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PROCEEDINGS
OF
952 CONVENTION

Part Two

TITLE NEWS

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Volume XXXI December, 1952 Number 11

In Volume XXXI, November, 1952, Number 10, we carried addresses and reports delivered at the 1952 convention of American Title Association in General Sessions and a portion of those used in meetings of our Title Insurance and Abstracters Sections.

In this issue are carried other excellent papers delivered at the convention.—Ed.

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Proceedings of Annual Convention

(Part 2)

American Title Association

Washington, D.C. — September 8-11, 1952

TITLE INSURANCE

Proceedings in Meetings of Title Insurance Section

REPORT OF CHAIRMAN

LAWRENCE A. ZERFING

Vice-President, Land Title Bank and Trust Company, Philadelphia, Pa.

The various committees, such as the Standard Forms Committee, the Committee to Consider Copyright of Emblem, and the Judiciary Committee, have been working and will make reports on their progress. The Chairman of the Emblem Committee, Russell A. Clark, has reported to the Board of Governors that the emblem be registered as a trade mark. The Judiciary Committee has been producing real results, as will be seen from the recent issues of "Title News." These issues have carried items of legal interest furnished by various companies throughout the United States. We believe the foundation is laid for a continuance of that service. However, a great deal more is still to be done, and the Chairman, Ralph H. Foster, will probably recommend some changes which it is hoped will produce still better results and which it is expected will furnish more complete coverage of the entire country. The Judiciary Committee deserves our sincere appreciation for the work done in furnishing this service.

Atlantic Coast Conference

During May, 1952, the Atlantic Coast Regional Conference was held in Atlantic City under the chairmanship of H. Stanley Stine. The conference was very successful and a marked freedom of discussion prevailed. An exchange of ideas under such circumstances is valuable to all those in attendance. As a result of discussion of title insurance practices a resolution was approved and referred to the Chairman of the Title Insurance Section with the request that it be submitted to the Board of Governors for action. That resolution, in brief, asked for a committee to study the revision of our code of ethics and make recommendations so as to make the code more effec-

tive. The Board of Governors at its meeting Sunday created such a committee.

Practices

The Executive Committee of the Title Insurance Section, as a result of these different statements at our Atlantic Coast region section, is of the opinion that in an effort to meet competition, or for other purposes, a number of companies are acquiescing to demands or requests which are beyond the bounds of proper title insurance, and are engaging in practices which, it is assumed, can, and will in time of falling markets, affect the title industry as a whole. The Committee recommends to the entire membership that practices and policies be studied with a view to keeping our business on the highest possible plane, bearing in mind that our function is to render the very best in title insurance service, consistent with safety, and that we do our customer no real service by agreeing to improper demands merely for the sake of adding volume.

Costs

Some suggestions have previously been made to the effect that a committee be set up to study costs of operation. After careful consideration it has been concluded that the methods of operation in the different parts of the country vary so greatly that such a committee could serve no real worthwhile purpose. It is believed that a study of costs, if it could be made on a local or regional basis, might produce helpful information for companies working on a similar or comparable basis. Any suggestions as to that method of approach would be most welcome.

Records

The Committee wishes to stress the importance, especially among the smaller and medium sized companies, of keeping more complete records, so that proper facts will be available when the insurance commissioners of the various states decide to ask for more detailed information concerning operations. It is the feeling that requirements of this character will grow rapidly. The limited experience available indicates that among the items of information we will be called for will be facts relating to the number of new transactions, the number of refinancings, the number of re-issues, and similar information. It will be relatively simple to consolidate such information in the regular course of operation, but it will be very difficult and expensive if it is necessary to check back on closed transactions.

The Chairman wishes to express his appreciation to the committee members and the others for their efforts and co-operation rendered during the course of this year.

REGIONAL CONFERENCES

Composition of Districts by States

Southwestern	Central	Atlantic
Arkansas	Michigan	Delaware
Colorado	Ohio	Dist. of Col.
Kansas	Indiana	Maryland
Louisiana	Illinois	Massachusetts
Missouri	Wisconsin	New Jersey
New Mexico	Minnesota	New York
Oklahoma		Pennsylvania
Texas		Rhode Island
		Virginia

Central States District

Report of Chairman

CLARENCE BURTON, *Chairman*
Ist Vice-Pres.-Sec'y, Burton Abstract & Title Co., Detroit, Mich.

The Central States Regional Title Insurance Executives' Conference, of the American Title Association was held May 9th and 10th, 1952, at the Edgewater Beach Hotel, Chicago, Illinois.

The conference this year was attended by twenty-six senior title insurance executives representing most of the title insurance companies in Indiana, Michigan, Ohio, Illinois, Minnesota and Wisconsin, besides our illustrious Executive Vice-President, Mr. James E. Sheridan and our Secretary, Mr. Joseph H. Smith.

This conference was very informal as in the past. We discuss subjects freely, make no formal recording of the proceedings and come to no particular conclusions as to the adoption of policies. It's just a good chance to get together with men other than your own competitor, who speak your language. I have attended these conferences for the last four years now and have never failed to return home with some good ideas for the operation of our Company. I derive more benefit from these than most any other meeting I attend. Possibly, this is because I am Chairman and so I am the one who must dream up the agenda.

Each year everyone is invited to come prepared to present his own problems. It seems, however, that no one else has problems so it resolves itself to a meeting for my benefit. At least this way I have a panel of experts to answer my questions.

Again, I urge every one who is eligible to attend these meetings. They are really worth while and if this group ever elects another Chairman they will be better yet.

Briefly, we discussed the following items. I won't attempt to tell you what the thoughts were because they vary and we don't all agree by any means. The only way you can get this is to attend the conference yourself.

1. Ed Dwyer posed the following for our discussion even though he was unable to attend. (Incidentally, he is the only one that sent in a topic beforehand.)
   (A) The advisability of trading starters with your competitors in view of the fact that some plants are not as complete as others and some do not attempt to give the same careful consideration to the examination of title as do others.
   (B) A discussion of the advisability of a joint court house crew to do all the searching for all of the companies.
2. Uniform recitation of building restrictions, easements, encroachments, etc., in cooperation with the life insurance companies as in Jim's recent letter.
3. Discussion on Building Fund Control.
4. Co-insurance, re-insurance, etc.
5. It is not unusual in Michigan to sell land on first, second and even sometimes third executary land contracts. What is the practice of companies in other states in insuring these various interest? Do they issue one policy with duplicates or separate policies covering the various interests?
6. Discussion again on loss and claim expenses.
7. Is it the practice of other title insurance companies throughout the country to insure the marketability of titles as we do in Michigan? By insuring against failure or indefeasibility of title, we could be more liberal and would we not then render a greater service to the public?
8. Ohio Bar Association forming a Lawyers Title Insurance Fund to underwrite attorneys' opinions as title insurance. The fund to be owned by the Ohio State Bar Association.
9. How much liability? Policy originally written on the acreage for as much as the company can handle. Then homes are built and sub-fee and mortgage policies

are written. Now, if title fails to the whole parcel, we are into it for about 10 or 15 times the total assets of the insuring company on one title.

10. The uniform partnership act provides that an estate in real property may be acquired in the partnership name. Also, that can be conveyed only in the partnership name. Supposing that there is a partnership by name of A & B Building Co. Real property is deeded to them under that name. A and B doing business as A & B Building Co. deed out. Or supposing that the situation is reversed. Is it the practice of the states that have adopted the uniform partnership act to generally approve these types of conveyances when insuring titles?
11. In issuing mortgage policies without exceptions we are very often asked to insure against the following types of encroachments:
(A) Encroachment by the owner of the insured property on adjoining land.
(B) Encroachment by the adjoining property on the land insured.
(C) Encroachment of a building or fence on an easement over the insured land.

It would be interesting to know the attitude and liberality of other title companies as to these types of encroachments when issuing mortgage policies "without exceptions."

12. Have any of you been asked by your mortgage company customers to procure for them a secondary market for their mortgages and/or have you been asked to process these mortgages for them to their purchasers? Have any of you done it? Do you think it good business for what we get out of our premiums?
13. It has not been the practice of our Company to determine the rights of persons in possession of the insured property when issuing mortgage policies "without exceptions." So far we have not had any losses in this respect. Perhaps we are just plain lucky. What is the practice and experience of other companies in this respect?
14. Discussion on Internal Revenue Liens filed in the Register of Deeds Office, without land recited. Also those Internal Revenue Liens filed only in the District Clerk's Office of the Revenue Department.

On the second day we always discuss plant operation and personnel problems.

Therefore on Saturday morning we discussed the following:

1. Any innovations in plant operations.
2. Any new pension or retirement plans.
3. Personnel problems, salaries, overtime, bonuses or profit sharing plans.
4. Business this first quarter compared with same period last year.
5. Costs over last year.
6. Predictions of things to come in our business. Next quarter and balance of year as compared with first quarter of this year and all of last year.

I think at this time I should publicly thank Jim Sheridan for really carrying the ball at these meetings. I wouldn't and couldn't be much of a Chairman without his help.

We had a successful meeting, it was enjoyable to me because of the good company.

Again let me urge you all to attend next year.

Atlantic Seaboard District

Report of Chairman

J. H. KUNKLE
President, Union Title Guaranty Co., Pittsburg, Pa.

The meeting of the Atlantic Seaboard Group held a Hotel Dennis, Atlantic City, on May 16th and 17th, 1952, was well attended by Title Executives and Jim Sheridan, and under the chairmanship of H. Stanley Stine it developed into one of our best meetings.

Free Discussions

I have attended every meeting of this group and in my judgment they provide an excellent forum for free discussion and debate on matters of concern to all. Many of the topics were controversial. Lengthy discussions were had on title rates, co-insurance and re-insurance, reserves, title losses, claims and costs, payment of commissions, unsound practices, ethics, etc. At this meeting a resolution was adopted requesting the Board of Governors of the Atlantic Title Association to create a standing committee to be known as the "grievance committee" to which committee could be referred complaints of unethical conduct for consideration and appropriate action. The members in attendance recognized that an association of this type is without legal authority or power to enforce its conclusions. They believe, however, that those found guilty should face a resolution of censure or possibly expulsion from membership. They recognized fully there must be healthy competition. It was urged, however, that it should be clean and honorable with full recognition and observance of the ethics of our profession.

Duties and Responsibilities

In recent months it appears there is a trend toward playing the angles and cutting the corners with risks assumed which can and will affect adversely the title industry as a whole. It is our duty to render the best title insurance service consistent with safety, but we do our customers no service in agreeing to improper demands merely for the sake af acquiring new business. We are reluctant to believe it is a deliberate intent to engage in sharp, unsound, unwise practices which will harm or destroy our business and we bring to your attention today in this National Convention our concern about some of these practices. The time to heal a wound is when it is small and not when it has become an open sore. Improper practices are bound to result in retaliation and what may be worse for all of us, vigorous and tightened exercise of controls by some department of the state.

MARKETABLE TITLE ACTS AND DECISIONS

A Panel

Members of Panel:

Ray L. Potter, Vice-President, Burton Abstract and Title Company, Detroit, Michigan.

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

Leo A. Reuder, First Vice-President, Title Insurance Company of Minnesota, Minneapolis, Minnesota.

Joseph S. Knapp, Jr., Vice-President, Maryland Title Guarantee Company, Baltimore, Maryland.

Moderator: Harold W. Beery, Vice-President, Home Title Guaranty Company, New York, N. Y.

INTRODUCTORY STATEMENT

MODERATOR BEERY

For the next hour we shall be engaged in a discussion of certain phases of the subject of Marketability of Title.

What Is It?

What is a marketable title? The answer to that simple question has plagued countless lawyers and has been the subject of litigation since the start of our system of jurisprudence. One of the text writers describes it as follows: From the conveyancer's point of view it is one which the courts will require a purchaser to accept. From the court's point of view it is one which a reasonable man will accept. From the reasonable man's point of view it is one which will not be subject to litigation. From the litigant's point of view it is one that is not worth attacking.

Common Law

The law of marketability of title is derived from the common law and the doctrines of equity as inherited from England. The earliest cases in this country appear to accept it without comment as an existing and well recognized doctrine. It does not extend to the extrinsic merits of a title but concerns itself solely with the question as to whether any given title can reasonably be expected to be disturbed. A title that is absolutely good may be unmarketable because the owner is unable to prove some essential fact in his chain of title. A title that is bad may nevertheless be marketable where neither the vendor nor vendee has reason to suspect the flaw.

Marketability Defined

The definition of marketability is necessarily subjective and depends, in almost every instance, on the facts in any individual case. Failure of title to a few inches of property in a congested urban area may result in unmarketability while failure of title to several feet may be unimportant in an agricultural or sparsely settled community. In a farming district the ownership of realty is popularly known, family history is familiar to the neighborhood, boundaries are recognized by rough measurement and each owner is actually in possession of his property. In such

a community there is no sympathy with a speculative attack on title or a technical refusal to keep a bargain. Consequently the law of marketability makes a close approach to common sense and justice. In large cities, on the other hand, where property has tremendous value, the most minute technicality may become the foundation of attack upon title.

The Objective

Only broad principles of marketability can be defined. The art consists in applying these broad principles to the given facts in a specific case. Recognizing this broad area of indefiniteness, courts have attempted to establish certain guides as a test of marketability. Some states have attempted to formulate legislative definitions as a guide in determining marketability. Other states have attemped to eliminate certain questions of marketability by the enactment of statutes of limitation barring, after a period of time, certain actions to assert claims against property. The members of the panel through their discussion of statutes and decisions affecting marketability will try to acquaint you with some of the guide-posts.

RAY L. POTTER

The Marketable Title Acts and similar legislation, adopted in recent years in various of the mid-western states[1], set up a legislative bar of certain claims and rights as against an owner, who presently holds a clear record title extending backward in time for the substantial period designated by each statute. It is the purpose of the statutes to make possible the purchase of real estate without the necessity of dealing with defects appearing in the title at a time prior to the beginning of the statutory period. This purpose is sought to be accomplished by the use of two separate devices.

In Minnesota and Wisconsin, for example, the framework of a statute of limitations is used. That is, all actions (with specific exceptions) are barred as against a title falling within the statutory definition. The Michigan act, copied, or at least the subject of flattering imitation, in Nebraska, North Dakota and South Dakota, specifies certain circumstances under which a person shall be deemed to have a record marketable title, and then proceeds to extinguish all claims (again with certain exceptions) against such title. The purpose, general effect and constitutionality of the two types of acts is believed on good authority to be the same.[2] The footnote here refers to a Michigan Law Review article by the distinguished Professor Ralph Aigler of the University of Michigan, whose writings, particularly in the Marketable title field, have been frequently quoted and paraphrased, but never plagiarized so completely as shall be done right here before you today.

Characteristics

The Marketable Title Acts have the following characteristics in common:

1. They deal only with record title.

2. Most of the statutes operate for the sole benefit of the party in possession. The Michigan statute, in order to cover unoccupied lands, operates only if the property in question is not in the hostile possession of another.

3. The statutes do contain varying exceptions of interests which they do not cut off.

4. The acts make no change in the law applicable to that portion of the title since the beginning of the statutory period.

5. The statutes provide that an interest, which would otherwise be barred, may be preserved by recording a notice of the specific claim made.

6. It has been said that neither type of act is, in reality, a statute of limitations at all, for they do not bar a cause of action but, rather, extinguish certain interests.[3] The statutes purport to protect a purchaser against the hidden perils inherent in the usual limitations statute. In a case falling within the operation of the statutes, protection is offered against disabilities and absence from the jurisdiction, however long either may continue. With varying exceptions, future interests are extinguished. Thus, in a proper case, the Market-

able Title Acts, if effective, will render a title marketable of record, whereas the statutes of limitation fail to do so because of their uncertainty, the strict requirements of adverse possession, the difficulty of proof, and the necessity of judicial determination.

To the extent, however, that the Marketable Title Acts go beyond the usual limitation statutes, considerable property rights are extinguished. And there is my subject this morning.

The General Constitutional Question

Do the statutes take private property without due process of law? It has been said that the principle that due process prohibits taking private property prevails, unless it conflicts with an important social interest.[4] So the question becomes whether the public purpose, as viewed by the legislative body, warrants the consequences,[5] and whether the legislation is reasonably calculated to achieve that objective.[6]

In considering whether the public purpose sought to be served justifies the consequences, it should be noted that in the mid-west, at least, the system of title transfer has had a very bad press. The consequences brought about by the over-meticulous title examiner have been unfavorably mentioned.[7] The delay and expense of lengthy title examinations are said to be economicaly wasteful.[8] The necessity of satisfying captious complaints has been said to reflect unfavorably upon the legal and title professions, to be unreasonably expensive and totally frustrating.[9] The reluctance of courts to require a purchaser to go through with his contract, when the purchaser claims the title is unmarketable,[10] opens the door to abuses which could be dangerous in the extreme.

Disbarment

A few years back, one of our state legislatures considered a bill which would make a lawyer who raised a title objection, later found barred by the statute of limitations, prima facie guilty of the common law crime of barratry in an action brought for disbarment.[11] One writer speaks of the widespread discontent with excessive burdens on conveyancing and says that it is imperative that these burdens be removed if our title system is to endure.[12]

Public Interest

My citations are not to "The Daily Worker." I have referred exclusively to learned and thoughtful articles published in technical journals in jurisdictions which, in normal years, vote Republican. The public interest in the improvement of our title system is manifest. Thus, if the Marketable Title Acts do help—and I ask you to believe that they do—the possibility that they might extinguish a property interest is not such a vice as to offend the due process clause.

Constitutionality

In support of the proposition, now asserted, that the Marketable Title Acts are constitutional, I ask you to consider the following examples of statutes designed to serve the public interest but which, however, do extinguish existing property rights:

1. A, being the owner of Blackacre, conveys same to B. Subsequently, A conveys same to C, who is an unsophistocated, innocent but quick fellow, who records his deed first. B's vested interest in Blackacre is cut off instantaneously—no delay of forty years, no worry about due process.

2. The statutory extinction of the property rights of a person, who has disappeared and remained in that status for a number of years, has long since been upheld by the Supreme Court of the United States.[13]

Iowa

3. The Iowa Court has held that a statute effectively barred vested remainder interests of two persons who were still minors at the time of trial.[14] Unfortunately, for the present purpose, the constitutionality of the act was not argued, but it was assumed in that case and in at least two subsequent decisions.[15]

Pennsylvania

4. A Pennsylvania act provided that where a money charge exists against land and where no action to enforce

same had been taken for fifty years after the due date or after the date of the instrument, there should be a conclusive presumption of payment in full. As applied to an obligation, of a term exceeding fifty years, the statute was found unconstitutional because it required bringing an action when there might be no default, no controversy and, therefore, no cause of action.[16] But, the Marketable Title Acts avoid this evil for the bringing of an action is not required. Rights are preserved by the simple, inexpensive and wholly pleasurable act of recording a notice of claim.

Kansas

5. A Kansas statute, also held unconstitutional, provided that if land had been platted for twenty-five years, and a deed from the subdivider had been of record for twenty-five years, such deed should be conclusively presumed to have conveyed perfect title.[17] The difficulty here was said to be the same as in the Pennsylvania Act and also that an estate in possession could not be converted into a mere right of action and subsequently barred. The Marketable Title Acts avoid the latter difficulty since they do not operate against the party in possession.

Zoning

6. Turning for a moment to fields outside the realm of title examination, and, in fact, turning to that joyous community, the City of Miami Beach, we find that land, apparently highly desirable for retail store purposes, was restricted by a local zoning ordinance for superior hotels and apartments. The court conceded that the ordinance lacked the usual bases in the preservation of public health, safety and morals. The ordinance was upheld, however, because it was said to serve the public welfare for the establishment and preservation of a highly desirable hotel and apartment district was considered one of the main assets of a community, in the economy of which the resort business played such an important part.[18]

Condemnation

7. The condemnation of private property for the purpose of slum clearance and subsequent sale to private buyers has been held constitutional in several states.[19]

The Limitations Question

Assuming for my present purpose that the marketable title acts are constitutional in general, their validity has been questioned because they have limited to approximately one year, the time, after their effective dates, in which a preserving notice could be recorded. This situation is believed analagous to amending a statute of limitations by reducing the period in which an action may be brought.

Such a statute may not be amended so that a period already passed could bar an action. But, if a reasonable time is allowed after the act is passed, it is well settled that such an amendment is unobjectionable.[20] The question of reasonableness is primarily the province of the legislature and the courts will not deny the validity of the enactment, as one court puts it, "unless the time allowed is manifestly so insufficient that the statute becomes a denial of justice,"[21] or, in the words of another court, "unless a palpable error has been committed."[22]

Among the many examples of decisions upholding such limitation acts are two which seem especially pertinent. The Supreme Court of the United States held valid a New York statute which provided that a tax deed, which had been of record for two years, should, beginning six months after the act became effective, be deemed conclusive that all statutory steps were regular.[23]

Statutes of Limitation

The ultimate in brevity was achieved by a Massachusetts act which reduced from six to two years the time in which actions for personal injuries could be brought and which made no special provision for causes of action already accrued. Nevertheless, the act was held valid, for thirty days elapsed between the passage of the act and the effective date thereof.[24] The court asked whether thirty days could be considered unreasonable against a plaintiff who had there-

tofore delayed two years in bringing his action. May we not ask whether a year, or thereabouts, is unreasonable against a plaintiff who has theretofore allowed thirty or forty years to pass without asserting his interest in any way, and then allows one year more to pass without filing the simple notice required? Without pausing for an answer, we reach, finally, the conclusion.

Conclusion

It is submitted that the Marketable Title Acts are constitutional. The public interest in their effectiveness warrants the slight danger that some one some day may be deprived of a meritorious interest. The wide adoption of such statutes in important jurisdictions suggests that they are reasonably calculated to achieve their objectives. In five states, at least, bar association title standards recognize their validity. The simplicity and sweet reasonableness of filing a preserving notice is viewed as the key to the constitutional question and an altogether happy device to achieve the constitutional end of offering protection to those who become alert once in each thirty or forty years.

As Mr. Justice Holmes put it:

> "Now and then an extraordinary case may turn up, but constitutional law like other mortal contrivances has to take some chances, and in the great majority of instances no doubt justice will be done."[25]

It is not claimed that these statutes will solve all of the problems of the title lawyer or the title insurance company but they are a step in the right direction—they will help occasionally. If they help occasionally their existence is justified.

[1]Wis. Stat. (1949) 330.15; Minn. Stat. Ann. (1947, 1950 Supp.) 541.023; Mich. Comp. Laws 1948, 565.101 to 565.109; Ind. Stat. Ann. (Burus, Supp. 1951) 2-628 et seq.; Neb. Rev. Stat. Ann. (1950) 76-288 to 76-298; S. D. Laws (1947) c. 233; N. D. Laws (1951) H. B. 728; Ill. Rev. Stat., c. 83, 10 a.; Iowa Code of 1939, 11024.
[2]Professor Ralph Aigler, 50 M.L.R. 185, 195.
[3]Professor Ralph Aigler, 44 M.L.R. 45.
[4]Rottschaefer Constitutional Law, 523.
[5]Professor Ralph Aigler, 50 Mich. L. R. 185, 197.
[6]1942 Wis. L. R. 258, 271.
[7]24 Mich. S.B.J. 202, 212; 17 Neb. L. Rev. 98.
[8]33 Minn. L. R. 54; Viele, "The Problem of Land Titles," 44 Pol. Sci. Q, 421.
[9]Perry Morton, 31 Mich. S.B.J. 8.
[10]Ford v. Wright, 114 Mich. 122; Walker v. Gillman, 127 Mich. 269; Bartos v. Czerwinski, 323 Mich. 87.
[11]24 Mich. S.B.J. 365, 366.
[12]Roy G. Tulane, 1942 Wis. L.R. 258.
[13]Nelson v. Blinn, 197 Mass. 279; affirmed Blinn v. Nelson, 222 U.S. 1.
[14]Lane v. Travelers Insurance Co., 230 Iowa 973, 299 N.W. 553.
[15]Swanson v. Pontralo, 238 Iowa 693, 27 N.W. (2d) 21; Sytle v. Williams (Iowa 1950) 41 N.W. (2d) 668.
[16]Girard Trust Co. v. Penn. R.R. Co. 71 Pa. D & C 533.
[17]Morrison v. Fenstermacher, 166 Kan. 568, 203 P 2d 160.
[18]City of Miami Beach v. Ocean and Inland Co., 147 Fla. 480, 3 S (2d) 364.
[19]Opinion of the Justices, 254 Ala. 343, 48 So. 2d 757; Zurn v. City of Chicago 389 Ill. 114, 59 N.E. 2d 18; People ex rel. States Attorney v. City of Chicago, 394 Ill. 477, 68 N.E. 2d 761; Belovsky v. Redevelopment Authority of Philadelphia, 357 Pa. 329, 54 A 2d 277, 172 A.L.R. 953; In re. Slum Clearance, 331 Mich. 714, 50 N.W. 2d 340.
[20]Mulvey v. Boston, 197 Mass. 178. 83 N.E. 402; Terry v. Anderson, 95 U.S. 628; Turner v. New York, 168 U.S. 90, 18 S. Ct. 38.
[21]From Wilson v. Iseminger 185 U.S. 55, quoted in Mulvey v. Boston, 197 Mass, 178, 183.
[22]Terry v. Anderson, 95 U.S. 628.
[23]Turner v. New York, 168 U.S. 90, 18 S. Ct. 28.
[24]Mulvey v. Boston, 197 Mass. 178, 83 N.E. 402.
[25]In Blinn v. Nelson, 222 U.S. 1, 32 S. Ct. 1.

MELVIN B. OGDEN

Encroachments upon adjoining land as They Affect Marketability of title

I. Generally.

The approach to this subject will be made from the viewpoint of a title insurer which is requested to insure against loss by reason of unmarketability of title occasioned by a specific encroachment of improvements onto adjoining lands or streets. Most standard form policies do not insure against such hazards because of an exception from the coverage as to "questions of survey," or "any facts which a correct survey would show," or similar qualifications. Many title insurers do, however, issue extended coverage policies which insure against encroachments not shown in the policy. And most title insurers issue the A.T.A. policy which, of course, insures a lender against unmarketability of the mortgagor's title because of any encumbrance (which would include an encroachment) not shown in the policy.

On Its Own Merits

When we say "Is this particular encroachment of such a character as to justify as reasonable and prudent purchaser in refusing to accept title?" we have merely asked a rhetorical question which provides no guide for deciding whether the encroachment renders the title unmarketable. And we find that judicial precedent offers no mathematical formula for such determination. An encroachment of one inch upon adjoining property may result in an unmarketable title in one case; an encroachment of one foot may be regarded as unobjectionable in another case. The one positive statement seen in decisions is "Each case must stand upon its own merits."

