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THE LAWYER, HIS CLIENT AND TITLE INSURANCE

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Charles F. Grimes is no stranger to the readers of Title News. His learned writings have given pleasure and knowledge to our profession on numerous occasions. Here is another timely and edifying article by Mr. Grimes who is General Counsel and Secretary of the Chicago Title and Trust Company. We are proud to present it here with permission of THE STUDENT LAWYER, Journal of the American Law Student Association, Chicago.

In one of his absorbing tales of murder, William Bolitho, English master of the mystery story, refers to "the strongest mental pleasure in our civilization, the joys of property."¹ While that may be a debatable observation, stated in the superlative, it touches upon a very human desire. No form of property (except money, perhaps) is more commonly desired than land. "It is a comfortable feeling to know that you stand on your own ground. Land is about the only thing that can't fly away."² One could take issue with Anthony Trollope for that statement—while land can't fly away, its *title* may.

Titles to land are as varied as fingerprints and can be as complex as the *Internal Revenue Code*. There are few branches of law whose principles do not affect title to real estate. "One who put on strong property spectacles could see almost the whole of law as included within that title."³ It follows that a lawyer who undertakes to appraise the quality of a land title must have a broad knowledge of the law.

Every lawyer in general practice faces the problem of advising his client whether to purchase or to lend money on the security of a given piece of land, but the character of the problem and its answer will depend upon many factors. To the question, what constitutes an acceptable title to real estate?, title insurance companies believe they have an answer of country-wide application—a title insurance policy. However, to understand the role of title insurance in real estate transactions it is essential to have some under-

standing of the general background and of the other types of evidence of title which are used in various parts of the United States.

We are looking at a complex picture. The laws of the forty-eight states relating to real property, to be found in the statutes and the decided cases, differ widely. Also, in different parts of the country local practices and customs of lawyers and their clients are predicated upon local problems, traditions and needs, resulting in widely differing concepts of what may be acceptable to a prospective purchaser or mortgagee. Finally the methods employed in determining whether a title is acceptable vary in different sections of the country.

In general, there are four methods in use in different parts of the United States of determining whether a title is acceptable.

a. Search of the public records

The first of these four methods, which is used almost exclusively in several Eastern states, involves a *direct search of the public records* by lawyers, who then give a written opinion as to the quality of the title. Where this system is employed, formal abstracts of title of the character prepared in Midwestern states by abstractors engaged in that business do not exist. Lawyers, many of whom specialize in title examination, make their own memoranda from the records, basing their opinion of title upon their own investigation.

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b. Abstract of title and attorney's opinion

Where this method is followed, an abstracter, often a corporation engaged in the business, prepares an abstract (a condensed history of the title) which reflects all matters of public record which may affect the title to the property involved. Generally, the seller (or mortgagor) of property already has an abstract showing the title to the date of his purchase and it is necessary only that a continuation of the abstract be made showing matters affecting the title since the date of the last prior continuation.

Today a complete abstract of title is often a formidable document, consisting of as many as ten or more of these so-called continuations made over the years by different abstracters. Customarily, the abstract is delivered by the seller's lawyer to the purchaser's lawyer (or the mortgage-lender's lawyer), who examines it and prepares a written opinion on the state of the title as it appears from the abstract.

On the basis of this opinion the lawyer determines whether the title meets the requirements of the situation. As an example, assume that the lawyer's client is buying property under a written contract which requires the seller to convey a "marketable" or "merchantable" or "good" title, terms which most courts regard as synonymous.

Just what constitutes a marketable title has been an issue in hundreds of cases.⁴ It has been variously defined in 92 *Corpus Juris Secundum*, page 24, as follows: "The term 'marketable title' is difficult of definition, but, accepting the prevailing rule that a good title is a marketable title, a 'clear title', 'merchantable title', or 'marketable title' generally means a title which consists of both the legal and equitable title, and is free from reasonable doubt in law or in fact . . . ; not merely a title valid in fact, but one which may be readily sold to a reasonably prudent purchaser, or mortgaged to a person of reasonable prudence as a security for the loan of money; a title en-

abling one to be reasonably sure, if he wishes to sell it, that no flaw or doubt will arise to disturb its marketable value; 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 on such transactions, be willing and should accept; a title free from any reasonable objection of a reasonable purchaser; a title of such character as should assure to the purchaser a quiet and peaceable enjoyment of the property; an unencumbered title; a title that is not only good, but indubitable; a title which is reasonably certain will not be called into question; a title which is clear, free from litigation . . . ; free from material or apparent defects, or from palpable defects, and grave doubts; a title free and clear from material encroachments . . . easements . . . substantial restrictions or limitations, and of all valid claims, outstanding interests, liens, and encumbrances whatsoever; ordinarily nothing less than a legal estate in fee, an estate indefeasible." [Cases cited in the text are omitted here.]

It must be readily apparent that to determine whether a title is marketable is a matter about which lawyers might reasonably disagree.

c. The Torrens system

The *Torrens system* is a method of land registration by counties pursuant to judicial proceedings much like a suit in equity to quiet title.

First introduced by Sir Robert Torrens in Australia in 1958, it was hailed as an ideal system of transferring land titles. The advocates of the *Torrens system* claimed that it eliminated costly and burdensome re-examination of title with each transfer, removed all uncertainties as to the condition of the title, and offered speedy and inexpensive transfer of title. Experience with the system in the relatively few states in this country which have adopted it has not borne out these enthusiastic claims. The weaknesses of the *Torrens system* have been noted by

able critics, whose attitude toward the system would undoubtedly be more objective than that of the author of this article.⁵ The *Torrens system* still operates actively in some of our larger cities, notably, Boston, Minneapolis, St. Paul, Duluth, and Chicago.

d. Title insurance

A policy of title insurance is a contract of indemnity relating to land described in the policy, protecting the insured against loss or damage by reason of defects, liens or encumbrances in the insured title existing at the date of the policy and not expressly excepted from its terms. Where title insurance is used, insurability of title or, in other words, the willingness of a title insurance company to insure title has become the test of acceptability of title.

Insurability is a broader concept than that of marketability, as appears from the words of Harold L. Reeve, a competent observer:⁶ "The proper concept of a title insurance policy is that it should cover sound insurable titles and need not be confined to lands which have titles meeting all the legal requirements of technical marketability.

"The correct philosophy behind the issuance of a title policy is that it is appropriately issued where the title of record plus the ascertainable facts not of record, when weighed in the light of experience, are of such quality as to justify the issuing company in believing that the title is sufficiently sound so that the company in the discharge of its commitments, by means available to it, can protect the parties in interest against loss and against being deprived of ownership or possession. This philosophy assumes the taking of business risks in protecting against loss. It facilitates normal real property transactions, regardless of the fact that by customary legal tests the title of record fails to be a marketable one.

"By practical everyday action insurability has succeeded legal marketability as the accepted present-day criterion for titles in almost all areas

where responsible title companies operate."

Courts have recognized insurability as the test of an acceptable title.⁷

How Do Title Insurance Companies Operate?

There are approximately 160 title insurance corporations issuing their own policies in the United States. The majority of these are "local" companies in the sense that they confine their insuring of titles to property within one state. Almost without exception, these companies maintain their own private indexes and records, called title plants, relating to real estate in the county where the home office of the company is located. A few of the larger companies also maintain title plants in other metropolitan areas.

