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THE PRESIDENT'S POSTSCRIPT

As this January issue of Title News goes to press, the February issue is practically ready and will follow very shortly. As many of you know, the Board of Governors felt that the convention proceedings should be contained in a single volume, So this month's Title News is devoted exclusively to a report of convention proceedings. Your Board of Governors feels that this is a constructive step, as it will permit our members to more readily locate convention material which they may want to refer to in subsequent years.

I sincerely hope that as many of you as possible are planning to be in New Orleans on February 20-21 for our annual Mid-winter Meeting. A number of matters of importance to our Association will be considered by your Board of Governors and should provide the basis for some discussion during the general sessions. In addition to this, as those of you who have attended Mid-winter Meetings know, many subjects of interest to our profession will be discussed during the general sessions. We do not have prepared papers or specific agenda at these Mid-winter meetings; rather they are designed to give the members of our profession an opportunity to participate in the discussion of matters of vital concern to all of us.

Ann joins me in the hope we will have the opportunity to visit with you in New Orleans on February 20th and 21st.

Ernest J. Lockhart

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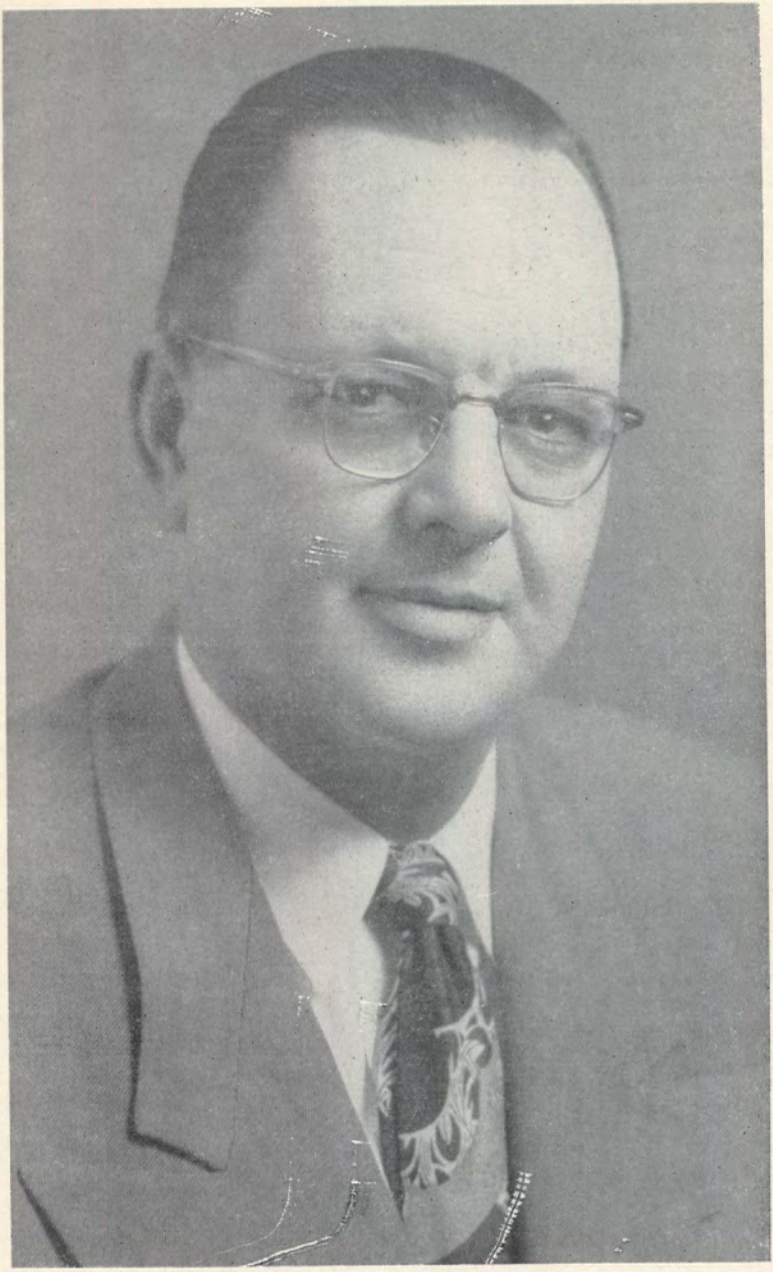

ERNEST J. LOEBBECKE

President, American Title Association, 1958-59

Report of National President

HAROLD F. McLERAN
President, American Title Association, Mt. Pleasant, Iowa

Once again we assemble together in our annual convention to transact the business of our Association for another year. To me this has been an extremely short year—in fact only eleven months have elapsed since the Richmond convention in October, 1957. I hope that our good Treasurer won't dock my salary because of this short year. A person gets well paid for being President of the A.T.A. To date I have received a two dollar bill and that was donated to me by the Kegs of Oklahoma when I attended their convention, but Bill Gill, and the other Kegs did such poor scribbling on it that it won't pass as legal tender anywhere except among the Oklahoma Indians, and they're too snooty to fool with it with all their oil wells.

Again I want to thank you for having bestowed upon me the presidency of this Association, the highest honor which the A.T.A. can confer upon any member. As I look back upon my term of office I realize how little one man can accomplish in that period of time, yet each new president starts out with hope and enthusiasm for finding a solution to the many problems. I also want to express my thanks to all of the officers and committees who so faithfully carried out their duties during the year.

Being President of the A.T.A. has proved to be a stimulating experience to me. As I've traveled around the country, attending the state conventions, and listening to the various problems, I've come to realize more and more the importance of our profession and most important of all the seriousness with which our people assume the responsibilities that go with certifying a title, knowing that someone is relying upon their integrity. I don't believe that any other profession takes its responsibilities to heart as much as the title profession.

During the year I have attended fifteen conventions as follows: Florida, Ohio, Nebraska, Mid-winter, California, Oklahoma, Texas, Iowa, Illinois, Central States Regional, South Dakota, Colorado, Michigan, Montana and North Dakota. I again want to express my thanks to the good people of those associations for the many courtesies which they extended to me and my family. I would have liked to have visited the other conventions during the year, but time and conflicting schedules would not permit.

As I traveled around the country, I had an opportunity to reflect upon some of the problems of our Association which I would summarize as follows: (1) A.T.A. activities, (2) Abstracter-Title Insurance relations, (3) Relations with the Bar.

On the return trip from the Michigan convention, I visited our National office in Detroit. Unfortunately Detroit is off the beaten path for most of us, so only a few have taken the trouble to visit the National office. Maurine and Jim Sheridan were most gracious hosts and this opportunity of being with them made me realize more than ever the debt our Association owes to Jim in having devoted the best years of his life to building the A.T.A into the organization it is today. We have been most fortunate to have the benefit of his energy, wisdom and diplomacy.

Our offices are located on the top floor of the Guardian Building, and are attractive and well arranged. My visit had been anticipated because all the furniture had been freshly varnished and nothing was in disorder in the entire office. The view over the Detroit River area is superb and if you ever have difficulty getting a reply from Jim or Joe, I can well imagine that they have their feet propped on the window sill, watching the passing panorama below. My only criticism of our office setup is the fact that the elevator stops two floors below, so it is necesary to walk up two flights of stairs. For Jim's sake I don't like that arrangement, but who are we to complain because Jim's thriftiness has saved us a pile of

office rent which is reflected in the treasury balance today.

The abstract and title insurance systems of title evidencing had been developing for many years before it was determined that there was need for a national organization. Several states were organized first. The National in 1907. The formation of the State and National Associations required the giving up of some measure of individual control in the interests of the good of the group, and that wasn't easy because every title man was an individualist and he took pride in running his office the way he thought best.

Since 1907 progress has been slow. There is no longer the original moving pressure for State cooperation. But as our economy has increased, and National lenders and business enterprises have entered the picture, it has become more and more apparent that we can no longer continue to think on a State basis but that we have reached a point of decision, either to forge ahead as a strong national association, or to drift as a second rate association, afraid to tackle the problems which we all know exist and which we must solve if we are to hold our rightful place in the scheme of real estate conveyancing.

The solution is not easy. We are composed of many State Associations, representing divergent viewpoints. On the Atlantic Seaboard title plants have never been generally employed. In the Midwest great emphasis has always been placed on the need for title plants. On the West Coast and elsewhere, where title insurance has become dominant, we find a different emphasis.

From a National standpoint, these State viewpoints must yield for the common good. A strong National organization does not need to be created at the expense of the State organization. Every state must continue to be a strong representative of its state members. Laws and customs in every state make that necessary, and desirable. But a strong National association cannot be built unless the states are willing to permit the National association to assume leadership and to solve the problems of the industry on a national basis. If we continue to insist on states' rights, so to speak, then our National organization can never assume active leadership in solving our problems without fear of retaliation.

There are many areas in which the A.T.A should assume leadership, but before expanding our activities we should first put our own house in order. Our Articles of Association should be redrafted in order to better reflect a modern approach to the rules which will guide our activities in the future. It seems to me that our primary purpose is to promote title evidencing, whether by abstracting or by title insurance. I would strongly urge that we incorporate. This should be done before expanding our activities further in order to simplify the transition from an association to a non-profit corporation. There would be no tax disadvantages and the benefits would be many, including the strengthening of the entire structure of our organization.

We should put into effect an expanded program of activities. Last October the Board of Governors authorized the employment of another staff member, and the Executive Committee has interviewed several likely prospects, one of whom we had hired but who changed his mind after three weeks. Other staff additions may be needed from time to time.

One of the complaints frequently heard, when visiting conventions, was that the A.T.A. didn't do anything for the State Associations or its members. It is understandable why some members might feel that way about the National Association, because many of them never attend a convention or never have occasion to even write to Detroit. The American Title News is their sole connection with the A.T.A., and for that reason it is important that increased emphasis be place on "Title News."

Many of the states have expressed an interest in incorporating their own State Associations. There is no reason why A.T.A. shouldn't provide uniform Articles so that membership requirements, etc., would be more or less uniform in the various states.

Very few of the states have a full time secretary, so are thus dependent on donated time and labor. Most of the officers must do their own work first and take care of the Association work in their spare time. A.T.A. could provide services to the states in planning conventions, programs, state news bulletins, organizational work, membership drives, title procedures, etc. Also help organize and promote helpful legislation and encourage uniformity.

Interest in the conservation of our national resources should likewise be of concern to us, and should be included in our activities.

We are most fortunate in the United States to have an abundance of natural resources, including land. As our population increases (and it has doubled every 50 years) more and more demand will be made on our soil to feed our people. Soil conservation should be of increasing importance to title people. Every great nation has had its rise and fall in its ability to feed its people. The danger signs have been pointed out in America. In the short 300 years of our occupancy of this continent, and particularly during the past 150 years, which coincides with the coming of the age of science and power driven machines, we have run into trouble. Along the Atlantic Coast in the Piedmont region we find charming landscapes of fields with red soils and glowing grain fields. But in their midst we find an insidious enemy devouring the land—stealing it away by sheet erosion, rain by rain, washing it down into the streams and out to sea. Sheet erosion marked by shallow but numberless rills in the field is blotted out by each plowing. More than 300 million acres out of our 400 odd million acres of farm fields are now eroding faster than soil is being formed. That means destruction of the land if erosion is not controlled. Saving our soil means business for all of us. We should support every soil conservation program.

Another problem involves the abstracter-title insurance relations. I will make only a few remarks on that subject because a man more learned than I will discuss that subject during the convention.

There is no reason why there should be any problem between the abstracters and title insurance companies if they will both take a realistic approach to the problem. Title insurance offers the only modern approach to the title evidencing business, and the difficulty has arisen from the expansion programs of the National companies. No State Association can hope to build a wall high enough to keep out foreign companies, but many states have passed, or are contemplating legislation designed to control the expansion of title insurance companies.

A number of abstracters have the feeling that no one should invade the area of their operations. Such an outlook is like an ostrich with his head in the sand, and completely ignores the trend toward title insurance. We have a right to look to the title insurance companies for leadership because the very nature of their operations, on a National basis, places them in a position of leadership. The stewardship of that leadership will either make the problem of expansion difficult or easy, also the title insurance companies must adopt and follow uniform procedures which will be beneficial to the public and will promote harmony in the industry.

The last problem which I will speak about is our relations to the Bar. The Bar has a long and honorable history. Lawyers have championed the cause of Justice down through the ages. The very existence of our democratic way of life is dependent upon lawyers to safeguard our rights. We have witnessed the steady encroachment of governmental agencies in recent years upon individual rights and freedom, and the discouragement by those agencies in the representation of the individual by a lawyer before those agencies.

Title evidencing is our livelihood. Realtors, lawyers and title evidencing people should work in cooperation to encourage land ownership. Each group has its own sphere of activity in the transfer of land.

In recent years a number of our members have been involved in un-

authorized practice suits. Some of our members feel that they have secured a favorable decision as a result of the lawsuit. I have only this observation to make. Every time one of our members becomes involved in such a suit, the entire title industry has lost even though the member wins.

In the expansion of title insurance, service became paramount, and it was easy to get into the position of making a one package deal out of the transaction. This necessarily discouraged or eliminated the buyer or seller from being represented by an attorney. No man or company can serve two masters. The examination of the title and the acceptance thereof for a policy is entirely the right and privilege of the company. As to the right of the company to fill out forms, the decisions are in conflict.

As a matter of public relations, we should encourage the buyer or seller to be represented by a lawyer. We should stop filling out forms except those needed in connection with the title policy. The lawyers of the country represent one of the largest potential markets for title insurance that we have. They are in a position to recommend or discourage the use of title insurance. It is just good business to cooperate with them. As a realtor told me one time, you scratch my back and I'll scratch yours.

If the title people are handling real estate transactions to the exclusion of the attorney, then we title people are unwittingly helping to break down public confidence and acceptance of the legal profession.

Not every section of the country is involved in this practice. Some sections make sure that they are not infringing on the practice of law. There is a general feeling among the members of the Bar that the use of title insurance eliminates the lawyer from the real estate picture. It seems to me that we should honestly and sincerely study the entire subject of Bar relations. If the conclusion is reached that we have been in error, in some of our title practices, then we should adopt a policy on a National basis and encourage all of our members everywhere to comply. Most lawyers are interested in making an honest dollar, the same as ourselves, and would welcome the opportunity to again engage in the real estate practice.

I hold no brief for the legal profession, even though I am a lawyer myself. I view this problem in a more selfish light in the preservation of the title evidencing system which I feel we can handle better than any other profession.

These are my reflections at the Crossroads. It is my sincere hope that in the consideration of the problems of our Association, in the future, that the Golden Rule will be followed in preference to the rule of the market place.

The Problem of Training Employees

J. A. OLMER

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Mr. Funk, Ladies and Gentlemen; I am quite interested in the subject of training specifically, and I hear I have been going around preaching about it a little too much, but this only puts me in the position of the Italian opera singer that I'm sure you've heard about who was appearing at a benefit in Italy where music was generally appreciated. He sang an aria, and everyone applauded and he had to sing it again, and again, and again, and finally his voice was gone and he stepped down and thanked them very much for applauding for him but explained that his voice was gone and that he would like to sing for them again but he just couldn't do it. Whereupon a voice from the back said, "You'll keep doing it till you get it right." Now I guess I'm doing it till I get it right. If you don't mind, as I go on I will try to illustrate my

points with my children, occasionally with my wife. I have three boys and I use them to illustrate all the points —they couldn't possibly have done all the things I say they did, so please recognize that some of it is just made up.

One of the things that interests me is the fact that the world is undergoing a couple of major revolutions. I'm not sure how much appreciation the world actually has of the revolutions that it is going through. At least I'm sure that management of companies is not very well alerted to the fact that it is undergoing some drastic changes that will have far reaching effects on business and industry generally. One of these revolutions I like to put under the heading of the revolution in electronics. This is a revolution that is extremely sweeping. It is going to be far more important to the world than the Industrial Revolution we went through in the last of the 18th, and the 19th, and so far in the 20th century, and to which we never fully adjusted our economic system. The Industrial Revolution, as such, merely replaced man's muscles. It gave him equipment to push stuff around—he doesn't have to assemble large numbers of people with shovels to move ground — he has bulldozers and steam shovels and that sort of thing to do it. Actually, if you're the typical husband like me, you don't really have any of these things. You don't have any of them, but ask your wife about them—she has them all. It used to be that she had to take a flat rock down by the river's edge to do something about clothes, and then along came a certain amount of mechanization — at least with the hand wringer — and then came the washing machine. Now we have the complete home laundry, and so she just throws the clothes in, turns a button, and when she comes back they're out on the line, and that's because woman appreciated this revolution far earlier than man did. You see, the first labor saving device ever discovered by man, was woman, and so this is just an example of what is happening to us. Now this electronics revolution is well illustrated by a thermostat on the wall for what it's doing. It is tending to replace man's nervous system. I'm not talking about his brain, because that's not going to be replaced by any hunk of machinery. As a matter of fact, one of our chief engineers refers to these high speed computers, commonly called "the electronic brain", as supersonic morons. The reason for that is that a machine will do exactly what it has been told in exactly the way it has been told to do it, and this, by a psychologist's definition, is a moron. There is some advantage to being a moron at a high rate of speed, though, and that's what the machine does have.

Now in replacing man's nervous system, you get a pretty good example in a room like this. There was a time when it took a custodian who used to sense when the temperature was changing, or had changed, and when his nervous system told him that the temperature was cold and the furnace wasn't putting out, he went down and opened up drafts and stoked the furnace. And if it was too warm, he checked the furnace, opened windows, etc. When I was teaching school, it always used to amaze me that his nervous system and mine were always out of phase, but now we have a thermostat on the wall, and this thermostat senses the changes in temperature within fractions of degrees and puts a negative feedback signal into the whole system — that's highfalutin electronic talk which means if the furnace isn't running when it's cold, it makes it run, and if it's running and you're too warm, it shuts it off—that's a negative feedback signal. That is the secret of an electronics system, monitoring itself. If it doesn't monitor itself it is not automation—it is automated—so, now it puts the signal in. It still loses the battle of the sexes. By that I mean when I come home at night and find the house a little too cold for my comfort and I walk by and up the furnace a little bit and the furnace comes on, my wife doesn't say anything. She waits until

she thinks I've forgotten, and she thinks I have an attention span of, maybe, 15 seconds, and then she walks past and nudges it down a little bit. We have the only thermostat with ulcers, but this is part of the pattern of battle.

Now this electronic revolution that is going on is affecting all phases of our life. It is very easy to sit back and say, "well, this is something an engineer worries about, and that's the end of it." But the businessman is being invaded by the electronic revolution, as well—electronic types of bookkeeping machines, office machines of all kinds, and so on. It is almost a safe principle that if a job is performed repetitively, or if it can be reduced to a form, it can be done by a machine. It can be scanned, the machine can make its own corrections, and it will be far more accurate than human beings can be in doing that kind of operation. For example, in school the time when people could tell a kid, "Well, you're not very good in mathematics — you better take business courses," is rapidly disappearing, because the businessman is going to be invaded with the electronics gadgetry just as much as any other phase of our existence is going to be invaded. The person who wants to have a career in business is going to need to know enough mathematics and enough science to program these machines, because this is what the machine does for the businessman—it lets him operate on data from which fairly sound conclusions have been drawn, whereas the bulk of his operation now is on pure intuition. He knows that somebody out in the field is a real, first-class salesman. How does he know this? Something inside tells him, just the way the personnel man operates on intuition, too —he doesn't know enough about testing and that kind of thing to use the scientific tools available to him. Therefore, he tends to disparage them, and he says, "I don't need that kind of stuff. Just let a good man walk in and I'll tell you in a minute." He has some kind of an inner sonar that goes "ping" when a good man walks in; and, you know, he's right—about twenty per cent of the time. The other eighty per cent of the time he's wasting the company's money. He's hiring people that look good on interview— they last three weeks, or they don't do the job, or whatever. And you know why they look good on interview? Because they're hired enough times to know how to go through interviews. The fellow that gets on the job and holds it for twenty years is going to be pretty poor on an interview—he can't even remember what is done, but if you're interviewed every week or two, all you do is sit back and listen to the trend of the fellow's questions, and you say, "Oh, he likes this kind of answer." Then you line things up and give him just what he wants. So the electronics revolution is going to make it possible for us to find out, by putting impurts into a machine, just how good a salesman this one is out in the field compared with previous salesmen and compared with the competitor's salesman. I like to use an example in our own company of this. It decided to try to find out why people leave our plant and made the assumption that the number of people leaving our plant was higher than it ought to be. This was a pure assumption—there was no way to establish what it ought to be. But how would you do this? The first and obvious thing when a person is quitting, to ask them why they're quitting, but this never works, because in a big company like ours—and we are a big company, at least as far as Seattle is concerned—no one wants to burn his bridges behind him. So you can predict ahead of time that when he leaves, if you ask him why, it's going to be, "he's leaving the state", "illness in the family", "he has a chance to make more money" —those are the standard ones. He's not going to say, "I don't like the parking situation"; "the cafeteria is terrible"; "I dislike my supervisor"; "I wouldn't work here under any circumstances," which may be the way he feels, but this isn't what he's going to say. So you don't get anything by just asking him why he quit. You

could tell ahead of time just what the answers would be.

So the President's office decided to avoid this fault by having somebody else ask him. They got the University of Washington to go out and sample five hundred people. To give you an idea what our training problems are, if you had 50,000 people working for you in an area, as we do, and you had a turnover of two per cent, which is not bad in the aircraft business—most people don't believe it's here to stay—these are people who are still investing in horses—two per cent a month turnover doesn't sound bad. The average businessman has much more than that. I mean the doctor that has one receptionist and she quits at the end of six months has really one hundred per cent turnover, you know. And two per cent a month is a thousand people out of fifty thousand. That means you have to hire a thousand people just to stay even. And if you want to increase your payroll, you have to add to that and realize that the two per cent would now be applied to a new base. So if you increase it to fifty-five thousand, then you have eleven hundred people a month quitting on which you have to stay even. So when we're talking about asking five hundred people why they quit, this means a two weeks supply—people who have left.

And the President's office went out and asked them, through the University of Washington—asked them an awful lot of questions, about the food in the cafeteria and what they thought of the parking. Some answers we could predict—no one likes the parking, including the president. But after the questions were asked, then someone had to figure out what the relation was among them. That is, did the fellow who did not like the parking also not like the food in the cafeteria, or was that a different fellow? And were the two—the one that didn't like the food and the other that didn't like the parking—were they the two that didn't like the supervisor, or were they two others? This means, to put it technically, that all of a sudden the President's office had run up against the fact that in order to find out what you've got, when you ask anybody more than one thing, you have to know how to do multiple correlation, and they didn't happen to know how. So they asked us to figure out what it would take to do this job by hand. Well, you can't do it by hand—there isn't enough time in the world to do this job by hand, but if they would allow a calculator, it would require one girl eight hours a day, sixteen months to figure the relationship between all the questions that they had asked five hundred people. Now we could spare a girl, but nobody could spare a calculator for sixteen months. So when this got back to the President's office, and when they finally reached the point that they wished to God, they had never become involved in it in the first place, which is the only attitude you can let them have, then we explained to them that we had already taught an IBM 701 machine how to do multiple correlations, and if they would let us have the data, we would bring the answers back to them. We got the data from them about three o'clock one afternoon, and the next morning the results were on their desks. It had taken five hours for the IBM 701 machine to do this sixteen month, eight hours a day job for one girl. Therefore, the businessman can afford to ask, "why do people leave the company?" whereas he couldn't afford to ask it before. But the machine will do this, and so the machine is going to make inroads, and this means that in anybody's training picture, he is going to have to be concerned with the amount of mathematics—it doesn't happen to be the standard kind of math that you learned in school. These machines either do it or not—there's only two possibilities—a signal or no signal, so you have only two numbers that you can deal with—it's called a Binaural system and people are going to have to learn mathematics and they're going to have to learn enough about science, at least to program this machine. This is one big part of our training operations; how to set

up a company, so you can utilize machines in the fields in which machines really function.

Now the second part of the revolution we're going through is one that has more implications for management, even, than that, and that's a revolution I like to call the team concept. This came out of World War II. Up until World War II, we used to solve all our problems by waiting for the birth of the next genius. If you read through any subject—take science, for example—you'll be reading the history of great names. You'll be reading about Boyle and Lavoisier and Priestley and Galileo and Newton and Einstein, and so on, and you'd know what each one of them was responsible for. Back when you went through chemistry, you learned Boyle's law and Charles' law, and so on. Thomas Carlyle once said that history is just the length and shadow of one man. If you want the history of science, take the one man at a time that you come across and read the history of his life, and you get it. That went out with World War II. It had to go out with World War II because it takes too long to wait till the next genius is born and besides that, he might be born Russian, so here's what we're up against.

If you take a look at what happened, along about 1725, Newton, according to popular legend, sat under an apple tree and the apple fell off and hit him on the head, and he said "Ah, the law of gravity," and he worked out a hypothesis — it was called a law, but a law has to be true, and it turned out not to be—he worked out a hypothesis that bodies attract each other in ratio to the mass and in inverse ratio to the square of the distance, or something like that. Don't worry about it, because it's wrong now. And so we waited almost two hundred years. It was almost 1925 before Einstein came along, listened to the whole thing and said, "Poppycock, the apple just hit him on the head harder than he thought it had," and we got the Einstein theory, which explains everything Newton had explained, plus . . . And it won't be long before there'll be some group working on these things, these same things that go on every day, and they'll come up with theories that will explain all of Newton's plus all of Einstein's, plus, and so on. But you'll notice that in saying this, I have to switch from Newton did this, and then Einstein came along, to "they" will do this, because it won't be done on an individual basis anymore. We can't operate that way. Our problems are too urgent, and the world moves too fast. For example, there has been more change, more progress in medicine since the turn of the century, fifty-eight years ago, than in the previous three thousand years—that's how fast the world is moving, and we can't wait two hundred years for someone to be born to have this idea. So as a result of World War II, we began to group people, and we grouped the electronics technicians and the mechanic and the engineer and the mathematician and the physicist and whatever we need to do the job, and we give them the problem, and we ask them for the solution. The difficult thing is to know what our problem is. The solution isn't difficult if you have the right teams put together, and if they work together as a team, it isn't difficult at all. You know precisely what the problem is. This puts us in a peculiar situation economically, in which the man who knows what your problem is worth more to you than the man who knows the answer, but that's just another indication of the direction the world is taking. So what does it take for a team to operate? Well, for one thing it takes some skills in human relations, for one member of the team to get along with the other member of a team. I always mention my kids at this point, because they show this in varying degrees. My oldest boy, who is about 18, is a complete individualist. He set up an enviable record last year of having the highest I.Q. and the lowest grades in the Seattle Public Schools. He once brought home an almost mathematical impossibility for a report card—it was straight "D" anyway you looked at it, down,

across, criss-cross, and so on. As a matter of fact, I had to compliment him on it, because it was an extremely difficult thing to do. I mean if he had just relaxed for a second, he'd have had a "C" in conduct, but he didn't relax. So he's regarded as a failure by the public school system, only because they don't know what he's working for. You see, you have to judge people in the terms of their objective, and he's studying to be an idiot, and he's got it. So he practices no human relations at all—none at all. My second one, though, is about 15, and he's pretty good at human relations—at least good enough to make "B" with very little work attached to it, because he has enough aplomb to stop after class on the way out and say, "Mrs. Erickson, that was one of the most interesting classes we ever had." Now if Mrs. Erickson asked him quick, "What did I say?" he wouldn't know, but he knows she isn't going to ask, and she knows he knows she isn't going to ask. Take it from an old teacher, the number of kids or parents who stop after anything and say, "That was good," is either zero or a little under. Nothing is ever good—there was always something wrong. So Dave is working this right down to the ground. Here he has a teacher he knows intuitively is just starved for somebody to say something nice about what she's done. Nobody ever writes letters to the editor saying, "I sent my child to school, and he got the best education you ever saw." So Dave is working this—this is human relations down to the ground. Well, at the end of the semester, of course, Mrs. Erickson says, "I can't give that kid an "A", because he didn't do any work, but darned if I'll give a nice kid like that anything under a "B" ". So he has straight "B's" any way you look at it, and this is attributable more to human relations than it is to anything else.

I'll tell you about my small one in a minute. He's a human relations expert, and he's only seven, but he knows how it works from beginning to end. Now human relations is something we are going to have to learn if we're going to get along as a team. Companies have become aware that human relations has all of a sudden reared its head as a real problem, without, I think, fully realizing why, and it's this grouping of people into teams that causes it.

Secondly, if they're going to operate as teams they're going to have to communicate. All I mean is to write clearly and meaningfully, to express themselves in speech the same way. By human relations, I mean only the ability to submerge their differences for the sake of the team. I don't mean anything like "everybody ought to be loved, and if you're not loving them, there's something the matter," because I'm not aware of any universally distributed quality of lovableness in people. But if two of us have to work together to get a job done, even though I dislike this other fellow intensely, I am going to have to forget that I do for the sake of getting the job done. As soon as the whistle blows, that can be a different story. I don't have to cultivate him, but I do have to know enough human relations so that we can operate as a team, or we can't work together, and then somebody's got to go. You can try to change him, if you like, and I read in a lot of business publications in the field of psychology, that we have to change people's attitudes, and I always feel sorry for the business that undertakes to do it, because the only ways that I've ever seen where it works successfully in changing people's attitudes is religious conversion. Diet will sometimes do it, psychoanalysis will, but usually the most infallible way is brain surgery, and most managements aren't capable in that field either. But we have to be able to get along.

Now communications has become a problem, too, and look at all the courses we have going around the country in the field of communications. Why is this? Well, teams have to be able to communicate, and we got to this point, we found, lo, they can't. The technical man has a great deal of difficulty trying to communicate with a non-technical man. Why?

Well, one thing he has a different language. His language has become a jargon, to the point where he explains himself in set phrases that belong in his profession and not in anybody else's. So he communicates with his own kind and not with anybody outside of the field. He's always surprised at this because he's communicated with these set phrases for so long, he thinks they do communicate. He isn't aware that he and others who form the same professional group he's in, have learned these phrases and have agreed to let them mean apparently what they do mean within the group. This is, of course, what happens to our engineers and our non-engineers. Our engineers learn a technical language—this is all. Why does this happen? Well, it is part of their educational pattern. When they enter college the campus is divided into upper campus and lower campus, or Upper Slobovia and Lower Slobovia, or whatever you're going to call it on the campus, and at one end you have the liberal arts people, and on the other end you have the engineer and the scientist, and so on, working down there. This is an interesting division in a campus; actually the engineers and scientists criticize the liberal arts majors up at the other end of the campus quite severely for not really buckling down and taking a good field, without realizing, of course, that it's the liberal art major that keeps him in school, because the amount of money an engineer pays for his education, doesn't begin to defray the cost to the university. It's that liberal arts major who is paying the same amount of money and only occasionally turning the pages of a book someplace—he doesn't burn things up on test tubes, he doesn't blow them up, he doesn't drop them, he doesn't do anything. He just turns pages of books and countless generations after him will turn the same pages of the same book, and it's what is left over from him that pays this fellow's way. And the scientist really ought to be falling on this fellow's neck, encouraging him to stay in school, but he doesn't think of that. This is a part of the lack of communication that takes place. Now down on lower campus, the engineer and the scientist type are learning the tremendous things that they have to learn. They're not learning anything about communication—I mean the English that they get, or something like that— they don't pay any attention to that, because, after all they say, "I'm never going to write a book," and they get out and write those text books and prove it. Because, as you remember from education, the difficult thing in a science or math book isn't understanding the idea, it's locating it. You're sure there's one in there someplace, but they conceal them pretty well. Now up on upper campus, they're doing just the opposite. They're interested in the expression of beautiful thoughts, so they're not paying any attention to the physics and the chemistry—those are requirements—they are thinking that if they can make "C's" or "D's" they're quite happy, and they forget it the minute they get out of the classroom, retain it only long enough for an examination, and so on. Yet they concentrate on their literature and their painting and that sort of thing. The result is that we've come out with two broad groups in the world. On the one hand we have a group from lower campus that has a tremendous message for the world and no facility at expressing itself; and on the other hand we have the liberal arts major with tremendous ability at expressing himself and nothing to say. Now if we could only cross the two, the hybrid would be a remarkable thing to behold, but you realize these people don't even speak, let alone intermarry. Now this is what gives us part of this problem in communications. So when I mention our training, you see, we're really concerned about training people in science, one way or another. And we do, training them in mathematics, training them in electronics, and these three all go together here, and a large part of our training centers on communication skills, part of it on human relations skills. Human relations in the

long run gets down to this, you either get along or you get out, and here's how you get along, if we can do it. So this is the broad pattern under which we train people. I don't like to use the word "train", and we'd love to find another word for it, because I don't think anybody actually likes to be "trained"—I don't like the sound of it, myself; I always have the feeling that if somebody does it to me, I'm going to come out like Rin Tin Tin, or something—I've always been self-conscious since watching a convention in Boston in the Plaza Hotel back there. We were having a convention of training directors, and I happened to be sitting right near the door—that's the safest place to sit—and the door was open because the place was warm, and a couple of elderly ladies came in, one of them not quite so elderly as the other, who was bent and stooped over and had a hearing aid, and so on, and she stopped and she tried to read this sign, which said what we were, but she couldn't. Her glasses weren't up to it, and she asked the lady who was with her what those signs meant, and so the other one read the signs and told her, "Why those men are all training directors," and the old lady looked across the room at all of us sitting in there, and she said, "I didn't know there were that many horses." So I've always been a little sensitive to the word "training."

Now within the confines of training, we do three broad subdivisions of this. One we call our pre-production training. And this is the training we give people before we expect them to do any kind of work. I don't mean that we do this to everyone, because sometimes people come to us with the skills we need. But ordinarily we give most people who work in the plants some kind of training before they go out on the job. I'll give you an example. They come to us without applicable skills. We give a certain amount of testing of what kind of work they are best suited for, whether they have a sense of space relationships, mechanical ability, or whatever it might be, high numerical sense, or something like this. This would leave us to determine whether a man would go into the mechanical line of work, store keeping type of work, or whatever. Then we have courses set up to teach this kind of thing. For stenographers and typists, we put them through a week's training, assuming they already have the skills of typing and shorthand — we don't do anything with that, except a refresher type of thing. Typing skills, we take the girl through a week's training during which she types one copy of every form we use in the plant. This is checked by the instructor, and she takes this along with her, bound as a manual, so if she has to complete a form any time after she is out in the plant on assignment, a form that she hasn't seen since she was in the training school, she just opens the manual, and while she will be slow, it will still be completed properly. It isn't the speed of the typist that runs up the cost, it's correcting the errors on the form that runs the cost up. So this is what I mean by pre-production training.

Secondly, our training falls into a broad classification that we call "re-training." This is the training of what is termed as "surplus" employees. By "surplus" I don't mean that they're not needed in the plant anyplace, but the skills they have are not needed in the plant anymore, so that it's really the skills they have that are surplus rather than the individual himself that is surplus, so we will run the individual through our training program. This is almost pre-production, except that the man has been in the plant, does know some things about it, so the fact that his skill—and this is one reason why I place the emphasis on this fast changing world—so his skill is no longer useful to us, and we retrain him in some allied skill that we do need. And finally our training falls into a third classification that we call "updating" training. This recognizes that the world is moving fast and that the aircraft industry is moving along with it. We like to compare ourselves, for example, with the auto-

mobile business, because it's about as big an employer of manpower as we are, and we're both in the transportation business in one way or other, and you get a feeling for it if you compare the two, that since the automobile was invented, it hasn't made any major change. The same pistons go up and down inside the same cylinders—my kids claim my car is so bad the pistons have actually changed cylinders—I don't think that's true — and the same valves open and close. The same cam shafts are going around, and all that sort of thing. Oh, true, the fenders have been shifted a little, and the car has been lowered considerably, and you get a lot of that. You also have an automatic transmission, which leads me to say that one of the problems with the world is that the automobiles can shift for themselves but the people can't, but generally speaking, an automobile today is identical to the automobile, in principle, of fifty years ago. That's about as far back as you can go.

I'd like you to compare the airplane of today with the airplane of fifty years ago. In fact, I'd like you to compare the airplane of today with the airplane of fifteen years ago, because in that time a whole new mode of propulsion has come in — jets and rockets and so on rather than p i s t o n driven airplanes. We don't build a piston driven airplane —our last one went out a couple of years ago, and all we have in the plant are jet airplanes. We didn't even stop with the turbo-props, the way some of our competitors did, because we didn't want to inherit the problems of the jet engine and the problems of the propellor, if we could get rid of one set of problems. This is what I mean by the man who knows what your problems are being worth more to you than the man with the answers. So compare these two industries, and you'll get an idea of what I mean by the necessity for updating people's skills.

These skills become obsolete fast, in an industry that is moving quickly. I'll give you one example to close this. The men on our production lines in our tooling, for example, men who design the tooling that we are using to build parts and the airplane, are not normally in a position to do much research. So, even if they were inclined to it, they're not in a position to. So a tool and die maker, for instance, or whatever he might be, is not in a really good position to know that the British have invented a process known as optical tooling. He doesn't know this. He's still going along using the same techniques that he was taught years back. He's modernized it as he goes along. But, you see, now we use a process we call "optics", and all it means is this: Let's assume we are lining up these two walls; we want them parallel to each other. The building trade being what it is, I can tell you automatically they are not parallel to each other. I've just been building a house, and I'm sensitive to this — this is one of the things I've learned from my wife. I had to learn economics and all that from my wife, after I got married. You see, I didn't really realize that in a democracy you can be outvoted one to one—and now I'm learning economics through building a house. You see, I can't afford this house, and I'd like to know how my wife can. Well, the building business is still using the same old techniques it has had for years and years. It's doing a lot of them at the factory, and it calls this pre-fabrication and thinks it's automated, but it's a long way from it. I listened to the fellows who framed the house for me, and, believe me, "framed" is a good word for what happened to me. These are fellows in their fifties, who were educated, you recall, back when the schools "used to educate them right." They weren't any of these modern whippersnappers who didn't really learn their math or spelling or anything—these were fellows who really learned how — and don't worry about your state—they learned it here, too. And I used to listen to them, and one would say to the other "Cut me a piece of siding," and the other one would say, "How long a piece do you want?" This one would say, "Well, it has to be 46 inches and three of those little black lines long."

Well, you see all you could do was to hope that both of them had rules marked in the same way. After they got the house framed, I discovered they didn't. Now if we wanted to put up walls like this, we would erect one wall any way we could without anchoring it permanently or just put up a two by four, something like that on one side, and concentrate on this wall, and on that wall we would put a Taylor-Hobson scope. It projects a beam of light; and on this wall we would put a heterprism, which would bend the light at exactly right angles. You can work it any way you want to. So having projected this line, you have that wall with that beam of light in this direction, then we would take it and line it up in this direction and when we were through, we would have a wall exactly at right angles to that beam of light. Then we would switch to the prism after building that wall and build the other. They would be exactly parallel to each other, and yet built independently of each other. This means you can build the two walls this way, if you want to, and then put them down here afterwards. You can build them upsidedown, if you want to; this is what lets us, for example, on our B-47 build this into our tooling and send it down to Douglas, a small competitor of ours in the southern end of the United States. And so our people on tooling cannot be expected to know this kind of thing is going on, as to the educational setup, training, to let them know what the new techniques are in their own field. Our scheme of training is this. One, you are going to have to train men anyway you look at it. They are haphazardly trained by themselves, or they are effectively trained by pre-planning. You can't get around having a training program in order to get properly trained people. And then, we don't want to apologize for what it costs us to train people, because we think it's to the customer's advantage if we can tell him, "We are going to put in your airplane the the best metal that we can buy, the best design we can get out of our engineers, and the best trained people are going to build that airplane. So we feel we have no reason to apologize. Now, human relations being one of them, I want to mention my small boy. My small boy, as I say, is a human relations expert, and he and I went walking not long ago, and we came to a high bank, and he said, "Dad, let's climb up this bank," and I said, "I can't climb that. You climb the bank if you want to, and I'll wait for you," and he said, "Why can't you climb the bank?" And I said, "Well, because you're a small boy, and I'm an old man, that's the difference. Old men can't climb high banks like that." "Well," he said, "you aren't an old man." This is nice to hear in the first place, you know. The oldest boy,—I said back when I was going to high school they used to teach us this way—and he looked at me and said, "Do you realize that's a quarter of a century ago?" That sounded worse than twenty-five years. This is when you are not a human relations expert — when you say a quarter of a century. Twenty-five years is easier to swallow. The little boy says "You are not an old man." Now I did one thing to him that you never do unless you want the employee to quit, I nailed him to the wall. I said, "Oh, what am I?" This is a bad thing to do in human relations. I knew at the time but I wanted to see what his reaction would be. I knew that he knew the answer, because I heard what he told his older brother when I wasn't there. He said, "You are a nice man with white hair," and while there is still a remote chance somebody here might think that I am, I'm going to quit. Thank you.

American Title Association—John Hancock Mutual Life Insurance Company Group Insurance Program

MORTON McDONALD,

President, The Abstract Corporation,
DeLand, Florida
Chairman, American Title Association,
John Hancock Mutual Life Insurance Company Group Insurance Program

It is with a great deal of pleasure that I address you today concerning our ATA group insurance program.

This insurance went into effect on June 1, 1958. We now have 83 companies with 463 employees participating in this program. My only regret is that I cannot say there are more participants in this program. I personally believe we should have at least three times this number. At present, there are companies in 24 states who have subscribed to this program. You might be interested to know that Michigan is leading with Iowa second, Florida third and Kansas fourth.

This program is set up primarily for a small company so that through this fringe benefit a small company might be better able to compete with the larger companies in holding good employees. This is purely a life insurance program. The claim is paid to the beneficiary as named in the policy after death of the insured regardless of how the death occurred.

When a company signs up for this insurance, they must sign up for at least 75% of their employees and the company must pay at least 50% of the cost of the insurance. The company may pay any larger amount as they see fit. If the company pays the entire amount, then all employees must be in the program. The company, however, can pay the entire amount in any one class. By class, I mean the four classes of insurance, the lowest paid employee being entitled to $2,500.00 in insurance and identified in Class 4; Class 3 being those entitled to $5,000.00; Class 2 $10,000.00 and Class 1 entitled to $20,000.00.

While speaking of these amounts, let me call your attention to the fact that this makes a larger amount of insurance available in this group plan than in most group plans. The surprising thing to me is that more of you have not already signed up just for the benefits that the principal in the company would receive. I am speaking now to you who are the owners or principal owners of your company. I will make the statement here that any of you who are owners of your company or principal owners of your company who have not subscribed to this program are downright foolish and shortsighted. You might not like that straightforward statement, but I think I can show you why the statement is correct.

The owner, being entitled to $20,000.00 insurance, could count this as the nest egg to pay inheritance tax; to guarantee the family continuing ownership of the title plant; to protect your title company while getting new management, or an additional protection to your widow because of inflated prices. Most of us had planned years ago for such a program but now find that it is inadequate because of inflated prices. I might say here that I think the type of person I am speaking of now can well afford to pay for the entire program for his small force to gain the protection that he would get.

This, like any other program, requires a selling job since many of you get too busy to read the letters or pamphlets sent you concerning the program. Some of us seem to get so busy at times on little things that we overlook some of the more important matters. This, I think, is one

of the things that is happening on the program.

Let me mention a few of the things that have been said in opposition to the program. One person has written that he would like to have such a program but would not want to include all his employees. He merely wanted to include the key personnel. Let me ask you, "Who are the key personnel among your employees?" I think our young generation is looking more at the fringe benefits they will receive in their employment than merely the take home pay. The type of employee that we wish to keep is the one who is thinking of the benefits and thinking their careers through rather than merely looking for a job. I do not believe we can overlook our lowliest employee, for that one may be the head of the concern in years to come. The office boy becoming the president of the concern is not just a Horatio Alger story.

Another question or objection that has been raised is, "We are more interested in a retirement program, can't you include this?" It is my opinion that the average person saying this has not investigated the cost of a retirement program. Neither have they investigated the work and records involved. This may come in our future program, but it is not anticipated at present. That is another fringe benefit, but one that I doubt that many of us can afford in our small companies. A number have suggested that they want a hospitalization plan or major medical benefits. It is possible that we can eventually add such a program either through our present underwriter or another underwriter as a separate program. Our Insurance Counselor is urging that we present such a program to you. Your Trustees feel that we should get this program better established before entering into any other type.

There is one more example I would like to give before closing. None of us is so large that we do not take a personal interest in our employees. Naturally, the smaller communities and smaller companies have more opportunity to have a personal interest in their employees. Suppose one of your employees dies from natural causes or from an accident. You would attempt to do everything possible for the family. In most cases, the ones we speak of would be those with smaller incomes and would be hard hit at the loss of one who was the breadwinner or who assisted the family in such things. We would, in all probability, provide a few weeks salary or an extra check as we felt we could possibly afford. Why not see that each of your employees is covered with this insurance and that we could, in case of death of that employee, say with pride to the family that because of your program the family would receive $2,500.00. The cost to you over several years would not be more than you would try to give in one check to the family if they were not covered with such insurance.

I am sure there are many questions in your minds. I would be glad to talk to you individually at any time during the convention that we might have an opportunity. I hope you will stop at the booth of John Hancock Mutual Life Insurance Company and avail yourselves of the information there. Why not make a tentative application while you're there? This program was not put in to take the place of any program you might have. It was put in for the purpose of making available the group insurance to many of us who could not obtain such a plan in any other way. This is one of the tangible benefits of membership in the American Title Association. I do not say it is the most important, neither do I say it is one of the lesser benefits. It is my opinion that the American Title Association has grown up and become of age, that the leaders in your association are working at all times, that the members whether they be from large companies or small companies, shall receive every possible benefit that an association can obtain. We are proud of this program and expect it to be of great benefit to many in the years to come.

Report of Planning Committee

BRIANT H. WELLS, JR.

Senior Vice-Pres., Title Insurance and Trust Company, Los Angeles, California

Two years ago, as you will recall, the chairman of this committee had the temerity to send a questionnaire to all members of the Association asking them to comment on things the Association was doing of which they approved and things that the Association was not doing which they would like to see done. We received such a tremendous response that by the time the last convention rolled around the committee was not in a position to do anything but give a statistical report on the returns.

Another year has now passed and your committee at this time feels like the man who had just returned from a lecture on penguins. He had found that he had learned a lot more about penguins than he ever needed to know. Seriously, however, your committee is deeply indebted to the membership for their response. A great number of you may not recognize in this report the things that you suggested. We have had to eliminate from the tremendous amount of material items that did not seem to fit into a classification that in the opinion of the committee would serve the Association as a whole. By way of illustration, a number of members suggested that the National Association take part in state legislative matters. There were suggestions calling for the direction of business to certain companies. Specialized tax relief was proposed. A great number suggested that the National Association take a part in trying to get companies in certain areas on the same price schedule, which obviously would be illegal.

The above are a few of the types of answers that the committee felt could not be incorporated in our report but nevertheless the committee does wish to express its appreciation again for the time and thought that was given to the questionnaire by the members of the Association.

The matters which we felt were of mutual interest throughout the Association and upon which there appear to be some unanimity, are as follows (and let me say that we have tried to hold down the number to things considered the most important and not have our report tell more about the Association than penguins need to know):

1. The Association should complete the existing plans to retain a public relations director on the staff. It is hoped that after this is done we could resume the advertising exhibit that we have heretofore held at our national conventions.

2. The Association should take a more active part in promoting the availability of and use of existing standard A.T.A. forms.

