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MORTON McDONALD

National President, American Title Association; President, The Abstract Corporation, DeLand, Florida

Proceedings of Annual Convention
(Part I)
American Title Association
Cleveland, Ohio—September 25-29, 1955
To Be Continued in December, 1955, Issue

REPORT OF THE NATIONAL PRESIDENT

LAWRENCE R. ZERFING
President, Land Title Insurance Company, Philadelphia, Pa.

This assembly constitutes the Forty-ninth Annual Convention of The American Title Association and closes a year of considerable title activity throughout the entire country. It marks a continuation of growth and development which has existed for some few years and which shows no real signs of abating and, indeed, we all hope there will be no abating. In favor of such probability is the fact that the number of persons gainfully employed is at an all-time high; wages are also high and these two conditions help the market for real estate which, in turn, creates business for our industry. Although tighter credit has affected the mortgage market somewhat, there is no indication that construction in dollar value will be lower in 1956 than in 1955; rather, there are some indications that aggregate construction of all types may have a slight increase over 1955. It must be conceded that the sudden illness of President Eisenhower may result in temporary lessening of confidence, but our economy is basically sound so that the upward trend should not be long interrupted. I know I speak for all of us when I say we sincerely hope for his early recovery.

In our industry, improvements in mechanical equipment and photographic reproduction processes over the past ten years have been phenomenal and new equipment is being constantly made available. This is of extreme importance because of the difficulty which exists in securing and retaining competent help. As a result, mechanical processes must be used wherever possible. Much of the latest and newest equipment is on exhibit at this Convention and the time spent studying those exhibits will be time profitably spent.

On this point, I can report that the Committee on Plants and Photography are well along with the consolidation of information secured over the past years; when entirely completed, which should be within the next few months, this will prove a valuable reference work for information on any mechanical processes used or apparently usable in our industry.

The scarcity of qualified help points up the necessity for formalized training or instruction procedures. Such plans, although they would be costly if operated by individual companies, could well lend themselves to development by local or regional combinations of several companies. There have been some discussions of this subject but I do not believe much has been accomplished in a practical way along these lines. I commend this to you for consideration in an

effort to develop personnel and, what is just as important, to make our industry an attractive one to ambitious and intelligent young people commencing their careers.

During the year business activity has been so good that there has been very little material received at headquarters, either in the way of criticism or contructive advice; that is, of course, good for the various members making up the organization but it does not make for the very best in organizational activity.

One of the greatest services that can be rendered to the members is the rapid production of the annual directory. As you know, that directory should ordinarily be available shortly after the first of the year. It is unfortunate that this year the directory has not been delivered at an early date. Headquarters has been making every effort to get this directory into circulation and, as a matter of fact, as far back as February of this year the proofs were available to the members showing the way in which the various listings would appear in the directory. A number of members in submitting their information did so on a basis which was considered inaccurate and incorrect by other members. As a result, the correct information was not available until a short time ago so that the directories are in the process of being issued at this time; admittedly, too late to be of much practical benefit. As a result, our membership has lost the advantage of that publication during the past nine months of this year. It is imperative that the Board of Governors fix an absolute deadline in which the directory must be issued and it must be with the understanding that the information then available will be used and, if that is found to be incorrect or inaccurate, there must be a correction of that information in the next year's directory.

No. 1. The Board should spell out, as far as possible, the number of lines which should be allotted under each company name; perhaps there should be a limitation of number of officers listed or some other information as well because if we permit one company, for instance, to list as many as six or eight officers you can well understand what is going to happen to the size of the directory. Size, of course, adds to the cost and I don't think it adds to the value to have excessive listings of officers by each company.

No. 2. The other publication issued by us which is of benefit to the members and can be of considerably greater benefit is our monthly publication of "Title News" that contains interesting articles and matters that are very informative. We in the industry have become rather well acquainted with each other so that the magazine could well afford a greater means of exchanging interesting information pertaining to the membership; I mean company activities, for instance, such items as mergers, consolidations or other changes such as movings, new buildings and material of that type. It could also include such items as peculiar losses or claims and peculiar title problems. All these could be set out in "Title News" and in that way exchange that information among all the members of the organization. Some such items appear in practically every issue, but this information can only be made available by the members. I suggest this is a job for each State Secretary to forward such information to National Headquarters for inclusion in the magazine. The members can very greatly assist in making the publication a much better one; the officers cannot do the whole job by themselves.

Some few years ago you will remember we set up a Grievance Committee and a few complaints have reached this committee. Some hold to the view that the committee cannot proceed and take jurisdiction over these cases because the duties and obligations were not spelled out clearly enough in the article setting up that committee. It is important that the Board of Governors spell out very clearly and definitely the duties and obligations of the Grievance Committee, liberalize the methods under which it can operate so that we can exercise the proper control over the few members who are not

operating in the way that we know is a proper way in which to operate. It is vital that either the Board or a special committee undertake this job and undertake it promptly. If we don't do it we will find a continuation of those wrongful acts which is going to be harmful not only to the organization as a whole but is going to be harmful to every member of the organization.

No. 3. There is no apparent change with respect to our relations with the Bar; conflicts exist in several areas but these conflicts arise because of conditions peculiar to those areas and not because of general antagonism toward the industry. Many of our members are members of the Bar and of Bar Associations and as such conscientiously endeavor to live within the canons of the legal fraternity.

In the natural functioning of the laws of economics, corporate entities have come into the picture to furnish indemnity which, under no conceivable circumstances, could be furnished by an attorney in private practice.

If there be no public call for these protective services, these contracts of indemnity and insurance, and the companies which issue them, will fall by the wayside because of lack of public support.

If there be need and call for their services and products, the public will demand and continue to demand delivery of these.

Attempts to hamper or prevent the delivery of such products and services to the public will not be graciously accepted by the public. Witness the cotton gin and attempts to prevent its use. It is only one of many I could use to illustrate my point.

Definitely there is need for avoidance of legal conflicts between groups — the attorney in private practice on the one side and on the other good title insurance companies, of repute, of honor, with sufficient financial strength to assure protection to the public.

In the long run attempts by one group, or a small section of one group as I believe often is the case, whether that group is industrial or professional, to hamper needed activities or services, must fall of their own weight as being adverse to the public interests.

In the cases of controversy between the Bar, local or otherwise, and the title companies, I earnestly hope these can be settled and will be settled, by calm consideration of all the factors involved, recognition by both sides of the table of the rights and the privileges of the other; and by acceptance from both sides that the public interest is paramount, and must be served—first, last and all the time.

During my term of office I attended State Conventions in a number of states and was greatly impressed by the activity of those associations; they are all trying to do a good job and they serve their members well. Of particular interest is the Washington Land Title Association which reached its fiftieth milestone this year. A few have passed that and as a National Association we ourselves will reach that milestone next year. My sincere appreciation for the many courtesies extended to me while visiting these various conventions.

To Jim Sheridan and Joe Smith of National Headquarters, the Officers, Committee Members and others who so willingly gave their time and effort to the activity of the Association, my sincere appreciation. I doubt whether there is an organization in which the acceptance of committee assignments were so freely given as in our own Association and such cooperation is most gratifying.

No effort was spared to make this Convention one of the best and you will determine for yourselves whether the effort was successful.

LAND TITLES AND BANKRUPTCY

JUDGE CARL D. FRIEBOLIN

Referee in Bankruptcy United States District Court, Northern District of Ohio, Cleveland, Ohio

It is customary, as you must know, for a speaker in his opening remarks to say something flattering of his audience. If you have any notion that I'm going to follow that banal custom, you're right.

The fact is that a number of years ago I had an extraordinary — a Homeric — experience. I made a speech on the subject of bankruptcy to the Ohio Title Men, and—mirabile dictu—they gave every evidence of knowing what I was talking about. Ever since then, I have had the warmest feeling, not to say an extravagant admiration, for the discriminating intelligence of title men.

I suppose that I could account for my being asked to speak to you today, by what we Presbyterians call predestination and predetermination. But, remembering that one of my audience at that earlier meeting was my loyal friend of many years, Walter Belding, I suspect that you will be safe in blaming him for my being here.

It is true that I have been in the Bankruptcy Court an unconscionable number of years, but that doesn't argue that I know all about titles. What I shall say about **that,** should not be received by you as divine revelation. In that particular field, you are the experts. So, it is my guess that this afternoon I am carrying hair oil to Italy. If you should disagree with me, I'll be tempted to take it all back. The truth, as you know, is manysided, and I've lived long enough to know that the world is round.

Scanning your Association's publication: "Title News", for many years back, I find that of the hundreds of speeches published, there are very, very few which discuss bankruptcy as it affects your business. In truth, I have discovered that **most** businessmen have a very hazy, often a distorted, notion about the subject. Apparently, they regard it as an esoteric subject complicated to the point of mysticism.

It occurs to me that at the present time, with bankruptcy cases in the country exceeding in number anything before recorded—close to 65,000 is the probable number of cases this year—you might be interested in a brief explanation of the Bankruptcy Act. It will give you perspective and should help you to understand more readily **that** aspect of bankruptcy in which you are peculiarly interested. Who knows? The time you save may be your own.

I say this although your publication informs me that Title Insurance Companies are in clover and having their best year. Incidentally, I have read also that some entirely new kind of insurance is being written. It has been said that this new insurance works this way: If you are drawing unemployment compensation and the Unemployment Commission notifies you that they have a job for you, the insurance company defends you.

Most people don't even know what kind of animal a referee in bankruptcy is—they may be pardoned for thinking he's the third man in the ring, where honest creditors battle it out with indifferently honest bankrupts. Under the Bankruptcy Act, the U.S. District Court is also the U.S. Bankruptcy Court. And the District Judges appoint Referees in Bankruptcy who then, as a bankruptcy court may administer all bankrupt estates, with the right of formal appeal to the Judges.

Bankruptcy is one method of adjusting or liquidating insolvent estates, and differs radically from other methods, such as assignments for the benefit of creditors, receiverships and corporate dissolution proceedings. Enacted by Congress, it is uniform in procedure throughout the country, and it is the only court which has

the power to impair the obligation of contract by granting the debtor a discharge of his debts.

There has been one underlying feature of bankruptcy ever since it was invented way back in the 15th Century: there is one person in every case who is delegated to act as the representative of all creditors and who administers the estate for all of them; today we call him a trustee. To a degree, the entire administration revolves about the trustee: his title, his rights and powers which he exercises for the benefit of all creditors.

But we do not have a trustee with that specific title in all cases in the bankruptcy court. This is owing to the fact that today the Bankruptcy Act comprises two general classes of proceedings: (1) Strict or straight or old fashioned bankruptcy proceedings and (2) Debtor Relief proceedings.

(1) Strict bankruptcy proceedings involve the adjudication of a debtor as a "bankrupt"; the election by creditors, or appointment, of a trustee; the sale and liquidation of the property, distribution of the fund, and to the so-called honest bankrupt, a discharge of his debts except certain kinds of debts such as frauds, taxes and alimony. This is the kind of "bankruptcy" which is by far the most common and is usually the kind referred to simply as "bankruptcy."

(2) The Debtor Relief proceedings —of which there are several—are designed to avoid liquidation and to permit the debtor to retain his property. The debtor although he files his petition in the Bankruptcy Court, remains a "debtor" and is not adjudicated a bankrupt; he is permitted to offer some form of adjustment of his debts by way of an Arrangement or a Plan of Reorganization which, if accepted by a majority of creditors and confirmed by the court, acts as a discharge of the old debts and creation of a new, adjusted liability. Among these the best known perhaps is Corporate Reorganization formerly known as 77B.

In these Debtor Relief cases we do not always have a trustee by name. But to remember is, that there is in every case someone who is vested with the same title, rights and powers as a trustee; it may even be the debtor himself who however, is then designated as the Debtor-in-Possession; as such he is in law a trustee with the same title and powers as a trustee.

Hereafter, when I use the word trustee, I include his equivalent in a Debtor Relief proceeding. And when I use the word bankrupt it will generally include a debtor.

It might be stated here that in some Districts, no trustee is appointed in strict bankruptcy cases where no creditor appears and no assets are scheduled. (This is permitted by a General Order of the Supreme Court (G. O. 15) which, I suggest, is contrary to the express provisions of the Act). In such cases, there being no trustee and no equivalent officer, there is no opportunity for the vesting or assertion of the title, rights and powers of a trustee.

With that preamble let us consider the right, title and powers of a trustee (or his equivalent in Debtor Relief proceedings).

First—and of chief interest to you —the trustee is vested by operation of law with the title of the bankrupt to all property wherever situated which the bankrupt (or debtor) could, by any means, transfer, or which could be levied upon by his creditors, under state law, except however, property which by the bankruptcy court holds to be exempt, under state law, as a rule. He steps into the shoes of the bankrupt. And—this is important—the trustee (or his equivalent) is so vested with title, as of the date the petition—voluntary or involuntary, in strict bankruptcy or Debtor Relief—is filed. I say this is important because rather frequently you will hear it said that the trustee's rights date as of the date of adjudication; there can be no question about that since 1938 when the Chandler Act was passed which was a rather complete revision of the law.

While it is said that the date that the petition is filed—also called "date of bankruptcy"—fixes the liabilities as well as the assets and title of a

bankrupt (or debtor), there are a few exceptions—and these exceptions are of particular interest to you.

(1) Since 1938 when the so-called Chandler Bankruptcy Act was passed, it is the law that the trustee (or his equivalent) also takes title to any property—not exempt—which vests in the bankrupt within six months of the date of the filing of the petition by bequest, device or inheritance—windfalls we sometimes call them; and it vests in the trustee as of the date when it vests in the bankrupt—but of course, always within six months of the date of bankruptcy. And it vests free of any transfer by, or suffered by, the bankrupt after bankruptcy. (Sec. 70a(8)). It has been held that an assignment by the bankrupt prior to bankruptcy of his expectancy is valid. Re: Barnett (2CA '42) 128 F. 2d 567. I assume in that event, that such transfer might be vulnerable as a fraudulent transfer or other transfer of property voidable under the Act.

Similarly, the trustee is vested, as of the date of bankruptcy, with title to property in which the bankrupt has an interest "by the entirety" and which, within six months after bankruptcy becomes transferable by the bankrupt. (Sec. 70a(8)). Ohio and many other states do not have estates by the entirety. In the case of tenants in common or joint tenants, title would vest at bankruptcy of any interest the bankrupt could convey on that date.

Somewhat similarly in the case of contingent remainders (unless, as in Ohio, such remainders are alienable and the trustee takes title at bankruptcy) executory devices, rights or possibilities of reverter and like interests in real property which are not assignable at bankruptcy but become assignable within six months thereafter, the trustee takes title. (Sec. 70a(7)).

(2) Another exception relates to real property located in a county other than the county in which the court records are kept of the particular pending bankruptcy proceeding. With respect to such property, the commencement of bankruptcy proceedings is not constructive notice and does not affect the title of a bona fide purchaser from bankrupt unless a certified copy of the bankruptcy petition, or of the adjudication or of the approval of the trustee's bond is filed with the recorder or other officer of such county, authorized to receive such certificate. (Sec. 21g of Act). (By the provisions of the Act, the trustee has the duty to record a certified copy of the approval of his bond in every county where bankrupt owns real property (Sec. 47e). Where bankrupt owns property in a foreign country, the bankrupt is required to execute a sufficient transfer thereof to the trustee. (Sec. 7a(5)).

(3) There is another exception to this general rule: that title passes at the date of bankruptcy. It seldom arises. Since it affects only personal property I merely mention it in passing. (Sec. 70d of the Act.)

The trustee (or his equivalent) in addition to taking whatever title to property held by the bankrupt, has rights which may result in bringing property into the estate. He succeeds to all the rights any general creditor may have by reason of his being merely such creditor of the bankrupt. (Sec. 70e). Those rights are primarily, if not exclusively, those available to creditors under the state law, e.g. the right to set aside fraudulent transfers by bankrupt as provided by state statute; suit is usually required to be brought within four years. Also, to set aside voidable preferences as provided in varying language by state statute; the limitation here is also about four years. Also, actions to avoid Bulk Sales; usually creditors must act within 90 days after the sale. (See Sec. 11e of the Act—limitations).

Again the trustee (or his equivalent) stands in the shoes of a hypothetical levying creditor, that is, the filing of the petition in bankruptcy is, in effect, an omnibus levy; it creates a lien by legal or equitable proceedings on bankrupt's property. He also has the rights of a hypothetical judgment creditor with an execution returned unsatisfied. There need not be at bankruptcy an actual

creditor having these rights. (Sec. 70c).

By reason of this provision, the trustee (or his equivalent) may avoid transfers by the bankrupt, or liens upon his property, which by state law require recording or possession for validity against a levying creditor and there is a failure of compliance by the creditor with this requirement prior to bankruptcy. Examples are: unrecorded mortgages and conditional sales contracts, pledges without possession, assignment of accounts receivable where by state law some filing or other act is required for validity against levying creditors and these have not been complied with prior to bankruptcy.

The fourth power is the right—several rights—provided expressly in the Bankruptcy Act itself. (a) Thus, in the Act itself regardless of state law, the trustee is empowered to set aside fradulent transfers made within **one year** of bankruptcy. (Sec. 67d). This particular section of the Bankruptcy Act is substantially the Uniform Fraudulent Transfer Act adopted in some states. Mind you, I have already referred to the trustee's right as successor to general creditors to invoke the fraudulent transfer statutes of the particular state. The limitation for bringing suit under these statutes is usually four years or more. (See Sec 11e of the Act).

I might interject here, that in your magazine some months ago you were told that by reason of this section—the Bankruptcy Act's fraudulent transfer section with a one year limitation—no title could be found clear for one year after bankruptcy.

Even if this were a valid conclusion I can't understand why he limited it to one year, when the trustee has the benefit of possibly four years—at least two years—or more under the state statute to attack the same fraudulent transfers. (Sec. 11e).

Again, by the Act itself, the trustee (or his equivalent) may avoid preferences (Sec. 60c and b) that is, transfers by a bankrupt to secure, or payments upon, antecedent debts, made by the bankrupt while insolvent, within four months of the date of bankruptcy, if the creditor had reasonable cause to believe that the bankrupt was insolvent.

This section is frequently relied upon by trustees to recapture property or money, where the bankrupt has within four months of bankruptcy given security for, or paid, a perfectly honest but pre-existing debt. Although you find courts speak of "illegal preferences" and "fraudulent preferences" the fact is that there is no illegality or fraud involved in securing or paying an honest debt. The purpose of this section is to establish a sort of retroactive moratorium of four months before bankruptcy within which there may be no diminution of the bankrupt's estate. This section, since its amendment in 1950 is pretty tricky. Reading it, one gets an appaling sense of anarchy. A noted author commented that "the language of this section is of a kind which would have astonished and delighted Gilbert and Sullivan." So I shall not explain it further, but shall be glad to answer questions in regard thereto.

Under this section a mortgage on real property given to secure a present loan **prior** to four months of bankruptcy, might be avoided as a preference **if** the mortgage is not recorded until a date **within** four months of bankruptcy on which recording date the loan clearly was an antecedent debt; and **if** on the recording date the bankrupt mortgagor was insolvent **and** the mortgagee had reason cause to believe it. This would be true, of course, only if by state law such mortgage had to be recorded for validity against bona fide purchasers.

One more right and power which the trustee is given by the express terms of the Act: He may avoid any lien obtained upon bankrupt's property by execution, attachment or by any other form of judicial action if such lien is obtained within four months of bankruptcy while the debtor was insolvent, that is, the debtor's assets (including exempt property) were worth less than the amount of his liabilities. This is not a

preference, except perhaps in a general sense. A fraudulent transfer suit filed within four months would constitute such a lien; also a general receivership or a judgment lien. But a foreclosure suit of a consensual lien would not be a lien obtained by judicial or legal action. Although no foreclosure suit may be filed after bankruptcy, if a foreclosure suit is pending at the date of bankruptcy, although the bankrupt still has title and the trustee is vested with that title, the Bankruptcy Court will not take jurisdiction except, to issue a temporary restraining order in order to permit the trustee to assert his rights in the foreclosure suit. Sometimes by consent of the parties, the Bankruptcy Court will take jurisdiction.

Now that you have a general analysis of the trustee's title, rights and powers, let's get back to his title which vests in him as to all bankrupt's property—whatever that title may be.

Having title, what can the trustee do with the property?—He is required to dispose of it somehow. Briefly, he may (1) set the property aside as exempt, or (2) abandon any interest in it or (3) sell it. Unless he disposes of it in some way, he will retain it, even after the case is closed. (If no trustee is appointed in strict bankruptcy, the title will not leave the bankrupt.)

If there are executory contracts, including unexpired leases of real property, which bankrupt—as lessor or lessee, or as promisor or promisee—could assign, the trustee has the option to assume or reject them within 60 days after adjudication. If not assumed within that period they will be deemed rejected. (Sec. 70b). And if rejected it relates back—it will be regarded as rejected as of the date of bankruptcy (Sec. 63c); and the promisee (the other party to the contract) may file his claim for damages if any, in the bankruptcy proceeding for breach of contract. (Sec. 63a(9)).

If the trustee does not dispose of property in some way and the case is closed and the trustee discharged, the only way to divest the trustee of title is to reopen the case by motion and payment of a $45.00 filing fee; have a new trustee appointed and have him dispose of it in one of the three ways I have suggested. Although this is practically a new administration with a new successor trustee, the title dates back to the filing of the original case. In the meantime, although the naked—if you will excuse the expression—title was in the bankrupt, it had vested in the trustee in the original case. The new, the successor, trustee will now get the benefit of the unearned increment, if any, which accrued to the property in the meantime.

I said that the trustee may dispose of the title by setting the property aside as exempt. If he files a report setting certain property aside as exempt and the report is approved by the court, it revests title in the bankrupt.

If claimed as a homestead we, in Ohio at least, run into difficulty. In another place I have fully discussed this subject (send a stamped envelope and I'll tell you where). Briefly, the Ohio statute—and perhaps other states—exempts to husband and wife living together, a homestead of the value of $1,000.00 or less (Rev. Code Sec. 2829.80). In bankruptcy, for the purpose of **this** exemption, it is not the value of the property occupied as a homestead that is considered, but the bankrupt's equity in it. If his equity in it is $500.00 or less, the property—the fee—will be set aside as exempt. (In re Hewitt (D.C. O. '17) 244 Fed. 241).

Keeping in mind that a homestead exemption is—in Ohio—merely a right of occupancy, if the homestead property is worth more than $1,000.00, if it is not divisible, it is, by our state statute, to be appraised and the yearly rental fixed. Then the judgment debtor—there must be a creditor who has a judgment for a certain amount—the debtor must pay into court upon the judgment the yearly rental fixed by the appraisers, but with a deduction of $100.00 for the year, until the judgment is paid.

(Rev. Code Sec. 2329.28). Conceding that bankruptcy preserves the right of exemptions prescribed by the state statute, how can such a statute be followed in bankruptcy? For how long could we require a bankrupt to pay the rental? Until what **sum** is paid upon what **judgment?** Bankruptcy is not a judgment for any amount. It seems to me that Judge Killets of this District has taken the only sensible and practical view in this situation: Regard the homestead, if valued over $1,000.00, the same as an encumbered homestead property, in which case the judgment debtor (bankrupt) is entitled to receive $500.00 from the sale price received for the property. (Re Crum (D.C. O. '13) 34 ABR 586). Our title companies encounter difficulty when trustees are not careful in setting aside these exemptions, to distinguish a homestead exemption—a right of occupancy with the title to the property in the trustee—and exemption in lieu of a homestead: property set aside absolutely at $500.00 in cash.

If not set aside as exempt, the trustee might get rid of his title by abandoning any interest in the property. That is to say, if it is of practically no value; if the particular property is encumbered beyond its value there would be no point in selling it, because there would be no surplus for general creditors. Strict bankruptcy is primarily for the benefit of unsecured creditors and the trustee should spend no time or money respecting secured creditors unless there will be a benefit to the estate, that is to unsecured creditors.

It is true that in some instances the secured creditors themselves prefer to have the property sold in bankruptcy because it is more expeditious and our public sales have proven unusually well conducted and productive of good prices. In such instances the trustee may be authorized to sell at the expense of the secured creditors and without any charge against the bankrupt estate.

It sometimes happens that the trustee takes an unjustifiably long time to make up his mind about selling the property, to the annoyance of secured creditors who wish to foreclose. In such instances the lienor, (mortgagee), should file an application for either (1) an order by the court directing the trustee to proceed with a sale of the property or to abandon any interest thereon; or (2) for authority to the mortgagee or other lienor to file a foreclosure suit subject to further order of the bankruptcy court.

Just another word about the trustee's abandonment of property. (There is nothing in the Bankruptcy Act upon the subject.) There are two kinds of abandonment: (1) Formal and (2) Informal. Formal abandonment is by express order of the court abandoning all interest of the trustee in the property. A certified copy of the order will revest the bankrupt with title "as is."

Incidentally, I find no warrant for orders sometimes made in bankruptcy, abandoning property to somebody —to a mortgagee for instance. To "abandon" means to foresake, to drop, let go—to "leave it lay". It means that there is to be no administration at all of the property by the court. If an order is made abandoning property **to** somebody, it is in effect a transfer of the title to somebody—in effect a sale without price. That is administering the property not abandoning it.

