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Official Publication of

THE AMERICAN TITLE ASSOCIATION

3608 Guardian Building — Detroit 26, Michigan

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ESCROWS

Rights, Duties and Liabilities of an Escrow Depositary

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I have been asked to give a brief review of the legal rules and principles controlling the rights, duties and liabilities of an escrow depositary, which over the years, have been established by our courts. I shall deal mostly with your duties and liabilities, rather than your rights. In any event, the latter are pretty much delimited and determined by the former.

Introduction

By way of introduction, it may be said that the subject matter has been involved in only a limited number of cases which have reached state or federal courts of final resort. This seems to speak well for escrow depositaries as a group. Either they abide mostly by their agreements, or they avoid adverse publicity by settling controversies out of court. There is a question which has been much litigated in our courts, viz., whether or not a wrongful delivery out of escrow to the grantee, who thereafter conveys to a bona fide purchaser for value, vests title in the latter as against the grantor. This problem, of course, lies outside the scope of my subject. (For the information of this group, however, it may be said that, while the courts as a whole are closely divided on the question, the New Mexico Supreme Court has held that, there being no valid delivery to the grantee under such circumstances, he has no title to pass to the bona fide purchaser. **Mosley v. Magnolia Petroleum Co.,** 45 N.M. 230, 114 P2d 740 (1941).

Defined

We should first define an "escrow," since its distinctive legal character has much to do with the rights and liabilities which flow therefrom. An escrow is a written instrument which, by its terms, embodies a legal obligation, and which is deposited by the grantor, promisor, or obligor, or his agent, with a stranger, or third party, to be kept by the depositary until the performance of a condition or the happening of an event, and then to be delivered over to the grantee, promisee, or obligee. **19 Am. Jur. (Escrows) p. 418.** The term "escrow" originally was applied only to instruments for the conveyance of land. Under modern theories of law, however, it is applied to the deposit of **any** written instrument with a third person. Instruments which have been held the subject of an escrow have included bonds, contracts for the sale of land, contracts for the purchase of goods or personal property, corporate stocks, deeds, contracts for the settlement of will contests, promissory notes and other commercial paper, insurance applications, subscrip-

tion papers, etc. **19 Am. Jur. (Escrows) p. 419.**

Performance

As the definition indicates, there can be no escrow unless the delivery of the instrument by the depositary to grantee or obligee is conditioned upon the performance of some act by the latter ,or upon the happening of some event not ordinarily under the control of any of the parties (such as the death of the grantor). The gist of the escrow agreement is the embodiment of this condition (or conditions); it must be communicated to the depositary; and except and until his agreement to accept the custody of the instrument with knowledge of such condition, the responsibility of the depositary does not attach.

Oral or Written

The condition upon which the instrument is delivered in escrow may be oral or written, or partly oral and partly in writing. However, the escrow depositary is well advised to have it put entirely in writing and signed by the parties in order to avoid unnecessary future arguments as to the terms of the condition. The condition or conditions, may be contained in the instrument which is the subject of the escrow, for example, contract for the sale of land, or it may be in a separate written instrument. The depositary is bound although he has not joined in the execution of such instrument, if he has voluntarily accepted custody of it, or of the instruments referred to in it with knowledge of its terms.

Not Agent for Either

Strictly speaking, the depositary is not the agent of either party to the agreement, nor the agent of both parties. By the better view, he is the trustee of an express trust, with duties to perform for each of the parties, the performance of which duties neither party may forbid without the consent of the other. He acts by virtue of the powers conferred upon him by the escrow agreement, and not as the agent of anyone; and to call him an agent of both parties merely leads to legal confusion. **19 Am. Jur. (Escrows) p. 430.**

Duties of the Depositary

Very briefly, and generally speaking, the duties of the depositary in escrow are two in number, and are, so to say, in the alternative. The first is to deliver the subject matter of the escrow to the grantee or obligee when and if the conditions imposed upon such delivery are performed according to the terms of the escrow agreement. The second is to redeliver the subject matter to the grantor or obligor when and if such conditions are not complied with.

Strict Execution of Terms

In essence, this means that, where a person, firm, or corporation assumes to act as the depositary in escrow, he is absolutely bound by the terms and conditions of the deposit, and is charged with strict execution of the duties voluntarily assumed. He must be guided in his duties by what the contract says. He is not entitled to interpret or construe the agreement other than according to its plain terms. He is not authorized to ignore one part of the agreement because another part of it omits such features as time or date for performance of the condition.

Leading Cases

We teachers of law often find that legal rules and principles are best understood by demonstrating their application to the facts of an actual controversy. With your forebearance, therefore, I propose at this time to summarize the facts and holdings in two leading cases involving the principles just enunciated. In the first case, which arose in New Mexico in territorial days, and went up to the Supreme Court of the United States, the depositary was held liable to respond in damages for breach of duty. In the second case, the Supreme Court of the state of Kansas distinguished the first case on its facts, and discharged the depositary from liability.

The first case is that of **Citizens' Bank v. Davisson,** decided in 1913. (229 US 212, Ann. Cas. 1915A, 272). The facts were that, on August 21, 1908, Mrs. Owens, acting for herself and in behalf of her co-executors of

the estate of her deceased husband, Solon B. Owens, made a written agreement with one Berryman, of Arkadelphia, Arkansas, for the sale to him of a ranch in Chaves County, with the livestock and other personal property thereon, for an agreed price of $80,000. This sum was made payable, $10,000 in cash upon the making of the agreement, $12,000 by assumption of payment of a not-yet-due note held by an eastern insurance company, and the balance in the form of five promissory notes, falling due September 10, 1909, and the four successive years thereafter. Davisson negotiated the sale as broker, and was entitled to a commission of $5,000 if the sale should be consummated. By the terms of the contract for sale, sellers were to furnish buyer, within ten days at Roswell, a complete abstract showing good merchantable title in the sellers; and the buyer was to have another ten days i.e., until September 10, 1908, to examine the abstract. If it showed good title, the transaction was to be closed at Roswell, on or before September 10, by delivery of a warranty deed to the purchaser, he paying the consideration according to the terms of the agreement.

Perfection of Title

The contract further provided, however, that if the title shown by the abstract should not be merchantable, then sellers must perfect it at their own expense **within a reasonable time**; that if they were unable to do so, then the buyer might attempt to perfect it: and that, if he were unable to do so, then the sale should be annulled, and the sellers should return to the buyer his $10,000 down payment. On the other hand, it was provided that, if the sellers could produce a good title, and tendered a warranty deed to the buyer, and he neglected or refused to comply with the contract by accepting the deed and executing the notes called for, then his $10,000 payment should be forfeited to the sellers.

Ater the parties had made and signed this agreement, it, together with the buyer's check, were placed in an envelope, and envelope and contents taken to the Citizens' National Bank of Roswell, to be held by the bank "in escrow." With the consent and approval of all parties, the cashier of the bank endorsed upon the envelope this memorandum, and signed it: "Check enclosed to be held in escrow until September 10, when final settlement is to be made. Deed and abstract to be placed in escrow with this. Abstract to be forwarded to Citizens' Bank & Trust Co., Arkadelphia, Ark., for examination. No money to be paid over until abstract is approved by purchaser's attorneys."

Oral Agreement

Up to September 10, the Owens estate had not been able to make good title to the buyer. It was then orally agreed between the sellers and the buyer that the estate should have thirty or forty days time in which to secure a necessary court order; and in consideration of the extension of time, Berryman, the buyer, was to be put in possession of the property. Davisson, the real estate broker, notified the bank of this supplemental oral agreement, although the parties themselves did not. Sometime between September 10 and September 22, Berryman appeared at the bank and demanded the return of his $10,000 check. This demand was complied with, no officer of the bank having ever opened the envelope theretofore, or having read the contract of sale. On September 22, Berryman repudiated and abandoned the contract, and left New Mexico territory. On October 5, at considerable expense, the sellers procured the court order necessary to perfect title. Thereafter, the sellers demanded of the bank half of the $10,000; and Davisson demanded the other half as his commission. These demands not being complied with, Davisson sued the bank for $5,000, making the sellers parties to the action.

Must Conform to Conditions

The trial court gave judgment for the bank, dismissing the action. This was reversed and remanded, on appeal, by the Supreme Court of the Territory. On retrial, full recovery was allowed Davisson and the sellers;

which judgment, on appeal, was affirmed by the territorial Supreme Court. The bank then took the case to the United States Supreme Court. Here again the judgment against the depositary was affirmed. In essence, the case was decided on this reasoning: the bank, by accepting the papers, was bound to conform strictly to the conditions expressed in the agreement between sellers and buyer; that this agreement was contained in the contract for purchase and sale of the property; that the memorandum written on the envelope was an obviously incomplete statement of the conditions of the escrow, and it was therefore the duty of the bank officials to have opened the envelope and acquainted themselves with the true conditions of the agreement; and that, having failed to do this, the bank could not thereafter plead ignorance as an excuse or justification for its conduct in violating the rights of the sellers, by returning the $10,000 check to the buyer before the sellers had had a reasonable time in which to perfect their title.

Kansas

For comparison, I now summarize the case of **Southern v. Chase State Bank**, decided in 1936. (144 Kan. 472, 61 P2d 1340, 107 ALR 944). What happened here was that plaintiff agreed in writing to purchase a farm for $11,700. He immediately entered into possession, paying $2,000 in cash at the time of the agreement in 1928, assuming two existing mortgages, and giving two new notes, one for $1,000 and the other for $1,200. The first note was payable in 1928, and the second on August 1, 1929. The contract for sale, notes, and deed from seller were placed in escrow with defendant bank, the deed to be delivered to buyer when the notes were both paid. The buyer paid the first note when due, substantial sums on the mortgages and in taxes, and made considerable improvements on the property. Altogether, he invested over $5,000 in the property. Because of the depression, however, he was unable to pay the $1,200 note when due, August 1, 1929. Despite this default, and statements by the buyer to seller and others that he was unable to carry out the contract, and was willing to give up possession, the seller did not insist that he do so. The contract contained no forfeiture provisions. Upon discovery of oil in the vicinity of the land in 1933, the farm became worth $24,000. The buyer then arranged for payment of the note, and tendered the amount thereof to the seller, but the tender was refused. The buyer then sued the seller for specific performance of the contract, and made the depositary bank a party defendant, with prayer that it be required to deliver up the deed in escrow. In that action the buyer won a decree for specific performance of the contract, and for delivery of the deed by the depositary.

Delivery

The buyer then brought a second action against the depositary bank, for damages. based upon the alleged wrongful refusal of defendant to deliver up the deed in escrow in January, 1934, and an alleged material diminution in value of the land between that time and July, 1934, when the bank did deliver up the deed in conformity with the decree of the court. On appeal, the Supreme Court of Kansas held that plaintiff was not entitled to any recovery from the depositary bank, holding, in effect, that the depositary had merely fulfilled its duties by complying strictly with the terms and conditions of the escrow agreement. The court specifically referred to the Davisson case, supra, and said that the decision there was not applicable to the controversy, because "that was where the escrow holder bank officers did not read the agreement but wrote on the envelope what they thought was the agreement, and went by it, and of course they should have been governed by the agreement itself."

Unambiguous

In the case before it, as the Kansas court pointed out, the contract of sale provided: (1) that the deed should be delivered over to the buyer "upon the payment of the two notes," and (2) that the due dates of the two notes were expressed to be, respectively,

September 1, 1928, and August 1, 1929. It was said that this language was clear and unambiguous as to the conditions upon which depositary was to make delivery of the deed. The second note not having been paid when due, and tender of payment not having been made until January, 1934, the depositary not only was entitled to refuse delivery of the deed, but actually was obliged to do so, in the absence of any supplemental agreement between buyer and seller communicated to it by both parties. The rule laid down was: "Where time is of the essence of the contract, the escrow holder has no authority to receive payment after the stipulated time has expired, without the consent of both parties."