A title plant consists of private records and indexes containing data taken from the public records affecting title to all real estate in the county where the plant is located. The manner in which different title insurers maintain their private records varies. In general, it may be said that the private indexes to the public records are kept in such a way that full information relating to the title to any particular piece of real estate is easily available to the company's experienced staff for determination of the terms on which that particular title may be insured. These indexes are so organized and maintained as to be geared for accuracy of information and speed of reference. They cover not only matters directly affecting title to real estate, such as recorded deeds and mortgages, confirmed special assessments and sales of general taxes and special assessments, but also pending suits and judgments in various state, municipal and federal courts which also affect title to land.

Speedy Service With a High Degree of Accuracy

Title companies maintaining a title plant must also keep in some manner an index of insanity proceedings, probated estates of deceased persons, and proceedings for guardianship of

minors—any of which may affect the title to real estate owned by the person involved. To be effective these private records and indexes must be kept up to date by daily entries reflecting daily changes in the public records, a job requiring detailed, painstaking work by a large force of employees. A high degree of accuracy is essential in transcribing data from the public records to the company's private records.

When the title company, operating on the basis of a title plant, receives an application for a policy, its examination of title is based on its own records, a procedure that permits it to render speedy service. Obviously, a mistake in indexing leading to failure to take note of a recorded deed, an existing mortgage, a grant of easement, a judgment against the owner, a federal tax lien, or some other interest of record may be expensive for the title company—*quod erat demonstrandum!* L L L L

In addition to the local companies, numbering about 125, which do business in only one state, there are some thirty-eight companies which engage in a multi-state business. Of these companies eight are considered as "national" because they are qualified as foreign corporations to issue title insurance in a dozen or more states. As a rule the so-called national title companies do not invest in title plants anywhere except in their home office territory, but operate through agents and approved attorneys in the areas where they are licensed to do business. Where title companies operate through agents and approved attorneys, policies are issued upon the basis of opinions of the approved attorneys, who either examine abstracts or make their own search of the public records.

What Protection is Offered to Lawyers and Their Clients by Title Insurance?

There is no standard form of policy written for owners of title, although policy forms of different companies do not vary widely. Title insurance companies have adopted a standard form of mortgage policy commonly known as the "American Title Associ-

ation Standard Loan Policy," which is accepted by all major institutional mortgage investors. Moreover, a title insurance company, upon the basis of special investigation or payment of an extra premium, often waives standard provisions of either an owners or a mortgage policy and assumes a risk beyond the scope of its usual coverage. Any discussion of the protection afforded by title insurance except with reference to a particular form of policy must be general in terms.

The steady increase in the popularity of title insurance in the United States has been due, in part at least, to the fact that it offers a solution to certain practical problems that arise when a lawyer prepares an opinion of title based on examination of an abstract or the public records.

When a client brings in an abstract to be examined, his lawyer is immediately faced with two separate and distinct problems. The first has to do with the safety of the title. This problem ordinarily presents little difficulty. While it is true that most good titles are full of defects and irregularities, there are many factors which operate to correct or neutralize them—limitation laws, recording acts, equitable doctrines of *laches* and *estoppel*, and many other statutes and principles of law and equity which can safely be relied upon to bar possible adverse claims. Ordinarily, a lawyer can form a sound judgment in very short order whether the title is "safe," that is, whether there is any real danger of his client being attacked or disturbed in the actual possession and enjoyment of the property.

But when the lawyer has disposed of this first question, a second and more difficult problem still remains. What will happen when his client gets ready to sell? The lawyer may be satisfied that some particular defect or irregularity could not possibly affect the safety of the title. Yet he knows that if he passes the objection, his client may be back in a year or two with the report that he, the client, has tried to sell the real estate and that another lawyer has

examined the title for the purchaser and raised the same objection, thereby either preventing the sale altogether or compelling the client to lay out a substantial sum in order to cure the defect.

The lawyer knows from experience how difficult it is in such a case to convince a client that he, the lawyer, is not at fault. The result is that lawyers in examining abstracts have had a tendency to point out every conceivable defect and objection, substantial or otherwise, and to insist, as a matter of self-protection, that those defects and objections be corrected before the transaction is closed.

As a result, the role of the lawyer in real estate transactions has often been criticized by laymen as impractical, technical and obstructive. Efforts have been made by many bar associations to meet this problem by formulating and publishing standards for title examinations in the hope that all members of the local bar will follow them. Unanimous agreement of attorneys has, however, often been difficult to obtain, and refusal of only one lawyer to follow the standards is enough to defeat the purpose for which the standards were adopted.

Title insurance has been found from experience to provide the best solution to the problem yet devised. When a policy of title insurance is issued, the accepted practice of the title insurer is to search the title back no further than the date of its prior policy. The curtain is drawn over preceding defects and irregularities against which it has insured title. Since the same procedure will be followed from time to time when future insurance is applied for, the title insurer disregards many of the defects and irregularities which an examining attorney in self-protection would have to insist be cured, even though they might bear no reasonable relationship to the basic safety of the title. This means that the title insurer is privileged to follow a more reasonable and practical standard in judging what constitutes an insurable title. The attorney for the purchaser

is thus enabled to provide his client with title protection which is better adapted to the needs of everyday business and at the same time is less likely to cause the client trouble in the future.

Does Title Insurance Hurt a Lawyer's Business?

One may inquire, "No doubt the use of title insurance offers many practical advantages and relieves the lawyer from many burdensome problems, but what effect does all this have on the general practitioner's business? Does it not deprive him of an important source of income? When title insurance comes in the door, doesn't the lawyer go out the window?"

The answer is that use of title insurance does not mean that the lawyer no longer has an important place in a real estate transaction.

For instance, one of the most important steps in any real estate transaction is the preliminary contract between the seller and the purchaser. It fixes the rights of the parties throughout the entire transaction. The determination of those rights may require the advice of a skilled lawyer.

Federal tax problems have today become of increasing importance. Both seller and purchaser require legal advice in this field at all stages of the transaction. In addition, the deed, mortgage, and other instruments required to complete the transaction must be drafted.

The attorneys for the parties should be present at the closing to advise and protect their clients with respect to pro-rations, deposits to cover uncompleted matters, and the many related details which always arise at that critical time. Legal advice is frequently necessary to protect the parties with respect to property insurance.

Where title insurance is used, the insurer issues a preliminary report on title advising the purchaser what exceptions will be made in its policy when issued. This report is examined by the purchaser's attorney, who advises his client with respect to

the importance of the matters expected, if any. If the purchaser's attorney concludes that it is essential to his client's protection that a matter excepted should be cured before the transaction is closed, the client must be so advised. The seller's attorney customarily consults with the title insurer and takes such steps as may be necessary to prepare clearance material and obtain a waiver of objections. Sometimes important legal steps, such as the bringing of a suit for declaratory judgment, may be necessary.

The purchaser's protection may require investigation with respect to title matters outside the customary scope of the title policy. The purchaser's lawyer must advise him concerning those matters. For example, an owners policy of title insurance ordinarily does not cover rights of parties in possession or questions of survey. The purchaser's attorney points out to his client the necessity of such additional investigation and frequently the attorney aids the client in seeing that the investigation is properly made.

The purchaser's attorney must determine, before the purchase price is paid, that all the terms of the contract have been complied with. Under some circumstances he may decide that the transaction should be closed by means of an escrow and this will involve additional legal problems.

