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THE ABSTRACT CORPORATION

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120 WEST NEW YORK AVENUE

MORTON McDONALD
PRESIDENT

DELAND, FLORIDA

August 6, 1954

To the members of
The American Title Association

A program of interest to all abstracters is being planned by the officers of the Abstracters Section of The American Title Association. We are endeavoring to have items on the program of interest to the smallest and the largest abstracters.

We would like to have your cooperation. One of the panels that we will have will be in charge of Charles Adams, Jr., 1309 Texas Avenue, Lubbock, Texas. This panel will be on "Fitting Forms For All Occasions". We would like for you to send to Mr. Adams, at once, a copy of the various forms used in your abstract work: your work sheets; maps for abstracts; any particular specialty in abstracting certain instruments; caption sheets; certificate sheets; special covers; time-savers in various forms that you might use; anything that you think is profitable and time-saving and efficient in your office. This panel will discuss these forms and also have a general display for your information. Don't forget to do this immediately. Why not include your special way of keeping pay roll records or any other forms. Don't forget the most insignificant might be the very one that will help your fellow title man.

We will be expecting you and looking forward to seeing you at the Edgewater Beach Hotel in Chicago, September 8th-11th.

With kindest regards, I am

Sincerely,

Morton McDonald

Chairman, Abstracters Section

MMcD/vad

SHORT FORM MORTGAGES

ALBERT C. WEYMANN, JR., ESQ.
Member of the Philadelphia Bar Association, Philadelphia, Pa.

My subject, as you have no doubt gathered from the title, is somewhat nebulous and accordingly a rather uninspiring one; particularly when you realize that there is no such thing as a definite type of short form mortgage, that is, a uniform or standardized form which could be submitted for adoption generally by the lending institutions.

Now about my relationship to the subject. Frankly, until about three short weeks ago, when I was first asked to address your convention on this subject, I had never heard of a short form mortgage. I was then—and perhaps after I have finished my talk, you will still consider me—a rather brash amateur on the subject. Candidly, I agreed to address this convention on this subject which was assigned to me by my good friend, Jim Schmidt, because of the pleasure I anticipated Mrs. Weymann and I would have in being with you, and not because of any preconceived notions I had with respect to the desirability of adopting a short form mortgage.

I point out this in order that I will not be confused with certain professional advocates of short form instruments, who I find spend a good part of their time and energy traveling all over the country, zealously espousing and lobbying for the adoption of abbreviated forms of all types and kinds —just for the sake of brevity alone, as far as I can gather. I am not one of them, and I have no predilections for a short form mortgage as such.

My real purpose in appearing before you is to present the case in favor of the use in Pennsylvania of a shorter and more simplified form of mortgage which, as a result of the research I have had an opportunity to do on the subject in the relatively brief period of time alloted me, I now sincerely believe in and heartily recommend.

Desirability

A discussion of the desirability of adopting a so-called short form mortgage must of necessity be predicated on the answer to the question "What is wrong with the form of mortgage currently in use throughout the state of Pennsylvania?"

The first thing I did when I was asked to address you on this subject was to review the various mortgage forms that are in general use in the Philadelphia metropolitan area, particularly the forms currently being used by the larger lending institutions. Because my relatively short experience in this field has not been so broad as to take me to other parts of the state, I regret that my observations with respect to the various forms currently in use will be limited to those prescribed by lenders to cover loans secured on real estate located in the Philadelphia area. However, from recent discussions had by me with persons engaged in the mortgage lending business in other parts of the state, I gather that the forms used throughout the entire state are quite similar in content and length to those being used today in the Philadelphia metropolitan area.

Verbiage

Succumbing to one of the less noble attributes of human nature, I first reviewed some bond, warrant and mortgage forms, consisting of three separate instruments, which I had prepared, as I recall, in the late 1930's. These forms, which are still being used rather extensively, represented one of my early major efforts in the field of mortgage draftsmanship, and they were prepared for use by a Philadelphia mortgage loan correspondent acting for several large national insurance companies. It was my thought that it would be a good approach to a study of this subject to look over the results of my own earlier effort and see what, if any-

thing, was wrong with it. I read the bond and warrant over and reviewed the mortgage form, and made an average count of the printed words contained in each of these instruments. It would be an understatement to say that I was somewhat amazed to find that there were approximately 3500 printed words in the mortgage form alone. Although the form of bond was relatively shorter, it contained approximately 2200 words in the printed portion; and the warrant averaged 2500 printed words. It struck me that it was a pretty sad commentary on the law of mortgages and the field of mortgage draftsmanship to be obliged to use such long, wordy instruments in order to accomplish such a plainly understood ultimate result. I felt, after reviewing my own forms, something like Whittaker Chambers must have felt when he wrote "THE WITNESS". I experienced a feeling of serious guilt, as well as a deep sense of repentence, for my small contribution to this rather unhappy situation.

Historical

In going back over the history of mortgage conveyancing in Pennsylvania, I find that the forms currently in use are essentially the same as those used in the early colonial days. Admittedly, there have been a lot of new covenants and so-called protective conditions engrafted on these early forms from time to time by counsel for various lending institutions. However, as I have just stated, the forms being used today are substantially the same as those of William Penn's day. Undeniably these forms are steeped in antiquity. They contain many archaic provisions which I honestly believe are meaningless, not only to the borrower, but also to the average person engaged in the mortgage lending field. Just as an example, I present for your consideration this ancient relic which we still find in fifty percent of the warrants for confession of judgment that accompany our present long form of

bond. I quote the following excerpt: "In the event of default, this is to authorize you to confess judgment"—the print is so small I can hardly read it—the printers had to use the smallest available type in order to get 2500 words on the two pages of the instrument—"thereon against me for the sum of blank dollars in lawful money aforesaid, and an attorney's commission of 5%, in case repayment has to be enforced by process of law as aforesaid"—now here is the real meat of it—"by Non sum informatus, Nihil dicit or otherwise, as you deem meet."

Its Meaning

May I offer a challenge to anyone in the room. Who knows what it means? I have to look it up every time I run across it. The only reason I know what it means today is that I just looked it up again yesterday. All that it means is that the attorney who confesses judgment is authorized to state of record that as far as he knows there is nothing to be said in defense of the obligor and that accordingly he has nothing further to say in the matter. In other words, all that it means is that judgment may be entered against the obligor for want of either an appearance or a plea, a right which has always existed by virtue of warrant of an attorney to confess judgment without the necessity of so stating in the instrument.

Examples such as this should be sufficient reason alone to indicate the desirability of effecting an overall revision of the forms presently in use, if for no other purpose than to have them speak in terms of modern day language.

The Participants

More specifically, let's examine the situation from the point of view of the various participants in an ordinary mortgage loan transaction, from its inception to its consummation.

The Mortgagor

The most important party to a mortgage loan, of course, is the borrower, because it is his need for funds which initiates the transaction. At this point I'd like to interject the thought that lending institutions often lose sight of this fact, even though they spend a considerable amount of money annually advertising both their merits as such, and the relative advantages which the borrowing gentry can gain through dealing with a particular one of them. Witness the fact that in the great majority of cases, the borrower is not even given an opportunity to see the mortgage loan papers until settlement is actually held on the loan, on which occasion he cannot possibly have the time to read over and appreciate fully the nature and extent of the obligations and commitments being assumed by him. In passing, I would like to note him. In passing, I would like to note another thing which has always bothered me in this same regard. I find, from my experience that only in a very few isolated instances is the mortgage borrower ever presented with copies of the mortgage loan documents which he can retain, even after settlement on the loan is consummated. Frankly, I have always felt that in too many cases the mortgage borrower is treated as if he were a necessary but somewhat obnoxious participant in the transaction.

Confusion

Turning back to the subject at hand, nothing can be found in the forms of mortgage loan documents currently in use to ease the state of mind of the average borrower, particularly the naturally diffident mortgagor who is borrowing for the first time. On the contrary, the forms currently in use are replete with legalistic "mumbo jumbo" which can only serve to terrify the average borrower. I think that we must all admit that the combination of the obsolete language contained in the instruments, the mention of the penal sum which is double the amount of money the mortgagor thinks he is borrowing, and the oft-repeated threats, implicit in the wording of the instruments, of the dire results which will follow if the borrower should fail to fulfill the numerous obligations and commitments assumed by him, tend unnecessarily to frighten persons who are

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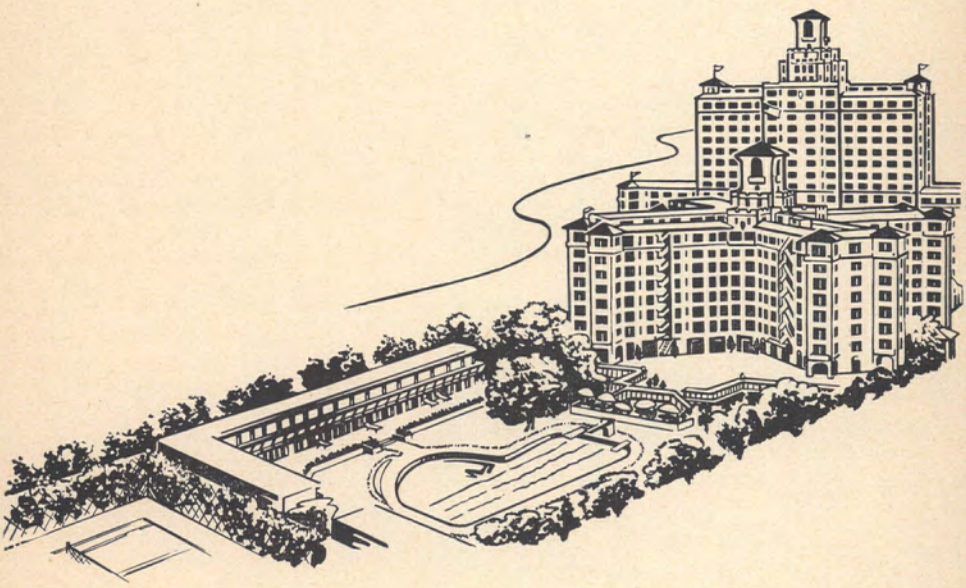

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financing the purchase of real property, particularly for the first time.

