# TITLE NEWS

Official Publication

## THE AMERICAN TITLE ASSOCIATION

Volume XXXI July, 1952 Number 6

# *Table of Contents*

# TITLE NEWS

*Official Publication of*

THE AMERICAN TITLE ASSOCIATION

3608 Guardian Building — Detroit 26, Michigan

Volume XXXI July, 1952 Number 6


## SURVEYS


By McCUNE GILL

*President, Title Insurance Corporation of St. Louis*


Many questions arise in connection with surveys of real estate. Is a survey necessary when you build a residence or a business building? Is a survey necessary when you buy or lease or lend money on such property? What about a vacant tract of land? What should a survey show, in order that that its user may have adequate protection? Should both side streets and the distances to each be indicated? Should the survey show driveways and easements and the location of public utilities? How about the location of buildings and easements on adjoining properties?

### Safety

When you build a building of any kind it is certainly a wise precaution to have the lot surveyed and stakes placed on the boundary lines of the lot and also at the corners of the proposed building. It not infrequently happens that a house is found to have been erected partly, and sometimes wholly, on the wrong lot.

In one instance an entire row of detached residences was built and it was later found that each house was located half on the correct lot and half on the lot of the adjoining owner. All of this because the builder thought a survey was unnecessary as an old survey stone was found at the corner of the block. Or rather he presumed that the stone was at the corner. This one happened to be in the center of the side street which had originally been an old country lane. It seems that there had been a custom to put stones in the center and not at the side of such lanes. However, the false assumption that the stone was on the edge of the street put every house twenty-five feet away from the place where it should have been. The task of getting deeds from each owner to his neighbor, not to mention the releasing and rewriting of the numerous mortgages, can be imagined.

### Business Building

The need, or rather the absolute necessity of having one's lot surveyed when a business building is to be built is rather obvious, as such a building usually occupies the entire frontage of the lot and sometimes all of the area of the lot. A survey will disclose the exact size of the lot and should be obtained before plans for the new building are drawn because it may well happen that there is a surplus or deficiency of ground in the block or the neighbors' buildings may encroach somewhat on the lot to be built on.

### Location

Or still more puzzling, the neighbor's buildings may be located a few inches away from the true line although wholly on his own lot. What can you do? Should you keep your building on your own lot and leave a small space or crack between the buildings to fill up with water or ice or should you build up to the neighbor's building even though you there-

by encroach on his lot? Assuming that you could not buy the small strip of ground from your neighbor, what would you do? The answer seems to be to build your building precisely on your line and to fill in the space between your building and with your neighbor's with cement as your wall progresses. In this way you will avoid weather damage to your wall and when and if your neighbor decides to rebuild you can tell him simply that he can chip off the sliver of cement and use his entire lot without interfering with your wall.

### Ingress and Egress

Boundary line troubles, however, are not the only ones avoided by a pre-survey. There will frequently be found rights of ingress and egress as well as easements for sewers, water pipes and wires that are to be avoided or specially treated in erecting your building. Knowing the exact location and depth of water, sewer and steam pipes will prevent many costly mistakes in planning.

### Residential

If instead of building a house, one is buying one already built it is also usually necessary to have the property surveyed. Of course if you are buying a small cottage with a yard on both sides and it is on the corner of two made streets it may be debatable as to whether a survey is necessary. But in a less simple situation a survey should certainly be obtained. If the house is in the middle of a block and the other lots are vacant there is really no way short of a survey whereby you can be sure that your house is really on your lot.

### Party Walls

And if a business building is being acquired, a survey should always be had in view of the great probability of the building not conforming exactly to the legal ownership lines. The prevalence of party walls, that is, where one wall supports two adjoining buildings, is itself a sufficient reason for a survey. This is especially true if you intend to tear down your building because if the wall is a party wall you must pay the cost of shoring, supporting, and weatherproofing the wall or perhaps the cost of erecting a new wall. It is sometimes not easy for an unskilled observer to determine whether there are separate walls or a party wall.

### Under a Lease

The reasons why a purchaser should obtain a survey apply with equal force to a lessee under a long lease, especially where the lessee is to make alterations. We know that it is standard practice now from many lending institutions to require surveys, this requirement growing out of a long experience in such matters and many losses where surveys were not obtained.

### Vacant Property

But suppose there are no buildings on the land, it being a vacant tract. Does the argument in favor of surveys still obtain? Most asuredly. For the price is usually a certain amount per acre or square foot and we know that the dimensions shown in deeds are seldom the dimensions found to exist on the ground. Not to mention encroachments of neighbors, roadways, adverse possession, and the like. And it sometimes happens that, through mistake or fraud, the purchaser or lender is not shown the tract described in the deed, but some other and more desirable tract. The presence of a responsible surveyor will prevent such an occurrence.

### Coverage

Now, having decided to obtain a survey, what should we insist that the survey show? For not all surveyors are required or accustomed to investigate or to show on their survey plats all of the things that a purchaser, lessee, or lender should know about the lot. The survey should of course show the location and dimensions of the property. By location is meant a reference to monuments of a legal nature, such as section numbers or lot numbers, as well as physical and easily observable natural and artificial monuments such as rivers, creeks, streets, roads, railroads, fences, and the like. By dimensions is meant a showing of the measured distances between the stakes set by the

surveyor and also the distances to the designated boundaries or location points.

### Distances

In surveying an ordinary city lot it is frequently found that the surveyor gives only the distance to one side street. He should do more than that. He should show the distances to both side streets and to the next street in back of the lot. The purpose of such a showing is so that the purchaser or his lawyer may determine whether there is a surplus or a deficiency of ground in the block and whether such surplus or deficiency is to be added to or deducted from the supposed dimensions of the property. It may be remarked that such surpluses or deficiencies of dimensions and area occur very frequently.

### Topography

Sometimes it is necessary to obtain much other information from the surveyor. It may be necessary to ascertain the condition of the ground for foundation work. Or a topographical calculation of levels may be called for. The platting of switch tracks and the projection of trackage easements or fee simple titles to strips across adjacent ownerships to the main railroad line is quite an art. And now we have similar problems with regard to trucks and highways.

### Legal Description

The surveyor should certainly furnish a legal description of the property with every survey. Particularly necessary is this if the description must be by metes and bounds and courses and distances. If the property is to be divided into separate lots or tracts legal descriptions of each part should be furnished.

### All Improvements

Surveys should show not only the location of all buildings, garages, sheds, and other improvements and structural appurtenances, but should also show the location of sidewalks, driveways, paths, pole lines, and other objects on the ground. The survey should show the location of these items with reference to the property lines, so that it can be determined whether they are of a nature to create easements either in favor of or against the owner of the building in question, or whether they violate restrictions or record easements. The location of fences and hedges, indicating the extent of the possession of the parties, should also be shown, and it should be indicated whether the fences are located on the property in question, or on adjoining property.

Surveys should cover the location of cornices, eaves, bay windows, entrances, porches, signs, fire escapes, and other items above the surface of the ground, both on the building on the property, and on adjoining buildings, to ascertain whether any of these items constitute an encroachment either by or against the property in question. In one case the surveyor showed the location of the building, but failed to show that the entrance and walk were on the side and entirely on the land of the next door neighbor. The location of the walls of buildings on lots on both sides should be shown, as well as cornices and porches and all encroachments.

### Accuracy

It is not necessary that the location of these items should be measured to within a fraction of an inch. It will be sufficient if the location is indicated by stating, for example, that a certain driveway, bay window, or cornice encroaches 2 feet, more or less.

If the building is built along the property line, there should be an indication as to whether there appears a party wall, or if this cannot be determined, an appropriate statement as to the doubtful character of the wall. If the surveyor is in doubt as to whether there are footings underground extending across the property line, or sewer or water pipes or conduits, he need not excavate to determine such facts, but should indicate the possibility in a general note on the plat.

The location of record building lines (front, side and rear), easement lines, and sewer rights of way, as indicated on the recorded plat of the subdivision, should be shown. If convenient the paper or tracing cloth

used for the plat should be 8½ by 14 inches.

### Amended Certificate

Where the building has not been commenced on the date of the survey, it should be amended later to show the location of the foundation and also to show conditions after completion of the building. The house numbers of all buildings should be shown both as they exist on the buildings and as they are recorded in the House Numbering Department of the City.

# SPEAKER'S BUREAU, STATE WIDE

## Before and After Colorado Springs

STEWART J. ROBERTSON

*Manager, Abstract Department American-First Trust Company, Oklahoma City, Okla.*

The 1951 American Title Association Convention was held in Colorado Springs last September as you know. Mortimer Smith, the president of that organization, in his "Report of the National President," touched upon a state-wide Speakers' Bureau in this fashion. "If you folks in attendance here, who are presently, or are about to become officers of your own state title associations take nothing else home from here but a working idea of a state-wide speakers' bureau, your trip will have been that of one hundred per cent accomplishment."

That statement, coming from President Motimer Smith of the ATA was quite a bouquet, and, quite logically, you ask, "Why?"

President Smith's remarks were directed toward a state organization that had set up the No. 1 state-wide Speakers' Bureau in the United States. President Smith figured that Oklahoma was about to give the rest of the title brethren "the word." If there is any horn I like to hear "tooted," it's the horn of the OTA. And, by the same token, if there is any horn I like to "toot," it is that same OTA horn.

