TITLE NEWS

THE OFFICIAL PUBLICATION OF THE
AMERICAN LAND TITLE ASSOCIATION

"OUR 61st YEAR"

JANUARY, 1968

PRESIDENT'S MESSAGE

JANUARY, 1968

The mid-winter meeting of our association is now only a short time away. This year once again we have the privilege of convening in one of our most interesting and colorful cities, New Orleans, Louisiana. This is a city rich in history and its heritage offers something of interest to everyone. Headquarters will be the Roosevelt Hotel, which is only a stone's throw from the heart of the French quarter. Located in the quarter are some of the finest restaurants in all the world, an almost unlimited number of quaint little shops that offer enticing adventures to the ladies, and a variety of entertainment facilities that attract visitors from the four corners of the globe.

On the more serious side, our association's business will be considered and dealt with at this time. Our Executive Committee and Board of Governors will come to grips with the issues facing ALTA and the industry. Our committees will meet and where necessary report the results of their labors. Our two sections will meet and, of course, there will be general sessions where any member in attendance may express his views on any matter which may concern him.

Of special interest will be a report by our National Conference Committee which is meeting with representatives of the American Bar Association.

In addition, we will have the privilege of hearing from Mr. Thomas S. Jackson of Washington, D. C., who acted as our counsel when we appeared last October before the Board of Governors of the American Bar Association in opposition to the creation of a National Bar-Related Title Assurance Corporation. I can tell you from personal knowledge that Tom Jackson is eloquent, forceful and persuasive. You should not miss his presentation regarding this critical problem.

To highlight our program the Honorable Hale Boggs, Congressman from the Louisiana Second District, which embraces the City of New Orleans, has agreed to address our General Session on Friday morning.

Congressman Boggs is a respected leader in the House of Representatives and has been influential in the passage of much very important federal legislation. He is a member of the powerful Ways and Means Committee and since 1962 has served as "Majority Whip" being outranked in the House by only the Speaker and the Majority Leader. You will most surely want to hear his message to us.

The glamour and glory of old New Orleans will provide a fitting backdrop for our deliberations and work at our 1968 Mid-Winter Conference. You are all cordially invited and seriously urged to attend these sessions on February 21, 22 and 23.

Sincerely,

Alvin R. Robin

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ON THE COVER: New Orleans—a city synonymous with beauty, history, excitement and tradition. The St. Louis Cathedral, pictured on the front cover, is the oldest Cathedral in the U.S., and is typical of the old world dignity that is New Orleans. This magnificent city will be the site of A.L.T.A.'s 1968 Mid-Winter Conference, February 21-23. Don't miss it!

PROCEEDINGS OF THE 61st ANNUAL CONVENTION

AMERICAN LAND TITLE ASSOCIATION

DENVER, COLORADO **SEPTEMBER 24-27, 1967**

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GENERAL SESSIONS

INVOCATION

By Father LAWRENCE ST. PETER

Assistant to Monsignor Jones, Superintendent, Parochial School System of Denver, Colorado

Bless us, Lord, with the blessings we most need to live as men among men, and if there is to be fire and burning let it be that fire of justice burning within us to give to all men their rightful due.

If there is to be violence let it be the violence with which we wage the battle within us against our prejudices, our hates, and selflike pride.

If there is to be power, let it be the power of equality that gives to every man the right to live in dignity and in the fulness of opportunity.

If there is to be a march, let us all march shoulder to shoulder toward that purification which rids our spirit of all that shames Your image within us.

This we pray, Lord, for otherwise how can we call ourselves Your children? Amen.

"A STATE, RICH IN HISTORY"

By The Honorable JOHN A. LOVE

Governor of the State of Colorado

It is my pleasure this morning, on behalf of the people of Colorado, to bring greetings and to welcome this meeting here within the State of Colorado.

I couldn't help but think about the definition that was given for a governor. When I was in Viet Nam they provided me with some fatigues and informed me of the system used, that the name goes there (indicating), the rank over here. It works out, "Smith —Lieutenant Colonel," or whatever it is, but mine came out "Love Governor."

You come to Colorado at perhaps the prettiest time of year. I usually expound upon the beauties of Colorado, but you have just seen a great many pictures here, and in the saying of some famous Chinese—I guess it must have been Mao Tse Tung, since I guess he is the greatest of all time —one picture is indeed worth a thousand words. So I won't expound, but I thought I would mention a little bit about the history of Colorado.

Modern-day history was founded in 1859 when a group of disappointed seekers from California stopped along the banks of Cherry Creek and found some gold. Now, this flow of disappointed Californians to Colorado is a pattern which has continued to this very day.

The problem was that they found a little gold, washed a little gold out of Cherry Creek, but they hadn't found a great deal, as a matter of fact. But that wasn't the word that went on East. I don't know whether the advertisements in the East carried the words, "Planned Community, all services furnished," or whatever else the promotional devices were, but indeed a great many people the next year did come to Colorado, and luckily, after a little bit of disappointment, another and better strike was made, and Colorado has proceeded and progressed since then.

I think of particular interest to you, perhaps, in the kind of activities you pursue in this group, is that we

are most interested in developing all of our great land out here.

We have looked around across the nation, here in Colorado, and it is quite obvious to see that a perfect job hasn't been done elsewhere. There are mistakes that have been made particularly in some of our great urban conglomerations. And we here in Colorado count our blessings not only with a great climate, great group of people, but we have that almost priceless ingredient of time, time to do a better job—not to create more urban and ghetto and other problems —but time to grow and progress, and in growing and progressing to concentrate on the quality as well as quantity life.

We are delighted to have you with us. We very seriously hope that you will have time not only to participate in this meeting but also to enjoy with us some of our beautiful mountain country.

Enjoy yourselves, have a good meeting, and come back and see us. Thank you very much.

"PARTNERS IN PROGRESS"

By ALVIN R. ROBIN

Vice President, American Land Title Association; President, Guaranty Title Company, Tampa, Florida

Thank you President George, and thank you Governor John Love. It is a distinct honor and a privilege to be welcomed by such a distinguished personage.

May I say first of all, that we are grateful for the very warm and gracious reception given us here in Colorado. It is always a pleasure to visit your state, and we are delighted to accept your very generous hospitality. We shall genuinely enjoy the very fine facilities of this famous "mile high city" and we will be reluctant to leave when our meeting is adjourned. We are gathered here today for our Annual Convention to deliberate our problems and to transact our business. We shall do so in a spirit that will reflect the warmth of the greetings we have received.

This is not the first time that our Association has been privileged to convene in Denver, although it has been many years since we were here. I doubt that there are many present who know when we were here last. The year was 1925. In the intervening 42 years, great changes have taken place in both this area and in our Association. The population of Denver then was less than 300,000. That is a striking contrast with the present population of greater Denver, which stands at approximately 1,200,000. Now we are both larger, stronger and more responsible. We are both also more mature, more knowledgable and more accountable, but we are each still composed of warm, friendly and responsive Americans. Let us hope it will not be another 42 years before we get together again.

And now, as this second meeting between the State of Colorado and the American Land Title Association gets under way, I would like to more tangibly express our thanks and appreciation for the generous welcome that we have all received here in Denver. We even hope that this gesture may find a place in the already rich and colorful history of your great State.

In seeking an appropriate way to express our feelings at this time, we made the discovery that the Chief Executive of this centennial state does not have a flag representing his office. We then learned that no Colorado Governor has ever had a personal flag. We do know that you have a banner and that you have a Colorado State Flag, but not one which you as Governor can use as a personal symbol of your office.

We also learned that Mrs. Dolores Renze, your very able archivist and heraldry expert had designed a flag for the office of Governor but that the executive department was without appropriately budgeted funds with which to have one made.

We then sought a flag-maker of stature and prestige to undertake this delicate task. After considerable searching, we located one of the caliber and quality that we desired here in Denver and we commissioned the Colorado Badge Company to construct this flag. Through their own (Betsy Ross) whose real name is Mrs. Charlene Reseigh (Ressy) it has become a reality.

For the benefit of those assembled here today, I would like to describe this flag and explain the significance of its design. The center portion of the flag embraces the heraldic shield of the great seal of the State of Colorado. Upon the upper portion of this shield there are three snow-capped mountains surrounded by clouds. The foothills and valleys are shown in red, representing the soil of Colorado. On the lower part of the shield there is golden ground upon which rests a miner's badge. A crest above the shield represents the eye of God with golden rays extending outward from the triangle that surrounds the eye. Below the crest and above the shield is a scroll around a Roman Fasces in red, white and blue bearing the words "Union and Constitution." Below the shield stands the motto "Nil Sine Numine" and on each side of the scroll there are three golden stars representing the six official territories of which Colorado was a part preceding its statehood. Immediately below the motto is the date 1876 designating the year of Colorado's admission to the Union. Around all other symbols there are 38 stars indicating that Colorado is the 38th State to become a part of the United States of America, and all of this on a field of blue representing the honor for which the great State of Colorado and the United States of America stand.

Our Colorado colleagues tell me that up to now 17 flags have flown over this state. It is now our privilege and honor as a token of our gratitude and appreciation and with best wishes from all members of the American Land Title Association to proudly present to you this 18th flag, the personal flag of the Governor of Colorado. May it wave proudly over the 38th State of our great and glorious Union.

"E PLURIBUS UNUM"

By GEORGE B. GARBER

President, American Land Title Association; Executive Vice President, Title Insurance and Trust Company, Los Angeles, California

At this time I would like to report on certain actions taken by your Executive Committee and Board of Governors at their meetings during the last few days. During the course of convention proceedings various committee reports will be made and I certainly hope I will not encroach on their remarks.

As you probably know, the Federal Land Bank System is celebrating its 50th anniversary. At the suggestion of Betty Lynde, the Board of Governors adopted a resolution commemorating this event.

From time to time concern has been expressed with regard to the lack of effective communication between members of the American Land Title Association and the National Association of Insurance Commissioners. Yesterday the Board of Governors adopted a resolution authorizing the ALTA President to appoint a six man committee representative of both association sections to work and cooperate with a similar committee to be appointed by the N.A.I.C.

You will be pleased to know that the Executive Committee has accepted the invitation of the Michigan Land Title Association to hold the 1971 Annual Convention in the city of Detroit. You will be advised regarding the hotel and dates as soon as they have been confirmed. You will also be interested to know that the 1970 Mid-Winter Conference will be held in the city of New Orleans.

It was with sorrow that we learned that our good friend Ernie Billman had suffered a heart attack which pre-

vents his being with us at this convention. A get-well telegram was sent to Ernie yesterday on behalf of the entire Association.

Those of you who attended the 1967 Mid-Winter Conference will remember that consideration was given to the expansion of ALTA staff activities to include the appointment of a Federal Legislative Committee and an acceleration of "watch dog" services to discover and report pending Federal legislation and proposed changes in rules and regulations of Federal departments and agencies which might affect the title profession. This was in line with the general approval of the membership of a desire of the ALTA to become more deeply involved in the affairs of the nation. Consequently, Chet McCullough, Chairman of the Constitution and By-Laws Committee, has been requested to prepare an appropriate Constitutional Amendment to be presented for action to the membership at the next Mid-Winter Conference, making provision for a Federal Legislative Committee. In the meantime, the President has been authorized to appoint a special committee to carry out this work.

Also at yesterday's Board meeting, thirty-nine membership applications were approved. Jim Robinson will publish the names of the new members in the January issue of *Title News*.

You are all aware of the resolution adopted by the American Bar Association at its meeting in Hawaii approving in principle the formation of a national bar-sponsored title assurance organization. I am pleased to inform you that at the Board meeting yesterday, it was decided to retain legal counsel to prepare and present both oral and written statements before the Board of Governors of the American Bar Association opposing that resolution.

The Board of Governors was kind enough to confirm appointments I had made of special committees during the period between the Mid-Winter Conference and this convention. These included the special committee to study the Uniform Commercial Code and special committee to study the Comptroller General's report regarding title services in connection with VA foreclosures. The Board also recommended that Section 4, Article VII of the Constitution and By-Laws be amended to permit two members from the same state to serve on the Standard Title Insurance Forms Committee. This amendment will be presented to the membership at the next Mid-Winter Conference. The Board also authorized the appointment of a special committee to study certain sections of the Uniform Probate Code.

In concluding my remarks, I wish to extend to the members of the Executive Committee and the Board of Governors, as well as to the entire membership, my thanks and appreciation for their sincere efforts and support of the Association's activities. Particularly, I wish to express my thanks to all of my good friends in the title industry who were so kind and thoughtful to me and my family at the time of our sorrow.

The Association is certainly fortunate in having a capable staff in their national office. Your Executive Vice President, your Secretary and Director of Public Relations have performed most capably. The addition of Mike Goodin to our staff as Business Manager has added strength to the office, and has relieved Bill McAuliffe and Jim Robinson from many details so that they can devote their time to other important Association activities.

It has been a pleasure and a privilege to serve the title industry during this past year, and I assure you I will always remain interested in the work of the Association.

"YOU ARE WATCHING BIG BROTHER"

By WILLIAM J. McAULIFFE, JR.

Executive Vice President, American Land Title Association, Washington, D.C.

On the Archives Building on Pennsylvania Avenue in Washington, D.C., there is inscribed "What Is Past Is Prologue." If we speculate about the future activities of the ALTA on the basis of our recent activities, the Association is headed for a very busy period. Since the 1967 ALTA Mid-

Winter Conference, your national officers and staff have attended thirty-six different meetings. At some of them, your Association was represented by more than one person.

One of the more important actions since the 1967 Mid-Winter Conference has been to file a statement on August 21 with the Subcommittee on Domestic Finance of the House of Representatives requesting that the Savings and Loan Holding Company Amendments of 1967 bill, H.R. 8696, be amended so as to prevent such companies from entering the title insurance agency business in the future.

The general purpose of this bill is to provide the Federal Savings and Loan Insurance Corporation, which is administered by the Federal Home Loan Bank Board, with additional authority over the activities of savings and loan holding companies. While this legislation would guard against potential conflicts of interest by requiring holding companies which control two or more associations to divest themselves of activities unrelated to the savings and loan business, the act specifically would allow such holding companies to conduct an insurance agency or an escrow business.

Most of the holding companies are centered in California, although they are also organized in eleven other states and territories.

Copies of the August 21 statement were sent to all the members of the House Subcommittee on Domestic Finance.

In addition, certain members of the ALTA were requested to contact members of the Subcommittee directly or indirectly. Our members have responded very well to this call for assistance.

Last Tuesday, I spoke to the Counsel for the Subcommittee, Mr. Morse. He informed me that as a result of a contact made by an ALTA member, the Chairman of the Subcommittee, Congressman Wright Patman of Texas, was interested in our request. Mr. Morse suggested that I attempt to work with the Federal Home Loan Bank Board Chairman, John Horne, or the Board's General Counsel, Kenneth E. Scott, to develop amendatory language that would be incorporated in the bill. I have been in touch with Mr. Scott. And, if the Board agrees with our position, I am in hopes of developing some language to effect our requested amendment.

Another matter that has had our attention involves the study by the House Subcommittee on Government Operations of the Comptroller General's Report of June 1966 on title services in connection with VA foreclosures in Florida. In this report, the Comptroller General recommended that the VA discontinue the practice of purchasing title binders on properties acquired in the state of Florida. Both the VA and the ALTA disagreed with the Comptroller General.

But Counsel for the House Subcommittee concurred in the recommendation of the Comptroller General on the basis that the Federal Government is self-insured and does not need title insurance. Last spring, Counsel advised me that he felt that the Comptroller General should investigate the use of title binders and title insurance by other Federal agencies.

President George Garber then created a special committee to meet with Counsel and the Chairman of the House Subcommittee, Congressman Jack Brooks of Texas. On June 21, the ALTA committee consisting of E. Gordon Smith, Richard Howlett, John E. Jensen, George Garber and myself, met first with John Dervan, Director of the Loan Guaranty Service of the VA, then Counsel for the Subcommittee, and finally with Congressman Jack Brooks.

Based on a conversation I had with Counsel for the Subcommittee on September 12, I believe that this matter is in a satisfactory state of suspension. Counsel for the Subcommittee had indicated displeasure with the cost of title services to the VA in Colorado and Idaho. But he is now satisfied with the situation in Colorado. The Idaho situation is not yet resolved. Incidentally, in the course of our discussions Counsel did say on more than one occasion that he might turn the Idaho matter over to the Anti-trust Division of the Department of Justice. Some time in October, a representative of the Loan Guaranty Service of the VA from Washington is traveling to Idaho to attempt to resolve this problem.

Because of my active role in both of these activities, with the approval of President George Garber, I have registered as a lobbyist with the Clerk of the House and the Secretary of the Senate, in accordance with the provisions of the Federal Registration of Lobbying Act.

In June of this year, the Comp-

troller General issued another report entitled "Potential Savings By Revising Procedures Relating to the Default of Guaranteed Housing Loans in the State of Illinois." In this report, the Comptroller General recommended: (1) the Administrator of Veterans Affairs require holders of VA-guaranteed loans in the State of Illinois to assign defaulted loans and related mortgages to the VA immediately prior to initiating foreclosure suits; and (2) the VA refer such defaulted loans to the Department of Justice for foreclosure action in U.S. District Courts, and for petitioning the Courts to appoint the VA as mortgagee-in-possession of the mortgaged properties during the twelve-month redemption period.

Again the VA fought the Comptroller General. The VA contended: (1) that the recommendations would result in the VA acquiring defaulted guaranteed loans in Florida which would not be foreclosed and which thereafter would have to be serviced directly by the VA; (2) the recommendations would be diametrically in opposition to the principle of substituting private for public credit and would increase general operating expenses by reason of an added servicing work load; (3) substantial delays had been encountered in the past in effecting judicial foreclosures through Federal Courts; (4) the proposal that the Federal government undertake to perform all the legal tasks incident to the liquidation of the security represents an intrusion of government into an area of private attorney litigation.

The upshot of this situation is, as I understand it, that further study is to be made of the Comptroller General's recommendations before they are to be implemented.

Perhaps many of you will remember that about a year ago the Federal Home Loan Bank Board surveyed our membership to determine if they could publish on a regular basis a mortgage recording survey using data collected in large measure from our members. They determined that this project was feasible as over 110 ALTA members in metropolitan counties expressed a willingness to cooperate. The Federal Home Loan Bank Board now wants to proceed as of January 1968. At that time, they intend to collect each month, mortgage recording data by type of lender and size categories. The data will be confined to activity within the standard metropolitan statistical areas in the United States.

The primary purpose of the survey will be to publish monthly estimates representing activity in a universe which consists of the total metropolitan areas in the United States. In addition, the Federal Home Loan Bank Board expects to release data for any individual standard metropolitan statistical area in which they obtain monthly reports for all the counties comprising that metropolitan area.

The Federal Home Loan Bank Board will need the help of our members to be successful.

David Fishbein, a Financial Economist of the Federal Home Loan Bank Board, is here at this meeting soliciting your help. In addition, he will be happy to answer any questions you may have concerning this project. I hope that you will be able to cooperate with the Federal Home Loan Bank Board.

You have heard George Garber report on the decisions of the Board of Governors. I have described just a few of the Association's interests involving the Federal government. During the course of this meeting you will hear the reports of many ALTA committees.

I believe that when you leave this convention you will agree that the Association is involved—is doing things.

As the tempo of ALTA activities increases, I assure you that your staff is eager and ready to assist the Association's officers and committees in meeting the Association's future challenges.

"CONTINUING TEAMWORK"

By The Honorable ROBERT NEWTON REID

General Counsel, Federal National Mortgage Association, Washington, D.C.

Ray Lapin (President, F.N.M.A.) regrets exceedingly that he is not here, as has just been said to you. I am very happy to be at your convention, I wish Ray were here at the moment. I think you can understand that.

The words that I will bring to you

today are Ray Lapin's words, so please don't say anything adversely after I leave.

You and I, and the thousands of men and women that comprise the nation's mortgage lending industry are face to face with one of the most pressing domestic problems of our time. If we have worked successfully as a team in the past—and I can attest to the fact that we have—we must double and triple our efforts in the years ahead. We must take a fresh look at the functions we now perform and ask ourselves what we can do to make the mortgage market an effective and integral part of the financial system. We must find out how we can participate in the development of techniques and instruments that will enable us to: finance the rebuilding of our cities, house the underprivileged, and strengthen the private mortgage market.

I know that this is a tall order and I do not propose to supply all of the answers—at least not in the next fifteen minutes. I do want to take advantage of this mile-high vantage point to examine the challenges posed by: the economic conditions our team may face in the months ahead, 5 million substandard houses in an affluent society, and the anachronism of an archaic mortgage market within the world's most sophisticated financial system.

Perhaps, this rarefied atmosphere will clear our vision and strengthen our resolve. As a team, we begin our examination from a strong base—a clear understanding of our mutual interests and a good track record.

It is hardly necessary to spell out our mutual interest. Your business goes up and down with mortgage financing activity. Accordingly, our role in supplementing the private mortgage market through the Secondary Market Operations and meeting special housing needs through the Special Assistance program is directly related to your business. Since her inception, Fannie Mae has purchased 1½ million FHA and VA mortgages. Each of these mortgages represents a title insurance policy, as nearly 100 percent of our portfolio is covered by title insurance. But this is not the full extent of Fannie Mae's impact on your business. Our insistence upon title insurance has contributed to its widespread use by establishing the precedent among mortgage originators.

Fannie Mae is most effective in periods of crisis, when it supplements the supply of mortgage funds and provides time for market adjustments to be made. Is there anyone here who does not remember 1966? Is there anyone here who would not prefer to forget that it ever happened? The reduced flow of funds into savings institutions and the mortgage market that culminated with the credit crunch of late August of that year drove housing starts down to a 20-year low, down 19 percent from a lackadaisical 1965, reduced the net flow of funds into residential mortgages by one-third and reduced your business by 9 percent.

Fannie Mae's role as a backstop to the private market was never more clear, not its resources more strained. Fannie Mae supplemented the rapidly dwindling supply of mortgage funds by purchasing 1.3 billion dollars under its Secondary Market Operations during the first half of 1966 alone. When its resources were nearing exhaustion, Fannie Mae had to resort to credit rationing. Even so, nearly 800 million dollars of FHA and VA mortgages were purchased in the second half of the year.

I would be remiss if I did not acknowledge that the team effort has not been one-sided. More than once, ALTA and its members have drawn upon their resources to help us solve title problems. The Title Guaranty of Guam, Inc., is a notable example. Several years ago, when the federal government moved to aid financing of reconstruction after two destructive typhoons, it found that no title insurance was available. Your Association and a number of leading title companies met the problem by organizing Title Guaranty of Guam and making it possible for Fannie Mae to provide the needed financing.

Before this gets to be a mutual admiration society, let's get back to our examination of the problems the industry may be facing in the months ahead. We have already seen interest rates rise to the forty-year highs of last fall and credit markets tighten, despite continued injections of Reserve Bank credit into the banking system. Under these conditions, the prospect of a 29-billion dollar deficit in the federal budget again raises the spectre of severely tight credit markets and a bone dry mortgage market.

To avoid placing so heavy a burden on the nation's credit markets, President Johnson has asked Congress to

add a 10-percent surcharge to individual and corporate income taxes. No one likes to contemplate a tax increase. But consider the alternative.

If the Treasury must meet so large a deficit by borrowing in the capital markets, the pressures generated would increase interest rates still further, attract long-term investors to the short-term market, draw savings from thrift institutions to the securities markets, and dry up the mortgage market in short order. From your viewpoint and mine, as well as that of the nation's economic health, these would be untenable conditions and unbearable strains on the nation's financial resources.

One observer labelled this alternative a "financial chamber of horrors." And, I would have to agree with that diagnosis. *A tax increase is imperative—the alternative is financial chaos and another toboggan ride for housing.*

On the other hand, a tax increase would reduce the Treasury's borrowing requirements by 7½ billion dollars. If coupled with reduced expenditures, variously estimated between 3 and 7 billion dollars, the budget deficit would still be large, but it would be manageable.

Once the credit markets are convinced that the federal government means business in applying fiscal restraints—and this is the intent of the tax proposal—we should find corporate borrowings materially reduced —borrowings should disappear. In short, fiscal restraint would set the stage for restoring sanity to the credit markets and provide elbow room for housing and mortgage finance.

Some will hold that an increase in taxes will reduce the demand for housing. I cannot argue with that point of view, but surely the spectre of still deeper discounts and higher prices is more of a threat to the demand for housing than the proposed tax increase.

Indeed, we are concerned about the large discounts already required to bring FHA and VA mortgages into line with yields available to investors in other markets. We know that if they continue, or worse, if they increase, they will further limit the volume of home sales and purchases.

We maintained our purchase prices above what seemed to be the private secondary market price for some months after the brief improvement of last winter in order to avoid stalling the recovery in housing. As a result, we found that we were buying a substantial part of all new FHA mortgages being insured. And, we were being criticized for driving private investors out of the market.

When Fannie Mae's purchase prices were dropped on August 26 to bring them into line with the private market, investors dropped their prices—despite the lack of any change in the market, except the reduction in Fannie Mae prices. If Fannie Mae is going to serve its function in the secondary market and conserve its resources for periods of severe restraint, we must and will find ways to avoid this in the future.

To this end, we are studying, and I emphasize studying, the feasibility of purchasing completed mortgages and selling forward commitments through an auction device. If it proves to be workable, an auction market would make it possible:

to avoid rationing devices that discriminate against some areas and some home buyers,

to rely on market pricing to allocate the resources Fannie Mae can put into the mortgage market during periods of stress,

to overcome the present practice of private investors who price their purchases of FHA and VA mortgages below Fannie Mae's prices, almost regardless of market conditions, and

to sell mortgages later without absorbing substantial losses.

We label these studies "urgent," for another period of severe credit restraint is neither remote, nor impossible.

We also plan to look into the feasibility of establishing a trading desk for FHA and VA mortgages. As explained by the theoreticians, who have not yet worked out the details that would make the trading desk feasible, we would maintain a continuous market for FHA and VA mortgages—both from the buying and selling side, thereby providing the market with a mechanism for determining mortgage prices in a competitive environment.

We are also considering suggestions that would have Fannie Mae lengthen the maturity of its outstanding obligations. The objectives of this proposal would be to:

a. avoid large rollovers of outstanding obligations at any one time and thereby at times when the market is tight and the risk of drawing savings from institutions is great, and

b. provide security-minded investors

with an instrument that would bring them into the mortgage market.

Our most recent issue of 400 million dollars, scheduled to mature in three years, was the longest maturity offered since last December.

We are also devoting much of our time and energy to the study of the numerous proposals that followed in the wake of the 1966 crisis. We want to turn yesterday's crisis into today's lesson and tomorrow's cure. We are better prepared to handle a crisis situation by the Congressional action that increased our borrowing capacity by 3¾ billion dollars in 1966. Even so, we still have to borrow in the private capital markets and are still faced with the risk of drawing funds from thrift institutions that favor mortgage investments. I for one see no point in taking funds from one part of the mortgage market in order to put it in another. To overcome this dilemma, we need new tools and new techniques.

Under a proposal now before Congress, Fannie Mae would be authorized to sell PC's under its Secondary Market Operations. If enacted, the participation device may provide a means of translating the mortgage instrument into a security instrument that can be sold to investors who prefer securities, investors who do not have mortgage departments. It may be possible to tailor PC's to their needs and to then place them privately without disturbing existing financial arrangements for moving funds into mortgages.

Can the title business do anything about these problems, except ride with the punches? It doesn't take ESP to see that the tax increase is in your interest as well as in the nation's. You can, therefore, take positive action to support the President's request.

When we look beyond the crises of yesterday and today consider the future of the mortgage market, the need is not for continuing teamwork, but for creative teamwork.

A major problem of the crises of the postwar years has been the inability of mortgage borowers to compete with security borrowers for funds. When money and credit tightens, corporate borrowers and the Treasury get theirs and the mortgage market takes what is left, which may be very little. This is bad enough in times of crisis, but it is becoming an increasingly serious weakness in the mortgage market's ability to compete for savings in more normal times. When you compare the potential growth in the demand for mortgage credit and the potential growth of savings flows into the hands of investors who are security-oriented—pension funds, mutual funds, syndications—you are confronted with the likelihood that the mortgage demands of the Seventies will go begging.

That is why those of us who worry about the long-range future of the mortgage market have become enamored with the concept of developing a bond, PC, collateral trust note, call it what you will, but a security instrument that does not require so much care and feeding.

This is an area where title insurance companies can be of considerable assistance. Title insurance travels along with the mortgage, but there are updating problems and there is the problem of making it crystal clear to the security buyer that he is protected. Can you certify on a security instrument that the properties securing the instrument are covered by title insurance?

The Department of Housing and Urban Development is looking into the feasibility of passing the FHA insurance through to the security. This would be particularly useful in project mortgages, e.g., the rent supplement program. The security buyer would still be concerned about types of casualty insurance that are not covered by FHA insurance. One proposal would provide blanket or portfolio insurance to the security issuer to cover these eventualities. I know that you have problems with state laws and that most of you are single-line carriers who are not in the casualty insurance business. Even so, the proposal is worth looking into if you are going to continue to play an important role in facilitating trading in mortgages. By suggesting the solution, I have solved 96 percent of the problem and leave the other 4 percent to you.

If these proposals seem to be farfetched, I can only say that these are changing times. Our markets are changing, the institutions that serve them are changing, the demands placed on them are changing. Creative teamwork demands that we find ways to change, that we look to the future and not the past, to new ways of doing our job and not to the tried and true, but archaic ways. Only then can we move forward and, as one pundit has said, "Bring the mortgage market into the Twentieth Century."

"STARVATION IN THE MIDST OF PLENTY"

By JOHN D. BINKLEY

Chairman, Finance Committee, ALTA; Chairman of the Executive Committee, Chicago Title and Trust Company, Chicago, Illinois

It is the responsibility of the Finance Chairman to report at each Mid-Winter Conference and each Annual Convention. The ALTA was formed in 1907. That means 119 times during its history some Finance Chairman has held the members spellbound with a recitation of financial figures. As I approach the task today, I feel somewhat like Barbara Hutton's sixth husband on their wedding night.

"I know what I am supposed to do;"

"You know what I am supposed to do;"

"My problem is how to make it interesting."

I envy the calm, self-assurance of some speakers whose words seem to flow like honey. I confess to a certain tenseness when I am about to deliver a speech. This morning, before the meeting started, I wished to refer once again to my notes, so I found an almost deserted, private room. As I paced up and down, a lady walking through said to me,

"Are you nervous?"

I replied, "No, of course not."

"Then what are you doing in the ladies' wash room?"

Well, some joker whose name I won't mention, but whose wife Alice surely puts up with a lot, has given me the title you see in the program for my report. As I glance around this magnificent ballroom I see at least a few whose grey hair indicates they are old enough to remember the dark days of the depression, when the rallying cry of those who would drastically change our way of life was "starvation in the midst of plenty!" Front page photographs and black headlines depicted acres of surplus oranges being deliberately destroyed by fire because there were no purchasers for the fruit. The panacea for all these problems, it was suggested, was a system of government intervention and control.

Thirty-five years and many miles of red tape later we see how times have changed. In the most affluent society the world has ever known, with a gross national product approaching 900 billion dollars, with American women spending more on cosmetics than the total United States Government budget was a few years ago, once again we have "starvation in the midst of plenty," only this time it is the real estate industry that is the victim.

I don't mean to imply that everything in our economy and present-day society is bad. Some things are amusing. Perhaps you remember the granddaddy of all the minstrel stories:

"Who is that lady I saw you with last night?"

"That was no lady; that was my wife."

Well, the modern version goes like this:

"That was no lady, that was my son-in-law, and I don't mind telling you we're not happy about it."

And in spite of the heartbreak and suffering caused by conflicts around the world, some amusing incidents have occurred. I understand President Johnson just can't understand why the Arabs and the Jews don't settle their differences in a Christian manner.

I share these profound and not so profound sentiments with you because they have a direct bearing on the financial structure of the American Land Title Association. It is the duty of the Finance Committee to provide an accounting for every penny of ALTA funds. While it is true that accounting is not the world's oldest profession, I doubt if the oldest could have kept its records without it.

Balance sheets and financial statements can be interpreted in a variety of ways. Economists with completely different points of view frequently

draw opposite conclusions from the same set of facts. It all depends upon how you express it.

Then there was the drunk who fell from the third story window. A solicitous lady came running up. "What happened," she asked. "I don't know," said the drunk. "I just got here."

Well, we didn't "just get here." In meetings on Saturday and Sunday, the Finance Committee, the Executive Committee and the Board of Governors have considered every detail of ALTA's income and expense. Here is where we stand on finances for 1967:

Based upon the best, but not the most optimistic, information we could secure at the time, our estimate was that dues collections for 1967 would amount to $210,800. I am pleased to tell you that, based on the collections to date, we will exceed that amount by the end of the year. In fact, we have already collected $213,670.

Income from the investment of surplus funds will add approximately $2,000. Investment of reserve assets held by the trustee will produce an additional $8,200, although this sum is transferred each year to the ALTA's Employee Pension Fund. So, total Association income for 1967 will amount to at least $224,000. As you can see, the ALTA staff administers some quarter of a million dollars of your money each year. This constitutes a fair-size business.

A year ago the Board of Governors adopted a deficit budget, indicating that the excess of expenses over income for 1967 would be $10,710, which would be taken from our surplus account. With only eight months of financial history so far this year it is impossible to state with accuracy how close we will come by year end to that deficit figure, but the indications are that our deficit will be much less than forecast. We feel that, under the prevailing circumstances, our 1967 financial experience is a good one. But what about 1968?

Again, we are confronted by the prospect of "starvation in the midst of plenty." Our 1968 dues income will be, as you know, determined to a large extent by the gross title business done by the member companies in 1967. We followed our usual practice of sending out questionnaires to the larger members and, from the replies received, projected the amount of dues we will be likely to receive next year. It will come as no surprise to you that business has been down overall this year by about 8%, so that our dues income will be down correspondingly to an estimated $200,-200 (down from this year's budgeted $210,800). With this fact before us, your Finance Committee has once again recommended a deficit budgdet for 1968.

Now, I am sure most of you know me well enough to know I wouldn't recommend a deficit budget unless I had satisfied myself there is no "fat" in the proposed expenditures for 1968. There are twenty-two expense items in the budget adopted yesterday by the Board of Governors. Some of these items will remain the same.

On several items we are able to trim a few dollars. Other expense items are increased somewhat, reflecting the general advance we have all experienced in the cost of doing business.

We estimate our total revenue in 1968 to be $210,100. In 1968 total expenses are expected to be $241,500, leaving a deficit of $31,400, to be supplied by the Association's surplus funds now in the hands of ALTA's Treasurer, Larry Ptak.

You may well inquire as to the status of our Association's surplus account. At the beginning of this year it stood at $57,338. This year's deficit will be less than forecast—we can't tell what it will be on December 31 but let's call it $2,000—as good a guess as any. Thus, at the beginning of 1968, our surplus will be $55,000.

The purpose of our surplus is to carry us through bad times, and we believe that we can afford to dip into it in 1968 to the extent of a $31,400 deficit to assure a continuation of the Association's services to its members, on a reasonable level.

You might say that we had the *choice* of a deficit budget or a drastic curtailment of our Association's activities. This reminds me of a reception attended by two clergymen. The first accepted a cocktail but, when no one was watching, spilled the liquor in a large urn. The second minister when offered a drink replied, "Why, I would rather commit adultery than take a drink!" The first minister said, "I didn't know I had a choice."

Our choice was similar to theirs.

"UNDER THE MICROSCOPE?"

By WALTER B. RAUSHENBUSH

Professor of Law, University of Wisconsin Law School, Madison, Wisconsin

It's a pleasure and privilege for me to have the chance to talk to you this morning. My subject is one in which I believe all of you, abstracters and title insurers alike, have a real interest: the small real estate transfer, and plans for possible study in depth of that transfer.

First of all, let me say that I know that I'm only the professor. I'm not in on the actual operation of real estate transfer, nor can the process have for me quite the vocational, emotional and financial significance it has for most of you. This is a truth which should make me, or anyone in a role like mine, both humble and cautious. But it can also mean that if I inform myself adequately, and look at the process hard and carefully, I just might see some things that you, close to the process as you are, may miss.

Consider the transfer of a house for a moment. To the lay buyer and seller, it must seem an essentially simple thing. Their goals can be easily stated. The seller, I take it, wants his price. He expects to pay off his existing mortgage (or have it assumed), pay his broker and his lawyer (if any), and receive the balance. The buyer wants occupancy when it was promised; he expects a genuinely safe title; he wants the costs in addition to the purchase price kept to a minimum, and he wants those costs known to him in advance, not popping up as an unpleasant surprise at closing. The seller joins the buyer in wanting the costs of transfer to be low, and of course once the deal is made, they both want a minimum of delay.

You may want to add to, or amend, that little list in various ways, and I'd be glad to have your comments on it. But the basic points would remain, I think: The goals of the *parties* in this sort of transfer are not really very complicated or sophisticated, *nor do they vary in any important way from one state or locality to another.*

What *does* vary incredibly from place to place, as you well know, is the *process* we in this country use to fulfill these simple and quite universal goals. I suggest to you that if there are intelligent beings on Mars, and if one of them happened to get a research grant to come to the United States and study the residential real estate transfer process, he would soon reject any claim that Earthmen are rational beings!

I will not here take the time to document these amazing differences among states; you know they exist. They contribute to what I think we can fairly call a volatile and controversial atmosphere surrounding real estate transfer today, an atmosphere which is reflected in the various points of view within the American Bar Association. You know some of the concerned groups in the ABA. The active group fostering bar-related title guaranty funds recognizes the strengths of title insurance, but wants the lawyers in on the business lest the success of commercial title insurance cause the lawyer wholly to lose his role in the process. The vigorous group concerned with unauthorized practice of law spends much of its time on the real estate transfer process asserting that real estate brokers and title companies are taking over parts of that process which ought to be handled only by a lawyer. A group within the Real Property Section thinks the great solution will come from use of computer and data retrieval techniques in our land records. Another few argue that we should give title registration techniques a better try than we so far have in this country. Others in the Real Property Section, including many of you here, think the steady growth of commercial title insurance portends the wave of the future, and a good wave at that. Many of the large mortgage-lenders of the country have counsel, active in the Bar, who agree with you. Yet even in this pro-title-insurance group, there is division. Some who support commercial

title insurance as the best way, want extensive changes in legislation, to ease the conveyancing process, and cut off old and speculative interests more quickly. Others oppose much of this legislation, fearing that a conveyancing path made smooth by legislation will reduce the attractiveness of title insurance, which now offers to smooth the path in a way other methods can't match.

As I say, these arguments and factions are known to most of you. When you listen to, or read, these arguments carefully, one thing you'll notice is that the participants in the argument start from quite varying factual assumptions. Each man assumes, if I may put it this way, the *universality* of his own experience, the widespread existence of facts that accord with what he thinks he knows. But the chap he's arguing with makes the same assumption, about *different* facts. The result is that *communication* among these factions is very difficult. The perceptive people in these arguments see this difficulty perfectly well, so they look to research in the real estate transfer process to provide the hard data, the carefully researched facts, from which they can mount their arugments, or perhaps even modify their arguments.

Now, the gathering of reliable research data takes time and money. This is particularly true of what we call "field research" or "law-in-action research," as opposed to mere study in books and periodicals. Yet when we talk about research into the real estate transfer process, we're inevitably talking about field research rather than book research. There's quite a lot written about problems in real estate *law*, but remarkably few writings which report on research into actual real estate *practices*.

Therefore, the interested people in the ABA who felt a need for more research data naturally looked to the outfit in the ABA family of organizations which is set up to do research and which has some money and resources, the American Bar Foundation. The Foundation, though ABA-related is an independent educational and research organization. It has a history of interest in "law-in-action research." For example, the Foundation has been involved for a decade in a study of the administration of criminal justice. Researchers for the study have spent little time in the library, lots of time riding in squad cars and observing what goes on in police stations.

Thus, it was proposed that the American Bar Foundation study title assurance and other aspects of the real estate transfer process. In our society today, we know that "Research" is an In Thing, and that to "Conduct a Study" is just about the most virtuous thing one can do. So all the interests and factions I mentioned within the ABA have approved the idea of such a study. And since I have here kidded a bit about the one-sided views of some of these factions, let me clear the record: I am sure that many of the men concerned with the real estate process and involved in these arguments within the profession, are deeply interested in what such a study might disclose and entirely ready to adjust their opinions as facts may require. There is, in your industry and in the Bar, very real dedication to the public interest and, I am sure, very real interest in any study which can bring some *light* to the *heat* of the present arguments.

Once the Foundation had agreed to devote some of its energy and resources to this project, the question became *what* was to be studied, and *how*. No one on the Foundation staff had a ready answer. The solution was obvious: Get someone to make a *preliminary study* to decide what should be studied! And the reason I stand here is because I am the one chosen to make that preliminary study. My talk is entitled "Under the Microscope?", with a question mark, because at this stage we don't know what further intensive studies will follow the preliminary study, nor indeed do we know whether *any* worthwhile design for further in-depth research can be developed.

What then has the preliminary study amounted to, so far? Two student research assistants and I have been at work since last February—very much on a part-time basis during the school year, somewhat closer to full time during the summer. We have tried to inform ourselves primarily about the problem areas, the sore spots, the points of controversy in the real estate transfer process. You don't do that overnight. We have sampled the periodical literature of six states, the appellate case law of four, the circuit court cases in two counties. We have studied the unauthorized-practice-of-law controversy as it relates to real estate brokers and to title companies. We have looked at the regulation of title insurance, as

the Torrens system. We have tried to learn about the differences in the process in different places. We have talked to brokers, lawyers, title men, or all three, in Wisconsin, Illinois, California, Texas, North Dakota, Florida, Massachusetts, and now Colorado, with more to come.

Over the coming months I'll be beginning to write up some of the things we've found, pinpointing and commenting on some of the problems, some of the arguments. But even before reaching that stage, indeed even at the beginning, we could see that the vast possible scope of the undertaking threatened to overwhelm us. It became important to define certain limits. We are working with transfers by sale only, not with leases, gifts, or transfers at death by will or intestate succession. We are dealing only with residential and possibly very small commercial transfers, not with the larger and more elaborate deals that get much of the current attention in the literature of real estate law and business.

This latter restriction points up one of the aspects of the study that we need to face candidly. As a bar-related inquiry, it must naturally examine the real estate transfer process at least partly in terms of the role of the lawyer. What role does he play in various parts of the country? What *ought* to be his role, or shouldn't he have one at all? In the larger and more complicated real estate transactions, we think the lawyer has an active and accepted role in most localities. In such large deals, the various parties tend to be fully represented, not only by lawyers, but by accountants, engineers, surveyors, architects, insurance counselors and so on, as needed. It is in the smaller deal, most typically the transfer of a single family residence, where you find the most differences from place to place and, I think the most controversy about unauthorized practice of law, the allegedly vanishing role of the lawyer, and the like. Take a look at page 4 of the Sept. 1967 *Title News*, which shows one lawyer doing nothing, just smiling, as a real estate deal is handled in escrow.

Let me make one thing clear: The American Bar Foundation is concerned about the lawyer's role in the real estate transaction *only from the standpoint of the public interest*. In the background papers of the project, and in the Foundation's instructions to me, this has been made very clear, and the various interest groups within the Bar have been told the same thing. For example, suppose we devise a way to measure with reasonable fairness what ingredients go to make up a satisfactory real estate transfer from the standpoint of buyer and seller, which is to say, from the standpoint of the *public*. Then suppose we find a way to study in depth just how the transfer process works in practice in several localities. We'd select places where the lawyer's role would vary from insignificant in one place, to a limited role in another, to a major role in yet another place. Then we'd make the best effort we could to ascertain in which of these places the public is best served. Where is the cost least? The time lag shortest? The incidence of pre-closing difficulties lowest? Where are there the fewest post-closing troubles, both as to title problems and as to any other post-closing problems we can find out about? Perhaps we'll find that the public does as well or better in places where the individual parties do not normally have lawyers. Or perhaps we'll discover that where the lawyer is missing, certain problems do arise which are not seen as much in places where the parties have lawyers. Whatever we find, if there's enough data to make it seem reliable, rest assured it will be published.

