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TITLE
NEWS

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THE PRESIDENT'S POSTSCRIPT



This is vacation time. As a result, I know that most of you have been thinking about other things than your national association. However, the first indications of fall remind us that the national convention is fast drawing near. Almost before we know it we will be heading for New York City and a grand time. Our hosts, the New York Title Association, with Harold Beery at the helm, have developed some wonderful plans for our entertainment. They are leaving no stone unturned to see to it that we have a good time. They are not doing this, however, on the philosophy that conventions are just to have fun. They realize the convention should be interesting and informative and that those in attendance are going to spend considerable time in serious consideration of matters affecting our industry. "All work and no play makes Jack a dull boy" and they are determined that all of us will leave New York bright and shining.

Your officers, of course, have the job of providing the serious moments. We'll do our best, but we need your help. Please send any ideas you have for topics which should be discussed either in the section meetings or at the general sessions to the National Secretary, Joe Smith, as soon as possible. We want the convention to be helpful to you. Just a few moments of your time, plus a 4 cent stamp can do much to make the forthcoming convention an outstanding one.

Ernest J. Lacobus



TITLE NEWS

The official publication of the American Title Association

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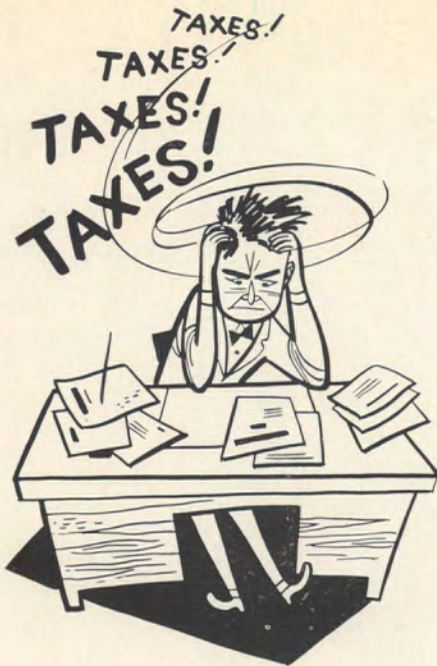
EDITOR: JAMES W. ROBINSON

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JOSEPH A. HOSKINS

Senior Partner in the Law Firm of
Hoskins, King, Springer & McGannon,
Specializing in the Practice of Federal Taxation,
Before the Real Estate Board of Kansas City, Missouri.

It is accepted practice to start a talk with a funny story. I would like to start with a fable which first came to your attention as a child. The French farmer was known for the hens he raised and the eggs they produced. Through mysterious circumstances, he acquired a hen that laid a golden egg every day. Our farmer was greedy; he could hardly wait for each day's sunrise in order to snatch the golden egg laid that morning. Although the hen laid a golden egg every day until the farmer's treasure box was full, the farmer was not satisfied. In frustration at the slow passage of 24 hours, he tried to force the hen to lay an egg in the morning and another egg in the afternoon, but unfortunately not even a hen that lays golden eggs seemed equipped to meet such demands upon her production abilities. You are familiar with the ending of the story. The farmer growled "What is *one* egg a day, I want all, all the gold that is inside her," and chopped off the poor hen's head. But alas, there was no gold inside the hen. Only the eggs were gold, and the farmer in his greed had killed the hen that laid them.

Since you know the title of my talk, I doubt that anyone will accuse me of undue subtlety in using that fable as an opening.

I make no pretense at being an economist. I could never qualify as an economic planner. I have practiced tax law for 18 years, and believe me, that experience has completely suffocated any pure theories of economics taught me in college.

Posing therefore only as a tax attorney, I submit that the federal government, in its demands for more golden eggs, has overlooked one fundamental characteristic of the American economy. All income starts with the land and the natural resources on and under the land. Man has not been able to create. The best that man can do is to process from God's creation, and it is the developing, processing, and fabrication which produce, the start of income. Unless business, industry and commerce are able to take over, process, fabricate and market the products of nature, there is no income, and without income, the income tax would be a nullity.

It would seem to be, as an amateur economist, that a properly designed income tax would favor the creation of income. On second thought, let us not say favor, let us just say that a tax which depends on the production of income would avoid destroying the ability to produce income.

The Mississippi River, I have read, dumps 145 cubic miles of water into the Gulf of Mexico each year. But my same encyclopedia tells me that at its head the River is but 12' wide and 18' deep. The Mississippi River starts with a small spring; it is fed along its route by a thousand creeks and streams and rivers, and these in turn, with but few exceptions, originate from small springs.

What is the great, vital flow of American commerce but the combined outpouring of the thousands of springs—known as individual business enterprises.

If the government were to take a reasonable share of the water from the mighty Mississippi River as it sweeps to the Gulf, there would be

no appreciable effect on the river or on the millions of people who depend on the river as it wends through the heartland of our country. But, take one-half of the water from each spring, and you can expect an arid, desolate impoverished area, incapable of production.

The river called the American economy is likewise mighty and has carried many emergency loads placed upon it. If you impound severely the source of the Mississippi, the river level will drop. The small boat, the barge of political expediency, can still be carried. But if we must launch a heavy ship of great need in a river from which we have expropriated one-half the water flow, we must expect that the sandbars of stupidity will soon ground our efforts. Twenty-five years ago, the federal income tax was a minor burden on the stream of business. It did not control the economy, and businessmen were permitted to expand and grow. With the needs of greater income during the early shadows of World War II, our government found that fantastic federal revenue could be obtained by increasing the rates of taxation. Business did not complain because the nation's freedom was at stake. It was a tax based upon sacrifice and the sacrifice was accepted on the implicit understanding that when the battle was over, the sacrifice would cease. Although the last shot was fired 14 years ago, we seem unable to give up the heady thrill of overtaxing our economy and so the taxes rise to keep up with the budget and the budget rises to keep up with the revenue.

Many Facets to the Problem

The present proposed budget is approximately 77 billion dollars. The federal government's budget 20 years ago was six billion dollars. It is true that every man in Washington wants to pare the budget provided, of course, there is no reduction in the projects in which he is interested. Everyone is absolutely, positively, unequivocally in favor of eventual tax reductions. There is not a single person having trusteeship of our money

who is not in favor of a balanced budget, tax reduction and adequate spending. I think we can add to those ideals also loving your Mother and brushing your teeth twice a day. The basic problem is not this or that particular expenditure. Three billion nine hundred million dollars for foreign aid is a fair chunk of money. The civilian payroll of the United States Government is now one billion dollars per month. That is also a lot of money. But the problem is much deeper than any single item. I like the way William S. White expressed it in a recent column:

Beyond Control

"Federal expenditures are becoming so vast and so diffuse in purpose as to raise a serious question whether any President or Congress will be able within a few years actually to control any budget. May not internal events, as for illustration sudden business recessions, or external events . . . in the cold war, become the real future of the budget?"

"This is the creeping nightmare of some fiscal conservatives. It is not so much the level of present spending that they fear. It is the possibility that men may lose to the robot of circumstance the very power effectively to control spending at all."

For the fiscal year 1959-1960, the interest in the federal debt will be more than 7 billion dollars. To the extent of 7 billion dollars, therefore, next year's budget has been committed by past events. Dozens of other programs have been committed—such as defense contracts, veterans' programs, farm payments, and social outlays. The robot is at work. A mechanical budget has been created and has been put in motion.

Let us therefore recognize, without approving or condoning, that we are faced with tremendous demands on our economy for your lifetime and mine. Let us admit, with shame, that we have permitted ourselves, our children and our children's children to become enslaved as surely as were the first boat load brought to this country from Africa. Their chains

were of metal; ours are economic. Let us then take stock and see what, if anything can be done. Have we in fact so desecrated our economic system as to be servants of a robot.