Substantial

The general rule may be simply stated: If the encroachment is **substantial** the title is unmarketable; if the encroachments is so negligible as to bring the case within the rule of de minimus, the title is not unmarketable. Inherent in this test is the thought that a purchaser should not be compelled to take title in the face of an encroachment if there is a likelihood that his use and enjoyment of the improvements as they stand on the land when purchased may be seriously interfered with. In applying this test, the facts and circumstances to be considered include the character of the encroaching improvement, the purpose for which the improvement is used, the expenses of removal, and whether rights to maintain the encroachment exist.

Upon Adjoining Property

II. Encroachments upon adjoining lands.

The character of the encroaching structure as a determining factor is evidenced by decisions holding that even a slight encroachments by a **permanent** structure is fatal, but that an encroachment by a cheap or temporary building may be disregarded. Thus, title was held unmarketable wher ea four-family flat encroached one inch upon the adjoining land (Stevenson v. Fox, 40 App. Div. 354, 57 N.Y.S. 1094). But a four-inch encroachment by a dilapidated frame shed was held not substantial (Scheinman v. Bloch, 97 N.J.L. 404, 117 A. 389).

Acquiescence

Agreed that a particular encroachment is substantial under the general test, the next question is whether long continuance of the encroachment with objection from the adjoining owner is sufficient to cure the objection of unmarketability. The vendor argues that, conceding no legal right exists to maintain the encroachment, the acquiescence of the injured adjoining owner in the encroachment shows that there is no probability that he will challenge it. This reasoning has appealed to the courts in several cases (e.g., McDonald v. Bach, 29 Misc. 96, 60 N.Y.S. 557, holding an encroachment of a wall by three-quarters of an inch was not material); but in each case it seems that there were other favorable factors and the encroachments were not actually of a substantial nature.

Adverse Possession

The argument which the vendor is most likely to advance as a cure to the objection of unmarketability is that rights to continue the encroachment have been gained by adverse possession. If the claim is to the fee title to the land encroached upon, it will usually fail in those states where payment of taxes on land adversely held is an essential element. If only an easement for maintenance of the encroachment is asserted, the matter of taxes is immaterial. In some cases (e.g., Wildove v. Pappa, 223 App. Div. 211, 228 N. Y. Supp. 211, involving an encroachment of 4 feet) the courts have found an adverse title predicated on open, notorious, and long continued existence of the encroachment to be sufficient to support the vendor's assertion of a marketable title. But in other cases (e.g., Spero v. Schultz, 14 App. Div. 423, 43 N.Y.S. 1016) the courts have questioned whether the evidence would sustain an adverse or prescriptive title; specifically, the courts have asked, granting possession for a long period, was the possession hostile to the record owner of the

land encroached upon, were there parties against whom the statute of limitations would not run, was there ever an agreement permitting the existence of the encroachment?

Estoppel

Estoppel as a cure is sometimes urged. Thus, the vendor claims that the long acquiescence in the encroachment raises an inference of an original parol agreement that the true boundary line is that which places the encroaching improvement wholly on the vendor's land, and that such line is a "practical" boundary which is conclusive on the parties as an estoppel. This theory of establishment of a boundary line by practical location to conform to lines of possession, thus eliminating the unmarketability objection, has been accepted in a number of cases (e.g., Wentworth v. Braun, 78 App. Div. 634, 79 N.Y.S. 489).

Implied Easements

A vendor seeking a foundation for his right to maintain an encroachment may find relief in the doctrine of **implied** easements. For example, suppose that the beams of the vendor's house are lodged in the wall of a building on adjoining land, but both lots had been owned at one time by the same person, who constructed both houses and thereafter conveyed the vendor's house to a predecessor of the vendor. A New York court (Schaeffer v. Blumenthal, 169 N.Y. 221, 62 N.E. 175) held that the vendor had an easment by implication for the continuance of the encroachment as long as his house should exist, and this right cleared an unmarketability objection to the encroachment. A California court (Navarro v. Paulley, 66 Cal. App. 2d 827, 153 Pac. 2d 397) recognized the implied easement rule where a garage encroached 5 feet on the adjoining lot and both lots were in a common ownership at one time, but refused to apply the rule because the garage could be moved to the vendor's lot at small expense.

These arguments of the vendor in favor of a marketable title despite an apparently substantial encroachment are mentioned here as a matter of information only; they should not be accepted as sufficient for title insurance purposes.

Upon Public Property

III. Encroachments upon public streets.

While encroachments upon public streets in their effect upon marketability of title are tested by the general formula, i.e., "substantial" encroachments affect marketability, while trivial ones do not, the vendor's argument that rights to maintain the encroachment have been gained by acquiescence, adverse possession or estoppel, is less persuasive in view of the paramount rights of the public and the restraints on asquisition of rights by adverse possession or estoppel as against the sovereign.

General Rule

The general rule of ancient origin is that streets for their full length and width are for the public use; that any permanent structure encroaching thereon is a nuisance per se, regardless of actual interference with public travel, and that it is the general duty of the city to keep the streets free from obstructions or encroachments by compelling removal thereof (City of Emporia v. Humphrey, 133 Kan. 176, 299 Pac. 950, sustaining injunction ordering encroachment of building by 3 feet on street). In the absence of a grant of power from the legislature, a city cannot authorize or grant rights for the maintenance of obstructions in public highways.

Latitude

This strict rule that no encroachment on the street can be permitted by a municipality is liberalized in many jurisdictions by judicial construction or local laws. If an encroachment is not unreasonable and does not interfere the public use, it is often held that it is not a nuisance subject to forced removal. More latitude is allowed as to minor encroachments above the surface (e.g., bay windows, awnings) or below the surface (e.g., vaults under sidewalks). Charter provisions often authorize municipal authorities to permit slight

encroachments, and in a few states this power extends even to permanent encroachments by walls and the like. Other exceptions to the general rule are found in some cases where the courts have held that under the circumstances of the particular case the municipal authorities were barred by laches or estopped by acquiescence from compelling the removal of an encroachment. (For an exhaustive treatment of these problems, see McQuillan, Municipal Corporations, section 30.73 et. seq.)

Not Determined

These rules as to the power of a city to force removal of encroachments on streets do not, of course, determine whether a title is unmarketable because of a particular encroachment. As will be seen, the vendor may defend the marketability of his title by admitting the right of the public to remove the encroachment but establishing that a reasonable man would accept the title because the cost of removal is slight or the risk of challenge is insignificant.

Unmarketable

A long line of cases, most of them in New York, have declared titles unmarketable where the encroachment upon a street was such as to threaten the purchaser with substantial loss in the fee or in the rental value of the premises, or a burdensome expense in altering the building to meet the requirements of law (see cases cited in 57 A.L.R. 1451, annotation). Thus, title has been held unmarketable because of the following encroachments upon streets: store windows, 1 foot over, cost of removal being $5,000; pilasters, 5 inches over, cost of removal being $3,000; wall of the building, 2½ inches over, cost of removal being $10,000.

Marketable

The cases in which encroachments on streets are held not to render the title unmarketable appear to be predicated on one or both of the following factors: (1) the cost of removing the encroachment is slight; (2) the encroachment is not violative of the policy of the municipality or has been recognized by official acts or ordinances. Thus in one case (556-558 Fifth Ave. Co. v. Lotus Club, 129 App. Div. 339, 113 N. Y. Supp. 886), the court held the title marketable where the encroaching portion of a basement of a residence could be readily removed at a nominal expense without injury to the building. In another case (Gilman v. Herman, 118 Misc. 390, 193 N.Y. Supp. 174), marketability was sustained where bay windows projected 1½ feet onto the street, the cost of removal and remodeling would be $300, the rental value of the building would not be impaired by removal, and the likelihood of interference by the city was remote because of the policy of the municipality to allow encroachments of bay windows 10 feet above the surface and extending not over 3 feet into the street. And a California court (Mertens v. Berendsen, 213 Cal. 111, 1 Pac. 2d 440) considered that an encroachment of 2 inches upon a street did not defeat marketability where the cost of removal was $300.

Municipal Policy

It is significant to note that in New York the early decisions (e.g., Broadbelt v. Loew, 15 App. Div. 343, 44 N.Y.S. 159) held that even substantial encroachments on public streets did not affect marketability where the usage and municipal policy of acquiescence demonstrated that the possibility of the owner ever being molested was "exceedingly remote." But these cases were later overruled or disregarded because of a change in municipal policy, discussed in a case (Acme Realty Co. v. Schinasi, 215 N.Y. 495, 109 N.E. 577), in which the court said: "It is familiar recent history that these changed conditions have led to the compulsory removal of building encroachments from areas, streets, and blocks where they had always before been permitted. When the late Mr. Justice Patterson wrote the opinion in the case of Broadbelt there was nothing to indicate that there would ever be a radical departure from the early policy of the city with reference to building encroachments on the streets. Since then the change has become an accomplished

fact, and its binding force has been recognized in later judicial decisions."

Sanctions

Acts of the municipal authorities sanctioning encroachments (e.g., an ordinance granting permission to maintain an encroaching building until demolished, or a building code authorizing overhanging cornices) have been regarded by the courts in some cases (e.g., Harrington Co. v. Kadrey, 105 N.J. Equity 389, 148 A 3) as proof that the encroachments in question were lawful, even though the municipal authorities were not empowered to compromise the public rights, and did not render the title unmarketable. However, it appears that these cases usually involved encroachments which were susceptible of removal at slight expense.

Conclusion.

It is suggested that the risk of unmarketability of title occasioned by an encroachment, whether upon adjoining land or a street, is one which a title insurer should not assume. If exceptions to such rule are made, they should be confined to cases where the title is clearly marketable under the test of cost of removal (i.e., the cost must be slight) or, in the case of encroachments on streets, the encroachment is expressly authorized by statute (not merely a municipal permit).

Preferred Practice

The preferred practice, it is believed, should be to show all encroachments in policies which insure against such matters (e.g., A.T.A. policies) and then insure, where appropriate, against loss by reason of any final court order or judgment requiring removal of such encroachment. The circumstances which would justify insurance against forced removal of an encroachment are not within the scope of this subject of unmarketable titles. It may be appropriate, however, to point out that, in considering an encroachment upon an adjoining owner's property, mandatory injunction will ordinarily issue to compel the removal of the encroachment, the exception to the rule being where the encroachment is the result of a mistake, the actual damage to the plaintiff is slight, and the cost of removal is great compared to the damage (see 96 A.L.R. 1287, annotation). The right to maintain an encroachment upon adjoining land, may, of course, be supported by a prescriptive easement, adverse possession or estoppel (see 1 Am. Jur. p. 513 et seq.); but, on the other hand, the encroachment may be regarded as a continuing trespass or nuisance, for which successive actions will lie (see 76 A.L.R. 312, annotation). In any event, it would seem that insurance against forced removal should be predicated on a willingness to assume the cost of removal in the particular case as an insurance hazard, without reliance upon defense factors which may or may not be valid according to the facts proved in litigation.

(An excellent article on this subject is "The Effect of Encroachments on the Marketability of Land Titles," by Ross D. Netherton, Chicago-Kent Law Review, Vol. 27, No. 2, March, 1949. Reference should also be made to an annotation on the subject in 57 A.L.R. 1451.)

LEO A. REUDER

I have been asked to limit my remarks to "What Effect or Impact Marketable Title Legislation has on the Title Insurance Business."

Even with this limitation placed upon me, it is still a large assignment. Frankly, I did not have the time to approach and explore this subject as expertly as I should have. We all have heard many definitions of an expert, and I shall not bore you with a new one. But honestly and sincerely ladies and gentleman, if Mr. Beery had asked my to discuss with you the subject "What impact has a wedding on the pocket book of the Bride's father." I would feel very competent and hold myself out as an expert, because just a month ago I was the donor on one of those occasions.

Recording Statutes

Every State has on its statute books, laws prescribing the method for filing and recordation of legal

documents which comprise and make up the muniments or chain of title. Needless to say, that over a period of many years these records have become so voluminous and cumbersome that attorneys and examiners, after delving through a maze of records, frequently find themselves bewildered and uncertain as to the quality of title under consideration. It is quite obvious when reviewing the Laws of the State pertaining to marketable titles, and the discussions in Bar Journals, that it was the increasing length of the chains of title and reluctance of many title examiners to approve titles without "fly specking," which prompted the need for legislation of this kind.

While the recording system was intended to protect purchasers for value and consequently to promote marketability and alienability, the sheer increase in the volume of title documents has created a conflict between the protection of vested and recorded interest on one hand, and the interest in marketability on the other. All of us know from experience that many titles are rejected on the grounds of fear alone—fear that the next examiner may not pass the title. Some courts have held that the mere fact an attorney or examiner has a reasonable doubt about the title renders its unmarketable.

Limitations

The Statute Books are full of limitation acts, and curative acts of as many varieties as Heinz has pickles are passed at every session of the legislature for the purpose of eliminating specific title defects—all these however, have not given much aid and comfort to title examiners. As a result, marketability-of-title acts which have for their purpose the simplifying and facilitating of real estate transactions, have been passed in a number of states.

Iowa

In 1919 Iowa passed a law to achieve that purpose, to be followed by Wisconsin and Illinois in 1941, Minnesota in 1943, Michigan and Kansas in 1945, Indiana, South Dakota and Nebraska in 1947 and North Dakota in 1951. It is very obvious therefore that Laws of this kind are of comparatively recent origin and only in two of the above mentioned states has the State Supreme Court passed on the validity of the Law. I will not comment on the constitutionality of these laws because Mr. Potter will deal with that phase of the subject matter.

Marketable Record Title

These Acts took two forms, one group following the lead of Iowa passed them in the form of a statute of limitation, saying, "No action shall be brought, etc.," and the other group, Nebraska, South Dakota, Michigan and North Dakota followed the form of a definition of what constitutes "Marketable Record Title."

It would not serve any useful purpose to incorporate in this paper the laws of the States which have enacted this type of legislation, but I will point out briefly some of the requirements and differences:

Definition

In some states the law defines what is a marketable title, others give no definition.

Possessions

Possession by the party claiming title is a prerequisite in most states, while others provide that the premises must not be in adverse possession of another.

Unbroken Chain

The provisions of the Law are generally available to persons who have an "unbroken chain" of title for the period designated in the Law, and at this point I wish to state that the period varies from twenty to seventy-five years in the States which have passed laws of this kind.

Proof of Possession

Proof of possession (where required) and of an unbroken chain of title may be in the form of an affidavit which the recorder or register of deeds must accept for filing.

Short Limitation Period

Most laws of this kind also provide for the filing of proof of a claim of title or interest by anyone who may claim adversely to the party in possession and claiming under an "unbroken chain of title" as provided by the Act. The last provision might be construed as a short limitation statute, because if the party claiming adversely does not meet the requirements of the law within the time allowed, his or her right, claim or interest is forever barred.

Iowa

The supreme court of Iowa upheld this provision of the act in the case of Lane vs. Travelers Insurance Co. 299 NW 553, where the statute was construed by the Supreme Court in a case where a minor, whose claim had not been protected, sought to establish a right to property arising out of a deed barred by the statute referred to. In enforcing the statute in accordance with its terms the court said: "We may observe, however, that there can be little doubt of the desirability of statutes giving greater effect and stability of record title."

Exceptions

Laws of this kind do not intend that the basic title prior to the period specified in the Act as creating a "marketable title" be disregarded and provide that the Act shall not bar:

(a) Rights of any remainderman upon the expiration of any life estate or trust created before the recording of deed of conveyance as set out in the Act (on which deed or instrument the owner claims title by reason of the provision of the act.)

Mortgages and Contracts

(b) Rights founded upon any mortgage, trust deed, or contract for sale of lands which is not barred by the statute of limitations.

Condition Subsequent

(c) Conditions subsequent contained in any deed, nor deemed to affect the right, title or interest of any railroad.

As I stated in the beginning my specified assignment is "What impact has this type of legislation had on the title business? This type of legislation is so new that at least for the present no dire consequences have been revealed. It will not take me very long therefore to tell you what I have discovered during my brief exploratory period.

Legal Maturity

Until such time as these laws reach legal maturity it remains the "sixty-four dollar question" and cannot be accurately answered at this time. I will however relate to you the experience in my State of Minnesota which passed its first law of this kind in 1943, and since that time by amendments and the passage of an entirely new law has presently what is commonly referred to as the Forty Year Statute.

Both forms of policies issued by our Company guarantee marketability of title. Prior to the passage of the law under discussion a good many examiners were rejecting titles that we felt were marketable and had insured. For the most part the objections had very little merit.

Quiet Title Action

In some instances we were compelled to bring an action to quiet title or resort to other curative measures, even though we felt that we had good legal advice and could successfully litigate an action for specific performance. You of course know as well as I do that our insured want action, complete their transaction and are not interested in legal actions to perfect an insured title.

Since the passage of the forty year statute we have had practically no difficulty and with the increased demand for title insurance, feel that this particular law has been beneficial rather than detrimental. It eliminates objections and criticism of a trivial nature, and the acceptance of the Law by most members of our local and State Bar Association does away with time consuming arguments about **title defects.** In other words it eliminates "fly-specking." The fact that demand for title insurance is growing

negatives the argument that this law might affect us adversely.

Refusal

I wish to point out, however, that by reason of the fact that these title marketability acts have been before the courts in only two states, some examiners refuse to follow the majority of the bar in relying on the law passed in their respective states. They take the same attitude on title standards which have been adopted and approved by a good many bar associations. The courts not having passed on the standards, examiners refuse to be guided by them. By and large, however, the majority members of the bar feels that the legislation has been beneficial. I come to this conclusion from the correspondence which I received from dependable and experienced lawyers in the states where laws of this kind have been adopted. Most of them feel that while laws of this kind are of a great help to title examiners, they admit that they are not a cure-all.

No Cure-All

I addressed a letter to men in the title insurance business in states where laws of this kind have been enacted, asking for their experience with such cases. I am pleased to quote the following from a letter received from Mr. R. W. Stockwell, President, Title Insurance Service, Inc., Indianapolis, in answer to my inquiry. "It has been our impression that the 1947 Act has not had any particular 'impact as a marketabilty Act on title insurance.' In my own experience I have found that in a few counties where title evidencing has not reached particularly high standards, or where there has been little advancement in the evolution of title evidencing, some attorneys do fall back upon the provisions of this 50 year statute and consider them valid. To our knowledge the Act has never been tested in the courts and most of the title attorneys are not willing to rely upon the Act as giving any particular relief to anyone who can prove a vested interest prior to the 50 years. Therefore, I do not believe that we can say that the Act has not had any effect at all upon the sale of title insurance. Certainly, though, it has no noticeable effect, and we seldom hear about it among our good title examiners of the state."

Conclusion

In conclusion I wish to make the following observation:

All of us in the title insurance business strive to give our customers as complete coverage as possible and particularly stress the fact that we protect against defects, liens, interests and equities not disclosed by the record. All of this makes our service not only desirable but more and more demanding.

We employ counsel to examine our records and titles no matter what method or system may be in vogue in different states, and rely on their opinion.

Marketability of Title Acts in my opinion are a step in the right direction—Lawyers who serve us deal with the record only—this type of legislation enables them to pass otherwise questionable titles—it saves time and money for the title companies and in no manner detracts from the coverage offered by their policies such as forgeries, incompetency, minorities, undisclosed heirs and numerous other matters against which only title insurance can offer protection.

JOSEPH S. KNAPP, JR.

Two phases of this subject have been suggested to me for discussion. (1) To what extent do the decisions indicate a relaxation of the strict rule that a marketable title is a perfect record title? (2) Have the courts recognized that an insurable title is a marketable title?

Is Insurability Marketability?

An exploration of the first phase discloses the general rule to be that, a vendor under the duty of furnishing a marketable title, must furnish a title which the record alone without the aid of parol proof shows to be marketable; and a vendee will not ordinarily be compelled to take a title, when there is a defect in the record

title which can only be cured by a resort to parol evidence. The authorities, however, (55 Am. Jur. Par. 180 page 651 and Par. 182 page 654) (ALR 57 page 1324, C.J. 66 page 870-872; Patton on Titles page 145-47) hold that notwithstanding the statement that extrinsic facts are not available to prove a marketable title, parol evidence is admissable to aid, supplement, or explain a record under some circumstances, as, when it is offered to explain the person intended by a name used in a deed, or to show that a grantor is an heir of a prior holder of the record title.

An examination of the cases cited as authority for this statement and a bringing to date of these cases in the respective state indexes, does not indicate an extension or liberalization of the rule.

Missouri

A 1948 Mo. case (Thomas J. Johnson & Co. vs. Mueller 205 SW 2d 52) while holding that a contract providing for the furnishing of a certificate of title required a perfect record title and not a marketable title, referred to, and recognized Reeves vs. Roberts 294 Mo. 593 which sets forth in detail what may be explained by affidavit to make a title marketable but states the affidavit cannot be used to change the record title.

Alabama

A 1948 Ala. case (Whitefield vs. McClendon 38 So 2d 856) held that a recorded affidavit was properly included in an abstract of title where contract required that abstract disclose a good and merchantable title, but refused to allow introduction of parol evidence to prove adverse title.

Colorado

A 1949 Colorado case (White vs. Evans 208 Pac. 2d 922) stated "a purchaser is entitled to receive a marketable title, a title that is fairly deducible of record and not dependent on matters resting in parol.

Minnesota

A Minnesota case (City of North Mankato vs. Carlstrom 212 Minn. 32) held title marketable based on testimony of a surveyor that he could locate the boundary lines of property, even though the stake for the beginning point called for in the description, was no longer available.

New Jersey

In a 1940 New Jersey case (Webster-Art and Strength Building and Loan Association vs. Josephine Armondo 128 NJ Eq. 219) testimony was allowed to show that the incorrect name of an infant had been used in a case for sale of property and held title marketable, as there could have been no other infant and it was a mistake in name only.

It is well settled that when a contract of sale provides that the abstract of title show a marketable title parol evidence is not admissable to prove title. (Campbell vs. Doherty (1949) 53 NM 280; 206 P 2d 1145; 9 ALR 2d 699.)

Montana

A 1937 Montana case however (Conner vs. Helvik 105 Mont 437) held a title marketable based on testimony that Vendor held an unrecorded deed, while the title of record was vested in another, and the deed was recorded before the signing of the decree.

Adverse Possession

There are two lines of cases in which many courts have allowed the production of parol evidence to prove a merchantable title; one involves adverse possession, and the other involves restrictions wherein parol has been allowed to show restrictions were no longer enforceable.

The following are some cases involving adverse possession: McWilliams vs. Toups (1941) 202 Ark 159; Highland Realty Co. vs. Feraud (1940 194 La 535; Taussig vs. Van Deusen (1944) 183 Md. 436; Bologna vs. Weiner (1939) 9 NYS 2d 610; Dorf vs. Bossert Terminal Inc. (1946) 59 NYS 2d 732; Smith vs. Windsor Manor Co. (1945) 352 Pa 449; Medusa Portland Cement Co. vs. Lamantina (1945) 353 Pa 53.

New Jersey

A 1948 New Jersey case (Casriel vs. King 141 NJ 515) held a contract

enforceable although restrictions were violated. It said in part, "But the evidence indicates that such restrictions and its violation have proved no obstacle to the sale of other properties in Asbury Park which were similarly situated. This evidence was furnished by the defendant's own witness and apparently the marketability of this hotel is enhanced by the fact that it has a liquor license."

Maryland

A 1941 Maryland case (Whitmarsh vs. Richmond 179 Md 523) in refusing to recognize restrictions as an objection to title, said, "from the oral testimony and from the photographs included in the record it appears that practically all of the properties adjacent to the property here involved now are being used for commercial purposes."

Have the Courts Recognized That An Insurable Title is a Marketable Title?

This phase of the subject is of vital interest not only to those in the title insurance industry but to all persons interested in the purchase and financing of real estate. If insured titles, those which title insurance companies agree to insure without dispute among themselves, are recognized as "merchantable titles," that is, are regarded as synonymous with, "merchantable title," the same as the expression "good title," "marketable title" and "merchantable title" are now regarded as synonymous, the facility of decision and reduction of expense would be invaluable to all persons and corporation involved in real estate transactions. However, an examination of cases does not indicate that the courts have adopted "title insurance" as synonymous with "marketable title."

Favorable to Title Insurance

The courts have referred favorably to title insurance in some cases. A federal court (Plimton vs. Mattakeunk Cabin Colony Inc. 9 Fed. Sup. 288) said, "it could not be deprived of its judicial function to determine marketability or a reasonable doubt thereof in the absence of the clearest convention between the parties that a proffer of title insurance should be binding and conclusive." The court said it had no doubt, whether or not it may take judicial notice of the general custom and practice with respect to title insurance in real estate transactions, it may consider the undisputed evidence before it and the custom of the weight given in the market place to title insurance. This case after quoting extensively from a Pennsylvania case (Foehrenbach vs. German American Title & Trust Co. 217 Pa. 331) which discussed the merits of title insurance, concluded as follows: "I consider the argument persuasive and I am prepared to give it due weight."

Maryland

In a 1936 Maryland case (Suburban Garden Farms Homes Corp. vs. Adams 171 Md. 212) it was held that a purchaser could not object to the marketability or insurability of title to land as a defense to a suit for equitable relief on a contract of sale on grounds that the title insurance company demanded an exception in its policy for certain defects, if the court was satisfied the title was clear.

California

In a 1948 case (King vs. Stanley 197 Pac. 2d 321) a California Court, in which state all or practically all titles are examined by title companies, held that although a contract of sale did not provide for the furnishing of a certificate of title, it was the right, under the general law, for the purchaser to receive a good and marketable title and therefore, the securing of title insurance did not impose any onerous or uncontemplated condition. The court stated "It (title insurance) is a reasonable method by which a vendee may determine the merchantability of the vendors title and a seller may not refuse to perform on the grounds that his title is not as complete as the one agreed to be conveyed."

Washington

The Supreme Court of Washington (Flood vs. Marcard 102 Wn 140; 172 Pac. 884) stated in declining to approve a title as marketable, "That it was not such a title as a buyer would

take when exercising ordinary prudence in the conduct of his affairs is sufficiently evidenced by the refusal of the title insurance company to guaranty it, and the refusal of its general counsel, whose learning and skill in the law cannot be questioned to approve title and neither of these had any interest in the main transaction, and we can conceive of no higher evidence of a want of marketability of title, as that term has been construed by this court, than these opinions.