3. We should continue existing committee work in the matter of uniform reporting to state insurance commissioners.

4. There should be continual vigilance in the matter of breaches of the Association's code of ethics.

5. We should maintain close relations with major allied national associations on mutual problems. In this connection an attempt should be made to prevent conflict of the date of our annual meeting with those of other such associations.

6. Earlier notice of the time and place of forthcoming meetings should be given the membership.

7. There should be more national headquarters' assistance in the work of the various committees.

8. Title News should be revamped on a more professional basis. It should be augmented with a news letter monthly. Items of interest to the membership as a whole should be included. It is recommended that a committee be appointed to consider this over-all proposition.

9. The Association headquarters should collect, maintain and furnish lists of proper contacts at major life insurance companies and other large nationwide lenders.

10. We should maintain the Association in healthy financial condition.

11. In order to implement the work of the Standard Forms Committee there should be created an effective Uniform Practices Committe, this for the purpose of attempting to establish uniform practices among our membership where dealing primarily with national lenders.

12. This final recommendation is not offered as an action of the committee but of its chairman. It should be obvious to the membership that the chairman of its Planning Committee should of necessity be close to the picture as it exists from year to year. Accordingly, the chairman of the Planning Committee should be selected from among the members of the Board of Directors. Speaking as chairman of the committee and being removed from the intimate details of Association activities, I feel that the work of this committee loses effectiveness.

This report has been kept short in the belief that its recommendations, if brief, are within the realm of accomplishment during the coming year. Each member of the Association is aware of the existence of the Planning Committee but during the past year no suggestions have been received from the membership. Do not wait for another formal survey. Please keep your Planning Committee advised of your desires.

Title Losses

LA VERNE HERBRUCK,

Vice-Pres., Title Insurance and Trust Company, Los Angeles, California

At the 1955 convention, Bill Deatly, Stewart Morris, and a number of others including myself, appeared on a panel on "Losses and Claims." This year we are taking a somewhat different approach, but in general I can extend my original report with the statement that we have suffered no diminution of volume but in addition have developed a number of sports and hybrids including some that would constitute a very satisfactory Fourth of July celebration.

Now when we begin to talk about losses and claims, one can wander into a twilight area of conflicts and contradictions that reminds me of the story that is told about one of our prominent Los Angeles criminal attorneys. This lawyer was defending a client who had been publicly housed on repetitive gambling charges. In his eloquent plea to the court the lawyer said, "Your Honor, this man has been a compulsive gambler but he has been completely cured—in fact, he is a prominent member of Gamblers Anonymous. Actually, your Honor, my client is willing to go so far as to bet you ten to one that he will never gamble again."

All this evolves out of what is meant by a loss. For example, if we miss taxes or a street bond, payment is promptly made and the case is closed. The loss is the out-of-pocket money. On the other hand, suppose that we make an error in a description. When the error is discovered, we begin the remedial work. First we analyze our position and determine the necessary action. Then we draw the necessary correction papers and begin to seek out the proper people to sign them. This can be a real undertaking before you find the people, do the necessary explaining, disabuse their minds of the thinking that they have a refund coming, etc. When the project is finally buttoned up, the only expense is that of salaried employees.

Possibly I can best illustrate how we feel feel about this by describing briefly how we handle losses and claims in our home office.

We feel that there is merit in seg-

regating our claims division from the line or production operation. Therefore, this division appears on the organizational chart as staff rather than line and reports to the Senior Title Officer, who in turn is staff.

This department is manned full time (and often overtime) by a manager, an assistant, two searchers, and two secretaries. All matters involving litigation are referred to the legal department. As a matter of fact, Dick Howlett should reaaly be up here because I am in his territory. A loss to me is when you don't make a profit, and then you are not out-of-pocket—you are out of work.

This department is carried as an operating expense and when a loss is processed, the washout reflects actual dollars expended without any inclusion or allocation of other expenses.

Theoretically, this segregation that I mentioned should provide a valuable by-product of which we could take more advantage. A review of the matters processed would give a detached, factual, and unbiased insight into the areas in which the operating people are coming up short. In other words, the causes could be analyzed and where appropriate, they could be incorporated in the educational program.

Returning to what is a loss—an example might be in point. Several years ago we decided that a number of titles might be mildly bolstered with some additional litigation. This has been completed at an out-of-pocket expense in excess of $50,000. The loss report submitted to management will not include the time of our own attorneys who prepared all the pleadings, nor will it include the research by title people for months to reveal the situation, nor will it include the countless meetings of top brass to arrive at a decision.

I am sure that enough has been said about the philosophy of this subject and I well realize that we are probably far from the vanguard in cost accounting regarding losses. Look at the practical side of the problem.

In the claims division a survey disclosed that out of 500 phone calls in one month, 125 actually resulted in a claim or loss. Add correspondence to this and you can see that another department would be required to make the allocation.

Sometimes you can have a loss in your loss department. Recently a title bust reached the claims department. After considerable investigation it became quite evident that the customer had twisted the facts a bit in procuring a policy. This we set out to prove. One of the principals was overseas in the service. We wrote the wife up north and she hit the panic button and wrote the husband, who in turn let loose on our customer. In the meantime we telephoned the wife and started a second go-around. Our claims man signed his letter "special investigator." The nature of the involvement was so run-of-the-mill that I have even forgotten what all the shooting was about.

When this came to my attention, it developed that the customer was a realtor with five offices and 60 brokers. I submit—how could a man like that stray from the truth? Ridiculous! At any rate, he called to compliment us on our sleuthing proclivities and at the same time inform us that he was calling a general meeting Monday a.m. to instruct his staff about us—and you know how. I don't mind eating crow, except on Friday—but that Friday it was devoured in large and copious quantities.

Sometime we should have a panel on how you handle claims or losses where either could be successfully resisted but the particular insured is somehow not the right guy to educate.

Recently we had a claim which the customer insisted that I handle personally. The facts were this simple. The customer has been an active broker for more than 25 years. In later years his business has been related principally to second deeds of trust brokered for claims. As you know, the borrower generally receives something less than the amount of the note in dollars. In this case we insured a deed of trust executed by a husband and wife, which

was and still is a perfectly valid lien. However, in this case, at the time of the title search, the husband and wife had a divorce action pending, as to which no lis pendens had been recorded.

Our rule in issuing a standard form loan policy (not an A.T.A. loan policy) has been to report the divorce action and where both spouses join, show the action in the policy subject to the deed of trust. The title officer in this instance which was a FIFO (fast in and fast out) disregarded the divorce because of the joinder by both.

When default occurred on the first payment, our customer's client dropped around to look into the matter. He found a deserted wife with a flock of kids and a long-gone husband. The wife mentioned the divorce. When the customer examined the loan policy and found no divorce mentioned, he came in roaring like a gored bull.

This guy nailed me to the mast. As a title officer I had handled his work for a number of years and could not deny that I had followed the manual and reported divorces. Naturally he would not have allowed his client to make the loan had we reported the divorce. Now when you explain our liability, that we insure the lien of the deed of trust and that there was no defect in the execution of the deed of trust, what do you get? The old "I'll never darken your door again" routine—and "I have friends." Frankly, I sweetened that loan a tiny bit.

It was suggested that we say something about the cost of investigation. How would you have handled this recent one? This began in the heart of our colored district. A colored gentleman appeared at a bank in the area and told the loan officer that his poor old mother had finally died and left him the home as surviving joint tenant, and that he was now able to take unto himself a long-desired bride and that he needed $4,500 to fix himself and the place up a bit. For identity he produced an army discharge, a union hod-carrier's card, etc. It developed that the house was 25 years old and required a termite inspection. The borrower, whom we shall call Joe, made careful arrangements and at the appointed time met the inspector and took him through and under the house. When termites were discovered, he repeated the performance for the workman.

When the trust deed came in, our title officer questioned the signature (we use statements of identity). The bank called Joe and told him that we questioned the trust deed and that he had better see us. When he came in his right hand was heavily bandaged. The title officer took it to his superior, one of our most conserative people, who passed it.

When the bank contacted the owner after no payments had been made, he was not Joe. I wish I had the time to relate our investigation before we found Joe. Eventually and by the weirdest circumstances, it tumbled out that Joe had a sister living in the neighborhood. She told her brother that the lady down the street had died and that the son planned to be married. Joe burgled the house and got the identification, and burgled twice again for the termite man. In the meantime, Joe had bought a diamond ring on credit because he was able to get the bank loan. When the jeweler contacted the bank, we found out Joe had a yellow Cadillac. In addition, he was cross-eyed. We found Joe in the County Jail and our only recovery after paying the loss was Joe's transfer to the state penitentiary. We could not identify the real owner in the neighborhood because Joe had terrorized the block from time to time and no one would talk.

One final situation which was rather unusual. One of the major oil companies built a large refinery in a nearby community. This involved the installation of a battery of very heavy diesel engines. The oil company exercised unusual diligence before it began operations. Realizing what could happen, the oil company obtained easements from the adjoining owners for the benefit of their refinery lands, which consisted of the right to extend noises, vibrations and/or tremors over the lands affected by the easements.

This was all fine until we insured a motel on lands burdened by one of the easements and through inadvertence, ignored the easement. The new owner promptly raised a strong complaint against the oil company, claiming that his guests were violently disturbed by the shaking action created by the diesels, whereupon the oil company produced its recorded easement.

The motel owner promptly transferred his affections to us. I suppose you could make quite a story out of how much he had been damaged, but at any rate, he was not buying any part of the pitch that he had a real asset in a motel with that kind of action. His damage, of course, was the difference in the value of the land, with or without the shakes. As I recall, we shook loose of $10,000.

JAMES G. SCHMIDT

Senior Vice-Pres., Commonwealth Land Title Insurance Co., Philadelphia, Pennsylvania

I have selected for my topic today "The Anatomy of a Title Loss." When losses occur, is it proper practice to pay them and forget about them, or is it not far better to analyze each loss—to dissect it—tear it apart to find out what lies behind it. If we carefully consider the c a u s e and effect, I am sure that the results of the analysis will be of great value to all title men, but it will be of most value to the company which had the loss.

Our first inquiry is as to the nature of the loss. Was it an item missed in the search—a mortgage, judgment, building restriction which would prevent the desired use of the property, some easement like a pipe line running through the heart of the property, an outstanding interest such as that of an heir who failed to join in a deed, a bankruptcy, corporate tax, estate tax or other item which should be disclosed by a search? The value of taking note as to what has been missed is self evident. Is our method of searching incorrect? Is there a defect in our indexing system—in our Plant maintenance? If we are having numerous losses as to a particular item, then we should concentrate on improving our search for that item. For example, in our company's experience our most frequent claims have occurred from missed taxes, water and sewer rents, ranging in amount from an unpaid tax of 27 cents to an unpaid excess water rent of $17,000.00. It follows that we are making every effort to improve our tax and water rent searches.

The nature of the loss might be a mistake in interpreting the law—in reading a will — examining a foreclosure. Here again, analysis of the loss shows the type of problem which should be considered more carefully in the future. Fortunately, our own losses resulting from mistakes in understanding the law have been few. We have had some losses by reason of failing to give Federal liens their proper priority in Sheriff's Distribution Policies. I assure you that after these losses occurred, we very quickly advised all our examiners and agents of the effect of the "City of New Britain" case.

The loss might result from a mistake in description due to the lack of a survey or a mistake in the survey produced. Rather peculiarly, at this m o m e n t we have more pending claims resulting from surveyors' mistakes than we have from insurances where no surveys were produced. In one case the house was built on an adjoining lot of ground—in another, two surveyors could not agree as to the location of the side of a street, which resulted in a substantial overlap of a gasoline station on the property of a super market. Analyze these cases and we learn our lesson. Experience dictates the names of surveyors whose work is dependable. Experience also indicates that in the long run we are better off if surveys are demanded. I know that the national life insurance companies would prefer that title insurance companies require surveys.

Mistakes in closing might well lead

to serious loss—miscalculations or the failure to follow a letter of instructions. Analysis of a loss arising from a mistake in settlement might change our closing methods. It might also indicate that insufficient time is given to the clerk to do an accurate job.

Of extreme importance are items which are not disclosed of record—unrecorded easements — decedent's debts—unfiled mechanics liens. There is the unrecorded lease with the option to buy. There are the visible easements which are not a matter of record. Occasionally you have the problem of the Municipal or State taking by eminent domain, which is neither visible nor of record. Recently we had a taking for road purposes where the road actually ran right through the center of the house. Some of these problems teach us to interrogate more thoroughly the seller or mortgagor. They also indicate that we should have better laws to cover the effect of unrecorded items on a purchaser or mortgagee for value.

More and more frequently we are being asked to insure against loss as to a know defect—that existing building restrictions will not prevent the erection of a gasoline service station —that an existing easement will not prevent the proposed use of the property—or that no loss will result from an encroachment in the bed of a street. The examination of each case in which loss results from taking such unusual risk gives us experience to determine what risks of this nature may be taken in the future.

Losses may result from fraud—forgery or a false affidavit. Our company has had more than its share of losses involving forgery. One real estate broker managed a number of unmortgaged homes for clients, and he regretted their unencumbered state. To rectify the situation he forged the owners' names on mortgages and we insured the titles. Before he was discovered, we had insured titles to void mortgages aggregating more than $48,000.00. We have had other cases where a nephew forged his aunt's will, or the seller brought the wrong blonde to settlement to sign a deed as his wife. I must admit that though we have studied these cases, we have not found a pattern yet, but I am sure that if we continue studying, some pattern will be there to guide us in the future.

The study of the nature of the loss has an additional advantage. It gives us excellent material for a speech or article on the necessity for title insurance. This material should also be furnished to our advertising department. With a list of cases where we have actually paid claims, there is no chance that our advertisement will give a false impression that our Policy covers matters which were never intended to be covered such as unrecorded hidden easements or the consequences of zoning ordinances.

So far, our dissection of a title loss has been limited to a consideration of the nature of the loss. Our second consideration should be as to the cause of the loss. Was it carelessness —of an employee—or an agent? Was it improper procedure in searching the title? In the May, 1958 Title News there was a report of a panel discussion on the subject of title losses, and one of the panel stated that his company did not have a single employee who made a careless mistake. They had a lot of ex-employees who made mistakes, but they did not have any present ones. I am afraid that I would have to reiterate the voice from the floor, "We wouldn't have any employees at all!" Yes, our employees will make mistakes, and when they do, it is our responsibility to call it to their attention. I have known cases where a careful clerk was severely reprimanded because he made a single costly mistake, while nothing was said to another clerk who made numerous small mistakes. For potential loss, the latter clerk is certainly the greater risk. In all cases, having ascertained the cause of a loss, we should endeavor to prevent its repitition. Reprimand your offender—correct your procedure—advise all examiners and searchers so that the mistake will not be repeated.

Our third inquiry should be, "Who made the claim against the Title Company?" Was it an insured owner, mortgagee or lessee? The answers to this question will show the type of

insurance which most frequently leads to a loss. The answers might affect the computation of rates for different types of insurance. Possibly there is no justification for a lesser premium for mortgagee insurance than owner insurance. In the field of insurance of a lessee, our company has never suffered a loss. This would indicate that we should advertise and encourage this type of insurance and prepare a form of Policy satisfactory to the large corporate lessees.

The fourth question is, "What is the reason for the claim?" On the one hand, was it a defect in or lien against the title? Did it arise by reason of a refusal of a purchaser from the Insured to complete a purchase because of a cloud on the title? If no claims arise from the latter, this would indicate that there is little risk in insuring marketability of title. I know that there are many title men who fear the assumption of such risk. In the Pennsylvania area we insure marketability as to owner, and at this moment, I cannot recall one claim based on unmarketability.

The sixth analysis relates to the age of the Policy on which the claim is made. At the 1938 A. T. A. convention there was another panel on Losses and Claims. The first speaker was Bill Deatly, of New York, who reported as to an excellent questionnaire which he had prepared and submitted to companies on the Atlantic seaboard. One of the impressive results of his inquiry was that 72% of the dollars of loss arose within five years of the Policy date, and 90% within ten years thereof. This shows the importance of determining the interval of time between the date of the Policy and the date of the claim. Possibly after twenty years the risk becomes so negligible as not to require the continuance of substantial reserves. We should also inquire as to the age of the lien or outstanding interest upon which the claim is made. This will help us determine the length of time for the search of title, and may save us the cost of long, unnecessary searches.

In our analysis of the loss our inquiry so far has related to the claim itself, and should be made for each claim presented. In addition, we should have a periodic examination of the method of handling claims. Are they referred to a special department of the company, one of the officers, or to counsel? Experience will most likely indicate that handling by a special officer or department is preferable, depending on the size of the company. In many cases, it is absolutely necessary to refer the matter to counsel. However, the company officer in charge of losses should be sufficiently capable that he does not have to confer with counsel as to every claim. When litigation is unavoidable, a record of its progress and cost should be kept. In many cases it will prove that a compromise or settlement is preferable to litigation.

Our procedure analysis should review the source of payment of losses. Are they paid from current recepits or a reserve fund? The reserve fund is more advantageous because a fixed amount can be set aside annually. Each year an amount can be added to the reserve which is the average yearly loss for the last ten or fifteen years. At the end of each year a new average will be computed so that the amount added to the reserve will vary. In this way an unusually large loss will not have a drastic effect on current income. For some reason, the largest losses seem to occur in the years when income is down.

When paid from the reserve fund the losses should include the amount paid to the Insured, the cost of investigation and litigation. You might also decide that an allocation of a proportionate part of officers' salaries representing the time devoted to losses should be included.

A study should be made of the ratio of the total amount of losses to gross income, and also to the total amount of insurance written. This can be of value in reports to the Insurance Department and is just one more factor in determining title rates.

A final study could be made of the amount of recovery each year. A special note should be made of the expense involved in attempting to make recovery. While in many cases it is good business to exert every effort to

recoup, there are other cases where the attempt to recover is not warranted, considering the cost involved. There are also cases in which the attempts to recover result in bad publicity.

This concludes our report on the dissection of a title loss. There are other questions which you might consider, some of which may depend upon your local requirements. There is an old proverb which says that we learn from our mistakes. I am sure that if we review and analyze our losses—if we really study the anatomy of a title loss—we shall profit from our loss.

J. MACK TARPLEY

Vice-Pres., Kansas City Title Insurance Company, Kansas City, Missouri

Ladies and Gentlemen of the Association, I would like to pass on to you four claims which I consider to be unusual in character. They all involve an interpretation of the policy, and only one is brought about by the factor of human error, which is the primary cause of losses to title companies.

Claim No. 1—In 1947 we issued an ATA Standard Form Mortgagee's Policy on a residence in the State of Louisiana. In late 1957, more than ten years later, the mortgagee started foreclosure and the foreclosure minutes revealed a laborer's lien for work done some 60 days prior to the start of foreclosure. Under the Louisiana Statutes the laborer's lien would prime the mortgage both as to land and improvements. It was surprising the number of experienced title men who thought we had no liability, but we paid. If you have any doubts as to our liability, read your ATA policy closely.

This claim was small, but a question we have not resolved is whether a contractor paying the laborer is subrogated to the laborer's right to the lien. On large scale repairs or improvements to commercial property this could be substantial.

Claim No. 2—In late 1950 and early 1951, our mortgagee's policies were issued upon 102 lots in a subdivision. The policies contained a statement that no restriction upon the sale or occupancy of the insured premises on the basis of race, color, or creed has been filed for record subsequent to February 15, 1950. In 1958 we learned that such a restriction had been filed for record about May, 1950, but was not disclosed by the record search and examination.

There is no question involved as to the validity and priority of the lien of the mortgages, but the loans being FHA loans there is a question as to the FHA insurance. Under the terms of the policy we insure a valid and prior lien on the premises, which we have, but we have improperly reported the title. What is our liability to the present holder of the notes? We have not yet resolved the question.

Claim No. 3—Duly recorded restrictions affecting a subdivision in Missouri provided in one paragraph that not more than one house should be constructed on any lot. A subsequent paragraph provided that no house should be constructed on a plot having a frontage of less than 75 feet or a square foot area less than 7,500 square feet. One lot in the subdivision was of sufficient size so that two houses could be erected thereon without violation of the latter paragraph in the restrictions.

In accordance with a long line of Missouri authority, we construed the ambiguity, if any, in the restrictions to permit the most free use of the land and issued policies on the two houses constructed on the above lot in favor of a local mortgage banker and, in said policies, specifically insured that the restrictions had not been violated. The mortgage banker thereafter attempted to sell the loans to an investor who had made a prior commitment, and the investor required copies of the restrictions. His

attorneys took the position that the restrictions had been violated, and the investor consequently refused to purchase the loans.

It is interesting to note that the discount rate on VA loans had dropped materially between the time the investor had made the commitment and the time these loans were offered to him.

We construed paragraph 3 of the Conditions and Stipulations of the A.T.A. policy to apply to this situation and took the loans off the hands of the mortgage banker at the original commitment price. We felt, however, that we were put in a very unfavorable position in the transaction, because the commitment to purchase by the investor was probably not an enforceable contract, and consequently we did not have the remedy of bringing any action for specific performance against the investor to have an adjudication as to whether he was justified in refusing to purchase the loans. I might also add that our acceptance of liability in this case was influenced greatly by the fact that the mortgage banker was one of our largest producers of business.

Claim No. 4—"A", a veteran, entered into a contract to purchase a residence from "B", a builder. The contract was contingent upon "A" securing a GI loan in the amount of $9,900.00, and also stated that the purchase price of the house had been reduced from $10,700.00 to $9,900.00 to offset estimated special assessments of $800.00. "B", together with the State Bank applied to the VA and obtained a Certificate of Reasonable Value establishing the reasonable value of the premises as $10,700.00, but said CRV contained the following provisions:

> "The amount of any assessment consequent on any special improvement as to which a lien, or a right to a lien, shall exist against the property as of the date of loan closing shall if not paid by the seller, also be added. As so increased the 'purchase price' may not exceed the reasonable value in Item 3 hereof."
>
> "Estimated Street and Sewer assessments $800.00 combined, per lot. Cost of sewers or streets improvements, if not paid by seller, may be assumed by veteran. The cost of same added to purchase price may not exceed the reasonable value herein."

On June 17, 1955, the sale was consummated for a purchase price of $9,900.00 and a mortgage securing a note in the amount of $9,900.00 in favor of State Bank was recorded. Our owner's and mortgagee's policies were issued, excepting special assessments for the year 1955 and subsequent years and containing a note that no special assessments appeared of record in the County Treasurer's office.

On the 30th day of June, 1955, the note and mortgage was assigned to the XYZ Insurance Company.

Subsequent thereto special assessments for streets and sewers were levied in the total amount of $1,482.67.

In 1958, "A" filed suit in the United States District Court against "B", State Bank and the XYZ Insurance Company alleging the above facts, stating that all parties defendant knew, or with reasonable diligence could have known that the reasonable value of the property had been exceeded by $682.67; that the Certificate of Loan Disbursements issued by defendant State Bank was incorrect; that the sale of the property violates the laws, rules and regulations of the United States of America pertaining to veterans. The plaintiff prays that the deed, note and mortgage be reformed by deducting said sum of $682.67 with interest at 4½ per cent from June 17, 1955, or that plaintiff recover such sum from defendants.

The XYZ Insurance Company called on us to take over the defense of the suit.

Subsequently, for jurisdictional purposes, the petition was amended to state that the action was brought in accordance with the authority contained in U.S.C.A. 38-694c-1. That section imposes a liability upon anyone

who "knowingly makes, effects or participates" in a sale to a veteran for an amount in excess of the amount of the Certificate of Reasonable Value. It does not provide that any mortgage given by the veteran is invalid.

On the grounds that the action is based on a claim for statutory damages arising from an alleged wrongful act of the XYZ Insurance Company, and does not constitute an attack on the validity or priority of the mortgage, we denied liability under the policy.

This claim is so new that we have had no reply to our letter denying liability.

In conclusion, we are finding that more and more claims coming to us are of a complex nature, brought about by a change in our economic conditions and our present system of mortgage lending. For those of you who may not have seen it, there is an excellent recent annotation on "Measure, extent, or amount of recovery on policy of title insurance" in 60 ALR 2nd Page 972.

New Developments in Tree Farming

E. F. HEACOX

Managing Forester, Weyerhaeuser Timber Company, Tacoma, Washington

Twenty years ago, the relatively few companies who were taking steps to keep their forest lands continuously productive, recognized that they could not stand alone. There were strong forces working toward government ownership or control of all forest lands and the very existence of private industrial forestry required that reasonably good forestry practices would have to prevail on a substantial portion of the privately owned forest land.

The companies scattered across the nation, that were giving leadership in the promotion of industrial forestry relied upon their foresters not only to develop good forestry practices on company land but also, to a considerable degree, to encourage other land owners to practice forestry on their industrial properties and on their farm woodlots. The Industrial foresters did this in the only way they knew how—and which was not very effective. They wrote and talked and held meetings and conferences about sustained yield, cutting cycles, rotation periods, mean annual increments and current annual increments; all of which made sense to the foresters but was meaningless to almost everyone else.

At this stage, more by accident than design, a few men with a peculiar talent for selling ideas began to pop up in the industry here and there. They told the foresters, "You can't sell forestery using terms that people don't understand", and the foresters naively replied, "You can't promote forestry. You don't know a Liquidambar styracaflua from an increment borer."

The public relations men persisted, to the dismay of the foresters, in talking about forestry in such simple terms as "a crop of trees" instead of "a Site II, medium density stand"; or "a tree farm" instead of a "sustained yield management unit."

To the best of our knowledge, the term "tree farm" was first applied to a specific area of land, when in 1941, Weyerhaeuser Timber Company established what we called the Clemons Tree Farm in Grays Harbor county.

The idea was picked up quickly and soon regional and national industry associations were sponsoring tree farm programs. Today, the American Tree Farm Program embraces 46,948,755 acres across the country.

At the last count, there were over 12,500 individual tree farms ranging in size from 5 acre woodlots to the largest industrial properties. They include old growth virgin timber, sapling and second growth stands, one year old plantations and areas re-

cently logged and ready for reforestation. While varying widely in size, location and character of timber, all certified tree farms have certain things in common:

(1) They are privately owned tax paying properties.
(2) The areas are dedicated to production of tree crops.
(3) The owner has agreed to provide a basic level of forest protection and management in accordance with a written plan.
(4) The owner has agreed to permit an annual inspection of the tree farm to make sure that he is practicing forestry in accordance with the standards of the tree farm program.

Let me explain how the tree farm program works in this area:

The Industrial Forestry Association is the certifying agency in western Washington and Oregon. This organization is made up of forest industry members who produce 50 percent of the logs in this region, and one of its principal objectives is to promote and develop the practice of forestry on privately owned land.

Industry foresters or the field representatives of Industrial Forestry Association, both of whom are acquainted with forest landowners, get in touch with people who they think may be interested, or just as frequently landowners themselves inquire as to how they may become certified tree farmers. In either case, the Industrial Forestry Association representative calls on the owner, inspects the property, and, in the case of small properties, frequently helps the owner draw up an effective 5-year forestry management plan. The landowner's application blank, together with a map of the property and his management plan, are submitted to a committee of the Board of Directors of Industrial Forestry Association. The committee goes over it in detail and recommends either for or against certification by the Board of Directors.

An important part of the tree farm program is the annual inspection of each tree farm. While it doesn't often happen, an occasional inspection reveals that the owner has not managed his property in accordance with the tree farm standards and the Board of Industrial Forestry Association then has the unpleasant duty of withdrawing the certification.

The question is often raised, "Do tree farmers get a reduction in property taxes or preferential treatment in income taxes?" If not, what do they get out of it? Why be a tree farmer? The answer is, tree farmers do not get preferred tax treatment or other monetary benefits, other than the income from the sale of trees. The certified tree farmer gets only the satisfaction of aligning himself with other landowners, large and small, who believe that private ownership and private management of tax paying land is essential to the health of our national economy. He is proud to hang his tree farm certificate on his wall and to display the tree farm sign on his property.

This, in brief, is the history of the term "tree farm" and the American Tree Farm Program. It was, and still is, a concerted effort to popularize forestry and to help people understand that producing tree crops is a straight business venture beset with perhaps more than the normal business risks but nevertheless offering opportunities for the profitable employment of land.

I should like now to discuss with you some of the things that are taking place on the industrial tree farms in western Washington and Oregon. It could all be summed up neatly by saying that, just as a farmer attempts to grow as much hay, or grain, or potatoes, per acre as he can, profitably, year after year; the industrial forester works toward production of the maximum amount of wood per acre per year on a profiitable basis.

Tree farmers make no apology for the fact that their principal business is to grow trees that some day will be cut down and converted into useful products. At the same time, they recognize that other forest uses such as stream flow regulation and recreation must be given consideration in developing forest management plans.

Reforestation and forestry, in popular usage, are almost synonomous and

certainly reforestation is an important operation on most tree farms today. During the past twenty five years in the Douglas fir region of western Washington and Oregon, a great deal of effort has gone into the development of natural reforestation methods, that is, logging plans have been modified to reserve blocks of seed trees scattered through the areas logged so that the seed produced by these trees would be scattered by the winds over the surrounding logged land. This method of reforestation has been developed to the point that it can be counted on to reforest about 80% of the area logged each year and it will continue to be an important reforestation method for some years to come. Natural reforestation, however, has two major drawbacks: First; cone crops are so infrequent that it takes about 10 years to do the job, and; Second, there is no control over the quality of the seed supply.

The economics of forestry will not permit land to reamin even partially idle for ten years between forest crops. The selection of superior strains of fast growing, disease resistant trees; cross breeding, and hybridizing show promise of producing timber yields substantially greater than the yields from trees of "run of the forest" parentage. For these reasons artifical reforestation methods, that is seeding and planting are gaining wider acceptance both to speed up the reforestation job and to make the first attempt at up-grading the species of trees we want to grow. In time, natural reforestation may be relegated to a minor role.

The latest development in artificial reforestation is aerial seeding. Methods of protecting tree seed from rodents have been painstakingly developed over the past ten years and where ground conditions are favorable, aerial seeding is now reasonably reliable. During the past three years, our company has seeded approximately 47,000 acres, mostly by helicopter, at a rate of ½ to 1 pound of seed per acre. In order to expand the opportunities for aerial seeding, we are using bulldozers to clear away brush and to perform a crude tilling of the soil prior to seeding. These operations are also supplemented by the use of selective chemical herbicides applied by helicopter to areas where undesirable brush species have taken over the forest land.

Where only pounds of seed are required to produce nursery seedlings for transplanting in the woods, tons of seed are required for board scale aerial seeding operations. We have built a plant for drying cones and extracting the seed, and we estimate that our reforestation program will require that we collect and process 45,000 to 50,000 bushels of cones per year for the next several years.

Planting of nursery grown stock has been used extensively to supplement natural seedfall and the Greeley Nursery operated by the lumber industry has produced 93 million seedlings for the tree farms in the Douglas fir region. Weyerhaeuser Timber Company has planted 34 million seedlings on 52,000 acres during the past 20 years. While aerial seeding is an intriguing operation, it has its limitations and hand planting of seedlings will continue for some years as an important reforestation measure.

Early foresters were usually depicted as the guardians of the forest spent most of their time in what came to be commonly known as "fire and, in fact, the majority of them protection."

It was not a matter of choice but rather a recognition of the fact that before one could invest money in growing a crop of trees, he had to have some measure of assurance that fire could be kept out of the woods during the several decades required for the trees to attain marketable size.

Twenty years of KEEP GREEN programs which have been so well supported by businessmen, teachers and citizens of the forest towns and cities have paid off. The Smokey Bear program, the tree farm movement and other fire prevention educational campaigns have been equally effective. In the aggregate, they have been as valuable as the development of scientific fire prevention and control

measures in the woods in reducing the threat of forest fires to something approaching a calculated risk.

The progress made in protection against fire, coupled with the rising trend of stumpage prices, caused foresters to focus more attention on the losses caused by insects and disease, which they suspected all along exceeded the losses by fire. Thus, to the tree farm foresters, the term forest protection has been considerably broadended in its meaning to include protection against fire, insects, diseases, animal pests and other destructive agencies.

Today, our company operates a plane with a crew of two foresters primarily to keep on the alert for outbreaks of insects and disease. Flights are made periodically over all the company's land to detect any flare up of a disease situation or an increase in insect population. These surveys are coordinated with similar aerial surveys made by government foresters and with ground surveys made by ourselves and other tree farmers. Committees made up of government and industry foresters review survey and research data and recommend control measures.

Another forestry activity that is receiving increasing attention on tree farms of all sizes is the thinning of second growth stands.

The harvesting and use of trees which normally are crowded out of a natural stand is the first step in thinning. Refinements of the process based on intimate knowledge of the growth habits of the trees can bring about increased yields and improved quality.

The economy in this region has been geared traditionally to big timber, big mills, and mass production, but as second growth stands become increasingly important in the overall timber supply, thinning and other cultural operations are beginning to be practiced more widely.

Most of the industrial tree farms contain extensive stands of mature and over mature timber. While these high valued timber areas form the backbone of the sustained yield operations, they are for the most part not increasing in volume. Some of these stands are so far beyond maturity that they are actually losing both volume and value with each passing year. Foresters on the industrial tree farms are examining systematically the mature timber stands to determine those areas where growth exceeds the loss from deterioration as a result of disease, insects, windthrow, etc. Type maps showing the general vigor of the timber, area by area, are prepared so that logging plans may be geared to the best utilization of the timber and toward maintaining the general health and vigor of the portions of the forest reserved for future harvests.

In every business, it is necessary to keep track of the quantity of goods on hand, to record incoming shipments and to account for goods sold and moved out of stock.

In the management of a tree farm, inventory records are of particular importance because the changes that take place in the forest today determine the amount of timber that will be available for harvest twenty, thirty, or forty years in the future.

Thus, it is the foresters job to determine periodically how much timber of each species, size and grade stands in the forest; to calculate how fast it is growing, and to record the amount harvested and the amount lost due to fire, insects. disease, windthrow, etc.

A substantial portion of the time of the 100 odd foresters employed by our company is devoted to making periodic examinations of the forest to determine for each small area, the age of the trees, the species composition, the number of trees per acre, the growth rate and other pertinent information pertaining to the vigor and condition of the stand.

On a large tree farm, a formidable mass of field measurements is accumulated which would be almost impossible to handle without the use of business machine cards and electronic computors. With this equipment, however, we are able to systematically organize the multitude of heterogeneous forest measurements. For each operating area, we are then able to

determine overall growth rates and predict the amount of timber that will be available for cutting during each of the next several decades. We can thus plan an annual rate of harvest that is in balance with the growth and, to use the forestry term operate the forest on a sustained yield basis. Plans of this type have been worked out for all fee land allocated to each of Weyerhaeuser Timber Company's eight manufacturing centers and our entire forest holdings are being operated on a sustained basis.

Forestry research is one of the most fascinating forestry activities. The rapid strides made during the past two decades in putting forestry principles to work on the tree farms threatened, until recently, to use up the fund of forestry know-how. Then about five years ago, a number of the major lumber and pulp companies across the country began, almost simultaneously, to direct more attention and to budget more funds for reseach on forest soils, silviculture, entomology, genetics, and other scientific fields influencing the growth of trees.

Weyerhaeuser Timber Company operates a forestry research center at Centralia, Washington, and we look upon forestry research as a vital part of our tree farm program. Our facilities include a complete chemistry laboratory, green houses, and equipment for growing plants under precisely controlled environmental conditions. We are equipped also to use radio active isotopes for tracing the translocation of nutrients and other chemicals in the circulatory systems of trees. We are using this interesting laboratory technique for such other tasks as tracing the pattern of a tree's roots beneath the soil and to relocate specially treated tree seed scattered on the ground in the weeds and grass.

Our research staff includes specialists in plant physiology, forest pathology, entomology, soils and biology. This group of men, most of whom have doctor's degrees, are pooling their skills to enable us to better protect the forests against insects, diseases, and animal damage; to control weed species in the forest, to attain the maximum growth rate of trees and to produce more tree seed of higher quality.

A second group of skilled silviculturists works closely with these scientists in developing improved timber culture methods. As a part of their work, they have established several hundred permanent forest plots scattered over the company's holdings. Through remeasurement of each plot at 5 year intervals, a detailed history of growth, mortality, and other changes is maintained. As with the forest inventory information, the data compiled on these hundreds of case histories is put on business machine cards and is analyzed electronically. The resulting information is used as a basis for computing future yields in connection with our long range forest management plans.

I have attempted to outline briefly the American tree farm program and, to tell you of some of the more important activities carried on by the tree farm foresters in the Douglas fir region and particularly on our own tree farms. No doubt that after this meeting, each of you will dash out to buy a tree farm of your own. As a forester my only advice is "check the title carefully."

Report of Committee on Title Plants and Photography

OTTO S. ZERWICK

President, Dane County Title Co., Madison, Wisconsin

Ladies and Gentlemen:

Not long ago I stumbled upon this little legacy from our recent recession:

> One day as I sat musing
> Sad and lonely and without a friend
> A voice came to me from out of the gloom
> "Cheer Up! Things could be worse."
> So I cheered up, and sure enough, things got worse.

Perhaps the Board of Directors of my own company weren't entirely motivated by the recession itself. They had been gently chafing in the background for many years. They had wanted a study of our operations and a quest for new and better ways. They thought our margin of profit could stand some fat.

But whatever the motivation, my board tapped me on the shoulder with the suggestion that I drop what I was doing and go forth into the world and get some new ideas.

One of the things which gravely concerned my board was that a competitor had come among us in both the abstract and title insurance fields who operated directly from the courthouse records without maintaining a plant of his own. This courthouse plant was started in 1943, our competitor, previously a title insurance agent, branched into abstracting in 1952. He seems to be doing very nicely. And if he could do it, were the thousands of dollars we spend on maintaining our plant each year justifiable?

As I conceived the job they thus handed me it seemed to me to present a double edge. Just to compare what we were doing today with chucking the entire plant and working from the courthouse might not present a fair judgment. Before we elected to give up the idea of any plant at all we would first have to know that we were keeping up our plant in the most efficient manner possible. A wasteful plant might well compare unfavorably with no plant at all, whereas an efficient plant might produce more profit than working from the public records.

Thus we have attempted, or better, we are attempting to study the operation of the title plants, and then to compare what seems to be the most efficient plant operation we can find with the costs of operating from public records. And when our esteemed Secretary heard of my job I suddenly found myself with a resounding title and a mammoth undertaking.

The comparative study your committee, as such, has embraced is again divided into two problems! First, is there an optimum way of doing each job the abstracter or title plant man does? And second, is there a combination of these schemes which is most effective?

We divided the jobs embraced in maintaining a plant as follows:

1. THE TAKE-OFF. This is the job at the courthouse—the unit of work done in getting the public records over to our office in the form in which the posters go to work on it.

2. THE POSTING. This involves the job of putting the information recorded into our own system of records—our plant.

3. THE SEARCH. Posting completes the plant. Searching, or locating, or chaining, is the gathering together of the information that you use in issuing title insurance or in creating an abstract.

4. TYPING. The manual effort required to produce the abstract of the title policy. Your committee had assumed that typing was a sort of standard expense you couldn't do much about. We thought the answer

to the question on our preliminary survey might assist us in suggesting the average length of the chains from plant to plant—or give us an idea of the bulk involved in the abstracts produced. But in comparing the answers we find such a marked difference in the figures that we are now curious as to the effect of different media on typing time. Can a person type one hundred words more quickly from transcript, micro-film, photostat, longhand notes, short hand notes, or the original?

So we sent out our preliminary questionnaire. and we were indeed gratified to receive in excess of 250 fully completed forms! Gratified, and overwhelmed, for to digest these figures turned out to be an almost endless job.

Here is one little table we made:

Exhibit "A"

Number Plants Reporting OPPPM*

	Counties Under 100,000 Pop.	Counties 100,000 to 500,000 Pop	Counties Over 500,000 Pop.
Under 10	30	2	0
11-20	52	12	10
21-30	45	16	5
31-40	13	7	0
41-50	15	1	0
51-75	4	0	1
75-100	5	0	0
Over 100	0	2	0

*Orders per person or employee per month.

Then we took the figures sent us, put them into a table showing time and percentages based on 100 instruments or 100 orders. We have made up the following table by drawing off from the mass of figures thus produced those plants which had an extremely high or extremely low performance in any bracket, and we also included those which showed an extreme performance in any combination of columns which we thought might indicate something worth looking into.

See Exhibit B on pages 38 and 39.

Now, what good are all those figures?

If I could do it, I think that by visiting the plants which made up the reports from whence the figures came that we would find many and wide variations in the manner in which the operations we all do are performed. As a committee. we are pounding out among ourselves the final questionnaire which we hope to submit to all who returned the preliminary. We have hopes of finding out something of whence these variations spring.

Some of the queries which intrigue us are these: Are there similarities between those who are getting what appear to be the best grades? Is the man who is making an apparently very efficient take-off sacrificing when it comes to his posting and search? Is high speed in one department offset by its complementary operation? Or, taking the contrary philosophy — does efficiency in one bracket indicate an efficiency conscious management, and will efficiency thus be reflected in each figure?

We are not presenting any deductions today. There are figures here which would bear out either of these hypotheses. Perhaps we cannot find—probably we won't find a conclusive answer. We are hopeful, however, that if we can find some evidence of differences in plant efficiency — we can also find some evidence of what makes for differences where efficiency seems to be on a par. One of my very helpful committeemen has suggested that just the nature of the descriptions used would account for extreme differences in the figures we obtain.

Let me at this point thank all those who did the hard work that was involved in getting the answers prepared for our use, and in the same breath, may I urge each of them to take off their coats and help us work out the very detailed questionnaire which is to follow. May I also add that if, after reading what we have done, any of you should be interested in helping us with figures on your own plant, even though you did not send in the preliminary query, we'll send you a copy of the detailed questionnaire upon request.

EXHIBIT "B"

Number Companies Reporting	No. Orders*	Per 100 Insts. Take Off	Post.	Per 100 Orders Search	Typing	% Time Take Off	Post.	Search	% Time Take Off	Post.	Search	Typing	Other
Counties over 500,000 population													
1	0-10	2½	15	200	225	6-	35	59	1.1	7	11.1	7	73 8
	11-20	2½	2	77	172	27	22	51	3.6	2.9	6.9	15.3	51 3
10		0	0	490	280	0	0	100	0	0	53.0	30	17
		80	68	308	1160	31	39	30	19	17	18	66	..
	21-30	14	8	84	20	21	12	67	63	36	20	36	66
6		3	15.5	63	63	9	50	41	.5	14	12 5	16 5	56 5
		11	3	25	50	57	14	29	16	6	3	6	69
	31-60	.	..	..	..								
1	63	1	5.5	39	5	4	46	50	1	12.5	14	1.5	71
Counties 100,000 to 500,000 population													
2	0-10	..	62	667	935	..	27	63	..	6-	10	4	80
		270	90	1300	1100	30	10	60	8	3	18	14	57
	11-20	.5	5.7	156	113	2	30	68	.5	7	16	12	64 5
11		.67	100	122	..	2	44	54	.3	9	11	..	79.7
		2.6	8.5	30	30	17	55	28	1.5	4.4	2	2	90.1
		10	2	90	..	50	9	41	9	1.8	7	..	82.9
	21-30	0	21	120	240	0	40	60	0	83	12-	25	55
		64	64	253	430	33 1/3	33 1/3	33 1/3	20	20	20	60	..
17		4½	1	108	300	40	8	52	13.3	3	18	50	15 7
		2.2	7 75	132	160	28	2	70	1.3	4 5	15 9	20.4	57 9
		2.3	2.3	200	190	10	10	80	80	3.2	26.3	23	44 3
10	31-40	2	4.2	32.3	65	27.5	27.5	45	7	11	7	13	62
		5.1	11	130	180	22	59	19	3.3	88	23.5	31	28
		7.1	6.3	200	434	14	12	74	7	6	36	51	..
3	41-50	.25	1.16	50	106	7	30	63	1.5	7	15	30	46 5
		4.4	13	100	150	7	22	71	2.5	7 2	24	37	29 3
1	116	0	0	44.4	74	0	0	100	0	0	30	50	20

Counties under 100,000														
	0-10	260	18	290	1000	82	5.5	12.5	3	55	8.5	35	..	
		0	21	2500	2000	0	16	84	0	10.5	52	39	..	
		40	200	1000	3000	10	45	45	4	19	19	58	..	
		1.5	3	100	..	16	33	51	1.2	2.5	3.7	..	92.6	
		6	6	111	173	33	33	4.5	4.5	4.5	4.5	9	77.6	
		40	30	800	5400	23	17	60	3	2	7	45	43	
	11-20	67	33	840	3000	6.2	3.1	90.7	3.1	1.5	43	1.56	50.9	
		11½	23	25	298	26	53	21	35	7.1	2.6	31.1	24.2	
55		5	1.5	50	200	39	12	49	57	1.7	7.1	34	51.2	
		1.5	.5	290	236	15	6	79	5	2	27	33	33	
		250	250	100	500	28	28	44	8	8	12	60	12	
	21-30	1.25	8	46	154	8.5	41.5	50	1	6.5	7	25	60.5	
		95	95	44	44	8	8	84	5	5	45	45	..	
52		9	2	135	1300	36	9	55	12.3	3.2	18.4	36	30.1	
		12	20	16	108	30	53	17	5	9	3	18	65	
		50	130	800	600	13	33	54	6.67	6.67	26.67	16.67	43.32	
			2	250	125	0	0	100	30	0	0	16	54	
	31-40	8	8	200	200	11	11	78	.5	4.5	33.3	33.3	28.4	
		34	34	63	500	40	40	20	16	16	8	60	..	
		20	20	10	58	33.3	33.3	33.3	5	5	5	30	55	
		10	3	75	200	37	11	52	11	3.5	15	40	30.5	
19		10	30	100	100	13	29	58	3	8	20	20	49	
		3	7	23	26	2.5	6	91.5	..	..	..	..	..	
		100	0	50	150	90	0	10	6.1	0	10	28	55.9	
		1.1	24	160	200	1	20	79	.4	8.5	33.3	42	15.8	
	41-50	31	31	650	650	20	20	60	10	10	30	30	20	
		4	.6	100	350	27 5	3.5	59	10	1.4	25	90	..	
13		17	140	140	210	6	47	47	.1	12	12	18	57.9	
		2.9	1.7	9	70	32	19	49	2.9	1.7	4.4	35	56	
		190	90	50	150	52	15	33	24	6	16	48	6	
	76-100	4	10	120	17	10	26	64	10	25	58	7	..	
5		7½	15	200	700	13-	25	62	3	5	13	53	26	
		15	15	44	88	25	25	50	10	10	20	40	20	

*Per employee per month

By the time our next convention rolls around we'll have some more figures! We hope they will shed light on how each of us can improve his plant.

So we have developed our operations to the peak efficiency we are capable of, and the problem my directors gave me still remains. Is the expense worth while?

I used to think that there was no question about it. Now I am at least dubious.

You mention prestige—security!

Yes, but to what figure? I've seen 10% difference in costs buy and sell too much prestige and security to be awed by the words. I've found that if the fellow without a plant will do it for less, you can make the welkin ring, but many a customer will desert you for the saving. I wouldn't have believed it if I hadn't seen it happen. "I never heard of a title loss," is often the unguarded reply — even from attorneys.

