OFFICIAL PUBLICATION

AMERICAN TITLE ASSOCIATION

TITLE NEWS

VOLUME XXXVI MAY, 1957 NUMBER 5

TITLE NEWS

Official Publication of

THE AMERICAN TITLE ASSOCIATION

3608 Guardian Building—Detroit 26, Michigan

Volue XXXVI May, 1957 Number 5

Table of Contents

UNSUNG HEROES

It is not often an article purely local in nature may be applicable in hundreds of localities across the country. But here is one such. This reprint of a newspaper article might well be entitled "The Fruits of Constant Public Relations." It refers to member companies in Mason City, Iowa. One of these is the firm of Charter Member Hugh Shepard, who celebrates his 60th year in the abstract business this year. Again, many readers can satisfy in the conclusion that it can well be applicable to their own firms.

Our thanks to Mr. Enoch A. Noren of the Mason City Globe-Gazette for permission to present this to our readers.

In a manner of speaking the abstractors are the unsung heroes of the business world.

There is little fanfare connected with their work, without which all transactions involving property would be a scrambled mess.

Theirs is the job of establishing clear titles and noting all possible loans, liens, claims, taxes and other items that might cloud such titles.

This is done by constant watching and filing of the records.

Last year when the city completed a resurfacing program of 39 blocks, for example, it was the abstractors' job to note what amounts were special assessments against the properties on these streets.

The same was true with the pavement program, involving 52,741 square yards, and with other city improvements for which there were special assessments.

This included more than 23,000 feet of sanitary sewer, 946 feet of storm sewer, 210 blocks of oiling on streets. The handling of these items alone is a tremendous job for the abstractor.

★

In 1956 there were 48 local and foreign corporations that filed 1,342 mortgages on city and farm property for a total of $12, 542, 155.66. One insurance company had two loans, one for a million dollars, on the New Mercy Hospital addition and another for $300,000 on the Park Hospital addition.

Other mortgages filed during the year brought the total number to 1,944. In this same period there were filed 2,245 real estate transfers, 8,450 deeds, 7,037 chattel mortgages and releases, 1,551 mortgage releases and assignments and 803 miscellaneous instruments that had to come under the eagle eyed scrutiny of the abstractors in their job of keeping records up to date.

All drainage operations throughout the county and the sanitary sewer at Clear Lake must likewise be scrutinized for special assessments.

The abstractor must likewise keep his eye on the cases filed in the clerk's office, particularly the equity and probate cases.

In 1956 a total of 409 equity cases were filed for a total of 35,557 now on the records. In the same period 236 probate cases were filed for a total of 8,920.

The abstactors thus serve as the watchdogs of our economic system. They give a quasi-public service that touches most of us. They are responsible and liable for errors in a most exacting job. They are bonded and guarantee their work to be correct.

We would say that the three firms doing this job in the county are deserving of a word of commendation for a job well done. They are the Shepard Abstract Co., Cerro Gordo Abstract Co. and Security Abstract Co.

Reprint from Mason City Globe-Gazette of February 11, 1957.

WHO SAYS SO?

Remarks of STEWART J. ROBERTSON, *Vice-President, American-First Title Title and Trust Company, Oklahoma City, Oklahoma*

Frequently received in National Headquarters are requests for suggested speeches before real estate groups, service clubs and other organizations. Here is a talk delivered before the Arkansas Land Title Association last year by Stewart Robertson, an avid advocate of speakers organizations in state associations. He sets forth some demanding reasons why the story of the title business should be told often and enthusiastically. He even gives a general outline that can be used in other areas for this purpose. This is an article worth saving for that next time when title men or women are asked to address a local group. The outline for a title-talk is at the conclusion of this article.

Please don't let the topic of this paper lead you to believe that I have a chip on my shoulder and want someone to knock it off. That, "Who Says So" winds up with a big question mark, not an exclamation point. I certainly wouldn't want to be misunderstood and placed in the same category as the individual of this incident. It was at the funeral of a woman — who was thoroughly disliked in her rural community—and for cause. With a sharp barbed tongue and a violently explosive disposition, she henpecked her husband, drove her children mercilessly and quarreled with her neighbors. Even the animals on the place wore a hunted look.

The day was sultry, and as the minister's voice droned on, the sky grew darker and darker. Just as the service ended, the storm broke furiously. There was blinding flash followed closely by a terrific thunder clap. In the stunned silence a voice was heard from the back row of the room: "Waal, she's got there."

About the only analogy I would like to make is, that we got here and we do appreciate the invitation to share this convention with you. Your Arkansas hospitality and friendliness warms the heart of those "foreigners" who are lucky enough to be invited to attend your convention.

To begin with, I would like to toss out this observation. Whether you want to admit it or not, the abstracting and title business is as much a part of this jet and atomic age as is the Thunderjet and H-Bomb. You can no more leave our profession back in the horse and buggy days than you yourself can go back to them. While I will admit there are times when we all would like to go back to the "good old days" by yanking the telephone cord out of the wall and just "sitting loose," that is just not to be. And, I believe that if we, as title people, can be accused of one cardinal sin, it is that we can't see the woods for the trees. While I believe we will all concede that back in the "horse and buggy days" our work was largely of a clerical nature, yet in the span of time that has brought us to the atomic era, that same passage of time has made of us a professional group! Look at the complexity of your titles; look at the thousands upon thousands of instruments and court cases you must find. Who else can do it but the abstracter? And, look at the innumerable times that you are being called upon for information, counsel and advice by your friends and customers. I don't speak of "counsel and advice" as is offered by those trained in the legal profession. I speak of it more in the terms of talking to a willing buyer or a willing seller, or both, and telling them what steps are necessary to correctly consummate a deal to protect **both** parties concerned.

Obligation

You know who is active in the mortgage market in your county and

where the best loan can be obtained if one is needed; you know what attorneys **you** would use to examine an abstract or prepare legal papers; you know what the practice is regarding proration of taxes, transferring or making arrangements for a new hazard insurance policy; affixing revenue stamps, paying off an existing mortgage. There is nothing simple about a real estate sale. There is nothing simple about processing a mortgage loan — especially to the uneducated. Most of your friends and customers fall into this unenlightened class. And, the amazing thing is that there are hundreds, possibly thousands of people in your county who would like nothing better than to be told about the pitfalls, the safeguards, just the plain old routine of a real estate transaction. **Here is an obligation that is yours.** You can shirk the obligation, that is true. But, in so doing, the greatest injustice will be—not to your neighbors—but to yourself. You want and need every bit of "good will" you can get. Your customers have a right to know and understand what problems confront you. And, if I were called upon to state my case in a "title talk" to the average lay group, it would be along these lines.

I have prepared and would like to distribute to you an outline of what is to follow. While the outline is being distributed, I would like to make another observation. I know of no group, who is better qualified to make an effective, interesting talk than the abstracters. And, I know of no group who needs more badly to discuss the service they render with the public.

Has anyone ever said to you, "I know my title's good. I've got an abstract." Or, "I know the land belongs to me, I've got a deed." Or, "I'm on a deal to buy a piece of property. What do I do now." You can multiply these questions by dozens more that have been shot at you—all of which profess ignorance on the part of the person who makes such statements or asks such questions. He needs to be enlightened. And this type of individual represents 90% of the people. They simply do not understand anything about our business or the service we render. The job of enlightening is yours!