The same court, however, in another case (Hebb vs. Severson 32 Wn 2d 159; 201 Pac. 2d 156) said, "It is to be noted, parenthetically, that even though a title be insurable, it does not follow, necessarily that the title is good or marketable. It cannot be gainsaid that any title, no matter how defective, is, from a practical standpoint, insurable if the premium rate is set high enough, or the list excepting defects which are not insured against be long enough. Therefore, to say that a title is insurable merely means that it is capable of being insured, and not that it is also good or marketable.

Georgia

A 1949 Georgia case (Douglas vs. McNabb Realty Co. 52 Se 2d 550; 78 Ga App 845) held that a contract to furnish a good and marketable title does not require vendor to furnish title which a particular title company would insure as it may decline to issue policy regardless of how good and marketable it may be.

Title Insurance the Test

There are some jurisdictions where it is customary as a matter of contract to provide in substance that the test of an acceptable title is one which a responsible title insurance company will insure subject only to its printed exceptions for its usual fee. This tends to make title insurance the test of marketability in that community or market place. The courts have sustained this provision as a matter of contract and required the purchaser to accept title if the title company offered to insure, or refused to enforce specifically where the title company proposed to include an additional exception. (McClenahan vs. Malis 164A-780—210 Pa. 99; Love vs. Fetters 121A-607—98 NJ Law 784; LaCourse vs. Kiesel 77 Att 2d 877-881; Butler vs. Santosus 62 York 31; Brinn vs. Mennen Co. 68 Att 2d 879, 882; Hebb vs. Severson 201 Pac 2d 156, 160).

Pennsylvania

It has been held in the State of Pennsylvania (Perkinpine vs. Hogan 47 Pa Superior 22) that where contract provides that the title shall be "such as will be insurable at regular rates by title insurance companies" such provisions will not justify the purchaser for refusing to take a deed for land because a single title insurance company refused to insure it.

New York

A New York Court (Fineman vs. Callahan 219 NYS 165; 218 App Div. 854) held under a similar form of contract that purchaser was justified in refusing title where a title company refused to insure except subject to encroachments even though the encroachments were trivial.

Conclusion

In conclusion I would summarize as follows: (1) A contract which contains no reference to the type of title to be conveyed requires that it be marketable. (2) Parol proof may be resorted to in some jurisdictions to explain the record title, and in other jurisdictions to both explain the record title and supplement it to establish a marketable title. (3) The courts retain the right to determine whether the title is marketable in all cases except where the parties by the contract have specially agreed to have the marketability of the title determined in some other manner, as by title insurance. (4) The courts in determining marketability in a particular case give serious consideration to the conclusion of a title insurance company as to its insurability but do not accept the conclusion of the title insurance company as final or binding on the court.

TITLE INSURANCE FROM THE INVESTOR'S VIEWPOINT

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Irvin S. Cobb said that natives of certain geographical portions of our country arrogate to themselves a special pride by reason of the fact that their parents had the forethought to choose these localities as suitable places for them to be born in. He included, of course, those born in Boston and went through Harvard. This was, he said, as though you had met an egg which had enjoyed the unique distinction of having been laid twice and both times successfully (Speech to Penn. Soc. at annual dinner, Waldorf-Astoria, N. Y., 12-17-20). However, some rather blunt statements have been made lately about Boston and New England. A Mr. Lait and Mr. Mortimer have been extremely successful writing books about various sections of the country with such titles as "Chicago Confidential," "Washington Confidential," and "U.S.A. Confidential." The inference from these works in paper covers to be purchased at many newsstands for 25 cents is, that the ambition of the mass-mind in America is impelled by two purposes, one of which is love of money which you have been informed is the root of all evil by a very good and much quoted authority, especially on Sundays—the other is—to be real plain—lechery. These gentlemen say something like this about New England:

> "It is an anachronism, decadent and broke, the only important section of the country where the indices go down not up. The people reflect the atmosphere—they have sour pusses. You seldom see a smile break through their tight thin lips. The Boston mentality, befitting the birthplace of intellectual culture in America, is blind to reality."

Local

It might be said that sometimes a country is not without honor save with its prophet traveling away from home. This does not apply to Texans —nor Californians—nor to me as a Bostonian. I disagree with Lait and Mortimer — Boston has much to be proud of—there is the John Hancock Life Insurance Company and Paul F. Clark, its President since December, 1944, whose company now stands fourth among American life insurance companies in total insurance in force —more than 12 billion dollars on nearly 9 million policyholders, certainly a fine tribute to his dynamic and progressive leadership—there is the Ritz-Carlton Hotel, there is ex-Governor of Massachusetts and ex-Mayor of Boston, James M. Curley, whose speaking artistry is almost equal to that of Churchill, Franklin Delano Roosevelt or Dale Carnegie. We have our own Governor Dever who presided so graciously at the recent Democratic National Convention and whom you all saw on television.

I should also mention John Fox of Boston—well—South Boston, who has an office at 89 State Street, Boston, under the name of Raymond Faxon & Co. He has made in the last 10 years 25 million dollars through some rather astute real estate and financial operations, all as described in Fortune in its recent June and July issues. His motto is "you never make money by saving it" and adds, "Wall Street is the laziest street in the world. It's populated by people who are well-to-do because their grandparents left them some money. I work seventeen hours a day." It is this type of initiative and perfection in always being right that makes a success story that delights Americans. It is the same sort of perfection one finds in what title insurance is accomplishing in a work of art like the building and running of a hotel such as the Carlton House in Pittsburgh, completed last April and the last word in hotel service of outstanding quality to be found anywhere in

the world, giving its patrons the kind of service and satisfaction you title companies seek to give your customers—people and institutions with lots of money to invest.

Virgin Fields

This should be of special interest to you: title insurance has not yet been accepted in New England with the exception of Connecticut areas that are near New York City. Perhaps the lawyers of New England will come around eventually to the approval of title insurance which will, of course, cut into their business but which, it might be said with truth, will better serve their clients. Lawyers in New England in the past have not always been regarded with great favor. For example, I would like to quote a few lines from the charge of Judge Dudley to the jury in the case of King v. Hopkins, 57 N.H. 334, in which his Honor said:

"You have heard, gentlemen of the jury, what has been said in this case by the lawyers—the rascals! But, no, I will not abuse them. It is their business to make a good case for their clients. They are paid for it, and they have done in this case well enough. But you and I, gentlemen, have something else to consider. They talk of law. Why, gentlemen, it is not law we want, but justice. They would govern us by the common law of England. Trust me, gentlemen, common-sense is a much safer guide for us—the common-sense of Raymond, Epping, Exeter and the other towns which have sent us here to try this case between two of our neighbors. A clear head and an honest heart are worth more than all the law of the lawyers. There was one good thing said at the bar. It was from Shakespeare, an English player, I believe. It is this: 'Be just, and fear not.' That, gentlemen, is law enough in this case, and law enough in any case. 'Be just, and fear not.' It is our business to do justice between the parties. Not by any quirk of the law out of Coke or Blackstone, books that I never read and never will, but by common-sense and common honesty between man and man. That is our business, and the curse of God is upon us if we neglect, or evade or turn from it. And now, Mr. Sheriff, take out the jury; and you, Mr. Foreman, do not keep us waiting with idle talk, of which there has been too much already, about matters which have nothing to do with the case. Give us an honest verdict, of which, as plain common-sense men, you need not be ashamed."

Suggestions

We have heard much at title association meetings regarding the various phases of the title insurance business. My following suggestions are designed to help the title company understand the problems of the lender, to make title insurance even more in demand than it now is by your good customers—the cream of whom are the life insurance companies, of whose investments since 1946 it can be truly and succinctly said, as Churchill would put it, "Never was so much invested by so few in so short a time" amounting to a total investment in 1951 of 68 billion 500 million dollars (the total assets of all U. S. life companies)—16 billion 100 million of which was invested in mortgages and 1 billion 450 millions in real estate.

Procedural

Now, how does the life insurance company go about obtaining a mortgage investment? You should understand the process followed substantially like this: a life insurance company has loan agents and correspondents in various cities and sections of some or all of the 48 states. Suppose a borrower wishes to obtain a mortgage on an apartment building for $100,000. He fills out an application at the office of the life company's loan agent in his locality. The agent sends the application to the City Mortgage Department of the life insurance company's home office. There the application is studied and submitted to a Loan Committee, one of whose members belongs to the life company's Committee of Finance, which finally approves or disapproves

the application. The Loan Committee analyzes the application and it is submitted by a member of the City Mortgage Department to the Committee of Finance, composed of a few directors and some very astute gentlemen on real estate values, the trend of business, interest rates, etc. Here the loan may be discussed again and (let us say in this case) approved. The loan agent in the distant city is advised accordingly, the loan papers are prepared, the title company submits a preliminary title report and these papers are forwarded to the home office for examination by its law department. The papers are checked by the law department and if approved, a check is sent to the loan agent with papers to be executed at the closing, and the loan is then closed as specified in a closing letter of instructions. Your title policy, received as an essential concomitant of the closing, is a much treasured document, assuring the lender the title is good.

Legal

In this process some difficult legal questions may arise and it is suggested that the title company, being acquainted with the peculiarities of the law of the place where the security lies could assist the lender and get itself much valuable good will by answering in advance some questions such as those which cause the lender concern. For example:—

Local Statutes

(1) It would help the title company to understand the lender's problems if the title company were well acquainted with and had in its files copy of the investment statute which governs the investments of each of the lenders to whom it issues policies, each state varying as to the requirements for mortgage and real estate investments by life insurance companies.

Marketability

(2) The title to a loan may be temporarily unmarketable at the time the loan is made—does the state statute require that the loan be secured by real estate the title to which must be marketable? For example—the lender is offered a loan in New York for $200,000. The security is a building which violates the fire department requirement that $12,500 be spent to build a fire-escape before the third floor of the building may be occupied. The borrower desires to close the loan at once and offers to give the lender $15,000 to hold until the fire escape is completed, which work the borrower proposes to have completed as soon as possible. Question: is the title marketable and if not, is it a proper investment? Is the decision in this regard for the law department or the business man, the manager in charge of city mortgages? Who will decied whether this is, in substance, the loan voted by the "Committee of Finance" since the Committee of Finance at the time it approved the loan knew nothing about this imbroglio of the borrower with the city fire department?

Additional Security

(3) A lender is offered a mortgage on 120 acres consisting of a farm. 40 acres of the 120 is subject to a bad title but in the event a certain woman, who is 51 years old, has no more children, the title to these 40 acres will be good. Title to the remaining 80 acres is good and is ample security for the mortgage loan under the investment statute. The borrower offers the 120 acres as security, however. May the 80 acres be submitted to the Committee of Finance as security for the loan but when this has been approved by the Committee, a mortgage will be obtained on the total 120 acres? Is the mortgage then a valid lien on unencumbered real property as required under the investment statute? Would it be preferable and also legal for the lender to take a mortgage on the 80 acres alone and then take another mortgage as additional security only on the remaining 40 acres, title to which is bad at the time the loan is closed?

Sufficiency of Security

(4) Where a lender is offered a mortgage and the title to the security is bad to a very small portion of the real estate; for example—to a proportion thereof that does not exceed 2% of the acreage of property, being

farm property consisting of 300 acres, should the law department waive objection provided the remaining property, title to which is good, is ample security under the statute? If the answer is "yes," how about 5%—10%?

Lease with Option

(5) Where a lender is offered a mortgage which is subject to a lease which contains a provision granting to the lessee an option to purchase the property free and clear, what effect will the exercise of this option have upon the mortgagee in the event the lessor, who will also be the mortgagor, fails to discharge the mortgage after the lessee has complied with all his requirements under the option including payment of the consideration.

Terms of Lease

(6) Where a lender accepts a mortgage and the security is benefited by and the loan is made partly on the basis of a long-term lease to a reputable and financially strong lessee, what specific clauses should the lender be certain are contained in the lease to secure the lender and the mortgagor as to the full performance of the lease by the lessee during the term thereof—referring especially to such ideas as, (a) default language—does it show liability for rent to the end of the term; (b) does lessee have the right to prepay rent in any manner; (c) would an eminent domain taking give lessee any special rights under the lease; (d) are there any governmental restrictions; (e) does the lessee have an option to purchase which could adversely affect the mortgagee; (f) is the clause in the lease regarding fire insurance satisfactory?

Proposed Legislation

(7) It would be of great assistance to a lender if it had advance information with reference to any new legislation in a state where it is dong business that might either benefit or adversely affect its investments in that state (here it might be well to point out that the ATA Title News is most helpful and beneficial in this regard).

Fixtures

(8) Lenders have much difficulty in the matter of fixtures—whether they are part of the real estate or not and covered by the mortgage. The policy of title insurance purports to cover only real estate. A fixture may be part of the real estate until a surprise creditor appears and replevies the same. The title company then may take the position: "Well, see, it wasn't real estate after all, it is now in the hands of the creditor, so the title policy does not cover this." If the title company would impart its knowledge about fixtures in a state where the lender makes loans, it would help the lender to understand the validity of its mortgage lien upon the fixtures and the extent of the dangers, if any, involved.

What Others Do

(9) It would be helpful if a title company would indicate to the lender customer for a title policy what other lenders of its same class require. For example, a life insurance company counsel would be most interested to know how other companies handle the various problems already outlined on marketability; including in the mortgage a lien on some real estate, title to which is questionable, but the remaining real estate securing the loan has good title which is ample security under the investment statute; etc., etc. The lawyer in one insurance company may hesitate to contact another company on this subject but you know and may tactfully suggest how he may reach a decision. Some executives find making a decision almost painful. As Dale Carnegie has bluntly said, "Some people would rather die than think."

Uniformity

(10) It is suggested that title insurance companies come around to a much needed uniformity that they do not now have. Other lines of insurance—casualty, fire, etc., have gone through the same growing pains that now affects title companies. These other lines of insurance have come up with the standard policy. The title companies, it is hoped, will soon follow suit. Lenders would like to see

this standardization, to see all title companies agree on a standard "Subsection B." We hope the present trend toward a ful coverage policy with no exceptions as to surveys or possession will come to fulfillment and that lenders will not be asked to accept limited coverage mortgage policies.

Other Practices

(11) What do other lenders do about examining completed loans after the receipt of a title policy or an attorney's opinion?

Reverters

(12) Most investment statutes affecting life companies prohibit a lien on property title to which is subject to reverter. How far do lenders go in covering themselves by title insurance against the possibility of reverter? (the statute does not specifically authorize this).

Lease Plus Option

(13) Suppose the lender is authorized by statute to make loans on leases of 50 years or more. If a lessee has a 41 year lease which he has option to renew for 10 years, can lender grant a loan by the lender being given irrevocable right to renew said lease if lessee doesn't do so?

(14) Is there any merit in title companies advising lenders as to the good qualities of "modern homes"? (see Time of 8-11-52, P. 49 et seq.).

Mechanics Liens

(15) Do lenders make a practice of insuring themselves against a mechanic's lien, where notice of lien is of record and the title company does not mention it in the policy?—say it is a $19.20 lien—the mortgage is $15,000.

Notice of Complications

(16) If title companies would give lender a few days' advance notice of some title complication to be expected at the closing, it would save much talk, possible delay and legal disputations at the closing.

Open End Mortgages

(17) Open End Mortgages. Lenders may be allowed by law to increase the original mortgage after payments on principal have been made, back to the original amount. Will title companies cover such increases at the rate of $5.00 a thousand, doing this on the basis of the owner's affidavit about no change in the title? (New York City Title Insurance Co. does this according to an article in House & Home Magazine for July 1952, P. 80).

Advertising

(18) One of the most entertaining books on title complexities, a book well known to many attorneys, is "Sam Warren's Ten Thousand Pounds a Year" written about the time of Charles Dickens and setting forth the extraordinary maze of entanglements in which a litigant could become involved. It describes the legal machinations of the firm of Quirk, Gammon & Snap, who were successful in dispossessing a worthy citizen of his ten thousand pound a year estate in favor of their client, one Tittlebat Titmouse. If a title company would print this and issue a copy to its customers, this might be a most subtle form of advertising.

Legal Questions

(19) It is suggested that the President of the American Title Association select three members thereof who shall constitute a "legal province committee." Any member of the Association would have the privilege of submitting to this committee any legal problem affecting his business on the basis that the answer would be without charge and the committee members would not be personally liable for any errors that might be contained in their answers. This service alone, should be worth many times the cost of joining the American Title Association.

The Life Market

The foregoing legal questions are only a few suggested that might be answered by a title company in a brochure issued from time to time to its customers — particularly the life insurance companies who are interested in lending large sums on improved real estate in the United States—now valued at 441 **billion** dol-

lars (homes alone now being valued at 190 **billions**).

In fact, Uncle Sam is today (for the first time—and it applies to any nation in all the history of the past) a trillionaire in land and property valued at a **trillion** dollars as it stands now and there is much more to be developed. This nation has more of everything than ever before and it is still growing (Special Report in U. S. News Week of August 8, 1952, P. 48).

Inflation

In closing may I suggest one word of caution on voting for a new President of the United States this fall, because how you vote will affect you directly and all U. S. citizens and their trillion dollar investment. This is it: consider the advice of Bernard Baruch, who probably has as much sense as anybody in the United States. He returned from Europe in August and upon his arrival gave out a statement that he would back neither Eisenhower nor Stevenson until he saw "which has the greater wisdom and fortitude to beat inflation."

He said:

"Inflation here will destroy any economic or foreign policy we make. The whole thing depends on our ability to control inflation. No policy will be of any avail if inflation is not beaten because then no policy can be carried out."

Conclusion

He thinks that either candidate has the ability to defeat inflation. Words will not do it, however. He said it would take plenty of courage. There are several politically unpopular things that obviously ought to be done. One is to cut out this monkey business of using taxpayers' money to keep prices of agricultural products up to uneconomic levels. If the government itself insists on boosting the price of corn, cotton and wheat there is not much chance of the cost of living coming down much. The second thing which ought to be done is something to discourage union monopolies which in many basic industries year after year push costs and, by inference, selling prices higher. In the monetary field the federal government ought to balance its budget, it ought to stop selling bonds to commercial banks, it ought to discourage unnecessary credit expansion, even if it means substantially higher interest rates. Trying to control inflation by this political pap known as price and wage control is just so much bunk. Inflation can be licked easily enough but unfortunately a lot of toes have to be trod on in the process.

So with these considerations and this bright investment future and with the spirit of mutual helpfulness let us both, title companies and investors, be governed by the optimism that appreciates danger and yet proceeds with the care and courage expressed in the Greek proverb:

"A shipwrecked sailor buried on this coast
Bids you set sail. Full many a gallant bark
When we were lost, weathered the gale."

TITLE INSURANCE RATES

Elements to be Considered in Establishing

FAIRFAX LEARY, JR.
Attorney-at-Law, Schnader, Harrison, Segal and Lewis, Philadelphia, Pa.

Chairman Zerfing:

The next item for discussion will be title insurance rates. Rates are something in which we are all interested, it's our bread and butter and if the rates are right we have a little jelly with it. However, I think the rates in the country generally have grown like Topsy. One area or one group charge a certain rate because of competition or because it seems the right thing to charge. I think very few fix their charge because they think they can get by with it. I don't believe that is typical of the title men. I think perhaps our trend is the other way, that our rates have not been keeping up with the trend of the times and have not been keeping up with costs. However, as time goes on the insurance commissions of the various states undoubtedly are going to take a greater interest, and have taken a greater interest, in the establishment of rates in our industry just as they have in all others. I think we must expect that to happen and continue. We should know how rates are brought about, why we establish a certain rate, and what insurance commissioners want. With that in mind we have asked a prominent member of the Philadelphia Bar to discuss Title Insurance rates and the elements to be considered in establishing these rates. Our speaker is well qualified to undertake this job. He is counsel for the Pennsylvania Title Insurance Rating Bureau, and as such has had considerable experience in dealing with the Insurance Commissioner of Pennsylvania. In addition to that he is well recognized as an expert and authority on financing, not only in Pennsylvania, but in adjoining states. It gives me a great deal of pleasure to present to you Fairfax Leary, Jr., of the Philadelphia Bar—Mr. Leary.

Mr. Leary:

I understand the subject that has been assigned to me can be called "The Elements to Be Considered in Establishing a Title Insurance Rate" or perhaps a proper sub-title would be "A Report on the Pennsylvania Title Insurance Rate Case."

The specific cause or reason for the initiation, in Pennsylvania, of a proceeding by the Insurance Commissioner to reduce the rates of title insurance companies is, I think, not material here, but the larger problem, the one that does warrant consideration by the entire industry, is posed by some of the allegations made by the Insurance Department as the reasons for commencing such a case.

Loss Record

Upon a comparison of the annual reports of title insurance companies with the annual reports of other insurance companies, one significant fact, in the opinion of the Department, emerged, and that was that there were little or no title insurance losses. In the field of insurance regulation one of the ratios that is used to determine whether the rates are proper is the ratio between losses incurred and premiums earned. The absence of title losses makes that ratio, in published reports, appear as if the title insurance companies were charging too much as compared with, for example, the Fire Insurance group, the Fidelity and Surety group, or the various sub-divisions of the Casualty Group. The ratio of losses incurred to premiums earned is entirely out of proportion in the title insurance group, but from this it does not follow that the title insurance companies are charging too much.

Ratios

The second ratio used also showed that, at least in Pennsylvania, Title Insurance companies are somewhat

different from regular insurance companies, and that is the ratio of underwriting profit to premiums written. That ratio includes not only losses but also the so-called expense ratio. Here again, in the Title Insurance Group, at least in Pennsylvania, the underwriting profit was substantially larger than that for the other companies covered in the Insurance Commissioner's annual report. Conferences with the Insurance Commisioner's staff had indicated sometime before the rate proceeding was started that he was disturbed about this situation. In an effort, therefore, to seize the initiative, a petition was filed requesting that a change be made in the form of the annual report, so that insurance companies of the usual type would report and be compared on one basis, and the title insurance companies would be separately treated and would report on a separate form.

Complications

In Pennsylvania (and I don't know to what extent this prevails throughout the country) title insurance has widely become an adjunct of the banking industry, with the result that many of our title insurance companies are not separate corporations, but departments of banks. The result of this is that a most complicated question of cost accounting arises every time you try to set down the true results of a title insurance operation. The Industry, I think, somewhat regrets now that in the past they merely reported the departmental figures, with no allocations to the title department for many items of cost. For example, in analyzing the annual report of one title insurance department of a bank, in Pennsylvania, we found they had reported no charge for rent of office space, no charge for stationery, no charge for heat, light or telephone, no charges for the services performed for them, janitorial, messenger, and otherwise, by the bank's general service department, and no charge for the salaries of the principal officers of the bank, except the officer in charge of the department, even though they had devoted time to title insurance matters. The result, of course, was that the apparent profit was much greater than the actual profit.

In the summer of 1951 notices were sent to all the title insurance companies in Pennsylvania that hearings would be held on the question of whether the rates were, in the words of the statute, and I quote them literally, "excessive, inadequate, or unfairly discriminatory".

As counsel, one is faced with the problem of trying to interpret what is an "excessive" rate when the only thing the statute says is that the rate must not be excessive.

Standards

I must tell you frankly that in this situation I feel very much like the fellow who is trying to answer the problem of "how high is up?"—how high is "excessive?" There are no standards fixed in the act. There is no guide such as you would have in a public utility rate case, whereby, by long custom, we have established the rule of a fair return upon the property used and useful in the business. That's very simple, relatively, compared to trying to guess what's fair in a title insurance rate, or any other insurance rate. In a public utility rate case you put in valuation testimony. You value the assets. You may do it on a reproduction cost-new basis, on historical costs, on a moving average cost basis, or on a prudent investment theory, but at least you know what you are trying to do. Whereas, counsel faced with preparing a title insurance rate case has very little to go by. What standard is the Commissioner going to use to decide whether the rate is excessive? "Oh," said one member of the Commissioner's staff to me, "that's very simple—it's very simple indeed—it's excessive if you are getting too much profit." I said "That's all right, how much is too much?" He said "Oh, we don't know that yet. We're going to find that out during the course of the hearing."

Statutory

The typical statute affords very little aid in this solution of the prob-

lem, as it provides only that:

". . . All rates shall be made in accordance with the following provisions:

"(a) Due consideration shall be given to past and prospective loss experience within and outside this Commonwealth, to physical hazards, to safety and loss prevention factors, to underwriting practice and judgment to the extent appropriate, to catastrophe hazards, if any, to a reasonable margin for underwriting profit and contingencies, to dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers, to past and prospective expenses both country-wide and those specially applicable to this Commonwealth, and to all other relevant factors within and outside of this Commonwealth."

Factors

Eliminating from the foregoing matters which do not appear to be applicable to title insurance, we have left a requirement that "due consideration" shall be given to:

(1) to past and prospective loss experience within and outside of this Commonwealth;

(2) to safety and loss prevention factors;

(3) to underwriting practice and judgment to the extent appropriate;

(4) to past and prospective expenses, both country-wide and those especially applicable to this Commonwealth;

(5) to a reasonable margin for underwriting profit and contingencies;

(6) to all other relevant factors within and outside this Commonwealth.

Apparently, the intent of the draftsman of the statute was to have a rate deemed "excessive" if, after considering loss experience and the expenses of operation, the underwriting profit in relation to net income (after provision for all returns to policyholders) should be unreasonably high.

The typical statute provides that any filing of rates may be supported by:

(1) The experience **or** judgment of the insurer or rating organization making the filing;

(2) The experience of other insurers or rating organizations; **or**

(3) Any other factors which the insurer or rating organization deems relevant.

Additional Factors

Thus, since there are several elements stated in the alternative, any one of them would constitute sufficient "supporting". Listing the elements, separately, then a rate may be supported by any one of:

(1) The experience of the filing organization;

(2) The judgment of the filing organization;

(3) The experience of other insurers;

(4) The experience of other rating organizations;

(5) Any other factors which the **filer** deems relevant.

On this analysis, rates can be supported by the **judgment** of the filing company, which would be the judgment of its Board of Directors or Board of Members, presumably expressed at a meeting. As the statute sets forth these types of support in the alternative, it does not seem that any discretion is given to an Insurance Commissioner to decide in what circumstances he will accept support consisting of "judgment" and when he will only permit "experience" rating to be used. The statute has left the alternative open to the industry.

