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FEDERAL LIENS AND FORECLOSURES

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LIENS IN FAVOR of the Government or its instrumentalities arise under various laws and in various circumstances and are of constant concern to the mortgage lender. The most frequently occurring types are tax liens imposed by different sections of the Internal Revenue Code.

Tax Lien

Section 3670 (26 U. S. C. 3670) of the Code reads as follows:

> If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, penalty, additional amount or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person.

Some Exceptions

Under this section, a lien arises in the case of a delinquency in the payment of any tax imposed by the government, with the exceptions - not apparent here but provided for in other parts of the Code - of the estate tax, the gift tax and some other such as the tax on distilled spirits. Therefore, the general tax lien under Section 3670 would seem to apply to income tax, social security, the taxes required to be withheld by employers, excise, tobacco and other such taxes.

Priority

The priority of the lien imposed by Section 3670 is governed by two sections. Section 3671 provides that the lien shall

arise at the time the assessment list is received by the Collector and shall continue until the liability is satisfied or becomes unenforceable by lapse of time. Section 3672 provides that a federal tax lien is not valid as to mortgagees, pledgees, purchasers or judgment creditors until (1) notice has been filed in the state or territory where the property is situated according to state law authorizing such notice, or (2) where no such authorization has been made, by filing notice in the office of the clerk of the federal district court in the district where the property is located. All states except New Hampshire have designated by statute the place for such filing.

Limitation

For Section 3670 liens, Section 276 (c) (26 U. S. C. 276 (c)) imposes a six-year period of limitation in which collection may be made by distraint or proceeding in court. Notwithstanding the six-year limit expressed in the statute, however, a thorough title search should extend back over a longer period. This is due to a district court decision in Drake v. Dollman, 29. F. Supp. 179, where it was held that a lien for a deficiency due from a taxpayer was effective against real estate purchased by a third party more than six years after the assessment of the tax but within the unrecorded extension of time for collection agreed upon by the taxpayer and the Collector in connection with an offer in compromise.

Ten Year Lien

The recording requirement discussed above does not apply either to the estate tax lien or to the gift tax lien. The estate tax lien is separate from the general lien created by Section 3670 and does not depend on recordation for its priority to private liens. U. S. v. McGuire, 42 F. Supp. 337; Detroit Bank v. U. S., 317 U. S. 329. Section 827 of the Internal Revenue Code (26 U. S. C. 827) provides for a ten-year lien upon the gross estate of the decedent. The lien arises at the time of death of the decedent and the only case where property may be passed free of the estate tax lien is where the property is sold by the person inheriting or otherwise receiving it to a bona fide purchaser for value, in which case that particular property is divested of the lien and a like lien then attaches to the remaining property of the transferor. The prospective mortgagee will be put on notice of the possible existence of an estate tax lien if a person in the chain of title has died within the ten years prior

to the title examination. For full protection, however, in view of the decision in Drake v. Dollman, cited infra, a thorough search should be made extending back well beyond the ten-year period, because of the possibility that an extension of the limitation period may have been agreed to by the Government and the taxpayer.

The language of Section 1009 (26 U. S. C. 1009), imposing a ten-year lien for unpaid gift taxes, is substantially the same as the provision imposing the estate tax lien. Therefore, we are led to the conclusion that it need not be recorded to have priority, and that the same precautions should be taken in the title search.

Other Types

WE TURN NOW TO other types of liens existing in favor of the Government. Section 1962 of Title 28 of the U. S. Code provides that a judgment rendered in a district court in a state shall become a lien on property located within that state ordinarily in the same manner as a judgment of a state court of general jurisdiction. When a state law requires the docketing, indexing or recording of state court judgments before the lien attaches, the same requirements apply to federal court judgments if the state law so authorizes; if, however, state law makes no provision for federal judgment liens, the federal liens attach without such formalities. Under this section of the Code, liens may arise in favor of the Federal Government as well as in favor of private judgment creditors suing in the federal courts. Most states provide for the recording of federal judgment liens, usually in a county recorder's office. The Government may obtain judgments, and hence judgment liens, in such cases at Title I loans, fines and penalties in criminal cases and bond forfeitures.

Subrogation Rights

The Government may acquire liens through its mortgage guaranty and insurance programs. For example, the Servicemen's Readjustment Act, Title 38, Section 694 (g) of the U. S. Code, provides that in the case of a default of a guaranteed loan, the administrator, on paying the guaranty, is subrogated to the rights of the holder to the extent of the amount paid on the guaranty. The regulations (38 CFR 36, 4323) provide for the recording of such a lien by requiring the filing of an instrument evidencing payment of the guaranty and the administrator's subrogation in a suitable place in the state in accordance with state law

applicable in filing of mortgages or other lien instruments.

Complications

Whether the private mortgagee makes a loan only to find that the Government holds a prior lien, or whether the Government becomes a junior lienor, the existence of a government lien complicates the foreclosure procedure. Such a lien cannot be wiped out by judicial foreclosure unless the Government is made a party, nor in any case by a power of sale foreclosure.

Consent

The government's consent to be sued in the case of any federal liens is given in Section 2410, Title 28, of the U. S. Code. Sections 3678 and 3679 of the Internal Revenue Code (26 U. S. C. 3678-9) also provide such consent in the case of tax liens alone.

Many Advantages

The provisions of the Internal Revenue Code for releases having proved impracticable in the case of ordinary mortgage transactions, mortgagees should utilize Section 2410, which expressly authorizes suit against the U. S. to quiet title and to foreclose the mortgage upon property on which it holds a lien. Section 2410 has many advantages: it may be used where any type of federal liens, including tax liens, exist; it applies to superior as well as junior liens; action may be brought in a state as well as in a federal court, although the U. S. may at its option remove the action to a federal court.

