TITLE NEWS

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American Land Title Association

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A MESSAGE

from THE PRESIDENT

January, 1964

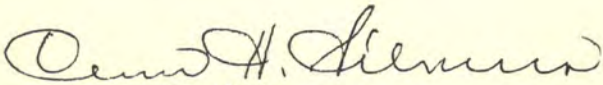
During the past four or five years, there have appeared in magazines of national prominence, numerous articles dealing with "closing costs." Many of these articles have been sharply critical of the title industry as well as other professional groups who serve the real estate buying and investing public. Naturally we are disturbed—even outraged—as we contemplate the injustic of these attacks.

We are not alone. Most businesses at one time or another are targets for critical comment. Although we smart under the sting of unwarranted criticism, we recognize that a democracy such as ours will always provide the framework within which men and women, who feel a correction is in order (or who fail to understand the facts surrounding a given service or the charges for that service), may launch such attacks. The lesson is an obvious one.

There is much we wish the public to know about the nature and value of our services; about our contribution to the communities we serve and to the national economy; about the part we play in the completing of a real estate transaction. NO ONE WILL TELL THAT STORY FOR US. We must do it ourselves! If, as a result of unfavorable publicity, members of American Land Title Association are awakened to the need for greater efforts to educate the public and to eliminate the lack of understanding among customers and potential customers, we shall have succeeded in transforming that which is a source of irritation into a program which will serve our own purposes.

An informed public would recognize the injustice of headlines and articles which misrepresent a profession that has served lenders, lawyers, realtors, builders, government agencies and generations of home-buyers with skill and competence. We owe it to ourselves to conduct an educational program that will bring understanding and confidence to the real estate buying and investing public. I urge you to grasp every opportunity to appear before civic groups and relate the story of the title industry.

Sincerely,



President

TITLE NEWS

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JANUARY, 1964

EDITOR: JAMES W. ROBINSON

Proceedings of the 57th Annual Convention

AMERICAN LAND TITLE ASSOCIATION

San Francisco, California — October 13-16, 1963

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Report of National President

WILLIAM H. DEALTY, President,
The Title Guarantee Company, New York, New York

Each annual report of American Land Title Association is, in fact, a composite of the reports by the respective Chairmen of its standing and special committees, by the Section Chairmen, and by its executive and administrative officers as they account to the membership throughout the annual convention for their stewardship, and the action that is taken thereon, whether by the Board of Governors or the membership. This then is but a part of the whole picture.

It has been a busy year, though not particularly eventful from the standpoint of accomplishment. The administrative functions of our national office were so ably directed and supervised by our Executive Vice President, Joe Smith, and our Secretary and Director of Public Relations, Jim Robinson, that it reduced to a minimum the need for any contribution to those duties by the other elected officers. Consequently, I was free to roam the country, more or less at will, though most often by invitation. I have endeavored to reflect herein some of the insight that I have gained into our industry as it functions throughout the country. Some of my predecessors had that insight before assuming office. I had to acquire it by osmosis as the year unfolded.

The warm welcome and genuine hospitality that goes out to your national officers in these travels and the educational value of the business programs at the state association meetings is a stimulating experience that I shall not soon forget and shall always cherish. It is regrettable, as I shall elaborate upon elsewhere herein, that a larger share of that experience is not stored up in the minds and hearts of representatives of our Association having longer tenure than its President for the time being.

Affiliated State Associations and Our Relations Therewith

Since our last annual convention, there have been twenty-nine annual meetings of affiliated state associations. Two associations, Ohio and Wisconsin, each held two such annual meetings in the interim. Nebraska's last annual meeting preceded our St. Louis convention and its next will be held during the last week in October. Your officers attended all but two of these state meetings, regrettably being unable to visit in Idaho or North Dakota owing to conflict in dates with California and Wisconsin, respectively. Total representation by your officers numbered thirty-five at the twenty-seven state meetings at which our National Association was represented.

My visits with title men and women throughout the country in their own environment has proven for me to be one of the greatest privileges of being President of our Association. A warm welcome, cordial hospitality and a genuine expression of appreciation attend the appearances of ALTA's national officers in every state. While certainly no surprise to me, the high regard throughout the country for the talents and personlities of our Executive Vice President and Secretary and Director of Public Relations, was also a source of great personal satisfaction. I recommend that each of them be encouraged to attend more state meetings, preferably in alternate years. Presidents come and go, but these men constitute the continuous open line of communication between the national organization and each of its affiliated state counterparts, so vital in keeping us informed of, and responsive to, the major problems in our industry.

I also consider it equally important that our Executive Vice Presi-

dent be able to find the time to broaden his contacts in Washington, one of the principal reasons for the transfer of our national office to the nation's capital. Our Secretary and Director of Public Relations should have more time for the creative aspects of his assignment and be able to spend more time in the field in an effort to learn more about the promotional and business development needs of our members, not particularly those in Chicago, Los Angeles, Dallas or New York, but elsewhere, and for closer personal contact with the members of our Public Relations Committee. None of these desirable objectives can be attained, in my judgment, unless both Joe and Jim are freer of the immediate supervisory and administrative responsibilities over the daily routine operations of our national office and its staff of employees. The Executive Committee and The Board of Governors have responded to this need by authorizing the creation of a position on the national office staff hopefully to be filled by a person capable of this administrative assignment, with only general supervision, after a short period of indoctrination. In taking this step, we shall, in my judgment, unleash latent talents now only partially utilized by Joe and Jim and unable to find expression because of the pressures of administrative detail and clerical office routine.

While I have sought no solution at this convention, I have a conviction also that, through inability to attend our annual conventions and mid-winter conferences, all too many of our members have no voice in the affairs of our national association. I believe we should seek ways by which the bonds between the active affiliated state association members and our national association can be strengthened to our mutual advantage. The Planning Committee will study all aspects of national and affiliated state association relationships in the coming year with the objective of accomplishing this desired result.

Your Board of Governors has taken all action necessary to create a formal pension plan for the salaried staff of our Washington office and a trust to fund its benefits. Their birth await only the approval of the Internal Revenue Service. The benefits will be funded wholly through income on the Reserve Asset Fund of the Association, and we hope thereby to fully provide for accumulated past service, as well as interim current service, on a sound actuarial basis within the insuing ten or eleven years—perhaps an even shorter period. Funding of the retirement benefits in advance of their payment will reduce total cost, afford our salaried officers and employees the assurance of payment upon their retirement and eventually place the Association on a pay-as-you-go basis with respect to this deferred responsibility. We have assumed no present obligation to provide these benefits except to the extent that all income on the Reserve Assets shall henceforth be devoted to the funding until past service credits have been fully provided for by the pension trust fund.

[Editor's Note: Necessary approval by Internal Revenue Service was received in November and the Plan and Trust are both in being effective January 1, 1963].

Activities of Association Counsel

In addition to services related to the staff pension plan, the trust agreement to fund its benefits and the preparation of the application to the Internal Revenue Service for approval of both under the provisions of Internal Revenue statutes, referred to elsewhere herein, the law firm of Covington & Burling has performed the following services since the mid-winter conference.

1. Served a further notice on the Indiana Bar Title Insurance Corporation to delete from its title insurance policies all reference to American Land Title Association, ALTA, American Title Association or ATA. No response was received. Counsel advised that since the forms had been used by members without "notice of copyright" thereon that any copyright which may have existed is now lost; that

had the forms carried the notice, use of the identical form without the ALTA form legend could not be prevented a non-member of the Association; that action now against a non-member to compel deletion from the policy forms of all reference to their genesis would probably be unsuccessful.

NOTE: The officers decided not to pursue the matter further. Consideration should, however, be given to the desirability of placing a copyright notice on future new policy forms or future revisions of existing policy forms, and applications for a copyright thereon.

2. Researched the Federal law governing registration of the Association name as a Membership Mark and of the Association seal as a Service Mark. With the approval of the Executive Committee, application for such registration has been made. Should such registration be granted, counsel advises that the following advantages will accrue:

   a. Thereafter, none other can legally acquire concurrent rights in the same name or seal, nor a confusingly similar name or seal, in any part of the country, which rights can be enforced in the Federal courts.

   b. After the Membership Mark and Service Mark have been registered for five years, they become incontestable.

   c. Registration of the Membership Mark and the Service Mark would enable the Association to stop any misuse of its name or seal by non-members in a manner that may suggest that they are members or to stop the use of a closely similar name or a closely similar seal by another membership organization engaged in the same general field of activity.

Counsel points out, however, that neither such registration would serve to protect against copying by others of the text of our standard policy forms or from truthfully stating on such copy that it is a standard form approved by the Association. Only copyright of the form would aid in preventing their unauthorized use. Consequently the Board of Governors has directed that steps be taken to copyright all new standard policy forms and all future revisions of existing policy forms; that application for such copyright be made prior to their release for use and that notice of copyright appear on all such forms from the time they are released for use.

Special Committee to Confer With FHA

This committee was appointed during the mid-winter conference at the request of the members. The full committee met once with officials of FHA, and once again to consider procedures available to it following that meeting. A subcommittee met again with FHA officials and your Executive Vice President had several further contacts over a period of several months. Our objective was to try to deter FHA from its intended use of "title waivers" to purchasers of and mortgage lenders upon resales of its involuntarily acquired real property (principally single family houses) as a substitute for the traditional methods—abstracts and attorney's opinions or title insurance—of evidencing title to purchasers and mortgagees in real property transactions.

It soon became apparent that FHA was seeking the cooperation of title insurers in its resale program without making necessary provision for any additional premium for the additional risk inherent in up-dating earlier policies, or reassumption of policy risks terminated as a result of the resales of the property. Despite the handicap imposed by the Association's inability to discuss rates involving insurance, your committee alerted insurers to the then latent policy of FHA and suggested that they consider the advisability of a "packaged" title service, to begin with the inception of the foreclosure proceedings on the defaulted FHA

insured mortgage, provide interim title coverage while the property remained in FHA ownership (in the form of a binder to insure FHA's grantee and/or the eventual lender upon the resulting purchase money mortgage), with policies to issue upon the completion of the resale transaction for a single rate, substantially lower than would apply were the total service to be applied for at separate times. Many insurers, in the resale program areas furnished us, made the availability of such a packaged title service and rate known to the field offices of FHA in the areas of their respective operations. To my knowledge, none were accepted. In a further attempt to cooperate with FHA one title insurer offered to provide the title service on resales of the agency's currently owned residential properties, in any jurisdiction in which it was not bound by prior rate filing requirements, to include a policy up to $25,000 to the FHA-approved mortgagee that participated in the resale program, for a modest uniform charge, excluding closing services, provided FHA would furnish it with the title evidence in its possession on any such property. I believe this effort has been equally unproductive up to the present.

During July FHA appears to have proceeded with its original intention, despite advice from FNMA that it would not accept the resulting FHA-insured mortgage for purchase unless it was supported by title evidence in the traditional manner. I quote from a communication by FHA to "All Approved Mortgagees", dated July 15, as an indication of FHA's established policy:

> "If the Commissioner sells a mortgage and such mortgage is later reassigned to him in exchange for debentures, the Commissioner will not object to title by reason of any lien or other adverse interest that was senior to the mortgage on the date of the original sale of such mortgage by the Commissioner."

On the other hand, we glean some ray of comfort from the following extract from an inquiry by FHA's Long Island, N.Y. district office, dated July 31, soliciting advice as to "financing costs" from approved mortgagees who wish to participate in its "Home Property Resale" program:

> "FHA will pay reasonable attorney fees for title evidence and such other reasonable and customary charges and fees as may be approved. However, since some of these charges are variable, we would appreciate your statement, in the space which follows, showing the attorney's and title examination fees you expect to have to pay . . . These figures may be shown as a lump sum, or per $100 of mortgage amount, whichever is customary."

Presumably, the lender could pay for title insurance, if it chose and if such disbursement were not separately approved by FHA, out of its service charge, which was limited to "$20, or 1% of the principal amount of the mortgage, whichever greater."

While this committee effort was certainly not crowned with outstanding success, I believe its activities point up the need for a standing committee empowered to handle relations with Federal Agencies of this, or similar, nature. An enabling amendment of the Constitution and By-Laws will be proposed for your consideration. It provides for an expansion of the scope of authority of the existing committee on Cooperation, with appropriate restraint to be exercised by the Board of Governors or the Executive Committee, some continuity in the membership of the Committee and a change in its name to "Liaison Committee." I understand that the report of the Title Insurance Section will also speak, among other subjects, to relations with other branches or agencies of the federal government.

Model Uniform Title Insurance Code

I believe we should encourage stronger state regulation of our insurance functions. State regulation in name and not in fact is most unlikely to meet the requirements of

Public Law 15, popularly known as the McCarran Act, which provides the only means whereby insurance may be freed of the provisions of federal antitrust laws and related federal statutes.

A tool to foster this type of state regulation is now in the making in the form of an industry-conceived, and I hope industry-supported, uniform model title insurance code. The Committee report, together with numerous suggestions for amendment, has been one of our most important tasks at this convention. I believe it provides the essential elements for state regulation **in fact,** and that it is the obligation of each of us to approach this report with an honest intention of adapting it to meet the regulatory needs of those of our members, or affiliated state associations, who or which may hereafter come to the conclusion that status quo for them leaves something to be desired; that we owe it to our members to give them the opportunity to accept or reject the report in the form that we may conclude it should be presented to them; and that we must, each of us, take cognizance of the probability that adequate regulation in some states and not in others may not be a deterrent to federal regulation of our industry.

I am reminded of a philosophy said to have been expressed by Benjamin Franklin at the Constitutional Convention in 1787 and recently called to my attention. I quote:

> "We are sent here to consult, not to contend with each other; declarations of a fixed opinion and of determined resolution never to change it, neither enlighten nor convince us. For, having lived long, I have experienced many instances of being obliged, by better information or fuller consideration, to change opinions, even on important subjects, which I once thought right but found to be otherwise. It is, therefore, that the older I grow the more apt I am to doubt my own judgment and to pay more respect to the judgments of others."

If each of us will approach this subject with full awareness of the basic truth of this quoted philosophy, I am confident that this monumental undertaking, so diligently pursued and so ably completed by our Uniform Code Committee, even though modified as the result of our deliberations, will be a credit to our Association and a real service to the greatest number, perhaps all, of its members, whether they be title insurers or their agents.

Reinsurance Protection Against Catastrophic Loss

An industry-sponsored and cooperatively-owned, though independently administered, instrumentality, or pooling arrangement, whereby soundly operated primary title insurers, after purchasing adequate reinsurance of their larger single risk policy liabilities, on either a facultative or treaty basis, could obtain at a cost commensurate with its value, reinsurance protection against catastrophic loss which might arise through human error in evaluation of the risk, infidelity, or the casualty risks that are inherent in our business, would, in my judgment, become a strong influence for raising underwriting standards and ameliorating some undesirable and potentially dangerous practices that have, here and there, and in one form or another, crept into our operating and investment practices and at the same time be a strong deterrent to any attempt at Federal regulation of our business.

Several possible avenues of approach were outlined in a panel discussion at our Title Insurance Section meeting in Minneapolis two years ago. Considerably over-simplified, but suitable for purposes of identification, they were Lloyds' Underwriters, an industry-owned loss reinsurance vehicle, and a reciprocal exchange of excess loss without payment of premium.

Lloyds' coverage is available, with notable exclusions from coverage, and is now utilized in several different forms by many companies in our industry. We know that one very substantial loss has been rejected by

the underwriters and that the claim is still being contested in the courts. This coverage is being utilized by some insurers to protect against aggregate of losses above a very modest annual amount; by others only against loss that, if sustained, would assume catastrophic proportions. The latter, I believe, should constitute our primary, and perhaps only, approach to the problem. Such a reinsurance program should, in my judgment, be designed to protect the underwriter against impairment of capital or involuntary liquidation, but with a retained loss corridor sufficiently high to require prudent underwriting practices. One other common flaw in the commercial coverage now available is exclusion of all losses due to infidelity of employees, approved attroneys, or agents, irrespective of its severity and exclusion, likewise, of losses arising from any policy issued more than ten years earlier than the occurrence of loss. Still another very important deficiency, in my judgment, is that the commercial underwriters are foreign to our shores with but a superficial knowledge of our business and even less familiarity with the variations in the manner of its operation and in the elements of risk from state to state.

I have discussed this subject at a number of state meetings this year and at the Southwest Regional Conference, and if I judge the sentiment correctly, I am sure that many of our members share my own belief that this subject should be fully explored by the National Association in behalf of all its members.

The Board of Governors has directed the appointment of a special committee to undertake a searching study and exploration of the subject of Reinsurance Protection Against Catastrophic Loss in all of its aspects; whether our industry should undertake to create its own instrumentality to provide that protection or whether it had best be left to sources without the industry; if the latter be its conclusion, then to attempt to devise a standard form of such agreement which would better serve the objective of more comprehensive coverage than now appears to be available in either the domestic or foreign reinsurance markets.

It is my hope that industry determination to explore this subject exhaustively will deter any attempt on the part of any of our members to foster the formation of a federally chartered and federally financed instrumentality to offer such protection —a procedure which in my judgment can lead to nothing short of federal regulation of an industry that should be regulated only by the several states.

A large part of that 59 page report referred to in your bulletin this morning was devoted to a documentation of the controversy between bar associations and all other groups that participate in real property transactions. I might also add that even among our own members there have been traces of similar controversy. I continue to regard negotiation as a desirable prelude to, and a potential substiute for, litigation. However, the history of this controversy between the organized bar and the title insurance industry has reflected exactly the opposite course, spurred on by the litigious attitude of the Unauthorized Practice of the Law section of the American Bar Association.

It seemed to me that the Pyrrhic legal victory of the bar in Arizona and the recently published survey by Prentice Hall sponsored by the Missouri Bar had created a climate in which a concise statement of policy in our industry at the national level would help to reverse the course of this history of controversy and which hopefully could become the basis for relegating it to the state or local level where, without the participation of any national association, differences might be resolved peacefully and more in the public interest than has resulted from litigation.

It continues, however, to be the judgment of your Board of Governors by a substantial majority, that any effort at reconciliation at the national level would have little chance of success and might constitute a disservice to many of our members. I bow to that judgment. Neverthe-

less, my own philosophy on the subject of relations between abstracters, lawyers and title insurers in real property transactions remains unchanged, and I propose to expound it, in a non-representative capacity, whenever the opportunity arises. It is based upon the premise that conflicts-of-interest are inevitable:

(a) Whenever a practicing lawyer attempts to engage in business, particularly a business related to the practice of the law,

(b) Whenever a title insurer attempts to substitute for a lawyer in real property transactions,

(c) Whenever an abstracter-agent attempts to represent more than one title insurer principal, or whenever any of the three groups atempt to serve two masters in any but an administrative or clerical capacity.

When I apply that philosophy to the methods of all bar related title assuring organizations, and some commercial title insurers, abstracters and practicing lawyers in the conduct of their respective businesses, as related to real property transactions, I arrive at certain ethically principled, though practical conclusions or solutions of the controversies. Most of you have heard them. Should anyone else be interested, they are available for the asking.

If I have sayed amisse
I am content that any man amend it,
or if I have sayed to little
Any man that wyll to adde what hym pleaseth to it.
Roger Ascham

In closing, I wish I could find words that would express adequately the feeling of deep personal privilege that was accorded me this year to work with and for the members, the governing board and administrative staff of this Association. Though few, if any, goals were achieved, we may have gained a yard or two on balance. My wife and I shall recall the year's experience most often in deepended and treasured personal relationships with many of the finest men and women engaged in any common enterprise.

Respectfully,
William H. Deatly
President

Once upon a time...

One company brought forth photocopy papers that were the finest ever seen in the land.  They were called PHOTOSTAT...and in due time the name became the paragon of quality. Lo, these many years, Photostat is still the Prince  Charming of the photocopy field. Its virtues are legion. Copy production can be continuous. You don't wait for test prints, because you can depend on the unswerving Photostat uniformity from roll...to roll...to roll. It copies anything  ...without any limitations, making a permanent image on durable, permanent paper. Photostat offers a wide choice of photocopy papers...each one capable of producing finely detailed copies...the sharpest you've ever seen. There are even lightweight Photostat papers, opaque or translucent, that reduce bulk, save space and lower postal charges. Photostat papers are trustworthy without being expensive. To live happily ever after with your photocopy requirements, you should choose Photostat brand papers. For the ultimate in happy results, we suggest marrying  Photostat papers to our wonderful Photostat Photocopiers. A word to Itek Business Products, Photostat Corporation, Rochester 3, New York, will bring you the full story.

Itek

A WELCOME TO CALIFORNIA

WILLIAM BRELIANT, President, Security Title Insurance Company, Los Angeles, California; President, California Land Title Association

Members of the American Land Title Association, Members of the California Land Title Association, Attending Ladies and Gentlemen:

As President of the California Land Title Association I want to extend to each of our visitors a warm welcome from the California Land Title industry. After ten years we are again happy to welcome the American Land Title Association to California.

I am sure that you will find your host city, San Francisco, will live up to California's hospitality. We will do everything we can to make your visit here a memorable and happy one.

Those of you who have not been in California in recent years will see startling changes throughout the State. Our continuing growth has set off building programs that are altering the face of our countryside, and the appearance of our cities.

Keeping pace with this growth is producing problems in the makeup of our plants and systems. It is resulting in a tremendous expansion of the title business and tremendous expectations of the title business.

As a member of the California Title Industry and on behalf of all members of the California Land Title Association, I cordially invite you to visit the title plants of our California Land Title Association members during your visit to California.

In the ten years since your association has met in California we have entered the space age. Its full impact on space is still to be felt but before we start worrying about outer space we have the down to-earth problems to be solved here. I hope you find some of the solutions while you are here, and that your visit with us in San Francisco is both pleasant and profitable.

Thank you.

Welcome to San Francisco

HAROLD S. DOBBS, Acting Mayor of San Francisco

San Francisco is really delighted to have you. I note from your program the last time you were in San Francisco officially was in 1939. Since that time many things have happened to this city, and as you are all aware there was a war during that time and I am sure there is very little here today that resembles what you saw before except the beauty of San Francisco, our hills, our cable cars, our hotel rates and our friendly police officers.

As a matter of fact, I might tell you during your stay please feel free to speak in any manner you deem appropriate to our police officers or just tell them who you are and if they don't respond properly just give them my name. It may help you.

The ladies are here; they should feel free to shop at our stores and use the credit privileges offered and again, if you have any difficulty just call. The Mayor's office will be happy to arrange almost anything.

But today I am here to say to you that the proclamation which was issued by the City and County of San Francisco designating this as "Real

Estate Title Week" is in recognition of the members here in San Francisco.

We are always pleased to have the representatives of free enterprise here. We like free enterprise in San Francisco. Everything good that has happened here has happened as a result of free enterprise and so I am here to welcome you because you are keeping America alive. When you come to San Francisco it is recognition again that San Francisco is a great American city where free enterprise will always run the Government and the Government will stay in the background simply to keep order. That is all we are supposed to do. And I say this to you in conclusion, that I hope your stay will be a pleasant one. The weatherman says there will be some rain today but I will take care of that. There will be no rain.

I had a call yesterday morning at 5:00 o'clock in the morning, at my home—I was asleep and my boy answered the phone. We always muffle our phone and he came in to me and awakened me and said that there was someone on the phone who said that there is going to be a tidal wave. Well, I get funny calls at home and I almost didn't respond to it, but I found there was some chance or other that we could have a tidal wave in this area as the result of the tidal wave in the Hawaiian area. Fortunately it did not occur. We didn't want to get you off the front pages and that's the reason I quieted everything down.

In conclusion, have a wonderful stay in our city. If there is anything we can do in the Mayor's office for you, we promise to do so at any time, day or night.

Thank you.

Response to Address of Welcome

CLEM SILVERS, President, American Land Title Association; Owner F. S. Allen Abstract Company, El Dorado, Kansas

I am pleased that I was asked to make this response today because it gives me the opportunity to publicly express my love and profound respect for your great city.

However, I cannot help but compare your warm welcome with the first welcome that I (and perhaps many others in this room) received some twenty years ago, when I was greeted, not by the acting mayor, but by the Port Director of Uncle Sam's Navy. (The accommodations I am enjoying on this trip have IMPROVED also.)

To one who had spent all of his days on the vast prairies of Kansas, this "stacked" city, where people **literally** "live on top of each other," in cliff-hanging apartments, on perpendicular streets, was frightening.

The "flatness" of the Marina District appealed to this bewildered Kansas "boy" and his Kansas bride of four years.

But San Francisco is irresistible! Within two months, we were envious of our friends who had chosen "apartments with a view" on Telegraph Hill, Russian Hill, Pacific Heights or near Twin Peaks.

However, the Marina had its advantages. We could walk to Yacht Harbor and watch the ships come under Golden Gate Bridge. And we were near the Presidio.

It was our good fortune to remain in San Francisco for a year before being transferred to other ports and the high seas.

San Francisco is the most cosmopolitan of all cities. Here you can see

the whole world. There is Little Italy, Little Russia, Little Japan, Chinatown. Why, nations were working and living together here in San Francisco long before the United Nations was born.

Were I only to list, for my friends, all the opportunities that San Francisco can offer them, my short response would become a lengthy address.

Since the writer, William Saroyan, paints word pictures that express my sentiments, may I borrow from his words and add some thoughts of my own as I urge all of you to make the most of your visit.

"San Francisco is the genius of American cities. It enlarges the spirit, educates the heart, deepens the experience of living. It is the whole world recreated as a single work of art. It has everything—sea, earth, sky and the wonderful world of people!

"There are no end of ways of spending one's time in San Francisco, pleasantly, beautifully, and romantically. Eat any kind of dish. Drink any kind of wine. Play any game you care to play. Go to the opera, the symphony, the concert, the stage play. Loaf in the 'high-toned bars' or the 'honky-tonks.' Bet on the horses. Go to the Golden Gate Park. Go to church, beautiful churches, beautiful and old. Ride the cable cars, and, if you really want an experience, drive your car up Russian Hill on Lombard Street.

"If you are alive, you cannot be bored in San Francisco. If you are not alive, San Francisco will bring you to life."

We of the American Land Title Association assure you, Mr. Dobbs, that we are grateful to be here in the most picturesque city in the world, and we are looking forward to the next three days as your guests. Thank you for having us.

Report of Trustees, ALTA Group Life Insurance Trust

MORTON McDONALD, Chairman of Board, The Abstract Corporation, De Land, Florida

Another report is due you on the operations of the ALTA Group Insurance Trust. There are some interesting items to report this time.

You will recall that when this program was begun, the principal range of coverage depending on income was from $2,500 to $20,000. Under this plan we now have something over $6,100,000 of insurance in force. It was felt that there should be some changes in this program. Changes were made with the idea that more people would become interested. The amounts of insurance were scaled downward so instead of four major divisions in amounts of insurance it was changed to six major divisions ranging from $1,000 to $20,000. Another million in coverage has been added under this plan. So, we now have in force something over $7,100,000.

This sounds like a good bit of coverage. It is, but it is not nearly as much as we should have with such a program. The cost of the coverage is as competitive as any I know. The plan was established primarily to assist the smaller companies who could not get such coverage otherwise. It is not to the exclusion of the larger companies and I think it would be of interest to many if you would only take the time to examine the program.

We have completed five years of the plan. At the end of the first year we paid a 10 per cent dividend. The second and third years we paid no dividend. At the end of the fourth year we paid a dividend equalling 5

per cent for that year and 5 per cent each for the two years skipped. This year we declared another 10 per cent dividend that you will be receiving shortly. That means an average of 7 per cent to date in dividends. During this same period we have paid the beneficiaries of the policies a total of $220,250. In addition we have a comfortable reserve for the future.

Our Consultant, Mr. Clifford Gould, has resigned. We do not expect to have a successor for a while. We feel that we should not move too fast in this respect.

Mr. Joseph Snyder of Chicago has resigned as Trustee. The Board of Governors of the American Land Title Association has named Mr. Frank Kromer of Chicago as his successor. We welcome him on the board. We have enjoyed the association with Joe Snyder and hate to see him resign but feel we have a splendid successor.

We expect to spend some time and effort in promoting this program during the next twelve months. The Trustees have authorized me to attend State Title meetings wherever possible, when invited by the officers of the State Association. I will present the program to the members at State Association meetings with the idea that we can reach more members than we can at the national meetings. This service is being offered to the various State Associations without cost to them and without cost to the American Land Title Association.

A number of people have asked the question, "What do the Trustees get out of this?" and we say again, we serve without compensation insofar as dollars are concerned. We have the satisfaction of seeing that another fringe benefit is made available to the members of the Association together with their employees.

I feel closer to this program than ever now. Just last Monday, October 7th, the manager of my Ocala office died suddenly. He was 44 years old. It certainly is a satisfying feeling to know that his widow and son will receive a sizable check because his "boss" was far-sighted enough to have this fringe benefit. Would you be able to take a check to the widow or orphan of one of your employees for from $2,500 to $10,000? Could your widow look forward to an extra amount of from $7,500 to $20,000 if you suddenly dropped out of the picture before what is considered your allotted time? This is not said to be morbid, but to get you to think of these things. Take action now. If you do not have a group life insurance program in your company, drop a line to Mr. Joseph Smith at our Washington office and request him to send you the necessary papers to qualify.

This is your program, put in for your benefit. Take advantage of it now.

DON'T FORGET

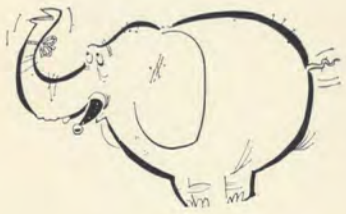
ALTA

Mid-Winter Conference

Riviera Hotel

March 11, 12, 13, 1964

Las Vegas, Nevada



Today's Challenge to Tomorrow's Freedoms

HON. KARL E. MUNDT, Senior United States Senator, Representing the State of South Dakota

Thank you very much, Mr. President, and good morning ladies and gentlemen of this magnificent convention in this beautiful western community.

I bring you greetings from the great State of South Dakota where we have four faces on Mount Rushmore and five faces on the Fischer Body Production Plant at Aberdeen, and where we have 15 million pheasants awaiting as of this Saturday to welcome you on the opening of our pheasant shooting season.

May I say, sir, I like to come to conventions. I think the convention is a great American invention that no other country in the World is quite able to duplicate. The American convention is where you get together and swap ideas with people—people working associated fields. You pick up some new acquaintances, you reaffirm some old friendships. I do not know who invented the American Convention, but I expect it was the manufacturers of Alka Seltzer or aspirin pills or something along those lines.

Conventions have the habit of turning day into night and night into day, and it all gets kind of mixed up at meetings of this type. Married people act like single people and single people act like married people.

All conventions are wonderful things and I don't think things would be quite the same if we didn't have this wonderful thing called the American convention.

I am especially happy to be here at a convention like this because it relates to a business with which I am somewhat familiar.

I did after some years of service rise to the position of Secretary-Treasurer of the Mundt Land Loan and Investment Company, a firm engaging in making first mortgages and transfers of real estate, and of course without a guaranteed title you go out of business pretty fast, so I found out the problems of the people engaged in your profession who give an American a title to something which he knows is sound and sure, and which in our country gives the owner protection.

Part of our business was making first mortgage loans. We would make the loans to the house owner on the real estate and sell the loan to investors like Prudential Life Insurance Company or to the Northwest Mutual Insurance Company, and we got along fine until there came about in the early 30's what was called a Depression and many people had no work so money was scarce, and somebody in Washington invented an institution called the HOLC, the Home Owners Loan Corporation. Some of you may remember something about that, and this Government investment company had access to more funds than we did and it received an interest rate a little bit lower or gave the borrower lower rates of interest. However, we managed even so to get along against this Government competition for a time.

We made loans to people needing the money and we gave them the personal attention so important to successful business. If somebody came in with a sick wife or somebody in the hospital, or some emergency, we would arrange to work with him and maybe we deferred the interest and kept his mortgage payments up to date whereas the Government employee didn't have that latitude. So we operated with this personal basis and we managed to compete with

Uncle Sam for quite some time until the Depression got worse and everybody in the mortgage business started foreclosing the mortgages and that was tough because we got stuck for our bad judgment in making bad loans and then in addition we had to pay our share of the extra taxes that resulted from the bad loans that Uncle Sam made; so we closed the business and I got into the business of Uncle Sam and I have been in it now for quite a few years.

I have loved every minute of it. It is an interesting business and it is a business where there are lots of people practicing it. It is already too big. Most businessmen want more business, want business to expand, but there are a lot of us down in Washington who would like to see our business contract and grow smaller instead of growing too big.

I want to talk, as the Chairman said, about "Today's Challenge to Tomorrow's Freedoms," primarily as one businessman to another. I shall speak as a fellow who is on lend lease, as it were, down in Washington, where I have been on the wrong side of the Potomac River, as a Senator trying to understand the procedure through a businessman's viewpoint and applying a businessman's logic to the problems which are arising. I have concluded in my own mind that the biggest single threat to the freedoms which we enjoy presently in this country can be designated and defined in that quaint manner that we have down in Washington by using a series of initials.

I use the initials TMG. I think the biggest threat to your freedoms as we have them in America now is represented by TMG, Too Much Government.

I really believe that.

This is not uniquely an American problem, it is a global problem and it is a problem of the 20th Century. It is especially a problem of the decade of the 60's of this 20th Century. It is one which faces us wherever we look because all of the world's free people are struggling with the problems of keeping Government large enough to do the things which are required of it and from becoming so large that it destroys the opportunity and the initiative and success which the rest of society desires to have.

And, we in the United States are not immune from this global trend. We didn't start it but we are caught up in it. The whole business of there being too much government has been plaguing the world almost since the beginning of the 20th Century.

Go back in your memories to the decade of the 30's. We saw TMG, Too Much Government, represented in Nazism and Fascism and syndicatism and the various one-man totalitarianism concepts developing at that juncture of history which as we all know continued right up to the World War in 1940. This business of the wars came when mankind was trying to fight back an attempt of the individual to control everybody, to develop a totalitarianism concept and make Government all-powerful and so authoritative that people didn't count any more. They were to be slaves, just puppets, the cogs thereafter in the great big national Government wheel. The decade of the 40's was thus largely a decade of war against Big Government just as the 1st and 2nd decades of the 20th Century were so largely marked by bloodshed and reconstruction to make the world safe for democracy.

Then the decade of the 50's was devoted to correcting the devastation of war, trying to re-enforce and realign the various powers which existed in the world, the shift from one kind of totalitarianism to another form of totalitarianism, the elimination of the Nazis and Fascists, the shift to the Communism concept of collectivism. Communism has now become a tremendous global movement. Today it is as large as we are and has more people under its domination than we do and represents for all of us a challenge in peace time, and in war, which somehow or other we must surmount and turn back or confront

the grim necessity of meeting it head-on in nuclear war. The Appropriations Committee of the Senate was told by the Secretary of Defense that if it comes down to a shooting war with Russia, everyone using the nuclear capacities which it now has, that there is the strong likelihood that in the first sixty minutes of that next war three hundred million casualties will take place. Roughly a hundred million Americans and Canadians, roughly a hundred million people behind the Iron curtain, and roughly a hundred million people in between.

This is why we have develcped so much military power, the weaponry, with which to enforce peace. We confront here in the 60's decisions which are pretty fundamental to our survival where a bad guess in foreign relations or perhaps in economics can destroy for all of us every dream of security and progress and opportunity and success that we are working for, the plans that transpire the blueprints, all the things we may build and look for to occur in business destroyed by a bad miscalculation made by the politicians in our Government.

As I said here earlier, this is the decade of decision in this era of survival. I think it is here in this country in this decade that you and I and other people like us are going to decide how much Government we want and how much we trust ourselves and our neighbors and our competitors and our associations to do the decent and proper and ethical things without the compunction of a Federal Law and without the surveillance of a Federal Auditor or Federal Inspector. I don't know what we are going to decide and it is not my purpose to suggest what I think folks like you should decide, but it is my purpose, as I go around talking to business groups throughout the country, to be sure that everybody in the private sector of our great society understands the forces that are at work, the problems which pile up and the fact that the decision is ultimately going to be made at home where the lawmakers are made and not down in Washington where the laws are made. It is going to be made by people like you in the voting places of your own home towns.

The decision is going to be made by honest and honorable people in the polling places of America. That's where the decisions are going to be made, not around the cabinet table in the White House or in the legislative halls of Congress. They are going to be made by people at home with a voting pencil in their hands.

Now, when I said I don't know where we are going or what decision will be made, I have evidence to back this up. Nobody in America can answer those questions today.

We have had two national referendums in the decade of the 60's, one in 1960 and one in 1962. We are going to have three more, '64 and '66 and '68. As sure as I am standing here I am convinced that before that final referendum in 1968 is completed and the votes are counted we are going to make completely and irrevocably a decision as to which way we want to have America go. This is a fundamental decision and we are taking our time about it because as a group of private citizens I think we do not know ourselves as yet just what we want to have happen in America. But America is going to make up its mind and Americans are going to make it happen before this decade is over!

Let's examine the election of 1960. Two fine young Americans were competing with each other for the Presidency. I happen to know them both unusually well. They are both friends of mine. I have served with both Jack Kennedy and Dick Nixon. I had served on special committees with each of them several times so I knew them better than I knew an ordinary colleague. I admired their energy and their vision and their determination and I watched the campaign and their work in it, I suppose, with more than just an ordinary interest because I knew so much about it, the

intimate thoughts and the plans and dreams, or aspirations of the rival candidates. They did in the campaign just exactly what I expected them to do. They told America exactly what they proposed to do if they were elected to the Presidency.

You remember the campaign? Mr. Kennedy went up and down the highways and byways of America saying that it's time to get America going again and he gave us a formula. He said that we have to get America off of dead center and moving again, and the way to do this is to give more power to people in political positions in Washington so they can apply more pressure, thus giving greater push to get America moving ahead in the field of National growth, in the field of economic advancement, employment, the field of education and health and social benefits and that is the way he proposed to get America moving again. That is, to give the politicians in control, in positions of authority in Washington, more authority, more power, more money to spend to put to work his plans, and that was his way to get America going again, so Kennedy said, "If I get elected that is what I will do."

Nixon began his campaign also by saying that we have got to get America going again. He said, "I want to do it in a different way. I think the reason for our stagnation is that too much power is put in the hands of too few people in Washington." He said, "What we need are fewer people in Washington, smaller expenditures, less dictation and direction, more freedom of the individual from the present government gauleiters so that private citizens can advance their successes according to their plans and their own concepts."

Well, here was the chance, a chance for America to decide how much government it wants. How much authority should we place with the people or with the politicians? Where do you want the control exercised, in Washington or in your own offices and your own homes?

But America didn't make any decision! There was a very narrow margin, less than one per cent by which Jack Kennedy won the Presidency from Dick Nixon, but in the same election the same people voting on the same ballot increased the conservative majority in the Congress of the United States by almost exactly the same percentage by which they elected Mr. Kennedy. This increased percentage in Congress held with Dick Nixon that government was already too big and too costly and too expensive. So we voted *"yes"* and *"no"* in the same election. Any student of government, or if he were a student of history, could have predicted that Mr. Kennedy was not going to be able to get programs enacted by Congress when he had a mandate from the people to move one way while Congress had a mandate from the people to do just the opposite, each by the same percentage, so nothing happened. And we took it back in 1962 for another referendum. What happened? Again we voted "yes" and "no"! And again the same people did it in the same election.

In that election of 1962 the people elected a Senate by an increased percentage which said the Senate's job primarily is to say "yes" to the White House because the President has a blueprint to the way to get America going again; he says spend it; socialize it, order it, command it—this is the way to get it and we as Americans should go along and give this program a chance and so the American voters were saying this in their choices for the Senate. But in voting for the members of the House of Representatives, by the same percentage they increased the members against such a program. So the voters also said that they do not hold with the President's program because it calls for too much power and too much spending.

