapse of time."

This statute further provides: "Such lien shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice thereof has been filed by the collector (1) in accordance with the law of the State or Territory in which the property subject to the lien is situated, whenever the State or Territory has by law provided for the filing of such notice; or (2) With the Clerk of the District Court in the office of the Clerk of the United States District Court for the judicial district in which the property subject to the lien is situated whenever the State or Territory has not by law provided for the filing of such notice.

So we see that B takes title to the property subject to an income tax lien only if lien is on file at time of purchase, but that the heirs are subject to payment as "transferees" until such time as the Government is barred by its own "Statute of Limitations."

MR. HORN: Thank you, Mr. Young. I think Mr. Young has very ably handled the question.

Title to premises in question is made through a judicial proceeding. A, one of the owners of the premises and a defendant therein, was in the military service, at the time of the institution of the proceedings, and as far as is known, is still in the service. B, a bona fide purchaser for value, is now in title.

(A) Assuming that A was served personally, and no question of redemption is involved, what, if any, rights does A now have?

(B) Assuming the same situation as (A), but service by publication on A, what are his rights?

(C) Supposing the proceedings was a mortgage foreclosure, which was commenced in 1943, and in which the statutory period of redemption has expired. What are A's rights?

MR. BEERY:

IN GENERAL

1. Generally

For a determination of the various questions involved, it is necessary to examine into the provisions of the Soldiers' and Sailors' Civil Relief Act which was enacted October 17, 1940, and later amended on October 6, 1942. The declared purpose of the statute is to strengthen the national defense by suspending enforcement of civil liabilities of persons serving with the armed forces so as to permit them to devote their entire energies to the defense of the nation. At least two considerations prompted Congress to enact such a measure: first, the maintenance in the armed forces of a reasonable measure of that unbothered serenity and security with respect of personal responsibilities which effectively promote military efficiency and the national defense; and second, the assurance that in the field of individual justice no advantage in judicial proceedings by or against a soldier or sailor will result from his absorption in his country's defense. The Act became effective on the date of its enactment. It continues in force until six months after the treaty of peace is proclaimed by the President terminating World War II. It is unquestionably valid.

2. Persons Entitled to Benefits

The persons entitled to the benefits of the Act include soldiers, sailors, Marines, coast guardsmen, members of the Women's Army Auxiliary Corps, members of the Women's Reserves of the Navy, Marine Corps, and Coast Guard, officers of the Public Health Service detailed by proper authority for duty with the Army or Navy, and citizens of the United States serving with the allied armed forces. To a limited extent sureties, guarantors, indorsers, accommodation makers, others whether primarily or secondarily liable, and dependents, are also protected.

3. Agreement Waiving Protection of Statute

If a person in, or ordered to be inducted into, the military service makes an agreement therefor, after his entrance into such service or after receipt of his order to report for induction, there is nothing contained in the act to prevent the modification, termination, or cancelation of any contract, lease, bailment, obligation secured by a mortgage, trust deed, lien, or other security in the nature of a mortgage, or the repossession, retention, foreclosure, bail or forfeiture of property which is security for any obligation or which has been purchased or received under contract, lease, or bailment, or affects his liability as a surety or endorser. If a waiver of the protection accorded to persons secondarily liable is made after October 6, 1942, to be effective it must be by separate instrument. If it is made before an order to report for induction or before entrance upon military service, it becomes invalid where the one executing it subsequently becomes a person in the military service.

4. Time When Benefiits May Be Claimed

Unless otherwise provided, the time within which the benefits of the Act may be claimed is coterminous with the period of military service. Other specific limitations are expressly or im-

pliedly given in connection with particular rights or remedies which extend the time to apply for relief after termination of military service for various periods of time from 60 days to one year. To a limited extent the benefits of the statute have been extended to persons ordered to report for induction or military service. Thus any person who has been ordered to report for induction and in the case of members of the Enlisted Reserve Corps, any person who has been ordered to report for military service, is entitled to claim the relief and benefits accorded persons in the military service under articles I to III of the Act.

PARTICULAR RIGHTS AND REMEDIES

Broad Discretionary Power Given To Courts

5. Actions and Proceedings May Be Stayed at Any Stage Thereof

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

6. Fines and Penalties

When an action for compliance with the terms of any contract is stayed pursuant to the Act, no fine or penalty shall accrue by reason of failure to comply with the terms of such contract during the period of such stay and in any case where a person fails to perform any obligation and a fine or penalty for such non performance is incurred, a court may relieve against the enforcement of such fine or penalty.

7. Stay of Execution, Attachments or Garnishments.

In any action or proceeding commenced in any court against a person in the military service, the court may similarly

(a) stay the execution of any judgment or order entered against such person, and

(b) vacate or stay any attachment or garnishment of property, money or debts in the hands of another whether before or after judgment as provided in the Act.

8. Stays May Be for Period of Service and Three Months.

Any stay of any action, proceeding, execution or attachments ordered by any court under the provisions of the Act, may be ordered for the period of military service and for three months thereafter and for such lesser time and on such terms as in the opinion of the court may be proper.

9. Debts Before Service May Be Suspended and Paid After Service in Instalments.

Enforcement of any debt incurred before service may be stayed so that the principal plus accrued interest may be paid off after service in equal instalments over a period equal to the full period of service, upon application to a court during service or within six months thereafter.