Within Reasonable Time

The court did recognize two well-established principles, but said they were not applicable to the facts of the case before it. The first was that time will not be held to be of the essence of a contract unless it clearly appears that such was the intention of the parties. The second was that, where no specified time is fixed for performance of the escrow condition, the necessary implication is that performance may and must be within a reasonable time.

It may seem queer to the layman that the same court should have decreed in the first action that it was the duty of the depositary to deliver up the deed in escrow; and then have held, in the second action, that the grantee was not entitled to damages by reason of the failure of the depositary to make such delivery upon tender by him of the amount of the note. The Kansas court clearly resolved this apparent contradiction in results by pointing out that, while there were equities in the earlier action entitling the buyer to specific performance, these equities could not be considered in an action at law for damages based purely upon the legal obligation of the escrow holder to carry out the escrow agreement as embodied in the contract of sale.

Failure to Comply Strictly

To summarize: the depositary was held liable to respond very substantially in damages in the Davisson case, because it neglected to ascertain all the conditions of the escrow agreement, and to comply strictly therewith, to the injury of the seller. The depositary was held not liable to respond in damages to the buyer in the Southern case, although the buyer was entitled in equity to specific performance of the contract, because it had complied strictly with the clear and unambiguous terms of the agreement. The mistake of the Kansas bank was in not promptly redelivering the deed to the grantor after August 1, 1929, upon failure in performance of the escrow condition by the buyer. It would thereby have conformed to the second of its two general duties, viz., where the terms of the condition upon which the instrument deposited in escrow was to be delivered are not complied with, the depositary is as much bound to withhold delivery from the grantee or obligee and to redeliver the instrument to the depositor, as he is bound to deliver the instrument to the grantee or obligee upon performance of the condition or happening of the event stipulated. The leading case enunciating this principle probably is **Moore v. Trott,** 156 Cal. 353, 104 P. 578, 134 Am. St. Rep. 131 (1909).

Contract or Tort

The question has arisen whether the liability of an escrow depositary lies primarily in tort for negligence or whether it is based upon breach of contract. A few courts have held, in cases of depositaries acting without compensation, that their liability is that of a gratuitous bailee, and thus exists only for a failure to exercise the degree of care required of bailees of that character. (Ann. Cas. 1915A, 278). The great majority of cases dealing with the liability of a depositary for breach of duty do not, however, mention the element of negligence. The reasoning is that the liability of an escrow holder for damages is purely a legal obligation imposed upon him by the terms of the escrow agreement. That is to say, since the depositary is bound by the terms of the deposit, and charged

only with the duties voluntarily assumed by him, liability attaches if, and only if, he improperly parts with the deposit contrary to the conditions connected therewith. LRA 1917E 907; Ann. Cas. 1915A, 277).

Money Damages

Time permits only the briefest consideration of a few typical examples of breach of duty, and the measure of damages applied by the courts. A bank, receiving title papers and deeds in escrow, with definite instructions as to the terms, time, and conditions of delivery thereof to the purchaser, and the exact amount of money to be paid by the purchaser as a condition on delivery, delivered the deeds and other papers in violation of such instructions, and without receiving the money specified. It was held that the bank was liable to the vendor for the full amount of money specified in the instructions. **Keith v. First National Bank,** 36 N.D. 315, 162 N W 691, LRA 1917E 901 (1917).

Non-Performance

A custodian received from a purchaser earnest money, to be forfeited upon nonperformance of an agreement for the sale of land, and repaid the money to the purchaser without the latter having performed the contract. It was held that the custodian was liable to the seller for the amount of such earnest money. **Nathan v. Rehkopf,** 57 Ill. App. 212 (1894).

Enforcement of Conditions

A depositary received a promissory note for delivery to the payee, agreeing to hold it until certain conditions were complied with. He delivered it to the payee without requiring compliance with such conditions, and the note passed into the hands of a holder in due course. It was held that the depositary was liable to the maker for the amount of the note. **Riggs v. Trees,** 120 Ind. 402, 22 N E 254, 5 LRA 696 (1889).

Criminal Responsibility

Such criminal responsibility as exists in the case of an escrow holder revolves about the matter of embezzlement of moneys entrusted to his custody. Frequently, the duties of a depositary may involve the receipt of money. His criminal responsibility for diversion of such funds to his own use is, of course, clear. A more likely pitfall, however, may be the case where the depositary is authorized to deposit such funds in his own account, and disburse them by check, in order to carry out the conditions of the escrow. It may be noted that his power to disburse the funds by his own check does authorize him to deposit the money to his own account, rather than in a special account. It does not, however, establish the relation of debtor and creditor between such depositary and the depositor of the funds so as to relieve the former of the obligation of keeping in his bank account at all times sufficient funds to cover the amount of the deposit. It has therefore been held that failure of the depositary to do this amounts to an embezzlement of such funds. On this point see **Hildebrand v. Beck,** 196 Cal. 141, 236 P 301, 39 ALR 1076 (1925).

This has been, as it could only be, in the brief space allotted to me, a very brief, and I fear, quite inadequate, treatment of the subject of the rights and liabilities of an escrow depositary. The points I would make for your guidance, in brief summary, are these:

First, if you have not already done so, prepare, or have prepared, by your attorney, or some other responsible person, an adequate printed form of "escrow instructions," with plenty of blanks and flexibility, to be signed by the parties for whom you propose to act;

Second, assuming that you have undertaken to act on the basis of a clear and unambiguous written agreement, see to it that you, or your employees, comply strictly with the terms thereof;

Third, that no departure therefrom is made at the behest of either of the escrow parties except upon supplemental written agreement signed by both of them;

Fourth, upon performance of the

condition or conditions of the agreement, make prompt delivery to the grantee, promisee, or obligee; and

Fifth, upon failure in performance of such condition or conditions at the time and place provided, make prompt redelivery of the papers to the grantor, promisor, obligor, or depositor.

REAL ESTATE FINANCING BY LIFE COMPANIES

During 1952 life insurance policyholders' funds made the greatest contribution to the financing of American business and industry of any year in history, the Institute of Life Insurance says.

The year's increase in holdings of securities of this type was $3,166,000,000.

Since the start of the Korean War and the undertaking of the nation's defense program, life insurance funds invested in business and industrial securities have increased by $6,994,000,000 to $30,369,000,000 in 1952.

The net gain in these securities represented 60 per cent of the increase in life insurance assets since the middle of 1950 and by the end of 1952 total holdings of business and industrial securities were 42 percent of total assets.

The two and one-half year financing aid, as measured by the acquisition of business and industrial securities was even greater. The life companies bought $11,703,000,000 of such bonds and stocks during the period.

Total new investments acquired in 1952 by the life companies were $13,926,000,000 and the assets of the more than 700 companies were $73,034,000,000 at the end of 1952, up $5,051,000,000 in the year.

Mortgages accounted for the second largest block of new investments in 1952, adding up to $3,978,000,000.

The year's investments were reported as follows:

Commercial Real Estate of Life Companies Near Billion

The investment of U.S. life insurance companies in commercial and industrial rental properties is now very near the $1,000,000,000 mark and will probably top that in the next few months, according to the Institute of Life Insurance.

With purchases of such properties in the amount of $185,000,000 in 1952, holdings at year-end were $972,000,000. This is almost entirely the development of the years since the end of World War II, made possible by changes in state investment laws during the early '40s.

Total real estate owned by the life companies at the end of 1952 was $1,868,000,000, more than twice the aggregate of such holdings in 1945.

December and 1952 figures on real estate investments of the life companies follow:

	Acquired		Holdings Dec. 31,
	Dec.	Year	'52
	(000,000 Omitted)		
Company Used	$ 5	$ 25	$ 395
Rental Housing	110	119	453
Commercial Rental	23	185	972
Farm	—	—	18
Other	3	5	30
Total	$141	$334	$1,868

—Life Insurance News

	Acquired				Holdings	
	Dec. 1952	Dec. 1951	12 Mos. 1952	12 Mos. 1951	Dec. 31 1952	Dec. 31 1951
			(000,000 Omitted)			
U.S. Government Securities	$ 335	$ 165	$ 4,261	$ 7,065	$10,195	$10,958
Foreign Government Securities	12	7	115	211	1,362	1,479
State, County, Mun. Bonds (U.S.)	10	8	173	179	1,126	1,142
Railroad Bonds (U.S.)	23	41	357	312	3,478	3,256
Public Utility Bonds (U.S.)	72	132	1,061	1,049	11,585	10,859
Industrial & Misc. Bonds (U.S.)	425	438	3,546	2,910	13,130	11,022
Stocks (U.S.) Preferred	13	11	102	131	1,483	1,432
Common	11	11	92	147	693	634
Foreign Corporate Securities	41	18	204	126	904	746
World Bank Bonds	2	—	37	40	131	93
Farm Mortgages: Vet. Admin.	—	—	—	3	26	28
Other	38	35	372	404	1,659	1,492
Non-Farm Mortgages: FHA	86	84	864	1,051	5,690	5,246
Vet. Admin.	31	68	429	1,271	3,349	3,123
Other	235	191	2,313	2,382	10,521	9,402
Total Securities & Mortgages	$1,334	$1,209	$13,926	$17,281	$65,332	$60,912
Farm Real Estate	—	—	—	—	18	24
Other Real Estate	141	59	334	274	1,850	1,593
Policy Loans	39	38	504	532	2,699	2,575
Cash	—	—	—	—	1,115	1,085
Other Assets	—	—	—	—	2,020	1,794
Total Assets	—	—	—	—	$73,034	$67,983

—*Life Insurance News*

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- **Microfilming of Your Office Records.** Office copies of abstracts, rough notes, search sheets of previously issued title policies, tract books.
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- **Preparing Tract Indexes.** Cards, loose leaf binders, typed or tabulating cards prepared for Tract Index systems.
- **Complete or Partial Installation of Geographic Unit File System.** On photocopies or Kard-a-Film.
- **Engineering Office Methods Surveys.** Basic fact-finding, impartial analysis and recommendations.

For full information about our Business Services Departments, write to Room 1773, Management Controls Reference Library, 315 Fourth Avenue, New York 10. Ask for Booklet BSD2.

Remington Rand INC.

PUBLIC RELATIONS AND ADVERTISING

A Panel

(Presented at convention of Washington Land Title Association, and reproduced in "Title News" by permission.)

Members of Panel:

Wm. F. Luhman, Franklin-Benton Title Company, Pasco.

M. G. Budd, Bremerton Title Company, Bremerton.

Charles M. Fogg, Tacoma Title Company, Tacoma.

Kenneth C. Klepser, Puget Sound Title Insurance Company, Seattle.

Arthur Anderson, Moderator, Snohomish County Title Company, Everett.

ARTHUR ANDERSON

Here is a rather startling fact that individual abstract and title offices which do an exceptionally good job in serving their customers, fail to recognize the importance of good public relations in their respective communities. A public relations program which will maintain in the minds of the public a favorable attitude to an office and to the industry represented by such office is as important to the industry as the technical skill and knowledge so essential in our industry.

The process of converting and strengthening the public's attitude toward the abstract and title industry is not a simple or easy one.

Impress the Public

Every phase of our industry should touch and stir public interest. Activies which will make for favorable impressions upon a critical public should be stressed. As an applied institutional activity, public relations is essentially and primarily a matter of shaping and carrying out effective educational and service policies which eventually reflect a favorable public attitude toward the service we render to the public.

It becomes important to express ourselves to others, to impress upon the public the thinking, feeling of the industry in its work to improve the understanding in favor of the public in general.