So we have repeatedly expanded the national debt limit until it is the largest in our American history and only two or three pieces of major legislation have been passed by the current Congress because you have

got members of the Senate and House who are trying to reflect the sentiment of the people back home who elected them. The President says: I hear the people calling I should go that way. The Senate hears the people calling: You should go along with the President. The House of Representatives, which has to go back home for approval in November, a year from now, also hears the people calling, and they hear something else. They hear the people saying, "Put on the brakes. Resist the President."

Ole was a hired man out in South Dakota and he had a girlfriend named Tilly whom he was going to marry. She was a beautiful girl. She had red hair and green eyes and a fine complexion and she was very curvaceous, but just about the time Ole was going to propose he went down to the barn and hanged himself; and left a note which said, "Finally I gave up in despair. I couldn't make up my mind. Everytime I looked at Tilly her eyes said 'go' and her hair said 'stop', and I didn't know what to do so I committed suicide."

And that it what we have been doing in our last two elections because we are seemingly unable to make up our minds what we want to have happen in America.

There are a hundred United States Senators and 435 Representatives but you have two million other people in the Federal Government, in the executive branch, but of these there are only two that you can influence; The President and the Vice President are the only two. The other two million can push you around and you can't even squeal effectively because the only people with whom you register are the politicians for whom you can vote or against whom you can vote. The rest of them in Washington won't listen to you even though they may be employed by you basically. So, you are going to have to influence your Senators, your Congressman, or the fellow who appointed and directs these Bureaucrats because he is the man, he is the boss, he is the one then who calls the tune and sets the pace. He is, in fact, the President.

While it is impossible for me to predict the answers to be written in 1964 as to what America wants in terms of a revival or a restriction insofar as freedom is concerned, I think it is important for us to identify and analyze and understand what is occurring, the forces that are at work and the desires and the destinations that these forces have. We should know who are the people who want an all-powerful state and who are the people who do not want it. I do think this morning, not with any malice, not with any criticism of motive, that you should know who wants to take from you the power and money that you have and give it to politicians down in Washington who already have too much authority because once they have it, there it stays. And your money stays there, too!

Analyze the forces at work in the last election or the last two or three or four elections and you will see all around us those who want an all-powerful state. There is more than one group, so I shall mention first the Communism bloc. There are in this country, and I have this from an FBI report, that there are some thirty to thirty-five thousand Communist operatives. There is an average of ten people in America who are influenced, dominated, or directed by each Communist member so that gives us some three hundred or three hundred fifty thousand people, who represent the size of the Communist impact in America. It would be a mistake to judge its effectiveness based on its numbers, and I am not going to do that. I suggest that all of us should spend a little time guarding the institutions of which we are proud and which we cherish from being infiltrated or influenced by Communist operatives and their innocent or cunning dupes.

In this country Communists have an influence far beyond their mere numerical strength. In all events all our Communists are zealous supporters of Total Government. They want to exercise the freedoms which are presently yours.

What I want to talk about, how-

ever, are the three great forces in American politics and the emergence within the last decade of a fourth force and what it means to us as businessmen.

Our political procedures and influences started significant changes in 1936, at which time the Democratic National Convention was in process. This convention unknowingly rewrote the political formula for America by changing its convention rules. Up until then it required a two-thirds vote to nominate a President and delegates voted by the unit system.

The Republicans had never followed that particular procedure because we were a party that didn't have the problems of sectionalism at that time that the Democratic Party has always had. But at the Democratic Convention of 1936, a master politician conjured up the new rule that to get elected all that you needed was a simple majority for nominating a President and that you don't have to vote a convention delegation under the unit roll unless you are bound to do so by your own State.

That opened up the doors for the development of a third political force in America which I propose to show is today the strongest political force in our lives, has the greatest influence over our future and which intends before the end of the 60's to rewrite some of the economic and political history of this country.

Let me point out how this great new third political force has developed.

The first evolvement. That political group called itself the CIO-PAC. It was run by Walter Reuther and a few other leaders and it later merged with the AF of L to become the Committee on Political Education, more commonly known as COPE.

The Committee on Political Education is still headed by Mr. Reuther who is surrounded by some of the best and ablest political engineers in the country and he is operating in every primary and in every fall election and at every level of the electoral operation where he has aspirations to influence or dominate the party of victory.

COPE is now exercising its own political machinery and the courts have said it is doing nothing illegal. I don't know whether or not this is correct, but you have to accept what the courts say as proper in this country until the judges change their minds or until we change the laws, and so I presume that Walter Reuther is doing a perfectly proper legal operation by which he has put together a *third political force* that makes the Democratic National Committee and the Republican National Committee look like pygmies by comparison. This is the thing I want you to know because unless you understand this it is pretty hard to fight effectively on either side of the ideological issues which are going to be decided for all of us, I am convinced, by the end of the 1960's.

The strength of Walter Reuther's new COPE, the strength of the Committee on Political Education, is not entirely in its numbers. It is *important* because in whatever state you may happen to come from, that organization, COPE, has more people working full time politically than the Democratic National Committee or the Republican National Committee combined. It is *important* because COPE issues more pieces of political material day in and day out between elections than both the Republican National Committee and the Democratic National Committee combined. It is *important* because COPE keeps and publishes an index on the voting pattern of every member of the House and Senate and uses this voting index to try to defeat or elect Senators and Congressmen on the basis of their service to the causes and the concepts advocated by COPE and its associated political allies.

COPE is *important* finally because it is building a political war chest which is going to enable it, in the next campaign, to spend more money in that election selecting and electing candidates who will vote its line

and represent its wishes than the Democratic and Republican National Committees combined can legally expend. COPE is well financed, it is well headed, it is not a Communist front, it is legal and it has a singleness of purpose. It knows what it wants, whom it wants to elect and whom it wants to defeat, what it wants to do and it knows how to do it.

COPE has the best training manual for political workers in the United States today.

It is a book of some 250 pages and it tells how to win friends and influence people at election time. It details the manner and procedures by which ordinary private citizens can become highly effective political workers.

It emphasizes the lesson that every successful political person has to learn and that is that politics is a mathematical business of addition and multiplication, not of substraction and division. It is a mathematical formula to win in politics, to put across the ideology, to protect the business or property or the function. You have got to do it by addition and multiplication, and not by dividing yourself away from the voters and by subtracting or alienating the people you don't like or with whom you have some minor disagreements.

Walter Reuther started with the very same people he had a long time ago, and they kept adding and multiplying and making common medicine with every big city political machine in America today. A big city political machine doesn't care whether it is a Democratic machine or a Republican machine. It doesn't have a philosophy of government. It doesn't care about political concepts and economic principles. It tries to get America going again by letting the politicians run everything or to get America going by giving office holders more money and authority. The big city political machine has no philosophy. It wants power. It wants patronage. It wants prestige, to have something to say in the selection of people for any office so it can keep its new authority, so COPE says, "Look, we have got the workers, we have got the troops, we have got the victory plans and we have got the money. We can help you stay in," and so they work together with big city political bosses in a common motivation because each serves its own specific purpose.

Consider next Americans for Democratic Action (ADA). It is not an unpatriotic organization. It is not a communist organization. It is a group of so-called self-proclaimed intellectuals. They have Phi Beta Kappa keys, they have individuals who are educators, they have men with doctors degrees, and they think they are pretty smart. They have got energy, and they have got contempt for individuals like you and me, because we are the poor stupid businessmen trying to make money and pay taxes and trying to make our own decisions whereas the ADA people consider themselves intellectuals who are perfectly willing to take on our problems and solve them for us—and at our expense!

The ADA has a lot of answers, more answers than there are problems, and so they think it is their duty to provide them even though they have to invent their own problems. I don't condemn them because I think they are unpatriotic. I simply resent them because they have lost confidence in the people. They have forgotten the basic concept of this country's government. They h a v e never suggested a solution to a single problem which didn't include giving people in jobs like mine more power over people in jobs like yours. No place in the Americans for Democratic Action program have you ever seen them say, "Let's give the people more power, more authority, more freedom." They always and inevitably recommend giving more power and more authority to some politician down in Washington. They have lost confidence in people and so Americans for Demrocratic Action, who are the figurers and dreamers and planners, find the musclemen they need in Walter Reuther's

organization for political action, (COPE) and that is why we have a third power in American politics.

And that's not all. The Big Government Crowd have with them in addition to COPE and ADA and the Big City Political Machines various special interest groups who join them in political campaigning for some special purpose or when they want to elect a party or a candidate favorable to their pet projects or programs. Thus, they have put together this whole package of political pressures and each group seeks to benefit its own special purpose or program once victory is achieved.

They move into other areas as well —take the Civil Rights issue, for example.

You have in addition to COPE and ADA, the National Association for the Advancement of Colored People, that represents a bloc that can be used politically and you put those together and let me tell you, my good American friends, you have in operation *a third force in American politics today* that is making a shambles out of our two-party system that has kept you free and made you prosperous from our very inception. You have got to vary your thinking about our pattern of American political activity or else you virtually become entirely impotent members of our great American body politic.

I can tell you that today in Washington people out of COPE headquarters and the various other groups that I have mentioned, can call up more members of the United States Senate and the House of Representatives and demand that they vote a certain way and deliver their votes than can the leaders of either political party. It's an old rule in politics if you double cross anyone you don't stay there very long and if you accept the help of the group that put you in authority and then turn your back on them they hate you with a vengeance, and so we have for three decades been developing this third force in American politics with no counter-balancing fourth force to offset its influence.

This third force has been attacking the things that keep men and women like you in your businesses, private ownership and the private transfer of private property. Once a piece of land or a piece of property gets out of the hands of private ownership and into my hands, a government employee, then we take care of it from that point out.

Once you destroy the right of people to own and transfer private property you destroy the need to guarantee a piece of property's title because once Uncle Sam has it there is no appeal from that type of proprietorship and that kind of ownership.

Therefore, my fellow Americans, I point out that I think it is highly important that there be a fourth force to put our national political campaigns back into balance again. By and large this thing has been developing, it is all in evidence and it has been evolving before our very eyes. You just need to go back in American history. Do you remember the Democratic National Convention back in Chicago when a great American was chosen for renomination and they were thinking about who would be the Vice President? The Presidential nominee said it then and he said it right over the radio where we all heard it. He stopped to analyze these new political forces and then he said, "You have got to clear it with Sidney." You remember that, friends? Of course you do, but perhaps some of you have failed to realize its full significance.

It's an historic phrase now. Sidney worked with CIO-PAC and with COPE. The evidence is there if we hunt for it and if we look for it.

Now, from the experiences and developments of this decade, a fourth force is finally beginning to emerge in this country within the last five or six years, so we can have a fair fight, and that's all I want and all any good American should ask. I don't know which side is going to win. I just simply believe that those who believe in their free and tradi-

tional constitutional concepts have no chance to win if they fight alone in one corner while they have this third force which is bigger and far better unified than either political party, is working against them, so a fourth force is vitally needed to try to balance this thing up so we can have a fair contest with neither point of view having an unfair advantage over the other.

Strangely this new fourth political force grew up in America from the spirit and spunk of the freedom loving businessmen, professional men and conservatives, citizens of this Republic who for so long had done so little to protect or to promote themselves. Constitutionalists and conservatives for thirty years have been concerned about American trends and with taxes getting higher, the integrity of the dollar diminishing from a hundred cents to a dollar to less than fifty cents, all this is happening to people who believe in something, in something called the American system. But for nearly thirty years also the only answer of business and of the professions has been, "nolo contendere." It has almost been a confession of guilt with no defense. They virtually pled guilty paid the fine and didn't fight back and I can understand that. It can be awfully tough fighting back if you fight alone or without organized allies. If you fight back the income tax examiners come, and if you are fighting back it may be that you will have trouble with the income tax examiner, or get a Government contract cancelled someplace along the way. So business leaders have been kind of afraid to fight back until finally they began to realize that once you have lost the fight entirely there then is no chance at all to fight back.

Now, however, if you want to fight back you don't have to fight alone, because the medical doctors started this whole business of building a fourth force in American politics in the early part of the decade of the '50's or the later '40's. They organized to fight against socialized medicine. It is not important whether you like socialized medicine or don't like it, whether you think it is good or bad; the doctor's didn't like it and they decided they would do something to stop it, and they had some initial success. They didn't say to a candidate: "Are you a Democrat or a Republican?" They went to the Congressional and Senatorial candidates and asked "Where do you stand on socialized medicine? If you are against us, we are against you. If you are for us, we will help you."

Well, it got results and from that they have organized an institution called AMPAC, a political organization modeled and tailored precisely on Walter Reuther's COPE pattern. You can't do any better. This success stimulated other people to fight for the protection of private power, private insurance, private transportation and private ownership and enterprise generally.

AMPAC, however, is belately realizing that it alone cannot win the fight against the socialization of America—it alone cannot even defeat Socialized medicine or stop it from being imposed upon America by degrees, one insidious step at a time. It is now ready, willing, and able to join up with other like-minded groups who believe in a free America and private ownership just as COPE so readily joins up with other groups desiring to concentrate more power, spending, and authority in Washington.

And, today, AMPAC no longer needs to fight alone. Many individual Americans as well as business groups fearing the growing encroachments of the Federal State are now organizing to protect themselves and to preserve the American concepts which have made us the unrivaled leader of the World. Some five years ago a group of these Americans met and organized a group which is now nationally recognized and respected, known as Americans for Constitutional Action (ACA). These citizens want to preserve and protect the Constitutional concepts which have served us so long and so well. They Vigorously, openly, and I am happy

to say rather successfully, oppose the paternalistic Federal programs espoused by COPE and ADA. ACA opposes the socialistic proposals of ADA and it challenges the COPE-ADA political third force by providing a great and growing political fourth force which, with AMPAC and other hoped-for allies, is prepared to fight the battle for freedom on American soil by use of the ballot and the polling place. It is putting our American political pattern back into balance again and it provides a responsible and respected organization through which good Americans can work to preserve their individual rights and freedoms. Memberships start with a minimum contribution of $5 per year which includes a subscription to the Congressional voting index and other useful information and material. National Headquarters of ACA is located at 20 E Street N.W., Washington, D.C. National Chairman of Americans for Constitutional Action is Admiral Ben Moreell, organizer of the Navy's Sea Bees, 1941, and former Chairman of the Board, Jones & Laughlin Steel Corporation.

The Americans for Constitutional Action is out to reject the unrealistic ideology of Americans for Democratic Action. ACA is non-partisan but it is strictly a political action group supporting its friends and opposing its enemies precisely as COPE has done almost without opposition for many years.

Then we have the ECO. The Committee on Effective Citizenship. It has suggested to chambers of commerce, to trade associations, to conventions and groups like yours, that unless you are willing to pool your free dollars you are going to lose them because nobody else is going to fight your battles and ECO is not interested in a specific project; it is interested in our free enterprise philosophy. ECO is not interested in any industry; it is interested in ideals. ECO believes in people and helps train them to work effectively to protect themselves.

So the Committee on Effective Citizenship trains young people in businesses, in every walk of life, in the functions of practical politics. ECO then sends them back to become active and they have become active and highly successful in a growing number of political campaigns. They have done a good job. They have just released to the employees of General Motors a booklet on how to understand the machinery of government and how people are elected, how decisions are made and how both taxes and jobs are created. It is more important that these young American business and industrial leaders understand the machinery of government than that they understand the machinery of production. ECO is trying to help provide this basic understanding.

About two months ago the fourth member of the fourth force in American politics finally was born. It is an association or organization called the Business and Industrial Political Action Committee. And what does it propose? It proposes that business and industrial people generally are either going to have to show as much action, as much determination, as much energy, as much ability, and as much dedication to the concepts in which they believe or to which they are dedicated, as does Walter Reuther's group or his third force is going to take away their freedoms and their rights of private ownership. Reuther wants to be around the bargaining table to go over a lot of books. He wants to have profit sharing. They are going to move right in on managerial and ownership functions. They know what they want and if nobody is opposing them with a counter-balancing organization they are going to get it.

BIPAC — This new Business-Industrial Political Action Committee is going to fight back. They use the same manual, they operate the same way by taking the same practices as COPE. They will cooperate with AMPAC, ACA, and ECO.

There is always a difference in every election. Frequently that difference is not simply between a Re-

publican and a Democrat, but there is a difference in the ideology, there is a difference in the posture and the position that the politician has towards the functions and the freedoms of the people. There is nothing as inane, as stupid, or as ineffective as the man who says, "I don't think I am going to vote, there's no difference between the candidates." Let me tell you something. Let me give it to you straight and clear. *Whenever there have been two candidates for the same office in American history, there has always been a difference.* It is just that you or somebody else has been too lazy to find it, that's all. But if you look hard enough you will find the difference—it's always there. And what does Reuther do? He doesn't always get precisely the man he wants but he gets somebody who is two per cent or five per cent or thirty per cent closer to his program than the other fellow. He supports the side he wants and then he says "You could never have won it without our help and if you stick with me we will win a bigger majority next time." Thus he multiplies "the difference" in his favor. Remember, there is always a difference, in every primary, in every fall election, and in every major election for Congressmen, Senator, State Legislator, Governor, or President. Find out which of the two candidates is closer to your way of thinking and support him. I can assure you that never in the history of America have two Siamese twins ever run for the same office in the same election. Indeed, there is always a difference.

You are never going to find anyone you agree with one hundred per cent, so what you are going to have to do is simply to find somebody to move in your direction and help him and encourage him and increase the difference by degrees in your favor.

The issues are pretty simple. The issues are between those people who want to hold Government down and those who want to build Government up, or in other terms, there are those who want to hold the people down and those who want to build the people up. Basically, the issues are divided this simply.

If things were always divided between Republican and Democratic, it would be simple, but you have variations in both parties.

We do have two distinctive and different parties in this country, though, in which you can develop the thinking of people. You have Walter Reuther's third force and you have the new political group now operating, the fourth force.

They don't have titles so I call them FGF and FGL; Federal Government Firsters and Federal Government Lasters. Federal Government Lasters assume that Americans want to do well, we want to see people get an education, we want to see them leaving the slums and we want to help them have good transportation, good incomes and vacations. We are all good humanitarians. The difference with the Federal Government Firsters is that he doesn't try to do it locally, he doesn't try to do it individually, he wants the politician to appropriate the money and tell the people what to do. That, the FGF'er believes, will take care of the problems.

The Federal Government Laster, however, will first try to find some way to do it locally. If there is a need to develop a public housing project, the FGL'er will want to get some figures together and see if we can develop low cost housing at a reasonable cost by local financing and keep it on the tax rolls. Maybe we can introduce a clean-up paint-up campaign, try to improve the community by local effort first. That's the difference. Do you call upon Uncle Sam for help and direction **first** — or **last?** Where do you want to start, with your trying or do you want to look to the Federal Government first?

Now, I wouldn't object to this too much except that any student of history knows there has been no place in human history where those who have had too much Government where the Federal Government First-

ers have had their way, where they have had any success. On the other hand, where they have kept the power at home and not let the Federal Government do everything, they can point to a succession of victories.

Look what happened to Hitler and what he did to Germany. He was burned to death and his country virtually ruined and he was a Federal Government Firster, all the way. Mussolini hanged by his toes in the public square in Milan and spat on by the people of Italy. Mussolini was also an FGF'er. And then Russia, unable, with more farm acreage than any other country, to raise enough feed, wheat, for her own. Communism is a Federal Government First concept carried to the nth degree.

Latin American governments are tumbling like a deck of cards. Wherever you place too much power in the hands of politicians they have wrecked their countries with no exception. The only place we try it in America is in our Post Office Department. That is the only place where we have gone the whole route. The politicians are running the Post Office Department without competition from any source.

Well, a man ought to be able to make a success running the past office. After all he has no competition at all, why, you can't even make your own stamps or they will put you in jail, and yet they go in the red hundreds of millions of dollars every year.

Why? Because politicians cannot run an enterprise profitably. Every time they have made a little profit all the people working for the Post Office Department say that we should be getting a raise in pay and we need more mail carriers and there we are right back in the red again and so we move the price of stamps from two to three to four and then to five cents, but things don't get better because all the employees say that if you are going to charge more for stamps then you are going to have to take better care of your employees. The towns and cities say we ought to keep the post office open longer, when you have a five cent stamp. Since stamps cost more you ought to keep open all night, don't close the windows at 5:00 o'clock, and stay open Saturday afternoon and provide more frequent city delivery service. I dare say if we were to sell the Post Office Department to J. C. Penny he would make a profit the first year.

I don't advocate doing this, however, I want to hold the Post Office Department out as an example of what will happen if we socialize or nationalize other services and functions in America!

One other thing, and with this I am going to close. My primary message is that all of you should be active in pushing this country in the direction you would like to have it go because this decision is going to be made by somebody and soon. The decision will affect you for the rest of your lifetime and now you have the chance to help make it.

If you are interested in these operations, buy booklets and literature and find out all about them. BIPAC headquarters are at 14 West 49th Street, New York City, New York, Business-Industry Political Action Committee. The minimum membership fee is just $10.00.

Americans for Constitutional Action as I have said, has as its address, 20 E Street, N.W., Washington, D.C. Dues are $5.00 a year and for your $5.00 you get an index that lists the vote of every Senator and every Congressman on issues involving your pocketbook and your freedom and how much competition the Government is going to give you.

It is important you have these voting records so you can look at them when somebody speaks to your Rotary or Kiwanis Club and tells you how wonderful he thinks you are. You can then look at this voting index and you can say to your Congressman or Senator—"Why did you vote such and such a way on such and such a bill?" You can then judge your Congressman by his actions

rather than by his adjectives. I want to repeat that there are always differences between candidates if you want to find them, so get in on each political campaign on one side or the other. If you walk down the middle of the road you are going to get hit when the traffic gets heavy, so decide for yourself, in your own mind, whether you want to be a Federal Government Laster or a Federal Government Firster.

Please remember, **Too Much Government** is a threat because it has failed every place it's been tried. It has failed in the American Post Office Department and it has failed abroad. When we make our decision will we make it in the direction of trusting the people a litle more once again or are we to trust only the politicians? That's your decision.

There are good people on both sides of this basic issue, and I am not condemning either side. I am just delighted that it is going to be a fair fight, that we have a fourth force developing in our American political scene instead of having as we had for so long, a third force with no counterbalance working to offset it.

When this country was formed we were worried about too much government even then because in the Preamble to the Constitution, when they set the whole thing up they said, "In order to form a more perfect Union, establish Justice, i n s u r e domestic tranquility, provide for the common defense, promote the general Welfare," and so forth.

Think how they must have pondered carefully for them to write it as they did: to provide the common defense and to **PROMOTE, and to promote,** the general welfare.

Man, what a difference Less fastidious men would have said, "To provide for the common defense and for the general welfare." Not these Constitutional fathers who feared the threat of too much government. They gave the politicians the power to provide the common defense but only the power to **PROMOTE the general welfare!**

This limits the things that the Federal Government provides to those areas where the individuals cannot do the job so well themselves.

Let us all, therefore, during the rest of the 60's get on the side we feel most ably reflects our views. Let no red-blood American, however, sit this one out. Get into this decision-making business on one side or the other. In other words, act now or forever hold your tongues. You can make the decision come out the way you want it to come out insofar as the functions of Government and the preservation of freedom are concerned in this, the greatest country of them all. The decision is directly in your hands.

Report of the Judiciary Committee

CARL D. SCHLITT, Chief Counsel, Home Title Division, Chicago Title Insurance Company, New York, New York

The interval between your Committee's last report and the current one appears to be one which has given rise to very few, if any, decisions of major importance in the field of real property law or of title insurance.

Several states have adopted new codes of civil procedure which, in the main, are recodification of existing law with comparatively few substantive changes. These, of course, will have an impact only within the confines of the states adopting these respective codes.

Of great significance is the widespread adoption of condominium statutes. Whereas, in 1961 only two states adopted such laws and in 1962 four states adopted such laws, in 1963 thirty-two states passed condominium laws and two other states have such legislation presently pending.

The information received from the Committee members from the various states are listed in alphabetical order.

ALABAMA

Plaintiff brought an action of ejectment, claiming defendant had constructed a barn on his land and was cultivating part of it. The defendant claimed that he had acquired title to the part of plaintiff's land which he occupied by adverse possession since 1940. Plaintiff established that he was in the military service from 1937 to 1951. The court held that the period during which plaintiff was in the military service could not be included in computing the statutory period for adverse possession. (**Campbell v. Langingham**, 145 So. 2d 824.)

ARIZONA

Action for declaratory judgment and to quiet title in certain real property based on deed restrictions. The Supreme Court held that the evidence failed to show that there was a binding covenant running with the land even though the original grantor inserted restrictions in the deeds as to use of land for residential purposes only. The grantor never subdivided the land and there was no showing that the ultimate grantees knew of the grantor's intent. The court said:

"Restrictive covenants which equity enforces between purchasers' interests are those that have been imposed by a common vendor or the original owner of a tract of land in pursuance of a general plan for the development and improvement of the property . . ."

If the purpose of the restrictions are not stated in a deed, the purpose must be proven. The court said:

"In determining whether land is included in a building scheme, doubts are to be resolved in favor of the free use and enjoyment of the property and against restrictions . . . Restrictive covenants are presumed to be for the benefit of the grantor alone in the absence of evidence to the contrary, and the burden of showing that such covenant runs with, or is appurtenant to the land is on the party claiming the benefit of the restriction."

The court found that the restrictions were merely personal and did not run with the land since the intention was not set out in the deeds and no general scheme or plan was shown. (**Palermo** v. **Allen**, 369 P. 2d 906.)

When a grantor conveys real property described by a subdivision lot number where the land abuts upon a vacated alley, the grantee obtains no title to the alley. In such a case there is no presumption that the grantor intended to convey an interest in the abandoned alley. (**Torrey** v. **Pearce**, 373 P. 2d 9.)

CALIFORNIA

A title company insured a piece of property in the same manner as it was legally described in the deed except that the policy stated that the land was in the "Beaumont Irrigation District, City of Beaumont." The policy excluded water rights and claims or title to water from its coverage. It was admitted by the defendant and the court found that the property was neither in the City of Beaumont nor within the Beaumont Irrigation District. It was found as a fact that no representations were made to plaintiffs that the land was in the Beaumont Irrigation District, no such inquiries were made by the plaintiffs before they purchased, and the plaintiffs knew that the land was not in the City of Beaumont. The plaintiffs got everything that their contract of purchase entitled them to. The fact that the title insurance policy added a water feature "Beaumont Irrigation District," not contained in the deed, does not mean that plaintiffs can seek to obtain a windfall from the defendant insurance company, particularly as the defendant specifically protected itself against a claim of this nature by excluding from the policy water rights or claims or title to water. (**Coleman** v. **Security Title Insurance Company**, 218 A.C.A., July 1963.)

An agreement between the plaintiff and defendant's predecessor in title pursuant to which defendant agreed not to convey real estate so long as it was indebted to the plaintiff and which was conveyed to the defendant when its predecessor in title was indebted to the plaintiff does not serve to create an equitable mortgage despite the fact that defendant took title when the agreement was a matter of record. Such an agreement is deemed a void restraint on alienation and a contract which is made contrary to public policy or against the express mandate of a statute may not serve as a foundation of any action either in law or in equity, and the parties will be left where they are found when they come to a court for relief. (**Coast Bank** v. **Minderhout**, et al, 218 A.C.A., July 1963.)

Prior to the sale at foreclosure a fire destroyed the improvements on the premises. The mortgagee bid in at the foreclosure sale for an amount equal to the amount found to be due the plaintiff in the action. The mortgagee-purchaser then sought to obtain the proceeds of the fire insurance policy under the mortgagee's status under the fire insurance policy. The court held that the plaintiff-mortgagee, having bid the full unpaid debt, the debt had been satisfied and that the mortgagor was entitled to the entire proceeds of the fire loss. (**Rosenbaum** v. **Funcannon**, 308 Fed. Rep. (2d) No. 4.)

Plaintiff seeks to foreclose a mortgage on a one-third interest which Nazzarena Persicone owned as a joint tenant with two others. The mortgage was executed during the period of joint ownership. Subsequently thereto Nazzarena Persicone and her two cotenants contracted to sell the property to the defendants herein under an installment contract permitting the defendants to go into possession. Under the provisions of the contract, payments were to be made to the joint tenants who retained title as such subject to the contract and who unitedly retained the right of repossession upon a default under the contract. Upon the death of Nazzarena Persicone, plaintiff seeks to foreclose the mortgage against her so-called one-third interest in the property, claiming that the joint tenancy terminated on her death. The court held there that the intent of joint tenants is an important consideration in determining whether their acts in dealing with the property in joint tenancy terminated it, and that absent a contrary agreement, the proceeds of joint tenancy property retained the character of the property from which the proceeds are acquired. The theory of equitable conversion is fictitional as to the intent of joint tenants as vendors under a sales contract; the theory should not be regarded as a substitute for reality in determining the intent of joint tenants in such circumstances. The plaintiff's demurrer to the complaint was sustained.

(**City of Frenso** v. **Kahn,** et al, 207 A.C.A., August 1962.)

ILLINOIS

Facts:

T bank acquired title to real property as trustee under an Illinois land trust in 1950. On March 8, 1957 T bank, as trustee, made a mortgage to P which was recorded March 15, 1957. On July 27, 1957 the United States recorded a notice of a Federal tax lien against the property of C, the beneficiary under the trust. Thereafter T bank made a second and third mortgage on the property. C then assigned his beneficial interest under the trust to one R. Default occurring under the first mortgage, P instituted foreclosure proceedings, obtaining jurisdiction over all persons interested in the premises. The United States in its answer asked the court to determine the rights and priorities of the respective parties. The decree of sale found that P held a first lien under its mortgage for the principal amount secured (including $663. advanced for 1958 real-estate taxes), interest, attorneys' fees and court costs; that the second and third mortgagees held a second and third lien, respectively for the amounts secured thereby; and that R was the owner of the beneficial interest under the trust subject to the interest of the United States in said interest for the amount of the federal tax. The United States appealed.

U.S. contentions:

1. P is not entitled to priority over the federal lien for the payment it made of the local real estate taxes which arose after the notice of the Federal tax lien was recorded.

2. The taxpayer's control over the trust was so extensive that **under Federal law,** no valid trust exists, resulting in the taxpayer's holding an equitable interest in the real estate which was subject to the Federal lien.

3. Irrespective of the second contention, the taxpayer had a right under the trust agreement to direct a conveyance to himself to which right the lien attached, and which prevented the taxpayer from thereafter directing the conveyance of the property free of the government's lien.

4. That as to the second and third contentions, third persons dealing with the trustee were chargeable with knowledge of the terms, provisions, etc., of the trust as well as the identity of the beneficiaries thereunder and the Federal lien against the property and/or the beneficial interest therein.

Held:

None of the government's contentions was tenable.

Opinion:

As to the government's first contention, there are two reasons why the payment of subsequently accrued taxes takes priority over the government's lien. First, the rights of the beneficiary were necessarily subject to such after accrued taxes. Since payment of the taxes was made pursuant to authority given under the mortgage, there can be no question regarding the precedence thereof over the governmental lien. Secondly, the Federal lien against the trust beneficiary did not attach to the real estate to which the beneficiary had no title under the law of this State.

As to the priority between the second mortgage and the Federal tax lien, the question is an important one, since it goes to the very heart of Illinois land trust transactions and the right of innocent third persons to deal with a land trust either as purchasers or mortgagees. Where the Federal Government asserts its tax lien, the question always arises as to whether and to what extent the taxpayer had "property" or "rights to property" to which the tax lien could attach. In answering that question one must look to state law, for it has long been the rule that in the application of federal revenue acts, state law controls in determining the nature of the legal interest which a taxpayer has in real property. See **Aquilino** v. **United States,** 363 U.S. 509. Only when the Federal tax lien has attached to the taxpayer's State-created interest, does Federal law determine the priority of competing

liens against the taxpayer's property or right of property. Therefore to determine C's "property" or "rights to property" we must look to the contractual documents of the trust here in question. These documents contain the clauses used for many years in the creation of an Illinois land trust, placing in the trustee the full, complete and exclusive title to the real property, both legal and equitable, and C's beneficial interest thereunder is personal property as distinguished from real estate by the terms of these documents and by settled Illinois Law. **Seno** v. **Franke,** 20 Ill. 2d 70; **Chicago Title & Trust Co.** v. **Mercantile Bank,** 300 Ill. App. 329; **Morrell** v. **Colehour,** 82 Ill. 618. As to the Government's contention that the junior mortgages were chargeable with the terms of the trust, the deed to the trustee contained the usual provision that "in no case shall any party dealing with the trustee in relation to said premises * * * be obliged to inquire into any of the terms of said trust agreement." Provisions of this type are legal and enable third persons to deal with real estate in reliance upon the record title of the land trustees. To hold that third persons dealing with the trustee must inquire as to the identity of the undisclosed beneficiaries in the light of this language would severely dislocate or even destroy local property concepts and relationships.

There is no question, therefore, that the beneficiaries' interest in the trust is personal property and the government's lien does not attach to the real property itself, leaving only for decision the Government's last contention that since its lien attached to the rights of the taxpayer at the time of its filings and the taxpayer had the right to regain the property subject only to the lien of the first mortgage, the Government should therefore stand in the taxpayer's shoe, able to proceed against the real estate. We find no fault with this argument as it applies to the date of the filing of the lien, and the Government could well have successfully pursued its remedies at that time. Since this was true, the Government now contends that the taxpayer could not thereafter by his voluntary action, diminish the Government's position. However, the Government took none of the steps provided for the seizure of personal property provided by the Internal Revenue Code (26 U.S.C.A., section 6331 et seq.) By failing to do so, it permitted innocent third persons to acquire claims superior to that of the Government. See **United States** v. **O'Dell,** 160 F. 2d 304; **In re Holdsworth,** 113 F. Supp. 878; **United States** v. **Eiland,** 223 F. 2d 118. Judgment affirmed. **(Chicago Federal Svgs. and Loan Assn.** v. **Cacciatore,** 25 Ill. 2d 535.)

Based upon a forgery in a conveyance of the interest of one of two co-tenants, the premises were conveyed and the mortgage executed thereon and Torrens certificates of registration were issued to the new owner and a mortgagee's duplicate certificate issued to the mortgagee. The co-tenant who was affected by the forgery claimed that the mortgagee did not have a lien on her interest in the property. It was so held and was held further that the Registrar is obligated to indemnify the mortgagee for its loss. **(Hoffman** v. **Schroeder,** 38 Ill. App. 2d 20.)

IOWA

An abstract company failed to show a judgment which was a lien on the title so that the plaintiff was later compelled to satisfy it. The court held the abstract company not liable under the circumstances in this case. While it was held that the defendant did not exercise ordinary care in this case, the decisive question is whether the plaintiff had a right to rely on the abstracter's certificate when the trial court had found that the plaintiff had actual knowledge of the judgment before he had expended any monies in clearing the title to the property and he therefore did not rely upon and had no right to rely upon the abstracter's mistake, nor did he have a right to take advantage of it. In its definition of "actual notice" the court stated that while having knowledge would charge one with actual notice, yet, full knowledge is not required to constitute

"actual notice," if the facts and circumstances are such as to lead a reasonably prudent man to make inquiry which, if prosecuted with ordinary diligence, would result in ascertaining the truth and that this is sufficient to constitute "actual notice." (**Crawford Lumber Company** v. **Abstract Guaranty Company,** 253 Iowa 705.)

KANSAS

A new Civil Code will go into effect as of January 1, 1964.

The most significant change affecting the title business is one governing the lien dates of judgment liens.

MASSACHUSETTS

An owner of registered real property mortgaged the premises, conferring upon the mortgagee the statutory power of sale in the event of default. Thereafter the United States filed a notice of lien against the owner of the mortgaged property. Default having occurred under the mortgage, the mortgagee conducted a foreclosure sale in accordance with the statute and the notice of sale in conformance with the procedure prescribed by statute contained the words, "Said premises are to be sold subject to any and all tax liens, unpaid taxes, tax titles, and any or all municipal liens and assessments, if any there be." The plaintiff purchased at the sale and then filed a petition in the Land Court to amend the certificate of title to strike out the Federal tax lien. It was held that the Federal lien was barred under the doctrine of **United States** v. **Brosnan,** 363 U.S. 237. This was a nonjudicial sale and the law in Massachusetts is that a mortgage conveys the property to the mortgagee subject to a condition subsequent that upon performance of the obligation the mortgagor may reenter and terminate the mortgagee's estate. The court therefore concluded that the mortgaged property was not the property of the taxpayer, and that the mortgagor's only rights in the land that was subject to the Government's lien was to reenter and that this right was lost through the foreclosure. (**Milton Savings Bank** v. **U.S.,** 187 N.E. 2d 379.)

MICHIGAN

A new State Constitution became effective January 1, 1963.

A new Judicature Act and Court Rules became effective January 1, 1963. Its purpose is to modernize and simplify court procedure and includes changes made in the foreclosure statutes and, particularly, with respect to executory contracts for the sale of land.

A new Uniform Commercial Code becomes effective January 1, 1964.

Act 150 of Public Acts of 1963 requires the address and name of each person drafting an instrument conveying land to be endorsed thereon together with the address of grantors and grantees.

Act 240 of Public Acts of 1963 changes and increases the fees to be charged by the Register of Deeds in the various counties of the State of Michigan.

NEW JERSEY

The Jersey City Redevelopment Agency acquired title to a tract of land and entered into a contract which provided in part that a mortgage to be secured by the Redeveloper shall not be deemed a violation of the provision against sale or transfer of the premises prior to the actual completion of all buildings as provided in the Redevelopment Agreement without prior written consent of the agency. In default of the provision, the Redeveloper was to reconvey to the Agency without consideration all the real property and improvements, but subject to existing loan agreements and/or first mortgages in replacement thereof. Thereafter, with the consent of the Agency, the Redeveloper conveyed the property to a corporation, which by letter assumed all the obligations of the contract. On the same day, the grantee executed a mortgage on the property without the consent of the Agency, and prior to the completion of the improvements the mortgagor went into default. Plaintiff mortgagee commenced a foreclosure action and also sued the title company which had insured the mortgage on the grounds that the language of the Re-

development contract and the deeds calling for a reconveyance in case of default under the Development Agreement created a condition subsequent, whereas the policy had only excepted "Restrictions as in deeds to Urban Developers, Inc." The title company's contention was that it was not liable under its policy because it raised the restrictions in the deed, which included the condition subsequent. It was held that the exception raised did not include the condition subsequent. The question whether the provision in the deed to the Developers that redevelopment had to to be completed within 32 days is a restriction. It was held that this provision was a "condition" and "more than a mere covenant." (**Feldman** v. **Urban Commercial, Inc.,** 189 A. 2d 467.)

* * *

Note: The title company was absolved from liability; that actions of the mortgagee had made default almost inevitable and that therefore the loss was created or suffered by the insured. The conditions of the policy which excluded defects, claims or encumbrances created or suffered by the insured saved the company from loss.

* * *

NEW YORK

A new Civil Practice Law and Rules, a Real Property Actions and Proceedings Law and a new Business Corporation Law became effective this year. A Uniform Commercial Code was adopted which will become effective in 1964.

The enactment of these new laws is intended, basically, to be procedural in effect, but important changes have nevertheless been made.

Changes were also made in many sections of the law affecting decedents' estates, including changes in the distribution of property in intestate estates.

Even though a Federal tax lien was not docketed in the appropriate section and block index as required by the New York State law for the filing of real property liens, nevertheless, since it had been filed in the index for Federal tax liens, it took priority over subsequent liens for local land taxes. (**U.S.A.** v. **Herman,** et al, 310 F. 2d 846.)

