

OFFICIAL PUBLICATION

AMERICAN TITLE ASSOCIATION

DO NOT REMOVE

TITLE NEWS

VOLUME XXXVII

FEBRUARY, 1958

VOLUME 2



TITLE NEWS

Official Publication of

THE AMERICAN TITLE ASSOCIATION

3608 Guardian Building — Detroit 26, Michigan

Volume XXXVII

February, 1958

Number 2

Table of Contents

<i>Article</i>	<i>Page</i>
One Abstracter in County Represents One Title Insurer Under Exclusive Contract—What Do Other Insurers Do Who Want to Do Business in That County?.....	3
A PANEL DISCUSSION	
<i>Richard E. Johnson</i>	<i>Harold A. Lenicheck</i>
<i>H. G. Ruemmele</i>	<i>George E. Harbert</i>
<i>E. Gordon Smith</i>	
Escrow and Closing Problems	
<i>James G. Schmidt</i>	14
Coming Events	20

EDITORS COMMENTS

Within this issue of Title News we include material from the 1957 Convention panel reflecting the views of outstanding representatives of the Abstracters Section and the Title Insurance Section. The topic is: "Where only one abstracter exists in the county and he already represents a title insurer under an exclusive contract, what do other title insurance companies do who want to do business in that county?" This discussion engendered considerable interest at the Richmond Convention last October and much of the material here had to be edited from the reporter's verbatim transcript before publication. We did not think it proper to publish part of the panel discussion without having it in its entirety, thus the delay.

* * *

We also publish here the paper of Mr. James G. Schmidt, Vice-President, Commonwealth Land Title Insurance Co., Philadelphia, on the subject of escrow closings. Due to a misunderstanding, this paper was not included in the December Convention issue, but since it comes from an outstanding title man in the person of Mr. Schmidt, we know our members will be interested in his paper.

ONE ABTRACTER IN COUNTY REPRESENTS ONE TITLE INSURER UNDER EXCLUSIVE CONTRACT — WHAT DO OTHER INSURERS DO WHO WANT BUSINESS IN THE COUNTY?

A PANEL DISCUSSION, 1957 ANNUAL CONVENTION

MEMBERS OF PANEL:

Richard E. Johnson, Moderator, *President*, Waupaca Abstract and Title Co., Waupaca, Wisconsin

H. G. (Bud) Ruemmele, *Secretary*, Grand Forks Abstract Co., Grand Forks, North Dakota

E. Gordon Smith, *Vice President*, Lawyers Title Insurance Corp., Dallas, Texas

Harold A. Lenecheck, *Executive Vice President*, Title Guaranty Company of Wisconsin, Milwaukee, Wis.

George E. Harbert, *President*, Rock Island County Abstract and Title Guaranty Co., Rock Island, Illinois

RICHARD JOHNSON, MODERATOR

Mr. Chairman and fellow members of the Abstracters Section: I might confess that when our good chairman, Lloyd Hughes, wrote to me last spring asking whether or not I would act as moderator on this panel, the more I considered the implications of the question presented, the more fearful I became and attempted to fabricate all manner of excuses as to why I couldn't participate on this panel. But Mr. Hughes, assured me in his convincing way that a moderator isn't expected to have any particular thoughts on the subjects, all the moderator is expected to do is introduce the speakers and then step aside and let the fur fly. So with that reassurance on the part of our chairman, I still, with some hesitancy, agreed to

act as that form of moderator on this panel.

I think you will all recognize the question as Lloyd has stated it to be one that has for a number of years been in the background of a number of our discussions but has never formally appeared on our program. In discussing through correspondence and in personal conversation with the other members of the panel the subject presented to us, we found it necessary to try as best we could to limit the scope of the discussion to the particular question presented. In other words, we don't consider that our panel is here today to debate the relative merits of title insurance versus abstracting, nor to get into the other offshoots of the question any more than is necessary in presenting an orderly discussion of the question which we have, and that is, as stated

in your program, where only one abstracter exists in the county and he already represents a title insurer under an exclusive contract, what do other title insurance companies do who want to do business in that county? Or, stated in another manner, what happens when the demand of the title insurance companies exceeds the supply of local abstracters?

The question will be discussed from the Title Insurance Section viewpoint, by Mr. E. Gordon Smith and also by Mr. Harold Lenicheck, who are our guests from the Title Insurance Section, and on behalf of the abstracters section by two well known members to you, Mr. George Harbert and Mr. Bud Ruellemele.

It was a little difficult in our pre-panel meeting to determine just how to approach the subject and how to get started. Perhaps the gentlemen on the panel found themselves in the position of the 19-year-old Arabian boy whose father, the shiek, had died suddenly and bequeathed to him a right large harem. The young fellow knew what to do, all right, but he didn't know where to begin. I think these gentlemen found themselves somewhat in that position.

But in the interest of an orderly approach to the subject, we thought it best that we lead off the discussion by a statement of the abstracter problem and the abstracter point of view, and knowing the gentlemen certainly as you and I know them, certainly some frank opinions as to what ought to be done will come out.

H. G. RUEMMELE

I don't know if I am the person responsible for this being on the program, but I do recall that at the Dallas meeting, questions presented here were taken up at my request and caused a lot of discussion, and apparently this panel resulted from it.

I do not have answers; I have questions, and in order to get those questions before you, I'd like to lay the foundation, if I may, of what I consider at this time a conflict between the title insurer and the abstracter.

President Binkley this morning dwelt a little bit on our common field. I think now we have reached a field of conflict, and I think perhaps this is the place that it should be resolved.

To begin with, let us go into a little history of our Association. Last year we celebrated our 50th wedding anniversary—I mean that wedding anniversary—when the Title Association was started. At that time it was predominantly and very predominantly an association of abstracters. However, there did exist at that time a small number of title insurance companies operating in metropolitan areas.