One of the most interesting replies we received from our preliminary questionnaire was from a gentleman who admitted that he was MR. NO PLANT OF 1927. The books indicate that he is a big success today. Look at his remarks:

> ". . . the story you recount of the young attorney who blossomed out in 1952 might well be me in 1927 . . .
>
> In 1927 I entered into a contract without any appreciable amount of capital (less than $2,500) . . . I embarked upon the title insurance business. At that time, I am not certain that I knew exactly where the Public Record Office was . . .
>
> Thirty years ago I concluded that a Title Plant in this part of the country was not essential to engaging in the title insurance business, particularly, where the **County** maintains a public record system equal to any well maintained plant . . .
>
> We feel that we have a substantial "Title Plant" developed without any capital investment, as these records were compiled when actual title orders were received . . . We use extensively experienced title attorneys, who abstract and examine our titles from public records and furnish us with a brief abstract but a complete title report on our own forms.
>
> It occurs to me that with the advent of modern methods maintained by the municipality and in our efficient indexing system that the value of "Title Plants" in many localities is slowly but surely diminishing . . ."

I found an abstracter in one of the less populous counties in my own state who had ingratiated himself with the Register of Deeds to the point where he had moved in. He had his desk and typewriter right in the office and worked the whole operation of getting out his abstracts right there. He was getting out 100 abstracts every month — all by himself. His time was divided 50-50. Half the time searching. Half the time typing. He has no take off problem. No posting problem. And he has no competitor. Probably won't have, either."

I am sure that the experience of two men is not the answer, of course, and perhaps the experience of many will not be conclusive. But we feel that our industry does need some kind of a yardstick to help its individual members study their own operations. There is no tonic like the knowledge that you are doing a good job. There is no incentive like the knowledge that another fellow is doing a better job. And there is no frustration like not knowing! If there is information which all of us can use, it lies in the experiences of all our members. Getting at it has certainly posed intriguing questions. We hope that we can surmount at least some of the problems.

I want to thank all of the members of my committee for their interest, encouragement, and labors! It has been a splended group with which to work. I also want to thank a sort of unofficial membership who contested many of my ideas, lent their thinking to the problems raised, and

gave of their time. Among those, I am particularly indebted to Mr. John Waddell of the Chicago Title and Trust Company, Mr. Thomas Holstein of the LaCrosse County Title Company LaCrosse, Wisconsin and of course, my former associate, and a former chairman of this Committee, Mr. Leonard Fish, now of the Phoenix Title and Trust Company.

Note: Orders per person or per employee per month had been a rather apparent measuring stick we had used in our own office. It seemed to us to indicate at least approximately how much work had been done in comparing one month with another. Mr. John Waddell pointed out to me that this would not be a fair yardstick with which to compare a company doing largely title insurance work with one doing largely abstract work, since in most cases a title insurance order involves two complete searches, whereas an abstract order usually involves a single search. The replies returned to us were thus weighed by counting each title insurance order as the equivalent of two abstract orders.

Publicity - Advertising

MORTIMER SMITH

Vice-Pres., California Pacific Title Insurance Company, Oakland, California

Recently a group was sitting in on a good old-fashioned business "slinging the breeze" session which was most interesting. It was not only interesting but also provoked considerable thinking and idea examination because, eventually, the ball being bounced around landed upon the subject of public relations.

When it was discovered that one of the folks there was a professional public relations consultant, naturally the questions and opinions became multiple. What really pushed the thing into high gear was when someone asked him, "What is public relations?" "Well," he said, "any man who can answer that one for you completely would be the man of the hour."

(Incidentally, I guess you know that a man of the hour is that fellow standing on the street corner whose wife has told him to wait for her a couple of minutes.)

Then the pro continued, "But I can tell you that when the vast majority of business activities and sales managers come to you to ask that you outline a public relations program for them, what they really want to know is, 'How can I get some business away from my competitor?'" Then as an oversimplified definition of public relations, he said it was "the background music and activity for giving to your business acts the public acceptance which makes your show a success."

There are so many sides to this thing. Different personal preferences may lean **toward** one or the other of them but for a coordinated porgram, we have to lean **on** all of them in their places and t i m e d to fill those places. It is only human nature for a person to do what he likes to do best and to justify as the most important his doing that with very logical arguments when, actually, the only sincere argument is that he just likes that activity. Advertising is one phase. Publicity is one. Salesmanship and its twin, selling, are another; but above all is the development of personalities in our personnel who can beat the drum out of a humdrum job and make it only hum.

Advertising used as a word to head up a ledger sheet in your account books probably has a much more general meaning than you would give to it in this discussion. We are talking now about space bought and paid for in a publication. Space which actually, for a particular issue or for certain particular issues, is your very own to be used by you only advantageously and with some degree of benefit if possible. Now, this will

cost you good money. Therefore, you have to approach the reason for the purchase of this space and its prospective use with objective and not wishful thinking.

As reported to me recently, a large super-market's advertising man was proposing to his girl. He had fully outlined the reasons for and benefits to be derived from this union. He became enthusiastic in his pitch and his training took over. "Remember," he accentuated with a real punch line, "this is positively the last day you can take advantage of this outstanding offer."

That is a good example of the easiest kind of advertising to concoct. It is the kind of advertising which has as its basis a specific message. It is the kind that is generally used by retailers. Its printed messages are directed to a pre-fabricated group of readers; shoppers who want to know every day's best bargains and for how long a time they will have an opportunity to avail themselves of those best buys. Appeal is an essential in advertising and the time limit, the bargain or the money-saving appeals are the best gimmicks of them all.

That kind of advertising is directed to a general buying public, a daily market always in existence; and its results in that market are immediately determinable.

That kind of market is waiting to hear, as reflected in prices of merchandise, what daily competition is doing to the prices of that merchandise.

In our title insurance industry, however, any publication advertising program has to be examined very carefully to ascertain its potentialities. In the first place, our product has no fluctuating daily price. Our market is not the general public but is made up only of definite segments of that general public. Our dealings with the public are initiated by those segments. The business possible to be obtained from any one of those segments can be pre-determined by us because the records of the business being originated by them are the very records which we keep for our own plant use. We don't need a general market survey because we make such a survey for ourselves every day. Probably many thousands of good, hard-earned title company dollars have been spent upon advertising space just because it was thought that the results were bound to be large because the amounts spent were large. For, while all of us know that the protection of a title insurance policy is a very real bargain for its insured, that information is interesting at any given time only to two classes of people. The first class is those who have had to resort to its protection to make themselves whole after a title loss, and this class is only interested according to the currentness of their situation. The second class is composed of those who, because of an impending real estate transaction, are going to need and are considering that protection.

An account of a visit of a friend of mine to a psychologist illustrates what the general public not falling into either one of those two classes might think of title insurance company ads in an ordinary vein and in an ordinary publication. The good doctor said to my friend, "Now, Mr. Jones, if an automobile started from the lower end of Broadway at 10:00 in the morning and traveled at a speed of 38 miles per hour, when would it meet a car traveling in the opposite direction along Broadway from a 10 mile distance traveling at a speed of 34 miles per hour?" Well, our friend scratched his head, thought a while, and finally said, "Who gives a damn?"

So, from a title insurance company standpoint, printed language which we think is pretty good is not necessarily good advertising. Not because there is anything wrong with the publication's circulation or, as a matter of fact, with the message sought to be displayed but just because there is no spark to kindle because of the non-existence of public readiness for acceptance of that message.

So, as to straight publication space advertising in our industry, program

it carefully. Probably the general public doesn't care about your plant but they do care that you, as a financial institution, are community spirited enough to advertise your support for the hometown ball club or any other civic enterprise interesting to them. For the title insurance industry, in order to be effective, advertising of necessity should and must be of an institutional nature, correctly steered.

Advertising and publicity are two distinct avenues. In advertising, you can say that you are good. The public, if any are interested, would think you very foolish if you did not—because you paid for the right to do just that. Publicity, however, is the use of an approach to the getting of your companies' names before the public as part of newsworthy items read by the people of a community. Generally, this is done by the people of your companies becoming associated with worthwhile projects in the area. News is to inform and not necessarily to impress, but if the information is good and you and your business affiliates are connected with it, the impression will be good, too.

Thus, the more that your names become mentioned in the affairs of your areas, the more the people will associate you and your companies with leadership in those affairs which, after all, are their affairs and something in which they are interested. A natural result over a period of time is for the general public to think, then, of your companies in terms of leadership, also.

Purposely, we differentiate between **salesmanship** and **selling.** The reason for this is to emphasize the fact that while most of us employ people for selling, we very often forget that what they are going to sell, apart from our technical skills, is the quality of salesmanship inherent in those performing those skills. Salesmanship is a characteristic and selling is an activity. Salesmanship is a wonderful asset; selling is an art and if the two go hand in hand, then, as the teenagers would say, "It's the most!"

Many people are possessed of the characteristic of salesmanship without realizing that they do have that gift. They are just nice people who enjoy being nice to other people. Those are the folks who, without any effort and in many cases without even knowing that they are doing it, make a friend of everyone they meet either socially or in business. They are comfortable to be around. In our business, they are the interested ones; sincerely interested in working out our clients' problems even if, in the doing of that, they might earn more than they are presently being paid for.

I know that many of you have heard the illustration I am about to make but it won't hurt to hear it again, because it is a perfect example of the fact that the peculiar thing about the attribute of salesmanship is that it very often is evidenced in the smallest ways.

They tell of a salesgirl in a chain candy store who always had customers lined up waiting for her while other salesgirls stood around doing nothing. When asked about it, she replied, "The other girls scoop up more than a pound of candy and then start taking away. I always scoop up less than a pound and then add to it."

That young lady obeyed all the company rules—wasted no merchandise. She had been hired to work for the company and did, but, as far as her customers were concerned, they liked her because she was 100% on their side in their opinions.

I am absolutely certain that many of us here today have, more than once, waited for particular sales people because they have impressed us in the past. We probably have passed up others who were not busy and have waited for the busy people because we were impressed with the fact that when they finally did wait upon us we would be at home in their care.

In our title insurance companies' office, the size of the group of service employees who, either knowingly or unknowingly, are just nice to people largely determines the degree of success of our actual selling personnel.

The actual selling or leg work boys have to be backed up by the salesmanship of the entire organization.

The legwork selling of anything requires enthusiasm, thought and hard work. While, in the title insurance industry, our actual so-called sales forces or groups of contact men are fairly small in relation to other businesses who employ salesmen to sell a product, our groups in many cases are the only groups we have which evidence to the public whatever aggressive selling we do. Of course, by saying "public" we again mean only those segments of the public which have a constant interest in our business because they use our business as an adjunct to theirs.

Yet, with what in the way of a sales kit do we provide our so-called salesmen? Frankly, we probably do not supply them with anywhere near enough. What do they have by means of which they can demonstrate that the product which they are selling is not only satisfactory but desirable?

The only thing they can do in and of themselves is to build up personal friendships. This is done either on an entertainment basis "being a good guy" or by being ready, able and, most of all, willing—under the guise of "service," to act as a general messenger boy for any potential client or group of potential clients.

Therefore, all of this legwork activity has to be conducted so that what we do sell to our prospects is the definite impression that our effort is directed toward their doing of more business and to the making of more money by them. Then they reward our salesmen and the companies for whom they work by purchasing from them the title insurance necessary and incidental to that program of those prospects making more transactions and more money.

Your salesmen, however, can only make and convey the promise of an impression. The factual demonstration of that impression has to be made by your entire organization.

If your organization has 500 employees, your public relations program has 500 participants. If you have 5 people, 5 are in your program.

Basically, what we are really discussing is the act of actually competing for business. This is a real old-fashioned American pursuit which so many people today describe as "public relations." This is an activity about which so much is said and so much is written under the entitlement "public relations" as if the term "public relations" were a cure-all for that old-fashioned competitive spirit based upon friendship.

The best escrow officer that I ever knew or of whom I have ever heard didn't belong to any clubs, didn't attend any meetings and didn't do any entertaining unless it was strictly on a friendship basis. However, he built up for himself and his company the most loyal group of clients that ever existed because every one of them felt that while he drew his salary from his company, he was nevertheless working for them to close their transactions.

So, I feel that there is no so-called public relations program which has ever been designed or which ever will be designed which will be successful unless we rely basically upon ourselves for its success rather than upon a program of mere words. We are going to have to consider good public relations the inevitable **result** of doing our work well rather than it being something which will **cause** us to do our work well. It is an end and not a means.

Therefore, our own organizations must have put over to them the fact that they are our public relations program. This means that call it what you will, the program has to become a matter of the education of our entire personnel.

They have to realize that they must be sincerely friendly with every client or customer or potential client or customer and that they have to evidence that friendship in the jobs immediately before them every day.

Of course, different personalities evidence friendships in different ways.

Some clients like the extrovert type; some clients want people serv-

ing them to work and not talk to them unnecessarily.

I was in a barber shop recently and the barber in the next chair called a waiting customer saying that the customer was "next." The customer walked up to the chair and before he sat down, handed the barber a quarter. "Well," said the barber, "this is the first time I have ever received a tip in advance." "That's not a tip in advance," said the customer. "That's your hush money."

One of the very first things that we must teach every **young** person in our business, and the thing which must constantly be **renewed** in the minds of those of us who perhaps are not classed as young any more, is that when we use that old overworked word "service" we have to back it up with that much underworked act of "service." We may like our own business but the only things that our clients like about it are what it does for them.

More of our promising young title people have to learn that it is not their ego that has to be rubbed but the personality of the customer that has to be polished. If your escrow or title officer is going to say yes, he should say it promptly and in a manner to show his client that he is saying yes not because he, the speaker, is such a brain but because he knows of no other client to whom it is so very important to say yes.

Saying no is something else again. Too quick a "no" can sometimes mean no—more business. Every time your escrow officer or title officer or anyone else in your organization fights with management for a "yes" to pass on to his client, he is doing what we want them all to do—fight for business.

So, ladies and gentlemen, let's continue our advertising but direct its goal and effect. We should keep on joining and being active in the worthwhile groups in our communities thus rubbing and even, at times, bending our elbows with our fellowmen. We will keep our leg work sales forces full of spark and energy. We hope that all of us will educate our entire staffs to recognize their individual importance in this competitive scheme of things.

We want to see the promised land of perfect public relations. Good, but please remember this, to get to that land—we, ourselves, have to take the trip.

Thank you very much.

Report of Judiciary Committee

F. W. AUDRAIN

Chief Counsel, Security Title Insurance Co., Los Angeles, California

There are about sixty members of the Judiciary Committee. Of all the readers of Title News, this group probably constitutes the most constant reader group of the Committee's pages that appear in the publication during the year.

I have had fine cooperation from the Committee members and thank them for their letters and suggestions.

As Chairman, I have selected for Title News the material in cases and comment that crosses all state lines and which reasonably has entry into your offices.

In the offices of counsel for most title insurance companies, there are files which contain, as do my files, copies of the cases we have found involving title insurance contracts or guarantees. Now and then we come upon and make a copy of a brief or trial court judgment, not appealed from, which also deals with a title insurance contract. This material, properly organized and periodically examined, can have several uses.

Some of these cases have your company as a party. Did you, and do you, continually wring value from that particular experience? For ex-

ample, in the training of title employees? Another aspect of a particular loss experience is to be sure that senior employees or other officers of the company do not get a fixation from that experience so as to overlook the need on their part for the plausible estimate or decision that, while an unfortunate experience came their way once, it has not recurred or may not recur, and hence, let's not ride that fear overly long. I'm sure that I'm not alone in having able employees who can't see or take good risks because their vision is still fixed on that serious loss in their office twenty years ago.

We have a man connected with the Company who lives and concerns himself with the "it could happen" world. In his private affairs, this might be plausible. It would be an intolerable thing in my office. Having been a lawyer with my Company for nearly twenty-four years, I have even a better basis than this man for being fearful of the "it could happen," and we do notice that possibility in the many thousands of risks submitted to my men and myself every year, but we go on to the more important and primary inquiry, "Can we find a way to take this risk safely for our insured and for my company?"

Another feature I find important in having as complete as possible a bibliography of all materials and cases on title insurance is that I have had a number of occasions to engage counsel in communities outside of Los Angeles to defend my Company where the action is on the policy and it was an instance where I wou'd be exercising bad judgment to accede to the demands of the insured rather than to litigate the issues.

I have some friends who do not agree with me. Each of us for his company is convinced that his respective view on how to cope with the demanding insured is the best view. It would serve no useful purpose even to try to develop this theme, i.e., to be sued or not to be sued, for that would have as little promise of any gain as to try for an agreement over the social desirability of spendthrift trusts. This is a comparison I purposefully make to enable me to quote a footnote from Nossaman on Trusts, wherein he says concerning the unusually strong objection of Professor Gray to spendthrift trusts: "To a generation which has survived the Fascist threat to civilization, there is a certain nostalgia in recalling a peaceful, almost pastoral time when so slight an issue as the harmless spendthrift trust, engaging the attention of one of the greatest minds of the age, seemed a major problem and the portent of social upheaval."

To these outside counsel, I furnish relevant and useful material on the title insurance contract. The likelihood of their opponent having so much material at hand is remote. Sometimes this material in his hands has a beneficial bearing on that part of the attorney's detailed statement of his cost of office, court, and conference time devoted to the case I assigned to him. In addition, such counsel are often grateful for this kind of help.

I have also had the experience of having outside counsel find in our printed form of contract, in a title insurance custom or in the case material, a point of view, a risk area, or some other feature not therefore referred to in the cases or known to me and one which I had not heard mentioned by my friends who are counsel for other title companies.

I must also mention, however, without any elaboration, those cases where my Company's best interests have been served without any ethical considerations being strained, in having counsel defend a case and my furnishing him no material whatever. If he thinks strongly that he can win the case and I believe it should be won, and it would confuse him to have my materials, then they never leave my office.

I mention here a further and a perhaps controversial point. In my opinion, it is ultimately damaging to the morale of employees and officers to adopt and without exception apply the rule that the insured is always right and that you always finally knuckle under and pay him. There are insureds who had an extreme dis-

like for you when they became an insured. They continue to have that attitude, and if you paid them in full on an outrageous claim, their attitude would then become even worse.

I think when you have a conviction as to the merit of your position, that a vigorously defended lawsuit has its place in our lives. We have won cases and have had the opposing party and his counsel nevertheless thereafter place title orders with us.

I have noted from time to time that some counsel for an insured, after having made his presentation of the merits of the insured's claim, adds to his argument that he personally has been a source of title business and suggests subtly, or not so subtly, that failure to accede to his recommendations to you will involve his own economic reprisals. When this is the added argument, it prejudices the discussion and can be an interfering factor in getting to a disposition of a claim.

Another value of having a complete assembly of the cases and materials relevant to our contracts is to afford counsel a better vantage point from which to judge his own company's experience.

I have in my office either the full file or a sufficient distillation of the file of all the claims of over $1,000.00 for my Company since 1920. I have had these materials studied so as to know what part of the loss experience is due to our being in the insurance business, i.e., true insurance losses, and what part was due to our own error, which, whether a plant or searching error, was a human error. The costs of litigation show in the summary, and the kinds of risks and errors involved.

There are times when this assembled experience affords the basis on which I decide to abandon some prior and more conservative position and thereafter assume a risk not theretofore taken. The fact that insureds or their counsel do not know your experience with some risks, and will therefore reluctantly abide by your requirement to take some expensive or delaying step, does not justify perpetuating that conservatism if you can develop a reasonable conviction that situations formerly feared are not going to lead to unwise exposures. I recall one title man in my state who called me every three years to see how I was making out on a change of practice I had adopted for my Company. His predecessors, probably rightly for their time, had viewed the former practice a correct doctrine. After ten or twelve years and three or four such calls, he felt that my statement of no adverse experience was a valid factor in making recommendations to his own company to modify their practices.

Referring briefly back to a knowledge of the litigation and loss experience of my Company, I have found a difference of opinion among title men as to whether to speak or not speak of the loss experience of their company. My view is that this aspect of our business may be spoken of frankly, without parade, and often be used to influence, perhaps even slightly, an insured who, while a regular customer, is inherently a critic.

We are not like the other insurers who have elaborate actuarial information and for whom losses are to be expected in predicted percentages. We make every effort to prevent loss occurring to our insured and to ourselves. In other forms of insurance, the insured, by his own knowledge and by his broker, is regularly afforded an opportunity at yearly or longer intervals to increase his coverage. Not so with us. We are also too sophisticated to indulge the idea that our insureds know us and our coverage like they do the other policies they carry. We seldom get to explain a policy to an insured. His values go up and although there are few total losses on our policies, yet our policy amounts remain the same, while inflation and the insured's improvements increase his value.

Under the circumstances, considering our advantage, in our knowledge of the insured's ignorance about our contracts, I think we have a moral obligation to serve him the best in title protection. However, I remain consistent here with that which I have previously said about being wil-

ling to look up more often, and not always have our eyes glued to all past practices.

The fact remains for all of us that there are title insurance losses, by forgery and other causes, and far more often the losses due to our own people. Some insureds get the point that if we, with our trained people, sustain these experiences, then consider what a tragic mess our friends would have on their hands in this world of paper—thousands and thousands of documents—if they sought in their own way to determine their titles.

For your critic—maybe one who likes to needle but is also a regular customer—do not hesitate to remind him that it's not in the nature of our business to expect estimated percentages of loss as do other insurers. It's illogical to be critical of us on the basis of comparing us with other insurers. Face up to this subject—be articulate.

I have several specific matters to mention. Those of us whose libraries include American Law Reports recently received Volume 60. A New Mexico case is reported therein, which has as its subject the measure of damages suffered by a mortgagee whose mortgage was executed by a maker who forged paper to make an apparent record title. The land was agreed to be worth $1,200.00, and the loan policy stated a liability in excess of the $6,000.00 due on the mortgage when the irregularities were found. The court found that since the land, the security, was worth only $1,200.00, the mortgagee, had his paper been good, could not have had a loss in excess of $1,200.00; i.e., had he ever, in any event been able to get the land by foreclosure.

The case is the incentive for a 30-page annotation discussing the general field of damages to be recovered by insureds under title insurance policies.

Referring again to the annotation, I call to your attention an increase in interest in the subject of the liability of insurers over and above the face amount of the policy. It has been something of doctrine for some title men to feel that no matter what happens by reason of the claim of an insured, the policy limits are the maximum exposure. In other fields of insurance, this is not necessarily true, and in an important recent case in California, our Supreme Court dealt with a policy of $10,000.00 where the carrier refused the opportunity tendered by the insured to settle for $4,000.00. Thereafter that carrier was ultimately held liable for $25,000.00, the full amount of the judgment against its insured.

This is in the field of excess risks and there is a sharp difference of opinion as to whether this kind of case law can reach a title insurer. My comments are—first, it has happened to a title insurer, and second, I see no reason why this rule applicable to other insurance should not apply to our contracts.

For my company, there have been situations where I have declined to defend because I felt that the policy did not cover the claim adverse to our insured. But since I now see the risk that a trial court may find as a fact that I declined the defense without good faith, which would be a breach of the covenant to defend and thereby give judgment against my company over the policy limits, I am going to make my decisions in the light of this additional peril. My views are tentative on this matter, for I have not yet fully studied a brief given me on the subject by one of my men.

Some of us attended the recent American Bar Association meeting in Los Angeles. It was of interest to hear able and informed men bring to the general bar membership a discussion of United States tax liens and carefully and fully state problems that have been familiar problems to senior title men for some years. By and large, title insurance companies have found a way to take care of themselves in this field, and only more recently has the impact of these liens been so prevalent as to engage the interest of general practitioners.

Excellent and exhaustively prepared printed materials were available on this subject at the U.S. tax lien session, but I was pleased to be a mem-

ber of a group of men, such as many of us here, who, in a continuing and very practical way, have had a lively and constantly up-to-date interest in this field. In the course of a year, many issues of the advance sheets of the Federal Courts carry tax lien cases. All title companies should now be completely current in this area, and with good communications, all other title men get the information they need in this field promptly.

My associate, Bruce M. Jones, was, as usual, a major help to me as Committee Chairman. Again I want to tell the men on my Committee of my appreciation for their letters and lively interest.

Report of Committee on Advertising and Public Relations

JESSE M. WILLIAMS

Vice-President, Louisville Title Insurance Company, Louisville, Kentucky

The previous Committee on Advertising and Public Relations recommended to the Board of Governors that the position of Public Relations Director be created on the national staff of the American Title Associatoin. The proposed functions and responsibilities of that position were detailed in the previous Committee's report.

The principal recommendation of this year's Committee is to re-affirm the position taken last year, and recommend most strongly to the Board of Governors that a person be found to occupy the described position in National Headquarters. It is felt that a committee composed of title people scattered around the United States is inadequate to cope with the necessary detail involved in advertising the American Title Association and the product and service of its members. It is not to be doubted for a moment that such product and service should be as widely advertised as possible, and that in the field of public relations our Association and the honor of being a member of such Association should be emphasized at every possible moment. This can only be done by an individual spending his full time, and cannot be done by a widely-scattered committee. It seems to us, that the future function of this Committee cannot reach fulfillment until it can act in an advisory and policy-making capacity to the Public Relations Director and to the Executive Officers in our National Headquarters.

We do know that effort was made during the past year to secure the services of a competent individual to perform these functions, but such efforts have thus far not succeeded. We realize that a satisfactory individual cannot be obtained in a short time, but we do recommend that the search be continued with renewed effort.

In conjunction with our recommendation as just outlined, we further recommend that some continuity of membership on this Committee be established, such as setting the membership between eight and twelve individuals, with two members being relieved each year and two added to take those vacated places. By such a procedure, the Public Relations Director and the Committee could formulate plans on a long range basis. In the absence of continuity, little can be accomplished year by year to carry on the work of a previous Committee.

I would like to express my sincerest appreciation for the cooperation and assistance of all members of this year's Committee. It has indeed been a pleasure working with them.

Jesse M. Williams
Chairman
Robert W. Stockwell
Ross M. Carrell
Stewart J. Robertson
Budd G. Burnie
James M. Hart
Fred M. Timberlake
Harold W. Wandesforde

Those Who Live in Glass Houses

WILLIAM GILL, SR.

President, American-First Title & Trust Co., Oklahoma City, Oklahoma

That was the second best introduction I have ever received—the best one was at a Texas Title Convention when I was forced to introduce myself.

Some years ago I stopped at a cross road filling station in eastern Oklahoma. The attendant gave me change for a twenty dollar bill in pennies, nickles, dimes and quarters. He said, "Get out of that car, mister —you and me are gonna celebrate— ain't ever sold so much gas before." I wasn't interested, but a shotgun pointed at my middle was persuasive. He handed me a tin can full of corn whisky and said, "Now drink it." I didn't argue after looking at his gun. "How did it taste?" he asked me. After recovering from an interior explosion, I truthfully muttered, "Horrible — tasted like hell." With a chuckle and look of grim determination, he remarked, "That's what I was afraid of—now hold the gun on me while I take a drink." I am not going that far with you good people today. I will assume the privilege of discussing in perhaps a rambling fashion, a difficult subject in understandable language and in doing so, recognize your American right to disagree in whole or in part.

Preliminary to more pertinent remarks, let me say I started in the abstract business in a town of less than 2,000 population in 1917. In 1925 I accepted employment with a city title company engaged in both the abstract and statewide title guaranty business. I have been active in my state and national association and have attended many state, regional and national meetings. Fortunately, I have a few title friends left and a large number of title men and women acquaintances. The many honors you have given me are appreciated. I have the greatest respect and admiration for the title men and women of this nation. It is natural to want to discuss some of the things observed. Doubtless, my conclusions and remarks will not coincide with yours—and that is to be expected.

During my years of rambling around, I have listened with interest to a discussion of title industry problems. I have witnessed many changes and am fairly conversant with the viewpoint of the abstracter, the title insuror, the title examiner and of more importance, the customer or the public. The type of title evidence furnished varies in some areas. I am not prejudiced, nor am I particularly interested in the abstracter, the title insuror or the title examiner as such. My interest is all inclusive. Each is a part of and together constitute the title industry, but neither is the "whole show" in the overall picture, and it might be helpful to pause long enough to digest that statement.

In my official company capacity, I have carefully watched developments, changes and trends—some of which I don't like, but, like you, must accept. It has been profitable and has broadened my viewpoint to mix and mingle with other title men and women, exchanging ideas and keeping posted on what happens elsewhere.

I believe the public has the power to control the type of title evidence it wants—be it the abstract, title insurance or a record search by the attorney. As title people, it is foolish to ignore fundamental facts and time does not permit expanding that statement.

Ladies and gentlemen, we are aware of a small degree of un-necessary ill will and friction existing between some of those furnishing different types of title evidence. Let's not make a "mountain out of a mole hill," or be so foolish as to "stick our heads in the mud," and say, "Friction is of no material consequence and not injurious to the title

industry." I believe a majority of our members have no just cause to complain. There does exist, I regretfully say a small minority with sincere and honest differences of opinion, which creates unwholesome atmosphere and make it difficult to engage in more constructive projects beneficial to the entire industry.

My affiliation with the title industry proves to me that some of our abstracters and title insurance members are entitled to complain regarding unclean competition and unethical practices. Those engaging in such practices are hopelessly in the minority. I suppose most of us, including myself, have at times fallen short of being "100 per cent lily white."

Unfortunately, some of the existing friction and ill feeling comes from "wild rumors" not always supported by facts, and some of it comes from a few who are unable to accept inevitable competition. Minority groups can cause a lot of dissatisfaction. The operation of certain Labor Unions is concrete evidence of the damage which minorities can do, bringing disrepute to the entire industry.

It seems to me, ladies and gentlemen, that for the good of the entire industry, more complete unity is highly desirable. Let me repeat, "the public has the power to control the type of title evidence we furnish."

The title industry—not the individual abstracter, title insuror or title attorney — is important to the economic life of America. The basis of our national wealth is real estate and the title industry makes it possible to safely consumate realty transactions. We must continue to remain numerically and financially strong.

When I accepted a spot upon this program it was with the distinct understanding that my remarks would be of my choosing. My love for the title profession and those engaged therin is so great I would not intentionally offend anyone.

I have heard — and perhaps you have also—the silly rumor, and in some instances the belief, that the American Title Association is operated for the benefit of title insurance companies. Some of the misinformed title insurance company representatives have said that the National Association operates for the benefit of the abstracters. Some few "sore heads" have charged that it does nothing for either group. A few ill advised minds think a little group, or a little clique "are in the saddle." That kind of "silly chatter is a lot of hooey and bunk." Those who have been and those who are now active in the American Title Association have "no axe to grind." Their sole and only interest is to give the members the best possible association services. It's rather difficult to satisfy approximately 2,400 rugged individuals.

The American Title Association seeks to serve all of its members. Our Executive Vice President, Jim Sheridan ranks high in government circles. His outstanding work in the nation's capitol and elsewhere has been invaluable to the industry. He commands the confidence and respect of life insurance companies and other investors operating in various areas. He represents the entire industry. Every effort must be made to retain his services. His thorough knowledge of our business and years of experience have proven profitable to the abstracter, the title insuror and title examiner.

Our Secretary, Joe Smith, is a likeable and capable young men, with a fine educational background. He is rapidly becoming a more valuable association asset. His pleasant smile, friendly manner, sincerity and good judgment create a most favorable impression. He too, is a valuable association asset to be retained. And, we have some very capable young ladies in national headquarters.

The American Title official family, from top to bottom, is experienced, capable and sincere. The membership of the Board of Governors is representative of various groups and areas; its integrity and desire to serve faithfully cannot be questioned. Many good men and women serve on various committees and devote many hours of valuable time to our business.

The Past Presidents Council meets annually and acts in an advisory capacity with representation on the Board of Governors. (With one exception, all of these past presidents are a valuable association asset.)

Add to this well-balanced frame work the remaining thousands of fine Christian men and women members and we have a trade association worthy of our pride and enthusiastic support, which commands the respect and confidence of those we are privileged to serve.

Ladies and gentlemen, this is your association. No group, clique, company or companies run or attempt to run it, except those conscientious men and women who constitute the frame work, to whom we, the members, have delegated a responsibility. The same is true of our many fine state associations.

I dislike to think, or have any of you think, in terms of title insurance-vs-abstracts. A heart, I am an abstracter, but I believe public demands are superior to my desires and wishes. While my company is not in the slightest interested in operating outside of Oklahoma, I realize my thinking must extend beyond the borders of my state, because title practices and public demands in other areas do affect and influence my company's operations and help us in making decisions.

I have the greatest respect for my competitors (sometimes with a few minor mental reservations). If we cannot trust and work with those engaged in the business of furnishing title evidence, just how much public confidence and respect are we entitled to command. There is no reason or justification to be "peeved or disgruntled" because one person believes in and furnishes one type of title evidence and the other something else. Verbal blows and outbursts never create competitor unity. To practice good public relations, we must consider not only the public and the customer, but also the competitor. He's the guy we must live with and he can cause a lot of grief and misery to come our direction.

It would be helpful, I believe, if those engaged in abstracting, insuring and guaranteeing titles and record searching title attorneys could reverse their positions and honestly and sincerely consider the problems and thinking of all those who furnish a different type of title evidence. Maybe it would result in a better understanding. Could it be possible that some of us have forgotten the Golden Rule. Or maybe we aren't sufficiently interested in the other fellow's problems and viewpoint. Are we blinded by our own backyard prejudices, customs and practices? Would a little more religion in business be helpful?

Momentarily, "a stone may be thrown through my glass house" when suggesting that title industry problems are never solved by "cussing each other" or promoting or securing the enactment of legislation designed to curtail or retard the operations of a competitor. The only real solution of differences is in the hands of the individuals who comprise the title industry.

Would it not be better and wiser for the disgruntled abstracter and the disgruntled title insurance company or title examiner to sit down calmly together in a friendly, cooperative, realistic, live-and-let-live atmosphere and discuss existing problems. By working closer together and doing a better job of policing our actions, plus some badly needed educational work within our ranks, the proclaimed high standards of the title profession can be raised to a still higher level.

I do not believe any good comes from open forum discussions on the convention floor, where charges and counter-charges, meritorious or otherwise, are recklessly in anger hurled back and forth in a "to-hell-with-you attitude."

Oklahoma's famous Will Rogers once said, "I don't have time to dislike anyone." I subscribe to and commend that philosophy to you.

For years we have heard rumors and know of actual instances where certain individuals outside our ranks with "socialistic leanings" occupying positions of trust and authority have

endeavored to promote the encroachment of the government into the title field. This threat should never be carelessly brushed aside or forgotten.

Many changes have taken place in the title industry during the past 25 years. Some abstract states have adopted uniform certificates, uniform system of abstracting, programs for better training employees, etc. The Home Owners Loan Corporation was instrumental in some reforms. One of these days we may well have a government agency which will make the HOLC look like "peanuts," likewise making demands.

Yes, ladies and gentlemen, I recall attending many meetings of abstracters which were of the "knock-down and drag-out type." Some said, "we don't need uniformity — leave us alone—we are doing alright." Some wanted to give complete coverage in the final certificate and some wanted to assume as little liability as possible. Some said and still say, "We don't need any abstract license laws or legislation." This great America was born and has continued to grow and exist upon diversity of opinion, new ideas, more unity, public demands, etc. Today almost complete harmony exists among the abstracters. The abstracters themselves found the solution to many vexing problems of 25 years ago. Competitor friction has almost completely disappeared within their ranks.

On the title insurance side of the house, I remember when each title insurance company had its own form of policy, including conditions and stipulations. Company "A" severly and openly criticized company "B" because it bowed to public demands and sought to increase its coverage. The final result was the adoption—by customer demand—of the standard mortgagee policy. For several years a committee has been attempting to draft a uniform owner's policy, and some progress is evidenced.

Both the abstracter and the title insuror have in many instances been forced to improve their product because of public demands or because of competition. Over a period of years there have been conflicts within our organization—there have been charges and counter charges. Today's criticism and friction of one segment as against the other is just another example of the continuing picture which exists always in a free society where competition lives, where competition is truly the "life of trade," where competition is just another one of those glorious things we have in free America.

To some extent, at least we are concerned with conflicting statutes regarding marketability of titles, Bar Association title examination standards numerous curative statutes. These things do effect gross income and net revenue of the abstracter, title insurance companies and title examiners. Yes, ladies and gentlemen, we will always have a common cause to unite and stay united. The title industry has one big objective—to furnish the public excellent title evidence, upon which the public can rely. We are all in the same business of handling the requirements of the public in its demands for adequate title protection.

Back in 1925, after I became somewhat familiar with guaranty of titles and title insurance, my first reaction was—"A very bright, but unsuccessful idea has been hatched—the public will always want abstracts." Honestly, I didn't know there was any other type of title evidence used. After acquiring more knowledge and later, after meeting and talking with title people from other states, I began to watch and study quite apparent trends. I reached the conclusion that the organizers of my company were rather far sighted to be engaged in the business of making abstracts and issuing title guaranties. Closely I have watched the title picture in Oklahoma and elsewhere. I now realize how foolish my thinking was in 1925, and I believe the abstract is "on its way out in Oklahoma, and Oklahoma is no exception." It is quite common for an abstract in Oklahoma City, Tulsa and other localities to contain as many as 500 to 600 pages. The titles to some of our large lakes and reclamation projects are so bulky it's impossible to furnish

the U.S. Engineers with abstracts. This means there is made a "skeleton abstract" or title attorneys search the abstracters records and in some instances the public records and, based upon such search, title certificates are furnished. This practice is shocking and revolting to abstracters in a so-called 100% abstract state, but contrary views and griping doesn't change the picture.

In recent years, due to Oklahoma's tremendous natural resources; wonderful climate; unbelievable, staggering scenic beauty; unexcelled industrial possibilities and unbeatable (?) university football team; etc. thousands of people have migrated into Oklahoma from California, Florida, Texas, "Yankee Land" and various other barren and uncivilized spots. These realty investors give us a "mentally retarded look" at the mention of an abstract. "Dumb clucks" that they are, they inquire "what the hell is an abstract?" We ask, "what do you want?"—and they go away happy because they got what they wanted—a guaranteed title. Since the abstract still exists, we store it in our basement for the customer, because it's too bulky to carry in the trunk or put on top of his 1941 model car.

I'm not worrying about the future of the abstract in Oklahoma—in our office the customer gets his choice. If we didn't give him what he wanted, he would get if from a competitor. The abstract or the abstracters records will always be the best source of better title evidence.

I am not trying to sell you abstracters on title insurance. I am giving you the picture as I view it. Whether you represent a title insurance company or not is your own business. It is interesting to note, however, that the trend toward title insurance is becoming greater annually. A search of the American Title Association National Directories for the past 25 years discloses a steady increase of abstracters who have secured a title insurance connection. That, I believe, is good business and is proof of the abstracter's progressiveness. Unless you are able to give the customer what he wants, he's going to get it from some other source.

There are two domestic title companies and 5 non-resident title insurance companies operating in Oklahoma—that's 99.98% too many. These competing companies are a valuable asset of the title industry, but a "pain in the neck to me." Seriously, they fill a need. Frequently, throughout the United States, title companies must jointly assume a risk where the amount is larger than one company could or should carry. It was necessary, in one instance, for more than 35 title insurance companies to jointly assume the liability of a very large risk.

Some years ago I visited a life insurance company in Hartford, Connecticut. I was shown what they called their "abstract room." It covered two and a half floors of a large building. The General Counsel told me that never again would they accept an abstract. It was easy to see why they reached this decision. Those of you who are not prepared to take care of the customers' needs may not know it, but very few loans are being made without a mortgagee policy. Time won't permit exploring the reason for this, but believe me some of our abstracters are needlessly loosing additional revenue. You abstracters are just as important, or can be, in your locality as the million dollar company is in its area. The fact that you pay less dues does not, in my opinion, decrease your value to the industry. You may be a small cog in a large piece of trade association mechinery, financially and otherwise, but in your locality you are the fountainhead of title information.

If and when the public demands a different type of title evidence in your county, there isn't any reason why you will be forced out of business. The important thing is, "give the customer that he wants," because if you do not, he will be forced to get it from some other source. One great agricultural and livestock state—and it's none of my business—prohibits title insurance, but that prohibition doesn't stop the "bootlegging of title insurance." This fact is

convincing evidence that public demands will be supplied one way or the other.

There are a number of contributing factors to the rapid growth of title insurance. The principal one being the proper safeguard of realty investments. There is nothing I would rather do than make abstracts. It's a fascinating business. Fascinating because you don't know what will happen from day to day; fascinating because it satisfies the gambling instinct which most of us possess, but don't always admit. There is something about the abstract business an abstracter loves — something that takes hold of you and makes you want to carry on. Yet, ladies and gentlemen, I cannot argue, nor do I now believe as I did 25 years ago, that the abstract, no matter how carefully and accurately compiled and examined by the best title examiner obtainable, is as safe as an insured or guaranteed title. Watching developments as I have, I am convinced the public is more and more reaching the same conclusion.

Certainly title insurance companies are exposed to great risks and pay unbelievable losses, but that's what they are paid for and expected to do. For hours I could recite instances of claims filed, titles defended, lawsuits settled and losses paid by my company, and in most instances the causes of such claims, suits and losses were not and could not have been discovered from an examination of the abstract.

For the sake of argument, let's admit a title is perfect of record. Let's admit abstracters, being human, make mistakes. The question in the mind of most prospective buyers and lending institutions and others is: "What protection do I get should an error occur which would cause a partial or total loss of the capital invested?" Don't kid yourselves—investors do think about possible losses. Stories which appear in local papers regarding title litigation has increased that worry.

Please overlook it if I get too close to home. What protection does the customer get in your state when he relies upon the abstract? Don't be offended at my unpopular, personal answer to the question. "The protection against loss is no greater than the financial responsibility of the company or individual making the abstract, plus the amount of bond or abstracter's liability insurance, if any, which is carried." "And, even then, no protection is given for possible losses from matters not disclosed by the record."

Do whatever you wish in your own state, but it is an unhealthy condition in any state where anyone—regardless—can hang out his shingle overnight and become an abstracter of titles—and in the same manner take it down at will. No title plant is necessary, no bond required, no nothing, but the desire to engage in the abstract business—not even an office, a desk or invested capital—and the abstracter doesn't even have to be a resident or a taxpayer of that state. Such conditions do exist in some states, and creates, I believe, a rather bad situation.

Let's be honest with each other—can you blame the public for wanting something better. One thing, I believe, that makes America great, that makes America grow, is the fact that its people are never satisfied—they are looking for the best, whether it be title evidence or something else.

A survey to find out to what extent the abstracters and title insurors are taking care of the customer's needs would prove interesting. I did this in the States of Oklahoma, Kansas, Texas and Iowa. The viewpoint of the customer in those states was enlightening and it gave the industry something to think about. Hundreds of letters were mailed to realtors, banks, attorneys, savings and loan associations, mortgage companies and others. A return stamped envelope was enclosed. The customer was asked to frankly tell about his experience with the title industry. He was assured his reply would be confidential. Many complimentary letters were received—a few not so complimentary. Some excellent suggestions resulted. Regardless of the contents of

the letters, we found out what the customer was thinking. It was interesting to note the customers had about as many ideas how the title business should be conducted as those engaged in the title business.

Yes, ladies and gentlemen, the title industry has made remarkable progress during the past 25 years. It's our job to build and maintain a good reputation for ourselves and our trade association. It's no secret, we want the public to think well of us. To what extent this can be accomplished depends upon individual acts. Those engaged in furnishing title evidence are here to stay, even though customers and practices may change, we still have one job—one purpose—and a certain mutuality of interest. I am convinced that a title insurance company, where it can make an arrangement with an abstracter who has a title plant, is in immeasurably better condition, competitively speaking, liability wise, public relation wise, than those who are forced to make other arrangements.

I do know that title insurance companies are forced to and want to take care of customer needs. I know they prefer to work with the abstracter, but I must confess that the actions of a very few title insurance companies contradict that statement. In the title insurance field the abstracter welcomes the leadership of title insurors provided the leadership offered is "Clean."

The story is told of an Arkansas farmer and his wife who sent their daughter to an eastern college. Finances would not permit her returning home until her education was finished. Paw met her at the depot in his model T and after taking her home, and daughter had properly greeted maw, paw said, "Maw, I'm going out to the corn field and scatter the rest of the manure." The daughter was shocked and said to her maw, "Why don't you teach paw to say fertilizer instead of that horrid word manure?" "Nothin' doin'," said maw, "you'd understand if you knew how long it took me to get him to say manure."

Let's keep on plugging away, regardless of the time and effort required, and see if there isn't an amicable solution to some of our existing problems and differences.

As far as I know, for the first time in the history of the American Title Association, a concerted effort is being made to secure more unity. Grievances have been aired and discussed for years, but no practical approach to a possible solution attempted until at this convention.

The title insurance and the abstracters sections, together with a special committee, are giving this matter consideration. It will take time, but nothing worthwhile was ever accomplished without a sincere effort. To give and take and be a little more charitable and understanding is characteristic of Americans. I urge our members to expand their thinking beyond the borders of individual operating areas and consider the title industry and its problems as a whole.

Let's find out what our abstracters, title insurors and title attorneys are doing, if anything, which is injurious to the title industry and then proceed in a sane and intelligent manner to correct any unwholesome practices. This can only be done in a friendly atmosphere and a desire upon the part of each to give our membership a stronger American Title Association and the public the utmost in title evidence and protection, keeping abreast or even ahead of public demands. Let us recognize the fact that there exists a mutuality of interest between those engaged in furnishing any form of title evidence.

Finally, ladies and gentlemen, as we travel down life's busy, complicated highway toward the fast sinking sun, let us strive to command the respect of our fellow title men and women, whose fellowship and friendship we have been privileged to enjoy; and command the confidence and respect of those with whom we have lived and served during a busy and useful lifetime. May it be said, "we never shirked our responsibility to our God, our trade association or our fellow men and women," and

when we grow too old to dream and the curtain of life is finally drawn, there will be real cause for regret and our passing will be recognized as a true community and trade association loss. That, ladies and gentlemen, will be prima facie evidence of worthwhile living.

In conclusion, let me pause long enough to plant in my garden of memories a beautiful white rose, symbolic of a most enjoyable visit with my good friends and acquaintances of the American Title Association at this, our 52nd convention, held in the beautiful city of Seattle.

Report of Legislative Committee

JOSEPH A. WATSON

Vice-Pres., The Title Guarantee Company, Baltimore, Maryland

The year 1958 was not a legislative year in the majority of states so that on the whole your legislative committee had very few active duties to perform. The members of this large committee are to be complimented for the way they cooperated with your chairman in reporting the presence or absence of legislative activity and any laws which in their estimation were of general interest to all of us in the title industry. My thanks to all of them for making this report possible. Twenty-four states reported no legislation whatsoever; fifteen reported no legislation of sufficient general interest and only Arizona, California, Georgia, New York, South Carolina and Virginia reported legislation of a varying degree of general interest. I shall briefly summarize the laws passed by those states I have particularly mentioned, which in the opinion of your chairman are of interest to our association.

ARIZONA amended and simplified the qualification requirements of foreign corporations insofar as the appointment of a statutory agent is concerned; enacted legislation presumably aimed at fire and casualty coverage prohibiting money lenders from directing the placement of insurance; modified its jurisdictional requirements for divorce actions; revised its requirements for subdivision plat approval within the three mile limit of towns having minimum subdivisions standards ordinances; and by statute, designed to prohibit speculation with regard to highway rights-of-way, fixed an interesting method for determining the compensation and damages in condemnation cases.

CALIFORNIA reports as of special interest to title companies the addition of a new subsection to its Revenue and Taxation Code providing a method by which the lien of certain personal property taxes, can be made a specific lien on the separate real property of the taxpayer.

GEORGIA reports that a step toward greater uniformity was made to a century old act by reducing the witness requirements for wills from three to two witnesses.

