OFFICIAL PUBLICATION
AMERICAN TITLE ASSOCIATION



# TITLE NEWS

VOLUME XXXVIII JULY, 1959 NUMBER 7

# THE PRESIDENT'S POSTSCRIPT

As I travel around the country visiting the various state title associations, I never cease to marvel at the interest so many of you have in the welfare and development of the title industry. Following the Colorado convention at Glenwood Springs, Colorado, I took advantage of an opportunity to do some trout fishing in the famed streams of western Colorado. For those interested the fishing was excellent and, so far as I am concerned at least, those who write the advertising copy on the wonders of Colorado and its fishing do not overstate the case. However, to get back to the point I started to make, fishing, as you know, leads to contemplation and my contemplation dealt on this matter of interest in our industry.

Because of this interest your officers and the staff at national headquarters are determined to do everything they can to make the ATA a finer organization. As you know, we have plans for some major changes at national headquarters which we hope will aid us in achieving this objective. We are planning some inovations at the New York convention. We believe that these too will help to improve our organization and thus our industry. To accomplish any of these things, however, we need the help of all our members and I sincerely urge you to take an even more active part in the affairs of your state association and also in your national organization. I know that Lloyd Hughes, George Rawlings, Art Reppert, Joe Smith and the other officers who also devote a great deal of their time to visiting the various state associations have found this same high degree of interest in our industry. I also know that they agree with me that if all of us back our interest with action, we can build a better and stronger organization to represent and to make our industry grow.

Ernest J. Lockard

# TITLE NEWS

*The official publication of the American Title Association*

EDITORIAL OFFICES:
3608 Guardian Building
Detroit 26, Michigan
Telephone WOodward 1-0950

JULY, 1959

EDITOR: JAMES W. ROBINSON


## *Features*


OUR PLACE IN THE SUN ..... 4
*Carol E. Williams*

HAVE SPEECH—WILL TRAVEL ..... 12
*Officers and Staff "Tell the World"*

WHY WE BEHAVE LIKE TITLEMEN ..... 14
*Herman Berniker*

THE WHY OF PUBLIC RELATIONS ..... 21
*Dr. J. D. Butterworth*


## *Departments*


The President's Postscript ..... 1

In the Association Spotlight ..... 7

Meeting Timetable ..... 11

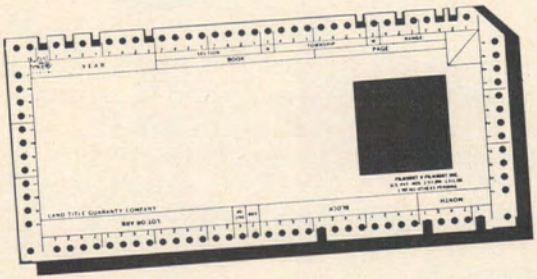
Letters ..... 24

In Memoriam ..... 24

# Records

# ARE MONEY

**. . . and Filmsort (R) is the one system in the title business designed specifically to help you make money through an efficient records system.**



Just the profitable sequence you desire can be arranged in your records system from microfilming county records to preparing lot books, plats, and finished files of cards. It's a UNITIZED microfilming procedure that lets you pick the EXACT record IMMEDIATELY — no scanning — no probing.

*Call, write or visit . . .*

**MICRO-RECORD, Inc.**

**P. O. BOX 2840 ★ BOISE, IDAHO**


An excellent public educational job is being done by many of our member companies through contact with local newspaper editors and columnists.

One outstanding example of newspaper coverage on the important subject of title insurance is the article written by Carol E. Williams of the Baltimore Sun based upon information furnished by Joseph S. Knapp, Jr., Executive Vice-President, Maryland Title Guarantee Co.

The examination of titles has been and still is the work of conveyancers and lawyers specializing in the law pertaining to real estate.

This is not limited to the preparation and legal interpretation of the various legal instruments conveying titles to real estate, such as deeds, mortgages, leases and trust instruments. It also includes, Joseph S. Knapp, Jr., executive vice president-treasurer of the Maryland Title Guarantee Company emphasized, testamentary and inheritance laws.

The intricacies involved in the determination of the validity of titles early convinced lawyers that purchasers of real estate and the lenders of money should have greater protection than the opinion alone of the lawyer, Mr. Knapp recounted.

So in 1876 the first title insurance company was formed by a group of Philadelphia lawyers. They not only wished to give their clients greater protection but also sought to release themselves from personal responsibilities.

**Greater Protection**

Accordingly, title insurance was originally designed to protect against

errors occurring through loss resulting from causes which could have been ascertained from an accurate examination of court records and their accurate legal interpretation, which is the duty of a lawyer.

As demands for protection by title insurance increased, requests were made for expansion in the coverage of the title policy. The title companies were quick to recognize the opportunities to increase the volume of title insurance. This resulted in a complete change in the business. Title policies now cover risks never contemplated when title insurance was first conceived. The risks now covered emanate from three principal sources; errors in the search of necessary records; errors in the interpretation of legal instruments in the chain of title, and facts which cannot be ascertained from a search of the record.

There is a false impression that sales made under decree of court—because they have court approval—are certain to give the purchaser a good title. No impression could be more erroneous, Mr. Knapp warned. All sales made under a decree of court should be carefully scrutinized.

**Rules to Follow**

There are technical rules and regulations for conducting the varied court proceedings for the sale of real estate. Unless these rules are followed precisely, the sale or sales made may be invalid.

Some statutes contain provisions which are called jurisdictional requirements and are mandatory and must be conformed to in exact language of the statute, while other provisions of the same statute need only be complied with in substance.

It must be realized that only a very small portion of the laws of this or any other state have been definitely before the court of last resort—"Court of Appeals" in Maryland—for interpretation.

Some statutes do not reach the appellate court for final decision for many years. But when construed by that court, a title which had generally been considered good may become defective because the decision places a different interpretation on the law, Mr. Knapp pointed out.

There are many defects in a title to a property which are not apparent from the public record and against which only title insurance protects.