10. Income Taxes Postponable.

Payment of State or Federal Income Taxes due before or during service may be deferred without interest until six months after service and may be made payable after service in equal instalments over a period equal to the full period of service upon application to a court during service or within six months thereafter.

RALPH RINKER

President, Kansas Title Ass'n.
Manager, Barton County Abstract and Title Co.
Great Bend, Kansas

11. Taxes on Real Estate and Personal Property Postponable: Redemption.

No tax sale shall be made and no proceeding to sell shall be commenced for taxes or assessments falling due before or during service on personal property of a person in service or on real estate owned and occupied by him or his dependents for dwelling, professional, business or agricultural purposes when he entered service and still so occupied by his dependents, or employees, unless the tax collector obtains permission of the court which may stay the sale or proceedings until six months after his service ends. He may also be allowed to pay taxes with accrued interest after service in equal instalments over a period equal to the full period of service, if he applies to a court during service or within six months after it ends. If such property is lawfully sold for taxes, it may be redeemed or a suit to redeem it may be commenced within six months after service ends.

12. Evictions.

No eviction or distress may be made as to any premises occupied by the dependents of a person in the military service primarily for dwelling purposes where the agreed rental therefor does not exceed $80.00 per month, except under order of the court.

13. Leases May Be Terminated.

Leases made before service of premises occupied for dwelling, professional, business, agricultural or similar purposes may be terminated at any time during service by mailing or delivering to the landlord or his agent a written notice of termination and the effective date of such termination shall be 30 days after the next rental payment date after notice is given in the event that the rent reserved under the lease is payable monthly. If the rent is not payable monthly the effective date of such termination is at the end of the month succeeding the month in which the notice is given.

14. Instalment Purchases.

If an instalment or deposit was made under a contract with a view to buying real or personal property and the prospective purchaser later enters military service, the seller cannot exercise any option under such contract for the cancellation or recision thereof except under order of the court.

15. Life Insurance Pledge Protected.

If life insurance was assigned and pledged before service to secure payment of an obligation of the insured, the assignee thereof is prohibited from exercising any rights under such assignment during the insured's period of service and one year thereafter unless premiums are unpaid or unless the insured dies, except by permission of the court.

16. Obligations Secured By Mortgages or Trust Deeds.

As to any obligations secured by mortgages or trust deeds on real or personal property which a person owned when he entered service and still owns, where the obligation originated prior to service, in any action or proceeding in any court to enforce the payment of such obligation, the court may stay any such action or proceeding or make such other disposition of the case as may be equitable to conserve the interest of all parties. No sale, foreclosure or seizure of property of a person in the military service, whether under a power of sale or under a judgment entered upon a warrant of attorney to confess judgment or otherwise shall be valid if made during service, after October 6, 1942, or within three months after service ends, except on an order previously granted by the court and a return thereto made and approved by it.

17. Storage Liens.

A lien for storage of household goods, furniture or personal effects of

a person in the military service may not be enforced or foreclosed during such person's period of military service and for three months thereafter except on order of the court.

18. Default Judgments.

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 military service or that plaintiff is not able to determine whether or not the defendant is in such service. If an affidavit is not filed showing that 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. Unless it appears that the defendant is not in such service the court may require, as a condition before judgment is entered, that the plaintiff file a bond approved by the court conditioned to indemnify the defendant, if in military service, against any loss or damage that he may suffer by reason of any judgment should the judgment be thereafter set aside in whole or in part. If any judgment shall be rendered in any action or proceeding governed by this action against any person in military service during the period of such service or within thirty days thereafter, and it appears that such person was prejudiced by reason of his military service in making his defense thereto, such judgment may, upon application, made by such person, be opened by the court rendering the same and such defendant or his legal representative let in to defend provided it is made to appear that the defendant has a meritorious or legal defense to the action or some part thereof. Vacating, setting aside, or reversing any judgment because of any provisions of this Act shall not impair any right or title acquired by any bona fide purchaser for value under such judgment.

20. Extension of Statute of Limitations.

The period of military service shall not be included in computing any period now or hereafter to be limited by any law, regulation, or order for the bringing of any action or proceeding in any court or bureau, commission, department or other agency of government by or against any person in military service, nor shall any part of such service which occurs after the date of enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942 be included in computing any period now or hereafter provided by any law for the redemption of real property, sold or forfeited to enforce any obligation, tax or assessment.

CONCLUSION

Let us now consider the effect on the rights of a person in military service:

I. In relation to whether he was personally served or served by publication in the action, and

II. Assuming that all of the requirements of the Soldiers' and Sailors' Civil Relief Act were fully complied with in the action, and

III. Assuming that in such action there was a failure on the part of the plaintiff to comply with the provisions of the Act.

With respect to whether the rights of the person in military service are any different depending upon whether jurisdiction over him was obtained in the action by personal service or service by publication, it is my opinion that the method of obtaining jurisdiction, whether by personal service or by publication, has no bearing on the question as long as jurisdiction over such person was properly obtained under the law of the state in which the property is located. Congress in enacting the Soldiers' and Sailors' Civil Relief Act obviously did not intend to change the law of the various states, territories and possessions of the United States applicable to real property. Indeed, if it attempted to do so, it is improbable that any such attempt would be held to be a valid exercise of its powers under the constitution.

