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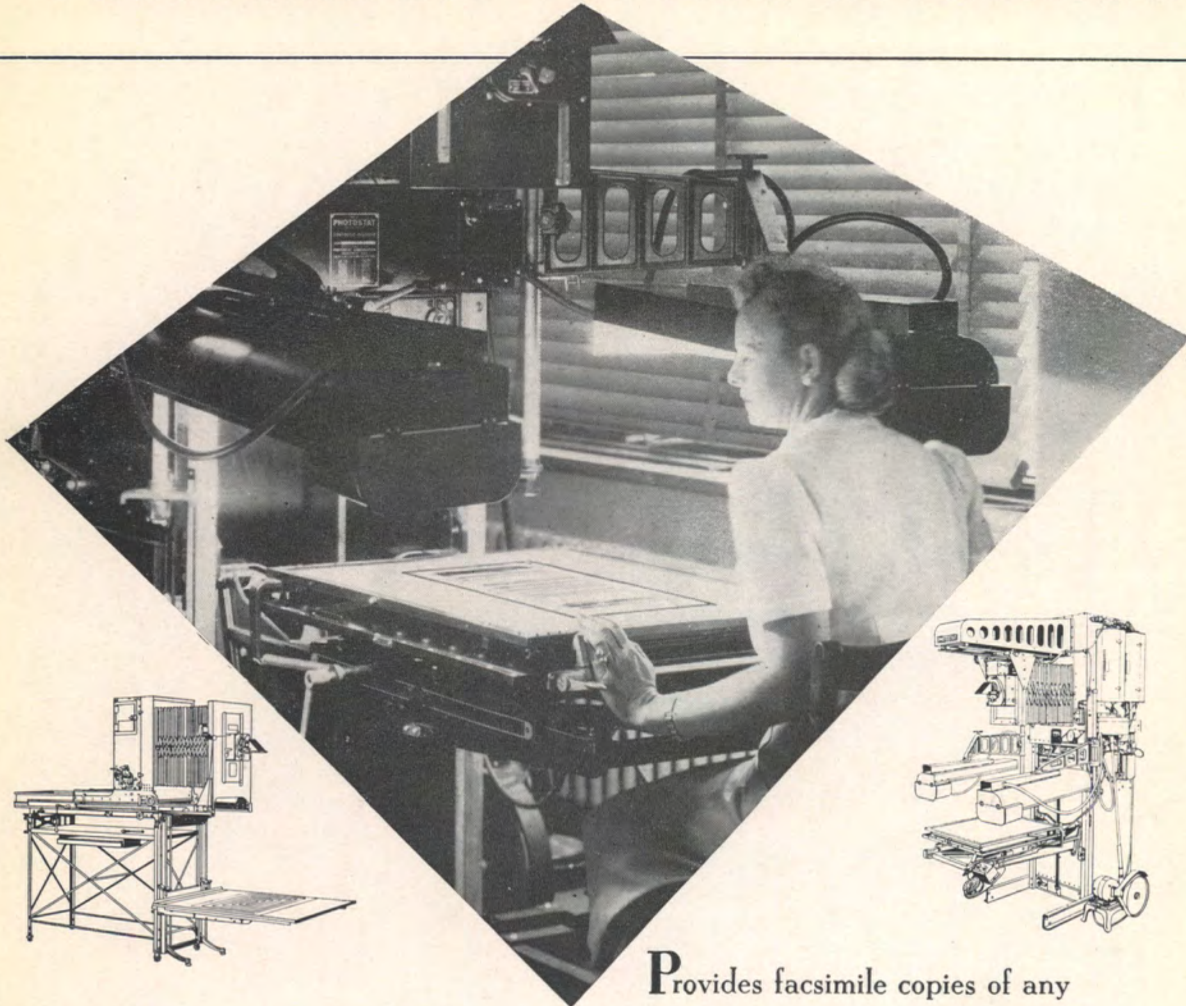

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TITLE NEWS

Official Publication of

THE AMERICAN TITLE ASSOCIATION

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VOLUME XXX | MARCH, 1951 | NUMBER 3

Escrows as a Method of Bringing in and Keeping Customers

EDGAR ANDERSON

Executive Vice-President
Lane Title & Trust Company
Phoenix, Arizona

When this subject was assigned to me, I was conscious that my effort might, at first blush, be regarded as a duplication, in view of the excellent article entitled "Escrows—their use and value" by John Mann of the Law Department of the Chicago Title and Trust Company, and the revised edition of William Gill's Title Course, containing a chapter on Escrow, by Melvin Ogden of Los Angeles, published by the Association as recently as June and July of this year.

My attempt to conjure up some phase of the subject that had not heretofore been presented in the many discourses before this august body was resolved by the caption suggested by Chairman Edward T. Dwyer. By avoiding, insofar as possible, the strictly legal aspects of the subject and confining my remarks to the title employed, I hope to ameliorate the tedium to those who have read and digested the two articles referred to. I shall enter a plea of confession and avoidance, and, having in mind particularly the neophytes in our midst, petition the indulgence of the more experienced practitioners for the elemental nature of these observations.

A Broad Picture

As indicated, this paper will deal with escrows, not in the limited and narrow definition found in the statutes, in language such as:

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

but rather, in the broader scope as recognized by the lay public, which generally conceives the terms as a combination of services rendered in a real estate transaction, by an independent neutral third party in the interests of all concerned.

EDGAR ANDERSON

The transfer of ordinary personal property, apart from transfers falling within the purview of the Bulk Sales and Recording Acts, is a relatively simple process and may be consummated with despatch by the mere exchange of cash, or its equivalent, upon delivery of the article purchased.

More Intricate

The transfer of real property is far more intricate. There is no right in our Anglo-Saxon heritage so jealously guarded as the real property right. The law has clothed it with protective mores having their origin in antiquity. The tempo of our modern civilization, and the well-known Latin maxim "caveat emptor" impels a purchaser of real property to desire the assurance that, at the time he parts with his consideration, he receives in return evidence of title to the property purchased according to the terms and conditions of his bargain. By the same token, the seller cannot be expected to part with his title until the consideration had passed into his hands. Since there may be obligations of the seller in the form of liens to be discharged from the proceeds of the sale, or money to be raised on the security of the property to enable the purchaser to consummate the transaction, as evidence of good faith, the necessary documents and funds must be on hand pending the deal. Such lienors would be equally unwilling to part with their rights unless their interests were likewise safeguarded. As between the parties, there will be adjustments to be made, such as taxes, insurance premiums, impoundments, interest on existing encumbrances,

rents, and similar items—the title must be searched and objections removed. It is evident that some time must elapse between the inception of the transaction and its final completion. Modern business demands that some machinery be set up to afford this protection and to perform the functions incidental to satisfactory completion. I believe escrow with tile insurance the best single agency yet devised to achieve these results.

Practices in Arizona

To escape the error that might obtrude were I to attempt to expound on procedures prevailing in localities with which I am not sufficiently informed, I will restrict myself to the practice which obtains in my own state of Arizona. I will say, at the outset, that in the West, escrow with title insurance has come to be recognized and accepted as the most favored, practical and expeditious method of closing the deal. We feel that an independent neutral third party acting as a stakeholder, employed to assemble the necessary documents and funds, to discharge the liens not to be assumed, to make the necessary adjustments, and generally to perfect the agreement of the parties, under definite unequivocal written instructions, has an appeal to the contracting parties. It gives them an assurance of safety, that they may rely upon the specialized training and experience of the Escrow holder. Especially is this true where a title insurance company acts in this capacity. Its financial stability and adequate supervision warrants this confidence.

Preliminary

To one contempating entering the field of escrow service, these queries immediately present themselves:

1. What is the service to be performed; its nature and routine?
2. Am I equipped and staffed to perform such a specialized service?
3. Is it a logical and concomitant instrumentality of the title business?
4. Is it productive of title business?
5. Will it enable me to retain business?
6. Will it speed-up and facilitate title closing?
7. Is it profitable?

Each of these questions may be answered in the affirmative, with qualifications.

No. 1 can best be answered by briefing the form of instructions, full copies of which are appended as Exhibits A and B.

Purchase and Sale Escrow

Exhibit A is used for a purchase and sale escrow. It may be used also for a purchase money mortgage incidental thereto by attaching the typewriter rider appended. Exhibit B is the form used for a mortgage escrow.

It is a contract under which both parties engage the Company to act as Escrow Agent in connection with a sale by seller to buyer of the described premises . . . It provides the time in which the terms and conditions shall be performed with an automatic savings clause for an extension. (See paragraph marked 1). It sets forth the terms of the deal, what adjustments are to be made, how the charges are to be apportioned, what is required by each to be done, provides a method of cancellation because of failure of one or the other of the parties to comply with the terms, protects the real estate broker in his commission rights (see paragraph marked 2), and in the event of a dispute, the Escrow Agent is saved embarrassment by a grant of authority to interplead in any court action (see paragraph marked 3). It provides for title insurance, informs the party to be insured of the exceptions that will appear in the policy and carries a note of caution as to matters for which the Company assumes no responsibility. Also there is ample room for the insertion of special instructions. Paragraph marked 4 relates to agreements of sale involved in the transaction and provides the method of cancellation. This is important to us, since these same instructions read with the agreement of sale, constitute a continuing escrow in which we are engaged to collect the periodic installments falling due under the agreement of sale.

To those who have a penchant for the art of simplicity, these instructions may seem quite forbidding and lengthy. If we err in the length of our form, we do so on the side of precaution to anticipate every possible foreseeable contingency. Recognizing the legal maxim "if there is no meeting of the minds, there is no contract," following the decisions confirmed in Corpus Juris that an escrow must be supported by a written contract, and to avoid any possibility of being regarded as a separate agent for each of the parties, in Arizona, we prefer instructions jointly executed. In some jurisdictions, the escrow is a congeries of separate instructions given by the respective parties. They are equally effective, provided when read together, they constitute a complete contract. Where this system prevails, it appears to be adequate to meet the exigencies of local custom and established practice.

Enforcability

It is pertinent to ask—is there a contract for the purchase and sale of real property enforceable in an action for specific performances? This is of moment, since quite a large percentage of our deals—50% more or less—are direct sales made without the intervention of real estate brokers, the final meeting of the minds coordinating with the written signed escrow instructions. Deals where the parties have been brought together by a broker are usually evidenced by an earnest money contract which forms the basis of the instructions. Properly drafted, which is the rare occasion, such an earnest money agreement, without question, constitutes a contract enforceable by an action in specific performance. In the absence of such an earnest money agreement, we incline to the view that the instructions, standing alone, are ample to bring into effect a contract between the parties, sufficient to sustain the requirements of the Statute of Frauds. We rely on no less an enlightened authority than Mel Ogden of the Title Insurance and Trust Company of Los Angeles, that there are California decisions to support this view, as made in his address on Escrows at the 1939 San Francisco Convention of the Association.

As these instructions are invariably prepared and executed before the title search is made, definite information as to encumbrances is lacking, and not infrequently, the title search will disclose matters which will necessitate written amendments to the instructions mutually consented to.

This is equally true where the closing is contingent upon the buyer's approval of certain matters, such as easements, restrictions, tax and rent apportionments and the like. In these cases, it is reasonable to assume that the offer being supported by a consideration is a continuing offer and enforceable upon acceptance of the buyer.

Routine Procedure

The routine procedure followed would be something like this: The instructions are prepared and signed, the earnest money deposited, search of the title made, statements obtained of the amounts of encumbrances to be assumed, or necessary to discharge mortgages and other liens, clearance made of matters disclosed by the title search, not to be assumed by the buyer, instruments to effect the transfer prepared and executed, prorations made; the remainder of the funds collected; accounts prepared and approved by the respective parties; the title researched to date and instruments recorded—title company recordings, by arrangement with the County Recorder, are the first filings of the day, thus precluding the intrusion of any matters between the title research and the recording of the instruments of transfer; upon closing, immediately after recordation, fire insurance endorsements are set up and obtained, funds disbursed, and policy of title insurance issued and delivered.

The schedule of rates charged for these invaluable services may be of interest. There is a wide variance in the fees prevailing in the different communities in Arizona. The reasons for this are various and may or may not be tenable. I will refrain from discussion on a purely local problem.

Escrow Fees

Amount	Phoenix	Tucson		Yuma
Not over $ 1000.00	Phoenix			$16.00
$ 1001. to $ 1500.00		**Unimproved property**	**Improved property**	18.00
$ 1501. to $ 2000.00				20.00
Not over $ 2500.00	$15.00)	$15.00)	$30.00	
$ 2501. to $ 5000.00	17.50)	18.00)	33.00	23.00*
$ 5001. to $10000.00	20.00	23.00)	38.00	28.00*
$10001. to $20000.00	25.00	33.00	48.00	38.00*
$20001. to $30000.00	30.00	43.00	58.00	48.00*
$30001. to $40000.00	35.00	53.00	68.00	58.00*
$40001. to $50000.00	40.00	63.00	78.00	68.00*
Add $5.00 for each additional $10000. or fraction thereof. NOTE: The same net result is achieved, more or less, by the companies doing business in Phoenix, though arrived at by different methods; one method is a fixed schedule regardless of the nature of the escrow, the other method follows the Tucson principle.		Add $1.00 for each additional $1000. or fraction thereof up to $50000.; 75c from $50001. to $10000. and 50c thereafter. Also add $5 for a mortgage; $7.50 for a contract; $10 for two mortgages; $12.50 for 1 mortgage and 1 contract. For direct sales, add an additional $5 up to $5,000 and $10 above $5000. NOTE: These rates are all inclusive —no separate charge is made for the drawing of instruments.		*Over $2000. add $10. for each $1000. or fraction thereof up to $100,000. and 50c thereafter.

Merit attaches to each system of rating. The higher rate without question is more commensurate with the services performed. Low rates give emphasis to the theory that the service is a mere incident to the title and should be done at approximate cost. It should be remembered always that the laborer is worthy of his hire. Regardless of the rates deduced, or which theory is regarded as the better, all rates should contain a unit sufficient to provide a reserve for loss, an item frequently overshadowed by other considerations. In the absence of a limit of liability in the contract of employment, I would say that the liability of the Company would be the actual loss sustained by the injured party.

Knowledge of Law

It is apparent that an ample knowledge of property law is essential to the proper functioning of an escrow department and to determine whether the conditions prescribed have been fulfilled. Extreme caution, however, must be exercised to avoid the censure that the Company may be engaged in the so-called unauthorized practice of law, that evasive, fanciful, imaginary monster which defies definition. This is of paramount importance at the moment in view of the accelerated actions of Bar Associations in attempting to restrict practices long established as a concomitant and integral part of real estate transactions. Where treaties exist—I avoid use of the term agreement—between the Bar Associations and Title Associations, strict conformity to such treaties should be had. This twilight zone is a delicate one, requiring mutual understanding based on rational thought, so that the normal and ordinary functions of business will not be unduly interfered with by hypertechnical interpretations. The states of Arizona and California are examples of such accords of harmonious relationship.

Relations with the Bar

The declaration of principles under which we operate with the Bar provides, in substance, that due observance thereof is deemed to be conducive to sound and orderly title and escrow business, legal practice, and the public interest; that the title company should endeavor to conduct its business so that it cannot justly be said that it, or its employees, are practicing law, that it shall not give legal advice concerning the respective rights and obligations of the parties to an escrow, or in connection with the issuance of a title insurance policy; that when requested so to do, it may prepare ordinary instruments in general use, and of established form, which are generally printed and commonly used in real estate transactions, where such preparation consists in filling in blanks, whether in connection with an escrow or title policy, including simple instruments of subordination, that the declaration does not attempt to define what is, and what is not, the practice of law. This declaration is scrupulously observed, and since 1934, when it first became effective, there has been only one complaint of sufficient importance to invoke the services of the arbitration committee provided for in the declaration. It further provides that a standing Committee of members of the respective organizations, with equal representation, meet annually to discuss matters of mutual interest. We interpret the declaration as precluding preparing any instruments relating to personal property, such as Bills of Sale, Chattel Mortgages and the like, coupled with a real estate transaction, since we do not insure title to personal property. You will note the remarks on page 1 on the instructions, marked for reference with an asterisk, reading:

> **Personal Property**
>
> If personal property is to be transferred as a part of this transaction, a Bill of Sale will be handed to Escrow Agent for delivery to Buyer. Escrow Agent is to assume no libability as to sufficiency of said Bill of Sale or as to the title to paid personal property,

nor can we undertake to prepare an original earnest money or purchase agreement, initiating the transaction.

Distribution of Forms

There was a time when the title companies uttered and distributed their own forms of earnest money or purchase agreements, in which their respective names were printed in an endeavor to assure them of the escrow and title insurance. Not only was this practice costly and wastefully extravagant—these pads made excellent scratch pads—but a similar practice was a cause of complaint by

the Bar against the local Real Estate Board which was distributing its form to others than its own members. This, most opportunely, gave us a tenable reason to discontinue our former practice to avoid like criticism.

Relation with Parties

What is the relationship of the escrow holder to the parties? He is like the chameleon—he changes his color to the mood of his surrounding conditions. He is an agent, or perhaps a better term would be trustee, for **both** parties from the inception of the escrow to its final consummation; he is an agent, or trustee, for **each** of the parties, with regard to the things to be done for each. His agency, however, is limited to the instructions given him—no more, no less. He is not a general agent in the sense that he is required to disclose to his principal all facts which come into his knowledge within the scope of his employment. This does not sanction the escrow holder condoning transactions which, prima facie, have a tinge of the shady, even though, legally, he may be protected in his knowledge—an example will illustrate this. It comes to the attention of the escrow holder that the owner engaged a broker to sell a property for a **minimum** price of, say, $12,000.00. The broker actually produces a buyer's offer of $16000.00, and proposes to set up two separate escrows, one for the sale of $12000. to a go-between and one for the re-sale by him for $16000., thus making a hidden profit of $4000. in addition to his commission. Without question, the broker in this case was obligated to obtain for and disclose to his principal, the best possible price. If the broker had been engaged to sell the property for a figure **net** to the owner, no questions of ethics would arise. While a case of this nature is not a frequent occurence, it is one that requires tact in handling. That is one reason why we discourage the original earnest money agreements being left in our files.

No Legal Advice

Nor is the escrow holder required to act as father-confessor or counsellor, except by mutual consent, and then he must not be forced into the position of extending legal advice. His experience does permit him to explain, direct and guide the parties to the desired ends. The requisite knowledge, experience and attributes adequate to handle the varied functions that demand the daily attention of an escrow officer, are the wisdom of a Solomon, the patience of a Job, and the discretion, tact and judgment of a Daniel—experience shows that so many of the parties are unschooled in the rudiments of a real estate transaction.

Advantages

What are the advantages of closing in escrow? Contrary to the impression of many persons going into escrow, it is not intended to obviate the necessity of independent legal advice on matters of a legal nature which most frequently arise. It does afford a means for the expeditious closing with assurance that flows from the transaction being handled by an impartial and responsible third party. It relieves the parties, and the broker where one is involved, from multitudinous details, provides a mechanism sufficiently flexible in its nature to be adaptable to almost any form of conditional delivery, such as mortgage, sale, lease, exchange, transactions, individual or multiple, and it effects a binding contract from which the parties cannot withdraw. It establishes a procedure which will develop into local custom and usage, tending to uniform conveyancing and title examination practice. With this preliminary statement of the mechanics of the operations and the compensation for the performance, to answer queries 1 and 2 you must first determine whether you care to assume these duties and whether you are equipped so to do. The conclusion that escrow may be regarded as an ancillary service to the title business quickly disposes of Query No. 3.