Among defects cited by Mr. Knapp are:

Forgery of any of the deeds, mortgages or will in the chain of title, execution of any of the deeds in the chain of title by a minor, insane or otherwise incompetent person, or by a person of the same name but not the real owner.

Attempted exercise of a power of attorney after the death of the principal, unless protected by special statute or failure of an administrator or executor to distribute leasehold property to the proper distributees of a decendant. Birth of a child of a testator after execution of a testator's will, which would entitle the child to a share of the testator's estate. Distribution of the property of a supposedly deceased person to his heir and subsequent proof that the person still lives. Execution of a deed, mortgage or lease by a person claiming to be unmarried and subsequent proof of his or her marriage resulting in an outstanding dower interest in the spouse.

**Joseph S. Knapp, Jr.**

There are many other causes for loss against which only title insurance protects, explained Mr. Knapp, such as execution of papers by officers of a corporation without proper authority, or delivery of stolen papers.

There are two kinds of title insurance, known as "Owner's Policy," which protects the owner as long as the property is owned by the insured.

It also insures to the benefit of the heirs or personal representative of the owner, depending on whether the property insured is fee simple or lease hold, in the event of the owner's death without having disposed of his property.

The second type is a "Mortgage Title Insurance Policy," which remains in force until the mortgage insured by such policy is paid.

If default occurs in the mortgage and the owner obtains title to the property through foreclosure, the mortgage policy automatically converts into an owner's Policy.

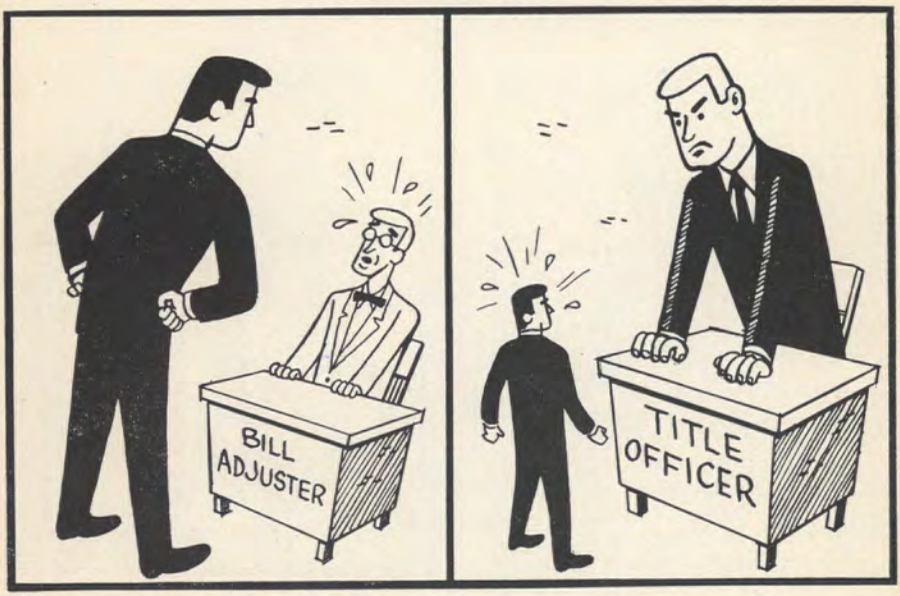
While title insurance is a comparatively young industry, it has become so generally accepted that practically all insurance companies, savings banks and large corporations refuse to invest in real estate or mortgages without the protection afforded by title insurance.

The State of California is a 100 per cent title insurance state, as is the District of Columbia, and in New York, Philadelphia and Chicago, title insurance is issued on practically every realty transaction.

Lawyers not only originated title insurance but have continued to be active in its development. Many lawyers place all title transactions directly with a title insurance company. It furnishes the lawyer with a report of title and copies of personal papers for inspection and approval before the closing of the transaction.

There are many lawyers, however, Mr. Knapp pointed out, who make the examination of title themselves or through their associates, close the action, and through an arrangement with a title insurance company, a title policy is issued as the result of the lawyer's work and opinion. In both of these methods, protection is given by a corporation with reserves in capital set aside for its policyholders. Such a corporation is under the supervision and subject to examination by the Insurance Commissioner of the state in which it operates.

## Ain't It the Truth




## New York Underwriters Elevate Beery

Harold W. Beery, President and Director of Home Title Guaranty Company, was elected President of the New York Board of Title Underwriters. Mr. Beery is a Trustee of the Kings Highway Savings Bank and is also a member of the Lawyers Clubs of Brooklyn and New York.

Daniel A. Whelan, President of Guaranteed Title and Mortgage Company, was eleceted Vice-President. Edward T. Brown of Watters & Donovan was elected Secretary-Treasurer of the Board.

The New York Board of Title Underwriters is the title insurance rating organization, licensed by the Insurance Department of the State of New York.

The Board makes and files with the Superintendent of Insurance the standard title insurance rates, rating plans and policy forms applicable in all counties of the State of New York.

## Mortgage Still Leading Investment Medium

The nation's oldest investment medium, the mortgage loan, continues to maintain its leading position with institution investors, passing corporate and state and municipal bonds in purchases by a wide margin, according to a study by G. Rowland Collins, dean, and Jules I. Bogen, professor of finance of the graduate school of business administration of New York University.

The work, entitled "The Investment Status of FHA and VA Mortgages," was prepared under a grant from the Mortgage Bankers Association of America.

Institutional investors, such as the life insurance companies, commercial banks, and mutual savings banks, have continued to turn heavily to mortgages for their investments. In the past 12 years they increased their mortgage loans by $111 billion as compared with an increase of $65 billion in corporate bonds, $22 billion in state and municipal bonds and $14 billion for equity securities. Their particular preference has centered on FHA and VA loans and, as of last year, the life insurance companies, banks and mutual savings banks and savings and loan associations held $47.2 billion of these loans, equal to 87 per cent of all such mortgages outstanding and 80 per cent of all nonfarm mortgages outstanding.