As the Association grew, as the value of land increased throughout the United States, the title insurance companies spread, and as they spread they had to move into areas where abstracters already existed. They were invited into the Association, or were already there, and it grew until it reached the point where the Association was divided into two sections. To me that in itself indicates the title insurance business was growing and must someplace along the line be absorbing the abstracter. And it has reached the point where Mort McDonald said this morning we have 2364 members, 1400 of whom pay \$10.00 a year in dues. I would venture to say that 1400 is about 99 per cent abstracters, which would also lead you to believe that at this stage in our game the title insurance industry is financing this organization. So they have come a long way, and as they have increased in scope they have moved into more and more abstract areas until we reach the present time.

Now, what is the present status? The present status as I understand it is that the title insurer starts out with the basic idea that he would like to have in new areas the abstracter as an agent. That is probably based upon the sound thought that the policy should not be written without satisfactory title evidence. However, in the growth of that thing the title insurer said, "I don't want to go in and build up a volume of business for that abstracter and let somebody

else come along and steal it from me or participate in it." So there grew in a development an exclusive contract wherein the contractor said, "You can be my agent and my agent only," and that today seems to be the predominant practice.

Now, in dealing with the problem we find a variance in the recording system. In some states they have no so-called tract indices; in some states they do. In the non-tracted-indices areas it is a rather difficult matter for anybody to casually walk into a recorder's office and ascertain the status of the public record to a particular piece of property, and in a tract-indices state, such as mine, in most instances it's a relatively easy matter to dig out the necessary information on a particular chain of title.

Now, that raises the additional point: we have the exclusive contract. We have the various recording systems. In the recording system that has the tract indices the basic underwriting information is readily available. The title insurer can move in. He can by-pass the abstractor, as he must under the present exclusive system, and he can secure his information from the record, itself, appointing an agent if he wishes. Or in the other states where you don't have the tract indices, he can do it as he pleases pretty much. The information that will be garnered by somebody other than the abstractor is in most instances not very reliable, and it is the business of the abstractor that the information he sells must be reliable, or he doesn't stay in business very long.

Now, that poses the problem of the underwriting policies of the title insurance companies. And try as I may in an informal manner, I can't find anybody in the title insurance industry willing to sit down and put in writing a basic minimum underwriting policy that they are willing to follow. They all agree that it must be based upon adequate information or public records, but in many instances that is not the practice.

Now, that leaves the abstractor in

a rather awkward position. He finds himself being competed with by title insurers represented by people outside of the title profession, so to speak, and operating on our more or less casualty basis resulting in a loss of income to him. So he immediately says, "There must be something wrong here. I am losing business. I have a large investment in a plant. That business is going over here to a man who does not have any plant, does not have any investment. He is turning out title insurance, and his contract, when he gets through, is as valid on the face as the contract that I am issuing on my record and as an agent for a company."

Now, what choice does the abstractor have when he faces that situation of economic obliteration? Well, I think the choices have been put before the legislature in various states. South Dakota this last year, as I understand, Oklahoma, Washington and Oregon have gone to their legislature, the abstractors have, I assume, inserted into some title insurance laws the provision that no abstractor may be signed on behalf of any title insurer unless it's signed by someone with a title plant, or words to that effect.

Now, in the development of this and as the pressure of title insurers develops in a given area, as would be expected in any business, you have rates, rates that are in most instances not controlled, and the title insurer quotes them as he pleases. It's very disconcerting to an abstractor who has a plant, who is endeavoring to turn out a good product, to find that the rate he is quoting is being undercut. So I think it is reasonable to assume that in those instances you are going to find the abstractor asking for more and more state control of the title insurance business.

Now, what is the abstractor's dilemma in all this? And this dilemma, I take it, it is my personal viewpoint—I don't know if the title insurance people will recognize it as a dilemma, but I do—for some reason or other, title insurance business seems to be

rather profitable, and whenever things are profitable, you get a lot of people who want to get in on the melon, and when they want to get in on the melon, there are several ways they can do it. But the most popular one is on a price basis and cost basis, so you find springing up — and we have in North Dakota, the urge to establish a title insurance company, undercut the existing rates, cut down some of the existing overhead, go in and write business. The policy is the same; maybe it doesn't have as good a guarantee as somebody else's, but so what? So the final result could be that with bad underwriting policies, inadequate charges, inadequate reserves, some title insurance company is going to go broke. Maybe not one; maybe many.

Now, I represent a title insurance company; maybe it's my company that goes broke. For years I have been recognized as a stable financial institution or abstracting institution to get along with. Every policy I have issued is now issued by a company that went broke because they didn't follow sound underwriting policies; they didn't charge an adequate rate. Where does that leave me?

Today we don't, in many instances, know with whom we are having the pleasure of competing. So I have some questions, and I put them out not as an indictment of anybody, but in the hope that within this Association we can have a frank discussion and that we can add to things we have in common with the title insurers some of these questions.

My first question is this: What, if anything, are the member title companies who apparently subscribe to a rather high ethical standard, supposedly governed by governing members of the American Title Association, doing or going to do in establishing a sound basis for issuing title policies?

Secondly, what formal action, if any, have we taken on the matter of binding policies governing the appointment of agents? Should it be a single, exclusive contract, should it be an open contract, making possible

multiple representation, or is any action necessary?

And, finally, what does the future hold for an abstractor facing the influx of title companies fighting on a no-holds-barred basis? The problem is here; the efforts to face it by open, frank discussions have been meager. Is not this Association the proper forum for unheated, intelligent discussion with a hope of finding an acceptable solution which will keep the title profession on a sound basis for the protection of the general public? I thank you.

H. A. LENICHECK

Ladies and gentlemen of the Abstracters Section: I am certainly very delighted to be here and have this opportunity to discuss these interesting questions with you. I am certainly delighted to see some of my colleagues from the title insurance section here. (Laughter.) I think that perhaps the problem is one—if there is a problem—that can be discussed and probably even a solution could be found.