Requirements

THE REQUIREMENTS FOR making the Government a party are relatively simple: service of the summons and complaint must be made on the U. S. Attorney for the district in which the action is brought and copies sent by registered mail to the Attorney General in Washington, D. C.; the U. S. must be given 60 days to answer. One drawback in the use of this provision is that the Government is given a one-year period of redemption after foreclosure, but since this is believed to run concurrently with any other redemption right that may exist, this is no great problem in the redemption states. Interestingly enough, the one-year period of redemption given the U. S. does not arise in any

case where the subordinate lien or interest of the U. S. derives from the issuance of insurance under the National Housing Act, as amended, or the issuance of guaranties or insurance under the Servicemen's Readjustment Act of 1944, as amended. (See Title 12, Section 1701 (k) of the U. S. Code.)

States Differ

In states such as Illinois there is little difficulty presented in dealing with a federal lien, since it is customary to examine the title and to foreclose by court action, joining in the suit all parties having an interest, including junior claimants. Proper service on the U. S. Attorney and the Attorney General, giving the Government 60 days to answer, takes care of the requirements of Section 2410. However, in states such as Massachusetts and Texas, where it has been customary to foreclose under a power of sale and without a title examination, it appears that a sale under the power contained in the deed of trust will not destroy a federal lien and that it can be destroyed only by judicial sale as outlined in the statutes. In these states, a thorough examination of the records to unearth possible federal liens on the property is not only highly desirable, but imperative.

Circumstances Vary

Where the lien of the U. S. is superior to that of the private mortgagee, the property may be sold subject to the undistrubed lien of the U. S., or if the U. S. consents, the property may be sold free of its lien and the proceeds divided as the parties are entitled. Under Section 2410, Title 28, and Section 3763 (a), Title 26, of the U. S. Code, where the lien of the U. S. is junior the property may be sold at foreclosure with a one-year redemption right in the U. S., or if a request is made to the proper officer and he finds that the property is insufficient to satisfy the lien of the U. S. or that the lien has become unenforceable by lapse of time or other reason, a certificate of release of the federal lien may be issued.

Important

In conclusion, it would be well to stress again the importance of an exhaustive title search, including a painstaking sifting of the facts to bring to light any lien not required to be recorded. Once a federal lien is discovered, the steps set forth in Section 2410 for dealing with the federal lien in foreclosure proceedings

should be carefully followed. In view of the prevalence of federal liens, particularly in the income tax, estate tax and judgment fields, prospective mortgagees and their title examiners cannot be too cautious.

LIFE COMPANY COMMERCIAL REALTY NEAR BILLION

The investment of life insurance funds in commercial and industrial rental properties came very near the billion mark in the first quarter of this year, the Institute of Life Insurance says. With the purchase of $23,000,000 in the first three months, March 31 holdings were $997,000,000.

Aggregate real estate holdings of the U. S. life companies on March 31 were $1,897,000,000, including $450,000,000 of rental housing and $406,000,000 of home office and other company used properties. The quarterly figures were reported as follows:

	Acquired Holdings		
	Mar. 3 Mos. Mar. 31		
	1953	1953	1953
	(000,000 Omitted)		
Company Used	$ 1	$ 3	$ 406
Rental Housing	1	2	450
Commercial Rental.....	10	23	997
Farm.....	—	—	17
Other.....	1	1	27
Total...	$13	$29	$1,897

REPORT OF JUDICIARY COMMITTEE

RALPH H. FOSTER, CHAIRMAN
President
Washington Title Insurance Company

Insanity -

Gibson was declared incompetent and guardian was appointed by decree of New Mexico court. Gibson conveyed California property to defendant. Suit was brought in his behalf to set aside this deed. A California District Court of Appeals held that the full faith and credit clause requires that complete credit be given the New Mexico decree and that the deed was wholly void. Gibson v. Westoby, 251 Pac. 2d 1003.

(Reported by Robert Mack Light,
San Bernardino, California)

Minerals - Taxation -

The case of McCoy v. Lowrie, decided by the Supreme Court of Washington on February 10, 1953 and reported in 142 Washington Decisions, page 22, 253 Pac. 2d 415, was an action to quiet title.

The facts were that the owner of the land conveyed to a corporation by deed which reserved to grantor, his heirs and assigns, all minerals with the right to enter for the purpose of exploring and mining. The corporation conveyed to McCoy, the plaintiff, without reservation or exception.

There was no separate assessment of taxes on the minerals.

McCoy for many years paid taxes assessed against the land.

The Supreme Court by decision of seven judges, with two dissenting, held the plaintiff's claim rested on the statute applicable only to vacant and unoccupied land which requires merely color of title and the payment of taxes for seven successive

years. R. C. W. 7.28.080, R. R. S. 789, P. P. C. 24-45.

Assuming that plaintiff had color of title and that the mineral rights reserved were "vacant and unoccupied land," the court held that plaintiff had not met the other requirement of the statute, payment of "all taxes legally assessed," because he had never paid any taxes on the minerals or mineral rights. The court rejected the argument that payment of taxes assessed and levied on the land included payment of taxes on the minerals and mineral rights.

(Reported by Sydney A. Cryor,
Seattle, Washington)

Title Insurance - Damages -

Plaintiffs purchased property then devoted to agricultural purposes, which they later changed to industrial uses, spending substantial sums in erection of buildings. At the time of purchase they secured an owner's policy of title insurance, from which a recorded easement was omitted.

In action against the title company for damages a California District Court of Appeal said:

> "The findings present the question as to the proper time for the valuation of the property for purposes of damages in such cases -- is it the diminution in the market value of the property caused by the defect and measured at the time of purchase, market value being measured by the use to which the property is then devoted, or is it the diminution in value as of the time of the discovery of the defect measured by the use to which the property is then being used? In either event, maximum liability is measured by the face amount of the policy.
>
> "It seems quite apparent to us that liability should be measured by diminution in the value of the property caused by the defect in title as of the date of the discovery of the defect, measured by the use to which the property is then being devoted. When a purchaser buys property and buys title insurance, he is buying protection against defects in title to the property. He is trying to protect himself then and for the future against

loss if the title is defective. The policy necessarily looks to the future. It speaks of the future. The present policy is against loss the insured 'shall sustain' by reason of a defect in title. The insured, when he purchases the policy, does not then know that the title is defective. But later, after he has improved the property, he discovers the defect. Obviously, up to the face amount of the policy, he should be reimbursed for the loss he suffered in reliance on the policy, and that includes the diminution in value of the property as it then exists, in this case with improvements. Any other rule would not give the insured the protection for which he bargained and for which he paid."

