TITLE NEWS

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A MESSAGE

from

THE PRESIDENT

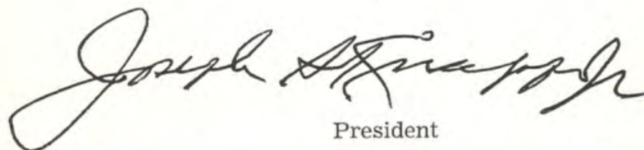
Dear Friends in the Title Profession:

Beginning on page 2 of this issue of **Title News,** there is a transcript of the panel on the "Uniform Commercial Code," as presented to the delegates in attendance at the Annual Convention in Philadelphia by four distinguished titlemen. Final copy for this outstanding feature was received too late to be included with other Convention material in the January issue.

Your careful consideration of the revised listing Rules and Regulations for the ALTA Membership Directory, beginning on page 18, is suggested. Please take special notice of Sections 14 and 15. In order to expedite printing of the Directory and to effect substantial publication savings, members are expected to submit listing information which is correct in every detail **the first time.** In the future, there will be no opportunity for revision of listing copy, which must be furnished the National Office on or before October 1.

Although the 1965 Mid-Winter Conference is still fresh in our minds, (and I again express my sincere appreciation for all who helped to make the meetings successful) it is not too early to begin making plans for attending the Annual Convention at the Chicago-Sheraton Hotel, October 3-6. Your officers and staff are already busy planning a program which will make your attendance a "must".

Sincerely,



President

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"Uniform Commercial Code"

A PANEL DISCUSSION

John P. Turner, Executive Vice President and Counsel,
Kansas City Title Insurance Company, Kansas City, Missouri
Robert Kratovil, General Counsel
Chicago Title Insurance Company, Chicago, Illinois
James G. Schmidt, Executive Vice President
Commonwealth Land Title Insurance Company, Philadelphia, Penna.
William Wolfman, Chief Counsel
The Title Guarantee Company, New York, New York

Presented to the 58th Annual Convention September 22, 1964.

STATEMENT BY MR. TURNER:

The insuring clauses of the ALTA owner's and mortgagee's policies refer to estates, encumbrances, etc., as they affect certain land, and land, in each policy, is defined to include improvements affixed thereto which by law constitute real property. This, of course, is consistent with the understanding which most of us have about title insurance, that is, we are concerned about the ownership of real estate, rather than the ownership of personal property and chattels, and I am sure that the charter powers of the companies of many of us might prohibit insurance of the ownership of personal property.

The definition of land in the policy forms normally frees us from the necessity of making a determination as to whether any particular item, once a chattel, has become so affixed to the land so as to become real property. If it has, as a matter of law in the state where the land is situated, become so affixed, then it is within the coverage of the policy, but it is excluded if it has not so become affixed. The point is, and this will be emphasized by one of our panel members, that the searching procedures and techniques which we use in determining whether we can insure the ownership of the land in question are adequate as to all the elements which constitute the land, including the former chattels which have become affixed, and if they have not become so affixed then we have no responsibility for the ownership of the same in any event. As has been pointed out in discussion in the title insurance section of this Association, the title insurer

may have an obligation to defend against an adverse claim to a particular item which the insured claims is affixed to the land, but if, as a matter of law, it is not real property, then the insurer has no responsibility for loss sustained by reason of the successful assertion of the adverse claim.

The foregoing also applies to the other side of the coin, whether something once a part of the land has been severed so as to constitute personal property. We are particularly concerned here with crops, normally a part of the land until actually severed from the soil.

Adoption of the Uniform Commercial Code does not change the rules exisiting in the state as to when a chattel has become so affixed as to constitute real property, and even if the rules were so changed, we as title insurers would not be affected so long as we maintain in our policies the present definition of land. But the Code does establish that, even though a chattel has become so affixed to the land as to constitute real property and thus be within the scope of our policy, certain enforceable interests may be created in the chattel before it has become affixed which will survive the affixation. The Code also permits interests to be created in crops while they still are attached to the soil. The Code provides the circumstances under which record notice of these interests must be given and the manner in which such notice is accomplished. Mr. Kratovil will inquire into the problems presented by the creation of these interests and the searching techniques which are involved.

Mr. Wolfman will discuss the effect of the Code on a real estate mortgage. Some of the changes which the Code occasions may not be of primary concern to us as title insurers, but they are of great concern to our customer, the mortgagee, and certainly we should be aware of them.

Pennsylvania was the first state to adopt the Uniform Commercial Code, and the title insurers in that state have had the longest experience with it. Mr. Schmidt, I am sure, will comment on the ideas expressed by Mr. Kratovil and Mr. Wolfman from the standpoint of that experience, in our discussion period, but to begin with, Jim will point out some of the basic concepts of the Code to be sure that we are all familiar with the terms which the speakers will use.

STATEMENT BY MR. SCHMIDT:

If the 1964 American Land Title convention had been held one week earlier this year, and our panel discussion had been on a program last Tuesday, I would have been able to announce that during the period of more than ten years since July 1, 1954, when the Uniform Commercial Code became effective in Pennsylvania, our company had experienced no difficulty, suffered no loss and had received no claim involving financing statements. Today I cannot make this statement because our first claim was made during the past week.

This claim involves a financing statement covering sixty bowling lane alleys and the appurtenances thereto, which financing statement was filed prior to the recording of the insured mortgage. This financing statement was indexed against the name of the tenant of the property, a name not furnished to the title company and not searched at the time of our examination of the title. It is our contention that under Pennsylvania law, bowling alleys constitute personal property and do not come within the description of "land" set forth in the Conditions and Stipulations of the policy. Furthermore, the indexing in the tenant's name did not constitute notice to a subsequent mortgagee of the real property.

This case is just one of the typical problems arising under the Uniform Commercial Code. It is the purpose of this panel to discuss these practical problems and to present to you our considered conclusions. For this reason, we should review those portions of the Code which would be of interest to the title profession.

Under Article 9 of the Code there is an attempt to provide a simple and unified procedure for the regulations of security interests in personal property. In the past, such security in-

terests had been protected against the claims of third parties by the filing of a conditional sale or a chattel mortgage, but under the Code the security interests are now protected by the filing of a financing statement, which is a short version of the original security agreement.

The Code is quite liberal as to the wording and formalities of the financing statement. There is no requirement for acknowledgments, witnesses or supplemental affidavits. A great deal of freedom is allowed in the identification of the article which constitutes the collateral, although a general word like "appliances" should not be used to cover refrigerators, ranges and the like. Freedom is also allowed in the description of the real estate where the article might be installed, which is sufficient if it reasonably identifies said real property. A house number would be sufficient if it could be tied in with the full description. Personally, I think that for full protection there should be a complete description of both the real estate and the collateral.

The place of filing the financing statement depends on the nature of the goods covered by the agreement. When the collateral is consumer goods, the filing is in the office of the Prothonotary (Clerk of the Court) in the county of the debtor's residence. When the collateral is crops, filing is in the office of the Prothonotary in the county where the land on which the crops are growing or to be grown, is located. When the collateral is goods which, at the time the security interest attaches, are or are to become fixtures, then filing is in the office where a mortgage on real estate concerned would be filed or recorded. In all other cases, filing is in the office of the Secretary of the Commonwealth. (Section 9-401)

Today we are not going to concern ourselves with the problems of crops, a term which needs no explanation other than to note that a search for financing statements relating to crops must be made in the office of the Prothonotary or Clerk of the Court. Our primary problem is the effect of a filing relating to some article which otherwise would be considered by a purchaser or mortgagee as part of the realty, and therefore covered by our title insurance policy. Such articles are covered in the Code by the word "fixtures", a word which leads to so many problems that a special committee has been appointed by the American Bar Association to clarify the law relating thereto, and similar committees have been appointed by some of our State Bar Associations.

In Pennsylvania the law appears to be as follows:

Chattels which are so annexed to the property that they cannot be removed without material injury to the real estate or to themselves, are realty. Chattels which are attached, but can be removed without injury to the chattels or realty, are chattels or realty, according to the intention of the parties when they are annexed. But the intentions of the seller and the buyer of the chattel that it remain personal property might have no effect on a subsequent purchaser or mortgagee of the real property who has no notice of such intention, and would normally consider that the chattel has now become a part of the realty.

Also in Pennsylvania, there is a further complication in the application of what we call the integrated Industrial Plant Doctrine, which holds that in an industrial establishment a chattel placed therein for permanent use and necessary to the operation of the Plant, becomes part of the real estate, although not physically attached thereto. Under this doctrine, jigs, dies, tools, electric motors, etc., in an industrial plant have been considered part of the realty. This doctrine has not been extended to hotels, theatres, restaurants, etc.

We should now consider some of the problems which have confronted title companies in Pennsylvania since the effective date of the Uniform Commercial Code on July 1, 1954. No

problems have arisen where the collateral was lumber, bricks, tile, cement, glass, metal work and the like, because the Code excludes such articles from the effect of a security interest. Furthermore, no problems arise where the collateral is manifestly personal property such as an automobile, because there is no responsibility on the part of a title company to search for such filings and give notice to the insured under a title policy. The problems all arise when we are dealing with that troublesome chattel — the fixture. The following answers are based on what I consider to be the law in Pennsylvania:

1. Where the financing statement covering a fixture is filed prior to the recording of a deed or mortgage, and our company is insuring such purchaser or mortgagee, the perfected financing statement would have priority to the rights of the insured, and it would be immaterial whether the financing statement was filed before or after the chattel was attached to the realty. (Section 9-313 (2) (4) (a) (b))

Since the passage of the Code, it has been the practice of our company, when we find such financing statement filed, to make the following certification on our title report: Title to personalty not insured (financing statement of record — here give information as to the parties, amount and chattel).

This objection is not removed unless a termination statement is filed. (Section 9-404)

2. Where the financing statement is filed after the recording of a mortgage, the respective rights of the mortgagee of the realty and the party who files the financing statement depend upon whether the filing is before or after the articles brought into the real estate.

If filed before it is brought into the realty, such filing has priority to the prior real estate mortgagee and the secured party could remove the collateral from the real estate, but he must reimburse any encumbrancer or owner of the real estate who is not the debtor for the cost of repair of any physical injury to the property. (Section 9 - 313 (2) (5))

If filed after the article is brought into the real estate, such filing would not have priority to an owner who is not the debtor, or to a prior real estate mortgagee unless such party consents to the security interest and disclaims an interest in the goods as fixtures. (Section 9 - 313 (3))

3. The rules stated in 1 and 2 above apply to articles brought into the realty under the integrated Industrial Plant Doctrine which has not been abolished by the adoption of the Code. In this case, these rules are somewhat broader in their scope because they apply to articles which would definitely be considered as personal property if not used in an industrial plant. For example, if a financing statement were filed for a scale or a crane brought into an industrial plant before the recording of a real estate mortgage, the financing statement would have priority. On the other hand, if a real estate mortgage was recorded first, and such scale or crane were brought into the property before the perfection of a financing statement, the real estate mortgage would be the prior lien.

4. How do these rules apply to advances under construction mortgages? This is answered in Section 9 - 313 (4) (c)) which provides that, as to financing statements, the advance would only be a lien on the date when it is made.

5. For notice purposes, what indexing is required? The Code only provides for indexing in the name of the debtor. (Section 9 - 403 (4)) However, the general rules of notice would apply, and to be effective as to a purchaser or mortgagee for value, indexing against the owner would be necessary. Indexing against the debtor who might be a tenant or a builder would not be sufficient notice.

6. Can a copy of the real estate mortgage be filed as a financing statement? It would seem that if it

has the requisites set forth in Section (9-402), an executed duplicate copy of the real estate mortgage could be filed.