Productivity

Queries 4 and 5. Whether the service is productive of title business depends on how you would answer the question—Which came first, the hen or the egg? Successful business relations are measured by the result achieved in first persuading the customer to come to our particular counter; and then by our conduct, through courtesy and efficient service, in creating an attitude that will prompt him to return to us, when again he needs a similar service. The fact that the percentage of deals closed in Phoenix through escrow has increased from approximately 65% in 1946 to 80% in 1950, is indicative that the proceedure is rapidly gaining favor with the buying and lending public. Building activity, the impetus given by the sale of new homes, and mortgage financing, particularly through the life insurance companies, which make it a requirement that funds be disbursed through escrow, have contributed unquestionably to this increase. However, the fact that the first deal is closed through escrow creates an attitude in the minds of the parties which will induce them to repeat the process, when they dispose of their property. Once the customer is in the office, you are assured of the title insurance. The problem, therefore, is to get him into your office first. Whether it enables you to retain business will depend upon the excellency of your performance in the initial deal.

Is it profitable? Query 7.

Fees

The low charges received in the City of Phoenix are quite a challenge to management. To keep the income and outgo in balance, it is necessary to eliminate all duplication of effort and unnecessary motion. Even with the most astute supervision, the companies just about break even or sustain a slight loss—volume alone prevents a greater imbalance. Fees more commensurate with the service performed, such as those prevailing in the towns of Yuma and Tucson, earlier referred to, no doubt produce a reasonably fair profit. A deterrent to excessive fees is the belief that they might be an inducement for other enlightened people to enter the field of escrow service in competition with the title insurance companies who now regard it as an adjunct to their business, which in reality it is. The system of individual escrow companies prevails in Los Angeles. I do not regard a separation of the functions of escrow service and title insurance as wholesome. There are localities where the title insurance companies once enjoyed an escrow business ancillary to their title functions, but the exigencies of the war years with reduced and inexperienced personnel compelled them to discontinue this activity as an expedient. Like Hermes with his winged feet, once he has fleeted past, attempts to recapture him is a long and difficult task.

Installment Collections

As stated earlier, the Arizona companies act as agent to collect the periodic installments under agreements of sale and mortgages to private parties. The annual fee for this service is $10.00, which is usually divided equally between the respective parties to the transaction. This collection service is found to be quite profitable, provided sufficient volume obtains. Its radius is a constantly expanding one. The proceeds resulting from this phase of our escrow service ameliorates any loss we may make in the initial closing escrow.

Quick Closings

Query No. 6. Will in speed up and facilitate title closing? Where the entire transaction is processed in a single office, there can be no question that the service can be done with greater despatch than if handled otherwise. It has the approval of all those who participate, private parties, real estate brokers, lawyers, mortgagees, private banks, savings and loan associations, and, particularly, the Life Insurance Companies, and the element of cost seems to be no restraint on its popularity.

Impartiality

The element of neutrality of the escrow agent is a most important factor. This cannot be emphasized too strongly. For instance, earnest money deposited with a real estate broker having an interest in his commission would not be a deposit in escrow, nor would the delivery of a deed to the attorney of the grantee—such delivery could rightly be construed as taking effect immediately.

To eliminate any possible question, therefore, the only prudent course to pursue is for the parties to select a disinterested third party.

Where the instructions contain a demand by one party, mutuality of agreement requires an obligation on the part of the other to fulfill that demand, and the eschow holder must take the precaution that the instructions so provide. It is his duty to make certain that each demand by the one imposes an obligation on the other.

Death of Party

It is worthy of note that where there is a valid and binding escrow agreement, the subsequent death or disability of one of the parties will not revoke the agreement. It may be enforced against the representatives of each party. If a dispute arises out of such a circumstance, the instructions are sufficiently comprehensive to permit the Company to require a Court determination as to whether the agreement is a binding one, thus relieving us from the necessity of making the determination. In only one instance in my 25 years of experience has this circumstance arisen—it was resolved by the legal representatives of the decedent being willing to consummatet the transaction as agreed.

These remarks are not designed to express any new principles of practice, but rather to give the fundamentals in simple escrow procedure. Neither is it intended as a legal treatise. I have purposely avoided distinguishing the fine legal interpretations existing in the various jurisdictions and refrained from citing authorities to support the statements herein made. Suffice it to say, that our practice has been established and maintained over a long period of years without encountering any momentous legal complications, which justifies the conclusion that due consideration has been given, thus far, to all possible anticipated legal implications which prudent foresight permits.

To those who would wish to pursue this subject further, I commend the references above referred to, and particularly, to Walter S. Home's book, entitled "Escrows Land-Title Procedure" published by O. W. Smith of Los Angeles. Mr. Home is the former Secretary and Counsel of the National Title Insurance Company of Los Angeles and a member of the California Bar.

American Title Association 1951 Directory

The American Title Association distributes one copy of the directory to all members in good standing. It distributes copies to national large users of our products. But it cannot cover the field available to the individual member.

Your National Officers enthusiastically recommend to all members distribution of extra copies of the directory by YOU to your customers and potential clients.

Distribute, with your compliments, to
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Legal Departments, Branch Managers, Field Men, Appraisers,
Attorneys, Special Representatives of:

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- Railroads
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- Life Insurance Correspondents
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- Chain Stores
- Pipe Line Companies
- State Departments:
  - Banking
  - Attorney General
  - Auditor
  - Highway
- Real Estate Operators
- Real Estate Boards

EXHIBIT A

ARIZONA TITLE GUARANTEE & TRUST COMPANY

ESCROW INSTRUCTIONS

Identify Your Deal With
Escrow No.

Escrow Officer________________ Phoenix, Arizona

h wife husband

whose address is Phone No.

herein called Seller (whether one or more) and

h wife husband

whose address is Phone No.

herein called Buyer (whether one or more) hereby employ Arizona Title Guarantee & Trust Company, to act as Escrow Agent in connection with a sale by Seller to Buyer upon the following terms and conditions which shall be complied with by said parties on or before.........................., 19........, except as otherwise specified herein.

The property herein referred to is situated in Maricopa County, Arizona, and is described as follows, to-wit:

Escrow Agent is instructed that all items checked thus (√) under the columns headed Seller and Buyer are the obligations which each will pay:

			SELLER	BUYER
Total amount to be paid by Buyer	$	Escrow Fee		
Which is represented by: Cash handed Escrow Agent herewith as earnest money, and to be applied on the purchase price____	$	Title Fee		
		Mortgage Policy Fee		
		Recording Fees: Deed		
		Mortgage		
Balance Cash payment to be paid by Buyer on or before____	$	Contract		
		Release of Mortgage		
Mortgage of Record, due____		Revenue Stamps		
with a principal sum remaining unpaid of is to be paid by Buyer.	$	Licensed Broker's commission in the amt. of $____ to		
Seller pays installment due____				
Buyer pays installment due____ and all subsequent.		Taxes:		
Agreement held under Escrow Agent's Escrow No.____with a principal				
sum remaining unpaid of____	$			
Seller pays installment due____		Paving Liens and other special assessments:		
Buyer pays installment due____				
Balance of____	$	S.R.V.W.U.Assn. or other irrigation project assessments and charges.		
Payable as follows:				
		Fire insurance to be provided in the amount of		
To be evidenced by		Interest to be adjusted to:		
on your regular form in use at this date.		Rents to be adjusted to:		
Upon recordation of instruments, title insurance policy is to insure title of		Annual collection fee		

PAYMENT: Upon the filing for record of the documents as provided herein, pay the proceeds of the cash payment to Seller, remitting any future payments which may be paid to Escrow Agent under any agreement for sale executed or transferred in connection herewith to

IF PERSONAL PROPERTY is to be transferred as a part of this transaction, a Bill of Sale will be handed to Escrow Agent for delivery to Buyer.

Escrow Agent is to assume no liability as to the sufficiency of said Bill of Sale or as to said personal property.

SELLER:

Will deliver to Escrow Agent a deed of the property from Seller to Buyer to be held by Escrow Agent until the terms hereof have been performed, at which time it shall deliver said deed to Buyer.

SELLER AND BUYER:

Will deliver to Escrow Agent all documents, pay to Escrow Agent all sums and do or cause to be done all other things necessary, in the sole judgment of Escrow Agent, to enable it to comply herewith and to enable Arizona Title Guarantee & Trust Company to issue any title insurance policy provided for herein.

Should these instructions contemplate a transfer of an interest in an agreement for sale, Seller and Buyer will deliver to Escrow Agent such documents as Escrow Agent may, in its sole judgment, require for the benefit of any party to said agreement.

Authorize Escrow Agent to pay, from any funds held by it for their respective credit hereunder, all amounts necessary to procure the delivery of such documents and to pay, on their behalf, all charges and obligations payable by them respectively, as specified herein.

Will each pay to Escrow Agent, upon demand, all charges payable by them respectively, as provided herein.

Authorize Escrow Agent to execute, on their behalf, form assignments, or otherwise order changes in any insurance called for herein other than title insurance and forward the policies to insurer's agent with the request that insurer consent to such transfer, attach loss payable clause or make such other additions or corrections as may be specifically required herein, and that said agent thereafter return such policies to Escrow Agent or to the parties entitled thereto.

Direct Escrow Agent to comply herewith within the time limits provided herein for compliance, or as soon thereafter as possible unless a demand for cancellation has been made on Escrow Agent as herein provided.

Authorize Escrow Agent, in the event any demand is made upon it concerning these instructions or the escrow, at its election, to hold any money and documents deposited hereunder until an action shall be brought in a court of competent jurisdiction to determine the rights of Seller and Buyer or to interplead said parties by an action brought in any such court. Deposit by Escrow Agent of said documents and funds, after deducting therefrom its charges and its expenses and attorney's fees incurred in connection with any such court action, shall relieve Escrow Agent of all further liability and responsibility.

Will indemnify and save harmless Escrow Agent against all costs, damages, attorney's fees, expenses and liabilities, which it may incur or sustain in connection with these instructions or the escrow or any court action arising therefrom and will pay the same upon demand.

Grant to Escrow Agent a lien upon and authority to reimburse itself for its charges and for any damages or expenses which it may incur or sustain in connection herewith, from all of the rights, title and interest of Seller and Buyer in all of the documents and money deposited hereunder.

Direct that no notice, demand or change in these instructions shall be of effect unless given in writing and that these instructions, and any subsequent instructions, given mutually by Seller and Buyer to Escrow Agent in connection therewith shall constitute the complete escrow instructions, notwithstanding any agreement which Seller and Buyer may have concerning the property.

Direct that all money payable hereunder be paid to Escrow Agent which, upon receipt thereof, shall deposit such funds in a Phoenix, Arizona, Bank in a general escrow account from which all disbursements shall be made by check of Escrow Agent. Escrow Agent shall be under no obligation to disburse any funds represented by check or draft, and no check or draft shall be payment to Escrow Agent in compliance with any of the requirements hereof, until it is advised by the bank in which deposited that such check or draft has been honored, unless Escrow Agent specifically agrees in writing to accept liability for the sufficiency thereof.

Authorize Escrow Agent to act upon any statement furnished by the holder or payee, or a collection agent for the holder or payee, of any lien on or charge or assessment in connection with the property, concerning the amount of such charge or assessment or the amount secured by such lien without liability or responsibility for the accuracy of such statement.

Direct that when these instructions have been complied with and Arizona Title Guarantee & Trust Company is willing to issue its title insurance policy, as hereinafter provided, and when Escrow Agent's charges have been paid, it shall file for record in the appropriate public office all necessary documents required to be filed or recorded, instructing the County Recorder's Office to mail any documents recorded therein to the parties entitled thereto at the addresses given herein, at which time Escrow Agent shall disburse all funds paid to it hereunder, as provided herein.

Agree that the employment of Arizona Title Guarantee & Trust Company, as Escrow Agent, shall not affect any rights to which it may be subrogated under the terms of any title insurance policy pursuant to the provision thereof.

CANCELLATION:

If either party elects to cancel these instructions because of the failure of the other party to comply with any of the terms hereof within the time limit provided herein, said party so electing to cancel shall deliver to Escrow Agent a written notice to the other party and Escrow Agent demanding that said other party comply with the terms hereof within thirteen days from the receipt of said notice by Escrow Agent or that these instructions shall thereupon become cancelled.

When such written notice is delivered to Escrow Agent by the party so electing to cancel, Escrow Agent shall, within three days thereafter, enclose a copy of said notice in an envelope directed to the other party at the address given in these instructions, or such other address as may be filed with Escrow Agent by said other party and deposit said envelope, with proper postage affixed thereon, in the United States mail. If no such address be filed with Escrow Agent, said envelope shall be addressed to said other party at Phoenix, Arizona.

In the event said other party shall fail within said thirteen-day period to comply with all of the terms hereof, these instructions shall become cancelled and Escrow Agent is thereupon authorized:

First: To pay to the party electing to cancel, any earnest money deposited hereunder by said other party, after deducting any charges;

Second: To pay to said other party, any other money deposited hereunder by said other party, after deducting any charges remaining unpaid;

Third: To pay to the party electing to cancel, any money deposited by said party, after deducting any charges remaining unpaid;

Fourth: To return all documents deposited hereunder to the party who delivered the same except documents executed by both Seller and Buyer, which shall be marked "cancelled" and retained in the files of Escrow Agent.

If, under these instructions, a commission is to be paid to a licensed real estate broker, then, notwithstanding any conflicting provisions herein contained:

(1) The party obligated to pay the commission shall not acquiesce in any mutual cancellation of these instructions without having first delivered said real estate broker's written consent to Escrow Agent.

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(2) Upon the cancellation of these instructions for any reason, should any funds, after deducting Escrow Agent's charges, become payable to a party obligated hereunder to pay said commission, then Escrow Agent shall pay to the real estate broker therefrom, a sum equal to one-half of the earnest money deposited by any other party and payable to the party so obligated, but not more than the full amount of such commission.

If Escrow Agent is unable or unwilling to comply with these instructions for any reason other than cancellation as hereinbefore provided, or if Arizona Title Guarantee & Trust Company is unwilling to issue any title insurance policy provided for herein, Escrow Agent is directed to pay the charges payable by Buyer from any money deposited hereunder by Buyer, paying the balance then remaining to Buyer, and to pay the charges payable by Seller from any money deposited hereunder by Seller, paying the balance then remaining to Seller.

AGREEMENTS FOR SALE OF REAL PROPERTY:

Should any part of the amount provided to be paid by Buyer be evidenced by an agreement for sale, an executed copy thereof, the deed herein provided to be furnished by Seller, a deed of the property from Buyer to Seller and such other documents as Escrow Agent may, in its sole judgment, require will be delivered by Seller and Buyer to Escrow Agent which shall record said agreement and hold said deeds until such time as all sums due for the account of Seller under said agreement for sale have been paid and the instructions herein have been met, at which time Escrow Agent shall deliver said deeds and other documents to Buyer.

If Buyer is in default under such agreement, Seller may elect to enforce a forfeiture thereof in any lawful manner, including, but not limited to, forfeiture by notice as hereinafter provided, but only after the expiration after such default of the following periods:

Where Buyer has paid on the purchase price: Less than 20%—30 days; 20% or more, but less than 30%—60 days; 30% or more, but less than 50%—120 days; 50% or more—9 months. In computing said percentages, the amount of any agreement for sale or mortgage agreed to, be paid by Buyer shall be treated as payment only to the extent of principal actually paid thereon by Buyer.

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If Seller elects to forfeit such agreement by notice, Seller shall do so through Escrow Agent by delivering to Escrow Agent a written declaration of forfeiture, addressed to Buyer and to Escrow Agent, together with a fee of $5.00. Escrow Agent shall, within three days thereafter, enclose a copy of said declaration in an envelope directed to Buyer at the last post office address which Buyer shall have filed with Escrow Agent and deposit said envelope with proper postage affixed thereto in the United States mail, or if no such address be filed, address said envelope to Buyer at Phoenix, Arizona.

If Buyer fails to comply with the terms of such agreement to the date of such compliance before the expiration of ten days from the date said copy was deposited in the United States mail as hereinbefore provided, Escrow Agent is authorized to deliver to Seller the documents and money deposited under these instructions or under such agreement.

Seller and Buyer shall pay the following amounts to Escrow Agent for its services in receving, accounting for, and remitting funds received under such agreement. If agreement is fully performed within one year from its date $5.00 each; if agreement is not fully performed within one year from its date $5.00 each at the end of the first year and a like sum at the end of each succeeding year or fraction thereof prior to full performance.

If disbursements are made to other than the parties hereto by reason of death, insolvency, bankruptcy, or incompentency of Seller, or by reason of any legal proceedings, Escrow Agent shall be paid an additional charge of $10.00.

DEFINITIONS

The word "charges" as used herein, refers to all charges and advances made and obligations incurred by Escrow Agent in connection herewith, and all charges of Arizona Title Guarantee & Trust Company in connection with the issuance of its title insurance policy or the cancellation of any order therefor.

The word "property" as used herein, refers to the real property described in and the subject of these escrow instructions.

The word "party" as used herein, refers to Seller or Buyer as the case may be.
The phrase "Seller and Buyer" as used herein, refers to Seller and Buyer both jointly and severally unless otherwise specified.

The day provided herein within which complaince with any requirement must be met shall end at the close of the then regularly established public business hours of Escrow Agent for such day, provided, should Escrow Agent be closed during any of said business hours on said day such requirement may be met on the next succeeding day on which Escrow Agent is open for business throughout said business hours.

TITLE INSURANCE

The title insurance provided for herein, shall be subject to the conditions of and evidenced by the regular form of owner's title insurance policy of Arizona Title Guarantee & Trust Company with a limit of liability equal to the total amount to be paid by Buyer. Said policy, upon issuance, shall insure Buyer against loss by reason of defects in the title to the property on the date of filing for record of the documents as provided herein, subject to such of the following exceptions as may be applicable in addition to the regular printed exceptions thereof:

(1) Taxes payable by Buyer as set forth herein;

(2) Building and other restrictive covenants to which the property is subject;

(3) Easements and rights of way for roadways, canals, laterals, ditches and public utilities over and across the property;

(4) Mortgages referred to herein;

(5) Rights of parties under the agreement for sale referred to herein;

(6) Rights of Buyer under the agreement for sale provided for herein.

(7) Any liens or encumbrances affecting said property suffered or incurred through any act or fault of the party insured or anyone deriving an interest in said property by or through the said party insured.

NOTE: There are some matters which Arizona Title Guarantee & Trust Company does not attempt to investigate or determine and for which it assumes no liability. While not a complete list, experience has shown that among these, the following deserve your particular consideration:

(1) Unrecorded mechanic's and material men's liens.

(2) Current personal property taxes.

(3) Utility charges, such as electric, gas, water and sewer.

(4) Charges for irrigation water and power.

(5) Boundary lines, location of improvements and possession.

(6) Compliance with limitations on use of the property, such as zoning and building ordinances and building and race restrictions.

(7) Premiums for fire insurance policies provided for herein. (Determination should be made that such premiums are paid and that such policies are in effect.)

(8) The provisions or the violation of any regulation of any governmental agency pertaining to the sale, resale, rental or occupancy of the property if priority assistance was obtained in securing construction materials for any building thereon.

There shall be no responsibility upon the part of Escrow Agent to see that the insurance provided herein is renewed upon expiration or otherwise kept in force.

Any Mortgagee's Policy of Title Insurance provided for herein, shall be subject to the conditions of and evidenced by the regular form of Mortgagee Policy of Title Insurance of the Arizona Title Guarantee & Trust Company with a limit of liability equal to the total amount of the Note and Mortgage insuring the Mortgagee against loss as therein stated, subject to building and other restrictive covenants to which the property is subject; easements and rights of way for roadways, canals, laterals, ditches and public utilities over and across the property; and terms and conditions agreed upon herein between Mortgagor and Mortgagee.

The note, mortgage, any fire insurance policies, and Mortgagee's Policy of Title Insurance, if any, shall be mailed to Mortgagee, upon the closing of this escrow, provided that, if Escrow Agent is to act as collection agent for said note and mortgage as provided herein, it is authorized to accept payments as specified in said note and to retain said documents in collection. The instruments may be withdrawn from collection upon payment of Escrow Agent's current collection fee and notice to the Mortgagor.

Mortgagee will presently execute and deliver to Escrow Agent a Release of said Mortgage, which shall be held by Escrow Agent and delivered by it to the party entitled thereto, together with the mortgage and note secured thereby, ONLY upon payment in full thereof. If said release is incomplete in any particular at the time of delivery to Escrow Agent, it is authorized to complete the same.