An informal abandonment means that the bankruptcy court records show no order of abandonment of the property, but it appears that certain property was listed in bankrupt's schedules, and the trustee did nothing about it, and the case was closed without any formal disposition of it in any way. Knowledge by the trustee of the property is essential to an inferred intention to abandon. When the question of title arises after bankruptcy, the person claiming title to such property allegedly abandoned informally by the trustee, will be put to it to introduce evidence of such informal abandonment. Quite frequently, a title company will not pass title to the purchaser from a former bankrupt (or debtor) because the trustee in bankruptcy did not, as appears from the

record, dispose of certain property then owned by bankrupt, whether by exemption, sale or abandonment. It might even not have been scheduled. In such instances, in order to clear the title, the closed bankruptcy case must be reopened by motion as I have already described it; unless, of course the title company is otherwise satisfied that there was an informal abandonment.

If not set aside as exempt and not abandoned, the trustee to get rid of the property which has vested in him, must sell it or, possibly, dispose of it to someone by an order approving some sort of compromise which involves a transfer of title from the trustee to another—it might even be to the bankrupt.

There is a rule in strict bankruptcy that the trustee should not sell property unless there is a probability that there will be a surplus over the liens—that is, that there is some gain to unsecured creditors. There is no lack of the court's jurisdiction involved; the sound discretion of the bankruptcy court is invoked. If there is an abuse of discretion, the remedy is by appeal.

There are two kinds of sales in bankruptcy: (1) Sales subject to liens and (2) Sales free of liens—or free of some and subject to others. Strangly there is practically nothing in the Bankruptcy Act about sales, but the courts have now clearly established that the Bankruptcy Court may sell property free of liens—even free of tax liens including Federal Tax liens —if the lien is transferred to the proceeds of sale.

(1) Sales subject to liens are always permissible. No lien creditor may complain. The trustee merely sells whatever title or interest he may have in the property as successor to whatever bankrupt may have—we sometimes call it his equity. As in all sales in bankruptcy, the sale is by the court. It is the confirmation of the sale by the court of the trustee's "sale", that operates as a transfer and gives the equitable title to the purchaser. The trustee's deed gives legal title. (Sec. 70g of the Act). The order of confirmation of the sale, by the court, cures all irregularities.

(2) Sales free of liens mean that the trustee has filed a petition to sell (real) property therein described, with certain alleged lien claimants named as defendants or respondents. He asks that these alleged lien claimants (defendants) be required to appear and set up whatever lien or interest they claim in the property or be forever barred from asserting any; the lien, if any, to be transferred to the fund.

Of course, due process requires reasonable notice of hearing on a fixed date, served upon the alleged lien claimants. The Act and General Orders are silent on the subject.

In this District we have a rule which requires a ten day notice of hearing on such petition to sell free of liens to all of the lien claimant defendants. If they fail to appear or answer, they may be forever barred from asserting any claim or lien upon the property. If they file a cross petition setting up a lien, hearing thereon will be had and the validity and amount, if valid, are determined, as well as their priority. The sale may be ordered free of any one or all liens. I find no warrant for the statement that if sold free of a superior lien, the sale will also be free of all liens, inferior or junior thereto.

At this hearing, as a rule, all liens will not be determined, but the petition to sell will be granted, the property ordered sold free of some or all liens of the parties named defendants, and such liens, if any, transferred to the fund realized from the sale of the property. The Supreme Court has said in effect, that as a rule, there can be no complaint by a secured creditor if his lien is transferred to the proceeds of the sale of the property involved.

However, it is still true that a secured creditor who might not be paid in full out of the proceeds of the sale, may object to a sale free of his lien on the ground that there is no reasonable prospect that the sale of the property will result in a surplus for general creditors. As said before, the court in its sound discretion may

nevertheless order the sale free of liens if in its judgment there might be a surplus, possibly because some lien not yet determined might be found invalid. If it develops that not sufficient is realized to pay such lien, the question of costs to be paid at the expense of the lien claimant is a much disputed question, with which you are probably not concerned.

The power of a bankruptcy court to sell free of liens is a great convenience and operates to expedite administration with the disputes relegated to the fund. It is the only court I believe in which Federal Tax liens may be promptly and finally disposed of; and in these days such liens are frequently present. In the state court, the government is entitled to 60 days for answer. And if the Federal Tax lien is first in priority, a foreclosure sale must be made subject to the tax lien. If the Federal Tax lien is not first, then the sale of the property can not be final for one year within which the Government may redeem the property; in other words, it may find a buyer for more money. (28 U.S.C.A. Sec. 2410). You will hear from a later speaker, all about Federal Liens.

Although some don't agree with me, I don't believe the Bankruptcy Court has jurisdiction to sell real property located in another state free of the lien of a non-resident lienor unless such lienor in some way consents to jurisdiction. But the trustee may apply and obtain ancillary bankruptcy proceedings in the foreign court where the real property is located. The trustee himself may then in that court file a petition to sell such property free of liens no matter where the lienor resides. (Sec. 2a(20)). If, although the real property is outside the state, the lienor is a resident and can be served, there is jurisdiction. If the property is located within the jurisdiction of the Bankruptcy Court, lien claimants may be served anywhere and required to set up their liens or be barred.

Of course, there is no difficulty in selling real estate located **anywhere** subject to liens. Whether there may be a sale free of the inchoate dower of bankrupt's spouse in property of the bankrupt depends upon whether, in the particular state, creditors may compel such spouse to accept cash satisfaction for such interest. (Sec. 2(7) of the Act). As I understand the law of Ohio, this can not be done unless the spouse consents or the spouse has joined with the bankrupt in executing a transfer, such as a mortgage, which is before the court for determination and enforcement. (14 O. Jur. P 705). Incidentally, the inchoate dower right of the bankrupt is not an estate to which the trustee takes title, at least in Ohio.

The trustee takes title to leases and land contracts. But since these involve executory contracts, the trustee, unless prevented by valid terms of the lease, has the option of assuming or rejecting them within 60 days of adjudication. (Sec. 70b).

The Act expressly provides that a provision in a lease, to the effect that an assignment thereof by operation of law, as by bankruptcy, shall terminate it or give the option to terminate it, is enforceable; although a prohibition against assignment generally is not. (Sec. 70b).

If the trustee assumes the lease of a bankrupt lessee, he may sell it. And if he does, he will not be liable for any subsequent breach by the buyer —assignee. (Sec. 70b).

If he rejects the lease of a bankrupt lessee, it is rejected as of the date of bankruptcy. (Sec. 63c of the Act). The bankruptcy being an anticipatory breach of the lease and not being assumed by the trustee, permits the lessor to prove any damage he sustains by the breach, but such damage may not exceed the amount of one year's rent as reserved in the lease (Sec. 63a(9), inclusive of any security held by the lessor. (Oldden v. Tonton (2CA '44) 143 F 2d 916). In Debtor Relief proceedings it is not to exceed three years.

Question was raised recently by one of our title companies as to the consequence of an abandonment by the trustee of a lease of real property of bankrupt lessee. It would seem clear that this was not an affirmance of the lease and therefore must be

deemed a rejection, relegating the lessor to his claim for damages for breach.

Similarly, the trustee takes title to the lease of a bankrupt lessor, subject to the trustee's option to assume or reject it. But rejection by the trustee will not deprive the lessee of his estate unless the lease provides otherwise. (Sec, 70b)

If the trustee should affirm and sell the lease of a bankrupt lessor, or of any property occupied by one not a title-holder, regard must be had of the rights of an occupant of the property. As you know, when property is occupied by one not having title thereto, it is notice to the world of any rights he may have. If not exactly constructive notice, at least it carries a duty of reasonable inquiry —similar to notice of possible easements. In such case, a trustee might file a petition to sell free of any lien or interest in the property by the occupant, requiring him to set up any rights he may have or be barred.

Somewhat similarly, the trustee takes title to land contracts. Being an executory contract, he may assume and sell or reject within 60 days of adjudication. If the vendor is the bankrupt and the trustee assumes the contract, he may sell whatever interest in the property the vendor has. Incidentally, the vendee, at least in Ohio, if he occupies the premises, might claim homestead exemption. Radford v. Kochman ('24) 27 O. App. 82.

That just about exhausts my knowledge of the subject—if it hasn't already exhausted you. Possibly, I have let my missionary zeal outdistance your patience. But if so, you will know that it is because I have in my official position, over the years heard so many take a quick glance at a bankruptcy problem and confidently reduce it to incoherence. I know that title men have a passion for precision and I'm told by some lawyers that some pursue it with an almost neurotic punctilio. So, If I have in some respects failed to achieve a vulgar accuracy on some technical question of title, I hope that thereby I have at least confirmed your superiority in your field —which I conceded at the outset.

WHAT DOES THE MORTGAGEE EXPECT OF TITLE INSURANCE

W. CARROLL KEESEY

Vice President—Investments, Fidelity Mutual Life Insurance Company, Philadelphia, Pennsylvania

Perhaps I should make it clear in the beginning that I have not been commissioned to speak for Mortgagees as a group. In fact, I have no authority to speak for Life Insurance. But I do have authority to speak for my Company which, while comparatively small, has a mortgage portfolio of approximately One Hundred Million Dollars, represented by more than 14,000 separate mortgage loans. And when I say that, do you realize that this means almost 14,000 separate Title Insurance Policies?

I hope you will not consider it immodest of me to say that I believe I am personally qualified to talk on this subject. When my Brother and I graduated from Law School at the State University of Iowa, we hung out our shingle in a prosperous little Southeastern Iowa County Seat town. There was no Title Insurance Company operating in that area at the time. In fact, there was no Abstract Company there. When an Abstract of Title was needed, it was made by one of the local lawyers direct from the County records. Usually, of course, the Abstract was examined by some other lawyer. Although people were reluctant to consult a fresh young lawyer or to trust his

advice on most matters, they seemed perfectly willing to permit him to prepare an Abstract of Title in connection with their real estate transactions—often times the most important business transaction of their lifetime. And so it was that I learned to run titles the hard way. Occasionally, too, some trusting soul would come to us with an Abstract of Title for examination. Usually, we were able to find some small flaw in it sufficient in the eyes of our client to justify a modest fee.

Subsequently, in the Mortgage Loan Department of my Company, it was my duty for several years, to close mortgage loans—both those we were purchasing by assignment and those we closed direct with our own funds. In either case, one of the most important details was the examination of the evidence of title.

And so, I think you will agree that I have been close enough to questions pertaining to titles to real estate to recognize some of them and to have developed a very keen interest in the whole matter.

I wonder if there might still be a few of you who have not yet heard the story of the man who bought a mule. He had observed this mule which belonged to his neighbor—how well it was trained—and he decided he would like to own that mule. He asked the neighbor how he trained the animal and he said "I use nothing but kindness and understanding in the training of my mules". So he bought the mule. The next morning he coudn't even get the animal out of the barn. He just planted his feet and refused to budge. Eventually the new owner went after his neighbor —asked if he could come over and help him. The neighbor was glad to oblige. When he arrived at the barn, he took in the situation at a glance. He looked around, picked up a three foot piece of two by four and slugged that mule a terrific belt right between the eyes. "Hold on," said his friend. "I though you said all you ever used on this mule was kindness and understanding." "That's right," replied his neighbor, "but I always have to get his attention first."

There isn't much glamour in the subject of this talk. However, I trust that you will begin to take some interest in it and that there may be something which will be mutually helpful as we go along.

Certainly we have come a long way from those bulky, cumbersome difficult-to-read Abstracts of Title to the modern, concise Title Insurance Policy. From the standpoint of filing space alone, the Abstract leaves much to be desired. And, in our business, it is simply impractical to try and maintain a Law Department in Philadelphia which would be competent to pass upon countless, complicated questions in all of the States of the Union which might have a bearing upon the validity of the title in any given case. But any competent title examiner **can** sit at his desk in Philadelphia and pass upon an Iowa title, if Title Insurance is used, for the simple reason that the Title Insurance Company has washed out all of the detail, and has presented him with a standard form that means the same thing everywhere.

I should like to congratulate you upon the job you have done. It has been no mean accomplishment for you to gear your operations to the ever expanding requirements of the real estate and mortgage loan brokers. The care with which your examiners have gone into the background of titles is evidenced by the comparatively few losses which you incur. You have the reputation of settling losses fairly and promptly. And, you have finally arrived at standard forms which, while perhaps not perfect from the mortgagee's standpoint, are generally acceptable. I can testify that in my experience, covering over 25 years with my Company, we have, with one exception, never found it necessary to make a claim under a Title Policy for anything larger than an unpaid real estate tax item that someone had inadvertently missed. And this record shines all the more brightly when I remember that we foreclosed and sold several hundred parcels of real estate in many states without ever having a purchaser or his attorney raise a really serious objection to the title.

Today, most corporate mortgage

lenders require Title Insurance. They will not accept the old abstract and attorney's opinion in areas where Title Insurance is available. Yes, you have come a long way. I have even noticed lately that the old Torrens Systems in some states are being abolished. Some of us never did have much confidence in them anyway.

But, of course, business has been brisk. Activity in real estate and mortgage loans has leaped to unprecedented heights. We have all had to work feverishly to keep up with orders and to maintain our place in the competitive race that runs ruthlessly on. It is in times such as these that corners may be cut, and sloppy work become routine. If you are to maintain the enviable position you have attained, it will behoove you to look to the details of your business to see that careless work today does not result in unexpected claims tomorrow. This is especially true with those of you who have been and are continuing to expand your operations on a national scale.

I wonder if you have stopped to think recently of what Title Insurance really means to the lender. To put it briefly, it means just about **everything** to him. We can be just as careful as is humanly possible in our appraisals of the property and our underwriting of the credit but if the title is not good, we might just as well have saved ourselves the time and trouble. It would be difficult to overstate the importance of Title Insurance in the mortgage lending operations of the Life Insurance Companies. You are aware of the rapid acceleration of mortgage lending by the Companies in recent years. In the first half of this year, they put over 3 billion dollars into mortgages, an increase of almost 1 billion dollars over the same period the year before. The total mortgage investment of all the Companies, as of June 30th this year was 27½ billions of dollars —up nearly 21 billion since the end of World War II. In addition to this, many of the Companies have been buying real estate for investment until they now have invested in this way the rather substantial total of 1 billion 400 million dollars as of June 30th.

Now, I don't expect you to remember these figures. But a billion dollars is still considered to be a lot of that **stuff** and you **will** remember that the stake of Life Insurance in real estate is huge by any known standards.

In the light of what I have already said, perhaps you will permit me to make some comments with which you may not find yourselves in such ready agreement as you may have been with what has gone before. I should like to be specific about some things which I think the mortgagee expects of Title Insurance—which I think he has a **right** to expect, if you please.

First, it is my conviction that he has a right to expect a document which can be quickly read and understood; one, too, in which the big print does not give it to you and the little print take it away. You have made great progress in this direction. But consider this exception taken from the policy of one of your good companies. It was found under Schedule B., of course. Here it is, word for word: "Special taxes and assessments of any kind **,if any."** Now I submit that a Philadelphia lawyer would hardly be expected to be less clear even in his better moments. Isn't it reasonable for the Mortgagee to expect that such special taxes and assessments shall be specifically set out, **if any?**

Second, he expects a document that is standard—that is known and is acceptable everywhere. Today mortgages are not the non-liquid asset they used to be. They have become readily saleable and are sold in large amounts in the normal course of business. Warehousing by banks has become commonplace. All of this has come about to a large extent from the uniformity of mortgage papers, particularly the Title Policy, which are as acceptable in Pennsylvania or Ohio as in California or Texas. You have come up, through a maze of different forms, with the L.I.C., A.T.A. and A.T.A.—Revised forms. Possibly there may be a need for different forms for different purposes but is there any good reason why every mortgagee should not get the same form of policy—the best you can

devise—wherever the real estate is located?

Third, a document which clearly and concisely insures his interest. Here is where I think you may have the most room for improvement. For instance, consider this exception which I think you will recognize as not at all uncommon. "Mechanic's and Materialmen's liens not shown of record." Frankly, now, the mortgagee just doesn't want to be worried about such liens — whether "shown of record" or not. He wants his Title Policy to insure him against these things. Here are a couple more old friends, "Easements as shown by recorded plat," and "unlocated pipe line easement". As the mortgagee, I want to know something about these easements. It is my belief that they should be defined and located in the Title Policy. I realize that these are relatively small things and I am using them simply to make a point —that the Mortgagee expects his interest to be fully insured with any execeptions **clearly** set forth.

Let me illustrate further by mentioning a recent experience of my Company. We had agreed to buy a block of mortgages from one of our valued mortgage loan correspondents. They were being offered by one of the large banks. When the package of loans arrived, Ranney Ranneberger, who supervises our loan closings, opened up the first Title Policy only to find an exception under Schedule B. which he could not pass. It turned out that 2 out of 3 of the Title Policies contained similar exceptions. Frankly we were surprised that the bank had passed these policies without insisting that the exceptions be removed. Ranney sent them back with a hint to that effect and we have been informed that the Title Company will remove these exceptions. So far as I know they are doing so without charge. I simply wonder why the Title Company didn't do this in the first place.

Perhaps the experience of your business has been good enough to take just a little more business risk in some of these things if necessary and eliminate them as a source of irritation to the mortgagee.

Fourth, a document free from question as to the interest of the issuing agent. It seems to me that there can be no valid argument in favor of appointing a mortagage banker or a real estate broker as such agent. Surely the conflict of interest here is readily apparent. The same is true of attorneys or others, who may be part of the mortgage or real estate firms personnel. I submit to you that in all good conscience no man should be placed in a position where he is serving two masters. No man who has the most remote interest in the placing of a mortgage loan with an investor should, at the same time, be in a position to validate the most important document in the entire package—The Policy of Title Insurance. Human frailties are such that this practice will eventually produce one or more men whose consuming desire to make a dollar at any cost, will overcome his ability to think straight to the point when he will consciously and with malice aforethought, place his name upon a clean Title Policy in order to make it acceptable to an investor, when he **knows** that the title is in fact defective. Ladies and Gentlemen, it can happen here! Fresh in the minds of all of us is the attorney in a Southern State who went literally berserk in this direction. But in his case, we find a situation which is more difficult to explain or to prevent. In his case we do not find the conflict of interest to which I refer. But I think the warning comes pretty clear that no man should be permitted to represent you when there is this conflict of interest. I am reminded also of the rumor that at least one Title Company is insuring advances on open end mortgages upon the affidavit of the property owner only. It seems to me that this is going somewhat further than you should be expected to go in making the open end mortgage attractive. Isn't is just a little naive to assume that some property owners (too many I fear) will not execute a false affidavit in order to satisfy the requirements of the mortgagee for an additional advance? Isn't it possible also that a property owner acting in good faith, may be totally unaware

of liens that may have been filed since the mortgage was recorded? Frankly, this would seem to be insuring titles more on a casualty basis —which would seem to go pretty far beyond the original purpose of your business and possibly assume a risk which your premium structure does not contemplate.

May I remind you that we in the Life Insurance business have reason to be wary of such things. Some of you are not too young to remember or to have read about the Armstrong Investigation of Insurance back in 1905 which shook the very foundation of the life insurance business. An investigation which arose out of abuses that had crept into the business while it was growing very rapidly—as yours has been in recent years. Some of the most flagrant of these abuses were those resulting from this conflict of interest in certain individuals. There certainly should be no hesitation about mentioning the Investigation at this time because the evils then disclosed are definitely of the past. Much of the Armstrong Investigation had to do with investments of the Companies. Fortunately in 1905, the market price of stocks and bonds was at a relatively high level and the surplus funds of the Companies were large. Generally speaking, the investments made, whether in stocks, collateral loans or in bonds, had been profitable. The reason why so much attention was given to matters relating to investment practices was not that the investments had proved unsound but that the investments enabled the officers of the companies to make substantial personal profit, often of a questionable nature, and enabled the companies to exercise substantial control over other corporations. Now, of course, all companies were not involved in these abuses but the good name of all was harmed by those who were. Up to this point you have built up good public relations. Your product is universally acceptable to owners and mortgagees. Most attorneys now recommend title insurance to their clients. You certainly do not want to be subjected to the wide criticism that would result from an investigation such as the life companies had. I am certain that you have no desire to go through such an experience with the possible adverse effects it might have on your business and with the heartaches which it would entail.

There is one thing more that I should like to mention. It has been my observation that in many instances, although the mortgagor is paying for the Title Insurance Policy which is furnished to the mortgagee, he may walk away from settlement with no title insurance of his own. It has occurred to me a number of times that you might do something here in the way of public relations and at the same time meet a real need of the property owner himself.

Again, I congratulate you upon a job well done, with the hope that you will continue ,as you have in the past, to do an even better job of meeting the need which Title Insurance alone can meet. The dynamic growth of your business in order to meet the tremendous need created by the building boom, which is still very much alive, is one of the unheralded romances of modern business. However, this rapid growth and the need and desire to widen fields of service and to expand into new areas, makes extra caution an **absolute must.**

The mortgagee looks to you expectantly for a Title Insurance Policy which will clearly and concisely cover his interest and which will help to make his investment in mortgages just as liquid as his investment in bonds and just as readily saleable.

In closing, I should like to quote from an advertisement I recently read in the House Organ of one of our leading Title Companies, I quote: "You have no risk; you fear no law suit. If the title is ever challenged, Blank Title Company stands ready to defend it, assumes all legal expense, and in case of loss, promptly pays."

That, in a nutshell, is what the mortgagee expects of title insurance.

ABSTRACTER–TITLE INSURANCE RELATIONS

GEORGE E. HARBERT, *Moderator*;

President, Rock Island County Abstract and Guaranty Co., Rock Island, Illinois

In order to save time and to eliminate the need of stating questions or problems, we have prepared this outline of the subject matter each speaker will cover.

SPEAKERS

Gordon Gray, abstracter; President, Twin Falls Title & Trust Co., Twin Falls, Idaho.

Subject matter: Consideration of the financial aspects which confront an abstracter who becomes a representative of a title insurance company.

Al Wetherington, Title Insurance Company Executive; President, Title & Trust Company of Florida, Jacksonville, Florida.

Subject matter: The advantages or disadvantages to the abstracter as viewed by the executive of a Title Company operating through many agents.

1. Service to the real estate broker.
2. Selling title insurance to large users by the Title Company.
3. Assistance in promoting local business.

Marvin Wallace, Abstracter; President, Cragon Abstract Company, Kingman, Kansas.

Subject matter: What does the abstracter in the small county gain (or lose) from title insurance?

1. Advantages in operation.
2. Advantages in public relations.
3. Disadvantages.

Robert J. Jay, Abstracter; President, St. Clair County Abstract Company, Port Huron, Michigan.

Subject matter: Is the local abstracter essential to the Title Insurance Company?
(a) Present operation.
(b) Future goal.

J. Mack Tarpley, Title Insurance Executive; Vice President, Kansas City Title Insurance Co., Kansas City, Mo.

Subject matter: How do title insurance companies view the abstracter as a representative?
(a) Present.
(b) Future.

Percy I. Hopkins, Jr., Abstracter; President, Palm Beach Abstract & Title Company, West Palm Beach, Fla.

Subject matter: What is the future of title insurance as an abstracter sees it?

Robert Stockwell, Director, State-Wide Title Insurance, Union Title Company, Indianapolis, Indiana.

Subject matter: How do you view the future insofar as relations between a title insurance company and the abstracters are concerned?

Moderator: George E. Harbert, President, Rock Island County Abstract and Title Guaranty Company, Rock Island, Illinois.

All have been asked to comment on the one question, "What can the American Title Association do to develop good relations between title insurance companies and abstracters?"

GORDON GRAY

President, Twin Falls Title & Trust Company, Twin Falls, Idaho

The paramount advantage to an abstracter who becomes a representative for a title insurance company is a pecuniary one. I take it that most of us are not in business for philanthropic reasons alone. We may love our work and enjoy the title business but in the last analysis our primary interest is income. It has been recently said: "Money may not be everything but it has a big lead over whatever is in second place."

It is difficult, if not impossible, to reconcile the different methods of doing business in the various sections of the United States with respect to costs and net income. On the Pacific Coast and in the other western states and in many other sections of the country there is no requirement that an abstract be made in order for a title policy to be issued. The title examination is simply made in the plant from the plant records. It isn't our purpose here to discuss the merits or lack of merit of either system. Suffice to say that ten years experience with title insurance in my state has resulted in greatly increased net profits to the abstracters.

To get right down to figures, we have found from a careful analysis of the abstract and title insurance business in my state that the average abstract order grosses $16.20, the average title insurance order grosses $43.50 with a net to the abstracter of $34.80, or a difference of $21.27 per order. This represents an average increase of 84%. We have found that the actual cost of producing this business is less than that required for the production of abstracts.

It should be pointed out that there are tremendous possibilities for increased net income by reason of new subdivisions. We have the one chain of title to examine as our base title. From this we may and do issue title policies to each lot in the subdivision based upon the valuation of each lot in the subdivision, plus the value of the improvements thereon. Contrast this with the abstract method whereby a complete abstract must be prepared for each lot at a lower price, which price usually does not take into consideration the value of the property abstracted.

Let me say to the abstracter who is considering embarking upon the sale of title insurance, that he need have no fear that he will suffer by reason of his customers purchasing a title policy for a small premium when an abstract would gross a much greater sum. He will find that the re-issues under the title insurance method will ultimately make up for this deficiency and his over-all operation will be much more lucrative to him.

One of the most important advantages to the abstracter in furnishing title policies to his customer is the fact that he has a much happier and more satisfied customer. It is easier to give much more rapid service to the customer under the title insurance method. In the last analysis that is all we have to sell, service plus responsibility to our customer. It is not possible to give as quick service on abstracts. In this modern day and age our customers are all in a hurry. When you contrast the length of time required to close a deal from the time you receive an order until the deal is entirely closed under the abstract method, with the title insurance method you will readily realize why your customers are happier with title insurance. We have found that title insurance is easier to write. We have found that it is faster to write. We have found that it is less expensive to write. We have found that we get more money for it. These are tangible advantages to us as agents for a title insurance company.