**I knew I was cracking up when I realized I had failed to send in my registration for the October Convention.**

# Enthusiastic Delegates Name Jay Michigan Title Association Head

Robert J. Jay, Vice President and Attorney, Monroe County Abstract Company and St. Clair County Abstract Company, with offices in Detroit, was elected President of the Michigan Title Association at the annual convention in Charlevoix, succeeding Jerry McCarthy, President of the Grand Traverse Title Company, Traverse City.

The state's leading abstracters and title insurance officers commemorating 58 years of organization history, completed a full two-day meeting which included a discussion of submerged lands by Nicholas V. Olds, Assistant Attorney General, State of Michigan, and an address by Clarence E. Merritt, Counsel, Consumers Power Company.

Robert J. Jay was born in Detroit, Michigan, August 20, 1924. He attended the University of Michigan, where he received a B.A. in Political Science in 1945 and L.L.B. in 1948.

He was admitted to the Michigan Bar in 1948 and since that time has practiced law in Detroit.

Mr. Jay is President and Director of the St. Clair County Abstract Company, Port Huron, Michigan; Vice-President and Director of the Monroe County Abstract Company, Monroe, Michigan, and Land Title and Abstract Company, Port Huron, Michigan, and Treasurer and Director of Land Title and Dawson Abstract Company, Sandusky, Michigan.

In the past Mr. Jay found time to act as part-time teacher of public speaking and parliamentary law for the Detroit Board of Education and American Speakers Club.

His memberships include Michigan Bar Association, Detroit Bar Association, Monroe County Bar Association, of which he is Secretary-Treasurer, St. Clair County Bar Association, Phi Gamma Delta, Phi Delta Phi, American Speakers Club and Detroit Yacht Club.

He is an avid sailor and has crewed a number of times in the Mackinac and Bermuda races. Golf is something for which he wishes he had more time and as a photographer, he has an excellent sense of composition.

On August 31, 1953, Mr. Jay married the former Sally Critton and they presently reside at 831 Lakeland, Grosse Pointe, Michigan, together with their three little Jays, R. Jekrey, Thomas Critton and Juli Marie.

Other Officers elected were:

Vice President: Montgomery Shepard, President Berrient County Abstract & Title Company, St. Joseph, Michigan.

Secretary: Earl Graves, Assistant Secretary Guaranty Title & Mortgage Company, Flint, Michigan.

Treasurer: J. C. Hegenauer, Owner Bay Abstract Company, Bay City, Michigan.

**Robert J. Jay**

# Private Housing On the Increase

Subsidized public housing has lost much of its appeal as a result of the private home building boom since World War II, and appears destined for a role of lesser importance in the years to come, according to two officials of the United States Savings and Loan League.

Norman Strunk, League executive vice president, and Dr. Leon T. Kendall, League staff economist, writing in the League's "Quarterly Letter," reported that public housing starts have average only 3 per cent of total residential expenditures since 1945, and have never exceeded 7 per cent of the total in any one year.

Messrs. Strunk and Kendall noted that immediately following World War II, public housing was a "hot issue," with many public housing enthusiasts predicting that private home builders and private financiers could not do the housing job required by the American people, and advocating the expansion of public housing as the only solution to the housing problem.

But the two League officials said that the subsequent private housing boom was to torpedo these ideas. They pointed out:

"Between 1946 and 1958 over 14 million new home were built; over 96 per cent of which were private; and only 3.4 per cent of which could be classified as public.

"In addition, the quality of the existing stock of housing has been upgraded through renovation and improvement. The percentage of standard or not delapidated dwelling units rose from 63 per cent to 76 per cent of all units between 1950 and 1956, according to the Census Bureau. In urban areas, the gain has been even higher.

"We have lifted the level of home ownership between 1947 and 1958 from 53 per cent of all families to 60 per cent of all families. In addition we have improved the quality and livability of homes.

"All of this was accomplished by the private building industry through the workings of a market economy relatively free of controls. It is fortunate for America that the critical decision in the housing area during the immediate postwar years were made so that government aid took a form which facilitated the working of market forces rather than the stifling of them, with both FHA insurance and VA guaranty stimulating home building in the least costly way."

In observing that public housing today is used only to a limited extent and generally in somewhat specialized circumstances, Messrs. Strunk and Kendall asserted that the "most striking fact" concerning public housing is that it did not fulfill to any degree the promise envisioned for it.

"Public Housing," they said, "appears now to be evolving into housing for specialized groups. The issues are becoming more and more social and less and less economic. It has become housing for minority groups, for victims of broken families, for the aged or elderly, and for families relocated because of urban removal projects and the like.

"In terms of demonstrated ability to do the job, it has been the private home building sector rather than the public sector that has succeeded in developing the capacity and ability to give Americans what they want in the way of home ownership."

# Merger Official

For many months industry members have watched with interest the negotiations relating to the merger of the California Pacific Title Insurance Company, San Francisco, into the Title Insurance and Trust Company. That merger was consummated May 1 and President Loebbecke has announced that Title operations will continue under the name of California Pacific Title Insurance Company in all of the areas where that company

operates and that joint policies of Title Insurance and Trust Company and California Pacific Title Insurance Company will be issued. He added that no change in personnel or operating policies of California Pacific is presently contemplated.

The merger unites two of California's oldest title insurance firms. The history of California Pacific dates back to 1887 and Title Insurance and Trust Company was incorporated in 1893. California Pacific is engaged in the title insurance and escrow business primarily in central and northern California, while Title Insurance and Trust Company primarily serves southern California.