7. How long does the lien of a financing statement continue? In the early days of the Code in Pennsylvania, this was a real problem because the provisions of the Code were uncertain. Fortunately, there is now a limitation of five years in (Section 9-403 (2).

While I have listed the above as problems, actually, the term "problems" is a misnomer. The above list really covers questions which have arisen since the passage of the Code and, we think, are answered by the provisions of the Code. As stated in the beginning of my remarks, we have had no real difficulty since the passage of the Uniform Commercial Code.

STATEMENT BY MR. KRATOVIL:

There has been so much discussion and so much written concerning the Uniform Commercial Code, one would think there is little left to say. And yet, on reflection it is evident that in all this writing and discussion there is no complete and adequate treatment of the pre-Code law. It is perfectly clear to any serious student of the subject that the Code, especially Article 9, represents only one more step forward in a long evolutionary process that began over sixty years ago.

The year 1904 is a significant year, but for a clear understanding of the events of that year, one must go back to the situation as it existed prior to that year.

As originally conceived in this country, the recording acts provided two separate and distinct filing and recording systems. In one, documents relating to real estate were filed and recorded and indexed in the grantor-grantee index. In the other, chattel mortgages were filed. These were also indexed in a name index. In recent times the installment method of selling became popular, and conditional sale contracts were developed to replace the cumbersome chattel mortgage. In most states the conditional sale contract was admitted, by amendment, into the statutory provisions for the filing of chattel mortgages.

When chattel filings were confined to articles of a strictly chattel character the old scheme of things worked well enough. Dealers in land were not interested in chattel mortgages on horses and wagons or conditional sales of furniture. But as this country clutched the ideas of installment purchasing to its bosom the picture changed abruptly. Numerous conditional sale contracts began to appear of record relating to furnaces, refrigerators, stoves, oil burners, water heaters, machinery in factories, elevators in hotels, sprinkling systems in commercial buildings, and other items that were definitely of interest to dealers in land.

The first rule that emerged with clarity was the rule that purchasers and mortgagees of land were not obliged to search the personal property records.[1] The reason commonly adduced in support of the rule is that prospective purchasers or mortgagees of land cannot be expected to search records which relate primarily to personal property.[2]

This was an absolutely revolutionary departure from all prior thinking concerning recording law. Under the old concept, if a man filed a document, in proper recordable form, in the proper recording office, it imparted constructive notice to all the world. But under this new rule, the seller of a furnace, sold on credit while it was still a chat-

1. Elliott v. Hudson, 18 Cal. App. 642, 124 Pac. 103 (1912); Trull v. Fuller, 28 Me. 545 (1848); Tibbets v. Horne, 65 N. H. 242, 23 Atl. 145 (1891); Merchants & Mech. Fed. S. & L. Assn. v. Herald, 201 N. E. 2d 237 (Ohio App. 1964); XXth Century Heating & Ventilating Co. v. Home Owners' Loan Corp., 56 Ohio. App. 188, 10 N. E. 2d 229 (1937); Peoria Stone Works v. Sinclair, 146 Ia. 56, 124 N. W. 772 (1910); Williams v. Hyde, 98 Mich. 152, 57 N. W. 98 (1893); Kelvinator v. Schader, 225 Mo. App. 479, 39 S. W. 2d 385 (1931); Phillips v. Newsome, 179 S. W. 1123 (Aex. Civ. App. 1915); Smith v. Waggoner, 50 Wis. 155, 6 N. W. 568 (1880); 1 Jones, Chattel Mortgages, (5th ed.) §134; 1 Patton, Titles (2d ed.) 147; 1 Thompson on Real Property §218; 4 American Law of Property §18.14.

2. 77 U. of Pa. L. Rev. 1022 (1929); Note, 15 Wash. L. Rev. 252 (1940); Note, 13 A.L.R. 448, 485 (1921), supplemented 73 id. 748, 773 (1931); 88 id. 1318, 1344 (1934); 111 id. 362 (1937); 141 id. 1283, 1295 (1942).

tel, would file his conditional sale contract, again while the article remained a chattel, in the proper office in the proper files, those relating to personal property, and yet if the furnace were later attached to a building, as was sure to be the case, a bona fide purchaser or mortgagee of the land was under no obligation to search the personal property records, and the bona fide purchaser or mortgagee of the land took free and clear of the duly recorded conditional sale contract. One cannot too strongly stress the importance of this rule. It is the key to full understanding of the Code. No one can understand the Code until he grasps this important point.

To make the matter even more surprising, the courts arrived at this result without hesitation and without elaborate discussion of the means by which they arrive at this result. Often the court would simply observe that it would be unreasonable to expect a purchaser or mortgagee of land to search the personal property records.

This created a predicament for credit sellers of valuable personal property articles that were destined to become fixtures. They had no truly satisfactory way of apprising purchasers and mortgagees of real estate of their rights.

Of course, there was a minority view that compelled purchasers and mortgagees of land to search the personal property records for security instruments relating to articles that were destined to be fixtures.[3] This never commanded much of a following.

To resolve this predicament in 1904 the ancestor of the Code provisions relating to fixtures filings was enacted in New York. In that year New York passed a law providing that conditional sales of articles that were attached to or were to be attached to buildings must contain a brief description of the real estate and must be filed in the land records.[4] Here is the first rational recognition of the fact that many articles sold as chattels are sold on credit, that they will become fixtures by installation in buildings, and that credit sellers of these articles are deserving of protection. These points are important: (1) Unlike the usual chattel security documents, these documents were required to contain an adequate description of the land; and (2) they found their way into the traditional real estate indexes, the grantor-grantee indexes, since the document was left with the same recorder's clerk who took in deeds.

Legislation of this same character was later enacted in Massachusetts, Pennsylvania and Oregon.[5]

In 1924, just forty years ago, and just twenty years after the New York law was amended, the Uniform Conditional Sales Act was promulgated. This law, modeled after the new York law of 1904, provided in Section 7, in part as follows:

> "If the goods are so affixed to realty at the time of a conditional sale or subsequently as to become part thereof but to be severable without material injury to the freehold, the reservation of property shall be void after the goods are so affixed as against subsequent purchasers of the realty for value and without notice of the conditional seller's title, unless the conditional sale contract, or a copy thereof, together with a statement signed by the seller briefly describing the realty and stating that the goods are or are to be affixed thereto, shall be filed before such purchase in the office where a deed of the realty would be recorded or registered to affect such realty."[6]

In giving the reasons for the inclusion of this provision, George Bogert, then Dean of the Cornell University College of Law, whose voice was most influential in the inclusion of this provision, said:

3. Sword v. Low, 122 Ill. 487, 13 N. E. 826 (1887); Boergina v. Berry, 96 Wash. 57, 164 Pac. 773 (1917); 77 U. of Pa. L. Rev. 1022 (1929); 15 Wash. L. Rev. 252, 254 (1940); Note, 13 A.L.R. 448, 484 (1921), supplemented 73 id. 748, 773 (1931); 88 id. 1318, 1344 (1934); 111 id. 362, 387 (1937); 141 id. 1283, 1295 (1942).

4. Kratovil, Fixtures and the Real Estate Mortgage, 97 Univ. of Penna. L. Rev. 180 (1948).

5. Bogert, The Evolution of Conditional Sales Law in New York, 8 Cornell L. Q. 303, 314-316 (1923).

6. Uniform Laws Annot., Vol. 2, Page 12.

"The conditional seller of the fixture should not get protection by filing the contract with ordinary conditional sale contracts and making a record similar to that made in the case of chattel mortgages. It is unreasonable to ask purchasers and mortgagees of realty to search in the personal property records regarding every article in connection with a building which might have been sold separately."[7]

It is important to assimilate the full import of this philosophy. While credit sellers of articles that will become fixtures are to be afforded an opportunity to protect themselves, as was not the situation under the prior case law, it was considered unreasonable to ask purchasers or mortgagees of land to search the personal property records. This is the philosophy deeply embedded in the Uniform Conditional Sales Act. The decisions under that act fully support this view.[8]

It is now time to turn to the Code itself. In the Uniform Commercial Code we find the requirements that security interest documents relating to articles that "are or are to become fixtures" must be filed "in the office where a mortgage in the real estate concerned would be filed or recorded."[9]

The Official Text makes this comment:

"Fortunately there is general agreement that the proper filing place for security interests in fixtures is in the office where a mortgage on the real estate concerned would be filed or recorded, and subsection (1) (b) so provides. This provision follows the Uniform Conditional Sales Act. Note that there is no requirement for an additional filing with the chattel records."[10]

In the official comment relating to Section 9-314 the following quote occurs:

"Under this Article as under the Uniform Conditional Sales Act the place of filing with respect to goods affixed or to be affixed to realty is with the real estate records and not with the chattel records."[11]

This means that under the Code, as under the Uniform Conditional Sales Act and under the common law that preceded it, purchasers and mortgagees of real estate need not concern themselves with those records that relate only to personal property, such as those that are filed under the Code with the Secretary of State.

In a recent article one of the critics of the Code observes:

"Several difficulties arise with respect to 'goods which . . . are to become fixtures.' Suppose a public utility company has on hand 1,000 wooden poles, and that a building contractor has in its warehouse one hundred hot water tanks. Assume that under the law of the adopting state both the poles and the hot water tanks will, when affixed in the customary manner, be 'fixtures'. It is hardly reasonable to suppose that a financing statement covering each item would have to be filed in every filing division where an electric utility pole or hot water tank might eventually be located. At this stage, the ordinary rules concerning goods should apply and the filing requirements for fixtures should become a relevant factor only when it is possible to determine specifically what is the 'real estate concerned' for a particular fixture. The only sensible interpretation is that the code does not contain any special filing provision applicable to goods which 'are to become fixtures' unless and until the specific real estate concerned is known, especially since any financing statement covering such goods 'must . . . contain a description of the real estate concerned.' But the foregoing conclusion does not

7. Uniform Laws Annot., Vol. 2A, Page 98.
8. In Re Brownsville Brewing Co., C.C.A. Pa., 117 F. 2d 463 (1941); Schwartz v. Collett, 24 Wash. 2d 653, 166 P. 2d 940 (1946); General Motors Acceptance Corporation v. Capital Associates, 108 N. J. Law 421, 158 A. 107 (1923); affirmed 110 N. J. Law 61, 164 A. 20; Kohler Co., Inc. v. Brasun, 249 N. Y. 224, 164 N. E. 31 (1928).
9. Uniform Comm. Code §9-401.
10. Official Text with Comments §9-401.
11. Official Text with Comments §9-314.

completely solve the difficulty. If a secrity interest attaches to the shipment of hot water tanks or utility poles, filing is to be made wherever an interest in goods would be filed; the interest would be perfected by filing in the chattel filing system. After the water tanks and poles are affixed to realty, does the security interest which attached when they were chattels remain valid and perfected on the basis of the previous filing? If the answer is yes, a searcher of the real estate record would be unable to give any opinion on fixtures to his real estate mortgage client unless he searched every Code filing office in which a proper filing might have been made. Or, can a real estate title searcher rely completely on the record in the office where a mortgage on the 'real estate concerned' would be recorded? If perfection under Section 9-313 means perfection only in the office specified in Section 9-401 (1) (b) and in the manner specified in Section 9-402 (1)—that is, in the office where a mortgage on the real estate concerned would be recorded, and by describing the real estate concerned—the real estate record searcher will be made happy. But this interpretation of the Code's provisions dealing with fixtures would not bring comfort to the financer who takes a security interest in the hot water tanks; even if he has perfected his interest in the tanks as goods, he may lose out to one with an interest in the realty created before the chattel financer's interest in the particular hot water tanks is perfected again, this time under Sections 9-401 (1) (b) and 9-402 (1). An opposite interpretation would place a tremendous burden on the real estate reccord searcher who might have to consider for instance, that the tanks as goods could be subject to a security interest created and perfected under the laws of another state which is still effective under Section 9-103. The Code is not clear on this point. The more plausible interpretation is the one favoring the real estate record searcher, even though it may cut down the utility of security interests in financing building contractors with respect to goods which may become fixtures."[12]

One would think that a careful reading of the pre-Code history would have helped this writer resolve the problem more readily in favor of the purchaser or mortgagee of land.