Good and Lasting

In meeting the daily problems, we do so in part by the way we speak, look and act. Impressions are created in the minds of our customers and the public generally by the way we speak, look and act. Impressions are created, and they may be good or bad. Our purpose should be to create the good and lasting impressions of the true function of our industry to the public. By speech you will register in the minds of people the aims and ambitions and attitudes, ideas and services rendered to the public by the business. You will project the work of this service in the minds of the

public, and it is vital that the result be favorable, otherwise our standing in the community will be jeopardized.

We should ask ourselves, "What do people think about our business?" To some extent, their desires and needs play an important part in their reaction to the service they get from us.

Most people are inclined to believe that which they like or want to believe, rather than what they deduce through a process of reasoning on the strength of evidence. We are for or against persons, programs and propositions without much reason. We usually feel first and reason next, if we reason at all. There is too little reasoning behind stands taken by people.

Formula

There must be a formula which we should follow to accomplish the task of making for good public opinion in our industry and the service we render. The following constitute important phases of a working formula:

(1) Since prejudices, prepossessions, and predilections largely control attention and favorable response, we should line up with attitude.

(2) Since human beings are inclined to be selfish, satisfy self-interest.

(3) Since people are interested in action, then dramatize facts.

(4) Since most people are indulant, but take pride in their good sense, make things plain and reasonable.

(5) Since the average person likes to be on the popular side, charm the imitative instinct.

(6) Since people enjoy the compliment of their suggestive slogans, use impelling language in selling the public on your product.

With frankness, honesty, temperance, sincerity, accuracy and dignity of statement, good results will follow. Doing all of this you will be keeping your public relations and will thus win the support and cooperation of the public, the most important asset in your business.

KENNETH C. KLEPSER

I have always sort of had the idea we should go along with Benjamin Franklin to see whether or not our public relations has been working. We have gone on the idea that we should go ahead and give a few cocktail parties for the real estate board, mortgage bankers, and Savings & Loan people, pass out a few football tickets, or have a box out at the ball park; but when it comes to a show down, like in Olympia, we find that we have very few friends.

I think if it hadn't been for Herb Sieler down there in the Senate a couple of times, we would have been in a lot of trouble.

In the Schools

Not long ago we were approached by one of the teachers at the University, who talked to us about some ideas he had that we could work out. His idea was that we should work through the Universities, and the course they have out there for the students before they get out into the businses world, to let them really familiarize themselves with all branches of the service. I think we should go along on the insurance program, although technically we are not in the insurance business, but I have an idea if we work through this —what they call The Insurance Industries Advisory Committee of the School of Business Administration, that we will find that organization will benefit us in a lot of ways.

Reciprocity

We should get into and work in the small communities and get back to the idea such communities do something for themselves. It occured to me that we probably wouldn't be too far wrong if we gave them some assistance, with their problems, then those people might be a little more inclined to give us some assistance when we have troubles.

WM. F. LUHMAN

The definition of a title plant is nothing more or less than a means of bringing together a mass of information in such a fashion that you can

quickly render service to the customer by giving him the information either by means of ownership or title insurance, whatever he is asking for without any delay.

Show Off the Plant

Actually, I don't believe the customer is particularly interested in the title plant, the kind it is, whether good, bad or indifferent, as long as he can obtain from you the service that he wants to buy and get it quickly. He is interested, however, in the idea that perhaps you perform a certain amount of work in giving him that information. There is one thing I have noticed, and that is that we are hiding our records from the public. The offices are coming to look a little bit more like banks and trust companies. The records and the actual work of examining, the title plant, are hidden in the back room some place and the customer doesn't see it. He only sees a few people out at the counter. I don't think that is good for our public relations. I think it would be much better if they could see the fact that we do have this mass of records, and that we actually do go through a lot of work in order to produce our title policy. I think our customer might not be so quick in calling us "a racket."

Geographic

Concerning our new title plant, we have what is called a geographic plant. It is merely an elaboration of what a lot of you have in the way of an arbitrary account for some of your unplatted areas, only instead of having that arbitrary that you find on the map refer to a particular column in a tract index, that arbitrary number refers to a file. In that file we find what amounts to an abstract of the property. So you are able to go to that file, open it up and there we find all the deeds, contracts, etc., in which you are interested. We find our customer likes that information.

Microfilm

We also make use of a photographic method. We have microfilm and find quite a number of occasions where an attorney will come in and ask to see a film of an instrument or the picture of that instrument, so that he can determine for himself the exact wording of some particular paragraph. It may be a Decree which has been recorded in the Auditor's office, such as happened to me day before yesterday. One of the attorneys came in and wanted to know about a Decree of Appropriation of Water which had taken place back in 1921. We were able to put that on film for him and give him the exact wording.

Teletype

We also use a teletype, because of the fact the main office in Benton County is 40 miles away from the Court House, and find it is of interest to our customers just from the standpoint that they like to see the type of machines we are using.

Aerial Photos

We also use aerial photos and it is of interest to our customers to locate their particular property and see what the remaining lands look like.

Checked Prior to Recording

There is one thing that is not exactly tied up with new plants, which I would like to mention; we have found that our customers appreciate our method of handling what I call the "wild file," in other words a customer comes in with an instrument he wants to record, which is not in connection with any title order. It is actually easy for us to handle that due to the type of plant we have, because before recording the instrument we examine it and post it to our books before we send it up to the Auditor's office; by examining it I don't mean that I examine the title, but I just look at the instrument to see that it is properly signed, sealed and executed. By means of posting it I determine that the description is correct, which we find lots of times is not true due to the fact that there is no title order involved. Most of those instruments are in fulfillment of some deal on which title insurance has been issued. By means of catching the errors in those wild filings before they are placed of record we save ourselves a lot of time, and we gain good will from our customers because

he doesn't have to go to a lot of trouble in getting a corrected instrument later. He doesn't have the expense of a double recording, and he finds out about it at a time it is possible for him to get the correction instrument without a lot of delay.

M. G. BUDD

I want to tell you something about radio advertising on this panel, and what we of the Bremerton Title Company have done in the past year. For two or three years we have been looking for a certain type of program which we felt would fit in with our idea in educating the public regarding the function of a title company, and the necessity of obtaining title protection when dealing with a sale or purchase or real estate.

Get the Right Story

Our local radio station was very cooperative and started searching for some kind of a show they thought would meet our purpose. We finally arrived at a show called "Freedom Is Our Business," starring Robert Montgomery. The show, we felt, generated good public relations. Our job was to educate the public and impress upon them the need for protection which title insurance gives. This was done by three commercials of approximately 2 minutes each, stating in plain, every day language, faults and defects that do arise in title examination. "Freedom Is Our Business" was produced on the air at a cost of $12.25 for a one-half hour program once a week.

Spread of Listeners

We have in Kitsap County over 26,000 radio families. We know from results that we have reached a great percentage of these people, and we can tell from questions that are asked when they call at our office that they have seriously been thinking about title insurance. As many of you know, there are a lot of silly questions asked by home owners.

Timing

I can highly recommend this type of advertising, but there are two things to keep in mind—that is, the type of program, and be sure of the time your program is on the air. We picked a time just before the football games and the basketball games, 7:30-8:00 on Friday night, and I think by using that time we were able to get a large audience. The program should be institutional and the commercial should tell a story in such a way that the listener can understand it.

CHARLES M. FOGG

Art has given me a very interesting subject to talk about—"Adventures in Public Relations." When I pinned Art down as to what he really wanted, he said, "We want to know what you are doing in Pierce County, and sort of act as clean up man for the rest of the panel," so that is about what I have got on hand.

Purpose

The purpose of a public relations program is to develop good will and to educate the public about the product we have. It is obvious to all of you from the speakers who have preceded me that the title insurance companies realize that a public relations program is of paramount importance, and they are now willing to spend considerable money and considerable time to put that across, because they realize that that is important to the industry if it is to succeed and progress.

Create Good Will

The good will part of the public relations program can be developed similar to that used by banks, savings and loan associations, and I would like to use the telephone company as an example. You will find that they encourage their employees to take part in civic affairs. They are all members of service clubs, and they encourage their members to take an active part in them, assume responsibilities, take heads of committees, serve as officers when they are asked to—the idea is, the public apparently is very conscious of the fact that if you take a living out of the community, you are expected to put

something back in, and it is amazing how conscious they are of that. It creates a favorable attitude on the part of the public towards your industry—they naturally feel favorable toward you if you are giving something.

Community Activities

We have members in the Rotary Club, Kiwanis Club—and I'm speaking of all of the title companies in Pierce County—Young Mens Business Club. Through their activities in those organiaztions it leads them into other community activities, such as serving on the Board for the Red Cross, participating in Good Neighbor Fund plans, and that sort of thing. They are also active in Chamber of Commerce work. It is a good contact and we feel it is important to take an interest in civic activities.

Social Clubs

Along with that, we belong to certain social clubs. If a man is going to spend hundreds of dollars with you each month, we don't think it's remiss to take him to lunch occasionally in a place you are proud to take him into.

Country Clubs

We also belong to golf clubs—we realize the importance of the personal contact you make there. People like to deal with their friends, and they associate their business with you.

An equally important part of a public relations program is in the matter of education. Explaining just what we have to the public, the importance of it.

Escrow

Along with title insurance, we are working in escrows, and the feasibility of closing their deals in escrow. We have had a couple of fellows in real estate firms over there in Tacoma who have kind of slipped up a little bit and caused quite a lot of excitement there for awhile, and it gave the escrow business a boost. Sooner or later that is going to be the coming thing in this State.

Trade Associations

We also belong to the Trade Association, Real Estate Board, and Bar Association, and we've given talks before them, and certain real estate firms and mortgage companies, explaining the coverage of our policies, what title insurance is, and the value of escrows.

Novelty Advertising

We've been giving the "give-away" plan a whirl too. We've got these plastic cigarette boxes, magnifying glasses, bank deposit containers — we've tried those, we've even got little clips that fit on the telephone with a pad, and incidently those have been quite successful. We find also that giving away form boxes containing the printed forms of deeds, mortgages, and other instruments, earnest money receipts with your own company name on them, are quite helpful. Also they have a provision in there for the closing of the transaction in escrow, which we find is making some difference.

Direct-by-Mail Material

We have sent out letters to the attorneys, loan associations and other interested people in the mortgage business, explaining full coverage policies, which we think eventually is going to come. We may be anticipating the field a little bit, but sooner or later it is going to be something we are all going to come to, and we are writing those policies.

Quite often incidents come up in connection with your business where you feel you have done a particularly good job of public relations in connection with the product you are selling.

It is our policy over there in Pierce County to consider just about every means of developing a public relations program. On some of it we have missed the boat, but we are determined to try everything. We'll be glad to tell you about our experiences, and in turn would like to know yours.

Herb Sieler

At this point, Herb Sieler spoke briefly regarding the splendid work the State Association has been doing in public relations. He stated in the public relations program, we should not overlook the legislature — show

some interest in the candidates who are running, help with their campaign, and then if some averse legislation should be introduced in the legislature, you have a chance to write to that man that you are opposed to that matter, and he'll give it consideration, because they are more interested on what is going on at home.

A BROKER'S PROBLEM

Getting His Commission

PALMER W. EVERTS
Secretary, New York State Title Association, New York City

Unfortunately, it seems that there are those who would deny the broker his commission and by subterfuge and deception try to avoid paying for services rendered.

An interesting example of this turned up involving the purchase of a hotel for $1,750,000 and a commission earned of $25,475. The complaint alleges that the defendant employed the plaintiff broker to secure all particulars with respect to the income and expenses of the property, the mortgages, and the price. The defendant agreed to pay the broker's commission and to act with respect to the purchase 'solely and only through the plaintiff.'