NEW YORK enacted quite a bit of legislation affecting real property, the following of which may be of some national interest:

> On the subject of Insurance an amendment was made to permit the Superintendent of Insurance to allow as assets of a title insurer accounts receivable for abstracts and searches not more than ninety days past due. Under Corporations we find that Title Guarantee and Trust Company has surrendered its banking powers and next year will assume the name "The Title Guarantee Company." I merely wish to state that this Company is to assume what in my humble estimation is an excellent name.
>
> Since 1830 New York as been operating under a law enacted to limit the common law "Rule Against Perpetuities" prohibiting the suspension of power of alien-

ation beyond two lives in being. A new law was just passed to permit suspension during any number of lives in being, thus making a partial return to the old common law rule applicable to estates created on or after September 1, 1958.

A number of technical amendments were made in the laws permitting investments in mortgages by insurance companies and banks. One of special interest to us, contains a provision which has the effect of permitting life insurance companies to invest in mortgages on property affected by a right of re-entry or forfeiture if a title company will insure against such right. The whole subject of rights of re-entry and forfeiture for breach of condition was treated in an elaborate series of statutes, the principal idea being throughout the whole series that the holder of such rights waives them unless he records a declaration of intent to retain them not less than twenty-seven years nor more than thirty years after the reservation of such rights and records renewal declarations thereafter every ten years.

SOUTH CAROLINA has made a much needed revision of the recording act as a result of two recent court decisions which brought to light an obviously impractical if not inequitable situation with respect to the priority of liens. These cases held that the then existing statute would not allow for delay in recording of a mortgage and if between the time of the execution of the mortgage and its recording the mortgagor executed a second mortgage or sold the property, the holder of the second mortgage or purchaser took priority over the lien of the mortgage first executed, even though the first executed mortgage was also first recorded. This result was reached on the principle that the holder of the second mortgage or the purchaser took without notice as contemplated by the statute. The new act corrects this situation by providing that "such subsequent conveyance or subsequent lien must be filed for record in order for its holder to claim under the statute as a subsequent creditor or purchaser for value without notice and the priority shall be determined by the time of filing for record."

VIRGINIA reports an act relating to the validity of the deeds of foreign executors and an act authorizing cities and counties to impose Recordation Taxes within their political subdivisions.

The year 1959 promises to be a year full of action for those interested in promoting and safeguarding the interest of our industry. Reports from our committeemen indicate that Arizona will try again for a revision of its Mechanics Lien Law; Colorado has a discussion in the Assembly on who should supervise the title industry, the State Banking Commissioner or the Insurance Commissioner; and Illinois reports on reliable information that the Bar Association will present a Marketable Title bill patterned after the Iowa act, but contemplating a forty year record title. In Montana the Insurance Commissioner is now working on a recodification of the Insurance Code and it should be up for approval; Florida has a strong committee at work on a much needed revision of its Mechanics Lien Law; and Washington feels that another attempt will be made to make the Torrens Registration compulsory, but expects that it is destined for sure defeat. Alaska having blossomed to Statehood, should be very busy, and Honolulu will press again for the adoption of the Title Insurance Code already prepared at the request of the Territorial Insurance Commissioner.

Report of Federal Legislative Committee

GORDON M. BURLINGAME

President, Title Insurance Corporation of Pennsylvania, Bryn Mawr, Pa.
Chairman, Legislative Committee

The Eighty-fifth Congress ended its session before dawn on August 24th, in a last-minute stampede of legislation.

Your Committee has not been able yet to discover any legislation which directly affected the examination of title to real estate. While, normally, this lack of legislation affecting examination of title would be the signal for a sigh of relief, it is indeed unfortunate that Congress again did not see fit to amend Section 2410 of Title 28, of the United States Code, to end the confusion existing between the decision in the Boyd case, and the Metropolitan case, with respect to non-judicial sales of real estate under powers of sale, and in addition, eliminating the period of redemption in favor of the United States where a sale of real estate is held to satisfy a lien prior to that of the United States. The Committee on Federal liens of the American Bar Association is presently preparing a report to be submitted to the House of Delegates of that Association on or about October 15th. This Committee is soliciting views of all those interested in the problem and it is suggested that if possible, the interested members of our Association transmit their views to the said Committee, the Chairman of which is Laurens Williams, Esquire, and the address is 602 Ring Building, Washington 6, D.C.

It is suggested that the Board of Governors of this Association might properly approve this project and direct the next Federal Legislative Committee to cooperate actively with the Bar Association committee in curing this unfortunate situation.

It should not be considered, however, that the Congress was lax in creating problems for our industry.

Ever mindful that in the present age longevity has increased the voting population, social security benefits were increased. Of course, these benefits must be paid for by taxation, and as a result, beginning January 1, 1959, the contributions by employers will increase from two and one-quarter to two and one-half per cent, and a similar increase in the contribution by the employee will take place. Moreover, the tax will be payable on the first $4,800 of salary, rather than on the first $4,200, as at present. By 1969, the total tax rate will be nine per cent, of which four and one-half per cent will be contributed by the employer and four and one-half per cent by the employee. This presents a problem to our industry, for it is unlikely that these increased costs can be supported without an increase in our charges, and in additon, it is probable that any increased deduction in the pay of employees will be met by increased requests for higher salaries, in order to maintain the present level of take-home pay.

It should be brought to the attention of the members of this industry that those companies having their own welfare and pension plans will be required to submit extensive reports on pension and welfare plans and benefits available to their employees, including benefits for sickness, death, accident, disability, etc. It should be noted that companies employing less than 25 persons are apparently exempt, but in the event any of the members of the Association have such plans, it would be well to consult tax counsel as soon as possible, to determine whether or not this very ambiguous piece of legislation applies to their company.

An emergency Housing Bill was passed which had the effect of releasing additional funds for mortgage loans, but a definitive omnibus Housing Bill became so enmeshed in the parliamentary confusion incidental to adjournment that it died in self-

strangulation. However, the volume of funds available for mortgage loans seems adequate to support the number of residential properties that can be sold during this year.

Looking into the future, it would be wise for our industry to become very conscious of certain thinking existing at the congressional level. Many of the influential members of the Ways and Means Committee apparently feel that some new formula should be devised to tax insurance company investment income.

It should be brought to the attention of the members of our industry that the Internal Revenue Code provides that the Underwriting and Investment exhibit of the annual statement approved by the National Convention of Insurance Commissioners is the basis for computing gross income. It is suggested that so long as the present form of report continues to be grossly inadequate to properly portray the income of title insurers, it is high time that energetic steps be taken which would lead to the acceptance of a more adequate reporting form, together with adoption of uniform accounting methods for insurers by the National Association of Insurance Commissioners.

With respect to the members of our Association, other than insurers, there is little likelihood of any tax reduction in the next Congress and in fact, we may see many technical changes in existing laws to tighten loopholes and an increasingly thorough scrutiny of expenses for travel and entertainment.

Respectfully submitted,
David E. MacEllven
Carloss Morris
Aksel Nielson
Russell G. Smiley
H. Stanley Stine
Gordon M. Burlingame,
Chairman

Eulogy — John H. Kunkle

E. M. FRANKHOUSER, SR.,

Exec. Vice-President, Berks Title Insurance Company, Reading, Pennsylvania

On the morning of April 5th, 1958, John H. Kunkle, President of the Union Title Guaranty Company of Pittsburgh, came to his office for a short but busy period of time. Later in the day he became ill and passed away in the evening of the same day. Thus, it might be truly stated that he died in harness.

John H. Kunkle was born in Homer City, Indiana County, Pennsylvania on May 5, 1890. He was educated in the public schools, in Penn State College and Grove City College. He resided near Greensburg, Pennsylvania where he taught grade and High School prior to 1914.

In 1914 he was employed by the Title Guaranty Company, one of the predecessors of the Union Title Guaranty Company and thus entered into the Title Insurance field.

He grew with his company through several mergers and in 1940 he became the President of the Union Title Guaranty Company of Pittsburgh in which capacity he served until his death. He served as President of the Pennsylvania Title Association in 1951 to 1953 and as Chairman of the Atlantic Seaboard conference of the American Title Association for several years.

He served his country in the first world war for a period of two years and attained the rank of Sergeant Major in the 56th Brigade Headquarters, 28th Division of the U.S. Army.

At the time of his death he was President and Director of the Union Title Guaranty Company; member of the Board of Governors, American Title Association; Trustee, Dollar Savings Bank; Director and Vice-President Fort Pitt Federal Savings and Loan Association; Advisory Commit-

tee, Mellon National Bank and Trust Company, (Workingmens Branch) Director, National Ben Franklin Insurance Company; member of the Greater Real Estate Board of Pittsburgh.

He was a Rotarian for many years and held memberships in the Duquesne Club, Pittsburgh Athletic Association, St. Clair Country Club, Amen Corner, Bankers Club, Shrine, American Legion, Veterans of Foreign Wars and Society of Industrial Realtors. He worshipped his God at the Beverly Heights United Presbyterian Church.

John H. Kunkle was, above all, dedicated to the Title Insurance Industry. As the head of his company he realized the great value of broad contacts in business, social and religious circles. When he was needed he served his country.

He resided at 40 Longue Vue Drive, Mt. Lebanon, Pennsylvania. Surviving him are his widow, Clara Prasse Kunkle, his sons, Robert C. Kunkle and John H. Kunkle, Jr., his sisters, Mrs. Ruth Geiger and Mrs. Sara Hart, and three brothers, Harry, Wilson and Paul.

He loved life and action and was fortunate to enjoy the great privilege of living and working to the very day of his death.

The title insurance industry has lost a fine executive and an alert business man; and our country has lost an outstanding citizen.

Eulogy — William R. Kinney

LORIN B. WEDDELL

Vice-Pres. and Sec'y, Land Title Guarantee and Trust Company, Cleveland, Ohio

William R. Kinney, former Chief Title Officer of Land Title Guarantee and Trust Company of Cleveland, Ohio, died April 3, 1958, at the age of 75 years. His service in the title industry spanned a period of more than forty-four years.

He was born in Louisville, Kentucky, graduated from Yale University and studied law at the University of Louisville. He engaged in the general practice of law in Louisville for a few years before moving to Oklahoma City. There he obtained his early experience in real estate law and the title industry as office attorney and general manager of a title company. He moved to Cleveland in 1914 and joined the Guarantee Title and Trust Company which was subsequently absorbed by the Land Title Guarantee and Trust Company. He was in charge of all legal and underwriting procedures for the company since 1944 when he became its Chief Title Officer.

Bill Kinney was an active member of the Ohio Title Association and at the annual meeting in 1956 he was made an honorary life member. He served, with distinction, as chairman of the legal section of the National Association for three consecutive terms. He was also a member of the Board of Governors of the Association.

Bill Kinney was recognized as an authority on title matters and was the author of many learned treatises on Real Estate Law. His counsel and advice on complicated title questions was frequently requested. He possessed the ability to brush aside immaterial facts and quickly get to the crux of the problem. His command of the English language enabled him to furnish scholarly persuasive opinions. He was particularly skillful in this respect.

Bill Kinney represented our title industry well. We miss his counsel and advice in the affairs of our Company.

With his passing, the American Title Association and the Ohio Title Association loses a man whose judgment and particular skills brought honor and dignity to our profession.

THOSE TROUBLESOME FEDERAL LIENS

Jurisdiction of Federal Courts, Including Bankruptcy

GEORGE E. HARBERT,

President, Rock Island County Abstract & Title Guaranty Company, Rock Island, Illinois

Mr. President, Gentlemen, I am agreeably surprised to find that there are more than eleven here this morning. I counted the program and found that there were eleven of us who had to stay, but I assume that a few of your trains don't get out till noon.

This subject that we are embarking on, I think is of more particular interest since the advent of title insurance in the smaller counties. In the old days I am satisfied that most of the abstracters limited their certificates as to the effect of federal liens of the federal court or bankruptcies so didn't worry much about the fact that possibly in so limiting their certificate they were engaging, or at least exposing, their customers to serious losses. I know that was the case generally in our state, and I think that I am fair enough to say that we were at least not far behind our neighbors. In most of the counties, we find that there was some kind of limitation in the certificate whereby the abstracter felt that if there should be anything occur outside of his county, which affected the title to real estate in his county, he was protected because he simply said he only certified to the records of the courts within his county. As I say, however, the larger picture that has been presented, because in the insuring of title, I have yet to see an underwriter who left out of his coverage any effect upon the title, occasioned by matters which were located or occurred beyond the boundaries of the county in which the property was located. I would say, in addition, that if an investor suffered a serious loss of title, it was not much comfort to him to know that the abstracter limited his certificate and didn't advise him of it, so that perhaps in a broader sense, even if you are engaged solely in the abstract business it would be well to review your ulitimate responsibility to your customer in view of these matters and determine whether you should make some effort to reappraise the situation and ultimately increase the latitude of your search. The subjects which have been assigned to me fall in three general classes: federal judgments, possible chance reactions, and bankruptcies. All of them have a relatively small space, and it is the effect of these which we possibly have underestimated that causes the trouble.

As to federal court judgments, the statute is short, provides that every judgment rendered by a district court within a state shall be a lien on the property located in such state to the same extent and under the same conditions as a judgment of a court of general jurisdiction in such state and shall cease to be a lien in the same manner and time. It is very clear, and I think the decisions indicate that it means exactly what it says. The only problem comes with the application of it. To illustrate, in a district in which my county is located, we have about twelve counties. We have three counties in which semblance of court is held. In the county in which I serve we have a branch court but no clerk's office. In another county in the district, we have a similar situation. And in still another county, Peoria County, we have both a court and a clerk's office. So the problem is when a judgment is rendered in the federal court, what property is affected. The cases are clear that if the judge sits in the branch court in Rock Island County and there renders his judgment, that judgment is a lien on all property

located in Rock Island County, because that would be the effect of a judgment of the circuit court in Rock Island County. The rendition of a judgment makes it a lien. Where the judgment is docketed or if it is never docketed, in our state, has no effect upon the lien of the judgment. Therefore, it is up to us to search the records of Peoria County for any judgments rendered in Rock Island County which may affect—or to find its effect—on citizens and land of our county.

On the other hand, if judgment is rendered in Peoria County, we are not concerned in Rock Island County because a judgment of a circuit court in Peoria County would have no effect on land in Rock Island County unless it was transcripted. If there are additional procedures in the state before a judgment becomes a lien, these procedures must be filed. In some states, for instance, you must file a transcript of the judgment in a recorder's office, together with a description of the land which is to be affected by the judgment. In such a case, it is clear that the federal court judgment is subject to the same limitations. The duration of the lein, all of the other matters concerning the interest it will affect, is again basically and exactly similar to the effect of a judgment in your state court. Likewise a judgment rendered in Peoria County, would have to be transcripted to our county. Therefore, we can lay down three rules for the title searcher. If he has no court, federal court, in his county, he need not concern himself with the judgment of the federal court of the district, because it will be necessary for a transcript of that judgment to be filed in his county before it can affect his land. If on the other hand, he has a branch court sitting in his county, even though the clerk's office is in another county, he must arrange to have those district court records searched in order to determine the judgments actually rendered in his county. In our case, our judge sits in our county one day every two weeks. We have arranged with him that at the end of the day in which he sits one of our searchers obtain a copy of all matters occurring in that court. Actually we go over about a half hour before he is to adjourn his court and copy his docket, which has a notation of any judgment that he has rendered. Failing to do that, we would have to arrange with another abstracter or with the clerk of Peoria County, to make a search of the records of the clerk of the court in Peoria County.

One question which is not clear and which I think bears some problem is this. If the case is heard in Rock Island County and the court reserves its judgment, and then perhaps in Adams County or in Peoria County hands down its decision, we feel that that judgment is a lien on the land in our county, despite the fact that the decision was actually handed down in another county. Going a step further, of course, if there is both a court and a clerk's office in your county, you have no problem because you simply search the clerk's office in the same manner that you would search the records of the clerk of the circuit court or whatever court of general jurisdiction is called. A lien of the court of the judgment of the federal court is similar in duration and attaches the same interest that is subject to a similar state court judgment.

Next problem that you have is in chance reactions in the federal court, the application of adoption of lis pendens. Curiously enough, cases are not so conclusive on this. But it would seem by analogy, that if the lien of a judgment is identical, the lien of lis pendens in chancery actions should be indentical with that of the state court. In Illinois, for instance, a chancery action upon filing, which describes real estate, becomes lis pendens at the moment of filing, and anyone dealing with that real estate is charged with the ultimate outcome of that suit. Failing to get service within six months, the lis pendens ceases until service is obtained. I would believe that a case filed in the federal court would have the same effect. The problem, however, arises in this fashion. The case is filed in a clerk's office in Peoria County in our district, it will ultimately be tried in

Rock Island County. I can find no cases which indicate that the lis pendens arises from the moment of filing the case in Peoria County. On the other hand, I can find none which say that it will not be lis pendens from that moment. So it is a problem which may cause trouble, particularly in the event of any foreclosure, let's say under F.H.A. or V.A. guaranteed mortgages, which they may well resort to the federal court to start their foreclosures if they fear any antagonism in the local state court.

The third subject which has some interest to many of us is the subject of condemnation. When the United States files a bill to condemn, the first thing they need to do, in fact the only thing they need to do to vest title, is a declaration of taking. This vests the title; it is filed in the recorder's office, and the subsequent adjudication or the subsequent trial in the federal court is merely to determine the amount of the damages. However, when a matter involving, for instance, an interstate bridge is filed, it is filed possibly by a city or county or other authority or municipal organization, and the condemnation. They actually started some The title does not vest in our state until the court has found two things: that the taking is for a public purpose and the amount of the damages. This has caused, under the theory of lis pendens, considerable question. We have recently encountered a case in which there were three transfers in our county. After the filing of the suit to condemn, but before the court came to trial, the parties were, very frankly, attempting to delay the condemnation. They actually started some improvements, after the condemnation was filed in order to build up the damages. The court in that case ruled that the filing of the suit in the federal court, even before service, instituted a lis pendens of which they were charged with notice. That was purely our local court, and because of the later developments, is was not appealed, but it has some interest to you.

The last subject, which is within the scope of my paper, is the subject of bankruptcy. This has been and will be a matter of considerable importance to all of you. In our county, which is slightly over 100,000 in population, last year there were over 300 new bankruptcies filed. This was treble the amount filed in the year 1956. The first half of 1958 there were 250 new bankruptcies filed, which indicates that the advent of even a slight recession will increase the importance of this. Now under the bankruptcy law, upon the filing of the petition in bankruptcy, followed by a subsequent adjudication, whether voluntary or involuntary, all of the property of the bankrupt, wherever located, passes to the trustee in bankruptcy. The trustee is required to file notice of his appointment as trustee within thirty days of such appointment, in each county in which real estate is scheduled, and I believe that word "scheduled" is intentional. I can see, and you can, that if it is an involuntary petition, and the bankrupt fails to schedule the property, the trustee would have no way of knowing where to file the notice of his appointment as trustee.

There is law in our state, and in other states, that if the trustee fails to file such notice and if the bankruptcy occurs outside of the district in which the property is located, a purchaser from the bankrupt, subsequent to the filing of the petition, will be protected. I doubt if that case would protect a purchaser from the bankrupt in either one of two cases: one, where the property was not scheduled, or two, where the bankruptcy occurred in the district in which the property was located.

I can't stress too strongly the importance of maintaining a bankruptcy docket, for the reason that within the last six months we have had two cases of where a bankrupt has given deeds to his property after he filed his petition in bankruptcy, and in neither one was the bankrupt a crook. In both cases he had a homestead exemption; he was buying the property on a contract, and his lawyer told him quite properly that his home property was exempt, because he had very little actual value there. The thing that was not stressed was that for him to obtain his exemption,

he must affirmatively claim it. If, as occurred in one case, he failed to claim it, his purchaser has no right to claim it on his behalf, and in that particular case there was some—I believe it was $1,800 in escrow based on the fact that the purchaser was buying the property. The exemption was not claimed, and the fact that it was closed in escrow and closed under a title guaranty policy was all that saved the purchaser. So, people with the best intentions can fail to observe the technicalities of the bankruptcy law and thereupon cause serious loss to the purchaser. The other and increasingly important possibility is that there must always be some lapse of time between the filing of the bankruptcy and the notice by the trustee of his appointment. The court says thirty days, so that would be the minimum, but if the question of whether the man were bankrupt were litigated, it might well be that that thirty days could become six months, and since the title of the trustee dates back to the filing of the petition in bankruptcy, anyone who acquired the title in the interim, would certainly lose that title.

It seems to me, therefore, that anyone who is engaged in furnishing a sound title service, should prepare or arrange either with the clerk of the court or with the abstracter in the county where the clerk's records are located, to secure a search or take-off of the bankruptcy docket, so that he could post bankruptcies that are filed within a very short period after the filing, in order to protect his customers from either intentional or unintentional conveyance of the property after that time. Thank you.

Federal Gift Taxes

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Very briefly stated, the Federal Gift Tax, as imposed by the 1954 Revenue Code, is levied on the transfer of property by gift during the calendar year 1955 and each calendar year thereafter.[1] The imposition of the tax is on a cumulative basis at graduated rates upon the aggregate sum of the taxable gifts made during each calendar year.[2] In general, the first $3,000 of gifts made to any person by the donor during the calendar year 1955 and subsequent calendar years are excluded in determining the total amount of gifts made by the donor during the year.[3] There is no limit to the number of such $3,000 exclusions available to a donor in any calendar year. However, no part of the $3,000 exclusion is available for gifts of "future interests in properties."[4] In addition to this exclusion —and exclusions in amounts provided by the provisions of gifts tax laws applicable to the year 1954 and preceding calendar years— there is a so-called lifetime exemption of $30,000.[5] A donor may avail himself of all of this exemption in one year or he may spread it over any number of years in such amounts as he desires.[6] Once the aggregate amount claimed and allowed as specific exemption in computing a donor's gift tax for the calendar year 1932 and all subsequent years, has reached the limit of $30,000, he will not be allowed any further exemption.[7] He will, however, be allowed his $3,000 exclusions and any deductions to which he may be entitled. Deductible in computing taxable gifts are charitable gifts of the same type as are deductible by an individual for the purpose of income taxation.[8] Then there is a gift tax marital deduction applicable to gifts between the spouses.[9]

1. I.R.C. Sec. 2501(a) (1954)
2. I.R.C. Sec. 2502(a) (1954)
3. I.R.C. Sec. 2503(b) (1954)
4. Idem.
5. I.R.C. Sec. 2521 (1954)
6. Reg. 108, Sec. 86.12 U.S. Code & Adm. News 1955 Federal Tax Regulations, p. 977
7. Idem.
8. I.R.C. Sec. 2522 (1954)
9. I.R.C. Sec. 2523 (1954)

Subject to stated limitations, gifts made by a husband or a wife to a third party are considered as made one-half by each spouse.[10]

The creation in 1955 or any year thereafter of a tenancy by the entirety, or a joint tenancy between husband and wife, with right of survivorship, is not deemed a transfer of the property for the purposes of the gift tax law unless the donor spouse elects to treat it as a taxable gift by including it in his gift tax return for the year in which such tenancy was created.[11] However, special provisions of the law become applicable and may make such transfers taxable upon termination of such a tenancy for any reason other than death.[12]

So much for a thumbnail sketch of the tax. There are two basic gift tax liens—one is a special lien imposed by Section 6324(b) of the Internal Revenue Code of 1954 and the second lien may be termed the general lien which relates to taxes generally and which is created by Section 6321 of such Code.

The general lien under Section 6321 and the special lien under Section 6324(b) are not exclusive of each other, but are cumulative. A special lien may exist without the general lien being in force, or the general lien may exist without the special lien being in force, or the general lien and the special lien may exist simultaneously depending upon the facts and the pertinent statutory provisions applicable to the respective liens.[13]

All of the priority problems and hazards to title examiners and insurers and others arising under the general lien, such as those relating to mechanics' liens, landlord liens, attachment liens, lis pendens, state and local tax liens, interests of contract purchasers and even to mortgage liens as such may be affected by the "choateness" test, (i.e. that such liens must be specific and perfected even though they exist and are good under state law before the Federal tax lien arises) have been adequately and competently covered by 1) Harold Reeve in the October, 1956 issue of "Title News," and more recently by 2) William T. Plumb, Jr. in his comprehensive articles on Federal Tax Collection and Lien Problems which appeared in the March and May, 1958 issues of the Tax Law Review and which is also now available as a reprint in booklet form; and, 3) in the

10. I.R.C. Sec. 2513 (1954)
11. I.R.C. Sec. 2515 (1954)
12. Idem.
13. Reg. Sec. 301.6324-1(c)

American Bar Association Report of the Committee on Federal Liens which was presented at the annual meeting of the American Bar Association on August 25, 1958. The same problems—and the "choateness" test—exist in the application of the general lien to gift taxes and substantially the same test, problems and hazards and some additional ones, exist by reason of the gift tax special lien. My remarks are therefore going to be essentially limited to the special lien without, however, any approach on my part to the case law development by our Supreme Court that the priority of Federal liens is a Federal question,—not a question of state property law—and that a lien competing with a Federal tax lien must be "choate" in the Federal sense to enjoy priority over the Federal tax lien even though it would enjoy priority under state law.

The special lien, imposed by Section 6324(b), arises on the date of the making of any gift, even before it can be known whether the year's gifts will be sufficient to incur a gift tax or in what tax bracket they will fall. The lien attaches to the donated property and continues for ten years from the date of the gift. If the donated property, or any part thereof, is transferred by the donee (or by a transferee of the donee) to a bona fide purchaser, mortgagee, or pledgee, for an adequate and full consideration in money or money's worth, the property is divested of the lien to the extent of the value of the gift and attaches to all property (including after-acquired property), of the donee (or the transferee) except any part transferred to a bona fide purchaser, mortgagee, or pledgee for an adequate and full consideration in

money or money's worth. Thus as to the donor, there is no lien on the other property of the donor. As to the donee, so long as he holds the property given, it is subject to the lien. Once he disposes of the property for an adequate consideration, then all of his other property is subject to the lien. Also, since the lien applies to **all gifts,** if a tax develops, it applies even though the donated property may have been less than the annual exclusion, and probably even though the donated property went to a charity and was deductible for tax computation purposes. And it is no defense that the gift tax on a **particular** transfer was fully paid[14] or that such transfer was so small as to be non-taxable[15], and that the liability being enforced related to an entirely different gift.

The primary liability for the tax is upon the donor,[16] but if the tax is not paid when due the donee becomes personally liable for the tax to the extent of the value of such gift.

14. Winton v. Reynolds 57 F. Supp. 565 (D. Minn. 1944)
15. Baur v. Commissioner 145 F.2d 338 (3d Cir. 1945)
16. I.R.C. Sec. 2502(d) (1954)

This special lien is a secret, unrecorded lien and I do not know how we as titlemen or anyone else could ever be absolutely certain that such lien may not exist against a particular piece of property. The report of the American Bar Association Committee on Federal Liens makes a statement that if the property had last been transferred over ten years ago, the gift tax lien cannot be in existence[17]. This is true as to the donated property to which the report was undoubtedly referring. But suppose the donee had transferred the donated property, Blackacre, to a bona fide purchaser for an adequate and full consideration in money or money's worth. Then the lien would have attached to all of the donee's remaining property which might include Whiteacre which such donee had owned for many years. If you are called upon to insure a transfer of Whiteacre within ten years from the date of the gift of Blackacre and such transfer is not made to a bona fide purchaser or encumbrancer for an adequate consideration the gift tax lien remains against Whiteacre absent payment of the tax.

Perhaps the only certainty that we can have is where we are satisfied that a transferee will fall within the category of a "bona fide purchaser, mortgagee, or pledgee for an adequate and full consideration in money or money's worth." Even this presents problems. If we apply the usual concept of "bona fides" there may be known facts or facts revealed in the chain of title which would put the purchaser or encumbrancer on notice of the possible existence of a lien. The Internal Revenue Service has ruled as to the Estate Tax lien that the words "bona fide" require only that the dealing be "at arm's length, as between strangers" and that knowledge of a death in the chain of title does not subject the purchaser or encumbrancer to the lien[18]. There has been no specific ruling on the Gift Tax lien. Mr. Spencer Zimmerman, Jr., in the Office of the Chief Counsel, Internal Revenue Service, in a 1956 address before the New York State Title Association, stated:

> "Transfers of real property for love and affection or under a trust instrument which indicates the gratuitous character of the conveyance should sound an alarm as to the possibility of a Federal lien for gift tax. Likewise, a transfer of real property to a straw man, with a transfer thereafter to joint tenants or husband and wife as tenants by the entireties, should prompt the inquiry as to whether a gift tax has been incurred."

17. Page 37
18 Rev. Rul. 56-144, 1956-1 Cum. Bull. 563

He further stated:

> "It seems to me that any title examiner who attempts to decide that there is no liability for a Federal gift tax where a gratuitous transfer is indicated, or concludes that a transfer by a donee is bona fide and for an adequate and full consideration

in money or money's worth, assumes some risk . . . [19].

There is also the question of what is "an adequate and full consideration in money or money's worth". In this connection, it may be stated that under the regulations[20] it is required that the consideration be an actual and full equivalent reducible to money value but that a bona fide and arm's length transaction in the ordinary course of business will not be second guessed as to the adequacy of the consideration.

If there is uncertainty as to whether or not a gift tax lien exists, a procedure is provided under Section 6325 of the Internal Revenue Code of 1954 for obtaining the release of the lien. Whether or not a title company should require such a release except in circumstances where there is evidence that a lien may be present, is a question of business judgment. In the case of the Company with which I am associated, I would have to confess that we have not been too concerned about Federal gift tax liens unless there was fairly clear evidence of the possible existence of such a lien. As far as I can ascertain, a similar practice is followed by other title insurers in California and apparently by many companies in other areas. In my opinion, we are assuming a casualty risk—and this is true in many respects as to the general lien applicable to income, gift and other taxes—in order that property transactions may not be unduly impeded. But as a practical matter as to both the special lien and the general lien of the Federal **gift tax,** we are, in my humble judgment in a safer position, based on past experience, than we are with respect to the general lien as applied to income taxes. The gift tax lien has seldom been utilized for the collection of such tax. There are few, if any, cases reported in the books where the Federal Government has attempted to enforce a lien against any person other than a donor or a donee although the gift tax law has been continuously on the books since 1932. In addition, gifts other than those made to charities that are deductible and those made in excess of the annual exclusions and the $30,000 exemption, are generally made by wealthy people who are well advised and who pay the tax or from whom the tax is collectible. Certainly a hazard does exist but even though we are faced with this special secret gift tax lien in addition to the general lien for gift taxes, I do not believe that our degree or extent of risk exposure, as to gift tax liens, is nearly as great as our exposure under the general lien as to income taxes. Nevertheless, it is certainly hoped that as a result of the studies presently being undertaken by the American Bar Association legislation will be enacted at the next session of Congress which will effect changes in both the special lien provisions and general lien provisions of our Internal Revenue Code so that greater certainty and stability will be created for property interests. In my opinion, the American Title Association should actively support the work and proposals of the American Bar Association in its endeavors to correct the existing Federal tax lien situation.

19. Proceedings, New York State Title Association, 1956, pp. 84 and 85
20. Reg. Sec. 301.6323-1(b)(1)

Federal Estate Taxes, Including Conveyances by Survivor of Joint Tenancy and Tenancy by the Entirities

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No attempt will be made by this brief paper to cover all of the complexities of the Federal Estate Tax. Comments herein will be limited to the effect of the lien under the Federal Estate Tax Law upon the transfer of property included or includible under the gross estate of a decedent. Such transfers may be made either by the decedent prior to his death or may be made by persons entitled thereto after his death.

Although the Federal Estate Tax has been in effect for about forty years the present law is set out in the Internal Revenue Code of 1954. Under Chapter 11 of the Code a tax is imposed upon the transfer of the taxable estate of every decedent who is a citizen or resident of the United States. The tax is a lien upon the gross estate of the decedent for a period of ten years from the date of dcath. Numerous deductions are allowed which bring about a reduction of the gross estate, including an exemption of $60,000. Because of this exemption a great majority of the estates of deceased persons are not affected by it.

Whenever examination of title is being made of a property which would be includible under the gross estate of a person who has died within the past ten years, the possibility of its liability to the lien of the tax should be considered. This is true even though the decedent's interest was a co-tenant with one or more joint tenants, or as one of two tenants by the entireties. Although in most states the rights acquired by survivorship are paramount to judgments, prior to execution, they do not have priority over the lien of the Federal Estate Tax.

Section 2033 of the Code provides that the value of the gross estate shall include the value of all property (except real property situated outside of the United States), to the extent of the interest therein of the decedent at the time of his death. However, certain succeeding sections of the Code provide for numerous special types of properties, includible in the gross estate, which may or may not be covered by the provisions of Section 2033. Section 2034 provides for Dower or Curtesy interests. Section 2035 refers to transactions entered into in contemplation of death. Section 2036 speaks of transfers made with retained life estate. Transfers taking effect at death are the subject of Section 2037. Section 2038 has to do with revocable transfers. Annuities are considered under Section 2039. Section 2040 provides for estates held under joint interests, while Section 2041 has to do with estates subject to powers of appointment, and Section 2042 refers to proceeds of life insurance.

It is interesting to note that such portion of the gross estate of a decedent which is included therein under Sections 2034 to 2042, inclusive, are under certain circumstances divested of the lien of the Estate Tax. Section 6324 of the Code provides under sub-section (a) items (1) and (2) as follows:

> (1) Unless the estate tax imposed by Chapter 11 is sooner paid in full, it shall be a lien for ten years upon the gross estate of the decedent, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien.
>
> (2) If the estate tax imposed by Chapter 11 is not paid when due, then the spouse, transferee,

trustee (except the trustee of an employee's trust which meets the requirements of Section 401 (a), surviving tenant, person in possession of the property by reason of the exercise, non-exercise, or release of a power of appointment, or beneficiary, who receives, or who has on the date of the death of the decedent, property included in the gross estate under Sections 2034 to 2042, inclusive, to the extent of the value, at the time of the decedent's death, of such property, shall be personally liable for such tax. Any part of such property transferred by (or transferred by a transferee of) such spouse, trustee, surviving tenant, person in possession of property by reason of the exercise, non-exercise or release of a power of appointment, or beneficiary, mortgagee or pledgee for an adequate and full consideration in money, or money's worth, shall be divested of the lien provided in paragraph (1), and a like lien shall then attach to all the property of such spouse, transferee, trustee, surviving tenant, person in possession, beneficiary or transferee of any such person, except any part transferred to a bona fide purchaser, mortgagee or pledgee for an adequate and full consideration in money or money's worth.

In addition to the statement above which provides for properties included in the gross estate of a decedent, under Sections 2034 to 2042, inclusive, of the Code, Revenue Ruling 56-144 in Internal Revenue Bulletin, 1956-1, page 563, Section 6324, reads as follows:

"The surviving tenant of jointly owned or entirety property which is included in a decedent's gross estate under Section 2040 of the Internal Revenue Code of 1954, is personally liable under Section 6324 (a) (2) of the Code for the Federal Estate Tax (if not paid when due) to the extent of the value of such property at the time of decedent's death. Any part of such property, which is transferred by the surviving tenant to a bona fide purchaser, mortgagee or pledgee for an adequate and full consideration in money or money's worth, is divested of the Federal Estate Tax lien under Section 6324 (a) (2) of the Code. However, a like lien shall then attach to all the property of such surviving tenant or spouse, except any part transferred to a bona fide purchaser, mortgagee or pledgee for an adequate and full consideration in money or money's worth. As used herein, a 'bona fide purchaser, mortgagee or pledgee', is one who, in acquiring the particular property deals, at arm's length, as between strangers, and pays a full and adequate consideration in money or money's worth. This conclusion is not affected by the fact that a purchaser, mortgagee or pledgee of property from a surviving tenant is presumed to have knowledge of the estate tax lien by reason of the recital of death of a joint tenant in the chain of title."

It seems clear, although not apparent at first reading, that Section 6324 (a) (2) of the Code applies only to the types of property mentioned in Sections 2034 to 2042, inclusive, of the Code; and that there was no intention to divest the lien from any other types of property includible in the decedent's estate, such as property which passes directly to heirs or devisees. Any property included in the gross estate of a decedent, except properties included under Sections 2034 to 2042, inclusive, regardless of whether or not the properties are being conveyed or mortgaged for a valuable consideration, will be subject to the lien of the Federal Estate Tax, even in the hands of bona fide purchasers or mortgagees for value. Anyone passing title to such property should secure a release from the District Director of the lien of the tax. And even as to properties included under Sections 2034 to 2042, inclusive, in order to avoid the risk of having to establish the bona fides

of the transfer and the fact of an adequate and full consideration, it appears to me that a release of the lien should be secured.

Excise Taxes, Social Securities, Miscellaneous Federal Taxes

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Today's discussion of "troublesome Federal liens" will be concerned with

a) When does a particular Federal tax become a lien, and
b) Can we find a record of such lien.

Mr. Reeve's splendid paper on the relative priority of Federal, State and private liens (TITLE NEWS, October 1956) makes it unnecessary to discuss priorities today—except to recall that an effort is made in the statute to protect mortgagees, pledgees, purchasers and judgment creditors by invalidating general liens as against the stated interests in real property unless notice thereof is filed in the office designated by State Law.

My assignment is to discuss FEDERAL EXCISE, SOCIAL SECURITY and MISCELLANEOUS TAXES. Perhaps a more felicitous or convenient tag would be: ALL FEDERAL TAXES which result in the General Lien imposed or created by Section 6321 of the Internal Revenue Code.

This would exclude SPECIAL LIENS. Included in this grouping are Federal Estate Taxes and Gift Taxes which have been [or will be] discussed by my colleagues.

There is one SPECIAL LIEN which is not on the agenda.

This is the DISTILLED SPIRITS TAX LIEN [IRC 5004 (a) (3)]. This section makes this tax a first lien on the "spirits, the distillery—and the lot or tract of land on which such distillery is situated and on any building thereon, from the time such spirits are in existence until the tax is paid."

The distiller is required to obtain the written consent of the owner of the fee and of any mortgagee, judgment creditor or lienor, agreeing to the PRIORITY of such FIRST LIEN of the federal government. If such consents cannot be obtained, the distiller must file a bond equal to the value of the property, in which case this special lien will not attach.

So—if you are asked to insure title to property which is being used to distill spirits, do not hesitate to call for proof of the payment of this tax or in the alternative for proof that the required bond has been filed.

This lien attaches from the time the "spirits are in existence."

SPECIAL LIENS have these characteristics in common:

a) They have "built-in" LIEN and EXPIRATION dates.
    1. ESTATE TAXES become a lien at the moment of death.
    2. GIFT TAXES become a lien from the date of each gift. (Incidentally, this lien attaches to the gift in the donee's hands, except if the donee's assignee is a BONA FIDE purchaser, mortgagee, pledgee without knowledge. Note that the phrase BONA FIDE is not used in the GENERAL LIEN sections).

Stated another way, these SPECIAL LIENS arise without prior administrative ASSESSMENT and DEMAND. On the other hand, the imposition of the GENERAL LIEN is usually preceded by ASSESSMENT and DEMAND.

GENERAL LIENS

The ingenuity of the tax collector and his Congressional aides is boundless. The dollars required to run the Federal Government are extracted from us by many methods (some more painless or painful than others). For our purposes, the kind of tax

which results in the GENERAL LIEN has only historical significance. Our problems would probably be the same even if the Single Taxers were elected to office.

In brief, the United States has a general lien on all the taxpayer's property, real and personal **after assessment and demand,** for non-payment of any Internal Revenue tax, including income taxes.

The tax collector—politely referred to as the DISTRICT DIRECTOR—notifies the taxpayer within 60 days after assessment and makes a demand for payment.

Upon the neglect or refusal of the taxpayer to pay a tax after **demand,** the general lien is automatically created on all the taxpayer's property without further act by the DIRECTOR.

A prerequisite to the EXISTENCE, FILING AND ENFORCEMENT of the lien is proof of the DEMAND or a waiver thereof. The date of the demand however has no bearing on relative priorities.

The lien relates back to the time of the ASSESSMENT. (This is an improvement over conditions as they existed in 1879. Then, the lien related back to the original due date of the tax).

The lien continues until the liability is satisfied or becomes unenforcible by reason of the lapse of time (IRC 6322). The basic statute of limitations applicable to the collection of assessments is six years (IRC 6502A) but it is not wise to assume that if six years have expired the lien is gone. Taxpayer consents may have extended the time. And—if the lien has been reduced to judgment—the tax lien will last for the lien period in a particular state.

The GENERAL lien covers everything and anything subject to ownership requires no seizure or other action to perfect it.

Except for income taxes paid directly to the Federal government, the bulk of the tax monies are WITHHELD or COLLECTED by private parties, as agents for the tax collector.

All the taxes on the purchases we make, taxes on admissions, dues, transportation, communications, safe deposit boxes are collected by the sellers or renters.

In the case of INCOME TAXES, OLD AGE INSURANCE or SOCIAL SECURITY, the employer sets aside some of his funds as the WITHHELD TAX and reduces the payment to the employee—sometimes without having or setting aside the amount of tax.

The law requires both the COLLECTING or WITHHOLDING agent to hold such amounts as "a special fund in trust for U.S." This provision does not create the GENERAL LIEN. The trust fund or **RES** must be traced by the Government—obviously an impossible task if the employer never set the fund aside.

A General lien comes into being only when the agent's liability is ASSESSED. Thereafter it is treated just like any other tax liability.

* * *

What you have heard is a brief digest of a wealth of material on the broad subject contained in a paper prepared by William T. Plumb, Jr., entitled "Collection Problems and Liens". Mr. Plumb is Chairman of a Committee on Federal Tax Liens and Collection Proceedings, Taxation Section, American Bar Association. His article requires 130 pages of legal cap. The footnotes to the article require 181 pages.

We View the Next Twelve Months

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Being an optimist by nature, I felt that if I relied solely upon my own judgment as to expected future business conditions in my area, I would tend to show such conditions more rosy than they actually might be. So, to avoid making such a mistake and with hope of getting a reasonably accurate picture of conditions the past six months, as well as expected conditions for the next year, I sent a questionnaire to some forty Kansas abstracters, chosen pretty much at random over the entire state. Most of the questionnaires were completed and returned.

I asked my fellow abstracters to compare the last six months with the previous six months period, basing their comparison upon:

(a) New construction;
(b) From oil and gas;
(c) Other abstracting and
(d) Their title insurance business.

The answers showed that:

(a) Abstracting from new construction was off 13.6%
(b) Abstracting from Oil and gas was off 12.2%
(c) Other abstracting was off 2.2%, and
(d) Title Insurance business was off 11.2%.

The decline in the more heavily populated counties was far greater than in the more sparsely settled counties in the western part of our State. For example, in the larger counties abstracting from new construction declined 21%, while the smaller counties experienced a decline of only 8%. Other abstracting declined 3.6% in the larger counties, compared to only 1% in the smaller counties, and commissions from title insurance declined 14.4% in the larger counties, as compared to only 1% in the smaller counties.

These figures seem to show that the decline in business in the past six months, compared to the six months immediately preceding, was due almost entirely to the slow down in new construction, although about 12% of those answering my questionnaire reported an increase from new construction, varying from 2% to 25%. Abstracting of farm properties and of older properties showed only a very slight decline. It is interesting to note that one abstracter, a very successful abstracter in one of the larger cities in the western part of our state, reported his business from new construction was off 80%, his title insurance business was off 65%, but his other abstracting showed a 30% increase over the previous six months.

Hoping to get a fairly good idea as to what the next twelve months will bring, I asked these abstracters to give me their estimate of business conditions in the coming year. Their replies would indicate that I am not the only optimist among Kansas abstracters.

We in Kansas expect in the next twelve months business from:

(a) New construction will increase 5.7%
(b) From Oil and Gas 1%
(c) From other abstracting 8.3%, and
(d) Income from title insurance policies will increase 11.2%.

About 8% of the abstracters reported that they expect business to decline, rather than improve, in the next year —the balance felt that business would increase and their estimates varied from 1% to as much as 50%. In reviewing the answers, it is evident that most of the increase is expected in the more heavily populated counties—the ones that showed the greatest decline the last six months.

So, we feel that in the next 12 months we will regain the ground

lost in the early part of this year.

In compiling the figures for this report I have purposely not included my own business. I have done this for two reasons. First, in the last 8 or 10 months four new oil pools have been opened in my county. Of course this caused quite a "stir" and resulted in a good bit of abstracting business. Second, last June 10th one of the largest and most vicious tornados that our State has ever experienced levelled approximately 40 square blocks of our little city. Over 500 homes and several business establishments were completely destroyed or badly damaged. Needless to say, this resulted in a considerable increase in the abstracting business. In addition to the abstracting resulting from refinancing, many abstracts were lost and had to be replaced completely. One man lost four abstracts, three of them on properties that were not in the disaster area. To paraphrase the well known saying, "This ill wind blew somebody good". This, however, was business we would gladly have done without. There is no satisfaction in profit from any mis-fortune which wrought destruction so quickly and so crushingly.

ROBERT M. BLAESE

First Vice-Pres., Title Insurance Company of Minnesota, Minneapolis, Minnesota

Forecasting is a precarious undertaking. Predictions, even if limited to the next three months, would still involve a lot of guesswork I open my remarks with this statement because I am not pleased with some of the things which now appear on the horizon. In some of the areas in which our company operates, the building starts during the last quarter have been ahead of last year and the recording of security instruments on the increase. Also there seems to be little doubt that the present surge in the construction industry, which was artificially stimulated by the F.N.M.A. $1,000,000,000 Special Assistance Program and other factors, will carry through for another three to six months. However, experts in the mortgage field are predicting that the government is now more concerned with the effects of inflation than they are with unemployment and that the Federal Reserve Board will again pursue its policy of tighter money and direct monetary controls. If this happens, we will be right back where we started from.

In addition to the money market, of course, there are other factors which could and do effect our business, such as our local economy. Minnesota iron ore industry has hit a soft spot due to the slump in the automobile business, but this has been off-set to a certain degree by the increase in our farm income and expanded tourist business. For the first time in years, we hear less grumbling from the farmers, except of course the p o l i t i c a l farmer. Another factor which will in my opinion have its effect on the title business locally is the Housing Authority Redevelopment program and the National Highway Act. Free-way programs all over the Northwest are expected to be in high gear next year which will necessitate the acquisition of many thousands of parcels of land. The work of compiling the title evidence itself will be immense, and the chain reaction of relocating all the property owners should c r e a t e a great deal of abstract and title business.

During the year, changes have been made in F.H.A. regulations under Section 203 of the National Housing Act which show great promise. I am referring to the expansion of the Certified Agency Program into some 21 states after a trial run in seven areas throughout the country. This program was originally designed by F.H.A. to make new construction F.H.A. loans available to communities of less than 15,000 people and now has been amended to include existing construction. Under this program, qualified F.H.A. lenders may apply to F.H.A. for appointment as agent. The appraisals are made by

independent fee appraisers who have been appointed by F.H.A., and the processing of the credit is handled by the agent. F.H.A. remains strictly an insurer, and all the paper work is done by the agent. The important point is that under this plan it is now possible to get an F.H.A. insured note within four days instead of the usual three to seven weeks presently required for a commitment. This program has been very enthusiastically received by all mortgage lenders, including F.H.A.'s most severe critic, the building and loan industry. It is my understanding that with the exception of the State of Colorado, the large metropolitan areas have not yet been included in this program. For example in Minnesota, the metropolitan areas of Minneapolis, St. Paul and Duluth are not yet eligible to this program. It is my opinion that if this program were opened to all of the states, including all of the metropolitan areas of the country, it could prove to be the greatest thing that has happened to the Title Insurance industry since the advent of F.H.A. itself; and it deserves the actice support of everybody in the Title Insurance industry.