Overholtzer v. Title Insurance Company, 253 P 2d 116.

(Reported by F. W. Audrain,
Los Angeles, California)

Divorce -

A Florida decree of divorce directed conveyance of real property located in Ohio. The Ohio courts recognized the Florida decree and directed conveyance in accordance therewith. Beebe v. Brownlee, 110 NE 2d 64.

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

Mechanics' Lien --

Mechanics' lien is superior to deed of trust as to amount of proceeds used in construction but not as to amount used to pay prior deed of trust. Oliver v. Groff, 253 SW 2nd 824 (February 1953.)

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

Mistake -

In 1925 plaintiff bought Lot "L" by metes and bounds description. He built a house, but it was on Lot "K" adjoining. He continued to pay taxes on Lot "L" but taxes on Lot "K," on which the house rested, became delinquent and through tax sale became

vested in defendant. A divided court held plaintiff had good title to Lot "K" (and his house.) Three judges dissented. McCreary v. Shields, 333 Mich. 290.

(Reported by Robert J. Jay,
Detroit, Mich.)

Restrictive Use -

A habendum clause in deed that realty was to be held so long as premises were used for a place of worship did not so restrict use that simultaneous use for church and production of oil would constitute a breach. Frensley v. White, 254 Pac. 2d 982. (Oklahoma)

(Reported by John W. Warren,
Newkirk, Okla.)

STILL POPULAR

The American Title Association headquarters still has a limited supply of "The Land Title Course-Revised" by Mr. William Gill, Sr., Executive Vice President, American-First Trust Company, Oklahoma City, Oklahoma. Every month new orders are received at national headquarters for copies of this book. One law school in the Southern part of the country has ordered in excess of 200 copies, and apparently makes it required reading for their students.

Many of our members may wish to order extra copies of "The Land Title Course-Revised" for use by their employees or to distribute to their clients. The book is priced at $2.00 per copy, and may be obtained by writing to the American Title Association, 3608 Guardian Building, Detroit 26, Michigan.

LET'S TAKE THE "IFs" OUT OF HOME OWNERSHIP

R. G. SMILEY, PRESIDENT
West Coast Title Company
St. Petersburg, Florida

We present below an article written by Mr. Smiley and carried in the St. Petersburg "Independent" in connection with the National Home Week of last fall. Rewritten to fit your local picture, we believe it would be accepted by the Real Estate Editor of your local paper, perhaps Sunday's issue, over your name; and, of course and naturally, with the name of your firm thus getting local publicity. -Ed.

In the United States there are more home owners per capita than anywhere else in the world. This high percentage of home ownership is recognized as one of the strongest bulwarks of a democracy and the designation of National Home Week to foster and promote the ownership of homes by individual families is an all important factor in the struggle of the Western people to prevent the spread of Communism.

Stress Fundamentals

For the next few days, millions of words will be written and millions of words will be spoken extolling various types of architecture and various types of construction. Columns will be written and speakers will dwell at length upon functional designs of houses for all types and classes of homes, but too little attention will be paid to the fundamental basis of all home ownership, namely, the title to the land upon which these homes are being built.

Basis of Wealth

Land, which is the basis of all home ownership, and, in fact, the basis of all wealth, is the commodity about which the prospective home owner should be most concerned, because if the title to the land should fail or if it should prove to be encumbered

at or prior to the time of its purchase, then the faith of the ownership of land was transferred by mere delivery of possession from one to another, which custom no doubt gave rise to the expression, "Possession is nine points of the law." As civilization became more complex, written conveyances of the title to land were used, and to show your title to any particular parcel of land, it was necessary that you produce for the inspection of the purchaser, all of the originals of the former conveyances. If one of such originals was lost or destroyed, a break in your chain of title resulted which was very difficult if not well nigh impossible to cure.

Remedy

To remedy this defect in the system of conveyancing, recording statutes were enacted, which enabled the land owner to record his instruments of conveyance so that if the originals were lost copies could be obtained.

Abstract is Born

As the ownership of land expanded and the volume of recorded instruments grew, it became necessary to compile brief histories of the title transactions to any designated tract of land, from some original source to the present, and thus the Abstract of Title was born which consists of a summary of the essential parts of every recorded instrument of conveyance and a brief statement of all recorded liens and encumbrances affecting that tract of land.

A History

The Abstract of Title as compiled now is essentially the same as those that were compiled a hundred years ago. Of course there have been improvements in the manner in which the history of any particular tract of land is set out in the Abstract. More complete information is shown and more care is taken in their preparation. However, it is still merely a history of the recorded transactions which have taken place that affect the particular lot or piece or tract of land described in the Abstract.

Attorney Needed

To the great majority of home owners, this Abstract of Title

is meaningless, because he does not know and cannot be expected to know what the effect of the various transactions set forth in the Abstract of Title has upon his particular title. Therefore, he must submit the Abstract to an attorney skilled in title research for an opinion on the title.

Feel Secure

After having obtained an Abstract of Title and an opinion from a competent attorney, the home owner can feel secure in his ownership

"IF" there are no hidden defects in his title arising from fraud;

"IF" there are no forged instruments in his chain of title;

"IF" none of the conveyances were made by persons under age or of unsound mind;

"IF" there are no outstanding widow's dower rights;

"IF" there are no outstanding rights of divorced persons;

"IF" there are no rights of a child or children born after the making of a will;

"IF" all of the conveyances in his chain of title are sufficient to transfer the whole estate owned.

Every attorney knows that some of these hidden defects may be existent in any chain of title, and these "IF's" loom large in the minds of every prudent buyer of real estate. From all of this arises the need and demand for insurance against financial loss, and the answer to that need and demand is "Title Insurance."

When you have a Title Insurance Policy on your home:-

You have a written guarantee that an insurance company will undertake at its own expense, to defend your title in all legal actions or proceedings alleging the title to be other than as insured.

You have a definite insurance contract indemnifying you, according to its terms, against loss or damage

due to title defects. Of course you should investigate the Company issuing your insurance contract to see that said contract is backed by known and sufficient assets and reserves and that it is recognized as a sound Company in its field.