There are two steps we can take.

- (1) We must insist that the federal government return to its constitutional role of government and abandon its concept of being the savior of all peoples in all places under all conditions.

May I quote you a few lines from a recent article by William Henry Chamberlin in the Wall Street Journal:

"It is a far cry from the American of Andrew Jackson's time whose principal desire was that the state would leave him alone, to the present clamor for every conceivable form of state aid, subsidy, insurance and guaranty against all the ills and mischances of life."

* * *

"What is overlooked is that, according to all historical experience, the state cannot assume the role of universal provider without also becoming a universal master."

- (2) We must insist that the taxing policies be reformed to promote rather than discourage the expansion of income.

I am still an amateur economist. To an amateur, a taxing policy which limits expansion of business is a contradiction fore-doomed to defeat its own purpose.

Perpetual Emergency

For the past 12 years each budget has been a so-called emergency budget; a one-year crisis. For 12 years, the President and the Congress have hoped for tax reduction "next year." For 12 years, the government has required the confiscatory taxes for "one more year." Strain harder, little hen, produce the golden egg, then strain again. I submit to you that the time has arrived to cease these annual delusions. There will be

no tax relief next year or any year after next year, unless businessmen demand that the administration and Congress plan a long range taxing policy, and cease the absurd mouthings of just "one more year." Then and only then will tax reform be possible. If a client of your's signs a 20-year mortgage for \$100,000 at 6% interest, he is committed to pay \$716.50 per month for those 20 years. If at the beginning of each year he proclaims to his wife and children that the burden will be less next year, he is obviously kidding himself and misleading his family. Our Federal Government has signed a mortgage into the future. The payments are as fixed and certain and inevitable as any mortgage on record. It is not realistic to promise relief next year or the year after next year unless Congress will revise its present taxing policies, to produce more tax through more income, rather than from higher rates on existing income.

The theme and the heart of my suggestions today may thus be stated: Business cannot contemplate substantial tax relief from a drop in expenditures and a continuation of the present taxing policy. Business must demand a completely revised taxing policy predicated on the simple equation that greater revenue, and reduced federal welfare payments, can be achieved only by full employment with a high standard of living. This full employment can be assured only by an expansion of business, industry, commerce and investments, and the expansion can be accomplished best by taxing program which encourages the expansion. If you owned a building, would you rather lease it to a tenant who does \$100,000 per year volume and receive 20% of the volume as rent, or to a tenant who does one million dollars per year volume and receive 10% of the volume as your rent. The approach is that simple. We have heard the news stories on unemployment. We watched our Congressmen courageously vote the expenditure 400 million of dollars in emergency unemployment benefits, and other projects, to alleviate the effects of this

unemployment. But did anyone in the government frankly admit that the taxing practices of the government stopped the expansion of business, hampered the demand for goods and brought about the plant closings which produced the unemployment.

Who Me?



I would like to stimulate you and all taxpayers to accept the challenge of considering the revenue acts in broad perspective. We have all fallen into the habit of searching the Internal Revenue Code in the hope of finding something which will permit us to deduct a few dollars here and a few dollars there. We have traded our family grocery money for a lollipop and have felt overjoyed if we had a choice of flavors. To emphasize the necessity of the broad critical view, let me cite a few examples. The time available underscores my statement that these are but examples. I will touch in light detail on four specific items; the theory of capital gain tax, the capital gain tax on real estate, depreciation, and the new law permitting certain corporations to be taxed as partnerships. I could just as well select as examples, the restrictions and frictions created by the double taxation on dividends, the destruction of initiative by a top income tax rate for individuals of 91%, the completely un-American concepts underlying the federal gift and federal estate taxes, and the promotion of mergers and monopolies by confiscatory taxes.

(1) **Capital Gains in General:** The United States has a special tax rate on capital gains. We feel fortunate when we have a capital gain, because the tax is a mere 25%. England does not tax capital gains. Our great neighbor to the north does not tax capital gains. Capital gains are not taxes in these countries because no income is created when one capital asset, a bond, stock or a building, is translated into another capital asset, for example, money, another building or another stock. These are exchanges of capital. You may have a profit but a profit is not synonymous with creation of income.

But let's assume that we cannot afford the luxury of the English system. I pose the question of whether Congress has the moral right to tax a capital gain when in fact there is no real gain. Congress uses an inflexible standard for the measurement of gain, the piece of paper called the American dollar. The dollar has no intrinsic value; it is a medium of exchange. It would seem to me that I have a profit or gain when I sell an asset only if I have greater buying power with the money I get out of the sale than I had, at the time, with the money I invested in the asset. In 1940, I invested \$100 in a stock and I sell it in 1958 for \$200. My \$200 in 1958 will not buy any more than \$100 brought in 1940. Have I had a gain? As an amateur economist, it seems to me Congress is imposing a tax on a non-existent gain.

(2) **Real Estate as an Investment:** Stocks and bonds held by an investor are capital assets. Real Estate held by an investor is a capital asset. Gains upon the sale of a capital asset held for more than six months are taxed as long-term capital gains. But for as many years as I have been practicing tax law, the Bureau of Internal Revenue, backed by the courts and with the acquiescence of Congress, has discriminated against investment in real estate. I may buy a thousand shares of stock and after six months sell 100 shares at a time, and no revenue agent will claim that I am in the business of selling stock. But if I buy a thousand acres of land

and sell 100 acres at a time in order to realize a greater return on my investment, every revenue agent wants to make me a real estate dealer and deprive me of capital gain. It is true that in the Revenue Act of 1954, Congress took a fainthearted step to correct this discrimination. But the correction should have been complete and bold. This is a large country. It has thousands of acres of land begging for development. It has millions of old, outmoded buildings which should be replaced. This is a frontier opportunity which could expand industry and employment and thus the tax collector's tribute. But it is discouraged in order that a few extra dollars may be collected by the threat of taxing a real estate investor as a real estate dealer.

(3) **Depreciation:** What is the concept of depreciation for tax purposes? It is the recognition that, as depreciable assets are used in the production of income, some of the proceeds are a return of capital. In a period of stability, the capital portion may be measured by the cost of the machinery or building in use; in an inflationary period fiscal foresight would demand a reserve or allowance based on replacement cost.

"Chairman Roger M. Blough of the United States Steel addressed a recent annual meeting of the company's stockholders:

"Back in 1930 we built an open hearth plant which cost about \$10 million. Today it will cost us about \$64 million to replace that plant. Through depreciation we have recovered the original \$10 million . . . The remaining \$54 million, however, will have to come out of our profits—our profits after taxes.

The problem of capital replacement and expansion is universal for American industry.

Dr. John Ryan of Fordham University has assembled figures conclusively evidencing the crucial impact of depreciation allowances.

"During the period 1945-56, depreciation and amortization allowances supplied \$104.3 billion

to total sources of corporate funds, or about 33%. These allowances were more important than retained profits and depletion allowances which contributed \$95.5 billion and were much greater than those from net new security issues which amounted to \$63.4 billion. Thus inflation and inadequacy of depreciation allowances have clipped the main source of capital investment for American business."

Dr. Ryan's conclusion merits our attention:

"What is needed in the way of over-all depreciation reform," says the author, "is full replacement cost accounting; depreciation allowances which realistically permit businessmen to replace worn-out or obsolete plant and equipment."

It is to you, but not to Congress, obvious that if a machine or building I use in my business is wearing out, I can continue or expand only by being permitted to set aside, in advance, the sums necessary for expansion or replacement.