But my approach to the subject of this panel is from the viewpoint of the home state title insurer. Our company confines its operations to the State of Wisconsin only, and while the practices and procedures in the various states vary, nevertheless, I believe that you will be interested in knowing how we think and operate in Wisconsin in terms of comparing the thinking and the operations within our own state.

To answer the question as to what other qualified title insurers do in a situation where there is only one abstractor in the county and he represents one title insurer, perhaps some background information should be given which will indirectly touch upon my views as to the other question in this panel discussion: what the future holds for the abstractor.

Now, I say "my views." You may agree with them; some of my colleagues in the Title Insurance Section may agree or disagree, you may disagree. Our Board of Directors some-

times agrees with me, and sometimes it doesn't. Our staff of officers sometimes agrees with me and sometimes it doesn't, so I am used to having disagreement insofar as my views are concerned, but I think at least an honest expression of one's views is helpful in coming to a solution of a problem.

My company is the successor of one of the original abstract companies in our county, and we still compile abstracts. So that the problems of abstracters are not new or strange to us. As a matter of fact, they are a part of our daily routine. And while we have been organized to write title insurance for perhaps some 40 years, still it's been in the last 20 years, actually, that title insurance has become used or got much of a start in our community, and now in the Milwaukee metropolitan area title insurance is widely used.

We feel that abstracts and title insurance are mutually dependent one upon the other. In our operations we depend almost entirely upon abstracts or the services that abstracters provide. We depend upon that as a basis for the issuance of our title insurance policies. And, actually, it's our feeling that we couldn't get along as well in our work if we didn't have the abstracter's services or the abstracts to depend upon.

Now, on the other hand, we think that title insurance offers abstracters opportunities. All industries, it seems to me, are faced with the problem of finding new methods, new processes, new sources of revenue. There comes a time when the old way may no longer be the best way and no longer does it serve the current need, and the title industry, in my mind, is no different from any other.

I remember some years ago at an ATA meeting in Chicago one of the speakers speaking before the entire group and warning the industry and particularly those who were in metropolitan areas, he warned that some method of speeding service and simplifying some of the cumbersome practices involving title evidencing and the transfer and financing of real

estate would have to be found by the title industry or others would find it for us. And he indicated, better, of course, that we find it for ourselves.

Now, it may be that title insurance is not the answer, and maybe it is. At least, we have found it to be acceptable and satisfactory where it's used. In our town I am satisfied that most of the loaning institutions, realtors, the subdividers, the builders are happy with it, and even most of the attorneys like it, because it has often served to eliminate frustrating technical delays. And so far, even the most demanding from the standpoint of service seem to be satisfied with it, because it is possible to process an order and to issue a preliminary report and have it in the hands of the applicant within a few hours.

Now, I don't say these things to debate the relative merits of abstracts and title insurance, but I do say them because I feel that insofar as the future for the abstracter is concerned, that the progressive abstracter should desire to serve his customers to the utmost of his ability, ought to consider placing himself in a position to offer title insurance service if his customers' needs demand it. In other words, there may be cases where the abstract will probably do, but if it doesn't serve the purpose, then I believe that the abstracter should be prepared to offer title insurance, and I might add that in offering it we feel that the abstracter should be entitled to receive his just share of the revenues resulting.

Now, in a sense I am trying to answer or at least maybe touch on some of the answers, Bud, that you have proposed here. If abstracts and title insurance are mutually dependent and if a title insurance contract could give the abstracter an additional valuable service to offer his customers, then doesn't it seem just a simple matter of good business for both the abstracter and the title insurer to get together to reap the mutual benefits that would result?

Now, we in Wisconsin, my company, apparently felt that way about it, for in extending our service

throughout the state we selected as representatives abstracters wherever it was possible to do so. Being a home state company, we felt we were close to the local situation, close to the needs and the problems affecting all the people engaged in the title business and the abstracters representing us who, by the way, we feel they just aren't any better, are a part of our family. We hold annual conferences where we discuss title problems, new legislation, practices and procedure. We offer our help in obtaining business or referring, whether it be abstracts or title insurance. We take part in the affairs of the state title association, and in general we try to do whatever we can to promote the general welfare of the title business in the state, and it all makes sense, for if we as title insurers are to succeed, our representatives must succeed, and to succeed—and we believe we have—it goes without saying the venture must be profitable to both abstracter and title insurer.

Now, getting down to the question: What does the qualified title insurer do when he finds only one abstracter in the county and that abstracter represents another title insurer? Well, it would seem to be beyond dispute that where a company initially trains an abstracter in the procedure of title insurance and thereafter continues such training by providing an examiner's manual and which is kept constantly current to reflect changes in laws and the development of new methods and procedures and in addition provides counsel and guidance on request, all of which my company does, such company should have exclusive rights to the abstracter's services in promoting the use of title insurance and in the writing and processing of binders and policies.

And here is the crux, I think: It would not follow, however, that an abstracter could not perform normal abstract services for a competing title insurer if he so desired, and, actually, this is being done in Wisconsin.

Now, a title insurer is faced with

several alternatives. One — I am speaking now of the situation where one abstracter, exclusive contract, somebody else, another title insurer wants to come in—he could have an attorney act as an exclusive agent. If the abstract company is tied up, doesn't wish to perform the normal abstract services for the competing organization or the title insurer, then the title insurer could make arrangements with a qualified attorney, perhaps, to act as agent for the title insurer in that county.

Two, the title insurer could establish, I suppose, a branch office in the county.

Three, the title insurer could require abstracts and extensions thereof in counties where it would have no representative. Now, that goes back to this idea that I mentioned where the title insurer has no representative or there is a representative there who represents a competing title insurer, that title insurer wishes to get in could require abstracts or extensions of abstracts so that he has the title information that he deems necessary upon which to base his binder and subsequently his policy. We do that in Wisconsin.