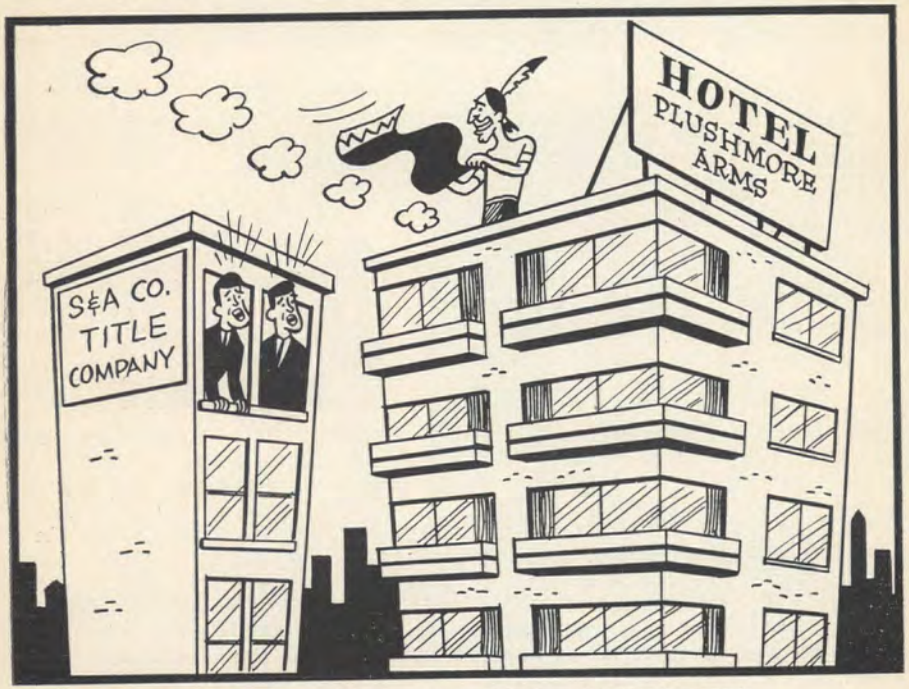
## C. T. & T. Sponsors Telecast of St. Lawrence Seaway

Chicago Title and Trust Company sponsored a dramatic documentary telecast especially produced to show what the St. Lawrence Seaway will mean to Chicago and to its people, Sunday evening, July 5, over WBKB (Channel 7) from 8 to 9 p.m.

Entitled "A Queen, The City and Its Future," the special full-hour television program served to dramatize the effects of the "World's Eighth Sea" and illustrated to the people of Chicago the economic and sociological changes that will be made in our lives by the St. Lawrence Seaway, Chicago's Gateway to the world.

Norman Ross took viewers on film to the official inauguration of the seaway in Montreal. Then, traveling with the royal yacht, they explored the entire network of inland waterways which lead to the world's greatest inland port of the future, visiting harbor facilities of Toronto, Cleveland, Detroit and Chicago.

The television audience saw the famous International Rapids section of the seaway, the Eisenhower and Snell locks. They watched the movement of ships and cargoes from ports across the ocean and witnessed on-the-spot interviews with Chicago leaders of business and industry, harbor officials and foreign seamen.




**He says he got it from an old Spanish land grant.**

# meeting timetable

July 31—August 1, 1959
**Montana Title Association**
Miles City, Montana

September 11, 12, 1959
**Kansas Title Association**
Town House Hotel
Kansas City, Kansas

September 13-15, 1959
**Ohio Title Association**
Hotel Pick-Carter
Cleveland, Ohio

September 20-22, 1959
**Missouri Title Association**
Mickey Mantle Holiday Inn
Joplin, Missouri

September 21-24, 1959
**Mortgage Bankers Association**
Hotel Commodore
New York, New York

September 25-26, 1959
**Utah Land Title Association**
Andy's Prime Rib
Salt Lake City, Utah

September 27-29, 1959
**Nebraska Title Association**
Town House
Omaha, Nebraska

October 2-4, 1959
**Washington Land Title Association**
Harrison Hot Springs Hotel
British Columbia

October 8-10, 1959
**Wisconsin Title Association**
Northernaire Hotel
Three Lakes, Wisconsin

October 19-22, 1959
**American Title Association Annual**
Commodore Hotel
New York, New York

(**New York State Title Assn.**, October 20, 1959.) (One day meeting in conjunction with ATA Convention.)

November 9, 10, 1959
**Indiana Title Association**
Lincoln Hotel
Indianapolis, Indiana

November 12, 13, 14, 1959
**Florida Land Title Association**
Fort Harrison Hotel
Clearwater, Florida

# Have Speech —Will Trave

## OFFICERS AND STAFF IN HEAVY SCHED


Sweeping across the country from state to state, our national President, Ernest Loebbecke, has maintained a killing pace in his determination to appear at every industry meeting possible.

Declaring that the Title Industry is a cornerstone of free enterprise, Ernie has set a difficult standard for his successor to follow. Since assuming the presidency, he has appeared at the following meetings.

**Florida Land Title Association**
**Missouri Land Title Association**
**Mortgage Bankers National Association**
**National Association of Real Estate Boards Annual Meeting**
**Arizona Land Title Association**
**Texas Title Association**
**California Land Title Association**
**Oklahoma Title Association**
**Illinois Title Association**
**South Dakota Title Association**
**Colorado Title Association**

**It is estimated that before his term of office expires, our President will have traveled close to 50 thousand miles in setting this fine example of an executive at work.**

Assuming an ever increasing important role in the direction of A. T. A.'s affairs, Lloyd Hughes, Vice-President, is also busy attendings meetings and spreading the gospel to all who are interested in land titles and the services performed by abstracters and Title Insurance Companies.

Emphasizing the need for unity, Lloyd has concentrated his efforts on the platform toward recognition of the common interests that exist among all titlemen.

In many areas State Title Associations and individual companies have done a superb job in establishing speakers bureaus that carry the title industry message to service organizations, women's clubs, bar associations, realtor groups, and other interested organizations. It has long been the earnest hope of industry leaders to establish an effective speakers bureau on a national basis.

Toward this objective, the officers of the major service organizations in the United States have been contacted requesting an expression of interest in a speakers program for their members. Some have responded enthusiastically. Sample speeches are being prepared, together with visual aids and it is confidently expected that, at long last, a nework of available talent will stretch across the nation, ready at almost a moment's notice to spring into action.

