OFFICIAL PUBLICATION

AMERICAN TITLE ASSOCIATION

TITLE NEWS

VOLUME XXXVI NOVEMBER, 1957 NUMBER 11

TITLE NEWS

Official Publication of

THE AMERICAN TITLE ASSOCIATION

3608 Guardian Building — Detroit 26, Michigan

Volume XXXVI November, 1957 Number 11

Table of Contents

Table of Contents (continued)

The American Title Association

Officers 1957-58

President—HAROLD F. McLERAN ..... Mount Pleasant, Iowa

Vice-President—ERNEST J. LOEBBECKE ..... Los Angeles, California
President, Title Insurance & Trust Company

Treasurer—JOSEPH S. KNAPP, JR. ..... Baltimore, Maryland
Exec. Vice-Pres., The Maryland Title Guarantee Company

Chairman of Finance Committee—MORTIMER SMITH ..... Oakland, California
Vice-President, California Pacific Title Insurance Company

Executive Vice-President—JAMES E. SHERIDAN ..... Detroit, Michigan
3608 Guardian Building

Secretary—JOSEPH H. SMITH ..... Detroit, Michigan
3608 Guardian Building

BOARD OF GOVERNORS

The President, Vice-President, Treasurer, Chairman of Finance Committee, Chairmen of Sections, and

Term Expiring 1958

JOHN D. BINKLEY, *Immediate Past President* ..... Chicago, Illinois
Vice-President, Chicago Title & Trust Company

WILLIAM GILL, SR., *Chairman, Council of Past Presidents* ..... Oklahoma City, Oklahoma
President, American-First Title & Trust Company

LEONARD F. FISH ..... Madison, Wisconsin
President, Dane County Title Company

WILLIAM R. KINNEY ..... Cleveland, Ohio
Chief Title Officer, Land Title Guarantee and Trust Co.

KENNETH C. KLEPSER ..... Seattle, Washington
President, Puget Sound Title Insurance Company

JOHN H. KUNKLE ..... Pittsburgh, Pennsylvania
President, Union Title Guaranty Company

WILLIAM A. McPHAIL ..... Rockford, Illinois
President, Holland Ferguson & Company

Term Expiring 1959

L. W. McILVAINE ..... Louisville, Kentucky
Vice-President, Louisville Title Insurance Company

HAROLD W. BEERY ..... New York, New York
Vice-President, Home Title Guaranty Company

CHARLES ADAMS, JR. ..... Lubbock, Texas
Guarantee Abstract & Title Company

CARROLL J. REID ..... Albion, Nebraska
President, Weitzel Abstract Company

RHES H. CORNELIUS ..... Phoenix, Arizona
Vice-President, Phoenix Title & Trust Company

Term Expiring 1960

J. L. BOREN ..... Memphis, Tennessee
President, Mid-South Title Company, Inc.

CLARENCE BURTON ..... Detroit, Michigan
Vice-Pres., Burton Abstract & Title Company

L. A. REUDER ..... Minneapolis, Minnesota
President, Title Insurance Company of Minnesota

H. G. RUEMMELE ..... Grand Forks, North Dakota
Secretary, Grand Forks Abstract Company

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

ABSTRACTERS SECTION

Chairman—LLOYD HUGHES ..... Denver, Colorado
President, Record Abstract & Title Insurance Company

Vice Chairman—ARTHUR REPPERT ..... Liberty, Missouri
President, Clay County Abstract Company

Secretary—WILLIAM JACKSON ..... Oklahoma City, Oklahoma
President, Coates-Southwest Title Company

EXECUTIVE COMMITTEE

JERRY McCARHY ..... Traverse City, Michigan
Owner-Mgr., Grand Traverse Title Company

MRS. LINDA NYE ..... Farmington, New Mexico
Manager, San Juan County Abstract & Title Company

D. E. SHEPHERD ..... Angleton, Texas
Asst. Mgr., Brazoria County Abstract Company

R. BUELL SMITH ..... Keokuk, Iowa
Abstracter, Smiths' Title Service

TITLE INSURANCE SECTION

Chairman—GEORGE C. RAWLINGS ..... Richmond, Virginia
President, Lawyers Title Insurance Corporation

Vice Chairman—THOMAS P. DOWD ..... Detroit, Michigan
Vice-President, Abstract and Title Guaranty Company

Secretary—DRAKE McKEE ..... Dallas, Texas
President, Dallas Title & Guaranty Company

EXECUTIVE COMMITTEE

JOHN B. GORDON ..... Madera, California
Vice-President, Security Title Insurance Company

J. MACK TARPLEY ..... Kansas City, Missouri
Vice-President, Kansas City Title Insurance Company

HERMAN BERNIKER ..... New York, New York
Executive Vice-Pres., Title Guarantee & Trust Company

MACLIN F. SMITH, JR. ..... Birmingham, Alabama
Executive Vice-Pres., Title Guarantee & Trust Company

Committees

COUNCILLOR TO THE UNITED STATES CHAMBER OF COMMERCE

JOSEPH D. SHELLY ..... Chicago 2, Illinois
Vice-President, Chicago Title and Trust Company

COMMITTEE ON ADVERTISING AND PUBLIC RELATIONS

Chairman—JESSE M. WILLIAMS ..... Louisville 1, Kentucky
Vice President, Louisville Title Insurance Company

ROBERT W. STOCKWELL ..... Indianapolis 4, Indiana
Vice President, Union Title Company

ROSS M. CARRELL ..... Des Moines 9, Iowa
President, Des Moines Title Company

STEWART J. ROBERTSON ..... Oklahoma City 1, Oklahoma
Vice President, American-First Title and Trust Company

BUDD G. BURNIE ..... Portland 4, Oregon
President, Pacific Title Insurance Company

JAMES M. HART ..... Bryn Mawr, Pennsylvania
First Vice President, The Title Insurance Corporation of Pennsylvania

FRED H. TIMBERLAKE ..... Lubbock, Texas
Service Abstract and Title Company

HAROLD W. WANDESFORDE ..... Seattle 4, Washington
Vice President, Washington Title Insurance Company

COMMITTEE ON CONSTITUTION AND BY-LAWS

Chairman—JOHN J. O'DOWD ..... Tucson, Arizona
President, Tucson Title Insurance Company

G. STANLEY YOUNG ..... Cleveland 13, Ohio
President, Land Title Guarantee and Trust Company

RAYMOND B. HESTON ..... Camden 1, New Jersey
Secy-Treas., West Jersey Title and Guaranty Company

GIBBS W. HARRIS ..... Tampa 2, Florida
Exec. Vice President, Tampa Abstract & Title Insurance Company

ANDREW DYATT ..... Denver 2, Colorado
Exec. Vice President, The Title Guaranty Company

COMMITTEE ON MEMBERSHIP AND ORGANIZATION

Chairman—WILLIAM A. JACKSON ..... Oklahoma City 2, Oklahoma
President, Coates-Southwest Title Company
And the Presidents and Secretaries of State Title Associations

PLANNING COMMITTEE

Chairman—BRIANT H. WELLS, JR. ..... Los Angeles 54, California
Sr. Vice President, Title Insurance and Trust Company

WILLIAM J. HOYER ..... Milwaukee 2, Wisconsin
State Agent, Kansas City Title Insurance Company

JAMES J. McCARTHY ..... Newark, New Jersey
Vice President, New Jersey Realty Title Insurance Company

PAUL D. MOONAN ..... Rochester 14, New York
President, Monroe Abstract & Title Corporation

THOMAS J. BOMAR ..... Miami 24, Florida
President, Dade-Commonwealth Title Insurance Company

WALTER R. DOUGLAS ..... Clayton 5, Missouri
President, Guaranty Land Title Company

DAVID FOGG ..... Tacoma 2, Washington
President, Commonwealth Title Insurance Company

JOHN V. HARVEY ..... Sioux City 8, Iowa
Partner, Talley, Harvey & Company

GEORGE C. RAWLINGS ..... Richmond, Virginia
Chairman, Title Insurance Section, American Title Association,
President Lawyers Title Insurance Corporation

LLOYD HUGHES ..... Denver 2, Colorado
Chairman, Abstracters Section, American Title Association,
President Record Abstract & Title Insurance Company

JAMES E. SHERIDAN ..... Detroit 26, Michigan
Executive Vice President, The American Title Association

GRIEVANCE COMMITTEE

Chairman—THOMAS P. DOWD ..... Detroit 26, Michigan
Vice-President, Abstract and Title Guaranty Co.

TERM EXPIRING 1958

CHARLES H. BUCK ..... Baltimore 2, Maryland
President, The Maryland Title Guarantee Company

GEORGE E. HARBERT ..... Rock Island, Illinois
President, Rock Island County Abstract & Title Guaranty Co.

TERM EXPIRING 1959

HAROLD LENICHECK ..... Milwaukee 3, Wisconsin
Executive Vice-President, Title Guaranty Company of Wisconsin

L. A. REUDER ..... Minneapolis 2, Minnesota
President, Title Insurance Company of Minnesota

Chairman—THOMAS P. DOWD ..... Detroit 26, Michigan
Vice President, Abstract and Title Guaranty Company

TERM EXPIRING 1960

MORTON McDONALD ..... DeLand, Florida
President, The Abstract Corporation

JAMES D. FORWARD, JR. ..... San Diego 12, California
Vice President, Union Title Insurance and Trust Company

COMMITTEE ON TITLE PLANTS AND PHOTOGRAPHY

Chairman—OTTO S. ZERWICK ..... Madison 3, Wisconsin
Vice President-Title Officer, Dane County Title Company

RICHARD A. PHILLIPS ..... Oklahoma City 1, Oklahoma
Vice President, American-First Title and Trust Company

HARRY J. KANE, JR. ..... Washington 5, D.C.
President, The Real Estate Title Insurance Company

A. J. YATES ..... Geneva, Illinois
President, Kane County Title Company

LaVERNE HERBRUCK ..... Los Angeles 54, California
Vice President, Title Insurance and Trust Company

HORACE CLARKE ..... South Bend 1, Indiana
Secretary, Abstract Company of St. Joseph County, Inc.

C. PERRY LIVERTON ..... Philadelphia 7, Pennsylvania
Assistant Title Officer, Commonwealth Land Title Insurance Company

VICTOR GILLETT, JR. ..... Corpus Christi, Texas
Vice President, Stewart Title Guaranty Company

JOHN F. LANDWEHR ..... Toledo 2, Ohio
President, The Title Guarantee and Trust Company

JUDICIARY COMMITTEE

Chairman—F. WENDELL AUDRAIN ..... Los Angeles 14, California
Vice President, Security Title Insurance Company

Circuit, District of Columbia
HOWARD BERNSTEIN ..... Washington 5, D.C.
Exec. Vice President, Realty Title Insurance Company, Inc.

Circuit 1: Maine, Massachusetts, New Hampshire, Rhode Island, Puerto Rico
THOMAS EARLE, JR. ..... Worcester, Massachusetts
Counsel, Worcester County Abstract Company

Circuit 2: Connecticut, New York, Vermont
GORDON SAMUELS ..... Buffalo 2, New York
Vice President, Abstract & Title Insurance Corporation

Circuit 3: Delaware, New Jersey, Pennsylvania
EARL M. FRANKHOUSER, JR. ..... Reading, Pennsylvania
Exec. Vice President, Berks Title Insurance Company

Circuit 4: Maryland, North Carolina, South Carolina, West Virginia, Virginia
WILLIAM C. ROGERS, JR. ..... Baltimore 2, Maryland
Vice President, The Security Title Guarantee Corporation

Circuit 5: Alabama, Florida, Georgia, Louisiana, Mississippi, Texas
FRANK A. STAMPER ..... Houston 2, Texas
President, Houston Title Guaranty Company

Circuit 6: Kentucky, Michigan, Ohio, Tennessee
RAY L. POTTER ..... Detroit 26, Michigan
Vice President, Burton Abstract and Title Company

Circuit 7: Illinois, Indiana, Wisconsin
HAROLD A. LENICHECK ..... Milwaukee 3, Wisconsin
Exec. Vice President, Title Guaranty Company of Wisconsin

Circuit 8: Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, South Dakota
ALBERT F. BLOCK ..... Davenport, Iowa
Vice President, Davenport Abstract Company

Circuit 9: Arizona, California, Idaho, Montana, Nevada, Oregon, Washington, Alaska, Hawaii
HERBERT A. ALSTADT ..... Portland 4, Oregon
Vice President-Title Officer, Title and Trust Company

Circuit 10: Colorado, Kansas, New Mexico, Oklahoma, Utah, Wyoming
ALBERT ISBELL ..... Denver 2, Colorado
Vice President, The Title Guaranty Company

JUDICIARY COMMITTEE—STATE MEMBERS

WILLIAM F. MILLER ..... Birmingham 3, Alabama
Exec. Vice President, Land Title Company of Alabama

ROBERT JESTER ..... Ketchikan, Alaska
Manager, Title Insurance and Trust Company of Alaska

JOHN B. WILKIE ..... Tucson, Arizona
Vice President, Arizona Land Title and Trust Company

JUDGE CARNEAL WARFIELD ..... Lake Village, Arkansas
Partner, Chicot County Abstract Company

DAVID C. SCHURCH ..... San Diego 12, California
Vice President-General Counsel, Union Title Insurance & Trust Company

PIERPONT FULLER ..... Denver 2, Colorado
President, Record Abstract and Title Insurance Company

ALBERT W. SHEPPARD ..... New Haven, Connecticut
c/o White Bros.

BENJAMIN N. BROWN ..... Wilmington 1, Delaware

H. DREWRY KERR, JR. ..... Miami, Florida
Manager, Lawyers Title Insurance Corporation

JOHN P. MATTHEWS ..... Atlanta 3, Georgia
Manager, Lawyers Title Insurance Corp.

M. F. TEMPLE MELONE ..... Honolulu 13, Hawaii
President, Long & Melone, Ltd.

JOHN B. BELL ..... Boise, Idaho
President, The Title Insurance Company

L. W. HAGUE ..... Joliet, Illinois
President, Will County Title Company

JOHN V. MEREDITH ..... Muncie, Indiana
President, Delaware County Abstract Company

TIM J. CAMPBELL ..... Newton, Iowa
President, Maytag Loan & Abstract Company

FRANK T. SUMMERSON ..... Hoxie, Kansas
Owner, Summerson Abstract Company

BEN M. STROTHER ..... Henderson, Kentucky
Owner, Strother Abstracts

JOHN J. DUTEL ..... New Orleans 12, Louisiana

PAUL M. NUSSBAUM ..... Hyattsville, Maryland
Vice President, Abstract & Title Company of Maryland, Inc.

JOHN CORBIN ..... Worcester 8, Massachusetts
Taylor Abstract Company

JOHN KLEIN ..... Grand Rapids 2, Michigan
The Michigan Title Company

R. M. BLAESE ..... Minneapolis 2, Minnesota
Vice President, Title Insurance Company of Minnesota

JUDGE O. B. TAYLOR ..... Jackson, Mississippi
Chairman of the Board, Mississippi Valley Title Insurance Company

McCUNE GILL ..... St. Louis 1, Missouri
President, Title Insurance Corporation of St. Louis

D. L. EGNEW ..... Hardin, Montana
Big Horn Abstract Corporation

KENNETH H. BECKENHAUER ..... West Point, Nebraska
Beckenhauer & Beckenhauer

M. M. SWEENEY ..... Las Vegas, Nevada
Exec. Vice President, Pioneer Title Insurance and Trust Company

GEORGE W. PICHE ..... Newark 3, New Jersey
Vice President-Title Officer, Lawyers-Clinton Title Insurance Company

H. COLEMAN MARTIN ..... Las Cruces, New Mexico
Secretary, The Southwestern Abstract and Title Company

CARL D. SCHLITT ..... New York 7, New York
Vice President-Counsel, Home Title Guaranty Company

ROBERT H. McNEELY ..... Greensboro, North Carolina

H. G. RUEMMELE ..... Grand Forks, North Dakota
Secretary, Grand Forks Abstract Company

THOMAS J. McDERMOTT ..... Mansfield, Ohio
McDermott and Associates

JOHN W. WARREN ..... Newkirk, Oklahoma
Vice President, Albright Title and Trust Company

VERNE D. McMULLEN ..... Salem, Oregon
President, Salem Title Company

CHARLES ZARIGAN ..... Philadelphia 7, Pennsylvania
Title Officer, Commonwealth Land Title Insurance Company

NATHAN M. WRIGHT, JR. ..... Providence 3, Rhode Island
President, Mortgage Guarantee and Title Company

JOHN G. MARTIN ..... Columbia, South Carolina

ALBERT HOUCK ..... Gettysburg, South Dakota
President, Potter County Land and Abstract Company

C. H. BRILEY, JR. ..... Nashville 3, Tennessee
Vice President, Tennessee Title Company

CHARLES C. HAMPTON ..... Dallas 2, Texas
Manager, Lawyers Title Insurance Corporation

MARK D. EGGERTSEN ..... Salt Lake City 1, Utah
President, Security Title Company

PETER GIULIANI ..... Montpelier, Vermont
Asst. Counsel, National Life Insurance Company

ORVAL GRIM ..... Arlington, Virginia
The District Title Insurance Company

BENJAMIN C. McDONALD ..... Seattle 4, Washington
Asst. Title Officer, Puget Sound Title Insurance Company

J. A. GIST ..... Wellsburg, West Virginia

W. E. ATWELL ..... Stevens Point, Wisconsin
Owner, Portage County Law & Abstract Company

JAMES A. PIANA ..... Newcastle, Wyoming
President, Weston County Abstract Company

LEGISLATIVE COMMITTEE

Chairman—JOSEPH A. WATSON ..... Baltimore 2, Maryland
Vice President, The Title Guarantee Company

MACLIN F. SMITH ..... Birmingham 3, Alabama
President, Title Guarantee & Trust Company

JOHN E. MURRAY ..... Fairbanks, Alaska
President, Title Insurance & Trust Company of Alaska

J. R. McDOUGALL ..... Phoenix, Arizona
Vice President, Phoenix Title and Trust Company

O. M. YOUNG ..... Little Rock, Arkansas
President, Little Rock Abstract Company

THOMAS G. MORTON ..... San Francisco 2, California
President, Western Title Insurance and Guaranty Company

CARLETON L. HUBBARD, JR. ..... Glenwood Springs, Colorado
Secretary, The Garfield County Abstract Company

EDWARD TRAURIG ..... Waterbury 2, Connecticut

S. LESTER LEVY ..... Wilmington, Delaware
State Agent, Berks Title Insurance Company

J. E. CHURCHWELL ..... Panama City, Florida
President, Bay County Land & Abstract Company, Inc.

HARRY M. PASCHAL ..... Atlanta 3, Georgia
State Manager, Title Insurance Company of Minnesota

DAVID T. PIETSCH ..... Honolulu 2, Hawaii
Asst. Manager, Title Guaranty Company of Hawaii

GORDON GRAY ..... Twin Falls, Idaho
President, Twin Falls Title & Trust Company

A. E. PETERSON ..... Chicago 2, Illinois
Vice President, Chicago Title and Trust Company

JOSEPH S. WAYMIRE ..... Anderson, Indiana
Secretary, Rowland Title Company

VIRGIL SHEPARD ..... Allison, Iowa
Butler County Abstract Company

JOHN W. DOZIER ..... Topeka, Kansas
Exec. Vice President, The Columbian Title and Trust Company

L. W. McILVAINE ..... Louisville 1, Kentucky
Vice President, Louisville Title Insurance Company

Lionel Adams ..... New Orleans, Louisiana
President, Lawyers Title of Louisiana, Inc.

