TITLE NEWS

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A LETTER

from

THE PRESIDENT

April 1, 1960

Dear Friends:

After July 1, 1960, the American Title Association Headquarters will be in a newly constructed building in the heart of Washington, D.C.

This location was definitely selected early in March, and was chosen in preference to at least ten other possibilities which were carefully considered. The Relocation Committee, "Dutch" Stine, Joe Knapp and George Rawlings is to be congratulated and thanked for finding such an eminently suitable place for us: Public parking next door, hotels within walking distance, and all this in a modern, completely air-conditioned building.

The main purpose of the move, as you remember, was to bring our Headquarters into the geographic circuit of more of our members, and our friends and customers, so drop in on your new office as soon after July 1st as you can. Your visit will make all the extra hard work that the Headquarters Staff will have done to accomplish the move, seem very much worthwhile.

Sincerely,

Lloyd Hughes

TITLE NEWS

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Features

Departments

WHAT BANKERS SHOULD KNOW ABOUT TITLE INSURANCE

BY
WILLIAM A. McADAMS, President
Kansas City Title Association
Kansas City, Missouri

At the request of the editors of "Bankers News", Mr. McAdams contributed the article "What Bankers Should Know About Title Insurance". It was later reprinted in the Missouri Titlegram and is carried here with permission of the editor.

Long familiar to Mortgage bankers, title insurance during the past few years has gained marked recognition as a valuable instrument with which to expedite real estate transactions.

Every banker knows that a borrower's character is as important as his financial ability in judging credit. Title insurance fills an important role in certifying the "character" of property. It guarantees against hidden weaknesses and protects against hereditary defects in the title that may be the result of character flaws of previous owners.

Consequently, the mortgage banker is in a splendid position to explain title insurance to his clientele because of his knowledge of the importance of character in either individuals or real estate.

The average American homebuyer, in completing the purchase of a home, usually recognizes the necessity and the value of having the public records searched to determine whether the seller does, in fact, have a good real estate title to tranfer. What he does **not** understand is the reason for title insurance. His banker is in a good position to explain the problems involved.

"If the records have been searched," he may ask, "and the findings analyzed, why do I need title insurance?" In itself, this is a good question and one which has an enlightening and interesting answer.

To begin with, the purchase of real estate is not like the purchase of clothing, jewelry, automobiles or other such items which are classified as personal property. There is no need, ordinarily, to know the marital status of the seller of **personal property,** whether he owes money or whether there are judgments against him.

But when one buys land—which is known as **real property**—these things and many more are of vital importance for two main reasons.

First, it is possible for many persons and organizations to have many different interests in the same tract of land at the same moment. Secondly, it is **not** possible—or necessary—that this host of persons give notice of their claim by being in

physical possession of land at the same time.

Consequently, a method has had to be devised which, in effect, notifies a purchaser of these claims to the property. It is a device of the law known as the recording system. And intricately involved with this system are such things as recording fees, abstracts, attorney's examinations, and title searches.

Who are the people who may have interests in the land Mr. Homebuyer plans to purchase from Mr. Seller? They are numerous and unlimited. To cite a few such claimants to an interest in Mr. Seller's property:

THE MUNCIPALITY—The city in which a tract of land is located claims real estate taxes for the past three years totaling $450.00. If these taxes are not paid, the city will cause a forced sale of the land to procure money to pay them.

THE MORTGAGEE—When Mr. Seller purchased the land, he borrowed $12,500.00 to pay the balance of the purchase price. If this sum is not repaid, the mortgage will be foreclosed and the land sold to procure funds to pay the debt.

A DIVORCED WIFE—When Mr. Seller bought the land, he had a wife. Upon being divorced, she was awarded $2,000 alimony. If this sum is not paid, she can cause the property to be sold to pay the debt.

THE LIGHT COMPANY—The local power company has the right to erect and maintain poles on a portion of the land.

THE NEIGHBORS—The neighbors are entitled to prevent the land from being used for any purpose contrary to certain neighborhood restrictions against use as an office or place of business.

The recording system says to these claimants—and Mr. Seller: "If you have a valid interest in, or ownership of, this land, put notice of your interest in the appropriate public office and that will eliminate your having to stay on the property to notify Mr. Homebuyer of your claim."

Then, in turn, the recording system says to Mr. Homebuyer: "If, before you buy this land, you will ascertain the rights of persons in possession and will make a search in the appropriate public offices and find that there appears no mention of anyone having a claim of interest adverse to Mr. Seller's ownership, then you may buy from Mr. Seller and you will not be affected by persons having an interest which does not appear in these offices—provided you have no actual knowledge of such rights."

As a matter of course, then, Mr. Homebuyer makes the search—but not personally—because, as a rule, there are several public offices to be visited, voluminous records to be searched and information to be analyzed. It is at this point that a corps of real estate title experts comes to Mr. Homebuyer's assistance.

In some sections of the country, the search will be made by attorneys who analyze the information. In other sections, it is made by abstracters, men who transcribe the information gained, in a condensed form if possible, so that it can be analyzed by the attorney.

Finally, the attorney advises Mr. Homebuyer of the effect of the information or advises a title insurance company whether or not it is safe to insure Mr. Homebuyer that no other person has an interest in, or claim to, the land.

Then Mr. Homebuyer asks his perennial question, to wit: "If the records have been searched and analyzed, why do I need title insurance?"

Despite all of the precautions taken up to this point and despite the fact that the information presented may indicate that there are no outstanding claims of interests, Mr. Homebuyer may still suffer loss from four primary sources.

FIRST TYPE OF RISK

The first of these risks is grouped under the heading—**matters not of record.** Even though the recording system is the best method by far for protecting persons against claims or interests not revealed in a record search, on the other hand, it is not used to deprive innocent persons of ownership.

An example of the foregoing ideals

with a man whom we shall call John Smith. Quite a number of years ago, Mr. Smith arrived in Kansas City and, through hard work and diligence, began to amass a small fortune. As he prospered, his real estate holding grew and, upon his death, he left a sizeable estate. Then seemingly from out of nowhere there appeared a lady from Ohio claiming an interest in the estate.

The basis for her claim was that she was the widow of Mr. Smith. She further related that she had filed suit for divorce and service was procured on Mr. Smith. He then left the state and the divorce was never granted. Mr. Smith apparently thought it had been granted, since he remarried after arriving in Missouri. If the first wife's claim was valid, she would have had an interest in all of the properties owned by Mr. Smith, including those which he had sold and from which he had received the full purchase price . . . **even though the purchasers could not have known of her existence by searching the records in Kansas City.**

A SECOND RISK

The second type of risk covered by title insurance deals with **matters that—although of record—are overlooked.** Even though responsible title insurance companies make every effort to obtain all of the record information, it is exceedingly difficult to accumulate and is fraught with the possibility of human error.

An excellent example of this type of risk concerns the title to a tract of land that we caused to be examined in 1927. The title was reported back as being satisfactory. In 1952, the property was sold to a purchaser who planned to raze the building on it for the purpose of erecting a new structure. When the construction crew started to tear down the building, it was discovered that one wall of the old building was joined to the wall of a neighboring building. Obviously, it was impossible to remove the wall without weakening the other wall.

Once again the public records were searched and it was found that a valid party wall agreement was in existence that had been overlooked.

Further, its discovery meant that the agreement had to be observed. The new owner was reimbursed the sizeable sum necessary to enable him to proceed with his new construction with different dimensions involved. The main point to be remembered in this case is that the period of time over which recovery can be made on matters of overlooked record—if the record is simply certified—is short. On the other hand, if title insurance is involved, the right to recover runs from the time that the actual loss is sustained.

NEGLIGENCE A RISK

Since an analysis of the information appearing in public records is not an exact science but is based upon the application of general legal principles, a third type of risk covered by a title insurance policy concerns the possibility of **erroneous opinion or negligence.**

A case in point occurred in a city in a southern state. The city had acquired some land by condemnation for street purposes. It later developed that all of the land was not actually needed. A Title Co., acting upon the advice of its attorneys, determined that the city had the right to sell the surplus land to the highest bidder, and insured the purchaser. Some time later, the supreme court of the state in question, acting on a similar case, declared that such surplus lands must be returned to the original owners.

Since the purchaser of the surplus land in question had title insurance, he was reimbursed for his loss because title insurance policies do not contain exceptions of liability arising from erroneous examinations. Until the supreme court decision was made, the attorneys had been justified in advising that the surplus land could be sold. They, as a result, could not be held liable for reason of erroneous interpretation.

The moral of this case, of course, is that if an attorney makes an examination negligently, he is liable for the damage done by his errors. If, however, the attorney makes the examination in accordance with well established legal principles and the

court interprets the applicable law otherwise, the attorney does not become responsible.