Again personalizing the situation—merely by way of example—although I have had some professional experience in this line of work over a period approximating fifteen years and presumably should have some knowledge and understanding of the wording and meaning of these documents, I must admit to having had a feeling of genuine consternation when I was obliged to explain to my good, but inquiring wife the significance of some of the provisions contained in the mortgage loan forms which we were called upon to sign, when we financed the purchase of our own home a few years ago.

Good Public Relations

During one of the addresses delivered to this body this morning, one of the speakers, identified with the title insurance business, urged upon this assembly the necessity in these modern days of selling every kind of business or profession; that is to say, of taking positive steps to create in the minds of all prospective users of your products, facilities or services, as the case may be, an acute awareness of the desirability of doing business with you. One of the things which goes hand in hand with this modern concept of merchandising is the idea of making it as easy and pleasant as possible for your prospective customer to do business with you. Although the mortgage lending business is different from a lot of other businesses in this respect, in that the prospective mortgagor, who has already committed himself to purchase a home and knows that he will need mortgage financing to do so, does not have to be "sold" on the desirability of obtaining a mortgage loan, there are undoubtedly many instances where persons have hesitated to embark on transactions of this nature and have continued to be renters of real estate as a result of a mortgage borrowing experience related to them by one of their more intrepid brethren who has braved the frightening uncertainties involved in consummating a mortgage loan.

The Public Offices

Accordingly, anything which can be done to simplify mortgage loan documents and thus make them more readily understandable to the average borrower would, in my opinion, represent a big step forward in the betterment of the mortgage loan field.

Looking at it from the point of view of those responsible for the maintenance of public records, a shorter form of mortgage is not only desirable, but in most jurisdictions an increasingly pressing necessity. From investigations I have made, I find that in most states in which a statutory short form of mortgage has been adopted, the idea was both originated and fostered by those public officials responsible for keeping the public records; this, because of the inordinate amount of storage space required to house the public records. Limitations on storage space are becoming increasingly noticeable in most jurisdictions. I spoke to the recorder of deeds of Philadelphia County in this regard, and he indicated to me that his office was fast using up all available space, and that something would have to be done to provide them with more space, unless the length and content of documents submitted for recording was considerably lessened. Assuming that the idea of using a shorter and more simplified form of mortgage shows merit from other points of view, it seems clear that the adoption of a short form instrument will result in a saving to the taxpayers generally. Furthermore, it should result in lowering recording costs, and thereby serve to reduce one of the many unadvertised extra charges to which the borrower is subjected, oftentimes to his financial embarrassment.

Obsolete

In so far as the lawyer is concerned, as I have previously noted, it is indeed a sad commentary and, in a sense, an uncomplimentary reflection on the profession, to think that we are continuing to use an instrument which is so steeped in antiquity and which has so many obsolete features in it. The instruments currently in use are,

in my opinion, confusingly repetitious in many respects, and unnecessarily cumbersome. As I have indicated before, a number of provisions contained in our standard forms currently in use are obsolete. As a glaring example, quite a few printed forms in use today still provide for the institution of foreclosure proceedings by the issuance of the time honored writ of sci. fa.; whereas, since the adoption of the new rules of civil procedure back in 1950, foreclosure has been accomplished through the filing of a much more simplified complaint in foreclosure. In other words, the old form of sci. fa. proceedings which is still being stipulated as the remedy to be pursued by the mortgagee is, for all legal intents and purposes, non-existent. Again, by way of further example, many mortgage forms currently in use go to some length to provide for a waiver of inquisition with respect to, and a voluntary condemnation of the mortgaged real estate by the mortgagor, as well as a waver of any and all other exemptions prescribed by law for the protection of an ordinary judgment debtor. As far as I can ascertain, a sheriff's inquisition has never been required by law as a condition precedent to the exposure of the mortgaged premises at sheriff's sale where foreclosure proceedings were instituted through issuance of a writ of sci. fa., and, accordingly, it has never been and is not now necessary for the mortgagor to condemn the mortgaged premises. Likewise, the several exemptions provided by law for the protection of ordinary judgment creditors, such as the so-called pauper's exemption, never applied to the very real estate which was pledged to secure payment of the debt sought to be enforced through the sale thereof. Accordingly, nothing whatsoever is gained as a matter of law by including in, and unnecessarily encumbering the mortgage instrument with a lengthy waiver of such other exemptions as may be accorded by law to the ordinary judgment debtor.

If nothing more, a concentrated effort on the part of all parties involved in the mortgage loan business to develop and adopt a shorter form of mortgage, would result in eliminating these many repetitious, obsolete, cumbersome, and sometimes inconsistent and confusing provisions, many of which are not necessary for the accomplishment of the result desired.

Next, considering it from the point of view of the title companies, I would think it would be most desirable to have shorter and more simplified set of mortgage loan papers. Costs of photostating would be substantially reduced, and there would also be considerable saving in record storage space.

The Lender

Most of these reasons advanced by me from the points of view of the borrower, the public recording officials, the lawyers, and the title companies, in support of adopting a shorter and more simplified form of mortgage, are equally applicable to lenders, particularly the major lending institutions whose business success depends to a considerable extent on the good will of the general borrowing public. Nevertheless, I cannot help but note some signs of reluctance on the part of some of our lending institutions, particularly the insurance companies, to what would amount to a complete overhauling of these forms which have been in use these many years. Even though this attitude may be somewhat shortsighted, at the same time it is to some extent explainable and understandable. Our mortgage forms currently in use have worked fairly well over a long period of years. They provide for a clearly understood remedy in the event of default, and the procedures followed in the use of these forms have been so well established that very few questions can arise with respect to the enforcement thereof. For these reasons I think that the principle line of resistance to shortening and simplifying our mortgage forms would naturally come from the lending institutions.

However, being aware, as they must be, of the various points I have heretofore outlined in favor of a

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short form of mortgage, I cannot help but feel that they too would become a more simplified and shorter form of mortgage, if they could be assured of the same degree of protection and ease of enforceability as they have under our present forms.

Assuming this to be the case, how should we go about developing a shorter form of mortgage which would be acceptable for general use in the mortgage lending business. In considering this question, we must bear in mind that the use of a short form of mortgage presents a somewhat different problem than that involved in other short forms of conveyancing.

Statutory Deed Form

As we all know, the State of Pennsylvania pioneered in the field of short form real estate conveyancing by the adoption of a statutory form of deed through the enactment of the Act of April 1, 1909. This statutory short form of deed is extensively used in most of the counties outside of Philadelphia; and although, up until quite recently, conveyancers in the Philadelphia metropolitan area indicated a reluctance to adopt this form of deed, I gather that its use is now becoming more widely accepted by even the conservative Philadelphians, thanks to its somewhat belated espousal by several of the title insurance companies doing business in that area.

No Statutory Mortgage Form

The question suggests itself why at the same time the Pennsylvania legislature adopted this statutory short form of deed, it did not, as the State of Massachusetts did in 1912 when it adopted a statutory short form of deed, also adopt a statutory short form of mortgage. I think the answer can be found in the fact that a statutory form of deed need provide for only a limited number of commitments on the part of the grantor; namely, those involved in general or limited warranties, or in a bargain and sale or quit-claim conveyances. And in the case of a normal conveyance, there are no commitments made on the part of the grantee. These four types of commitments, and the liabilities and responsibilities that flow therefrom, are readily reducible to interpretative statutory provisions providing for their incorporation by reference in the conveyancing instrument. On the other hand, in the case of a mortgage, experience has shown that there are innumerable covenants, conditions, and other protective provisions, all prescribing commitments to be assumed and obligations to be carried out by the mortgagor, which the respective lending institutions have insisted be included in the mortgage instrument. It would be very difficult, if not impossible, for the legislature to foresee and prescribe all of these types of covenants, conditions, and provisions which the various mortgagees may see fit to require, for the purpose of providing for their interpretation and incorporation by reference in a statutory form of mortgage.

Acceptable

Since the adoption of a statutory short form of mortgage which would be generally acceptable to lenders presents problems different and more serious than those involved in prescribing a simplified short form of statutory deed, I think it incumbent upon those espousing the adoption of a shorter and more simplified form of mortgage to explore the possibility of accomplishing this result without the benefit of statutory aid, compare the results with those which can be accomplished by legislative enactment, and then decide which of the two methods should be followed.

