TITLE NEWS

THE OFFICIAL PUBLICATION OF THE
AMERICAN LAND TITLE ASSOCIATION ®

AUGUST, 1966

A MESSAGE FROM THE CHAIRMAN OF THE ABSTRACTERS SECTION

August, 1966

Once again, it is my privilege to use our President's space in Title News. As is customery, I would like to comment on the Abstracters Section activities, and also briefly preview our part of the Miami Convention program, which is now only a short time away.

There is little I can say about our Management Seminar of last April that has not already been reported in the June issue of Title News. Like most first things, it was somewhat of an experiment, and we learned a great deal from the production of this program. The attendance was far more than expected, with 131 registrants. The interest and enthusiasm of those present was high, and I believe we all gained some additional knowledge that will assist us in dealing with our Management problems. The critique comments solicited from those who attended indicated that the program was well worth while, and the general concensus was overwhelmingly in favor of future Seminars.

As a result, one of the workshops which will be sponsored by the Abstracters Section at this year's Annual Convention, will be a capsule Management Seminar. We are again receiving help from the Small Business Administration, and this part of our program is being co-produced by that organization. I can tell you without any reservations, that we have commitments from three exceptionally well qualified men to make this presentation, and I believe you will all find it extremely interesting.

Another workshop will be a sequel to last year's presentation by our Committee on Abstracters Liability, Errors and Omissions policies. This time the emphasis will be on the presentation of a proposed policy form, and we hope to have offers from responsible carriers, to write this policy. Our third workshop will be an all Florida show, and will deal with a subject that is of vital interest to all abstracters and tile insurance agents.

In addition, there will be other timely presentations on the regular part of our program, which I am sure you will not want to miss. Another fine Convention program has been arranged, so be sure you are with us in Miami Beach this October.

Sincerely,

Alvin K. Lohn

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FEATURES:

DEPARTMENTS:

VOLUME XLV

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1966

ON THE COVER: ALTA members attending the 60th Annual Convention in Miami Beach, October 16-20, 1966, will be greeted by a distinguished statesman. Elliott Roosevelt, Mayor of the City of Miami Beach, was in the enviable position of having seen history made. As Personal Aid to President Roosevelt, he attended the Big Three Conference which shaped the destiny of modern civilization. He is an author and businessman with an outstanding war record, having received 27 combat decorations from the United States, England, and France. We welcome Mayor Roosevelt to the cover of Title News.

JAMES W. ROBINSON, *Editor*
FRANK H. EBERSOLE, *Assistant Editor and Manager of Advertising*

THE ODD LOT

by Robert W. Smith

Licensed Land Surveyor, California

The problem of the remnant lot in a recorded subdivision has been a cause of frustration to surveyors for many years. Legal opinions that are in apparent conflict with one another tend to confuse the surveyor even further.

The general problem is how to treat an excess or deficiency found to exist in a block of lots, the block normally consisting of a series of regular lots with one or more irregular shaped lots at one end.

Definitions:

Remnant is a noun denoting a remainder, or that remaining or left over. As applied to this problem it refers to that lot (or lots) which are left as remainders after a series of regular lots have been developed. The application of this process is termed the "remnant rule".

The remnant rule may be further divided into two categories:

1. The case in which one lot is not specifically dimensioned.

2. All lots in the block are dimensioned.

Apportion is defined as a process of dividing, assigning in just proportion, or of distributing proportionately. Referred to the problem under discussion it is the proportioning of the excess or deficiency found to exist in a block among all of the lots, proportional to their share of the total length of the block. The application of this process is termed the "Apportionment rule".

At this point it might be well to stress that the assumption made herein is that only the block or subdivision boundaries can be located in accordance with the original monument positions. The interior lot corners are either lost or have never been set. It is further assumed that the title lines have not been changed by unwritten rights or transfers.

Remnant lots that are formed by adjoining subdivision boundaries that can be shown to be in error are normally handled by the remnant rule principle. This is actually an aspect of the senior-junior rights problem and will not be further developed in this article.

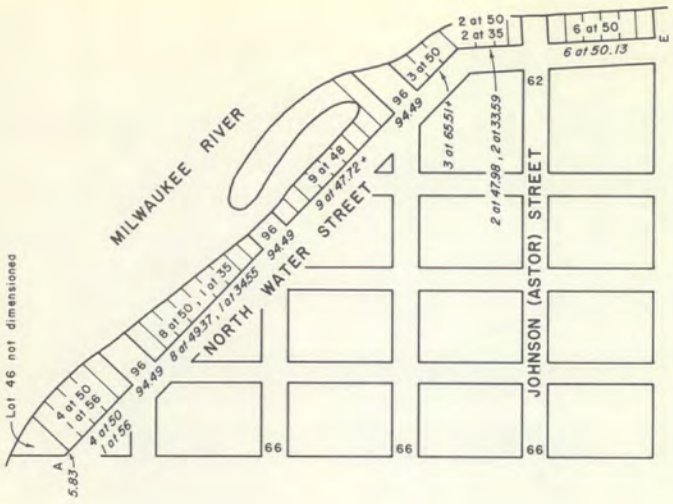

Figure 1

The first type of remnant rule division noted is the group in which one lot has been purposely left undimensioned. A classic case of this type is Pereles v. Gross[1] (see Figure 1). The court in this case states:

> In 1876 the city engineer undertook to locate on the ground these water lots [2] and the intervening streets to the river, and finding confusion seems to have practically disregarded all distances indicated on the original plat, and gave to the various lots and streets the dimensions marked in the figures below the lot lines in North Water Street (the dimension figures above the lot lines being those of the original plat). Upon such survey, and others, it is found that the distance from the northeast line of lot 46 [3] to the point E exceeds the total of the figures on the original plat by 37.96 feet subject to the question whether the north end of Johnson (Astor) Street should be 66 or 62 feet. If only 62 feet, the surplusage would be 4 feet less.[4] The defendants contend that these various lots and streets should be given the dimensions accorded them upon the original plat and that the resulting surplusage of from 35 to 40 feet should all be cast upon lot 46, whose frontage was left unmarked.

In the theory of the city engineer it was apparent from the plat that the intention was to keep the ends of the streets running at right angles from North Water Street to the river in correspondence with the north and south

[1] *126 Wis. 122, 105 N.W. 217, 110 Am. St. Rep. 901, (1905).*

[2] *the lots fronting on the Milwaukee River.*

[3] *point A.*

[4] *The distance between A and E is presumed fixed. If the width of Johnson Street was 62 feet rather than 66 feet there would be 4 feet more not less surplus in the blocks.*

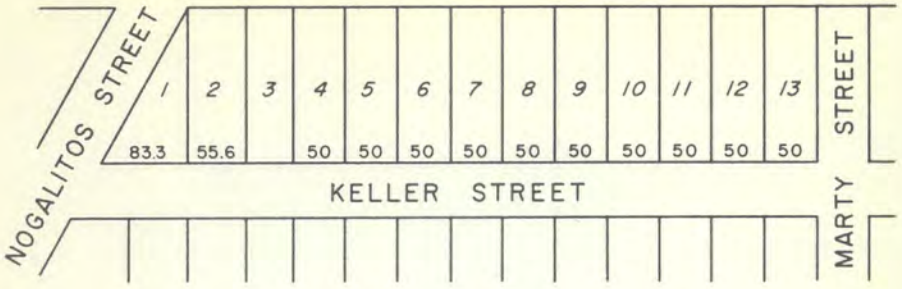

Figure 2

streets in the body of the plat, and that this result was nearly accomplished by his survey of 1876. This survey caused some of the lots to be changed by almost one third, viz. from 50 feet to 65.51 feet. To this Justice Dodge commented:

> This is complete perversion of the rule, founded on both reason and authority, that when in subdividing a line or space, the surveyor declares the dimensions which he has given to each of the subdivisions, except the last, and there leaves an irregular space, without designating its dimensions, he will be presumed to have thrown the remainder, much or little, into that irregular and unmeasured portion.

