TITLE NEWS

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THE AMERICAN TITLE ASSOCIATION

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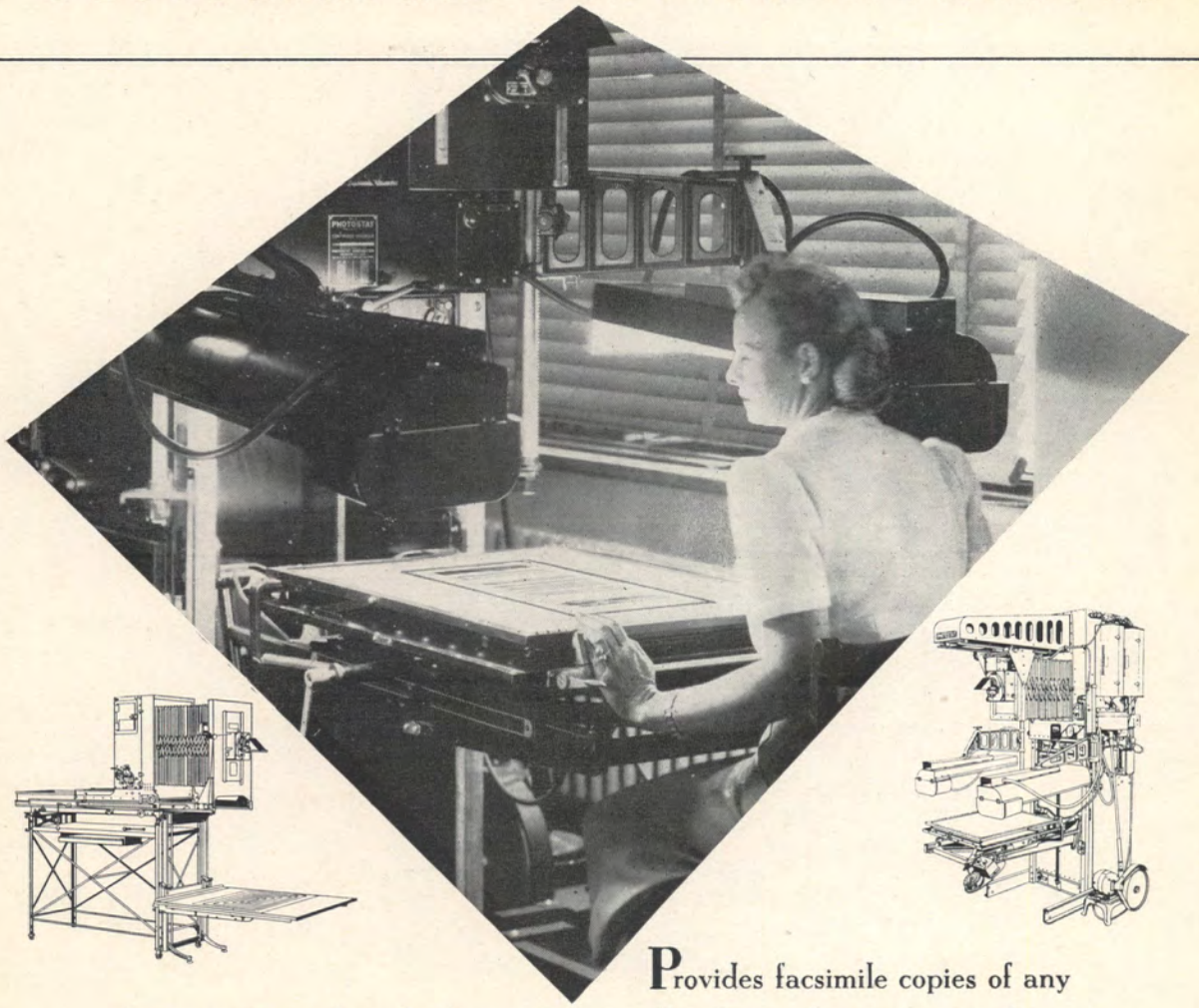

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3608 Guardian Building — Detroit 26, Michigan

VOLUME XXVIII FEBRUARY, 1949 NUMBER 3

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Federal Legislation Concerning State and Gift Tax Liens

WILLIAM R. KINNEY

Chief Title Officer
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Cleveland, Ohio

My comments this afternoon upon the subject of Federal Estate and Gift Taxes will be limited to some of the high spots of the Revenue Act of 1948 and to certain proposed legislation concerning such taxes which has already been advocated before at least one Congressional committee. I am going to assume that we have all been sufficiently harassed by the law heretofore in effect as to be familiar with most of its essential provisions.

The Revenue Act of 1948 has substantially changed the old law concerning Federal Estate and Gift Taxes in some particulars. These changes are designed to equalize the burden of such taxes in common-law and community-property states by taxing the residents of all states substantially as though they were subject to the rules of community property.

Unfortunately, the changes thus made are of little or no benefit to title men so far as furnishing assistance in solving the problems concerning such taxes which have always plagued us. In fact, in some respects, these problems have been aggravated by the changes which have been made in the law, particularly when it comes to determining from record information whether the estate of a given decedent is or is not subject to a Federal Estate tax.

Hidden

Both taxes are still hidden liens. Both, under some circumstances, may still affect all other property of a transferee. The only completely effective protection against either is still a release of lien by the Commissioner.

In the matter of the Estate Tax, there are three major changes. There is a change in the method of computing the gross estate. There is a new "gimmick" called the "adjusted gross estate." There is a new deduction in favor of the surviving spouse which is termed the "marital deduction."

The change in the method of computing the gross estate is of little or no importance to those living in common-law states, since it results from the repeal of certain sections relating to community property which were enacted in 1942. You will recall that prior to that year, only the one-half interest of the decedent is community property owned at the time of death or transferred during life in contemplation of death was to be included in the gross estate. Under the 1942 amendments, upon the death of the first spouse, the entire community property had to be included unless some portion of it was economically attributable to the surviving spouse. The 1948 Act repeals these 1942 amendments thereby, in effect, reverting to the older law so far as fixing the basis upon which the value of the gross estate is to be determined.

When you come to the adjusted gross estate and the marital deduction, the fun begins.

As I have said, the adjusted gross estate is something new and its serves a single purpose—that is to furnish the basis for calculating the maximum

WM. R. KINNEY

amount which can be claimed by the surviving spouse as a marital deduction. Such maximum cannot under any circumstances exceed 50% of the value of the adjusted gross estate.

Not Automatic

This does not mean that the surviving spouse automatically gets the benefit of this maximum percentage. As we shall see, the actual amount to be allowed depends in a case of intestacy upon state laws concerning inheritance, dower, curtesy, etc. and in a case of testacy upon the testamentary scheme employed by the testator in providing for the spouse.

It therefore becomes necessary to define both the marital deduction and the adjusted gross estate in some detail.

In simple terms, the adjusted gross estate is simply the entire gross estate less certain specified deductions. In common-law states computation of the value of the adjusted gross estate is comparatively simple. You merely subtract from the value of the entire gross estate the aggregate amount of the deductions allowable for funeral expenses, administration expenses, claims against the estate, unpaid mortgages and such amounts as are reasonably required and actually expended during the settlement of the estate for support of dependents. In common-law states, the remainder constitutes the value of the adjusted gross estate.

Community Property

In community-property states, however, you get into higher mathematics. In such states, the value of the adjusted gross estate is determined by substracting from the entire gross estate the sum total of four items. These are:

1. The value of property held as community property.
2. The value of property transferred by the decedent during life, if, at the time of transfer, the property was held as community property.
3. Proceeds of life insurance policies to the extent purchased with premiums or other consideration paid out of property held as community property.
4. An amount, not based (as it is in common-law states) upon the aggregate amount of the deductions allowed for funeral expenses, administration expenses, claims, mortgages and monies expended for the support of dependents, but, instead, an amount which bears the same ratio to the aggregate of such deductions as the property included in the gross estate, diminished by the amount subtracted for the community property items which I have just identified as deductions one, two and three, bears to the entire value of the gross estate.

If that last is not intelligible upon a first hearing, don't blame me. Blame the language of the Act. Perhaps a specific example will help to clarify matters.

Assume an estate to be of the
gross value of $500,000
and the value of all community
property deductions to be... 200,000

This leaves a diminished gross estate of 300,000
and the ratio of the gross estate, as so diminished, to the entire gross estates is as 3 is to 5.
Assume next that deductions for funeral expenses, etc. amount to 50,000
The deductable percentage of this (3/5th) is, therefore.... 30,000
Substract this amount of $30,000 plus the $200,000 representing the community property items, or a total of.... 230,000
from the gross estate of $500,000 and there remains 270,000
This remainder is the adjusted gross estate and the maximum marital deduction which is allowable is 135,000

By way of camparison, and using the same figure of $500,000 for the value of the gross estate and $50,000 for the statutory deductions allowed for funeral expenses, administration expenses, etc., the maximum marital deduction in common-law states would be $225,000 instead of $135,000. The apparent disparity between these amounts is off-set in community-property states by the fact that, in such states, the surviving spouse receives one-half of the community property tax-free, no matter which spouse has been responsible for its accumulation.

In making these computations as to community-property states I have assumed two things:

I have assumed, first, that the amount which I have subtracted for community property deductions does not exceed the value of the interest in such properties which is actually included in determining the value of the gross estate.

And I have assumed, second, that the community property interests which I have subtracted from the value of the gross estate were of such character and so held at controlling moments of times as to entitle them to be so deducted under the provisions of the Act. Time does not permit going into these provisions in any detail. Even if time did permit, I believe that to do so would be time wasted because so many complications and exceptions, and exceptions to exceptions are involved that any attempt to explain them orally would probably leave a listener completely lost in a forest of words with little or no chance that he would be able to comprehend and follow the markings on the individual trees. I shall, therefore, merely refer you to subparagraphs (B) and (C) of paragraph (2) of subsection (e) of section 812 of the Internal Revenue Code as amended by the 1948 Act.

Restrictions

The marital deduction is additional to the sundry deductions heretofore allowed in computing the value of the net estate and is to be figured before the statutory exemption of $60,000 is taken into account. It is allowed only when the decedent is a citizen or resident of the United States, cannot exceed 50% of the adjusted gross estate and, within that maximum, consists in general of an amount equal to the value of any interest either in separate or community property which passes or has passed from the decedent to the surviving spouse provided that such interest is included in determining the value of the entire gross estate.

The Act specifically defines what is meant by an interest "passing from the decedent to the surviving spouse" in several subsections including one subsection which contains eight subparagraphs. Because of time limitations, I can give you only a very general idea as to the determining factors and must emphasize the fact that some technical distinctions and some additional specific matters covered by these legislative definitions are not included in this generalization. For a complete picture I must refer you to the Act itself.

Generally speaking, in order for a particular interest to qualify for the marital deduction, it must pass outright to the surviving spouse. Even though it passes in such fashion, no deduction is allowed if the interest will terminate or fail upon lapse of time or upon the occurrence or non-occurrence of a future contingency and if, upon such termination, any interest in the property passes from the decedent to any person other than the spouse or the estate of the spouse.

Examples

Common examples of interests passing outright to the spouse and thus qualifying for the marital deduction would be a bequest to the spouse, or a devise to the spouse of a fee simple interest in real estate, or an interest in fee inherited by the spouse in case of intestacy.

An example of a terminable interest which would be excluded would be the devise of a life estate to the spouse with remainder over to the testator's children. However, the Act provides that an interest will not be considered as one which will terminate or fail upon the death of the spouse, if such death will cause termination or failure only if it occurs within six months or as the result of a common disaster resulting in the death of both the decedent and the spouse and if, in either such contingency, termination or failure does not in fact occur.

Trusts

Whether trust provisions made for the benefit of the surviving spouse will qualify for the marital deduction depends entirely upon the pattern of the trust. Only one type of trust meets the necessary requirements. This is where, under the terms of the trust, the surviving spouse is entitled for life to all of the income, payable annually or at more frequent intervals, with power in the spouse to appoint the entire corpus free of the trust to herself or to her estate, and with no power of appointment in any other person to appoint any part of the corpus to any person other than the spouse. A trust which permits accumulation of income does not fall within this category. A somewhat similar provision applies to life insurance proceeds payable to the spouse for life with power of appointment as to payment of proceeds after death.

Disclaimers

If the spouse disclaims an interest which, in the absence of a disclaimer, would be considered as passing from the decedent to the spouse, then such interest is to be considered as passing to the person or persons entitled to receive the interest as a result of the disclaimer. But if, in the absence of a disclaimer by any person other than the spouse, an interest would be considered as passing from the decedent to such person, and if a disclaimer is made by such person and as a result the spouse is entitled to receive the trust, the interest is still to be considered as having passed to such other person, as if the disclaimer had not been made, and not as having passed to the spouse.

One last word as to the Estate Tax. Under the old law, and within certain limitations, property which had been subjected to a Federal Estate Tax within five years was not taxed again. Under the new law, this is no longer true as to properties received by the decedent from a former spouse by devise, bequest, descent or gift after the respective effective dates of the new Act, or as to property acquired in exchange for property so received.

The provisions concerning the Estate Tax contained in the 1948 Act apply only to the estates of decedents dying after December 31, 1947.

Changes in Act

The changes which are effected by the 1948 Act concerning gift taxes follow to a large extent the same general pattern as is used in the case of estate taxes.

The Act provides for a marital deduction of 50% of the value of property transferred by gift to one who at the time of transfer is the donor's spouse. No deduction is allowed in the case of terminable interests if the donor retains an interest which may be enjoyed by the donor, or his heirs or assigns, after the termination of the interest transferred to the spouse or if the donor possesses a power of appointment exercisable immediately after such transfer.

If the interest is transferred to the donee spouse as sole joint tenant with the donor or as tenant by the entirety, the interest of the donor which exists solely by reason of the possibility that the donor may survive the spouse, or that there may occur a severance of the tenancy is not to be considered as an interest retained by the donor.

Transfers in trust, with or without power of appointment, are treated in much the same fashioon as in the case of the estate tax.

In community-property states, the marital deduction as to gift taxes is allowed only to the extent that the transfer can be shown to represent a gift of property which is not, at the time of the gift, held as community property. However, property is not to be considered as so held if the entire value of the property (and not merely one-half thereof) is treated as the amount of the gift.

A gift made to any person other than the donor's spouse is to be considered as made one-half by him and one-half by his spouse, provided: (1) that at the time of the gift each spouse is a citizen or resident of the United States; (2) that no power of appointment, as same is defined in Section 1000, is created in the spouse; (3) that donor does not remarry during the remainder of the calendar year in which the gift is made; and (4) that both spouses signify their consent (in the manner and within the time provided for in the Act) that all such gifts made during the calendar year by either shall be considered as made one-half by each.

The provisions of the Act concerning gift taxes apply only to gifts made after the enactment of the Act.

To Equalize the Burden

Generally speaking, the various changes in the law concerning Federal Estate and Gift Taxes which I have mentioned this afternoon were made for the obvious purpose of reducing the burden of such taxes and, as I have already said, of attempting to equalize such burden as far as possible between residents of common-law states and residents of community-property states.

But no matter how grateful we may be as individuals for any such tax relief, as title men we are today just where he have always been—behind the eight ball, constantly confronted with the possibility that a particular property is encumbered with a hidden lien whose existence is difficult and, at times, impossible to discover.

The unfairness of such a situation to persons dealing with real estate has long been apparent not only to us but to others as well. As long ago as 1944, recommendations for remedial legislation were approved by the American Bar Association and were later presented to the Ways and Means Committee of the House of Representatives. our Title Association is co-operating in the matter and that renewed efforts will be made to have such remedial I understand that a committee from legislation introduced in the 81st Congress.

The legislation as proposed and recommended strikes at the heart of our problem by making the provisions of sections 3672 to 3679 of the Internal Revenue Code apply to the lien of estate and gift taxes. Under such an amendment, no such lien would be valid against a mortgagee, pledgee, purchaser or judgment creditor until notice has been filed by the collector in the appropriate recording office. Certain other and necessary clarifying provisions regarding the personal liability of the transferee, donee and beneficiary and the transfer of lien to other property owned by them are also included.

It is to be fervently hoped that legislation along the line proposed will eventually be enacted. However, I think that we are going to have to be prepared to meet certain more or less serious counter-arguments. Looking at the matter from the government's standpoint there are demonstrable differences between the government's situation in connection with the collection of income and similar taxes and its situation with reference to the collection of estate and gift taxes.

For instance, the fact that a given individual owes an income tax for a given year and the fact that such tax has not been paid are facts which the government can discover from its own records the moment that the tax goes delinquent and, in such case, file a notice of lien forthwith. But, in the case of estate taxes, the fact that a person has died and that an estate tax may be due from his estate will not be known to the government until a return is filed. The resultant time lag may be months or it may be years, dependent upon how soon after death administration is begun. An even more obvious situation exists in regard to gift taxes.

So, while I am heartily in accord with all of the arguments which are advanced in favor of the proposed legislation, it seems to me that it would be well for us to be prepared to meet the following two more or less persuasive counter-arguments with equally persuasive answers:

Convincing Argument

First. It will probably be argued that, since the government now enjoys the advantage of an immediate lien which attaches automatically, it would be unreasonable to expect it to forego such advantage and substitute a method which involves a time lag over which it has no control and during which assets might be dissipated so as to make it difficult (and at times even impossible) to collect the tax due.

Second. It may also be argued by some that such a change in the law would place a heavy burden upon the government in this respect: It would either have to adopt a general practice of automatically filing a notice of lien upon the filing of an estate tax return (with all of the paper work incident to such practice) or be confronted in every case with the necessity of deciding whether and, if so, when a notice of lien should be filed.

But, regardless of such counter-arguments, I am going to continue to hope that Congress does something about the matter.

Reports of Chairmen

Report of Title Insurance Section

MORTIMER SMITH, *Chairman*

Vice-President, Oakland Title Insurance And Guaranty Company
Oakland, Calif.

As title insurers, all of us are interested in the news of what has been going on in our Title Insurance Family since we were gathered together about a year ago. It is fitting to review those happenings which have taken place to make our tasks a little easier, and to report upon what has been accumulated by way of suggestions for future constructive activities.

Most of the activities of our Title Insurance Section are allied very closely with those of the other sections of the American Title Association, the Abstracter's Section and the National Title Underwriters and Legal Sections. This is as it should be, for certainly those people who have only themselves after whom to model their efforts cannot progress very rapidly and we can learn much from all who are in this basic title business.

Abstracters' 14 Point Program

During the past year, the Abstracters' Section, under the very able leadership of its Chairman, Earl C. Glasson, has been energetically carrying the message of the American Title Association to individual abstracters and State associations of abstracters throughout the country. Through a fourteen point program, those people are being shown the benefits to themselves and to their clients of their strong national organization and of their fine state groups. As they realize these benefits, their support of the American Title Association and of those state associations has become most enthusiastic and benficial to all.

From time to time, it would be well for all of us to take stock of our own activities in that connection.

We learn also from our National Officers, headed by President Kenneth E. Rice, and the Legal and National Title Underwriters Sections under

William R. Kinney and Leo T. Wolford; with our job having been to channel the title insurance hands all of the available information obtainable from a co-ordinated organization which information is or may be interesting and of value to those in our Title Insurance Section.

Naturally, the great clearing house for all of us is National Headquarters in Detroit. It is the tremendous flow of correspondence to and from Jim Sheridan's office which is keeping all of us abreast of the times.

Convention Program

I think that in the program being presented at this convention, both at the general sessions and at the section meetings, you will enjoy hearing what some of our title specialists have to say upon many of the subjects concerning which you have been writing to National Headquarters during the past year. We hope that many of your problems will be answered satisfactorily. Please don't hesitate to ask questions if our speakers do not happen to touch upon the particular phase of a situation in which you are interested specifically.

Regional Conferences

During the past year, two very important regional conferences of title insurance executives were held. One of these was the Atlantic Seaboard Regional Conference held at Atlantic City and one was the Southwest Regional Conference which met in Oklahoma City. Lawrence R. Zerfing, Vice President of the Land Title Bank and Trust Company of Philadelphia was the Chairman of the meeting in Atlantic City and William Gill, Executive Vice President of the American-First Trust Company, of Oklahoma City, was in charge of the meeting at Oklahoma City.

From reports received, the meeting at Atlantic City was a complete success, and your chairman can vouch for the satisfactory results of the conference at Oklahoma City as he attended as a representative of the American Title Association, and observed at first hand a group of title insurance executives talking shop in an informal way, getting together and ironing out the wrinkles in the doing of our every day jobs.

Further progress in the development of these two existing regional conferences is enthusiastically urged and the creation of new additional districts in which conferences of title insurance executives will be held is strongly recommended. With the Atlantic Seaboard Regional Conference and the Southwest Regional Conference as models, other districts in other localities could begin functioning very expeditiously.

Everything has been running along rather smoothly as far as the general business of title insurance is concerned. Personally, I have the feeling that it was the work done by the people active in this organization prior to and during the war years that kept things anchored to the proper fundamental foundations of our business during those difficult times when, as individuals, we might not have been able to do so.

From now on, perhaps we should carry the ball a little more ourselves in order that the work done by those men can be furthered and benefits continue to flow from it.

Additional Services and Coverage

From time to time in the past the coverage of our title insurance policies has been made more uniform and has been broadened. No doubt that progression will continue in the future.

Additional services are being demanded and additional liabilities are being and will have to be incurred. We in the title insurance business daily make bets with our customers. We bet them that a title is as we say it is. Generally speaking, we give them odds about roughly five hundred to one. We bet the, in effect, that if the question ever arises, a court will decide that their title is exactly as we have said it is. In the title insurance, as in the law business, we get into the habit of thinking that there is something absolute about a title, or that there is something absolute about the law. As a matter of fact, there is no law except what judges say is the law.

This, of course, must be kept in mind when we consider such demands for additional services and give thought to taking on additional liabilities. We have to make sure that we are operating upon a system under which the odds are at least fair to us.

Expansion—With Care

We must, however, expect and we must do everything in our power toward the liberalization of the coverage given to the public under our title insurance policies. As long as any service which makes it easier for our users to do business, properly comes within our province, no resistance on our part ever should be forthcoming to the popularizing of that service. I feel very strongly that the extension of the coverage of title insurance, provided that the result is title insurance and not casualty insurance is our greatest asset in public relations.

Your Chairman is a firm believer in the old adage that "Activity brings activitiy," and along that line, out of the suggestions which have come to hand during the past year, would like to recommend one or two which offer very worthwhile activities for the Title Insurance Section to undertake during the coming year.

There are a great number of people in the production end of this business of ours. These men and women work every day upon ways and means of doing our job more efficiently and less expensively. At all of our meetings, panel discussions by and between plant and production men and women should be encouraged and their statements and their conclusions distributed to our membership, for in no other way will we be able so readily to augment our own ideas and enlarge our production possibilities. One idea obtained from such discussions can easily be the key to the solution of the most intricate plant or searching problem of any one of us.

Operational Charts

The way we operate the fundamental organizational steps of our business may be influenced considerably by the locality or localities in which that operation takes place. However, regardless of the matter of geography, there most certainly must be numerous basic departmentalizations and individual positions which either are or should be fairly definitely susceptible to a standardization copied after the successful operations of others. Perhaps if all of us were to exchange charts of operational systems we could find a tremendous amount of informative material, and it is recommended that this be done.

It has been suggested that as an effort of this group, and entirely separate and distinct from our Committee on Policy Forms now headed by Mr. Henley, so as not to pile too much work upon that particular committee, we set up a steering committee on forms, general every day title examination and office forms, having as its goal the reasonable standardization, through an exchange of forms and the selection of the best, of the thousands of pieces of paper all of us are using, from the original order blank down to the completion of our job.

Such an activity would do much to create and carry along a much greater efficiency in our business.

Occasion had arisen during the year to request various members of the Title Insurance Section to take on various jobs for the good of the Industry. The response always has been most willing and helpful. To those fine

people, please let me say, "Thank you, all, very much."

Finally, to all of you, my sincere appreciation for the opportunity to have been chairman of this fine group of business people, the Title Insurance Section.

Thank you.

Legal Section

WILLIAM R. KINNEY, *Chairman*

Chief Title Officer
Land Title Guarantee & Trust Co.
Cleveland, Ohio

I have no formal report to make on behalf of the Legal Section. That is not because there haven't been any interesting legislative and judicial developments during the past year, because there have been several important ones, but it is because practically every one of those developments has been given an individual spot on the convention program, and anything that I might say would be purely repetitious.

I could well include comments on the recent decisions of the United States Supreme Court on the restriction cases, comments on the present practice in procedure where the Veterans' Administration is involved, comments on Federal legislation regarding gift and estate taxes, comments on some of the problems that we encounter when there are sales to individuals of individual units and multiple unit projects, but if you will glance at your program, those four subjects will all be topics for discussion.

Tide Water Lands

Similarly, the Tidelands bill. I have no doubt that Jim McCarthy in his report as Chairman of the Federal Legislative Committee, will give us the last word on the so-called Tidelands bill. However, in that connection I am going to say one thing, because I know Jim McCarthy won't say it, and that is this: In his appearance before the Joint Judiciary Committees of the Senate and the House, as a representative of the American Title Association, Jim reflected great credit on both himself and the Association in his prepared statement and in his answers to questions put to him. Anyone who reads the transcript of those proceedings I think will agree that Jim more than held his own.

And so on down the list. Everything that I could talk about is already scheduled, and I really have nothing to talk about. Whoever is responsible for that happy situation has my sincere thanks.

National Title Underwriters Section

LEO T. WOLFORD, *Chairman*

Vice President
Louisville Title Insurance Co.,
Louisville, Kentucky

The activities of the Underwriters Section are not such as lend themselves to a formal report. There has been a great deal of correspondence during the year, and we have tried to cooperate with the other sections, and they certainly have cooperated with us. I am sure you would find it a great privilege to be on the mailing list of Jim Sheridan and Mr. Smith and find out how much has to be done to arrange a convention like this, to click as it does. I can tell you, after seeing all the correspondence that comes in, copies of many letters that we do receive, that it takes months of work to arrange for this kind of convention. It starts months in advance, and it is very interesting to see it develop and see the plans that are made. I won't take your time to go any further. I will say it has been a great pleasure to work in this connection.

LEO T. WOLFORD

Restrictive Covenants

Application of the Effects of Recent Decisions of the United States Supreme Court to the Examination and Insurance of Titles to Real Property Affected by Covenants and Restrictions

S. A. CLARK, *Solicitor*

Title Guarantee and Trust Co.,
New York, N.Y.

The restrictive covenants in Kraemer v. Shelley and Sipes v. McGhee affected real property situate in the states of Missouri and Michigan, whereas the restrictive covenants in Hurd v. Hodge and Urciolo v. Hodge affected real property situate in the District of Columbia, and the decisions in these cases were rendered on different grounds in that the first two cases came within the Fourteenth Amendment of the Constitution as applied to states and the last two cases came within the Civil Rights Statute and public policy.

The opinions of the court in Kraemer v. Shelley and Sipes v. McGhee were delivered by Chief Justice Vinson on May 3, 1948, and I assume have been read by all of you ladies and gentlement. As anticipated, the decisions rendered hold that the decisions of state judicial officers in their official capacities are actions of the state within the meaning of the Fourteenth Amendment of the Constitution.

Fourteenth Amendment

What is the Fourteenth Amendment? The first section of said amendment provides: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No STATE shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any STATE deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Before the said decisions were handed down by the United States Supreme Court the most widely discussed case in respect to the Fourteenth Amendment was Corrigan v. Buckley 271 U.S. 323:70 L. ed. 969. In that case, the court declared the question litigated not within the jurisdiction of the Supreme Court insofar as its jurisdiction is based on power to review constitutional questions and in effect declared the arguments should be addressed to the courts of the state or territory where the real estate is located. The property affected by the discriminatory restrictive covenant against the sale to Negroes was situate in the District of Columbia. This case

was followed by numerous other cases in the District of Columbia until the United States Court of Appeals rendered a decision in 1945 in Mays v. Burgess, 147 Fed. (2) 869; cert. denied by U. S. Supreme Court. Substantially the same form of covenant was here before the court as was considered in Corrigan v. Buckley; but here the appeal from the District Court was from a judgment which set aside a deed and enjoined the grantee from using or occupying a residence. Reliance of the appeal was not placed wholly on constitutional questions, the Civil Rights Act and Federal public policy as in the Corrigan appeal. The court held that that type of restriction had become a rule of property in the District of Columbia and that a covenant against Negro ownership or occupation is valid and enforceable in equity by way of injunction. Both the cases, Corrigan v. Buckley and Mays v. Burgess were decisions affecting property situate in the District of Columbia.

The courts of many of the states recognized these decisions as applicable to property situate in such states, and as late as February 11, 1947, Justice Livingston of the Supreme Court of New York held that judicial enforcement of the racial restrictive covenants is not prohibited by the Fourteenth Amendment to the Federal Constitution and is not contrary to the public policy of the State of New York and of the United States. The prohibitions of the Fourteenth Amendment have reference to state action exclusively and not to any action of private individuals. Reference to decisions of the state courts are made merely for the purpose of indicating their interpretation of the meaning of the decisions in Corrigan v. Buckley and Mays v. Burgess.

Cases in Point

The case Kraemer and wife against J. D. Shelley and wife was to enforce restrictive covenants against occupancy or ownership of property by people of the Negro race. A judgment for defendants was reversed by the Supreme Court of Missouri, 355 Mo. 814.

The case Benjamin J. Sipes and others against Orsel McGhee and wife to enforce a covenant that property should not be used or occupied by any person except those of the Caucasian race. A judgment for plaintiffs was affirmed by the Supreme Court of Michigan (316 Mich. 614).

Reversed

Both of the above actions on certiorari to the United States Supreme Court were reversed. Chief Justice Vinson delivered the opinion of the court which covers both actions and which holds, among other things, that "The action of state courts and of judicial officers in their official capacities is to be regarded as action of the state within the Fourteenth Amendment" and "restrictive covenants based on race or color standing alone do not violate any rights guaranteed by the Fourteenth Amendment, and so long as the purpose of the covenants are effectuated by voluntary adherence to their terms there has been no action by state and provisions of Fourteenth Amendment have not been violated." The meaning and interpretation of the last quoted holding poses an interesting question. Does it mean that such a covenant may be inserted in a deed and if violated by one of the contracting parties by his conveying or leasing the premises to a person discriminated against, an action may be brought against such party for damages? Or may a liquidated damage clause be enforced or must such a contract be enforced in a court of equity? It seems to be a well recognized principle that a contract may contain a liquidated damage provision without precluding the parties from resorting to equitable remedies. If, however, liquidated damages could not be enforced, what would be the measure of damages to be determined in a court

S. A. CLARK

of equity? The question also arises that if the covenant is unconstitutional, would or should a court entertain jurisdiction to enforce the same for damages. I believe the English tendency is to prohibit a contract if you cannot get a court to enforce it.

It seems to me, however, that the language "and so long as the purpose of the covenants are effectuated by voluntary adherence to their terms" does not mean that such an action could not be enforced in a state court if such court entertains jurisdiction.

The court, in discussing Corrigan v. Buckley, states, and I quote, "Whether the equal protection clause of the Fourteenth Amendment inhibits judicial enforcement by state courts of restrictive covenants based on race or color is a question which this court has not heretofore been called upon to consider." "It is apparent that that case, which had originated in the federal courts and involves the enforcement of covenants on land located in the District of Columbia, could present no issues under the Fourteenth Amendment: for that amendment by its terms applies only to states." "This court concluded that since the inhibitions of the constitutional provisions invoked, apply only to governmental action, as contrasted to action of private individuals, there was no showing that the covenants, which were simply agreements between private owners were invalid. In other words, the District of Columbia not being a state of the U.S., the constitutional question as to the effect of the Fourteenth Amendment could not be raised in Corrigan v. Buckley and that all subsequent decisions of the state courts holding that Corrigan v. Buckley was the authority for holding that such restrictive covenants did not violate the provisions of the Fourteenth Amendment were and are in error. The inference from the above also being that a contract between owners of real estate restricting the use or sale thereof to any particular class may be entered into and enforced by the parties thereto as against each other if such a contract is not lived up to. Such enforcement, if permitted by the courts, however, would probably be restricted to damages. It seems to me that it would be rather difficult to prove any material damage.

Hurd v. Hodge

The action Hurd v. Hodge and Urciolo v. Hodge was in respect to restrictive covenants against the ownership or use by Negroes of real property situate in the City of Washington, District of Columbia. Chief Justice Vinson also delivered the opinion of the court. It was urged by petitioners that judicial enforcement of the restrictive covenants by courts of the District of Columbia should be held to deny rights of white sellers and Negro purchasers of property, guaranteed by the due process of the Fifth Amendment. The court, however, found it unnecessary to resolve the constitutional issue so advanced and concluded that judicial enforcement of such restrictive covenants by the courts of the District of Columbia is improper for other reasons. The court then refers to section 1978 of the Revised Statues, derived from Sec. 1 of the Civil Rights Act of 1866 which provides: "All citizens of the United States shall have the same right, in every state and territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property," and holds that for the purposes of this section, the District of Columbia is included within the phrase "every state and territory"; that the statute does not invalidate private restrictive agreements so long as the purposes of those agreements are achieved by the parties through voluntary adherence to the terms; that the action toward which the provisions of the statute under

consideration is directed is governmental action; that by reason of section 1978 of revised statutes derived from sec. 1 of the Civil Rights Act of 1866 judicial enforcement of the restrictive covenants by the courts of the District of Columbia is prohibited; that that statute, by its terms, requires that all citizens of the United States shall have the same right "as is enjoyed by white citizens . . . to inherit, purchase, lease, sell, hold, and convey real and personal property." Further, even in the absence of the statute, there are other considerations which would indicate that enforcement of restrictive covenants in these cases is judicial action contrary to the public policy of the United States, and as such should be corrected by this court in the exercise of its supervisory powers over the courts of the District of Columbia. The power of the federal courts to enforce the terms of private agreements is at all times exercised subject to the restrictions and limitations of the public policy of the United States as manifested in the Constitution, treaties, federal statutes and applicable legal precedents. Where the enforcement of private agreements would be violative of that policy, it is the obligation of courts to refrain from such exertions of judicial power. We are here concerned with action of federal courts of such a nature that if taken by the courts of a state would violate the prohibitory provisions of the Fourteenth Amendment (cites Shelley v. Kraemer). It is not consistent with the public policy of the United States to permit federal courts in the nation's capital to exercise general equitable powers to compel action denied the state courts where such action has been held to be violative of the guarantee of the equal protection of the laws.

Thus, it will be observed that the opinion of the court in Kraemer v. Shelley and Sipes v. McGhee is based upon the Fourteenth Amendment in respect to judicial enforcement by state courts, whereas the opinion in Hurd v. Hodge and Urciolo v. Hodge was based upon the Civil Rights Act of 1866 and public policy.

These decisions have entirely changed the conception of the law in respect to such restrictive covenants and, naturally, the question has arisen as to what, if anything, could be done to overcome the effects of these decisions. Certain suggestions, however, have been made, and I call your attention to an article in the U.S. News, under date of May 14, 1948, entitled "We've Been Asked About Status of Racial Bans." Among the questions asked are the following:

Are covenants outlawed now?

No. The Supreme Court rules that covenants by property owners, agreeing not to sell, rent or transfer their property to Negroes or other groups, are not in themselves illegal. The decisions in no way bar the signing of such covenants by property owners or cancel existing agreements.

Can racial covenants be enforced?

Not by the courts. Heretofore, both state and federal courts have issued enforcement orders in the form of evictions, injunctions against moving in, or cancellation of deeds. Now these court practices must end where racial restrictions are involved. Furthermore, lawyers of the Justice Department say that the Supreme Court's decisions also prevent courts from enforcing such restrictions against Jews and others on the basis of religious creed. But the decisions do not interfere with enforcement of covenants on a voluntary basis by property owners.

Can covenants against renting be enforced?