ELBRIDGE B. DONALDSON ..... Baltimore 2, Maryland
Vice President, The Maryland Title Guarantee Company

THEODORE W. ELLIS ..... Springfield 3, Massachusetts
President, Ellis Title Company

CHARLES M. HARMON ..... Cassopolis, Michigan
Owner, Cass County Abstract Company

C. J. McCONVILLE ..... Minneapolis 2, Minnesota
Vice President, Title Insurance Company of Minnesota

GEORGE S. NEAL, JR. ..... Jackson, Mississippi
Title Officer, Kansas City Title Insurance Company

R. B. MILLER, JR. ..... Platte City, Missouri
President, Murdock & Newby Abstract Company

TED E. NELSTEAD ..... Miles City, Montana
Vice President, Custer Abstract Company

JOHN GUMB, JR. ..... Fremont, Nebraska
Manager, Dodge County Abstract Company

SIDNEY W. ROBINSON ..... Reno, Nevada
General Counsel, Washoe Title Insurance Company

CHARLES A. GEBHARDT ..... Newark 2, New York
State Manager, Lawyers Title Insurance Corporation

J. R. WYCOFF ..... Hobbs, New Mexico
Security Title Company

WILLIAM WOLFMAN ..... New York 38, New York
Chief Counsel, Title Guarantee and Trust Company

W. A. HANEWINCKEL, JR. ..... Winston-Salem, North Carolina
Manager, Lawyers Title Insurance Corporation

A. D. MacMASTER ..... Williston, North Dakota
President, William County Abstract Company

JOSEPH C. HUGHES ..... Columbus 15, Ohio
Manager, Lawyers Title Insurance Corporation

GEORGE A. FISHER ..... Oklahoma City 1, Oklahoma
Vice President, American-First Title and Trust Company

STANTON W. ALLISON ..... Portland 5, Oregon
Vice President, Commonwealth Title Insurance Company

ELMER S. CARLL ..... Philadelphia, Pennsylvania
President, Industrial Trust Company

CHARLES J. HILL ..... Providence 3, Rhode Island
President, Title Guarantee Company of Rhode Island

RAE McINTYRE ..... Columbia 1, South Carolina
Secretary, Lawyers Abstract Company

HERBERT A. HEIDEPRIEM ..... Miller, South Dakota
President, Heidepriem Abstract and Title Company

GEORGE M. HOUSTON ..... Memphis 3, Tennessee
Vice President, Mid-South Company, Inc.

HARRY E. BRANDT ..... Austin, Texas
President, Gracy Title Company

JESSE N. ELLERTSON ..... Salt Lake City 1, Utah
President, Title Insurance Agency of Utah, Inc.

JOSEPH S. WOOL ..... Burlington, Vermont

WILLIAM L. BRAMBLE ..... Richmond, Virginia
Counsel, The Life Insurance Company of Virginia

WHARTON T. FUNK ..... Seattle 1, Washington
President, Lawyers Title Insurance Corporation

JAMES A. McWHORTER ..... Charleston 1, West Virginia

THOMAS J. HOLSTEIN ..... LaCrosse, Wisconsin
President, LaCrosse County Title Company

W. G. KERPER ..... Cody, Wyoming
President, Title Insurance and Trust Company

FEDERAL LEGISLATIVE COMMITTEE

Chairman—GORDON M. BURLINGAME ..... Bryn Mawr, Pennsylvania
President, The Title Insurance Corporation of Pennsylvania

RUSSELL G. SMILEY ..... St. Petersburg, Florida
President, West Coast Title Company

H. STANLEY STINE ..... Washington 5, District of Columbia
Exec. Vice President, The Washington Title Insurance Company

DAVID E. MacELLVEN ..... San Francisco 2, California
Vice President-Associate Counsel, Western Title Insurance & Guaranty Co.

CARLOSS MORRIS ..... Houston 2, Texas
President, Stewart Title Guaranty Company

AKSEL NIELSEN ..... Denver 2, Colorado
President, The Title Guaranty Company

STANDARD TITLE INSURANCE FORMS COMMITTEE

Chairman—BENJ. J. HENLEY ..... San Francisco, California
President, California-Pacific Title Insurance Company

H. E. TULLY ..... Seattle, Washington
Assistant Vice President, Washington Title Insurance Company

HERMAN BERNIKER ..... New York, New York
Executive Vice President, Title Guarantee & Trust Company

HAROLD W. BEERY ..... New York, New York
Senior Vice President, Home Title Guaranty Company

JAMES G. SCHMIDT ..... Philadelphia, Pennsylvania
Vice President, Commonwealth Land Title Insurance Company

JOSEPH S. KNAPP, JR. ..... Baltimore, Maryland
Executive Vice President, Maryland Title Guarantee Company

R. W. JORDAN, JR. ..... Richmond, Virginia
Vice President & Counsel, Lawyers Title Insurance Corporation

MELBOURNE L. MARTIN ..... Miami, Florida
Vice President & General Counsel, American Title & Insurance Company

W. R. KINNEY ..... Cleveland, Ohio
Chief Title Officer, Land Title Guarantee & Trust Company

FRANK I. KENNEDY ..... Detroit, Michigan
President, Abstract and Title Guaranty Company

HOWARD T. TUMILTY ..... Oklahoma City, Oklahoma
Vice President & General Counsel, American-First Title & Trust Company

V. C. McNAMEE ..... Fort Worth, Texas
Vice President, Stewart Title Guaranty Company

A. E. PETERSON ..... Chicago, Illinois
Vice President, Chicago Title and Trust Company

A. B. WETHERINGTON ..... Jacksonville, Florida
President, Title & Trust Company of Florida

RICHARD H. HOWLETT ..... Los Angeles, California
Vice President & Chief Title Officer, Title Insurance and Trust Company

COMMITTEE ON ABSTRACTERS LIABILITY INSURANCE AND BOND COVERAGE

Chairman—A. F. SOUCHERAY, JR. ..... St. Paul, Minnesota
President, St. Paul Abstract & Title Gtee. Co.

JAMES O. HICKMAN ..... Boulder, Colorado
Ass't Mgr., Boulder County Abstract of Title Co

GAYLE WYNACHT ..... Billings, Montana
Owner, Abstract Guaranty Co.

MONTGOMERY SHEPARD ..... St. Joseph, Michigan
President, Berrien County Abstract and Title Co., Inc.

HAROLD F. McLERAN, President-Elect,
Mt. Pleasant, Iowa

REPORT OF NATIONAL PRESIDENT

JOHN D. BINKLEY, *Vice President*
Chicago Title and Trust Company, Chicago, Illinois

My friends, it is not without a touch of regret that I face you this morning to make my last address as your president . . . because this job has been a challenge and a stimulating one . . . it has given me the opportunity to meet and become acquainted with more of you . . . I have learned much more about this fascinating industry of ours. And I shall be proud to have my name added to the list of past presidents of the American Title Association who have preceded me, and alongside those leaders of our industry whom you will elect in the future.

But this is enough of my personal feelings. Our teamwork in the American Title Association is uppermost in importance, and I would like to speak first about the present and then about the future of our function as an effective trade association.

As to the past twelve months, I am now more than before, aware that the running of the American Title Association is not a one-man job. It is not even a one-group job. Whatever will, I hope, be deemed worthwhile among our accomplishments in the past year is attributable to many persons working together . . . the committees, the section heads, the regional organizations, and our headquarter's staff.

As one example of your Association's effective teamwork at the national level, we joined forces last summer with the National Board of Fire Underwriters in successfully bringing about amendament of Senate Bill 1168, which avoided the needless SEC registration of more than 30 of our cooperate members.

Another matter we worked on this year is of particular interest to the medium and small-sized firms among our membership. It has to do with a group life insurance plan to be sponsored by the Association. This project was originated by your immediate past president Mort McDonald while he was still in office. The response to the questionnaire sent to you was overwhelmingly gratifying and demonstrated beyond all doubt that all of you feel the program will meet a real need. It is obvious that Mort sensed this need and he is entitled to our sincere appreciation for having stimulated us to undertake this project.

While official approval has not yet been given the program which has been developed on your behalf, we have scheduled a special Board of Governors meeting on Wednesday afternoon for the sole purpose of giving this matter our careful consideration. I am confident that the Board, when it has been thoroughly briefed, will look with favor on the plan.

Also, special mention should be given to this the ATA Planning Committee this past year. As many of you know, that committee sent questionnaires to a large portion of our membership asking for an evalution of the Association's present functions and for suggestions as to additional functions and services. The results of this important slrvey will be reported later in today's General Session.

Let me at this point anticipate some aspects of the Planning Committee's survey by saying that I think we should be more concerned about the future of the title industry . . . and about the role of the American Title Association in that future . . . than about our past accomplishments.

I do not consider that the present functions and goals of the American Title Association are adequate for its position as the national association of the title industry.

I hope that more of you will join me in this belief, and that positive action will come as a result. Let me give you some of the reasons for this position.

One of the important characteris-

tics of the economic growth of our country since World War II has been the enormous volume of real estate transfers and mortgages, caused by the construction of homes, shopping centers, office buildings, stores and factories. Of course, this activity gave all of us title people a lot of business. But there are new aspects in the business that some of us have not yet fully recognized.

First, there has been a great migration of people, buisnesses and real estate investment capital across state lines. The growth in Florida and California are the most obvious, but not the only instances. And even if the trend were to slow down, the effects of what has already occured are irreversible.

The primary effects on the title industry are these: the demand for title **insurance** in preference to other forms of title evidence has increased tremendously, and users of title insurance are much more sophisticated about the quality of title protection and service given by title insurers. To put it another way, provincialism is disappearing in the title industry . . . practices in widely separated localities are being compared by customers. More and more title industry customers are demanding uniformity of title evidence, and at the highest level of quality they have encountered anywhere in the United States.

The secondary effects on our industry are apparent to all of you. Two of them are the post-war expansion of title insurance corporations in financial size and geographic coverage, and the growth in title insurance sales through abstracter agency systems.

So I urge that our national association devote more time to the promotion of better understanding between its abstracter and underwriter members and to bringing more abstracters into the national association. It is no longer sufficient that an abstracter or title insurer be a member and participant in a state title association. The business environment demands participation in both your state and national association, with increasing emphasis on the national association.

Let me mention briefly just a few of the current problems of our industry that have not been solved at the state or regional level. They are serious ones, and require stronger action at the national association level.

Some title insurance underwriters have knowingly issued policies for substantially less dollar coverage than the fair market value of the insured's interest in the property. Once this is done aynwhere it encourages pressure on other underwriters everywhere. In the long run, this practice could cause the collapse of public confidence in title insurance, because only full coverage at fair premium rates can pay for vigorous defense of contested titles and full payment of any losses. And these safeguards are the foundation of the title insurance industry. This is a problem that can be dealt with adequately only by a strong national title association.

Our industry has another serious weakness . . . it is our realations with the organized bar. In recent years there have been unauthorized practice charges brought against members of the title industry in many different parts of the nation. Any one instance of this friction is harmful to all of us, for no matter how local or unjust a case may seem to us, it is viewed as a discredit to the title industry by leaders of the legal profession throughout the country. The American Bar Association has an active and vigilant committee on unauthorized practice. Now, it would be serious enough if only the legal fraternity were involved in these unpleasant situations. But the ill effects are always more widespread, because lawyers, individually and through bar associations, often exercise great influence on public opinion. This is particulaly true as to their influence on banks, savings and loan and life insurance companies, with whom the title industry is greatly concerned. Therefore, we need better self-policing and representation of title industry rights in this regard. The initiative and association level to be truly effective.

The same conclusion is inevitable also for the broader problem of our title industry public relations, advertising and publicity. Most of our membership consists of title firms too small to even contemplate individual efforts along this line. And the minority of larger member firms find it expensive to accomplish a professional grade job in just their own metropolitan areas.

While the services and protection of our industry are just as vital to the public as those of the casualty or life insurance industries for example, the public generally does not understand or appreciate us anywhere near as much. To help remedy this the American Title Association must have better access to public media of communication, and it must provide more resources and assistance to the state title associations and individual members in the area of public relations, advertising and publicity.

I do not intend these statements as a criticism of our headquarters' staff. They have had a rigorous, full-time work load as things are. But I do urge that our headquarters' staff be increased in personnel and in monetary budget. And the minimum first step along this line should be the addition of an experienced man as Public Relations Director. Once this is accomplished, he can start on a continuing public relations plan with the advice and cooperation of our present headquarters' staff and the Association's Advertising and Public Relations Committee.

What I have just said, summarizes, in essence, the unanimous recommendation this year of your Association's Advertising and Public Relations Committee. I endorse it wholeheartedly.

Another deficiency in our national association has been in the field of title industry statistics. About the only available national data of direct interest to use are the F. W. Dodge and U.S. Department of Commerce reports concerning new construction activity. All of us could measure our performance and plan our businesses better if we had statistics covering real estate transfers and mortgages along with accurate reports on the volume of title evidence issued. To the best of my knowledge, this sort of measurement has been accomplished only by the New York State Title Association.

Now, if you agree that we must make our national association a stronger and more effective agency, working for all of us, it certainly follows that it will require a larger annual budget. And that, of course, means larger annual dues. We should be willing to pay that cost, for it will soon pay returns in the form of more and better business for every one of us in the title industry.

I have no hesitancy about advocating these increased efforts and expenditures at this time even when there is a mild slowdown in real estate activity in most areas. Right now a backlog of demand for new housing is building up. In the long run, the title industry will continue to grow and prosper. What better time is there to devote a little more effort and money to our national association than the present, when we are not contending with overtime work just to get the title orders out?

ADDRESS OF PRESIDENT-ELECT

HAROLD F. McLERAN,
Mt. Pleasant, Iowa

I am sure that down through the years my predecessors in office faced this hour with a deep feeling of humility in having this great honor bestowed upon them. Such is my feeling this night.

Ten years ago, Florence and I attended our first American Title Association convention at Kansas City, and knowing only Jim Sheridan and the few folks from Iowa at that convention, we wondered how any one could get acquainted with the many people there. You folks have been most generous with us. You gave me work to do and I have found it to be one of the most pleasant experiences in my life to work with you.

I could not have achieved this honor alone. Florence has shared with me a sympathetic understanding for the many hours which I have had to spend away from home in keeping up with work in the office in order that I might carry on these outside activities. Also, without the loyal help of my two secretaries in the office I could never have participated so extensively in this Association's affairs.

Title work has many facets. It requires a review of past history down through the years, as well as an eye to the future.

We are assembled this year in the great commonwealth of Virginia, which State is replete with so much of the early history of our United States. William Byrd and his family have performed many public services, including the founding of the City of Richmond. The other day I was informed that a meeting would be held in the Byrd Room, in the John Marshall Hotel. Being a native of Iowa, the word "Byrd" meant to me only our feathered friends, and I was a little embarassed upon inquiry to have one of my good friends from Virginia tell me that I was standing by the Byrd room.

One more transgression on Virginia history and I hope you'll forgive the retelling of this story. Two penquins at South Pole—boy and girl and madly in love. They had the usual lovers' quarrel and it was decided that it might be best to try a separation by boy penquin going to North Pole. Boy penquin went North. Soon he received this message from his girl friend "Come home quick, I'm with 'Byrd'."