As I've touched on these possible topics for investigation, one thought must have crossed the minds of many of you: This sort of data might be very interesting, but how in the world is he going to get it? How is it possible to break apart hundreds or thousands of real estate transfers in several different localities and really find our how each one progressed, how satisfied the parties were, what went wrong if anything, and so on? And at this stage I must admit, you have me. I don't know anything except that after I have formulated the questions better and more sharply, I am going to try to find ways to get the answers. As to some of the questions, I may well conclude that I can't find ways. For now, I'm not sure.

One of the big problems, of course, will be the willingness of those who do have information to share it with us. If we devise a questionnaire that gets at some matters we think important, will lawyers, or brokers, or title men, or whoever it's addressed to, take the time and trouble to provide

meaningful responses? Will a large real estate brokerage office which has kept complete files and notes of deals closed and not closed (if such an office exists) let us rummage in their files to get a first hand view of what sorts of things go wrong and with what frequency? Will a law office do likewise on its files of real estate deals, if proper confidentiality and anonymity are assured? How about an escrow company, or the escrow department of a title company? How about the office of an agent for a title insurance company? And, getting still closer to your particular interests, will title insurance companies welcome us if we ask to do in-depth studies of their claim and loss records, so we can see what sorts of claims do pop up and also perhaps get some insights into why those claims that are valid weren't cured or made subject to special exception when the policy was issued?

The things I have been suggesting, let me stress, are only the highspots of our tentative thinking up to now. Now is the time, the very best time, for you to be telling me what things I ought to be looking into. Are there problems in the process that I may not know about? Are there arguments I ought to hear which I may have missed? I assure you that other interested groups have supplied me with information and arguments in substantial quantity. Let me take this chance to urge any or all of you to write to me at the University of Wisconsin Law School, Madison, Wisconsin. Send me any written materials you think I ought to see, tell me of any problems you think I ought to be working on, make any comments you wish on the proper scope or approach of our study, and (by all means!) offer any help you think you might be able to give. I have a modest travel budget, and will hope to be visiting the offices of at least a few of you over the coming months. If your cordiality matches that extended to myself and my wife here in Denver, I have some very pleasant encounters ahead of me!

I cannot close without suggesting some of the wider implications of the proposed study. To analyze the roles of lawyers and other participants in the real estate transfer process, and to find out what seems to work best and why, is ambitious enough. But the products of a study of that kind, if we find ways to make it, will have importance far beyond the initial questions. One aspect might relate to possible improvement of the process by legislation. If we find that a possible title difficulty, worried about by conveyancers over the years, practically never comes up in real life, why not legislate to eliminate the difficulty? Perhaps we can simply pass a law forbidding anyone to claim that a duly recorded instrument fails for non-delivery. Maybe we'll decide that a victim of a forgery not in possession can reasonably be cut off as against an innocent purchaser after a few years. Maybe our data will suggest that it's reasonable by legislation to reduce those much advertised Seven Traps for Unwary Home Buyers to five, or three! Or maybe the thrust of such facts as we discover will be in the opposite direction. Some of what we find, though, *ought* to be relevant in one way or another to the Simes-Taylor proposals and other programs for legislative change which many states have considered over the past dozen years.

Beyond that, I do not see how the study can avoid a good hard look at the future of real estate transfer. This is a subject in itself, and I know that a speaker shortly before lunch is expected to have effective terminal facilities and to use them, so I will not go into the ramifications. I'll try only to get you thinking (as I'm sure many of you already are) about some of the questions we'll have to face.

Let me say first that I've tended to think of myself in many ways as an old-fashioned sort of person—as my crew cut now amply shows! I used to dream that I could be a lawyer and law teacher for a pleasant and stimulating lifetime, and still manage to avoid having to know anything about, or having anything to do with, those modern monsters loosely called computers. Then in a rash moment, I agreed to do this study for the American Bar Foundation, little realizing how fast that undertaking would shatter my dream. How can we escape the proposition that the great need in real estate transfer is reliable, quickly available *information* on the state of the title, the status of the property and of the seller, and related matters? In a rough sense, that's really what both abstracting and title insurance are all about. In title insurance, the company performs some important but limited evaluative and risk-taking functions, yes, but it's no new thought for me to say to you that a great deal of what the title

insurance company does is furnish reliable, guaranteed title *information.*

And when we speak in this decade of the gathering and presentation of previously recorded information, how can we avoid having the phrase "electronic data retrieval," or some similar bit of jargon so recently added to the American vocabulary, come to our minds?

The foundations on which we are likely to build are already laid in two places. The first is the public tract index, now in existence in at least parts of a dozen or so states. Some have been successful, some not so successful. I understand that in New York City, some title insurers no longer maintain title plants, but use the public tract index as their basic source of title information. In my home county in Wisconsin, by contrast, we've had a tract index for nearly thirty years, but the two major abstracters and title insurance agents continue to maintain complete title plants. Three other outfits, though, do a similar but smaller business based on the tract index. A few tract indexes are moving toward electronic data retrieval techniques, and a few other experiments in land parcel information, such as the Land Data Bank in the District of Columbia, are underway. I don't think our study can ignore these developments.

But the second foundation of which I spoke is in many ways the firmer and more advanced. Ladies and gentlemen, in connection with the search for title information, *you* are the people who have the right equipment! In a very real sense, your experience and know-how in tract indexing is greater than that of the public agencies. Your collective experience in applying electronic data techniques to these problems is far ahead. You know that we're approaching a technical capability to put together automated tract indexes more complete and reliable than any present public index, and probably better than any of your companies has yet devised.

I suggest to you that the march of events and the advance in techniques will cause increasing pressure to make this sort of information available to the public on some reasonable basis, at almost the push of a button. How will the title industry respond? Will its title plants be taken by the exercise of the power of eminent domain to serve as the basis for expanded public tract indexes, with title companies concentrating on evaluation of risk? Or will title companies become regulated public utilities and public indexing in any separate form become a thing of the past? Or will title insurance and abstracting service become so fast, reliable, automated, and inexpensive that present recording and indexing systems will continue as a vestige from mere inertia, but the pressures for change will just never build up? Or will the computer age make title registration schemes seem feasible and attractive, with a turn in that direction once again?

Today, I don't know the answers to these questions, nor do you. But your industry can have a potent influence on the answers, if it faces the potential of the next two decades constructively. I know many of you have already thought about these things. Please let me know your thoughts and ideas on these matters, as well as on the other problems I've talked about here. And please accept my thanks for this chance to share these preliminary thoughts with you, and the thanks of Marylu and myself for your wonderfully cordial hospitality here in Denver. I want to keep open and use the channels of communication this visit has helped to establish, and I hope you will want to do the same. By all means let me hear from you, and thank you again.

"BE IT ENACTED—"

By WHARTON T. FUNK

Chairman, ALTA Legislative Committee; President, Security Title Insurance Company of Washington, Seattle, Washington

There is submitted herewith the report of the State Legislative Committee for 1967. It is such a lengthy report that is not feasible to do more than make a few comments of a general nature to the convention.

This committee pays particular attention to changes in title insurance codes and abstracters licensing laws. We are reporting new title insurance codes in Arizona and Nebraska and the title insurance code in Oregon

integrated without substantive change into a new General Insurance Code, and that the code in Texas has been extensively revised; also, significant changes in laws affecting the title insurance and abstract business in California, Florida, Kansas, Maryland, Minnesota, Missouri, North Dakota, Tennessee, Texas, Utah and Wyoming.

I think it would be of interest, in view of the publicity that developed in the metropolitan area of Washington, D.C. and adjacent areas in Maryland regarding the misappropriation of funds by a few closing attorneys, to mention the two laws that grew out of those unfortunate events:

"Chapter 714 — amending Sections 431-1 and 486-2 of Article 48A of the Maryland Code providing that whenever a title insurance company shall issue a policy of insurance insuring the title to property for the benefit of any mortgagee, the title company or the title attorney shall, prior to the disbursement of the settlement funds, notify the mortgagor of his right to purchase insurance insuring title to the property for his benefit and of the cost of such insurance.

H. B. 1075 amending Article 27 of the Code by making it a criminal offense to pay or receive anything of value for the purpose of soliciting, obtaining, retaining or arranging any real estate settlement or real estate settlement business."

I might also mention that in Texas the law has been amended to reach down into the regulation of the title insurance business by prohibiting the "insuring around" an existing record lien except under circumstances approved by the State Board of Insurance. It seems that our own industry should be able to perform this function without having to have the state do so.

I might also mention that Florida is continuing to have friction between the Lawyers Title Guaranty Fund and the balance of the industry.

In the field of taxation it is interesting the number of states which have seized upon the termination of the Federal Conveyance Stamp Act to prevent the taxpayer from benefitting by adopting a State Conveyance Stamp Act.

Now I have a recommendation to make to the Board of Governors. I have been chairman of this committee now, I believe, for the fourth time. Each year an uncertainty has existed concerning the exact purpose of the committee. Although I have always felt that each state representative need report only the new state laws that might be of general interest to the title industry, nevertheless, each year we seem to expand the report to include many changes in substantive real estate, probate and procedural laws that could be of little interest outside the state. I am sure that in the great majority of states, the State Title Association reports to its own members the new legislation of interest. So, this does not need to be repeated by a committee of the ALTA.

I find that Section 12 of Title VIII of the Constitution and By-Laws of the ALTA provides that *The Legislative Committee*:

"Subject to the approval of the Board of Governors, shall have power to act with regard to legislation affecting or relating to the interests of members and the title business generally. The Committee shall report its activities at each annual convention."

I do not believe that in recent years a "Legislative Committee" other than our committee has been appointed. It is obvious that our committee has not been functioning so as to comply with the above quoted Section because that Section quite clearly contemplates committee action on *Pending Legislation* whereas our committee has always been performing a *reporting* service covering legislation *already passed.*

I therefore recommend that:

The Planning Committee study the entire problem concerning the function of this committee, particularly as it relates to the committee provided for by the above quoted Section and recommend to the Board of Governors an amended Section to replace said Section 12 which will clearly define the functions of this committee in line with their concept of how the committee should function.

In closing I wish to express my deep and sincere thanks and appreciation to all the many members of my committee for their time and work in furnishing me such a wealth of material from which to compile our 1967 report. We had only four states which failed to report.

There were a few states where the committeeman representing that state had to be changed for reasons such as retirement, etc. My special thanks to the men who volunteered as replacements.

EDITORS NOTE: Copies of the Synopsis of State Legislation compiled by the ALTA Legislative Committee may be secured by writing to the American Land Title Association office in Washington, D.C.

"YOUTH MUST ALSO SERVE"

By JACK RATTIKIN, JR.

Chairman, Young Titlemen's Committee, ALTA; Executive Vice President, Rattikin Title Company, Fort Worth, Texas

As you all know, the Young Titlemen's Committee began some two years ago, in effect, with a different name to start with, but since that time we have had four different meetings of our group and each time it gets larger and larger, and the people get a great deal more active in respect to the items that we want to do and what we have done.

We took on a motto for our particular group. I think Joe Smith set it out last year, or in Miami. It was "Change and Adjust."

Our particular group is taking this on and has felt that since the Title Association has been kind of a going group for quite a number of years that we would try and acknowledge some of the changes that are taking place. And since we are young, and arbitrary young men, we want to adjust things and try to go about things maybe a little different way. We want to swing everybody over to the thinking of not our way but thinking of the Association as a whole and what it can do not for ourselves but what it can do for the public in general, and how we will spread our knowledge that we have of our product to the general public rather than just to ourselves at these particular conventions.

Consequently, we have taken on an active program of going out to the public and not doing so much for the convention as a whole, but taking on these things to educate the public as to who we are, what we are, and what we have to offer. We think by doing this we can do more for ourselves and the Association and the money in our pockets than any other way.

As you know, or probably know, the Title Association or the Title Insurance and Abstracters, have practically no image, or very little image, and that is with the real estate dealers, mortgage bankers, and the Bar.

The general public doesn't know who we are, and consider us as a necessary evil very often and think we are a very expensive necessary evil, so this is our main project—to go around this and try to show these people why we are here and what we do.

We made a manual last year of some fifty pages, about twenty-five different committees, and this is what we are working toward. However, right now we are stressing lawyers' title guaranty funds and liaison with related industries. That is quite a wide depth in itself.

Paul Dickard has taken on the chairmanship of that subcommittee and has been a very effective chairman.

In trying to better the relationship with related industries, we have been in contact with the ones we work most closely with, the Young Mortgagemen's Committee of the National Mortgage Bankers Association, and the Young Lawyers Conference of the American Bar Association.

I have just been in contact with the Chairman of the Young Mortgagemen's Section, which is a section of the Mortgage Bankers, and we have set up a conference of our committee with theirs in two weeks in Dallas at the national meeting to go over some of the common problems which we all have.

We have been fortunate enough to secure a place on the program at the next American Bar Association Convention, the Young Lawyers Conference. They made this conditional on our committee becoming a standing committee, and I understand that is up for vote. They want us as a standing committee because if they get into these programs jointly they want to have a committee that is going to be there and not one that is here today and gone tomorrow. So I urge you all, when that vote does come up, try to give us a little help and make us a standing committee rather than just an arbitrary committee for a particular year.

We have gained this place on the panel of the Young Lawyers Conference next year, and I think this is a great step forward. They are recognizing us, that we exist, at this point.

On the study of the lawyers title guaranty funds, we are taking an open approach completely. We have gotten materials from every area that has these funds. We are making an objective approach to this thing, and trying to work not on a defeatist basis of defeating these things because it hurts our pocketbooks and vice versa, but looking at it as a public good, what we can do to show the public one way or the other. We are trying to convince ourselves exactly where it is, rather than propaganda and such from both sides, and just like our speaker previously here, making a study, and we hope that we can help them by supplying them with some of the information that we found out.

On recruiting and placement, Tom McDonald is in charge of that, and this has been an extremely active committee this year.

To show you one thing that we have done, and are doing, we have become publishers now and we are publishing a brochure. Tom McDonald has come up with a very unique cover for this brochure, and we are working on it at this time with the help of Bert Holm, Rodney Hamm, and Bill Thurman. By the end of the convention we will have completed this brochure on recruitment. We have never had this, really, before. We have a man at each particular state set up to go out and hit every university, of any size whatsoever, in the placement area, and we will talk to them, get these brochures in their hands, and it will show something about our industry, with the idea of placing people in the title industry that we need so very greatly.

It is our hope that this brochure will be a start in the right direction. We are going to follow up on it. We are going to start a very active campaign, and it has already started, on getting placement going.

One other item is that there is a land title course being offered now in various states, I think Iowa and in Texas—one has started now both at the University of Texas Law School and Northwood Institute in Texas. Northwood Institute, as I understand it, has let this industry form the curriculum for this course, select the textbooks for this course, and do the instructing for this course, and yet it is a fully accredited course. Thanks to Bert Holm for his work on this particular committee.

At the meeting this morning, although we are not autonomous and we have no power—it must go to the Board of Governors, which we will submit—we did in our own little way endorse the Northwood Institute land title curriculum as a model curriculum for land title courses throughout the nation. This is a beautiful curriculum, and I do have a copy of it and we will submit it and hope that the ALTA will give its endorsement to this particular curriculum, with the idea of pushing this, with our endorsement, throughout the entire nation. It is a great thing, if we can do this.

I am just about out of time. I wanted to say a few other things but I can't. Our group is moving forward and we are going beyond the objections that we have been having. We are trying to meet these objections before they start. Meet with people and get ahead of them, don't let them object, always be on the defensive. We are going to try to get on the offensive, and look ahead.

We invite everybody to attend our meetings. It is certainly not a closed meeting, and we do not have an "under-forty" limit. It is for anybody who wants to work in this line, and we would like to have them come to these meetings.

They never conflict with regular meetings of the Association because we don't want it that way. We want to work with everybody, and in this way we hope we can all work together.

"OF MICE AND MEN"

By DRAKE McKEE

Chairman, Planning Committee, ALTA; President, Dallas Title and Guaranty Company, Dallas, Texas

President Garber appointed Don B. Nichols, Thomas S. McDonald, Roy P. Hill, Jr., Alvin R. Robin, Alvah Rogers, Jr., Fred Timberlake, Otto Zerwick and me as members of the Planning Committee at the beginning of his term of office.

Three subjects were given us for consideration and for recommendations to the Board of Governors.

1. Whether The Young Men's Committee should be given section status, such as the Title Insurance Section and the Abstracters Section.

2. Suggestions as to classifications to be set pursuant to the Constitution and By-Laws by the Board of Governors for associate membership.

3. A change of name of the two sections as proposed by resolution of the Florida Land Title Association.

The Planning Committee met prior to the Mid-Winter Conference and proposed to the Board of Governors that the Young Men's Committee be given standing committee status instead of that of special committee. This recommendation was adopted and has been acted upon.

As to question two, suggestion was made that for the present the only classification for associate membership be that of Life Counsel with a grandfather clause to protect present associate members who may not be Life Counsel. This was rejected by the Board of Governors and the Committee was told to give the matter further study and to report again at this convention.

As to the third question, we recommended that the name of the Title Insurance Section remain unchanged, and that the Abstracters Section become the Abstracters and Title Insurance Agents Section. This was rejected and we were told to give further study to this and to report again in Denver.

We met for further deliberation on Sunday morning and made our amended report to the Board of Governors on Sunday afternoon.

With respect to question one, we recommended that the status quo be retained with respect to associate members and that the Board of Governors make no specific classifications at this time. We gave our reasons for this conclusion in rather flowery language. With obvious disdain the Board voted to "accept" our report, making it clear that by doing so, they were in no wise adopting it. Later, under the items of new business, the Board voted unanimously to specify certain classifications for associate membership.

As to the second item, we recommended at this time, that the name of the Title Insurance Section be changed to "Title Insurance and Underwriters Section" and that the name of the Abstracters Section be changed to "Abstracters and Title Insurance Agents Section." One or two members of the Board replied that our committee obviously had not given thought to the provisions of the Constitution and By-Laws of ALTA in this connection and although receipt was acknowledged of our suggestions, by unanimous vote it was decided that this item be sent back to the Planning Committee for further study, with the admonition that the incoming ALTA President would no doubt appoint a brand new committee.

It was at this point that it dawned upon me that the title of this report came from old Robert Burns' little poem entitled "To a Mouse" and to the stanza which says—"The best laid plans of mice and men gang oft agley—and leave us nought but grief and pain for promised joy."

Actually, George Garber didn't promise us any joy, but all of us did enjoy our work as members of the Committee. I would like to thank my fellow members for their grand cooperation and too. I would like to tell you that the officers of our association and the welfare of our members are in good hands in our Board of Governors.

PRESENTATION OF HONORARY MEMBERSHIP AWARD

By DON B. NICHOLS

Past President, American Land Title Association; Owner, Montgomery County Abstract Company, Hillsboro, Illinois

Benjamin J. Henley of San Francisco, California has retired this year from his company. Our American Land Title Association Board of Governors, at its meeting here in Denver on Sunday, awarded an honorary membership to Mr. Henley. It is my pleasure to accept the assignment from our President George Garber to make the presentation to Mr. Henley as a part of our 61st Annual Convention program.

In addition to his very many natural attributes, Benjamin J. Henley's foundation for his career in the title insurance business was the legal profession in the state of Nevada. After being admitted to the bar in that state in 1911, he practiced and became a member of the firm of Hoyt, Norcross, Thatcher, Woodburn and Henley of Reno.

He left that firm to become a member of the Board of Directors and Executive Vice President of California Pacific Title Insurance Company of San Francisco in 1924. To the many thousands of people in the title fraternity, the name Ben Henley is synonymous with the progress and advancement of the title business. He was elected to the office of President of the California Land Title Association for the term 1926-27. He became leader of the American Land Title Association as its President in 1934-35. In both of these offices he pointed the product of title insurance toward greater standardized benefits and protections for the public. He has continued these efforts during his entire career.

Mr. Henley became the President of the California Pacific Title Insurance Company in 1948 and effective January 1, 1960 Chairman of the Board of that company. With the merger of California Pacific into Title Insurance and Trust Company, he was elected a Vice President of the parent company. He was elected a Director of Title Insurance and Trust Company in 1959.

At its Annual Convention in San Francisco, California in June this year, the California Land Title Association made Mr. Henley a permanent, honorary member of that Association.

The Bar Association of San Francisco recognized his many contributions to the legal profession by making him an honorary member and, as such, he joins with distinguished statesmen, illustrious members of the judiciary, and dedicated Deans of California law schools similarly honored.

It is now my honor and pleasure, representing the American Land Title Association, its Officers, Boards, and Members, to present to you Mr. Benjamin J. Henley this honorary membership certificate and with it the best wishes of all of us in ALTA to our 1934-35 Association President.

"A WARM WELCOME"

By JAMES W. ROBINSON

Secretary and Director of Public Relations, American Land Title Association, Washington, D. C.

Thank you Mr. President. In helping to plan the program for this Annual Convention I seem to have painted myself into a corner. President Garber has reported to you regarding the major Association activities. Bill

McAuliffe has told you about the many activities which occupy our time at the ALTA office. Frank O'Connor will describe in some detail the dramatic impact our program of Public Relations is having on news editors, home buyers and related professional groups. It will come as a shock to my friends to discover that in this situation I am virtually speechless.

Of course I could give you a detailed description of the paleozoic mollusk which survives only on Island of Madagascar, but instead I have a very brief but important message. In my opinion we have only scratched the surface of the service we can perform for members of the American Land Title Association. You tell us what needs to be done and we will do it, we are confident, better than anyone else in the world.

Now I seem to sense in this ballroom, a breathless air of excitement; a keen anticipation which can result only from your eagerness to learn the names of those individuals and firms which were approved yesterday by the Board of Governors for membership in the American Land Title Association. Here they are:

Andrews Abstract Company, Andrews, Texas
Bell County Abstract Company, Belton, Texas
Bellingham Title Company, Bellingham, Washington
Craw-Kan Abstracts, Inc., Girard, Kansas
Greeley County Abstract & Title Company, Tribune, Kansas
Duval Title Company, Jacksonville, Florida
Franklin County Abstract Company, Ozark, Arkansas
Hanford Title Company, Hanford, California
Mahoning County Title Company, Youngstown, Ohio
Pope-Yell Abstract Company, Russelville, Arkansas
The Portage County Title Company, Ravenna, Ohio
Provo Land Title Company, Provo, Utah
Quay County Abstract Company, Tucumcari, New Mexico
Southern Title Insurance Company, Knoxville, Tennessee
Southwest Land Title Company, Ft. Worth, Texas
Tallapoosa Abstract and Title Company, Alexander City, Alabama
Transamerica Title Company, Los Angeles, California
Warren W. Wilkins, Richmond, Virginia
Sheldon Bowers, Montpelier, Vermont
Levy Abstract & Title Company, Bronson, Florida
Clarence P. Potrykus, Boston, Massachusetts
Meridan Abstract & Title Company, Miami, Florida
Pioneer Title of Louisiana, Inc., New Orleans, Louisiana
Jean Cook Abstract Company, Texarkana, Arkansas
Prewitt-Rogers Abstract Company, Osceola, Arkansas
Sierra Title Company, Ventura, California
William A. Hayes, General Motors Cororation, Detroit, Michigan
Capitol Land Title Insurance, Inc., Madison, Wisconsin
Wayne H. Chesebro, Concordia, Kansas
Guardian Title & Abstract Company, Miami, Florida
Warren L. Hanna, Washington, D.C.
Southern Title Insurance Corporation, Richmond, Virginia
Glendon E. Rewerts, Leoti, Kansas
Southwest Land Title Company, Houston, Texas
Opal A. Teeple, Mankato, Kansas
Ronald Charles Wolf, Montpelier, Vermont
Charter Title Company, Beverly Hills, California
St. Paul Title Insurance Company of Colorado, Lakewood, Colorado
Osage County Abstract Company, Linn, Missouri

In all seriousness we welcome these new members to a splendid organization with a fine tradition of noble service to the country and to its membership. We urge them to take an active part in the affairs of the Association.

I thank you.

"A BETTER BEST SELLER"

By G. ALLAN JULIN, JR.

Chairman, Directory Rules Committee; Senior Vice President, Chicago Title and Trust Company, Chicago, Illinois

I believe it was a year ago that the chairmen of our various committees were asked to select a title for their report that would sound interesting and, presumably, would help overcome the natural reaction to seeing a long list of speakers scheduled to deliver their reports. As I look around this morning I am not quite sure whether that has succeeded in drawing attendance at this early hour.

About two months ago when asked to submit a title for the report of the Directory Rules Committee, I picked the one that appears on the program, "A Better Best Seller." But when I got down to the point of preparing my report I wasn't quite sure what I had saddled myself with. Somewhat frustrated, I began to comb through my much used Directory and I came to the conclusion that our Directory can in many ways be compared to a best seller. Starting with the cover, we see on it a very bold eye-catching sketch of a bird who has either received a terrific electric shock or is jet propelled. An eye-catching cover design, of course, is essential to any best seller. As a matter of fact, many books are sold just because of the eye appeal, misleading or otherwise, of their cover design. Fortunately, that is not the case with our Directory.

And then, of course, it appears that in recent years a good book, or let's say a book to become a best seller, must be rather lengthy. Well, our Directory has fifty chapters and as is so often true of a best seller, these chapters vary in length from a half a page to several pages. Locale for the contents of a book is also extremely important, and we can certainly say that our best seller, our Directory, has the best and most interesting setting any book could have. It covers the activities of its cast of characters in fifty different areas of the United States.

Have you ever noticed how many of the most popular books in the last few years have had a tremendous number of characters for the reader to keep track of? Think of a book like *Hawaii* or *Doctor Zhivago.* In reading either of those you almost get the feeling that you will never remember everyone involved in the story told. Having this in mind, many of those books at the very front list the leading characters. Well, our Directory does that. In the front of it we list all of our officers, the Board of Governors, and the officers and executive committees of the Abstracters Section and of the Title Insurance Section. And as you peruse the various chapters, or in this case, state sections, you can even find out something about the financial position of many of the corporate characters that appear in the story our Directory tells.

One of the often used tricks of the author of a best seller is to weave some element of mystery into his book. I am sure that our national headquarters staff will agree when I say there is mystery involved in our Directory: How in the world with all of the careful editing and proofreading do errors appear in the finished product?

Still another characteristic of some of our best sellers is that they are controversial. Take for example that fascinating new book "An Operational Necessity". Certainly, the submarine captain's decision to gun down the survivors of that non-combatant freighter on the basis of operational necessity was a highly controversial one. And goodness knows and our national headquarters will testify to the fact that the content of our Directory has created more than one controversy over the past several years. This can range all the way from the manner in which financial positions are stated to whether a given office is entitled to a separate listing as a branch office of a company member. Here the controversy may either be handled by ALTA or by the affiliated state title association that might be involved.

But now seriously, ladies and gentlemen, our Directory is an excellent product. It deserves to be and is the "best seller" in our industry. It is one that is updated annually and probably is the most important publication of the ALTA for your use and for the use of many of your customers throughout the country. Tremendous care is exercised at ALTA headquarters in producing this volume. It is equally important for you, as you send in your listing material, to send it in correctly, for, as you know, once your material has been sent in it is carefully incorporated into the Directory and, since a year ago, galleys are no longer sent out for you to make any changes or corrections. If you have sent in your material correctly, national headquarters is willing to recognize the fact that it is responsible for any errors that appear.

I mention that this book is of importance to you and to your customers. Use it. This is why you have it. You can use it to help advise your customers as to title people operating throughout the country.

During the past year the Directory Rules Committee has really had relatively few problems presented to it. Of those that we did receive, none but one were of such a nature as to suggest the need for any change in our directory rules. The one problem that can be significant was instigated by a letter from the Insurance Department of the State of New York objecting to the fact that the listing information as to the financial condition of members appeared in many different ways resulting in the inability to make proper comparisons between companies. To those of you who are not doing business in the State of New York, and that certainly embodies the majority of our members, this may appear to be of no significance to you unless you recognize the fact that a customer in New York could conceivably be interested in placing an order anywhere throughout the country. Therefore, it appears that the objection by the Insurance Department of the State of New York has merit.

Your Directory Rules Committee gave much thought to developing a formula that could be applied uniformly. Bear in mind that formula has to recognize the rules and regulations of the regulatory agencies of the states of domicile of our members. We arrived at a conclusion at just about the time that the Standard Title Insurance Accounting Committee was also giving consideration to this same matter. That committee, giving just as much thought to the problem, arrived at a somewhat different solution from that of the Directory Rules Committee. And because of that, I have suggested that before any official change is made in our Directory Rules as to the manner of listing the financial condition of our members, a joint meeting of the Directory Rules Committee and of the Standard Title Insurance Accounting Committee be held, such joint meeting being charged with the assignment of presenting a joint recommendation at the time of our Mid-Winter Meeting in New Orleans.

This, of course, means that our 1968 Directory will come out following the rules as they are now written. Our national headquarters will make every effort to see to it that the present rules are adhered to, even though there have been instances as recently as our 1967 Directory in which the rule for statement of financial condition has not been followed.

By now, each of you as "co-authors" of our "best seller," the ALTA Directory, should have your copy in at our national headquarters. I hope you have done so, for it is needed in order to get the Directory out on schedule. Publishing the Directory is one of the biggest and most time consuming tasks that national headquarters has. Your cooperation in sending in your listing material promptly will be of real help in getting the Directory out on schedule.

Ladies and gentlemen, my report to you this year obviously is not a conclusive one. I will end my report by saying that all members of my committee have been extremely helpful and are title people who want to be of help to their Association. I have a sneaking suspicion, however, that each of them secretly feels somewhat like the young man who went to a revival meeting and was so stirred by the speakers that he got down on his knees and said, "Oh Lord, let me be of service, preferably in an advisory capacity."

Respectfully submitted,
G. Allan Julin, Jr., Chairman
E. A. Bowen, Jr.
Gordon Burlingame, Jr.
Gregory Salinas
Frank T. Summerson
Joseph G. Wagner

"A BARGAIN IN PUBLIC EDUCATION"

By FRANCIS E. O'CONNOR

Chairman, Public Relations Committee, ALTA; Senior Vice President, Chicago Title and Trust Company, Chicago, Illinois

The title of this report, "A Bargain in Public Education" is quite adequate and descriptive. However, an equally fine title might be "Achieving Major League Results On a Minor League Budget." Here's why.

In 1967, due to a 34% decrease in budget from 1966, the Committee was able to develop only 5 consumer advertisements. As in past years, we were able to secure remnant space in the *Saturday Evening Post* in such a manner that every area of the country was reached by at least one of them. Actually, through these ads, the ALTA message was carried into 15 million homes with approximately 50 million readers, and we have received a great number of coupons clipped from the ads requesting more information.

You might recall that the 1966 advertising campaign to consumers was based on the "Seven Traps" theme. There was some sentiment expressed that this was simply and purely "scare advertising." So in 1967 we developed ads emphasizing the educational which dealt with the nature of a real estate title and the importance of a complete search as a basis for the issuance of a policy of title insurance. One advertisement pointed up the difference between an owner's policy and a policy of mortgage title insurance.

This advertising program, as you know, was awarded first prize in the creative advertising competition conducted by the Transamerican Advertising Association Network. Congratulations are due to Stanley House, our advertising representative, who did most of the creative work.

The writing team of Deane and David Heller continues to register dramatic accomplishments. In the past year they developed a number of press releases. One was "How FHA Helps the Home Buyer"; a second announced ALTA's cooperation with related business groups in promoting the "Buy A Home Now" campaign; a third, issued to coincide with the personal income tax filing deadline dealt with the subject of "Death and Taxes"; another, for the second time around, was based on the "Lincoln Lost His Home" story, released to newspapers and magazines immediately before Lincoln's birthday.

Two other news stories were developed by the Hellers, and both of these dealt with the Maryland embezzlement situation and emphasized the difference between an owner's and mortgage policy.

Still another release announced the availability of the pamphlet, "Get The Most For Your Money When You Buy A Home."

Newspapers and magazines throughout the country carried all of these stories and as a result letters and postcards were received and are being received from all over the United States requesting pamphlets and other material from our staff headquarters. How the people in our office in Washington meet this challenge and are able to respond to all requests is a constant source of amazement.

The Hellers have plans for more news releases, one of which will be on the subject of wills of deceased persons, and another will deal with confusion resulting from common names appearing in a chain of title.

What I have just said certainly indicates an impressive accomplishment, but actually it tells only part of the story. As a result of the newspaper items prompted by the work of the Hellers, the ALTA office has received 24 requests for specially written articles for magazines and newspapers, half of which have already been developed and sent out. For example, on August 8, the real estate editor of the *New York Times* requested an article on the subject of real estate titles which is now being prepared by Dave Heller.

Because of the Heller news releases, various ALTA pamphlets quite recently have been listed in the "literature available" columns of some outstanding national publications, such as *House and Garden, The Christian Science Monitor,* and *Burroughs Clearing House.* As a result over 1000 requests for the booklet, "Get The Most For Your Money When You Buy A Home" have been received.

Our film distribution program continues to be successful. Actually the extent of distribution of the film is limited only be the number of prints presently owned by the association and the yearly budget available for supporting the distribution program. In 1967, 21 television showings of "A Place In The Sun" reached an audience of 387,000. In addition, 219 film showings at airports, civic classes, service groups fraternity organizations, etc., reached an additional 5,000 persons.

We continue our efforts in the development of what we believe to be interesting and effective association literature. Since October, 1966, the ALTA has produced the following:

"How FHA Helps The Home Buyer"

"Get The Most For Your Money When You Buy A Home"

"Owner's VS. Mortgage Insurance" (Based on the Maryland scandal)

"Public Relations Manual For Employees of Member Companies"

In addition, literature developed in the past, such as "Lincoln Lost His Home," "ALTA Answers Some Important Questions," "Your Home, How Much Of It Do You Own?" and "Seven Traps For Unwary Home Buyers" continue to be popular both with the public and the members of the ALTA.

After a year of negotiation by the ALTA staff and the Public Relations Committee with the editor of *Better Homes and Gardens,* the January, May and June issues of that magazine carred articles on the subject of title evidencing. Steps are being taken to secure an 8-page reprint containing all three articles in a single brochure with the *Better Homes and Gardens* front cover and a dropout blurb on the cover calling attention to the pamphlet's contents. These reprints will be made available to association members at cost.

We have been trying for many years to secure a place on the Annual Convention program of the National Association of Real Estate Boards for one or more of our members. We are pleased to report that Jim Robinson will appear as part of a panel at the 1967 NAREB Convention, discussing "Why Your Firm Needs A Good Public Relations Program."

One of the projects currently in process is the development of a new brochure, possibly covering the truth about closing costs. It is quite possible that this brochure will be in publication next year.

Here are the recommendations of the Public Relations Committee for 1968:

Although our publicity efforts have met with unusual success, evidenced by news clippings and thousands of requests by the public for additional information, the Committee feels that it would be a mistake to concentrate all efforts in this one area. We believe a true national program must encompass all facets of public relations including publicity, literature, speaking programs and paid advertising. The reasons for this are: First, there is a limit to the number of press releases the nation's editors will absorb. Second, there is the problem of time and clerical help in the ALTA office. Third, public relations activities affect other parts of the overall budget, such as bulletin, supply, postage and salary expenses. Further, the difference in the nature of an advertisement in a national magazine must be recognized—it does not always evoke an immediate response on the part of the reader, but it conveys a message that is frequently lasting.

Considering these factors, your Public Relations Committee recommends an overall expenditure of $45,000 for all Public Relations activities.

The Committee enthusiastically recommends a continuation of the services of Deane and David Heller who have scored many accomplishments in the time they have been associated with us. We also recommend a continuation of the film distribution program on the same basis as 1967.

The Committee feels that the development of meaningful literature is extremely valuable to the Association's Public Relations efforts and therefore suggest that some money be allocated to this purpose.

One void in our present program is lack of distribution to editors of weekly neighborhood, regional and community publications. There are so

many of them that it would be impractical to send each a press release, but various feature services, such as Featurette, Derus and Company and King Feature Syndicate periodically make news stories and articles available to these publications. We recommend that a number of ALTA stories be developed and inserted in weekly newspapers through one of the feature services.

Finally, the Committee recommends an allocation to cover unanticipated public relations expenses. I am sure that with this your 1968 Public Relations Committee will achieve even greater success than the committees of prior years.

"THE FINANCIAL PICTURE— PRESENT AND FUTURE"

By DR. WILLIAM FREUND

Chief Economist and Executive Director, Investment Research, Prudential Insurance Company of America, Newark, New Jersey

During the first six months of 1967, the U. S. economy continued to grow althrough at a distinctly sluggish rate. Private spending by business and consumers was restrained. An inventory correction of considerable proportion took place. Housing was just beginning to emerge from the doldrums of the previous year. Only government spending—both Federal and local—moved up sharply.

Yet within this environment of slow overall growth, long-term interest rates not only reached the heights attained during the business boom of last fall but also scaled to even higher peaks. This contrast between sluggish business in the first half of the year and almost unprecedented long-term interest rates presents an apparent contradiction. Why has the demand for funds been so great in the face of sluggish business?

A huge volume of corporate security sales has come to market in recent months. Obviously, the proceeds were not needed to finance a new boom in plant and equipment expenditures since these remained largely unchanged. Nor were funds needed to finance inventory purchases since business slashed inventory buying with a vengeance.

The large amount of corporate borrowing was motivated by an eagerness to restore liquidity. During much of 1966, corporations were unable to raise all the funds they desired. As a result, they depleted their holdings of such short-term assets as cash, U. S. Government securities, and open market paper. After last year's squeeze on corporate liquidity, it is little wonder that business was eager to replenish it. During the first quarter of this year, business liquidity improvced at an $8.3 billion annual rate. In the second quarter, however, the drive to restore liquidity was frustrated by a vast acceleration in corporate income taxes. This nonrecurrent speedup in tax payments cost corporations some $6 billion in liquidity.

Another reason for the very heavy volume of corporate security floatations in recent months has been the memory of the credit crunch of 1966. Undoubtedly, some part of recent financing has been anticipatory, that is, borrowing in order to assure an adequate supply of funds with which to meet the financial needs of the next economic boom.

The apparent contradiction between the slow pace of business expansion and peak interest rates can also be explained by the expectations of investors. The capital markets have been aware for some time now of the large amount of borrowing to be done by the U. S. Treasury. Much as in the stock market, widespread expectations about the future get built into the level of bond prices. This is the process of discounting future expectations which goes on in every competitive market all the time. If these expectations are then realized, they no longer have any impact on the market once the event takes place. Of course, the impact can

be great, if expectations are wrong and future events are incorrectly discounted.

What of the future now? What is likely to happen to interest rates? Will we see another credit crunch in 1968?

I am convinced that a strong pick-up in business activity lies ahead. As we go into 1968, a resurgence of private demands will be superimposed upon large increases in Federal financing. Business capital expenditures will rise moderately. Inventory buying will no longer be exerting a massive drag on the economy and may even contribute to mild boost in output. With a continuation of adequate mortgage credit, the recovery in the housing market should make great strides. I believe there now exists a backlog of unsatisfied housing demand which would come to the surface given an abundant supply of mortgage credit. Moreover, I believe that consumer spending will be more robust, contributing a larger gain to national output in 1968 than the year before.

Thus, I am optimistic that business on the whole will be prosperous in the year ahead. But just as we had the contradiction of sluggish business and peak interest rates in 1966, so I believe we may well have another contradiction in the year ahead. Despite a vigorously rising economy and full business prosperity, I expect long-term interest rates to remain roughly at their present high level during the next six to nine months.

The reason I do not expect interest rates to scale to substantially higher peaks is that by early 1968 corporations should be in a much better liquidity position than they have found themselves in for quite some time. Thus they will be able to finance internally a larger share of their increase in plant and equipment outlays and inventory purchases. Moreover, banks and other thrift institutions have improved the state of their available liquid assets and are ready to finance the impending business expansion. Even the Treasury's huge demands on the capital markets should not result in lifting rates much higher to the extent that these demands have been widely recognized, anticipated, and discounted.

So far I have ignored Federal Reserve monetary policies. It is absolutely essential that a tax increase become effective no later than January 1, 1968, and in all these projections I assume this will be the case. Without a tax increase, I could envisage a great congestion in the capital markets as the Treasury's demands exceed anticipated levels. Without a tax increase, short-term rates could rise into the 5 to 6% area. Under these circumstances, we could once again get a flight of individual savings out of the thrift institutions and into open market obligations. This recurrence of "disintermediation" would be as disastrous for the housing industry this time as it was in the fall of 1966. But I doubt it will happen. I doubt it will happen because a tax increase is likely to be enacted. Furthermore, if the Federal Reserve Board must choose between a repetition of last fall's credit crunch and another debacle in the housing industry, the Federal Reserve might well decide to risk somewhat more inflation rather than a money market panic.

I can sum up my conclusions this way: (1) I expect income taxes to be raised January 1st by perhaps 8% across-the-board. (2) I expect business activity to pick up steam as the economy rolls into 1968. At that time a resurging private economy will be superimposed upon continued expansion in government outlays at both the Federal and local levels. (3) Despite these developments, I expect long-term interest rates to remain close to present levels. By early 1968, the liquidity position of American corporations will be greatly improved. There has also been some amount of anticipatory financing which will help business finance a part of the business expansion which lies ahead. (4) Much of the Treasury's needs for financing has already been discounted in the financial market and has already been incorporated into present interest rate levels. (5) As a result, I do not expect a recurrence of the credit crisis of the fall of 1966 and the resulting throttling of the housing market. Housing is making a very satisfactory comeback. The demand appears to be substantial and rising. The main question is whether an adequate supply of mortgage credit will be available and this, I believe, will be the case. (6) With a tax increase, the Federal Reserve System will not have to step so hard on the credit brakes as to precipitate another credit crunch.

In short, I am optimistic on the business outlook and I am optimistic that we have gained some wisdom—

the wisdom to avoid the sort of catastrophic capital market conditions which we had in the fall of 1966. Business looks better, housing looks better, and with the help of a tax rise, long-term interest rates will probably remain close to present levels.

EULOGY IN HONOR OF BERNARD DOCHERTY

Our beloved friend, contemporary and associate Bernard Docherty having been called from his earthly labors by Omnipotent God, on June 8, 1967, in the 63rd year of his life, it is fitting and proper that we take respectful note of his life, his passing and our loss.

"Bernie," the name by which he was affectionately known, was born in Glasgow, Scotland, and came to this country with his family at the age of six. He attended New York University and received his law degree in 1931 from St. John's University. He also received a Master's degree in law from that University. He started his business career in the Actuarial Department of New York Life Insurance Company and later transferred to the Office of the General Counsel upon his graduation from law school. He was appointed Counsel in 1954 and became Assistant General Counsel in 1958. A specialist in investment law, he had charge of legal matters relating to real estate and mortgage loan investments made by New York Life Insurance Company outside the City of New York.

"Bernie" served on the staff of the New York Mortgage Commission in 1935. He was active in Manhattan Democratic politics from 1935 to 1947 and served on a local draft board in the Bronx during World War II.

He was a member of the New York State Land Title Association, the American Land Title Association and participated for many years in the Life Counsel activities of the American Land Title Association. He was also a member of the American Bar Association, the New York State Bar Association, and the Association of Life Insurance Counsel.

He is survived by his wife Charlotte, and a son, Edward.

To live in hearts we leave behind is not to die, so, may his generous and kindly spirit continue to abide in the hearts of the members of this association as the years come and go. Let it, therefore, suffice to be here recorded, that there was no friend of "Bernie" Docherty's who did not love him, he had no acquaintance who did not respect him and admire him, his sense of honor was never conscious of temptation, thus, we mourn his passing, our loss is his eternal gain; "He fought the good fight, he kept the faith, he finished his course."

Therefore, be it resolved that the American Land Title Association include in the printed proceedings of this meeting its deep sorrow at "Bernie" Docherty's passing and that a copy of this memorial resolution be sent to his family and to his Company.