Later, the defendant and his associates acquired the property through direct dealing with the seller and without the knowledge of the broker. The broker had to sue for his commission. The defendant moved to dismiss the case based on technical objections that the complaint was improperly drawn. The court denied the motion. (Mosberg v. Goldberg N.Y. L.J., Oct. 31, '52, P. 1022c5.)

On the other hand, a broker may believe that he is entitled to a commission but finds that he is unable to convince the court of the fact. Such a case was recently brought up to the court of appeals, the highest court in our state.

On October 16, this year, the Court of Appeals decided a case where a broker brought suit and proved that he had produced a buyer for the sale of the property with whom an oral agreement was reached.

Negotiations were carried on for about a month when the purchaser refused to complete the sale allegedly "because of the delay." No written agreement had been signed. The broker argued that the defendant had prevented the sale by her delay and that he had earned his commission. The court, however, in this court found that the sale failed not because of delay but just because the purchaser changed his mind before signing a written contract. The court said the broker had not earned his commission. (Timmans v. Shumaker, 304, N.Y., 749.)

Holds Suit Excessive

Of course there are bound to be cases where there is an honest difference of opinion as to the validity of a claim for brokers commission. The number of cases brought into court are certainly in excess of what should be necessary. The broker who renders service is as entitled to compensation as is the attorney who handles the legal problems, or the title insurance company which provides complete and permanent title protection for the investor.

A real estate broker may actually earn and collect his commission even when no sale is closed. A recent case involved a situation where the owner misrepresented a single item, the amount of the annual insurance premiums on the property offered for sale.

The broker procured a buyer ready, willing and able, who agreed to all the essential terms for the sale. When he learned that the annual premiums for insurance were $1,600 instead of $700 as had been falsely reported by the seller, he refused to close the deal. The court found that the transaction had failed solely because these figures had been falsely represented by the defendant to the plaintiff.

Invester Evades Payment

The owner further tried to evade payment of the commission on the ground that the broker had agreed that no commissions should be deemed due unless and until the deal was actually and fully closed, the deed delivered and the purchase price paid. The commission agreement drawn by the seller's attorney, also provided that no commission should be due if the title shall not close irrespective of the reasons the purchaser shall fail or refuse to take title, whether or not such failure be due to actual or claimed defect in the seller's title, or any "wrongful" act on the part of the seller except the refusal of the seller to deliver the deed.

The word "wrongful" has been inserted at the request of the broker who sought to correct the contract. The court found that the word "wrongful" was intended to be for the broker's and not the owner's protection, and granted judgment to the broker for his commissions in the sum of $4,357 with costs. (Klein v. Gliver, N.Y.L.J., Sept. 18, 1952, P. 528.)

OIL COUNTRY ABSTRACTING

AL HANSEN

President, Fallon County Abstract Company, Baker, Montana

Baker, in Fallon County, Montana, is one of the more remote spots in the State. The County is located in the southeast corner of Montana, joining North Dakota on the east, and with only Carter County between it and the State of Wyoming on the south. We are closer to the capitals of three other states, namely North Dakota, South Dakota and Wyoming, than to our own, Helena, Montana.

The Fallon County Abstract Company has operated here since the beginning of the County. Before that the Custer Abstract Company and the Security Abstract and Title Company, both of Miles City, carried on business here. First we took over the interests of the Security Abstract Company, and later those of the Custer Abstract Company. While this is one of the smallest counties of the state in population, we have had competition almost constantly since our arrival here in February of 1915. As we all know the amount of business is limited in any county and there have been many times through the years when it would not have been possible for us to stay here and pay our bills without adding other business to that of the abstract company. We have enjoyed these years of experience and have found the abstract work far from monotonous. We have followed with interest the various real estate transactions in the county and have found that there is always something new developing.

Oil

The work has become even more interesting in the last few years due to the increased activity resulting from the oil discoveries. There had been gas activity in the county since 1915 and this had become more extensive during the 20's when pipe lines were extended to serve the Black Hills in South Dakota, several cities in North Dakota and west in Montana to Miles City, but this did not result in much additional abstract business as the gas industry did not spend much money for this service. They have been content to get memos, and only in extremely difficult cases have they been willing to spend much money

for certified abstracts. However, the gas activities have resulted in encumbering the records of this county with leases, agreements, and contracts, and now when the oil companies order abstracts they make large packages, which, of course, are more expensive. During the last year we have had to make abstracts covering the gas field, that is, the area in which the gas wells have been drilled and gas produced, and these abstracts have been an especially large undertaking.

Microfilm

Realizing about two years ago that the abstract business would expand because of the oil activity, we began to prepare for this business. I had been more or less interested in photography for many years, and the year before had built a photostatic machine with which we were able to make photostatic copies of the records or of the instruments as they were recorded. Later, in Minneapolis, I was able to buy two photostatic machines, which were, of course, superior to the one of my own making, so the home-made one was discarded. One of the new photostatic machines was installed in the Court House and the other in our office. From the time these machines were purchased we have been able to make copies of any desired instruments or records very rapidly. Court files were copied at the office and other records at the Court House. A short time after this we bought a 35mm Microfilm camera, and copied all of the county records on microfilm rolls. We found this very profitable, for the time soon came when we were to make use of them. Most of the oil companies were not willing to accept the so-called streamlined abstracts, as they wanted verbatim copies of everything of record. Oil is valuable, and titles, important. Every instrument must be scrutinized to make sure that there are no defects in the title.

Prints

This being so, it now became necessary to make readable copies of the microfilm records. A microfilm enlarger was installed and we proceeded to make 8½"x13" prints from the film. Our indexes are in good order, and with this arrangement we were able to supply complete and exact copies without the necessity of proof reading or corrections. We only had to be sure that all necessary instruments were included and in proper order. In addition court files were placed on microfilm and enlargements made. In these, also, no proof reading was necessary and complete copies were furnished, including pictures of the original signatures. Of course, this took more paper and space, but we gave them what they wanted. It has been necessary during the last six months of 1952 to employ a night crew, and to work in two shifts to make enlargements.

Photographic Abstracts

We are very much interested in photographic abstracts and believe that in time we will make all abstracts this way. We suggest, however, that anyone not knowing anything about this kind of production and desiring to install the necessary equipment contact someone who has had experience, for the equipment is expensive, and the experience costly. There is much that can be avoided by consulting someone who has actually had experience in the installation and use of photographic equipment, not a salesman who is trying to sell equipment.

Preferred Treatment

Our experiences with oil have been very interesting. Some of the "Lease Hounds" have the idea that they are bringing into the territory a large volume of business, and that they should have a special rate and be given an advantage over other business. This is not true, however, of established operators, who ask only for service and are willing to pay the regular price. As a rule we do not find many who want to tell us what to do. They leave it to us to get the work out and the price is not questioned.

Memorandum of Title

Some operators request title "memos" or "certificates." Undoubtedly all abstracters in this area know what these are. We limit our liability on them to the amount of the charge.

Often we are asked to have them made in duplicate and triplicate, and with this business we usually have numerous requests for additional information after the service is rendered. We have found that one of the triplicates is used to go with the lease, the second is to go with the sale of some minerals, and the third is retained by the broker. In this way we receive one fee, but have three clients making requests for added information. Because of this situation we have declined to make more than one copy. In addition, some of the brokers seem to think that Memos should be continued like abstracts. This we also decline to do, and in all cases make a new Memo when this is requested. If time were not limited, I would like to make a lengthy discussion on the subject of title memos, as it has many interesting aspects. However, suffice to say, they were never intended to be used in place of an abstract. Their purpose is to aid the parties in making a deal, to have a preliminary search of the title so that the transaction may be completed and then an abstract made to show the title and the defects cleared.

Mineral and Surface

We have had requests for abstracts to be made in two separate forms. Some want them to cover the minerals only, other desire to have only the surface rights abstracted. To do this the abstracter must pass on the relation of the various instruments to either the minerals or the surface. All abstracters know that to do this is to assume a heavy responsibility. It is amusing to note that in many cases such requests come from lawyers who should know that to pass upon a conveyance, and to say whether it covers either surface or mineral rights is a legal problem. The duty of the abstracter is to abstract the documents and to assemble them so that the examiner may determine for himself just what is covered by each conveyance. Furthermore, every instrument which conveys or affects minerals must also have some relation to the surface, because without the use of some of the surface the owner of the minerals would have no way of entering the lands for the purpose of securing them. This also applies to surface rights. If they are subject to the use of the owner of the minerals there must be some reference to this fact. For this reason we do not make abstracts in which we attempt to separate the mineral and surface rights.

The foregoing is written rather hurriedly for the reason that our time is limited and we have been receiving an unusual amount of work. We hope that our experiences will be of some help to other abstracters, and we will be happy to hear from anyone who desires further comment. We have enjoyed visits from several abstracters and are always glad to chat with someone with whom we can exchange experiences.

As perhaps most of the abstracters know, the writer is a lawyer, and can realize some of the problems of the lawyers, as well as the abstracters. We are also very happy to exchange ideas with the lawyers, to learn of new ideas, new problems, and the solving of the same.

Our Situation

As to this office, at the present time we have eight people working. Four are lawyers and two of the lawyers are also abstracters. We also have one full time abstracter and three other helpers. In addition we have the standby help of two young men who work nights when we become rushed in the making of photostats. We must not forget that there is also the janitor who takes care of the office and empties the waste baskets every day, cleans the sidewalk, and sweeps the floors.

I have resided here and have been steadily engaged in the title business since February 24, 1915. Looking back this does not seem such a long time. I have enjoyed every day of my work, but feel that soon I have done my part and should leave it to the younger generation. Soon I hope to adjust things so that I can do this, and can enjoy my remaining years in a more relaxing manner.

LIBERTY OR SECURITY

MORTON McDONALD
Chairman, Abstracters Section, American Title Association
President, The Abstract Corporation, De Land, Florida

There has been so much spoken and written in the past few years about security that we have practically forgotten the word liberty. Too many supposedly sane thinking people seem to have the idea that security is the same as liberty; or that security necessarily embodies liberty. I think we might have a different view if we stop and consider the meaning of each word. We might review our histories too and learn again what so many peoples through the ages have striven for. Was it liberty or security?

Liberty

The meaning of the word liberty as shown in Webster's Dictionary is the state or fact of being a free person; exemption from subjection to the will of another claiming ownership of the person or services; freedom; opposite to slavery, serfdom, bondage, etc. Freedom from external restraint or compulsion; power to do as one pleases. The dictionary in defining individual liberty says those who are free from external restraint in the exercise of the rights that are considered as without the province of a government to control. Individual liberty under modern constitutional government in general involves freedom of the person in going and coming, equality before the courts, security of private property, freedom of opinion and its expression, and freedom of conscience.

Security

The word security is described as meaning; the condition of being protected or not exposed to danger; safety; freedom from fear, anxiety or care.

Now, I would like for us to think a bit of the meaning of these two words and decide which we wish to have. Or can we have both. Can we have one without the other? It certainly appears that we can have both and we can surely have one without the other. If we cannot have both then shall we strive for liberty or security?

In Biblical Days

Several thousands of years ago a great liberator, Moses, led the children of Israel out of Egypt. In the general sense they were secure. They were being fed, clothed, and housed. It was not what they would like to have had, but yet they had certain securities. They had no liberties. These Israelites did not flee from the Phariohs because they were seeking security, but because they were seeking liberty. They wanted the right of free speech, free worship, free thought. They wanted the privilege of changing from one job to another, the privilege of learning trades, the privileges only a free person could have. They were leaving the security of shelter, food and clothing though it was not the best. They fled to a wilderness so they might be free. And do you remember this ancient story and the promises God had made to them? God had promised them liberty and the freedom of another land. He had not promised them security. Because they had not been promised that security that so many of them hoped for (and so many of us today look for) they wandered in a wilderness for forty years, forty years of hopeless wandering waiting for security, —afraid to accept liberty without a sense of security,—afraid to accept a liberty from which they could build a lasting security. They were putting the emphasis on security rather than liberty and were getting neither. This is probably what Thomas Jefferson meant when he said "I have sworn on the altar of God eternal hostility against all forms of tyranny over the minds of men."