OREGON

Plaintiff owns land near the Portland International Airport and claims that continuous flights over his land to the airport which could ripen into an easement by prescription amounts to the taking of an easement in plaintiff's land for which plaintiff is entitled to compensation The Appellate Court remanded the case so that proper testimony might be taken, holding that there is a question as to whether the flights are of such a nature as would deprive the plaintiff of the proper use of his land, in which event there would be a taking, or whether the flights constituted a nuisance which would be merely a tort for which damages, if proved, might be assessed. (**Thornburg** v. **Port of Portland,** 376 P. 2d 100.)

PENNSYLVANIA

A decedent died intestate owning one piece of real estate and leaving a sole heir to whom letters of administration were granted. Within a year of the decedent's death, the heir in her individual capacity executed a mortgage subsequent to the time when letters of administration had been granted to her. After the heir's surety as administratrix had been discharged, the heir ,acting as administratrix, conveyed the real estate in question to third parties, after being excused by the Orphans' Court from entering additional security. When the mortgagee proceeded with execution against the real estate because of a default by the heir, the third parties to whom the property had been conveyed requested a stay of execution and the Superior Court of Pennsylvania granted the stay of execution. The court held that the third parties had acquired the property free of the mortgage inasmuch as the Fiduciaries Act of 1949 gives the fiduciary the power to sell the property and to convey marketable title. The court held that it was not necessary for the purchasers from the administratrix to check the judgment and grantor indices with regard to intervening action by the heirs even

though the administratrix was also the sole heir. If an exception to the rule is to be made then it would require that searches be made against all heirs regardless of the number and this would largely nullify the advantages gained by the Fiduciaries Act of 1949 in the marketability of a decedent's real estate. **(Quality Lumber Co. v. Andrus and Zupancic,** 201 Pa. Super. 189.)

SOUTH DAKOTA

The former mortgage laws permitted one year for redemption plus an additional year if interest is paid. This has now been changed to provide that on any property less than three acres there is a redemption period of only 180 days and no extension by payment of interest, provided that the mortgagors agree to the 180 day redemption clause.

TEXAS

A fallout shelter is not a "building" as contemplated by deed restrictions and by city ordinances. **(Hancox v. Peek,** 355 S.W. (2) 568.)

In an action to restrain defendants from conducting a beauty parlor in violation of restrictions, defendants pleaded waiver and the existence of other violations. In enjoining further use for beauty salon purposes, the court held that to prove waiver or abandonment it must be shown that the other violations were so great as to lead the average man to conclude that the restrictions had been abandoned. **(Barham v. Reemes,** 366 S.W. (2) 257.)

Bequests "to the blind and crippled" and to "needed charity" and to "most needed charity" were held to have created valid and enforceable charitable trusts, as against the contentions that the provisions of the will were too vague and indefinite, and even though no trustee was named in the will to administer the trusts. **(Wilson v. Franz,** 359 S.W. (2), 630.)

The recorded restrictions for the subdivision provided "for residential purposes only" and, in a later paragraph, provided that "no noxious or offensive trade or other activity shall be carried on." In a suit to enjoin violations of restrictions, the court held that the defendant's operation of a beauty shop in the garage of her home was permissible. The court held that had the "residential only" restrictions been the only ones in the instrument, the business could not have been operated; however, the second part dealing with noxious and offensive trades indicated that a trade could be carried on if it was not noxious or offensive. **(Baker v. Brackeen,** 354 S.W. (2) 660.)

Oil production payments do not constitute a "gas, oil or mineral leasehold interest in land" and are not, therefore, subject to an involuntary mechanic's lien. **(Wilkins v. Fecht,** 356 S.W. (2) 855.)

A reservation of "oil, gas and other minerals" does not include limestone, caliche, or surface shale, and the surface owners are entitled to recover sand, clay, gravel, caliche and limestone which can be recovered or removed by open pit or quarry method. **(Atwood v. Rodman,** 355 S.W. (2) 206.)

VIRGINIA

Where there is a severance of the title to subsurface coal by a conveyance, the ownership of the surface of the land, while undisputed, is the possession of the surface only. It does not constitute possession of the mineral estate which had been sold and severed from the surface and therefore adverse possession against the minerals cannot be obtained through possession of the surface. **(Mountain Mission School v. White,** et al, 204 Va. 256.)

Subsequent to the filing of a voluntary petition in bankruptcy by the husband, he and his wife conveyed to third parties real estate which the bankrupt and his wife had held as tenants by the entirety. The entire net proceeds of the sale were paid to the wife. The trustee in bankruptcy of the husband seeks to recover one-half of the proceeds of the sale on the grounds that the transaction, within one year of the bankruptcy, constituted a fraudulent conveyance and that the sale terminated the tenancy and the husband's share of the proceeds should be available for the

husband's creditors through his bankruptcy. The lower court sustained the position of the trustee in bankruptcy, but on appeal to the Circuit Court judgment was reversed on the basis that personal property as well as realty may be held by husband and wife as tenants by the entirety, that the proceeds derived by sale of real estate were so held, that the husband's interest in the proceeds was therefore free of claims of his creditors and that his gift of his interest to his wife was not in fraud of creditors since they could not be prejudiced by a transfer of property not subject to their claims. (**Oliver** v. **Givens, Trustee,** 204 Va. 123.)

Plaintiffs agreed to convey to a predecessor in title, at $500 an acre, that part of their land which, measured along its eastern line, ran for 622 feet from a monument and which parcel contained about 10 acres. Through an error the surveyor laid out a plat on which the easterly line was shown to be 722 feet and the parcel to contain over 11 acres, for which quantity the purchaser paid. The plat was attached to the deed from the plaintiff and the deed description corresponded with the plat, hence the error was a latent one. It was not discovered until after the purchaser from the plaintiff had sold the property to third parties. It was held that inasmuch as the third parties were bona fide purchasers for value they took free of the latent equity and according to the plat which the plaintiffs had adopted as their own by incorporating it in the deed. Even if it had been shown that an even more remote purchaser had notice of the mistake prior to the conveyance of the property, a purchaser with notice from a bona fide purchaser without notice of a latent defect takes good title. (**Guss** v. **Realty Corporation,** 204 Va. 65.)

A firm of mortgage brokers borrowed from the plaintiff bank sums which the firm advanced in installments to the defendant to finance the construction of a house. To secure this loan from the bank the brokers deposited with the bank the note of the defendant secured by a deed of trust on the property. When the house was finished the defendant sold it to innocent parties whose attorneys sent to the mortgage brokers funds to pay off the Juliano note, thinking that the brokers still held it. The brokers used the funds for other purposes. Some months later when the bank learned of the payment to the brokers it made a demand on the trustee under the deed of trust to sell the property, and upon the trustee's refusal to act the plaintiff instituted foreclosure on the deed of trust which action was defended on the ground that the mortgage brokers were an agent of the bank authorized to receive payment. It was held, however, that since the bank had no agreement with the brokers with respect to servicing or collecting the note, that the payment had not been made to an agent of the plaintiff-bank authorized in fact to receive it. If payment is made to a party who does not have the instrument in hand, the paying debtor takes the risk that the party paid may have no authority to make collection. Judgment of foreclosure was granted. (**Security Company** v. **Juliano, Inc.,** 203 Va. 827.)

WEST VIRGINIA

The following statutes enacted by the 1963 West Virginia Legislature, and now effective have some bearing on titles to real property in the State of West Virginia:

1. Contract in writing made for conveyance or sale of real estate shall be as valid against creditors and purchasers as if the contract were a deed conveying the estate or interest embraced in the contract. Both contract and deed void as to creditors and subsequent purchasers without notice until admitted to record.

2. Time for filing claims against decedent's estates reduced to not less than four nor more than six months from the date of the first publication of notice to creditors.

3. Released liens against real property resulting from reimbursement agreements, required to obtain public assistance, and repealed the former acts creating such liens.

4. Complete new chapter recognizing condominiums and unit property and provisions, rules and regulations regarding same as real property.

The following states have enacted condominium statutes:

Alaska
Arizona
Arkansas
California
Colorado
Connecticut
Florida
Georgia
Hawaii
Illinois
Indiana
Iowa
Kansas
Kentucky
Louisiana
Maryland
Massachusetts
Michigan
Minnesota
Missouri
Nebraska
Nevada
New Mexico
North Carolina
Ohio
Oklahoma
Oregon
Pennsylvania
Rhode Island
South Carolina
South Dakota
Tennessee
Texas
Utah
Virginia
Washington
West Virginia
Wisconsin
Puerto Rico

* * *

Respectfully submitted,
Judiciary Committee
By: Carl D. Schlitt, Chairman

Report of Legislative Committee

WHARTON FUNK, President, Lawyers Title Insurance Corporation, Seattle, Washington

Each year the Legislative Committee reports to the Convention newly passed State laws that may be of general interest to the title industry. The Committee has a representative in each of the fifty States to report on such legislation. Each was asked to respond to the following questions:

1. Give a resume of any legislation that was passed by your legislature which had a direct effect upon the title industry in your state.
2. Give a resume of any bills introduced but not passed but which will probably be introduced again which would directly affect the title industry if passed.
3. Any initiatives that would directly affect the title industry.
4. Any other legislation of interest.

Time and space limitations required us to eliminate from consideration additions to or changes in fundamental real estate law, with one exception. Even so, the task of selecting from the mass of material submitted, the new legislation that should be included in this report was not easy.

The response from the various State Representatives was really overwhelming.

We received reports from 47 of the 50 States. Of the States reporting, only 2 had no legislative session in 1963. So you can see that our Committee was really busy this year.

First we should mention the one exception to basic real estate law mentioned above. It is:

CONDOMINIUM

We thought it might be interesting to you to know whether the Condominium concept of ownership had caught on. Well, we can assure you it took the country "by storm." **Twenty-seven States** reported passage of a Condominium Act in 1963!! Some states, Arizona for example, passed the law in 1962. It will be interesting

to know how extensively these acts will be utilized by the builders and mortgage lenders.

TITLE INSURANCE CODES AND AMENDMENTS

To title insurance people legislation affecting Title Insurance Codes, particularly as it might pertain to rates, regulation etc. are of paramount interest. So each State Committee member was asked to report any such legislation. Here are the results:

Minnesota

An amendment requires Title Insurance Companies to set aside 10% of the premium into an unearned premium reserve. Recovery is at rate of 5% a year.

Maryland

Our first report from Maryland indicated that Chapter 553 of the Acts of 1963 revised and rewrote the Insurance Laws of the State of Maryland (Article 48a annotated code of Maryland) but indicated that there were not too many changes in the portion of the laws pertaining to title insurance. However, our latest report, while furnishing us with few details, indicates that the following changes were made:

Minimum Capital Stock requirements provided for; Title Insurance defined; limit of risk is provided for (it would be interesting to know more about this); defines re-insurance; Reserves are given attention; rating and payment of commissions for procuring business are mentioned (see below); Premiums are required to be clearly set out and are subject to approval of the Commissioner.

Concerning the payment of Commissions for procurement of business, the previous law allowed such commissions to Real Estate Brokers and Attorneys. The new law apparently allows Commissions only to licensed agents of the insurer.

North Carolina

Reports they are still trying to get a good regulatory bill through.

Oregon

An Interim Committee has been authorized to study all Insurance rates including title insurance rates.

Pennsylvania

Act No. 439 enacted August 14, 1963, effective September 1, 1963, to regulate the Title Insurance Business. It is a comprehensive act and it provides for the licensing, qualification, regulation, examination, suspension and dissolution of title insurance companies, the examination and regulation of rates and rating regulations for title insurance, the licensing and regulation of agents and applicants for title insurance, prescribing the terms and conditions upon which foreign title insurance companies may be admitted or may continue to do title insurance business within the Commonwealth and imposing penalties and repealing inconsistent laws. Rate filing by the title insurance company or rating organization is provided for and all fees and charges are subject to approval or disapproval of the Insurance Commissioner.

Tennessee

A Title Insurance Code was passed in Tennessee in 1958. Never implemented by Rules and Regulations from Commissioners Office. That office now is holding hearings to adopt "do" and "do not" type of regulations.

Utah

Paid in capital of at least $150,000.00 instead of $100,000.00 required of all title insurance companies.

Deposit by every title insurer with Commissioner in home state raised from $100,000.00 to $150,000.00.

Real estate mortgages eliminated as authorized investment for guarantee funds.

Rebating or price cutting prohibited — Commissioner may r e v o k e license as penalty.

Unearned premium reserve to be maintained, based on fifteen cents (15c) for each $1,000.00 of liability. Recovery at 5% per year.

ABSTRACTERS LICENSE LAWS, REGULATIONS, ETC.

Of equal importance to abstracters in our Association are any amendments to or new license laws or regulations. So our next report is legislation directly affecting our abstracter members.

Arkansas

The State Title Association sponsored a bill to increase the annual abstracters license fee from $15.00 to $25.00 and to make it mandatory that all licensees have a complete set of abstract books or indexes sufficient to compile complete and accurate abstracts of title. The bill passed the Senate but got caught in the log jam in the House.

The State Title Association sponsored some amendments to the abstracters laws in Arkansas which would have required an abstracters bond of $7500.00 and adopted a 20 year plant law, but the act after passing the Senate without a negative vote also got caught in their House "log jam" (where have we heard that before). It will be introduced at the next session.

New Mexico

Abstracters bond of $7,500.00 required. Requires abstract plant for 20 years prior to July 1, 1963, or 20 years prior to date abstracter commenced business and providing for penalty for violation. Contains Grandfather Clause applicable if plant is maintained on current basis commencing July 1, 1963.

But perhaps the most interesting piece of legislation to come to our attention was reported, but not sponsored by the Utah Title Association and was never introduced. It was an act to provide for an abstracters lien upon the land covered by an abstract for the work and materials used in preparing such abstract. Sounds like Utopia!! The entire industry would be mighty interested in such legislation. (After all, just about everybody else has lien rights, why not the abstracter. Couldn't we squeeze title insurance premiums in too?)

CONVEYANCING AND BAR ASSOCIATION ACTIVITIES

Scriveners Bill

Five states reported the introduction of a bill to require the name and address of the person drafting the document to appear thereon before it is recorded. It was indicated that these bills were inspired by the Bar Association. The bill passed in **Michigan** and **Missouri** but was either defeated or died in Committee in **Minnesota, Utah** and **Georgia.**

It seems that such an act would place quite a burden on title offices. Undoubtedly many documents would come in for recording without the name and address of the drafter thereby making it the duty of the title office to see that such name and address is affixed.

Arizona

You recall the Initiative that was so overwhelmingly passed by the voters in Arizona permitting Real Estate Brokers to draft documents affecting real estate.

Our Arizona representative reported that the Arizona Land Title Association caused a bill to be introduced which would have given title insurers the same right. It passed the House, but, although it was thought that it would have passed the Senate, it was lost in Committee. The State Association is considering whether to reintroduce it in the 1964 legislature.

North Carolina

Reports the Bar Association voted to discontinue its plans to set up a Bar Association Title Company and disbanded its Committee.

South Dakota

An interesting pair of bills was introduced in the South Dakota Legislature. Although they were not passed, I feel they should be reported.

The first would permit establishment of a business trust for purpose of insuring titles to real estate but would limit the right to form a business trust for such purpose to two or more attorneys.

The other bill would have allowed any licensed South Dakota Attorney to countersign title insurance policies.

These two bills caused quite a "stir" within the State Title Association.

Georgia

Code Section 9-401 defines the practice of law in Georgia so as to permit Title Companies to prepare necessary instruments in an insured transaction. An attempt was made to redefine the practice of law so as to prohibit such activity by Title Companies. The attempt was defeated. (Our Georgia

representative reports that the Unauthorized Practice of Law Committee for the Georgia Bar Association is engaged in litigation with Lawyers Title Insurance Corporation and the Bar's position is that the present statutory definition of the practice of law is unconstitutional.)

A bill was passed permitting the integration of the State Bar of Georgia.

MISCELLANEOUS LEGISLATION OF INTEREST

Oregon

An Act was passed in **Oregon** requiring Escrow Agents to be licensed and supervised by Real Estate Commissioner — Title Companies, Banks, Mortgage Loan Companies, etc., were excluded.

California

On the subject of Escrow regulation, California law regulates the activities of the escrow departments of title companies. See Section 12396 of the California Insurance Code (amended by the 1963 legislature).

Idaho

Act passed to permit title policies and reports to be introduced in Court actions and be prima facie evidence of the records. Previously it was limited to abstracts.

Washington

Act passed to permit filing of lis pendens giving notice of Federal Court actions involving title to land in the county in which the land is situated. Several years ago the Congress passed an act consenting to the passage of such acts by the various States. If your state has not passed a similar act, you might have your state title association sponsor one in your next legislature. Its effect could be very beneficial to the industry in your state.

Wyoming

A bill to prohibit county clerks from making abstracts failed to pass —will be introduced again next session.

UNIFORM COMMERCIAL CODE

While this Code affects personal property more than real estate, four states felt it of sufficient importance to mention its passage. They were **Indiana, Wisconsin, Missouri** and **New Jersey.** It was introduced in **Washington** but not passed. Although not reported by our Committeeman in **Oregon, California** and **Montana,** I understand it has been passed in those States and very likely is already the law in many other states.

MARKETABLE TITLE

Three States reported passage of Marketable Title Acts: **Oklahoma** and **Utah** reported 40-year acts and **Indiana** a 50-year act.

Wisconsin reports that a special Committee of the Bar Association in that State has approved a marketable title act and if approved by the general membership it will be introduced in the next legislature.

DESTRUCTION OF PUBLIC RECORDS

The microfilming and destruction of public records are matters of continuing interest to all title people.

Illinois

Our Illinois representative, George Harbert, Past President of the ALTA reports as follows:

"I think I might comment upon one act passed in 1961 which is just now becoming recognized in our profession. This was an act setting up a state commission to determine what public records may be destroyed and what public records may be reduced to Microfilm. It is now being implemented by surveys and in the next years we expect that many records in our court house will be destroyed and records filmed. This will have a far-reaching effect on the Title Company, and our association is watching the progress of these acts and will attempt to evaluate them as they progress."

North Dakota

Our North Dakota Representative reports that the Title Association in that State opposed a bill to permit destruction of documents in the Recorders' offices at the discretion of County Commissioners. The bill failed to pass but will probably be introduced again next session.

ACCESS TO PUBLIC DOCUMENTS

The use of space in the Court House, the access to documents and the procedure for making the daily "Take-Off" are live topics for discussion and conversation whenever title people get together.

New Jersey

On this subject, New Jersey passed Public Law 1963, Chapter 73, approved May 31, 1963, entitled: "An Act concerning public records and their examination by citizens of this State, providing certain exceptions to the right to examine public records, and conferring jurisdiction upon the Superior Court in respect to such examination."

This legislation insures the right of the general public to examine public records subject to limitations that may be imposed by order of the Governor, rule of Court and Federal regulations. It provides the right to copy records by hand with the additional privilege of copying by photographic process provided the process is approved by the custodian of the record who has the right to make a charge of not less than $5.00 nor more than $25.00 per day.

This legislation further provides that the photographing of any record may be denied if it shall interfere with the economic and efficient operation of the office maintaining the records.

The above legislation on its face would appear to be advantageous to the Title Industry since it specifically provides for the right to photograph records. However, this right is not absolute. The Clerk or Register in charge of the records may impose such requirements and conditions as he thinks appropriate to protect the records. This, of course, implies that he can limit the amount of photographing and the methods used and can impose fees up to $25.00 per day. The Title Companies in this State are aware of the potential problems that may arise because of this legislation and are making every effort to maintain a favorable rapport with the custodians of the public records which are utilized by the companies on a daily basis.

Seems to me that the entire industry should take particular note of this act. It poses two great dangers. First, in this day of legislative "witch hunts" for new sources of revenue, if our legislatures discover they can charge us for the privilege of making our daily take-off, we could be faced with another cost of doing business, in effect another tax. Second, is the threat that the privilege of copying records can be denied completely.

Conclusion

One cannot be chairman of this Committee without being tremendously impressed by the amount of time and effort devoted by the members of our industry toward the betterment of our system of laws as they pertain to the ownership of land.

It remained, however, for our Committee representative from the land of the Eskimo and the Tundra, the Far North State of Alaska to put his finger on the one element in our legislative process which has and probably will continue to have a greater effect upon our industry as well as all other industry than any other legislative action. In response to the final question in our questionnaire:

"Any other legislative matters from your State that might be of interest to the members of the ALTA."

he replied:

"They are spending TOO DAMN MUCH MONEY."

Our Congratulations to Harold Lightle, Executive Vice President and Manager of the Alaska Title Guaranty Co. of Anchorage, Alaska, for expressing in seven devastating words our biggest governmental problem.

May I express to all members of our Committee my sincere thanks for the splendid response and the tremendous amount of time and effort expended in preparing the state reports. The fact that only three states failed to report is truly phenomenal cooperation.

It was indeed a pleasure and an honor to have served as your Committee Chairman again this year.

WHARTON T. FUNK
Chairman ALTA
Legislative Committee

Report of Chairman, Abstracters Section

DON B. NICHOLS, Owner, Montgomery County Abstract Company, Hillsboro, Illinois

I originally intended to make my report as Section Chairman this morning rather brief. When I looked at the printed program of our Abstracters Section Meeting I found the ALTA headquarters staff had allotted me even less time than I had planned for my report. Hence the adage that "one of the most important ingredients in a receipe for speech-making is plenty of shortening" is now applied.

Recently the devil was walking down Powell Street here in San Francisco. He crossed at Geary just as a cable car came along and ran over his tail. He picked up the piece and was wandering down the street when he met a cop. "Hello, there, Lucifer," said the policeman, "What are you doing here?" Lucifer answered, "I'm looking for a place where they retail spirits."

Our section staff met at Washington, D.C. at the mid-winter conference in March at an "early" breakfast with each of our section officers and executive committee members in attendance at the conference present. ALTA President Wm. Deatly, Executive Vice President Joe Smith, and Secretary and Director of Public Relations Jim Robinson were also present for this meeting and breakfast.

Three goals of the Abstracters Section for 1963 were formulated by the staff at the March breakfast meeting, and later were presented to and approved by the Board of Governors:

FIRST: Prepare and make available to members a model Abstracters License Law and Plant Law.

SECOND: Edit and provide copy to ALTA headquarters for publication and distribution to all ALTA members of an Abstracters Newsletter in May, July and September.

THIRD: Have a display of sample abstracts with at least one from each state where abstracts are primary form of title evidence, at the San Francisco ALTA convention and use this display as a workshop session.

What have we accomplished on the three goals?

The first, The License Law Model: Plan to attend the 2:00 o'clock workshop this afternoon on the Abstracters License Law and Plant Law. A suggested model law is ready for presentation and consideration. Copies will be given to all in attendance at the workshop and the entire model will be discussed section by section. We especially need those of you from States which already have one or both types of legislation to help us get the best possible model. It is our expectation to come out of this afternoon's workshop with a model Abstracters License and Plant Law to present to the Board of Governors for their consideration, and, if approved by them, that can then be made available to ALTA members. The Abstracters License Law and Plant Law objective of our section must, of necessity, be continued into 1964. We are confident the goal will be achieved and the best possible model made available to our membership.

The second, The Abstracters Newsletter: Each officer and executive committee member of the Abstracters Section has contributed to the publication of the Abstracters Newsletter mailed to the entire ALTA membership on May 10, July 10, and September 10. Our appreciation to ALTA Secretary Jim Robinson and his fine staff in Washington for their work in getting the newsletters printed and mailed on the requested dates for all 3 issues. If only one or two of you here today came to this convention as a result of the newsletters, our goal will have been fulfilled. The number of sample abstracts received

for this display from the newsletters was easily determined and has made the project worthwhile.

The third, The Abstract Display: With 107 representative sample abstracts from 27 states and letters from 5 additional states indicating they no longer made abstracts, the work of each of our section officers and executive committee members is evident. Specific states were assigned to each of us and the conscientious effort put forth by each resulted in the fine display you see here at San Francisco. The "Show and Tell" workshop Monday afternoon gave only four of those who sent in samples an opportunity to tell us step by step their office procedures and special processes. We hope you will take time today and Wednesday to "examine" many of the sample abstracts on display. You could possibly take home an idea that would improve your service and/or the appearance of your abstracts. One ALTA member from Missouri sent a sample for the display and said in his letter: "Back in 1933 I entered an abstract in the ATA contest at the convention in Chicago, and received 5th prize. The abstract that won either 2nd or 3rd prize appealed so much to me that I immediately changed our form of abstracting to closely copy this one. I therefore am one who has received great benefits from seeing how others prepared their abstracts." You will find a wide variation in the methods used in the preparation of the abstracts on display—typewritten —mimeograph—Photostat — Xerox — photo copy—all sizes of paper and types and colors of covers. I am sure anyone with an abstract in the display will be glad to answer any questions you have about his product if you want to write to him after you get home.

Another "early" breakfast meeting of our Abstract Section staff was held this morning, again with ALTA President, Wm. Deatly, Executive Vice President Joe Smith, and Secretary and Director of Public Relations Jim Robinson in attendance. We reviewed the work done on our 3 goals for 1963. We believe they have been worthwhile section activities and satisfactorily accomplished. We felt the model license law required full section membership participation in this afternoon's workshop before being submitted to the ALTA Board of Governors for their consideration. Thus it was impossible to complete this one goal in 1963, and it will of necessity carry over into 1964.

Each of our Abstracters Section officers and executive committee members has contributed much time, effort and gone to considerable personal expense to make this convention a better one for you. My special thank you to Vice chairman, Joe Cantrell, Tahlequah, Oklahoma; Secretary, John V. Meredith, Muncie, Indiana; and executive committee members William F. Galvin, St. Petersburg, Florida; R. Earle Graves, Jr., Flint, Michigan; James O. Hickman, Denver, Colorado, and Frank T. Summerson, Hoxie, Kansas.

I want to express my appreciation to those who have preceded me as Chairmen of our Section, and who responded to my request for suggestions and guidance at the beginning of my year of service—George Harbert, Lloyd Hughes, Mort McDonald, Harold McLeran, Art Reppert, and Clem Silvers each took of his time to write and give me the benefit of their experiences as Chairman and sent constructive suggestions for section activities.

For the next few minutes I would like to discuss with you some of the activities of our American Land Title Association in 1962-63. They are of intense interest to me as this year's Abstracters Section Chairman, and I hope you, too, will find something of benefit in them.

Figures are, at times, boring and monotonous, but how else can I remind you how really "big business" our ALTA is without a few? In 1962 the gross revenue was within $400 of $200,000 of which dues accounted for more than ¾ of that amount. Total expenditures were slightly in excess of $180,000 of which $135,000 was for operating expenses for salaries, supplies, office, etc., and $45,000 was for services including Title News, Bulle-

tins, Directory, Advertising Aids, etc.

California paid the most dues to the Association in 1962, $41,345, followed by New York, Illinois, Texas, and Missouri in that order. The average fell between Indiana (as 13th) and Ohio (as 14th). An average is hardly a true picture here, as one state, New Hampshire, paid only $15.00 for its one member and 5 states paid less than $100.00.

The number of members in the various states is not reflected by their dues payments. Of the 2481 total ALTA membership for 1962, Texas was first with 239, Kansas second with 176, Missouri third with 141, Iowa fourth with 138 and New York fifth with 132. Of the first five states in dues payments, California, 1st in dues, was 11th in membership with 82 and Illinois 3rd in dues, was 12th in membership with 77. Fifteen of our states had less than 10 members in each state and again an average is hardly a true picture, but mathematically figured is 50 members per state. Utah with 48 members and Minnesota with 51 members are nearest the average in numbers of members.

The annual conventions of the ALTA have become so large in recent years that it is now necessary to secure hotel reservations for them 5 years in advance to enable us to have the convention at the time of year and in the approximate geographical location desired. Our 1964 convention is to be in Philadelphia, '65 Chicago, '66 Miami Beach, '67 Denver, and '68 Portland, Oregon. Midwinter conferences, although not as large in number of attendees, have grown to the point where they, too, must be scheduled several years ahead to assure location and time. 1964 Las Vegas, Nevada, '65 Washington, D.C., '66 Chandler, Arizona, and '67 Washington D.C. The return to Washington every other year has been approved by the Executive Committee and Board of Governors who feel the congressional receptions held in conjunction with the Washington mid-winter conferences are beneficial to our industry and its close liaison with the individual state senators and representatives.

A retirement plan for the 9 headquarters staff of ALTA has been adopted, effective January 1, 1963 which compares favorably with plans offered by other industry and commercial organizations. No employee is eligible under the plan until he achieves 5 years of service and reaches at least the age of 30. Only one of our ALTA employees is included in 1963, one additional will be eligible in 1964 and so on, dependent upon continued service and employment. Basis of the plan is life insurance and cost to the Association annually will be about $5,000.00, which is to be funded from income on reserve fund assets.

The District Land Title Association of Washington, D.C. was approved for membership and is our newest affiliated State Title Association.

"A Place Under the Sun," by TV stations committee has been approved and included the employment of a commercial distributing firm to arrange for the showing of the film, "A Place Under the Sun", by TV stations as a public service. Where possible, the ALTA member in the area will be notified in advance of the scheduled showing of the film so that he can, if he wishes, give it publicity in the local news media by his own advertising. Also included in the public relations program is a series of national advertising in magazines and publications by our major customer groups as Mortgage Bankers Association magazine, American Bar Journal, Savings & Loan League News, National Real Estate Investor, American Right-of-Way Journal, and National Association of Homebuilders Journal.

The October issues of these magazines will carry advertisements approved by the Executive Committee and it is hoped that the magazine ads will be effective and pointed to their special field.

Speaking of advertising, the other night on TV, I saw an advertising commercial for a tooth paste with food particles in it. It's for people who are too busy to eat between brushings.

In March, many of us received a startling advance publicity release on

a mechanical title plant process called "Electro Title." Possibly some of you have written to the Beverly Hills, California office of this concern and received the brochure and some scanty information on the unit. Our ALTA Executive Committee had several exchanges of correspondence regarding the "Electro Title" and an announcement was sent in March by Executive Vice President Joe Smith, from Washington, to all of our members, suggesting they "keep an open mind as to the product and process and a wait-and-see attitude until it is tried and proven."

Electro Title believes 12 Title Companies, using their equipment, could monopolize the title business in the entire United States and that eventually the small title companies would vanish, just as independent grocers have given way to chain super-markets. This was the specific reference used by one of their representatives. They estimate 3 machines for my own state of Illinois would be all that would be required.

Our conclusion is the Electro Title Company does not have a unit suitable for use by existing medium or small size title companies, but that they are attempting to sell the "cover the State" theory to one or two title companies in each state and this, naturally, presents a threat to the very existence of the majority of our ALTA membership.

I believe we must keep a watchful eye on this new computer system and be aware of its capabilities to service our industry.

We enjoyed our opportunity to represent President Deatly and the ALTA at the Annual Conventions of the South Dakota Title Association in June and the Minnesota Land Title Association in September. Members of both Title Associations went out of their way to make Vera Rose and me welcome and included in their convention business and social activities.

Bill Clark, President of the South Dakota Title Association, a resident of the recent nationally headlined city of Aberdeen, and Lynn Bettis of Rapid City, were our special hosts on our visit to Rapid City, South Dakota. They made sure we had an opportunity to see some of their beautiful country, even though we did get up before 6 in the morning to take one drive to Mt. Rushmore to have breakfast there and get back in time for the morning convention session opening.

Jim Whitney, President of the Minnesota Land Title Association, and Tony Winczewski, their Secretary-Treasurer, were among those hosting us on our Minnesota trip to Detroit Lakes for their annual convention. Linn Sherman, President of the North Dakota Title Association joined us as out-of-state visitors to the Minnesota convention. Framed and on the wall of my study at home are two 8 x 10 photographs taken at the Minnesota convention to help us recall the new friends and pleasant memories of the convention in years to come.

It was interesting to participate in the convention routines of South Dakota and Minnesota, and I am certain we profited more from our visits than did those we visited.

The 3 day convention schedule this year has limited us to only one half-day, this morning, exclusively for our Abstracters Section meeting. It was therefore necessary to ask each of our speakers on this morning's program to limit his talk to fit in with the condensed time schedule. This will probably mean we will not be able to always have the question and answer period after each speaker. I want to call your attention to the open forum scheduled later this morning and suggest you make note of your question or comment and hold it until then.

We have two short presentations this morning that were intentionally not listed on your printed program, so unless you are willing to chance missing them, don't "scoot out" between speakers.

Our industry is a vital one to the American economy—one that assists our citizens in fulfilling a basic human desire: the ownership of real estate. We encounter all the hazards of invested capital, keen competition,

fluctuating markets, specialized employee training, and confiscatory taxation. We maintain privately owned title plants, we work closely with lawyers, real estate brokers, home builders, and private and public lending institution officers in the gigantic and wonderful task of building a stronger and better America. Yet it is with something approaching apology that we attempt to explain our services and charges.

We are shy for two reasons. The first is our failure to recognize that collectively we are no longer "small business." Many of us, with small and medium size companies, think of ourselves with the giants of the industrial world and find ourselves on the wrong end of the telescope. But just think! As an industry we can boast of $500 million of invested capital and assets and 42,000 employees; with an annual conservative estimate of $280 million in salaries. The time has come for an awareness of our contribution to the American way of life.

The second factor contributing to our reticence in the past has been our failure to educate the public in terms of everyday language. The average homebuyer k n o ws little or nothing of the processes that are such a necessary part of the protection he needs when buying a parcel of real estate.

We must take a more active part in the affairs of our community in an effort to bring about a better understanding of title matters to our neighbors and future customers.

In closing I would like to tell you a story which, I believe, exemplifies the need for cooperation in our ALTA activities.

A man had just arrived in heaven, told St. Peter how grateful he was to be in such a glorious place, and asked St. Peter to give him one glimpse into hades in order that he might appreciate his g o o d fortune even more. This St. Peter did. In hades he saw a long table extending as far as the eye could reach, laden down with the most delicious of all varieties of foods. But everyone around the table was starving to death. When asked for an explanation, St. Peter said, "Everyone is required to take food from the table only with 4 foot long chopsticks. They are so long that no one can reach the food from the table to his mouth, and therefore, each one is dying of starvation."

Quickly they returned to heaven, and behold the new arrival saw an identical table, laden down with identical foods, but everyone around the table was happy and well-fed. Then he said to St. Peter, "With what do they take the food from the table?" and St. Peter answered, "Only with 4 foot long chopsticks." At that the new arrival inquired: "Then why are all those in hades starving to death while all those up here are so well-fed and happy?" Whereupon St. Peter replied: "In heaven we feed each other."

Inter-Association Contact Committee

GEORGE R. FALLER, President, Marinette County Abstract and Land Company, Marinette, Wisconsin

Because I think this Inter-Association Contact Committee—IACC—concept has the potential to become one of the biggest and finest things to hit the title industry in a long, long time; and because time is limited, I am going to jump right into this subject.

First of all — WHAT IS THIS THING? this IACC?—WHAT IS IT ALL ABOUT? Thus far, it is largely just a concept; an idea, and the idea is very simple—very elemental. It is solely and only this: the creation by your state association of a committee whose sole and only function is to develop and foster communication BETWEEN STATE ASSOCIATIONS. That is what this concept is—and that is all it is.

Now, I can't see that there is anything so revolutionary, or soul-shaking about this. Actually, the whole idea is laughably simple.

You might say, however—WELL, WHAT'S THE POINT IN ALL THIS? WHAT PURPOSE DOES IT SERVE? Well, I'll give you the answer to that in one word—COMMUNICATION. That's the point, and that's the purpose. Communication, contact — the interchange of ideas, suggestions, and information — to some extent, maybe, just the building of friendships and acquaintances BETWEEN THE STATE and STATE ASSOCIATIONS through the personnel on this IACC committee.

Now you and I—as state association officers and members—are working to create, foster and develop activity WITHIN OUR STATE ASSOCIATIONS, and to do this we communicate with one another.

But, have you ever stopped to realize that on a member-to-member, and association-to-association, basis there is a total void—a complete absence of communication between your association and any other state association. Inter-association communication on any formal or recognized basis is entirely non-existent. Now, this IACC concept is intended to remedy and correct this; it is designed to supply some inter-association contact, or communication, where none now exists.

Maybe you feel a little bit like I do. You have heard so much about the communication business you are actually a little tired of hearing the word. Well—I'll agree to that. But neither you nor I can gainsay the fact that without communication, we not only wouldn't have an American Land Title Association—we wouldn't even have a state association.

Now, I don't want to bore you with all this communication talk and I am certain you will agree with my evaluation of its importance anyway, so I'm not going to dwell on this any longer. And, in passing, let me take just a minute to note and recognize the vastly improved job the American Land Title Association is doing. In recent years there seems to be an increasingly acute awareness, a growing sensitivity, to the needs of the members and the necessity of rendering more and better service to its members which—as a trade association, is its principal and prime function. The recently announced public relations program — the advertising program just inaugurated — and the proposed National Abstracters School —are just two examples of this. Incidentally, there is much more communication between 1725 Eye Street, NW now than there ever was before —but we said we would lay off this communications kick.

You will want to know how this IACC thing got started at all. Maybe you are thinking—"Yeah, I'd like to know what screwball dreamed up this weirdie." Well—I'll tell you. A year ago, when the directors of the Wisconsin Title Association scratched right through the bottom of the barrel and came up with me—I started to do a lot of thinking. The internal affairs — the intra-state probems of our association didn't worry or bother me too much since—basically—they aren't too much different from an **organizational** standpoint, from the problems encountered in running other organizations that I have headed up over the years—just as you have done in your own jurisdictions. However, this is the first time that I have served as the head of an organization of state-wide significance—and impact— and it is the first time that I have enjoyed responsibility for an organization that has a direct connection with the national scene. I am referring, of course, to the fact that my state association — and yours—are component and affiliated associations of the American Land Title Association. Without my association, and yours, there wouldn't be any American Land Title Association.

THIS IS WHAT BOTHERED ME. The fact that I didn't know a single soul in our sister states—Michigan, Illinois, Iowa, Minneosta, or anywhere else, for that matter—that was an officer of his state association. We have been fortunate, in Wisconsin, to have had a number of men, starting perhaps with Al Achten (our secretary for many years) and going down through Dick Johnson, Leonard Fish, Otto Zerwick, and especially Tom Holstein and Bob Kniskern, who have been active at the national level, and who never seemed to tire of urging the rest of us laggards to start attending national meetings. These men, particularly Kniskern and Holstein, were constantly recruiting new prospects for attendance at these national meetings and conventions. Now, as I began to mull this over—I was struck by the realization that if a couple of these fellows pulled out of the title industry, or for other reasons were eliminated from the picture—our pipeline wouldn't exist.

The more that I thought about it the more I was struck with the need for activity and communication between the states because—you see—that's all we are doing here. Basically, that's what our American Land Title Association is—sort of a central clearing-house.

ON THE COVER

The youngster on the cover of this month's TITLE NEWS has an innocent, eager look about him. He doesn't realize that he has inherited many vexing problems, including the proposed Model Title Insurance Code, development of standard underwriting practices, plant maintenance and expansion, unfair and discriminatory competition from certain professional groups, deep concern about the welfare of our nation and a dire need to educate the public as to the nature and value of his services.

Perhaps we should all follow his example; live one day at a time, confronting each problem as it arises with intelligence, dignity and good will. With the kind of leadership we enjoy in the American Land Title Association, these problems WILL be solved.

The officers and staff wish you indeed a

HAPPY NEW YEAR

Certified Land Title Searcher (CLS)

MORTON McDONALD, Chairman of Board, The Abstract Corporation, De Land, Florida

It has been the desire of many of us in the title field to raise the standards of the profession. In the strictest meaning of the word profession, I do not think our work can be so classified. However, I feel that everyone dealing in services can, possibly, be classified as professional people. You do not raise the standard of any business or profession by merely changing the name of the product or service. Certainly, the standard must be deserved before it will be accepted by the public.