MACLIN F. SMITH, JR.

Exec. Vice-Pres., Title Guarantee & Trust Company, Birmingham, Alabama

Realizing my inadequacy as an economist or predictor of the future, it occured to me that you might also like to have opinions of other title men in the Southeast. I, therefore, took the liberty of writing to the heads of eleven title companies in the states of Alabama, Florida, Georgia, Mississippi and Tennessee and asked them: What do you look for in the next twelve months?

I will not identify their remarks, but I would like to express my appreciation to the following for their prompt and most helpful assistance: Will Goodloe, Al Wetherington, Mort McDonald, Russ Smiley, Harry Paschal, John Matthews, O. B. Taylor, Jim Boren, E. B. Walton, C. H. Briley and Charlie Hon.

Briefly, here is a quotation from each of their letters:

1. "I hardly know how to answer you, as some days we think business is good and then it gets bad."
2. "You need a crystal ball much worse than you need a letter from me, but it seems to me that we should continue to have a steadily improving business throughout 1959."
3. "Business outlook in our state is good, although it has been spotty this year."
4. "The business outlook for the next twelve months, as far as I can prognosticate, is that it will rock along on about the same level as the first six months of 1958."
5. "I am frank to say that I don't look for a great deal of activity in our line of business for the next twelve months."
6. "Our business started showing a falling off last September and it continued along into May. From May of this year, our new orders and total volume have shown a definite increase, and we believe that at the close of 1958 we will show both volume and profit equal to 1957. We are looking for a continuation of good business and, with the momentum now going in building, this should extend well into 1959."
7. "I would hazard a guess that our business will continue to improve through the next twelve months and perhaps through 1960."
8. "Please excuse the rambling nature of this letter. I am afraid all it boils down to is an expression of cautious optimism on my part for the future."
9. 'The year 1957 was one of the slowest that we have ever experienced, . . . but the first six months of 1958 hit an all-time low, with expenses continuing to

creep upwardly; however, July was one of the best months in this company's history, and August is still extremely active, so that our officers are forecasting that, in spite of the first six months, the entire year of 1958, as a whole, will be considerably more profitable than the year 1957."

10. "We anticipate that by the end of the year we will have equaled or exceeded last year's volume."

11. "The first seven months of 1958 reflect that the company will run in the black for 1958, and the next twelve months should be profitable ones."

In the final analysis, six of these gentlemen indicated business in 1958 had been worse than 1957; three said it had been better and two made no comment. Six stated that the mortgage situation had shown improvement in the last six months and that there was more new building; five did not comment. But more important, seven thought that we could look for increased business in the next twelve months, and four predicted about the same as the last six months.

There are two other factors, mentioned by my collaborators, whose influence no doubt will be felt and should be a stimulus to business, particularly in the larger cities; these being urban renewal and the Interstate Highway program.

In our own state, only a small portion of the Interstate Highway program is actually under way, but engineering studies are being completed rapidly and, by the middle of the year 1959, acquisitions should be taking place throughout the state. Alabama alone is scheduled to receive 875 miles of controlled access roads at an approximate cost of $755,000,000.

The construction of these new roads, which is to be spread over a period of thirteen years, and the tremendous amount of money expended under this program nationwide will not only produce title orders from the highway departments, but from thousands of individuals who will be displaced by the highway department acquisistions. Our general economy throughout the country should receive a boost from this source, not only in the next twelve months but for years to come.

To sum up, I think definitely that there is generally a feeling of optimism for the future. In spite of the recent setbacks in the availability of mortgage funds, if new starts in building continue at the present rate, the volume of mortgage money is not too drastically reduced and, assuming that there is no blow-up in the Far or Middle East situations, I believe that we can look for a reasonably good year.

Report of Committee on Resolutions

GORDON W. McKAY

President, Deschutes County Title and Abstract Co., Bend, Oregon

1. **WHEREAS** it has been the pleasure of those of us in attendance at this Convention to be addressed by leaders of our profession, those of associated professions and distinguished guests who have brought to us messages of interest, importance and great value;

THEREFORE, BE IT RESOLVED:

That the American Title Association in convention assembled express its thanks and appreciation to those who have devoted their time and efforts by addressing this convention; and

2. **WHEREAS,** our President, Harold F. McLeran, and his associates in office have faithfully devoted their time and efforts to the advancement, benefit and progress of our Association, thus adding another great year to our growth and success;

THEREFORE BE IT RESOLVED:
That this convention hereby express its thanks and sincere appreciation to Harold F. McLeran and his associates for their outstanding accomplishments in behalf of our Association; and

3. **WHEREAS,** The Washington Land Title Association, the Convention Committee, the local title companies, the Mayor and officials of Seattle and the Olympic Hotel have all contributed in the careful planning of this convention and through their efforts the delegates have been afforded the finest of entertainment, food and accommodations which have made our short stay in the beautiful city of Seattle a very enjoyable one;

THEREFORE BE IT RESOLVED:
That this convention express its thanks and appreciation to each of said organizations for their efforts in our behalf; and

4. WHEREAS, this convention has been honored by the presence and attendance of many Life Insurance Company counsels and executives and other distinguished guests whose fine spirit of cooperation with the title profession has made our tasks much easier and enjoyable;

THEREFORE BE IT RESOLVED:
That this convention express its thanks and appreciation to each of said distinguished guests for honoring us with their presence at this convention.

RESOLUTIONS COMMITTEE
Gordan W. McKay, Chairman
John W. Dozier
William M. West

ABSTRACTERS SECTION

Report of Chairman

LLOYD HUGHES
President, Record Abstract and Title Insurance Co., Denver, Colorado

What happens during these years of instantaneous communications is so well covered by our efficient friends, Jim Sheridan and Joe Smith out of Detroit, and the United Press and Associated Press out of Washington—not to mention the League of Women Voters—that the Chairman of a Section is hard put to give you anything that is really news. The best I can hope to do is to summarize the high spots and tell you my opinion of our business from the vantage point you have given me.

One item of news that came to the Board of Governors at the mid-winter meeting in Memphis was the suggestion from George Rawlings, Chairman of the Title Insurance Section, that the officers of his section were considering proposing that the Association produce a moving picture in color and with sound on the Title Insurance business. It was suggested that such a picture should cover the title business as a whole and be suitable for showing by all members of our Association.

At our Richmond Convention a year ago the drop-off in business—the recession — was very much on our minds. Today, according to the experts, and I hope according to your own experience, the biggest recession since World War II appears to be receding. It seems to be the general concensus that the business picture hit bottom and unemployment hit its peak in April of this year; and the title men and women from various parts of this country with whom I have talked are no exception, they invariably mention May as the month when their business started to show improvement. It is true that some areas are not out of the woods yet,

but there are good reason for believing that they will be soon and that 1959 will be a good business year.

Currently our biggest bugaboo is the growing threat of inflation. Rising prices, a bullish stock market, firming up of interest rates, a 12 billion dollar federal budget deficit, all these, and even more important, the apparent belief of so many people that we can expect inflation as a way of life, do present very real dangers that cannot be ignored. We should expect, and will undoubtedly see, actions on the part of Uncle Sam to slow down this upsurge if it continues. What has happened in other countries could happen here. It must not.

World conditions . . . what a mess! I read an editorial the other day to the effect that potential destruction and unrest seem to be the signs of our times. I don't worry about the "unrest," there is no hope for anybody or any people that isn't restless in the face of oppression; but the "potential destruction" is the sternest actuality of our time. The effort being made to avert international catastrophe is a desperate one, because if our nation is goaded to the extremity of war, it might well be the last extremity of civilization. But there is no need for my going into this further here, except to bring up that grim phrase "barring war," which must of necessity appear in every business report today including this one.

But we can't hold our breath while we wait to see what the future holds, and I know that we are not doing so. I have visited as your representative four State Title Association conventions: Montana, several years ago, not as chairman of this Section but as a representative of A.T.A.; Wisconsin, last year; and Arkansas and New Mexico, last Spring. Next month I am looking forward to visiting with our good neighbors in Nebraska at their Golden Jubilee Convention. Believe me, it is a pleasure, and I mean it, to represent the American Title Association at these meetings, and to learn even more directly than you can at a National convention, what really fine people make up this title industry of ours. The interest of the meetings, everyone of them that I have attended, was only exceeded by the hospitality of the membership. During the business sessions I have often had to pinch myself to realize that I was not at a Colorado Title meeting. So many of the problems are so familiar: employee relations and public relations, training, education, costs, services, abstracts and title insurance, and today, with so many large lending institutions as customers common to all of us, we have to meet so many of the same requirements.

As I see it, our business prospects in this nation are unlimited. We have two assets which have not been known to the same extent anywhere or at any time before in history. These assets are freedom and prosperity. Those two words are general and they sound respectively political and economic, but apply them to the individual American citizen and what do you have—our customer, free and prosperous. It seems to me that the natural multiplication of our customers in this environment of natural resources and habitable land leads automatically to unlimited business prospects.

By way of emphasizing the importance of freedom and prosperity to our customers and consequently to ourselves, take a look at an old country that has been growing for a long time the way we are growing now and you will see what I mean. China is a vast country with rich resources . . . ancient and tragic. Her citizens have had political freedom for less than fifty years in their entire history—gone now of course—and they have never had prosperity. Her people are slaves, not customers; a slave takes what is handed out, whatever is available. American citizens on the other hand, our customers, decide what shall be available. They mold our business by their demands and they have been doing this since 1776, and long before that to cause the English Monarchy no inconsiderable trouble.

Looking at it this way, there is no business in the United States that is run now the way it was run when it started; banking, transportation, merchandising, housing, everything

has developed and adapted to changing demands made by the customer. The two main changes are that there are more customers and that they move faster. Translated into business, this is volume and efficiency. And when you look at the title business you discover that the origin of title insurance came in this country in Pennsylvania: oil . . . boom . . . fast increase in volume of business . . . demand for speed in title evidence. Once tried, title insurance followed the booms.

With these examples and this bit of history I hope to have brought a different slant to the Abstracters Section. Our customers decide whether we sell abstracts or title insurance—we don't. In stable areas that haven't been touched by boom conditions the pressures that have forced title insurance in other places weren't there—more people moving faster. But with the population increase of this nation at the rate it is, the boom is going to be everywhere. Isn't it about time that we all moved over to the title insurance side of the title business? I think it is. In my opinion that is our best bet for getting our share of the business during the fabulous 60's—the boom that history will record, developed out of the increased production of babies.

Thanks for letting me be your chairman for another year. My thanks, too, to all of my fellow officers, and I know that you all join me in special thanks to those who will take part in our program today and tomorrow.

What Our Customer Wants

RICHARD H. HOWLETT

Vice-Pres. and Senior Title Officer, Title Insurance and Trust Co., Los Angeles, California

For a discussion such as proposed by this assignment to make much sense, it is necessary to define some of the terms we all use. Without a common definition we will not all be using the same language.

Our industry is the title industry—not just abstracters or just title insurers but the whole occupation of producing evidences of title to real property. Our customers are the purchasers of that broad service and it is their needs that set their minimum requirements—that which they want—and determines the form and extent of our services.

But what do we mean by "title to real property?" The expression has two very different meanings. The first is proof of ownership—the establishment that a specific parcel of land is presently owned by a certain person, and that no other interests in that parcel are outstanding. This too takes two forms. The record title, the instruments of conveyance and encumbrances which have been properly recorded and which show all steps in the devolution of the title from the government to the present owner. Record proof of ownership, however, is not enough, as the record may not reveal matters which can defeat the title, such as possessory interests that would be disclosed by an inspection or survey of the premises. For the proof of ownership to be complete it must then cover both record and possessory matters.

In the second sense "title" means extent of ownership, the rights of the owner to make use of the property, and the limitations imposed on those rights by the provisions of the various instruments in the record chain of title or imposed by law—such as zoning ordinances. This meaning of the term "title" to real property is just as important as the proof of ownership, for if the parcel cannot be used by the customer for the purpose intended, it is of little or no value to him.

Our industry has many classes of customers, each with different needs and, therefore, each requesting different services, different evidences of title.

The purchaser of residential property—his own home—inspects it himself. He talks with the people in possession, he locates the fences and easements for utilities. He sees the occupied parcel and if it is a foot or so narrower than the record dimensions, it does not affect the value of the parcel as a residential site. He makes his own possessory inspection to determine that phase of proof of ownership, and he therefore only needs to obtain from us title evidence covering the record proof of ownership. If, however, he is buying a vacant lot to build his home, his needs change. The title evidence he needs and wants must be expanded to cover limitations on the use of the parcel. Covenants, conditions and restrictions prescribing use, setbacks, type of construction must be studied. Investigation must be made of applicable zoning ordinances. A survey must be obtained to ascertain if there is sufficient land to accommodate the proposed improvement. These are actual needs, valid requests for extension of title services. This is what this class of customer wants.

The purchaser of industrial and commercial property usually is acquiring valuable land and the shortage of a foot or even less would result in a substantial loss. Where adjoining improvements encroach onto the subject parcel, the customer needs to know if the owner of those improvements can maintain the encroachment, and whether or not the adjoining owner by virtue of the encroachment has acquired an estate or interest in the subject parcel. The mere fact that improvements have existed for some time is not proof of compliance with zoning requirements or provisions of covenants, conditions and restrictions. So far as this class of customer is concerned, an evidence of title of necessity must cover use and possession or his needs have not been met.

The wants of a third class of customer, by virtue of volume of business, is probably the most influential in effecting the form and coverage of title evidences. Lenders' needs led to the adoption by our industry of a standard loan policy of title insurance. That policy has facilitated the flow of money so necessary in an expanding real estate market. The coverage of that policy, in large measure, met the need of the lenders for proof of ownership—both record and possessory, and to a limited extent furnished evidence of title as to right of use. We have all felt that the extended coverages of that policy did not impose an unreasonable risk on our industry; this was primarily based on the fact that if a defect became known, the owner would cure that defect holding the lender harmless. Some lenders recognize in this factual condition additional needs of their own. If the owner to eliminate the defect has to expend large sums of money his ability to repay the loan might be impaired, the lender then says its title needs require that the owner have the extended title coverages afforded the lender so that if a defect does come to light the borrower will also be protected—his ability to repay the loan will not be impaired. A real need—not necessarily met by our industry today.

Since our customers invest substantial sums in real property relying on our services, they have another need —that our industry be sound, not only financially but in the methods and practices followed. The customer does not want a claim against an abstracter or title insurer—the customer wants the loan he made or the particular parcel he purchased. A title company which is willing to issue evidences of title based on inadequate plants and short-cut methods eliminating consideration of all factors affecting title can save on production costs and for a time operate at a profit. Such a system is based on an admission that claims for defective work will arise and the charges are set to meet this cost. Even though the claim is paid, the customer knows that the claim arose because of unsound practices. The customer has a tendency to discredit the ability not only of the one company guilty, but all other title companies in the community as well. We owe the obligation to ourselves and

to our industry to follow only sound title practices, and to see to it that our competitor does the same. This is the only way our industry's product will continue to be accepted by our customers.

Closely related to this factor is the need for stability. The customer deserves to know that the company he is doing business with will be in business when trouble does arise. This requires a sound financial condition and good management of our business. Our customers are willing to pay a fair fee for our services, no more than that, and they should not be expected to pay increased costs resulting from poor management or unsound title practices.

There are areas in which I believe our industry could improve its services and better meet the needs of our customers.

We have a tendency to limit our services to the large volume of easier work for lenders and purchasers of residential properties. We have given coverages to lenders that we refuse to owners.

Whole classes of customers are offered nothing or very limited title coverages. Title evidences covering mineral estates are issued only by a very few companies. This is because it is considered an extra-hazard business. The only reply that need be made is that if the title evidence issued is based upon a complete examination and observation of sound title practices, the probability of loss is no greater than in the issuance of any other class of title evidence.

Title evidences that meet the needs of our customers—that is what our customers want—must reflect more than the record proof of ownership. Our industry can and should be willing to offer title evidences covering: The actual condition of the possessory title; the limitations on use that may be made of property; and every class of interest or estate in real property.

If we long fail to meet the title needs of all our customers we can be sure that a competitor will enter the field to supply the needed services, or a new industry will be formed to meet those needs. It would seem sound for us who are in the business of supplying title evidences to overcome the inertia of habit and expand our services to meet all of the title needs of all of our customers. A service that does not meet a real need does not deserve to be sold, and the title company able and willing to meet the ligitimate needs of the whole community deserves and will attain the support and loyalty of that community.

Abstracters Liability Insurance

A. F. SOUCHERAY, JR.,

President, St. Paul Abstract and Title Guarantee Co., St. Paul, Minnesota

Chairman, Committee on Abstracters Liability Insurance and Bond Coverage

Under all land and its improvements lies the title—the transfer of which rests within the scope of the business of an abstracter. The importance of the abstracter to our economy is obvious, particularly when we consider that almost everyone, at least at some time in his lifetime, will be affected by his efforts. Unlike the transfer of other types of property, the transfer of real property is usually much more complex because of regulations as to its transfer, its use and the many different types of participation various persons may have in it.

With the modern and ever-growing regulations that affect the transfer of title, it requires not only greater educational and experience requirements of the person who holds himself out to the public to serve them on a fee basis, but it places upon the abstracter greater care and re-

sponsibility in so doing. In this respect, the abstracter's responsibility under the law to his client is not unlike that of others engaged in one of the other skilled professions. The abstracter must exercise the same skill and knowledge as other members of his profession and by virtue of his responsibility to the buyer or seller of real property is under certain obligations to him. He is held to that care which an ordinary, reasonable and prudent abstracter would exercise in the same or similar circumstances. If he fails in the performance of his duties, he may be held personally liable to his client for the damages ensuing from his actions whether the same constitutes a violation of his contract with his client or a negligent performance or failure to perform his duties prescribed in the relationship. Thus, we can conclude that he is liable if, to the damage of the person employing his services, he negligently or erroneously omits from his abstract any notice, judgment, mortgage, pending obligation or other lien or encumbrance affecting the title or if he incorrectly reports the quantity of the land conveyed. The abstracter is not generally considered a guarantor of title but contracts that he will faithfully and skillfully do the work which he contracts to do.

Some ten years ago and in recognition of these obligations, The St. Paul Fire & Marine Insurance Company was contracted by the American Title Association to provide professional liability insurance for the abstracting profession. It is natural that over the years questions involving interpretation of coverage as well as practices and procedures of abstracters should arise. It is admitted by this Company, these past years has taught them something of the business, and although they still have much to learn, they have profited by their experience and the counsel and suggestions of friends in the abstracting business in solving some of the problems involving underwriting as well as claims.

This policy as now printed presents broad protection set forth in understandable language. It protects the abstracter in his professional capacity as a title abstracter and pertains exclusively to his professional services rendered. It agrees to pay on behalf of the insured or his estate all sums which he or his estate shall become legally obligated to pay by reason of the liability imposed upon him by law for damages arising from any claims made against the insured or his estate and caused by any negligent act, error or omission not only of the insured but of his predecessors in business and his employees past, present and future. Thus, coverage is provided should an error occur whether the abstract is made for a client or for the use of a title insurance company upon which a title policy may be issued.

In recognition of the changing trends in the methods of title abstracting, the following wording was inserted in the insuring clause of the abstracters' policy in 1953:

> The professional services for others as a title abstracter shall include such memoranda, certificated issued in lieu of abstracts, notes and references to chains of title as well as name searches, tax and assessment searches which are furnished or compiled by abstracters as a basis for an examiner's inspection.

Prior to the above insertion in the policy, it was necessary that an actual abstract be in existence before the coverage of the policy would be effective. In view of the fact that many title insurance companies permit the agent-abstracter to prepare the above data rather than the formal abstract, this extension of the policy was granted.

The defense and supplementary payments section of the policy agrees to defend in the abstracter's name all suits alleging such negligent acts, errors or omissions whether the suit be groundless, false or fraudulent. It provides payment of costs taxed against the insured in the suit, as well as other supplementary expenses, including reimbursement of the insured for all reasonable expenses, incurred at the consent of

the Company. The amounts so incurred are paid in addition to the applicable limits of liability of the policy.

The Abstracters' Liability Policy applies to claims, suits or any other action arising during the policy period. Thus, regardless of when the error occurs, if the claim is brought during the policy period, there would be coverage. Since coverage is afforded for claims occurring in the policy period, the only safeguard to continued coverage is to keep the policy in force. This policy is a legal liability policy, and thus it is limited to the insured's legal obligations rather than to what may be termed moral obligations. Thus, if the statute of limitations has expired on an abstract prepared by an insured, he has no legal liability and coverage would be limited to defense if action is brought. In Minnesota, it is our understanding that the Statute of Limitations is six years from the date of the certificate, except in the event of fraud it is six years from the date of discovery of the fraud.

The Abstracters' Liability Policy contains a broad insuring clause which must be defined or qualified by certain restrictions. Dishonest, fraudulent, criminal and malicious acts and claims from libel, slander and assault or battery have been excluded. Since this is an errors and omissions policy based upon negligence, these acts are usually willful or intentional by nature and should not come within the scope of this policy.

Claims arising out of the ownership, maintenance and use of property and to bodily injury, sickness, disease or death of any person, or to injury to or destruction of any tangible property are excluded. These claims are subjects of public liability policies and refer to the premises and operation hazards rather than to professional services. Coverage for these claims can be procured under various types of public liability policies.

The policy does not insure your opinions of title on real estate. This is a policy to protect against negligence and carelessness; it is not designed to insure against faulty judgment.

Finally, claims under the Federal Securities Act of 1933 are excluded. It is conceivable that this act, which calls for full and fair disclosure of the character of securities held, might be extended to include real estate transactions. Consequently, the liabilities imposed by the act might conceivably be invoked against the abstracter. The purpose of this policy is foreign to the intent of the act, and any claim arising from violations of the act has been excluded.

In a number of instances, questions of coverage have been raised when the insured, who in addition to being an abstracter is an agent for a title insurance company, has in the preparation of a title policy failed to type in certain exceptions or has not followed instructions of the title company in the preparation of the policy. Errors made in the typing or preparation of title policies are not covered under the abstracters' policy. Errors in this situation are those made in his capacity as an agent.

The Country-wide experience of the St. Paul Fire & Marine Insurance Company since they began writing this coverage in 1949 has been 41%. The break-even or permissible loss ratio for this coverage considering acquisition costs and general overhead is 51%.

Abstracters' Liability Experience

Year	Written Premiums	Losses	%
1957	$103,294	$ 45,160	43.7
1956	100,253	40,264	40.
1955	88,138	45,712	51.86
1954	75,178	11,528	15.3
1953	64,033	55,433	86.6
1952	56,847	8,873	15.6
1951	44,961	18,704	41.6
1950	31,862	8,220	25.8
1949	12,398	2,008	16.2
	$576,964	$235,902	41

An examination of the claims they have encountered under this policy shows that they fall into the following general classes:

(1) Failure to show recorded mortgages and mechanics liens.
(2) Tax liens overlooked and taxes certified as paid were not paid.
(3) Errors caused by confusion of legal description.

(4) Failure to show easements.
(5) Erroneous assignment of royalties.
(6) Failure to make complete abstract.

The amount of liability each abstracter should carry is entirely at his own discretion. It is difficult to determine what limits should be carried, but obviously the values of the land in your particular area will govern these amounts.

The abstract and title field is a dynamic industry. Changes are constantly taking place, particularly in the trend toward a dual capacity of an abstracter and title insurance agent. With this combination, additional liabilities and possibilities of loss are created, and, as a consequence, the St. Paul Fire and Marine Insurance Company has received many inquiries as to questions of coverage and the feasibility of extending the abstracters' policy to cover these contingencies. These subjects have many ramifications, and, as a result they, in conjunction with the insurance committee of the American Title Association, are currently making a study of these problems. They feel confident that with the good counsel and cooperation that has come to them from the abstracting industry that they will be able to further serve our needs.

In closing, may I remind you that I have acted as Chairman of this Committee for more years than I care to remember. I wish to thank the other members of this committee for their faithful contributions. Thank you for your attention.

Life With Colorado's Abstracters Law

JAMES O. HICKMAN

Secretary, Abstracters Board, State of Colorado
Asst. Mgr., Boulder County Abstract of Title Co., Boulder, Colo.

The day before yesterday, while I was listening to Bill Gill's sermon, I was facing this hour with dread, because I knew that I would have to start this speech out violating one of the cardinal rules of good public speaking, by making an apology. Not an apology to you, it should be to the Governor of Colorado, who has appointed me in this position as Secretary of the Abstractors Board, and I was thinking that if Bill Gill as a capable speaker could make Oklahoma sound attractive, just think what we could have done if we could have had an outstanding speaker from Colorado telling you about all the virtues of Colorado. Colorado, with its lofty peaks, mirror lakes, its scenic grandeur, I believe, but no longer certain, it is the highest state in the nation; however, now with Alaska, I wouldn't want to make that as a positive statement. Colorado is divided into sixty-three counties. Most of these counties are small in population. They vary from six hundred thirty-two people to counties over sixty thousand people. Probably only in six counties in our state the population exceeds sixty thousand people. In all of these counties but three, we have licensed abstract plants. In the three counties that do not have licensed abstract plants, the county clerk and recorder maintain the tract indices and prepare the abstracts. In all other counties the clerk and recorder does not maintain a tract index or will not prepare abstracts. The only index being maintained is that by the abstracter and the only index the clerk and recorder maintain is the grantor-grantee index. Most of our plants are small, except those in the Denver metropolitan area. These small plants require from two to ten people, and only approximately twenty percent of the counties have competing plants. This figure of twenty percent for competing plants is not as small a figure as it might seem, when you realize that many of your counties are less than fifteen thousand people. Most of the larger counties do have competing

plants. We have had an abstracters' licensing law since 1929, which law was amended in 1949. I would like to read to you what I feel are the key points to our amended law.

SECTION 1. It shall be unlawful for any person, firm, partnership, association or corporatoin from and after July 1, 1949, to engage or continue in the business of making, compiling or selling abstracts of title to real estate, without first obtaining a license from the Abstracters' Board of Examiners, hereinafter provided. Applicants for abstracter's licenses not licensed in a county as an abstracter prior to July 1, 1949, shall not be licensed without first obtaining a license as herein provided and in addition thereto there must be a finding by the Abstracters' Board of Examiners that the present or future public convenience and necessity requires, or will require, such a license.

SECTION 2. **Abstracters' Board of Examiners Created.**—There is hereby created a board of three members, to be appointed by the Governor which shall be known as the Abstracters' Board of Examiners. Each member of the board shall have been actively engaged in the making of abstracts of title to real estate in the State of Colorado for a period of at least five years immediately preceding his appointment. The Governor shall appoint one member for a term of two years, one member for a term of four years and one member for a term of six years, provided, however, that the board shall not at any time consist of any two members who are from the same county, or who are Directors, Officers or Employees of the same licensee or of any Abstract Company or abstracter whose business is owned or controlled by such licensee. Upon the expiration of the term of office of any member, the Governor shall appoint a member for the term of six years. Each member of said board shall qualify by taking the oath provided by law for Public Officers; vacancies on said board caused by death, resignation or otherwise shall be filled by appointment of the Governor.

SECTION 4. **Application for License and Fee-Bond.**—The annual fee for an abstracter's license shall be $25.00 for each county in which the licensee does business. Such fee shall accompany the application for such license and shall be returned to the applicant if the license be not issued. Every license issued under the provisions of this Chapter shall expire on the first day of July of each year, but shall be renewed by the Board upon application within thirty days prior to the expiration thereof and upon payment of the annual fee therefor. In case of a firm, partnership, association or corporation, such license shall issue to such firm, partnership, association or corporation as such, and it shall not be necessary for any individual member or employee of such firm, partnership, association or corporation to obtain such license. No license herein provided for, however, shall be issued until the bond hereinafter provided for be filed and approved.

SECTION 7. **Abstracter Shall Have Abstract Books and Systems of Indexes — Access to Records in Public Offices.** — For every county in which such licensee does business, every abstracter licensed under this Chapter, shall have for use in the business of compiling abstracts of title to real estate, a set of Abstract Books and System of Indexes or other records showing in brief comprehensive form, or full copy of, all instruments of record or on file affecting real estate in the Office of the Recorder of Deeds as indicated by the reception book therein, except as hereinafter provided. For that purpose such licensee or applicant for an abstracter's license shall have access to any of the records, documents or original documents in the Public Offices of this State or any county thereof, such access to be had during ordinary office hours and at such other times as the Official in charge of any such office may permit and determine. Such records, documents or original documents may be inspected for the purpose of making notes, transcripts, or copies therefrom or for the purpose of making photographs or microfilm copies thereof. In the event an abstracter desires to engage in business in a county where there is no

licensed abstracter and where the volume of abstract business is so small that it would not be feasible to require a licensee to have a complete set of Abstract Books and System of Indexes or other records, the said Board may issue a license, and as a condition to the original issuance thereof, may require that the licensee compile a set of Abstract Books and System of Indexes or other records, within a reasonable period of time to be prescribed by said Board.

SECTION 8. **Examination.** — Any person, firm, partnership, association or corporation desiring to obtain a license under the provisions of this Chapter, may obtain such license by complying with the provisions thereof and by passing satisfactory examinations both as to the Abstract Books and System of Indexes or other records and a personal examination as to the knowledge, skill and ability of the applicant as an abstracter. If the application be made by a firm, partnership, association or corporation, the personal examination need only be taken by the active Manager or by one of the active Managers. The examinations shall be conducted by the Abstracters' Board of Examiners. The fee for the examination of Abstract Books and System of Indexes or other records not previously licensed shall be $100.00. The fee for the examination of Abstract Books and System of Indexes or other previously licensed, but which have not been in use for a period of one or more years, shall be fixed by said Board, but shall not exceed $100.00; the fee for the personal examination shall be $25.00. All of said fees shall be paid to said Board at the time application is made for an examination. If upon examination the Abstract Book and System of Indexes or other records do not satisfactorily comply with the requirements of this Chapter, or if the applicant does not pass a satisfactory personal examination, license shall be refused and the fee in connection with the application shall be retained by the Board.

SECTION 9. **Revocation of License.** The Board shall have, and it is hereby given the power to cancel and revoke any license issued under the provisions of this Chapter for a violation of any of the provisions of this Chapter, or upon the conviction of the holder thereof of a crime involving moral terpitude, or if the Board finds such holder to be guilty of habitual carelessness, habitual inattention to business or of fraudulent practices, or for incomptency.

Those are the key points of our law. It has many other provisions, but we feel those are the main points. These points again are that an adequate plant must be maintained, competent personnel must be employed in this plant and must have satisfactorily passed an examination to prove this. It requires that the abstracters must be bonded. It provides funds that allow the Abstracters' Board to administer the law, and the Board is composed of abstracters that must have had at least five years experience in Colorado. We feel that this law has served Colorado well, not only to ourselves but to our customers. The customers like this law, as they are dealing with a plant they are sure is adequately maintained, a complete plant and the plant will be operated by competent personnel. In addition to that, the abstracter that they are dealing with will be bonded and, finally, the public is not required to pay the funds of having the county maintain an abstract index, but this cost is borne by those who are using the service and the abstracter charges for that service.

As to the profession itself, we feel that the Colorado Abstracters' Law has made our business a profession. We in Colorado are always proud of our standing in the community and in the Association. Over the years we feel that the members of the Colorado Title Association are probably, on a population basis, the best attenders of our American Title Association. With us abstracting is not a sideline—it's our livelihood—and it is this law that has forced us to maintain and adopt this position. It has helped us keep out the curbstoners and others who are not willing to make an investment to build a plant, but who would be there to drain off what business might be in a rush or busy times. Employees not only work

for an adequate plant, but they themselves are examined to determine their competency. It has given the employer a goal to place before his employees, because he can tell his employees that when you have proved your ability by passing the Abstracters' Law, then you may have a raise, or whatever the case might be, and it gives the employee an incentive to work ahead. As to the workings of the law, there are three members appointed by the Governor. These members oversee the licensing of each plant each year and the individual examinations. The examination which is given to individuals in a comprehensive one-hundred-question examination that takes approximately eight hours to complete. Of those taking the examination approximately eighty per-cent pass it. Questions on the examination are changed each time and twice a year examinations are given, or if individuals wish to come into my office or the Denver office they may, and take the examination on a one-take time basis. As new plants are built, the Board will go to the community and examine the plant and have sample abstracts prepared. They will then from these sample abstracts determine if the proposed plant is satisfactory as a complete plant. If not, they will lay down the requirements that must be met for a license that can be granted. We have had approximately seven new plants licensed in Colorado under this provision. In 1949 our law was amended. The law was originally enacted in 1929. The 1949 Amendment contains the following wording:

"Prior to the granting of a license to an applicant there must be a finding by a Board that there is public convenience and necessity which requires or will require a licensed abstracter."

This clause has been a stickler to our Board, as the law does not lay down guides as to how to determine what is public convenience and necessity. Recently, we had an application where the Board had three hearings in the community in which the applicant was desiring to build an abstract plant. After these hearings the Board denied the license and denied the application to proceed to build a plant. The applicant took the case to the lower court, and the lower court ruled that the Board was arbitrary and capricious in its decision in failing to find that public convenience and necessity required a new abstracting plant. The Board is now faced with the decision, which must be met by October 3rd, as to whether to appeal this decision to the Supreme Court or to take the decision of the lower court. The Board has felt that they would like to have a ruling as to the constitutionality of this provision, which the lower court did not determine. Those are the main features of the Colorado law. I'll be glad to answer any questions that any of you might have about this measure.

Profit Sharing

ROY C. JOHNSON

President, Albright Title & Trust Company, Newkirk, Oklahoma

A Profit Sharing Trust might possibly be one of the most important tools of a successful business. It acts to stabilize employment. It attracts new employees of quality. It is a business aid to meeting stiff competition in the employment market and is a legal tax saving device.

Any legal tax saving device that can be used by an employer is becoming more and more important. We all overlook the changes that have occurred over the years because we become too accustomed to the present way of doing things. Taxes have increased tremendously over the years. Let me illustrate—twenty years ago the federal government spent $7 billion; this year it will spend $80 billion. The federal debt was $37 billion and today it is nearly $280 billion.

Forgive me for reference to the great state of Oklahoma, however, I should know a little more about Oklahoma than other states. Twenty years ago in our state we spent $86 million; this year we will spend more than $400 million, for the operation of our government. Total tax collections, federal, state and local, in Oklahoma, during the year of 1958 will amount to more than $1 billion, $200 million. This money, all coming from the tills of business and from the savings of our individuals, has a terrific impact upon the economy of Oklahoma citizens and can best be illustrated by the fact that this is more than twice the value of all crops and livestock produced on Oklahoma farms and ranches last year.

This should indicate to you that government, and the cost thereof, has grown to such magnitude that we, the citizens, should have more than just a casual interest in the subject matter. In our private lives, and in business, we should take every legal advantage of tax saving devices.

If possible, I would like to further stress the importance of taxation. How much of a savings account would you have if you had been able to deposit the amount of personal income tax you have paid in the last ten years into a savings account and added 4% interest? If your average tax payments have been $1,000 a year, you would have approximately $12,-100. If your average tax payments have been $4,000 a year, you would have approximately $48,500. If your business is a corporation, how many dollars have you paid in taxes in the last ten years? I'll venture that the total sum has been quite substantial.

Profit Sharing is an excellent means of tax savings. It accomplishes many things, including the improved morale of the personnel of the company. Here are a few beneficial accomplishments resulting from the creation of a Profit Sharing Trust:

1. A means of acquiring better class employees.
2. Greater stability of employment.
3. More satisfactory severance relations at age 65.
4. Causes employees and officers to have a more keen interest in the general welfare of the company.
5. Employee has a greater sense of security approaching retirement age.
6. Company will prosper as a result of a more efficient operation.
7. Increase profits to the stockholders.

The tax exempt status of a Profit Sharing Plan requires qualification under Section 401A of the Revenue Code. There are three tax consequences arising in connection with such a qualified plan.

1. The employer is allowed to deduct from taxable income contributions made to the trust, within the limits prescribed.
2. The income, including interest, dividends, and capital gains, is exempt from tax.

3. The employee's share is not subject to tax until received by him.

The Internal Revenue Service has reported that there are now approximately 36,600 tax qualified pension and profit sharing plans. Annual contributions to such plans now amount to approximately $4 billion, and the total assets are nearly $30 billion.

Every one of us, and our associates, will reach a point in life where our productivity has not kept pace with compensation. Sooner or later, we will all reach the point where we are unable to perform our tasks as quickly and efficiently.

Those of us who are engaged in the capacity of management are sooner or later confronted with the problem of terminating employment relationship with an individual, or finding some other job that the individual can perform more efficiently, at perhaps a reduction in wage; or, solving the problem with a proper pension arrangement.

Foremost in the minds of our predecessors during their working years was the necessity of thrift, in order to provide for themselves upon retirement. The thought of providing one's own retirement security is becoming less and less evident in our minds, and in the minds of our associates.

Maximum benefits of $200 per month for a man and wife from social security at age 65, provided they earn less than $1,200 per year. This alone is hardly sufficient to provide one with the necessities of life, thus must be supplemented.

Large companies in the United States evidently were the first to realize the importance of pensions and profit sharing plans. Most all large corporations have established such plans, many of which have been in existence for many years, however, the number of plans approved by the United States Treasury Department continues to increase year by year, for it is becoming more and more important to provide an attractive plan for employees.

Many companies hesitate to enter into a pension plan for it represents a definite commitment on the part of the company in making available certain funds each year, however, on the other hand, the profit sharing plan provides that all payments shall be made only if, and when, profits are earned. Therefore, a pension plan is a fixed commitment on the part of management whereas a profit sharing plan is a commitment only if profits are available.

Some of the basic elements of a profit sharing plan consist of the following—eligibility from the standpoint of age and service, retirement age, shall retirement be compulsory, method of vesting interest to the participant, amount of corporate contribution, investment of trust funds, and trusteeship.

Profit sharing plans do vary substantially from company to company, where the individual requirements of business are different.

Most plans provide for required retirement at age 65, some provide for earlier retirement upon application by the employee and approval by the board.

Most plans provide for a service requirement ranging from six months to five years; probably the most popular is a waiting period of two or three years before one becomes eligible to participate. Those plans that have age requirements generally require one to be thirty or thirty-five years of age before participation is allowed.

Frequently the participant's interest is vested at an annual rate of 10%. This is easily understood and extremely simple to calculate. Many companies, however, have different requirements in this respect. One company, for instance, vests 50% after ten years and 10% thereafter. Another vests 100% after 15 years. Another vests 50% after 5 years and 5% thereafter. Some require contributions on the part of the employee.

The amount of the corporate deposit, or contribution, varies almost with the will of the individual corporation. For example, 10% after taxes; 10% of the net profits; profits over 15% of net up to 10% of net worth; another 50% of net earnings to 10% of pay; another 2% of earnings less stipulated deductions; another 50% of the first $50,000 of adjusted net profits; etc.

Allocation to the individual employee's account is usually based upon the amount of compensation; in some cases upon compensation and years of service. For example, if one were to use both, an allocation of one unit per $100 of base annual salary, exclusive of bonuses and overtime, plus one unit for each year of service, such would be a practical plan and easily understood.

Every plan should specifically outline the method of investment and the appointment of a Trustee and the manner of replacement of the same. Some plans provide for investment in life insurance, securities, mortgages, bonds, real estate, stocks, etc. Many plans are handled through life insurance companies. Some are handled through banks and corporate trustees; others are handled by individual trustees. Banks and corporate trustees offer a variety of investment and supervisory plans for the financing of retirement plans. The Trustee may, under the authority granted in the agreement, either have the authority to invest, with or without consent. This would apply to bank, corporate, or individual trustee.

One important reason for the growing popularity of profit sharing plans is the fact that they impose no financial strain on the corporation, as there is no fixed obligation. Many corporations have been reluctant to undertake the more or less fixed obligations of the pension plan. The profit sharing trust, on the other hand, requires the company to contribute only to the extent that profits permit. In good times when taxes are high, the contributions will be larger. If there are no profits, no contribution is made. Moreover, it is always possible to place a ceiling on the contribution; just as it is possible to make no contribution until profits have risen above a specific level, or a predetermined yield on invested capital.

Stockholders, officers, and executives of a corporation are not able to retain much of their income today. Stiff corporation and personal income tax rates deprive them of the fruits of their labors. If profits from business are increased, only a trickle slips through the twin tax strainer. This is especially true of profits allocated to dividends. Disbursing profits to key executives in the form of increased salaries, or bonuses, is oftentimes not the correct solution. Personal income taxes skim off most of the cream.

Under an approved profit sharing trust, the employee's share escapes both corporate and personal tax blows. The corporation's contribution is deductible from the corporation's income. The trust income is wholly tax exempt and the employee's share is not taxed until it is paid. As a simple illustration of tax saving, we will use the top $1,000 of a corporation's income:

Corporation's Top Income	$1,000
Deduct State and Federal Taxes (Assume 4% state)	560
Net Corporate Income after taxes	$ 440

The remaining $440 is disbursed in the form of dividends to a stockholder, who is in a 40 per cent tax bracket:

	$ 440
Tax will amount to $176, thus leaving $264 out of	176
the original $1,000	$ 264

Assuming the $264 resulting dividend, after taxes, was invested annually at 5 per cent, over a 20-year period, however we must reduce the interest yield by 40 per cent because of income tax, thus the accumulation, including interest, would be $7,349.96.

Now let's take a look at what would happen to the top $1,000 of the corporation's income when placed in a Profit Sharing Trust:

The entire $1,000 is placed into the trust and is tax free	$ 1,000.00
This may now be invested at 5%, free of tax; continuing the contribution for a 20-year period, we accumulate	$33,065.94

This, of course, is subject to tax when paid to the participant. Assuming it would be drawn at one time and would, therefore, be subject to taxes on a capital gain basis, or a maximum of 25%,

the tax would amount to ..... $ 8,266.48
Thus, there would remain $24,799.46
The stockholder-employee would make a net gain of $17,449.50
or 337% as a participant in a Profit Sharing Trust.

Many people today have been in the enviable position of having received dividends from a corporation over a 20-year period. There may, perhaps, have been a slight interruption in the payment of such dividends from time to time, but, nevertheless, a 20-year period of continuous dividends is not at all inconceivable. If you are one of those fortunate persons, if you had been able to increase that by 337 per cent, would that not have been an extremely wise thing to do?

Here are a few brief facts concerning profit sharing plans which I would like to bring to your attention in conclusion:

1. There is no fixed liability. Contributions are geared to profits. The corporation contributes no more than it can afford, particularly attractive to a company with fluctuating profits and one that is unwilling to undertake a fixed commitment entailed under a pension plan.
2. Can be operated by any profit-making business, regardless of size. Actually, no company is too small nor too large.
3. The cost of installation and administration is reasonable — no need to incur actuarial services to set up and operate a profit sharing plan.
4. Employee has a definite incentive to keep costs down and profits up, for participant's share depends upon company having good profits.
5. Employees need such a plan— high taxes and living costs prevent the accumulation of retirement funds.
6. Meet competition — labor shortages have demanded new methods of abstracting and the keeping of employees, and the establishment of profit sharing trusts has, in many instances, allowed the meeting of competitor advantages.
7. Labor demands — unions, through collective bargaining, force the adoption of forms of profit sharing and pension plans.
8. Prevention of turnover—stability of employee personnel has, in many instances, prevented waste, training costs, provided higher production, job incentive and in this manner actually more than offset the cost to the employer.
9. Tax advantages—fully deductible to employer. This substantially reduces the cost, making Uncle Sam a partner in the payment. Income non-taxable to the trust and taxable to the beneficiary at a future time, when distributed either at capital gain rates, or at rates more favorable to the taxpayer because of being in a lesser income tax bracket due to retirement.

If you have any interest whatsoever in the matter which I have been discussing with you, may I suggest that you discuss this with your key employees, your fellow officers, directors, your tax consultant, and your attorney.

Title Evidence and Protection in Alaska

JOHN E. MURRAY

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Nation-wide attention has recently been given to the problems of Alaska. There is awareness of Alaska as an important element of national and global defense and additional attention has been attracted by the discovery of oil resources in apparently commercial quantities. And, within the last couple of months, Congress has granted to the Territory of Alaska, the right to adopt statehood and such statehood was adopted by an overwhelming majority of the Alaskan electorate. Thus, we all know that Alaska now stands at the threshold of a future which seems to be a bright future and of great significance to future national development.

The many phases and aspects of this historic and almost unique development are focused into a spectre from which a title company can well look back to the years past and ahead to the years to come.

Our title company was, for all we could determine, the first commercial venture of this type ever established as a domestic corporation in the Territory of Alaska. This company was incorporated in 1949 and the first title insurance policies were issued in the early spring of 1950. During the years past, there was daily occasion to acquaint ourselves with the essential problems of Alaska in its former status as a Territory and also to look prayerfully forward to a future status as a state.

When we came into existence and into operation, it was still very doubtful whether Congress would eventually take full cognizance of the needs of Alaska and be ready to grant statehood to this Territory. At that time, the population had not yet increased in the present proportions and the prospect of oil was still comparatively remote. These have been years of tremendous growth and tremendous activity, much of which has been reflected in our files and our daily problems and pursuits.

And there have been innumerable occasions to study closely the necessities of reviewing and reforming the political status of Alaska in order to adjust the political and legislative machinery to the contingencies of a new age.

We have always been impressed by the fact that there are not any Alaskan title problems which are not connected, one way or another, with the political status of Alaska. Much of the difficulties we had to contend with in implementing our objectives as a title insurance and abstract company were intimately connected with the impossibility of ruling this vast Territory from Washington, D.C., and to establish a proper functioning of the judiciary without a home rule.

Certain factors must be noted to explain the peculiar difficulties which will be discussed. The area of Alaska is very large but the population is still comparatively small. Therefore, there is a problem of geographic distances and of transportation and communication. Obviously, in former days and prior to the need of title coverage for Government loans, there was no great demand for obtaining abstracts or title insurance and, accordingly, the public was not educated on the functioning and on the needs of title business. We found the population in dire need of these services but unforunately, uninformed as to the nature and coverage offered by title companies. One of our first objectives was, therefore, to inform and educate the public. Fortunately enough, we had the enlightened assistance of bankers, realtors and attorneys, three professional groups who were most anxious to secure for their growing economy the help and assistance of a title company, and giving much of their time and efforts

to help educate their clients in the needs for title insurance.

Nevertheless, the road was not an easy one to travel. We found and we still find that residents of the more remote areas of Alaska are completely unacquainted with the meaning of a title report we may furnish. Some of them are convinced that the mere fact of procuring a commitment for title insurance, regardless of the exceptions which we may set forth in such report, guarantees them a good title and will protect them against any loss of their title or encumbrance. Others stubbornly want to believe that the title company itself could be instrumental in doing the legal work required for removing exceptions made in our policies. Others again believe that title insurance is quite unnecessary where they have been in possession of the land for a period of ten years, which is the Alaska Statute of Limitations applicable in certain cases. In all these instances, much patience and diplomacy must be used to explain in plain and simple language to the title customer what is the nature of our services and to what extent we can help him to protect his ownership and possession and to satisfy the needs and requirements of his creditors, lendors and buyers. Just one instance of the experiences we have had: The other day, a title customer showed us our title report setting forth significant defects in the chain of title and he asked us what that meant and what to do about it. Upon suggesting that he must clear his property from these exceptions, he remarked that he does not have to clear it with an attorney because he had a caterpillar to clear the land. This, of course, is just one instance of many uninformed title customers concerning our services.