Our President, Jack Binkley, last Monday gave a masterful report of the activities which this Association should engage in the future. I concur wholeheartedly in Jack's report. We cannot afford to be at odds with any segment of our Society or of the title industry.

There is another matter which should receive attention. In my opinion, one of the first tasks which should be undertaken should be the complete rewriting of our Constitution and By-Laws, clearly defining the purpose of our Association, setting out the classes of membership, keeping in mind the Goodloe report and outlining the duties of the various offices and committees. It will be a tremendous job and I don't anticipate a stampede of volunteers to work on that committee.

The title evidencing profession is one of the keystones in our land tenure system. Instead of being on the defensive public wise, the American Title Association should provide leadership in facing problems which will lead to better public acceptance of our profession. I have no illusions that all of this will be accomplished in one year.

Down through the years, as I have had the opportunity to become better acquainted with you, it has been stimulating to me to see so much talent in our Association. In my acceptance of the Presidency, I know that I can depend upon all of you in helping to carry out the affairs of this Association.

You have bestowed upon me the highest honor which this Association has to offer to any of its members. I accept this honor with sincere thanks, and will endeavor to carry out the duties of the office to the best of my ability.

EVIDENCING OF LAND TITLES FOR THE UNITED STATES

HONORABLE PERRY W. MORTON
Assistant Attorney General of the United States, Washington, D.C.

It is a real personal pleasure and privilege for me to share in this annual meeting of your Association. It would be hard to find any group at a National level with whom I have interests, both personally and officially, as much in common as I have with you. Much of my own professional experience for more than 26 years has brought me in close and frequent association with abstracters, title attorneys, and title companies, their work and their problems. Since assuming my present office in 1953, my personal contact with the details of title work has necessarily been limited by the fact that the Land Acquisition Section is only one of eight sections of the Division for which I have general responsibility. But in spite of this necessary diffusion of my present concerns, title examination, land transactions and litigation still constitute the field in which I feel the most at home.

At your invitation I have brought with me today your old friends, Ralph Luttrell and Claude Nix, respectively the Chief and Assistant Chief of the Land Acquisition Section. I am sure that they are enjoying this meeting with you as much as I am. Between the three of us I would hope to be able supply to the answers to any questions you may have when I have finished. Their long and dedicated Federal service better equips them to discuss the assigned subject, "Evidencing of Titles for the United States."

The idea of there being three of us here brings to mind a story which United States Circuit Judge Sobeloff, former Solicitor General, loves to tell as an experience of his early practice in Baltimore. He was employed to try a case for a client who had never been in a court room before. During the first recess the client nervously suggested to Mr. Sobeloff that he get another lawyer to help him. Insisting that he could handle the matter himself, Mr. Sobeloff asked his client why he had made such a suggestion. "Well", said the client, "there are two lawyers there on the other side. When one is talking the other is thinking. But when you are talking nobody's thinking." So it is that while I am talking I will expect Ralph and Claude to be thinking, and when I have finished they perhaps can take over.

I do consider it a privilege, almost without parallel, to be in general charge of the title work and real estate litigation of the biggest landowner, the biggest land buyer, the biggest landlord, the biggest land seller, and at the same time the biggest land tenant in America. A recent survey by the General Services Administration shows that the Federal Government now owns nearly 22% of all the land in the United States. Roughly one-tenth of this 22% represents land which is not a part of the public domain, but which has been acquired over all the years either by purchase of condemnation.

Well over a century ago a bitter controversy arose between the United States and the State of New York concerning the title to a tract of land on Staten Island upon which fortifications had long been maintained at Federal expense. The title contest became so acute that in the year 1841 Congress refused to appropriate funds for the repair of these fortifications until the question of title had been settled. This was the occasion which for the first time in American history, as far as I know, awakened Congress to the importance of having an examination of the title to federally acquired land prior to the expenditure of public money. And so it was

that on September 11, 1841 the Congress passed a Joint Resolution requiring the Attorney General to approve the validity of titles before the expenditure of public funds for any buildings upon such lands.

A little sampling of statistics, based upon the experience of the past ten years, should illustrate what hardly needs proof, that the United States is the largest single customer of abstracters and title companies in this country. In these last ten years condemnation proceedings have been filed to acquire nearly 79,000 tracts of land, and, in addition to that, the Attonrey General has approved the titles to more than 67,000 other tracts or parcels for acquisition by voluntary purchase. The condemnation proceedings involved nearly 4,000,000 acres of land for which a total of more than $250,000,000,000 was deposited in the various courts as estimated compensation. The direct purchases included more than 3,600,000 acres for agreed considerations totaling over $226,000,000.00. Thus, in this ten year period, the title work done for the Federal Government involved nearly 150,000 individual title searches spread over every state in the Union and all of the territorial possessions.

I hardly need to point out to this audience that in the handling of this volume of title business the Department of Justice has encountered an almost infinite variety of complicated and unusual problems.

The announced subject—"Evidencing of Titles for the United States"—was assigned to me in exactly those words. I have two principal objections to it.

First, I do not like to be "fenced in" by a heading, and there is every probability that I will break through the fence before I finish.

Secondly, and now more seriously, the very form of expression suggests the idea that "Evidencing of Titles for the United States" is in some way mysteriously different from evidencing title for any reasonable purchaser. And that carries with it the rather uncomplimentary implication that there is something unreasonable about the United States. I should like to put any such notion to rest, if I can, by accentuating first the positive instead of the negative.

There are two words which ought to be etched on the spectacles of everyone who has anything to do with real estate title transactions. Those are the words "Marketable Title." By definition, a "marketable title" is one which is free from reasonable doubt. Bouvier expands the idea in the classic expression that a marketable title is "A title which a reasonable purchaser, well informed as to the facts and their legal bearings, willing and anxious to perform his contract, would in the exercise of that prudence which business men ordinarily bring to bear in such transactions, be willing and ought to accept."

That is the criterion by which all of us measure our work, no matter what our particular function may be. And if it isn't, it ought to be. With regard to this central concept, there is no reason why attorneys for the United States should behave differently from anyone else. They should approve a title when the evidence shows it to be "free from reasonable doubt." They should reject it if the evidence discloses a reasonable doubt.

So it is that I want to feel and want you to feel that we are pulling together in the same direction. The legal work of passing on titles in the Department of Justice is directly comparable to that of a large title company doing business in many jurisdictions. We have, to be sure, a whole booklet entitled "Regulations for the Preparation of Title Evidence in Land Acquisitions by the United States." You don't need me to read it to you. It would unnecessarily burden these remarks and detract from my central purpose were I to go into any detail, with one or two possible exceptions.

The cardinal rule which I wish to emphasize beyond anything else, as printed in bold face on the first page of the Regulations, is this: "EVIDENCE OF TITLE ACCEPTABLE TO PRUDENT ATTORNEYS AND

TITLE EXAMINERS IN THE LOCALITY IN WHICH THE LAND IS SITUATED WILL ORDINARILY BE ACCEPTABLE TO THE DEPARTMENT."

In our working attitudes—and I mean both yours and mine—it must be recognized that there are some risks which must be assumed in any business transaction. A title examiner too often forgets that an abstract may show a **perfect** record title and yet the title may be completely bad for reasons which do not appear upon the face of any record. Patton on Titles lists 16 such possibilities. Familiar examples are adverse possession, forgery, and undisclosed incompetency. And in pointing this out I am not drumming up business for title insurance companies as against abstractors. I know that these are the points made in the advertising of title insurance. However, one who goes through a real estate transaction cannot possibly escape all risks and cannot secure protection against all risks. For example, a purchaser of land is primarily interested in obtaining the quality of ownership that he has bargained for. It does not satisfy him merely to get his money back if there is a failure of title. Title insurance may restore his pocketbook by paying a stipulated sum of money if there is a failure of title, but if it were the money the purchaser wanted he would not have bought the land in the first place. Title insurance cannot assure that a title will not fail any more than fire insurance can assure that a frame building will not burn down. I am not suggesting that title insurance is bad on this account or that there is anything that can really be done about it. The point I am making is that it is the height of absurdity to insist upon a perfect record for the mere sake of perfection, when perfection, even if secured, may be illusory. And that is really just another way of saying that in our work with titles all of us have to be realistic and reasonable.

Let me give you an example. I am sure that we have all been called upon by hyper-meticulous examiners to meet many utterly absurd requirements for affidavits of identity. However much it should embarrass us, it is common knowledge that every well organized community has some old timer who makes a pin money business of furnishing such affidavits. Some years ago another examiner required an affidavit of identity in a deal where my client was the seller. I telephoned a local abstracter to see if he knew of anyone who could make the affidavit. His reply was that he could get me "an affidavit that George Washington was Benjamin Franklin." Rather amused, I asked him how much such an affidavit would cost. His answer was "anywhere from $1.00 to $5.00, depending on how far it is from the truth." I should not be understood as urging the elimination of the practice of accepting explanatory affidavits in the broad areas of their reasonable dependability and legitimate purposes I am merely suggesting that the demand for explanatory affidavits in situations where good sense would require no explanation constitutes an abuse which if not stopped is bound to weaken our already overburdened system of conveyancing.

There are, to be sure, certain respects in which the United States stands in a somewhat different position from other purchasers. Those differences do not and should not in any important degree alter the universally basic criteria for the **evidencing** of title as far as the abstracters or title companies are concerned. On the contrary the differences merely affect the flexibility with which our Department may relax objections to particular technical defects in certain circumstances.

The first and most important of these differences is that the United States has the power of eminent domain, whereas the ordinary purchaser does not. As an ultimiate resort, if worst comes to worst, the United States can condemn to perfect its title if some adverse interest has been disregarded or left hiding in the woodshed when an acquisition was originally closed. Obviously, this is no

reason for the Government to be careless in its title examinations or to be less than prudent in its real estate transactions. No more than anyone else should the Government be willing to pay for the hole in a doughnut. I hope the day never comes that I have to justify before a Congressional appropriations committee the payment of a condemnation judgment for any substantial adverse interest left outstanding through the carelessness of my staff at the time of closing an earlier purchase.

The second important difference, overlapping the first to some extent, is really a combination of two factors. The first factor is that as a practical matter most acquisitions are intended for long term Government use. The second factor is that if the Government has acquired the basic fee simple title it is generally immune from suits to quiet title or to foreclose any liens which may for some reason have been left outstanding. Again, however, these factors are no excuse for the Government to be careless in the handling of its land acquisitions.

I have passed over these differences so briefly merely to note their existence and at the expense of precision of statement. That they do exist, however, does make it possible for the Government in certain circumstances to approve titles for closing purposes on evidence which would not be altogether acceptable to the ordinary prudent purchaser. This is especially true in those instances where the cost of eliminating the risk will substantially exceed any loss which may reasonably be anticipated from the risk. Thus, for example, as to properties of relatively low value, proofs of heirship by affidavit are often accepted in lieu of probate proceedings and affidavit of adverse possession may be and frequently are taken as sufficient where the local practice would be to require a suit to quiet title. It is for the same reasons that title evidence is considered sufficient if based on various limited periods of search prescribed in our regulations. It is readily admitted that because of variations in local law the stipulated periods of search may be more sensible in some states than in others. After all, the regulations have to be general rules consistent, on fair balance, with what long and widespread experience has indicated to be reasonably safe for the Government's overall purposes. There is nothing so inflexible about the regulations but that they may be modified on a case basis or even on a project basis.

There is one other difference between the United States and other purchasers as to which I address myself particularly to the representatives of the title insurance companies. In the ordinary title policy, for private use, there are certain fairly standard conditions which are not acceptable to the Government. I would mention especially the clause by which the insuring company reserves the right to defend actions. Such a clause is incompatible with the inescapable fact that in any suit to which it is a party the United States must be represented by the Attorney General, whose decisions as to the conduct of the Government's case must control.

In most instances the cooperation of the abstracters and title companies in their dealings with the Government has been excellent. I would be less than frank, however, if I did not say that in some areas there is room for improvement. More particularly, some title companies are not assuming what I consider to be their full responsibility because they seem to have a habit of noting defects and irregularities which are no more than fly specks. It has been my natural assumption that the reason purchasers pay premiums for title insurance is that they expect the title insurance company to assume some risks. There is even a suspicion held in some quarters that this excessive fly specking is done with the knowledge that the Government can wash the fly specks away by condemnation, whereas the same picayune exceptions would not be made in a private transaction for fear of causing it to

fail. To the extent that this may be true, if it is, it could very well be an important factor in the unpleasant fact that we have a disproportionately large number of acquisitions thrown into condemnation instead of being able to complete the deals on a purely voluntary purchase basis. One of the biggest obstacles to the efficient administration of justice is the large backlog of civil cases. It may surprise you to know that we now have 29,000 tracts involved in pending condemnation cases. We are making strenuous efforts to reduce the backlog. I plead with all of you to help us with this by not making unnecessary objections which may be the cause of throwing a new case into condemnation, and that you also bend your greatest exertions in promptly filling the Government's orders for title evidence.

In the remaining time I want to look beyond the perimeter of my assigned subject with some thoughts that are at least tangent to it. In the past quarter century, to my own obsevaion, title attorneys, abstracters and companies have become increasingly sensitive to the widely held public feeling that existing conveyancing practices and procedures are needlessly inefficient, cumbersome and expensive. If we who work with the system can see beyond the end of our noses, we must realize that it is actually to our own longer range self interest to do all we can to eliminate, or at least reduce the adverse impact of, some of the congenital absurdities and complexities of our rather antiquated system. Unless we are content with our own inertia, we should continuously be asking ourselves what can be done about it. There is more uniformity in the laws relating to automobiles than there is in the laws relating to real estate. There is probably nothing in the world quite so local as real property. It is almost immediately apparent that in a country of 48 states, it would not be realistic to suppose that anything very nearly approaching general uniformity will ever be attained. For example, the dream of the Torrens system advocates, while arguably offering an idealistic approach to the solution of the problems, has failed of any widespread acceptance for very good and practical reasons. There is no basis to believe that there will ever be any general consignment of our admittedly cumbersome recording systems to the junk pile. If we could start over again with a new country and a clean slate, anyone in this room could, with a little imagination, devise a better system. But until we start laying out subdivisions on the Moon, that is probably out of the question.

There are, however, certain specific and progressive accomplishments within the past 20 years which prove that significant improvements **are** possible within the general framework of the existing system. Many state bar associations all over the country have been performing distinguished public service in sponsoring movements toward improvement. To paraphrase a distinguished American who recently retired from Cabinet office, I insist that what is good for the public is good for us. By "us," in this case, I mean attorneys, abstracters, and title companies.

There is power in an organization such as this, and in your state level affiliates, by which you can, if you will, add the impetus which will greatly accelerate the accomplishments already in sight. In the field of legislation **much** has been done in the past few years, and more can be accomplished, particularly in regard to statutes of limitation and comprehensive curative acts. The trouble with most statutes of limitation is that they are unnecessarily limited by absurd execptions and disability provisos. The trouble with most curative acts is that they have been sporadic and piecemeal. But ample patterns are now available in both of these fields of law to accomplish very substantial progress if your voices can be raised loud enough for your legislatures to hear.

Most noteworthy of all the recent legislative developments are the so-called "Marketable Title Acts" such as the one adopted in Michigan in 1954, borrowed by Nebraska and

South Dakota in 1947, and copied elsewhere since. In general pattern they declare, in effect, that one who has an unbroken chain of record title to any interest in land for a specified period of time shall at the end of such period be deemed to have marketable record title to such interest, subject only to narrowly limited antecedent exceptions, and subject, of course, to any defects in the chain of record title during the stipulated period. Provisions are made to preserve the older interests by recording notice of them within limited time, but in the absence of such notice they are extinguished. Such statutes, therefore, not only bar the old interests by lapse of time, which is the usual function of statutes of limitations, but provide a mechanical method of determining the situation of record.

However, the best statutes of limitation and Marketable Title Acts must ordinarily look back a very considerable number of years to the base point prior to which defects are rendered harmless. And curative acts, however comprehensive they may be, also ordinarily operate behind a fixed or progressive healing date several years prior to any given time of examination. In short, there is no real substitute for good sense.

The organized assocations of the Bar in a present total of 23 states are now fostering the use of good sense by having adopted uniform standards of title examination at the state level. The first state-wide standards were formulated in Connecticut in 1937. I take an almost parental pride in the fact that I helped draw up the first set of "standards" in 1938 in my home state of Nebraska, which was the second of the states to join in this rapidly spreading movement. Statewide standards of title examination reached by agreement of the members of the bar afford the most workable means I know to break the vicious circle which otherwise exists among title examiners. Unless some means of escape are provided, the norm for title examination tends to be established in any community by the examiners who raise the most objections irrespective of their triviality or lack of merit. Those of you from states which do not yet enjoy the benefits of such a system of standards would do well to look into the idea. Representatives of the title companies in such states should not indulge the baseless assumption that the idea will not work in states where title insurance is prevalent. As others of you can testify, title companies are among the enthusiastic supporters of the standards in many of the states which already have them.

I urge you all, therefore, to become active participants in these efforts to improve our system by cooperative exertions for the good of the public we all serve. The result will be better understanding, better service, and better business.