No. The Supreme Court said the courts cannot enforce agreements against occupancy of property by any persons on the basis of race or color. This covers renting as well as sales or other transfers. Covenants against renting to Negroes and others, as well as selling, can still be signed legally by property owners, but not enforced by the courts.

Are titles affected in any way?

Real estate men say that existing titles and deeds to property are not weakened by the Supreme Court rulings. The custom often has been to write covenant agreements into deeds, including restrictions based upon race or color. But these agreements in themselves are found by the court to be legal. Thus titles to property, where racial covenants are involved, are said to be valid as heretofore.

Can damages be collected from covenant violators?

This will have to be decided by the courts. Some lawyers say that, Where damage is shown to result from breach of contract in selling property in violation of a covenant, courts can be used to collect damages. Others believe that in view of the Supreme Court decisions, the courts cannot now award damages for breach of contract involving racial covenants. This question is expected to be settled finally by the courts —perhaps by another decision of the Supreme Court.

This same publication in the same issue has another article which suggests certain methods that may keep neighborhood agreements in effect on a legal basis, and I quote from this article the following suggestions:

Requiring membership in a club or a co-operative as a condition for owning or occupying property is a plan, already in use, by which sale of property is restricted to certain groups. In one type of club, the property is owned by the club itself. The householder-member simply owns shares of stock and is assigned certain property for occupancy. This type of club is considered legal, without any question. But it has the drawback that the householder never has individual title to the property he occupies.

Use of options, or privilege of "first refusal," is another means by which future transfers of property may be controlled. Under this plan, the firm selling real estate in a subdivision retains the right to have first chance of buying it back if the new owner offers it for sale. This plan seems to have no legal flaws, except that, to be valid, the privilege might have to have a time limit.

Approval of neighbors is the basis of still another plan already tried. Usually, under a plan of this type, a majority of the five nearest neighbors must approve the new occupant before a residence can be sold or rented. This plan, like that of club membership, appears not to be affected by the Supreme Court's decisions. Its use probably will spread unless or until courts disapprove such a limitation on the right to transfer property freely.

This subject could be enlarged upon as there is plenty of other material and legal opinions that have been recently handed down which are most interesting and beneficial to our business if the same were properly collated, but my time has been limited and I have had to pass over a lot of things to make this paper as brief as possible.

I have, however, been asked what effect these decisions have on title insurance. My thought is that they have no effect insofar as title is concerned. Such a restrictive covenant should be returned as an exception, but if we are satisfied that same comes within the decisions above referred to, we could give insurance that the same are unenforceable. I would hesitate, however, to issue any insurance to the effect that a contract between the parties covering such restrictive covenants is a valid and enforceable contract.

DISCUSSION

MR. McCUNE GILL: (St. Louis, Missouri): My question is directed to Mr. Clark. Assuming that a Negro does not buy a home in a restricted subdivision, but leases one, assuming also he cannot be dispossessed under the Shelly Decision, and assuming also there is in the restrictions a reversionary clause, I would like to ask his opinion or perhaps his guess as to whether one white man, namely the original proprietor of the subdivision, and the owner of the reverter, can enforce the reversion against another white man, namely, the lessor of the property to the Negro.

MR. CLARK: My best guess is yes, he can enforce the reversion.

MR. GILL: Then you do not think that we should in any way assume to insure a lender against the effect of a reversionary clause, even in an anti-Negro restriction?

MR. CLARK: Well, of course, I am not familiar with insuring reversionary interests, because we always except them. We never insure them.

MR. GILL: But in view of your opinion that the white man can enforce the reversion against another white man, we certainly would not wish to insure against that reversion.

MR. CLARK: Well, as I said a moment ago, I think that reversion would be enforcible.

MR. GREEN: My name is Walter Green. I am from Hyattsville, Maryland, and my question is directed to Mr. Clark. It is simply, how would you enforce it?

MR. CLARK: I will just refer that back to you. Will you please tell me how? I don't know.

CHAIRMAN SMITH: Gentlemen, we are engaging in the old Indian custom, "How." How many of you Ladies and Gentlemen have been called upon to insure a lender against forfeiture under a restriction which contains a race restriction?

(Showing of hands.)

CHAIRMAN SMITH: Now, the next question is, how many of you did that?

(Showing of hands.)

There are quite a few.

Open Forum—Legal

Presiding: William R. Kinney, Chairman, Legal Section, American Title Association; Chief Title Officer, Land Title Guarantee & Trust Co., Cleveland, Ohio.

CHAIRMAN KINNEY: I would like to read, for the purpose of emphasis, the note that appears in the program.

> "Note: This is your Forum; this is your opportunity to present legal questions and problems which concern your firm. Don't be hesitant. Contributions by all will make this forum successful."

To get things going, after we got to Chicago we received a letter from Mr. Johns of Pendleton, Oregon. He has a question that he said he would like to find the answer. So I wonder if we could give it to him while we are here.

The Gibbs Case

"I have one question which I wanted to put before the Legal Section. It is this: We soon expect to have an order for about 85 title insurance policies from National Housing Administration. How can we insure any title for any department or agency of the government in view of the decision in United States against Gibbs."

That decision, if you recall, is the Carolina case where a property, the title to which was vested in the NHA and was transferred by letter, the control of the property to the Navy Department. The NHA disposed of the property to a bona fide purchaser in the Navy Department. I don't recall whether it was a purchaser from that department or whether the question arose with that department, but anyhow, the Court held the letter transferring control divested NHA of title and that their purchaser took nothing.

Now, have any of you gentlemen any suggestions we can send on to Mr. Johns touching on his problem?

MR. HENLEY: One of our attorneys goes into the office of the War Assets Administration and checks the whole file. He finds there the order declaring the property surplus and determines that the technical transfer from one department to another is made by the proper department of the government. Of course, we do have to rely upon some factual statements outside of the record, but we are able by investigating the records of War Assets, which are located in San Francisco, determine to our satisfaction, that a proper declaration of surplus has been made, and if there has been a transfer from one department of the government to another, and that it has been properly made.

We had, as a matter of fact, one transaction there in which the property was being sold by the War Shipping Administration. When we checked the title we found that a portion of it had been included in a housing project which had been constructed by NHA, and we found that NHA in that case had made no declaration of surplus. So we had to hold the transaction up until the National Housing Administration in Washington had declared that portion of the property which was included in the whole parcel surplus and had gone through the necessary steps under the law and regulations for the disposition of war surplus to make it a valid transfer and a valid sale.

MR. McCUNE GILL: Mr. Kinney, following the decision to which you referred, Congress passed a section—I don't know the number, but you can find it added to the Surplus Act, which says that an innocent purchaser for value of any such property takes it free from any inter-departmental or other transfers or handlings of any kind.

That was passed, I take it, as a result of this decision, because it is very difficult to find what has been going on within the department. But if that section means what it says, I think we are protected in taking a deed from the record owner of the property and will take it free from any transfers, regulations or negotiations whatever that are not of record. It is a very valuable thing to find, and highly protective, and I think does protect us in most cases.

MR. HENLEY: Mr. Kinney, that is Section 25 of the Act, and there was some question in our minds whether or not it covered the holder of an encumbrance. I think that it would, and it was the opinion of our counsel that it would, but it wasn't clear.

In this particular case I speak of, a life insurance company was lending about $600,000 on the property after it was acquired from War Assets. Therefore, in that case we are very careful to determine that the regulations and the law had been complied with, and felt that we were not justified in relying upon that Section 25 of the Act.

Stamp Tax

CHAIRMAN KINNEY: Here is a matter that was asked to be included in the Forum program. It is the question of stamp tax on mortgage notes, that grew out of the General Motors Acceptance case.

Frankly in Cleveland we haven't run up against any situation where it was of any moment one way or the other, and I am, frankly, not familiar with what the later developments have been. Have any of you any further ideas, based on experience?

MR. GILL: I have. I hate to be talking all the time, Mr. Chairman.

We have what they call in the east the bond and mortgage; we call it a note and a deed trust. So when the clause of the Stamp Act relating to notes was repealed, we thought it repealed the necessity of any stamps on what we called notes.

When the government got around to it, they moved into St. Louis and starting checking corporate mortgages. By that time the bond and mortgage clause had been repealed as to anything but corporate mortgages. So they dug up a lot of corporate mortgages on which there were no stamps, and then we wanted to know what we should do in the future. So we wrote to the Commissioner and said, "What do you consider to be a bond issue or bonds, and do you think our notes are bonds?"

He wrote back (and it is hard to understand this distinction), but we are pleased he did it. He said, if you have more than one piece of paper, you have a principal note and some interest notes, or you have several pay-off principal notes, that is a bond issue and must be stamped; but if you have only one note, and the note carries the interest in the note itself, that is not a bond issue.

So we proceeded on that method, and of course, all our corporate mortgages now secure one piece of paper, one note.

We were a little dubious what he might do with that in the future, but only very recently we have received a regulation which backs up that proposition.

So I take it, our so-called notes, if issued by a corporation and containing more than one note, they must be stamped; but if there is only one note, it need not be stamped.

CHAIRMAN KINNEY: Thank you, Mr. Gill. Any other comments?

MR. DAVENPORT: (New York): New York is one of the few states which has used bonds. All other states in the country (I believe it is true), use the note rather than the bond. So in the east we have been paying stamp taxes on those corporate bonds and assignments and extension thereof, and in the rest of the states we have not.

The legislature this year in New York State permitted the use of notes by the trustees, savings banks and trust companies, instead of bonds, whereas the bond had been the only legal investment to be secured by a mortgage up until this year's legislature.

The G. M. A. C. Case

Then we were faced with the General Motors Acceptance case, which threw the whole situation pretty much into a mess, because regulations following that case prescribed five or six conditions which being in existence even with the note made that note, in the opinion of the taxing authorities, a bond and subject to the stamp tax.

Among those five or six conditions which might exist in the corporate note was a provision for acceleration because of default and another was payment on installments.

Obviously, those conditions were general and usual in our real estate transactions, and if those conditions prevailed, the regulation stated it wasn't necessary that all of these five or six conditions exist, but that any of them might make the transaction taxable.

So we sent the matter to Washington in order to get rulings upon this subject. We received one ruling, which was not by any means satisfactory. We followed that up with further work, and now have a ruling which states positively, although there is the existence of those two conditions, that is, payment in installments and an acceleration clause because of default, the existence of both of those provisions do not make the transaction taxable.

If you go beyond that and go into the requirements, submission of annual statements, agreements not to pay large devidends than have been paid by the corporation, and similar provisions, if you go beyond that, it seems entirely possible that even though the note is used, that may be held to be taxable.

If you go beyond those two conditions which I mentioned first, it would seem to be necessary to get a specific ruling on that transaction or put stamps on the note.

CHAIRMAN KINNEY: Thank you, Mr. Davenport.

MR. AMERMAN: (Prudential): There is just one thing Mr. Davenport did not mention, and that is, that the Internal Revenue Department has been good enough to rule that any note dated before May 14, 1947, which was the date of the General Motors Acceptance Corporation decision, will not be taxed by them; but as he has also said, they reserved the right to tax notes, of course, subject to judicial ruling, in which these unusual provisions are inserted, either in the note or in any instrument accompanying the note—it may be the mortgage, the trust deed, or it may be some collateral agreement.

So in these industrial and commercial mortgages, which are so prevalent today, in which certain requirements are made which go beyond ordinary mortgage requirements, as Mr. Davenport said, for annual financial statements, or perhaps sometimes the salaries of officers will not be excepted without the consent of the mortgagee, any of those things may render a note taxable, even an ordinary promissory note.

I think it is a matter of concern for the people all over the country. I think it is a nationwide problem in which everybody at present should take notice.

CHAIRMAN KINNEY: Thank you, Mr. Amerman.

Plant Methods, Including Building and Rebuilding

A PANEL DISCUSSION

Members of Panel:

John W. Dozier, *Vice President,* Columbian Title & Trust Co., Topeka, Kans.

Edw. T. Dwyer, *Executive Vice President,* Columbian Title & Trust Co., Portland, Oregon.

A. B. Wetherington, *Secretary,* Title & Trust Company of Florida, Jacksonville, Florida.

Thomas G. Morton (with script), *President,* Title Insurance & Guaranty Co., San Francisco, Calif.

Mortimer Smith, Acting Moderator, *Vice President,* Oakland Title Insurance & Guaranty Co., Oakland, California.

MODERATOR SMITH: Mr. Tom Morton, President of the Title Insurance and Guaranty Company of San Francisco, California, was to be the Moderator of this panel. He has been working too hard and had a bad back, so he couldn't make it. He did prepare the script and he did a very fine job on it.

If you will bear with me, I will try to get through this. I will ask the questions. I don't know the answers, but these gentlemen do.

When I say "I" or "we" or anything of that kind, it means I am Tom Morton and "we" are the Title Insurance and Guaranty Company.

The discussion that is to follow will be a discussion of plant methods, including building and rebuilding. Although certain questions have been prepared in advance that are to be answered by members of the panel, every member present should feel free to ask additional questions, and if the members of the panel cannot answer them, the questions will be submitted to the general membership for reply. If any of the answers are not complete enough, feel free to ask for a further explanation. Do not hesitate to ask questions, as each question that is answered provides just that much more information on the subject.

Need to Rebuild

Judging from my own experience, there is more need for plants to be rebuilt than there is for new plants to be built. This is a natural result, as a plant of some type has been maintained in almost all counties and from time to time it becomes desirable to modernize such plants.

Increased activity in some counties has made it possible for new companies to enter the field and be assured of a sufficient volume of business to operate on a profitable basis. It is, of course, necessary for such new companies to build new plants.

Ordinarily when a company entered a county for the first time, that company built a complete plant. This practice, however, has been changed to some extent by some of the new companies, as plants are built now covering

only a limited period of time. Whether or not this practice will prove to be satisfactory cannot be determined until a sufficient length of time has passed during which the efficiency of the plant can be tested.

We have not had any occasion to build a new plant for 15 years and at that time we used the progressive arbitrary system.

This next group of questions are directed to Ed Dwyer.

Ed, before I ask the first question, I wonder if you would explain to the gentlemen the difference between a progressive arbitrary plant and the geographical plant, in English.

Geographical Plant

MR. Dwyer: Well, that is a little difficult to do, Mort. Under your geographical plant, your geographical plant is, as a matter of fact, in our counties, a progressive arbitrary system. Whether you use tract books or whether you use slips to file, it makes no particular difference. Is that sufficient, sir?

CHAIRMAN SMITH: Well, the only thing, Ed, I thought we might bring out, you post in a tract book, where in some geographic plants you don't post at all, but just file your slips.

MR. DWYER: That is true.

CHAIRMAN SMITH: Ed, you have built two plants comparatively recently and apparently in building these plants you did not use tract books but segregated the slips according to the property affected. Did you do this to have a workable plant available in the shortest period of time possible or do you believe this type of plant is satisfactory?

MR. DWYER: Well, we believe the geographic is a very satisfactory plant. All our branch managers are sold on it.

CHAIRMAN SMITH: Did you have maps prepared to use in conjunction with these slips?

MR. DWYER: In the one case where we built our plant from scratch, our map work was done in conjunction with our take-off. In the other case where the time element was all important, our geographical system was set up before the mapping. As a matter of fact, it took us a year and a half to set up our geographic, because we had to take care of a large volume of work in the meantime. The further advantage of the geographic system is that your documents are compiled within the section so that you don't have to rewrite in the arbitrary.

CHAIRMAN SMITH: Do you contemplate using tract books in the future?

MR. DWYER: We have no intention of using tract books in the counties in which we have set up our geographic. As a matter of fact, we are giving serious consideration to switching the process and going geographic in three of our counties where we now have tract indexes.

CHAIRMAN SMITH: Have you ever checked the cost of making up a chain of title from one of these slip plants with the cost of making up a chain from your progressive arbitrary plant in Portland?

MR. DWYER: As a matter of fact, you don't make up the chain of title in your geographic. You simply pull out your account book and there it is in front of you.

CHAIRMAN SMITH: Is the take-off segregated so as to have all instruments affecting a given block in a subdivision or a government section in one group or do you make a still further breakdown so as to have all instruments affecting any particular parcel of land in one group?

MR. DWYER: Frankly, that depends entirely upon the activity of the account. Sometimes we bring it down minutely. Other times you throw it into a section if the account isn't active.

A. B. WETHERINGTON

CHAIRMAN SMITH: Do you maintain any record of the slips that are in each group so as to be able to determine that none of the slips have been lost?

MR. DWYER: Our geographic system is not a true slip system, for the reason that these slips are bound in a post binder and they are given a double recheck before they are filed.

CHAIRMAN SMITH: Have you had any trouble because of missing slips?

MR. DWYER: As a matter of fact, strange as this may seem, we have had less trouble on our slip system than we have had by misposting in our tract book.

CHAIRMAN SMITH: In making the take-off, did you disregard mortgages and other similar liens that were satisfied?

MR. DWYER: Before we started plant building, we sent two of our examiners into the county and they checked all the mortgages for proper satisfactions.

CHAIRMAN SMITH: How did you determine that they were properly released?

MR. DWYER: Where the records showed that a mortgage had been satisfied for more than 20 years, the recital of such satisfaction was taken as conclusive. During the 20-year period, all satisfactions were checked for their sufficiency.

Take off Discharged Mortgages

CHAIRMAN SMITH: Did you make a take-off for mortgages or other similar instruments that imposed a lien on the property even though the lien had expired by lapse of time or otherwise.

MR. DWYER: Yes. Take-off is made for the reason that under our law in Oregon a mortgage could be extended by recitals in any deed in the chain of title; and all foreclosed mortgages were also taken off.

CHAIRMAN SMITH: Would either of the other members of the panel or any of the members in the audience care to ask Mr. Dwyer any further questions about a geographic plant?

MR. WETHERINGTON: I would like to ask a question. Ed, have you had occasion to figure the difference in cost as between take-off and under the geographic system? I believe you post to the tract books in Portland. Do you have any figure on the difference in cost?

MR. DWYER: No, I am sorry, Al, I don't have.

CHAIRMAN Smith: Does anybody else have an answer to that? I guess they don't have those figures out.

MR. DOZIER: I would like to ask one question. As I understand, on these geographic plants we have, most of these slips are just filed. Now, this question was asked over here, and Ed didn't have exactly what I understood to be the answer. But I would like to know, and if anybody in the audience uses it, in those cases where there are these instruments that are just filed in these folders, do you have anything in those folders to indicate what was in there?

CHAIRMAN SMITH: At any time?

MR. DOZIER: At any time.

MR. DWYER: We don't, and as a matter of fact, that is the only criticism we have ever had directed at us. In California, where they set up the geographic, they had a chain of title on the outside of the envelope. But we have been operating one plant now for five or six years, and as I said, we haven't had any slip-ups. If the work is properly done in the first instance, I don't think there is anything to worry about.

Check all Filings

CHAIRMAN SMITH: Do you recheck in any way the filing of those slips?

MR. DWYER: Yes, we do. That is double rechecked; first, ordinarily by the poster, and secondly, in both of these plants, by the branch managers themselves.

MR. RUSSELL SMILEY: (St. Petersburg, Florida): About how many instruments in that particular county are filed in a day, on an average?

MR. DWYER: I would say in the one 50 to 75, and in the other 25 to 40.

MR. SMILEY: Where you have that geographic breakdown of what you call the nuclei, how many instruments are filed that would be considered blanket instruments and you have to make duplicates to put in various other files? This would cover other property.

MR. DWYER: I don't have any figures on that. It wasn't too heavy, though.

MR. SMILEY: Not very heavy?

MR. DWYER: No.

CHAIRMAN SMITH: The cost of building a geographic plant as compared to a progressive arbitrary plant cannot be ascertained, unless a plant of each type is built in the same area at the same time, as costs vary in different areas, and as we all know costs of this type of work have increased considerably during the past few years. It would be interesting, however, to compare the time required in building a geographic plant as compared to the time required to build a plant under the progressive arbitrary system.

Ed, do you have a record of the time required in building the two plants just referred to and a record of the number of documents that had to be taken off in each of the counties?

MR. DWYER: No, I don't have, but in both counties we had an entirely different situation. In the first instance, we went in from scratch. It was a rather active county, and as I say, we did our map work in conjunction with that. That plant took us a little better than two years to build.

In the second case, we had a plant that we couldn't rely upon. We used it to some extent, and our map work was done after our plant work was set up, or shortly before it was completed, we started our map work.

But there again, following Tom's idea, in the second case we were competing with a large number of things down there and (our stenographers were costing us $200 a month) whereas if the plant had been built in Portland, most likely it would increase cost considerably.

CHAIRMAN SMITH: The geography had a lot to do with the geographic plant.

MR. DWYER: Yes, it did in that case.

CHAIRMAN SMITH: Has anyone in the audience built a plant on the progressive arbitrary system recently? If so, how much time was required and how many documents were taken off?

Photography

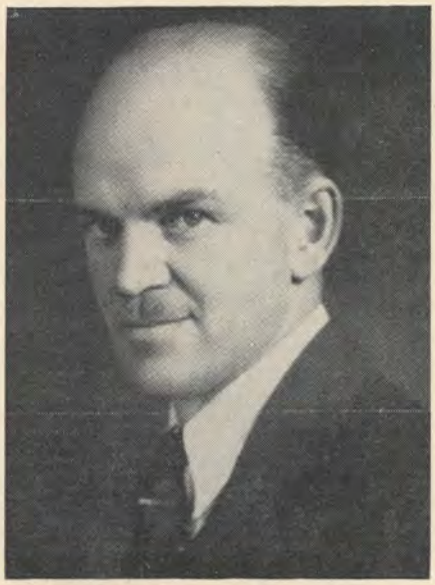
MR. HENLEY: (San Francisco): Why didn't you use photography for your take-off?

MR. DWYER: Ben, with all these people here who are advocates of photography, I shouldn't say this, but frankly, we had a plant built at Oregon City by photography, and while there have been some improvements in photography, that is true, but we still think this geographic method is a better deal than photography.

MR. HENLEY: I just wondered, if you were having trouble getting typists, why that wouldn't be a solution to your problem. Your objection to photography was sufficiently great to overcome the advantage of the competition of the camera against the typist.

MR. DWYER: In answer to that, I will say this, that in our part of the country we have one man who specializes in building plants by photography, and he refused to build the plant because he couldn't get sufficient help.

I might also say we had contemplated building a plant and we were going one step further and that was to photograph and take prints of your



THOMAS G. MORTON

film and then go geographic. We haven't tried that out yet. We may do it.

CHAIRMAN SMITH: Has anyone in the audience built a plant on the progressive arbitrary system recently? If so, how much time was required and how many documents were taken off?

MR. WETHERINGTON: I would like to have an answer to that.

CHAIRMAN SMITH: Mr. Wetherington says he would like to have an answer to that, if there is anyone that has it. No answer. So I guess we don't have it.

MR. DWYER: May I ask one question, Mort?

CHAIRMAN SMITH: Surely.

MR. DWYER: Has anyone in the title business a good system of cost accounting, in any phase of the business? (Laughter)

CHAIRMAN SMITH: The trouble with statistics and things of that kind, Ed, is that you can prove one thing by one set of statistics and you can't prove another thing.

For instance, if it takes one man 12 days to build a ship, it should take 12 men one day to build a ship. But htat doesn't necessarily prove that if it takes a ship 60 days to cross the ocean, that 60 ships can cross the ocean in one day. I think that answers the question.

Ed, well, you have really answered this question, but did you use photography in making your take-off for these plants or did you make a typewritten take-off?

MR. DWYER: Typewritten take-off.

Take-Off by Typewriter

CHAIRMAN SMITH: Typewritten take-off is his answer. Now, has any member of the panel or any one in the audience built a plant by using microfilm only; that is, by using the film in the same manner as a typewritten slip would have been used had it been made?

Nobody has done that. No hands are raised. I guess we will have to get the answer to that next year.

Then he has another question. What is the approximate cost per instrument of such a plant?

No one having done it, I don't suppose we have the approximate cost.

I believe that it has been much more common for title companies to modernize existing plants. At least this is a fact in so far as my personal experience is concerned. We have found existing plants to be cumbersome and to some extent unreliable. If the plant is just cumbersome, we have opened up a new set of books, prepared all necessary maps, and as of a given day started all posting in the new plant.

If a plant has proven to be inaccurate, we have checked for the purpose of determining the period during which the postings were inaccurate and therefore during which the plant could not safely be relied on, and have gone back and built a new plant from such time.

As a result of this practice, we have a modern and efficient plant being built up each year, with the natural result of having more and more of title examinations confined to the new plant.

To Ed Dwyer again: Ed, I believe you have also followed a similar practice. Is this correct?

Standardization

MR. DWYER: The answer is yes. Operating as we do with ten completely owned branches, we find it desirable and economical to attempt to standardize our operations as much as possible. True, we do not have the exact type of plant in each county in which we operate, excluding the counties in which we have the geographic, but we try to conform all our plants to the plant in the main office, unless it is found expedient to adopt the geographic system. We have, however, set up a uniform general name index for all of our outside counties and we have also standardized our mapping in these counties.

Maps

CHAIRMAN SMITH: Speaking of maps, Ed, do you require maps of the entire county to be prepared for use in connection with your plant?

MR. DWYER: Not out where we live. A great deal of our counties still are sectionalized, with no activity. So we have no troubles with those.

CHAIRMAN SMITH: So if they are inactive, you leave them alone.

Metes and Bounds Descriptions

This is addressed to John Dozier: John, in building your plant, all instruments which describe property by metes and bounds were posted as affecting a portion of a designated area. Later it was necessary to rebuild the portions of the plant to which such postings were made. What system was used in rebuilding?

MR. DOZIER: The progressive arbitrary system.

CHAIRMAN SMITH: There are different versions of the progressive arbitrary system and you apparently use a system with which I am not familiar, as I have only known of the systems that use numbers only for designating arbitrary areas. Will you explain why you use letters and numbers?

Arbitraries

MR. DOZIER: When I was asked this question originally, I don't know whether I understood exactly what we were trying to get at. I undestood, in our metes and bounds tracts, of course, we didn't know where we were going, when we first started building this plant, and most of these metes and bounds areas were so cut up and we didn't have maps available.

So in posting this plant, we had to post these tracts to just a large area, and when we got through, we had several hundreds of instruments posted to an area, but we couldn't tell just what particular part it affected.

All we did was rebuild a plant, went back in, took all these instruments out, and made plats of them, and then these plats were given, (as I understood his question at that time) our own arbitrary numbers and we progressively numbered those as we cut down. The original tracts were somewhat larger. We will say, ten or fifteen acre tracts were given a letter A, for instance, on our plat, and that is what we used to post an account of that particular instrument.

As these tracts were cut down into smaller tracts, out of a part of A we would give it a numeral. In other words, on our index, way down at the end of it, where we could find tract 1, it was posted as tract 1 in A.

In other words, we could tell by this number where it originally came out of. That is what I thought he meant by that question.

CHAIRMAN SMITH: It was just your own way of doing what everybody else was doing?

MR. DOZIER: What everybody else was doing.

CHAIRMAN SMITH: Ed, you maintain a progressive arbitrary system in Portland. Do you use letters and numerals or just numerals?

By Numerals

MR. DWYER: We use just numerals for the reason that there being no limit to numbers, we have never found it necessary to use letters.

CHAIRMAN SMITH: Al, I believe you also use the progressive arbitrary system. Do you use letters and numerals or just numerals?

MR. WETHERINGTON: We use only numerals which have been satisfactory for the reason that we start with as small a tract of land as we feel is necessary. That tract is called a farm. The farms are cut into tracts, the tracts into blocks and the blocks into lots, and there just isn't any limit to the number of numerals.

Now, it may be necessary when one of these small parcels that we designate now as lots have become more active and are cut into smaller segments, that we will have to use some letters also.

CHAIRMAN SMITH: Ed, when an instrument is posted to your tract books, your posters do not write out the numeral or the letters designating the particular portion of a section, but merely make a check in the column for such lot number or portion of a section. Has this caused any errors taht may have been discovered had the

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numerals or the letters indicating the portion of the section been written in the proper column?

MR. DWYER, No, it has caused no error, to our knowledge.

CHAIRMAN SMITH: I have always been under the impression that if the numerals or letters were written in the particular column that should there be an error in the posting by having the numeral or letters written in the wrong column, that such error probably would be caught when the chain of title was made up, as the eye would detect the numeral or letters designating the property for which the chain was made even though it was in an adjoining column.

Al, you apparently write out the number or letters in your plant. Have you any particular reason for doing so?

MR. WETHERINGTON: We found absolutely opposite to Ed, that our posting clerks made fewer erros if they are required to write out the number or letters rather than check against the column.

Now, that is not necessarily true in connection with Section lands, where the 40 acres still stay in a body. Oftentimes they do check that.

MR. DWYER: Mort, maybe I have misread this thing. I am speaking now of sectionalized land. On our arbitraries, we write out our arbitrary number, of course.

CHAIRMAN SMITH: But the others are just checked out in the margin, so to speak?

MR. DWYER: That is correct.

Tract Book Pages

CHAIRMAN SMITH: All three of you use approximately the same size tract books, but apparently there is a difference in the number of columns shown on the sheets.

Ed, you use a sheet with 20 columns appearing thereon. Why was this number selected?

MR. DWYER: The 20-column sheet was adopted even before I went to work for the company, and that was a long, long time age. I don't know the real reason for using this particular subdivision. I might say, however, that the average block in the city of Portland comprises less than 20 lots. If over 20 columns were used, the columns on an ordinary tract book sheet would be so small it would be difficult to write in the space provided.

If, on the other hand, your setup provided for but ten, it seems there would be a waste of space. As good a reason as any is that this may have been done because it was found more efficient to work with multiples of twenty and twenty subdivisions gave us the desired spacing.

I can think of no better subdivision than 20.

CHAIRMAN SMITH: Al, you only have ten columns. Why was this number selected?

MR. WETHERINGTON: We use a ten-column tract book. As Ed just stated, I found that in use long before I went to work with the company, and that has been a long time ago too.

It is the exception in our section of the country to have less than 16 or even 20 lots in a block. More subdivisions have more lots than that.

So in a column of ten, containing all the digits, we can post under that particular digit, each lot ending in 9 will be under 9, whether it is 9, 19, 29, or 79.

By using the 10-column, we have larger columns, and still without affecting our margin space that we need, and we have found that it worked very satisfactorily.

CHAIRMAN SMITH: Has this prac-

tice caused any errors in the preparation of the chain of title?

MR. WETHERINGTON: We have not had any loss experience due to this type of posting. I might further add that we use separate tract book sheets for section lands and they carry the 16 columns.

Columns to Page

CHAIRMAN SMITH: This is Tom Morton speaking now.

We have always used 16 columns principally because of the 16 divisions of a section. I am inclined to believe that 20 columns is a more efficient number and in the last tract book sheets which we prepared and which are to be used in the building of a new plant, we included 20 columns.

This will provide columns for 20 lots in any block in a subdivision or in any subdivision in which there are no blocks. It will also provide the 16 columns necessary for 16 subdivisions of a section with four additional columns for governmental lot numbers. This permits the closing out of the particular area in a section which has been given a lot number on the government plat.

All of you use tract books which is evidence that tract books are more efficient than loose cards. You also all use post binders which I believe everybody has learned are more efficient than bound volumes.

Each of you also post the given and surnames of the parties to an instrument. Do any of you abbreviate any names under any circumstances?

MR. WETHERINGTON: We frequently post only the initial in the given name.

Posting Names

MR. DWYER: Our posters are given strict instructions to post the name of the grantee in full. However, the grantor's name may be either abbreviated or eliminated entirely where a cross-reference can be made. Our sheet contains two columns, showing title numbers; one column is immediately ahead of the grantor column and the other immediately after the grantee column. The column after the grantee column carries consecutive numbers.

To illustrate, if a grantee came in, let us say, on line 6 of the page and went out of the title on line 12, on line 12 we would simply show in the title number column "Six," which, of course, would refer to the grantee on line 6; and then we would add the name of the spouse, if any.

This same rule applies to posting of mortagages.

CHAIRMAN SMITH: Have any of you ever considered posting the surnames first so as to make it easy to locate property owned by a certain person in a particular area?

MR. DWYER: We have always carried our surnames first and have never considered changing this practice.

CHAIRMAN SMITH: Do you think such posting would have any advantage?

MR. DWYER: Posting by the surname last, as far as we can see, would be a distinct disadvantage. In this connection, however, I should say that in our geographic plants where we use a complete abbreviated take-off for our entries, the names naturally appear as they are shown on the recorded documents.

Recorder's Serial Number

CHAIRMAN SMITH: John, you do not post the Recorder's Serial number to your tract book which of course is available at the time of the posting, but you do post the book and page of the instrument, presumably at a later date, thereby having to duplicate to some extent the work of posting. Have you ever considered posting the recorder's serial number at the time of posting and to maintain your take-off slips according to such file number?

Do you think that any saving could be effected by doing this?

MR. DOZIER: No. This was another misunderstanding that we had in our correspondence.

We don't have a recorder serial number, never have had. It is one of those peculiar things.

Of course, in our county we record by photograph, and we have the book and page the next morning. Our Recorder books and pages the instruments as they come into the recorder's office, at the same time he puts the time on.

We started the system years ago in photography, which we convinced the county to do, because we do the recording for the county.

We don't have any mortgage or deed books any more. We got rid of all of those.

We just start out, and the first instrument comes in as a deed, the next one is a mortgage, and so forth, and we put the book and pages on just as they come in, and then we have the photostat take-off, which we have the next morning, and it is all booked and paged.

CHAIRMAN SMITH: That, of course accounts for the lack of the serial number in the posting?

MR. DOZIER: That is right.

CHAIRMAN SMITH: Do you then wait for the book and page the next morning before you post?

MR. DOZIER: That is right.

CHAIRMAN SMITH: Al, I notice that you do both, so I would like to ask you the same question that I just asked John.

MR. WETHERINGTON: We post both the clerk's number as well as the book and page, for a number of reasons, the first one being that certain instruments under the laws of our state are never actually spread on the records. This is particularly true of mechanics liens. The law provides that they are recorded when filed and the clerk files these liens numerically according to his receiving number and we, therefore, must do likewise.

We first attempted this posting just prior to the advent of photostating records for the reason that the recorder was many months behind in recording and the book and page could not be ascertained. We then operated showing only the clerk's filing number and later went back and secured the book and page, but due to the length of time, we missed lost of them, and our plant no doubt still has a great number of those slips still not in.

Posting Book and Page

CHAIRMAN SMITH: My question may have been a little misleading, so I am not sure whether you post the book and page of a document to your tract books or not, Ed. Obviously you could not post it at the time of the posting of the instrument, as it was not available at that time. If you do not post the book and page at any time, let me know as I would like to ask you to state your reasons why you do not do so.

You see, these questions are based a little on the correspondent angle.

This question is not from a critical attitude, as we have long since stopped posting the book and page to our tract books. We do carry sheets in front of the binders holding our take-off slips which show the book and page of each file number contained in the particular binder.

MR. DWYER: We have always used a serial number for posting. In the early days of our history, we went so far as to post the books and pages on our tract books when they were available—that is, after the serial number was on, of course.

However, after we went on a full take-off, some ten years ago, our tract books show the serial number only. The books and pages are, however, shown on our daily take-off. Our daily take-off is arranged in groups of 1,000 numbers.

Our recorder has cooperated with us to the extent that each January 2nd, he starts with No. 1. This is quite an advantage because now if we were looking for, we will say, instrument No. 147 in 1945, we know that instrument will be found in Book O of 1945. If, however, we are looking for instrument No. 43860, we know that instrument would be found in Book 43 of the year specified.

However, for our geographic system, since the take-off has been filed and it is impossible to locate it for book and page reference, we use the instrument number index which shows the book and page of the instrument. Our system is apparently very similar to the master sheet used by Tom himself.

Colored Ink

CHAIRMAN SMITH: Do any of you use any special ink for posting to your track books?