Originally this title company was limited in its plant and in its functions to the Anchorage Recording District, which covers an area of land with a perimeter of perhaps 40 or 50 miles around the town of Anchorage. It soon was seen that there were definite title needs in other more remote and not so densely populated areas and we soon arranged for including in the Anchorage title plant, appropriate copies or records from such recording districts as Palmer, Wasilla, Homer, Kenai and Seward. These towns are rather small, mostly not more than 2,000 inhabitants and they control a still thinly populated but potentially large agricultural area and, as of now, it has been seen that much of these areas has considerable oil and gas potentialities. We also included the recording district of Kodiak, which encompasses a rather small island with a town of not more than 800 inhabitants and a number of fishing villages on the same island. Everybody will understand that it is not possible to maintain branch offices in these listed areas. Nevertheless, there has been acute mortgage and real estate activity in some of them and it has been strictly necessary for us to enter into contracts with the recorders, under which we assist them in making photostatic copies of all their recordings which are transmitted at very regular intervals and immediately included into our files, office records and title books. In fact, some of those recording precincts are now very active as producers of current title business. It is, however, in these areas that we meet with some of the most difficult problems of adjustment to the title needs of modern-day title insurance. The system of recordation districts as it now exists obviously lacks centralization and even rationality. Under the system of government which was established under the Organic Act in 1913, Alaska had not been granted its own judiciary. The judiciary for Alaska was formed by the District Courts of Alaska, now sitting in four judicial divisions but being one district court and the court of general jurisdiction for the Territory of Alaska. It has been recognized in many court decisions that in this capacity, the district court of Alaska was both a Federal court for the purposes of Federal jurisdiction, such as bankruptcy and also a Federal court of Alaska for matters Alaskan. The power to establish subdivisions for the purpose of recorda-

tion and to appoint recorders was vested in the United States District Court. Those recorders are United States Commissioners and as such appointees of the Court, they were given many other function: The United States Commissioners are also Justices of the Peace, Probate Judges and Registrars of Vital Statistics. Evidently, these many functions could be readily performed by the Commissioner in the past where there was very little activity in any of these fields. But things have changed and the result is that the Commissioners are now overburdened with judicial and administrative functions which some of them are physically unable to discharge and often professionally not properly prepared to assume and discharge. Still the court has no Federal funds to pay adequate salaries to these Commissioners except in the big cities and in the small rural communities the Commissioners must derive their income from such fees as they are permitted to charge for their functions. It has been proven over the last years past that such income is entirely insufficient and inadequate as a compensation for their many duties and that very many very able men and women were unable to continue in office because of lack of an adequate income.

Additional Problems

It is also evident that the difficult functions of a Probate Judge are an additional burden to the Commissioners and that lack of preparation for such functions can result and in fact has resulted in many defective probates which encumber and cloud title to valuable properties. There has also been great uncertainty and doubt as to the authority of the Commissioners to prepare abstracts of title in areas where the help of an attorney cannot be secured. We have, on many occasions, seen the need to enlist such help from the Commissioners in recording districts where it would be entirely unfeasible to maintain regular title service. For instance, such recording districts such as Valdez or Seldovia require two or three title orders within one year. But if such title order is presented to us, it usually involves an order by an important government agency or some other very obvious need. For such needs, we establish the policy to inquire with the Commissioner and the Recorders whether they are willing or able to give us a certified abstract of title. With some of these Recorders we have had excellent experiences because they have developed the skill of a good abstractor and present competent transcripts from their records. The court regulated their conduct as abstractors and requires that the abstracts be certified, full transcripts of the entire instrument, so that the presentation could not be considered as a legal opinion and, therefore, obnoxious to the legal profession.

We had various experiences in working with these Commissioners. In one case, the Recorder and Commissioner refused to certify an abstract because he believed that title companies made excessive profits on these transactions and he did not want to support big business, as he expressed his thoughts. In another instance, the abstract angle worked fine but the Commissioner who had been the sole charge of this office for more than twenty years, had ideas of her own about instruments which were sent for recording for the closing of the deal. She refused to record a deed because she believed that the deed must not be recorded until such time as the purchase money mortgage, which was to run for fifteen years, had been paid off. At such occasion, she revealed that this had been the practice of her office and that in her office, such mortgages are not being shown on the record until paid off. Another Commissioner whom we tried to reach by long distance telephone for the recordation of a very important instrument of assignment of oil and gas interests left a message that he must not be disturbed for the next few days because he was doing a repair job on his house. In one case, an attorney traveled for us to a remote recording precinct for running some chains of title and inquired

about the possibilities of having title searches done. He was told there was one man in town, a grocer who had six years of school and was, therefore, able to read these instruments.

As I said before, it is not the individual Commissioners who must be blamed for these difficult conditions. The number of available appointees for this office is very limited and occasionally the Court has been compelled to reunite two or three recording districts because of the reason that no Commissioner could be found. Under these circumstances, the divisions became complete arbitrary and within the last thirty years, there have been issued about thirty orders out of the Third Judicial Division of the District Court pertaining to redistribution of recording districts. Some chains of title must be followed through three or four recording districts in order to find all the instruments of record applicable to that piece of property.

I have discussed one of the difficulties of title examination directly traceable to the lack of a sound and practical political subdivision of the immense Territory of Alaska. Comparable difficulties exist because of the several types of quasi municipal bodies having taxing powers under the present political setup. Most of the tremendous area of Alaska is not broken down into any self-governing policial subdivisions. However, the present laws permit, in addition to the incorporation of cities, the incorporation of public utility districts and of independent school districts. Much use has been made of these facilities. Both school districts and PUD's have the power to levy taxes for the purposes for which they were created. In the vicinity of Anchorage, much of the residential land is subjected to the taxing powers of a PUD and of a school district, both concurrently. Of course, tax records must be kept in the offices of these organizations and, needless to say, that the personnel in charge of these objectives is not always well acquainted with the statutory provisions regulating their duties as a taxing body. We found wide reluctance to permit us proper inspection of these public records. We also found that some of these records were very poorly kept. People have proven to us and to the school district that they had paid their taxes as assessed and yet, for some reason which could never be explained, the land had been sold for unpaid taxes and tax deeds issued. Many titles are obscured and clouded by tax deeds of these taxing bodies. Even property which is now incorporated into cities is still sometimes found to be delinquent on taxes assessed prior to incorporation by the PUD's or by the school districts. The former tax sales have been definitely objectionable being tax sales conducted by an officer or an agent of the taxing body and not by court foreclosure action. In 1957, the Territorial Legislature passed an act for the purpose of modernizing the tax sales by municipal corporations by creating a tax foreclosure in the district court with one tax deed issued upon foreclosure judgment to the foreclosing body. Of course, a test case will be needed in order to determine whether tax titles so derived can be considered for title insurance in proper circumstances. The tax titles derived under the old tax sales are not found to be acceptable for title insurance.

An interesting observation of the history of much of Alaska can be made in examining titles in the older towns, as for instance, Seward. Seward was founded in 1905 by a homesteader who platted his homestead as a private subdivision and gave it the name, Seward. Additional areas were created as townsites by the United States Government under the Alaska Railroad Act. At that time, it was expected that Seward would be the most important center of the Alaska Railroad net, then under construction, and would have paramount importance as a seaport. However, in 1922, Anchorage became the administrative center of the railroad and from that time on, Seward was somewhat neglected. It appears that in the years between 1919 and 1928, Seward must have been something like a ghost town. The old title rec-

ords show that there was a great amount of speculation in property in Seward, particularly by financial interests from the East Coast. Most of the money was made available by the Harriman National Bank of the City of New York. But in the early twenties, there was apparently no activity whatsoever and the Harriman National Bank foreclosed practically two-thirds of the town of Seward under one mortgage foreclosure. The title was then held by this national bank, which, in turn, became insolvent. The City of Seward acquired apparent title by a series of tax sales in the 1920's. We tried to examine those old records and memorials. Needless to say, from a technical title point of view, the acquisition of title by the City of Seward was defective and to make things worse, the City of Seward started to sell the property so acquired by quitclaim deeds around 1940. Our title examinations disclosed the outstanding interest of the unknown trustees and liquidators of the Harriman Bank and the other oustanding interests in these matters pertaining to the greater portion of the City of Seward. In the meantime, citizens of Seward became aware of the need for title clearance and it has became the habit of property owners to join in quiet title suits covering comprehensive tracts of the Seward area. During the last five or six years, so much progress has been made in clearing the title to Seward property that we can now safely say that as to about 80% of Seward, clear titles or reasonably clear titles can be shown in our examinations and policies.

Of course the citizens of Seward exhibited in this matter a great sense of cooperation and civic responsibility. In other localities, people are not sufficiently aware of the need of action to make title available for title insurance and are still fighting each other rather than seeking a solution to their title problem.

I mentioned old probates. In some instances, it has taken ten years to fifteen years to close probates and we have at least one case in Palmer, a rather important agricultural center, where nearly 40% of the City of Palmer proper is subject to a series of title exceptions because of the reluctance of one administrator to cooperate fully in the closing of one estate.

It is rather interesting to note that in different areas different title problems are existing which are hindrances to title insurance and to prompt expedition of loans and real estate transactions. In the so-called Kenai Peninsula area, which is important for agriculture and also for oil and gas, we have the problem of the homestead surveys. In that area, a group of homesteaders, who had acquired their 160-acre homesteads around 1920 to 1930, have been persistent in refusing to use surveyors to establish arbitrary subdivisions or plats of their homesteads. They began by deeding away acreage by metes and bounds, using insufficient monumentations and ambiguous descriptions and they persisted in describing junior grants by adjoiner to the first grant. Now, where most of these homesteaders would like to make disposition of the balance of their land for the purpose of oil and gas leases or for other commercial ventures, they are very much disappointed that the title company insists on re-survey and on acceptance of correction and quitclaim deeds based on such re-survey. Of course everybody will realize that Alaska lacks capital and these homesteaders also sometimes lack sufficient cash to pay for the costs of a survey and for the legal assistance they would need to procure and file proper instruments and to close old probate proceedings. Sometimes the monies for such title clearance must be escrowed in the course of a comprehensive sales transaction. In the above, we have spoken of a number of everyday problems we have met during the last years of examining title in Alaska, but I wish to mention that there are certain special problems which present particular difficulties and which are waiting for a comprehensive solution. One of these difficulties exists because of the fact that the United States Rectangular Survey

includes less than 1% of all the land in the Territory of Alaska. The rest is unsurveyed. The efforts to procure federal leases on public land are of course not limited to the stretches of land which are mostly coastal and which are surveyed, but also to those wide portions of wilderness which are not surveyed. The land office uses a system of so-called Atlas maps which are based on hypothetical townships and ranges and which are approximately useful but not fully adequate to describe the land under federal lease. Title insurance for land not surveyed presents, of course, very difficult problems of location and descriptions which we have to solve for the benefit of the interested party.

Another question which has been presented to us is the one of the so-called Russian titles. This question has arisen as to some valuable property in Sitka. Under the Treaty of Cession of 1867, all of the land in Alaska became public land of the United States except such land which was held in private ownership. There must have been precious little of such land in private ownership because there was no commission appointed for judicial powers to adjudicate any questions arising thereunder. To make a long story short, together with the act of turning over the Sitka installations to the United States, there was executed a protocol which listed a group of lots designated as "C" lots, as being private property established prior to the Cession under the Russian laws. The records of Sitka have often been examined and consulted and it appears that there is no evidence of such grant by the former sovereign. However, Congress has always disowned these tracts and the Department of the Interior has considered them as having been in private ownership from the inception of American rule and, therefore, not under jurisdiction of the Department of the Interior. Here it must be necessary that Congress enacts proper authorities to grant quitclaim deeds or confirmatory patents in order to clarify the title condition.

The lands occupied by missions of the Russian-Greek Orthodox Church have, in the course of the last sixty years, been patented to trustees for such church under appropriate acts of Congress. A question has now arisen as to the succession to the original trustees who were Archbishops of that church, appointed in the days before 1917 by Russian church authorities. It appears that as a consequence of Communism and Atheism, pursued by the present rulers of Russia, the believers of the Russian-Greek Orthodox Church reincorporated as a corporation under the laws of the State of New York, after New York state law had granted same the authority so to do. The present apparent title holders to the land of the Russian missions in Alaska are the appointees of this religious group. Under a Supreme Court decision which was issued in 1953 in the matter of possession of St. Nicholas Cathedral in New York, the United States Supreme Court held that the subject law of the State of New York, under which the Russian-Greek Orthodox Church had been incorporated, was unconstitutional and void, as violative of the First Amendment to the United States Constitution. Henceforth, there is a wide open question as to the right, title and authority of the above named church authorities to administer and to sell and convey the church lands of the Russian church in Alaska.

In the above, I have tried to offer some of the experiences and some of the difficulties presented by title work in Alaska and I now wish to look from the past toward the future and to sketch my thoughts as to what the future may have in store for an Alaskan title company. Our past work has been done under the status of a territory and under the Organic Act. Our future work will be done within a state of the Union and under a modern state constitution. The new state will be given ample physical resources by liberal land grants from the Federal Government. These lands will undoubtedly be opened to leases for oil and gas. There will be grants of homesteads and there will be leases for production of other miner-

als. We look forward to a period of title work where matters of mining laws, oil and gas and homestead laws will be the problems we shall have to study. We will have to study them and we will have to apply them for the benefit of the customers, for the benefit of the public at large, both with respect to Federal lands and to Federal laws and with respect to State lands and to State laws. This company is dedicated to assist the production of oil, gas and minerals by the creation of a modern oil and gas plant which will encompass those areas which are not surveyed but which are described by hypothetical and fictitious subdivisions. We are aware of the difficulties but we shall establish the necessary means and tools to cope with them. We know that the system will also have to be extended to new state lands and that our methods of examining the title to oil and gas leases may have to be reviewed and supplemented under the contingencies of new state laws prescribing the means under which leases can be procured from the state.

We hope there will be a new era of mining activities. There will be mining claims and mining patents. Of course, in the title insurance of mining claims there are serious limitations which are in the nature of the matter. Mining patents will not present the same difficulties. This company has always assisted Federal and Territorial agencies in title work particularly in matters of condemnation proceedings, road building projects and similar comprehensive projects. We hope such occasion will be given to us to give the same assistance to the State of Alaska.

Those are some of the future objectives. They have not yet crystallized and we cannot give too much detailed information on that. We know, however, one thing—that our work will in the near future be greatly simplified by providing the authorities and the mandates of the States Constitution to create cities and burroughs as the only type of political subdivision. The PUD's and school districts will, under the terms of the constitution, continue to exist without the power to incorporate or annex new areas but we hope that they will soon be dissolved for making place to the burroughs. The burroughs system is hoped to be the center of a new recordation system which will be centralized and which will reunite the records in a comprehensive manner. A state judiciary will be created and it is hoped that the Commissioners' courts will be replaced by inferior state courts with well-defined jurisdictions. From the above, the necessity is clear to completely sever the activities of the Recorder from the activities of the Justice of the Peace. Of course, very grave difficulties could arise if the new subdivisions would be set up in a manner to break up the areas of presently existing recordation districts and split the records of several burroughs. Undoubtedly, most interested circles in Alaska are aware of the necessity that such a thing must not be done. We hope the legislature will realize that the public will best in served by a centralized system of recordation and by keeping the records of very remote place of recordation at one of the bigger centers for general inspection. The selection of adequate personnel for recordation will present some difficulties. We are, however, deeply convinced that everybody is aware of the importance of this function and that Civil Service appointments will be made which will be free from politics and will help to build a career for Recorders, fully trained and aware of their serious responsibilities to the landowning public and to the agencies, both private and public, which must rely on the accuracy and completeness of the public records. Effective title insurance, of course, will stand and will fall with the effectiveness and accuracy of the recording system. Everybody will realize and everybody does realize in Alaska that continued lending by Government agencies and continued investment by out-of-state interests depends on the title security which can be offered to those intrests and that a sloppy system of recordation or the creation of new complications and difficulties in this field

could have disastrous consequences.

It seems that the framers of the State Constitution had just this danger in mind when they pointed out the necessity of simplification of the political subdivision of Alaska. We look with high hopes to the work to be done by the first legislature of the new state and we know that these legislators will not fail in the completion of their very worthy objectives. May it be said that even under Territorial status, important preparatory work to eliminate the great difficulties of title has been done by the legislature. We already have a very modern method of tax foreclosure by municipal bodies, we have the Alaska Trust Deed Act of 1957, and a system of land registration on any property owned in Alaska has been initiated for the purpose of creating a basis for the future assessement of Alaska property taxes if such be needed and desired.

Our work in the field of title insurance has always been very simplified, compared with many other jurisdictions by the fact that we had no experimentation with any community property laws. It is our understanding such a thing is not contemplated in any near future. If any title problems arise due to some act of legislature, which we do not expect to happen, our organization will be prepared, however, to meet the challenge and to have proper methods and proper standard operational procedures ready for such contingency.

TITLE INSURANCE SECTION

Report of Chairman

GEORGE C. RAWLINGS

President, Lawyers Title Insurance Corporation, Richmond, Virginia

As Chairman of the Title Insurance Section, it is my duty to make a report to you.

At the outset, I should like to express my appreciation to the Vice Chairman of the Section,

Tom Dowd, Senior Vice President and Secretary, Abstract & Title Guaranty Company, Detroit, Michigan;

to the Secretary,

Drake McKee, President, Dallas Title & Guaranty Company, Dallas, Texas;

and to the members of the Executive Committee consisting of

John B. Gordon, Vice President, Security Title Insurance Company, Madera, California;

J. Mack Tarpley, Vice President, Kansas City Title Insurance Company, Kansas City, Missouri;

Herman Berniker, Executive Vice President, Title Guarantee & Trust Company, New York, New York;

and

Maclin F. Smith, Jr., Executive Vice President, Title Guarantee & Trust Company, Birmingham, Alabama,

for their interest and cooperation.

A meeting of the Executive Committee of the Title Insurance Section was held in Memphis at the time of the 1958 mid-winter meeting. Various problems incident to the title insurance industry were discussed and several worthwhile projects which should be undertaken by the Title Insurance Section were considered.

The Chairman was instructed to present to the Board of Governors of the Association a request that the American Title Association underwrite the production of a color sound film for general distribution to its members and to the public for the further promotion of the use of title insurance. It was contemplated that it would require about 18 months to prepare and perfect the script and produce the film by which time the

existing film, "The Land Is Yours," produced by the Atlantic Coast Regional Conference would have been shown throughout the country for several years and a new production would be needed to continue effective results.

It was the consensus of the Executive Committee that the Title Insurance Section should, within the authority prescribed by the constitution of the Association, undertake more direct and aggressive action in the interest of the title insurance industry.

Later on in the program, you will hear a report from Ben J. Henley, President, California Pacific Title Insurance Company, San Francisco, Chairman of the Committee on Standard Forms of Title Insurance, which committee was appointed by your Chairman immediately following the Richmond convention. Mr. Henley has been Chairman of the Standard Forms Committee for several years, and you will realize when you hear his report the tremendous amount of work Mr. Henley and his committee have done on a very complicated assignment. I should like to go on record publicly as expressing my appreciation for the intelligent and constructive work done by this committee.

The Title Insurance Section has another important special committee known as the Annual Report Forms Committee. This committee was appointed by my predecessor in office and continued by me this year. The committee consists of:

Percy E. Warner, Vice President and Treasurer, Title Insurance & Trust Co., Los Angeles, California —Chairman;

Ervin W. Beal, Vice President and Treasurer, Dallas Title and Guaranty Company, Dallas, Texas;

Earl W. Evanger, Accounting Officer, Chicago Title and Trust Company, Chicago, Illinois;

John E. Griffith, Vice President and Treasurer, Phoenix Title and Trust Company, Phoenix, Arizona;

J. K. Higdon, General Auditor, Lawyers Title Insurance Corporation, Richmond, Virginia;

and

Frank J. Kroemer, Vice President and Comptroller Home Title Guaranty Company, Brooklyn, New York.

The objective of this Committee was to secure the approval of the National Association of Insurance Commissioners of a revised standard annual report form which would be acceptable to the title insurance industry and in accordance with sound accounting principles recognized by the American Institute of Accountants.

At the last convention, Ernie Loebbecke, then Chairman of the Title Insurance Section, reported on the progress of this committee up to that date, which report concluded with an account of a meeting in Atlantic City on June 10, 1957, with the Blanks Committee of the National Association of Insurance Commissioners. You will recall that very little was accomplished at this joint meeting because of the rather casual attitude of the insurance commissioners.

Subsequent to the meeting in Atlantic City, our Committee was informed indirectly that, to secure approval of the NAIC Blanks Subcommittee, any new form would have to conform to certain prescribed requirements.

From this point on, I will bring you up to date by quoting from a recent letter from Percy E. Warner, Chairman of our Committee, to William Gould, Department of Insurance, State of New York, who is chairman of the Blanks Subcommittee of NAIC.

(QUOTE)

"These suggestions were followed and another tentative blank was prepared and proofs were sent to New York for a meeting of your Committee held in December, 1957. Again we had no indication of approval or disapproval by the NAIC Blanks Subcommittee of the forms submitted.

"In March, 1958 we were requested to prepare 15 copies of the tentative Annual Statement blank based on the proofs submitted in December, 1957. These

were forwarded to you on March 14, 1938, so that they could be distributed in advance to members of the NAIC Title Blank Subcommittee scheduled to meet in New York during the period March 31 to April 2, 1958.

"Messrs. Kroemer, Higdon and Warner met with your Committee in New York in what we had hoped would be a round-table shirt sleeve type work session with an interchange of ideas line-by-line and page-by-page so that agreement could be reached on a form satisfactory to the Title Industry and the Title Blank Subcommittee. Instead of a workshop session, we were again confronted with a semi-formal hearing type of meeting which soon went into 'Executive Session.'"

—(End of Quote from Mr. Warner's Letter.)

It is obvious that our Committee has worked diligently to accomplish its assignment. It has held meetings at Chicago, Atlantic City and New York at considerable inconvenience to members who had to travel long distances to attend the meetings, and they are to be commended for the effort they have made. Realizing how exasperating it must be to undertake to convince a committee from various State Insurance Departments to change a method of reporting of long standing, I think Mr. Warner and his committee have made real progress, and I have no doubt that they will ultimately succeed in securing the approval of a revised annual report form. To the incoming Chairman of the Title Insurance Section, I heartily recommend that the present personnel of the Committee be continued.

Your Chairman attended the Atlantic Coast, Central States and Southwestern Regional Conferences of title insurance executives. A detailed report will be made to you by the Chairman of each of these conferences. As one who in the past has urged that these regional conferences be made a constructive force in the Association, I was gratified at the interest displayed and constructive discussions carried on at each conference. I am convinced that they will become more and more a vital part of the Title Insurance Section.

GEO. C. RAWLINGS, Chairman,
Title Insurance Section
American Title Association.

Report of Chairmen of Regional Districts, Title Insurance Executive—1957-1958 Administration

WILLIAM H. DEATLY

President, Title Guarantee and Trust Company, New York, N.Y.
Chairman, Atlantic Coast Region

Forty-two executives, representing twenty-three title insurers, domiciled in seven states and the District of Columbia, attended the three-day 1958 Atlantic Coast Regional Conference which was held at Skytop, Pa., again this year. The conference dates were May 5 through 7. The eight jurisdictions of domicile included Florida, Kentucky, Maryland, New Jersey, New York, Pennsylvania and Virginia, and the District of Columbia. At least five of the twenty-three companies represented operated in areas outside the region as well as within it and were therefore qualified to attend one or both the other regional conferences. Our National Association was represented by our Executive Vice President.

The conference heard the report of its motion picture film distribution committee, voted unanimously (a) to sell prints hereafter at the producer's price to any ATA member who will agree to show it unchanged and without a leader of any kind, in the interest of wider distri-

bution, but subject in New York State to distribution by the New York Title Association only, (b) to compile quarter-annual reports of showings of the picture in the Atlantic Coast Region for distribution to the companies who contributed to the production cost, (c) to request one company to discontinue the use of a leader on its films claimed to have been purchased without knowledge of the restriction against individual company leaders, (d) to retain the balance of $1,059.50 in distribution committee funds to defray future committee expenses, and (e) to express the gratitude of the group to the members of the film distribution committee, Messrs. Stine, Chairman and Wilkinson, Colleton and Zerfing, who graciously accepted reappointment for another year.

By August 30 the picture had been shown in the Atlantic Coast region at least 329 times to an aggregate audience of 22,642 persons by Modern Talking Picture Service and by individual companies. This relates to a film production cost of approximately $17,500 and a distribution cost estimated at $2,819.00.

The conference discussed a proposal by the Villanova (Pennsylvania) School of Law to prepare a treatise on state regulation of title insurance companies to cover the 49 states, the District of Columbia, Hawaii, Puerto Rico and the Virgin Islands to be started in 1958, completed in manuscript by September 30, 1959, and to cost $15,000, plus printing—a potential total cost of $25,000—and to include a compendium of all State statutes affecting title insurers. Provision was also made for annual or biannual supplements which might cost a total of $1,500 to $2,000 per supplement. Nearly all the companies were interested, believed it should be sponsored by ATA and, if not, by the Title Insurance Section of ATA, and the Executive Vice President was requested to submit the proposal to the other two regional conferences. In order to allow work to begin this past summer, five companies subsequently underwrote a preliminary cost of $2,500 without commitment that the project would receive widespread financial support from ATA or any other companies individually. We have since learned that the project was disapproved at both other regional conferences and its future is now somewhat uncertain.

Your Chairman has seen the draft of the preliminary research work by the School of Law, believes it has considerable merit and that it should be studied by the Executive Committee of the Title Insurance Section for the purpose of recommending for or against a substantial grant by the American Title Association to enable completion of the project next summer. Its scope is too broad in the judgment of your Chairman to justify its financing by a few companies.

The discussion of this subject and the motion picture film give rise to expressions of opinion on the understandable conflict of interest which exists in our Association between title insurers and many abstracters, and between abstracters who are agents of title insurers and those who are not. It was also recognized that there are areas in which a comity of interest exists among all three such groups. The function of and need for the National Title Underwriters Association was also discussed. There appeared to be strong sentiment for a re-examination of the organizational structure of ATA, having in mind greater autonomy for each Section and Sectional control over a portion, at least, of the dues paid by the members of the respective Sections. This we respectfully refer to the Board of Governors.

The following unanimous conclusions were reached, limited of course to the areas within the Atlantic Coast Region in which the participating companies do business:

1. Ways and means should be sought to prevent a multiple line insurer in the Southeast from issuing policies of title insurance as a casualty risk without title examination.

N.B. It is believed that the preventive efforts have had the desired result in one state of the several states in which this multi-

ple line insurer has been licensed.

2. A special reissue rate or reduced title insurance rate on U. S. Government lease-purchase deals through General Services Administration will not induce lenders to require title insurance of leasehold mortgages on Government owned land to be amortized out of governmental agency rentals.

3. Mats of advertising copy to be prepared for use by member companies would not meet with widespread acceptance.

4. A policy exception "Subject to the right of others to redeem" was sufficient to cover the possibility that federal liens might attach to the right of redemption during the redemption period in those jurisdictions in which the right of redemption existed.

N.B. This discussion brought out the desirability of running searches for bankruptcy and federal liens against all parties in the chain of title to a mortgage being certified for assignment or foreclosure.

5. Title insurers should not waive their right of subrogation against a seller who pays for title insurance coverage of his purchaser. Insurance of both seller and purchaser for two premiums is the solution.

6. Title insurers cannot reasonably refuse indemnity against misappropriation of insured lenders' funds entrusted to their agents. Many felt the same was also true as to their approved attorneys.

7. Title insurers should not modify the standard policy condition or exception on zoning, should not express opinions on zoning outside their policies or binders, with or without disclaimer of liability, but may, upon request, furnish copies of zoning ordinances or regualtions without opinion thereon. Request was made, through a member of the standard forms drafting committee, for a more clearly worded exception regarding zoning in the ATA Standard Loan Policy and the Standard Owner's Policy now under study, the latter of which was activated by this conference last year.

8. A uniform title insurance statute, including reserves, would be a desirable project for the Title Insurance Section.

9. There is nothing improper in interpreting the standard loan policy as protecting against the invalidity of the mortgage lien to charge the insured premises if the debt is voided by usury.

10. Distribution of the comparative operating statistics was limited to the twenty-one companies that contributed to the compilation, and to the Executive Vice President. The most significant facts revealed by the study were:

3 of 21 companies reported larger gross income in 1957 than in 1956.

3 of 21 companies reported operating deficits in 1957.

2 of 21 companies improved their operating income ratio to gross income in 1957 over 1956.

3 more of 21 companies maintained that ratio in 1957 within 10 per cent of 1956 results.

16 of 21 companies reported higher ratio of losses and loss adjustment expenses combined to gross income in 1957 than in 1956.

18 of 21 companies reported higher ratios of the total of salaries, other compensation, employee relations expenses, commissions and production services purchased to gross income in 1957 than in 1956.

A poll of current business trend—the first three or four months of 1958 vs. 1957—revealed a pattern of lower volume—both in dollars and units—in the current year—except for companies operating in the Maryland and District of Columbia area where dollar gross was generally higher. Happily this favorable trend, which seems to have started earlier nearest the seat of Federal Government, is now being experienced to a moderate extent nearer the hearth of your speaker.

To the outgoing chairman, no decision of the conference was of greater significance than the unanimous election of Frank J. McDonough, President of West Jersey Title and Guaranty Company, of Camden, New Jersey, as its chairman for 1959. Frank's leadership will stimulate "us" Easterners to hotter battles, sounder decisions and greater accomplishments, I am sure.

It has been a genuine pleasure and stimulating experience to have served as the chairman of this conference for the past two years.

LORIN B. WEDDELL

Vice-Pres. and Sec'y, The Land Title Guarantee and Trust Company, Cleveland, Ohio
Chairman, Central States Region

Following the pattern set in previous years the Central States Regional Conference of title insurance executives again convened in Chicago, Illinois. Thirty-one senior title insurance executives from seventeen abstract and title insurance companies located in Indiana, Illinois, Michigan, Minnesota, Missouri, Ohio, and Wisconsin attended the meeting, which this year was held at the Drake Hotel on June 9th and June 10th, 1958. In addition to the foregoing officers, the Conference was further dignified by the presence of our National President, Harold McLeran; the Association Executive Vice President, Jim Sheridan; the Association Secretary, Joseph Smith; and the Chairman of the Title Insurance Section of the Association, George Rawlings.

As in the past the Conference was informal. There were no prepared addresses and no minutes were kept of the material discussed in the open forum round-table style meeting. The informality of this kind of meeting seems to provoke considerable discussion on a wide variety of subjects, some of which never appeared on the Chairman's agenda. The subjects discussed fell into two major categories: (A) Legal and Underwriting Problems, and (B) Operations Problems, including business promotion. In addition, the representatives from National Headquarters reported on developments in other regions as well as on the national level.

After introductory remarks made by President Harold McLeran, the first subject to be discussed at the conference was the problem arising out of the demands being made in certain areas by sellers to be also named as the insured in title evidences being issued to buyers. It was pointed out that acceding to this request would result in a loss to the insurer of the right of subrogation. The suggestion was made that if such protection is deemed necessary by the seller, an additional premium should be paid, whether one evidence is issued insuring both buyer and seller, or two evidences are issued, one insuring the buyer and the other insuring the seller. The suggestion of additional premium payment is somewhat complicated by the fact that in certain areas it is the custom for the seller to pay for the evidence insuring the buyer.

The next subject discussed was that of providing in a fee policy insurance against loss by reason of mechanic's liens, either of record or subsequently filed for record which later could be construed to be a lien prior to the fee interest being insured. Certain members attending reported a slight increase in the number of requests received for this form of coverage, and in those areas where such protection is offered, an additional premium is charged for the increased liability. Everyone seemed to be mindful of the loss which might arise from such a practice, and everyone seemed to handle the requests for this coverage on an individual basis.

Two members reported they had been requested to provide affirmative insurance against loss due to zoning violations. It was pointed out that this form of insurance could be dangerous because in many communities the zoning records are so casually maintained that it is impossible to make the thorough and accurate ex-

amination necessary to provide such insurance.

It was reported that the Title Insurance Section of the National Association was investigating the desirability of taking action to prevent Bankers Fire and Marine Insurance Company (Alabama) from issuing title insurance policies in Georgia, Florida and Alabama on a casualty basis and without benefit of title examination. An up-to-date report was furnished about (1) the progress made on the revision of the standard title insurance policy form, (2) discussions held on the proposed amendment to the ATA form to automatically provide consent of the insurer to a release of a portion of the insured premises, and (3) progress made to date on the ATA group insurance program. Several new cases involving the priority of federal tax liens and enforcement of those liens through seizure and sale were discussed.

The next subject considered concerned methods or procedures which could be employed in insuring titles to units in co-operative apartments. It was suggested that more comprehensive and complete surveys be prepared so as to show in greater detail the elevations and planes within the building to facilitate the description of the unit. Improvements in methods of conveyancing and financing were advocated.

Some members present admitted that they knowingly had issued title evidences to certain agencies of the Federal Government insuring for one-half the consideration paid for the property. Others had refused to insure for less than true value even when threatened with withdrawal of the business by the agency. All members present deplored the practice of issuing equity insurance. It was hoped that the federal agencies soon would abandon the practice of requesting under-insurance.

The following list of diverse subjects were discussed without attempting to reach any specific conclusions:

(1) Fringe Benefits, including profit-sharing plans, pension plans, hospitalization, etc.

(2) Radio and Television Advertising, including costs and benefits;

(3) Agency Relationships, including form and scope of agency agreements;

(4) Labor Unions and Attendant Problems;

(5) Recent Cases Involving the Unauthorized Practice of Law;

(6) Reduction of Operating Expenses.

The Executive Vice President, Mr. Sheridan, submitted a proposal as requested by the Atlantic Coast Regional Conference for a study on state regulation of title insurance companies to be undertaken by the School of Law of Villanova University. After discussion it was the unanimous conclusion of all members present that such a study, although worthwhile in certain respects, did not present enough general appeal to justify the expenditure of American Title Association funds.

A brief report on the distribution on the film "The Land Is Yours" was furnished. It was mentioned that the enthusiastic response to this film had encouraged the Atlantic Coast Regional Conference Film Committee to consider producing a second film to further promote title insurance.

The response of the Central States Regional Conference members to the request from National Headquarters for a report on operating statistics was disappointing. Not enough members responded to justify any analysis of reports. However, during the discussion which followed, it became apparent that confusion existed in the minds of some members about the form of reporting. It was concluded that further study of a desirable report form should be made, and a committee was appointed consisting of Earl Owens, Hiram Stonecipher and John Binkley, as Chairman, to conduct such an investigation and make the necessary recommendations. The committee was urged to consider the form presently used by the Atlantic Coast Regional Conference members.

The Chairman of the Title Insurance Section of the Association urged the title insurers to take a more

active part in the affairs of their section of the National Association with a view to re-evaluating the benefits of membership in the Association as now organized.

The Conference was concluded with a report of business conditions for the first five months of 1958 as compared with the similar period in 1957, both in units and dollars. The only consolation obtained from the report was that everyone seemed to be affected by the recession, but all were most optimistic about future business.

This report cannot be ended without expressing gratitude to Jim Sheridan for making arrangements for accommodations at the Drake Hotel, and to the Chicago Title and Trust Company for its hospitality in making our evening session a most enjoyable occasion.

DRAKE McKEE,

President, Dallas Title & Guaranty Company, Dallas, Texas
Chairman, Southwest Regional Conference

Statistically speaking, we had in attendance at the second Regional Conference to be held in Dallas thirty-two title men, representing seventeen companies, plus Mr. Kirk R. Mallory, Supervisor, Title Section of the State Board of Insurance of Texas, and Mr. James E. Sheridan, Executive Vice President of The American Title Association. Ten wives accompanied their husbands, and although they did not attend the business meetings, they took part in the social affairs. Twenty topics for discussion were submitted prior to the Conference, and everyone in attendance participated in the meeting by coming to the rostrum and addressing the Conference on his particular item and then by supervising the general discussions.

The social aspect of the meeting consisted of a noon luncheon for all the men in attendance at the First National Bank in Dallas with Mr. Blagden Manning as host. Mr. Manning is Chairman of the Executive Committee of the bank and also Chairman of the Board of Dallas Title and Guaranty Company. Plus an evening cocktail party, followed by dinner dancing at the Adolphus Hotel. The ladies were guests at lunch at the City Club.

The items discussed and the conclusions reached by the Conference can be summarized as follows:

The reported practice on the part of some title insurance companies of omitting exceptions from title policies and binders to make the policies acceptable to investors was condemned.

It was reported that there is no uniformity for the charge for a leasehold policy when issued simultaneously with an owner's title policy on the fee title on identical property. In Texas each policy takes the full regular rate, while in other states credit is allowed on the leasehold policy.

General approval was given the development of an ATA standard form owner's title policy, and the Standard Forms Committee of the Association was encouraged to pursue its work in this connection.

The members of the Conference were unanimous in expressing the opinion that title insurance should not be issued on a co-insurance basis.

Mr. Harry Halff of San Antonio led an interesting discussion on fringe benefits to employees, giving in detail the profit-sharing plan recently adopted by his company.

Mr. Halff also gave facts and figures with respect to his company's branch office operations, leaving the impression that branch offices are costly, lack adequate management supervision, and are employed principally to offset the competition of other companies.

The dangers involved in issuing title policies on the interest or estate created by contracts for deed to be delivered in the future were exam-

ined and appropriate exception agreed upon.

The protection afforded an assured under both the ATA revised form of mortgagee's policy and under the Texas form with respect to usury was presented to the Conference, and to the surprise of some, it was learned that many companies have announced to their assureds that the policy does afford protection against the consequences of a usurious contract. The Conference took no uniform stand on this matter because some of the companies seem to construe the mortgagee's policies as affording no insurance against the consequence of a usurious loan.

No enthusiasm was expressed with respect to the request of the Federal Land Bank that a rider be attached to mortgagee's policies as follows: "Any defects in the title to said property of which the assured may have knowledge or be charged with notice at the time of issuance of the policy, shall not affect the liability of the company hereunder." Nor did the companies indicate that they would be willing to give the Federal Land Bank affirmative insurance as to minerals and water rights.

Some of the companies have been requested to insure affirmatively with respect to zoning ordinances. It was recognized that this might afford the companies an opportunity to broaden the coverage of title policies and the scope of service available to the public, but many of those present were not inclined to enter this field of insurance.

The vast Federal Highway program received the attention of the Conference. Specifically, the position of title companies with respect to VA loans when the right of way includes a part of the security was discussed. Nothing specific was agreed upon.

A representative of one of the Colorado companies spoke to the Conference on the subject of forms of owner's title policies with emphasis on the conditions having to do with fixing liability of the company by tender of deed by the assured to the company in consideration of the payment to assured of the appraised value of the property. It seems that there is no uniformity in Colorado in this respect. He also asked for discussion with respect to separate forms of owner's policies for fee simple estates and for leasehold estates. Those present offered some very helpful suggestions based on their own experience and the forms used by their companies, and the upshot of the discussion was to emphasize again the importance of the work being done by the Forms Committee of ATA in developing a uniform owner's title policy.

Mr. Rawlings addressed the Conference on the subject of relations between insuring company and agent with emphasis on the type of title evidence required of the agent to support the issuance of binders and policies. Local custom and practice must be taken into account, and Mr. Rawlings' explanation of how Lawyers Title adapts itself to areas in which title evidence is developed with the use of abstract plants, without the existence of abstract plants through approved attorneys who search the records of the county recorder's office, etc., was both interesting and beneficial to all present.

The members of the Conference were reluctant to surrender the right of subrogation against the seller in connection with the issuance of an owner's policy and favored the suggestion that there be two policies, one for the seller and the other for the buyer, at the regular rate of premium for each, when the seller insisted upon protection against a loss under his warranty.

The effect of Federal tax liens filed subsequent to the issuance of mortgagee's policies was given a thorough study with the result that the members of the Conference were convinced that this matter is still to be decided due to the conflict which exists between certain of the Circuit Courts of Appeal.

Mr. Gill called upon a representative from each state to give a report on business conditions in his area and then summarized the economic situation in general. In most instances the first six months of 1958

reflected less business to the companies than did the first six months of 1957, but it appeared that business for most everyone had taken a rather sudden upturn in the weeks just preceding the Conference, and optimism was expressed as to the prospects for the remainder of the year.

The Atlantic Coast Conference and the Mid-West Conference were held prior to our meeting. Mr. Sheridan and Mr. Rawlings were present at them, and they were able to contribute much to our deliberations by conveying the things expressed at the former conferences since many of our topics had been topics of discussion there.

It was decided to meet again in Dallas in 1959. The dates will be announced later.

Respectfully Submitted,
Drake McKee
Chairman

Need for Improvement in Quality of Surveys—How to Accomplish

FRED R. PLACE

President, Ohio Title Corporation, Columbus, Ohio

This is a "paper" and not a speech and its subject, generally, "Owners Title Insurance and Surveys"—notwithstanding anything it says in the program.

I agreed to this before the program was printed and if the program isn't correct it isn't my fault. Of course, you can't blame either Sheridan or Smith, because they didn't know the title until just now. (If there's any time left after I give the paper, I'll then make the speech.)

Having agreed to do this job, my first thought was—How can I get someone else to furnish the material, so—I sent out 80 questionnaires. I received 75 replies, which is about 94%.

The people who received these constitute a fair cross-section of the country from East to West.

The questionnaire and a tabulation of the answers are as follows:

QUESTIONNAIRE

Re: Survey Coverage by Owner's (or Fee) Title Insurance Policies.
(This does not apply to mortgage policies)

	Yes	No	No Comment
1. Does your company usually insure against matters a survey might disclose	30	45	
2. If answer is yes, do you require a survey by:			
(1) Any registered surveyor	16		31
(2) A registered surveyor approved by you	28		
3. If a survey is required, do you require:			
(1) A drawing showing all physical facts	67		8
(2) Will a certificate by the surveyor supplying answers to your questions suffice	10	32	33
4. If survey coverage is included in your policy is an additional charge made	27	36	12
5. If an additional charge is made, is it based on:			
(1) The amount of the coverage	21		34
(2) Flat charge	2		
(3) What someone in the office thinks the risk is worth			
6. In your state would you have legal recourse on your surveyor if you suffered a lost because of his error	62	2	11

7. Would the error need ot be sufficiently gross to constitute malpractice (Several of 11 explained proof required.)	40	11	24
8. If you do not furnish coverage against survey questions as a general rule, do you on special cases	50	4	23
9. If so, do you charge for it	25	22	28
10. Does your local competitor furnish this coverage	58	11	
11. If he does, does he charge for it	22	36	17
12. Do you think you should furnish this coverage	52	18	5

REMARKS: Be as verbose as you please, but stay on the subject and mail this before August 1, 1958. Use other side, if necessary.

The gist of this tabulation boils down to this:

No one covers survey questions "generally" on owners' policy coverage excepting one spot in the New England area and this is without added charges, for obvious reasons.

In California the coverage is available if the customer wants it and is willing to pay for it. This same well organized approach exists in a large city in Illinois.

Generally, on the Northeast Coast the situation seems to be a "Yeah, we'll give it to them if they insist, and for free." As we go South on the East Coast, we encounter more resistance to this coverage. In fact, in one spot in the so-called "Deep South" I got a firm, negative, "Over my dead body," reply to the whole idea of survey coverage. This answer was given, however, with the qualified admission that he had on some occasions furnished survey coverage, but only after taking the utmost precaution—and he did it without any additional charge. The threat of loss of the business was not a factor.

Regarding propositions Nos. 2 and 3, the vast majority require a drawing reflecting the results of a survey made by an engineer approved by the Title Company. Some require a drawing and a certificate answering specific questions and a few will accept the certificate of survey only.

The amazing picture is presented by those companies who will, on occasion, insure against survey questions, if an approved survey is presented and who, after spending the additional time required to analyze the survey and after assuming the additional risk, **make no charge for it.** Some few make a flat charge as a service fee. The majority who do charge, base it on the amount of the risk.**This seems to be the logical approach.** In Texas, they are confronted by legal restrictions on such charge.

Nearly all of my informants say they would have recourse against the surveyor for negligence and in those areas where surveyors are required to be bonded, this is a real source of salvage. In other areas, the answer to this is, "his jeep and engineering instruments are exempt from execution and what else does he have?"

These are extremes, however, and in the middle ground there are cases where surveyors have contributed a **large** amount of time and a **little** money to correct their errors.

You will note a substantial number are sure their competitor is giving away the stuff and not charging for it, but my questionnaire shows that some times this isn't true.

Lastly, note that 52 thought survey coverage should be given; 18 thought not, and five were non-committal. Of the 52 there were some who were not furnishing survey coverage now. Of the 18 negatives, some were now furnishing it. Of these 18, several cited the difficulty in getting proper engineering data on which to insure. Three who were now furnishing the coverage and charging for it, answered **no** to the question of whether or not the coverage should be furnished.

The sad part of this picture is that the average title policy buyer does not fully comprehend that he is not protected. In the first place, he does not comprehend title. A case in point: The owner of a motel in Santa Bar-

bara, California, who came there from the State of Washington, closed his deal and then discovered his neighbor's fence inclosed seven feet of his rear yard. He went to the Title Company and was told his title policy did not cover this situation. His question—"What the hell good was the title policy, anyway?"

In addition to the eight bucks I paid him for his cab, I also gave him $50.00 worth of free legal advice. I hope he acted on it. The fence was erected by permission of the former owner of the motel so the neighbor could build his house within two feet of his property line, contrary to the Santa Barbara building code. The fence was to fool the building inspector and it did—but, it's still there and the neighbor doesn't want to take it down.

In conclusion, may I state that it is my prediction that some day we will all be insuring the facts of possession and those an accurate survey would reflect. I also realize that before we reach that point we will make more turns than I did driving from Lompoc, Cal., to San Francisco on State Route 1.

Effect of Housing Bill of 1958

R. W. STOCKWELL

Vice-Pres., Union Title Insurance Company, Indianapolis, Indiana

Ladies and gentlemen, the subject assigned to me by your chairman and as shown on your program is entitled "Effect of Housing Bill of 1958." This assignment was handed to me in early August. You undoubtedly are aware by now that this bill died in the House Rules Committee; that for the first time in many years the legislature **fortunately** failed to enact another confusing array of amendments to our present housing legislation.

When this fact became apparent I called your chairman for re-assignment of subject only to find that my subject was in the hands of the printer. I told him it reminded me of my first case when I started practicing law. A Negress without funds walked into my office seeking a divorce. I demanded a $50.00 deposit for filing of the complaint which she promised in two weeks. I heard no more from her for about a month until I saw her on the street and asked about the deposit. Her simple reply was, "Oh, didn't you all hear about my husband? He committed suicide." The case of the housing bill of 1958 is very similar. It, too, committed suicide of what might be called auto-intoxication. The builders and the lenders and the Congress spurred on by the present recession and an unnatural and unhealthy appetite overloaded the Congressional stomach with one and three-quarter billion dollars of housing legislation which it could only partly digest and therefore could not assimilate. The resulting self-engendered poison was the immediate cause of death of this Housing Bill of 1958. In its death we need not mourn — in fact, we may have cause for rejoicing. Stemming from such death there may arise a period of some peace and tranquility —a period in which we may catch our breath amidst the utter turmoil created by many cross currents arising from the constant changes in laws, rules, regulations, interest rates, discounts, market prices on mortgages, etc., etc.