FOURTH RISK CITED

A fourth and final major risk covered by a title insurance policy is one dealing with **the cost of defending against title claims in courts of law** . . . whether or not the claim is valid. Even though an owner of property is, in fact, the rightful owner, this does not prevent the possibility that a claim will have to be defended.

Should the defense of the case be successful, court costs and attorney's fees will still have to be paid. It is the responsibility of the title insurance company to pay such costs. If the defense is unsuccessful and the claimant is found to have interest in the property, again the title insurance company must pay, in addition to the value of the interest lost, the court costs and attorney's fees incurred.

This type of risk is best typified by a case which involved a tract of land near Kansas City's famous Union Station. Prior to its purchase, the owners-to-be applied for title insurance. A search of the records plus opinions from three prominent Kansas City attorneys pointed to the title's validity. Sometime after the purchase was consummated a claim was made against the title. Despite the fact that title experts concurred in the soundness of the title, the case went to court and had to be defended. Before it was finished, a Title Insurance Company paid more than $18,000 simply to prove what had been fairly well established in the first place—the title was good. By reason of the title insurance outstanding, the owner of the property was completely freed of any expense involved in defending the claim.

SUMMARY

In summation, then, one can say that when a claim arises due to any defect in the real estate title as insured, the title insurance company immediately takes necessary protective action in two ways:

1. If it is necessary to enter a legal defense under the policy in any suit or proceeding adversely affecting the title as insured, the title insurance company takes such action . . . completely at its own expense.

2. If a loss is sustained, the policyholder is protected up to the full amount of the policy which, usually, is equal to the full purchase price paid for the property.

Thus, unlike other forms of title protection, a title insurance policy relieves the policyholder of costs and expense in defending against the adverse claim—whether the claim insured against proves valid or not—and repays the policyholder for loss without expense for collection. It is not necessary to establish loss first and then sue for reimbursement. Once the claim is turned over to the title insurance company, protection is guaranteed.

Thus, from the preceding discussion, it is apparent that title insurance serves both the banker and the home buyer. But it has special advantages to the banker.

For instance, title insurance speeds up the transfer of mortgages and lessens the work required to complete profitable mortgage transactions. With a title insurance policy involved, the banker is relieved of the necessity of making complex property searches.

And it facilitates marketability. Title insurance assures the banker a favorable market atmosphere for profitable sale and speedy transfer of the mortgage, if that is his desire, because it is easy to show vital proof of a clear, risk-free title.

ON THE COVER

The age old custom of "dressing up" for Easter Sunday is but the external aspect of something that lies very deep in the human heart.

Instinctively, we recognize that Easter Sunday is indeed a very special time of the year. Most of all, we are filled with wonder and joy at the bright promise of spiritual rebirth that the Day reaffirms. Nature, itself, in its annual reawakening beautifully symbolizes the miracle of this holy day.

And as we join the Easter parade, we are deeply conscious of all that is good and precious in our daily lives.

MEETING TIMETABLE

APRIL 22, 23, 24, 1960
Arkansas Land Title Association
Mountain Inn, Fayetteville, Arkansas

APRIL 29, 30, 1960
Central States Regional
Drake Hotel, Chicago, Illinois

MAY 1, 2, 3, 1960
Iowa Title Association
Hotel Fort Des Moines
Des Moines, Iowa

MAY 4-, 5, 6, 1960
Atlantic Coast Regional
Seaview Country Club
Absecon, New Jersey
(Just outside Atlantic City)

MAY 6-7, 1960
Abstracters Short Course
Florida Land Title Assn.
Univ. of Fla., Gainesville, Fla.

MAY 11, 12, 13, 1960
Illinois Title Association
St. Nicholas Hotel, Springfield, Illinois

MAY 12, 13, 14, 1960
Pennsylvania Title Association
Galen Hall, Wernersville, Pa.

MAY 13-14, 1960
New Mexico Title Association
The Sundowner
Albuquerque, New Mexico

MAY 19, 20, 21, 1960
California Land Title Association
Hotel del Coronado
Coronado, California

MAY 20-21, 1960
Tennessee Title Association
River Terrace Motel
Gatlinburg, Tennessee

MAY 24, 25, 26, 1960
American Right-of-Way Assn.
6th Annual Nat'l Seminar
Shoreham Hotel, Washington, D.C.

JUNE 3, 4, 1960
South Dakota Title Association
Sawnee Hotel
Brookings, South Dakota

JUNE 6-7, 1960
Southwest Regional
Sheraton-Dallas Hotel
Dallas, Texas

JUNE 8, 9, 10, 11, 1960
Oregon Land Title Association
Gearhart Hotel, Gearhart, Oregon

JUNE 9-10-11, 1960
Wyoming Title Association
Worland, Wyoming

JUNE 16, 17, 18, 1960
Colorado Title Association
Harvest House Hotel
Boulder, Colorado

JUNE 19-20-22, 1960
Idaho Land Title Association
Shore Lodge
McCall, Idaho

JUNE 30 - JULY 1-2, 1960
Michigan Title Association
Boyne Mountain Lodge
Boyne Falls, Michigan

JULY 9-12, 1960
New York State Title Assn.
Saranac Inn, New York

JULY 29-30, 1960
Montana Title Association
Rainbow Western Hotel
Great Falls, Montana

AUGUST 12, 13, 1960
Minnesota Title Association
Hotel Duluth
Duluth, Minnesota

SEPTEMBER 8, 9, 1960
North Dakota Title Association
Bismarck, North Dakota

SEPTEMBER 15, 16, 17, 1960
Kansas Title Association
Warren Hotel
Garden City, Kansas

SEPTEMBER 22-23-24-25, 1960
Washington Land Title Association
Olympic Hotel
Seattle, Washington

SEPTEMBER 23-24, 1960
Utah Land Title Association
Cottonwood Country Club
Salt Lake City, Utah

SEPTEMBER 25, 26, 27, 1960
Missouri Title Association
Statler Hotel, St. Louis, Missouri

SEPTEMBER 25-26-27, 1960
Nebraska Title Association
Clarke Hotel
Hastings, Nebraska

OCTOBER 3-6, 1960
Mortgage Bankers Assn. of America
Conrad Hilton Hotel
Chicago, Illinois

OCTOBER 9-13, 1960
American Title Association Annual
Convention
Statler Hilton Hotel
Dallas, Texas

OCTOBER 20-21-22, 1960
Wisconsin Title Associatioin
Liggetts Holiday Inn
Burlington, Wisconsin

The Appraiser's Responsibility In the Sixties

BY
SHELDON DRENNAN, Realtor, M.A.I., S.R.A.

As we stand on the threshold of the decade of the Sixties it seems an appropriate time to pause for reflection. This is not easy to do with the current pressures and demands upon our time and talents and some of you probably would prefer to have me give you a talk on some technical subject with something that could be used in the solution of tomorrow's appraisal problem. As the result of these day to day pressures I think most of us find ourselves so close to the trees that we cannot see the forest. There are certain basic trends evident which are worth your while to pause and consider.

What does the professional appraiser see in the Sixties? Two of the most important factors are the increasing velocity in the change of real estate values, and the necessity of dealing with big government on an ever increasing scale.

Real Estate values are subject to radical changes due to:

1—Population Explosion

2—Continued "Migration of Job Opportunities" and therefore of People

3—Extension of Highway Systems with emphasis on Expressways

4—Growth of Automation triggered by higher labor costs

5—Inflation

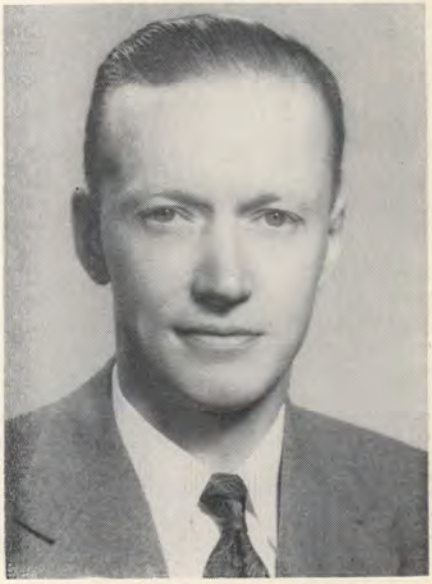
Appraisals for government agencies will concern themselves mainly with urban redevelopment and highway systems. Most of this work is subject to Eminent Domain action and this is the field in which we seem to encounter the most difficulty in professional appraising.

You men represent various groups all having a common denominator of a need for and interest in real estate appraisal services. I believe you have a right to know what we ourselves consider to be our responsibilities to you as the client, to our profession and the public and to ourselves.