If an escrow is not used the purchaser's attorney must determine that no liens or other matters have affected the title between the date of the insurer's preliminary report on title and the date of closing.

The purchaser's attorney must check the deed, see that it is promptly recorded, and later examine the policy of title insurance for correctness in relation to this client's interests.

Many other specific matters could be mentioned to illustrate the fact that title insurance does not and cannot displace the lawyer in a real estate transaction. Every practicing lawyer knows that he must always take into account the amount in-

involved in making his charge for services. Frequently the value of the property involved in a real estate transaction is such that it is impossible for the lawyer to charge his client on a regular *per diem* basis. In such a case the examination of a complicated abstract, often consisting of 100 pages or more, together with the preparation of an opinion of title, merely increases the work and responsibility for which the lawyer cannot hope to be adequately paid. Many lawyers have found that where title insurance is used, their compensation in real estate transactions approximates the amount they would have received had they added a burdensome abstract examination to the other services necessarily performed.

Moreover, a lawyer also may incur a heavy personal liability for errors or oversights in performing the exacting and highly technical work of examining an abstract or title, and yet this personal responsibility is rarely, if ever, compensated for by the lawyer's fee for the examination.

Examples of Value of Title Insurance to Clients

There are several areas in which title insurance has proved of particular value to policyholders: (1) protection against loss by hidden claims, which even a careful examination of the records will not disclose; (2) defense of the policyholder, without cost or expense to him, with respect to the title as insured; (3) the assumption of a calculated risk by the insurer; (4) issuance of a policy insuring against a known defect, lien or encumbrance, thereby enabling the interested parties to close a deal pending removal of the defect, lien or encumbrance.

The character and seriousness of hidden claims, which are potentially lurking in every title, can best be illustrated by actual cases drawn from the experience of title insurance companies. One of the most serious of the hidden risks is that of *forgery* of signatures on a deed, mortgage or trust deed. Here is a fairly typical case.

A professor in an Eastern university and his mother were the owners of a vacant lot in a suburb of Chicago. Early in 1954, through a real estate broker, they signed a contract to sell the property to a builder for \$3,000. Some nine months later, having heard nothing from the broker, the professor while visiting in the Midwest, drove out to the property and was astonished to find it improved with a ranch house occupied by a family named Grange. He sought the advice of a lawyer, who examined the public records and found there a deed purportedly signed by the professor and his mother conveying the lot to the builder, who in turn had conveyed to the Granges. In due course the situation was presented to the title insurance company that had insured the Granges' title and had also issued a mortgage policy to a savings and loan association. Investigation developed that the broker, in deep financial difficulty, had forged the signatures of the professor and his mother and had pocketed the proceeds of the sale. The title company purchased the lot from the professor and his mother, who conveyed to the Granges. The broker was indicted for forgery, pleaded guilty and was sentenced to the penitentiary.

There appears to be no end to the variety of ways in which a claim of forgery can arise. The files of any title insurance company operating in a large metropolitan community could supply many dramatic forgery cases in which the policy holder has been protected against loss.

Dower Claims are Frequently Encountered

Another not infrequent source of loss for a title insurer is a *claim of dower* presented by a woman whose husband neglected to observe the formality of having her join in a deed to property he owned during the marriage. The fraud and dishonesty in these cases lies in the misrepresentation by the grantor in his deed that he is a bachelor, a widower, or divorced and not remarried. A married woman is, of

course, equally guilty if she represents herself to be a spinster, a widow or divorced and not remarried. A dower right of this character, being inchoate and unenforceable until the death of the dishonest spouse, may slumber for many years while the injured spouse, patiently or impatiently, awaits the death of the wrongdoer. The person damaged in these cases is the purchaser or subsequent owner whose title remains subject to the dower right of the spouse who failed to sign. An owner protected by title insurance suffers no damage in any of these cases, for he is not only protected against loss, but he has none of the bother or expense of investigating the validity of the dower claim or of defending a suit filed to assign dower. It is no problem to give illustrations of claims of dower, for they are common.

Some years ago a corporation which owned a large department store in a Chicago suburb, covered by a title policy for \$350,000, faced a dower claim for \$60,000, which it promptly referred to its insurer. The corporation had acquired title in 1929 by deed from Otto Baker and Laura, his wife. In 1936 a woman named Emily Baker filed suit for dower, claiming that she was Otto's lawful wife in 1929, that she had not signed the deed to the corporation, that Otto had recently died and that she was entitled to dower. She produced a valid marriage certificate showing that she and Otto had married in 1928.

When questioned, Laura explained that she and Otto had contracted a common-law marriage in Illinois in 1904 and had lived together as husband and wife in Wisconsin, Michigan, Minnesota, South Dakota and Illinois. Two children, grown to maturity, had blessed the marriage. Laura had been deserted by Otto some years before he married Emily. It required months of intensive investigation (at no expense to the insured, of course) to cover the trail of Otto and Laura over a period of twenty years through five states to assemble evidence supporting the

common-law marriage, but the effort produced newspapers, leases, deeds to other property, church and hospital records and a bundle of letters, which proved beyond question that Otto and Laura were lawful man and wife. Emily's case was settled for a small fraction of her claim.

The Case of the Married "Bachelor"

Some years ago a native of Lithuania came to the United States, leaving his wife in the old country. As he prospered here he began to buy, sell, and exchange apartment buildings, his equity usually being small. Whenever he conveyed property he always described himself as a "bachelor." Over a period of fifteen years he held title to twenty or more properties. After his death his widow, through a Chicago lawyer, claimed dower in all of the properties to which her husband had held title. Only one piece remained in his name at the time of his death. This dower claim, involving numerous properties, all of which were protected by title insurance, reached the courts in only one case, a foreclosure suit, in which it was defeated on the doctrine of equitable subrogation.⁸

Any title to real property founded upon a decree in an equity suit is potentially subject to question at any time by way of a *collateral attack* on the decree relied upon. This type of claim is illustrated by a suit filed in 1938 in the Federal District Court in Chicago involving valuable business property on Randolph Street near Dearborn. The plaintiff claimed an undivided one-fifth of the title under a deed to an ancestor made in 1866. The title had been the subject of litigation in 1893 in a proceeding to which the plaintiff had been a party and in which his interest had been foreclosed. Plaintiff sought to avoid the conclusive effect of the 1893 decree by showing that he was then a minor, that while a minor he had been declared insane and that he had not been restored until 1941. The new proceeding was based on a 76-year-old deed and at-

tacked the validity of a decree over 40 years old. The plaintiff's theory of his case was as unsound as it was ingenious, but he fought his claim to the Supreme Court of the United States. The title was successfully defended on behalf of the owner by a title insurance company.⁹

Decrees entered by default against defendants served by publication of notice have been attacked collaterally upon the ground of fraud on the part of the plaintiff or his lawyer (his agent) for failing to make an honest, diligent effort to locate the defendant so that he might be personally served the summons.¹⁰

Conveyances by Minors—The House That Bob Built

As a rule there is nothing in the chain of title to a piece of real estate which discloses the age of the parties to a deed or mortgage. One dealing with the title in reliance on the record takes subject to the possibility that a minor in the picture may repudiate his deed or his mortgage. Consider, for example, the case of Bob Smith and Jane Wesley, young and deeply in love, who eloped to Kentucky and got married. On their return to their home town in southern Illinois they faced, among other realities, the fact that they had no place to live and that a baby was on the way. They moved in with Bob's folks, who helped the young couple buy for \$500 the vacant lot next door.