### Anything Wrong?

But, before we get to that "amen chorus," I would like to jump to the concluding remarks of that paper presented in Colorado Springs. To the questions, "What was wrong with our Speaker's Bureau?" and "In the light of our experience, what would we do differently today?" here was the No. 1 statement.

1. "Do a better job of educating our state association membership of what we have to offer them. This is the first time this story has been told. I believe more invitations for speakers would have originated through our state group had they known more of the background of this project."

OK. You haven't necessarily asked for it, but here it is—the story of your Speakers' Bureau, as related at Colorado Springs.

There were four of us on the Public Relations Committee and this is not a moment too soon to give credit where credit is due—to these committee members:

Chas. E. Bledsoe, Lawton,
Kenneth Sadler, Muskogee, and
John Warren, Newkirk.

### Help

We needed help—additional personnel from every corner of the state. Letters went out to 7 additional people. This, then, gave us a combined force of 11 persons—located in strategic sections of the state they could be called upon to cover. I am more than a little proud to announce that not a one rejected our request. In fact, here is a sample of the replies received:

"I have just returned from an extended vacation broke and somewhat the worse for wear, and find your letter of July 25. I don't know a damn thing about it, never expect to know much about it, but my feeling is if it is for the benefit of OTA and you think I'm suited, naturally it is my desire to do my part."

As for our Speakers' Bureau mem-

bers, that has been one of our easiest problems. Their cooperation and willingness has been of the highest order and from newspaper and other accounts reaching me, they have really "wowed" the groups they have appeared before.

**Personnel**

It is worthwhile to note here that we have not yet had occasion to use all the persons enlisted in our Speakers' Bureau. I would like to give you their names, and I am sure if you care to correspond with any of them, they will be very glad to render any assistance they can. They are:

1. Helen Bizzell, Holdenville
2. J. L. Bowman, Jr., Claremore
3. O. L. DeArmon, Vinita
4. M. M. Hightower, Duncan
5. Roy C. Johnson, Newkirk
6. J. Herb Loyd, Stillwater
7. T. D. Nicklas, Lawton

The "draft" caught a couple more of our good OTA members—and ATA members, too—to wit:

Wm. Gill, Sr., Oklahoma City, and V. Hubert Smith, McAlester.

Numbered among our "Honorary" members are:

Jim Doss, Eufaula.
George Goetzinger, Woodward
John McCue, Fairview, and
Irvin Mullican, Chickasha,

because of their interest and activity on behalf of this project. As this Speakers' Bureau activity continues to grow—and we anticipate it will—we will enlist the aid we need to fit the demand.

What have our speakers talked about?

**Interesting Displays**

Just preceding the American Title Convention in Oklahoma City a year ago, we had a meeting of our Speakers' Bureau and one of the Speakers' Kits was given to each member of our group. In each kit is some interesting title evidence, all photostated. Here's an old English deed, 207 years old; several Patents which are the inception of title as to Homestead allotments; Indian Surplus allotments; land from the United States of America; and land from the School Land Dept. of the State of Oklahoma, and old "shirt-tail" abstract, and a more "modern" one, last certified to June 6th, 1899. This abstract has a certificate in it which has been "fancied up" with a ten-cent revenue stamp. And, on the cover of this abstract is an attorney's opinion on the title, the like of which I have never seen before—and never expect to see again. For brevity, it is incomparable, I am sure you will agree.

It reads, "I hereby certify that I have carefully examined the within abstract and find that title to said property is vested in Chas. F. Johnson in fee simple.

If the displaying of these instruments has aroused your interest — they are running true to form—and to the use for which they are intended. Actually, it has been my experience that a lay group is just as interested in this sort of thing, and perhaps even a little more so, than a group of title people.

**Pamphlets**

Here is another addition to our Speakers' Kit—it's a booklet entitled, "What Would You Say?" On the back page of the booklet, its author is identified as one Wm. Gill. In view of the fact I hang my hat in the same office as this author and it is his signature that validates the payroll checks, I'm sure you will find it quite understandable when I say "this is one helluva good booklet."

If you should doubt my word—or if you should have occasion to make a speech and stand in need of some interesting material to incorporate in your talk—then I suggest you get out your Vol. 29, No. 10, Oct., 1950, edition of Title News and judge the value of this work for yourself. In it, McCune Gill, Past-President of the American Title Association, and a great title man of St. Louis, Mo., will again see in print his Biblical story of the first transfer of title of record as taken from the 23rd Chapter of Genesis. I am convinced that in Civic Club circles in Oklahoma, this has been the most frequently told Bible story during 1951.

**Talks That Are Alive**

Our Speakers' Bureau members have not been operating from

"canned" speaches. They have all preferred to work from an outline and I think it worth while to rapidly review the outline used by M. M. Hightower of Duncan, Okla., and which was printed and distributed as a supplement to the Speakers' Kit.

How many of you gentlemen own a piece of real estate or hope some day to own real property?

History of titles.

McCune Gill of St. Louis tells of first real estate transfer. (Bible reference).

Ceremonies dealing with land transfres. Handful of dirt, etc. Acceptance.

Old English Deeds. Samples.

The Statute of Frauds.

Louisiana Purchase.

Treaty of Dancying Rabit Creek.

Samples.

Patents. Samples.

Present recording system.

Cases in various courts, and instruments recorded in Stephens County. Number of tax rolls. Lien dockets. Federal Income Tax books. Gave number of each.

Who could keep a record of all real estate transactions, find all instruments of record, etc. The abstracter.

Oklahoma Title Association.

Abstracter's Bond.

Shirt tail abstract. Sample.

New abstract. Sample.

Land is the basis of all our wealth.

There isn't a square inch of land in the world not owned by someone.

Many times the ownership is hard to determine, but nevertheless, ownership exists.

You do not own the house, the lot, or the land, you own the TITLE.

Various kinds of deeds.

Safeguards in buying real estate. Buy real estate as though you were buying it for your widow and children.

Insist on an abstract.

Attorney's opinion.

Survey.

Know the persons with whom you are dealing.

Minors. Incompetents.

Check your Deed against the Abstract or Survey.

Revenue Stamps.

Recording the Deed.

WILLS. Sample.

Keep a list of your real estate.

That's about it, Stew, except the speech was perforated at several spots with some of my appropriate (?) corny jokes.

You can see Bill Gill's footprints all over this outline, as I used his very thorough and complete booklet "What Would You Say?" to good advantage.

I passed out about forty or forty-five of those booklets, "Their First Home." Some of the boys wanted four or five copies.

The boys seemed to enjoy the following most of all:

## A REMARKABLE WILL

More vividly than a portrait does untutored hand, which tediously enscribes the holographic will, depict the nationality, character and idiosyncracies of the testator.

The remarkable specimen of a man's last will and testament, which we print below was offered for probate at the July, 1934, term of the County Court of Anderson County, Texas. For its authenticity we vouch.

"I am writing of my will mineself that des lawyir wand he should have to much money he ask to many answers about the family. First think i want done, I dont want my brother Oscar got a dam thing. I got he is a mumser he done me out of four dollars foreteen years since.

"I want it that Hilda my sister she gets the north sixtie akers of at where I am homing it now I bet she dont get that loafer husband of hers to brake twenty akers next plowing. She cant have it if she lets Oscar live on it i want i should have it back if she does.

"Tell mama that six hundret dollars she has been looking for ten years is berried from the bak-house behind about ten feet down. She better let little Fredrick do the digging and count it when he come up.

"Pastor Licknitz can have three hundred dollars if he kisses the book he wont preach no more dumhead talks about politiks. He should a roof put on the meeting house with and the elders should the bills look at.

"Mama should the rest get, but i want it so that Adolph should tell what not she should do so no more

irishers sell her vaken cleaner, they noise like hell and a broom dont cost so much.

"I want it that mine brother Adolph be my executor and i want it that the judge should pleese make Adolph plenty bond put up and watch him like hell. Adolph is a good bisness man but only a dumkoph would trust him with a bested pfennig.

"I want dam sure that Schleimial Oscar done nothing get tell Adolph he can have hundret dollars if he prove to Judge Oscar dont get nothing; that dam sure fix oscar."

This is the "how" of a state-wide Speakers' Bureau—both as to lining up your speakers and placing at their disposal the working tools of such a project.

**The Start**

Getting the activity under way was accomplished by announcing to our state association membership through this sort of letter that our Speakers' Bureau was set up and ready to go. Attached to the letter was an application for a speaker. Several subsequent announcements were also run in our state association publication, the "Titlegram," plugging the activity of the Speakers' Bureau.

Now we get to the meat of this project. What was accomplished? Did the results justify the effort? In the light of our experience—what would we do differently today?

**Results**

To date (9-25-51) our speakers have appeared before 40 groups representing approximately 2306 individuals. 20 of the 40 groups have been civic clubs (American Business Club, Lions, Kiwanis and Rotary) with an attendance of 1116.

Fourteen appearances were made before either local real estate boards or regional meetings of the Oklahoma Real Estate Association, with approximate attendance, 865.

Four classes of GI's were addressed with 150 persons in attendance.