Remember, we are not dealing with a tangible product like groceries or tires or refrigerators. Our product is not one that can be analyzed, tested or compared as to quality. There's no such thing as a Chevrolet abstract and a Cadillac abstract. All we have to sell is service—and the sooner your customers know what you render in terms of service—the sooner they will understand what the title business is all about and will be going along with you.

Now, back to the outline which you now have. It has been the experience of all the Oklahoma Abstracters who have been doing this sort of thing that they prefer to talk from notes—or an outline—rather than from a prepared manuscript. If you care to make additional notes as we go along, fine.

To get any group on your side and going along with you, I would suggest that your opening remarks be of a humorous nature—or that an appropriate story be told. For example, to illustrate what you are NOT going to do, I have heard a story that was related by Kenneth McFarland who is the No. 1 Public Relations man for General Motors.

It was the occasion of McFarland's first speech. He was superintendent of schools in a small Western Kansas town, and a group of ranchers had invited McFarland to address them. After much hesitancy, McFarland finally agreed to speak to them. He spent three or four weeks in preparation—solid preparation. When the morning dawned of the day he was to make his speech, it was evident that a blizzard was coming in from the Northwest. Knowing that if he was to keep his engagement, he would have to get an early start, he did just that and just beat the blizzard to town.

He hung around the cafe, drug store and pool room all day, with the blizzard howling outside. At 6:30 p.m. he went to the school house where the meeting was to be, and there were just two ranchers there. They waited until 7 p.m. and finally one more rancher showed up.

With just three present, McFarland told them, "I don't know what to do. I'm prepared to talk, but with just three of you here, I don't know whether you want to go ahead with the meeting." There was quite a period of silence, then an old fat rancher in the middle spoke up, "Well, son, I don't know nothin' about speeches, I don't know nothin' about speakin,' all I know about's cattle. But, if I went out to feed my cattle and just found three of them there, I'd go ahead and feed 'em."

With that encouragement, McFarland went ahead with his speech—and talked for 2½ hours. When he had finished, there was dead silence—the ranchers kept right on sitting where they were.

It got a bit embarrassing to McFarland, so to break the ice, he inquired, "Well, how did I do?" There was more silence—then finally the old fat rancher in the middle spoke up again, "Well, son, it's just like I told you in the first place, I don't know nothin' about speeches—I don't know nothin' about speaking. And, son, it's just like I told you in the first place, if I went out to feed my cattle and found just three of them there, I'd go ahead and feed 'em. But, I wouldn't give 'em the whole damn load."

Background

Your audience generally likes this kind of assurance that you're **not** going to give them the "whole damn load"—that you have your eye on your watch and under no condition will you keep them overtime. The groups you generally talk to are business men. They have appointments and commitments following your meeting. They respect you for respecting them.

A bit of background into titles is always helpful. It is interesting to a lay group to hear about the first transfer of record—as recorded in the 23rd Chapter of Genesis in the Bible. I am sure you have all heard the story about Abraham seeking a place of burial for Sarah, who had died at the age of 127 years. It was the custom to find a cave suitable for burial purposes, and a man named Ephran had such a cave on his land. Abraham bought the cave "and all the land that was round about and the cave that was therein" from Ephran for 600 sheckles of silver, current money with the merchants. The deal was concluded "in the audience of the sons of Heth." It is amazing how complete that sale was as compared with present day practices. The land was described, there was a named consideration involved and there were witnesses to the transaction. (The full particulars and account of this Biblical transfer have appeared in Title News several times.)

Going on to early American procedure, it was the practice for the seller and buyer to meet with witnesses on the land being sold. The seller would proclaim for all to hear, "In the presence of Almighty God and these witnesses, I hereby sell and transfer to Bill Fordyce this land that begins at the foot of that mountain; thence East to the River; Thence South along the river as far as a man can walk in a day; thence West to the range of mountains, Thence back North to that mountain over there." Obviously such a plan would not work. The witnesses would die or move away—or would be susceptible to bribe and would "forget." The buyers would go off to war, and when they returned someone else would be in possession of their land. But, such was the early American system of transferring title.

Next was enacted the Statute of Frauds, which provided among other things that no real estate deal would be binding on the parties unless it was reduced to writing. That brought into being the present recording system, where such instruments reduced to writing could be filed of record. And, the recording system brought into being the abstracter because, who but the abstracter, could find all the instruments filed of record that describe some particular piece of land.

The average group is very interested in seeing old documents that have some historical significance or interest. Take, for example, this old English Deed which illustrates where the term "This Indenture" comes from. It was the practice 300 or 400 years ago to prepare two of these deeds, one

being kept by the seller, the other by the buyer. Notice these indentations where the deeds were separated. The indentations are referred to as "This Indenture." Physical possession of this deed meant the owner owned the land, and in case of disputed ownership, the owner would go to the seller, get his copy of the deed, and if the indentations fit, that was positive proof of ownership.

Here are some Patents, which are the inception of title in Oklahoma. Here is a Patent from the United States. Here is one from the Commissioners of the Land Office—and here is an Indian Patent on Indian allotted land. Few people have ever seen anything like this and heard the story behind the documents. I can speak from experience that it holds their attention.

Few people know what the present day abstracter actually does. Generally, they have some hazy idea that an abstracter is a fellow who has his nose stuck in musty old records and is as much a part of the court house as the boiler.

They would be quite surprised to know that he could tell them from his office records, more about their property than they know themselves. For example, the land upon which this hotel is situated is described as Block 80, Original City of Little Rock. Back in 1833 and 1834, two Patentees named Catherine E. Eller and William Russell deeded this property to the Governor of Arkansas. Years ago, this land used to be the old state house grounds, and across the street, the American Legion still maintains the old state house. Between 1905 and 1908, the Marion Hotel Company acquired the hotel property from Robert E. Wait, Trustee and the St. Louis Iron Mountain and Southern Railway. From the number of liens that were filed when the hotel was built, and all the mortgages that followed, up until 1926, the financing operation was not without its headaches. Now the hotel is owned by the Southwest Hotel Company. And, this institution, along with several other hotels owned by the same company, are mortgaged for the neat sum of 3½ million dollars. If I were a betting man, and I have changed my ways since I was in Hot Springs last Saturday, I would wager there are plenty of key people working in this hotel who don't know what we now know.

Constant Witness

Speaking of musty records, they are good for a laugh now and then. You have all heard, I'm sure, the will that was probated in Anderson County, Texas. It is authentic, and you can use it on your audience in developing this point, or conclude your remarks on that humorous theme.

If your business acquaintances actually knew that you know everything that happened in your County last Saturday — who was selling his farm or home; who was mortgaging his property, to whom and for how much; who was getting divorced or foreclosed, who was being committed to a state hospital; who was leasing his farm or selling part of the mineral rights, some of them might be quite surprised. But, if they knew how many confidential deals you are in on from the basement on up, they would be even more surprised. It is literally true that the abstracter is the fellow who sits on the front row seat watching everything that goes on in his county—day in and day out—rain or shine. He sees human nature at its best—and at its worst. He sees the realization of ambitions—and he witnesses hopes and aspirations go down the drain in a foreclosure action. Titles are nothing cold—they are just as warm and human as each of us present.