You have the safety and security that title insurance alone can provide your real estate purchase.

You have eliminated the "IF's" from your home ownership.

* * *

"IMPROVING THE ENVIRONMENT

"A cheap price alone, however, does not assure redevelopment. The mere fact that an area is run down is not, as some planners seem to think, evidence that it is a desirable spot for new building. Many of the blighted urban areas have been left behind in the growth of cities because they are plainly not attractive to investors. Lack of convenience, obsolete street and block layouts, lack of parks, schools, and other community facilities, air pollution, noise, and similar nuisances, inadequate zoning protection--any or all of these detractions, irrespective of price, discourage investor interest.

"The cost problem, therefore, is one not only of eliminating the unsocial values of slum land but also of giving the land some real value by increasing its natural appeal. Eliminating smoke, building highway and parking facilities, improving schools and expanding parks and playgrounds--in other words, doing the things that need to be done anyway to keep up the vitality of the city--all tend to remove the cause of blight and give the forgotten area some market appeal."

United States Chamber of Commerce
Construction Markets - May 1953

ABSTRACTS OF TITLE

Comments on Oklahoma Abstracts by Oklahoma Attorneys

The Oklahoma Title Association repeats the comments and suggestions, made 13 years ago, and then asks this pertinent question:

HAVE YOU CHANGED YOUR METHOD OF ABSTRACTING SINCE 1940, OR ARE YOU IN THE SAME RUT AS YOU WERE AT THAT TIME?

Comments

1. The certificate is a vital thing in every abstract and I do not at this moment have any suggestions to make on the certificates used in Oklahoma by the better abstracters.

I do think that in the abstracting of every mortgage which is unreleased the exact wording in regard to the waiver of appraisement should be set out.

The commencement date should be shown on the caption of all supplemental abstracts.

If the base abstract has 50 pages, when it is continued the first page of the continuation should be numbered 51.

Omit Opinions

2. The abstract should never contain comments as to the condition of the title, which comments involve legal interpretations or conclusions. In one abstract I examined, prepared by an abstracter in this State, there was a notation in the abstract to the effect that it was the abstracter's opinion that several undivided interests were not vested in the record holder because of certain full blood deeds. Such comments should not be made.

Where the abstracter tacks a supplemental abstract at the end of the original abstract, careful statement should be made as to the period of time covered by the original abstract as well as the tacked supplement or supplements.

Supplements

Where the abstracter tacks supplements at the back of the original abstract or previous supplements, the pages should be numbered consecutively regardless of the supplements.

A standard abstract form should be made in connection with deeds, mortgages, oil and gas leases, etc. In the event any instrument deviates from the standard form, the abstracter, in abstracting such instrument, should state in the abstracted form the particular clauses which deviate from the standard form. If there is considerable deviation from the standard form, it is wise to insert the instrument in full in the abstract.

Abstracts should be prepared on typewriters with pica type and the spacing of all typed or printed matter should be standard.

Uniformity

3. I would like to impress upon the abstracters of Oklahoma that too much cannot be said in behalf of uniform abstracting of instruments. Unfortunately many, far too many abstracters have "ideas of their own," which fall far short of meeting the needs, convenience and requirements of examining attorneys. Frequently in my own work I will have from four to twelve abstracts a day to examine over periods of months, particularly when a new field is open or where there is a hot geological play.

In addition to a thorough examination and consideration of each abstracted instrument speed is highly essential as well as lucrative to the attorney engaged in the general practice of law.

A uniform method of abstracting an instrument is greatly desired by one who is actively engaged in the examination of abstracts. To turn page after page of an abstract and find uniformity is convenient permits speed and eliminates unnecessary labor and brain fag.

I could write indefinitely on this subject particularly setting up the instrument from whom and to whom, date, filing date and

recording data at the top of the instrument, the arrangement of the pertinent and essential parts of an instrument and how to abstract it, but no doubt it would be a case of love's labor lost, so far as the Oklahoma Title Association collectively and a group is concerned. Individually many are fine, but collectively they can deal out untold and needless headaches to examiners.

Mechanical Form

4. I believe the greatest improvement that could be made in Oklahoma abstracts would be the adoption by all abstracters of a uniform method of abstracting. As you doubtless know, abstracts are miraculously accurate. In my experience I have found an exceeding low percentage of errors and omissions, but the sloppy manner in which abstracts are frequently slung together is sometimes exasperating and irritating. I heard an expression on the elevator the other morning in regard to a hair-do which I think would apply, that is, many abstracters have the appearance of having made up with a mix-master.

I suggest that all abstracts in Oklahoma follow exactly the same mechanical form.

All advertising of the abstracter should be omitted from the sheets on which entries appear. The most provoking form of advertising to me is the kind appearing in the center of the page over which the entry is written.

"See Red"

I am also very much opposed to red typed pages. For instance some abstracters type all instruments in red which they consider to be encumbrances. This makes an examiner see red and is a reflection on his intelligence.

Oklahoma abstracters seldom make an index for their abstracts. Of course, this is not necessary in small abstracts but it is very helpful in the larger ones.

Oklahoma abstracts seldom contain a plat. This should always be included where the abstract covers lots, blocks or other irregular descriptions.

Certificates

In many instances the last certificate of an abstract which has been supplemented several times is not clear as to the period covered by its statement in regard to taxes, liens, etc. It would be very helpful to the examiner if the final certificate covered the condition of taxes, judgments, liens, etc., from the beginning down to the date of the certificate. I think in most instances abstracters intend to treat their certificates in that manner, but the certificate itself does not clearly show whether it covers taxes, etc., from the beginning or merely from the date of the beginning of the certificate.

Many abstracters neglect to number the pages of their abstracts. This is especially true where the entries are numbered. The pages should always be numbered at the bottom rather than at the top.

An abstracter is, of course, not supposed to pass on the legality of any of the entries but his abstract is merely supposed to reflect the records as they actually exist. I, however, have observed that most abstracters who have been in business for a good many years are familiar with irregularities appearing in the titles of their county. I, therefore, have always been very much in favor of an abstracter commenting upon and calling attention to irregularities. It is especially helpful to have an abstracter explain in a note, the appearance of strays in his abstract. He usually knows why they are there and could save the examiner a lot of expense by simply including in his abstract a note of explanation.