In addition, Section 9-313 provides, in part, as follows:

"(2) A Security interest which attaches to goods before they become fixtures takes priority as to the goods over the claims of all persons who have an interest in the real estate except as stated in subsection (4).

"(3) A security interest which attaches to goods after they become fixtures is valid against all persons subsequently acquiring interests in the real estate except as stated in subsection (4) but is invalid against any person with an interest in the real estate at the time the security interest attaches to the goods who has not in writing consented to the security interest or disclaimed an interest in the goods as fixtures.

"(4) The security interests described in subsections (2) and (3) do not take priority over

"(a) a subsequent purchaser for value of any interest in the real estate. * * *"

Under the definitions section "purchaser" includes a mortgagee.[13]

Insofar as protection of a purchaser or mortgagee is concerned, the Code then appears to incorporate completely the philosophy of the Uniform Conditional Sales Act and the case law that preceded it. In short, innocent purchasers and mortgagees of land will be protected. The Code continues the philosophy that purchasers and mortgagees of land need not search the personal property records.

One deviation from the system under

12. Coogan, Public Notice Under the Uniform Commercial Code, 47 Ia. L. Rev. 289, 327 (1962).

13. Uniform Comm. Code §1-201 (32).

the Uniform Conditional Sales Act relates to the manner of indexing these fixture security documents. Unlike the Uniform Conditional Sales Act, which called for fixture security documents to be filed and indexed in the traditional real estate records, the Code calls for the fixture documents to be indexed as follows:

> "A filing officer shall mark each statement with a consecutive file number and with the date and hour of filing and shall hold the statement for public inspection. In addition the filing officer shall index the statements according to the name of the debtor and shall note in the index the file number and the address of the debtor given in the statement."[14]

This suggests that whenever a Code document is filed, whether in the Secretary of State's Office or in the Recorder's Office, it must be indexed in a separate index where the documents can bear, as the Code requires, consecutive file numbers.

The one problem that remains is the chain-of-title problem. The problem that often recurs in the literature is that of the general contractor who buys furnaces or other articles on credit, and the financing statements are filed in the office where real estate mortgages are filed, namely, in the land records. These will be indexed in the recorder's office filings, along with the other Code documents that are filed locally, such as crop liens and liens on consumer goods, but they are indexed under the name of the debtor, as the Code requires.[15] In real property law this document would be considered a "wild" instrument.

Let us consider the language of our recording laws before all this happened. They provided, in most states, for an official grantor-grantee index. They did not provide, in so many words, that a wild deed or mortgage did not impart constructive notice. The cases said so, but the statute did not. The recording law simply said that deeds, mortgages and other real estate documents should be indexed according to the name of the parties. The courts took it from there, and evolved the notion that an orderly, chronological sequence of instruments was required.[16]

Is there any reason to suppose that the court will not arrive at the same conclusion with respect to the provisions of the Code? What possible reason would exist for requiring indexing in the name of the debtor, unless this had some significant relation to the land in question? In their holdings that purchasers of land need not search the personal property records and in their holdings that wild deeds do not impart constructive notice the courts, without benefit of any legislative crutch, took a practical, sensible approach to the problem.

One can only hope that these questions are presented to the courts by title men.

STATEMENT BY MR. WOLFMAN:

There is considerable difference of opinion on the success of the framers of Article 9. Many think they did a wonderful job. I regret that I find myself less enthusiastic. Specifically I feel that they have not done well by the real estate mortgage lender.

The first problem of one who lends money on the security of a mortgage on improved real estate in a Code state is whether or not he must file a financing statement under the Code to perfect his lien on the fixtures attached to the real estate. I emphasize the word "fixtures." Despite the importance of this question, it is not answered in plain language in the

14. Uniform Comm. Code §9-403.
15. Uniform Comm. Code §9-403 (4).
16. Harris v. Reed, 21 Ida. 463, 121 Pac. 780 (1912). The language of §9-403 (1) suggests the possibility that the courts may hold, as they do with respect to land, that the index is no part of the record and that mere filing in the proper place imparts constructive notice. See 8 Thompson, Real Property §4379. The philosophy of the real estate cases appears to be that a person making a filing is expected to find his way to the proper window to make a filing but need not stay to supervise the recorder's entry of the document on the records. A recent decision, "In the Matter of Excel Stores, Inc. and Excel Enterprises, Inc.", U. S. Dist. Ct., District of Connecticut, June 20, 1963, apparently unreported as of this date, applies chain of title theory to Uniform Commercial Code filings.

1. Uniform Commercial Code §9-102.

text of the Code, as it should have been. In one place, the Code states that the scope of the article includes fixtures.[1] In another place, it states that a financing statement must be filed to perfect all security interests with certain exceptions.[2] There is no express exception here for real estate mortgages. But in the section which deals with priority of security interests in fixtures we read: "This act does not prevent creation of an encumbrance upon fixtures or real estate pursuant to the law applicable to real estate."[3] I believe that the draftsmen meant what they said in this sentence and so do the commentators. I am satisfied therefore that no separate fixture filing is required. A separate fixture filing would be particularly silly in New York. The Code requires the filing of a financing statement affecting fixtures in the office where a mortgage on the real estate would be filed or recorded.[4] The New York recording officers, in following this requirement, will actually index fixture filings in the same book where they index real property mortgages. Thus if an overcautious mortgagee files a financing statement affecting fixtures at the same time that he records his mortgage, there will be two successive entries against the same name in the same book in favor of the same lender for the same debt, so that the second entry is obviously futile and unnecessary.

Although I am willing to state with certainty that one who records his real estate mortgage need not file a financing statement under the Code to perfect his lien on the fixtures, nevertheless I am not able to say with anything resembling certainty what a fixture is. This is because the timid Code makers dodged the issue and said: "The law of this state other than this Act determines whether and when . . . goods become fixtures."[5] What an opportunity they missed here! I doubt that there is a subject on which laws of the several states vary as much as they do on the law of fixtures. Here is an area where uniformity is eminently desirable, at least to the extent of filing and notice requirements.

Lawyers in all states will agree that the heating plant, the electric light and power plant and the elevators in an office building or apartment house are fixtures. But what about the gas ranges, the refrigerators and the kitchen cabinets? What about the drapes, the rugs and the furniture in the lobby of a luxury apartment house?

In New York, which represents one extreme, all of these are strictly personal property. Our highest court had occasion to review the question of the character of gas ranges in 1929. Following old precedents, our court held again that gas ranges in an apartment house are not fixtures.[6] One judge dissented. He wrote an eloquent plea for an abandonment of the old precedents. "There comes a time," he wrote, "when the law must keep abreast of changes in social conditions; when we as judges must recognize the circumstances under which the business of housing is now conducted. We must look at the facts as they are and not try to press them into an old-fashioned mold. Today people live in apartments, massive affairs housing hundreds of families, equipped with modern improvements. Science has revolutionized the art of living. The gas range and ice-box are in every apartment. The tenants do not furnish these things. No tenant carries away these things when leaving. Cook stoves and ranges in the ordinary apartment house become part of the building, a portion of the apartment, the same as doors and windows and mantelpieces."

But his plea was in vain. The majority of the court held that the court must follow existing rules of law and that it was up to the legislature to make any changes if changes were necessary. Thirty-five years have

2. Uniform Commercial Code §9-302.
3. Uniform Commercial Code §9-313 (1).
4. Uniform Commercial Code §9-401 (1) (b).
5. Uniform Commercial Code §9-313 (1).
6. Madfes v. Beverly Development Corp., 251 N. Y. 12.

passed and so far as I am aware the indifferent mortgage lenders have not yet drafted a bill to be introduced in the legislature to change this rule.

The law being what it is in New York, the mortgage lender there and in the other states which hold similar views must file a financing statement under the Code at least in the office of the Secretary of State if he wishes to perfect his lien on the gas ranges and refrigerators and the like. Under the optional filing procedure adopted in New York, the filing must be made in the office of the Department of State and in the county recording office of the county where the borrower has his place of business.[7] Thus if you count the mortgage recording as one filing, the lender must effect a triple filing to perfect all his security!

Moreover, in order to determine whether the borrower has good title to the ranges the lender must have a search made in the Department of State. If the owner has a common name, like John Smith, the search may return many financing statements. Since the Code does not require that financing statements identify the goods affected except in a general way, or that their location be set forth, the goods involved in the statements shown in the search may be anywhere in the state. The mortgage lender will have to sort out the returns and investigate them as well as he can. If a statement is filed against one other than the owner of the real estate, as for example a general contractor, the lender will not find it at all unless he ascertains the contractor's name and orders a search against his name. The central filing system may be good for credit men generally, but it is not too good for real estate mortgage lenders.

Even as to a fixture, the Uniform Commercial Code makes no requirement that the name of the owner of the real estate be set forth in the financing statement, although the description of the real property is required.[8] Several states have amended the official text by requiring that the name of the owner of the real estate be set forth in the financing statement and by directing the filing officer to index it against the owner. Among these states are New York, Connecticut, Maine, New Jersey, New Hampshire, Rhode Island, Ohio, Tennessee, Wisconsin and Maryland. Strangely the Permanent Editorial Board of the Uniform Commercial Code has rejected this simple and beneficial amendment on the ground that it is too early to make amendments, although in the same report in which this amendment was rejected they approved a number of what seemed less important amendments.

New Jersey takes a very different view from that of New York on personal property attached to or used in connection with real estate. The courts there have adopted what is called the "Institutional Doctrine." An apartment house is an institution, they say, which cannot be operated without gas ranges and refrigerators. As one judge put it in a New Jersey case: ". . . the refrigerators and gas ranges are part of the plant of an apartment house, ...the building as an apartment house cannot function without them . . . They are no more removable . . . than would be the carrying away of the front door, although the unhinging of the door would be less difficult."[9] It seems to follow that in New Jersey or in other states with similar rules the apartment house mortgage lender need not file a financing statement in the Department of State or make any searches there for such financing statements. However, I am told that many lenders, perhaps overcautious, fearing that the Uniform Commercial Code may have fractured their "Institutional Doctrine" do make it a practice to file a financing statement in the office of the Secretary of State in Trenton, New Jersey. The Code has been in effect in New Jersey since January 1, 1963.

7. Uniform Commercial Code §9-401 (1) (b) and (c).
8. Uniform Commercial Code §9-402.
9. Future Building & Loan Assn v. Mazzocchi, 107 N.J.E. 422, 152 A. 776 (1931).

In these days of tricky financing we often see large mortgages on leaseholds. Not infrequently the lessee owns the building as well as the lease and mortgages the building with the leasehold. I have been asked whether the Uniform Commercial Code creates any new problems as to such financing. I think not. There is a provision in Article 9 which expressly excludes from the application of the articles the creation or transfer of an interest in or lien on real estate, including a lease or rents.[10] The section on priority of security interests does not mention leases. However, I am confident that the provision in that section permitting creation of an encumbrance on fixtures or real estate pursuant to real estate law applies equally to leaseholds.

