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TITLE NEWS

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Official Publication of
THE AMERICAN TITLE ASSOCIATION
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TABLE OF CONTENTS

THE ABSTRACTER AND TITLE INSURANCE

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Vice President, American Title Association
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Sycamore, Illinois

This is the age of change. A great age to be living in but an age which requires a fertile mind and a willingness to keep step with progress. The automobile has wrought a mechanical miracle within the space of just over 50 years, and with this progress towards perfection mechanically, a great many other things have happened. Cities which a half century ago were unimportant villages, have now become sprawling industrial centers. We need not dwell upon the tremendous impact of labor organizations on our National politics, because everything that I could conceivably say on this subject is being said by every medium of publication available to the politicians.

The Movies, the Talking Movies and Radio have changed the entertainment thinking of the American people and now all of these are concerned with the competition offered by that mighty new TV Giant which is now available to most of us.

Changing Times

While changes affected by the automobile, the airplane, radio and television excite the imagination and attract the attention of the public, there have been other changes in the last 50 years which are proceeding steadily, sometimes rapidly, in other fields of endeavor. Today life insurance is as common as the kitchen sink and few families fail to carry some form of it, and yet the major life insurance companies are only about 100 years old and life insurance in any form is less than 175 years old. Believe it or not, the records of the fire insurance companies indicate that 60 years ago only one building in 40 was insured against fire and yet today, it is considered foolhardy not to carry fire insurance on your property.

A Challenge

Our own profession has not been exempt from progress, and, in fact it would be a sad commentary upon our initiative and ability if we were content to do business in the same old way and at the same old stand that served our forefathers. Tract indices as we know them today, were reputedly invested in Chicago in the 1840s and within the memory of all of us, geographic indices, photostatic take-off, microfilm and machine sorting are changing our thinking and our method of doing business; -but other changes which are not so apparent are likewise taking place within our industry. We must rise to the challenge of these changes, or we will find ourselves in the same position as is the livery stable keeper or the blacksmith who did not believe that automobiles would have a permanent impact upon the way of living of the American people. Let us, therefore, take inventory of our industry and perhaps we can more clearly direct a questioning mind to the problems of tomorrow.

Evolution in Lending

One look at the lending field and the evolution within it should cause us all to pause and consider. 50 years ago, most of the loans on real estate were made locally. When John Brown wanted to build a house he went to the local banker. True, he paid a commission, plus a higher rate of interest, then he is paying now, but in most cases the local banker, or the lawyer for the local bank, searched the records, gave an informal opinion of title, and the loan was made. The loan was a short term loan and a year later, or two years later, John Brown went back to the local bank, paid off his loan, or paid part of it, paid a new commission and obtained a new loan. The big change in lending occurred in the Twenties and during the depression which followed, when the informality which had characterized the early lending was found to have in it, inherent weaknesses which made it impractical. Local bankers found that loans, even good ones, did not help them to meet a run on a bank. The long and sometimes tedious methods of foreclosing a loan and then liquidating the property did not lend itself to the sudden demand for cash made by a large number of depositors.

New Era

Lending entered a new era and today we must face an accomplished fact of long term loans, government insurance of the loans

and absentee lenders. Thru FHA and now thru VA the repayment of loans is guaranteed and the life insurance companies found that mortgages were a most satisfactory means of obtaining a relatively high interest on their funds. Today the Prudential Insurance Company, alone, has more money invested in loans on real estate than the total of all of the money invested by all of us in the title business throughout the entire United States, and that includes investments of such stalwarts of the profession as the Chicago Title and Trust Company, and the tremendous companies in other Metropolitan areas in which companies having assets of 30 to 50 millions of dollars are operating.

Standards Required

With this change in lenders, new requirements have arisen. No longer could the lawyer call up his friend the banker and say, "Sure John Brown owns that property. I have known him for 20 years and he's all right," but selected attorneys were required to render opinions of title based on carefully written abstracts. This could not help but require standardization in our businesses. An officer of the Metropolitan Insurance Company may pick up your abstract and my abstract and may require that you and I, though 100s of miles apart, show our instruments in identical, or nearly identical fashion so he will not have to interpret an endless number of variations. For instance, believe it or not, in my County 50 years ago, the abstracters never showed a will in full, but merely summarized the will in much this fashion: 'Will of Jordan Bruce gives life estate to his wife with remainder to the children living at her death,' or, 'Will of Willard Johnson devises this property to Sarah Jones.' Try giving an abstract with this kind of a summary to one of the major insurance companies today and see what happens.

Costs and Profits

This process of standardization was by no means the answer to the problems either of the insurance companies, nor of the makers of abstracts. With every page which we were required to add to our abstracts in order to produce a product acceptable to the customers we added to our cost. It is true that we added something to our bill, but I am sure all can testify that the percentage which we were able to add to our bill to the customer, as compared with the charged made by our predecessors 50 years ago has been entirely inadequate. My predecessor charged

75 cents an item in 1900 and his abstract of a deed simply said: 'Mary Jones, a spinster, to Sam Brown, Warranty Deed, conveys Caption. Signed as given. Acknowledged.' The insurance company required me to extend this abstract of this deed until now it occupies approximately 1/2 page of legal paper. And for this I get $1.75. In 1901, I note that the top abstracter in the employ of my predecessor was raised from $50.00 to $55.00 a month with the notation that he was getting married and probably needed more money. I also note that 6 months later the abstracter made him a partner, which I presume is in line with current day thinking that if the man's salary gets to high, make him a partner so he can't take so much money out of the firm.

Glaring Defect

Another fact is being added to the problems of title examiners. Every transaction that adds to the length of the abstract, also adds to the work of the examiner, and where the practitioner of 50 years ago was examining an abstract of 5 to 10 pages, he is now confronted with an abstract of 40 to 50 pages, and many times the abstract exceeds this in length. This factor focused the attention of all real estate investors and real estate examiners upon the one glaring defect of the abstract lawyers system. Conscientious representation of a client requires that the attorney examine the abstract before him from the Government even though he knows that a fellow member of the Bar has examined it within the last few years, or few months. This has created a variety of problems.