Certainly a rate filing must be considered to be prospective in operation. Past experience can only be used as it may be a guide to the future. If a rate schedule should be filed and be supported by the judgment of the companies making the filing as to prospective volume and pattern of business and prospective expenses, it seems to me that the Insurance Commissioner must approve the rates unless he is prepared to sustain the burden of proving that the judgment of those making the filing, as to the future, was not in fact exercised, or was palpably wrong.

Times Change

Actually, the requirement that prices be neither "excessive" nor "inadequate" recalls the price regulation of the guilds in the middle ages when only the "just" price or the "fair" price could be charged. As Judge Joseph C. Hutchison once said, "We learn but to forget, and forget but to learn again." In the middle ages we lived in a highly regulated economy until the strictures of regulation were found to be so burdensome that we cast off the guild system, the concept of the "just" price and the multifarious regulations of those times. We passed then into a system of economics that we can, perhaps, characterize as a period of little regulation, or **laissez-faire.** It is noteworthy that the guild system and its complicated regulations disappeared with the disappearance of the individual craftsman method of production, and that **laissez-faire** reached its peak with the development of the factory system of production. Now that the factory system has evolved into the present machine age of mass production, we again reach for regulation to curb the evils we see in the system. In the peak of **laissez-faire** we forgot what had been learned in the early days of the guild system, and in this age, the peak of the mass production machine age system, we are learning again the need for some controls. But have we not forgotten, but to learn it again the hard way, that too much control can also be a bad thing for us? Just as in the middle ages, the concept of a just price or a fair price did not work, so in the present times a concept of a fair return or a rate neither inadquate nor excessive cannot be workable unless we have some objective standard against which to judge and against which to measure the results of our judgment. Nor can this objective standard be a fixed immutable formula, for in the whole economic complex, each factor bears upon many other factors, so that no one can be isolated and fixed by formula. Even in the utility field, we have the struggle over the rate of return, which should of course vary from time to time, and from industry to industry, based upon risk, costs of money, need for attracting capital for expansion and numerous other factors. Equally, changes in the general price level have their effect upon the valuations that determine the base upon which the return is to be allowed. In terms of low prices, the utilities contend for an historical cost approach, and in terms of high prices for a "reproduction-cost-new-at-present-prices-less-observed-depreciation" basis. As is to be expected the utility commissions tend to take the opposite approach in each case. The courts have tended to work out the necessary compromises. But, as in any area ruled by **stare decisis,** or precedent, the rules of the past are not always the proper rules for the future unless careful consideration is given to all of the factors present when the rule evolved. All too often judge-made rules are thought controlling by other judges when changes in the economic situation should require a change in the rules.[1]

Application of Regulations

The point to be made is that there is danger in fixed formulae for rate controls and there is danger in judicial precedent where the surrounding economic situation is often not referred to at all in the court's opinion. Yet despite these recognized damages, it is only human to seek a formula so that the administrative agency can claim that it is not making the rules by which we are governed, but is merely applying a rule to the facts of the situation.

Flexible

If, inevitably we are going to come to a formula in title insurance rate control, it must be a formula that has some give at the edges, and one that allows for us to store up our surplus in the seven good years against the needs of the seven lean years that will surely follow.

We still are floundering a little, I think, trying to find out how much profit an insurance company should make in the title insurance field, and not to be deemed to have excessive rates, and a little later on I shall

refer to some of the factors we have been attempting to consider and evaluate.

Statutory Control

At this point, I should like to refresh your recollection as to why title insurance companies in many states are subject to the jurisdiction of insurance commissioners under a statute containing these words that rates must not be "excessive, inadequate, or unfairly discriminatory". I think you all remember the Southeastern Underwriter's case in which the Supreme Court, after approximately a hundred years of holding to the contrary, decided that insurance was inter-state commerce, and, therefore, subject to the anti-trust laws. You all also remember very well the decision of Congress made shortly thereafter that insurance was to be left to state regulation and that if the states had a proper regulatory act, then at least the rate fixing elements of insurance would not be subject to the anti-trust laws. At this point, of course, the large casualty companies and the other companies in the insurance field went to work and the pressure was tremendous to put a relative uniform bill through in all the states, and the so-called "All Industry" bills were prepared. I believe that the problem of title insurance, except among the title insurance companies, received relatively scant attention in framing the bill. Looking at the legislation it seems as if the decision was that title insurance could come under the statute or not, as it pleased. Some eighteen jurisdictions have statutes which expressly say that title insurance is not subject to the rate regulation.[2] About twelve expressly include title insurance under the particular state called The Casualty and Surety Rate Regulatory Act, or have a special regulatory statute for title insurance rates.[3] Then about nineteen take no position in their statutes whatever,[4] with the administrative interpretations generally to the effect that the casualty and surety rate regulatory act in those jurisdictions does not include title insurance.

Regulation

We seem, however, to be in an era of increasing regulation. While there is, I think, some hope, not only in Pennsylvania but in some other states, that, in November, the zeal for excessive governmental regulation of everything may be changed, wise administrative policy would, nevertheless, suggest that in those states where the rates are not now regulated, title insurance companies should consider well and thoughtfully the problems incident to a regulated industry. Sound merchandising of your insurance policies would suggest that it will be bad for the title insurance business if the public generally comes to believe that the rates are too high, since there are no losses, and that, therefore, title insurance is a useless thing to purchase.

Special Problems

What then are the special problems that face a regulated title insurance industry? I think I have given some indication of the first one we face, and that is, basically, is title insurance really insurance? That was raised by some members of the Commissioner's staff in Pennsylvania—Is it really insurance? This issue stems from the absence of any significant title losses to report on their regular loss report forms. Yet, basically, it seems that title insurance is insurance since it involves the payment of a sum by each one of a large number to ensure the payment to a very few of large losses. It is properly called insurance and it is properly regulated by the Insurance Commissioner rather than by some other department. The chief feature which makes title insurance different from the normal type of insurance that any future loss results from past causes, and that, by careful preliminary work, losses can be prevented. This preliminary work is done to make sure that the title, once it is guaranteed, will be free from defects. And, of course, we are all familiar with the reasons that led up to that. We know the home owner doesn't want a dollar value when his home is taken away from him by a title loss. We know

that the business firm is not interested in dollars if the plant is no longer there. They want the assurance of good title and when they pay for it they get it. The success of the title insurance industry, and it ought to be very proud of its success, is just the very fact for which we appear to be criticized—that there are no losses. A loss indicates, very largely, that preliminary work was not carefully done, that the company has in effect failed in its mission if there is a loss. So that rather than being criticized because there are no losses, I think the industry ought to be congratulated because losses are so small and insignificant.

Lack Basic Data

The second problem that we face is just what types of business does the industry do, and what volume does it do in each type? Because if we do not know the composition of our business we do not have the information necessary to fight misconceptions as to the nature of the business that are very prevalent in a number of places. Also without that information, we lack the basic data necessary to enable sound judgment to be made when, and if, revisions in the rate structure become necessary or a formal justification of the rates is attempted.

Specific Problems

In Pennsylvania we have been discussing a revised schedule of rates and the staff of the Insurance Department have put considerable pressure on us to come up with a reissue rate. There has been discussion of a "mortgage only" rate, there has been discussion of credits to be given when a mortgage is re-financed by the same company, and there has been discussion of the rate to be charged for advances under existing mortgages, to name only a few things. But the companies do not know what amount of business is done in each of these categories. In the absence of specific data as to exactly what is involved, dollar-wise, if you don't have a reissue rate and you decide to put one in, it becomes very difficult to develop a schedule of rates. Equally, if you don't know what will happen to your total income if you put in a rate for mortgage insurance only when you have not had one before, it becomes impossible to decide what is the proper rate for mortgage insurance only. And, of course, if you are going to introduce a rate for mortgage insurance only at an amount which is lower than the regular rates, you have to increase something else so as to come out whole in the long run. And how much are you going to have to increase this something else when you don't know how much of that something else you have to work on?

Now the other side of the picture. What about the companies that do have the mortgage only rate? If they should decide to eliminate it, what would that do to their business? How much increased revenue would result from the elimination? Again, the problem comes down to a matter of record keeping so that we can know just what types of business we do, and what volume of business is done in each category.

Matter of Judgment

But every proposed rate adjustment involves two points. First a study of the past records. If a particular rate had been eliminated in the past and if after the elimination, the volume and pattern of business remained relatively the same, what would income have been? This can be statistically determined. Then, to that you must apply judgment, and in the last analysis rate making can only be judgment,—the judgment of those who are familiar with the industry, as to how much business would drop off and how much new business would be generated by a change in rates, and, perhaps most important of all, what will be the future pattern and volume of such transactions in the real estate market?

Overall Picture

The same point could be made with respect to all the other elements of

the business. One of the difficulties in any rate case, therefore, will be the development and presentation of the necessary data to educate the Insurance Commissioners as to the overall composition of your business, the relative volumes in the particular categories, and the costs. Incidentally, such a proceeding is also most educational for the industry.

Time

The next problem we faced was, against what period of time should a given rate structure be judged? Should we judge it only against last year's profits, and if they were too much, should rates be reduced? Should we judge it against ten years' experience? And I mention that period because that was the period used by the Pennsylvania Insurance Commissioner in his Notice of Hearing when he requested that statistics be produced for a ten year period. Or should we use twenty years' experience? The general fluctuations in the real estate cycle, according to such economists as we have consulted, vary anywhere between fifteen and twenty-three years. I think you can readily appreciate that an examination of relative rates in a time of peak activity is going to produce a very unfair picture in a time of depression, the bottom of the activity cycle. On the other hand, we then face this practical problem,—if we convince the Commissioner that the period against which he must review the rates is a complete cycle, somewhere between fifteen and twenty-three years ,where in Heaven's name are we going to produce the detailed data for twenty years back as to what went on in Pennsylvania. Or anywhere else for that matter? Of course, you understand that on any matter Pennsylvania never passes. We are going to have to come up with the data somehow, but it's going to be quite a problem, and it would be extraordinarily expensive to have to go back and reconstruct the data for twenty years past. Yet if we don't go back for some very lengthy period we immediately run into the stubborn fact that rates are going to be tested against what we all know is a period of high activity, with high dollar values in the real estate transactions which we are insuring, and consequently a period of the very highest profit. "Oh," said some of the Commissioner's staff, "don't worry about that at all. You are in a regulated industry now, and we are going to have to give you a fair return. Your rates can't be permitted to be inadequate any more than they can be allowed to be excessive. When business falls off, come back and we'll let you raise the rates."

Changes in Rate Structure

That, of course, raises the next factor, and that is in an industry of this nature how frequently can you go about changing the rates? Should the rates be like a railway time table, subject to change without notice? Doesn't there have to be some stability and connection with the past? What is the effect of raising rates in a period of falling volume of business?

Supply and Demand

The classic economic law of supply and demand, which I think is what the member of the Insurance Department was relying on, is, of course, not a law of supply and demand at all. It's a law of supply and demand at a price. And the price element is most important. As developed by Adam Smith the law includes two basic assumptions, it seems to me. First, that demand will fluctuate by reason of forces beyond the control of the producer—and I think that's so today. The second assumption is that the producer can adjust his output to a lesser demand without materially affecting price.

Fixed Costs

The second assumption, however, it seems to me, is something we want to think about today. Can the producer adjust his production to changes in demand without material change in price, and still stay in business? Let's think about that. Certainly in the case of the cottage type industry, against which Adam Smith developed his theory of the law of supply and demand, it was perfectly true that if

a man was producing a hundred units and the demand fell off he could reduce his production to fifty units and still stay in business. The reason for this was the costs of production in the time of the 1790's and the beginning of the industrial revolution were very largely the direct costs of labor and materials. They varied directly with the number of units produced. This situation, I think, does not prevail to that extent today. More and more the costs today do not vary directly with the number of units produced, but tend to become fixed irrespective of the number of units. This, I think, is true not only in the industrial field generally but also in the title insurance field. But to step outside of the title insurance field again for a moment—this phenomenon of increasing fixed costs can be observed almost everywhere. We can see it clearly in the steel industry where there are large fixed costs of capital for plant. But fixed costs exist outside of plant costs. Due to union rules, seniority and the like, and the pressure of the guaranteed annual wage, the costs of labor, which were regarded as one of the principal elements of direct cost, tend also to become fixed and have to be paid regardless of the number of units produced. If this is so, and it seems to me that it is true, we no longer have the flexibility necessary to adjust production rapidly to changes in demand without so affecting price that we magnify the effect of the forces operating on the demand.

Production

I think a little example will illustrate this point. Suppose it costs ten dollars to produce whatever you want to produce, a title insurance policy, a fountain pen, or even that extraordinary product used in economics, known as the wigit, and suppose that in the early days, of the ten dollars only one dollar was the fixed cost and nine dollars was the direct cost per unit when you were selling and producing a hundred units. Now, if demand fell off in that situation so that only fifty units were to be produced, the fixed cost—one dollar a unit times a hundred units, or fixed cost of one hundred dollars, would increase to two dollars a unit when applied to fifty units. You would still have the nine dollars of direct cost. The total cost would become eleven dollars a unit. Now, if you had a selling price at the old ten dollar cost of twelve dollars a unit you could cut production from a hundred to fifty units and still sell at twelve dollars a unit at a profit. Of course the effect on the producer is not a 50% cut in profits, it's a 75% cut, because with a hundred units at a two dollar profit you would make two hundred dollars and with fifty units at a one dollar profit you would make only fifty dollars or a quarter of the former profit.

Decreased Demand

But consider what happens to the situation when the fixed cost item rises in proportion to the total cost to say five dollars a unit in a hundred unit situation. Now, in that situation, with five dollars fixed, and five dollars cost direct, you would have on a hundred units, five hundred dollars of fixed costs, and that would be ten dollars a unit when you dropped your units down to fifty. The reduction in the number of units would then give you a total cost of fifteen dollars per unit where before your cost was ten dollars. You would then have a cost of three dollars in excess of the old price. To adjust price to the new cost, in order to stay in business and just break even in a time of falling demand, you would have to have an increase of twenty-five percent in price, an increase of three dollars on a former twelve dollar price. And, of course, you all know what happens then—any attempt to charge the higher price will result in a further falling off of demand, and that will increase the intensity of your cycle. Industrially, therefore, the manufacturer will tend not to reduce price but will try to reach a broader market by lowering his price to do two things—first, he will attempt to increase the overall demand by inducing more purchasers to enter the market at the lower price—second, he will try to

capture for himself, by price cutting, a greater share of the reduced total market. I do not believe it is necessary to argue the point here, that price cutting in the insurance business cannot be tolerated either by the industry or by the government.

Large Fixed Costs

Now, we have made no study of costs on the basis of fixed versus direct in the title insurance business, but I think it can be said, on the basis of such figures as we have examined, that at least those types of companies which we call plant companies—those companies that have a title insurance plant—are in a situation where they have a large element of fixed cost which does not vary directly with the volume of their business. Therefore, they cannot engage in a change of price, a change of rate, to meet substantial variations in the volume of business, because the change in rate would be too great. Nor, can a change of price do too much, in my opinion, to stimulate new business;—that is, brand new business that doesn't buy title insurance at all. Actually the cost of title insurance is a relatively infinitesimal proportion of the total cost of any real estate transaction, and I don't think the cost of title insurance is what makes or breaks a deal in the real estate business, but in a time of falling prices any increase in costs may have a deterrent tendency, which a wise administration should seek to avoid. Therefore, I think we can establish that regulation cannot be based upon a theory of changing rates rapidly to meet fluctuations in demand.

Wide Fluctuation

We did make a study to determine how the demand might fluctuate. The volume of voluntary sales, mortgages, and new private construction in Philadelphia from 1914 to 1950 was studied, and the results are shown on the accompanying chart prepared by Dr. Rowlands of the University of Pennsylvania. Mortgages rose from 40,000 transactions in 1918 to 105,000 in 1922 and 1923, fell to a low of 8,000 in 1933 and did not rise to about 40,000 again until just about the end of 1950 where the new peak, far from being the 105,000 of 1922, was in the neighborhood of 70,000. There was then a fall off in 1949, they were down again to about 45,000.

Voluntary Conveyances

What do we mean by voluntary deeds? All deeds put on record can't be used too much as a figure to guide your title insurance thinking, because the sheriff's deeds, the involuntary sales, are of a different type. Therefore, Dr. Roylands excluded the sheriff's sales from total sales, and came out then with a fluctuation in voluntary deeds of 50,000 in 1921 when the series started to 85,000 in 1922 to 1923, a fall to 50,000 in 1928-29, a toboggan slide to 17,000 in 1933, a very slow and gradual rise to just above 50,000 in 1939, a peak of 70,000 in 1946, and in 1950 again below 50,000.

Future Fluctuations

With such illustrations in the past it seems perfectly clear to me that consideration must be given to fluctuations in the future. Therefore, we must fix and regulate title insurance rates on the basis of data accumulated over at least one period of the real estate cycle. We don't have that data now, and the point we are trying to make and put across in Pennsylvania is that regulation starting now must permit an accumulation of data in these and future years. It must be based on the frank acceptance of the fact that profits also must be accumulated in good years to take care of the lean years that will follow—or else the industry will lose the stability that is absolutely essential for an insurance industry.

Direct vs. Indirect

In addition, I think this analysis leads to the conclusion that calculations of unit costs—I don't want to shock some of my good clients here—but calculations of unit costs are relatively worthless things, unless they are tied in to the volume of business, and unless we can find some way to classify those costs between

the direct costs which on a unit basis will remain the same regardless of the number of units of title insurance sold, and the indirect or fixed costs which remain relatively static no matter how many units are produced, because each type of cost must be carefully taken into consideration in determining your rate structure. The reason also is this: under regulation we must justify, we must file statistical data justifying a rate schedule.

Again, a Matter of Judgment

The guide in determining whether a rate is to be approved or is not to be approved, again, as I said, is whether it will result in too much profit. Therefore, a regulated industry must be prepared to show what its profits will be under the best judgment of all of its members as to the expected volume of business in a period in the future. To do this, it must be able to project its costs against a series of varying assumptions as to the future volume and pattern of its business. Not only generally on an overall basis, but by particular types of business resulting from particular rates.

To do the latter, it is necessary that the industry know what its costs will be under each assumption as to the expected future volume of business, and be able to calculate its expected profits in each such situation.

Aside from costs, it is also necessary that the industry know something of its actual pattern of business, and our studies in Pennsylvania have revealed something of this.

Analysis

An analysis of the combined business of five title insurance companies, namely, Commonwealth Title Insurance Co., Land Title Bank & Trust Co., Bryn Mawr Trust Co., Berks Title Insurance Co., and Union Title Guaranty Co., based on company figures for the year 1950 in the cases of the Commonwealth and Land Title, and for the year 1951 in the cases of the other three companies (comparison of year to year data indicated that variation in pattern was slight between these two years) produced the following results with respect to class of business.

A. **Composite of Metropolitan, Suburban and Other Title Business.**

Face of Policy	Per Cent of Total Matters	Per Cent of Total Revenue
$0 — $5,000	36.64%	20.97%
5,001 — 10,000	36.44%	30.15%
10,001 — 15,000	14.60%	15.40%
15,001 — 20,000	5.16%	7.19%
20,001 — 50,000	5.41%	11.39%
50,001 — 100,000	0.94%	3.87%
100,001 — 500,000	0.68%	6.73%
500,001 — & over	0.13%	4.30%
	100.00%	100.00%

B. **Metropolitan Business—All Companies**

Face of Policy	Per Cent of Total Matters	Per Cent of Total Revenue
$0 — $5,000	42.27%	26.52%
5,001 — 10,000	38.28%	35.23%
10,001 — 15,000	11.02%	12.89%
15,001 — 20,000	3.37%	5.31%
20,001 — 50,000	3.71%	8.12%
50,001 — 100,000	0.73%	2.98%
100,001 — 500,000	0.52%	4.78%
500,001 — & over	0.10%	4.17%
	100.00%	100.00%

C. **Suburban and Other Business —All Companies**

Face of Policy	Per Cent of Total Matters	Per Cent of Total Revenue
$0 — $5,000	24.80%	11.51%
5,001 — 10,000	32.56%	21.47%
10,001 — 15,000	22.07%	19.69%
15,001 — 20,000	8.94%	10.38%
20,001 — 50,000	8.98%	16.97%
50,001 — 100,000	1.41%	5.39%
100,001 — 500,000	1.04%	10.07%
500,001 — & over	0.20%	4.52%
	100.00%	100.00%

These tables indicate that in the area primarily sampled, namely, Philadelphia, Allegheny, Berks, Delaware, Montgomery, Bucks and Chester Counties in Pennsylvania, approximately 36% of the business involves matters of $5,000 or less, but that 36% of the business produces only 21% of the revenue, or a ratio of 1.7:1. On the other hand, in matters of over

$500,001, thirteen one-hundredths of one percent of the number of matters produces 4.30% of the income, or a disproportion of 1:30. The matters between $5,001 and $50,000 are, perhaps, not unduly disproportionate. Over $50,000, the disproportion appears to be inordinate.

Metropolitan

With respect to Metropolitan business, the relative disproportions are somewhat less than the overall in matters $5,000 and under, the ratio being 1.59:1 between number and income. A higher disproportion then in the overall exists with respect to matters $500,001 and over, reflected by a ratio of 1.41:7 in matters to income. In matters of $20,001 and over, the disproportion is obviously excessive.

Suburban

With respect to Suburban and Other Business, the relative disproportions are substantially greater than the overall, $5,000 and under having a ratio of 2.1:1 between numbers and income. Matters between $5,001 and $10,000 are likewise in disproportion, the ratio being 1.52:1 between numbers and income. The disproportion in matters between $10,000 and $20,000 are not greatly out of line. In matters of $20,000 and over, the disproportions between numbers and income are excessive.

Operating at Loss

These studies indicated a surprisingly large volume of matters of $5,000 or less, constituting in the so-called Metropolitan business of some companies very close to 50% of such business. The studies of revenue received and the expenses in each size bracket which were developed by applying average unit costs to the number of matters in the size group clearly indicated that these smaller matters were done at a loss to the companies. From the point of view of the title insurance companies themselves, then, something is amiss in the present Pennsylvania rate structure, as it is not sound business for nearly one-half the volume of business to be produced at a loss. Some adjustment seemed indicated and a revised schedule of rates is in process of preparation.

Elements

All this leads us to a consideration of what are the elements to be considered, against this background, in trying to develop a rate structure. We have perhaps been accustomed to thinking of these elements three in number—a loading charge or a cost of operation element, a premium or risk rate to cover losses, and the profit element. Some companies use a rate structure consisting of a separately stated charge called the examination fee, if you will, and to that they then add an increment of so much a thousand as insurance is purchased. That is the present custom in Pennsylvania. Others have what they call an "all inclusive rate" but there again, as in most of the rate schedules I have seen, there is a basic loading charge, because the minimum rate charged for the first amount of insurance is much greater than the increment per thousand thereafter. Thus, whether stated separately or not, the three elements are then present, the loading charge, the risk rate, and the profit element.

"Per Matter" Approach

We can consider rates, it seems to me, on two approaches. One of them can be called the "per matter" approach, where you attempt to allocate costs so that each matter, each application for insurance, regardless of the amount of insurance purchased, will pay its own way as far as expenses are concerned. Two factors should be considered here. First, as I hope I have demonstrated, a per matter cost can only be fixed in the light of a given number of matters to be transacted. And second, (and it seems to me that most rate schedules contain an admission of this) the small matter, the two thousand dollar matter, may not be able to pay its full freight. It might tend to drop out of the business if the unit rate per matter was too high. The result is a compromise in the schedules. Yet the very existence of the heavy initial charge raises the question of whether the increment per thousand

is or is not to be solely a risk rate. And obviously, and I think we have proved this pretty conclusively in Pennsylvania, it cannot be considered solely as a risk rate, as it must absorb a large portion of costs not covered by the initial charge.

"Per Dollar" Approach

The other possible approach to a rate structure can be called the "per dollar" approach, where rates are fixed on the basis of the dollars of insurance sold. You simply take your total cost, you add to that your expected profit, and divide it by the number of dollars of insurance you are going to sell next year and that's the charge per thousand. This is the approach also used in other types of insurance and is the approach with which our Insurance Commissioners are most familiar. It has the advantage of not appearing to force a comparison of the increment per thousand of insurance with the pure risk or the amount necessary to cover losses and perhaps loss expense. At first blush this approach might appear to reduce the area of prognostication, or crystal-ball gazing, because you only have to guess how many dollars face insurance you are going to sell next year. Actually it doesn't, because you can't foresee the total dollar face amount of insurance you are going to sell next year, it seems to me, without deciding first how many matters you are going to have and second what the relative size of each matter will be, so you can come up with your total. The "per dollar" approach, it seems to me, also suffers somewhat from a double fluctuation. Not only, as we have shown, do the number of transactions fluctuate in the title insurance business, but the total dollar volume of your sales fluctuates with the value of the dollar, as real estate goes up and down, so that a "per dollar" approach subjects your rate structure to a double fluctuation which the "per matter" approach does not to the same extent, although, of course, it's still there to a degree.

Compromise

Actually every rate structure I have seen where the title examination is made by the insuring company, represents a compromise between these two approaches. There is a basic loading charge which does not cover the cost of operation, aside from loss and loss expense, and there is an increment which is more than just a risk rate, increasing in amounts necessary to provide, on an overall basis, an amount of income that will cover costs and yield a profit large enough in good times so that operating losses in bad times can be kept within manageable limits.

Risk Rate

The second element then that I mentioned in the title insurance rate is the risk rate. Now on pure insurance theory in title insurance, that is, a determination of a rate that will cover the losses, and the expense of adjusting losses the risk rate is infinitesimal. One large company in 1946, and I am using a company which is not a Pennsylvania company, sold two hundred and fifty million dollars face amount of insurance, and yet their losses were only about $5,000 that year, or 2c per thousand of insurance sold. That's the pure risk rate for that year. Other loss figures which we have compiled indicate a similar relatively insignificant pure risk rate. Some attempt has been made on the basis of cost accounting to try to increase this to include in the losses not only losses but an element called "loss expense", the cost of the attorney's adjusting a claim that doesn't result in an actual pay-out, the cost of the salaries of the officers and others concerned who negotiate with somebody who thinks he has a claim and persuade him he doesn't really have it. But even after that had been done in this same company, the change in the pure risk rate becomes relatively small. In 1948 they carefully compiled their loss and loss expense. They got their loss figure up to $40,000.00 as against $300,000,000.00 face amount of insurance sold and they, therefore, came up with a pure risk rate of 10c per thousand. Then in 1950 values had so increased in the area of this particular company that they were back to

2c a thousand as the pure risk rate. Therefore, it seems to me that risk element in title insurance becomes very difficult of computation and certainly should not be separately considered in any regulation of rates.