Specifications

5. I think all attorneys, who examine abstracts from time to time, have their ideas on this subject and I know that the work of such examining attorneys would be much easier if all abstracts were prepared under uniform specifications. In this office, naturally, we see abstracts from all parts of the state and there now exists anything BUT uniformity in the preparation thereof. That is particularly true where abstracts are not re-compiled but are merely brought to date. The abstracts that are re-compiled are more nearly uniform and consequently are much easier to examine. It always makes me nervous where, for example, there are several different sizes of sheets; that is, where the abstract contains say sheets 8 x 14 and some 8 x 11. In exam-

ining such abstracts it is very easy for an attorney to miss a sheet unless he makes a particular effort to check the number of pages in connection with his examination. This would mean a lot of extra work.

Of course, there are other items in connection with uniform specifications which are just as important as uniformity. Particularly do I have in mind the practice of some abstracters of showing all instruments in full. For example, in showing a deed in the abstract I see no necessity of setting up all the language in the deed. When that is done it ceases to be an "abstract" but is merely a compilation of the record. It takes a lot of extra time of the examining attorney as it then becomes necessary to read every word in order to ascertain that there is nothing in the deed which would have any bearing on the title. There is no reason I know of why an abstracter could not brief these deeds as well as the other usual instruments shown in the abstract.

Acknowledgments

I believe there are some abstracters who still persist in the practice of copying acknowledgments in full. It seems to me that this is entirely unnecessary unless the acknowledgment does not conform to the Oklahoma statutory form. Where the statutory form is followed it should be sufficient for the abstracter to simply state "Statutory form of Acknowledgment." Where the form is other than statutory, or where the acknowledgment is the form of acknowledgment used in some other state, then the abstracter would naturally copy it in full.

I realize that abstracters like other professional people each has his own ideas about the way he wants to do his work. However, the Oklahoma Title Association has done a great deal to advance the cause of uniform abstracts in this state and I believe that in so doing it has rendered the individual abstracters of this state a splendid service.

Sizes and Shapes

6. To anyone with a logical mind, the value of uniform abstract specifications is obvious.

Is there any value to the public in having uniform systems of money, and weights and measures? If so, then surely there is much value in uniformity of abstracts compiled in the various

Counties in the State.

Suppose you had an offer from two different firms, of a job inspecting garments for the purpose of detecting imperfections; and suppose the pay offered was the same -- so much for each garment; now suppose the work offered by the first firm consisted of inspecting garments, all identical in size, shape, material and construction, while the garments to be inspected for the second firm consisted of all the different sizes, shapes, material and construction; which job would you prefer, other considerations being equal?

This illustration may help us to understand how a title examiner feels after a day's work examining abstracts; suppose on Monday he examines several abstracts of different sizes and shapes, in some of which the page numbers are placed in the upper right-hand corner, in others in the lower left-hand corner, in others in the lower right-hand corner, in others in the center of the bottom of the page, and in still others in the upper left-hand corner; where some of the abstracts show the filing memorandum in the upper right-hand corner, others at the end of the instrument, and others use both methods, shifting from one to the other; where some of the abstracts show acknowledgments immediately after date of instrument, others at the end of the instrument, others in the middle of the page, and still others use all these methods -- shifting from one to the other, with the entries and pleadings arranged hodge podge, helter skelter.

"Spice of Life"

Then suppose that on Tuesday all of his abstracts are uniform, as to size and arrangement of sheets with all important data set out clearly at the same place in each entry, with all entries and pleadings logically arranged; on which day do you think he could do the most work, and on which day could he do his work in less time and with less nervous strain and with less danger of making errors?

It really doesn't make any particular difference whether printed, mimeographed or multigraphed forms are used or whether the entry is entirely typewritten, so long as the same general scheme or arrangement is used.

I see no reason why an abstracter doing a large volume of business should not use multigraphed forms, as they could very

easily be made to present a neat appearance by carefully filling the blanks with the same style type.

Variety may be, as Shakespeare says, "the very spice of life" -- but I say to you that uniformity, system and logical arrangement of detail is the bread and meat of our business life. A little spice may be alright in its place, but it can never take the place of systemitized uniformity without which our modern business could not exist.

Most any logical scheme of compiling an abstract would be satisfactory if you would only all use the same scheme.

Varied Schemes

A title examiner may be pretty dense, as no doubt some of them are at times, but it doesn't require a great deal of time for them to become accustomed to most any reasonable scheme of compiling an abstract; but just about the time they get used to a particular scheme of abstracting, they have finished their work with that particular abstract then they start to work on another one involving a different scheme -- then perhaps in the next abstract they encounter has still a third scheme; its like Sandy's horse:

Since bran was cheap, Sandy had been feeding him on bran, but the price of bran began suddenly to increase and to keep on increasing -- so Sandy mixed a little sawdust with the bran; the horse seemed to be doing alright, so he gradually increased the proportion, adding more and more sawdust from time to time and less and less bran as the price went up, until finally he reached the climax and was feeding all sawdust; there was only one fly in the ointment; as Sandy subsequently reported, that just as soon as his horse got used to a diet of one hundred per cent sawdust, he died.

Efficiency

7. Uniformity is one of the necessary requisites of efficiency and is a much desired goal in the business world where time is valuable. Individuality is a beautiful thing in its place, but it isn't in harmony with present day business efficiency.

Only one who has been a soldier can appreciate how routine and uniformity destroy individuality, but soldiers also learn to

recognize that these are indispensible if efficiency, organization and coordiantion are to be accomplished.

The subject of uniformity should be applied not only to the system or procedure of all of the abstracters within the state, but should be applied to all of the abstracts within one plant and to all of the entries within one abstract. The ideal situation, of course, cannot be accomplished under a system where an abstracter merely recertifies entries that were made years ago, before uniformity had ever been thought of. It is confusing to the title examiner to check an abstract where the data in the various entries may be arranged in four or five different manners. It requires additional time on his part and lessens his efficiency when he must look in different places on different entries for the same information. Of course, we cannot require that new uniform entry sheets replace all of the old work that the customer has previously paid for with his hard earned money.