....
Seller

....
Seller

....
Buyer

....
Buyer

EXHIBIT B

ARIZONA TITLE GUARANTEE & TRUST COMPANY
ESCROW INSTRUCTIONS

Identify Your Deal With
Escrow No.

Escrow Officer____________________ Phoenix, Arizona

h wife husband

whose address is Phone No.

herein called Mortgagor (whether one or more) and

h wife husband

whose address is Phone No.

herein called Mortgagee (whether one or more) hereby employ Arizona Title Guarantee & Trust Company, to act as Escrow Agent in connection with a mortgage by Mortgagor to Mortgagee upon the following terms and conditions which shall be complied with by said parties on or before____________________, 19____, except as otherwise specified herein.

The property herein referred to is situated in Maricopa County, Arizona, and is described as follows, to-wit:

Escrow Agent is instructed that all items checked thus (V) under the columns headed Mortgagor and Mortgagee are the obligations which each will pay:

			Mortgagor	Mortgagee
To be evidenced by a mortgage and promissory note, on your forms now in use, or on forms used or prescribed by Mortgagee, in the sum of____________ to be executed by Mortgagor to Mortgagee, as follows:	$______	Escrow fee		
		Mortgage Policy fee		
		Recording fees		
		Deed		
		Mortgage		
		Release of Mortgage		
		Revenue Stamps		
		Licensed Broker's Commission in the amount of $______		
		Taxes:		
Cash handed Escrow Agent herewith by Mortgagee____________	$______	Paving liens and other special assessments and charges:		
Cash to be handed Escrow Agent by Mortgagee on or before____________	$______			
		S. R. V. W. U. Assn. or other irrigation project assessments and charges:		
Upon recordation of instruments, Mortgagee's Policy of Title Insurance is to be issued as herein provided, and proceeds of the mortgage paid to Mortgagor. All payments under said mortgage collected by Escrow Agent shall be remitted to Mortgagee____________		Fire Insurance to be provided in the amount of $______		
		Annual Collection fee $______		

Escrow Agent is authorized to obtain proper mortgage clauses to be attached to any fire insurance policies in connection with this escrow. There shall be no responsibility upon the part of the Escrow Agent to see that the insurance provided for herein is renewed upon expiration or otherwise kept in force.

The title insurance provided for herein, shall be subject to the conditions of and evidenced by the regular form of Mortgagee's Policy of Title Insurance of Arizona Title Guarantee & Trust Company with a limit of liability equal to the total amount of the note and mortgage. Said policy, upon issuance, shall insure Mortgagee against loss by reason of any defect in the execution of said mortgage or by reason of any incorrect statement or guaranty in the policy concerning the title to the land herein described, or by reason of any defect in, or lien or encumbrance on the title to the said land at the date thereof; excepting only the defects, liens, encumbrances and other matters mentioned in the written and printed exceptions to the policy; and as part of the policy, subject to all its terms, conditions, exceptions and stipuations, the said Arizona Title Guarantee & Trust Company will guarantee that the title to said lands, subject to the said mortgage therein described, is vested in the mortgagor, subject to Building and other restrictive covenants to which the property is subject; easements and rights of way for roadways, canals, laterals, ditches and public utilities over and across the property; and terms and conditions agreed upon herein between Mortgagor and Mortgagee.

Escrow Agent is to pay from said funds, all amounts necessary to procure delivery of such documents required to enable it to issue the title policy specified above, and to pay all charges and obligations payable by Mortgagor affecting said property, and which are now due or delinquent.

If Escrow Agent is unable to comply with these instructions within the time specified, Mortgagee may withdraw all money and papers belonging to Mortgagee, on demand; but, in the absence of such demand, Escrow Agent shall proceed to comply with these instructions as soon as practicable.

All money payable hereunder shall be paid to Escrow Agent, which, upon receipt thereof, shall deposit such funds in a Phoenix, Arizona, Bank in a general escrow account from which all disbursements shall be made by check of Escrow Agent..

Time is declared to be the essence of these instructions.

The note, mortgage, any fire insurance policies and title insurance policy shall be mailed to mortgagee, upon the closing of this escrow, provided that if the Escrow Agent is to act as collection agent for said note and mortgage as provided for herein, it is authorized to accept payments as specified in said note and to retain said documents in collection.

Mortgagee will presently execute and deliver to Escrow Agent, a release of said Mortgage, which shall be held by Escrow Agent and delivered by it to the party entitled thereto, together with the mortgage and note secured thereby, ONLY upon payment in full thereof. If said release is incomplete in any particular upon its delivery to Escrow Agent, it is authorized to complete the same.

The instruments may be withdrawn from collection upon payment of Escrow Agent's current collection fee and notice to the mortgagor.

____________________ ____________________

____________________ Mortgagor ____________________ Mortgagee

Bankruptcy and Its Problems

BERTRAM K. WOLFE

(Delivered at 1950 Convention of Pennsylvania Title Association.)

After more than a decade of operation under the Chandler Amendment, most issues have been resolved either by further amendment or by court interpretation. I now think it is safe to say the Bankruptcy Law is being administered with a minimum amount of doubt or confusion. The Chandler Act has been a very successful addition to the Bankruptcy Law, although there are still some problems, as there naturally would be.

The Definition of a Transfer

One of the most controversial sections of the 1938 amendment was the definition of the date of a transfer of either real or personal property, as applied to fraudulent conveyances and voidable preferences.

This arbitrary definition provided that the date of a transfer was the date it became so far perfected that the title of the transferee would be superior to the right of a judgment creditor of or bona fide purchaser from the transferor. (1) It was a summer Sunday afternoon when that definition was concocted by Jacob I. Weinstein and the late Bernard A. Illoway of the Philadelphia Bar, and myself. We had in mind the simple case of the debtor who borrowed money from a bank or other financial institution and transferred machinery or other tangible physical assets by a bill of sale, as security, but without transferring possession. If the transferee subsequently took possession because of a default in installment payments or interest, should the date of the transfer relate back to the date of the original agreement or should it be considered as of the date possession was taken? An original transfer may have been for an actual present, new consideration, but inasmuch as between the time of that original transaction and the date when delivery was actually made a judgment creditor of the transferor could have obtained a lien upon the property superior to that of the transferee, it was thought best that the date of the transfer should arbitrarily be fixed as of the date of the taking of possession rather than as of the date of the original agreement.

Voluntary Transfer

This had the effect of making a transfer for a present consideration actually a transfer for a past consideration in some cases, but it had also the effect of striking down secret liens and made the transfer vulnerable to a preference suit if a petition in bankruptcy was filed within four months thereafter.

I think it was Professor McLaughlin of Harvard who suggested that the transfer should be perfected as against a possible bona fide purchaser from the transferor as well as against a possible judgment creditor.

Frankly, I do not think that anyone contemplated the far-reaching effect of the so-called bona fide purchaser test on the assignment of accounts receivable, trust receipts and other security transactions. However, when the facts in the now famous case of Corn Exchange National Bank vs. Klauder (2) were presented to the Supreme Court it became very obvious to parties interested in lending money on intangibles, that the bona fide purchaser test might well be considered oppressive and certainly inequitable.

> Through the courtesy of the author and the Pennsylvania Title Association it is our privilege to carry in Title News this excellently prepared discussion on certain sections of the Bankruptcy Act.
>
> The author, Mr. Bertram K. Wolfe, is a member of the Psnnsylvania Bar Association and contributor over the years to that which we might describe as a post graduate course in the law when our Pennsylvania Title Association meets in convention.
>
> Mr. Wolfe is Professor of Law at the Temple University in Philadelphia; he is Chairman-elect of the National Bankruptcy Conference; he is Chairman of the Committee on Bankruptcy, Commercial Law League of America; he has made valuable contributions, particularly relating to the Bankruptcy Act as Associate Editor of the Commercial Law League Journal and the Journal of the National Association of Referees in Bankruptcy.

In that case a debtor assigned certain accounts receivable to a bank for a present consideration. The agreement was that the debtor should continue to collect these accounts and turn the money over to the bank when collected on account of the bank's claim, but because, in Pennsylvania, no notice was given to the customer accounts, the transfer of those accounts receivable under the law as it stood at that time was not good as against a possible subsequent bona fide purchaser thereof. Consequently, although, the transfer to the Corn Exchange National Bank was in fact for a present and new consideration, because the transfer was never perfected as against a possible subsequent bona fiide purchaser by notice it was held to be for a past consideration, and when bankruptcy ensued within four months after the date when notices were finally given to the customer accounts, it was held to be a voidable preference.

Another situation where the bona fide purchaser test was applicable was in a recent case in Philadelphia, the bankruptcy of H. Richard Bennewitt (3). Bennewitt was the owner of real property in Montgomery County. He sold it and took back a purchase money mortgage for $17,000. He alleged that immediately upon taking back the mortgage and as of the same day on which the settlement was made, he assigned the mortgage to his parents in consideration of a cash payment to him by them of $17,000.00.

No Notice

The assignment of the mortgage was not recorded. It doesn't have to be, but neither was notice given the mortgagor of the assignment. Consequently, when he went into bankruptcy some time later, and when the assignment turned up, the trustee in bankruptcy took the position that the assignment to the mother and father was not good as against a possible subsequent bona fide purchaser because there had been no recording or notice to the mortgagor. There had been no perfection as against a possible subsequent purchaser of the mortgage so the date of the assignment of the motgage was considered as immediately before bankruptcy rather than as of the date when it possibly actualy took place. What was claimed a transfer to the parents for a present actual consideration was held to be for a past consideration because it had never been perfected under the bona fide purchaser test.

Many lawyers and writers felt that the bona fide purchaser test was an advantageous addition to the law, notwithstanding the surprise interpretation resulting from the Klauder Case. But the interests representing security transactions were against it, of course, and they have just succeeded in having passed the amendment of

March 18th, 1950. (4) In this amendment the bona fide purchaser test with respect to the transfer of personal property has been deleted and the sole test is whether or not the transfer was perfected as against a judgment creditor. With respect to the transfer of real estate, the bona fide purchaser test remains the sole test to determine the date of the transfer. Because this is so new and because it has that very important feature with reference to the transfer of real estate, I thought it important to bring it more particularly to your attention, if you haven't already studied it.

There has always been in the Bankruptcy Law a right on the part of the estate to recover a voidable preference. A preference is a transfer by the debtor of any asset while he is insolvent to a pre-existing creditor. (5) If on the date of the transfer the creditor knew or had reasonable cause to believe the debtor was insolvent and if bankruptcy is filed within four months after that date, then it is a voidable preference and may be recovered. (6) Accordingly, the date of the transfer is very important.

Time of Occurrence

The new amendment is complex. It attempts, in great detail, to spell out in more than a thousand words, when this date occurs, as compared to the one hundred words that were used in the previous law. Confining myself entirely to a transfer of real property, it is said that such a transfer is deemed to have been made when it becomes so far perfected that no subsequent bona fide purchaser from the debtor could create rights in such property superior to the rights of the transferee. (7) The judgment creditor test, as I said, is used solely to fix the date of the transfer of personal property, and the bona fide purchaser test is used solely with respect to real estate transfers.

The amendment then attempts to describe how and only how a subsequent bona fide purchaser could create such superior rights. It says: "* * * a purchase could create rights superior to the rights of a transferee within the meaning of paragraph (2), if such consequences would follow only from the * * * purchase itself, or from such * * * purchase followed by any step wholly within the control of the * * * purchaser, with or without the aid of ministerial action by public officials. * * * Such a purchase could not create such superior rights for the purposes of paragraph (2) through any acts * * * subsequent to such a purchase which require the agreement or concurrence of any third party or which require any further judicial action, or ruling." (8)

What that all means or to what specific circumstances it was intended to apply, I do not presently know, and we will probably only get further enlightenment when and if the drafters of this particular provision choose to make some explanation of the various problems they had before them when writing these words. Very little help can be gleaned from the report of the House Judiciary committee which simply says, "In other words, for illustration, it includes, as it should, special priority liens or rights that may be acquired only by the agreement or concurrence of a third party or further independent judicial action." (9)

Time Element Again

Passing that, however, there is another sub-section of the amendment which is much clearer, and is also very important. If applicable state law requires a transfer of real estate to be perfected by recording, then that recording must be done within 21 days in order to relate back to the date of the actual transfer. If it is not so recorded within 21 days, even though the applicable state law allows a longer time—as I think it does in Pennsylvania—then the date of the transfer will be the date of actual recording, and it will arbitrarily become a transfer for a past consideration, and possibly be a voidable preference. (10) Furthermore, with respect to mortgages, inasmuch as applicable state law in Pennsylvania requires immediate recording in order to perfect the mortgage against a subsequent bona fide purchaser, the mortgage must be so recorded, or otherwise, when later recorded, it will be for a past consideration and a possible voidable preference if bankruptcy occurs within four months and the debtor is solvent. The time for recording a deed, if bankruptcy is going to follow within four months, is now shortened to 21 days in order to relate back and be good as against a subsequent bona fide purchaser.

BERTRAM K. WOLFE

There may be a number of occasions where this new law would be applicable to your problems. I have thought of one. Supposing the owner of real estate transferred his property by deed and you were insuring the title, settlement would be made at the company and the chances are the deed would be recorded immediately and there would be no problem. But, supposing the owner of real estate transferred to X, no application for title insurance was made, and then the deed was recorded 25 days later. The grantee subsequently transferred to someone else who makes application for title insurance. If you were searching the title I think you would say that with respect to the first transfer, outside of the consideration of this new act, the recording within 25 days perfected the title as against a subsequent purchaser from the original transferor, and you would insure that title. However, if a bankruptcy of the first transferor should follow, it could be arbitrarily said that his transfer was for a past consideration and perhaps a preference.

Trustee Sales

By Section 70 (a) the trustee in bankruptcy takes title by operation of law to all property which the bankrupt had on the date the petition was filed which could have been alienated by him or taken in execution by creditors.

The trustee's title is determined as of the date of the filing of the petition and he takes it subject to all valid incumbrances. (11) In other words the trustee takes the title the bankrupt had, unless by some positive provision of the Bankruptcy Law, not now relevant, he may take some superior title. It is the duty of the trustee to liquidate the assets, (12) and he may get, but does not need, permission of the court to sell. But his sale must be confirmed by the court. It has been repeatedly said that the trustee's sale in bankruptcy is not an execution sale, but is a judicial sale; that is, he is acting for and is an arm of the court. Therefore, such sales must be confirmed by the court. (13)

The only legal requirement as to notice which the court must regard are such notices as are required by the Bankruptcy Act itself; that would be the notice to creditors in connection with the confirmation of the sale. The provisions of the judicial code requiring a sale take place in the courthouse or within a certain distance thereof, and after due advertising, are not applicable, even with respect to real estate sales, in bankruptcy cases, and the new code of 1948 so specifically provides. (14)

Power to Authorize Transfer

Many pieces of real estate pass to the trustee encumbered by valid mortgages, tax liens or other liens not voided by the bankruptcy law. It is

often advantageous to the estate, in order to obtain the best price, to expose these properties for sale free and clear of such liens, the liens, if and when they are proved, to be relegated to the fund realized from the sale. There is no doubt that the Bankruptcy Court — it is the Referee, usually—has the power in a proper case to authorize a sale free and clear of liens and thereby discharge the property from the burden of such liens so long as some form of notice is given to the lien creditor and he is given an opportunity to be heard. (15)

The form of the notice is unimportant. In some jurisdictions a simple notice by the Referee, advising the lien creditor that an application has been made to sell free and clear, and fixing a time for a hearing, has been held to be sufficient. (16) In the Eastern District of Pennsylvania, however, we have adopted a more formal procedure. The Trustee takes a rule upon the lien creditors to show cause why the sale should not be free and clear. A copy of the petition and rule is served on the lien creditor and a hearing fixed. One way is as good as another if the lienee is given a reasonable opportunity to appear and be heard in opposition to the proposed sale. The court has the necessary jurisdiction to order the sale free and clear. In most cases the order is freely granted. There is usually very little that a lien-holder can advance in opposition because if the sale brings more than his lien, he is paid in full, which is all he is entitled to. If the sale brings less than his lien, on the application for confirmation, he may elect to take the property or the sum realized even if it is less than his lien. The correct rule is, and should be, that the lien creditor can oppose a confirmation and take the property if the proceeds are not sufficient to pay him in full or he may elect to take the amount realized, whereupon the sale is confirmed.

In Opposition to Order

What may be offered in opposition to the order to sell free and clear? Some cases have said that the Referee should not make such an order unless there is an equity in the property over and above the lien. (17) Another case has said even though the appraisement in the bankruptcy case is less than the lien, the Referee may make the order. (18) Other cases have said the making of the order is in the sound discretion of the court, particularly if there is some question as to the valitdiy of the lien. (19) This is the best rule. It should be flexible and the lien creditor's interest is adequately protected at the time of confirmation.

Whether the order is made or whether the sale is confirmed, is really a problem between the trustee and the lien creditor. If the order to sell free and clear is made and the court has jurisdiction to make it, as far as the title to the property is concerned, and as far as a purchaser from the trustee is concerned, the order is good and the property will be discharged from the lien.

Notice to Lien Creditor

It seems to me that the only question about which a title insurance company need concern themselves is whether or not the proper notice has been given to the lien creditor. If proper notice has not been given to the lien creditor in order to satisfy what might be called due process, the court is possibly without jurisdiction and the order might be a nullity. If proper notice has been given it is unimportant, as far as the purchaser of the property from the trustee is concerned, whether the contest between the trustee and lien creditor was fair or not. It seems to me all you have to look to is whether or not notice has been given in order to satisfy due process and confer jurisdiction. Any notice which gives fair and reasonable opportunity to the lien creditor to be heard and oppose the confirmation is satisfactory.

Tax Liens

If a tax claim is perfected by the entry of a judgment prior to bankruptcy, it is valid as against the trustee under Section 67 (b), even though at the time the lien was perfected the bankrupt was insolvent, and although it was within four months from the time of filing of the petition. If the tax claim is not perfected prior to the filing of the bankruptcy petition, it may still be perfected after a petition is filed by simply giving notice to the Bankruptcy Court or the trustee. This applies to all tax claims that may become liens upon real estate by the entry of a judgment. However, Section 63a(4) of the Act provides that with respect to tax claims or liens assessed against specific property, such as real estate tax, although that tax claim may be a personal liability, it shall not be paid in a bankruptcy case except out of the proceeds of the sale of the property. In other words, real estate owned by a bankrupt which cannot produce for the estate any proceeds over and above valid liens will be abandoned by the Trustee. The tax claim cannot be paid out of the other assets of the estate even though technically a real estate tax claim is a personal liability. The tax remains against the property and the personal liability of the bankrupt will not be affected by his discharge. This special provision of the Act was included for very obvious reasons. Where a bankrupt owned real estate in which there was no equity for the estate over and above valid tax claims and mortgages, the mortgagee could go to the taxing authorities and persuade them to file a claim in the bankruptcy case. This claim would then be paid out of proceeds realized from other assets to the prejudice of merchandise creditors and would inure only to the benefit of the mortgagee. This would not be fair and the tax claim will not be allowed.

After Acquired Property

In Pennsylvania a lien against real estate does not attach to after acquired property, but it has been held by the Supreme Court of the United States that a tax lien in favor of the United States against a bankrupt will attach to after acquired property, irrespective of any state law to the contrary. (20) Although the facts in that particular case pertain to a lien against personal property, the dictum of the opinion is to the effect that it applies to both personalty and realty. Of course, it is not likely that after a tax lien has been entered against a debtor he would thereafter acquire real estate and then become bankrupt, but it is possible.