In the meantime your officers and staff, within the limitations of time and human endurance have worked dilligently to fill the need for speakers at the important state and regional functions.

As chairman of the abstracters section, Arthur Reppert has answered the call in several of the states. His message, "These Changing Times," delves into the fundamental transition that has taken place in the manner of the industry's operations during the past twenty years. His warm, friendly, personality and down-to-earth manner are enthusiastically welcomed by all who hear him.

**"Publicity tools are like an expensive complicated piece of machinery," A. T. A.'s Director of Public Relations, Jim Robinson, tells the delegates to state meetings, "worthless unless intelligently used." His talk, "The Human Touch," has been delivered to the Michigan Title Association Convention the Florida Land Title Association Course for Abstracters and is scheduled to be heard at the Fiftieth Anniversary Convention of the Ohio Title Association as well as by the delegates to the Missouri Title Association Annual Meeting.**

Twenty thousand miles in the air, fifteen formal speeches to regional meetings, Title Association Conventions, and other industry conferences, thousands and thousands of personal contacts—this is the role that Joe Smith, Executive Secretary, has played since Jim Sheridan's death on February 12. His message, "The Industry Has Come of Age," strikes at the very heart of every titleman's current business situation.

# Why We Behave Like Titlemen

*As pertinent today as it was several years ago when it was written, "Why We Behave Like Titlemen" by Herman Berniker, Executive Vice-president of The Title Guarantee Company, New York, will be of interest to all members of our industry.*

Our Insurance Law (sec. 41) defines an insurance contract as an agreement whereby the insurer is obligated to confer benefit of pecuniary value upon another party, the insured, dependent upon the happening of a fortuitous event.

The same section teaches us that a fortuitous event is any occurrence or failure to occur which is, or is assumed by the parties to be, to a substantial extent beyond the control of either party to the insurance contract.

We may describe the risks assumed by a title insurer as being of two types. In the first group are the disclosed risks; in the second group are the hidden risks.

Despite the fact that a careful title insurer spends the bulk of his revenue to ascertain the condition of the title, every title policy is issued with the hope and prayer that all prior grantors were of full age and sound mind; that the martial status of the former owners was correctly given in the deed; that there were no children born after the date of a will in the chain of title; that there were no missing heirs of law due to incorrect findings of heirship by the courts; that none of the deeds were executed by frauds; that no confusion was created due to similar or identical names; that deeds or other closing instruments were executed by the proper parties; that none of the instruments in the chain of title were forgeries; that all the affidavits of service in all the actions or proceedings are true.

The foregoing are good examples of the types of risks assumed by a title insurer against which it cannot adequately protect itself. With regard to these risks the title company is by definition a true insurer.

With regard to the ascertainable facts of a real estate title, the title company acts as a fact-finding organization for the prospective purchaser or mortgagee. In these respects the title insurer endeavors to protect itself and the buyer or mortgagee by making exhaustive searches of the public records. The broad objective is to eliminate guesswork and the possibility of loss.

**Similar to Boiler Insurance**

Our work is not unlike the activity of a boiler insurance company. No policy of boiler insurance is issued until the engineers employed by the company satisfy themselves that the boiler is in condition for insurance. Certain recommendations are made. In many cases they are corrected before the boiler insurance is issued.

In the same way, a title insurer prepares its report of title, in which it sets forth certain "exceptions" which should be eliminated prior to the closing of the transaction. If the exceptions are not eliminated they are included in the policy.

Many "objections," "flaws" or "flecks" are eliminated by the experienced title insurer prior to the closing because of its practical experience and its awareness of legal precedents justifying the elimination of the objection to title.

With regard to this type of risk assumed by the title insurer, the Supreme Court of Pennsylvania once defined title insurance in the following words: "Title insurance is not merely guesswork, nor is it a wager. It is based upon careful examination of the muniments of title, and the exercise of judgment by skilled conveyancers. The quality of a title is a matter of opinion, as to which even men learned in the law of real estate may differ. A policy of title insurance means the opinion of the company which insures it, as to the validity of the title, backed by an agreement to make the opinion good in case it should be mistaken and loss should result in consequence to the insured."

We are wagering when we insure against the "hidden" risks enumerated. We studiously avoid wagering with regard to the known or ascertainable aspects of a title.

The Insurance Law recognizes that we are not, in this respect, wagering, because title insurance is expressly exempted from section 47, which limits the exposure to risks in the case of other types of insurance.

Title insurance policies issued in this area insure "marketability." This is not necessarily true in other parts of the country. It is therefore the obligation of the title insurer to assume the defense of a title if an unwilling buyer refuses to take title or an unwilling mortgagee refuses to make a loan. It has been said, many, many times, that reasonable people may disagree as to questions of law, and our courts have frequently held that if a doubtful question of law exists, a buyer is not compelled to take the title. It therefore behooves the cautious title insurer to make certain that the title is not subject to collateral attack by an unwilling buyer in a specific performance suit.

The insurer must weigh the possibility that even though the title is good, an unwilling buyer may seize upon any objection and compel the title company to demonstrate the soundness of the title in a court room. Incidentally, the cost of proving that a good title is good is another example of a hidden risk .

There is a story about a title man which demonstrates this point.

A reader for a company read a will in a chain of title and decided that the title was good because the remainders created in the will were vested and not contingent. A well-written memorandum was written by the reader to sustain his views. Soon after the company insured the title a buyer rejected the title on the ground that the remainders were contingent. The insured seller asserted a claim under the policy, and the title company, on behalf of the insured, brought a specific performance suit against the reluctant buyer. Special Term decided that the title was was good, and directed specific performance. The opinion of the court adopted the reasoning of the company's reader. Successive appeals were taken by the buyer to our highest court. In each instance the title was sustained. On the day that the Court of Appearls decision came down the president of the title company called for the reader, who, when he received the call, saw visions of raises, promotions and the like. He walked gingerly to the president's office and was there informed that it had cost the company $5,000 to establish the soundness of this title; that he should not have attempted to anticipate the decision of our courts, particularly when our appellate courts have often disagreed on the question of whether a remainder is vested or contingent. Paradoxically, a good title may be *unmarketable.*

There have been innumerable in-

stances when titles have been held unmarketable despite a prior judicial approval of the procedure followed.