One of the factors which greatly affects an abstracter's cost of doing business under the abstract method is the necessity for examining attorneys to check and re-check with the abstracter with respect to certain defects or supposed defects, perhaps of ancient origin, in the chain of title. This takes considerable of yours and your employees' time. We all realize,

law is not an exact science. Although title has been approved by one or perhaps several attorneys, this is no guarantee that a subsequent examiner will not differ in his opinion and raise questions of title theretofore overlooked. There is no possible way to avoid this and the result is always an unhappy customer. He is just as unhappy with you—the abstracter, as he is with the attorney. Our state bar association worked diligently for years to adopt a set of standards for examination only to find that enough of their brethren would not be guided by these standards. The seriousness of the situation was recognized and the state bar association several years ago passed a resolution recommending that title insurance should come into Idaho. (The resolution recited that abstracts were becoming too lengthy, difficult and expensive.)

In past years we have had many excellent addresses before this convention having to do with modern plant methods with respect to microfilming, photostating, etc. It is not my purpose to discuss this subject today, except to point out that such modern methods have made the writing of title insurance much less expensive. It is unnecessary to transcribe or re-copy the record for any purpose. Examination may be made directly from photo-copies or from microfilm with the aid of viewers. In our title insurance operations it has cut our costs markedly.

It has been suggested that one of the disadvantages to the abstracter in writing title insurance is that it is possible to use one base abstract to cover an entire subdivision, thereby eliminating any financial return which an abstracter may receive from making mimeographed copies, as is now required under the abstract system. This may be true under the system whereby the title insurance is issued by a title insurance company not using the abstracter as his agent to counter-sign policies. I am not familiar with this system. We are fortunate that our state law requires counter-signature of all policies by a person, partnership, corporation or agency owning and maintaining a complete set of tract indexes or abstract records of the county in which such property is located. This is the practice in many states even though not a requirement of statute.

I have tried to point out that not only is the gross revenue to the abstracter increased, but that it has been our experience that our expenses have decreased. The cost of employment of competent legal assistants has been more than offset by the reduction in the number of other employees who are no longer necessary to do the tremendous amount of stenographic work formerly necessary.

In those states where a bar rule requires both an abstract and a title policy it no doubt is true that the cost to the customer is increased considerably. The question is asked: May this not result in attempts to reduce the need for frequent title service? It would seem that title services are required or they are not required. In other words, if one is selling or mortgaging, title evidence is a necessity which may not be easily dispensed with. It is true, that under this system you do not have the advantages heretofore enumerated under the title insurance system alone, with respect to speed, ease of operation and cost of production.

It is no doubt likewise true that the customer is unhappy with the extra cost to him. An unhappy customer makes an unhappy abstracter. It would seem to those of us who have never operated under this system that it is a system which is not conducive to good will as between the customer and the abstracter, because of the expense involved. It would seem that our efforts should be exerted toward persuading the bar to abandon such a rule. The attitude of the members of the bar in those states exclusively using title insurance is certainly not hostile. We have had the wholehearted cooperation of the bar and I can truthfully say to you that an overwhelming proportion of the bar prefer the title insurance system once they have had it in operation and used it in their practice.

Briefly, in closing I have been asked

to consider what part the American Title Association should play in developing good relations between abstracters and title insurance companies. In those states where it has always been the custom, if not the law, that title insurance companies select agents who are abstracters, maintaining abstract plants, it would seem that this Association should lend its assistance to attempt to persuade title insurance companies not to select agents who are realtors or loan agents or brokers, rather than abstracters. This is an association of title insurance companies and abstracters, and we should protect the interests of each insofar as possible. We should avoid trying to force a different method of doing business on a company in any state where a definite manner of doing business has been long established. Also, I would know of no way in which such decisions could be enforced. We certainly do feel that we should exert whatever influence we can against the practice of writing title insurance based upon curbstone abstracts.

With respect to the casualty approach in writing title insurance, although we may personally prefer the other system, I can see no method whereby we can regulate this practice by those title insurance companies which have always conducted their business on a casualty basis. Let us be tolerant of the other man's right to conduct his business in the manner to which he is accustomed.

A. B. WETHERINGTON

President, Title and Trust Company of Florida, Jacksonville, Florida

The Moderator in his preliminary instructions to the members of this panel, suggested to each member a particular section of this extremely broad subject. However, due to the very broad field there will, no doubt, be similar, if not duplicate statements, made by the various members of the panel. If such is the case, we ask your kind indulgence. Perhaps it might be as well to explore the evolution of title insurance, particularly as to the experiences of our company.

Prior to 1922, our predecessor companies were engaged solely in furnishing abstracts of title. In 1922, we formed our present corporate existence, obtaining authority to write title insurance. Initially, we confined our title activities solely to our home county, wherein we owned the abstract plant. Shortly thereafter, due primarily to the fact that our county was then the largest county in the State and the center of financial transactions, we were called upon to issue policies in other counties. It was our practice to secure from the abstract company in such outside county, a complete abstract of title. Examination was made by our local attorneys and based on their opinion of title as reflected by the abstract, title insurance was issued or declined. We soon found this plan to be impracticable for the reason that our local attorneys were not familiar with the titles in other localities and we found that we were only insuring a small percentage of the titles submitted. Spot investigation reflected that exceptions were raised by the attorney far removed from the location of the property under examination that the local attorney had long since determined was immaterial. We, therefore, decided to inaugurate a new plan; namely, appointing the local abstract company as agent; approving qualified attorneys in the county; and these two working in conjunction and in co-operation with each other, we soon found created an ideal arrangement; and that we could safely insure the majority of the titles. This plan is now generally in use in our State and has spread to all portions of Florida.

It is my firm belief that title insurance cannot be successfully written without the abstracter and my company operates on this theory. A title insurance company, operating through its own plant or plants, must assemble the chain of title. If it does not own the plant, then the local abstracter must assemble the same data

as would be assembled in the home plant. This does not mean that the laborious typing of a complete abstract must be done, but the abstracter must assemble the chain of title sufficient enough that the examiner will have the complete title chain. As a matter of fact, among our agents we have long advocated modernizing their plants to eliminate the necessity of typing the abstract. We recommend that the abstracter compile either a pencil chain search or if his plant is so arranged that he puli the plant slips, list them in the same order as if he were compiling an abstract. The examiner is then able to make his examination from such chain of title eliminating the huge expense of actually typing the abstract.

Aside from the huge saving in time and labor when the abstract is not typed and delivered along with the title policy, the abstracter does not sell his records. The more abstracts that are in existence in the hands of the public reduces the length of time that a future abstract will be necessary. In the years of my experience with our various agents, I find that those agents that are the most prosperous are those that have eliminated if not entirely, to a great extent, actually typing an abstract.

It goes without saying that a title insurance policy is the best evidence of title obtainable. This fact is proven to a great extent in that most, if not all, the large life insurance companies demand title insurance on their mortgages.

Let us consider this matter from the angle of the real estate broker. Of course, the only way that a real estate broker can secure his commission is to get the deal closed and naturally, he prefers his commission this week, instead of next month. Then, too, the longer the transaction hangs before closing, the more likelihood of either the buyer or the seller backing out on the deal. Getting away for the moment from the time element, often times when an abstract and attorney's opinion form the basis of the title evidence, the examining attorney will pick ancient and inconsequential flaws in the title. This is motivated to a great extent by the fact that the examining attorney knows that his opinion is not final. This same title will be examined again and again by other lawyers, and he is afaid to jeopardize his professional standing by having a brother lawyer at a subsequent date raise a question that he feels can be safely ignored. Frequently, these matters are either so ancient or so inconsequential that a title insurance company accepts the title as a business risk and passes the title thereby allowing the deal to close. I have noticed that the most successful of our real estate brokers have printed in their contract for sale, that the evidence of title to be furnished is a title insurance policy. In talking to these real estate brokers, I have found them to be anxious to have the purchaser satisfied that he has a title that when he desires to sell or mortgage would not be forced to the time and expense necessary to clear an objection found by a subsequent examination. If such an event happened the purchaser would never be a customer of that broker again.

Another advantage, of course, is the speed in which a title insurance policy can be issued. Once the title has been insured, we never go back of that examination. This is not true in connection with abstracts and attorney's opinions for each purchaser must have his lawyer examine the complete chain of title. This, as previously stated, is time consuming and raises the possibility of objections. It is these facts and others too numerous to mention that have proven that title insurance is the best evidence of title.

Let us consider for a moment the benefits that the abstract agent obtains from the title insurance company that he represents. Suppose for example, that every abstracter, assuming he had sufficient capital to do so, insured his own titles. Think of the huge individual printing bills that each separate company would incur. In our State, we have almost 60 abstract companies as agents. I noticed that we carry in our stationery vault 156 current forms used at one time or another in issuing title

policies. All of these forms are printed by us and distributed to our agents at no expense to them. Obviously, printing forms in such volume makes the process so much cheaper.

Our product is no different from any other product. It must be sold. This selling job, the title insurance company performs to a great extent, and almost entirely to the larger users; and in order to secure approval of our policies, it is necessary to acquaint the life insurance companies and large mortgage lenders, with the financial responsibility and ability of the company to perform and to respond on its policies. This service, the title company performs for all its agents, relieving the agent of the cost of selling their individual abstract company. My company, for example, makes a practice of calling on or contacting periodically, all of the large lenders by personal contact. We, therefore, do a job for almost 60 companies on one call. Another service that the title company performs for its agent, is in connection with closing transactions. Frequently, particularly, in the case of mortgagees, when entering a new territory, do not know the reputation or integrity of all the abstract companies. Invariably they contact the title company and we actually give them a letter of indemnity agreeing to save them harmless in connection with any funds entrusted to an agent.

The matter of advertising is a very important feature in any business. Our ads in directories, publications and pamphlets of various and sundry descriptions, newspapers etc., carry a list of all our agents, showing the names and addresses. The cost to the individual agent alone would make such advertising, in many instances, prohibitive.

You all know that more and more legislation is offered in our various legislatures that materially affects our business, either beneficially or adversely. Obviously, it would not be practical for our almost 60 agents to close up their businesses to go to the State Capitol to appear before Legislative Committees and should they all do so, it would be impossible for them all to be heard. The title company, however, representing the entire group, presenting a united front for the entire group lends a great deal of weight to the argument and without doubt influences to a certain extent the thinking of the Legislative Committee.

In order to have an amicable relationship between the title company and its agents, there are certain fundamental rights of each. We do not believe that the title company should write a policy in any locality where they have an agent directly from their home office. It is some times necessary that the application be processed and handled through the home office, but in those isolated cases the agent is a part of the transaction and receives his portion of the fee. We do not believe that agents should encroach in another agent's territory except by mutual agreement between the two agents. We do not believe and will not appoint, as an agent, anyone unless he has adequate abstract plant facilities to do the job that is necessary for safe underwriting. We do not believe that lawyers, realtors, mortgage loan brokers are qualified to be appointed as title insurance agents.

I realize full well that some title insurance companies, in their anxiety for more business, have and are expanding into territories already adequately covered and appointing others as representatives who are not abstracters. This practice, I firmly believe, will ultimately prove to be a catastrophe to the title industry. Let us assume, for example, that in "X" county, there are two abstract companies maintaining adequate plant facilities with daily take-offs and, in fact, legitimately in the abstract business, and are agents for a title company. Let us assume further, that a mortgage broker who handles mortgages in volume in said city sees an opportunity to gain for himself additional revenue aside from his mortgage brokerage and makes an arrangement with a title insurance company to issue policies direct. Assuming further, that the title insurance company will require that he

purchase abstracts from one of the two abstracters in the town, which certainly any prudent title insurance company would do. One of the two abstract companies will then get an order for a short continuation abstract from the subdivision plat, or some known source of title. Thus the abstract company maintaining the adequate plant is deprived of any share of the title policy fee. Assuming that this practice becomes wide spread, several other brokers and realtors likewise secure a connection with a title insurance company. Sooner or later, the two abstract companies who furnish the overhead to keep up their plants will be unable to secure sufficient income to maintain their daily take-offs. Then, of course, everybody is out of business. It goes without saying that there are only a certain number of transactions that will occur in any place at any given time, and should the fees for the title evidence be divided by too many, none will profit.

Inasmuch as I have already stuck my neck out, another inch or two will not make a great deal of difference. So, at the risk of offending some present, I will go a step further.

The Moderator in suggestions to the Panel asked two questions:

1. Should the Association decree it to be unethical for a member company to insure a lawyer's guarantee Association?
2. How far should the Association attempt to regulate the casualty approach to title insuring? Should it declare it to be unethical to write title policies without any abstract whatever? Or based on a curbstone abstract? If so, how can the Association soundly enforce its decisions?

It seems to me that the answer to the first question is elementary. I personally do not feel that a title company should underwrite risks assumed by individuals not engaged in the title business.

The answer to the second question is, of course, more difficult. I have an idea that might be practical. Instead of the Association attempting to regulate or stop this practice, there may well be another solution. Every title company with possibly one or two exceptions that issue title insurance policies in localities where they do not own a title plant, issue said policies through agents or representatives. The majority of these underwriting companies in some localities, particularly in their home state, would not think of appointing as an agent, anyone other than an abstracter or abstract company, who had a title plant sufficient to insure safe underwriting. However, these same underwriters, as they expand in localities already adequately covered, appoint representatives other than legitimate abstracters or abstract companies. It would, therefore, seem to me that a possible solution to this problem is for the abstract company in localities where these underwriters do operate legitimately, to force these underwriters not to appoint in other states as agents any person or company that is not qualified to act as such agent. If all of the abstract companies in all of the states were to adopt and vigorously pursue this plan, it could well be that the practice could be stopped, or at least remedied.

I cannot believe that an underwriter who has a group of fine agents in a state is going to jeopardize the business so well covered in that state in order to realize an uncertain amount of potential business in another state.

MARVIN W. WALLACE

President, Cragun Abstract Company, Kingman, Kansas

In discussing the advantages and disadvantages from a public relations standpoint in the issuance of title insurance, the Abstracter has found himself in the past and will, no doubt, for some time in the future in somewhat of a quandary, particularly, as to just where his best interests may be.

There is no question that the ad-

vantages of title insurance are tremendous and that it is a greatly improved product over the abstract and attorney system, the Torrens System, the lawyer search or any other system, since it definitely provides an insurance or guaranty contract on the condition of the title in place of merely an opinion that is in most instances of very doubtful value.

The advantages of title insurance would very definitely include the following advantages to the public which would quite naturally be an asset in so far as the public relations of an Abstract are concerned.

Title insurance provides protection to the title evidence purchaser against loss or damage to title defects instead of uncertainties that do exist in all other forms of title evidence.

Title insurance and guaranty companies are forced by law through various state insurance departments under which they operate to maintain proper legal reserves for losses and it only follows that their fees should be based upon these experiences and sound underwriting practices. This method replaces the lack of responsibilities that exists in the opinon of the lawyer and extends the responsibilities of the Abstracter's certificate. It provides integrity with indemnity for loss or damage in place of irresponsibilities and confusion.

There are only a very few abstracters who place their fees upon a valuation basis or set up any reserves for losses for the liabilities that exist under the statutes in their business or profession. Far too many abstracters attempt to avoid rather than to assume the responsibility that the statutes provide and consequently never grow to their proper stature.

The compiling of the abstract and the tremendous duplication in examining of the abstract from beginning to end each time a property is mortgaged or sold constitute a loss of great amount of time, money, labor and effort and a great portion of it can be eliminated through the use of title insurance.

Title insurance provides a very realistic approach for the disregarding of very remote possibilities and theoretical defects that probably never existed in the first place.

Experience in title insurance has proven its resourcefulness and practical business sense in replacing the confusion that exists through the operation of the title examiners as such or the Torrens System or the abstract and attorney system. It provides for much faster closing of mortgages or sales and in the procurement of leaseholds, easements or rights of way and in fact, all matters pertaining to real estate title and what is mighty important in this day is its ability to make mortgage money far more liquid than heretofore.

The abstracter has the distinct advantage, in the selling of title insurance by not having to prepare and show the entire title history. You only insure against loss or damage and in so doing, you do not sell that portion of your abstract plant for every attorney to pick flaws in. Also in Kansas, and various other states, the abstracter is responsible to anyone relying upon the abstract and in the common practice of the landowner in loaning their abstracts to the mortgagee, the lessee, the royalty holder, the pipe line company, right of way holder and the many other interested parties, the abstracter finds himself responsible to each and all of them and is paid only for the one instance, to say nothing of the confusion in attempting to prepare abstracts of title to satisfy the examination that is made of them by the attorneys of the varied group of interested parties without being accused of dreadful things that exist under such arrangement. It is rather hard to serve under more than one master, doubly hard to serve under many and practically impossible when you are compensated by only one.

Title insurance eliminates expensive storage costs not only to the owner of the real estate but as well to the mortgagee including the expensive clerk hire, postage and other clerical expense in handling the bulky abstracts of title.

Due to the elimination of labor and loss motion that exists in the various

other forms of title evidence, it has been proven beyond any reasonable doubt that title insurance produces a much greater profit with far less expense for the abstracter.

From a public relations standpoint of the abstracter—I think the greatest advantage in writing title insurance is the fact that it practically forces the abstracter to do two very important things, first, title insurance has to be sold to the public as well as to the agencies through whom the public does its business, and the abstracter will have to sell it to the public in one way or another and not secure his business in some upstairs room or cheap rent district from some main street stand operated by the banker, the attorney or the raealtor, as such. Secondly title insurance properly serviced forces the abstracter into the escrow business and sundry other incidental practices that are highly technical and incident to the proper conduct of the title business, wherein it is necessary for the Abstracter to transact business directly with the public. Certainly the proper place for ninety per cent of all the escrow business should be in the hands of the title people, who are competent to handle and properly service it. Neither the banker, the realtor nor the lawyer are in a position to do this service properly nor profitably.

Disadvantages

Normally, you would assume that any product that had so many advantages as title insurance has over other methods of title evidence that it would have the same experience as the proverbial mouse trap. That the public would just fall all over itself trying to take it from you but such is not the case.

The title business, has from its inception been strictly a local business and because of its very nature, it will probably continue local both in theory and in fact. Probably the only exception might be in the larger metropolitan areas but for this I would not wish to venture very far at the moment. To change a profession or business that has been strictly local from its inception and place it on a state or even a national plane over night has not been done except in unusual instances, and certainly these unusual circumstances are becoming fewer as time goes by.

There are numerous disadvantages to the abstracter in the use of title insurance. Even in the abstract states there is a tremendous difference in the quality of the abstracters as well as the tools and equipment that are used in the pursuit of the vocation. In Kansas, we are making every effort to correct this situation and comparatively, I believe that we have probably as high a standard for abstracting that exists today. Your speaker has served on the Abstracters Board of Examiners of Kansas since its inception about fifteen years ago and during this period of registration and licensing of abstracters, the examination and requirements incident thereto have shown a steady improvement and have developed an experience in recent years of about fifty per cent fatality in the applicants who have previously been admitted to the bar not to mention the experience of any of the others. This standard has been fairly well maintained in view of the fact that it is necessary to subordinate the standard somewhat in the less populated counties where the volume of business and the income is so low that it is difficult to secure applicants of higher quality for registration and license. Time will correct much of this problem in Kansas. I mention this because in Kansas it is a violation of the statutes for a title insurance company to pay a commision in the sale of title insurance to anyone unless that agent is an abstracter.

Another tremendous disadvantage to the abstracter is the inability of the title insuring companies to grow up and act as such. There is far too much lack in standardization of policies and practices and uniformity so common to inexperience in the field. The selfishness for temporary advantages of the title insurance companies in securing immediate business is most disquieting to the abstracter. The practice of trying to skirt around the abstracter's back

for business and if successful, trying to force his deal upon the Abstracter at a cut rate price which only inures to the benefit of the title insurance company, is certainly not to be desired. If the profit is sufficiently large for the premium that you can afford to cut prices then let us reduce the price to the ultimate consumer in the first instance.

The unsound underwriting practices that are being employed only for the purposes of securing a dollar volume of business and the insuring against known defects in the title is certainly a problem and very disquieting but the worst of all is the absurd practice of insuring titles on a casualty basis—Is there any wonder that there is any common walking ground at all between the abstracter and the title insurance company?

The practice of all title insurance companies in their eager attempt to build up a quantity business in place of a quality procedure of sound underwriting practices and relationship is not only disquieting but very disgusting to the intelligent abstracter who is jealous of his profession and business.

When I first entered the title business we were representing the New York Title and Mortgage Company and upon most of their literature brochures was carried the skyline of the city of New York with the phrase written underneath, "Secure as the Bedrock of New York" and one bit of pamphlet further described their capital funds of $63,000,000.00 of such tremendous proportions that it would form a solid shaft of gold 22 feet high and 3 feet square at the base. The weight of this vast treasure would be more than 200,000 pounds. In the eagerness of this fine company, without competition in the national picture at least, to build up a quantity business and to pay a dividend upon that vast amount of capital funds, they found it necessary to indulge in speculative ventures and unsound practices.

Most of you know the story and how it happened and most title insuring companies in business at present guard themselves against the insuring of the payment of interest and principal of mortgages and do not enter this field, however, in the present attempt to build up a quantity volume of business by some of our companies the speculative feature of their activities are and can be just as disastrous.

Like the drowning man grasping for a straw is the title insurance company who insists upon an exclusive contract for that quarter of a pound of meat that he was lucky to send you years ago, is probably the most pitiful bit of nonsense offered the abstracter. Is there any wonder why the other ambitious title insurance company should go to the mortgage broker for an outlet for its business or otherwise circumvent the abstracter with the exclusive contract, with its choice bit of business that they may, for the moment, control to its selfish advantage?

Most, if not all of the poor relations of the title insurance companies with abstracters, is due not so much with the service that is rendered nor the product that is sold, as with the selfish means which are employed in the relationship.

Some states have developed a title insurance code through legislative channels for the protection of all concerned in this business. Certainly there is a great amount of defining and adhering to certain rights before the relationship between the abstracter and title insurance companies are at its best. Perhaps legislation is the proper approach, at least, we in Kansas are seriously considering this procedure and a great deal of our convention time next month will be taken by this subject.

This brings me to the last of my comments—The subject of "What part the association should play in developing good relations between the abstracters and the title insurance companies?"

Since the only difference between the abstracter and the title insurance company is the method employed and since advancement in either field would tend to indicate that neither can get along too well without the services of the other, it would be

naturally wiser for the two to team up together and to use our associations for the improvement of ourselves in rendering the greatest and most satisfactory service that is possible for us to offer the public.

ROBERT J. JAY

President, St. Clair County Abstract Company, Port Huron, Michigan

As far as the abstract company is concerned it would not seem unfair for one title company to name several representatives in a particular county. I believe it would be much fairer to the abstract company for the reason that a particular broker, or attorney, or bank, may favor one title company as against another title company and if the abstracter was a representative of the wrong company, he would completely lose out on their business. Whereas, if an abstract company represents more than one title company, he could at least have a chance of servicing all potential customers in his particular county, whether they preferred a particular title company or not. I will admit it does foster more competition between the two abstracters; but there is no reason why a young, aggressive, personable individual of one abstract company should lose out to a dull and unambitious competitor simply because he does not represent a particular title company.

The use of curbstone abstracters or non-title people as representatives of title companies should not only be frowned upon and discouraged but in some manner be stopped altogether, if possible. For a title company to name a curbstoner as his representative infers that the money, time and energy spent in building a good, sound, reliable abstract plant is wasted. The title company is in effect saying, "because we are so large, we are willing to take some risk that the curbstoner may miss particular instruments of record". In other words, they are telling the public that a good, sound abstract plant is not a necessity in order for a title company to supply good evidence of title. So, in effect, the title company is telling the public that abstracts are equal in value whether made by a curbstoner or by an abstracter with an up-to-date, reliable plant. I am firmly convinced, as an abstracter, that if we felt we could make just as reliable abstracts in the same manner in which a curbstoner makes his abstracts, we certainly would not go to all the expense and time consumed in maintaining an up-to-date title plant by taking off daily records. From our experience it seems that this is the only speedy, efficient and reliable way in which to put out an abstract of title. Without such a plant, the process is long, cumbersome and unreliable.

I do not believe the title company necessarily has to name an abstract company that belongs to either the State Title Association or the National Title Association But, I do feel that any abstracter named as a representative of a title company must have a plant that is equal to the plants maintained by abstracters in either a State or National Association. To arbitrarily hold that a title company must name as representative an abstract company that is a member of a state or national association is being too strict. This, for the reason that some abstracters, because of peculiarities of their own, do not feel like belonging to either the State or National Association. Some feel that the expense and time involved is not sufficient to warrant belonging to the association or that the association could bring them no direct benefit. Although this may be erroneous thinking, we still live in free America where a man has a right to choose what he wishes to do. He should not be penalized because his feelings do not run with the majority.

I truly believe that it is good business for an abstract company to enter into some type of agency agreement with the title insurance

company or companies in his particular state or territory. Through our experience, we have found that this does not mean a decrease in revenue although it may not mean any greater revenue. However, it must be borne in mind that an abstracter is in a quasi-public service and that many times a lawyer cannot pass title on an abstract because of defects which he does not feel he can safely ignore. Whereas, a title company may know that there is a defect and feel that the practical considerations warrant taking a considered risk as to any loss ever arising from such defect of title. It is for this reason that an abstracter is aiding his community by taking on title insurance. In this way, he helps to clean up titles that are otherwise unmarketable. Also, there is the probability of an increase in net profits through decreasing operating expenses. Therefore, in the interest of good will to his customers and a service to his community and possible profits it actually warrants an abstract company becoming an agent of a title company.