Estates by the Entireties

The estate by the entireties, as you know, is an estate created in real or personal property, in which both husband and wife are said to own the entire estate and under Pennsylvania law, as in most jurisdictions, a creditor of the husband or wife alone, has no right to issue execution or take that property in satisfaction of his debt. Therefore, in a bankruptcy case, because the rule is that only such property passes to the trustee as is alienable or can be taken in satisfaction by creditors, an estate held by entireties does not pass to the trustee. (21)

Lien Dates Back

You are also familiar with the rule in Pennsylvania. that were a creditor of a husband obtains a judgment against the husband and he has as estate by the entireties, the creditor can do nothing at that time, but if the wife should die before the property is alienated by both husband and wife, the lien of that judgment dates back to the time it was entered and not as of the time the wife died. (22) It, therefore, comes ahead of any subsequent liens after the judgment was entered, or, in fact, ahead of even a mortgage which the husband and wife may have created after that judgement was entered. That is strictly Pennsylvania law, but, applying it to a bankruptcy case which arose in Pennsylvania, the U.S. District Court said in a case where a husband went into bankruptcy, and the wife died subsequently but before the property was alienated, the trustee, having the position of a judgment creditor, relates his title back to the time when the bankruptcy petition was filed, and takes the property. (23) As the trustee stands in the shoes of a possible judgment creditor and has the right to relate back his position to the date of the filing of the petition, it would follow, in Pennsylvania, from the opinion in this case, which is logically

decided, that at any time after a bankrupt's petition has been filed and within five years, if the wife should die and the property has not been alienated by both husband and wife, the trustee will take title to the property and be ahead of any subsequent mortgage or other liens that might have been created. This ruling is entirely independent of the new provision of the Chandler Amendment with respect to the six months waiting period to which I will later refer.

Revival by Trustee?

Now, a question has been posed: A judgment creditor in Pennsylvania may preserve his lien after five years by reviving it on the possibility that the wife may die, say seven or eight years thereafter and before alienation. Could a trustee in bankruptcy also do the same thing and keep alive his potential title by "reviving" the bankruptcy at the end of five years?

It has never been done. It has never even been thought of, as far as I know, probably because this relation back theory is peculiar to Pennsylvania. I do not see any reason, however, why it could not be done. There is a provision of the new Federal Rules of Civil Procedure which provides that all process or procedure after judgment in the Federal Courts shall conform to and follow the practice and procedure in the state courts, (24) and the Federal Rules of Civil Procedure in the absence of anything contrary in the Bankruptcy Act, itself, apply to bankruptcy cases. (25)

If under the practice a judgment creditor may keep alive his lien against an estate by entireties by reviving the judgment, I see no reason why technically, a trustee in bankruptcy could not do the same thing. The chances are that he would not. The estates are generally closed long before five years have gone by, but it is something to think about. As far as the title is concerned, I do not think that title insurance companies need to be particularly concerned. The property can be alienated by husband and wife free and clear of the trustee's potential title, certainly at any time after six months from bankruptcy. As to mortgages within that first five years, I take it you would not insure because of the decision in the Flynn Case. At the expiration of five years it would be a simple matter to ascertain if the trustee had attempted the novel idea of reviving the bankruptcy ajudication. I think this should be done because it is very possible, now that the question has been raised, that some one might try it and succeed. You would simply have to look at the record of the Bankruptcy Court to see whether there had been any attempt to revive, and if there were not, and the five years had gone by, the property is clear.

A new provision of the Chandler Amendment with respect to tenants by the entireties provides that if at any time within six months after the filing of a bankruptcy petition the wife should die and the husband then becomes the sole owner of the property, the property will pass to the trustee. (26) In view of the Flynn decision and the peculiar law in Pennsylvania that we have just considered, I do not think that provision has added anything as far as Pennsylvania is concerned except possibly with respect to alienation during the six months period.

During that period husband and wife may not be able to sell. The words of the act do not so declare, but from the very time this amendment was passed in 1938 there has always been a feeling that during that six months' period the property has been taken out of the market. There is a definite cloud on the title, and if it is alienated during that period and the wife should die, it might, nevertheless, pass to the trustee. Surprisingly enough in twelve years there is not a single reported case interpreting this particular section of the Act with respect to alienation.. All I can do is to call your attention to the fact that there is still a wide open question, and that it would be inadvisable for anyone to take title or insure title or pay money for real estate within that six months period.

Title by Inheritance

By the amendment of 1938 there is also a new, somewhat comparable provision, with respect to inheritances. It is provided that if a bankrupt inherits property within six months after the filing of a petition, the inheritance passes to the trustee and becomes part of the estate. (27)

There have been two cases so far reported interpreting that particular provision. In one of these cases, the inheritance vested the day after the petition was filed. It was held that it passed to the trustee without question. (28)

Assignment of Expected Inheritance

Another case and a rather interesting one was where a debtor, probably in anticipation that he was about to inherit and before the decedent died, made an assignment of his expectancy to another relative. He then went into bankruptcy and a few days after the bankruptcy the decedent dies and the question was whether or not the property passed to the bankrupt's estate or whether the assignment was good. (29) This was a New York case and under New York law the court held that a creditor as of the date of the petition could not have levied upon or attached an expectancy and therefore they said the assignment was good and the assignee would take in preference to the trustee. Even though this decision was based on applicable state law, the decision is questionable.

That, gentlemen, I think, is all I have to say at this time. I certainly will be glad to answer any questions if I can that you might have. I think that is the usual procedure.

DISCUSSION

PRESTON D. BRENNER, Philadelphia, President, Pennsylvania Title Association; Title Officer, Land Title Bank & Trust Co.: That's right. We will be glad to have you answer questions, if somebody has a question. Please first give your name for the record.

GORDON M. BURLINGAME, Vice-President, Bryn Mawr Trust Co., Bryn Mawr: In view of the Act of 1949 in Pennsylvania as to tenancy by the entireties do you suppose that . . .

MR. WOLFE: You mean the act which divides a property in divorce cases?

MR. BURLINGAME: Yes. If the husband had gone into bankruptcy and a petition was filed and within the five year period the bankrupt estate had been closed, and there was a divorce . . .

MR. WOLFE: Was the divorce prior to the bankruptcy or after the bankruptcy?

MR. BURLINGAME: After bankruptcy. Would his interest in the real estate go to the trustee?

MR. WOLFE: If there had been a judgment entered under state law, a judgment against the husband alone, and a divorce, the creditor could only take a half, couldn't he? I think the trustee would only take the half.

MR. BURLINGAME: But he would take the half?

MR. WOLFE: Yes, because he stands in the shoes of the judgment creditor who could levy on the half after the divorce.

MR. BURLINGAME: Then it would relate back to the date of the bankruptcy?

MR. WOLFE: Yes. But after the six month period, if the property is alienated by husband and wife, that gets rid of the judgment creditor, so it also gets rid of the trustee in bankruptcy. The trustee stands exactly in the shoes of the judgment creditor.

MR. BURLINGAME: The thing I am conjuring in my mind is that the petition in bankruptcy, and then a divorce, four years and eight months later, and then an alienation.

MR. WOLFE: By the husband of his half?

MR. BURLINGAME: By the husband and wife now divorced.

MR. WOLFE: But now they hold as tenants in common.

MR. BURLINGAME: That is still subject to bankruptcy. He can't alienate it.

MR. WOLFE: After six months and a divorce he could alienate his undivided one-half interest.

MR. BURLINGAME: But subject to the trust.

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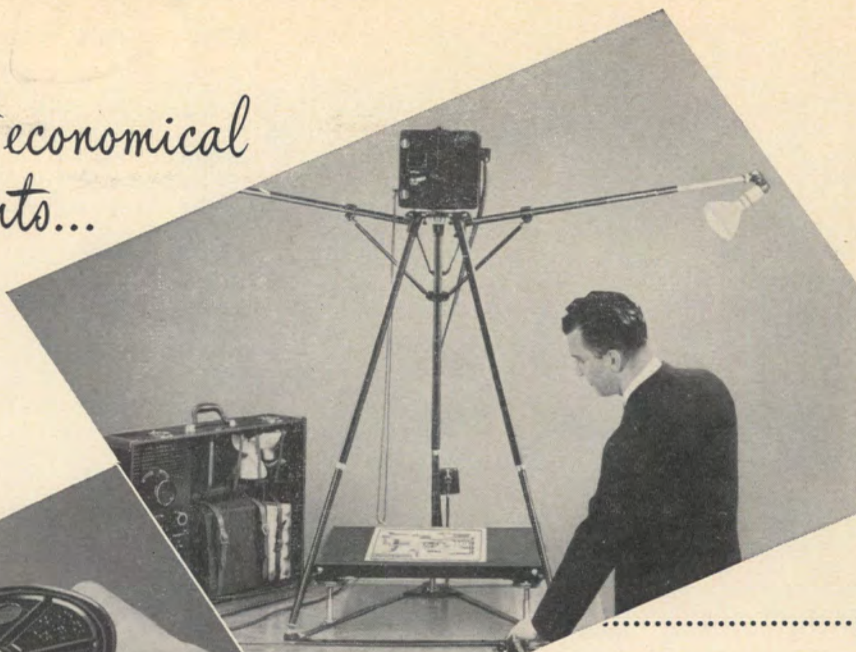

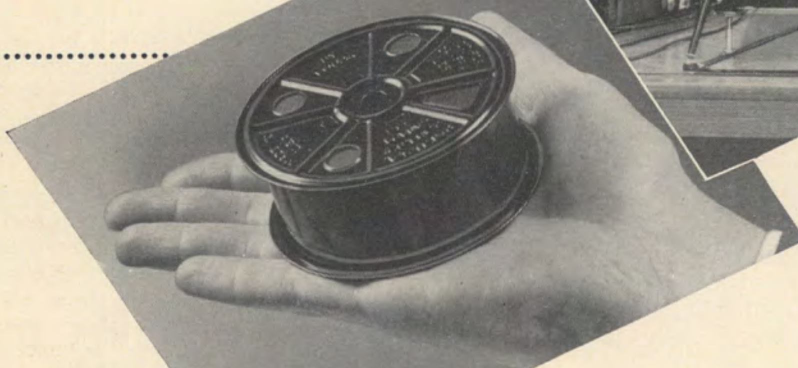

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MR. WOLFE: Wait, there is no trust. Immediately upon the divorce, the judgment creditor could attach and either spouse could alienate his or her one-half interest. As soon as the divorce is decreed they are tenants in common. The judgment creditor could now levy upon his one-half interest. Therefore, as soon as the divorce happened, the trustee would take his one-half interest.

MR. BURLINGAME: Even though the estate is closed?

MR. WOLFE: That doesn't make any difference, because you can always reopen an estate to distribute after acquired property.

MR. BURLINGAME: Thank you, sir.

HERMAN WASHER, Title Officer, Commonwealth Title Company, Philadelphia: In a sale by a trustee in bankruptcy, property is sold free and clear of all liens, including taxes. How about water rents?

MR. WOLFE: Is the water rent a lien?

MR. WASHER: No, not necessarily.

MR. WOLFE: If it is not a lien . . .

MR. WASHER: The tax, even though not a lien, would be upon the fund.

MR. WOLFE: If a tax lien has not been perfected prior to bankruptcy or no notice has been given in order to perfect it after bankruptcy, then the tax claims comes in as a priority against the fund. Wouldn't you say water rent is in the nature of a tax claim?

MR. WASHER: That is the thing I don't know.

MR. WOLFE: I believe that would have to be decided by your applicable state law. If it can be identified as a tax claim and it is not a lien, then it will come in as a priority in the general distribution of the bankrupt estate. If it is a lien it is paid before any proceeds from the sale of the property come into the bankrupt's estate. Whether or not a water rent is a tax claim, I don't know. I think you ought to be able to answer that better than I can. If you know of water rents still in existence, it might be best to include these in your notice to sell free and clear. If the water rent is a lien on the property, it must be included in the notice to free the property whether it is a lien or not.

MR. WASHER: From the title question, I think it would be very important.

MR. WOLFE: It would be.

DAVID B. JAMES, JR., Member of the Law Firm of Moore, Panfil & James, Philadelphia: This isn't technical. Was the amendment of 1950 precipitated by the Virginia Decision on Trust Receipts or was it merely brought to us by discussions?

MR. WOLFE: The amendment came about after a long drawn-out battle that started between securities interests and the National Bankruptcy Conference, ever since the Klauder Case. Many other cases followed that decision and they just piled up one by one. It got to the point where the security interests were in bad shape.

MR. JAMES: You think, then, that the Virginia Case—that it was accidental that the Virginia Case came out a week before?

MR. WOLFE: I would say it was accidental. This bill was in the Senate a number of years. It went to the House and was entirely rewritten there with several different schools of thought with respect to recordation and whether you should provide for bona fide tests and rules as against the bona fide purchaser, and so on, and the act has been written and rewritten a number of times.

MR. JAMES: That is true, but I thought perhaps the Virginia Case precipitated it.

MR. WOLFE: I don't think it did. The amendment was sponsored by the American Bar Association and was due to go through Congress when it did.

FRANK O. SCHLIPP, Member of the Law Firm of Rambo & Mair, Philadelphia: Would the matter be affected by the fact or the question as to when the deed was executed—in other words, if prior to 1925, it wouldn't have the right of partition or right of tenancy in common—getting to tenancies.

MR. WOLFE: You mean, under the Pennsylvania Act? If it doesn't apply, you wouldn't have the questions of divorce or the change from entireties into tenancy in common. That is simply an application of the state law.

J. CHANNING ELLERY, Member of the Law Firm of Rambo & Mair, Philadelphia. I believe you stated that a person taking a motrgage by assignment, to be protected would have to record the mortgage within 21 days under the second portion of that amendment?

MR. WOLFE: No, I said if the applicable state rule is that you must record the mortgage immediately to be protected against a bona fide purchaser, then you must record immediately. In other words, the amendment provides that you must record where recording is required, within at least 21 days, but if the applicable state law requires a shorter period, then you must use the shorter period.

MR ELLERY: But you don't think that takes away the applicable state law of Pennsylvania that notice is applicable?

MR. WOLFE: No—notice is just as good as recording in assignment cases. It is just one way of giving notice.

(1) Sec. 60a

(2) 318 U. S. 434; 63 S. Ct. 679 (1943)

(3) U. S. District Court, Eastern Dist. of Penna., Cause No. 23246

(4) Act of March 18, 1950; 11 U. S. C. A. 96

(5) Sec. 60a (1)

(6) Sec. 60b

(7) Sec. 60a (2)

(8) Sec. 60a (5)

(9) Report of House Committee on the Judiciary, August 22, 1949

(10) Sec. 60a (7)

(11) Sec. 70a

(12) Sec. 2a (7)

(13) Coulter vs. Blieden, (CCA-8, 1939) 104 F. (2d) 29; cert. den. (1939 308 U. S. 583, 60 S. Ct. 106

(14) Title 28, U. S. C., Sec. 2001 (c)-2002

(15) Coulter vs. Blieden, supra. In re Eastern Products Corp. (DC Fla. 1923) 286 Fed. 447. Van Huffel vs. Horkelrode, (1931) 284 U. S. 225, 52 S. Ct. 115

(16) West Texas Const. Co. vs. Nelson, (CCA-5, 1935) 77 F. (2d) 754

(17) New Liberty Loan vs. Nusbaum, (CCA-4, 1934) 70 F. (ad) 49. Seaboard Nat. Bk. vs. Rogers, (CCA-2, 1927) 21 F. (2d) 414

(18) In re Hout, (DC Pa. 1934) 9 F. Supp. 419. In re Beardsley, (DC Md. 1941) 38 F. Supp. 799

(19) Coulter vs. Blieden, supra. Federal Land Bank vs. Kurtz, (CCA-4, 1934) 70 F (2d) 46

(20) Glass City Bk. vs. U. S., (1945) 326 U. S. 265; 66 S. Ct. 108

(21) Meyer's Estate, 232 Pa. 89 (1911)

(22) Fleek vs. Zillhaver, 117 Pa. 213. Beihl vs. Martin, 236 Pa. 519

(23) In re Flynn, (DC Pa., 1924) 1 F. (2d) 566

(24) Rule 69a, F. R. C. P.

(25) Bankruptcy General Order 37, January 16, 1939

(26) Sec. 70a (8)

(27) Sec. 70a (8)

(28) In re Carl, (DC Ark., 1941) 38 F. Supp. 414

(29) In re Barnett, (CCA-2, 1942) 124 F. (2d) 1005

Some Legal Considerations

Delivered at Convention of Mutual Savings Banks and Reprinted by Permission

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Let me, at the outset, disavow any pretense of scholarship in these remarks; not that I feel any such disclaimer is going to be necessary, but simply to anticipate what shortly will be quite apparent. I doubt, however, that any of you really expect or want to be taken on a lecture tour through the legal dream world, so probably no one will be disappointed, on that score at least. What is of more immediate interest to you and to me is not so much the epic involutions attending the historical development of real estate law, for example, but the facts of every-day business life as they relate to investment in real estate securities,—strictly a bread and butter approach to the day's work. How does the lawyer figure in this?

Almost any lawyer can cite plenty of reasons for not doing something. It comes rather easy for him to pick flaws; but at the risk of some oversimplification, and at the same time not wishing to minimize unduly the need for a reasoned caution in approaching a novel situation, let me say that I conceive the function of the lawyer, particularly the business lawyer, to be something more than to act as a traffic cop, color blind to everything but red. I think the principal function of the lawyer advising business men should be first, of course, to point out the navigational hazards, but, equally to point out how business may be done, in reasonable safety,—without undue exposure to the gimmicks and booby-traps lying about. This means that the lawyer must judiciously temper his pursuit of riskless perfection, lest his client end up in a glass jug, safe but sterile.

This is the approach we have cultivated continuously at the National Life during the past fifteen years while acquiring and administering a portfolio of a couple of hundred million dollars worth of FHA mortgages of all types, including construction loans. We have seen, of course, that there are legal risks and deterrents, some of them serious, in loaning money all over the country on the strength of local land securities, but fortunately our experience over this period has amply demonstrated the feasibility and safety of operations of this kind, if undertaken with reasonable understanding and adequate preparation.

Now, I assume all of you have made and are making FHA loans in your own particular localities, so we can well omit discussion of this agency's structure, functions and requirements. As I understand it, you are mainly concerned now with the practical legal aspects of buying mortgages on properties in states other than your own. I can well appreciate that your approach to this expanded activity, to say the least, is inclined to be conservative, though you do have in mind, I am sure, the successful experience of many of your member banks, like those in Vermont, who for several years now have been going afield for FHA loan investments. I think this experience deserves careful analysis and consideration.

But to get on with the subject: In my opinion, the most valuable single contribution to the development of this type of investment operation is title insurance. This instrumentality within the past fifteen years literally has annihilated that most formidable barrier to the free flow of mortgage loan investments across state lines,—the inescapable fact that the essential ingredient in every mortgage loan transaction is title to land, an element which, as you know, must always be tested by the local law. Land being immovable, to this extent the investment is immobilized.

There are other ways, of course, by which the investor domiciled in Boston, for example, can test the validity of a land title in El Paso, Miami, Seattle, San Diego, Detroit, Atlanta, or most anywhere else. He can rely on an abstract of title and an attorney's opinion, or a torrens title certificate in the very few places where the system of land registration exists. Torrens titles are so seldom seen, however, that they may well be dismissed for our present purposes. The only remaining alternative worth mentioning, aside from title insurance, therefore, is the traditional history of title as disclosed by the public records, whether the examination is made by reference to the original records themselves or to an abstract of the original records. The investor relying on a record title faces two important questions, (1) the sufficiency of the abstract, and (2) the professional worth of the examining attorney. But even if the abstracter has done his work well and a most completent attorney has diligently studied the abstract, the investor still can't be entirely sure he isn't loaning money on a delusion. A seemingly perfect title is not always a good title, for there are many title flaws which are not necessarily apparent of record. Most titles which appear good of record, are, of course, wholly sound and long experience has shown that it's reasonably safe to rely on them. But experience has also shown that many a time bomb can be ticking away night and day in what appears from the record as a perfect title. If it blows up in your face, and don't think that such eventualities are uncommon, more than likely the loss will be all yours. Such things as forgeries, impersonations, secret marriages, faulty divorces, incompetency of parties, and the existence of children born after the death of a testator are but some of the title hazards that don't appear in the record, and any one of them can cause real trouble.