In spite of professional standards we are dealing with human beings and just as medicine has its quacks, and the law its ambulance chasers, so the appraisers have their practitioners of intellectual dishonesty. I assure you that we are doing everything possible to minimize this type of activity through the efforts of the professional societies in our field, namely, the American Institute of Real Estate Appraisers and the Society of Residential Appraisers.

Appraiser's Responsibility to His Client:

Those of you who hire us have a right to expect a high degree of competence and responsibility on our part which should be plainly evident in the



SHELDON DRENNAN

appraisal reports which we submit to you.

One of the most important factors which we must consider is highest and best use of the property under appraisal. When you consider the basic forces and trends which will affect the value of real estate in the Sixties you realize that the time has long since passed when you can assume that the highest and best use of a given piece of real estate automatically will be the same for the next ten years as it has been for the past ten years. This one point alone is often the very heart of the wide divergence of opinion of value which has been evidenced by some appraisers and which has led to questions regarding confidence in and the integrity of many professional real estate appraisers. As a client you have the right to know that careful consideration has been given to all factors influencing the use of a given parcel of real estate, from the basic trends affecting our economy and the general location in which the property is located, down to the specific considerations of the parcel itself in relation to its land and the improvements thereon. The appraiser's reasoning should be fully documented with explanations of the apparent trends so that there is no reasonable doubt as to the validity of his assumption as to this highest and best use.

You have a right to a full explanation from the appraiser as to market conditions which will give you a better understanding of specific comparisions between subject property and comparable sales.

The time has long since passed when the appraiser can simply list basic information concerning several comparable sales without drawing specific reference between these sales and the subject property. This is another common complaint directed to appraisers by you our clients; however, I wish to emphasize that it is not always possible to make such specific comparisons between subject property, and, for example, the three most comparable sales. This is the classic textbook approach and may be applicable in the appraisal of residential property in project developments where all buildings are practically alike. In the appraisal of more unusual property exact comparisons are often difficult to obtain and you must rely upon the judgment of your appraiser if you had enough confidence to hire him in the first place.

I recall the case where a fellow appraiser asked if I had any comparable sales of lighthouses. I thought he was joking; however, he had a request from a government agency for an appraisal of an abandoned lighthouse and the agency was insisting on comparable sales!

Many intangibles are present in making comparisons between various parcels of real estate and it is impossible to attempt to force the appraiser into unrealistic comparisons. The appraisal of real estate is not and never can be an exact science subject to solution by automatic mathematical formulae. An opinion of value is only as good as the man who makes it and you have a right to expect that it will be done with competence and integrity.

Appraiser's Responsibility to His Profession and the Public:

A professional man is one who stands apart by reason of his special talents, skills, ability and knowledge. To develop these factors to the highest degree makes it mandatory that he contribute to and take from the common body of knowledge which he shares with other professional men in his field. It is therefore the responsibility of every professional real estate appraiser to contribute anything that he can to this common knowledge and to keep himself abreast of the latest developments in his field so that his clients may receive the benefits. These relationships have long been recognized by the American Institute of Real Estate Appraisers and the Society of Residential Appraisers and are demonstrated by the constant use of conferences, seminars and various educational programs which give the appraiser the opportunity to better himself and to contribute to the common fund of knowledge and experience. This meeting today is a good example of the opportunities being created by forward looking organizations such as

the American Right of Way Association in helping to promote an interchange of information among all of us interested in these problems.

I have commented upon the importance of studying basic trends which will affect real estate values in the Sixties. The thoughtful appraiser owes it to the public to speak out concerning events which affect these trends.

The spectacle of abject surrender by the steel companies to union demands, apparently forced by circumstances beyond their control, is most disturbing to the thoughtful appraiser seeking the basic economic trends which will influence real estate values in the Sixties. It is not pleasant to contemplate the v i s i o n of foreign manufacturers rubbing their hands in

glee when this news hit the international wires. How will we appraise "the present worth of future benefits", on which all real estate values are based, for industrial plants in which costs are so high that the products can no longer compete with foreign imports? If we foresee these trends it is our responsibility to speak out. Higher labor costs can lead only to a further growth in automation and a more rapid obsolescence of existing manufacturing facilities which may not be suited to automated production lines. Such obsolescence may radically change the value of industrial real estate. This is only one example of many where it is our responsibility to evaluate such changes in our economy.

I have mentioned the relationship between appraisers and government in the fields of urban redevelopment and highway programs. Many such appraisals involve the acquisition of private property under Eminent Domain procedures. We have a right to examine the basis on which property is taken. We live in a highly complex society in which many procedures have been forced into revisions in keeping with modern problems. The laws governing Eminent Domain in Michigan are apparently almost 100 years old and are obviously woefully behind the times as a vehicle for rendering justice and equality both to property owners and taxpayers. For example, in Michigan we have a condemnation law which says in effect that the jury is the judge of the law and the facts. In practice this means that the judge instructs a jury composed of untrained laymen, that they are to decide the merits of a condemnation case, based on their knowledge of the law and the facts and he then proceeds to leave the courtroom and the trial is for all practical purposes conducted by the attorneys representing the two sides. I have a great respect for a jury of my peers in matters which involve human relationships such as criminal trials and the like; however, I do not believe that the complexities of real property valuation can be readily understood by unskilled and untrained people based upon the knowledge they receive in a courtroom. The nature of the obsolete rules under which condemnation trials are conducted and the absence of the judge gives free rein to a distorted presentation by the advocates on both sides. Under these circumstances it is most difficult for an expert witness to maintain his impartiality and I wish to impress upon you the seriousness of the results. Many competent appraisers will not submit themselves to a histrionical circus sideshow of advocacy when the trial should be a dispassionate presentation and analysis of facts viewed in their proper perspective. The present procedure is conducive

to emotional rather than factual appeal and hence to erroneous awards by uninformed juries.

If you think my criticism is academic I wish to cite two examples. Obviously I cannot identify either of these cases; however; in my opinion one illustrates an erroneous award based on emotional appeal and the other an erroneous award based on misunderstanding of technical points which a lay jury could not be expected to readily understand.

In the first instance at the conclusion of the trial, the jury awarded the property owner approximately $100,000 more than the value which had been demonstrated by the expert witness for the petitioner. In this case the property owner had been called to testify in his own behalf as to the value of the real estate involved. The reasons for this award might never have been known except that several months after the conclusion of the trial one of the jurors happened to meet the appraiser for the petitioner. He explained that all of the jury except one woman had agreed with the petitioner's value; however, this woman threatened to produce a hung jury unless the property owner was given an additional $100,000 because she thought he was a nice man and deserved it.

The other example involved the appraisal of waterfront property. There were two types of land involved. One was solid ground back of the normal water lines. The other was filled ground retained in place by steel sheet piling. Both kinds of land had a common use, neither one more valuable than the other. The appraiser for the petitioner valued this land at a common unit rate per square foot based on its use. The appraiser for the property owner did the same thing and then added to the value of the land, the depreciated value of the steel sheet piling. This was obviously erroneous as without the steel sheet piling there would have been no land beyond the normal water line on which to place a value. As such piling costs several hundred dollars per lineal foot, it is obvious that the property owner was placing a value considerably in excess of what it should have been and the taxpayers were forced to pay many thousands of dollars in additional award. The validity of the approach used by the petitioner's appraiser was checked with various sources throughout the country and found to be correct. This is another example of how a jury of lay people can be confused by a technical problem.

I believe that the only reasonable solution to such a situation is to eliminate the jury system in Eminent Domain proceedings and to substitute the use of qualified commissioners who would understand the technical problems involved and who would have little patience for emotional harangs by advocates on either side.

There are other phases of this law which appeared to be anything but fair. For example, fixture removal. If you intend to make a property owner whole, it seems rather ridiculous to say that you will pay for detaching and reattaching his trade fixtures but that you will pay nothing for his very real costs involved in moving such fixtures from one location to another. It is my understanding that this was declared non-compensable because it was difficult to determine whether the moving would be across the street or cross the state. I submit that the difficulty of compensating a property owner should not interfere with a fair award and that at least some basic compensation be allowed for moving which is a very real expense to the owner.

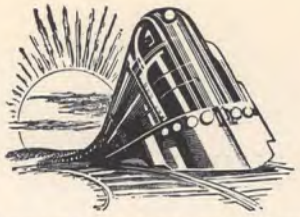
As professional appraisers, familiar with these problems and the injustices which they create, I believe it is our responsibility to the public and to our profession to do everything possible to have this antiquated law revised and brought up to date.