It is my opinion that a lot could be done to improve the situation without the benefit of any statute whatsoever.

Stripped down to its bare essentials, a mortgage, as we understand it in Pennsylvania, is merely a conveyance of real estate to secure the repayment of a loan evidenced by another written instrument, usually either a bond or a note. It does not itself constitute the obligation. Although it takes the form of a grant of a fee simple title, it results in the

creation of a lien only, provided the instrument spells out on its face the fact that it is a conveyance made solely for the purpose of securing the repayment of a debt; that is to say, contains a so-called defeasance clause.

Admittedly, this does not present a very involved situation, and I sincerely believe that the desired result could be accomplished by possibly a one-page or, at the most, a two-page instrument.

Omissions

Our mortgage forms which are presently in use devote a considerable amount of space to a verbatim recitation of the lengthy payment provisions and all the other covenants, agreements, and conditions that are set forth in the bond. I think all of these lengthy recitations could be eliminated from the mortgage without in any wise prejudicing the rights or remedies of the mortgagee. It is clear that there is no legal compulsion for including them.

Simplified

All that need be done in order to constitute the mortgage a valid lien to secure the debt involved would be to recite in one brief "whereas" clause the fact that by virtue of a note or bond given by the mortgagor to the mortgagee under even date, the mortgagor is indebted to the mortgagee in the stated principal sum, with interest, payable in the manner and in accordance with all of the terms, provisions, and conditions contained in the bond or note (all of which could be incorporated in the mortgage merely by reference, as distinguished from verbatim recitation), and then go on to say that the subject conveyance was being made for the purpose of securing said principal debt, the interest due thereon and all other sums and charges payable by the mortgagor to the mortgagee as therein provided, in accordance with all of the covenants. terms, conditions, and provisions thereof.

Land Description

Then would follow in order the conveyance itself, the description of the mortgaged premises, a reference to the last deed of record, the appurtenance and the habendum clauses.

We in Pennsylvania seem to have developed a fetish for reciting in each of the three mortgage papers — the bond, warrant and mortgage—everything that is set forth in the other two instruments. As I see it, there is no need whatsoever to recite in the mortgage, covenants having to do with the following, all of which can be and usually are recited in the accompanying bond: the maintenance of insurance on the mortgaged premises, the payment of real estate taxes and other municipal charges and assessments and the production of receipts therefor, the maintenance and repair of the mortgaged premises, the prohibition against the commission of demolition or waste, the manner in which insurance proceeds are to be applied in the event of a casualty damaging or destroying the mortgaged premises, and the assurance that all additions and improvements made to the mortgaged premises shall become the property of the mortgagee as additional security for the payment of the mortgage debt.

Possession

However, it would be well to include in the mortgage instrument a provision giving the mortgagee the right upon default to gain possession by confession of judgment in ejectment. This would give him the unqualified right to collect promptly, following default, all rents becoming due on the mortgaged premises; a right which he does not have under the law in the absence of this remedy insofar as rents becoming due under leases post-dating the mortgage are concerned. This provision, which is not included in the majority of forms currently in use, could well go further and give the mortgagee discretion as to the manner of applying the rentals collected by him.

Foreclosure

Next, the shortened mortgage form would go on to provide for the right of the mortgagee upon default and the expiration of the so-called grace periods to immediately file a complaint in foreclosure (as distinguish-

ed from a writ of sci. fa.), to proceed to judgment and execution thereon for recovery of the debt. This provision respecting enforcement which is required solely for the purpose of having waived by the mortgagor the 12-month waiting period described by statute (1705, 1 Sm. L. 57, g 6; 21 Purd. Stat. g791), can be in much more abbreviated form than the like provisions contained in the form of mortgage currently in use.

Redemption Rights

Most mortgage forms now being used contain a so-called redemption clause, wherein is spelled out at some considerable length the cessation of all right, title, and interest of the mortgagee in the event the mortgagor discharges the mortgage obligation. There is no legal requirement for the inclusion of this provision. The fact that the mortgage contains a defeasance guarantees the mortgagor this result. However, it may be well to include a much more abbreviated version of this provision merely to preserve the peace of mind of the mortgagor.

As I have indicated previously, there is no legal necessity for setting forth at great length provisions for the waiver of inquisition and voluntary condemnation, or for the waiver of the various exemptions provided for by law, either they are not applicable to an execution sale of real estate conveyed to secure the mortgage debt, or, if they are applicable, the statute creating them provides that they cannot be waived; for example, the deficiency judgment act. Accordingly, no purpose is served by the inclusion of this type of provision.

Accompanying Forms

A discussion of ways of developing a shorter and more simplified form of mortgage instrument without benefit of legislation would not be complete unless some mention were made of the form of bond and warrant which could accompany the same. It has been recommended by some draftsmen that the bond, warranty of attorney to confess judgment, and the mortgage all be included in one instrument. I personally do not recommend this even though single-instrument forms of this nature have been used in Pennsylvania. In a particular case in which this type of instrument might be used, the mortgagee may well decide, upon default, to enter judgment on the bond by virtue of the warrant of attorney. For some reason, presumably a settlement of the obligation, it may not ever be necessary to issue execution on the judgment. Then comes the problem of how to have the mortgage satisfied of record if the bond, warrant and mortgage are all combined in one instrument filed in the prothonotary's office. A further reason for not combining all three of these papers in one instrument is that the mortgagee does not like to be without some written evidence of the obligation while the mortgage itself is being recorded.

Combined

On the other hand, I am all for combining the bond and warrant in one instrument. I see no purpose whatsoever for a separate warrant of attorney to confess judgment, containing on an average of 2200 printed words. This remedy can be fully covered and provided for in a relatively short paragraph appearing at the end of a bond, just as it now appears in the ordinary note form with which you are all familiar.

Further Savings

Before ending this discussion on the form of the bond and warrant, I would like to submit one other suggestion for your consideration, and that is the desirability of eliminating the penal sum from the mortgage transaction, which can be accomplished merely by the substitution of a note for our time-honored, but rather frightening form of bond. Notes instead of bonds are used in a great number of states, often resulting in a substantial federal documentary stamp tax saving to corporate obligors. There is only one possible advantage that the use of a bond has over an ordinary promissory note, and that is that it enables the obligee

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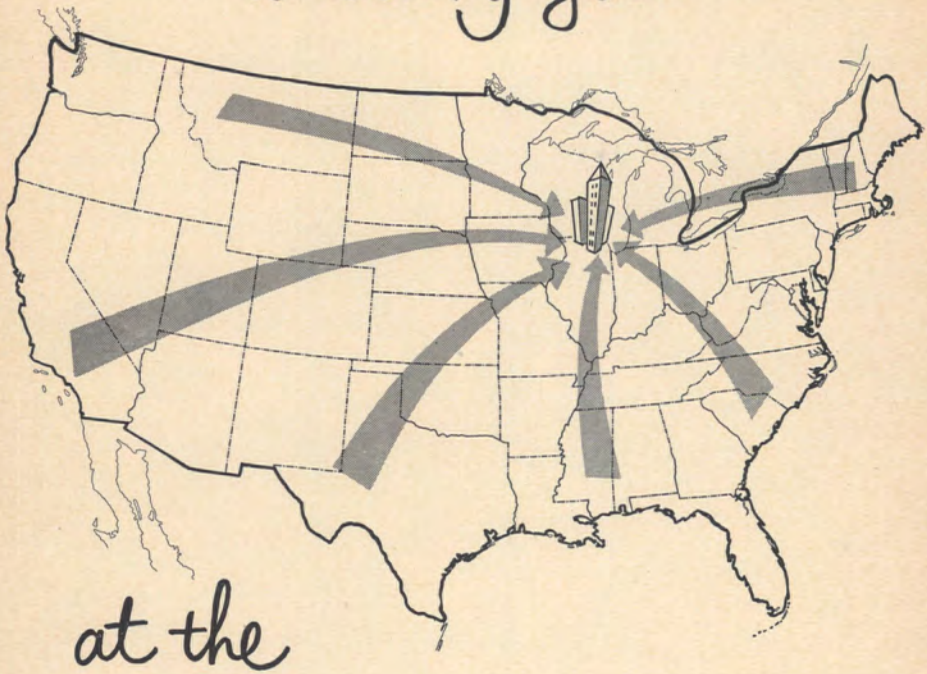

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to enter a snap judgment by confession in an amount sufficiently large to cover not only the full amount of principal and interest due, but also all other sums which might be payable by the obligor to the obligee by reason of the failure on the part of the obligor to carry out all the provisions of the obligation, such as seeing to the maintenance of fire insurance, and the payment of real estate taxes. In the absence of a penal sum contained in the instrument evidencing the mortgage debt for the amount of which judgment can be entered by confession, there is no other way in which these additional items which might be due by the obligor to the obligee can be collected through the entry of judgment by confession. In other words, under the law the prothonotary should not, in the case of an ordinary note calling for the payment of other sums in addition to principal and interest, the amounts of which are not readily ascertainable from the face of the note, enter judgment by confession in an amount which would include any such additional sums of this nature, even though the note contained a provision authorizing him to do so. However, I cannot help but feel that the advantages which would be gained in the form of increased good will on the part of the borrowing public in eliminating the penal sum through discarding the use of our formidable form of bond and using an ordinary form of promissory note, would far outweigh the loss of this single advantage, of questionable value, which a bond containing a penal sum gives over an ordinary mortgage note. I should add that in the great majority of states simplified forms of mortgage notes, rather than mortgage bonds, are used.