It is well to note at this point that the undimensioned lot need not be the end one in the block. As an example let one examine the case of Toudouze v. Keller[5] (see figure 2). Lot 3 or the "Subdivision of Property of T. J. Devine" is not dimensioned. All other lots in the block are dimensioned. Justice James says of this:

> This plat, from which the annexed sketch is taken, calls for a specific number of feet frontage (50 feet) on Keller Street for all said lots (sic), except lot 3, where no frontage is shown, except that it appears upon the plat as being of less width than the others. The legal effect of this failure to designate any frontage for one of the lots is to make any deficiency in the width of the block fall upon lot No. 3. The surveyors who testified stated that the proper way to ascertain the width of lot 3 was to measure from the Marty Street corner of the block as far as the lots had stated fronts, which would bring them to the west line of No. 3, then to measure from the Nogalitos corner the given frontage of lots 1 and 2, and the intervening space would constitute lot No. 3. This has been judicially declared to be the legal and proper way, under the circumstances, to ascertain the appropriate width or frontage of No. 3, as the lots are represented upon the sketch. In Pereles v. Magoon, 78 Wis. 31, 46 N.W. 1049 (sic),[6] 23 Am. St.

[5] *118 S.W. 185 (Tex. Civ. App. 1909).*

[6] *78 Wis. 27, 46 N.W. 1047.*

Rep. 389, The Supreme Court of Wisconsin says: "Had the plat given the specific dimensions of each of the several lots fronting on Jefferson street except lot 1, and given no dimensions of that lot, then such absence of the dimensions of that lot would have evinced the intention that it should include whatever should be left after setting off the several lots of which the specific dimensions had thus been given, whether the same be more or less".

Continuing with the discussion of undimensioned lots brings one to the "grand-daddy" of the remnant rule problem—Baldwin v. Shannon.[7] A tract of land in Jersey City, New Jersey was divided into 50 lots, a map of the subdivision being made by Clark and Bascot in 1851. Justice Reed says:

> Of these fifty lots, forty- either were laid off as regular lots, namely, lots with a uniform width, and two lots, Nos. 47 and 49, as irregular lots.

It is important to note that no dimensions appeared on any of the lots of this map and hence the first question put to the court was to decide what the full width of the "regular" lots were. Justice Reed continues:

> No width is written upon the plots as they appear upon the map, but there is a scale of distances. Upon placing the compasses upon these plotted lots and then applying them to this scale, it appears that all the regular lots are laid off twenty-five feet absolute, and not frontage, width. . . . A difficulty, however, arises from the appearance in the testimony of such circumstances as show that the entire tract is too short to be subdivided into fifty lots, forty-eight of which are regular lots of twenty-five feet absolute width and two of which are irregular lots, which appear upon the map as still wider.
>
> How, then, are the lots to be located? It has been held in cases where sections of regular width were sold and it happened that there was not sufficient land to furnish the number of sections of the required size, that there must be a proportionate diminution of each section. . . . If the present was such a case, the soundness of this rule would be open for consideration. But, in this case, two of the lots were clearly irregular. All the evidence in the case relative to the character of the ground, and of the application of the plan to the ground, shows that these two lots were the divided remnant left after laying off regular lots. . . .

The plaintiff's deed contained, in addition to the call for the lots on the Clark and Bascot map, a metes and bounds description. This description fortified the justice's decision that the lots were intended to be twenty-five full width.

The essence of this case seems to be that where it can be shown that the intent was to lay off a series of regular lots (regular might be presumed to mean lots of uniform width, and further probably a full number of feet in width) and have the remainder or remnant taken up by one or more

[7] *43 N.J.L. 596 (1881).*

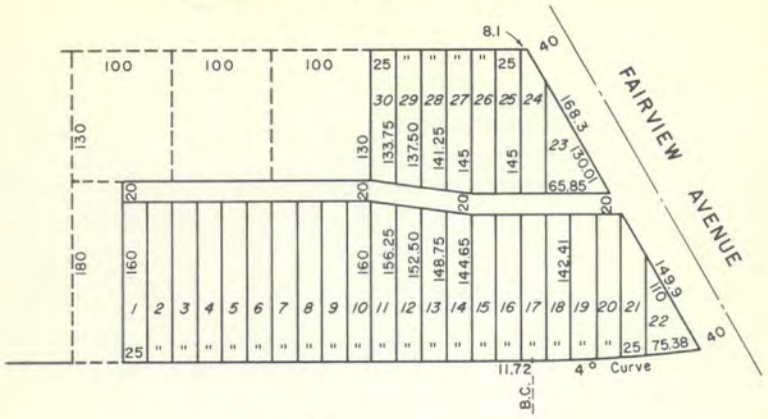

Figure 3

This is to certify that Curtis A. Hughes & Marietta E. Hughes, his wife. owners of the following described property, viz:—Beginning at the southeast corner of lot Twenty-Four (24) of Merriam's Out-lots, thence, northeasterly on the line which divides lots Twenty-Four (24) and Twenty-Five (25) of said Merriam Outlots one hundred & eighty (180) feet; thence, northwesterly on a line parallel to southwesterly line of said lot Twenty-Four (24) fifty (50) feet; thence, southwesterly on a line parallel with southeasterly line of said lot Twenty-Four (24) one hundred & eighty (180) feet; thence, southeasterly on southwesterly line of said lot Twenty-Four (24), fifty (50) feet to point of commencement; also, the southwesterly one hundred & eighty (180) feet of lots Twenty-Five (25) & Twenty-Six (26) and all of lots Twenty-Seven (27) and Twenty-Eight (28) of Merriam's Outlots—have caused the same to be subdivided & platted & hereafter known as "Hughes Midway Addition to the City of St. Paul, Ramsey Co., Minn," as shown by this map—& we do hereby give and dedicate to the public and for the public use forever the alley as shown to run through said property as this map indicates. Witness our hands & seals this thirtieth day of April, A. D. 1880.

Marietta E. Hughes. [Seal.]
Curtis A. Hughes. [Seal.]

In presence of Harvey George. Clarence H. George.

irregular lots, then the remnant rule should be applied. It should be noted by the wording of the court's opinion that evidence relative to the character of the ground and the application of the plan to the ground is a part of the justification for this decision.