Loss Prevention

Another suggestion has been made that, in at least the company examination system, if we are going to try to develop figures that will be compared with other insurance companies, we should have a category of expense for reporting purposes known as "Loss and Loss Prevention Expense" and under Loss Prevention Expense we would allocate all of the costs of examination, all of the costs of settlement, and develop then a ratio to premiums earned which would be very much more in line with the ratios of insurance companies engaged in the other classes of insurance. This approach, however, also raises problems of cost accounting allocation that are difficult of solution.

Actuarial

We then come back where we started in the third element. What is the amount of profit that is to be allowed? What is fair? What is a proper return? The insurance departments have developed for Fire Insurance regulatory purposes and to some extent for casualty insurance regulatory purposes, the concept of a 5% spread between cost and expenses, the theory being that on the basis of past experience you can estimate costs and your expenses with sufficient accuracy so that you can fix rates on an expected volume of business which will then yield a 5% spread between income and outgo. It is all very well in theory but so far we have been unable to find the seer with the crystal ball that is sufficiently accurate. And I find also when I examine the difference between the prognostications of the fire and casualty companies, which are all set up on a 5% basis, and their actual experience, that their crystal balls haven't been very good either, and they must have a very large Jones factor in the estimate of expense. In other words, they are not realizing 5%, they are realizing a good deal better on the actual reports in good years in the casualty and fire field, and, of course, worse in some of the bad years. In the fire insurance field it depends largely on whether you have a hurricane to pile up losses under extended coverage or not. But in title insurance, the controlling factor is the real estate market, a quite different thing.

Summary

So, in summary, it seems to me in a rate-regulated industry, the industry has to accumulate for itself the data to enable it to make a sound prognostication of its future business. And then the struggle and debate will be, "What is the course of the future?" The only dispute you can have with an Insurance Commissioner on that basis is going to be his judgment versus your judgment as to what the future business and expenses will be. And on that basis, if we can establish, and we hope we can, something better than the 5% margin, the only problem is to convince the Insurance Commissioners to give us time to accumulate the necessary data to enable sound forecasts to be made. In other words, we must work on the principle that we have to crawl before we can walk and we've got to walk before we can run. Therefore, any regulation now must be of an interim and temporary nature, pending the accumulation of sufficient data to enable a proper evaluation of the rates to be made.

* * *

Chairman: Are there any questions from the floor for Mr. Leary?

Mr. Hayes, Baltimore, Maryland: At the beginning of Mr. Leary's talk he mentioned that the insurance companies financial statements exclusive of the title companies, and their statements as to profit and loss at the end of the year were compared with title companies' statesments of profit and loss at the end of the year. Am I correct in that?

Mr. Leary: No sir, I attempted to point out that there were two ratios on which the comparison was made. One was the so-called "loss" ratio in

which losses are compared to net premiums earned, as I recall it. The second is the so-called "underwriter" ratio where you have a combination of expenses. It is the second one where it comes close to a total profit and loss picture, but it is not, because in the true insurance you set up a reserve for each premium and it has to earn itself off, and therefore there is a difference between the premiums written which is used in the underwriting ratio and the premiums earned.

Mr. Hayes: I should like to ask this question. Or rather, was this taken into consideration, that with the insurance companies, not including the title companies, their premiums are annual premiums and their liability ceases if perchance that annual premium is not paid. Where, on the other hand, your title insurance company makes one premium and that liability is in existence for possibly 10, 15 or 20 years. He won't know what possible loss there will be until a reconveyancing takes place.

Mr. Leary: That has been pointed out. But we cannot rely too heavily upon it. In Pennsylvania, we have reported loss experience for many, many years and the losses just haven't developed. We must not let a theoretical idea blind us to the fact that in this portion of the insurance industry, a loss is an exception not the rule. And, of course, there are the comparisons with companies like the Fire Association of Philadelphia that charge in the fire field a perpetual premium.

Mr. Hayes: Thank you.

Mr. Leary: But it is a significant difference, and one I thought we would all appreciate without bringing it out in the open.

Mr. Davenport, New York: Is it not the most practical and immediate item we can get from your talk and your being here with us that it is of vital importance for title companies over the country to start just as soon as they possibly can an adequate cost accounting system in preparation for such tax as may come in the future from insurance departments.

Mr. Leary: I think, sir, I would agree with you. I think our first step and one which we have under very active consideration is to try to get some kind of a cost accounting system that would result in comparable statistics from the various companies. I have read a number of the things you have sent around and suggested, sir, and I personally agree with you. The principal problem is going to be not to develop a cost accounting system in each company, which may be all right for that company's own purpose, but to develop something so that industry-wide statistics will have some significance when we have them. For instance, we could take the figures from that bank I told you about that didn't charge anything to its title department for rent. They are going to come out one way. Now then if such companies start charging rent and other items as expenses and they allocate such items on a different basis, that is, if one company does it on a square foot basis and another figures its rent as so much per dollar volume of business, you are not going to get a comparable result when you try to add the companies together. On the same basis, you don't get comparable results now, when you try to add a fire company and a title company together for comparative purposes in an Insurance Department's annual statement.

Mr. Davenport: I agree with you, sir, that the period of time must be approximately 20 years during which we must accumulate data in order to have any value. That makes it particularly important that we produce with the greatest speed possible some system by which we can have comparable figures for all companies, at least all companies in any one area.

Mr. Leary: I would agree with you, sir. That, of course, is only a personal agreement and does not bind my clients or any of them.

Chairman: If there are no further questions we want to express our appreciation to Mr. Leary for his

explanation of this subject, which is a new one, and is going to be of increasing interest to us. Thanks to you Mr. Leary.

Footnotes:

[1]See the discussion of obsolescence and depreciation allowances based on past costs in a period of greatly reduced purchasing power of the dollar contained in Dean, PROVISION FOR CAPITAL EXHAUSTION UNDER CHANGING PRICE LEVELS, 65 Harvard Law Review, 1339 (1952).

[2]The jurisdictions excluding title insurance are Alabama, Arkansas, Idaho, Illinois, Indiana, Kansas, Kentucky, Massachusetts, Mississippi, Montana, Nebraska, New Jersey, North Carolina, Ohio, Oklahoma, South Dakota, West Virginia and the District of Columbia. The California statute calls for disclosure, but does not regulate the rates as such.

[3]Those expressly including provisions for the regulation of title insurance rates are: California, Maryland, Michigan, Minnesota, Missouri, New York, Oregon, Pennsylvania, Virginia, Washington and Wisconsin.

[4]The remaining jurisdictions are, of course, Arizona, Colorado, Connecticut, Delaware, Florida, Georgia, Iowa, Louisiana, Maine, Nevada, New Hampshire, New Mexico, North Dakota, Rhode Island, South Carolina, Tennessee, Utah, Vermont and Wyoming.

TITLE INSURANCE STANDARD FORMS

Report of Committee

BENJ. J. HENLEY, *Chairman*
President, California Pacific Title Insurance Co., San Francisco, Calif.

Following the mid-winter meeting of 1952, there was sent to members of the Association a report upon the action of the Committee on Title Insurance Standard Forms in the drafting of standard exceptions for Schedule "B" of ATA policies, together with copies of forms which were tentatively approved by the Committee at the Cincinnati meeting.

The communication which accompanied the forms suggested that State Associations undertake to obtain, through committee or otherwise, the views of their members concerning the context of and the use of forms such as those considered by the Committee. This communication resulted in action by some state associations, but the work which has been done along that line indicates that it will be extremely difficult to carry out the plan through State Associations, or by concerted action of Title Insurance members in given localities.

Suggestions for changes in some of the forms were received from some Title Associations and from some life insurance company counsel. All of these suggestions were given consideration and at the meeting of the Committee held in Washington on September 8, 1952, the forms with some revision received the approval of the Committee and those counsel for life insurance companies who were present. The forms as approved will be distributed to the members of the association from headquarters.

The Committee approved the forms with the understanding that their use, both by members of the association and their clients, would be optional. It is recognized that it is not within the province of any Committee or of the Association to impose upon association members the use of particular forms. Therefore the approved procedure was that the forms be distributed to members by the Association, and then if their use is requested of a particular member by any lender that member will itself decide whether it can comply with such request. In this way the forms are made available for use and their gradual adoption can be accomplished at the election of individual insurers and their individual customers.

Your attention is called to the fact that the decimal system of numbering the forms which has been used readily permits the addition of new forms under each classification and the addition also of new classifications.

It is intended, if for legal or other

reasons any of the exceptions in their approved form cannot be used in a particular locality, that other forms covering those subjects will be formulated by the insurers in that locality which will then be sent to the headquarters of the American Title Association to be included in the A.T.A. Manual of Standard Exception Forms for Schedule B, after approval by the Standard Forms Committee. Likewise exception forms covering subjects not now included may be formulated either by groups of insurers, or by State title associations or by the Committee and included in the Manual. New forms when approved will be given the next consecutive unused number under the subject to which it belongs, and will then be referred to by its appropriate number just the same as the presently approved forms.

If, for instance, the approved forms for taxes cannot be used in any locality because they are not adapted to the collection procedures established by the laws of such localities, additional forms, to be numbered consecutively under the controlling number of taxes, could be adopted and approved and such forms would be included in the Manual of Approved Forms and when called for any one could be used instead of any one of those which has already been approved.

You are requested, therefore, if you prefer other forms to those already approved, or desire to propose additional forms to send those forms to the Association office at Detroit for consideration and approval.

A.T.A. MANUAL OF STANDARD EXCEPTION FORMS FOR SCHEDULE B OF A.T.A. STANDARD LOAN POLICY

Approved by A.T.A. Committee on Title Insurance Standard Forms, Sept. 8, 1952.

1.01 to 2.01 TAXES
2.01 to 3.01 ASSESSMENTS
3.01 to 4.01 RESTRICTIONS
4.01 to 5.01 EASEMENTS
5.01 to 6.01 SURVEYS AND ENCROACHMENTS
6.01 to 7.01 LEASES AND RIGHTS OF PARTIES IN POSSESSION
7.01 to 8.01 MINERAL RIGHTS

TAXES

If there are no unpaid taxes which are a lien, it is unnecessary to make any mention of taxes in schedule B.

1.01 Taxes for ....., a lien but not delinquent.

1.02 General and Special County Taxes for ....., a lien but not delinquent.

1.03 General and Special City Taxes for ....., a lien but not delinquent.

1.04 General and Special County and City Taxes for ....., a lien but not delinquent.

1.05 General and Special Taxes for ....., a lien but not delinquent.

1.06 Taxes or Assessments levied by the ..... District for ..... and subsequent years, but not delinquent.

ASSESSMENTS

2.01 Special Assessment No. ..... of the ..... Improvement District No. ..... created for ....., payable in ..... installments of $....., on ..... in each year. All due installments paid. ..... installments unpaid.

2.02 Special Assessment of ..... District created for ....., amount $ ....., payable annually on ..... in installments of $ ..... each. All due installments paid. ..... installments unpaid.

2.03 Special Assessment for ..... amount $....., payable annually on ..... in installments of $..... each. All due installments paid. ..... installments unpaid.

2.04 Bond No. ....., Series ....., for ..... dated ..... amount $ ..... payable ..... annually on ..... in installments $ ..... each. All due installments paid. ..... installments unpaid.

RESTRICTIONS

Unless expressly noted above, this policy insures that no restriction upon sale or occupancy on the basis of race, color or creed, has been filed of

record at any time subsequent to February 15, 1950, and prior to the recordation of the mortgage under Schedule A-2 hereof.

3.01 Restrictions in instrument recorded in ..... of ..... page ..... which contain no forfeiture, express or implied, and which have not been violated.

3.02 Restrictions in instruments of record which contain no forfeiture, express or implied, and which have not been violated.

3.03 Restrictions in instrument recorded in ..... of ..... page ....., which have not been violated and which provide that a violation thereof shall not defeat or render invalid any mortgage or deed of trust made in good faith and for value. This policy insures against loss resulting from any such defeasance or invalidity.

3.04 Restrictions in instrument recorded in ..... of ....., page ..... Agreement recorded in ..... of ..... page ..... subordinates the right of forfeiture to mortgages and deeds of trust, made in good faith and for value. The restrictions have not been violated, and this policy insures against loss resulting from enforcement of the right of forfeiture as against said mortgage or deed of trust.

3.05 Restrictions in instrument recorded in ..... of ..... page ..... The right of forfeiture has been subordinated by an instrument recorded in ..... of ..... page ....., to the lien of the mortgage or deed of trust insured hereunder. Restrictions have not been violated.

3.06 Building set back lines as shown on the filed or recorded plat of subdivision which have not been violated.

3.07 Restrictions appearing of record, but this policy insures that said restrictions have not been violated and that a future violation thereof will not cause a forfeiture of title.

3.08 Restrictions of record, but this policy insures that said restrictions have not been violated, and that the clause providing for forfeiture of title has been modified so that a violation will not defeat the lien of the mortgage or deed of trust set forth under Schedule A.

EASEMENTS

4.01 Easement over the (describe location) feet of said land for (set forth purpose of easement) as reserved by ..... in instrument recorded .....

4.02 Easement over the (describe location) feet of said land for (describe purpose of easement) as created in favor of ..... by instrument recorded .....

4.03 Easement (location not disclosed) for (set forth purposes) as created in favor of ..... by instrument recorded .....

4.04 Easement for joint or community driveway over the ..... feet of said land to be used in conjunction with the ..... feet of the land adjoining on the ..... as created by instrument recorded .....

4.05 Easement over the ..... feet of said land for (describe purpose of easement) as shown upon the recorded plat of subdivision.

4.06 Possible easement for (set forth purpose, i.e., "pole line," "road," "pathway," "spur track," etc.) which exists over (describe location) of said land as disclosed by inspection, or survey.

4.07 Rights of the public and others entitled thereto to use for street (or highway, or road) purposes that portion of the premises lying within ..... street (or highway, or road).

4.08 Reservation of easements for ..... affecting the ..... feet of insured premises.

4.09 An agreement relating to a party wall on the ..... line of said land, executed by ..... and ..... dated ..... recorded .....

SURVEYS AND ENCROACHMENTS INSURANCE AGAINST LOSS FROM ENFORCED REMOVAL OF ENCROACHING IMPROVEMENTS

If insurance is to be furnished against loss from enforced removal of encroaching improvements the fol-

lowing shall be added to the exception showing such encroachment:

Subject to the terms and conditions of the policy, this policy insures against any loss or damage caused by any final court order or judgment requiring removal of encroaching improvements referred to in this exception.

5.01 Encroachment of the (describe improvements) situated on land adjoining on the ..... onto the land described in Schedule ..... as shown by a survey made by ..... dated .....

5.02 Encroachment of the (describe improvements) situated on said land onto the land adjoining on ....., as shown by a survey made by ..... dated .....

5.03 Encroachment of the (describe improvements) situated on said land onto ..... Street (or alley or onto the easement referred to in paragraph ..... of Schedule "B") as shown by a survey made by ..... dated .....

5.04 Projections by (describe improvements) on and over .....

5.05 Encroachment of the (describe improvements and location of encroachment) situated on land adjoining on the ..... onto the land described in Schedule ..... as disclosed by an inspection.

5.06 Encroachment of the (describe improvements and location of encroachment) situated on said land onto the land adjoining on ..... as disclosed by an inspection.

5.07 Encroachment of the (describe improvements and location of encroachment) situated on said land onto ..... street (or alley or onto the easement referred to in paragraph ..... of Schedule "B") as disclosed by an inspection.

LEASES AND RIGHTS OF TENANTS IN POSSESSION

6.01 A lease of ..... dated ....., executed by ..... as lessor and by ..... as lessee, for the term of ..... years from ....., recorded ..... in Book ..... of ..... page .....

6.02 An unrecorded lease of ..... dated ....., executed by ..... as lessor and ..... as lessee, for a term of ....., disclosed by (specify source of information, i.e., "inspection," "recorded document," etc.).

6.03 Rights of tenants as tenants only.

6.04 Rights of parties in possession as tenants only.

MINERAL RIGHTS

NOTE: If title to mineral rights has been separated from title to the surface, the severance should be shown by an exception, in the language of the reservation or the grant, of the minerals from the description of the insured land.

7.01 Oil and gas lease dated ..... from ..... to ..... for the term of ..... years from ..... and so long thereafter as oil and gas are produced in paying quantities, upon the terms, conditions and covenants therin provided, but with no right to lessee to disturb the surface, recorded ..... in Book ..... of ..... page .....

7.02 Community Oil and gas lease dated ..... executed by ....., as owners of said land and other persons as owners of other lands in the community area, as lessors, and by ..... as lessee, for the term of ..... years from ..... and so long thereafter as oil and gas are produced in paying quantities, upon the terms, conditions and covenants therein provided, but with no right to lessee to disturb the surface, recorded in Book ..... of ..... page .....

ABSTRACTERS SECTION

Proceedings in Meetings of Abstracters Section

Report of Chairman of Section

GEORGE E. HARBERT

President, DeKalb County Abstract Co., Sycamore, Illinois

Our meeting today is the 46th meeting of the Abstracters Section of the American Title Association. At this stage of our proceedings the Chairman is expected to report to you upon the important matters which affect our business and which have occurred since our last Convention.

Price Control

It is a great pleasure for me to come before you and give this, my concluding report as Chairman of your Section. Those of you who were present at Colorado Springs last year remember that perhaps the most burning issue before our Section at that time was the question of price control. It was indeed fitting that this be so because we were wedged between rising labor costs and an inflexible price ceiling which was threatening many of our members with a non-profitable operation despite the fact that we were turning out more business than ever before in the history of our profession.

Be Exemption

It is no longer news to tell you that during the course of this year we have obtained exemption from ceiling prices from OPS. It may, however, be news to some of you that this was the result of one of the best co-ordinated efforts made on your behalf by a great number of your fellow abstracters. A petition was filed before the OPS last November and a supplemental petition was prepared and filed in December. The material for the original petition was the result of the combined efforts of the officers of your Association and of your Section. The supplemental petition drew its source material from an even wider selection. To these members of our profession who so cheerfully and ably gave us their time to prepare this petition I acknowledge my deep indebtedness and can only say that the successful outcome of this petition is a tribute to their fine efforts.

Acknowledgment

Of course I would not tell the whole story if I did not acknowledge the careful planning and judicious presentation by our Executive Vice President, Jim Sheridan. The only trouble with Jim is that we expect a superlative performance from him and anything less is considered as below par. To Jim, however, goes much of the credit for the final drafting and all of the credit for the personal contact work which made this venture successful.

Hope

I hope that through the relief created by this exemption your labors will be lightened and your businesses restored to a sound financial basis.

Regional

During the past year a Regional Convention was held in Chicago to which abstracters from Michigan, Indiana, Iowa, Wisconsin and Illinois were in attendance. This Regional grew out of the recommendations of Bill Gill and his Planning Commission and was designed solely for abstracters. At our largest session we had 111 persons in attendance and our smallest 62. The Regional ran for a day and a half and confined itself to such subjects which would be of general interest to all of the abstracters. At the end of the Regional Meeting the members in attendance were high in their praise of its accomplishments, and since that time we have received many letters commending the

project. It is my recommendation, therefore, that the Regional meetings be considered as part of the activities of our Section. I do believe that to hold a Regional every year in the same place for the same group would soon cause it to lose its tang and my feeling is that a pattern should be worked out to enable a Regional to be held in various parts of the country to bring together different groups and different combinations of States. It may well be that a pattern of repeating a Regional in one location about once every three years would be successful.

Outlook Good

During the past year it has been my privilege to visit nine State Conventions in addition to the Convention held by my own State. Everywhere I visited I found that, in general, conditions are prosperous, and there is a growing awareness of title insurance. During the last few months some of the doubts which clouded the horizon of business have been dispersed and everything points to a high plane of business activity for the remainder of this year and for the first half of 1953. It is interesting to note that many of the leading business prognosticators are now predicting good business throughout 1953 and well into 1954 and I sincerely hope that these forecasts will prove correct.

Wage and Hour

On the trouble side we find sporadic outbursts of wage and hour difficulties. In one of our States the situation last winter grew rather tense, but calm thinking and judicious action by the State Association ironed out the difficulties and clarified the thinking of both the Government Investigators and of our own people. However, I cannot too strongly emphasize to you the absolute necessity of keeping accurate records of the time and pay of your employees. Bear in mind that the record must be a voluntary one and that one signed by the employee is far better evidence than one prepared by you and approved by the employee. I am sure that because of the present labor situation all of you are observing the minimum pay of 75 cents an hour with time and a half for all hours above 40. If there should be a stray in the Convention who has not been doing this, I can only suggest to you that you would be better advised to flirt with the buzz saw than to continue to violate these regulations.

Growing

The use of title insurance is growing and with its advent many problems are arising, which are new to us. As you remember, for the last two Conventions we have had a Committee consisting of members from each Section of our Association who have attempted to secure information as to any alleged grievances on the part of the abstracters. I can truthfully say that the work of Bill McPhail and his Committee have proved most enlightening and it has been a source of pleasure to discover that the grievances were few and far between, usually entirely local in character and in every known case they have been satisfactorily adjusted. This year our Committee was instructed to attempt a forward look at the situation and it is hoped that this Committee will be able to anticipate problems before they arise. I am sure that at future Conventions you will hear of the work of this liaison committee and will find that its efforts will do much to provide for an orderly transition from abstracts to title insurance in those communities where title insurance is spreading.

Customers Desire

Keep this in mind, the final determining factor as to whether we will sell abstracts or title insurance is the desires of our customers. If our customers believe that title insurance is a better product, they will buy that product even though it costs them more money to do so, and you and I may expect to continue to be the key men in the title service in our communities only by continuing to give to our customers the best title service that is available, and the kind of title service that the customer wants and needs.

Costs

All over the country costs are rising

and business has lost some of its boom proportions. The trend towards mechanization which started years ago continues, and those plants who were in the forefront are now garnering profits from their ability to correctly read the future. If you have taken no steps to mechanize your plant or to install labor saving devices, you may find your profits dwindling. A small slump in our business may well prove disastrous to you, while to those who have soundly planned, the slump can be a temporary annoyance. It is not too late to do something about this and our many fine exhibits may chart the course of action for you. Take advantage of them and of the experiences of your fellow abstractors which can be obtained easily and cheerfully.

Thanks

In conclusion, I wish to thank all of you for coming to this Convention and the great number of you who are making the program of our Abstracters Section a success by devoting your time for study of the problems of interest to us. As you will note from your program, we have attempted to limit the number of formal speeches and to increase the number of informal discussions. This type of program will only be successful provided you, the audience, participate. If this meets with your approval, join in discussions—ask questions—give suggestions. Through the medium of Radio you have heard "Town Meetings of the Air" and perhaps have enjoyed listening to the confusion of the experts. This program is not on a national hook-up, but is intended to be national in its scope. As far as we are concerned these experts maintain that they cannot be stumped, so the challenge is up to you.

In Conclusion

I also want to take this occasion to thank particularly the Executive Committee of the Section who have loyally supported every Section activity. I want to thank our Vice Chairman, Mort McDonald, for his splendid co-operation and for the magnificent job he did on the handling of the questionnaire last year. It was a great lift to me to have his support and advice and counsel. Hubert Smith, your secretary, has successfully handled a hard assignment in preparing for you a manual of State Operations. Last, but not least, I wish to thank those sages of our Section who have occupied this position before me and who have never failed to heed my call of distress when it needed their valued assistance.

Thank you.

WHY ADVERTISE?

Supplemental Report on Abstracters Questionnaire

MORTON McDONALD
President, The Abstract Corporation, DeLand, Fla.

A number of you will remember that last year a questionnaire was sent out to all the companies in the Association who prepare abstracts. A large percentage answered this questionnaire and I had the privilege of reporting the findings at our last annual meeting.

Chairman Harbert requested me to make further study of this pamphlet and give a more detailed report to you on some phase that might be of interest. The advertising feature appealed to me, so therefore, I will take a bit of your time on this subject. You may think I am a bit "tetched" on the advertising and public relations subject. The more I study our industry from this angle, the more convinced I am we are woefully weak in this department. Too many members of the title fraternity feel that when a person deals in real estate he will come to the nearest title office

for the necessary work. From research this appears to be far from true.

Why Advertise?

I recently saw figures on amounts spent annually by several different industries on advertising. I am not sure my figures are entirely correct, but I do know the percentages are correct insofar as this statement I read goes. For instance the flour industry; that is F-L-O-U-R from which our bread is made; does an annual business of about $400,000,000.00. They spend about $40,000,000.00 annually on advertising. The business of breakfast cereals and soap flakes runs into hundreds of millions of dollars annually and each spend about 10% of their income on advertising. Flour, breakfast cereals, soap flakes, all items used by practically everyone daily. Why do they spend so much on advertising? Maybe, because there are so many brands they try to get their customers to buy a certain brand. You don't think that applies to us? Just stop to consider how many ways a person might get a real estate transaction closed. Of course I will admit unless he uses at least the type of service I sell, I think he is on the wrong track. He can close in several different ways without using my services, and if he is not aware of the service my company can render, he will not be using it. It is through advertising that he will know about this service. Last year I reported that the questionnaires revealed that 65% of the title companies were making a reasonable profit. I was inquisitive enough to try to learn why the other 35% were not making a reasonable profit. It was my idea, before making a more exhaustive study of the questionnaire, that advertising had much to do with it. One question was, "Do you advertise?" Another, "Do you make a reasonable return on your investment?" Fifty-five percent of those who said they were not making a reasonable return also said they did not advertise. Of those making money only 17% said they did not advertise. Now does that not look as though there was some value in advertising? From some of the things listed as advertising it appears that we need to study the subject quite a bit.

I would like to quote some of the answers. I am not doing this to cast any reflections on anyone but to attempt to assist in bringing to light some of our errors in this field. One said he advertised but did not make money. His only ads appeared as special holiday greetings in the newspaper and a distribution of fishing calendars. Another said he advertised only in local newspapers and school publications but did not make money. Another said he did not make money and did not advertise, saying, "We are just too damn sweet to our customers." Another said he considered service most important; however, he did not make money nor advertise. Another who said, "I am of the opinion that good service will hold the business," also said he did not make money.