1. It has increased the cost of examination, or has caused the lawyer to take on the job of title examination at a loss.
2. Knowing that his work will be checked by a fellow member of the Bar, his inclinations are to accept no risk, however small, but to advise his client of all of the defects which may be discovered from a minute search of the abstract, so that he may not be discredited by a subsequent, more technical examination, and
3. It has slowed up the timing of real estate transactions so that weeks and sometimes months elapse between the signing of a contract and the consummation of the sale.

All of these facts must be considered in a re-examination of the present status of the title profession.

A Calm Appraisal

To begin with, it is self-evident that every abstracter intends to stay in the business. Many of the older members of this Association have rendered effective title service in their respective counties for a great many years, and there is no reason for them even to contemplate that they will not continue to render the same effective title service to their community for many more. To the younger members we need only admonish that there is no such thing in this world as a monopoly so deeply entrenched that it can afford to retrogress. To, abstracters, therefore, a calm appraisal of this evolution and of the problem presented by it should prove helpful.

Problems

As we see it, the problems of today may be summarized as follows:

1. Our customers demand the acceleration of the closing of real estate deals.

2. The sources of mortgage money are no longer local, but are national in scope, and are demanding adherence to the national standards in title service.

3. Labor costs have soared entirely out of proportion to our price which we are charging the public for our product. To illustrate, in 1900 a $10.00 abstracter need only turn out 13-1/3 instruments per week to return his salary to his employer, while the average girl in my office today must turn out 28.6 instruments per week to return her salary. In 1900, only 6% of your gross went for taxes while now between 35% and 45% is so absorbed.

4. The cost of establishing a competitive plant through photography has closed the door to any dream of protected monopoly that might exist in the minds of any of us.

Looking Ahead

And so, we look to the future, if we are to stay in business:

1. We must speed up our services to our customers and at the same time deliver a product which can pass the careful

scrutiny of the attorney for the Metropolitan Life Insurance Company, or the attorney for the Bank of America in California.

2. We must either discover more labor saving devices which can be adapted to our business, or increase our changes to our customers far beyond their present schedule.

3. We must recognize that our individual plants are no longer separate and independent, but that we are a part of a service which is National in its scope and in its problems.

To attack the third problem first, during the past year, the profession has witnessed the effective service which could be rendered to each through the intercession of the National Association before OPS to obtain a ruling that they were exempt from price ceilings. No one alone could have succeeded in obtaining such a ruling. In fact, before the intervention of the National Association, one abstracter in Minnesota was fined for violating ceiling prices and numerous abstracters throughout the country who sought to act independently obtained adverse rulings on the issues raised from District Offices.

The National Association

Through our National office we also obtained representation before the major National lenders and obtained favorable recognition in the drafting of regulations by the numerous Federal Administrative bodies whose operations affect some, or all of us, such as FHA, VA, Engineers and the Treasury Department. While it is unnecessary to emphasize this point, I would fail in my duty to you were I not to point out that today as never before we need the assistance of a National Association in business. Bear in mind also that the character of the National Association is derived from each and every member of that Association. When thinking of that Association and of its Officers, keep in mind that they are your Officers and only through your active and vigorous support and cooperation can the officers and the Association properly function.

Service Valuable Too

I think that with a combination of labor saving devices and some adjustment of our fees, we will continue to operate successfully at a profit. I have my doubts as to whether we can base our charges solely on a per item basis and obtain therefrom

an adequate revenue to operate, and I think there must come some method of charging which is based upon an intangible factor in our service which has never been properly evaluated, by most of us. We have clung too long to the theory that our charges must be based upon the printed pages of our abstracts. To me a statement to our customer that we have searched the record for 50 years and have found nothing, not even one solitary, single deed, is just as valuable to him as the advice to the customer that during the 50 years we have found 25 or 30 instruments, and yet in the one case, I presume as per item charge would result in a $50.00 or $60.00 bill, while in the other we might hang our head in shame if we sent him a bill for $25.00. The net result is the same; - we have assured him that the title upon which he seeks to invest his money contains only certain items and none other, and the certificate 'none other,' may be the most important certificate in the entire abstract. To me, therefore, I see no other way than that we, as abstracters, must develop, a more realistic approach to our services. I think a combination, time and valuation charge is much more realistic than a per instrument charge, and to those of you who are having trouble making ends meet, may I suggest that you investigate very thoroughly the systems now in use by some of your associates in your state who approach their problems through these channels.

Through some kind of time or valuation charge, or a combination of both, and the judicious use of labor savings devices, we can solve our financial problem, but we do not thereby necessarily speed up our services to our customers, or deliver a standardized product which is nationally recognized.

Most Significant

We now come, therefore, to a consideration of the most important change which is taking place in our profession in this century. This, as you are all aware, is the widening influence of title insurance. Viewed purely from the vantage point of a disinterested observer, Title Insurance accomplishes all of the goals which today seem to be our objectives. Therefore, it is most important to you and to me who desire to continue in this, our selected profession, that we thoroughly evaluate the advantages and disadvantages of title insurance.

System Differs

To begin with, title insurance has developed a system of

charging based in the main on valuation. It is true that you should be compensated for your extra search work in individual cases, but the major charge to the customer is still a charge based upon the value of the property. Curiously enough we have discovered that where lawyers were resisting a valuation charge hooked to an abstract bill, they have no feeling but that title insurance should be charged on the basis of the amount of the policy written, which is the approximate value of the property covered. The magic word 'insurance' tells him that premium is so much per $1000.00, while the valuation charge on a certificate does not carry home to him the dollar sign message. To me, therefore, title insurance offers a medium of charging which presents a sounder approach to our services than does a per item charge for the abstract. However, there is one factor in title insurance premiums which is distrubing. Perhaps I am a bit like the employee who works for me who measures his salary, not by what I say it is, but by his 'take home' pay. I too, measure my gross receipts from my title company, not by what customer pays me, but by my 'keep home' pay, and every dollar that the customer pays me that goes outside the county to my insurance company departs from my County without my blessing. I think this factor in title insurance is of extreme importance. I think the title insurance companies must realize that rates must be based entirely upon the service which they render to the county, which includes, of course, their expenses, a reasonable profit, and an ample reserve for losses. If title insurance spreads, therefore, we have a right to expect that the issuing company, will reduce their rates to meet the loss experience which they encounter.