Another serious problem which is currently affecting the appraisal profession is the employment of unqualified appraisers to do work for which they have not been trained. I regret to say that this has been frequently done by governmental agencies. I trust you will not misunderstand my frankness on this subject, as I do not believe in the shortsighted policy of attempting to limit the number of competent appraisers so that a certain

chosen few will always have work to do. Qualified appraisers are busier today than they have ever been and those of us who are active in the educational work of the Institutes and Societies would be entirely inconsistent in our thinking if we sought to limit the available men. On the contrary, we have done everything possible to upgrade the standards of appraisal practice and to encourage new men to come into the field and learn so that they too could take over part of the tremendous work load.

The reasons advanced by the government agencies for this practice is that the nature of the crash program under which they must operate forces the hiring of anyone who has even a smattering of knowledge permitting him to be designated as an appraiser. This is a falacious practice and will result only in irreparable damage both to property owners and taxpayers. It is bad enough to have to operate under an obsolete and antiquated condemnation law and a competent appraiser and expert witness finds it extemely difficult to function under the present rules. Replacing a competent appraiser with an untrained or unqualified man compounds the errors which can be made by uninformed juries. Once the case is closed and the awards are made it is generally impossible to backtrack and rectify what may be a considerable wrongdoing.

The great American system of attempting to complete everything yesterday is in many ways most admirable; however, in my opinion this is not a good example of its application. It is obvious that many of our slum areas need to be rehabilitated and the modern automobile has created a serious necessity for improved highway and expressways. Appraisers certainly do not wish to stand in the way of progress; however, it must be obvious that professional training cannot be obtained overnight and that competent appraisers take time to produce in terms of education and experience. It appears that the only suitable alternative, other than to carry on the intense educationally program, is to pull back the throttle a bit and match



the planned programs more closely to the men available to do the work. If this is not done the pressures and demands by government agencies will only result in the self-elimination of many competent men from this type of work.

Appraiser's Responsibility to Himself:

It seems almost elementary to state that a professional man's reputation is his most valuable asset. Yet we constantly see examples of so-called appraisers who are willing to accept a fee for the underwriting of a predetermined appraised value. This practice may lead to temporary financial benefits but can have only one result when this man's reputation finally becomes known among his fellow men. As I have previously stated, it is difficult enough to operate under our present condemnation laws and to deal competently with many of the perplexing appraisal problems without having to contend with plain dishonesty.

I wish to comment briefly on an area of potential difficulty in appraisal practice, namely, the relationship between the professional appraiser and the review appraiser representing various government agencies. Personally, I believe that a review appraiser is in a most difficult position. His job calls for the utmost in skill and training in the appraisal arts, plus the ability to exercise judgment and tact in the pursuit of his work. Generally speaking the higher the authority in our American economy, the more skilled and experienced are the people who occupy these positions. The same should be true of a review appraiser. This man should know at least as much of the appraisal techniques as those whose work he is reviewing and preferably a great deal more. Good judgment and extreme tact are called

for in knowing how far to carry a review of an appraisal without overriding the opinions of the appraiser and ending up by injecting the reviewer's opinion of value into the appraisal itself.

This is one of the great dangers in dealing with big government. Some appraisers whose bread and butter may be dependent to a great degree on certain government work, may be inclined to be swayed by the thinking of the review appraiser. Nothing could be more damaging to both the appraiser himself and to the work which is being done. The professional appraiser must always be responsible for the opinion to which he signs his name. He must never be put in a position subservient to the thinking of a review appraiser. On the other hand, many appraisers have failed to properly analyze the appraisal problem in their reports and to adequately document statements made therein. We should welcome questions of clarification and constructive criticism from reviewers, as this polishing of the rough spots will improve our communication with our clients.

Need Better Understanding

I believe the function of the review appraiser is to bring out the best in a qualified man, as well as to detect any possible inconsistencies in the work, but most important to be able to know when to stop short of injecting his own thinking into the work of another man. If the review appraiser is still not satisfied with the results he should cease trying to appraise the property from the report but rather to go out into the field and study the property on a first-hand basis. If carefully done this should result in a better understanding between the reviewer and the appraiser.

Those of you who study "The Appraisal Journal," published by the American Institute of Real Estate Appraisers, have noted the brief quotations at the end of various articles. By the same token I wish to conclude with a quotation which I believe expresses the fundamental principle of a man's integrity, which must govern his actions each and every time he is called upon to express an opinion of value of real estate. I refer to the statement made by Polonius in giving advice to his son, Laertes, in Shakespeare's "Hamlet":

> This above all, to thine own self be true;
> And it must follow, as the night the day,
> Thou canst not then be false to any man.

Members of the title industry have a substantial stake in the success of the national Right-of-Way Acquisition program. As they continue to cooperate more closely with engineers, surveyors, government officials and appraisers, they welcome material which will give them a better understanding of the problems confronting all of the professional men assisting in this gigantic program.

The above talk by Sheldon Drennan was presented to Michigan Chapter No. 7 of the American Right-of-Way Association on January 19, 1960.

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- ☐ Are you sure of your grammar, spelling, and punctuation?
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- ☐ Do you get along with others in the office?
- ☐ Do you offer to help others when they are swamped?
- ☐ When you make a mistake, do you admit it and then rectify it or avoid making it a second time?
- ☐ Do you observe the office rules faithfully?
- ☐ Can you leave your personal problems at home?
- ☐ Do you ignore rumors and refuse to gossip?
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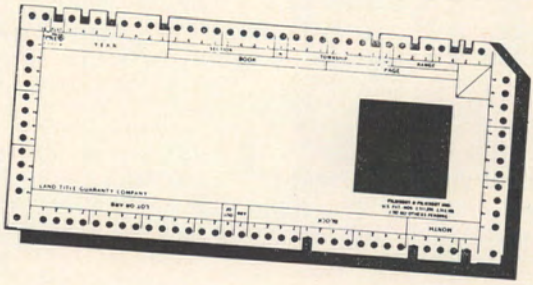

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My Most Interesting Case

BY
P. L. HAUSER

Vice President, Mid-South Title Company

Memphis Tennessee

There are, we understand, only seven basic plots in the entire field of literary romance and adventure, but we are certain that in no other industry do those seven basic themes find a more interesting or human application. In the files of every abstracter and title insurance company—on every page of every tract book, in fact—there is a story of love and envy, hate and pride and grief, sacrifice, devotion and intrigue. In the mind of every experienced title man, one case stands out because of its amusing, dynamic, or intriguing aspects.

On these pages Mr. Hauser deftly tells the story of his Most Interesting Case. Other title men are invited to try their hands as authors. Or, if you prefer, send us the essential facts and we will write the story for you.

One of the more interesting real estate transactions that I have handled was one involving a farm of about 500 acres in Shelby County, which was being acquired by subdivision developers—the city having grown to the point where the tract was now suburban property rather than remote farm property.

This tract of land had been in the same family since the early 1800's when grants by the States of North Carolina and Tennessee were issued. There had never been a sale of the property and only an occasional transfer of an undivided interest from one member of the family to another member of the family.

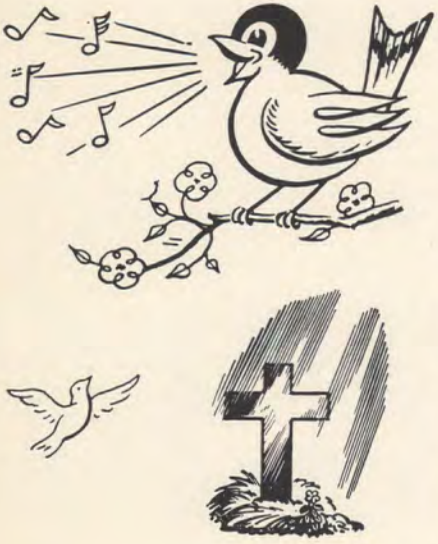
The original owner's name was John F. Hamlin. There were five generations of men in title, each named John F. Hamlin, with little, if any, identification in the various instruments of record as to which John F. Hamlin was involved at each particular time. Fortunately, the area was settled by several families who had for many generations lived in that particular area, so I was able to piece together the Hamlin family history from family bibles, wills and information from tombstoones in various cemeteries.

In interviewing some of the old settlers, in an effort to establish dates of death of some of the members of the Hamlin family, it was found that there was an old family grave plot at one of the very old cemeteries in Memphis, So I went to the cemetery office to get help in locating the plot.

It developed that the cemetery officials had lost contact with the family and had been trying for over twenty years (but apparently not too vigorously) to contact the family to solicit funds to provide care and to beautify the plot. The officials at first refused to tell me where the plot was located unless I told them how to get in touch with the family, and not desiring to get in the middle of a squabble between the officials and the family, I refused to identify the present members of the family. We finally compromised on my agreement to notfy the family that the cemetery officials were eager to get in touch with them and I was then given the location of the plot.