I won't go further with this story for I am sure you remember the out-

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come. They later had both liberty and security when they came to their senses and determined to obtain the liberty they first sought.

Under Roman Rule

Certainly the Christians of two thousand years ago were not seeking security when they were under the Roman rule. They could at least obtain a sense of security by agreeing to the edicts of the Roman Government. To do this they would have been compelled to give up their freedom of thought. They lost most of their liberties of course, but they did not trade their liberty for a false security. Many died that we might have the liberty we have today. The liberty that we treat so lightly.

Came the Pilgrims

When the Pilgrims came to the new world in the Seventeenth Century they were not seeking security. They desired the right, the freedom to worship as they saw fit. They gave up any security they had to settle in a wilderness. A new world, full of dangers. Nothing secure but full of liberty.

For Freedom

After the American colonies began to show signs of growing and prospering, the British Government gradually took away many liberties they had enjoyed. The colonists, our forefathers, were willing to sacrifice any security they had rather than give up their liberties. They fought for freedom, for the privilege of establishing a free nation. Not a nation that could offer any degree of security for sometime to come, but a nation with liberty and freedom. Patrick Henry uttered the famous words, "Give me liberty or give me death." He did not demand security. He felt he could obtain that if he had his liberty. Benjamin Franklin once said, "Those who would give up essential liberty to purchase a little temporary safety deserves neither liberty or safety."

No Price Too Great

Men of that day, Patrick Henry, Benjamin Franklin, George Washington, Thomas Jefferson and many other great patriots were willing to sacrifice their lives if need be that a free nation might be established of liberty loving peoples. Each one of these great men were hoping to create a nation that would allow free enterprise to build the security. They were not interested in a nation that would be a wet nurse for its people.

Present Attitude

Until a few years ago we would fight and die for our liberty, but are we willing to do it now? Daniel Webster said, "God grants liberty only to those who love it enough to defend it." We seem to be too intent on gaining security. The depression of the thirties probably brought on this feeling. We were free, we had no intent on surrendering our freedom but we were insecure and we have been trading much of our freedom, many of our liberties for what is said to be security. How many liberties, or freedoms can you think of affecting directly or indirectly the title industry that have been taken away or seriously limited merely for the sake of purportedly more security? The first example I think of is real estate mortgages. Many thousands of home owners could not meet the payments on their mortgaged homes in the late twenties and early thirties. It had been the custom for many years that mortgage lenders would only lend on term mortgages, mostly payable in three to five years. At the end of this time a new mortgage was made. During the depression years the lenders were afraid and our government stepped in with the HOLC. Millions of people were able to save their homes and justly so, but it put the government in the mortgage business in competition to free enterprise. Was it not possible for free enterprise to solve this problem without running to the government for aid? Remember when we turn to our government for aid we are asking for more security and less liberty. Edmund Burke, the great English statesman about the time of the trouble with the American Colonies said, "The people never give up their liberties but under some delusion."

The Federal Farm Mortgage Corporation and FHA was set up principally because the lenders felt insecure and could not solve their problems without government assistance. We got government insured mortgages, but at the same time we got a lower rate of interest. We were sacrificing our rights to earn a slightly larger rate of interest for a government secured loan. At the same time we were being taxed for these extra services out of the reduced earnings for the privilege of gaining this security. It is a security, certainly, but is it not a vicious cycle of events that leads to such a delusion?

A Necessity Then

I am not criticizing our Government leaders for establishing the HOLC, the FHA, the VA loans, Public Housing, RFC and the like. Everyone of these agencies have rendered an invaluable service; but could not our free enterprise system have done the job without Government aid? If we as business men had analyzed our problems and offered solutions rather than throw up our hands and ask for Government aid we would have been in a much stronger position. Many of these problems should have been analyzed long before we were in serious trouble. It was too late after the storm had struck. During the times of plenty were the times to study the problems that might arise when the lean years came.

Future Planning

How many of us as titlemen have been making plans for more efficient service while business has been good? This is the way a free people should make themselves secure and in doing so we will build a lasting security and also stay free. We cannot coast along with no thought of tomorrow. We must plan our business to be ready to adjust to changing times regardless of what changes might take place. The alert leaders of today will continue to be leaders tomorrow. For instance the abstracter of yesterday who kept alert is the leader in his field today. This does not mean he discontinued making abstracts to write title insurance to become this leader. For in my mind we will continue making abstracts as well as probably sell title insurance also. We are, however, first and last abstracters. He has kept up to date with new methods, modern equipment, a complete plant and the like. He has been following the trend of the times. He, has not expected any government agency to subsidize his abstract business when business was bad. He is keeping his liberties and gaining more security.

Depend on Government?

I am reminded of the fable of the ant and the grasshopper when I think of our demands for old age pensions. Surely, there are those who because of sickness and extreme circumstances have been unable to provide for their old age. They should be assisted, but I will come to that later. But, why should we not learn to so plan our economic status that we can provide a bit for the future? The Social Security Act as it concerns old age pensions is not a bad idea at all. But, have you ever stopped to figure up the amount of money you would have in a savings account at only 2½ percent interest if you deposited regularly the amount you are required to pay in on Social Security? If you did this regularly without being forced to you would have as much for an old age pension as you would under the present plan and would not have been taxed in addition to handle this fund.

Our Brother's Keeper

I mentioned the person who because of extreme circumstances had been unable to provide for the future. We have been taught of old that we were our brothers keeper. We have been taught that we would have the widows and orphans with us. We were also implored to care for them. If we each did our part as good neighbors we would not need the ever increasing government welfare agencies. It costs much more to care for the indigents through our state welfare agencies than it would through

voluntarily doing what we should. It is not because of any dishonest efforts, but because of the organizational setup and the various steps to be taken. We are calling on our government to do the welfare work that we as Christian people have been taught was our responsibility, and at a much greater cost than if we did it voluntarily. Another case of sacrificing our liberties for security.

Rules and Regulations

Many in the title business are clamoring for various legislative acts that will, so it is hoped, prevent others from opening in competition. We would all like to do as much business as possible, but do we want to give up our liberties? When we ask for government regulation in our field we can expect it in fields we do not desire. One of Shakespeare's characters in Macbeth said, "You all know security is mortal's chiefest enemy." Do we want the liberty to expand, the liberty to price our product, within reason, as we see fit, the liberty to plan, dream and build for the future? Do we want the freedom to employ whom we desire, the freedom of giving our employees a chance for advancement when desired? Or, are we willing to trade these liberties for regulations that, yes, will probably give us old age assistance, will give us certain subsidies and will give us many regulations we had never dreamed of.

I recently read a short article from the Greenwood, Miss., Commonwealth. I would like to read it to you for I think it illustrates aptly what I have been trying to say:

A Fable—But How True!

An Indian was haled into court, charged with not paying his income tax. The Red Man asked the judge why he should pay income tax. The judge painstakingly explained that Uncle Sam needed the money so that when he, the Indian, got sick or too old to work or got out of a job, the Great White Father would be able to send him some money to take care of him.

A light of understanding flashed over the Indian's face. "Judge," he said, "that just like my dog and me. He good dog. He hard-working dog. When he work much hard he comes to me, bark, and say, 'Boss, I work much hard, give me nice piece of meat.'

"I take big sharp knife, cut off piece his tail and say, 'You good dog, you work much hard, here nice juicy piece meat for you.' He so dumb, he no know difference. It big laugh—he licked my hand for give him piece of his own tail."

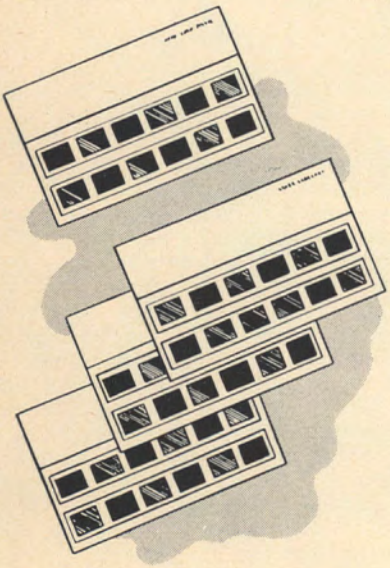
And like the Indian's dog, incredulous as it may seem, many Americans, the while they consume themselves, are licking the hand that does the slicing and passes the slice on to him, in gratitude and supplication for more of the same.

Let's Stay Free

Let's stay free and take our chances as our forefathers did. Let's think and plan together for the future. Let's build our castles in the sky. Some may crash, but some will stand and we will not be calling on someone else to solve our problems.

I am proud to have the privilege of working out my problems in a free nation among liberty loving friends. As long as I am free I will take my chances on security. I am proud of my country and I will give of my best to keep it free for my children and your children so long as I live.

● Above all . . . ECONOMY!



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NEW YORK

TITLE INSURANCE

Protection and Economy

R. A. "DICK" PHILLIPS
Asst. Supt. of Agencies, American-First Trust Co., Oklahoma City, Oklahoma

The examination of a title is the ascertainment of the condition of a particular title and of all things affecting it. In Oklahoma, this is done by an examination of an abstract. Since all abstracts must be made by human labor, human errors occur. The precision and exactness of machinery cannot be expected from the human race.

Human Errors

Title guaranty for one thing guarantees against these human errors, as a matter of fact, a title guaranty guarantees against errors made by the abstracter, errors made by the title attorney, errors made by surveyors, errors made by clerks in the office of the county treasurer, court clerk and county clerk, etc.

Off Record Risks

Errors constitute a large portion of the losses by title companies. If a title guaranty insured only against losses due to errors, it would still be a worthwhile investment. However, title guaranty does more than merely guarantee or insure against errors. Some of the more important items that are covered by title guaranty are: forgery, fraud, deeds executed by persons of unsound mind, deeds executed by minors, misinterpretation of the law, reversed court decisions, defects not shown of record, secret marriages, secret divorces, statutory mechanics' and materialmen's liens, not of record, undisclosed or missing heirs, undiscovered wills, unrecorded easements and many other items.

It is generally assumed that a prudent examiner will discover all the defects of a title. Little is known of the unforseeable hazards that exist in nearly every title. These unforseeable defects cannot be revealed by an examination of the title or the record.

Hazards

To illustrate a few of the hazards which a title guaranty protects, let us discuss some actual cases.

Minors

A piece of property was being sold through guardianship sale. There was an Indian minor involved, who owned a 1/3rd interest. After the sale was completed and the deed delivered to purchaser at sale, guaranty of title was issued. Several years later the Indian minor filed a suit to set aside the deed, claiming he was never paid the full purchase price, at least the full portion due him. The facts were that the guardian was a fugitive from justice, he had persuaded the minor to sign a receipt for a portion of his consideration, telling him that if he did not sign the receipt he would get nothing. This case was settled and cost the title company several thousand dollars in obtaining a deed from the Indian, who by that time, had reached the age of majority.

Fraud

Another case involved a young Oklahoman, who wanted a new shiny "Buick eight." His name happened to be the same as his father and his wife's name was the same as his mother's. While his parents were in California, the young man and his wife mortgaged the parents property. Unfortunately, the mortgage company in this case did not obtain a mortgage guaranty. The court cancelled the mortgage, and $10,000 was lost.

Reservations

A case involved an Oklahoma man, who in 1925, bought what he thought was a full 10 acres of land, overlooking the fact that 15 feet of this property had been reserved in a deed by a previous record owner. The oversight was revealed many years later

when the owner was about to sell an interest in his property. In acquiring the tract, however, the owner had secured a guaranteed title, and therefore he received full remuneration for his loss.