MR. DWYER: Yes, in Portland we do. There we use blue ink in all cases except that red ink is used for mort-

gages and mechanic's liens; purple ink for court work where the posting is made to the property.

The choice of colors, in my opinion, is without any particular significance.

CHAIRMAN SMITH: Do all of you designate your arbitrary lots in red or any other distinctive color?

MR. DWYER: No. We designate our arbitrary lots in blue.

CHAIRMAN SMITH: How many pages are in each tract book?

MR. DWYER: We have no set number. We do try to limit the thickness of our tract books, each of which is approximately 2½ inches thick, the weight of the volume being our prime consideration.

CHAIRMAN SMITH: Ed, when do you post the application number (of a policy of title insurance) to your plant?

Pencil Posting

MR. DWYER: At the time the application is received, this entry is made in pencil by the chain maker. When the policy is ready for writing and the final recheck is made, it is then posted in ink. In our geographic plants, a slip is part of our order and the typed order goes into the account as a slip. After the examination has been made, it is filled in its proper place by the examiner, who in the case of a geographic system, is also the chain maker.

CHAIRMAN SMITH: Why was the posting made in pencil at the time the application was received?

Posting Title Policy Files

MR. DWYER: To eliminate the possibility of two applications being received and worked on at the same time. In other words, if the final posting were made only after the examination were made, it is conceivable that the work of one examiner could be wasted by reason of the extra examination.

Since this was written, I think of another reason that was done. Oftentimes you refer to judgments, we will say, in the chain of title. You have in the application, where those same names come up, your search. Well, obviously, if you have made a judgment search in one case, you should be able to utilize it before your final chain is made.

CHAIRMAN SMITH: Do you post your application numbers in red or some distinctive color of ink so as to be able to locate them at a glance?

MR. DWYER: No. They are posted in blue.

Maps

CHAIRMAN SMITH: Al, you maintain your maps in folders that stand upright in a cabinet. Has this system proved entirely satisfactory or are there some objections to it?

MR. WETHERINGTON: No, we have found this system entirely satisfactory. That is a system that we started some twelve or fifteen years ago. Prior to that time they were filed flat in a drawer, and we found that refiling was difficult.

We buy our plats from the recorder. At the time each plat is recorded, that is a blueprint on cloth, and it is fairly substantial. By filing not more than twenty of these plats in a heavy cardboard folder and into a large filing case, we found it very satisfactory.

CHAIRMAN SMITH: Ed, you suspend your maps on rods and I presume they are hung on these rods by the use of Cello Clips. Has this system proven entirely satisfactory or are there some objections to it?

MR. DWYER: Tom mentions Cello Clips, and I don't know what Cello Clips are.

CHAIRMAN SMITH: Don't you know? It is kind of a ukulele, only bigger. (Laughter)

MR. DWYER: For that reason I have brought with me an exhibit of one of our maps, which I would be pleased to explain, and if you gentlemen are dong any map work, I would like to have you look at this, because I think we really have something. That is the way the map is (indicating).

Those maps hang down, and they hook over the side here (indicating).

JOHN W. DOZIER

They are numbered, the number of the map, the particular designation, north section or whatever section it is, township, range.

CHAIRMAN SMITH: They are numbered on the top so they would be down waist high?

MR. DWYER: Yes, waist high.

CHAIRMAN SMITH: So you would go along and get the number off the top?

MR. DWYER: Yes. It is reinforced, lifetime stuff, if you use them rightly and correctly.

The General Index

CHAIRMAN SMITH: Do you maintain a general index that consists of an index to an account or are the postings made directly to the particular name in the index?

MR. DWYER: Formerly we had an index to our general index, but when we set up our new name index ten years ago, we eliminated the index to the index and all postings are made directly to the particular name in the index.

CHAIRMAN SMITH: John, you post all miscellaneous instruments that affect title to property but which do not describe any particular property to one index and judgments and pending suits to another index. Why is this done?

MR. DOZIER: Primarily to keep from having to go over the same instruments time and time again when we are running judgments.

The index that we were talking about in this correspondence was a general index where we post only affidavits and powers of attorney and such of those things that you have no other place to carry them. Anything that has a legal description, of course, is carried in our tract book. Any instrument filed in the Recorder's office, such as an income tax lien or something of that kind, is posted to our judgment index.

This thing we have here that we are referring to is solely for affidavits and powers of attorney, where you have no place else to put them.

CHAIRMAN SMITH: But which you have to run just the same?

MR. DOZIER: That is right.

Soundex

CHAIRMAN SMITH: Ed, why did you adopt the Soundex for your general index?

MR. DWYER: Our old alphabetical system became so cumbersome and unsafe that about ten years ago we decided to build a new index. We wanted something which would do our work accurately and speedily. The best thing we found at that time was the Soundex System then in use by Joe Weber of the National Title Company in Los Angeles.

This system has proved very satisfactory and we have experienced no great difficulty in training new employees in the system. Its use, however, is confined to those who have been trained for the task. In our branch offices, we use the alphabetical system with a series of cross indexes to group names which might be considered Idem Sonans.

CHAIRMON SMITH: What system of take-off are you now using?

MR. WETHERINGTON: Manual take-offs.

CHAIRMAN SMITH: Ed?

MR. DWYER: We use the full take-off with abbreviations. That is standard throughout our organization.

CHAIRMAN SMITH: Can you be positive of your abbreviations, I mean as positive as a woman driver who holds out her hand and you know she is going to turn right, left or stop?

MR. DWYER: Yes, sir.

MR. WETHERINGTON: You would think of that.

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Particulars Later

Cost of Take-Off

CHAIRMAN SMITH: What is the approximate cost per instrument?

MR. WETHERINGTON: In 1947 the cost per instrument was $.1765 per instrument. The first six months of 1948 the figure has increased to $.2146 per instrument. This cost to us is reduced by 50 per cent due to a joint take-off agreement with one of our competitors.

CHAIRMAN SMITH: Ed?

Mr. DWYER: The cost per instrument averaged 17 cents during the years 1946 and 1947.

CHAIRMAN SMITH: What are some of the advantages of a take-off made by the use of photography, photostat, typewriter?

MR. WETHERINGTON: I personally feel that a manual take-off by typewriter is necessary sooner or later. We were almost to the point of being compelled a few years ago to make microfilm takeoffs due to the fact that we were so far behind the recorder. Had we been forced to this, however, we would have immediately made a typewritten take-off to be used in examining titles.

Our typewritten take-offs, once they are posted to the tract books are complete in themselves to the point that they require no further checking with the public records, our examinations for title insurance being made by our attorneys from the take-off slips.

CHAIRMAN SMITH: Al, I assume that you have not considered having prints made from the microfilm, as if you did this, there would be no particular reason for a typewritten take-off to be made. Have you ever considered doing this?

MR. WETHERINGTON: No.

CHAIRMAN SMITH: Ed?

MR. DWYER: Since the only method used by us in our take-offs is the typewriter, we have no information on which to form a belief on the other two points of this question.

CHAIRMAN SMITH: Al, you use cards for each surname. Do you have an index to these cards or are they maintained in alphabetical order?

MR. WETHERINGTON: Yes, we have a separate index to these cards, each card having a number which is obtained from the index.

CHAIRMAN SMITH: Does each card contain all names that sound alike?

MR. WETHERINGTON: Yes.

CHAIRMAN SMITH: Do these names appear at the head of the card so that the given name only is posted?

MR. WETHERINGTON: That is correct.

CHAIRMAN SMITH: Are the names given a number so that such number may be written in a column prepared therefor in front of the given name?

Probate Files

MR. WETHERINGTON: Yes.

CHAIRMAN SMITH: You also maintain a separate index for probates. What is the reason for this?

MR. WETHERINGTON: We maintain a separate index for probates for the reason that we do not take off a probate until needed in a title examination. We have found it necessary to only abstract 20 per cent of the probates that have been filed in our county and it would seem to me that an index including items that are not complete would be misleading and possibly could cause errors should the postings be made along with other matters that are complete.

Taxes

CHAIRMAN SMITH: You maintain a tract index for taxes. What is posted to this separate index?

MR. WETHERINGTON: Under our system of collecting taxes, all properties on which taxes are not paid by April 1st of the succeeding year are sold to the highest bidder, and if no bidders are present the remainder to the county and all lands not sold have been paid. We post to the tax tract index these certificates. Periodically a check of redemption records is made and such redemption noted on the tract index.

CHAIRMAN SMITH: Why are these posted to the separate index and not to the tract books?

MR. WETHERINGTON: We use separate trained abstracters as tax searchers, and if these were posted along with our general indexes, it would be quite difficult to segregate them, and then the plant would become too bulky.

CHAIRMAN SMITH: That completes the script prepared by Tom Morton. Are there any questions anyone in the audience would like to direct to our panel members?

MR. SMILEY: (St. Petersburg, Florida): In the original part of the discussion, they talked about your tract book sheets as having twenty columns or ten columns or sixteen columns.

We have that system of tract indexes which are used in our plant, but we don't divide it in any columns at all. We set up a sheet, we will say, for block 10, North Shore Addition, and under that we post the lot numbers of the particular instruments that are filed right under that block in one column, oh, I guess it is about five inches wide; and if we have five lots, we post lots 2, 3, 4, 5 and 6. If we have one lot, it is posted as lot 1. If a whole block is involved in the transaction, we say the whole block.

What is the advantage of having it divided into columns?

CHAIRMAN SMITH: You mean you don't post to a column at all. You say you have it that wide, a couple of inches, and you post a lot, in that column you would say—

MR. SMILEY: Just put down the numeral 3, if it affects Lot 3.

CHAIRMAN SMITH: You have to check every writing in that column to which you post all of that information?

MR. SMILEY: That is right.

CHAIRMAN SMITH: But we just have to run down a column, and if there is nothing in it, there is no document.

MR. SMILEY: Well, you can run down that column and pick out your numbers pretty much as fast as you could down the columns.

CHAIRMAN SMITH: I don't think you would find that the general concensus of opinion. (Chorus of no's.)

MR. MYREN: (San Jose): How many copies do you make of your sheets?

MR. WETHERINGTON: Two. As a matter of fact, we make four, one for each company.

MR. MYREN: In other words, you have an original and three copies?

MR. WETHERINGTON: That is right.

CHAIRMAN SMITH: Anything further?

MR. CHARLTON HALL: (Seattle): The take-off, Al, you said cost you so much for two sets, is that right?

MR. WETHERINGTON: That is right.

MR. HALL: 17 cents an instrument, something like that?

MR. WETHERINGTON: That is right.

Photographic Take-off

MR. HALL: Has anyone here been making a photographic take-off of the daily work and did you compare the cost of that with this cost?

MR. WETHERINGTON: That is what I was trying to find out and asked that question myself.

MR. HALL: I would like to know if anybody here makes their take-off by photography daily and how much it costs them, and then if they want to make a second set or a third set, for three companies, like we have, how much it would cost for the second and third copy of the same take-off.

MR. WETHERINGTON: Mr. Hall, I haven't actually done that. I asked the question a while ago. A few years ago we were casting around for various means to improve our take-off. That is what we are after all the time.

We got into a figure, and I won't be positive this is the correct figure, but to make these four copies which we have under our system, or we would have to change it, it was going to be about 26 cents for the four copies.

MR. HALL: For photographic?

MR. WETHERINGTON: For photographic, that is correct.

CHAIRMAN SMITH: That is not 26 cents apiece?

MR. WETHERINGTON: 26 cents per instrument, yes.

MR. MYREN: Jack O'Dowd says he gets five copies for 7½ cents.

MR. WETHERINGTON: That would make 35 cents then.

MR. MYREN: I figure mine comes out five copies for 25 cents.

MR. HALL: The typewriter take-off is five copies for 25 cents?

MR. MYREN: Yes.

MR. HALL: And on the photographic it would be more. It would be 37.

MR. MYREN: He wants a pencil and paper to figure what 5 times 7½ is.

CHAIRMAN SMITH: He knows what 5 times 7½ is, and he doesn't need a pencil and paper either.

Gentlemene, our time is up. I am sure any of the members of this group, exclusive of myself, because I am not an expert like they are, would be glad to answer any questions at any time during the meeting here.

I do feel these gentlemen deserve a lot of credit for tthe work they put in on this, and Tom acting as Moderator has certainly done a fine piece of work. I believe he is very deserving of all the things we can express to him, which we most certainly do.

I want to thank you, John, and you, Al, and you, Ed, very much for coming up this morning and being so fine about this program. It was a very good one, I feel, and I think we can get a lot out of it when it is printed in the proceedings.

(Applause).

EXHIBIT "B"

The completed map, mounted on cloth, borders bound, steel rod sewed in header, is ready to hang in map rack.

Total cost of materials used per map $1.29

1½ man-hours labor per map.

This map, Exhibit "B", is a paper print direct from tracing by a dry process. Tracing is on sensitized paper exposed to Mercury Light in printing machine, then developed by Ammonia fumes.

The advantage of this kind of print over the old work method of negative and positive is that in addition to the reduced cost the exact scale from the tracing is obtained.

The printed map is placed, face down, on a Tuf-Flex plate glass, topped with a sheet of Char-Tex cloth (waxed surface down on paper print) and covered with a thin paper on the cloth to prevent the electric iron from contacting the wax and staining the map. An electric iron is applied and moved slowly back and forth on a strip of map until the wax on the cloth is thoroutly softened so that it will cling to the paper. The iron is quickly removed and a water tank set on the strip thus heat-treated in order to hold the cloth and the paper together until the wax coheres and sets. While this is taking place, the adjacent strip is heated with the iron and the tank placed on it—and etc., until the map is complete.

The copper water tank sets on a plate which is 8" wide and 42" long, designed to correspond with a strip equivalent to the length of the iron when the same is slid crosswise on the cloth. This has been found most practical as it is necessary to place the pressure on the map immediately upon removal of the heat in order to insure uniform bond of paper and cloth. The four strip applications of heat and pressure take only 12 to 15 minutes per map.

When removing completed map from work table, care must be exercised to pick it up straight and lay it out flat on the table where it will be undisturbed for at least 24 hours, until the wax is thoroughly set.

The next step is the cutting and application of the border binding strips from the left-over trimmings of Char-Tex cloth. These are applied by the same method described above for the cloth back, except that a narrow electric iron specially designed for this work is used so that only that portion of the map directly contacting said strips will be re-heated.

The position of the steel rod is marked off and the title number, etc., of map written so that the map may be located in the map rack. The map is then folded over the rod and sewed with a machine, after which the edge is sealed to the back of the map by a narrow strip of Char-Tex cloth. The map is then complete.

The following equipment is used in producing Exhibit "B":

1 Dneeto Printing Machine	$750.00
1 Steam-O-Matic Electric Iron	16.00
1 Narrow Border Electric Iron	13.00
1 Tuf-Flex Plate Glass 30"x48"	38.90
1 Copper Water Tank on Aluminum plate (8"x42"x3")	21.50
1 Singer Sewing Machine	150.00
	$989.40

Materials used in Exhibit "B":

Sensitized Paper 30"x42" each	.11 1/3
Char-Tex Cloth 29"x40" each	.80 1/3
Scotch Tape 1½"x29" each	.03 1/3
Steel Map Rod	.33 1/2
Ammonia Developer	.00 1/2
	$1.29

EXHIBIT "A"

Tracing paper on which our maps are drawn and from which direct blue line white paper prints are made—purchased as per sample, complete with title, border markings, and arb column.

Cost per sheet ..... $.40

Title Requirements of Veterans Administration and Procedure for Approval of Loan

HOWARD TUMILTY

Vice-president and General Counsel
American-First Trust Co.
Oklahoma City, Oklahoma

I should give credit, I think, in the very beginning to Mr. Sheridan, Mr. Scranton and others who since I reached the convention a little after 11 o'clock this morning have provided me with the latest information available concerning developments in this subject. It has been difficult for me to undertake to accumulate the material that I have amassed here. I do not say that in order to try to enlist your sympathy, but simply to let you know that my efforts to contact the regional attorneys offices or the V. A. have not been too satisfactory, and I couldn't arrange it when it was convenient for me. Finally, however, that was done.

I think the better way to present this matter is for me to give you what I had first prepared, with one or two slight amendments. That would indicate the situation as it stands now under the existing regulations, and then I shall refer to the new matter which has just come to our attention, concerning which we shall have some further action in the very near future, we hope.

The Statute itself does not fix the quality of title to be acquired. Regulations of the Veterans Administration have been promulgated which for our purposes have the force of law.

The statute itself does not fix the quality of title to be acquired. Regulations of the Veterans Administration have been promulgated which, for our purposes, have the force of law. Section 36:4350 of such Regulations provides in substance as follows:

1. The title must be a fee simple, legal or equitable; or

2. A leasehold estate running or renewable at lessee's option for not

less than 14 years from the maturity of the loan, or to an earlier date at which the fee simple title will vest in lessee, and which is assignable or transferable if subjected to the lien; or

3. A life estate, if the remainder and reversionary interests are subjected to the lien.

Such estates are not ineligible because of encroachments, easements, servitudes, reservations for water, timber or subsurface rights, or building and use restrictions whether or not enforceable by reverter if there has been no breach giving right to the exercise of the reverter: provided, that such limitations, as they may materially affect the value of the property for the purposes used, are taken into account, in the appraisal of reasonable value required by the act.

Eligibility

At the time the loan is made and guaranteed, the VA is not concerned with the type of title owned by the veteran, except to ascertain from a very general statement made by the veteran that he will acquire an estate eligible for guaranty; but, if the lender afterwards acquires title to the real estate after default and tenders the same to the VA, the title must meet their requirements. The regulations just mentioned have received amplifying construction by the VA, from which the following rules may be deduced:

1. Considered only from the standpoint of the acquisition of an authorized lien, the lender is required only to obtain a lien on property the title to which is such as to be acceptable to prudent lending institutions, informed buyers, title companies, and attorneys generally in the community where the property is situated. (Sections 36:4351 and 36:4325b, of the Regulations.)

2. However, when the lender has acquired title to the real estate and tenders it to the VA, the latter will require a marketable title, or at least one that will be readily acceptable to purchasers and one that will support a suit for specific performance of a contract to purchase.

3. A title acceptable to prudent lending institutions, etc., may or may not be the equivalent of a marketable title or one readily acceptable to purchasers, depending upon the decisions or practice in the given jurisdiction. If there is any distinction between the two, the VA will require that the tendered title meet the standard for marketability.

4. In one state, perhaps others, there are no titles that are marketable in the strict legal sense of that term; and there the VA will accept titles that are readily acceptable to purchasers and which will support suits for specific performance of contracts to purchase under the practice in the jurisdiction.

5. Exceptions as to marketability will be recognized also as set forth in Section 36:4350 of the Regulations, heretofore mentioned. There is no breach of the requirements if the estate is subject only to impairment resulting from encroachments, easements, building and use restrictions, etc., provided such impairments were taken into account by the appraiser in arriving at the value of the property.

After Default

Where it is proposed, after default, either to acquire title by deed in lieu of foreclosure or to foreclose, note of intention so to do is to be served upon the Regional VA office upon forms available for that purpose. If the VA consents to the acquisition of title by deed or authorizes the institution of

HOWARD TUMILITY

foreclosure proceedings, the leader may proceed accordingly. Foreclosure proceedings, of course, should be conducted in the manner provided by law in the jurisdiction where the land is situated. In most, if not all instances, Regional VA offices will expect to be provided with a copy of the petition or complaint filed, and perhaps also copies of some other papers filed in the case. The VA may fix an upset price in connection with the foreclosure sale to be made. These things are mentioned not because they affect directly the requirements for title, but as instances of matters to be observed and used in connection with the acquisition of title.

Upon completion of the foreclosure proceedings, or where the lender has taken title by deed, in those jurisdictions where an abstract is the ordinary evidence of title, the abstract must be submitted to the VA, and the same will be examined by VA local attorneys to ascertain whether or not the title meets the requirements under the regulations above mentioned. Any defects disclosed by such examination must be remedied.

If the lender has acquired the entire title to the mortgaged property without any right of redemption remaining, the same must be transferred to the VA by deed, containing a general warranty or a special warranty limited to claims by, through or under the grantor. Possession of the property must be delivered at the same time. A lender who has acquired only a conditional estate, subject to the right of redemption, must transfer to the VA all rights acquired, including possession of the property, if then obtainable under the law of the jurisdiction.

Deficiency Judgments

Where the foreclosure sale is for an amount less than the total indebtedness due, the VA will require that a deficiency judgment be obtained, as may be permitted under the facts and the law of the jurisdiction, and that all rights under such deficiency judgment likewise be transferred to the VA. Whenever personal service of process cannot be made as a basis for obtaining a defficiency judgment, the VA desires to be satisfied in that respect; and the affidavit or other legal method used in the jurisdiction to show the necessity for substituted service should be submitted to the VA attorney for scrutiny before filing.

Your attention is directed to the ATA Special Bulletin dated May, 1948 entitled "Memorandum Regarding Relations to Title People with Veterans Administration." The statements made therein are not superseded. The foregoing rather supplements the bulletin and refers to some matters not specifically covered in the bulletin.

DISCUSSION

MR. MORRIS: (Stewart Title Guaranty Company, Houston, Texas): Mr. Tumilty, in this proposal of the changes of the VA regulations under the requirements for title to be furnished the VA, the first item you read was Title Insurance or commitment, I believe. Down in our country the Board of Insurance Commissioners prescribes the rate, and it says there is no rate on these commitments. I am wonder ing if we are getting around to something free here. We are a little bit allergic to that. Drake, do you know anything about what I am asking here?

MR. DRAKE McKEE: (Dallas, Texas): I have an idea that when Mr. Tumilty said "commitments," that the proposal contemplates the issuance of an owner's policy ultimately. The commitment is simply an agreement to issue a policy, and I don't think that the VA would rest solely on a commitment to issue.

MR. MORRIS: What he says there, he says that he can.

MR. McKEE: Then we will have a rate prescribed, if that becomes law.

MR. MORRIS: I still would like to do some arguing with somebody before we submit it. We can get a rate prescribed, but that is a little bit easier said than done.

CHAIRMAN SMITH: I wonder if you mind reading that again, Howard, that section having to do with that.

MR. TUMILTY: I will read this again, and then tell you what my advisor here and I think it means. But, of course we are in a large part guessing also. "The acceptability of a conveyance pursuant to the requirements will be established by delivery to the Administrator of any of the following evidences of title: (1) A title policy insuring the Administrator in an amount equal to the consideration for the property, or a commitment therefor."

MR. MORRIS: Well, why have that in there?

MR. TUMILTY: I don't know. Mr. Scranton and I think it does refer to the binder or the preliminary certificate that is customarily used, saying, "We will issue guarantee when the following requirements are met," which in this sort of case probably would be only the filing of the deed from the then owner to the VA. Perhaps we are wrong.

MR. MORRIS: Well, it still seems important to me, although it might not be to the rest of you. There is no use wasting your time, but from what I have read there it says that the VA can accept a commitment as title evidence.

McKEE: No.

MR. MORRIS: All right. A "Commitment therefor," without making it a title policy, for which he has to pay.

MR. TUMILTY: I would be very inclined to think that you will have to furnish a title policy and not simply a preliminary certificate, and if you do that you will get paid for it, even in Texas, won't uoy?

MR. MORRIS: Yes, sir.

MR. McKEE: I am Drake McKee, from Dallas Title & Guaranty. It seems to me, Mr. Tumilty, that that has another angle to it, that statement that they will accept the general warranty of an approved holder, or one defined in that section of the Act or the regulations. Our mortgagee's policy form in Texas and perhaps elsewhere becomes an owner's policy when the assured acquires title in a legal manner. It strikes me that perhaps they could figure out a way to give a general warranty and be protected under the mortgagee's policy already furnished, and no further title business result.

MR. TUMILTY: Well, as these proposals are now worded, I think that would be possible, and therefore these matters and perhaps some others in connection with it ought to be definitely in the minds of those title representatives who hace conferred and I hope will confer with the VA authorities concerning the adoption of the amendments to the existing rules.

CHAIRMAN SMITH: I think, Howard, and Ladies and Gentlemen that very definitely this Section and our Board of Governors, should take cognizance of the remarks that you gentlemen have made. I feel that you have evidenced the feeling of all the rest of us, that we don't want words in there that aren't absolutely clear, as to their meaning, not only as to how they affect us, but as to how they affect the people with whom we are going to do business. I don't know whether we can get anything done here about it or not, but certainly it should be tried.

MR. BYRON CLAYTON: (New York City): These regulations which you read have already been amended. You are just reading the first edition. Copies of the amended ones have been sent to a lot of people around the country. My office received a copy yesterday.

CHAIRMAN SMITH: For further study and perhaps further amendment.

MR. CLAYTON: Right, and they have been sent to their whole mailing list of people who have shown any interest in the proceedings, and they have called a meeting—by the way, the ones that you read were approved by the solicitors, subject to further amendment. Then they have been amended. They have been sent out to the mailing list, and there will be a hearing in Mr. King's office soon. We expect that those amendments as they come out will be printed in the Federal Register and become law by the 15th of November.

CHAIRMAN SMITH: Thank you very much, Mr. Clayton. That is helpful.

MR. CLAYTON: My group feels that that bunch of amendments as amended pretty well take the curse off the Veterans Administration proceedings up to this time.

CHAIRMAN SMITH: I imagine it will work out so we will get along pretty well with the Veterans Administration before we get through, and I hope they will get along pretty well with us. Any further questions?

MR. DOCHERTY: My name is Docherty of the New York Life Insurance Company. I am addressing my question to Mr. Tumilty. About a month or so ago Solicitor Odom wrote an opinion to the effect that under condition No. 1, the ATA policy, there was no protection accruing for the Veterans Administration, despite the fact that the condition as presently worded assumes to protect the owner of the indebtedness if he takes title in satisfaction of the indebtedness, and to protect any instrumentality of the government if that instrumentality takes title by virtue of a contract of insurance or contract of guarantee. Now, it seems to me that it was quite clear when that condition was adopted that it was the intention that the policy would become a fee policy, protecting the Veterans Administration if the Veterans Administration took title. But apparently Mr. Odom feels that if the Administration takes title under 4325 of the regulations that he is not taking title by virtue of a contract of guarantee. I was wondering what the various members of the Association thought about that.

MR. TUMILTY: Of course, I can't answer for the various members of the Association. I think that I read that opinion by Mr. Odom in connection with the material that I tried to peruse. My own personal opinion was that he was taking a rather technical and a strained view of the situation, but nevertheless, he did reach the conclusion that that paragraph in the conditions of the ATA policy was not sufficient to give the administrator protection. I got this impression. Now maybe I am wrong, but I got the impression from my perusal of what Mr. Odom said that if the administrator's name had been included in the face of the policy as one of the beneficiaries, that he might not have had the same objection. I simply mention that. I don't know what the rest of you will think of it, nor what changes ought to be made. Under these new proposals, however, that may be of very limited importance now, don't you think?

MR. TUMILTY: May I ask the gentleman from New York, don't you think that if these new proposals as to title requirements, or in substance these that we have read, are adopted by the VA that it will be of relatively little importance what Mr. Odom thought about the old provision of the ATA policy?

MR. DOCHERTY: Yes, I think it will be of little importance, assuming that those amendments are adopted. I am speaking of the regulations as they are presently in effect.

MR. CLAYTON: These new regulations contain a clause that they will be retroactive and cover everything in the past. You didn't read that part, but that is in there.

MR. TUMILTY: Yes, sir, that is in there, but I did not read it.

MR. CLAYTON: And the boys who go to Washington are going to try—now this is just a try—to get all that set of opinions and regulations and notices that are going out, all of those that conflict with the new regulations rescinded and burned up.

Report of Committee on Standard Forms

(Title Insurance)

BENJ. J. HENLEY, *Chairman; President,*
California Pacific Title Insurance Company, San Francisco, California

and

Expansion of Coverage

Demands For and Resultant Additional Risks Involved

A PANEL DISCUSSION

Members of Panel:
McCune Gill, *Vice President,* Title Insurance Corporation of St. Louis, St. Louis, Missouri.
William R. Kinney, *Chief Title Officer,* Land Title Guarantee & Trust Company, Cleveland, Ohio.
Benj. J. Henley, *Moderator.*

CHAIRMAN HENLEY: Mr. Chairman, Ladies and Gentlemen: There are two matters covered under my assignment this morning. One is a report of the Standard Forms Committee.

On that particular subject, I have little to report because the Standard Forms Committee has had substantially no business submitted to it during the past year.

One question did arise as to the sufficiency of the language which was included in the conditions and stipulations of the ATA policy last year, by which we attempted to include in the Insurance Federal agencies guaranteeing loans made by institutional and other lenders.

However, it seemed that that was not a matter for consideration by the Standard Forms Committee, but one which should have been worked out directly with those departments of the Federal government, and having received the ball from the executive secretary, it was immediately passed back to him with a suggestion that he make the touchdown in that particular case.

One subject only was called to the attention of the Standard Forms Committee during the past year.

In describing the insured, the A.T.A. policy includes as an insured, each successor in interest in ownership of the indebtedness secured by the mortgage or deed of trust insured and also any such owners who acquired the title to the land referred to in the policy in satisfaction of the indebtedness.

In 1946, paragraph one of the conditions and stipulations of the policy was modified to provide that the benefits thereof should inure to any federal agency or instrumentality acquiring said land under an insurance contract or guaranty, insuring or guaranteeing the indebtedness, or any part thereof, whether named as an insured in the policy or not.

It was reported to the Executive Secretary of the Association that notwithstanding the language referred to above, certain lending agencies have required that a special provision be incorporated in the policy including certain federal agencies as insured. It is obvious that such special provision is unnecessary and it is difficult to see how any change in the policy could improve the situation. The Chairman of the Committee, therefore, suggested to the Executive Secretary that the problem was one which should be worked out directly with the federal agencies involved.

EXPANSION OF COVERAGE

It is pertinent in discussing this subject to recall that land title insurance is an outgrowth of the abstract and lawyer examination system of determining the condition of title.

Coverage Asked

In those states in which it is the custom of purchasers of, and lenders upon the security of real property, to rely upon abstracts and opinions of attorneys as title evidence, it never occurs to the purchaser or lender that he should insist that the examining attorney guarantee that the rights of his clients to be acquired in the pending transaction are superior to possible mechanics liens, or that there are no encroachments of improvements which can cause damage, or that there are no covenants or conditions which can result in damage or in the loss of the rights of the purchaser or lender. However, where the prevailing form of title evidence is title insurance, lenders particularly, apparently believe that title insurance is a complete substitute for a good title notwithstanding the actual existence of defects, or for priority of the lien or charge of a mortgage or deed of trust over mechanics liens, easements and other similar matters when there is no priority.

Indemnity Business

Section 1176 of the Insurance Code of the State of California permits incorporated insurance companies to invest excess funds in notes or bonds secured by mortgage or other first lien upon unencumbered real property, if there exists no condition or right of re-entry or of forfeiture under which such lien can be cut off, subordinated or otherwise disturbed. I understand that that provision is similar to the law of the State of New York and various other states. Some insurance

company lenders apparently have concluded that this requirement of law is met, regardless of the priority of mechanics liens, if a title company will insure against loss that might result should mechanic liens be filed. These lenders ignore the fact that insurance of this type is indemnity business and is considered by indemnity companies to be habardous business. They likewise ignore the fact that a title insurance company does not create reserves designed to pay losses on this type of risk.

The purchaser of, or lender upon the security of real estate where title insurance is not available, wants to know before he closes his purchase or loan that his title or lien is a good title or a good lien. Where title insurance is available, however, the title insurance company is urged to insure or guarantee the purchaser or lender against any loss however remotely related to the title which might result from any outstanding right or interest affecting the property. The purchaser or lender, if he is successful in inducing the title insurance company to insure, seems to believe that the policy of title insurance makes a good title or a good lien, as the case may be, regardless of what the record may show.

Are We to Blame?

The title insurance companies themselves are undoubtedly to some extent responsible for this point of view. Those title policy forms which do not insure against loss resulting from the rights of parties in possession, overlaps and conflicting descriptions which might be disclosed by a survey, encroaching improvements and similar matters, have for a long time insured against various hidden defects such as forgery, acts of incompetents and matters of that type which are inherent in the validity of the title itself. However, insurance against loss resulting from defects of the character last mentioned is quite different than insurance against loss which might result should it later be discovered that a floating easement which cannot be definitely located on a large parcel of property and which has been ignored in a title policy, in fact passes through the elevator lobby of a 20 story building which has been constructed upon a small part of the property. Some of the losses against which title companies are asked to insure, which seem to fall within the classification of indemnity insurance, rather than title insurance, are the following:

1. Loss resulting from mechanics liens.

2. Loss resulting from present or future violation of covenants or conditions. These covenants or conditions, among other things may:

   (a) Restrict the type and cost of improvements.

   (b) Prohibit the sale or manufacture of liquor.

   (c) Include race restrictions.

   (d) Contain set-back limitations.

3. Loss resulting from encroachment of improvements, either the improvements of the subject property or those of adjoining property.

4. Loss resulting from damage to improvements, including shrubbery, lawns or trees, by the use of easements to which the property is subject.

Unless such loss is excluded from the liability of the policy by an exception inserted under Schedule B, the A.T.A. policy form insures against loss resulting from the rights of tenants in possesion under unrecorded leases and I would say also insures against loss resulting from the prepayment of rent by a tenant in possession, whether holding under a written or unwritten lease whether the lease be recorded or not.

This subject in all of its aspects is presented to you today for discussion. Some of the Questions which naturally arise are,

BENJAMIN J. HENLEY

1. What hazards of this type, if any, should the title company insure against?

2. Should an extra charge be made for insurance against loss resulting from hazards of this type?

3. Should title insurance companies attempt to accumulate special reserves to protect themselves and their policy holders against the hazards of such special insurance?

California Form (Proposed)

For some time, through Mr. Clayton of the Metropolitan Life Insurance Company, and myself as chairman of the Uniform Forms Committee of the California Association, we have been discussing procedures which would eliminate for the title companies some additional work and for the life insurance companies likewise additional work in the examination of policies on loan.

Since we arrived in Chicago we have had a meeting and have discussed a form of endorsement which may shock some of you because of the extent to which it goes in providing the type of protection that I have outlined in this report, and Mr. Clayton might feel I have outlined it somewhat critically. I am going to read the endorsement to you so you can have rather striking proof of maybe my inconsistency. (Laughter.)

This endorsement reads as follows—I might state at the outset that obviously the endorsement can be used only in those cases where an inspection of the property is made. It would be in California used principally with ATA policies or similar policies which contain no exceptions as to the rights of parties in possession and similar mat ter.

> "The company hereby insures the owners of the indebtedness secured by the mortgage or deed of trust shown in Schedule A and also any such owner who acquires the land referred to in the policy in satisfaction of said indebtedness, against any loss which said insured shall sustain by reason of any of the following matters:"

And I might say that the purpose of that language and of these particular provisions are to affirm to the insured a statement of fact rather than positive insurance.

> "1. (a) Any incorrectness in the assurance which the company hereby gives (1) that there are no provisions contained in the covenants, conditions, and restrictions referred to in Schedule B under which the lien of said mortgage or deed of trust can be lost, subordinated or otherwise disturbed, (2) that there are no present violations on the land described in Schedule A of any enforceable covenants, conditions, or restrictions referred to in Schedule B, or any future violations thereof which shall occur prior to acquisition of title by the insured."

Because it is a little difficult to follow that, I might say that is prefaced by the statement that the company insures against any loss which the insured shall sustain by reason of any future violations of the covenants or conditions which shall occur prior to the acquisition of the title by the insured.

> "(c) Unmarketability of the title to said land of any covenants, conditions, and restrictions, occurring prior to acquisition of title by the insured.
>
> "2. Damage to improvements on said land, including lawns, shrubbery, and trees, which may result from the exercise of the right of use or maintenance of any easement shown in Schedule B, or which may result from the exercise of any right to use the surface of said land for the extration or development of the minerals excepted from the description of said land or shown as a reservation in Schedule B.