EULOGY IN HONOR OF MRS. GEORGE GARBER

"To want you, to need you
To wait for you in vain
Half I find it pleasure
Despite its stinging pain—"

When Harriet Garber's being went out into the vastness of the Great Beyond, this world's store of gladness and cheer suffered a damaging loss.

On April 16, 1967, death from a cerebral hemorrhage removed from the ALTA scenes a distinguished and highly esteemed gentle-woman, the wife of our President, George Garber.

Harriet Esterbrook Garber, born in Pocatello, Idaho on January 22, 1918, was the fourth of seven children born to John and Rowena Esterbrook. Her family moved to Seattle before her first birthday and it was there that she received her schooling, graduat-

ing with honors from West Seattle High School. She entered the employment of the Washington Title Insurance Company in 1936, just three years before George Garber joined the law department of that firm. Harriet and George were married on May 31, 1941 and continued to live in Seattle until they moved to Los Angeles in 1957.

They had two children. A daughter Mary, born on March 22, 1944, is a graduate of the University of Southern California and was married last June 10, to Dr. James V. Luck, Jr., an intern at Fresno General Hospital. The Garbers' son Jim, was born on July 11, 1947, and is a pre-law student at the University of Southern California.

Harriet was an extremely devoted wife and mother. Few children in any home were accorded more solicitous care than she gave to their development. She made her home a place of delight and cordial companionship where she always found time for Mary's and Jim's young friends who often sought her friendly counsel.

Unflinchingly faithful, she served as a common sense mentor as well as an inspiration to the unfolding of her husband's solid career.

It is notable that this short life of only forty-nine years was a productively busy one. Patient, kind and gifted with an extraordinarily unselfish interest in other people's problems, she held to her course steadfastly despite the plagues of ill health.

During her residence in Seattle, Mrs. Garber was extremely active in Republican politics having served as state leader in the "Eisenhower for President" movement, as a delegate to the Republican National Convention at Chicago in 1952, as state president of *Pro-America* (a Republican women's organization of approximately 1500 women). She also served as women's campaign chairman for the successful elections of Gordon Clinton, Mayor of Seattle, Congressman Thomas Pelly of the state of Washington, and as close political advisor of the Honorable Arthur Langlie, Governor of the state of Washington for three terms.

Driven by a boundless desire to learn, she sought to improve herself by intensive reading and study for the fulfillment of her desires.

A strong supporter of community activities, she was a member of the Seattle Milk Fund, area chairman for the United Good Neighbors' Drive, and active member of her Episcopal Parish women's organization, officer of the Pasadena Auxiliary of the Boys' Republic, and the Women's Auxiliary of St. Luke's Hospital. She was a member of St. Edmond's Episcopal Church in San Marino.

Harriet Garber was a true lady—a woman of refinement and culture. Charm, poise, and graciousness were as natural to her as breathing. Though unobtrusive by nature, the joy of her spirit and her welcoming smile shone constantly.

The poet Frederic Adams wrote of his mother as we think of Harriet:

"She was as good as goodness is
Her acts and all her words were kind
And high above all memories
I hold the beauty of her mind."

It was near the end of the second decade of our century when Harriet Esterbrook began her fruitful life. Before this decade would be ended over 126,000 American youths would have given their lives in World War I. It was a time given to serious thoughts of Life and Death, when . . . Henry Van Dyck, Presbyterian clergyman, author, and professor of English literature at Princeton University wrote:

"There is only one way to get ready for *immortality*, and that is to *love* life and *live* it as bravely and faithfully and cheerfully as we can."

HARRIET GARBER was ready for immortality!

No heart ever beat with truer surges of kindness than the heart of Harriet Garber. She bore an immoderate love for all mankind.

The impact of her life upon her family and her friends stands out liked a beacon on a hill . . . and the brightness of its sheen will enduringly bless the scenes where she worked and laughed and loved. The warm sunshine which she spread about her during her passage through this world will linger on. . . .

"To want you, to need you
This is not all in vain
For in our happy memories
We have you back again."

"THE VOICE OF EXPERIENCE"

By GEORGE C. RAWLINGS

Chairman of the Board, Lawyers Title Insurance Corporation, Richmond, Virginia

I bring you greetings from the Council of Past Presidents, and I was instructed to say to you that the luncheon arranged for us Sunday by the Association was enjoyed and appreciated.

It will be a relief to you, I know, that the group of oldtimers—and there were sixteen of them present—have no suggestions on how you should run this Association.

The subject of my report, "The Voice of Experience," as carried on the program, was not my selection. It was assigned to me by the President. Unfortunately, he did not indicate just what I was supposed to be experienced in. Whatever it was, he evidently thought it was quite limited for he only gave me five minutes.

Someone has said, "Experience is the name everyone gives to his mistakes." If this is so, I could tell you about the evils or virtues of bourbon, or tell you what to do when a woman without a stitch of clothing rushes in the open door of your living room at the Biltmore Hotel in Los Angeles when we were attending an ALTA Convention; or tell you of the futility of trying to outtalk Dick Howlett and Gordon Burlingame at the last convention.

In fact, my experience over the years covers a lot of things, and I would rather not talk about them, but if I had to do it over again I doubt if I would do it much differently.

It has also been said that the best substitute for experience is being seventeen years old, but there is one thing I am sure of, and that is it would never do for a seventeen-year-old boy to have the benefit of fifty years experience.

When I joined Lawyers Title in the early Thirties, I was a relatively young man, but I had had more than the usual amount of general business experience for my age. I knew absolutely nothing about title insurance, nor for that matter about titles to real estate.

My first ALTA Convention was in Springfield, Illinois, in 1937. Some of you oldtimers will recall that Dr. Daniel Gage attended that convention, at which time he was writing his thesis on title insurance, which he subsequently had printed in booklet form, entitled, "Land Title Assurance Agencies in the United States."

You would find it interesting to go back and read Dr. Gage's book, and then reflect on the changes that have taken place in the title business in the last thirty years. Experience is a great teacher.

Also, thirty years ago title insurance companies operating on a so-called national basis were persona non grata in the councils of this Association. I say so-called, because there was no company at that time actually operating nationally. Lawyers Title Company, which I was associated with, operated in more states than any other company at that time, therefore, we were the target for most of the barbs.

Remember, this was shortly after the failure of the old New York Title & Mortgage Company.

You will recall back in the Thirties, and even later, the companies that then controlled the affairs of the American Land Title Association severely criticized the concept of a national title insurance corporation, and now the same companies are spending vast sums of money acquiring companies and advertising to the public the facilities that they have throughout the nation. It now seems to be a race to see which of the latecomers in the national field will be the first to qualify to do business in all fifty states.

Again, it may be said, experience is a great teacher.

It is interesting to note that as late as the 1950's there were approximately 160 title insurance companies operating in the United States, and now there are 104, of which sixteen are wholly-owned subsidiaries.

Undoubtedly the past thirty years has seen a tremendous development in the title insurance business. It has been a challenging experience, plowing new furrows almost daily. Some have resulted in rich harvests and others have fallen on barren soil, but it takes both the good and the bad to make up a worthwhile experience.

Mine has been exciting and rewarding. Certainly experience has taught me that there is no substitute for loyalty, dedication to your work, perseverance in all undertakings.

My experience also compels me to say to the young men and women of this Association that you have an inspiring opportunity for real accomplishment within the years ahead.

The history of the successes in this industry in the past twenty-five years will, in my opinion, sink into insignificance when compared with the progress and development in the next twenty-five years.

You will be living in a challenging age within a dynamic industry, flanked by computers and data processing equipment. I wish that I could be with you. Thank you.

"THERE'S NO ACCOUNTING FOR SYSTEMS"

By ERVIN W. BEAL

Chairman, Standard Title Insurance Accounting Committee, ALTA; Senior Vice President and Treasurer, Dallas Title Guaranty Company, Dallas, Texas

The assigned title of my subject—"There's No Accounting for Systems"—though intended to be dubious, is surprisingly apropos! Various attempts have been made to define accounting, but I find a ridiculous story concerning a chief accountant to be humorously effective: It seems that the senior accountant of a substantial business had for years kept the center drawer of his desk securely locked. But, each morning he slyly unlocked the drawer, peered into it, and hastily re-locked it. Immediately following his sudden death, the office force's curiosity about that desk-drawer was uncontainable, and they quickly forced open the drawer and found a memo which read, "the debit is toward the window."

Notwithstanding the general concept of what accounting is, one authority has described it as an empirical science—or, to put it simply—an inexact science, the result of experiment or experience. Thus, it must be said that the system or systems of accounting, likewise, are best determined on the basis of experience and need . . . and, these matters are variable, thereby permitting only those system applications required by the circumstances, and not the adoption of hard-set procedures on inflexible principles as are found in many other sciences and professions. A cartoonist delightfully exemplified this by noting that as a bank was being held-up the teller said to the robber, "the auditor would like to know how much you are taking."

Of course, there are accounting principles, and these principles contextually establish the foundation of system and procedure for the gathering of financial data from which management and investors can measure the result of commercial activity.

In the financial area of title insurance, American Land Title Association has recognized the ever-increasing importance of accounting standards, both as to private and governmental need. Accordingly, your association maintains the Standard Title Insurance Accounting Committee, whose purpose is to:

1. Review accounting practices and procedures used by American Land Title Association members.
2. Recommend standard methods and accounting forms.
3. Confer with supervisory authorities for the purpose of determining such practices as said supervisory authorities might deem beneficial for the public interest.
4. Develop uniform accounting practices and procedures.

During the current year, the State of New York Insurance Department communicated its disapprobation of statements of financial condition of title insurers as they appear in the ALTA Directory. The complaint of the New York Department is aimed at inconsistent and unparalleled statements of respective title insurance companies.

For example, these financial facts are, among possible others, generally found to be variously stated; thus,

"Capital—Surp. & Res."
"Capital, Surp., Res. & Und."
"Capital—Surp.—Res."

The New York Insurance Department stated, "In many instances the statements do not conform with the requirements of our governing statute and, possibly, the statutes of other states." The office of the Superintendent of Insurance of the State of New York, through the Principal Insurance Examiner, addressed, also, the following to the American Land Title Association:

> In preparation for your next Directory, it would appear advisable to develop a uniform legend for all title insurers that would convey the desired information on financial condition, without departing from existing statutes. . . . Apart from the question of statutory compliance, it would appear that a uniform presentation would serve the interests of fair competition.

In response to the advisement of the New York Insurance Department, Mr. McAuliffe, Executive Vice President of ALTA addressed an answer, which read in part as follows:

> I appreciate your suggestion that it would appear advisable to develop a uniform legend for all title insurers that would convey the desired information on their financial condition. Accordingly, I am forwarding a copy of your letter to the Chairman of the ALTA Directory Rules Committee and to the Chairman of the ALTA Standard Title Insurance Accounting Committee.

In consequence of the stated objections of the New York Insurance Department and in keeping with the precepts of the Standard Title Insurance Accounting Committee, a quorum of the Association's accounting committee convened in Chicago, Illinois in the latter part of August of this year to review the New York issue and to study other accounting problems, some of which are extensible.

Those accounting committeemen present at the Chicago meeting and their company affiliations were, in alphabetical order by name of member:

Ervin W. Beal
Senior Vice President & Treasurer
Dallas Title and Guaranty Company
Dallas, Texas

Charles L. Coffman
Controller
Pioneer National Title Insurance Company
Title Insurance and Trust Company
Los Angeles, California

Richard E. Fox
Treasurer & Comptroller
Chicago Title Insurance Company
Chicago, Illinois

J. K. Higdon
Controller
Lawyers Title Insurance Corporation
Richmond, Virginia

Joseph J. Hurley
Sr. Vice President and Treasurer
The Title Insurance Corp. of Pennsylvania
Bryn Mawr, Pennsylvania

John D. Petterson
Divisional Secretary and Treasurer
Kansas City Title, Division of
Chicago Title Insurance Company
Kansas City, Missouri

H. James Sheetz
Treasurer
Commonwealth Land Title Insurance Company
Philadelphia, Pennsylvania

Also present at this meeting were:

Richard A. Krause
Vice President & Controller
American Title Insurance Company
Miami, Florida

Carlyle G. Schumann
Secretary
Stewart Title Guaranty Company
Houston, Texas

Each is a member of the Council of Executive Accountants of National Title Underwriters Association; and,

Eugene Torgersen
Staff Accountant
Chicago Title and Trust Company
Chicago, Illinois

Mr. Torgersen attended part of the meeting as an observer.

William J. McAuliffe, Jr., Executive Vice President of American Land Title Association was present during the entire course of the meeting. Mr. McAuliffe initiated the convocation with the subject, "Budget, Programs and Activities" of the ALTA. This subject was very elucidating, manifesting the profound interest and efficacy of the national body of the land title industry.

A part of the introductory to the Chicago meeting herein referred to was a provocative paper prepared by the Chairman, which was entitled, "Never Mind the Cheese, Just Let Me Out of the Trap." This paper purported not to be in favor of or in disfavor of changes in accounting approaches, although recognizing inevitable change. Accordingly, the dissertation sought to remind that problems presented to the committee would and should be dealt with on the basis of what is to be recommended . . . not as edictal policy.

Accounting practice in unregulated business, principally, conforms to what is referred to as *generally accepted accounting principles*; whereas, in regulated businesses such as, title insurance, governmental and regulatory bodies require account-reporting on what is referred to as *statutory principles*. Thus, it is obvious that certain standards are to be achieved. Notwithstanding the ultra-conservatism of statutory reporting, a large group of title accountants, and public accountants as well, are antagonistic toward bureaucratic decree. This group justifiably takes the position that statutory principles are unrealistic and archaical . . . failing to reasonably and accurately present accounting statements in a more meaningful manner. One state title association proposes to seek revision of its controlling statute by amending the code to provide that financial statements of insurers *may* be prepared, issued, and distributed externally,

> . . . in accordance with generally accepted accounting principles and contain, in a footnote, disclosure of the amounts by which Stockholder's Equity and Net Income shown therein differ from Surplus as Regards Policyholders and Net Income shown in financial statements required to be filed with the Commissioner.

There is substantial agreement among professional accountants that the shareholder is entitled to a financial statement which accurately reflects his equity in *all* the assets of the enterprise, and the effectiveness with which management has utilized those assets. Statements prepared using generally accepted accounting principles best accomplish this task. Neither the statutory nor GAAP principles of statement presentation satisfies the requirements of the other —and for obvious reasons, the insurer does not want to publish two statements reflecting different figures.

In connection with the divergence of account-reporting practices in published financial statements, a review of fifteen companies reveals that eight (8) companies made financial reports on statutory principles, four (4) companies' statements were in conformity with generally accepted accounting principles, and three (3) companies presented public statements on still some other basis.

Another disparity in financial reporting is in the treatment of escrow on the Balance Sheet. Without intending to be prejudicial, it is believed that the Accounting Committee can reach an accord with itself—one which will be, also, acceptable to the public accountancy profession; but, this is likely to be controverted by regulatory authority, unless the title industry as a whole gives support to the dictates of common sense and realism.

Not as to the financial reporting of escrow, but as to the attitude of the Standard Title Insurance Accounting Committee on the conduct of the escrow function, a diacritical discussion of custodial accounting as it might be related to the Federal Deposit Insurance Corporation's insured amounts rulings was conducted by the committee. In the considered opinion of the accountants, the following recommendation is duly made:

WHEREAS, the Standard Title Insurance Accounting Committee of American Land Title Association is fully aware of the fiduciary character and the trust position of the Escrow function, and accordingly seeks to adopt that attitude which it believes to be consistent with business prudence and which obtains the maximum insurance affordable by the Federal Deposit Insurance Corporation as such insurance is applicable to Banks in which escrow monies are deposited by escrow agents; now, therefore,

BE IT RECOMMENDED, all escrow agents holding funds for the benefit of others shall maintain proper records which shall reflect at all times the identity of interests therein; disbursements should not be made from escrow, unless sufficient funds exist in, or for immediate credit to, the individual escrow account.

Ervin W. Beal, Chairman
Resolution Committee:
Charles L. Coffman
Joseph J. Hurley
Carlyle G. Schumann
Passed Unanimously

In a manner of speaking, the title insurance accountant has a special apprehension of reality; the Germans have a word for this—it is weltansicht (vĕlt än' zĭkt). The accountant is seriously concerned over, among other things, the increasing volume of reporting to regulatory authority. He is concerned about the total absence of uniformity of reports as required by the various states, unless one says that the convention form of annual statement is the exception; otherwise, each state, and sometimes the political subdivisions of a state, prescribe vastly different formats for statistical and tax information.

The Accounting Committee membership recognizes the obvious insurmountability of state disunion when and where statutes and politics are involved; thus, the disarray and the conglomeration of paper work imposed upon the title accountant by various governments is the natural consequence of unilateral action of regnant authorities.

The title accountant does not protest the needs of the various state authorities; judicious account gathering of regulatory bodies must and does deserve commendation from the title accountant, who as much as anyone can appreciate the responsibility of state agencies. What the accountant does say, however, is that these accounting requirements are severe and costly and that a greater awareness of severity and cost is not undesirable.

Now, to revert for a moment: The New York matter concerning a common nomenclature for financial reporting was studied by the Accounting Committee, which referred its conclusions to the Directory Rules Committee. Inasmuch as a co-ordinate study of the issue is needed, a joint meeting of members of both committees is planned to propose a recommendation to be made to the American Land Title Association at its mid-winter meeting in early 1968.

In conclusion, the members of the Standard Title Insurance Accounting Committee are grateful to this Association for the opportunity to associate with one another, to discuss familiar problems, and to seek common professional objectives. Each member and each member's company has already benefitted from the enlarged experience of a broadened unity. The Standard Title Insurance Accounting Committee has a job to do . . . and it will do it well!

Thank you.

"CAPITALIZING ON CONFUSION"

By HALE WARN

Chairman, Committee on Membership and Organization, ALTA; Senior Executive Vice President, Title Insurance and Trust Company, Los Angeles, California

Last October, following our 1966 Annual Convention, President George Garber, in conjunction with his appointment of the members of the Membership and Organization Committee, stated that whereas the function of that committee had previously been to stimulate applications for membership in the ALTA, and inasmuch as that particular responsibility was currently being handled in a State Title Association, he had another idea as to the function of the Membership and Organization Committee.

It was two-fold: First, to study the entire relationship existing between the ALTA and its affiliated state title associations, particularly as to membership elegibility conflicts and, second, to revise the ALTA form of

membership application to coincide with the conclusions reached as a result of such study.

For this purpose he appointed the following committee members:

N. Bruce Boney, Vice President
Lawyers Title of North Carolina, Inc.
Charlotte, North Carolina

Mrs. Marjorie R. Bennett, Manager
Menard County Abstract Company
Petersburg, Illinois

Herbert P. Becker, Vice President
Standard Title Insurance Company
Oklahoma City, Oklahoma

Stanton W. Allison, Executive Secretary
Oregon Land Title Association
Portland, Oregon

H. R. Caniff
Pioneer National Title Insurance Company
Indianapolis, Indiana

Edward T. Brown, Executive Vice President
New York State Land Title Association
New York, New York

Judson L. Palmer, Vice President
Kansas City Title Insurance Company
Kansas City, Missouri

Hale Warn, Senior Executive Vice President (Chairman)
Title Insurance and Trust Company
Los Angeles, California

As a starter it was determined that the nature and extent of such conflicts should be identified. Jim Robinson was asked to obtain copies of the constitutions and by-laws of all affiliated state associations and was able to obtain such from 31 out of 39 associations. Some of the remaining eight are inactive and probably do not have formal constitutions and by-laws and I am certain that the others can be obtained.

The 31 sets of by-laws were reviewed as to membership eligibility requirements in conjunction with the membership provisions contained in the constitution and by-laws of ALTA. A meeting of the committee was held at the time of the Mid-Winter Conference of ALTA and the various conflicts were identified and discussed and it was expected that recommendations would be formulated at a subsequent meeting of the committee which it was anticipated would be held prior to this Annual Convention. However, circumstances prevented the holding of such a meeting and I was advised by Jim Robinson that only two members of the committee expected to be in attendance at this convention so a meeting at this time could not be held. By reason of these facts any thoughts or recommendations which are contained herein must be considered as those of the chairman, individually, and not those of the committee as a whole.

It has been the general impression that membership in an affiliated state association, if such exists in the state or region of the domicile of an applicant for membership in ALTA, is an eligibility requirement for membership in ALTA. In examining Section 2, Article III of the Constitution and By-Laws of ALTA, this does not appear to be the case. Said section makes it optional with the affiliated state association as to whether or not membership in the state association is a requirement for membership in ALTA and, conversely, whether or not membership in ALTA is a requirement for membership in the state association. It would then follow, if the state association had not formally elected to exercise such option, that membership in ALTA could be considered without regard to membership in the state association.

In only one of the 31 constitutions and by-laws (Idaho) is there a requirement that membership in the state association is a prerequisite to membership in ALTA. It may well be that this option has been implemented in other states in some manner separate and apart from their constitutions and by-laws, but if such exists, we have no knowledge of it at this time. In three constitutions and by-laws (Iowa, Missouri and Wisconsin), membership in ALTA is a requirement for membership in the state association, and in two states (Florida and Idaho), while the applicant for membership in the state association is not required to be a member of ALTA, it is required to subscribe to the code of ethics of ALTA. The balance contain no such requirements.

If membership in a state association as a matter of practice, irrespective of the wording of the ALTA by-laws, is a requirement for membership in ALTA, many problems are encountered in relation to the various classes of members authorized by the various state association by-laws, such

as "Regular", "Associate", "Honorary" or even existing classifications such as "Legal" and "Title Examiner." Said Section 2 of the ALTA by-laws states that a member of a state association, without full voting rights therein, may not, unless otherwise eligible, be elected to membership in ALTA. This appears to create many inequities pertinent to membership eligibility in ALTA. For instance, in one state (New York) a title insurance company applicant for membership in that association cannot be elected to regular membership from that state unless such company is incorporated under the laws of the State of New York. It can only become an associate member, which carries no voting rights with it, and, therefore, makes it ineligible for membership in ALTA. Other states have only one class of membership, with that general class being undefined, and, therefore, a member of that state association, irrespective of his function or classification, would be eligible for membership in ALTA.

I could go on and on with many areas which could be deemed unfair under the present procedures, but it became very evident as the various discrepancies were identified that the first major determination which must be made is whether or not the ALTA is to be an association of state title associations or a strong national association standing upon its own feet, but working in close coordination with all its affiliated state associations. It also became evident that this whole matter becomes intermingled with and overlaps into the problems of ALTA directory listings, all of which probably should be resolved together.

While I regret that our committee has been unable to complete its assignment in this year, I would like to strongly recommend that the study of and attempt to resolve these matters be continued on into the next ALTA administration. In this connection it would seem advisable to appoint a committee for that purpose which would be representative of the membership as a whole and which would be able to devote sufficient time to the over-all problem and be able to meet with sufficient frequency to submit final recommendations by next year's convention. It may even be that this could be a function of the Planning Committee or a new committee which would include representatives from the Planning Committee, the Constitution and By-Laws Committee, the Membership and Organization Committee and the Directory Rules Committee.

The files of the Membership and Organization Committee, including copies of all constitutions and by-laws received, have been delivered to Jim Robinson for redistribution to the committee chairman of such committee as is appointed to carry this project on next year.

"SOMETHING TO TAKE HOME"

By HAROLD A. LENICHECK

Chairman, Meeting of Affiliated Title Associations, ALTA; President, Title Guaranty Company of Wisconsin, Division of Chicago Title Insurance Company, Milwaukee, Wisconsin

The state officers meeting was scheduled for Monday morning, September 25th, at eight a.m. As President George indicated, this was an early hour, and it was a departure from the usual custom of scheduling this meeting on the day before the opening sessions. As a result of this, of course, the opening sessions were pushed back to 9:30 rather than nine o'clock, and I am sure that this was not an unwelcome rule.

I might just say that whether it was the early meeting hour or whether it was the breakfast that was furnished by ITA—whether either one of these items was the drawing card I can not say—but as George indicated we had a splendid attendance record. When the meeting was called to order I think every chair in the room was taken, and after we had received a warm welcome from our National President we got down to the business of the meeting.

We discussed about a half dozen topics which had been suggested, and

I think we could have discussed another dozen had time permitted. Each topic that was discussed could really be the subject of a lengthy presentation, but I am going to limit the report to simply mentioning these topics and commenting on one or two of the items.

First, we discussed the question of the abstracting practices which involve the furnishing of a photocopy of abstracts by a non-abstracter, and needless to say to this group, nothing favorable was said about that practice.

Then we talked about maintaining membership in state associations, and I imagine that Hale Warn would be interested in that.

We talked about the proposed changing of the name of the Abstracters Section, and Don Nichols was present at the meeting and I am sure that Don got some information which he will impart to the appropriate people at the appropriate time.

We talked about state legislation, and particularly state legislation that was of special interest to abstracters and title insurance people, and, Admiral Funk, we did not encroach upon your committee's prerogatives.

Then we talked about state association programs of special interest to the members, and in this regard I think we were all impressed with the tremendous interest that is being taken in developing training programs for title personnel. Some excellent plans have resulted and some excellent plans have been implemented in the various states. These are all worthy of consideration, not only by every state association, but by our national organization as well, for here we feel indeed is an area that most certainly appears to demand more thought and more study in depth.

We had titled our report, "Something to Take Home," and of course we did this because we knew that we would gain some knowledge and ideas that we could take home to our state association. But more than that, Ed Brown of New York had suggested that a special kit containing copies of ALTA literature be presented to each state officer attending the meeting.

This suggestion was passed on to the National Headquarters, and Jim Robinson, on behalf of the national staff, responded most bountifully and we did have something more to take home.

Not only did Jim fill this envelope with ALTA literature, but he put into it one of the finest tools that I think state officers could find anywhere in assisting them to do a better job for the state association. It was a pamphlet that was prepared some years ago under the direction of Mort McDonald. It suggested ideas for successfully operating the affairs of a state association. The state officers were so delighted with this tool, and considered it so helpful, that this body voted to request and recommend to the Board of Governors, if that is the appropriate body to make this recommendation to, to create and appoint a special committee to preserve, update and distribute annually this outline of suggestions for state association presidents and secretaries. And so on behalf of the state officers I formally submit that recommendation. Granting of it would certainly constitute something to take home for future conventions.

Our meeting was short but it was fruitful, and I want to thank all the fine state officers who participated in this meeting for their participation, for their suggestions, for the discussion, and the ideas that they presented. I also want to thank the national staff for its excellent help in setting up the meeting, ALTA for the breakfast and Jim Vance for his fine work. In closing I would like to say to future convention committees that they should continue to schedule the state officers meeting, as this one was scheduled, prior to the opening day and at an hour preceding the opening sessions.

"JUSTICE ISN'T ALWAYS BLIND"

By RAY L. POTTER

Chairman, Judiciary Committee, ALTA; Vice President and Chief Title Officer, Burton Abstract and Title Company, Detroit, Michigan

A conscientious attempt has been made to screen all of the judicial decisions handed down during the last committee year by the federal and state courts and to bring to you in this report a distillation of those

cases fancied to be of interest or importance to the title industry.

The Chairman acknowledges gratefully the extensive contributions of talent and diligence which have been made by many members of the Committee. Unfortunately, the enormity of the task undertaken and the slight possibility that some committeeman somewhere may have nodded prevent attaching any guarantee of completeness.

Once again we have profited from the cooperation of the Committee on Significant Decisions on Real Property Law of the American Bar Association Section of Real Property, Probate and Trust Law.

The Chairman acknowledges that he alone is responsible for the final selection of cases and for such violence and other abuses as may be found in the editing. For putting up with all this and for their fine work, the Chairman offers his most sincere thanks to each member of the Committee.

EDITORS NOTE: Copies of the Judiciary Committee Report may be secured by writing to the American Land Title Association office in Washington, D.C.

"REVAMPING THE MORTGAGE MARKET— THE TITLE COMPANY'S ROLE"

By CLAIR A. BACON

Vice President, Mortgage Bankers Association of America, Denver, Colorado

I want to review developments that promise to bring sweeping change to the mortgage market. Change is so much in the air, so evident, that it is not far-fetched to say that the field of real estate finance is on the launching pad. Whether the launching is a success, whether the blast off will be this year or next, forces generating and demanding change have been evident for some time.

As we review these forces, let's begin the countdown in the proper tradition with the number **10**. The most persistent forces for change have been a steady narrowing of the spread between long- and short-term interest rates. In the first postwar decade, short-term rates were seldom within 100 basis points of long-term rates. This used to give the mortgage market a distinct advantage over its competition. Thrift institutions that favor mortgage investments were able to borrow short and lend long, with no threat of savings being drawn off by the securities market. Thrift institutions prospered and the savings they attracted became the private domain of the mortgage market.

It was not until August 1959, that short-term rates exceeded the rate thrift institutions paid savers. With the advent of the "Magic Fives," funds flowed from deposit accounts to the securities market. Thrift institutions could not fight the trend by offering a competitive rate, because they held large volumes of mortgages carrying rates as low as four percent. These changes were not accidental, one-time things. They were the result of a conscious effort to increase the commercial banks' ability to attract savings—and they succeeded.

But commercial bank time deposits are not the private domain of the mortgage market; therefore, the changed pattern of savings directly affected the flow of mortgage funds. Seeking to recover their lost advantage, thrift institutions want legislative authority to expand their lending powers. But this would only reduce the flow of mortgage funds from savings deposits still further.

The implications are clear enough —savings deposits have not been and are not likely to become the reliable source of mortgage funds they had been for so many years.

Nine. On the other side of the market, corporate borrowers "made the scene" in 1965 with an aggressive appetite for funds that has not yet

been satisfied. Between 1955 and 1965, the capital markets were largely dominated by mortgages with brief intrusions in their domain by the treasury. Corporate bonds were an active part of the trading market, but they were not a major drain on the supply of savings. The business expansion of the early sixties was financed largely with internally-generated funds. The expansion of the mid-sixties, however, was financed with borrowed funds.

Corporations are extremely effective competitors for funds. Higher interest costs do not slow them down significantly. And, they offer investors a security instrument that requires a minimum effort. Little wonder that mortgage borrowers have been least successful in periods when corporations were competing aggressively for funds. This was made painfully clear to the mortgage market in 1966 and again this year.

If we can believe longer run projections of the demands of corporate business for credit, the corporate bond will be an aggressive competitor in the years ahead. Thrift institutions and mortgages that do not and, under present arrangements, can not adjust yields rapidly will find the corporate bond taking advantage of capital market opportunities through their exceptionally flexible yield structure.

To compete in this environment, funds flowing into mortgages must be committed for longer terms and ways must be found to sell mortgages under the competitive cover of a security-type of instrument.

Eight. Federal Home Loan Bank and Fanny Mae obligations already substitute a security-type instrument, as they serve limited areas in limited ways.

The Federal Home Loan Bank Board backs up the savings and loan system and the Federal National Mortgage Association backs up the market for FHA and VA mortgages. Neither agency has made a major substitution of securities for mortgages as they both borrow on short-term instruments and lend on long-term mortgages.

The short, average age of their outstanding issues drew these institutions into the 1966 market at yields as high as six and a quarter percent for new money as well as for funds to replace maturing issues. As a result, they drew savings from the institutions they ostensibly serve, greatly reduced the net impact of their efforts, and exposed their inability to fully meet the market's needs.

Seven. For many years now, mortgage market participants, particularly mortgage bankers, have been in the vanguard of the pioneers using high speed computers. They have proven that investor requirements can be satisfied with a minimum cost and maximum efficiency. Investment in mortgages is still not comparable to coupon clipping, but it is closer to it than it has ever been.

As investor prejudices are broken down by the economics of costs and the evidence of facts, much of the duplication in paper shuffling and record keeping will be removed from mortgage financing. As this is accomplished, active trading in mortgages and in securities backed by mortgages will be a step closer to being accomplished.

Six. To these ends, mortgage bankers have already accomplished a great deal, such as warehousing and advance commitment procedures.

A mortgage banker conceived, and with the financial participation of materials manufactureres, a new institution to carry the top fifteen percent of a ninety percent loan. In this way, borrowers can obtain a ninety percent conventional loan with investors who were previously cut off from participating in this market carrying the bottom seventy-five percent.

Five. For a number of years, mortgage bankers have been performing the home office function for pension fund investors through separate institutions that issue collateral trust notes or simply purchase and manage mortgage portfolios.

More recently, an individual mortgage banker has issued a note secured by mortgages directly to an investor. And, a major life insurance company is testing a program that may well eliminate the home office costs of investing in mortgages by taking a note secured by mortgages instead of taking on the paperwork of checking and holding the mortgage instrument and related documents. In this program there is a role for a title insurance company to act as a custodial agent for mortgage documents, and perhaps a trustee or both.

These innovations reflect the market's recognition of the changed role of the deposit institution and the growing need for a security-type of instrument.

Individual mortgage bankers and

investors break new ground every day. At the same time, the Mortgage Bankers Association of America continues to study the barriers that have hampered the mortgage market's development, seeking ways to remove or overcome them.

Four. The FHA mortgage offers the best vehicle for direct trading in mortgages or for selling securities backed by mortgages. The insurance principle as well as appraisal and inspection practices creates an acceptably standardized instrument for these purposes.

I am more than a little concerned at the erosion that seems to be taking place in the Federal Housing Administration, brought about by the Congress and the Administration's inability to face up to the economic facts of life, best exemplified by their unwillingness to respond to the market in interest rates. Also, to convert the Federal Housing Administration into a social institution, without regard to underwriting principles of economics, a principle upon which it was originally based in its inception, and one on which it will continue to be most useful. I do not mean to imply that, either, we in private business can ignore our social responsibility any more than Federal agencies can. It is very clear to me that we must define which is which, and be careful about mixing the two. Again I want to stress the inflexibility of the FHA interest rate. It is such a significant problem in the future of FHA, and will not be solved in any other manner than facing the problem head-on, and hopefully at the present time both Congress and the administration seem to be recognizing this fact.

MBA has consistently fought for a market-determined rate as being the ingredient essential to the development of an effective secondary market in FHA mortgages. We hope to have legislation introduced this year that would remove the statutory ceiling and require the maximum permissible rate to be established on a timely basis that would minimize discounts. We may, as some observers believe, be tilting with windmills, but we believe that the chance of obtaining corrective legislation is better today than it ever has been. And, we will continue to urge its passage.

Three. Equally urgent, if the market is to successfully launch a security-type instrument, is the need to convince security-minded investors that the new instrument is, in fact, as secure as the FHA mortgage itself.

In a report recently prepared for Senator Sparkman's Committee, we recommended that legislation introduced in 1961, legislation that would transfer the FHA insurance from the mortgage to the security itself, be thoroughly reviewed. We are pleased to note that the Department of Housing and Urban Development stated in the same report that it has such a procedure under study.

Two. An FHA-insured debenture would materially aid in the successful launching of a security-type instrument. But investors would still require an active trading market in such securities. To this end, we also suggested a review of the 1934 legislation that provided for Federal chartering of corporations that would originate, buy, and sell FHA mortgages and issue their own debentures secured by FHA mortgages. Whether Congress responds to this suggestion or not, we plan to conduct such a review and study, for we firmly believe that the mortgage needs of the next decade will not be met through traditional arrangements.

One. As an adjunct to this study, we also propose to study the feasibility of operating a "Trading Desk" in Fanny Mae. I am sure that you have heard some of this before from Mr. Reid, because the head of our Research Department now works for him, as of very recently. But this is a program that we have been studying and thinking about for a long time, and the man who has spearheaded this is a most capable individual. I feel that the Mortgage Bankers have suffered greatly by his loss, but we may have gained by the fact that he is acting as economic consultant to the Federal association, the Federal Mortgage Association, on a full-time basis, for one year. His name is Oliver Jones, and many of you may know him. He is an extremely capable man.

In this role, FNMA would not separate its operations from the private market. Nor would it seek to isolate mortgage credit and home-building from the rest of the economy. Rather it would bring the mortgage market into the broad capital markets as an integral part of the financial system.

The combination of an FNMA auction market and private mortgage associations may also encourage the development of firms that would hold mortgages in speculation, thereby ar-

bitrating yield differences and providing a basis for hedging positions in future mortgages.

Now maybe we can blast off! If and when these events or feasible alternatives are worked out, you and I will be operating in an entirely new environment. Trading mortgages and trading securities backed by mortgages will be an everyday affair. Savings deposits will still be invested directly in mortgages, but the market will not be so dependent upon the ability of thrift institutions to compete for savings and the mortgage will compete directly with corporate bonds and Treasury obligations.

These are things we have been thinking and doing something about for some time. They are relevant to your business if they do no more than expand the volume of mortgage lending. But, they will do more. Some of the changes being considered will require modification of the concept of title insurance before the blast-off stage can be reached. Others will generate entirely new economic functions, which may be added to those already performed by title companies.

As an old title insurance man, I know that great strides have been made in improving the protection provided the lender and the homeowner, in standardizing the report form, and in seeking greater uniformity in state laws affecting title insurance. And, I realize that you are not about to rest on your laurels.

I do not want to sound like the ungrateful citizen who says to the local politician, "Sure, you have been good to me in the past, but what have you done for me lately?" But it is reasonable to ask, "What are you doing or can you do to contribute to the developments now taking place in the mortgage market?"

As the mortgage lending business strives to develop instruments that will compete with securities, it must recognize the needs of a new kind of investor, a security-oriented investor. He is not knowledgeable about real estate and is not interested in learning. He can not be persuaded to purchase a security that is not supported by reasonably standard and homogeneous collateral. The FHA mortgage standardizes a part of his risk. The title policy standardizes another part. But, even the standard title policy provides for exceptions that can vary all over the lot. The security-minded investor cannot live with these exceptions, at least not without a substantially larger payment for risk. I would suggest, therefore, to give serious consideration to the development of some form of blanket insurance that would cover exceptions in a portfolio of mortgages used as collateral behind marketable securities. This may be a form of casualty insurance and quite different than you now view the function of title insurance, but that function must grow and change with the changing developments in the mortgage market.

Mortgage bankers who will be taking much additional risk as debenture issuers are already concerned over, perhaps, minor title risks they take between the time the loan is closed, funds are disbursed, and the title policy is effective. Can you reduce this period of time? Or, better yet, can you develop a kind of recording insurance that would blanket these risks into one policy?

In effect, we have joined forces in our separate roles in the many facets of the real estate business to exploit our relationship and experience at performing a better service. To this end the Mortgage Bankers Association has taken the lead in getting together an inter-industry group involving the staffs and officers of various trade associations, feeling that the common interests far outweigh the differences or areas where there might be conflict. We would welcome and encourage your participation.

I will let you up a little bit from a real dry talk, I know, and I am reminded of these three men of the Cloth who had become quite well-acquainted and very good friends. A Rabbi and a Presbyterian minister were devotees of fishing in a particular lake up here, we'll say Grand Lake, and one day they talked their Catholic priest friend into going along with them on this fishing venture.

They got up there and the fishing wasn't so good but the weather was warm and they were basking in a boat out in the middle of the lake, and finally the Rabbi said, "Doggone," he said, "I would like to have a cigar. I believe I'll go ashore and get one," so he stepped out of the boat, walked across to the little store on the shore and got himself a cigar, walked back out to the boat and stepped in and lit up the cigar. The Catholic priest just looked at him. Unusual.

Pretty soon the Presbyterian minister got up. He said, "I am kind of hungry. I think I would like to get a

candy bar." He stepped out of the boat, walked across the water to a little store, and got his candy bar, turned around and walked back.

The Catholic priest thought, "How about this?" He ate his candy bar and he thought and thought, and pretty soon he said, "By golly, I better have a pack of cigarettes," stepped over the edge of the boat, and, kerplunk, right to the bottom of the lake.

The Presbyterian minister looked at the Rabbi and said, "Do you suppose we ought to tell him about the rocks?" Maybe we could benefit by telling each other about the rocks.

The mortgage-backed security would be more attractive and more workable if these impediments were removed. Can you develop the legal means of clearly passing title insurance through to the security, or the economic basis for more comprehensive coverage at a cost that will keep the security competitive with alternative investments?

The mortgage market would also benefit from a still greater effort on you part to obtain greater uniformity in lien laws and in title procedures, including the practice of examining title through the abstract attorney.

A security tends to standardize the collateral behind it, but the collateral can not be too diverse or the security will not be marketable at competitive yields. That is why mortgage bankers have waged a continuing battle to gain greater uniformity in laws that govern mortgage lending, including statutes on liens as well as usury, doing business, forecloaure, and rights of redemption. We would certainly welcome your assistance in these endeavors.

Perhaps the aspects of a highly developed mortgage market that are most intriguing to title companies revolve around the problems of assuring security buyers that the mortgages used as collateral exist and are in good order, maintaining the record of security ownership, and handling transfers of mortgages in the collateral pool. Who will act as trustee and perform these functions?

Some large mortgage bankers may perform these chores directly, particularly if they become supervised financial institutions. The single audit program, perhaps with occasional surprise checks, may be enough. On the other hand, the investor who buys securities in the open market rather than through direct placement may demand a third party trustee. Should the trustee be a commercial bank which is already handling the mortgage papers in its warehousing line? Should it be a title company which is familiar with the mortgage business and is sufficiently expert in the business of electronic data processing to handle the record keeping involved?

Clearly, much work remains to be done before real estate finance can be launched into uncharted space. Clearly, title companies can contribute to and benefit from a successful launching. Clearly, the time has come for mortgage banking and the title business to focus on the common goal of paving the way for a mortgage market that performs as effectively, efficiently, and competitively as any other market for long-term investments. Thank you.

"MAYBE THE INDIANS DON'T WANT IT"

By H. EUGENE TULLY

Chairman, Special Committee on Public Land Laws, ALTA; President, Security Title Insurance Company, Los Angeles, California

The Public Land Law Review Commission has continued its hearing and study activities during the past twelve months. Public meetings have been held in Denver, Albuquerque, Fresno, Palm Springs, New Orleans, Asheville, North Carolina, and Billings, Montana. Additional meetings in other areas are planned.

The purpose of these meetings is to hear the views of individual public land users, representatives of government and industry, spokesmen for those primarily interested in recreational use of public lands, and any other citizens interested in the administration of the vast areas comprising the public domain.

You will recall that the mandate of the Commission is to report to the President and the Congress with recommendations of those administrative or legislative actions which should be taken to assure "that the public lands of the United States shall be (a) retained and managed or (b) disposed of, all in a manner to provide the maximum benefit for the general public." The Act creating the Commission required the filing of report and recommendations by December 31, 1968. Very recently the House of Representatives passed a bill to extend the reporting date by eighteen months and to increase the appropriation for the Commission's work from $4,000,000 to $7,390,000.

Probably the most difficult task of the Commission will be to establish the criteria to be applied in determining what actions will in fact provide the "maximum benefit for the general public" in the administration of public lands. It appears that development of criteria is proceeding simultaneously with development of facts regarding past policies and problems.

In the latter connection, the Commission has authorized approximately 25 separate studies on various aspects of administration of public lands and resources. Most of these studies will be carried out by private research organizations, government agencies or universities, all under contract arrangements with the Commission. The specific study topics which appear to be of greatest interest to our membership are: (1) Land Exchanges and Acquisitions; (2) Digest of Public Land Laws; (3) Land Grants to States; and (4) Use and Occupancy of Public Lands.

The reports issued following the public meetings indicate rather clearly that the presentations and discussions centered around one basic issue which can be loosely identified in several different ways: (1) "wilderness preservation vs resource production"; (2) "recreation vs industry"; (3) "land availability vs land withdrawal (or 'lock-up')."

Another topic of particular interest to meeting participants relates to sharing with local government of revenues derived from public lands and payments made by the federal government in lieu of taxes. This aspect of public land administration is also the subject of one of the specific studies now underway. In the meetings there has been relatively little interest shown in title questions which arise from public land laws, in improving the maintenance and accessibility of title records, or in providing greater protection under the recording system.