If in the judicial proceeding in the problem all the provisions of the Soldier's and Sailors' Civil Relief Act were complied with the title of the bona fide purchaser for value cannot be attacked by reason of the military service of the defendant even though the said defendant may, for good cause shown, obtain an order vacating or reopening the judgment under which the property was sold. The title to the property acquired under problem C would be subject however to redemption by such person in the military service during the statutory redemption period as extended by that period of military service under the provisions of Section 205.

If, however, the provisions of the Act were not complied with it would seem that under the provisions of Section 200, dealing with default judgments, the rights of the person in the military service have not been conclusively barred by the judgment duly entered in said action. Under this section of the Act it is required that as to any action or proceeding in any court in which there is a default on the part of the defendant to appear in said action or proceeding, affidavits stating whether said defendant is or is not in such military service are required and where it does not appear from the affidavit filed that the defendant is not in such service no judgment may entered except on order permitting the entry of such judgment and no such order may be made, where the defendant is in the military service, unless prior thereto the court shall have appointed an attorney to represent the interest of said defendant in the action or proceeding. Congress in enacting the law undoubtedly intended that as to those actions or proceedings in which judgments would be entered by default, the utmost protection should be given to any such absentee defendant in the military service and the language of the section clearly indicates that compliance with its provisions is necessary in order to effectively and conclusively bar the rights of such person in the military service as to the property involved. The courts have held that title to any such property acquired by any person under a default judgment, where the provisions of the statute were not complied with, is not void, but is voidable at the instance of the service man upon a proper showing of prejudice and injury; that the Act was intended solely for the benefit of persons in the military service and non compliance therewith cannot be a basis for a collateral attack on the validity of the judgment granted. Therefore, in situations A, B and C it would seem that the title to the property in the hands of the purchaser under the judgment in the action is voidable on a showing of prejudice and injury; however, in situation C, where there is a right of redemption under local law for the repossession of the property, and the defendant does not choose to attack the validity of the judgment, he has the benefit of Section 205 which provides that no part of the period of military service after October 6, 1942, shall be included in computing any time allowed by law for the redemption of real property sold or forfeited to enforce the payment of any obligation, tax or assessment. This provision of the Federal Statute must be regarded as written into our statutes of redemption and in effect amending such statutes by giving additional time for redemption in certain cases. It would apply in this situation and it is not merely directory or permissive, but is imperatively controlling and automatically extends the period of time allowed for redemption in all cases coming within the application of its terms.

MR. HORN: Thank you very much Mr. Berry for a full coverage of the question.

MR. FAIRFIELD: I want to ask about Subdivision 4 of Section 200, which provides that insofar as the bonafide purchaser is concerned, the setting aside or reversing of any judgment shall not impair his rights. We are involved here in a question of a bonafide purchaser. Why isn't the answer to question A and B that A doesn't have any rights against this property?

MR. BERRY: I think the answer to that is that the provision of the last section of Subdivision 4 is conditional upon the compliance of the plaintiff in the action with the provisions of the balance of the section. That is, that a plaintiff who disregards the directive contained in the Act to do these various things—filing an affidavit, getting the order permitting his entry of judgment, having an attorney appointed to represents the interests of the defendant—I think if he fails to comply with those provisions, he is not entitled to the benefit of the last section.

No. 4: "A owns the premises in question, which are subject to a condition subsequent with right of re-entry for breach, as created by a deed in the early chain of title, that the said premises shall not be used for the sale of intoxicating liquor. A desires to execute a mortgage on the premises, but the mortgage man refuses to make the loan if his policy will be made subject to the said condition. It is not possible to locate the persons having the right of re-entry so as to procure a release. What procedure can be followed?"

MR. LANDELS: I think we can cover this briefly. That will depend upon the law of the particular jurisdiction. I think the only procedure in Calofirnia would be a procedure to quiet title. Under the facts stated here the plaintiff would not make out a case, but if he should make out a case and should obtain a judgment, I think we would be willing to insure the title. There have been two or three recent District Court of Appeals cases in California which have treated conditions subsequent to this character as equitable servitude and refused to enforce them where the holder of reversionary interest had parted with all title to any portion of the tract of which the particular premises constituted a part.

Those decisions, I think, are held in the right direction.

MR. HORN: Thank you, Mr. Landels. We will ask Mr. Taylor to take Question No. 5.

No. 5: "A died in 1940. At the time of his death, he owned the premises in question in joint tenancy or by the entireties with B, his wife.. A's estate was duly administered and closed in 1942. A Federal Estate tax return was filed and a tax paid, but the premises in question were not scheduled on the theory that A's interest therein was not taxable. Thereafter in 1945, B conveys the premises to C, who pays full value therefor. (a) Can the United States enforce a lien for Federal Estate taxes against the premises in the hands of C? (b) Assuming that B executes a mortgage of the premises to M, can the Government enforce a lien for Federal Estate taxes on the premises prior to the lien of M's mortgage?"

MR. TAYLOR: The I.R.C. Chapter 3 effective in the estates of decedents dying after February 10, 1939, includes all estate tax laws in force as of January 2, 1939; thus the provisions of said chapter will apply to the given situation without taking into consideration change of rates and additions made in the 1942 act, specifically including community property.