In my opinion, therefore, you will be well advised to insist upon title insurance whenever and wherever it is available, thus to assure yourselves that the borrower is in fact the owner of the security and the mortgage offered you a valid and enforceable first lien. Should either of these essentials be assailed while your debt remains unpaid, or even after you have acquired or sold the security, the burden of defense and indemnity is cast upon the title insurer. The business of title insurance today is run on a sound and progressive basis, and the vital part that title insurance has come to play in our field is amply demonstrated by the fact that nowadays the great bulk of loans originated for investment offerings are covered by title insurance. To this very great extent your title problem is self-solving.

It is, moreover, a tribute to the title companies that they have clarified and standardized their practices and contracts, and have achieved remarkable uniformity in all their operations. As the outstanding example of their enlightened approach to the title problem in mortgage banking, I would cite the development of the ATA Rev. (1946) standard mortgage policy. This clear and relatively simple contract insures the investor that the borrower's title is good and marketable and the mortgage valid and enforceable, even against defects not apparent of record. This contract has become the standard full coverage title insurance policy, and is the type most commonly seen nowadays. Texas, California, New York and Illinois (Chicago) have variants of the ATA policy, but they are basically similar. Some companies still issue an outdated form, the LIC, which differs from the ATA in style and phraseology, but very little in substance.

I consider it especially significant to people like ourselves who have come to rely on title insurance that the law reports show virtually no title policy litigation, and this I attribute both to clear expression and to enlightened management.

Time, of course, forbids a detailed discussion of policy provisions and coverage at this point, but briefly

this is what the ATA form covers. It insures the named insured, and successive owners of the indebtedness, including government agencies acquiring either the debt or the property, for the duration of the insured's interest in the debt, the property or his liability under covenants of warranty. The mortgagor's title is guaranteed to be good and marketable. The validity and priority of the mortgage lien are also guaranteed and protection against the effect of mechanic's and materialmen's liens, recorded or not, is included. If you are identified as assignee of the mortgage in the policy the validity of your assignment is guaranteed even though it may not be recorded. The owner of the land is identified by name, and unless there is a specific exception as to facts which would be shown by an accurate survey or inspection of the premises, all objections or defects which would appear from a survey or an actual inspection of the property are within the policy coverage. All title policies are effective, of course, only from the date thereof, which in all cases should be no earlier than the date the mortgage is filed for record. Matters excepted from policy coverage are clearly stated in what is known as Schedule B and the title examiner should be very careful to note and evaluate these exceptions most of which are unobjectionable to the FHA on tender of title in exchange for debentures. In case of doubt, you can clear the question with the FHA before disbursing your funds.

Thinking that perhaps a graphic tabulation might help to highlight the essential provisions of the various title policies most frequently seen, I have added such a chart to the transcript of these remarks.

It wouldn't be fair to end this discussion of the title problem, however, without also saying that in localities where title insurance is not available, good abstracters and title attorneys are quite sure to be found, and once you are satisfied as to their professional competency, the title risk involved is no more than a reasonable business risk, and one freely assumable by prudent investors.

Next, of principal concern is the matter of foreculosures. Taking a man's home away from him isn't exactly a soul-satisfying endeavor, but occasionally it has to be done. Fortunately, the loans that end up in foreclosure are an extremely small percentage of the gross volume, and even where foreclosure is necessary, it is never undertaken precipitously. Here again, however, we must contend with the diversity of local laws and procedures for enforcement must be sought at the situs. In some states foreclosure is quick and cheap, in others rather long drawn out and expensive. This immediately suggests rather pointedly that FHA loan purchases in the quick foreclosure states are to be favored over the states where foreclosure is more involved and expensive, but this shouldn't be the sole determining factor, for obviously a good loan in a bad foreclosure state is much to be preferred to a poor loan in a good foreclosure state. Without benefit of analysis or inference of any kind I will merely point out to you that the National Life have yet to foreclose a single FHA loan in Illinois, for example, the state usually mentioned along with New York as the extreme in undesirable foreclosure characteristics.

The investor in out-of-state mortgages is principally concerned with two foreclosure questions: How long will it take, and what will it cost? The time can vary roughly from 30 days to 20 months, and the cost from a very few dollars to $400, or more, speaking only of routine, uncontested cases, and depending upon the jurisdiction. In Tennessee, for example, foreclosure is by trustee's sale after 20 days' notice by publication, and there is no redemption after the sale if the right to redeem has been waived, which it always is in the deed of trust. The cost need not be more than $75. On the other hand, we have Illinois where it will take you 20 months to foreclose a mortgage and cost you three or four hundred dollars. In Illinois it is strictly and exclusively a judicial proceeding in the classic manner, and there is a fifteen months redemption period after the sale, during which time the mortgagor stays in possession rent free.

To illustrate the wide diversity of local foreclosure procedures, I have attached another chart to the text of these remarks, lacking the time for detailed treatment otherwise. This tabulation, I repeat is merely for illustrative comparisons, subject to verification, and must not be taken as inspired and authoritative revelation of these mystical rites in which hapless debtors are sacrificed.

Of incidental interest at this point, let me mention that as to actual method, foreclosures fall into two categories as I have already suggested,—judicial and non-judicial, the former requiring court action, the latter being merely summary sales under powers contained in the mortgage or deed of trust, without court action. Judicial foreclosures are sub-divided again into those conducted according to the grand and ancient customs of the Court of Chancery, and those conducted more or less in the nature of proceedings at law. This is a distinction with little practical difference, however, for the end result in a properly conducted foreclosure, by what ever method, is always the same. The security is liquidated.

Now, brief mention of deficiency judgments. In FHA lending, the deficiency judgment has virtually no purpose or value. The FHA does not insist that you recover a deficiency judgment, and since you do not need it to effect recovery of your investment under the contract of FHA insurance, why bother? Moreover, the pursuit of deficiency judgments has become subjected to so many legal harrassments that it's more like chasing a will-o'-the-wisp than anything like sound practice. Except in the case of special and over-riding consideration, forget deficiency judgments.

Another important item of concern in the acquisition and management of a geographically diversified mortgage portfolio is your relationship with the local servicing office, usually another bank or a mortgage loan correspondent. Obviously, this relationship should be clearly understood and expressed in a formal servicing contract reflecting mutual agreement as to rights, duties and functions of both parties.

Assuming you have selected your local servicing correspondent for his credit. experience, facilities and good reputation, I believe your servicing contract should be drawn with a view towards making him an independent contractor, so far as possible, responsible for results rather than to make him strictly your agent in all respects. Among other things, depending upon the exact relationship intended, inclusion of provisions covering the following specific points should be considered:

1. The correspondent's compensation,
2. The fact that the correspondent is to have no right or interest in any loan except the right to service it as long as you own it and the servicing contract is in force,
3. Designation of the correspondent as trustee of mortgage payments collected, for remittance or application as required in payment of taxes or insurance premiums,
4. The keeping and inspection of records,
5. Segregation of funds in the correspondent's hands, pending remittance,
6. Responsibility for paying taxes and insurance premiums and keeping insurance in force,
7. Responsibility for giving default notices to governmental agencies,
8. Responsibility as to foreclosure,
9. Termination of contract as to any particular loan upon sale thereof by you,
10. Termination of contract generally. If at all possible, secure the right to terminate at your option, or for unsatisfactory servicing, you to be the sole judge.

Often instead of a general servicing contract with a particular correspondent covering the entire ac-

count, you may find loans offered with an individual servicing contract for each loan which follows the loan on transfer to successive investors. This is more frequently the case with loans which were originated for more or less indiscriminate distribution among purchasers in the general market. In these cases it is difficult to effect revisions in the contract, but these should be little real need for this since servicing functions are now pretty well standardized and through normal development servicing contracts have come to be equally standardized and to enjoy ready acceptability by investors generally.

Most loans we know live out their normal lives on the books in the pleasantly uneventful atmosphere of regular amortization, but the human element inherent in every home loan will often manifest itself in more noticeable ways. There may be delinquencies and reinstatements, bankruptcies, probate administration, prepayments, changes of ownership, refinancing, fire and windstorm losses, besides foreclosures already mentioned, and other things that require special attention from time to time. Among these other things and in increasing frequency, you will get requests for the release of original borrowers from personal liability when the security is sold to a new owner. It has been our policy at the National Life to freely grant these requests, subject to FHA concurrence, upon assumption of the mortgage debt by the new owner and upon satisfactory showing that the substituted obliger is an acceptable credit risk. This calls for the execution of a three-way assumption and release agreement, signed by the original borrower, the assuming purchaser, and the mortgage holder, reflecting the following essential provisions:

1. Recital of the underlying circumstances and considerations influencing the transaction,
2. Representation that no secondary liens or claims against the property exist, except for taxes not delinquent, the accuracy of such representations being a condition precedent to the operation of the agreement,
3. Assumption of the debt by the new owner,
4. Release of the original borrower by covenant not to sue, and as to the original borrower limitation of recovery to the security only,
5. Non-release from liability on title covenants, and express preservation of the original lien.

The execution of such an agreement will not impair your title insurance coverage. The ATA policy expressly so provides, and I am sure all major title companies take the same attitude even in regard to policies which are silent on the subject.

Most sales, of course, do not necessitate the execution of an assumption and release agreement, the sale being merely subject to the outstanding mortgage which the grantee may or may not assume and agree to pay. Usually the only way you learn of such sales is when you get a change of ownership rider for your hazard insurance policy.

As my final observation, let me emphasize what we all know already, —that in this field of human endeavor, probably more than any other, it is the personal element that counts. More than any other thing, you need the right people in the right places, people who are thoroughly conversant with the FHA system, people who have working knowledge of real estate and real estate law, people who understand banking and accounting. You need people who are good administrators rather than thinkers or theorists. Even the professional man, the lawyer in your organization, must organize his work administratively if he is to be a useful part of your mortgage investment unit.

In the limited compass of these remarks I have tried to do little more than point out some of the grosser considerations that might concern the lawyer in the field of mortgage banking. My remarks are offered not at all with the idea that they should be considered either exhaustive or authoritative, but merely in the hope that they might be informative and stimulating to the boys on the firing line, the ones who do the work day in and day out. I am well aware that you bankers traditionally enjoy intimate rapport with the real high priests of the legal theoracy, and when all is said and done, you will rest safe and secure in their solicitous care.

Our President Davis instructs me to say to you, however, that National Life welcomes and values your collaboration in this field, assuring you most heartily that our experience and facilities are wholly at your disposal at all times. Trank you.

STATE	METHOD OF FORECLOSURE	AVERAGE TIME	AVERAGE COST
ALABAMA	Power of sale. Purchaser entitled to possession during two year redemption period. FHA will accept title subject to redemption.	6 weeks to sale	$50.00
ARIZONA	Court action, for judgment and execution. Six months redemption period after sale.	10 months	$200.00
ARKANSAS	Suit in chancery for decree of foreclosure and sale. No redemption after sale.	6 months	$150.00
CALIFORNIA	**Non-Judicial** Power of sale. No redemption after sale.	4 months	$200.00
	Judicial Court action, petition for judgment and sale. One year period of redemption after sale.	15 months	
COLORADO	Power of sale upon four months notice. Six months period of redemption after sale.	8 months	$150.00

STATE	METHOD of FORECLOSURE	AVERAGE TIME	AVERAGE COST
CONNECTICUT	Suit in equity for decree of strict foreclosure. If no redemption before time fixed by court title becomes absolute in mortgagee.	6 months	$150.00
DELAWARE	Legal or equitable action. No redemption after sale.	4 months	$150.00
DIST. OF COLUMBIA	Power of sale under deed of trust. No redemption after sale.	2 months	$100.00
FLORIDA	Suit in equity for judgment, foreclosure and sale. No redemption after sale.	4 months	$200.00
GEORGIA	Power of sale. No redemption after sale.	2 months	$100.00
IDAHO	Court action for judgment and execution. One year period of redemption after sale.	18 months	$200.00
ILLINOIS	Court action for decree of foreclosure and sale. Fifteen months period of redemption, with possibility of appointment of receiver meanwhile.	20 months	$400.00
INDIANA	Court action. No redemption after sale, but sale cannot be held until one year from date of petition.	15 months	$250.00
IOWA	Court action, equity proceeding. One year redemption period after sale, mortgagor in possession.	16 months	$150.00
KANSAS	Court action, petition for judgment and sale. Eighteen months redemption after sale, mortgagor in possession; except six months redemption if property abandoned. or in case of purchase money mortgage with less than ⅓ equity.	1 year	$150.00
KENTUCKY	Court action, equitable proceeding. No redemption after sale unless bid less than ⅔ appraised value.	8 months	$150.00
LOUISIANA	Court action. No redemption after sale.	60 days	$150.00
MAINE	Public notice describing mortgage and claiming condition broken and foreclosure. One year period of redemption from publication of notice.	1 year	$100.00
MARYLAND	Power of sale in deed of trust. (Decree of equity court as to mortgage in City of Baltimore). No redemption after sale.	2 months	$200.00

STATE	METHOD of FORECLOSURE	AVERAGE TIME	AVERAGE COST
MASSACHUSETTS	Power of sale in mortgage. No redemption after sale.	3 months	$100.00
MICHIGAN	**Judicial** Court action, equitable proceed ing. One year period of redemption after sale. **Non-Judicial** Power of sale in mortgage. One year period of redemption after sale.	15 months	$150.00
OKLAHOMA	Court action, equitable proceeding. Bid must be at least ⅔ appraised value. If appraisal waived (usually optional with mortgagee) no maximum bid required, but sale is stayed 6 months.	6 months with appraisal 12 months without appraisal	$250.00
OREGON	Court action, equity proceeding. One year redemption after sale.	17 months	$200.00
PENNSYLVANIA	Scire facias, or entering judgment on bond. No redemption after execution sale.	3 months	$200.00
RHODE ISLAND	Power of sale in mortgage. No redemption after sale.	3 months	$100.00
SOUTH CAROLINA	Court action, equity proceeding. No redemption after sale.	4 months	$200.00
SOUTH DAKOTA	**Judicial** Court action. One year redemption after sale.	14 months	$200.00
	Non-Judicial Power of sale in mortgage. One year redemption after sale.	12 months	
TENNESSEE	Power of sale in deed of trust. No redeption after sale.	2 months	$75.00
TEXAS	Power of sale in deed of trust. No redemption after sale.	2 months	$75.00
UTAH	Court action for judgment and execution. Six months redemption period after sale.	14 months	$200.00
VERMONT	Suit in equity for decree of strict foreclosure. If no redemption before time fixed by court title becomes absolute in mortgagee.	1 year	$150.00
VIRGINIA	Power of sale in deed of trust. No redemption after sale.	1 month	$100.00
WASHINGTON	Court action for judgment and execution. One year period of redemption after sale.	17 months	$250.00
WEST VIRGINIA	Power of sale in deed of trust. No redemption after sale.	2 months	$100.00
WISCONSIN	Court action. No sale can be held until one year after judgment. No period of redemption after sale.	17 months	$250.00
WYOMING	Judicial: Court action. Non-Judicial: Power of sale if mtg. so provides. Nine months' redemption period after sale by sheriff.	15 months	$250.00

COVERAGE	ATA (Rev.) 1946 Standard Loan Policy	CHICAGO Title & Trust Co. Form - L	CHICAGO Title & Trust Co. Form - H	TEXAS (Insurance Commissioner's Form)	NEW YORK (Standard Underwriter's Mortgage Policy)	CALIFORNIA (C.L.T.A. Standard Coverage Policy 1949)
PARTIES INSURED	Named Insured, and Successive Owners of Indebtedness (Including Government Agencies)	Mortgagee Named in Mtg., his Successors or Assigns	Same as C T & T - L	Same as ATA (Rev.)	Named Insured, His Successors, Personal Representatives and Permitted Assignees	Same as ATA (Rev.)
DURATION of COVERAGE	Life of Insured's Interest in (a) the debt (b) the property, or (c) liability under covenants of warranty	Same as ATA (Rev.)	Same as ATA (Rev.)	Same as ATA (Rev.)	Same as ATA (Rev.)	Same as ATA (Rev.)
VALIDITY of MORTGAGOR'S TITLE	Yes	Yes	Yes	Yes	Yes	Yes
VALIDITY and PRIORITY of INSURED'S TITLE or LIEN	Yes	Yes (valitity and priority of Lien)	Yes (validity and priority of Lien)	Yes	Yes	Yes
MARKETABILITY of TITLE	Yes	No	No	No	Yes	Yes
UNRECORDED MECHANICS' LIENS	Yes	Yes	No	Yes	Yes	Yes
VALIDITY of ASSIGNMENT of MORTGAGE, recorded or not, if assignment is noted in policy	Yes	No	No	Yes	No	No
FEE OWNER IDENTIFIED	Yes	No	No	Yes	No	Yes
REMARKS	Includes Survey Coverage Unless Excepted in Schedule B	Includes Survey Coverage Unless Excepted in Schedule B	No coverage against 1. Improper disbursement 2. Usury 3. Ultra vires borrowing	Includes Survey Coverage Unless Excepted in Schedule B	Includes Survey Coverage Unless Excepted in Schedule B	No Survey Coverage Unless Expressly Included

Consult Policy re Rights of Parties in Possession, etc.

All Policies Insure only as of date.

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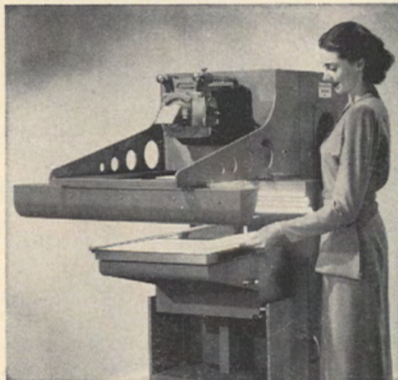
2. IMPROVES SERVICE, LOWERS COSTS



In the plant you can enlarge 6"x 9" Dexigraph take-offs with the Title Company Plant Dexigraph to provide letter-size positive prints for inclusion in abstracts or title policies. You speed title searches and the preparation of abstracts — reduce operating costs, as abstracting is performed only when required for orders. This Dexigraph also copies documents up to 8½" x 14" at unity, can be used to duplicate general office records.

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Remington Rand INC.

"The Other Side of the Ledger" Title Insurance Losses

EDWARD T. DWYER
Chairman, Title Insurance Section
American Title Association
Executive Vice-President
Title and Trust Company
Portland, Oregan

We suggest members mark in their memory this fine article as a pattern for and containing material in their public relations program. This is an excellent presentation of various points on the subject of the need for adequate title evidences and ties in with papers of comparable character written by Mr. William Gill, of Oklahoma City, and Mr. McCune Gill, of St. Louis. Their articles have appeared in recent issues of *"Title News."*

Mr. Dwyer's article graphically tells of efforts of title insurance companies to avoid losses by a properly built chain of title, by one skilled in abstracting, and a legal examination of that chain by one skilled in the law of Real Property. Put another way, a title insurance company prepays losses by many safeguards, all expensive.

To the complete satisfaction of any thinking man, Mr. Dwyer's article demonstrates that, despite all these precautions, losses occur. Some are by reason of human frailty. Doubtless losses through these factors have been intensified in the pressure days of the last three or four years to grind out title evidences. Doubtless there will come to light, occasioned by the high pressure under which personnel of title companies had to operate, additional claims, expense of litigation, and title insurance losses.

Mr. Dwyer informs us this address has been delivered before the Real Estate Board of Portland and Bar Association meetings in other Oregon sections.

To this leader in Association affairs, this distinguished member of the Portland and Oregon Bar, we express our thanks for his excellent article.

We solicit from other members the forwarding to National Headquarters of copies of addresses their personnel have prepared for use in their public relations program.

Mr Chairman, Mr. President, ladies and gentlemen of the Portland Realty Board and guests:

As I walked over from the office this noon, I tried to figure out why the subject of this talk should be of greater interest to realtors than any other phase of our operations. That it is of such concern I take for granted, for I know from experience that this aspect of our business is of far greater interest to most of you than any other part of our activity.