Some Unnecessary Steps

A second and basic step in the approach to title insurance must be the elimination of all unnecessary work by the searching company. To me, it is an absolute waste of time to prepare a completely typed abstract solely for the purpose of handing it to an examiner for the title insurance company, whether that examiner be an employee of ours, or an employee of the insurance company, or an outside attorney. I see no merit in having one of my girls type our photostatic take-off so I can read her typed version of it, when within the files of our office is the original photostat itself. In fact, as an examiner, I am less likely to misinterpret a word than is my non-legally trained employee.

Consider the Subdivision

If an insurance policy is written on a subdivision, or on any lot in a subdivision, the first abstract only should show the title from the Government to the subdivider, and from there on out the title insuring company should accept from us a search from the subdivision to date, since it adds nothing to the search for us to go to our copy book and tell our girl to copy Items 1 to 48 in order to give the title insuring company another typed copy of the same material which we have heretofore presented to them.

Costly Repetition

From the standpoint of the customer, if we are forced to make a complete abstract and then add on an insurance premium, our bills to him are going to be entirely out of proportion to the service which we render, and in order to keep the cost of title service within reasonable limits, it is essential for the searching company and the insuring company to eliminate every unnecessary repetition of labor and at the same time to reflect these savings in the charges which we make to the customer.

Intelligent Approach

Title insurance is not an altogether unmixed blessing so far as labor saving devices are concerned. Today we find that a great many subdivisions have covenants and restrictions which will take three to four pages of typing to show. Since every summary of the title, or title insurance policy, must show this important aspect of the title, an intelligent approach to some simple method of repeating these covenants must be devised. Without claiming a miracle of efficiency, we found that by multigraphing the covenants and merely attaching them to the policy, we were able to reduce the cost of policy writing to a minimum. This, and many other problems will tax your ingenuity, but the solution of them will pay tremendous dividends to you as the years elapse.

Responsibility

Another problem which arises out of title insurance and which has not yet been fully explored is the question of responsibility between the searching company and the insuring company for errors. I think all of us can see that the insuring company is unquestionably liable for unknown risks, but who is liable for

errors in abstracting, or errors in take-off? Most of us carry some kind of abstracter's liability insurance, and most of such policies specifically provide that they do not protect the abstract company against loss arising from the conduct of title insurance business, or from the examination of titles. The Idaho Title Company has been successful in obtaining a coordinated policy which protects their agents from all liability which they may incur by errors made in connection with searches prepared for that insurance company. Most mortgage policies require some sort of inspection by the local representative of the subject property, to ascertain the location of improvements, possibility of the existence of easements, encroachments, or right of ways, and in many cases the insuring company requires some kind of identification of the makers of the mortgage by the local agent. A further clarification of the liability of the abstracting or searching companies, and a comprehensive policy covering his liability is much to be desired. The recommendations that such a policy be secured, if possible, is in the hands of the Abstracters Committee of our National Association and I am sure that if it is possible for them to do so such a policy will be secured.

It Can Be Solved

Last, but not least, we have the problem of the single abstract company operating in a County in which two or more title insurance companies are seeking to secure business. We, in the abstract profession believe that title insurance companies, even those whom we do not represent, should purchase their services from us, but we owe to these companies whom we do not represent a fidelity of service which will not cause them to lose business to their competitor, if they trust us with their abstract work even though we represent their competitor. This question is one which I am sure will warrant careful study by the best minds in our profession and its solution is possible.

Conclusion

In conclusion, therefore, may I say to you that I see nothing in the title insurance picture which will eliminate you from the title business. I cannot conceive any type of title insurance which can be predicated on anything other than a careful search of local records. I heartily recommend, therefore, that you approach title insurance with an open mind - that you become acquainted with and investigate a sound, reputable title insuring agency with whom you can cooperate and perhaps represent. I do not

advocate the discontinuance of abstract service, but I merely say that you should prepare to give your customer the type of service that he desires, you should sell both title insurance and abstracts. I am sure that you will find that the title insurance companies are owned and operated by people who have grown up in our title profession and I am certain, that, with but rare exceptions, they are conscious of your problems and will strive to assist you in remaining the key man in title service in your county.

And so with a firm conviction that though our problems be many, the solution of all of them is within the scope of our abilities.

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ABSTRACTERS REGIONAL CONFERENCE

HOTEL HANFORD
MASON CITY, IOWA
FRIDAY - SATURDAY
MAY 22-23

(SEE PAGE 35)

SERVICE–EFFICIENCY–CO-OPERATION

CLYDE F. KENSINGER
Recorder of Deeds
McLean County, Illinois

The fundamental requirements of any county official are courtesy, efficiency, and the ability to meet the public which he serves.

I have always felt that a politician is an official looking forward to the next election, but a public servant is an official looking forward to the next generation, and upon the latter theory I and my colleagues endeavor to operate the Office of Recorder of Deeds in McLean County, Illinois.

Congenial

First, we staff our office with congenial and efficient deputies, employees who are not only interested in their job, but are interested in serving the public, and who love the opportunity to meet and satisfy the people they serve.

Until you have given a customer information regarding a specific piece of property which he thinks can not be had, you will never know the real joy that comes to a recorder.

Interdependence

Man wouldn't survive his infancy without the help of others; maintenance of his existence depends on others. In fact man is helpless alone. The most cruel of all punishment is solitary confinement; and for most people the greatest joy is pleasant relationships with other human beings.