At the present time I do not believe that we are in an interim stage, the ultimate goal of which is that a title company hopes to supplant abstract companies. I limit this generalization to the state of Michigan where we have our abstract companies. I believe you will find that in many rural communities and even in some of the medium sized communities, title insurance is still not an established medium of title evidence. This is not because title insurance has not been used and talked about by many, many people and perhaps have been pressed to some extent by the abstracter who acts as an agent for the title company. I think it is merely the reluctance of many people to accept new evidence of title when their fathers and grandfathers before them had used abstracts.

This is not a farfetched theory. When I was in Monroe, Michigan, on Monday, the nineteenth of September, we had issued a title insurance committment in the amount of six or seven thousand dollars to a prospective new purchaser of land. The title commitment showed g o o d, marketable title. The purchaser was borrowing funds from a farmer who, although in the argricultural profession, was very much of a businessman. The farmer had no use for the title commitment and would not lend his money on the faith of it. Although the title commitment cost substantially less than a new abstract from government to date, the purchaser still had to put himself to the expense of $135.00 to purchase a new abstract as title evidence for his mortgage. This has happened many times in our communities which are very near the metropolitan area of Detroit. On the other hand, we do find that the large institutional lending agencies and banks readily accept title insurance without question.

To further substantiate the point that title companies will not presently supplant abstract companies in the State of Michigan, let us look at some of the large corporations in Detroit, such as General Motors and Ford. They undoubtedly could make just as good tool and die patterns as many of the small shops that exist in and around Detroit. However, they are concerned with making the best possible automobiles in order to meet competition and are thinking on a national level. I believe they have found from experience that instead of trying to do everything themselves, it is more convenient and wise to farm out some of the parts that go into automobiles to smaller companies who specialize in that particular type of work. This eliminates the headaches of production as far as this particular part is concerned. They probably feel the small company can do an equal job, if not better, than the large corporation.

In like manner, I feel that title companies must work through abstracters in the same manner. Although the goal of the title company is to finally issue a policy of title insurance, the value of that policy is only as good as the abstract from which the opinion was written. The keeping of many records, examining of titles, and the selling and promoting of insurance is in itself a large job and the title companies should

content themselves with doing this job in the best possible manner. An abstracter can be to a title company what a small tool and die manufacturer is to General Motors and Ford. He does a small part of the work that goes into a final title policy because he can do it equally as well if not better than a large title company. He is well known in his community and his only concern is what goes into making a good abstract without attempting to determine how the examiner for title insurance purposes will look at it or who will buy the policy.

As an executive of a large national title insurance company recently said at the Atlantic Coast Regional Executive Meeting of The American Title Association, "confidence is the cornerstone of the industry. If and when the customers and particularly the lending institutions which are lending billions of dollars on the assumption that we are using every reasonable precaution and proper technical skill in the issuance of our policies lose confidence in our underwriting practices, we are out of business. There is not a title insurance company in this country (and I say this as representing one of the larger companies) with assets sufficient to disregard sound underwriting practices and issue its title insurance on a casualty basis". In effect he is saying, large users of title insurance presume the title companies are using the best possible means of procuring title evidence on which to base their final policy. This would necessarily preclude title companies bypassing the abstracters and naming as representatives mortgage companies, curbstoners or title people because a good abstract is the basis of every good title insurance policy.

I believe our national association can play a major part in the development of good relations between abstracters and title companies. As previously noted, we, as abstract companies, find that our revenue has not been decreased because we act as agents for title insurance. Also, we find we are able to help clients, such as banks, mortgage companies and even attorneys, to make the title to property marketable which would otherwise be unmarketable until a further passage of time. Title insurance also helps to correct a great many description difficulties in our counties.

I honestly feel that in some way the National Association should write into its by-laws or rules that it would be highly unethical for a title company to write a title policy from the casualty risk approach. This would mean that a title company could not write a title policy without an abstract or simply by appointing a curbstone abstracter or non-title person as his representative. I feel that this is only fair because both abstract companies and title companies make up the National- Association and we cannot stand together as a united body unless we see the common problems involved and try to aid each other as much as possible. At least for the time being title companies cannot operate without abstract companies or accessibility to a complete title plant and be absolutely safe in insuring titles. The local abstracter also has the public respect and confidence in his community and this aids the title company in selling its product. The title companies, on the other hand, can be of great help and benefit to the abstracter in his community by looking at the practical risks and technicalities involved in a particular defect in title and after due consideration pass the title for purposes of title insurance and therefore make the land saleable.

For these reasons, it is my considered personal opinion that, our National Association should make a rule or by-law with penalties provided for violation thereof, not excluding expulsion from membership, that a title company would not appoint an agency or non-title person in a county where there is an established abstract plant and where such abstract company is willing and able to cooperate on all title insurance service requirements. This is not a farfetched theory but rather something that is practiced by one of our large national title companies. This large company puts out its title insurance manual

for approved attorneys and recognizes that there are so-called "abstract" states and "attorney" states. In such states, meaning the "abstract" states, the manual reads, "The approved attorney may base his certificate of title on an examination of the borrower's or seller's abstract". In the so-called "attorney states" the attorney must base his certificate of title "on his own personal examination of the records or on an abstract prepared by himself. The approved attorney is not permitted to base a certificate of title upon an examination of abstract prepared by another approved attorney." So you can see that even this large national title company realizes that abstracters cannot be safely bypassed if they wish to issue good and reliable policies of title insurance. In my mind for a title company not to work with the abstracter where the abstracter is willing to cooperate and is able to service its needs is plain foolish and unfair to the large title company's clients who put their faith and trust in the policies issued by such company.

Our National Association is composed of abstracters and title companies. Here is where we should be able to have frank discussions of our problems and solve the difficulties with which we are faced so that both the title company and the abstracter gets his fair share of the business and we present a united front to our clients.

J. MACK TARPLEY

Vice President, Kansas City Title Insurance Company, Kansas City, Missouri

The subject assigned to this panel is one of increasing interest throughout the country and is one of the most controversial at the present time. I have been asked to express the views of the title insurance companies as to a particular phase of the general subject. That is, of course, a thing that I cannot do. My remarks are based upon my own personal thinking and are not necessarily the views of any title insurance company.

Since in theory all speakers pose as experts, I would like to state my background and qualifications in the title business. I was graduated from Law School in 1935 and returned to my home town in Arkansas to practice law. I formed a partnership with an older attorney who also operated an abstract plant. I spent five years there getting experience in small town justice and abstracting. In 1940 I moved to a town of 40,000 and took over the operation of an abstract company which was an issuing agency for a title insurance company. In 1947 I moved to a town of 100,000 and became associated with O. M. Young in the operation of a state agency for a title insurance company. Then in 1952 I became an officer of Kansas City Title Insurance Company. I give you this to show you that I have han experience on both sides of our question.

The first part of my subject is to deal with relations between insurers and abstracters where there are two or more competing abstract companies in the county. The question is posed, should one insuerer name every abstracter as its agent. I would say, no. The insurer should select the abstracter whom the insurer thinks will do the best job for it and then do its utmost to train and assist the agent so that by giving proper service and proper underwriting a fair share of the available business will come its way. There can be exceptions to the general statement, of course. In one community where they are two abstracters, the two got together, came to us and requested that both be named as representatives of our company and we complied with their request. It has been suggested that such action forces competition. "So What"—is my answer. I have learned long ago that I can never get all the business available in a given community and I also know that there is no way yet devised in our system of free enterprise to prevent someone

from competing with you, whether you be in the abstract, title insurance or white shirt business. In case you are not acquainted with it, the white shirt business is my favorite business. On particularly trying days I threaten to go into it. You sell nothing but white broadcloth shirts, one collar style, acceding to the customer's requests on questions of size only.

It has further been suggested that to appoint as representatives all of the "plant" companies in a county forces a competing insuror to use "curbstoners" or non-title people for representatives.

First we must determine what is a "curbstoner." I know of communities of considerable size where none of the abstracters have the slightest semblance of a plant. Are they all "curbstoners?" I know of other communities where an abstracter only has a tract index while competitors have a complete plant. He is concidered a "curbstoner" by his competitors, although he is actually the best abstracter in the community. Does the lack of membership in a State Association or the American Title Association brand an abstracter as a "curbstoner?" Sometimes I get the impression that our thinking may be a little warped along that line. We are also faced with the problem that a "curbstoner" in the City of Oz may not be a "curbstoner" in the Village of Podunk. My own definition of a "curbstoner" is an abstracter upon whose abstracts you cannot rely, regardless of what plant facilities he may have or to what association he may belong.

Next let us consider the designation "non-title people." If by that designation it is meant real estate brokers, mortagage companies and other persons having an interest in the title to be insured, my unqualified answer is that they should **not** be designated as title company representatives. Never, my friends, make the mistake of referring to or considering attorneys as "non-title people" as several of our brethren have had that opinion pushed down their throats by bar associations.

I feel that in abstract states a title insurer should appoint as its agent an abstracter whose abstracts pass current in the community and whose abstracts are generally relied upon by the bar of the community as satisfactory evidence of title, without regard to questions of plant facilities and membership in trade associations. To impose requirements upon a representative other than character, ability, willingness to work and a general acceptance of the product which he produces, is not only unfair to him but an open invitation for trouble from outside our fraternity.

It is also my opinion that any title insurer who appoints non-title people as his representatives, or who appoints a "curbstoner" as I have defined him will have little if any success in the community, and while he may make a big splash with his dive into the waters, his method of operation will soon catch up with him for various reasons and he will soon sink.

The thought is interwoven through the suggestions made in connection with this discussion "should a title insurance company be required to" and "is it ethical for a title insurance company to." My only observation with respect to this is who shall "require of" a title insurance company? Shall it be a voluntary association of title insurance companies? Shall it be a state or national title association? Or, shall it be a governmental subdivision? By like thought, who shall determine what is ethical and what is not ethical? Shall it be by one of those above named? Also, I submit that if requirements are to be imposed upon title insurance companies in their dealings with abstracters as their representatives, then similar restrictions must be imposed upon the abstracters. It also must be borne in mind that no broad set of rules and regulations can be laid down, but the matter must be considered upon the basis of local practices and customs, certainly for each state.

Now what of the obligations of the abstracter in this relationship we are discussing. In any successful relationship there must of necessity be obligations and the performance

thereof by both parties. It is the desire of title insurers to cooperate with and work through the abstracters, but they in turn expect cooperation.

The thought has been suggested that the naming of an abstracter as representative is no guarantee that he will be a sole outlet for title insurance. Certainly no title insurer can make such a guarantee to its representative. It can only guarantee to him by contract that he will be the exclusive representative of that company in a given territory. It cannot guarantee him against the acts of a competing title insurer and a competing abstracter in forming a like relation. Here again we have the factor of competition which none of us can avoid and none of us should fear. Any man or woman who can successfully sell abstracts against competition can sell title insurance. Of course to do so, he must have an interest in it and a desire to sell it. No man can successfully do anything in which he has no interest. Abstracters have been known to accept the agency for a title company merely for the purpose of tying up the agency of a company in the hope of keeping someone else from getting it, or to try to keep title insurance out of his community. Such action, of course, can result only in the selection of another abstracter as agent, and certainly is an action which does not make for better relationship between title companies and abstracters generally. Certainly I acknowledge the right of any man to have his own opinion on any subject and recognize that his opinion may differ from mine. If an abstracter does not believe in the value of title insurance and its place in the business world today, that is his business and not mine, and I have no quarrel with him. But if he so believes, aligns himself with a title insurance company as a representative and then does nothing but take what business the title company can throw his way, then I do quarrel with him because he is not living up to his part of a bargain.

The title companies in most instances have worked with the abstracters and want to continue to do so. All that is asked is cooperation. Don't misunderstand me. I don't claim that title insurance is a cure-all for the title profession, nor do I claim that the title companies are lily white and without fault in their relationship with the abstracters. We have all made mistakes, but then the fellow who doesn't make mistakes is either one who does nothing or is in a horizontal position six feet underground. If we profit by our mistakes then our relationship should be improved.

It has been suggested that we are passing through an interim stage and that the ultimate goal of the title insurance company is the owning of plants throughout the country. It is also suggested that such a plan might have a bright side for the abstracter in that it would provide a market for abstract plants for the families of abstracters at a fair price when the family is unable or unwilling to carry on the operation. I think that I can allay the apprehension of the abstracters and also tarnish the suggested brightness by several statements.

I doubt if all of the title insurance companies operating throughout the country have enough available assets, over and above those committed for reserves, statutory deposits and other purposes, to acquire all of the abstract plants. I know that the title insurers do not have on their payroll, nor is there available to them, the necessary personnel to operate the abstract plants asumming that they owned them. I am sure that most of you are aware of the shortage of trained title personnel, particularly in the executive or managerial category, and taking into consideration the loss of those who would be willing to work like a dog as long as he was the owner, but who would seek other employment if he were an employee, you can see another reason against title insurance company ownership.

There is also the fact that the insurance commissioners of more than one state take a rather dim view of an abstract plant as an asset of a title insurance company. In some states it is not allowed as an asset

for qualifying while in others the amount which may be invested in abstract plants is limited by statute.

To the abstracters I can say you and your plants are here to stay. The day may come, and I sincerely believe that it will, when you will not prepare to sell your product in the form you do today, but there still must exist the abstracter and his plant so long as the right to private ownership of real property survives.

The question has been raised as to the possibility of domination at the local level by the title insurance company. For the reasons just stated there is no desire on the part of the title companies for domination, and assuming there was, the spirit of competition is too keen to permit it. There is too much competition between competing insuring companies and between competing representatives. The representative who selects a reputable insuring company whose policies are generally acceptable and then equips himself to do a proper job of selling himself and his insuring company to the public becomes, in the eyes of his local customers, the insuring company, and therefore controls the title business arising at the local level.

All members of the panel have been asked to comment on the part the American Title Association should play in developing good relations between abstracters and title insurance companies. I say, and again I am expressing a personal opinion, that the Association as it is now constituted with its present by-laws and lack of police power can promulgate no enforceable rules regulating the relation between competing companies, competing representatives, and between underwriting companies and representatives, but can only present opportunities for a frank open discussion at which reasonable men should be able to reconcile their differences. If we cannot reconcile them perhaps the only answer lies in strict regulation by some agency created by our industry or by some agency outside our industry.

PERCY I. HOPKINS, Jr.

President, Palm Beach Abstract & Title Company, West Palm Beach, Florida

It is an extreme pleasure for me to appear before this group today as a representative member of the hundreds of local abstract companies throughout this great country, who, through their energies and application throughout the years have helped elevate the title profession to its present respected standing and position in the local communities. I am confident that I can state without fear of contradiction that the local abstract companies are the rock upon which this profession stands. It has fallen to the lot of these companies in the past few years to sell title insurance to their various communities. I am sure that we can now agree that this job has been well done.

Due to the tremendous growth of title insurance, we now arrive at a time where it is well for us to look back down the road which we have just traveled and also to peruse the long road ahead. We are somewhat in the position of the elderly gentleman who, after reaching the twilight of life, reflected that, "If we could only live our lives backwards, think how many more juvenile delinquents there would be in the world today." Let us hope that our title profession does not revert to such a condition.

I think it timely therefore to reflect upon the advantages of title insurance and also upon the relations between the title insurance companies and we their agents.

In order to acquaint you with my own local condition, so as to acquaint you with my personal approach, I wish to state that my company is located in a fairly largely populated county. We have a large financial investment in our plant, which plant was established some 31 years ago. I have five competitors, three of which have plants which have been in existence for a number of years.

The other two are fairly new in the field and do not have title plants. Our orders are aproximately eighty-five percent title insurance orders. The balance of fifteen percent are abstract orders. We are sold on title insurance and are constantly striving to increase our percentage of orders in its favor.

Needless to say, I am convinced that the advantages of title insurance greatly outweigh its disadvantages. However, for the purpose of review, let us consider these advantages briefly.

We find that the advent of title insurance has greatly increased our revenue, and that the overhead required of income from title insurance is greatly less than that required in the preparation of abstracts. If abstracts were completely eliminated in our community, we are satisfied that we could achieve large savings in keeping up our plant daily as our plant organization would be completely changed. However, this condition we expect to exist for some time to come.

Another apparent advantage is the fact that we are convinced that we obtain much more income from each transaction than we would obtain in the preparation of an abstract. For example, if only an abstract were required, our continuation cost for the abstract might possibly be approximately twenty dollars. At the same time a re-issue title insurance policy covering this same transaction might bring us $100.00 or more.

We find great advantage in the fact that we have, over the years, issued a large number of title insurance policies. This has had the effect of stock piling title examinations on most of the subdivisions in our county. By examining the title to these subdivisions we have become familiar wih the status of these titles up to and including the plat. This means that we now run our chain of title from the plat to date, thus eliminating much unnecessary work and at the same time enabling us to give quicker and more efficient service to our customers. We find that by being in the position to give this type of service, we make better friends of our Real Estate Broker. We materially cut the time required between the signing of the contract of sale and the closing of the transaction. This results in the saving of many deals and at the same time helps the broker to obtain his commission as quickly as possible.

There are numerous other advantages, but I believe that they, to a great extent, can be summed up by stating that with title insurance, our income is greater and our service is better.

Since the advent of title insurance, several problems have come to the fore between the title insurance companies and the abstracters. I believe that this is only a natural result of the growth and progress of any product. Many of these problems seem insurmountable at this time. However, some of them, I believe, will gradually straighten themselves out. Others which seem insignificant at the present time may bear watching as they might become the vital problem of the very near future.

In considering the problems between the title insurance companies and the abstracters, I believe that any criticism should be constructive, regardless of the source from which it originates. We should, therefore, approach the problem with the understanding that the problem of the title insurance company might have a completely different approach for them than it does for us. The same might be true in reverse. It is therefore incumbent upon us that we understand each others approach and that we sincerely and conscientiously work out these problems to the advantage of all members of this Association.

Naturally, there isn't enough time allocated for us to consider all of the problems apparent at this time in our industry. Therefore, I will touch upon what I consider the most important problems at present in my own community.

One of our most serious problems is that of title insurance companies who come into our county on project work only. They obtain a master abstract upon the whole subdivision,

and proceed to issue the title insurance from their home office at the national rate. They have no financial investment in our county, nor do they have a plant which covers the property in our county. From our point of view, they appear satisfied in receiving the same income from these policies as they would if they had an agent in our area. I believe this to be a serious detriment to the abstracter and one over which there should be some control.

Another even more serious problem concerns the organization by the attorneys in our state of a Guaranty Fund upon which the lawyers are now writing title insurance in competition with us. Some of your states have this same situation I understand. Only attorneys may belong to this Fund and it has grown considerably in the last two or three years. Now the lawyers are still our friends, and we obtain a considerable amount of abstract work and some title insurance orders from them. However, we still cannot afford to lose sight of the fact that we are in direct competition with them for the title insurance business in our vicinity. At the present time, it is not a tremendous disadvantage to us as their policies are not generally and freely accepted by the mortgage lenders nor by the Real Estate Brokers. At the same time they are not in a position to give the same type of service to the public as we are. However, recently it came to my attention that two title insurance companies are negotiating with this Fund in an effort to obtain permission of the Fund to underwrite their policies. You can readily see that if this is done, considerably more stature would be given the policies of this Fund. Should that happen, it will immediately become a much more serious problem to us. To me, gentlemen, this is like snapping at the hand of the Creator. I seriously believe that this is a matter which should be given serious consideration by the American Title Association and that definite steps should be taken to curtail it.

Another problem along this same line which is of some concern to the abstracters is the growing practice of title insurance companies appointing attorneys in various communities as agents. This has led in some cases to the issuance of title insurance upon inadequate title evidence. I realize, of course, that with the growth in the number of title insurance companies, that these companies have felt it necessary to appoint such agents where the existing abstract companies already represent a company. However, I do believe that it could lead to an unhealthy situation as far as the reputation of title insurance is concerned. We all wish and intend to be in business for a long time to come and I think therefore that we should be vitally concerned with the wholesome reputation of the product which we are to sell. I do not personally know the answer to this problem. However, I do believe that it is one which we should watch and discuss in order that it not lead to disastrous results.

Gentlemen, the title insurance company is the best friend that the abstracter has. They have increased his income. They have been instrumental in prevailing upon him to institute more modern and up to date procedures and equipment and they have given him a better product to sell to the public. We know that the title insurance companies feel the same toward us. With this wholesome relationship, we should therefore approach our problems on mutual ground with the aim of solving them for the advantage of all and to the detriment of none.

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ROBERT W. STOCKWELL, *Vice-President & Director,*
State Title Insurance Department, Union Title Company, Indianapolis, Indiana

I consider my participation in this panel to be a distinct honor and privilege. So far as I am personally concerned it is a privilege to exert to the utmost my meager talents in an attempt to explode the illusionary fiction among some abstracters and title insurance companies that title insurance is somehow inimical to the interest of the abstracter; that the abstracters' functions are somehow antagonistic to title insurance. More than twenty years experience working constantly with about two hundred Indiana abstracters has proven to me, at least, that nothing could be farther from the truth. The title insurance company cannot sell title insurance without the abstracter, **period.** Neither can the abstracter sell title insurance without the title insurance company. The fact that they both must sell title insurance now seems quite obvious. Title insurance as a faster, safer, and more economical means of title evidencing needs little proof for the modern title man.

In other words, title insurance is selling itself with a pyramiding and snowballing acceleration in sales. In Indiana the rate of increase is 25% each year over the previous year during the past ten years. Therefore, for both abstracter and title insurance company — sell title insurance they must. This then is their first point of mutual interest bringing them together as indispensable and interdependent partners. Notwithstanding all the illusionary talk about so-called "casualty title insurance" the title company cannot safely issue title insurance without the abstracter's search of the public records and the attorney's examination. The title insurance company needs the abstracter in a great many ways: first, because as a local distributor and salesman the abstracter's office is the best marketing place for title evidence in the county; second, because his functions are not competitive with those of the attorney, the realtor, the lender, or other title users; third, because it is **not** unethical for the abstracter to sell title insurance as it is for the attorney. These are only a few of the principal reasons why the title insurance company has almost an indispensable need for the services of the abstracter in every county. If the abstracter could fully appreciate the extent of this need, he would never have any qualms as to the possibilities of encroachment by a title insurance company. I say this because I have frequently heard this fear expressed by the small abstracter.

But, just as much as the title insurance company needs the abstracter so does the abstracter need the title insurance company. Unless the abstracter's business is very large and is backed by a very considerable amount of capital, it is neither feasible nor profitable for him to get into the title insurance business on his own. The title insurance business is a separate and distinct function and is a very different business from that of abstracting. The truth of this fact has been proven several times in Indiana within the experience of a number of our larger abstracters who have seriously considered insuring their own titles. After long consideration and extensive research into the matter, even with our agreement to cooperate in re-insuring their policies, they have always definitely decided against entering the title insurance business. Although the local abstracter and examiner do practically all of the work necessary for title insurance, their title evidence which is the result of such work, is strengthened immeasurably by the seal of approval and the guaranty of the separate title insurance company. The title insurance company greatly increases the business of the abstracter by sending him business which clears on a state wide or national level through the title insurance company. The abstracter may obtain in this manner four different items of profit — abstract profit, examination fee, closing fee and commission on title insurance. Business development oper-

ations, advertising, public relations, for and on behalf of the local small abstracter, are furnished to him by the title insurance company he represents as agent. Yes, the abstracter is also dependent upon the title insurance company and with title insurance sales pyramiding he definitely needs its services.

Although the abstracter and the title insurance company are indispensable and interdependent partners, what seem to be insurmountable difficulties may sometimes arise between them. Some of such difficulties have been referred to me for answers on this panel. They are divided into: A—the problems of the title insurance company that wishes to operate in a county where the only abstracter with a good plant is not its agent and B—the problems of such an abstracter who has the only good plant in the county.

Now under A is the following question: "Will the title insurance company appoint a lawyer as agent and buy abstracts from such abstracter who has the only plant but is not its representative?" I think they will buy abstracts from the non-agent abstracter with the only good plant in the county if they have any worries at all about paying claims on their title insurance, and most good title insurance companies do. The other kind do not get much business anyway. In Indiana, though, it is not feasible to appoint an attorney as an agent if you expect to establish a permanent business of any size. In general, a practicing attorney as agent is the competitor of other attorneys who are potential title insurance customers. Therefore, if this particular problem is to be handled properly such a title insurance company in such county should appoint a lawyer as an examiner only; have him obtain his abstracting from the non-agent abstracter with the only good plant and probably handle all the other functions of an agent within the home office of the insurance company.

To the second question, "Will such a title insurance company be justified in relying on curbstone abstracts or a finger search of the record?", my answer is: No.

To the third question, "What protection may be obtained by such a title insurance company against such non-agent abstracter if he steals title insurance customers during the time that he is making an abstract for such title insurance company?", my answer would have to be that such company does not have much protection except that of the appointment of examining attorneys and directing the title insurance customers to the examiner's office.

The fourth question is: "What about multiple agencies?" My answer is that I believe that they are not feasible for any of the parties concerned. It is difficult to serve two masters and serve both well or to carry water on both shoulders. I am not in favor of multiple agencies.