Bob and Jane then went to a builder who specialized in construction of so-called "shell" homes on an owner's paid-up lot. They selected a plan suitable to their needs and gave the builder a mortgage for the full purchase price of the house he built for them on their lot. The young people moved into their unfinished house, found life next door to Bob's parents something of a strain, and soon discovered that completing the house was beyond their means and their skill. The consulted a lawyer, who suggested that since they were both minors they could disaffirm their mortgage.

On the day when the first payment

was due on the mortgage Bob and Jane presented to the bank, which had taken over the mortgage, their birth certificates shoning conclusively thta Bob was only eighteen, Jane seventeen. They refused to make any payments on the mortgage. The bank, consulting its files, found a mortgage title insurance policy and promptly turned the problem over to the insurer.

Sick of their bargain Bob and Jane were willing that their equity in the property be sold. The insurer retained local counsel, who arranged for the appointment of a guardian for the minors. The court approved a sale of their interest in the property for \$600 which the insurer paid to the guardian, who conveyed title to the bank.

Many other kinds of hidden claims are potential sources of trouble and loss to an owner or mortgagee of real property who is not protected by title insurance: (a) claims of heirs, whose names are omitted, willfully or otherwise, from a proof of heirship or an affidavit of heirship upon which reliance is placed; (b) a missing will that turns up after an estate has been probated as intestate;¹¹ (c) a claim that a grantor was incompetent; (d) errors in public records—for instance, failure properly to index a federal tax lien; (e) wrongful release of a trust deed before maturity by an individual trustee;¹² (f) claim that a deed in the chain of title was never delivered; and (g) false statements in an affidavit relied upon with respect to heirship, judgments, adverse possession, identity, delivery of deeds or payment of mechanics' or other liens.

Defense of Title at No Cost to Policy-Holder

A provision common to all title insurance policies is the agreement of the insurer to defend the title as insured without cost or expense to the policyholder. The illustrative instances of hidden claims, heretofore noted, all of which were defended by a title insurance company, clearly demonstrate that even where the adverse claim is defeated the cost

and expense of achieving that result may be considerable. Even a claim of title which never reaches court may involve extensive, time-consuming investigation and negotiation before it is disposed of. If the adverse claim is asserted by suit in court, the defense may include court reporter's fees, expense of handwriting experts or other expert witnesses, and all expenses attendant upon appeal if the case goes to a reviewing court. A property owner who is protected by title insurance escapes all of the worry and expense of contesting an attack upon his title.¹³

Assumption of Calculated Risks

a Significant Service

If title insurance companies existed only for the purpose of insuring perfect titles, it might be urged they have little excuse for existence. An important purpose is served, of course, by an examination of title which notes the existence of defects. As a rule those defects are curable, so that the purchaser or mortgage lender knows that he is getting a sound, insurable title. However, in many examinations questionable defects are noted which the title insurance company must weigh carefully to determine the extent of the business risk which it assumes if they are waived. The construction of a will is a classic example of this problem, or a decision whether all steps have been taken necessary to the validity of a corporate mortgage, or whether all necessary parties to an equity proceeding have been made defendants and have been properly served so that they will be bound by final decree, or whether it is safe to insure title to a vacated street or alley. The decision of these and a myriad other questions raised in the daily examination of titles are the routine business of a title insurance company.

"Cap" Streeter and His Claim to Chicago's "Gold Coast"

Occasionally a decision of one of these problems assumes great importance to the community as well as to the title insurance company. In the latter part of the nineteenth

century when the City of Chicago and Chicago Title and Trust Company were both relatively young and growing, a character known as George Wellington "Cap" Streeter lay claim to some 186 acres of land along Chicago's lake front north of the Chicago river.

"Cap" based his claim upon everything he could think of, including adverse possession, military bounty warrants and government patents—all supported by shotguns with which he and "Ma" Streeter were handy. He even had a subdivision plat prepared, calling it the District of Lake Michigan, and sold "lots" to gullible buyers.

While few owners of land in the disputed area believed the "Cap's" claims were valid, no one was willing to invest money in improvements without title insurance. The land involved was close to the center of Chicago's business district and extremely valuable.

Chicago Title and Trust Company, convinced that the Streeter claim was baseless, provided the title insurance. Numerous court actions ensued, in all of which it was held that Streeter had no squatter rights, no title, no anything.

In the area, which for a time was called Streeterville and is now a part of Chicago's "Gold Coast," are located some of Chicago's largest and best known buildings, including the Drake Hotel, Lake Shore Athletic Club, the Furniture Mart, the downtown campus of Northwestern University, Chicago-Wesley Memorial Hospital, Passavant Hospital, the Palmolive Building, and scores of other costly structures. It may fairly be said that the calculated risk assumed by Chicago Title and Trust Company was a major factor in the growth and development of the Streeterville area.

Title Insurance Often Makes the Deal Possible

Occasionally consummation of a real estate deal appears to be blocked by the existence of a defect which does not involve the validity of the whole title, but which for some

reason cannot immediately be cleared away. It may be a mechanic's lien claim whose validity or amount the owner, who is selling, wishes in good faith to contest; a pending appeal from the judgment against the owner; an existing mortgage, about to mature but not available for immediate release because of absence of the owner of the mortgage paper; a pending probate estate where the heirs have an advantageous sale, but the period for filing claims has not expired; or some other type of lien which the seller cannot or has good reason for not wanting to satisfy immediately.

These are risks which the lawyer representing the buyer cannot permit his client to assume, yet time may be really of the essence and not merely a phrase in the printed contract form. The seller may need the proceeds of sale promptly for a definite purpose. A mortgage broker, with a commitment for a loan, may find his time limit about to expire. The buyer may have building or subdivision plans that cannot wait. Title insurance can solve all these problems. A title insurer, upon being indemnified by a deposit of cash, securities or a surety bond, can be persuaded to assume the risk and issue its policy protecting the buyer against the offending defect, which can be disposed of later. This service enables lawyers to close many deals that otherwise would fail.

Title insurance is available in nearly all parts of the United States. The insurable title is steadily increasing in favor as the most acceptable title and the one affording maximum protection and security to the insured. Life insurance companies, which are large investors in real estate mortgages all over the country, prefer title insurance to other forms of title evidence. In New York City, Chicago, Cleveland, and Los Angeles, and their suburban areas, title insurance predominates as a method of affording title protection.

Title insurance is steadily growing in favor because it is a flexible form of title assurance, readily adaptable to the changing needs of lawyers and

their clients in all types of transactions in real estate. It offers a degree of protection, security and freedom from worry and expense no other kind of title evidence can match. More and more lawyers have come to recognize that title insurance complements and does not displace their services to their clients in real estate deals.

1. "The Self-Help of G. J. Smith" by William Boltho.

2. "The Last Chronicle of Barset," Anthony Trollope.

3. Powell on Real Property, Vol. 1, p. 3.

4. Note, 57 A.L.R. 1253-1554.

5. Powell, Registration of Title to Land in the State of New York (1938); Friedman, Contracts and Conveyances of Real Property (1954), Sec. 19; "The Torrens System in Alberta: A Dream in Operation," Ivan L. Head, Attorney, Calgary, Alberta,

35 Canadian Bar Review, Jan. 1957, pp. 1-37.

6. "Guaranteeing Marketability of Titles to Real Estate," p. 2 (1951). Harold L. Reeve, Senior Vice President, Chicago Title and Trust Company.