In some localities, attorneys advo cate title guaranty. It gives their client the utmost protection, does not expose them to title risk and gives them a feeling of security.

No Annual Premium

Premiums on fire and automobile insurance must be paid periodically. Over the years, their total cost makes a staggering figure. A title guaranty carries only one premium and the guaranty, so to speak, is perpetual. Even after a beneficiary under a guaranty sells his land, he retains the guaranty to back up his warranty of title.

Sometimes losses paid by title companies appear small to the beneficiary, but the actual time spent either making a settlement or defending a law suit will make the actual loss to the title company many times greater than the apparent loss.

Some attacks are less costly to defend than others, but in those cases where expense is kept to a minimum, it will nearly always be substantially larger than the fee for title guaranty.

A few illustrations herein, of what may happen to a title, were picked at random from a quite sizeable list. It is impossible to illustrate the many other actual losses, or claims, which necessitate the expenditure of money and time.

In concluding, we must admit, that title guaranty is economical, complete and, as a matter of fact, the only full title protection.

(Note: In the above "Title Guaranty" and "Title Insurance" are synonimous.)

CODE OF ETHICS

Report of Committee on Ethics and Practices

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

MID-WINTER CONFERENCE, AMERICAN TITLE ASSOCIATION
ST. LOUIS, MISSOURI, FEBRUARY 27-28, 1953

The American Title Association:

Pursuant to Resolution of your Board adopted at the 1952 Convention, Washington, D.C., President Dwyer appointed a Committee on Ethics and Practices of The American Title Association composed of the following:

Mr. George E. Harbert, Mr. Ben J. Drymon, Mr. William H. Deatly, Mr. O. M. Young, and Mr. Mortimer Smith, Chairman;

To formulate a Revised Code of Ethics to govern the conduct and practices of the Members of the Association, which Revised Code of Ethics is to contain such provisions as are customary in articles of this type so as to help the Membership to maintain the highest possible standards in the conduct of the title industry; and to recommend standards be set up to carry out the provisions of such code;

And to submit to the Board of Governors for its consideration, a tentative draft of the Revised Code of Ethics at the 1953 Mid-winter Conference of the Association.

Said Committee under such instructions respectfully submits the following report.

We submit for your consideration a draft of a Code of Ethics.

CODE OF ETHICS

The American Title Association

The foundation of the American heritage of personal Freedom is the widely allocated ownership and use of the land. Upon the furtherance of that heritage, depends the survival and growth of free institutions and of our civilization. The Land Title Profession is the instrumentality through which titles to land reach their highest accuracy and attain the widest distribution.

The Title Profession having become such a vital and integral part of our Country's economy, there are imposed on each member of the American Title Association obligations above and beyond those customarily required of participants in ordinary commercial pursuits and a code of ethics higher and purer than ordinarily considered acceptable in the market-place, to the fulfillment of which the Title Profession is dedicated. Each member of the American Title Association shall be ever zealous to maintain and improve the quality of service in his chosen calling, and shall assume personal responsibility for maintaining the highest possible standards of business practices, and to those purposes shall pledge observance and furtherance of the letter and spirit of the following Code of Ethics.

First

Governed by the laws, customs and usages of the respective Communities they serve, and with the realization that ready transferability results from accuracy and perfection of titles, members shall issue abstracts of title or policies of title insurance only after a complete and thorough investigation, founded on adequate records and learned examination thereof, and shall otherwise so conduct their business that the needs of their customers shall be of paramount importance.

Second

Every member shall obtain and justifiably hold a reputation for honesty and integrity, always standing spon-

sor for his work intellectually and financially.

Third

Ever striving to serve the owners of interests in real estate, members shall endeavor (a) to facilitate transfers of title, by elimination of delays and unnecessary exceptions and (b) to make their services available in a manner which will encourage transferability of title, provide adequately for obligations which they assume in connection therewith and afford a fair return on the value of services rendered and capital employed.

Fourth

Members shall support legislation throughout the country which is in the public interest and will unburden real estate from unnecessary restrictions and restraints on alienation.

Fifth

Members shall not engage in any practices detrimental to the public interest or to the continuing stability of the Title Profession.

Sixth

Members shall support the organization and development of affiliated state title associations founded and maintained upon the Principles set forth in this Code of Ethics.

Seventh

Any matter of an alleged violation of the principles set forth in this Code of Ethics may be submitted to the Grievance Committee of the American Title Association.

Respectfully submitted

Dated February 27, 1953.

The above was approved by the Board of Governors and Chairman Smith instructed to present the same to the General Conference on February 28th, 1953.

On motion, duly seconded and carried unanimously, the Code was given approval by delegates attending the conference.

The Revised Code of Ethics will be presented at the annual Convention in Los Angeles in September for final action.

REPORT OF COMMITTEE ON CONSTITUTION AND BY-LAWS

To Mid-Winter Conference, American Title Association, St. Louis, Missouri
February 27th, 1953

JOHN J. O'DOWD, *Chairman*
President, Tucson Title Insurance Company, Tucson, Arizona

Chairman O'Dowd presented certain proposals to amend the Constitution of the Association, as stated herebelow, these having been approved, on February 26th, 1953, by the Board of Governors and the Chairman instructed by said Board to present the same to the Mid-Winter Conference.

AMENDMENTS TO CONSTITUTION

Article III—Section 1, First Paragraph. To read as follows:

"The following persons, who shall have subscribed to the Code of Ethics of this Association and who shall have agreed to be governed at all times by its provisions, shall be eligible to active membership in this Association:

(Note: The words ", who shall have subscribed to the Code of Ethics of this Association and who shall have agreed to be governed at all times by its provisions," are to be added within Article III, Section 1, First Paragraph)

The following two amendments are new:

To Article VII—Section 3. Add paragraph:

At the same time the President shall appoint a Grievance Committee of not more than 5 members, one of which he shall designate as Chairman. The term of office of such committee shall be contemporaneous with that of the appointing president.

To Article VIII—Duties of officers and committees add Section 15 to read as follows:

Section 15. The Grievance Committee is charged with the duty and responsibility of receiving and investigating complaints of alleged member violations of the principles of the Code of Ethics. A complaint may be filed by another member or by any aggrieved party. The complained-of member shall be given notice of the complaint and full opportunity to refute the charges against him. The Chairman shall report the Committee's findings, with its recommendation to the Board of Governors, at its next meeting. The decision of the Board of Governors shall be final and binding upon the parties subject only to appeal therefrom to the next following annual convention meeting of the membership. No censure or expulsion shall be effective except upon a vote by two-thirds of the full membership of the Board and only after reasonable notice to the complained-of member and granting him the right to appear in person and present evidence in his defense.

Upon motion, duly seconded, the above were approved by the delegates attending the Mid-winter conference of 1953.

The proposed amendments to our Constitution will be presented for final action at the 1953 convention of the Association in Los Angeles in September.

RESOLUTION, MID-WINTER CONFERENCE, 1953

RESOLUTION

Adopted at the Mid-Winter Conference
American Title Association
St. Louis, Mo., February 28, 1953

WHEREAS, the Executive Committee and other national officers of the American Title Association have had under consideration the matter of title guaranty/insurance companies appointing, as agents of such guaranty/insurance companies and with power to issue title guaranty or title insurance policies, those engaged in the business of making or procuring the making of mortgage loans, said mortgage loans being retained in some instances; and in other instances made or procured for the purpose of resale, in which event the title guaranty or insurance policy, insuring validity of the lien of such mortgage and issued by such agent will be transferred to the purchaser of such mortgage, and

WHEREAS, it is obvious that a conflict of interest in any selfserving performance as described may develop, in that the aforesaid agent, in a desire to initiate mortgage business, may be influenced as to the soundness of the title insured or guaranteed and

WHEREAS, it is equally obvious that agents who issue policies of title guaranty/title insurance should have no pecuniary interest in the transaction nor be beholden either to the lender or borrower, and

WHEREAS, the possibility of such conflict is neither necessary nor desirable and may prejudice purchasers of the aforesaid mortgages against the use of title guaranty/insurance.

NOW THEREFORE, BE IT RESOLVED that we, the delegates attending the American Title Association Mid-Winter conference in St. Louis this 28th day of February, 1953, do condemn in principle such practices and appointments, as being detrimental to the best interests and protection of the public, including the beneficiaries of title guaranty/insurance policies, and also detrimental to the institution of title insurance; and said delegates solicit members voluntarily to abstain from such appointments.

The appointment of any person as such agent who is owner, partner or employee of a company engaged in the making of mortgage loans as aforesaid shall be construed as being embraced within the objectionable practices hereinabove set forth.

An appointment of such agent, or of any person, firm or corporation engaged in the business of initiating mortgage loans for the account of another person, regardless of whether such mortgages run in favor of such agent or in favor of such ultimate investor, shall be construed as embraced within the objectionable practice hereinabove set forth.

It is not contemplated within the purview of this resolution that its terms of condemnation apply to any person, firm or corporation actively and regularly engaged in the abstract and title business.

SHORT FORMS FOR CONVEYANCING IN CALIFORNIA

BENJAMIN J. HENLEY
President, California Pacific Title Insurance Company, San Francisco

This discussion of the practice of using short forms for conveyancing in California at this meeting is the result of a request of Charley Swezey that the subject be placed on the program.

To me it is ironical that a New York lawyer having to do with real estate titles should be looking to California to provide for the great state of New York patterns and precedents for the establishment of a system of short forms for conveyancing. I say this because a substantial part of the law of California, which established our present method of real estate transfers and encumbrances, with the exception of that relating to the deed of trust, came from the so-called Field Civil Code which was prepared between 1846 and 1865 for adoption by the legislature of New York.

Some Background

The constitution adopted in New York in 1846 provided for the appointment of two code commissions. One was given the duty to reduce to a written and systematic code the whole body of the law of the State or so much as the Commissioners deemed practicable and expedient and to report back to the legislature. The other was to codify the rules of practice, pleadings, forms and proceedings. The commissions were appointed shortly after the adoption of the constitution. The first report of the procedure commission embodied a portion of a proposed Code of Civil Procedure and this was adopted in 1848. The commission continued to operate until its final report at the end of 1849 and in 1851 the procedure code was amended in conformity with the suggestions of the commission.

Progress

The work on the substantive code proceeded slowly until 1850, at which time the commission was abolished. It was revived in 1857 and made several reports between that time and 1865 when its work on three codes, penal, political and civil was completed.

Never Adopted

The Civil Code never was enacted into law in New York. Attempts were made to secure its adoption as late as 1884. It was enacted by the Assembly four times and by the Senate and Assembly twice, but in the latter two cases was vetoed by the Governor. One Governor gave as his reason for the veto the fact that the Code was unscientific in structure and inaccurate as a presentation of existing law. It would seem that in the roaring fifties of the last century New York was somewhat less liberal legislation wise than was the new State of California.

The Field Code

The name of the Field Code derives from David Dudley Field who appears to have been the primary advocate for the adoption of codes, both substantive and procedural, so, although the State of New York had full opportunity to place itself on the side of simplicity in conveying, it has considered the subject for many years and has continued its adherence to ancient procedures.

Others Act

Between 1863 and 1872, five states, California, Georgia, North Dakota, South Dakota and Montana adopted a Civil Code using the New York Field Code as a pattern.

The legislature of California enacted its Civil Code in 1872. In doing so it yielded to the influence of David Field and it recognized the desirability of simplicity in the mechanics for the transfer and encumbrance of property, both real and personal. Many sections were taken from the Field Code. It contained comprehensive provisions defining various interests in property, real and personal, which were to be recognized under California law, the method by which such interests could be transferred and encumbered, and the legal effect of terms to be used in transfers and of the acts of persons in dealing with property.