One vocational group in the high school at Fairview was addressed with approximately 25 students present, and it was my pleasure to address the junior and senior students in the Law School at the University of Oklahoma with about 120 students present.

There you have it to date. Forty speeches with over 2300 persons "given the world." Later on this fall we are due to appear before the Oklahoma Savings and Loan League (state convention), and the Daughters of the American Revolution at Durant, and the state convention of the Oklahoma Lumbermen's Association.

**More Results**

On the question "Did the results (of our accomplishments) justify the efforts?" I'm going to let others answer that. Hubert Smith of McAlester talked to the Lions Club at Durant, and here is a report from Fred D. Blalock, of Durant, who secured the invitation. "Am glad to report that Hubert Smith made an excellent talk and received a lot of favorable comment. We had about 80 at our club meeting to hear him."

This comes from one of our speakers, M. M. Hightower of Duncan, who recently caught a double-header. At Waurika, Okla., on August 20th, he talked to the Lions Club at noon, then to Rotary at 7:00 p.m. He says, "Made my noon talk at Waurika today, first of the double-header. Am leaving in a few minutes to talk to Rotary Club. Strange as it may seem, they seem to like to hear about titles, and the "Remarkable Will" continues to wow 'em."

Another of our speakers, Chas. E. Bledsoe of Lawton, after having Hubert Smith address his Rotary Club, evidenced his enthusiasm thusly: "The more I see of the Speaker's Bureau program, the more convinced I am that no member of the association should overlook an opportunity to present these programs in his county."

And of Charlie Bledsoe's speaking ability, Dave Boyer of Walters, Okla., had this to say, "Thank you and the association for sending our friend Judge Bledsoe of Lawton. He made a fine and interesting address—his talk was immensely interesting and he received the congratulations of the Rotary members when he left."

**Tangible Results**

Such comment as this is not the exception to the rule—it is the rule. Consequently I think our Speakers' Bureau is accomplishing a two-fold purpose. First, it is tangible evidence the state association is doing something for the individual members from the standpoint of informing the public about our business. And, secondly, while helping the local abstracter primarily, such a program also contributes its part toward strengthening the state organization through such organizational activities.

And in conclusion, the question, "In the light of our experience, what would we do differently today?"

**Spread the Good Word**

1. Do a better job of educating our state association membership of what we have to offer them. This is the first time this story has been told. I believe more invitations for speakers would have originated through our state group had they known more of the background of this project.

2. Contact the state headquarters for Rotary, Kiwanis, Lions, 4-H and F.F.A. clubs, etc., and make known to the state officers for their official publication, the facilities we have to offer.

3. Exercise more effort in getting news items published in the local papers, concerning the speaker, Oklahoma Title Association and nature of the discussion on titles. This sort of thing is valuable free publicity and we are entitled to it.

# WHY I AM A TITLE MAN

By WILLIAM J. HARRIS
*Executive Vice-President, Houston Title Guaranty Co., Houston, Texas*

I have been asked to reveal to you one of the innermost secrets of my life. I have been requested to tell you why I am a title man.

Of course, when I was born they told me I was a boy, and as I grew older they told me that I am what is sometimes called "A MAN," and since I have a title I can be called a "TITLE MAN," but seriously, the question I am to answer is WHY.

As I considered the various fields of endeavor that offered opportunity to a young man, I remembered some of the boys talking about post office, or maybe it was a game called "post-office." In any event when I had a chance to go into the postal service, I thought, "this is for me," but you know working in the post office was not at all like what the fellows talked about, and I quickly tired of the peace and security of the Democratic party. As I looked about for some other field or calling, of course I was in the period called "courtship" of a new calling, courtship being that period between lipstick and mopstick, and I felt the demands for a task or job that offered competition. I have always found real pleasure in any activity that gives me an opportunity to compete, and I had heard that the title insurance was in a way competitive, and so the die was cast—it was to be the title insurance business for me. Little did I know the joy and rich rewards that were to be mine, I had often dreamed of being in a business where you were in effect the "Knight in Shining Armor" or the "Defender of the Poor and Needy." The passage of time and experience in the business has taught me that the title man is this and more. For example, who else has a greater opportunity to do good and protect the negligent than the title man as he stands between the tax collector and the people. Harassed by unthinking and unreasonable citizens who demand to know whether or not taxes on property have been paid, the collector quite often issues a certificate which states that the taxes are paid when in fact they are not. Who is it that freely and graciously relies on this certificate and guarantees to John Q. Public that the tax collector is right? You are correct, it is the "Knight in

Shining Armor," the "Defender of the Poor and Negligent," the title man who steps in and makes the parties whole. Or who has greater opportunity for service to his fellow man than the title man who takes a drawing by someone called a licensed surveyor, which drawing says on its face that it should not be used for the purpose of locating the lot lines, and locates the boundaries of the insured's properties from a description that doesn't describe. To render a further service we are privileged to happily guarantee to the mortgagor that the surveyor is correct, regardless of whether or not he has been on the property. This is just the beginning of the opportunities for service that are the special privilege of the title man.

**The Neck of the Chicken**

Being in a fairly competitive business, we are always pleased to perform the laborious tasks that often fall to the lot of the poor girls in the mortgage company's office. We joyfully prepare closing statements, write letters of transmittal, fill in countless forms and papers, secure photographs and surveys, obtain copies of restrictions and sell the buyer on the idea of accepting the prepayment privilege in the note together with the policy of hazard insurance sent over by the insurance agency affiliated with the loan company. Occasionally we are privileged to explain a small brokerage charge to the buyer that was inadvertently omitted in the discussion at the time of the loan application. When we have accomplished the small services just referred to, we are than the recipients of the coveted degree of "Fork" from our buddies, the mortgage men. The degree fork meaning the fellow who carries the load but gets little of the gravy.

**We Get Paid**

One of the more compelling motives for being a title man and certainly one that gives us a great deal of pleasure is the chance we have to exercise our judgment of bank balances. Many times in the closing of

deals we are allowed to disburse our funds and accept the personal check of Joe Blow, the buyer, so that the agent, the builder or the seller and the attorney may receive their hard won proceeds. Ah, yes, when this is done, then we have grasped the three essentials of happiness—something to do, rush to the bank; something to love, the sound of the teller as he says, "This is O.K."; and something to hope for, the premium on our policy.

**We Counsel**

Last but not least, there is in the title business an excellent opportunity for making friends and meeting the right people. Just this past week I was privileged to meet a man who wanted us to issue a Mortgagee's Policy on some of his property so that he could borrow money for attorney's fees and court costs incurred by his being under indictment for murder. I also met a man from California who wanted to make his home in Houston, and was asking us to issue our Owner's Policy to him. He had a problem though in that when he left California he thought his wife had divorced him, and as he passed through Yuma, Arizona, he met a lovely creature that he made his second wife. As we counseled with him it developed that she actually was his second wife, his first wife had never gotten a divorce. When the facts were finally established his face was red, his earnest money was gone and our file had to be canceled, but we surely did enjoy his company.

**Squatters?**

One of the most charming couples I have ever met was the little old lady and her husband who were being forced to sell their home because it was infested with Spirits. It seems as though at certain times hands would reach up out of the floor and trip them, or the heads of lions and tigers would appear through the walls. This couple had tried everything; they had on two occasions poured kerosene on the floors and walls and set fire to them in an attempt to drive away the Spirits, but without success. I told our examiner of their problem and of the adverse possession of the Spirits, and he said that it was his opinion that the Spirits held something more than a life estate, and that we should be furnished with a Spiritual Warranty Deed covering their alleged interest. I was unable to find an attorney who would prepare such an instrument and so I had to lose the business, but I did make two wonderful friends.

**Qualifications**

To measure up the high calling of the title man, you should have the curiosity of a cat, the tenacity of a bulldog, the diplomacy of a wayward husband, the patience of a self-sacrificing wife, the enthusiasm of a flapper, the friendliness of a child, the good humor of an idiot, the assurance of a college boy, and the tireless energy of a bill collector.

Seriously, I am a title man by the Grace of God, and if I would succeed, I must pray for a Good Harvest, but keep on hoeing.

# REPORT OF JUDICIARY COMMITTEE OF THE AMERICAN TITLE ASSOCIATION

By RALPH H. FOSTER, Chairman
*President, Washington Title Insurance Co., Seattle, Washington*

### Wills—Competency

Approximately one year prior to the making of his will two guardianships—one in Oregon and one in California—had been instituted against testator and on contest were urged as evidence of mental incapacity to make a will. The Supreme Court of Oregon held that this was not conclusive as to the status of testator's mental capacity. The court considered other evidence and upheld the will. In Re Beir's Estate, 190 Oregon 15, 222 Pac. 2d 1005.

(From report of Judiciary Committee of Oregon Land Title Association—Kenneth R. Schramm, Oregon City, Chairman.)

### Bankruptcy—Homestead

By stipulation of bankrupt, mortgagee and judgment creditors, property claimed exempt as a homestead was sold and their claims transferred to the proceeds. It was held that the proceeds should be applied; first, to pay the mortgage, second, to pay the homestead claimant the amount of the homestead exemption, and finally, any balance to the judgment creditors. The court rejected the claim that the mortgage should be paid out of the homestead exemption. In re Shelton, 102 Fed. Supl., 629.