7. *Weiss v. Cord Helmer Realty Corp.*, 140 N. Y. S. 2d 95 (1955); *King v. Stanley*, 32 Cal. 2d 584, 590 (1948).

8. *Kaminskas v. Cepauskis*, 369 Ill. 566 (1938). See also, *Petta v. Host*, 1 Ill. 2d 293 (1953).

9. *McCambell v. Warrich Corporation* (1940), 109 F. 2d 115 (cert. den. 310 U. S. 631). See also *Gromer v. Molby*, 385 Ill. 283 (1944), in which a 42-year-old decree was attacked.

10. *Greenwald v. McCarthy*, 402, Ill. 135 (1949); *Romain v. Lambros*, 12 Ill. App. 2d 64 (1956).

11. *Eckland v. Jankowski*, 407 Ill. 263 (1950).

12. *Kennell v. Herbert*, 342 Ill. 464 (1931).

13. For illustrative instances, see: *Witt v. Panek*, 408 Ill. 328 (1951); *Blackert v. Dugosh*, 12 Ill. 2d 171 (1957).

* * *

Abstracter vs. Abstractor

Abstracters themselves seem to be confused, and they likewise have confused publishers, printers and others. Many abstract forms are printed with indifferent and inconsistent spellings of the word "Abstracter". Well, which is it? Abstracter or Abstractor? This question caused a bit of research by the Editor and here is the result:

Funk and Wagnalls Dictionary, Webster's Dictionary and Black's Law Dictionary all state the spelling is "*abstracter*."

When someone is angry at an Abstracter, he may call him many things in addition to his proper name, but even in anger, a glance at the follow-

ing Missouri cases all refer to him as "abstracter".

Marston v. Caterlin, 239 Mo. 390;

Goodner v. Mosher-Roe Abstract & Guaranty Co., 314 Mo. 151;

Rankin v. Schaeffer, 4 Mo. App. 108;

Zweigardt v. Birdseye, 57 Mo. App. 462;

Keuthan v. St. Louis Trust Co., 101 Mo. App. 1.

Conclusion: It must be "Abstracter"—that is, unless you still read and write Latin in your community, in which case the word "Abstractor" might be correct.

—Missouri Titlegram

NO LOSS CLAIM

As we of our profession well know from the hard and expensive table of experiences, our path is not always strewn with roses. In the field of title insurance, claims are paid early and often. But more than claims are paid.

For frequently, acting on behalf of the insured, the title company decides to resist the claim. Frequently this resistance takes the form of litigation. Litigation costs money—money in actual litigating expense including court costs and counsel fees, time and expense of executive officers of the title company in considering all the facts, and endless expensive conferences.

We present, with permission, an interesting article on this subject carried in the house organ of the Lawyers Title Insurance Corporation, Richmond, Virginia.—ED.

Not all claims result in a loss being paid. In fact not all claims have a legitimate basis for being claims, nor do they involve defects in the title.

But how do you go about estimating the cost of trouble, time, and application of skill and experience when solving a problem involving an insured title?

Consider the facts of this case and the parties involved—then imagine what turmoil might have existed had it not been for Lawyers Title.

Counsel for a large building supply company filed suit to foreclose a mechanics' and materialmen's lien against the property in question. Another building material supplier filed a second suit for similar cause. Both suits named a certain life insurance company as noteholder, and counsel for the life insurance company entered the picture. Meanwhile the owner of the property, being notified of the suits, engaged his counsel to attend to his interest. The owner's attorney contacted the title insurance company's counsel who in turn, engaged private counsel to investigate the case and protect its insured. At the same time, the title insurance company reviewed its file and policy and discovered that the wrong life insurance company had been named as noteholder, therefore it took steps to advise counsel for the correct noteholder, which was also a life insurance company as well as the insured party.

That completed the preliminaries; there were seven attorneys involved

and no one had as yet completed the investigation necessary to evaluate the merits of the claim. It is at this stage that the imagination might conjure up a myriad of pictures depicting the situations of harried parties trying to understand and cope with the advice, claims and counter-claims of seven different attorneys.

However, the situation did not reach even the slightest degree of uncertainty. The skill and experience employed during the investigation revealed that the insured title was as stated in the insurance policy, there were no mechanics and materialmen's liens that had priority over the recorded deed of trust. This was pointed out to the claimants who quickly realized that their liens were subordinate to the noteholder's interest. The first life insurance company was dismissed from the suit by motion of its counsel to the effect that the party named defendant was incorrect, which was confirmed by the complainants, and both were dropped.

Here we had the making of a long, expensive litigation that was brought to a speedy conclusion with not one cent expended in claims. In fact there was not even adequate basis for the attack on the title. But imagine the trouble, expense, and exasperation of the parties, had it not been for the title insurance company which stepped in and applied what it knew to be the correct measures in the proper direction. There was no hesitancy, no uncertainty, no wasted motions, and no loss of time or con-

cern to the insured. This is one of the many features included in the serv-

ices and protection offered by title insurance.

Federal Land Ownership

The U.S. Government owns 772 million acres of land throughout the world including property in 109 foreign countries, an annual inventory of Federal property has disclosed. The government's real estate holdings total \$42.9 billion in terms of original acquisition cost.

The acquisition figure is nearly \$3 billion higher than the \$40 billion in the last annual report, but government land holdings declined by almost three million acres during fiscal 1957, the period covered.

These figures, along with many others that reveal the nature and extent of the government's worldwide realty holdings are contained in a document released by the General Services Administration.

Entitled "Inventory Report on Real Property Owned by the U.S. Throughout the World—as of June 30, 1957," the document was prepared and published by GSA at the request of the Senate Committee on Appropriations.

Highlights of the report include:

The U.S. owns real property in all 48 states, the District of Columbia, 8 U.S. territories and possessions and 109 foreign countries.

Of the 12,689 installations which the government maintains in the U.S., 4,139 or almost one-third are under the jurisdiction of the Department of Defense. The Post Office Department is second with 3,119.

The 772 million acres owned by the government throughout the world is

the equivalent of an area almost two-fifths the size of the entire U.S.

771 million acres, or 93 per cent of all government lands are in the public domain. This acreage, almost evenly divided between Alaska and the U.S., is utilized for such purposes as national parks and forests and military installations. No costs are reported in the inventory for public domain lands.

The Department of Interior, with extensive holdings devoted to grazing, parks and reclamation, is the government's largest landowner. The Department controls 211 million of the 408 million Federal acres in the U.S. and 338 million of the 363 million acres outside the U.S.

Department of Defense properties, which cost \$28.5 billion, account for two-thirds of the total cost of Federal realty.

The government owns nearly half of all the land in the 11 Western states compared with only 3.3 per cent in the Northeastern and North Central states. Federal ownership ranges from 6,000 acres in Connecticut to over 61 million acres in Nevada.

Measured in terms of cost, Federal holdings run from \$24 million in Vermont to \$3,995 million in California.

Federally-owned buildings within the U.S. provide the government with 2,161 million square feet of floor area. One-fourth of this space is devoted to housing; one-fourth to storage and about one-eighth to offices.