The Plot Thickens

Upon arriving there, I found it to be in a small valley under a tremendous magnolia tree that had for many years been a favorite roosting place for the birds in that area. After much unpleasant work of cleaning the tombstones (some of which had fallen flat) so that the dates could be read, I identified all of the members of the family who had been buried there from about 1830 to 1914. There are various expenses involved in clearing title to a piece of property, but it was probably the first time that a title examiner had been paid for cleaning up after birds.



Another incident involving the same transaction occurred in obtaining a family affidavit from two sisters in their middle 60's, who were cousins of the present property owner, and who had lived on the same farm, in the same house, all of their lives. I telephoned the two ladies and made an oppointment to see them, and when I arrived at their home, I was taken into the sitting room and was served tea in a very formal manner.

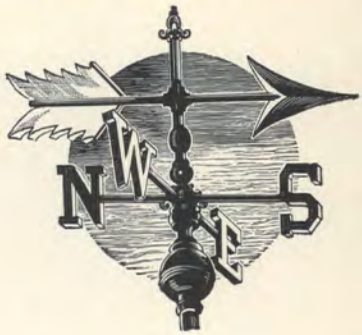
When the social amenities were over, I began to ask questions and take notes in an effort to work out a family chart concerning the Hamlin family. After several minutes of questioning, I dug further back into the period of time as to dates of deaths, births and children of various members of the family, and then it suddenly occurred to me that one of the sisters had made several trips out of the room, and each time would reappear in a very short time with the exact date, name, etc. in answer to each question I had asked. I hesitated to ask why she was making these trips out of the room because the atmosphere was such that while they were very friendly and cordial, it was more of an indulgent atmosphere, giving the impression that the interview could and probably would be terminated quickly if I in any way displeased them.

Forever Female

The sister who had been seated in the room all during the interview noticed the perplexed look on my face, which I had unsuccessfully tried to hide, and asked me, during one of her sister's trips, if I had any idea why or where her sister had been disappearing out of the room. I said, "No, ma'am, I do not." She then explained that her sister had been going to the family bible, which she had kept hidden for many years because she was quite sensitive about her age. Apparently the "sensitive lady" would not allow even her own sister to see the bible, in the hope that she would have forgotten her real age through the years.

"Where on Earth . . . ?

By
HUGH A. BINYON
Survey Examiner
West Coast Title Company
President-Elect
Florida Society of Professional Land Surveyors



. . . did that Land Surveyor get the idea that he should show all those easements in addition to those shown on the record plat?" While these words were being spoken another Titleman in another office (in the same county) was saying, "Where on earth did this surveyor get the idea that he should leave all those recorded easements off his survey? He knows that there are three recorded easements on that land!"

These two situations seem ridiculous until you consider that if Titleman number 1 were paired with Land Surveyor number 2 and Titleman number 2 were paired with Land Surveyor number 1—everything would have been serene!

Why should such above situations arise? What may be done to remedy the situation?

Since there are reasons for everything that happens, let's see if we can find a few that may be the key to this problem, which is more or less nationwide; and then possibly come up with an answer.

In considering land surveys and the Land Surveyor, we must start with the biblical notations concerning "Your neighbors' landmarks" — but which do not mention directions, distances, or the recording of deeds.

Next we might consider what the Romans did about such matters—but you will have to tell me about that because I don't know.

After we get into the limited monarchy period, such as evolved in England, we find descriptions such as "Northerly", "Easterly", etc. We also find land descriptions such as "Bounded on the North and East by Finch, on the South by Wheelwright, and on the West by Goldsmith." These two types of descriptions were adopted by the American Colonists, and in the latter part of this era we begin to find bearings of lines mentioned (as the compass came into use) where straight lines were involved. Written deeds came into use and recording procedure developed.

We might consider the next stage as the period of the original Government Land Surveys in which the land was sectionized and township plats were prepared. Even before we can get well acquainted with this system of surveys, too large a percentage of these newly set section corners begin getting "lost." We also begin to find fictitious surveys, overlaps, and hiatuses. Add to this Uncle Sam's ruling—"That the physical evidence of the original township, section, quarter-section, and other monuments must stand as the true corners of the subdivisions which they were intended to represent, and will be given controlling preference over the rec-

orded directions and lengths of lines." Field notes and approved maps were hereby rendered secondary in **this** subdivision work.

Woodsman Surveyors

With the advent of the above ruling the best Land Surveyors were not the fact-finders or mathematicians—the best Land Surveyors of that time were the best woodsmen or corner finders. Instead of measuring **to** a corner, it was necessary to measure **from** a corner—if the corner could be found (fictitious or otherwise).

The above ruling was put forth some fifty years ago. Since that time, many thousands of miles of roads have been built and many thousands of the set corners (which must be measured from) have been moved, re-moved, covered or lost.

Our "Woodsman Surveyor" is now very busy. He must learn trigonometry, geometry, and a l g e b r a in order to prorate, project, rerate, and reject to be able to reset and/or re-establish existent, lost, or obliterated corners. But by the time he has mastered these new requirements even this knowledge turns out to be insufficient for the job in hand. For during this time the patentees have sold off, devised, or just "left" parcels of their patents with "good and sufficient descriptions" of their time. Unfortunately many patentees then ran out of time, departed from this world, and left behind heirs, assignees, lawyers, liars, and sundry others each of whom had divergent put positive ideas of the patentees INTENT.

Next the graduate engineer enters the field with his training in "exact" science. He is to take over from the "Woodsman Surveyor" of the home-spun education. But due to the earlier quoted RULING, inaccuracies of preceding descriptions, lost corners, errors in original surveys, etc., etc.,—the engineer is unable to match his pure science exactly with the imponderables—even with the help of the exciting and new curative (?) legislation. The engineer does not take over—he is overtaken; and if he continues to serve as a Land Surveyor, he sits on the same bench with our "home-spun" friend.

By the mid-twenties, more fee-holders have died, more poor descriptions have been written, more section corners have been lost, more curative legislation has been passed—and the Land Surveyor **is more** cussed than discussed.

The two main underlying reasons for the cussing are (1) that no uniform standards or requirements have been laid down for the Land Surveyor's work other than those laid down by his immediate employer—who requests that the Land Surveyor measure from such corners as will enable his employer to claim the most land; and (2) as a Land Surveyor's notes are not recordable, and since they are his private property for he or his heirs to dispose of as they see fit, the consequences are that many existing lines and corners have been set for which the supporting evidence has been lost.

In the middle thirties a panacea for land surveying troubles was thought to have been found in the institution of Registration Laws for Land Surveyors. In most all states Registration Boards were set up for the

examination and registration of Land Surveyors. This was a fine idea except for the fact that all surveyors were then immediately registered under "Grand-father" clauses (and many men still sneak in through this back door); and also except for the fact that examinations were made on the basis of mathematics and techniques with little or no attention being given to the human aspects and legal principles of Land Surveying.

Training Needed

Land Surveying, as such, has NOT been taught, beyond the bare essentials of mathematics, instrumentation, and methods of subdivision of the public domain until the past decade—and only then in less than ten schools in the United States. This does not mean that Land Surveyors have all been without education within their field. The competent and successful **self-trained** Land Surveyors have successfully trained others. My intention is to point out that graduate engineers or experienced **engineering surveyors** who pass a registration examination in Land Surveying are seldom qualified to engage immediately as principals in Land Surveying. Experience in Land Surveying under

(b) Some Examining and Registration Boards now require experience in Land Surveying whereas they previously required experience in unqualified surveying;

(c) Professional Land Surveyors have organized in many states during the past ten years;

(d) The American Congress on Surveying and Mapping has developed a large membership in its "property Surveys Division";

(e) Several colleges have instituted "short courses" in Land Surveying in cooperation with the more active local State Land Surveyor's Organizations—with practicing Land Surveyors conducting most of the classes;

(f) A very few colleges have instituted regular courses in Land Surveying and the trend is for more to do so as satisfactory instructors become available;

(g) The limitations of the types of work in which a Land Surveyor is permitted to engage are being relaxed;

(h) Several states have amended (or are in the process) their registration requirements by demanding more education and experience of men who are to be admitted to registration examinations;

(i) The general public, attorneys and Titlemen are becoming aware that all Land Surveyors do not do the same quality of work;

(j) The "jack-leg" surveyor is slowly being replaced by the more qualified men of the professional type. By being able to demand fees more in keeping with a professional status, these professionals are able to employ and train a better quality of field and office personnel;

(k) There is evidence of a more widely accepted understanding of the true legal role of the competent present day Land Surveyor, e.g., John S. Grimes in his Third Edition of "Clark on Surveying and Boundaries" states on page 11—and I quote verbatim — "The surveyor's client employs him because the surveyor has skills upon which the individual is entitled to rely. These recognized

skills are, however, in a slightly different classification from that which is generally considered labor such as plumbing or bricklaying. The art of surveying is like that of the medical or legal profession, primarily one requiring mental ability. Although it might be difficult to convince a tired, muddy surveyor of the fact, the concept of surveying does not involve physical effort. The surveyor is instead employed because of his superior knowledge."