Now under B in regard to the problems of the abstracter who has the only good plant in the county. Should he sell title insurance or not? The answer is that he should. To answer all questions under this heading I believe the crux of such questions is resolved in that of the feasibility of multiple agencies. As stated before, I do not believe in multiple agencies. In fact, I feel that they are just about as unworkable and impracticable as the marriage of a man to several women or vice versa. The abstracter with the only good plant in the county should pick the title insurance which is best for him. He should conduct himself and his business in such a manner as to merit the abstracting business of **all** title insurance companies. He should not positively and actively attempt to steal title insurance business of companies he does not represent, because he will probably get such title insurance anyway if he conducts his business in such a manner as to merit it. If such lone abstracter has the best plant, the best personnel and speed of service, he need have no fears of any kind of competition from foreign title insurance companies that he does not represent. He will reap as large, if not a larger portion of title insurance in his county as he formerly did in

abstracting. They go together and one follows the other.

In closing I would like to make one last observation as to both the abstracter and the title insurance company. As stated before, within the last two or three years, it has become quite apparent that title insurance as a means of title evidencing is sweeping the country and will eventually prevail almost exclusively. The "gold rush" is on. All manner of nefarious schemes and plans to get in on the pickings will naturally ensue. But, most of you who are wise in the title business I think will agree that this is not a business that can be "rushed." It does not change rapidly. It has its roots in tradition and is based upon one word more than any other, and that is **"assurance."** The plan of so-called "casualty title insurance"; the plan of appointing, either directly or indirectly, as agent, a large lending company or any other title user; the plan of mutual insurance of attorneys' opinions — all such plans are completely antagonistic to the establishment of **"assurance"** and confidence. They all stem from a very natural greed to get in on the gleanings, to get in on the pickings in this new "gold rush." All of such plans in my opinion are doomed to fall of their own weight, because they are not right, they are not ethical, and the wise and established title users of the country will recognize this fact and refuse to patronize them. Yes, I still believe that title insurance cannot be sold in volume with the greatest speed, safety and assurance without an adequate search of the public records by competent and well established professional abstracters using the best equipment together with an examination by the best and most experienced title examiners. I asure you that I am not just married to this old and conventional plan of selling title insurance, but I believe those who know me well will agree, that if there were any other way to, with honesty and dignity, make more money in the title insurance business, I would be the first to try it.

I have been asked to comment on Number 4 which is the following question: "What part should the association play in the development of good relations between the abstracters and title insurance companies?" This is an exceedingly difficult question to answer wisely, and should be given slow and very calm consideration. In fact, the question reminds me very much of an audience which was attempting to badger a very eminent pediatrician into answering a question: "Just how should we raise our children?" The eminent pediatrician came forth with this answer, and I believe it might have something to do with our question. He answered, "Feed'm, love'm, set'm a good example and leave'm alone."

TRAINING PROGRAM ACTIVITIES, SURVEYS RELATING TO SAME AND APPLICATION

ERNEST J. LOEBBECKE

President, Title Insurance and Trust Company, Los Angeles, California

When I first saw the long title which had been given the subject assigned to me, I started to object. But on second thought I decided that it was very descriptive of the situation. If we analyze it, I believe you will agree with me. Let's look at the first part of it.

Training Program Activities

After all, training programs aren't new. They have existed ever since the first cave-woman lured an unsuspecting male into dragging her off to his cave. Before the dust had settled she instituted a training program for him. Today, we all have training programs—when you hire your first employee, you irrevocably add training to the list of jobs that must be done in the daily operation of your business. Naturally, in a small operation it is an informal and intermittent activity—but still it is there. The bigger the operation, the more it pushes to the front in the list of problems facing management. And for that reason we have the second part of our title—

Surveys Relating to Same

As the problem of training looms ever larger we realize we must do something about it. So we make a survey—find out what the other fellow is doing. Some of us do it very informally—talk to our business associates at lunch or at the club. Or we go to meetings on the subject and try to pick up ideas. Some of us go all out. We add a training director with a department all his own to our organization. We have him attend classes on the subject. He goes to conventions and management seminars—he joins the training directors association—he writes to other companies which have formal programs—in short he shoots the works to cover the subject from every angle. Then, having surveyed the situation—either informally or in great detail—or perhaps somewhere in between—we are ready for the third part of our title—application.

Application

At this point we are sure we have gotten to the meat of the coconut—this is where the big pay-off comes. Unfortunately, however, this is seldom true. I have talked to many title men about training—both in small operations and in large ones. In every case the results are just the same as in my own shop—they have long been aware of the need for training—they have studied the problem—they have instituted programs — BUT, there is always an underlying note of disappointment when results are discussed. In short, the big pay-off hasn't materialized, and all concerned are filled with just a little bewilderment as to why this should be so.

Being curious by nature—and also more than a little unhappy that our own results hadn't been better, I began to look for reasons. The first conclusion I came to was that training programs are like the weather. There is a rather strong tendency to talk about them, but accompanied by the failure to do very much about it. However, that analysis only described the results—not the reasons behind those results. So I dug a little deeper. I believe I have found the reasons, and if this talk accomplishes nothing else, perhaps it will help to make your training programs a little more effective because of an added awareness of them.

But to get back to the reasons. Basically I believe there are two—

Too busy and too much.

Let's look at the first one. In practically every case I find that somebody is too busy to let the training

program really work. A program is devised and set in operation—and invariably, before it is completed or even really tested, it breaks down because the employees are needed for production work, or the instructor has to take on a special job, or vacations or sickness increase the load here or there—or something else comes along to delay or completely stop the program. In other words, when the pressure is on the training program is the first to suffer. While this is perfectly understandable—it is most unfortunate, for the very reason for having a training program is to supply the needed help when these pressure spots appear. Instead of that, the pressure spots put an end to the device which has been created to cure them. It is a vicious circle, and the solution is not an easy one.

Now let's turn to the second reason —too much. This one is not nearly so clear-cut nor does it offer easy analysis or simple solution. Being human, we are always on the lookout for new gimmicks which will make life easier for us. A training program seems to be just such a gimmick. Historically, in the title business, we have come to expect that an employee needed six, eight or ten years of job experience in order to become a competent title man. Also, current needs have shown that we can't wait that long. We are completely in agreement with Henry Ford's statement that "the school of experience is a great teacher, but its graduates are too old to work." And we know just what to do about it. We have nodded our heads sagely as we read over the words of Louis W. Lerda of Standard Oil of New Jersey, for they describe what we want to do exactly. Just in case you have forgotten, or mayhap there are some here who have not read them, I will quote: "Training is passing along the know-how through carefully selected methods, according to a well-conceived plan, by competent and well-prepared people, in a suitable training climate, to shorten learning time or experience. Training is telling—plus showing—plus supervised practice until the desired change is achieved in the learner's skill, attitude, or behavior." Why, there is nothing to it—that describes our training program to a T. Let's get on with it—we'll fill this shop with grade A help in nothing flat. And so we start. We expose our embryo title man to a class which is set for two days a week for a period of twelve weeks. An hour each day—30 minutes of which is grudgingly given of company time, and 30 minutes of his own—and that often caustically commented on by his spouse because the kid's dinner has to be delayed on those two nights each week. Parenthetically, I might say that we expect him to do just as much work on those two days on which we give him the 30 minutes, as on any other. I was not brave enough to try to find out what his spouse expects, but in some cases at least, I imagine that the student finds the company's attitude by far the most reasonable. Well, at last it is over with—the twelve weeks have passed and we sit back to watch our atomic-powered, jet-propelled, twelve-week wonder get under way. But what happens? Nothing—or at least the change is hardly perceptible. He goes about his work much as before, and the fact that he approaches his problems each day just a little surer because of what he learned, goes by unnoticed. Why —because of the disappointment that he is not a completely finished product—a better man than those who have learned the hard way, through years of experience. So comes condemnation and loss of faith in the program. The hard-bitten operating man decides it's no good—just a new-fangled idea dreamed up by some joker to make a soft job for himself. But the real truth of the matter is, the real fault lies in the fact that somebody expected too much. Yes—the major reasons for failure of training programs—"too busy" and "too much."

With that, perhaps I should quit. I've covered the three segments of my topic as set forth in the title. I've stated a conclusion. I should shut up. But many years of listening to Bill Gill, Al Suelzer, Mort Smith, George Rawlings, Jim Sheridan, etc., etc., ad infinitum has filled me with

a desire to emulate them. Thus I shall continue until the last possible second.

Seriously though, before I close, I would like to voice a few thoughts on the importance of training programs and why it is so necessary for us to find a solution to the problems they pose.

These programs **are** important to us. The current shortage of help makes it imperative that we train our new people more quickly. We must bring them up to an acceptable level of efficiency just as quickly as possible—not only so that we can get the work out that is piling up on our desks, but also to reduce turnover. These employees are interested in how much they can earn. They can't pay today's grocery bills with tomorrow's promotional increases. Thus they are susceptible to promise of more pay, particularly in the early stages of their employment. The sooner we get them up, the sooner they get out of the reach of those who would lure them into other areas where they can get higher pay for less skilled activities.

There is another, and actually a more important reason. Our industry has grown greatly in stature. Title men and women must be better trained in things other than the purely technical aspects of our business. Public relations, economics, the intricacies of mortgage financing, government insurance and controls, and many other matters are esssential if they are to have the kind of background which will enable them to meet the challenge of our changing times.

These are some of the reasons why I feel we must have training programs, and why we must overcome the obstacles. Instead of saying that we are too busy—that we can't afford the time, I believe that we **must** adopt the attitude that we can't afford **not** to take the time. Further I believe that we musn't expect "too much". We must keep the real goals in mind—not expecting to do the job overnight, but realizing that constant effort will not only shorten the time that it takes an employee to learn a given job, it will also result in his being better qualified to accept new assignments and greater responsibilities as time goes on.

This is the philosophy that we try to follow in our own shop. While we have been only mildly successful thus far, we have done a lot of work and are continuing to do more. I have here a report which Tom McKnight, our training director, made for me. It is 22 pages long, and so I will not attempt to cover it for you. I will, however, make just a few references to it, in order to illustrate some of the areas in which we are working. If you are interested in specific details, please feel free to write to Tom. He will be glad to help you in any way he can. Just write to:

T. R. McKnight, Training Director
Title Insurance and Trust Company
433 So. Spring St.
Los Angeles 13, California.

Here are some of the things we are doing:

Excerpts from Tom's Report

First of all, we decided to try to do the job right. That is always an easy decision to make, but not always easy to carry out. Our attempt went something like this:

I. In November 1953, we established an education and training section as a part of our Personnel Department with responsibility for training and development, both as to actual training in some areas, and as to development and co-ordination of program and techniques in all areas. Sort of a supervisory-advisory set up.

II. In setting up this section, we were correlating our first steps, which had been—

A. The establishment in May 1953, of an Orientation and Induction Process.

B. The addition, in July of 1953, to our written Management Guide of a statement of the general objectives of our management in regard to training and development.

C. The spelling out, in August 1953, of the methods which would be used in carrying out the program. This included such things as who would be responsible for

training; which specific areas would be company-sponsored and which should be sought from public educational facilities; set forth the make up and duties of an Advisory Training Committee composed of the heads of the chief operating and staff divisions of the company.

III. When this had all been assembled and activated, the next step was the creation of an overall program by the training section and the Advisory Training Committee. Basically, it consists of the following:

I. Induction and Orientation Process.

Designed to acquaint the new employee with the company—to make him feel at home and want to work there. On this problem of "too busy" which I have already mentioned, it is interesting to note that one of our announced objectives was to "Hold regular follow-up meetings to be sure that the employee has no further questions to ask, requests to make, etc. These to be held approximately 30 days after employment." The report states: "So far division and department managers have been reluctant to release employees for these meetings and therefore none have been held." Once again—"too busy".

II. Title Orientation Program.

This is designed to let our new employees in on the secret of what the title business is all about. We have reached the conclusion that when someone on the outside asks an employee: "What does your company do?" that he should have a slightly better answer than: "I dunno." So these are the things we tell him about:

A. The nature of land.
B. How land is described.
C. The nature of ownership of land.
D. The manner by which interests in land are created and transferred.
E. The manner by which interests in land are encumbered (or burdened).
F. The reason for our industry.
G. Real estate practices and procedures.
H. Title Plant contents and operations.
I. The story of our own company.

III. Title Typist Training Program.

This is our beginning operation for girls. Training material is rather voluminous and is generally restricted to matters necessary for the girl to be able to become proficient at typing reports and policies. A training period of 6 to 8 weeks is generally sufficient.

IV. Title Secretarial Training Program.

It was originally planned that the title typist, after finishing her original training, would receive training as a title secretary **before** being promoted to Title Secretary.

Again let me refer to actual experience. My report shows as follows: "In many instances supervision has been reluctant to allow title typists to take sufficient advance training in title secretarial work because of **pressing production problems.** Once again—"too busy."

V. Title Searcher Training Program.

I will not take the time to enumerate the details of this program. I am sure you all know the multitude of things we have to do to start a title man on the road. Suffice it to say, we desperately hope that after a few days he can find his way from the lot books to the General Index alone. We don't expect him to know what to do when he gets there, but hope that sufficient exposure to training and job experience will do the trick. My report lists this complaint: "The new searcher is not tested sufficiently prior to assignment to the job, as to aptitude, intelligence and adjustment." Well, that's true, but then the choice

isn't too large, so it is just one more hurdle for the training program to get over.

VI. Title Officer Training Program.

I have gotten from searcher to title officer in a hurry. But don't be misled. Actually it has been a long road through the maze of knowledge that must be imparted before the searcher is ready for promotion to title officer. And when that time comes, there is an even greater amount to be done. In addition to knowledge of the many codes, cases, law reviews, texts, etc. which comprise the more important aspects of the procedures pertaining to our business, we expect him to have a very good working knowledge of the following:

The California Land Title Association Manual.

The Handbook for Title Men.

Our Manual of Operating Procedures (some of which haven't yet gotten into the Manual because we are "too busy".)

Our file of Title Officer Reminders.

All of our write-up and vesting forms.

Special Articles and material on such subjects as Partnerships, Bankruptcy, Homesteads, etc., etc.

The material contained in Mel Ogden's "Outline of Land Titles."

I am sure you recognize that covering that job is no little accomplishment. It isn't achieved in a week, or even in a year. Here are just a few of the hurdles, as shown by the report on our training program:

"There is no apparent inclination to make the training program a pre-requisite to promotion to title examining work." There it is again—"too busy"—when we need him, shove him into the job and let him learn the hard way.

"There is the continuing problem of instructors and making them available when needed." —Again—"too busy".

"While most instructors did an excellent job, yet it was difficult to require them to expend their personal time writing and developing lecture and training material." Again—"too busy" to do it on company time.

Those deal with the sending end of the problem. Here are some on the receiving end:

"In most cases the attendance was in direct ratio to the amount of interest shown by the employee's immediate first or second line supervisors."

"The percentage of people who can or will take the time to read and study technical material voluntarily, or on their own time, is very small."

Well, I could go on, but I am sure that you get the point. It isn't an easy or an over-night job.

VII. Other areas of training.

We cover a number of other areas, such as Branch Office Training, basic Supervision and the like. We also participate in the Education and Training program of the California Land Title Association. We have found much to help us in working with our fellow title men in California, and have been happy to have the opportunity of contributing printed material, handbooks, manuals, taped lectures, and the like which were created in our own shop. This joint effort, has I believe been helpful to all of us in the Association.

I could go on and on, for this is not a simple subject, nor one which should be lightly regarded, but I think I have taken enough of your time.

In closing, I want to again remind you. Don't let the pitfalls of "too busy" and "too much" wreck your training program. You need the program, but remember, you will have to work to make it successful. It will not come easily.

REPORT OF LEGISLATIVE COMMITTEE

WALLACE A. COLWELL, *Chairman*
Vice President, Abstract and Title Guaranty Company, Detroit, Michigan

This is a brief summary of all reports, interim and final, received from committee members, of legislation affecting real estate and related subjects.

ALABAMA and ARKANSAS (Interim)

Nothing affecting real estate or title to real estate.

ARIZONA (Final)

First regular session of 22nd Legislature. Laws now in effect:

Surplus — for sale, lease or exchange of surplus property by cities to the United States Government for governmental purposes.

Old Age—no recovery against estates of old age assistance recipients.

Utilities, Condemnation—for cities and towns to have right to condemn plants, systems and business of public utilities.

Flood Control—for county to acquire and provide, without cost to United States Government, lands, easements and rights-of-way necessary for construction of flood control projects.

Negotiable Instruments — due on Saturday, payable next succeeding business day except on demand.

Sale of Land by Game Commission —provides authority for Game and Fish Commissioner to sell land with reservation of mineral rights.

Sale Approval — requires approval of commercial leases and sales by State Land Commission by Board of Appeals.

Tax Reduction — Flood Loss — provides for reduction of assessment of property loss through floor or fire (Act of God).

CALIFORNIA (Final)

Have several interesting items of legislation to report, including the repeal of the Torrens Law — never more than 300,000 certificates in the state—so repeal is not of great significance to the title business here.

Service of Writ: Underwritten Title Company—covers the method of serving the writ upon banks, savings and loan associations, and title insurance companies, requiring that any such institutions having branch offices should be served by leaving a copy of the writ and notice with the manager or officer at the appropriate office or branch. This section is amended to include underwritten title companies. In addition, the section is clarified with respect to the circumstances under which a copy of the complaint must be served upon such institutions. This is done by making clear that if the demand as stated in the writ does not exceed $300.00, then a copy of the complaint must also be served.

Sponsored by the California Land Title Association.

Counties: Purchase of Real Property: Publication of Notice—Section 25350 of the Government Code presently provides that no purchase of real property where the purchase price exceeds $300.00 shall be made unless notice of intention of the Board of Supervisors to make the purchase is published at least three weeks prior thereto. This section is amended to raise the $300.00 to $2,000.00.

Securities Excluded From Corporate Securities Law—Section 25102 of the Corporations Code lists several classes of securities and provides that the Corporate Securities Law shall not apply to such classes. This section is amended to add to the classes of securities which do not fall within the Corporate Securities Law "a promissory note secured by a lien on a single parcel of real property, when such note is not one of a series of notes executed by one maker or persons associated together in the issue of notes."

Creation of Joint Tenancies—Section 683 of the Civil Code, relating to joint tenancy, is amended to pro-

vide that a joint tenancy may be created by a transfer from joint tenants to themselves or some of them, or to themselves or any of them and others, and to provide that a husband and wife may create a joint tenancy by a transfer to one of them and to another or others. This is an extension of existing law, and present provisions governing creation of joint tenancies are not limited.

Judgment Liens: Duration of—Section 674 of the Code of Civil Procedure now provides that a judgment lien continues after recordation of an abstract, for a period of five years from the date of entry of judgment or decree. This Section is amended to make the duration of such liens ten years rather than five years.

Notices of Completion, Notices of Cessation: Who May Sign—Section 1193.1 of the Code of Civil Procedure, relating to mechanics' liens, now provides that notices of completion or notices of cessation shall be signed and verified by the owner or someone on behalf of the owner. This language is amended to provide that such notices shall be signed and verified by the owner or his agent.

In addition, paragraph (i) of Section 1193.1 is amended to change the present statement that where the interest or estate is held by several persons as joint tenants or tenants in common, any one or more of the co-tenants may be deemed to be the owner, substituting for the word "several" the words "two or more".

Sponsored by the California Land Title Association.

Married Minors; Males Treated same as females—Section 25 of the Civil Code, relating to minors, is amended to: (1) make the section applicable to married male minors over 18 years of age as well as to female minors. (2) The provisions relating to actions affecting marital status are broadened to include any action or proceeding involving support or the custody of children of the marriage or determination of property rights.

Executors and Administrators: Guardians: Conveyances—Section 587 of the Probate Code presently provides that executors and administrators may, with or without consideration, dedicate or convey real property to certain governmental agencies. This section is amended to add to those agencies to which such dedications or conveyances may be made, the United States of America or any agency or instrumentality thereof. In addition, the section is amended to provide that executors or administrators may convey, release or relinquish to the State or any county or municipal corporation access rights to any street, highway or freeway from any real property of the estate. Section 1515 of the Probate Code, which is virtually identical to Section 587 except that it relates to guardians rather than to executors and administrators, is amended in identical manner.

Sponsored by the California Land Title Association.

Estates: Distribution to Deceased Distributee—Section 1023 of the Probate Code presently provides that where an heir, devisee or legatee dies before distribution his share may be distributed to the representative of his estate or to the estate itself with the same effect as if it had been distributed to him while living. The amendment adds a paragraph to this section permitting distributions by a decree of distribution purporting to distribute to the deceased distributee by name rather than to his estate or the representative of the estate. Such decrees are to have the same effect as though distribution had been made to such distributee while he was alive. There is a further provision that such purported distribution shall be void, however, where it is distributed pursuant to a will which provides that the distributee shall be entitled to take only in the event that he survives the date of distribution.

Decrees of distribution heretofore entered are validated, but Section 2 of the measure states that any proceeding or defense based on the invalidity of such a decree on the ground it purported to distribute to a deceased distributee by name can only be commenced or maintained within one year from the taking effect of this act.

Sponsored by the California Land Title Association.

COLORADO (Interim)

The Colorado Title Association introduced a bill to the 1955 session of the Colorado Legislature which would have placed all domestic and foreign title companies doing business in Colorado under the supervision of the State Banking Commission. This bill was written after a careful study of a number of title insurance laws of various states but it failed to become a law as considerable controversy arose between the foreign and domestic title companies operating in Colorado.

A bill which would have repealed the present Colorado law governing the abstract business was introduced but also failed to be enacted.

CONNECTICUT (Interim)

Considering legalization of open-end mortgages.

FLORIDA (Interim)

Plat Act — amendment defeated which would have required that before a plat could be accepted for record by the Clerk, the developer must present to the Clerk an original and two copies of a complete abstract from government to date. The proposed amendment provided that a lawyer could borrow the abstract.

Tax Stamps—pending bill to eliminate Florida tax stamps on mortgage notes when the mortgages are warehoused for a period of time.

IDAHO (Interim)

33rd Session of Idaho Legislature.

New Laws effective May 2, 1955, unless given immediate effect (1E).

Judgment: Present statute providing that lien of a judgment attached to the debtor's property with the act of docketing the judgment is repealed. Effective immediately, the judgment now becomes a lien when the transcript or abstract thereof is filed with the Recorder. Duty of plaintiff's lawyer to see that the transcript is prepared and filed in order to create the lien.

The same section also settles the question of when and to what extent a decree for alimony and child support is a lien on defendant's property. By the act, the lien is only for past due installments and on such judgments hereafter rendered the issue is now closed. If all payments due at a given time under the decree have been paid in full, the judgment is not a lien and the defendant may sell his property free from any exception.

Distribution: Court may distribute the entire estate to surviving widow or minor children when value of estate does not exceed $5,000.00. Widow now allowed $600.00 immediately from bank accounts of decedent.

Mortgage—no longer necessary to specify the maximum amount of the obligation to be secured by a mortgage.

Mortgage—future advances may be made to another than the original mortgagor.

Income Tax: The 15% deduction allowed by the 32nd Legislature was repealed and a 7½% increase passed in the nature of a surtax.

IOWA (Interim)

Acts passed provided:

Death Certificate—for recording of death certificate in county of residence when death occurred in different county.

Notary Public—for notaries public to have power to act in any county by filing their certificates in extra counties.

Taxes, Inheritance—for inheritance taxes, not a lien on real estate prior to July 4, 1941.

Bills not passed but under consideration:

to authorize county recorder to keep records to show death of joint tenant by affidavit of survivorship.

to clear record of stale reverters such as schoolhouse sites, church sites, restrictions on title (approved by Title Standards Committee of Bar Association).

MARYLAND (Final)

Acts effective June 1, 1955, provide:

Probation of Estate — requires at least 90 days notice to creditors in equity proceeding for sale of property for the purpose of partition where

estate has not been previously administered.

Minor Wife — authorizes married female, who has attained the age of 16 years and who holds title to property with her husband by the entireties, to join with her husband in an instrument of conveyance, either deed or mortgage.

Mortgage — increases from $500.00 to $1,500.00, as limit for future advances allowable under a mortgage.

Mechanics Liens — for filing of mechanics lien to include the drilling and installation of wells to supply water.

Land Contracts — requires the inclusion of additional provisions in all land installment contracts relating to notices received by the vendor as to repairs or improvements.

MICHIGAN (Final)

New Laws Effective October 14, 1955, except those given immediate effect. (1E).

Drains, Recording—requires the recording of all drain agreements and easements 30 days after confirmation. (1E).

Land Conveyances—permits grantor or grantors in land conveyances to be named as grantee directly. Grantor may create joint tenancy or tenancy by the entireties directly. (PA3).

Land, Submerged Lake Bottom — Great Lakes—permits State Conservation Department to grant and convey unpatented submerged lake bottom lands and artifically filled lands along shoreline of Great Lakes. (IE).

Plat Act — establishes minimum width for all residential lots at 60 feet, with 50 feet width permitted only if facilities are installed or to be installed immediately. Permits proprietor to deposit funds to insure installation of facilities. (IE).

Taxes—requires inspection by State Tax Commissioner of all assessment rolls prior to July 1st of each year. (IE).

Taxes—permits estate and inheritance taxes to be paid from residue of intestacy estates before assignment.

Tax Exemption—permits veterans one year tax exemption on homestead if acquired within five years from honorable discharge. (IE).

Misc.—Banks and Trust Companies —permit bank and trust companies to subscribe for stock of Federal National Mortgage Association.

Misc.—Malicious Damage, Minor—permits recovery from parents for malicious destruction of property by minors.

MISSISSIPPI

No regular session during 1955.

MISSOURI (Interim)

68th General Assembly.

New Probate Code—approved and passed by both Senate and House. If signed into law, it will cause many important changes in the present law and clarify abstracting of estates.

MONTANA (Final)

The Montana Title Association reports no new legislation affecting real estate or the title to real estate.