One section of Article 9 of the Code which is helpful to real estate mortgagees has not had the publicity it deserves. It is the section which rescinds the rule of Benedict v. Ratner.[11] That was the case in which the United States Supreme Court held that a pledge of accounts receivable to secure a loan was constructively fraudulent as to creditors and therefore void as to the pledgor's trustee in bankruptcy because the pledgor remained in control of the accounts and was permitted to collect and retain the proceeds of the accounts so long as he was not in default on the loan. That was followed by a decision in the court of appeals which held void as to a trustee in bankruptcy a grocer's mortgage of his real estate and the groceries on the shelves, because the grocer was permitted to sell the groceries to his customers and retain the proceeds.[12] This cannot happen again in a Code state because Section 205 expressly provides that a security interest is not invalid even if the debtor is permitted by the terms of the agreement to use, commingle or dispose of all or part of the collateral without accounting for the proceeds.[13]

A discussion of the function of the title companies in these matters is in order. In New York, we have for many years worked with the Uniform Conditional Bill of Sale Act, which is still in effect and which will remain in effect all of this week. Article 9 of the Code is said to have been based in part on this act. There is resemblance at least in the feature that there is one system of filing for goods in general and another for fixtures, although the filing requirements have been changed substantially. Under the old law, fixture filings in New York are indexed in a book in the county recording offices entitled, "Conditional Bills of Sale Affecting Real Estate." We make routine searches for the proper period in this book. We schedule any returns we find in our title report and except them in Schedule "B" of our title policy if they are not disposed of at the closing. We do not make searches for chattel mortgages or conditional bills of sale affecting personal property except on specific request and for an additional fee. Any returns found on such a search are made on a separate report in which our liability is expressly limited to $1,000.00. Since we do not insure title to personal property, we do not find it necessary to add these returns to Schedule "B" of our title policy.

Actually, many large mortgage loans close without such searches. Many lenders apparently are satisfied with the pure real estate security and their appraisals do not take into account the personal property attached to or used in connection with the real estate. On the other hand, many large wholesalers of gas ranges and refrigerators cause their conditional bills of sale to be filed against the real estate and indexed against the owner of such real estate. Perhaps this amounts to an election by the conditional vendor to treat such goods as fixtures, although I know of no case on this point. In any event, if we find such filings, we

10. Uniform Commercial Code §9-104 (j).
11. 268 U. S. 353 (1925).
12. Brown v. Leo, 12 F. 2d 350 (C.C.A.2) (1926).
13. Uniform Commercial Code §9-205.

do except them in our title reports and policies. I do not anticipate any substantial change in these practices under the Uniform Commercial Code.

MR. TURNER:

The remarks by the panel members have indicated the scope of the Code as it affects the title insurer and the real estate mortgagee. Obviously, they have not attempted to answer all the questions raised by the Code, and I think it will be quite some time before we even know what all the questions are, let alone the answers. But to illustrate some of the problems, I would like to pose a question to each of our panel members. Mr. Kratovil, Title Company issues its policy in favor of X, mortgagee, at the time the mortgage is filed for record. Actually, the mortgage is for a construction loan, and the money is paid out in draws by the mortgagee, the disbursements being obligatory upon the mortgagee under a properly executed loan agreement. What problem is presented to the mortgagee by Code Section 9-313, and does the title insurer share in this problem?

MR. KRATOVIL:

This question cannot be answered briefly. The cases have always distinguished between two relatively clear-cut situations, the one involving a mortgage made **after** a fixture has been installed and the other a mortgage made **before** a fixture has been installed. Where a mortgage is made **after** the fixture has been installed, the fixture figures in the mortgagee's appraisal of the building, and under the common law, he was entitled to protection against a security interest in the fixture since, as I have explained above, filings in the personal property records did not impart constructive notice. But where the fixture was installed **after the** mortgage lien had attached, the fixture had no part in the mortgagee's decision to make the loan and removal of the fixture was normally permitted. Kratovil, **Fixtures and the Real Estate Mortgagee,** 97 U. of Penna. L. Rev. 180, 199 et seq. In this last situation, the law prefers the "new money" to the "old money." The old case law was not changed by the Uniform Conditional Sales Act except that the chattel security interest could be protected against **subsequent** purchasers and mortgagees by a filing in the land records, as explained above. Now, the construction loan straddles the line between the two situations I have mentioned. Where a fixture purchased on chattel security is installed in the course of construction, the mortgage is recorded **before** the fixture is installed, but disbursement takes place before, during, and after installation of the fixture sought to be removed. The common law generally protected the real estate mortgagee. **Swift Lumber & Fuel Co.** v. **Elwanger,** 127 Neb. 740, 256 N. W. 875 (1934); **King** v. **Blickfeldt,** 111 Wash. 508, 191 Pac. 748 (1920); **Alf Holding Co.** v. **American Stove Co.,** 253 N.Y. 450, 171 N. E. 703 (1930); Gilmore, **The Purchase Money Priority,** 76 Harv. L. Rev. 1333, 1367 (1963). Thus in **Dauch** v. **Ginsburg,** 214 Cal. 540, 6 P. 2d 952 (1931), the court says:

> "In the Dauch case the loan was made for the purpose of constructing a hotel building. The owner and the encumbrancer contemplated and agreed that the security for the loan should be not only the real property but also the completed hotel building. The conditional seller of the plumbing and heating equipment knew there was a prior encumbrance against the completed structure; knew that the building was being erected for a hotel and for no other purpose; knew that the hotel could not be operated if the equipment in question were removed; and knew that such a severance would substantially diminish the security of the prior encumbrancer. In such a case it was held that the rights and claims of the conditional seller of the equipment must yield to those of the prior encumbrancer."

At least one decision reached the same result under the Uniform Conditional Sales Act. **Greene** v. **Elkins,** 134 Misc. 118, 235 N.Y.S. 438 (1929).

Some of the pre-Code decisions stress the point that as to disbursements made **after** the fixture is installed the mortgage should be considered a **subsequent** encumbrancer even though

recording of the mortgage preceded the fixture security transaction. **Mississippi Valley Trust Co.** v. **Cosmopolitan Club,** 111 N.J. Eq. 277, 162 Atl. 396 (1932); **Rupp.** v. **M. S. Johnston Co.,** 226 Md. 181, 172 A. 2d 875 (1961); **McCloskey** v. **Henderson,** 231 N.Y. 130, 131 N.E. 865 (1921). These decisions limit the mortgage priority to advances made after an unrecorded fixture security transaction has taken place.

The only relevant language in the Code is in Sec. 9-313 (4), which protects against security interests in fixtures "a creditor with a prior encumbrance of record on the real estate to the extent that he makes subsequent advances * * * without knowledge of the security interest and before it is perfected." The Official Text with Comments is silent as to the meaning of this language. Is it intended to apply to construction loans? If it is, the construction lender is junior to the fixture security as to all advances made **before** the fixture security transaction takes place because such advances are not "subsequent advances." And if the financing statement is filed **before** affixation, the fixture security interest takes priority over subsequent advances because when they take place the security interest has been perfected by filing. The mortgagee could only protect himself by making a search of Code filings at the time of each disbursement and by refusing to proceed with disbursement unless each filed financing statement of fixtures is subordinated to his mortgage.

Various arguments can be advanced against this interpretation of the Code. See for example, 76 **Harvard Law Review** at page 1399. You can also argue that if this dramatic result was intended, the Official Text with Comments would not ignore it. You can also argue that Section 9-313 (1) permits the "creation of an encumbrance upon fixtures or real estate pursuant to the law applicable to real estate" and this law clearly states that a mortgage covers fixtures subsequently attached. Osborne, **Mortgages** (1951) 91, 580. You can argue other points, but the literal language of the Code will always be hurled against you. Quite possibly, the courts will divide in their interpretation of the Code on this point.

Only a few conclusions can be reached by the prudent title insurer. One is that wherever a mortgage policy is dated or redated so that it covers the filing of a financing statement on fixtures, possible fixtures, or corps, it should be shown on the mortgage policy as a lien prior and superior to the mortgage. Thus if the financing statement is filed **prior** to the recording of the mortgage it enjoys full priority over the mortgage. If the financing statement is filed **after** the recording of the mortgage and no construction loan is involved (e.g., new furnace installed) the Code again gives the financing statement full priority with an absolute right of removal of the fixtures as against the prior mortgage. See Section 9-313 (5) as explained in Official Text with Comments. If the loan is a construction loan and the financing statement is filed after recording of the mortgage but during the course of construction we have the problem already discussed created by the language of Section 9-313 (4). Certainly in this situation we must show the financing statement as a lien prior to the mortgage until the uncertainties in the law are resolved.

Where the policy covers a construction loan mortgage, it is the practice of some title insurers to make the policy subject to mechanic's liens, and as construction money is disbursed the lien waivers are examined and the mechanic's lien exception is insured against to the extent of money advanced if the waivers are proper waivers. This is often done without any formal continuation of title. The only record check is for mechanic's liens. Then title may not be brought down until the building is completed and the construction loan is to be assigned to a permanent investor. Suppose the title search then reveals a financing statement filed during the course of construction. The title insurer could argue that he has no liability on his policy covering the recording of the construction mortgage. He would contend that the financing statement is a lien "attaching or created subsequent to the date" of the policy. But the permanent investor's take-out commitment

calls for a clear mortgage policy, and he will not buy the loan unless the exception is removed. This places the title insurer in an uncomfortable spot. He can duck the question by making his policy covering the construction mortgage subject to "financing statements under the Uniform Commercial Code filed during the course of construction." Whether this product can be sold is the question.

If the title insurer makes his original policy subject to the "pending disbursement" exception and brings down his title completely with each draw, his title search obviously must include a search of Code filings.

Of course, the best solution is to seek an amendment of the Code that would protect the mortgage lender.

MR. TURNER:

Mr. Wolfman, "X" mortgagee makes a loan on a hotel. "X" includes in his mortgage not only the land and building, but also all furniture, furnishings, etc., being used in the operation of the hotel. "X" carefully files his mortgage as a real estate mortgage and as a financing statement in the office of the Secretary of State and in the office of the recorder of deeds in the county where the land is located, that being the only place of business for the mortgagor in the state. "X" also searches for financing statements executed by the debtor in all of these places. Is "X" fully protected?

MR. WOLFMAN:

I assume that "X" will search for financing statements not only against the name of the immediate mortgagor but also against the names of the predecessors in title of the mortgagor during their respective periods of ownership up to a date five years preceding the search.

If he does this, he will be fully protected as to **fixtures** only in those states which have departed from the uniform text by requiring the inclusion of the name of the owner in a financing statement affecting fixtures and the indexing of such statement against the owner. As to fixtures in the other states and as to personal property in all states, "X" is still subject to the hazard tha' the equipment may have been installed by a contractor who acquired them subject to a perfected security interest. There is no satisfactory way to eliminate this hazard completely. The best that "X" can do is to take proof showing payment in full for all the equipment or to obtain the names of all the suppliers and search for financing statements against all such names.

MR. TURNER:

Mr. Schmidt, Title Company issues its policy in favor of "X", mortgagee, "X's" loan being insured by the FHA After the loan is made, "Y", a furnace supplier, installs a new furnace in the property under a conditional sales contract but does not file a financing statement. Thereafter, "X" forecloses, purchases at the foreclosure sale and transfers the ownership to the FHA, in exchange for debentures. Title Company issues a new policy in favor of the FHA. What are the rights of "Y" and is Title Company affected?

MR. SCHMIDT.

I would think that the furnace would become part of the realty and the FHA would acquire said real property clear of any rights of Y. My answer might be different if a financing statement were filed. If filed before the furnace was installed, the right of "Y" would have been perfected, and if the furnace was not paid for, "Y" could remove the

(Continued on Page 25)

ON THE COVER

In the finest tradition of ALTA leadership, two members of a distinguished family established a new "first" for the American Land Title Association.

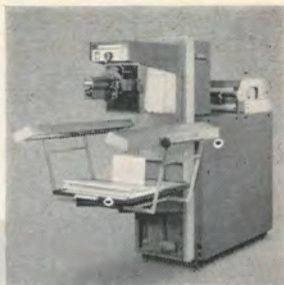
Morton McDonald, a Past President of ALTA, and his son, Thomas McDonald, are both serving this year as members of the Board of Governors. It is the first time in Association history that a father and son have served on the Board simultaneously.