To Simplify

At the same session of the legislature, a Code of Civil Procedure was adopted which likewise contained many provisions having to do with the ownership and transfer of real and personal property. Many of the sections then adopted remain substantially unchanged to this time. They make the use of short, direct forms of deeds and real estate encumbrances practicable and useful in California.

Included in the Civil Code were forms of transfers and mortgages as well as provisions defining the legal effect of such instruments.

Unchanged

Section 1092 enacted in 1872 and remaining unchanged to this date provides:

"A grant of an estate in real property may be made in substance as follows:

"I, A. B., grant to C. D. all that real property situated in (insert name of county) County, State of California, bounded (or described) as follows: (here insert description or if the land sought to be conveyed has a descriptive name it may be described by the name, as for instance, 'the Norris Ranch')"

While this form of deed has general usage in California the description of the property by a "descriptive name" such as the "the Norris Ranch" as suggested in the code section is not recommended. Such a description would not be insured by California title companies as creating a good record title.

Effective Transfer

Instead of making it necessary to rely upon scriveners and conveyancers to express in their parchments all of the provisions necessary to create the estate to be granted, and leaving it to the courts without legislative guides to determine the in-

tent of the parties to conveyances, the legislature by substantive law and rules of evidence decreed that by using specific simple language property rights, with all of the appurtenances and incidents, could be effectively transferred and encumbered. For instance, the Civil Code, among other things, provides that:

"Words of inheritance or succession are not requisite to transfer a fee in real property."

"A transfer of real property passes all easements attached thereto."

"A fee simple title is presumed to be intended to pass by a grant of real property unless it appears from the grant that the lesser estate was intended."

"Where a person purports by proper instrument to grant real property in fee simple, and subsequently acquires any title, or claim of title thereto, the same passes by operation of law to the grantee, or his successor."

Implied Covenants

"From the use of the word 'grant' in any conveyance by which an estate of inheritance or fee simple is to be passed, the following covenants, and none other, on the part of the grantor for himself and his heirs to the grantee, his heirs, and assigns, are implied, unless restrained by express terms contained in such conveyance:

"1. That previous to the time of execution of such conveyance, the grantor has not conveyed the same estate, or any right, title, or interest therein, to any person other than the grantee:

"2. That such estate is at the time of the execution of such conveyance free from encumbrances done, made, or suffered by the grantor, or any person claiming under him.

"Such covenants may be sued upon in the same manner as if they had been expressly inserted in the conveyance."

Definitions

The Code of Civil Procedure adopted by the 1872 legislature indicates the same solicitude for the protection of the interests of the citizens of the youthful commonwealth in matters of judicial procedure as did the Civil Code in other matters. The courts were provided with definitions of terms, some of which might seem unnecessary unless it be that there was some doubt about the extent of the learning of the members of the legal profession. For example, so that there might be no confusion, terms such as the word "evidence" are defined. The Code says that "judicial evidence is the means sanctioned by law of ascertaining in a judicial proceeding the truth respecting a fact." A presumption is stated to be "a deduction which the law expressly directs to be made from particular facts." Certain presumptions were defined as being conclusive, and others are held to be satisfactory if uncontradicted. These are denominated as disputable presumptions which may be controverted by other evidence.

Presumptions

Among the disputable presumptions Number 39 of Section 1963 of the Code of Civil Procedure states that it is presumed "that there was a good and sufficient consideration for a written contract." Therefore, the statutory California short form of grant deed contains no recital of consideration. Such a recital is made unnecessary by the disputable presumption of consideration.

To Mortgage

As adopted in 1872 section 2948 of the Civil Code provided that a mortgage of real property might be made in substantially the following form:

"This mortgage, made the ..... day of ..... in the year ..... by A.B. of ..... mortgagor, to C.D. of ..... mortgagee, Witnesseth:

"That the mortgagor mortgages to the mortgagee (here describe property) as security for the payment to him of $..... on (or before) the ..... day of ....., in the ..... with interest thereon (or as security for the payment of an obligation describing it, etc.)"

Other Methods

While this form of mortgage will undoubtedly commend itself to abstractors and other title people, I am sure that it would not satisfy the requirements of any mortgage lender and probably would not be acceptable to Charley Swezey in spite of his predilection for short forms of conveyances. I feel safe in saying that an examination of the public records of all the counties of the State of California would disclose no mortgage in such simple terms. As a matter of fact, few mortgages are used in California today. The promissory note secured by a deed of trust is now used almost exclusively as the evidence of debt and the security instrument for real estate loans.

Deeds of Trust

This type of real estate loan security apparently did not occur to David Dudley Field for there are no provisions in the 1872 codes of California relating to deeds of trust. From his compilation, however. Section 2924 was included in the California Civil Code of 1872 providing that:

"Every transfer of an interest in property, other than in trust, made only as security for the performance of another act, is to be deemed to be a mortgage, except when in the case of personal property it is accompanied by an actual change of possession, in which case it is to be deemed a pledge."

Growing Popularity

Until 1917 Section 2924 remained substantially unchanged and there were no provisions in the California codes regulating the use or foreclosure of the deed of trust for ordinary real estate loans, although by that time mortgages with power of sale and deeds of trust were coming into common usage in place of ordinary mortgages.

The inclusion of a power of sale in a mortgage had stautory sanction in another section of the Civil Code based on Field's draft which provided that "a power of sale may be conferred by a mortgage upon the mortgagee or other person, to be exercised after a breach of the obligation for which the mortgage is a security."

Overtaken

Gradually the use of the deed of trust superceded the mortgage because foreclosure did not require a judicial proceeding and there was no right of redemption after sale as existed after a judicial sale under a mortgage foreclosure decree. While many mortgages contained powers of sale such powers were frequently not exercised when foreclosure was necessary. Resort was frequently made to the courts probably because a sale by the mortgagee placed the mortgagee in a dual capacity which was objectionable particularly to a financial institution mortgagee.

Recognition

The legislature of 1917 recognizing the increasing use of the deed of trust and the informality with which sales were conducted by mortgagees under powers of sale in mortgages and by trustees under deeds of trust, amended section 2924 so as to make it nonrecognizable by Mr. Field by prohibiting the exercise of a power of sale contained in a mortgage or in a transfer in trust to secure the performance of an obligation until there had been recorded in the office of the Recorder of a notice that a breach had occurred in the performance of a secured obligation and of the election of the mortgagee or trustee to sell property to satisfy the obligation, and there should elapse three months following such recording. The amended Section also required that after the three months had expired notice of the sale should be given as required for sales of real estate under execution. No right of redemption from a foreclosure sale by a mortgagee or trustee under power of sale then existed and none was provided for in the 1917 amendment. While other restrictive legislation relative to sales under deeds of trust has been enacted since 1917, the provisions of Section 2924 of the Civil Code noted above govern most sales and are substantially unchanged from their original terms. There is still no right of redemption after a trust deed foreclosure sale.

Increased Use

Even the mortgage with power of sale has now been almost completely superceded by the deed of trust and the business of acting as trustee under deeds of trust has developed substantial volume with bank Trust Departments and title companies. While foreclosures have not been numerous in recent years, reconveyances are constantly called for requiring frequent attention by any trustee who has been designated as trustee in any large number of deeds of trust.

"Fictitious" Mortgage

In 1935 Federal Farm Credit groups sponsored a movement to reduce recording charges for crop loan mortgages in California. The device used was to provide by law that any person could record in the office of a county recorder a so-called "fictitious" mortgage of personal property, and thereafter could include in any actual mortgage of personal property or crops any of the provisions of such fictitious recorded mortgage for any and all purposes by reference therein to such provisions without setting forth the same in full. The law expressly provides that the recording of any mortgage containing such provisions of the "fictitious" mortgage by reference shall operate as constructive notice of the whole thereof including the terms referred to with like affect as though such provisions were set forth in full in the actual mortgage.

Reference Purposes

In 1947 the Federal Land Bank of Berkeley and the California Farm Bureau sponsored, and there were enacted similar provisions providing that "fictitious" mortgages and deeds of trust of real property might be recorded and used for reference purposes in actual mortgages or deeds of trust. The provisions of Section 2952 of the Civil Code affecting real estate deeds of trust or mortgages are substantially the same as those of Section 2963 relating to mortgages of personal property previously referred to.

The Pattern

It is interesting to note that without the formality of express legal approval, which was considered unnecessary, the Lawyers Title Guaranty Company of Los Angeles, now a branch of Title Insurance and Trust Company, of which Mr. Fred A. Ballin, Jr., was President, inaugurated the use of a deed of trust form which provided the pattern for the short form of real estate deed of trust now in use in California where the "fictitious" deed of trust procedure is followed. The only substantial difference in Mr. Ballin's procedure and that now followed was that his short form deed of trust instead of referring to a recorded "fictitious" deed of trust, referred to the terms and conditions of an actual deed of trust appearing in the public records and by reference included the terms of that instrument in the short form securing a different loan.

General Use

Following the adoption by our legislature of the provisions for the recording of fictitious deeds of trust, financial institutions including title companies, recorded such deeds of trust and printed for their customers use short forms which referred to and adopted the terms of such "fictitious" instruments. It is the general practice of title companies either to print on the back of the short form itself or on a sheet attached to it so perforated that it can be readily removed, all of the terms of the recorded deed of trust to which reference is made and the terms of which are incorporated in the actual deed of trust.

"Do Not Record"

When the procedure of printing the terms of the recorded deed of trust on the short form was inaugurated some county recorders insisted that they were required by law to record the entire instrument and charge therefore. notwithstanding the fact that a portion of the instrument was designated as not to be recorded. As a result, the law was amended to provide that whenever a document or paper was presented for recordation upon which there is typed or printed a mortgage or deed of trust which incorporates therein provisions of another instrument recorded in the of-

fice of the county recorder and a copy of such provisions is printed on the mortgage or deed of trust under a caption "Do not record" that the recorder shall not record such matter as may be indicated by such caption.

By Reference

A survey indicates that the procedure of recording a "fictitious" deed of trust and referring thereto for the actual teams of an actual deed of trust is not generally used by financial institutions in the making of their own loans. Most of the banks, building and loan associations, insurance companies and mortgage companies operating in the state still use their individual long forms of deed of trust where they are lending the money themselves. However, many banks where they act as trustee for clients who are lending money, use the short form of deed of trust. For instance, the Bank of America which has branches in every county in California, has recorded the same form of "fictitious" deed of trust in almost every county and its short form which it provides for its customers use refers to the recording data for each of those counties. The same practice is followed by some other banks in the state.

Short Form

Real estate brokers and individuals who are ordinarily alert to the costs of closing sales or loans generally encourage the use of the short form and a large number of them are used in all parts of the State for transactions of individuals.

The failure of financial institutions to use the form, I believe, can be charged partly to inertia and partly to the fear that in the event of any considerable number of foreclosures substantial unfavorable criticism can come to them because of their failure to have set out in the signed instrument all of the obligation of their borrower whose property is made the security for the indebtedness.

Few Objections

It is apparent that the objections which can be urged to the use of the short form of deed of trust do not exist as to the California form of grant deed. The practice of requiring the grantor of real property to convey by general warranty deed has never prevailed in California. In some areas the use of a so-called "grant, bargain and sale deed" was followed but the legal effect of that deed under California law is identical to that of the grant deed and the use of the extra words add nothing to the legal effect of the instrument. The use of the California statutory form is now very general throughout the State and is approved without question or inquiry.