Gifts and Novelties

Personalized gifts and novelties are distributed by a large majority of those who advertise. I mentioned last year the wide variety. Articles for the desks of customers proved to be most popular and are probably the best type of advertising in that field. There are a few in the specialty line I would like to mention. The reason for calling attention to these items is to point out both good and bad points as I see them. Ash trays, clip boards, telephone covers and special telephone directories, knives, letter openers, lighters, pencils, paper weights, rulers, scratch pads, thermometers, are those that appear most popular as well as doing a good job. "Baby titles," baby sets, candy, cigars, flowers, football tickets, fruit, hosiery liquor, magazines, nut peelers, nail files, perfume, sewing kits, theatre tickets, show a variety of items. All these items are used or have been used by members of the Association. The value of the last group of articles insofar as advertising the local title company is very doubtful. Some of these items can be considered as goodwill tokens, of course, but many such gifts will be accepted time and time again without any return to the giver in title orders.

Christmas Time

There were several companies who reported the only advertising that they did was give liquor to their customers, particularly at Christmas. The interesting fact revealed was that every company so reporting this as their only advertising media also reported that they did not make money. Don't worry, those boys will drink all the liquor you will give them and then when you close your doors because of lack of profit, will take another big drink bemoaning the fact your free gifts have ceased.

Enough has been said about the questionnaire. Much has been learned from this questionnaire, too. We all could use this knowledge to our advantage if we would put serious thought on our advertising program.

Service

Let's look at what we can do for a few minutes. There are many more small title offices in the country than there are large ones. The small companies should study their advertising needs closely. It appears that many carry on a very haphazard program, if by chance you could call it a program at all.

What are you trying to sell? Service, is what you have to sell. Service to the person who is dealing in real estate, either buying or selling, borrowing or lending money, developing new tracts or building houses. From whom will that person get his information as to the type of title service he will need? Will he know to come to you? Why do you think he understands to come to you? Do you depend on your friends to direct them to your office or does he know this from having seen your ad? All these questions are vital. Too many take it for granted that a person needing title service will come to the title office.

Institutional

First, what methods should we use to educate the public on the correct type of title evidence? Newspaper and radio institutional advertising is good. Talks at luncheon clubs, schools, colleges, real estate meetings and the like, serve to get our message to many.

New Business

Second, how can we create title business? You would be surprised to know how many people take the neighbors word or the real estate agents word or someone else's that they are sure the title to the home that the prospect is planning to buy is absolutely ok. Many take such opinions and get no title evidence. Others have heard about several ways of closing a real estate deal and take one method or the other not knowing the best. It is through advertising, educational advertising, that these prospective customers will learn of your service.

Co-operation

Third, through close cooperation with the members of the Bar, Real Estate Brokers and Mortgage Lenders, you can develop sure methods of getting the prospect in your office.

Finally, no one suggestion will suffice. The best advertising media for me may not be feasible in your territory at all. Study your field. Check on the amount you should spend. Plan your advertising program rather than take a hit or miss chance. You are selling service, which must be good, but you must let the prospect know of your service before he will have a desire for it.

EMPLOYEE RELATIONS

Employee Relations and State Title Association Activity—Profit Sharing, Pension Plans—Group Insurance—Hospitalization—Costs and Benefits.

A Panel

Members of Panel:

Roy C. Johnson, President, Albright Title and Trust Company, Newkirk, Oklahoma.

Richard E. Duff, President, McHenry County Title Company, Woodstock, Illinois.

A. J. Achten, Secretary-Treasurer, Shawano Abstract Company, Shawano, Wisconsin.

Moderator: A. Wm. Suelzer, President, Kuhne & Company, Inc., Fort Wayne, Indiana.

ROY C. JOHNSON

Association officials have attempted over the years to encourage employee attendance at state Title Conventions. The results, however, have been spotty—sometimes good attendance, sometimes only fair, on the part of employees. We have always had good attendance from the standpoint of owners and managers.

I presume the reasons for lack of attendance of employees are mainly two—

1. The expense of taking a number of persons to the convention.
2. The closing down of the office or department, as the case may be.

District Meetings

It has long been the custom of our state association to sponsor regional, or district, meetings over the state during the year. As a matter of information, years ago we divided our state into twelve districts, each district comprising some six or seven counties. Such district meetings are usually held in late afternoon or evening in connection with a dinner, some local company acting as host, which meetings have ordinarily attracted a good number of employees. As a rule, the meetings have been conducted in such a manner to create an interest on the part of the employees.

Some two or three years ago it was felt advisable, on the part of our Executive Committee, to appoint an Employees' Section Chairman and to have a regular section at our regular State Convention for employees only. As a result, this program has now been in effect two years. As I recall, the length of sessions was approximately two to two and one-half hours. The meetings were conducted by employees, carefully selected by the Executive Committee. Subjects were assigned to each which were of general interest to employees. As a general rule, the topics were along the line of how to do a particular job in an abstract office.

Beneficial

Although I have not attended one of these sessions, some of my own

people have attended them and have reported to me that they have thoroughly enjoyed such meetings. They have expressed the thought that the group, generally, has been enthusiastic. They have enjoyed exchanging ideas and feel that they have been benefitted by having their own section at our annual convention.

During the latter part of this month we are to act as host to our particular region and intend having an employees section. We plan to allow them approximately one hour for discussion of problems of general interest to them. I am of the opinion that the action that was taken by our association in providing a separate section for employees has proven to be quite satisfactory.

Suggested Topics for Discussion in Employees Section

ALWAYS a get acquainted session; that is, personal introductions.

Humorous and strange experiences in connection with titles I have checked.

What I like or dislike about the abstract business and recommendations for improvements.

Why Federal Court Certificates?

How the typist may better cooperate with the compiler.

Special Assessments.

Compiling.

Modern methods of abstracting.

The Modern Abstract Plant.

General discussions and open forums.

Corporate officers, executives and employee-stockholders and other employees can PERSONALLY benefit taxwise from a deferred-benefit profit-sharing plan to a much greater degree than has been commonly recognized. Realization of this fact is beginning to spread—especially in the small and medium corporations.

Why the Current Interest in Profit-Sharing Trusts?

The big reasons are the growing awareness of the great tax advantages both to corporation and executives, and the fact that a profit-sharing trust imposes no financial strain on the corporation.

No fixed commitment.—Many corporations have been reluctant to undertake the more or less fixed obligation of a pension plan.

The profit-sharing trust, on the other hand, requires the company to contribute only to the extent profits permit. In good times (when tax rates are high) the contributions will be larger than in bad times. If there are no profits, no contribution is made. Moreover, it is always possible to place a ceiling on the contribution, just as it is possible to make no contribution until profits have risen above a specified level or a predetermined yield on invested capital.

Advantages to executives. — Stockholder-officers and other executives of corporations are on a treadmill today. Stiff corporation and personal income-tax rates deprive them of the fruits of their labors. If they increase the profits of the business, only a trickle slips through the twin tax strainers. This is especially true as to profits allocated to dividends. Paying out profits to executives in the form of salary increases and bonuses is often difficult, if not impossible, under Stabilization rules, and personal income taxes skim off most of the cream.

But under an approved profit-sharing trust the employee's share escapes both the corporate and personal tax blows. The corporation's contribution is deductible from the corporation's income. The trust's income is wholly exempt from tax. And the employee's share is not taxed until it is paid out.

And so, executives are beginning to realize two facts:

1. A deferred-compensation arrangement is an excellent, profitable, and sound way for them to salvage more than a pittance from the tax man.

2. Of all deferred-compensation devices, the tax-exempt profit-sharing trust is generally the best and most efficient.

Let's take a look at a typical stockholder-executive of a typical small corporation. Assume two situations:

SITUATION 1: There is no profit-sharing trust

SITUATION 2: The corporation has a Treasury-approved (hence tax-exempt) profit-sharing trust which was set up late in 1952 but made effective as of January 1, 1952, the beginning of the corporation's taxable year. The essential features of this profit-sharing plan are:

(a) All officers and employees are members.

(b) The corporation agrees to contribute 25% of each year's profits before taxes, but in no event more than the amount deductible on its tax return.

The law limits the normal deduction to 15% of the payroll of the officers and employees who are members of the plan. However, if any year's contribution is less than 15% of the payroll, the difference may be carried over to years when profits permit a contribution of more than 15% of payroll.

(c) Individual accounts are set up under the plan for each member. Each company contribution is allocated to these accounts in direct proportion to annual salaries. At the end of each year the trust earnings, which are tax-exempt, are apportioned to the accounts of the members.

(d) Members can draw down their entire shares if they retire for age or disability. Upon the death of any member while employed, his share is paid over to his beneficiary.

(e) Each year of membership entitles a member to a "vested right" in 10% of his account. Thus, if he leaves before 10 years of membership he forfeits part of his account. The forfeited part is then redistributed among the accounts of the remaining members.

Under regulations of the Wage Stabilization Board, distributions must be spread over at least 10 years (except for death payments). This bars the capital-gain privilege temporarily. However, when controls are removed, the plan may be amended to provide lump-sum payments which will carry that privilege.

IN THIS EXAMPLE — Corporate Picture at End of 1952

The corporation's profits in 1952 before taxes were $60,000. It had an excess profits credit of $40,000 and a payroll of $85,000. Thus, 25% of the profits before taxes was $15,000. However, 15% of payroll was $12,750. Accordingly, the contribution for 1952 was $12,750, the lesser of the two figures.

The following shows how little it actually cost of the corporation to make that $12,750 contribution:

	No Plan	With a Plan
Profit before taxes	$60,000	$60,000
Contribution to plan		12,750
Income subject to tax	$60,000	$47,250
Normal tax and surtax	25,700	19,070
Income after normal tax and surtax	$34,300	$28,180
Excess profits tax	6,000	2,175
Income after taxes	$28,300	$26,005
(Thus, actual cost of $12,750 contribution is $2,295.)		
To funded reserves and surplus	$14,000	$14,005
Balance for dividends	14,300	12,000

Now let's see how the executives of that corporation fared, first, without the profit-sharing plan, and second, with the plan:

Jim, the president, is 40, married, with two children. He owns 50% of the stock. His brother owns the rest.

Jim draws an annual salary of $12,000 and has additional income of $3,200 from investments. Without the profit-sharing plan his dividends from the company for 1952 would have been $7,150; and with the profit-sharing plan, $6,000. His wife has no income of her own. Living expenses took $11,000 in 1952. What was left went into common stocks yielding an average of 5%. His brother's picture is much the same:

	No Plan	With a Plan
Jim's 1952 income before tax	$22,350	$21,200
Income tax; (standard deduction)	5,513	5,076
Income after taxes	$16,837	$16,124
Living expenses	11,000	11,000
Available for private investments	$ 5,837	$ 5,124
Allocation for 1952 in profit-sharing plan		1,800

Thus the profit-sharing plan cut Jim's funds for private investment that year by $713. In return, however, Jim has $1,800 earning income in a tax-exempt trust. And the trust also has $10,950 in the accounts of the other employees.

Accumulation Through the Years

Let's see what would happen if tax rates remained the same and the events of 1952 repeat themselves year by year;

Investment yield.—We assume that Jim's private investments would earn 5% a year. That, however, is before taxes. Even under a joint return and the income splitting technique, Jim's tax bracket is 38%. He will be in a higher bracket in a year or so, but for our purposes assume it stays at 38%. So his net return is 3.1%.

And let's assume that the profit-sharing trust funds also yield 5%. However, that is a net return, because the trust is tax-exempt. So Jim gets off to a head start under the trust:

1. He has $1,800 of principal added each year to his profit-sharing fund at an annual cost of $713 in funds for private investment.
2. The trust investments earn a net of 5%, instead of a net of 3.1% on his own investments.

However, there is another important factor. Remember that an employee has to be a member of the plan for 10 years before his rights are fully vested. And if he leaves before 10 years of membership are up, he forfeits part of his fund to the other employees. Let's assume—very conservatively—that forfeitures swell Jim's account each year by only 2%. That brings each year's "yield" up to 7%.

Let's trace the two funds ($713 a year in a private investment fund, as against $1,800 a year in the profit-sharing account) through the years until 1977, when Jim becomes 65 years old and plans to retire:

Amt. after:	Private Fund	Profit-sharing Fund
5 years	$4,000	$11,100
10 years	8,500	26,600
15 years	13,800	48,400
20 years	20,000	78,000
25 years	27,200	121,800

Note that the taxes will have been paid on the private fund. That is not true of the profit-sharing fund. When Jim draws down his account in 1977, he presumably can treat the entire sum as long-term capital gain. (1) That means, at present rates, that the tax cannot be greater than 26%. Thus, Jim will have left AFTER TAXES, the sum of $90,132—which is $62,932, or **230%** MORE than he would have had without the profit-sharing plan.

If the corporation had not been subject to excess profits taxes, the difference between the private fund and the profit-sharing fund would not be as great, of course, but it would still be substantial.

Finally, don't forget that Jim's brother gets similar benefits and both Jim and his corporation would reap great benefits through the incentive value of the ever-growing accounts of the other key employees under the profit-sharing trust.

RICHARD E. DUFF

Pension Plans and Problems in a Small Company:

Pensions, or retirement plans, have passed through the development stage, and now seems to be an established force in our economy. The American people have become security-minded. Therefore, it might be said that we are now concerned with the trends in a well-developed movement.

Security in old age is fraught with fears, hopes and emotions. Several factors are working simultaneously, to make the problem rather critical, and urgent.

1. Our people are living longer.

2. The number of persons over 65, is steadily increasing, in relation to the number of persons, in the lower productive age groups.

3. The greatest spark in the trend for pensions, is the inadequacy of Social Security for retirement. Millions of employed men and women, are aware of this inadequacy, and are looking to their employers, for additional security when they retire. Do we want to turn over the job to the Government, under an expanded social security? I think we ought to maintain freedom of opportunity, freedom of initiative and freedom of enterprise. Can we do it under more and more controls? It would seem that we can better maintain these freedoms if each company or organization will try to work out a program adaptable to its own particular requirements.

What Does a Retirement Plan Do for the Employer?

Progressive management usually favors a retirement plan, because it means greater efficiency and better employee relations, generally. It improves employee morale, gives them a feeling of permanence, attracts and retains employees who might otherwise go to a company which offers greater security, and has other monetary and tax advantages. Pension thinking is as much in the minds of the younger workers, as in those that are older. They are going to join and stay with the firm that offers them a substantial income after retirement. And they will avoid the one which has no such program. Therefore, many employers today, are utilizing retirement plans, to hold their own employees, and keep them from being attracted elsewhere.

Advantages to the Employee:

Employees have become security-minded. What's more they realize, they must have help, to win security for old age. They know they cannot do the job unaided, because they are effectively stymied by high taxes, soaring living costs and the meager yield, from any investment plan at their command. Social Security will provide a bare subsistence income, at best.

It gives them a feeling that they belong, that they are sharing in the profiits of the company, and that the company is interested in their well being at the present time, as well as helping them to provide for their future.

Can You Afford a Plan? What Are the Costs?

It is no longer a question of whether a firm can afford a retirement plan. It is more a question of whether the employer can afford to be without a plan. The employers aim should be to develop a program which will be as fruitful as possible with a minimum of cost, and a maximum of flexibility. The design of a retirement program suitable to a particular company is a tailor-made job.

There are no fixed answers, but careful study and a forecast of probable contingencies can result in a program, adaptable to the particular personnel conditions, and fiscal policies of the company. Costs will be equal to the benefits paid, plus expenses, less the income earned on the funds, plus or minus any capital gains or losses.

It takes a capital fund of approximately $15,000.00 to retire a man of 65, on a pension of $100.00 per month. What does this mean, in terms of percentage of pay roll required to carry a reasonable pension plan? It can be as little as 2%, or as much as 10%, or more, depending on a number of factors. These factors include the scope and level of benefits, as well as the age and years of service of the employees. A plan can be designed, so that a company does not have to contribute the same percentage of its pay roll each year. The normal percentage of pay roll cost, is generally between 2 and 7 per cent. It may be higher if a firm has a high past service cost—the cost for retirement already accrued for older

long service employees, who will be ready for retirement in a few years.

What Size Company Can Set Up a Retirement Plan?

The size of a company has nothing to do with setting up a plan. Even a company with only 20 employees, can provide retirement benefits, if it operates at a profit.

Of course, plans vary, depending on the size and earning capacity of the company, but no company making a profit, need deprive its employees of retirement benefits. While it is true, that many of the widely publicized plans, are for manufacturers like Ford, General Electric and Bethlehem Steel, it is well to remember that thousands of others, that operate small business and employ one, or two hundred persons also provide employee retirement plans.

Profit-Sharing Plans:

Profit-sharing arrangements afford an excellent means to encourage employee incentive, and at the same time provide a solution to the retirement problem. This is the type of plan we have. Our company, after careful consideration, has established a profit-sharing retirement plan, as of January 1, 1951, which provides for systematic saving on the part of each employee. Any employee of the company, who is at least 21 years of age; who has been in the employ of the company for at least one year and who is a resident of the State of Illinois, is eligible to join the plan, by signing the Employees Contribution Agreement. The Agreement provides, that they may subscribe a certain percentage of their salary to which is added a fixed contribution by the company, as well as an additional contribution, after taxes and a specific return made to the stockholders. Years of service with the company have a bearing on the amount of each employee's share in the fund as it is accumulated, and the profit-sharing provision is attractive to them. They feel that they have a personal stake in the enterprise. They get more satisfaction from their work, and an additional incentive to increase their efforts.

We are a company of 25 employees at the present time, and they obviously consider the plan an excellent one, for while it was not compulsory, when the plan was submitted to them for approval, we had 100% subscription from all eligible employees. And not one key employee has left since the adoption of the plan. The entire plan, of course, must be approved by the Treasury Department to permit the company's contribution to be a tax deduction.

The cost to the company for 1951 for each $1.00 contributed by the company to the fund was 0.1925 cents. In other words, the balance of the company contribution to the fund would have been paid out in additional income and excess profit taxes, had not the plan been in effect.

It is important that the commitments of a company for a retirement plan should be geared to a conservative appraisal of the company's long-term economic prospects. When the profit-sharing method is used, a company can be assured that there are no fixed commitments, beyond its long-term capacity to carry, and the benefits payable will be derived from a reasonable accumulation of profits from its current operations.

We found that the choice, development and operation of our retirement plan was considerably simplified by the use of the experience of a large trust company which had years of experience in the consideration and administration, of numerous plans of employers engaged in widely differing businesses. In many cases the studies, analysis and cost estimates leading to a final informed conclusion as to the best type of plan come through the cooperation of the employer, his attorney, trust officer, actuary or other consultant.

In Conclusion,

The problem of retirement planning, is to strike a balance between the costs it is safe to assume, and the benefits believed to be necessary. New concepts and influences are at work, to direct the trend of pensions and retirement plans, which have become a dominant force in our economy. It is the responsibility of both

employer and employee to cooperate in solving this retirement problem.

If we are to maintain reasonable profit levels, pensions may have to be geared to productivity. Profit-sharing plans are so geared. In providing an employee with an incentive to work more efficiently, pension costs and benefits may be indirectly tied to productivity.

Every employer knows that if his employees operate more efficiently he will make more money. He is also aware that employee turnover costs him money. Consequently, any system which increases efficiency, and reduces turnover expenses is a practical investment. Therefore, money spent for retirement plans is not just a giveaway proposition. In my opinion a retirement plan for a company, large or small, is a sound investment, which will pay dividends to the employer. It is just good business.

A. J. ACHTEN

When Mr. Harbert called about a month ago and asked me to make an investigation of the subject of Group Insurance for members of our profession, I must admit that I did not fully realize what I was getting into, nor did I realize the time which might be spent on the proper investigation of the possibilities connected therewith. However, when we recall Mort McDonald's report on the Abstracters Questionnaire made at our convention in Colorado Springs, last year, wherein he cited the fact that 14% have group insurance and 30% have group hospital and medical care, I believe you will agree that Chairman Harbert did choose a subject that should be given serious consideration.

Competing with Big Business

I believe it would be generally conceded that big business today does offer their employees such coverage and if we want to remain with big business and be able to maintain the class of employee to which we have been accustomed instead of being a training and proving ground, I do believe there is no alternative for us but to provide the extra benefits which tend to maintain a friendly Employer-Employee relationship.

Time permitted to me did not permit the full investigation which might have been made of the subject in question. However, from my limited search, it appears that there are three ways to provide this type of coverage.

Direct Individual Coverage

FIRST, there is the possibility of providing direct coverage for the single employee; that is, buying a single life policy or accident and health policy for each employee. From the exhibits I have been able to gather, as well as from my personal experience, this is impracticable primarily because of the fact that the rates charged for this type of coverage are unnecessarily high, or, if the rates are adjusted to attempt to meet competitive group plans, the policy is loaded with sufficient exclusions to make it undesirable.

As a Group

THE SECOND way to provide such benefits is by way of the group insurance plan, commonly written in big industrial plants, etc., having 100 or more employees. This type of coverage usually requires a minimum of maybe 10 or 25 employees before the contract will be considered and usually further requires a minimum of 60% or 75% employee participation before the contract will become effective. This type of coverage I believe, could be made available to our members either through our National Association, or through our state associations, but again I feel that this plan might be found impracticable. First of all it might be found difficult to secure the 60% or 75% membership participation, due to the fact that our larger companies have initiated such plans which they would hesitate to interrupt, and lastly, this type of insurance would require a central office for collection and remittance of premiums, and I don't believe our state offices are so situated that they would be in a position to handle the collection of premiums and the other detail which might accompany such a plan.

Co-operative Enterprise

THE THIRD plan and the one which seems to offer possibilities, is the one which I have chosen to submit briefly herewith.

A group of employers in the midwest, seeing the need for this type of coverage, formed an association under the name of the UPPER MIDWEST EMPLOYERS ASSOCIATION, with an executive office in Marshall, Minnesota, the prime purpose of which organization was to provide group insurance benefits for its members and employees. Membership was made available to employers upon payment of a membership fee of $1.00, and a sufficient number of employers joined the organization at the outset so that they immediately qualified for any group plan of insurance, and membership in this region is now available to any employer at the cost of $1.00.

This association working with the Bankers Life Company of Des Moines, Iowa, devised an insurance plan available to members with three or more persons in their office. This insurance plan is covered by a master contract issued to the Upper Midwest Employers Association, and for your information the contract briefly covers items set forth in table of benefits, costs and other information at the end of this article.

To attempt to explain the above coverages in detail as well as certain limitations which are to be found in any insurance contract, would take much more time than is allotted here today. However, I do feel that the above plan or possibly some similar plan does offer possibilities for the members of our association. Cost-wise I believe you will readily admit that the above plan even though it includes Life, Accident, Sickness, Hospital, Surgical and Poliomyelitis benefits, costs little more than the present comprehensive Blue Cross or similar Hospital and Surgical plans, and no doubt many abstracters are today paying that kind of money for possibly half of the protection.

It is not my purpose to attempt to in any way sell this plan to our association and to bear this statement out, let me explain that the Bankers Life Company of Des Moines, Iowa, although licensed to do business in 46 states of the Union, is to date licensed to issue the above contract in only four states in the Upper Midwest. And since our national office is not located in one of the four states in question, the above contract could only be available to our membership in the four states.

Employee Participation

This plan was offered herewith primarily because it offers all of the various types of coverage in a single package; it requires that employer and employee share the cost; and it is a contract that is handled through the local insurance agent in the community wherein each employer is located; it carries a premium that would not generally be considered prohibitive; and it is a plan which may be adopted by one or more employers at will.

And now that I have completed my little report, I suppose it would be only proper to offer an apology for not having something more concrete to offer. But speaking of apologies reminds me of the welfare worker, who, upon hearing a woman's story that her husband had left her five years before, looked with amazement at the brood of young children and asked, "Who is their father?" The woman answered, "My husband, of course." "Then he hasn't left you?" "Oh, Yes. But he comes back now and then to apologize."

If my apology can bring results no where near equalling the results of the husband above mentioned,—if it will merely open a discussion of the subject in question and a little thinking on the part of the abstracters in question, I am sure that some plan will be devised through some willing insurance company to provide benefits which will help us meet our social obligation; a plan which will show our employees that we are interested in their security and develop the family feeling and employee loyalty that successful businesses constantly seek to improve, all at a price we will all be willing to pay.

FOR ACTIVELY EMPLOYED OFFICERS, PROPRIETORS AND MANAGERS:

SUMMARY OF BENEFITS

Life Insurance	$2500.00
Accidental Death and Dismemberment—Principal Sum	2500.00
(The Life and Accidental Death and Dismemberment are reduced to $1000.00 each on the date the insured attains age 65.)	
Accident and Sickness, Weekly Benefit	28.00
Hospital Benefits	
Room and Board, Daily Benefit—up to	9.00
Other Hospital Charges —up to	120.00
Surgical Benefits	
Up to amounts shown in schedule of operations—up to	225.00
Poliomyelitis Benefits —up to	2000.00

DEPENDENTS

Hospital Benefits	
Room and Board, Daily Benefit—up to	9.00
Other Hospital Charges —up to	120.00
Surgical Benefits	
Up to amounts shown in Schedule of Operations—up to	150.00
Poliomyelitis Benefits —up to	2000.00

SUMMARY OF TOTAL COSTS

	Without Dependents	With Dependents
Under Age 65	6.36	$10.84
Age 65 and over	4.86	9.34

FOR ALL OTHER EMPLOYEES

SUMMARY OF BENEFITS

Life Insurance	$1000.00
Accidental Death and Dismemberment—Principal Sum	1000.00
Accident and Sickness, Weekly Benefit	
Male Employees	21.00
Female Employees	14.00
Hospital Benefits	
Room and Board, Daily Benefit—up to	9.00
Other Hospital Charges —up to	120.00
Surgical Benefits	
Up to amounts shown in Schedule of Operations—up to	225.00
Poliomyelitis Benefits —up to	2000.00

DEPENDENTS

Hospital Benefits	
Room and Board, Daily Benefit—up to	9.00
Other Hospital Charges —up to	120.00
Surgical Benefits	
Up to amounts shown in Schedule of Operations—up to	150.00
Poliomyelitis Benefits —up to	2000.00

SUMMARY OF TOTAL COSTS

	Without Dependents	With Dependents
Male Employes	$4.18	$8.66
Female Employees	3.71	8.19

ABSTRACTERS LIABILITY INSURANCE

Report of Committee

A. F. SOUCHERAY, JR., *Chairman*
President, St. Paul Abstract and Title Guarantee Co., St. Paul, Minn.

For two years I have been the chairman of this committee and know all of you will be happy when the new chairman takes office, because it takes new life to get things done.