MULTIPLE USE OF TAKE-OFF

WILLIAM C. SHAVE, *Vice President*
Land Title Company, Miami, Florida

When Jim Sheridan called and asked me to talk about the Multiple Use of Take-Off, I am sure that the feeling which I had was the same as the City Slicker who stopped on a Country Road and asked a Farmer which way it was to town. The Farmer answered, "I don't know," so the City Slicker then asked the Farmer which way it was to the Main Road, and the Farmer again answered, "I don't know," so in exasperation the City Slicker said to the Farmer, "You don't know much do you" and the Farmer answered "I aint lost." But believe me, I was lost . . . but with the help of many friends, I was able to obtain information which I shall attempt to convey to you.

FIRST, let's define the phrase "Multiple Use of Take-Off." This is a single operation for the benefit of many in making the daily take-off of instruments recorded, to be used in the preparation of abstracts or the writing of Title Insurance policies. In Dade County Florida during the year 1933 and prior thereto, there were 4 or 5 companies making a daily take-off of papers filed. Two of these companies were making what we call a "Full Take-Off." That is, a take-off sufficiently complete to give all of the information which would be necessary in making an abstract in your own office. The other companies were making "Brief Take-Offs" for indexing purposes, which necessitates additional work at the Courthouse for preparing abstracts. During the year 1933, there were some 15,000 papers filed in Dade County, which is the least number of papers recorded in any one year for any years prior to or since then. Our own company was just organized in 1933, so we were too small to have anything to do with the decision to make a Daily Take-Off in conjunction with the other companies.

HOWEVER, during the year 1934, we were able to buy into the deal. The method decided upon in Dade County was what is called the "Ditto System," which is an inexpensive system of reproducing a negative made with a special ribbon. The negative is put on a simple machine, and the number of copies required, can be reproduced.

IT IS our recollection that when we first started to use the Ditto System with so few papers being filed, the cost was approximately $40.00 a month for each member of the association. At the present time, the DAILY FILINGS are approximately **15,000 a month**, and have numbered as many as 20,000 a month within the past year. On account of the heavy filings, a number of the employees of Ditto Service are required to keep the various abstract plants right up to date. These employees come to work at different hours at the Courthouse, and those that are on duty when the Courthouse closes, are required to stay until the day's filings have been completely run through the ditto system. Consequently, we are able to get a reproduction of everything filed in the Courthouse on any given day, at 8:30 the morning of the following day. Therefore, abstracts can be dated 8:30 A.M. the latter part of any day in which the Abstract search is completed. The present cost to each subscriber of Ditto Service, is approximately $360.00. WE HAVE 12 abstract companies that use the service. One copy is sold to a daily legal newspaper which covers the calendar and activities of all the courts in Dade County and also publishes a list of the papers filed, within a few days or a week of their filing, and a copy is furnished to the Recorder's office without charge. Two of the companies using the Ditto Service, post to Tract books, using the ditto information to make their posting. The other companies use ditto cards as an index and file them alphabetically and chronologically in the appropriate openings in file cabinets. WHEN THE ditto Take-Off requires filings in several openings, ditto service furnishes sufficient

copies for filing in each opening. In other words, no duplicates have to be made at the abstract company office.

THE DITTO SERVICE in addition to furnishing a Take-Off of recordings filed in the Recorder's office, also furnishes information from the U. S. Court and other courts of records with respect to the filings of Suits, Judgments and Miscellaneous matters which are to be indexed in what is commonly called the "Name Index."

IT HAS often been said that "Necessity if the Mother of Invention." If that statement is true, then certainly financial savings must be the Father of Invention. From the preceding information, you can certainly see that a definite financial saving is assured by the use of Miltiple Take-Off.

TIME IS also valuable in our business, and there is a tremendous saving of time in the smooth operation of Ditto Service. The Ditto Service has many advantages. One being that if an error is made in any of the take-offs, all companies have the same error and one or more of the members catch this error and report it to the Ditto Service. Then a Corrective Slip is sent to each of the member companies. In Miami, while we have a large Courthouse, if every company maintained a corps of clerks to make the daily take-offs, the space would be prohibitive and the cost to each company would be great.

SINCE THE inauguration of Ditto Service and because of our getting together on its operation, we have been able to cooperate on many other things which were for the good of our business. At the present time, we have in the embryo stage, an Association of the Title companies in Miami, for the purpose of arriving at good standard underwriting policies for Title Insurance. Of course, only good for each of us and the general public, can come from a move such as this.

UNTIL NOW, I have discussed what we have at the present time, now I would like to add a few of my own ideas on what we could have in the future. I believe that a commonly owned Plant is not only possible, but would be an ideal arrangement. IN OTHER WORDS, a single take-off either posted to Tract books or filed as Index cards, for the common use of participating companies. In my opinion, that system would have many advantages over the present Ditto System. This would be time saving in that it would reduce the amount of handling necessary. It also means a financial saving, because it would greatly reduce the number of employees required, the space used and the work involved, and it would bring the participating companies closer together for a common good, which is a situation from which only good could come. A time and financial saving idea from any member, would always benefit everyone. A PLANT such as this could be used for gainful advertising, and the cost of advertising would be greatly reduced since it would be borne by all members and not by one. IN MY opinion, this type of operation has unlimited possibilities, and should definitely be investigated.

I THANK YOU for your kind attention, and hope that the information I have related to you today, will lead to a more friendly association with your competitors and to a better financial profit for you, as I know that I have learned much from the work involved in preparing this talk and also from the many people who helped me in this.

THE FEDERAL HIGHWAY PROGRAM AND PARTICIPATION THEREIN BY TITLE INSURANCE AND ABSTRACT COMPANIES

MEMBERS OF PANEL:

Frank C. Balfour, *Chief Right of Way Agent, California Division of Highways.*

A. Edmund Peterson, *Vice President,* Chicago Title and Trust Co., Chicago, Illinois.

Clifton W. Enfield, *Chief Council,* Bureau of Public Roads, Washington, D.C.

FRANK C. BALFOUR, *Chief Right of Way Agent*
California Division of Highways, Sacramento, California

It is indeed a pleasure to appear before you distinguished members of the American Title Association, which represents a complete cross section of the title profession as now practiced throughout the United States, and in the 20 minutes assigned to me attempt to cover all of the bases on a subject that should probably have a minimum of two hours.

For many years you title men, or at least that portion of you who are interested in securing a profitable volume of business and we right of way agents have had a common goal; namely, the acquisition of a clear title for a particular use to a given parcel of land based on a correct and g o o d description. Althought this statement is probably an oversimplification in describing our mutual efforts in obtaining a clear title to the rights of way we negotiate, the procedures relating to it as presently practiced throughout the c o u n t r y, vary so greatly between the several states that there is no common set of ground rules that will apply either to your title procedures or to our own right of way acquisition procedures.

This whole problem of the close working relationship between you title men and us right of way agents is now brought into the sharpest focus by reason of the enactment of the Federal-aid Highway Act of 1956. The magnitude of this federal highway program and the impact it will have upon both your title operations and our right of way negotiations will be tremendous.

As you are all aware, the federal interstate system of highways, which comprises the major national network of superhighways, will consist of approximately 41,000 miles. 75% of this system will be on new alignment and the remaining 25% will generally involve the widening of the right of way on existing alignment.

The Bureau of Public Roads presently estimates that the acquisition of the necessary right of way for this program will involve approximately 730,000 parcels of land at an estimated cost of five billion dollars, exclusive of the cost of clearing the right of way and relocating utility facilities.

The Federal Highway Program is only a part of the planned freeway construction program during the next 15 years. Based on present available information, it is my opinion

that the Federal Highway Program plus the freeway and expressway construction program of the states, plus the program of the political subdivisions of the states will, during the next 15 years, represent a total expenditure for right of way and acquisition of access rights in the neighborhood of $30 billion. It is therefore obvious that when we are discussing title service, escrow service and title insurance we must think in terms of hugh business volume.

On the interstate system, the Federal Government is paying 90% of the total cost of right of way acquisition and construction. In a few of the states because of the heavy Federal ownership of land, the Federal Government's share of the total cost may run as high as 95%.

The Bureau of Public Roads, which has been charged by the Congress to administer this huge highway program, has just about completed the detailed ground rules under which it will delegate to the several states the authority to negotiate and purchase the necessary rights of way for this highway program.

In essence, these regulations will require a good and sufficient title to each and every parcel to be acquired based on a correct and accurate legal description and, last but not least, a competent and accurate appraisal for the purpose of negotiating the purchase of such parcels of right of way.

To fulfill this huge right of way acquisition program within the framework of the Bureau's basic requirements and meet construction advertising deadlines will require close cooperation and liaison between you title men and us right of way agents.

At this point I would like to express some personal views. The Federal Highway Administrator and the staff of the Bureau of Public Roads have done a very fair and efficient job in setting up the required policies and procedures that must be followed by the states of secure Federal reimbursement of right of way acquisition, with one exception. The Federal regulations are almost silent on the type of title evidence that is required although the regulations do provide in the list of eligible items for overhead for reimbursement abstracts of title, title certificates and title insurance.

Based on my many years of experience in public land acquisition and having to face the responsibility of supervising the acquisition of approximately 10,000 parcels per year at an expenditure close to $150 million a year, I want no part of any procedure that does not include a full and complete title report from a competent title company, payments for rights of way distributed through a thoroughly reliable escrow agent and I want a policy of title insurance because with this policy of title insurance I have the satisfaction of knowing that top specialists in land title insurance are gambling their money against our ability to secure good and sufficient title to the land on which the public agency I represent intends to spend millions of dollars on public improvements. In other words, to me good title reports, good escrow service and title insurance are indispensable to the proper and sound operation of a public right of way land acquisition agency.

I am sure that if a top state highway administrator had a severe stomach ache he would go to a doctor, and not a blacksmith for a diagnosis and certainly he would call a surgeon and not a tailor for the operation.

We right of way men fully realize that even though this great acquisition program will expand our operations manifold in all of the states, the expanded program will not have as great an impact on your own title companies, even though you may secure 100% of the available business. The increased volume of available title business will, however, be substantial and in all probability require certain changes in the plant procedures of some of the title companies.

For example, all properties abutting upon the right of way of the interstate system of highways will have no right or easement of access whatever to the through lanes of the freeway except in common with the

traveling public generally. This restriction of access from private property to a highway is a comparatively new concept in some states. This may well mean that you representatives of companies who operate in such states will be called upon to not only issue title insurance or other title evidence as to the sufficiency of the state's title to right of way being acquired for the new freeway, but also as to the sufficiency of conveyances releasing and relinquishing to the state all abutter's rights of access to such highway. This situation will particularly apply where the state is extinguishing an already vested right of access of an abutting owner such as will be the case where an existing conventional highway is being converted into a freeway. (The term "freeway" as used herein is defined as a highway in respect to which owners of abutting lands have no right or easement of access.)

The matter of negotiating right of way on a full freeway basis, with its attendant taking of abutter rights of access, involves considerably more title information than acquiring rights of way on a conventional highway where such rights are not involved. For instance, in the appraisal and negotiation of access rights, not only is it necessary to know the ownership vesting of the larger parcel of which the freeway right of way is a part but also to know the vesting of any and all easements that may intercept the freeway right of way within the boundaries of the parcel.

To fully illustrate what in my opinion are the necessary requisites in the way of minimum title information required to efficiently operate a right of way department actively engaged in purchasing properties for public improvements, I wish to briefly summarize the working relationship we have with the various title companies involved in our over-all state operation in the 58 counties of California.

For the past 18 years, since the legislature granted the highway department statutory authority to acquire rights of way on a freeway basis, the title companies in my state, in close cooperation with our right of way department, have continuously improved their title services to the point that we now have a most efficient operation and one that I doubt could probably be improved upon.

For the benefit of you title representatives from my home state, I possibly should not make such a complimentary observation, as it was not too many years ago at a state convention of California title companies that we had a somewhat outspoken and heated panel discussion between our respective organizations on what was wrong with the other fellow's operation and how it could be improved upon, but I am happy to report that our relations with all of the title company offices in California during the past several years have been most pleasant and profitable to my own organization, and I am sure to the title companies as well. In this connection, during the past 12 years, we have made several exhaustive studies and have long since come to the conclusion that it is to the distinct advantage of the taxpayers of the State of California for us to "farm out" all title and escrow service to title companies and that this procedure is considerably less expensive than if we attempted to establish a title searching section within the right of way department under which procedure we would not have the advantage of the title insurance policies that we receive.

If you will bear with me, I will with pardonable pride, briefly outline our present operating relationship with the various title companies in California which represents the culmination of this 18-year period of trial and error procedures.

Each fiscal year (July 1 to June 30) we enter into a formal contract (generally called a service agreement) with each accredited title company, and this year we have 104 such agreements in effect with California's title companies.

Many of these agreements are of course with branch offices or affiliates of other companies. The agreement sets forth all of the terms and

conditions of the title services to be rendered to the State. In general, the agreement provides that for a fixed fee the title company will furnish the State on each parcel to be acquired the following:

(1) A preliminary title report insuring the state in the amount of $3,000 that the condition of title as therein set forth is correct and that it will subsequently issue at no additional fee, its standard form of policy of title insurance vesting title in the state in the like amount of $3,000, provided said policy is issued within 18 months after the date of issuance of the preliminary report.

(2) This preliminary report will show, in addition to the name of the vestee, the date and recording reference to the deed by which the vestee acquired title, together with his address if available, and the amount of Internal Revenue Stamps affixed to the vesting deed.

(3) It also specifically names all the parties that must be contacted or named parties defendant to clear title to the various exceptions therein set forth. This includes the names of the present owners in interest in all existing easements or rights of way that are clearly described. (Note: In special instances, where the determination of the present owners in interest requires extensive title searching, an additional fee is charged in accordance with the terms of the service agreement.)

(4) Report on all county and municipal tax and bond liens.

(5) A complete legal description of the larger parcel, of which the right of way being acquired is a part.

For the purpose of establishing title charges on each of our orders, the larger parcel is defined in our service agreement as any lot or number of lots vested in the same ownership in the same block of any subdivision, or land vested in the same ownership situated entirely within one government survey section.

(6) In addition to the above, this fixed fee also includes a unilateral escrow service on transactions up to $25,000, which subject I will discuss with you later.

In addition to the above, the service agreement sets forth a schedule of charges for issuance of an up-to-date preliminary report to replace title reports that are more than 18 month's old, additional tax reports, supplemental preliminary reports where all or a portion of the parcel previously reported upon changes ownership, endorsements on policies of title insurance assuring the sufficiency of the release and relinquishment to the state of abutter's rights of access to the freeway, furnishing copies of deeds and other instruments and providing other title services on miscellaneous contingencies as specifically set forth in the agreement.

In all those cases where we are acquiring the abutting owner's rights of access, we receive a Release and Relinquishment of Access Endorsement, which insures the state that such owner's remaining property, as specifically described in said endorsement, has no easement or right of access to said freeway. The form of this endorsement (a copy of which is available upon request) was prepared through joint cooperation of the California Land Title Association and ourselves. It is now used as a standard form of endorsement throughout the State wherever a policy of title insurance is issued involving the acquisition of access rights. As I stated previously, the state pays an additional fee for this special access endorsement.

I am sure that all you title men are fully cognizant of the fact that whenever you issue an endorsement of this character, it provides a valuable future record for your plant use in writing subsequent policies on lands adjoining freeways, in that it specifically defines the exact limits of the original holding upon which this appurtenant right of access has been extinguished.

In other words, it reduces to a minimum the possibility of your later erroneously showing that a given parcel abutting upon a dedicated highway has an implied right of access thereto, where in fact, all abutter's rights of access have been extinguished.

I can not stress the point too strongly to you title men—that it will become increasingly important in the operation of your plants to properly flag all properties adjoining the interstate system of freeways and all other access controlled highways as to the extent of the abutting owners' rights of access thereto. Some title insurers will certainly get burned sooner or later if you do not heed this warning.

The supreme courts of several of the states have rendered decisions (California's case is Schnider, et al vs. State of California (38 A.C. 492) 2-21-52) to the effect that when a state constructs a freeway along new alignment where no highway has previously existed and has through due process declared the new improvement to be a freeway with restricted access in advance of the construction of the project, abutting owners have no vested right of access. It follows that abstractors and title insurers must in these cases go beyond the county recorder's office and probably to the office of the state highway department to make certain where they stand in connection with the control of access.

We in the California state highway right of way department in all negotiated settlements along new alignment insert a standard freeway access taking clause (we, of course, do not concede in these cases payment for the taking of access rights) for the purpose of putting the world on notice, and of course this serves as a definite flag to the title companies. We follow approximately the same procedure in eminent doman proceedings in which cases we specify that the access rights from the abutting property are being taken both in the Lis Pendens and in the Fnal Order, again of course without conceding compensation for the taking of such access rights.

You must keep in mind that at least as of this date many of the states are not following this procedure to get the taking of access rights clearly on record so I recommend that you abstractors and title insurers work out some system with the state highway departments under which proper clauses will be inserted in deeds of conveyance in negotiated settlements in declaration of taking and in other eminent domain proceedings for the purpose of developing a clear record relative tothetaking of access rights when freeways are constructed along new alignment.

Referring back to the matter of our unilateral escrow procedure—the fixed fee, which I mentioned above, for preliminary report and subsequent policy of title insurance also provides that the contracting title company will furnish this special escrow service, provided the total consideration for the purchase of the parcel of right of way does not exceed $25,000. In excess of that amount, an additional fee is charged in accordance with an agreed schedule of charges. Under this unilateral escrow procedure, the escrow holder accepts no instructions whatever from our grantors but only those which it receives from us.