Congratulations are in order for Morton McDonald for another reason; in 1965, he completes his fortieth year in the title profession.

We welcome these dedicated leaders to the cover of **Title News**.

WRIT BY HAND

...or any other way



William ——— & Wife
To.
Robert ———

Know all men by these presents that I William ——— and Betsey his Wife of the town of Penfield County of Monroe and State of New York in consideration of One hundred dollars to me in hand paid by Robert ——— of the town aforesaid the receipt whereof is hereby acknowledged have bargained Sold and quit Claimed and by these presents do bargain Sell and quit claim unto the said Robert ——— and unto his heirs and assigns forever all my right title and interest claim and demand in and to all that certain piece or parcel of land situate in the town of Penfield aforesaid (viz) fifty acres of land to be taken off from the South end of the South east division of lot number seventeen in said town and bounded on the East South and West by the lines of said division and on the North by a line parallel with the South line of said division and so far distant therefrom as will include fifty acres of land also one other piece of land a part of North east division of number fifteen in said town and bounded as follows commencing at the North west corner of said division and running South in the west line of said division six rods thence east eight rods thence North six rods thence west six rods to the place of beginning containing forty eight rods of land including all Highways if any there be with all and singular the hereditaments thereunto belonging In Witness whereof I have hereunto set my hand and seal the day and year first above written.

Sealed and delivered
In presence of Daniel Fuller Jr
on the 14th day April 1855.

William ——— L.S.
Betsey ——— L.S.

Monroe County ss.
On the 14th day of April 1855 personally came before the above named William ——— and Betsey his Wife known to me

Original records come in all ages and every conceivable condition. One may be a land grant, handwritten on sheepskin . . . another a slick piece of microfilm. There is only one way to get perfect copies from any existing record—photographically. And the best way is with a PHOTOSTAT® Photocopier!

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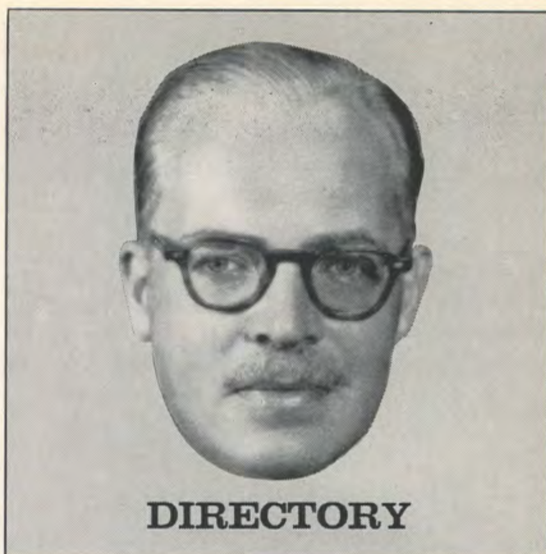
DIRECTORY

1965

IMPORTANT INFORMATION ABOUT THE ALTA DIRECTORY

NEW RULES WILL SIMPLIFY PROCEDURE



OCTOBER 1 DEADLINE SET

Pointing out that members of the American Land Title Association are in the business of being *right* when they put something down on paper, G. Allen Julin, Jr., Chairman of the Directory Listing Rules Committee, submitted suggested revisions of those rules to the Board of Governors at a recent meeting. The changes were adopted unanimously.

In the future, *no one* will receive an extra set of galleys for revision. State Secretaries will still control the listings in their respective states by submitting on or before October 1, each year, a list of those individuals, firms and corporations entitled to listing in that section of the ALTA Directory.

It is expected, that the simplified procedure will result in considerable savings in costs and fewer errors and will expedite the production of the Directory.

Rules and Regulations For Alta Directory Listings

APPROVED BY THE BOARD OF GOVERNORS MARCH 6, 1963, AND AMENDED MARCH 11, 1964, AND FURTHER AMENDED MARCH 5, 1965.

1. Only those persons, corporations, partnerships, or firms which are members in good standing of the American Land Title Association under the provisions of the Constitution and By-Laws of the Association shall be entitled to listing in the Directory published annually by the Association. Each such listing shall be in compliance with the Rules and Regulations set out in the following paragraphs.

2. Subject to these Rules and Regulations, each listing in the Directory shall be limited to the following information:

   a. Name of person, corporation, partnership, or firm.
   b. Street address, if any, city, county and state.

c. Telephone number, including area code, if any.

d. Indication by code of whether the member listed furnishes abstracts, writes or furnishes guarantee or title insurance policies, or all of such forms of title evidence.

e. Capital, surplus, undivided profits and policy reserves in the amount or amounts set forth in the latest annual report of a member title insurance company, as filed with governmental supervisory authority or authorities, listed separately or in aggregate, on a basis consistent with the laws relating to publications of financial information, if any, of the state of domicile of said member title insurance company. No financial information supplied by any member shall be printed in any Association Directory unless it be certified by an officer of the member company to be in accordance with the above rule.

f. Names and Titles of individuals; provided, however, that the names of not more than ten individuals may be included in the listing of the home office of a member and further provided that the names of not more than six individuals may be included in the listing for a principal district office or division office of any member title insurance company, and further provided that the names of not more than three individuals may be included in the listing for any other office of a member.

3. "State" as herein used shall include the states and territories of the United States, the District of Columbia and the Commonwealth of Puerto Rico.

4. "Bona-fide branch office" as herein used is defined as one owned, operated, and controlled by the person, corporation, partnership, or firm listed, and staffed by the employees of such person, corporation, partnership or firm listed, located at an address other than the address of the principal place of business of said person, corporation, partnership or firm.

5. "Affiliated state title association" as herein used is defined as a state title association which has become affiliated with the American Land Title Association as provided in the Constitution and By-Laws of the Association.

6. The Directory shall include such general information concerning the American Land Title Association as the Board of Governors of the Association may from time to time prescribe; and shall list the members and their branch offices under states, with the names of the states alphabetically arranged and with the listings of the members set forth as provided in these Rules and Regulations under an alphabetical county presentation.

7. Immediately following the name of each state, there shall appear in the order set out below the following information:

a. The name of the affiliated state title association, if any, together with the name, company and city of business of the president of that affiliated state title association, and the name, company and city of business of the secretary or such other officer as the affiliated state title association may designate.

b. The names of all title insurance companies, members of the Association, who are authorized to do business in the state and whose policies are furnished either through bona-fide branch offices holding membership in the affiliated state title association, or through duly authorized agents or representatives holding membership in said affiliated state title association, together with an identifying code to which code reference shall be made in the county alphabetical listing as provided in paragraph 7, d following.

c. A city-county index, in city alphabetical order.

d. The membership listing for the state of all members (except title examiners) in county alphabetical order, and alphabetically within a county, in conformance with paragraph 2 of these Rules and Regulations. Said listing, however, shall exclude separate individual listings of officers and managers listed by company members.

e. Title examiners, if any, who are members of the Association; provided, however, that for those states in which the affiliated state title association has "limited" membership only those title examiners shall be listed who are approved for said listings by the affiliated state title association. Listing shall be alphabetical by county.

f. Such other listings as the Board of Governors of the Association may from time to time direct.

8. All title insurance company members furnishing policies of title insurance on properties in any state may be listed as provided in paragraph 7, b of these Rules and Regulations with a key or code letter-number designating duly authorized agents or representatives of such companies, provided that the only such agents or representatives listed must be members of the affiliated state association if there is one, and must be members of the American Land Title Association. If there is no affiliated state title association, only such agents or representatives who hold direct membership in the American Land Title Association may be listed.

9. No member shall be listed, excepting as provided for in paragraphs 7 and 8 of these Rules and Regulations, in and under any state list as doing business in such state unless and until such member is a member of that state's affiliated title association, if an affiliated state title association exists, even though that member who is not a member of that affiliated state title association holds a direct membership in the American Land Title Association.

10. No member shall be permitted to list and there shall not be listed the name of any agent or representative in any state unless such agent or representative is a member of the American Land Title Association and such agency or representation is duly authorized by the member principal.

11. All members of an affiliated state title association, which members are also members of the American Land Title Association, whether resident or non-resident in such state, shall be entitled to all the listing privileges provided by such affiliated state title association as are compatible with these Rules and Regulations and with the Constitution and By-Laws of the American Land Title Association.

12. Each affiliated state title association requesting the right to do so may make its own more restrictive rules of eligibility for directory listing for its state, provided it concurrently agrees to assume the responsibility for determining whether such rules are observed, provided that said rules for eligibility as established by the affiliated state title associations shall not be inconsistent with or incompatible with these Rules and Regulations.

13. Any member of the Association which qualifies to do business in any state in which there is no affiliated state title association shall be entitled to list its bona-fide branch offices in the state, whether such member be resident or non-resident.

14. "On or before October 1 each year every ALTA member shall submit listing information in exactly the form it is to appear in the following year's Directory. The ALTA staff will undertake to publish that information (consistent with the Directory Rules and consistent with 15. and 16. below) in precisely the manner it is furnished by members. *No one* will receive a set of galleys for revision.

15. On or before October 1 each

year the secretary of each affiliated state title association shall furnish the ALTA Staff with a list of its members eligible for Directory listing. No individual, firm, or corporation will be listed in any state unless his or its name appears on that list. Failure of any state association secretary to furnish such a list by October 1 will constitute authority to the ALTA Staff to publish all information received from members domiciled in that state subject only to the restrictions imposed by the Directory Listing Rules.

16. Each title insurance underwriting member may at its option on or before October 1 each year furnish the ALTA Staff with a list of agents and representatives authorized to carry the symbol of that underwriting company, and only those agents and representatives so indicated shall be entitled to carry that title insurance company's identifying code. A copy of the material furnished by the underwriting member to the ALTA Staff shall also be sent to the secretary of each affiliated state association concerned sufficiently in advance so as to permit any points of possible difference between the underwriting member and the state affiliated association to be resolved by them. Failure of an underwriting company member to furnish such a list of agents and representatives on or before October 1 shall constitute authority to the ALTA Staff to publish all identifying codes indicated on the listing forms submitted by agents and representatives.

17. In the event any dispute with respect to any listing shall be presented by the affected affiliated state title association such dispute shall be investigated and settled by the Grievance Committee of the American Land Title Association after such Committee shall have received the advice and counsel of such affected affiliated state title association. Listing information appearing in Directories published subsequent to the conclusions reached on said dispute by the Grievance Committee shall conform with such conclusions."

18. Directory copy for those states in which there is no affiliated state title association shall be in conformance with these Rules and Regulations. The Association shall enforce such Rules and Regulations and resolve disputes over proposed listings.

19. If any member title insurance company protest the listing of any branch office, that member may file a written protest asking National Headquarters not to list such office.

Upon the receipt of such protest by National Headquarters, that office shall immediately require that the member company against which such protest has been filed sign a statement affirming the right to such listing, which statement of affirmation shall be executed in such form as may be approved from time to time by the Board of Governors of the Association. Upon receipt of such properly executed statement of affirmation, the staff officers of the Association shall direct the listing of the protested office in the Directory copy, and shall send a copy of their decision to the protesting company. In the event of the refusal or failure by the protested company to correctly execute and forward to National Headquarters such statement of affirmation within ten days of the receipt by the protested company of the notice of protest, the protested listing shall be stricken from the directory copy.

If, for any reason, the protesting member disputes the correctness of the statement of affirmation, it may file a complaint with the Grievance Committee of the Association, filing such complaint in National Headquarters. The Grievance Committee shall act upon such complaint in accordance with the procedure outlined in the Constitution and By-Laws of the Association.