"3. Action to compel the elimination of any encroachment shown in Schedule B which consists of any encroachment of any portion of a structure located mainly upon said land onto adjoining lands, streets, or alleys, which action shall result in an order of judgment requiring removal of the portion or portions of the structure or structures causing such encroachment."

The language and the substance of the endorsement are still under discussion, and the agreement between the members of the California Committee, who are present here, and the representives of life insurance companies, is still in a more or less tentative stage.

I would report, however, that by individual separate endorsements California companies have been providing substantially that coverage in a good many cases for some time, and I have no doubt we will get together with Mr. Clayton and his Committee on provisions substantially conforming to those which I have just read.

Mr. Henley Creates His Own Panel

Now, when the program committee worked out this program, I feel that they really treated me rather badly, because I notice as to all of the other programs which have preceded me here they have a Moderator and two or three men on each side of the table to help him out and a lot of fine signs giving their names; but when I come up, I am here all by myself. (Laughter.)

Now, I feel that that just wasn't right, so I have decided to provide my own panel on this thing, and because I am taking care of this subject in Illinois, I am reminded that some ninety years ago there was quite a series of debates carried on in this neck of the woods by a couple of gentlemen named Mr. Lincoln and Mr. Douglas. They disagreed rather violently on some of the issues of the day.

We have today two gentlemen who are long time members of this Association, who I think disagree quite as violently as Mr. Lincoln and Mr. Dougles did on some other issues, on this particular problem.

I will ask Mc McCune Gill of St. Louis and Mr. William Kinney of Cleveland if they will come up. I am going to ask them to debate the propriety of the California members of this Association providing for their clients the coverage which I just read to you.

Mr. McCune Gill of St. Louis, I think you all know, and also Mr. William Kinney of Cleveland.

Mr. Gill writes me that he supports the policy which this endorsement adopts, and therefore, I am going to ask Mr. Gill to tell you what he thinks about the desirability of title insurance companies going into this kind of coverage. Mr. McCune Gill, will you take the rostrum?

(Applause.)

MR. McCUNE GILL: Mr. Chairman, and Ladies and Gentlemen, first I would like to answer two questions which I think will inevitably be asked and have been asked me numerous times.

Of course, one of the principal reasons why people do not want to extend their coverage is because they feel there is a great risk of loss. So the two questions are these:

How To Do It

First, if the title insurance company insures a lender against loss by reason of reversions in restrictions, how can it protect the lender and itself against any loss because of a violation?

The answer is this, or an answer is this: To provide in your deed of trust, or trust deed, a conveyance from the mortgagor of the title to the trustee, which is customarily done, and then to provide a lease from the trustee back to the mortgagor at a nominal rental, which is also frequently done, the lease to run during and only during the complete compliance by the mortgagor or anyone under him, with all restrictive covenants, the lease to terminate immediately upon any attempted violation, which violation shall not be considered to be with the consent of the trustee.

Now, upon a violation occurring or there being a threat of such occurrence (we think and we hope), although the specific clause has not got into the courts as yet, we think that the court, ever anxious to prevent or not apply a forfeiture, would say that so far as the lender is concerned, there has been no violation; so far as the borrower, or his grantee is concerned, their lease terminates.

So the trustee in title possession can immediately put out the mortgagor if he has committed the infraction, or the mortgagor's grantee, if he has. The trustee can take possession and, of course, thereafter will use the property only in conformance to the restrictions.

That is a somewhat novel idea. We invariably insist upon it being put in the deed of trust, whenever we insure against loss because of reversions.

Maybe I should explain. Suppose there is an insurance against a reversion because of using the property for a liquor saloon. The owner of the property leases it to someone who supposedly is going to use the property for a grocery store, but puts in a liquor saloon. We think that that immediately cancels or terminates the lease from the trustee to the owner. We think we can put out the owner and put out his lessee and regain possession of the property and use it properly, and we hope, as I say, that the courts will say that there has been no reversion as to the trustee, who only represents the lender.

Whether we could put out other than a Caucasian who had bought the property or had rented the property, we are not so sure, but we think that the courts would hold that whether we could put him out or not, the reversion would not affect the trustee and the lender; in other words, that the title would still be subject to the mortgage.

Mechanics Liens

That is the answer to that question. The other question is: If a title insurance company insures a lender against loss because of mechanics' liens arising from a construction loan, how can the title company protect itself and the lender from such liens being filed or proven?

When people ask me whether title companies can, without undue loss to themselves, insure against liens, I simply tell them that that is a closed question, so far as I am concerned, because four title companies in St. Louis have been doing it for ten years and have suffered very slight loss; in our own case, not over 5 per cent of our total fees, and I don't think in the case of any company more than 10 per cent of their total fees over a period of ten years.

As to other states: I recognize, of course, that the lien laws of each state differ, but I am assuming that they are all as bad as our state, and I think you might well assume that, namely, a condition where all mechanics' liens are ahead of all construction mortgages. Just assume the worst and go ahead from there.

Protecting the Title Company

Now, as to the detail of protecting yourself, how did we handle many liens of construction loans—in one case, a million dollars worth of buildings near an Army camp—how did we do that without getting into what the surety companies tell us is a very hazardous business?

In the first place, we take no surety bonds. Our charge is rather high—you may think not too high, however, and the surety bond charge added to that would make it much more difficut to handle. Besides, without condemning surety companies en bloc, it is sometimes quite difficult to collect on a surety bond. At any rate, we ask and want no surety bond.

Fees

Our charge is $15 per thousand, with a minimum of $100 for each building, this in addition to all title search charges, and have no trouble in getting it at all.

It is charged not against the—it is charged perhaps against the lender who wants the policy, but it is paid for by the contractor of the property.

Everybody likes it, sub-contractors, unions, lenders. It is very popular.

Now, how do we go about protecting ourselves from this terrible hazard? Generally speaking, we believe no one. We check all receipts to see if they have been forged. A good many of them are forged or perhaps they are paid with post-dated checks or some other device. If we don't pay out the proceeds ourselves and the gen-

eral contractor pays them out, we immediately check with the party to whom he said he paid the bill, to see whether he has paid the bill in cash. If he hasn't, he doesn't get his money. If he has, he does. Generally speaking, however, we do all our paying out ourselves.

Perils

Now, there are two zones of danger in this business. One zone of danger, one element of danger is this, that there never was enough money to build a house. You may marvel that experienced builders don't know how much a house will cost, but many don't. They are too hopeful, they are in too competitive a business, and so forth.

Dealing with contractors at first hand—(of course, after you deal with a contractor for quite a while, he knows what you will take and what you won't take)—but dealing with him at first hand, as I say, you will reject half of the plans and specifications and break down cost sheets brought in. We demand a complete set of plans and specifications. We want a complete breakdown of sub-contractors, sometimes 50 or 60 of them. We accept none but the best sub-contractors. We are not so interested in the general contractor; he doesn't get paid until the whole thing is finished. But we must have firm bids—no escalator bids or cost-plus bids. That is where our volume has been cut down considerably in the last few years. But now we can get firm bids and good sub-contractors.

It is simply a matter of addition then, checking all your items to see it there is enough money. Frequently there isn't, so we decline to go into the deal.

Assuming there is enough money and a little margin, we will say enough money to build the buildings, we then call for the mortgage money. If that is paid to us in one lump sum, we just pay out of that. If it is paid to us in "draws," we agree with the lender (the draw, of course, being for the purpose of saving interest), that we will not insure his loan until he pays us all the money. So he can pay us the money in the customary draws, or he gets a little dubious about it and gives us all the money and he gets his policy even before the first spade is stuck in the ground.

The Pay-Outs

Then we take the equity money and we proceed to pay the money out to the sub-contractors. Labor involves the most trouble, because if you don't pay them on Friday, they won't work on Monday. But sometimes we even have to dig down to the low level of paying labor bills, but that has only happened once or twice.

Our inspector, who, incidentally, is the same man who has passed on the plans and specifications, visits the property at least once a week. He may have to visit it once a day in a dubious case, but usually once a week is sufficient.

When he sees that the plumbing has been delivered, he pays the plumbing material company. If it hasn't been delivered, he doesn't.

Incidentlly, we only take all of a project. We won't take one house out of ten, because obviously the liens on the others would apply to ours.

So he proceeds and checks the progress. We keep a ledger on the whole thing, a progress report, and make all the payments ourselves. That is considerable work. I will get to that in a minute.

To operate 100 houses—right now we are operating probably a couple hundred—but I should say, to give you plenty of leeway in your personnel, to operate each 100 houses you will need an inspector and a bookkeeper and you will also need a manager who can handle several hundred houses.

Operating Costs

Now, what is the cost? I should say that the cost of doing that (which is obviously high because you have a lot to do), is about 30 or 40 per cent of your fee. The other 10 or 20 per cent would be a reserve for losses. None of us has ever lost more than 10 per cent of our fees over a long period. The other half is profit. And with us, we feel that if any part of our business is running at a two to one basis, namely, that the immediate salary cost is less than half the total premium, that we are doing business at about the right ratio. We have done it for a great many years and we have been very careful with it.

As I say, we rejected many proposals that came in because there wasn't enough money to build a house. We say "More money or less house."

In our pay-outs we have been very successful. Our largest loss, I might add, was $4,000, where the inspector just out of a human frailty, took the contractor's word that he had paid the cement company. He hadn't. It was a forged receipt and we lost $4,000. But that is not a defect in the system, but a defect in the human element.

So we feel very strongly that it can be done and that it should be done, that it creates much new business, that it is profitable and certainly pleases the customer. (Applause.)

CHAIRMAN HENLEY: I will now ask Mr. Kinney to express his view on this subject, which doesn't exactly coincide with that of Mac's.

MR. KINNEY: Mr. Henley, Ladies and Gentlemen, I find myself this morning in much the same situation as a chap who was lying on the floor of the county jail, with the jail physician bent over him, with a stethoscope and feeling his pulse and so forth. After a few minutes, the Doc. spoke up and said, "Why, this man has been drugged." Some flatfoot standing by said, "I know he has, I just drug him three blocks." (Laughter.)

Now, Ben Henley "drugged" me in her from the breakfast table. I didn't know anything about it until then. I had an opportunity merely to read over the proposed rider that he read to you, and I am at a further disadvantage in having Mr. McCune Gill on the other side of the question.

Basic

Frankly, about all I can do under those circumstances is simply approach the matter from a few basic angles; and I want to emphasize this fact, that anything I say this morning, please regard as merely an expression of my personal views. I know there will be a lot of people who disagree with them, and as a matter of fact, my own company (shall we say for business reasons), sometimes disagrees with them and proceeds accordingly. (Laughter.)

Frankly, I have always been opposed to title insurance companies going outside of their own spheres of business. I suppose that originally that feeling rested largely on theory, the theory being that we should all stick to our own knitting.

Always More

However, there are other and to my mind even more compelling reasons which make me oppose this practice. One of those is that I think it is short-sighted, and I think this morning's development proves that it is short-sighted. We have gradually been inveigled into taking on this risk, and that risk, and the other risk, and none of us knows where it leads to. But it has lead to this, and frankly, when I read this proposed rider over, I was somewhat horrified.

Another reason why I am opposed to the present practice is that I think it is economically unsound because of the fact that it adds nothing to, or little, if anything, to the profit share of the ledger.

Now, don't misunderstand me. I think that it would be asinine on the part of any title company not to cooperate to the fullest extent in any matter of risk that comes within the scope of title insurance. I don't blame lenders for wanting protection from any available sources against anything and everything that might affect the validity or the security of the lien.

This, however, raises a question in my mind as to whether it is a reasonable thing to request of title companies.

Here is another thought that I have had through the years. With this people are going to disagree, and I will have to put it rather bluntly. It seems to me that the number of these risks the title companies are being asked to cover is simply a successful effort to shift to the shoulders of the title company burdens which to my mind should be borne by somebody else, and frankly, sometimes that other fellow, to me, is the lender himself.

Reasonable Needs

Another reason I oppose this is the fact that I think (in Ohio at least), many of the demands being made upon us for additional coverage go beyond any reasonable need of a mortgagee. I realize that uniformity is very beneficial to anyone examining policies of title insurance coming in from all over the United States, and I agree with standardization. But I think it works two ways. In the first place, I don't think that companies should be asked to insure risks that are not essential; and in the second place, I feel that a little uniformity on the other side of the picture would be very helpful many times.

Each to His Own Taste

For instance, we have in our office a code book. We have listed in that book the particular requirements of our various customers. In policy work that book has to be consulted by four departments; first, by the examiner who examines the title and schedules a policy; second, by the reviewer who reviews the examiner's work and checks it over; third, by the typist; and lastly, by the comparers who proofread the policy after it is typed.

Now, all of that work and expense incident to doing those things is occasioned not merely by the fact that our customers have different ideas as to what must be insured against and what need not be, but that there is a difference of opinion even as to form.

For instance, just before I left Cleve- I thumbed through that book and I found that on the simple matter of violation of use in building restrictions, we had one form that I will label a standard form, that is acceptable to twelve insurance companies. It is not satisfactory to seven other companies. Of those seven companies, three find what I will term a substitute form O.K. The other four, however, each insist upon its particular wording. The result is that we have six forms, all of which say substantially one and the same thing, to cover one item of policy coverage.

So that personally, if I may, Mr. Henley, I would like to refer to one or two of these matters.

Mr. Henley, Ladies and Gentlemen, these first two things are merely a statement of fact, which the reading shows to be the case. There is one of the things that, while I realize the title company is frequently in a position to ascertain the facts, nevertheless it does not appear to me to be a reasonable request to make of the title company, along with a lot of other requests, unless there is an additional premium paid for it.

Now, some of them seem to be trivial. The loss on others seems to be so purely remote and theoretical; actual loss probably would never occur. It can be argued, however, but, nevertheless, it is a risk which falls outside the scope of title insurance. It is a risk which falls outside of the provisions of the ordinary standard policies, and personally, I can see no reason to expect title companies to assume outside risks unless they are paid for them.

Construction Loans

Now, in matters of importance, like Mr. Gill has referred to, construction loans, matters of that kind, the additional premium is paid, paid gladly. But so far as principle is concerned, I see no difference between a risk for which you can charge a substantial premium and the risk which is of a character that falls outside of your policy for which, let us say, only a nominal small premium could be charged, as to why we shouldn't charge it on every one of the items that we are asked to insure against, that don't come within our policy.

McCUNE GILL

Restrictions

Now, the same paragraph mentions violation of building restrictions. That falls in the category that I mentioned a while back of a risk or a coverage that goes beyond the seeming needs of the lender. Outside of the question of marketability, which is covered later here, in Ohio at least, unless the restrictions contain a reverter clause or a provision as to liquidated damages or some other penalty provision, I can't see how any violation, past, present or future, can have any effect upon that title or upon the security.

Now, when you get down to the last of this, where they talk about replacing shrubbery and grading over the landscape, and so forth, there I think we are just being asked to give the kitchen sink, and frankly, it just doesn't appeal to me as being good business or within reasonable request. (Applause.)

CHAIRMAN HENLEY: Thank you, Bill.

I was telling Mr. Kinney that our time is 15 minutes past. He has the next matter on the program. He has very kindly allowed me a few minutes to tell you why the California title companies have gradually acquiesced in the request of insurance companies throughout the east to provide this type of coverage.

In the first place, we have been operating at the disadvantage of distance, which now is not such a factor, but in past years has been. When it took five days for mail to get from New York to San Francisco, if it was necessary to submit to the New York office of a life insurance company a copy of conditions and restrictions for them to determine whether or not they would accept a loan, where the title was subject to such conditions and restrictions, a great deal of delay occurred in the closing of the loan. Much additional work and expense devolved both upon the title company and the insurance company in working out the condition of the title as to that particular objection before the title could be closed.

So that has been one of the factors, and I would say the principal factor which has brought about our gradual coverage of one matter and then another until we have, as I am frank to say, gone quite a long ways in the coverage which we are willing to grant.

Practical Aspects

Of course, from the standpoint of a purist, there is no question but what I think this is not title insurance. However, it seems to me that if we go back to the early issuance of a title insurance policy,—as a matter of fact, in San Francisco twenty-five years ago our first exception excluded from the coverage any defect in the title which did not appear of record. Our escrow people and people selling our policies were constantly telling our customers that we insured against forgeries. That statement was not accurate because certainly a forgery is a defect in a title. So we finally eliminated the word "defects" and the exclusion of that first exception was then limited to liens, easements, and similar matters which were not shown of record; and we, therefore, included in our coverage then forgeries, the acts of incompetents, and many of these other matters, which we all, I think, generally cover throughout the country, and which we use as a reason why a title insurance should be accepted instead of an abstract and lawyer examination.

Now, there is not really a great deal of difference when you consider the question from the fundamental standpoint of whether it is title insurance or indemnity insurance, it seems to me, between insuring against loss by reason of a forgery or insuring against loss by reason of the inclusion in a condi-

tion or in a restrictive provision a condition which might result in the forfeiture of a title.

In this particular case we are insuring that the restrictive provisions, whatever they may be, do not contain a condition subsequent. It seems to me that isn't essentially different than insuring that person who executed the security instrument, for instance, or who purported to execute it, did in fact execute it. The two things are not essentially title matters, but the latter one we have insured against for a very long time.

The Hazard

We also considered another point, which Mr. Kinney discussed, and that is the possibility of loss or hazard. We know that in our state, at least, there have been relatively few cases in the history of the state where there has been any forfeiture of title by reason of a violation of covenants or restrictions. We believe the hazard is very slight.

In order that the life insurance companies in New York, for instance, may avoid possible questioning of their loans by the insurance commissioner, from the title standpoint, they have to have in their office a reasonably satisfactory evidence that their lien is the first encumbrance which cannot be lost or otherwise detrimentally affected by conditions in the title; and if the title company doesn't give them that insurance, they have to get it from some other source.

We have found in order to satisfy the situation, we have a lot of paper work in our office; they have a lot in their office. If because we send on a title report or a title policy which contains an easement, for instance, shows a right-of-way or an easement, we have to show where that right-of-way or easement is located. They have to check up to see none of the improvements encroach on the easements.

If we are issuing an ATA policy, we inspect the property; if necessary, we obtain a survey, and we determine where the improvements are located.

We know, in the majority of cases where we will use this endorsement, if these easements are for utility purposes or some similar matter (possibly a community driveway), the possibility of any difficulty is extremely remote.

Expenses of Handling

So we are doing this in order to expedite business in our office and in the office of the insured, to avoid expense which is now involved in providing these ten or twelve different forms of endorsement covering exactly the same protection,and also to permit our clients who are receiving this particular type of coverage to know that when they get this endorsement they have a certain coverage. They don't have to then analyze the conditions or restrictions or pay a great deal of attention to the easement, its location on the property, the purpose for which it was created, or the fact that there might be some encroachment.

Encroachments

We all know, and I notice on the program under Mr. Kinney's forum here, he is going to discuss the question of the encroachment of improvements, that is, inaccurate surveys, and we know in practically all the cities of the country (I assume that is true, although I am covering a lot of territory), but I do know in California and practically all old towns, improvements are built without surveys and they practically all encroach on the streets and frequently on the adjoining property; and we have followed the practice for a long time of insuring against loss by reason of encroachments, provided that they, within the terms of the California decisions, do not create unmarketability; and if the encroachments are in such classification, we insist some action be taken to remove them.

We have been investigating those questions and taking on some responsibility for them, for lenders who demand that service. The local lender doesn't demand it because he has his own inspectors on the ground with whom he is in direct personal contact and is able to work out those problems for himself.

I think there is some basis for debate as to whether title insurance companies should do this. I think, however, that so far as the things which we are now doing are concerned, we have been doing them so long and we found that the hazard involved isn't great, that it is a service that we can legitimately render; and that it makes our service and our business of more value to the community and thereby adds to the security of and need for our service; and that it is really of value to us from that standpoint as well as from the standpoint of economy and probable safety in operation.

MR. WETHERINGTON (Florida): Ben, I want to get one point that was brought out. The proposed insurance against restriction violations—is that in cases where the survey discloses that there are presently no violations?

Questions of Survey

CHAIRMAN HENLEY: The survey and inspection might disclose violations. For instance, we have areas in our particular territory where a liquor restriction, for instance, exists. It was put on the property twenty-five or thirty years ago when it was residence property. Today every other building on a business street in that area is a tavern.

We insure against loss by reason of the violation of that restriction, because under the decisions of our Supreme Court, if the character of the area has changed, the restriction is no longer enforceable.

MR. WETHERINGTON: Well, we unfortunately don't have such favorable decisions. The point I wanted to make was in connection with where a survey discloses a present violation of restriction.

Years ago it was our policy—before the advent of FHA—we pointed out to the lender that such and such was the case and let them make the loan at their peril. If they had security, they made it.

When FHA came in, they couldn't any longer do that because they had a guarantor. Immediately the FHA agreed to release or waive their right to refuse debentures by virtue of that particular existing thing. We incorporated it in the exceptions, that we would insure against loss and damage except such loss and damage as the FHA had already waived to a contract purchaser. If the insurance company wanted to foreclose the property and not take advantage of its FHA security, we didn't feel it was proper to ask us to guarantee that a proposed purchaser wouldn't offer that as an objection and raise the question of marketability.

In our country we have had claim after claim, and in the last few months we have had a "down" market—purchasers trying to get out of bargains they have made—and we were just continually and perpetually defending those cases.

Separate Policy Forms

MR. SMILEY: (St. Petersburg, Florida): If the title insurance companies individually or collectively want to go in the indemnity business, why not write a separate policy instead of adding a rider on to the regular policy? Why confuse the two issues?

CHAIRMAN HENLEY: I suppose we feel there is no great advantage in attempting to do that. Probably the confusion will not involve us in any unnecessary loss, and our clients do not seem to be confused by it. They seem to want it. So we are trying to meet their requirements.

MR. SMILEY: But in other sections of the country, where laws may be different, those same lenders who are lending—for instance, I am from Florida—and we have a different theory as to mortgages and the title and the trust deed, which Mr. McCune Gill apparently in St. Louis is able to get around the propositions of restrictions. It probably wouldn't work in Florida, because a trust deed which may be given to the lender or trustee for the lender would still be considered a mortgage and it would not convey the title, but only be additional security for the mortgage, and it would be a lien, not a transfer of title.

Therefore, if some other section of the country adds on to the policies certain additional riders and so forth, the lenders in New York or Chicago or San Francisco or Texas who may come into Florida, will expect the same additions to the policies, things which are not feasible in the State of Florida. Therefore, as to those jurisdictions, where they want to go in with that

additional risk, why don't they just write separate instruments instead of adding them on to policies?

CHAIRMAN HENLEY: There may be some things in California against which we could not insure by reason of such a rider. But, of course, we are assuming here that we are going to use this rider only in those cases where we are reasonably satisfied that there is no substantial risk involved.

For instance, we have many times, and I think probably all of the companies in California, have insured against loss by reason of a very obvious violation of a set-back.

I know of one area where it is provided every house in the block shall be set back 15 feet, and they are only set back 10 feet, but every house in the block has been built for 20 years; and every house in the block is set back uniformly 10 feet. We have attached riders to our policies insuring against any loss by reason of a violation of that set-back provision contained in the covenants and restrictions.

MR. SMILEY: Including marketability?

CHAIRMAN HENLEY: Yes. Of course, we have gone through our decisions and in all the history of the state, there has never been an action brought, no judgment, at least, in the Supreme Court where that kind of violation caused any loss.

Indemnity Insurance

We recognize the fact that this is indemnity insurance. We also recognize the fact that we are in the business to serve a purpose. Now, if we are not going to go to the maximum extreme in meeting the necessities, and, of course, there is a debate as to whether or not this is necessary (as Mr. Kinney pointed out), whether the insured really needs that insurance. But there is some question whether we are to be the judges of that or the insured. If it is something that we can within reason do, it seems to me someone else is going to eventually provide the protection. We have more or less approached it from that standpoint; and while there is no clear logic which would induce a title insurance company from the strict standpoint of title insurance to grant this kind of coverage, still we ourselves in the early development of our business did take on certain risks of this type and this is an extension of that risk.

We might disagree as to whether a certain risk is one that we can probably assume, and of course, there has been a great deal of disagreement as to whether or not we can insure against loss by reason of mechanics' liens.

As far as these particular hazards, with the exception of mechanics' liens, I would feel our risk is very much less, notwithstanding Mr. Gill's comment, because I think most of us do not handle the business as he does.

Extra Hazard Fees

MR. SMILEY: Do you charge an extra premium for adding that rider on the policy?

CHAIRMAN HENLEY: We at one time did, but finally competition compelled us to dispense with the charge. Some day we might.

A Word of Caution

MR. GEORGE RAWLINGS: (Richmond, Virginia): Mr. Chairman, I didn't come here to discuss the legal aspects of this, but I think we should bear in mind the fact Mr. Gill spoke about experience for the last ten years, we should consider this broadening coverage further than that. My own opinion is that we haven't had real experiences in the last ten or twelve years.

We have been on a rising market since 1932 or 1933. A great volume of this title insurance business has been written during that time. I don't think we have had a proper experience. We all know that title losses most frequently occur in times of depression. We haven't had that experience in the business we have written for the last ten or twelve years, and I think that should be borne in mind when you are considering broader coverage.

CHAIRMAN HENLEY: Mr. Clayton?

MR. BYRON CLAYTON: (New York): Isn't it true, while you don't charge an additional premium for this rider, you charge an additional premium for the ATA policy to which it is attached?

CHAIRMAN HENLEY: That is correct.

MR. CLAYTON: Yes. So you do get a charge there.

Now, I have noticed what you have said about losses. I don't know how many, and I have been trying to figure out how many policies our company has bought in California or taken in California in the last twenty-five years; certainly forty or fifty thousand. Never have we made a claim against any title company for a cent, as far as I know, on any of these grounds that are covered by this rider.

Now, that is a pretty good story about all the risks you are taking, but it is not such a big risk as you think. We have never made a claim. I don't know if any of the other insurance company men are here, but if any of them are, and if any of them ever made a claim for any of these grounds, I would like to hear from them.

MR. SMILEY: That would seem to indicate the coverage isn't necessary.

MR. CLAYTON: Oh, yes, it is. We have laws that we have to comply with. We have examinations by men who come in and look for these very things. Everything that we do is screened by our Insurance Departments, not of our own state alone, but several states. A group of examiners move it from the New York Insurance Department, assisted by examiners from other states, and they spend much time examining our files; and they look for all of these things.

Now, if there has never been a loss, and we require this, we have to have it in some form or other, it seems to me if your business is going to move on and title insurance is going to do the business in the future, they have got to take this kind of things into consideration.

I don't know how we would get coverage if we did not get it from the title company. If there is some other way, I don't know what it is.

MR. SHERMAN: (Boston): I have been with Mutual Life Insurance Company for 16 years, and I don't know of any loss anywhere where we made a claim on any of these matters you have discussed. I don't think we have made a claim on them. I don't know how many loans that concerns, but it covers most of the states, and I don't know of any claim during that period.

CHAIRMAN HENLEY: I think I should say, of course, this endorsement will be only used in lenders' policies. Obviously, we will not issue this kind of a thing to an owner.

Title Insurance

A PANEL DISCUSSION

Members of the Panel:

J. F. Horn, *President,* Title Insurance Company of Minnesota, Minneapolis, Minnesota.

Frank K. Stevens, *President,* Brazoria County Abstract Company, Angleton, Texas

James L. Boren, *President,* Mid-South Title Company, Memphis, Tennessee

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

CHAIRMAN GLASSON: The next item on our program is a panel on "Title Insurance." Last year, if you remember, we did not by any means exhaust the possibilities of the subject in the panel we had then, and so we arranged a repeat. However, since we did not exhaust the inquiry and the possibilities last year, I am sure that it will not be too much of a repetition. There are many new things which I am sure you are going to hear from this panel. The panel consists of Frank I. Kennedy, President of the Abstract & Title Guaranty Company of Detroit, as moderator, Mr. J. F. Horn, President of the Title Insurance Company of Minnesota, Minneapolis, Mr. Frank K. Stevens, President of the Brazoria County Abstract Company of Angleton, Texas, and James L. Boren, President of the Mid-South Title Company of Memphis, Tennessee.

Will the eminent gentlemen please come forward so that we can properly welcome them?

MR. KENNEDY: Ladies and gentlemen of the Abstracters Section: As you know, last year we had a panel on this same subject in this section, but the discussion was entirely by representatives of title underwriting organizations. It perhaps did not reach into some of the questions which were in the minds of the abstracters, who are particularly interested in knowing how title insurance will affect them. So we have a panel today in which we have a balance. We have Mr. Horn of the Title Insurance Company of Minnesota, who represents the underwriters. We have Mr. Boren and Mr. Stevens, both of whom are themselves abstracters, who are themselves interested in title insurance from the viewpoint of the abstracter who is working with an underwriting company. We hope by this discussion to give you a picture of how title insurance works, both from the viewpoint of the underwriter and of the abstracter.

The company with which I am connected makes both abstracts and title policies. We give the customers what they want, and we note that our business is gradually shifting more away from abstracts and to policies of title insurance. Today title insurance is our predominant business; but we make a number of abstracts, perhaps fifty abstracts a day, on the average.

You don't have before you today any super salesmen who are trying to sell you title insurance from the viewpoint of some big company that wants to take over your county, but from the viewpoint of a team that works together. The first member of that team, then, is Mr. Jerry Horn. Mr. Horn.

J. F. HORN

When Colonel Kennedy assigned to me the subject of my discourse on this panel, he suggested that I say something of agency arrangements between title insurance underwriters and those whose business is title searches, abstracts, etc.

I need not spend much time on explaining to you the relationship between title insurance and the business of title searches and abstracting. They do not conflict. They are supplementary to each other and may be likened to a medical examination and life or accident insurance.

The Title Search

The title search in a real estate transaction is like the laboratory blood count, urinalysis, Wasserman test and physical examination and the report on these tests and examinations is the abstract which a medical doctor examines in a medical examination as the lawyer examines the abstract of title in a real estate transaction; but no physical test or medical opinion takes the place of life, health, accident or hospitalization insurance. Nor does the fact that your car is in good shape and you pass a fine test for a driver's license warrant your discontinuing your auto liability insurance.

So we find that life insurance does not supplant the services of the laboratory or doctor, nor does title insurance supplant the services of the abstracter or lawyer. In each case the insurance supplements and depends upon the examination and expert opinion.

Hidden Hazards

Insurance being available, it is well worth while for the investor in real estate to insure against hazards most of which are undiscoverable in the title search and opinion on the title such as forgeries, reverters, encroachments, unrecorded instruments, equitable interests, dower and courtesy estates, etc. The Supreme Court of Wisconsin the case of Mergener vs. Fuhr (208 N.W. 267) in holding that a mortgage was valid and enforceable against an innocent purchaser notwithstanding a recorded forged satisfaction thereof says: "Our recording system is the result of years of development, and is the product of the best thought and effort of experts in their line; and, notwithstanding that, it is far from being perfect and is still open to many improvements. The defects and shortcomings of the system have of recent years been disclosed, and in order to meet a situation like the one here presented title guaranty companies have been chartered to do business for the express purpose of indemnifying those who have become the victims of criminal operations or of the ignorance or negligence of the recording offices. For a trifling percentage, such a policy of indemnity may be readily procured everywhere, and such guaranties as a title company affords could readily have been procured by those who will be obliged to suffer the loss in the instant case."

So now let us look at the matter from the abstracter's viewpoint and answer the question of how does he get in position to most profitably handle title insurance on an agency basis.

Title insurance—to guarantee against the defects mentioned costs but little —the national rate being as follows:

Owner's Leasehold Insurance

$3.50 per $1,000 up to $50,000.00; $3.00 per $1,000 on amounts over $50,000 and up to $100,000; $2.00 per $1,000 on amounts over $100,000. $10.00 minimum.

Mortgagee Insurance

$2.50 per $1,000 up to $50,000.00; $2.00 per $1,000 on amounts over $50,000 and up to $100,000; $1.75 per $1,000 on amounts from $100,000 and up to $500,000; $1.50 per $1,000 on amounts over $500,000. $7.50 minimum.

This is a pure insurance premium in addition to what you charge for title search, abstract and title examination. When the title has been searched, abstracted and examined, the investor in the real estate or the mortgagee receives a binder or preliminary policy. The binder or preliminary policy covers the insurance obligation of the issuing company, subject to such defects, exceptions and requirements, as may be necessary to get title in proper insurable condition.

As corrective matter is furnished, objections are removed and when the deal is ready to close, the final policy is issued. The final policy is the insurance contract in its final form after removing all exceptions, defects and matters except those waived by the insured.

Operating Costs

Perhaps 45% to 50% of the pure insurance premium goes to the cost of work done preliminary to the final policy—advertising, printing, agent's commissions, writing preliminary policy, bookkeeping, checking out papers to overcome objections, closing deals, etc., etc. The balance is for writing the final policy, paying claims, setting up reserves, costs and overhead and we hope some profit.

Where an abstracter or title man sells his customer title insurance what he gets out of it depends on what he does or can do. At first the inexperienced agent gets only his fees for the search and abstract, etc. and perhaps a small compensation for referring the business. As he learns more about the insurance end of it he gets so that he can write the binders from the title search and attorney's opinion, and check out corrective matter—and when he is thoroughly proficient he can even write the final policy and countersign same as a Validating Officer. As he becomes more and more proficient and does more and more of the work he gets an "over-write" of more and more of the premium until he is receiving 40% 45% of the premium itself. Considering that the over-all cost of the whole title service to the investor includes title search, abstract, attorney's examination and title insurance—where over-all rates are quoted—it is not unusual for a proficient agent abstracter to get as high as 80% of the over-all rate paid by the investor.

Manual

There have been many attempts to compile a manual of title insurance instructions so that you could sit down and read the manual and know how to do the whole thing. This has never worked out. There is so much difference in the laws, rates, exceptions, title searches and abstracting, methods of operation, etc. that the instruction manual has not worked out except in a few cases where localized to states like California and New York where there is a tremendous volume of business which does not cross state lines.

Ordinarily where a titleman starts sending in applications for title insurance he sends the abstract and attorney's opinion to the home or regional office of the title insurance company with an application on blanks furnished by the insurance company, getting a commission for the business so referred. The binder or policy is sent back to the agent for delivery and he quickly learns how it is done—how to set out the exceptions and objections — and soon takes over more of the work for a corresponding increase in his pay until he is competent to do everything except carry the risk, set up the reserves required by law, etc.

I could talk all day on details but it is not as complicated as it seems when you really get into it and it has worked out and is working out satisfactorily and profitably in many cases and is not detrimental to your business nor your clients' business. And now a plug for my company—our financial strength and qualifications make our policies acceptable to all the large companies and trusts, as well as to large industrial property owners operating on a national basis. We do not make abstracts (outside of Hennepin County, Minnesota) nor render opinions on titles so we cannot come in competition with you or members of the bar who refer business to you so that neither you nor your clients need fear our competing with you, and the same is true as to many title insurance companies operating on a national basis through agencies such as you.

MR. KENNEDY: Thank you, Jerry Horn. Now we will get back to the abstracters' part of this program. How does this operate from the viewpoint of the abstracter? I am going to call first on James L. Boren, President of the Mid-South Title Company of Memphis, Tennessee, who will tell you about the workings of a title insurance operation from the viewpoint of the abstract company side of the deal. Jim Boren.

J. L. BOREN

MR. BOREN: In all of my correspondence with our chairman and our moderator, they mainly stressed one point, and that was brevity. Frank suggested that I discuss with you a moment title insurance from the standpoint of the local abstracter. I probably have changed that just a little bit. I was going to discuss why I got out of the abstract business and into title insurance. I first started in the abstract business in 1926, and went through two periods of a large volume of business, and also the well remembered depression. In the boom of the late '20's the situation was very well taken care of by abstracts. We were able to maintain an efficient organization of abstracters and turn our products out in a reasonably satisfactory time. During the depression of the '30's if we were to remain in business it became necessary for all of us to cut our force to a skeleton, and during that period we were not training any new people in the profession of abstracting.