With your permission therefore I would like to change my subject to the "Effect of **No** Housing Bill for 1958." By no Housing Bill in 1958, it should be understood that there was no comprehensive Housing Bill enacted. However, in the same breath we must admit that the President gave his approval on April 1, 1958, to Senate Bill No. 3418 sponsored by Senator Sparkman as the Emergency Housing Act. This Act amended the National Housing Act to permit a

larger amount in loan-to-value ratios. It increased from 450 million to 950 million the FNMA's special assistance fund. It gave 25 million to FNMA for military housing and 25 million for the purchase of housing at research and development centers, it increased from 4 to 4½% the interest rate ceiling on FHA section 803 military housing mortgages, it amended section 512 of the Serviceman's Readjustment Act of 1944 very extensively and it gave relief to FHA and VA in their regulation of discounts. I could spend the rest of my alloted time telling of the various changes, all of which you probably have seen put into effect since April 1st. The President signed this Sparkman act with obvious reluctance and made the following comment since the bill would probably pass over his veto anyway. He said, "However, the legislation ignores the responsibility of private enterprise to function without imposing a direct burden on the Federal purse." He stated that this burden would be approximately 1 billion dollars and that it was a threat to private financing which was entirely unnecessary.

Now to say that we in the title profession are not interested in the most housing possible would be ridiculous, for more housing means more money on our pockets. On the other hand, none of us would accept title business if such business would in the future cost us more than the profit we made on it. Any excess housing artificially stimulated by legislation which adds dollars to our title insurance pocket only to take out a sizable hunk from our tax pocket and undermine our entire currency through inflation is basically bad business. I have said that the 1958 Housing Bill died of auto-intoxication. I think this is figuratively what happened for the legislature was just unable to swallow some of the innovations contained in this bill especially in view of the improved business conditions. Their opposition stemmed from their inability to accept some of the direct aid programs sought to be obtained by circumventing the normal appropriations procedure — old folks housing, college building and additions to FNMA program 10 and to the VA direct loan program. In spite of the fact that it is not uncommon for some Congressmen to place popularity above sound economic judgment, Congress just simply could not digest and assimilate the hash of housing legislation it had finally concocted into what was known as the 1958 Housing Act.

Certainly everyone is in favor of encouraging home ownership and is anxious to further the standing of good housing programs just so far as the results of such programs do not jeopardize our general economy as well as our coveted manner of living. We are opposed to run-away inflation; we are opposed to unwise borrowing and to a paternalistic socialization in public housing. Authorities disagree as to the amount of housing needed. However, I don't think anyone could quarrel with the fact that since our population growth is nearly 3 million a year it is not unreasonable to assume that even without the need for replacement housing due to depreciation and obsolescence nearly 1 million additional homes per year are needed. But the facts and figures show that on an average we have or will build that many houses per year in 1957-58-59. How much more housing do we **really** need?

To better understand our present situation in housing legislation, it might be well for a moment to view the backdrop of history in this field. For a number of years prior to the end of World War II an acute housing shortage developed due to war time restrictions and due to a very large part of the savings previously invested in mortgages by banks, mutual savings banks, savings and loan associations and life insurance companies being very properly invested in low-rate interest bearing bonds to finance the tremendous cost of war. In the 12 years after 1945 these institutions sold their government bonds and increased their investment in mortgages about 34 per cent. A very large part of this investment, of course, was in FHA and VA loans.

The National Housing Act of 1934 provided a very different pattern for mortgage investment when it changed the lending procedure from loans at 60 per cent to 66⅔ per cent of appraised value to the then FHA pattern of 80 per cent of value. The 10-year 60 per cent mortgage previously used was drastically changed to the making of a 30 years VA loan at 100 per cent of value. Obviously, the builders found they could sell many more houses under such financing. Of course, the lenders were happy to trade their low-rate interest bearing government bonds for the higher yield in FHA and VA loans. Both builders and lenders went merrily on their way apparently oblivious to the fact that such funds would some day be completely exhausted. Fortunately, some restrictions on building during the Korean War slowed down the demands for funds until they were replaced to a certain extent by pay-offs in loans during the Korean War period. Fortunately, also, at this time low interest rates fixed by the government impeded the investment in mortgages and this allowed savings to accumulate for mortgage purposes. But then Federal National Mortgage Association started to buy loans at 100 cents on the dollar when they were only worth 95 cents in the open market. There was still a fair supply of money for purchase of loans through 1955 and 1956. By 1957, however, the old law of supply and demand began to rear its ugly head and lenders found that savings were not sufficient to justify their previous over-investment in mortgage loans. During 1957 we heard a lot about loans selling at a discount. To the great consternation of lenders and builders the government at this point came in to regulate such discounts and Congress refused to raise the 4½% interest rate on veteran's loans which just about took VA loans out of the market. Since a very large portion of the savings of the country goes into housing and related enterprises the recession in home building contributed to a major extent to the general recession we have been experiencing from January, 1957, up to and including the present time.

But by now we have had a year and eight months to catch our breath. The Emergency Housing Act of April, 1958, removed many obstacles including most controls on discounts and since early in the year considerably more mortgage funds have become available. However, the Federal Reserve Board very recently has again started the process of raising the discount rate which is a good signpost warning as to the tightening of credit and this just may later be reflected in putting the brakes on the present, relatively free money in the mortgage market. This may be a very healthy situation for through all of this backdrop of experience which I have just described, the builder, lender, title man and others in the realty industry should have learned one outstanding fact in financing homes which now should be crystal clear. That fact is that the law of supply and demand affects credit and money just exactly as it does everything else within the field of commerce. That law of supply and demand is a natural law which executes itself. It arbitrarily polices its own functions. It will not be legislated for or against Another fact that we are learning to recognize as it creeps from under the cloak of Santa Claus housing legislation is the crafty killer of our economic life known as inflation. Inflation is an insidious economic disease. We would have been further inflicted with that disease had the 1958 Housing Bill been enacted.

Yes, but since it was not enacted, I think we will find that peace, quiet and tranquility within the entire realty industry will be the end effect of no housing bill in 1958. We will have this period to catch our breath until the 86th Congress again takes up the housing situation. I think during that time we will come to appreciate the statement attributed to HHFA Administrator, Cole, who was complimented by the President for his recent public description of the 1958 Housing Bill as: "A one and three quarter billion dollar Christmas tree loaded for the benefit of everyone in sight—with one exception. The excep-

tion is the taxpayer who is going to have to pay for it." To this we might add that the resultant inflation, the free and easy spending program would gradually undermine our currency, reduce the value of every pension or fixed investment, yes, and undermine the economic stability of this nation—a stability upon which our nation depends for strength amidst this shaky world just as much as it does upon military strength. I do not claim to be a prognosticator—but I believe no Housing Bill in 1958 will have the effect of increased prosperity for the country as a whole. In spite of the predictors of gloom we all did pretty well last year. Many of us are doing better this year and I see no reason to believe that 1959 will not show still further improvement. As for the Housing Bill of 1958 I might paraphrase W. S. Gilbert and say: "The Congress did nothing in particular, and did it very well."

Texas Title Insurance Laws and How Administered

HONORABLE KIRK R. MALLORY

Director, Title Section, Board of Insurance Commissioners, Austin, Texas

Thank you George, Members ATA, this will afford me one opportunity that I would like to grasp right now, because I have felt through the years a real sense of appreciation and gratitude to The American Title Association for its kindness in permitting me to sit in on national conventions. I have attended a number of them, and I originally felt like a sort of "swoose"—I wasn't in or out, but it was very helpful to our thinking down there in Texas to participate in your programs, and George and all his predecessors have been most kind in inviting me to attend and listen to all that went on, at least unofficially. I'd like to express my appreciation also to my friends of the Texas Association. They have urged me to do this, and I hope it has been beneficial from their point of view.

It would never have occurred to me that I would have anything to offer on this program that would be of any value. I anticipated staying entirely on the other side of the rostrum, and what little I tell you about what we do in Texas I want you to be sure is not said in the sense of trying to tell you that we have a superior way of doing anything or that's better than anyone else's way—it's just a way—and George thought you might like to hear it. With us, it has grown up over the years. It is our way of doing. We have lived with it, and all in all, we are fairly happy, and the companies seem to be reasonably well satisfied. So for whatever it may be worth, I will go over with you briefly what we have, and we don't have actually too much in the way of statutory provisions or manual provisions. We do, however, have some statutory provisions which have remained basically the same since about 1929, and it might be worth while to run through a few of them.

In our work down there, we have had the close cooperation and help of the Title Insurance Association of Texas. They have furnished us with actuarial help over the years, and in the present job we have there of trying to do some rate justification.

I recently went back over the rate committee reports that our Title Insurance Association of Texas has filed. I went back as far as April 22, 1929, which was the beginning of our title insurance regulations, and I foun back there where they got reports from their members and presented the substance of these reports to the board at its hearing, and they had done the same thing again as recently as April of this year—1929 to '58—they've been working with us.

There has been some uniformity in their conclusions on what we're doing. I notice on April 22, '29 they said, "The only definite information disclosed by these reports is that no company in Texas is getting adequate returns on its investment." On April 28, 1955, they said, "Return on the investment is inadequate and unsatisfactory," so we've just gone straight down the line without any variation. We haven't played any favorites at all.

We have in this little chapter, in the Texas Insurance Code, Chapter 9, which is devoted entirely to title insurance companies, and it is an all inclusive chapter. It winds up by saying, "No law hereafter enacted shall apply to title insurance companies, or such title insurance business, unless such subsequent enactment expressly states that it shall so apply." The rest of the things that we have in the code have nothing to do with title insurance, unless they say "title insurance," so we don't involve ourselves in a lot of problems affecting other lines of insurance, because we recognize that title insurance is a thing in and of itself.

In our article on incorporation we have one peculiarity that I find seems to be somewhat similar to Washington, that is this business of owning abstract plants. We don't actually say that the underwriting company has to own an abstract plant, but we've got a kind of an agency situation that says that it's illegal and a rebate, if you divide your premium with any person, firm, or corporation that doesn't own and operate an abstract plant in the county in which they're the agent, and if they do have an abstract plant, then the underwriting company can appoint them as an agent, after the board approves the division of premium; so we have the responsibility of approving division of premiums, and on that brief statement hangs our whole rate making procedure. Underwriting companies have the authority to own abstract plants. The underwriting company doesn't have to but can own abstract plants; they can make and sell abstracts, and do all those various things that are ordinarily found in that line of business. As an additional power, they may accumulate and lend money, purchase, sell or deal in notes, bonds, or securities, without bank privileges. They can act as trustees by contract, or under any legal designation of power.

Now we have as a sort of a hangover, still in our code, the provision that general casualty companies can adopt the authority to write title insurance. At this time I only know of one of our companies organized under that original provision. All the others come under Chapter 9, having to do entirely with title insurance companies.

We have some deposit and reserve requirements, which many think are inadequate, but they serve us, at least until they can be a little more realistically viewed. The deposit in Texas must be kept in Texas. We don't have any reciprocity so far as title insurance deposits are concerned. One-fourth of the authorized capital will be put up as a deposit, not to exceed a hundred thousand dollars; by statute it is earmarked for the protection of the policy holders. That is a true deposit to be put with our state treasury in Texas or with an approved depository in Texas. Then, additionally, we have a reserve requirement of five per cent of gross annual premiums, which, again, will not run over a hundred thousand dollars, to be kept separate and apart in a segregated fund and also to be earmarked by statute for the protection of policy holders.

We have a provision on maximum liability, limiting coverage to not more than fifty per cent of the capital stock and surplus in any one policy, unless the excess be simultaneously reinsured. There our statute says it shall be reinsured with another company authorized to do business in Texas. The reinsuring contract, again, has to be approved by the Board in Texas. We have not set a rate, a premium for reinsurance, but each one is filed and considered separately, and of course

they do follow a very close general pattern, and ordinarily we don't have any difficulty in the reinsurance rates or the terms of the contract.

Now foreign corporations coming in to Texas are subject, of course, to the same statutory requirements as anybody else. They have to have a financial statement, showing a hundred thousand dollars of unimpaired capital, a resolution making the chairman of the board the attorney for service, and the filing fees and occupation tax are the same as any foreign casualty company. They do not pay a franchise tax; they do pay a tax on gross premiums, and this gross premiums tax varies from 3.85% down to 1.1% if the investment in Texas securities is over ninety percent "of the amount that it (the company) had invested in similar securities in the state in which it then had the highest percentage of its admitted assets invested." I quoted that because it is a little obscure to me. You can get down to one point one, if you invest as much in Texas as you do in whatever other state you invest the highest percentage of your admitted assets.

We have a provision on rebates and discounts that probably causes more of our activity than any other one section. It's Article 9.22, and it's very brief. "Rebates and Discounts. No commissions, rebates, discounts or any other device shall be paid, allowed, or permitted by any company, domestic or foreign, doing the business provided for in this chapter relating to title policies or underwriting contracts, provided this shall not prevent any title company from appointing as its representative in any county, any person, firm or corporation owning and operating an abstract plant in such county and making such arrangements for division of premiums as may be approved by the board." This is the provision I mentioned a minute ago. On that brief statement, and purely from a negative approach, the Texas board has had to provide a workable agency arrangement and an arrangement for approving division of premiums. We do this—to tell you what we actually do—whether we do it right or wrong, this is about what happens. When an underwriting company wants to get a new agent, or is fortunate enough to get a new agent among our very limited people who are qualified there, they will send to us, there in Austin, basically two things; one is certain specified abstract plant data showing us first, that the proposed agent owns and operates an abstract plant, and, second, what he's got in it, because the board has, as I said, laid down some general ground rules the substance of which is that the plant must actually be an abstract plant in the common definition of that business and that it must have in it the general indicies from which you can trace the particular title involved in the issuance of the policy back at least twenty-five years. Now that has been the subject of a great deal of discussion as to whether twenty-five years is too long on too short, but the board thought they had to do something, and they put it there as a practical approach. We recognize that this is not completely satisfactory, but so far the requirement seems to have worked reasonably well. The Board will then enter a formal order approving the contract with the agent, approving the division of premiums. Then you're in business. Of course, the fact that these agents must be among abstracters, limits the possibility a great deal and has by very necessity driven the companies to try to find ways of doing, whereby they could do business in communities where perhaps there were one or two abstracters, and they were already tied up. How could they do business there without doing violence to our statutory requirements? We have had various examining attorney arrangements. I think more or less the same things that you have elsewhere, most of them perfectly legitimate, some of them gizmoes, of course. There again, that just depends upon the people involved; neither the legislature nor anybody else is going to make the small percentage of people

honest that are dishonest, and they're not going to sway the big majority of honest people. We try to see that no devices are carried out merely as anti-rebating dodges, that too much business is done by so-called unauthorized agents. At the same time we like mighty well not to cripple the progress of title insurance companies in Texas.

Every Board we've had—and I've worked through several of them there—have had one basic idea that I've thought was very good, because you know, from the suffering end of regulations, it is very difficult from our point of view, from the regulatory point of view, to draw the line between supervision and management. The board is charged with some very specific supervision over the title industry in Texas, but it has no business at all trying to manage your business, and every board we have had so far has drawn that line. We've tried to hew to it. I think, if we've had any success down there in the regulation of title insurance, as George has suggested, a great deal of it probably has been based on the fact that the state has tried to provide the framework within which you can operate, without trying to run your particular business. In other words, if we can provide the playing filed for you, we believe you all will play the game and the best player will come out on top, and a few of them are going to come out on the bottom. That's business, and we want it to be a business—we don't want it to be an adjunct to the state government.

Now we have a manual down there that is pretty simple. This little booklet in my hand is the manual with a copy of the title law in the back of it. When I look at the manuals we have around that board for automobile insurance and things like that, I count our blessings every time I see this little thing. We have, in this little manual a section on rules, one on rates, and one on forms. Now, I'll give you a little idea what is in it, and if you get interested enough to want one, you can get one for a dollar from the Steck Company at Austin, Texas, and they're cheaper by the dozen.

"Rebates and discounts. No company shall close a real estate transaction nor title search service for the closing of such transaction and withhold issuance of the title policy thereon for issuance in a subsequent transaction and apply the premium, or any part thereof, applicable in the first transaction upon the premium in the subsequent transaction." Does that sound familiar to any of you? "Nor shall any company issue a binder for which a premium is prescribed, without making full charge for such premium, nor shall such premium or any part thereof be applied on the premium of any policy whatever." The Board has tried to protect the title insurance people, tried to help them to protect themselves, as best we could from rebating demands. We know some of the pressures that are put on you, and we know what competition is. We have always been willing down there for any title insurance person to say, "Well, Mr. Builder, I'd just love to accommodate you and withhold the issuance of this thing until we get down the line a ways and apply your binder premium on a subsequent transaction, but the board won't let me. They're the biggest bunch of so and sos down there you ever saw, and after all Mallory is the worst. So I just can't do it for you." So that's rule number one, and I think quite appropriately, perhaps, because we feel that it has afforded a good deal of protection in Texas to the title industry. We have a provision for the elimination of exception as to survey, which I think we might improve on a little, but we never have.

We have a provision for exception in the owner's policy to rights of parties in possession, where the insured waives inspection and is satisfied to acept the policy subject to the parties in possession. In all such cases, the company must obtain a written waiver from the insured. Sometimes people have forgotten to get the waivers, and they've put the general exception in and then some-

thing has happened that has caused some argument, but actually we have a fairly workable exception for rights of parties in possession.

Now we have a rule on issuance of mortgagee's policy prior to the completion of improvement, which may be a little different than some of you are used to. There is an exception subject to completion of improvements. Then on completion of improvements and the owner's acceptance and a showing satisfactory to the title company that all bills for labor and materials have been paid in full, (you hope), the exception appearing in Paragraph A of this rule may be eliminated by an endorsement, and down there, of course, it amounts to this, that the companies in Texas do assume that liability without any additional premium. We should have some search charge for that, perhaps, but in our setup so far we never have provided it.

We have only one endorsement that we use, and it's available only to Fanny May or the V.A. or the Federal Housing Commissioner. We provided that endrosement only after it seemed like the federal government thought they were going to have to have it.

We have gotten our binder situation down to where we hope it's a little better than it was. We have two things—a "Mortgagee's Information Letter," which has been denominated that because we thought maybe it would be more descriptive of the actual purpose than to call it a binder. It's for a bonafide deal which would be ready to close in thirty days. It contains title requirements, definite form of proposed policy and data necessary to propose loan documents, no charge is made for this.

Then we have a "Mortgagee's Title Policy Binder on Interim Construction Loan," and that does carry a small premium. We call it a premium, actually it seems to be nothing more than a small service charge. The Mortgagee's Title Insurance Binder on Interim Construction Loans, which we would be inclined to call "the binder", shall be used only with respect to temporary construction loans, in which it is contemplated in good faith that title company issuing interim binders shall be asked to issue its regular mortgagee's title insurance policy on a permanent loan, covering the identical property, in one or more parcels, when improvements are completed, but which permanent loan may be made by mortgagee other than the mortgagee named in the mortgagee title insurance binder. The use of such interim binder shall be limited to temporary construction loans and pledges of temporary construction loans, and liens. It shall not be used on vacant lots or tracts except in connection with immediate construction of improvements nor shall it be issued after completion of improvements to which it relates.

Of course, it is a little difficult sometimes not to use the information letter in lieu of the binder, particularly in view of the fact that one is free and one has a small charge in connection with it, but in general our people tell us that these two forms have worked out fairly well. They're reasonably new yet, but we tried to carve them out to fit our particular situation, and I hope with a minimum of change from now on, they'll go along all right.

In our schedule of basic premium charges, and I'm going to skip back and forth here, in the interest of time—we start out with a rate that provides thirty dollars on policies up to seven hundred and fifty dollars—that's our starting point. At a hundred thousand dollars you'd get $316. We are presently engaged in trying to find out how to make a title insurance rate. We made this—we've had it, and everybody is living by it. Now we're trying to find out how you make a rate—we're having a hard time doing it. We're getting good help from everybody that's ever tried to, including the companies, here in Washington, and officials in Olympia, who are furnishing us some figures on justification of rates, but we have this problem—we have in Texas a kind of a package rate,

package deal thing. The closing of the transaction in Texas is included in our premium. Escrow services as such are not included as part of the premium, but the actual closing of the transaction is, so that we have sort of a loaded premium. We don't have a pure premium situation there. We have a lot of service charge loaded in there, and we have tried to define closing the transaction, because with us when the agent or the company actually receives and handles and disburses the money, that is an escrow service, and our board has never tried to regulate that, nor has it ever tried to say whether or not the company should charge an escrow fee, and if so what it should be. However, as to actually closing the transaction, that is within our premium. Our definition says that the expense of closing the transaction is included in the premium and will therefore be borne by the insuring company. The term "closing the transaction" is construed to consist of the investigation made by the company just prior to the actual issuance of the policy, to determine proper execution, acknowledgment and delivery of all conveyances, mortgages, papers, and other title instruments which may be necessary to consummate the transaction, and includes the cost to the company of determining whether all delinquent taxes are paid, that all current taxes have been properly prorated between the purchaser and seller in the case of an owner's policy, and to determine whether or not the consideration has passed and that all necessary papers have been filed for record. In the case of a mortgagee's policy it is necessary to determine if the proceeds of the loan have been properly disbursed—not that you disburse them—but to have them disbursed—and that the note has been delivered, as well as to ascertain that all necessary papers have been filed for record. In other words we have tried to denominate that as things that you need to know before you issue your policy. A final search of title made as of the time the papers are filed to ascertain that no change in title has occurred is also included. The foregoing definition does not prevent voluntary assistance rendered by the title insurance company as a convenience to one or more of the parties to the transaction, although not necessary to the closing of the transaction, such as receiving, and disbursing, money. Thus far, the companies are on their own so far as the escrow part of it is concerned.

Now we have had very good cooperation both with the companies and the agents in furnishing us annually for about three years with the agents, and maybe four with the underwriting companies, certain statistical data which we try to test our rates on. We were surprised and pleased on how well the country agents have answered our forms. We know that they're not set up for a lot of bookkeeping, and we know they are busy and we know they are often operating two or three different kinds of businesses. We've got information from agents that is valid and very helpful to our actuarial section. The underwriting companies, of course, have always cooperated with us.

Mutuality of Interest

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INTRODUCTION

Institutional investors have had a marked influence on the phenomenal growth of title insurance in the United States. Life insurance companies alone, at the end of 1957, had 35 billions of dollars invested in real estate mortgages, part of which, over a ten year period, financed the purchase of approximately four million residences.[1] This fact, of itself, mirrors the extent to which there is mutuality of interests between title insurers and institutional investors.

Both groups should be, and are, intensely interested in improving and simplifying the laws, procedural and substantive, affecting titles to real property. This interest is reflected by participation of our respective attorneys in national, state and local bar association activities and by their membership on, and activities in, watch-dog legislative committees, groups concerned with the development of uniform laws, and various other organizations whose efforts are directed toward improvements in the law. Illustratively, through the American Bar Association concerted efforts are presently being made to improve the law pertaining to vexatious federal tax liens. In the same vein, the American Title Association is entitled to high commendation for its recent generous contribution to the study being conducted in the University of Michigan Law School on uniform title standards.

Title insurers and institutional investors are likewise mutually interested in reasonable rates, both for new policies and reissues. The importance of rates is demonstrated by the fact that requests by investors for title insurance on loans purchased in some states are still resisted on the ground that title insurance rates are uncompetitive compared with the cost of the attorney-abstract method of evidencing title.

Mutual concern has often been expressed by representatives of both groups with respect to the observance of high standards in searching and reporting on titles. Strong emphasis has been placed on the importance of full and accurate disclosure of the true condition of titles, on the avoidance of insuring over, or failing to report, defects of which the investor should be apprized.[2]

The significance of any of the areas of mutual interest mentioned certainly cannot be minimized. Limitations of time and space, however, as well as sympathy and understanding for my listeners and readers, dictate that the scope of the discussion here be restricted. Attention will be directed, therefore, to possible improvements in present title policy forms—improvements which should react to the mutual benefit of both title insurers and institutional investors.

Surprising as it may seem to many long-time members of the American Title Association, there has been no major change in title policies in use since 1946—a period of twelve years. Certainly, change is not to be advocated for its own sake. But, there is convincing evidence that many portions of present policy forms are in need of re-examination and re-appraisal based on our experience operating under them since their adoption.

Clarification

All will concede the desirability of insurer and insured achieving a meeting of the minds concerning the intent and purpose of title policy provisions.[3] Surely, such unanimity is to our mutual interest. Yet in many areas doubts arise and differences of opinion exist. Title insurers and institutional investors could, like proverbial ostriches, bury their heads in the sand; refuse to recognize such differences, refuse to clarify the policies and let the courts decide the issues. It is far better and less expensive, however, to resolve differences amic-

ably rather than in the courts. A few illustrations should suffice to show the need for study.

In the years since the adoption of the American Title Association standard mortgagee policy, loans insured by the Federal Housing Administration and those guaranteed by the Veterans Administration have been significant factors in the residential lending field.[4] The standard mortgagee policy does not expressly mention the possibility of losses suffered by a lender under these governmental programs. Happily, to date, economic circumstances have been such that foreclosures and consequent recourses to the governmental insurance or guaranty have been relatively few.[5] The number of title questions arising on these foreclosed loans has, because of the excellent, qualitative standards of title insurers in general, thus far also been relatively small. Problems can and do arise, however. On several loans in my office which were partially guaranteed by the Veterans Administration, our claim against the governmental agency was to have been halved because of an erroneous statement in the title policy that title was held by husband and wife (when in fact the mortgagors, although they held valid title, were not husband and wife). In other cases, erroneous statements have appeared in title policies with respect to the existence of racial restrictive covenants and violations of other restrictions affecting the properties. Fortunately, in most of these cases, the properties were ultimately sold without loss justifying recourse against the title company. Given less favorable economic circumstances, however, such misstatements in title policies could certainly have resulted in substantial losses to the lender because of reductions in claims against the government or because of its refusal to accept title. A leading and respected representative of the title insurance industry has addressed himself to this question as follows:

> "In concluding this discussion, I would like to leave with you one thought relating to FHA and VA loans. Where title insurance ignores known defects and attempts in so doing to make marketable a title which in fact is not marketable, it is possible that these government agencies, in case of foreclosure, may question its guarantee of payment on the theory that title does not conform to its regulations. There has been little or no experience to date, so far as I know, which justifies an opinion on this question. **While the title company does not insure against loss which might result from the possible resistance against payment of their obligations by these agencies, this question is a matter of concern to the industry."**[6]

This statement relates to insuring as marketable a title which is in fact unmarketable. The author's attitude that the title policy does not insure against loss resulting from non-payment by a governmental agency might also logically apply, however, to misstatements concerning racial restrictions, violations of other restrictions, the manner in which title is held and, in fact, any other erroneous statement in the title policy. Representatives of many lending institutions certainly are not in accord with the author's position. The warning bell has been sounded, therefore, and efforts should be expended to resolve this important, mutual problem.

Differences arise in other areas. Recently a title company became obligated to discharge a mechanic's lien which had priority over the insured mortgage. After payment, the lender was requested to submit the title policy for reduction of the face amount. The title insurer asserted that the lender's policy was to be reduced by the amount of payment made to the mechanic. Reliance was placed on the following language in the policy:

> "All payments under this policy shall reduce the amount of the insurance pro tanto and no payment shall be made without producing this policy for endorsement of such payment unless the policy be lost or destroyed . . ."[7]

Reduction in insurance coverage was resisted because payment was made not to the lender but to a third

party. The lender still retained its full investment in the property and required the original amount of insurance to protect its interest. While the dispute was satisfactorily resolved between title insurer and investor, the incident affords another illustration of the mutual benefit to be derived from a restudy of title policy forms.

Doubt has occasionally been expressed on the extent to which present policies cover other eventualities. For example, to what extent is the right of access to a public highway insured. Lack of access may adversely affect saleability and seriously depress the property value. Certainly, this is a possibility against which investors need protection. Still, present title policies make no express provision in this regard. While lenders have various theories under which they feel title insurers are liable, express language clearly showing the intent of the parties to the contract and resolving any possible doubt would be mutually beneficial.

A disconcerting contention has been made in some quarters that the title insurer is not liable for a forgery where title is not closed, and the forged document is not executed, in the title company office. Support for this position is lacking in title policy provisions. Certainly it could not seriously be maintained as against an assignee of the original lender. Nevertheless, careful exploration of the conflicting interests involved is warranted, together with deliberation aimed at eliminating differences of opinion.

In some states, the mortgage holder may be precluded from foreclosing if the originating mortgagee or any prior assignee had not qualified to do business in the state.[8] The national investor may not encounter this problem when it makes direct loans or purchases from correspondent companies, as originating mortgagees, which it knows have qualified. Increasingly, however, mortgage paper is being widely traded. The investor, then, may have little or no knowledge concerning the original mortgagee or its assigns. The standard loan policy is regarded by investors as affording protection against the risk of prior unqualified holders of the security instruments. Title insurers may very well concur in this conclusion. Mutual constructive effort could profitably be devoted, however, to clarifying the policy provisions to eliminate possible differences of opinion.

Disputes may arise as to the direction in which a revised title policy should proceed in the clarification of provisions over which differences of opinion exist. Naturally, changes resulting in the assumption of substantial risks not anticipated by the present premium structure will warrant a re-evaluation of premium rates. In any event, it is clearly of mutual benefit to uncover all areas of difference and attempt assiduously to reconcile them.

Standardization

The current cause of substantial volumes of correspondence between title insurers and investors, correspondence which is mutually expensive and time consuming, relates to the intended meaning of exceptions from the insurance coverage. Efforts to standardize exceptions have thus far been less than successful. An exception acceptable to one investor is unacceptable to another, therefore, title insurers adopt varying practices for different major investors. The line of least resistance is chosen and attempts are made to placate all. Inevitably, instructions are mistakenly applied and costly correspondence ensues.

Several problem areas encountered in my experience deserve mention. The problem of special assessment districts ranks high on the list. In many sections of the country, and particularly in the western states, special assessment districts are created for varying purposes such as lighting, drainage, irrigation, water, and other special improvements. When reference is made in the title policy to the fact that the property is situated in such a district, to ascertain the effect of the reference often requires considerable correspondence. Investors should be made aware of special districts, but they must also know whether district charges or assessments are outstanding and, if so, the amounts assessed against the in-

sured property. Assurance must also be furnished that no charges are delinquent. While the problem is usually one of semantics, this type of exception has been the subject of literally hundreds of letters in our office. Still, a satisfactory solution is yet to be achieved.

For at least a decade, many lenders have not normally required that they be supplied with copies of covenants, conditions and restrictions affecting residential mortgaged property. The title policy must affirmatively insure, however, that the covenants, conditions and restrictions have not been violated and that a future violation will not cause a forfeiture or reversion of title. [Unfortunately, the Texas form of title policy, which is not the American Title Association form, does not insure against present violations (although it does insure against forfeitures), therefore, to establish conformance with governmental requirements on loans insured by the Federal Housing Administration or guaranteed by the Veterans Administration, we find it necessary to examine all covenants, conditions and retrictions affecting Texas loans.] Where copies of excepted covenants, conditions and restrictions are not supplied, problems arise with respect to the intended scope of the exception. Occasionally, an instrument creating covenants, conditions and restrictions also provides for an easement or for the right to levy a private charge or assessment. Several cases have been directed to my attention in which the title policy exception merely mentioned the covenants, conditions and restrictions when in fact there were also easement and assessment provisions. Clearly, liability attaches for such an omission, but investors are more interested in accurate reporting than in establishing liability. Consideration of this problem with emphasis on more careful examination of the instrument and on drafting standard language which will draw attention to the limited scope of the exception should prove mutually helpful.

In some communities, restrictions are imposed with respect to the sale of subdivision properties. Committee or association approval of a prospective purchaser may be required or it may be necessary that a property for sale be offered first to the private governing group. These and similar restrictions respecting the disposition of mortgaged property warrant consideration by the prudent investor who, following foreclosure, would, as purchaser, be bound by them. When copies of excepted covenants, conditions and restrictions are not furnished, lenders presently assume that the excepted instrument contains no restrictions on disposition of the property and consider that title insurers would be liable for failure to refer specifically to any restrictions on disposition. Careful thought should be devoted, however, to the advisability of having the standard exception of "covenants, conditions and restrictions" expressly negate the existence of restrictions on the sale or other disposition of the property. Such standard language would have the mutual advantage of certainty and would serve as a reminder to the title insurer of the necessity of supplying copies of the instruments where there are restrictions on disposition.

Voluminous correspondence between title company and investor relates to that specie of right of way, commonly designated the "unlocated easement." This monstrosity, necessary perhaps to the utility company, causes unending difficulties to the investor. Exploratory efforts might result in a satisfactory, standardized system of treating such exceptions, with a resultant reduction in mutually expensive correspondence.

No attempt has been made to enumerate or discuss all areas wherein standardization of exceptions is possible and desirable. Title insurers, better than anyone else, know the idiosyncratic requirements of some institutional investors—and are, or should be, conscious of the room for improvement.

Streamlining

Every letter, every number, every word inserted on title policy forms must be typed and checked by the title company and reviewed by the institutional investor. Typing, checking and reviewing are laborious and costly. To the extent that typed ma-

terial can feasibly be incorporated into the printed form, both investor and title insurer benefit.

On every loan insured by the Federal Housing Administration or guaranteed by the Veterans Administration, the lender must establish the non-existence of racial restrictions filed after February 15, 1950. At first a statement to that effect was typed in each policy. Later, a rubber or metal stamp was employed. Some title companies are now overprinting the appropriate clause into the title policy or including it in a special endorsement. Lenders are still obliged to check each loan to determine whether the clause has been typed, stamped, overprinted or endorsed into the policy. Has not the time arrived for its inclusion in the regular print?

Most lenders are required to, and all lenders are anxious to, establish that covenants, conditions and restrictions affecting mortgaged property have not been violated and that a future violation will not cause a forfeiture or affect the validity or priority of the mortgage or deed of trust. In every loan policy in which covenants, conditions or restrictions are excepted, title companies must type, or insert by way of endorsements, statements assuring against violations and forfeitures. Here, too, the practices vary. Some companies type the same clause after each exception of covenants, conditions and restrictions. Some type it but once at the bottom of the exception sheet. Some include it by way of endorsement. In any event, the lender must always affirmatively check for it. Consideration should be given to the inclusion of language in the regular printed form somewhat as follows:

> "Except as otherwise expressly stated in Schedule B, no covenants, conditions, terms or restrictions excepted therein have been violated, and a future violation will not cause a forfeiture or reversion of title or affect the validity or priority of the mortgage or deed of trust insured hereby."

Additions should also be made to the clause to protect the lender against restrictions against disposition and any other unusual, objectionable restrictions. Title insurers would benefit from such language by reductions in typing, and lenders by reductions in the time required for examining the title policy.

At the request of some investors, many title companies have succeeded in eliminating the full legal descriptions from their policies, thus relieving the investors of tedious and costly word by word comparisons with descriptions in deeds or mortgages. Title policies in such cases merely cross refer to the description in the insured instruments. In some sections, where long metes and bounds descriptions are still common, the cross reference technique has not yet been adopted. Apparently title company overall procedures in these sections are such that the typed description in the policy is considered essential. Some investors apparently have also continued to require that the full legal descriptions appear in title policies. Reconsideration of this problem, particularly in the light of the experience of those who have eliminated the full descriptions, may prove mutually beneficial to both investors and those insurers now typing the full descriptions.

With the advent of an increasing number of road building programs, the number of requests for partial releases of mortgaged security has multiplied rapidly. Many lenders, out of caution, have followed the procedure of obtaining title company consent to partial releases so as to avoid the possibility of a later claim of adverse effect on subrogation rights. This procedure involves exchanges of correspondence and the expenditure of time and effort which could more profitably be expended elsewhere. Consideration should be given to the inclusion in the standard loan policy of a blanket consent to such releases, subject to such conditions as insurers consider essential to their protection.

Undoubtedly, other provisions of title policies will likewise lend themselves to improvement. An interested, inquisitive spirit on our parts should disclose them.

Scope of Coverage

The scope of the coverage afforded by title insurers to investors is clearly a matter of acute mutual interest. Generally, institutional investors are interested in increasing the scope of their protection, provided the insurance is issued in consistence with sound underwriting practices. Certainly it is in the investor's interest that the premium charged be adequate to meet reasonably anticipated claims thereby avoiding the possibility of insolvency. Investors should scrupulously avoid encouraging insurers to assume unwarranted risks of a purely "casualty" nature. Experience figures for such risks may be unavailable or unreliable, the premium charged generally does not actuarially provide for the risks, and claims honored for such casualties would reduce the insurer's available reserves for true title risks. Title insurers, similarly, should be anxious to furnish the maximum possible coverage to investors, consistent with sound underwriting principles, at premiums commensurate with all risks covered. While the assumption of unwarranted casualty risks is to be discouraged, certain risks of a casualty nature seem necessarily to fall within the province of the title company.[9] Too often, however, the battle cry "casualty insurance" is raised to any suggestion that consideration be devoted to an increase in the scope of the policy. Many fail to acknowledge that forgeries, unknown heirs and other risks undetectable from an examination of the record are also largely of a "casualty" nature. Yet, title company advertisements emphasize the significance of insurance against these risks. The advertisements are right. These elements of title insurance are extremely important. They would never have been incorporated in the policy, however, if the casualty argument had prevailed.

When the American Title Association standard policy was devised and adopted, representatives of the life insurance industry maintained unsuccessfully that zoning ordinances and regulations should not be excepted from the scope of its coverage. Over the years, investors have continued periodically to seek this service. While the number of situations in which investors have suffered losses due to zoning is relatively small, the problem for the nationwide lender, who relies on title companies for other title matters, is acute. Zoning is purely a local matter. In some communities, numerous, different investigations must be undertaken in order to establish compliance or noncompliance with applicable zoning laws.[10] The problem is becoming increasingly significant and complex, therefore, constructive action must soon be taken. Are title companies, consistent with local restrictions relating to permitted activities and the practice of law, prepared to step into this area, which is such an integral part of the overall title problem? At least one title company has answered this question affirmatively. In a recent address before the 18th Annual Appraisal Conference in New York City, Harold W. Beery, President of Home Title Guaranty Company, after enumerating ten possible effects of zoning on prospective investors, concluded as follows:

> "I have no doubt, however, that the means will be found to relieve the real estate field of fears about compliance with zoning. **I believe those of us who serve the real estate field have a responsibility to look for a solution to the problem of how to provide, as a routine manner, complete confidence on matters of zoning and their effect on title to real property."** (emphasis supplied)

Lenders continue their concern with the problem of assessments when the "Additional Coverage" policy is not supplied. This policy insures against assessments for street improvements under construction or completed on the date of the policy which might take priority over the mortgage. Since insurance is afforded against assessments not necessarily disclosed by the record, before writing the additional coverage policy, insurers, in varying ways, establish the non-existence of recent street im-

provements. In many communities, title companies refuse to make this coverage available. In such areas, lenders are confronted with the problem of making other arrangements to staisfy themselves as to this risk, notwithstanding that reliance on most title matters is placed on title companies. Since the problem is peculiar to local law, the national lender is particularly perplexed. Present arrangements are unsatisfactory and re-exploration of the problem is warranted. Changes in local laws may be indicated as the proper solution in communities in which title insurers presently feel that the risk cannot adequately be guarded against.

During the past fifteen years, lenders on business and commercial properties have placed increasing emphasis on the credit of prospective or existing tenants.[11] Particularly is this true in loans secured by proposed shopping centers in outlying areas or by other real property in unproven locations. Whereas in earlier times, the tenant's lease was subordinated to the mortgage, the tendency now is to permit the lease to be prior and to take an assignment of landlord-mortgagor's interest therein as collateral security.[12] The effective assignment of lease, then, assumes critical importance. The lender must satisfy itself concerning the validity and enforceability of the lease and the effective execution and recording of the assignment. Presently the title company assumes no part in these functions. Since the protection desired by the mortgagee is comparable to that afforded when a title company insures leasehold mortgages, query whether it is feasible to extend the scope of title insurance service so as to insure the lender as to the validity and priority of the assignment of lease as collateral security.[13]

Standard Owner's Policy

All will concede the mutual benefits realized by title insurers and lenders from the adoption of the American Title Association standard loan policy. The same persuasive reasons favoring that adoption are now applicable to a standard owner's policy. Over the last decade, institutional investors, and particularly life insurance companies, have been increasingly attracted to the advantages of owning real property, particularly in the form of sale-leaseback transactions.[14] The volume of such acquisitions is rising steadily, a trend which is likely to continue. Presently a wide variety of owners' policies are offered necessitating a review by counsel for investors of the entire policy form. Standardization is lacking in the insuring clauses, the conditions and stipulations and the exception sheet. Institutional investors expect their owner's policy, as does the mortgagee policy to afford protection against mechanics' liens, parties in possession, survey readings and marketability. Currently a substantial volume of the policies offered to investors must be returned for a more satisfactory policy form or for the elimination of unacceptable exceptions. Many of the remarks heretofore directed to mortgagee policies are likewise pertinent to owners' policies and should be considered in preparing a standard form. The need for improvement, mutually beneficial to insurer and investor, is pressing and some steps have already been taken to fulfill that need.[15] A final, joint effort on our parts may produce the desired result.

Worthy of special mention is the coinsurance clause which appears in owners' policies issued by some title companies. This clause provides that if a partial loss occurs following an alteration or improvement made after the policy date, the insured, under certain circumstances, becomes a co-insurer. Alterations or improvements may even cause a reduction in the insurer's liability where the alterations or improvements did not affect the amount of loss. To illustrate, a title policy for $5,000,000 is written to cover the purchase price of a parcel of unimproved land. Buildings costing $20,000,000 are immediately erected. Apparently, a $100,000 loss due to an undiscovered lien on the property would be pro-rated and the insurer would be liable for a relatively small percentage of the loss. $24,-

000 under policies providing for co-insurance when the cost of improvements exceed 20% of amount of insurance). To avoid such coinsurance, the investor must carry insurance of almost the full amount ($25,000,000) even though the risk of total title failure in this price range is infinitesimal, and few, if any, title companies could withstand a $25,000,000 loss. Investors favor elimination of the co-insurance feature, especially where the title insurance exceeds some set amount or where the amount of loss is unaffected by the alterations or improvements.

Conclusion

Fortunately, title insurers and investors have heretofore harmoniously labored together to settle questions of mutual concern. The close cooperative spirit displayed by title insurance representatives in our dealings is worthy of high tribute and commendation. Great forward strides have already been taken, but the journey is not yet, nor is it ever through. Constantly changing conditions create new crises and new challenges.

It is my suggestion that a joint committee, representing institutional investors and title insurers, be appointed to explore and attempt to resolve the various problems raised here, as well as any other problems of mutual interest. Appointment of this committee should be made forthwith. Instructions to report its findings and recommendations within reasonable time limitations should be issued. The appointment of this committee should be productive of continued mutual progress.

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*Of the New York and Wisconsin bars and Associate General Counsel of Metropolitan Life Insurance Company. The writer gratefully acknowledges the many ideas herein contained contributed by his colleagues in the Life Insurance Counsel group of the American Title Association.

FOOTNOTES

1. 1958 Life Insurance Fact Book, page 80. The majority of most life company real estate mortgages are accompanied by title policies. Also, see generally, Johnstone, **Title Insurance,** 66 Yale Law Journal 492 (1957). While accurate figures on the amount of outstanding title insurance, or the percentage held by institutional investors are not available, as indicated the major institutional investors hold title policies which number in the millions.

2. See generally, Mendel, **Title Insurance, Tranquilizer or Boon to The National Lender.** An address given at the 1957 Annual Meeting of the Legal Section of the American Life Convention in Chicago. (L.S. 1957, p. 140). Henley, **What Investors In Mortgage Loans Are Demanding In Title Insurance,** 35 Ttitle News No. 5 p. 9 (1956). In an address before the New York State Title Association in the Hotel Biltmore, New York City, on April 29, 1958, Julius S. Wikler, Superintendent of Insurance of the State of New York cautioned title insurers strongly against the departure from the traditional approach of a complete title search and from other sound underwriting practices.

3. Gordon M. Burlingame, President of the Title Insurance Corporation of Pennsylvania made an interesting and provocative address entitled "Ambiguities" before the Pennsylvania Title Association on May 16, 1958. In this address, Mr. Burlingame questions the scope of coverage under the present ATA Standard Loan Policy (Revised 1946) concerning four important points: (1) the extent to which the policy insures against unenforceability of the mortgage because of an unqualified foreign corporation, as mortgagee in the chain of title, (2) certain problems in Pennsylvania posed by the Uniform Commercial Code, and particularly the extent to which the policy insures against liens on chattels which, as between owner and mortgagee, may constitute part of the realty, (3) the extent to which the title policy insures against present violations of zoning ordinances and building regulations and (4) the meaning of the words insuring against "actual loss or damage." Some of these features of the policy are also discussed herein.

4. Statistics obtained from various governmental sources indicate that 30% of all non-farm home mortgages in the past twelve years have been guaranteed by the Veterans Administration or insured by the Federal Housing Administration.

5. Annual reports issued by the Life Insurance Association of America entitled **Mortgage Loan Delinquency and Foreclosure Experience of Life Insurance Companies** show that in the past three years 0.09% of the VA guaranteed loans in force and 0.06% of the FHA insured loans in force have been foreclosed.

6. Henley, **What Investors In Mortgage Loans Are Demanding In Title Insurance,** 35 Title News No. 5, pp 9, 15, 16 (1956). (Underlining Supplied.)

7. American Title Association Standard Loan Policy—Revised 1946 (also Additional Coverage Policy). Conditions and Stipulations, paragraph 8.

8. **John Hancock Mutual Life Insurance Company v. Gerard** 57 Ida. 198, 64 P. 2d 254 (1936). Also see generally, 23 Am. Jur., Foreign Corporations § 182-185. Also see Carrier, **The Doing Business Rule With Respect to Mortgages,** an address delivered before the Association of Life Insurance Counsel, December 10, 1956 at the Waldorf-Astoria Hotel, New York City.

9. See Henley, **What Investors In Mortgage Loans Are Demanding in Title Insurance,** 35 Title News No. 5, p. 9 (1956).

10. Harold W. Beery, in an address before the Annual Appraisal Conference in the Sheraton-Astor Hotel, New York City, on March 21, 1958, mentioned that as many as eight different inquiries might be necessary, at several different boards or agencies, in order to establish compliance or non-compliance with applicable zoning ordinances.

11. See Williams, **The High Credit Lease As Security—A Lawyer's Viewpoint,** an address delivered before The Association of Life Insurance Counsel May 17, 1954, at The Greenbrier, White Sulphur Springs, West Verginia.

12. See Campbell, **Some Aspects of the Landlord-Tenant-Mortgagee Relationship,** a paper read before the Association of Life Insurance Counsel, May 12, 1943, in New York City.

13. This suggestion also was proposed in 1954 by Andrew G. Holl, then Assistant Counsel of Mutual Benefit Life Insurance Company, Newark, New Jersey, in an address delivered to the New Jersey Title Association. This address is reprinted in 33 Title News No. 4, pp. 2-6 (1954).

14. Statistics made available by the Institute of Life Insurance show that the annual commercial investment in properties owned by all United States life insurance companies increased from $219 million in 1947 to $1,867 million in 1957.

15. The Committee on Standard Forms of the American Title Association has considered the possibility of a standard owner's form for several years. See Henley, **Report of Committee on Standard Form of Insurance,** 34 Title News No. 12, p 72, (1955).