(Reported by Lawrence L. Otis of Los Angeles.)

### Bankruptcy—Homestead

An intricate discussion and interpretation of the Bankruptcy Act as applied to the California homestead and judgment lien laws is found in a case where the United States Court of Appeals reversed itself on rehearing. Samprell v. Straub, 189 Fed. 2d 379; 194 Fed. 2d 228.

(Reported by J. D. Finch, Los Angeles, and also by Lawrence L. Otis of Los Angeles.)

### Race Restrictions—Damages for Breach

An action for damages for breach of race restriction cannot be maintained. To hold otherwise would result in indirect enforcement of such a covenant. Phillips v. Naff, 332 Mich. 389-52 NW 2d 158.

(Reported by Ray L. Potter of Detroit.)

### Time and Change

In the case of Brown v. Deming, 243 Pac 2d 609 (a case otherwise unimportant to title men) the Supreme Court of New Mexico opens its opinion thus: "This is the first case we have had where a plaintiff has availed himself of the provisions of Rule 18 (a) . . . and joined in a complaint a count for damages for breach of warranty, and another for tort. May the repose of the souls of Blackstone, Kent, Chitty, Sutherland and Bliss be not too long disturbed by what has happened here."

### Tax Title—Easement

The United States Court of Appeals for the District of Columbia had before it the question of whether a tax deed to a lot over which lies an easement, created by deed and appurtenant to another lot, extinguishes the easement. After saying "the authorities are divided" and "at best the question is a close one" the court sustained the holding of the District Court that the easement was not extinguished by the tax deed. Engel v. Catucci No. 11120 decided May 29, 1952.

(Reported by Harry J. Kane, Jr., of Washington, D.C.)

### Adverse Possession

Forty years payment of taxes alone is not sufficient to establish adverse possession.

The recording of an instrument is constructive notice only to those acquiring interests subsequent to the

execution of the instrument. It does not affect the rights of prior record owners. Waldrip v. Olympia Oyster Co., 140 W. Dec. 433.

Decree by court without jurisdiction of the case is void even if attacked collaterally except where person attacking is estopped because he participated in the proceeding on the theory that it was valid. Harbin v. Schooley, 247 SW 2nd 77.

Delivery of deed by grantor to third person with absolute direction to deliver to grantee after grantor's death is good. Ridenour v. Duncan, 246 SW 2nd 765.

(Reported by McCune Gill of St. Louis.)

# TITLE INSURANCE

## Unusual Claims

By SAUL FROMKES
*City Title Insurance Co., New York City*

Title insurance is so technical a field that one word in an unusual place may lead to an unusual claim. In this case the word is "contiguous."

Practice decrees that if several parcels are to be insured as being contiguous, a request therefor is made and a special fee paid.

Julia Marlowe and her husband, E. H. Sothern, owned about 30 acres in Delaware County, Pa., and lived there on and off for a half-century. Their holdings originally consisted of three separate tracts.

The property recently came under new ownership. The new occupant was advised by a neighbor that he was using a strip of land not belonging to him. Whereupon a claim came to the insurer.

### Contiguity

The title company was so startled that it asked the client where he got the idea that contiguity was insured. He said: "It's in the policy," and he gave chapter and verse. In a literal sense it was; the word "contiguous" had been used in an early deed referring to two of the three parcels, and was copied from the county clerk's records in describing the property.

Unquestionably the client thought he was buying an unbroken tract. That was the sole merit of a claim, which based on a word in an unaccustomed place, was new in the insurer's experience.

Title claims ordinarily are settled according to facts, not in accordance with the honest content of a misapprehension. However, to the best of the title company's knowledge, this situation is without precedent. It proposes to buy the gore intervening between the client and his neighbor, and establish the contiguity for which the client was not insured though he thought he was.

* * *

May an owner rely on the protection of a title policy when building operations uncover an encroachment which could not have been revealed by customary searching precautions?

The property known as 200-225 East 61st Street, corner First Avenue, provides an example of title insurance at its protective best. All normal precautions were taken; when examination and survey were completed the purchaser could be content that he could safely go ahead.

### Foundation Wall

But with excavation came the discovery that a large rock formation underlay both the insured's property and the adjoining building. The foundation wall of the adjoining building had been accommodated to the rock formation. But the holder of the title policy wanted no such makeshift. He insisted on removing the rock from his land, and that meant heavy expense to protect the adjoining building.

Was a hidden mineral encroachment, not possible to reveal in ordinary title searching, covered by the

policy? The insured claimed that the insurer was liable. The question was not litigated. The point involved was so unusual that the title company deemed meeting the claim to be an opportunity to emphasize the value of title insurance.

* * *

By P. A. SHEDLOCK

*Guaranteed Title and Mortgage Company, Brooklyn, New York*

Would you like to hear about a rather odd and unusual claim, one which clearly shows the value of title insurance?

Perhaps, the circumstances in the following title and subsequent claim thereon, may be the very one that you are looking for.

Many years ago, an application was received for the insurance of a building loan mortgage, affecting the construction of a big apartment house.

Numerous affidavits were submitted to the title company. These proofs indicated conclusively that the last fee owner of record had died in the State of Vermont, and also showed who were the successors in interest of the said fee owner.

Deeds were obtained from these parties, and were duly recorded, and the first payment was made under the terms and conditions of the building loan mortgage.

### The Real Owner

A few months later, a policeman visited the premises, and asked the foreman in charge of the work.

"Who gave you authority to build on my lot?"

Investigations by the title company proved conclusively that this police officer was actually the sole owner in fee of the property.

The affidavits and deeds which had been obtained at the closing, were from persons who never had any interest in the premises under examination.

Of course, the title company cured the title.

## EXPENSIVE STENOGRAPHERS

By CARL D. SCHLITT

*Home Title Guaranty Company, Brooklyn, New York*

This title affected property in Suffolk County. An old map had been field in 1927 which showed some sixty odd lots each lot being in dimensions at least one acre. Three lots on this map were conveyed in 1929 to a person who shall be designated as Mr. X. Mr. X owned a large summer place bordering on the map and bought these three lots in order to create a buffer between his estate and the balance of the map. The developer also sold off three or four individual lots to other owners and sold no more property from the map. In his conveyance to Mr. X in 1927, the developer had included a restriction that no more than one building should be built on any one lot, that such building should cost not less than $5,000 and further covenanted in said deed that he would similarly restrict all of the other lots shown on the map. In 1947 the title company insured the title to all of the unsold lots on the map to the claimant and set up the restrictions referred to above. The restrictions were very lengthy, and while the examiner had taken off the restrictions in full the office typist in copying the restrictions into the title report missed the one line in the restrictions limiting the number of buildings on any one lot to a single building.

### Sales Start

The insured began to sell portions of the lots to various new purchasers. In the case of one of the lots so sold in divided areas, the owners of the various portions of the lot began the construction of two buildings. The insured had, in addition to these sales, taken a number of the lots, set them aside and entered into an agreement with Association Universities, Inc., a corporate subdivision of the Atomic Energy Commission, to file a new subdivision map showing approximately 150 lots each with dimensions of 75 feet in front by 150 feet in depth for the purpose of using them as sites for the building of

homes for scientists who would work at the Brookhaven project of the Atomic Energy Commission. At this point the villain enters.

Mr. X, seeing the construction of two buildings on one lot and having found out that the insured had entered into this agreement with the Atomic Energy Commission, as well as ascertaining the fact that many other lots had been sold in divided portions, served a summons and complaint in an action to enjoin the violation of the restrictions. It was at this point, in the course of the investigation of the validity of the action, that the error in typing the report was first discovered. It was decided that Mr. X's action had a good basis in law and that it would most likely result in a judgment in his favor if it were prosecuted. It was, therefore, decided to clean up the title without suit. Discussions with Mr. X led to the agreement that if there were no further violations, he would agree to waive the violation as to the one lot on which the two buildings were being constructed. Negotiations were entered into with Associated Universities, Inc., and it cancelled its agreement to buy the lots on the new subdivision map. In place thereof our insured acquired another parcel of property nearby which was not subject to the restrictions which was accepted by the Associated Universities, Inc., in place of the property which it had contracted to buy.

### Negotiations

Charity to the reader and the overwhelming desire to forget induces the writer not to recapitulate the gory details of the negotiations with Associated Universities, Inc., then with its numerous counsel, supervisors, super supervisors and the heads of the project in Washington. At long last and after much negotiation, this portion of the transaction was consummated.

While these proceedings were going on, our insured negotiated with the people to whom he had sold parts of lots, obtaining reconveyances of portions and inducing the holders and owners of the remaining portions of sold lots to acquire the balance of their respective lots which our assured had reacquired. In several cases construction had been started but fortunately on only the one lot referred to above had there begun the commencement of two buildings on any one lot. Of course in many cases the inducement to the owner of a portion of the lot for purchasing the balance of the lot could only be a reduction in price. We finally succeeded in establishing the ownership of each lot in a single owner, and then entered into an agreement with Mr. X providing for the entry of a judgment which specifically prohibited a further violation of the restrictions and which permitted the violation in respect to the one lot which had two buildings on it to continue undisturbed.