Another alternative, the title insurer could refer the work to the title insurer operating in the county—that is, the outside title insurer. That is done in some instances. We have done it in Wisconsin where it has been impossible for us to work out an arrangement to get the title evidence ourselves or where it has been a matter of price and that to furnish the title evidence and to have us process it would cost considerably more than to refer our client or our customer to the title insurer working in that county.

And another way would be to operate through an approved list of members of the bar.

Now, insofar as Wisconsin is concerned, we have used all of these alternatives, with the exception of the second one that I gave you, and that was establishing a branch office in the county. We have used on spe-

mentioned to you, and that was operating through an approved list of members of the bar. We have done this in some instances on FHA applications.

Now, in Wisconsin abstracts will continue in wide-spread usage for a long time, I am sure. I realize that each state is different. Of course, no one solution is going to solve it for everybody. But I do feel that if you have a situation that is similar to ours in Wisconsin, I think it would be well worth the time and the effort that it takes for every abstracter to seriously consider connections with a title insurer, for it seems to me that by doing so he can best assure himself of being in a position to meet any demands that his customers might make for title evidence.

E. GORDON SMITH

The subjects assigned to this panel for discussion today are perplexing ones. I have no idea that I can come up with any solution to the various problems involved, but, in the light of my experience in the title business, I may be able to give some of you an idea or two which will permit a new approach in your efforts to deal with your individual situation.

Since the time I received my first pay check from Lawyers Title in June, 1925, it has been my privilege to be associated with abstracters. I am glad I fell into the title business as an avocation, for in the past 30 years I feel I have been associated with the finest people who exist. During this period, I also have gotten to know a lot of abstracters and title men pretty well. As a result, in my remarks today I hope I may accurately present the viewpoints of both the title insurer and its abstract company agent.

Now, I would like for you to think with me for a moment concerning what are the primary objectives of the title insurance agency system. Stated briefly, they might be described as—

1. To establish a facility which will permit issuance of the title

insurance company's policies over a wide area in a prompt, efficient and safe manner.

2. To produce a profitable volume of business.

The requirements of Objective No. 1 are readily met through a title insurance company's careful selection of a local abstract company agent and the subsequent training of that agent to satisfactorily meet the demands of its customers. I want to dwell longer on Objective No. 2 for, after all, our primary objective in being in business is to produce a profit.

The first thing I would like to do is to convince you of the desirability and almost necessity of the abstract company and the title insurer working together as a team. The closer the relationship which can be developed—the more successful the operating performance of the team. The title company should feel that its abstracter-agent in any given community is the best in his county, and, in its business solicitation program, should widely proclaim that fact to the world. Similarly, the abstracter-agent should believe that he represents the best title insurer in the business, and he should use that argument as he solicits orders at the local level. Believing confidently in each other, the title company gives the agent greater authority to make decisions in its behalf at the local level. The agent accepts the advice and counsel of the title insurer. Mutual confidence and working together in dual harness produces for the abstract company and the title insurer a highly effective business solicitation and title service team.

Now, how do we go about achieving this highly desirable team? I think the prime prerequisite is for the agency operation to be conducted under the so-called "exclusive" form of contract. This type of contract usually provides that the abstract company-agent will act as agent only for one title insurance company and will not aid in procuring title insurance orders for any other title insurance company.

At the outset, I think it would be

well for me to say it consistently has cific jobs the last alternative that I been the policy of my company to use the so-called "exclusive" form of agency contract. Personally I, too, favor the exclusive agency contract, but, in all frankness, I must admit there have been times when I have doubted the wisdom of that method of operation. However, in the light of developments during the past 5 years, I now am firmly convinced that the exclusive contract method is best from the viewpoint of the local abstract company, the underwriter and the consumer of our service.

In order to prevent any misunderstanding as to what I am talking about, I think it might be well to re-define my idea as to the principal obligations under an exclusive agency contract. Under this form of contract, the underwriter agrees that the agent shall be its exclusive representative in the specified operating territory. Most contracts provide for the company to directly issue policies in the agent's territory, but usually a provision is included under which the local agent receives exactly the same commission from the underwriter as if the policy had been issued by the agent. This part of the exclusive agency contract is extremely important to the agent because it prevents the underwriter from setting up additional facilities with which it would compete with the agent for business. It also prevents the underwriter from skimming off the cream and handling the big deals directly to the exclusion of the agent.

When a title insurance company knows it is represented exclusively locally by a single abstract company, it can well afford to exert much effort to assist the local agent in his program of business solicitation and development. Today an increasingly large percentage of title insurance business is controlled by title insurance companies as a result of their promotional activity in the more populous cities and financial centers. Frequently, this control is not direct in that the title insurer does not obtain the order on the spot and send it

to its local agent. Instead the title insurer must sell its prospective customer on the idea of using the title insurer's agent on future acquisitions of real estate. This the title insurer can afford to do when he knows his policy will be issued on all orders received by the abstractor-agent. Solicitation of this nature would not be profitable to the title insurer if the local abstractor was agent for several title insurance companies, thereby affording the title insurer no assurance his policy would be issued on all business he had solicited in the agent's behalf.