During the late '30's we began building our force again and training new people, and then the war came along. Our young men went into the service. Our ladies went into government work of one kind or another. During the war period and the post war boom, we found ourselves so badly under-staffed and with such inexperienced help that our industry could not possibly turn out orders in a manner to satisfactorily meet the requirements of our customers.

Delays in Service

In my own locality it was not at all unusual for six or eight weeks to elapse between the time an order was placed with us and the time an abstract was delivered. By that long lapse of time anything could happen to a real estate deal. One of the parties might change his mind, as frequently happened, and on more than one occasion one of the parties to the transaction died before the abstract was completed and the deal could be closed. As you probably know, our customers were not in a very happy frame of mind by that time and we were not regarded too highly in our respective communities. Knowing that the situation must be improved, my associates and myself on January 2, 1946, started out our career in the field of title insurance.

We have found that we can serve our customers much more rapidly than we could in our days in the abstract business, and we now have what we all are striving for, satisfied customers. From the days of abstracts, when it required from six to eight weeks to close a real estate transaction, we have actually closed deals on title insurance in our office in as short a period as fifteen minutes from the time the order hit our front desk. Of course, we do not try to do this very often, and when we do we advertise it very extensively, and our customers do also, but we have demonstrated that it can be done.

Revenue

Besides serving the people of our community, we naturally are interested in making some money out of it if we are to stay in business. When our company decided that we would make no abstracts, the other companies in our community who are making abstracts had a minimum abstract charge of $25.00 for an abstract, not to exceed five instruments, and a price of $2.00 per instrument for abstracts over five instruments. We instituted what we called a search charge. In some places they called it a "minute" charge, various names. We received for this a minimum of $17.50 up to and including five instruments, and $2.00 per instrument for any instruments over the first five. We actually receive in cash $7.50 per order less than our two abstract companies, but we do much less work for that fee. We have none of the laborious work of typing and compiling abstracts, as we know it, and we feel that we receive more clear profit from the $17.50 search than we would from the $25.00 abstract.

Abstracter and Title Insurance

Now, Frank also suggested that I say something about the local abstracter's relations with the underwriting company. I hardly know what to say about that. In our company we feel that we are actually a part of the company who underwrites our business, and we conduct our business that way. We hardly feel that we are an agent. We have gotten sort of close to our boys. If a question of title arises, we ask ourselves the question, "Are we willing to take this risk?" We don't say, "is so and so willing?" because that becomes something not quite so close to you. If we decide that the risk is too great for us to accept and

that we wouldn't put our money back of it, we turn the title down.

Of course, knowing that the officers of the underwriting company have had many more years of experience in the title insurance than we have, we at times refer questions of title to them that maybe are a little too deep for us, and I think probably in the last almost three years now we have probably referred four or five out of some 10,000 or 15,000 titles to our underwriting company.

Pick Your Company

If any of you are planning to enter the title insurance field, I would suggest that you be careful in choosing the company that you wish to underwrite your business. Be sure that they have sufficient capital structure so that you would not hesitate to issue their policies to your customers and to recommend the acceptance of those policies. Then sit around the table with the officers of the company you select and find out if you can fit in with their method of doing business, their method of operation. Go into that very carefully. Go into your own local problems, and above all, do not sign a contract until you and the officers of the underwriting company thoroughly understand each other, each other's method of operation. I think that that is absolutely essential, and if you do it and go into it in that manner, I think you are going to find it a profitable and pleasant connection.

MR. KENNEDY: Thank you, Jim. I think that is a considerable contribution. Now, we thought perhaps you would like to know just how you go about taking over or entering upon the operation of title insurance, what you have to do to adapt yourself and your plant methods to title insurance, and we have with us here this morning Mr. Frank Stevens, President of the Brazoria County Abstract Company of Angleton, Texas, who has gone through that experience. Mr. Stevens will tell you just what his experience was. Mr. Stevens.

FRANK K. STEVENS

MR. STEVENS: Our chairman, who is also named Frank, has stated that I was going to tell you about our experience, because that is about all I feel qualified to tell you. In other words, I don't believe I could attempt to tell each of you how I think you should prepare yourself or your plants to take on title insurance, but having just done that a couple of years ago ourselves, I can tell you what we have done and some of our thoughts on the matter.

I might state that our company has been in business as an abstract company seventy-five years in Brazoria County. I also don't want you to think I founded it myself.

Factors

I think this topic was assigned to me because we have only recently done this particular job. Hence my remarks will naturally be colored somewhat by our own experience.

The owner of an abstract plant in a small to moderate size town, who is contemplating taking this step has a real selling job to do. He has to weigh all the factors involved and sell himself on Title Insurance, both as to its value to his customers or clients, and also as a source of increased income and satisfaction to himself.

Abstracters as a class are proud of their profession, and have a feeling that they are rendering a real service to their customers and being generally men of high standards they do not wish to rush into another wholly different form of title service until they have convinced themselves of its value and can rest assured that they will continue to feel proud of their calling.

Compensation

As to the probable increase in income; the Abstracter who has been in business for many years and perhaps enjoys the patronage of all of the attorneys in his town or county must weigh and consider the probability that many of these attorneys will resent Title Insurance and will be included to throw their business elsewhere if there is another abstracter available who sticks strictly to the making of abstracts. Will the Title Insurance Fees compensate for the probable loss of abstract business?

Examinations of Titles

Also he must determine who will do his Title Examination work. Anything less than a first class Title Attorney may present a definite hazard, and most good attorneys of my acquaintance already have so much work to do that they cannot find time to give prompt service for title insurance, especially if they have to go to the Court House to examine titles from a chain furnished by the Abstracter.

Is your office space large enough to handle comfortably the rather large groups of people who will come in to close loans, etc., often several groups at a time plus their kids?

Adequacy of Staff

Do you have in your force one or more people who are capable of handling the many problems necessarily connected with the processing, closing and completion of the ordinary sale and mortgage, and the issuance of a Title Policy thereon? If one person is going to handle the whole job, as is often the case in a small plant, he or she should have a good background of experience as an abstracter, so he can run title chains and understand the various angles that come up. He should have some knowledge of bookkeeping and be thoroughly trustworthy, as he will be called upon to do a large amount of figuring and bookkeeping in connection with the handling and disbursing of sizeable sums of money provided by the Loan Companies for the funding of the loans, or by the purchasers of properties, and also in preparing the rather complicated and widely varying loan closing statements required by the Loan Companies. If this person is to do the actual closing, he or she must have the wisdom of Solomon, the patience of Job, and the disposition of an Angel, as few of the young men and women who are the principal home buyers today have any idea what it is all about, or why there should be so many, to them, foolish requirements and expenses to closing a sale and loan, and it requires a miracle of patience and salesmanship to satisfy all their questions and objections, and send them away happy.

We Took an Agency

I personally pondered the matter for several years before I finally decided to make the plunge. Our Company, the Brazoria County Abstract Company, has been in business in that County for 75 years, and no one there has ever used Title Insurance, until a few years ago when some Houston companies got the business of issuing policies on many hundreds of F.H.A. home built in and near Freeport in our County. Thereupon I was forced to go into Title Insurance business in self-protection, and took the Stewart Title Guaranty Company agency for that County.

My son had obtained his law degree just prior to enlisting in the Air Corps in 1941, and he had now returned from China, where he finished the war as a Major and Commander of one of Chenault's Squadrons at Chikiang. Knowing his careful nature and thorough training, I did not hesitate to have him undertake our Title Examination work and thus far we have issued about 900 policies, aggregating approximately $3,000,000 without having been called upon to defend any title we have insured.

I was also very fortunate in getting the services of a lady who had worked for us a number of years before her marriage, and who had since then worked for two Title Companies in Houston, and also done bookkeeping for a large construction firm in that city. She is possessed of all the needed personal qualifications, having wisdom, patience and a wonderful disposition and she has made a fine job of handling the Title Insurance end of our business with very little help.

Our New Quarters

We have found our office rather too small to comfortably take care of the groups coming in to close loans, as we have very little space for a waiting room. Our building being a wooden one, and more than fifty years old, we are solving our problem of room by building a first class modern fireproof building, which will contain about 5,000 square feet of floor space downstairs, and another 1,000 square feet in a kind of penthouse which will have a suite of offices for a couple of attorneys.

We have lost some abstract business of attorneys who resent Title Insurance as an encroachment on their pre-

rogatives, but we still are kept comfortably busy in both branches of our business, and our gross income has been greater in 1947 and in this year than in any previous years in our history. This is, of course, largely due to the development going on in our county, which stands near the top in Texas in the production of Sulphur, Oil, Rice, Cattle, Magnesium and a multitude of by-products.

We Feel our Way

Out of a desire to avoid antagonizing our attorneys we have not thus far done any active advertising of Title Insurance, rather letting its advantages gradually become recognized by the public. I think that we are writing practically all the Title Insurance being written on Brazoria County lands at present. I believe the business will gradually grow until it forms the larger part of our business as has been the case in most places.

We have in our plant full copies of nearly all the records and abstracted copies of the rest, as well as office copies of base abstracts of almost any tract of land in the county, hence our attorney can usually do all of his examining right in our office without going to the Court House.

As to the matter of maintaining our pride in our profession I want to say that in the main I can still take pride in serving our customers with Title Insurance, but there are some things about Title Insurance as it is regulated in Texas, that I would like to see changed, but this will have to be done by our State Insurance Commission.

DISCUSSION

MR. KENNEDY: Thank you, Frank Stevens. I think that you have told us just what is going to be the case of every abstracter who considers changing over, what I am sure was the mental process of the people in my own company and, I am sure, of every other company, large and small, which has changed over. You have this period of doubt and indecision, and when you make the plunge then you just have to start in and adapt yourself.

Title Insurance Defined

There you have had the story, but before I turn this over to any questions, if I may, I would like to bring back again Jerry Horn's definition. Remember that a title policy is not a history of title. It is not concerned with it. It is a contract of indemnity, whereby for a premium you agree to pay loss or damage which the insured may sustain if the title is not as represented in the policy, subject, of course, to certain conditions and stipulations that they give you notice properly, and that there has been no concealment in their application to you, and the usual things you get in an insurance policy.

Title Insurance and the Attorney

Now just one more thing, and that is that this attitude of the attorneys I think is very common everywhere initially. As title insurance becomes more and more the custom of the community, it turns out that it is not a substitute for attorneys. Certainly in the larger communities informed users of title insurance do not discard their counsel. A purchaser's attorney may look over the preliminary letter, the binder, the commitment, or whatever you may call it, the paper, in other words, which tells you the terms and conditions under which the company will insure. He may advise them what is going to have to be done before it is insurable. He may sit in at the closing. He may look at the completed policy to be sure that it is satisfactory, as to what his client gets.

You find that as the Bar learns this and as customers learn that there is still a place in this for the attorney, that a great deal of that friction will be eliminated.

Now the meeting is open to questions. You see the three gentlemen lined up here, and you can purchase three balls for a quarter, and you can have your choice of any prize in the hall if you succeed in knocking the heads off the three gentlemen. Mr. Murray Jones of Kansas City.

MR. JONES: I would like to make a statement that might help clarify some of the things that Mr. Stevens said, things that might leave doubt in the minds of some of the abstracters not from Texas. In the first place, the Texas Commissioner of Insurance fixes an over-all rate in Texas, which includes not only the searching of the records for title evidence, but the examination and the closing, and for that reason because they can't split fees, Mr. Stevens has to do his own closing on deals in his office, because it is so provided in their state law.

That condition does not prevail outside of Texas, and most of you who might take on a title insurance agency wouldn't have some of his problems to contend with, providing extra help, and so forth, to take care of that additional detail that is ordinarily the province of an outside attorney. Am I right on that, Mr. Stevens?

MR. KENNEDY: Thank you, Murray.

MR. STEVENS: I might add that the attorneys from Texas are perfectly willing to change to conform with this other version.

The Attorney Closes

MR. BOREN: I might say just a word on that attorney situation. The three title companies in our town have quite a large list of approved attorneys, and frequently deals are closed that we don't even know are in the making. The attorney brings us an opinion, which we insure. Other attorneys who do not like to examine titles, but do want to draw the instruments and close the deals, will send us an order. We run the chain, examine the title, give him a report, a preliminary report, and then he closes it. There are many ways that you can work title insurance with the local attorneys and leave them in the picture and not antagonize them.

MR. STEVENS: Perhaps I should further explain that the larger part of our business thus far has been closing of sales and loans sent to us by Houston loan companies. That represents most FHA, GI stuff. We have closing instructions. Of course, on the occasional ones that originate there at home, why we wouldn't necessarily do the closing, but that has been the bulk of our experience so far, and the reason I had that in mind.

Limitation

MR. THORNTON (Birmingham, Alabama): Yesterday we agreed that the Statute of Limitations would run on an abstracter's certificate. I would like to ask if the same condition exists as to a title insurance policy, and if so, how the customer can get continuing protection.

MR. KENNEDY: Well, I would presume that the Statute of Limitations runs under a title policy or against a title insurance policy claim, the same as it would under an abstract certificate, but that is not inconsistent with continuous protection because, of course, the statute does not begin to run until a right of action occurs, and a right of action doesn't occur under a title policy until there has been some incident, some claim disclosed or something occur which would occasion a loss to the party insured.

MR. THORNTON: That is a little different answer than what we received yesterday on the abstract certificate. It was agreed that the Statute of Limitations would run from the delivery of the abstract to the customer.

MR. KENNEDY: Well, the reason for the difference, I presume, is in the wording of a title insurance contract. I don't have a standard form of title insurance policy here, but I am sure if you will read, for instance, the American Title Association standard mortgagee form, you will see by reading it that the policy runs just as long as there is a right to be protected, but your cause of action may not arise until some years in the future, and that is when your Statute would operate.

Now I am very, very sorry that we have to close the discussion now, but because of the limitation on time we will have to do that. Thank you, Jerry, and you, Jim, and Frank, for your presentation this morning. I know that you will be willing to answer any questions that you can if these gentlemen get you outside. I will turn the meeting back to our Chairman.

CHAIRMAN GLASSON: Thank you, gentlemen, each and every one of you, for a most interesting discussion. I am sure you will be waylaid many times between now and the time you get your lunch. It is way past noon now, so I am going, with your permission, to adjourn this morning's session.

We All Sell Groceries

KENNETH E. RICE

Senior Vice-President
Chicago Title and Trust Co.
Chicago, Illinois

CHAIRMAN GLASSON: We in the Abstracters Section sometimes overlook the fact, I think, that the national officers of the American Title Association have our interests at heart just as much as we do ourselves. We thought this year we would like to have our President come in and talk to us for a few minutes, at least, not only because the dignity of his office rates that but because of the fact that he is a very fine gentleman.

It is a pleasure and honor, ladies and gentlemen, to call upon Mr. Kenneth E. Rice, National President of the American Title Association, who will address us for a few minutes on, of all things, "We All Sell Groceriees."

Kenneth E. Rice

It is literally true that we all sell groceries of one kind or another. Perhaps you have observed that the important nutritive value of various kinds of foods has been well emphasized by competent merchandisers in this field. Bread, for instance, has become known as "the staff of life." Bacon, believe it or not, has become associated, at least figuratively, with successful achievement, you know—the fellow who brings home the bacon. Well—at present prices, bringing home the bacon IS a successful achievement.

Reasonable Profits

Selling groceries involves that phase of business activity known as distribution in contrast to production or manufacturing. It is generally recognized that each business function from the farmer to the consumer is entitled to a reasonable profit for the capital invested, labor expended and service performed. The fact that the distributive process is entitled to just compensation was rather oddly developed by a Negro preacher down south. He gave a sermon emphasizing that salvation is free and later exhorted his flock about the paltriness of the collection. "Didn't you don say, Parson," protested a parishioner, "that salvation is free, free as the water we drink?" "Salvation IS free, Brother," replied the minister. "It's free and water is free, but when we pipe it to you, you has to pay for the piping.

Successful distribution involves sales and, in turn, the development of adequate sales volume depends on good merchandising methods. Selling groceries has changed a great deal in the last fifty years. Crackers are no longer sold from barrels, and other foods formerly sold in bulk are now neatly packaged and attractively displayed. Today, grocery stores are not purveyors of town gossip, and whittlers do not languish idly in a changed atmosphere which bespeaks industry and activity where cleanliness and attractiveness are well combined with economies of operation.

We all sell groceries means that we all sell a product, a service or a personality. Improvements in merchandising methods which are entirely obvious can easily be observed in most lines of business that involve vigorous sales activity. Generally speaking, however, the abstract business has not been particularly sensational in popularizing its product. It has not been in the vanguard in the development of improved processes or increased sales

KENNETH E. RICE

appeal. Many abstracters have been content to use the old horse and buggy. Our business has been cloaked with an aura of mystery. In short, we have perhaps done too good a job of maintaining the status quo.

Service at Decent Prices

The greatest contribution which we as abstracters can make toward the well being of our industry and toward our own individual success is to render good service at a reasonable price. This objective carries with it the connotation of improved methods, economies of operation and a sense of public responsibility. We must be alert to opportunities for improvement in all of these areas. It is part of our job to explore new methods and techniques in a search for a better, faster, and more economical way of doing our work. Meetings such as this as well as meetings of our state title associations afford an excellent occasion for the exchange of ideas resulting in our mutual benefit. At the same time, we must recognize our opportunities as well as our responsibilities to contribute a social good among the peoples of communities which we serve.

Public Acceptance

Somebody once said that Vice President Garner was a whiskey-drinking, poker-playing evil man. Perhaps by that standard many abstracters may be evil too. But, from a great many years of association with abstracters, and particularly during the past year when I have had frequent occasion to renew acquaintances with so many of you in your home states, I know that as a group you are industrious business men and a credit to your communities. Business men know that public acceptance is a most valuable asset and that public opinion is perhaps the most potent force on earth. Business during the last few years has, in a sense, been on trial. It has not enjoyed ready spontaneous public acceptance. Business has had to work to attain it. Public acceptance is linked inevitably with popular understanding. We gain public acceptance and an appreciation of the valuable function we perform by letting people know what we do and why it is necessary. Take pride in the orderliness of your plant and show people of your community the books and records which you maintain day-by-day so that they may have accurate title information quickly and expeditiously. Many forms of inexpensive advertising can be utilized to develop an awareness that your business is a good citizen in the commercial life of your city.

Civic Responsibility

It is important, too, for you personally to be recognized as a good citizen. Many people look upon you as the business and their attitude toward your company depends considerably upon their impression of you. By reason of the nature of your work, abstracters can frequently serve effectively on civic projects and undertakings. Don't shirk occasional responsibilities of this kind because such responsibilities carry with them opportunities to enhance an appreciation of your business and its function.

Recently we at Chicago Title and Trust Company depicted the manifold duties of an executor and trustee by a picture of the Greek God Siva, who was alleged to have had a thousand hands. I imagine that you are thinking that if you had a thousand hands you might have time to do all these things. In effect, you feel that I have counseled you to be an abstracter, a salesman, an advertising man, a public

with an abiding interest in the civic relations man, and a public benefactor uplift society. You say it is simple for a large company to juggle that many balls, having an alleged executive in every private office, but that maybe I ought to come out and see you work.

Advantages of Small Business

My answer is that because this is difficult to do doesn't make it less necessary to be done. Remember, too, that the odds are not entirely in favor of the larger companies. Their problems in this field are intensified in relation to their size. So many of the contacts with customers and others are handled by clerical help who sometimes leave considerable to be desired in the handling of people. Of necessity, management loses a large measure of direct contact. Problems of adequate communication arise and management has the double-barreled job of acquiring information upon which to base sound conclusions and of disseminating information interpreting the companies practices and policies to develop a better understanding and acceptance. Small business has an important advantage in that the management maintains more direct contact and the boss knows what customers and others think of the company. Having this information he also has the occasion to explain intelligently the service which his company affords.

Social Responsibility

It is just as necessary for small business to have a true sense of social responsibility as it is for large businesses. Making friends and influencing people is equally important to the success of both. The technique of making friends for business is not unlike that employed among individual persons. It is a matter of using those familiar traits of conduct which result in favorable acceptance and cause an individual to be liked by his associates. To emphasize the negative, I should like to tell you of an exchange of letters between George Bernard Shaw, the noted British playwright, and Winston Churchill. This technique is good fun between friends of long standing who appreciate each others wit, but is not recommended as good procedure to win friends initially. Mr. Shaw, who had a new play about to open, sent a letter to Mr. Churchill which read substantially as follows: "I am enclosing two tickets for the opening night performance of my new play. You may bring a friend with you—if you have one." To which Mr. Churchill acidly replied: "Thanks so much for the tickets which I am unable to use and am returning. I'll take two for the second night . . . if there is one."

CHAIRMAN GLASSON: Thank you very much, Kenneth, I am sure the applause is indicative of our appreciation of your kindness in talking to us on this most interesting subject.

The High Cost of Abstracting and What to Do About It

A PANEL DISCUSSION

Members of Panel:

Ray Harvey, Jaspar County Title & Guaranty Co., Carthage, Mo.

W. M. McAdams, *Vice President,* Kansas City Title Insurance Co., Kansas City, Mo.

Joseph T. Meredith, Moderator; *President,* Delaware County Abstract Company, Muncie, Indiana.

CHAIRMAN GLASSON: Today we have a panel which is going to discuss "The High Cost of Abstracting and What to Do About It." Now we don't mean the high cost to the customer. We are pretty well satisfied that that has to be high, but we mean the high cost to us, and this panel, consisting of Joe Meredith, of Muncie, Indiana, as moderator, Ray Harvey of Carthage, Missouri, and William McAdams of Kansas City, Missouri, will discuss the matter.

MODERATOR MEREDITH

The first part of this subject is patent.

Although Bill McAdams went into a spasm when we first discussed the subject because he had the idea that we were discussing the subject from the standpoint of the customer, from the viewpoint that charges to the customer, from the viewpoint that charges to the public were too high—that something ought to be done about it.

Mac was carefully briefed—that the high cost referred to the expanding costs of operation, the rising overhead —the contraction of the margin of profit.

That was different—so here he is.

Now Bill is going to start this thing out by reviewing the business until 1928, I'm going to bring it up to the present time and Ray Harvey is going to tell us what to do about it. That's where you can start tossing the tomatoes and bringing up the questions—that's where we will take our hair down—But wait for that until you've heard it all.

JOSEPH T. MEREDITH

We may be like the old farmer in Indiana. In 1898 there were swarms of blackbirds that flew over the state. Old Cy told his wife to put on the kettle, he was going out and get some blackbirds. He took down his old shot gun and trudged out. His wife could hear him shoot and shoot. Finally he came back. "How many did you get?", she asked. "Nary a one," he replied, "but didn't I make a lot of noise?"

Now maybe we will just make a lot of noise—but here goes. Mac, it's yours.

WM. M. McADAMS

Do you know of anyone who appears on this program more often than I? Perhaps the reason for these frequent appearances is that the Chairman of this Section, like the farmer with the well stocked, mechanized barn, who was working a bull in the field, believes it well to keep you reminded, (If such a reminder is necessary to anyone in

the title business) that there is something in this world besides romance and pleasure.

I think to get a foundation for this subject, we should perhaps dwell on the evolution of title evidence. Perhaps none of you need be reminded that before our recording system, ownership of land was evidenced by original instruments. Subsequently the lawyer searched the records, until they became too voluminous. At this point the abstracter came into being, for the purpose of furnishing chains of title to aid the lawyer in his search, until this method again became too burdensome for the lawyer. The lawyer is burdened considerably even today. I know; I am quite well acquainted with lots of lawyers at home. I have a friend whom I met on the street the other morning. His eyes were bloodshot, black rings under his eyes. I said, "Joe, what's the matter with you? You are working yourself to death." He said, "Yes, I have been up all night trying to break a woman's will."

Full Information

The abstracter reached full maturity, if not in the metropolitan centers, at least in the Middle West, along about the turn of the century. At that time they began to furnish full infromation. The lawyer need no longer rise from his desk. The abstracters properly certified and compiled all of the information that should be necessary for him to reach a conclusion as to the validity of title, or the condition, liens, and encumbrances thereon, that should be before him. At that time our recording system and our records were rather meager. The abstracter had about five places to search for the information necessary to make up that abstract of title. He had the deed and mortgage records, of course, the index to them, tax records, probate records, state court records. We still have all those. We will always have them.

Federal Court

I am being quite general purposely because of the different conditions prevailing throughout the country. Since that time our Federal courts have come into the picture. Not that we didn't previously have Federal courts, but we didn't pay any particular attention to them. But in our metropolitan areas particularly, you do have recordings in Federal courts. Various judgments are rendered in those courts which must be recorded. The bankruptcy system came into being, which made another office necessary to be searched. Then came our Federal income tax liens, followed by our Social Security tax liens.

Time Brings Changes

You say, "What difference do those make?" They all add to the cost of producing the service so that the lawyer may spend more time in, shall we say, breaking women's wills. I know current problems better. Originally the abstracter, (you older abstracters will recall) took in an order, he wrote it up on the order book, he went back and searched, made his own chain of title, went over to the court house and abstracted his own instruments, all in longhand. He was the only fellow who saw the job. I wish the typewriter had been invented earlier. Some of those fellows could write beautifully, but they do crucify the eyes if we have to examine them today.

It was followed by the typewriter, and the clumsy finegrs of men couldn't cope with the situation. The fair sex came into our business, in stenographic positions, and what not. I don't mean that we didn't want the fair sex in the business. I think they are about the only stimulant that I know of that would keep one in the business. I point that out merely that it did increase our costs.

Again, our public officials were scattered all over the county, brought about primarily by the various boards and bureaus and state liens and Federal liens that were created and necessary to show. When the abstracter reached full maturity also he reached a professional status. We could no longer have our offices down back alleys and cheap rent districts. We had to move uptown and display some air of dignity, respectability. That also added to our cost.

Ever Increasing Costs

I need not ell this audience how salaries have increased over the period that most of you have been in business. You all remember back when you had pretty good abstracters for $30.00 or $40.00 a week. You had pretty good stenographers for $65.00 a month. I don't advocate that we go back to that. I wouldn't want to see it myself. But I think that there is no industry in the world which requires the intelligence and ability that is required in the abstract field where the salaries, from the executive officers down to the lowest paid unskilled employe is as low as in the title industry.

Your rents—I use 1900 as a base—up to Mr. Hoover's time in 1929, your rents increased many, many times. Doubled. Your salaries increased from those low points that I mentioned to much higher. I think I am not unreasonable when I say, without any particular statistics to prove it, that between 1900 and 1929, the salary of your working employe, (not necessarily your executive officers, but your working employe) more than quadrupled. The cost of material and equipment followed the same trend. Your free service increased twofold or more. Why? Because you had established in the community a profession, a business that everyone needed the information that you sold, but he wasn't always willing to buy it. There will be those chiselers in every community.

Now we have dwelt a moment on the increase in the various services rendered, but are they commensurate with the increase in our charges? I know of no community where instrument charges, certificate charges, judgment searches, tax searches, any of the services we render have more than tripled. That is in the larger areas, metropolitan centers. I know of no community in the outlying districts, country communities shall I say, that have any more than doubled. Yet their overhead, as I stated before, more than quadrupled itself.

Now, for the benefit of those of you who have remained awake while I have demonstrated, analogous to the man with only one book, the utter futility of continually calling upon a man with only one subject, I will now turn this discussion over to my colleagues, who will not only continue the subject to a more current date, but will tell you what to do about it, I hope.

JOSEPH T. MEREDITH

Mac has brought you up to 1928.

That was the year Hoover was elected President by the greatest vote ever accorded a President.

In one day, J. I. Case rose $51.00 a share and International Harvester rose $60.00 in a single day. Over nine million shares were traded on the board.

Business was good, but we were still in swaddling clothes. In many communities, there were active curbstoners. The Federal Land Bank and other national lenders would take the work of almost anyone. That had a depressing effect on prices, and with that sort of competition, most abstract plants barely made a living for the operator. And most operations were carried on by one-time attorneys, ex-recorders and similar folks.

Suddenly, this swollen accumulation of business collapsed. There were no buyers of real estate, and even the mortgage lending institutions got scared and would not even accept deeds for the property they had mortgaged to satisfy the debt. People who had invested in rental property and had expanded their operations by mortgaging what they had, to purchase more, found themselves with a stack of loan pass books, and no rental income to pay the monthly payments. Renters who did not pay rent were urged to stay in the houses anyway, just to protect them. Building and Loan associations were satisfied with interest only, or less, rather than add to their already top-heavy inventory of real estate.

Governmental Relief

The HOLC was devised to assist the homeowner—and it also assisted the abstracter, but in most cases they fought like beavers to keep down the costs of title services, and after having eaten pretty low down on the hog for two or three years, we were not strong enough to combat their efforts. The Federal Land Bank did the same thing, and often got certificate fees reduced and set a maximum on title costs.

But along with at least getting some

source of business we got the NRA. That dead duck did one good thing. It brought many of our people together into closer association. It eliminated commissions and kick-backs. Maybe not 100%, but at least almost so. That was what made the depression worth while. Our state associations took advantage of NRA to build strong organizations and put requirements of membership that made our associations mean something, and enabled us to secure the recognition from national lenders which we needed and deserved.

When the HOLC ran out, we were sparring for time, until they began to foreclose the mortgages, and we had another shot in the arm. Finally, the building program and the armament program got under way in 1938 and we were off to the races. Things went along pretty good until the advent of strikes, higher and higher wage demands, and then the war.

While many of us expected a complete shut-down of business during the war, such as developed in World War I, it never happened. Instead of decreasing, business increased. There was not so much building, but the existing homes began to get in demand, and as rentals were purchased the housing situation became acute, and the rat race was on.

The Rush Was On

It increased until many of our plants were working night shifts, enlarging their staff with anyone who could pound on a typewriter, and trying to keep the backlog from getting increasingly larger. To compete with war industries, our force was given wage increases, bonuses, work incentives and everything and anything to keep the flow of business moving and trying desperately to keep the established mode of title evidencing from breaking down completely. At times, it looked as though it were impossible, but by the end of 1946 and the early part of 1947 the job was whipped. We had won the battle—but at the expense of exhaustion and an abnormal increase in the cost of doing business. It wasn't so bad when the volume was at such a high level, but now that it has gone back to a more normal operation (I say more normal because it is still abnormal, to my way of thinking) those excessive costs are still with us.

Increases in rates have been established by many of our firms, but there are also those who, for one reason or another have not been able to pass on the higher costs to their customers. After all, there is a ceiling on price rises. A ceiling put there by our customers. As with other commodities, we cannot price ourselves out of a market. You can't kill the goose that lays the golden egg.

The problem isn't local in scope, it extends across the entire country, and this panel intends to try to help you solve the problem.

Well, there's the picture—now let's find out what to do about it—Ray Harvey.

RAY HARVEY

Mr. Moderator, Mr. McAdams, Ladies and Gentlemen:

When I was asked to take part in this panel discussion and assigned this particular phase of the subject, it was said that possibly I could make it thought provoking. At the time, I doubted my ability to give you anything that could be put to practical use. However, after considering the subject from all angles, I decided that the worst that could happen would be that you might think me a crackpot with a theory. Since all great changes that have occurred in history have been advanced by some crackpot, and the facts are that I, too, desire to make a better living in the abstracting profession; I am willing to shoot with both barrels and trust that, at least, it may be interesting if not too worthwhile.

RAY HARVEY

Construction

The subject, "The High Cost of Abstracting," could be interpreted in several ways. It might be construed to mean the high cost to the customer, which is a debatable question in a majority of cases; or it might be interpreted to mean the high cost of production and the small amount of remuneration we receive for our services. Because of the startling devaluation of the dollar in recent years and the rapid growth in prices of nearly all commodities, I choose to follow the latter theory.

You have heard Mr. Meredith tell us about the beginning of the business and the problems confronting the abstracter at the time our present system of charges came into being. You have heard Mr. McAdams tell of the changes in living costs and costs of production during the last twenty years; and now, according to our good friend Earl Glasson, the Chairman of the Abstracters Section, I am supposed to wander off into dreamland and tell us what to do about it.

I don't know why I like to get up and rave like this anytime that I have an audience which is compelled to listen, unless it is the nature of the brute. As a small boy, I picked up a book of birthday proverbs that my mother had at home. In it, under each day of the year, was a proverb purporting to give a thumb nail sketch of the individual born on that day. Naturally, I was very interested to see what I was like, so I hurriedly turned to the page for June 19. There it was in big, bold type, "Every ass loves to hear himself bray."

Profit

"How to increase our margin of profit" is my understanding of the subject with which I am charged. There are several ways to accomplish this.

One, of course, is to eliminate part of the unnecessary waste that many of us have allowed to creep into our businesses. That, however, is our smallest chance for gain; but can be helped by methods of photography and other innovations in machinery and equipment which are on the market at the present time.

Costs

The cost of operation, as we all know, is based upon the costs of rent, supplies, equipment and wages. By far, the largest of these is the item of wages. I notice that a survey of the cost of abstracting, furnished recently by this Association, gives the information that from forty to seventy per cent of the total income in our profession is spent for labor. It is necessary that people in our profession receive salaries comparable to those in other fields and sufficient to meet the ever rising cost of living. It is impossible, therefore, to effect a saving by reducing salaries. Our only solution must be in the use of new equipment and new methods designed to eliminate the need for so many employees. All through history men who have made the greatest financial successes have been the ones who were able to substitute machinery for labor; thereby, effecting substantial savings in the costs of production. With new machinery available to us, it is, therefore, important that we make of it far greater use than we have during the past. I, personally, have found that by use of duplicating equipment I have been able to lower costs on multiple orders for abstracts. I now am experimenting with photography to lower the cost of the daily take-off. This is a subject which has or will be explained to us during this convention. Not only do we eliminate part of the labor cost, but in every instance where machinery is used, the subsequent copies are bound to be correct and this eliminates chances for error, which has always been one of the bug-a-boos in our profession. In our plant, once we have abstracted preceedings from Circuit or Probate

Courts—instruments which we plan to use more than once—we no longer worry about the cost of typing, comparing or the chances for error. The next time we need it, we merely take the master and run the necessary copies on the duplicator. It has substantially lowered our cost of production.

Abreast The Times?

I think, however, that there is one glaring weakness in our whole setup. In abstracting we are still in the horse and buggy days. The Title Insurance Companies, the lawyers, the doctors and nearly all the professions have kept up to date; but not the abstracter.

In any business or profession you must have customers with the ability to pay. "You can't get blood out of a turnip" is as apropos to abstracting as it is to any field of endeavor. Yet, with our old-fashioned system of sheet and certificate charge, we try to get the largest part of our profit from the ones least able to pay. As a matter of fact, we are not fair to ourselves with such charges. We do not take into consideration the fact that if we overlook taxes or a mortgage on a $50,000 property, we are liable for many times the amount we would be on a $200 vacant lot. Yet the charge to the customer is the same. We do not realize that the cost of take-off and posting for the past hundred years is a vital part of every abstract and should be charged for accordingly. When we run our chains and check our abstracts, we follow the same procedure and need the same information whether there have been many transfers or just a few. Our customer is getting the same value for his purpose whether there be five or fifty transfers. If a man acquires title to a piece of property by a deed, we charge $0.75 or $1.00 plus $5.00 for the certificate to show this information. Should he acquire it through an estate, we charge him approximately $15.00 and $5.00 for the certificate or a total of $20.00 as against a total of $6.00 in the first instance. Invariably, the one with the fifty transfers or the one who acquires property by will and who owes the larger bill is one of the turnips in our business. We note his inability to pay and many times do not make the full charge.

Other Professions Have

The legal and medical profession have long since realized these inequalities and have based their charges accordingly. The fees for legal advice or the removal of an appendix for bankers or other well-to-do persons are far greater than those charged the less fortunate. Should not these same factors apply when we furnish title information? Why should we, the abstracters, continue to make our charges on 19th century experience, while we live, spend our money and pay costs of production on a streamlined 20th century basis?