If you say to me that the federal tax law does not recognize the principle of accounting in advance, I remind you not to forget to file your declaration of estimated income tax on April 15th. The item that is not recognized is that the government could save millions of dollars in social welfare payments in the future if it would forego, by this route, a few thousands of dollars in tax collections today.

(4) **The New Subchapter S:** With adequate promotion, Congress recently passed an amendment to the Internal Revenue Code. This amendment contains pious pronouncements of the fortunes of small business, and a grave concern of Congress for the recognition that small business might survive, indeed even grow, if the small business could elect to be taxed as a partnership. This legislation was adopted as a tax relief to small business. Now, let me call your attention to three strings tied to this magnanimous gesture.

(1) The privilege is not available if more than 20% of the income is from rental, dividends and/or interest. I have not found out why rental corporations are excluded. A child is denied the right to watch television if he is disobedient. Costello lost his citizenship because he committed falsifications and perjury. I am happy to be with the distinguished members of the Real Estate Board. Will someone please tell me what crime was committed by the people who receive rental income, to be thus denied the favor of tax citizenship.

(2) The privilege is available only to small business firms. In addition to being pure, you must also be small. Congress defines smallness not by size of the corporation in dollars but rather by the number of stockholders. A corporation with 11 stockholders or two classes of stock and a net worth of \$5,000 is **not** a small corporation. But a corporation with 9 stockholders and a net worth of one million dollars is a small corporation.

(3) The third string is the one that leaves me blank. I repeat this amendment is a relief measure. It permits a small business to be taxed as a partnership or as a corporation, whichever produces the lesser tax. But Congress says you must make your choice 11 months in advance. You must decide almost one full year before you know which method gives you relief; and if you elect the partnership route, then change your mind, you are punished. You cannot again elect for five years.

Expansion Necessary

You are informed, thinking businessmen. You decide. Did Congress grant small business tax relief designed to produce expansion—or did it permit small men to stifle relief by imposing ridiculous crystal ball requirements followed by economic exile for 5 years. I close with a reference to the theme upon which this talk opened. As a nation, we will never get out of debt by impeding the power to grow. If this nation is ever to eliminate its 280 billion dollar

debt, the money cannot come from today's mechanics of obstructing the stream of industry, commerce and income. It cannot come from the limited expansion which may be realized simply through the growth of the population. It can come only from a great expansion in business and investment opportunities to the end that there is no unemployment. A broad tax base which encourages business to expand, which encourages the individual to reach out and grow, will produce an expanded income and thereby a tax sufficient to meet current budgets, without welfare payouts, and a little over to apply on past mistakes. Tax reductions and reforms must be planned as investments in the future of the economy, not the future of a political party.

If Government is so blind as to think it can meet new budgets by increasing or even continuing, the

This Sounds Familiar

If a friend were to give you an orange, he'd simply say, "Here's an orange."

But when the transaction is entrusted to a solicitor he might put it this way:

"I hereby give and convey to you, all and singular, my estate and interest, rights, title, claim and advantages of and in said orange together with all its rind, juice, pulp and pits and all rights and advantages with full power to bite, cut, and otherwise eat the same, or give the same away with and without the rind, skin, juice, pulp or pits, anything herein before or herein after or in any other deed, or deeds, instruments of whatever nature or kind whatsoever to the contrary in anywise notwithstanding."

Then another smart legal eagle may come along and take it away from you.

**BIG PEOPLE TALK ABOUT
IDEAS.
MOST PEOPLE TALK ABOUT
THINGS.
LITTLE PEOPLE TALK ABOUT
PEOPLE.**

present tax rate on investments and business, and so shortsighted as to feel justified in denying proper deductions for depreciation; in continual harrassment of executive salaries; and in chopping at business selling and promotional expenses, for example, then I recommend to the Congress and the administration careful consideration of the delightful poem by La Fontaine describing the fable of the hen and the golden egg:

"To this lesson in greed,
Pray, little ones, heed:
Each day, we are told,
A most wonderful Hen
Laid an egg made of gold
For this meanest of men.
So greedy was he,
He was not satisfied
"What is **one** egg to me?
I want **all** that's inside."
He cut off her head,
And began to explore.
But the poor hen was dead,
And could lay eggs no more."

IT'S A GOOD BET YOU'LL FIND A

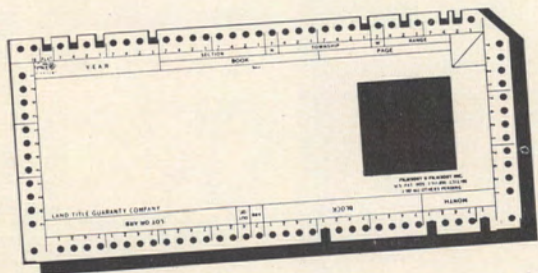


Full House

In New York

October 19-22

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IN THE
ASSOCIATION
 SPOTLIGHT

Seattle Title Firm Expands to Portland

Puget Sound Title Insurance Co., Seattle, announced it has acquired, through a stock exchange, control of the Pacific Title Insurance Co., Portland.

Pacific Title—oldest title firm in Oregon—has branch offices in Salem, Beaverton, Oregon City and Dallas. It also issues title insurance policies through agencies in eight other Oregon counties.

Puget Sound Title was organized in 1927 and maintains its home office in the Dexter Horton Bldg. It operates through subsidiaries or agencies in 28 Washington counties.

The transaction had prior approval of Puget Sound Title Stockholders and was sanctioned by W. A. Sullivan, Washington State Insurance Commissioner.

Kenneth C. Klepser, president of Puget Sound Title, said: "We feel that by expanding our operations in the Pacific Northwest we will materially increase our effectiveness and strength as a land title insurance organization."

Title Executive Addresses Realtors

Tom West, Vice President and Public Relations Director of Pioneer Title Company, Nevada, was a guest speaker at the Las Vegas Board of Realtors monthly luncheon. His topic was—"Survey and Property Distribution."

A Bedtime Story



Poor Joe. He was a real estate broker who had to learn the hard way that the local abstractor is his best friend. This little story of the unsung hero has been made available to members of the ATA for distribution to lawyers, realtors, lending institutions, subdividers and to the general public. You are encouraged to order as many or as few as you can use in your community. Many of you have already done so. Orders have poured in from Florida, Iowa, Texas and a good many of the other abstracting states.

Why not take a step in the direction of cementing relations with your attorney and real estate friends? Order a supply of "A Bedtime Story" with **their** names imprinted on the front cover. It will help your realtor friend explain to his prospects the need for your service.

Title Company Move in Topeka

The Capital Abstract and Title Company, Topeka, Kansas, has moved to a new street level location at 220 West 6th Street and is now operating under new ownership.

Eugene A. Allison, a native of Topeka and formerly in the real estate business, is the purchaser of the Capital Abstract Company from the Kansas City Title Insurance Company.

New Home for Monroe County Abstract Company

A comedy of errors preceded the final grand opening of the new building now occupied by the Monroe County Abstract Company in Monroe, Michigan. Robert Jay, Vice-President and Attorney, tells a fantastic tale of midnight lamps burning to make the final mechanical installations only to discover that the beautiful beige carpeting didn't match. All's well that ends well, however, and members are cordially invited to visit the new office at 19 West Washington Street, in Monroe.

Montana Firm Appoints Manager

Appointment of Douglas Paterson as general manager of the First Montana Title Insurance Co., a subsidiary of the Montana Corp., was announced by Frank Whetstone of Cut Bank, president of the title firm.

Paterson has been executive vice president of a title insurance group at Las Vegas, and has over 30 years' experience in the title insurance field. Prior to joining the Nevada firm, he was with Title Insurance Trust Co. of California.