When a purchaser buys a piece of real estate, if you ask him what he bought, the odds are about 100 to 1 that he will tell you, "I bought 160 acres of the most fertile bottom land you ever saw," or, "It's a 6-room buff brick with a bath and a half," or, "A 10-acre chicken ranch that's just what I have been looking for." It's true that that is what he saw and paid his money for, but whether he actually bought it or not depends on the TITLE. I could give any of you a deed to any piece of land in Arkansas—and if I could convince you I actually owned the land — I would take your money and pull a fast dis-

appearing act. You might think you had bought that fertile 160 in the bottom—or that 6-room buff brick—or that 10-acre chicken ranch—but actually you would have bought nothing. You see, the title is what you buy. Unfortunately I don't own any land in your great state, so any deed I might give would be worthless. This is something too few people know anything about—and it's our job to give them pointers. When you buy the title, possibly the seller doesn't intend to take advantage of the purchaser, but that purchaser may be buying a Suit To Quiet Title—or just the undivided interest of an heir—or a title that is cluttered up with liens and judgments. I'm not telling you anything you don't know, but do your customers? They are entitled to know.

I presume that in most of your deals, it is up to the purchaser to satisfy himself as to title. He has a choice, either an attorney's opinion on the title, or he can have the title guaranteed. Speaking of having a choice, I'm reminded of the mountain boy in Tennessee who had been courtin' his girl friend for some time. At last her father spoke up, "You've been seein' Nellie for nigh into a year. What are your intentions—honorable or dishonorable?" The startled young hillbilly replied: "You mean I got a choice?" Any prudent purchaser should exercise a choice—to see that he is actually getting what he thinks he's buying. We have all seen many a sad seller who "took a chance" when he purchased his property and did not have the abstract examined or the title guaranteed.

It's a good idea to know the people you're dealing with. There's the time an insurance agent was writing a policy for a cowpuncher and he asked the cowhand if he had ever had any accidents.

"No," said the cowboy, then added trying to be helpful, "a bronc kicked in a couple of my ribs and a rattlesnake bit me a couple of years ago."

"Well!" said the agent. "Don't you call those accidents?"

"No," said the cowpuncher, "they done it a purpose."

If you don't know who you are dealing with and some crook comes along hell-bent on finding a sucker, he's going to do his "crookin'" on purpose. It doesn't happen often. But, old Si Jones barn doesn't get struck by lightning or blown away by a tornado very often. You can be pretty sure that Si knows it can happen and if he's smart he has insurance on that barn.

We Know

I suppose we could all tell stories about the times we have run into errors in survey or encroachments. We have had our title losses arising out of the fact that the lot line ran right through the middle of the living room; or the house was built on the wrong lot. I know this sort of thing sounds pretty silly, that anyone would be so stupid as to build a house on the wrong land. But, it has happened in the past, and it's a safe bet it will happen in the future. A purchaser had better be sure he is buying what he is actually looking at—not the vacant lot next door or down the street.

Rights of parties in possession have contributed their share of misery to the closing of a deal. It's just another item that bears watching in the clean cut closing of a transfer of title.

Proration of taxes is oftentimes one of those details of a sale about which nothing is said. Then, right in the middle of the closing up it comes and the seller says to the purchaser, "You pay the taxes!" and the purchaser says, "No, you pay the taxes!"" And, they could both qualify as the man to whom our Tax Assessor sent a tax assessment blank. To the question, "Nature of taxpayer," the answer came back, "Very mean." I think we all feel that way about taxes. Any person who ever expects to own any land should be informed about the laws or customs concerning the proration of taxes.

Proration of insurance is something that is not foreign to us, but it is to many of the uninitiated. If there are insurable improvements on the property, something needs to be done about the hazard insurance policies. If the right thing isn't done at the time of closing, someone is apt to get ruined—for sure. It's like the time

that a young colored couple were getting married. The bridegroom asked the minister the price of the service.

"Ot well," said the minister, "you can pay me whatever it is worth to you."

The young colored boy looked long and silently at his bride. Then slowly rolling the whites of his eyes, he said, "Lawd, suh, you has done ruined me for life; you has, for sure."

Assumption of existing mortgages carry certain obligations. The purchaser should have a signed assumption statement from the mortgagee so he will know the amount of the obligation he is assuming. More times than not, the mortgagee wants a certified copy of the deed which transfers title and there is also a slight transfer fee involved.

Properly prepared instruments—it's hard to stress this point strongly enough. We have all seen perfectly good titles get loused up because of improperly prepared instruments. You know exactly what I'm talking about—and you can site case after case where there was much time wasted and much expense involved straightening out names or descriptions or acknowledgments because of incompetence or carelessness—or trying to save a few dollars. There is just one way to prepare a legal instrument and that is the RIGHT WAY. Here is wonderful opportunity to get in a good and justifiable plug for your attorney friends by insisting that an attorney should prepare all instruments involved in a transfer of title.

Possibly "dresser-drawer" deeds can give the same kind of trouble to you as they do to us. In Oklahoma a deed becomes invalid upon the death of the grantor. That means that a deed held off record in such a contingency is one that is headed for District Court to prove delivery during the lifetime of the deceased. I doubt if the average layman is fully aware of this situation. At least not until it happens to him, then it's a sad story. And, dresser drawer releases of mortgage from individuals, which get lost—well, that, too, is a sad story. Especially when it's necessary to Quiet the Title against an old $50.00 mortgage given in 1897, and you know it will cost $250.00 to $300.00 to put through the suit. If there is one good tip you can pass on to any group you are appearing before, it would be—DO NOT hold any legal instrument unrecorded!

At this point I would like to depart from the outline because any closing remarks you might make would be of YOUR own choosing and would be appropriate for the type of group being addressed, whether it's a civic club, a county bar association, a 4-H or F.H.A. group or a group of high school seniors.

Story Told

From my experience with this type of activity, and I do hope you will pardon this personal reference, I would like to share what I really consider its beneficial aspect to be. In discussing titles with laymen, it has caused me to raise my sights—to be proud of being an abstracter. Not that I wasn't proud from the first day that I became engaged in the title business, but when you hear the statement made repeatedly that, "I sure enjoyed your talk and I feel like I know a little bit about the title business now," and when such statements carry a warmth of sincerity, that is what makes you feel like you have accomplished something. About our business, I would like to restate that we have become a professional group. I'll grant you there may not appear to be much glamour about taking off the daily fiilings, posting your indexes, abstracting instruments and copying court cases. But, I'll also bet the surgeon doesn't find much but hard work in performing an appendectomy, a tonsilectomy or any other operation. I'll wager the lawyer will say it's plain hard work to brief a tough law suit and the engineer finds it tedious going in making his calculations and drawing the plans for that new highway bridge over the Arkansas River. We render a valuable service—one that is highly acceptable in our society. We ascribe to a code of ethics. We are an ethical group. We must inaugurate and maintain a pro-

gressive program of customer relations. Although sometimes the thought is tempting, we can't afford to be like the floorwalker, who tired of his job, gave it up and joined the police force. Several months later a friend asked him how he liked being a policeman. "Well," he replied, "the pay and the hours are good, but what I like best is that the customer is always wrong."

We are a relatively young group—speaking from an association standpoint. The American Title Association has just completed a half-century of service. Compared with the Medics and Lawyers and Engineers, our state and national associations are still youngsters. But we are growing up. And, with age comes maturity. And, with maturity comes responsibility. That is true of us individually. That is true of us as an association. We either go forward—or backward. We never stand still. I can't believe that any of our state associations, or our national group wants to stand still. We are dedicated to service by the nature of our work. We are banded together for a purpose — improvement! It stands to reason that if some activity proves to be successful in one state, why wouldn't it be equally worthwhile and advantageous in another state? Let us share our successes.