The next case for discussion is Barrett v. Perkins [8] (see Figure 3.) Justice Brown comments:

> All the lots, except 22, have, according to the plat, a frontage of 25 feet on University Avenue, and lot 22 a frontage of 73.38 feet. The distance between the outer boundary of lot 1 and Fairview Avenue, the end of the plat, is insufficient to supply the number of lots given on the plat with the dimensions stated. So that, beyond question, there was a mistake in the preparation of the plat, or in the original survey, and the purpose of the action is to locate and correct it. The whole controversy in the court below narrowed down to the question whether lot 22 was or was not erroneously designated on the plat as a 75-foot lot. . . . There is not enough land within the

[8] *113 Minn. 480, 130 N.W. 67 (1911).*

platted tract to supply all the lots of the dimensions given on the plat, and this situation is not controverted. Giving to lot 22 a frontage of 75.38 feet results in moving each of the other lots 25 feet west, and in the end to completely extinguish or eliminate lot 1. In other words, there is a deficiency of land, and all the lots cannot be accounted for. In such a case the most the court is authorized to do, in the form of correcting the apparent mistake, is to apportion the deficiency among the several lots, and not eliminate one of them entirely, as the trial court, in effect, did in the case at bar. The owner of lot 1 has as much, and it would seem greater,[9] right to have his property remain a part of the plat, as the owner of lot 22; the greater right, because lot 1 was first laid out by the owner of the plat, and beyond controversy, with the intention that it should be and remain a lot of the subdivision of the dimension indicated. . . . Here the owner of a definite tract of land intended, and his intention is manifest, to lay out as many lots of the uniform width of 25 feet as the tract would contain. This he proceeded to do, laying off 21 25-foot lots, after which there remained an irregular or triangular piece to be disposed of as a remnant. This he supposed was 75.38 feet at its base, and so noted it upon the plat. This, we are satisfied from the record, was a clear mistake. But it is not necessary to extend the opinion by a discussion of the matter. It is not important. There is a deficiency of land to make up the number of lots with indicated frontage, and the rule in such a case is that the deficiency must fall upon the last or irregular tract; the remnant of the whole after laying out the lots of a uniform size. . . . The rule furnishes a definite and safe method and guide for the determination of mistakes of this nature. . . .

The key to this case is the note that a mistake has been made and that this mistake can be isolated. Mistakes that can be isolated are not prorated. Skelton in his book[10] calculated the width of lot 22 (holding the width of lot 23 fixed, and assuming Fairview Avenue to be straight) as approximately 53.78 feet, as compared with 75.38 feet as shown on the plat. It will be seen that the digits of these two numbers are the same and it is quite probable that the interchange of digits is the cause of the mistake. The judgement to cause lot 22 to take the deficiency, although correct, should probably have been decided on the basis of the specific location of a mistake rather than on the principles expounded by Justice Brown.

Whenever a mistake can be shown to exist and can be isolated, it is the duty of the surveyor to place the excess or deficiency where the mistake has caused it to be, rather than to prorate the er-

[9] *It is questionable whether the owner of lot 1 has any greater right than the owner of lot 22 or for that matter lot 2 simply because of the numerical designation. In a subdivision all lots are created simultaneously and there are no senior rights.*

[10] *Skelton, Ray Hamilton,* The Legal Elements of Boundaries and Adjacent Properties, *The Bobbs-Merrill Co., 1930, pp. 229-232.*

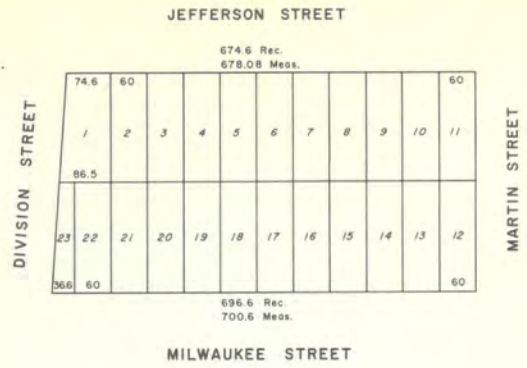

Figure 4

ror through the other lots.

With this point in mind let one examine a case that has been used many times to uphold the apportionment rule — Pereles v. Magoon[11] (see Figure 4). The actual distance from Martion Street to Division Street proved to be approximately 3.5 to 4 feet in excess of the dimensions shown on the plat of the subdivision. The court said:

> Had the plat given the specific dimensions of each of the several lots fronting on Jefferson Street except lot 1, and given no dimensions of that, then such absence of the dimensions of that lot would have evinced an intention that it should include whatever should be left after setting off the several lots of which specific dimensions had thus been given whether the same should be more or less; but where, as here, the specific dimensions of each and all of the several lots fronting on Jefferson Street are given upon the plat, and there is no lot in the block of which the specific dimensions are not thus given, there seems to be no substantial reason why such excess should be given wholly to one lot merely because its dimensions, as given upon the plat, differ from those of the other lots.
>
> This court has repeatedly held, in effect, that where a piece of land is subdivided into lots, and a plat of the subdivision recorded, and the actual aggregate frontage of such lots is *less* that is called for by the plat, the deficiency must be divided among the several lots in proportion to their respective frontage as indicated by the plat.

One of the interesting points of this case is the mathematical inconsistency of the data shown on the plat. If, as the court held, the excess along Jefferson Street should be prorated among all the lots, then the same reasoning would have to be applied to the excess along Milwaukee Street. Further, the excess along the rear lots lines would have to be similarly prorated. But doing this would cause the lot lines as they run from Jefferson Street to Milwaukee Street to angle at the

[11] *78 Wis. 27, 46 N.W. 1047, 23 Am. St. Rep. 389 (1890).*

middle line of the block. This obviously was not the intent of the subdivider. To prove this point let one note that the dimension of lot 1 on Jefferson Street is 74.6 feet and that a line drawn across the block colinear with the line between lots 1 and 2 has a dimension of 96.6 feet (36.6 + 60) on Milwaukee Street. Since the line dividing the block is centered between Jefferson Street and Milwaukee Street the rear lot dimension of lot 1 should be (74.6 + 96.6); 2, or 85.6 feet rather than 86.5 feet as shown on the plat. At first glance one might be inclined to mark this as a drafting error since the digits are the same and let the issue rest. But if it were assumed that 96.6 feet and the rear lot dimension of 86.5 feet were correct the front dimension of lot 1 could be calculated as 86.5—(96.6-86.5), or 76.4 feet compared with 74.6 feet as shown on the plat. Again the digits are the same. The only conclusion that can be reached is that there is a mathematical inconsistency, or error in at least one, and possibly two or all three of the dimensions along the two lots which face Division Street. An error has been made and isolated (isolated in so far as the error must be in either or both lots 1 and 23), therefore it is this author's opinion that a more justifiable solution to this case would have been to use the remnant rule, much as it was applied in the previously discussed Barrett v. Perkins case. Nevertheless the court's decision stands.

A number of cases[12] were cited in the Pereles v. Magoon decision. Moreland v. Page, 2 Iowa 139 (1856), seems to have been one of the first to establish the apportionment principle and it would be well to quote the court's opinion:

> . . . where on a line of the *same* survey between remote corners, the whole length of which line is found to be variant from the length called for, in re-establishing lost intermediate monuments, as marking subdivisional tracts, we are not permitted to *presume* merely, that a variance arose from the defective survey of any *part;* but we must conclude, in the absence of circumstances to the contrary, that it arose from the imperfect measurement of the *whole* line, and distribute such variance between the several sub-divisions of such line in proportion to their respective lengths.