Whetstone said Paterson will maintain his offices in the Ford Building, where the Montana Corp. and its other subsidiaries are located.

Paterson will be introduced to stockholders of the Montana Corp. at its first annual shareholders meeting today at 10 a.m. at the Civic Center Council Chambers.



Federal National Mortgage Assn.
211 South Broad Street
Philadelphia 7, Pennsylvania

July 20, 1959

Mr. Ernest J. Loebbecke, President,
Title Insurance and Trust Company,
433 South Spring Street
Los Angeles 54, California
Dear Mr. Loebbecke:

We are in the process of training a new group of employees for placement in the various divisions of the Philadelphia Agency. These young men have excellent educational backgrounds, but of course, are quite limited by experience in the real estate lending field. I believe you will be interested in knowing that one phase of their training is to become acquainted with the purposes and advantages of title insurance, which the Philadelphia Agency requires in almost every case. This type of training has been made practicable largely through the cooperation of your members in supplying literature which they have available for distribution. From a considerable volume, we have selected certain pamphlets which we found particularly well suited for the purpose.

Very truly yours,
ARTHUR A. GRETZ
Agency Manager

T. I. Promotes Executive

President Loebbecke announced the promotion of 4 executives as another step to keep pace with the growth of the Title Insurance and Trust Company. Vice President Clarence E. Gauldin, formerly manager of home office title operations, has been named manager of all Los Angeles County title operations which includes the home office and the company's National Title and Lawyers Title Divisions.

Ivan Peters, vice president and manager of title processing, has been appointed manager of home office title operations succeeding Gauldin.

Nathan D. Wynkoop, vice president and manager of branch operations, will continue to supervise branches but in addition will have supervision of two subsidiary companies, Pioneer Title Insurance Company, California, and Union Title Insurance Company of San Diego.

James F. Healey, Jr., formerly vice president and chief title officer, is appointed vice president and chief counsel. In this assignment, Healey assumes supervision of the firm's law division and, additionally, will continue his functions as chief title officer.

Star-Studded Right of Way Seminar to Feature Titleman

A star-studded program will feature several titlemen when the Illinois Chapter of the American Right of Way Association meets at Urbana, Illinois, on September 18 and 19 to conduct an education seminar. Prominent among the participants will be WILLIAM A. THUMA, Vice President; WILLIAM L. BLAKE, Assistant Vice President; and JOHN D. LAGORIO, JR., Title Officer, all of the Chicago Title and Trust Company.

In Memoriam



Oregon Titleman Passes Away

Abstracters and titlemen throughout the country were saddened recently by the death of James S. Johns, Prominent Oregon leader and at his death President of the Oregon Title Company, Pendleton.

James Johns was a loyal and active member of his state association for many years and his work was recognized at the national regional in 1931 when he was elected President of The American Title Association.

S. W. Livingston Dies

S. W. Livingston, 86, pioneer Washington, Iowa, abstracter died on May 19 after an illness of several days. For more than 50 years he operated a title plant in Washington, having been at the office until four days before his death. He was the senior member in the firm of Livingston, Day and Meeker. Surviving are three children. Funeral was held on May 22.

Tom Moore Lost to Industry

A member of the American Title Association for many years, Thomas Moore of Rochester, Minnesota, died May 11, 1959, in an airplane crash.



meeting timetable

September 11, 12, 1959
North Dakota Title Association

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
Northernnaire 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 7, 1959
Arizona Land & Trust Company
Pioneer Hotel
Tucson, Arizona

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

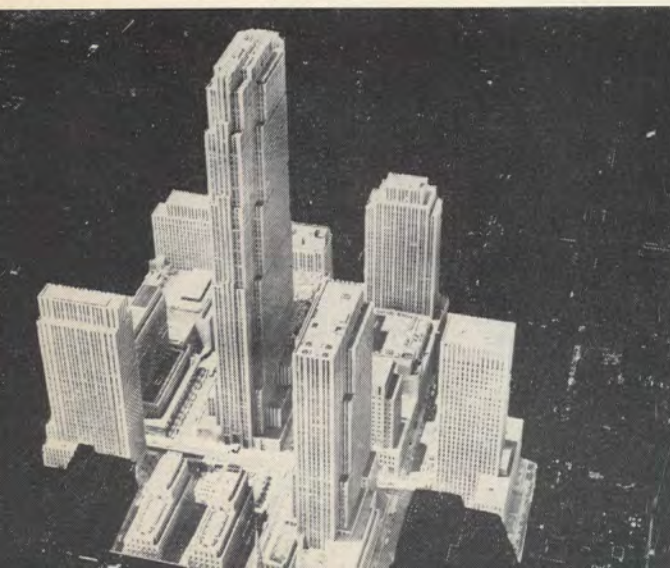
MODERN ARABIAN

AWAIT YOU

The title industry stands at the threshold of a new era. The challenge is tremendous, the problems are many, the opportunity staggers the imagination. Every effort is being made by your officers and staff to assure the success of the 1959 Convention. Every opportunity will be made available for the exchange of ideas on industry matters. Prominent business and political personalities will be on hand with thought-provoking and inspirational messages.

Add to this the glamour, the mystery, the fascination, the breathtaking magnitude of the greatest city in the world! The ultimate in the fulfillment of man's modern dreams, New York offers entertainment, culture, drama, and a wealth of history.

Send in your registration now. Your host, the New York Title Association, is leaving no stone unturned to provide for your comfort and enjoyment. The ladies are particularly welcome and special features have been arranged to make their visit to New York an outstanding event.



NIGHTS

U IN NEW YORK



A man made mountain of steel and concrete; the ever-changing face of Manhattan Island, beckons the young and old, the rich and poor, the serious student, and the gay romancer.

Above — Bartholdi's colossal figure of "Liberty Enlightening the World." Center — The world famous Rockettes, precision dancers of the Radio City Music Hall. Below — A "city-within-a-city." Rockefeller Center is composed of 15 skyscrapers. A touch of the old world is New York's famous Chinatown. In the center of Battery Park are the ruins of Castle Clinton where Jenny Lind made her American debut in 1853.



TITLE EVIDENCE

AS WE

SEE IT



In the April, 1959, issue of TITLE NEWS we were privileged to carry an outstanding paper on the subject, "Matters Not of Record in Register of Deeds Office," by Clarence M. Burton, Vice-President and Secretary of the Burton Abstract Company. This article was a part of a panel presented to the Michigan Chapter of the American Right of Way Association. So enthusiastic was the response that we take pleasure now in presenting the rest of that panel discussion.

Robert J. Jay

We of the title profession, are proud of being given this opportunity to discuss with you the use of title evidence in land acquisition for right of way purposes or when purchasing land in fee. Although the matter of real estate titles is very technical and complicated, we will attempt, this afternoon, to explain in very simple terms just what title evidence is and how it can best be used to your advantage.