The pleasant association with the attorneys, real estate men, loan companies and banks will always be cherished, and the cross section of life encountered while serving at the counter leaves many happy memories.

More Service

Second, eight years ago, to obtain the maximum efficiency in recording instruments, we installed a photostat machine to copy instruments filed for record. In addition, our entry book, grantor grantee, mortgagor, mortgagee and chattel mortgage indexes are kept up to date daily.

One Family

Cooperation between the abstract office and the recorder's office is a necessity for a successful administration. We give office space in our office for four employees of the McLean County Abstract Company, and this is without a doubt the best reimbursed space in our office. They give us access to their tract index which saves hours of searching and we reciprocate by giving them needed photostats. Our association with their employees and the management have always been the most pleasant, and it is a genuine pleasure to have them with us. In our office parties the abstractors are considered in our official family and many good times have resulted from these gatherings thereby binding our two offices in a mutual interest.

Continuous Study

It used to be that guinea pigs multiplied the fastest. Then along came government job holders . . . . . that brought on more legislation. Now a recorder in addition to his other duties, in order to maintain an efficient office, must be well versed in the new laws pertaining to his work that are being continually sponsored by both national and state legislation.

Making Friends

Last, the ability to meet the public is a valuable asset of the recorder and his employees. We have learned that there is more to be gained than just our salary, and one of the outstanding advantages we have is the making of friends. We as humans grow tired of the eternal chase for the dollar, the keeping up with the Jones's, trying to be president of this or chairman of that, but we never grow tired of keeping old and making new friends. Consequently we make a special effort to be pleasant to our customers, to our mutual friends, the abstractors and lawyers, and to give the taxpayers of our county the benefit of a courteous, efficient, and businesslike administration.

RENEWING TITLE POLICIES AT EACH SALE

PALMER W. EVERTS
Secretary, New York State
Title Association

"Why do I need a policy of title insurance? The seller had it insured when he bought it so the title must be good."

Now and then some one jumps to this conclusion without honestly thinking the problem through. The theory is full of holes and highly fallacious.

A policy of title insurance issued to "A" a year ago or even a couple of weeks ago does not provide title protection for "B" who is buying the property today. There is no existing contractual obligation between the company which issued the policy and "B."

True, the company believed that it had carefully examined the title when the policy was issued, but suppose, for example, they missed an unpaid tax item. There is always the so-called "human question" and even title insurance companies can make mistakes. They pay for errors of their employees and in some cases the total of such claims paid during a year's time run into many thousands of dollars.

No Obligation to "B"

While "A" owned the property the title insurance company would be obligated to pay for a tax item which had been overlooked, but they have no obligation to Mr. "B." Without a policy of title insurance running to you the responsibility is on "B's" own shoulders. He must pay the loss himself whether it is $10. or $10,000.

Would you expect to go back to the seller and hope that he would make good when a claim is made against your title? It would probably be futile. The normal transfer of title to you does not carry insurance that the title is good.

If the difficulty bobs up a few years later, are you sure you could find the seller? Will he have funds to pay for your loss? Will you have to bring suit against him? What might this cost you in legal fees?

There are many things which can becloud a title between the time Mr. "A" the seller acquired ownership to a piece of property and the time he sold it.

Some Possibilities Listed

1. A judgment lien against Mr. "A" becomes a lien against the property at once as soon as he acquires it. Such a lien might spring from an automobile accident or failure to pay some debt.

2. The Federal Government may have filed a tax lien against a seller who failed to pay income taxes or filed fraudulent returns. Such an item could be a very substantial lien against any property the seller owned.

3. A divorce proceeding in a foreign state and a new wife has been known to materially affect the validity of a purchaser's title.

4. Can a purchaser be sure that there is not a condemnation proceeding pending?

5. Is there a possibility that the seller is in bankruptcy? Has the seller ever been adjudicated a bankrupt during his period of ownership?

Almost anything can happen between the date when the seller purchased the title and the date of a current resale.

If the new purchaser needs a mortgage the record title will be subject to re-examination probably by another title insurance company. If new or different objections to title are raised the cost of clearing them up may be a substantial sum.

Most claims arise from some unusual set of circumstances. A cow kicking over a lantern and burning a city would be an unusual set of circumstances, but it is said to have happened.

DIVORCE DECREES AND THE ABSTRACT

WALTER A. YODER, ATTORNEY
Costigan, Wollrab & Yoder
Bloomington, Illinois

It would certainly be a nice thing at this time to outline a procedure by which an abstracter could get divorced from his present seasonal hard work as one thinks about the rush orders, real estate closings en masse, the lack of competent assistants in some cases and the many other perplexing problems. No doubt individual abstracters might often express themselves as being interested in a statutory enactment by which they could divorce themselves from all of the responsibilities of their business and forever after dream of living in that Utopian existence in which the telephone does not ring and the word "rush" does not appear. What I expect to say has nothing to do with this as the only relief in sight is reforms which are not revolutionary and which can be accepted.

Continuing Right

One of the many perplexing problems has been that of showing earlier divorce decrees on abstracts where the divorce occurred before the divorced grantee had obtained title. The problem arises from the fact that if this person does not have a valid divorce another person continues to exist who has a continuing inchoate right of dower in his property which he has acquired after he has thought he was divorced legally and which under a proper set of circumstances, the grantee not surviving his former spouse, can ripen into consummate right of dower.

For The Examiner

Therefore it seems to me that the abstracter has the burden of showing sufficient of any such earlier divorce proceedings on the abstract so that the examiner can determine for himself what the situation is. In the event there is an appearance by the defendant in any such case it seems to me that the decree with the

recital of the appearance is sufficient. If, however, in such earlier divorce proceedings the service was by summons or by publication, the service itself should be shown. Not in every case would it be necessary to show the divorce proceedings in full, since oftentimes there is considerable extraneous matter in the proceedings which in no way affect the validity of the particular judgment or decree. The recitation of service in the decree, unless actual service is shown elsewhere on the abstract, plus the portion of the order of judgment which dissolves the marriage should be sufficient.