What Can Be Done?

From all the foregoing you probably have deduced how the Land Surveyor came into being—how, in general, he has developed, why land surveys do not all show the same information and what is being done for further development of the profession.

You undoubtedly have this question in your minds—"What can the American Title Association do to help standardize land survey work so Titlemen will know what to expect to find in a survey prepared for use with Title Insurance?"

After considering the following:

(1) A need is felt by both the Titlemen and the Land Surveyors for standards or classification of surveys;

(2) Most land surveys have to do with the conveyancing and/or encumbrancing of lands;

(3) The Land Surveyors do not have any UNIFORM STANDARDS of surveys other than technical standards regarding the accuracy or precision of methods and/or techniques involved in making a property survey;

(4) The American Title Association has already developed, is now, and has long been using standard ATA policies (with minor variations) in most states;

(5) The ATA policies are used mainly for the conveyancing and/or encumbrancing of lands; see (2);

(6) Much time and extra work (which means money in any language) is lost or expended in reconciling completed policies with land surveys;

(7) Titlemen and Land Surveyors each often believe that the other is responsible for the unnecessary lost time and extra work; and that

(8) Such loss of time and extra work experienced by both Titlemen and Land Surveyors is preventable.

Meeting Urged

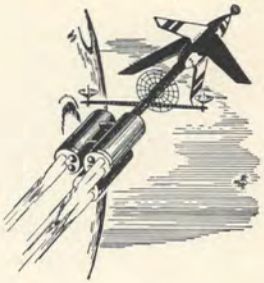
My answer to the problem would be that, since the Titlemen **already** have existing policy standards, a committee on Land Surveys of the American Title Association meet with an appropriate committee of the Property Surveys Division of the American Congress on Surveying and Mapping and have the proceedings (or the results thereof) published concurrently in the journals of both organizations. Following such action, joint state committees, composed of both Titlemen and Land Surveyors, would probably go into action and results could be obtained on statewide bases for the establishment of required information necessary to be shown on land surveys to meet the needs of the Titlemen.

Herbert Bayard Swope has said, "I cannot give you the formula for success, but I can give you the formula for failure—which is: Try to please everybody."

The competent Land Surveyor has tried to please the land owner, the mortgage man, the attorney, the court, the Titlemen, and a host of others all at the same time, so he must be the exception that proves Mr. Swope's statement. In his attempt to please everybody the Land Surveyor continues to gain in stature. He strives to utilize his skills and judgement to overcome the errors and shortcomings of many people in the past; and at the same time produces surveys that are acceptable for the increasingly rigid requirements of the present. His job is to continuously make "silk purses from sows' ears"—and he has been eminently successful.

It is my impression that to further improve their services to the public, the Land Surveyors would be very receptive to the suggestion of the previously mentioned meetings of Titlemen and Land Surveyors at both national and state levels.

NEW METHODS and MODERN EQUIPMENT



BY

CLAUDE L. GOFF, Vice President

Record Abstract and Title Insurance Company
Denver, Colorado

Back in 1951, at the time I assumed management of The Adams County Abstract Company at Brighton, Colorado, there existed in that office a hodge-podge of systems, which like Topsy, had "just growed" the years.

The earliest records in Adams County were made back about 1857, in what was then Arapahoe County. In 1902 Arapahoe County was divided, making Adams, Arapahoe and Denver Counties, and designating Denver County to be the custodian of the original records. All of the records pertaining to the new-formed Adams County were to be transcribed into newly created books, and placed in the new Court House at Brighton. These records filled some 70 volumes, and were all designated with the letter "A" followed by consecutive numbers beginning from A-1 through A-70.

The first recording in the newly formed County was made in November, 1902, and a whole new series of books created, beginning with number 1, with no letter prefix. In about 1905, the then County Judge Girard, made hand-written take-offs in small bound books of all these old records, and created an index on a blind system using book and page only. He created a second set of index books beginning with the first book of Adams County recordings, and these also were blind by book and page only.

In early 1942, the County Commissioners purchased a Photostat Camera to use for the recording, so the owners of the Abstract Company at that time started a completely new index, in which they used the blind system, but with Reception Number only. This system continued until May 1, 1948, when the Company decided to make a 6" x 9" photostat take-off and set up a completely "open" index, giving sufficientt information with which to intelligently answer telephone inquiries without referring to the original document or take-off.

During the years since 1905, the old original books had begun to wear out. They needed rebinding or recopying. In either case we still had the blind numbers to list and then refer to the take-off to find out what type of instrument we were dealing with and what effect it had on the particular parcel of ground each time it was necessary to use it for reference. So,

before doing anything along this line, we began assembling, acceptaing, rejecting and otherwise considering ideas on which to establish a feasible means of consolidating all these various indices into one which would contain all the old information and still be more useable.

There are probably a great many salesmen who either feel very much cheated, or at least are sorry they ever heard of the author of this article. Countless hours were spent with them listening to the explanation of the virtues of their various systems and products. Every vacation for several years was a "Postman's Holiday". Mrs. Goff probably became very tired, over the years, spending vacation time going through Abstract offices wherever we went. Our fraternity is composed of individuals who are very divergent in their views on what makes up a good "plant", but united solidly in thinking that his own is the very best that can possibly be conceived. Probably in the light of the factors in each locality, he is correct. At any rate, we found no ready-made system that appealed to us as being the answer in Adams County.

MANY NEW IDEAS

Many new slants on the one basic idea of how of index the documents so they can be found quickly without spending too much to do it were encountered, and many different applications of modern machinery and techniques were found. E Pluribus Unum—"Out of Many, One". The answer—combine some of the ideas and build our own system. What we wind up with is a combination of a 12" x 12" ledger card for each Section and each Block in each Subdivision in the County, plus a card for each quarter section where metes and bounds tracts make it necessary or desirable to set up "arbitraries".

All of the old blind information was copied by by typewriter onto these new ledger cards, and checked. Until they can be filled in, we are no better off on that part of the index than we were before, but we are no worse off, and it is all consolidated into one place. Every day that new postings are put on the efficiency of the plant is increased, and the less need there is to refer to the old blind postings. This is especially true as we get farther away from "completes" and have only continuation abstracts and reissue policies to deal with.

In March of 1958, The Adams Abstract Company was merged into and became a part of Record Abstract and Title Insurance Co. by exchange of stock. Record already had a set of indices for Adams County, so we were then posting two sets of books every day— one in Brighton and the other in Denver. Since the Adams set was on the new system and the Directors considered it a more efficient plant, it was decided that we should either send all the Adams work to Brighton, or find some means of furnishing chains to the Denver Office for processing work there. Some customers might like one office better than the other, or think they could get bettter service from one office. After some more "trial and error" we finally decided upon Teletype as the solution to this problem. Record had been buying a copy of the take-off from Adams for many years. Since 1956, this had been in the form of rolls of microfilm. We continued to make a copy of the film for each office after the merger,

CLAUDE L. GOFF

so that the pictures are available in both offices.

At this time we continue to process orders for Adams County work in the office in which the order is received. The Brighton Office is operated as a wholly owned subsidiary, doing its own work inside the corporate structure which existed prior to the merger. Title insurance is written as though it was an authorized Signatory Agent, and the files are maintained at Brighton as though it were a branch office. However, when an order for a policy is received in the Denver Office, it is entered there as though it was on Denver property, an order for chain is sent to the Brighton Office by Teletype. It is searched and the names checked in Brighton, the filing information returned to Denver on the Teletype, and the order processed from the microfilm the same as though theindex was in Denver.

In Denver County we have for many years had a joint take-off operation with one of our competitors. We jointly own and operate a Photostat Camera at the Court House, producing 6" x 9" photostats for each Company every day. Currently there is a plain in the making whereby all of the five or six companies operating in Denver will enter upon a joint take-off utilizing one 35 mm mircofilm camera. This camera would make one copy of the take-off every day and this would be duplicated as many times as there are companies in the venture.

In order to post this direct from the microfilm without having to make photos of all the instruments, we plan to create a set of indices for the City and County of Denver, just like the one we are using in Adams County, as outlined above, with, perhaps, one big exception, however. These same sheets can, and probably will be posted by our Burroughs Bookkeeping machine at a faster rate than on a typewriter. The only change is the programming of a bar to control the stops.