Insured Closing Service

Although you may admit my arguments are persuasive as to the desirability of creating an abstract company—title insurer team and that this can best be achieved under the exclusive contract, you still will be concerned about the fact there is only one local abstract company in your county but 5 title insurance companies are competing there for business. If the one local abstract companies has exclusive contracts with one title insurer, how are the other title insurers to be taken care of? At the risk of over-simplification, I offer this solution. When one of the 4 title insurers not represented in your county seeks an order in your territory, you should agree to furnish the needed basic title information at the prevailing rates. This title information usually will be in the form of a regular abstract. The title insurer then will have the abstract examined in any manner he sees fit and eventually will issue its policy. Yes, the local abstractor lost the title insurance commission on this particular transaction, but it is unreasonable for the local abstractor to expect to get all of the business. This method, if employed by title insurers not represented locally, is cumbersome, slow and has a small profit margin. It does permit the title insurers without local representation to serve their established customers, but it gives the local abstractor with one title insurance connection at an inherent competitive advantage. That is as it

should be. Over a period of time, the local abstract company with title insurance facilities will obtain more than 90% of the potential title insurance business, because he can render more prompt service, has local facilities for closing deals, as well as many other advantages with which all of you are familiar. This fact has been demonstrated time and again. There is no satisfactory substitute by which one competing for title insurance business may overcome the built-in advantages enjoyed by a local abstract company set up to issue title insurance policies in its own office.

GEORGE E. HARBERT

During the last hour we have heard a discussion of many phases of our mutual problem. So sum up these points and perhaps to draw this panel to conclusion it seems to me we should do two things.

First: Let us eliminate from the discussion the things upon which we can agree. When this is done perhaps we will find that there are not too many points of disagreement and our efforts can be directed toward a study of these.

In general it is my firm conviction that prosperity in our business can only be attained by mutual co-operation based on a respect for the problems and aspirations of all of the members of our profession. Our objective is to provide the public with the best title service that is possible and while doing this, we must make ourselves a reasonable profit. I am sure that there is no one of us who seriously wants our services to be rendered without profit and that upon this common ground we can all agree. I believe that good service can be coupled with a fair profit if we carefully evaluate the worth of our service and do not undersell ourselves even to secure a temporary advantage.

To begin with; I am sure we can all agree that Title Insurance is the coming service. Its use is spreading and most of us are now representing some underwriter. For the purpose

of this talk I am going to call our group "abstractors" and in that classification I mean to include the typical abstractor-representative who operates a title service office at County level. We believe that the general good of the title industry is best served if local title service is channelled through our privately owned and operated offices or plant, rather than from a distant vantage place, or from an office far removed from the locality of the land.

The first point that seems to me to be important is a recognition of the fact that title insurance consists of two parts; a sound careful search of the records, and an examination of the result of that search; in other words, regardless of what you call it—the history of the title, and an evaluation or examination of that history.

We, as abstractors have specialized in preparing a short concise history of the title to real estate in such a form that its examination can be done soundly and expeditiously.

As abstracters, we gained our present position because, we were able to search local records more efficiently and give to the examiner of the records a better product than could anybody else for the same money. We should not kid ourselves. The lawyers were making abstract searches long before we got into the picture. If we didn't do a better job than they did, we wouldn't be here today.

I do not believe that we can eliminate competition. With all due respect, to our title companies who talk about turning over their applications to their competitors and demanding a complete abstract as a basis for a title policy, I don't think that is the general rule today and I don't think it will be the rule tomorrow.

The next question is: Will multiple agents make us more profit, make our underwriters more profit, and furnish better title service to the public? Personally, I do not believe so. I don't believe that a multiple agency will solve any of our prob-

lems. I think they would not increase them.

Let me point out a few simple problems. I represent one company. A competing underwriter comes to me and asks me to represent him also. What am I going to say the first company? Am I going to call him up on a telephone and say.

"Mr. Title Company, up till now you have been getting all of my business. From now on I am going to give you half." I don't think they will like that. If I get by with it the first time, I am sure that every underwriter will feel that I am running scared, and I can expect that I must answer the same problem time and time again as other underwriters will be encouraged by the success of my first competitor.

In fact it is my belief that such a decision would encourage many companies who now confine their activities to local areas to become national in scope, and it might well induce companies who have no basic knowledge of title insurance to enter the field.

Sooner or later we must say no, to some title companies, as we cannot expect the good title companies to share business with every company who knocks at our door. I would fear that the better companies might prefer to pull their agency away from me, rather than to share with every newcomer in the field.

Assuming for the moment that I am wrong, and that it is only necessary for me to represent two or three companies to maintain complete dominance of my local County, and assume that these companies are willing to give me a chance to work out my problems and to take the portion of the business from my County that I allocate to them. How do I do this fairly? In the counties as small as the ones in which I operate, one or two subdivisions may be the major title business in a given year. Certainly if I give all one subdivision to one company and none to my other outlet, I invite trouble, and yet it seems unfair to write a base title thru one company and the policies on

individual lots in its competitors. If one company sustains a loss, it may well believe that I am giving its competitors the safe titles.

Then how to I explain to my customers? I do not believe that title insurance has yet lost its individuality as is the case with fire insurance companies, and we still believe that we should sell the quality of our company. This is not possible, if we represent several companies.

Last, but not least, I believe the local representative is more a sales agent. In my mind he is an actuary and the success or failure of title insurance depends on the determination of local risks at local levels. If the local representative transmits all risk questions to a higher authority, far distant from the title scene, the red tape involved will slow the progress of title insurance and may even stop it completely. I find it much easier to decide risks if I am sure that my underwriter knows that I will not willingly lead him into an improper policy.

Since I do not find any relief in multiple agencies, it seems to me that it is up to us to point out some of the problems of the present system. Certainly I do not expect to avoid competition, even though I have the only title plant in the County. I cannot expect all companies that I do not represent to write off my County because I will not represent them. At present perhaps there is enough virgin territory that these companies do not care to enter my County, but this is only temporary, and the time will come to all of us when competition will be present.

I do not particularly fear this. I certainly do not believe that competition will force us out of business. If that were so, we would have failed years ago. But I do feel that if our association is to perform its full purpose, we have a right to expect our fellow members to live up to the Spirit of our code of ethics and to base their policies on a sound search of the records, by a company or individual skilled in such matters. I am not too sure that we as abstract-

tors can exert as much control over this situation as can his competing underwriter. Certainly your agents advise you of the local situation. I know I advise my carrier of my problems in this respect.