Section 802 makes all of the provisions of the chapter applicable to the estates of citizens or residents of the United States with certain exceptions, which do not affect the question under consideration.

Section 811 I.R.C. provides that the value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated, except real property situated outside of the United States—

Sub-paragraph (e) reads:

(e) Joint and Community Interests.

(1) Joint Interest.—To the extent of the interest therein held as joint tenants by the decedent and any other person, or as tenants by the entirety with the decedent and spouse . . . except such part thereof as may be shown to have originally belonged to such other person and never to have been receieved or acquired by the latter from the decedent for less than adequate and full consideration in money or moneys worth . . .

Section 827 I.R.C. provides as follows:

(a) Upon Gross Estate.—Unless the tax is sooner paid in full, it shall be a lien for ten years upon the gross estate of the decedent, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien. . . .

Sub-paragraph (b) of Section 827 pertains to transfers intervivos and makes the transferee personally liable for payment of the tax. This provision was amended by the Revenue Act of 1942, which I will discuss later.

Section 825 provides for the release of the Executor from personal liability if application is made therefor as provided by the code and regulations. In our instant question this section need not be considered.

It can thus be seen that the lien imposed by Section 827 attaches at the date of the decedent's death to every part of the gross estate, whether or not the property comes into the possession of the duly qualified executor or administrator. It attaches to the extent of the tax shown to be due by the return and of any deficiency tax found to be due upon review and audit.

The lien upon the entire property constituting the gross estate continues for a period of 10 years after the decedent's death, except—

(a) If the tax is paid in full before the expiration of such period.

(b) Such portion of the gross estate as is used for the payment of charges against the estate and expenses of its administration allowed by any court having jurisdiction thereof.

(c) Such portion of the gross estate as has passed to a bona fide purchaser for value if payment is made of the full amount of tax determined by the Commissioner pursuant to a request of the Executor for discharge from personal liability, in which case the lien is substituted upon the consideration received from such purchaser.

(d) Such property as was received from the decedent as a transfer by trust or otherwise in contemplation of or intended to take effect in possession or enjoyment at or after his death or under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not, in fact, end before his death (1) the possession or enjoyment of, or the right to the income from the property or (2) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or income therefrom (except in case the transfer was a bona fide sale for an adequate and full consideration in money or money's worth), and was sold by the Transferee or trustee to a bona fide purchaser for such a consideration. In such case the lien attaches to all the property of the transferee or trustee except such thereof as may be sold to a bona fide purchaser for such a consideration.

(e) If a certificate releasing such lien is issued.

There have been a great many cases before the courts with reference to the lien of the Federal estate tax. Its constitutionality as regarding property held jointly was sustained by the Supreme Court of the United States in Quinn v. Commissioner in 1932 287 US 224, 53 S Ct. 332.

The section of the statute as originally enacted in the Revenue Act of 1916 remained unchanged in the Revenue Act of 1918. The Revenue Act of 1921 added a new provision with respect to property acquired by less than a fair consideration or by property acquired by gift, devise or inheritance. The section as presently in the I.R.C. was enacted in the Revenue Act of 1924 and the Revenue Act of 1926. The Revenue Act of 1942, Section 402, amended Section 11 (e) by adding a new paragraph relative to community property.

There seem to have been a number of cases dealing with the priority of the government's lien over that of a mortgage placed on the property subsequent to death. In the United States v. Security First National Bank of Los

Angeles, decided in 1939, the following are the facts: The decedent died February 13, 1926. No return was filed until February 2, 1933. On August 11, 1933, a notice of lien under Section 3186 Revised Statutes (now Section 3670-3677 I.R.C.) was filed. There was a deed of trust to the Title Insurance and Trust Company prior in date to August 11, 1933. The court resolved the question into two propositions, viz: 1. If the lien was created as of the date of death then the Government prevails as against the deed of trust. 2. If the lien was created as of the filing of the notice of lien under Section 3186, then the owner of the deed of trust would take free of the government's lien.

The court stated that the lien took effect as of the date of death; that a tax lien can arise but once; that such lien can have only one effective date of beginning; that the lien was created by Section 315a of Revenue Act of 1924 (being the same as Section 827 of the I.R.C.); that notice under 3186 is not needed to create a lien.

The court held that the lien of the government attached as of February 13, 1926, to all of the property of the estate and that it is good as against subsequent encumbrancers; the court also held that the proceeds of the trust deed used to pay approved claims and expenses, which Trust deed was executed prior to notice of assessment, was prior to government lien but that additional funds loaned on a renewal of the Trust Deed on September 7, 1934 (being subsequent to the filing of the notice under Section 3186) were subject to the government lien because those funds were advanced after the notice under Section 3186 had been filed. The court used the theory of Equitable Conversion to arrive at this portion of its decision on the theory that under Section (b) above referred to such portions of the estate used to pay authorized claims would have been released and therefore the funds used for such purpose would have been released and the lien of the mortgage or trust deed by which such funds were required were also free of the lien.

A similar holding as to the date of the lien attaches was announced by the court in case United States v. McGuire, decided in 1941, 43 F Supp. 337. In that case the deceased died December 10, 1930.