When the CLS program was first suggested to me I was not overly enthusiastic. Even the first time I presented the program to the members of the Florida Land Title Association at one of its annual meetings, I was not completely sure that this was the program we wanted. After studying this program and after having had it in operation for two years now, I am convinced that we are progressing in the right direction.

Now let us get into the meaning, the setup and the functions of the CLS program. First, what does CLS mean? CLS means, Certified Land Title Searchers. In 1960 a constitution and by-laws were adopted by the Florida Land Title Association. Article I gives the name as "The Florida Institute of Certified Land Title Searchers, a non-profit professional organization."

Article II sets out the objects which, in short, are to recognize properly qualified persons with the title "Certified Land Title Searchers," commonly known as "CLS"; and to promote and maintain higher standards in the profession; and to formulate rules of professional conduct; to promote better relations with others in related fields; to establish educational standards for the profession and to conduct meetings, services, conferences, and educational courses that will be helpful in realizing their objectives.

The code of ethics as adopted is the code of ethics of the American Land Title Association.

The minimum requirements of membership are: a person must be at least thirty years of age; must have creditable experience with an abstract or title insurance company holding membership in The Florida Land Title Association for at least seven years. A person must successfully pass an examination given by the Examining Board of the Institute which examination must include first, questions to determine the applicant's knowledge of the Institute's Constitution and By-Laws, rules of ethics and regulations; second, knowledge and ability to prepare a complete abstract of title and knowledge that would cause one to be considered an expert in the field of land title searching; and third, a general knowledge in the field of title insurance. A person passing these requirements shall be entitled to a membership certificate. However, this certificate shall be surrounded whenever the individual's membership is terminated for any reason. There are two classes of membership. First, the active member, composed of members who are employed by a member of the Florida Land Title Association, and, second, the inactive member, being one who is no longer employed by a member of the Florida Land Title Association. An inactive member can attend meetings of the Institute, but shall have no voice in the activities.

One may resign, as he can from most organizations. A member may be suspended or expelled by the Governing Council or by a vote of 80 per cent of the membership if he

violates the by-laws or rules of professional ethics or any regulation of the Institute, or if he is found guilty by a court of competent jurisdiction of fraud or any felony and for other reasons about the same as any other organization.

There are no dues for membership. The Governing Council can levy an assessment if needed. An application fee of $25.00 is charged and an examination fee of $25.00 is also charged.

The Governing Council is composed of five members being the President, Vice-President, Immediate Past President, Secretary-Treasurer and one member at large. The member at large is appointed annually by the President of the Florida Land Title Association. The examining board is composed of the Vice-President and two other members appointed by the President of the Institute.

The annual meeting of the Institute is held presently just after adjournment of the annual meeting of the Florida Land Title Association. Last year was our first such meeting and will be continued again this year. We closed our State Title Convention at noon on Saturday and opened our Institute Convention with a luncheon on Saturday. The Institute meeting adjourned about the middle of the afternoon.

Now you have heard of the organization and the general setup of the Certified Land Title Searchers. Let us discuss some of the possible benefits and possible results of such an organization. You will note first, that there was no grandfather clause. No one was automatically admitted regardless of the number of years he had been a title searcher. Everyone who has been admitted had to stand a rigid examination.

A group of us got together to prepare our first examination. We have in the past and will possibly continue in the future to hold one examination per year. It is a written examination given in five different sections of the State on the same day. One of our members is in charge in each location. We started at 9:30 in the morning and adjourned for lunch at 12:30. We reconvened at 2:00 p.m. and adjourned at 5 p.m. It was estimated that the fastest would take five hours and the maximum allowed would be six hours. I timed the first group I had last year and the fastest took four hours and fifty minutes and I called for one paper at the end of six hours. This person was working on the last question when I told him the time was up.

We have changed a few words in our constitution and by-laws. The most important change being that one may receive credit for work with a title company in another state. We require seven years experience and now will allow up to six years service outside the state and give an applicant credit for one year for every two years experience outside the state.

It has been suggested by a few that this type of organization could lead to a form of labor union among the title industry. This is not the idea. It is felt by most that it will add prestige and raise the standard of those so employed. We point to the CPA's in the accounting field. There are many good accountants who are not CPA's, but if you want the best in accounting you look for a CPA. There are many good life insurance agents, but when you are looking for the best you look for a CLU. Many people can appraise real estate fairly accurately, but if you want the best you get one who is an MAI. So you can see with the proper care in selecting only the best, a CLS can eventually mean much to one in the title field.

I stood the examination along with the original group. I will admit that my paper was graded by other members of the committee that had been working with me on this project. It could possibly be said that I had the inside track. In fact, it might have been said, however, I guarantee you that I really worked on that examination paper. Certainly after having served the years that I have in the profession I was not expecting any material benefits for myself. I did it to encourage others to better themselves and to assist in getting this program under way.

The CLS Institute has now been given the responsibility by the Florida Land Title Association of handling all educational matters for the Association. We have had a number of short courses sponsored by our Association and directed by the General Extension Division of the University of Florida. Our Institute is now in charge of any future courses. Our Association, I believe, was the first to hold such a short course. We have been well pleased with the results. We expect to continue to have the General Extension Division of the University of Florida direct the courses. The guidance and type of courses will be decided upon by the members of the Institute of Certified Land Title Searchers.

The last examination given to become a CLS was taken by fourteen people in the State. Only five passed. This does not mean the others were not good title people, it did mean that to be entitled to be called a CLS you must be at the top. At the top, not in management, but in experience and knowledge of land title searching. There are now seventy-two or so title searchers in the State of Florida who are entitled to sign their name with CLS after the signature. It means little at present for few people know for what it stands. As customers see the plaques hanging on the walls of the offices of title companies throughout the State, the meaning becomes better known.

In future years it is hoped that this Institute might spread throughout the United States and become just as acceptable as CPA. This is not accomplished overnight and it cannot be realized without real work and thought. The principles and ideals must be guarded zealously. The rules must be strict. As this is done, a Certified Land Title Searcher will be recognized as the best in the field. Management, employees and the public will profit by the higher standards demanded by such an organization.

Record Creation and Retention

JOHN WADDELL, Treasurer, Chicago Title & Trust Company, Chicago, Illinois

When I was sixteen years old, I learned the first principles of record keeping. I had invested my life savings by paying $100.00 for a used car. Record retention meant nothing to me then and the state had not passed any laws about registration of title. I put my bill of sale under the seat and sent for a state license. A few days later, someone stole the car for a joyride and I discovered to my sorrow that the police wanted the numbers on the motor before I could get it back. There was my lovely car standing in the police lot and I couldn't get it back because I hadn't made a record of the numbers nor retained my bill of sale.

Principle Number One: Create records appropriate to your needs.

Principle Number Two: Keep them in a safe place.

Eventually, I recovered my car and acquired several more years of education, but I do not recall any further training on the subject of records. Then I started to work and the training I got as to record creation was what most people get: keep on making the same kind, shape, size and form of record that your predecessor did. To some people, this is still the only rule there is about record creation. You might call it the "Be sure it fits the same binder" rule. This is just sensible enough to be useful. But please do not turn it into a principle.

Let me start with the take-off of recorded instruments, deeds, mortgages, releases. It seems there are just two ways to make a take-off. Either you copy the whole page with a camera, or you copy what you consider is important by using a type-

writer or a pen or pencil. Now suppose you use a camera. Those who do often seem to think this is the ultimate in record creation and that nothing much can be done about the volume of paper or film they need to use.

The first notion I had when we started a photo take-off was, what a waste it is to take pictures of two sides of a typical deed form. Why can't we have a one-sided deed, I asked. Of course, I got a lot of reasons why this was impossible. The stationers have large stocks. The lawyers won't like any tinkering with the forms. The recorder will object because his fee is based on pages copied. There isn't enough room. In spite of all this, we did get one-sided forms introduced in Cook County after two years of effort. Warranty deeds, quit claims and releases are all one-sided, one-pagers; only 25 per cent of the documents filed require two pictures.

We have one big stationer in Chicago who made us feel mighty proud when he advertised "The first improvement in deed forms in 50 years." This probably was true — in Cook County—but I found a little later that similar changes had been adopted years before, in other counties, so my head is back to normal size. But maybe you can do even more in your county.

Another technique we use to cut the volume of paper we create in the take-off is reduced size. In our case we have adopted a reduction to 80 per cent of original size, because our experience has been that anything smaller than this is too hard to read.

This reduction below original size saves some 50 square inches of paper on every legal size document and as they pile up by the thousands, the space saving begins to be impressive.

Of course, if you are making contact prints, reduction is out of the question. But some day, when you consider enlarging the building to hold the records you created, the convenience and simplicity of the contact print may not be so attractive.

I have made the point that attention to record creation begins in the Recorder's Office, but certainly it only begins there. When we get into the title plant, the problem broadens. So far as I know, the take-off problem is similar and universal — that is, the principal difference between the take-off in one place and another is volume and method, but the problem is essentially the same. However, in the plant you are your own master of record creation and retention.

I can give some specific illustrations but first I'd like to state another principle. It's simply this: the successful control of records depends on constant attention to details of their creation and retention.

I would like to know if you have noticed how the introduction of assorted duplicating and copying equipment has an insidious effect on the growth of your files. It's just possible this phenomenon is confined to the title insurance business in my city, but I doubt it. Consider this: We have been producing a file for every order in a consistent series for well over 50 years. We literally have millions of them. Not long ago we made a careful sample of the file contents as part of a record retention study. As a by-product, we got these statistics: In 1910 to 1920, the average file contained 12 pieces of paper. We have simplified and improved our productivity a great deal since then, but the average file produced in 1950 to 1960 contains 16 pieces of paper—a 33 per cent increase. In the old days, duplicating facilities were limited. If a man wrote a legal description on a work sheet, there was no easy way to make six copies, so the sheet was passed from hand to hand as various searches were made. This delayed the job, of course, so today we run off copies, pass them out and get the work done simultaneously. I can't object to this, but here's the insidious part: the extra, extra copies. We have aggressive managers who just hate to see anything that is being duplicated copied over, so no matter how the duplication is done—by Thermofax, on white print or photo copies or ditto or multilith or Xerox, one or two extra copies are made (to save time and labor, of course); and these get

used. That is, someone writes some notation on them; naturally a file clerk can't be sure they are extra and, sheet by sheet, the permanent file grows. Busy people cannot be expected to worry about just one or two little sheets in a file. But you can imagine that once two million extra sheets are stored away in permanent files, we need a quarter of a mile of file drawer space we could use for other purposes.

Maybe your volume is thousands instead of millions; but every file cabinet costs money. If you haven't noticed how the extra copies are sneaking into your files, you can stop them before they get so well-imbedded in the files that you can't afford to get them out.

The retention of records is a subject that often seems to get the same sort of sporadic attention that the average home owner gives to the junk that accumulates in his garage. He gives no thought to the partly filled cans of paint, the half bag of concrete and the old tire until a rainy Saturday when, in a great burst of energy and attention, the whole place is cleaned up. This technique works in the office, too. You have all seen the clean-up that occurs when someone gets a new desk or a new piece of equipment is installed. But it's not the way to handle records. "Records," of course, is a broad term. There is not much point in setting a date for disposing of your basic title plant, but how about the duplicate set you acquired when the present firm was formed, or when you took over the business of a deceased competitor? I strongly favor a decision on how long they are to be kept the day you stop making entries. Compare the results of deciding to keep them for 15 years on this day—i.e., when everything is fresh and clear—with the problem of deciding the same question 15 or 20 years later. Granted, it may not be your problem or mine 20 years from now, but it's really tough for a manager, who needs space or is about to move, to find out if old records have any value. He asks the old timers and gets answers like, "Yes, we use them from time to time." He tries to get an example and they tell him about a case as if it happened yesterday. But then he learns it happened 10 years ago and saved a trip to the courthouse. Can he safely discard it now? Of course not. Just to be safe, he decides to keep it 15 years more. If some predecessor, or he himself for that matter, had decided 15 years ago, he would not need them now. The final review and destruction order would be no problem.

I know of several instances where hasty decisions to make room right now by destroying a record have been costly. I have never seen a case where a considered decision to destroy a record in the future, whether one year or twenty, proved to be wrong. We set up our first overall retention schedule in 1939. That is, we reviewed a large number of records and made a lot of 5, 10, 15 and 20-year retention decisions then. None of these was wrong, although some may have been over-cautious. The trouble is with the "permanent retentions" and with the ones we overlooked or the new ones which were never going to be a problem.

Any record retention program requires a special kind of man with faith in the future. The young man of 25 simply doesn't have it. He may buy a 20 pay life insurance policy, but he cannot conceive of the new accounts receivable ledger he's posting as ever being a record retention problem. On the other hand, the fellow who is going to retire in a year or so is too reckless. He will let you destroy the corporate charter and the tract books a year after his retirement. But seriously, how long to keep records; whether they be take-off slips or copies of paid bills, requires the same constant attention to detail that is important in record creation. Some common sense, and a schedule of legal requirements, which will cover matters like income tax records and payrolls, but will not be much help on the typical title plant records, are needed. A letter size loose-leaf notebook containing descriptions of each record type, the decision made and an indication of why, is impor-

tant because you and your successors will consult the notebook for years. You will need a tickler system to bring up dates for things you decide to do. It is often practical to mark the record itself. For example, wrap the old book you decided to keep for five years in paper, and put a sticker on the package, "Destroy in 1968." Come 1968, if the book is still wrapped, the decision was probably sound.

Enforcement of these retention decisions may be more difficult than you think. It depends on the type of record, who has it, and where it is. Suppose you have a file drawer containing receipts, and you guess you will fill this in five years. There is no specific time you have to keep them, so you decide on five years. So Susie, who does other things, files receipts in the drawer and it fills up in four years. Naturally, she starts another drawer, and there is no pressure on her for another four years. By that time the drawer is filling every three years and nobody looks at the instructions you put in the front of the first drawer to pitch out those over five years old. This is only one set of files and won't be the only one, and the only answer I know is periodic review and follow-up to see that the program is working. This may mean another job for the boss in the small office, but he has the advantage over me. I'll have to requisition a janitor to come get the pile of papers and fill out a cremation form to get them burned.

I would like to include some observations on record restoration. We have always been concerned about the possibility of the loss of our title plant by fire or other catastrophe. Certainly the best way to solve this is to avoid having to restore by taking every possible precaution to prevent loss. So I would not spend money or time on a restoration program until I had done what I could to be sure I would not need it. But you may have noticed that this creates a state of mental conflict. If you have sold yourself or your Board of Directors on a fire protection program including fire-resistant cabinets, an automatic alarm, and $C0_2$ gas extinguishers in a so-called fireproof building, it's hard, if not impossible, to go on from there and start planning what you would do if all this failed. It's extremely hard to plan for an event you simply don't believe in.

I therefore contend that before you start a restoration plan—and let me make it clear, I think you should unless you are looking for an excuse to get out of business—before you start planning, you need either a vivid imagination or a good scare. Even if you have had a tradition of being conscious of and doing something about record restoration, as we have, there's nothing so effective as looking at what a fire or boiler explosion or a flood can do to records. It doesn't have to be a title plant—any office will do.

For instance, Inland Steel Company built a fire-proof stainless steel and glass skyscraper across the street from The First National Bank in Chicago. One of the tenants was an accounting firm whose work sheets are as vital to their business as your records are to you. I don't know what happened, but they had a fire in this brand-new accounting firm office that left the office in a mess and scarred the face of the beautiful new building for a month or more.

Not long after, I stayed in my own office after hours and rode down the elevator in time to see a large crew of firemen carrying coil after coil of hose down into our sub-basement. Others were busy connecting a pumper to the fire hydrant. As I watched the hose from the pump to the basement fill under pressure. the hose kinked and burst; and in about a minute there was 6 inches of water on Clark Street. About that time, I thought of the 250,000 files and other records we have in vaults below the street, and I had no trouble visualizing our file clerks taking skin diving lessons. Fortunately, the fire was in the boiler room. The firemen put it out quickly and efficiently without getting a drop of water in the file vault. But that's what I mean by suggesting you get conditioned so you believe it could happen to you.

Now that you are conditioned, what should you plan? As I see it, you **first** decide you have an obligation to your stockholders, your employees and your customers to get back in business in the least possible time. People will be patient and understanding for a few days, but when their deals are going to fail or, their loans are held up, they are going to look for alternatives. So time is more important than mere feasibility of restoring the plant.

Not having seen your plant and not knowing what you have already done in anticipation of destruction, I would be foolish to suggest just what you should plan to do. Some operators have what amounts to duplicates of their important records on microfilm. Others have compromised by obtaining a duplicate of a security film produced by the Recorder, and I expect there are various middle-of-the-road programs where some paper copies, some film and a lot of wishful hopes are stored in a bank vault or other safe location.

I have these suggestions: Having a copy of your own records without a plan for getting back in business is not enough. You must also spend a few hours going over what you would actually do if your records were destroyed.

I'm told that business firms which have suffered unexpected loss of records found two things most disconcerting. First, the contents of their desks—the stuff they were working on yesterday—was the most serious immediate loss. Someone always had a bundle of the most important papers in the place right on his desk the night the tornado hit. The obvious moral to this is exercise the same vigilance about irreplaceable papers as you would about currency. Nobody goes home leaving $10,000 in dollar bills in a desk drawer, in spite of the fact that thieves are not more likely to ransack the office that night than the tornado is to hit it.

The second disconcerting thing about a records disaster type of loss is almost funny until you think about it. The thing that really stops a business office cold is lack of raw material. That is, paper forms. All the vital records may be preserved in the safe or the fireproof cabinet but they can't take an order, write a letter, pay a bill, issue a certificate of title or a title insurance policy for lack of forms. I imagine this is more likely to paralyze the large office than the small one, but it's something to consider in the restoration program oriented toward getting back in business soon.

I have one practical suggestion to those who have rolls of films of their important books stored in a safe and suitable place. Until a few years ago, the only options for using this film in place of the original records were (1) put it on viewers and start new current records, or (2) conventional photographic enlargements on paper that would not stand much handling and was not very satisfactory if you tried to make entries on the photographs to up-date the record. The introduction of the Xerox "Copyflo" machine has made it practical to enlarge the film rapidly on card stock or on heavy ledger paper and at a cost of some 6 cents a linear foot. If your records will reproduce well as black on white and don't depend on some fancy colored ink scheme, this form of reproduction might actually give you a better record than the one destroyed.

Let me conclude by telling you about my nightmare. I have heard that when the first test of the atomic bomb was ready to be fired in New Mexico, some of the scientists had last-minute doubts as to whether the chain reaction would stop with the fission of the few pounds of uranium in the actual bomb. And they pressed the key anyway. I think of this when I approve the issue of a new form or the adoption of a new record—will it stop within the calculated limits or will it go on and on, filling up file cabinets and then buildings in an ever-expanding mushroom cloud of paper. It hasn't happened yet, but some day—who knows?

* * *

He who rides a tiger cannot dismount.

Report of Chairman, Title Insurance Section

JOSEPH S. KNAPP, JR., President, The Title Guarantee Company, Baltimore, Maryland

As Chairman of Title Insurance Section of the American Land Title Association, which I consider a formidable and very important organization, I wish to thank all of you for the great honor conferred on me for the past year.

I have endeavored to fulfill the responsibilities of this office and have requested, received and utilized the suggestions and great abilities of the other officers and members of the executive committee of this Section in preparing the programs for the past Mid-Winter Meeting and for this Convention, and in other ways. For their help and cooperation, I thank each of them.

I take no credit for the special reports of the various committees which will be made at this Convention because they were appointed and the subjects were delegated to them by others before the beginning of my tenure of office. They and the committees deserve the credit.

The material which these committees have produced shows the time and thought required in the preparation of the reports and I need but refer you to the report of the Uniform Title Insurance Code Committee, which represents two years' work, and the reports of the other committees.

Each member of the ALTA and the committees of the Association are its backbone. The ideas and suggestions for work and accomplishments must be forthcoming from the membership. Your committees are the machinery which produce the results and your executive and section officers, the National Officers, the Board of Governors and our very efficient national staff, with their invaluable help, try to steer the programs and activities of your Association.

These thoughts are true for past administrations and sections, and will follow for the future. Some executives are more inspirational than others, but that is the way of individuals. The heart and pulse of the Association is in the membership and their individual ideas, thoughts, ambitions, contributions and final decisions.

This year, in addition to the National Mid-Winter Convention and some special committee meetings, I attended the Atlantic Coast Regional Conference and the Pennsylvania State Title Association Meeting. Both of these meetings were excellent and rewarding to me, and, I am sure, to all others who attended them.

Although I did not attend other state and regional meetings, I feel sure that the problems and discussions at each meeting were approximately the same and included volume of business available; competition therefore; ability and efficiency to handle; ways and means to increase efficiency; public relations; advertising; ethics in the industry; profits returnable; lawyers and bar association activities; staff improvement and their availability, and some subdivisions of the above subjects.

The purpose of the National Convention is to bring before it the subjects and problems from the various areas and to suggest and resolve, if possible, some solutions of them so that each member may take a thought or two home which will help in the solution of his or her local problem.

Our Convention program presents reports and discussions of subjects which the planners of the program think will be of the most interest to you. The work and subjects of many committees are not limited in their benefits especially to one Section of the Association, but, in most cases,

are beneficial to both sections. Publicity programs and the public relations of our staff and your officers help the whole Title Industry and not the members of one particular section of the Association.

As an illustration, I would like to comment on a larger user of title evidence in its purchasing and use of real estate and mortgage investments thereon. That is the United States Government and its agencies. They are a tremendous user of the services of those who furnish title evidence, both abstracts and title insurance.

Some agencies of the Government have made changes in their requirements and others are now considering and contemplating changes in the title evidence requirements. The first change came several years ago when some agencies of the Government, in their solicitation for bids, requested them on the basis of guarantees limited to fifty percent (50%) of the acquisition cost of the property. Some bids were made on this basis and contracts awarded thereon. In effect, the Government obtained partial insurance and the insurer was obligated for all loss from the first dollar to the amount of the guarantee and the Government became a self-insurer for the excess. This arrangement violated sound insurance practice and was not acceptable to some insurers.

Another deviation came this year. The FHA, as part of its program to dispose of the great number of properties it had acquired throughout the country as a result of its guarantee, considered a method of disposing of these properties on a so-called waiver basis, which was tantamount to FHA becoming a self-insurer of title. The details of this contemplated plan were brought to the attention of the membership of the ALTA and your President appointed a special committee, of which he was chairman. This committee met in Washington following the Mid-Winter Meeting with some members of the staff of the FHA and, at a later date, your President, with a smaller group of the ALTA committee, met in the office of the FHA, in Washington, with the Commissioner and members of his staff. The genesis of this meeting was that the ALTA would contact its membership and have local members contact their area FHA Director and submit to him suggested reasonable methods for handling these transactions in accordance with local customs and practices. This was done and special proposals were submitted in most, if not all, areas.

The FHA initiated a pilot program in seven cities on April 9th, 1963, but I have not been advised as to the success of the program in these cities, nor do I know to what extent our members participated in furnishing title evidence for the sales and financing.

However, a development of importance with which, I assume, many of you are familiar, was the offer by the FHA, dated July 15, 1963, to sell multi-family purchase money and assigned mortgages on properties located in numerous states. This offer contains the following:

> "In lieu of furnishing a title policy brought down to date of sale of the mortgage, FHA Regulations afford the purchaser and all subsequent holders the protection set forth in Sect. 207.259a, as follows:
>
> "If the Commissioner sells a mortgage and such mortgage is later re-assigned to him in exchange for debentures, or the property covered by such mortgage is later conveyed to him in exchange for debentures, the Commissioner will not object to title by reason of any lien or other adverse interest that was senior to the mortgage on the date of the original sale of such mortgage by the Commissioner."

The aforegoing is what I referred to before as a method of sale which is tantamount to a government agency becoming a self-insurer of title.

The FHA, under date of July 19, 1963, issued Property Disposition Letter No. 82 to Directors of all FHA Field Offices, entitled "Private Financing of Acquired Home Properties Sales." Under the above private financing plan proposed, FHA assumed "reasonable and customary cost of

obtaining financing and closing costs." The term "financing" includes a charge for arranging financing, if any; attorney's fee; service charge not to exceed $20.00 or 1% of the principal amount of the mortgage, whichever is the greater; cost of title evidence; survey; credit reports; photographs, if any; State and Federal Revenue Stamps; transfer taxes, if any; recording fees; and such other reasonable and customary charges and fees as may be approved.

You will notice that title insurance is not specifically mentioned, but in one area a proposal submitted by a mortgagee provides that settlement expenses are in accordance with title company listed charges. This proposal was approved by the District Director and the proposal forwarded to Washington for approval. An investigation was then made by FHA to ascertain whether the Title Insurance Companies in this state were subject to the supervision of the State Insurance Commissioner and whether the title companies were required to file Rate Schedules for approval by the Insurance Commissioner.

This investigation disclosed that not only were the title companies required to file and obtain approval of their charges, but also were required to file for approval all forms of the title policies which they used.

The filed Rate Schedules were analyzed by FHA and, apparently, were determined to be reasonable for the area because the proposal to use title insurance was approved by the FHA in Washington. It is indicated that the program in this area will be under way before this Convention is over.

I believe that information on this National FHA program is of such importance to our industry that I have included it in my report, even at the risk of some duplication with the report of our President. It will also be brought up for discussion in the open forum meeting of the Title Insurance Section so each local aspect of it can be reported and discussed. This subject is of interest to all who furnish title evidence and not to the Title Insurance Section alone.

The above report shows the desirability of proper state supervision and regulation of the title insurance industry and is a very compelling reason for the title insurance industry to complete a suggested Uniform Title Insurance Code.

Any further comment by me on the activities of your Association during the past year, in view of the splendid and detailed report of our President at the opening General Session meeting, would be redundant.

From present indications, business this year has been comparable to last year, and, in most areas, has been better. Last year was regarded as a better-than-average year, so I assume that we should not feel too badly if we do as well, or some better, this year.

Competition continues to be keen and this is good for the industry, as it keeps us on the alert and makes us energetic in our solicitation for business and the perfection and betterment of our services. The many mergers of title companies are producing changes not heretofore expected or foreseen. The West moves East and the East moves West and new interests enter the title insurance field. This is an indication of the growth and expansion of our industry.

Real Estate Investment Trusts

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Like most of you, I have devoted a large part of my life to the problems arising in the insurance of titles to real property. During these years it has been my custom to try to learn the significance of each legal or title term which I have heard or seen in my daily work. Unfortunately, I have found that the meanings of some words or terms would just not stay with me. Each time I would come in contact with them, I would have to go back to the Legal Dictionary, read the definition, and each time I would promptly forget the meaning. At this moment I can think of a number of these illusive terms. For example, the word "poudrette" seen so frequently in offensive use restrictions—somehow, its meaning escapes me. Or the term "brundage clause" required by some lenders in a mortgage. And in this same category, since law school days, I have often come across the phrase "Massachusetts Trust," and never quite understood what such a trust signified.

Then, about three months ago, your chairman, Joe Knapp, called me to ask me to speak at this session on the subject of Real Estate Investment Trusts. You can understand from what I have just told you that he was not calling me as an authority on the subject, but primarily because I had the bad habit of saying yes. In any event, I accepted the responsibility, and inasmuch as the real estate investment trust is in form a Massachusetts trust, there I was, back looking in the Legal Dictionary and hoping this time that the subject would make an indelible impression upon my mind.

I found in 156 American Law Reports, Annotated, that the method of conducting a real estate enterprise in the form of a business trust is said to have originated in Massachusetts as a result of inability to secure corporate charters for acquiring and developing real estate without a special Act of Legislature. As a result, this type of organization reached its fullest development and most extensive use in that State. Hence the name "Massachusetts Trust."

Pennsylvania Law Encyclopedia Vol. 6, page 280, states that "a business, common law or Massachusetts Trust (you will note that these three terms are used interchangeably), is a form of business organization consisting essentially of an arrangement whereby property is conveyed to trustees in accordance with the terms of an instrument of trust, to be held and managed for the benefit of such persons as may, from time to time, be holders of transferable certificates issued by the trustees showing the shares into which the beneficial interest is divided, which certificates entitle the holders to share ratably in the income of the property, and on termination of the trust, in the proceeds thereof.

In Pennsylvania, prior to 1961, we had very few cases in which real property was held in the name of a business trust. There is still no statute providing for the formation of such trusts, but they are recognized in our case of PENNSYLVANIA COMPANY vs. WALLACE, 346 Pa. 532.

The reason that we had few cases of real estate held in a business trust prior to 1961 was that persons who invested in real estate through such a medium did not enjoy the same tax break as persons who pooled their funds in a company which invested the money in diversified stocks and bonds. The income from the real estate investments ordinarily was taxed twice—once at the corporate level and again when distributed. In-

come from a stock investment trust, on the other hand, was taxed only once when distributed to the distributee.

In 1961, Sections 856-858 were added to the Internal Revenue Code and removed this discrimination by providing for taxation of real estate investment trusts in much the same way as regulated stock investment companies. The income would not be taxed in the hands of the trustee and along with the advantages of depreciation and accelerated depreciation would flow through to the certificate holders. It may well be that this law's effect upon real estate investments will be as important as that which occurred in the securities field through the growth of mutual funds. If this occurs, it will be most important for all of us to have a clear understanding of the powers of a real estate investment trust. A number of trusts specializing in investments in real estate and real estate mortgages have already been created, and it is anticipated that many more will come into being during the next few years. It was for this reason that your chairman has requested that this subject be covered at this meeting.

My approach to the subject will be to raise the questions dealing with the investment in, mortgage and sale of real property, and then attempt to answer the questions raised. If I have no answers, particularly for your individual State, I hope at least that the questions themselves will help to stimulate your thinking on the subject.

The first question is:—What is the physical make-up of such a trust to qualify under the Internal Revenue Code?

It cannot be a corporation, but must be an unincorporated trust or an unincorporated association which, during the entire taxable year, would be taxable as a domestic corporation were it not for the provisions of the code. The regulations specify that the organization cannot be established as a limited partnership. Management must be vested in one or more trustees. No property may be held primarily for sale to customers in the ordinary course of trade or business. Beneficial ownership must be evidenced by transferable shares or by transferable certificates, and such beneficial ownership must be held by at least 100 persons.

The other requisites apply to income received, property held for sale, investments, rents from real property, distribution of income, capital gains, taxation of beneficiaries, etc. The bulk of the income must be from passive income sources and not from active conduct of a trade or business.

In each case, State law must be checked carefully to determine whether an unincorporated association which meets the requirements for a real estate investment trust can validly exist and do business under the laws of the particular State in which it is organized.

Question 2:—Can such a trust acquire title to real estate?

Sackman in the "Law of Titles" states that business trusts have been held to have the power to acquire title to and deal with real property. Legal title vests in the trustees, and the validity and nature of title depend upon the provisions of the trust instrument.

Undoubtedly the very name of the trust indicates that it is intended to acquire title to real estate. The code provides that 75 per cent of the value of the total assets of the trust must be represented by real estate assets, cash and cash items (including receivables), and Government securities. The term "real estate assets" means real property (including interests in real property and interests in mortgages on real property), and shares in other real estate investment trusts. In the Declarations of Trust which I have examined there is a specific power to purchase, mortgage, sell, acquire on lease, hold, manage, improve, lease to others, option, exchange, release and partition real estate. Naturally, the right to exercise such power will depend upon the law of the State in which the real property is located.

Question 3:—Can title be acquired in the name of the trust? In other words, is the trust a legal entity?

Many Declarations of Trust provide that real property can be acquired in the name of the trust, and undoubtedly in some jurisdictions such as Massachusetts, Missouri and Virginia, the title so acquired would be valid. However, in most States such title would be questionable, and the better practice would be to acquire title in the names of the trustees or in a nominee.

The code provides that "the trustee will be considered to hold legal title to the property of the trust . . . whether the title is held in the name of the trust itself, or in the name of one or more of the trustees."

The legal title does not vest in the beneficiaries, and the interest of a beneficiary cannot be sold under execution as real estate and there is no right of partition. It is also important that the holders of beneficial interest shall not be personally liable for obligations of the trust.

Even when legal title is in the trust name, a mortgage or deed would be made by all of the trustees or those authorized in the Declaration.

Question 4:—Must the Declaration of Trust be recorded?

Since the Declaration sets forth the powers of the trustee to acquire, mortgage and convey real estate, it is a muniment of title, and a duplicate original declaration and any amendments thereof should be recorded. It would appear that there would be no necessity for a special Act of Legislature providing for recording. In some jurisdictions it would be necessary to record a certificate evidencing the succession of trustees.

Question 5:—Is there any disadvantage in taking title in the name of a nominee?

Where title is taken in the name of a nominee, from a title standpoint it would be preferable not to have the nominee status appear on the face of the conveyance. This leads to some self-evident disadvantages. If the nominee is an individual, the property would be subject to judgments against such an individual, and problems would arise at the time of death. If the nominee is a corporation, there would have to be extreme care in the formation of such corporation, otherwise it would be subject to corporate taxes which would naturally cut down the amount of the dividends payable to the beneficiaries.

Question 6:—Is a real estate investment trust ever considered a partnership?

It has been said that this depends upon the instrument creating it, and according to the way in which the trustees are to conduct the affairs of the group. If the trustees are free from the control of the certificate holders in the management of the property, a trust is created; but if the certificate holders are associated together in the control of the property as principals, and the trustees are merely their managing agents, a partnership between the certificate holders is created.

Typical common law trusts do not generally provide for the control of the trustees by the beneficiaries and often provide no means by which the beneficiaries may remove the trustees. The Internal Revenue Code states that the management must be vested in one or more trustee.

In all of the Declarations of Trust which I examined, the Trustees were the managers of the trust, but in some there was a provision that the trustees are elected annually by the beneficiaries and this gives an element of control over the trustees. Lawyers in Ohio, Florida, Oklahoma, Texas and other States are concerned about this and think that where such right to elect exists, a partnership is created and it might affect the limited liability of the shareholders. Titlewise, this problem might be solved if two or more of the beneficiaries, i.e., partners, join in a deed or mortgage with the trustees.

Question 7:—Is a real estate investment trust ever considered a corporation?

Yes, but this does not seem to affect its rights to purchase, mortgage or sell real property. It could lead to the problems of qualifying in a particular State or to its taxation as a corporation.

Question 8:—Is it necessary to file or register under Fictitious Name Act?

Usually advisable, but failure to register would usually not affect the validity of a deed or mortgage created by the trust.

Question 9:—Is there any objection to the use of the word "trust"?

Apparently this question has arisen in some States including Ohio. In Colorado a statute provides that no company other than a bank or trust company using the word "trust" in its name can do business.

Question 10:—Is the primary purpose of such a trust the buying or selling of real property or the investment in income-producing property?

You will recall the requirement that a real estate investment trust is a trust which does not hold any property primarily for sale to customers in the ordinary course of its trade or business. Gains on the sale of real property held for less than four years must represent less than 30 per cent of the trust's gross income. As a result, you will not find a trust constantly buying and selling real property. A large real estate investment trust would normally be invested in relatively few pieces of real estate—hotels, shopping centers, apartment houses, office buildings, bowling alleys, etc. Care should be exercised that the trust is not actively operating such investment because this would be violating the provision that income must not be from active conduct of a trade or business. Hence the trust would lease the entire shopping center to a managing corporation which would operate the center.

Question 11:—If a business trust is formed in one State, could it acquire title to real property in another State?

Usually the investments of such a trust are widely scattered. Last week I was conversing with an attorney of such a trust and found that their holdings were in Maryland, Georgia and Jamaica. This indicates the necessity for study of the laws of the State where the real property is located. Frequently a trust meets the requirements of the State of organization but fails to meet the requirements of the State where they contemplate purchasing real property. It would therefore be advisable to consider the requirements of States of possible investments at the time of formation.

Question 12:—Does such a trust violate the rule against perpetuities?

If, under the terms of the trust it is perpetual, it would violate the rule against perpetuities in some jurisdictions. For this reason it may be advisable for a real estate investment trust to be created for a specified number of years or for the lives of persons named in the trust agreement.

This question has arisen in Oklahoma, Hawaii, Michigan, Indiana, District of Columbia and other States. New York law provides that if the trust can be terminated by either action of the trustees or affirmative vote of the beneficiaries, the rule is not violated. If the consent of both trustees and beneficiaries is required, the rule would be violated.

Question 13:—Can a Real Estate Investment Trust acquire title as co-owner with others?

This problem arose in a case in Maryland. The question is answered by the wording of the Internal Revenue Code which includes in the definition of "real estate assets," interests in real property. Caution should be observed that such holding would be subject to the right of partition by the other parties and a waiver of such right of partition might be held to violate the rule against perpetuities or the rule against restraint of alienation.

Question 14:—What States have enacted recent laws relative to Real Estate Investment Trusts?

Maryland, 1963, page 178, Chapt. 93, Act 78 c, effective June 1, 1963. Real estate investment trust recognized as a permitted form of unincorporated trust or association for the conduct of business in this State. The requisites to qualify are those set forth in Internal Revenue Code. This article shall not be construed as

limiting present law with respect to any "common law trust," "business trust," or "Massachusetts trust."

Declaration of Trust must be filed, officers and resident agent identified, and security for payment of taxes filed.

Mississippi Code 1942, Vol. 4 A, 5570-01 et seq.

"The Mississippi Investment Trust Act" effective May 15, 1962, defines an investment trust as an express trust created by written declaration of trust—three or more trustees hold or manage trust property as trustees for holders of transferrable certificates evidencing the beneficial interest in the trust estate. One trustee to be a natural person resident of Mississippi.

Declaration to be recorded with Clerk of Chancery Court in county of principal business, and with Secretary of State of Mississippi.

New York — McKinney's Consolidated Laws. Real Property Book 49 (Sections 42 d, 96 and 103) effective April 6, 1961.

96 (7) sets forth the provisions of a real estate investment trust as proper purposes for which express trusts may be created.

42 d states that such trust shall not be deemed to be invalid as violating any existing laws against perpetuities or suspension of the power of alienation. 103 provides that the interest of the beneficiary may be transferred.

Kansas 1961, Ch. 117, page 261, effective April 13, 1961, relates to investment companies and to securities and notes, and recognizes the legality of investment trusts.

South Carolina 1961, #322, effective May 15, 1961, provides that real estate may be acquired, conveyed and mortgaged by the trustees in the name given to or used by the business trust. A business trust shall not be affected by any rule against perpetuities. A business trust may sue or be sued in the name and style by which it conducts business without naming the shareholders therein.

Tennessee 1961, Chapter 247, effective March 14, 1961, gives a clear simple definition and approval of the common law business trust requiring filing trust instrument with Secretary of State, county register in county of principal office and in county where it owns real property. Taxed and treated as a corporation.

Texas Real Estate Investment Trust Act—Vernon's Ann. Civ. St. Vol. 17, Title 105, Act 6138 A, provides that a majority of the trustees be natural persons resident of Texas. Declaration must be recorded with county clerk of county of principal place of business.

Virginia Real Estate Investment Trust Act—1950 Code 6—577, et seq. Laws 1962, provides for creation of such trusts.

Georgia Chapter 108—6, as amended in 1961, is a very comprehensive Act covering the entire subject.

If there is no reported case or Act of Legislature recognizing a real estate investment trust in a particular State, it would be inadvisable to purchase real property in that State. If there is a case recognizing the validity of such trust but no Act, then the general principles of common law trusts would apply. When States pass Acts on the subject they frequently hamper the simple administration of the trust within such jurisdiction.

My research on this subject has been far from exhaustive, and I am sure that many of you could add further information about these trusts. Nevertheless, I have finally learned something about Massachusetts Trusts and I am glad Joe Knapp asked me to review the subject. One of these days I'll have to go back to the Legal Dictionary and look up "Poudrette" and "Brundage Clause."

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Realtors—Members of the National Association of Real Estate Boards—who are experienced in urban renewal, serve without compensation on advisory teams which visit cities at the invitation of the local government and the real estate board to assist in the development of their slum and blight elimination programs. These team visits are one of the NAREB's "Build America Better Programs."