I think we must reject the pure casualty approach to title insurance.

I also think that if there is a competent abstractor available, a title insurance company should purchase an abstract from him even though he represents a competitor in preference to using a hasty search of County maintained records as a basis for title insurance.

I realize that if we were to seek this objective from purely selfish reasons, we would be doomed to failure. Our desires however are based on the most important reasons in the world and reasons which are as important to you as to us.

The rates for title insurance are based upon your loss experience plus a reasonable profit. The basis of your loss history has been, a sound abstract of the record plus a thorough examination of this abstract. If these two factors are eliminated your losses will increase, and the rates now charged will be inadequate. If this is not true, the rates now are too high.

We have no complaint if a competing title Company buys a sound abstract from us or from our competitor and procures an examination from a recognized attorney but if the attorney is employed by the user of the policy so that his allegiance is divided, or if he is using that position to secure a wholesale rate for his client, we consider such competition unfair and unsound.

From our standpoint, the use of a curbstoner's abstract or search destroys our contention that abstracts made from adequate plant facilities are better. If however, the curbstoner can point with pride to his sponsorship by a recognized title insurance company, it would seem that our claimed superiority is non-existent. The next step is inevitable. If title insurance becomes universal and my underwriter is willing to take a

finger search of the public records as a basis for title insurance, I see no reason why I should continue to maintain a sound plant. We believe that this will certainly increase your losses but you should certainly be more interested in this than are we.

In any event sooner or later the public will suffer either through increased rates or the failure of some companies. We believe that this is the time to avoid either of these alternatives by taking a firm position with relation to the type of title evidence upon which title insurance is to be written.

The failure of one title insurance company will set the industry back twenty five years. We have many persons in our community who would use such a failure as an excuse to condemn all companies good and bad.

An abstractors we must do our part to meet the problems involved in this situation. If we receive an order from a source that indicates a competing title Company is writing title insurance, we should not try to undersell the consumer nor delay the order to show up the company. I believe we owe them a duty to fill the order expeditiously and not to try to steal the business.

I do not believe that cutting rates will help any of us, and yet on all sides we hear that this is being done and in every case it is justified because "My competitor forced me to do it."

"Wildcatting" is another evil that sooner or later will create tragic results. By "Wildcatting," I mean the practice of trying to reach into a community and secure a large policy, leaving all the run of the mine small policies to the local competitor. This is bound to invite cut rate policy writing by the local man to try and secure the order and reprisals in territory in which the wildcatting company has an accredited representative.

So, in conclusion, I believe that within the framework of our Association we can resolve our differences. I believe that we have to use good, common sense. I don't believe, that

a code of ethics or a legislative program can spell out the actual moral issues behind it. I think we must expect our members to deal with us—and we must expect to deal with our fellow members fairly and honestly. I would make just one recommendation; that is, I do believe that a continuing joint committee to try to iron out these problems would be helpful. I don't think it should be called a

grievance committee, because, as I recall it, nobody is willing to admit a grievance in any other place than in the lobby of the hotel. When you ask a member to put it in writing, he will not do it. But a committee to try to iron these differences out on the basis of sitting down and working them out, on the basis of understanding and mutual need will help us all. Thank you.

ESCROW AND CLOSING PROBLEMS

JAMES G. SCHMIDT

Vice-President, Commonwealth Land Title Insurance Co., Philadelphia, Pa.

I have been asked by your chairman to address you on the subject of "Closings". This word "closing" should mean what it says, "This is finality—this winds up the transaction". It is my purpose to consider those steps which will make a closing live up to its meaning.

There is an anecdote of the Prussian General who was awakened from a sound sleep to be told that the French were advancing, and he said, "The plans are in the third drawer of the cabinet," and went back to sleep.

I am not inferring that if one is sufficiently prepared beforehand he can take a nap during an escrow or closing, but I do stress that preparedness will lead to a smoothly operating closing which will be completed quickly and efficiently, and which will at least not cause any loss of sleep afterward.

In considering this question of preparedness, I would like to approach it from the viewpoint of the various parties involved.

First, from the view of the principals—the seller, and particularly the buyer. In most cases they come to the day of settlement for their property without rehearsal and no real knowledge of the parts they play. I think that it is the title insurance company's responsibility to guide and prepare them so that they realize in

advance the problems which confront them at closing.

Naturally, they should have some knowledge of the value of title insurance. The presentation of a film such as the one which we will see later this morning can be of extreme value to educate them as to the service performed by a title insurance company. Such a film is of value in all areas—where title insurance is unknown, it stresses its value; where title insurance is the ordinary procedure, it corrects some false impressions which, unfortunately, have been acquired by much of the public.

But I think we should go beyond teaching the value of title insurance. In the film, "My Florida Land," which the Florida Title Association showed us on Sunday, the abstractor, Mr. Factor, gave the young couple purchasing a property a booklet—and I wondered what the booklet contained. Did it really prepare the purchasers for the problems and costs which would confront them in purchasing their home?

In the October 1957 copy of the Kiplinger magazine, "Changing Times," there is the article entitled, "Don't Forget Those Closing Costs". It states how Mr. and Mrs. X have made that momentous decision, "We've got the down payment—we can swing the monthly payments—let's buy the house". So they sign,

little suspecting that they would be slugged with a bill that would atomize their trim, tight budget.

The day of closing arrives, and they are confronted with closing costs which amount to from \$100 to \$700. They include mortgage service charge, property survey, appraisal fee, credit report, prepaid interest, prepaid taxes, conveyancing, documentary stamps, real estate transfer taxes, recording fees, hazard insurance, closing fees, title insurance, affidavits, acknowledgments, tax and other adjustments. Do they understand these charges? Rarely. And invariably they lump these charges under one headline, "Title Charges," and blame them on the title company. In fact, an article in a national magazine, "House and Home," placed the responsibility for large closing costs on the title company when the major items listed were taxes and other costs which the title company had no power to change.