Curiously, national organizations representing business and industry have not taken a prominent part in the meetings held thus far. In April, the Commission Chairman, Congressman Wayne Aspinall of Colorado, urged such participation and stated that national organizations generally have not presented their views and recommendations to the Commission.

Your Committee, through Mr. McAuliffe, has brought or is bringing to the attention of the Commission two specific problems:

(1) Relinquishment of "excess" portions of Congressional grant railroad rights-of-way, title to which is held by the railroad companies in limited fee. The railroad companies may not under existing law alienate any portion of the charter rights-of-way of specified width, and title thereto may not be acquired by adverse possession. In many instances the location of the original right-of-way is uncertain, the railroad companies had claimed and occupied a strip of lesser width and other parties had, in good faith, occupied and improved portions of the right-of-way. In the past, private bills have provided relief in specific cases but such a piece-meal approach has been expensive, time-consuming and generally unsatisfactory.

(2) The adverse effect on land use of the unlimited right of surface entry which exists in connection with mineral interests reserved to the United States. The right of entry cannot under present law be released, even in part, by the federal government. One specific result is that improved property which is so affected is ineligible for FHA or VA loans.

The Committee has recommended that at this time it is inappropriate for the Association to propose specific solutions to these problems because in both cases the land areas affected are sizable, the rights involved are valuable, and basic governmental policy should be expressed before specific legislative action is urged.

Finally, as a matter of interest, the House of Delegates of the American Bar Association, at the Houston meeting earlier this year, authorized the Section of Mineral and Natural Resources Law and the Section of Administrative Law "to establish liaison with, and provide consultation and advice to, the Public Land Law Review Commission."

Respectfully submitted:

F. W. Audrain
John E. Griffith
Carleton L. Hubbard
Francis J. Morrato
H. Eugene Tully, Chairman

"YOU BET YOUR LIFE"

By MORTON MCDONALD

Chairman, ALTA Group Life Insurance Trust; Chairman of the Board, The Abstract Corporation, DeLand, Florida

You bet your life I have something to tell you. This time I would like for all to hear this report. There was a time when it was directed to the smaller companies principally, but we have information this time that should interest both large and small companies.

As in the past, we have group life insurance. In addition, we added the VAD&D program. That is Voluntary Accidental Death and Dismemberment. This year we are proud to announce the addition of a Hospitalization and Major Medical Program. I will give the report of the Trustees on each program in order.

At the recent meeting of the Trustees in Washington, it was decided that there would be no dividend this year. The three Trustees, Mr. Richard E. Fox of Chicago Title Insurance Company, Mr. William J. McAuliffe, Jr., Executive Vice President of American Land Title Association and I, report this as we paid out slightly more in claims and expenses during the last fiscal year than we took in. This is not alarming as the trust is still in good financial condition. We have a net worth of over $38,000.00. It is to be expected that there will be some years when the claims will exceed the income. That is why we endeavor to build our reserves so that we can take care of these claims at such times.

We are still offering group Life Insurance to all members of the American Land Title Association who have at least one full time employee on the payroll. That is, the owner or partner plus at least one full time employee. There was a time that some of the larger companies could get a better rate due to the younger average age of their employees. This is no longer true. We can now offer to any of you a life insurance program ranging from $1000.00 to $20,000.00 based on salary, covering every employee who is paid for at least thirty hours per week. We can offer this insurance at a price based on the employees age that is as low or lower than any other program that we know of. Each employee of each company is classified as to age and the cost is figured accordingly.

We do not feel that many of you have stopped to examine the Accidental Death Program as you should. Many of you stopped by the insurance desk in the airport in your home city and bought a policy before flying out here to the convention. You paid much more for the coverage for a short period than it would cost you for twenty-four hour coverage. You can purchase up to $150,000.00 Accidental Death Insurance for 77 cents per thousand and be covered for 24 hours per day for 365 days per year. OR you can purchase the family plan policy which will cover you up to $150,000.00, your wife for 30% of the amount and each child in the family for 10% of the amount for the small amount of $1.20 per thousand. This covers any kind of accident at all times.

How many of you have made this known to your employees?! Many of you have employees that would like to be able to avail themselves of this cheap coverage. Any employee and his family is eligible. You do not have to have the group life insurance to be eligible; you do not have to have a percentage of your employees.

The employer does not have to pay part of the premium. Why not make this available to your employees and why not purchase a policy for you and your family?

Now the new program, the Hospital and Major Medical Plan. You must have the Life Insurance Plan to be eligible. If you are not a participant in the group Life Insurance Plan, we are allowing new members to join without requiring a physical examination. Any member of the company can join during the next ninety days without a physical except those applying for $20,000.00 insurance. That is, any who desire to obtain the Life Insurance and the Hospitalization Plan.

We have arranged a very adequate program for hospital and doctors expenses. We are offering the program at three pay levels; one at $20.00 per day for the hospital bed, one at $28.00 per day and one at $36.00 per day. You can choose the one that comes nearer meeting the expenses of hospitalization in your city. Other benefits are figured in proportion: for instance, other hospital charges $400.00, $560.00, $720.00; maximum surgery $600.00, $750.00, $900.00. Maternity benefits are larger than most present day policies that I know of. Then on a long illness or unusually expensive illness, the major medical picks up the tab for 80 cents of every dollar, with a maximum of $15,000.00.

You will need to examine the whole program to get the full picture. This program is also figured on age. For an employee under 40 years of age, the $20.00 coverage will cost $5.24 per month. For a family, the cost would be $18.19 per month. For an employee from 60 to 65 years of age, this will cost $12.59 per month for the low level of $20.00 per day for the hospital bed. For the single person, the price range will be from $5.24 per month to $12.59 per month. For those over 65 years of age, you can get $10.00 per day supplement to Medicare for $3.89 per month. We think, at present day cost of hospitalization insurance, we have a package that you need to seriously examine immediately. If you have further questions, contact our Group Insurance Office at 1616 H Street N.W., Washington, D.C. The coverage is realistic, the costs are very competitive. Why not get in now; protect yourself and your employees with both health and life insurance. It is certainly a satisfying feeling when you know you have provided for the times when death.

These are tangible benefits provided by the officers of your Association; someone is down because of health or provided at rates that we all can afford, so that both large and small can feel secure when they are covered by the programs offered by the ALTA Group Insurance Trust.

"A WORD OF APPRECIATION"

By WILLIAM H. DEATLY

Chairman, Resolutions Committee, ALTA; Executive Vice President, Title Insurance and Trust Company, Los Angeles, California

This report of your Resolutions Committee is truly a composite expression of the feelings of each committee member in attendance at the convention and recorded while its proceedings are fresh in the minds and hearts of all of us.

WHEREAS, with the address of Governor John A. Love, colorful Colorado and its capital city, Dynamic Denver, has provided a most restful and enjoyable atmosphere for our deliberations and actions, and

WHEREAS, the members of the Land Title Association of Colorado, Kansas, Nebraska, New Mexico, Utah and Wyoming have given so generously of their time and talents to our comfort and well-being in advance of and throughout this meeting;

THEREFORE, be it resolved that this 61st Annual Convention of American Land Title Association express and record the grateful appreciation of all its members in attendance, to Governor John A. Love, for the Great State of Colorado, for Dynamic Denver, to the officers and members of the Land Title Associations of Colorado, Kansas, Nebraska, New Mexico, Utah and Wyoming, and especially to James O. Hickman, Convention General Chairman, Mrs.

James O. (Pat) Hickman and Mrs. Lloyd (Virginia) Hughes, Chairman and Co-Chairman for the Ladies, Joseph G. Wagner, Chairman of Reception and Hospitality, Leonard H. Bartels, Chairman for Registration and Arrangements, Charles A. Willis, Chairman of Finance, and James W. Hull, Chairman of Entertainment, James W. Guyer, Publicity Chairman, and to each of the members of their respective committees for their most cordial welcome to the convention delegates, for their untiring efforts in their behalf and for their outstanding contribution to the success of this convention.

AND WHEREAS the delagates to this convention have been the beneficiries of learned, thoughtful and thought-provoking and stimulating addresses by an unusually fine complement of guest speakers, each of whom has made a true and lasting contribution to this convention;

NOW THEREFORE, be it resolved that the delegates here assembled express and record their sincere and deep appreciation for the participation in this 61st Annual Convention of the American Land Title Association to:

THE HONORABLE JOHN A. LOVE,
Governor of the Centennial State, Colorado;

WALTER B. RAUSHENBUSH,
Professor of Law, University of Wisconsin Law School,
Madison, Wisconsin;

D. H. BUTTERS,
International Business Machines Corporation,
White Plains, New York;

JERRY KOORY,
Planning Research Corporation,
Los Angeles, California;

DR. ALEX J. SIMON,
Assistant Dean, School of Business,
University of Colorado;

J. PENNINGTON STRAUS, ESQUIRE,
Schnader, Harrison, Segal & Lewis,
Philadelphia, Pennsylvania;

COLONEL ROBERT REID,
General Counsel, Federal National Mortgage Association,
Washington, D.C.

DR. WILLIAM FREUND,
Chief Economist and Executive Director, Investment Research,
Prudential Insurance Company of America,
Newark, New Jersey;

CLAIR A. BACON,
Vice President, Mortgage Bankers Association of America
Denver, Colorado;

COLONEL WILLIAM WATTS,
Chief, North America Air Defense Command Space Center
Colorado Springs, Colorado

AND WHEREAS, this Association and its members have enjoyed for many years the active participation and interest of learned counsel for the life insurance companies and their contributions to our aims and aspirations;

NOW THEREFORE, be it resolved that the convention delegated again express and record their grateful appreciation to life insurance counsel for their helpful guidance toward an ever improving service of our industry, to investors and the general public;

AND WHEREAS, responsibility for the American Land Title Association has during the year that will close with this convention been entrusted by the membership to the elected national officers, the Chairmen and Executive Committees of the respective Sections, and to the appointed chairmen and members of all standing committees, and to the executive and administrative officers at our National Headquarters in Washington, D.C., and;

WHEREAS, each of them has served with distinction during the past year and in a manner which has brought this Association to a new high in prestige and influence. They have met and well resolved, for the time being, those industry problems which continue and increase in complexity and which require ever more sophisticated approaches to their solution; their collective planning for and execution of a most interesting and enlightening business program for this convention has made a great contribution to our industry.

NOW THEREFORE, be it resolved that on behalf of all 2400 members of this Association, the convention delegates here assembled express and

record their grateful appreciation to George B. Garber, our retiring President, Alvin R. Robin, retiring Vice President and nominee for President for the ensuing year, Laurence J. Ptak, our perennial Treasurer, John D. Binkley, retiring Chairman of the Finance Committee, Thomas J. Holstein, continuing Chairman of the Abstracters Section, Gordon M. Burlingame, retiring Chairman of the Title Insurance Section and Vice President to be of this Association, to the Chairmen and members of all standing and special committees of this Association, and to other members of our Association who have so ably contributed to the business program of the convention, and to William J. McAuliffe, Jr., our Executive Vice President, James W. Robinson, our Secretary and Public Relations Director, and Michael B. Goodin, Business Manager of our National Headquarters, for a year of outstanding progress in the annals of our Association.

Mr. President, in behalf of the members of this committee who are: Joseph A. Watson of Baltimore, Md., Roy P. Hill, Jr., of Caspar, Wyoming, Robert M. Blaese of Minneapolis, Minn., and myself, I have the honor to move the adoption of each of these resolutions.

EDITOR'S NOTE: The above resolutions were unanimously adopted by the ALTA members present at this meeting.

"STATE REGULATORY LEGISLATION"

By J. MACK TARPLEY

Vice President, Chicago Title Insurance Company, Chicago, Illinois

This paper is intended to be in the nature of a report. It is not to be taken as a comprehensive report of all such legislation enacted, but is merely those items coming to my attention by investigation and by inquiry of friends in the industry which I felt would be of general interest.

The preparation of the paper was complicated by the delays in legislative adjournments, the signing of bills and the problem of obtaining final drafts of enacted legislation. If my factual information is in error as to the final draft, forgive me; if my interpretation of the material is different from yours, argue with me later, but respect my right to an opinion.

The legislative year of 1967 produced the greatest number of attempts to regulate our industry that I can remember. I have every reason to believe that subsequent years will produce increasing attempts. I urge that you become more attentive to the consequences of attempted regulation. Undesirable legislation adopted in a state far removed from your operation may well be a pattern for attempted legislation in your domicile tomorrow.

If I do not cover legislation which you deem to be important, I would appreciate hearing from you, but the following legislation is of particular interest to me:

ARIZONA:

Arizona, which in the past had minimal regulatory statutes applicable to title insurance, has now enacted a code providing for more stringent regulation. The Act provides for the filing and regulation of rates and filing by rating bureaus is authorized.

While the Act by its terms requires the filing of schedules of "fees", that term is not defined by the Act. The Act also provides for the filing and approval of title policies and other contracts of insurance before use thereof.

The Act defines a "title insurance plant" as a 20-year geographically posted or sorted indices together with a set of name indices for all documents not susceptible of geographic posting or sorting.

Agents are required to be licensed, but agents must be corporate entities.

While I will not attempt any explanation, I would like to state that the section of the Act relating to

Taxation of Title Insurers can, because of the existing Retaliatory Section of the Arizona Insurance Code, cause a different basis for taxation of foreign and domestic insurers.

As a part of the section of the Act requiring Determination of Insurability, no insurer may issue a title policy unless the insurer or its agent maintains a title plant covering the county in which the land is situated; subject, however, that the policy may be based upon a policy issued by a company or agent maintaining such a title plant.

The Act does provide for an unearned premium reserve; however, it is my *personal* opinion that the provision of 10¢ per thousand dollars of liability on each policy issued, accompanied by a recovery of 10 percent a year, is inadequate.

The Act contains sections on Commissions, Rebates and Personal or Controlled Business which substantially follow the ALTA Model Code.

CONNECTICUT:

A new Act, as a substitute for Section 38-57, requires that advertising, announcements, cards or circulars made or issued by insurance companies, purporting to set forth the financial standing by a statement of assets, shall set forth with equal conspicuousness its liabilities and a summary of operations computed on the basis allowed for its annual statement, and no such public announcement shall be made until such statement has been filed with the insurance department. For lack of a better name, I choose to call this a "truth in advertising" statute.

CALIFORNIA:

Senate Bill No. 638 amends the minimum capital requirements for underwritten companies and provides for amendments to the regulation of said underwritten companies and particularly the escrow activities of such companies. For the uninitiated among you, an underwritten company is the Eastern or Midwestern equivalent of a corporate agency. Senate Bill No. 960 relates to an amendment of the existing rebate statute in California. It makes the improper use of escrow funds to facilitate the closing of a transaction a rebate. It also makes the indiscriminate issuance of preliminary title evidence without collecting fees therefor a rebate. I commend the Act to all of you and would suggest that the content thereof is worthy of your consideration and study.

KANSAS:

House Bill No. 1269 should earn praise to the Kansas abstracters for including standards of abstracting in a bill primarily concerning the filing of surety bonds for abstracters. From the standpoint of relying on abstracts for the issuance of title policies, it is sincerely hoped that the abstracter will include in the certificate to said abstract, an exclusion as to the matters provided by the statute. A failure to do so, would in my opinion, impose a liability on the abstracter.

MINNESOTA:

Of interest to you, and I am sure a first in our industry, is an Act authorizing Fillmore County, Minnesota, to acquire privately owned tract indices by gift, purchase or *condemnation.* How do you react to a condemnation of your plant?

NEVADA:

Assembly Bill 296 directs the Commissioner of Insurance to make a study of the present insurance laws and to prepare an insurance code for the consideration of the 1969 Session of the Legislature.

The Commissioner of Insurance has entered into a contract with Robert D. Williams, Esquire, to undertake the drafting of the proposed code.

I would urge those of you with any interest in the matter to see that the title industry is afforded an opportunity to be heard in the preparation of the code.

MARYLAND:

A statute was enacted requiring that every borrower, in advance of the closing of any mortgage transaction, be advised that owner's title insurance was available and the additional cost thereof. Evidence that the borrower was so advised must be retained by the company issuing the title insurance. All of us should be alert to further legislative attempts in this jurisdiction.

NORTH CAROLINA:

The limitation of risk statute which was burdensome to those of us doing business in that state has been amended so that it is now applicable only to North Carolina risks. It was formerly applied to risks wherever written.

NEBRASKA:

A new Act is now law which amends the Nebraska Insurance Code for the regulation of title insurance. A reading of the new Act raises questions as to the sufficiency of the Act to do a proper job.

Rate regulation provisions are included in the new Act and follow the file and justify method as set forth in the ALTA Model Code. The new Act contains no provisions for rate filing through a rating bureau, but requires individual company filings. Forms of policies and contracts of insurance are required to be filed with and approved by the insurance department prior to use.

The act contains a provision for licensing of agents in accordance with existing statutes relating to the licensing of insurance agents. The Act further requires that title insurance agents handling escrows furnish to the insurance department a fidelity bond.

Section 44-413.01 is an amendment of an existing section bearing the same number. It provides for reserves for *domestic* companies but has no reserve provisions for foreign companies, nor does it have any substantial compliance provision. The reserves for domestic companies fall into two categories: (1) a loss reserve in an amount estimated to be sufficient to cover losses of which the company has notice, and (2) an unearned premium reserve. The unearned premium reserve required of a domestic title insurance company is an amount equal to 10 per cent of the "fee" charged for a contract of insurance. Since the Act defines the term "fee" as every consideration whether denominated premium or otherwise, it is possible that the reserve required of such company could (1) vary on policies in like amount, and/or (2) exceed the net amount remitted to a title insurance company operating on an agency basis.

Whether or not a foreign title insurance company domiciled in a state having no unearned premium reserve statute would be required to create such a reserve would be dependent on the Insurance Commissioner's interpretation of the general insurance code. I can find no clear statutory provision.

The Act contains no "other sections applicable" provision, nor does it exclude application of the general insurance code.

OHIO:

A title insurance code supplementing existing insurance code. I have not seen a copy of the bill as finally passed, and probably should refrain from commenting. I have made inquiry, however, and I believe that I am acquainted with the significant portions of the new law that I am talking about.

The new law subjects all companies doing a title insurance business to the supervision of the insurance department insofar as the issuance of title insurance is concerned. Under prior law this was not true. The definitions under the new law follow substantially the definitions contained in the ALTA Model Code.

Provision is made for rate regulation and rate filing by the adoption of existing Chapter 3935 of the Ohio Insurance Code as applicable to the business of title insurance. This chapter also makes provision for filing through a rating bureau. Forms of policies and other contracts of insurance are required to be filed and approved with the department of insurance prior to use.

Of interest to you is a provision of the new law which reads as follows:

> "A title insurance company shall not engage in the business of guaranteeing the completion of improvements in this state."

Following the pre-existing Ohio law, the unearned premium reserve required by the new Act, for policies on land in Ohio, must be deposited with the insurance department in cash or approved securities.

As an interesting commentary, the Act defines "risk premium" and "fee" substantially as does the ALTA Model Code; however, the Unearned Premium Reserve is to be reserved at 10 per cent of the "title insurance premium", which term is *not* defined by the Act. Obviously, a ruling by the Director of Insurance will be required to define the term.

While the new Act makes no provision for use of the unearned premium reserve in the event of liquidation, dissolution or insolvency your attention is invited to Section 3903.11 of the general insurance code. A loss reserve is required, the Act following the language of the ALTA Model Code.

TEXAS:

The state long regarded by those in the industry, particularly Texans, as

having the ultimate in regulation has a new Act designed to "beef up" the regulations and the regulatory powers of the Texas State Board of Insurance.

The changes are many and are primarily designed to afford sufficient regulatory authority to better insure the financial stability of title insurers and hence offer better protection to the public interest. I will not attempt to cover all of the changes, but only those which in my personal opinion are significant from an industry standpoint.

Article 9.07 of the Act vests in the State Board of Insurance the authority to prescribe underwriting standards and practices.

Article 9.08 prohibits "insuring around" which is described as the willful issuance of a binder or policy showing no outstanding enforceable recorded liens while the issuer knows that in fact a lien or liens are of record against the property, *except* under circumstances as the State Board of Insurance shall approve.

Article 9.12 requiring deposits, allows a deposit of a certificate from the regulatory body of the foreign state which evidences an equivalent deposit protecting policyholders wherever located.

Article 9.17 provides for a reserve for losses using the language of the ALTA Model Code.

Article 9.19 relating to maximum retained liability permits reinsurance, at the discretion of the State Board of Insurance, with a non-licensed company, which is new to Texas.

Article 9.21 affirmatively grants to the State Board of Insurance the authority to make and enforce rules and regulations with reference to underwriting standards and practices.

Article 9.29 is a new section providing procedures for the supervision, conservation and liquidation of title insurance companies.

Article 9.30 is an amendment of an existing article to specifically prevent payment of a portion of the premium for the solicitation and referral of business.

Article 9.34 is a new article requiring a determination of insurability and the preservation of evidence thereof.

Articles 9.35 to 9.39, inclusive, are new and deal with the licensing and bonding of agents. The articles also require that agents must, at the agent's expense, furnish to its underwriter(s) an annual audit report of its trust or escrow accounts. The underwriter is required to furnish to the State Board of Insurance an analysis of such audit reports. Bonds are also required.

Article 9.40 grants to the insurer the right at any time to audit, at its expense, the trust or escrow accounts of its agents.

"Escrow Officer" is defined as "an officer or employee of a title insurance agent whose duties include any or all of the following: (1) countersigning title insurance policies, commitments and binders; or (2) supervising the preparation and delivery of title insurance policies, commitments and binders; or (3) receiving, handling or disbursing escrow funds; ...."

Articles 9.41 to 9.46 require the licensing and bonding of "escrow officers" prior to their performing the defined duties for and on behalf of title insurance agents.

As an interested spectator and participant in negotiations, argument and harangue, I can assure you that the final draft was not easily prepared.

WYOMING:

The new Wyoming Act is a result of a complete recodification of the Insurance Code prepared without consultation of members of the title insurance industry. To be perfectly frank with you, I am not at all certain that I comprehend the purpose of the provisions relating to title insurance.

An interesting provision requires that a summary of the annual statement of each insurer, title and other lines, certified by the commissioner be broadcast once each day for six successive days from a duly licensed standard broadcasting station located in Wyoming. Said broadcast at the expense of the insurer.

The tax provisions of the Act are quite interesting. A tax is imposed on total direct premium income and all other considerations for insurance contracts. Domestic Title Insurers are permitted to deduct "that portion of the premium chargeable to title search and examination services as reasonably determined by the commissioner." There is no provision for deduction by a foreign insurer. The tax rate as to foreign insurers is 2½ per cent, as to domestic insurers it is 1½ per cent. Both rates are subject to graduated reductions based on a monthly mean of the percentage of Wyoming investments as defined by Act to its total assets.

A reading of Section 96 of the Act relating to the determination of the financial condition of an insurer and Section 103 providing for the maintaining of an unearned premium reserve by a title insurer, indicates to me that a title insurer shall not be required to show its unearned premium reserve as a liability charged against its assets. I feel sure that this was not intentional.

Section 103 provides for an unearned premium reserve of 10 per cent of "risk portion of premium", with a recovery of 5 per cent of the original amount of the reserve each year for a period of 20 years.

Section 306 defines "premium" as "the consideration for insurance, by whatever name called." This is important in view of the tax provisions of the Act previously referred to.

Policy forms are required to be filed with and approved by the Commissioner and your attention is invited to Section 305 which defines "policy". Section 318 reads in part as follows:

> "Every policy shall specify: . . . (v) The premium. . . . The commissioner may . . . specify what portion or portions of the charge by the insurer for or in connection with title insurance shall be set forth in the policy."

Section 460 of the Act requires that the title policy be based on evidence of the current condition of title certified in writing by an abstracter licensed under Wyoming laws for the county where the property is situated, *or* on the opinion of a Wyoming licensed attorney as to the condition of title following a review by the attorney of pertinent title records or abstracts. The import of this section seems to be that a title policy may be prepared by a lay abstracter from his abstract or by a title insurer from an abstract, or by an attorney from his search of the public records, or by a title insurer from an opinion of an attorney based upon a search of the public records.

Section 462 requires that any mortgage policy must "conspicuously" show on its face, and of any evidence thereof delivered to the mortgagor, that coverage is limited to the mortgage only. Every qualified insurer should check the form of preliminary title evidence used as well as any settlement statement delivered to the mortgagor at closing.

Rate regulation in the file and use method is imposed, with the filing through rating bureaus authorized.

Previously, I made the statement that I did not comprehend the purpose of the sections of The Wyoming Act; after further consideration, I am not at all sure I understand the sections themselves.

I realize that few of you do business in Wyoming and may feel that I have spent too much time in discussing the Act. However, I would like to caution you with respect to two matters: (1) Complete recodification of insurance codes without participation by our industry creates the greatest adverse exposure to us. (2) Enactment of legislation in one jurisdiction can act as a springboard to legislation in other jurisdictions.

If the legislation affects you, or if you have any interest therein, I urge that you secure from a legislative service within the state a copy thereof and after study form your own opinion as to the consequences thereof.

Again I urge that if you wish to use the A.L.T.A. Model Code in the preparation of legislation, that you should only do so after a thorough study of your existing insurance code and with full consideration of the overall effect of utilizing particular provisions of a proposed act on the intent of the whole act.

"PUSH-BUTTON SEARCHES?"

By GERALD W. CUNNINGHAM

Chairman, Title Plants and Photography Committee, ALTA; President, Black Hawk County Abstract Company, Waterloo, Iowa

I hope it will come as a nice surprise to you to know that I have pushed the button which is going to cut at least another ten minutes off this program, and as to that question mark, George, "Push-Button Searches?", I would suggest we remove that question mark. I think it has been done at this convention.

The push of a button will get you a picture and a voice from most anyplace around the world, and bounced

off of a satellite at that.

The push of a button activates a camera on the moon.

The push of a button changes the course of a satellite.

We keep a meticulous set of books in Waterloo, Iowa, but somebody can push a button in Washington, D.C. and tell me I'm a dollar short.

With the push of a button one person in millions can be identified from his fingerprints.

Or with the push of a button any working person can be identified from his Social Security number.

The push of a button locates the information you gave at the last census taking.

Push a button on a microfilm machine and receive processed microfilm mounted in an aperture card.

Push a button on a magnetic tape typewriter and watch the words flow forth at over one hundred fifty words per minute.

The push of a button will retrieve a single card from a file of thousands.

The push of a button will in seconds provide a photocopy of a microfilmed image.

Push a button and send a photo to any branch office via telephone.

The push of a button will get you a sandwich, a cup of coffee, and a piece of pie.

The fact is, the push of a button will accomplish a myriad of tasks, including blowing up the world we know.

Push-button searches can be a reality. It is possible it could be done today. In fact, it is done today. Those of you who heard Larry Ptak's panel yesterday know it is now being done.

Utilize the machines on the market and the technical knowledge available and you could have push-button searches.

We in this industry are still private enterprise, and I am sure we desire to stay that way. But we must not forget our customers, to provide the services desired at a price he is willing to pay, or some politician will discover some votes to be had by proposing government intervention and thereby entice the voter to push his button on the voting machine.

I can't help but think of the fellow that proposed to stop crime. He suggested, "Let the Government take it over and they would take all of the profit out of it."

Push-button searches will cost money, lots of it; and time for the input of information, so only you can decide how fast you want searches push-button style.

Do keep in mind, all that is old is not bad, nor is all that is new, good. Don't push the panic button.

One last comment, next to the wastebasket there is nothing like push-buttons to save work.

Thank you.

PROPOSED AMENDMENT TO THE ALTA CONSTITUTION AND BY-LAWS

Submitted By CHESTER C. McCULLOUGH

Chairman, Constitution and By-Laws Committee; Senior Vice President, Chicago Title Insurance Company, Chicago, Illinois

In accordance with the provisions of Article XI, Section 1 of the ALTA Constitution and By-Laws it is recommended that Section 4 of Article VII, and Article VIII, of the Constitution and By-Laws be amended in the manner set forth in the following paragraphs in order that the "Young Titlemen's Committee" and the "Standard Title Insurance Accounting Committee" (being now special committees) become standing committees of the Association:

1. Amend the first paragraph of Section 4 of Article VII to delete the "and" before "the Standard Title Insurance Forms Committee" and substitute a comma therefor, and to insert the words: . . . "and the Standard Title Insurance Accounting Commit-

tee" and after the words "Constitution and By-Laws Committee" add a comma, and the words "Young Titlemen's Committee,"—so that the said paragraph will read as follows:

"The President within thirty days after election, shall fill expired terms and vacancies, if any, in the Liaison Committee, the Grievance Committee, the Standard Title Insurance Forms Committee and the Standard Title Insurance Accounting Committee and shall appoint all members of the Planning, Judiciary, Membership and Organization, Legislative, Public Relations, Constitution and By-Laws Committees, and Young Titlemen's Committee, and such other Committees as may have been authorized by the Board of Governors or by the members at any convention, each to consist of a chairman and such number of members as he shall deem advisable, unless otherwise provided."

2. Amend Section 4 of Article VII to insert, preceding the last paragraph thereof, the following paragraphs:

"The Young Titlemen's Committee shall be composed of a Chairman and anyone under a maximum age to be established from time to time by a majority vote of the members of the Committee in attendance at a meeting called by the Chairman or Vice Chairman and who, individually or through company membership, is an active member of the Association."

"The Standard Title Insurance Accounting Committee shall be composed of a Chairman and eleven other members. Not more than two members should be accredited from the same state, territory or district. No appointments shall be made that will afford any corporate member, or affiliated group of corporate members, directly or through its or their agents, concurrent representation by more than two of its officers or employees. The members shall be divided into three classes of equal number, initially to serve one, two or three years, each succeeding class to serve for three years. The Chairman may appoint such subcommitees as he deems necessary, each of which subcommittee shall be composed of not less than six committee members, one of whom shall be designated as subcommittee chairman."

3. Amend Article VIII to renumber the present Section 19 as Section 21, and to insert the following new Sections 19 and 20:

"Sec. 19 THE YOUNG TITLEMEN'S COMMITTEE shall meet semi-annually at the same time and at the same place as the Mid-Winter Meeting and the Annual Meeting of the Association, for the purpose of the advancement of the title industry, as well as to arouse the interest of young titlemen and potential titlemen in the American Land Title Association; the encouragement of cordial intercourse among its members; the improvement of the relations between the title industry and the public; and the furtherance of the professional interests of the younger members of the Association.

"Sec. 20. THE STANDARD TITLE INSURANCE ACCOUNTING COMMITTEE shall review from time to time all accounting practices and procedures used by Association members, recommend standard methods and forms for accounting, confer with supervisory authorities for the purpose of determining such practices as said supervisory authorities might deem beneficial for the public interest, and to develop uniform accounting practices and procedures. Recommendations of any sub-committee shall be subject to approval by a majority of the whole number of the Committee. The Committee shall report at each Annual Convention and Mid-Winter Conference of the Association, to the Title Insurance Section or to the membership, or to both Section and Association membership, as the occasion shall require, and all reports and recommendations of the Committee shall require action by majority vote at the Convention or Conference at which they shall be submitted, in order to qualify as standard practices or forms. All reports of the Committee shall be advisory in nature, and no member shall be required to follow their recommendations nor to use recommended standard practices or forms, nor to follow recommended procedures."

CARRIED UNANIMOUSLY.

EDITOR'S NOTE: Tim J. Campbell, Jr., President, Maytag Loan and Abstract Company, Newton, Iowa, addressed the Abstracter's Section at the Convention on September 26th. Mr. Campbell's presentation will be carried as a series of articles in future issues of Title News.

ELECTION OF NATIONAL OFFICERS

By proper nomination and second, the following officers were unanimously elected for 1967-1968:

President—ALVIN R. ROBIN, Tampa, Florida,
President, Guaranty Title Company
506-08 Tampa Street, 33602

Vice President—GORDON M. BURLINGAME, Bryn Mawr, Pennsylvania,
Chairman of the Board, The Title Insurance Corporation of Pennsylvania
10 South Bryn Mawr Avenue, 19010

Chairman, Finance Committee — LLOYD HUGHES, Denver, Colorado
Senior Vice President, Transamerica Title Insurance Company
1720 California Street 80202

Treasurer—LAURENCE J. PTAK, Cleveland, Ohio
Vice President, Lawyers Title Insurance Corporation
723 Superior Avenue, N.E., 44114

BOARD OF GOVERNORS

Term Expiring 1970

E. A. BOWEN, JR., Little Rock, Arkansas,
Vice President & Secretary, Beach Abstract & Guaranty Company
213 West 2nd Street, 72201

RICHARD H. GODFREY, Oklahoma City, Oklahoma,
President, American-First Title & Trust Company
219 Park Avenue, Box 1653, 73101

HARRISON H. JONES, Louisville, Kentucky,
Vice President, Louisville Title Insurance Company
223 South Fifth Street, 40201

G. ALLAN JULIN, JR., Chicago, Illinois,
Senior Vice President, Chicago Title and Trust Company
111 West Washington Street, 60602

MILTON J. SCHNEBELEN, Farmington, Missouri,
President, The St. Francois County Abstract Company
108 West Columbia Street, 63640

ABSTRACTERS SECTION

"ABSTRACT, BUT CONCRETE REFLECTIONS"

By THOMAS J. HOLSTEIN

Chairman, Abstracters Section; President, LaCrosse County Title Company, LaCrosse, Wisconsin

The title they have placed on this part of the program is an attempt to glorify what is essentially my report to you of the Abstracters Section. It will be short and to the point, but it should, of course, be made. Then, if I may, I would like to leave one idea with you, if only to satisfy our programmers.

The Section has flourished during the past year because of the high calibre of its members and committees, and its essentially grass-roots character.

Through the efforts of one committee, we are much closer to the actual policy we want as coverage for errors and ommissions insurance, and will

probably find a carrier to place it with as you will hear later this morning.

We have also, through another committee, brought up-to-date all the information on, and the curricula of, the various state schools. You will hear a report on this. I should here comment on the growing interest in the abstract states on sponsored programs for title evidence education in college level schools. The latest move in this direction is in Indiana.

We also seem to have maintained our sense of humor, so necessary in this business where all our customers want everything yesterday, as you will see from Tim Campbell's report.

From the state conventions your chairman attended this year—Minnesota, Iowa, Missouri and North Dakota—the midwest is in good shape. Each state convention was well attended and had an interesting, full program. And the people were wonderful to meet.

Now for the idea I would like to leave with you for your consideration during the next year. The idea is for all of you, but principally for the manager or worker in the very small abstract plant. The idea is that the Horner's Corner Abstact Company is gone. You can no longer indulge yourself in the situation where your abstract goes no further than your county boundaries, nor can you shrink from offering title insurance as a part of your service.

None of us are too far from the Interstate Highway System. It is now possible to build an airport in towns of less than 1,000 population for about $100,000, as I learned in Missouri, and many such towns are so building. A large percentage of new factories are now built in the suburbs and will, in the next twenty years, be built in towns like yours. There is a great weariness in people who are now crowded into the cities with their transportation and other problems, a groping for the old grass-roots situation where a man can actually walk to work if he so wishes and is not too far from some hunting or fishing or boating or loafing of some kind.

I believe the average American is at the point where he is tired of smog and busses or commuter trains and wants to see some clouds and sky, and maybe live on the banks of a lake or river.

Maybe I am talking of conditions that might exist ten to twenty years from now, but it could happen in your town and county tomorrow. You must gear up for it. No one advocates the expenditure of a lot of money for expensive machinery or extra employees now, but you can at least plan. The lightning might strike tomorrow, next week, next year, or ten years from now, and you must be ready. There is a lot of help available to you from your state association and the American Land Title Association. You should use it. If you do not, you may have a competitor next year. If you do use it, you will remain "Mr. Titleman" in your county forever.

I hope you do.

"SHOULD I TELL MY PARTNER?"

By DR. ALEX J. SIMON

Assistant Dean, School of Business, University of Colorado

Ladies and gentlemen, at yesterday's luncheon, Governor Love pointed out that he dared not make any observations at all dealing with land titles because almost everyone in his audience knew more about the subject matter than he did. This morning I feel that I find myself somewhat in the same situation, a very delicate situation.

Sunday evening, as I was visiting with you and enjoying the wonderful hospitality—and incidentally the water that I drank Sunday was a lot better than the water I am drinking this morning—I found out that everyone that I visited with was a very ethical individual and you know an awful lot about ethics; it is your colleagues or your competitors that are not ethical.

Apparently those that need a briefing on ethics are not here. I understand that the majority of you here have a very good reputation for maintaining pretty high standards and for being very concerned with the high standards of ethics. As I

read your standards of ethics, your Code of Ethics in the Journal, and also in the program, I feel that you have done a very good job of attempting to spell out exactly what an abstracter, or, as I found out this morning, an agent, should be doing with regard to serving his public and performing his functions.

I understand as a whole your profession is held in pretty high esteem; however, I have discovered that in certain parts of the country, recently, some newspapers have been a little concerned about the ethics of the people in the real estate business and they have given you a hard time.

I wouldn't be too concerned because as I see it, it is a matter of perception, of people seeing things differently. Apparently there is some concern among you because they have asked me to come up at this mike and to discuss this situation with you some.

I understand it is a delicate situation, it is a delicate subject, and I am fully aware that some of the remarks I may make may be very controversial, nevertheless I have agreed to do this. I have agreed to tackle the subject, and so let's proceed.

First of all, I believe that we are dealing primarily with an interpretation of the matter of ethics, a semantic problem, rather than the term in itself. Human nature being what it is, man has a tendency to see things the way he likes to see them, to hear things the way he likes to hear them, to understand things the way he thinks it will better suit his purpose.

We have our own values, we interpret things the way these values allow us to interpret things, and the way it will affect us in our business The typical human being has some pre-conceived notions of what is and what is not, and what should be, and because the English language is such that it is, it allows us to interpret things in a manner in which it will better suit what we ourselves already believe.

In other words, we understand the same words in a different way as is illustrated by this joke that our minister tells:

In his first congregation, apparently the people were supporting him and the church very well. Someone died and left $3,700 to the church to be used as the church would see fit.

Being a democratic individual he called a meeting of the congregation and brought the matter up and threw it open for discussion. There was quite a bit more discussion, Mr. Chairman, than there was here dealing with the subject—apparently you were a little closer than they were—and after about two hours an abstracter, charter member of the church, arose and made a motion that a special committee of three be appointed and be given the authority to investigate all types and kinds of this commodity he thought they should purchase, and if they found one at the right price, that they be given authority to purchase a chandelier.

A used car salesman arose immediately and in a very loud voice said, "I object, for three reasons. Number 1, there is no one in this church can spell it; Number 2, if we had one, no one here could play it; and Number 3, we need light fixtures in this building."

Seriously, my function is to attempt to relate to you in a thirty-minute period my perception, my point of view, regarding the behavior of people. I would like to start with a couple or three general statements, and then I will conclude with what actually is my main concern at this moment.

Man's attitude and his behavior at any given moment in time is a product of the society or the environment in which he lives, the type of job that he is doing. It is a matter of perception again, the way he sees his role in his society, his industrial society, if you please, as well as his social society.

There is a cause and effect relationship between many factors here. Because I didn't want you to think that my memory was that great I wrote some of these things down. There is a cause and effect relationship between your action and my action, and my background, my values, attitudes, sentiments, emotions, status symbols as we see them, whether or not we have them, our frustrations. And you know, at times we have a tendency to be frustrated with certain things or acts, and when these frustrations come about we tend to ignore them as long as they are mildly disturbing frustrations. However, when your boss or your client or the Insurance Commissioner or someone else starts putting pressure and bearing down, then we discard our defense mechanisms and we attack the problem and solve it—our skills, our abilities, our education—legality versus morality or ethics.

You know something can be legally right but morally wrong in business transactions. I have known an awful

low of instances in the industrial world and in labor relations where a company could have been legally right according to the written law of the Bible and the contract in disposing of the services of an employee. On the other hand, because of an act or action on the part of somebody in management, a supervisor, somebody in the Personnel Department, another co-worker, the company could have been morally wrong in firing the person, for there is quite a difference. But it depends on how you see it, doesn't it?

Your actual society that you live in, and the one you would like to live in, the standard of living you now enjoy, the one you would like to enjoy—all of these things, plus the manner in which you perceive competition, your competitor in your community and in your society, and whether or not you perceive yourself as an astute business man and your competitor as a sharpie, or a professional—there is a cause and effect relationship between all of these and your behavior.

In the industrial world, in supervisor-subordinate relationships, we will put it this way: There is a cause and effect relationship between action, interaction and reaction, and you react at given times, depending on how violently whatever has been said or whatever has been done affects you.

All of these value-judgments, I think, can be illustrated by one little incident. When Red Auerbach retired as coach of the Boston Celtics, on national television, he gave credit to his success primarily to his father, and he used these words:

"He showed me right from wrong. He made me a man."

This is the manner in which he expressed his personal value system, his personal ethics, if you please.

A second general statement: Man is a complex and unique animal. He is not only conditioned by his environment, he is conditioned by HOW he has lived and WHERE he has lived.

Our background, our education, those with whom we have rubbed elbows—our personality is determined somewhat by the many, many experiences we have enjoyed throughout life.

The young child at age two or three, because of his father's and mother's love and devotion and care, has begun to mold a personality. All of a sudden you will say, "Isn't that wonderful? Isn't that a nice personality?"

Then he or she begins to associate with Girl Scouts or Boy Scouts, the elementary schools, the social groups in which you allow that child to participate, and that rubs off, and all of a sudden at age six or seven another little personality emerges. You see something that is really interesting and intriguing.

Then the exposure to the elementary school teachers, finally the junior high teachers, and at thirteen or fourteen or fifteen something else emerges, and then upon graduation from high school, or in the senior year in high school, at age eighteen or nineteen, another personality emerges, unfortunately.

That is a time in which we no longer can communicate with them. They don't "dig" us, and actually you don't dig them. I think it was Will Rogers that said once, "I left home when I was seventeen. I returned when I was twenty-three, and you can't imagine how much my father and mother learned in that six year period."

Then the individual either goes to college, a trade school, or goes to work. Their associates and their supervisors have an effect upon that individual. The university professor has an effect upon the behavior, the attitude, the personality of the individual, sometimes adversely. But you would be amazed at how much you learn from somebody you don't like.

While working on my doctor's degree I made a "C" in a course on economics, and Man, that guy was rough! But he has made me part of what I am today.

On the other hand, one that I really liked, one that I really enjoyed, talked world resources and had a philosophy that resources are *not*, they *become*. He put it this way: The action and interaction between man, nature and culture, is making society what it is today. And this will be what I intend to play with a little in my closing remarks.

He had a terrific impact upon me. In fact, when I wrote my dissertation I felt like he was looking over my left shoulder and examining every word.

I make these points, ladies and gentlemen, because stop and think at how many people over a period of years have molded you and your personality, have made you what you are today.

Yes, man is a product of what we think, the way we think, the way we think we are supposed to think. We behave in certain groups in a given way. In other groups we behave differently. We do what we think we should do at a given time, at a given moment, but what we think helps to determine our actual activity.

Dr. Homer Rainey, as some of you may know, is probably one of the greatest educators that was ever fired from the State of Texas. He came down to the University of Colorado as our President and is now professor emeritus and quite a layman in his church. He puts it this way: "As we believe, so we live, and as we live, so we become."

We rationalize our actions. If a certain transaction handled a given way may tend to put a few extra bucks in the kitty, it is so easy to rationalize that "I am legally right." What Dr. Homer Rainey said is saying plenty. He has really put it on the line.

A third general statement: Whether or not a person is motivated to do "right" depends upon whether or not his needs and his wants have been satisfied. By that I mean his desires, his wishes, his hopes.

In the industrial world, Abraham Laszlow of Brandeis University puts it this way, that generally man has five basic needs. The word "basic" is improper here. He has five needs. There are the physiological needs, the basic needs, money, food, clothing, shelter, for himself and his family.

Honorable man believes that work is honorable. When these needs are satisfied, then something else begins to be important to that individual. He calls these safety needs, the need for protection against discriminating supervisors, against a management who is not concerned with the individual as such, and so what happens? We join unions, we band ourselves together against possible discrimination, fearing that if we do not we will be ostrasized by our fellow man. And if not necessarily so, we are subject to discrimination.