The four members of the Panel represent the four title insurance companies doing business in Michigan and all of the men are thoroughly experienced in their field. We have been allotted time at the end of the program to answer any and all questions regarding the use of abstracts, title searches or title insurance. However, each member of the Panel will first give a short talk on the various aspects of title evidence. We have broken the title picture down into four categories, as follows: (1) Mr. Ralph Jossman, Assistant Title Officer of Lawyers Title Insurance Corp., Detroit, Michigan, and also Chairman of the Title Standards Committee of the State Bar of Michigan, will out-

line the recorded title as reflected in the Register of Deeds Office. He will also touch upon negative reciprocal covenants and the necessity of recording affidavits necessary to clear title. (2) Mr. Clarence M. Burton, Vice President, Burton Abstract and Title Company, Detroit, Michigan, will show how title to real estate cannot be determined by checking only the records in the Register of Deeds Office but the necessity for checking records in other County and City Offices and in Chancery and Probate Courts. He will also discuss possessory rights involved in land as reflected by actual inspection of the premises. (3) Mr. Gerald T. McShane, Secretary, Michigan Title Company,

Grand Rapids, Michigan, will explain City and County taxes and special assessments and where and when records must be checked to determine whether or not there are outstanding taxes or assessments on land. He will also discuss the matter of Federal Tax Liens as relating to real estate. (4) Mr. Edward A. Maier, Vice President, Abstract and Title Guaranty Company, Pontiac, Michigan, will explain the services offered by abstract and title insurance companies to purchasers of real estate and what is meant by an abstract, title insurance and title search and the advantage of each.

You will note that the actual rates charged for services will not be discussed for the reason that charges for title services vary from County to County and depend on the time and nature of a particular title that is being abstracted or insured. If you have any questions regarding rates in a particular locality, please contact the local abstracter or title insurance company and they will be happy to give you the rates for their services and also, if you desire, explain on what basis you are charged for such services.

Perhaps much of the discussion will be "old hat" to the veteran Right of Way men in attendance. However, we do feel that it will serve as a refresher to them and also we hope that our discussion will enlighten the newer members of the Right of Way profession as to the value of title evidence in the purchase of real estate, whether it be for right of way purposes or in fee.

During the question and answer period at the conclusion of the Panel there were a great many questions asked by various members and I will attempt here to condense and consolidate the questions and answers given by members of the Panel.

1. The value of using title searches that are 30 days old or possibly six months old or older is of negligible value. This for the reason that if such a search is relied on by the person attempting to purchase a right of way, he is not acquainted with what has happened to the title since

the time of that search. It is very possible that a mechanic's or materialman's lien may have been filed subsequent to the search or a Federal Tax Lien may have been filed or the person holding title could have gone into bankruptcy or mortgaged his own premises and the purchase of land or right of way in reliance on such an old search would be naturally subject to these encumbrances. It is the wisest course of action to have a supplemental search made right up to the time of acquisition of the land. It is even better procedure to escrow the funds that are to be paid over, which service is performed by abstracters and title insurance companies in Michigan. In this way, the instrument conveying the land or the right of way and the money to be paid therefore can be placed in the hands of the escrow agent and he can make an up to the minute check of the records before recording the instruments and before disbursing money. In this way you are assured of an unencumbered title as far as a title search reveals such state of facts.

Title Evidence Summarized

It is certainly much wiser to rely on an abstract or a title policy rather than a title search in order to determine the exact status of title to real estate.

2. It is well to remember that Federal Tax Liens do attach to unrecorded land contract interests and if the right of way buyer has knowledge of an unrecorded land contract interest, he should so advise the abstract or title company so that a search can be made to determine whether or not there are any such liens against this land contract purchaser.

It is well to note that when and if Federal Tax Liens are filed and affect the title to real estate, unless said liens are paid in full, it is a long and arduous procedure to get clearance from Uncle Sam as to the particular piece of property that you may be interested in purchasing.

3. It is sound practice for the right of way buyer to check the property for any new improvements or additions that may have been made to said premises within the last 90 days. If he finds such improvements, he should check to determine that all bills for said improvements have been paid in full because laborers and materialmen have a period of time after which the work has been done to file

liens for non-payment of same and although those things are not now of record, they might take precedence to your title if filed in accordance with the statute.

This scratches the surface of the nature and value of title evidence in land acquisition. We hope this panel has been of benefit to the members of the Right of Way Association.

THE RECORD TITLE

Ralph Jossman

Assembling a complete statement of the title to a particular parcel of land requires that searches be made in many places and under several headings. However, the starting point of any such search should be in the records of the county register of deeds or in an abstractor's tract index prepared from these records. A search of such records is essential and fundamental. Ignoring them is like leaving the gin out of the martini.

The necessity of having an accessible office where records of title transactions could be maintained and referred to by those concerned with such matters was recognized in the early days of the New England colonies. Massachusetts provided for this before 1650. After the Revolution, when the western lands were opened up for settlement, the same need was found to exist. Provisions for recording of instruments are to be found in Michigan's territorial laws as early as 1805. However, most of our basic recording law derives from the Revised Statutes of 1846.

The laws of 1846 provided that each register of deeds should keep entry books for deeds and for mortgages, and enter therein all such instruments that he recorded. The entry books were to contain reference to the parties to the instruments, a brief description of the land covered thereby, and the date of receipt. They still do so. In 1879, the further duty of keeping a reception book of levies was put upon the register. This book was also to include *lis pendens*, attachments, and certificates of sale.

Each register was also required by the laws of 1846 to maintain an alphabetical index of the parties to the instruments recorded in his office. This was to enable persons interested in running down titles to follow them by checking for a particular party as grantee and then as grantor. They could also obtain, in this way, information as to the recording of mortgages and levies.

Further provision had been made by a statute of 1841 that the supervisors of a county could require the register of deeds to set up a general index to all books in his office, so that a search of the records to ascertain title might be facilitated. Even as far back as this, the advantages of searching titles by tracts instead of by names would seem to have been recognized.

The early recording system was a rather simple arrangement, predicated on the idea that recording would be pretty much limited to deeds and mortgages. Mortgages were usually discharged by notation of the mortgage holder on the record, a method which is no longer legal.

The recording system today is far different from what it was 100 years ago. In some ways it is more simple; in others more complex. New requirements have to be complied with before instruments may be recorded, including, but not limited to, typing in the names of witnesses and notaries, giving the marital status of male grantors, furnishing the address of the grantee and attaching recordable proof of death to instruments executed by surviving spouses or cotenants.

Recording Important

Improved techniques in photography have led to photostatic and microfilm recording of instruments. This, along with the requirement for typing in names of the executing parties, witnesses and notaries, eliminates some of the palpable errors in copying which used to occur. Many an apparent break in title or conflicting deed grew out of the inability of the register to read the instruments submitted to him. The photographic method of recording permits all kinds of instruments to be put into one set of records. However, registers are still required to maintain separate indexes of deeds and mortgages. If you are recording a deed as a security instrument, it is important that it be recorded and indexed as a mortgage. Otherwise, it will not give proper notice of your rights thereunder.

While we are dealing with the recording of instruments, may I suggest that if you have obtained affidavits, deeds, or other curative instruments to eliminate title defects, the thing to do with them is to record them. You will then be protected against the risk of loss or destruction of the instruments. Then too, when title to a parcel of land is defective, the property involved in the defect is frequently greater in extent than just the parcel in which you are interested. Recording the papers may help someone else with his title problems.

There may be only one set of records, but a variety of instruments are being recorded today, some of

which were unheard of years ago. The older theory was that if there was no specific provision for the recording of an instrument, it wasn't entitled to be recorded. Accordingly, statutes have been enacted in this state specifically authorizing particular instruments, such as land contracts, certain types of affidavits, waivers of priority of recorded mortgages, etc., to be put on record. Some textbook writers profess to think that our recording system may break down from the demands put upon it, but such a view impresses me as too pessimistic. To the users of the system, it appears to be holding up pretty well.