Judge Thornton in the previously footnoted Francois v. Maloney case says:

> It is just and reasonable that a *pro rata* division of the deficiency should be made. There is no good reason why the loss should fall entirely on lot 1. The parties hold title by deeds, which describe the lots by numbers. The recorded plat is necessarily referred to, for the ascertainment of the dimensions of the lots. The original monuments were lost. The purchase of lot 1, then, has as good a right to sixty-five feet in

[12] *Jones v. Kimble, 19 +is. 452 (1865); Miller v. Topeka Land Co., 44 Kans. 354, 24 Pac. 420 (1890); Francois v. Maloney, 56 Ill. 399 (1870); Newcomb v. Lewis, 31 Iowa 488 (1871); and Moreland v. Page, 2 Iowa 839 (1856). Of these five cases the first four all in turn refer to the fifth: Moreland v. Page.*

width as the purchaser of lot 6 has to fifty feet. Each party should lose his proportion of the deficiency. A contrary rule would operate the most palpable injustice.

Except where the contrary can be proven the apportionment rule has been applied in the majority of the cases in which this problem has come up. Only one other case could be found in support of the remnant rule—Thordarson v. Akin.[13] The opinion of the lower court judge reads in part:

> There is a difference of 3.3 feet between the length of this block as shown on Plan 193 and that shown on the plan of the special survey, the excess being on the latter.
>
> On this excess in length of 3.3 feet shown on the last plan the plaintiff bases his claim. His contention is that this excess should be distributed over the whole length of the block; and that by doing this along the northern (sic)[14] boundary of the block, one inch will be added to the width of each 25-foot lot. . . .
>
> If the excess in question be distributed over the western boundary of the block as the plaintiff contends it should be I find that the effect of it would be to remove the dividing line north for the distance stated[15] and, in that case, the defendant's eaves and throughs would project over, and his fence run onto, the plaintiff's land, as the latter alleges. In fact, many other buildings and fences in that block would be similarly affected.

The excess in this case was not prorated but placed in the irregular lots. However, the last quoted sentence gives rise to the thought that the evidence of practical location might have been the controlling factor in this case rather than a strict application of the remnant rule, for buildings and fences built soon after the original monuments were set and in general agreement with one another may be the best evidence of the original survey lines.

The surveyor should continually keep in mind that he is actually trying to the best of his ability to determine the location of lot lines as they were originally monumented. Monuments as originally set (with the exception of senior rights intrusions) control over any angles and distances shown on a plat. It would be well for surveyors to take notice of Associate Justice Richards' comments when the Thordarson v. Akin case was appealed:

> It should, I think, be assumed in this case that the surveyor who laid out the lots planted stakes, or monuments of some kind, to show the boundaries between the lots. Those stakes would be the legal boundaries of the lots and, in case of a clash between the boundaries, as so determined, and the measurement shown by the plan, the former would prevail. . . .
>
> But it has been discovered that the frontage of the whole block on Victor Street on which the plaintiff's and defendent's properties front, contains about

[13] *21 Manitoba L. R. 157 (1911).*
[14] *western.*
[15] *1.4 feet.*

3 feet more than the total of the lot measurements shown on the plan. The plaintiff claims that this three feet must be divided proportionately amongst the different lots in the block. . . . This, if followed, would show the defendant's eaves to project over the boundary between his land and the plaintiff's.

The onus is on the plaintiff to show where the boundary is. It is not by any means certain that the extra three feet was, in fact, distributed by the original survey amongst all of the lots. It may by chance have gotten entirely into any one of the lots fronting on Victor Street, or into those fronting on Notre Dame Street,[16] at the northerly end of the block.

It, therefore, should be as a last resort, if at all, that a court should hold that the three feet was distributed as the plaintiff claims.

Before the plaintiff can ask us to draw the conclusion he seeks to have drawn, he must at least, show that a careful and exhaustive search was made for all such original posts, or monuments, as would show the actual survey, or for vestiges of them from which their location could be ascertained. This he has not done. His surveyor assumed that, because the original survey had been made nearly 30 years before, therefore there could be found no such original monuments, or vestiges of them, as would be a guide to the location of the line between plaintiff's and defendant's lands. It may be that, in fact, there were no vestiges of the original posts. But that is not to be assumed by the Court till proved.

In a subdivision all lots are created at the same time, hence no senior rights can exist between adjoining lots. Therefore any excess or deficiency found to exist in a block must be shared by all the lots. This is just and equitable. The application of this principle is the apportionment rule.

Where one lot in a block has been specifically left undimensioned or marked more or less, it may reasonably be assumed that the subdivider did this intentionally and that his intent was to place any excess or deficiency that might exist in this lot alone.

The problem of the remnant rule application to a subdivision in which all lots are dimensioned cannot be easily resolved. Unless the contrary can be proven by either written or unwritten means any excess or deficiency found to exist in a block should be prorated. Proration, however, is a last resort and should never be used indiscriminately. If a mistake or error can be found and isolated (and one of the first places to look for such mistakes would be in the irregular lots) then the error should be placed where it exists and not prorated. Each case with which the surveyor is confronted must be judged alone on its own special qualities. There is no general rule.

BIBLIOGRAPHY

Brown, Curtis M., "Remnant Rule and Proration." *Surveying*

[16] *the irregular lots.*

and Mapping, Vol. XX, No. 3. pp. 354-359, Washington: American Congress on Surveying and Mapping, 1960.

Brown, Curtis M., "The Surveyor and the Law." *Surveying and Mapping*, Vol. XVIII, No. 4, pp. 455-457, Washington: American Congress on Surveying and Mapping, 1958.

Holmquist, J. Harold, "A Problem for Land Surveyors." *Surveying and Mapping*, Vol. V, No. 3, pp. 54-60, Washington: American Congress on Surveying and Mapping, 1945.

Holmquist, J. Harold, "A Surveying Problem." *Surveying and Mapping*, Vol. VIII, No. 2, pp. 84-86, Washington: American Congress on Surveying and Mapping, 1948.

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James W. Robinson

Dear Jim,

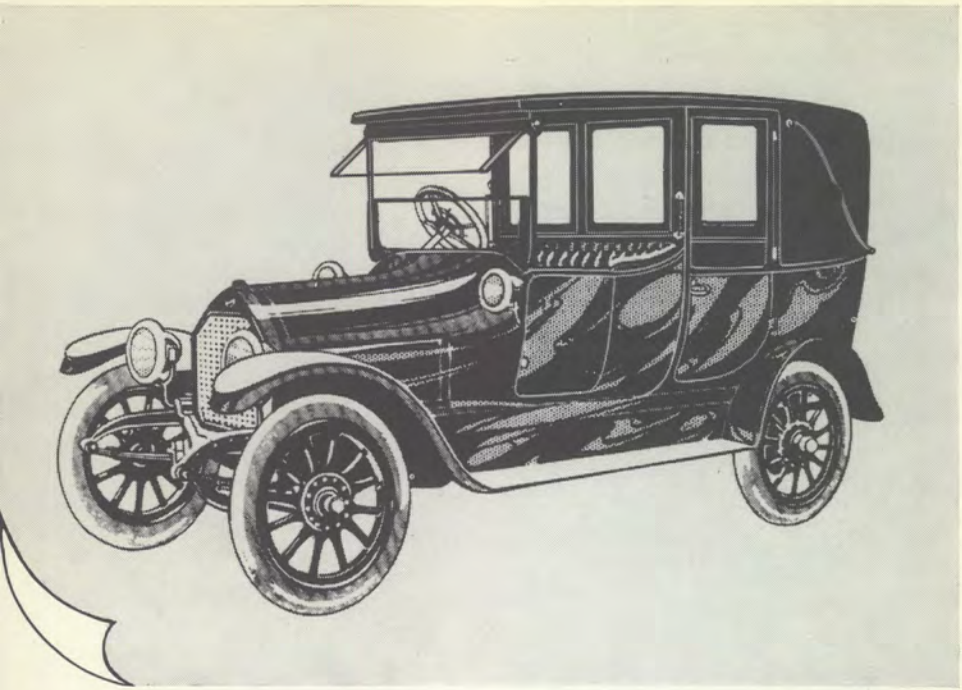
Thank you so much for the June issue of the ALTA news. Bob would have been as proud and pleased as I am in re the article about Alice.