In Conclusion

It is unfortunate that it has taken New York so long to reconsider the program promulgated by David Dudley Field 100 years ago. It is possible if Mr. Field had received the support of more forward looking pioneers, like Charley Swezey, he could have put his project over, or it might have been easier for Mr. Field if instead of the individual who as Governor of the State of New York vetoed the bill enacting Field's Civil Code, the Governor had been the Kentucky Judge who in the case of Chiles vs. Conley's Heirs, 32 Ky. 21, in 1834 when considering a deed which provided that "for value received, I bargain and sell unto A. T. my whole right of improvement made by J.D. and all the land as far as T.M.'s claim interfers with my claim" said

"The literal import of this writing is that of an executed agreement, or a conveyance of the title which the vendor held. It contains all of the essential requisites of a conveyance in fee simple. It is informal and unusually summarized, when compared with the redundant, quaint and prolix style of modern conveyances by deed. But it is not more laconic or less comprehensive than the ancient Saxon deeds, and is almost as formal and elaborate as the antiquated charters of enfeoffment; and, indeed, its form and style are, in some respects, preferable to the repletion and repetition which unnecessarily characterize and greatly deform modern deeds of conveyance. It is sealed, and signed, and attested properly; it

shows a valuable consideration; it identifies the parties; describes the land, and acknowledges an absolute executed sale in fee of the vendor's rights. These constitute a deed of conveyance; and therefore, this instrument contains no provisions and intimations to the contrary, this court cannot, by any allowable process of interpretation, give to it any other character or effect than those of a deed of bargain and sale."

D O T

(Dope Observations Trends)

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

Everything is subject to what happens within Russia. Nobody outside the Iron Curtain knows that answer.

Subject to that, most signs indicate business for us will be good throughout 1953 in most of the country.

There are deflationary evidences, notably the drop in food prices. Thus there will be no hectic rush to buy farms. But, taking the country by and large, these are more than offset by other factors.

The Mortgage Market

Interest rates are firming. It is believed FHA and VA guaranteed paper will be raised in the immediate future —VA to 4¼%, FHA to 4½%. That increase in interest rates should and will release a lot of money of life insurance companies and other financial institutions to the mortgage field.

Controls

Decontrol of prices on thousands of items has not created inflation. Some items, relatively few, have risen in price.

Decontrol of wages probably will mean higher wages in many sections. We think it may mean a greater willingness on the part of many to do an honest day's work for a day's pay.

New Construction

It was expected factory building might decline in 1953. All signs now indicate that prediction was wrong. New factory construction will be high.

In January and the first week of February, 1953, contracts for heavy construction totaled two billions, an increase of more than 60% over the same period in 1952.

Housing Units

At the turn of the year most authorities expected slightly under one million starts in new housing this year. The view now is higher, and that it will exceed one million new units. The junk that was built in the early post war day contributes to this new demand for new housing.

Our correspondence in national headquarters with great financial institutions other than life insurance companies shows a sharp increase in apparent willingness to buy mortgage paper in jurisdictions other than their state of domicile. This increase in interest is definite. It indicates the financing troubles of 1953 will be less acute than 1952.

There seems little likelihood of reimposition of Regulation X.

The General Market

Demand for merchandise is high. Production and sales might be described as slightly spotty. There are sales under way, some distressed sales, on heavy goods—TV's, radios, refrigerators, etc.

Automobile production will be high. But, except as to Cadillac, it looks like a buyer's market.

Our Market

We depend on the construction market. The more West and the more

Southwest one goes, the more active is the building construction industry. It is believed new construction will be off in the East. The real activity is in the West and Southwest and some scattered sections of the South; most authorities expect it will continue throughout 1953.

The sales prices on old houses continue to decline, but not sharply.

The tremendous increase in population is a factor not to be overlooked. Our old friend General John O'Brien, President of Gunisson Homes, Inc., (subsidiary of U.S. Steel) in a recent statement predicted that, by reason of population increase and the general increase in living standards there will be a call, in the next 25 years, for new housing totaling 33 million new units. That is an average of over one million for the next quarter century.

All this means title work, a lot of it.

Adverse Factors

Among factors adverse to our interests are the decrease in prices on foods and livestock, and the extension of rent control by the federal government through designating certain areas as critical areas by reason of activity associated with war, or production for war or defense.

As regards the former, the cattle market presently has the front page. Leading farm authorities don't like the falling market but most of their publications indicate they prefer less aid, and thus less control by a paternalistic government, and more desire to survive in a competitive market. Those who want more federal aid are the most vocal, and thus politics comes into the picture. It is already in.

Buying of farms is off; the land boom is in a lull, one that probably will continue. Prospective buyers are looking and shopping. The upsurge in asking prices has run its course. We hear of virtually no distress selling. We look for no sharp downturn in farm prices.

Rent control is to expire April 30. The A. F. of L. asks Congress to extend it to June 30, 1954. The C.I.O. asks its extension in cities where vacancies fall below 2%. You may wish to express your views to your Representatives on this — and other matters now pending in Congress.

Foreign markets, reciprocal trade agreements, lowering or raising our tariff walls all combine to make the picture complex. For political reasons, more or less, the administration may be forced to yield ground in the months to come.

Taxes

Some members of the Congress want tax reduction this year, and want it passed now. The executive branch wants to see the new budget and the new appropriations bills passed first. The dope seems to be that the House may pass a tax relief bill and that the Senate will be less yielding. Nobody knows now who will win out, but a mosaic seems to create this sort of a picture:

For individuals, a tax cut applying to the second half of 1953, and maybe only to the last quarter, on a basis of 10%, which would thus mean a net tax reduction of 5% or 2½% for the year.

Corporations: The same relief on the excess profit tax along the same line of percentage of relief given to individuals.

Most authorities expect virtually all of the excise taxes will be continued at least through the first session of this Congress.

We believe, failing an increase in the war, the administration will be able to effect sufficient operating savings to bring about a slight tax reduction; and that the administration's idea of deferring action on tax reduction until later in the year will prevail.

Two strong fine Senators, Taft and Byrd, are reported to have joined forces that tax relief must follow appropriation bills; further they may agree on some cutting of the new budget of the Administration.

Summarizing, we think, except as to the East, we have painted a picture more gloomy than is necessary. Excluding the East, most signs point to a better than fair and up to high business for the title profession throughout 1953.

From the 1953 Midwinter Conference

We should, every single solitary last member of the Association, do more and more and still more to sell home ownership. From now on out it is going to be a buyers market and we need to put our shoulders to the wheel to further the sale of new homes; and thus further the sale of abstracts, title policies and escrows and other services we perform.

Plan to attend conventions of our national association, your own state association and its regional conferences.

You are urged to participate more actively in programs of the Bar, the realtors, the mortgage bankers, and the building and loan people of your area. It is time, yes past time, we publicized our firms and our guild more than in the past. It is a job calling for individual treatment.

(The three paragraphs next above are not the words of the writer of this article. They are the words of dozens and dozens of title people from all sections of the country as they expressed themselves at our 1953 midwinter conference in St. Louis in February.)

It would appear we should gear ourselves in most localities to maintain our staff at its present level of strength, but with care—that now is the time to weed out the misfit, the square peg in the round hole—that we don't rush out to replace those who voluntarily leave for other jobs —but that we keep ourselves alert for people of competency who fit into the picture of the title business.

And first, last, and all the time go mechanical. There are no signs which point to decreases in prices on machines usable by our people. There seems absolutely no reason for you to defer buying new equipment.

PERSONALS

JOSEPH H. SMITH
Secretary, American Title Association, Detroit, Michigan

A title insurance forum for title examiners and abstracters was conducted by the ABSTRACT AND TITLE GUARANTY COMPANY, Detroit, Michigan, February 4.

MR. LAWRENCE E. DONOHUE, Attorney, Legal Department of General Motors Corp., discussed "Client Requirements of Title Examiners". Other speakers covered topics of interest for the 75 guests representing over 33 counties in Michigan.

FRANK I. KENNEDY, President (and former President of ATA), LAWRENCE C. DIEBEL, Vice President-Treasurer, THOMAS P. DOWD, Vice President, and WALLACE A. COLWELL, Vice President, greeted those in attendance.

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UNION PLANTERS TITLE GUARANTY COMPANY, Memphis, Tennessee, elected HAROLD C. CURRY, Attorney, to the position of Assistant Secretary at a recent meeting of its Board of Directors. MR. VANCE J. ALEXANDER, President of the Company, also announced the promotion of JULIAN G. AYMETT as Manager of BLUFF CITY ABSTRACT COMPANY, a fully-owned affiliate of the title firm.

* * *

Honored for 50 years of service in the real estate business at a recent meeting of the St. Louis Real Estate Board were McCUNE GILL, President, and GEORGE R. HUNSCHE, First Vice President, TITLE INSURANCE CORPORATION OF ST. LOUIS, along with GROVER W. DEVINE, President, and EDWARD W. SCHAEFER, of LAND TITLE INSURANCE CO. OF ST. LOUIS.

STEWARD J. ROBERTSON, Secretary, OKLAHOMA TITLE ASSOCIATION, was recently promoted to Assistant Vice President of the AMERICAN-FIRST TRUST COMPANY, Oklahoma City.

* * *

The IOWA TITLE ASSOCIATION will celebrate Golden Anniversary at its Convention in Mason City, Iowa, May 21-22. CARLTON CROSLEY, President of the Association, and DON HUGHES, Secretary, are busy planning for this occasion, along with Charter Members HUGH H. SHEPARD, President, SHEPARD ABSTRACT COMPANY, Mason City, and VARICK CROSLEY, President, CROSLEY AND BOEYE, Inc., Webster City.

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RAY HARVEY, Vice President, JASPER COUNTY TITLE & GUARANTY CO., Carthage, Missouri, and a former member of ATA Board of Governors, is member of House of Representatives of his State.

* * *

(Notice has been received on following meetings of affiliated State Title Association set forth here along with ATA functions.)

ARE YOU A NOTARY?

Are you a Notary Public?

If so, are you careful where you place the imprint of your seal when taking acknowledgments?

If the photographic system of recording is used in the County Clerk's office, it is necessary to black the seal so that it will show when the instrument is photographed.

If you put the imprint of your seal over the expiration date of your notary commission, many times it can not be read.

If you use a rubber stamp for names, commission expirations etc., are you careful to keep fresh ink on the ink pad and then when you use the rubber stamp, do you make a clear impression?

If you use a rubber stamp, be sure to keep it clean.

Do you use a grade of ink that can be easily read?

Do you use a typewriter ribbon until it is so light that it looks almost like the paper?

If the Secretary, Cashier, Asst. Secretary, places the seal of the Corporation over the signature, when the seal is blacked for photographing, many times you cannot read the signature.

Do you type the names of the officers executing the instrument under their signatures?

Do you write your name so everyone can read it? If not, do you type your name under the written signature?

—Oklahoma Titlegram

COMING IMPORTANT ASSOCIATION EVENTS

DATE	MEETING	WHERE TO BE HELD
May 1-2	Texas Title Association Convention	Paso Del Norte Hotel El Paso, Texas
May 7-8	Illinois Title Association Convention	Sheraton Hotel Chicago, Illinois
May 18-19	ATA Central States Regional Meeting—Title Insurance Executives	Edgewater Beach Hotel Chicago, Illinois
May 18-19	Arkansas Land Title Association	Marion Hotel Little Rock, Arkansas
May 21-22	Iowa Title Association Convention (Golden Anniv.)	Hanford Hotel Mason City, Iowa
May 22-23	Regional Conference of Abstracters, ATA	Hanford Hotel Mason City, Iowa
June 8-9	Pennsylvania Title Association Convention	Hershey Hotel Hershey, Pa.
June 11-12-13	Michigan Title Association Convention	Otsego Ski Club Gaylord, Michigan
June 18-19-20	California Land Title Association Convention	Hotel del Coronado San Diego, California
Sept. 14-15-16-17	ATA-National Convention	Biltmore Hotel Los Angeles, California
Oct. 25-26-27	Ohio Title Association	Hotel Hollanden Cleveland, Ohio