In United States v. Paul, 41 F Supp. 41, there were the same general holdings concerning the date of lien and the recordation of notice and in addition the court held that notice of lien under Section 315a, Revenue Act of 1926, need not be recorded in order for said lien to prevail against subsequent purchasers, mortgagees and judgment creditors; however, in that case all of the subsequent purchasers were heirs or made transfers among themselves and were held not to be purchasers for value.

The facts in this case were reviewed again by the Supreme Court in Detroit Bank v. United States, 87 L ed 304, and Michigan v. United States (being a companion case on the same facts), 87 L ed 312, in which decision the Supreme Court reviews the whole subject of estate tax liens and recites the re-enactment by Congress of the same section concerning the creation of the lien, arriving at the conclusion that such re-enactments, some of which were subsequent to the provisions concerning general liens of the United States, had the effect of determining that notice under Section 3186 is not needed. It was specifically held that an estate by entireties is included in the gross estate and that a subsequent mortgage is inferior to the United States lien and by implication that a subsequent purchaser for value takes subject to the lien except in the case of a bona fide purchaser for value of property transferred intervivos by the decedent in contemplation of death. The Court further held that as to property which has been released by the Commissioner under the provisions of Section 315a, no subsequently determined tax would be prior to a purchaser for value.

I have found no case in which the question was raised as to the lien of the tax against a purchaser for value, consequently I assume that the provisions creating a lien on all of the property has not been disputed and that no subsequent purchasers have attempted to defend the property against such a lien.

I therefore conclude that the answer to Question (a) "Can the United States enforce a lien for Federal Estate taxes against the premises in the hands of 'C'?" is "Yes," and the answer to Question (b) "Assuming that B executes a mortgage of the premises to M, can the Government enforce a lien for Federal Estate taxes on the premises prior to the lien of M's mortgage?" is "Yes" unless the proceeds of the mortgage were used for the payment of charges against the estate and expenses of its administration allowed by any court having jurisdiction thereof.

This discussion should also cover the situation which might arise since the amendment in 1942.

Sub-paragraph (b) of Section 872 was amended by that act affecting estates of decedents who died after October 21, 1942, and that makes an additional exception as follows:

(e) In case the decedent died after October 21, 1942, the date of the enactment of the Revenue Act of 1932, such property as was included in the gross estate under the provisions of Section 811 (b), (c), (d), (e), (f), or (g) and was sold to a bona fide purchaser for an adequate and full consideration in money or money's worth by the spouse, transferee, trustee, surviving tenant, person in possession of the property by reason of the exercise, nonexercise, or release of a power of appointment, or beneficiary. In such case the lien attaches to all the property of the spouse, transferee, trustee, surviving tenant, person in possession of the property by reason of the exercise, nonexercise, or release of a power of appointment, or beneficiary, except such thereof as may be sold to a bona fide purchaser for such a consideration.

I have found no case since that time determining the priority of liens as to a purchaser from a surviving spouse.

It would appear from the provision that any part of such property sold by such spouse or surviving tenant to a bona fide purchaser for an adequate and full consideration in money or money's worth shall be divested of the lien provided in Section 827a and a like lien shall then attach to all property of such spouse or surviving tenant except any part sold to a bona fide purchaser for an adequate and full consideration in money or money's worth that the intention is to release property sold by such surviving spouse or surviving tenant.

It is difficult for me to believe that the Government intends to release its lien in such cases. The inclusion of the words "a bona fide purchaser for an adequate and full consideration in money or money's worth" may be the joker. If so, the decision would depend upon the definition of a bona fide purchaser. If all that is meant is a purchaser in good faith who pays the fair value of the property and goes into possession of the same without actual knowledge of the lien, then the way is open to insure a great many titles. On the other hand, if by "bona fide purchaser" they mean a person who purchases without notice either actual or constructive, then the new provision means nothing.

It would appear to me that the only safe procedure to follow from a title point of view is to require a showing that the tax has been paid and the property was included in the return or obtain a specific release of the property as provided by Section 3674 I.R.C.

Question No. 6

A, an honorably discharged serviceman, desires to purchase the premises in question. In order to complete the transaction, it is necessary to obtain a loan. Accordingly, A, together with his wife, B, execute a mortgage which is insured pursuant to the provisions of the Servicemen's Readjustment Act of 1944. It appears, however, that A is 20 years old and that B is 17 years old and that under the State laws, contracts, etc., by a male under the age of 21 years and by a female under the age of 18 years, are voidable. Is the mortgage in question subject to the objection that it is voidable?

C. H. BONNIN, Title Attorney, Metropolitan Life Insurance Co., New York:

To assist veterans in purchasing homes or farms or to go into business for themselves Congress passed the

Servicemen's Readjustment Act of 1944 which was amended by Public Law 268. This Act provides a means by which veterans may more readily borrow money from lending agencies, since it guarantees to such lenders the repayment of a portion and in some instances of the whole of the money borrowed. Title III of this Act provides that any person who has served in the active military or naval service of the United States at any time on or after September 16, 1940, and who has received an honorable discharge after service of ninety days or more by reason of injury or disability incurred in the service in line of duty shall be eligible for the benefits of Title III of the Act.

An eligible veteran may apply at any time within ten years after the termination of the war for the guaranty or insurance of a loan.