It must be admitted, however, that a couple of catch-all devices have in recent years caused some peculiar documents to be found of record. One is the utilization of the fact that almost anything can be placed of record by attaching it as an exhibit to some recordable instrument — oftentimes, an affidavit that John Doe, the affiant, is the same person as John Doe, a party to the otherwise unrecordable document. The other is the abuse of those provisions of the Forty Year Marketable Title Act which provide for keeping interest alive by filing a timely notice of claim. I'm not referring to notices designed to perpetuate an easement grant and the like. Such papers are within the proper scope of this statute. What irks me is seeing claims filed under this statute for a real estate broker's commission, or for a share of profits of a joint venture. When such claims are filed at least 39 years before the Act would affect the asserted interest in the land (assuming that any interest in the land ever existed) one can not but have some suspicions of the bona fides of the claimant. If any provision of the Forty Year Act takes place, perhaps something can be done about this clear abuse of its provisions.

Let me close with a few caveats, which may be of some assistance to you. When you have finished running a title in the register's or the abstractor's office, it is well to consider whether you have checked certain

matters which may affect your title and yet can be easily overlooked. If you are running a name search, you are charged with notice of instruments executed by a person in possession, even though he may not have record title to the property. Again, even if you have checked the title records relating to a particular parcel, there may be matters of record which are binding on your property, yet do not appear in its chain of title at all. By this, I have in mind the so-called reciprocal negative easement doctrine, a rule of law long since recognized by our Supreme Court as a basis for the enforcement of building and use relations. Briefly, the rule is that if the owner of two or more lots or tracts of land, so situated as to bear such a relation, sells one of them with restrictions, the restrictions will apply to the land retained. Even if a particular lot seems to be unrestricted, it is a wise precaution to investigate other lots in the plat for restrictions which may have attached thereto by virtue of this doctrine. It was decided many years ago that recording of instruments con-

taining such restrictions is constructive notice to persons dealing with other lots in the subdivision.

Finally, while the recording of an instrument is of considerable importance from the standpoint of notice and of evidence, it is not in itself any indicia of the genuineness or effectiveness of the instrument. The register is not entitled to go behind the face of the instrument if it meets the recording requirements. Yet a recorded instrument may not be a genuine one; a deed or a discharge of mortgage may have been forged. Papers may have been procured through fraud, duress, or undue influence. Parties to instruments may have lacked contractual capacity for any of several different reasons. Or the parties may have failed, through inadvertence or ignorance, to give the document the intended legal effect. Fortunately such occurrences are quite infrequent, but they do take place. An apparently perfect record title may be less than perfect. Our following speakers will have some suggestions about protecting yourself against them.

TAX LIENS UPON REAL ESTATE

Gerald T. McShane

Under our State and Federal Constitutions taxes may be imposed upon the ownership of real estate, and rights-of-way acquired by state or corporate officials at the time of acquisition may be subject to State and Federal taxes. In the category of state taxes we find County, City, Village, Township and School Districts Subdivisions. At the present time the State of Michigan does not levy real property taxes and has not done so since the adoption of the State Sales Tax in the year 1933. The taxes levied by the various subdivisions of the state are principally divided into two categories.

The first category to be discussed is that dealing with the cost of operating the named subdivisions of the state.

County Taxes

The most general category is that for the operation of our 83 county governments. Under state law the tax assessing officials prepare tax rolls based upon assessed values placed upon various parcels of real estate,

and the tax for the operation of the county governments is assessed and becomes a lien upon all property in the state upon December 1st of each year. It is quite generally agreed that the tax levied upon December 1st of each year is considered as paying for the budget-estimated cost of operating each county for the next fiscal year which coincides with respect to county governments to the next cal-

endar year of January 1st through December 31st.

The duty of collecting these taxes is initially vested in the township treasurers of the respective counties as to all lands lying outside of the limits of home rule cities. This duty of collection continues in the township treasurers until March 1st, at which time they are required to account to the county treasurer for all collections made and are required to turn over the rolls to the county treasurer for the collection of any taxes remaining unpaid.

For property located in certain home rule cities, the duty of collection may be vested in the city treasurer until March 1st, at which time the city treasurer is required to account to the county treasurer for all collections made and is required to turn over to the county treasurer for further collection any taxes remaining unpaid. It can, therefore, be stated that with respect to all prior years other than the current year the county treasurer is the office to which a right-of-way buyer should look for the purpose of ascertaining the existence of delinquent taxes after March 1st in any year. Prior to March 1st in any year, the right-of-way buyers' inquiry should be directed to the township treasurer with respect to any delinquent taxes for the then current year if the land is located outside of a home rule city. If the land is located within the limits of a home rule city, inquiry should also be made of the city treasurer of that city to determine whether or not there are any current county taxes being collected by the city treasurer and which remain unpaid.

The next category of state taxes to be discussed is that pertaining to the taxes levied and assessed for the operation of our townships and villages and certain classes of cities. These taxes are generally assessed and levied simultaneously with the assessment and levying of our county taxes. The collection thereof is done under the supervision of the county treasurer, and the rolls are made up as a part of the county tax rolls so

that the existence of such township and municipal taxes is determined by making a search of the county treasurer's records with respect to all delinquent years and of either the county treasurer's records after March 1st or the township treasurer's records prior to March 1st with respect to the current year's tax.

When dealing with land located within a home rule city a different rule applies. In those cases it will frequently be found that the home rule city collects its own taxes and that the tax year is entirely different from the tax year which applies to the county and the townships. Where the home rule city collects its own taxes, it is frequently found that its fiscal year may be established as the year of July 1st to July 1st and that the tax is assessed and placed in the hands of the city treasurer for collection on July 1st of each year to cover the cost of operating the home rule city during the next fiscal year. In such cases the records of the city treasurers must be checked for the existence of delinquent taxes. With respect to home rule cities that collect their own taxes, there is no duty upon their part to account to the county treasurer for the collection of city taxes, and it will be found that city taxes of prior years continue in the hands of the city treasurer for collection so that in those cases it is necessary to check for the existence of taxes of prior years in the city treasurer's records as well as checking for the existence of the current year's taxes.

School Taxes

The next category to be considered is the collection of school district taxes to cover the cost of operating our various school districts as well as to cover the cost of capital improvements to our schools, or, in other words, the cost of payment of principal and interest on school bonds. In the case of rural districts, these taxes are usually assessed simultaneously with and collected as a part of the county tax. This would mean that the tax day for these taxes

is December 1st of each year and that they become delinquent on March 1st in similar fashion with the county taxes and the township taxes. Certain city school districts collect their taxes through the offices of the township and county treasurers in the same way that the rural districts make collections. In other words, while the school district has the power to levy taxes, the collection of such taxes is ordinarily turned over to the township and county treasurers and the same assessed value is used as is used in the collection of township and county taxes.

City Treasurers Collect Some School Taxes

Other school districts located in certain home rule cities entrust the collection of their taxes to the city treasurers, and the taxes are assessed and collected simultaneously with the taxes collected by such home rule cities. The existence of school taxes may, therefore, be determined in some cases by examination of the records of the county and township treasurers with respect to rural districts or by examination of the records of the city treasurer with respect to districts located wholly within certain home rule cities.

There is one other important classification of taxes collected by various subdivisions of the state which must be given special consideration. This classification is covered by the term "special assessments." Special assessments may be considered as taxes levied for the payment of improvements which are made to real property where the effect of the improvements is to increase the value of a particular area of the municipality or of the township and where a special benefit will accrue to the land owner in that area. Prior to the making of such a special improvement, such as the construction of sewers, watermains, sidewalks, street paving, etc., the area to be benefitted by the improvement in question is first determined and is denominated a special assessment district. All land within that area is subjected

to a tax for the payment of the improvement in question. In most cases these taxes are payable over a period of five years or ten years in annual installments which bear interest for the purpose of paying off bonds which are issued by the municipality to obtain the funds with which to make the improvement.