There are two things which I think we can do. First—publish a booklet explaining the features of a closing, listing the anticipated costs. This could be distributed to attorneys and brokers so that they might give them to prospective buyers. The booklet could be adapted to local custom—in our area it could explain why a bond is made in double the amount of the debt. (The explanation of that one item delays many closings.) This booklet would save considerable time of the attorney or broker in explaining such items. On the last page there could be a blank sheet on which the attorney or broker could list the approximate expenses of the particular closing. Such a booklet would be an excellent advertisement for the title company.

The second service to the buyer could be the holding of forums to discuss the problems of home buying. Two weeks ago we had such a forum in Philadelphia attended by close to three hundred prospective buyers, and we were able to explain to them the problems and the costs of home buying.

At the closing, an opportunity

should be given for the principals to ask questions or to read the documents which they are asked to sign. A separate conference room for this purpose might be helpful.

Understand, this need for education is not limited to the small home buyer. Two weeks ago a deed was sent to me by a mid-West lawyer. He had worked out a transaction whereby one corporation was transferring real property in Pennsylvania in exchange for corporate stock. Imagine his surprise to discover that there would be two real estate transfer taxes aggregating forty thousand dollars. Possibly a pamphlet advising as to closing practices and costs in each state would be of value. I think that the A. T. A. should sponsor an interchange of such information.

Our second problem of preparation deals with the attorney or broker. For them we should prepare a check list.

I understand that in military aviation every Navy plane has on the instrument panel a check list of all the steps involved in getting the plane off the ground and back on the ground again.

For the attorney or real estate broker, I think that we should print a check list of all of the steps—simple and complex—involved in the preparation of a real estate closing.

To make the list effective, it should be printed on one sheet so that it may be kept with the Agreement of Sale in one file covering the particular transaction.

A sample check list could cover the following: (Note: The list can be typed on one 8½ by 13 sheet.)

Check List for Attorney or Broker Basic Data

- Location of property.
- Name of seller.
- Name of buyer (individual or joint ownership).
- Sales price.
- Payment on account.
- Subsequent payments on account.
- Last date for settlement.
- Are there special terms in Agreement of Sale?

Who pays Real Estate Transfer Taxes?

Are extras or equipment included?

Will there be a mortgage or deed of trust?

Have you obtained a legal description?

Is a survey necessary?

What is record of last deed?

Are there any deaths, wills, etc.?

Has title insurance been ordered?

Number of title application.

Pending Receipt of Preliminary Title Report

Have you arranged for:

Financing.

Assignment of lease or delivery of possession.

Fire insurance binder.

After Issuance of Title Report

Have you sent copies of title report to other interested parties?

Are there objections on report to be taken care of prior to closing?

Identity of parties.

Marital status.

Legal capacity.

Court actions.

Are objections which remain satisfactory to purchaser and mortgagee?

Are there any building restrictions or easements?

Have you obtained the following:

Statement from mortgagee addressed to Title Company and necessary papers to satisfy.

Statement from judgment creditors addressed to Title Company and necessary papers to satisfy.

Receipts for taxes, water and sewer rents requested by Company.

Bills for unpaid taxes etc. computed as of date of closing.

Clearance certificate for water and sewer rents.

Receipts for street improvements.

Inheritance and Estate Tax receipts.

Letter of Indemnity or evidence removing objections from Title Company previously insuring title.

Are these required:

Corporate resolutions.

Corporate taxes.

Waiver of liens.

Release of liens.

Inquire whether Title Company will insure against Mechanics Liens.

Final Preparation for Closing

Have you prepared the:

Deed.

Bond and mortgage or deed of trust.

Are names of parties correctly set out?

Have you submitted papers for approval?

What is date and hour of closing?

Have you notified parties (including spouses) of closing date?

Seller to bring receipts, leases or other papers.

Buyer to bring cash or certified check for approximate amount needed to close.

Mortgagee to bring check to closing or forward check with letter of instructions.

Have you prepared a sample closing sheet, showing credits due buyer and seller?

Lastly, we should approach our preparation from the viewpoint of the closing clerk or closing officer. Here the most important preparation is an "agenda", and by this I mean an agenda for every closing—from the involved agenda with complete dress rehearsal of a Zeckendorf transaction to a regular prescribed plan for conducting a simple closing.

For the big settlement, a dry run is advisable. Where such rehearsal is not possible, there should at least be a written agenda showing the place, time, parties present, instruments to be delivered at closing, pre-closing steps, actual transfer of title and post closing steps. It should be planned so that everything is done in the least possible time.

I have been to such closings where thirty important people were present, and practically all of them were standing around doing nothing, and not knowing what they were supposed to do. I have been to other

closings with as many present, and each person had a copy of the agenda and knew exactly what was to be done and when it would be done. As far as possible, different steps were accomplished at the same time.

Even in the simple closing, the officer should have a prescribed system of procedure. This system will naturally vary in different parts of the country—will be quite different in California where they have escrows than in Pennsylvania where escrows are practically unknown. But in a certain company—or within a certain area, all closings should be conducted in the same way. The client knows what to expect and is not dependent upon the idiosyncrasies of a particular clerk.

The time and length of a closing depends upon local practice. In Philadelphia our closings last one hour and are held on the hour and half hours, so that all principals do not arrive at the same time and all distribution checks are not being drawn at the same time.

Actually, all closings do not last the same length of time. For this reason I think that there should be a good officer in charge of all closing clerks. This officer should look over the closing list—ascertain which closings will be brief and which will last more than the allotted time. It reflects on the company to have people arrive for a closing and be delayed because the clerk is still working on the previous closing.