These needs are fairly well satisfied in the United States of America today, so he says, "Then what becomes important?" Because of these social needs, the need for being liked by your fellow men, by your fellow workers, the need for affiliation, the need for warning other people to see you the way you see yourself, or at least the hope that you can convince other people to see you the way you see yourself, and the next one is fairly well related to this one: There are ego needs.

In other words, need for status symbols, need for titles. You know, I can remember after World War II, I got out of the service. Money. Twenty-one bucks for a while and then fifty-six for a while. You don't save too much, and you got out of the service and you had to have a home, a job. The most important thing in my life at that time was to find work, work in which I could earn enough money to satisfy my needs and wants and to feed my family the way I felt they should be fed.

In a very short while, returning to the old company that I had been with, those needs were met, and then all of a sudden a supervisor one day said, "Alex Simon, I want you to grab that four by four"—it was only sixteen feet long—"and take it down to the Barrel and Drum factory and we will meet you there."

"Fine, Andy." I looked out and discovered that all these four by fours that he was talking about had been saturated in creosote, really saturated, so I went back to Andy and I said, "Andy, how about one helper?" You know, instead of throwing this over my shoulder I felt like it would be all right with two men. He said to me, "Look, Simon, you get that four by four over to the Barrel and Drum factory or get out. There are seventeen men at the gate waiting for your job."

What did I do? I ran straight to the Union Hall.

These needs were satisfied in a very short while, so then there were social needs. You start belonging to certain little clubs. Those needs were satisfied in a relatively short time.

Then came the ego needs. I had to have a handle. Every urinal needs to have a handle. So I went to school. The bachelor's degree and the master's degree, and then I went out and worked in industry for a while, but that wasn't enough. I still had to have more. Money was there, social needs were being met, my safety needs were met. You know, you have the bachelor's degree and the master's degree and that is a good union card.

I had to have that doctor's degree, so we rushed back and we worked and we secured it, together, and then somehow or other money needs began to get important again. Why work at

one university for $30 a month when I could go to another one for $35?

What I am pointing out is that man's needs change from day to day, from week to week, from month to month, and it is a function of time or age. It is a function of how you perceive what you need to do next.

Then man's fifth category of needs comes into being here. He calls these self-fulfillment needs, the need to drive yourself to excel, to do much more, to be great, and in the academic world it means writing, so he would write an article or two, and you satisfy two needs. If you don't write you don't get a raise; if you do write you get your name in print and, you know, the P.R. Department of the University immediately notifies the newspapers and they interview you and you get your picture in the paper, and so on and on.

And then an Assistant Dean's spot became available. Man! I was at U.S.C. but I rushed down here, because this is satisfying a need.

Does anybody know where there is a Deanship open?

I am satisfying today some of the self-satisfaction needs, self-fulfillment needs, some of the ego needs, and if it is not going to be disturbing I am also going back to the old basic needs, physiological needs, because I am getting paid to do this. So you see you are never satisfied, are you?

As you satisfy a need something else comes into being and that need is satisfied at the moment and no longer is a motivater.

I feel that I should somewhat answer the question that has been posed to me and then give you the benefit of some of my concern.

The question was, "Should I tell my partner?" My answer is yes, by all means. In order to do so one must live and behave and think and act ethically, morally, and legally.

If you were to find a flaw in an instrument that you were investigating, and by using the benefit of that flaw make a few extra dollars, legally —but morally?

If you discover information that is really confidential, like, you know, I.B.M. is moving to Boulder, eight years ago, so you go out and purchase a bunch of land. Nothing wrong with that, is there? Legally correct.

If you discover an error you have made and if it is not corrected, if later on it may pose a problem to someone; should you tell your partner? I contend, and I feel, and I believe, not only should I be willing to tell my partner, but in our negotiations prior to settling on a topic, it was suggested, "Should I tell my brother?" Yes, I think I should tell not only my partner, my brother, my wife, but I think the most important thing of all and the key to the whole thing is, am I willing to tell myself tomorrow morning when I am looking at myself in the mirror while shaving? I think that is the key to the most important thing of all.

I am not concerned with ethics and morality as it is in America today, because I don't think it is that bad. And I think that most of us will agree. But to go back to old Dr. Zimmerman's little philosophy when he said, "Resources are not, they become." They were available two hundred years ago, but man and culture could not make them available economically and/or use them. So he says that in this interaction, what makes resources really available? Man serves as the catalyst, and it is for that reason that when I speak of man, man of that generation and of past generations, I use the word, the letters, capital "M," capital "A," and capital "N," because the ingenuity of man and the desire to improve his way of life, to find ways and means of making and manufacturing things that would make life easier, even work, mechanization, automation, so to speak, the primary goal in industry in doing this is an attempt to find a better way to make more products at the same cost, and at the same time to make the workers role and his life easier.

Yes, ingenious MAN has done much. We are doing things today that one would not dare even dream about a hundred years ago. And what is to happen ten years from now? I don't know. But we are getting more and more ingenious.

Industry has been willing to invest millions of dollars in better machinery, better equipment, air-conditioned buildings, piped-in music, et cetera, et cetera, to make man's life easier. And as it has, profits have gone up, wages have gone up, work has become easier, but industry has not spent much, until recent years, in an attempt to develop the biggest and best resource in the United States, and that is MAN.

MAN is America's greatest resource, providing we allow all of the ingenuity to come out of that individ-

ual, providing we allow everyone to become, and the average worker should be allowed to do so. But because of mismanagement of yesteryear it has reached the stage now where the workers, tied to the assembly line, no longer want to become and to be ingenius. They are ready to sit back in their complacency, and they demand more—more money.

In fact, my concern is, ladies and gentlemen, that work is no longer an honorable thing to do. It is still not bad, but how about this younger generation? We have fared so well in this country, we have had a good way of life, and as a result we are also attempting to make life easier for our children.

We give them everything they want. They don't have to go out and mow lawns and deliver newspapers, and so on, to buy clothing. In fact, we will give them a television set for their room so that they won't bother us while we are watching television.

Are we or are we not actually spoiling them? Are we preparing them to meet the change, the cultural change?

In your deliberations this morning someone said something about, "Yes, and it is changing rapidly," the type of work that you are doing. It will continue to change.

I contend that man and culture interacting together have done a wonderful thing for this country, but we are not preparing the younger generation to meet this change in culture.

They come out of the colleges and the universities, and those of you who live in Denver who have interviewed any of our students will tell you this is the exact fact—they don't want to work, they want your job, the Personnel Manager's job, the President's job.

I think, and I would like to think, that we could go back to the old society, but continue the new way of life. And in order to do that, we need to prepare the next generation to think and act and behave as we think and act and behave. So in concluding I have five little recommendations:

The first, let's return to the Bible as one of the best textbooks in the home.

The second, let's insist upon better education of our youngsters in the elementary and secondary school systems, and at that time let's begin to teach them something about a code of ethics or a morality or the acceptance of their responsibility.

The third, let's be sure that the training in industry and the training in the universities include a little more of the thinkings of what is right and/or what is wrong, and to you lawyers who are in this group, I am not saying that you are immoral or illegal, I am merely saying for the average lay individual, legality and morality should be working side by side, not to the exclusion of the other.

Number four, as professional people—and I have a very high regard for your profession—let's really learn the difference between what is legally right and morally or ethically wrong in business transactions.

And last, but by all means not least, in our relationship with each other and our transactions with each other, let's develop a mutual trust for each other, a mutual respect for each other, and then practice the Golden Rule.

Before I leave, don't ever think for one minute that I think we have all the answers. All we know are the problems, and we also have to admit that in spite of everything I have said here, at one time or another, because of pressures, financial pressures, because of illnesses in the family, because of many other things, that even though man has elevated himself to a substantially high level in the point of view of his community, at times man reverts to the lower level, to the animalistic stage.

I illustrate that by pointing out the cannibal chief who so badly wanted his son to become someone that he was willing to invest thousands of dollars to send him to the United States to learn a new culture. So he sent him to the University of Colorado to get a degree.

The first year or year and a half was rather difficult because there was a change that was forthcoming. He had to adjust.

But by the end of the fourth year he had really learned our culture, yours and mine. Besides that, he had a piece of paper eight and a half by eleven that said, "Man, you have got something there." But before going to work he decided to go back and visit the old home country, and his father and mother were so proud of him. "*My son,*" really up there in the world.

"Son, why don't you do all of the grocery purchasing for the next few days?"

So the boy went to the grocery store. You see, their culture changes almost as rapidly as ours. They have

grocery stores up there now. He wanted to purchase some brains, and he went and the butcher said, "Brains? What kind of brains?"

He said. "Human brains, of course." The butcher said, "Yes, but there is a difference," and the boy said, "Well, you will have to explain it to me," you know, being from a different culture.

He said, "Well, abstracters' brains are $4.00 a pound, doctors', M.D.'s, brains are five dollars a pound, and university professors' brains are $7.50 a pound," and the boy said, "$7.50?"

The butcher said, "Sure. Don't you know how many university professors it takes to get just one pound of brains?"

"AT LAST—AN ERRORS AND OMISSIONS POLICY"

By ARTHUR L. REPPERT

Past President, ALTA; President, Clay County Abstract Company, Liberty, Missouri

Tom, you did a real nice job earlier in the session, I think it was Sunday or something, and I was supposed to give him something to introduce me by, and I purposely forgot it. One of the reasons I forgot it was when people ask me I always tell them this kind of thing about my first starting in the abstract business.

I have been in the abstract business, I guess, for thirty-one years, starting in May, '36. But my original start in the abstract company started two years before that when I was a freshman in college and got the job of being janitor of the company. So I was janitor for two years, and all I knew about it was what I emptied in the wastebasket for them. So I started kind of from the bottom in this job.

I hope I have learned something along the line. I daily find out I haven't, however. There are continually new problems coming up every day, people calling and wanting you to do things that you have never heard of before or can't see how in the world you can do, but you end up satisfying them some way.

Errors and omissions are an interesting thing. I gave a little talk along this line at the Missouri Association meeting earlier this month, and lo and behold, the printed program misspelled "omissions," so you can see it happens everyplace. It had "o-m-m" instead of "o-m."

I don't care how much wisdom you have got or how much experience you have got to immunize yourself against the possibility of claim in an abstracter's policy. In preparing an abstract, you just can't possibly be wise enough or experienced enough to keep from having such.

Even if you were doing the total job in your own office and didn't have to employ other people who could make mistakes, I am sure that you would be making mistakes, too, once in a while, because, as my former boss who taught me the business told me, the only people that don't make mistakes are out in the cemetery. Just hope the one you make doesn't cost too much.

The errors and omissions policy that we have is the one that was promulgated by a committee of the Abstracters Section of our Land Title Association. Before that we had one policy that we could buy from Lloyds of London. I notice Mr. Keyes back here in the audience from Lloyds.

We felt that we desired to have an American carrier at that time, that perhaps we could get a little closer connection with. A committee was formed to form the Abstracters Errors and Omissions policy.

This policy then came out in about 1949. The policy at that time was strictly a policy to protect abstracters in preparing their abstracts. I will say this, from my travels around in my own state, there are as many ways to prepare them as man can imagine.

This policy, however, as I stated, was to protect errors and omissions in the preparing of abstracts from indices that you made, the taking off the record, and this was meant that

you would be protected if you made a mistake in the actual typing of the bulky abstract, as we call them.

I, in my county, had one of the most backward abstracters in Missouri, I found out. We use an eight and a half by fourteen sheet of paper. We copy the deed practically in full. We rearrange it a little bit, that is about all.

I was attending a regional meeting in our state and someone that puts out a three and a half by eight, vest pocket edition, said that she was sure that anybody was just crazy that put out this big, bulky thing. So I informed her that I was glad that I knew where I was now in putting this out.

This abstracter's liability policy was to protect the abstracter against his errors of that bulky thing, and the main part of the policy, the main thing that protects you, is the phraseology of the policy, which says, "To pay on behalf of the insured all sums which the insured shall become obligated to pay by reason of liability imposed upon him by law."

This is very, very important, if you realize that the policy that you have now and the policy that we will eventually have, I am sure, will protect you only for things you are legally liable to pay for.

Because of this, so many fellows have taken out the policy thinking it is going to protect them against all accidents, such as I heard this morning. I think I was talking to Summerson down here, and he was writing a liability policy for a young couple who were getting married. They were going on to school. He was going to medical school. The boy said, "Now, does this protect me against all accidents?" Summerson said, "Well, I think there might be one that it wouldn't protect you against."

But this policy that we have protects us against all legal obligations. It does not protect you against anything morally that you feel that you made a mistake and you owe the fellow, even though you are not legally liable for. It does not protect you if the statute of limitations in your state has run and you are therefore no longer legally liable.

This happened in the State of Missouri recently. The case went to the Supreme Court. The fellow had prepared an abstract, had addressed his certificate attached to the end of the abstract, to a party. The abstract then wasn't continued, each time it was transferred for two or three more times. It was later found that some restrictions were left out of the abstract. The fellow sued the abstracter and they went to court.

The statute of limitations had not run but the Court said that the plaintiff in the case had no privity of contract with the abstracter, because the abstract hadn't been continued each time. His privity of contract was with the party to whom he had made the abstract some three or four owners back, and the abstracter was not obligated to pay, and the insurance company was not obligated to pay.

You might feel sorry when you have injured a person, but you have got to come to the realization that you can not be just a good Joe all the time in your business. If you want to, then don't take the policy out and start building up reserves of some kind, which in your business you will pay income tax on, even though you have reserved to build them up.

So our policy is a policy that protects us only against legal liability.

After the abstracter's original policy was put out, some seven or eight years later it was discovered that quite a few people, as we have found here this morning, are agents of the title insurance companies, and were not preparing the complete typed abstract that we are preparing—notes, memoranda, photographic takeoffs of deeds and such as this—and that to protect those people, the policy is changed to allow the new words in the policy concerning the notes and memoranda from such as that. This is still talking strictly about the abstracter's policy, and this protects an abstracter against his errors of omission.

Then about ten years after the first policy was issued, it was discovered there were errors being made by an agent who was an abstracter in preparing the binder that was given to the customer before he wrote the policy. He put down in the binder some information or some exception, or objection, and the deal got closed. Maybe it was a deed of trust that was missed, maybe it was a restriction that was missed, or some other thing, and because of that there was a loss to the title insurance company.

This policy then will protect that person if he makes a mistake in preparing a binder or complying with instructions as set out in his contract or promulgated by the company who he is writing for.

It will protect him if a girl misses

a deed of trust, or makes an exception in putting them in the policy. This policy is entirely different from the policy which is the abstracter's policy.

After we got these policies in, as I say, about '59, in the last few years there has been some rumbling. It came out two years ago at the convention that the rates were up, as far as the abstract policy and the title insurance agent policy, and after a discussion in the meeting here it was felt that a committee should be appointed to check into the matter of policies.

We had to see if they could be changed, find out about the rates of these policies. This is what the committee has been working on for two and a half years now, or three. I guess this is the third year.

George Harbert was the chairman for the first two years and then I was on the committee with Clem Silvers and Jim Hickman, and somebody else it seems like. I forget who it was right now.

We prepared, and it was disbursed to the people at the last convention in Miami, Florida, a form of policy which we had thought would cover the situations as we had found them up to that time.

We submitted this policy to St. Paul and to Lloyds of London and received back from each one of them a new proposed policy which did not cover entirely the points that we desired.

Then this past year Tom asked me if I would continue on as chairman of this section of the committee since George had sold his business and is not actively in the abstract business any more, nor an agent.

To bring to some of you who perhaps were not in Miami—and I am sure some of you will have forgotten some of the things—we made some investigations in that committee, and George did a tremendous amount of sending out of letters or preparing questionnaires, and getting them, and then going through and finding out what they had to say.

On the circular that was about the errors and omissions policy that the people were carrying at that time, from about four hundred returns the reports showed there were very little losses.

At this point we got from St. Paul a list of the previous four years, '62 through '65, showing the amount of losses that had actually been paid out by them.

It was interesting to me and to the committee in general that the losses over that four-year period amounted to 62.3 percent of the premiums paid. This is a little higher than the average yearly had been, because one year the St. Paul had a 118 percent loss. The first year, '62, there was a thirty-five percent loss ratio; '63, forty-two percent, and '65, forty-nine percent loss ratio, so that we are losing money for the insurance companies but we are also not losing entirely for them.

It is a money-making proposition for the insurance company, the amount of premium we pay. We paid a total, in the five years in premiums, of $516,000. We had losses of $321,000. It is interesting to me in talking with people that I rarely run across anybody who has had a loss. These losses must all come from people who I don't have a chance to associate with.

The committee, on using the St. Paul policy, attempted to change some things. And at this point if any of you think of anything you would like to ask at the end, or any questions about the policy, jot them down, we will go over that again.

We changed one matter in the policy which was passed out last year, and much to my sorrow and George's and everybody else, I have had nobody correspond with me, or I don't believe George has, concerning the policy. I just wondered, George, if anybody read it after we gave it to them last year.

I am sure it could be helpful if we could get a little more help from the people, but one of the matters we changed in the policy, as you will remember, if you do remember, is based upon the number of employees you have, the people who could make mistakes, and the premiums you pay are based upon that amount. However, some of the companies we found were buying some of their information, some tax information, some Federal judgment information, from another party, another title company, or something like that, from an adjoining county, perhaps, if they needed that kind of information. We have changed the policy to include employees of other people who do work for you that you pay them for.

We also felt that from our study the minimum deductible on the policy should be a minimum of $500. We feel that if we can keep the minimum down, and you pay the first $500 of any loss, it will require a lot of the in-

surers to cease having to pay little nickel and dime claims, as they are referred to. That is because it takes almost as much bother and trouble to pay a small claim as it does the larger claims.

Another item we have proposed is the matter which requires you to advise the company in case of any claim you have. I doubt very seriously if many of you realize that the policy you now have—if you have a claim of five dollars or a hundred dollars and you have got a deductible of five hundred dollars, and if you had a claim and paid it off yourself—you are in dereliction of your duty as a holder of the policy if you don't notify the company of that. Of course this would be one thing, if they afterwards found out you had had a lot of small claims and hadn't reported to them. This would give them a very good out to cancel you. We feel that it isn't fair that we have to report all claims to these people.

Another matter that we added was that the company, the insuring company, could not settle any claim in excess of the limit of the policy. This could get to be very dangerous on our part. They agree to a settlement of a claim larger than the amount of your insurance, and then you would have to dig up the rest.

And under No. 6, subrogation, we added that in the event the policy contains a deductible amount, such right of subrogation shall only extend to the amount in excess of the deductible amount.

As I have stated, we have submitted these policies, and we got another policy back from both of them. We since then have heard from people of other changes that we might desire in the policy, some other ideas as to the policy. We haven't resubmitted our policies to the companies, but we probably will do that within the next year.

Some interesting things came out of this questionnaire that George reported on, and I thought they would be worth reporting again so that you could hear them. They were not published in the Journal that came out last June.

Another survey showed that ninety-three percent of those to whom the questionnaire was sent carried some form of errors and omissions policy; fifteen percent claimed no losses; sixteen percent estimated losses of less than $2,000. This is in the lifetime of their policy.

Twenty-two percent estimated losses of less than five dollars; sixteen percent, between $500 and $1,000; and thirty-one percent in excess of $1,000. Forty-five percent had no deductible clause; twenty-two percent, $100; ten percent, $500; and one company carried over $1,000 deductible.

We feel this is a very, very important thing in the rate structure of our policy as to how much the deductible is going to be. We feel that if we can get the deductibility up to a minimum of $500, and that they wouldn't write policies of less deductibility than that, that we probably might be able to get our rates down somewhat.

I was interested, in going over the reports to make these remarks, that my State of Missouri carries the highest amount of errors and omissions policy amounts of any state in the Union.

The primary policy runs between the brackets of $25,000 and $40,000, and a few up to $50,000, and seventy-five percent of those reporting carried the above amount.

Another interesting fact is that sixty-eight percent of the policies are now written by the St. Paul and twenty-seven percent by Lloyds. I am sure Mr. Keyes wishes it were reversed.

We also had information from this questionnaire that the biggest loss comes from taxes missed, and the second from liens and judgments missed, which are primarily things that do not come from our posting of our index books. They come from perhaps having to check somebody else's record and they have made a mistake and posted the taxes paid or something like that, or descriptions were so vague that you thought you were getting the right one and you got the wrong one.

Another interesting matter was that only ten out of the six hundred people that returned the questionnaire indicated they were unhappy with the policy. This made me wonder whether we actually do need a new policy or not, if the people are not unhappy with it. Only three companies out of the six hundred indicated they had been canceled by a carrier.

I think in the errors and omissions policy, one thing that we need to work on before we see if we can't get it done, came to light from discussion with a few other people, in the angle of the situation where a loss was had on an abstracter's policy from the

notes being incorrect or the posting of the indices was incorrect, something like that was incorrect. But a policy of title insurance was later issued from those notes and paraphernalia, the mistake or the error being in the preparation of the evidence to give to the attorney who would examine it and write the policy.

I am trying to get across to you that we are talking about the abstracter's policy and not the title insurance agent's policy. If that loss comes to light, the companies will tell you that you haven't had any loss under an abstracter's error and omission policy, that the title insurance company is primarily liable for that. So after they have paid off and settled with the people, and they do make a demand on you for the loss, "then we will discuss the matter with you."

To me, this is a thing that is just almost foolish, but I do realize from talking with the liability people, on all types of liability, it apparently is the idea of liability policies that you are supposed to only pay off the least amount you can possibly pay off, even though you admit there was a mistake and that is the reason you bought the policy.

You are always supposed to attempt to beat down the claimant in trying to settle with him for less than his losses.

To me, we should be able to work out some type of policy with the people, St. Paul or Lloyds, whoever it is, that if there is a loss with an abstracter's error and the policy was issued, that at least some provision would be made for joint settlement of the claim by the title insurance company and the liability people. If they can't get together on how much to pay, the liability company doesn't feel it should pay that much on the loss, and the title company doesn't want to pay the loss, we could work out some provisions for arbitration or something like this. But I think it is very understandable and it is very true that with title insurance people I have heard of very few where they have tried to dicker.

You have either made a mistake or you haven't made a mistake, and if you have made one, you have insured the wrong party or you left off some taxes or you missed something and insured the wrong party. Why, you have made a mistake, and title insurance companies work as fast as they can to keep people happy and settled and pay the full amount of the loss that is necessary to pay. This, much to my surprise, is not the way the liability companies do.

It is my hope that we can work with the large life insurance underwriters, find out what their problems are, where the losses are coming from, so we can work out something in our policy that will help them with their problems with their agents.

I have had indication from talking with a couple of liability companies that they would like to write the policies, but they don't feel that the title insurance companies will ever sue or ever fully demand from their abstracter his losses. If we can get this done, I think we will have a better policy, too.

In closing these remarks, I want to bring up one other matter, which I think is very, very important, and perhaps in a few years will have to become a committee action. That is to write some type of policy on infidelity or dishonesty on the part of agents. These are becoming more of a problem to title insurers throughout the United States because of the infidelity or plain dishonesty of some of their agents in not properly disbursing funds.

I never heard of any of them that actually ran away with the funds, but they sure have used a lot of funds and then come up short and unable to pay their escrow funds to the people. This is a thing that we, as abstracters and agents, the title insurance companies, are going to have to start doing in order to protect us. The most honest ones are going to have to start watching, because the insurance companies are paying off entirely too many losses on infidelity on the part of their agents. I don't care whether it is an agent who belongs to this Association or not, there is entirely too much being paid along this line.

The committee that is presently working on this problem will hope to be able to have something more before this time next year, and I feel that we will at least have a new individual policy. Perhaps if we can't have all that we would like, we will have something worked out with the insurance companies between now and then so that we can change some of these things.

I do, however, feel there are a lot of things that we have never even thought of ourselves that you folks have thought of, but you won't tell us about them. At the meetings we have had, a few people stood up and told

us in generalities some things, but nothing specific.

If you do have a problem with your policy, if you don't like some portions of the policy, if you have got something that has come to your mind, if you don't want to stand up and talk in the group, write to one of us or catch us and tell us what your problem has been with the policy, and maybe we can get a correction, if possible.

I would like to close, then, with some questions if anybody has them, or if you can tell us some problem that you have had.

A MEMBER: I have a problem in knowing just exactly what coverage is available. Our insurance agents apparently do not know what coverage is available. I heard one abstracter saying the other day that he was able to get a rider on his policy, or he heard that he would be able to get a rider on his policy, protecting him against the fact that he had not referred a legal question to a lawyer when he should have.

Can you give us some information as to what coverage is available and how our insurance agents can get in touch with the people that are selling the insurance?

MR. REPPERT: At the present time St. Paul Mercury, through their agent, and Lloyds, through their agents in the United States, we do know that we have policies that will protect you.

I have been talking primarily of the abstracters' errors and omissions policy, the title insurance errors and omissions policy. Policies can be purchased by lawyers in making mistakes in rendering of their opinions, in failing to tell you something that you should put in the title binder that you are writing.

I understand that Lloyds and St. Paul are both writing some type of escrow agents insurance in certain places.

A MEMBER: St. Paul does write that other coverage that you are speaking of. If you are doing your own examining and not referring it to a lawyer, they do have that additional coverage, too.

A MEMBER: Has any investigation been made or considered by your committee on discussing with the carriers insurance rating on an area basis? I happen to be from a state where the loss rato is about five percent rather than sixty-two percent. I don't know about Missouri. But from your survey, has it shown that these losses, the higher loss ratios, are in certain areas more than other areas?

In other words, other types of liability insurance, casualty insurance, automobile, that we are all acquainted with, are rated on a territorial basis.

This is a question that should be considered. I would feel it should.

MR. REPPERT: Nobody has ever heard of such as that, have they? I think that is a good idea.

A MEMBER: We did run a survey in our own state. We have a particular gripe. After paying premiums for many years without any claim to St. Paul, we put in a rather major claim, around $5,000, and St. Paul fought it all the way. The case was lost, they paid their claim, and immediately canceled our policy.

Then you go to Lloyds, and Lloyds says, "Well, since you have been canceled out by St. Paul, we can only offer you the $1,000 deductible."

I think on a company of this nature, with a one-claim ratio there, and canceling out, something should be done about that matter.

MR. REPPERT: I am sure it is a personal matter, but can I ask you this question: Was this the first claim you had ever had?

A MEMBER: It was about the third, but it was the first major claim over one hundred dollars. It was the first major claim, as such.

MR. REPPERT: Had you had some claims which you had paid off yourself which you had not allowed them to know about?

A MEMBER: No. Actually, we have got a pretty tight shop and it was the first major claim, as such. We checked, of course. When you go to Lloyds the first thing they ask you is, "Have you been canceled out?"

"Yes, we have." And then of course they come right back to you, "Well, all we have to offer you is the $1,000 deductible."

MR. REPPERT: Were the rates comparable with the St. Paul policy?

A MEMBER: No, the rates were considerably higher, and I am sure there are other agents in the New Mexico area, where some of your titles are rough, I'll admit, and the matters of posting and plants in some areas could be a matter of insurability there, but because of this our area and our state association has looked into the matter.

In fact—it wasn't this year's convention but last year's convention—St. Paul was supposed to have had a man at the state convention and he

canceled out at the last minute, stating that he felt the New Mexico convention wasn't large enough to demand his time at the convention.

I report this as a director at large.

MR. REPPERT: Some other remarks?

MR. H. G. RUEMMELLE (Grand Forks, North Dakota): Has the committee been able to interest any other underwriter in this policy?

MR. REPPERT: Yes, we have. We have tried to interest five other ones, but have gotten no place with them.

George, while he was chairman, had a gentleman trying to find an underwriter and this fellow couldn't find anybody that was interested.

MR. PAUL HUCHTON (El Paso, Texas): Just an observation: The report that you made with respect to losses as compared to premiums would indicate to me that St. Paul's experience is such as to induce them to determine that the title underwriting business is not so hazardous.

I am surprised that they so quickly terminated a policy in light of a loss or two.

MR. REPPERT: I am sure they have canceled people. The report we got from St. Paul themselves, though —I would have to check my notes— was that there had been only three cancelations by them. I can't remember whether it was the past year or the past two or three years, or something like that. This is what they say.

Will anybody admit they have been canceled besides the gentleman from New Mexico?

MR. ROBERT J. JAY (Port Huron, Michigan): Yes.

A MEMBER: One other question: Their plan is still to write the basic policy as the abstracter's protection, and then to this add the riders that are desirable on the part of the insured?

I know down in our country—the one gentleman mentioned, over here, about examination of title—it is a common saying, a common description of that rider, down in our country is that we call it the fifteen dollar law degree.

A MEMBER: You have indicated to us that there is a profit in this business. I don't know whether it is possible or not, but why couldn't our association get into this business and buy reinsurance until such time as we are big enough to eliminate the reinsurance?

MR. REPPERT: I will attempt to give some explanation, and then if George wants to he can elaborate, and I will be glad to have him.

We investigated something of this kind. We find that it would have to be almost statewide instead of nationwide, because of state regulations in the insurance business.

I doubt very seriously if we have got enough people that would buy our policy, and we would almost have to make it compulsory if we did, and then we have wondered about whether people would have to drop out of the Association if they also had to buy an insurance policy from us.

We could very easily, the first year, just wreck ourselves and not be able to pay because the premiums wouldn't be great enough until we had built up a tremendous backlog.

I don't know but what St. Paul has its problems, but it could have turned out that you could have, the first two or three years, had an awful lot of losses and we wouldn't be able to pay claims, and then people would hear about that and they would drop out from our group.

I just don't believe we have got enough people to pay the overhead, to run the thing, to write our own policy, because when you talk about somebody underwriting us or paying the excess you are talking primarily about large amounts, and the claims, as I have found them, have been such as the gentleman from New Mexico says, a five thousand dollar claim. To get somebody to pay over a thousand dollars or two thousand dollars they might as well be right in the business themselves.

George, can you give some more explanation?

MR. GEORGE E. HARBERT (Rock Island, Illinois): Arthur, I think everything you said is correct.

We had one more problem, and I think you men will recognize this one. How do we set up machinery to determine when we do pay and when we don't pay? The job of so many of us, when we are facing a claim, is that we analyze it from two standpoints: Are we legally liable to pay it, and secondly, what happens if we don't pay it and lose a customer's account. To get in that borderline, the Association would have to set up some kind of a group to investigate the claims. And every time they turned a man down, I think they would lose a member. So we felt that it would be better to stay out of it than to possibly have at one of these convention meetings a forum by the man who says, "Well, I have a claim

and the committee turned me down; now let's get a new committee." It just seemed like it was a runaround and we couldn't figure the answer.

If you are smart enough to figure the answers I think it would be a good venture.

MR. RONALD GOLDSAND (New York, N.Y.): I don't know about the profit. You mention there was a $500,000 premium and $300,000 paid out. Did St. Paul tell you how much profit they made? It wouldn't seem there is much profit involved in that at all. With the cost of defending actions all over the country, $200,000 doesn't seem to be much.

MR. REPPERT: It doesn't seem to be much at all, and we don't know whether this included administrative expense and such as that.

A MEMBER: We had one of the gentlemen from St. Paul come to our state convention. If any of the rest of you are thinking that it might be nice to ask someone from St. Paul to come down, I think it is a waste of time.

The fellow that showed up had a prepared speech and he wouldn't vary one word from it. He dodged every question, and he said he wasn't prepared to answer things of that nature.

They don't have people that work enough in this area so that they can send anybody out with any ability to answer questions. I really felt that we would have been better off not having him, because he didn't tell us anything in his prepared speech and he wouldn't do anything pertinent in the line of answering questions.

I had correspondence with them on trying to pin them down on three or four things, and it took about half a year. Finally, they wouldn't answer my letters, they would just write on my letter "Yes," or "No," and put an initial on it.

They are trying to dodge a lot of things.

A MEMBER: Their claims adjuster sure can answer questions, though.

A MEMBER: The answers are all "No."

MR. REPPERT: The first time I had a claim was this past year, and the claims man that came out to talk to me about it just knew nothing about my business or the abstract business, I could tell. I am sure he must have been a good claims adjuster for St. Paul on some angle, so I called him in when I first noticed the mistake, and of course he wasn't interested in paying at all until the title insurance company had paid and they made a demand on me.

When that happened I wrote direct to the main office up in St. Paul and just told them that I would settle it some way with them by correspondence or some claims adjuster in the area that had some idea as to the problems of an abstracter, and that I wasn't interested at all in talking to the man that first came to see me. They did send another man out and he saw that there had been a mistake made, and then they argued with the title insurance company as to how much they were to pay.

MR. FRANK T. SUMMERSON (Hoxie, Kansas): One question I have: Is the policy the same whether you are in Nebraska, Missouri, or Kansas, with the same amount deductible, and so forth?

MR. REPPERT: To my knowledge, yes. I think I have taken up enough time. Thank you very much, and we will continue, but if you have any questions, any remarks, or any thoughts, if you would find the policy we gave you a year ago and go over it and see what it does say, and let us know. If we can't get anything from the section members it is hard to know how you want the policy changed. Thank you very much.

"THE GROWING INFLUENCE OF TITLE SCHOOLS"

By GEORGE HARBERT

Past President and Honorary Member, ALTA, Rock Island, Illinois

Gentlemen, the first thing I think I should comment on is the difficulty of staying off my feet and remembering that you are not interested in hearing too much from a person who used to be in the business. I do think you missed a great bet this morning. You had a chance to change your name so that it could be initialed very interestingly. You could have called yourself the Abstracters and Agents. On your door you could put AAA. They wouldn't know whether you were selling automobile insurance or what. Or maybe if you just put AA they would have thought you represented Alcoholics Anonymous, so by sticking in these words "Title Insurance," I don't see what you fellows can do about A.T.I.A. That doesn't spell anything. So I think when you consider a new name you should think of how the letters look.

Gentlemen, seriously, it is a pleasure to come before this group to talk about a subject which has been very dear to my heart. I wish I could feel that this report that I am bringing to you is a complete one; however, I am forced to admit that it fails to qualify for this description. We have reports from twenty-seven states, which means that we have no reports from twenty-three states.

Included in these twenty-three states are several states which I believe have conducted a school, and I am wondering whether some program of abstract education has not been carried on in many others. Of the reporting states, fifteen are presently conducting schools and twelve are not presently conducting schools and have made no plans for future programs.

In addition to the incompleteness of this report, I am well aware that I am only a pinchhitter. Frances Alfstrand of Illinois originated this group study and knows much more about the background of it than I do. Unfortunately, she also has sold her interest in the abstract business of which she was a partner, and now is on the staff of Illinois Wesleyan as a professor and could not take the time to attend this convention.

After giving you the dark side of the picture, and my anxieties because of the incompleteness of my report, and of the difficulty of following such a talented chairman, I do want to point out to you the bright spot which I encountered. The hard working sections of the different states came up with a great mass of fine material, and to them and to Jim Robinson I extend my thanks for their splendid cooperation.

It would make this report unduly long to try to outline in detail the activities of the reporting states. I will, however, summarize the information which I have received so that perhaps you may gain some knowledge of the national program and may carry back to your states some ideas as to the part which your state can play in it.

The following states reported to me that they are conducting an educational program:

California, Colorado, Florida, Illinois, Iowa, Indiana, Kansas, Michigan, Missouri, Nebraska, New Jersey, Ohio, Oregon, Pennsylvania, and Texas.

If your state is not on that list and if you are conducting an educational program, you should make the headquarters aware of it. If you are not conducting any kind of a program perhaps you should give it some consideration.

There seems to be many types of program which are being offered by the states. Most of the states are either now conducting short programs, or at least started with a one or two day session. Some of these states, notably Indiana, Kansas and California, divide their states into regions to make the situs of the course available to all of their members.

In almost every case, the states reported that the teaching staff was recruited principally from their own

membership. To me, this is a very healthy sign, and is certainly in line with the experience of the Illinois State Association.

We found that in our membership there were a number of well qualified persons who knew the subject and were able to teach it far better than could persons who had not had actual experience in our business.

I noted with a great deal of pleasure also that there is a new trend developing among our members. Several states are now proposing to provide a more ambitious course for educating abstracters. Oregon, for example, has provided an evening course consisting of 10 two and a half hour sections. New Jersey has a 16 session course of two hours each, and Texas, through the efforts of our good member, Mr. Bruno Holm, of Texarkana, Texas, has arranged with the college to provide an accredited course during the 1967-1968 academic year. The course will be presented at Northwood Institute of Texas in cooperation with the Texas Land Title Association.

According to their brochure, the course will be a two-year course and will lead to an associate degree. It will be a college level course, and twenty-five percent of the courses offered will be specialized land title courses.

To assist in the preparation of the curriculum, the Texas Land Title Association created a committee consisting of Wiley Alliston, of the Stewart Title Company of Dallas, Alex Halff, Alamo Title Company, San Antonio, and Jimmy Pigman, President of the Dalhart Abstract Company of Dallas. With help such as this I am sure the specialized land courses will be excellently arranged.

The college also states that they will offer the same course on their other campuses, which are located at West Baden, Indiana, and Midland, Michigan, if the initial program proves successful.

The California Title Association has, in addition to their one-way program, which is given at eight specific locations, prepared a course covering the fundamentals of the land title business. This is done in conjunction with the University of California.

It would seem to me that the course approach offers a tremendous challenge to all of us, as it would open the door to a method by which people presently employed in the title industry can increase their knowledge of the business and perhaps increase their enthusiasm for it.

Pennsylvania has sent out a questionnaire asking their members to suggest whether they have any interest in a course. If the interest develoopes, the Pennsylvania State College proposes to conduct a course, which will be a 16 week course.

The five states who are pioneering in these extended courses are to be congratulated, and I am sure their positive action in this direction will cause other states to explore the field for their jurisdiction to determine whether or not something of this character can be promoted.

The cost of the schools which have been given vary tremendously. Indiana, with a one-day school at various locations, charges only $5.00. Iowa, with a three-day school, charges $55.00, but the $55.00 dollars includes three nights lodgings, two noon meals and one evening banquet. I think the course comes free. Except for the extremes, the charges for the short courses seem to run in the neighborhood of $10 to $25.

In almost every case, the attendance has exceeded the expectation of the planners. The top figure which I have on attendance comes from Michigan, where the attendance at their school numbered 118. Other states may have topped this, but if so, they did not report on their attendance.

Many states invited the students to evaluate the course at its completion. Michigan sent to its students a questionnaire two weeks after the course. The results were most interesting. Michigan had allowed three hours to land survey, of a two-day course, and fifty-one percent of the students thought more time should have been devoted to this subject.

Nebraska, which gave a two-day course, is planning to repeat, but proposes that the subject matter to be discussed must be delivered to the registrants at least a month ahead of school in order to encourage questions and discussions from the students. I consider that very unfair to those speakers who write their speech the day before they have to give it.

The subjects vary with the different states. Most states emphasize legal descriptions, particularly metes and bounds descriptions. The most emphasis on this subject was found in the State of Iowa. In their school, two of the three days were devoted entirely to legal descriptions, and from the material forwarded to me I would say the subject was probed in depth.

Kansas, on the other hand, devoted only forty-five minutes to this subject and directed their main emphasis towards the abstracting of court proceedings and the use of indices.

Public relations, liens, particularly Federal liens, current laws and decisions, abstracter's liabilities, are subjects which are popular and appeared on most curricula.

Indiana devoted one-half of its one-day session to a discussion of employer-employee relations. One paper was logically headed, "What an employee expects of an employer," and the other, "What an employer expects of an employee." I am sure if both employers and employees were present it must have provoked an interesting debate.

Illinois directed the thrust of its school this year entirely towards management, called its course a management seminar, and discussed many subjects which were of particular interest to management, such as employer-employee relations, on-the-job training for employees, the use of various types of modern machinery, modernization of title plants, and destruction of files and records.

Missouri also had in its course many things directed towards management, including a talk on data processing. This was the only state where I noticed that particular subject.

Several states, including Colorado and New Jersey, ran parallel courses and directed one course towards management and more experienced employees, and the other toward beginners.

Some states give awards to the student upon completion of their courses. Several states, including Colorado, give a certificate. These certificates are, in effect, certificates of attendance.

Florida, however, gives a certificate which designates the person completing the course as a "Certified Land Searcher." According to their report, and according to the information which I am sure most of us have been familiar with, the certificate requires not only completion of the course but the passing of an examination showing the qualification of the applicant for the certificate.

The various state associations have recognized a need for training employees. It would seem to me that the reports thus far indicate the need for an active national committee to plan coordination and perhaps assist in the field of education.

To me, it is not enough just to report results of the efforts of the various states at a convention such as this. It would seem to be more effective if the data concerning existing school programs, plus recommendations, could be continuously supplied to the state association.

It would seem to me to be difficult to attempt to organize a national training course. While some subjects, such as Federal liens, public relations, perhaps, are adaptable to an overall program, each state must necessarily emphasize the effects of the laws and the customs of that particular state upon the abstracting profession.

For instance, the course in Ohio deals with subjects such as closing escrows and title examinations, and had very little on abstracting as we in the Midwest know it, and the course in Iowa, on the other hand, was directed entirely to land descriptions, probably because they have problems in that direction. Many states have prepared abstract manuals for the education of their abstracters. Here, too, the local approach is important.

I am sure that all of you remember that William Gill, a Past President of this Association, and a leader in the State of Oklahoma, designed a book which was distributed nationally as a manual for abstracters. Most of us read this manual and learned much from it, but we recognized that much of it was adaptable only to Oklahoma.

The inspiration of this manual, however, caused many states, including Illinois, Iowa, and Utah to prepare their own state manuals. There again may be other states who have manuals, but these have not come to my attention. In our state we have had a splendid committee for this project and were greatly educated by a manual of instructions prepared by the Chicago Title & Trust Company.

We also reviewed the other manuals of other states, particularly those which I have mentioned before. Those that we have examined are well done and reflect local abstracting requirements.

My last theme is that each state seriously consider the publication of a manual adaptable to their state. I am sure that they will gain much assistance from the original manual and from the manual subsequently put out by other states.

In conclusion, may I say that the problem of education is becoming

more acute. I need not tell you that the cost of labor is rising rapidly. Unless the productivity of the employees can be increased the rise in the cost of abstracting could well become prohibitive.

Machines are helpful, but there is no more sophisticated machine invented than the brain of an educated employee.

I conclude with the basic theory that governs the modern computer. You can not retrieve from the brain of your employee any material which has not been programmed to him.

Thank you very much.

ELECTION OF SECTION OFFICERS

By proper nomination and second, the following officers were unanimously elected to serve for 1967-1968:

Chairman THOMAS J. HOLSTEIN, LaCrosse, Wisconsin,
President, LaCrosse County Title Company
509 Main Street, P. O. Box 969, 54601

Vice Chairman LOUIS C. HICKMAN, Logan, Utah,
President, Hickman Land Title Company
112 North Main Street, 84321

Secretary JAMES J. VANCE, Fort Atkinson, Wisconsin,
Secretary & Treasurer, Jefferson County Abstract Co., Inc.
131 E. Milwaukee Street, 53549

EXECUTIVE COMMITTEE

MILDRED J. BENESH, Bismarck, North Dakota,
Manager, The North Dakota Guaranty & Title Co.
Courthouse, 58501

HARTZELL GIVENS, Taylorville, Illinois,
Owner & Manager, The Taylor Abstract Company
107 S. Washington Street, 62568

FRANCIS J. MORRATO, Albuquerque, New Mexico,
President & Title Officer, New Mexico Title Company
301 Gold Avenue, S. W., 87101

BRYAN B. PARKER, Hill City, Kansas,
President, Howland Abstract Company, Inc.
315 North Pomeroy Avenue, 67642

TITLE INSURANCE SECTION

"CAN THIS MARRIAGE BE SAVED?"

By GORDON M. BURLINGAME

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At the end of a particularly eventful day when one is finally quiet and one is left entirely alone with his thoughts, the mind's eye occasionally turns inward for a soul-searching introspective look at the very fibres which give meaning to life itself. We search for that "golden thread" of significance which we hope to find interwoven throughout the pattern of our sometimes cluttered and only fragmentarily purposeful activities.