ABSTRACT CERTIFICATES

ALAN LOTH

Attorney at Law, Fort Dodge, Iowa

We carry, with permission of the author and of the "Iowa Title News" a thought provoking article on the subject of certificates in abstracts of title. The article clearly points to some of the present weaknesses in both the contents of abstracts and in the certificates. Inferentially, it indicates the hope of the author that greater standardization can be obtained—standardization both in the showing of abstract contents and standardization in the certificate.

We recommend this article to your continuing study.—Ed.

My first contact with an abstract was early in 1914. It was one of the mysteries which the law schools of that day ignored. I didn't know where to begin with it. I am not sure I know where to begin now.

By the first World War, I had learned enough so that I made abstracts for the Winnebago County Abstract Company for a couple of years. Until a short time before there had been three abstract companies there. The competition had produced extremely competent abstracters and excellent abstracts. My experience in learning the records and putting the abstracts together has been extremely helpful ever since. I hope it has given me some insight into the problems of the abstracter as well as the examiner.

Any analysis of Abstract Certificates must consider what is an abstract, and what is a certificate. Regardless of how Certificates differ otherwise, they all say "this is an abstract." If the document lacks the fundamental quality of an abstract, the certificate is broken right then. So I would like to notice what an abstract must do; who uses it, and what they rely on it for.

Iowa's basic resource has always been real estate. People buy it, sell it, lease it, give it away and leave it behind when they die. They give and take mortgages on it, create innumerable rights and easements in it, and make all sorts of agreements about it. All our governments mix it up with taxes and more taxes, and an ever-increasing variety of liens, condemnations, drainage, levee, irrigation or conservation districts, zoning and other regulatory ordinances, etc., ad infinitum. Now even limited access is

coming. Courts get into the game in ways that are wonderful and often wierd. They apply the most technical body of law that we have, except taxes. Their officers sometimes understand how to follow the judicial direction; sometimes not. The legislature periodically tries to patch up mistakes that inevitably creep into all this; sometimes making it better and sometimes worse.

The abstracter's job is to show and arrange all the records of every transaction involving a given plot of ground for the people who are handling it. The buyer can't wrap up the ground and take it home. The lender can't keep it in his safe until he gets his money back. They will not rely very much on the owner. They want more than his warranty in the deed or mortgage, and more than the judge's name in the legal papers. So the abstract has come to be the symbol of the property itself. All parties usually take the information in it as gospel. This is a real tribute to the reliability of Iowa abstracts. It imposes a corresponding responsibility on abstracters. Making abstracts calls for a high degree of specialized background and skill to satisfy the large variety of people who rely on them. Originally Iowa land was largely owned in the East; and practically all financed there. The volume of foreign ownership and financing is very great. Most lending agencies have their own requirements, to enable them to handle this volume. They, in turn, are regulated by various government agencies, who tell them what they must get for their money. The abstracter's skill must meet the needs of these customers, as well as the local people. The

home folks can check up or supplement the information in the abstract by looking at the records. The people outside the county seat cannot; and must rely on the abstract alone. So the Insurance Commissioners and Insurance Companies in New York, Connecticut, New Jersey and Massachusetts have a very real influence on how Iowa abstracts are made and certified.

And our own courts have spoken on this subject. They say an abstract should include every record on which the validity or marketability of the title depends. They say the information in those records should be set out so fully that no reasonable inquiry remain unanswered, but so briefly that irrelevant detail is put aside. It must be limited to the official records, and not be the opinion or inference of the abstracter. In other words, it must not be either a transcript of the record on the one hand or a mere index on the other. It takes real discrimination to avoid both these extremes and keep to the middle road. When an abstracter copies papers that are immaterial to the title, or includes details which can make no possible difference, he is either padding his bill, or he doesn't know what to sort out and so puts everything in. On the other hand, some abstracters give little more than the name and date of papers filed, omitting details needed to show whether a court has jurisdiction, or whether the paper contains its essential features, or just what its terms are, or what its result has been. These are of no help to the examiner. He must then go to the court house and look at the record; an impossibility if he is in another state or even another town. If the abstracter substitutes his own opinion or construction of actual contents or omits a detail which essentially affects the title his certificate that "this is a correct abstract" is untrue. Here is the essence and test of an abstracter's skill. I have felt that an effort to shorten a paper for an abstract of its contents has made many of them insufficient.

For example, you set out a deed or

affidavit, with the date, book and page, and summarize its contents. It is written in the record book; but if it is not properly indexed or acknowledged, it is not a valid record, and is not evidence to support the title. But when you set it out, you impliedly certify that it is properly indexed and acknowledged, unless you set out the acknowledgement or index as it is. Many certificates say that instruments are properly acknowledged unless otherwise shown. A few say the same thing about the index. This probably arose from the Iowa decision that the examiner is entitled to have the abstract show whether the instrument is properly acknowledged and recorded. I think this assurance is implied in any certificate that is an accurate abstract. When the abstract sets out the instrument before the book and page are assigned to it, it is impossible for the abstracter to know that it is properly indexed; and such an entry is on its face improperly certified to.

An abstract may show a will by its date and title, and then summarize what the abstracter thinks it means, instead of giving its language. Technically no examiner should take this, for it is not an abstract of the record but the abstracter's opinion. Many examiners feel that wills thus shown are probably so simple that the abstracter must be right, and accept his construction of the will. It is a really delicate job to tell whether even a simple-looking will gives a fee or a life estate; or a remainder to be vested or contingent; or a power of sale is absolute or restricted. If, without setting out the language, you say what it means, and are wrong, your certificate is false.

Again, an abstract sometimes shows the probate inventory and inheritance tax return by title, date and list of heirs, without showing whether it lists this land, or testator's entire interest in it. Then it shown an inheritance tax receipt in full. If the inventory did not in fact show decedent's complete interest in the land, the receipt in full does not discharge the tax lien. For the receipt in full is applicable **only** to assets reported, and

this is not reported. In my judgment you are liable if the customer later has a tax to pay, even if you do not certify specifically about these inventories.

Original notices are another example. If a defendant has appeared, the original notice to him is immaterial and can be omitted. But if he did not, the abstract should show more than the date and title of the notice and the fact of its service. It should show whether the notice contains all the jurisdictional data required by Rule 50, or any other applicable rule. Surprisingly many abstracts omit signatures on these notices. Many omit other jurisdictional details, or abstract the contents so meagerly that the examiner cannot tell if they are good or bad.

I think that all customers are entitled to assume that all instruments are in legal form, unless otherwise shown. Some certificates expressly say so. I think they all imply that the abstracter has not listed a document which is legally insufficient as such, without disclosing the insufficiency. However, examiners do not want merely the certificate making the abstracter liable. They want to know whether the document is adequate. They want enough data so they can make their own decision about these things. The abstract should show what the paper says sufficiently to enable them to do so.

In his admirable article on Abstracts, Jesse Marshall says there will always be an area of disagreement between abstracters and examiners as to what should be shown on the abstract and the completeness of the showing. He says it is usually best to solve the doubt by showing what the record says. Ordinarily that can do no harm, while omissions may. But even that rule is not universal. Court houses are full of records having nothing to do with land titles. They are useful for other things, but are no part of an abstract. The auditor's tax plats and his transfer books, including certificates of change of title in probate, are not title records. I knew a case where an abstracter years ago showed a tax

plat of an irregular tract. People then began to describe those tracts by lot numbers which the auditor had used for his own convenience. There was no such plat in the recorder's office. After while the auditor's plat was changed, and his lot numbers expunged. Then the title came into question and had to be proved. It took costly litigation to do it. The abstracter thought he was doing his customers a favor by setting out a record which did not affect the title. Instead, it mixed them up. This plat made the abstract improper, though it probably described a record at the time.