So, to the question, "WHO SAYS SO?" I think it would be a far-reaching progressive step if all members of the Arkansas Land Title Association would say so. I think your incoming officers would really appreciate a show of hands of those who would be willing to "Say So"—to help carry the ball — to any organized group who would extend an invitation to a titleman who would discuss abstracts and titles for their benefit. You will be doing yourself some good; you will be doing your association some good; but most of all, your discussion will be of real benefit to your friends, your customers—your fellow man.

OUTLINE FOR TITLE TALK

1. Appropriate opening Humorous Remarks or Story
2. Historical Background of Titles
   (a) Biblical Transfer
   (b) Early American Procedure
   (c) Statute of Frauds
   (d) Recording System
      (1) Exhibit samples of Patents; Old Instruments; Old abstracts; Interesting documents

   (Note: Make this discussion under No. 2 as long or as short as you wish, depending on the time that has been allotted you. Be *SURE NOT* to impose on your audience by running over-time or taking more than your allotted time.)
3. The Present Day Abstracters Job
   (a) He must know what happened years ago
      (1) Interesting Titles— or — "Remarkable Will"—or—
      (2) Facts about title where Meeting is being held
   (b) He must know what happened yesterday
      (1) Deeds, Mortgages, Foreclosures, Divorces, etc.
      (2) Most of work is confidential
      (3) The abstracter sits on the front row seat watching everything that goes on in his County
4. You But the *Title* When You Buy Real Estate

(1) The Buyer must satisfy himself that the title is good by

(a) Having the Abstract examined—or—

(b) Having the Title Guaranteed or Insured

(2) Know the Parties You're Dealing with

(a) Fraudulent Instruments

(3) Errors in Survey and Encroachments

(4) Rights of Parties in Possession

(5) Proration of Taxes

(6) Proration of Insurance

(7) Assumption of Existing Mortgages

(8) Properly prepared instruments

(9) Dresser - Drawer Deeds or other instruments

(10) Attorney's Requirements

5. Appropriate Closing

(1) The "Remarkable Will." (If not used earlier.)

(2) Plug for local Title Association.

ADVERSE POSSESSSION–MISTAKE IN BOUNDARY DISPUTES

Lewis A. Kann*

Here is a review of decisions in the State of Maryland which delves into the area of adverse possession by examining the disseisor in a manner that asks not only what was done to manifest intent, but what was done CONSCIOUSLY to establish required intention. It is an interesting and searching approach. This was originally carried in the Maryland Law Review, Winter Edition, 1957, University of Maryland School of Law. To the author and editors of the publications we gratefully acknowledge credit.

Tamburo v. Miller[1]
Ervin v. Brown[2]
Hub Bel Air, Inc. v. Hirsch[3]
Bishop v. Stackus[4]
Ridgely v. Lewis[5]

* * *

The courts of this country have long been in conflict on the question of whether there can be an adverse possession where the adverse possessor has occupied beyond his boundary line as the result of a mistake in the location of that boundary. The five cases presently noted, which were decided recently by the Court of Appeals, have clarified Maryland's stand in this conflict.

In *Tamburo v. Miller,* the plaintiff had brought suit in trespass *q.c.f.* for that the defendant adjoining lot owner had occupied ground beyond the confines of his deed onto the property of the plaintiff. The defendant, when he originally purchased his lot, had erected a fence around his property connecting wooden pegs which he had erroneously thought to signify his boundaries; and he had later built a boat-house partially on the property of the defendant. The argument raised by the defendant, both as a defense and as the ground for a counter claim in trespass, was that he (defendant) had gained title by an adverse possession for the twenty-year period of the statute of limitations. The plaintiff, in turn, contended that since the defendant had occupied beyond his boundary as the result of a mistake, there was not such an adverse possession to have ever started the statute running. The Court of Appeals held that the mistake was immaterial, and that the adverse occupation for the twenty-year period had vested title in the defendant. In the words of the Court:

> "The modern trend and the better rule is that where the visible boundaries have existed for the period set forth in the statute of limitations, title will vest in the adverse possessor where there is evidence of unequivocal acts of ownership. In this view it is immaterial that the holder supposed the visible boundary to be correct or, in other words, the fact that the possession was due to inadvertence, ignorance, or mistake, is entirely immaterial."[6]

In *Ervin v. Brown,* the doctrine was followed, the only substantial difference in the case being that there the disseisor occupied up to a hedge planted by the disseisee rather than himself. The Court held that there being evidence justifying a finding of adverse possession, it was immaterial that it arose from a mistake.[7]

The same question was raised as to a small strip of ground between two buildings in *Hub Bel Air, Inc. v. Hirsch, supra.* The Court, regarding the question as now being settled, disposed of it by saying that the argument was answered by the *Tamburo* case.[8] By holding the mistake to be immaterial in these cases, the Maryland Court has repudiated the view which considers the mistake a weighty factor in determining if there is a sufficient *intent* to constitute an adverse possession.

Though having been criticized for the commission of an historical error,[9] the courts in this country had long been uniform in holding that two of the essential elements of an adverse possession are that the occupation be with a *hostile intent*, and *under a claim of right or title.*[10] Thus, the general rule is that:

> ". . . to constitute an actual disseisin, there must not only be an unlawful entry . . . but it must be made with an *intention* to dispossess the owner, . . . Thus . . . the *quo animo,* in which the possession was taken, is a test of its adverse character; and before one's possession is pronounced adverse, it must be found that he *intended* to hold in hostility to the true owner."[11]

In applying this principle to the *mistake* cases, many courts reasoned that where one had occupied beyond his boundary through a mere inadvertence, there was lacking the necessary hostile intent to claim against the true owner. *Mistake* and *hostile intent* were said to be mutually exclusive of one another;[12] "the mere fact that the occupation is by pure mistake precluding any possibility of there being a possession hostile to . . . a consciously considered individual."[13]

However, this in itself did not entirely preclude the possibility of an adverse possession in the majority of courts following this view, for a further distinction was drawn from which could yet be found a hostile intent. This distinction was whether the mistaken possession was under a *conditional* intent to claim title to the boundary occupied, or under an *absolute* intent to do so; that is, whether the intent was to claim only if the mistakenly-chosen boundary *was* the *correct* line, or whether the intent was to claim *regardless* of its being the true line. If the latter, the possession was adverse; if the former, it was not.[14] Washburn described the distinction thusly:

> "'. . . if the limits of the occupation be fixed with the intention of claiming them as *the* boundaries, the statute runs; but if the occupation and delimitation of the boundaries appear to be merely provisional, with the intent to claim them as boundaries if they are found to be the proper boundaries, then the statute does not run'."[15]

This view—repudiated first in the *Tamburo* case—was the view which had been followed by the early Maryland cases. In *Cresap v. Hutson,*[16] it was said that where two brothers had erroneously approximated the boundary between the portions of a tract devised to each by their father, the mistake prevented an adverse possession by the one who was occupying beyond his true line. And in *Davis v. Furlow,*[17] the Court of Appeals upheld a prayer granted by the lower court that if the defendant's predecessor had occupied the land, supposing it to be the land in the deed, and without the intent to occupy land outside the lines of the deed, then it did not constitute an adverse possession. The Court said:

> "'A disseisin cannot be committed by mistake, because the intention of the possessor to claim adversely is an essential ingredient of a disseisin'."[18]

In *Sadtler v. Peabody Heights Co.,*[19] the defendant in ejectment was held to have acquired title to a closed roadbed between two of his lots, even though he occupied under the mere belief that it was his, because he had taken possession with the hostile intent to claim it whether it was really his or not. In *Jacobs v. Disharoon,*[20] the plaintiff had purchased a portion of a large tract and occupied the land according to the boundaries marked on the ground by a surveyor in the presence of the grantor and the plaintiff. In the deed, instead of discribing the plot as so marked on the ground, the grantor erroneously described boundaries the parties had earlier discussed but discarded. The Court, after discussing the distinction between *conditional* and *absolute* intent in mistake cases,[21] held that this plaintiff had the necessary hostile intent to claim the land for which he had paid.[22]

Criticism of the old view has been levelled at its practical result, in that it rewards only the evil intent. Though the law seldom allows a man to profit by his own mistake to the detriment of another, by excluding mistaken possession from the doctrine of adverse possession, that doctrine thereby limits its protection to the thief who would "steal" the land of his neighbor with a "felonious" intent.[23] It has also been said that the old view's emphasis on the mental attitude of the possessor is unwarranted, for it is the running of limitations against the true owner's action in ejectment which is the important factor.[24] But even assuming that the intent element is an important factor to be considered—for the courts uniformly require some hostile intent to claim against the true owner — the analysis of the courts following the old view is fraught with theoretical inconsistencies, and impracticalities of evidence and proof.

By searching the evidence to determine if the occupier's intent was *conditional* or *absolute,* the courts adhering to the old view disregard the rule that a man's intent should be determined by his *objective manifestations* rather than his *subjective thoughts.* Here the objective intent appears from the very act of possession and the degree and character thereof. As Justice Holmes, speaking for the Massachusetts Court, said:

> ". . . he will not be the less a disseisor . . . because his occupation . . . is under the belief that it is embraced in his deed. His claim is not limited by his belief. Or, to put it in another way, the *direction of the claim to an object identified by the senses as the thing claimed overrides the inconsistent attempt to direct it also in conformity to the deed,* just as a similar identification, when a pistol shot is fired or a conveyance is made, overrides the inconsistent belief that the person aimed at or the grantee is someone else."[25]

Not only does such a rule depart from the tests applied in other fields of law,[26] but the question of whether there was a mere *conditional* intent to possess to the true boundary is difficult and often insusceptible of proof. In the early and well reasoned case of *French v. Pearce,*[27] the Connecticut Court criticized the adoption of this rule, pointing out:

> "The enquiry no longer is, whether *visible* possession, with the intent to possess, . . . is a disseisin; but from this plain and easy standard of proof we are to depart, and the *invisible* motives of the mind are to be explored."[28]

Perhaps it is too lenient to say that *conditional* or *unconditional* intent is "insusceptible of proof." For in actuality, one who possesses land beyond his boundary under the mistake that it is his own can have but one intent. He holds it as he holds the land contained in his deed, intending to claim it against all the world, for he is unaware of any difference in the two. Since he labors under mistake and ignorance, he does not conceive of the possibility that it may not be his. The thought never enters his mind of whether he claims the land only upon its being the true boundary. "He has no positive or conscious intention, one way or the other."[29] Hence, the attempt to prove which of the two intentions he had is merely a hypothetical question in retrospect: what would his intent have been had he known of his mistake?[30]

Such speculation raises a further objection in that it encourages fabricated testimony and puts the honest and uncoached party-witness at a disadvantage. Given the choice on the witness stand, between two intentions of which he had neither, he is likely to select the "morally better" one, that he merely intended to occupy to the boundary if it were the correct line, and thereby defeat his case.

A learned writer, in discussing these problems, has argued that the analytical error committed by the courts which follow the old view has been the failure to distinguish two different situations: (1) a *pure mis-*

take and (2) a *conscious doubt*.[31] In the latter, *conscious doubt*, the individual who oversteps his boundary has a conscious uncertainty of the exact line; therefore, he is aware that he may commit error. In such a situation, he will have either a *conditional* intention or an *absolute* one, and, hence, it is proper to determine which of the two he in fact had. But in the case of *pure mistake*—the situation in the majority of the cases—there is no possibility of such an alternative, because he is unaware that he has overstepped his line.

It is hoped that the Maryland Court, in repudiating the older view in the mistake cases, will nevertheless distinguish it from the *conscious doubt* situation. The quarrel with the old view of the *mistake* cases is that they sought to distinguish between two types of intent where there could be only one possible intention. But in the *conscious doubt* cases, where the intent could be conditional or absolute, a failure to so distinguish would be as unfair to the disseisee as the old mistake view was to the disseisor.

Thus it would seem that although the Maryland Court failed to utilize an opportunity to distinguish *conscious doubt* from *pure mistake* in *Bishop v. Stackus*,[32] there is reason to believe that it may yet be done; the Court's language in several instances so indicates. In *Ervin v. Brown*, the Court said: "The occupation by the appellees' decedent could not be considered to be provisional."[33] And in *Ridgely v. Lewis*,[34] the Court said that, ". . . certainly, in the instant case, there is to be found that there was nothing provisional in the holding and use of Parcel A."[35]

Inasmuch as these statements were contained in two of the very cases repudiating the distinction between conditional and absolute intent in mistake cases, it is submitted that the only logical reason for which the statements could have been made is that the Court visualized situations in which there *could* be one of two types of intent, such situations being those of *conscious doubt*.

1 203 Md. 329, 100 A. 2d 818 (1953).

2 204 Md. 136, 102 A. 2d 806 (1954).

3 203 Md. 637, 102 A. 2d 550 (1954).

4 206 Md. 493, 112 A. 2d 472 (1955).

5 204 Md. 563, 105 A. 2d 212 (1953).

6 Tamburo v. Miller, *supra*, n. 1, 336.

7 Ervin v. Brown, *supra*, n. 2, 143, 144.

8 Hub Bel Air, Inc. v. Hirsch, *supra*, n. 3, 645.

9 Bordwell, *Mistake and Adverse Possession*, 7 Iowa L. Bull. 129 (1922). The author argues that the American conception of adverse possession has been from the affirmative approach of the party in possession being vested with a new title rather than the English negative approach of limitations running against the old title of the party out of possession. This, he says, is the result of confusing *adverse possession* with the common law conception of *disseisin*, which, when repudiated by Lord Mansfield in the case of Taylor v. Horde, 1 Burr. 60, 97 Eng. Rep. 190 (1757), gave rise to the modern concept of adverse possession. The American error resulted from the:

> ". . . . identification of adverse possession with the old disseisin and a reading into adverse possession of Coke's old definition of a disseisin (Co. Lit. 153b) to the effect that 'a disseisin is when one enters, intending to usurp the possession, and to oust another of his freehold'."

This led to the unfortunate "impression that in order for title to be gained by adverse possession the land must be held with an intent consciously hostile to the true owner," Bordwell, *ibid*, 132, *circa*, fn. 21. See also articles by the same author in 34 Harv. L. Rev. 592 and 717 (1921) and 33 Yale L. J. 1 (1923); and City of Rock Springs v. Sturm, 39 Wyo. 494, 273 Pac. 908 (1929).