### Damages

The amount of insurance on this title was $45,000. The elements of damage, among others, included the following: A loss of five lots on the exchange of property with Associated Universities, Inc., by reason of the necessity of conveying an area equal to thirty lots on the new location in place of the twenty-five lots which were returned; the forced sale of portions of lots to the owners who had first bought portions of the same lots and had improved them; the refund to contract vendees on the basis of the originally advantageous selling price; the inevitable lower price which can be obtained for a large plot as compared with the price for that same plot if it were cut up and sold in two or three different parcels. An estimated statement of the claim prepared by accountants for the insured, indicated a minimum loss estimated at $42,550, based in part, of course, on prospective profits. The claim was settled by payment of $17,400 which represented actual loss by reason of the foregoing. The insured was made whole and expressed accord with the basis of settlement.

* * *

By EDWARD J. CONNORS
*Inter-County Title Guaranty and Mortgage Company, Floral Park, New York*

No system of title searching is perfect. Errors creep in, forgeries, fraud and other matters that cannot be

# Cut "daily take-off" costs

# with Recordak microfilming

**Only one clerk is needed . . .** and only minutes are required for the complete "daily take-off" job.

**Just imagine**—with a Recordak Junior Microfilmer (illustrated) documents up to 11″ x 14″ in size can be recorded instantaneously—simply by pressing a button. *twenty-five or more photographs taken in a minute's time . . .* for a fraction of a cent apiece!

***You bring the courthouse to your office***

Your typists will work from photographically accurate and complete records—enlarged sharp and clear on the screen of a Recordak Film Reader. No confusing extract abbreviations to figure out . . . no transcription errors to duplicate . . . no unnecessary trips to the courthouse to double-check facts or verify signatures. As a result, time and dollars are saved *daily* . . . and your customers are assured better service . . . increased protection.

**Learn in detail** how Recordak microfilming can cut your costs in the courthouse and in your own office; also get all the facts on the complete line of low-cost Recordak Microfilmers *now offered on an attractive purchase or rental basis.* Write Recordak Corporation (*Subsidiary of Eastman Kodak Company*), 444 Madison Avenue, New York 22, N. Y.

*"Recordak" is a trade-mark*

**RECORDAK**

*(Subsidiary of Eastman Kodak Company)*

**originator of modern microfilming—**
**and its application to the title-abstract business**

guarded against cause loss. A title insurance policy protects the owner or mortgage holder not only against mistakes that occur in the examination of a title, but generally and specifically against any loss the insured may suffer by reason of his ownership of the property.

A unique claim arose in the late 1930's in Nassau County, which it is believed, is the first and only claim of its kind.

An owner of a piece of property, whom we shall call "X", applied to one of the lending institutions in Nassau County for a mortgage loan on his property. In due course the lending institution approved his application for a loan. The mortgage was executed and placed on record in the Nassau County Clerk's Office, and X received the amount of the motgage loan, some $8,000.00.

**The Villain**

X was evidently familiar with the machinations of the County Clerk's Office, and more particularly with the method used by the County Clerk (required by law) to indicate on the Office record that a mortgage has been paid or satisfied. A rubber stamp is used by the County Clerk, which is stamped on the record of the mortgage itself. It usually reads "Cancelled and discharged of record by certificate filed (date) recorded in Liber 000 of Discharge of Mortgages, at Page 00. John Jones, Clerk."

X had a rubber stamp made identical with the one used by the County Clerk. Then X went to the County Clerk's Office and stamped the official record of the mortgage he had made above with this stamp, filled in fictitious data and signed the County Clerk's name in the proper place.

Now X applied to another lending institution for a first mortgage on the same property. This mortgage application was approved. The usual title search was made and it disclosed no mortgage on the property. X appeared at the second lending institution, executed the usual bond and mortgage and received the amount of the mortgage loan, another $8,000 odd dollars, and disappeared.

Of course both lending institutions had title policies insuring that each mortgage was a first lien on the property. Neither bank sustained a loss of any kind.

* * *

By JOSEPH LAPIDUS
*Title Guarantee and Trust Company*
*New York City*

In April of 1946, the title company insured for $880,000, the fee to a corner parcel of real estate, improved with a twelve-story apartment house, located on the upper east side in the Borough of Manhattan, New York City. The purchaser was a prominent Wall Street attorney who had bought the property as an investment.

The existing building, upon a plot with a frontage of 111 feet on one street and 104 feet on the other had been erected in 1929, replacing an earlier six story building which had occupied a smaller corner plot 70 feet by 104 feet. The title was apparently clear and uncomplicated, being a "reissue" title which had been previously examined and insured by this and other companies for a number of fee and mortgage transactions in the past.

**Ejectment**

One year (almost to the day) after the issuance of the title policy the insured received a letter from an upstate attorney, representing a client who claimed to be the owner of the insured's 70 foot corner parcel, as the sister and sole heir and next of kin of one S, who died intestate in 1924, seized of the property. The letter stated that an ejectment action would be brought at once and requested that the insured, as a "matter of convenience" to the writer, furnish a list of all tenants holding under the insured so that these might be joined as defendants in the action.

The letter was promptly referred to the Company and the insured received immediate assurance that his title would be defended without cost to him.

**Facts Disclosed**

A review of the title disclosed no apparent basis for the claim. The record showed that S, who had acquired the property by deed in 1919, died in 1924, a resident of an up-state

county, leaving a will which had been duly admitted to probate in that county. The will named as executor and trustee a New York City bank and trust company of unimpeachable respectability which had conveyed the property in 1925 under a good power of sale to a predecessor of the insured. While, under the will, the bulk of the estate was devised for charitable purposes, this could not be a ground for attack on the will by a sister.

As claim counsel I wrote the attorney telling him what we knew of the title, suggesting that there was no apparent basis for the claim asserted unless there were facts in his possession unknown to the insurer of the title. It was further suggested that even if there were some defect in the probate proceedings, an ejectment action could not succeed, since our insured and his predecessors in title had been in possession under color of title for more than 21 years and any action would be barred by the 15 year statute of limitations. The attorney replied, firmly disagreeing with our views as to the soundness of the title, but shedding no further light as to the basis for his attack. Within a week he served upon the insured a summons and complaint in an action in the Supreme Court, New York County. This the insured turned over to the Company which referred the matter to its counsel for defense of the action.

### The Reason

The complaint set forth a simple cause of action in ejectment for recovery of possesson of the premises with a demand for $200,000 for the value of the use and occupation of the premises withheld. Apart from the incomprehensible allegation that S had died intestate there was still no inkling of the basis for plaintiff's claim. The ensuing investigation led to the attorneys who had represented the corporate fiduciary in the probate of the will and were still its counsel, and here, for the first time, the reason for the attack on title was revealed.

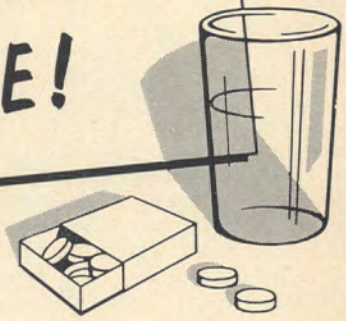
It appeared that the bank, having entered upon its duties as executor and trustee, continued its administration of the estate undisturbed for 20 years. There had been an intermediate account in which the sister was cited, and appeared. In 1944, following a decision by the Court of Appeals dealing with the question of "self dealing" by fiduciaries, the bank submitted to its attorneys the question whether in the administration of the trusts under the will it had a right to hold its own stock. The inquiry caused counsel to re-examine closely the provisions of the will, a holographic instrument of 16 pages in book form, entirely in the handwriting of the testator, dated and executed **March 9, 1921.** This examination disclosed that in one of the paragraphs, which devised certain securities, reference was made to stock of the bank by a corporate name **which it did not acquire until September 21, 1922,** a year and a half after the date of the will, when its name was changed as the result of a merger. In the same paragraph reference was made to the stock of another corporation which was not formed until **April 13, 1922,** over a year after the date of the will. It was obvious that this portion of the will must have been written by the testator after its execution. This discovery was promptly and voluntarily communicated to the Surrogate who caused a citation to be issued to all interested parties to show cause, among other things, why the sufficiency of the proof of probate should not be determined. Upon receipt of this citation the sister, represented by the same attorney, filed a petition, several times amended and "suplemented," which asked that the decree of probate be declared null and void. Proceedings in the Surrogate's Court were still pending, undetermined, when the ejectment action was started.

### Vigorous Prosecution

The ejectment suit was vigorously prosecuted. There were numerous amendments of pleadings and hotly contested preliminary motions. A motion by plaintiff to dismiss a counterclaim setting up defendant's adverse possession was denied and, upon ap-

# No Matter What You Call Them

# . . . they are a HEADACHE!



What is your name for one of your most valuable assets? Is it Title Bases? Abstract Bases? Boxes? Bundles? Starters or Chains? No matter what you call them, they are a headache. You have heaps of these vital, space consuming records. You use them constantly.