Jim, if there is an announcement about his death in a future issue, would it be possible to add this note?

"My family joins me in sending appreciation for each and every expression of sympathy and concern which we received from the members of the title industry. Your notes, flowers and cards were comforting."

I also am grateful to you, Jim, for the picture you sent. The going is rough, but I am managing.

Sincerely,
Mrs. Robert E. Kniskern



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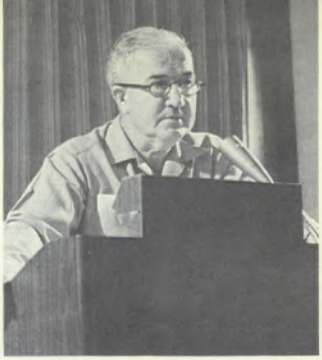


New President, Bert Tousey

Rhes Cornelius Speaks

ABOVE: Edward T. Dwyer, honorary member of Oregon Land Title Association, and a Past President of ALTA, greets the convention.

LEFT: Retiring President, Urlin Page, presents $500 memorial award to J. W. Southworth.

OREGON HOLDS "BEST CONVENTION"

BERT TOUSEY ELECTED PRESIDENT

The Oregon Land Title Association held its 59th Annual Convention at Salishan Lodge June 8, 9, 10, and 11. Representing

TOP: (left) Herbert A. Alstadt, President and and Division Manager, Pioneer National Title Insurance Company. (right) Helen Page; Mr. and Mrs. Don B. Nichols, Stanton W. Allison, honorary member and Executive Secretary.

LEFT: ALTA's Executive Vice President, William J. McAuliffe, Jr., reports from Washington.

the American Land Title Association were National President, Don B. Nichols, Mrs. Nichols (Vera Rose), and William J. McAuliffe, Jr., ALTA's Executive Vice President.

Elected to serve as President of OLTA during the forthcoming year was Bert J. G. Tousey, Vice President of Transamerica Title Insurance Company of Oregon. Fred McMahon, Chief Counsel, Title Insurance Company, was named as Vice President, and Stanton W. Allison reappointed Executive Secretary-Treasurer of the Association.

One feature of the Annual Banquet was the presentation of a $500 award to J. W. Southworth, the winner of the Memorial Essay Contest. Watch future issues of Title News regarding this interesting state association promotion.

In addition to Don Nichols and Bill McAuliffe, distinguished speakers during the business sessions included:

The Honorable Walter G. Korlann, Insurance Commissioner, State of Oregon; Joe B. Richards, Oregon State Representative from Eugene, Oregon; Carl E. Weidman, Executive Vice President of the California Land Title Association; E. E. Grant, Principal Title Officer of the Bonneville Power Administration; The Honorable William A. Dickson, Probate Judge of Multnomah County; Jerrold B. Thorpe, Corporate Personnel Director of Title Insurance and Trust Company of Los Angeles; Professor Henry J. Bailey, III of Williamette University; William E. Love, Portland attorney and member of the State of Oregon Law Improvement Committee.

At the Annual Banquet, the four living honorary members of the Oregon Land Title Association were presented to those in attendance with an appropriate ceremony. These honorary members are L. A. Henderson, Frank B. Wylde, Edward T. Dwyer, and Stanton W. Allison.

TOP: (left) ALTA President, Don B. Nichols, was guest of honor at the Texas Convention. (right) Officers and Directors—Jack McAninch, Harold Eastland, Frank Stamper, Woody Weylandt, Eddy Feuille, Bill Thurman, Ed Prud'homme.

RIGHT: Uniform Commercial Code Panelists, Tom Ellis, Paul Dickard, Hubert Johnson.

MORE ABOUT TEXAS

In the July issue of Title News we were privileged to carry a story about Charles C. Hampton, who was named by the Texas Land Title Association as the "Texas Titleman of the Year." We are pleased now to present some further highlights of the 56th Annual Convention of the Texas Association which was held at the Sheraton-Dallas Hotel, April 14-16, with more than 400 title industry representatives in attendance.

In addition to panel discussions and business sessions dealing with a variety of industry problems, convention participants heard feature addresses by Waggoner Carr, Attorney General of the State of Texas; Don B. Nichols, President of the American Land Title Association; Edward McFaul, internationally known "serious humorist," and William J. McAuliffe, Jr., Executive Vice President of ALTA.

The convention also appreciated the remarks of Maurice G. Wood, President of the County and District Clerks Association of Texas, made at Saturday's luncheon.

Wives of the Association's members enjoyed a continental break-

TOP: Bill McAuliffe provides comprehensive summary of Washington activities.

BOTTOM: Uniform Deed of Trust Panelists, C. M. Hudspeth, E. Gordon Smith, and Max Higginbotham.

A workshop dealing with how to make relations between abstracter-agent and the local attorney more pleasant and profitable was lead by Duke Taylor, Immediate Past President. Workshop participants pictured left to right: Elwood Weylandt, Gene Sheppard, Taylor, M. L. Dew, Jr., and Charles Embry.

fast on Friday morning, hosted by the wives of Dallas Association members in the Hotel's London Club. Highlight of the ladies entertainment was a Saturday luncheon at the home of Mrs. William R. (Cissie) Knight and a tour of the Northpark Regional Shopping Center.

All convention delegates found their own entertainment Friday night following a cocktail party and buffet in the Charro Room of the beautiful Chaparral Club. The refreshments, food and dramatic view of the city of Dallas offered a delightful combination following a hard day of business sessions.

The Saturday morning skit, "The Further Misadventures of the Unmarketable Title Company," written by Eddie Feuille, provided an entertaining and most informative beginning for Saturday's sessions. The all-star cast included Fred Timberlake as narrator, and such stellar performers as Bill Thurman, Ed Prud'homme, Sheila McKee, Mrs. Norma Kerr, Bill Kerr, Bill Bartram, and Woody Weylandt.

"Title Problems Created by the Uniform Commercial Code" was the subject matter handled by Paul Dickard, Hubert Johnson, Dallas attorney, and Tom Ellis, County Clerk of Dallas County.