20. A separate page or pages in the directory shall carry the listing of all honorary members of the Association, including their names and complete address.

21. Upon their adoption by the

Board of Governors of the Association, these Rules and Regulations shall supersede any and all prior existing, Rules and Regulations concerned with the Directory of the Association.

22. All of these Rules and Regulations shall be subject to the Constitution and By-Laws of the American Land Title Association and shall be interpreted in accordance with the Code of Ethics of such Association, and the Grievance Committee of the American Land Title Association shall have the power and responsibility of receiving and investigating complaints of alleged violations of these Rules and Regulations, after which investigation, such Committee shall report thereon to the Board of Governors of the American Land Title Association.

23. In so far as it is compatible with these Rules and Regulations and with the Constitution and By-Laws of the American Land Title Association, any affiliated state title association may, at its option require as a condition for the listing of any member of the American Land Title Association in that state's portion of the annual Directory that said member also be or become a member in good standing of said affiliated state title association.

24. Not withstanding any of the other provisions of these Rules and Regulations, individuals, corporations, firms and their branch offices who are members in good standing of American Land Title Association shall be listed in the annual Directory even though they are not also members of an affiliated state title association unless the applicable affiliated state title association shall have exercised its option under Section 2, Article III, of the Constitution and By-Laws as amended, which option reads as follows: "Any affiliated association may, at its option, require as a condition for membership therein or in this Association that a prospective member having his or its principal place of business in the state or territory represented by such association be or become a member of both associations."

Report of

G. Allan Julin, Jr., Chairman of the Directory Rules Committee

Jim Robinson in his report to you of the many problems with which National Headquarters Staff has been faced in the production of the 1965 Directory has, I believe, under-stated the difficulties and the expensive procedure involved in preparing copy for each new directory in accordance with the Directory Listing Rules as they now stand.

Your Directory Listing Rules Committee was asked to consider these problems. We have done this with considerable helpful cooperation from Jim Robinson at National Headquarters. Basically, the present arrangement has called for galleys of the directory listing to be submitted to the secretary of each affiliated state association for review, correction, deletion, or what have you. In addition, title insurance underwriting members have had the right to request galleys, again for review, correction, deletion, etc. This has resulted in sending out an almost unbelievable number of galleys. These have at times been returned promptly to National Headquarters, but at other times even when the galleys have been specifically requested, they have not been returned.

Our association is made up of people who in their daily business life take great pride in doing their work correctly the first time. It does not seem too much to expect the members of our association to submit material to National Headquarters correctly the first time. Actually, under the rules

(Continued on Page 25)

"DUTY"

By

JAMES R. PETERSON, Secretary

Iowa Abstract and Title Company, Algona, Iowa

Here we face the provocative question of just where an abstracter's duty lies when he has private knowledge of a competency situation which is not of record. It is recommended for your reading pleasure.

"Mr. Webster, here's the continuation of the abstract to the Kelly Building."

Blake Webster looked up from his desk as John Curtis handed him the folder.

"Thanks, John. Did you say 'Kelly Building?' Is it being brought down to date for a sale or for mortgage purposes?"

"Sale, Mr. Webster," the abstracter replied. "There's a closing being held on this deal tomorrow afternoon at 2:00."

Blake opened the file and glanced quickly at the description.

"North Half of Lot 2, Block 23, Original Plat", he read. He thought, "No doubt about it. This is Ed Kelly's building. Let's see, continued from June 8 ,1963 at 7:00 A.M.—shortly after Ed bought it."

Blake let the folder fall to the desk, locked his fingers behind his head and leaned back in his chair. His mind returned to a lazy summer day in July, 1963. He and his wife, Ellen, were lolling in deck chairs on their back yard patio.

Suddenly the air was wrent by a series of screams.

"My God, Ellen, that's coming from next door, isn't it?" Blake jumped from his chair, and peered through the hedge toward the next house.

"Sounds like June Kelly. Blake, you better get over there and see what's wrong."

He ran through the opening in the hedge between the lots and burst through the kitchen door, the continued screaming lending wings to his feet.

"No, Ed, no. Stop it," he heard, as he ran into the spacious living room of Ed Kelly's home.

June Kelly was backed against the wall, her eyes wide with fear, as Ed advanced toward her, waving a butcher knife. Blood streamed from a gash in her arm.

"Put down that knife, Ed," Blake yelled.

Ed turned toward Blake, gibbering unintelligibly. Blake had never seen him like this, his face contorted and red. Ed's mouth worked convulsively as he moved toward Blake, swinging the knife.

"Gotta stop him," Blake thought. "He's gonna carve me with that thing if I don't." He looked wildly about the room for a weapon. At his side, the fireplace tools nestled in a rack. He grabbed the poker from the rack. Ed shrieked with fury as he rushed toward him, and Blake swung the poker down. Ed collapsed, the knife clattering across the floor as he fell.

The buzz of the telephone in the next office brought Blake out of his reverie. "Nearly two years ago," he mused. "When Ed regained consciousness, he'd been unable to remember any of the frightening business: wounding June or attacking me. At June's urging, he consented to being treated by a psychiatrist who came twice a month from Chicago. June told Ellen that the doctor had suggested June's brother move in with them, to help control Ed in event he had another attack. She also said Ed had schizophrenic tendencies, according to the doctor, and was liable to have another at-

tack at any time. He should be in an institution, but June can't bear to send him, and they have enough dough to keep the doctor coming. "That is the story on Ed Kelly, Blake reflected. "Now, Mr. Webster, *you* have a decision to make. So far as you know, Ed Kelly's condition isn't known by anyone in town, except his family and his best friends, you and Ellen. Tomorrow his building is being sold. There's nothing in the public records about Ed's schizophrenia. Do you, as an abstracter, have a duty to inform the buyer's attorney about Ed, or should your loyalty to your best friend keep you quiet?"

Blake reached for the telephone, then sat back in his chair again. "After all, who am I to decide whether Ed Kelly is competent? There's probably many people under psychiatric care who are signing deeds and mortgages every day. On the other hand, if it weren't for Ed's wealth, and his ability to pay for expensive care, he's probably be in a mental institution right now."

Torn by the necessity of making a decision he could live with, Blake commenced pacing the office floor.

"I wonder if any other abstracter has had to make a decision like this?"

"Uniform Commercial Code"

(Continued from Page 23)

as they have stood, there has been almost silent encouragement to preparing listing material hurriedly for initial submission simply by virtue of the fact that everyone knew that a second opportunity would be given to correct any errors.

With this in mind your committee submitted to the Board of Governors of ALTA its recommendation that the present sections 14, 15, 16 and 17 of the Directory Listing Rules be amended. Have in mind that in reading them considerable emphasis is put on October 1 of each year as a deadline date for the submission of listing material for the succeeding year's directory.

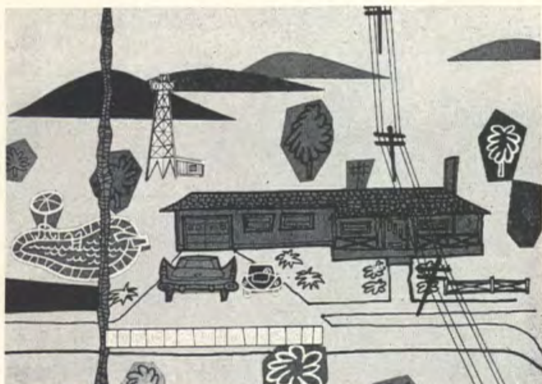
★ ★ ★ ★ ★ ★

"Report of Directory Rules Committee"

(Continued from Page 16)

furnace from the premises, but he would be liable for the cost of repair of any physical injury to the realty. If filed after the furnace is installed, I think that the rights of the FHA would be superior to the rights of Y.

WHEN IS AN EASEMENT TERMINATED OR EXTINGUISHED?



By EARL J. SACHS, Vice President, Title Insurance and Trust Company, Los Angeles, California

Last month a builder asked our company to eliminate from our policy of title insurance the following exception:

> "An easement over said land for the maintenance of sewer connections from the westerly 80 feet of the land adjoining on the west to Brown Street as recited and reserved in a deed recorded May 14, 1909."

In this case, the builder bought the property subject to the easement as shown, but, by reason of the ancient recording date of the easement, he was certain it would have no effect on his building plans.

He applied for an apartment house construction loan and the lender asked for special insurance that they would suffer no loss by reason of the existence of the easement or that the easement be eliminated from our policy of title insurance. Investigation disclosed that the owner of the 40 feet adjoining on the west was annoyed with the builder because the proposed apartment site had at the present time an old one-story bungalow which would be demolished and in its place they would erect a three-story apartment building. The new building would eliminate the present enjoyment of light and air on the side of the adjoining property. Our investigation further disclosed that the adjoining owner would not give the builder, or anyone else, any information as to whether or not the sewer easement was in use and the city records did not disclose where the sewer of the adjoining house was connected.

The builder, in an attempt to find where the sewer might be located, dug a few test holes and found an old demolished dry sewer line on the rear of the land he purchased. He was certain that this was the line we were showing in our policy and now asked us to eliminate the easement. Inasmuch as no conclusive evidence was submitted, we suggest-

ed that the builder dig a ditch to sewer depth along his west property line and an inspection of this ditch would be conclusive evidence.

The builder was so certain that no sewer line existed on his land. he ordered the grading contractor to proceed with the demolition of the old bungalow and grade the land for subterranean garage depth.

That is when the fireworks began. The grading contractor hit the existing sewer line and the line being very old crumbled in many places. The owner of the property adjoining on the west was ordered by the Health Department to connect to the sewer in the street in front of his home.

The builder is now threatened with a suit for damages and inconvenience and a finding as to easement rights. His construction loan cannot be insured without reference to the easement until either a Quitclaim Deed is secured from the angry adjoining owner, or, a quiet title action is brought and pursued to a degree in his favor.

It is suggested that, regardless of the length of time the easement had been in existence or recorded, you investigate each easement shown in the preliminary title report. If they conflict with building plans, have the same eliminated before purchasing the property.

It is possible that the builder, or former owner, could have secured a Quitclaim Deed from the easement builder by paying for the sewer connection ordered by the Health Department and prior to the disclosure of his building plans.

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MARK YOUR CALENDARS

OCTOBER 3, 4, 5, 6, 1965

59TH

ANNUAL CONVENTION

American Land Title Association

Chicago-Sheraton Hotel

CHICAGO, ILLINOIS

Bakkum and Benson

Kenneth G. Bakkum, for seven years Vice President and Manager of the Clackamas County Branch of Title and Trust Company, Oregon City, Oregon, has been promoted to Manager of the Monterey County operations of Title Insurance and Trust Company Salinas, California, according to announcement of Donald V. McCallum, President of Title and Trust Company.

K. Bakkum

Richard L. Benson, Assistant Vice President and Manager of the Cowlitz County Branch, Washington Title Insurance Company, Longview, will succeed Bakkum as Vice President and Manager of the Clackamas County Branch.

R. Benson

Benson attended the University of Washington joining Washington Title Insurance Company in 1951. In 1954 he was appointed Manager of the Clallam County Title Company, Port Angeles, Washington. In 1956 he was promoted to the position of President and Manager of the Cowlitz County Title Company, Longview, Washington. Upon its merger with Washington Title Insurance Company, he assumed the position of Assistant Vice President and Manager.

Elections Announced at Title Guarantee

Herman Berniker, President of The Title Guarantee Company, N.Y., N.Y., has announced the promotion of seven lawyers in the Main office, Brooklyn and White Plains offices of the company. Paul Neustadt and Frank Hagan were elected Title Officers and Theodore Moss, Benjamin J. Saperstein, Leopold Lapitino were elected Assistant Counsel, also Sidney Rosenthal and Arthur S. Coyne were elected Assistant Title Officers.