### Cases Cited

Here are some examples:

In Schoellkopf Holding Co. v. Kavinoky (216 N. Y., 507) an executor with a power of sale had conveyed to a corporation, in consideration of the issuance of all the stock to the executor with the apporval of the surrogate by a formal decree. It was held that this was not a proper exercise of the power of sale; that the title was unmarketable because the decree was not binding on infants who were not cited.

In Gedney v. Marlton Realty Co. (258 N. Y., 355) real property was sold pursuant to an order of the Supreme Court with the authority of a specific statute, on notice to all persons interested. More than sixty years later the Court of Appeals held that the specific act was unconstitutional, and awarded possession to the heirs of the parties to the ancient proceeding.

In Kennedy v. Lamb (182 N. Y., 228) the Supreme Court signed an order permitting publication of the summons on a New Jersey resident, but the title was held unmarketable even though the defendant was in fact a non-resident, because of the failure of the supporting affidavits to show that it was impossible to serve this defendant in the State of New York.

The Court of Appeals, in Lynbrook Gardens v. Ullman (291 N. Y., 472) held a title unmarketable, coming through a tax foreclosure, after a Supreme Court foreclosure judgment, pursuant to a statute held constitutional by the Court of Appeals, only because a Federal Constitutional question had been raised. Later, when the same case came before the Supreme Court of the United States, it saw no question and denied certiorari (322 U. S., 472).

Even a judicial declaration that a title is marketable may not be relied upon until the Court of Appeals has spoken. In Dingley v. Bon (130 N. Y., 607) the Supreme Court had, in an earlier controversy, held the title marketable. In a subsequent transaction another purchaser again raised the same objection. This time the case went to the Court of Appeals, where the title was held unmarketable.

The opinion in Colorado & Southern R'y v. Blair (214 N. Y., 497, at page 516) warns that "there seems to be a too prevalent notion that a judgment of a court protects those acting under it, and too often the courts grant decrees on mere formal proofs"; and later, "it needs to be better understood that judgments only bind the parties and their privies."

Having in mind some of these principles, we may now discuss the title which was the subject of the letter of October 29, 1947, to the editor of the NEW YORK LAW JOURNAL.

### Proof of Heirship

Most of us learned in law school that you cannot prove family history except by the testimony of a person related by blood or affinity. Yet there is consternation when a title company report calls for corroborative proof of heirship when, as in the case under discussion, the petitioner for probate of a will is a stranger to the family. The next of kin of the testator in the instant case were nephews and nieces living in various sections of the country.

Our files will show that in similar cases the corroborative proofs have produced new heirs. If we had not called for the proofs the probate proceedings would have been worthless as against the heirs who were not cited.

In the case of Toole v. Koenler (14 State Reporter, 934) a purchaser was relieved, at a sale in a partition suit, because "it does not seem that the simple affidavit of the plaintiff in the action, positive as it is, should be sufficient in order to place the purchaser in that position of security as to the alienage of the persons not made parties to the action to which he is entitled, in order that the title which he is required to take should be free from doubt."

### The Missing Heir

Greenblatt v. Herman, in 144 N. Y., 13, presents a title not unlike the one we are discussing. There the seller's title was derived under a sale by an administrator for the payment of debts. The principal objection to the title was that the petition of the administrator did not purport to set forth all the heirs of the decedent. The General Term decision discloses that at the hearing before the surrogate **a member of the family testified that the decedent left no other heirs** than those mentioned in the schedule. Yet a subsequent purchaser rejected the title thirteen years later. The Court of Appeals finally held the title marketable, but added:

"The objection taken by him (the purchaser) was not wanton or frivolous. The title had once before been rejected by competent conveyancers upon the ground taken by the plaintiff, and this was known to him when his objection was made."

The Court of Appeals sent the case back for a new trial, in order to enable the plaintiff to have a decree for specific performance.

We can only conjecture about what the court would have decided if title had been rejected by the purchaser from the administrator, or if there had been no testimony by a member of the family. The Court of Appeals may very well have adopted the reasoning in the Toole v. Koenler case (supra).

The whole problem of passing titles based on **affidavits** presents many difficulties to the title insurer. Yet the public and the Bar takes "for granted" that titles should be passed on affidavits. Maupin's work called "Marketable Titles to Real Estate" advises that affidavits of family history are not admissible in evidence. Yet the taking of such affidavits is almost a daily occurrence in a title company. The title company thereby assumes another hidden risk; that the affidavit is not perjurious or based upon a faulty recollection.

The lack of understanding of these basic truths often prompts the request that we assume "business" risks. Freely translated, the request means:

> Despite the fact that there is a valid objection to the title, discovered at great cost and expense; and
> Despite the fact that our courts have held such titles unmarketable; or
> Despite the absence of adequate law on the subject,
> I request you to insure my title without any exceptions.

The applicant for accident insurance understands that it is just that the insurer exclude from coverage things like "trick" knees and similar known or disclosed predispositions to trouble or accident.

In the same way, the title insurer endeavors to protect itself against loss, if the exception is not eliminated by the parties prior to the closing.

### What Are We Paying For?

At this point we usually hear the cry, "Then what are we paying you for?"

The answer is:

You are paying us to search, examine and study the records, the facts of possession in accordance with case and statute law and to give you a written report summarizing our conclusions.

You are paying us to supervise the closing of the transaction and to make certain that the closing is in accordance with the preliminary report.

You are paying for the issuance of a title policy insuring against direct attack and insuring the marketability of the title.

You are paying for the cost of maintaining a capital structure adequate for the payment of valid claims under our policies, a capital structure dedicated solely to the doing of a sound title insurance business.

You are paying for the establishment of a statutory reserve fund, designed by law to give the policyholder further protection.