Under this Act the veteran in question would be entitled to apply for a loan. To determine whether he could enter into a valid contract for such a loan in connection with which the lender would obtain a guaranty from the Administrator of Veterans Affairs, attention should be given to the 1944 Supplement of the Code of Federal Regulations of the United States of America, Title 38, Part 36, Sec. 36.4008, subparagraphs (b) and (c), which provides as follows:

'(b) The law of the State where the contract is made determines the capacity of the parties to contract. Similarly the law of the State wherein the real estate is situated determines the capacity of the mortgagor to encumber and of the mortgagee to hold the legal rights resulting from encumbrance. The act does not modify such law of the State. The guaranty by the Administrator will be available only in the event that under the applicable State law the contract between the borrower and the lender is binding on both and the mortgage has the legal effect intended. This paragraph will be applicable particularly in cases involving miners, 'persons of unsound mind,' and persons under other legal disability by reason of the law of the State. It will be applicable also in cases involving mortgage or other loans which any guardian, conservator, or other fiduciary seeks to make, or obtain; and to a guaranty thereof for which application is submitted.

(c) Type of loan and mortgage: (1) Except as otherwise provided in paragraph (a) (which pertains to loans that do not exceed $500.00 and where lender does not require a mortgage) of this section, each loan guaranteed under the provisions of Title III must be evidenced by a note or notes secured by appropriate security instrument or instruments ('mortgage legally sufficient in the jurisdiction in which the property to be encumbered is situated')."

In the instant case the veteran is twenty years old and his wife is seventeen years old. Since the State Law in question provides that a contract by a male under the age of twenty-one and by a female under the age of eighteen is voidable and the regulations hereinbefore cited provide that the law of the State determines the capacity of the mortgagor to encumber and of the mortgagee to hold legal rights resulting from such encumbrance, the mortgage in question would be voidable.

Many of the States have passed laws which remove the legal disability of minors.

In the following States both the veteran and the spouse of the veteran may contract fully in connection with Section 501 of the Servicemen's Readjustment Act of 1944 as amended:

Alabama
Arizona
District of Columbia
Illinois
Indiana
Kentucky
Michigan
Maine
Mississippi
Missouri (if 18)
New Jersey (if 18)
*New York
North Carolina
Ohio
Pennsylvania (if 17)
Rhode Island
South Carolina
South Dakota
Tennessee
Utah
Wisconsin

*In New York State an amendment to the Banking Law provides that a "veteran eligible for the benefits of Title III of the Servicemen's Readjustment Act of 1944 and the spouse of such veteran, regardless of the minority of either or both and without limitation of the powers of any such person who is of full age shall each have the power to enter into and contract for a loan or loans to such veteran pursuant to such title and make and execute notes, mortgages and other instruments. Notwithstanding any contrary provision or rule of law, no such veteran or spouse shall have the power to disaffirm, because of minority, any act or transaction which he or she is hereinabove empowered to perform or engage in, nor shall any defense based upon such minority be interposed in any action or proceeding arising out of any such act or transaction."

In view of the fact that this provision appears as an amendment to the Banking Law, there is a doubt in the minds of some attorneys and title men as to whether other lending institutions are protected on loans to minors. One title insurance company has agreed to undertake the risk on a case basis but others have refused to insure such a risk. The doubt can be removed only by judicial decision or legislative amendment or both. A title company in Philadelphia indicated regardless of the fact that Pennsylvania has a Statute removing the disability of minors, said company would not undertake the insurance of such a risk until the Supreme Court of the State of Pennsylvania had passed favorably upon it.

In the following States the veteran is empowered so to contract but the minor spouse of the veteran is not:

Arkansas
Colorado
Connecticut
Georgia
Idaho
Kansas
Vermont
Louisiana
Massachusetts
Minnesota
New Hampshire
Oklahoma
Wyoming (if 18)
Texas (if 18)

Several States have endeavored to assist the minor veteran in the purchase of a home by legislation adapted to the individual States' requirements, for example:

Amendment passed in 1945 to Code of California on Military and Veterans affairs under which any veteran who is under the age of twenty-one years shall be deemed to be of the age of majority and be an adult person for the purpose of entering into any contract for the purchase of a farm or home from the Board or any other contract with respect to such property. This relates only to veteran minors obtaining loans under a farm and home purchasing program inaugurated by the State of California.

It is interesting to note that some states, notably Iowa, have for some time provided that disability of minority is removed by marriage.

Virginia has adopted a law under which a minor veteran and a minor spouse of a veteran ,if they are eighteen years old, may so contract, provided the Circuit or Corporation Court of the City or County in which the property is located gives its approval in a proceeding which is initiated by the filing of a petition signed by the minor or minors setting forth the facts pertaining to the proposed transaction and stating why the Court should approve the execution of the necessary instruments. A guardian ad litem has to be appointed to investigate and report in writing to the Court, and the petition may not be approved except upon recommendation of the guardian ad litem and of at least two disinterested and qualified witnesses appointed by the Court.

Title 96, Article 5921a of the Laws of 1945 for the State of Texas provides "where it shall appear to their material

advantage veterans may have their disability of minority removed and be thereafter held for all legal purposes of full age except as to the right to vote."

We may conclude from the foregoing that there is evidence that the legislatures of nearly all the States have passed or are giving consideration to legislation which will aid the veteran in obtaining a home. It is apparently a fundamental belief that if a person's minority was no bar to the nation's right to call on him for service to his Country, the same minority shall not be a legal disability which will bar him from some of the benefits enjoyed by his compatriots of full age.