The Oklahoma Title Association has done an excellent job in working out uniform entries and encouraging their use. It is regretable that the abstracters have not unanimously adopted these forms. Here is where "individuality" bobs up. Certain abstracters prefer doing things their own way or following an old habit established either by themselves or their predecessors years ago. They are the "old dogs" who refuse to learn "new tricks" in the interest of uniformity.

Printed Form

I am highly in favor of the abstracters using the printed forms, because after the attorney has familiarized himself with the printed form, he no longer has to read the printed portions. But if the abstracter merely follows a uniform form and arrangement, but types out the entire entry, the title examiner must check all of it to see that it does actually follow a uniform plan, and to see that the typist has made no error of omission or commission. The more that can be put on printed forms, the better. In my opinion, everything should be printed that can be printed, leaving to be filled in only the name, dates, recording data and descriptions and any unusual provisions which may be written into the instrument which is being abstracted. When this is done it reduces to a minimum the information which the examining attorney must watch.

These are random thoughts on your subject. The ideal state

or situation of absolute uniformity cannot be obtained as long as the individual element must be taken into the equation. The government can put all men in uniform, but they will not all look alike. In the same manner the abstracters of this State may adopt uniform entries and abstracts, but they will be far from uniform. Even the style and size of type on the typewriters are not uniform. Some abstracters still insist on using red typewriter ribbons, which, to my mind, is about the same as a man wearing a coach hat, wing collars, a mustache and a chrysanthemum, as in the days of the gay nineties.

WHEN NAMES ARE IMPORTANT

PALMER W. EVERTS
Executive Secretary
New York State Title Association

Names, names and similar names present many problems in searching real estate titles. A glance at any telephone book in a large city will disclose many people by the same name and others having very similar names. Are the judgments filed against the name of the present owner actually against this owner or against another man who has the same or similar name? Having dug up judgment liens against the name given have you checked for liens against others of similar names?

When two or more names are pronounced about the same you have the problem of checking both.

Examines Name History

A number of statutes of this State and many decisions of our courts concern names of persons. Occasionally the judge writing a decision becomes historically erudite, as in Feldman vs. Koll, reported in the New York Law Journal of November 4, 1935, on page 1684, wherein Justice Wenzel explained the derivation of "King K's" as applied to sellers of cheap merchandise. He explained that the name Morris is an aglicization of the Hebrew "Melach," meaning king. Again in Matter of Whelan, 146 Misc. 176, at page 180, it was shown that Whalen, Wheland and Phelan are but variations of the same name. On the other hand Frank and Frederick are different names (New York Pat-

tern Co., Inc., vs. Gatton, 153 Misc. 424.)

When two or more names are pronounced alike, though spelled differently, they are said to be idem sonans - of the same sound. Thus Storrs and Stores, Jetta and Jetter, Gottlieb and Gottleib, to choose a few from many instances, have been decided at various times to be idem sonans. It is harder to agree that Brenham and Brennan sound the same, though they were decided to be equivalent by the highest court of the State (Miller vs. Brenham, 68 N. Y. 83.)

Bess is a corruption or abbreviation of Elizabeth, and when a person named Mary Elizabeth Hedges dropped the name Mary and was sometimes known as Bess, it was decided that a judgment against "Bess Hedges" was a lien on her real estate, even though the statute requires the true name to appear in the judgment docket in order that a lien can exist. (H. R. & C. Co. vs. Smith, 212 App. Div. 173: affd. 242 N. Y. 267.) This decision was not, however, controlled by the principle of idem sonans but seems to have turned largely on the theory that a person can (subject to legal limitations) adopt what name he pleases.

The legal doctrine of idem sonans is merely that the law excuses the bad spelling of a name if the word so spelled, sounds right.

A few cases on the subject will be of interest.

Can Make Errors

Under the doctrine of idem sonans absolute accuracy in spelling names is not required in legal documents or proceedings. All that is required is that the name is spelled, though different from the correct spelling, conveys to the ear when pronounced according to commonly accepted methods, a sound practically identical with the sound of the correct name. Thus the name Jetta, in legal proceedings was held equivalent to Jetter, the true name. (119 A. D. 172)

A variance of names in a chain of title may be obviated by proof that both refer to the same person. (Hellreigel V. Manning 97 N. Y. 56.)

If a title searcher decides that two names are idem sonans and he searches both, the search against each must be complete

within itself and if he omits a judgment against one of them he becomes liable for any loss occasioned thereby. Commonwealth V. Owen, 2 Wkly, N. Cas. (Pa.) 200.

The doctrine of idem sonans does not apply to afford constructive notice of public records where two foreign names pronounced alike in fact begin with a different letter of the alphabet. In re: Heils Appeal 40 Pa. St. 453.

Middle Initial Important

The omission of the middle initial of a judgment debtor on the index of judgments is fatal to the lien of the judgment creditor as against a subsequent bonafide grantee of such debtor for value and without notice (Crause V. Murphy, 140 Pa. St. 335, 12 L. R. A. 58.)

The search for deeds, mortgages and judgment liens against parties having the same or similar names requires a careful and exhaustive search.

"ROLLING HOMES -

ALTHOUGH nation's home supply is catching up with demand, trailer homes are becoming more popular. Today more than 650,000 trailers house 1.8 million Americans. Last year's trailer sales zoomed to $300 million - 28% gain over 1951.

* * *

"AD OUTLAY -

In 1952 all other countries combined did not spend as much in advertising as did U. S. alone-as estimated $7.4 billion. This sum represents only 2% of national income, and a very small part of cost of products it helped to sell. Advertising is such a dominant factor in American economy only because it has proved itself our cheapest and most effective selling tool."

Business Briefs
May, 1953

D O T

(Dope Observations Trends)

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

Interest Rates

Probably the most important factor (domestic) to affect the realty market and thus our market is the interest rate for mortgage money. That our market is improved by the action to step up the rate on F. H. A. and V. A. paper to 4 1/2% is self-evident. Whether it will improve it in an amount and to the extent desired by builders is something else.