I would like to trade the horse and buggy for a new 1949 automobile or airplane. I desire to charge my customers on a fair and reasonable basis, considering the services rendered and the potential liability incurred in serving them. There is nothing wrong with our business that cannot be corrected by a proper system of charges aimed at giving to people the kind of service they want at a price they are able to pay. To me, that is the only purpose of a business or professional man and it is also the only secret to increased profits for us and a better living for all engaged in the abstracting profession.

To sum it up, I would base abstract charges on cost of production plus a reasonable allowance for protection against our potential liability as insurers, plus a reasonable margin of profit. I would recommend that we establish a three part rule, made up of the following items:

Formula

First, an instrument or entry charge as low as possible. Second, a charge based either upon the sale price or the assessed valuation of the property involved. Third, a reasonable minimum total charge.

This system would afford a more equitable basis of charges for the services rendered, would lower costs to the ones least able to pay, and would give the abstracter earnings and profits commensurate with others engaged in similar fields of public service.

In conclusion let me say, I have enjoyed appearing on your program and trust that the time consumed has not been completely wasted. It is easy to go along in the same old way, but it is hard to change. Many of us fear competition, but let us be thankful that we still have a right in this country to own our own business and, to the best of our ability, meet the continuing challenge of life.

In the words of one of the greatest of all writers: "This above all, to thine own self be true and it must follow as the night the day, thou canst not then be false to any man."

DISCUSSION

MR. MEREDITH: Well, there you are. You can pick out the tomatoes now and start tossing. You have heard the suggestion made. I am sure it is thought provoking. I am sure that many of you have questions that you would like to ask. Perhaps you have very definite reasons why the suggested program wouldn't work. Do I hear any questions from the floor on this subject?

Valuation Charge

MR. HARMON (Michigan): Mr. Meredith, do you have any information at hand as to how many states use the valuation charge generally?

MR. MEREDITH: It isn't so much by states as it is by individual firms. May we see the hands of those who now practice a valuation charge?

(Show of hands.)

MR. MEREDITH: That is quite a few. Would any of you care to have a question from any of these people, the hows or wherefors? Here is one right here. What manner of valuation charges do you use, sir?

MR. GILLILAND (Sioux City, Iowa): We operate on a basis of one-tenth of one per cent on the first $25,000.00 of current assessed valuation. In Iowa the assessed valuation is presumed to be 60 per cent of the actual value. On the next $25,000.00 we charge one-twentieth of one per cent, or 50 cents a thousand of the current assessed valuation. Above $50,000.00 we charge one-fortieth of one per cent, or 25 cents per thousand, until our valuation charge reaches $100.00. Above that charge, or above that figure we have no more. In other words, a $100.00 top on the valuation charge. That charge is not repeated on a continuation of the abstract if it comes back to us within six months from the time we had it before, unless the title has changed. In that case, the full valuation charge is repeated.

MR. MEREDITH: May I ask you, Mr. Gilliland, one question, that perhaps might be in the minds of others. That is a surcharge, is it not?

MR. GILLILAND: It is.

MR. MEREDITH: Did you decrease your per instrument or certificate charge at the time you put this in effect?

MR. GILLILAND: We did not.

MR. MEREDITH: All right. Thank you very much. What do you do in this case? You very often have an abstract come in that is on a vacant lot. However, a house has been built on it that has not yet been assessed for taxation. Do you give him any valuation charge on the house that has just been built, or do you skip it until it goes on the record?

MR. GILLILAND: The only way we know a house has been built on that lot is if a mortgage appears. Then we sort of figure about 50 per cent of the value of that mortgage. I might have said too that we charge no valuation charge on any property assessed under $750.00. In other words, vacant lots very often get by without a valuation charge.

MR. MEREDITH: Thank you very much. I saw several other hands. Is there anyone here who have a valuation charge on a little different basis than Mr. Gilliland has reported Earl?

MR. GLASSON: The only difference in the valuation charge we make is that our charge is based on a flat dollar scale. We do not break it down into one-tenth of one per cent, say, of the assessed valuation. We charge $1.00, for instance, as a valuation charge on a property assessed at from $250.00 to $999.99, $2.00 when the valuation goes up to $2499.99, and so on up the scale. That is the only difference that we make. It is a little easier to figure. It still comes out in round dollars, and if

there were any shock due to the customer, he would be probably unaware of it.

QUESTION FROM THE FLOOR: How do you arrive at your value?

MR. GLASSON: The value is always the assessed valuation as shown on the treasurer's books.

The Low Priced Lot

MR. MEREDITH: Mr. Harvey has suggested that if we are going to be helpful, we must make it possible for the fellow with the small property or the cheap vacant lot to get his property cheaper, get his abstract cheaper than the man with the higher priced property. Now, if you add this as a surcharge, how do you figure that the fellow with the cheap property is getting off better? Because you would have to raise the prices unless you did that? Is that it?

MR. GLASSON: I would be glad to answer the question. I think the installation of any valuation charge, or any other kind of a charge which is imposed as a surcharge is done only because of the fact everyone with whom I have talked who has instituted a surcharge of any kind, it was done because of the fact that it was necessary to get additional revenue in order to exist. Therefore it became necessary either to make a flat horizontal raise or keep the basic charges pretty well as they were and to impose the surcharges. It works the same way. Had you derived your revenue from a horizontal increase originally, then in order to impose a surcharge you would in all honesty to yourselves and your customers reduce the flat charges and impose the surcharge as a substitute. It works just the same way as if you originally reduced your flat basic charges.

Billing by the Item

MR. A. W. SUELZER (Fort Wayne, Indiana): I want to ask this question, by way of gauging customer reaction to the valuatioon charge, and that is, how many of those who apply the charge bill it separately; because unless it is billed separately the customer doesn't know whether he is getting a valuation charge or not.

MR. MEREDITH: Let us see the hands of those who use a valuation charge and bill it separately.

(Show of hands.)

MR. MEREDITH: I take it then that outside of one instance, I believe, that those who make those charges simply include it all inclusive in your statement for your abstracting. Are there other questions now on this subject?

Instrument Charge

MR. GEORGE HARBERT (Sycamore, Illinois): Mr. Chairman, just what is the instrument charge say, in Iowa, where they are using a valuation charge, so we can get some way of gauging what they charge or what they are surchariging on top of? You have about $1.00 to $1.50 an instrument here generally, and I would be interested in what they start the surchage from.

MR. MEREDITH: I am informed in Iowa the per instrument charge is from $1.00 to $1.25.

MR. MEREDITH: Are there any other questions? Well, I am sure that this subject will be discussed among yourselves. It offers a great deal of possibilities. I am sure more and more people are considering the feasibility of adopting some sort of a valuation charge, and before long it seems as though it is going to be quite general. We thank you very much for the attention, on behalf of our forum committee. (Applause.)

CHAIRMAN GLASSON: Our thanks are certainly due to the panel for their discussion. It has been most enlightening. I am sure if you ladies and gentlemen remember what has been said you will take home much to think about. I will suggest to you that you canvass in your own minds the possibility of instituting some sort of surcharge whenever you need additional revenue, rather than raising your prices horizontally.

Fourteen Point Program

Abstracters Section

WILLIAM GILL, SR.

Executive Vice-President
American-First Trust Company
Oklahoma City, Okla.

CHAIRMAN GLASSON: The next item on the program is one that is dear to me. I know I am going to be glad to hear what the speaker has to say. I heard a speaker last week bounce up on the program when he was introduced and he said, "This is going to be so good, according to the introduction, that I can hardly wait to hear what I have to say myself." Our speaker today is going to talk to you on "The Abstracters Section Fourteen Point Program." I am sure you will agree I could have picked no one better qualified to do that, because I have picked the "daddy" of the idea. Bill Gill back in 1936 called a conference of the presidents and secretaries of state associations for the purpose of organizing a program to strengthen and enthuse state associations, and out of that meeting came an Abstracters Section Fourteen point program. You have heard many times that many of the state associations adopted some of them. Wherever it was adopted it was eminently successful, but due to the lapse of time and the exigencies of the war years the program became in some respects a little outmoded. So again at the prodding of the daddy of the idea in 1948 in the spring, we got busy and we revised it and revamped it, in so far as it seemed advisable and necessary. There could be, of course, no more fitting acknowledgment of the work of Bill Gill on this matter than to let him tell you about it this morning. I am very happy and most proud to call upon him now. Mr. William Gill of Oklahoma City.

WILLIAM GILL, SR.

I appreciate the opportunity of discussing with you abstracters "The Abstracter's Section Fourteen Point Program."

This program is a "reconditioning" or perhaps the "recertifying and bringing to date" of a somewhat similar program adopted in 1935. Chairman Earl Glasson and other members of the Abstracter's Section are to be congratulated in their efforts to bring you a program which will be of material benefit to your various state associations and individual members thereof.

As I have stated on other occasions, a program is of no value unless it is "worked." It was Dwight Morrow, I believe, who discovered after he abroaded a train and the train pulled out of the station that he had lost his ticket. The conductor, knowing him and in an effort to avoid unnecessary embarrassment, advised Mr. Morrow that it would be all right with the company and all right with him for Mr. Morrow to pay his fare at a future date. To this Mr. Morrow replied: "It may be all right with you, Mr. Conductor, and with the railway company, but it isn't satisfactory with me—without the ticket I do not know where I am going."

This Fourteen Point Program is a ticket to take us somewhere, but if it becomes lost and is not used the value ceases. I recall back in 1935-36-37 and 38, a large number of states put into effect a similar program. Many of the state associations are now doing many of the things listed in this program.

WHAT HAPPENED TO THE OLD

PROGRAM—I suppose it was lost in the mad rush—I repeat, an unworked program is of on value.

They Rely Upon Us

Before discussing certain parts of this program, let's talk about the abstracter—or I should say: "Let one abstracter talk with other abstracters." We, of course, realize the most valuable asset of an abstract office is the customer—without a customer we could not long continue in business. Let us pause for a moment and consider the fact that annually billions of dollars change hands—WHEN?—Only after the abstracter has rendered a service to a mortgage company, a bank, a realtor, a government agency, a building and loan association or someone else. Each of those mentioned are customers. Yes, Ladies and Gentlemen, the abstracter is a most important cog in the realty wheel—and, after all, you are of some importance in your community. Concerning your customer, I will defer comment for the moment except to say, in my opinion, it is a good business policy to assume that the "customer is always right" although we know at times he is extremely provoking to say the least.

Concerning the abstracter, much could be said. For about 30 years I have had more or less contact with the abstracter. For about 30 years I have worried about the problems of the abstract office the same as you have worried about your own problems. After all, our problems are no more complex than the problems of any other business or profession. To me the abstract business is a fascinating one—fascinating because you never know what will happen from one day to the next—fascinating because there is something new to be learned and because there is the element of risk always present. It's fascinating in that it satisfies the gambling instinct most of us have, but not always admitted. With all of its worries, perplexities, grief and misery, I like it the same as you. The fascination of the business—the love you have for your work—are important elements but of more importance is the remuneration. There is something wrong with any business if it can't operate on a paying basis. Perhaps the field may be overcrowded—maybe it's lack of executive ability or it could be "cut throat prices and competition" or even unethical practices. Whatever the contributing factor may be—a successful business must be a profitable one. Too much charity in business does not meet overhead expense any more than unscrupulous dealings create confidence and build good reputations.

Worth While Program

It's reasonable to assume that an abstracter would not belong to the State or National Title Association unless it was believed membership in such associations were beneficial. I think that is a reasonable conclusion and yet I sometimes wonder why some abstracters seek affiliation with either, if they are to be judged by the thought and effort they display in trying to make the association really worth while. The fact that a member pays dues after having been hounded to death by the secretary or treasurer isn't worth a "tinkers damn" as compared with the value of his service in putting over a worth while program.

At numerous State and National Conventions and Mid-winter meetings uniformity has been urged—uniformity as to method of abstracting as well as prices charged. I have an idea, however, that a lot of our abstracters have their own "pet way" of doing things and a price map of abstract charges in many localities would look like the Biblical coat of many colors. Just as long as we put off the task of selling ourselves and others that it would be beneficial to display a little bit of "ordinary common garden variety horse sense" in connection with this important question of more uniformity—then just that more likely we are to receive public criticism. What the public will demand of the abstract business is guess work—frankly, it isn't altogether a bed of roses at the moment. I have witnessed a marvelous improvement during the time I have been identified with the American Title Association—yet, I believe there is still room for considerable improvement.

EARL C. GLASSON

Uniformity

In Oklahoma the Uniform Certificate, the Uniform Abstract and almost a universal uniform schedule of abstract charges have met with public favor. No longer does the title examiner have to read a Uniform Certificate—he knows exactly what it contains and that it gives complete coverage—that certificate contains no "well worded clause" to relieve the abstracter from any liability in the event of a loss.

This Fourteen Point Program contains nothing that hasn't been accomplished in other states. I am proud that my state has already adopted it—when we adopted it we merely reaffirmed what we have been doing for the past 10 or 12 years—I'll admit, however, in several respects, we are quite negligent. In Oklahoma, and elsewhere there is still room for improvement.

I make this assertion in all kindness, but not in the least fearful of successful contradiction—it's a tremendous task to get abstracters to sacrifice a few "pet ideas" of their own and fall in line with the majority.

It's Everybody's Job

Those of you who are acquainted with my state and National Title Association activities—and I am not trying to call your attention to my presumed importance or knowledge—but those of you who know me, I do not believe, will question my sincerity or good intentions—remember that statement, please, because I have already said and I am going to say something else rather harsh and perhaps inappropriate—no abstracter has any business in a State or National Title Association unless he or she is willing to exert an effort in the solution of our problems and unless he or she is willing to carry out the action of a majority. As long as each individual abstracter clings to the thought that his way is best or nurses some "pet peeve," then just that long will your State Association fail to function properly. If your Association sees fit to adopt this Program, I urge you to join with the "optimistic majority" rather than remain a member of the "pessimistic minority"—if you will do this, then your association membership will become a great deal more valuable than a mere card. It seems to me that the greatest problem confronting us today is the attitude of the abstracter. How can we point the way to a public which knows not what it wants as long as there exists among us such a wide diversity of opinion and practice.

Please do not think I can do nothing but criticize. As a whole, the abstracters are all that could be desired—I am not talking to that class, I am talking to the indifferent and "don't give a damn" class—and the bad part about it is there are but few, if any, in the room, coming within that classification. The class that needs to be reached are those who never attend State conventions let alone National meetings.

The Program Itself

Let's talk about this "Fourteen Point Program" for a few minutes. No comment is necessary on points Nos. 1-2-3 and 10. They are sufficiently self-explanatory.

Pay particular attention to No. 4,—Have a Planning Committee—over a period of years such a committee can develop a program for your State Association. Many things of local concern can be handled which would be of no interest perhaps to some other State Association in some far away location. That is purely a local matter. There

isn't a State Association represented today that doesn't have a few "old heads" whose advice and counsel is worth heeding.

Attend National Conventions

The only comment I have to make on No. 5 is the importance of the State Association paying the expense of your President to these meetings—if he can't go then send your Vice President or Secretary. The expense isn't too great and it's a nice way to show your appreciation for the untiring efforts of your state officers.

No. 6 previously, could not have been adopted, because the National Association did not have sufficient funds to have a representative of the National Association at your Convention. One of the National officers knows what is taking place in other communities and with our increased dues schedule the National Association will be glad, with no expense to your Association, to have someone present.

No. 7 is important—it isn't a new idea. I'll skip it because I have probably said too much about that matter anyway.

Use Their Experience

No. 8 is a brand new idea—but it is a good one. What happens to your past president. Down in Oklahoma for years and years they have been organized—the past presidents' organization is known as the "KEGS"—don't ask me what that means—it's a secret. They are present at conventions—at the annual banquet they have their own "KEG" table—and they have their own KEG—they never attempt to dictate or run a convention or association, but I can tell you this much—"No KEG will refuse to do anything he is asked to do by the Association"—that's an unwritten law—when called upon he always responds.

Regional Meetings

No comment is necessary regarding No. 9—District or Regional meetings, but may I stress the importance of these meetings. You will find by far the best State Associations are in states which regularly hold regional meetings. You get an opportunity to talk with those abstracters who never attend State or National meetings. If employees of the abstract companies are urged to attend you will find they will stimulate the meetings and receive experience and training valuable to them in the future after they take over the business when the time comes for us to step out of the picture.

No. 10 is good. It keeps the membership posted on what is happening throughout the state. It tends to tie the members closed together. I think it very much worth while.

Probably one of the most important points is item No. 11—The Title Industry, in many localities, has been negligent in its public relation practices. In fact, there hasn't been but very little public relation work carried on except by individual members. Sometime ago I made a survey by mail, in the states of Kansas, Oklahoma, Texas and Iowa, asking attorneys, mortgage companies, oil lease and royalty dealers, banks, real estate men, etc., to what extent the abstracters were giving satisfactory service. I was surprised at the number of replies in which "surprise was expressed." They couldn't believe the abstracter was concerned about the public. That, Ladies and Gentlemen, is the very thing we should be concerned about—what we think of the customer is of no consequence as compared with what the customer thinks of us. The response was good in each of the four states. In Oklahoma approximately 400 replies were received, a large majority were sane and sensible—a few

WM. GILL, SR.

should have been enclosed in "asbestos envelopes." Yes, we received a great deal of minor criticism—it was good and we were glad to get it. Each and every writer received a courteous reply. You know without my telling you, our customers have about as many crazy ideas regarding what an abstracter should and should not do as our own members have. Whenever I appear before a meeting of building and loan men, mortgage association meetings or a Realtors group I endeavor to explain a few of our problems, what the Association expects of its members and then I frankly ask for any criticism anyone cares to make. You usually have a few "sore heads" present and sometimes you get some rather hot questions or complaints, but isn't that what we want to know. They like to get it off their chests and it presents a fine opportunity to answer complaints and they know the Association is really concerned about their welfare.

Public Relations

No. 12 ties right in with No. 11. Number 12 is a local public relation project. I find that civic clubs, church groups and other gatherings are always on the lookout for the unusual type of program. They are always attentive when a title man or woman talks about title matters. Every member of the audience either owns, or hopes some day to own, a tract of real estate he can call his own and at gatherings of this kind you can distribute the items mentioned under point No. 13 of this Program. Can you think of a better way of publicizing your State Association and your business? Think what it would mean if points No. 12 and No. 13 were carried out in every community in your state.

The last point—No. 14, is self-explanatory. The importance of this item cannot be over estimated. If you have an organization of past presidents of your Association, perhaps they could be induced to prepare a similar title course more suitable for your own state—it wouldn't be too hard a job if the work was divided up between 6 or 8 past presidents, letting each prepare a course on a given subject.

Our Future

In conclusion, let me ask that you study the future of the abstract business. You know title insurance is increasing daily throughout the United States—you know the abstract has already disappeared in many localities and its disappearance is becoming more rapid in others. You have but to consider that during the past few years a revolution has confronted many lines of business. Compare, if you will, the old-fashioned music box with the combination player and radio; the lantern slide machine with the sound motion picture and television; old photography with the wire-photo; the ice box with the electric refrigerator and the deep freeze; the freight train with the truck; old-fashioned farm methods with mechanical farm equipment; the independent merchant with the chain stores; and, last but not least, the various phases of business in which the Government is now engaged and the trend toward socialized medicine, housing, etc.—if you pause and consider these things for a moment you may conclude that the abstract business might not be resting upon the "rock of Gibraltar." The public must be satisfied—it has and always will accept any improvement. I believe it to be a part of wisdom to watch our step and look into the future.

We have been given a Fourteen Point Program which will in no manner cure all of our "ills"—it will be of tremendous value to those engaged in the abstract business. The Abstracter's Section has endeavored, in submitting this Program to state associations, to show us where the river is located but there can be no "old-fashioned baptizing" until we get "religion." What the state associations will do with this Program depends upon the support they will get, to a large extent, from those in this room.

Some abstracters in my state say: "I would attend regional meetings, but

I'm too busy. I would practice more uniformity, BUT— I would do a lot of things BUT.

An old Negro preacher was somewhat disgusted with his quite dormant congregation. One morning he could stand it no longer and decided to talk rather plainly to the members of his flock. "Brethren and Sistern," he said, "Dis is about de no goodiness bunch of Niggers I'se ever seen. Sister Jones was gonna clean the church carpet, BUT something happens and it ain't got cleaned. Deacon Smith was to have fire wood here dis morning—he didn't BUT he mint well—de choir leader promised a beautiful anthem BUT he got a bad cold—all I eber hear from you Niggers is BUT—BUT—BUT. If dis congregation don't git religin, day is all going to hell on dair Buts."

Now, Ladies and Gentlemen, who is going to see that this program becomes effective in your state. Let me give you some figures from the "Dayton, Ohio, Builder."

It's the Truth

Don't believe this BUT:

Population of United States is approximately	135,000,000
People 65 years or older	37,000,000
Balance left to do the work	98,000,000
People 21 years or younger	54,000,000
Balance left to do the work	44,000,000
People working for Government	21,000,000
Balance left to do the work	23,000,000
People in Armed Services	10,000,000
Balance left to do the work	13,000,000
People in State and city offices	12,800,000
Balance left to do the work	200,000
People in hospital and asylums	126,000
Balance left to do the work	74,000
Bums and those who won't work	62,000
Balance left to do the work	12,000
Persons in jails and penitentiaries	11,998
Balance left to do the work	2

Those two are—You and I.

Therefore, let's you and I shake hands and pledge ourselves to accept the challenge contained in this Program, then go back home and get the job done. Don't wait for Tom, Dick and Harry—they are good fellows—they mean well—BUT!

CHAIRMAN GLASSON: Bill Gill has always given us real talks. I appreciate it very much. I do hope that you ladies and gentlemen will remember every word he said. If you will, and carry back to your state association the ideas Bill has given you and the arguments he has given you with respect to the Fourteen Point Program, you will do your state associations an inestimable amount of good.

You will note on your program that there is provided a few minutes for discussion. Does anyone have anything they would like to say with respect to the subject?

DISCUSSION

MR. CLAUDE BALDWIN (Iowa): Mr. Chairman: As president of the Iowa Association, I feel at this time I should mention Iowa has adopted this program this last year. I don't know how many other states have, but we have been for the last several years doing practically what these fourteen points provide for, but we did adopt them formally just within the last year. Now there are about one or two of them that we really haven't got into yet, but the rest of them are substantially as mentioned by Mr. Gill. I think that one on dues is particularly important, because if you tie in your national dues with the state association dues, you collect them all at once. That is the way we do it there in Iowa. I understand other states have other methods.

We have a sliding scale for our state dues which we find brings in revenue.

Revenue

If you let every company pay a certain amount, the companies that can well afford it will not do it. We have a scale something like this. Those that are under revenue of $5,000.00 in the preceding year, the gross revenue, based on the gross revenue. We take each company and assume that they are honest in reporting. Under $5,000.00, dues are $10.00; $5,000.00 to $10,000.00, $12.50. and so on up. We have no trouble with our dues whatever, and our finances are in good shape.

No. 4 we haven't adopted, but I think that is a very good one, and we are going to get busy on that right away.

No. 8, (organizing our past presidents), we are going to do that at our next state meeting at Sioux City.

No. 12, "Sponsor educational programs", we haven't gone into that very much, but I think that is a very fine point. The other points we have been carrying out, particularly No. 13. We prepared a little booklet which we give to prospective real estate buyers and young couples who are purchasing real estate, which is very good, entitled "What you Should Know When you Buy, Own, Sell, or Mortgage Real Estate," in question and answer form. It advertises our association. It advertises abstracters. The lawyers like it, because we tell them that everybody should have their abstract examined to have a good title.

Michigan

MR. CHARLES HARMON (Michigan): I am Mr. Harmon, president of the Michigan Title Association. Those of you who heard the report of the state presidents yesterday morning may remember my remarks concerning the dead wood in some of our state associations. Now, under Paragraph No. 3 we have gone one step further. You have to be careful in your state association of memberships changing hands. People have the idea that there is nothing to this abstract business but making money, and in the case of death or some other situation where a member abstracter gets out of the business, there are usually some people interested in taking over that business. You have to watch these people to make sure they have the knowledge necessary to be an abstracter, or that they hire a competent abstracter to run their business.

Now, that is the reason that we in Michigan have adopted the program which I explained yesterday. I think it is worthy of the consideration of the rest of the state associations, to watch these transfers of membership closely, because as I explained, one or two chunks of dead wood in your organization can hurt each and every one of you who are working to improve the status of your state and national organizations; you keep running into these kick-backs from people who have just moved in on the abstract business and don't know what they are doing. That is the thought that we wish to present for your consideration from the Michigan Title Association.

CHAIRMAN GLASSON: Thank you, Mr. Harmon, very much. These reports are most encouraging to the officers and committee men of the section. Mr. Dykins from Montana.

Montana

MR. DYKINS (Montana): I would like to report on the fact that for several years we have known that anything that Mr. Gill has advocated was good for the association. We have adopted it practically in full and have been carrying it out for a number of years, and have the various things that he suggests we should have, but we have added one additional feature. That is last year and this year we have had what is known as a display room. Now in this display room are presented all the latest works of the different abstracters in the state, for the purpose of showing progress of abstract work. In other words, samples of all kinds of abstract work are sent in or brought in, and they are on display in this room, and we find that it is one of the most educational features we have.

In other words, two fellows were out playing golf this year. The other fellow says, "I must hurry back and hear a certain speech." The other fellow said, "Don't worry about that. You will get more out of that display room than you do out of that speech."

They come in and mull over the different exhibits, and they really sit down there and make notes. I know that display room is one of the most outstanding features of our convention.

CHAIRMAN GLASSON: Thank you. I imagine that would go a long ways towards the matter of eventually arriving at some uniformity in abstracting. I am sorry that time does not permit us to carry on this discussion further, but I wish to again thank each and every one of you for your interest in this matter.

Before I introduce the next panel,

I would just like to tell you I was very glad to hear Bill Gill's statistical information. It explains the matter that has caused me to work so hard in the last two or three years. Each and every one of us has been faced with the increased cost of doing business, and I know each and every one of us is going to be most interested in finding out what the other fellow has done to overcome the disadvantage which is obvious in that situation.

Raising Ourselves by Our Bootstraps

A PANEL DISCUSSION

Members of Panel:

Harold J. Taylor, *President,* Effingham Title Company, Effingham, Illinois
J. I. Miller, *Owner-Manager,* Montgomery County Abstract Company, Independence, Kansas
George Goetzinger, Moderator., *Owner,* Goetzinger Abstract Company, Woodward, Oklahoma

CHAIRMAN GLASSON:

This panel is entitled "Raising Ourselves by Our Bootstraps." Again the title probably doesn't mean a great deal, so I can't explain very much about it to you. I am going to leave that to the panel. The eminent gentlement who are going to take part are Mr. George Goetzinger, owner of the Goetzinger Abstract Company of Woodward, Oklahoma, and incidentally, President of the Oklahoma Title Association; Mr. Harold J. Taylor, President of the Effingham Title Company, Effingham, Illinois; and J. I. Miller, owner of the Montgomery County Abstract Company, Independence, Kansas, and immediate past president of the Kansas Title Association.

MR. GOETZINGER: When I received the notification from Earl in regard to the subject, I gave it some thought, and I was reminded of the proverbial Pat and Mike. Pat was very ill and Mike finally called the doctor. The doctor came and hurriedly examined Pat, and turned around and said, "Mike, I believe Pat is dead." Pat said, "No, Doctor, you are mistaken. I am not dead." Mike turned around and said, "Pat, shut your mouth. The doctor knows more about it than you do."

I am inclined to think that perhaps Dr. Glasson knew more about it than we did.

The members of this panel are Justin Miller, Harold Taylor, and myself, and the subject has already been announced. In order to treat it from a progressive standpoint, we have divided it into three distinct phases, where we have been, where we now are, and where we are going, or the past, the present and the future. Mr. Miller will delve into the past, and I shall dwell for a moment upon the present, and Mr. Taylor will star-gaze into the future. I will now present Mr. Miller.

J. I. MILLER

When our distinguished Chairman, Earl Glasson, called me and asked that I take up about five minutes on this program on the subject of "Raising Ourselves by Our Own Bootstraps," it sounded easy. So. I said, "OK Earl, see you in Chicago."

One thing that he suggested to me sounded completely out of line. He asked me to take up the **past** of this subject. Now, what does a young kid like me know about the **past** of the abstract business; I have only been trying to make the things for about 32

J. I. MILLER

years. Anyway, he definitely put me in the old man class; but I guess we all have to get used to that sooner or later. The rest of our panel seemed to be well selected. George Goetzinger should be well qualified to talk about the present of the business, for he certainly gets around. Judge Harold J. Taylor is a forward looking young man and is certainly well qualified to take a look into the future. Anyway, who cares about the **past**; that's over with, so any remarks that I can make on that subject must be dull, uninteresting and a repetition of things that you all know already. So, I will wake you up when it is time for George to talk.

After the conversation with Earl, I went home, put on my boots and pulled on the straps. Nothing raised but my blood pressure. I proved to myself conclusively that you just can't raise yourself by your own bootstraps, and that we had been assigned an impossible subject.

I started Thinking

If a man ever gets any good ideas, he will get them while he is shaving; he is at least supposed to have privacy, he is unencumbered with uncomfortable and often too tight around the waist clothing, no man's face is interesting in the mirror, especially when shaving, gray hairs and wrinkle are something to be overlooked, the business of shaving is purely routine, and the mind is a perfect blank and receptive to ideas; all this, of course, is based on the assumption that the shaver has had a good night's rest and no hang-over. It is a good guess that many an abstract plant has been built, re-built and re-arranged while the abstracter has been working on the wily whisker.

The other morning, while I was shaving, it occurred to me that perhaps the abstracter had really accomplished the impossible, and had actually raised himself by his own bootstraps. We will all agree that he has been raised, and we will also agree that no one has raised him but himself.

In the beginning, the recording system was invented. The first records were simple and the public checked the records without assistance. Then lending agencies, foreign buyers and bankers, who were too lazy to go to the court house, began hiring some jobless person, a lame duck or anyone, to make a check of the records for them and sign his name to the search. The results were not so good, mistakes were made and the public lost money. Then came the demand that this jobless person, who by that time was called an abstracter, be held responsible for his work. This demand was

given a boost by such of the abstracters themselves, who thought that they could get some friends to sign their bond. He had a selfish motive in this, for he thought that he might eliminate competition. He had a good graft, the county was keeping up the indexes, and after all he was getting 10c per entry (of which the customer only deducted 50% for sending him the business); and that other so called abstracter down the street, and some possible future competitor probably could not find any friend who would be willing to sign their bond. So, the bond law went into effect, with his blessing.

The Bonding Law

Upon publication of the Session Laws, containing the new bond law, he read the law over again. Someone in the Legislature had thought enough of the public to put real teeth in this bond law. After reading it two or three more times, he first had a sinking feeling; what if he should make a mistake and he and his bondsmen would be called upon to make good a loss. He had no surplus, for there had been no chance of creating a surplus under his past scale of prices. Secondly, he got the feeling that his job now had official standing; he was authorized to use the county books, whether the Recorder liked him or not. He began to feel responsibility, and feel that he had some standing in his community. In order to be able to meet this new position, his wife must have better clothes, and he should be able to pay any loss that he might have. He heard that some abstracter in another county was charging and getting 25c per entry. He and his competitor both happened to conclude about the same time that their services were also worth 25c per entry. The regular customer was willing, for he got 50% of that also. So it went. Next he found that he could not rely on the county indexes without losing his shirt, so he began to build an abstract plant; that cost money, and it also cost money to keep it up. So, the price went up to 50c per entry, and the good customer got only 25% of that; but the customer was getting the same cut as before, so he didn't kick much. Then our bootstrap puller found that he must employ help in his office; the typewriter was invented and he had to buy one, then two, and then replace them. He found himself running behind at 50c per entry. He also came to the realization that it was no longer possible for the public to go to the county records and get his information accurately and reliably. Titles were getting longer and more complicated, and it took him longer to compile his abstracts. All of this made it necessary for him to go to 75c per entry; then he reduced the customer's "take" to 10%. He got along alright on that until the late lamented 1930's, when business quit, but his over-head kept on, for it would be suicide for him to neglect his plant, upon which he had spent a lifetime and thousands of dollars. Then came the Second World War; business zoomed and so did the cost of everything that he had to buy, salaries, supplies, machines, rent, taxes, and you know all about that. That left nothing to be done, except get $1.00 per entry, which he did. It was not long until that was not sufficient. He could not price his product out of the market, but he had to pay expenses and make good his losses; or at least create a surplus to take care of possible losses. Most of his profession were rendering a valuable, technical, responsible and efficient service. He found himself making the same charge for an abstract on a cheap tax title lot that he was making for an abstract on the town's tallest skyscraper; that was not right. He has now begun to make a charge according to the value of the property, and some years ago began making title insurance connections for what good they could do him and furnish this further service to his customers.

Our Place in the Sun

Considering all the foregoing, it appears that we have gone quite a ways toward lifting ourselves by our own bootstraps. One thing is sure, no one has helped us. The customer who objects to paying $1.00 per entry, used to object to paying 10c. Our product is infinitely better and most of us are responsible and will pay our losses, if, as and when they occur; and we all have some of them. We have given the users of our product a sense of security, for we have a reputation of standing back of our work. In other words, by our own bootstraps, we have lifted ourselves from a position of obscurity and irresponsibility to a place in our communities and in the business world of being looked upon as respectable, responsible and good solid, necessary citizens, worthy of our hire.

This seems to cover the past of the abstracter as I have seen and heard about him. We will now hear from Mr. George Goetzinger where we stand at the present time.

GEORGE GOETZINGER

This subject intrigued me very much right from the start, for the reason that from the section of the country whence I come boots are a very common and useful article. I kicked the subject around for several days wondering how it would apply to the abstract and title business at the present time. I asked myself a number of questions, and then came up with some pretty definite conclusions. These I shall proceed to give to you.

How Necessary Are We?

First, I asked just what is the importance of the title business today? And by the "Title Business" I include all forms of evidencing of real estate titles. And surprisingly, right back to me came this answer. We are dealing with land. Land is the basis of all wealth. Everything that man has comes either directly or indirectly from land. But land is God's Heritage. Man never owns it. He only owns the title to it, and has a license to use it. This is where we in the title industry come into the picture. If man's title to the land is not valid, then his right to use it, and to all he has placed upon it is in jeopardy. We have a very important task, don't we? For by far the greatest portion of the wealth of the earth is invested in land, or the improvements placed thereon.

Then I asked myself, What type of people are engaged in the business today? And to this question, I got a very pleasant answer. During the past two years it has been my privilege to meet and mingle with a goodly number of abstracters from my own and adjoining states. I found them, almost without exception, to be leaders in the respective communities in which they lived. That within our ranks there were leaders in the churchs, lodges, civic organizations, chambers of commerce and City and State governments. Why did they do these things? None of these positions offered any financial compensation. So. I concluded that the title people just had to be a pretty good bunch of fellows. They were interested very much in other things besides their own business.

"How Are We Equipped?"

Then I asked myself this question. How have we equipped ourselves to perform the important task that we do? And immediately came to me the answer—title plants. I have been in many of them, and I don't believe I ever ran into any other class of people that invested more for the return they get than do the abstracters. As you all know, the title people spend untold thousands in equipping their offices with tract indices, miscellaneous indices, suit and judgment dockets, maps, plats, take-offs, photostat and microfilm equipment in addition to the necessary furniture and machinery so they can offer to the land-buying public safety in their dealings with the title to real property. Hardly any of these plants could be sold on the market today for anywhere near the amount of capital invested in them. Why the modern abstract plant reminds me of the Arkansawyer and his sawmill.