It is our sole obligation to negotiate for and deposit into this escrow all the necessary instruments for the purpose of clearing title (with the exception of full or partial reconveyance under trust deeds and partial or full releases under mortgages. In this step of clearing, it has proved to the mutual benefit of all parties concerned if the negotiating right of way agent handles negotiations with the trustee and beneficiary and the mortgagee and the escrow officer follow through and secure the execution of the necessary documents). In other words, the escrow holder acts as our disbursing agent. The escrow prorates the amounts, makes necessary deductions, determines that title is in a condition to close, records the necessary instruments and disburses the moneys in accordance with our instructions.

Another very important service we obtain from the title companies is a report on all recent conveyances of properties between private parties in the general area of our right of way acquisition projects. This information is required by our appraisal section in maintaining a current and up-to-date record of all such land trans-

fers between private parties in order to establish the going price of properties comparable to those being acquired by the State.

Based on the record of these transfers, our appraisal section then contacts either or both parties to the sale to verify the actual sales price, as compared to the indicated price as shown by the cancelled Internal Revenue Stamps on the deed.

In this connection, I can unqualifiedly state that no public agency actively engaged in appraising and acquiring many properties can efficiently establish the fair market value of such properties without a complete background of these comparable private sales. In fact, this valuable title transfer information is the very backbone of our entire appraisal process.

To obtain a record of these private transfers, we pay the title company a fixed fee per hour for the use of its plant by one of our authorized personnel in searching out all recent sales of nearby comparable properties. In my opinion, the cost of this title service is negligible compared to the extensive benefits derived by the department in furthering the process of correctly establishing market value of the properties being acquired for the highway project in an efficient and expeditious manner.

At this point, I would like to briefly comment on four questions that have been presented to me by your program committee:

(a) When a freeway intersects an existing street or road at right angles, which street or road is closed at the freeway right of way line, creating a cul de sac street the problem that arises, depending upon the laws of the individual state, is whether or not the properties that fronted on a through street and now front upon a cul de sac (or dead end) are entitled to damages, and if damages are allowed under the state law, we are then in the same position as we would be with any other parcel, as to appraisal to determine the fair market value of the damages, negotiations or eminent domain proceedings, and the requirement of title report service and policies of title insurance.

(b) Relative to the problems arising in connection with the readjustment and relocation of publicly and privately owned public utility facilities, these utility facilities must be permitted to cross the interstate highways and state-constructed freeways, with the area of joint use being covered by some form of common use agreement, with each party of necessity having to respect the rights and privileges of the other party. However, in many cases the question arises as to whether the utility has prior rights to the public to make the determination as to which party bears the cost of relocation and rehabiliation. This is when the title companies are called upon and oftentimes must make some rather complicated title searches and report their findings.

(c) Under Federal requirements on the interstate system, longitudinal encroachment of public utilities must wherever humanly possible be eliminated. It follows that if the utility in its existing location has prior rights to the land they occupy they properly should be reimbursed. Here again the services of the title company become very valuable and undoubtedly the utility in acquiring a new location for their right of way will be calling upon the title company for title reports to determine the ownership of the lands that they must cross.

(d) I have been asked the specific question: "Does the use of title insurance policies facilitate reinbursement by the Bureau of Public Roads to the states of funds spent for right of way acquisition?" I can say that if I were an auditor for the Bureau of Public Roads, policies of title insurance would certainly facilitate and expedite my approval of reimbursement to the states.

I believe you gentlemen would possibly be interested in some of the general conclusions which were reached a few years ago at the panel discussion I mentioned above, between members of the California Land Title Association and ourselves

regarding the expediting of closing right of way acquisitions by our California highway right of way department, and incidentally all of these conclusions are just as sound today as they were eight or ten years ago.

The principal conclusions of this meeting are as follows:

(a) That only one form of preliminary report will be furnished the State regardless of whether the property is being acquired by deed through negotiation or by condemnation proceedings under eminent domain. In this connection, it is my understanding that some title companies in other states issue special litigation reports following the prior issuance of other title reports for negotiation puroposes.

(b) Title company to furnish adequate explanatory footnotes regarding unusual title exceptions that appear of record but do not relate to title matters appearing in the direct record chain of title.

(c) That wherever practical or possible, the Right of Way Department will furnish the title company, upon ordering preliminary reports for the first time, maps which would at least show the approximate line of the highway as well as the sectional or subdivided properties affected by the highway project. In this connection, it would be preferable to furnish more detailed right of way maps if the right of way lines are established at the time of ordering the title reports.

(d) After the right of way department has completed preparation of its detailed right of way maps required for the writing of the metes and bounds descriptions to be used in the deeds to the State, it will furnish the title company copies of such maps for use in writing final policies on the various parcels included within the right of way project.

(e) Each title company and respective district right of way office shall work out a "tickler system" for the purpose of providing a closer check and follow-up on all pending title orders and escrows.

(f) That wherever practical to do so, the title company should endeavor to assign certain title examiners to handle our orders so that they will have a better working knowledge of our requirements and work functions.

(g) That there definitely should be a close liaison between the districts right of way agent in charge of our district right of way office and the manager of the respective title companies in his district.

For the most part, the foregoing comments have been on the complimentary side as to the operating relationship between you title men and us right of way agents. However, from the standpoint of criticizing your operation as it applies to quite a few title companies, I wish to make three closing observations which I hope you title men will keep in mind when you return home to your respective states.

The first criticism I wish to make is about the practice of being supertechnical in showing each and every minor title defect that may exist in the record, even though you may know to your own knowledge that such defect is a "dry record interest" that has no practical effect on the actual ownership of the property. In other words, I believe that in many instances, you title men demand a perfect record title; whereas, we strongly believe that you should on many occasions accept a reasonable insurance risk by eliminating certain of these technical title defects.

The second criticism I have to make relates to certain title companies that follow the practice of giving preferential treatment in the filing of title orders to other parties, such as banks, building and loan associations, real estate brokers, etc., before working on state highway orders. As I stated earlier, I fully realize that the orders you receive from the various public agencies only represent a small part of your over-all title business; however, it is a continuing and important part of your operation.

I can well remember during the depression years that practically all the title companies in California were most solicitous in obtaining

state highway orders, as during that period we were probably the largest single organization engaged in the transfer of properties in the state. You may be assured that in my state as well as in others, that prudent business practices on the part of the state highway right of way departments will demand that in the channeling of title business in the future, we give preferred consideration to those companies that under present boom conditions are now giving us fair and equal consideration with their many other big customers in filling of these title orders.

The third criticism that applies in most, but not all of the states, is that the title companies have shown a lack of understanding of this huge potential volume of business and they have shown no active sales endeavor to sell the state highway administrators and right of way administrators on the valuable service they have to offer, a service that is to the distinct advantage of the taxpayers who are paying for the land acquisition for this huge public improvement program.

It is interesting to note that the contractors, the automotive industry, the highway construction equipment people, the suppliers of aggregate, cement, and petroleum products have shown a tremendously aggressive attitude toward the Federal highway program and have certainly been active in their sales campaign with the state highway departments from the time this expanded highway construction program first reached the discussion stage, but it appears to me that with the exception of a very limited number of states, the title companies have shown an attitude of satisfaction toward the volume of business they are now handling and do not seem to be interested in securing the type of business we have been discussing, which I am certain is profitable volume business.

I wish to express my sincere appreciation to the officials of the American Title Association for extending to me the invitation to come here from California and discuss our mutual problems.

CLTA ENDORSEMENT 106

Attached to Policy No.....
Issued by
.....Title Insurance Company

The Company assures the Insured that the owner, or owners, of the record title to the following described land

(Land retained by grantor who has conveyed part of his original holding to the State for a freeway)

and the owners of any record interest in or lien or encumbrance of record upon said land, other than holders of tax or assessment liens, have each released and relinquished to the Insured all rights of access to and from the land rescribed in Schedule A of this policy, which accrued or would accrue to them as appurtenant to the land described in this endorsement because of its abutment upon said land described in Schedule A, except any rights reserved by them in, and subject to any conditions set forth in the

(Set forth instrument of owner or owners releasing and relinquishing access rights if it contains any reservations or conditions; also any subordination of mortgage or deed of trust or other instrument in which rights are reserved or conditions imposed. If there are none, end the above paragraph before the word "except.")

The Company hereby insures the Insured against any loss which the Insured shall sustain in the event that the assurance herein shall prove to be incorrect.

The total liability of the Company under said policy and any endorsements therein shall not exceed, in the aggregate, the face amount of said policy and costs which the Company is obligated under the stipulations thereof to pay.

This Endorsement is made a part of said policy and is subject to the schedules and stipulations therein, except as modified by the provisions hereof.

.....TITLE INSURANCE CO.

By.....
Assistant Secretary

CLIFTON W. ENFIELD

Chief Counsel, Bureau of Public Roads, Washington, D. C.

It was my distinct privilege and pleasure to meet with you at your annual meeting in Miami last year, at which time I spoke on the subject of the National Highway Program and its impact on the nation. At that time, just a few months after the enactment of the 1956 Federal Highway Act, the tremendous national highway program had barely gotten underway.

You will recall that we visualized the beneficial effect of that program upon the economic, business and social life of this country. We also anticipated some of the problems that would be faced in carrying this program out, one of which, and probably one of the most important of which was the immediate requirement for greatly enlarging and accelerating the right of way acquisition portion of the highway program.

The geometric and construction standards that have been adopted by the Secretary of Commerce in cooperation with the state highway departments for the System of Interstate Highways requires that the highways be constructed adequately to accommodate the traffic that is forecast for the year 1975.

Now, in 1956 there was 65 million vehicles registered in this country, travelling on all of the highways, roads and streets of the nation. It is estimated that in 1975 there will be a minimum of 100 million vehicles travelling a trillion vehicle-miles per year. Today there are 19 vehicles per mile on each mile of highway, road and street in this country. In 1975 it is expected that there will be a minimum of 30 vehicles per mile.

Now, to handle this anticipated increased volume of traffic, the Interstate System from the land acquisition standpoint requires wide rights-of-way for the construction of multiple traffic lanes, frontage roads, grade separation structures and interchanges and to provide for medians, drainage and landscaping. all those things which are essentially part of highways today, thereby necessitating the acquisition of substantially greater quantities of property for right-of-way than has been necessary for highways of lower standards.

The Interstate System highways are to be constructed with a minimum of curvature that is correlated with the design speed of the highway. Such high standards of alignment frequently require the severance of large tracts of property, frequently requires the acquisition of buildings and other improvements which cannot readily be avoided and still maintain the highway standards that have been established. Control of access is also required for the Interstate System which oftentimes enhances the severance damages resulting to the owner's remaining property. All these things combine to make right-of-way more expensive, to make it more difficult to obtain and to increase the importance of adequate title information to insure that the states have good title to the property they are now acquiring.

These and other right-of-way considerations are of growing importance to the Bureau of Public Roads. Prior to 1943 the Federal Aid highway laws did not provide for Federal funds to participate in the cost of right-of-way acquired by the states. Between 1943 and 1956, although right-of-way costs were eligible for Federal participation, few states used Federal-Aid funds for this purpose. Most states used all of their apportioned Federal funds for the construction of highways, and there was little need to apply these funds to right-of-way. The enactment of the 1956 Act, however, has completely changed this picture. Beginning with fiscal year 1960 the Interstate funds will be apportioned to each of the states on the basis of the estimated cost of completing the Interstate System in that state as it relates to cost of completing the system throughout the entire nation. Therefore, the estimated cost of completing the system, including the costs of right-of-

way, is a measure of the Federal funds that will be apportioned to the several states.

Since Federal funds will be available to pay 90 per cent of the cost, including the right-of-way of the Interstate System, 95 per cent in the public lands states, all of the states will ask and, in fact, are now asking for Federal-Aid participation in the cost of rights-of-way. To illustrate the increased Federal participation in right-of-way cost, during the three fiscal years of 1953, -54 and -55, the states received a total of $16½ million in Federal funds for right-of-way. During the 15 months period between June 29, 1956, when the Federal-Aid Highway Act law was enacted and September 30th of this year, Federal funds were obligated for the acquisition of rights-of-way on the Interstate System in the amount of $475½ million; on the primary, secondary and urban projects in the amount of $53½ million, or a total of $529 million.

Even before enactment of the 1956 Act, the Bureau of Public Roads recognized that its practices and procedures in right-of-way would have to be revised, in light of this anticipated increased Federal interest in right-of-way acquisition, so as to promote maximum efficiency and also to adequately protect the increased Federal funds that would be going into this endeavor.

As you know, the United States road building has traditionally been the responsibility of the states. There are no Federal highways as such in this country, except some roads that are located upon Federally-owned lands. The philosophy of Federal-Aid highway construction has remained the same from the first Federal Highway Act in 1916. The states make the survey, prepare the plans, acquire the right-of-way, award the contracts, supervise construction of the highway, and after it is once built, they maintain it. The Bureau is desirous of being of maximum assistance to the states in formulating sound right-of-way practices and procedures. The Bureau does not propose to dictate to the states as to how their right-of-way organizations will be set up or as to how they will carry out their land acquisition functions.

On the other hand, however, the Bureau does have the obligation to insure that the right-of-way and the access control are adequate for the standards of the particular highway and also to insure that participating Federal funds are properly spent in return for value received. Meeting this obligation without telling the states how to perform their state functions is made doubly difficult by the differences that exist in state laws and state practices in the field of land acquisition.

Examples of the varying practices of the states which will be of interest to you ladies and gentlemen here are the kinds of property interests that are acquired by the states and the types of title evidence that the state highway departments secure. Twenty-two states, Puerto Rico and the District of Columbia generally acquire fee title to the highway rights-of-way. Nine states acquire only easements. Seventeen states acquire either fee title or easements, based upon the circumstances. Some states acquire fee title when negotiating but can only acquire easements under condemnation. Some states acquire fee title in urban areas and easements in rural areas. Some states acquire fee title on access control highways and take fees on nonaccess controlled highways.

There are 19 states and Puerto Rico that do not utilize the services of commercial title companies at all but secure title information entirely through the use of their own employees, individual abstracters, private attorneys or require the property owner to submit the necessary title evidence.

Twenty-nine states, Hawaii and the District of Columbia depend upon the services of commercial title insurance and abstract companies in varying degrees. Eleven of these states and Hawaii obtain certificates or abstracts or other types of title reports. Some secure memoranda, some have very informal type title reports. Eleven of these states and Hawaii obtain full and complete re-

ports but do not get any title insurance at all.

Eighteen states and the District of Columbia obtain title insurance, but here their practices vary. Some states obtain title insurance on all parcels acquired. Some obtain it only on parcels located in urban areas. They do not acquire insurance on parcels in rural areas. Some obtain insurance only on parcels having a value in excess of a specified amount, and some states limit their title insurance only to unusual and exceptional cases.

Faced with differing state laws and practices, the Bureau undertook the task of preparing Federal-Aid right-of-way procedural requirements that would be adequate to protect the Federal interests, the Federal funds involved, and at the same time be sufficiently flexible to permit the states to resolve their own organizational and operational problems. In 1955, in anticipation of some highway act coming out of that Congress, the Bureau made a study of the right-of-way organizations of all the states and the Bureau and the procedures followed by the right-of-way organizations. Subsequently, two committees were appointed to study the reports resulting in this study. One committee consisted of persons who were employed by the Department of Commerce and the Bureau of Public Roads. The other committee consisted of members of the American Association of State Highway Officials who were appointed by that Association.

The objective of these two committees was the same; that is, to make recommendations for the formation of adequate but simple Bureau right-of-way policies and procedures for Federal-Aid participation in right-of-way acquired by the states. The results of the joint efforts of these two committees are now embodied in what is known as Policy and Procedure Memorandum 21-4.1, which was issued on the 31st of December last year.

This memorandum is primarily designed to do four things: First, to insure that the organization personnel and procedures of the state right-of-way departments are adequate to carry out the state functions; secondly, to insure that sound appraisals are secured and reviewed prior to negotiations; third, to insure that vouchers submitted to the Bureau for reimbursement of Federal funds are properly documented to support the consideration paid by the state; and, finally, to insure that sufficient information is available in the state files to permit a detailed audit by the Bureau of Public Roads of all right-of-way expenditures.

The requirements set forth in this memorandum and supplements that have been issued to it are few and, I believe reasonable. They consist principally of the following:

1. The states are required to follow the right-of-way practices and procedures which they have submitted to the Bureau and which they have found to be satisfactory.

2. At the right-of-way programming stage the states are to submit cost of right-of-way that they can make at that time, which estimate must be made or approved by the right-of-way division of the state highway departments.

3. A project agreement is to be entered into between the states and the Bureau covering the acquisition of right-of-way before reimbursement is actually made.

4. Before negotiating, the states are required to secure at least one appraisal to each property to be acquired or damaged, and for improved industrial and commercial properties under the present P. P. M. to secure at least two appraisals. These appraisals may be made by either fee appraisers or by state employees, so long as they are competent and qualified to make the appraisal. The appraisals are also to be reviewed by the Right of Way Division.

5. Negotiations for the acquisition of land are not to be carried on by the same person who made the appraisal.

6. Negotiated agreements are to be invited in written contracts or instruments and ultimate deeds of conveyance, all of which are available to representatives of the Bureau for inspection at any time.