Allowable Expenses on Travel and Entertainment

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Section 274 of the Internal Revenue Code was enacted in 1962 as a result of the Internal Revenue Service's pressure on Congress to close what it considered a major "loophole" in our tax laws. It specifically denies deductions for entertainment expenditures, including facilities which do not meet certain standards, for business gifts exceeding a stated amount and for certain traveling expenses. It also expressly disallows the deduction of any of these items which the taxpayer cannot substantiate as to amount, time, business purpose, and business relationship. The Internal Revenue Service is given specific power to prescribe such regulations as are deemed necessary to carry out the purposes of this Section. Regulations have now been issued relating to both the requirements for substantiating travel and entertainment deductions claimed with respect to the substantive provisions of Section 274.

This new legislation is considered by some segments of the business world, notably the resturant, entertainment, hotel, and resort fields, as the most disastrous Federal legislation since the advent of prohibition—and that its sponsors and proponents are in the same class as those persons who championed prohibition. Undoubtedly, these segments of business have suffered as the result of this legislation, partly because of the uncertainty existing concerning its scope, partly because of the normal businessman's antipathy towards keeping the required records, and partly because some people have been engaged in "expense account living." Many articles have appeared in newspapers, magazines, and trade journals, attempting to outline the new rules laid down by this legislation. One of the clearest explanations for the businessman has been compiled by the Treasury Department and may be reprinted by trade associations, etc. It is entitled "Questions and Answers for the Businessman."

Prior to the enactment of Section 274 of the Internal Revenue Code, the basic question concerning the deductibility of travel and entertainment expenses was whether it was personal or business. Normally, if a taxpayer could show a business relationship to the recipient of the entertainment, the expenditure was allowable, even though technically he could be required to show that it was ordinary and necessary to his business. In practice, if he could demonstrate that it was not personal and that there was a business relationship this test was usually considered to be met. Because of the **Cohan** rule (1), which held that where the evidence indicated that a taxpayer had incurred certain deductible expenditures but their exact amount could not be determined, as close an approximation as possible should be made, many entertainment deductions were made based upon estimates of the taxpayer. One of the most important features of the new law is the elimination of this **Cohan** rule.

The substantiation requirements of the new law are very explicit. The taxpayer must keep adequate records to show the amount of any such expense, the time and place of any travel or entertainment, and the date or description of any gift, the business purpose of the expenditure, and in the case of entertainment and gifts, the business relationship of the recipient. No longer can he expect to estimate such expenses and reach a settlement with the Revenue Agent. The Agent now has the authority to disallow any expenses not adequately

substantiated in accordance with the above rules. Basically, each employee on an expense account is required to keep an accurate, contemporaneous record of his expenditures in order to support his reimbursed expenses and this record must be complete enough to meet the requirements outlined above. In addition, he must keep receipts for any single expenditure in excess of $25.00 and for all lodging expenditures. Cancelled checks alone are not sufficient receipts.

The purpose of this article is to discuss what entertainment expenses are deductible, and time does not permit a detailed discussion of the regulations relating to substantiation requirements. However, a few observations should be made with respect to these requirements. First, the employer should insist that employee expense accounts set out the above information. If credit cards are used, additional information must be contemporaneously kept to reflect the information not shown on the monthly statement. In connection with clubs, sufficient records must be kept to demonstrate the amount of business use as compared with total use. In the area of record keeping, the persons most likely not to meet the requirements are the executive officers, particularly officer shareholders. The reason for this is obvious—few people enjoy keeping the required records and what bookkeeper is going to refuse to honor the expense chit of his boss because it doesn't meet the requirements of the regulations. It must be remembered, however, that these are also the items most likely to be challenged by the Revenue Agent. Thus, in order to avoid possible wholesale disallowance of entertainment expenses it is incumbent upon the officers, particularly the officer shareholders to satisfy the record keeping requirements. In any organization of substantial size it is advisable to standardize reimbursement procedures and expense account forms to meet these requirements. Such a practice has several advantages. It provides more assurance that the employee will submit the necessary documentation, it is easier to check that this information is submitted, and consistent use of such a procedure will have a favorable impression on any examining Revenue Agent.

Section 274 provides for disallowance of certain expenditures which would be otherwise deductible as ordinary and necessary expenditures under the Internal Revenue Code. Thus, it adds no new deductions and the items excepted from its provisions must still be ordinary and necessary business expenses in order to be deductible. The most important restriction is contained in Section 274(a) and relates to the disallowance (with certain exceptions) of any item considered entertainment expense unless the expenditure is (1) directly related to the active conduct of the taxpayer's trade or business or (2) in the case of an expenditure directly preceding or following a substantial bona fide business discussion, is associated with such active conduct of trade or business. The section also prohibits the deduction of any expenditure for the cost of maintaining any facility used for entertainment (including dues of social, athletic or sporting clubs) unless the facility is used primarily for business and the expenditure itself is directly related to the active conduct of business. Before considering the implications of these restrictions, the exceptions which are set out in Section 274(e) should be outlined inasmuch as the so-called "business meal" exception covers a category that normally constitutes the majority of the entertainment expenses of most businesses.

The exception for the "business meal" covers expenses for food and beverages furnished to any individual under circumstances which are of a type generally considered conducive to a business discussion. Thus, generally speaking, if a taxpayer takes a customer or business associate to lunch or dinner at a restaurant, hotel dining room or eating club merely to promote goodwill, such expenses are deductible even if business is not discussed since the promotion of business goodwill is an ordinary and necessary business expense. This exception may also apply where the food

or beverages are served at the taxpayer's home on a clear showing that the expenditure was commercially rather than socially motivated. However, if the atmosphere is not generally conducive to a business discussion such entertainment will not be deductible unless it meets the more restrictive requirements of Section 274. The Internal Revenue Service in its regulations has taken the position that if there are substantial distractions such as entertainment or a floor show, the atmosphere is not conducive to a business discussion. Thus, its position is that food and beverages furnished in a night club or at a large cocktail party do not fall within this exception. It is not always necessary for the taxpayer to attend the business luncheon or dinner himself. For example, if a dental equipment supplier purchases a table at a dental association banquet for dentists who are actual or prospective customers of his equipment, the cost of the table would fall within this exception. In connection with business meals, a rule has been developed by judicial decision that if a taxpayer takes a customer to lunch he must exclude the portion of the bill equal to what he normally would spend on his own lunch on the grounds that this portion is a personal expense (2). The Commissioner of Internal Revenue has announced that this rule will be applied largely to abuse cases where taxpayers claim deductions for substantial amounts of personal living expenses (3). Thus, unless a taxpayer falls within this abuse category, it is not necessary for him to make this adjustment in his business meal deductions.

A question sometimes arises as to whether the expenditure is deductible if a taxpayer takes an employee or a competitor to lunch. Since the "business meal exception" covers lunches for any individual, the restrictive requirements of Section 274 are not applicable. Accordingly, if the principal purpose of taking the employee or competitor to lunch is business rather than personal, it should be deductible without regard to these new restrictions. Often, for example, the best time to discuss a particular business problem with an employee is at lunch away from the interruptions of the office. Many helpful suggestions can be obtained from discussing mutual problems with a competitor; the taxpayer doesn't have to steal business secrets in order to show a business purpose for taking a competitor to lunch.

One more important observation with respect to the "business meal" and other exceptions under 274(e) should be made here. These items are merely excepted from the restrictive substantive requirements of demonstrating that they are either "directly related to" or "associated with" the active conduct of the trade or business. There still must be a business purpose, for example, goodwill, and the record keeping requirements of Section 274(d) must be complied with.

The other exceptions with respect to entertainment which are not subject to the new restrictive rules of Section 274(a) actually cover items that many persons would not normally consider entertainment expenses. These exceptions include food and beverages furnished on the taxpayer's business premises primarily for his employees, expenses treated as compensation to the employees, reimbursed expenses, recreation expenses primarily for the benefit of employees other than officers, shareholders or other highly compensated employees, employee stockholder business meetings, entertainment expenses directly related to necessary attendance at bona fide business meetings of business leagues, items available to the public, and entertainment sold to customers. The more important of these exceptions will be discussed later in this article.

Section 274(a) is applicable to any activity which is of a type generally considered to constitute entertainment, amusement, or recreation. Thus, even if such an item might be otherwise allowable as advertising, compensation, or other expense, it will be disallowed by Section 274(a) unless it meets the business relationship requirements thereof or is spe-

cifically exempted by Section 274(e).

The regulations consider that the term entertainment may include an expenditure claimed as a business expense which is incurred in satisfying the personal living requirements of an individual. Certain exceptions to this rule include supper money paid to an employee working overtime, furnishing accommodations to employees while in business travel status, or an automobile used in the active conduct of a trade or business even though incidentally used for commuting to and from work. Furnishing accommodations or an automobile to an employee or business customer for vacation use would constitute entertainment.

The exact meaning of the term "directly related to the active conduct of the taxpayer's trade or business" is subject to wide interpretation. If the background of Section 274 and the reports of the Senate Finance Committee and the House of Representatives Ways and Means Committee are ignored, it could be argued that this language adds nothing to the existing requirements of the business relationship of entertainment expenses. As previously stated, it has always been required that entertainment expenses must be ordinary and necessary to the business in order to be deductible. The Supreme Court has indicated that in order for an expenditure to be an ordinary and necessary expense it must be directly related to the business (4). However, in view of the aforementioned reports and the legislative background, we must assume that a closer business relationship is required within the meaning of this term. Commissioner of Internal Revenue, Mortimer M. Caplan, probably made the most candid statement concerning this question in his remarks at the news convention on issuance of the proposed regulations when he said, "The Committee reports **indicate** Congress intended that there must now be a closer relationship between most T & E and the taxpayer's business than have been required under prior law." In any event, the Commissioner's regulations, require a closer association to the business than that required under prior law.

The proposed regulations set out two types of circumstances under which entertainment expenses will be considered as being directly related to the active conduct of business. Under the first, the expenses will be directly related if the taxpayer can clearly demonstrate that at the time he incurred the expense he had more than a general expectation of deriving income or other specific business benefit (other than goodwill) at some indefinite future time, that he did engage in the active conduct of business during the entertainment, that the principal aspect of the combined business and entertainment was business, and that the expenditure was made with respect to the person with whom he discussed business. It is not necessary that more time be devoted to business than to entertainment. The regulations presume that entertainment at a night club, theater, sporting event, or vacation resort is not directly related, and the taxpayer would have to overcome this presumption by showing special circumstances that the statutory standard was met. In addition, the active conduct of business is not considered to be the principal character of a combined business and entertainment activity on hunting or fishing trips or on yachts unless the taxpayer clearly establishes to the contrary.

The other circumstances under which entertainment will be considered directly related is entertainment provided in a clear business setting directly in furtherance of a taxpayer's trade or business. The taxpayer must first clearly establish that any recipient of the entertainment would have reasonably known that the taxpayer had no motive in incurring the expenditure other than directly furthering his trade or business. Presumably, this requirement is to prevent application of this provision to entertainment of social or personal friends. In addition, this provision will not be applicable if the entertainment occurred under circumstances where there was little or no possibility of engaging in an active

conduct of a trade or business such as where the taxpayer was not present or there were substantial distractions as at night clubs, theaters, sporting events, or cocktail parties, or if the taxpayer meets with persons other than business associates at cocktail lounges, country clubs, golf clubs or athletic clubs, or vacation resorts. However, entertainment of a clear business nature which occurs under circumstances where there was no significant personal or social relationship between the taxpayer and the recipient, may be considered to have occurred in a clear business setting. The scope of this provision is not clear since it is doubtful that this last provision gives the taxpayer carte blanche for goodwill entertainment of any person who is not a personal or social friend. The example given in the regulations for application of this rule relates to entertainment of business representatives and civic leaders at the opening of a new hotel or theatrical production where the clear purpose of the taxpayer is to obtain business publicity rather than to create or maintain the goodwill of the recipients of the entertainment. This should cover entertainment of similar nature at the opening of a new branch office. What other circumstances it might cover may be questionable. In addition, the regulations provide that any use of a club for "business meals" is treated as directly related entertainment. Thus, if a taxpayer belongs to such a club and takes business associates for lunch in order to create or maintain goodwill, his club dues wuld be deductible to the extent allocable to this function without any further requirements.

Under Section 274, the taxpayer may also deduct entertainment associated with the active conduct of his trade or business if the entertainment directly precedes or follows a substantial or bona fide business discussion. This provision was not contained in the original bill which was proposed by the Internal Revenue Service but was included in the compromise agreement between the House and Senate before the final enactment of the bill. The background of this provision demonstrates that it was included primarily to allow deduction of goodwill entertainment under the circumstances outlined. The regulations provide that entertainment is considered associated with the active conduct of business if the taxpayer establishes he has a clear business purpose and the expenditure is allocable to the person who engaged in the business discussion or a person closely connected to him.

The taxpayer must actively engage in a meeting, negotiation, discussion, or other bona fide business transaction for the purpose of obtaining income or other specific trade or benefit other than goodwill immediately or at a definite or readily determinable future time either immediately before or immediately after the associated entertainment and the principal character of the time spent together by the taypayer and the persons entertained is the active conduct of busiess. In other words, the Internal Revenue Service will not recognize an incidental business meeting followed by substantial entertainment. However, again, it is not necessary that more time be spent in the business meeting than in the entertainment. It should be noted that there is no requirement that associated entertainment be carried on under circumstances conducive to business discussions. Therefore, if it immediately precedes or follows a substantial business discussion, the entertainment can take place at night clubs even if there are substantial distractions. However, in any event it must have some business purpose for the entertainment such as to the creation or maintenance of goodwill in order to meet the ordinary and necessary test which is required of any expenses to be deductible.

To the extent the entertainment expenditure is lavish or extravagant no deduction will be allowed. No guidelines are laid down as to what is lavish or extravagant except that whether an expense is lavish or extravagant depends upon all the cir-

cumstances of the particular case. Expenditures for facilities are not necessarily disallowed under this rule, provided they meet all other requirements. The real difficulty with this rule is that what may seem perfectly reasonable to a taxpayer may be construed as lavish or extravagant by a revenue agent.

Generally the recipient of the entertainment must be a "business associate." This term is defined as a person with whom the taxpayer or his representative could reasonably expect to engage or deal with in the active conduct of his business such as customers, clients, employees, agents, partners, or professional advisors, actual or prospective. With certain exceptions as to the wives of "business associates" there must be a business relationship between the taxpayer and the recipients. Under certain circumstances if nonbusiness guests were present, the portion of the entertainment allocable to the business guests would be deductible if the proper business purpose were present. An example of this would be associated entertainment for goodwill purposes where the taxpayer had held substantial business discussions with the business associate and entertained him in the evening for goodwill purposes in company with social friends. It appears that a taxpayer will no longer be able to deduct the portion of the entertainment allocable to the social friends, even though they were invited in order to aid in the goodwill entertainment.

Section 274 (b) prohibits the deduction of business gifts in excess of $25.00 annually to any one recipient. A gift to the wife of a business customer is treated as a gift to the husband unless the wife has a business connection with the donor. Packaged food or beverages for consumption at a latter date are considered gifts rather than entertainment. The taxpayer can treat tickets either as gifts or as entertainment if he does not accompany the recipient to the event. If he accompanies the recipient, tickets will constitute entertainment. If a large group of tickets are given a business firm, this limitation will not apply if under the circumstances it can be shown the tickets were not for the use of a particular individual or limited class of individuals. Three other exceptions to this limitation are:

1. Identical items costing $4.00 or less on which the taxpayer's name is clearly and permanently imprinted, such as pens, plastic bags, etc. and which are generally distributed by the taxpayer.
2. Signs, display racks, etc. to be used on the business premises of the recipient.
3. A service or safety award to an employee consisting of tangible personal property not costing the taxpayer more than $100.00.

This section has the effect of prohibiting the deduction of any business gifts other than nominal ones. In addition, of course, Section 274(d) provides very specific requirements for record keeping with respect to gifts. For example, if a business firm buys substantial amounts of liquor for Christmas gifts, the costs of any bottles not properly accounted for could be disallowed. The $25.00 limitation would also normally disallow a part of any case gift to a single individual.

Section 274(c) is designed to limit some travel expense which would otherwise be deductible. Its application is rather narrow since it applies only if the travel exceeds one week, the time attributable to the nonbusiness activity constitutes 25% or more of the total travel time, and the traveler has substantial control over arranging the trip. Even under such circumstances it will not apply if the traveler can establish that a major consideration in making the trip was not to obtain a personal holiday or vacation. If this section does apply to a particular trip, the effect is that a portion of the traveling expenses to and from the destination will be disallowed based on the ratio of nonbusiness days to total days on the trip (days of traveling are considered traveling days).

Where an employee is traveling on behalf of his employer, he will not

be considered to have substantial control over the arranging of his business trip unless he is a managing executive or directly or indirectly owns more than ten per cent of the stock of his employer.

An example of when this section would apply would be if the chief executive and principal shareholder flew to Honolulu, spent one week in business and two weeks for vacation and then flew back. Unless he could demonstrate that either he did not have substantial control over arranging the trip or that a major consideration in his determining to make the trip was not to provide an opportunity for taking a personal vacation, two-thirds of his traveling expense to and from Honolulu will be disallowed.

It should be noted that even if this provision does not apply, a taxpayer cannot deduct all of his expenses of a combined business and vacation trip. In the above example, if Section 274(c) did not apply because the taxpayer did not have substantial control over arranging the trip, the traveling expense to and from Honolulu would be deductible, but his expenses in Hononlulu applicable to the vacation portion of his trip would not be.

A discussion of the major categories of entertainment expense in light of the new law and regulations may be more meaningful than an attempt to precisely define the terms "directly related to" and "associated with." Accordingly, consideration will now be given to such items as conventions, wives' expenses, baseball tickets, golf tournaments, and company cars.

The new law has not changed the rule that travel expenses of an employee attending a legitimate business convention as well as his business expenses at the convention are deductible (except to the extent he may run afoul of the restrictions on traveling expense on a combined business convention-vacation trip). Basically, the employee's travel, lodging, and meals at such a convention are deductible. A question may arise as to the deductibility of his entertainment expenses while at the convention, but in light of the regulations, most entertainment expenses previously deductible as ordinary and necessary will still be deductible.

Section 274(e) excepts meetings of business leagues which are exempt from tax under Section 501(c)(6) of the Internal Revenue Code from the more restrictive entertainment requirements of Section 274(a) (most industry associations qualify for this business league exemption). Thus, entertainment expenses incurred in connection with such a convention need only be ordinary and necessary. The regulations provide that any officially scheduled meeting of the convention shall be considered as a substantial and bona fide business discussion if the convention has a scheduled program of lectures, panel discussion, display of products, or similar activities, and this program is the principal activity of the convention. Accordingly, even if the organization is not an exempt business league, entertainment after the program would generally be deductible if it were associated with the active conduct of business — for example, goodwill entertaining. The expenses of maintaining a hospitality room for maintaining or generating goodwill are deductible.

In order for the above rules to apply, the convention must be primarily for business purposes, and the primary purpose of the employee's trip must be to attend the convention. Where the primary purpose of the trip is personal, or the convention is primarily a vacation the expenses will not be deductible (5). The Internal Revenue Service may question whether a convention is a valid business convention if it is held in a resort area (particularly if outside the geographical area of the particular organization) or if it is held on shipboard. However, the convention site per se will not defeat the deduction, if it can be demonstrated that the principal purpose is business.

Section 274 does not affect the wives' traveling expenses so that the deductibility of these expenses is governed by existing law. The Inter-

nal Revenue Service's position has been that these expenses are not ordinary and necessary unless the wife performs business services commensurate with the expense involved. Normally, the fact that the wife is required to perform hostess duties, that the employer requires the attendance of wives, and that special programs are provided for the wives is not considered sufficient. Unfortunately, the judiciary have reached the same conclusions (6). As a result, it is extremely difficult to justify deductions for wives' traveling expenses, including traveling expenses to conventions. In this connection, however, it should be noted that the portion of the expense disallowed should not be in excess of the additional expense incurred by reason of the wife's presence. This is important, for example, because often a special air fare is granted to the wife when she travels with her husband and the hotel cost is normally only slightly increased.

In the field of goodwill or "associated with" entertainment expense, if the taxpayer's entertainment meets the requirements of the new statute, the portion thereof attributable to his wife or the wife of the business customer will be deductible if it meets the requirements of the prior law that it is ordinary and necessary. Thus, if a taxpayer entertains a customer for goodwill purposes after a substantial business discussion or in the evening at a convention and because the customer's wife is present, and he deems it desirable from a business standpoint that his wife be present, the entire entertainment should be deductible. This is also true where the entertainment takes place during the business discussion.

Because so many firms purchase season box seats for baseball games, the deductibility of this item is of major interest to many taxpayers. The deductibility is to be based on the individual tickets rather than the cost of the season box. An odd rule applies here to tickets given to customers. If the taxpayer gives the tickets to a customer he can treat the tickets as a gift if he does not accompany the customer. This means that if the total gifts to that customer for the year do not exceed the $25.00 limitation, the cost of these tickets will be deductible if the gift is made for goodwill or other business purposes. However, if the taxpayer accompanies the customer, the expenditure is entertainment. Because attendance at a sporting event is not considered to be directly related to the active conduct of a trade or business, the entertainment would be deductible only if directly preceded or followed by a substantial business discussion. Tickets generally available to the taxpayer's employees, unless primarily for the benefit of officers, shareholders and highly paid employees, would be excepted from the restrictive provisions of Section 274 as expenditures for employee recreation and the cost of these tickets would normally be deductible. It is suggested that any company which purchases such box seats keep an accurate log of the recipient of each ticket and his business relationship. If a particular use constitutes entertainment rather than a gift, a record should be kept of the substantial business discussion directly preceding the entertainment.

Another substantial item of entertainment for many taxpayers is the annual golf tournament or similar event to which a large group of customers, prospective customers, or other business associates are invited. Under prior law, if the guests were primarily business guests rather than personal or social friends the deduction was rarely questioned. This type of entertainment may not be deductible under the new law. If its primary purpose is to obtain or maintain goodwill (as it normally would be), it would have to either directly precede or follow a substantial business discussion (which would normally be impracticable), or be in a clear business guests, rather than personal the regulations would indicate that this is not a clear business setting, although under some circumstances it might be if the guests were business guests. rather than personal or social friends. The guests would

probably reasonably know that the taxpayer's purpose was to directly further his business. A meeting at a golf course is specifically considered as not being conducive to business discussion only when the taxpayer meets with persons other than the business associates. Perhaps, if the taxpayer can demonstrate that he and his representatives utilize the time spent with the customers to directly promote business, he might be able to substantiate the deduction. However, this type of entertainment may very well be disallowed under Section 274 even though there is no social or personal friendship involved.

Club dues paid to a social, athletic, or sporting club and other facilities for entertainment are generally subject to the "directly related to" requirements of Section 274. Other facilities include any property owned or rented which is used for entertainment such as yachts, hunting lodges, fishing camps, and apartments or hotel suites in resort areas. A taxpayer must meet two tests in order to deduct any of the costs of such facility or such club dues. First he must show that the facility is used more than fifty per cent for business under the ordinary and necessary test of the prior law in order to be able to deduct any of the cost of maintaining the facility. This test can be based on the number of days used for business as opposed to the number of days used for nonbusiness. However, if substantial nonbusiness use and only nominal business use occurs on the same day, the day would probably be considered a nonbusiness day. Business use includes such use as strict goodwill entertaining which does not meet the tests of the new law. Use of the club for business meals is considered a business use for this purpose. Then in order to claim a deduction for a portion of the cost of maintaining the facility he must determine the portion of use which met the test of being directly related to the active conduct of his business.

It is not clear whether the costs of such a facility which are allocable to "associated entertainment" after a substantial business discussion are deductible. If not, most deductions for the cost of maintaining a facility may be lost because of the difficulty of showing that the facility was used directly in the active conduct of the trade or business. The Internal Revenue Service interprets the new law as creating a presumption that a yacht or hunting lodge is not a clear business setting so that goodwill entertainment alone would not be sufficient. The taxpayer will have to present very convincing evidence of actual business negotiations to meet the requirements of being directly related to active conduct of trade or business.

The difficulty of demonstrating that a club is used primarily for business will depend partly on its nature. It will be much easier to demonstrate that a downtown luncheon club is used primarily for business than it will be to show that a country club is so used. A luncheon club having no other function is not considered a social, athletic, or sporting club, so the new requirements do not apply to the expenditures for dues. The primary reasons a business man joins a luncheon club are to have a place to take business associates to lunch and to make business contacts with other members. A substantial portion of the use of such a club would normally fall within the "business meal" type of entertaining. A country club, on the other hand, is often used by a taxpayer's family purely for personal purposes and it is also difficult to distinguish between the recreational and business aspects of the taxpayer's own use. The only suggestion here is to keep an accurate record to try to demonstrate the business use and the portion "directly related" to the active conduct of business.

Dues paid to professional organizations, civic clubs, and service organizations are not subject to these new provisions. Such dues must have a business purpose, however, in order to be deductible.

The effect of the disallowance of reimbursed travel or entertainment

expense of an employee of the taxpayer is a matter of concern under the new law. Prior practice was not to disallow such expenses unless they constituted personal expenses, and the largest area of disallowance was traveling expenses of wives and families and the portion of club dues considered personal. If the employees were not substantial stockholders, one of two alternatives were usually followed by the revenue agent. The first was to disallow the expense to the employer but not add the amount to the income of the employee. This alternative was admittedly arbitrary and it is understood the Internal Revenue Service will continue to re- this basis of settlement and requires that such an item be included in the employee's income. The second alternative was to treat the item as additional compensation to the employee (deductible by the employer) and then tax such amount to him. If the employee involved were an officer-shareholder, the normal approach of the revenue agent was to disallow the expense and tax it to the individual as a dividend. The restrictions of the new law make this question even more important.

Section 274 makes no reference to income arising from disallowance of expenses. Accordingly, the Internal Revenue Service will continue to regard reimbursed expenses of employees which are disallowed as personal as additional income to them. Such items as vacation trips for employees and most wives' traveling expenses are the most common ones falling into this category.

When an item of reimbursed entertainment or entertainment facility expense is disallowed by reason of the fact that it does not meet the new stricter requirements of business relationship, the law provides two alternatives which has the effect of prohibiting a double disallowance:

1. If the employer treats the item as compensation to the employee on its own income tax returns and for withholding tax purposes, no disallowance will be made at the employer's level. The item will, of course, constitute income to the employee and will not be deductible by him as an expense.
2. If the employer does not so treat the item, then the expense will be disallowed to the employer but not to the employee.

Note that this prohibition against double disallowance relates only to entertainment which would otherwise be deductible as ordinary and necessary expenses.

The provision against double disallowance does not protect against disallowance to the employer and inclusion in income of the employee where the items are disallowed as personal. Suppose, for example, the traveling expense of the wife of an employee accompanying him to a convention is disallowed on the grounds that it is personal and not an ordinary and necessary business expense. This item would be income to the employee. However, if the employer does not treat this item as compensation, as outlined above, the expense, to the extent it was considered entertainment (which, as stated before, includes vacation trips and hotel suites) would be specifically disallowed under Section 274(a) even though it might be deductible as compensation if it were not for such section. Technically, it would appear that if the wife's portion of the traveling expense did not fall within the definition of entertainment expense, under Section 274(a), the employer could still claim this expense constituted compensation to the employee and an allowable deduction to the employer. However, this technical point might be difficult to establish. Some employers who require wives' attendance at conventions are considering treatment of reimbursed expenses of wives accompanying their husbands on convention and similar trips as compensation and making cash adjustments to the employees involved to cover their additional personal income tax. While the additional cost involved in this procedure must be carefully considered, some employers consider it as insurance

against the possible adverse effects outlined above.

The employee's use of a company car, even though primarily for business, has given rise to some tax problems where the employee drives it to and from work and uses it for routine personal errands. (Commuting expenses are considered personal expenses and not deductible.) The Service has indicated that this personal use will not be considered entertainment expense under Section 274, so that any disallowance of this expense is governed by prior law. The practice of the Internal Revenue Service in this regard has been to disallow the personal portion of the automobile, including commuting expense, if the user was a stockholder-officer, and to treat the disallowed expenses as income to the user. Where the employee is not a stockholder, the Service has been recently taking the position that this commuting use is extra compensation and taxable as income to the employee even though the expense is not disallowed to the employer.

In summary, Section 274 has materially restricted the deductibility of certain travel and entertainment expenses. The most important restrictions arise from the requirements for substantiation of such expense and the repudiation of the **Cohan** rule since the Internal Revenue Service can now disallow any claimed deductions not adequately supported by documentary records. This makes it imperative upon the taxpayer to keep proper records. The limiting of goodwill entertainment to business meals, entertainment in a clear business setting, and entertainment either directly before or after a substantial business discussion will result in disallowances of some business entertainment. The $25.00 limitation on business gifts will probably greatly reduce the expenditures in this area. The unknown factor is how the Internal Revenue Service will apply the law and regulations in practice. Obviously, an examining agent will not normally review each and every item of entertainment expense claimed to ascertain whether or not it meets the requirements of the new law. Probably the approach will be a typical sampling method with particular attention being paid to large expenditures, expenditures for facilities, including club dues, and expenditures of officer-shareholders. In any event, taxpayers must expect a closer scrutiny of deductions claimed for travel and entertainment expense. At the risk of being unduly repetitive, it should be emphasized again that proper record keeping is imperative.

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1. **Cohan v. Commissioner** (CA-2, 1930), 39 F. 2d 540.
2. **Richard A. Sutter,** 21 TC 170.
3. Remarks of Commissioner of Internal Revenue, Mortimer M. Caplin, at news conference announcing the proposed regulations.
4. **Heininger v. U.S.,** 320 US 467.
5. Regs. 1.162-2(b) (1).
6. **Challenge Mfg. Co.** 37 TC 650,
   Rev. Rul. 55-57, 1955-1 CB 315,
   Rev. Rul. 56-168, 1956-1 CB 93.

Abstract Company Mergers

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"Merger",—this word conjures up big business unions, and the formation of multimillion dollar corporations, but it is also a word that is aptly applied to the joining forces of two or more business men or groups, to more successfully keep alive our concept of individual enterprise, despite the rising costs that confront them.

It would unduly prolong this paper to try to distinguish between consolidations and mergers, or to delve into the legal formalities that are necessary to comply with the law in each particular state.

The purpose of this paper is to list a few of the problems that have faced those in our business who have joined forces and perhaps to present some questions that need answering if you are thinking of joining forces with your competitor by the merger of your abstract companies.

On this subject there are no inflexible guides so this paper is intended more as a check list to some of the questions that should be considered. In scope it is written for the benefit of those of us who serve the smaller communities. Mergers involving the larger members of our association are planned and executed on an individual basis and the problems presented and the solutions to them are c a p a b l y considered by experts in these companies.

To those of us who do not have access to the thinking and planning of experts, perhaps the experience of those who have merged, or absorbed other companies may assist us in solving some of the problems which may arise.

Should We Merge?

The first problem that arises in every discussion of merger is—Should we merge? Until this question is explored there is no point in considering the mechanics of merging. Every merger must necessarily cause each party to disclose the intimate details of his operations; his balance sheet, the volume of his business, his payroll and other matters, which can be harmful if they fall into the wrong hands. We all like to think that our competitor is not fully aware of our worries and our weaknesses nor of our successes. So before we reveal any of our strength or weakness we should answer the question. Should we merge?

To properly evaluate the advantages and disadvantages of a merger, it is helpful to divide the subject into three types of merger.

(1) Between two or more competitors who operate in the same territory and draw their business from the same customers and who collectively supply all the available service in this territory.
Example: Two abstracters operating in one County—and having no other abstracters in the County.

(2) Between abstracters who operate in the same territory but who do not supply all of the available service in the territory.
Example: Two abstracters operating in one County but having one or two more competitors who also serve the people in the County.

(3) Between abstracters who serve different communities in whole or in part, and who may or may not have some territory in which they both seek business.

There is one other type of merger which can be eliminated from this immediate discussion. In many cases the mechanics of merger can be used to complete an outright sale. The advantages of this type of merger will be discussed hereafter but for the moment can be disregarded.

Case No. 1

It would seem that the advantages greatly outweigh the disadvantages in a merger of two companies who collectively control all of the busi-

ness in a given territory. To us in the Mid-West who believe that a private title plant is a necessity, we see in such merger the consolidation of daily maintenance work that we both must do and the resulting reduction in employees. If you know that you will eventually secure all the abstract business which is available in your County you can prepare abstracts of instruments, of estates and of other matters in the dull months and stock pile them for use when ordered. Your relations with the Court House officers and employees should improve since less people need to be underfoot in the various record offices and the public officials do not have to worry about favoring one of their friends at the expense of another. It improves your control of accounts receivable and permits you to require prompt payments of bills from customers. It may permit you to be more realistic about discounts and to avoid their use purely as competitive price cutting. But all is not perfect or there would only be one abstract company per County in all of our Midwestern States.

On the debit side of the ledger, such a merger may require considerable adjustment of personnel. If each merging company is well staffed and each one is managed by a competent manager, some adjustment of rank and authority is obvious. If the owners are the managers this problem is more likely to be solved at the time of merger, but if the owners are not the managers, or if the managers are only minority owners, the problem of the respective rights of each administrator, will certainly cause some difficulty. It would probably create an ideal situation if the manager of one company were ready to retire and the manager of the other could take over. But if both managers feel they have years of service ahead, the internal friction resulting may nullify, some, if not all the advantages of the merger. In one merger of three companies which came to my attention, the combined company found itself with three persons who had served as manager. The succeeding three years were hectic, indeed, until one manager resigned, and one retired.

Such problems are not limited to the manager but may affect several other senior employees.

As a sidelight to this problem the possibility of the creation of a new company should be considered. Let us pause for a moment to consider one situation. In this County, the Recorder maintains a top notch tract book. As a result of a merger the managers of one of the companies was asked to take a subordinate position. I do not know that his salary was affected, but his pride was hurt. Since he had maintained good public relations with his customers, he opened up as a competing company and used the Court House tract books. Today, 30 years later, he is the stronger of the two companies in the County and probably secures 60 percent of the total available business. In these years he has built a splendid plant and serves his community exceptionally well.

Even in Counties in which there is no County plant, all of us are aware that plants may be built by photography or electronics and since they have the advantage of knowing the present division of ownerships, a more effective tract or geographic index can now be built than was constructed in the first instance. It will lack copies of searches, but all in all, may be quite effective.

Today one more problem is present. Many Abstract Companies are now representing a Title Insurance Company. If Title Insurance is a major factor in the area, the problem of terminating the agency of one of two title insurance companies may pose a problem. If each company has written a substantial amount of title insurance in the area, the company which is dropped may feel obliged to seek another representative. This should encourage those who believe that dual agencies are workable, but in today's market it presents a serious problem. The volume of business, that such an agency can generate may assist a disgruntled employee in organizing a competing company, or may invite into the field others who

are equally capable of becoming keen competitors.

While not a disadvantage, it is noted, that after such a merger, the need for good public relations with the customers is more important than ever, and efforts in this respect should be intensified. Most people distrust a monopoly and associate such creations with increased prices and decreased service. Good public relations and good service must effectively quiet this worry. Increased earnings should result from operating savings without the necessity of increasing prices, unless one or both companies has been selling their services too cheaply. If this is so, good public relations should be able to demonstrate the situation and justify any raises that are necessary.

CASE NO. 2

Where there are three or more companies operating in an area the merger of two of them presents many of the problems previously discussed. Since no monopoly is created, one worry of the customers is averted. However, the other factors must be considered and evaluated.

A disgruntled senior employee may seek employment in the outside company and take with him some business.

One title insurance company may transfer its account to the outside company if this company did not have such representation before.

While operating economies will be affected, they may not be so noticeable and credit control or termination of discounts may not be so easily accomplished.

Last, but not least, is the control of business. Every customer who gives his business to one of several competitors usually does so because of several factors. Price and service enter into the decision, but in many cases such decision is prompted by personal likes or dislikes. In one merger with which I am familiar one large account was lost when one company acquired a competitor through merger. In this case company "A" and Company "B" decided to merge. In the County which they both served, Company "C," a third competitor supplied and still supplies good title service. Company "B" had for many years had all of the business from one Building and Loan Association. The office of the attorney for this Building and Loan was across the hall from the Company "B." As a result of the merger it was decided to move the office of Company "B" into the office of Company "A" which was located two blocks away. The attorney for the Building and Loan transferred his business to Company "C." He stated that he had only remained with Company "B" because they were across the hall, but when he had to walk to a new building he preferred to leave his business with Company "C" which was managed by a golfing buddy of his, and whose office was in a building which was nearer than was the office of Company "A."

In our own case, after a merger with another smaller company we made a careful check of accounts that remained with us after our merger with this company. We found that about two thirds of the business of that company continued with us but that as a result of our merger we had enriched our competitor with at least one third of the business of the acquired Company.

CASE NO. 3

In some Counties there are companies who serve only a portion of the County. This usually occurs when there are two or more large cities in the County and one company has great strength in one area while its competitor controls the majority of the business in another portion of the County.

Certainly many of the same problems will be present in these cases as in those which were considered before but there should be more inducement to merge than in other cases.

In such unions, the greater coverage offered to the customers should prove valuable. Plant maintenance should prove less expensive. There should not be as much friction in the expanded staff since probably at least two offices will still be necessary.

However, much work must be done

to iron out conflicting practices and charges, and many times it is difficult to convince competitors of long standing that they are now fellow workers. Loyalties of the employees must be fused by developing a new Espri De Corps. This is particularly true among the older employees and the problem must be handled with understanding and patience. The company that I now manage was formed from two such Companies. When I purchased the combined companies, I discovered that many rivalries still existed although the merger had occurred many years prior to that time and each office felt itself a bit superior to its former competitor.

Mechanics of a Merger

Assuming, however, that preliminary discussions have eliminated the general policy objections and the companies feel that it is advisable to merge, the next step in a merger is to allocate to each of the owners of the companies who have embarked in the merger a fair share of the ownership of the new Company. If each of the underlying companies are corporations, this can be done by division of the stock in the merged companies. If it is a partnership the division can be made by an appropriate partnership agreement. There are so many variations of the problems that must be solved that only a few guide posts can be offered. The simplest case involves two companies of relatively equal size who decide to merge. For the sake of simplicity we will consider that each company does an equal annual gross business, has equal assets and that each plant has been maintained equally well.

On the face of it, each ownership group should receive an equal share of the stock of the new company. Before the merger is consummated the problem of control should be carefully analyzed since internal friction among the owners may be more disruptive than that arising between employees.

Let us however, move a little further into the problem area and take as an example two Companies which we shall call A and B.

	Company A	Company B
Gross	$100,000	$100,000
Net	$ 15,000	$ 15,000
Balance Sheet		
Tract Indices	$ 1.00	$ 40,000
Furniture & Fixtures	15,000	
Accounts Receivable	20,000	40,000
Cash on hand	5,000	75,000
	$40,001.00	$170,000

The problem assumes real proportions since, as stated, each company has demonstrated an equal ability to earn and each company has equal efficiency. However, Company "A" has carried its plant at a nominal figure and Company "B" has arrived at a substantial value for it.

If one were buying either company he could arrive at a fair value by taking $1\frac{1}{2} \times 100{,}000 = 150{,}000$ and adding accounts receivable and cash. In case of a merger this will not work out as Company "A" has only $25,000.00 in these last two categories and would therefore be priced at $175,000.00 while Company "B" would add up to the following:

$1\frac{1}{2} \times 100{,}000 =$	$150,000
Acct. Receivable & Cash	115,000
	$265,000

In a merger, however, it would be most unfair to attempt to allocate stock in the merged Company on the relative market value of the companies since this would give Company "B" a decided advantage and distribute to its owners 60 per cent of the stock while only 40 per cent of the stock would go to its equally successful competitor.