This back-woodsman down in Arkansas had owned eighty acres of timber land for a number of years, and had spent his time fishing and hunting as was the general custom in that locality. One day while he was out in the woods hunting squirrels, the idea came to him that if he had a sawmill and could make lumber out of the trees that he had on his land, he would be a rich man. So he inquired among his friends if they knew where he could buy a saw-mill. One of them suggested that he get a Popular Mechanic's magazine and look through the want ads, and he might locate one. This he did, and found an advertisement of a company in Chicago who manufactured and sold

saw-mills. He wrote and asked what it would cost to buy a saw-mill. Very soon he had a letter from them informing him that if he would send them the size and height of the timber he had to cut, they would be glad to furnish him specifications and price. He gave them this information, and then didn't hear anything for a long time. He had almost forgotten the whole idea, when, one day he went to the mail box to get his mail. There, much to his surprise, by the mail-box was a large roll of plans and specifications and inside the box was a letter from the company. He immediately opened the letter and read.

"Dear Sir: We have received the plans for your saw-mill from our engineering department and are forwarding them to you herewith. The cost of the mill installed will be about $50,000.00 (and that was before this post-war boom). We shall be very glad to hear further from you."

To which the hill-billy immediately wrote his answer.

"Gentlemen: If I had $50,000.00, what in Hell do you think I would want with your saw-mill?"

Nevertheless, we have our plants. They are a handy thing for us, and not too many of us want to sell anyway.

Changing With the Times

Then I thought: There is a great difference between the title men of today and those of a few years ago, and again the question, Why? We haven't had any help from anyone except ourselves. Of course, we have managed to get some favorable legislation in a few states, but not in too many. We have our State and National Associations which have been a wonderful thing for us. They have, at least, fostered good-will among the title fraternity, and out of them we have attained a certain degree of uniformity of our product. This, of course, should be enlarged upon.

Revenue and Salesmanship

Then the question of charges for our services came to me, and, at once, I knew that, even today, there must be something wrong with us. What was it? And then the answer came to me—"Salesmanship." Ladies and Gentlemen, that's it. We are so busy trying to turn out a good reliable product, that we never take the time to sell ourselves or the title business to the public. We are just taken for granted, and that's our fault. What is the answer? Public Relations. It is true, we have gotten to the place where we are on very friendly terms with the Bar; and Bankers, insurance companies, lending agencies, real estate men, and oil companies realize the important part that we play in real estate transactions, but we have certainly done a poor job of selling the public in general on the importance of the service we render. A well rounded program of public relations—not mere publicity—can do us more good than any other one thing that I can think of. Why, when the steel industry wanted to raise its prices, did it apologize to anyone? No. It raised them, and the prices of automobiles doubled and tripled, as did all other steel products. So it has been with all other lines, but we of the title industry have attempted to let volume take care of the situation, and are still trying to operate on about the same old schedule, with perhaps a small increase which does not begin to make up the difference in the cost of labor and supplies. I hope that we can get our heads together, all of us, and come out with a good, practical Public Relations Program.

After all, however, I still think that we are in a good line of business. That we can be proud of our profession and the advancement we have made in it in the last twenty-five or thirty years.

GEO. GOETZINGER

And I still think that we are a pretty good bunch of Joes, and that we have done a pretty fair job of "Raising Ourselves by Our Bootstraps."

HAROLD J. TAYLOR

MR. TAYLOR: By this time you all realize what an unusual panel this is. In the first place, as we admitted, we have an impossible subject. In the second place, the first speaker admittedly is so young he couldn't possibly know anything about the past. The second speaker has convinced you that the present is so fleeting as to leave very little point of discussion, and as to the third speaker, we all know that none of us know anything about the future. So they have given us quite a task here with the subject. Probably the whole panel could be safely eliminated.

As an additional discouraging feature, as far as I am concerned, our good secretary, Jim Sheridan, assured me when he found out that I was on the program, that because of the excellence of the addresses that we had already heard, that anything that I could possibly say would be merely an anti-climax. But will all these things confronting us, we have this part on the program and must unburden ourselves of something.

The Future Speculative

Speaking of the future, of course, we know nothing definite as to what is to take place, so it is a mere speculation of the speaker, based upon his surroundings and his particular point of view.

Now, the archipelago of my knowledge of the abstracting business is so widely scattered in the sea of my great ignorance that I am not sure that I can sum up any definite ideas for you. Also, addressing this assembly, I wonder—and that is one of the things I am ignorant of—how many abstracters there are in these United States. But I venture to say that you who are present here are a very small per cent. Also, you constitute the progressive and the outstanding element, who will come here long distances, who will take your time; you are the ones who are most interested in your business, and sometimes I think at these conventions if there is any value in any of the remarks, they should be given to those who stay at home, who are the ones, it occurs to me, with whom we are most interested in our discussion of the future of our business.

I shall take for my topic the fact that there is no future in our business if we continue to operate it as we have in the past. I think without exception here all of us have either said that we abstracters are living in a horse-and-buggy day, or that there is something the matter with our profession. So we all admit that we must improve, and I think to have a future in any line of activity today, when we see the progress that is made in the world in general, that we must show some improvement.

Always News Ways

I was reading the other day an article in one of the newspapers that they have now devised a system of transmitting and reproducing copy, whereby they said it was possible to transmit the book, "Gone with the Wind", (which I think is something over a thousand pages), transmit this entire copy of the book over a long distance and reproduce the same permanently in less than two minutes. Somebody told me here since I have been here that the test had been made, and I think they did it in some sixty seconds.

I thought as I read that article, if this is possible, how different it is, when we contemplate our business today where in many cases it is impossible to obtain an abstract of title of some few fifty or seventy-five pages in less than from two weeks upward.

Now, in any case, when one discusses a subject, as I have said, you must be guided by your point of view, and I am circumscribed by a rather

limited horizon of knowledge of abstracting companies, being situated in a small city in southern Illinois, but I do want to take up first something that is to me a very important feature of our necessary improvement, and that is our attitude towards the service that we are giving. I have talked to several of you members since I have been here, and there are various ideas, but in Illinois, and particularly in my part of the community we have a problem in rendering the service that I believe we should give to our customers. Not only do we have this problem, but there is in some cases an almost indifferent attitude on the part of our members.

Why Don't We Act?

At our State conventions for the past several years, every year we have one period devoted to the promptness of service which is being furnished to our customers, and invariably it has come out the same way. Everybody is behind and worrying about how to catch up, apparently worrying about it, and yet at the next convention nothing is done about it. That has gone on for a period of years, and the only difference in the situation that I know of is the variation according to the amount of over-plus business that the particular institution has.

So we have gone on from day to day, without improving the situation. In southern Illinois a few years ago we started an oil boom, and just to illustrate the attitude of some of our members, we were very much perturbed over the fact that some of our small counties were having ten and twenty times the business we ever had. We had a district meeting to discuss the proposition, and one of our members said, "I have now in my office a sufficient number of orders to assure me of a business for six months, business many times what I have had heretofore. I am making a lot of money. I have the only set of title books in my county, and they can just go to hell."

Now, probably that is an extreme attitude, but that is not fiction. That is a fact. This particular member is now deceased, and incidentally, before he died, a photographic company came in and made a new set of the records and practically eliminated him from competition.

We Cannot Remain Indifferent

Maybe my section of the country is different than yours, but ever here I have talked to several gentlemen who are turning out abstract orders in a week or ten days and assuming that they are doing a very fine job. I say, as a title examiner (because I happen to be an attorney and also examine titles), that this indifference that many of our members have had towards the customer, stating, as I have often heard them, that the customer is impatient, and taking the attitude that we are doing the best we can, if we continue in that sort of a state of mind I believe that someone who can devise a machine which will reproduce "Gone with the Wind" in two minutes is going to try some other system to compete with our line of business.

As a title examiner I know that many deals are dependent upon promptness, and as a result, what do we do? We do without the abstract and take a risk, and with all the propaganda we are putting out about the necessity of an abstract, the necessity of going through all the steps to assure a good title, if you eliminate that service to which the customer is entitled, you are going to encourage him to seek some other means of satisfying his needs rather than the abstracter.

This probably doesn't apply to all of you sitting in this room. I am sure you are all efficient. But every time we allow a fellow abstracter or a member of this association to lower the standards of our membership, to lower the standards of service that is being rendered, you are creating in the public an attitude that is going to kick back in your face and probably in the future eliminate you from this business.

HAROLD J. TAYLOR

Good Service a "Must"

I wonder sometimes, as this business of ours has grown up, and the speaker preceding me has suggested, from one step to another, without any rhyme or reason or plan, until now ewhave become one of the, at least "A" grade important businesses in the country, whether we have stopped to analyze just what position we are in as to rendering service. When we stop to think of it, after all, our ultimate customer is the man who wishes to acquire or to dispose of an interest in real estate, and all he wants to know is, does he have a disposable interest or does his frantor have an interest which can be conveyed, and he wants to know, as surely as possible, that the answer to that question will be right. we hear a lot of talk about the get-up of an abstract, how beautiful the plat is, and what kind of lettering, but the ultimate customer only wants the answer to his question.

I think sometimes, which is also repetition, we become so engrossed in turning out, as the previous speaker has said, a nice piece of work ourselves, that we forget what our purpose is.

Their Respective Fields

In considering what the service is that we are to render, I wonder where we are going to draw the line between our services and the services of a title examiner. That line is most indefinite, and varies according to the abstracter and the title examiner. Probably you have had the same proposition. I had one excellent title examiner not long ago tell me that the way he wanted his abstract made was in the most brief skeleton form possible, because, he said, "I charge by the conveyance for my examination. I can examine them faster. In addition thereto, the responsibility that you take when you eliminate these portions of the instrument is greater and my responsibility is less. Therefore, don't put all that stuff in the abstract. Leave it out."

On the other hand, we who have had some experience with some of the oil company attorneys. They take the attitude that you are not an attorney. Every time you eliminate any portion of an instrument, you must have some legal knowledge, because you know that an abstract is only the important part of the instrument, but in order to know whether or not an eliminated portion is important you must have a general and excellent knowledge of tile law. So they say, "Eliminate nothing from the title and include it all." In between you have the man who says, "You must show seals, you must show signatures, you must show this, that, and the other."

Harmony of Thinking

I think if we are going to continue in the future, we must have some uniformity of idea of where our service starts and the other service ends. I claim, and I can get lots of arguments on the point, that you have to be a better title attorney to prepare an abstract of title than you do to examine one. Of course, I was arguing here with somebody since I have been at the convention, and they say, "Why, it is easy for an abstracter. If he is in doubt, he just puts it in the abstract." But any of you who have studied law or who have gone to law school know that the element of a good lawyer isn't that he knows all the law, but he knows whether or not he must look up the particular points. So in examining the titles, in order to know what to eliminate, you must have a knowledge of law, and it scares me—probably you older, more experienced practitioners don't have the same trouble, but it scares me the more I learn

about title law and realize how little of the total amount I do know and understand.

Creatures of Habit?

I want to give you an example, and it could be multiplied hundreds of times. It happened in our county. We had a new Probate Act in Illinois not very long ago, and most all of the counties had blanks printed to conform to the new law. In southern Illinois a certain blank company prepared all the summonses for use in the sale of real estate to pay debts, and the law is in Illinois, as in most states, that a summons, in order to be valid, must issue from the sovereignty, from the people of the state of Illinois, and through some mistake this line was omitted from the summonses that were distributed generally in southern Illinois. I tremble to think what would happen ordinarily, but we happened to be abstracting for an oil company and my help—I don't do the abstracting myself—copied a summons in full, and as I was examining the title, I saw that the line, the first line was eliminated, and I immediately thought it was a typographical error and went over to find out, but sure enough, it was omitted from all the summonses. I found in our county that there were some twenty or thirty sales of real estate to pay debts in which these invalid summonses were used.

I made some investigation of southern Illinois and found that in other counties there were many errors, and I tried to find out, and I was unable to find a single case where an abstracter caught that mistake. So imagine how many abstracts we have floating around in southern Illinois with an absolutely invalid proceedings, which is shown by the abstracter, who showed the summons in part. By the abstract the service is shown to be good, while in fact it is invalid.

That is just one little point of what we, as abstracters, have to know.

It seems to me that it is time that we had some standardization of where our duties start and end and the title examiner's begin. Personally, the more I make abstracts the more I am impressed with the fact of how little I know about what should be included and what should be eliminated.

Qualifications

We might go on and speak of many things that, if we are to be assured of a future, we must change. It isn't true probably in all states, but this system we have in Illinois where there are absolutely no requirements whatever on an abstracter of title—you can start in business without a bond, without a set of books, without anything, and down in southern Illinois in many counties we have this operation going on, and what happens? I am examining for a bank or a loan company, and I refuse to accept a certain abstract because the abstratcer isn't a member of the association and I know he hasn't any books, and still they can go to another attorney and he will pass the same abstract of title.

In fact I have one client—we do all his work, both legal work and abstracting business, and the other day I caught him going to a curbstone abstracter to have his abstract prepared. I said, "What's the matter?" He said, "We are selling this property and we are a little scared of the title. We didn't think you would pass it, so we didn't come to you."

Abstracting by Irresponsibles

Now do you wonder that, as there is in my community, there is a lot of dissatisfaction among people about the product that we are putting out. It isn't altogther our fault. It is also the fault of the title examiner. Time after time when an abstract is examined—I examined an abstract the other day on which we checked the record, and there were twenty-seven conveyances left off, including one whole subdivision in this particular piece of land. This was passed by a bank. I examined one the other day in which an abstracter showed a deed as a joint tenancy deed when in fact it was a tenancy in common, and the bank made the loan, and there was only a one-half interest on the place.

Now that might happen any time, but it happens so often where an abstracter has no knowledge of the business and no set of books. So I submit to you that if we are going to continue in this business we can't admittedly continue in this horse-and-buggy manner. It is necessary, I believe, not to you as a group, but to convince our members that it is service that we are trying to sell and to convince them of the importance of that service. It is necessary that we more clearly define what our duties are and raise our standards so that we, being the cream of crop, and doing what we think is a good job, will not have our reputation endangered by the many, many others purporting to furnish a product which, in fact, is not as it should be and does not measure up to the standards that should be expected.

MR. GOETZINGER: Thank you, Mr. Taylor. Inasmuch, Chairman Glasson, as this called for no discussion, we are happy to turn the program back to you.

CHAIRMAN GLASSON: Thank you. I think these gentlemen, for the excellent job they have done, deserve not only the individual applause you have given them, but applause for their collective efforts. Let us give it to them.

Woes and Worries—We Fix 'Em

A PANEL DISCUSSION

Andrew Dyatt, *President,* Landon Abstract Company, Denver, Colorado

Earl C. Glasson, *Chairman,* Abstracters Section; President Black Hawk County Abstract Company, Waterloo, Iowa

CHAIRMAN GLASSON: And now, ladies and gentlemen, from here on out the program is yours. This is the time when we have our open forum, and that means that this is the time when you ask questions and we, or you, attempt to answer them. Andy Dyatt of Denver, Colorado, and I will attempt to handle this forum as best we can.

We hope that you have a lot of woes and worries that you want us to fix; we hope you will bring them out. In fact, we hope you have so many woes and worries that it will take so much time I will have to cut you off when it is time to go to eat, later.

And, speaking of a lot of them reminds me of a little story I ought to tell right now, about the lady down south who had twelve or fifteen children. She had so many she had a hard time keeping track of them. Outside of the house, in the position usually occupied by a rain-barrel, there was a barrel, but not only rain went into it but a lot of other things that just went down, anything from the house, tin, oil, and various things. One day one of these youngsters dropped into that barrel some way or other. He came to the surface long enough to yell for help. She ran to haul him out, got him up on the edge of the barrel, and she started clawing at his eyes, ears, mouth, to get that stuff off, and finally she gave it up as a bad job. She shoved him back in and she said, "It's easier to have another one than to clean you up." (Laughter)

So if Andy will come up, we will clean this up; we will try to answer.

Liability

MR. THORNTON (Alabama): I would like to know whether or not an abstracter having prepared an abstract for his customer and the customer carries it to a different company to have the title insured, is there any liability

for errors on the part of the abstracter to the title insurance company?

MR. DYATT: My feeling would be that the abstract company has liability, regardless of who pays the bill. We feel that way, anyway.

CHAIRMAN GLASSON: You tackle that from the standpoint of the moral obligation?

MR. DYATT: Yes.

CHAIRMAN GLASSON: Even that would depend on how the certificate is drawn. If it is drawn so as to make a contractual liability with the person for whom you made the abstract, you probably would not be liable. There are cases to that effect. However, abstract companies nowadays, wanting to be of the greatest service to their customers, by and large make their certificates read that they are beholden to whoever relies upon this abstract. In that case, it seems to me there would be a liability for loss no matter in what quarter it occurred.

MR. THORNTON: Does the statute of limitations run on an abstracter's certificate? In other words, where there is a certificate twenty years old, if an error has been committed prior to the date of the certificate, is the abstract company still liable to anyone?

CHAIRMAN GLASSON: I answer that question from the standpoint of the law of my own state of Iowa. An abstracter's certificate is supposed to be a contract, not written, not in writing, and therefore the statute of limitations runs against liability on that contract in accordance with the statute governing liability on unwritten contracts. In our state it is five years.

I think in Colorado they have a different period, although they act under the same rule. Probably Andy would tell you about that.

MR. DYATT: Six years.

Statute of Limitations

MR. THORNTON: Supposing you have an abstract brought to you that was made ten years ago by a different company and you bring that abstract up to date, you are certifying just for a ten-year period, do you have a liability for that period prior to the ten years?

CHAIRMAN GLASSON: Have you in your certificate certified as to the title prior to the ten-year date?

MR. THORNTON: Not in the case I have in mind.

CHAIRMAN GLASSON: Then I wouldn't think there would be any question of there being any liability attaching to you, unless you have either expressly or impliedly certified that the previous work was accurate and correct.

MR. THORNTON: May I ask, then, what protection does the customer have for any period prior to the ten-year period, or whatever the date the other certificate was?

CHAIRMAN GLASSON: I would say he has non excepting the protection given him by the various statutes of repose and of limitations. If he is smart enough to recognize that fact, he asks you to recertify the previous work, whereupon you do undertake a new liability for the correctness of that work, as a general rule, with the exception of perhaps the state of Oklahoma, where it has become quite general to demand recertification of the old abstracts. You will note, however, that in most of the special certificates suggested for you by the national insurance companies, the Federal Land Banks and almost any organization doing a national business, that there are words in there which would impose that liability upon you if you are not careful in reading it and construing it.

MR. THORNTON: But in your opinion the only legal protection that the customer would get would be to have the abstract recertified?

CHAIRMAN GLASSON: Certainly, certainly.

ANDREW DYATT

MR. LYNN MILNE (South Dakota): The statute of limitations is ten years in South Dakota.

Abstracters Bond

CHAIRMAN GLASSON: This is the one I was going to ask before Mr. Thornton arose, so here goes. This one comes from Mr. George Lathrop of Nebraska. Mr. Lathrop writes:

"In Nebraska the tract index is a public record kept up to date by the recorder and kept in the recorder's office, and it is open to the public. The only legal requirement to become an abstract company is to file a $10,000 bond, to be approved by the county judge. We have tried for over twenty years to get an abstracters law on the statute books, but without success. My county, with a population of 20,000, has eight abstract firms. If any other state with a similar situation has been able to get an abstract bill passed, I would like to hear from them."

Who on the floor would like to comment on that matter?

MR. DYATT: We have, and have had for a number of years, a license law in Colorado. It requires, among other things, that anyone applying for an abstract license must have a complete set of books of their own. They must make a daily takeoff. They must be prepared to make a daily takeoff. And they must pass an examination showing their ability to protect the public by being able to prepare a good abstract.

Among other things the law places the appointment of a board in the hands of the Governor, and that board has the responsibility of conducting these examinations.

The law has worked out very well with us, and I am sure that if anyone is interested in it they can contact Mr. Hickman, the secretary of our state association, (H. C. Hickman, Boulder, Colorado) and he will give you the necessary information. It is a good thing. It is good not only for the abstracter, but it is good for the people of the state to know that wou have qualified abstracters doing the work.

We also require a surety bond at the time the license is issued.

MR. CROSLEY (Iowa): At the time this Act was passed, did all those engaged in the business go in under a general "grandfather's" clause?

MR. DYATT: Under a blanket grandfather's clause.

Fees by Statute

MR. JOS. T. MEREDITH (Indiana): Did the state legislature try to fix your certificate charges?

MR. DYATT: No, they do not. That is one of the bad things. In our state we have certificate charges all the way from three to ten dollars, or rather, two to ten. We need some uniform rates, of course.

MR. KIMBALL (Minnesota): Minnesota is now working on a license law that we hope to submit at the next session.

MR. T. J. LLOYD (Colorado): I might suggest to the gentleman from Nebraska he ought to get in touch with his legislators and do a little lobbying and politicking around.

CHAIRMAN GLASSON: I think the gentleman from Nebraska might tell you that the legislature gave him a kick in the britches just last session, when they passed one of these statutes which makes indefeasible titles after a certain period of years expressly including the right of minors who have not had their day in court. Am I not right in that? As I read that statute, it was rather all-inclusive, and I think probably the Nebraska people perhaps do not have too much confidence in what their legislature might do for them in the instant matter.

MR. CROSLEY: In Iowa we haven't sought such legislation because we were afraid we would get more than we wanted.

CHAIRMAN GLASSON: I don't think that is quite accurate. In Iowa we tried twice to get an abstracters license

law passed. We worked, we worked hard, but we didn't get the thing passed, and the only excuse we got as a reason for not getting a favorable vote was they thought we were trying to protect ourselves at the expense of someone else, which was entirely an erroneous thought. We had no thought except we felt that the public should be protected from the machinations of the blacksmith who bought a typewriter and a sheet of paper and went into the abstract business, as so often happens when there is no license law; in other words, the curbstoner.

Party Walls

CHAIRMAN GLASSON: A thing that has been called to my attention once or twice is the matter of party walls. I would like to hear from somebody as to how they handle the matter of party walls. Suppose you are abstracting title to what we shall call lot 1, and lot 1 carries with it a right to a party wall on the adjoining six inches of lot 2, that party wall agreement having been filed in the period which you are handling in continuing the abstract. What is your practice? Do you consider that that is a property right which it is necessary for you to treat so that you believe you should show the chain of title to lot 2, so as to show the right of the grantor of that party wall arrangement to make it, or do you consider it merely an appurtenant to lot 1 in the form of an easement?

MR. LLOYD (Colorado): I think it should be shown on lot 2 as well as lot 1, because the party that owns lot 2 wants to know what is conveyed in his title, and our company would definitely show that party wall agreement on the chain of title in lot 2.

CHAIRMAN GLASSON: You would not show the complete chain of title on lot 2 down to the point of making the party wall agreement?

MR. LLOYD (Colorado): Yes.

MR. STROTHER (Kentucky): We would show the chain of title in tract 2, because the nature of the right on tract 1 would depend upon the right in tract 2, so we would bring the title down on tract 2 along with tract 1.

Easements

MR. THORNTON (Alabama): In making an abstract of lot 1, we would show the first instrument creating that easement on lot 2, and we would except in our certificate the easement described in that particular instrument. We do that to avoid showing many instruments that cover lot 2, and also convey that easement as created under that particular instrument. However, we have had many customers come back and ask to show the entire title to lot 2, so as to know whether that is an enforceable easement or whether it is not.

CHAIRMAN GLASSON: That is the point. Isn't it desirable to show that the owner of lot 2, had a right to make that party wall easement in favor of lot 1? Is that the general practice? How many do treat it that way?

(Show of hands.)

How many do not?

(Show of hands.)

Well, it is about fifty-fifty. In other words, you can take it or leave it. It is your choice.

MR. TOM LOYD (Oklahoma): Mr. Chairman, that again might depend on the situation with respect to title examiners. If you know that one attorney is going to examine that title, that might make a difference. You might show it as an exhibit with the original deed; or for another title examiner you might want to show up the whole chain of title to lot 2. The situations might vary.

MR. KIMBALL (Minnesota): Duplicating that same situation whereby you might be granting an easement to your neighbor in return for his granting a like easement over his property, wouldn't you want to know he had the right to grant the easement, if you were granting him the easement across your property?

CHAIRMAN GLASSON: It would seem reasonable.

CHAIRMAN GLASSON: All of you have had orders from chain stores in which they ask you for a complete chain of title to a piece of property at the time they are negotiating a lease. It is, of course, for the purpose of determining that the person offering a lease has a legal right to do so, and that the property is not otherwise encumbered so as to prevent their peaceable possession. At times they adopt the theory that unless they know they are getting what they are paying for they are not going to pay for it, and it seems reasonable to me that an abstract of title should be so prepared, either at length or briefly, so as to reveal that information including easements and party wall agreements.

MR. DYATT (Colorado): We follow the practice, I think, because of precedent established, a good many years ago, of making an exception of the property in lot 2 in our certificate. I don't claim that is probably good abstracting, but that is the way we handle it in Denver.

CHAIRMAN GLASSON: Anyone else want to say anything about that? It is rather an interesting subject because it has facets which may be construed according to your liking or according to the custom of your community.

MR. CROSLEY (Iowa): In our town we have very few party wall agreements, but on buildings that have been built for years, isn't it a generally recognized rule of our Supreme Court that any party wall that has stood undisputed for years is considered a common party wall and that each owns half of that wall?

CHAIRMAN GLASSON: I rather think as a general matter you are right. I think that under the statute of adverse possession in Iowa, which bars claims against one who has been in peaceable possession, adverse possession, since prior to January 1, 1930, that the right to a party wall would be considered to be covered by that statute; therefore evidence to the effect that there has been adverse possession would be sufficient to cure a great many of the possible defects which might have arisen in the execution, or in the right to execute that party wall agreement.

Joint Tenancies

CHAIRMAN GLASSON: I would like to digress to just one more question which has arisen with respect to joint tenancies. In many states, of course, there are enabling acts saying that one can deed to himself and his wife as joint tenants and create valid joint tenancies, disregarding, of course, the common law rules relating thereto of interest and possession.

In Wisconsin in 1947—(and Wisconsin is a state in which joint tenants are recognized although not favored)—there was handed down a decision to this effect: that a man and wife as joint tenants hold property, and of course the title passes to the survivor upon the death of one of them. But if the decedent, (the first one to die,) has made a will in which either expressly or by implication he includes a residuary clause by which he makes disposition of the joint tenant's property, and if the surviving spouse accepts under the terms of the will, the joint tenancy is broken and the title passes by the will and not by operation of law as a joint tenancy.

Has anyone in any other state had a similar decision?

MR. HOWARD CLARK (Indiana): That is the Indiana law also, that the tenancy can be broken by a will, when the husband dies and the wife accepts under the will, she takes as surviving spouse, and that means full title under the will and not as survivor in joint tenancy.

Abstracting Estates

CHAIRMAN GLASSON: You can see, I am sure, the implication of that decision. It makes quite a bit of difference how you tackle the matter of abstracting the estate of the decedent. If the property passes by virtue of the joint tenancy, obviously all you need show is the fact that there are no inheritance taxes which could be a lien on the property, and you can brief the estate. If, however, the property passes by virtue of the will, then claims against the decedent's estate will become liens, the costs of administration of course must be paid; again the matter of taxes enters into it. It makes quite a bit of difference.

There was a gentleman back there who wanted to be heard. Your name and state, please?

MR. LAWRENCE (Indiana): Lawrence, from Indiana.

CHAIRMAN GLASSON: Go ahead, sir.

MR. LAWRENCE: Under that rule, think you will find that in legal vernacular is known as the doctrine of equitable estoppel, and I can't tell you just what year it was, it's been, oh, probably fifteen or maybe twenty years ago, in the American Title Association News there was quite an article on that subject, setting forth the number of cases all over the nation, and the rule on how it applied, and explaining it in great detail. I happen to know because my father wrote the article.

CHAIRMAN GLASSON: Joe Meredith, from Indiana.

MR. MEREDITH (Indiana): I think they have covered that, however, in Indiana. They follow the practice of showing the will of the decedent in the joint title estate and it probably stops there, unless he has disposed of the property by will.

CHAIRMAN GLASSON: And under those circumstances that is in accordance with the routine I described?

MR. MEREDITH: Yes.

CHAIRMAN GLASSON: The point I wish to bring out finally on this matter is this, that it seems that that is the majority rule. If any of your states have not passed upon the matter, or if you do not have statutory provisions, I would suggest that you be very careful that your abstracts do reflect the proper procedure there, because it is very likely, of course, that your courts will follow the majority rather than the minority rule, unusual circumstances, of course, excepted.

MR. RUSSELL COTTINGHAM (Indiana): Mr. Chairman, in spite of the fact that the examiners say that the abstracters should not draw any conclusions, that is an erroneous idea, because if they didn't draw conclusions they would be showing everything in an abstract, whether it affected the title or not, and they wouldn't be allowed to be selective at all. We don't show the wills, unless it is a very short will, then we show the will, but if it is a long will—some of them might be eight or ten pages long—we make the statement that he died testate, probably where it was recorded, and state that the will does not specify devising the realty, but we show enough to show whether or not there was an inheritance tax, because it might have been made in the last two years and made in contemplation of death.

Party Wall Agreements

I would like to say something on that question of party wall easements, too. I think that is another instance where an abstracter should use some judgment, for the reason that a party wall agreement in a small town like Arlington on a building that has been in existence for fifty years wouldn't be of the same importance as one that Kroger's might have in a million dollar building in Chicago, for instance.

We generally show the deed to lot 2, for instance, showing the granting of the party wall agreement, and we make a note showing that that day the grantor was the record owner of that lot, and we show that the title to lot 2 now has been conveyed to so and so, who is the present-time record title holder. Very often we give the books and pages of the intervening instruments to prove that. But I think that on account of the economical end of it the abstracter is bound to use some judgment along that line.

CHAIRMAN GLASSON: I would suggest to you, and the only suggestion I would have with respect to your remarks, on that party wall matter, is that I think perhaps you might consider your own economic interests when you come to briefing those matters so closely. (Laughter)

More on Joint Tenancy

MR. LOYD (Oklahoma): Mr. Glasson, in Iowa does your law require any other proof of death in a joint tenancy estate?

CHAIRMAN GLASSON: No, we do not have that.

MR. LOYD: We have that in Oklahoma.

CHAIRMAN GLASSON: I think what you refer to is a procedure authorized by statute where there is a determination of joint tenancy heirship or survivorship. I had known you had that, and I would imagine that would be very handy. However, we do not have it in Iowa, and I do not think it is a very usual statute in many states.

MR. KIMBALL (Minnesota): Minnesota has it.

MR. MILNE (South Dakota): South Dakota has it.

MR. CYRUS B. HILLIS (Iowa): We recently had a continuation job where the title was a joint tenancy. During the period before the death of either of the joint tenants the property was sold on contract. We continued the abstract and examined for all of the heirs. We made a complete showing of the estate on the theory that the joint tenancy was terminated when the title was sold. We believe that that theory is the correct one. The surviving spouse had contemplated selling the property as a joint tenancy with only the usual showing of the death and the inheritance tax. I think that is somethink that is something that will undoubtedly come up, and I believe that those of you who go into it will agree that the course we have carried out is the right one.

Abstracters Liability Fund

MR. CLARK (Indiana): Again on the subject of abstracters' liability:

Several years ago the Association discussed the possibility of going into that field. There seems to be a great deal of discontentment here. There seem to be some companies who want to get into it. Has there been any further effort on the part of the Association to set up, or figure out a way of setting up a fund to be participated in by the members for the purpose of furnishing abstracters liability insurance on behalf of the Association?

CHAIRMAN GLASSON: I will answer your question, sir, this way, that the matter has been thoroughly canvassed. In the discussions on the matter the thought was revealed that the moneys of the American Title Association do not belong to the Abstracters Section or any other Section. While we contribute a great deal of money to them, yet we must admit that the title insurers also contribute money to them. Again, we know that membership in the American Title Association by and large is a matter of membership in state associations. Now, there are various requirements for memberships in state associations. Some of the qualifications, standards, are very, very stringent; in other places they are rather lenient, all justified by reason of the peculiar circumstances in the jurisdiction.

Yet the fact evolves from those thoughts that if membership in the American Title Association made one automatically eligible for insurance by a fund put up by the American Title Association, we doubtless would be confronted by all these varying situations and conditions. Therefore it seemed at the moment that it was not advisable to pursue that idea further, and particularly not until we had determined that there was no chance of getting a domestic company in the field on favorable terms.

Negative Reciprocal Easements

MR. THORNTON (Alabama): I would like to ask if anyone would care to reveal what their practice is in a situation like this, where a map of a subdivision has been filed of record, and the owner has placed restrictions on the lots, such as building liens, cost of building, and so forth, and subsequently he changes those restrictions on a particular lot—

CHAIRMAN GLASSON: A different lot?

MR. THORNTON: Well, a lot in the subdivision.

CHAIRMAN GLASSON: Yes.

MR. THORNTON: Refer to it as lot 2 in block 3.

CHAIRMAN GLASSON: All right.

MR. THORNTON: Is that release of restrictions on lot 2 in block 3 of value to or effect upon adjoining lots or to the lots in another block, or is its value confined to the lot on which it was released?

CHAIRMAN GLASSON: Now, before we answer that question I would like to have two dozen lawyers step forward to answer that.

You have opened up on honey of a question, brother. You have implied that there might be a negative easement in there, and if anyone knows what the law on negative easement is I don't know who he is, because it is almost impossible to tell from the record what is a negative reciprocal easement, in my experience.

You have also opened up the matter of the value of the obligation of the proprietor of the subdivision on so many matters that I would hesitate to take a shot at the question.

MR. THORNTON: We must all have some practice we follow.

CHAIRMAN GLASSON: I think you will find that the practice generally is that you show such instruments as would affect the lot itself. If the subsequently recorded instrument does affect the restrictions which have been placed upon the lot; you show it for what it is worth. It may be within the power of the proprietor to change those restrictions, but it may be that it is an entirely conjectural factor on his part because he may have contracted with others to maintain restrictions on all the lots in his project.

In view of that, it is hardly possible to set down a hard and fast rule. I would say generally all you can do is show what is of record, and let the lawyer figure it out.

"Advance Estimates on Abstracts" A Forum Discussion

MR. GRAHAM (Denver, Colorado): I would like to have Al Suelzer elaborate just a little bit more on the last part of his talk about no estimates, no advance estimates.

MR. SUELZER: Well, Don, as I said in my speech, I have talked so much about that here that almost everybody is tired of hearing it.

MR. GRAHAM: No, we are not.

MR. SUELZER: But that's all there is to it. You simply say to your client, "We charge by the item, and on court proceedings we charge by the page, and there is no way in the world we can figure out how many pages a will is going to be in advance, or a foreclosure suit, so we can't make you any advance commitment."

A Long Time Ago

Of course, we didn't start quite in that way. We started in this way. We decided on a maximum charge. Now this takes you back fifteen years. We based that maximum charge on a comparison of our average charges. Let's say for a complete abstract in those days, at the schedules then prevailing, cost about $65.00, so we figured the maximum charge—(I want to tell you we have no such thing now)—we fixed the maximum charge at $75.00. If a man came in and said, "I will have to have a new abstract made and I would like to get some idea of what it is going to cost," we said, "We can't tell you, but we can tell you this: it won't cost you more than $75.00."

Then we computed the bill strictly according to our schedule. If it turned out to be $65.00, we explained to him he was getting the job for $10.00 less than he expected to pay for it, and was pleased. If he got the job for $55.00, he was very much pleased, because he was prepared to pay $75.00, and in that way the policy became established.

Later on we increased that to $100.00, and than we increased it to $125.00. Now we have no maximum at all. Our abstracts now will in some cases run $250.00, $300.00, but in even those cases we make no advance estimates, and everybody knows they can't get an advance estimate.