During the past several years many realtors have suggested the subject of "Title Losses" as a topic before this Board. I have long felt that I would like to talk on this matter. A few weeks ago your genial program chairman, Bill Dominey, exacted a promise from me to speak to you on this subject, on this, the next to the last meeting day before summer vacation. I told Larry my subject would be "The other side of the ledger"; just to make it sound mysterious, my remarks will be confined to "Title Losses."

Keeping it Secret

It might appear that we should keep quiet about our losses and not call people's attention to the fact that we are fallible, but before an intelligent group such as this, I see no harm in confessing that we do go off the deep end occasionally. In fact, our losses but justify a theory we have held since our company was organized in 1908,—that of ample reserves to protect our policy holders from losses, no matter how they arise.

Realtors, being curious about title losses, reminds me of the story of the inquisitive old lady who used to frequent the zoo and torment the keeper with question after question. One bright Spring morning she appoached him and said, "Keeper, I just must know whether the hippopotamus in yonder pen is a male or a female."

The poor keeper scratched his head and thought awhile before answering. "Lady, I have been keeper here for a long, long time and maybe I should be ashamed of my ignorance, but I really don't know. If you don't mind, may I ask you how in the name of Heaven could the sex of that critter be of interest to anyone other than another hippopotamus?"

For the past several years, if the reports I hear are true, realtors of Oregon have experienced an era of good business not equaled in any like period. Title companies in this area have also prospered during the same period in a modest way. Both the realtors and title men can remember when business wasn't so brisk. Some of you, I know, have a feeling that even though these lush times are not going to last indefinitely, that it's going to be good for some time to come.

Volume

During part of this period of unusual activity, your business and ours have differed in one detail, at least. We produced a larger volume of business than ever before in a like period —which meant we were mounting up liabilities at an unheard of rate, yet we were able to set aside, while subject to excess profit taxes, but ten or fifteen cents out of our premium dollar. Out of this 10 or 15 cents had to be paid a reasonable dividend and some small part set aside to pay the losses, which, when they occur, will have to be paid on the basis of a forty, fifty or let us hope a 75-cent dollar. Title losses, as a rule, don't come to light until the policy has been outstanding for some time.

It is not my intention to try to give you the impression that most of our income goes to pay losses, for after our premium dollar is split between taxes, salaries, plant maintenance and a reasonable return on investment, there is very little left to set aside for losses. Theoretically, there should be no losses in our business. This may sound strange to you, but it is a fact. People are supposed to be honest; we have the full record before us; our title examiners are well trained; each chain of title is carefully examined and rechecked—so how can losses arise?

Some people are not honest, however; our record occasionally is faulty; our title men, being human, get blind spots once in a while and quite frequently the Supreme Court outguesses us. The obvious result is losses.

Specific Example of Loss

May I point out here that there are two distinct classes of losses in our business. The most common, but, at the same time, the least costly are record losses. We frequently overlook taxes, city liens, judgments, easements, and, on occasion, mortgages, but the losses that really hurt are the non-record losses. To point out a few of these,I mention forgeries, false personations, fraudulent conveyances, claims of minors and persons under disability, false affidavits, after-born children, and claims of persons not in mentioned probate proceedings. There are a host of others which time will not permit me to enumerate.

No matter what our record for losses has been during the years past, I am of the opinion that this record will not serve as a criterion for the losses that we must expect in the not-to-distant future. All of us have been working under pressure, with trained personnel being the exception rather than the rule. I believe

I can safely say that the underwriters in Oregon are fully cognizant of this fact and welcomed a recent requirement of the Insurance Commissioner requiring all title companies to set aside 3% of their gross premium income as an unearned premium reserve to take care of losses, which are bound to occur.

Another

Now to get down to cases, I want to give you a few examples of losses within my own experience. Perhaps the most costly title loss we have yet suffered arose out of a title that was clear beyond suspicion. It is the perfect example of a title being good as a matter of record, but bad as a matter of fact. The history of this case, if you are interested, is reported in Volume 140, at Page 501 et seq of the Oregon Reports.

Briefly, the story is this: Mr. S—— was the owner of a tract of land on which we had originally issued a policy in the amount of $10,000.00. Our liability was later increased and was, at the time of the loss, $40,000.00. This title was examined by our chief examiner, based upon an abstract of title prepared by the leading abstract company in Benton County. I defy any examining attorney to find fault with the record title as disclosed by that abstract.

Still Another

In a suit to quiet title, brought some years after we had issued our policy, and brought, it seems, because a Corvallis lawyer knew much more about the family history than was disclosed by the record, the following "off the record" matters came to light: A Nevada decree of divorce, granted some twenty years prior wasn't exactly as valid as the record would have one believe.

And Yet Another

Mr. and Mrs. S—— were married September 17, 1900. The property embraced in our title insurance policy was acquired through the joint efforts of both, but the title taken in the name of Mr. S——, only. On the 10th of November, 1906, Mr. S——, without the knowledge or consent of his wife, conveyed this property to his sister without consideration. In April, 1928, his sister made another wash sale to Mr. S——'s daughter-in-law, who had full knowledge of Mrs. S——'s interest in the property. This deed was also without consideration.

In the suit to quiet, it was proven beyond a question of doubt that Mr. S—— induced his wife to take their child and go on a visit to her sister's home in St. Louis, Missouri. He gave her a check which was ample to cover her traveling expenses, but immediately upon her departure, stopped payment on the check. He then gave his sister possession of the property, left for parts unknown and never again returned to his wife and child.

Again

When Mrs. S—— returned to Corvallis, shortly thereafter from her St. Louis visit, Mr. S—— was gone and his sister denied her admittance to her former home. The record doesn't show it, but the implication is that this blow was the direct cause of Mrs. S——'s going insane. She was later committed to the asylum. Her guardian filed an answer in the suit to quiet. In obtaining his Nevada divorce, service was had on Mrs. S—— by publication. Appended to Mr. S——s affidavid were several letters in which the writer (most likely the plaintiff Mr. S——) under a nom de plume had Mrs. S—— permanently located in St. Louis and one letter indicated that Mrs. S—— had not been seen or heard of in Corvallis for over a year. It was also proven that Mrs. S—— resided at all times

EDWARD T. DWYER

after her return directly across the street from the land in question.

Not only did the Supreme Court set aside the Nevada decree, despite the fact that it was over twenty years old, but gave Mrs. S—— (the insane spouse) an inchoate right of dower in the lands we had insured. This, from a title standpoint, was the very worst thing that could have happened to us. It put us at the mercy of the attorneys for Mrs. S——.

A "Record" Loss

The next loss I want to talk about is strictly a record loss. It is rather laughable because before we acquired our Clatsop County Branch, the Astoria Abstract Company had been our agent for over twenty years. Aside from passing an $850.00 judgment, which I still think could have been successfully defended against, we were never called upon to pay a loss in that county.

Within two months after we purchased the Astoria Abstract Company, and with the same personnel, mind you, we suffered a loss of $4,750.00.

An Interesting Case

A Miss "A", while visiting a friend in Astoria, saw a small house and decided it was just the sort of house she wanted when she retired. She had formerly lived there. Unfortunately, she had a judgment against her, and instead of taking title in her name, she took it in the name of her brother. He was practically due to retire at the time. So her brother moved down to the house, and having some income but not much to do, he fell in with a lot of old cronies who used this house as a gambling den and drinking establishment, and to some extent as a house of ill fame.

One of the neighbors complained to his sister, who, upon going to Astoria, found that all the stories about her brother were true. So she notified him a vacate the premises. At that time she obtained from him a quit claim deed and recorded it. It was a metes and bounds description. The description began at the northeast corner of an intersection, but our poster read it as the northwest corner.

After the sister left for Portland, someone came to the house, rang the doorbell and inquired whether the property was for sale. The brother quoted a price which was acceptable and the deal was made. They went to our office and closed the deal.

When the sister again returned to Astoria several months later, she went to the house and found it occupied by a total stranger. When she inquired as to his right to be there, she was told that he had a deed from Mr. "A", her brother. Both of them went to our office, and it then developed that the deed from the brother to the sister had been recorded but was posted on the opposite side of the street.

We Overlooked Part of It

Another loss arose in this manner: Our title report showed title in Mr. X, Trustee. As is usual in those cases, we called for the trust instrument under which the Trustee held title to determine if the Trustee had power of sale and whether there was any limitation of any kind on his power. In due time the trust instrument was presented for our inspection.

The sale involved a considerable sum as the site was being bought for the purpose of erecting an apartment house thereon. We had an order for both the owner's and mortgagee's policies. The instrument was in order—a good power of sale, and on the single sheet of paper that contained all the language necessary to satisfy our examiner, there was no language to put him on guard. But on the reverse side of the sheet, about half way down, so that the small paragraph could not be seen except by turning the instrument completely over, was a short, concise statement

to this effect: "It is understood that the Trustee here in shall never sell this property for an apartment site."

Our error may seem stupid to you, but I can't say that the examiner was really negligent. Had he been abstracting the instrument for an abstract, he would have overlooked it, also. The apartment house was well under construction before one of the beneficiaries under the trust brought suit to enjoin further construction. This case was carried to the Supreme Court and we considered ourselves fortunate when we got out of the mess by paying a rather substantial sum the Court assessed as damages.

A Son Mortgaged

Here is another—John and Mary Smith, let us call them, husband and wife, owned a house and lot as an estate by the entirety. He and his wife took a trip East. They had a son by the name of John whose wife's name was also Mary. You see, both the father and son had the same given name and the given name of the mother and the daughter-in-law were identical.

John, the son, wanted a nice, new, shiny Buick "Eight" more than anything else in the world. He had no money—neither had his wife, but his parent's property would easily support a loan of $2,500.00, and that sum was sufficient. For this loan they applied to one of the local banks. After the father and mother returned from the East, they received an interest notice from the bank. We had insured the bank's mortgage as a first lien. There was nothing for the bank to do but to offer to sell us this choice bit of security, and there was nothing for us to do but buy it.

The Absent Brother

Here is one we caught in time. During the time the Home Owner's Loan Corporation was active, we had an escrow in which H.O.L.C. bonds were being distributed to the heirs of a deceased mortgagee. The title report showed the two sons of the mortgagee as the sole heirs — John and Joe Doaks, let us call them. To these two sons was being distributed the H.O.L.C. bonds. By way of conversation, the escrow officer said, as he was shuffling the pages, to the boys, "Let's see now, your father left you and Joe—is that right?"

"Well," said one of the lads, "There's Paul, too, but he doesn't know anything about business."

The escrow officer pricked up his ears, for the title report showed that the interest the mortgagee had, passed to the two boys and said casually, "I wonder why Paul's name wasn't mentioned in the petition for probate of your father's estate."

"Well," came the answer, "He doesn't count. You see, he's in the insane asylum."

A few years ago we reported a title out of one of our branch offices, showing title free and clear in John Jones. We had, however, called for proof that the deed from his grantors, which had been executed some time prior to the date that it was recorded, was delivered in the lifetime of the grantors. The attorney for the new owner called us on the phone and told us that the husband, one of the grantors, had died, leaving no children and that his wife was his sole heir—arguing that inasmuch as the estate had been held by the entirety that the whole title was hers in any event, and that the wife was still living.

A Probate Case

A petition for probate had been filed which confirmed the fact that the widow was the sole heir and since this reasoning satisfied us, we issued our policy. In fact, we wrote three policies, one on each tract of real property owned by the decedent. In each case the grantee in the deed was a different person. But what the attorney did not tell us, and we had to find out the hard way, was these deeds were never delivered during the lifetime of the decedent nor did the widow deliver the deeds after his death.

The fact was that they were executed and placed on top of the cash register in the grantor's store. After the funeral, the three grantees, all of whom were relatives of the deceased, went to the store with the widow to see if they could find a will, because the decedent had hinted to these grantees that he was going to make some provision for them. Instead of a will, they found the deeds. Each grantee, on the advice of counsel, took his or her so-called deed and rushed to the court house and had the same recorded.

After the will was found, the widow decided she had received a rather shabby deal from her husband and consulted at attorney. He figured out that since there was no delivery of these deeds, the grantees received nothing. They say troubles frequently come in pairs. In that particular case it was triplets.

A Faulty Affidavit

Some years ago, I examined a title for a mortgagee's policy on a construction loan of $30,000.00. Title showed vested in one Mr. Kelly, free and clear, except a judgment, amounting to $891.00, arising out of a mechanic's lien foreclosure. When Mr. Kelly received our report, he came in to see me—a big, genial Irishman with a lodge button about the size of a four-bit piece. Being a member of this popular lodge and also an Irishman, I felt we must be wrong—we must have the wrong Kelly.

All doubts were set at rest when he told me that during all the time the work for which this lien was claimed was in progress and for some time before and after he was domiciled in the great state of Texas. In fact, he could prove it—and did. The next day he came in with a sheaf of office copies of letters he had supposedly written either from San Antonio or Fort Worth. After all, there were millions of Kellys. I fell for it and took his affidavit. In fact, I took his oath and most likely apologized for causing him so much trouble.

Mr. Kelly defaulted on his mortgage immediately. The mortgagee started to foreclose. The title search for the foreclosure was made by one of the other title companies. They picked up the judgment and the judgment creditor was made a party defendant. He filed an answer and the mortgage company threw the matter in our lap.

A few days later, Mr. Kelly, voluntarily mind you, came into the office and informed me that he couldn't understand it but that he was badly confused when he made that affidavit because he suddenly remembered that he was the man. Naturally, I told him that it was a rather bad time to regain his memory and asked him what he intended to do about it. He said, "Not a damn thing," turned on his heel and walked out.

The Dead Returns to Life

During a rather short period, in addition to insuring the titles for the City of Portland, we were also doing the investigating for the City Attorney's Office for parties defendant in suits to quiet title on the city's foreclosed properties. During this short period, we had two dead men walk into our office. Both these ghosts' estates had been probated and neither one had ever left the City of Portland. In fact, one of these ghosts proved conclusively that he had lived at the same address on East Seventh Street for nineteen consecutive years. He called it spite work on the part of a brother-in-law. Nice clean fun.

Judgments

In 1921 a judgment of the Circuit Court was docketed against one Smith and two others. Smith later married a woman who, to our knowledge, was the owner in fee of three properties in Multnomah County. Thereafter he induced his wife to deed all three properties to a third party and then both took a conveyance back to themselves as tenants by the entirety.

During the time he was married, he borrowed rather extensively from his father-in-law, and while Smith was the son-in-law, the father-in-law did not press him for payment. Smith's wife died and he then became seized of the whole title. He then sold all three properties and all three properties were insured by us. His father-in-law tried to collect from him but was unsuccessful.

The old man was a smart fellow or maybe he just happened to hire a smart lawyer. Some checking was done and it was found that there was a judgment against Smith during the

time he was seized of this property and the father-in-law bought an assignment of the judgment. When our search was made, the docket showed a full satisfaction as to all three judgment debtors. Later, and after our policy was issued, the docket was changed to show satisfaction only as to the other two co-debtors. The Smith judgment was good—good enough for the old gentleman to collect $2,700.00 of our money to replace some, at least, of the money he had loaned to his worthless son-in-law.

Another loss comes to mind. Execution sale was had on a judgment against Mary White. The Sheriff's return showed that Mary White could not be found in the state and service was had by publication. Mary White had married one Greene, and was, at all times, residing within two blocks of her former residence situated on the property sold under execution sale. We had insured the purchaser at the execution sale and when Mary White's attorney moved to have the sale set aside (and thank goodness property values were a little more stable then than now), we found another place our assured liked just as well as Mary's place and for a reasonable sum we put him into his new home and let Mary keep her old place. Easy, wasn't it?

Bad Abstracting

This one makes me "hot under the collar" everytime I think of it, and it happened some years ago. It was just before we built our plant in Clackamas County. A customer of ours wished to loan some money on a property and insisted upon a title insurance policy. He furnished us with a complete abstract prepared, we thought, by a very reputable abstracter in this county. The mortgage was executed and recorded and the abstract brought down to date showing the mortgage and then brought in to us for a final policy.

The description of the mortgage was wrong. The property was in the right section but in the wrong township. The abstracter, a woman (I suppose thinking what she was going to get the old man for dinner that night), copied the description on the caption of the abstract into the mortgage as abstracted. The mortgagor went into default and when we were asked to supply the attorney for the mortgagee with a foreclosure report, we caught the error and asked him to have the instrument reformed bebore he proceeded with his foreclosure. He knew it all and started his foreclosure. He proceeded with his foreclosure as far as the sale. Then he woke up and asked for a reformation. Judge Latourette properly told him to continue his "Rip Van Winkle" sleep. We reimbursed the mortgagee, paid the attorney's fees and then suggested to the abstracter that possibly they might like to share the loss. Funny thing, but they couldn't see it. Looking back, I don't suppose the whole abstract plant was worth what we had to pay for attorney's fees anyway.

Used Girl Friend

Here is another one that was deliberatedly pulled on us by a gentleman still operating in the real estate field. He had nine judgments against him. He bought quite a little property, but always in the name of his girl friend. He and his girl friend were temporarily on the outs; a good buy came up and he solved his difficulties at our expense. His name, we will say, is L. E. Doe. We knew his given name to be Leonard, but when he took title to this property, he took it in the name of Edward Doe. His full name was apparently Leonard Edward Doe. We didn't, of course, run judgments against any given name but Edward. No one would or could. He used to be a customer of ours but since that happened he takes his business elsewhere, thank goodness.

Death Certificate

One of the iron clad rules of our offices is a requirement of insisting upon a certificate of death or a petition for probate of the estate of a deceased spouse where the property is held as tenants by the entirety. A few years ago, I found that this was a first class requirement.

Question of Death

A prominent realtor had a deal in our escrow department. He is a rather impatient fellow and sometimes becomes irked when there is anything to clean up in a title. Property values were beginning to increase. He had made a deal for a poor little widow, as he said, whose property was under foreclosure whereby he could realize for his client some $800.00 by short-cutting the foreclosure and making an immediate sale. The right to redeem had but a scant two months to run. Our title report showed title in Mary Roe and Richard Roe as tenants by the entirety subject to foreclosure. The deed in our escrow was executed by Mary Roe, a widow.

The realtor insisted that we waive our harsh rule and take the pood widow's affidavit establishing the death of her deceased spouse. This I refused to do. The realtor told us that he knew the poor man died in the State of Washington, so I sat right down and dictated a letter to the Bureau of Vital Statistics at Olympia. The answer came back, "Never heard of him." I called the realtor and he asked me to call her attorney. This I did, and the attorney insisted that he knew Mr. Roe had died in Washington and the records at Olympia must be wrong. That evening the attorney called me and asked me if it could possibly make any difference if the decedent had died while a patient at the Veterans' Hospital at Walla Walla. I wrote there. They had never heard of him.

I got impatient and called the attorney and told him to quit playing horse and suggested he contact the widow and not depend so much on his memory. The next day he called back rather apologetic and said, "Dwyer, I forgot something. That man died in the Veterans' Hospital, all right, but not under that name. They most likely will have a record of his death under the name of Valentine."

I wrote again. This time I got the certificate and by information contained in the certificate it was apparent that the body of the deceased had been shipped to Indiana for burial. A person had to be dumb and blind not to be able to smell something at that stage of the proceedings so I called the attorney again and told him that we would all save time if he brought in his client; I wanted to talk to her. The dear little widow came in—a battle axe if I ever saw one—about six feet two inches tall and three axe handles across the shoulders. She didn't have a chip on her shoulder—she had a three-foot length of hardwood.

The first thing she said was, "What in the H—— do you want to know?" I told her we wanted a simple explanation of the use of this other name by her departed spouse and why his body was sent to Indiana instead of to her in Portland. That, she made clear, was none of my d—— business. We got no place fast.

The attorney started to say something and she let him have both barrels and what a charge each barrel contained. He finally took it as long as he could and got up and left the room. After he left, I found what she really thought of him—but to get back to her.