So much for the effort which might, and which I think can and should be made to simplify and shorten our mortgage forms without the benefit of legislation.

Now I would like to turn briefly to what has been done in other states through the aid of legislation.

Indiana

As early as in 1852 the State of Indiana passed an act adopting a short form of mortgage similar in length and simplicity to our statutory short form of deed. I mention this merely as a matter of historical interest because this particular statutory short form of mortgage, which is similar to short statutory forms approved by the legislatures of a number of other states, contains no reference to any covenants or conditions to be performed by the obligor other than the payment of the mortgage debt, and accordingly would not be acceptable for use in Pennsylvania today.

New York

In 1846 the State of New York commissioned David Dudley Field to revise and codify the laws of that state. He came up, a few years later, with a code known as the Field Civil Code, which contained a provision for a short form of mortgage containing no mention of conditions and covenants to be performed by the mortgagor, other than the payment of the mortgage debt with the interest due thereon. This code was never adopted. However, New York, which is a bond as distinguished from a note state, at a later date (1896) adopted a statutory form of mortgage which I have chosen to refer to as an abridged form. The statute set forth in very abbreviated form the various clauses and covenants normally included in bonds and mortgages, and then went on to spell out at great length how these abbreviated clauses and covenants prescribed for use by it would be construed, as well as what liabilities, rights, and remedies would result from the use thereof. For instance, section 4 of the act in question devotes approximately two pages of ordinary pamphlet law size to construe and explain what consequences will follow from the inclusion in a mortgage of a covenant "that the mortgagor will keep the buildings on the said premises insured against loss by fire, for the benefit of the mortgagee." I would not recommend the adoption of this type of mortgage in Pennsylvania.

Massachusetts

The State of Massachusetts, which is a note state, in 1912 adopted a statutory form of mortgage which requires even less space to do the job. This type of mortgage which I have chosen to designate as an incorporation by reference mortgage, contains no conditions or covenants whatsoever. The statute merely provides that when one person conveys real estate to another person, "with mortgage covenants" to secure the payment of a specified debt as evidenced by an accompanying note, on "statutory conditions," with "statutory power of sale" on default, that the inclusion of the second of following covenants, as outlined in the statute, being incorporated in the mortgage instrument as obligations to be performed by the mortgagor:

To pay principal and interest as and when the same become due.

To perform all obligations contained in the note accompanying the mortgage.

To pay all prior mortgages secured upon the same real estate.

To pay all real estate taxes and other municipal assessments and charges.

To maintain insurance for the benefit of the mortgagee.

To refrain from committing waste.

Massachusetts

To complete the picture with respect to the Massachusetts statutory short form of mortgage, the inclusion in the mortgage of the first-quoted phrase "with mortgage covenants" results in the mortgagor warranting to the mortgagee the nature of the title granted and the rights which might be exercised by the mortgagee with respect thereto; and the inclusion of the third quoted phrase "statutory power of sale" results in the mortgagee's being given the right to pursue the foreclosure remedy prescribed by the statute in the event of default. This Massachusetts statutory form of mortgage, like the abridged type provided for by the law of New York, certainly goes a long way towards accomplishing the desired result of an acceptable short form of mortgage, if it is merely briefness that we are looking for. It has only one major shortcoming in that it does not lend itself to the inclusion in the mortgage of other types of covenants or conditions which certain lenders may require and which are not covered by the statute. This shortcoming might be overcome by providing for a blank space in the mortgage form wherein such other covenants and conditions could be set forth. Of course, if this were done, it would be an open invitation to overly zealous counsel for the more cautious minded lending institutions to treat this blank space as an open door to the recreation of a long-form mortgage.

Statutory Form

Finally we have the type of statutory form of mortgage now in use in California, Arizona, Florida, and North Carolina, which are all note states. I mention California first because it pioneered in the use of this so-called master or blank form of mortgage. It was done first in 1935 without the benefit of any statute. The particular lending institution which initiated this practice recorded an actual executed mortgage deed of trust, containing all of its regular provisions and covenants. In the next mortgage loan granted by it, instead of setting forth in the mortgage deed of trust these same covenants and conditions which were contained in the previous mortgage, it referred to the recordation of the earlier mortgage by date and book and page numbers, and provided that this particular mortgagor should, in the discharge of this particular mortgage debt, be bound by the same covenants and provisions contained in the mortgage instrument previously recorded. This practice proved so satisfactory that a number of other lending institutions operating in California adopted it. In 1947 a statute was passed eliminating the necessity of incorporating by reference the terms and provisions of an actual mortgage which had been previously recorded. It enabled a lending institution to record an unexecuted blank or master form of mortgage, and to later have

all other mortgages executed in its favor as mortgagee adopt the same terms and conditions contained in the previously recorded blank or master form, merely by including a reference to the recordation of the blank or master form, accompanied by a covenant on the part of the mortgagor that in discharging the subject mortgage debt, he would be bound by all the covenants and conditions contained in the blank or master form.

California

This master form of mortgage, which is also sometimes referred to as a "fictitious" form, is now in general use in the State of California. The mortgage instrument takes up only one side of a legal size page. The other side of the page is reserved for a form of reconveyance which, under the law of California, is required to be made by the trustee under the mortgage deed of trust when the mortgage debt has been discharged; and a verbatim recitation of the various covenants and conditions contained in the recorded master or blank form of mortgage, to which the mortgagor, on the face of the mortgage insturment, binds himself by the process of incorporation by reference, as previously explained. The status which authorized the use of this statutory master form of mortgage expressly provided that it would not be necessary for the recorder to record this data appearing on the back of the mortgage with the result that only one side of the single page mortgage form is recorded.

Master Form

In so far as the mortgage instrument itself is concerned, of all the statutory short forms that I have considered, I much prefer the so-called master form which has been adopted in the State of California; primarily because it lends itself much more readily to the inclusion of the various types of protective covenants required by the different lending institutions. Although the form of the mortgage instrument is standardized, each lending institution can insist upon the mortgagor being bound by a particular type of protective covenant desired by it merely through the use of the incorporation by reference device.

However, in determining what would be the best method to effect the desired change in Pennsylvania, we are faced with an entirely different problem than that which existed in other states which have already adopted a statutory short form of mortgage; this, because our mortgage loan documents are quite different than those used in most other states and, being somewhat unique, do not lend themselves to the same statutory forms and procedures that have been adopted in these other states.

The nub of our problem, as I see it, is the antiquated form of bond which we have been using in Pennsylvania. If we are going to continue to use this form of bond, containing as it now does all of the covenants, commitments and conditions designed to preserve the security of the mortgaged real estate, nothing much would be accomplished through the adoption of a statutory master form of mortgage instrument such as is now used in California. There would be no point in having a statutory form of mortgage instrument which incorporated by reference all of the protective covenants and conditions contained in the lender's recorded master form, if those very same covenants and conditions were to be set forth at length in the bond accompanying the mortgage.

A Choice

Therefore, in order to correct the situation in Pennsylvania, we must make a choice between one of two methods, and that choice will in turn depend on our decision as to whether or not we propose to continue using the form of bond to which we have been accustomed.

If we are going to retain our lengthy form of bond, there will be little or nothing which can be accomplished through the adoption of a statuotry form of mortgage. As I indicated earlier in my talk, a much shorter and more simplified form of

mortgage instrument, adaptable to our present form of bond, can be worked out without the necessity of any legislative sanction; that is to say, by incorporating in the mortgage instrument the various covenants and conditions set forth in the bond through a reference contained in the mortgage instrument to the provision of the bond.

In my opinion, a great deal can be accomplished toward the desired end through abandoning our present form of bond and using a much more abbreviated form of mortgage note in its place. The suggested form of note would not contain any of the covenants and provisions now set forth in the bond which address themselves to the preservation and to the maintenance of the security of the mortgaged real estate. The note would contain a short warrant of attorney to confess judgment, and it would give the holder the right to accelerate the mortgage debt in the event of default on the part of the obligor in the payment of the debt or in the performance of any of the covenants or conditions contained in the mortgage instrument, all of which would be incorporated in the note merely by a reference contained therein to the provisoins of the mortgage instrument. For the mortgage instrument, I would recommend the adoption of a statutory form similar to that in use in California; that is to say, a simplified form of mortgage conveyance which would in turn make reference to a recorded master form of mortgage for the purpose of prescribing the covenants, conditions and commitments having to do with the preservation of the mortgage security to which the mortgagor would be bound.

My Choice

I personally am in favor of adopting this second, though admittedly somewhat more drastic, method of overhauling and simplifying our present mortgage loan papers.

I fully realize that nothing of any consequence can be accomplished in this direction, by either of the methods suggested by me, without the approval of, and sponsorship by the Bar, the lending institutions and the title companies. I therefore conclude with the earnest recommendation that the Pennsylvania Title Association appoint a committee to work in co-operation with the Bar and the representatives of the lending institutions in an effort to agree upon a short and simplified set of mortgage loan papers for use in Pennsylvania.

+ +

ADVERTISING

There are definite and sharp lines to be drawn defining the province in which it is the privilege and the duty of an attorney, and of him only, to advise his client.