NEBRASKA (Final)

67th Session.

New Acts become effective September 17, 1955, and provide as follows:

Decedent's Estates—for the transfer of personal property of deceased person without judicial proceedings where the value of the estate, less liens and encumbrances, does not exceed $700.00.

Decedents' Estates — that petition for license to sell real estate for payment of debts shall set forth that real estate to be sold is not exempt for sale for any reason, including homestead rights.

Decedents' Estates—to make surviving joint owner or owners of jointly held real or personal property liable for the debts and obligations of the deceased joint owner or owners within limitations and under conditions prescribed.

Decedents' Estates—procedure for determination of heirship when decedent died without estate.

Tax, payment of—for manner of payment of tax and interest when rights, interests or estates are uncertain or contingent. Bond to assure payment of tax when uncertainty has been resolved.

Tax, Inheritance — determine date when transfer of real estate shall be

treated as made in contemplation of death set at 3 year period ending with date of death except in case of bona fide sale.

NEW HAMPSHIRE (Interim)

New law effective April 1, 1955.

Real Estate Mortgages—Subsequent Advances—Any sum or sums which shall be loaned by the mortgagee to the mortgagor at any time after the execution of any mortgage hereafter made, shall be equally secured with and have the same priority as the original indebtedness, to the extent that the aggregate amount outstanding at any one time when added to the balance due on the original indebtedness shall not exceed the amount originally secured by the mortgage.

NEW MEXICO (Interim)

Amendment to Mental Illness Statute effective June, 1955.

New law authorizes abstracters and attorneys to examine court records on Mental Illness cases.

NOTE: (The 1955 New Mexico Legislature passed a statute known as the Mental Illness Statute becoming law as N.M. Sess. L. '53 c. 182, which was apparently an exact duplicate of the Idaho Statute passed somewhat earlier. This law carried a $500.00 penalty for the disclosure of information relative to the mentally ill or insane. As a result of this law, most of the District Court Clerks placed the Insanity Dockets and Files under lock and key, and in most places where they were not locked up the title people placed exceptions in their abstracts and did not search this record.

Title insurance underwriters qualified in New Mexico agreed to issue Mortgagee's policies without exception to this fact, but did include proper exception in Owner's policies of title insurance.

NEW YORK (Final)

Summary of laws passed:

Title Insurance Corporations — Assets (Insurance Law Effective July 1, 1955).

The amendment provides that the Superintendent of Insurance, on and after January 1, 1956, shall allow as admitted assets of a title insurance corporation premiums and fees for title examinations and insurance not more than ninety days past due, less commissions payable thereon. Previously such premiums and fees not more than twelve months past due were admitted as assets.

Savings Bank — Investment of Funds (Effective March 25, 1955).

To permit mortgage loans up to 80% of the appraised value of a single family residence not more than 10 years old, occupied by the owner, if the appraised value does not exceed $15,000; or if the value is greater, 80% of the first $15,000 and 50% of the remainder of such appraised value.

Business in County Offices on Holidays and Saturdays (Effective June 1, 1955).

Holidays and Saturdays are to be considered as Sundays for all purposes relating to the transaction of business in county offices throughout the state except in counties which are wholly contained within a city.

Whenever the last day on which a paper shall be filed or an act done or performed in any such office expires on Saturday, the time therefor is hereby extended to and including the next business day.

Decedent Estate Law—Election by surviving spouse against or in absence of Testamentary Provision (Effective April 19, 1955).

The words "intestate share" shall be construed to mean the surviving spouse's share of the estate as in intestacy or one-half of such net estate, whichever is smaller

Decedent Estate Law — Power of sale after-born child (Effective April 2, 1955).

Provides for a child—born after a will is made and not provided for or mentioned therein—succeeds to the same portion of the parent's estate as would have descended to such child if the parent had died intestate.

Decedent Estate Law—Wills—Right of Election (Effective April 19, 1955).

The amendment clarifies the lan-

guage of the subdivision and provides expressly that all estate taxes shall be disregarded in computing the net estate for the purpose of ascertaining the share of the surviving spouse after an election to take against the will.

Real Property Law—Proof by subscribing witness (Effective July 1, 1955).

When the execution of a conveyance is proved by a subscribing witness who resides in a city the proof must include the street and number, if any, of his residence.

Real Property Law—Acknowledgment by Corporation and Form of Certificate (Effective July 1, 1955).

If the proving officer resides in a city, the certificate of acknowledgment must include the street and number, if any, of the residence of such officer.

Real Property Law—Record of Certain Conveyance Validated (Effective July 1, 1955).

After September 1, 1955, a recording officers shall not accept for recording any conveyance of real property executed subsequent to that date unless the city, town or village in which the property is located is stated in the instrument of conveyance. This section shall not operate to invalidate any instrument which is recorded without this information nor shall it impair any title founded on such a conveyance or record thereof.

Recording Act — Options to Purchase a House (Effective April 21, 1955).

Provides that such options shall be deemed executory contracts and makes the recording of option agreements effective only up to and including the last day fixed by the agreement for the exercise of the option.

Tax Sale — Foreclosure by Action in Rem (Effective March 10, 1955).

The amendment adds a new subdivision giving to cities the power to adopt a local law making a deed given pursuant to a law providing for foreclosure of a tax lien by action in rem presumptive evidence that all prior proceedings required by law were regular and providing further, that after two years from the date of the record of the deed the presumption shall become conclusive.

NORTH CAROLINA (Final)

Real Estate — Power of Attorney —authorizes married woman to exercise powers of attorney conferred upon her by her husband, including power to execute and acknowledge deeds to property owned by her, by herself and her husband, or by her husband. (Proposed Constitutional Amendment).

Real Estate — Abandonment—Railroad — provides that railroad which has removed tracks from a right-of-way and has not replaced any part of them or made other railroad use of any part of right-of-way for seven years ensuing is presumed to have abandoned right-of-way.

Decedents' Estate Law — provides that where decedent's personalty is insufficient to pay all debts, application may be made to superior court for sale of decedent's realty for payment of debts without first exhausting personal property assets. Validates previous sales of realty under section to extent that sales were held without first exhausting personalty. Does not apply to pending litigation.

Decedents' Estate Law—After-Born Children — puts after-adopted and after-born children on same basis and provides that shares of both in testator's estate shall be governed by provisions of GS 28-153 through 28-158. Effective July 1, 1955.

Minor Wives — authorizes married women under 21 to make binding agreements with respect to any transaction involving an estate held or purchased by entirety.

Validation of Deeds—adds executor and administrator to list of officials whose deeds are not invalidated through omission of official seal and makes section apply to all such deeds executed prior to March 12, 1955.

Validation of Acknowledgments — validates acknowledgments and privy examinations taken prior to 1951 (instead of 1939). Does not apply to pending litigation.

Validation of Conveyances by General Services Administrator—authorizes and validates conveyances of property by General Services Administration for United States without seal. Does not affect pending litigation in which title to United States property under General Services Administration's supervision is in question. (NOTE: The Attorney General of North Carolina declined to give an opinion as to the constitutionality of this act, but one of the Assistant Attorney Generals is of the opinion that it is constitutional.)

Real Estate—Requirement of Examination — Wife — requires private examination of wife when making contract (of over three years) with husband affecting her real estate or corpus of her personalty, or income therefrom. Effective July 1, 1955.

Validation of Contract between Husband and Wife — validates contracts between husband and wife (which come within provisions of GS 52-12) made prior to January 1, 1955, even though acknowledged by notary, if contract contains certificate that same is not unreasonable or injurious to wife.

OKLAHOMA (Interim)

Last year the County Treasurers Association of Oklahoma, through a tremendous amount of effort and assistance upon the part of every abstracter in this state, successfully got adopted a constitutional amendment covering the releasing and extinguishing of ad valorem taxes. This proposition was submitted as State Question No. 361 at the general election on November 2nd, 1954, and was passed with a very good majority. In order to vitalize the amendment, House Bill No. 596 was enacted by our Legislature, and became law on February 28th, 1955.

OREGON (Final)

Title Insurance Act—Now Effective —New Act regulating and controlling the conduct and operation of title insurance companies sets forth requirements to organize and provides for creation of "Title Insurance Unearned Premium Reserve Fund."

In addition to capital and deposit requirements, the Act requires that the company shall own and maintain in the county in which its principal office in the state is located a title plant consisting of a general index, adequate maps, and currently posted tract or geographic indexes for all the lands in such county. It shall also directly or through its agent own and maintain for each additional county in which it shall be authorized to transact a title insurance business a comparable title plant.

PENNSYLVANIA (Interim)

Conveyances—requirements for recording — to contain complete post office address of grantees. Effective September 1, 1955.

Real Estate Tax Sale Law—proceeds of sale now to include "lien holders in the order of their priority." Effective September 1, 1955.

Realty Transfer Act—re-enacts and amends Realty Transfer Act by defining transaction as "the making, executing, delivering, accepting or presenting for recording of a document," by adding to definition of value the words "or any other document without consideration," by adding a new section 4 that the tax shall have priority out of the proceeds of any judicial sale and the sheriff shall pay the tax out of the first moneys paid to him in connection therewith, and the tax shall apply to all documents offered for recording subsequent to May 31, 1953, and shall not apply to any documents delivered prior to February 1, 1952. Effective June 1, 1955.

Real Estate—Real Estate Title Held by Foreign Corporation — validates and quiets title to real estate held by a foreign corporation not authorized to transact business in Pennsylvania and heretofore conveyed to a citizen or citizens of the United States, or a corporation authorized to hold such real estate. Effective June 23, 1955.

Tax Law — Townships, Boroughs, School Districts to impose local Realty Transfer Fee—provides that certain political subdivisions may levy taxes "as they shall determine to be paid by the transferor upon the transfer of real property or of any interest in real property situate within such political subdivisions regardless of where the instruments making the transfers

are made, executed or delivered, or where the actual settlements on such transfers take place."

RHODE ISLAND (Interim)

Nothing affecting real estate or title to real estate except Act which created Rhode Island Mechanics Lien Law Commission to study the Mechanics Lien Law.

SOUTH DAKOTA
and
TENNESSEE (Final)

Nothing affecting real estate or title to real estate.

UTAH
and
VERMONT (Interim)

Nothing involving title questions presently before the legislature.

VIRGINIA

No regular session in 1955 (convenes in even years).

WASHINGTON (Final)

County Road Engineer — The records and books in the County Road Engineer's office are made public records open to the inspection and examination of the public. This act took effect February 1, 1955.

Homesteads — The net value for which homesteads may be selected and claimed as exempt is increased to the sum of $6,000.00.

Probate Procedure — A new enactment authorizing the court to order the continuation of the business of a decedent other than of a partnership, for such period of time and subject to such restrictions as the court order may provide.

Rights of Inheritance — This complete law on the inheritance rights of slayers is designed to preclude a slayer from acquiring any property or receiving any benefit as a result of the death of the slayer's victim.

Proposed State Highway Locations —This amendment authorizes the filing of descriptions and plans of proposed state highways with the County Auditor, at which time the owner of any property affected thereby makes further improvements at his peril; and after such filing, building permits are not to be issued within a period of one year for any improvements within the limits of the proposed highway.

Local Improvement Liens—An important revision of RCW 35.50 relating to the lien of local improvement districts of cities and towns. The city or town creating a local improvement district is required to file with the officer authorized to collect assessments, the title, district number, diagram of boundaries and preliminary assessment roll of the district showing the lots, tracts, and parcels to be benefited, and the estimated cost and expense to be borne by each. The proposed assessment roll shall immediately be posted to the index of local improvement assessments against the properties to be affected.

WISCONSIN (Final)

Divorce and Annulment Actions,— the record must now show one of the parties to be a resident of the county in which the action is brought.

Domestic Insurance Companies, other than life—investment not to exceed 5% of the company's admitted assets in income producing real estate.

Mortgages—Savings & Loan Associations now authorized to acquire mortgages from any person so long as they represent loans that the association itself could have made in the first place.

Highway Location, Discontinuance, Alteration and Layout—County Highway Commissioner to compile a record of the laying out, alteration or discontinuation of all highways outside of cities and villages.

Easement for Public Use—acquired by gift or purchase or condemnation shall not be deemed abandoned on the ground of non-user for any period less than that prescribed in the Statute of Limitations.

Lis Pendens, Filing now compulsory,—instead of optional in all cases where the complaint, cross-complaint, or counter claim contains a legal description of real estate and asks relief in connection therewith. It further provides that judgment shall not be entered in such a case until

20 days after the Lis Pendens is filed.

WEST VIRGINIA (Final)

Banking Code—to provide that no **nonresident banking institution, corporation having** its **principal office** or **place of business outside** the **State** of **West Virginia,** or nonresident person shall be appointed to act as executor, administrator, curator, guardian or committee, except that a testator who has a nonresident as his executor, and except that for the guardian of a nonresident infant, there may be appointed the same person who was appointed guardian at the domicile of the infant. This amendment added the provisions with respect of corporations and banking institutions and in other respects is the same.

Real Estate Sale or Lease—Future Interests—provide for summary proceedings for the sale or lease of real estate at the instance of persons having future interests, vested, contingent, or executory, and for publication with respect of nonresident and unascertainable parties.

Insurance — Regulation of Trade Practices—to regulate trade practices in the business of insurance defining unfair competition, deceptive acts, misrepresentation of policy contracts, for cease and desist orders and penalties for the violation thereof.

Security Trust Agreements — Corporation must be chartered under laws of West Virginia to act as trustee—with principal office within the State.

Real Estate—Acquired by State for Non-Payment of Taxes — Release — Title to land acquired by the State for non-payment of taxes more than 10 years before 10 consecutive years of payment of taxes shall be released to the person who would be the owner but for the title of the State, and that all unpaid taxes prior to said 10-year period are declared to be fully paid, with provision that the Act shall be retrospective and prospective, and does not affect the title for persons claiming land by transfer who had purchased for taxes.

EFFICIENCY AND PERFECTION IN THE ESCROW DEPARTMENT
(A Playlet)

CAST

John B. Waltz, *President,* Commonweath Title Company of Philadelphia, Philadelphia, Pa.

Elmer S. Carll, *President,* Industrial Trust Company, Philadelphia, Pa.

Earle M. Frankhouser, *President,* Berks Title Insurance Company, Reading, Pa.

Gordon M. Burlingame, *President,* Title Insurance Corporation of Pennsylvania, Bryn Mawr, Pa.

Wilbur I. Diefenderfer, *Vice-President and Title Officer,* Berks Title Insurance Company, Reading, Pa.

James M. Hart, *Vice-President,* Title Insurance Corporation of Pennsylvania, Bryn Mawr, Pa.

Joseph J. Hurley, *Secretary-Treasurer,* Title Insurance Corporation of Pennsylvania, Bryn Mawr, Pa.

Andrew Sheard, *Manager,* National Department, Title Insurance Corporation of Pennsylvania, Bryn Mawr, Pa.

Preston D. Brenner, *Vice-President,* Land Title Insurance Company, Philadelphia, Pa.

Prologue by Mr. Burlingame

SCENE:

Settlement Table at Title Company.

CHARACTERS:

Grantor—John B. Waltz.

Grantee—Earle M. Frankhouser.

Real Estate Broker—James M. Hart.

Cooperating Broker — Gordon M. Burlingame.

Mortgagee's Representative—Elmer S. Carll.

Attorney for Purchaser—Wilbur I. Diefenderfer.

Interrupter—Joseph J. Hurley.

Settlement Clerk — Andrew A. Sheard.

Opening comments by BURLINGAME as to the purpose of skit. Might mention this skit is not being done for the purpose of ridiculing the real estate or legal professions, but is only for the purpose of instruction in the proper preparation and procedure of settlements, and that all of the mistakes which will be brought forth, could not possibly happen in one settlement.

ON STAGE:

WALTZ, FRANKHOUSER, CARLL and SHEARD.

SHEARD remarks about lateness of hour and what is detaining the brokers and attorney.

DIEFENDERFER enters and apologizes for being late.

BURLINGAME enters and apologizes for being late.

HART enters and apologizes for being late.

SHEARD starts preparation of settlement sheet, asking sale price, deposit, adjustment of taxes, adjustment of house rent. Finds there is no rent adjustment as rent commences as of the first of the month, but HART has not requested WALTZ to bring lease with him.

HART promises to produce lease next day.

DIEFENDERFER requests that no distribution be made until lease is produced to the Title Company.

SHEARD proceeds with grantor's side of settlement sheet, and looking at settlement certificate finds the same discloses a ground rent, questions WALTZ and HART if they have procured the necessary deed of extinguishment for the rent, and a statement as to the amount due. HART says that he has procured statement and produces same, but was not aware that it was necessary to inform the Title Company that the ground rent was to be extinguished, or that a deed of extinguishment was necessary.

SHEARD informs WALTZ that it will be necessary to run the ground

rent title out, to see if the Blair Trust Company as Trustee under the Will of Mary Brown is the proper one to extinguish the ground rent. Also informs HART that it will be necessary for him to prepare the deed of extinguishment after the necessary information is furnished.

SHEARD then requests statement on the mortgage appearing on the certificate.

HART produces statement from David Black, and to his amazement finds that Black is charging interest to July 20, 1952, not having noted the fact that the mortgage was an expiration mortgage and not a within mortgage, and therefore, Black is entitled to interest to the expiration date.

SHEARD further informs WALTZ and HART that it will be necessary for David Black to appear in person in order that the mortgage can be satisfied of record, upon receipt of the principal and interest.

SHEARD asks for the bill for 1947 City and School taxes and water rent which are shown as delinquent on the certificate.

HART states that he did not procure these as he thought it was the Title Company's duty to procure the same.

SHEARD informs HART that if the Title Company had been notified prior to the settlement, it would have obtained the bills.

SHEARD asks, and WALTZ does produce 1951 tax and water rent receipts.

SHEARD then asks what disposition has been made of the lien for sewer which appears on the certificate.

WALTZ states that there has been a new sewer installed, but he has not received any bill for the same.

SHEARD then states that he will procure the necessary bill from the City Solicitor's office or the lien holder.

SHEARD then raises the question as to the possible excess meter charges for water and sewer rent which may be assessed since May 1st, 1947, the last reading of the meter, and asks WALTZ whether he has requested a reading of the meter. WALTZ replies in the negative, and then SHEARD asks FRANKHOUSER if he is willing to take subject to the same. FRANKHOUSER consults with DIEFENDERFER, and DIEFENDERFER advises FRANKHOUSER not to take subject to possible excess charges. SHEARD then suggests that a suitable sum be withheld against WALTZ in order to protect FRANKHOUSER, and after discussion, a fund of $100 is agreed to be withheld.

ENTER:

HURLEY who annoys SHEARD about the return of funds held for possible excess charges in a settlement which he had made about a year ago. SHEARD explains to HURLEY the steps necessary to procure the release of the fund.

EXIT:

HURLEY.

WALTZ remarks he hopes he does not have to wait that length of time for the return of his money, and SHEARD explains to him the same as he has explained to HURLEY.

SHEARD then requests a statement from WALTZ from the Black Finance Company for the repayment of the judgment appearing on the certificate, but WALTZ claims that is not his debt, that he only endorsed the note for someone else, and therefore, the other party should pay the judgment note, but it is finally explained to him that it will be necessary for him to either pay the judgment in full or procure the proper release of the premises from the lien of the judgment.

SHEARD attempts to insert against WALTZ a charge for the Pennsylvania State Transfer tax in the amount of $100.

HART objects claiming that his Agreement of Sale was entered into prior to the passage of the Act and also claims that the Act is ambiguous as to who is to pay the tax. A discussion is entered into between HART and BURLINGAME whether or not FRANKHOUSER would pay the tax. BURLINGAME refuses to have FRANKHOUSER pay the tax, and then asks SHEARD what is the Title Company's stand. SHEARD replies

that the Title Company is neutral in the affair, and that his requirement is to see that the tax is placed on the deed because of the fact that the Recorder of Deeds will not accept the deed unless the stamps are affixed in the full amount of the consideration.

HART and BURLINGAME then ask DIEFENDERFER his opinion.

DIEFENRERFER states his opinion and it is finally decided between WALTZ and FRANKHOUSER to split the tax.

Charges are then entered against FRANKHOUSER'S side of the sheet with CARLL stating that the mortgage is in the amount of $7,000 for a ten year period. FRANKHOUSER claims he informed BURLINGAME that he wanted a mortgage in the amount of $6000. for fifteen year. CARLL then states that it will be necessary for the mortgage and bond to be redrawn.

FRANKHOUSER further claims that he informed BURLINGAME that title was to be taken in the name of himself and wife.

BURLINGAME states that FRANKHOUSER had made such a request, but in ordering title insurance, and in applying for the loan, he had failed to mention that fact.

SHEARD asks FRANKHOUSER if the judgment of the U. S. of A. appearing on the certificate is against him. FRANKHOUSER states it is, but he was informed by BURLINGAME that judgments do not affect after acquired real property. SHEARD informs him they do, and asks DIEFENDERFER to explain to FRANKHOUSER why. DIEFENDERFER does explain and FRANKHOUSER agrees to pay the judgment, or have the property released from the lien of the same.

SHEARD then informs FRANKHOUSER of the amount necessary to complete the settlement, but that an additional sum might be necessary in order to dispose of the U. S. of A. lien, and that at the time he deposits with the company the fund necessary to complete the settlement, he should produce a certified check.

SHEARD requests WALTZ to sign an affidavit to dispose of objections A and B on the certificate. WALTZ refuses to sign the affidavit as to being unmarried, never having been married, because of the fact that he is a divorcee, having obtained a divorce after acquiring title to the property; also stating that he obtained his divorce in Allegheny County, Pa.

SHEARD informs him that it would be necessary to obtain a certified copy of the divorce decree and that this information should have been furnished at the time the application for title insurance was made.

SHEARD then asks for the necessary proofs to dispose of objections C, D and E on the certificate, which arose prior to the time that WALTZ had acquired title to the property.

HART inform SHEARD that WALTZ had been insured as owner of the property by some other title company, and he thought that having secured such title insurance, that it would not be necessary to obtain anything from that company. SHEARD informs him that it will be necessary to secure photostatic copies of the proofs from the former title company in order to remove the objections.

ENTER:

HURLEY desiring to know when this settlement is going to be over, as he has waited at least a half hour. SHEARD asks him to be patient.

EXIT:

HURLEY.

SHEARD informs the people attending the settlement that a physical inspection of the property discloses the fact that additional property to the West of our premises is fenced in and used by WALTZ.

FRANKHOUSER claims that he thought that he was obtaining title to that portion. WALTZ agrees. SHEARD, looking at the application, finds that there was no description given, or record of the last deed, and the only identity of the property was by house number, and as WALTZ had acquired title to the two properties by separate deeds, the title to the next door property would have to be examined. Therefore, it is entirely impossible to complete the settlement until all of the various items have been disposed of.

FEDERAL TAX LIENS

DAVID E. MacELLVAN

Vice President and Associate Counsel, Western Title Insurance and Guaranty Company, San Francisco, California

(Delivered by Thomas J. McDermott, McDermott and Associates, Attorneys-at-Law, Mansfield, Ohio. Remarks of Mr. McDermott in italics type.)

I have no issue to take with any of the findings of Mr. MacEllvan in the paper which you are about to hear, and it shows a thorough knowledge of his subject and considerable research for it. I do commend it all to your attention when you have the opportunity.

It must be realized that, as regards priority, enforceability and divestment, Federal tax liens are creatures of Federal law and most, if not all, of the rules relating to those and other areas of the effect of such liens must come from decisions of the Federal, not the State, courts. For this reason ordinary concepts of creditor law and lien rights, and rules of practice relating thereto, cannot be applied to Federal liens. The liens are rights or property of the United States and as such enjoy certain immunities and advantages not available to lesser mortals. In certain regards and in certain phases of the relation of these Federal rights to private rights the law is not clearly defined or established. A title company may find itself pioneering if it undertakes to decide some of these unresolved issues, particularly if it decides against the position of the United States. The Federal courts may later not agree with such decision.

In approaching these problems two words must be given great consideration. One word is sovereignty, the other is consent. A sovereign can be sued or its rights affected only by its consent. The State of California is also a sovereign, but the various statutes creating liens for state taxes have given consent that such tax liens must be recorded to be liens on property, and when so recorded shall have "the force, effect and priority of a judgment lien and shall continue for five years from the time of filing," etc. (See applicable state statutes cited at 31.02b of California Land Title Association Manual.)

Foreclosure of Prior Liens

The United States has given certain limited consent to actions affecting its tax liens. Such consent and the extent and effect thereof must be construed and interpreted by the Federal courts. One of the most commonly encountered relations of private liens to Federal liens is in the foreclosure of a trust deed by trustee's sale. That such sale cannot divest or cut off even an admittedly subordinate or inferior Federal lien, and the whole concept of Federal sovereignty as applied to such liens, is found in the leading case, in 1939, of the Metropolitan Life Insurance Company vs. United States, 107 Fed. 2d. 311, certiorari denied by the U. S. Supreme Court, 310 U.S. 630.

In that case a sale under a power of sale in a mortgage was held to not cut off a Federal tax lien which was admittedly inferior to the lien of the mortgage. The court said:

"The U.S. as a sovereign may be sued only with its consent. It follows that the Congress has the power to prescribe not only the methods by which and the conditions under which tax liens on real estate may be released, but also to limit the right to sue therefor and no suit may be maintained against the U.S. for such purposes unless strictly within the terms of the statute under which consent is given."