No Shopping Around

When I said that when you give those estimates it makes your client go shopping for price, that is absolutely true. That was in full swing at home. They would award the job on the basis of the lowest estimate, and then gradually one abstracter noticed that the jobs were going mostly to his competitor on the basis of this advance estimate, and the only thing he could do was sharpen his pencil and make a lower estimate; and then when the first one found that the stream had turned away from him and was going towards his competitor, he sharpened his pencil. Gradually it got to where you didn't even try to figure how long a job was going to be. You made the price on what you thought would land the job, and so an abstract that according to schedule might have brought $75.00 was leaving your office for $40.00.

That is a period fifteen years ago, and I have an idea that in some ways some of you are having that experience now if you make advance estimates. You may not have had it as badly as we did, but now we collect absolutely one hundred per cent fee schedule on every job. We three competitors have our own clients. People might prefer us to the other fellow. Another client might prefer him to me. He knows that it is going to cost him approximately the same in each office, so he doesn't ask anything about fee. It is a wonderful thing, as you can realize, if you can collect one hundred per cent schedule on every job.

MR. JOHN BLUE (Rensselaer, Indiana): Mr. Suelzer, what about the large insurance company that writes and says, "We have misplaced such and such an abstract and would like to have an estimate on the cost. Please forward at once." Do you have a standard reply?

MR. SUELZER: We write them a very nice letter and say that we can't tell them in advance, but we tell them how we will figure it.

MR. BLUE: You mean you give your rates?

MR. SUELZER: We don't give them any estimate.

MR. BLUE: Your rates per entry? Do you say how you are going to base your charges?

MR. SUELZER: Oh, we might, if they wanted to know that. It isn't usually necessary. We get requests like that from attorneys in different cities in Indiana. We write them a nice letter and explain why we can't make any advance commitment, and the next letter probably will bring the order.

LLOYD HUGHES (Denver): What about replies to requests from the Government for bids?

MR. SUELZER: Well, I don't recall that we ever had anything like that, but I think we would write them the same kind of a letter.

MR. SHEPARD (Mason City, Iowa): What do you do on abstract copies and multiple abstracts, additions, and so forth?

Multiple Abstracts

MR. SUELZER: We have had a schedule for multiple jobs, that was worked out very carefully. That figured the price of one abstract, or two, or fifty-eight or seventy-six, or one hundred fifty-two, in terms of the original abstract. In other words, we called the fee computed according to the schedule for the original abstract the basic fee, and then we established an index figure for any number of abstracts over that.

Now, that is in process of revision because we found that the way we had that schedule drawn up it didn't produce the results that it should. That is quite a difficult job, working that out, but that is in the process of being worked out.

We used to, in the old days, turn those out at less than cost, on the theory that the man whose abstract went out for the subdivision would probably get the continuation.

MR. SHEPARD: Well, what proportion do you figure on your subsequent abstracts?

MR. SUELZER: Well, as I say, we have an index figure that changes according to the number of abstracts and applied to the basic fee, which is the scheduled fee for one complete abstract.

MR. SHEPARD: I understand that, but how far down do you go? Suppose a man wants twenty abstracts of the same tract?

MR. SUELZER: Then you can look at your schedule and see that twenty abstracts would cost something like perhaps 7.8 times the basic fee, which you won't know until you have completed the first abstract, and that is what you tell the man. If he says he wants twenty abstracts, you say, "We can't tell you what they will cost, but we can tell you they will cost 7.8 times the first abstract, and that will figure according to a schedule running approximately $1.00 a page, with certain additions.

MR. SHEPARD: That would be for how many subsequent abstracts?

MR. SUELZER: For any given number, except the index figure would change according to the number.

MR. TAYLOR: I think he wants to know what that index figure is.

MR. SUELZER: That is variable.

MR. TAYLOR: I know, but what is your system of variation?

MR. SUELZER: Well, that index figure is a result of figuring out a lot of things, what it costs to run amimeograph job, and the first stencil and the second stencil, and so on. It takes a while to figure it out, but when it is figured out you have all your costs and a proper profit in there and your services in your office which are unpro-

ductive of fees. You have them represented in the picture. You have rent and light and telephone. You try to figure that all in and you come out to where you ahve a pretty good index figure.

MR. SHEPARD: Well, what relation would your twentieth abstract bear to the cost of the No. 1 abstract or master abstract?

MR. SUELZER: Well, maybe I don't understand you, Mr. Shepard.

MR. SHEPARD: Well, I am just trying to figure, if they want to get, we will say, twenty abstracts, or maybe 200 abstracts. We recognize the cost of the master abstract. We charge the full price for that, of course. We charge for the expense of the multigraphing, or whatever we do, but the point is now, how much of a break should the abstracter consistently beexpected to make in getting out a whole order of twenty to 200 abstracts?

MR. SUELZER: Well, your final fee, of course, should be an amount that covers all the expenses and includes a reasonable profit. You can work that out. That is the way you figure your schedule, and we try to figure ours that way, too.

MR. SNYDER (Independence, Missouri): I am wondering how you compete with title insurance.

MR. SUELZER: Well, the only title insurance issued in Fort Wayne is issued on an agency basis by two of the three companies, and their abstract fees are untouched by the title insurance. That goes on top of the abstract fee, so it doesn't enter into competition.

MR. SNYDER: I am wondering how some of the other companies are competing with title insurance. Say in a new subdivision where they will come in and issue a blanket policy.

MR. SUELZER: Well, we haven't had to meet that problem yet. We probably will some day.

MR. SNYDER: We meet it in Missouri.

Losses and Claims— Their Direct and Indirect Costs

A PANEL DISCUSSION

Members of Panel:

W. Herbert Allen, *Executive Vice President,* Title Insurance and Trust Company, Los Angeles, California.

Herman Berniker, *Vice President,* Title Guarantee and Trust Company, New York, N. Y.

Edward J. Eisenman, *President,* Kansas City Title Insurance Company, Kansas City, Missouri.

J. W. Goodloe, Moderator; *President,* Title Insurance Company, Mobile, Alabama.

MR. GOODLOE: Mr. Chairman, Ladies and Gentlemen: It is a real pleasure for me to be here and to appear with the gentlemen around me. I think you will agree they are among the big guns in the title profession, in our business. (Applause.)

Getting down right into our subject, "Losses and claims, their direct and indirect costs—" Did you ever, as the executive officer or front man of your company, experience that cold, clammy feeling when a stranger walks in, and without blinking an eye, bluntly states, "Did this company guarantee the title to the Jones property out on the so and so highway?" And then that feeling of exuberance of the blood rushing back into your viens, when the customer says, "I am buying that property and I want you to check the title for me." (Laughter.)

All of us have losses, and frankly, we should have them—in moderation, but we should at the same time strive to better our service and protection to our clients in order to meet more adequately present needs arising from changing conditions. I might add that the costs thereof be spread over the cost of the product delivered. Otherwise, are we able to fully justify our own existence?

Many a time have I heard my good, well-meaning friends say, "Do title companies really have losses?"

Prepaying of Losses

What Mr. Public does not understand and, apparently, what some of our State Insurance Commissioners do not understand in all its detail, is what it costs a title company in its efforts to

J. W. GOODLOE

give security to its customers, and at the same time give protection to itself. They fail to realize that the primary function of a title company is to discover title defects before insuring; and that the greater part of the premium is paid for chaining of the title, and examination of the title risk, not for the payment of future losses.

An analysis of the cost of losses and claims paid by the average company will break down the expenses into two distinct classes: Direct costs and indirect costs.

Direct costs for losses are those paid on account of claims resulting from an actual monetary loss, property loss, or depreciation of value, suffered by the insured.

Borderline Cases

Direct costs usually fall within two groups:

First, those claims resulting from oversight or negligence on the part of the title examiner or mistakes in the records of the title company, which, according to statistics, show taxes and special assessments heading the list, with prior mortgages, judgments, mechanic's liens, and easements causing depreciation in value, following in order.

Second, those losses arising from questionable claims which it may be good business on the part of the title company to pay, even though, under a strict interpretation of the policy, the claim could be denied.

These are borderline cases. My own limited experience has taught me that a lot of good will can be gained by paying claims of this category. If it is an open, admitted loss, pay it promptly. Paying a claim promptly results in a satisfied, boosting custo-

mer, and is mighty good advertising.

Indirect costs include those arising from the obligation of the title company to defend, at its own expense, attacks on the title of the insured; it matters little as an item of expense whether such attacks are justified and bona fide claims, or whether they come under the heading of "Nuisance suits."

Indirect Losses

I submit there is another indirect loss that progressive companies voluntarily incur, to wit: The cost of the re-writing, the re-working and, thereby, the improving of various indexes in the title plant. We sometimes erroneously think of this as "title plant maintenance," but strictly speaking, this is not day-to-day maintenance; rather it is a voluntary preventative against future possible losses. As such it is an indirect loss because it is an indirect charge against profits.

In order now to bring out some of the finer points on this subject, we will hear from the members of the panel. We will first call on Mr. Edward Eisenman, President of the Kansas City Title Insurance Company, Kansas City, Missouri, and we will ask Mr. Eisenman to tell us something about loss experiences in Kansas City, where his company has it own title plant as differentiated from its national underwriters' experience where dependence is had upon outside agencies and outside attorneys for title examinations.

Address of E. J. Eisenman

MR. EISENMAN: Because of the nature of the subject or the portion of the subject assigned to me, I have prepared no paper. I undertook to do so, but the reason I didn't finish it was that the actual information and statistics necessary to write a real paper on the job are just not available on the subject.

There isn't any title company up until the present time, within my knowledge, that has a completely setup picture of possible losses or of actual losses, either direct or indirect.

Lots of Expenses

The direct losses are easily ascertained because you pay it out to someone else. But the expenses you pay for attorneys' fees, traveling expense, court costs, and other matters of that kind, you can't attribute them to the business of any particular year, unless you go back and make up a sheet of statistics, such as we expect to start on very soon, and which I understand one or two other title companies in my acquaintance have begun.

This particular portion of the subject which is assigned to me is with respect to the difference between, or the experience as to title losses on titles insured through the examinations from our own plants—we have four plants in our office—and those that we issue on title examinations made by approved attorneys in other localities, and that subject is a very simple one.

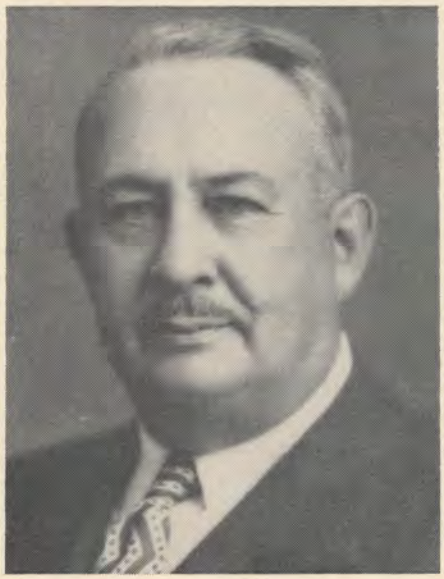
National Department Losses Greater

The number of claims that are made on what we term our national title insurance business, done under out national title division, is much greater than it is on our local policies. But the amount of losses sustained is greater on the local policies, for the reason that whenever a claim is made on a local policy, it is generally a real one.

There are a number that have been brought into action with our national business that get into the category that the moderator describes as the nuisance suits. We have several of those pending at the present time. I don't think the plaintiffs have the slightest hope of recovery. Nevertheless, they have brought the suit because they have learned the title is insured and they hope to get a settlement.

Litigate Nuisance Suits

Well, our attitude towards the settlement of claims has always been just



EDWARD J. EISENMAN

one: To pay no money in settlement, even if it costs your more to lick the claim, because once you start to settle and get the reputation for settling, you have just that many more nuisance suits brought every year.

We had a sort of racket, as we grew up in some of the states where we originated the idea of title insurance on what we at that time called our outside plant, which has since developed into the national plant. We were insuring title in Missouri, Kansas, Oklahoma, Arkansas, Louisiana, Missouri, Illinois, Iowa, Colorado, the whole midwest section.

The plan as it originated, was to approve of brokers and office examining attorneys, and they did the job exactly as it was done before, but when it was finished, it was certified in to us for title insurance. A great many of the attorneys, while it was strictly against the regulations and in violation of the questions which they answered definitely on the questionnaire that they signed, were financially interested in the loan broker's business, and when the depression came along, the life insurance companies—(I use them because they are the largest users, or at that time were the largest users of our product on that national business)—had to foreclose properties and were going to sell them. It got to be a regular racket among some few attorneys in the outlying counties particularly, where an institutional seller was disposing of a piece of property, and they found something in that title that required a suit to acquire.

We had a number of cases where the insurance companies referred the matter to us. At that time the policies we wrote on mortgage policies did not insure marketability; but when the difficulty came up, our policies were insuring marketability. We never said a word to the insurance companies that we hadn't insured marketability of titles, we just went ahead and corrected the thing.

We brought two suits to correct title in all the group we had submitted to us. As to the remainder of them, we just said to the buyer's attorney, "well, either take it or you will stand a suit for specific performance." They very soon learned the title company was not going to be intimidated into foolish quack title suits or into settlements of fancy or nuisance claims, and we are not troubled with that any more.

Less Close Supervision

We have been in the national title insurance business on the plan that was evolved out of our original idea that started back in 1917, and we started back into it on the national plan in 1939. So it is a little less than ten years' experience we have had on that. In our national business the number of claims presented and number of suits to be defended are greater by far than on our local business, occasioned I presume mostly by the fact that you don't have the supervision of the examination and processing of the title insurance in the outlying office, which you do in your own office; and where you have really experienced and highly qualified people to handle it, the number of actions that we have defended has been much greater on the national business than on our local business, but our amount of dollar loss on our national business has been considerably less.

Photographic Take-Off

In fact, our largest single loss was on a local piece of business in Kansas City, on a straight out and out forgery. The largest loss on that amounted to, and I will never forget it because I saw the check, $33,765. It was a job of forgery put over by a very competent and qualified gentleman who came from a good family, studied law, was highly educated, but he developed all his talents on the crooked side and

finally wound up by getting caught in a bank robbery in Pennsylvania. We had been looking for him all this time. I have a letter in our file that he wrote us imploring us to extradite him and try him in Missouri because if he were tried in Pennsylvania, he would be sentenced to life under the habitual criminal act. But we didn't extradite him, although we got a warrant for his arrest if he were ever released. But he died in the penitentiary.

The experience we have had on the matter of losses on the two classes is, as I said, the number of claims on our national business is larger, but the amount of dollar loss is less, and for the reasons stated.

MR. GOODLOE: Thank you, Mr. Eisenman. I was particularly glad to hear you bring out the point of nuisance suits. No doubt in the few years to come, with declining values, we may have more and more of that type of trouble continuously.

We will now hear from Mr. W. Herbert Allen, Executive Vice-President, Title Insurance and Trust Company, Los Angeles, California. Mr. Allen, I hope, will give us some of his experiences through losses suffered because of known contingencies insured against, and anything else he might care to add to the subject.

W. HERBERT ALLEN

MR. ALLEN: Thank you. Mr. Goodloe, before beginning my more formal remarks, I would like to pay my respects to Chairman Mort Smith. His statement about the luncheon was incorrect, because I didn't have any luncheon. What he really wanted to tell you about was the fact we dined last night at Ireland's Fish House, which I understand is Chicago's leading emporium, fish, lobsters, and so forth. As Mr. Smith was about to sit down, he said to the waiter, "Do you serve crabs?" The waiter said, "Sure, sit right down, we serve anybody."

Known Hazards

In giving me this assignment, it was suggested that I direct my remarks particularly to the matter of losses suffered because of insurance issued against known hazards.

In Dollars and Percentage

Our losses from all sources in 1947 amounted to $102,233.32, which was 1.23 per cent of the premiums received. Our estimate of losses for the full year of 1948 is $135,000, or 1.42 per cent of probable total premiums.

For the 35 years, 1911 to 1945, inclusive, our losses totaled $697,650, or 1.19 per cent of the premiums.

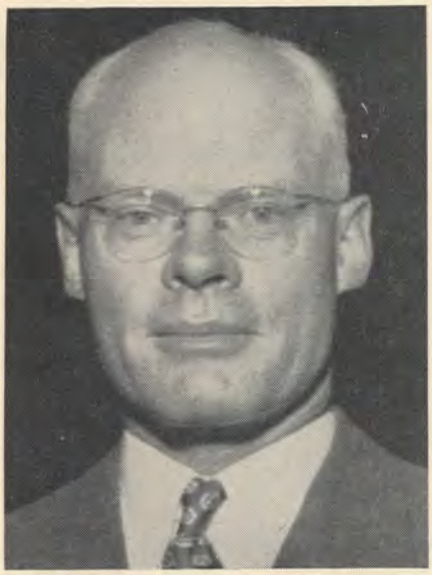
Does Not Cover All Expense

May I say parenthetically that that does not include indirect expenses? That is only dollars paid out to customers. Indirect expenses would increase it.

While the loss record for the last two years is fractionally higher than the long term average, the increase is too small to be significant. What is significant is the fact that all of the losses for the entire period arose out of matters which for one reason or another we failed to detect or consider, and none resulted from defects which were known to exist at the time of issuance of our policy.

On only two occasions have we been called upon to defend our position in the courts, and in both cases not only were we successful, but as it had been obvious in advance that litigation would ensue, necessary legal expenses were taken care of through arrangements with our customers.

I am therefore brought to the conclusion that, paradoxical as it may sound, the issuance of insurance against known hazards is actually the safest part of our business, always provided, of course, it is surrounded by proper precautions.



W. HERBERT ALLEN

Our experience in that respect is borne out, since I have been at the convention, by talks with members of the Title Association from Arizona and the West Coast and some from the East. But I am hoping in the discussion, we may find others whose experience with insurance on unknown hazards may be different.

Not Casualty Insurance

May I make it plain at the outset that in no case do we regard ourselves as a casualty company issuing insurance on the basis of mathematical probabilities of loss. When we issue a policy, we do so in the firm belief that the title, even though possibly not technically perfect of record, cannot be successfully attacked. Our record will, I believe, substantiate this position.

Before you draw the further conclusion that we are slaves of perfection and that we never take a chance, let me hasten to add that such is not the case. We try always to have our people bear in mind that we are running a business, not a law department.

Waiving Objections to Title

Many times every day we overlook minor irregularities which are not sufficiently serious to indicate that we should require our customers to perfect the record title by bringing a quiet title action or taking other curative measures involving unreasonable time and expense.

All such matters are brought to the daily meeting of our Title Committee, consising of the chief title officer, his assistants, and our general counsel. Not infrequently the administrative officers of the company are asked to sit in. Every effort is made to find a way to pass the title and every angle is exhausted before we give a final "No."

I cannot give specific advice on just how far we feel we can go, because each case must stand on its merits in the light of all surrounding circumstances. Perhaps the best thing I can do is to refer you to the remark of Pat, who, suffering sorely, as he was being borne wounded from the field of battle, addressed his stretcher bearers thus: "Boys, if you can't be aisy, be as aisy as you can."

MR. GOODLOE: Thank you, Mr. Allen. There is nothing like actual statistics when you speak of losses. Mr. Allen gave us that, along that line.

Now, any discussion concerning losses would not be complete without offering some remedy. What can be done to minimize losses? Briefly, I will give you some of my ideas along this line, rather briefly and quickly.

First: Educate the public on what a policy does and does not insure against.

Second: Cooperate with your local Bar and Realtors in sponsoring necessary legislation.

Third: Hold periodic conferences, not only with your title examiners, but also with office department heads, acquaint them with your specific loss problems. It will tend to make them "loss conscious."

Fourth: While we should strive to give our clients the best possible protection consistent with sound business, do not allow the threat of loss of business to force our entry into the surety field. Mr. Henley dwelt on that quite fully, I think, this morning.

Fifth: Set up more complete accounting records to show a better breakdown of what may be classified under the broad head of title losses.

Sixth: The American Title Association should sponsor periodic surveys in order to obtain informative data on actually losses. This will present a clearer picture of the nature of losses, what part of the cost goes into actual losses, and what part is charged to special legal fees and cost of defending lawsuits. There is no sound business foundation to the old theory that a title company should conceal its losses for fear the record thereof might

hurt its business, or help its competitors.

We would like next to hear from Mr. Herman Berniker of the Title Guarantee and Trust Company of New York City. I think he will deal much further on the last thought that I brought out.

HERMAN BERNIKER

In approaching the problem of preventing and minimizing losses, the first element to be considered is, of course, the policy itself.

A carefully drawn policy, clearly setting forth the liability of the company, the protection offered, the exceptions from coverage, and the conditions for making a claim, is the first step in preventing the assertion of claims, particularly those arising from a failure of the insured to understand that his particular loss arises from a condition which is not the subject for coverage under the policy.

Extend to the Limit

This does not mean, of course, that the policy should be a self-exculpatory document which will create doubt in the mind of the insured as to the quality of the protection offered by the insurer. On the contrary, our aim should be to extend as far as possible the general coverage of the policy and to liberalize its provisions in favor of the insured, both in the terms of the contract, and in the spirit in which they are interpreted. Our aim has been to build up in the minds of the bar, and lay public alike, a justified confidence that one who holds the title policy of a reputable insurer has achieved real title security—that his title is good and marketable and that any attack upon it, direct or indirect, will be defended promptly and vigorously without cost to him and that losses will be paid promptly and without attempt on technical grounds to evade liability.

Only recently, The New York Board of Title Underwriters made a complete revision of the standard policy issued by the members of the board, clarifying and liberalizing in favor of the insured many of the policy provisions and benefits. Among these, was a provision under which the insurer absorbs entirely the cost of defending the title, as well as costs imposed by the court in case of an adverse decision, instead of deducting such costs from the amount payable under the policy. On the other hand, we included a provision merging all previous transactions in the policy and restricting liability to claims under the policy, The purpose of this provision was to eliminate claims which would be barred under the policy but are occasionally asserted on the theory of negligence in the work performed preliminary to the issuance of the policy.

Personalty Not Covered

In a surprising number of instances claims have been asserted which involved questions of title to personal property used in connection with the insured premises, violation of municipal and zoning resolutions relating to the character and use of buildings, title to the beds of streets, and the like, all of which are excluded from coverage under the policy. The mere fact that these are exceptions from coverage is not enough unless this is brought home to the insured and his attorney. If a loss of this character has been suffered and the claim is made because the insured did not realize that it came within the general exceptions from coverage, he often feels, though without justification, that the title insurer has let him down. Both the bar and the lay public require constant education and re-education, so that the purchaser of title insurance may know with certainty just what he is getting when he applies for and receives his policy. The better understanding the insured has of his contract with the insurer, the less likelihood there is of unjustified claims being made.

Unmistakable Language

As part of this process of education, we recently initiated a completely new form of report on title designed to make it clear to the applicant from the moment he received the report—which is his insurance binder—just how we do our work, what we do and do not insure, and what the applicant is required to do to obtain the most complete coverage possible. The aim throughout is to promote comprehension by a logical arrangement of the information supplied, simplicity of language, and bringing into prominence general exceptions from coverage heretofore often relegated to small type.

The next and probably most important element in the prevention of loss is that of the methods used and personnel engaged in the actual examination, reporting and closing of the title. While insurance generally may be defined as a wager upon the happening of a fortuitous event beyond the control of the insurer and insured, this is true of title insurance only with respect to the so-called hidden risks. As to the ascertainable risks which depend upon the facts which make up the quality of the title, the insurer is a fact-finder. Consequently, the incidence of loss in title insurance bears a direct relationship to the quality of the fact-finding organization—the experience and learning of examiners, readers, closers and title officers, the care with which they perform their duties, and the efficiency of the procedures employed.

Training From Within

Assuming that the insurer has at his command, in every department, personnel of the best caliber available, the staff must be kept aware constantly of the necessity of care in the performance of duties and must be kept abreast of the most recent developments in the decisions of the courts and the changes in statutory and administrative law. Practices we have found helpful in this connection include issuance of frequent staff bulletins on practice and procedure; distribution of a monthly summary of recent decisions involving real estate and title questions, and of an annual summary of changes in legislation. Incidentally, we have for some years distributed our printed summaries of recent decisions and statutes affecting real estate to members of the bar and have found this an excellent means of promoting good public relations. We are planning, starting this Fall, to inaugurate periodic dinner-meetings of the Law Department staff, at which problems can be discussed and prominence given to current losses and means for their avoidance in the future.

Finally, I should like to emphasize the importance of the qualifications and personality of the person in charge of claims, and of his staff, where the size of the organization justifies the employment of assistants.

Diplomacy

The claim attorney has contact with the customer at a time when he is most sensitive and difficult. A customer may be faced with serious loss, or he may have a grievance, the importance of which is often in his own mind magnified out of all proportion with reality. Upon the way in which he is handled may depend the course of important future business. Consequently, the claim attorney should be a thoroughly able lawyer, capable of appraising quickly the legal and practical aspects of the claim presented. He must be able, where necessary, to make the customer see, without creating resentment, that the company is not liable in a given case. He must be aware of the necessary difference in approach in dealing with the disposition of a claim by the insured and one by a third party claimant. He must be aware at all times of the necessity for handling claims with dispatch to reduce damage and avoid further loss. This is particularly true where the company insures marketability, and delay in disposing of a claim may result in the loss of a sale or inability to get a needed mortgage or building loan. Or the situation may be as obvious as the necessity for paying promptly a missed tax item to avoid accumulation of penalties.

Where the objection of title is raised by another insurer holding divergent views on the title, he must be able to present convincingly the reasons why the title should be passed.

Disposition

In New York we have for many years employed the practice among responsible insurers, in appropriate cases, of passing objections to title upon the letter of indemnity of an insurer who has previously insured free of the particular objection. The claim attorney must be quick to see when this may

be the most effective way of disposing of a potential claim and helping a title to close. Frequently he is forced to work under pressure, without opportunity for extended study and preparation of memoranda of law, or even of long explanatory letters, and may have to do much of his negotiation over the telephone. He should have the ability and personality to do this effectively. He should be able, in the framework of his own organization, to command the cooperation for the speedy disposition of cliams.

Improvements in Legislation

The incidence of claims can also be reduced by an alert administration, looking always for holes in legislation which can be plugged up, and working with other companies and title associations for passage of validating and liberalizing legislation which may help to eliminate future claims on title. Recently in New York a bill for administration by municipalities of a comparatively new "procedure for the foreclosure of tax liens," a series of decisions by courts cast doubt upon hundreds of titles previously insured. The decisions resulted in some immediate claims and many more potential ones. Prompt action by our companies, acting in cooperation with the state association and the corporation counsels of several of the municipalities involved, resulted in the passage of validating legistlation which will cure these titles.

I might say that it has been our own fortunate experience—and I venture to say that it is the experience of all of you—that the sums paid out for title losses are insignificant in relation to the total amount of liability for title insurance written. In fact, there may be more truth than jes in the suggestion that occasional title losses are desirable as emphasizing the need for title insurance. The infrequent occurrence of title losses is sometimes seized upon to support the argument that most titles are good and that title insurance is largely unnecessary. The proponents of this argument overlook the fact that if most titles are good, it is in great measure due to the fact that title insurers, through their vigilence in uncovering defects in titles and their insistence upon the curing of defects as a condition for the issuance of unqualified insurance, have made the titles good.

Prepaying Losses

The well organized title insurance company, in the ordinary course of its work, through the years, expends huge sums of money in paying for the services of personnel with experience in real property law and in training such personnel; in building up a plant, the abstracting of public records and frequently of private records, family histories, maps, surveys and other documents not otherwise available; and in the maintenance of these records year after year at great expense. Not only must the labor costs involved be considered, but the cost of storage alone runs into many thousands of dollars annually.

The importance to the public of this service rendered by insurers is pointed up by the fact that in some instances, in the case of catastrophe, resulting in the loss of public records, the title company plant may be the only reliable source of information concerning record titles.

The experience of our own company is that currently 77% of our total income goes into the actual cost of production of our titles. These production costs are higher than they might have been if we did not, as a responsible insurer, do our own work in accordance with established principles of law, with the organization, procedures, and plant which we consider requisite for doing a proper job of title insurance.

HERMAN BERNIKER

All of the expenditures discussed go toward reducing the risk of title loss and might well be called **payments of losses in advance**—payments which the examiner, abstracter or insurer who operates on a casualty rather than on an indemnity basis saves when he certifies a title based on a "finger search" of the public records, coupled frequently with a reliance on the revelation, through such a search, of the fact that a responsible insurer has recently insured the title for a fee or mortgage transaction.

The difference between what it costs the insurer to insure a title based on an honest examination and what it would cost were the company merely speculating on the risk of a title loss is an element of the cost of preventing title losses which is frequently overlooked.

MR. GOODLOE: Thank you, Mr. Berniker. This ends the panel part of the discussion. We have a few minutes left on this panel and would like to throw the question open now if anyone has any questions along the lines of losses. I think we have some very able men up here that would be able to answer them.

DISCUSSION

MR. STEWART MORRIS (Texas): Mr. Goodloe, I would like some information on this business of tabulating losses. We recently had a meeting with distinguished members of the Mortgage Bankers Association, who pointed to the fact that title losses in Texas were so close to nil that they shouldn't pay such high rates.

I think that so many of us merely show in our loss column actual dollars paid in claims.

I am wondering how many companies here, that are better set up than we are, seek to tabulate a portion of some officer's time and salary or all of some officer's salary into the loss column because he handled nothing but negotiations with people who think they have claims or have claims, and things that are worked out, that are real losses, without ever paying out any actual dollars. Do some of the companies compute those as losses and show them in their loss column?

Insufficient Records of Loss Expense

MR. GOODLOE: That was one of the suggestions I attempted to bring out. I am wondering how many companies represented by those present do or have over several years kept any accurate system of losses, trying to show a breakdown as to actual losses paid out as distinguished from losses for attorneys' fees, especially attorneys' fees, and if not attorneys on the regular payroll, special attorneys' fees, and litigation, court costs and so forth.

Could we have that by a show of hands of any companies that actually keep such a record or have been keeping such a record? I see several hands out there. Thank you, sir.

I notice Mr. Ford raised his hand. I wonder if you could just throw a little light or give some idea as to the system that might be set up, within your own organization, as to how the breakdown is.

MR. JAS. R. FORD (Los Angeles): Mr. Goodloe, and Gentlemen, we keep a very accurate detail in our company on losses. We have a committee that meets once a week, and any loss or claim originating within that time is considered. If it has any potentials, we immediately set up a reserve and that reserve is going to depend upon the seriousness of the claim, as we may view it, which may range from a very nominal sum up to the full amount of the policy.

As those claims are settled, the amount is either credited to loss or the loss is taken up to the entirety, if that is what it requires, with the result that at the end of the year we can tell quite completely the amount of money we have paid for claims or for losses in that particular year, together with the amount of legal fees in connection with the loss.

Including Counsel Fees

Now, I might say in our particular company that last year our losses, including attorneys ' fees, was somewhere in the neighborhood of $50,000. I haven't got the exact amount before me. At the present time, this year, it is in the neighborhood of $40,000. But we can tell with completeness at the end of the year, because we keep an accurate and exact detail on everything that is paid in connection with the loss.

MR. GEORGE RAWLINGS (Richmond, Va.): Mr. Chairman, our company does substantially the same thing that Mr. Ford has recited, but he didn't say whether he kept an accurate record of the time spent by your own employees in handling those claims.

MR. FORD: We do not.

MR. RAWLINGS: I think we are missing the boat here, and it is a difficult thing to handle. Assume you don't have enough claims to have a complete claim department; that you have a legal department that handles most of your claims, and one attorney spends or devotes a part of his time to claims. But where we all are wrong, we can't get these costs into our loss account. I was wondering if anybody here has attempted to do that.

MR. FORD: I would like to say in answer to that, Mr. Goodloe, that the question of time involved by members of our company, of our legal department particularly, in discussing these losses and investigating them, is not considered in our item of loss. It is only outside legal counsel, legal fees and costs, that we include in the item of loss.

More Complete Records

MR. HENRY J. DAVENPORT (New York): I would be glad to contribute our experience. You remember at last year's convention there was considerable discussion of this matter and it was a general conclusion, as I felt, that we had made errors in the past in minimizing our losses reported. Last year in December, in our annual report, for the first time we reported not only losses paid, but we reported an item of loss and loss expense, which made a substantial sum for loss expenses, rather than just the losses paid.

During the year for the first time we had allocated part of my salary, part of the salary of any officer who had anything to do with the claim department, and all of our interior costs, besides an outside attorney's cost, and the actual dollars and cents loss paid, were bulked together in one item of loss and loss expense, which to us makes a better showing than the ridiculously small items of losses reported in the past.

MR. RAWLINGS: Mr. Goodloe, may I ask Mr. Davenport if he arrived at that percentage of salary by just picking a figure or was it determined pretty carefully?

MR. DAVENPORT: It was done very accurately. Our expense accounts are on an allocated basis all along the line. A sincere effort was made to have those allocations as accurate as they possibly could be. They are arbitrary, of course, but we improve them each year and we believe we are getting to a point of allocated expense which is fairly accurate.

MR. ALLEN: While I recognize the desirability of getting our losses as high as possible, from a public relations standpoint, if not from an operating standpoint, it seems to me the business of charging salaries, (internal salaries) as part of the cost of losses runs into some practical difficulties, one of which has been brought out, namely, that the man who is doing the estimating is very important. One estimator may be rather generous in the time that he assigns to various people to work on losses, and another estimator may not be. Consequently even in spite of fairly honest efforts, assuming they are all honest, you get into a situation where loss records of different companies, if you merge those two items in one, become almost incomparable, and you get into a cost accounting method which obviously is very, very difficult under the best of circumstances.

For that reason, I think that while we have considered that and talked it over with numbers of people, we want to know actually what our losses are and what we pay outside attorneys, because we do it the same way as Mr. Ford does, include all those outside expenses.

Therefore, if all companies are on that basis, you have an actual figure definitely known and determined, which can be compared. So that when Mr. Ford says he has $50,000 of losses in proportion to his premiums, we know what his premiums are ,and so we know he has had a loss ratio of 1.5. Well, if we have a ratio of 2.5, perhaps we are having too many losses. But if he gets to putting in salaries of top officers and what not, how do we know on what basis he put them in? It seems to me you lose your comparability, although I admit possibly the public relations angle is more important.

MR. GOODLOE: Thank you, Mr. Allen. Does anyone else have anything to add to this?

Into Divisions

MR. GOODRICH (Chicago): We have had some experience in this loss field, and our attempt is to keep a complete record of costs. We break them down into three divisions: The actual settlements that we make on losses under our policies, the expense in connection with recorded fees, traveling expenses, outside attorney's fees, or other expenses that are incurred in the actual handling of claims.

We also keep a time record on the amount of time that is spent in analyzing and considering claims by our members of our staff who are charged with that responsibility. We try to keep that on a time basis that is spent, and we come out with a figure at the end of the year that includes all of our expenses.

Upon the basis of including all of those items in our loss figure, our losses, while it varies from year to year, is something in the neighborhood of 1.6.

MR. GOODLOE: Thank you, Mr. Goodrich. Does anyone else have anything to say?

Tax Angle

MR. WALTER GREEN (Maryland): What effect does that have on the tax situation, if you charge some portion of the salary of the top officers to your losses? What happens to your tax expense from a taxation standpoint?

MR. GOODRICH: We charge no expenses of the top officers. This is the expense of members of the law department where our claims are handled in our organization. It is a law department of several individuals. One man spends almost all his time administering these problems, and we don't include top officers' salaries in that. The expenses we figure are actual loss figures and are treated that way in our tax picture.

MR. GOODLOE: It is a deductible expense in any event, either way you set it up, whether it is loss or salary.

Has anyone else anything else to say? I believe our time is up. Our panel has brought out some very good ideas and some information to enlighten those of us who have not set up some constructive cost records in our companies. Even that way, it has been very worth-while.

CHAIRMAN SMITH: I want to thank the gentlemen of this last panel. I think they did a very good job as shown by the discussion which they started and its shows they did a lot of good work. Mr. Goodloe, Mr. Berniker, Mr. Allen, and Mr. Eisenman, we express our appreciation very, very much. (Applause).