In these moments of reflection, we seek to clarify and crystallize our personal beliefs and values. At these times, we also frequently make somewhat accurate estimates of our personal worth and success as measured against these beliefs and values. It is rare indeed when the man who leaves these quiet moments is the same man who entered, for it is here we gain our sense of perspective. It is here we lay and re-affirm the foundations upon which the remainder of our actions must, of necessity, be predicated.

Just as each intelligent individual must, from time to time, reflect upon the very underpinnings of existence in order to determine the accuracy and validity of his endeavors, so too must associations of individuals corporately engage in the painful task of formulating the balance sheet of practices measured against beliefs, to determine the Associations corporate net worth or net loss. Precisely as individuals often find their beliefs basically sound, but their activities wholly inappropriate to achieve goals logically dictated by those beliefs—associations, too, must face the fact that they, as well as individuals, frequently allow their corporate attitudes, actions and responses to be diverted from the central themes for the primary promulgation of which they purportedly exist.

Admittedly, such introspective evaluations, honestly and fairly made, are equally as essential for maintaining the corporate integrity of associations, as they are for maintaining the personal integrity of individuals. However, it must be conceded that this type of evaluation within an association is at least twice as difficult to accomplish. Initially, it must be fairly observed that while an individual can, without admission of fault to any other person, privately re-assess his own work within the confines of his own conscience, an association bent upon re-evaluation must, of necessity, assemble for the declared purpose of collectively admitting the possibility of error. This psychological barrier is not lightly surmounted.

For associations which are frequently accustomed to raising the banner and declaring openly that there is "none other so perfect", the task is especially difficult. Size alone compounds the problem for associations, in that it is difficult to fit such "dead time" activity into the schedules of many busy men, and, perhaps more importantly, it is practically impossible to bring a large group to the realization, at any one given point in time, that such an evaluation is either necessary or desirable. Inertia, however, is probably the greatest of all deterrents. Tradition, irrespective of its reconcilability with stated concepts of belief, determines actions in most associations which have endured for any appreciable length of time. Following tradition is always simpler than wrestling with any problem at its conceptual origin, and the result of dealing in matters in the traditional way, albeit imperfect, can be reasonably calculated on the basis of experience, a factor not lightly to be regarded, in the face of the uncertainty of new, different and independent judgments.

Notwithstanding the difficulty inherent in the undertaking, it is my firm belief that the time has come for our industry to begin just such a study to determine the validity of our present activities, priorities and values. Lest my motive be misunderstood, let me state at the outset that I am not a Conservative Romanticist, again raising the time-worn cry, "If we could only return to the good old days." My observations persuade me that we, as a collective industry, have been for many years more concerned with maintaining the structure and image of our institution, its size, financial strength, acceptability, geographical diffusion, conformity to similar contemporary institutions, than we have with the inculcation, cultivation and practice of the concepts and philosophies which have served the only valid basis for our existence. Insofar as my observations and conclusions are accurate, it is my dedicated position that we have made ourselves suspect by those who would compare our stated theoretical reasons for existence and historical origins, with our contemporary practices expressed in our day to day operational policies, attitudes, goals and activities.

I wish to emphasize that I do not urge this assessment of beliefs and alteration of practices merely in order to resolve any logical inconsistencies which might, and unquestionably do, exist. It would be far easier to amend our statement of beliefs, if this were the only aim. My thesis is that such activity can and will result inevitably in the development of an industry entirely above reproach. Perhaps there are those who think that this thesis is far too Utopian to have validity.

The purpose of our marriage is

service to the public, the advancement of the title evidencing profession, and the promotion of security of ownership of real property. We are part of a "combination" of specialists, each in his own way performing some vital task in the challenging and wonderful job of building a greater America.

But then, why shouldn't there be a community of interest between abstracters and title insurance underwriters—the two components of our National Association? To promote "security of ownership," the title insurance underwriter must be sure the insurance is based upon a complete and precise abstract. May I gently remind you that it is not the title insurance members of American Land Title Association who claim the abstracters are engaged in an unlawful practice of law. For an insurer to criticize an abstracter is as foolish as an abstracter sniping at an insurer. We are all in this business together.

May I assure you that the problems which confront the title profession are a matter of great concern to the officers and staff of American Land Title Association, and that everything possible is being done to settle these problems. For the first time, we have taken the offensive. For years, the title insurance industry has been the target of villification by every uninformed or prejudiced editor who was prompted to write an article on home buying or title evidencing. Now we have taken a positive approach, and the results are extremely gratifying.

So much confusion, misinformation and lack of information characterizes the average citizen's concept of the nature and value of services performed by titlemen; in fact, so much mystery surrounds the real estate buying and selling process that public education and the projection of a realistic "professional image" looms as our immediate task, second in importance only to the ever-present challenge of improving title services to lenders and purchasers of land.

As I have said, titlemen assist mankind to fulfill a basic human desire—the secure ownership of real estate. In the finest tradition of free enterprise, they risk invested capital and their own energies and talents in the pursuit of this goal. Their contribution to the economic stability and welfare of the communities they serve and of the nation, is significant. Yet the "man in the street" is only vaguely aware that such a profession exists.

For too many years, title insurance officers in this country have hidden their lights under a bushel. Our industry is a vital one to the American economy—one that assists our citizens in fulfilling a basic human desire, the ownership of real estate. We encounter all the hazards of invested capital, keen competition, fluctuating markets, specialized employee training and confiscatory taxation. We maintain privately owned title plants; we work closely with lawyers, real estate brokers, home builders and private and public lending institution officers in the gigantic and wonderful task of building a stronger and better America. Yet it is with something approaching apology that we attempt to explain our services and charges.

We are shy for two reasons. The first is our failure to recognize that collectively we are no longer small business. Many of us with small and medium sized companies think of ourselves as completely local in character. We tend to compare ourselves with the giants of the industrial world and find ourselves on the wrong end of the telescope. But just think! As an industry, we can boast of five hundred million of invested capital and assets, and forty-two thousand employees, with an annual conservative estimate of two hundred eighty million in salaries. The time has come for an awareness of our contribution to the American way of life.

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

I am reminded of the story of the candy maker whose candy was the best to be had, but whose price was so low that no one supposed the candy could compare with other priced much higher. The business came under the observation of a man of modern ideas of advertising and selling methods. He purchased control and immediately proceeded to price the candy higher than any other on the market, and advertised extensively. Because everybody thought this outrageously priced candy must be the best, he outsold most of his competitors, and made a flourishing business out of one which had always

been a struggling enterprise. All this, without any change in the quality of the goods he was selling.

The business of title evidencing is a good business, and I mean that in two senses; basically good in the moral sense, because it gives the owner, the lender and the state pretty much what each wants—assurance; and I have heard substantiated rumors (if such can be), that it is a lucrative business, for those who practice it well. I sincerely hope the rumor is well founded, for I believe good service deserves reward.

Now the point I am making at this time, is that to keep the title evidencing business good—both morally and economically, we ought to make scrupulous compliance with regulatory standards the first rule of operation. It is good ethics, and it is good business, and I think the only kind of departure anyone engaged in this business can possibly use as a takeoff point.

I also urge you to have faith in the future. These are troubled times, indeed, but crises are not new in the history of our country nor of the world. Each generation has its trial, its challenge, its test of courage and endurance. In the face of difficult times, I suggest that we will persevere if we hold fast to the principles of Truth, Honor, Justice and Hard Work, that have made our Nation, our Profession and our National Association great. In our best interest, I urge you to continue your support of the American Land Title Association.

I am delighted to have had the opportunity of serving you, and I would like to thank the Executive Committee of the Section for its support and advice.

As this will be my last report as Chairman, may I say finally that I do believe the marriage can be saved.

"INTER-RELATIONSHIP OF MEMBERS OF THE BAR AND A TITLE INSURANCE COMPANY IN A REAL ESTATE TRANSACTION"

By J. PENNINGTON STRAUS, *ESQUIRE*

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I must say that I think that the introduction of public speakers has a tremendous resemblance to obituary notices. They both seem to be motivated by the same philosophy; that is to give the speaker in the one case and the deceased in the other a certain amount of courage to face the terrors and uncertainties ahead. I must confess I suppose that we have all as members of audiences experienced the situation where when the public speaker was finished, we wished that his introduction had been his obituary notice; and speaking of obituaries, if anything I have to contribute today will tend to formulate the obituary of the conflicts that have grown between the organized bar and the American Land Title Association, I will be well rewarded.

My purpose today is to give you a little historical background and I'll apologize initially if I'm repeating things that many of you already know. I believe that a certain amount of the history of the problem we have before us is necessary for its full understanding. The problem we are having between our respective associations is not a unique one. It has existed in many other fields of commercial activity. There was a time when banks lent money and then there came to be a time when banks assumed fiduciary and trust powers

and became corporate fiduciaries drafting wills and trust agreements and administering estates without benefit of counsel.

A conflict developed. That conflict resulted in the creation of a national conference between the American Bar Association and the American Bankers Association. Today, happily, most of those conflicts have been resolved. There was a time when life insurance was a salable article and the agents who sold it concerned themselves just with the problem of writing a policy for their customers and that alone was all of their interest.

But then about twenty years ago some more advanced thinkers in the life insurance field began to decide they did a better job for their customers if they inquired into their customer's total finanical structure and began to advise him on the preparation of his wills, deed of trust, and the total planning of his estate. And lo and behold, we have today the profession of estate planners.

This also created conflicts between the organized bar and the life insurance industry and again a national conference of life underwriters was established, and happily most of the areas of conflict there have been resolved. Similarly, with realtors and the fact that they drew papers in connection with the real estate transaction, and particularly the agreements of sale, created areas of conflict, and a national conference was made between the A.B.A. and the National Organization of Realtors. While this is not a perfect thing, yet many problems have been resolved, and I could go on repeating the situation. The same story was true of the accountants and a national conference was created.

Now you have been in existence as a national organization for sixty years, and the American Bar Association, I think, for seventy, and yet we have never had a national conference with you. And why is that? I think the reason is touched on in what Gordon Burlingame mentioned in his very thoughtful paper. Until perhaps World War II, insurance of titles was a local matter. When I came to the bar, the commonwealth title, and the land title, and two or three companies in our town at that time did most of their insurance work right in the County of Philadelphia; even in Bucks County twenty miles away they had a little business. That pattern, as you all know, has radically changed and today you gentlemen are conducting a national commercial industry of great proportions and impact on the economy. True, practices vary from state to state and from county to county within states in the operation of a real estate transaction, and the participation of the lawyers and title insurance and representatives of the real estate man. But you are involved in a national industry; you are insuring mortgage lenders who are national in scope and who are more and more requiring you to conform in treatment of the policies you issue to them. And now you are confronted with the national organization of the A.B.A. and our mutual interests and conflicts.

The day is passed when title insurance is a local industry. It's a national industry and its problems have to be met on the national level. Now the story of development of the Bar Related Funds is known, I know, to most of you, but just remember it had its origin about 1959 or 1960 when a committee of the bar formed by John Satterfield, then the President, concerned itself with the economics of the lawyer. That committee was created for the purpose of finding out why the general level of the lawyers' income wasn't keeping pace with the level of the economy. And as it pursued its studies, it came upon the fact that in many areas, lawyers who had in the past a monopoly on the real estate transactions, from the making of the abstract to the preparation of the opinion on the validity of title and the handling of the funds and settlement, were being displaced. And in many places quite entirely displaced by, frankly, a combination of commercial interests between the real estate agent and the title insuring organization.

This combination was spreading from beyond the great metropolitan areas, where it had been long established, into states and into counties where title insurance had never been heard of before and was a thing of remote interest up until that time. The lawyers of Florida, rightly or wrongly, gathered themselves together about fifteen or more years ago and formulated under a Massachusetts trust. Thus, they felt they met the competition of the commercial company; and thus, they felt they would assure that the lawyers would be in effect the monopolies in handling the real estate transaction.

You know, of course, that that fund has prospered and I'm told that last year it wrote the largest amount of title insurance in the State of Florida. I think the second was Lawyer's Title in Virginia, and in that state this idea has taken hold and obviously it has prospered.

The committee on economics in the Bar seized on this idea. Subsequently a special committee for the Bar Related Fund was created under the chairmanship of Stanley Balbach, and the parade was on the way. I think today there are fourteen or fifteen state Bar Related Funds. I believe the only Massachusetts trust form of this fund was in the State of Florida and all the other funds are business corporations duly incorporated in accordance with the insurance laws of the particular state where they operate. Some of them are directly created by the bar associations of the state and some are created, or were created, by lawyers and not directly by the bar association. Of course some of these funds, as you very well know, have not prospered as the Florida Fund did. They have been unable to attract sufficient capital to make their operations really profitable. They have, in many cases, found difficulty in re-insuring their larger risks, and so this special committee conceived the idea that if a National Bar Related Fund were created which would attract on a national basis, capital from lawyers throughout the country, there would be supplied the financial background and impetus to bolster the weak funds in those states where they were faltering, and give greater strength to the entire movement. Now when this proposition began to develop, the idea of the Bar Related Fund, it came to roost in my section of the A.B.A., the Real Property, Probate and Trust Section. I was an upcoming Vice Chairman of that section and I had to face, with other members of our council, this growing problem. Needless to say, as many of you know, it was far from any unanimity on these proposals. Many of our members were distinctly title insurance oriented lawyers who had always dealt with title insurance companies. Many were employees of title insurance companies. Much of the improvement in the law that emanated from our section, the division of real property of the total section, came from the scholarship of the lawyers who were title company lawyers. Naturally, therefore, there was a great deal of discussion. There were those lawyers, in fact, from New England who didn't want title insurance of any kind; and as you know in New England, subsequently, lawyers still handle the entire matters from abstract to settlement.

And there are large law firms in Boston and other cities which are, in fact, title plants devoting their entire practice to the real estate transaction, and whose opinions are accepted by lending organizations without insurance.

All shades of interest were reflected in our section and, frankly, this controversy threatened to tear us apart. Some of us felt that a solution had to be reached by a rapport of some kind with the A.L.T.A.; and four or five or six years ago, Ray Potter and I were delegated as the guinea pigs. I well remember that October afternoon—I think it was October—that he and I called on Joe Knapp, then your President, and a group of your officers at the Belleview Stratford where your meeting was being held that year. We were received with hospitality but, shall I say, a certain reserve and suspicion. However, what made the suspicion and made that meeting a somewhat successful one was one of those incidents that sometimes changes the history of nations. Joe Knapp turned out to be the finest composer of the martini that I have ever known. Ever since I drank Joe's martinis, I have been an inveterate gin drinker. And beginning with that somewhat happy beginning, we prospered through a number of informal meetings, and those meetings which were unofficial on both sides, finally led to a series of more important meetings at which—and I can hardly believe it when I tell you—meetings at which the A.B.A. was represented not only by the Section of Real Property Probate and Trust Law, and also by the members of the Unauthorized Practice Committee, and also by Stanley Balbach, and Hewen Lassiter. We all sat down two or three times and discussed our problems and what we finally agreed upon was that a national conference had to be created, and that was the beginning of the idea. As you can see, it took about five years to bring that to a point of even formalization in your organization and ours.

Now there were some other areas in which we of the A.B.A. felt that we could bring some light to bear on this question. We got together again,

the special committee on Lawyers' title Guarantee Funds in our section, and proposed a study of the real estate transaction and how it was handled throughout the United States, and that this study be conducted on an impartial level by competent scholars under the direction of the American Bar Foundation. Yesterday you had the privilege of hearing Professor Raushenbush tell you how he is progressing with that enterprise. I think you will all agree we are fortunate that such a capable man was found for that job. A very capable gentleman scholar who, I'm sure, will bring together finally at one place an authoritative total picture of this problem. Another area that we agreed upon in the A.B.A. to help foster the position of the lawyer in the real estate transaction was a public relations program, and I know you are all familiar with the "Home Buyer's Guide" pamphlet and similar pamphlets which have been produced by us in co-operation with that special committee. We just had wide distribution last year throughout the United States and I know I don't have to promulgate and try to propagandize to you gentlemen here the fact that a lawyer does have a part in a real estate transaction, that there are legal questions involved, and hopefully in the best interest of everybody a lawyer ought to be in the picture. We have to educate the public for that fact and we hope that as the time goes by, more and more of your companies will do as many now are doing and help advertise that idea to the public. We have been following these general programs, but the essential part of the program is the national conference. This need is the center of the whole effort and if this fails, then indeed, the whole program will fail.

Now I want to talk to you a little bit about the business of the Honolulu resolutions and I know these are very vital, and sometimes perhaps painful to you. They are rather painful to me. At Honolulu our section proposed, and it had the support of the special committee on Lawyers' Title Guarantee Funds, and the Unauthorized Practice Committee, a resolution to create the national conference. This resolution went through the Board of Governors unanimously and it went through the House of Delegates unanimously. We can say without any equivocation, that the American Bar, at every level of authority and at every shade of its variant opinion, totally supports the idea that there shall be a national conference. We are a hundred percent behind this idea. There is no equivocation on that.

At this same meeting, the special committee on Lawyers' Title Guarantee Funds had proposed a resolution for consideration. First we present the proposal to the Board of Governors, and then it goes to the House of Delegates which is the final legislative body. This special committee had proposed a resolution not only that the American Bar Association should approve in principle the creation of a National Bar Related Title Insurance Fund but further that the Lawyers' Title Guarantee Fund Committee be authorized forthwith to create such a fund and to employ in the promotion of that fund $25,000.00 of the A.B.A.'s money; that the fund be given the title of the American Bar Title Assurance, Inc.; that it be related in every respect to the American Bar Association except that it would be an independent corporate entity. That was the proposal brought by the special committee to the Board of Governors.

The Real Property and Probate Section voted against that resolution. The Section on Corporation Business and Banking Law voted against that resolution and so did the Section of Taxation. The total membership of those three largest sections of the Bar represents about a third—almost forty percent—of the total membership of the A.B.A. I was given the opportunity to appear before the Board of Governors and to express to them the view of all of us: That action on the question of the summation of a national bar related fund be deferred and tabled until the national conference had been created and had been given a full opportunity to operate and show its merit.

I am sure, and I heard later through the usual grapevines, many of the members of the Board of Governors supported that position but a small minority supporting the Balbach position prevailed to the extent that the modified resolution which you are aware of was adopted. That resolution reads—and it's significant because I want to show the procedural steps that must now be followed by the A.B.A.—(modified compromised resolution): The House of Delegates requests the committee on Lawyers' Title Guarantee Funds working in collaboration with the subcommittee of the Board of Governors to draft a

definitive plan for preparation to the Board at its October meeting.

This means in procedural parlance that, first of all, this subcommittee of the two groups, the Board of Governors and of the Lawyers' Title Guarantee Fund, must prepare a plan. That plan must pass approval of the Board of Governors. I assure you there are many members of that Board who are not enthusiastic about this idea. Finally, whatever plan that may be approved by the Board must come to the House for final limitation. This is a series of procedural steps which means that the creation of a national bar related fund is far from an accomplished fact. I do not take the temerity to tell you what the outcome will be, but I assure you that there are many effective and vocal units in the American Bar and many influential members who will speak to the Board of Governors against action on this proposal, at least until the national conference has had a few years to establish itself.

In this connection I know that it has been considered by your Executive Committee to ask leave of the Board of Governors of the A.B.A. to present a brief setting forth your views. I think presented in that way it could do no harm and might do great good. A great deal of discretion must be exerted in the choice of your counsel, of course. He must be a lawyer of stature in the national picture and he should be a lawyer who's unrelated to any side of this controversy. Finally, I want to close with a little appeal for the national conference. I hope I don't have to make an appeal.

I remind myself of the story of the two wise men who were discussing together what is life's greatest good. The first wise man said to his brother, "What in your view is the greatest good?" The second wise man thought a while and said, "In my view, the greatest good is that right should triumph." The first wise man thought about this a while and he said, "No, my brother, I disagree with you. The greatest good is that compromise should triumph because your view of the right often differs from my view of the right, and in destructive conflict there can be no triumph. Compromise is the greatest good."

I think it's a good idea for the establishment of international relations as well as for the deliberations of the national conference between your association and ours. I would like to suggest to you that in some states we are progressing along the lines that that national conference should progress. You, of course, are all aware of the situation in New York where the Declaration of Principles long ago was adopted between the Bar and the New York Title Association. We in Pennsylvania right at this moment are working on a Declaration of Principles between the Pennsylvania Land Title Association and the Pennsylvania Bar Association. That Declaration of Principles will include such considerations as the title companies agreeing to give us the drafting of all conveyancing papers except thev be requested to draw such papers by a lawyer representing one of the parties. It will include a commitment by the title companies to mark the title reports and the commitments to assure the title going to the other parties with legends advising the parties to retain individual counsel because transactions in real estate have legal significance. It will involve the setting up of a joint committee to work between the two organizations and it will also contain a provision that the Pennsylvania Bar, as such, will not create a Bar Related Fund. This has not as yet been adopted but it will be up for consideration in the House of Delegates at the winter meeting.

I merely mention this as straws in the wind. I don't believe the national conference can begin by setting up a Declaration of Principles. It can only begin by delineating the areas of conflicts and trying to find out what solutions can be met, and recognizing the fact that we hold self evident that title insurance is here to stay, bar related insurance organizations are going to be in existence and are here to stay, realtors are here to stay, certainly lawyers are here to stay, and my God we have got to get together to solve our problems in the public interest or the public is going to solve them for us. Thank you very much.

DATES TO REMEMBER—
ALTA Annual Conventions

1968 Portland, Oregon, September 29-October 2, Portland Hilton Hotel
1969 Atlantic City, New Jersey, September 28-October 1, Chalfonte-Haddon Hall
1970, New York, New York, October 4-7, Waldorf-Astoria
1971, Detroit, Michigan, October 3-6, Statler-Hilton Hotel

"THE MODERN CONCEPT OF CONDOMINIUMS"

By GERALD GROSWOLD

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The modern concept of Condominiums is in fact, the result of the sophistication of an ancient concept. Condominiums have existed since the days of the Roman Empire in various forms. However, prior to 1961, few persons in the title industry had even heard the word, "Condominium". Since that time this concept has attained substantial significance in our industry.

Condominiums first came into existence in ancient Rome. Since that time, they have continued to exist in various forms. Colorado, for instance, probably had the first Condominium in North America. Those of you who might have had the opportunity to visit Mesa Verde National Park in Southwest Colorado have had an opportunity to view this rather unusual phenomenum. In about the year 1000 the Pueblo Indians began the construction of the "cliff dwellings", which remained as their place of residence for approximately 250 years. While I doubt that the Indians living in the cliff dwellings thought of themselves as Condominium owners, this is undoubtedly what they were.

In ancient Rome, a Condominium owner was a person of prestige enjoying luxury housing. The cliff dweller was participating in a housing concept conceived of necessity and dedicated to survival. The modern Condominium owner is probably somewhere between these two extremes. One of the basic reasons for the popularity of Condominium ownership is, at least in part, due to the desire to retain the advantages of land ownership, coupled with a desire to be free of the inherent problems of individual home ownership.

The inception of the modern concept of Condominiums was undoubtedly the passage of the Housing Act of 1961, amending Title 2 of the National Housing Act by the addition of Section 234. Section 234 authorized FHA insurance on family units in multi-family structures. The original Act was amended by the Housing Act of 1964 and is now known as "Mortgage Insurance for Condominiums." It is somewhat ironical that the Legislative enactment, which gave life to the modern concept, has been the source of limited financing in the expansion which it prompted. Apparently, Section 234 has been used very little, due to the fact that its regulations are more restrictive than those imposed under conventional financing.

As a result of the impetus provided by Section 234, Condominium ownership is now providing a modern concept of real estate development, in a manner that fits logically into today's high land cost and continually rising construction and maintenance costs. Let us examine this old concept with its new innovations as to what it is, briefly how it operates, and what its impact has been and might be.

WHAT IS IT? Webster defines the word, "Condominium", as, "joint sovereignity"; "joint rule of a county or region by two or more states." Black's law dictionary defines the term as, "co-ownerships or joint ownerships." Obviously, both of these definitions fall short of a complete modern definition. For the sake of a point of beginning for our discussion we can use the definition from the Colorado Statute which says that Condominium ownership shall be deemed to consist of a separate fee simple estate in an individual air space unit of a multi-unit property, together with an undivided fee simple interest in common elements.

In a Condominium, the purchaser will acquire an undivided interest in the general common elements of the Condominium. Under the Colorado Statute, general common elements are specifically defined and include all of those items which are co-owned and are necessary to the continued existence of the complex, including the building or buildings in which the

units are located. This acquisition will usually be an equal undivided interest. Thus, if there are to be 20 units, each owner will acquire an undivided 1/20th interest in and to the general common elements. The owner will also acquire any limited common elements appurtenant to his unit. Limited common elements are defined by our Statute as those general common elements reserved for use by fewer than all of the owners of the individual air space units. A typical limited common element is a balcony, or a parking stall, or a storage area. He will also acquire, and this is the most significant distinguishing factor of Condominium ownership, the outright ownership of a cube of air space. This air space will be delineated on a plat or map recorded in the office of the Clerk and Recorder and described in the Declaration and Conveyance as being "all of the air space lying between the walls, the ceiling and the floor of a particular unit."

At this point it is probably well to distinguish Condominiums from co-operatives and other similar complexes. A co-operative is a concept of co-ownership which lacks the outright ownership of the air space upon which the Condominium depends. While there are various types of co-operatives, a typical one comes into existence when a group of persons acquire ownership of a multi-unit structure, transfer it to a corporation and then evidence their individual ownership through shares of stock. Concurrent with the acquisition of his interest, each owner is given the exclusive right to use and occupy a particular apartment.

The co-operative lacks the basic element in the Condominium—that of the outright or fee ownership of the air space encompassed within the unit. This single difference is important in several respects: If the owner does not hold a fee title, he is restricted to those few lenders who can or will finance his acquisition. A co-operative must be financed through a blanket loan, and each owner must share the risk of default by his co-owners. In addition, the owner is precluded from prepaying the amount of indebtedness attributable to his undivided interest. A co-operative normally is subject to a blanket assessment and taxation. Thus, again, the owner must share the risk of default by his co-owners.

There is another concept—that of row housing, which is similar to a Condominium in that it does allow the outright ownership of a single unit. It differs, however, in that it is limited to single-story development or multi-story structures where the upper story portions of a particular unit are immediately above the ground floor portions of the same unit. The units will be bounded on each side by party or common walls. Lying somewhere between the row housing concept and the Condominium concept is a somewhat new process of development called the Planned Unit Development. It combines features of both the Condominium and the Row Housing. The Planned Unit Development is also the end result of FHA oriented Legislation and Regulation. Planned Unit Developments combine individual site ownership with adjacent common property.

Although the expansion of the modern concept of Condominium ownership began prior to the time of the adoption of any local or state Legislation, it has been furthered throughout the United States by Legislative enactment in 49 of the 50 states. Vermont is the single state which does not have some form of Condominium Ownership Act, and it is apparently in the process of preparing a Bill to be presented to its 1968 Legislature. In an effort to evaluate this Legislation, we examined each of the Statutes. An attempt was made to categorize the Statutes, which proved to be somewhat difficult. It is possible, however, to break the Statutes down into the categories of Short and Long Statutes. For the purpose of such categorization, we used the distinguishing features in the Statutes relating to items normally contained in a Declaration. We have defined a Short Statute as being a Statute which merely provides the vehicle through which Condominium ownership may be created, without spelling out in any specific detail the provisions necessary in a Declaration which would relate to (a) the action to be taken upon the destruction or obsolescence of the unit or (b) the creation of assessments and liens for assessments either for common expenses or for reconstruction. It appears that there are six Short Statutes. These exist in the States of Arizona, California, Colorado, Nevada, South Dakota and Wyoming. The Colorado Statute, for instance, covers only one and three-fourths pages in the Statute Books and consists of five paragraphs, one of which is devoted to giving the Act

the title, "Condominium Ownership Act."

While Colorado, for instance, had Condominium development prior to the time of the adoption of its Condominium Ownership Act in April, 1963, the adoption of the Statute has simplified several basic problems. While the form of Legislation adopted in various states is quite widely varied, the Statutes generally deal with the following problems as they relate to Condominium ownership:

1. Suspension of the operation of the rule against perpetuity.

2. Suspension of the operation of the rule of unlawful restraints on alienation.

3. Many Statutes suspend the operation of the common law rule which terminates an agency relationship on death or disability of a principal which allows the irrevocable appointment of an attorney-in-fact to deal with the property upon its destruction or obsolescence.

4. Most Statutes have made provision for the separate assessment and taxation of individual Condominium units. The necessity for such taxation is important to eliminate the problem present in co-operative ownership created by defaulting co-owners and such Legislation facilitates loans from any lending institution obligated by its governing legislation or regulation to impound tax funds during the life of the loan.

HOW IT OPERATES. The thing that distinguishes the Condominium from any other structure is the way in which title is held. There are three basic documents necessary in the creation of any Condominium. These are the Declaration, the Map and the Conveyance.

The most important document in the creation of a Condominium is the Declaration. The Colorado Condominium Act defines the Declaration as an instrument "which defines the character, duration, rights, obligations and limitations of Condominium ownership." In this sense, the Declaration establishes the basic rights and obligations of the co-owners and thus establishes the basic rules under which the Condominium will function. The Declaration will have to cover at least the following items regardless of the kind of complex involved:

(a) Description of the complex: A correct legal description of the land upon which the building or buildings are located. This is necessary to impose the provisions of the Declaration upon the Condominium units included in the complex.

(b) Description of the unit: The new statute defines a Condominium unit as: " . . . An individual air space unit together with the interest in the common elements appurtenant to such Unit." There are various ways in which air space may be described. The statute contemplates the "filing for record a map properly locating Condominium Units." In a properly drawn Declaration, the unit can be described in such a manner as to avoid unreasonably long descriptions. Since the Declaration as well as the Map will be recorded in the office of the Clerk and Recorder, they may be properly incorporated by reference in the deeds conveying interest in the complex. By defining each unit with a descriptive number, identifying name, and an explicit enumeration of general and limited common elements in both the Declaration and Map, it will be possible to considerably shorten the usually long description used in Condominium conveyances. While this will considerably lengthen the Declaration, this minor inconvenience will be repaid many times in the course of selling the Condominium. Every contract, deed and deed of trust must contain a complete and accurate legal description. A little added length in the Declaration and a little added care in the Map will be repaid many times over.

(c) Description of the general common elements: If any variance from the Statute is desired, these variances should be set forth in the Declaration. The Statute defines general common elements as:

(i) The land on which a building or buildings are located;

(ii) The foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stairways, fire escapes, entrances and exits of such building or buildings;

(iii) The basements, yards, gardens, parking areas and storage spaces;

(iv) The premises for the lodging of custodians or persons in charge of the property;

(v) Installations of central services such as power, light, gas, hot and cold water, heating, refrigeration, central air conditioning and incineration;

(vi) The elevators, tanks, pumps, motors, fans, compressors, ducts and in general all apparatus and

installations existing for common use;

(vii) Such community and commercial facilities as may be provided for in the Declaration; and

(viii) All other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use.

Any further definition or different description can and must be placed in the Declaration.

A reference to the general common elements and the undivided fractional share in them which is to appertain to any named unit should be incorporated as well in the Condominium unit description referred to above.

(d) Description of limited common elements. Limited common elements are defined by the Statute:

> Those common elements designated in the Declaration as reserved for use by fewer than all the owners of the individual air space units.

Again the Declaration should anticipate convenient description of the unit. Since the appurtenant limited common elements are a necessary part of the unit they should be properly defined. In addition, the definition of the unit should include the limited common elements appurtenant to it.

(e) Provision for reciprocal easements. Since the descriptions which come into existence through the use of the Declaration and the Map contemplate locating an apartment specifically both horizontally and vertically, it is logical to provide for reciprocal easements for the encroachment of common elements into given apartment spaces and for apartment spaces into the common elements, in order to cover possible problems created as a result of slippage or shifting. The use of reciprocal easements has become an established practice in California where soil problems, earthquakes, and mud slides considerably increase the possibility of slippage. In Colorado it has not been considered as essential to the operation, but it is felt that such a provision is necessary to take care of the inability to construct exactly as depicted on the Map.

(f) The Condominium Declaration will provide for the administration or management of the Condominium complex itself. In Colorado, it has been the custom during the formative stages of a Condominium to have the developer designate a manager. Such an appointment is usually for a limited period of time. Thereafter, provision is made for the manager to be a non-profit corporation, the membership of which is made up of all of the owners. The designation of the manager, the procedure for the transfer of management, and the continued operation of the Condominium must be spelled out with particularity. With respect to such management, the following matters should be provided for.

(1) Procedure for the appointment of a representative for each unit.

(2) Procedure for the calling and holding of regular and special meetings of the owners.

(3) Detailed procedures for the giving of notice of such meetings.

(4) Procedure for the appointment and duties of the manager or management board. It is common practice in Colorado to have a management board created within the corporate structure of the management association. That board is then given the authority to hire or otherwise provide for an individual manager for the entire project.

(g) It is customary for the Declaration to make provision for the assessment and collection of common expenses. These common expenses include such things as insurance, heat, water, general maintenance and upkeep on common elements and exterior surfaces, provisions for repairs and service, and the maintenance of any appurtenant recreational facilities. The Declaration should specifically provide for the manner in which the management board or manager is to determine the amount to be collected for the common expenses. The Declaration must then go on and make provision for the assessment and collection of such assessments. It is customary to make provision for the imposition of a lien to secure the payment of such common expenses. The existence of such lien is of course for the benefit of co-owners in the project. The manner in which the lien is established, its relative priority and its record evidence is of significant importance to all who may deal with the project. It is customary in Colorado to provide that the lien arises upon the date of the default in payment of the common expenses. Provision is customarily made for the giving of notice of the existence of such a lien. The lien here is custom-

arily made subordinate, by the Declaration, to any first mortgage or deed of trust and to the general property taxes. Provision is also made for the method of foreclosure of such a lien. Since in Colorado we have the Public Trustee concept and since the foreclosure of such a lien cannot be accomplished through the office of the Public Trustee it is customary here to provide that such a lien may be foreclosed in like manner as a mortgage.

(h) The Declaration will normally spell out in detail the relative rights and obligations of the owners of units in the event of partial or total destruction of the improvements and will make provisions for the application of insurance proceeds.

(i) The Declaration should contain provisions for: Insurance covering both the common area and all units and should include the following:

(1) Issuance of a blanket policy with endorsements for the individual owners' interests. Loss payable clause endorsements will also be necessary.

(2) Provisions for the continued retention of the insurance coverage in the event of unit owners failing to pay the assessed monthly payments for the purpose of renewals.

(3) Provision for the handling of the possible diversified interests of the various owners and mortgagees with respect to insurance proceeds.

Because of the flexibility of the Condominium concept, it is possible that certain unit owners will acquire their interests free and clear while other interests will be encumbered.

Provision must necessarily be made in the Declaration to allow the handling of these various diversified interests.

(4) Provision for the supervision and administration of insurance and insurance proceeds by the manager.

Because of the many diversified interests of the various parties involved with respect to the insurance and insurance proceeds, it is necessary to provide in the Declaration for authority in the manager of board of managers to supervise the payment of premiums and renewal of insurance.

In Addition, in the event of loss, the manager should be used for the purpose of the proper expenditure and distribution of insurance proceeds.

(5) Provision for unit owners to carry additional insurance protection. The Declaration should be prepared in such a manner as to allow or at least to not effectively preclude the unit owner from obtaining such additional protection as he may desire with respect to his own property not used in connection with the unit or in common with others.

(j) Provision restricting partition by Condominium units.

(k) Provision restricting the use to which a Condominium unit may be put.

(l) Provision for the procedure for the determination as to whether or not the building shall be reconstructed in the event of total or partial destruction.

(1) Provision for the application of insurance proceeds.

(2) Provisions for determinations with respect to obsolescence.

(3) Provisions for special assessments.

(m) Provision for first right of refusal in the event of intended sale or lease of Condominium unit and record evidence thereof.

(n) Provision for amendment of the Declaration.

The concept of Condominium is a concept of both horizontal and vertical subdividing of property. The document accomplishing this unusual type of subdividing is referred to as a "Map" in our Statute. The Map is drawn with an eye to subdividing vertically so that the upper and lower boundaries of the air space conveyed can be specifically located. It is, of course, necessary to describe a Condominium unit with the same certainty as is required for any adequate legal description. There are various ways in which this can be accomplished.

The method which has been used principally in Colorado contemplates the horizontal location of the building in relation to the boundaries of the land. In addition, building plans are used which delineate horizontally each apartment with respect to its location within the building, the distinctive number of the apartment and identifying and locating perimeter and bearing walls as common elements. In addition, the upper and lower elevations of the Condominium unit are set forth in a datum plane.

The Map in whatever form, should identify each component part of the unit, so as to be susceptible of later

description. The basic unit is, of course, the apartment itself, and is usually described as being all that space lying between the walls and the floor and the ceiling of particularly described apartment unit.

In a multiple building complex, it is obvious that it is necessary that this identification include reference to the particular building. In addition, if the owner is to acquire the exclusive right to use and occupy a particular parking space or storage space or other limited common elements, these must be located specifically on the Map.

The walls, which are to be the subject of common ownership, including not only the exterior walls, but also all interior load-bearing walls, should be identified and located specifically. The thickness of the walls should be identified.

It is entirely possible and proper to combine the identification of the unit and its component parts on the Map with a description of what is to be contained in each of the units set forth in the Declaration. If this is properly done in both the Declaration and the Map, it is then possible to convey a Condominium unit, as, for instance, Unit No. 1, Jones Condominium, according to the Delcaration and Map recorded a certain day, at a book and page, without further description or exception.

The conveyance of a Condominium unit can be done through the same basic form of deed used for the conveying of any other type of real property interest. The selection of the type of conveyance is dictated by facts no different than facts that would be considered in such a determination for the conveyance of any other type of property. The conveyance of a Condominium interest must be executed with the same formality which is required for the conveyance of other property interests. However, the original conveyance of a Condominium unit must be drawn with the fact in mind that it is a conveyance of undivided interests in only certain respects and the fact that other undivided interests will be conveyed to other co-owners. In this sense, it is necessary that the conveyance not only contain a description of the air space, which is to be the subject of the ownership, the areas that are to be the subject of exclusive right to use and occupancy and the right to use other common elements or common facilities, but also, it must except the other air spaces and undivided interests and reserve to the grantor the right to convey similar interests to other parties. If the first purchaser is given an undivided interest in the land and an undivided interest in the building, in addition to his individual unit and the common elements without such reservations, the grantor has disposed of an undivided portion of the right to convey similar interests to the second purchaser. Such conveyances result in a continual diminution of the right to convey the complete interest to the second and following purchasers.

In Colorado, we have been considerably impressed with the Condominium development that has resulted since 1963. In spite of the fact that we have one of the shortest Statutes, we feel that it has provided the flexibility necessary to allow imaginative Condominium development.

In insuring the title to a Condominium, we feel that there are various matters that should be evaluated and approved in the course of the preparation of the necessary documentation. Our company prefers to review the Declaration, the Map and the form of Conveyance prior to the time of recording. In such a review, we look specifically for the following matters:

1. The establishment of the necessary documentation to allow the use of short descriptions.

2. With regard to the first right of refusal, we check to make certain the right of refusal exempts the Declarant and that provision is made for certain recordable evidence of compliance.

3. With regard to liens for common expenses and any allowable assessments, we look to determine that such liens are subordinate to a first deed of trust or mortgage and that provision is made for the management association to afford reliable evidence of the status of payment.

We also check to make certain that the Declaration provides a method for the foreclosure of the lien.

4. We examine the Map in the same manner as we would a subdivision map clarifying the legal description and all courses, distances and ties.

5. All documents relating to the Condominium must be formally executed by proper parties in title, including the beneficiaries of any outstanding indebtedness.

Our company feels that a proper way to insure a Condominium unit is to use the description which I referred to above. We do not feel that it is proper that we make an exception under Schedule B of the Declaration and instead we add following the description, the phrase: "Subject to the terms, provisions and obligations of said Declaration."

When insuring resales of Condominiums, two matters must be shown as requirements. First, it is necessary to make a requirement for evidence of the compliance with the first right of refusal. Most Colorado Declarations provide that a deed executed without such compliance is void. Second, a requirement should be made to obtain evidence of the payment of common expenses.

What has been the net result of the modern concept of Condominiums? I prepared a questionnaire which was circulated among some seventy representatives of the title industry throughout the United States. I should like to thank all those who so kindly responded. Unfortunately the summary that can be drawn from the questionnaire is incomplete. The report itself shows the development of approximately 11,000 primary residential units, some 3,000 recreational units and approximately 45 commercial units. It is my opinion that the development under the modern concept has been substantially greater than this report would indicate. I believe that to say that there have been between fifty and sixty thousand Condominium units developed in the United States in the last 6 years would be a safe estimate. The type of development can be broken into categories of primary housing, recreational or secondary housing, commercial and industrial development. Under virtually any Statute, with the possible exception of Section 234, the type of possible development is limited only to the developer's imagination. The development in Colorado has been pretty broad exposure in the spectrum of what can be done with Condominiums. Here we have single building high-rise apartments, multi-building development, individual building low-rise development and substantial recreational or secondary housing development. There has been relatively limited commercial development within the state although I believe that the potential in this area is as great or greater than it is in any other category. Secondary or recreational or secondary housing development in the State of Colorado has come from the fact that it is known as Ski Country U.S.A. The State of Colorado has some twenty nine ski areas currently operating within its boundaries. At practically every ski area there has been at least some Condominium development. The Town of Aspen, Colorado, is probably the best example of the potential of Condominium development. This small mountain town which has been the center of skiing in the United States for the last 20 years has now very likely become the center of Condominium development in the United States. Approximately 75% of the residential construction in the Aspen area in the last 5 years has been Condominiums. There are now 25 separate and distinct Condominium complexes either constructed or under construction in the Aspen area. One of the substantial attractions for Condominium development in such an area is the ability to have the advantage of the ownership of the unit and its availability when desired coupled with the ability through the manager to rent the unit during periods of time when it would be otherwise unoccupied.

What might be the impact of this modern concept on the title insurance industry? It has been our experience here in Colorado that the Condominium concept has been the source of substantial revenue which, but for the development of the concept would not have been available. Consider the difference between insuring an apartment house or motel complex, which is the subject of sale as compared with the same building sold under the Condominium concept. The title insurer involved in the apartment house sale will have an opportunity to prepare a policy once every eight or ten years, when the apartment house is either sold or refinanced. Under the Condominium concept, the title insurer, first has the opportunity to insure the property during the stages of construction, and then follow it with the issuance of an individual policy on each Condominium unit. These units will be the subject of financing, refinancing and resale in much the same manner as an ordinary residence would be. Thus the insurer has the opportunity of insuring the property again once every six years or so as the units are transferred.

"PORTRAIT OF A PERFECT ESCROW"

By JAMES H. MCKILLOP

Title Officer, Lawyers Title Insurance Corporation, Winter Haven, Florida

It's a sincere pleasure to be invited to appear before the Title Insurance Section and to discuss settlement in escrow practices around the country. Since the topic is fairly broad, I am sure that you will agree that time permits only a random review of the nature of the obligations assumed by the escrow or settlement agent, escrow and settlement practices in general, and some observations about neglected aspects of escrow practices.

Speaking of broad topics, I'm reminded of an observation one of my acquaintances made when I was addressing a group on the Uniform Commercial Code in Florida. When I finished my talk, he walked up to me and said, "Jim, your talk reminded me of a Texas Longhorn." Not being from Texas, I had to inquire what on earth did my talk have to do or relate to a Texas Longhorn. He said, "A point here and a point there and a lot of bull in between." So much for broad topics.