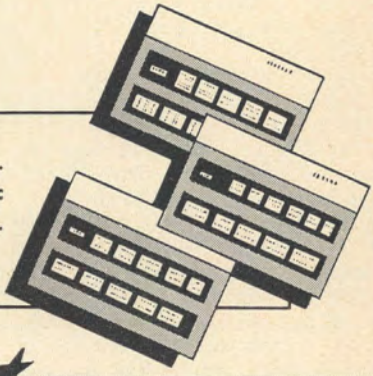
Here's how Inter-County Title Guaranty & Mortgage Company of New York solved its problem. This major title company with its ten busy offices serves the New York metropolitan area. They were hemmed in by these title base files, stored in separate rooms, on shelves reaching from floor to ceiling. Hard-to-get information, dangerously exposed slowed their services.

FILMSORT Jackets solved this problem. Title files were filmed on high-speed 16mm microfilm cameras. Individual film for each title file was cut and inserted into rugged long-lasting FILMSORT Jackets, no larger than 3 x 5 . . . *17,200 title files in one 3 x 5 cabinet.*

Easy-to-Find and Easy-to-Use FILMSORT Jackets provided Inter-County with a security copy of its most vital records as additional protection against fire or disaster . . . gave their professional personnel a working copy . . . made for more comfortable and efficient working conditions in all offices of the company.

What Inter-County Title Company did for better service, plus protection, you can do, too!

***Take a look at FILMSORT . . .*** **the answer to all photographic problems in the title business. Send for literature today.**



FILMSORT *Individualizes Microfilm!*

. . . It's in the cards

**FILMSORT INC.**
**DEPT. T. PEARL RIVER**
**NEW YORK**

peal to the Appellate Division, was affirmed. Among the novel theories advanced and persistently argued throughout the litigation was the unconstitutionality of the 15 year statute of limitations. It was not until March of 1949 that the action was tried, resulting in a dismissal of the complaint. Plaintiff took an appeal to the Appellate Division which resulted in an affirmance in March of 1950, sustaining the title. It was not until the fall of 1951 that the case was closed following the dismissal of an appeal taken to the Court of Appeals upon constitutional grounds and denial by that court of re-argument on its dismissal. Even the subsequent motion to cancel the lis pendens was opposed by plaintiff's attorney.

**Hidden Risk**

It should be pointed out that the claim arose from no negligence of any kind at any stage of the numerous examinations of the title to the premises but from one of the ever present "hidden risks" covered by title insurance which no examiner of the title who is not an insurer assumes. No examiner of the title could be charged with negligence for failing to know or detect that a corporation referred to in an obscure paragraph of a will, in connection with a devise of stock in the corporation, did not actually come into existence until some time after the date of the will. Had the purchaser of this property failed to get title insurance he himself would have been compelled to bear the entire burden and expense of sustaining his title. The insured, having paid a fee of $1,309.57 for the examination and insurance of his title, was able to rest, completely untroubled, secure in the knowledge that he would, in no event be subjected to a penny of loss or expense. Except for the transmittal to the title company of the first paper served upon him he was in the position he would have been in if no claim had ever been asserted against him. Throughout four and a half years of bitterly contested litigation involving a possible loss of his entire property he was able to enjoy its use undisturbed and collect his rents and profits. During the same period the title company expended in excess of $9,500 for legal fees and expenses in the defense of the action. This represents actual cash disbursements and does not take into account the value of the time of its employees in the preparation of the case. The story of this claim demonstrates rather forcefully the value and importance of title insurance.

* * *

By HUGH J. FITZSIMONS

*Title Guarantee and Trust Company, New York City*

One of the more hazardous forms of title insurance is the insurance of building loan mortgages. This is illustrated by the following story of a loss of $200,000 paid by the old Lawyers Title & Guaranty Company. It is one of the largest losses paid in the whole history of title insurance.

In 1929, the Lawyers Title & Guaranty Company, a predecessor of the Title Guarantee and Trust Company, insured a building loan mortgage of $4,000,000 covering the Carlyle Hotel (Madison Avenue from 76th to 77th Street). At the closing, the building loan contract in the usual title company form and the bond and mortgage were executed and thereafter the building loan contract was filed and the mortgage recorded.

In an action brought to foreclose the mortgage in question lienors who had filed liens amounting to about one million dollars were made parties defendant. Answers were interposed by the lienors claiming priority because an earlier preliminary agreement, or commitment to make the loan was not filed as required by law. Such agreement or commitment, it was claimed, constituted a building loan contract within the meaning of the law in effect at that time and should have been filed in the county clerk's office within ten days after its execution.

In view of the large amount of the claim, the company, deciding that discretion was the better part of valor, made a settlement of twenty cents on the dollar which meant a loss of $200,000 because the applicant claimed

that the preliminary agreement or commitment was exhibited at the closing to the representative of the company.

In 1930, the lien law was amended to prevent such a claim of priority from being made by providing that such a preliminary agreement or commitment is not to be construed as a building loan contract if, pursuant to such commitment, a building loan contract is thereafter entered into between the owner and the lender and filed in the county clerk's office on or before the date of recording the building loan mortgage.

# ABSTRACTS OF TITLE

## Comments by Oil Company Counsel

EDITOR'S NOTE: Clearly established is the desire of the abstracter to meet the wishes of the attorney. The requirements of the latter vary in different sections of the country according to the necessities of his jurisdiction and of his client.

We are privileged to carry in "Title News" comments, criticisms and suggestions of counsel of various oil companies. To these distinguished counsel of many oil companies, who prefer to remain anonymous in this resume, we express our deep appreciation for their frankness and their constructive suggestions.

1. Abstractors make an index of instruments shown in abstract including grantor, grantee, book, page and entry number;
2. Colors: white sheets and black type are best for the examiner;
3. Metes and bounds description should be double spaced. If single spaced, each CALL should be on a separate line. Draw an attached plat on any metes and bounds tract carved out of a legal sub-division; the same as to lots along said riverbank;
4. Abstractors should not remove Certificate of another abstractor. When Certificate is more than five years old, abstractor should re-certify from beginning to down to date, thereby saving time and too, only making one charge instead of two if abstract is returned for re-certification. The more complete the original abstract, the less the cost for examination.

---

1. Show on the Certificate for whom the abstract was made as well as address of customer—for reason that abstracts get lost;
2. Where an estate owns an oil and gas lease upon several tracts requiring an abstract covering each, all for the same company, only show the probate proceedings in one abstract but in the other abstracts show in which abstract probate proceedings are shown.

---

1. Particularly in western Oklahoma, would it not be advisable for an abstractor to have Mid-continent abstract maps of his county, in connection with which could not a satisfactory trade be made between the abstract and map company?
2. Have a list on file of the names and addresses of non-residents, especially those owing perpetual mineral interests;
3. In Certificate of Title would it not be advisable to show who

owns minerals other than the landowner?
4. Mineral conveyances should show whether they are "perpetual" or "term".

---

1. Keep house in order—records up to date—stay on the ball and continue to render the fine service you have in the past.

---

1. Show company lease contract on account of there being so many lease forms of contract;
2. Show in full the probate and guardianship proceedings.

"(a) When Abstracts of Title are returned to the abstractor with the request that they be certified down to date, the abstractor in no instance should remove any certificate in such abstract. Not infrequently the abstractor removes the last certificate and then attaches all subsequent conveyances down to date under a new certificate. When an abstract of title thus certified to date is resubmitted for examination, the examining attorney is then required to recheck all notes made in the former examination and upon which his original opinion was predicated. This creates considerable confusion, although the abstractor does not intend it to do so. When requested to certify an abstract down to date, the abstractor should merely abstract all of the conveyances or all the instruments of record subsequent to the last certificate in the abstract which for illustration is dated June 1, 1950 at 7:00 o'clock A.M., and include such material in a new certificate certified from June 1, 1948 at 7:00 o'clock A.M. down to and including January 27, 1951 at 7:00 o'clock A.M.

**Taxes**

"(b) When an abstract of title is sent to an abstractor for certification to date, the abstractor should certify the status of all taxes then of record against the property involved. Most abstractors merely show in the Supplemental Certificate the taxes which have accrued subsequent to the prior certificate in the abstract and do not show what disposition, if any, has been made of taxes included in the prior certificate. In short, the Supplemental Abstract should reflect a true picture of all taxes of record against the property included in the certificate; then the examining attorney would know definitely what the tax liability is.

**Speed**

"(c) One dislikes to complain, but certain abstract companies surely could examine the records and certify a Supplemental Abstract down to date with greater dispatch than they do. No doubt, efficient assistance is difficult to obtain in an abstractor's office, but the abstractor should realize that in delaying the certification and delivery of Supplemental Abstract for two or three weeks holds up the completion of oil deals and greatly inconveniences oil companies. Surely they can procure sufficient competent assistance to enable the compilation of Supplemental Abstracts within a reasonable time."

**Mineral Instruments**

"When an abstract is being made for use in connection with the purchase or sale of an oil and gas lease on the premises or a royalty or mineral interest therein, all mineral or royalty deeds should be copied in full; and when an oil lease is abstracted which has not been released of record, the term of it should be copied."

"Most of the suggestions here offered are, no doubt, already incorporated in the approved rules of your profession, but are brought to our attention by the failure of a few abstracters to adhere to them or are the result of limitations placed by the customer on the abstracter in ordering the abstract. They naturally will also reflect the reaction of the oil company or its title examiner. The order in which these suggestions are given is not intended to indicate their importance.