A possible manifestation of this may lie in the fact that as a matter of pleading, the statue of limitations for adverse possession may be raised under the general issue plea in Maryland, whereas it must otherwise be specially pleaded. 1 POE, PLEADING AND PRACTICE (5th ed., 1925), Sec. 275; Md. Code (1951), Art. 75, Sec. 76; Hub Bel Air, Inc. v. Hirsch, *supra*, n. 3, 641-642. The inference may be that the defendant's showing limitations and title in himself is denial of the plaintiff's allegation of title or possession, whereas a plea of limitations in other cases is merely an allegation that an otherwise valid cause of action is barred by lapse of time.

10 Bordwell, *supra*, n. 9, 130-1; Tamburo v. Miller, *supra*, n. 1, 335; Bishop v. Stackus, *supra*, n. 4, 498.

11 3 WASHBURN, REAL PROPERTY (5th ed., 1887) 139, and to the same effect at 149:

> ". . . this intent to claim and possess the land is one of the qualities essential to constitute a disseisin."

12 The argument putting relevance on the mistake is:

> ". . . that to make the possession adverse and constitute an ouster there must be an intent to disseise the owner, and that the belief that they owned to the line to which they occupied

negatives such an intent, and their occupation will therefore be presumed to be in subordination to the title of the true owner."

Searles v. De Ladson, 81 Conn. 133, 70 A. 589, 590 (1908).

13 Comment, 31 Yale L. J. 195, 196 (1921).

14 4 TIFFANY, REAL PROPERTY (3rd ed., 1939), 471-2.

15 As quoted in Jacobs v. Disharoon, 113 Md. 92, 98, 77 A. 258 (1910). See also Tamburo v. Miller, 203 Md. 329, 336, 100 A. 2d 818 (1953); Ervin v. Brown, 204 Md. 136, 143-4, 102 A. 2d 806 (1954).

16 9 Gill 269 (Md., 1850).

17 27 Md. 536 (1867).

18 *Ibid*, 545.

19 66 Md. 1, 10 A. 599 (1886).

20 *Supra*, n. 15.

21 As appears in the quotation, *ibid*, 98.

22 In the Tamburo case, *supra*, n. 15, at 336, the Court seemed to rely on Jacobs v. Disharoon as authority for the view that the mistake is immaterial, when it states the holding in that case to have been:

". . . that one who continuously asserts ownership within an enclosure for more than twenty years in exclusive, notorious and actual hostile possession, would not be required to surrender the title by adverse possession merely because of his possession by mistake."

This would appear to be an improper reliance. Not only did the Court in the Jacobs case rationalize the problem under the old view of materiality of mistake and "alternative intent," but also the case is not the traditional situation of the mistake case: it was not so much a mistake in possession as a *mistake in the deed*, for which equity may accord reformation. The Court in the Jacobs case, *supra*, n. 15, 98, evidently was influenced by such nature of the mistake, for it said:

". . . to hold that one who purchases . . . and continues for . . . twenty years, in . . . hostile . . . possession . . . asserting his claim to it . . ., must surrender it because of some *defect in his deed* would largely do away with title by adverse possession." (Italics supplied.)

23 80 A. L. R. 157; 97 A. L. R. 14, 20-21. The latter annotation contains a voluminous collection of cases of both the old and new views. See also City of Rock Springs v. Sturm, 39 Wyo. 494, 273 P. 908 (1929); and Bordwell, *Mistake and Adverse Possession*, 7 Iowa L. Bull. 129 (1922).

24 3 AMERICAN LAW OF PROPERTY (1952), 789. The author criticizes the authorities following the old view because:

"They are necessarily wrong as a matter of legal principle because they disregard the plain operation of the statute of limitations which alone gives title by adverse possession."

See also Bordwell, *ibid*.

25 Bond v. O'Gara, 177 Mass. 139, 58 N. E. 275, 276 (1900). (Italics supplied.)

26 Tiffany points out that even in other phases of the law of adverse possession, the intent factor is not so applied. Why should more weight be given the mistake in boundary cases than where the mistake goes to the title to a whole tract? 4 TIFFANY, REAL PROPERTY (3rd ed., 1939) 475, fn. 56. The author cites the following from 2 DEMBITZ, LAND TITLES, 1937:

"If possession through mistake were held not to be adverse, very little room would be left for the statute of limitations, for almost every man who buys land under a bad title labors under the mistaken idea that his deed is good and effectual."

27 8 Conn. 439 (1831).

28 *Ibid*, 445. (Italics supplied.)

29 97 A. L. R. 14, 20. And in City of Rock Springs v. Sturm, *supra*, n. 23, 913, it was said:

"Not knowing of the mistake, an intent to correct the line . . . when the true boundary is . . . discovered is hardly conceivable . . . So far as any mistake is concerned, that is not likely to enter his mind. Whatever affirmative psychological attitude he may be said to have is an intent to claim the land, though not from anyone else, since he already considers it his own."

30 In Bayhouse v. Urquides, 17 Ida. 286, 105 P. 1066, 1068 (1909), the Court said:

"Neither the courts nor anyone else can tell or conjecture what the party might have intended to do in the event he discovered later that he had been mistaken as to the true line. If he acted in ignorance of the true line and in good faith, then of course he could have had no intention whatever with reference to a possible future discovery of any mistake. So far as he was then concerned, he was acting on a verity."

31 Note, 7 Ore. L. Rev. 329, 331 *et seq.* (1928).

32 206 Md. 493, 112 A. 2d 472 (1955). In that case there was evidence from which it might have been found that the possession was under a *conscious doubt* accompanied by a *conditional intent*. Evidence inferring *conscious doubt* included discussions by the disseisor's wife with the builder that the garage may have been over the boundary, and similar statements made to the disseisee. Evidence of *conditional intent* appeared from statements in regard to moving the garage off of the disseisee's property.

33 204 Md. 136, 144, 102 A. 2d 806 (1954).

34 204 Md. 563, 105 A. 2d 212 (1953) — another case reiterating the doctrine of the Tamburo case.

35 *Ibid*, 567.

* Class of 1956, University of Maryland School of Law.

FEDERAL LIENS v. STATE LIENS

G. M. BURLINGAME, *President,*
The Title Insurance Corporation of Pennsylvania, Bryn Mawr, Pennsylvania

Here is another approach to Federal Tax Liens: distribution of proceeds of a foreclosure sale when among the encumbrances to be paid is a federal tax lien. The author discusses with authority the complexities of priority, registration of liens and other important points involved in such a situation.

A question has arisen regarding the case where the proceeds of a foreclosure sale are not sufficient to pay all encumbrances in full and the encumbrances to be paid include (1) real estate taxes, (2) federal tax liens, and (3) mortgages and/or judgments which in point of time antedate the federal tax liens; how are the proceeds of sale to be distributed?

The distribution problem arises, of course, from the fact that the federal courts have construed the applicable federal statutes as giving federal tax liens priority over all state liens, except mortgage and judgment liens created before the filing of the federal tax lien notice, while the effect of applicable state statutes is to give real estate taxes priority over all other liens (including federal tax liens) without exception.