Where closings take place out of the office, the time should be so arranged that the company clerk will be able to make maximum number of closings per day. I talked with an officer of one of the companies who changed the times so that a clerk could make three out-of-office closings per day instead of two.

Closings will be simplified if the preliminary title report is properly prepared. Title objections should be numbered or lettered for identifica-

tion. They should be grouped so that those which will be removed at closing appear together and those which will most likely remain, appear in another group. One or two markings by the clerk will then be sufficient. In fact, in some cases they can be marked previous to closing. In this respect I would encourage pre-closing conferences to remove objections.

Many objections are removed by affidavits of seller. These affidavits can be simplified if prepared as a series of easily understood questions such as: Have any repairs been made to the property? Did you sign another Agreement of Sale? The paper would terminate with an affidavit that the answers are true.

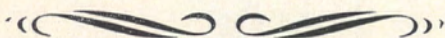
It might be possible to simplify closings by agreeing to apportion taxes, water and sewer rents, etc., as of a date such as the 5th, 10th, 15th, 20th, 25th or 30th of the month. In any event, easy mathematical charts should be made available to the customer, and all clerks within the same area should use the same methods of computation.

One of the most important steps in improving closing procedure is in issuing distribution checks where the title company makes distribution. After all other matters are completed, such a delay makes a particularly bad impression on the parties.

During a closing, the closing clerk should not be interrupted by other customers or by officers. Questions relative to other closings should be referred to some other officer or employee of the company.

The closing is the culmination of all which has gone before—the listing of the property for sale, the negotiations leading to the sale, the arrangements for financing, all lead to a final dramatic event—the closing.

To recapitulate what I have said can best be expressed in the Boy Scout motto—just two words—“BE PREPARED.”



Examine With Care

**AMERICAN TITLE ASSOCIATION
GROUP LIFE INSURANCE
PLAN**

*Designed Expressly for ATA Members and
Their Employees.*

All members have been mailed the introductory brochure.
Subscribe today by sending initial payment and subscription
card to

ATA GROUP INSURANCE TRUST

Suite 747

Chicago 4, Illinois

209 South LaSalle St.



SCHEDULE OF BENEFITS

ACTIVE OWNERS AND EMPLOYEES EARNING \$7,500 AND OVER ANNUALLY \$ 20,000

EMPLOYEES EARNING ANNUALLY

15,000 BUT LESS THAN 17,500 10,000

3,500 BUT LESS THAN 5,000 5,000

LESS THAN 13,500 2,500

EMPLOYEES AGED 70 OR OVER 1,000

THE AMOUNTS OF INSURANCE FOR AN INDIVIDUAL WHO IS AGE 65 OR OVER, INSURED OR BECOMING INSURED, WILL BE 50% OF THE AMOUNTS SHOWN ABOVE

John Hancock
MUTUAL LIFE INSURANCE COMPANY

The American
Title Association



A GROUP LIFE INSURANCE PLAN DESIGNED EXPRESSLY FOR OUR MEMBERS AND THEIR EMPLOYEES

GROSS MONTHLY COSTS OF THESE BENEFITS

	UNDER AGE 65	AGED 65 to 70
ACTIVE OWNERS AND EMPLOYEES EARNING \$7,500 OR OVER ANNUALLY	\$12.50	\$12.50
EMPLOYEES EARNING ANNUALLY		
15,000 BUT LESS THAN 17,500	\$12.50	\$6.25
3,500 BUT LESS THAN 5,000	6.25	3.13
LESS THAN 13,500	3.13	1.56
EMPLOYEES AGED 70 OR OVER		\$1.25

INFORMATION ON HOW TO ENROLL YOU AND YOUR EMPLOYEES IS FULLY OUTLINED IN THE FOLDERS ON THE TABLE

TAKE ONE!

A graphic display at the Mid-Winter Conference of American Title Association showing the benefits and advantages of the Group Insurance Plan now being offered to members of the Association.

COMING EVENTS

Date	Convention	Place
April 8-10	California Land Title Association	Biltmore Hotel Phoenix, Arizona
April 11-13	Oklahoma Title Association	Western Hills Lodge Sequayah State Park
April 13-14	Wisconsin Title Association Mid-Year Meeting	Raulf Hotel Oshkosh, Wisconsin
April 17-19	Texas Title Association	Brownsville, Texas
April 27-29	Arkansas Land Title Association—50th Anniversary	Arlington Hotel Hot Springs, Ark.
May 4-6	Iowa Title Association	President Hotel, Waterloo, Iowa
May 4-7	Atlantic Coast Regional Title Insurance Executives	Skytop Club Skytop, Pennsylvania
May 9-10	New Mexico Title Association	Alvarado Hotel Albuquerque, New Mexico
May 14-15-16	Illinois Title Association	Pere Marquette Hotel Peoria, Illinois
May 16-17	Pennsylvania Title Association	Claridge Hotel Atlantic City, New Jersey
June 9-10	Central States Regional	Drake Hotel Chicago, Illinois
June 13-14	Southwest Regional	Adolphus Hotel Dallas, Texas
June 16-17	South Dakota Title Association	Sheraton-Johnson Hotel Rapid City, South Dakota
June 19-21	Colorado Title Association	The Crags Estes Park, Colorado
June 29-30	Michigan Title Association	Grand Hotel Mackinac Island, Mich.
August 1-2	Montana Title Association	Placer Hotel Helena, Montana
Sept. 21-26	Annual Convention— American Title Association	Olympic Hotel Seattle, Washington
October 12-14	Nebraska Title Association— 50th Anniversary	Town House Omaha, Nebraska
November 3-6	Mortgage Bankers Association Convention	Conrad Hilton Hotel Chicago, Illinois
November 5-6-7	Kansas Title Association	Broadview Hotel Wichita, Kansas