The decision was that the tax lien of the United States was not extinguished by the mortgage sale even

though such tax lien was inferior to appellant's (Metropolitan) mortgage." The rule was restated as follows in 1954 in Miner's Bank vs. United States, 110 Fed. Supp. 563:

"Where a validly recorded prior mortgage, followed by a validly recorded tax lien, is foreclosed in state court without making the givernment a party, the tax lien is not thereby extinguished, the purchaser takes title subject thereto. The tax lien is immune to state action. Once established against the property of a taxpayer, it may only be removed as federal law permits."

Also in 1954, the California Supreme Court refused a hearing in Sohn vs. California Pacific Title Insurance Company, 124 Cal. App. 2d 757, in which the opinion said; at 766:

"A Federal tax lien upon real property is not eliminated by the exercise of a power of sale under a prior deed of trust."

That is not generally encountered in Ohio. We do not have any of such sales, but it is of general interest.

It should be clearly understood at the outset that as against purchasers, pledgees, encumbrancers and judgment creditors Federal tax liens do not obtain any automatic priority or superiority. They originally did; they were secret liens but, as will be pointed out, that has been corrected by Federal statutes.

In other words, even though the deed of trust and the exercise—not the exercise of, but the grant of the power, is prior to the subordinate inferior tax lien of the government; nevertheless, the tax lien still remains upon the property.

Insolvency Priority

There is a U.S. priority but it is in an entirely different statute, 31 U.S.C.A. 191. That deals with priority of payment of U.S. claims in cases of insolvency. It should not be confused with our problem although some of the government attorneys have made certain attempts to apply the rules from it to the area of tax lien priority. The latter is covered by 26 U.S.C.A. 3672. The insolvency priority of **payment** right under Section 191 is not a priority of lien question, although in some Federal cases under it, debts owed the U.S. have been given priority over private liens by decisions that the latter were only "inchoate or general," as contrasted to "specific," liens. Section 191 reads as follows:

"Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed."

The matter of general liens becomes rather involved but so far as federal tax lien is concerned, the effect is this: A state general lien has no priority under either of these federal statutes, either in insolvency or under the tax priority statutes.

The section is, as noted, applicable only to insolvency situations and is therefore not of any effect in the ordinary tax lien problem, not involving insolvency.

Statutes

The tax lien and tax lien priority sections involved are 26 U.S.C.A. Sections 3670 et seq. Section 3670 is to the effect that "if any person liable to pay any tax neglects or refuses to pay the same, the amount shall be a lien in favor of the United States **on all property and rights to property** real or personal." The above underlined words are of considerable importance in consideration of our problems.

Under Section 3672 protection against the tax liens is afforded to "mortgagees, pledgees, purchasers

and judgment creditors," unless the lien is filed in the state recording office, in states which provide by law for filing Federal tax liens. The California statute providing for such filing is found in the present Government Code, Sections 27330-1.

Both sections, the 31 U.S.C.A. 191 insolvency-priority of payment Section, and the 26 U.S.C.A. 3672 tax lien and filing section, were discussed in United States vs. Scovil, 75 S. Ct. 244, decided by the United States Supreme Court January 10, 1955. The Supreme Court of South Carolina had given priority to a landlord's distress for rent over U.S. Tax claims in an insolvency receivership of the tax debtor-tenant. The U.S. Supreme Court reversed saying it was unnecessary to decide the question under Section 191, since under Section 3672 the government, by proper filing, had a prior **tax lien.**

The court held that the landlord's rights were something less than a judgment lien under Section 3672. The South Carolina "distress" appears to be of the nature of our attachment. The South Carolina law apparently classes it as a "perfected" lien, but the U. S. Court said, "the distress lien was not perfected in the Federal sense at the time the government's liens were filed. **Such perfection is, of course, a matter of federal law."** (Emphasis added.) The Supreme Court (U.S.) further overruled the state trial court ruling that the distressing landlord was a "purchaser" under Section 3672.

Two other U.S. Supreme Court decisions announced the same day (January 10, 1955) may be read with interest. See U.S. vs. Liverpool etc., 75 S. Ct. 247 and U.S. vs. Acri, et al., 75 S. Ct. 239, hereinafter referred to. Whether these late cases indicate a trend by the Supreme Court to draw together the effects of the Section 191 and the Section 3672 statutes, at least in the realm of judgment liens (inchoate and general as against specific) remains to be seen. It would not seem that any such result could occur in the area of purchaser or encumbrancer (mortgagee) lien priority rights.

From the title standpoint there are two basic problems, how, when and against what Federal taxes become liens, and, secondly, how do we get rid of them. On the first point, a brief examination of the history of Federal tax liens may be informative and helpful.

Historical

The predecessor of the above referred to insolvency-priority of payment Section 191 came into being in 1799. The first Federal statute creating a lien on property (now 26 U.S.C.A. 3670, et seq.) was a combination of 13 Stat. 470-1 in 1865, and 14 Stat. 107 in 1866. That act made Federal tax liens a lien from the date the tax was due and payable. The law was amended in 1879 by 20 Stat. 331, under which the lien date became the date the Collector received the assessment list from the Commissioner.

As first stated above, the rights and privileges of these tax liens differ considerably from private creditor rights. The chief differences may be summarized as follows. The Federal lien under the above original forms of the statute reached real property without any public record, even as against parties dealing in good faith with the record. The liens reached personal property before reduction to possession, whereas private rights as to personal property, such as by execution or attachment, require taking physical possession. The third variance is that the Federal government rights under these liens are not bound by State immunities and exemptions as the private creditor is.

The effect of the Federal liens as secret liens was definitely established by the United States Supreme Court in 1893 in United States vs. Snyder, 149 U.S. 210. Under that decision Federal tax liens, without being made matters of record in any public office, were given effect even as against bona fide purchasers for value and without notice of lien.

This resulted in 1913 in the amendment of the law by 37 Stat. 1016, which created the present form of protection to "mortgagees, purchasers and judgment creditors" by re-

quiring filing of the lien in the United States District Court Clerk's office to be valid against the three named interests. It was further provided that if in any State or territory the local laws made provision for recording federal liens on an equal basis with state or private liens, the Federal claims would be effective against such purchasers and encumbrances only if so filed in the State recording office.

The next major amendment came in 1939 by 53 Stat. 882-3. That amendment added "pledgees" and affected only personal property rights, the above 1913 amendment having covered the real estate interests. The 1939 amendment was brought about by Federal Court decisions that the tax lien was enforceable against securities even though sold or pledged to a good faith taker. The amendment gave protection to pledgees of personal property, and also exempted "securities," as defined in the Act, in the hands of bona fide purchasers.

Removal of Liens

Before turning to any consideration of special situations, the possible methods of clearing or divesting Federal tax liens once accrued is important. Admitting that we have a validly filed Federal lien, subordinate and inferior in point of time to a specific right or lien such as a mortgage or deed of trust or judgment, the sovereign United States has given certain consent to procedures which can affect or divest its lien.

By Suit

Under 28 U.S.C.A. Section 2410, the United States has consented to be sued as a defendant in State or Federal court in any action "to quiet title to or for the foreclosure of a mortgage or other lien upon real or personal property on which the United States has or claims a mortgage or other lien."

Several things should be noted in connection with that section. The United States has consented to being sued in a **State** as well as a Federal court. The action can be brought only in cases where the Federal government has or claims "a mortgage or other lien." The statute does not consent, for example, to a quiet title where no government lien exists or is claimed. It should be particularly noted that the section consents only to a judicial proceeding and not to a trustee's sale or any other sale, nonjudicial in character, under a power of sale. The statute is definite in this regard and the Metropolitan and Miner's Bank cases above have so construed the section.

Procedure

Under the section there are special provisions as to service on the United States, special provision as to time to answer, and a special period of redemption given to the Federal government.

You will note that the section permits quiet title. That provision was added only in 1942. Before that date if a private lien had been foreclosed in such manner as to not divest the Federal lien the only relief available was a later sale in which the private right would be given priority, if entitled thereto, and paid first out of the proceeds. Before the amendment a few lower Federal court decisions permitted what amounted to an equitable quiet title against the government on the grounds of a showing that there was no equity which could be developed for the government on a sale. The decisions were clearly erroneous under the then form of the act, they were much criticized, and numerous other Federal cases denied the right. The 1942 amendment permitting quiet title resulted.

It is possible to get a waiver of that one-year right of redemption by the United States, which is often done.

Payment

Another method of getting rid of Federal liens is by payment. This method would, of course, be very unpopular, particularly if it has to be used by a title company which had missed one of these liens or insured a title where such liens have not been cut off by trustee's sale. For an excellent discussion of the pay-

ment method of removing Federal liens I would refer you to the discussion of that subject by Bruce Jones of Los Angeles, beginning on page 41 of the report of the Proceedings of the 1954 CLTA Convention.

The 1954 Revenue Act has added a third method of release Before that the District Director could give a release if he found that security remained subject to the lien of double the value of the government's claim, or if payment was made to the United States amounting to the value of its equity or interest in the property. The third method, added by the 1954 Act, is that the Director can now give a free release upon determination that no equity value exists for the United States claim.

Other Federal Liens

This discussion was originally planned on the subject of Federal tax liens exclusively. Certain other subjects are so closely related that it would appear expedient to mention them at this time. They particularly concern Federal claims other than tax liens, as well as all such claims in favor of the so-called United States "instrumentalities or agencies," in addition to the United States government directly. Without going into too much detail, the following general observations are made.

Mr. MasEllven has reference here to the proceedings of the California State Title Convention where this paper was originally delivered.

The subject of general liens of all kinds in favor of the United States, or its instrumentalities or agencies. came before the CLTA Uniform Practices Committee in recent months. It appeared to be that although the practice of all member companies was quite similar as to Federal tax liens, some of the companies had applied different rules to Federal judgments and mortgages, or to such claims of Federal agencies. The matter is still under consideration by Uniform Practices, although an immediate recommendation was made that member companies apply the same rules to all rights or claims of any nature vesting in the Federal government or any of its instrumentalities and not consider a foreclosure of a trust deed by trustee's sale as cutting off **any** claims of the United States or its instrumentalities or agencies even though inferior to the trust deed. If any reversal of this position takes place, such action of the Committee will, of course, be brought to the attention of all member companies.

Briefly, the recommendation is based on what clearly appears to be sound analysis, to the general effect that the rights and immunities of a sovereign exist in favor of itself **or** any of its agencies or instrumentalities, and further that there is no logical basis upon which to distinguish a sovereign's rights in a mortgage or judgment lien from its rights in a tax lien. In this connection it has been above noted that Federal rights can be divested only by Federal consent. It should be noted from the above Section 2410 that consent has been given to **judicial** action against the government as a defendant in a case in which the United States "has or claims a mortgage or other lien." This would seem to be a direct statement that that is the **only** action consented to, and that consequently a trustee's power of sale cannot reaeh any United States "mortgage or other liens."

It has recently been suggested that there is justification for permitting a trustee's sale to take out Federal liens other than tax liens, or even to permit the sale to take out tax liens. The authorities cited for this position are the above Miner's Bank case, 110 Fed. Supp. 563 in 1954, and the case of Bank of America vs. United States, 84 Fed. Supp. 387 in 1949. An analysis of those cases simply shows that as to tax liens which have not been divested in a manner consented to by the United States a quiet title can be maintained successfully against the government upon a showing by appraisers etc. that no equity in fact exists for the government lien to attach to. It would seem that the mere possibility that such an action could be successfully maintained against the government would

not be a sound justification for ignoring or passing Federal liens of any kind not properly divested of record. Such suits might or might not be successful, and even if successful, would be expensive. It is obvious, of course, that since the Federal lien continues to exist, unless properly divested, we would be insuring that an actual existing lien does not exist, merely because we might later be successful in quieting title against it if the factual situation permits.

Partnerships

Turning now to a discussion of particular areas in which these questions may be encountered, it appears to be our experience that numerous questions arise as to the effect of Federal tax liens in partnership titles. The basic question is whether a filed Federal tax lien against a partner is a lien against the title vested in the partnership name, and vice versa. For a discussion of this phase of the question I would refer you to my remarks in the report of the 1954 CLTA Convention Proceedings, beginning at page 50.

It was there indicated that there is considerable justification for the theory that the Federal courts will not enforce Federal tax liens other than against the actual tax debtor, and that if the tax debtor is a partnership the lien will not reach the partner's personal assets, or the other way around. In the Convention discussion, attention was directed to Circuit Court of Appeal cases which upheld the validity of State filing statutes which required a description in the tax lien of property sought to be made subject to lien. Under such statutes a tax lien would not be a general lien, as in most cases, including California. There was at least one contrary holding by a Federal Court of Appeals in a different Circuit. The question never reached the United States Supreme Court, but has now been settled by the 1954 Revenue Act. Under Section 6323 (b), as added by the 1954 Act, such notice of lien is valid if in a form "as would be valid if filed with the Clerk of the United States District Court." The section further provides that "such notice shall be valid notwithstanding any law of the state or territory regarding the form or content of a notice of lien."

As pointed out in the Convention Proceedings, it would seem that the Federal Courts recognize the doctrine of filing in public records by name as being the only justifiable method of imposing liens on property. The United States Supreme Court in 1953, in 345 U.S. 361, said that Congress enacted the above discussed Section 3672, affording protection to mortgagees, purchasers and other lienors, to meet the harsh rule as to unfiled secret Federal liens established by the United States vs. Snyder (cited above).

Further justification for the position that the Internal Revenue Department recognizes the doctrine of separate legal entity of a partnership has been afforded by a case just closed in our office. Title to real estate was in a partnership. Federal tax liens in large amounts were filed against one of the individual partners. Partial releases of the real estate were given by the Collector (Director) on payment to him of the net proceeds of the tax debtor partner's share of the sale. There was no intimation that the government would seek to claim a lien on the full partnership title. The amounts involved were large and would have fully justified a test case had the government had any idea that it could make its liens against one of the partners stick against the partnership title.

Be that as it may, I would direct your attention to the concluding paragraph of the discussion of the partnership subject in the 1954 Proceedings to the effect that the question is still undecided directly in the courts, and the problem is, therefore, one for management decision in any particular case.

Chiefly to illustrate the doctrine that Federal law controls the priority of Federal liens, attention is directed to the following rule of law established by Federal decisions.

Attachment

Under California law, if an attachment is recorded against real estate the lien of a judgment thereafter obtained and docketed in the same case dates back to and becomes effective as of the attachment date. In the MacKenzie case, 109 Fed. 2d. 540, it was held that a Federal tax lien intervening between the attachment and the judgment was not cut off. It was held that the judgment did not relate back to the date of the attachment, and that the judgment creditor does not have a judgment lien within the meaning of Section 3672 until the judgment is perfected by obtaining it and recording evidence thereof. In other words, an attachment is not a judgment.

The cases on attachment liens illustrate quite well the manner and theory of federal tax liens and their priority under California law as well as other law. The lien, if any, when the judgment is obtained, dates back to the time of the attachment, the attachment proceedings. In the California case it was held that the judgment lien did date back to the attachment dates.

In the case of Winther vs. Morrison, 93, Cal. App. 2d. 608, it was held that a judgment lien did date back to the attachment date and cut off an interviewing Federal lien. The California Supreme Court refused a hearing, thus affirming the decision. The case went to the United States Supreme Court as United States vs. Security Trust and Savings Bank, 340 U.S. page 47. The Supreme Court said in that case, "An attachment is merely a lis pendens notice that a right to perfect a lien exists . . . nor can the doctrine of relation back operate to destroy the realities of the situation. When the U. S. tax liens were recorded Morrison did not have a judgment lien." On the subject of what law controls as to the effect of an attachment and a judgment, the theory of Federal sovereignty and Federal control of these questions was clearly announced in the case by this statement in the opinion. "While we should accept the law of California as its court has declared it, the Federal question remains whether it is in conflict with 26 U.S. Code 3670-3672."

That rule was reiterated as recently as January of this year when the United States Supreme Court said in the above referred to Acri case, "The relative priority of the lien of the United States for unpaid taxes is always a Federal question to be determined finally by the Federal Courts. The State characterization of its liens, while good for all state purposes, does not necessarily bind this court."

And, therefore, the federal law as to priority is not the same as the state law. Mr. MacEllven devotes a considerable space here to closely connected matters as the disposition of the surplus money in case any is left over after a sale; whether it should be applied to the federal lien or not. These questions are debatable. We can't give you an answer because there isn't any, but his comments and research are worthwhile if you are interested in any of these particular stunts.

Surplus Money

A further problem in connection with trust deed sales can arise if there is surplus money. Assume foreclosure by trustee's power of sale of a first deed of trust. The next lien in point of time is a Federal tax lien, followed by a second deed of trust and a judgment lien. The trustee's sale develops a surplus. Is the United States entitled to participate in the surplus money.

That exact situation appeared in 1954 in Sohn vs. California Pacific Title Insurance Company. 124 Cal. App. 2d. 757. A hearing was denied in the California Supreme Court. The case indicates that the surplus money was payable to the liens following the Federal tax liens, but not to the United States on account of its tax liens. The court said:

"The equitable principle which transfers the creditor's claim from the foreclosed property to the sale proceeds does not apply when the creditor's lien on the property is

unaffected by the sale and in such case the creditor's right to look to the real estate for security continues. The Federal tax lien was not eliminated by the sale pursuant to the exercise of the power of sale under the **prior** deed of trust." (Emphasis added.)

The court cited as part of its authority the above Metropolitan case. It is suggested that management consider carefully before such action be taken and surplus monies paid out without regard to the government rights. The reason for this caution is that the United States was not a party to the suit although, as above pointed out, the final answer to all of these questions lies in the Federal courts and not in the state courts. In addition, it appears that in the Sohn case certain releases had been given by the government which could have been construed to go so far as to constitute a release of the surplus monies. Until the question is squarely decided in the Federal courts it is suggested that any such surplus money question be carefully analyzed before any management decision is made.

Community Property

Another area exists in connection with Federal liens in which we have practically no guiding or authoritative judicial rulings. That is the question of the possible effect or lien of Federal taxes owing by one spouse against property held of record in the name of the other spouse. The CLTA Manual at 21.01a presents the following possible situation:

1946—Husband and wife acquire title as joint tenants or as community property.

1948—One spouse conveys to the other as separate property.

1949—Notice of Federal tax lien against the grantor spouse for the year 1947 is recorded.

1950—Grantee spouse conveys to third party.

The government theory appears to be that as between the spouses the lien attached to the tax debtor's interest when the list was received by the Collector in 1947. The tax lien became a matter of record in 1949, so that the grantee in 1950 may not have the protection of 3672 since the lien was of record when he took his conveyance. The obvious question is whether, as pointed out in the above discussion of partnership matters, the Federal courts will recognize that under the ordinary concept of recording and indexing the Federal lien **was** of record in 1949, but it was not of record against the spouse then in title and technically would not be found under a search made in strict conformity with recording law principles.

The Handbook for Title Men at 21.01 says that a title company will report Federal tax liens not only against the person in title but against the husband or wife of the person in title unless the title is separate property of record of the title holder **prior to the date the Collector received the assessment list.**

For various situations involving who to run for Federal liens, and which ones to show, consideration of the few following possibilities is suggested:

1. Title is in a wife by inheritance.
2. The same, but her husband joined in a deed of trust last year, or joins in a trust deed to file.
3. Title is in a husband and wife in any tenancy, or simply as husband and wife, and one deeds to the other.
4. Title is in one spouse (as in No. 1 above) and a deed is recorded to the other spouse.
5. In either No. 3 or 4 the grantor spouse later joins in a deed of trust
6. Is there any difference if the deeds between spouses above are just deeds or are for value, or pursuant to a valid divorce settlement.

In connection with the effect of joinder by one spouse in a trust deed given on property vested only in the other spouse, the recent Villafuerte case, 125 Cal. App. 2d. 466, indicates the California rule that such joinder in a trust deed by a nonrecord holding spouse gives no interest in the property to such joining spouse. Under the above theories that decision would, of course, not be controll-

ing on the Federal government or in the Federal courts.

This is definitely one of the unexplored areas of Federal tax lien law. The CLTA Manual recommends that a searcher show all possible husband and wife tax liens, with management to determine which to ignore. (We should wish management luck.) Mel Ogden, in his Outline of Titles, said this:

"The only safe rule of title practice is to assume that Federal taxes against either spouse may be a lien against any property owned by either or both spouses, unless an exception can be found under the statute. (3672 of 26 U.S.C.A.)."

Paying Money to Tax Debtor

Another area in which we may be affected by the lien of Federal taxes is not strictly speaking a title question. It can, however, involve a title company. If you pay money to a Federal tax debtor against whom a Federal tax lien has been filed do you become personally liable for making the payment? Does it make any difference whether or not you have actual notice of the filed Federal lien?

This can happen to you as an individual if you pay your own obligation to a tax debtor. You may pay off a trust deed on your home, which is held by a tax debtor with a filed Federal tax lien against him. You may pay your account at the local store and a Federal tax lien is filed against it. As a title company you may pay money out of an escrow to a Federal tax debtor. If you are in any way a trustee under a trust deed or under a conventional trust you may pay money to a tax debtor. The case which happens the most often, of course, is that of a bank paying out money to, or at the order of, a depositor who is a tax debtor with a lien filed against him.

The so-called Western Union case in 1931, 50 Fed. 2d. 102, was first accepted as authority for the proposition that Federal tax liens would not reach intangibles. By numerous later Federal decisions such authority has not only been weakened but completely overthrown. It now appears clear that in the eyes of the Federal courts tax liens reach intangibles, and can be a lien on money, debts or choses in action.

It seems to be clearly accepted, even though not clearly judicially established, that absent an actual levy or distraint there is no personal liability for transferring monies subject to a filed tax lien to a tax debtor. The proposition is so stated in Merten's work, The Law of Federal Income Taxation. There appears to be no clear-cut judicial decision on the point, although there are numerous cases as to such personal liability where the element of levy or distraint was present. There is another line of cases involving interpleader by the one holding and owing the money. There appears to be no clear case as to personal liability not involved in those types of action. That is, possible personal liability arising out of the filed lien solely.

The following appeared in the 1938 Commerce Clearing House Tax Service, paragraph 6249 on page 8143. It will be observed that in the matter referred to the bank had actually been served with a notice of the lien. The following quotation is, according to the Tax Service, from a letter dated October 4, 1935, signed by the then Commissioner of Internal Revenue, in answer to a letter of inquiry. The "General Counsel's Memorandum," therein referred to, was shortly before 1935 and was to the effect that a filed lien was in fact a lien on money and would support distraint.

"Reference is made to your letter of September 9, 1935, in which you state that your client . . . has been served with a notice of lien under Section 3186 of the Revised Statutes against the account of a depositor and you ask to be advised what are the duties of the Trust Company towards the Collector and the United States Government by reason of the service of this notice of tax lien.

In the second paragraph of your letter you observe that in General Counsel's Memorandum 5432 (C.B.

VIII-1, 134) the distinction between a lien and a distraint is emphasized. In the last paragraph of the aforementioned General Counsel's Memorandum it is stated that the process of distraint is often confused with the filing of notice of lien and it is stated that the notice of distraint "is one of the processes by which an existing lien for taxes may be enforced." Your statement that a transferee of property belonging to a delinquent taxpayer against whom a lien had been filed would ordinarily take such property subject to the lien coincides with the view of this office. The administrative practice and procedure of furnishing notices of tax liens to banks, trust companies, and other holders of assets or credits of delinquent taxpayers is followed merely to assure the receipt of the information by the holders of such assets or credits of the existence of a claim of the United States upon the property and rights to property of the delinquent taxpayers.

As will be observed from the above, the furnishing of notice of tax lien is solely for the information of the person receiving the same **and it is only after a collector has levied upon a bank deposit that there exists a duty upon the bank to withhold funds from a depositor."** (Emphasis added.)

Although published in 1938, that letter appears to still be cited as about the only authority for the absence of such personal liability. It is further stated in some of the text books that such absence of personal liability "must be the law" or banks would have to go out of business or become personally liable for the tax debts of all of their depositors. That is obviously not a legalistic authority, but would appear to be a good common sense deduction as to what the law must be.

It is to be noted in this connection that under Section 3672, the present form of which is found as Section 6323 of the 1954 Internal Revenue Code, that there is an exception from the lien as to securities, and that under the definition of securities we find "money."

Assignment of Trust Deed

The same exception and definition of the word security leads us into our next practical situation. The security definition includes "negotiable instrument." The note secured by a deed of trust is a negotiable instrument. If you are asked to insure an assignment of a deed of trust and you find a filed Federal tax lien against the assigning beneficiary, is the assignment subject to the lien.

It appears that the practice of title companies differs in this regard. There appears to be no controlling authority on the point. It is suggested that the answer might be different if at the time of the insured assignment the negotiable note had ceased to be negotiable for some reason under the Negotiable Instrument Law.

Mechanics' Liens

Another area in which title work may be affected by these liens is that of mechanics' lien claims. Such rights would clearly appear to be intangibles. In the light of the above pointed out attitude of the Federal courts that the tax liens reach intangibles, it should not be startling to find the liens being made effective against mechanics' lien claimants' rights. In this connection it is recommended that thought be given to a recent California District Court of Appeals case (See Highsmith vs. Lair, 127 A.C.A. 565). The case cites Citizens Bank of Barstow vs. United States, 114 Fed. 2d. 380, which said in effect that, "A claim for work, labor and materials furnished is evidence of a debt and a chose in action . . . is property or rights to property although intangible in character."

State Exemptions

It appears clear that state exemptions do not apply to Federal liens. In this connection see United States vs. City of Greenville, 118 Fed. 2d. 963. Also 132 Fed. 2d. 345 and 158 Fed. 2d. 657. This rule reaches all forms of state exemption such as homesteads and spendthrift trusts.