Such special assessment taxes are collected by the city treasurer if the property is located in a municipality or by the township treasurer if the property is located in a township. They are assessed and collected as an addition to the taxes payable on the tax date of each year. If an installment becomes delinquent with respect to land in a township, such delinquent installment is turned over to the county treasurer for collection. If an installment is delinquent with respect to land located in a home rule city that collects its own taxes, it remains with the city treasurer for collection along with any delinquent city taxes, and the records of either the township treasurer or the city treasurer, as the case may be, must be checked for the existence of any such delinquent installments.

All of the installments of a special assessment are actually due at the time that they are placed in the hands of either the township treasurer or the city treasurer for collection. They are not considered as past-due and subject to sale until the general taxes of either the township or the city become pastdue, and only the so-called delinquent installments are subject to sale. It will, therefore, be found that when checking for the existence of special assessments it is always necessary to check the records of either the city treasurer or the township treasurer where the land is located to determine the existence of any unpaid installments which have not become delinquent and subject to sale. In other words, while the county treasurer's records may show the existence of one or two unpaid and delinquent installments, his records would not show the existence of the remaining of the five or more installments which have not become delinquent and subject to sale

but which are, nevertheless, duly created liens upon the land involved.

Most abstract companies maintain what is known as tax history departments and will furnish a tax history or tax statement in conjunction with furnishing an abstract of title. It is usually advisable for right-of-way buyers to make use of this service where it is available, but with respect to counties which have no abstract companies operating in them, it would always be advisable to obtain a written statement from the county treasurer and either the township or city treasurer with respect to every parcel of land over which you wish to acquire a right-of-way, since any right-of-way acquired would be subject to being defeated by a tax buyer who purchased a tax lien in existence at the time of acquisition of the right-of-way in the event that such tax lien is not paid prior to the time that the period of redemption from the tax sale has expired.

Federal Tax Liens

There is another type of tax lien which is becoming increasingly important to right-of-way buyers but which is not as yet as common as the state tax liens. This is the federal tax lien, which may be imposed for nonpayment of federal income and social security taxes or federal estate taxes. Such tax liens are leveled against persons owning the property rather than against the property itself. The existence of such liens is more difficult to discover for the reason that they are not found in the offices of our county, municipal or township treasurers. Their existence can be determined only by a search of the offices of the United States District Court Clerks in the various federal districts of Michigan by making what we call a "name search" in the offices of the Register of Deeds. Before such a name search can be made, it is necessary to have an abstract of title of the property involved certified to date, and the name of each owner of the property who held title within the previous 10 years must then be run in the federal tax

lien indices either in the Register of Deeds' office or in the office of the District Court Clerk to determine whether or not such a lien exists against such an owner. With respect to any of such owners who have died, additional searches should be made in the Probate Court and additional inquiries should be made with respect to the size of his estate in order to determine whether or not there is the probability of the existence of a federal estate tax lien.

Such liens are very difficult to determine with any degree of certainty for the reason that the federal estate tax is considered to be imposed upon a decedent's property as of the moment of his death without regard to any time limit that his representatives may have within which to pay such a tax. You may, therefore, encounter the case where a man has recently died and not even his own family knows whether or not a lien will eventually be asserted since there has not been time to determine how much property, real or personal, that the man had at the time he died. If such property totals more than the \$60,000 exemption accorded to each decedent and more than any deductions to which he might be entitled, you will know that a lien can eventually be claimed against the property in which you are interested, and before making payment to his estate, a specific release of the property in question will have to be obtained from the District Director of Internal Revenue at Detroit.

Priority of Federal Tax Liens

Where your search develops the existence of federal income tax or social security taxes, you will, of course, want to be sure that such taxes are paid before any consideration is paid to the owner for transfer of his land. This is for the reason that under the law a federal tax lien is accorded a high priority over state and municipal taxes and other types of liens, and your right-of-way would be defeated by Uncle Sam if you neglected to take care of any lien that was established by him as being in

existence at the time you acquired your right-of-way.

Certain abstract companies will certify as to the existence or non-existence of federal tax liens. Other abstract and title companies consider that the vagaries of a name search are such that they refuse to make any guarantee with respect to the

existence or non-existence of federal tax liens and leave the treatment of this subject to the field of the title insurer. In any case, the right-of-way buyer should be on his guard and obtain the best evidence with respect to federal liens that may be available in the community in which he is operating.

ABSTRACT AND TITLE INSURANCE

Edward Maier

You were given an expert opinion on the recorded and the unrecorded evidence of title, ad valorem taxes and Federal Tax liens.

It is my hope to acquaint you with the product and the services offered by an abstract or title company.

Every member of the American Right of Way Association has a common interest in the ownership of land in one way or another.

Either as: A Right of Way buyer and appraiser,

The Lawyer

The Realtor

The business of acquiring land for highway purposes or easements for pipelines, utilities, etc.

The Banker

The Real Estate Broker

The Land Promoter

Property Management

The Home Owner and Abstract & Title Companies.

There is a close relationship between all of these interests and there is a mutual need for all in every growing community.

Inasmuch as we believe you should avail your business interests with the services we offer, we believe also, that you should know something about an abstract and title company and what makes it tick.

Many times a real estate deal is pending for weeks waiting for some contingency to occur and when it does the abstract or title company is given a matter of hours, comparatively, to produce some evidence of title to satisfy the conditions of the transaction for closing.

The abstract or title company must then virtually pick the title off the shelf, type it and deliver it.

I want to tell you briefly how an abstract or title company is able to produce evidence of title on short notice but before doing so let us briefly inquire into how and why the need for title evidence began.

Let us for a moment go back to the time when man first lived by hunting and fishing.

His needs were simple and his wants few.

He had no use for land.

He lived in a cave or hut and moved about as the climate best suited him.

Later he domesticated animals and then began the search for pasture and water.

Man then became the head of a large family and he began to settle down to more permanent abodes.

Out of this, settlements grew—the land was cleared and the farmer was born.

What one worked to produce, he wished to keep.

The harder he worked—the more he acquired.

Then—man wanted his possessions respected and assured to him.

Thus did property rights in land begin.

With the growth of our commonwealth the need for proper evidence of title began.

Everyone knew Farmer John. He had lived on his farm for many years. No one disputed his ownership.

But as people moved about it became necessary to trace the true ownership of land and the abstract of title was born.

Then we ask—What is an abstract of title?

Abstracting Standards

“An abstract of title is a concise statement in orderly form of the substance of documents appearing on the public records, which affect the title to real property.”

The State and National Title Associations have for your benefit and for the benefit of the legal profession adopted certain abstracting standards.

I mean by that—standard practices of what are necessary and vital parts of a deed, mortgage, estate, etc.

The present day abstract of title must contain deeds, mortgages, liens, probate matters, chancery causes, Federal tax liens, unemployment compensation liens, bankruptcies, divorce proceedings, restrictions upon the use of the land and easements. Some of which evidence is recorded and some unrecorded.

Each entry must be curt, clear and concise and yet full enough for the proper examination by the lawyer.

A tax history will normally accompany the certification of the abstract of title unless a request not to include taxes is made.

Special assessments may also be furnished upon request.

The preparation of an abstract of title must of necessity contain the many items above discussed.

It requires a complete set of records and the daily application to the task of maintaining complete records at all times.

Every abstract or title plant should have in its office a complete history of every parcel of land within the county where the plant is situated beginning with the land patent from the U.S. in 1838.

While this was originally taken off in long hand and later by the typewriter it is now perhaps all con-

tained on microfilm to conserve filing space.

Putting all these old records on microfilm for easy and ready reference is no small task and it is expensive.

The task of maintaining our records daily, is constant.

A copy of every instrument recorded in the office of the Register of Deeds must find its way to the abstract or title company as soon as possible after its acceptance for record.