Headaches, Heartaches and Comforts of an Advertising and Public Relations Program

Outdoor, Billboard, Street Car and Bus Ads

EDWARD T. DWYER

Chairman of the Board, Title & Trust Company, Portland, Oregon

As the printed program indicates, my part in this discussion has to do with outdoor billboard, streetcar and bus ads.

Let us eliminate billboard advertising at once as our company never did indulge in that type of advertising. It was thought of, even suggested by our advertising counsel.

As for outdoor advertising—our experience in this field is very limited, as the few times we were induced to go into this type of advertising, were at the request of sub-dividers who wanted us to share part of all of the expense of advertising their particular sub-division.

Back in the days when we really had to sell title insurance we cooperated on several occasions with an auctioneer who had extensive experience in selling out the tail end of sub-divisions. He had operated both in the state of Washington and in California. It was his suggestion that we have large signs painted which he placed advantageously throughout the sub-division. Naturally these signs extolled the virtues of the subdivision being auctioned. We were compensated to the extent that we were permitted to place on the bottom of these signs language somewhat along this line. "The Title to the property you purchase is insured by Title and Trust Company."

Now as to streetcar and bus ads. In this field we carried on a rather extensive program for nine years and ten months. Two hundred and seventy two cards, eleven by twenty-one inches were used. Two hundred and twleve of these cards appeared in the city street cars or buses, and sixteen on the inter-urban lines. Copy was changed every two months, and if I may be permitted to say so, these ads were both attractive and informative. The monthly cost, based upon a twelve month contract, was $249.50 per month. During this same period we were also running display ads in the two local newspapers, the same advertising agency was employed to furnish copy for both.

Never did we receive any favorable comment on our display ads, but we did receive many nice comments about our streetcar ads. The cost of the streetcar ads was just about twenty-five percent of the cost of our display advertising.

On one of Jim Sheridan's visits to Portland, he was attracted to our car ads to the extent that he requested copies of these cards be sent to national headquarters.

Motion Pictures

H. STANLEY STINE

Exec. Vice-Pres., District—Lawyers—Washington Title Insurance Co., Washington, D.C.

Let me say at the outset that I am anything but an expert on public relations and/or advertising. I suppose the only justification for my being on this panel covering the subject assigned to me is my experience with the film entitled "The Land Is Yours" produced by the Atlantic Seaboard Regional Conference of this Association.

Motion pictures have for many years been a media of advertising and public relations used by every industry that I can think of, and the films cover any subject you might desire. The most recent release of a national distributing firm which I have seen makes available ninety-six new films and you have your choice of anything from "Tips on dressing right" to "Higher education in America." As a matter of fact, just two weeks ago, I saw a film produced by one of our major rubber companies. Strangely enough, the story had nothing to do with tires, rubber, or any by-product of rubber. It dealt with the economy of these United States and how far we underestimate our growth. Our own industry got into the motion picture field when the Title Insurance and Trust Company of Los Angeles, I believe, pioneered with a picture in 1954. Since then they have produced several more. The Florida Land Title Association has a picture. But, perhaps, it was the exhibition of the Texas Bar Association picture at our meeting of the Atlantic Seaboard Regional Conference in Baltimore in June 1955, which sparked the idea that we might be able to produce a film which would really cover the story of title insurance.

A committee was appointed to develop the feasibility of producing such a picture and if its decision was in the affirmative, then to proceed to consider the ways and means of doing so. I was a member of that committee.

The Committee met and after several hours of deliberation, it decided a motion picture portraying the title insurance industry could be produced. This was a momentous decision as that is where the headaches began. Now, my background in motion pictures consisted of seeing an occasional film at the neighborhood movie house, or watching my neighbors taking shots of their pride and joy in the form of their children or their home. I am sure the other members of our Committee had not much more experience in this field than had I. But after all we were assigned a job and we set about to do it.

We looked around for a reputable film producer and having located one we obtained a quotation of something over $17,000 as the cost of producing such a film. Of course, the first obstacle to overcome was how to raise that kind of money. A formula was finally devised whereby all of the companies in the region would be asked to contribute on a capital structure basis. Seventeen of the companies responded and the Committee had a firm commitment to cover the cost of production. Headache No. 1 had vanished. We start now with the second and more painful one.

Just what kind of a plot can you create around which to build a story to tell your viewers about title insurance? None of us knew. Each of us gathered up all of the brochures on the subject in our respective offices and forwarded them to the professional script writer the producer had provided for us. He studied the material and suggested a theme. It sounded good and we started to work on the script. One of our great difficulties was the geographic distance between the Committee members. One was in New York, I was in Washington, another in Louisville and our Secretary in Richmond. Frequent meetings were out of the question but we did meet on important

points. We had to keep informed through correspondence and telephone calls. As the script progressed, the biggest headache which developed was with our legal sequences. Remember, our region covers eight States and the District of Columbia. Any portrayal of a legal doctrine had, necessarily, to be common to all of those jurisdictions. What a difficult chore that was, but we conquered it. Finally, the finished script was agreed upon and as I reviewed it, I must confess it was not too easy to read a sequence of dialogue and at the same time envisage the picture of the film which would accompany it. At any rate, the Committee authorized commencement of the production.

Some months later we were summoned to the producer's studio to view the production as completed before the interlock of sound and film. You sit in the producer's projection room, the lights go out and the order is given to run the film. Up to now, you have had only headaches. At this point, you have a real heartache when that important organ of your anatomy leaves its normal place of abode and jumps up into your throat. A clammy perspiration envelopes you and you sit there with closed eyes wondering whether you have created something worthwhile, or whether you have really laid a $17,000 bad egg. You hear some sound and as you open your eyes you see some figures on a screen. As the next twenty-two minutes pass by, your heart slowly drops back to where it belongs and once more starts beating, even if it be more rapidly than normal. The lights go on and you realize you really haven't seen or heard what has happened. With the best feigned poise you have at your command, you ask the producer to re-run the film for a more detailed study. You now see the picture with a clear eye and hear the dialogue with an unobstructed ear. You make the notes with a steady hand. At the completion of the second showing you are able to make a comparison of notes with the other committee members and decide on minor changes in both the picture and the script.

You then approve the film as amended for printing.

On the plane returning home you sit back and review what has transpired in the last two years in connection with this project and you become relaxed with a feeling of comfort that the whole thing has come to a successful conclusion. You are proud of what your committee has created for our industry.

But your comfort is short-lived. The participating companies have all purchased copies of the films but find they do not have the facilities necessary to give it the kind of distribution the film should have. Another headache. Not too long a one, however, as we shortly learned of the commercial distributors of this type of film. A leading firm was contacted and a contract entered into. A sufficient number of prints was provided by the participating companies for use in the library of this distributor and covers the entire area of our region. While our program of distribution has been in effect only since the middle of last February, I can say to you that it is most effective and is increasingly successful. Just another comfort at the end of a long trail.

Yes, ladies and gentlemen, I would recommend to you the use of motion pictures in your advertising and public relations programs. But if you attempt to set up your own picture, let me remind you that you will have headaches and heartaches, but that the comfort which follows the enthusiastic acceptance of your efforts will more than compensate for your suffering.

Radio - Television

ALVAH ROGERS, JR.

President, Title Insurance Corporation of St. Louis, St. Louis, Missouri

Gentlemen . . . in developing an advertising program the first job is to decide upon your objective. That's basic . . . but very important.

All of us at Title Insurance Corporation of St. Louis knew from long and painful experience that our main problem lay in the fact that very few persons in the St. Louis area knew about title insurance. Because for more than 75 years Certificates of Title have been the prevailing kind of title evidence in St. Louis. These certificates cover only the record title; they contain no words of indemnity; nor do they state any dollar amount of coverage. They offer scarcely any more protection to purchasers and mortgagees of real estate than does an abstract of title and lawyer's opinion.

So we decided to take the bull by the horns and try to educate the public on the basic principles of title insurance . . . and the need for it.

We decided to sell the **idea** of title insurance first . . . our company name second.

This was a calculated risk because we realized this approach would help our competitors too. Believe me . . . it has. They appreciate our advertising. However we feel that T.I.C. is gaining the greater benefit.

After experimenting with several other media, we selected radio as our primary media for two reasons: first —radio gives us the time we need to tell a complicated story to a fairly captive audience; second — in St. Louis, radio is our best buy cost-wise.

To kick off the program our advertising agency created a character known as "Mr. Defective Title" . . . a little villain who represented everything bad that could happen to a home-owner who does not have title insurance.

In using Mr. Defective Title we took another calculated risk, because he is a "negative approach" character. But we felt strongly the need to shock the public . . . to make them stop and think . . . and to get our message across in such a dynamic way that it would be remembered.

Let me play a recording of one of our Mr. Defective Title commercials, so that you can hear how we did this. (one-minute tape recording played)

Well, as you have seen, this was strictly a shock treatment. We used Mr. Defective Title for nearly two years.

We know this approach worked because:

1. During this period owners policies became noticeably easier to sell;
2. Our competitors said that many of **their** cuostomers asked for "the title insurance with the big, red seal" (which is as you know, T.I.C.'s trademark);
3. A play, built around Mr. Defective Title, won first prize in a contest at Washington University in St. Louis;
4. Toward the end of the period in which we used Mr. Defective Title we received quite a number of telephone calls from people who were tired of hearing this character.

That last factor may sound like bad results to you. However, we knew that when a **few** people complained about our radio message it must have made a strong impression on **many** people in our market area. This was our basic objective.

When complaints started coming in we promptly took Mr. Defective Title off the air . . . and, instead, put on a series of commercials which announced that Mr. Defective Title has gone on a vacation . . . you won't be hearing his villainous voice on the air for some time.

Following these transitional commercials, we took an entirely different approach. Our agency came up

with new commercials which are delivered by two friendly characters called Mac and Jack.

These new commercials are written in a rather breezy and light-hearted manner . . . however, they still get our message across quite clearly.

I'll play one of the Mac and Jack commercials for you so that you can see why they are now becoming fixtures in the St. Louis radio listeners' minds. (one-minute tape recording played)

Now, just a few words on our view of buying radio time.

We have consistently purchased news programs or other programs which provide good continuity for our commercial message, and which have a prestige nature.

This approach is different from "spot radio," in which you buy short commercials at various times throughout the day and week. We think it is better to concentrate on one audience and sell the people in it thoroughly instead of hopping around the dial and around the clock with our message . . . hitting here and there.

When we buy a radio program—usually a five-minute one—we like to stay with it for at least a year. And we buy radio time on prestige stations . . . even though their time is more expensive than others. Also, by staying with these stations we get choice time periods: such as a 6 P.M. local news program on one station, and a 7:40 A.M. popular commentator on another.

That's the basic story of our radio advertising. It has worked well for us . . . I have no doubt that a program of consumer education by radio advertising will work in many of your market areas too.

Personal Solicitation

HARRY V. CAMERON

President, Arizona Land Title & Trust Co., Tucson, Arizona

I consider myself fortunate to have been assigned the only subject of this panel which comes under the "comforts" category of the title.

I say this because we all know that personal solicitation is the one part of our business development and public relations program which comes first, last and always. We need no motivational surveys or depth perception tests to tell us the degree of effectiveness this mode of contact gives us with our customers. In other words, it is as direct an approach as we can get in the solicitation of title business.

This statement is made on the assumption that a given company uses the proper public relations man to begin with, and this brings up the all important subject of how do we get or make a good public relations man?

By trial and error I am pleased to report that I am now an expert. In case you think I am joking or being a bit egotistical in classifying myself as an expert, let me assure you that the yard-stick used in arriving at this conclusion is "how much did it cost?" in loss of business to our competitors, It costs thousands of dollars not only but we literally ruined dozens of good escrow and title officers in the process, on whom we had spent thousands of dollars in training.

In finding the right man we started by trying to make use of assorted top-notch personality boys, whose main qualifications for the job consisted of good-looks, ability to meet people and general sales ability. This was a mistake, as we almost lost all of the internal members of our staff because of frustrations born as a result of promises made by someone who did not have an intimate knowledge of the inner-workings and operations of the various departments of a title company.

We next tried John Doe, who was a good experienced escrow or title officer who had a background of being thoroughly trained in the com-

plete processes of a given title order through a title company. This in part solved our problem, but soon we noticed this man spending most of his time personally escorting a given title order through our various departments to make sure it received the same service that his old personal customers had been taught to expect of him. We also noticed that some of our customers were conspicuous by their absence, and, upon inquiry, discovered that our man was very well liked by the customer but had never been able to bring himself around to the almighty question, "how about some title orders?", inasmuch as he lacked that native ability of a salesman to come right out and ask for business. I guess I need not add the obvious, that this John Doe, "would-be-out - side - public - relations-man" never was satisfied to go back to the humdrum existence of his old desk job and left us to join the builder who owned three Cadillacs and needed just that type of man to herd orders through that slow title company.

The obvious conclusion in the quest of a good public relations man is, of course, a combination of both types just described, together with a liberal quantity of "enthusiasm for his job and company." A good man on personal solicitation can do an invaluable job for your company because he is the liaison between you and your customers. He will keep your name before your customers, be alert to any shortcomings of your service, and have the daily opportunity of hearing and acting on criticisms or compliments of your service.

He can and should work hand in hand with your various departments following leads for business furnished by alert escrow or title officers, lay out his day's work on a systemtic basis so that calls on customers are timed so as not to wear out his welcome and, by the same token, not to overlook the old faithfuls with a word of thanks for business received.

Not only should he know his own business well, but he should make it part of his job to become intimate with the general problems of his customers' business. For instance, he should keep himself up to date on the current mortgage and real estate market to the extent of being able to converse intelligently, and in some cases help with the specific problems of our customers.

Sure, he should play golf, take out to lunch and generally entertain customers and potential customers, but should guard against becoming too close to his favorites and thus losing his effectiveness with others.

Last, but not least, he must be, in the greatest sense of the word, a public relations man in his own office, understanding the production problems and instilling in all employees the desire to sell on the inside as he does on the outside, as he knows full well that one wrong word by a dyspeptic escrow or title officer to a customer can undo all the efforts that he has expended on the outside to get that customer into his office.

A good man on Personal Solicitation of title business can be a comfort.

Newspapers

CLARENCE M. BURTON

Vice-President, Burton Abstract and Title Company, Detroit, Michigan

At the outset, we should realize that the commodity (Title Insurance), we have to sell is out of the ordinary type of common product usually advertised and sold. Our product is purchased only about twice in the lifetime of any individual or family. It is a different commodity than food, clothing, furniture or automobiles. By comparison and general usage it is not a well-known commodity.

One of the first headaches calling

for aspirin is how to acquaint the general public with the value and importance of Title Insurance. Advertising is one of the means by which this headache can be relieved. My subject and assignment calls for newspaper advertising, therefore, I shall restrict myself to this medium.

Newspaper advertising is a basic means by which general information about Title Insurance can be disseminated—but again headaches are involved.

Briefly let me enumerate.

(1st HEADACHE): The selection of a capable agency or individual as Advertising Director (and Public Relations) with a sufficient knowledge of Title Insurance and an understanding of it to properly present it to our prospects. All this limited to an organization's ability to pay, in service fee or salary.

(2nd HEADACHE): The approach, theme or method which, through adverstising, we hope to educate our prospects on the value and importance of Title Insurance and at the same time, direct these prospects to our place of business and buy what we have to sell. Ordinary advertising will only produce ordinary results. You can't plant onions and expect roses to bloom. Newspaper costs, however, remain the same whether the advertising is ordinary or outstanding.

(3rd HEADACHE): Who are our prospects? Who is the most influential person (or persons) in the purchase of Title Insurance? I intend these to be provocative questions and don't intend to answer them all, but on this point I'm sure we all agree that the most influential people in this respect are the real estate brokers, the attorneys, the mortgage bankers and the builders.

(4th HEADACHE): What media is best suited to reach these prospects?

I have promised to restrict my comments to newspaper advertising but don't feel that I am digressing too much if I include here my feeling that since our commodity is sold to the limited field of influence that I have just mentioned, we might gain more from advertising in periodicals such as the Bar Journal, the "Realtor" magazine, the Mortgage Bankers periodical and Builder Magazine; since they seem to be the ones who call the shots when Title Insurance is purchased anyway. Of course, my feeling in this respect is tempered by my following comments.

(5th HEADACHE): When newspapers are used, how much money (percentage-wise) should be allocated to newspapers for an effective newspaper advertising campaign? Too small an allocation is money wasted. Too large is too expensive.

(6th HEADACHE): What section of a newspaper is best for us? Main News? Women's Section? Sports Pages? Financial Pages? Real Estate Pages? Whichever section is used, however, it has been found that more ads above the fold are read than below and therefore are more effective. Since the price is the same (usually) above or below the fold, it behooves us to request space above and if not possible for a particular insertion, it might be well to delay until a later day when it can be obtained.

(7th HEADACHE): Is frequency of insertion more important than size? Or vice-versa? Should several small ads appear weekly (and that's spelled w-e-e-k-l-y) or should one large ad be used? What is a large ad?

(8th HEADACHE): In areas served by several newspapers which newspaper or combination of newspapers best covers the field of our prospects?

These are but a few of the major headaches.

I talked to Jim Sheridan after I had partially prepared this "blurb", and he said, "I suppose you have lots of statistics to give us." Well, no, I don't have any, principally because the only statistical data I've ever been able to reduce to memory is that, if all the people who fall asleep in church were laid end to end they'd be a lot more comfortable."

Now to get on with a few of the HEARTACHES:

(1st HEARTACHE): An advertising campaign that fails to do the job, that fails to do what it was intended to do. In other words—a flop! No result! At least no tangible results.

(2nd HEARTACHE): An advertising campaign that unintentionally overlooks and consequently offends certain segments of our prospects. We did just that once in the newspapers. We were running a series of ads glorifying first the attorney in a real estate matter, then the mortgage banker, then the real estate broker and then the builder. In the one for the real estate broker, advertising counsel in drafting the copy referred all the way through to the "Realtor" and as you all know that is a copyrighted name and can only be used by members of National Association of Real Estate Boards. Needless to say, we heard much about it. One group of all negro real estate people who call themselves "Realtists," demanded our next ad read the same but to substitute their name. We refused to do this and dropped the whole thing.

(3rd HEARTACHE): (in the field of Public Relations) Adverse publicity appearing in newspapers which could have been prevented or subdued by an alert Advertising Director or Public Relations Department.

(4th HEARTACHE): An unwise selection of an agency (or Advertising Director). An unwise selection of a Public Relations "expert" who turns out to be "Not so expert."

(5th HEARTACHE): Overspending the budget—and explaining same to the Board of Directors.

These are some of the major heartaches.

Now for the COMFORTS, the greatest of which is probably the fact that I'm nearing the end of this paper verbal treadmill to oblivion.

(1st COMFORT): A successful advertising campaign that makes the public and our prospects conscious of what we have to sell, the value and importance of Title Insurance. Advertising that produces tangible results beyond expectations and puts smiles on the faces of the members of the Board of Directors.

(2nd COMFORT): An agency (or Public Relations man, Advertising Director) that knows its business and how to do what it was employed to do, capably and efficiently.

(3rd COMFORT): Publicity that reflects creditably to your organization.

(4th COMFORT): The knowledge that, through alertness, certain adverse publicity, harmful to your firm or the industry as a whole was "killed" (prevented) from reaching the general public or trade. It is much easier, I understand, to negotiate with a newspaper editor to either kill or tone down such adverse publicity if you are a steady advertiser in his paper.

(5th COMFORT): The overall knowledge of a job well done by all and especially when your competitor's ad appears on the opposite page from yours and your advertising counsel has put so much more punch and force in yours, that the competitor's is either not read or is quickly forgotten.

(6th COMFORT): As a result of a good advertising campaign—an extra year-end dividend to stockholders.

In conclusion there is nothing more gratifying than to sit back and in re prospect, think over the "six comforts" previously mentioned. No aspirin is needed here.

In reference to aspirin and headaches — a local Detroit Chemist worked out a fine formula for an aspirin tablet designed especially for horses, but when it came to writing advertising copy—and a name for his product, he encountered considerable difficulty. To date I have never seen this man's horses' aspirin advertised.

One must remember there are headaches and heartaches in all types of business. Ours is no exception. The final "comfort" we all can derive is the knowledge that what we have to sell, and advertise, is a good product. A needed commodity. A commodity dispensed by individuals of high standards and integrity—all members of an association subscribing to the best business ethics.

Legal Problems

HAROLD A. LENICHECK

Vice-Pres., Title Guaranty Company of Wisconsin, Milwaukee, Wisconsin

This subject has caused considerable discussion and debate. Opinions differ and though different, each has merit. I hope that by informing you of my company's view and how it treats the subject, you may be able to find a partial solution to some of your own problems by applying our thinking to the situation as it exists in your state.

Federal tax liens arise out of assessed internal revenue taxes which the taxpayer has refused or neglected to pay after demand made upon him. (Sec. 6321 IRC). Unless another date is specifically fixed by law, the lien commences and has priority from the time the assessment is made by recording the liability of the taxpayer in the office of the Secretary or his delegate, and to us "delegate" includes the District Director of Internal Revenue, (Secs. 6322, 6203) except that as against a mortgagee, pledgee, purchaser or judgment creditor, in the State of Wisconsin the lien does not become effective until notice thereof is filed in the office of the Register of Deeds as provided by State Statute. I believe most of the other states have a similar statute designating an office within the state for the filing of such notice. These notices may also be filed in the office of the Clerk of the United States District Court. But, because of our statute designating an office within the state for the filing of such notices, it is our opinion that filing in the District Court does not make the lien valid as against a mortgagee, pledgee, purchaser or judgment creditor if there is a failure to file in the office of the Register of Deeds. (Sec. 6323).

A federal tax lien has priority over all conveyances, liens and encumbrances which are subsequent to the commencement date of the federal lien. It covers all property and rights to property of the delinquent taxpayer owned at the date of the lien or thereafter acquired while the lien continues in force. (Regulations Sec. 301.6321-1) State exemption laws, such as the homestead exemption, do not apply. U.S. v. Heffron, 158 Fed. 2nd 657 (C.A.A. 9th Circuit).

The lien continues until the assessment is paid or until the liability for the amount assessed becomes unenforceable by reason of lapse of time. (Sec. 6322) It may be enforced by a public sale by the United States Marshal under a warrant of distraint issued by the Director of Internal Revenue. (Sec. 6331) The purchaser at the sale acquires the right to receive a deed of the property from the District Director at the close of one year from the date of sale if the property is not previously redeemed by the owners, their heirs, executors or administrators, or by any person having an interest therein, or a lien thereon, or by any person in their behalf. (Sec. 6337-8).

In a judicial action to foreclose a mortgage, what is the effect of the lis pendens on federal tax liens?

Under the theory apparently based on case law to the effect that a state cannot in any way by statute or law eliminate the power of the sovereign Government of the United States so that the state cannot prepare a statute such as the lis pendens statute which would eliminate the rights and power of the United States to attach property of a taxpayer, federal tax officials have taken the position that the lis pendens would have no effect on federal tax liens of the United States.

Our Counsel seriously doubts the correctness of the position taken by the tax officials, and feels that notwithstanding U.S. v. White Bear Brewing Company, 350 U.S. 1010, 76 Sup. Ct. 646, and other cases usually cited in support of the government's theory, our lis pendens statute may be applicable against the United

States in a mortgage foreclosure action.

However, because of the position taken by our federal tax officials, Counsel agrees that adherence to his view in situations of this kind would likely lead to litigation and expense. Consequently, we insert in our preliminary reports where the title to be guaranteed is to be based upon a mortgage foreclosure sale an exception with reference to possible rights of the United States under any federal tax liens that may be filed at any time prior to confirmation of the Sheriff's sale. I understand there are many companies besides our own following a similar practice.

A foreclosure under a power of sale contained in a mortgage, and its effect on federal tax liens presents its own problems. In Wisconsin, by statute, every mortgage of real estate containing a power of sale, upon default being made in any condition thereof, may be foreclosed by advertisement within twenty years after the maturing of such mortgage or the debt secured thereby in the cases and in the manner specified in the statute. So, we refer to a foreclosure under a power of sale as a foreclosure by advertisement.

Under the Wisconsin statutes governing foreclosures by advertisement, it is our opinion that no title passes to the purchaser at the sale until he receives a deed, and the purchaser does not receive a deed until after the redemption period has expired. Accordingly, we take the position that the mortgagor continues to have the entire title to the real estate until the deed is given, and the federal tax lien filed subsequent to the sale and during the redemption period is a lien on the real estate title itself, not on a mere equity of redemption.

Whether the Federal Government is bound or affected by a sale made under a power of sale contained in a pre-existing mortgage if the Government has a lien properly filed at any time before the sale is completed is doubtful. Courts of the United States which have passed on the subject are not in agreement.

The Court of Appeals for the 4th Circuit has held the United States bound and so have District Courts in Minnesota and Texas. U.S. v. Boyd, 246 Fed. 2nd 477 (C.A. 4th, 1957); U.S. v. Ryan, 124 Fed. Supp. 1 (D.C., Minnesota, 1955); Trust Company of Texas v. U.S., 3 Fed. Supp. 683. (D.C. Texas, 1933). The Court of Appeals for the 6th Circuit held to the contrary, that the federal lien survives such a sale, and may be enforced by ordering a new sale in an action to foreclose the federal lien. This decision was followed by a District Court in Georgia. Metropolitan Life Insurance Company v. U.S., 107 Fed. 2nd 311 (1939); U.S. v. Cox, 119 Fed. Supp. 147 (1953). The United States Supreme Court denied certiorari in both Court of Appeals cases, so the two opposing Court of Appeals decisions are even in that respect. The Boyd Case was the later case, and while this leaves the holding in the Boyd Case a persuasive authority, it is not a conclusive one.

The government takes the position that federal tax liens can be extinguished only in the specific ways that Congress has authorized. Extinction of the lien by the exercise of a power of sale contained in a mortgage is not one of the forms of termination that Congress has recognized. In the Metropolitan Case, the Court of Appeals for the 6th Circuit put it this way:

> "The federal statutes create specific liens for taxes, and, as a corollary, give a specific remedy for their removal, and when such liens once attach, they may be lifted only as provided thereunder."

It can be argued that the federal tax lien attaches only to that which the delinquent taxpayer owns at the time the lien comes into existence, and that the title which he owns at that time is a limited one because of the power of sale that he has previously given to his mortgagee. To the contrary, it may be argued that the power of the federal government to establish and enforce liens for the non-payment of federal taxes is a plenary power which is subject only

to such limitations as Congress may voluntarily place thereon. So the unsettled question is not what Congress has the power to do, but what has Congress actually done with reference to keeping federal tax liens in force when they have once become fastened on a piece of property?

We are not too optimistic as to the ultimate establishment of the proposition that the exercise of a power of sale in a mortgage is effective to cut off a federal tax lien accruing subsequent to the recording of the mortgage.

As to a purchaser in these situations, we agree with the proposition that the purchaser at the sale is a "purchaser" within the protection of Sec. 6323 of the Internal Revenue Code, so that a federal tax lien filed subsequent to the sale is subordinate to his interest in the property. However, though the purchaser at the sale does get priority over a subsequently filed federal tax lien, under the decision in the Metropolitan Life Insurance Case, we feel the purchaser does not escape the danger that the property may be resold in an action brought by the government to enforce its junior lien.

In the Metropolitan Case, the majority of the Court recognized the subordinate position of the United States lien as against the interests of the purchaser at the sale, but affirmed a judgment decreeing a second sale of the property. Quoting from the Court of Appeals decision:

> "The District Court held the tax lien of appellee (the government) was not thus extinguished, but was inferior to the appellent's mortgage, and ordered the property sold and the proceeds first applied to appellent's claims, and the balance, if any, to appellee."

It should be noted that the District Court and the Court of Appeals treated the mortgagee (who had purchased at the sale) as being still the holder of mortgages which were to be paid out of the proceeds of the new sale. In that situation, what would be the predicament of a title insurance company that had guaranteed the title of the purchaser at the foreclosure sale if, for example, the purchaser lost the title as a result of the resale, or there was a substantial difference between the actual value of the property and the amount the sale ordered by the court produced for the benefit of the policyholder?

In the Metropoiltan Life Insurance Company Case, the government filed its tax lien before there was any foreclosure sale under the power of sale, while the situation we are talking about is one in which the tax lien is not filed until after the sale but during the redemption period. That factual difference, however, in our opinion affects only the change in status from a "mortgagee" to a "purchaser." Both are protected by Sec. 6323 against any claim of priority by the government, but neither is protected under the decision in the Metropolitan Case against a claim by the government that it has a junior lien for which it can insist that the property be sold a second time even though the mortgagor's redemption period has expired.

If the line of judicial authority represented by the Metropolitan Case (6th Circuit) were to be upheld ultimately by the Supreme Court of the United States, that second sale might visit substantial losses on a title insurance company that had issued policies in reliance on the opposite line of authority represented by the Boyd Case.

We prefer the reasoning and the result of the Boyd Case, and think it was correctly decided, but since it does not conslusively establish the law on the subject, we insert an exception not only as to any United States tax lien already on file, but as to any that may be filed in the office of the Register of Deeds prior to the completion of the foreclosure sale by deed.

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

The bulk of our problems don't involve new law but rather the application of existing law to a particular set of facts. So far as my Company is concerned, we have had great difficulty in dealing with situations where an owner proposes to develop property in violation of restrictive covenants or conditions that may be enforceable as part of a general plan. This is particularly true where it is unfeasible, if not impossible, to obtain releases of the restrictions from all property owners who may have a right to enforce them. Obviously there are two questions to resolve in such cases: (1) Is there a general plan that affects the property in question, and (2) if there is such a plan, is it currently enforceable?

A general plan is one imposing common restrictions to a number of subdivision lots. Ordinarily these plans relate to all of the lots in a subdivision or to the lots in specific blocks. The plan is usually put into effect either by incorporating restrictions in a plat or by recitals in deeds made by the subdivider. In most states restrictions shown in a plat are enforceable against all lot owners even though no reference is made to the restrictions in the deeds of conveyance. Where restrictions are imposed by deed alone, if the deeds to all the lots contain identical restrictions a general plan is effected. However, in some cases a subdivider does not include restrictions in all of the deeds and a question arises as to whether property conveyed by a deed containing no restrictive covenants is bound by a general plan. In Illinois and in many other states the failure to include restrictions in all deeds does not preclude the enforcement of a general plan. In a recent Illinois case (**Wayne** v. **Baker**), 6 Ill. App. 2d 369), decided in 1955, it was held that restrictions in deeds to 96 lots where there were 115 lots in the subdivision created a general plan. On the other hand, in a more recent case where we insured some church property free and clear of restrictions relating to architectural design which appeared in all of the subdivision deeds except the one to the church the court fortunately held that the general plan of restrictions did not apply to the church property. I suppose the moral to this story could be that the courts are more lenient where churches are involved. Be that as it may, you can't get much comfort from the church case if you have a situation involving private parties. By and large it is hazardous to insure title to a subdivided lot free and clear of restrictions even though the chain of title to the lot in question discloses no deed or other instrument imposing restrictions where it appears that a large majority of the lots in the subdivision have been conveyed subject to uniform restrictions that can be construed as establishing a general plan.

In many cases where a general plan has admittedly been established we are asked to insure free of restrictions by reason of repeated violations or because of changes in the character of the neighborhood. Many restrictions imposed in the 20s and prior are unrealistic by today's standards, and many properties so restricted would be much more valuable if unrestricted development were possible. During the 20s large areas in and around Chicago were subdivided and made subject to restrictions limiting use to apartment buildings. It became apparent, when bulding development resumed after the depression, that much of this property was suitable for single-family residences rather than apartment buildings. Similarly, many plans provided that only two-story residences could be erected whereas today one-story ranch houses would be much more popular and salable in these areas. On the near north side of Chicago a number of sections restricted to single-family residences with substantial set-back lines some 40-odd years ago are now in areas where high-rise apartment buildings or commercial structures are predominant. The

courts of most states, however, have held that a change in the character of the neighborhood adjacent to or surrounding a restricted area does not warrant relieving property of restrictions. Last year the Illinois Supreme Court handed down a decision to that effect involving set-back restrictions. **Punzak** v. **DeLano,** 11 Ill. 2d 117.

You have a different question, however, where there are restriction violations in the area covered by the general plan and you are asked to insure free and clear of the restrictions on the ground that they have been abandoned and are no longer enforceable. We are hardly warranted in requiring a suit to remove restrictions or releases where there are violations of a substantial nature in the immediate vicinity of the property involved. For example, we recently had a matter involving height restrictions in a small subdivision. The plan required two-story buildings, two-thirds of the subdivision was restricted to residential use and the remainder to commercial use. The entire residential portion and part of the commercial area was improved with one-story residences. Most of the lots in the remaining commercial part had been improved, about 50-50, with both one and two-story commercial buildings. We insured the owner of several commercial lots free and clear of the height restriction. It should be noted, however, that violations which are not in the immediate vicinity of a property and which do not seriously affect or injure the owner will not preclude the enforcement of restrictions by that owner with respect to property that is adjacent or close to his land. **O'Neill** v. **Wolf,** 338 Ill. 508. For that reason, in a case where liquor restrictions had been imposed on a one-half mile square subdivision we refused to insure lots on the east side of the subdivision free of the restrictions even though there were numerous violations in the western part and two isolated violations in the eastern part on lots that were not in the immediate vicinity of the property in question. We indicated that we would insure if a decree was obtained in a suit against the property owners in the immediate vicinity, finding the restriction to be unenforceable, or if such owners released the restriction. There is an element of risk in insuring over general plan restrictions even though there has been a release or abandonment by the adjacent property owners who would ordinarily be affected by a non-conforming use if there are any owners in the restricted area who have not released. But under these circumstances attempts at enforcement can usually be defeated. If it appears that there is liklihood of a nuisance attack, insurance can generally be given upon the furnishing of indemnity to cover the cost of defending against such attack.

It is obvious that there are no pat answers to the questions that arise in connection with insuring over general plan restrictions. Each situation requires a careful evaluation of the facts in the light of the principles governing the establishment and enforceability of such restrictions. As a matter of practice, before issuing policies in substantial amounts insuring over restrictions of this type we have one of our Title Officers (who are all lawyers) make a physical inspection of the restricted area in company with one of our regular inspectors. After such an inspection a trained lawyer can usually evaluate the risk involved in issuing a policy giving this type of protection.

LAURENCE J. PTAK

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Legal problems arising out of descriptions of land take many forms and, of course, are of concern to the title examiner since they control, quantitatively, the land insured.

Where land is described by reference to government surveys or to recorded plats of subdivisions or allotments, relatively few questions arise. The greatest difficulty, therefore,

grows out of metes-and-bounds descriptions in older sections of the country and particularly in the older cities, many of which were laid out before the concept of subdivisions was created and these lands, being quite valuable, the need for their accurate description is great.

Then, too, the science of surveying and the quality of instruments used has greatly improved, as has the necessity for greater accuracy.

The story has been told of a surveyor who operated in Cleveland over a hundred years ago, that when he came to a gully or other obstruction which was inconvenient to cross, would take his measuring chain and whirl it in the manner of a sling shot, let fly and stop it when the end had reached its approximate destination. He would then read the distance so easily measured.

Needless to say, his work causes us a great deal of trouble today and is a far cry from the modern surveyor who measures to the thousandth of a foot.

In the course of the short time allotted, it is only possible to cover a few of the high-lights of the law relating to descriptions. These words can only be considered a short refresher on the subject.

It is well established in law that the only purpose of a description is as an aid to determining the intent of the parties to a conveyance; that a description, as a will, must be interpreted from the four corners thereof and that in the event of discrepancies, they must be resolved by giving an order of precedence to the various means used to establish boundaries.

Thus. natural monuments, such as lakes, rivers, trees, etc., prevail over less certainly established markers. Artificial monuments in the form of iron pipes, pins, stakes and the like, which may deteriorate, be misplaced or readily moved, are less acceptable in determining the intent of the parties.

Still further down the scale of acceptability are adjacent boundaries, i.e., references to adjoining ownerships.

Courses and distances, while apparently of much greater scientific precision, are, by reason of the greater possibility of error and transposition, only precedent to statements of area in determining the land involved.

To illustrate—assume that the side of a parcel is described as being a line bearing N 30° E, 100 feet from a certain point, is adjacent to John Smith's land and terminates at an iron pin set in the South bank of the River Styx. In the event that the bearing conflicts with the direction of John Smith's line, the latter will be given preference, and if the distance and the iron pin are inconsistent with the South bank of the River Styx, the latter will likewise prevail.

Nothing seems better established than the principle that the closing course of a description, regardless of monument, bearing. distance or area, goes home by the quickest and most direct route consistent with the circumstances.

While hardly a legal point, many people are confused by apparently common lines being described by different bearings. The apparent discrepancy is often cleared up when it is discovered that the conflicting bearings are stated with reference to different assumed meridians and when consideration is given to the fact that bearings are used only to indicate angles, the problem is usually solved.

Since a grantor is assumed to be more familiar with the land he is selling than his purchaser, and since the language in the description is presumed to be his, it is well settled that discrepancies or indefiniteness will be resolved in favor of the grantee. The opposite rule applies, however, in the case of conveyances from a governmental authority, this rule representing the preference generally given to the public interest as against the private.

It has become quite evident in comparing the work of modern as against older surveyors that the latter, possibly realizing some inaccuracy in their work or their instruments, have usually erred on the side of conservatism. Generally speaking, if the older

work is in error, it will be found that less land is indicated than more, although the opposite is occasionally seen.

The determination of who receives surpluses and how shortages are accommodated is dependent altogether on the nature of the circumstances. Thus, if the land is described by metes and bounds and a surplus is found between parcels formerly held in a common ownership, title to the surplus is considered to have remained in the original owner.

Conversely, if shortages are discovered, as when, for example, a common grantor attempts by two or more deeds to convey more frontage than he in fact has, his first deed will control, and a subsequent grantee will suffer to the extent of the shortage. The rule, of course, is based on the fact that the grantor cannot sell what he does not have.

A like situation arising out of a recorded subdivision, however, is resolved under quite a different rule. In this case, all conveyances are considered to have been made to implement a common plan, and all grantees, regardless of the dates of their deeds, are permitted to share surpluses or required to assume shortages in proportion to the relative size of the lots acquired.

It appears to be quite common for title insurers to pass less adequate and often quite indefinite descriptions of lands devised by will. It is certainly true, in our area at least, that far more sketchy descriptions are used without adverse comment in agreements of purchase and escrow instructions.

As between deeds and wills, there seems to be but little less need for accuracy in the latter. I wish someone here more learned in the law could enlighten us as to the reason for this anomaly.

Finally, and though I dislike to conclude with a negative note, it must be realized that conveyances are occasionally found which, despite the application of all the rules of interpretation and all of the attempts to determine the intent of the parties, the deed will fail because of the indefiniteness or repugnancies of a description.

We still have the Statute of Frauds. No language may be read into, implied or inserted in a deed after it has been delivered.

If such a degree of uncertainty exists as prevents the determination of the intent of the parties, the deed is void and the title attempted to be conveyed is unmarketable and uninsurable.

HAROLD W. BEERY

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A Discussion of New Sections 346 to 349, Both Inclusive, of the Real Property Law of the State of New York Dealing with the Question of Forfeiture Restrictions.

The development of much valuable vacant land has been retarded by privately imposed restrictions containing provisions for forfeiture of title in the event of a breach.

In the case of ordinary covenants and restrictions without forfeiture provisions, the courts have been able to keep pace with changing times, and where an action is brought to enjoin a violation of a promissory restriction the court, on equitable doctrines, may refuse such relief on the grounds that the restriction is of no value, that the character of the neighborhood has so changed as to make the continued imposition of the restriction a hardship, or for such other equitable reasons as the court may determine, and may also, as an alternative to granting an injunction, award monetary damages to the parties who can show loss, but may, nevertheless, decree that the restriction need not be enforced, and in fact, can even declare the restriction to be at an end and no longer effec-

tive against the property. This ability to keep pace with the times is, however, not available in the case of restrictions with forfeiture provisions. The most common method of enforcing such forfeitures is by an action in ejectment which is an action at law, and does not permit the injection of equitable doctrines balanced between the parties. The court must render a decision on the facts as a pure question of law. Realizing that the proper use of land permitting its most productive use is a matter of public interest and recognizing further that the security and marketability of titles are matters of public concern transcending the limited interests of the parties affected in the ownership of the land, the Legislature of the State of New York enacted five new sections in the Real Property Law of the State which seek to ameliorate to a large extent the problems and hardships imposed by these common law devices of restrictions containing forfeiture provisions. These enactments were based on studies made over a period of many years. Out of these studies and the criticisms of them in public hearings developed the legislation which was enacted this year.

New Section 345 of the Real Property Law was enacted to limit the duration of forfeiture restrictions, and provides a method for preserving their effectiveness.

The statute provides that a condition subsequent or special limitation restricting the use of land, whether existing at the time of the enactment of legislation or in the future, will become unenforceable, and the right of re-entry or the possibility of reverter would be extinguished unless a declaration of intention to preserve these rights is recorded before the expiration of thirty years from the date on which the condition was created. After the first thirty-year period, the statute would require such renewal declarations to be recorded at ten-year intervals to preserve the forfeiture provisions. With respect to those forfeitures which were more than twenty-seven years old at the time the statute was enacted, a declaration of intention to renew must be filed within three years. Where this declaration of intention to preserve is not filed, the forfeiture rights terminate, and the restrictions may be enforced only as promissory restrictions. The statute by its terms does not apply where the condition or limitation was created in favor of the United States, the State of New York, or any governmental subdivision or agency of either; the owner of a reversion following an estate for life; a mortgagee or contract vendor or the holder of any other security interest in the land; the owner of a reversion on a lease of communication, transmission or transportation lines, and it is also inapplicable to restrictions created in favor of the owner of a reversion on an estate for years where the number of years for which the estate was created will expire less than seventy years after the time when recording of an initial declaration would otherwise be required. This last provision would eliminate the necessity for recording to preserve restrictions in leases for less than one hundred years.

Sections 346 and 347 of the Real Property Law state the equitable doctrines permitting the extinguishment of non-forfeiture restrictions and extending these doctrines to forfeiture restrictions. With respect to forfeiture restrictions created on or after September 1, 1958, Section 347 abolishes the automatic reverter under a limitation and the right of re-entry on the breach of condition subsequent, and substitutes therefore an action in equity to compel a reconveyance of land subject to such breach. The Section states expressly that this relief shall be granted only to protect a substantial interest, and further provides that the action will be subject to any defense that might be interposed in an action in equity to enjoin a violation of a restriction created by covenant. The court is empowered to deny the relief sought, or to impose conditions to the granting of the relief, or to grant alternative relief including an injunction prohibiting the violation of the re-

striction. A very important provision of this Section is calculated to prevent unjust enrichment by permitting the court to evaluate the improvements placed on the property which must be paid for if the forfeiture is to be enforced. This Section is inapplicable to restrictions created by lease, which restricts the use of the leased premises where the lease is for a term of less than one hundred years, and where the restrictions are created in a conveyance for benevolent, charitable, educational, public or religious purposes restricting the use of land to such purposes.

Section 346 of the Real Property Law spells out the specific effect of Section 347 in subjecting restrictions governed by Section 347 to the doctrine of relative hardship, and permits the court to extinguish the restrictions upon payment of damages. In effect, it permits the application of the equitable doctrines applied to ordinary covenants to forfeiture restrictions. It is to be noted that Section 347 previously discussed affects only restrictions created on or after September 1, 1958. This prospective effect of that Section avoids serious constitutional questions, but still leaves open the problem of such forfeiture restrictions existing prior to the time the Section took effect.

Section 348 was enacted to provide this relief, and the constitutionality of its retroactive effect is apparently based upon what is deemed to be an exercise of the police power. Under this Section, the courts are given discretionary power to grant relief to owners of land subject to a special limitation or condition subsequent by a judgment that the restriction in question be governed by Section 347, in effect therefore declaring that only an equitable cause of action to compel a conveyance is created, and that such cause of action is subject to all equitable defenses and is subject in particular to the doctrine of relative hardship so that the court may extinguish the restriction upon payment of damages. This Section creates such an action, and permits relief where the court finds that the primary purpose of the special limitation or condition subsequent was to restrict the use of land and that the import of the restriction, the circumstances in which it was imposed and the conditions in which it operates at the time of the action unreasonably limit the use and development of land or unreasonably impairs the certainty of titles. The relief may not be granted if it appears that the restriction has been breached at the time of the action so that no possessory estate resulting from the limitation and no right of re-entry that has become enforceable would be impaired. However, where such relief is denied because of the breach, the person entitled to enforce the breach must bring an action to recover possession, or to re-enter within six months after the judgment denying the relief under Section 348. If the action is not commenced within that time, the right to enforce the breach is extinguished. This Section, therefore, affords an owner subject to a forfeiture restriction the right to have it removed upon payment of damages where the circumstances so indicate, or where he has breached it, he may start the operation of a short statute of limitations which will destroy the forfeiture provisions. Even where the action to enforce the forfeiture is commenced in time, he may, nevertheless, interpose the equitable defense which affords him so much greater protection than he had previously.

Section 349 was enacted to permit the modification or extinguishment of forfeiture restrictions on the use of land held for charitable, educational, public or religious purposes. As times change and neighborhoods alter, certain charities find that they can no longer function properly in their present environment, and try to sell the property so granted or devised so that they may move to new localities where their services may have much better results. In many of these cases, they risk forfeiture of the property granted or devised, and this is an example of the cold dead hand reaching from the grave to control the affairs of living, vital institutions. This Section 349,

therefore, confers upon the courts the discretion to modify or extinguish such forfeiture restrictions again on the basis of a valid exercise of the police power. By reason of the fact that the restriction creates a public interest in any question of its extinguishment or modification the Section requires that the Attorney General be a party to the action. This Section again is made inapplicable to conveyances made by the United States, the State of New York, or any unit, subdivision or agency of either. The form of relief as well as the question whether any relief shall be allowed is left to the discretion of the court. The court may in its discretion adjudicate that the restriction is discharged in whole or in part, or may modify it; that the holder of the land be authorized to convey, lease, mortgage, or otherwise dispose of it free of the restriction; direct the use to which the proceeds of the sale shall be put; declare the interest that the owner of the reversionary interest shall have in any property paid for in whole or in part with the proceeds of sale, or may award damages for such injury as a party to the action may sustain by reason of the extinguishment or modification of the restriction.

Unquestionably, this legislation is forward looking in character, and is of extraordinary benefit in stimulating the development of land to its fullest and most productive use. Obviously, constitutional questions are involved. The Law Revision Commission which recommended this legislation has attempted to anticipate this question in its studies by emphasizing the public interest which is involved and passing the constitutionality of these statutes as an exercise of the police power. Whether that view will be sustained is something which is yet to be determined. Certainly in the absence of an adjudication by a court of final jurisdiction, it is risky to accept these statutes at their face value. Other states have enacted legislation of a similar character. Some constitutional questions have arisen with respect to them, but the results are inconclusive. While the statutes which I have discussed are necessarily limited to the State of New York, and will be determined as to their effectiveness in the first instance by the courts of that State they point towards a well-defined road leading to the removal of anachronistic, undesirable hindrances on the use of property best calculated to serve the interests of the community at large. Possibly a better means to a solution may be devised, but as a tool readily at hand given us by our State Legislature, they are to be highly recommended, and should serve as a pattern to many other states who have either not considered the problem, or who have not struggled with it to as advanced a point of solution.