However, although there is some apparent conflict in the cases, there is authority that if the case involves a state rule of property or estate in property, instead of a state exemption of property from execution, the Federal Courts will honor the state law as to the nature of a property right. The Oklahoma homestead was held to be an estate in property, not an exemption, in 64 Fed. Supp. 389, and one spouse allowed to enjoin a Federal tax lien sale under a lien filed against the other spouse. In 86 Fed. Supp. 522, the same rule was followed as to a Texas homestead. (See the above case in 132 Fed. 2d. 345, also involving a Texas homestead.)

In 188 Fed. 2d. 326, holding the common law tenancy by the entirety, as adopted by a state statute, to be a rule of property and not an exemption, the doctrine that Federal courts will honor state rules of property is clearly expressed.

Unfortunately the extent of the impact of Federal tax liens on the California comunity property "rights" or "interests" has not been clearly defined by Federal decisions and must thus remain as one of the as yet unexplored areas of Federal tax lien law.

Although in the title industry we are concerned with the record title except in certain phases of A.T.A. liability as to off "record risks," it is to be noticed that the cases on Federal tax lien priority have gotten into matters of priority of the lien over unrecorded mortgages or other private liens and questions of whether under state law mortgages, (a) must be recorded to be valid, (b) "may" be recorded, (c) cannot be recorded (personal property).

Bona Fides

Cases under Section 3672 have arisen as to priority if a mortgagee has actual notice of a Federal lien which exists by return of the assessment to the Collector and takes his mortgage before the tax lien is recorded in the state recording office. As title people this should be of no particular interest if the tax lien is not of record when we insure the lender. His "off record" knowledge of the lien would be his burden under the policy form.

Although some of the Federal cases have favored a lender, with actual notice, over the tax lien, other cases have held that under Section 3672 a "purchaser" must be bona fide and without actual notice to prevail. Since this again involves liens not appearing in state records, we of the title industry are not concerned.

In these latter connections Federal cases have been noted that Section 3672 does not specifically require that the interest of the mortgagee or purchaser appear of record nor does it specifically require a bona fide and for value status, (except with reference to the Section 3672 exception in favor of a mortgagee, pledgee or purchaser of "securities," as defined in the section. Such exception operates only if "such mortgagee, pledgee or purchaser is without notice or knowledge of the existence of such lien.")

Additional Advances

An area in which we can be affected is that of insuring additional advances. Until it has been clearly held in the Federal courts that obligatory additional advances will take priority over intervening Federal tax liens, we would be well advised to not assume that risk. Optional advances should, of course, be governed by our usual rules and not insured as being prior to intervening Federal liens.

Mechanics' Liens

There is conflict in the cases on priority between a mechanics' lien claim and a Federal tax lien against the owner of property subject to the lien of the mechanic. We would normally meet that question only in a judicial foreclosure of the mechanics' lien. The United States would be a necessary defendant and the judgment would speak for itself. Such a case, if appealed, might well establish the law as to the California type of lien. In cases involving such liens in other states the nature and date of attaching of the mechanics' lien in the particular state have been issues.

1954 Revenue Code

The 1954 Internal Revenue Code must be considered in several of these connections. As originally drawn, it contained certain new material codifying some of the judicial rulings, overthrowing others and in some cases resolving, judicial conflict. Some appear in the law as finally enacted, some failed of final enactment. Of the latter, some have become Federal Regulations (See the Federal Register for December 11, 1954).

One definite change appears in the new law which can have considerable impact in some phases of title work, especially the above question of the effect of a tax lien against one spouse on property held in the name of the other spouse. Under Section 6322 of the 1954 Revenue Code (Section 3671 of 26 U.S.C.A.) the tax lien first arises **"at the time the assessment is made,"** instead of as before, "at the time the assessment list was received by the Collector."

A further 1954 change, of no consequence in California, is found in the new Section 6323 (b) providing the notice of tax lien filed in state offices of record will be valid if in the same form as would constitute valid filing with the Clerk of the Federal District Court, "notwithstanding any law of the State or Territory regarding the form or content of a notice of lien." This will prevent a state statute, such as the Michigan Act upheld in cases above referred to, from requiring that a Federal tax lien contain a description of property to be affected by the lien.

The rule of the above discussed cases dealing with a judgment as being inchoate or unperfected, and the situation of an attachment—tax lien—judgment sequence would have been codified in the original form of the new Code if enacted as first drawn. It does not appear in the act as it became law but the new Regulations (301.6323-1, Federal Register, December 11, 1954, page 8465) provide that judgment creditor means one with a perfected, not an inchoate, judgment lien and further that an attachment is not a judgment.

The original form of the 1954 Act would have provided that the tax lien would be valid, without filing, as against a mortgagee, pledgee, purchaser or judgment creditor with actual notice or knowledge of the lien. The lien would also have reached a tenancy by the entirety interest of the tax debtor by including that interest in "property or rights to property." No reference was made to community rights. Neither provision appears in the enacted form of the Code.

In conclusion it is again suggested that in any consideration of Federal tax lien questions the important words 'sovereignty' and 'consent' be accorded their due weight, and that it also be kept in mind that we must take our rules of law from the Federal Court decisions.

One matter which Mr. MacEllven doesn't make mention is the lien on after acquired property. The reason he doesn't is that it is taken for granted in most states. In Ohio and some other states the general rule is that liens do not apply to property after acquired by the debtor. But this matter of federal tax lien is an exception to that rule and federal tax liens to apply to after acquired property are very important in the examination.

In referring to these statutes, it is somewhat confusing to those who don't have frequent recourse to them. The change in the numbering, the section numbers which I have mentioned, Internal Revenue Code, refer to the Act of 1939. The Act of 1954 completely renumbered all those sections and under the present law that section number is 6323, and parallel tables which go with those statutes should be consulted in those cases.

One change which was made in the recodification, was that under the old law the tax became a lien and arose at the time the assessment list was received by the collector. Under the new law it first arises at the time the assessment is made.

A further change in the 1954 law, which is not important in Ohio, but it

is in some states, is the matter of conformity statute. There are two kinds of conformity statutes. One of them simply provides for protection against federal tax liens in states where provision was made for recording them in the state recording office. There wasn't much problem of priority or of conformity then, but now the 1954 Act has added this: That they will be valid if in the same form as would constitute valid filing with the Clerk of the Federal District Court, "notwithstanding any law of the State or Territory regarding the form or content of a notice of lien." This is of consequence now in those states like Michigan which require the notice of lien to describe the property affected. Therefore, in those states where the state law does not provide for the recording of the federal tax lien notice; without the description of the property, then you do not have conformity. You will have to go outside of the county to see about federal tax lien.

The more important matter of conformity which we usually think of when we speak of conformity statutes and ordinarily refer to, is the matter of lien judgments of federal courts. That is a matter which I would be glad to have anybody comment on here. The basic thought principle is that if the state statutes do not conform with the requirement of the federal statutes, then you do not have perfection from your county records.

One of the most used texts on real property lists Ohio as one of the states which has an uncertainty in that respect. I hate to disagree with that eminent authority. As far as I know, there is no disagreement among Ohio title men but what we have a good conformity statute. The difficulty arises when any additional requirement is made as to federal judgments. I am digressing a bit but I believe this is interesting to some of you. There, for example, in Ohio which we believe has a good law, recording is not necessary in the county of rendition. It can be required in the county of rendition if it is not in the court office. If it is in a separate recording office, but if it is in the county court office it requires a recording, then it is an uncertainty and dangerous to rely upon.

By the way, the amendment of the Ohio statute in regard to federal tax liens is not anything you need to be concerned about. It simply provided administrative procedure: procedure referring to the filing by mail and making of a duplicate copy of the notice, and so on, so you won't need to study that particular act.

GOOD PUBLIC RELATIONS

CARROLL R. WEST

Vice President Title Insurance and Trust Company, Los Angeles, California

The subject that has been assigned to me is Good Public Relations and I have been allotted twenty minutes to cover the subject. In contemplating the task to be accomplished in so short a time, I feel like the small boy who returned from Sunday School and promptly fell into a molasses barrel. Remembering his Sunday School training, he immediately offered up a little prayer "Lord, please make my tongue equal to the occasion".

Obviously, it is not possible to cover this subject in twenty minutes —or an hour and twenty minutes for that matter. But I will try to remember that someone has said "A speaker who does not strike oil in twenty minutes should stop boring". Therefore, you can be assured that I will stop "boring" at the end of the twenty minutes that has been allotted to me.

Since we only have time to cover the high spots of public relations, it seemed to me that the best method to approach the subject might be to imagine a mythical company and a

mythical man. I am going to suggest that each one of you imagine that you are the head of a company that has never assigned the responsibility of public relations to an individual within your organization. You have heard a lot of talk about this thing called "public relations" and you decide that your company ought to have some of it. You decide that you are going to select someone and make him responsible for the public relations of your company. You remember the words of Theodore Roosevelt who said "The best executive is one who has sense enough to pick good men to do the work he wants done, and self-restraint enough to keep from meddling with them while they do it".

Now let's look for the man. Let us call him "Genial Joe". Now I don't want to give you the wrong idea about Genial Joe. He is not the boisterous, backslapping type as his name might imply. We call him Genial Joe because he is genuinely fond of people and, above all, he knows how to get along with people.

Of course, there might have been a time when you would have selected a backslapper, or, perhaps someone like the fellow who kept this motto on his desk and practiced what it preached:

I hate to be a squawker,
I always long for peace,
But the wheel that does the squeeking
Is the wheel that gets the grease.

But not this time. You do not want someone who believes he gets most because he shouts loudest. You want someone who has the temperament that was advised by Lord Brabazon in the Irish Digest. He wrote "Always behave like a duck—keep calm and unruffled on the surface, but paddle like the devil underneath". So, having decided upon the temperament of the individual that you want to head your public relations, you start looking around. It may be that Genial Joe is in your own organization. If so you will want to make sure that he has had the formal training for public relations, or that he is the kind of a man who is deeply interested in public relations, — who has studied and who continues to study the subjects that are so important to the job. Subjects such as humanities, psychology, modern management methods, economics, journalism, advertising, industrial relations, political science, the social sciences and the nature and dynamics of public opinion.

For the purpose of this discussion, however, let us assume that you do not have such a man and you start looking around outside your organization. Finally you find Genial Joe and you offer him the position as head of your public relations department or division.

Now if Joe is the kind of fellow that I believe him to be, he is going to ask a number of questions and he is going to be pretty sure of the answers before he accepts the position. He is going to listen to you, but he is also going to make various inquiries in other places. I believe that the first question he will have to determine to his satisfaction is:

IS IT A GOOD COMPANY? That is a broad question but an important one to Joe. He will want to know if the people in your community believe it to be a "good company". He will want to know if your company is ethical, if it gives good service, if its employees are happy and contented and if the management of the company has a sincere feeling of responsibility to the public that it serves. Of course, it's possible that Joe might accept the challenge even though the reputation of this mythical company is unsavory—he might feel that he could help do something about it. However, in today's tight labor market, I suspect that Joe would not attempt the almost impossible. He will want a satisfactory answer to the question "Is it a good company?" If the answer is satisfactory, he will then be concerned about this question:

DOES THE MANAGEMENT OF THE COMPANY SINCERELY BELIEVE IN PUBLIC RELATIONS? Joe knows that just to want public relations is not enough. He believes as does the head of one of our major railroads who said "Public relations

is a part of the job of everybody in the company from the president to the office boy". Joe knows that if you, as head of your company, really believe in public relations, your attitude will be reflected throughout the entire organization. Joe will want to make sure that you realize that private business interest must be in the public interest if it is to survive; that the public interest is a changing concept and that business must change with it; that the key position which business occupies in the American system cannot be taken for granted but must be sold to the public; and that modern public relations techniques can help business to do this.

I believe that Joe will have one final question that must be resolved before he accepts the responsibility of heading the public relations department or division of your company. By this time you are probably saying "Who is interviewing whom"? But don't forget, you selected Genial Joe because he is qualified and, above all, sincere and honest. Because he is honest, he will not attempt the job unless he feels that there is an opportunity to do a good job.

Now, let us look at the third question that he will ask:

WILL I BE A PART OF TOP MANAGEMENT—WILL I SIT IN ON POLICY MAKING DECISIONS —WILL I BE FULLY INFORMED AS TO WHAT IS GOING ON? Joe knows that unless he is a part of the management group,—unless he participates in major decisions, there is little likelihood of his being able to do the job that you want done.

Someone has said that "The business-man is always in a sweat. He never knows whether the period just ahead is to be a new era or a new error". That may be true to some extent but despite the uncertainty, I am sure that all of us want to make as few errors as possible. If Joe sits in on your management group, it is quite likely that he will be able to anticipate and prevent public relations errors. He can help to put out public relations fires before they start.

And don't forget, Joe has a pretty well-rounded background — business management, economics, industrial relations, and many other types of knowledge—it is not limited to just the use of technical skills such as journalism and advertising. He can be a valuable asset in other management decisions.

Because public relations cuts across every segment of your company's operations, it is also imperative that Joe know what is going on. Only by such knowledge will he be able to take advantage of all of the public relations opportunities within your company. Let me speak frankly, — modern management has come to realize that the person responsible for public relations must be a part of top management. I do not mean just placing him in that group on the organization chart, then forgetting his place until a company gets into public relations trouble.

Now let us assume that Joe has satisfied himself that you have a good company, that the management of the company really believes in public relations, and that he will be a part of management and will participate in policy making decisions. You hire him and you place him in charge of public relations. If Joe is the kind of a man I think he is, he is going to determine the answers to a number of questions relating to the job. He will want to know:

IS THERE AN OVER-ALL PLAN — OR POLICY TO GUIDE PUBLIC RELATIONS ACTIVITIES OF THE COMPANY? It should be remembered that policies are the rules of conduct for the operation of a business. They are important not only to management but to all employees and to the general public as well. Therefore, Joe will want to know if there is a public relations policy. If not, he will draw up a policy for your approval—a policy that covers all of the areas and activities of public relations within and without the company, and that specifically assigns responsibilities for those functions. In other words, it will be a working plan, approved by management, for the conduct of the public relations activities of your company.

IS THERE A PROGRAM OR PLAN FOR INTERNAL COMMUNICATIONS? This question will be high on the list of those in Joe's mind. He knows that "Public relations like charity begins at home". He knows that if employees are well-informed they are usually good employees and since "Public relations is the job of everyone from the president to the office boy", employees are a great public relations potential.

Most of us remember that there was a time when management had the attitude that "What they don't know won't hurt them". I think all of us would agree that Humpty Dumpty was a fence-straddling egghead. That probably explained his attitude when he said to Alice "It simply depends on who is master, we or they". But all of us know that the day has long since passed when there are masters and slaves. Today, everyone in a successful company is a part of a team, working together as a team. Successful management today, instead of representing the selfishness of a single group, maintains a proper balance of equity between stockholders, employees, customers and the public interest.

So if there is not a plan for internal communications, Joe is going to suggest that one be developed. It may be the conference or staff meeting method, it may be letters and bulletins, it may be an employee publication, or a combination of all. It depends on the size of the organization and the facilities available. Whatever plan is used, it will be comprehensive.

DOES THE COMPANY COOPERATE IN COMMUNITY PROGRAMS? Obviously the answer to this question is yes, otherwise Joe's first question "Is it a good company" would not have been in the affirmative. However, it is possible that our mythical company, like many companies, participates only when it is called upon by a committee from some community betterment organization. It is possible that our company does not take the lead in helping to organize programs that will help to build a better community in which to live. If this is true, it is quite likely that Joe will suggest that the company plan a comprehensive program for participation in community affairs — designating those individuals that will represent the company in each community activity. By so doing the company will not only be carrying its share of community responsibility but the end result will be a good public relations.

DOES IT CONTRIBUTE TO WORTHY CHARITIES ON AN EQUITABLE BASIS? Here again, I am sure the answer is "yes". But is there an over-all plan for such contributions, or does the company merely wait until the committee calls and give the most to the charity that exerts the most pressure?

As the head of your public relations activities, Joe has probably spent considerable time studying the merits and the activities of all charitable organizations. It is a part of his job. He can help you outline your contributions program for the entire year—a program that will be equitable and that will not exceed the limitations of your contributions budget. It will be a service to mankind and it will be good public relations.

DOES THE COMPANY ENCOURAGE ITS EMPLOYEES TO PARTICIPATE IN COMMUNITY SERVICE ORGANIZATIONS? All too frequently, companies depend entirely upon a few members of the management group to participate in community service organizations. It appears that they either feel that employees further down the line cannot be spared or that they are not interested. I am convinced that companies with that attitude are overlooking a tremendous opportunity—an opportunity to develop better citizens, to develop the leadership capabilities of employees and, last but not least, to develop good public relations representatives.

DOES THE COMPANY USE EVERY AVAILABLE MEANS OF COMMUNICATION TO SEE THAT ITS VIRTUES ARE RECOGNIZED? The vice president in charge of public relations for one of the major automobile manufacturers has said "Good public relations is the combin-

ation of two important ingredients—good deeds and effective communication". The public relations head of another national manufacturer has said "It is not enough to do a good job—you must let the public know about it."

Effective communications means more than just publicity and advertising. Joe will, of course, make it a point to see that every available news item about your company and its people is regularly disseminated to press and radio. He will talk to you about the advertising budget and even though it may be limited, he will see that you get the most out of your advertising dollars.

But Joe is going beyond that—he is going to suggest the use of other means of communication. Probably one of the first will be a Speakers' Bureau. He will develop a series of subjects and ask you and other members of your firm to be prepared to speak before trade, professional, civic and service club groups. It is well known that the program chairman of any organization has a tough assignment. He is always looking for good speakers. Therefore, Joe will contact the program chairmen of the many organizations in your community and let them know that speakers are available. The opportunities are unlimited.

Up in the Acadian section of Nova Scotia, more commonly known as the Evangeline country, an iron chest was unearthed just a few years ago. It contained the records of what is probably the first "meeting and eating", or opinion forming group that was organized on this continent. It was known as the ORDER OF THE GOOD TIME and it was organized in 1606. The group was composed of ship builders, merchants, tradesmen and professional men who met regularly to discuss current events and enjoy good fellowship together.

Incidentally, Nova Scotia has made good public relations use of the records of the ORDER OF THE GOOD TIME. A visitor to Nova Scotia, who spends a period of two weeks in the province, is made an honorary member and presented a membership certificate. Some years ago I spent a delightful vacation traveling throughout the Province of Nova Scotia and I am now a member in good standing of the ORDER OF THE GOOD TIME, or as the Acadia French call it L'ORDRE DE BON-TEMPS. My certificate carries the picture of the first grand master Samuel de Champlain and the date is 1606.

The point I'm making is that since 1606, thousands of organizations have been formed. There is no accurate count but it is estimated that there may well be as many as three hundred thousand or more individual organizations, all of which are opinion forming groups. Your community undoubtedly has scores of such opinion forming groups. Telling your story to them will be good public relations.

As other means of communications, Joe will discuss plant tours (where groups are invited to visit your title plant), customer contacts, direct mailing, news releases, advertising, window exhibits and so on. He will suggest regular participation in trade and professional associations related to your own industry such as financial, real estate, law, builders and so on. He will remember at all times that the objective of public relations is simply to win friends for one's company. And now for the last question, but by no means the least important:

DOES THE COMPANY ATTEMPT TO BUILD PRESTIGE FOR THE INDUSTRY IT REPRESENTS? It is an old adage that "We sink or swim together" but I prefer the positive approach "In unity there's strength". By unselfishly promoting the aims and objectives of our state title associations and our American Title Association we will be helping not just one company, but we will be helping our entire industry. I suspect that some of our public relations difficulties in some quarters may well be because all of us have not worked together as a team to promote the good name of the title business as a whole. Let me illustrate what I mean by "good name".

In the City of Bagdad lived Hakeem, the wise one. A great many

people went to him for counsel which he gave freely to all, asking nothing in return. There came to him a young man who had spent much but received little, and he said: "Tell me, wise one, what shall I do to receive the most for that which I spend?"

Hakeem answered by saying, "A thing that is bought or sold has no value unless it contains that which cannot be bought or sold. Look for the priceless ingredient".

"But what is that priceless ingredient?" asked the young man.

Spoke the wise one: "My son, the priceless ingredient of every product in the market place is the honor and integrity of him who makes it. Consider his name before you buy".

I am convinced that, for the most part, our title industry has that "priceless ingredient" — a reputation for honor and integrity. But let us remember, it is not enough to do a good job. We must let the public know about it. First, we must "practice what we preach" then use every available means to let the public know that our industry stands for a high standard of ethics and service to the public. For Genial Joe and you—your company and mine—our entire title industry—it will be good public relations.

REPORT OF GRIEVANCE COMMITTEE

MORTIMER SMITH, *Chairman,*
President, Oakland Title Insurance Company, Oakland, California

In making of this report, your Grievance Committee respectfully requests that certain matters be recalled to your minds by you.

In 1953, a committee was appointed to draft a Code of Ethics for the Association Membership and such a Code of Ethics was adopted in 1953.

In 1954, the Association at its general convention of its Membership amended its constitution to embody in the constitution references to the Code of Ethics, to provide for the appointment of a Grievance Committee and to set forth the duty of the Grievance Committee.

Also, the Membership of the Association at that 1954 convention adopted some resolutions by the terms of which the Association set forth some business practices which should be deemed violations of the Code of Ethics of the Association.

Your Grievance Committee has met here in Cleveland.

Its discussions have had to do with the necessity for bringing about an administration of your Code of Ethics in such a manner as to prohibit particular business practices which after a careful and reasonably complete investigation have been found to be injurious to the public.

As a result of these discussions, your Grievance Committee recommends that this annual convention of the American Title Association authorize the Board of Governors to define and make explicit from time to time those unsound business practices which have been found to be injurious to the public and so constitute a violation of our Code of Ethics; and authorize the imposition for such violations of the following penalties: Fines not to exceed the sum of $1,000.00, or suspension from membership for a period of not longer than eighteen months, or censure or expulsion from membership.

That is a recommendation, Ladies and Gentlemen.

Your Grievance Committee also has a request to make. If any complaint is to be made to that Committee, please make it in writing and accompanied by factual and demonstrable material.

Respectfully submitted
Grievance Committee of
American Title Association
By Mortimer Smith, Chairman

ROLL OF HONOR

Past Presidents of the American Title Association

1.	1907-08	W. W. Skinner	Santa Ana, Calif.
2.	1908-09	A. T. Hastings	Spokane, Wash.
3.	1909-10	W. R. Taylor	Kalamazoo, Mich.
4.	1910-11	Lee C. Gates	Los Angeles, Calif.
5.	1911-12	George Vaughan	Fayetteville, Ark.
6.	1912-13	John T. Kenney	Elkhorn, Wis.
7.	1913-14	M. P. Bouslog	Jerseyville, Ill.
8.	1914-15	H. L. Burgoyne	Cincinnati, Ohio
9.	1915-16	L. S. Booth	Seattle, Wash.
10.	1916-17	R. W. Boddinghouse	Chicago, Ill.
11.	1917-18	T. M. Scott	Paris, Texas
12.	1918-19	James W. Mason	Atlanta, Ga.
13.	1919-20	E. J. Carroll	Davenport, Ia.
14.	1920-21	Worrall Wilson	Seattle, Wash.
15.	1921-22	Will H. Pryor	Duluth, Minn.
16.	1922-23	Mark B. Brewer	Oklahoma City, Okla.
17.	1923-24	George E. Wedthoff	Bay City, Mich.
18.	1924-25	Frederick P. Condit	New York, N.Y.
19.	1925-26	Henry J. Fehrman	New York, N.Y.
20.	1926-27	J. W. Woodford	Seattle, Wash.
21.	1927-28	Walter M. Daly	Portland, Ore.
22.	1928-29	Edward C. Wyckoff	Newark, N.J.
23.	1929-30	Donzel Stoney	San Francisco, Calif.
24.	1930-31	Edwin H. Lindow	Detroit, Mich.
25.	1931-32	James S. Johns	Pendleton, Ore.
26.	1932-33	Stuart O'Melveny	Los Angeles, Calif.
27.	1933-34	Arthur C. Marriott	Chicago, Ill.
28.	1934-35	Benjamin J. Henley	San Francisco, Calif.
29.	1935-36	Henry R. Robins	Philadelphia, Pa.
30.	1936-37	McCune Gill	St. Louis, Mo.
31.	1937-38	William Gill	Oklahoma City, Okla.
32.	1938-39	Porter Bruck	Los Angeles, Calif.
33.	1939-40	Jack Rattikin	Fort Worth, Texas
34.	1940-41	Charlton L. Hall	Seattle, Wash.
35.	1941-42	Charles H. Buck	Baltimore, Maryland
36.	1942-43	E. B. Southworth	Crown Point, Ind.
37.	1943-44	Thos. G. Morton	San Francisco, Calif.
38.	1944-45	H. Laurie Smith	Richmond, Va.
39.	1945-46	A. W. Suelzer	Fort Wayne, Ind.
40.	1946-47	J. J. O'Dowd	Tucson, Ariz.
41.	1947-48	Kenneth E. Rice	Chicago. Ill.
42.	1948-49	Frank I. Kennedy	Detroit, Mich.
43.	1949-50	Earl C. Glasson	Waterloo, Iowa
44.	1950-51	Mortimer Smith	Oakland, Calif.
45.	1951-52	Joseph T. Meredith	Muncie, Ind.
46.	1952-53	Edward T. Dwyer	Portland, Oregon
47.	1953-54	George E. Harbert	Rock Island, Illinois
48.	1954-55	Lawrence R. Zerfing	Philadelphia, Pa.