I am sure that many in the audience have had extensive experience in the escrow field and it is not my point or attempt to try to discuss with you the details of an escrow, but I do think that more attention must be given to our escrow procedure in general in order to safeguard it. If you will reflect with me for a moment I believe you will agree that the past year or two has shocked many of us in the Title Insurance Industry into the realization that proper practices in the handling of our insurance funds has not been understood, or probably more prevalent, has been wantonly disregarded.

Most underwriters have exposed themselves to tremendous risks by insuring the proper handling of funds involved in real estate transactions regardless of whether the escrow function is to be performed by the underwriter's own facility, or by the underwriter's agent, or a private attorney. I believe most title men agree that the escrow and settlement function is an integral cog in the total Title Insurance and service machinery; however, losses from this aspect of our business can be staggering and sometimes embarrassing.

Although no trend or pattern has developed, the defalcation of a handful of a group of attorneys on the East Coast has created a clamor from the public for the protection under Title Settlement, which they feel necessary. Since they have been involved through their approved attorneys in securing the estates created through such escrows, some legislators of one state have suggested that title underwriters take the loss of everyone injured by the wrongful acts of the underwriter's approved attorney regardless of whether the title insurance is to be issued by the party claiming damage. I know that you agree that prompt steps must be taken to correct situations which may lead to the public clamor for protection at the expense of the Title Insurance Industry.

In order to avoid misunderstanding of my meaning of escrow, or escrow function, which term I will use for convenience throughout the balance of this talk in lieu of settlement, closings, and other synonomous terms, let's take a brief look at escrow and in progress. First of all we are not talking about a pure escrow where an actual deposit by an obligor is made to a third party who is a stranger to the transaction and is to be kept by the stranger until the performance of a condition or happening in certain events and then delivered over to the obligee, grantee, or promisee. Although it is true that elements of the pure escrow emerge in our title transactions, the concept has expanded and we find the escrow or closing agent snarled with numerous instructions relating to such matters as the supervision of the execution of instruments creating the estate to be insured, ascertaining the insurability of the created estate, accounting for rent and dispursement of funds, supervising the registration of instruments, pro rating taxes and prepaid items, and so forth. While an escrow

agent is not the insuror of the funds deposited with him, he owes a high degree of fidelity to the parties to the transaction and must account for all funds delivered to him. He must be impartial to the parties to the transaction and refuse to divulge information concerning the transaction to unauthorized persons. Release of such information could cause a title company, or an approved attorney, to be liable for damages resulting from such action.

Due to the fact that the escrow procedures vary widely according to the practice of each locality, it is difficult to stereotype a typical closing procedure. As a matter of fact, there are probably as many variations in procedure as there are localities, and I imagine that each escrow agent with each insuror takes a position that their procedure is the best. Nevertheless, I think that this attitude has been demonstrated to be unwarranted. Notwithstanding this lack of uniformity in procedure, there are, of course, many common functions performed by escrow agents throughout the nation in both sale and mortgage transactions. The legality of the instrument must be ascertained; title must be determined to be in such condition as will meet the requirements of the buyer or mortgagee; closing statements must be prepared; and accounting for the sale and loan proceeds and pro ration of taxes, rent and prepaid items; outstanding liens must be satisfied or released and title secured of record; commissions and fees must be deducted and accounted for.

If the escrow agent is a title company and is permitted under law of the state, or under agreement with the local Bar Association, to prepare instruments, extreme caution must be excercised too because the instruments have to reflect the instructions from the parties to the transaction. More than one time a company has responded to damages due to the improper vesting in the wrong grantee, erroneous amounts on promissory notes, and other errors including instructions. Probably the most critical aspect of the escrow is the escrow agreement or closing instructions. In some areas, title companies are handicapped because they can not draft the agreement to meet their needs as title insurors. Unfortunately many lawyers are not familiar with real estate transactions and place the title company in the uncomfortable position of suggesting corrections to the escrow agreement. A good escrow agreement should provide the following for the protection of the escrow agent: it should stipulate a definite termination date in order to avoid controversy and the necessity of the title company to go to court to have its rights ascertained; there should be a definite agreement for the return of the instruments deposited and for the return of the funds; there should be agreement that the escrow agent shall have discretion in determining the probity of payment of items and the parties should agree to be bound by the agents determination; there should be agreement that the escrow agent shall not be liable for the failure of depository functions; there should be agreement that the title company as escrow agent shall have the right to determine insurability or marketability of the title to which the parties agree provided that the title company is willing to insure the title as required by the agreement; finally, the escrow agreement or closing instructions must be crystal clear. If an escrow agent has any doubt as to what he is to do and when he is to do it, he should insist on amendment or clarification.

In some states the escrow function is performed by approved attorneys; in others, title insurance agents and underwriters handle it through branch office facilities and perform the same function. Although the casual observer may assume that it is a clerical matter, I believe you will agree that proper performance of closing requires a temperament, skill, and integrity which can not be assumed regardless. As a party performing the escrow function, there are certain inherent hazards which should not be ignored since liability can be fostered upon a closer's company by carelessness, oversight, lack of training, or improper supervision. And so it appears that the industry needs to give a second look to its stepchild, the escrow department.

With regard to escrow losses incurred through defalcation of approved attorneys, there seems to be a pattern which might lend to remedial supervision. Usually the attorney is active in the field of title law. He handles closings with a result of large daily float in his escrow account. He usually practices law in a densely populated area or inherited his experience in a rapid rate of growth. The existence of this float represents a temptation which leaves the attorney strained. During periods

of lush real estate development such attorneys follow through the habit of using a float for their personal gratification. As long as funds are coming in and going out he figures no one will be injured and he can easily replace the funds when necessary. Unfortunately, real estate markets, like the balance of economy, are something alike in nature and fluctuate. The lawyer finds himself with reversed cash flow. His investments don't pan out. He can't replace the money taken from escrow and his clients and title underwriters learn that supposedly good first mortgages have taken a back seat to unsatisfied prior liens. Although the industry has developed no sure cure for an approved attorney's defalcation, the situation suggests closer supervision; personal visits with attorneys and local lenders often lead to information about doubtful or shady practices, and attorneys' brothers at the Bar will share their thoughts and suspicions with trusted visitors when they would be unwilling to reduce their doubts to writing. Unfortunately, audits of approved attorneys' escrow accounts are not practical because they involve confidential information of clients.

Some underwriters back-check the public records for compliance with binder requirements, especially with regard to satisfaction of outstanding liens. Although there is a marked absence of legislation with regard to the attorneys' financial responsibility for misappropriation of clients' funds, some state Bar Associations are taking steps to create client security funds as one of many steps to upgrade the image of the Bar. Certainly such efforts are multiple and should be encouraged.

Although the underwriter is in a position to more carefully and readily supervise and audit the activity of the agent, the risk of vicarious and direct liability can not be over estimated due to the increased tendency of underwriters to endorse their underwriters escrow service through insured indemnity agreements. The most obvious preventative measure is a periodic audit of each escrow's account. Some supervisory method would seem to be of value. The underwriter can participate in training escrow officers and reviewing procedures in line with the laws of the particular state. The escrow officer could be encouraged to call on the underwriter for advice in a case of doubt or complexity and he could have the personal responsibility, and the underwriter should take the personal responsibility of rendering intelligent and prompt advise.

As you know, there are many times when the pressure of business and the importance of customer relations tends to focus undesirable pressure on the escrow department to deviate from the norm, or wave customary procedures to the extent possibly that management and sales departments should try to shoulder the burdens of following responsible practices in the conduct of our business. The escrow department should not be made to feel that it is going to destroy a valued customer relationship by sticking to its guns any more than the title department should be pressured into endorsing out such exclusions as is usually excluded.

Please rest assured ladies and gentlemen that this gold plate customer, notwithstanding his first-class credit rating, is and will continue to shatter at the most inopportune time. For the benefit of those agents and approved attorneys in the audience, I am sure that you understand and share the underwriters deep and well-founded concern over the financial stability of their respective customers and of the integrity and reputation of the Title Industry.

Through cooperation with a segment of the industry and excercise of judicious integrity, I share with you hope for great strides—for the industry's great strides—in the progress of this great nation.

Mr. Chairman, I would also like to say on behalf of the young title people that are here at this convention and are looking forward to participating in the American Land Title Association, it is a privilege to able to address you today. Thank you.

DATES TO REMEMBER—

ALTA Mid-Winter Conferences

1968 New Orleans, Louisiana, February 21-23, Roosevelt Hotel

1969 Chicago, Illinois, March 5-7, The Drake Hotel

1970, New Orleans, Louisiana (dates and hotel to be announced)

"REVISE AND DISSENT"

By RICHARD H. HOWLETT

Chairman, Standard Title Insurance Forms Committee, ALTA; Senior Vice President, Title Insurance and Trust Company, Los Angeles, California

Your committee on Standard Title Insurance Forms for the year 1966-67 was composed of William H. Baker, Jr., Senior Vice President and General Counsel, Lawyers Title Insurance Corporation, Richmond, Virginia; Frederick R. Buck, Executive Vice President, The Title Guarantee Company, Baltimore, Maryland; James O. Hickman, Executive Vice President, Transamerica Title Insurance Company of Colorado, Denver, Colorado; Harrison H. Jones, Vice President, Louisville Title Insurance Company, Louisville, Kentucky; C. J. McConville, Senior Vice President, Title Insurance Company of Minnesota, Minneapolis, Minnesota; James H. McKillop, Title Officer, Lawyers Title Insurance Corporation, Winter Haven, Florida; Thomas B. Preston, Attorney-National Claims Division, Stewart Title Guaranty Company, Houston, Texas; James G. Schmidt, President, Commonwealth Land Title Insurance Company, Philadelphia Pennsylvania; William A. Thuma, Vice President, Chicago Title and Trust Company, Chicago, Illinois; H. Eugene Tully, President, Security Title Insurance Company, Los Angeles, California; and William Wolfman, Chief Counsel, The Title Guarantee Company, New York, New York.

The Committee met during the Mid-Winter Conference in Washington, D.C., for two days in Chicago, Illinois on August 14-15, 1967, and concluded its meetings starting last Friday here in Denver. The Committee has worked hard—all have attended the meetings, and performed each special job assigned. I wish to thank each on behalf of the Association and Section for their continued service.

The Chairman also has asked John Turner, Vice President and Counsel, Chicago Title Insurance Company, Chicago, Illinois, to work with the Committee as its Counsel.

Periodically, it is well to re-examine the purposes of this Committee. Section 17 of Article VIII of the Association's Constitution and By-laws assigns three tasks: (1) Review from time to time forms in use; (2) recommend for use new forms or revisions of existing forms "in a continuing effort to keep title insurance coverage responsive to the justifiable needs of insureds"; and (3) confer with representatives of insureds who utilize the services of member companies and with supervisory authorities "for the purpose of implementing the foregoing objectives."

There seems to be some concern that the members of the Committee are heavy investors in either printing or paper concerns and are, therefore, prone to recommend changes in forms merely to keep the printing and paper industries operating at peak levels. Dissent before revision. Then there are others that believe the Committee refuses to recognize its past mistakes and refuses to revise to correct those mistakes. Dissent for lack of revision. Then there are those that refuse to accept change. Revise and Dissent. None are correct.

The Committee, since 1959, has been reviewing the approved forms, and has recommended changes in those forms. The Committee has also considered many requests from members and customers of members for change. The Committee has reported to you each year its actions in considering those requests. In considering those requests, and while work-

ing on the Commitment for Title Insurance forms, the Committee has noted certain provisions of the policies—both Owner's and Lender's—that might be considered either ambiguous or inconsistent with other provisions. The Committee also is aware of some rather involved problems when using the present policies to insure a leasehold or a mortgage on a leasehold. The Committee has been asked to interpret provisions of the coverages of the policies, which questions are raised because of lack of clarity in the original language.

In our reviews we have, of necessity, had to consider the practices followed in the various areas of the country in adapting or modifying existing forms to accommodate changes in demands of our customers. Seldom do we find all of our members taking the same approach in solving problems presented. The Committee does not wish to prescribe practices nor set standards of underwriting principles but if the problem is presented because current forms are not responsive to the justifiable needs of insureds, then we do have the obligation to propose change to avoid the problem. Even so, such revision will raise dissent. Those opposed to change—those who have not yet faced the problem, and those who would have taken another approach—will dissent. Three different groups.

What motivates change? We can take the approach that until the customer hollers loud enough, his need for change can be ignored. Under these conditions, when the change is made we are acting under pressure—we compromise—the change in form or practice usually is neither what the customer needs nor what we should do. I need few examples of this to illustrate my point. But review in your own mind the practices and coverages your company is now providing builders and developers that probably go outside of the title insurance industry and you can find your own personal examples. Pressure caused the extension. I wonder if it might not have been better to have analyzed the needs of the builder-developer in light of the nature of that business today and have afforded title insurance coverages that actually met those needs. Revision that should not cause dissent.

However, in the analysis of those needs we cannot design coverages or afford services that only accomplish meeting what we want to be the problems. To make that kind of a revision is only to invite dissent—probably justified. Change based on guess or hope has little or no validity.

The Committee has under consideration the promulgation of a single form of policy. This study was not prompted by any huge customer block asking for that form of policy. In fact, there are many of our members who have never considered whether or not such a form is practical. The study has, however, brought into focus the differences that now exist in the forms now approved. The Committee is also forced to consider changes in law—changes in practices and the changing needs of insureds. This study is not the result of pressure; hopefully the result will not be a compromise with reality leading to changes that never should be made. This afternoon some of those problems will be discussed by the whole committee.

This year we were requested to consider the promulgation of a standard assignment endorsement. The Committee recognizes this as a matter that should be resolved; however, until we resolve the question of the promulgation of a single form policy and revision of existing policies, if that be the decision, we have deferred consideration of the assignment endorsement. We have also asked the CLTA to defer a proposed change of the time to bring an action on the policy after a loss is established to conform to the statute of limitations of the jurisdiction in which the land is situated rather than the existing 5-year period.

Our industry is strong. Hopefully the Committee will help us determine our own destiny as to forms and coverages. Knowing the industry, there will be some dissent; may that never divide.

ELECTION OF SECTION OFFICERS

By proper nomination and second, the following officers were unanimously elected for 1967-1968:

Chairman ALVIN W. LONG, Chicago, Illinois,
President, Chicago Title Insurance Company
111 West Washington Street, 60602

Vice Chairman FRED B. FROMHOLD, Philadelphia, Pennsylvania,
Senior Vice President, National Division, Commonwealth Land Title Insurance Company
1510 Walnut Street, 19102

Secretary RAY L. POTTER, Detroit, Michigan,
General Counsel, Burton Abstract and Title Company
350 East Congress Street, 48226

EXECUTIVE COMMITTEE

JOHN P. MATTHEWS, Atlanta, Georgia,
Vice President, Lawyers Title Insurance Corporation
30 Pryor Street, S. W., 30303

DANA G. LEAVITT, Oakland, California,
President, Transamerica Title Insurance Company
1330 Broadway, 94612

ROY P. HILL, JR., Casper, Wyoming,
General Manager, The Title Guaranty Company of Wyoming, Inc.
535 South Center, 82601

WILLIAM G. WAS, Tucson, Arizona
President, Arizona Title Insurance and Trust Company
4425 E. Broadway, 85711

WORKSHOP SESSIONS

"PUTTING YOUR BEST FOOT FORWARD"

Moderator:

FRANCIS E. O'CONNOR

Chairman, Public Relations Committee, ALTA; Senior Vice President, Chicago Title and Trust Company, Chicago, Illinois

Panelists:

ROBERT K. MAYNARD

Director of Advertising and Public Relations, Lawyers Title Insurance Corporation, Richmond, Virginia

WILLIAM L. ROBINSON

Vice President, Burton Abstract and Title Company, Detroit, Michigan

EDWARD SCHMIDT

Assistant Vice President, Commonwealth Land Title Insurance Company, Philadelphia, Pennsylvania

CARROLL R. WEST

Vice President, Title Insurance and Trust Company, Los Angeles, California

STATEMENT BY FRANCIS E. O'CONNOR

Before we get into the important part of this program, I will exercise my privilege as moderator to make a few remarks which may be entitled: "*Public Relations, 1967: There Is Still An Understanding Gap.*"

The words "Public Relations" have different connotations for different people and definitions run the gamut from "image makers" to "attitude conditioners."

The politician and the motion picture star, the clergyman and the night club proprietor, the educational institution and the dance studio, all are interested in and talk about what they call "public relations"—obviously with radically differing motivations, methods and standards of quality.

In the modern world of business, however, there is little difference of opinion concerning the meaning and importance of public relations as an essential tool and integral part of management.

In the early years of World War II, corporations increasingly began to appreciate that good public relations was good business. They discovered that people liked to buy from companies they knew and understood, liked to invest money in them, liked to deal with them, liked to work for them.

For us in the title and abstract business, however, during the past several years there have been developments which suggest there is reason for refreshing our thinking about public relations and reviewing our methods of communicating with the public. There still is a serious *understanding gap* in spite of all that we have been doing—a gap in public understanding of the nature of our industry, of the nature and importance of what each of us does in our communities.

Undoubtedly, the primary cause of our neglect of public relations efforts can be charged to an inherited philosophical concept that the public doesn't need to know—and doesn't really care—about the title business; that the job of educating the public is too great a challenge, too expensive to tackle; that public relations efforts should be concentrated only on related customer groups who are presumed to know something about the title business.

Our neglect of public relations also may be due to concentration on increasing production and reducing costs through technological changes, use of computers, introduction of new methods and procedures, and on other areas of management concern that have cried out more loudly for attention than has the need for a basic communications program. These innovations affecting maintenance of plants and production of orders certainly are exciting and of interest to all. However, unfortunately we have not yet found a way to mass produce good will by means of punch cards and, while electronic devices readily amplify sounds, none thus far has been perfected that will instantaneously amplify our company's reputation. Pressures and problems confronting every company are vast and real but we must be careful that concern with them does not cause us to forget or neglect a basic fact: we still must create a favorable business climate, through public relations activities, or all the fine new cameras, data processing equipment, improved methods, and efficiency studies will be pointless.

Every one of us has a long way to go to get our company better identified, its purpose and function in the community and in the economy more clearly understood, respect for our integrity and good character enhanced, and finally—the end result, of course—volume of business increased.

In view of this continued need, it may be well to restate some of the basic principles underlying the public relations of the title industry and each of its individual companies.

First, we cannot forget that quality of our service is fundamental. The advertising campaign has not been written, nor the publicity program conceived, nor the exhibit designed—that will for long succeed in disguising the true character or nature of a company producing a shoddy product or inferior service.

Second, I am convinced that there is something that can be described as a *public relations point of view*, a habit as it were, that should come into play automatically when weighing decisions, when planning, when carrying forward the day-to-day operations of a business. This habit should produce actions relating to all corporate services, policies and activities with a regard to the effect, the impression that will be made on customers, stockholders, employees and the community.

From this point, our next principle logically follows: *public relations today must be a top management function.* Having suggested this, we must next remind ourselves that at the same time, it also is the concern of every member of the staff. The good will our business enjoys is the result of the accumulated performance and attitude toward the customer of the entire organization from the president down. Public attitudes toward a company are a product of the public's total impression of the company—what the public sees, hears, reads and experiences in connection with it.

Fourth, *public relations knows no season.* The program has no terminal point. The impression your company made in the minds of its customers and the community ten years ago must be made again and again. The public which surrounds your business is continuously changing. You are dealing with a parade, not a crowd. Groups touched by your organization today will have new members tomorrow. Your public grows up. It gets old. It dies or it moves away. Your public relations job is not well done if it was done last month, last year. You will have to keep doing it over and over, today, next month, next year.

My fifth conviction is this: *size of the company has nothing to do with what we are discussing.* Big business has no monopoly on good will. Being small does not reduce the significance of public relations problems any more than being big assures their successful solution. Even the individual in business alone can enhance or reduce his acceptance and the good will he enjoys through personal contacts with others. Understanding of this, and concern for the impressions made on others, may make the difference between success or failure of a small business.

My sixth and final suggestion: *a company, whether it is a great or a small business enterprise, whether it operates nationally or solely in a local community—has certain responsibilities as a good citizen.* These responsibilities, of course, include financial support to institutions which contribute to community welfare—personal participation and leadership in worthy causes—giving support and time to enterprises ranging from church organizations, PTA, Community Chest or United Fund, to service clubs, chambers of commerce and community improvement associations. The manner in which these responsibilities are fulfilled perhaps contributes more to your public relations than any program of advertising, publicity, communication, or merchandising.

I have endeavored to simply review some of the well organized basic concepts in public relations which, in the pressures of 1967, some of us may have been neglecting.

All of us are familiar with the phrase "Escrow bridges the gap." I suggest that we can paraphrase that thought slightly and remind ourselves that it is "public relations which bridges the gap in understanding."

Through our advertising campaigns, our customer relations programs, our publicity, displays and promotional pieces, how well are people getting really to understand us? Are we making progress toward better understanding of the title industry? Are people talking about us intelligently—with appreciation and comprehension, with respect and a feeling that they are talking about an important, vital institution and staff of people? *That is the question!*

The challenge now is to improve what people are thinking and saying about us, to give our customers and our communities real insight into the complicated, painstaking nature of our work, the difficulty of maintaining the title plants which serve the community—to cause them to have reason to speak more appreciatively of us.

Our goal must continue to be the effective use of public relations principles to bridge the understanding gap between our companies and the publics they serve.

Dr. Claude Robinson of Opinion Research Corporation summed it up for us rather well when he once stated, "X plus Y = Public Relations." X stands for the corporate fiber—the policies, the inherent value of the product, the character of the company. Y stands for interpretation of company policies and products through customer relations—advertising, publicity, and other communication techniques. Neither one, alone, equals good public relations.

To speak rather bluntly, we can't rest on our X.

STATEMENT BY ROBERT K. MAYNARD

Sarah Bernhardt, who some say is a contemporary of mine—'tain't true! —is probably misquoted as having said: "I don't care what the critics

write about me if they spell my name correctly."

I suppose that's true of individuals in show-business—if we judge by the popularity of some of our notorious headliners. However, while the public, generally, will smirk tolerantly about the publicized morals of some individuals, the fact is that, again generally speaking, the entire movie industry takes on the reflected image of the few.

Any business is pretty much the same. If we're to be described as tarts or Don Juans, we'd better not give our right names—or business addresses. In every business, publicity can make or break a reputation of a firm. No matter how hard we try, we can't eliminate publicity. It may only be word of mouth—but it's publicity. An important fact is that *publicity can be controlled to a great extent.*

Satisfied customers spread the good word. So—starting with that kind of publicity, you're in control. Good service properly priced, a pleasant staff and a readily available helping hand can do wonders toward spreading the good word.

Conversely—but why waste time on that. Not one of you would, even for a moment, fall into that "conversely" category—I'll bet.

But, when it comes to getting notice in the public press, every one of us is guilty of passing up opportunity after opportunity.

An example—I recently received a newspaper clipping from one of our offices. The story was a good one based on the protection of title insurance for the home owner. All the quotes in the story were attributed to a competitor.

"Why can't we do something like this?" our manager wrote me—and I knew that he meant, "Get on the ball, Maynard!"

The story rang a bell—and after I de-coded my secretary's filing system, I discovered that the whole story was built around a months-old release we had sent out from the Home Office—and we always send a copy of all general releases to our branch offices. We have suggested many times that they talk with the editor and clear up any questions he has! How a competitor got into the act, I can only guess. Probably he had the foresight to take the editor to lunch. I wrote back—"*we* missed this one"—and I'm sure the manager knew I meant—"let's all get on the ball."

For too many years, the title business was run like a secret society. A public-be-damned attitude prevailed insofar as our operations are concerned—maybe because we felt our business was too involved to be readily understood—or because we felt we were professionals. After all, doctors write perscriptions unintelligible to all but other doctors and pharmacists, and lawyers write documents that defy interpretation by the public—and even, sometimes, by other lawyers and judges.

However, most of us here have seen our industry develop into a full-blown competitive, commercial enterprise. As such, it is highly susceptible to public opinion. And public opinion is influenced to a great degree by publicity—be it good or bad. Unfortunately, no publicity is bad publicity, for the mind of man is so perverse that it suspects the unknown—particularly if the unknown costs him money.

Publicity starts with the individuals in the firm. Who are they and what do they do that's newsworthy in the community? Are they active in civic or religious affairs of the community? Have they interesting hobbies? Did they help rescue a cat from a tree?

I don't recommend contriving situations for publicity—but if something unusual should happen—take advantage of it. I remember one of our branch offices had such a bonanza a few years back when a young woman stepped out of a taxi and selected our ground floor waiting room as an ideal location for demonstrating her firm belief in nudism. Don't sit back waiting for a news break like that—they come but rarely.

But human interest stories walk through your door regularly. Interesting transactions involving ordinary people—or ordinary transactions involving interesting people make good local interest stories.

Make a friend of your local editor or real estate reporter—take him to lunch. He'll tell you the kind of story his paper would like to have.

The more human an organization makes itself—the better the public acceptance. Publicity is one of the greatest humanizers available. *Publicity* as I've said before, can be under your control to a great degree. After you have demonstrated to the local news men that you're a pretty good Joe—or Josephine—engaged in a legitimate business, you will get better treatment from the press even

if an adverse story over which you have no control should break. At the very least, the news man will extend the courtesy of getting your side of the story before he writes it. In this case, remember that "No Comment" is usually interpreted as a "guilty" plea by the public.

Here's a quick rundown of the news media available to you. Newspapers, radio, television, regional and local magazines and newsletters, and, of course, the trade journals in allied fields, like realtors, builders, attorneys, bankers publications.

Incidentally, radio and TV are especially prime targets for interview shows.

If the list of media is small in your area, you can make your releases by friendly phone calls to the reporters and news editors you know.

If it's a large list—here's as good a road map as any I've ever seen for submitting typed releases:

1. Find out how far in advance of publication the news editors want the story.
2. Give *full* details and make sure everything is correct—right down to the middle initials of minor participants in the story.
3. Put your name, the name of your company and phone number in the upper left or right hand corner of the first page.
4. Give the date the story is to be released—if it is undated, show "for immediate release."
5. Send photos, preferably "working" or action photos that are 8 x 10 glossies of good quality.

While I have the soap box, I'm compelled, as a public relations man, to put in a pitch for your sympathy. Here's a piece reprinted from the *Houston Chronicle* and written, apparently, by a reporter who fully understands the plight of the public relations director. I quote:

"Sandwiched tightly between top brass and the teeming masses sits a wild-eyed individual playing PR director. He's the most misunderstood, maligned, overworked, underpaid, underrated, unappreciated, underestimated, unheralded and unsung guy in all of the business world. . . .

He has the curiosity of a cat, the tenacity of a mother-in-law, the determination of a taxi driver, the nervous system of a truck horse, the digestive capacity of a goat, the simplicity of a jackass, the diplomacy of a wayward husband, the hide of a rhinocerous, the patience of a cow, and the good humor of an idiot. . . .

He's the eternal middleman—too weak for manual labor, too stupid to be an executive—who parks his years-old auto between the boss' current-model limousine and the janitor's equally new sports car."

No Comment.

STATEMENT BY WILLIAM L. ROBINSON

Let me say at the outset that when the idea of this panel was first suggested I asked to be excused; on the grounds that, unlike my distinguished colleagues on this committee, I was *anything* but an expert on public relations. However, Frank O'Connor quickly reminded me that, by definition alone, I could easily qualify as an expert and would therefore be entitled to participate in this program. I'm sure you all know the definition of an expert—anybody who's more than fifty miles from the home office.

But, you know, seriously, I think that's one of the great difficulties we face in this whole public relations area—the fact that our industry is largely made up of expert *title* men; *not* expert *public relations* men. And I think this difficulty is probably never more apparent, nor more acute, than when we have to sit down and write the copy for an ad, or a speech, or a piece of educational literature, which is hopefully going to explain our industry, and its product, to some segment of the general public.

Now I *certainly* wouldn't presume to tell you how to write that copy, no matter how far I was from my home office, but I *would* like to point out what I think is one of the real tough problems involved; on the theory that if we can recognize some of the problems, we may have a little better chance of coping with them. It's what I call the "language barrier", and I think, to a large extent, it stems from this very fact, that basically we are *technical* experts, trying to explain a unique product, with which *we* are intimately familiar, to people who are not only completely uneducated about our industry, but who already have some pretty deep-seated misconceptions about it. Why is it, do you suppose, that even though we have, collectively, spent Lord knows how much time and money trying to explain title insurance, there are still so incredibly few people who really understand the *basic nature* of the product, or what we do to justify the pre-

miums we charge? Well I suggest the answer *may* lie in the fact that we're just not speaking their language—that which means one thing to us may mean something quite differently to them.

For example, let's take our unfortunate use of the word, "insurance". Now to most people, insurance means one of two things—either life insurance or casualty insurance. Yet we've used this word to describe something which is totally different, in its basic concept, from either one of those two things. And not only does the word itself have this very definite, preconceived meaning for most people, but we're also up against that natural tendency to relate anything new which we encounter to something with which we are already familiar, rather then to imagine some brand new, unfamiliar concept. And of course life insurance and casualty insurance are all too familiar to just about everybody. So the thought process is perfectly simple—it's obviously not life insurance, so it must be some form of casualty insurance.

And, you know, the worst of it is that, according to the dictionary definition of the word, "insurance," *they're* right, and *we're* wrong! Webster defines "insurance" as "a contract whereby one party undertakes to indemnify or guarantee another against loss by a contingent event." Certainly a much better description of casualty insurance than of title insurance. While admittedly there is an indemnity aspect to a title insurance policy, its *basic concept* would seem to be much more accurately described by the word, "*guaranty*," which Webster defines as "an agreement by which one person promises to make another secure in the possession, continued enjoyment, or the like, of something."

See what I mean?—language barrier. How do you explain title insurance without using the word, "insurance"?

Well obviously it's too late to change the word, but maybe we could try to change its meaning, at least insofar as it applies to our industry. Maybe we could get across the idea that title insurance is different—that it's not insurance in the usual sense at all; that it's unique,—but I think we have to begin by thinking about it in different terms ourselves.

For example, why not talk about it as a generic form of insurance, which it really is, if we're going to continue to call it "insurance." In other words, couldn't we stress the idea that there are not *two*, but *three*, basic types of insurance—life insurance, casualty insurance, and title insurance. Life insurance insures against something which is necessarily going to happen sometime; casualty insurance insures against something which may or may not happen; and title insurance insures against something which has *already* happened.

Better yet, how about analogising it to a manufacturer's warranty. Now here's something which is pretty familiar to most people, and to which they can easily relate—the written guarantee that the product purchased is free from defect and completely fit for the purpose or use for which it is intended. I'll admit there may be differences between the two, but if people were to think of them as by and large identical, wouldn't they have a much better understanding of the basic nature of a title policy than they have when they try to apply their own preconceived notions about insurance? And wouldn't the use of this same analogy also reveal the basic error in the thinking of all those self-appointed "experts" who are forever pointing out that our losses don't begin to justify the premiums we charge? Of course they don't—and the cost to the manufacturer of the defective products which he has to repair or replace under his warranty doesn't begin to justify the price *he* charges either. But the time, effort, and money which the manufacturer puts into making sure that his product is not going to be defective in the first place, have just one whole whale of a lot to do with the price he charges. And so it is with a title policy.

Now of course I'm not suggesting that we change the name of our product, or even that we use these specific examples in trying to explain it. I'm only suggesting that if we want to promote a better understanding of title insurance, and of what we do to justify the price we charge for it, then maybe we should try explaining it in some different kind of terms. I'm simply suggesting that when we sit down to write that ad, or speech, or piece of educational literature we keep in mind the possibility that we *may be* the victims of this so-called "language barrier," and that if we can tie the package up with a different colored ribbon—one that will look a little more familiar to peo-

ple than the one we've been using—we may improve our chances of achieving some kind of breakthrough.

Now before someone asks the obvious question about whether or not I've tried this racial approach and if so, with what success, let me hasten to say that of course I have not. You see, I work in our Detroit office and I'm only a public relations expert west of Ann Arbor.

STATEMENT BY EDWARD SCHMIDT

"Getting a new customer" is the special job advertising can do for you—as well as keeping your present customers informed and impressed. You all know that ours is a "service business" and that we don't have a product that you can see, taste, touch or wrap up in a fancy "point of purchase" package to attract attention. BUT, is this where we stop? I say this is where we START! Surely we can TALK and WRITE about our business, and these are the lines of communication for advertising media.

The choice is always ours—whether we advertise or not, because we are a part of the American free enterprise system, and our competitors, God bless them, are usually helpful in prodding us to make the most of our business opportunities.

In the next few minutes, let me suggest a few opportunities as they may apply to YOUR office—YOUR operations—YOUR business.

"It pays to advertise" is NOT an idle phrase. It's a worker for almost every successful businessman who uses it to get his sales messages across to his potential customers. Your finest service can't do the whole job! After all, that good job well done is almost a personal experience between you and the particular customer. And remember too, that your competitors consider all your customers as their prospects. But HOW do new and potential customers learn about your ability to serve them well—obviously through ADVERTISING or PUBLIC RELATIONS or the happy combination of both.

Don't waste your money on casual, unplanned advertising. Consider all the possibilities you have—and there are many—and then PLAN for success through advertising and related business promotions.

Now let's organize! First of all you must BELIEVE that advertising can help you, otherwise you just don't have the interest and motivation necessary to tackle the job. Here are a few questions.

1. Have you decided your business is big enough and you don't want any more?
2. Are you convinced that advertising is a waste of good money?
3. Will a hit-or-miss attempt at advertising help you?
4. Would you object to a planned program?

If your answers are "NO", then I think you DO believe in the benefits possible through good advertising—and we can start on our way to planning a personal program. Here's how to get started.

1. Decide what you want to accomplish.
   (a) Is it to become better known?—to sell a special service, to publicize your ability and capacity, or is there something unique about your organization and you want ALL, or at least MORE of your potential customers to know more about it.
2. Decide how much money you can afford to invest in this effort to improve your business. Regard your advertising as a necessity and not a luxury. A percentage of gross income is often used as a guide to the amount to be allocated.
3. Decide on a reasonable length of time to give the program a chance to produce an effect and a result. Don't change the direction in which you are going, or dilute it, or abandon it before the full cycle has been completed.
4. Select advertising media very carefully, to achieve maximum contact with your customer market.
5. Get professional assistance in preparation of advertisements and to manage continuity of advertising program.

PUT SOMEONE IN CHARGE OF THE PLANNED ADVERTISING PROGRAM.

The job that isn't attended doesn't get done!

Also, the motor may be running, but until you step on the accelerator you don't go anywhere. The program needs a knowledgeable driver to keep it in motion and headed for its destination.

If YOU are the director, then look after it REGULARLY and plan it as a CONTINUOUS PROGRAM not as a separated series of single decisions and single advertising efforts.
Here are some possible objectives.

1. Just to become better known in the community, which incidentally, is just the most important aspect of being in business.
2. To ATTRACT new and retain old customers through information and publicity about your company, its services and personnel.
3. To establish or enhance a reputation for efficient, capable service to the community.
4. To solicit your present and potential customers on a regular basis.
5. To describe your services and build customer awareness and appreciation of the need to buy them.
6. To educate the public in the merit and value of title abstracts and title insurance.
7. To generate more business and profit.
8. To meet and beat the competition.

Some ways to advertise:

THE SIGN ON YOUR DOOR—start there, and PLAN to make a good impression. Is it clean, neat and in good condition?

YOUR LETTERHEAD, AND ENVELOPES—Are they UNIFIED with your signs or other printed materials such as forms, etc. to give an impression of professional consideration?

YOUR OFFICE IS YOUR "BUSINESS HOME". Your customers are your "business guests", and you don't spend money on them, you MAKE money on them. Invest in their comfort and convenience and you will achieve a good public relations result translatable into profit. A good-looking office is a wonderful advertisement.

DO YOU HAVE WINDOW SPACE? Arrange with a local display man to design and install attractive displays, which may relate to the title or abstract business, or be a showcase for a variety of community events,—even publicizing the Policemen's Ball or the local rummage sale. It depends on you and the community. Lobbies or hallways can also be used.

ARE YOU IN THE YELLOW PAGES? If so, how prominent is your ad? Have you checked on your competition lately?

TRADE JOURNALS, and DON'T JUST SAY "COMPLIMENTS OF A FRIEND"—Sell your company and its services. That's what the magazine or Roster or Year Book is supposed to do, so give it a chance.

RADIO is usually considered a "prestige" media for advertising but you'll find a bargain in spot rates if you look for it.

DIRECT MAIL—A most effective method of low cost contact with present and potential customers. Also, a personalized opportunity to present a single idea, or a series through careful production of the letter, folder or combination of both.

ADVERTISING NOVELTIES — Much can be said "For" and "Against" giveaways as a form of advertising, but consider the merit, then if advantageous use the item most appropriate —pens, pencils, calendars, rulers, coin holders, key rings, letter openers, book markers. Some have short lived interest or usefulness, others have continuity and are effective for a long time. The list is endless, and somewhere along the line it pleases most everyone "to receive a gift."

POSTMARK ADVERTISING—A low cost, attractive, effective medium.

NEWSPAPERS, MAGAIZNES — Every community has them in abundance.

Advertising, like the suit you wear, may be bought in the size and price range that pleases your personally, and the more sophisticated and expensive programs are always available.

What I have suggested is an outline for your consideration of a PLANNED ADVERTISING PROGRAM available to you on a minimum cost basis.

I have tried only to remind you of the good business principles you all know, but it was Emerson who said "THE WORLD NEEDS MORE TO BE REMINDED THAN INFORMED." I hope I have renewed your awareness of the benefits of advertising and that you will make it work to your advantage—to help you retain your present clients and to bring you new customers.

STATEMENT BY BILL THURMAN

No amount of investment in advertising, publicity, new buildings or facilities can return a profit without a

corresponding investment by people in human endeavor to breathe the breath of life into masonry and systems and computers. You can't automate people out of those personal services that deal with other people. No matter how big the mass market for goods or services may be, it still has to be dealt with one by one. This points out the necessity of the practicing of the Golden Rule, which is the often a subtle factor in a successful business enterprise. All I'm trying to say is the nice customer wants to be treated the way you'd want to be treated if you were in his place. I want to read you an article entitled "I'm a Nice Customer."

I'm a nice customer. You all know me. I'm the one who never complains no matter what kind of service I get.

I'll go in a restaurant and I'll sit and sit while the waitress gossips with her boy friend and never bothers to look and see if my hamburger is ready to go. Sometimes someone who came in after I did gets my hamburger, but I don't say a word in complaint.

If the soup is cold or the cream for the coffee is sour, whatever happens, I try to be nice about it.

It's the same when I go to a store to buy something. I try to be thoughtful of the other person. If I get a snooty salesperson who gets nettled because I want to look at several things before I make up my mind, I'm polite as can be. I don't believe rudeness in return is the answer. You might say I wasn't raised that way.

And it's seldom I take anything back to a store. I've found people are just about always disagreeable to me when I do. Life is short—too short for indulging in these unpleasant little scrimmages for the sake of a dollar.

I never kick, I never nag, I never criticize, and I wouldn't dream of making a scene, as I've seen people doing in public places. I think that's awful.

No, I'm a nice customer! And I'll tell you what else I am. I'm the customer who NEVER comes back!

In fact, a nice customer like myself, multiplied by others of my kind, can just about ruin a business. And there's a lot of nice people in the world just like me. When we get pushed far enough we go down the street to another service station, and buy our gasoline in places where they're smart enough to hire help who appreciate nice customers. Together, we do them out of millions every year.

I laugh when I see them spending their money on advertising to get me back, when they could have had me in the first place for a few kind words and a smile.

I don't know about you, but this really puts the finger on me when I walk down the Buy B.U.Y. side of the Public Relations Street. I'm a real nice customer, and I sure won't be back where I'm not well treated. If we never forgot how dangerous and damaging one dissatisfied customer multiplied by ten, or a hundred, or a thousand, can be to any business enterprise, we would never have to be reminded that Public Relations is a two-way street; we would never have to think twice to remember that Public Relations is a responsibility to the jobs we hold—to the companies for which we work—and to our fellow employees, who could lose their jobs through no fault of their own, because of loss of business that resulted from someone's lax appreciation of their own effect on the whole public relations image of their company. Your personal contacts, your customer relations are so vital to your business. Every day you and your associates will answer phone calls, write letters, confer around the closing table, greet customers entering the office, and perform countless other tasks dealing with people inside and outside your organizations. In these contacts you will be winning or losing your public. Remember that every day you will have many chances to make yourself and your company rise or fall in the opinion of your public, and everyone within the company who communicates with the public is the company to the public.

I suppose we have more contacts with our customers on the phone than by any other means. Every phone conversation leaves some impression, good, bad, or indifferent. Be sure yours leaves a good impression. Answer the phone promptly, speak pleasantly and distinctly. Take the pipe or gum or cigarette out of your mouth. Use the customer's name on the phone. Write it down when he tells you his name so you'll have it to use during your conversation. There's no sweeter music to a person than the sound of his own name. Always be courteous, never failing to say good-bye or thank you.

Effective correspondence is certainly an important contact. In answer-

ing letters try to be prompt, considerate, and sincere. The unforgivable sin in business correspondence is not in saying no, which can be said gracefully, but in refusing to say anything at all by pigeon holing or vest pocket vetoing letters, which to the sender have made important requests.

Visitors entering your office should certainly be warmly received. They should be quickly recognized with a smile and friendly help, and "May I help you." One important thing to remember in talking to your customers is that although you are by far more knowledgeable than they, don't convey to them that you think you're smarter than they.

There are so many little, but important things, in this matter of Customer Relations. My alloted ten minutes only allows to barely scratch the surface. There's a friendly greeting, a note of appreciation, a phone call that creates a good impression, a helping hand with a problem. This matter of Customer Relations, or Public Relations, is the embodiment of Michelangelo's famous comment—"Trifles make perfection and perfection is no trifle."

EDITOR'S NOTE: Mr. Carroll R. West's informative comments at the Public Relation's Workshop Session on September 25 will be carried in a future issue of Title News.

"FEDERAL TAX LIEN LEGISLATION"

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STATEMENT BY MR. WENTWORTH

When the government decides to seek collection of a delinquent tax through enforcement of a federal tax lien against real estate, it usually proceeds under one of two remedies provided by the federal statute. One is a judicial proceeding to foreclose the federal lien and the other is an administrative levy and distraint proceeding to sell the real estate.

Such a judicial proceeding is filed by the United States in the appropriate federal district court.[1] All persons having liens upon or claiming an interest in the property are made parties. The court may appoint a receiver with all the powers of a receiver in equity. A decree may be entered directing a sale of the property by an officer of the court. The Federal Tax Lien Act of 1966 added a new provision that if the property is sold to satisfy a first lien held by the United States, it may bid at the sale

[1] 26 USC §7403

an amount not to exceed the amount of the lien and the expenses of sale. There is no statutory provision for redemption by anyone from such a judicial sale. This type of a judicial proceeding would seem to present no particular problem to Abstractors or Title Insurers as all pertinent matters appear in the public records, the same as in any ordinary judicial proceeding.

However, a different situation exists if the government chooses to enforce its lien by the administrative proceedings, namely, a levy upon and sale of real estate by the District Director.[2] Such a sale can be in process or even completed without anything appearing in the public records, other than the originally filed notice of federal tax lien. The administrative proceeding is commenced by the District Director's levy upon the property. The federal statute provides for no exemptions as to real estate.[3] Thus, a homestead right granted by state law may be sold unless the homestead right is considered to be a separate estate of a spouse who is not liable for the delinquent tax.[4] However, it has been held that an estate by the entireties cannot be sold during the joint lives of both spouses if only one of them is liable for the deliquent tax.[5] While there appears to be no decided case whether the interest of one joint tenant may be levied upon and sold, the government has been successful in foreclosing against such an interest by a sale of the entire property.[6]

The levy on real property may be made ten days after demand for payment of the tax and within six years from the date of assessment,[7] subject to an extension of time by agreement with the taxpayer[8] or the happening of certain other events expressly provided for in the Internal Revenue Code.[9] While under the Federal Tax Lien Act of 1966 a judgment on the tax liability may extend the time for collection by a court proceeding, it does not extend the time within which the District Director may levy and sell real property.[10]

The Revenue Code requires that a notice of a seizure of real estate be given the owner and that notice of sale be given the owner and either published in a newspaper published in the county where the property is located or posted at three designated places if no such newspaper exists.[11] The statute describes the required contents of the notices. It also describes the place of holding the sale, a determination of a minimum sale price, the method of holding the sale (usually by public auction) adjournments of sales and deferment of payment of part of the purchase price.