During my first term the committee devoted most of its time and efforts to sell every abstracter on the necessity of carrying Abstracter's Liability Insurance. Through the committee's efforts, a representative of the only American Stock Insurance Company writing this type of coverage attended our annual convention, in order that our members could acquire complete information about insurance of this type and he in turn get a better picture of our business. We were successful in getting this company to promote the sale of this coverage.

Members Using

From the survey made in 1951, we found that out of an available 1,994 American Title members, in abstract states, only 543 or 28% carried insurance. Of these 543, only 168 or 10% had policies with St. Paul Mercury.

To give you the picture as presented by St. Paul Mercury, I quote from a letter received from its Secretary, John C. Parish, dated August 22, 1952:

"Since the inception date of our program, the St. Paul Mercury Indemnity Company has only 947 policies for abstracters for members in good standing of the American Title Association. This figure represents all policies, new, renewals and rewritten contracts. It would seem from our count that the company is still writing only 20-25% of the total abstracters' membership and, unfortunately, this does not give the company a wide enough spread to accurately appraise their anticipated experience.

The Record

The written premiums during the time the company has been engaged in the insurance program for the American Title Association amount to $137,652. These are written premiums, however, and more revealing is the earned premium experience by years which I give you as follows:

In 1949 the company had an earned premium record of $12,398, with a loss ratio of 16.2%.

In 1950 the company's earned premiums were $31,862, with a 25.8% loss ratio.

In 1951 the earned premiums were increased to $44,961, but our loss ratio likewise increased to 41.6%.

Loss Records

The steady increase in the loss ratios is indicative of the current trends not only in the Professional Liability business but in the General Casualty experience which has been generally quite adverse country-wide for nearly all companies.

The advertising and articles in the Title Association News has been helpful, and the first six months of 1952 have shown a substantial increase in the number of policies written as well as an increase in the earned premiums. There has also been some shading in the loss ratio, but it is still too early in the year to predetermine what the results will be at the close of 1952.

More Customers

We are hopeful that a more representative number of abstracters will be written by the company between now and the close of the year, for it is only through this means that we can give the consideration to any rate modification which the insurance committee may expect. We must keep in mind the trend of claims as illustrated in the loss ratios for the years 1949-1951.

Claims

The company is developing rapidly in its treatment of claims reported by the various abstracters, and this experience plus the fact that insurance is being carried in a strong, domestic progressive carrier should be of great value and importance to the members of the American Title Association. The membership will be interested to know that we have reports of claims in the five figures and only recently learned of a very large claim in the neighborhood of $20,000. Details, of course, are currently confidential, but it is well for the membership to know that they are faced with high potential losses, and adequate insurance is a most valuable asset in the efficient operations of each individual abstracting firm.

Adjustment of Claims

A speedy and satisfactory adjustment of claims under an abstracter's liability policy is just as important as the adjustment of claims under a malpractice policy carried by doctors. Our reputation as abstracters is at stake and if our claims are treated lightly, it may result in a law suit that might have far reaching effects. I know it to be a fact that the St. Paul Mercury realizes this, despite the fact that in one instance during this year a claim was bungled. This unfortunate error was due to a misinformed clerk of the Insurance Company and the efforts of a young lawyer adjuster. It caused one of our members considerable embarrassment. When our committee got into the picture, it was not long before everyone involved was happy again. I believe this unfortunate situation proved two things:

(1) That the Insurance Company has an obligation to adjust with the utmost speed, and

(2) That we should give the facts to the Insurance Company in such a way that there is no room for anything but a speedy settlement.

Liability

All of us have been in the title business long enough to know that where an error in an abstract or any certificate results in a loss to one of our customers, we are liable. We also know it would be unwise and poor public relations to try to escape our mistake. We further know how any claim based on our mistakes should be adjusted. Insurance companies are not abstracters. Our committee feels if the facts concerning our errors and mistakes are accurately and clearly presented to the Insurance Company, with suggestions as to their adjustment, that in practically every case the claim will be settled to the entire satisfaction of everyone concerned with the minimum amount of delay.

Title Insurance

With the development of Title Insurance, some of our people have been induced to get casualty Insurance Companies to underwrite their risk. During the year, one of our middle west abstracters asked the committee to check with the St. Paul Mercury on whether it had committed itself to underwrite any losses that would develop on the part of an abstracter who would issue a Certificate of Ownership or in other words, a Title Policy. Another inquiry came from a western state where it appears Lloyds are underwriting the opinions of abstracters who are issuing Title Policies as agents for Title Insurance Companies.

The St. Paul Mercury has refused to write this type of coverage because they do not want to be in the Title Insurance field, either directly or indirectly. They likewise feel such a policy would violate their confidence with the State Bar Associations whom they are now covering with a "Lawyers Errors Policy."

Separate Field

It seems to our committee that Title Insurance is a separate field and any company writing such insurance should be willing to assume its losses out of its own reserves. Any other conclusion would be unwise because it would permit small Title Insurance Companies to be formed in states where the requirements are ridiculously low. The protection of the users of Title Insurance would be in jeopardy at all times; either by the

failure of the company to carry a liability policy, or because it was too small to back up its own policies.

In conclusion, I wish to thank all of my committee for its help during the year, and all of us again want to encourage our members to carry an abstracter's liability policy.

PUBLIC RELATIONS

Public Relations, Competitor, Customer, Court House. Are We Selling Ourselves to Public? Speakers Bureau. Advance Estimates.

A Panel

Members of Panel:

M. M. Hightower, Jr., Co-Partner-Mgr., Duncan Abstract Company, Duncan, Oklahoma.

Carlton W. Crosley, Treasurer, Crosley and Boeye, Inc., Webster City, Iowa.

A. A. Poirier, President, Wheatland Abstract Company, Harlowton, Montana.

Charles Adams, Jr., Assistant Manager, Guarantee Abstract and Title Company, Lubbock, Texas.

Harold F. McLeran, Mount Pleasant, Iowa.

Moderator: Byron S. Powell, President, DuPage Title Company, Wheaton, Illinois.

M. M. HIGHTOWER, JR.

STATE SPEAKERS' BUREAU

It is indeed a pleasure to have the opportunity to discuss with you for a few moments the merits of the State Speakers' Bureau.

Holding no claim to super-salesmanship, such as was exhibited by the undertaker who sold the widow a suit of clothes, and an extra pair of trousers in which to bury her deceased husband; nevertheless, your speaker shall attempt to sell you on this Bureau, as a MUST in your public relations program.

Jim Sheridan, our genial Executive Vice-President, advocates and encourages state speakers' bureaus.

Stewart Robertson, of Oklahoma City, pioneered this program, and Dan Calkins of Enid, Oklahoma, is carrying the program forward this year, in the Sooner State.

Why It Ticks

First, join me while we take this Bureau apart, and see what makes it tick. In Oklahoma, where the Speakers' Bureau is no longer a dream, but a reality, here is how it works:

Speakers for this Bureau (all of them members of the Oklahoma Title Association) are located at strategic geographic spots throughout the State, ready on short notice to make a speaking engagement to members of Church groups, Civic Clubs,

Schools, Real Estate groups, farm groups, and/or any other group desiring our services.

These speeches are made at no cost to the host club or group, as all expenses are borne by the Oklahoma Title Association, a fund being set up for this purpose, as a portion of our Public Relations Program.

These speakers are interested in one thing: Preaching the Gospel—the Gospel of Real Estate Titles—to any group of persons showing an interest.

Subject Matter

You might ask, what is there to talk about? There are tow basic subjects for these speeches. (1) History of aTitles. (2) Safeguards in buying real estate. As there seems to be no limitation as to how far the thoughts on these subjects can be expanded, it is desirable that each subject be given in a separate speech, as justice cannot be done to both in a reasonable length of time. Time will not permit going into detail on these subjects, but if you are interested in outlines for speeches we have them available for you. However, when you become interested in the Speakers' Bureau, you wil find yourselves making your own outlines, and after delivering your first speech will say, "Golly, I didn't know my own strength."

It is no problem to find something to talk about—your own experiences in the Abstract business are always interesting to your audience. I daresay all of you can recall this minute, a peculiar title in the records of your home County that would be very interesting to tell about.

Questions

Quite frequently, the Speaker is interrupted by questions from the audience. This is always encouraging. Because here is absolute proof that one guy in that audience is still awake.

Benefits

Who benefits from these talks? Obviously, the principal beneficiary is John Q. Public—the same John Q. Public, who if he be misinformed or ill-advised, or just plain ignorant as to the complicated real estate titles of today, can be the thorn in the side of the Abstracter. The same John Q. Public who may be the young man, investing his life earnings in a home, who has never heard of an Abstract of Title. Or he might be the man who thinks an Abstracter has only to type a few pages and charge a large price. He may be the chap who blames the abstracter for defects in the chain of title.

Here is our chance, fellow Abstracters, a golden opportunity to discount and hold for naught these ugly rumors that are detrimental to the Abstracting profession, and replace these rumors with facts—facts as to the costs of operation of an abstract plant—facts as to the intricate problems, the work, the risk involved, and the responsibility the Abstracter assumes when he signs that Certificate.

Improved Public Relations

The Abstract Companies in the County where the talk is given also receive benefits from these speeches. This fact has been reflected in the letters received from Abstract Companies thanking the Speakers' Bureau, and mentioning many fine comments made by their customers about the talks. That my friends, can mean only one thing—better public relations.

Newspaper Publicity

The Press has given us good coverage. In case you would like to see some of these newspaper clippings, we have them here for your inspection. Look them over, and you will see some fine newspaper advertising for the Abstract business. The remarkable thing about this advertising is: It does not cost one penny.

Then you say, "Why, man, I've never made a public speech in my life. I'd be shaking in my boots." Your point is well taken. In the Speakers' Bureau, there are those among us who know the pangs of stage fright, who have experienced the peculiar uneasy feeing of butterflies in the tummy, your speaker being no exception; but we maintain and submit for your consideration this thought: Any man who can meet the public in his office—talk to them intelligently and

sincerely about their title problems—can talk to a group of people with equal intelligence and sincerity, and at the same time derive for himself an ample portion of self-satisfaction and exultation, that automatically comes with a job well done.

Facts

So you are still not convinced? You want facts and figures? Okay, we have them. Up to April 1st of this year, our speakers had appeared before more than 2500 individuals. Since that time we have filled 25 speaking engagements, 3 of the 25 were made this past week. Approximately 1,000 persons heard these 25 speeches this year; making a grand total of 3,500 people — 3,500 people, incidentally, who know more today about the Abstract business than they did yesterday—3,500 people who appreciate the great public service rendered by Abstract men and women—3,500 more cautious people, to be sure, who know now that the title will be thoroughly investigated before their money is invested. Why? Because they have learned through the medium of the Speakers' Bureau that it does not pay to take a chance; they have learned of people who have taken that chance and are now sadder, but wiser. They realize now that large sums of money can be lost through carelessness in real estate titles, but you may rest assured that it will not happen to those 3,500 individuals. They've been converted.

Yet we have hardly scratched the surface. The potential is great. Thousands of people are waiting to hear the story of titles, they are entitled to it —they will appreciate it—it is up to us to tell them about it.

In Oklahoma we believe that we have discovered a good thing, and in all sincerity, we say to you that we would like to share it with you.

Organize Your Own

It has been said that to sell a product, you must first sell yourself on that product. You have probably gathered by this time that we in Oklahoma are sold on the State Speakers' Bureau. We have seen it in action. We know it will work. We have watched it grow in leaps and bounds from a small brainchild, into a fully developed, active and progressive program that apparently has no limitations—into a program that once properly organized has spread like a fire in a wind-storm.

In closing may we present this challenge to those of you who have not initiated this program. Try it. You'll like it. John Q. Public wil like it. You can't miss. Raise yourself to your full height, throw out your chest and tell 'em about Abstracting. You'll lay 'em in the aisle. You'll WOW 'em.

You'll be glad tomorrow that you did it today.

CARLETON W. CROSLEY

When asked to handle the subject of competitor relations, I assume the fact that the directory showed more than one firm operating in our city fully qualified me in this field. At least I had certainly not held myself out to be an expert on the matter, unless the old adage is true about anyone over twenty-five miles from home being in that category.

I have, however, lived with competition for the sixteen years that I have been in the business, and am pleased to say that for the most part the relations have been quite pleasant.

Competition Keen

Competition has always been keen, but fortunately on a good level. There have been some disagreements, of course, but certainly never of the kind resulting in bitter feelings or the "no speaking" relationship that I have heard of in some cases.

Perhaps it has been due to a fine caliber of men involved, for which we have been fortunate, as I can see that a lack of that would cause difficulties we have not had to experience.

Joint Purchase

There were four abstract firms in our area when I became associated with our company. Shortly after that I had my first experience with competitor relationship of the mutual

interest type, wherein our company purchased with a competitor one of the other firms. A situation where the owner died with no one to carry on and we purchased the plant jointly and retired it, an arrangement which proved of advantage to both of us.

Since that time our company has purchased individually another firm resulting in only two in our community at this time, which is about right for the area.

Good Competitor Relations

The other remaining firm is of a good type and we have worked together on various matters of mutual interest. We have at different times operated a joint take-off which I know is not uncommon. However, about four years ago we purchased jointly a photostat machine which we keep in the County Recorder's office. This is used for take-off only, although under certain conditions and as agreed between us, it has been used for outside commercial purposes. The cost of the machine and expenses of its operation have been shared equally. We have also worked together in promoting some improvements in various county offices, improvements in procedure in the office as to indexing methods, processing of instruments, etc., which have been helpful and time saving to us (and usually for the county official as well).

Price Competition

As to prices, we have always set these individually, but I think that we are quite close. We did agree on the use of a valuation charge which I think is important to all firms in an area to do, if such a charge is to be put in effect. The schedule for this is still not where it should be, but I think that we are approaching a proper one.

At least I do feel that our experience shows that it is possible to go over things together, and I know that many of you do. But, I know of others who seem to feel it impossible. I cannot help but feel, however that except in rare cases, can this that except in rare cases, can this really be true. The other firm usually has the same problems and they are usually just as anxious to solve them.

For example:

Common Problems

Not too long ago I called on two abstract companies in an adjoining county. I was doing this with respect to some legislation our association was sponsoring in the Legislature, but our visit, of course, got into general matters. Both companies reported the same problems, primarily those of high overhead and low prices which I know are problems common to us all. However, they both had a somewhat futile attitude with respect to doing anything about it, claiming that it was impossible to discuss it with the other company.

I suggested, however, that perhaps it would not be as difficult to talk about the matter as they thought (my having heard the same story from both of them, though not so informing them) and encouraged them to get together.

Improvements

I think that it was less than a week later that I received a letter from each one, unbeknownst to the other, thanking me for my visit and stating that conditions were much improved and both offering to buy me a dinner the next time they saw me.

While this is a case where a third party was of assistance, I do not think that it is always necessary. I am sure that there are other places where this story might apply and where getting together might be easier than those involved think. Often the other guy actually isn't a bad fellow!

A. A. POIRIER

When George Harbert, Chairman of our abstracters' section, asked me to act on this panel, my first thought was to decline, as I knew it would require a little research and thinking to assemble and write an article that would be of interest to you men and women of this convention. However, when I considered how hard George

and all the other officers of our national association are working for us, I just couldn't turn him down.

In this short paper I will not be able to touch on all the items outlined for our panel, but I would like to say a few words about public relations. There has been a lot said and written on this subject, but to me public relations boils down simply to the Golden Rule: "Treat your customer and your public as you would like to have them treat you."

Service

We are in business to serve the customer—we don't sell clothing or groceries but services. Our customers are varied—some like slightly different services than others. I don't believe that anyone can have the 'public-be-damned' attitude and stay in business. The fallacy of that policy is obvious—we are all in business to make money and continue in business. The good-will of our customers is of paramount interest to us all. What can be done to maintain or increase that good-will is the policy that should be pursued.

Public relations is too easy to neglect during the hectic periods and when we have too much work to keep up with ourselves, yet think back during the war years (World War II, that is) when you couldn't get cars. The dealer that made all the big deals and shady exchanges, the ones that didn't bother to explain to you the why and wherefore—they're the ones that you would prefer not to do business with now that you can shop around. Our business, like any business, is usually a lifetime job, and should be treated accordingly.

Our Market

We title people have for our customers the lending agencies, lawyers, real-estate men, oil companies and individuals. Our public relations with all of them should be of the very best. Another group of people with whom we come into daily contact, and who are equally important to keep good relations with, is the court house employees. We should be courteous and helpful, to new employees as well as old. They can help us a lot in our work, as we can help them. Sometimes our own employees, through their own actions, will make for bad public relations. We must be on guard for this—to try and prevent it before, and to try and patch things up afterward.

As They View Us

How does our work appear to different people? To an attorney, correctness and order might be the only essential; a small land owner might judge the abstract merely by the appearance of the cover and pages; an oil company might judge you on service, another on price. How many people understand just exactly what an abstract is? Some people believe that an abstract is sufficient to give clear title — one person finding that this was not the case, to his sadness a few years after he got his abstract, very sanely remarked that it might not be a bad idea to put a statement in the abstract to the effect that the abstract is not for the purpose of showing the validity or invalidity of the title, but that it is merely a record of the instruments on file affecting the land title, the validity of which is not approved or disapproved by the abstracter. It pays to take time out to explain to the customer exactly what he is getting and perhaps some of the work that is involved to justify what might at first seem to him as an exorbitant price for 'typing' work.

And let us not forget the meaning expressed in words. When a customer comes into our office and we talk to him about tract indices, execution, judgments, chain, etc., he might not follow us at all. On this subject a speaker at our state convention in Billings, Montana, had this remark:

> There was a lady who took her little dog out to the same park every day. When she got to the park she would take off the leash and her little dog would run and play and have a great time. One day the lady went to a strange park and after she had taken off the leash the dog started romping thru the park in his usual manner. Fin-

ally he came to a big tree, and the tree said: "Hello, little dog, you are a stranger here, are you not?" The little dog said: "Yes," and the big tree said: "Well, have one on me." "No, thanks," replied the little dog, "I've just had one on the house."

That conversation in any other setting, needless to say, would have an entirely different meaning. Your customer can only understand language that means something to him. If a doctor sat down in a barber's chair and asked for a tonsorialectome, how many barbers would give him — a haircut??

Also a thought taken from Stewart J. Robertson's article on Public Relations:

"The fish it never cackles 'bout
Its million eggs or so.
The hen is quite a different bird,
One egg—and hear her crow.
The fish we spurn, but crown the hen
Which leads me to surmise—
Don't hide your light, just blow your horn
It pays to advertise.

A Golden Smile

Don't overlook the value of a smile. It costs nothing, and takes much less muscular exertion than a frown. When you greet a person with a smile you are saying to him much more convincingly than with words, that you are glad to see him and that you are at his service.

To reduce our Golden Rule philosophy of public relations to an everyday working principle, and also to help that smile along when you have just lost your best stenographer, have a headache, been sued for $10,000 and have just been thrown out of the house by your spouse; try a suggestion by Howard C. Porter, President of the Billings Montana Business College: "Treat every customer as if he or she were the son or daughter of a king."

CHARLES ADAMS, JR.

On July 18th of this year there appeared a cartoon in a great many daily papers across our nation. There was nothing unusual about this cartoon. It told a joke, it was true to life and it poked fun at the real estate profession.

But to me, this cartoon exposed the very heart of the great tragedy of our title profession.

Let me read it to you:

It is entitled "All in a Lifetime."

Purchaser: "In reading over the trust deed record, this property we're buying seems to have changed hands pretty often lately, isn't that a bit unusual?"

Real Estate Agent: "Well, er—yes, after you have finished signing these papers I'll tell you all about it."

The joke is well taken, but I could not laugh for crying.

Tell me, just what is a TRUST DEED RECORD? To me it means a record of deed of trust in the County Clerk's office. But what did it mean to the cartoonist: What did it mean to the millions of people who read it?

It was just a jumble of words that sounded important, and the cartoonist didn't know enough about our business to know what words to use. Why couldn't he call it an ABSTRACT OF TITLE? I will tell you why, it is because he had probably never heard of an abstract of title. That is the only thing he could have been referring to, because no other title evidence shows how often property changes hands.

Why

The cartoonist is Mr. I. Beck, and he is a well educated man, and very successful in his field. Yet he doesn't know enough about real estate transactions to call the title evidence by its right name. He could have called it a CERTIFICATE OF TITLE, A TITLE POLICY, or other evidence of title as used in his state. But the point is that he did not call our product by its name.

Please consider this fact: We have an industry which extends into al-

most every county, borough and parish in the United States. We have a product which is used or should be used by every land owner. Yet the general public does not know the name of that product. That is the problem.

Education

The answer of course is education. It takes a long time to educate the general public. Do you know that a great many people throughout the nation think that land is conveyed by delivery of the old deed to the purchaser? How many hundred years has it been since land was conveyed by delivery of possession of the grant, patent or deed? Some times I think people have a "racial memory." There has been a lot said at this convention about advertising. Title companies spend a lot of money on advertising, and it helps in this particular problem, but it does not solve this problem. This problem is nationwide and need to be solved on a nationwide scale.

We need better public relations and my suggestion for improving these relations is to start with the young people.

The high school principal in my town of Lubbock is an old friend of mine. He owns a farm and his home, and he is our customer. He knows a little about our product.

He tells me that his school, and most high schools in the nation, teach a course known as Junior Business Training. This subject teaches the boys and girls how to fill out checks, how to make out a receipt, how bank clearing houses work, what is a stock corporation, and the kinds of stock.

Why not include a chapter in the textbooks telling how land is conveyed, how the laws of our nation provide for the quick and convenient sale of real estate, how the lawyers of our country advise their clients in such sales. And tell how title evidence is obtained, how a title plant keeps up with land titles. Then tell about title insurance and abstracts of title. This could be told in simple language, and goodness knows this is no more complicated than corporation stock transactions. Every high school boy and girl hopes some day to own a home or a farm or a ranch, and I think they would be interested in this chapter.

We could go to the school book publishers and ask that such a chapter be included in their textbooks, we could spend a little money and have an information booklet published and distributed to the authors of these textbooks, and offer to collaborate with them in writing such a chapter.

Contact Publishers

Those of us who live in areas where these school books are published could have a conference with the publishers. The state associations could contact the proper state agency, and follow through on the use of these books. The local title company could offer cooperation to the school on the day that chapter is studied.

There are those in this convention who are much better qualified than I to suggest a solution to this problem, and this presentation today is for the purpose of bringing out such suggestions and provoking a discussion which may lead to better relations with our customers.

HAROLD F. McLERAN

In order for an abstracter to justify his experience he must render a service. In order to render a service the abstracter must have access to the public records. In the early days of our country when population was sparse there was little need or demand for specialized service such as abstracting. Everyone knew everyone else's business, consequently the public records were not voluminous. As the population increased enterprising persons saw the need for a more thorough searching of the records, and as a result the business of abstracting came into being. Undoubtedly many of the early indexes were compiled by surveyors, who, practicing their trade in a growing country, decided to settle down and become permanently located. It was natural they should prepare indexes and thus offer this specilized service.

Early Views

The expansion of the abstracting system must have been viewed with alarm, because the early court decisions and construing statutes had a tendency to deny to abstracters the right to have access to the records.

"The fear that the continued use of the public records by abstracters would interfere with the duties of the custodian of the records and would impede other members of the public in the examination of the records, and the natural aversion to permitting the public records to be made an agency for private gain, seems to have influenced the courts in taking this position." (American Law Report 1761).

Conflict

It would be interesting to know what prompted many of these early court decisions. Perhaps early lawyers viewed with jealousy this encroachment upon their practice of searching the records for their clients. This would be an understandable reaction. This conflict between lawyers and abstracters still exists today in many parts of the country where lawyers feel they can safely search the records without the aid of indexes. Perhaps, too, as abstracting became more widely used, the public resented having to pay a fee to abstracters for this service since the abstracters were getting their information from the public records.

Service Recognized

"In the later cases, however, evidently as a result of the beneficial services which the abstract and title insurance companies are now recognized as rendering to the public, and in realization of the fact that the fears of the early judges that the records would be monopolized by the abstract companies were largely groundless, the tendency has been to construe the statutes so as to extend the right of inspection and examination of the records to abstracters and insurers of title." (Atlantic Title and Trust Company vs. Tidwell, 173, Georgia, 499). In this Georgia case the action was started by an attorney who for some reason decided to carry on a crusade.

Access to Records

"There would seem to be no question but what an abstracter or insurer of title, acting as agent for an attorney, or a person interested in a certain chain of titles, would have the right to have access to the records for the purpose of ascertaining the title or furnishing an abstract in a particular case." (Bell vs. Commonwealth Title Insurance and Trust Company 189 U.S. 131).

Right to Copy

"There is some conflict, however, in the right to compile a complete set of abstract books for the purpose of setting up a business. Modern legislation in many states has taken care of this situation by conferring on professional abstracters the right to make copies of all public records relating to land titles in a given county, in order to make up sets of abstract books for their own use." (Burton vs. Tweed 78 Michigan 363).

In the absence of statute it would seem that the public officers would have the right to prescribe reasonable rules and regulations for the examination of the records in their offices.

Harmony

It thus becomes a matter of public relations for abstracters in getting along with the court house personnel. Keeping harmonious relations with the court house is far more important than testing out that right in a law suit. Nothing is sure in a law suit. An adverse decision in a suit brought by an abstracter might not only result in limited use of the records but also give the wrong impression to the general public.

Excellent Relations

In compiling this paper I wrote to a dozen or more abstracters in the state of Iowa for their suggestions as to the abstracter relations with the court house. Either I wrote to the wrong abstracters or the ones I wrote to were practicing good court court house relations, because they

all reported that their relations were excellent.

Following are some of their suggestions:

1. Give assistance by helping the officers with some of their duties when occasion warrants, such as looking up the owner of real estate and so forth.

2. Give information and advice when requested and adroitly point out errors when noticed.

3. Maintain a helpful spirit of cooperation. Favors rendered to the officers will be appreciated and reciprocated.

4. Be tidy with the use of court house records. Put the books back in place.

5. In busy times let the court house employees have the right of way with the public.

6. The heads of offices are elected by the voters and might or might not be efficient help. Cultivate their friendship and help shape their policies in the operation of their office.

7. Don't ask special favors unless necessary and be especially careful to keep your word.

8. One experienced abstracter helps the officers when needed and they reciprocate. This particular abstracter must be in Utopia, because he carries the keys to the court house so he can go in nights, Sundays and holidays.

9. Pour on the personality. Make them glad to see you come in to their office, and don't be afraid to tell them when they are doing a good job.