In January, 1958, Record opened an office in Littleton, Colorado, which is the County Seat of Arapahoe County. All of their current records for that County were moved to that office. The take-off there is 6" x 9" Photostat copies, purchased from our competitor at Littleton. When a chain is ordered for processing an order in the Denver Office, it is returned by Teletype the same as in Adam County. However, in this case it is necessary to pull the photostats out of the file and send them to the Denver Office for the use of the Title Officer in preparing his findings. When they have served his purpose in processing the case, they must be returned to Littleton for permanent storage. In order to do away with this transportation, with consequent possibility of loss in handling, or getting into the wrong file, we plan to go to microfilm in this County also, making two copies of the film daily—one for each office.

In the attempt to modernize our operations, and "streamline" them to give the customer faster and better service, we are using Verifax, Ozalid, Photostat, Microfilm cameras, readers and enlargers; Addressograph, Electric typewriters (including one dual IBM unit), Multigraph and Teletype. We are installing Xerox equipment both for microfilm enlargement and direct reproduction.

How We Seem to Ourselves	How We Seem to Others
Retiring	Anti-Social
Lean	Skinny
Cheerful	Frivolous
Witty	Corny
Frank	Insulting
Vivacious	Boisterous
Well-dressed	Ostentatious
Well-informed	Pseudo-intellectual
Husky	Fat
Ambitious	Greedy
Gentleman	Smooth Operator
Virtuous	Narrow-minded
Conservative	Stubborn
Unpretentious	Uncouth
Cautious	Cowardly
Dainty	Frail
Enthusiastic	Fanatical
Nonconformist	Eccentric
Generous	Extravagant
Thrifty	Stingy
Just	Hard-hearted
Courageous	Foolhardy
Successful	Lucky

ENCUMBRANCES UPON THE GOOD EARTH

By
T. J. McDERMOTT
Author of Deskbook on Land Titles and Land Law

There is nothing personal about any of my talks. In speaking of encumbrances, I am talking to you and not about you. You do not encumber the earth; you are the salt of the earth. Our world would limp more than it does now if it were not for the work done facilitating conveyances by reporting encumbrances upon land.

Mortgages

Encumbrance is a broader term than lien. It comprehends any right or interest in land, existing in another than the landowner, which diminishes the value of the property, but which is consistent with the conveyance of the fee. Mortgages are the encumbrances with which we are most concerned.

The recording of mortgages is governed by a statute varying from the general recording statute discussed in an earlier talk. The provision here is that mortgages take effect from the time they are delivered to the recorder for record. This statute furnishes the answers to most questions on the record priority of mortgages.

What was previously said regarding "entitled to record" should be recalled, that is, recording gives no legal effect to a defectively executed mortgage. Thus, a mortgage with one witness is not effective under the statute, even though recorded.

A release or assignment entered directly on the margin of the record must be attested by the recorder. A release or assignment by separate instrument must be witnessed and acknowleged as is provided for deeds.

A bona fide purchaser who acquires an interest for value more than twenty-one years after the last due date on a mortgage takes the interest free from the mortgage, unless the mortgage had been refiled according to law.

Mechanics Liens

Mechanics liens attach from the date, the first labor was performed or the first material furnished under the original contract. A statutory procedure is provided for a mortgagee to obtain a first lien although his mortgage is filed after construction has commenced. When the mortgagee can show that his mortgage was filed before construction was commenced, he has priority for the advances made thereafter if he was obligated to make them. The statutes also pro-

vide a method by which a purchaser or mortgagee can ascertain who is entitled to file a lien.

A mechanics lien must be filed for record within sixty days after the last work or material is furnished under the contract. The lien expires six years after it is filed without further record, if no action to enforce it has been brought. The lien may also be extinguished by record of notice to commence suit or by record of a bond as set forth by the statutes.

Other statutory liens do not often cause much concern to us so long as we do not omit reporting them.

Judgment and Execution Liens

A judgment or decree is a lien upon land of the debtor from the time a certificate thereof is filed with the clerk of court for the county where the land is located. Land of the judgment debtor is subject to a lien without such filing when an execution on the judgment is levied on the land. A judgment is not a lien on land acquired by the debtor after the certificate is filed. Judgment and execution liens do not attach to equitable interests, such as the interest of a purchaser under a land contract. Liens may be acquired by executions from other counties as shown by the sheriff's foreign execution docket.

The State Bar Standard states "Court costs are a lien only when execution has been duly levied on the property or when a certificate of judgment has been filed during the judgment debtor's ownership of the property".

An attorney at law has no implied authority to compromise, partially release or assign the judgment. However, his authority to satisfy his client's judgment upon full payment is presumed.

These liens become dormant and no longer attach to the property when five years elapses without the issuance of an execution or the filing of a certificate. A dormant judgment may be made a lien upon land presently owned by the debtor when revived by order of court.

Additional rules apply to judgment liens acquired before August 30, 1935. We do not often encounter liens existed for so long a time.

Judgments in federal courts may become liens by filing a certificate as on judgments in state courts, or by levy of execution. The latter can be found only by a search of the Marshall's Execution Docket.

The above rules do not apply when a court expressly charges land with a lien by a decree in equity.

Dower

As to the land of a person dying since 1931, the surviving spouse has dower only in property conveyed, or only to the extent encumbered, during the lifetime of the deceased spouse without the survivor having released the right. This limit on the right of dower does not solve many of our problems as we continually have the question of whether inchoate or contingent dower exists.

A divorce extinguishes dower. This is so as to the lands of the party dying after December 31, 1931 although the divorce was before that date.

Dower does not attach to equitable interests; the deceased spouse must have had a legal estate of inheritance during the marriage. Thus, the wife of a land contract purchaser does not have a right of dower.

It should be remembered that the period of adverse possession against the spouse who did not release dower does not commence to run until the death of the landowner, which may be many years after the deed. The title examination standard is "Problem:"

After what lapse of time should the omission from a deed of a recital of grantor's marital status not be regarded as a defect?

Standard:

"The omission of such recital is not a defect when the deed has been of record for more than fifty years, in the absence of notice of subsequent facts indicating the contrary."

The right to commence an action for dower expires at the death of the surviving spouse.

Dower does not attach to property both acquired and conveyed by a person while the spouse who had been adjudged insane is an inmate of hospital of the insane. Provision

is made for endorsement of these facts upon the conveyance.

Procedures in common pleas court and in probate court are provided for release or sale of dower rights of incompetent persons.

A judicial sale does not bar dower, except in partition, unless the spouse is a party to the action. Dower is not barred even though the spouse is a party when the lien being enforced is subordinate to dower (for example, a mechanics lien or judgment against the owning spouse), unless the husband or wife of the owner consents to the sale free from the right. Exceptions to these rules are made as to land contracts, judgments and mortgages existing before the marriage.

A wife can release her contingent right of dower only to a person who already has the fee or by joining her husband in a conveyance; that is, inchoate dower cannot be transferred to a stranger nor to the husband. The exception to this rule is separation agreements which are not always enforceable.

Joining in the execution of a deed is not a sufficient release of dower unless the spouse of the owner also joins in the granting clause or unless the deed contains an express release of dower.

Taxes

The lien of general taxes for the current calendar year attaches on the day preceding the second Monday in April. Various provisions are made for the lien dates of different kinds of special assessments. In some counties it is difficult to ascertain whether any assessments not certified to the county auditor are a lien.

Taxes remain a lien after a judicial sale until actually paid, notwithstanding that the county treasurer was a party defendant and the court ordered the taxes paid. It has been so held even where the court ordered that its decree operate as full satisfaction.

Tax records are not title records, and they do not affect title except as showing tax liens and except as they may be actual notice.

The lien of inheritance taxes does not expire. Enactment of a statute limiting the period of this lien is a good prospect during the current session of the Legislature by a bill upon which the Real Property and Taxation Committees of the State Bar have been working. The tax attaches to property transferred in contemplation of death, and a transfer within two years before death is presumed taxable. The lien is transferred to the proceeds of sale by proceedings to sell to pay debts of the decedent.

A federal estate tax lien expires ten years after the death of decedent. The lien attaches when the adjusted gross estate, including life insurance, exceeds $60,000. A bona fide purchaser has a very limited protection against this lien. A close lookout must be kept for indications of this lien as no provision is made for recording a notice. Both this tax and the inheritance tax apply to estates under survivorship deeds.

A federal gift tax lien also attaches without recording a notice. A bona fide purchaser has a greater protection against this lien.

Federal income tax liens are not valid against a purchaser, mortgagee or judgment creditor until notice has been filed with the county recorder. It should be particularly noted that these liens, like the liens of the state for aid to the aged, are liens upon property afterward acquired.