A Good Rule

Some abstracters which I know have a good rule which they apply in the showing of such divorces in which rather than try to take out the important portions of such a decree so as to eliminate unnecessary abstracting they do this only in the event more than one or two pages of abstracting is required in the showing of the decree. In other words if the decree is as short as many of them are, nothing can be accomplished for the customer by eliminating portions of the decree shown.

How Far Back?

The next question which abstracters always raise is how far should they go back in checking for divorce decrees appearing in their county for making such showings? No hard or exact rule exists in this regard and judgment based on experience will have to be engaged in by the various abstracters from their own experience in this respect.

With Legislation

It does seem to the writer that everyone is missing a bet in not having a Bill presented to the legislature, which Bill would provide that as to all divorces obtained before this date, in the event a spouse expects to continue to claim dower rights a written claim for dower would have to be filed in the Recorder's Office of the particular county within which real estate affected is situated and that upon failing to file such claim within such time the person wishing to assert such dower interest would be barred as against subsequent purchases or encumbrances of the property. The Act could likewise provide that hereafter when divorces were obtained such a claim would have to be made a

matter of record in the Recorder's Office of the particular county within a given number of days after the final decree was entered or the person who would otherwise have the right to assert such a claim would be barred against subsequent purchases or encumbrances.

An Experience

Please don't get too excited about this, however, as the writer, when he was Chairman of the Real Estate Committee of the State Bar Association with the help of some good draftsmen and the Illinois Legislative Reference Bureau had such an Act prepared which everybody agreed was very fine. The State Legislature, however, ran into a very hot season early and although this Bill had been advanced to second reading, like a number of others it was not called out after the second reading and was permitted to die. The momentary disgust for legislative efficiency on the part of the entire committee because of this disheartening experience resulted in this constructive measure being dropped and as far as I know it has never been the subject of any future legislative consideration.

Eliminate It

Here is a chance, you abstracters, to put legislative push on such a Bill and if you do so you will eliminate all of your worry in connection with the showing of old divorce proceedings where persons previously divorced now come into the chain of title. As to just how far such a Bill would go to eliminate spouses's rights on invalid earlier divorces I am not going to stick my neck out, but after you check into this thing a little further you may come to the conclusion that perhaps what we should do is just go the whole way and bar dower entirely. A good many men interested in the field of real estate are slowly but surely being driven to this conclusion. After all, the original purpose of dower was to take care of the little woman, although it was given to either surviving spouse by our Statute, but in this enlightened day and age many of the philosophical are saying both the little man and the little woman are well able to take care of themselves with reference to their rights in the other's property.

REPORT OF JUDICIARY COMMITTEE

RALPH H. FOSTER, CHAIRMAN
President, Washington Title Insurance Co.
Seattle, Washington

Deed in Contemplation of Marriage -

In a bill to set aside deeds made by a man to his daughters just before his marriage to complainant the court stated the rule to be that the court will grant relief where the conveyance is made without the knowledge of the intended wife and intended to prevent her rights from attaching; but the rule does not apply in the case of a bona fide purchaser. Dorrough v. Grove, 60 So. 2d 342 (Alabama).

(Reported by Maclin F. Smith, Birmingham)

Corporations: Fraud -

Where fraud is alleged in the sale of all, or substantially all, of the assets of a corporation, dissenting shareholders are not relegated to relief exclusively under the "appraisal" provision of the Corporation Act (Ill. Rev. Stat. 1951, C. 32, par. 157. 73), but they may have equitable relief by decree rescinding the sale, the statute being applicable exclusively only where the complaint is inadequacy of price. Robb vs. Eastgate Hotel Inc. (1952), 347 Ill. App. 261.

(Reported by Lyle W. Maley, Chicago)

Lease and Option -

Where lease for a term of years commencing June 1, 1945 and ending March 1, 1950 contained a provision that "Lessors agree to give to Lessee the right to purchase the premises mentioned in this Lease during any part of the term of said Lease for the sum of $13,500.00 cash," and lessee held over after the expiration date and during holdover period sought to exercise the option to purchase, held, option could not be exercised, be-

cause "it is not such a provision as will be incorporated in a year to year tenancy created by operation of law." Wanous vs. Belaco (1952), 412 Ill. 545.

(Reported by Lyle W. Maley, Chicago)

State Income Tax --Real Estate Sales --

Of interest in the six states having a Gross Income Tax are two recent decisions of the Supreme Court of Indiana. The decisions both concerned interpretation of the state statute as applied to situation where an owner of an unencumbered lot, erected a home thereon, executed a note and mortgage, and then conveyed to a purchaser who assumed and agreed to pay the mortgage. The court held generally that the amount of the mortgage was not to be included in the Gross Income of the seller. Indiana Dept. etc. v. Colpaert Realty and Indiana Dept. etc. v. Crown Dev. Co., both decided Dec. 16, 1952.

(Reported by E. B. Southworth, Crown Point)

Holographic Will -

An engraved monogram on a piece of paper purporting to be a will may not be considered as a signature. Pounds v Litaker, 235 N. C. 746, 71 S E (2d) 39.

(Reported by R. W. Jordon, Richmond)

Torrens Certificate--Restrictions --

The holder of a Registered Certificate of Title (Torrens) which does not contain notation of restrictive covenants which appear on recorded plat holds title clear of such restrictions. Kane v. State (Minnesota) decided July 11, 1952.

(Reported by A. F. Kimball, Duluth)

Deeds --Conditions Subsequent--

A condition subsequent will not be inferred from language in a deed which merely prescribes the use to which a property is to be put. If, however, the deed goes on to state that upon the putting of the property to another use the estate shall terminate and revest in the grantor a good condition subsequent is created.

Under such a deed the grantor has no actual estate remaining in him, but merely has the right or power to terminate or take the grantee's estate upon the happening of the condition. Shultz vs. Beers, Calif. DCA-3, 245 P (2nd) 334.