**Corrections**

1. Abstracters are called upon to and do make corrections of abstracts previously certified. These corrections are usually by deletion, substitution or addition of a portion of or an en-

tire entry. Such corrections should be stamped with the name or initial of the abstracter together with the date of such correction. Otherwise the examiner is at a loss to know whether or not the correction is covered by the certificate, and likewise the abstracter cannot tell in the future whether or not such correction was made by him.

**Exceptions and Reservations**

2. In abstracting what appear to be standard instruments such as deeds, including mineral deeds, there is a tendency to overlook exceptions and reservations contained in the instruments, which, of course, are most vital.

**Sequence**

3. Failure to follow the sequence in which the abstracted instruments were recorded. While it is sometimes helpful not to observe the recording sequence as, for example, following a mortgage or lease immediately with a release thereof or combining court proceedings, yet as a general rule the observance of a recording sequence is most helpful, particularly where, as in Oklahoma, the abstract is not indexed.

**Essentials**

4. Failure to show in an abstracted instrument the essentials, such as the term of an oil and gas lease or special provisions such as an overriding royalty interest, production payment or firm drilling obligation. Even though the customer has requested that such an instrument be abstracted only it should show such essentials.

**Divorce Actions**

5. Failure in divorce cases to reflect service (or waiver of service) on the defendant and failure in probate cases to show all notices necessary to give court jurisdiction. This is no doubt often due to the nature of a customer's order, but the fact is that these omissions ultimately become more expensive than if originally included in full.

6. Failure of the certificate to show the status of one or all of the following:

(a) Intangible taxes;

(b) Personal taxes (especially Seminole County abstractors);

(c) Special assessments, such as drainage or levee districts.

7. Failure to attach a federal certificate disclosing actions pending, income tax liens, bankruptcy proceedings, etc.

**Plats**

8. Failure to include a plat where the property is platted and the plat duly recorded. Even where the plat is not recorded a plat attached by the abstracter is most helpful in those cases where there is a detailed metes and bounds description, even though the abstracter negatives his certificate as to the correctness of such plat.

**Fasteners**

9. The use of roundheaded brass paper fasteners for binding the abstract together, as a result of which there are exposed the two sharp-pronged tongues of each of the paper fasteners which are good for nothing except scratching or tearing desks and other papers with which they come in contact. A very small additional expense would obviate this.

---

**Re-Certifications**

One of the most annoying problems is that of either being required to or requiring others to (or assuming the attending risks) procure a recertification of the abstract to the extent that it is covered by an abstracter's certificate dated more than five years previously. This is required because an action for damages by reason of any imperfect or false abstract is barred after five years from the date of the abstracter's certificate covering such abstract. We, of course, hardly expect your organization to seek an extension of this five-year period since it was probably sponsored by and is for the express benefit of the members of your association. While most abstracters are cooperative in this regard to the extent of making only a minimum charge where they are recertifying their own work, some are not so considerate.

We feel that the abstracters of Oklahoma have endeavored with suc-

cess to provide abstracts with a high degree of uniformity as to arrangement, abstract of entries and certificates and that the suggestions we have made, together with other suggestions of less importance, are the result of individual infraction of your established rules rather than a defect in your guiding rules and regulations for abstracters. We appreciate the opportunity you have given us for making these suggestions and know that they will be received in the same manner in which they were given."

---

**Pending Suits**

"I think the Abstracter's certificate should certify as to any suits pending in a Federal Court affecting title to the particular tract of land.

"Also, each certificate should state the number of pages (instead of entries) covered by the particular certificate, and each page should be numbered for identification purposes. Most Abstracters number the pages but in some instances they do not. I find that the usual printed certificate covers '..... entries/pages'. The number is usually filled in on typewriter, but the Abstracter fails to show (by x-ing out) whether he means pages or entries. This leads to another, more important suggestion, namely,

**Physical Make Up**

"In many cases an original abstract is submitted to the Abstracter to be brought down to date and instead of making a supplement to the original (under separate cover) the original is torn apart, the supplement (usually bearing a different number) is inserted under the original cover, and the Abstracter then certifies only to the number of pages he has inserted. I find that many so-called original abstracts have several extension certificates. This, I think, is very bad practice. If an Abstracter tears up an abstract for the purpose of extending it then his certificate should cover the entire period of the abstract, whether it be the original or a supplement that he is bringing down to date. In other words, how can we depend upon an abstract which has been torn apart several times, various certificates added, in some cases the pages are not numbered, and then the supposed-final certificate may cover only a few pages. My suggestion in this regard would be that an Abstracter should not be permitted to molest the seal on any original abstract, and that all continuations should be made by a separate supplement, regardless of whether or not there are only a few pages or, in some instances only the certificate itself.

**Taxes**

"Also, it is impossible to determine from some supplemental abstracts what the status of taxes is with reference to unpaid taxes shown in a prior supplemental abstract. This for the reason that in many instances, a subsequent supplemental abstract will certify only as to taxes for the period covered by the supplement leaving the examiner in doubt as to whether prior unpaid taxes have been satisfied. To eliminate this doubt, and to save the examiner from checking the various supplemental abstracts as to the status of taxes, it is preferable that the Abstracter in each supplemental abstract certify as to the status of taxes not only for the period covered by the supplemental abstract but also for all prior years.

"We note that Abstracters in the western part of the State in supplements certify as to all taxes in the following form: '1948 and all prior years paid,' or, showing the prior years for which taxes have not been paid, even though for a period which is not covered by the supplemental abstract.

**Adequacy of Certificate**

"For your information, and to stress the fact that certificates should adequately cover any situation, I want to call your attention to the following. Recently, I examined a supplemental abstract which was prepared by one of the best Abstracters in the State—a thoroughly reliable concern—for the purpose of reviewing the title to our lease-hold interest as we were getting ready to start a well on the property. The well was

drilled and production obtained, which necessitated a further extension of the abstract so that division orders could be prepared and, in the meantime, someone sent in a mineral deed which should have been included in the former supplemental abstract, examined prior to commencement of drilling operations. This was purely a mistake of the Abstracter and, by receiving the deed from the owner the supplemental abstract was rechecked, but it was not contained in the particular supplement although it was on record at the time. The supplement was returned for correction and the deed inserted, but under new cover, and using the same dates on the certificate, and the same number on the cover. I think the certificate should have shown that the abstract was corrected to include the deed for the reason that had we not received the deed direct from the owner we would not have known about the interest. I do not intend by this narration to find fault with the Abstracter for the error in not including the deed in the supplement, but do say that his certificate should have mentioned the correction, in that he did not change the date of the certificate."

---

**Limitations of Extension Certificate**

"These abstracts contain a certificate providing that if the seal is broken that the certificate is void. The next continuation of the abstract is made by inserting it in the original abstract and the seal is broken. The continuation certificate is limited to the continuation only. Thus, according to the certificates in the abstract, such certificates prior to the final is voided by the breaking of the seal or ribbon on which the seal is attached. We do not believe this is general but have noticed it in some cases. Other abstracters in making such continuation bind the continuation with the main abstract but do not break the seal or ribbon."

1. "That each certificate show the status of taxes for each year since the beginning of title.
2. "That oil and gas leases be shown in brief form thereby eliminating unnecessary pages."

"I have discussed this matter with members of our Land and Lease and Legal Departments and find that they are very well satisfied with the abstracts we are obtaining and presently have no suggestions for improvement."

"We advise that we are well pleased with the methods and form of abstracting now being done by Oklahoma abstracters which we use. We have no criticism whatever to offer. We hope that they continue to maintain the high standards of the past."

"Most of the abstracters that I deal with belong to O.T.A. I find their work very satisfactory and the services excellent. I find those who belong to this association are usually more efficient and give faster service, than those who do not belong to the association."

"It might be of interest to note that I have been examining abstracts in Oklahoma for thirty years or more, and have examined abstracts from all parts of the state, and so far as I recall I have never had any trouble due to defective abstract work."


# It doesn't matter how "Burke" spells his name you'll find it Fast with Soundex

Write today for the free booklet shown below. It describes a filing system that is virtually made to order for your General Index, or any large name file. Title companies who are using Soundex report up to 50% lower filing costs – greater accuracy, too!

In this space, we cannot hope to explain the whys and hows of this simple, wonderfully effective filing system. The booklet "tells all" – and your copy is waiting. Mail the coupon today.


**This booklet can point out big savings in your General Index.**

**Remington Rand** INC

Management Controls Reference Library
Room 1232, 315 Fourth Ave., New York 10

Yes, I would like to have your Booklet LBV528.

NAME_____

FIRM_____

ADDRESS_____

CITY_____ ZONE____ STATE_____

# D O T

(Dope Observations Trends)

JAMES E. SHERIDAN
*Executive Vice-President, American Title Association, Detroit*

The 58-day steel strike ends, with a loss of 20,000,000 tons of needed steel, and a direct loss of four billion dollars to the economy of the country.

It caused and will continue to cause other impacts. Shortage of steel will cause lay-offs in factories producing civilian goods.

### Losses Next Winter

For nearly 60 days virtually no iron ore came down the Great Lakes. We'll feel the effects of that loss next winter.