Several approaches may be suggested. One suggestion would be for Company "B" to declare a dividend to its stockholders of approximately $90,000.00 to equalize the assets and to base stock distribution solely upon the fair value of the companies as determined by gross business. The weaknesses of this approach are evident. The loss of $90,000.00 in cash may be a serious obstacle and the payment of such a large dividend may result in a high income tax to the stockholders of Company "B."

A second solution and usually a more sensible one can be reached by issuing two types of stock. The common stock can be distributed solely on the basis of gross business or a factor derived from this.

Preferred stock may be issued to compensate for excess amounts of receivable, cash, or investments of one company, based on their fair valuation.

The preferred stock may be issued with provision for redemption in installments over many years, thus weakening the impact caused by the withdrawal of a large amount of cash and in all probabilities reducing the amount of income tax which will be assessed against the stockholders of Company "B." In all probability the tax in this case will be based on a capital gain, at the time the preferred stock is redeemed with a maximum tax of 25%, while, if a dividend were declared before the merger, it would probably be taxable as current income.

A third solution would give to the stockholders of Company "B" one half of the common stock and the difference, ($90,000) in debentures issued by the new or merged company. If successful, this has the advantage of permitting the merged company to deduct any payment of interest on the debentures as a company expense. If preferred stock is issued, the dividend is not deductible. However, this type of adjustment enters into a field that is full of danger and should only be pursued after careful consideration of the tax angles present in the specific case. Otherwise the recipient of the debentures may find that the Internal Revenue Department holds the distribution of such debentures to be in fact a dividend and taxable as such.

Value of Assets

It is usually the law that assets of each of the corporations engaged in the merger become the property of the new corporation on the same tax basis as they collectively had. To illustrate:

	Co. A	Co. B	Merged Company
Furniture	10,000	12,000	22,000
Plant	1.00	40,000	40,001.00
Bldgs.	25,000	15,000	40,000

From this it would seem that the book value of an asset is the sole criterion of its worth in or to the merger. This, however, does not always follow. Let us suppose that two competing companies had purchased photographic equipment at the same time. Cost to each was $12,000. Each company decided that the equipment had a life expectancy of 8 years, but one placed it on straight line depreciation while the other used the sum of the year's digit reduction theory. The result after 4 years would be as follows:

	Co. A	Co. B
Original investment	12,000	12,000
Present worth after depreciation for 4 of 8 years	6,000	3,333.33

The next important thing to remember is that the asset in the hands of Company "A" will contribute a base of $6,000 towards tax reduction through depreciation. The exact value of this base depends on the earnings of the companies. If their earnings are under $25,000 per year the respective value of the assets is as follows (for depreciation purposes):

$ 6,000 @ 30% = $1,800.00
3,333 @ 30% = 1,000.00

Balancing these factors, we could establish the relative worth of the assets by some formula by which the asset in the hands of Company "A" has an actual worth of only $800.00 more than the same asset in "B" rather than the $2,666.67 as indicated by the balance sheet.

If earnings exceed $25,000.00, the difference is about $1,386.00 instead of $800.00.

Two factors should be taken into consideration in adjusting accounts receivable. Many small companies report their income as received and not on an accrual basis. Therefore, if a company makes less than $25,000 net per year, the accounts receivable are only worth 70% of their face since the Company must pay 30% of the

amount collected for income tax.

If the gross of the company exceeded $25,000., this would depreciate the value of such accounts still more. In addition to this, the factor of uncollectability must, of course, be considered. Many companies are unrealistic in their reserves for collection loss and this, too, must be evaluated.

If two corporations are doing the same gross business, the presence of large accounts receivable by one company compared to the other company, is usually a warning sign indicative of lax collection methods.

Purchase by Issuance of Stock

Merger may be used advantageously to prevent the immediate application of high capital gains tax to a sale of assets. To illustrate: A local company owned by one man, has an opportunity to sell its plant and business to a large Title Company. Many such sales occur in our profession when a larger company which is extending its operation seeks an outlet in the area served by the County Title Company. In many cases the seller may gain a substantial tax advantage by requiring that the sale be programmed as a merger. It is no hindrance to a merger that one corporation has assets of millions compared with the selling company's thousands. The advantage to the seller arises from the fact that if he is given stock in the purchasing corporation it is not taxable until he sells it. If he receives cash, it is immediately taxable to the extent that there is a gain over his purchase price. If the seller does not need the money but only the income from the money, he may defer the tax for years and in some instances, avoid it entirely.

This may be particularly advantageous to a retiring abstracter.

To illustrate: John Smith, who operates an Abstract Company in Illinois and is anxious to retire, because of age or ill health, receives an offer from the large ABC Title Company to purchase his plant and indices for $60,000.00. Smith purchased the Company for $5.000. in 1932 and in addition to the plant he has accumulated $40 000.00 in undivided profits. If he takes the offer in cash he must then liquidate his company and, as sole stockholder, he will receive a total of $100,000.00 of which $95,000.00 is taxable. His tax today would be $23,-750.00 so that his actual sale price is $76,250.00 net to him. Since he already had $40,000.00 in undivided profits (which he feels is his property) he has only received $36,250.00 net for his plant. If, however, he can arrange a merger by which he is given stock in the purchasing company in the amount of $100,000.00 market value,

(a) he does not pay any capital gains tax now.

(b) If he keeps the stock (since he may only need the income from it), upon his death he will certainly have an estate tax exemption of $60,000.00 so his children will only need to pay an estate tax on $40,000.00 and no capital gains tax. If he is survived by his wife, he can use the marital deduction plan and she can receive the $100,000.00 in stock, free of any federal estate tax. In her hands the stock has a base of $100,000.00 (market value on date of death) and she can dispose of it tax free for this sum.

It has also been held that a reorganization by which the majority stockholder in a corporation receives preferred stock in place of common is not taxable, provided there is a sound business reason for the transfer. In one case, the owner of a small corporation held 54% of the common stock of it. He decided to retire and the structure of the corporation was modified so that he received all of a new issue of preferred stock while the 46% minority interests received all of the common stock. The transfer was held to be non-taxable. Through this method it is possible for a retiring abstracter to sell his interest to his junior associates. The same follow up program could be used to avoid taxes as that noted above.

Transfers by two or more Individuals to one Corporation.

It is possible to obtain tax free treatment in a transfer of assets

which are individually owned to a corporation.

Thus A & B have each been engaging in the abstract business and decide to join forces. If they decide to organize a corporation they may transfer their individual assets to the corporation in exchange for stock without tax, but the assets will have the same tax base in the new corporation as they did in the hands of the individuals.

But suppose each Abstracter owned its own building and the new corporation needs only one of them. It is decided that the newer and more modern building is adequate and that the older building will be placed on the market at once.

To add to the problem let us assume the older building, purchased in 1933, has been completely depreciated by its owner so its book value is zero, but it will have a sales value of $20,000.00. If taken in at book value the sale price of $20,000.00 will be taxable to the new corporation as income and may impose a 52% tax. If, however, it can be taken in at $20,000.00, no tax will be imposed. Under certain circumstances this may be accomplished by issuing short term notes to the owner of this building payable only from the proceeds of the building sale. It will impose a tax of 25% on the owner of this building at the time of sale but will avoid a 52% tax on the new corporation. If both companies are corporations, the owner of the building to be sold may, before merger, create a new corporation, transfer the building to it and give each stockholder of the old corporation stock in this corporation. This is called a spin-off and creates no tax liability until the building is sold. If held for six months the sale creates a long term gain with a 25% maximum tax.

Also at this point it is to be noted that if 80% of the stock of the new corporation is owned by the owner of the building, the sale will be taxable as income and not as capital gain.

Report of Planning Committee

GEORGE C. RAWLINGS, President, Lawyers Title Insurance Corporation, Richmond, Virginia

The Constitution and Bylaws provide that the Planning Committee shall study ways and means for improving the operations and methods of the Association and the furtherance of a closer relationship between it and the membership. Its recommendations shall be submitted by the Chairman to the Board.

A Planning Committee was established in 1945 and for five or six years thereafter a flood of plans, ideas and suggestions were recommended by the Committee, many of which were adopted by the Board of Governors. So many were adopted, in fact, the Executive Committee at its mid-winter meeting in 1952 requested the Planning Committee to revise, condense, rewrite and where advisable reconsider all previous reports and recommendations. As a result, Bill Gill, the Chairman of the Planning Committee at the time (Bill, you know, was the daddy of the Planning Committee idea), reported at the following convention in considerable detail recommendations made, actions taken, results accomplished, as well as recommended plans yet to be implemented in the future.

Ten years has elapsed since such a progress report has been made and in view of the fact it is becoming more and more difficult to present each year constructive projects dealing with basic problems of the industry which are practical for the

Association to undertake, it appeared to your present Committee that this was the appropriate time to bring you up to date and refresh your memory on what has been recommended and what has been accomplished, as well as emphasize some of the things yet to be completed. This will also be helpful to future committee members, as I know that in search of worthwhile projects, suggestions are frequently made that have been thrashed out by previous committees. Now, to review the pertinent and more important recommendations of the Planning Committee for the past ten years, with brief comment as to what has been accomplished.

1. Contact with Related Groups

This, your national officers are doing with regularity and recently the Association became affiliated with the Conference of Building and Allied Organizations and through this vehicle are able to increase contacts with representatives of related organizations.

2. Contacts with Government Agencies

Your National Headquarters in Washington makes regular contact with pertinent Government agencies with whom our members have relationships.

3. Statistical Services

Considerable statistical information has been compiled by National Headquarters, some of which has been communicated to you by the publication of convention proceedings and in various articles in TITLE NEWS. The Regional Conferences of Title Insurance Executives for several years compiled operating statistics of title insurance companies in the several regions but discontinued the practice this past year when a majority of the members felt that it was of doubtful value. As you undoubtedly know, your National Headquarters is now undertaking to compile total industry figures on capital, surplus and reserves, number of employees, etc. (I am told that the efforts in this matter are not receiving the full cooperation from all our members.)

4. Abstracters Fourteen Point Program

Up until 6 or 7 years ago, this 14 Point Program was vigorously pursued. It seems to have lost its momentum in more recent years and it is recommended that the Program be revitalized with whatever changes are necessary at this time.

5. Program for State Associations

At State Officers' Meetings at Annual Conventions, all of the suggestions of the report have been promoted.

6. Committee on Title Plants and Photography

This committee has continued to be active and helpful and reports annually to the membership. These reports are carried in TITLE NEWS.

7. Advertising by Members

Your National Office has over the past few years made various mats, movies, and other advertising media for use by our members. Recently, as you know, the Public Relations Committee has inaugurated an industry-wide advertising program.

8. Title News

This publication has been improved and continues to improve along all lines suggested. Just stop and compare mentally the present publication with what we had a few years back.

9. National Headquarters Office

It was recommended that consideration be given to moving the National Headquarters Office and reorganizing its staff for a more efficient and effective operation. The move to Washington, D.C., was accomplished with a minimum of disruption under the expert direction of Ernie Loebbecke, then President of the Association. The reorganization of the staff in your National Headquarters has resulted in an effective, enthusiastic group. We can now be justly proud of our physical layout in Washington, D.C., and our headquarters personnel.

10. Reserve Fund

It was recommended that adequate reserves be maintained by our Finance Committee. This has been done and in addition provision is being made and consideration given to

adequate retirement plan for our headquarters personnel.

11. Annual Audit

It was recommended that financial affairs of the Association be audited annually by an outside auditor. The books of the Association are audited annually by Arthur Andersen and Co.

12. Regional Meeting

As recommended, regional meetings for title insurance executives are held annually.

13. Revise Constitution and Bylaws

It was recommended that revision of the Constitution and Bylaws be considered. This was done by a very efficient Constitution and Bylaws Committee and our present Constitution and Bylaws adopted by the membership.

14. ALTA Directories

It was recommended that consideration be given to certain changes in Directory listings. This has been accomplished and I am sure all of you appreciate the improvement in our Directory.

15. Election of Members and Minimum Dues

It was recommended that application for membership in all cases be approved by the Board of Governors and that minimum dues be increased. These recommendations were adopted and are now in effect.

A number of the recommendations adopted are continuing programs, and it appears to us that your Association has currently in progress or proposed all of the projects it is practical for it to digest in the foreseeable future.

In reviewing the recommendations and accomplishments, the members of the Committee are impressed by the progress made in recent years in the effectiveness of your Association and the increased stature of the industry and conclude this report with the recommendation that the members of the Association reaffirm their loyal cooperation in supporting the various activities proposed for the benefit of our industry.

Respectfully submitted,
Joseph S. Knapp, President
The Title Guarantee Company
Baltimore, Maryland
Don B. Nichols, Owner
Montgomery County Abst. Co.
Hillsboro, Illinois
Alvin R. Robin, President
Guaranty Title Company
Tampa, Florida
Robert L. Ott, President
Bahner Abstract Company
Conway, Arkansas
John V. Meredith, President
Delaware County Abstract Co.
Muncie, Indiana
John W. Warren, Vice President
Albright Title & Trust Co.
Newkirk, Oklahoma
John J. Lyman, Vice President
Security Title Insurance Co.
Los Angeles, California
Joseph H. Smith, Exec. Vice President
American Land Title Association
Washington, D.C.
Geo. C. Rawlings, President
Lawyers Title Insurance Corporation
Richmond, Virginia, Chairman

Report of Standard Title Insurance Forms Committee

RICHARD H. HOWLETT, Senior Vice-President,
Title Insurance and Trust Company, Los Angeles, California

The Standard Title Insurance Forms Committee for the year 1962-1963 was composed of Herman Berniker, Vice-Chairman, Wm. H. Baker, Jr., C. J. McConville, V. C. McNamee, William A. Thuma and Paul J. Wilkinson. On behalf of the Section and Association I wish to thank them for the services they have performed which have contributed so very much to the effectiveness and stature of our Association.

The Loan policies approved at the last convention have received general acceptance in all areas. The Committee knows of only one national lender that has expressed a criticism of those policies, even so, that lender accepts the 1962 policy in several areas.

The Loan Policy has not been filed with the appropriate regulatory bodies in two states. The Committee has asked the insurers in those states to take the necessary steps to obtain the necessary approvals.

The Owner's Policies, Forms A and B, have not yet been as widely used as the Loan policies. This use, however, is increasing, and in a relatively short time we should be able to report that these policies also are in general use.

The Committee repeats its request that you inform us of the criticisms of your customers as to the coverages of any of these policies. That is the only way we can meet our obligation to the Association to recommend to you those coverages that meet legitimate needs of our customers and that can be properly afforded in accordance with sound underwriting principles. After reviewing the various suggestions that have been made and questions that have been raised, the Committee is of the opinion that we should not change the Loan or Owner's Policies approved at the 1962 Convention.

There has been one question pending before that Committee for several years, which arises out of the contract of insurance as expressed in both Loan Policies, both insure against loss or damage which the insured shall sustain by reason of:

> any defect in or lien or encumbrance on said title at the date hereof not shown or referred to in Schedule B or excluded from coverage in the Conditions and Stipulations; or
>
> the priority over the mortgage at the date hereof of any lien or encumbrance not shown or referred to in Schedule B or excluded from coverage in the Conditions and Stipulations; or.

Those two coverages raise an inference of inconsistency. The first indicates that all matters affecting the title to the estate or interest in existence on the date of the policy should be shown in Schedule B. The second implies that only those matters that are prior to the insured mortgage need be shown in Schedule B.

Paragraph 2 of the Conditions and Stipulations provides that the policy continues in force in favor of the insured who subsequently acquires the estate by foreclosure or by a deed in lieu of foreclosure. In the latter case the title of the insured would be subject to subordinate matters, and if such matters were in existence on the date of the policy and not disclosed in the policy—then the title would not be as insured.

Paragraph 4(a) of the Conditions and Stipulations imposes affirmative duties on the insurer if a sale of the mortgage is turned down because of a defect, lien or encumbrance exist-

ing on the date of the policy but not shown or referred to in Schedule B.

It is the opinion of the Committee that all matters affecting the title to the estate or interest subject to the insured mortgage should be set forth in Schedule B. However, the insured lender should be afforded affirmative coverage as to priority. The Committee recommends that such coverage be afforded by setting out in Schedule B, prior to the listing of the subordinate matters, a statement substantially in this form:

> The following (matter, defect, lien or encumbrance) (affecting) on said title exists at the date hereof but the Company hereby insures that such (matter, defect, lien or encumbrance) is subordinate to the lien or charge of the mortgage referred to in paragraph 2 of Schedule A.

The Committee recognizes that in many areas the practice is not to show subordinate matters in Schedule B. The Committee recommends that in such areas there be typed or printed in Schedule B the following statement:

> This policy does not purport to show matters existing at the date hereof, if any, that are subordinate to the lien or charge of the mortgage referred to in paragraph 2 of Schedule A.

If such a statement is printed as an exception in Schedule B, the policy may still carry the appropriate ALTA designation or caption.

A question has been raised as to the coverage of the Loan Policy where a federal tax lien is filed or recorded subsequent to the issuance of the Loan Policy but prior to the disbursement of the proceeds of the loan. This usually arises under policies covering construction loans that are to be disbursed as work progresses. There is a growing body of law that the federal tax lien, in these cases, will have priority over such subsequent disbursements whether obligatory or optional, and whether the lender has knowledge of the tax lien or not.

Paragraph 3(d) (4) of the Conditions and Stipulations of both Loan policies excludes from the coverage of the contract of insurance loss or damage by reason of

> Defects, liens, encumbrance . . . or other matters . . . attaching or created subsequent to the date hereof (other than mechanic's liens and street assessments).

It is the opinion of the Committee that if the insured mortgage was a valid lien on the date of the policy, because of the exclusions from coverage contained in paragraph 3(d)(4) of the Conditions and Stipulations, no special exception need be set forth in Schedule B calling attention to the possibility that a subsequently filed or recorded federal tax lien might gain priority over the portion of the loan proceeds that might thereafter be disbursed. The Committee recognizes, however, that because of the many similar problems that arise under insurance of loans where the proceeds are to be disbursed after the issuance of the policy that sound underwriting principles would indicate the wisdom of including some form of "pending disbursement" exception in Schedule B.

Most of our members receive requests for interpretation of the policies in use as to whether or not the insurer might be liable under specified hypothetical situations. Many of these inquiries have been referred to the Committee for consideration, and where specific answers can be given—the member has been informed.

The Committee is of the opinion and recommends to you that the member companies should refrain from writing general letters of interpretation of the provisions of the policy. Paragraph 9 of the Conditions and Stipulations of the Loan policies and paragraph 10 of the Owner's policies provide that no provision or condition of the policy can be waived or changed except by writing endorsed on the policy or attached thereto.

There is a reason for that provision. The contract of insurance should be expressed in the policy, it should not be dependent upon or varied by an unrelated letter that might or might

not be applicable to the facts of the case covered by the policy.

Many of the inquiries received relate to the responsibility of a title insurer with respect to the qualification of the insured loan under applicable governmental regulations, either FHA or VA. The policy does not afford any coverage as to whether or not the insured loan is eligible for governmental insurance or guarantee. The policy coverage goes to the condition of title and the priority of the loan; it is for the insured to determine whether or not that title complies with governmental regulation.

As discussed at the Midwinter, the Committee has maintained contact with the Standard Underwriting Practices Committee — we are in basic agreement. The two committees can and will serve the Association well.

The Liaison Committee is composed of Messrs. Berniker, Baker and McConville. They have furnished copies of all approved policies to the Committee of the National Association of Insurance Commissioners. One informal, explanatory meeting has been held — and we have been informed that a more formal conference will be held later this year. We will keep the Section and the Board of Governors informed of all developments.

The Department of Justice, through Mr. Claude F. Nix, Assistant Chief, Land Acquisition Section, at the St. Louis Convention, suggested that a different coverage should be afforded the United States than was contemplated by existing policies. Since the Federal Government usually acquires title by condemnation—the need of the government is to have accurate information as to ownership of the estate or interest to be acquired and the ownership of all encumbrances, liens and charges on that estate. Since a litigation guarantee cannot be produced by a title insurer in all jurisdictions the Committee recommends that the form of title evidence to be supplied should be a policy. We propose a policy that can either insure the United States as to its own title or can insure the United States as to the title of a third person.

The Committee is indebted to Mr. Nix and Mr. Williams of the Department of Justice for their help and assistance in formulating this policy and endorsement—both of which are acceptable to the Department.

The proposed policy of title insurance is to be issued prior to the commencement of the condemnation action or acquisition of title by the United States by voluntary conveyance and is based upon the coverages afforded by the American Land Title Association Owner's Policy, Standard Form A-1962, except that no coverage is afforded as to access. Schedule A is based upon the ALTA Owner's Policy and will accommodate the vesting of the title either in the United States of America or a third party.

Schedule B is based upon the ALTA U.S. Policy form now in current use. The instructions, however, for the use of the policy will require an expansion of existing service. The notes indicate the extent of this expansion of service. Under current and delinquent taxes it is contemplated that all taxing districts in which the land is situated and all taxing authorities that have jurisdiction over the land for the levy of taxes shall be set forth showing the lien date for each of such taxing districts or authorities and the amounts of assessments that have not been paid on the date of the policy. Special exceptions will require a current vesting. That is to say if the title to the property is subject to an easement the names of the persons or parties entitled to use the easement should be set forth.

The additional information that is required to be shown in Schedule B is essential for the use of the Department of Justice. The Department must know and must make arrangements in the condemnation proceedings for the payment of all taxes. The Department must know the names of all owners and holders of encumbrances or other charges or liens against the property so that such persons or parties can be made parties defendant to the action.

The general exceptions of the new policy are based upon the general exceptions of the existing ALTA U.S.

Policy form except that paragraph (c) has been expanded to exclude from coverage easements and claims of easements where no notice thereof appears of record. In addition, subparagraph (d) has been added to paragraph 2 which excludes from coverage conveyances, agreements, defects, liens or encumbrances, if any, where no notice thereof appears of record; provided, however, the provisions of that subparagrah 2(d) shall not apply if title to said estate or interest is vested in the United States of America on the date of the policy. If title at the date of the issuance of the policy is vested in a person other than the United States such title would be subject to the off-record commitments and such charges of such third party, therefore, it is necessary to exclude such contracts or commitments from the the coverage of the policy. If, however, title is vested in the United States and no notices of such contracts appear of record, then such an exclusion is not needed and should automatically fall.

The Conditions and Stipulations of the policy are based upon the Conditions and Stipulations of the existing U.S. Policy except that the time for notice provided in paragraphs 1, 2 and 5 was changed from 60 days to 90 days. It is realized that this extension of time might make it impossible for the insurer to make an appearance in an action or other proceeding within the time required by law. Such inability might impose a liability upon the insured which is not now contemplated by existing policies. Since the insured under the policy is the United States of America, the insured can limit this exposure by the exercise of the power of condemnation which would be its duty and, therefore it is the opinion of the Committee that this extension of coverage can be warranted where the insured is the United States of America but would not be warranted if the insured were a private party.

The Conditions and Stipulations were amended to permit the modification of the policy by an endorsement as set forth in paragraph 7 and to provide for the place that notice should be given to the insurer as set forth in paragraph 8.

The proposed date down endorsement should be issued as of the time of the filing of the Declaration of Taking and the lapse of the appropriate time so that title can be vested in the United States of America or upon the recording of a voluntary conveyance to the United States of America.

The endrosement recognizes that the original policy will probably be issued on the fee estate whereas the interest or estate acquired by the Federal Government might only be an easement. This will permit the modification of the description of the estate or interest insured as set forth in paragraph 1(a).

If the land described in the original policy is different from the land actually acquired, paragraph 3 permits an amendment of the policy to give the correct description.

Paragraph 2 of the endorsement will delate those items shown in Schedule B of the policy which have been satisfied or released and will accommodate the inclusion of the intervening matters affecting the title between the date of the policy and the date of filing of the Declaration of Taking or the recording of the voluntary conveyance.

Paragraph 3 of the endorsement deletes subparagraph 2(d) of the general exceptions since such exclusion from coverage is not necessary if title to the property is vested in the United States of America.

The next to the last paragraph of the endorsement contemplates that at the time of the issuance of the endorsement the actual amount of insurance will be known and changes the liability of the insurer under the policy and the endorsement to the actual value of the property taken or the amount of the purchase price in accordance with customary practice. Since the policy will be issued prior to the acquisition of title, the liability stated on the face of the policy will be some agreed amount between the insurer and the United States. The endorsement then will modify this liability to reflect the

actual amount of insurance to be afforded for the service.

Under the procedures as proposed for the issuance of the policy and endorsement no coverage is to be afforded as to the validity or sufficiency of the condemnation proceedings. The Department of Justice has indicated that it is willing to assume this risk.

Respectfully submitted,
Richard H. Howlett, Chairman
Standard Title Insurance
Forms Committee

ADDENDUM

Upon motion duly made, seconded and carried, the Title Insurance Section of the American Land Title Association recommended to the general convention the adoption of the ALTA U.S. Policy Form—1963 and the ALTA U.S. Policy, Date Down Endorsement, 1963, in the forms as submitted with the report of the Committee of the Standard Title Insurance Forms and filed with the Executive Vice President of the Association.

At the general session of the general convention on October 16, 1963, on recommendation of the Title Insurance Section, on motion duly made and carried, the American Land Title Association U.S. Policy Form—1963 and the ALTA U.S. Policy, Date Down Endorsement, 1963, in the forms as filed with the Executive Vice President of the Association, was approved for use by the members of the Association.

BATTLE OF SANTA FE

OSCAR J. ALLEN, President,
Allen Title Company, Albuquerque, New Mexico

The battle of Santa Fe, unlike the battles of Bougainville, the Bulge, or Okinawa, was not headline material for the press. Consequently, the fact that you are unfamiliar with this engagement is quite understandable.

Santa Fe, the capitol city of New Mexico, is no stranger to conflict. It was founded by professional soldiers in the middle of the 16th Century and descendants of many of these families still live there.

Coronado's expedition consisted of all soldiers except for the Dominican Friars who were sent to keep books on the expeditions' treasure finds.

Subsequent expeditions to colonize were half military and half colonists. The descendants of these professionals still love to fight physically and politically.

I heard a University of New Mexico professor state recently that during World War II, there were more congressional medals of honor awarded to residents of Truchas, New Mexico, than to the entire State of Massachusetts.

While the battle in question used planes and motor transports, it was essentially a legislative matter. The question of legislation was brought before the 1962 convention of New Mexico Land Title Association in a very forceful manner. Shortcomings were presented by title insurance underwriters and abstracters alike. After due discussion, the president appointed a legislative committee and issued a general order. The meeting of the order could be summed up rather briefly: "Take care of these matters without delay, by legislation, if necessary."

The technical requirements called for:

1. The bolstering of an antiquated abstracters licensing law, and

2. The containing of the threat of competition from the lawyers title guaranty fund operation.

Our G-2 section furnished us with some interesting facts. The present abstracters licensing law required anyone desiring to become an abstracter to obtain and file in the office of the County Clerk an Ab-

stracter's bond in the amount of $2,000. Anyone with a $10 bill and a penny pencil could be a bonded abstracter, and many were.

A representative of the Florida Lawyers Title Guaranty Fund had stirred the New Mexico Bar Association at their convention in 1962 to the point of appointing a 21-man committee to investigate the forming of a New Mexico underwriting company.

To facilitate the ease of getting their feet wet, the Fund from Colorado offered a plan of qualifying their corporation in New Mexico and offering membership to New Mexico attorneys on the basis of a $250 membership per attorney.

The City of Albuquerque, with agencies for six nationally known underwriters, was faced with the happy thought of competing with three hundred fifty agents for one company, each with a monopoly on the legal work. From this we arrived at our objective:

1. Amend or pass a new abstracter's licensing law, and

2. Organize a welcome for the lawyer's title guaranty fund.

Our first step was to employ an attorney. We selected a firm who had at one time or another sent several of its members to the Legislature. We employed a member who had not only been in the House of Representatives but who had experienced drafting legislation; also one who was a title attorney experienced both in abstract and title insurance examining.

In conference with the attorneys we decided on the following program:

1. Avoid at all costs any legislation that would require a licensing board which would have to be financed from the State general fund.

2. Since the insurance department was already established and had policing powers, continue the licensing laws and control of the title insurance agents under the insurance commissioner. We also decided to add to this bill control of title insurance rates and policies similar to that exercised in Texas.

3. Have the insurance commissioner sponsor the bill.

We had this bill drawn and went over carefully and very logically and decided that if the superintendent of insurance was to sponsor the bill, we should by all means let him know what the masterpiece contained before asking him to appear before a committee in its behalf.

Our first trip to Santa Fe, preliminary reconnaissance, was a conference with Mr. Ralph Apadoca, superintendent of insurance. (I was glad I had known Ralph and his family for some thirty years.) The results were brief and to the point:

1. He had no powers over abstracters and did not want any.

2. He had a respect for the Sherman & McClellan Acts regarding antitrust matters which apparently had not yet reached Texas. Hence, no rate control or policy control.

3. An amendment to the title insurance code requiring title plants was fine as long as he could enforce it by writing a letter to the underwriters.

4. He was opposed to any so-called "grandfather" clause. Limited—yes; unlimited—no.

5. He would appear before the proper committees but would not sponsor the measure.

So back to the attorney we went and back to the two-point objective.

This time we wrote a new abstracters bill providing:

1. An increase in bonds requirement based on the county's population, following the Pennsylvania proposed statute, with a minimum of $5,000 coverage to a maximum of $25,000.

2. Any new abstract company formed after July 1, 1963, must have a twenty-year title plant before being licensed.

3. Any company in existence on July 1, 1963, it not so doing, must maintain a regular take-off and must build a twenty-year plant within five years from July 1, 1963 and must file an affidavit with the County Clerk annually, when recording his abstracter's bond, to the effect that he is so doing and providing a penalty for violation of the Act by fine of not less than $100 or more than $1,000.

We also wrote an act relating to title insurance agents, that essentially

required any title insurance agent to be governed by the same plant laws as we had included in the abstracter's section.

This time, Mr. Apadoca approved. To obtain quick approval, our Board of Directors held a long-distance telephone conference, approved the bills, and directed that copies of both bills be sent to every member of our association.

The delay caused by the necessity of redrawing our bills had consumed twenty days of the sixty-day legislative period. We were not too concerned as a member of one of the oldest abstract companies in the state had been elected to the House of Representatives and we counted on him to introduce the two bills and sponsor them through the house.

To our dismay, we found that he had made some previous commitments and was on one of the more active committees and could not introduce the bill. Fortunately, we explained our predicament to a realtor who was serving his second term in the House, who agreed to introduce both bills.

After introduction in the House, the bills were referred to the House Corporation and Banks Committee. Immediately, we obtained the names of the Committee members, not only in the House but in the Senate, and fired a quick memorandum to all of our members, urging that they contact the Committee in behalf of the bills.

The hearing was placed on the Committee calendar and, after only a couple of delays, was debated. The hearing was held in the morning, but by this time, two small abstracters—not members of the New Mexico Land Title Association—had filed objections to the bond requirements. Also several Federal abstracters had voiced objections.

The Chairman of the Committee appointed one Committee member to get together with the title people and iron out the difficulties. This meeting was held the same morning and resulted in lowering of the bond requirements to a flat $12,500, and exempting Federal abstracters from the plant requirement. The bills were called in for hearing the afternoon of the same day. After limited debate, the bond requirement was cut to $7,500 in all counties and the bills, as amended, returned to the floor of the House with a "do pass" recommendation.

The New Mexico House of Representatives has a membership of sixty-six. Both bills passed with two members voting against the abstracters' bill and four members voting against the title insurance bill. Again a bulletin had been sent every member of the association, urging them to contact their own representatives in behalf of the bills.

At this point, all of the controversy had arisen over the abstract bill and had come from small, non-member companies over matters that could be easily adjusted. The title insurance bill had gone through without revision or question. But the honeymoon was over.

The bills were now referred to the Senate. We had checked the Senate Corporation and Banks Committee and found that the Chairman came from the same town as our association president. He had, by this time, explained the bills fully and had everything in order for a quick hearing and recommendation.

The Lieutenant Governor had other ideas. Instead of referring the bills to the Corporation and Banking Committee, he sent them to the Rules Committee. The Lieutenant Governor is a lawyer and a quick look at the seven-member Rules Committee showed that it contained four more bar association members, including the Chairman.

Several delays in the hearing occurred with the Committee on hand each time to present our views. It seemed that each time the bills were set for hearing, a buzzer would ring in the Committee Room and the Chairman would say, "Sorry, gentlemen, but our presence is required on the floor."

This was expensive, frustrating, and disgusting. Finally, the first hearing took place. Four of us were present, along with one uninvited guest:

The Executive Secretary of the New Mexico Oil and Gas Association. He knew nothing of the bills but had been requested by a member company to oppose the abstracters' plant bill.

Fortunately, one of our members present was one of the leading mineral abstracters in the State. I had known the objector for several years, having cooperated with him in establishing the unit system of taxation, when he was State Tax Commissioner.

Before the Committee knew of his objection, three of us got him across the hall in a vacant committee room and went to work on him, leaving one member to stay with the committee. Shortly, word came that the committee was discussing the bills. Two of us stayed with Mr. Secretary but could reach no agreement, and finally agreed to rewrite the abstract bill to somehow satisfy them.

When we went back to the Rules Committee Room, they were ready to vote favorably on both bills and we had to request a postponement rather than risk a fight with these people on the floor of the Senate, where we were woefully lacking in sponsorship.

We rewrote the abstracters' bill and took a rough draft back to the oil and gas people in Santa Fe, only to find out that the Secretary had discussed the bill with the association's attorney, who had no objections to the original bill—in fact, favored it. So back we went to our original bill.

A second hearing was set. There was no debate and the abstracters' bill was sent to the Senate with a "do pass" recommendation, but the title insurance bill remained in the committee. We had almost succeeded but now everything was going wrong. We could not get a committee hearing but did find that the abstracters' bill had been recalled from the Senate floor to the Committee.

Finally the bills were again set for hearing—a meeting which resulted in no debate, no discussion, and complete evasion. I was in bed with the flu at this point but we were very ably represented by a good committee headed by another Albuquerque title man. Our group finally demanded to be heard: "Why was the abstracters' bill called back?"

We were never informed and after many sheepish evasions and much embarrassment on the part of some committee members, the bill was sent back with a "do pass" recommendation.

We have learned subsequently it was caused by a letter written to one of the lawyers on the committee by a bar association member who, as past president of the American Bar Association, not only carried weight but objected to the title insurance bill because of the Lawyers Title Guaranty Fund developments and had asked that the abstracters' bill be returned and considered simultaneously with the Title Insurance bill.

At this point, our group caucussed briefly and decided that the time for an open fight had arrived. Our Chairman "blew his stack," pointing out the unreasonableness of the delays, stating he knew the reason for the opposition, and demanded that the bill be given the consideration of any other bill. All this was to no avail.

Another delay — and finally the fourth hearing. We briefly restated our position and asked if we could answer any questions. One committee member volunteered: "I hope that we can do something about this bill today. I am tired of looking at these damned abstracters." The Committee Chairman smiled politely at this effort at humor and promptly went into Executive Session. We waited outside for them in the hall and assigned one of our men to each committeeman when they came out. All we could find out was that the bill had been sent to the floor "without recommendation."

Again we urged our people to contact their senators. We made three trips to Santa Fe before the bills were voted on. One of our members was finally asked by the Committee member reporting the bill to sit with him on the floor of the Senate. The gentleman did a good job of reporting the bill, but had informed us prior to the session that he would

present the report but that he was obliged to vote against it.

The abstracters' bill passed the Senate without too much opposition. The title insurance bill was defeated in the Senate by a vote of twenty-eight to four. The only small point of satisfaction from the vote was that, of the four Senators voting for the bill, two of them were lawyers.

We were not out of the woods yet. We expected the bill to be signed promptly, even though the Governor is a lawyer. Nothing happened, so back to work we went. Investigation showed that the Governor had apparently read the bar association letter, was using the bonding excuse to avoid signing the measure.

We found a Democratic Senator, one of the Governor's political party, who called him in regard to the bill. (It just happened that he was in the bonding business.) Upon telling the Governor he would write the new abstracters bond anywhere in the State and assured him this would run no one from the abstracters business, the bill was signed and became law July 1, 1963.

Briefly, this is what this engagement cost in time, money and other items:

Postage, telephone and telegraph $459.70.

Attorneys' fees, $468.00.

Thirty-seven feet, nine inches in postage stamps.

Nine hundred seventy eight feet of letters and cards.

Twelve thousand miles traveled by Legislative Committees and other members.

Forty-two conferences all the way from the telephone to the men's room.

Two thousand two hundred forty man-hours (mostly wasted).

Five gallons dry martinis.

Now let us get to the results:

Mistakes in war, in business, or in football, can be the basis for defeat.

1. We made a mistake in the bond requirements. From the outcry, I think many of our abstracters are lucky to get a $2,000, as they have no financial responsibility.

2. We failed to make a list of industries that might be affected by our proposals—oil and gas industries, Federal abstracters, and lawyers.

3. We made no pre-legislative effort to acquaint interested industries in our effort to improve our own industries, such as Board of Realtors, the Lumbermen's Association, the Homebuilders' Association—all three with large and influential memberships and with permanent lobbies during the Legislative session; and

4. Because we are small in numbers, underestimated our influence and ability to wage open warfare in the halls of our Legislature.

We are like the little boy who attempted to carry a wildcat home by the tail. The experience was not fatal but will be vivid and live long in our memories. We will be back, full of fight, with a better bill in the 1965 Session to finish the job.

Report of the Puplic Relations Committee

JOSEPH D. SHELLY, Senior Vice President, Chicago Title and Trust Company, Chicago, Illinois

At our annual meeting last year the Public Relations Committee was formed by the appointment of the following members in addition to myself as Chairman: M. A. Brooker, Jr., H. R. Caniff, Fred B. Fromhold, M. V. Henderson, Jr., Robert K. Maynard, Willliam Thurman, and Carroll R. West. At the outset I should like to pay tribute to all of these members who have given willingly and liberally of their time to consider the various matters that have been involved in formulating a program.

Our objective has been to initiate activities that would make the Public Relations function within our Association more helpful to our industry and thereby more responsive to the needs of the individual members. And a parallel objective has been to try to enhance the prestige of the Association as a formidable organization, particularly in its relationships with the national associations of our customer groups, such as the National Association of Real Estate Boards, Mortgage Bankers Association of America, the American Bar Association, and others.

A meeting of this Committee, attended by all of the members, was held on January 7 and 8, in Chicago. All of the various public relations activities in which the Association had been engaged were reviewed and suggestions and advice was given to the Public Relations Director concerning these activities. In some instances it was suggested that activities be curtailed and in other cases changes were proposed, and to supplement this, new ideas were discussed, all of which resulted in the recommendation of a program for the year. In formulating the program, the recommendation of the previous committee for the adoption of a national advertising campaign was reviewed. It was the unanimous belief that the Association should not undertake a broad market research project and advertising effort on a national scale. In reaching this unanimous decision the opinions of individual members differed somewhat in their estimate of the possible or potential benefit of a program of advertising to the public.

My own view is that the cost of a formidable program of advertising to the general public by our association would be greatly disproportionate to any increased revenue that member companies could derive from such an effort. To be effective such a program would have to be continued over a period of years. At best it takes time and persistence to develop public acceptance and understanding. Advertising as a component of sales and business promotion by individual companies can be more adequately justified in terms of business acquisition. In our business, lawyers, mortgage lenders, and real estate people have always been effective in guiding the uninitiated real estate buyer in the choice of title evidence. Advertising by our national association cannot be calculated to create such a firm resolution on the part of the real estate buying public that it will ignore or disregard the advice of legal counsel or the requirements of a mortgage lender who is investing a large share of the purchase price.