10. A box of candy at Christmas expresses your appreciation for the extra services.

11. One abstracter loaned his office force to the recorder for three days in catching up in recording at a busy time.

12. When taking records from the office be sure to sign the proper receipts and return the records promptly.

13. In winter be judicious in the handling of wraps so as not to have them in the way. Smokers should not leave cigarette butts and ashes around. In the housekeeping part of working in the court house there should be a condition where there is a place for everything and everything is in its place.

14. Be careful to observe the office closing hours so as not to delay any employees from leaving.

15. Do not interfere with or disrupt the work of the county officials.

16. Conduct yourself in a quiet and cheerful manner.

17. Do not make unusual demands for services, and so forth.

18. Arrange with the proper officials for necessary desk space or working area, and also compensation therefor.

19. Court house regulations with the abstracters is a fifty-fifty problem necessitating golden rule conduct by both the officer and the abstracter. An amicable relationship obviously works to the advantage of both.

Thank you.

A GLANCE AT THE FUTURE

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

What is the future of the title business?

Where do we go from here in the 6,600 and more counties in these United States?

It is our pleasure to report today to the Convention of the American Title Association in the capitol of our nation, in the City in which we have spent many, many hours—some pleasurably, some worrysome.

I find myself filled with nostalgistic memories as I let my thoughts go back to the remaining last days of Mr. Hoover's Administration and the early days of the first term of Mr Roosevelt, over twenty years ago when I started contacts with Federal agencies.

Brought back are the days when Mr. Justice Reed, now a distinguished jurist on the Supreme Court, was General Counsel of R.F.C. and later Solicitor General; when Mr. Harry Blair was Assistant Attorney General in the Lands Division.

And it seems but a short time back when Mr. Horace Russell was General Counsel of H.O.L.C., Bill McNeil, known well to all title men of my generation, was its General Manager; when Burt King was in its foreclosure division—and now we find it is the Honorable T. B. King, Loan Guaranty Director of Veterans Administration.

Burton Bovard, now General Counsel of Federal Housing Administration, was just one of the boys in the Legal Division. Jack O'Brien was one of the staff in Justice. Abner Ferguson was Assistant General Counsel of F.H.A. Time passed and with it we saw Mr. Ferguson retiring from service of the Government as Federal Housing Commissioner. We saw Jack O'Brien become General John J. O'Brien, head of the Real Estate Section, Corps of Engineers.

And so with many others, all near and dear to me.

But time moves on, and we must move with time.

Distributed to delegates attending this convention is a list of distinguished guests, being officials of Federal instrumentalities whose activities have to do, in one form or another, with titles to land and thus evidencing of titles. Your and their time and other duties permitting, I hope many—all—our folks will be able to have visits and consultations with these officials.

They are fine men. They are capable, honorable public officials—career men for the most part.

We hear much about scandal in Government — incompetence, favoritism, graft. Maybe it exists. But:

To the Government officials who are our guests at this Convention, I say I am proud to represent a group of title men who are Americans of honor and integrity.

To my title people, I say for more than two decades of time, I have called upon officials of the Federal Government in Washington and elsewhere, including many on our list of guests at this convention.

I have been in close touch with innumerable Federal agencies, beginning back in 1932, 21 years ago. In those years, I have served as a Title Consultant in the Corps of Engineers of the Army, and in the same capacity in the Bureau of Yards and Docks of the Navy. Personally, I was a participant in the task of placing contracts for title work in many cases, ranging from hotel seizures to the title work necessary in that which we later learned were sites for the atom bomb, its production, its testing.

Some 300,000 titles became vested in the United States of America through action by Federal Instrumentalities, with final approval by the Department of Justice, its Lands Division.

Over a million loans were made by H.O.L.C.

The quantity of title work performed in connection with the opera-

tions of R.F.C. was mammoth, all under the direction of Mr. James L. Daugherty, then its General Counsel and now retired. Tying in with it were the vast enterprises and attendant title work of Defense Plant Corporation, handled by Alan B. Brown, its Counsel and now Assistant General Counsel of R.F.C.

And so it was up and down the line of innumerable Federal instrumentalities.

I have said to the Government officials here I am proud to represent the title people of the Nation.

To those same title people, and to the world, I say I am proud it has been my duty and pleasure to have had contacts with scores and scores of officials of the United States Government.

To my title people—and to the world—I say none of these Government men—not a single one—has ever so much as intimated to me that, so to speak, he was "on the take"; that he was interested in a mink coat, or a trip to Florida, or cash.

To you gentlemen in the Federal Service, honorable and competent, fair minded and understanding, possessed of an awareness of the importance of the operations of your Department and yet with a comprehension of the problems which confront the title people, I say I am proud to have known you and to have been privileged to call upon you.

You have been insistent the requirements of Government be met, and yet with the milk of human kindness in your make up.

And today, speaking to the largest gathering of title men and women in the 46 years of history of the American Title Association, I repeat I am proud of you. To you, one and all, I publicly express my deep personal thanks for your acceptance of me and my problems; and your ever-present willingness to cooperate in betterments of methods and procedures to the eventual, the inevitable, improvement of and for all parties in interest.

We salute you all, honorable, loyal, distinguished American patriots!

* * *

Our Market

The Federal Government continues to be the largest single customer of the title profession. As of today, it owns substantially one quarter of the total land area of the United States.

True, we make contacts for the membership at large in Washington, and, travel commitments permitting, occasional calls upon field offices. But no one man could ever hope to cover them all, nor a dozen men.

We recommend you keep before you the desirability of frequent, regular contacts with field offices of Federal instrumentalities, regional, state and district. There are many such and a considerable amount of title work stems from or is caused by the activities of each such field office.

* * *

Our Market

Secondary Lenders

Closely approaching, and in some cases surpassing the United States Government as a customer, we find the life insurance companies.

As of June 30th, 1952, the life insurance companies had invested in mortgage paper:

Farm Mortgages	$ 1,619,000,000.00
Non-Farm Mortgages	18,716,000,000.00
	$20,325,000,000.00

They owned real estate in fee simple to the sum of $1,892,000,000.00.

Any one of ten different life insurance companies has, in its mortgage portfolio, more money invested than the total assets of all the title and abstract companies of the United States.

Mutual Savings Banks
Foundations
Unions
Fraternal Orders
Pension Funds of Corporations

And I would leave you with a reminder that the great mutual savings banks and trust companies and other financial institutions of the East, by legislation of recent enactment, are now authorized to purchase mortgage paper in jurisdictions beyond the state of domicile.

Let me direct your further attention to the vast amounts of money

available to the mortgage market in the great foundations, such as the Ford and Mellon Foundations, and in the fraternal and religious and charitable organizations—and in our unions.

Nor should we overlook the vast sums of money, with much more to come in the future, that might be made available to the mortgage market through investment of pension money of our great corporations. Hundreds of millions of dollars may become available from these sources.

And always to be kept in our mind and knowledge are the Federal discount agencies, such as the Home Loan Bank for the building and loan associations, and Federal National Mortgage Association for our banks and trust companies.

And so, with the turnover of funds, our title business improves.

The wealth of our country is indescribably great. But sometimes it takes a little rooting to channel it, or enough of it, as we would wish. We could individually perhaps do a little more than presently is the case in our co-operative labors with the mortgage broker and the real estate operator and our local financial institutions in persuading capital to come into our respective areas.

* * *

Our Market

Predictions are that our population will increase by about 60 millions, or 40%, by 1975. The growth of population today is about 250,000 per month. Each month, twelve times a year, we add to our population enough yeople to recreate a city the size of Flint, or Dayton.

It is generally figured that, for the next ten years, the needs of the country for new housing will be on an annual basis of 1,000,000 new starts each year. It could be more. America is never satisfied. Unlike static Europe, we are in a constant state of flux.

When T.V. came on the market, we didn't throw away our radios—but we bought T.V.'s. And we'll buy colored television when it is marketed. That's America.

The farm home as well as the city home today differs from the home of 1900 as day differs from night. Did any of you elder statesmen live on a farm? In the winter time? Does it make you cold now to think about those nights? Brrrrrr.

And where are the kerosene lamps, and the pot bellied stove in the living room? Who brings in cord wood now for the big wood stove in the kitchen? Ask a youngster that today, and the answer would be "What stove? Are you kiddin'? We use electricity."

American brains and "know how" and American production have done more than put the nation on wheels. It has put the home, that unit of the economy of the country upon which we of the title fraternity must depend, in just about the same class, almost, one might say, like autos, "a new and better model every year."

Today, we have air conditioning, and radiant heat, and a washing machine, and an electric ironer—or, if we don't have them, we're not content until we get them.

What's in the kitchen? The electric stove, the electric refrigerator, the deep freeze, that is, the small one. (The big one is down in the basement.)

The T.V. set is in the living room. Radios?—they're all over the house. Each of the children has one—"It helps them study better."

Not any longer, or not much longer anyway, will we be willing to get out of the car and raise the garage door. Because now we've got the electric eye—and gosh, are we mad when it fails to work!

Gone to the museum is the washtub which, on Saturday night, became—and in the kitchen of course—the bathtub for the whole family. Who of you can remember going out to the pump in the backyard to "fetch in more water?" The kids of today certainly have it soft.

Chic Sales would have quite a problem today finding a spot in which to soliloquize. Sears Roebuck still put out a catalogue, but this year's model is read under the electrical light floor lamp in the living room; and

Mr. Sears and Mr. Roebuck are also advertising on radio and T.V. now.

What do these things mean to us, to our market?

They mean the difference between profit and loss—they mean constant turn-over of our merchandise; for that's exactly what we experience when we bring an abstract to date, or when we issue a new title policy upon surrender of the old.

* * *

Our Market

For thousands upon thousands of years, man made his living from the top eight inches of the land. He mined the coal that was close to the surface, close enough so that he could reach it from the surface—but not below. That statement may be subject to technical attach; but, in the main, man lived off the top eight inches of the soil.

Today, we have oil, and gold and silver, uranium, cobalt, manganese, copper—all these and a thousand and one other precious ores, all making new wealth and creating new machinery for man from the bowels of the earth.

Take one to illustrate. In our own country, in the past twenty years, we have opened many new oil producing areas in many sections of the country—Michigan, North Dakota, Montana, Mississippi, Illinois, Indiana; and we have extended the producing areas of the more established fields of production of the great Southwest and the Far West; and even in the older fields of production in Pennsylvania and Ohio.

These bring refineries, and cracking plants, and smelters, and railroad cars and lake and ocean-carrying bottoms. They bring factories which need be close to fuel. And all these bring homes—and c h u r c h e s—and schools—and shopping centers—and saloons—and bowling alleys—and a myriad of other units of our commercial life, our playtime, our existence—day and night, month in, month out.

Thus and as a natural consequence, the title business prospers along with the growth of the country. For the research labors of him who establishes the safety of the title to the land is vital to the success of him who discovers the liquid gold beneath the surface of the land.

His investigative skill in assembling, studying and interpreting the various recordings of title are as necessary to the peaceful and unchallenged maintenance of the business enterprises of the new community and of the homes of the owners of these and their workers as is necessary the engineering and constructive skill of him who built the business life of the area.

* * *

Change

Would you wait three weeks for the auto manufacturer to paint the car you wanted? Would you buy one of the old clicher type casings that took the energy of eight men and a horse to remove from the rim?

Is it not then equally in order we think — now — about change — about modernizing the equipment in our office — modernizing and streamlining it from top to bottom, from the front door to the back, modernizing it in every conceivable way, manner, shape and form?

Today on the market, we have the camera for the take-off. We have on the market many other devices of proven usability by title companies. Manufacturers of excellent equipment for our field have displays of their wares at our convention in the South American Room and Foyer No. 3, both on the second floor of the Statler.

Be certain to take time—plenty of time—to see these exhibits. See them in operation. Talk to their salesmen. Ask questions. Study the application of all this equipment to your needs. Talk to other members inquiring what they have done, and plan to do.

Be sure, ladies and gentlemen, to hear the report of the Chairman of our Committee on Title Plants, Mr. C. Perry Liverton, of Philadelphia, and other speakers from his Committee on plant matters. I assure you benefits. And on your return home, if not before, study what you can do to throw out the old and put in the

new—then buy it and put it into operation in your office.

* * *

Our Market

Federal income taxes have had their adverse effects upon the sale of realty—and thus the title business is affected adversely.

Watch for exchanges of property. Under certain circumstances, exchanges can be made without incurring capital gains. It would be well members familiarize themselves with certain of the details on this type of transaction. From our view, it means the title orders. It is suggested the transactions be handled pursuant to the advice of counsel experienced in income tax law.

* * *

Our Market

People

Business Week, an excellent publication for business men, ran an article in which were set up extremely interesting figures. We've used some of them and we are adding a few of our own. For definitely we must consider people as a factor in our business.

Ten years ago, there were 60 million married people in these United States. Today, there are over 75,000,000.

The "easy money" times we have had in the past eleven years resulted in earlier marriages, and more children, and thus a need for more homes, more schools, more stores, factories, and what have you. These mean title work.

Life itself, by reason of the marvelous advances in the field of medicine —and not as socialized medicine, by the way—has extended itself. Today, death from childbirth is rare. Equally rare is death from diseases which formerly took people by the thousands—small pox, diphtheria, scarlet fever and numerous other diseases common to childhood.

Tuberculosis was once responsible for the death of much of our population, notably among our Negroes. Today, it's just about whipped.

Today, we have actually studies being conducted on efficiency in building homes specially for the elderly, homes in which "Go mechanical" is the watchword.

All these conditions and situations and changes make for more title work. Or they can do that if only people are sold the idea of home ownership.

* * *

Our Market

Super Highways—Toll Roads

The so-called "Dream Highway," the Pennsylvania Turnpike, is now finished from the East to the West of that great state. It is a toll road.

The new toll road from Boston to Washington, by-passing the great cities of New York, Philadelphia, and Baltimore, is now in operation.

Ohio is building its extension of the East-West Toll Super-Highway, as are other states, too.

Maryland, with its new Chesapeake Bay Bridge now in operation, connects the southern portion of its state with the New Jersey Turnpike.

These are but a few of the many. They are toll roads. Other states—virtually all states—are studying these. New York plans a 500-mile Thru-way linking New York City and Buffalo, via Albany.

These and secondary highways, and other super-highways, some toll, some free ways, open new vistas in the matter of travel.

But looking at it selfishly, they open up new title work, a tremendous quantity of new title work. By 1956, it is calculated the country will have nearly 2,000 miles of super toll roads. Add these to the secondary road system in contemplation, and we come up probably with thirty to forty thousand miles of new roads, made necessary in part by the dearth of construction of any highways during World War II; made even more necessary by the tremendous increases in traffic in every section of the country.

Then add to all that, all the street widening activity that is taking place in our cities, the new streets that are being created in these same cities.

Then add to all these, the amount of new businesses that will be brought into being on and adjacent to all these new projects.

There is a vast amount of potential title work in the months and years to come in this picture.

* * *

Taxation

Federal Income Taxes

Subject to a lot of things—war (and I mean World War III), a step-up in the Korean War, national domestic emergencies, etc., it seems probable we will get some tax relief when Congress meets in January, 1953. The platform of both great political parties makes that a promise.

It would appear we can proceed in the expectation the excess profits tax will drop from 30% to 15%, and be terminated in 1954.

It would appear there may be a reduction in personal income taxes. probably in 1953, of about 10%.

* * *

Our Market

Our Greatest Market

But our greatest market, ladies and gentlemen, lies not in these cold statistics I have earlier stated, nor in the projects created by the ingenuity of man, or the necessities of the state or city. It does not lie in the great suburban projects, or even greater mammoth toll roads, nor in oil nor uranium.

It never has existed, does not now exist and never will exist because "it's cheaper to own than pay rent," —nor by reason of air conditioning.

The greatest market we may hope to enjoy comes not because the drive is heated, and the garage door opens automatically through the electric eye.

The greatest market we enjoy in the title profession comes, I like to think, with the Blessings of Almighty God. In His infinite wisdom, He seems to have been singularly fond of America and her people. To us, He has given countless blessings—undeserved, of course, but ours is not to inquire the reasons.

Why came our fathers to these shores?

To escape military service under the crown? Yes.

For religious reasons? Of course.

To escape the tyrant and to become free men? Yes, that is true.

But deep in the hearts and souls of men is a desire, inborn and never stilled as long as breath is in the body, to own for himself and his a bit of the land of this universe—a spot of ground upon which he can stand and say to the world, "This is Mine—This is My Castle—This is My Home."

And further he may say, "I have no cares about the cost of this in money and in sweat and toil and sacrifice. Those were but temporary and minor. I have attained my objective. I have a home for me and mine."

The Good Lord put that craving into the hearts of men. But He also gave man a free will to do or not to do, as He saw fit. Man is the only animal thus endowed—a free will,—to obey or refuse to obey His sacred commandments and instruction.

To further the desirable objective man shall live according to the Will of the Lord, men and women consecrate themselves to His Divine Service. They serve in order to bring strength to the weak, to restore the fallen.

Let's bring that lesson home to ourselves: Man is born with an inborn wish he shall have a home. Man can nurture that seed into fruition. He can exercise his free will thus to perform—or he can ignore that urge.

It is in that field of missionary work that we of the title world can do our part.

For we can enrich that soil, now semi-dormant, into a more flourishing plant. Proper, consistent and persistent public relations will do much. Advertising and ever preaching the doctrine "Own Your Own Home" are themes upon which much can always be said.

America today has 51% home ownership, the first time in history a majority of our citizens can claim home ownership. That 51% is poor material for the ravings and rantings of the demagogue in the public square who would tear down America

and her principles, her philosophies, her traditions, her heritage.

The man of family who owns his home is locked to the land, a voluntary disciple, tied to the ideas of stability of Government, of our system of Free Enterprise. He accepts gladly and labors for the God given Bill of Rights and other liberties for which our forefathers fought and died.

Let us then dedicate ourselves to the dual objective of serving God and Manna simultaneously. Let us strengthen our own institution of evidencing of titles by furthering our services and increasing the financial strengths of our companies by new business and by the assumptions of greater responsibilities to the public; —and all this ever in the knowledge that thus we are performing better as Americans, working to foster American principles and ideologies.

But far superior to these, let us perform these steps in the hope we thus shall be earning for ourselves, to the best of our abilities and according to the talents given to us, a place in that eternal home where title is vested without cloud or imperfection forever.

What finer epitaph could I wish for myself than "Here lies a man who was a good American."

NATIONAL HEADQUARTERS REPORTS

JOSEPH H. SMITH

Secretary, American Title Association, Detroit, Michigan

Mr Chairman, honored guests, and ladies and gentlemen of the title profession:

When Jim informed me that I was to make a report to the Association membership, he stated that it should last about five minutes. In giving me this information he said I could use his watch to so time myself. I have had the use of this watch for the last four days, since mine is in the repair shop, and I now find that it runs about twenty minutes fast each day. This should further reduce the time of my remarks.

Staff

To throw a spotlight on your Association office in Detroit, besides Jim and I, we employ four girls to handle the details of our correspondence, the putting together and publishing of the bulletins, the alternate issues of "Title News" on multolith, and the numerous other tasks that are related to an association of this size. We have what I believe is a fine group of girls working for us, and they are just as anxious as both Jim and I to be of service to you.

Many of you have knowledge of the fact that "Title News" now carries a most informative article each month by Jim Sheridan, which might be aptly referred to as the "Kiplinger Letter" of the title profession. It is something which we hope meets with your approval, and I hope you will read it.

Personals

It is also my pleasure to report each month in our publication the article which is entitled "Personals". Most of the information that appears in this column is gathered from state association publications and company periodicals. I shall always welcome any addition data about what our members are doing — whether they have been elected to any civic or service association office, and other bits of information which may be of interest to the profession.

Membership

Many of you will be interested in knowing that the membership of The American Title Association has increased by 142 members, not including those who will be approved for membership at this convention. Through this trade association, prog-

LUNCHEON OF PAST PRESIDENTS

(Left to right) Benj. J. Henley, Charles H. Buck, William Gill, Sr., Thomas G. Morton, E. B. Southworth, Fred P. Condit, Mortimer Smith, McCune Gill, John J. O'Dowd, Porter Bruck, Jack Rattikin, Frank I. Kennedy.

ress is fostered and ournished. The smallest as well as the largest members of the profession work together for their mutual good. I believe that there are others who will be interested in joining with us to better themselves and the public interest. It behooves us to interest those others who are qualified to join the State and National organizations.

Directory

This year, according to the records, we have printed and distributed a total of 15,283 directories, the largest total in our history. It is hoped that this medium of getting our name before the users of title service will be continually increased.

Since beginning with the Association last February, it has been my pleasure to visit with many title people from many parts of the country. I hope that in time I may be afforded the pleasure of meeting all of you personally.

We have received excellent cooperation from many of the state officers, on various subjects, and we hope that all of the members will continue to keep us informed of the affairs in your state so we may have the information available to all who are interested in like or related matters.

Here in the hotel, as you enter the elevators, there is inscribed upon the wall a motto of E. M. Statler that we at your headquarters wish to subscribe to. It goes like this—LIFE IS SERVICE—THE ONE WHO PROGRESSES IS THE ONE WHO GIVES HIS FELLOW BEINGS A LITTLE MORE—A LITTLE BETTER—SERVICE.

We are anxious to be of service to you.

We are all anxious to progress.

DO CALL ON US.

NOMINATING COMMITTEE

MORTIMER SMITH, *Chairman*
Vice President, Oakland Title Insurance & Guaranty Co., Oakland, California

Pursuant to Section 13 of Article VIII of the Constitution of American Title Association the seven last Past-Presidents of said Association in attendance at this 46th Annual Convention thereof have met as a Nominating Committee.

Such seven last Past-Presidents are E. B. Southworth, Thomas G. Morton, A. W. Suelzer, J. J. O'Dowd, Frank I. Kennedy, Earl C. Glasson and Mortimer Smith.

Your Committee unanimously recommends the following listed gentlemen for election to the following listed offices of American Title Association for the ensuing year:

For President ..... Edward T. Dwyer
For Vice President George E. Harbert
For Treasurer ..... William Gill, Sr.
For Chairman Finance Committee ..... Briant H. Wells, Jr.

And for Members of the Board of Governors to Serve for Three-Year Term: John D. Binkley, Ralph H. Foster, Joseph S. Knapp, Jr., V. Hubert Smith, Marvin W. Wallace.

RESOLUTIONS

Report of Committee

A. WM. SUELZER, *Chairman*
President, Kuhne & Company, Inc., Fort Wayne, Ind.

Charles D. Eidson

WHEREAS, Charles D. Eidson, of Harrisonville, Missouri, departed from this life on May 15, 1952; and

WHEREAS, said Charles D. Eidson was during more than thirty years an outstandingly loyal and active member of the American Title Association and of the Missouri Title Association, supporting and serving throughout said time the interests of both said Associations with his wise counsel and his willing and effective effort; and was, in grateful appreciation, often honored by office in both said Associations, including membership on the Board of Governors of said American Title Association; and

WHEREAS, said Charles D. Eidson walked all his days in the light of an abiding faith and trust in his God and in his fellowman; and was endowed with an unusual capacity for sincere and sympathetic friendliness and friendship and a disposition always to give without reserve of himself and of his services wherever they could be helpful, with always a quiet smile, a word of cheer, and a gentle, kindly good humor; and was for these qualities deeply respected and esteemed by everyone; and his passing was, therefore, marked by a deep and compelling sadness by those whose privilege it was to know him and especially by members of both said Associations; and

WHEREAS, it is desired to honor lastingly the memory of said Charles D. Eidson;

NOW, THEREFORE, BE IT RESOLVED, that the American Title Association, in Convention assembled at Washington, in the District of Columbia, by these presents enshrine in the hearts of its members and on its enduring records this expression of its respect for his memory; and

of its gratitude for the gift of his presence among them; and for his services so freely and effectively given; and of its esteem for his high qualities of mind and heart; and of its sincere sorrow at his passing;

AND BE IT FURTHER RESOLVED, that a copy of this resolution attested by the officers of this Association be forwarded to his bereaved widow at Harrisonville, Missouri.

Edward Straehle

WHEREAS, through the sudden death of our late associate, Edward Straehle, of Detroit, Michigan, this Association has lost a beloved and esteemed friend, a leader in the field of land titles, whose wise and kindly help was always available to his fellow titlemen, now therefore,

BE IT RESOLVED, that the members of the American Title Association, in Convention assembled, do hereby express their sorrow over the loss of Mr. Straehle and do extend to Mrs. Straehle and to the other members of his family their profound and sincere sympathy.

BE IT FURTHER RESOLVED, that the Secretary of the Association present a copy of this resolution to the family of Mr. Shraehle.

C. W. Dykins

WHEREAS, C. W. Dykins, of Lewiston, Montana, departed from this life on June 6, 1952; and

WHEREAS, he was during more than thirty years a conspicuously active and loyal member of the American Title Association and of the Montana Title Association, serving throughout said time the interests of both said Associations with his wise counsel and his willing effort; and was often honored by office in both said Associations, including membership on the Board of Directors of said American Title Association; and

WHEREAS, said C. W. Dykins was endowed with a gift of kindly friendliness; and a disposition always to give freely of his services, with a gentle touch of quiet humor; and was for these qualities deeply respected and esteemed by all who knew him, and his passing is, therefore, marked by deep sorrow in both said Associations; and it is desired hereby to honor his memory;

NOW, THEREFORE, BE IT RESOLVED, that the American Title Association, in Convention assembled at Washington, District of Columbia, by these presents inscribe on its records this expression of its respect for his memory and of its sincere sorrow at his passing.

AND BE IT FURTHER RESOLVED, that a copy of this Resolution be attested by the officers of this Association and forwarded to his bereaved family at Lewiston, Montana.

Thank You, Washington

BE IT RESOLVED, that the American Title Association, in convention assembled at Washington, District of Columbia, express herewith to the Host Title Companies of Washington, District of Columbia, and to their several convention committees and their gracious ladies, its deep appreciation and gratitude for their generous hospitality and for their effective planning, arduous effort and most liberal expenditures in producing a convention so outstandingly successful in its provision of the means for comfort, entertainment and serious accomplishment.

AND BE IT FURTHER REVOLVED, that this resolution be inscribed in the minutes of this Convention and that a copy thereof duly attested by the officers of this Association be delivered to Mr. H. Stanley Stine, General Chairman of the Convention.

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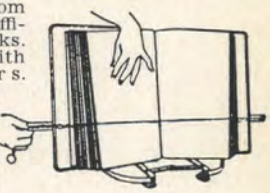

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