(Reported by Robert Mack Light, San Bernardino)

Escrows -- Liability of Escrow Agent to Buyer--

A complaint against an escrow agent which merely alleges that the seller failed to deposit his deed in escrow in accordance with the terms of the escrow agreement and that the escrow agent failed to give to the plaintiff buyer timely notice of such fact and that, therefore, plaintiff had been compelled to sue for specific performance at a cost of $2,500.00, fails to state a cause of action in that it fails to show a casual connection between any neglect of the escrow agent and the necessity for the suit for specific performance which, on its face, was necessitated solely by the seller's breach of his obligation. Southall vs. Security T. I. & G.Co., Calif. DCA 112 ACA 355.

(Reported by Robert Mack Light, San Bernardino)

Probate--Federal Jurisdiction--

U. S. Court cannot probate will or administer estate of decedent but can try suit to establish heirship between citizens of different states. Illinois v. Conaty, 104 Fed. Supp. 729 (June, 1952).

Possession as Notice --

Possession of real estate by purchaser under contract or defective deed is notice to a later purchaser from grantor. Whitehead v. Foxhill, 105 Fed. Supp. 966 (Sept. 1952).

(From "Title Decisions" by McCune Gill, St. Louis)

ATTORNEY AND ABSTRACTER

HORACE H. WATKINS
Attorney-Abstracter
Dodge City, Kansas

A lot has been written about the relationship between the attorney and abstracter with respect to titles to real estate. During the many years in which I have been practicing law and also operating an abstract office, I have found that such a relationship is one of mutual cooperation and a sincere desire on the part of both to render the best possible service to the owners of real estate and to see that their titles are merchantable or marketable and free from defects.

How Much is Enough

Abstracters are frequently confronted with the problem as to how much or how little should be shown in an abstract which will satisfy the attorney examining the abstract; this is especially true with the abstracting of court proceedings. The important rule to use as a guide is to show enough to convince the attorney that the proceedings have been conducted according to law. This requires some of the documents filed in a proceeding to be copied in full, while others may be briefly abstracted.

Some Instances

Take the case of a proceeding in the District Court, whether it be a quiet title suit, foreclosure action, partition suit or whatever it may be. My own experience has been that it is very difficult to give the attorney a complete outline of the petition without copying it in full, and this I always do. The summons issued by the Clerk of the District Court may be abstracted, but the return should be copied in full so as to show whether the summons was properly served. Affidavits to Obtain Service by Publication, as well as Notices of Sales, should be copied in full. I believe Orders of Sale may be abstracted, but the Sheriff's return should be copied in full.

Another Case

The same is true of proceedings in the Probate Court, with respect to petitions, orders, and legal notices. I believe such documents as oaths, bonds and appraisements can be briefly abstracted. Orders of the Inheritance Tax Division of the State Commission of Revenue and Taxation are better copied in full. Wills should always be copied except that I think it is proper to omit descriptions of land not covered in the abstract. This, incidentally, may also apply to orders of the court, inasmuch as the attorney who examines the abstract is concerned only with the land in question.

The Plat

When I examine an abstract covering town property I am interested in seeing a plat so as to reveal clearly if the addition in which the property is located is actually in the section, township and range within which the addition was supposed to have been platted. I have examined abstracts which omitted the plat and I always make a requirement that it be shown. Another point I wish to mention is the certification as to proceedings in the Probate Court from the time of the Government certificate or patent. The old certificates did not mention such proceedings as they do now. Abstract should include a certificate concerning proceedings in the Probate Court during the period in which they were not referred to. I have frequently found that such certificates were omitted and in such case I make that requirement.

The Examiner

The May issue of the Kansas Abstracter contained a lengthy article about short period abstracts. I wish to call attention to one statement made in this article, and that is to the effect that the greatest trouble with our abstract system lies with the examiner, and that as a consequence the abstracter gets the blame; and further that the attorneys specializing in the field of real property are under duty to find "in favor of the title" and if there are valid objections to the title it should be corrected in such a manner that it thereafter be freely alienable. I agree with the last statement in that a defect in a title should be so corrected so that a purchaser will not have to do it over again. It may be true that a few attorneys are over-critical in their requirements, but generally I disagree with the statement that the greatest share

of the trouble lies with the examiner, and I further disagree with the quotation that it is the duty of a lawyer to find in favor of the title.

A Duty

Rather, it is his duty to thoroughly examine the abstract, call attention to any possible flaws which some day the purchaser may have to correct, and make any requirement which will so completely make the title merchantable or marketable that the purchaser will never be called upon to go to the expense of having it corrected.

Not Sound

If there is any agitation to promote the passing of a law providing for a short period abstract, it probably is stimulated by those who believe in quick real estate sales, and who are not concerned about the marketability of titles to real estate. Such a law would work an injustice not only on present owners of real estate, but also on anyone who had even a remote interest for a period of many years. A short abstract, covering only a period of so many years, would be of no value, because it would not reveal whether one might have a title for a long period which had not been actually divested. In addition to that, I cannot conceive of such a law being constitutional, and I base that contention on the fact that several years ago, one of our legislatures passed a law to the effect that where a plat of original town or addition have been of record more than 25 years prior to the taking effect of the act, such deeds would be conclusively presumed to have conveyed title notwithstanding any defects in the title of the grantor or failure of grantor's spouse to join therein, provided such presumption shall not be applied in any action brought within one year from the date the act took effect.

Authority

The Supreme Court of Kansas held this act unconstitutional as a violation of the 14th amendment to the Constitution of the United States. This decision is a notice to the legislature that it cannot legislate away one's interest in real estate, even though such interest may have been in effect for one-hundred years as it is depriving such person of property without due process of law.

Limited

An attorney could not possibly approve the title to real estate if all the information he had were covered by a short abstract, because he could have no assurance that there was not some outstanding interest in the real estate which commenced prior to the period which the short abstract would cover. If such a bill appears in the next legislature or in any other future legislature, both lawyers and abstracters should oppose it with all their vigor. It appears to me that the only type who would sponsor such a bill are the type who are interested only in quick sales regardless of the consequences of such, and who are too tight-fisted to pay for abstracts and for services of having them examined.