There are also fields of endeavor in which it is the privilege and the duty of a title insurance company, functioning under chartered rights granted to it by the sovereign, to inform its clients on the status of title to a designated parcel of real estate, and to assume liability by reason of the issuance of its policy of title insurance covering the same.

In the operation of its Escrow Divi-

Just like moving the

Prices quoted are subject to change without notice.

RECORDAK

(Subsidiary of Eastman Kodak Company)

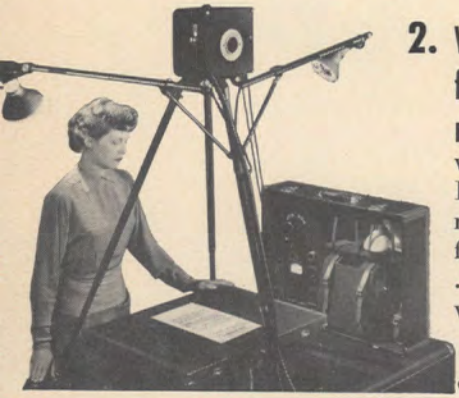
originator of modern microfilming — and its title-abstract application

courthouse into your office

1. When you use Recordak microfilming for daily take-offs.

One clerk—in a matter of minutes—can record all documents filed in the courthouse during the day. In addition to reducing your abstracting costs greatly, this simple practice gives your office staff photographically accurate and complete film records—free of errors, omissions, confusing abbreviations. And it also eliminates those wasteful trips back to the courthouse to verify signatures, etc.

The Recordak Junior Microfilmer is ideal for take-offs. Surprisingly low priced, too. Purchase: $450 to $1200, depending upon model; Rental: $17.50-$25.00 per month.



The Recordak Micro-File Machine (Model E) is the ideal all-purpose machine. Compact and readily portable, it can be used to photograph bound volumes as well as separate documents. Purchase Price: $1765; Rental Price: $60 the first month, $35 per month thereafter.

2. When you use Recordak microfilming for copying real-property records.

You can do the impossible—with ease and at surprisingly low cost. For example, the complete records of a medium-sized courthouse can be microfilmed in a matter of two or three months . . . and the cost per document, imagine, will be only a fraction of a cent.

Just think how this will enable you to centralize your operations . . . and give your customers much faster service!

* * *

Write today for full details on the line of Recordak Microfilmers designed for varying requirements; and interesting facts about title-abstract installations. Recordak Corporation (Subsidiary of Eastman Kodak Company), 444 Madison Avenue, New York 22, N.Y.

"Recordak" is a trade-mark

sion, a title company is privileged only to discharge the duties of the stake holder, and in strict accordance with the terms of the escrow contract.

In the complexities of modern day life in America there has developed that, which for want of a better phrase of description, we shall label "No Man's Land," a vague area difficult of description in any exact language. It might be described as an area which is subject to further definitive description. But here again we find veritably insurmountable obstacles to overcome. A primary fact is that we have forty-eight separate and distinct jurisdictions, with their varying types of foundation of law, of record cases, notably those involving merchantability of title, of local custom and practice.

The picture, in its sum total, is clouded, or aggravated, by the overzealous element in collateral or allied fields of endeavor, which assures its customer that "The title company has already examined this title; and you don't need a lawyer."

Statements of such character—and we endeavor to restrain our language —irk the attorney engaged in private practice. Statements of this character are a matter of embarrassments to the title company. It's denials of responsibility for the statement frequently are of little avail until common sense sets in on all sides.

Certainly, on calm analysis by the attorney, he must inevitably come to the same realization—that the statement quoted above stem not from the title company.

For the title company desires that its relations with the Bar shall be established and maintained on a high level, with full recognition of the rights and prerogatives both of the legal profession and of those engaged in the insurance of title to real property, be the latter the home office of the company or a field agent.

We well remember that some years ago, the trust company with which we were then associated carried full page newspaper advertising, driving home before the public eye, the needs of all citizens for the professional services of an attorney. Copy was headed "Ablest of Pleaders, Yet Unable to Plead for Themselves." Copy went on to set forth to the public, in layman language, various of the canons of the Bar, emphasizing that no self-respecting lawyer could publicize or advertise himself except under the heavy hand of self-imposed restraints as defined by his guild.

Several title companies of late have felt it timely to emphasize to the public their position on this subject; and to point out, in unmistakably clear language, that the advice and counsel of a competent attorney is beneficial in all real property transactions. They have disclaimed, so to speak, statements made by others; they have disassociated their respective companies from the irresponsible outsiders who represent to their customers that the services of an attorney are not required.

A California company, just to mention one, emphasized this point in newspaper and pamphlet advertising by a boxed statement carried within the framework of its over-all copy. Other companies have followed, to a greater or less degree, procedure of comparable character.

The Chicago Title & Trust Company has recently taken one further step. It has carried a series of advertisements not only in metropolitan Chicago papers but down state as well on this very point that the services of an attorney in real estate transactions are to be desired, are an essential factor.

We are permitted to reproduce in full this series. To fit "Title News" they have necessarily been reduced. Actual size is 3 columns x 10 inches. Our thanks to this fine member company for a job well done. Our thanks that we may carry these on the pages next following.

—J.E.S.

do

garden tools

go with the home you buy?

a LAWYER knows...

he'll see that you're treated fairly!

Many questions come up when you're buying a home. Who gets the garden tools ... the appliances ... the storm windows and screens? Do they go with the house, or do you have to pay extra for them? This year's taxes: do you pay them, or does the buyer? Who gets the oil that's left in the tanks?

Like most questions connected with home buying, these are matters of law. *And nobody knows law like a lawyer.* His job is to look after your interests. He sees to it that the sales contract gives you everything you're entitled to. Important as such things are, they're just a small part of the lawyer's services. It's he who tells you what is safe to sign and what isn't ... if the property you're buying fits the description ... whether or not there are claims against it.

His help costs you very little—far less than the trouble you might have without it! Those who know tell you: *never buy property without seeing a lawyer.*

A Chicago Title Guarantee Policy protects you against "hidden risks"

Your lawyer can, and will, find any flaws that appear in the records. But he knows there may be hidden risks *not shown* in the records. A mistake in names, perhaps, or an undisclosed heir—these flaws and many others can lead to a claim against your title.

Your protection against such risks is a Chicago Title Guarantee Policy, issued right here in town. If your title, as guaranteed, is ever questioned, Chicago Title and Trust Company takes over its defense, paying the full cost of litigation. If there is a loss, it is paid promptly.

Best of all, once you have a Chicago Title Guarantee Policy, you have no further cost to keep it in force.

No other title protection you can get has as strong financial backing as that of this century-old company

CHICAGO TITLE AND TRUST COMPANY

Chicago • Danville • Decatur • Edwardsville • Rockford • Springfield

Policies issued locally by

LOCAL AGENT'S NAME HERE

OVER 100 YEARS OF EXPERIENCE WITH ILLINOIS REAL ESTATE

DOWER RIGHTS QUIT CLAIM DEED EARNEST MONEY

ESCROWEE WARRANTY DEED

RESTRICTIVE COVENANTS

words can never hurt you when you're buying a home

not if you have a LAWYER . . . he makes everything clear

What do they mean, these mysterious terms? Do you have to know them all when you go to buy a home?

Luckily, you don't . . . that's what a lawyer is for. He takes the mystery out of the legal phrases, digs through the fine print. He makes everything clear to you.

Does your sales contract give you all the protection it should? He'll make certain it does. The property you're buying: does it fit the legal description? Your lawyer will check thoroughly to make sure. He'll see that you get all the things you're entitled to when you finally move into the house.

In short, a lawyer is the "ounce of prevention" that can save you costly trouble later on. You'll find that careful buyers make this a rule: *never buy property without seeing a lawyer.*

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Chicago • Danville • Decatur • Edwardsville • Rockford • Springfield

Policies issued locally by

LOCAL AGENT'S NAME HERE

OVER 100 YEARS OF EXPERIENCE WITH ILLINOIS REAL ESTATE

so many papers to sign when you're buying a home

. . . that's when you're glad you have a LAWYER

It can be confusing, this buying a home. So many things to sign . . . "offers to buy" . . . bids . . . mortgage papers . . . sales contracts.

Should you sign them or not?

That's when you're glad you have a lawyer. You know that he will look after your interests . . . advise you against doing anything for which you might be sorry later. When you sign a paper, you know that he has gone over it carefully to make sure you're fully protected.

Your lawyer does more. He sees that the property you're buying is exactly as represented; that there are no claims against it; that, when you move into your house, you'll get everything that should go with it.

You pay little to have this protection. *Preventing* trouble now is far cheaper than paying for it later. That's why the wise buyer says: *I never buy property without seeing a lawyer.*

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LOCAL AGENT'S NAME HERE

OVER 100 YEARS OF EXPERIENCE WITH ILLINOIS REAL ESTATE

can you build the way you'd like on the lot you're buying?

it's best to make sure by seeing a LAWYER first

Chances are there is nothing to stop you from building any way you please.

But it's best to see a lawyer and be sure. Many is the man who bought a lot only to learn that building codes or zoning regulations barred the kind of house he planned. Again, while the *lot* lines are big enough to take the house you want, the *building* lines may be too narrow. Or perhaps the water and sewer connections are so far away as to make the cost prohibitive.