Paul Nuestadt joined The Title Guarantee Company in 1959. In 1962, he was promoted to the position of Assistant Title Officer. He received his LL.B. in 1934 from St. Johns Law School. Admitted to the New York State Bar in 1936.

Theodore Moss was employed in August 1963. He obtained his LL.B. in 1958 from the New York Law School. He was admitted to the New York State Bar in January 1959.

Leopold J. Lapitino was employed by The Title Guarantee Company in 1961. In 1962, Mr. Lapitino was elected Assistant Title Officer. He is a graduate of Fordham Law School, 1937. He was admitted to the New York State Bar in October 1938.

Benjmain J. Saperstein is attached to the Chief Counsel unit in the company's main office in New York. He

is a graduate of Albany Law School, class of 1917 and was admitted to the New York State Bar in 1921.

Sidney Rosenthal joined The Title Guarantee Company in 1957. He received his LL.B. in 1926 from the Brooklyn Law School and was admitted to the New York State Bar in 1928. He is assigned to the company's Brooklyn office.

Arthur S. Coyne joined The Title Guarantee Company in April 1963 after having been engaged in the practice of law in Newark, New Jersey. He received his LL.B. from the New York University Law School. He was admitted to the New Jersey State Bar in 1950.

Welsh Appointed

Announcement of the appointment of John H. (Jack) Welsh as Michigan director of personnel for Lawyers Title Insurance Corporation, was made Jan. 19 by Frederick A. Thomson, Senior Vice President, at his headquarters, 735 Griswold Street, Detroit.

Welsh joined Lawyers Title in 1951 as a field representative. He subsequently served as co-ordinator of builders' business and assistant sales manager for the metropolitan area. He has completed courses in real-estate law and management of personnel at the University of Michigan and at Wayne State University.

Welsh is a member of the Builders Association of Metropolitan Detroit, the Detroit Real Estate Board, Detroit Mortgage Bankers Association and United Northwestern Realty Association.

New Opening in L. A.

Lawyers Title Insurance Corporation, Richmond, Virginia, announces the opening of its National Division office in Los Angeles. The new office is located at 145 North Broadway, where Lawyers Title also operates a branch office.

Kenneth C. Crowder, Vice President of Lawyers Title, is in charge of the Los Angeles National Division. Crowder was formerly manager of the Chicago National Division.

Lawyers Clinton Promotes 3

Thomas E. Colleton, Chairman of the Board of Lawyers-Clinton Title Insurance Company of New Jersey and its President for 25 years, announced the election of George W. Piche as the new President of the 37-year old company at a meeting of the Board of Directors at the company's main offices at 15 Market Street, Newark, New Jersey, on Friday, January 15. This followed the annual meeting of stockholders.

T. E. Colleton

Mr. Colleton will continue as Chairman of the Board and Chief Executive Officer. He is also President of the National Mortgage Company and is a director of the National State Bank of Elizabeth. A resident of South Orange, he is former President of the New Jersey Mortgage Bankers Association and of the New Jersey Land Title Association. He was the head of the Federal Housing Administration in New Jersey from 1934 to 1940.

G. W. PICHE

Mr. Piche, active in the title insurance field for 50 years, was Executive Vice President and title officer of Lawyers-Clinton. He is on the Board of Managers of the Bloomfield Savings Bank and is a Past President of the N. J. Land Title Association. A resident of Bloomfield, he was President of the Bloomfield Board of Education for twelve years and of the Essex County Federated Board of Education.

Mr. Colleton announced other promotions for executives of Lawyers-Clinton Title Insurance Company.

M. Schwartz

Max Schwar.z, associated with the company for 20 years and a Vice President, succeeds Mr. Piche as title officer. Residing in Elberon, Schwartz is a member of the Monmoth County and N.J. State Bar Associations and is a Vice President of Temple Beth Miriam in Elberon. He is Past President of the N J. Land Title Association.

Herbert Parvin, former Assistant Secretary, becomes an Assistant Vice President. He will also continue as Associate Title Officer and Robert Burns was appointed Associate Title Officer.

Transamerica Promotes Two

Frank Benecke, President of Transamerica Title Insurance Company of Washington, formerly Puget Sound Title Insurance Company, announced the promotion of Wesley A. Langlow and Carl Scheuch, Jr., to Senior Vice Presidents of the Company.

Langlow, a graduate of the University of Washington law school, has served as title officer and secretary of the title firm for many years. He is a member of the local and State Bar Associations and has been active in the affairs of the American Right of Way Association. In his new capacity he will act as general counsel and secretary.

Scheuch, a native of Seattle and a graduate of the University of Washington, has been active in community and civic affairs as well as serving in various capacities with the Seattle Real Estate Board, Seattle Mortgage Bankers, and Home Builders Association. His new duties will include responsibility for the advertising, community and customer relation programs of the title firm.

Langlow and Scheuch are both past presidents of the Washington Land Title Association.

Robinson & Wolf Promoted

Ryland A. Robinson, for five and a half years Vice President and Manager of the Hood River County Branch of Title and Trust Company, Hood River, Oregon, has been promoted to Manager of the Cowlitz County Branch of Washington Title Insurance Company, Longview, Washington, according to announcement of Donald V. McCallum, President of Title and Trust Company.

R. Robinson

C. William Wolf, Jr., Assistant Manager of the Beaverton office of Title Insurance and Trust Company will succeed Robinson as Assistant Vice President and Manager of the Hood River County Branch.

B. Wolf

Wolf attended Pasadena City College, Pasadena, California. He joined Title Insurance Company in March, 1958, and was transferred to Title and Trust Company in Corvallis in November, 1959. Prior to his appointment as Assistant Manager of the Beaverton office, he served as Assistant Manager of the Lincoln County Branch in Newport and in the Clatsop County Branch in Astoria.

Earl J. Sachs

Earl J. Sachs, 2260 Los Amigos, La Canada, Vice President and Manager of the customer relations department of Title Insurance and Trust Company, Los Angeles, Calif., notes his

fortieth anniversary with that firm.

Since joining the title company in 1925, he has served in a variety of title positions, including that of searcher, abstracter, title officer, unit supervisor, manager of the subdivision department and manager of the title examining department. He was elected Vice President in January of 1956, and was appointed manager of customer relations in March of 1960.

A native of St. Louis, Missouri, he received his elementary education in Los Angeles and high school education in Menlo Park. He later attended St. Joseph's College, Mountain View, Southwestern University, Pomona College, UCLA and Stanford University.

Active in professional and civic organizations, he is a member of various realty boards and escrow associations, and currently serves as a director of the Los Angeles Escrow Association. He is also a member of the Building Contractor's Association of California, Builder - Developer Council, Home Builder's Association, Young Home Builder's Council, Los Angeles County American Savings and Loan Institute, the Board of Governors of the Spastic Children's Foundation, the executive council of construction industries committee of the Los Angeles Chamber of Commerce, the Chamber's membership committee and the Optimist Club. He is Board Director and Treasurer of the Glendale-Burbank Chapter of the Building Contractor's Association, Past President of the supplier council of the Home Builder's Association, and Past Secretary and Vice President of the Building Contractor's Associates.

Beery Retires

A Reception and Dinner was given January 18th at the Waldorf Astoria Hotel, N.Y.C. in honor of Harold W. Beery by the directors and officers of Home Title Division of Chicago Title Insurance Company. Mr. Beery, after forty-four years of active service, retired as of the year end as an administrative officer of Home Title Division and as Vice President of the Company. He will continue in his position as Chariman of the Divisional Board of Directors.

Lawyers Title Promotes 3

George C. Rawlings was elected Chairman of the Board and George V. Scott was elected President of Lawyers Title Insurance Corporation by the Board of Directors at its meeting in Richmond, Virginia, on February 17, 1965.

G. Scott

G. Rawlings

Rawlings, who had been President of Lawyers Title since 1956, joined the Company in 1934 as a Field Representative and was soon made Assistant Vice President. In 1939, he was elected Vice President, and in 1947, Executive Vice President, which position he held until he was elected President in 1956.

He served as President of the American Land Title Association in 1960.

Scott had been Executive Vice President of the Company since 1963. He joined Lawyers Title in 1931 as Assistant Title Officer in the Home Office in Richmond. In 1939 he was named Branch Manager of the Newark office. He was elected Vice President in 1945 and returned to the Home Office two years later. Scott was elected Senior Vice President in 1958.

In other action, the Board elected William H. Baker, Jr. Senior Vice President and General Counsel. Baker, who heads the Company's legal department, had been Senior Vice President and Chief Counsel.

New V. P. at Metropolitan Title

Mr. Morris Seltzer, President of Metropolitan Title Guaranty Company, New York, N.Y., announced the election of J. Jennings Mahran as Vice President and Chief Counsel by its Board of Directors.

Mr. Mahran will make his headquarters at Metropolitans new enlarged quarters at 41 East 42nd Street, New York City.

J. Mahran

Mr. Mahran has spent almost a half century in the banking and real estate fields. He started as a messenger boy in the old Market and Fulton office of the Irving Trust Company in 1917, attended the American Institute of Banking, studied law, and graduated from New York University Law School in 1922 while he continued his rise in banking.

Mr. Mahran is a member of the New York State Bar Association and the New York County Lawyers' Association, having been a member of the latter's Law Reform and Real Estate Committees.

Management Changes

A number of management changes have been made by the Oregon Title Insurance Co, with headquarters in Portland, Oregon. The Board of Directors elected Roy N. Vernstrom President after a period of time serving as Vice President and Manager.

At the same time, Donald E. Walters, Vice President and Counsel, was also elected Secretary of the corporation.

Vernstrom announced the appointment of David A. McClements, formerly Klamath County Manager, as Manager of Multnomah County (Portland). He was succeeded in Klamath by James A. Little, formerly Manager of Curry County. Little's position in Curry was filled by David DeMartino, formerly an examiner in Clackamas County.

John B. Eakin, Jr., Manager of the Linn County operations was promoted to Clackamas County Manager, following the appointment of his predecessor, Robert H. Thomas, Jr., to the position of Metropolitan Development Manager. Eakin was succeeded in Linn County by Harold Eastridge, examiner in the Linn County plant.

Glen A. Turnbull, Escrow Officer for Cascade Title Co. in Eugene, Ore., has returned to Oregon Title Insurance Co. as Manager of the Josephine County branch.

New Division

John B. Waltz, President of Commonwealth Land Title Insurance Company, Philadelphia, Pennsylvania, has announced that, the business of the South Jersey Title Insurance Company, a wholly owned subsidiary, will be conducted as a division of the Company.

R. Buckman

The new division with offices at 1501 Atlantic Avenue, Atlantic City, N. J. will be under the direction of Raymond A. Buckman, Vice President assisted by LeRoy Mattson, Assistant Vice President and James C. Post, Assistant Treasurer.

L. Mattson

Ray Buckman, Vice President has been active in the National Title field and has wide experience in plant administration, title searching-examination and settlement services. He presently resides in Northfield, N.J.

with his wife and four daughters.

LeRoy Mattson, Assistant Vice President, has 42 years service in the South Jersey area. He served four years on the City governing body of Absecon, N.J. where he resides with his wife. For 10 years he served as a member of the Board of Freeholders of Atlantic County.

J. C. Post

Jim Post, Assistant Treasurer, has been employed by the South Jersey Title Insurance Company since 1940 and is thoroughly familiar with New Jersey title operations. He attended the New Jersey College of Commerce. He and his wife and two daughters are residents of Absecon, N.J.

Loughnane Named

William J. Loughnane of Clifton has been named to head the Trenton office of New Jersey Realty Title Insurance Company, it was announced by James J. McCarthy, President of the Title Insurance Firm.

W. Loughnane

Loughnane, who is an Assistant Vice President of the company, has for the past year headed its Freehold office. New Jersey Realty Title Insurance Company is headquartered in Newark.