A panel led by C. M. Hudspeth, Houston attorney, Max Higginbotham, from San Antonio, and E. Gordon Smith, representing TMBA, covered "A Commentary on the Uniform Deed of Trust."

The "Dilemma of the County Clerks and the Abstracters at the Courthouse" was explained by the Association President, and one solution was offered by Mr. Ward Houston of Southern Microfilm Corporation.

A workshop discussion on "How Can We Make Relations Between Abstracter-Agent and the Local Attorney More Pleasant and Profit-

able" was led by Duke Taylor, and specific phases were covered by Woody Weylandt, M. L. Dew, Jr., Charles Embry, and E. L. Sheppard.

General Convention Chairman, J. W. McAninch, TLTA outgoing President, Frank A. Stamper, and newly elected President, Woody Weylandt, agreed that this convention was not only one of the largest ever held by the Association, but also one of the most enlightening to the membership.

An appropriately engraved watch and plaque were presented to Hampton by William J. Harris, President of Houston Title Guaranty of Houston, as sponsor of the "Titleman of the Year" award.

MEET KENNETH J. SCHUNN, TEXAS STAFFMAN

Ken, former title officer of the Western Title Company in Lubbock, immigrated from Phoenix, Arizona, where he attended grammar school and was graduated from West Phoenix High School in 1953.

He attended Phoenix Junior College where he won two letters playing baseball and was awarded the customary gavel for serving as president of his social fraternity.

Ken also attended Arizona State University and has studied both physical education and business administration.

His title insurance background began in 1957, at Lawyers Title of Phoenix, where he progressed from delivery boy through the title plant, examination department into the trust department.

He joined Valley Title & Trust Company and later headed up the title department until March of 1963, when he went to Lubbock, one month after the birth of Western Title Company.

KENNETH J. SCHUNN

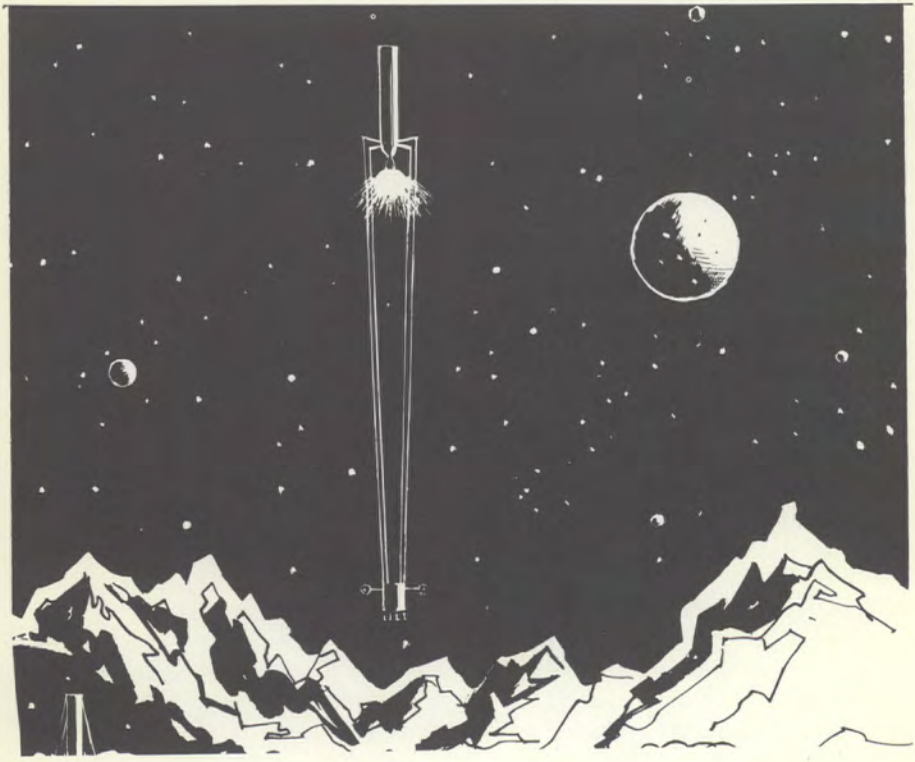
Ken is a member of the Roman Catholic Church and is a third degree Knight of Columbus.

At 31 years of age, he remains a bachelor and admits, "I just haven't met the right girl yet."

Ken began his new duties at the State Convention in Dallas and presently resides in Austin where he plans to pursue his avocation of officiating basketball and baseball games on the high school and college level.

He enjoys hunting, water sports and says, "I get real serious about my golf and it is the best way, for me, to completely forget the ever present problems of the day."

TITLES IN SPACE



By
James W. Guyer
Executive Vice President
Larimer County Abstract Company
Fort Collins, Colorado

At first, this idea seems a little "too far out" to merit your consideration, and yet the more it haunts you, the more you will wonder if the title industry shouldn't do something about it.

Here's the idea: With all the title industry's experience there must be concepts of titles, title evidence, or surveys and descriptions that would be better than we now have, though at this late date would be impractical to install. Yet, if we had it to do over again, or were starting somewhere anew, these ideas and concepts would be put into operation.

We may have that opportunity in four short years, or less, when some young man stands on the surface of the Moon and says, "I take title to this, by right of conquest, in the name of the United States of America, Earth". What

does he mean by "this"? As far as the eye can see? Shades of the Spanish Land Grants! or will he take a transit with him and try to survey it according to present, popular, earthly custom?

Does the Moon have poles from which meridians could be established? Or are there new concepts in engineering by which a photographic plat could be obtained from an aerial survey performed by a pre-landing, orbiting space vehicle?

Assuming it were platted by photograph, where would such a plat be filed or recorded? Washington? Moscow? United Nations?

Could we in the title industry recommend to NASA, some procedures that would make life better for future generations? If we could, it might be our only contributions in the present space effort.

Certainly a great deposit of experience and good old Yankee "Know-How" abides with the members of the American Land Title Association. Perhaps a Commission composed of the ALTA people, members from the American Bar Association and the American Society of Civil Engineers or the American Congress of Surveying and Mapping could help NASA now, and generations to come.

The development or modification of the concept of the right of ownership of space above the ground on Earth and other planets, may be subject to pressures for owned and used space corridors for inter-stellar transportation vehicles. Take such questions as, Where would "universal space" begin? Would it be much the same as we have in "international waters" on Earth? Perhaps a pellicle around each planet would be established, legally, to describe the limits of the space above the planets, and anything beyond it would be "universal space".

Thus, limits on how far above the ground it would be practical or safe to insure the fee simple title to air space would be determined; and a new dimension would be added to the present concept of *all* the space above the ground that one can reasonably use is part of the title to the surface.

Is all this "kookie"? It is not too "way out" if you agree that Buck Rogers has become quite respectable of late.

Once a young man sets foot on the Moon, the title problems will arise, so why not beat them to the draw and have our answers and solutions ready? As long as we are asking questions, what better "ball carrier" could there be than the American Land Title Association. We won't do it alone; there would be help; there would have to be a team. Somebody will have to take the first step, though, toward the solution of these and a thousand more questions.

Think about it. But not too long! Some Astronaut (or Cosmonaut) will soon be out there, with or without the answers. Let's help him!