A lawyer finds these things out before you go too far. He learns, too, if the property you're buying fits the legal description . . . if there are any claims against it . . . if the sales contract gives you all the protection it should.

The lawyer's services cost you little—yet the trouble he prevents can be very costly indeed. That's why experienced buyers will tell you: *never buy property without seeing a lawyer.*

A Chicago Title Guarantee Policy protects you against "hidden risks"

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OVER 100 YEARS OF EXPERIENCE WITH ILLINOIS REAL ESTATE

ADVERTISING

It has been said that advertising is the life blood of business. Daily we see, in our Free America under Private Enterprise, results of greater sales wrought by intelligent advertising; and because of this increased production, the public obtains better merchandise at lowered prices.

To a degree, this picture of better service to the public, and at lowered costs, can be applied, to a greater or less degree, to the title world. True, our functions are largely professional in character and largely require individual treatment. Notwithstanding, there can be a proper place for advertising of the products and services of the land title guild.

The story of the need for an abstract and/or title insurance policy, for the services of our escrow division and other services, has been told many times by many title and abstract companies in their advertising and publicity campaigns. But much new business wholly escapes all. Too frequently, in many jurisdictions, a survey of the recordings compared to orders in the various title companies operating in a designated community will disclose much new business is without our services; will disclose that titles to land have been sold and bought as one would buy a pack of cigarettes.

And perhaps it is not out of order to observe that the less the advertising, the greater is the percentage of transfers of title to land on which there was neither the services of a title company nor an attorney in the picture.

One is forced to draw an inevitable conclusion—that, in those areas, the public is not "sold" on the need for an adequate evidence of title; that here there is demonstrated the need for more strenuous work to inform the public to a greater degree on the "What and Why" of our appearance in those transactions; and specifically to inform the potential buyer of real estate of the value, the need for an evidence of title.

We carry in the pages next following reproductions of advertising material of certain title companies:

A—The Union Title Company, Indianapolis, Indiana, publishes a monthly magazine, 8½x11. It is given wide distribution to the principal users of our services. From it, we have quoted copy relating to the need for a title policy under the heading, "You Need Title Insurance Because . . ."

B—The Abstract & Title Guaranty Company, of Detroit, has printed a small pamphlet, a throw-away, which in question and answer form tells in an interesting fashion the story of title insurance.

Parenthetically, having in mind our relations with the Bar, we call particular notice to Question and Answer No. 19.

Their pamphlet is a 6-page folder, 3⅛x8½, printed in three colors, blue, Kelly green and gray, with an attractive outside cover page featuring as its title "Questions and Answers."

C—In a different style ,the Burton Abstract & Title Company, also of Detroit, approached the problem. It has prepared a brochure, the contents of which are carried in this issue. Graphically it portrays the story of advances in our profession. It refers to the value of an abstract and points out the need for the professional services of a competent attorney. It tells the story of the need for a title policy.

The Burton brochure is saddle stitched. It consists of eight pages and cover. It is 5¼"x7⅜". The title is "Modern Title Protection." The text is printed in two colors, with side heads printed in red, which serve as an index. In this issue we have carried these heads as paragraph or subject headings.

The last page consists of printed material descriptive of the firm, its services, and locations of branch offices and a list of its affiliate companies.

—J.E.S.

"You Need Title Insurance Because . . . ."

Union Title Company, Indianapolis, Indiana

1. You cannot afford either to lose your property or to spend money defending your title.
2. It forever protects the holder of the policy without renewal or payment of additional premiums.
3. There is no other equally safe way to deal in real estate or mortgages.
4. Every title guaranteed is thoroughly examined by competent attorneys.
5. The entire assets of the company are back of this insurance.

Benefits to Owners

Perfect protection. Safety. Marketability assured to the extent that another policy will be issued identical in terms up to the point covered by that certificate.

Investigation of every step in the title by the best legal examiners.

Ready sales.

Quick assets for loans.

Convenience and flexibility in the transfer of your property.

Benefits to Real Estate Men

Saving of time required in meeting objections to titles, leaving more opportunity to negotiate deals.

Title Insurance will speed up sales.

Deals will not be lost because of ancient and technical objections to title.

Benefits to Lawyers

They can have all the assets of this Insurance Company back of their opinions.

We guarantee their clients against loss from title defects.

The examination of titles is a technical, exact and legal matter for the lawyer alone. We seal and approve the product of the abstracter and the conclusions of the lawyer.

Benefits to Mortgage Lenders

Sure protection, absolute security of investment.

Elimination of delay, in passing on titles.

Marketability of mortgage bonds.

Freedom from legal complications and uncertainties.

Immunity from title disputes, annoyances and difficulties.

Omission of technical examination of title in home office of lending company.

Standardized examination and specialized investigation on how far the courts have gone in upholding titles.

"Title Insurance—Questions and Answers"

Abstract and Title Guaranty Company, Detroit, Michigan

1—What is Title Insurance?

ANSWER: Title insurance is a contract to indemnify against loss suffered because of defects in title, **unmarketability,** liens and encumbrances. It is not mere guess work, nor is it a wager, but it represents the opinion of the issuing company as to the validity of the title, backed by an agreement to make that opinion good, in case it should prove to be mistaken and loss should result in consequence.

2—What Is An Abstract?

ANSWER: An abstract of title is a concise statement in orderly form of the substance of documents, appearing on the public records, which affect the title to real property.

3—What Is An Abstracter's Liability?

ANSWER: An abstracter certifies that he has prepared a true and correct abstract of the **record** title. He is required to exercise due care and diligence in his work, but the abstract is no better than the competency and **financial responsibility** of the abstracter.

4—Why Is Title Insurance Needed?

ANSWER: Protection is needed against such things as loss by encum-

brances, which may not appear on the record, defective title, adverse claim to title; and to defective title due to forgery, undiscovered errors, errors in public records, deeds executed by those under legal disability, deeds executed and recorded but not validly delivered, etc.

5—What Does the Term "Marketable Title" Mean?

ANSWER: This term implies, not merely a title which is valid in fact, but one which can be sold, in the ordinary course of business, at a fair and reasonable price to one willing to buy, or one which can be mortgaged to a person willing to lend money upon a reasonable security. Such a title is one which may be freely made the subject of sale to a reasonable purchaser, one which a prudent man would not hesitate to purchase at the market price for a good title, without abatement of price, and which will bring in the market as high a price with, as without, consideration of the alleged objection to title. A marketable title is vendible because of its fitness to serve its purpose, its proper purpose being defensibility and salability. **A title policy guarantees a marketable title,** something a warranty deed cannot do.

6—What Specific Exceptions Are Usually Set Forth in a Title Insurance Policy?

ANSWER: All discovered or known defects, estates, objections, liens or encumbrances are set forth in the policy and are excepted from insurance thereunder.

7—Does Title Insurance Cure "Bad" Titles?

ANSWER: Title insurance does not cure "bad" titles—if by "bad" titles is meant a fatally defective title—any more than a life insurance company will insure the lives of persons afflicted with fatal diseases.

8—If the Title of An Insured Property is Attacked in a Court Proceeding, Who Bears the Cost of Necessary Litigation to Defend the Same?

ANSWER: The title insurance company bears all cost of such litigation regardless of whether the claims are substantiated.

9—In What Respect Does Title Insurance Differ From Any Other Type of Insurance?

ANSWER: Other types of insurance insure against loss from future happenings, while title insurance protects against losses arising in the future from happenings in the past. Other types of insurance usually require payment of an annual premium, while title insurance requires the payment of only one premium, paid when the policy is issued.

10—How Long Does the Protection Afforded Under a Title Insurance Policy Continue On (a) Owner's Policy, (b) Leasehold Policy, (c) Mortgage Policy?

ANSWER: (a) As long as the insured, his heirs and devisees have an insurable interest;

(b) As long as the insured may sustain loss by reason of failure of the leasehold estate;

(c) Until the original indebtedness secured by the mortgage or deed of trust is satisfied, or the property coming through foreclosure is disposed of to a stranger. If the insured buys the property at a foreclosure sale, the policy operates as an Owner's Policy to the extent of the indebtedness.

11—What Is the Difference Between "Fee" and "Mortgage" Title Policies?

ANSWER: A fee policy protects only the owner, while a mortgage policy protects only the holder of the mortgage on the property. Separate policies are required to protect both interests in the property.

12—What Procedure Does the Title Company Follow on Receiving An Application for Title Insurance?

ANSWER: First, the title company makes a thorough and expert examination of the records. Then, an interpretation must be made of the

legal effect of instruments found in the chain of title, and also of facts outside of the record. Where it seems for any reason advisable, the company may investigate the property and question individuals who may be able to contribute information as to the history of the title. Finally, if the title is found to be good, the policy is issued insuring against failure or unmarketability of the title, subject to any matters shown in schedule B thereof.

13—What Is the Difference Between FHA Mortgage Insurance and Mortgage Title Insurance?

ANSWER: The FHA plan insures mortgage lenders against certain loss on the loans they make on real estate. It does not in any way insure the lender as to the borrower's title. Whereas a mortgage policy insures the lender that he has a valid first lien on a fee simple title.