7. Vouchers submitted by the state to the Bureau for reimbursement are to be supported by sufficient documentary information to fully set forth all the facts relative to the transaction which includes right-of-way map, certificate of acquisition and cost, giving all the details of the acquisition, the consideration paid, the incidental expenses and showing that the price paid is based on appraisals and justification contained in the state file. The voucher is also supported by a tabulation of all of the appraisals secured by the state, accompanied by a statement justifying any settlements that are substantially differing from the appraisals.

While this memorandum has proven to be generally satisfacory, the experience of the Bureau and the state highway departments and the alleged right-of-way scandals in Indiana that have received so much publicity of recent date has indicated a need for certain modifications in these procedures. A revised draft of the memorandum has been prepared by the Bureau, has been revised by the special right-of-way committee of the American Association of State Highway Officials, and the suggestions in that instance are now being studied and appropriate changes are now being put into the revised draft for early issuance.

Some of the important new provisions under consideration for this memorandum are these:

1. The tabulation of appraisals submitted to support vouchers should contain a certificate that the tabulation contains all of the appraisals made and that there have been no changes or modifications in the appraisal subsquent to the time of admission, except as shown on the certificate.

2. The appraisals made of all improved property having a value in excess of a stipulated amount, say twenty or twenty-five thousand dollars, as distinguished from the present requirements of having two appraisals on all properties improved for industrial or commercial purposes.

3. That appraisal reports be fully documented and include photographs of all principal above-ground improvements that have a bearing on final consideration for damages. Now, that "final consideration" that may be of some interest to you ladies and gentlemen is the requirement that the appraisal reports include a tabulation of all sales of the subject property between the time the highway location was established, possibly going back for a period of five years, and the date of the appraisal, showing the parties to the transaction, the verified purchase price for which it sold and the date of the sale. Similar information of sales between the date of appraisals and the date of ultimate acquisition would be ascertained by the states and made a part of the state files.

You may be wondering why the Bureau's Policy and Procedure Memorandums do not include specific requirements relative to title evidence, that you are certainly in the best position to know the importance of good title evidence. I assure you that the Bureau has neither overlooked nor failed to recognize the importance of title evidence in public land acquisition. As I commented earlier, the road building responsibilities in this country are primarily that of the states. The practices of the states vary so greatly with respect to real property title evidence that any definitive Federal requirements would in many instances require substantial changes in the procedures and the practices of the states and in some instances would require substantial organizational changes within the state right-of-way provisions.

Under the Federal-Aid laws and regulations, the obligation of acquiring and preserving rights-of-way for Federal-Aid highways rests upon the states. Before Federal funds may participate in right-of-way costs, states must certify that the properties have been acquired and the nature of the title obtained. The Federal-Aid Highway Act of 1956 with respect to the Interstate System also requires the states to enter into agreements with the Secretary of Commerce that they will not permit

automotive service stations and other highway users of service facilities to be located on rights-of-way of the Interstate System. It requires agreements that additional points of access over and above those in the approved plan will not be permitted without the approval of the Department of Commerce. The experience of the Bureau has clearly demonstrated that Federal funds and the Federal interests are adequately protected by these certificates and agreements of the states insofar as title to the right-of-way is concerned.

The Bureau makes an audit of each claim of the states for reimbursement for the cost of right-of-way. An important part of this audit is the examination of all options, sales agreements and instruments of conveyance to assure that the real property acquired is necessary and that the necessary rights were obtained. Costs incurred by the states to obtain title evidence, including title insurance, as well as other usual expenditures that are normally incident to land acquisition are eligible for participation of Federal funds, and unless special or unusual circumstances appear, the Bureau relies upon the assurance of the states that good title has been obtained from the state's grantor.

The Federal-Aid Highway Act of 1956 also authorizes the Secretary of Commerce to acquire lands in behalf of the states when the Secretary finds that they are able to acquire the lands themselves or unable to acquire with sufficient promptness to meet the highway construction program. The request by states for Federal acquisition on the Interstate System will depend primarily upon the adequacy, or, probably more correctly, on the inadequacy of state laws. Such request in most instances will be because of lack of liberal authority of some of the states to enter into possession of property under condemnation until a judgment has been entered and payment has been made or because of the lack or clear and adequate access control authority.

There are 17 states at the present time that do not have clear right-of-way or clear authority for immediate possession of right-of-way which is involved in the condemnation proceedings. At least seven of these states have devised either judicial or administrative procedure for expediting the trial of condemnation proceedings existing by reason of lack of authority of obtaining immediate possession. Only one state has no specific authority, either by statute or judicial opinion, to controlled access. There are a number of states, however, that do not have adequate authority for access control to meet the circumstances that will be met in all instances in construction of the Interstate System in particular.

From information presently available to the Bureau, only five states, Maryland, Mississippi, Illinois, Idaho and Washington, have indicated that they may call upon the Bureau to acquire rights-of-way. However, an additional four states, Alabama, Georgia, Montana and Iowa, may need limited assistance. So far, requests for Federal acquisition of right-of-way for the Interstate System has been submitted by only three states: Maryland, Illinois and the state of Washington.

On March 25th of this year the Bureau of Public Roads issued a second Policy and Procedure Memorandum, being number 21-4.2, governing the Federal acquisition of the rights of way on behalf of the states at their request for Interstate Systems under this procedure, the states must submit a letter to the General Accounting Bureau, setting forth the purpose for which the land is necessary, the reasons why the state cannot acquire, the extent to which access is to be controlled and an agreement upon the part of the states to pay its pro rata share of the cost. to accept title when it is conveyed by the Government to the state and to maintain the highway to be constructed upon that particular right-of-way.

This letter of request for Federal acquisition is to be accompanied by a number of supporting documents which include copies of the right-of-way map, copies of the descriptions, copies of one appraisal and three copies of title evidence covering each property involved prepared in a form

described in the Department of Justice pamphlet, "Regulations for the Preparation of Title Evidence in Land Acquisitions by the United States."

Another important consideration in the acquisition and clearing of rights-of-way involves a matter of relocation of utility facilities. For many years Federal funds have participated in the cost of relocated utilities facilities when made necessary by highway construction where the state was obligated under the laws of that state to pay the cost. The Federal-Aid Highway Act of 1956 provides that Federal funds may participate whenever a state pays for the cost of relocating the facilities of any public, privately or cooperatively owned utility made necessary by improvement of a Federal-Aid highway, unless such payment violates state law or violates a contract between the state and the utility.

This 1956 Congressional legislation induced the introduction of legislation in 39 states this year to require the states to pay the cost of utility relocation, in instances where the utility had no property interest in the highway right-of-way which they occupied. This legislation as proposed in the states was usually limited to Federal-Aid highways. Such legislation was passed by the legislatures of 21 states, in 15 of which it became law. Legislation of this type was vetoed in six states, and the measures were either defeated, withdrawn or not acted upon in the other 18 states.

On the 15 utility relocation reimbursement acts that became law, which were signed by the Governor, 10 apply only to the relocation of utilities made necessary for improvement of the 41,000-mile Interstate System. These include the states of Delaware, Florida, Illinois, Maine, Minnesota, Nebraska, North Dakota, Oklahoma, Tennessee and Texas. Four relate to all Federal-Aid highways, interstate, primary, secondary and extensions of all. These states are: Idaho, New Mexico, Montana and Utah, and one state, the state of Connecticut, applied its statute to all highways that are maintained by the State Highway Department.

Recognizing that the national highway program will increase utility relocation and that the actions of these 15 state legislatures will substantially increase Federal participation in this cost, the Bureau has revised its memorandum pertaining to the reimbursement of utilities so as to more adequately meet the problems in this enlarging field. Policy and Procedure Memorandum 30-4 should be issued in the next couple of weeks. In substance, it will provide that to the extent a state actually pays for the cost of relocating a utility, which payment is not contrary to the state law or to a contract between a utility and the state or a subdivision of the state, Federal funds may reimburse the state for the cost of right-of-way, including title evidence in appropriate instances, preliminary engineering and construction.

At the time of enactment of the Federal Aid Highway Act last year, it was feared by some that right-of-way acquisition and the delay in right-of-way acquisition might retard the progress of the highway program. Fortunately, this has not occurred on a nationwide basis today. Some delays have been experienced in varying areas in the acquisition of rights of way. It is not being widespread, and on a national basis delay in acquisition of right-of-way has not been a major problem to this time, which bespeaks in itself, I think, the excellent service that title companies have obviously been rendering to the states. In many instances, however, right-of-way acquisition, itself, has been delayed. These delays frequently result from other factors, such as delays of the department in locating highways, in preparing plans for construction of highways, which frequently is an outgrowth of the shortage of engineers in many highway departments.

Considering the many problems which necessarily were faced with the sudden acceleration in the highway construction program, most of which problems were anticipated and prepared for in varying degrees, the progress made to date in the Federal-Aid program has been satisfactory on a national basis. By June 30 of 1957, on a nationwide average basis, the

states had committed to approved construction plans, right-of-way acquisition and preliminary engineering an amount equal to all of the fiscal year 1957 apportionments of Federal-Aid funds which total Congressional authorizations amounted to $2 billion. This does not mean that the 1957 funds of each state were fully obligated, but it is the national product. Some of the states have obligated part or had at this time, end of June, obligated part of their 1958 funds in addition to all of their 1957 funds. This was the first time in history that Federal-Aid funds in an amount equivalent to the total authorized and apportioned for a particular fiscal year had been obligated during that fiscal year then occurring. As you know, Federal-Aid funds are available for obligation for a period of two years following the year for which they are authorized.

Federal-Aid funds for the two preceding fiscal years ending June 30, 1958 and June 30, 1959, have also been apportioned to the states and are available for expenditure. For these two years Congress has authorized for 1958 $2½ billion and for 1959 $2 billion 865 million. As of September 30, 1957, some two weeks ago, there had been obligated for preliminary engineering, right-of-way and advertised construction contracts on a nationwide basis an amount equal to all of the 1957 Interstate funds and primary, secondary and urban funds, 36 per cent of the 1958 Interstate funds and 35 per cent of 1958 primary, secondary and urban funds. Now, with only 25 per cent of the 1958 fiscal year having passed, you can see that we are on schedule on a national basis. However, some states are experiencing difficulties, which difficulties we hope will soon be overcome. There are three states that have obligated all of their 1957 money, all of their 1958 money and have obligated part of their 1959 money. Those three states that are well out ahead of the race are Maryland, California and New York.

The success in overcoming the inertia that is usually experienced in undertaking additional work and the satisfactory progress of the program to date it attributable in a large measure to the excellent cooperation among all levels of government in providing leadership in this program and to the complete and enthusiastic support of business and industry. I am confident that the progress will continue through the combined tireless efforts and devotion of all who have a part in this highway program, either in public or private capacity. As we gain wider experience in this greatest public works program undertaken by man, our progress will be marked, I believe, by ever-increasing economy and efficiency through the use of simplified and advanced techniques and procedures and through the utilization of the full services of appropriate private industry.

You and your colleagues in the title business have made a substantial contribution to the success of the program during its first 15 months. The satisfactory progress attained would not, in my opinion, have been possible without your wholehearted cooperation. I recognize that there are areas yet where work still needs to be done, but I am sure that these can be worked out to the satisfaction both of the title industry and the states and the Bureau of Public Roads.

On behalf of the state highway departments and the Bureau, I'd like to take this opportunity to thank you for the invaluable services that you have rendered during the past year and a quarter and to solicit your continued wholehearted support.

A. EDMUND PETERSON, *Vice President,*
Chicago Title and Trust Co., Chicago Illinois

I think you all realize from the remarks of Mr. Enfield and Mr. Balfour, that the Federal-Aid Highway Program is of current and vital interest to the title industry. As Mr. Enfield has told you, the primary job of acquiring and maintaining roads is one for the states. The Federal Government enters into this phase of the program only if the states are unable to acquire the needed rights of way with the necessary promptness. Even when the Federal Government handles the condemnation proceedings, the matter of securing title evidence is handled by the state authorities. So it is our job to sell these officials on the proposition that we in the title industry are best equipped to furnish the title evidence which they require.

According to a survey made early this year by the late Arthur A. Anderson, who was Chairman of the Committee on Special Title Certificates of the Washington Land Title Association, the industry has plenty of work to do in this area. Mr. Anderson sent questionnaires to all of the state highway departments to ascertain how they obtained title information in connection with the acquisition of rights of way. He received replies from 46 states (all but Louisiana and Texas). Three states obtained titled policies; three title reports of a title insurance company; one a complete abstract; nine use abstractor's certificates; and six obtain attorney's certificates; two use all types of title evidence, but the remaining 22 rely on title searches made by highway department employees or by some other state employee. (In making this tabulation I have classified the states on the basis of the principle method employed for obtaining this information.)

Every title company and abstractor should formulate a program under which title evidence can be furnished to the state highway departments promptly and at a fair price. We ought to be able to demonstrate to the state officials that we can furnish this information quicker and more accurately than can state employees. Certainly a title company or an abstractor with a plant should be able to furnish title evidence for less money than the state would spend to hire title searchers to work from the public records.

The highway departments will have plenty to do in connection with this program other than check titles. It is to their advantage to make use of the facilities of the title industry for title information so they can concentrate on the main job which is, of course, the laying out of routes, the acquisition of the right of way and the conconstruction of the roads. It has been estimated that this road program will increase the work of state highway departments 60% and it would be next to impossible for these departments to hire trained title searchers to take care of this additional work load.

Last year at Miami we heard Mr. Clifton W. Enfield, then Chief Counsel of the Oregon State Highway Department, address us on the subject of "The National Highway Program". You will recall that he, at that time, called attention to the fact that the 1956 Federal Aid Highway Act contemplates the completion within 13 to 15 years of an interstate highway system of 41,000 miles to cost an estimated 27 Billion Dollars of which sum the Federal Government will furnish 24.8 Billion and the balance will be furnished by the individual states. In other words the Federal Government furnishes about 90% of the money and the states 10%.

The size of this program can perhaps be better realized if you bear in mind that approximately 650,000 parcels of land equal in area to the State of Delaware will be acquired for the interstate system alone. Needless to say the constructoin of the interstate routes will require the construction of thousands of miles of auxiliary and connecting roads.

That this program is no longer in the dream stage is evident from the

August 16th issue of the Washington Report published by the Chamber of Commerce of the United States in which it was pointed out that 30 states had already obligated all of their 1957 federal aid apportionment.

During the first three years of this program the states will receive 6.55 Billion Dollars of Federal Aid ranging from a low of 8.5 Million Dollars for Hawaii to a high of 451.3 Million Dollars for the State of New York.

According to an article by J. Edward Johnston in the August issue of Nations' Business virtually every property owner will to some degree be affected by this huge program. There can be no doubt that in the immediate area of these roads there will be much activity in real estate based on the possible use of this adjacent land for residential as well as commercial and industrial developments.

The enactment of the federal-aid act has caused many states to re-examine the provisions of their condemnation laws. The federal law contemplates that the needed rights of way be acquired expeditiously. The law provides that if a state does not have provisions in its law for the "quick taking" of the needed property, then the property will be acquired by the Federal Government and later conveyed to the state. In Illinois, our last legislature which adjourned last June, passed an act authorizing a "quick taking" by the state for road purposes. Whether this statute will stand the constitutional test, no one knows at the present time. A similar statute enacted in our state in 1949 was held to be unconstitutional by our Supreme Court.

It hs been pointed out by all of the officials of the Federal Bureau of Public roads that it is essential that no public funds be wasted in connection with this program. It is vital, therefore, to the state highway departments that when they expend public funds for the acquisition of property that they get the kind of interest in the property that is needed in connection with the road program. Certainly in this situation, the state departments should be happy to have a title company's or abstractor's assurance regarding the state of title.

Some of you may find it advantageous to have a special man or group to handle this work. We have found it helpful, particularly from the standpoint of speed to have a special group to handle condemnation work. This unit consists of a unit manager, who is also an examining attorney, five examining attorneys, two preliminary examiners and a clerk. From time to time to meet peak loads additional examining attorneys are assigned to the unit. We have prepared special instructions for them. We have definite understandings with the condemning authorities with respect to what our reports will show, what will be required to waive usual objections and which objections will show as exceptions when the policy issues. We have found that if these matters are clearly understood in advance, that much time is saved in getting out the policies which the condemning authorities require.

To give you some idea as to the amount of work involved in highway projects, we contracted with the Illinois State Toll Road Commission to furnish title reports and policies with respect to the 187 miles of road being built by the Commission. We entered into a contract with the Commission under which we were paid a flat sum per parcel which included the issuance of a $4,000 policy, on each parcel. In those cases where the Commission required additional title insurance they paid us the schedule rate. Over a period of one year, we received orders for title work in connection with the 5,350 parcels of land which the Commission is acquiring in connection with this program. In addition, we handled 1,850 escrow transactions for which we were paid an additional fee. This arrangement has worked to the advantage of both our company and the Commission. Most of us are anxious to get business today. We should all make every effort to make agreements with those involved in the federal highway program for the furnishing of the necessary title evidence which they will require.

THE HOUSING MARKET IN 1958 AND BEYOND

DR. GORDON W. McKINLEY, *Director of Economic and Investment Research, The Prudential Insurance Company of America.*

First, let me say how happy I am to have this opportunity to meet so many members of the American Title Association. Since the Company for which I work is the largest mortgage lender in the world, I naturally feel a close association with the title insurance companies, abstract companies, and law firms from all over the United States whose representatives are assembled here today. It is good to have this chance to exchange ideas on subjects in which we have a mutual interest and concern.