A Question

Another question which arises occasionally among attorneys and abstracters is the advisability of an attorney who is also an abstracter examining the abstracts which he himself has made or extended. I see no inconsistency in doing so. When an attorney is making an abstract, he is doing so as an abstracter only; he can put no more or less into an abstract than is shown in the public records. This does not prevent him from also examining it as an attorney. I have very frequently examined abstracts which I had made or extended, and I have frequently made requirements on such abstracts, the same as I would have done if it had been made by another abstracter. There is no reason for any lawyer to refuse to examine an abstract just because he worked on it as an abstracter, provided, of course, that he is competent as an abstracter and has had sufficient experience in making abstracts.

Congenial Relations

There are other problems which frequently confront abstracters and attorneys with relation to abstracts, but space will not permit enumerating all of them. With the acquaintance I have had both with attorneys and abstracters during the many years in which I have been practicing law and operating an abstract business, I have found that there is a congenial feeling among them; that both are equally concerned about the welfare of the parties to a real estate transaction, and that each receives the proper service due him.

Working Together

Abstracters have a pride in their work and are more than pleased to produce an abstract which will intelligently set forth the full history of the real estate covered by it; and attorneys are more than anxious to serve their clients and save them from any possible hazardous risk of future litigation on account of any defect in the title. The cooperation of both is the greatest assurance that the interests of the real property owner is served, and as long as such cooperation continues there should be no danger of any legislation being passed and becoming a law which would in any way adversely affect such interests.

D O T

(Dope Observations Trends)

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

War? Peace? Truce? Armistice? Cold War? Hot Cold War? You make your own guess - just as is the rest of the world. But the uncertainties are bound to affect business. They make planning for the immediate future difficult. They make long range planning almost impossible. But the cards are dealt; and one must plan his hand with what he has.

Construction

The first quarter of 1953 was more than good for most members in nearly all sections, this despite the acute shortage of mortgage money for F. H. A. and V. A. paper. Outlays in the construction field continued high. Up to mid April awards for heavy construction totaled over 4 1/2 billions. That sets an all time high. The Building Materials Division of the Department of Commerce reports the country spent on the basis of over seven billions on construction of all types in the first three months - another record high.

Income - Employment

Income of the country is high and employment in March stood at 61 1/2 million gainfully employed. Purchases of goods, heavy and soft, continue high. But it is important to watch the amount of credit buying. Rumors in our Middle West are that there have been more repossessions recently than for a long time previously. The bankers are trying to keep credit buying in hand, under the watchful guidance (and maybe heavy hand) of the Federal Reserve System. But the public is not buying anything and everything willy nilly. There is shopping around; and easy credit terms frequently make the sale.

Total income of the country is calculated to be on the basis of about 280 billions for the year, an increase of about 5% over

last year. Payrolls increased in the first quarter. So did profits of individuals engaged in business, except farms. Income of farmers dropped but not much.

Housing Regulations

Almost simultaneously, two actions affecting us occured. Housing and Home Finance Administrator Albert M. Cole announced elimination entirely of requirements for a down payment on homes purchased by veterans under the G. I. law. Down payment requirements were not lifted on F. H. A. paper, but intensive studies are under way under the direction of the new F. H. A. Commissioner.

Mr. Cole's directive also altered the terms of G. I. loans to 25 to 30 years instead of 20 to 25 years as had been the requirement.

Interest Rates

Pressure upon the Administration to revise interest rates on V. A. and F. H. A. paper continues to mount. It has been intensified by the rate of 3 1/4% established by the Treasury in early April on its issuance of new 30 year bonds. That was followed by announcement of Federal National Mortgage Association it would not purchase over the counter any more mortgage paper except that on which there had been previous commitment, outstanding Purchase Receipts, or Defense Housing loans which would be purchased with money previously earmarked for that purpose.

The entire construction and mortgage fields complain that adherence to a 4% rate on V. A. and 4 1/2% on F. H. A. paper is unrealistic. So something must give. It likely will be an early upward revision on both. The question now in our mind is whether the new rates will be sufficient to attract enough new money to new mortgage paper. Probably there will be enough when we roll together funds of life insurance companies, foundations, mutual banks, fraternal orders, savings and loan associations, pension funds of great corporations and of unions, and private loans by individuals. But there will be no enthusiastic rush by large investors to sell bonds (at a paper loss) to raise cash for mortgage investments. These mortgage investment funds may have to come from new receipts of premiums and other types of new income.

Public Housing

The other action occuring almost simultaneously with Administrator Cole's directive is that taken by the House Appropriations Committee which virtually stops the low cost housing program. The Committee makes no appropriation for this type of housing. The Committee also recommended disposal of home mortgages now held and to refund local housing bonds now held by the Public Housing Administrator.

This does not mean the end of all public housing. The Committee action is subject of course to action by the House and Senate. But it's a sign, an indicator, of the thinking of Washington today.

With approval by the President, Senator Taft has introduced a bill (S. 1514) which would create a 25 member Commission on Governmental Functions and Fiscal Resources. The Commission would make studies on the entire gamut of housing, particularly activities in which there is a union of federal state and local authorities - or, stated another way, federal aid procurements.

Obviously, the Administration is determined to give away less rather than more and to take Government out of competition, with private business. That's demonstrated by actions and proposed actions.

The Realty Market

Are prices down? Coming down more? Our own checking corroborates the conviction of authorities we read and to whom we talk. The asking price and the sales price on an old house (20 years and more) are both down - perhaps down a solid 10% against the price of 18 months ago.

On new construction, the buyer is also "writing the ticket." Many new houses stand unsold until finally the asking price comes down. Some brokers are asking for a 90 day exclusive on old houses. On new construction, the sale is frequently closed when there is a downward adjustment in the price of from 2% to 5% below last year's level.