The program that was developed by this Committee and a budget of cost was presented to the Board of Governors of this Association on March 6, at the meeting in Washington, D.C. The budget estimate involved an expenditure of $18,000.00 which was unanimously approved

by the Board. As a result of this approval the following elements have been put into effect to implement the recommendations:

(1) An advertising agency in Washington, D.C., was engaged to prepare copy and art work in the preparation of a series of institutional-type advertisements scheduled to appear in the following magazines:

The Mortgage Banker
Burroughs Clearing House
NAHB Journal
American Bar Association Journal
Right of Way
Savings and Loan News

The first series of advertisements appeared in the August issue of these publications. A varied appeal in terms of illustrations and copy was formulated to the interest of the readers of these different magazines. Similar advertisements are scheduled to appear in October and December, and in February, April and June of next year. It is the belief of this Committee that such advertising in customer publications is a step in the right direction. Such an arrangement helps to establish a more effective working relationship with the current officers and staff of these customer groups and adds to the prestige of the American Land Title Association. In addition, of course, the advertising messages are reminders of the values of the title services which our members throughout the country are prepared to furnish and these messages give us an exposure to the total membership of these respective customer organizations.

(2) A contract was entered into with Association Films, Inc., of New York, for the distribution of the American Land Title Association film. Twenty prints of the film were furnished to Association Films, Inc., for use throughout the country and an additional five prints were purchased for use through our national office. One of the movie prints has been given to the Office of Right of Way and Location, Bureau of Public Roads, U.S. Department of Commerce, to be used as part of its training program. Members of our Association have been notified of showings of the film in their locality and the wishes of members who do not desire to have the film shown in their localities have been respected. To date ten showings of the film have been arranged. The total cost of this film activity as of October 1, including the purchase of prints, is $3,015.79. It is anticipated that an additional sum of $450.00 will be required to complete the contract for the balance of the calendar year 1963. Naturally these showings are not intended to interfere with or affect the showing of the film by individual companies. Such showings are, I believe, considerably more effective because an opportunity is afforded to the local company to amplify the explanation of title insurance and to answer questions from the audience. The personal contact that occurs between officers of a company and a segment of the public within the community enhances the benefit very much.

(3) 5,000 copies of the brochure "The American Land Title Association Answers Some important Questions" were printed and distributed to members as a result of which orders were received for 957 copies which involved a net cost of $347.00.

(4) An attractive counter card bearing the newly designed seal of the Association with a self-standing easel was produced and offered for sale to the members at $1.95. As of October 1, 373 counter cards have been

ordered. Financially this promotion is self-sustaining.

(5) Through the cooperation of members a new category involving "case histories" based on actual experience of member companies arising from title defects and defense of claims has been carried in "Title News" under the heading "Stranger than Fiction." Many members of the Association in various parts of the country have commented favorably about this new feature in the Association's official publication.

(6) It was felt by the Committee that closer liaison should be developed between the Public Relations Staff of the Association and officers of member companies. The thought here is that the Public Relations Staff in order to be truly helpful to the members should concern itself more directly with some of the problems and experiences of our members. To do this the staff would have to broaden its area of interest rather than pursuing a narrow specialty involving advertising, lectures on courtesy, encouraging greater efforts in the field of customer cultivation, activities in community affairs, and the like. It was thought that a series of three or four meetings in various parts of the country between the Public Relations Director and officers of companies in the region would permit discussion and exchange of views and would broaden the scope of information and ideas that would be useful to the Public Relations staff. Such meetings can provide an inventory of material that should make communications from the national office more responsive to the needs of members.

This idea was tried out in Chicago on August 26. Invitations were extended by the Director of Public Relations to twenty-two title men from Illinois. Ohio, Iowa, Wisconsin, Michigan and Indiana. Twenty-one of those invited accepted the invitation and participated. An agenda was prepared and the meeting was set up as a one-day workshop session. The agenda consisted of the following matters:

(1) New problems in title company relations with county officials.
   (a) Problems arising by the adoption of new methods of record keeping — magnetic tape, punch card, microfilm, etc.
   (b) Problems involving the securing of magnetic tape, and other material pertaining to the recording and storage of public records.
   (c) Space used in county offices, including rentals of space in new public buildings managed by public buildings commission.

(2) Methods of being informed concerning state legislation and facilities to handle legislative matters.

(3) Promotion efforts with subdividers and home builders.

(4) Avoiding and overcoming conflicts with the legal profession.

(5) Effective customer relations with organized customer groups.

This pilot effort was considered to be extremely helpful to the Director of Public Relations and, perhaps even more important, the participants who came to the meeting found the discussions informative and valuable from their standpoint. Among those who attended the meeting were Harold F. McLeran, Judson Palmer, William Barnes, Robert Stockwell, C. J. McConville, Wallace Colwell, George Harbert, Laurence Ptak, Alvah Rogers, Jr., and Harold Lenicheck. The fact that the subject material and discussion was helpful to participants as well as the Public Relations Director is evident from some random comments which I shall quote:

"I thought the Chicago Meeting was very constructive and very the informality of the meeting re- well handled. The subjects were

all of interest and I believe that sulted in a more relaxed atmosphere."

"I believe that one of the most important ingredients in assuring the success of the meeting was the fact that each person attending was asked to be responsible for some subject of discussion. Personally I would look forward to more of these meetings."

"To me this was one of the finest meetings I have attended in connection with the American Land Title Association. It certainly was interesting to exchange ideas and to discover that most of the problems have a great similarity and that methods used by others may well solve our own problems. I feel the meeting was tops and should be repeated in many sections of the country."

Recommendations for the Ensuing Year

The Public Relations Committee has presented its recommendations and a budget to implement such recommendations for the calendar year of 1964. The recommendations are concurred in by all members of the Committee except one and his observations and comments have been included in our report to the Board of Governors. The recommendations are as follows:

The Association has already contracted for continuing the advertising in the national publications of the customer groups. Completion of this contract will cost $6255.00. The Committee has recommended that this same program of advertising be continued during the last half of 1964. It has also recommended that two customer magazines be added to the list. These are "American Builder" and a quarterly publication of the National Association of Real Estate Boards. During the present year 1963, the amount budgeted for this advertising was not entirely used because the program did not begin until August. The unused portion of the budget will, of course, revert to the Association treasury at the end of 1963. We now propose a budget of $15,500.00 to cover the cost of this magazine advertising during 1964.

The Committee recommends the continuance of the program of TV showings utilizing the Association's film involving a budget of $1,500.00 for 1964.

The Committee recommends a continuance of the grass roots type of workshop on the basis of the good experience with the pilot meeting. A budget of $1,200.00, exclusive of travel expense, is recommended for the purpose of conducting such meetings. The total budget for all of thes public relations activities during 1964 amounts to $18,200.00.

In the opinion of the majority of the Committee these recommendations which have been approved by the Board of Governors will provide an opportunity to do a more adequate job of public relations. All of us realize that the success of these endeavors depend very much, in the final analysis, on the interest and cooperation of all of our members. Your Committee is grateful for the cooperation and encouragement that you have shown during the past year and we are confident that the new committee will enjoy this same measure of excellent support.

I hope that you will be sure to view the samples of public relations material that are so effectively displayed at this convention and our thanks are extended to the various companies for their expenditure of effort to participate.

Report of All-Industry Statistics Committee Final Report

C. J. McCONVILLE, Senior Vice President, Title Insurance Company of Minnesota, Minneapolis, Minnesota

Thank you President Bill: Ladies and Gentlemen:

For some years the officers and staff of our Association have felt they could do a more effective job for the members if our spokesman had more information about the title industry. That was the reason for the survey and why President Art Reppert appointed a committee to get these answers in April of 1962.

We prepared six questions which were based on suggestions of the Planning Committee. We tried to make them easy to answer in order to encourage a high percentage of response . . . but to contain the basic information we needed.

We worked out a procedure to use automation as much as possible on the replies. We felt that the answers should go to some company outside the title industry since many members would not want their competitors to have this information. We selected a processing bureau near our national headquarters which had experience with both Government and private business and had the necessary IBM equipment. That was our first mistake.

Off the record let me give you some of the experiences that we had. At one stage the stockholders of the processing company stepped in and booted out the management. All of the officers were fired. Since then there hav been three or four more changes in management. The persons specifically assigned to our project have changed so often they look like passengers getting on and off a San Francisco cable car. We tried to reach one of them on Tuesday and discovered that he had left for an appointment in Maryland on the previous Friday and mysteriously disappeared. He never showed up for the appointment and they haven't heard from him since.

Then there were the results we received from that company . . . for instance on the tabulation from Florida they arrived at a rather startling conclusion. At least I thought it was startling although the Florida people have probably suspected this for a long time but never had proof before. This fact was that the title companies in Florida paid more in federal income tax than they took in!

Since it was obvious that we were not getting accurate answers, we had all the answers repunched and retabulated by another processing company. We now feel that we have accurate answers.

One of the most interesting facts uncovered by the survey was not even on the questionnaire. We discovered that 45% of our members—didn't like to answer questionnaires! This is how we went about discovering that intriguing statistic. We publicized the survey in ALTA Title News, in separate bulletins from ALTA headquarters and through our contact with state title associations. Most of the state title associations were happy to publish the announcements that we sent them, encouraging their members to respond to the questionnaire. We then sent out our first mailing to 2,275 members. This included all members except attorneys and branch offices of the members.

After waiting a reasonable length of time, we sent out a second mailing to all non-respondents. This caused a few raised eyebrows. As one of our members put it very succinctly, and I might add with several more high-powered adjectives than I can use in this report, "If your survey is so confounded secret. how did you know that I didn't answer?"

For those of you who had the same question in your mind, let me re-assure you that this information was handled in confidence. The envelopes did contain a code identifying the member. When the envelope came in, that member's number was checked off. However, the questionnaire was then separated from the envelope and there is no way of knowing which questionnaire belongs to which member. We had to keep a record of the responses, however, or we would have no way of knowing with whom we must follow up.

We then recontacted the state title associations urging them to further encourage their members to respond to the survey.

Finally, we mailed a third follow up to all non-respondents. So that made (1) the original questionnaire and letter (2) one follow up by us (3) one follow up by a contact man in each state and (4) a follow up to the follow up. The Committee would appreciate it, however, if you didn't refer to us as being "all followed up."

After the final mailing and tabulation we arrived at our totals which indicated about a 55% response from the members. Fortunately almost all of the companies having 25 employees or more did respond. So although the percentage of responses was less than we hoped for—we believe our figures represent over 85% of the title industry as a whole.

Not being satisfied with a 55% response, the Committee has determined to try to secure information about the silent 45%. So every Committee member is in the process of or has already contacted a key individual in eight or nine adjoining states to secure estimated answers about the non-respondents. Those figures will be kept separate and the final report delivered to the ALTA office will show both the actual answers plus estimated figures for the non-respondents.

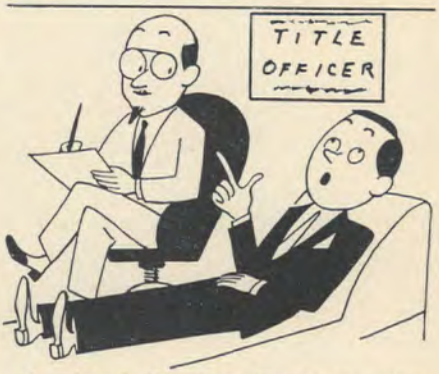
The results are very interesting. The Board of Governors has determined that the complete statistics should not be published but I can give you certain of the highpoints. For instance, our members have title plants worth over 200 million dollars; they have other assets in excess of one-half billion dollars. Annually we do a gross business of over 300 million dollars and pay salaries in excess of 130 million dollars annually. Our members pay annual federal income taxes in excess of 28 million dollars. (These figures may not seem so high after the prices here in San Francisco, but I thought they were quite significant.)

Our spokesman can now prove what **we** all know: that title people are an important economic factor in our country today.

We believe that the information secured will be of considerable assistance to our officers and the staff in their contacts with Government, with those industries that use title services and in our national advertising program.

The members of the Committee want me to express appreciation for the cooperation received from so many people in the industry, the ALTA staff and officers. In turn I want to commend the members of the Committee for their untiring efforts to secure meaningful figures. I would like to introduce you to the members of the Committee and I ask that each Committee member stand and remain standing until they are all introduced.

Herb Becker of Texas;
John Kunkle of Pennsylvania;
M. R. McRae of Florida;
John Meredith of Indiana; and
Robert Morton of California



I missed the San Francisco Convention.

The Challenge Confronting Us

HONORABLE WILLIAM F. KNOWLAND, Editor, The Oakland Tribune, and Former Senior United States Senator from the State of California

Mr. President, Members of the American Land Title Association: Along with many other people who have welcomed you to California and to the City of San Francisco, I wish to join in that welcome. We have a number of conventions that are held here. There will be one of some interest that will be held here next year.

Now, there is no business more important to you than the business of Government.

Confiscatory tax burdens—Federal, State, and local—the encroachment of labor upon the field of management under Federal and State Legislation, the growing impact of government policies on commerce and trade conditions, cannot be ignored if free enterprise is to remain free.

Plato expressed it in these words:

> "The punishment of wise men who refused to take part in the affairs of Government is to live under the governments of unwise men."

Now, our founding fathers were dedicated to the cause of freedom and they were so dedicated that they closed the Declaration of Independence with these words:

> "And for the support of this declaration, with a firm reliance on the protection of divine providence, we mutually pledge to each other our lives, our fortunes, and our sacred honor."

Now, in this space and atomic age which we find ourselves, we should do no less in assuring the blessings of liberty to ourselves and to our successors.

In his "house divided" speech in 1858, two years after his defeat by Stephen A. Douglas for the United States Senate in Illinois and two years before he defeated Douglas for the Presidency, Abraham Lincoln said:

> "If we but know where we are and whether we are tending, we then might better judge what to do and how to do it."

In our generation of space travel, atomic warheads and challenging totalitarian communist power of international proportions, the need is even greater, it seems to me, to find out "where we are and whether we are tending."

At home, we must not permit big government or big labor to so overshadow the individual that he loses his individualism and becomes a mere statistic on an electronic tape.

The individual must not willingly surrender nor have forcibly taken from him the control over his conscience and his power of decision in matters moral, economic, or political. For this is really what the American heritage is and what the American Revolution was all about.

The real, deep, moving, powerful—yes, irresistible—strength of our nation comes from the free and undominated convictions of men and women, old and young, rich and poor, native and foreign-born, educated and unschooled, who have a deep faith in America and a belief in Almighty God.

Now for a time, to be sure, they might get side-tracked by false prophets and fooled by silent voices. But as Lincoln so well understood and so simply stated:

> "You cannot fool all of the people all of the time."

The founding fathers of the Republic were men of faith. Benjamin Franklin, at the time of the Constitutional Convention, when it appeared that the great body would break up without accomplishing its objective, went to the front of the Convention Hall and in a very moving speech, suggested that thereafter

the sessions of the Constitutional Convention start with a daily prayer and in a closing remark which can now be found in the Journal of the Constitutional Convention, he stated:

> "The longer I live the more convinced I am that God governs in the affairs of men. And if a sparrow cannot fall to the ground without His knowledge, is it likely that an empire can rise without His aid."

Having concluded his remarks, the Convention decided to meet with daily prayer and almost as if by a miracle the great disputes were settled.

As Mr. Franklin some weeks later left the Convention Hall, he was stopped at the door and asked what kind of a government had been given the American people and he is reported to have replied:

> "We have given you a Republic, if you can keep it."

Now, there is, was, and always will be differences of opinion as to what our policies should be. They may differ from place to place and from one year to another. But as far as I am concerned there are certain landmarks that are clear, regardless of the time and place. Even in stormy weather when the mountain peaks cannot be seen, you know it is there in all its grandeur.

For what it is worth, I give you my views growing out of thirty years of active participation in the local, state and national affairs.

1. The Constitution of the United States is the greatest governmental document struck off by the hands and minds of men. If adhered to, our political and our economic freedom in the future are assured. But if it is compromised or short-circuited or abandoned, our own liberties and those of future generations will be in deadly peril from dedicated and unscrupulous communist forces.

2. Power and responsibility must always go together. Power without responsibility in government, in business, and in labor, is detrimental to the well-being of our American people.

Five years ago, I stated that no man or group of men should have the power to strangle the economic life of our nation, of our state, or our community, for this was more power than any reasonable men should want and far too much power for any unreasonable or irresponsible ones to be allowed to have.

3. Physical resonsibility is a basic criteria of responsible government, local, state, and national. No individual and no business can continue to spend more than it takes in without ultimate disaster — and neither can government.

4. Long ago, decent citizens of all political parties united to clean up elections and to eliminate vote buying and vote stealing. The use of the public treasury to influence elections results may not be criminally indictable, but it is morally indefensible, and future generations of our people may wonder why their heritage was destroyed while insolvent governments appropriated vast sums to gain a passing popularity.

5. Law and order is a basic necessity in a free society and our people must never tolerate or compromise with an allegiance by government officials with the criminal underworld, labor goonsters, or business racketeers.

6. Every American citizen has guaranteed rights without regard to race, color, creed or sex. But Civil Rights are far more broad than racial rights alone. The right to be secure in one's person going to and from work, to own property, to manage it and to dispose of it, to associate with friends of one's own choice—These are also civil rights and are entitled to respect and protection by the Federal, State, and local authorities.

7. Education is and education should remain close to the people. We must guard against rules that would ultimately transfer control of our educational system away from the localities and the states to the Federal Government of Washington. That is to say, after 14 and a half years of experience in the Nation's Capital, there is no such thing as free Federal money, and I can testify that a dollar that

goes to Washington in taxes suffers substantial attrition before it comes back as a grant-in-aid.

Now, the founders of our republic knew the dangers of concentrated power. It spelled just one word through them: "Tyranny."

To guard against abuses of power, they divided the Federal Government into three great co-equal branches—the Legislative, the Executive, and the Judicial—as checks and balances one against the other.

They were not satisfied even with that—that this would be ample protection. So they therefore deliberately set out to make the Federal Government one of limited and specified power and they reserved all other powers for the State and for the people thereof.

They were still not satisfied that this would be ample protection for them and their successors, and so they insisted as a part of the understanding on the rectification of the Constitution that there would be immediately provided to the American people, the first ten amendments which we know as a Bill of Rights, which gave to our people certain rights which neither the Federal, the State, or local government can take away from them.

This, then, is our first and our foremost principle: Guard the American people against abuse of power regardless of the direction from which that threat comes—internal or external, political or economic.

Now, no matter how great our problems are in this age in which we find ourselves, we as a free people can solve them if our freedom of choice is left to us. Safe in the collective judgment of a free society is another basic principle. The danger comes when a large part of the electorate becomes apathetic or disillusioned. Then, the judgment resulting from a light vote is not the collective judgment of the people but the result of an organized effort by a minority pressure group.

Government is too important to be left with the office holders alone. Government in a very real sense is the people's business. It cannot function without an informed electorate.

There is real danger to our nation in any policy of managed news. In addition to establishing the form of government under which this growth has taken place, out of a small weak colony to now a great nation of 190 million, stretching from the Atlantic to the Pacific, and out into the past to become the most productive nation the world has ever known, the Constitution guarantees certain basic freedoms. The first Amendment of the Bill of Rights states:

> "Congress shall make no law respecting the establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press, or of the right of the people peaceably to assemble and to petition the government for a redress of grievances."

Now, this freedom of speech and of the press is of vital importance to not only those in the communications field of the press, radio and television, but it is far more important to the American public as a whole. Now, all of these media had great power and great influence and, as I mentioned before, with power must also go responsibility. A free people must be an informed people.

A great responsibility rests upon all communications media to see that the America people are well informed on matters of international, national, state and local affairs. It is not sufficient in my judgment merely to record the events. An understanding of the happening may require a background of the "news behind the news."

Editors and commentators must try to maintain a sense of balance.

Often I am asked by well-meaning people why the newspapers cannot eliminate crime news. To do so, I believe, would be a disservice to the people. It would be comparable to a doctor keeping from the patient's family that he had cancer, because it would upset them.

Only an alerted community can take the necessary steps to eliminate

corruption or to rally in support of the law enforcement departments in upholding law and order.

I do not deny that at times some of our newspapers seem to over-emphasize crime to the point where it appears to dominate the news of the day. When such a situation exists, the editors may have lost their sense of balance and values as to the extent of overlooking or playing down world and local events of more real importance.

With the developments that have been taking place in the communications field in the last few decades, we have become neighbors to the remote places in Asia and Africa. An escape over the Communist wall in Berlin is not only written and pictured in the newspapers the same day in California, but the event is also viewed on television and broadcast on radio news reports.

The President of the United States makes the State of the Union address and the text is reported in the Pacific Coast afternoon papers of the same day. Millions of Americans and Europeans watch and hear him on television and radio while he is speaking before the Joint Session of the Congress or in the rebroadcasts within hours of when he appeared before our Congress.

In the space and atomic age in which we now live, those in the communication field, no less than those in government, must conduct themselves with great responsibility, as I have previously indicated.

Now human institutions are not infallible. Newspapers, radio and television organizations have in the past and will in the future make mistakes. In the rapidly moving events of the day, sometimes quick decisions, interpretations, turn out to be wrong, but this is one of the prices of freedom.

I am concerned, however, by the growing tendency of governments—local, state and national—to keep from the public facts which the public is entitled to have.

Now, sometimes office holders seem to forget that public business is the public's business. In Washington, under both Democratic and Republican administrations, there has been a growing tendency to classify material as restricted, confidential, secret, or top secret, when it does not properly fall into such classifications as far as the national defense is concerned.

It is more to cover up the mistakes of the administration or bureau chiefs, to save them from embarrassment, than it is to protect the security needs of the nation.

This generation witnessed a terrible result when a great nation like Pre-World War II Germany was taken over by those who took control of all media of communication and used them for the purpose of carrying out the policies of the Hitler government.

In the Soviet Union and in other areas of the Communist world, there is a complete government control over all media of communication. The people read in the newspapers there, and hear on radio or see on television only that news information which the Kremlin wants them to have. In my opinion, it is not in the interests of free institutions for any government, including our own, to use news as an instrument of that policy.

I do not of course refer to government's issuance of statements, giving this position on public policy or the reason for taking such action. But I do refer to the deliberate misleading of the press and the public.

Now, confidence is a good deal like credit: once lost, it is awfully hard to regain. The confidence of the press in the public has been shaken by a lack of candor and by misstatements of fact in regard to the Cuban situation of a year ago.

In replying to an inquiry from representatives of the United States Press International about half-truths and misstatements of government press releases during the Cuban crises, Arthur Sylvester, Assistant Secretary of Defense for Public Affairs, at a New York Deadline Club meeting in New York said, and I quote:

> "It would seem to be basic, all through history, that a government's right—and by government

I mean a people . . . in our country, in my judgment, the people present and have the right to present and do present every two and every four years what government they want . . . that it is inherent in that government's right, if necessary, to lie to save itself when it's going off into a nuclear war."

Now, it seems to me that this is a most dangerous doctrine. Government officials, to be sure, may refrain from commenting on inquiries from representatives of the press, radio or television; but are they justified to put out false information, even in this nuclear age? Should our communication media follow the government's line even if they know, or strongly suspect, that it is untrue or misleading?

In World War II, the newspapers of the nation, recognizing the problems confronting our country and the very life of the Republic being at stake, placed themselves under a form of voluntary censorship. They did not mention, of course, the sailing of troop transports or even visits of the President of the United States on non-political inspection trips around the country.

To many newsmen the particular situation seemed unnecessary in view of the fact that hundreds of thousands of people had seen him in an open car on downtown streets. No mention was made of the first atomic blasts; newspapers' mention of something that had happened of great magnitude was vague.

The war correspondents were consistently briefed as to campaigns underway or about to embark, and they did not violate this confidence at that time because they knew that it might jeopardize the very security and the lives of our forces. They knew the general restrictions and the reason for them and they understood why they must act with responsibility.

But we are not now at war. Could a free society make proper judgments on vital issues if information were withheld from them upon which those decisions had to be made? In a free society operating under a constitutional form of government, can any administration properly advocate a "papa knows best" policy and can it give or withhold from the people information to which the government believes they should be exposed or not be exposed?

This is a dangerous doctrine. Now, I believe in the informed judgment of the American people. Given the facts, I believe their reactions can be depended upon in the long run. The moral and practical question we must confront is: Whether or not our government or any government has a right to deliberately lie to the American people.

Is it sufficient that we, as businessmen, keep informed as best we may and cast our votes on election day? I think not. We must be prepared to participate for a part of our lives in Governments on the local, the State, and national levels. Businessmen should have no less interests in the functioning of the government than does labor.

We have permitted the demagogue to sell the worker that there is no community of interest between the employee and the employer, that the free enterprise system of private capital is on the way out, and that government ownership and expanding socialism is the way of the future These cannot be combated successfully by a passive resistance. These doctrines must be actively fought in our economic, our social, and our political arenas.

President Theodore Roosevelt was once asked by an American citizen who was troubled by the problems of that day and who came to him and said:

"Mr. President, what can I as an individual citizen do to help meet the problems of the day?"

President Teddy Roosevelt replied:

"If each citizen will do what he can with what he has, where he is, the accumulative effect in a free society will be irresistible."

And I take it with the great challenge confronting us this year and next year, that we as citizens, regardless of our party affiliations, must

each one of us do what we can with what we have where we are. And I believe that the end result will be irresistible in our free society.

Businessmen should be active in a society of a free government, constitutional government, and the free enterprise system. Now, perhaps you may offend a few of your customers but you promptly gain many others to take their places.

But if businessmen are to be intimidated so that they will not participate in public affairs, then it seems to me we are not made of the same stuff as the founding fathers who gave us this republic.

Young men of ability in your organizations should be encouraged to serve in Government on the local, the State, and the national level; on the Board of Education and on the other public bodies and commissions.

The times require the best we have to offer. And if businessmen count themselves out, our communities, our states, and our nation will have lost a great resource that should at least be furnishing its fair share of personnel to man the ramparts in our free society.

Now, as a private American citizen, I do have a deep conviction that if only we of our generation will show the same courage and same common sense that motivated the men who sat at Independence Hall and gave us first, our Declaration of Independence, and later, our Constitution of the United States, that there are none of our great domestic problems that we as a free society cannot solve and there is no foreign foe which we need ever fear.

Report of Secretary-Director of Public Relations

JAMES W. ROBINSON, Washington, D.C.

There is something so formidable about any portion of a convention program which begins with the words "report of—," that I wish I could have given a different title to my talk.

I assure, however, you that my message is a brief and simple expression of appreciation for the privilege of representing at the national level the finest people in the world—the men and women in the real estate title profession. I am truly grateful for the extent of cooperation I have received not only from the National Officers and members of the Board of Governors, but from the rank and file of membership, all of whom have responded quickly and effectively to my pleas for information and for assistance.

To you officers of affiliated state title associations, I say thanks for the splendid news stories, photographs and technical material without which it would have been impossible to publish the kind of a magazine that the American Land Title Association needs and deserves.

In considering those matters of importance which I might bring to your attention this morning, I turned to the transcript of the 1962 convention proceedings. Just a year ago in St. Louis before a vast and wildly cheering audience of some 12 or 13 sleepy persons, I had this to say, "I know that under the leadership of Bill Deatly, the outlook for 1963 continues to be encouraging. Certainly there will be a determined effort to strengthen the moral and ethical performance of individual members and of the Association. I'm sure we can expect an expanded program of education, both within and without the industry. The serious problems confronting ATA members will be met with courage and good judgment. Our

new President will demand the utmost in service and loyalty from the staff. We are eager to meet the challenge."

I am delighted to report that my enthusiastic forecast has proven to be actually quite conservative. There **was** a determined effort to strengthen the moral and ethical performance of individual members and of the Association. An expanded program of education both within and without the industry **was** carried out. The serious problems confronting the ALTA **were** met with courage and good judgment by our President and by our other officers. I can assure you that President Deatly **did** demand the utmost in service and loyalty from the staff.

In reviewing the accomplishments of the preceding year, I recall a quotation which seems to have perfect application in this instance.

"There are no collective efforts; there are only collective results of individual efforts."

This little phrase seems to summarize the spirit of the dedicated men and women who have created a National Association that is recognized as an important and influential factor in the entire real estate and housing industry. I wish that each of you could have had the opportunity last Saturday to attend the joint meeting of the Board of Governors, the Uniform Title Insurance Code Committee and the Executive Officers of the Title Insurance Section. Twenty-seven company executives deliberated for an entire day on the many technical aspects involved in giving birth to a uniform title insurance code. Each of them had previously studied 176 pages of material including the suggested code and more than 100 recommended changes to various sections of that code. It was truly an inspiration to watch these officers of yours give so unselfishly of their time and talents in behalf of the title industry.

So much has been written and said already about the magnificent contribution that William H. Deatly has made to this Association and to the title buisness that any remarks of mine would be redundant. I am sure Mr. Deatly would be the first to agree that it was not he alone who carried the burden but that the devotion of such men as Joe Shelly, Ernest Loebbecke, J. W. Goodloe, George Rawlings, Tom Dowd, Carl Schlitt, Chum Funk, Dick Howlett, Mack Tarpley, Victor Gillette, John Turner, Al Julin and Mac McConville and the members of the committees these men headed made the progress of the past year possible. One brief observation with regard to President Deatly, however, he will go down in history as the man who married title insurance to the public interest and subsequently became the father of the modern concept of an enlightened title evidencing profession.

You have heard the report of the Chairman of the Public Relations Committee. Your Board of Governors is committed to the principle of an expanding program of public education. As a National Association, we seek recognition for the Association itself, for the industry and for each of its members. Our approach to the related professional groups and to the general public is institutional in character. It is fair to say that the activities of the past five years have begun to show results. We still, of course, have a long, long way to go.

Now, what of the future? Saturday morning I was privileged to participate in a radio interview here in San Francisco. One of the questions I was asked was, "Are members of your Association considered professionals?" My response was, of course, that they **are** professionals in the finest sense of the word: I based my reply on the criteria established for other professions; the lawyers, the doctors and the certified public accountants. These standards include:

1. A body of literature peculiar to the industry—we have that
2. A code of ethics to which the majority of the members of the industry subscribe—we have that
3. Academic training—we have that through our employee education programs, our State Association abstract schools and our panel dis-

cussions, workshops and seminars.

4. A voluntary association which carries on to elevate and improve the level of performance for the benefit of the public—we certainly have that
5. Dedication to the principle that there shall be no information within that association which is private, but which is shared by all —we certainly subscribe to that philosophy.

I would like to offer a word of assurance. Don't be dismayed if your neighbors don't immediately recognize you as professionals. Continue to act as professionals, and with the help of the National Office, recognition will come.

I predict a year of progress under the leadership of Clem Silvers. He has outlined a program of employee education and public education. He will encourage the enactment of state abstract laws and licensing laws. It is a privilege to look forward to working with Clem, and to offer the assurance that the staff at National Headquarters will help in every way possible to make the coming year the most successful in ALTA history.

We have not reached the pinnacle of our prestige and influence, but we have come a long, long way. Your capable and intensely loyal Executive Vice President, Joe Smith, has no magic wand with which to transform indifferent government agents and officers of related associations into enthusiastic proponents of the title evidencing profession, but the sheer force of his personality; his undoubted integrity; his personal magnetism have commanded the respect of a great many important men in Washington.

Monday morning President Deatly received many telegrams of congratulations. One of them was from the President of the United States. I happen to know that this was no perfunctory gesture on the part of some paid White House Assistant. It received the personal attention and approval of the President himself. I venture to say that, just a few years ago, the President of the United States had never heard of the American Land Title Association, nor its predecessor, the ATA.

So—we will go forward under fine leadership to greater things for the titlemen and women of the nation. I think we have a winning combination; the finest people in the world, headed by Clem Silvers, administered by Joe Smith, with a bashful, barefoot public relations man to take care of the details.

God bless you all.

Report of Directory Rules Committee

G. ALLAN JULIN, JR., Vice President, Chicago Title and Trust Company, Chicago, Illinois

Mr. President, ladies and gentlemen of the convention, I am submitting this report as Chairman of and on behalf of the Directory Rules Committee, which was a special committee appointed about a year and a half ago by then President Arthur L. Reppert. In addition to myself the committee consisted of:

Mr. H. R. Caniff, Union Title Company, Indianapolis, Indiana.

Mr. R. C. McAuliffe, Vice President, Security Title Company, Salt Lake City, Utah.

Mr. Hugh B. Robinson, Secretary, Carroll County Abstract Company, Carrollton, Missouri.

Mr. E. Gordon Smith, Senior Vice President, Lawyers Title Insurance Corporation, Dallas, Texas.

Mr. Carroll R. West, Vice President, Title Insurance and Trust Company, Los Angeles, California.

It is not inappropriate, ladies and

gentlemen, to point out that two members of the committee, namely Messrs. Caniff and Robinson are the Secretary-Treasurer of the Indiana and Missouri state associations, respectively. Both of those gentlemen saw to it that the interests of the affiliated state associations were kept well in mind throughout the deliberations of the committee.

When Art Reppert appointed us, his description of our assignment was simple and brief: Study the present Rules and Regulations governing directory listings and present for consideration by the Board of Governors any recommendations considered desirable. This brevity of description of the assignment was well done, for each person asked to serve on the committee accepted the appointment at once. I might add that this willingness to work for our association was subsequently further demonstrated by the whole-hearted and enthusiastic cooperation and sincere effort put forth by each member of the committee until the completion of its assignment.

Perhaps the first real clue to the road that the committee was to travel was the fact that the room assigned it for its first meeting was named the Pony Express Room in the Chase-Park Plaza Hotel in St. Louis during our convention last year. I am sure it seemed to each of us that we encountered just as many figurative ruts, boulders and impassable paths as any Pony Express rider during the course of our work. And when our final report was submitted to the Board of Governors and unanimously adopted, we as a committee experienced just about the same degree of satisfaction with the accomplishment of our assignment as the Pony Express rider must have felt when he delivered his mail pouches at the end of his route.

The final report of the committee was submitted to and adopted by our Board of Governors on March 6th of this year, during the Mid-Winter Conference in Washington, D.C. The full text of that report and of the new Directory Listing Rules and Regulations appear in the August, 1963, issue of Title News, and I am not going to repeat either the report or the rules themselves. In addition to appearing in Title News, at the time our national headquarters sent out the call for the listing material for the 1964 Directory the appropriate officer of each affiliated state association received a copy of the new rules and regulations.

I hazard the guess that up to this year no officer of the association—or perhaps no member has possessed a complete and accurate compilation of the listing rules and regulations for many, many years, for they had to be pieced together from the minutes of meetings of the Board of Governors over many years. At least, as of now, these rules and regulations are contained in one document.

I do not maintain that the new rules and regulations are perfect, nor do I expect that they are completely acceptable to every individual and every company. I do aver that the committee has tried to give fair consideration to the problems and needs of each individual, each abstract company, each title insurance company, and each affiliated state association in getting appropriate listing in our national directory. We have also endeavored to provide a reasonable degree of flexibility for the handling of isolated or unique cases.

By now each of you should have submitted to national headquarters your listing information for next year's Directory. If national headquarters has sent back to you some pointed inquiries, or has asked that you alter or correct your listing, my only advice to you is in line with that of a prominent manufacturer whose products are customarily delivered not assembled. Each carton contains a slip of paper on which is printed a bit of advice to the frustrated customer who is having trouble putting the contraption together. It reads: "If all else fails, read the instructions." I suggest you read the Directory Listing Rules and Regulations.

It would not be right for me to conclude this report without making two

brief points. First, at the time I reported our recommendations to the Board of Governors I was asked by the committee to convey its unanimous opinion that our ALTA Directory is an excellent product, and is one of which our staff at national headquarters may be proud. Second, permit me to express the committee's appreciation for the splendid cooperation we received from the national staff.

For myself and for the other members of the committee, thank you for the opportunity to be of some small service to our national association.

Report of the Resolutions Committee

ROBERT J. JAY, Vice President, Land Title Abstract Company, Detroit, Michigan

WHEREAS, the 57th Annual Convention of the American Land Title Association had excellent guest speakers, namely, the Hon. Karl E. Mundt, Senior United States Senator, representing the State of South Dakota, whose timely topic, "Today's Challenge to Tomorrow's Freedoms" was highly inspirational in urging businessmen to take an interest in politics; the Hon. William F. Knowland, Editor, The Oakland Tribune and former Senior United State Senator from the State of California, speaking on, "The Challenge Confronting Us" clearly set forth that Americans must have all the facts and exercise their rights if the Republic as set up by our forefathers is to properly function and govern; the Hon. J. Stanley Baughman, President, Federal National Mortgage Association, Washington, D.C., outlining the relationship of FNMA and the Title Insurance Industry.

THEREFORE BE IT RESOLVED, that the entire membership does hereby express its sincere appreciation for the effective and inspirational thoughts on timely topics expressed by said speakers.

WHEREAS, the California Land Title Association, as host, and the neighboring associations of Arizona, Oregon and Washington, as co-hosts, for the 57th Annual Convention under the chairmanship of Bob Morton, have diligently worked, planned and contributed financially to the success of this convention,

THEREFORE BE IT RESOLVED, that the appreciation of the officers, staff and members in attendance at this convention be extended to Bob Morton and all of his hard-working associates in making the Golden West live up to its reputation.

WHEREAS, the ladies of the American Land Title Association have worked diligently and thoughtfully in contributing materially to the success of the entire convention program,

THEREFORE BE IT RESOLVED, that each and every member recognizes the importance of the ladies' attendance at the convention and particularly expresses his deep appreciation to Ellenette Morton and all of her assistants for their efforts in contributing to the success of this convention.

WHEREAS, the hard work and painstaking efforts of the National Officers, Board of Governors and Chairmen and their committees are evidenced by the successful year climaxed by this convention or in the words of President Bill Deatly, "The American Land Title Association has gained a yard or two on balance,"

THEREFORE BE IT RESOLVED, that the membership hereby acknowledges the overall efforts of the officers and committees and extends its

sincere appreciation for a job well done.

WHEREAS, the American Land Title Association would not be able to function effectively without the continued efforts of our Executive Vice President, Joseph H. Smith and Secretary and Director of Public Relations, James W. Robinson.

THEREFORE BE IT RESOLVED, that the members hereby acknowledge that Joe Smith and Jim Robinson have again completed a very successful year.

WHEREAS, the American Land Title Association is, by political philosophy, basically opposed to the usurpation by governmental agencies, of those business institutions which, by tradition and experience, properly belong within the free enterprise concept; and

WHEREAS, the American Land Association, through its officers and directors, is often very vociferous in expressing this philosophy; and

WHEREAS, when an occasion arises where a retrenchment occurs, on the part of a governmental agency, to the private enterprise concept, a corresponding responsibility exists to commend those in our government who follow this thinking, by act or deed; and

WHEREAS, the Federal Housing Administration, effective October 1st last, instituted a program which allows and encourages private lending sources to handle the mortgage financing in connection with the sale of Commissioner held properties, as opposed to the previous practice of financing by the Federal Housing Administration; and

WHEREAS, the Federal Housing Administration is evidencing a desire to regain the original purpose, for which it so ably served this country for so many years, i.e., an insurer rather than a lender; and

WHEREAS, it is the opinion of this Association that such is in the public interest.

NOW, THEREFORE, BE IT HEREBY RESOLVED, that the American Land Title Association, meeting in its annual convention at San Francisco, California, commend the Federal Housing Administration and, more particularly, Philip N. Brownstein, its Commissioner, for his sponsorship of this program which broadens the private mortgage investment field, and that copies of this resolution of commendation be delivered to the Honorable Mr. Brownstein, to the Honorable Chairman of the House and Senate Banking and Currency Committees of the United States Congress.