Open Forum Legal

(1946 Convention)

FRANK I. KENNEDY

President,
Abstract and Title Guaranty Company,
Michigan, Presiding

MR. KENNEDY: I imagine this program was prepared before November 5th because there have been no questions submitted for propounding to those in attendance at this forum. I understand, however, that our friend, Bill Kinney of Cleveland is here, and that he has a very good one with which to start us off.

MR. FRED R. PLACE, Columbus, Ohio: That proposition just raised about the common construction of two buildings brings up a situation that is bothersome in the eastern part of the county. The facts would be these: Common owner erects a flat of four or five or six units, two stories, having common walls. They are now being divided and sold to G.I.'s as separate ownership. Nothing in the deed excepting the producer's survey showing the division lines of the property go down the center of the wall, but there is no provision for reciprocal easement, for utilities, party wall rights, maintenance of the wall, or any of those things that should accompany it. I am wondering what other companies are doing when running into those situations and issuing ATA policies. The survey reveals the wall is divided.

MR. WILLIAM KINNEY: Fred Place asks where there was a four-family building, for instance, and the owner was selling the separate units that they had run across instances where party wall rights might be important because of the fact that the description merely went down the center line of the party wall.

We have had several requests in Cleveland on separate units of that type. We have turned them all down. The thing that worries us goes even deeper than the matter that Mr. Place has called attention to. We realize that the question of easements, use of common areas like hallways and stairways, entrances and so forth, are troublesome, but they can be worked out. There is a solution for them.

The question which disturbs us, however, is along this line: Assuming—and I stress the word "assuming"—that a fee simple title can be carved out and conveyed of a piece of property which amounts to no more than a cube of air space even though that cube be at the present occupied by an apartment, or by the second floor of a house. How is such a cube to be safely and accurately described? It is limited purely by horizontal and vertical planes; and when you come to those horizontal planes, is there any safe form of description other than one that refers to sea level or government geodetic surveys? After all, a plane fixed by a ground measurement would certainly be an indefienite plane to rely on.

FRANK I. KENNEDY

In Cleveland, I think this matter of the use of air rights came up as early as anywhere in the country. Our Union Terminal above a certain horizontal plane is purely an air tight proposition. But even there it is not a fee simple title. The supports of that building are on pillars and the fee ownership of the ground supporting those pillars in turn is owned by the company, that is, the lessee of the terminal building.

Suppose that you do describe the property, and that the unit you are describing is the top unit of a building, and the owner who is splitting up the building has sold out every single solitary unit. What about the air space above that? If he still owns it, can he, regardless of the purchaser of the separate unit, go ahead and build other floors above the now existing floors?

And again, just for one other thing that worries us, suppose that the building is completely demolished. What are the respective rights of the various owners of these separate units?

Now I realize that it may be pure dumbness on the part of us in Cleveland not to have an immediate and simple answer to those basic questions; but, frankly, we haven't been able to reach one. If any of you folks, either through experience or happy inspirations, can start us off in the proper line of thinking that would enable the Cleveland companies to insure such units, we would be very happy.

MR. EISENMAN: We have had that in Kansas City. It was a rather mixed up proposition. Before we would insure in this case we had each one of the clients come to the office and we explained exactly what they were getting, and we insured for that and no more.

Those policies can be issued, and you are safe on them; but unless you have people in and make sure that they understand what they are doing and have them sign a written statement to that

effect, you are in a position of having a lawsuit over every one of them.

What Fred Place asked about was slightly different from what Mr. Kennedy discussed here. Fred had the case of four buildings with three walls separating the buildings. Those walls were party walls. I take it there was no provision for party wall rights for maintenance costs or anything of that sort or, for instance, to rebuild that wall in the event it was destroyed.

The thought occurs to me that without any provision whatever with respect to party wall rights, you have just got to make an exception in there that makes the fellow's policy absolutely useless insofar as party wall rights are concerned.

There were no provisions for maintenance or use or anything else?

MR. PLACE: That is correct.

MR. EISENMAN: You got into the deal after the conveyances were made then. I have taken the position you can insure anything a man has if you properly describe it. By implication when a common owner divides such a building up into four units, the walls straddling the lines of ownership become party walls. That is, if you are on one side and I am on the other, I can't tear my half down.

MR. PLACE: The question came up as to what kind of an exception you should put in the policy.

MR. EISENMAN: They party wall easement is there, but there is no definition of the respective parties' rights or obligations with respect to them.

MR. KENNEDY: I think we should hear more about the party wall question, but we have the problem propounded by Mr. Kinney. He has got something more difficult to handle in the nature of reciprocal easements.

MR. KINNEY: If I understood you right, I don't believe that the setup that you had in your area is the setup that I have in mind in Cleveland. Our setup, as suggested by the owners, is not a cooperative proposition. There is no basic agreement; there is no basic trust; there is nothing.

Here is an owner with a sixty suite apartment, and he says to this G.I., "I will sell it to you, this apartment No. 42, way up there on the roof. I will sell it to you in fee." Then that owner comes in to us and the G.I. comes in to us and asks whether we will insure the title to that unit No. 42 that is somewhere up there in the air.