14—What is the Basic Coverage Provided in the Usual Owner's Title Insurance Policy?

ANSWER: The usual Owner's policy protects the insured against loss or damage sustained up to the amount of the policy on account of any defect in the title or liens against the property as of the date of policy, other than those mentioned in schedule "B" of the policy and the conditions and stipulations thereof.

15—Does Title Insurance Protect Succeeding Owners of the Property?

ANSWER: Yes. The policy may be assigned with the assent of the company to the new purchaser. However, the policy insures only as of its date of issue. The new purchaser's title can be insured by an extension of the original policy, the rate for which is less than the cost of a new policy. (See Schedule of Rates.)

16—What Is the Limit of Liability of the Insurer Under the Usual Form of Owner's Policy?

ANSWER: The aggregate liability shall not exceed the amount stated in the policy and subject to that limit the actual loss to the insured and cost of litigation.

17—What Happens If the Title Policy Is Lost or Misplaced?

ANSWER: A lost policy can be replaced at nominal cost ($2.50)—where replacing of an abstract of title, if it should be lost, is expensive.

18—Why Is Title Insurance of Assistance to Realtors in the Sale of Real Property?

ANSWER: (a) Title insurance takes all uncertainty out of ownership.

(b) It makes the closing of deals rapid and certain.

19—If You Have a Title Policy, Is An Attorney's Opinion Necessary?

ANSWER: It is good business to get an attorney's opinion even after you receive your policy of title insurance. Title policies contain certain exceptions which an attorney can interpret in the light of his client's interest. Further, it is advisable to have the attorney participate in the closing of the deal, in connection with various adjustments in insurance, taxes, etc., and to generally protect the interest of his client.

20—What Is the History of Title Insurance?

ANSWER: The first known title insurance company was organized in Philadelphia in 1876. Because of the sound protection offered by title insurance to the owner and mortgagee, this idea of insuring titles has grown steadily through the years and in some states the use of title insurance is now practically universal.

21—How Good Is a Title Policy?

ANSWER: Obviously, it is as good, and no better, than the company issuing it. Abstract and Title Guaranty Company has built an enviable reputation throughout Michigan for reliability, cooperativeness, and prompt payment of all just claims. Of the quarter of a million owner policies which have been issued since 1921, only one suit has been brought by a policy holder. Abstract and Title Guaranty Company has resources in cash on hand and securities in excess of Two and One-Half Million Dollars and is under progressive, local management.

"Modern Title Protection"

Burton Abstract & Title Company, Detroit, Michigan

Land—The Principal Source of Wealth

Land is man's principal source of wealth and American tradition has demanded that it be easily transferable. Real property with a secure title and properly purchased, has always been and will always be a good investment. Home ownership is one of the fundamentals of good citizenship.

Register of Deeds

From the earliest days a system of public registration of conveyances of land has been provided for in this country. In Michigan, we have the Register of Deeds Office, the sole purpose of which is to give notice to the world of the rights of claimants and to preserve title evidence. The public has full right to the inspection of these records.

Notice

The recording of an instrument affecting land gives it no greater force or validity as between the parties to it, but it does give notice of the rights acquired under it. Thus, if a seller of a parcel of land were to deed his property to two separate purchasers, who did not have notice of the other's claim, the deed which was recorded first would take precedence.

Duties

The law requires the Register of Deeds to note on each instrument the time of its acceptance, make an entry of it in what is popularly known as a reception book, index alphabetically the name of each party to the instrument and record it at full length. There is however, no provision in the recording laws for the indexing of these instruments by land.

Method of Recording

In 1866 when the Burton Abstract and Title Co. was established, these instruments were copied by hand. Then came the introduction of the typewriter and in more recent years photography, which has made forgeries more difficult and easier to detect.

Name Index—Tract Indexes

If a purchaser of land had to search the Register's records under the name index to determine the validity of the title, it can be readily understood that it would be an unending task. The famous Burton records include an abstract copy and index by land of every instrument that has been recorded in the Register's Office. These records also include similar entries of proceedings affecting land in the Probate Court, County Clerk's Office, Bankruptcy Court and other public offices. Other voluminous private data are also compiled.

Entered Daily

These recordings and proceedings are abstracted and indexed daily, which insures you prompt and efficient service in obtaining your Abstract or Title Policy.

Your Selection

This company is not interested in influencing you in your selection of these proofs of title, it is interested only in providing you promptly with the best protection obtainable.

Abstract Defined

An abstract from these records is a complete, accurate and concise statement of the pertinent and legally significant facts appearing on the public records from the time that the title was in the Government up to the date of its certification. A complete tax search is made of the property abstracted and it is certified as to its correctness.

Examination by Attorney

It should be understood however, that an abstract presents only a history of the title and not a guarantee

of the title and should be submitted to an attorney for examination.

In examining the abstract the attorney bases his opinion on the **prima facie** evidence appearing therein and determines the ownership, encumbrances, irregularities and marketability of the title.

Title Insurance

In recent years there has been an increasing demand for Title Insurance. It is the answer of private enterprise for more protection and greater convenience in the sale and mortgaging of real estate.

Some Reasons for Increased Demand

When mortgages are protected by title insurance, it enhances their marketability. A mortgage can then be assigned more quickly and with less cost. The Federal National Mortgage Association has demanded this protection in the purchase of mortgages and most institutional lenders located in other parts of the country do likewise.

The so-called "Scavenger Act" is of comparatively recent origin and its many phases have required interpretation. The public has naturally turned to title insurance and its added protection when dealing in these titles.

Defined

In issuing a Title Insurance Policy, the Burton Abstract and Title Co. contracts to indemnify the insured against any loss that may be suffered by reason of any claims, defects, encumbrances or unmarketability of title. The only exceptions are specifically enumerated in the policy. It will immediately defend the title and bear all cost of such litigation regardless of whether the claims are sustained.

Differs From Other Insurance

Title insurance differs from other kinds of insurance for the reason that it requires only one premium at the time the policy is issued, while other kinds usually require an annual premium. Other kinds of insurance insure against loss from future happenings, while title insurance protects you against losses arising in the future from happenings in the past. Also, the premiums for other kinds of insurance are based principally on experienced losses, while title insurance premiums are not only based on experienced losses, but the preliminary work prior to the issuance of the policy and the investment to facilitate the issuance of same is considerable.

Additional Work and Investment

An applicant for title insurance is entitled to one preliminary commitment showing the necessary requirements for the issuance of a free and clear policy. An abstract of the records must be compiled before the title to the insured property can be expertly examined by an attorney. Other additional services are necessary, preliminary to the issuance of a title policy. To insure you prompt and efficient service, the Burton Abstract and Title Company has a very elaborate set of records, the cost of which and their maintenance is substantial. It is this preliminary work and this investment which is to a great extent responsible for a lower loss ratio as compared to many other kinds of insurance.

Types of Policies

The most prominent types of title policies are "Owner's" and "Mortgage" policies. The former protects one having an owner's interest in the property and the mortgage policy protects the lender. Both have essential and distinct functions and when issued simultaneously a savings is effected.

Owner's Policies
Assignments—Reissue

Owner's policies are issued only for the full value of the property and are interminable in point of time. The insurable interest may be assigned without cost on forms provided for that purpose by this company. It is the established practice however, for purchasers to insist that the policy be re-issued and dated as of the time of the sale. Upon the sur-

render of the old policy this can be done at a reduced rate.

Mortgage Policies Termination—Assignment

Mortgage policies remain in force until the original indebtedness secured is satisfied, or until the mortgaged land is sold on foreclosure to a stranger. If on foreclosure, it is sold to the insured, it will then become an Owner's policy in the amount for which it was originally written. Upon the transfer and assignment of the mortgage the protection of the mortgage policy is transferred automatically to the assignee of the mortgagee.

Protection Against Hidden Risks

A real estate title may be free from objection as far as the records go, yet there are certain things which are left to common honesty and accuracy. Title Insurance protects you against these hidden risks.

For example, a conveyance by a record titleholder reciting erroneously that he is a single man would not necessarily bar his wife's dower. Also, a forged deed, release or other instrument would not deprive a rightful owner of his interest.

Some other hidden risks which Title Insurance will guard you against are fraud, mental incompetence, undisclosed heirs, mistaken legal interpretation, confusion due to similar names and deeds delivered after death.

Attorneys' Services Recommended

It is the policy of this company to recommend to its patrons that they be represented by an attorney when closing a real estate transaction. In the interpretation of the policy and in the closing of the deal, many matters arise which require professional advice.

State Supervision

This company operates under the direct supervision of the Insurance Department of the State of Michigan and a deposit is maintained with the State Treasurer for the protection of its policy holders.

Capital

The Burton Abstract and Title Co. has assets of over $2,785,000.00, and reserves are set up and maintained under supervision of the Insurance Department.

Applications

Title Insurance Applications will be accepted by this company on land anywhere in Michigan.

CUSTOMER RELATIONS

M. M. HIGHTOWER

Manager, Duncan Abstract Company, Duncan, Oklahoma

In discussing the subject "Customer Relations" with Mr. McCortney with whom I work, he jokingly remarked that this means "Relatives who are customers."