I recently saw a survey given the FHA with an abstract. It copied the road record in the auditor's office. That improperly described the road, and made it seem to encroach on the lot. The actual plat, dedication and location of the road were proper. The needless showing of this mistaken record made considerable trouble.

So much for what an abstract is when you certify it. Actually a whole program could be devoted to that. But, having made the abstract, what about the certificate? This is the abstracter's contract with his customer. His legal liability flows from it. But, as cannot be too often repeated, the customer is not primarily interested in the legal liability of the abstracter. He doesn't want liability, or a lawsuit about it. He wants an abstract that is complete, correct and acceptable to others. So his primary concern about the certificate is that it assures him of such completeness and accuracy.

This is illustrated by the fact that for many years, the liability of an abstracter was only to the customer who buys the abstract from him. It does not run to anyone who took the abstract from that customer. Mortgagees sometimes demanded special certificates running to them, because they could not enforce the abstracter's contract to their mortgagor. There are still innumerable abstracts certified from 50 to 10 years ago whose certificates could not be enforced by anyone now. They were made for people who have since passed them on. People still accept

them, knowing they can't sue the abstracter, because they have no contract with him. But they don't care, so long as the certificate and character of the abstract assures them it is in fact complete and accurate. That is what makes it acceptable.

I know that it is fashionable now for some certificates to run to anyone relying on them. The Title Standards say that they should not be limited to any specific person. But the principal thing the customer wants to know is that the abstract is accurate and complete. Every certificate says it is accurate. As to completeness, they vary widely in form and substance. The customer wants definite assurance of completeness as to these things:

1. The abstract covers all the land he is dealing with;

2. There are no gaps of time during which any record could be made which affects that land;

3. All the records are included which are needed to give a complete picture about every claim of title or lien.

Let us see how the certificates assure him of these things:

1. **That all the land is covered:** Abstracts begin with a caption containing the description. Some certificates describe what they cover by referring to the caption. Others repeat the description again, at length. I like the former; it saves re-checking the description. But this is a matter of taste; either is all right. The point is to describe exactly what land is included, and limit both the abstract and the certificate to that description. If the description excepts any area, like a railroad or school, the abstract should omit everything about the excepted ground. The condemnation of the right-of-way or site, or its later conveyance by the railroad or school, is no more a part of that abstract than a deed to land across the road. Some abstracts make such exceptions; and then confuse matters by including entries about the excepted area. There can be no assurance that these entries are the **complete** title to the area. For the certificate excepts it, and so can omit other entries

about it. Abstracts which do include such entries actually include both areas, and so should not except either.

2. **That there is no omitted period of time:** A new abstract from government to date cannot omit any time; for the certificate refers to the whole period. But most abstracts nowadays are continuations. Either the caption or the certificate, or both, will say, for example, that they begin July 15, 1950, and run to May 1, 1958. That means the examiner has no right to believe that they include anything which went on record before July 15, 1950. "An abstracter has no liability to report matters, though of continuing effect, which become a matter of record at a date outside the period of his certificate." (Patton). That means they can, during the 8 years Theo Snow and Maree Potter got the title, omit any judgments, personal or other tax liens, institutional charges or other liens which went on against Snow or Potter between May 1, 1948, and July 15, 1950 (Patton Titles 142).

But such liens are vital, for they attach to the land as soon as the debtor acquires it. They are ahead of anyone taking from him. I believe the uniform certificate does not say, in such cases, that there has been any lien search which goes back 10 years.

I think the certificate should specify that it goes back at least 10 years as to such liens against such new parties. Some abstracters doubtless make such searches for the full time; and intend the certificate to say so. They should see that it does say so. Mr. Patton in his book says that every abstract should specify the period covered by these lien searches. Many abstracts have separate entries, before the certificate as to judgments, personal and other taxes, institutional liens and the like. If these entries say they go back 10 years, the certificate need not say so again as to them.

But surprisingly many such entries say the judgment search is for 10 years; but don't say so about any other lien. Then the certificate is defective because the examiner cannot know that the required 10 year search

has been made. And you say that the 10 year search has been made as to judgments, and don't say so as to other liens, you strongly imply that your search for them is only for the period of the continuation. Of course, if the continuation is longer than 10 years, this problems disappears.

Another example of difficulty in time involves marginal notes on older records. Let us say a mortgage was recorded in 1940. When a separate extension, or a release, is on the margin of the old mortgage record, does the examiner have any right to assume that the abstracter, beginning with 1950, has hunted up old records to see what is on them? Some certificates definitely say they do NOT certify as to such marginal notations on records originating before the continuation begins. Perhaps some specific statement one way or the other is desirable.

I know one abstracter who solves these problems very simply. Each time he continues one of his own abstracts, he rectifies it from the government. That definitely includes everything from the beginning. If the prior continuations are partly by other abstracters, you may not want to do this. But it is an easy way to handle abstracts which have been made entirely in your own office.

Finally the certificate must make certain that the abstracter has really covered all public records dealing with any possible lien or claim of title. Sometimes this assurance is largely given at the beginning, in the caption. Sometimes it is all at the end in a certificate proper. Sometimes it is partly in each place, and sometimes partly in separate entries on particular subjects, in between. The arrangement is of minor importance. Any plan adopted adopted by an abstracter is readily followed by those who frequently examine his abstracts. An examiner coming on a new plan may have some trouble at first, but he soon gets used to it.

The important thing is to satisfy all reasonable examiners that the certificate gives unequivocal assurance that the abstract includes everything. Title Standard 1.2 says the certificate

should cover all conveyances, liens, encumbrances and proceedings in the office of the Recorder, Clerk, Auditor, Treasurer and Sheriff. It does not require the certificate to be in these words. There is a great divergence in the language which certificates actually use. One fundamental difference is between the general certificate intended to be all-inclusive, and one which lists the records and subjects searched, in detail.

Most certificates 50 years ago simply stated that this is a complete accurate abstract of title to the land. Some abstracters still use it. Many others are almost as general. Mr. Johnson of Oskaloosa has a form saying in substance that the abstract includes every record creating constructive notice which affects the land. Mr. Block of Davenport, and the uniform certificate say they cover "all matters affecting or relating to said title which are on file or on record in said county," or the like. In my judgment that alone is sufficient to make an abstracter liable if he leaves anything out.

The trouble with that short general certificate is that it enables an abstracter to escape liability—but that the examiner cannot be sure whether the abstracter believes that some specific record does not affect the title or is a proper part of the abstract. For example, where federal court meets, are its records a record of that county? Probably not. So the certificates in those counties go further, and specify that the federal court search is included, because one would not otherwise be sure about it.

We find many other records like the death certificate of a life tenant, the marriage record of a female owner, the articles of incorporation of a corporate owner, trade name registrations, insanity proceedings, and bankruptcy transcripts. Are these "records giving constructive notice," or are they any part of the title to land? Maybe so; but the examiner wants to be sure the abstracter thinks so and includes them. Probably examiners who know the habits of individual abstracters will rest comfortably, realizing that they

will show such items if they are material.