The fees received by the title company, which does its work in ac-

cordance with established principles of law, in the many small transactions do not compensate it for the bare cost of the work and labor involved in the preinvestigation of the title.

The soundness of a title company's position is too often judged by factors completely foreign to the legal principles involved in the title—the seller's profit, the buyer's need for a home or a plant, the broker's commission, the resentment which flows because the raising of a question is an implicit criticism of the quality of the legal work involved — the chagrin stemming from the failure of the seller's attorney to have recommended title insurance when the seller purchased the property. (It is only fitting to make the observation that such problems rarely arise when the seller holds a title insurance policy of a responsible title insurer.)

This is not to suggest that title men have not erred by raising questions which the courts have taught us should be overlooked.

### Competitive Business

Title men are ordinary mortals, and errors will be made. They are not clothed with judicial power. Yet, we are asked to pass titles through wills which require construction by a court; yet, we are asked to anticipate decisions on points not yet finally passed upon by our courts. We cannot, in the language of the Court of Appeals in Norwegian Church v. Milhauser (252 N. Y., 186), "declared this title marketable."

The business of title insurance in this community is highly competitive, most of it fair, some of it unfair. There are title insurers who issue their policies without doing the exhaustive and thorough examination. The quality of the title insurer's work and his attitude toward title questions are prime factors which should be considered by attorneys for buyers of title insurance.

Is it likely that a title company will, as a matter of fixed policy, raise needless questions? The economic pressure has a tendency to make title men "reasonable," even if years of experience and study does not produce the desired result.

We are as eager as any party to a real estate transaction to see titles closed. When titles close bills are paid. Questions, exceptions, cause delays, additional work, adjournments of closings, further continuations of the searches prior to closing, correspondence, all of which increases the expenses of the title insurer.

### Most Deals Close

Currently, 98.5 per cent of all the titles received by our company result in closings and policies. The bare statement of this fact is a complete refutation of the notion sometimes stated that "title companies break up deals."

An analysis of remaining titles in the 1.5 per cent group would disclose that

(1) Some do not close because of business and financial reasons.

(2) Some do not close because our applicant for title insurance recalls why he engaged us and advises the buyer or mortgage against closing because of the condition of the title.

(3) In the remaining fraction of 1 per cent of the title transactions may be the rare and unusual case of a title not closing "because of the title company."

The title industry has and will continue to serve, in season and out of season, in lean and lush years, to make real estate readily transferable.

Despite the "caution" of the title insurer and despite the fact that the bulk of its revenue is spent to ascertain the validity of the title, many losses are paid annually to third parties who attack titles. Many losses are paid directly to the insured. Much time and money is expended to investigate and ascertain the validity of an alleged objection to title. Much time, effort, money and counsel fees are expended to prove that insured titles are marketable.

# Well, At Least I Ran My Competitor Out of Business

# The Why of Public Relations

*Talk presented May 1, 1959, by J. D. Butterworth, Head, Marketing Department, College of Business Administration, University of Florida, Gainesville, Florida, on the Public Relations Panel of the Short Course sponsored by the Florida Land Title Association in Gainesville.*

Your moderator, Mr. Robinson, has asked me to speak to you this afternoon on the public interest aspects of this broad topic of industry public relations. This I am pleased to do and I greatly appreciate the invitation of your conference committee to make these few remarks.

In pondering over the problem of how to fulfill my assignment on this panel, it occurred to me that one possible approach might be to confess at the outset my almost total ignorance about the technicalities of the general field in which you are involved and to indicate to you what I, as a stranger to your business, would like to know about you and why I think it is important for me to be convinced that I need your services.

So that you and I can come to at least a partial meeting of the minds concerning the services you offer and the public's need for those services, let me express a personal feeling that I think is not at all uncommon.

My whole background, personality, education, and training have led me to the conclusion that there are many, many problems of my daily existence that I cannot hope to cope with all by myself. If I were to try

to become an expert in even a few of the fields with which my daily living is concerned, I would have neither the time nor the energy to accomplish much of anything.

Therefore, like so many others, I employ, directly or indirectly, an expert in a particular field to give me advice. I'm sure we all do this on occasion—we don't attempt to treat ourselves for physical ills, we employ a mechanic if the family car breaks down, and we retain an attorney if someone sues us.

These problem areas are common to all of us—they represent problems we know we can't solve for ourselves and we are, therefore, quite willing to pay an expert in the field to solve the problems for us.

In addition to their universal character, in that all of us at one time or another are faced with these problems, they are also quite recognizable as problems. If we are sick, we generally know it, if the car won't run, it's obvious that something is wrong, and if the process server appears at the door, we know trouble is ahead.

But not all problems, real or potential, that I, as an average person, face are quite so apparent to me. I am sure that I must have many problems that I don't even recognize as problems. I suppose that in my ignorance I am daily being exposed to real or potential troubles of which I am completely unaware.

## Protection Essential

As I understand your particular business activity, you are the experts who can solve at least one poblem of this latter kind—specifically the problem of whether or not I really am the legal owner of a piece of ground — a piece of ground upon which stands my house and garden, around which most of my life revolves, into which I pour a high proportion of my monetary and physical strength, and concerning which I, like most other people, am unable to express my true feelings. If you carefully consider what ownership of real estate means to most people, it seems readily apparent to me that a system of protection of that ownership is essential to our modern society.

## Largest Single Investment

For example, for millions of people, ownership of real estate is, in reality, the equivalent of the ownership of a home and the maintenance of a decent, respectable family environment. Ownership of real estate represents a large portion of the total social structure of our nation and, in so doing, it satisfies what must certainly be considered one of the basic human desires.

Further, ownership of real estate and the protection of that ownership also represents for millions of people the opportunity of economic advancement and all that that opportunity in turn represents. I trust we are all agreed that in our society one of the guiding concepts is that the owners of property of any kind are relatively free to use the property in production with the hope of gaining a profit. If this be true, then certainly some system providing for security of ownership is essential.