Therefore, if all applicable statutes, as they have been construed, are taken at face value under the factual circumstances outlined above, the real estate taxes would have priority over the mortgages and judgments, which in turn would have priority over the federal tax liens, which in turn would have priority over the real estate taxes—which would all add up to what might appear to be distributive impasse when there is not enough money to pay all three items in full.

This matter has been discussed with counsel, and I thought you would be interested in the outcome of the discussion which will become the practice of our Corporation.

First, it is necessary to recall certain fundamental principles regarding federal tax liens.

Section 2410 of the Judicial Code was adopted in order to enable private litigants to join the federal government in foreclosure proceedings and actions to quiet title, so that tax and other liens held by the government could, in proper cases, be discharged or otherwise dealt with according to law. Under subsection (c), it is clear that the federal lien, if junior, will be discharged by the judicial sale in such foreclosure, and the United States is given one year from the date of the sale within which to redeem (28 U. S. C. A. 2410).

By the terms of this Act, it seems clear that the right of redemption only arises, and the federal lien will only be discharged, where the United States is made a party to the action. Accordingly, to determine whether such right exists, the examiner would only need to examine the records of any judicial sale of the property conducted within one year. If there were no such sale, or if the federal government was not a party to the proceedings, then there would be no right of redemption.

Of course, if the United States held a lien, duly registered in the county under the legislation of May 1, 1929, P. L. 1215, 74 P. S. 141, etc., but was not joined in the foreclosure proceedings, then the tax lien would not be discharged by the sale, but the title examiner would pick up the lien in the search. No question of redemption would be involved. And if the federal government were claiming a lien, because of the filing of an assessment, but had failed to register the lien in the county, then such lien would be invalid as to the purchaser at the judicial sale, as well as to other purchasers, mortgagees and judgment creditors in accordance with Section 6323 of the Internal Revenue Code. To the extent that there would be any valid lien in such a case (and it would be valid, for in-

stance, as against local tax liens) it would not have been discharged by the sale, and, again, the question of redemption would not be involved.

Internal revenue collectors, however, have been more careful in the last few years about registering their liens in the counties in which the real estate is situated. Therefore it is necessary for the title examiner to inquire as to whether or not the United States has been joined as a party defendant. As I have indicated, if the United States were not joined in the proceedings as a party or if the complaint did not ask that the property be sold in the proceedings, the United States liens could not be affected by such proceedings.

Local real estate taxes being apparently always included in sheriff's minimum bid, together with his cost, and the state realty transfer taxes, results in a requirement by a county sheriff that these local taxes be paid from the proceeds of the sale, since they are, of course, prior in lien under state law to the earlier mortgages and judgments. However, the United States Government does not recognize the priority of such taxes over the federal tax lien and will not permit the amounts paid ahead of its lien out of the net proceeds of the sale, to exceed amounts due to prior mortgagees and judgment creditors, they being the only lienholders to whom such priority is extended under Section 6323 of the Code referred to above.

This means that a sheriff would have to set aside out of the proceeds of the sale, the total of the amounts due on mortgages and judgments which by federal statute are preferred over federal tax liens. Out of such fund, the real estate taxes are to be first paid. Then the remainder of the fund is paid to the creditor lienholders whose liens are so preferred over federal tax liens according to their lien priority. Finally, the balance of the proceeds of sale, if any, remaining after such fund has been set aside, is to be paid to the United States on its tax liens until tax liens are fully paid.

If there is an insufficiency of bid to pay real estate taxes and all lien creditors who have priority under the above section of the Judicial Code, real estate taxes must be paid first. If there is a sufficiency of funds to pay all lienholders with priority, but not enough to pay all lienholder and real estate taxes, the amount over the sums due preferred lienholders must be paid to the United States until its tax claims are paid in full, since the federal liens would have priority over real estate taxes.

It should be pointed out again that in connection with the United States Government's position in such proceedings, the government has a period of one year after the sale within which to redeem the property for the amount bid at the sale. This right of redemption would affect the title of any purchaser at the sale, unless the proceeds were sufficient to pay the federal tax lien in full. Therefore, when insuring the title to a purchaser at sheriff's sale or out of a sheriff's sale in such case, an objection should be raised as to the government's right to redeem, which objection should not be removed until the federal government had released the property or the period for redemption had expired.

Realty transfer taxes are to be treated as part of the cost of the sale. They do not constitute a lien on the property until and unless there is a failure to pay the tax at the time of the delivery of the deed. The practice, I believe, of the sheriffs of the counties in which we are interested, has been to purchase and affix the necessary stamps, having included an allowance for the estimated amount thereof in the minimum bid, and to require the purchaser to obtain the city, township or school district stamps which must be affixed to the deed. It is not believed that the U. S. Government could question the deduction of the cost of the state stamps from the proceeds of the sale, any more than it could question sheriff's costs.

The case of Southern Ohio Savings Bank and Trust Company vs. Bolce, et al, etc., 165 Ohio St. 201, 135 N. E. 2nd 382 (1956) cites and follows the recent U. S. Supreme Court decisions of U. S. vs. City of New Britain, 347 U. S. 81, 74 S. Ct. 367 (1954) and U. S. vs. White Bear Brewing Co., 350 U. S.

1010, 76 S. Ct. 646 (1956) to the effect that the rights of purchasers, pledgees, mortgagees and judgment creditors are the only ones which take precedence over the lien of federal taxes previously assessed, but not yet filed in the local recorder's office, and said case, which involved the proceeds of a judicial foreclosure sale, adopts the distribution procedure which I have outlined above, under which the local taxes are paid out of a fund which would otherwise be sufficient to satisfy the prior mortgages and judgments, and the entire balance of the net proceeds of the sale paid to the federal government on account of its lien.

Under these decisions, it seems perfectly clear that the priority of a judgment creditor over a federal tax lien subsequently filed is based on the date of the entry of the judgment, and does not depend on the issuance of execution thereon in states such as Pennsylvania, where the law gives such judgment creditors an automatic lien upon all real estate owned by the debtor at the time of the entry of the judgment. In other cases, there have been efforts to give priority to other types of state-recognized liens, such as state unemployment contributions, mechanics' liens or attachment claims, etc., on the theory that they are deemed to be perfected, specific or choate under state law, and are therefore equivalent to judgment liens, but the decisions have been adverse to these contentions, and the priority has been strictly limited to final judgments in the usual and accepted sense of the term. This theory was upheld in U. S. vs. Texas, 314 U. S. 480, 62 S. Ct. 350 (1941); People of the State of Illinois, etc., vs. Campbell, 329 U. S. 362, 67 S. Ct. 340 (1946); In re Litt, 128 Fed. Sup. 34 (E.D. Pa., 1955).

REAL ESTATE INVESTMENT GUIDE
(A Book Review)

By ANDREW HOLL and LAWRENCE L. LASSER*

Mortgage and Real Estate Investment Guide (Sixth Edition), by Malcolm C. Sherman. Rapid Service Press, 375 Broadway, Boston 11, Massachuseets, 1957. Pp. 464, $10.00.

In this age of specialization, the efficiency of the specialist frequently depends upon the sharpness of his tools. This applies as well to the real estate fraternity as to the machinist or wood craftsman. The few well-worn texts that lie close at hand are the everyday tools yielding necessary information upon which we base our decisions. While not primary sources, properly annotated, they save many hours of research. To be useful they must be current and to the point. Such a tool is Malcolm C. Sherman's "Mortgage and Real Estate Investment Guide." From the title, it sounds as though we are going to tell you about the latest publication in the field of "How to make barrels of money in real estate." Those who have used Mr. Sherman's manual in the past know that this is not a Dale Carnegie type advice book, but a sound and detailed analysis of the laws of the forty- eight states affecting real estate and mortgages.