I have not mentioned a number of encumbrances, including easements, leases, restrictions, other convenants, etc. Instead of doing so, I shall be more likely to interest you if you ask some questions or bring up some particular points for discussion. If you have the solution to your problem, give to us with the original statement. I have a healthy respect for questions with delayed-action answers, and have not forgotten the training I used to give recruits at the front concerning booby traps. If you have a tentative answer to your problem, let us have it so that we may get to the heart of the discussion promptly. The remarks I have prepared for this evening are purposely much shorter than those prepared for our previous sessions. I believe there are plenty of questions and comments which can come from the floor.

IN THE ASSOCIATION SPOTLIGHT

Leaves Title Post

Lawrence C. Diebel, 40 year veteran of the Abstract & Title Guaranty Co., Detroit, Michigan retired in February. Fellow employees gave him a sendoff party at the Sheraton-Cadillac Hotel. More than 200 attended.

Diebel started with the title company in 1912, in the tax department. He became assistant manager in 1921, then assistant secretary, and was executive vice president, and treasurer at the time of his retirement.

Hale Warn Elected

Hale Warn, Jr., executive vice president of Title Insurance and Trust Company, Los Angeles, was elected to the firm's board of directors during its regular meeting, W. Herbert Allen, chairman, has announced. Warn's election fills the post left vacant by the death of attorney Dave F. Smith last month.

Warn, who is in charge of all title operations for the firm, started his title career with the California Title Insurance Company in Redwood City, California, in 1928. He served with that Company in various managerial capacities until 1952 when he took leave of absence to become executive vice president and later president of Land Title Insurance Company. Following the merger of California Pacific Title Insurance Company and Title Insurance and Trust Company in April, 1959, he returned to his position with California Pacific Title Insurance Company and was elected to his present position with Title Insurance and Trust Company in June, 1959.

Warn was born in San Mateo, California, and attended public school in that community. He graduated from Burlingame High School and attended San Mateo Junior Colege.

Active in professional and community affairs, Warn is president of the California Land Title Association and serves as 2nd vice president and director of the Wilshire Chamber of Commerce. He has also served on the executive committee of the Muscular Dystrophy Association and was chairman of its 1955 fund drive. He is a past president of the Sacramento Exchange Club and of the Sacramento Executives Association. While a resident of that city he served on the Sacramento Planning Commission.

HALE WARN

FHA Discounts

.....Congress has been urged to take positive action to correct the discount situation affecting FHA mortgage loans by removing the requirement that the builder must pay the discount for the home buyer or borrower. Congress also was asked to remove all interest ceilings on FHA loans.

Both suggestions came from B. B. Bass, president of the Mortgage Bankers Association of America and president, American Mortgage and Investment Company of Oklahoma City.

The situation has become an intolerable one, he said, with many builders being driven more and more from the FHA program because of the heavy mortgage discounts they must absorb.

The discount situation developed in FHA and VA mortgage loans from their controlled interest rates which are below the general market.

To enable continued investment in such loans and to secure a return comparable to yields available on conventional mortgages, large institutional investors have resorted to the discount practice whereby the borrower pays back the full amount of the mortgage but somewhat less than that amount is actually advanced by the lender.

Discounts vary as to the area of the country, lowest in the Northeastern section and higher in the Southwest, South and Far West.

Announcement

Monroe County Abstract Company, Monroe, Michigan, announces the appointment of Arthur G. Morrow as Attorney and Manager of that office.

Mr. Morrow has been associated with the Abstract and Title Guaranty Company of Detroit in the Legal Department from 1950 to date except for two years of private law practice.

He was born in Detroit, graduated from Southeastern High School and received his law degree from Wayne University in 1950.

Mr. Morrow replaces Theodore R. Hill who recently resigned.

Rattikin Jr. Honored

Jack Rattikin, Jr., public relations director of Rattikin Title Company Fort Worth, Texas, was elected president of the Fort Worth Junior Bar association February 25.

Rattikin is the son of Jack Rattikin, Sr., owner of the title firm and past-president of the American Title Association.

The Rattikin Title Company is an authorized issuing agency of Kansas City Title Insurance Company which the senior Rattikin serves as vice president.

JACK RATTIKIN, JR.

Illinois Changes

Kane County Title Company in Geneva, Illinois, will be merged into Chicago Title and Trust Company.

The proposed merger has been approved by directors of both companies. It will be submitted to a vote of the shareholders of Kane County Title Company at a special meeting in Geneva on April 7 and to the shareholders of Chicago Title and Trust Company at their annual meeting scheduled for Monday, April 11.

All present services and personnel of Kane County Title Company will continue as the Kane County Division of Chicago Title and Trust Company at the same address. A. J. Yates, President of Kane County Title Company, was elected a Vice President of Chicago Title and Trust Company at a meeting of that Company's Board of Directors on March 9. He will continue to serve as Manager of the new Kane County Division.

Kane County Title Company provides title insurance service on real estate in both Kane and Kendall counties and traces its business history back for more than half a century.

The first incorporated title company in Kane County was organized in 1902 under the name of Kane County Title and Trust Company. Some four years later in 1906 the Kane County Abstract Company was organized and in 1920 the two companies merged under the name of Kane County Abstract Company.

A. J. Yates was elected President in 1942. He resides in Geneva, and will continue to head the operations of the title office as a Division of Chicago Title and Trust Company.

Mr. Yates has spent his entire business career in the title business. Following a long association with Chicago Title and Trust Company in Chicago, he served for 13 years with the former DuPage Title Company at Wheaton where he held the office of secretary. He joined the staff of Kane County Title Company as Vice President and General Manager in 1938. During the same year he was elected to the company's board of directors and four years later he became President. He is a Past President of the Illinois Title Association.

In 1948 Kane County Title Company moved into a specially designed title plant, which incorporates one of the most modern as well as one of the largest photographic laboratories used in connection with title work in the country. Mr. Yates has been a pioneer among title men in the use of photographic microfilming equipment.

Wisconsin Company Purchased

Chicago Title and Trust Company has announced acquisition of Title Guaranty Company of Wisconsin with headquarters in Milwaukee.

The Wisconsin company was purchased for cash from First Wisconsin Bankshares Corporation, which owned all of the stock of Title Guaranty Company of Wisconsin.

Title Guaranty Company of Wisconsin will continue to operate under its own name at 734 N. 4th St. in Milwaukee. John D. Binkley, vice president of Chicago Title and Trust Company and past president of American Title Association, will assume the office of president. Harold

JOHN D. BINKLEY

A. Lenicheck will continue as executive vice president and director of the company. All personnel and services of the Wisconsin company will be continued.

102 Vigorous Years

The McHenry County Title Company at Woodstock, Illinois, by action of its Board of Directors at the quarterly meeting held at the offices of the Company in Woodstock, Illinois, on March 11, 1960, increased the stated capital of their Company to $300,000.

The McHenry County Title Company recently celebrated its centennial year in the title and abstract business and currently is in its 102nd year of service in the county.

In Memoriam

W. H. McHenry

W. H. McHenry, of the McHenry Abstract Company, died February 6 in the Veterans Hospital in Omaha, Nebraska, where he had been a patient for 30 days. Ill for more than a year, he died from a malignancy. He was born in Denison, Iowa, on April 9, 1898, the son of Sears and Margaret Harvey McHenry. He married Josephine Crawford. Surviving besides his wife are a son, William A. McHenry, Rice Lake, Wisconsin; a daughter, Mrs. A. M. Dutton, Fairport, N.Y.; five grandchildren; three sisters, Mrs. Margaret Evans and Mrs. G. C. Whitley, both of Ames; and Mrs. R. E. Romey, Mason City.

Mr. McHenry was active in the Iowa Title Association, serving in all offices.

University of Michigan Law School
Hutchins Hall, Ann Arbor
March 15, 1960

Mr. Joseph H. Smith, Exec. Vice-Pres.
American Title Association

Dear Mr. Smith:

The research project sponsored by the University of Michigan Law School with the Supervisory Committee from the American Bar Association Section on Real Property relating to the improvement of conveyancing procedure has resulted in the publication of the volume "Proposed Model Act." Your association is among the individuals and firms who contributed financially to the support of this project, and it is with real pleasure that we are sending you under separate cover a copy of the book. Professor Simes, the Director of the project, has produced a substantial number of proposed model acts which may be suitable for a number of states. The explanatory notes and the monographs which also appear in the book should be very helpful when such acts are considered by state legislatures for possible adoption.

We very much appreciate the contribution which your association made without which this project could not have been undertaken. Substantial interest has been shown in the work, and we have an advance sale of more than 1,500 copies of the book. It will be widely distributed throughout the country, and we hope it will have a real impact in improving the marketability of land titles.

For your information Mr. Simes is continuing his work on the second phase of the project and expects to publish a set of model title standards as soon as his work is completed.

Sincerely,

ALLAN F. SMITH

Director of Graduate Studies.