Are we overbuilt? Authorities say "No," except in a few isolated instances. But our own checking would indicate we are

close enough to it in various jurisdictions that a splurge of 60 days of construction of homes could put us on the border line.

Our competition? Of course, primarily it is that other title company down the street. Actually it's all other businesses - the department store, the manufacturer of the deep freeze, the gas incinerator, the television (and color T. V. coming) - these and all other types of business all compete with us for John's dollar.

We submit it a wise move that our members re-double their efforts on the "Own Your Own Home" theme. The construction business is that of the architect and the material house and the builder. It's definitely our business too. It would be difficult for you to overdo it. We have home ownership in the country today at a level above 50% of the population. That's fine - until you start thinking about the 45% that don't own a home.

Planning Ahead

What's the significance of recent events? How shall we plan the last half of 1953?

We make no firm predictions; and we don't believe anybody else can. If Russia really wants peace--and we mean a real peace, not a phony peace - we need actions rather than words. And even with actions of limited character, we wouldn't trust her as far as we could throw a railroad train. The burnt child fears the flame.

Undoubtedly, defense spending will - must - continue. That means a high level of business even if it is on an artificial basis.

Our own belief, or hunch, or guess, is this: Despite the high level of title business in the first quarter, we don't enthuse about expansion programs by our people except those needed. We do recommend you plan more and more to "go mechanical," to purchase first-class physical equipment, to put in the new machines on the market. For the labor market probably will continue tight.

Federal Housing Commissioner

Our warmest congratulations to the President of the United States for nominating, and to the Senate of the United States for

confirming, Mr. Guy T. O. Hollyday as Federal Housing Commissioner. Guy has resigned as President of The Title Guarantee Company, of Baltimore. Mr. George H. Schmidt, former Vice-President and Treasurer, has been elected President.

In leaving his company and taking this important Governmental post, Guy Hollyday is making a real financial sacrifice and assuming great responsibilities. With all our heart, we wish him well, and this with the entire title fraternity joining. We know Guy will do a grand job as Commissioner. And we pledge to him the talents and services of the entire membership of the American Title Association, to be his to use freely and often.

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PERSONALS

JOSEPH H. SMITH
Secretary, American Title Association, Detroit

The OHIO TITLE CORPORATION in Columbus, Ohio, moved to its new business location in the Lanman Bldg., 16 South Third St., last month. FRED R. PLACE, President of the Firm and former member of ATA Board of Governors, announced the new quarters will provide nearly twice the floor space as the former offices at 52 West Gay St.

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34 year old St. Clair Guaranty and Title Co., Belleville, Illinois, was sold to ST. CLAIR TITLE COMPANY, a new corporation affiliated with CHICAGO TITLE AND TRUST COMPANY. President of new corporation is JOHN D. BINKLEY, Vice President of Chicago Title & Trust Company, and member of ATA Board of Governors. J. R. DONLAN is Vice President and Treasurer, W. L. WISKAMP, Vice President and Secretary, and HENRY C. G. SCHRADER, retiring President and Treasurer, of St. Clair Guaranty and Title Co., will serve as Title consultant.

HALE WARN, JR., was elected President of LAND TITLE INSURANCE COMPANY, Los Angeles, California, last February. He formally served as Executive Vice President of firm.

The Board of Directors of THE TITLE GUARANTEE COMPANY, Baltimore, Maryland, announced the election of GEORGE H. SCHMIDT, as President of the Company. Mr. Schmidt was elected to fill the vacancy caused by the resignation of GUY T. O. HOLLYDAY whose appointment as Federal Housing Commissioner by President Eisenhower was confirmed by the United States Senate, on April 15. (See D. O. T.)

At the same time, the Board announced the election of PAUL J. WILKINSON to the position of Executive Vice President, J. MILTON BRANDT to be Vice President and Treasurer and A. EUGENE KERNAN to be Vice President.

IMPORTANT ASSOCIATION EVENTS

DATE	MEETING	WHERE TO BE HELD
May 7-8	Illinois Title Association Convention	Sheraton Hotel Chicago, Illinois
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May 18-19	ATA Central States Regional Meeting - Title Insurance Executives	Edgewater Beach Hotel, Chicago Illinois
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May 18-19	Arkansas Land Title Association Convention	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 5-6	Atlantic Seaboard Regional Meeting	Traymore Hotel Atlantic City, N. J.
	*	
June 5-6	Idaho Title Association Convention	Boise Hotel Boise, Idaho
	*	
June 8-9	Pennsylvania Title Association Convention	Hershey Hotel Hershey, Pa.
	*	
June 11-12-13	Michigan Title Association Convention	Otsego Ski Club Gaylord, Michigan
	*	

DATE	MEETING	WHERE TO BE HELD
June 18-19-20	California Land Title Association Convention	Hotel del Coronado San Diego, California
Aug. 28-29	Montana Title Association Convention	Great Falls, Montana
Sept. 14-15 16-17	ATA-National Convention	Biltmore Hotel Los Angeles, Calif.
Oct. 25-26-27	Ohio Title Association Convention	Hotel Hollanden Cleveland, Ohio

ABSTRACTERS REGIONAL CONFERENCE

FRIDAY-SATURDAY
May 22-23
HOTEL HANFORD, MASON CITY, IOWA

Illinois Kansas Minnesota — IOWA AND HER SISTER STATES — Nebraska South Dakota Missouri Wisconsin

Iowa Members: The Regional Conference will immediately follow your own convention (May 21-22) Plan to stay over and take part.

Members, Adjoining States: The Iowa Title Association invites you to their 50th Anniversary Convention Come early. Partake in the fine program.

Everyone:
You are all invited to join Iowa and Her Sister States on this occasion. Come for the Iowa Convention and the Regional Conference.

Make Reservations Direct To The
HOTEL HANFORD, MASON CITY, IOWA
(STATE ARRIVAL AND DEPARTURE DATES)