Unanimously adopted by the convention this, the 16th day of October, 1963.

BOB JAY, Chairman
DON McCALLUM
ANDY SHEARD

Report of Committee on Membership and Organization

J. W. GOODLOE, President, Title Insurance Company, Mobile, Alabama

When your Committee was given its assignment for this year, it was suggested by President Deatly that your Committee explore the possibilities of organizing, or creating interest in, State Land Title Associations in our Eastern and Southeastern states, wherein no State Association at the present time existed. Particular reference was made to the States of Alabama, Georgia, Kentucky, Mississippi, North and South Carolina, Delaware, Virginia, West Virginia, and the District of Columbia.

At our Mid-Winter Conference in Washington, we were pleased to report the formation of a State Association in the District of Columbia; for this we give particular thanks to the efforts of Mr. Howard Bernstein

of Realty Title Insurance Company, Inc., Washington, D.C.

An exhaustive study was made of the possibilities of the formation of State Associations in the remaining states named. Your Chairman received excellent assistance from our Committee members residing in this area, to-wit: Messrs. Trammel McIntyre, Atlanta, Georgia; Harrison H. Jones, Louisville, Kentucky; Rowan H. Taylor, Jackson, Mississippi; Howard Bernstein, Washington, D.C., and M. R. McRae, Sarasota, Florida.

From the reports received from these gentlemen, it was the conclusion of your Committee that the formation of State Associations in all of the above named states, with the possible exception of Alabama, was, in the near future, extremely doubtful, if not impossible. Among the reasons for this conclusion, was the difference in the method of producing the evidence of title necessary in connection with title examinations and issuance of title insurance policies. In the majority of these states, there are very few, if any, recognized abstracters of title, as such. The title examination work being prepared by local attorneys, who usually make their examination of the title direct from the county records, and, ultimately, if title insurance is required or obtained, these same attorneys quite often act as both title examiners and agents for one of our title insurance companies operating in that area—doing business on a national scale.

It further developed that there are no "local" title insurance companies in any of these states, except in Alabama, Mississippi and Virginia, title insurance being furnished by our national companies. In Alabama, we have several active abstract companies; and we have created some interest in the formation of a State Association, which I believe can be followed up to advantage in the near future.

In the State of Mississippi, the County Recorder or Register of Deeds is required by statute to maintain a set of tract indexes, wherein the daily recordings are indexed, as in a property index.

At the suggestion of Mr. Harrison Jones, one of our members, your Committee explored the possibility of creating further interest in the formation of State Associations by attempting to bring to the attention of our members, not affiliated with State Associations, some of the numerous advantages to be derived from a State Association.

With this in mind, we have arranged for display an exhibit of various bulletins, publications, etc., being sent out periodically by our State Associations to their members. These publications concentrate on problems on the state level, such as changes in the state laws, public relations with the local state bar, unfair competition, etc. We believe it will be to your advantage to examine this exhibit. Some of you with State Associations may gather an idea from your neighbor.

If we look back 30 years or more, before the days of FHA, GI loans, etc., the problems of the local abstracter or title company were usually limited to its own community. Today, with our government agencies reaching into practically every phase of the real estate and mortgage business, it would be impossible for a local title company to continue in business without assistance from our National Association in solving some of the numerous problems that arise from day to day in connection with the title work on loans, land purchases and condemnations. A case in point—our National Association recently stepped in to convince the FHA and VA of the necessity of obtaining some form of assurance (insurance) or Owners Policy in cases of foreclosure by them. One of the advantages of State Associations could be the possibility of preventing, through State legislation, fire and casualty companies from entering the title insurance field on a purely casualty basis. This seems to be a growing practice in some states.

Nearly all of our State Associations mail out to their members a periodic bulletin or "news letter." You will

note some excellent publications in the exhibit. The Illinois Land Title Association, in cooperation with Illinois Wesleyan University, offers a short course of training for employees of title companies.

A few State Associations use the ALTA "decal" on their literature — a good suggestion for all State Associations to follow.

In conclusion, thirty-three states and the District of Columbia have State Associations affiliated with our National Association. Of the states West of the Mississippi, Nevada is the only exception. In addition to the Eastern and Southeastern states noted above, no State Association exists in any of our "so-called" New England states, except the State of Connecticut.

Your Chairman wishes to thank all the members of our Committee who have assisted in making this somewhat negative report possible.

"FNMA" and the Title Insurance Industry

J. STANLEY BAUGHMAN, President, Federal National Mortgage Association, Washington, D.C.

It is indeed a pleasure to be here in San Francisco and to address this assemblage. I am sure I could not have been called upon to appear before any group whose activities are of more fundamental importance to the effective functioning of the organization I represent than the American Land Title Association. As abstracters and title insurers, you contribute very basically to the soundness, and consequently to the marketability, of real estate mortgages. A major reason for my organization's existence is to help assure the continuous availability of a general secondary market for the purchase and sale of the Federally-underwritten sector of home financing, the well known FHA and G.I. mortgages.

The organization I represent is the Federal National Mortgage Association, a Federally chartered and, in part, a Federally-owned corporation known informally as FNMA or "Fannie Mae." FNMA is familiar to many of you through your close connection with mortgage lending and related industries.

As many of you know, FNMA in February of this year rounded out twenty-five years of assistance in the financing of American homes. I would like to take this opportunity to express my appreciation for the American Land Title Association's participation in Industry's Salute to FNMA in observance of this milestone.

During its quarter century of service, FNMA contributed nationally to expanded home ownership and to improved homes and environment and has given important financing support to home building and to the national economy. Its volume of business has increased over the years and its type of financial services have become more numerous. The Association is the largest residential mortgage operation of its type in existence today.

We in FNMA are strong champions of the principles of title insurance. Our endeavors to maintain and improve sound business practices, which have been an important basis of our growth, have included an ever increasing emphasis on title insurance as the essential form of title evidence. Today, our mortgage purchasing is almost one hundred percent on a title insurance basis.

Our insistence on title insurance does not in any way detract from the importance of the abstracter's role. Without abstracting there could be no title insurance, as we understand it. After abstracting has been skillfully

and thoroughly accomplished, however, title insurance coverage is immensely important, especially with respect to the areas of risk which are independent of the public records and therefore outside the scope of the abstracting function. These extra values of title insurance are so well known to you in the title industry that they need no recital. They are, nonetheless, fully appreciated by "Fannie Mae."

I should like to mention, however, a specific instance in which FNMA found the American Land Title Association particularly helpful. I refer to the situation on the Island of Guam which was recently ravaged by two very destructive typhoons. The Federal Government recognized the need to aid in financing the construction of new housing in the territory but, because of the unfortunate condition of the Guam land records and land law, no title insurance was available. At this point, your executive vice president, Joseph H. Smith, and a number of leading title companies set to work on the problem and together they were successful in organizing the Title Guaranty of Guam, Inc., and thus made it possible for FNMA to provide financing for much needed housing in that area. I commend them for this and their other accomplishments which typify the resourcefulness and competence of the ALTA and its members

But I am not here today to extol the virtues of title insurance, or to tell you how to set up and maintain a title plant or how to run a chain of title. I leave that to those who are far more knowledgeable than I. It will be my purpose, rather, to introduce you to our organization, the activities of which, as I have said, are clearly related to the operations of the title industry. A little family history may be helpful, however, in reconstructing the atmosphere in which this organization was created.

The Government's first really significant participation in housing was the establishment in 1918 of the U.S. Housing Corporation to finance homes and to provide housing accommodations for civilian employees connected with World War I activities. This corporation was liquidated in 1945. It was followed in 1932 by the Reconstruction Finance Corporation which later furnished the capitalization and supervision for the home mortgage activities of The RFC Mortgage Company and the Federal National Mortgage Association. The same year saw the establishment of the Federal Home Loan Bank System, the forerunner of the Home Owners' Loan Corporation (liquidated in 1950), the present day Federal savings and loan industry and the Federal Savings and Loan Insurance Corporation. Appropriations were provided by the National Industrial Recovery Act (NRA) in 1933 to finance slum clearance, low cost housing and subsistence homesteads.

The first major long range impact of the Government on housing, however, occurred in 1934 with the enactment of the National Housing Act. This law had as its objective that of promoting the development of an adequate secondary market for residential housing mortgages by establishing a program of Federal mortgage insurance and authorizing the creation of privately owned and financed national mortgage associations.

The national mortgage associations authorized to be established by the National Housing Act were designed to assist indirectly in satisfying the need for home construction credits by providing a market for conventional and Federally insured mortgages. Despite the liberal terms under which these private national associations could be established, including their virtual tax free privilege, none was ever chartered under the legislation. The statutory authority to establish private national mortgage associations was, in effect repealed in 1948.

The story of the development of "Fannie Mae" is interwoven in the Country's economic history from the depression to the present. Its creation in 1938 was prompted by the needs of the depression and preceded by experiments with similar devices which either did not take hold or were for limited objectives and application. But

the lessons of these experiments served to guide the planning for the new corporation that was to become a stabilizing force in the market for FHA and VA mortgages and was, importantly, to encourage the origination by private financial interests of large volumes of these mortgages.

FNMA was initially chartered as a subsidiary of the Reconstruction Finance Corporation to help provide a national secondary market for FHA-insured mortgages and in 1948 its activities were expanded to perform a similar function for G.I. mortgages. Beginning in 1951 and continuing through most of 1954, a major portion of FNMA's funds were committed and utilized to provide financing for defense, disaster and military housing. Other types of mortgages supported were those covering cooperative housing, war emergency and postwar rental housing; FNMA's aids to housing, also included the making of direct loans and construction loan advances and the issuance of advance commitments providing for the purchase of mortgages at par purchase prices.

We call the activities conducted between 1938 and 1954 the "old FNMA" to distinguish them from those authorized under the FNMA Charter Act of 1954. During the first few years of its operation, that is, before mid-1948, FNMA functioned as a true secondary mortgage market; its subsequent purchases of mortgages at support prices on both a commitment and over-the-counter basis converted the activities, according to some critics, from a secondary to a primary mortgage market facility.

In 1954, FNMA's operations were changed substantially. For many years various banking and housing trade groups had recognized the desirability and need for a privately financed and privately owned and managed organization to provide secondary market facilities for home mortgages. To achieve this objective quickly and on an adequate scale, a limited measure of Government participation and supervision was believed to be necessary. Studies and recommendations of the industry groups and of the President's Advisory Committee on Government Housing Policies and Programs, made in the fall of 1953, were considered by the Congress in connection with the approval on August 2, 1954 of the present Federal National Mortgage Association Charter Act.

The new facility was assigned the task of performing the three major functions of (1) managing and liquidating the portfolio of the "old FNMA" for the account of the Secretary of the Treasury—the Management and Liquidating Functions, (2) providing means whereby Federally supplied funds can be utilized to provide special financing assistance for selected types or categories of housing or of helping to maintain a high level national economy—the Special Assistance Functions, and (3) functioning as a secondary market facility by providing a degree of liquidity for home mortgage investments thereby improving the distribution of investment capital available for home mortgage financing—the Secondary Market Operations. Each of these functions has its separate mortage portfolio, financing and accountability. FNMA's activities under its 1954 corporate charter were begun on November 1, 1954.

FNMA's Overall Role in Housing

Overall, FNMA's statistics are impressive. By way of illustration FNMA has

Contracted to purchase over 1,325,000 mortgages totaling some $14 billion 700 million;

Purchased more than 1,197,000 mortgages with unpaid principal balances of almost $12 billion 430 million. Each of these mortgages involved title examination prior to their purchase by the corporation;

Supplied financing through its mortgage purchases for more than 1,300,000 family residences or dwelling units;

Sold and exchanged more than 519,000 mortgages totaling about $4 billion 610 million;

Liquidated other than by sales 199,000 mortgages aggregating some $2 billion 960 million. The current portfolio totals approximately $4 billion 860 million;

Paid all operating expenses out of earnings and had a net income over and above expenses of more than $530,000,000.

Significant as the Association's activities and its direct investment in the housing economy may be, they represent only a small portion of the total FHA and VA financing that has been stimulated by the existence of FNMA's facilities and their provision of a "backstop" for the housing industry.

Management and Liquidating Functions

These functions deal with the disposition of the remaining portion of FNMA's $5 billion 135 million portfolio that was acquired under contracts made between February 1938 and November 1954, and those mortgages that were acquired subsequently from other housing agencies. We are required by law to manage and liquidate this portfolio on behalf of the Secretary of the Treasury in an orderly manner, with a minimum of adverse effect on the home mortgage market and minimum loss to the Federal Government. Liquidation is proceeding at a good rate, the portfolio having been reduced by about 77 percent to approximately $1 billion 200 million.

Special Assistance Functions

The corporation's Special Assistance Functions are conducted exclusively for the account of the Federal Government, with Treasury money. Upon specific authorization by the President of the United States, or by the Congress, this activity provides "special assistance" for financing selected types of home mortgages that qualify under special programs. Provision is also made for "special assistance" through the purchase of home mortgages generally as a means of retarding or stopping a decline in mortgage lending and home building activities which threatens materially the stability of a high level national economy.

Some of FNMA's special assistance programs are under the direction of the President of the United States and interest rate mortgages, (4) housing for victims of major disasters, (5) housing in Guam, (6) experimental housing, and (7) housing on restricted Indian Lands.

Two programs under Congressional direction are currently active. These relate to (1) FHA section 213 cooperative housing, and (2) FHA section 809 housing (sales type housing for civilian employees connected with a research or development installation involving the military, the National Aeronautics and Space Administration (NASA) and the Atomic Energy Commission (AEC) and section 810 (rental housing for military and essential civilian employees in defense impacted areas and in connection with any NASA or AEC research or development installation.)

In 1962, FNMA amended its purchasing procedure to encourage the holders of its special assistance commitments to sell their mortgages to private investors instead of the Association. Under the revised procedure, the seller of a mortgage on multifamily housing or a project covering 5 or more units can receive a refund of three-fourths of the 1 percent commitment fee paid to FNMA provided others were established by the Congress. The two types of authorization currently total about $3 billion 575 million. Our purchases under these programs have totaled some $2 billion 300 million, and contracts to purchase approximately $175 million of additional mortgages are outstanding. The current portfolio is approximately $1 billion 565 million. Special assistance programs which have been established to assist specific types or categories of housing are terminated when such needs have been met or when the financing provided therefore is no longer necessary.

At the present time, there are seven active housing programs under the direction of the President of the United States. These programs relate to (1) urban renewal and displaced housing and to home improvement loans in urban renewal areas, (2) housing for elderly persons, (3) housing for low and moderate income groups financed with below-market

it (1) requests cancellation of the contract within the commitment period, which is usually twenty-four months, (2) agrees to immediate cancellation of the commitment, and (3) has arranged satisfactory private financing. Immediately prior to adoption of this procedure there was no provision for refunding any part of the commitment fee in event of cancellation.

Since the inauguration of the revised commitment procedure, 141 contracts involving a reduction of about $331 million of commitment funds have been cancelled and approximately $2.5 million commitment fees have been refunded. By this action, the Federal Government was relieved of the necessity for purchasing the mortgages represented by the cancellations thus making those amounts available for other housing programs or for other Government purposes. At the same time, private investors were able to add such amounts to their holdings of long-term Government-backed housing mortgages, thereby improving their investment position and also increasing their stake in the housing economy; and last, but not least, sellers received a higher price for the mortgages because of the savings in fees they would have had to pay had they sold the mortgages to the Association.

Secondary Market Operations

The Secondary Market Operations represent the private sector of FNMA's activities. They are a part—a small segment—of the national secondary mortgage market. Financed to the maximum extent with private funds, these activities are carried out in much the same way as a private organization which conducts a similar type business.

The flexibility of the facility, its ability to adjust readily to changing conditions, its effectiveness in meeting the needs of the housing industry and its role as a stabilizing influence on the mortgage market are widely and generally recognized. To cite a few examples of these services:

1. During the last eight and three-quarter years FNMA has continuously been in the market for FHA and VA mortgages;
2. When the market is "tight" FNMA's purchasing activities expand, thereby making a greater volume of mortgage funds available in capital shortage areas. Thus, in 1957 and 1960, both tight money years, FNMA's secondary market purchases were $1,021 million and $980 million, respectively;
3. When the market eases, and the need for the liquidity furnished by FNMA decreases, the Association sells mortgages to private investors, using the proceeds to buy more mortgages or to reduce borrowings. Illustrative are its $466 million of sales in 1958, $522 million in 1961 and an expected total of about $775 million in 1963;
4. FNMA's purchase prices are generally in the upper range of the market, thus providing stability to the price structure for FHA and VA mortgages;
5. Sales prices are sufficiently high to avoid undercutting the market for FHA and VA mortgages and help to strengthen the price structure for such mortgages;
6. In its financing program, FNMA is able to bring into the mortgage market a volume of capital funds (including pension funds) that would otherwise be channeled into other forms of investment;
7. FNMA issues a standby type of commitment to organizations that require commitment arrangements in their operations; and makes short-term bank-type loans on the security of FHA or VA mortgages to lending institutions needing liquidity in their business operations; and
8. A means is provided whereby sellers can raise cash on their mortgages and at the same time retain control over them for a period of time; if desired, they may repurchase the mortgages

from the Association at the prices paid for them by FHMA.

Financing

The Association finances its Secondary Market Operations principally by the sale to private investors of debentures and short-term discount notes in an amount not exceeding ten times its capital and surplus. Additional sources of funds are provided by the proceeds from subscriptions to preferred and common stock and additions to surplus, the automatic tenfold borrowing leverage provided by such stock and surplus, fees and charges, and the proceeds from portfolio liquidation. In its borrowing operations, FNMA competes with all other borrowers in the market place and, consequently, must pay the prevailing price for funds needed to finance its mortgage purchasing activities. FNMA's financing thus can, and does, have a direct relationship upon its ability to provide secondary market assistance to the housing economy.

FNMA's experience in financing its Secondary Market Operations with private capital has been very favorable. Since its first $100 million debenture issue in February 1956, FNMA has successfully marketed $6 billion 630 million of its Secondary Market Operations debentures and $4 billion 730 million have been redeemed. Although these securities are not guaranteed by the United States, they have won investor acceptance and are recognized as a seasoned quality investment second only to United States Treasury issues. A large measure of the high regard accorded these securities by commercial banks, savings banks, insurance companies, pension funds, non-financial corporations and other investors may be attributed to FNMA's financial strength, credit standing, integrity as well as its continued conservative efficient operations.

A portion of the financing required for the Secondary Market Operations is obtained through the issuance of short-term discount notes similar to commercial paper. The notes are tailored to the individual needs of corporate, institutional, and other investors seeking short-term obligations at published rates within a maturity range of 30 to 270 days. This form of financing supplements the Association's debenture borrowing program and provides the corporation with a greater degree of operational flexibility by (1) reducing the cost of borrowing funds needed to finance the operations; (2) enabling the Association to pay off maturing notes from the proceeds of sales or other liquidation instead of being required to hold the proceeds or investing them temporarily awaiting the due dates of future debenture maturities; and (3) permitting the Association to go into the intermediate and long-term markets when rates are favorable and holding off when rates are unfavorable for such financing. Under these arrangements, short-term discount notes aggregating $2 billion 654 million have been issued by the Association and all have been redeemed.

Currntly, the capital of FNMA consists of about $159 million of preferred stock which was issued to the Secretary of the Treasury and $90 million of common stock originally issued to organizations that sold mortgages to, or borrowed from the Association. The Secretary of the Treasury is authorized to purchase an addition of $49 million of the preferred stock as required by FNMA to broaden the purchasing potential of the facility. In order to assure the continuous growth of the capital structure of FNMA and at the same time provide for an automatic increase in its borrowing potential, sellers of mortgages to the Association are required to make contributions into capital incident to subscriptions for common stock in an amount equal to not more than 2 percent nor less than 1 percent of the unpaid principal amount of the mortgages involved. The rate is currently 1 percent. Borrowers from the Association are required to make capital contributions equal to ½ of 1 percent of the amounts borrowed. The 902,774 shares of common stock which were outstanding on August 31 were held by 8, 742 different stockholders

of record. The FNMA Charter Act contemplates that in due course the preferred stock will be retired and the Secondary Market Operations will qualify to become privately owned and managed.

FNMA's purchases in its Secondary Market Operations since November 1954 have totaled approximately $4 billion 975 million; sales amounted to $2 billion 195 million; repayments and other principal credits accounted for $690 million of additional liquidation. The current portfolio is approximately $2 billion 90 million.

More than 2,600 banks, mortgage companies, and similar organizations have qualified to sell mortgages to the Association in the Secondary Market Operations and of these 1,478 have sold mortgages to FNMA during the last eight and three-quarter years. Their sales related to properties located in 47 states, the District of Columbia, Puerto Rico and the Virgin Islands. Eighty-three percent of the mortgages ($4 billion 138 million) were purchased from 940 mortgage companies; the other major selling groups were—10% ($490 million) from 344 banks and trust companies, 4% ($189 million) from 169 savings and loan associations, and 1% ($34 million) from 25 insurance companies. In addition, 2% ($124 million) were acquired from the Federal Housing Administration in exchange for FNMA-held FHA debentures.

It appears clear that there is and probably will continue to be a need for the type of secondary market assistance FNMA can and does provide for FHA and VA mortgages, particularly in times of generally tight market conditions. As in the past, FNMA will probably continue to be a major source of assistance to sellers that have no regularly established outlets for their mortgages and for areas in which there is a shortage of capital available for home financing. The facility does not compete for business, but, nevertheless is available to those whose usual financial outlets are inadequate. And it will continue to provide liquidity for those qualified FHA and VA mortgages which are of such quality as to be readily marketable in the private secondary mortgage market.

I have enjoyed giving you this overall report of FNMA's activities. We of the Association appreciate the help and particularly the understanding of our problems by your association and its members. I am sure that our future relations will be as pleasant and meaningful as they have been in the past.

Report of Constitution and By-Laws Committee

LOREN WEDDELL, Acting Chairman, Executive Vice-President, Land Title Guarantee and Trust Company, Cleveland, Ohio

Report of Constitution & By-Laws—

The following amendments to the Constitution and By-Laws have been approved by the Executive Committee and by the Board of Governors:

ARTICLE III Section 1

SECOND PARAGRAPH. "Active members shall be limited to [those] **sole proprietorships, partnerships or corporations while** directly **and primarily** engaged in **the business of** land title evidencing, who or which shall have subscribed to the principles of the code of ethics of this Association or as the same may be amended or interpreted from time to time as herein provided, agreed to be governed by its Constitution and By-Laws and, if a title insurer, not engaged in any class of insurance other than title insurance, and

whose applications for membership shall have been approved by the Board of Governors. **All applicants for active membership shall have had a continuous experience in the business of title evidencing for at least five years immediately prior to the date of application; provided, however, that such requirement may be waived by the Board of Governors if the applicant, or the principals thereof, are deemed by said Board to have acquired otherwise the equivalent of such continuous business experience."**

ARTICLE III Section 2

ADD AT END OF PARAGRAPH. **"A member of such Affiliated state title association without full voting rights therein may not, unless otherwise eligible, be elected to active membership in this Association.**

ARTICLE IV Add new section to be designated Section 5.

"Section 5. MEETINGS OF THE BOARD OF GOVERNORS. Regular meetings of the Board of Governors shall be held during each annual convention and each mid-winter conference of the Association at such time, or times, and at such place, or places, as shall be designated by the President. Special meetings of the Board of Governors may be called by the President, by a majority vote of the Executive Committee, or by not less than five governors, on not less than ten days written notice in which the time and place of the meeting and its purpose or purposes shall be set forth."

ARTICLE VII Section 4

FIRST PARAGRAPH. "OTHER COMMITTEES: The President within thirty days after election, shall fill expired terms and vacancies, if any, in the **the Liaison Committee,** [and] the Grievance Committee **and the Standard Title Insurance Forms Committee** and shall appoint all members of the Planning, Judiciary, [Co-operation,] Membership and Organization, Legislative, Public Relations, Constitution and By-Laws Committees and such other Committees as may have been authorized by the Board of Governors or by the members at any convention, each to consist of a chairman and such number of members as he shall deem advisable, unless otherwise provided."

NEW SECOND PARAGRAPH. **"The Liaison Committee shall be composed of the Immediate Past President, the Vice President, the Chairman of the Abstracters Section, the Chairman of the Title Insurance Section, the Chairman of the Standard Title Insurance Forms Committee, and four appointed members. The four appointed members shall be selected on a basis that will at all times afford the Committee broad geographical representation. The Vice President shall be Chairman of the Committee."**

NEW FOURTH PARAGRAPH. (Between Grievance Committee and Legislative Committee) **"The Standard Title Insurance Forms Committee shall be composed of a Chairman and eleven other members. No two members shall be accredited from the same state, territory or district. No appointment shall be made that will afford any corporate member, or affiliated group of corporate members, directly or through its, or their, agents, concurrent representation by more than two of its officers or employees. The members shall be divided into three classes of equal number, initially to serve one, two or three years, each succeeding class to serve for three years. The Chairman shall appoint a subcommittee on uniform language for Schedules A and B and other blank spaces in the standard title insurance forms, to be composed of not less than six committee members, one of whom shall be designated Sub-Committee Chairman. With prior approval of the Board of Governors, the Chairman may appoint other sub-committees to carry out the objec-**

tives of the Committee as in Section 17 provided, each to consist of a Chairman and such number of other committee members as he shall determine."

ARTICLE VIII Section 10

"THE **LIAISON** COMMITTEE [ON CO-OPERATION], **or a sub-committee thereof named by the Chairman,** shall work and co-operate with other national professional or trade associations and **with federal government departments and agencies,** or with committees or authorized representatives [thereof] **of such associations, departments or agencies,** [or of similar bodies,] to promote sound legislation **and regulations,** [and] to prevent unsound legislation **or regulations, or to accomplish other desirable lawful objectives** [to the end that security of land title and facility of their transfer may be attained in the highest possible degree.] **Such co-operative effort shall be undertaken only upon specific authorization by a majority of the whole number of the Board of Governors or of the Executive Committee and any undertaking or agreement on behalf of this Association, that shall evolve out of such co-operative effort, shall be subject to ratification by a comparable majority of said Board of Governors or said Executive Committee."**

ARTICLE VIII Section 17

"THE STANDARD TITLE INSURANCE FORMS COMMITTEE shall (1) review from time to time the standard title insurance forms approved at annual conventions or mid-winter conferences and recommend for use by Association members, (2) recommend for such use new standard forms or revisions of existing standard forms in a continuing effort to keep title insurance coverage responsive to the justifiable needs of insureds, and the title insurance industry and consistent with requirements of supervisory authorities and (3) confer with counsel or other representatives of insureds who utilize the services of member companies of this Association throughout broad geographical areas and with supervisory authorities of member insurers for the purpose of implementing the foregoing objectives. The sub-committee named in the fourth paragraph of Section 4 of Article VII shall study common or frequently recurring circumstances or conditions affecting insurance of titles to interests in real property and develop uniform language recommended for use in Schedules A and B or other blank spaces of the standard title insurance forms. Recommendations of any sub-committee shall be subject to approval by a majority of the whole number of the Committee. The Committee shall report at each annual convention and mid-winter conference of the Association to the Title Insurance Section or to the membership, or to both Section and Association membership, as the occasion shall require, and all reports and recommendations of the Committee shall require action by majority vote at the convention or conference at which they shall be submitted in order to qualify as standard forms or procedures. All reports of the Committee shall be advisory in nature and no member shall be required to follow their recommendations nor to use recommended standard forms nor to follow recommended procedures. Neither the Committee nor any sub-committee shall render formal written opinions to members of the Association, to policy-holders, or prospective purchasers of title insurance." Section 17 shall be renumbered Section 18. Section 18 shall be renumbered Section 19.

These proposed amendments will be published in a future issue of Title News, which publication shall constitute official notice to the membership, as provided in Section 1 Article XI of the Constitution and By-Laws.

REPORT OF EXECUTIVE VICE-PRESIDENT

JOSEPH H. SMITH, Washington, D.C.

Aside from the genuine business benefits we derive from meetings of this kind, it is another pleasure we all share when we come to a National ALTA Convention. There is a hidden value and one which was expressed so completely in something I read the other day. Here is what it said:

"Whatever else is lost with the years, whatever else changes, our conventions remain a time of happy recollections and time for refreshing our friendships."

Following this approach for a moment, I hope you will excuse my bringing to your attention that one of our very talented members who has on numerous occasions delighted us with his "Treasurer's Report," and has in his own state association been the high point of every convention program will retire early next year. I refer, of course, to Mr. Harvey Humphrey of the Title Insurance and Trust Company who has, on so many occasions, filled our hearts with laughter and who is recognized as the best raconteur of amusing stories in our industry. I take the pleasure of acknowledging to Harvey not only our thanks but also our sincere best wishes and to add the hope that perhaps we shall be able to call upon him in the future to provide the light side at coming ALTA meetings.

Before reporting to you on activities of your Association in Washington, I would like to have a showing of hands as to how many here approve of the three day meeting we are now participating in?

Most of you signified that this type of meeting is to your liking.

How many of you prefer a four day meeting?

It appears from this that considerably more of you desire the streamlined three day sessions in preference to a four day gathering.

Since our last convention, your Association has affiliated with a new group called the Conference of Building and Allied Organizations. A session was held in Washington in May and numerous representatives of various groups agreed that an informal organization to serve as a medium of intercommunication between the several associations should be developed.

At a later meeting, the purposes and general rules of this organization were agreed upon and they read as follows:

"To foster a more complete and sympathetic understanding of the total Building Industry on the part of its constituent elements; to encourage a free flow of information between the sectors thereof; to provide forums in which topics of general interest to all elements may be freely discussed; to provide a common and neutral meeting ground where all may contribute knowledge and may debate freely; (all to the extent permitted by law)."

Among the general rules that you will find of interest are these:

"There shall be two or three meetings every year.

"It shall be a non-profit voluntary convention of the Building Industry groups.

"No resolutions shall be passed.

"No positions taken.

"All sessions shall be off the record and no quotations shall be permitted.

"All costs of conducting the meetings shall be prorated among the organizations participating."

The Executive Committee was advised of this shortly after our Mid-

Winter Conference. They approved of our becoming a member of this group and the Board of Governors has ratified such approval of this meeting.

It is believed that those participating in this conference will afford officers of the American Land Title Association an opportunity to mix with leaders of other related groups, and, more particularly, will identify our National Organization with the entire Building Industry.

Among members of this group are: American Bankers Association, Mortgage Bankers Association of America, National Association of Real Estate Boards, National Association of Mutual Savings Banks, U.S. Savings and Loan League, and various others.

The Association Headquarters was alerted to a proposed publicity release by Electro-Title Company, a division of Lawstaff, Inc. of Beverly Hills, California, which advocated a revolutionary electronic title search device. Members of the Executive Committee exchanged views on possible counteraction against the implication of this release; and after contacts were made with California members to secure dependable information about the concern, a letter from National Headquarters was sent to all members alerting them to what had been learned and advising that an open mind on the subject was desirable. Regular inquiries have been made about the company and thus far nothing substantial has been learned to add to our earlier acquired knowledge. Since information retrieval is vital to the title business, it is necessary all members keep alert to all possibilities of the electronic field.

Participation in Related Trade Association Meetings

In May of this year the American Land Title Association was privileged to present a panel to the Annual Seminar of the American Right of Way Association in Atlantic City, New Jersey. Representatives of member companies appeared on the panel and did an outstanding job. They were each able to advance the idea that title companies throughout the nation can be, and are, of great service in all Right of Way undertakings.

Those appearing were: Mr. Morton McDonald, DeLand, Florida; Mr. James G. Schmidt, Philadelphia, Pennsylvania; Mr. Robert Kratovil, Chicago, Illinois; and it was my privilege to introduce these gentlemen to the assembled members of the Right of Way Association. It was well worthwhile.

A number of contacts were made with the officers of related groups with the hope that one of our officers could appear on their convention programs. Although we were unable to secure time this year, we are encouraged by a possibility of being able to have a representative of American Land Title Association at one of their future meetings. It is our plan to continue contacts with other associations with the suggestion that our officers are willing to respond when requested.

Relations With Federal Agencies

Our relations with a variety of Federal Agencies are cordial and friendly. Regular contacts and continuous discussion are carried on with officers of Federal Home Administration, Veterans Administration, Farmers Home Administration, Department of Justice, Bureau of Land Management, and the Federal National Mortgage Association, among others.

It is a pleasure to report that among the various problems described by our National President in his report and referred to by the Chairman of the Title Insurance Section in his report, member companies are making genuine efforts to solve some of the differences that exist between title companies and Federal Agencies. You can be sure the agencies are aware of this and appreciate it.

Recently while calling on the new Chief of the Land Acquisition Section, Mr. Harold S. Harrison in the U.S. Department of Justice, I was asked if I could do anything to accelerate cooperation by member companies in supplying necessary title certificates which, in the eyes of the Justice Department were unreasonably delayed. It did seem that a forward step would be taken toward

ameliorating some of the complaints that certain Department of Justice officials have against some of our members if I agreed to be of service in any way he felt might be helpful. Subsequent dealings with the Department of Justice may impose upon me the obligation to "trouble shoot" for the Justice Department, but if some of our members are indeed unaware there is some dissatisfaction with Certain of our services, I cannot help but feel that a reminder given vocally and confidentially could be beneficial.

It is also encouraging to report a successful negotion with the Farmers Home Administration which began back in September of 1962. The matter is best reported by quoting from a letter dated June 6, 1963, from the Administrator, Mr. Howard Bertsch.

" . . . We are revising paragraph II B of that instruction to read as follows:

"Examination of Title. At the proper time, the county supervisor will notify the borrower, and seller if land is being acquired, that they should employ the designated attorney or title insurance company to examine the title and perform the other legal services in connection with title clearance and loan closing, and that he should furnish to the designated attorney or title insurance company any needed abstracts of title or other title evidence for use to the extent possible to reduce the cost to the borrower.

"This change no longer requires the designated attorney to make his examination from public records of abstracts of title and permits him to use existing title insurance policies or other title evidence at his discretion as a basis for the title opinion he furnishes in connection with the property.

"We appreciate your interest in the Farmers Home Administration and assure you that we are continually appraising our methods of operation in an effort to improve the effectiveness of the lending programs of this agency."

We continue our negotiations with the Federal Housing Administration, and ALTA members are exerting every effort to solve some of the problems which FHA faces when it reconveys properties it has acquired by foreclosure. All of our members should be alert to the difficulties FHA faces in these situations and keep continually in touch with local directors to assure them of our sincere efforts to be of assistance where possible.

Federal Liens Legislation

As stated in a previous report, a group in Washington, D.C., composed of representatives of banking, building and mortgage organizations, have been attempting, with the help of the American Bar Association, to correct some of the inequities in the present Federal liens picture. Meetings have been held with the Treasury Department and certain Congressional Committees and legislation has been proposed which could have some curing effects. We are watching this carefully and have participated in some of these meetings, but there is little likelihood that adequate legislation on this will be passed by the 88th Congress. We are encouraged, however, by the progress being made.

The work and efforts of our National President, Bill Deatly, and other elected officers has been truly inspirational these past months. The various committee chairmen have rendered invaluable service to our members and all officers can feel justly proud of what has been accomplished for the "good of the order." The AMERICAN LAND TITLE ASSOCIATION is steadily advancing in achievement and stature and by doing so the pride and enthusiasm of our members continues to increase. Many have reported to me personally how pleased they are with what has been accomplished through the voluntary contributions of our elected and appointed officers.

It is a privilege and an honor to be working with such an outstanding group of dedicated men and women.

ELECTION OF OFFICERS

The Immediate Past President, Arthur L. Reppert, serving as Chairman of the Nominating Committee for the ALTA, and also as Chairman of the Nominating Committee of the Abstracters Section, and George C. Rawlings, Chairman of the Nominating Committee for the Title Insurance Section placed the following names in nomination for the positions indicated. All were unanimously elected and installed in office Wednesday, October 16, 1963.

President
Clem Silvers, Owner, F. S. Allen Abstract Company, El Dorado, Kansas

Vice President
Joseph S. Knapp, Jr., President, The Title Guarantee Company, Baltimore, Maryland

Chairman of the Finance Committee
John D. Binkley, President, Chicago Title Insurance Company, Chicago, Illinois

Treasurer
Laurence J. Ptak, Vice President, Lawyers Title Insurance Corporation, Cleveland, Ohio

BOARD OF GOVERNORS

(Term Expiring 1966)

John P. Turner
Executive Vice President, Kansas City Title Insurance Company, Kansas City, Missouri

E. Gordon Smith
Senior Vice President, Lawyers Title Insurance Corporation, Dallas, Texas

Hale Warn
Executive Vice President, Title Insurance and Trust Company, Los Angeles, California

Horace B. Clarke
Executive Vice President, Abstract Company of St. Joseph County, Inc., South Bend, Indiana

Thomas McDonald
Vice President and Manager, The Abstract Corporation, Sanford, Florida

TITLE INSURANCE SECTION

Chairman
George B. Garber, Senior Vice President, Title Insurance and Trust Company, Los Angeles, California

Vice Chairman
John Ely Weatherford, Vice President, American Title Insurance Company, Miami, Florida

Secretary
Chester C. McCullough, Senior Vice President, Chicago Title Insurance Company, Chicago, Illinois

EXECUTIVE COMMITTEE

Rhes H. Cornelius
President, Title and Trust Company, Phoenix, Arizona

Joseph A. Watson
Senior Vice President, The Title Guarantee Company, Baltimore, Maryland

Stewart Morris
Executive Vice President, Stewart Title Guaranty Company, Houston, Texas

Robert H. Morton
Vice President, Western Title Insurance Company, San Francisco, California

ABSTRACTERS SECTION

Chairman
Don B. Nichols, Owner, Montgomery County Abstract Company, Hillsboro, Illinois

Vice Chairman
Gerald W. Cunningham, President, Black Hawk County Abstract Company, Waterloo, Iowa

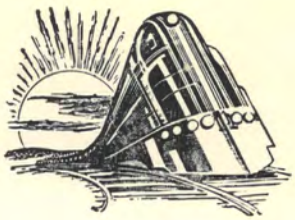
Secretary
B. G. Bowman, Secretary & Treasurer, Rogers County Abstract Company, Claremore, Oklahoma

EXECUTIVE COMMITTEE

Louis C. Hickman
President, Hickman Abstract Company, Inc., Logan, Utah

Hugh Robinson
Secretary, Carroll County Abstract Company, Carrollton, Missouri

Meeting Timetable



MARCH 11, 12, 13

Mid-Winter Conference
American Land Title Association
Hotel Riviera
Las Vegas, Nevada

APRIL 11-12

Wisconsin Title Assn.
(Spring Meeting)
Holiday Inn
Wausau, Wisconsin

MAY 3, 4, 5

Iowa Land Title Association
Des Moines, Iowa

JUNE 12-13

Montana Land Title Association
Yogo Inn
Lewistown, Montana

JUNE 17-18-19-20

Oregon Land Title Assn.
Eugene, Oregon

JUNE 25-26-27

Land Title Assn. of Colorado
Stanley Hotel
Estes Park, Colorado

JULY 15-16-17-18-19

New York State Title Assn.
White Face Inn
Lake Placid, New York

SEPTEMBER 20-24

Annual Convention
American Land Title Association
Bellevue Stratford Hotel
Philadelphia, Pennsylvania

OCTOBER 22-23-24

Wisconsin Title Assn.
Hilton Inn
Milwaukee, Wisconsin

FUTURE ALTA CONVENTIONS

1964—Philadelphia
1965—Chicago
1966—Miami Beach
1967—Denver
1968—Portland, Oregon

FUTURE MID-WINTER CONFERENCES

1964—Las Vegas
1965—Washington, D.C.
1966—Chandler, Arizona
1967—Washington, D.C.


AMERICAN LAND TITLE ASSOCIATION
SINCE 1907