MORE CONVENTION SPEAKERS CONFIRMED

The 1966 Annual Convention at the Fontainebleau Hotel, Miami Beach, October 16-20, will be a significant event in more ways than one. General Convention Chairman, James Kidd, is fairly brimming with ideas which will reflect at the SURF BREAKER on Sunday evening, as well as in many of the other convention activities.

The business portion of the program is almost complete. We are pleased to confirm the following additional outstanding speakers.

EDWIN L. STOLL

Edwin L. Stoll, Washington, D.C., Director of Public Relations of the National Association of Real Estate Boards, has been associated with NAREB since he left active duty with the Army in the summer of 1946.

An experienced observer of Washington trends, he edits REALTOR'S HEADLINES, the weekly newsletter which gives 83,000 Realtors throughout the country the latest developments in their field.

In addition, he is charged with the overall public relations and advertising activities of NAREB, including the spreading of the Realtor message through radio and TV broadcasts, and through ads in national publications.

During his five years of active military duty, Lt. Col. Stoll held several public relations assignments in this country and with the Fifth Army in Italy, in addition to his service with an anti-aircraft battalion.

Before entering active duty

with the Army in 1941, Mr. Stoll was a reporter for the *Chicago Tribune* for four years, specializing in financial news, among other assignments. A graduate of the University of Illinois in journalism, he is the author of a number of magazine articles. He is currently a Director of the Washington Chapter of the Public Relations Society of America.

Mr Stoll will address the Abstract Section on Tuesday morning, October 18. His topic will be "Public Relations for Abstracters."

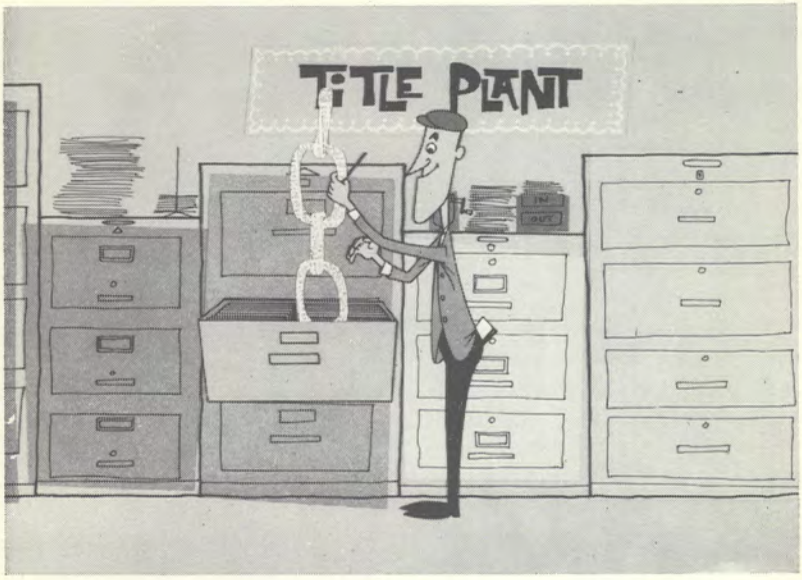
ANDREW S. BOYCE

Good news for ALTA members! The success of the Management Seminar conducted in Chicago in April promoted the Association officers to consider the possibility of a "thumbnail management clinic" in connection with the Annual Convention program. With the cooperation of the Small Business Administration office in Washington, D.C., Andrew S. Boyce, Chief, Procurement & Management Assistance Division, has tackled the job of putting together a concentrated program dealing with basic management problems.

Mr. Boyce is a native Georgian and a graduate of Georgia Tech., with graduate work at M.I.T. in Aeronautical Engineering. Prior to World War II, Boyce was in private industry; but following the War he continued in the Navy for a number of years. Mr. Boyce has been with the Small Business Administration since 1959 with vast experience in the Management Assistance Program and in the Research and Development Program. He was transferred from the Atlanta Office to the Miami Regional Office approximately one year ago.

Mr. Boyce's management clinic will begin at 9:35 a.m., Tuesday, October 18, at the Abstractors Section meeting. Experts in various management fields will discuss "Functions of Management," "Management Use of Accounting Information," and "Personnel Management." The clinic will be resumed as a workshop session at 2 o'clock, Tuesday afternoon.

Photostatic Takeoff



By
Wayne Speelmon
First Montana Title Company of Billings
Billings, Montana

Our take-off for our Yellowstone County plant is made by photostat copy on a reduction of 60% of the original size. This produces a copy 5½ x 8" which is for the most part a very satisfactory reproduction, and can be efficiently used for indexing and abstracting or examination purposes. The obvious disadvantages are costs and storage. We have 33 letter size 4 drawer filing cabinets, a total of 132 drawers, all of which are full of photostat prints. We estimate the cost of reproduction, including labor, at 27¢ per instrument, assuming an average of 3 shots or pages per instrument. Of this amount, 11¢ goes for photostat paper and supplies, and 16¢

for labor.

Our take-off for our Carbon County plant is made on 16mm microfilm. Since this take-off is relatively small, the cost is so minimal as to be almost disregarded. One roll of microfilm is enough for about 3 months. Likewise, the labor factor is much less since the take-off by microfilm can be made much faster. We mount the microfilm in 3 x 5 cards, which accommodate 3 strips or about 15 pictures. You can also appreciate that storage is not much of a problem. We feel that the microfilm system has many disadvantages. It seems to be more sensitive and frequently produces less than satisfactory negatives or prints. Line voltage, lighting and color, and condition of the paper being copied are definite factors which must be considered in exposing the film. It is difficult and inconvenient to use without first making prints. For indexing we find it more convenient to make a pencil take-off manually, which is really a duplicate take-off, and requires comparison with the microfilm. Microfilm and reader works fairly well for examination purposes where a copy of abstract of the instrument is not required, though again not as conveniently as the photocopy. We dislike microfilm for abstracting, since it requires a reader which must be situated with relation to lighting and in many instances in such a way that it is difficult to view and type at the same time. It is inductive to error, in that it discourages us from making a proper comparing of the abstract with the microfilm.

In working with both systems, we have the best opportunity for comparison and feel the photocopy or other readable reproduction system is superior, and that the additional cost is offset by its more versatile use.

I think the ideal take-off would be a combination of the microfilm and print. There are various ways this is being accomplished in title plants, but so far as I have been able to determine, either the cost is more than our present system, the costs of equipment for making cheaper reproductions is out of reach, or commercial services for such process are not available.

I would like to make clear that I am not by this discussion advocating or attempting to sell either system. It is my thought that perhaps some of our readers are using a system which is better, or a method which is more efficient, and would be willing to pass on suggestions for our benefit. I believe we can all agree that any of our take-off systems are superior to the old method of typing or writing the instruments on the 5½ by 8 cards.

WHAT IS THE DISTINCTION BETWEEN AN ALTA POLICY AND A JOINT PROTECTION POLICY?

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

Scarcely a week passes that some builder does not call the company concerning a problem he is having with his lender. Most of these problems arise when a title company makes it's preliminary report to a lender prior to issuing it's ALTA Policy.

At this point it might be well to state what matters are insured, and who is insured by a Joint Protection Policy.

Joint Protection Policies insure just as the term implies—the owner of the property jointly with lenders and others who may have an interest in the title to the land being insured. They are insured among other things against loss that may result from:

(a) Facts or risks disclosed by public records and insured against specifically or by omission.