But as our discussion progressed we decided this couldn't be what V. Hubert Smith had in mind for this topic, because the old saying: "Lives there a man with soul so dead that he can't get a kiss from his own wife?" can be parallel with "Lives there an Abstracter with soul so dead that he can't get an Abstract from his own kinfolks?"

Speaking of kinfolks, did you hear about the hillbilly who put a silencer on his shotgun because his daughter wanted a quiet wedding?

After deciding that customer relations had nothing to do with kinfolks, I began to think seriously about what could be done to improve customer relations in the abstract business.

I would like to state at this time that any of the following thoughts or suggestions will not solve all our problems, but possibly will help if we practice them.

First Impression

First, how do we meet our customers when he or she walks into our

office? Do we smile? Are we friendly? Are we sincere?

It had been said that to frown, we must use three times as many muscles in our face, as when we smile. Therefore it must be harder work physically to frown than to smile. If this be the case, possibly we should not work so hard.

After writing about this smile business, I thought I would put it to a little test. I found that if I smiled when a customer walked in, that 90% of the time the customer also smiled. A smile is contagious. Let's start an epidemic.

Salesmanship

Some of you may not agree with me when I state that the abstract business is unique in that it requires very little salesmanship. I contend that we do not sell an abstract like we would sell a suit of clothes, or an automobile. I contend that an abstract is bought through necessity; the necessity of proof of title. I dare say very few abstracts are bought because the customer wants it; the abstract is usually bought because someone requires or demands it.

If we could borrow money on our home or farm from some lending institution with a copy of our deed, you may be sure that deed is all we would take when seeking a loan; we would not buy an abstract because there would be no necessity for one. Our product has no physical attraction to our customer, it makes no difference to him whether the abstract be red, white or blue in color. When he enters our office he knows he has to have an abstract and usually all he wants to know is the cost.

Then if our product requires no salesmanship, what must we sell? We must sell OURSELVES to our customer. We must sell him on us through our willingness to help him with his title problems. We should let him know that our work requires a special skill, and that we are proud of our profession. We should never, at any time, do, or say anything that would cause a customer to lose confidence in either us, or our ability. The customer's confidence in our ability is priceless, it should be cherished by us, and should be guarded as we would guard a rare gem.

The Attorneys

We in the abstract business know that attorneys are among our best customers. I sincerely believe that when you sell an attorney on your product, you also sell a large majority of his clients. The attorney can be the best salesman we have if we put out a good, correct, product. On the other hand, if we put out a shabby, half-hearted, incorrect abstract, this same attorney can be the Paul Revere who rides in the night, shouting for all to hear, "BEWARE OF THAT ABSTRACTER, HIS PRODUCT IS LOUSY, NOT ONLY IS HE A SOURPUSS, BUT HE WILL NOT PAY A LOSS UNLESS FORCED TO DO SO, AND HIS ABSTRACTS ARE INCORRECT."

Let us not ever underestimate the value of attorney customers.

Being curious to find what Mr. Webster had to say about a Customer I looked in his dictionary and was surprised to find the following: I quote Mr. Webster's definition, "1. A customer is one who regularly or repeatedly deals in business with a tradesman or business house; a purchaser. 2. A customer is a fellow; chap;—usually with qualifying adjective, as queer, ugly, etc." Unquote. We have always known, I suppose that some of our customers seemed queer, and possibly we formed an opinion that some of our customers were not exactly what we would call pretty, but I was surprised that Mr. Webster had the same interpretation.

Types

We all have customers of various types. We have fat customers; slim customers; happy customers; unhappy customers; short and tall customers; white, red and dark customers; surely, know-it-all customers; chip-on-their-shoulder customers; I want to get an abstracted deed customers; me or my wife or no one else in the family ain't signed no deed—I don't care what the records show customers; we've been robbed cus-

tomers; why do you have to show all that stuff in the abstract customers; I want my abstract finished by yesterday customers; you have only to add one page customers; the last abstract I had made on the south forty had ten pages in it—why does this one on City property have fifty pages customers.

And last but not least we have beautiful, vivacious, blonde, brunette and red-head customers. Mr. Sloan, McCortney and myself have a verbal agreement (possibly should be in writing) that if a customer (lady customer, that is) comes into our office, and this lady customer is 45 years of age or older, I am the one who waits on her. But just let a young lady walk in between the ages of 18 and 44 and it's every man for himself. I have received two sprained ankles and one black eye trying to beat those guys to a blonde customer.

We as abstracters, in order to have satisfactory customer relations with the various types of customers, must, of necessity be psychologists, politicians, diplomats, one-man arbitration boards, and we definitely need to have a sense of humor.

I am indebted to V. Hubert Smith for the following thoughts on customer relations:

The Customer

The Employer and Employee both represent the business and all depend upon the customer.

What is the customer? The most important person in this office, in person or by mail. The customer is not dependent upon us—we are dependent upon him. He is not an interruption of our work, he is the purpose of our work. He is not an outsider, but a part of our business.

He is not someone to argue or match wits with. He is a person and not a statistic. He has feelings, emotions, biases, prejudices and wants. In taking his order, we must find what he wants to do, and strive to meet that want. We must use courtesy, and tact, and give cheerfully free service. Thank you, Hubert.

You know, I believe as we constantly try to develop better customer relationship, that we should not overlook this major factor in pleasing our customers: That is—our ability to listen. We often find ourselves doing all the talking; while if we listen, we might find some very pertinent information about the title in question. If the customer wants to tell us about his new baby, we should listen, and if he wants to carry on this diaper conversation instead of getting to the point about his abstract, we should listen. I imagine the better we listen, that we will find a happier customer. If the farmer's cow died, and he wants to tell us about it, we should listen—with sympathy, of course. Ridiculous, you say? Maybe so, but it works.

Did you ever stop to think that the reason a dog has so many friends, is because he can only listen to you, and wag his tail?

I believe that all I have been trying to say about customer relations can be summed up with this one simple thought.

Blessed is the Abstracter, who practices the Golden Rule in his customer relations, for he shall have a satisfied customer.

COMING EVENTS

Date	Meeting	Where to Be Held
Aug. 27-28	Montana Title Association Convention	Grand Hotel, Harve, Montana
Sept. 8-9-10-11	**American Title Association National Convention**	**Chicago, Illinois Edgewater Beach Hotel**
Sept. 24-25	North Dakota Title Association Convention	Williston, No. Dakota
Oct. 2	South Dakota Title Association Convention	Aberdeen, South Dakota
Oct. 3-4	Kansas Title Association Convention	Hutchinson, Kansas Baker Hotel
Oct. 4-5	New York State Title Assn. Convention	Lake Placid, New York
Oct. 7-8-9	Nebraska Title Association Convention	Fairbury, Neb. Mary-Etta Hotel
Oct. 7-8-9	Oregon and Washington Land Title Associations—Joint Convention	Tacoma, Washington Winthrop Hotel
Oct. 10-11-12	Missouri Title Association Convention	Jefferson City, Missouri Hotel Missouri
Oct. 17-18-19	Ohio Title Association Convention	St. Francis Hotel Canton, Ohio
Oct. 21-22-23	Wisconsin Title Association Convention	Delevan, Wisconsin Lake Lawn Lodge

CODE OF ETHICS

The American Title Association

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

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

FIRST

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

SECOND

Every member shall obtain and justifiably hold a reputation for honesty and integrity, always standing sponsor for his work intellectually and financially.

THIRD

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

FOURTH

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

FIFTH

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

SIXTH

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

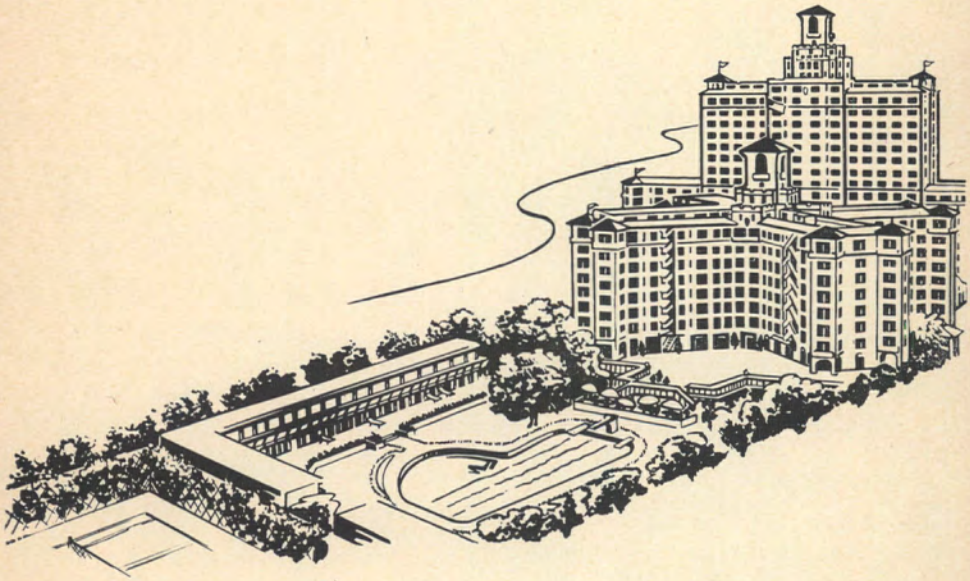
SEVENTH

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

Have You Registered?

AMERICAN TITLE ASSOCIATION

48th Annual Convention



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