In the last four months, rates for money have tightened. "Easy" money is not with us now. Action of the Treasury Department in its long time financing started plenty of action. It was followed by short time government financing at 2 1/2% for 15 months and 2 5/8% for 12 month treasury paper.

Since then, Housing Authority bonds (122 million) were sold at an average interest charge of 2.82%, a new high for tax exempts. On an 800 million dollar issue of tax anticipation bills - 107 day issue - the Treasury will pay an interest rate of 2.383%.

Illustrative of high quality bonds of political subdivisions, other than United States obligations, Baltimore County, Mr. bonds sold at a net interest cost of 2.98%.

In the field of private financing money continues to tighten. Three of the big finance companies raised their rates. There is talk that the rate on loans of great corporations (prime paper) may go higher. One banker stated it might go to 4%.

The spread between the yield on high class bonds and the yield on mortgage paper (net, after allowing for servicing charges) thus continues to narrow.

Private debt continues to mount. According to the Business

Bulletin of the Cleveland Trust Company, Cleveland, Ohio,(an excellent guide for any business man) the debt on non-farm houses is $58 billions. But don't let this scare you, says Cleveland. As a percentage of total personal income after taxes, this mortgage debt is only moderately above the 1939-1941 debt average. And the trust company might have added that home ownership has gone from around 40% immediately preceeding World War II to over 55% in 1953.

Favorable Aspects

The above paints a gloomy picture on mortgage money. The picture is not without favorable aspects. It has a brighter side. These factors impress us:

The auto industry settled with C. I. O. and expect no big strike this year. There is possibility of a steel strike. But in light of the auto industry settlement and the pattern it set, plus the fact neither side has fully recovered from last year's steel strike, a new one this year seems unlikely. There may be trouble in the coal mines in the Fall.

In the construction field strikes this Spring have been a retarding figure. A personal observation: How many straws can be loaded on the camel's back? Will home ownership be priced out of the market?

General business of the country is operating at a 361 billion dollar level, over 20 billion above this time a year ago.

Retail sales in most lines are at an all-time high, although there seems some softening in a few lines, T. V.'s, home appliances, used cars. And it might be noted this high level of business stays high through high sales of civilian products and with defense spending leveling off, slightly.

Production is high. So are earnings. First quarter earnings show better by 10% than the first quarter of 1952. Dividends for the first quarter of companies whose reports are made public amounted to over 2 1/2 billion, an increase of nearly 5% over the same period last year.

Employment stays at a high level - more than 61,500,000 persons.

The Bureau of Labor Statistics reports 110,000 non-farm homes started in April. Private starts for the first four months totaled 356,100. That's slightly above last year's figures. Translated into the full year it means 1,200,000 in 1953. Public starts for the first four months totaled 21,100.

Mortgage money: There is reason to expect a reasonable adequacy because of one fundamental reason: There is so much money in our country it just can't find enough outlets. The life insurance companies, the mutual banks, building and loans, trust companies, and the banks, national and state, are heavy in funds. Money to them is so much merchandise on the shelf; and that inventory must be kept down. Prudence dictates they spread their investments, with much in the bond markets of course, but also much in the mortgage field.

Add to the above the vast funds of foundations, fraternal orders, pension funds of great corporations, the unions, and private mortgage money, and you probably reach our conclusion - that mortgage money can be obtained; but it will not be tossed out willy-nilly.

We expect there will be insistence the borrower make sufficient down payment to assure he has an equity worth protecting.

We hear various proposals are under consideration in this matter of down payment. Nothing has jelled yet but the dope seems to be that the Administration may propose to the Congress relaxing on F. H. A. guaranteed loans by cutting the down payment to about half the present requirement. Further that the maximum mortgage F. H. A. could guarantee would be stepped up from the present limit of $16,000 to $20,000.

We don't believe mortgage bankers will object to the latter. Whether they would be intrigued by the cut in down payment, and thus a decrease in the equity of the mortgagor, is a matter of conjecture. "Come the recession," even a slight one, and a thin equity could be extinguished overnight. Mortgage bankers still remember foreclosing in the 30's on abandoned properties after the borrower had lived out his redemption rights but still in possession. They don't want this even with a Government guaranty of return of principal and interest.

In a consideration of the adequacy of mortgage money, one of the really big factors, in our judgment, is agitation by Left Wingers for direct lending by the Government. That agitation never ceases. We are satisfied the brains in the world of financing are aware of this and will endeavor to see to it that money in sufficient quantity and at reasonable rates (considering the money market) will be made available to the construction field.

Farm Real Estate

While it has not nosedived, the income of farmers has been declining. With that, there has been a drop in the asking prices of farm land and a larger drop in the number of potential buyers. Various proposals to ease the situation are advanced. One is to sell food products abroad for a song - or give 'em away. Meantime, over-planting continues.

Taxes

The situation on income taxes seems to be shaping up something like this:

Both Houses seem determined to cut taxes, the position of the President notwithstanding. If the excess profits tax dies with expiration of the present law - June 30th - (and there seems close to a 50-50 bet this will happen) then you can feel pretty sure there will be a companion cut on income taxes for individuals. Thus far the President has refrained from laying a heavy hand on the Congress. Unless he does, and heavily, look for a tax cut, probably applying to the last quarter of 1953. Remember the House, all of it, and one-third of the Senate come up for re-election in 1954.

Conclusions

Probably we should label this "Guesses." For the Korean situation makes it difficult to arrive at conclusions with any certainty. One international crisis follows another. And the attitude of our allies (?) don't help any.

Speaking to our own industry and our prospects for the immediate future, it would appear we have many reasons to expect good business in most areas of the country, but sections which are wholly agricultural will have it to a lessened degree; that this good business should continue for the second half of 1953 and

probably into the forepart of 1954.

Money don't grow on bushes and houses are not going to sell themselves. Neither will abstracts and title policies. It will take some scrouging around to get mortgage money. It will take salesmanship to move houses, new and old.

One point to keep in mind is that the desire for home ownership is on the increase. It always existed in the hearts of men. But it became latent. Now it's revived. Optimists talk about ownership in the next twenty years by 75% of our people. That don't mean 75% of our present population: they mean 75% of our population of 1970.