(As an aside, let me make clear that I recognize there are certain limitations to the use of property by the owner—limitations which, ideally at least, are placed on individuals for the protection of the total society. I refer, of course, to such matters as zoning restrictions, building ordinances, the right of eminent domain, taxation powers and the like.)

Now, if you agree that ownership of real estate represents to most of the people of this country, *first*, the maintenance of a home, and, *second*, the opportunity for economic advancement, then it follows that the protection of these opportunities is a matter of almost universal concern. And in my somewhat limited knowledge and understanding of your specific economic functions, this is the problem I believe you are prepared to solve. This is the problem which makes it possible for your business to exist. This is why you are attending this conference today—to determine how you can better pro-

vide this essential service in order to solve this problem.

But (and I think this is most pertinent to our being here today) if I, as a representative of millions of other land owners, am not sufficiently aware of the inherent problems of security of ownership of real estate, I am going to be most reluctant to purchase your service. I may be forced to do so, unknowingly, or I may grudgingly agree to pay what perhaps seems like an exorbitant fee for your service—or, I may, in my ignorance and lack of understanding, refuse to buy your service even though informed of it—or (and this is why this panel is gathered) I may never have heard of either you or your service.

## Cautious Buyer

Regardless of my reaction, I am not going to look with favor upon buying "a pig in a poke." As a land owner, I want to know why I need your service, I want to be informed by those who should know, by the specialists, by the experts, as to all the problems of security of ownership of real estate. You people are the specialists in providing this service. You can help me immeasurably in protecting my property rights. In your own selfish interest you must make me aware of the expert help and advice you can give me. In the broad social interest (and you would not be here if you weren't socially concerned) you, I feel, have an obligation to inform and enlighten me. You have the obligation, both for your own economic advantage and for the social good, of providing me with the information I need to arrive at a sound decision regarding the purchase of your services.

Let me outline briefly for you what I, as a home-owner, think you should tell me about yourselves. These are the matters on which I must make my decision about patronizing you.

*First*: Just what is your service? What do you do for the fee I pay you? I think you should tell me about the physical work involved in preparing an abstract of title—about the investment in records and equipment that is necessary if you are to perform this service effectively. If nothing else, this will make me a little happier at paying your price.

*Second*: I want to know why your service is valuable to me. What are the potential problems I face if I don't buy your service? What can you do to help me? In other words, why is your service a service?

*Third*: Make it easy for me to speak your language, explain some of the common terminology of your profession. Familiarize me with the special words and the meanings of these words. They must be important or you wouldn't use so many of them. And no one likes to have the feeling that he doesn's understand what the other fellow is saying. We don't like to be in strange company, and we don't like to talk in strange terms.

*Fourth*: Tell me something about the personal you, or your company's personality. Who are you? What is your background? Why should I display trust in your judgment? What is there about you that would make it easier for me to buy your service?

Let me summarize now before turning the floor over to the next speaker. *First,* I pointed out that all of us face problems we are not equipped to solve for ourselves, problems that perhaps we don't even recognize. *Second,* the security of ownership of real estate is one of the major problems we all have, but it is also a problem that I am afraid many of us do not recognize as being a problem. *Third,* it seems to me the solution to this particular problem is in your hands. *Fourth,* you have an obligation to let the public know how you can help solve this problem. And, *finally,* I suggested some of the information I think the public should have access to. Now, HOW this information is to be communicated by you to the public will, I hope, form the basis for the remainder of the afternoon's discussion. Thank you.

## The Executive's Dilemma

If he's late for work in the morning, he's taking advantage of his position . . . If he gets in on time, he's an eager beaver.

If the office is running smoothly, he's a dictator . . . If it's not, he's a poor administrator.

If he holds regular staff meetings, he's in desperate need of ideas . . . If he doesn't he doesn't appreciate the value of teamwork.

If he spends a lot of time with the boss, he's a back-slapper . . . If he doesn't he's on the way out.

If he goes to conventions, he's on the gravy train . . . If he doesn't he's not important.

If he tries to get more office personnel he's a politician . . . If he doesn't he's a slave driver.

If he's friendly with the office personnel, he's a politician . . . If he keeps to himself, he's a snob.

If he makes decisions quickly, he's arbitrary . . . If he doesn't, he can't make up his mind.

If he works on a day-to-day basis, he lacks foresight . . . If he plans ahead, he's a dreamer.

If he tries to cut red tape, he has no regard for system . . . If he insists on going through channels, he's a bureaucrat at heart.

* * *

The granting of authority to federal savings and loan associations to make loans to builders for the acquisition and improvement of "raw" land for subdivision purposes would make more adequately-developed land available to the smaller and middle-sized builder, and would contribute to improved land planning, according to the United States Savings and Loan League.

* * *

Expenditures on new homes in the first four months of 1959 totaled $4.8 billion, roughly 35 per cent above expenditures of $3.5 billion in the first four months of 1958, the United States Savings and Loan League reported.


*Mr. Joe Smith*
*American Title Association*
*3608 Guardian Building*
*Detroit 26, Michigan*
*Dear Joe:*

*In many parts of the country very complete title plants are maintained at quite an expense and all of us are continually searching for ways to reduce our cost. We find that some companies maintain divorce records and some companies do not. I would like to have this subject discussed as to the value of maintaining divorce records when such suits do not show that any real property is involved.*

*Thank you,*
*Stewart Morris*

## In Memoriam

## Porter Bruck Mourned

Porter Bruck passed away May 28, 1959, in a San Francisco hospital after a comparatively short illness. Memorial services were held in San Francisco.

Porter was probably one of the best known and universally liked title men in the West.

He had been living in Arizona since his retirement from active work.

Porter, in addition to serving as ATA's president, was president of the California Land Title Association in 1931-1932. He also served in a like capacity for Title Insurance and Trust Company and for Land Title Insurance Company. For many years he was a leader in Los Angeles civic and community affairs.

He leaves his widow, Marjorie; a son, David; and a daughter, Barbara.