The Facts Come Out

She wouldn't tell me where they were married. This was certainly none of our business. Where she and her poor departed Richard were joined in lawful wedlock was none of anybody's concern but their own. I finally tired and told her that I, too, had had enough. After all, she had over $800.00 coming to her if the deal went through and all we would gain ourselves was a small title fee. Then she broke down and gave me the facts.

Richard was a veteran of World War I. He was discharged in New York and met her in New Jersey. Indiana was too far away. He was tired of traveling—too tired to return to his wife and children. One night Mrs. Roe's husband came home unexpectedly as husbands sometimes do. Hubby picked up a chair. Richard had a toy "45" Colt that belonged to Uncle Sam and just in play he pointed it at the irate husband. Imagine his surprise when he pulled the trigger and there was an explosion. Richard left in a hurry. He came to Oregon. She followed after a reasonable length of time after the husband's funeral, and

not wanting to use his name, they used hers, or so she said.

We immediately told her that we did not want any part of this title. I later found that one of the other title companies is out on that title. One of their examiners apparently had a blind spot. The queer thing about this tile is that the foreclosure looks perfectly good on its face. This is another instance of title good as a matter of record but a mess as a matter of fact.

An Escrow Deal

A Mr. Johnson, some years ago, wrote our President from California and asked him to get an appraisal of two lots located in Benedictine Heights. This he did. A few weeks later he wrote telling us that he was trading some property in California for these two lots and if we could assure him that they could be sold at the appraised value by a given date, that he would make the deal and instructed us to proceed with the title search.

Mr. A. H. Hickman, who most of the older realtors will remember with affection, was the appraiser. We called him and he told us he would gladly take the lots at the appraised value. In due time the deed came to us, reaching us on Saturday morning and with escrow instructions specifying that if the deal were not closed by Monday to return all papers. There was no reason for our escrow officer to become suspicious, but he did. He wired Sacramento to check on the notary commission and when we did not get a reply along toward noon we put the deed on record and forgot the matter.

That Saturday, by the way, was a holiday in the state of California; consequently the state offices were closed. The proceeds of the sale we sent to him to an address in California and Mr. Hickman proceeded to construct a very beautiful home on the property.

Forgery

The former owner was visiting in California and when a neighbor of hers saw that a beautiful house was being built on the property, she wrote her and gave her the news. Thanks to a nosey neighbor for acting so promptly, the former owner sent a letter post haste in answer advising her, definitely, that she was mistaken for she hadn't sold her property. In fact, she and her husband had just recently decided that they were coming back to Oregon and intended to build a house on these lots.

The husband of the neighbor called me the morning they got this news and told me what had happened. I called Mr. Hickman and asked him to stop construction until we unravelled this mystery. There really was no mystery about it. Mr. Johnson was a forger of the first water. The only thing that surprised us in the whole deal was why he didn't pick on a more valuable piece of property. To this day we have never heard any more of Mr. Johnson—at least under that name.

Not Community Property

It is rather strange what some attorneys will attempt to accomplish in a law suit. A few years ago, Mr. and Mrs. Dee, both having been previously married and both having had children by their former marriages, owned a farm in Clarke County, Washington, as community property. They decided to retire from farming; sold their farm and moved to Portland and bought a house and several lots in Sellwood. Soon afterward the wife died.

Her children thought that they should have some share of this real estate because that is the way it would have worked in the State of Washington. They apparently convinced the attorney that inasmuch as the money derived from the sale of the community property was invested in Oregon real property, that the Oregon real estate was also community property. We insisted, of course, that we had no community property laws in the State of Oregon and since the title was taken by husband and wife that it was an estate by the entirety in Oregon and that upon the death of the wife the whole title was in the husband and that the children on either side had no interest in it. That is one time when we guessed right; but law suits, particularly when they have to be carried to the Supreme Court, are costly.

Equitable Mortgage

Before we built our plant in Lincoln County, we were prevailed upon to insure a title for a Californian who had never dealt with abstracts, and he was too old to learn. He had to have a title insurance policy or he wouldn't buy the property. Several months after our assured took possession, he came in to notify us that his property was to be sold under execution sale by virtue of a judgment against the owner prior to his grantor. We checked the records, found the judgment but also found it had been docketed many months after the owner had parted with his title.

The attorney for the judgment creditor contended that the deed to our assured's grantor was given a security for a debt. Hence, it was a mortgage and being a mortgage, the legal title hadn't left the judgment debtor. The Circuit Court found the lien was good but not as to the property we had insured.

Service

In closing, may I say that several years before the outbreak of the War we had a crew of young men, most of whom had learned the business from the ground up. Our older men were retiring or their ranks were being rapidly depleted by death. Business wasn't too brisk; we had a surplus of manpower and had practically reached the crest of every good tile man's heaven — **Good Service**. Service so fast and so accurate that even the most exacting client couldn't find just cause for complaint.

Alas, the War came on; the ranks of our older men kept right on thinning and Uncle Sammie had measured most of our title examiners for officers' uniforms before we realized that we had an inadequate force of title men to cope with a normal market. The market quickened so rapidly we were utterly bewildered. We had, it seemed, an unlimited amount of title work and a very limited crew to handle it.

During that hectic period, some members of the bar and many of the realtors couldn't understand why title orders couldn't flow through the shop in the time it previously took and some criticism was directed toward the title companies because of slow service. I am still reminded on occasion of an order that took two weeks to report out.

Gentlemen, in behalf of your humble servants—very few of you will ever know the amount of overtime worked by the title people of this state to give you the service you got and are still getting. Comparisons are odious, I know, so I won't compare the title service in this city with that of Seattle, San Francisco, Los Angeles or any other larger city of which I have knowledge.

My time is up, Gentlemen. I hope, from the few cases I was able to cover in this short period that you realize that some entries, at least, must be posted to the other side of the ledger.

Inspection Practices in Connection With Full Coverage Policies

C. L. EVANS
Chief Engineer
Washington Title Insurance Company
Seattle, Washington

In discussing the question of inspection of properties in connection with full coverage title insurance policies it is well to consider the beginning and growth of that practice in this locality.

No Inspection Then

Prior to October, 1932, the Washington Title Insurance Company, in issuing Life Insurance Company or American Title Association form policies, made no physical inspection of the premises to be insured, but relied upon statements by the insured or their agents as to rights of parties in possession possibility of liens, question of survey, etc., and an agreement, from the agent, indemnifying the title company against loss. Of course the indemnity agreements were of little value as the company would be reluctant to enforce them in case of loss but as the volume of full coverage policies was small, possibly 3 to 5 a month, this method proved fairly satisfactory. However, late in 1932, the company foreseeing an increasing demand for this type of policy and because of a rather careless statement furnished relative to the rights of parties in possession of an apartment house covered in one of their policies, decided to make an actual field inspection of any property before issuing a full coverage policy thereon.

Later

The first year, under the inspection system, 188 policies were issued, the inspections being made by two men who devoted only a very small part of their time to this work, traveling some 1647 miles in doing so. During the 18 years this system has been in operation there has been a steadily increasing demand for A.T.A. form policies. At the present time approximately 35% of the title policies issued are in the A.T.A. form, requiring an Engineering Department with a staff of 10 office men, three of whom are Registered Land Surveyors licensed by the State of Washington, and 16 field men, all working full time, to carry on the inspection and survey work in connection therewith. Our inspectors traveled some 70,000 miles this past year.

In the beginning mortgage loans made by Life Insurance Companies and other agencies requiring full coverage policies were confined almost entirely to the urban areas of Seattle. The properties were located in long established districts, where street improvements were all in and street intersections well monumented. Because of this the task of making inspections was a comparatively simple one. Reference points from which measurements could be made were generally plentiful and easily found, thus questions of survey were readily determined. The houses being of old construction, the question of liens was confined to painting or redecorating and minor repairs made within the lien period and of course easily determined.

Increased Demand

When prosperity finally came around the corner and with the advent of the war years, the demand for this type of title coverage increased. With this increase the coverage moved out into the suburban areas north, south and east of Seattle and into some of the smaller towns and farming districts of the county. Hundreds of new plats were filed, each imposing restrictions relative to building lines, occupancy, use and areas. Reserved was the right to make cuts and fills upon the various lots and tracts in the original reasonable grading of the abutting streets. Easements for driveways, sewers, drainage, water lines, pole lines and other utilities were reserved, conveyed or dedicated.

All these things added greatly to the work of making inspections. The suburban roads and streets in the new additions were generally unimproved and monuments or reference points few and far between. Monuments, where they did exist, in the unimproved streets were of course buried, sometimes one to four feet below the surface of the road, making it necessary to first find their approximate location and then dig in search of them, before questions of survey could be determined. Where blocks of new houses were under construction it was sometimes difficult to determine whether the premises being inspected were subject to liens by reason of the adjacent construction. Where streets had not been graded it was necessary to determine whether the abutting property would be damaged by cuts or fills when the streets were graded. Location of easements had to be determined and their effect upon existing improvements noted.

All Needed Equipment

Our Company takes some pride in being able to say to you that our field parties are well equipped to cope with these and any other problems in connection with the work of making inspections. The equipment of each of our survey parties consists of the latest model Engineers' Transit; a one hundred foot steel tape graduated to feet, with an additional foot at the end graduated to tenths of a foot to facilitate the measuring of fractional distances; a fifty foot steel tape graduated throughout in feet and hundredths of a foot; plumb bobs and hand levels, to assure horizontal measurements over uneven or sloping ground; picks, shovels and axes; and red warning flags for protection when working in heavy traffic. Inspection parties carry the same equipment with the exception of the engineers' transit.

The Personal Factor

In addition to the mechanical equipment necessary in making surveys and inspections, each inspector should have certain mental equipment and personal qualities. He should be resourceful, observant and have a thorough understanding of what he is to do, of what to look for and why. He should possess the additional qualities of: Accuracy in making his measurements and reporting his findings; courtesy in his contacts with the public; tact and patience in securing information; and consideration for the rights of persons and property. He should avoid loquaciousness, particularly in his contact with curious and prying neighbors, even bearing in mind that the information he has and that he is seeking is a confidential matter between the title company and the owner of the property.

Procedure in Field

When an order is placed with our Company for an A.T.A. form policy, a requisition for the inspection is immediately sent to the Engineering Department. Upon receipt of the requisition a field sheet is prepared, using a standard 7¼ x 4⅝-inch field book sheet. The front side of the sheet is filled into show the order number, name of the firm placing the order, amount of the policy, street address of the property, legal description, map references, name of the owner, and name of the owner-to-be; following this are the notations as to the type of inspection or survey required. If there are restrictions, easements or slopes affecting the property, they are also noted. The lower half of the sheet is used by the inspector for his notations. A sketch of the property is drawn on the reverse side of the sheet, on a scale of 40 feet to the inch. This sketch shows the dimensions of the property, the bearings of the lines,

distance to an intersecting street, widths of streets, location of and distances to monuments and such other data as may be available. The preparation of a field sheet sometimes necessitates considerable research in the records of the City or County Engineer's office.

After this sheet is completed it is sent out with one of the field parties and the inspection or survey is made. If an inspection only is required the inspector determines the location of the property lines, making note of any encroachments, violations of restrictions or building lines, checks on easements and slopes, ascertains the names of parties in possession and what rights are claimed by them, and makes inquiry as to materials delivered to, or labor performed on the premises within the last 90 days. Where a survey is required, he will delineate on the sketch the location of the buildings and other improvements located on or appurtenant to the property; including driveways, walks, fences, rockeries, walls and hedges; showing the dimensions of the buildings and other improvements, with distances from the property lines to such improvements.

Procedure in Office

Upon his return to the office the inspector fills out a Field Inspection Report form showing the Order Number, name of the inspector, date of inspection and the information obtained in the field. The Field Inspection Report then passes to one of the office engineers who reviews the report and who may waive certain minor encroachments or violations noted by the inspector, if in his judgment it is safe to do so. An inspection report is then sent to the title examiner who includes the result of the inspection in the Preliminary Title Report made to the mortgagee.

Where a survey has been made, a draftsman prepares a plat thereof on a scale of 20 feet to the inch from the information shown on the field sheet. This plat is then certified to and signed by one of the Registered Land Surveyors, blue printed and three copies sent to the firm ordering it.

On the day following the recording of the mortgage a second or final inspection is made, the inspector checking to see if any changes have occurred affecting the various matters reported on in the preceding inspection. He reports his findings in the same manner as before. The results of this inspection are then sent to the mortgagee in the form of a pencil supplemental title report.

The Fourth Annual National Advertising Contest

for

MEMBERS OF THE AMERICAN TITLE ASSOCIATION

PURPOSE

1. PURPOSE—To stimulate advertising and publicity by the membership which will attract and increase business; to disseminate and exchange among the membership meritorious advertising and mediums; to sell the abstract and title profession to the public; and to make the members more conscious of the value of advertising and publicity.

RULES

2. RULES—The rules of the contest are as follows:

   A. Members will submit 2 copies of all new advertising and publicity material, which they wish to enter—one to Harvey Humphrey, Director Community Relations, Title Insurance and Trust Co., 433 So. Spring St., Los Angeles 13, Calif., and one to James E. Sheridan, Executive Vice President, The American Title Association, 3608 Guardian Bldg., Detroit 26, Mich. Mr. Humphrey's material will form the Advertising Exhibit to be presented at the National Convention this fall. Prior to the report of the Committee on Advertising and Publicity, at that meeting, the committee members will vote on the material submitted and determine the winners of the contest (NOTE: If only one copy of material is available, forward it to Mr. Humphrey. While National Headquarters would like to have a copy, from which to select and reproduce outstanding examples in the Association Bulletins during the year, Mr. Sheridan has said, "The contest is first. If you have an additional copy to spare, of course we should like it at Headquarters."

ANDREW DYATT

Chairman, Committee on Advertising and Publicity, American Title Association, President, Landon Abstract Co., Denver, Colorado

   B. Factors considered in making the awards will include the character of the advertising or publicity in selling the public on the title and abstract business; originally of approach; attractiveness of presentation; economy and comprehensiveness of coverage.

   C. In submitting their entries, the members will describe the material; give the cost; estimate what coverage or circulation the item had; and state whether material was prepared with aid of outside advertising counsel.

   D. In judging the material, the committee will divide it into the following classifications:

      a. Newspaper and magazine advertising;
      b. Booklets, pamphlets, financial statements, etc.;
      c. Blotters;
      d. Direct mail campaigns, including letters and series of printed messages, etc.;
      e. Miscellaneous advertising, including novelties, gifts, etc.;
      f. Business and office forms which carry advertising

such as legal forms, office maps, policy or abstract covers, etc.;

g. Publicity releases:

h. Radio advertising;

i. House organ or company publications;

j. Posters, display cards and exhibits.

E. Prizes will be awarded at the Annual Banquet at the National Convention.

PRIZES

3. PRIZES—The Prizes to be awarded are as follows:

A. A grand prize for the most effective advertising program of the year carried on by any abstract, title, or title insurance company in the Association. This trophy will be a perpetual trophy and will be held bỳ the winning company through the following year. The company's name will be inscribed on the trophy and the company will also receive a plaque or certificate which it may retain permanently, as evidence of having received the award.

B. An annual capital prize, consisting of a bronze plaque to the abstract company producing the best single ad, series of ads, publicity story, or series of publicity stories, during the year. This plaque will be held permanently by the company winning it.

C. An annual capital prize, consisting of an identical bronze plaque to the title or title insurance company—whose combined capital and surplus exceeds $1,000,000.00 **or** which employs outside professional advertising counsel — producing the best single ad, series of ads, publicity story or series of publicity stories, during the year. This plaque will be held permanently by the company winning it.

D. An annual capital prize, consisting of an identical bronze plaque to the title or title insurance company—whose combined capital and surplus is less than $1,000,000 **and** which does **not** employ professional advertising counsel—producing the best single ad, series of ads, publicity story, or series of publicity stories, d u r i n g the year. This plaque will be held permanently by the company winning it.

E. Certificates of Merit to the first, second and third prize winners for the best ads or publicity stories in the classes described in paragraph 2. RULES, subparagraph D above.

All members are urged to participate. The rules this year are easier than ever before. Remember, it's open to all and you may not only win recognition for your advertising efforts, but also may submit an idea by which other members of your profession may benefit.

Let's make this the biggest contest and exhibit in the history of the Association.

Cordially yours,
COMMITTEE ON ADVERTISING AND PUBLICITY,
The American Title Association.

Harvey Humphrey, Los Angeles, Calif.

Montgomery Shepard, St. Joseph, Mich.

Donald C. Peek, Portland, Oregon.

H. C. Hickman, Boulder, Colorado.

Hart McKillop, Miami, Florida.

Pearl K. Jeffery, Columbus, Kansas.

Paul P. Pullen, Chicago, Illinois

Al Weiss, Tampa, Florida.

Andrew Dyatt, Chairman, Denver, Colorado.

Customer Relationship

W. E. STEWART, JR.
Vice-President
Salem Title Company
Salem, Oregon

Mr. Alstadt, your moderator for this panel, has suggested that I discuss briefly the following itemized subjects under customer relationship by Land Ttitle Associations:

1. The value of Association advertising.
2. Participation by representatives of the Association in politics and legislative sessions.
3. Entertainment of allied groups such as Realty Boards and Bar Associations in the name of the Associations rather than by individual Title Companies.

Under the heading, Cooperative Customer Relationship by Competitive Companies, he has asked me to discuss:

1. Joint entertainment by companies in a specific locality for local bar and realty boards in their respective meetings.
2. Joint participation in the donation of prizes for golf tournaments or door prizes.

Tell the Public More

Many title companies within the jurisdiction of our respective associations aggressively advertise the quality of their services and the quality of their products. Little has been done, however, so far as your speaker knows, by either the Oregon Land Title Association or the Washington Association, to advertise or sell the industry—that is, to acquaint John Q. Public with the benefits of title insurance or the benefits of reliable abstracting, and to educate him to the full realization of the wisdom of securing a title insurance policy or an abstract from a member of the Association. Isn't John Q. Public more apt to display a willingness to read and to remember material published by the Association in explanation of what the industry purports to do for the property owner than he is that material which is published by an individual Company—fully realizing that the individual Company has its own axe to grind?

> This thought-provoking article was delivered by Mr. Stewart at a joint meeting of the Oregon and Washington Title Associations. The article and accompanying exhibit warrant study by any member company interested in better advertising and improved public relations.

Wisconsin Did It

We might well take a tip from the Wisconsin Title Association on this point. I have before me a letter written under date of October 21, 1950, by the Mottram Advertising Company of Milwaukee, Wisconsin. It reads in part: "The enclosed copyrighted booklet, 'Let's Talk Facts', was written recently and published by us for the Wisconsin Title Association. Their Association has found the booklet very effective in bringing the fundamental principles regarding real property to their clients and prospects.

Since the first issuance of the booklet, it has been receiving widespread interest and, just this week, we received a large quantity order from the Iowa Title Association."

The letter along with this booklet was mailed to Title Associations throughout the country.

The pamphlet is four inches by nine inches and consists of fifteen pages of easily readable material, mostly in question and answer form. At the beginning of each question and answer there is a small cartoon to emphasize the point contained in that paragraph. Advertising men everywhere recognize the power of a car-

toon to convey succinctly a thought or an idea.

"Let's Talk Facts"

The booklet is called "Let's Talk Facts Relating to Your Real Property", and carries the emblem of the Wisconsin Title Association on the front cover. It relates principally to the abstract business but could easily be converted to a comparable treatise on title insurance.

Some of the material contained in the book is the following:

1. We can all use a little good advice. And the best advice anyone can give is: Always have an abstract of title down to date whenever you buy, sell, mortgage or loan money on real estate. It should be compiled from Tract indexes of the County Records which competent Abstracters possess. You may select an abstracter or abstract company who is a member of the Wisconsin Title Association with absolute confidence.
2. Why do I get an abstract? You receive an abstract so that you will be able to determine the ownership of the land described in the Abstract. The Abstract will show the record title to the property, the nature of any easements which affect it, mortgages which might be recorded against it, liens which have been filed and affect the property, court judgments, special assessments and many other matters which might affect your enjoyment and use of your property.
3. Will an abstract eliminate the services of an attorney? No. A complete abstract, however, contains in one unit all information of record—thus enabling an attorney to ascertain the true condition of your title without consulting public records.