People want bigger and better housing. Obsolescense sets in much faster than it did 50 years ago. That means turnover increases, and more orders for title evidences. A well planned Speakers Bureau, carved out of our state title associations, and/or the companies operating in any designated area, could do wonders to further home ownership, on the theme, "We, who own no land, urge you to buy land."

Competent help continues scarce. It won't ease soon. It may worsen. Or, stated another way, it would be well to "go mechanical" every way you can. Study the new gimmicks and gadgets on the market and their application to your office.

Tell 'Em What You Think

We like the Kiplinger News Letter. This four page weekly release is accurate. He boils it down to fundamentals.

In his last two releases, he has seen fit to devote 25% of his release to the inertia which seems to possess the business men of the nation on one matter - regular contacts with their Senators and Congressmen. We think Kiplinger is right 100%.

For over twenty years, we have made the rounds in Washington for you. Time and time again, we learn how little our people write their representatives in Washington. But the Left Wingers do. They avalanche the Congress with letters, telegrams and telephone calls concerning measures in which they are interested. That seems particularly true when the Congress is considering something we would describe as Socialistic in character. Socialized medicine was one such.

Unquestionably, 95% of our people have decided views on many of the bills now in Congress. But who writes his Congressman or his two Senators or the Chairman of the Committee having a particular bill in charge? When none does, how can we expect them to know our views and reconcile an expression of our views with their votes? What does it avail one to write, after the Congress has acted, that we don't like the way our man voted? By that time, the horse is out of the barn.

Congressmen are human beings. They want to hear from their constituents. Don't let yourself be too busy to write them. Being busy is a relative matter. What the United States Congress does is a matter of high importance to all of us, and our support of meritorious performances by our Congress, our recorded constructive opposition, properly timed, are relatively important to the preservation of our ideals of Free Enterprise.

Exactly the same statements can apply to our Senators, for they too are human beings. Or 95 of them are human. I'm not so certain about one.

Business men cannot now become complacent because a new friendly atmosphere exists in Washington. The new man in Congress is always under pressure and needs the active support of business men all over the country.

PERSONALS

JOSEPH H. SMITH
Secretary, American Title Association, Detroit

PALMER W. EVERTS, Executive Secretary, New York State Title Association, addressed Westchester County Real Estate Board at annual spring meeting on "Why Buy Title Insurance?"

* * *

At the convention of the Texas Title Association in May, FRED H. TIMBERLAKE, Partner, of the Service Abstract & Title Company in Lubbock, was elected President, and Ethel M. McLeod of the same firm was elected Secretary-Treasurer.

* * *

A. O. HARSTAD, President, Ohio Title & Abstract Company of Cedar Rapids, was elected President of the Iowa Title Association at their Golden Jubilee Convention last month. DON A. HUGHES, Secretary-Treasurer of the Moore Abstract & Title Company, Cherokee, was re-elected to the office of Secretary.

* * *

At the ATA Central States Regional meeting of title insurance executives in Chicago last month, LAURENCE J. PTAK, President, The Cuyahoga Abstract Title & Trust Company, Cleveland, Ohio, was elected Chairman for the coming year.

* * *

G. A. BERTSCH, Valley County Abstract Company, Glasgow, Montana was recently reappointed to the Abstracters Board of Examiners for the state of Montana.

* * *

Arkansas Land Title Association elected EARL HOWARD, Manager, National Abstract Company, Hot Springs, President, for the coming year. MRS. SALLIE B. CAULDER, Manager, Lonoke Real Estate & Abstract Company, Lonoke, was again elected to the office of Secretary.

W. HERBERT ALLEN, President, Title Insurance and Trust Company, Los Angeles, California, at the request of California Attorney General Edmund G. Brown, now serves as a member of a newly appointed Southern California Citizens Committee to advise on ways and means of preventing crime.

* * *

M. M. HIGHTOWER, JR., Co-Partner-Manager, Duncan Abstract Company, Duncan, is the new President of the Oklahoma Title Association, and WILLIAM A. JACKSON, Vice President, Coates-Southwest Title Company, Oklahoma City, is the new Secretary.

* * *

Home Title Guaranty Company, New York, N. Y., presented a Spring Symposium on May 6th, at NBC Center Theatre to some 2000 attorney clients. HENRY J. DAVENPORT, President of the company welcomed the real estate lawyers and introduced the speakers.

Is Anything New in Advertising?

There are always new, novel and interesting developments in the advertising of our members. Delegates have seen them, increasing in number of advertisers and quality of copy at recent national conventions in our

NATIONAL ADVERTISING DISPLAY

All members are urged to forward copy of their advertising, of all character, as an entry in our 1953 Contest. And you may win a prize too!

SEND YOUR ENTRY NOW TO
ROBERT H. SOMMERS, CHAIRMAN,
VICE PRESIDENT, SECURITY TITLE INSURANCE COMPANY
530 W. Sixth St., Los Angeles 14, California

IMPORTANT ASSOCIATION EVENTS

DATE	MEETING	WHERE TO BE HELD
June 18-19-20	California Land Title Association Convention	Hotel del Coronado San Diego, California
	*	
June 26-27	New Mexico Title Association Convention	Albuquerque, N. M.
	*	
July 10-11	Colorado Title Association Convention	Stanley Hotel Estes Park
	*	
Aug. 28-29	Montana Title Association Convention	Great Falls, Montana
	*	
Sept. 14-15-16-17	ATA - National Convention	Biltmore Hotel Los Angeles, Calif.
	*	
Oct. 5-6	Missouri Title Association Convention	Hotel Phillips Kansas City, Mo.
	*	
Oct. 9-10	Wisconsin Title Association Convention	Mead Hotel Wisconsin Rapids
	*	
Oct. 12-13	New York State Title Association Convention	White Face Inn Adirondack Mts.
	*	
Oct. 25-26-27	Ohio Title Association Convention	Hotel Hollanden Cleveland, Ohio
	*	
Nov. 9-13	Mortgage Bankers Association Convention	Miami Beach, Florida