Fortunately, we are blessed with a federal system of government under which each of the states is free to legislate on intra-state matters, thus allowing us little people a greater measure of control. For the advantages of state integrity, we must sacrifice uniformity of legislation among the states. Those who must deal with real property in several states are faced with a mass of slightly differing legal concepts which can be mastered only by the photographic mind and then only until the next legislature meeting. Mr. Sherman has contributed to the mental well-being of interstate investors by making available an up-to-date desk-side handbook. It will tell at a glance the legal rate of interest; whether fixtures may be included in mortgages, and whether aliens may own real estate, as well as a plethora of pertinent legal facts in each of our states. All of these have been crammed into a fist-sized volume with an ingenious indexing system that reveals the plain principle in a jiffy.

The first half of the manual deals with a state-by-state mortgage law breakdown with statutory and case law references. It covers forms, Statutes of Limitations, foreclosure, mechanic's liens and various aspects of foreign insurance company investments, as well as considerable additional data.

A layman would find very little of use in this section because the author presupposes a working knowledge of mortgage law sufficient to make the terse statements meaningful. This is as it should be, for this is a manual for ready reference and not a textbook. However, understanding the basic tenets of mortgage law, you will find the first part of the manual an invaluable aid in relating the law of a particular state to your basic knowledge.

Having set forth in glanceable form these fundamental state variations, Mr. Sherman fills the remainder of his pages with short expositions of the many legal details that are forever cropping up. Sometimes we rely upon legal research and more often we rely intuitively upon our background of general knowledge. Chances are that Sherman has covered most of these troublesome little points like, state acknowledgment requirements, federal liens, important FHA lending provisions, foreclosure costs by states and circumstances

* Mr. Holl is Associate Counsel to the Mutual Benefit Life Insurance Co., Newark, N. J., and Mr. Lasser is Assistant Professor of Law at Rutgers Law School and Counsel to the Newark Real Estate Board.

under which a wife's signature is required. Also included are standard forms for assumption agreements, collateral assignments of lease, prepayment clauses and the like. We were particularly interested to see that the vexing problems of out-of-state mortgages by foreign banking insurance and investment companies treated in detail. The author has all of the important phases of the problem including what constitutes "doing business," qualification requirements and penalties, and taxes to which the foreign corporation is subject. The requirements are set forth in a convenient state-by-state summary form.

This is not a book for beginners. It is not a book for the casual estate investor. It is written specially for those who are concerned with the everyday problems of multi-state real estate investing whether it be at the mortgagee or the mortgagor level, and is so constructed as to provide pertinent finger tip information. Most important, the vital information contained in the Guide is timely. The Guide is loose leaf in form and is kept up to date by loose-leaf additions when there are new statutes or decisions and by complete revisions annually. Mr. Sherman is Associate Counsel to the John Hancock Mutual Life Insurance Co., and as such is very much aware of the requirements of a mortgage investment guide. He has fulfilled these requirements admirably and we are pleased to recommend his guide to you.

ABSTRACT RATES AND PUBLIC RELATIONS

With rising costs of doing business it becomes apparent now and then that prices must advance also. Here is a letter used by a member company in Flint, Michigan, which presents a fine example of broaching this delicate necessity. Names have been withheld but we can assure readers that the author of this letter recently informed us there has been no complaint from customers when advised of the needed price adjustment.

March First

1957

Have you priced a good steak lately?

Time was when a fellow could think about a good steak without a guilty conscience. Not today! Prices have gone up so much you get a guilt complex just thinking about them.

Not that we want to eat steak everyday. Or even every week. We just want to get into an income category where we can at least **think** about steak. Without wincing.

That's why we've been forced to put through this small increase in our prices for abstract work. We felt we owed it to that guilty conscience of ours to do something. So, we raised prices. Not filet mignon prices . . . not even tenderloin raises. Just enough of an increase to think about those small inexpensive minute steaks.

You see, it has been four years since we increased any of our prices. During that time everything else has increased in cost approximately 22%. This puts us in a spot where we can only afford hamburger thoughts.

Seriously, we know that you are aware of the rising costs of doing business today, and we hope that you understand our position. Like any business, we must be able to show a profit from our operation—or we cease to exist. We're sure that the increased rates for our work, shown in the accompanying price list, will not cause anyone an undue hardship. We are equally certain that they will prove beneficial to you in guaranteeing the continued quality and thoroughness of our work.

Cordially,

THE ABSTRACT
COMPANY

In Five Colors

AMERICAN TITLE ASSOCIATION EMBLEM DECALS

- Actual size: 10¾ x 9¾.
- Attractive five - color membership emblem.
- Easily mounted on entrance door, windows, office partitions.
- An expression of pride in your association.
- Two dollars each — delivered.

Order now from Headquarters

AMERICAN TITLE ASSOCIATION
3608 Guardian Building
Detroit 26, Michigan

Coming Events

Date	Meeting	Where To Be Held
May 23 - 25	Texas Title Association	Shamrock-Hilton Hotel Houston, Texas
May 24 - 25	Tennessee Title Association	Noel Hotel Nashville, Tennessee
June 7 - 8	Central States Regional Conference	Edgewater Beach Hotel Chicago, Illinois
June 7 - 8	New Mexico Title Association	La Fonda Hotel Santa Fe, New Mexico
June 9 - 14	Insurance Commissioners	Haddon Hall Hotel Atlantic City, N. J. (also Chalfonte)
June 12 - 14	Illinois Title Association (50th Anniversary)	Drake Hotel Chicago, Illinois
June 19 - 22	Oregon Land Title Association	Pilot Butte Inn Bend, Oregon
June 28-29	Colorado Title Association	Hotel Colorado Glenwood Springs, Colo.
June 23 - 25	Michigan Title Association	St. Clair Inn St. Clair, Michigan
June 27-28	Idaho Land Title Association	Shore Lodge McCall, Idaho
August 2 - 3	Montana Title Association	Northern Hotel Billings, Montana
Sept. 13 - 14	Washington Land Title Association	Wenatchee, Washington
Sept. 13-14	North Dakota Title Association	Clarence Parker Hotel Minot, North Dakota
Sept. 15-17	Missouri Title Association Convention (50th Anniversary)	Kentwood Arms Hotel Springfield, Missouri
Sept. 19-20-21	Wisconsin Title Association	Northernaire Three Lakes, Wisconsin
Sept. 21 - 24	New York State Title Association	Shawnee Inn Shawnee-On-The-Delaware, Pennsylvania
Oct. 3 - 5	Kansas Title Association (50th Anniversary)	Baker Hotel Hutchison, Kansas
October 13-17	**American Title Association Annual Convention**	**Hotel John Marshall Richmond, Virginia**
Nov. 4-7	Mortgage Bankers Association	Dallas, Texas
Nov. 10 - 12	Ohio Title Association	Sheraton Mayflower Akron, Ohio

DATES TO REMEMBER:—

OCTOBER 13 - 17, 1957

51st Annual Convention

AMERICAN TITLE ASSOCIATION

JOHN MARSHALL HOTEL

RICHMOND, VIRGINIA

A Visit to the Heart of Historyland