Questions and Answers

The last five pages of the pamphlet contain general questions and answers. Samples of these questions are: What do you mean by record title? What is a tax title? Are all title papers supposed to be recorded? Why should I keep my tax receipts? What name should I use when I buy and sell property?

Some such pamphlet could be distributed to good advantage at least throughout the State of Oregon by the Oregon Land Title Association and, I believe, it could be used as successfully in the State of Washington.

Advertising Media

It is my understanding that most of the men who attended the recent American Title Association convention in Oklahoma City, considered these media of advertising successful: newspapers, magazines, periodicals, billboards, and direct mailing. This direct mailing, of course, entails the mailing of advertising such as that contained in the Wisconsin pamphlet to members of realty boards, members of the bar, banks and trust companies, builders, contractors and land subdividers. Those same men evidently believe that radio advertising in most of its forms is unsatisfactory. They indicated that the benefit received from such advertising, that is, by way of spot announcements and so on, was not commensurate with the costs. They seemed to believe that the only way of using radio advertising is that of sponsoring a program. Here again, most seemed to believe that the cost is prohibitive.

I don't know what the situation is in the State of Washington, but I do sincerely believe that the Oregon Association could be of great assistance in developing a large field of new business in Oregon by advertising Purchaser's Title Insurance Policies. It could educate the public, the brokers and the lawyers concerning the meaning of these policies and the advisability of procuring them for the contract purchaser.

W. E. STEWART, JR.

Tell Everybody

We in the title business know that a contract purchaser should not be expected to pay in full under a contract which provides for issuance of an Owner's Title Policy to him when he has performed. We know that the purchaser should receive a Purchaser's Policy at the inception of the contract—that he shouldn't be asked to take the chance of paying his contract down to the last payment, then to find that his seller's title is defective. Why not share this knowledge with the prospective purchaser, his broker and his attorney through advertising, or an educational effort, if you will, by way of the activities of our state associations? Isn't such an effort doubly advisable in these days of fewer cash sales and an increasing number of contract sales?

Politics?

The question whether representatives of our associations should participate in politics and legislative sessions is an interesting one. It is "bad politics" as well as poor customer relationship, in my opinion, for any member of the Associations, as such, to take an active part in politics. Such activity can only boomerang to the embarrassment not only of the individual but also of our profession. It is very seldom, if ever, that the enemies acquired, willfully or unwittingly, by a business-man politician do him any good in his business. It is my contention that they do him considerably more harm than any good which he or the profession might realize from his political sorties.

This does not mean that we should close our eyes to political trends or to the activities of our legislative assemblies. To the contrary, we should be ever alert, as Associations to act quickly to suppress the introduction of offensive bills, and to opportunities afforded to us for the preparation of constructive title legislation. It should be our purpose through our legislative committees to formulate good bills, and then to convince some group, for examples, the realtors and the attorneys, to present those bills under their own names but under our watchful eyes.

Paid Lobbyist?

There has been some well-founded agitation in Oregon for retention by the Association of a paid lobbyist to protect the interests of the member companies during sessions of the Oregon State Legislature. There are several ways of protecting our interests politics-wise and legislation-wise without active engagement in either politics or legislatures by our Associations or members of them, and without the consequent offense to our valued customers.

Relations with Allied Industries

It is accepted as good customer relationship, and in my opinion rightly so, that an industry such as ours, which derives its customers from members of other groups or associations, show an interest in the group activities of such customers, on the state level. Effective ways for our Association to evidence such an interest are those of furnishing entertainment in the name of the Association, donation of prizes for golf tournaments, or contributions of door prizes at the state meetings or conventions of these groups and associations. On the county level, our two companies in Marion County, Oregon, have found it to be effective customer relationship to sponsor the social hour at the annual meeting and banquet

of our county real estate boards and at the periodic meetings of our county bar association. Let me stress that both of these activities should be conducted on a cooperative basis, that is, through the Association and under its name on the state level, and by a cooperative effort of the companies who are located in a single locality.

Entertainment

The efforts of an individual company to furnish entertainment, refreshments and so on, to a state convention of realtors or the bar association, and of its competitor to do the same at a subsequent meeting in the name of the individual company, reminds me of the group of eight ladies who met once a week for two tables of bridge. Each of the ladies took her turn in acting as hostess for the occasion, and in serving light refreshments. Soon it developed that Ann, when her turn came to act as hostess, tried to outshine Mabel who had acted as hostess the week before. Susie, the following week tried to outdo Ann. This continued until some of the girls felt they couldn't keep up the pace in serving expensive food and in setting the table at refreshment time with sterling silver that would match the quality of that displayed by some of the other members of the group. Consequently, ill feeling developed among them and their weekly meetings blew sky high. Isn't it true that this type of competition among title companies might well develop ill will between them. This ill feeling soon is recognized by members of the group whom the companies are trying to entertain—result, poor customer relationship.

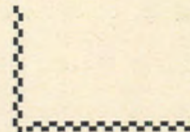
There is no attempt here to contend that competition between companies does not have its place or is not good business. The proposition is submitted, however, that cooperative efforts by member title companies through their associations and joint participation by local companies in the projects just outlined can result and will result in better customer relationship for the entire title industry.

Let's Talk

FACTS

Relating to Your
REAL PROPERTY

WTA



AN ABSTRACT OF TITLE

Should set forth the contents of every instrument of record affecting the title, so full that no reasonable inquiry shall remain unanswered, so brief that the mind of the examiner would not be distracted by irrelevant details, so methodical that counsel may form an opinion on each conveyance as he proceeds in his perusal, and so clear that no new arrangement or dissection of the evidence should be required.

Abstracting of titles is strictly an American institution, born of American traditions and fostered by the judicial branch of our Constitutional form of government. It had its inception, in one form or another, about the time the original thirteen states were organized. It later developed to its present status, with slight variations of methods in some states, and is now generally recognized as the only sound method of making a comprehensive determination of real estate title or ownership.

2

KEEP THIS BOOK...

it contains

VALUABLE INFORMATION

which you, as a present or prospective owner of real estate, should know. Eventually you will have use for the information it contains.

THE KNOWLEDGE you can obtain by studying its contents may save you

MONEY
WORRY
TROUBLE

and protect you against **LOSS**

•

It is not unusual for the uninformed person dealing in real property transactions to become confused with its seeming complexities. The material contained in the following pages, therefore, has been prepared to assist those involved in buying or selling real estate with sound, non-technical advice.

PUBLISHED BY THE

WISCONSIN TITLE ASSOCIATION

whose members are the abstracters of the state and

ALWAYS AT YOUR SERVICE

JUST BETWEEN YOU AND ME

WHAT IS AN "ABSTRACT"?

Briefly, an "abstract" is a document which contains, in a short or "abstract" form, all the essential information on record in the public offices affecting the title to or the rights of ownership in a given tract of land.

The purpose of an abstract is to enable anyone interested in the title to land to determine its sufficiency without referring to the original sources for information — that is, the public records established by statute.

An abstract of title is evidence of your rights and the character of your title. It should be neat in appearance, durable in construction, impress one with confidence and should be full and complete enough to enable a lawyer to pass upon the title, eliminating uncertainties.

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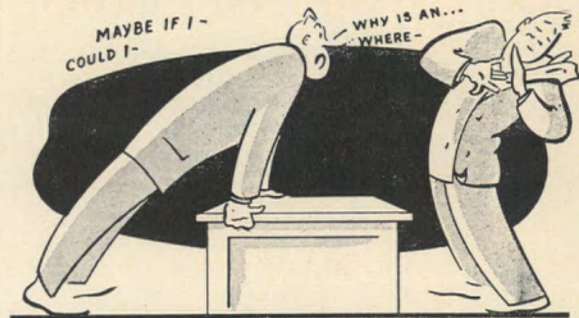
We can all use a little

GOOD ADVICE!

And the best advice anyone can give is: *Always* have an abstract of title down to date whenever you buy, sell, mortgage or loan money on real estate.

It should be compiled from tract indexes of the county records which competent abstracters possess. You may select an abstracter or abstract company who is a member of the WISCONSIN TITLE ASSOCIATION with absolute confidence.

QUESTIONS! QUESTIONS!



You ask them and . . .

WE'LL ANSWER 'EM!

Providing the correct answers to questions regarding real property is our business. If a doubt remains in your mind after reading our "Questions and Answers" booklet, consult your attorney . . . then contact a member of the Wisconsin Title Association. His experience and knowledge is at your disposal.

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Let's start with the most common question:

WHY SHOULD I HAVE AN ABSTRACT?

Because you must *know* your title and its true condition. Buying, selling, mortgaging or otherwise dealing with real property is based upon the title to the property and not upon the ground or other material of which it is composed. An abstract will reflect the true record title.

The satisfaction and peace of mind you gain in knowing that your title is good will be worth many times the cost of the abstract.

It enables you to satisfy one who loans you money on the property as to the sufficiency of the title.

It saves the expense of buying a complete abstract when you sell — just because *you* took the property without an abstract don't take it for granted the next buyer will! *Be safe — get a complete abstract.*

WHY DO I GET AN ABSTRACT?

You receive an abstract so that you will be able to determine the ownership of the land described in the abstract. The abstract will show the record title to the property, the nature of any easements which affect it, mortgages which might be recorded against it, liens which have been filed and affect the property, court judgments, special assessments and many other matters which might affect your enjoyment and use of your property.

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WHO SUPPLIES THE INFORMATION RECORDED IN AN ABSTRACT?

Information relative to the title of your property is contained in documents recorded or filed in the Public Offices of the county in which the property is located

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SHOULD I INSIST UPON A COMPLETE ABSTRACT

FROM THE UNITED STATES TO DATE?

Yes. Never accept a partial abstract, because it is not complete and does not show the true condition of the title. An abstract of title should always be complete, showing the title from the Government down to date. With such an abstract, a competent lawyer will be able to tell you the condition of the title as shown by the records.

Have your abstract examined by your attorney, before making settlement on your purchase.

WILL AN ABSTRACT SHOW GOOD TITLE?

A complete abstract of title compiled and made up as above will only show such title as the records show and discloses any defects in such record title such as: Unrecorded patents, failure to have the estate of a former owner probated, and other such matters. The examination made by an attorney will disclose not only the above stated defects but any defects in foreclosure proceedings, probate proceedings, defective instruments, missing conveyances, etc. In other words, an abstract may be a good abstract and not show any title in the owner of the real estate. There is only one way to know what your title is and that is to have a complete abstract down to date and have it examined by your attorney.

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WILL AN ABSTRACT ELIMINATE THE SERVICES OF AN ATTORNEY?

No. A complete abstract, however, contains in one unit all information of record . . . thus enabling an attorney to ascertain the true condition of your title without consulting public records.

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WHERE DO I GET AN ABSTRACT?

Always insist on a member firm of the Wisconsin Title Association.

WHO PAYS FOR AN ABSTRACT?

Usually the seller. It is a matter of agreement and should always be agreed upon and such agreement should be stated in any contract of sale.

MUST I TAKE WHATEVER ABSTRACT THE SELLER GIVES ME?

No. You should not accept any abstract whatever until you have had it examined and finally approved by your attorney.

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IF I GET AN ABSTRACT TO A PIECE OF PROPERTY AND GET THE PROPERTY IS THAT ALL THAT IS NECESSARY?

No. Be sure the title disclosed by the abstract and your deed have been approved by your attorney.

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SHOULD I DEPEND ON A NEIGHBOR'S ABSTRACT TO SHOW THE CONDITION OF MY TITLE?

No. Because it does not protect YOU against loss — further, when you sell, you will probably be required to furnish a complete abstract.

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WHAT DO YOU MEAN BY "CERTIFIED TO BY AN ABSTRACTER?"

A certificate is attached to the abstract by the maker in which it is stated that it is a true and correct abstract of the record title. The abstract is no better than the competency and responsibility of your abstracter.

DOES AN ABSTRACT HAVE TO BE RECORDED?

No. It should not be recorded.

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WHAT DO I DO WITH MY ABSTRACT AND PAPERS?

Keep them in a safe place, which means in a place from which they cannot be stolen, destroyed by fire, water or other causes.

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WHEN I BUY REAL ESTATE WHAT SHOULD I DO?

In order to avoid trouble and expense in the future, have a thorough understanding of all matters connected with the purchase (including the furnishing of an abstract of title). Have the deed, mortgage and any other papers made out by your attorney and be sure that all matters agreed upon between you and the seller are incorporated in the same and that the description of the property is correct.

If any part of the sale and purchase is to be completed at a later date, then a contract of sale should be drawn setting forth exactly what you have agreed upon as to payments, instruments to be executed, abstract of title to be furnished and all other matters.

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SHOULD I ENTER INTO A CONTRACT BEFORE I CONSULT MY ATTORNEY?

NO. *Never.* ALWAYS consult your attorney first.

General Questions

WHAT DO YOU MEAN BY "RECORD TITLE"?

It is the title disclosed by the public records of the county in which the property is located.

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WHAT IS MEANT BY "TITLE"?

"Title" is ownership — the right to use, possess, enjoy, dispose of and mortgage real property. The *indisputable evidence* of title is an abstract.

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THE LAND I WANT TO BUY WAS OWNED BY THE SELLER'S FATHER FOR THIRTY YEARS — SHOULDN'T THE TITLE BE GOOD?

Ownership for thirty years or any other length of time does not make the record title good. Follow the advice given in this booklet as to abstract, examination of title by your attorney, etc., if you really want to know.

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SHOULD I CONSIDER THE TITLE TO PROPERTY GOOD

BECAUSE IT HAS BEEN OR IS OWNED BY A CAREFUL, PRUDENT AND CONSERVATIVE BUSINESS MAN, OR EVEN A LAWYER?

NO. *NEVER.* There is only one way to know about a title. Get an abstract of title and have it examined by your attorney as heretofore advised.

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WHEN PROPERTY IS INHERITED OR PASSES BY WILL, SHOULD THERE BE A DEED?

NO.

WHAT IS A "TAX TITLE"?

Title based upon the sale of the property for unpaid taxes and procedure in accordance with the statutes, including the execution and delivery of a deed by the County Clerk.

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ARE ALL TITLE PAPERS SUPPOSED TO BE RECORDED?

Yes. Be sure to record all papers after your attorney has checked them.

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I HAVE THE DEEDS TO ALL MY PROPERTY LOCKED IN A BANK'S SAFETY DEPOSIT VAULT WHY SHOULD I RECORD THEM?

To establish your record of title. Deals in real estate are based upon the record of title.

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WHAT SHOULD I KNOW ABOUT THE RESTRICTIONS ON THE PROPERTY I AM GOING TO BUY?

Consult your attorney about any restrictions on property you propose to purchase.

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WHY SHOULD I KEEP MY TAX RECEIPTS?

To show that you have paid your taxes.

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WHEN I PAY A MORTGAGE SHOULD I GET A SIGNED AND ACKNOWLEDGED RELEASE?

Yes, and have the release recorded immediately.

SHOULD I GET THE ORIGINAL NOTE MARKED "PAID" WHEN I PAY?

Yes, and it would be well to keep it.

WHEN I BUY SHOULD I HAVE THE PROPERTY SURVEYED?

Yes, unless you have satisfactory physical evidence as to its boundaries.

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WHAT IS A "TITLE OPINION" AND WHERE DO I GET IT?

It is what your lawyer tells you about your title after he has examined your abstract. To be of any value to you, this opinion must be in writing.

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I CAN HAVE A COPY OF MR. SMITH'S OPINION, WON'T THAT BE JUST AS GOOD?

No. Mr. Smith's attorney is liable only to Mr. Smith, so if something should happen, you have no one upon whom to rely.

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WOULD I LOSE MY PROPERTY IF I LOST MY DEED . . . AND SOMEBODY FOUND IT AND WANTED TO CLAIM MY PROPERTY?

No. However, you should be sure that your deed, or other instrument by which you acquired your title, has been recorded.

I BOUGHT MY PROPERTY SEVERAL YEARS AGO. SHOULD I NOW HAVE AN ABSTRACT MADE AND THE TITLE EXAMINED AND APPROVED?

Yes, do it now — delays are dangerous. If an abstract shows that corrections are needed to give a good title, you should secure whatever affidavits or corrections are needed while persons who are in a position to furnish the needed information or documents are still living and can be located.

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IF I GET A DEED TO THE PROPERTY I AM BUYING, WILL THAT BE ALL THAT IS NECESSARY?

No. Insist upon a complete abstract of title. Have it examined by your attorney. Get a written opinion and have all defects cured of record. Your attorney will advise you when this has been done and when the title is satisfactory.

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WHAT NAME SHOULD I USE WHEN I BUY AND SELL PROPERTY?

If you already have title to property, continue using the name by which you hold this title in all future real estate dealings. A good practice is to use your given name, your middle initial, if you have one, and your surname, such as JOHN W. DOE — JANE B. DOE, *never* Mrs. John W. Doe — reason: A fickle husband might divorce his wife, remarry, and the new wife becomes Mrs. John W. Doe.

This booklet has been published by the Wisconsin Title Association in an endeavor to help the people of Wisconsin in knowing a few of the fundamental principles of dealing in real estate.

No one can know how to do every kind of business, but everyone wants to own a home and property and know how to handle it properly.

New laws are being made constantly to meet the requirements of the ever-increasing population, and the procedure of dealing with the ownership of land, as well as everything else, is also changing to conform to these new laws. Only persons who make a business of knowing this procedure can come anywhere near keeping abreast of the times.

If you do not find the answer to your question in the foregoing booklet, call on your local abstracter, or your lawyer.

THE TREND IS TOWARD UNIFORMITY

Every effort has been made by the Wisconsin Title Association to insure that the abstract which you receive from an association member will be sufficient to enable your attorney to intelligently pass upon the condition of the title to the property which it covers.

The certificate of the abstracter gives you information as to a large number of additional liens and incumbrances which can effect the title to your property.

In addition, the Wisconsin Title Association is endeavoring to secure uniformity among Wisconsin abstracters so as to simplify the work of the title examiner and insure that an abstract to Wisconsin real property will set out the instrument, court proceedings and other matters affecting the title in such a way as to best meet the general requirements and purpose of an abstract of title.

To this end the assistance and cooperation of lawyers and real estate men of Wisconsin, as well as the public, are respectfully solicited and suggestions leading to greater uniformity and improvement in abstracting welcomed.

The Wisconsin Uniform Abstracter's Certificate was copyrighted in 1936, and is now in use by many members of the association. This certificate has received favorable comment in a number of states and meets with the approval of all the large insurance companies doing business in Wisconsin.

WISCONSIN TITLE ASSOCIATION

Code of Ethics

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

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

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

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

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

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

LAND TITLE COURSE
REVISED

We urge you favorably entertain the idea of purchasing extra copies of the July (1950) issue of "Title News," containing "The Land Title Course, Revised," edited by Mr. William Gill, Sr. They are priced at $2.00 per copy.

Members have found numerous uses for extra copies, among these being:

1. Copy for employees presently employed in all capacities, from executive officers to apprentice employees.
2. Copy for all new employees, particularly those who show promise.
3. Copy, with compliments of the firm, to counsel and employees of mortgage departments of banks, mortgage bankers, building and loan associations, trust companies and other financial institutions.
4. Faculty of law schools, business administration schools in universities, graduating classes of high schools.
5. Life insurance company counsel domiciled and/or lending in areas serviced by member title insurance/title guaranty and abstract firms of the Association.
6. Attorneys specializing in real property law.
7. State and regional officers of federal departments and agencies interested in land and land titles.
8. Land and legal departments of oil and pipe line companies, lease brokers, chain stores, real estate dealers, etc.
9. Officers of departments of the state—Attorney General, Highway Department, etc.

SEND YOUR ORDER TO

American Title Association

3608 Guardian Building — Detroit 26, Michigan

NOW

WHILE WE HAVE THEM IN STOCK