(b) Many "off record" facts or risks, including:

1. Forged instruments in the chain of title.
2. Acts of minors, incompetents or aliens whose disability is unrevealed.
3. Undisclosed rights of husband and wife, when recorded instruments contain false recitals that one of them is unmarried.
4. Claims of heirs in the case of wills invalid for failure of the testator to name one of his children.
5. Instruments void because made by an attorney-in-fact acting under powers that have already termi-

nated by the death, undisclosed, of the principal.

6. Questionable identity of persons, as, for example: the identity of the grantor in a particular deed with the grantee of the same or a similar name in the prior deed.
7. The invalid delivery of any instruments in the chain of title.

Now that you have some idea as to what a Joint Protection Policy insures against, we will explain that an ALTA policy is issued for lenders only, and insures a lender, in addition to the items shown in a Joint Protection Policy, against the following:

1. Encroachments of improvements over title lines.
2. The location of title lines as determined by a correct survey; excesses and deficiencies in dimensions.
3. Mechanic's liens which attach subsequent to recording of loan papers, but which may have priority if work started prior thereto.
4. Rights of parties in possession under unrecorded leases, options, deeds, or agreements to convey, or claiming any interests adverse to the record owner.
5. Community property claim of spouses in possession contrary to the record vesting of title.
6. Easements established by use and not disclosed by the records.
7. Violations of conditions and restrictions.

In order to protect ourselves in insuring against the matters above mentioned, we make a personal inspection of the property. Our inspectors are carefully trained men and are furnished with a map of the property according to the records. The inspector makes a complete inspection of the property as to the location of improvements and interviews the parties in possession. If the inspector cannot determine whether or not an encroachment exists such as is usually the case in store buildings, apartments, etc., built flush with the property line, a survey is requested. In other cases a survey is waived. From this report and the preliminary report of title, the lender can determine whether or not we are in a position to issue an ALTA policy in accordance with his request.

Usually when the builder calls about his problem, he cannot understand why when he bought the property, or when he secured his construction loan, no problem was presented at that time, and why only now does a title company present these problems.

Generally, what happens is that the builder, when he has a construction loan, has violated the conditions, or has built the improvements over an easement, or has built the improvements outside the lot lines, all of which occurred after the construction loan was filed.

Again, may I call the builder's attention to the fact that when lenders receive this type of insurance, if the builder has been lax in checking the conditions and easements that affect the property, he will have trouble in the future.

LOUISIANA SEEKS TO AMEND LIEN AND PRIVILEGE ACT

The present Louisiana law pertaining to the privilege held by a lender, either on new construction or on the remodeling of existing construction, provides less than adequate protection to the lender.

The purpose of House Bill 862, prepared by the Louisiana Land Title Association, is to set up a guideline for defining "work begun or materials furnished," as well as to remove an architect or licensed engineer from a position better than that held by the lender.

Unless the law is clarified, lenders could well be put in the awkward position of refusing to make interim or construction loans because of lack of reliable information as to when the work begins and, consequently, not know if their mortgage is in the prime or first position. Materialmen may protect themselves by checking the public records prior to beginning work or furnishing materials in the same manner as the lender checks the public records for its assurance.

The act provides that work is begun when a minimum amount of One Hundred and No/100 ($100.00) Dollars worth of material is delivered to the building site or if there is visable evidence on the building site that construction has begun, or in any event, the lender may rely upon an affidavit of a licensed engineer or architect, filed in the public records, in those cases where there is no contract or performance bond. These provisions are necessary for the protection of the lender as well as materialmen, and unless some relief is granted from the existing statutes, it would appear that lending institutions will continue to be in the position of not knowing whether or not they are holding a valid first mortgage and, therefore, not be safe in making interim or construction loans.

MONROE ABSTRACT NAMES OFFICERS

Gordon L. Malboeuf and Paul D. Moonan, Jr. have been elected Assistant Vice Presidents of Monroe Abstract & Title Corp.

Other junior officers elected at the quarterly meeting of the board of directors were:

Robert J. Marino, John D. Colligan and Rudy J. Zink, Assistant Secretaries.

Mariano and Richard Gorman, Assistant Secretary, will be in charge of the Clerk's Office operations of the corporation assisted by Colligan. Zink will continue to manage the search department in the main office.

Moonan will supervise all ab-

stract operations and will be personnel officer and continue as associate title officer.

Malboeuf also will continue as associate title officer, a post he has held for the past few years, and will devote most of his time to the title insurance operations.

JOHN deLAITTRE JOINS STAFF OF MBA

Ewart W. Goodwin, President of the Mortgage Bankers Association of America, announced that John deLaittre, a former member of the Federal Home Loan Bank Board whose term expired June 30, has agreed to join MBA on September 1 and to assume the office of Executive Vice President on November 2. Mr. deLaittre, who was appointed to the Board in 1962, informed President Johnson late in April that he did not seek reappointment.

Mr. deLaittre will succeed Samuel E. Neel, the Association's General Counsel since 1946, who became Executive Vice President upon the resignation of his predecessor in March, 1965. At the time of this appointment, Mr. Neel, who maintains a private law practice in Washington, D.C., agreed to serve as Executive Vice President only on a temporary basis and until a successor could be found for the position. He will continue as Executive Vice President until November 2, and thereafter as the Association's General Counsel.

Prior to his appointment to the FHLBB, Mr. deLaittre was President of the Farmers and Mechanics Savings Bank of Minneapolis, and had been a member of the FHLBB Task Force from its inception in 1961.

He received an A.B. from Harvard College in 1929, and an LL.B. from Harvard Law School in 1933. He was associated with a Minneapolis law firm from 1933 to 1940, when he joined Farmers and Mechanics. He was President of the National Association of Mutual Savings Banks in 1959-60. Later, 1961-62, he was a director and treasurer of the National Thrift Committee, and a director of the Western Oil and Fuel Company and of the Great Northern Insurance Company.

Mr. deLaittre's office as Executive Vice President will be at the Association's Washington office, 1707 H Street, N.W.

Have You Registered?

HOTEL FONTAINEBLEAU

MEETING TIMETABLE

August 18-19-20, 1966
Montana Land Title Association
Viking Lodge, Whitefish

August 18-19-20, 1966
Minnesota Land Title Association
Ramada Inn, St. Paul

September 9-10, 1966
Kansas Land Title Association
Ramada Inn, Topeka

September 15-16-17, 1966
New Mexico Land Title Association
La Fonda Hotel, Santa Fe

September 15-16-17, 1966
Utah Land Title Association
Riverside Country Club, Provo

September 22-23, 1966
Louisiana Land Title Association

September 25-26-27, 1966
Missouri Land Title Association
Ramada Inn, Jefferson City

September 29-30; October 1, 1966
Wisconsin Title Association
Midway Motor Lodge

October 2-3-4, 1966
Ohio Title Association
Statler-Hilton Hotel
Cleveland

October 16-17-18-19, 1966
ANNUAL CONVENTION
American Land Title Association
Fontainebleau Hotel, Miami Beach, Florida

November 4-5, 1966
Land Title Association of Arizona
Scottsdale, Arizona

November 10-11-12, 1966
Indiana Land Title Association

November 17-18-19, 1966
Florida Land Title Association

American Land Title Association