I want to talk to you this morning about what is likely to happen in the housing market, and in the mortgage market, during the coming year. Although the year immediately ahead is naturally more interesting than some distant year in the future, we should not lose sight of the fact that what happens to housing or any other part of the economy in a particular year, such as 1958, is partly the result of forces peculiar to that year, and partly the result of more basic underlying movements which have accumulated over a number of years in the past and will continue for many years into the future. In other words, our economic system has continuity; it is a moving, developing thing, and can be understood only if we first stand off and watch its evolution, and then move closer to examine its response to the circumstances of the moment.

If we want to understand the housing market in 1958, our initial step must therefore be to take a look at the way the housing market has evolved during the past several years and how it is likely to evolve in the **average** year in the future. Having done this, we will then be in a position to examine the particular forces which, in 1958, may push housing volume above or below the longer run average.

The questions I should like to try to answer are therefore: (1) If the coming years, 1958-60, turn out to be reasonably prosperous, what **average** volume of residential construction will the market support? (2) What particular circumstances are likely to act on the housing and mortgage market in 1958? (3) How many housing starts are we likely to have next year, and what will be the volume and interest rate structure in the residential mortgage market?

Sustainable Level of Housing Starts, 1958-60

The basic, or underlying, demand for new housing is determined by four main factors — (1) Household formation, (2) Demolition of existing structures, (3) The conversion of existing larger homes into a greater number of small units, and (4) The need to provide sufficient vacant units so as to give mobility to our population. If you will refer to the first column of Table 2, you will see how much each of these factors has contributed to housing demand during the past seven years. From 1950-56, non-farm household formation has averaged 1,000,000 a year; demolitions less conversions have averaged 105,000 units a year; and we have added 125,000 units a year to the total number of vacancies. During this same period, 30,000 units a year which were previously in the farm category have become available for non-farm use through suburban expansion. Because of these factors, we have been able to produce 1,200,000 residential units a year, and the total non-farm housing stock has risen to 47,500,000 units.

What is likely to happen to these different components of housing demand during the coming three years? Let's turn to Table 1 and consider the most important source of demand —household formation. It may be well at the outset to clear up a mis-

conception which seems quite prevalent even among those closely associated with the housing field. Household formation is not the same thing as family formation. Household formation means "the net increase in occupied dwelling units". Keeping this definition in mind, it is clear that family formation could be larger than household formation if there were a great deal of "doubling up", i. e. several families occupying the same dwelling unit. Conversely, household formation can rise far above family formation during a period when families or individuals are "undoubling".

If you will refer to the first column of Table 1, you will see the various factors which have contributed to household formation during the past seven years. Family formation from causes other than undoubling has averaged 570,000 a year. There has been an additional demand for housing created by the undoubling of 115,000 sub-families a year. A sub-family is a family living with another family to which it is related by blood or marriage—the most usual example being the case where a young married couple lives with his or her parents. A further demand for housing has been created through the undoubling of secondary families, that is, families not related to the family with which they had been living. Note that, **out of a total of 720,000 family households formed annually during the past seven years, 150,000 a year have arisen through undoubling.** This is an important point to bear in mind when we look to the future. Finally, there has been an additional demand for housing from the increase in individuals who maintain their own household. Of the total of 280,000 individual households formed annually during the past seven years, **almost half have resulted from undoubling.**

In the last column of Table 1, I have entered my estimates of average annual household formation during the coming three years, As our population grows, there is normally an increase in the number of new families formed. At present, family formation is relatively low because of the low birth rate during the depression of the thirties. During the next three years, family formation will reflect the somewhat higher birth rate of the late thirties. I should like to emphasize, however, that the increase will not be sizeable. It will not be until 1965 that the high birth rate of the postwar period begins to have an appreciable effect on family formation.

While demand arising from family formation will rise moderately from 570,000 annually to about 620,00, the demand arising from undoubling is likely to **fall substantially.** The unusual situation in the years following World War II, when homes were simply not available and families and individuals were forced to double up, has now largely been corrected. Such undoubling as occurs from now on will be principally a reflection of rising living standards, and will therefore be slow and relatively small in volume. My conclusion is that non-farm household formation during the coming three years will drop to about 860,000 a year.

TABLE 1

NON-FARM HOUSEHOLD FORMATION PER YEAR, 1950-60

	1950-56a	1957b	1958-60b
*Net increase in non-farm families (from causes other than undoubling of sub-families)	570,000	580,000	620,000
*Net undoubling of sub-families	115,000	70,000	40,000
*Net undoubling of secondary families	35,000	20,000	10,000
†Net increase in non-farm individuals	145,000	140,000	140,000
†Net undoubling of secondary individuals	135,000	110,000	50,000
	1,000,000	920,000	860,000

*The sum of these three items equals non-farm family households formed.
†The sum of these two items equals non-farm individual households formed.
aEstimates based on Census data.
bForecast.

If you will now turn to Table 2 and refer to the last column, we can discuss the other items which will enter into the demand for housing in the next three years. Demolitions should show a steady rise in the years ahead. Slum clearance is still lagging bady in the United States, but the extensive road building program planned by the Federal and State governments will speed up the rate of demolition of existing structures. Unfortunately, there are no official figures on the number of demolitions, nor the number of conversions, in this country. It is possible, however, to get some idea of the volume involved by piecing together estimates for various cities, along with national estimates of homes d s t r o y e d by fire or other catastrophe. My own estimate is that during the coming three years demolitions will subtract around 200,000 units a year, and conversions will add about 50,000 units a year, to the housing stock. The net demand for new housing arising from demolitions and conversions will therefore be about 150,000.

I have entered in column 3 an allowance for a rise of 150,000 vacancies a year until 1960. Of course, few of these vacancies will occur in newly built units. The process will be one of a rise in vacancies in older homes, as people move out of these homes into newer units. The vacancies will not spread to new houses until the overall vacancy rate has risen to somewhere in the neighborhood of 3.5 per cent. Since the vacancy rate is now quite a bit below that figure, construction can exceed newly created demand for housing for several years before builders begin to experience difficulty in moving their output.

Now that we have estimated each of the components of housing demand, we are in a position to estimate the volume of non-farm housing starts which the market w i l l absorb until 1960. Household formation, demolitions minus conversions, and vacancies will add up to about 1,160,000 units a year over the next three years. Since about 20,000 units of this demand will be supplied annually by f a r m houses becoming available for suburban living, the remaining demand for non-farm residential construction will amount to about 1,140,000 units a year.

Now I am not saying that exactly 1,140,000 units will be built in each year from 1958 to 1960. What I am saying is that 1,140,000 units a year can be built without running into a situation of oversupply. I do not believe that we can support anything like the 1,300,000 start rate which characterized 1955, and the estimates of 1,500,000 starts per year which

TABLE 2

SUSTAINABLE LEVEL OF ANNUAL NON-FARM RESIDENTIAL CONSTRUCTION, 1958-60

	1950-56a	1957	1958-60b
Non-farm household formation	1,000,000	920,000	860,000
Net conversions (–) and demolitions (†)	105,000	145,000	150,000
Rise in total non-farm vacancies	125,000	– 50,000	150,000
	1,230,000	1,015,000	1,160,000
Estimated transfer of existing units from farm to non-farm catagory	30,000	25,000	20,000
Annual non-farm construction	1,200,000	990,000	1,140,000
Non-farm housing, stock,* end of period	47,500,000	48,370,000	51,400,000
Estimated total non-farm vacancy ratio	8.9%	8.8%	9.1%
Estimated "significant" non-farm vacancy ratio at end of period**	3.2%	3.0%	3.5%

*Excluding trailers.

**Does not include seasonal vacancies, nor vacant homes not offered for sale or rent. Differs from Census vacancy ratio principally in that it includes as vacant those houses which are sold or rented but not yet occupied.

sometimes emanate from parts of the building industry strike me as completely unrealistic. I do believe, however, that we can have a prosperous housing industry over the next three years, producing at a rate about 15 per cent above the 1957 level.

The General Business Outlook for 1958

Now let's turn to 1958 and consider the particular factors which during the coming year may push housing above or below the longer term average. The most important of these factors will of course be the degree of prosperity in the economy as a whole. Although there might be a strong need for housing, this need will not show itself in the market place unless incomes are high, and incomes depend in turn on a high level of employment. Is 1958 likely to be a year which will provide the incomes necessary to generate a strong market demand for housing?

I do not believe that 1958 will go down in the record books as an all-out boom year. Business capital spending, which has been rising ever since 1954, is likely to reach a peak in the last quarter of this year, and show a small decline during 1958. An additional decline in business spending is likely to occur because of a fall in business purchase for inventory. Manufacturers' inventories are at present much too high relative to sales. This high inventory-sales ratio is likely to prevent any marked increase during 1958 in manufacturing output.

Although the two factors I have mentioned will have a depressing effect on the economy in 1958, there will be other areas of considerable growth and strength. Federal, state, and local spending will rise by about $5 billion in 1958, and consumer expenditures are likely to surge ahead by $14 billion. I estimate that gross national product, i. e. the value of all new goods and services produced, will rise from about $435 billion in 1957 to over $450 billion in 1958. Since there is a good chance that the rise in prices will be brought to a standstill in 1958, the increase in the gross national product will be a real increase rather than the fictitious increase which inflation brings.

As a result of this moderately good advance in the economy as a whole, incomes will move ahead sufficiently to form the basis for a good market for housing in 1958. In addition, it should be remembered that consumers are now beginning to recover from the credit-buying splurge of 1955. They are therefore in a better position to undertake new debt commitments than has been the case in 1956 and 1957.

The Housing and Mortgage Market in 1958

The housing market in 1958 will thus have two important factors in its favor: First, the analysis of household formation and other factors affecting the need for housing indicates an underlying demand for a volume of housing starts somewhere in the neighborhood of 1,140,000 units a year. Second, incomes in 1958 are likely to rise sufficiently to translate this underlying demand into market demand. There still remains, however, one final question—"What is going to happen in the long term capital market? Will sufficient money be available to finance the mortgages for more than a million new homes?"

Whether or not money will stay tight in 1958 depends on two major factors: (1) the strength of the general business situation, and (2) the policy of the Federal Reserve Board. I believe that the Federal Reserve Board in 1958 will be faced with generally prosperous business conditions, and a continued tendency for prices to rise. **Under these conditions, I think that the Board will be justified in continuing the tight rein on credit.** It is true that in so doing the Board runs the risk of inducing a temporary hesitation in the growth of employment and a temporary squeeze on business profits. But the goal of stable prices is so vital to the successful functioning of our free enterprise economy that it seems to me justifiable to run the risk of some dampening in business conditions in order to lick the serious rise in prices which we have been undergoing in recent months. This is particularly important in the housing field. There

is no question that the average buyer is being priced out of the housing market. It is thus a mistake to imagine that the solution to builders' troubles is a flood of easy credit. If the Federal Reserve will continue the tight money policy for another six months, there is a good chance of bringing the price rise to a halt and at the same time maintaining a reasonably high level of prosperity.

My guess is therefore that the overall capital market will remain tight through at least the first half of 1958. But **within** the capital market there is likely to be some shifting in the proportoin of total funds flowing to corporations and to the mortgage market. The decline in business expenditures on plant and equipment, plus the effort by manufacturers to hold inventories in line, will lessen the need for external corporate funds. This does not mean, however, that the total corporate demand for external funds will decline by a large amount in 1958. Corporations have pushed their liquidity ratios to an unusually low level in 1957, so that they are likely to attempt to restore better liquidity positions either directly or indirectly through stock flotations or long term borrowing. I estimate that corporate demand for long term funds in 1958 will be almost as high as in 1957.

The demand for funds by state and local governments will rise in 1958, and there will also be a strong demand for consumer credit. During 1957, the federal government has actually been a **supplier** of funds, because over the year as a whole it has shown a small cash surplus and this cash surplus, plus a reduction in the Treasury's cash balance, has enabled the government to reduce the publicly held debt by about $4 billion. In 1958, the government will probably not be able to reduce the publicly held debt by more than $3 billion. It will thus release less funds to the capital market than it has this year, so that an additional strain will be placed on the market.

The net effect on the capital market of federal financing, state and local financing, and consumer financing, will therefore be to offset any decline in demand for funds which may emerge from the corporate sector. The total demand for funds, outside the mortgage market, is thus likely to be as large in 1958 as it has been in 1957.

But the supply of savings will, of course, be growing. And a good portion of these savings will be flowing into institutions which, by law or by custom, invest heavily in mortgages. It seems reasonable to me to assume, therefore, that although we are not by any means headed for an easy money market in 1958, the **proportion** of total funds flowing to corporations next year will decline and the proportion flowing to the mortgage market will increase slightly. The net flow of funds into the residential mortgage market in 1958 is likely to rise by about one billion dollars over the amount supplied in 1957.

Let me now sum up my conclusions:

1. There is a basic demand in the United States for an average of approximately 1,140,000 new housing units annually during the next three years.

2. In 1958, general business conditions will be moderately good. Incomes will rise sufficiently to provide a good housing market.

3. The overall capital market will remain tight at least through the first half of 1958. Within the total capital market, however, the proportion of total funds flowing to corporations is likely to decrease, and the proportion flowing to the residential mortgage market to increase. I do not expect mortgage loan rates to ease, but I do expect more funds to be available for mortgages.

4. Finally because of the factors I have discussed above, I expect the seasonally adjusted rate of housing starts in 1958 to rise from slightly more than 1,000,000 at the beginning of the year to over 1,100,000 by the end of the year. The total for the year is likely to be close to 1,075,000.

Next year will therefore not be another 1950, nor 1955. It will, however, be a very satisfactory year, and the sort of year which is likely to lay the groundwork for a further moderate but steady rise in housing output in the future.

JUDICIARY COMMITTEE, REPORT OF CHAIRMAN

F. WENDELL AUDRAIN, *Vice President,*
Security Title Insurance Company, Los Angeles, California

Along in August I received a letter from President Binkley about the ATA program at Richmond and the problem of enough time to hear and see. He said that the program committee figured that if the Judiciary Committee report were submitted in writing for printing in TITLE NEWS that all the people at the convention would have an extra day to go to Jamestown. I hope all you people liked your day at Jamestown. I did. So did my wife.

I have been mailing in Judiciary Committee material to ATA all year. Sometimes it arrives when enough better and more urgent material was on hand to fill 40 pages in TITLE NEWS. Later on the Judiciary notes show up. Now, the Committee is not unhappy about this for we know the life of an editor with his feature writers is not always an easy one. But if some case note seems a little aged when you read it, please remember it may have been sent in at a much earlier time.

For the readers who have a lively interest in options in a grantor's deed, whereby he reserves the right of repurchase on specific terms, and particularly whether this sort of thing violates the rule against perpetuities, your attention is called to **Boemhild v. Jones,** 239 F. 2d. 492 (2/18/57).

The language of the deed was:

> "And further reserving the right to repurchase said land from the grantee if he should at any time offer the same for sale, at the same price and amount grantee is now paying for same, and the grantee by acceptance of this deed agrees to and binds himself to such reservation."

Plaintiff sought to enforce the option. Defendant contended:

> "That the option reservation is void because it violates the rule against perpetuities, and for the additional reason that it places an unreasonable restraint upon alienation."

While the case involves Arkansas law, the parties are in Federal court on diversity of citizenship.

As to the perpetuities rule, the court stated:

> "We are of the opinion that there is reasonable basis for believing that the option here granted was personal and did not extend beyond the parties to the option, and that consequently it cannot be said as a matter of law that the rule against perpetuities has been violated."

As to the rule relative to unreasonable restraints on alienation the court referred the matter back to the trial court, as the judgment was on pleadings, and the trial court had not stated its views on local law for the benefit of the appellate court and since the latter court said the question was a close one under Arkansas law, there was need of further attention to the point in the lower court. If you are are fascinated by this particular field of law, and read this sort of thing as casually as you do a Reader's Digest page, there are four fine pages of this case.

* * *

Bankruptcy trustees are sometimes unusually aggresive about their efforts to enhance the estate they administer. In **Mesirow v. Duggan,** 240 F. 2d. 751 (2/4/57), one corporation filed its petition for reorganization in a Missouri Federal Court. A month later, another corporation was adjudged an involuntary bankrupt in Indiana. The day before a trustee for the latter corporation was scheduled to hold a sale free and clear, he was enjoined by an order out of the Missouri proceedings (the Missouri corporation claimed that the Indiana

bankrupt was it's wholly owned subsidiary). However, the sale occurred and the sale was confirmed to the buyer, who thereafter made substantial expenditures on the property and collected rents. Two years later, Duggan, as trustee, whose estate had the purchase price, $18,500, brought an action to recapture the property and the rentals, intending thereby to have the purchase price, rents, the improvements and the land also.

The circuit court would not accomodate this proposal and reversed a lower court that held for the trustee. The court stated:

> "Of the several other theories of attack upon the judgment there is one that is so entirely clear and completely conclusive, and that so perfectly lends itself to the adjustment of the equities between the parties, that we put aside all others. That attack is based upon the universal and age-old equitable principle that one who sells real estate at a void judicial or quasi-judicial sale, to a purchaser who pays the purchase price in good faith and without a c t u a l knowledge of facts or circumstances rendering the sale void, may not, in conscience, be permitted to keep both the real estate and the purchase money."

After noting that Duggan had recovered (in the lower court) the real estate and the money paid for its purchase, the court also said:

> "In those circumstances it would be shocking, inequitable and unjust to p e r m i t him to retain both."