The Comment to the Title Standards is that the certificate should not be confined to listing the specific county offices searched, and should use general language. But that does not cover the problems of just what records are searched in those offices. Standard 1.11 says it should have specific deference of search for institutional liens. And Standard 1.3 says that it should specify the names of persons searched against, to enable the examiner to determine whether he wants other names searched also. Sometimes this is done by certifying that the search includes "all names appearing in said continuation." Others list the names searched in the certificate itself. Some go further, and say that they do not search as to any other name, whether *idem sonans* or not. This avoids being held for failing to show a judgment against Birk or Joans when the title includes only Burke or Jones.

Perhaps Mr. Johnson's "constructive notice" form would make him liable here. The purpose giving the names searched for is to let the examiner decide if he needs a further search for different names. For the same reason the Uniform Certificate and those similar to it list many matters as to which they have searched; so the examiner need not be in doubt that they are included. This specific listing also says that it does not limit the general language, and thus restrict its scope. The list of things which some such certificates specify has become very large, because of the increasing number of subjects which sometimes affect land titles. Other certificates name only a few; and then say also that there are no liens, encumbrances, conveyances of proceedings of any kind except as shown. These certificates seem to meet most demands of most examiners. If they occasionally ask for some specific assurance, it is because they feel some particular need for it in the particular case.

One other thing is often specified; that the record shows no extensions or due dates of mortgages except as

specified in the abstract. This saves the abstracter having to say so in each ancient mortgage entry; and also makes sure the examiner can rely on the absence of such extensions.

But there are some abstracts which do not use the general certificate recommended by the Title Standards and the Uniform Certificate. They begin by limiting the records or instruments which are abstracted. For example, one abstract says it is an examination for "deeds, mortgages, probate proceedings, partition and dower suits, mechanics liens, bonds, judgments, attachments and suits in district court." It does have later entries about *lis pendens*, claimant's book, old age assistance liens, taxes, tax liens and tax sales. Then it ends with a certificate limited to the points set forth in the heading of the abstract.

That omits many important matters, such as affidavits in aid of title, easements, zoning ordinances, special assessments, tile drainage agreements, and even extensions or releases of mortgages. The examiner should and often will require a broader certificate. Sometimes an abstract thus limited at the outset may end with a certificate in general language. But it may be questionable whether that will overcome the particular limitation. The local bar may know that the abstracter actually does show more things than he lists. The abstract may itself demonstrate this by showing such things as releases or affidavits. So such certificates may get by in practice.

But it was that sort of certificate which once induced all loan companies to demand their own form of certificate. And such abstracters should not be surprised if added certificates are still required of them.

If there are any omissions in the search or showing, the abstract should say so; usually in the certificate. Examples of this are abstracts since beginning with town plats rather than with the government; and the omission of ancient mortgages under Code Section 614.21. In this latter connection, it should be noted that the abstract cannot safely omit any

school fund mortgage, no matter how old. The Iowa Constitution provides that the school fund is to be inviolate. That prevents the legislature from giving priority to any claim or title over a school fund mortgage or en-

acting any statute of limitation against such a mortgage. So the abstractors should phrase this exception in their certificates so as to show it does not mean that school fund mortgages are omitted.

By integrity we mean honesty, straightforwardness in thought and manner, genuineness. It means being honest with oneself as well as with others. The person of integrity does not pretend to be something he is not. He is conscientious in his actions, sincere in his relationships, and not apologetic in his shortcomings. He is what he is, even while striving to be what he may become.

Again it may be said that integrity concerns not only what a person

does and the way he does it, but also what a person can do or is capable of doing. It is possible for a person to get by as well as others without having to make the same effort as others have to make, because he may have more talent or natural aptitude or capacity than others have; but if he also has a sense of integrity, he will not be content to do less than his special gifts and endowments qualify him to do.

—Boystown News

THE TITLE BUSINESS— A PROUD PROFESSION

From a speech given by Mr. M. M. Hightower, Jr. Duncan Abstract Co., Duncan, Oklahoma before a convention of the New Mexico Title Association. There is considerable material here for all to read—and reread.

A title man has a right to be proud.

1. He has the privilege to work for a free people; people who have the freedom of worship, speech and earning anything within their capacity. We serve a proud group of people, the cream of the crop, so to speak, who in turn take pride in home ownership and land ownership.

2. He takes pride in his town. He says to himself, "This is MY TOWN, USA, I am a part of it." I have watched it grow. I helped to build it. Without my professional knowledge and skill, this town's development would have been retarded, property ownership would have been very difficult, sometimes impossible, to determine.

3. He takes pride in his business. Just as the Doctor ministers to the ill, just as the Minister gives consolation to the little family in time of trouble, just as the Attorney talks to the young couple who seek his counsel, and averts the tragedy of Divorce, the Title man takes pride in his business when he digs and prods and delves into the mass of recorded instruments and emerges with the one instrument that fills in the missing link, and makes the chain of title complete. All the above mentioned professional men derive a great amount of satisfaction from a job well done. The Doctor, the Minister, the Attorney, the Title man all professional men—all with a common objective. Service to their fellow man.

The steady, sure hand of the surgeon deftly applies the scalpel in the delicate brain operation. The fluent oratory of the minister, guided by his Bible, influences the spiritual lives of his congregation. The wisdom of the Attorney guides him to the book in his law library that gives him the Supreme Court decision to enable him to protect the interests of his

client. The skilled, trained eye of the Title man guides him through a maze of countless thousands of recorded instruments, and through the use of his almost magical indexes, he emerges with twenty-five, and only twenty-five, instruments that affect the title to the little home in which the young couple want to start their life together. Yes, the title business is a satisfying business — the Title business is a proud profession.

4. He takes pride in his community. He is active in civic affairs. He tries to make his town a better community in which to live; a community his children and grand-children will be proud of. The title man takes pride in his community.

5. The title man takes pride in his work. He strives constantly to improve his product, to streamline it, to expedite it through photography and other modern equipment. He is never satisfied that his methods and service cannot be improved. He tries hard to stay out of THE RUT.

The title business is a challenging business. It is not for those seeking an easy living. It is not for the careless. It is not for the 'do it tomorrow' individual. It is not for the lazy. The title business is indeed a challenging business. The title man with an eye for the future has this motto: 'When it comes to titles, ONLY THE BEST IS GOOD ENOUGH'.

We are living in a fast age. Greater demands are being made on us daily for speed. Speed and more speed. A few quotes from customers: "Get that loan closed. My buyer is leaving town tomorrow, gotta close that deal. My draft on the Oil Lease expires right away, so please rush. Hurry, Hurry. Speed, speed, speed. Rush it but get it right. Expedite it but make a thorough search. Thousands of dollars depend on your skill and your speed." May I repeat? The

title business is a challenging business.

Are we going to meet these demands? Are we going to accept the challenge? You bet your life we are! HOW SHALL WE ACCOMPLISH IT? The answer is right here in this meeting. I would wager the combined years of experience in the Title business that is represented in this

room would exceed two hundred years. The knowledge is here. The experience is here. Get acquainted. Exchange ideas. Buy your competitor a cup of coffee. You're in this thing together. You have the same problems. Get together.

The business you improve may be your own.