It is to be assumed that some type of description which limited the estate and the property which was going to be conveyed would be devised. It is also to be assumed that so far as reciprocal rights and easements are concerned, they would be worked out. The problem that disturbs us, and which I mentioned, still remains despite all of those things.

MR. EISENMAN: You are right, but in selling a man unit No. 42 on the 14th floor, or wherever it happened to be, it is to be assumed along with that grant or conveyance of that apartment it would have to be described in addition. He must be given in the same instrument or by other instruments rights of ingress and egress through certain parts of that property and he should be given a proportionate interest in the land itself, so that when the entire property was sold out by the original common owner, the individual owners of all these units would all get something.

MR. KENNEDY: What happens when times takes its inevitable toll, and the building has lived out its usefulness, and it is about ready to be torn down? What are the rights of these fellows then? Who decides of all these sixty tenants that the building must be torn down, and what happens to that air space when it is torn down?

MR. KINNEY: When somebody succeeds in devising an instrument that takes care of our local situation, we will give it very careful consideration; but in the meantime, it is going to be "thumbs down" on insuring any of those units.

MR. J. F. HORN, Minneapolis: I have one that is exactly the same thing. Perhaps a little more simple. A friend of mine, wanting a place to live and being unable to dispossess anyone under the OPA rules unless he was a purchaser, looked around for housing. A friend of his owned a house that was at least twenty-five years old—a rather large house. He had access to materials and the workmanship to convert it into a duplex. The house was converted into a duplex, and the friend proposed to sell him the second floor flat on a twenty-five year old building. He asked if that was insurable; and for one case, I didn't want to go into the thing. It is exactly the same problem, because one would know that that house would probably not be there for very long, and I doubt if either one of them would maintain or want to maintain it much after the housing question was over.

What would be the state of the man who bought the second floor if that duplex burned down or fell down?

MR. KENNEDY: There are some air right agreements which have been in effect for some time.

MR. EISENMAN: We have always discouraged that kind of conveyance. If the instrument defines and describes an interest at all in real estate, you can insure whatever that is. There is nothing hard about that, but they must first prepare their instrument and describe what is to be insured.

Membership and Organization Committee Report

Co-Chairmen:

Roy C. Johnson, *President,* Albright Title & Trust Co., Newkirk, Okla.

J. W. Goodloe, *President,* Title Insurance Co., Mobile, Ala.

MR. ROY C. JOHNSON: As a result of additional income from the new dues schedule, the Association has been able to provide many new and additional services to its members. This committee, realizing what an excellent opportunity this situation presents, has attempted to take advantage of this circumstance to increase our membership.

Several months ago a list was made up of all of the delinquent and former members. These lists were prepared and sent to the different Secretaries and Presidents of the State Associations, who in turn, were requested to check over the list, eliminating any companies that were no longer in existence and add new companies that might be eligible for membership.

As a result of those lists having been corrected by someone who had definite knowledge regarding these facts, we were able to write letters to prospects. Letters were mailed to approximately 1,000 prospects.

Actual results of these letters is not known for the reason that we had no way of keeping an accurate record of how many members we were able to retain who were delinquent only for 1946. It is felt that a good many members did come back into the Association and that a great number of delinquent dues were collected.

The Membership Committee would like to express the thought to each and every member of the Association that they shall be actively interested in the activity of this particular committee in obtaining new membership throughout the entire country. We are firmly of the opinion that in larger numbers we have a greater strength and as a result, a more adequately financed program and consequently can provide a better service to our entire membership.

In Memoriam

DONZEL STONEY

February 1st, 1870
December 21st, 1946

The passing of Donzel Stoney is observed in sorrow. He was nationally known in our profession.

Mr. Stoney was born in Napa County, California, in 1870. He was an original incorporator of the Title Insurance and Guaranty Company, of San Francisco,

and served it in various capacities. He was its President at the time of his death.

Mr. Stoney was President of the California Land Title Association in 1922-1923. An unquestioned leader in the title profession, he served the American Title Association in many capacities and on many committees, culminating in serving as National President in the 1929-1930 term.

JAMES M. ROHAN

February 18th, 1867
January 16th, 1947

We report, with regret, the passing of a veteran title man, James M. Rohan, Chairman of the Board, Land Title Insurance Company, St. Louis, Missouri.

Mr. Rohan started his long and distinguished career in the title profes-

sion over a half century ago. He was active in civic and title affairs of St. Louis and Missouri, having served as President of the St. Louis County Chamber of Commerce and President of the Missouri Title Association.

His contributions to the American Title Association were many and varied extending over a score of years.

Mr. Rohan is survived by his widow, Mrs. Mae Wathen Rohan and six sons

H. LAURIE SMITH
1887 — 1947

His many friends and associates—and their number is legion—will learn with regret of the passing to his eternal reward of H. Laurie Smith, of Richmond, Virginia, on March 28th, 1947.

Founder and President of the Lawyers Title Insurance Corporation, of Richmond, Virginia, Laurie Smith

served our profession on innumerable occasions. His work is written into the work of many Committees, of the Title Insurance Section, of which he was Chairman, and in his service as National President. Upon his return to the ranks, he again took up committee work on which he was engaged up to the time of his death.

He is survived by his wife, Mrs. Mary Hawes Tyler Smith, and three daughters, the Misses Mary Laurie, Keith Marshall and Lydia Lewis Smith.

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.