McCarthy also announced that Joseph P. Grabler of 153 Beech Street, Jersey City, will succeed Loughnane as head of the Freehold office.

Loughnane joined New Jersey Realty two years ago as a title examiner at the company's Newark office, later becoming an Assistant Title Officer. A graduate of Fordham University School of Business Administration, he received his law degree from Fordham University School of Law.

He is a graduate of Seton Hall, and also received a master's degree and his law degree from that university.

ALSO AT N. J. REALTY TITLE

James J. McCarthy announced the appointment by the Board of Directors of A. Lyndon Woodward as Vice President of the Company.

Mr. Woodward has been with the Company since 1947, at which time he was a salesman for the Newark office of the Title Company. In 1955 he was transferred to the Hackensack office and promoted to Appraiser for the parent Company, New Jersey Realty Company. Two years later he was re-assigned to the Newark office of the Title Company and advanced to the post of Sales Manager.

In January of 1961, Mr. Woodward was appointed Assistant Vice President of the Title Company, while still retaining his post of Sales Manager. He served in this capacity until January of this year, when the Board of Directors appointed him Vice President in charge of the Administrative Management Department.

Oregon Promotions

Billy T. Barnes and Paul S. Wiggins have been elected Assistant Vice Presidents of Title and Trust Company, according to announcement of Donald V. McCallum, President of Title and Trust Company, Portland, Oregon.

B. Barnes

Barnes is presently an Assistant Manager of the Clackamas County Branch of Title and Trust Company in Oregon City. He graduated from the University of Oklahoma Law School with an LLB. degree in 1957

and was employed by Title and Trust Company in its Albany office in 1958. He has been in the Oregon City office since 1960. Barnes is a Past President of the Oregon City Lions Club.

P. Wiggins

Wiggins will continue in his present assignment as Assistant Manager of the Washington County operations and Manager of the Hillsboro office. Wiggins graduated from the University of Oregon Law School in 1957 and is a member of the Oregon State Bar. He has been employed by Title and Trust Company since 1958 and has managed the Hillsboro office since 1963. He is a member of the Hillsboro Lions Club, a member of the Chamber of Commerce, and has been active in the United Good Neighbors Campaign.

R. F. Hall Promoted

Assuming duties of Vice President and Assistant Manager of the Reno office of Pioneer Title Insurance Company of Nevada is Robert F. Hall, as announced by Harold W. Wandesforde, President of Pioneer Title Insurance Company of Nevada, Las Vegas.

R. Hall

A native Nevadan, having been born in Reno and educated in the Reno schools, Hall served as a parachute infantryman in the U. S. Army. Returning to Reno, he attended the University of Nevada prior to joining Washoe Title Insurance Company of Nevada in 1953. In 1957, he became a title officer and in the last year-and-ahalf, has held the position of senior title officer and Assistant Manager of the title department.

Chelsea Title

Frank B. Glover, Senior Vice President in charge of the National Title Division of Chelsea Title and Guaranty Company, announces the appointment of F. Victor Westermaier, Jr. as Vice President in charge of their Eastern Regional Sales Office to be located in Camden, New Jersey area.

Westermaier is a native of New Jersey. He attended Haddonfield Private and Public Schools and the University of Pennsylvania Wharton and Law School.

He has had many years experience in the title industry, having most recently been associated as a Vice President with a title company. He is the immediate Past President of the New Jersey Land Title Association and is presently on its Board of Governors.

Massachusetts Promotion

At its annual meeting, Massachusetts Title Insurance Company elected Henry W. Keyes President. Mr. Keyes has been General Manager, a Director and a Vice President since 1953. He is a member of the bar in Massachusetts and New Hampshire, and is a partner in the firm of Spencer & Stone in Boston. He succeeded Henry W. Davies, who had served the Company in various capacities for more than fifty years, and as President since 1918. Mr. Davies, who retired as President at his own request, becomes Senior Vice President and remains a Director. Other officers and directors were re-elected.

H. Keyes

New Asst. V. P.'s

Three new Assistant Vice Presidents have been elected as officers of Burton Abstract and Title Com-

pany, Detroit, Michigan, according to Edson N. Burton, President of the firm. All other officers were re-elected by the Board of Directors.

The three new Assistant Vice Presidents include Leland P. Allcut, Sr., Milton R. Braidwood and Charles E. Potter. Allcut is in public relations and sales for the firm. Braidwood is in charge of a Mobile Title Production Unit and Potter is Lapeer Regional Manager of Burton Abstract and Title.

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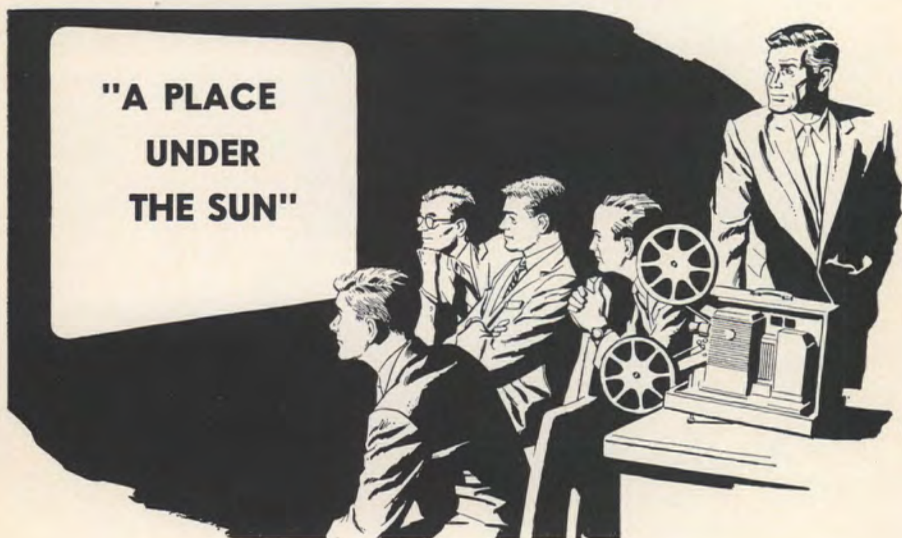
In Memoriam

James A. Minchin

James A. Minchin, Assistant Vice President of Home Title Division, Chicago Title Insurance Company, died December 31, 1964. He joined the staff of the Company in 1946 and was long active in its New York office. He was elected Assistant Vice President of the Company in 1957. He was a Trustee of the Building Industry League, a member of the Bronx Real Estate Board and a member of the Cardinal's Committee of the Laity.

A Valuable Sales Tool ALTA'S 16mm Movie



JOSEPH H. SMITH RESIGNS

It is with sorrow that we announce the resignation of ALTA Executive Vice President, Joseph H. Smith. At a recent meeting of the Executive Committee in Washington, D.C., Smith made known his intention to leave the service of the American Land Association in these words:

Following considerable reflection and thought, it is my decision to ask that you accept my resignation as Executive Vice President of the American Land Title Association. It is my intention to continue to serve the Association for whatever time the Association officers decide is necessary to assist in the transition of my duties to a successor. To this end, I suggest this resignation become effective approximately June 1, 1965.

My experience with the Association has been rich and rewarding, and I am grateful to all members and officers for their assistance and cooperation for the thirteen years it has been my pleasure to serve ALTA.

Smith joined the ALTA in 1952 as assistant to the late James E. Sheridan and was elevated to his present position in February, 1959.

Born May 2, 1922, Joe Smith is a native of Detroit. He was graduated from the University of Detroit Law School and for some years was an instructor in business law and current economics at the University of Detroit Evening College of Commerce and Finance. He has served as a member of the Board of Directors, University of Detroit Alumni Association; was Captain of the University of Detroit basketball team in 1948. He is presently a Trustee, ALTA Group Life Insurance Trust.

His activities include memberships in the Michigan Bar Association, American Bar Association, Washington Board of Trade, Knights of Columbus, American Society of Association Executives, Gamma Eta Gamma Law Fraternity and the Delta Sigma Pi Professional Business Administration Society.

During the thirteen years of Joseph H. Smith's association with the ALTA, he has endeared himself to every member. His standard of conduct; his dedication to the ideals and principles of the Association; his sympathetic understanding and his warmth of personality have earned the respect and affection of all with whom he has come in contact, within and outside the title industry.

Effective June 1, 1965, Smith will join Lawyers Title Insurance Corporation as Vice President at the home office in Richmond, Virginia. The officers, members and staff of the American Land Title Association wish him the personal success and satisfaction he so richly deserves.

Meeting Timetable

APRIL 29, 30, 1965
Arkansas Land Title Association
Albert Pick Hotel, Little Rock

APRIL 30, MAY 1, 1965
Oklahoma Land Title Association
Tradewinds Motel, Muskogee

MAY 2, 3, 4, 1965
Iowa Land Title Association
The New Inn, Okoboji

MAY 5, 6, 7, 8, 1965
California Land Title Association
Fairmont Hotel, San Francisco

MAY 10, 11, 1965
Pennsylvania Land Title Association
Skytop Lodge, Skytop

MAY 13, 14, 15, 1965
Texas Land Title Association
Rodeway Inn, El Paso

MAY 20, 21, 22, 1965
Washington Land Title Association
Harrison Hot Springs, B.C., Canada
The Harrison Hotel

MAY 21, 22, 1965
Tennessee Land Title Association
Chattanooga

JUNE 2, 3, 4, 5, 1965
Idaho Land Title Association
The Downtowner Motel, Boise

JUNE 4, 5, 1965
South Dakota Title Association
Falcon Cafe, Pierre

JUNE 9, 10, 11, 12, 1965
Oregon Land Title Association
Gearhart Hotel Gearhart

JUNE 9, 10, 11, 1965
Illinois Land Title Association
Drake Hotel, Chicago

JUNE 10, 11, 12, 1965
Land Title Association of Colorado
Broadmoor Hotel, Colorado Springs

JUNE 11, 12, 13, 1965
Montana Land Title Association and
Wyoming Land Title Association
Jackson Lake Lodge, Wyoming

JUNE 18, 19, 1965
New Jersey Title Insurance Association
Seaview Country Club, Absecon

JUNE 20, 21, 22, 23, 1965
Michigan Land Title Association
Hidden Valley, Gaylord

JULY 11, 12, 13, 14, 1965
New York State Title Association
Otesoga Hotel, Cooperstown

SEPTEMBER 9, 10, 11, 1965
New Mexico Land Title Association
"The Inn," Hobbs

SEPTEMBER 10, 11, 1965
Kansas Title Association
Baker Hotel, Hutchinson

SEPTEMBER 16, 17, 18, 1965
Utah Land Title Association
Prudential Federal Savings Auditorium
Salt Lake City

SEPTEMBER 19, 20, 21, 1965
Missouri Land Title Association
Lamplighter Motor Inn, Springfield

OCTOBER 17, 18, 19, 1965
Nebraska Title Association
Prom Town House Motor Inn, Omaha

OCTOBER 21, 22, 23, 1965
Florida Land Title Association
Fort Harrison Hotel, Clearwater

OCTOBER 24, 25, 26, 1965
Ohio Title Association
The Christopher Inn, Columbus

OCTOBER 28, 29, 30, 1965
Wisconsin Title Association
Hotel Sterlingworth, Elkhorn

NOVEMBER 7, 8, 9, 1965
Indiana Land Title Association
Claypool Hotel, Indianapolis

FUTURE ALTA CONVENTIONS

1965 — Chicago
1966 — Miami Beach
1967 — Denver
1968 — Portland, Oregon

FUTURE MID-WINTER CONFERENCES

1966 — Chandler, Arizona
1967 — Washington, D.C.

AMERICAN LAND
TITLE ASSOCIATION
SINCE 1907