In Oakland and Wayne Counties a copy of every instrument is in the hands of the abstract or title company the next morning following the day of recording. This time will vary in other counties.

Each instrument must be located, indexed and processed, so that the chain of title affected by the recorded instrument is complete and up to date at all times.

In addition, we must constantly maintain our name index for estates, death records, persons under disability for whom a Guardian may be appointed, miscellaneous affidavits, powers of attorney, receiverships, etc.

Last week in Oakland County we had a day when some 500 instruments were recorded.

Back in 1955 a 600 instrument per day was common but we haven't since reached those peak days.

These instruments include deeds, mortgages, mechanics' liens, Federal tax liens, discharge of mortgages, etc., so that out of these 500 instruments only a small fraction represents some abstract or title work.

The cost to process the other instruments is nonetheless always present. Anything that requires labor is a cost.

Streamlined Operations

The abstract or title company has the same problems as any other business, that of streamlining their operations to meet the ever mounting costs.

The abstract of title, therefore, is a history of the chain of title to a parcel of land as revealed by the records

The abstract of title when certified to date must be presented to your lawyer, who after reading and examining the same, renders his opinion as to the marketability of the title disclosed by the abstract.

This last is important because the abstract is no guarantee of title nor is it a conclusion that every instrument shown therein is valid.

The other evidence of title now in very popular use and demand is the policy of title insurance.

In the Metropolitan areas there is a definite trend to change from abstracts of title to title insurance.

This change is not due to any sales campaign but more by the demands of banks and lending institutions.

The first title insurance company was organized in 1876 and today there are some 2500 title insurance companies in the United States.

Let us define title insurance.

What is it?

What form of protection does it give?

Title insurance is a contract to indemnify against loss suffered because of defects in title, unmarketability liens and encumbrances.

It is not mere guess work, nor is it a wager but it represents the opinion of a company which issues it as to the validity of the title backed by an agreement to make that opinion good in case it should prove to be mistaken and loss result in consequence.

There are two types of title policies.

The Owners or Fee Policy and the Mortgage Policy.

The owner or fee policy is used as evidence of title for the benefit of a purchaser of land and buildings.

The mortgage policy is issued for the benefit of loaning institutions, such as banks, mortgage loan companies, insurance companies, etc.

The mortgage policy insures the particular mortgage indebtedness as being a valid first lien upon the premises.

There are two types of mortgage policies issued to cover the particular needs of the loaning institution.

That is the title and encumbrance search.

One form of mortgage policy insures against violation of building and use restrictions, encroachments, mechanic liens not of record, questions of survey and special assessments.

The other type of mortgage policy is issued subject to the items above enumerated.

Another pertinent question regarding title policies is: "What is meant by insuring marketability?"

By marketability is meant a title which the reasonable prudent purchaser is bound to accept.

This point is worth remembering as it sometimes happens that a purchaser who has signed a preliminary agreement to buy a piece of property will change his mind about the desirability of his purchase and seek a flaw in the title as reason for refusing to go through with the deal.

In cases such as this the title company stands back of the policy and if suit is brought for performance of the agreement and the court finds the title unmarketable, the title company will indemnify the insured.

A policy of title insurance is protection against loss by encumbrances which may not appear of record — defective titles — adverse claims to title—forgery—undiscovered errors—errors in public records—deeds executed by those under legal disability—deeds executed and recorded but not validly delivered and many others.

Additional Services

It guarantees the ownership of property regardless of forgeries, unrecorded wills, delinquent taxes and undisclosed heirs.

So much for abstracts of title and title insurance.

The abstract or title company also offers its services as an Escrow Agent and is able to furnish ordinary as well as special tax searches upon request.

There is also another service furnished by an abstract or title company, a service which the highway department and the utility companies frequently use.

This type of search shows the last recorded deed and any undischarged mortgages.

The abstract or title company has its own individual form of title and encumbrance search.

The State Highway Department and some of the utility companies have their own form but there is one common feature of all—under this form of search, the company preparing it—is not an insurer of the title shown—nor does it guarantee the title or any evidence of title thereto.

This type of search furnishes a useful need when the Right of Way buyer or appraiser wishes to get his foot in the door, so to speak.

It gives him a speaking acquaintance with facts concerning the land.

He may not find the titleholder shown in the search in possession but it does afford him some talking points where, upon inquiry, he discovers the rights of the parties in possession.

This type of search should be used for just the purposes stated.

Ultimate purchase of the land in question or condemnation thereof should require an abstract of title certified to date and attorney's examination or a policy of title insurance guaranteeing the title of the Purchaser.

There is another type of search furnished the State Highway Department which is called, "Purchase by Easement or Condemnation."

This type of search is a little more exhaustive on the part of the abstract or title company but again it is no guarantee nor opinion of the title.

People in the abstract and title business are dedicated to their tasks.

Their knowledge and long experience equips them to best serve your title needs.

If you have a title problem consult your abstract or title man he will be happy to listen and lend his advice and assistance.

I am going to close my remarks by suggesting that each one of you interested in land acquisition read, "The Stubborn Stumbos and the Troublesome Turnpike."

Under the contents of the March

Issue of True Magazine it is listed as, "Humor."

It was humorous to the Stumbos and their friends but to the Oregon State Highway Department it was a real headache that taxed their legal department to its utmost.

Briefly it affected a strip of land one rod wide over which the Oregon State Highway Department built the magnificent "Pacific Highway," also known as Highway 99.

The highway was built in 1946 over the lands of the Stumbos without their leave or consent.

In the summer of 1956 the Stumbos decided to prevent the use of this one rod strip of land as a public highway and took steps to accomplish their purpose.

The matter was finally settled in January of 1958.

It is well worth your reading. It contains humor and the matching of wits of legal counsel for the State and the Stumbos but it also points out the trouble that arises when no search of title is made.

As the articles read, "Someone goofed." No title search of this parcel was ever made by the highway department.

HAVE FUN, BUT BE CAREFUL; WE LOVE YOU

With the long Labor Day weekend coming up (September 7, to be exact), many of us will be pushing our luck in attempting to cram as much travel, fun and enjoyment as possible into the three days.

Everyone should keep in mind, however, that during last year's Labor Day weekend, over three hundred people lost their lives in traffic accidents.

In 71% of these accidents, speed was a major factor.

Drinking was involved as well in nearly half of the accidents.

Remember, speed kills . . . so start early and don't hurry. Slow down at sundown. Don't let your children grow up without a mother or father because of your carelessness.

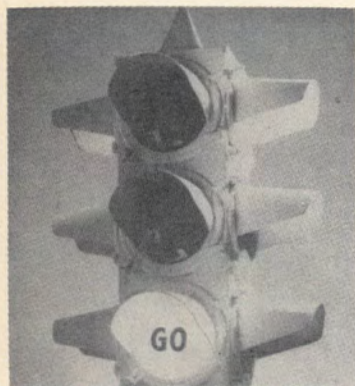
Let's all be back at work Tuesday morning, September 8.



AND READ THIS PAGE . . .

IT IS IMPORTANT TO YOU

The A.T.A. Group Life Insurance Trust is proud to announce a reduction in premium of better than 20 per-cent. The new rate effective as of August 1 is *99c per thousand* instead of \$1.25. A 10 per cent dividend was also paid to participating members. The first year of insurance experience has been favorable. The ATA Group Insurance is now a successful operation and more attractive than ever for members and their employees.



AHEAD

Write now for more information about the better plan of insurance for yourself and your employees. Write today to:

Mr. Clifford F. Gould, C.L.U.
Insurance Consultant to A.T.A.
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Coral Gables, Florida