It is reassuring to find an appellate court speak so firmly to an obvious and grossly unequitable situation.

* * *

" The recent case of **Beets v. Tyler,** (290 SW (2) 76, Mo. (1956) sustains the validity of another device which we can expect to also see used to indirectly effect race restrictions. The case involved a preemptive or first refusal option which had been imposed as one of the restrictive covenants affecting all of the lots in a large subdivision. The provision in question prohibited any lot owner from making a sale of his property unless he first gave 15 days' written notice of the terms of such proposed sale to the subdivider and the owners of the two lots adjoining the lot being sold. Any of the three optionees had the prior right to buy the property on the same terms. The provision purported to bind successive owners of lots. It was to continue in effect for twenty years and could be extended for additional twenty year periods by action of a majority of the lot owners.

The attack on the validity of the provision was based on the contentions, among others that (1) it was an invalid restraint on alienation and (2) it violated the Rule Againt perpetuities.

In response to the restraint on alienation attack, the court said that if this had been a preemption for a fixed price, it "might well operate as an unreasonable restraint on alienation" but that where, as here, it was for whatever price the owner could negotiate with a prospective buyer, it did not constitute such a restraint. This view has considerable support (Restatement of Property, Sect. 413; 37 Cal. Law Rev. 419, 445).

* * *

Lawyer Walter G. Huber, one of my committee members, at Blair, Nebraska, informs us of **Buford v. Dahlke,** 158 Neb. 39 (62 NW 2d. 252) 34 Neb. Law Review 501, wherein the husband and wife as joint tenants sold on a contract but their status as vendors was not shown as joint tenants. Upon the husband's death the administrator successfully established that the vendors, husband and wife, held that interest as tenants in common and thus the wife alone could not deed to the vendee. This case later achieved attention in an Iowa case, **In re Bolers Estate,** 78 NW 2d 863 (1956) wherein that court determined that a contract of sale executed by husband and wife, joint tenant owners, effected an equitable conversion of the real estate into personal property. This made for a half and half co-tenancy onwership of the personalty and evidently again precluded the wife from being able to

solely perform the vendors obligations. These cases indicate that vendor joint tenants may well think about the proper manner of preserving the joint tenancy character of what they have felt after making such a contract. Suppose the vendee defaults, and a decree quieting title, or other similar setup is taken against him, how do the vendors then own, as tenants in common or joint tenants?

* * *

The issue of the Yale Law Journal, February, 1957, contains an article about title insurance, written as to some aspects of the business not heretofore so fully covered. This ought to be required reading among senior personnel of title insurers.

For those title attorneys and title men who have had a fairly firm view that a U.S. tax lien against a partnership entity may not be a thing to require exception when the individual partner is buying or selling, the decision **"In the Matter of Crockett"** 150 F. Supp. 352 (4/5/57) will be of minor interest. In this matter the tax lien incurred by the partnership appears to have followed and become an obligation of the partner who set up his own business as an individual (using no partnership assets) after the partnership folded.

Many of us would feel more confident if the pertinent decisions were by our circuit court, but most of the interesting and pertinent district court decisions will be all the judicial support that we have to support our own views.

My associate, Jones, calls my attention to a recent New York U.S. District Court case wherein an infringement case involved an artistic device sold as "Curvallure" by one maker and sold as "A'Lure" by another maker. The following is not violently out of context:

"It is obvious, however, that the product in itself is not a "lure" nor is it "alluring." While a "lure", in the sense of a decory, is a tangible product which can be purchased, it cannot seriously be contended that the product herein involved is included in catagory of "lures." "Allure", when used as a noun, is an intangible quality possessed by women in varying degrees, and thus is not a marketable commodity."

As to the last sentence, I found a marginal comment by my associate Jones: "Obviously this judge has led a sheltered life."

A U.S. District Court in California recently gave a decision in a controversy between a vendor and the United States as to the vendor's liability for income taxes which were owned by a vendee that defaulted and quitclaimed the property back to the vendor.

The tax lien, $9,800.00 against the contract vendee was recorded prior to the vendee entering into the sales agreement under which the vendee made a down payment of $10,000 and later increased his equity to $17,000.

After the vendee quitclaimed, following his default, the vendor, in the course of a resale had to set aside funds on an agreement with the Collector, to await a trial of the issue as to how much of the vendee's equity constituted an enrichment (called unjust) of the vendor and thus be subject to the tax lien. Having found that the tax lien reached the vendee's interest, the court then ruled or what expenses should be credited and deducted against the enrichment (rents, taxes, attorneys' fees, title expense, commissions, etc.) so as to get the final tax subject amount. The vendee's equity of $17,200 was whittled down to a vendor's enrichment of $1,-639.00 which the tax lien reached.

Bensinger vs. **Davidson,** 147 Fed. Supp. 240 (12-18-56) U.S.D.C.S.D. Calif.

More than one title company has had an insured come in after the polciy date and be confronted with a tax bill that reflects the earlier taxes that were missed during the search.

This was the situation in **Zurich Insurance Co. v. Klein,** 121 ATL 2d. 893 (4/11/56). The plaintiff took care of the taxes which the title examiner missed and then sued the grantor. Must have been a fair sized tax bill. The discussion in the case involved the affect of warranty deeds, which was important in this case. "Appellant had, by general warranty deed,

conveyed the premises to the purchasers. A vendor by general warranty is obliged to deliver a deed that is free of liens for taxes, etc."

The grantor tried to establish the plaintiff as a volunteer in paying the missed taxes, but the court found contract obligation which made the volunteer argument ineffective.

For those of you who can use this sort of case law and have recourse to warranty deeds, a solvent grantor whom you can or want to sue, i.e., other considerations are not paramount, here is a case that you can mull over as you write your check to the tax collector.

There is much more to be reported, but from past experience there wouldn't be room for it in Title News.

Some of the matters deserving of mention now and which may be referred to in later issues are:

Goldenberg, vs. Title Guarantee Company, 129 A 2d, 684; Exchange Bank, etc. vs. Tubbs Mfg. Co., 246 F 2d, 141; Lawyers Title Ins. Corp. vs. Petre, 245 F. 2nd, 334; No. Pac. Ry. Co. Vs. Advance Realty, 78 NW 2d, 705; and Brown vs. U. S. A., 152 Fed. Supp. 107.

Mr. Ray Potter, Chief Counsel, Burton Abstract Company, sent to me the "Report of the Committee on Significant Decisions on Real Property Law," by a section of the American Bar Association. It has many gems for title men.

Copies of "Pennsylvania Title Policies," a quarterly publication of the Pennsylvania Title Association, and the full 1957 proceedings of that association came to me. Other good material came in from title men and attorneys.

The chairman of the committee is grateful for the reciept of this useful material and has speculated upon methods of making this material more widely and currently available to title men everywhere. Suggestions will be welcome to the chairman of the committee for the coming year.

FEDERAL LEGISLATIVE COMMITTEE, RFPORT OF CHAIRMAN

PAUL J. WILKINSON, *Chairman*
Executive Vice President, The Title Guarantee Company, Baltimore 2, Maryland

Your Committee desires to report that there has been very little legislation, passed by the Congress of the United States during the 1957 session, directly affecting the business of abstracting or title insurance.

P.L. 104, known as the Housing Act of 1957, was passed in July of this year. The Act authorizes the Federal National Mortgage Association to use another $1,150,000,000 to buy mortgages from original lenders to free more money for loans. By the terms of the Act the FHA is authorized to lower its minimum payment for home loans to required down payment of 97% on $10,000 value, with 85% of additional $6000 and 70% of any excess to maximum mortgage of $20,000 for one or two family dwellings; and a maximum of $27,500 for three family dwellings and $35,000 for four family dwellings, with $7000 additional for each extra unit above four. The 30 year term will be continued.

The Act also requires FHA and VA to set reasonable limits on discounts on Government-backed mortgages, and also provides money for slum clearance and college housing loans.

Although authority was asked to raise interest rates on GI home loans from 4½% to 5%, this authority was not granted. However, H.R. 4602 was introduced to provide direct Government loans for veterans' housing in rural areas, which bill was vetoed by the President.

STATE LEGISLATIVE COMMITTEE, REPORT OF CHAIRMAN

JOHN P. TURNER, *Executive Vice President, Kansas City Title Insurance Company, Kansas City, Missouri*

The Constitution of our Association provides that the Legislative Committee shall, subject to the approval of the Board of Governors, "have power to act with regard to legislation pending before the Congress and any state legislature on matters affecting or relating to the interests of abstracters and title men and the title business generally and shall submit a report of such action at each annual convention meeting of the Association." By reason of the existence of a Federal Legislative Committee for the Association, your chairman was advised that the Committee had no responsibility with regard to federal legislation.

In line with the duties set forth above, each committee member was requested to report any act introduced which purported to "regulate in any way the abstract or title insurance business, or to authorize the use of the Torrens system, or restrict the present necessity for the use of title evidence (as might be true in the case of so-called 'marketable title' acts)," and further to report whether such acts were passed or rejected.

The legislatures of forty-four of the states, as well as those for the Territories of Alaska and Hawaii, convened during 1957. Although numerous acts (both favorably and adversely) affecting the title business were reported as pending, it appeared that the state title associations were entirely capable of taking such action in connection with the same as would be consistent with the interests of American Title Association. Consequently, your committee was not required to "act with regard to legislation pending."

The disposition of such acts is as follows:

A Torrens act was introduced into the Washington legislature but died in committee. Information was received that such an act would be introduced in South Dakota, but it was never presented. Ohio, on the other hand, which has had the Torrens law for some time, passed an act which permits land registered under the same, to be withdrawn, and conveyed thereafter under the recording system. Your chairman is not sufficiently acquainted with the Torrens system generally to know whether it is common for land once registered to be perpetually under the system and, consequently, whether efforts should be made in other states to pass acts similar to that adopted in Ohio.

So-called "marketable title" acts are considered by many abstract members of the Association as detrimental, since such acts may result in abstracts being required only for that period of time called for by the act as establishing marketability. Such an act calling for a 40 year period to establish marketability was introduced in Connecticut, but was defeated. The one proposed for Wisconsin was not introduced, apparently due to the lack of any organized support. It is reported that the Illinois Bar Association is working on a marketable title act, and the same probably will be introduced in the 1959 session.

Wisconsin passed an act which requires that any instrument by which the title to real estate or any interest therein or lien thereon is conveyed, created, encumbered, assigned, or otherwise disposed of, must bear the name of the person who, or the government agency which, drafted the instrument, and the attorney general has ruled that a corporate name as the instrument draftsman is not sufficient. The committee member for Wisconsin labels this as an "interesting effort of our bar to police the unauthorized practice of the law."

Abstracters' license laws were in-

troduced in Minneasota, Missouri and New Mexico. The Minneasota act predicated the issuance of a license upon an examination as to skill and knowledge, plus the posting of a liability bond, and the act was passed by the legislature. The Missouri and New Mexico acts each required the licensee to have complete indexes (such indexes being referred to in our industry as a "plant"), and both acts were defeated. It is interesting to note that the New Mexico act was not sponsored by the state title association.

Kansas, already having an abstracter's license law based upon the requirements of knowledge and bond, attempted to amend the same to require licensees to have a plant, but the amendment was not adopted. South Dakota was able to put all licensees on a plant requirement basis by not passing any new legislation. It first passed its abstracter's license law in 1929, with a plant requirement, but also with a "grandfather" clause, permitting those already in business without a plant to be granted a license for a stipulated period. The period was extended from time to time, but the last extension was limited to July 1, 1957. It was not again extended by the 1957 legislature.

It has always been an interesting speculation as to how far the state might go in regulating abstracters, once the gate has been opened via an abstracter's license law. This is illustrated by a bill introduced in the Colorado legislature (although not passed) which provided that abstracters should not be required to show zoning and building codes in the abstract.

The title insurance segment of the Association also received attention from the legislatures. Regulatory codes scheduled, or at least rumored, for Colorado and Florida did not materilize. (The committee member for Florida requested that the executive vice-president of American Title Association be advised that an act was passed "outlawing carpetbaggers and disenfranchising Yankees with bleeding hearts.") A regulatory code was introduced in Hawaii, but did not pass, the committee member advising that the reason for the failure was "the presence of more important legislation."

As a part of a revision of all insurance laws of Oklahoma, specific provision was made for title insurance companies. Among the provisions relative to qualification by both foreign or domestic stock companies is that for a paid-in capital of not less than $100,000 and a surplus of not less than $50,000. It also contains a requirement that every policy of title insurance or certificate of title "shall be countersigned by some person, partnership, corporation or agency, actively engaged in the abstract of title business in Oklahoma as defined and provided in Title 1, Oklahoma Statutes Annotated." (It is your chairman's understanding that Oklahoma has an abstracter's license law and that the reference is to such law.)

South Dakota also adopted an act which provided that a policy of title insurance or certificate of title issued by a foreign insurance company must be countersigned by a South Dakota licensed abstracter. Washington amended its existing statute so as to permit title insurers to do busniess in more than one county so long as they maintain an approved guaranty fund of not less than that required for the largest county in which they are doing business, but such insurers in additional counties are required to maintain in each county an authorized agent with a complete set of tract indexes. A bill was defeated in Idaho which attempted to repeal the existing law requiring countersignature of title insurance policies by an abstract company owning a set of abstract books in the county in which the insured land is situated.

New Mexico amended its title insurance premium reserve requirement so as to require a reserve of 10% of the premium collected (excluding from the term "premium" charges for abstracting, record searching, escrow and closing services and other related services which may be offered or furnished or the costs and expenses of examinations of title, or premiums paid for rein-

surance), but with provision for the withdrawal thereof over a period of twenty years. Idaho rejected a proposal to tax title insurance companies at, according to the committee member, "such a high rate that, had it become law, title insurance companies probably could not have operated in Idaho." Suggested legislation in Wyoming relative to premium taxes was not introduced.

New York amended its law so as to make it clear that none but title insurance companies may reinsure title insurance risks. Wisconsin amended its present law to make it clear that title insurance companies could not insure against loss by reason of the non-payment of principal and interest of bonds and mortgages. (There apparently is no evidence that any of the companies in Wisconsin were attempting to do so.) And Ohio rejected a measure which would have required any title insurance policy written to protect a mortgagee to insure to the benefit of the mortgagor.

Many of the committee members kindly also furnished information relative to acts passed which affected real estate law. Your chairman considered these acts beyond the scope of the committee activity, but nevertheless feels one to be of such interest to title men generally that it should be reported. Apparently, a prior Wisconsin law authorized the state court to enter satisfaction of a judgment rendered by it upon the application of the judgment debtor, provided such debtor had thereafter been adjudicated bankrupt and had been discharged. It has now amended its judgment lien law to include the following, "A judgment discharged in bankruptcy shall, upon entry of the order of discharge, cease to be and shall not thereafter become a lien on any real property of the discharged person then owned or thereafter acquired."

Your chairman wishes to thank all members of the committee for their generous cooperation.

RESOLUTIONS COMMITTEE, REPORT OF CHAIRMAN

GORDON M. BURLINGAME, *President*
The Title Insurance Corporation of Pennsylvania, Brynn Mawr, Pa.

1. Whereas, since the last annual convention of this association, God in his infinite wisdom, has seen fit to call from our midst, Past Presidents, Arthur C. Marriott, Henry R. Robbins and Edward C. Wyckoff, who by reason of their being learned and skilled in the law, were honored and revered not only by the title insurance industry but by their fellow brothers at the bar as well,

   Now therefore be it resolved, that the American Title Association in convention assembled, express its feeling of deep sorrow that it will no longer be able to call upon Arthur C. Marriott, Henry R. Robbins and Edward C. Wyckoff for counsel and advice but deep gratitude that they have at last reached their eternal home, the goal of all. And be it further resolved that the officers of this association be instructed to forward a copy of this resolution to the families of the said Past Presidents.

2. Whereas, it has been the privilege of the members attending this convention, to be addressed by leaders in our industry and by distiguished guests, experts in the fields of economics and development of our nation.
   Therefore be it resolved that the American Title Association in convention assembled express its deep thanks to those who at great expense of time and thought have honored the Association by their presence and by addressing this convention.

3. Whereas, our President has distinguished himself as a true and able leader of this Association in the tenure of his office, representing the best traditions and ideals of the title industry, he has unstintingly devoted his time and efforts to the advancement and development and progress of the Association, having added thereby immeasurably to its prestige.
   Now, therefore, let it be resolved that this convention hereby express its grateful thanks and sincere appreciation to John D. Binkley for his outstanding administration as President of this Association.

4. Whereas the Lawyers Title Insurance Corporation, as host for this convention, under the able leadership of George C. Rawlings, and his fine committee, has, by its thoughtful planning and outstanding performance, provided us with superb convention facilities and entertainment that will be long remembered by those in attendance with a great deal of appreciation; and whereas, we of the Association have been impressed by the warm and friendly feeling of the host, now, therefore, let it be resolved that this committee hereby express its appreciation and thanks to the Lawyers Title Insurance Corporation for its exceptional part in making this convention such a delightful and eventful experience.

5. Whereas, the management and employees of the Hotel John Marshall have demonstrated great cooperation and friendliness in handling this convention, now, therefore, let it be resolved that the appreciation of those in attendance at this convention be conveyed to them by delivering to the manager a copy of this resolution.

CODE OF ETHICS

The American Title Association

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

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

FIRST

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

SECOND

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

THIRD

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

FOURTH

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

FIFTH

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

SIXTH

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

SEVENTH

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