### More Strikes

Watch coal. John L. Lewis gave notice on July 26th of contract termination. That means there could be a coal miners' strike on September 20. There is a stockpile of about 85 million tons of coal on the ground and that will carry the country about 60 days. Strike may be averted by a wage raise and fringe benefits in line with the settlement in steel—certainly no less, probably more.

More strikes seem inevitable.

### General Business

The economy of the country seems moving on a fairly even keel. But emient authorities divide in their conclusions on the immediate future. There are many reasons to argue either viewpoint.

### Sales

Bargain sales currently prevail in many lines, including TV sets, refrigerators, electric stoves, radios, autos and other appliances. Clothing and shoes are down.

### Slump—Recession—Depression

No serious slump is expected, notwithstanding there will be unemployment in the fall and winter because factories making wares for civilian use won't have steel. Available steel will go mostly to the defense factories.

Defense spending will be on the increase. It's now about four billion a month. By year end it will be around five billion a month.

You can buy almost any automobile you want right now but it won't be many months until they are scarce, more or less, again.

Is the country manufacturing more merchandise than can be absorbed? Numerous say so. Some think the steel shortage was not too bad a thing to happen from the standpoint of avoiding the situation of warehouses packed and jammed with unsold civilian merchandise.

Auto inventories are said to be 40% below what they were a year ago. TV sets went down 20% in inventory. Inventories on some other appliances, against last year, went down as much as 50%.

### Timing

No business recession is expected in the next six months, despite election year, strikes, etc., nor in the early months of 1953. But beyond that?

The next President of the United States may face a situation of deflation rather than inflation. It has already set in in some European countries and we may have a taste of it.

Nobody expects it to be of disastrous proportions. For another reason, savings are high. Four years ago, the country was spending 97% and saving 3%. Right now, savings are 8% and some say as high as 10%.

It's a buyers' market today, no question of that.

### Our Own Field

Getting down to our own business, we are directly dependent upon, among other things, an active realty market and an availability of mortgage money.

There is a shortage of the latter, although Congress did authorize new FNMA, FHA and VA paper.

Most authorities expect a continued slow drop in sales prices and number of housing starts. That's reflected by the figures given us by title and abstract companies in various sections of the country. Some (defense areas principally) report new business equal to last year's. Most report a slight drop. Some few, mostly in areas hard hit by the steel strike, report severe decreases in new orders.

We were heading for a total of 1,100,000 housing units for 1952. Shortages of steel may upset that, probably will.

**Regulations of Government**

Before it adjourned, Congress passed a bill that if housing falls below a seasonally adjusted annual rate of 1,200,000 for three consecutive months, the President must reduce down payment requirements to a maximum of 5%.

There are various "bugs" in this. The government now has not what one would describe as authoritative and reliable and truly nation wide figures on which if would base any new relaxing order.

And keep in mind that FHA can still require down payments in excess of 5% on houses costing $7,000 and more. Also that lenders can always make their own credit investigations and make down payment "suggestions" before they decide to make conventional loans.

**Costs**

It probably will cost more to build a new house, but not much more.

Steel will be higher, so will wages. Lumber is down and so are other wares in the construction of a house, but the decrease is slight. And the belief is these decreases will be more than off-set by higher costs of steel and general wages in the construction field.

On the point of wages, that statement is certainly true in areas where war work is in progress—and those spots are constantly increasing in number in many sections of the country. Competition for help is keen.

Spending for new plants is high, well over last year.

Old houses are still commanding good prices, but the market is commencing to soften on these.

The boom on farm properties has definitely abated. Asking prices are still high—not as high as they were last year but still high. However, the demand is down, the buyers are shopping around more and more.

The buyers' market is definitely here.

**For the Next Several Months**

Our business should continue better than fair but well below a boom. Perhaps you should refrain from quickly replacing fair-to-middling help that leaves you. But don't skeletonize down too much. Keep your foot near the brakes as we said last month.

And go mechanical.

# PERSONALS

JOSEPH H. SMITH

*Secretary, American Title Association, Detroit*

• "There is no more beautiful spot on the Eastern seaboard than the Adirondacks at this season of the year," so reports PALMER W. EVERTS, Secretary of New York State Title Association, as he encourages attendance at the state convention Oct. 2-3 at Whiteface Inn on Lake Placid.

• Michigan Title Association making plans for their Convention Sept. 4-5-6 at Castle Park near Holland . . . BRUCE G. vanLEUWEN, Michigan Association President, guarantees varied program of interest to all members . . .

• The Chairman of the Board of Phoenix Title & Trust Co., GEORGE

W. MICKLE, was honored recently by being selected as member of Arizona Interstate Stream Commission . . . the company publication, TITLE-VENTS, states "This high honor is only the most recent of his long list of appointments to public and corporate service dating back to 1915."

• The Idaho Title Association elected JOSEPH MONTELL, Secretary Treasurer of Inland Abstract Co., Grangeville, as President for coming year . . . DAVID GRIFFITH was returned to office of Secretary Treasurer . . . JEANETTE EPENETER continues as Executive Secretary . . .

• At Texas Title Association Convention in May, E.D. McCRORY, Executive Vice President of American Title Guaranty Company in Houston, was presented with handsome sport coat in appreciation of his untiring efforts and accomplishments as Association president during the past year. . .

• JACK RATTIKIN, President of Rattikin Title Co., announced formal opening of his new quarters at 812 Houston St., Fort Worth, Texas on June 28 . . . said by many to be among most attractive offices in the area. . .

• At semi-annual meeting of Texas Title Insurance Association, a part of, and affiliated with the Texas Title Association, FRED H. TIMBERLAKE of Kansas City Title Insurance Co., Lubbock, was elected President . . . CHARLES C. HAMPTON of Lawyers Title Insurance Corp., Dallas, was elected Vice President . . . H. G. HURLBUT, Stewart Title Guaranty Co., Dallas chosen as Secretary Treasurer.

• Annual Convention of Missouri Title Association will be held Oct. 6-7 at Kentwood Arms Hotel, Springfield . . . MRS. ZETTIE HUBBARD, Secretary, is sending out the notices . . .
• Wherever he goes from coast to coast, JAMES E. SHERIDAN, Executive Vice President of ATA, advocates and encourages state speakers' bureaus . . . in Oklahoma where such a program is flourising, speakers have engagements through entire state appearing before all type of organizations. . .

• Pennsylvania Title Association re-elected JOHN H. KUNKLE, President of Union Title & Guaranty Co., Pittsburgh, to serve another term as association President . . .

• GORDON M. BURLINGHAME, Vice President of Bryn Mawr Trust Co., was again voted in as Vice President and Carl P. Obermille, Title Officer, Land Title Bank and Trust Co., Philadelphia, was returned to office of Secretary . . . T. F. DEADY, Title Officer, Broadstreet Trust Co., Philadelphia re-elected to his post of Treasurer. . .

• American Title and Insurance Co. of Miami, Florida, announced the appointment of ERWIN J. BRANDT as Vice President . . . he was formally Manager of Title Dept. of Commercial Standard Insurance Co. of Fort Worth, Texas.

• Franklin Title and Trust Co., Louisville, Kentucky, announced that CHARLES LAMAR has been elected Vice President and Secretary of Company . . .

• A visitor to the National Headquarters office of the American Title Association in Detroit recently was BEN M. STROTHER, of Strother Abstracts, Henderson, Kentucky . . . stopped in route to Quebec where he is motoring with family.

• RALPH CALLAGHAN, President-Manager of Fremont County Abstract Co., Canon City, was elected to office of President by Colorado Title Association at their convention in July . . . LLOYD HUGHES, Vice President of Record Abstract & Title Insurance Co., Denver, was once again installed as Secretary . . .

# ARE YOU REGISTERED?

★ ★ ★

## *For Profit — For Pleasure*

THE BIGGEST—THE BEST—

## American Title Association Convention

SEPTEMBER 8 - 9 - 10 - 11
HOTEL STATLER
WASHINGTON, D. C.

★ ★ ★

Register and Make Hotel Reservations Direct to National Headquarters

AMERICAN TITLE ASSOCIATION
3608 Guardian Building
Detroit 26, Mich.

# Coming Events

**AUGUST 25 - 26**

Montana Title Association—Annual Covention
Northern Hotel, Billings, Montana

**SEPTEMBER 4 - 5 - 6**

Michigan Title Association—Annual Convention
The Castle Hotel, Castle Park, Michigan

**SEPTEMBER 7 - 11**

American Title Association—Annual Convention
Hotel Statler, Washington, D. C.

**OCTOBER 2 - 3**

New York State Title Association—Annual Convention
Whiteface Inn, Lake Placid, New York

**OCTOBER 3 - 4**

Wisconsin Title Association—Annual Convention
Leathem Smith Lodge, Sturgeon Bay, Wisconsin

**OCTOBER 9 - 10 - 11**

Oregon Land Title Association—Annual Convention
Timberline Lodge, Oregon

**OCTOBER 24 - 25**

Washington Land Title Association—Annual Convention
Chinook Hotel, Yakima, Washington

**OCTOBER 27 - 28**

Indiana Title Association—Annual Convention
Hotel Lincoln, Indianapolis, Indiana