Upon a sale of property, the District Director issues a certificate of sale to the purchaser upon payment of the full purchase price.[12] The United States may bid at the sale. The certificate of sale does not convey title because of the possibility of a redemption being made as permitted by the statute.[13] A redemption right is given to the owners of the property, their heirs, executors or administrators or any person having any interest therein or a lien thereon.[14] To redeem from the sale, a person must pay the bid price plus interest at the rate of 20% per annum. Under prior law the period for redemption was one year. The Federal Tax Lien Act of 1966 reduced the redemption period to 120 days.

If no redemption is made the purchaser is entitled to a deed from the District Director.[15] The statute declares that such a deed shall be *prima facie* evidence of the facts recited therein and shall operate as a conveyance of all the right, title and interest the party delinquent had in and to the real property sold at the time the tax lien attached. The Federal Tax Lien Act of 1966 added a new provision stating the District Director's "deed to real property * * * shall discharge such property from all liens, encumbrances, and titles over which the lien of the United States with respect to which the levy was made had priority." [16]

A separate statutory provision requires the District Director to keep a record of all sales of real property and redemptions of such property as well as other relevant information concerning the sale.[17] It is further

[2] 26 USC §6331
[3] 26 USC §6334
[4] Weitzner v. United States, 309 F(2) 45 (5th Cir. 1962)
[5] United States v. American National Bank, etc., 255 F(2) 504 (5th Cir. 1958)
[6] United States v. Trilling, 328 F(2) (7th Cir. 1964)
[7] 26 USC §6502
[8] 26 USC §6502(a)(2)
[9] 26 USC §6503
[10] 26 USC §6502(a)
[11] 26 USC §6335
[12] 26 USC §6338
[13] Lowe v. City of Atlanta, 221 Ga. 477, 145 SE(2) 534 (1965)
[14] 26 USC §6337
[15] 26 USC §6338
[16] 26 USC §6339(c)
[17] 26 USC §6340

provided that a certified copy of such record issued by the District Director "shall be evidence in any court of the truth of the facts therein stated." [18] In practice, a District Director's office, on request, will issue what is known as a "Record 21" form as evidence of the title of a purchaser coming through a District Director's deed. Of course, a "Record 21" form is not conclusive evidence. For example, the form contains certain statements regarding the giving of notice to the owner which are merely conclusions but give no details as to the steps which were taken. These conclusions could be denied in a suit attacking the validity of the sale and deed. There are several decided cases which hold that a person claiming title coming through a District Director's sale and deed has the burden of proving compliance with all procedural steps required by the statute.[19] Thus, a Title Insurer would assume that burden in defending such a title it had insured.

In summary, let me say it appears that Abstractors and Title Insurers may be affected by proceedings to enforce federal tax liens in two possible ways; *first*, when the record title appears in a private owner subject to a federal lien, and *second* when a title appears to have been made through a sale in proceedings enforcing a federal lien.

No particular problem appears to exist if the United States has foreclosed its lien in a federal district court or has asserted its claim as a defendant in a state court proceeding. In either situation, pertinent information is a matter in the public records and there also has been a judicial determination of any conflicting interests, the same as in any equity proceeding.

However, in case of a levy and sale by the District Director there may be nothing in the public records and there is no court adjudication of conflicting interests in the property or of the validity of the proceedings. Thus, when insuring a private interest or lien subject to a federal lien, the public records may not disclose a pending levy by the District Director, an outstanding Certificate of Sale or a Deed which had been issued. Furthermore, if a title is insured coming through a District Director's sale and deed, a holder of an interest or lien presumably cut out by the sale and deed may contend the sale proceeding was not in compliance with the statutory requirements. Thus, a Title Insurer may become involved in litigation and to sustain the title will be compelled to obtain testimony and documentary evidence from the local Revenue Service Office which conducted the sale.

[18] 26 USC §6340(b)

[19] McAndrews v. Belknap, 141 F(2) 111, 115 (6th 1944); Margiotta v. District Director, etc., 214 F(2) 518 (2nd 1954). Compare United States v. City of New York, 233 F(2) 307 (2nd 1956)

STATEMENT BY MR. EAGAN

It has been pointed out that a federal tax lien is created by assessment of the liability, and affects substantially all of the property of the taxpayer. Essentially it is a secret lien. In relation to other liens the rule of first in time first in right applies, but the government requires the other lien to be choate. It considers as choate a lien which is as definite as a judgment lien. In these respects the new law did not change the old.

The new law did modify the priority positions of various interests in relation to a federal tax lien. Purchasers are protected under the new law.[1] They were protected also under the old law. The new law specifically defines purchaser as including a party holding under any of the following: a lease, an executory contract to purchase or lease, an option to purchase or lease, or an option to renew or extend the lease.[2] Apparently the Congress intends that if there is a valid installment contract in existence prior to the filing of a federal tax lien, the purchaser can continue to make payments and his position will be protected after the filing of the lien, even though he has knowledge concerning it. IRS attorneys have said that the statutory statement of parties who are protected codifies existing law, but previously some cases had refused to give priority to a contract purchaser who had not received a deed prior to the filing of the tax lien.[3] Another change in the law is that in order to have priority a purchaser must give adequate and full consideration in money or money's worth. Some cases had given purchaser status to parties who had paid small amounts which bore no relation to the value of the property.

In order to have priority the purchaser's interest also must be one which is valid under local law against

[1] 26 U.S.C. 6323(a)

[2] 26 U.S.C. 6323(h)(6)

[3] Leipert v. R. C. Williams and Co., 161 F. Supp. 355 (1957)

subsequent purchasers without actual notice. In connection with real property this requirement often would make necessary the recording of the purchaser's interest prior to the filing of the federal tax lien.

A judgment lien creditor who records before the filing of the federal tax lien has priority over the tax lien. The only difference between the old and new law is the addition of the word "lien" in the statute. There is no change in substance.[4] Nor does there appear to be any change in the rule that if property is attached prior to the filing of a federal tax lien, but the tax lien is filed before the judgment becomes a lien, the tax lien would have priority.[5]

The holder of a security interest has approximately the same position which a mortgagee or pledgee was given under the old law, except where special new statutory priorities apply.[6] These will be considered later. In order for a mortgagee to be protected, these requirements must be met prior to the recording of the federal tax lien: there must be an agreement; the lender must give up money or money's worth; the security must be in existence. I don't believe the language of the statute is clear as to whether the security interest must be recorded and local law may control this point. The statute says that the interest must have become protected under local law against a subsequent judgment lien arising out of an unsecured obligation. In some states at least a mortgagee with an unrecorded lien would be protected against a subsequent judgment creditor.

If a mortgage is recorded first, a subsequent advance by the lender after the recording of a federal tax lien appears not to be protected, even though the advance is obligatory, unless it qualifies under one of the special priority situations discussed below. The advance would not be choate, at least in the eyes of IRS.

A purchase money mortgagee probably is protected against a previously recorded federal tax lien. The statute is silent on this point. Also it is not certain that "purchase money mortgage" includes a mortgage running to a party other than the seller. This type of loan could be considered purchase money in character in view of the language used in the Senate Finance Committee explanation of the Act, but there has been some indication from IRS that only a mortgage back to the seller could properly be considered to be a purchase money mortgage.[7]

A mechanic's lien claimant is given priority under the new law; he had no such rights under the old.[8] The tests are that the mechanic's lien must be valid and the specfiic claimant must have started to furnish materials or services prior to the recording of the federal tax lien. Under the type of law where the priority of a mechanic's lien relates back to the commencement of work on the project regardless of when the claimant performed work or delivered materials, the new law has not eliminated the circuity of lien problem.

Several special statutory priorities (superpriorities) are provided for in the new law. Some but not all of these affect our business. These priorities exist even though notice of a federal tax lien has been filed.

General real property taxes and special assessments may have priority over a previously recorded federal tax lien. This special priority would exist only if the tax or assessment lien is entitled under local law to priority over secured interests in the property.[9]

Mechanics's lien claimants who worked on a residence occupied by an owner in a dwelling unit of four units or less are protected provided the contract price with the owner does not exceed $1,000.[10]

Where an attorney has a lien for fees under state law he has priority over a federal tax lien to the extent of his reasonable compensation.[11]

The new law continues a superpriority in favor of securities. According to the statute securities include negotiable instruments.[12] This leads me to the Goldberg and Badway cases.[13] In each of these cases the assignee of a mortgage was held to be subject to a federal lien filed against the assignor at his place of domicile. The court decided that the interest purchased was personal property rather than real property and, therefore, the domi-

[4] 26 U.S.C. 6323(a)

[5] United States of America v. Security Trust and Savings Bank of San Diego, 340 U.S. 47 (1950)

[6] 26 U.S.C. 6323(a), (h)(1)

[7] Legislative History, Federal Tax Lien Act of 1966, Senate Report No. 1708, Section II A(1), page 4949

[8] 26 U.S.C. 6323(a), (h)(2)

[9] 26 U.S.C. 6323(b)(6)

[10] 26 U.S.C. 6323(b)(7)

[11] 26 U.S.C. 6323(b)(8)

[12] 26 U.S.C. 6323(b)(1)

[13] U.S. v. Goldberg, 362 F. 2d. 575 (1966) and U.S. v. Badway, 367 F. 2d. 22 (1966)

cile of the owner was the proper place for filing the tax lien. (Residence has been substituted for domicile in the new law.) In neither case is there discussion of the possibility that the note, even though secured by a mortgage, may have been negotiable. If it was negotiable, it seems to me that the superpriority protection given by the statute should have been sufficient to protect the assignee against the government.

A real property construction or improvement financing agreement is given special priority.[14] There would have to be a written agreement in existence prior to the recording of the tax lien. The agreement would have to provide for financing the construction or improvement of real property or a contract to do the work. The interest of the lender would have to be entitled to priority under state law against a judgment lien creditor as of the time of the filing of the federal tax lien. If these conditions are met, there is no time limit within which advances must be made. The language of the statute is not too clear as to whether advances for offsite construction would be protected, although representatives of IRS have indicated they would. The extent to which a construction loan really has protection against a federal tax lien also is not clear. Many advances are made as a result of change orders or after variations of the building loan agreement which technically at least make the advances optional. An optional advance is not within the contract and, therefore, not within he statute. However, the statements of IRS representatives and the tenor of the Senate Finance Committee explanation of the Act indicates that the purpose of the exception is to permit completion and the resulting enhancement in the value of the property. There is an indication, therefore, but no guarantee that the section will be construed liberally in favor of a lender.[15]

A special priority given to obligatory disbursement agreements appears to be aimed at personal property transactions and seems not to be helpful in connection with ordinary mortgages.[16] One of the provisions of the statute is that the agreement shall be treated as coming within the law only to the extent of disbursements which are required to be made by reason of the intervention of the rights of someone other than the taxpayer. The Senate Finance Committee Report uses an irrevocable letter of credit as an example of the type of transaction intended to be covered.[17]

An obligatory advance made within 45 days after the filing of a tax lien may have priority over the tax lien.[18] The requirements for this priority are these: (1) the party making the advance has no actual (not constructive) notice or knowledge of the tax lien; (2) there was in existence prior to the recording of the tax lien a written agreement to make the advance; and (3) the property was in existence. There is no problem as to this third requirement where real property is the security. This provision really says that a lender making a series of obligatory advances only has to search the records for federal tax liens every 45 days.

If a mortgage has priority over a federal tax lien, the following types of advances made after the recording of the federal tax lien also have priority:[19] (1) interest or carrying charges on the debt; (2) reasonable charges and expenses of an indenture trustee or agent holding the security interest for the benefit of others; (3) reasonable expenses including attorneys fees actually incurred in collecting or enforcing the obligation secured; (4) reasonable costs of insuring, preserving or repairing the property; (5) reasonable costs of mortgage insurance; and (6) amounts paid to satisfy another lien on the same property which lien is entitled to priority over the federal tax lien.

[14] 26 U.S.C. 6323(c)(3)
[15] Legislative History, Federal Tax Lien Act of 1966, Senate Report No. 1708, Section II A(3)(b), pages 4953-4954
[16] 26 U.S.C. 6323(c)(4)
[17] Legislative History, Federal Tax Lien Act of 1966, Senate Report No. 1708, Section II A(3)(c), page 4954
[18] 26 U.S.C. 6323(d)
[19] 26 U.S.C. 6323(e)

STATEMENT BY MR. POTTER

Enforcement of a Private Lien Against a Subordinate Federal Tax Lien

The successful foreclosure of a mortgage or deed of trust against land, to which a junior federal tax lien has attached, requires compliance with both state and federal law. The Federal Congress has the power to create the general tax lien and to prescribe rules for its behavior. Congress could specify the only method by which property could be freed from a lien. Congress, however, has chosen

not to preempt this area of the law. All this has been clear at least since Brosnan [1], a decision noted with pleasure a few years back.

Congress has continued to permit federal liens to be cut off by proceedings authorized by state law. Congress has, however, imposed certain conditions compliance with which is mandatory if the foreclosing party is to accomplish his purpose. Since we last assembled, Congress has changed the rules substantially by enactment of the Federal Tax Lien Act of 1966.

An attempt will be made to review those provisions of the Internal Revenue Code, as now amended, which require close attention in a foreclosure. Since Congress deals separately with judicial foreclosures [2] and non-judicial foreclosures [3], we accommodate ourselves to this approach. But first comes a caveat that there may be, in one or more states, a method of foreclosure which does not fall immediately and decisively into either the judicial or non-judicial classification. Until the proceedings are so classified, one cannot tell where to turn nor which section of the code to follow.

Judicial Foreclosure

If it has been decided to foreclose by a judicial proceeding, a search for notices of federal tax liens should be made up to the time at which the action is started. If, at that time, no notice of lien has been filed, it is necessary neither to join the United States as a party defendant nor to be concerned further about competing federal tax liens. The foreclosing party may ignore the possibility that a lien has attached, but no notice thereof has yet been filed, and the possibility that a lien may arise and notice be filed while the foreclosure action is pending.[4] This is not exactly startling. But recognition of the principle in federal tax lien law does have a novel aspect.

If a search made before starting the action reveals a general tax lien, the United States must be joined as a defendant. Otherwise, any judgment or sale will be "made subject to and without disturbing the lien of the United States . . .".[5] But, if the United States is joined as a party defendant and the procedure is otherwise proper, the judgment or sale will have the same effect on the subordinate federal tax lien as provided with respect to junior liens by local law.[6] One assumes that's good. At least you are accustomed to it. Presumably the judgment or sale will free the land of any lien notice of which was not filed when the action began and of any lien which arose after the action began. It should be observed that the United States must be joined if a lien is on file when suit is started even though local law does not require joining a junior lienor in order to cut off his lien.

Suit against the United States is permitted by express waiver of sovereign immunity in cases in which the United States holds a mortgage or other lien on the land involved in the action.[7] This code section has been amended by the Federal Tax Lien Act of 1966 to broaden the scope of permitted actions. Formerly permission was granted to bring an action to quiet title or foreclose a mortgage or other lien only. Now partition, condemnation and interpleader are included. The amendment is thought to be beneficial since it permits clearing title of federal liens in more cases and provides certain procedural advantages in avoiding multiplicity of suits and otherwise.

The waiver of sovereign immunity permits such suits in any federal or state court having jurisdiction. The statute, as it now stands, does not purport to grant jurisdiction anywhere. Thus, there will be federal jurisdiction only if justified independently. The United States, however, retains the right to transfer the action to a federal district court.[8]

Procedural Steps

The code sets out certain necessary procedural steps, the most important of which will be mentioned. The complaint must set forth with particularity the nature of the interest or lien of the United States. The full detail from the filed notice of tax lien must be shown.[9] Service must be made as specified in the code on the local district attorney's office and by mail on the Attorney General of the United States. The United States has sixty days after such service, and such further time as the court may allow, to appear and plead.[10] The

[1] United States v. Brosnan and Bank of America v. United States, 363 U.S. 237, 80 S. Ct. 1108, 4 L Ed. 2d 1192 (1960)
[2] 26 USC 7425(a)
[3] 26 USC 7425(b)
[4] 26 USC 7425(a)
[5] 26 USC 7425(a)(1)
[6] 28 USC 2410(c)
[7] 28 USC 2410
[8] 28 USC 1444
[9] 28 USC 2410(b)
[10] Ibid

action brought must seek a judicial sale of the property involved regardless of whether local law would require such a sale.[11]

If a judicial sale ordered in an action to which the United States is not a party discharges a federal tax lien, the United States may nevertheless claim a share of the proceeds of the sale (with the same priority as its lien) at anytime before the distribution of such proceeds is ordered.[12] Also, the United States may intervene in any foreclosure action to which it is not already been made a party for the purpose of asserting a federal tax lien.[13] Should the United States intervene in such circumstances, the scope of the action could be broadened to the full extent permitted by the 1966 amendment [14] and the United States would have the right to transfer the action from a state court to the federal district court.[15]

The code does not specify at what time the United States may intervene. Presumably, therefore, it may intervene at anytime prior to the completion of the action. In the proper case it will be essential to note that the 1966 act provides specifically that if the application of the United States to intervene is denied, the adjudication will have no effect upon the federal tax lien.[16]

The right of United States to redeem from a judicial foreclosure sale will be the subject of comment a bit later.

Non-Judicial Foreclosure Proceedings

We all remember that, some years ago, we took joy in the Supreme Court decision in Brosnan [17] in which the majority of the court held that a nonjudicial foreclosure proceeding (confession of judgment or exercise of power of sale) which, under applicable State law, would cut off a private lien junior to the mortgage, would also cut off a junior federal tax lien. It may also be recalled that the minority opinion protested that the majority's rule would permit large quantities of land to be divested of federal tax liens without so much as notice to the United States. In the 1966 legislation, Congress has retreated from the Brosnan position to the extent of requiring notice to the United States, in certain cases, as a condition precedent to divesting the property of the lien. An attempt will be made to summarize the provisions relating to the giving of the prescribed notice.

A subordinate federal tax lien will not be cut off by a foreclosure sale if a notice of said lien has been on file more than 30 days prior to the sale, unless proper notice of the sale is given to the United States.[18] A subordinate federal tax lien is cut off if notice of the lien was not filed 30 days before the sale or if proper notice of the sale was given to the United States and if local law would so treat a junior lien.[19]

One looks at the record 30 days before the date of foreclosure sale. If no notice of the federal tax lien appears to have been filed or recorded at that time, the foreclosure will be effective against any federal tax lien which may then be in existence but as to which no notice has been filed. The foreclosure sale will also be effective against any liens which may arise after said date 30 days prior to the sale.

Notice of Sale

The code provides that the notice given to the United States shall conform with the regulations prescribed by the Secretary or his delegate.[20] As of the date of preparation of this material, no regulation has been issued. Technical Information Release 873, dated December 22, 1966, specifies the contents required in the notice of foreclosure sale in detail. Although the Technical Information Release does not have the status of regulations, I believe it is safe to say that the release may be relied upon fully. Since the contents of TIR-873 are so well known, they will not be repeated here.

The code provides that "notice of a sale . . . shall be given . . . in writing, by registered or certified mail or by personal service, not less than 25 days prior to said sale, to the Secretary or his delegate." [21] TIR-873 specifies that service shall be made on the Chief, Special Procedures Section, in the office of the District Director for the Internal Revenue District in which the sale is to be conducted. Since the statutory requirement is that notice shall *be given* not less than 25 days prior to the sale it would seem that,

[11] 28 USC 2410(c)
[12] 26 USC 7425(a)
[13] 26 USC 7424
[14] 28 USC 2410(a), made applicable by 26 USC 7424
[15] 28 USC 1444, made applicable by 26 USC 7424
[16] 26 USC 7424
[17] Op. cit. supra note 1
[18] 26 USC 7425(b)(1)
[19] 26 USC 7425(b)(2)
[20] 26 USC 7425(c)(1)
[21] Ibid

in the absence of regulations on the point, we must take this to mean that notice must *be received* not less than 25 days before the sale. Hopefully the regulations, when issued, will provide that the date of mailing is the date notice is given.

If, after proper notice of a sale has been given, the sale is adjourned, one might well wonder whether the giving of a new notice is required. The literal reading of the new legislation and TIR-873 point in that direction. Hopefully the regulations will clear up this problem too. At any event it would seem of the first importance to obtain precise evidence of the form of the notice served and of the time and manner of service. After all if proper notice was given, the land has been divested of the tax lien. If proper notice has not been given, the lien continues to be effective against the land. Until such time as the regulations clarify or modify what is now the apparent rule, caution requires a very conservative position in insisting on strict compliance with the requirements for service.

In passing it should be noted that provision is made in the code authorizing the United States to consent to making a foreclosure sale free from the federal tax lien.[22] TIR-873 says that the District Director may consent "where he deems it appropriate" even though timely or adequate notice is not given. No conjecture is made concerning the criteria to be used in determining appropriateness.

Redemption by United States

The period during which the United States may redeem land sold at a foreclosure sale has been reduced by the 1966 legislation to 120 days or the period allowed by state law, whichever is longer. This applies to both judicial sales [23] and non-judicial sales.[24] The code provisions on the right to redeem appear broad enough to give United States a redemption right in any case in which a lien is being cut off—i.e., not only where notice of the lien was filed sufficiently early to require a joinder of or notice to United States.

Technical Information Release 912, dated June 22, 1967, indicates that the regulations to be issued will provide that the United States will have no right of redemption from a non-judicial sale unless notice of the lien had been filed more than 30 days prior to the foreclosure sale, unless a right of redemption would be given to a private creditor similarly situated. I take this to mean that if the state law provides no right of redemption for a junior lienor, the United States will assert no such right arising from a tax lien unless notice thereof was filed more than 30 days before the foreclosure sale. Thus, in jurisdictions in which there is no right of redemption as a general thing, the United States has given up an important right. If the state law gives a right of redemption to a junior lienor, the United States will have the same right.

The 1966 Act supplies us with a statutory formula for determining the amount United States must pay to redeem from a judicial foreclosure.[25] In summary, the required amount is the sum of:

(a) The amount paid by the purchaser at the sale (if the purchaser held the lien foreclosed, include the amount of the obligation secured by the lien to the extent it was satisfied)
(b) Six per cent interest on such amount
(c) The excess of the expenses incurred in foreclosure over the income derived plus a reasonable rental value.

The formula supplied has a reasonable ring but it cannot be guaranteed to conform to the law of all the states or even any state. The same formula is made applicable to non-judicial foreclosures.[26]

Heretofore the right of the United States to redeem from foreclosure sales was exercised rarely in large part, at least, because funds were not made available for use for this purpose. The 1966 act establishes a revolving fund of $1,000,000.00 for use by the United States in redeeming real property.[27] It may be used.

The provisions of the code dealing with the manner in which the United States may redeem appear, as of this point in time, to create potentially serious problems.[28] It is contemplated, apparently, that the United States will bring about redemption through the officer authorized by state law. If there is no such officer or such officer refuses to act, the Secretary or his delegate "shall execute a certificate of redemption". It is said that this certificate shall be recorded without

[22] 26 USC 7425(c)(2)
[23] 28 USC 2410(c)
[24] 26 USC 7425(d)(1)
[25] 28 USC 2410(d)
[26] 26 USC 7425(d)(2)
[27] 26 USC 7810
[28] 26 USC 7425(d)(3)

delay in the proper registry of deeds. If, however, the local law has made no provision for recording such documents, the certificate can be filed in the office of the clerk of the United States district court for the local judicial district. The certificate executed by the Secretary or his delegate constitutes prima facie evidence of the regularity of such redemption and, when recorded, transfers to the United States all the rights, title and interest acquired by the person from whom the United States redeemed such property.

Thus it appears that it may be necessary to make a search in the office of the federal district court clerk for such certificates of redemption. Because of a possible difference between local and federal law on the amount required to be paid by the United States to redeem and for various other reasons, there may well be cases in which the United States effects a redemption in accordance with the amended code but without recording any document in the register of deeds office. Under state law, record title may be established in the purchaser at the foreclosure sale whereas, under federal law, the title to the property may be in the United States. A search of the office of the federal district court clerk may reveal the existence of this unhappy situation. The solution of the problem involved, as far as your speaker is concerned, will await further developments.

STATEMENT BY MR. BOWLING

1. Creation of General Tax Lien.

(a) When lien arises

The Federal Statutes continue to provide that the general Federal tax lien (as distinguished from the special lien for Estate and Gift taxes) shall arise at the time the assessment for such taxes is made.[1] The Internal Revenue Service notes the assessment in its office and then must make demand upon the taxpayer for payment. Upon his refusal or neglect to pay, the lien relates back to the date of assessment.

It can be seen that this is a secret lien, often known only to the I.R.S., but it is a valid lien for all purposes, except to the extent that the Federal Statutes specifically provide that it is invalid under certain circumstances.

(b) Interest in property to which the lien attaches.

The statutes provide that the tax shall be a lien upon all property and rights to property, whether real or personal belonging to the taxpayer.[2]

A general lien is created on all property of the taxpayer and levy on a particular parcel of property is unnecessary for the creation of the lien. The inclusiveness of the tax lien is illustrated by the fact that it attaches to property otherwise exempt from creditors under state law. It will attach to contingent rights when they become enforceable, terminable interests subject to their termination, property restricted as to transferability and to after acquired property.

While Federal law may determine which property belonging to the taxpayer is subject to the lien, state law will determine whether property belongs to the taxpayer. For example, state law will determine whether a partner has an interest in partnership property or whether a spouse has an interest in the community estate. State law will control as to whether the lien attaches to property owned by a taxpayer who is a tenant in common, a joint tenant or a tenant by the entirety.

2. Duration of General Tax Lien.

The Statutes provide that the lien shall continue until the tax is satisfied or a judgment for the tax is satisfied, or until the lien becomes unenforceable by reason of lapse of time.[3] Lapse of time is provided for by requiring enforcement by levy or court proceeding within 6 years after assessment or expiration of a period agreed on by the I.R.S. and the taxpayer.[4]

It can be seen from the foregoing that the mere passage of 6 years from the date of assessment cannot be relied upon to eliminate the tax lien. The life of the lien may be extended by an extension agreement which may be known only to the I.R.S. and the taxpayer. Also, the period of limitation will be suspended when the taxpayer's property is in the control of a court or due to the absence of the taxpayer from the country for one or more periods of at least 6 months.[5]

The commencement of a suit for money judgment for the taxes will suspend the running of the 6 year period and the obtaining of a judgment will keep the lien alive until the judgment

1. 26 U.S.C. §6322

2. 26 U.S.C. §6321
3. 26 U.S.C. §6322
4. 26 U.S.C. §6502(a)
5. 26 U.S.C. §6503

is satisfied,[6] except that the judgment will not extend the period within which the tax may be enforced by levy.[7]

3. Filing of Notice of General Tax Lien.

While the lien for general Federal taxes attaches to all property of the taxpayer upon assessment, the statute provides that the lien shall not be valid as against certain designated third parties until notice thereof has been filed.[8]

In the case of real property, the lien must be filed within one office in a governmental subdivision designated by the State within which the property lies.[9] Under so called "conformity statutes" the states have provided for the filing of such liens in local recording offices.

The filing requirements regarding personal property are important to title men because the courts have held that the interest in property owned by a mortgagee is the indebtedness, which is personalty. The notice of tax lien in the case of personal property must be filed at the residence of the taxpayer which, in the case of a corporation or a partnership, is deemed to be its principal executive office.[10] Assignees of mortgages and title insurers must decide whether to require a search for Federal tax liens in a jurisdiction other than that in which the land lies to determine whether the assignor has a tax lien filed against him which will follow the mortgage into the hands of the transferee.

4. Refiling of Notice of Lien.

We have seen that the six year period for enforcement of the Federal tax lien may be extended under several circumstances. However, the new Act now requires the Government to refile its notice of tax lien within 30 days after the expiration of the original 6 year period and before the end of each succeeding 6 year period if it wishes to retain the priority of its original filing.[11] If it refiles after that time, its priority will date only from the time of the refiling. It would appear that certain third parties who wish to acquire an interest from the taxpayer may safely do so even though a Federal tax lien has been filed and an extension of the life of the lien has occurred, if 6 years and 30 days have expired since the assessment and the Government has not refiled notice of its tax lien.

5. Administrative Removal of Tax Lien.

The Statutes provide that a certificate of release of any lien imposed with respect to any Internal Revenue tax may be issued if it is determined that the liability for the amount of tax assessed has been fully satisfied or become legally unenforceable, or there is furnished a bond conditioned upon the payment of the amount assessed. Also, a certificate of discharge of any part of the property subject to the lien may be issued if it is found that the value of that part of the property *remaining* subject to the lien is double the amount of the unsatisfied liability. Also, a partial discharge of property subject to the lien may be made if there is paid over in part satisfaction an amount which is not less than the value of the interest of the United States in the part of the property to be discharged. Also, a certificate of partial discharge may be issued if it is determined at any time that the interest of the United States in the part to be so discharged has no value.

A certificate of partial discharge will be issued if part of the property is sold and the proceeds of sale are held as a fund subject to the tax lien in the same order of priority. Also, a certificate of subordination of the Federal tax lien to a junior lien may be issued if there is paid to the United States an amount equal to the amount of the junior lien or the Collector believes that the amount realizable by the United States will be increased by the subordination of the tax lien. Also, a certificate of non-attachment may be issued if for some reason, such as confusion of names, any person other than the taxpayer may be injured by the appearance that a notice of lien has been filed against him.

Certificates of release or non-attachment may be revoked under certain conditions by the Collector by giving notice to the taxpayer and filing notice in the local recording office. However, the reinstated lien will take effect only as of the date notice is mailed to the taxpayer but not earlier than the date notice of revocation is filed. This will allow persons to deal

6. 26 U.S.C. §6322
7. 26 U.S.C. §6502(a)
8. 26 U.S.C. §6323
9. 26 U.S.C.§6323(f)
10. U.S. v. Goldberg, 362 F. 2d 575; U.S. v. Badway, 367 F. 2d 22
11. 26 U.S.C. §6324(g)

safely with the taxpayer in reliance upon the certificate of release or non-attachment until notice of revocation is filed. Note that a certificate of discharge may *not* be revoked. However, the Act does provide that if the taxpayer disposes of and reacquires the property after the issuance of a certificate of discharge, the tax lien will reattach.[12]

6. Special Liens for Estate and Gift Taxes.

Federal Statutes provide that the special liens for Federal Estate and Gift Taxes arise upon the death of the decedent or when the gift is made and last for 10 years (unless the tax becomes unenforceable by lapse of time—generally 6 years after assessment). Notices of these liens do not have to be filed to be valid against third parties.

However, the Gift tax lien is lifted from the gift when transferred by the donee to a purchaser or holder of a security interest, provided the property did not pass from the decedent through his will or by intestacy, being included in the gross estate only because of the Estate Tax Statutes.[13]

The new Act brings the Estate and Gift tax lien within some of the savings provisions applicable to the general tax lien. Mechanics' liens, ad valorem taxes and assessments, attorney's liens and other interests are given priority over these special liens under the same conditions applicable to the general tax lien. Also, if a security interest, such as a mortgage, has priority over the estate or gift tax liens, such priority shall extend to interest and expenses of foreclosure, etc., in the same manner as provided with respect to the general tax lien.[14]

12. 26 U.S.C. §6325

13. 26 U.S.C. §6324
14. 26 U.S.C. §6324(c)

"THE MAGIC OF AUTOMATION"

Moderator:
LAURENCE J. PTAK
Vice President, Lawyers Title Insurance Corporation, Cleveland, Ohio

Panel:
D. H. BUTTERS
International Business Machines Corporation, White Plains, New York

JERRY KOORY
Planning Research Corporation, Los Angeles, California

JACK J. EDWARDS
Executive Vice President, California Land Title Company, Los Angeles, California

STATEMENT BY LAURENCE J. PTAK

The subject for this panel, "The Magic of Automation" is, I believe, the fanciful brainchild of our good friend and Director of Public Relations, Jim Robinson.

Automation, as will develop, is not very magical and I would caution you to make proper allowance for Jim's PR hyperbole; he even thinks that Title Insurance is a good thing.

Automation, as exemplified by computers, involves simply a collection of odd bits of rather old-fashioned things. For example, the magnetism of iron on which the computer depends for its memory has been of use in mariners' compasses since the time of the Vikings; electricity goes back at least to Ben Franklin's time; and even the vacuum tube as an electric valve was invented by Lee de Forest in 1906.

The principles of mechanical computation were developed by Blaise Pascal, a Frenchman, in 1642, and Charles Babbage, an Englishman, designed a theoretically feasible computer in the mid-1800's which failed only because metal working was not sufficiently advanced to build it.

No—computers are not magical, but grew out of the combination of long-known principles into the mechanical and electronic marvel which we know today.

The most marvelous computer of which we can conceive would be just so much inert material until a man pushes in the plug and tells it what to do. This is the function of software: to define the problem; to organize the solution; and to write the instructions which tell our zombie what we want it to accomplish.

Jerry Koory is manager of the Computer Applications Department of Planning Research Corporation of Los Angeles. Jerry's firm has developed the software for a computerized title plant. He will tell us of the problems involved and the solutions thereof.

STATEMENT BY MR. KOORY

This presentation covers two topics: 1) software that is required for title search automation, and 2) managing the development of software systems. In order to talk about the two subjects, I must first provide some definitions. First of all, "software." Software is a comprehensive set of d e t a i l e d instructions that cause the computer to perform work. "Programs"—a set of instructions organized into a logical group. "Programming"—converting an English language prose description of the system into detailed instructions that can be understood by the computer. "Support software"—a set of programs, sometimes referred to as utility programs, which provide the programmer with the basic tools that he needs to communicate with and direct the computer; usually supplied by the manufacturer. Last, but not least, "applications software"—the programs that perform the real work of the system.

The Automated System

A brief description of the system that was automated is:

1. More than 7 million punched cards organized into two files: property index and general information index (GI).
2. The two files index the set of microfilm files which are copies of documents recorded at the County Recorder's Office.
3. The function of the system is to search the property and GI indexes, prepare a chain of title, listing all document references, including starters.
4. Property is indexed in two ways: tract, block, lot and range, township, section.
5. The general information index is a name file and is encoded using the Russell Soundex system.
6. Input to the system is 5000 to 8000 punched cards per day. These cards represent the result of indexing from the microfilm files delivered from the Recorder's Office to the title plant.
7. Output. Up to 360 searches per hour producing reports for title officer management, plant audit and data processing.

Hardware

1. IBM 360/30
2. 32, 768 bytes of fast access memory
3. Three 2311 disk packs (7.25 million bytes each)
4. Two 2321 data cells (400 million bytes each)
5. A card reader punch
6. 1100 line a minute printer

Required Software

For any system such as this, there are two kinds of software: support software and applications software.

First, let's discuss support software. As mentioned earlier, support software is normally supplied by the manufacturer, and in this case it was. We used the 16K disk operating system (16K DOS) with the physical input/output control (IOCS) system. For a programming language we used the Basic Assembly Language for the 360. COBOL was considered for the programming language and rejected primarily because the schedule for its availability was not compatible with the project development schedule. Additional reasons for not using COBOL were that we had a small memory machine and we felt that we would have to have very high density of data packing on the files in order to effectively use the file storage that was available to us. Another item of support software that we would have liked to have used was Index Sequential. This is supplied by IBM for data management of random access files. It's the right idea, but for the type of file we had, and for this special application, we determined it was not as efficient as we required. The result of our study of Index Sequential, however, led us to the design of our own file management system, so it wasn't a complete waste of time.

The applications software is that software produced by us to perform maintenance of the data base, and do title searches and other reports as required by the title plant management. This software package has a set of programs that are organized into the various work "modes" of the system. The complex of programs is controlled by a single program called "System Control." System Control and each of the operating modes are discussed briefly below.

System Control

This program is resident in core memory at all times and provides the continuity between various phases of the system. It examines the requirements for processing and fetches from the disk pack the appropriate programs to perform the functions as required.

Update

The function of update is to read the index cards each day, perform an edit upon them, and add them to the file so that they are available for retrieval in response to a query.

Search

The function of Search is to respond to a query by searching the files and providing the chain of title. Search has two modes. The normal mode is to process a new order and enter the order into the daily transaction log and provide the searching to list the chain of title. The other mode is to simply display the contents of the file in response to a query but not enter data into the new order file. The display function allows the title plant management to perform customer service by providing chain of title and tax information among other things without the requirement of initializing an order.

Audit

Another mode in the system is Audit. The function of Audit is to provide an edit listing each day of those items which have been added to the file so that the plant auditor may make a visual check of the data. This has proven to be of value as the plant auditor knows a great deal about recordings, common misspellings, tracks, etc. If an error is detected, the erroneous data may be flagged until the correct information is available.

Plant Accounting

The purpose of this function is to provide the title plant manager with accurate data on a daily basis so that he will always know the contents of his files. As the files are organized in a current and a main plant concept, it is necessary for the plant manager to keep a constant check on the extent of the current plant. When the current plant, which is held on the disk pack, is close to becoming full, then he must schedule a reorganization so that he does not overflow the disk.

Reorganize

Reorganize is a mode in which we merge the contents of the current file kept on disk with the main file which is kept on the data cell. The result of Reorganize is a newly ordered main file on a data cell with, in effect, a current file that is blank. A side benefit of Reorganize is that we solve the file security problem at the same time. Because the Reorganize function is essentially a copy function, at the end of it we have a brand new file sitting on one data cell, the old main file sitting on another data cell, and the old current file sitting on a disk pack. These two old files are then called the father file and are stored in a vault as backup in the event of a catastrophe. We actually use a two level security system where we have the father and the grandfather copy of the file, so in case of any accident during reorganization we can always go back one step and recreate the files in a few hours.

Other

The Other mode is a special mode that we installed in the system to provide an escape hatch for the installation manager. This allows him to enter the system during the day and interrupt it for handling "Other" kinds of work. The system is capable of providing many more searches during the normal work day than are ever required. As a result, there are times when the computer is available for other tasks. The Other mode provides this escape hatch. The installation manager may choose to run payroll, other accounting functions, or even rent time if he so desires.

File Conversion

Last, but certainly not least, one of the major pieces of software that was produced in this development process was the set of programs necessary to do the file conversion. Remember that we read over 7 million punched cards during file conversion, processed them and placed them out on the data cell for permanent storage.

The total set of programs that were developed for this application constitute 20,000 instructions, required some 50 man months of professional programmer time, and extended over a period of 20 calendar months.

Management of System Development

I assume that most of our audience today are managers and not particularly interested in detail on file design, programming techniques, etc. Therefore, I will leave the details to the question and answer period or to individual discussion at your pleasure, and now proceed to describe the steps of the development process and how the process can be managed successfully.

The development of a system is divided into two phases: design and implementation.

Design Phase

1. Statement of Requirements

The initial product in the design phase is normally a statement of requirements which is produced by the customer and describes, in his words, what his problem is.

2. Functional Design

Working with his statement of requirements, and as a result of some study activity, we produce a functional design. This is a statement of what the system will do in order to respond to the statement of requirements provided by the customer. It's an exterior view from the point of view of the user of the system. It also includes such things as performance requirements.

3. Design Review

The next step in the design phase is a review where we sit down with the customer and review with him in detail the functional design to be sure that the system as described will provide the activities and functions he requires.

4. System Specification

A System Specification is a description of how the system will operate in providing the functions defined earlier. It's an interior view of the system and contains a great deal of detail. It describes the input, includes a glossary of terms, defines the file structure, defines the output including formats and content of all reports and products of the system, and describes the processing that will take place in the system, including any math formulation that is required. The last item in the system specification is a description of the file conversion requirements for the system.

5. Design Review—Concurrence

This review requires sitting down with the customer and going over in detail the system specification to obtain his concurrence on the design. The customer is not expected to understand all the details of the processing and formulation or the file structure, but he is expected to review the input data to be sure that nothing was left out, and particularly review the output of the reports to be sure that those are the reports that he wants and that's the form in which he wants them. This particular point is one of the most important in the whole system development because the system specification is the blueprint for the system. The customer must look at this very carefully to determine if he agrees with it. Once he has agreed, a design barrier is invoked to provide control for changes that may be requested during the implementation phase. Following user concurrence on the system specification, the implementation phase is begun.

6. Implementation Plan

The final activity of the Design Phase is to prepare the Implementation Plan. This plan is a detailed schedule of events and activities that will take place during the implementation. It is used by management for estimating the cost and the time required for development, and later is used to check progress as presented on the regular status reports.

Implementation Phase

1. Change Control

Change control, as mentioned above, is very important in two ways. First, approval of changes is at the same level with budget control. This automatically removes the temptation from the project manager to put in changes just to be a nice guy. He knows that his boss is looking at these and looking at the budget for the job at the same time. The second item used for maintaining change control is a device called the "Wishbook." The Wishbook is a notebook which is given to the project manager at the beginning of the implementation phase with instructions to use whenever somebody comes up to him, whether customer or programmer, and says, "Gee, I've been thinking about the design, and I wish we had this feature in it." The project manager immediately records this wish in the Wishbook. When the customer says, "What are you doing?", the project manager says, "I'm recording the wish—it's a good idea and I don't want to forget it." The message has to be clear; he is recording a wish but not implementing a change. There are some changes that come along that are necessary because they're a result of an oversight during the system specification, and those changes, of course, are put in; otherwise, the system would not be as useful as it was intended to be. But wishes are recorded and are reviewed at the end of the project to see if there is a requirement for producing a Model 2 version of the system. The customer gets a good review of the total project and an on-time, on-budget completion of his initial project.

2. Acceptance Testing

Planning and producing tests for acceptance testing are very important. It can be done by either the customer or by the programming staff producing the system. In many cases it's wise for the customer to produce the acceptance test as this is a very good vehicle for training his own staff in how to actually use the system that has been developed for them. Regardless of who develops the acceptance test and plans for testing, the other party must have an opportunity for full review and concurrence on the tests prior to the time that they are used. Acceptance tests, of course, must follow the system

design as described in the system specification.

3. Status Reports

Another activity that goes on during the implementation phase is status reports. This should be done on a regular basis and should be related to the total time of the contract. If it's a reasonably short contract, then probably every two weeks is required. If it's a longer contract, once a month is probably satisfactory. The status report must be related to the activities and the events of the implementation plan.

4. User Manual

A major document that is produced during the implementation phase is the User Manual. This normally has two volumes. The first volume is for the computer operator and instructs him how to operate this system when it's in the computer. It tells him what tapes to mount, what cards are to be read, and what to expect out on the printer and the console typewriter. It's a run book and sits on the console during execution. The second volume is aimed at the system analyst, that is, that person that is responsible for managing the data that's in the system. This document describes how to make the system perform the functions for which it was implemented. It provides data formats, control and parameter information, and anything else required by the person who is generally responsible for using the system.

5. Maintenance Manual

The last document that is produced in the implementation phase is the Maintenance Manual. This also has two volumes. One is the program listing itself, that is, that listing that is generated during program assembly or program compile time. Volume II is the system description. The system description is an update of the system specification. The system specification describes how the system will be produced; the system description describes how the system was produced. If the system specification was properly done, the system description is produced by a simple updating and revision of the specification.

In conclusion, I have described the system which was automated, and the software produced in order to actually implement that automation. I've discussed the development process, and in particular the management techniques which were used for controlling the development process.

Thank you.

EDITOR'S NOTE: Remarks made by Mr. D. H. Butters and Mr. Jack Edwards at the "Magic of Automation" Workshop Session on September 25 will be published in a future issue of Title News.

CONGRATULATIONS AND BEST WISHES TO THE NEW NAREB PRESIDENT—LYN E. DAVIS

Lyn E. Davis, Dallas, Texas was elected President of the National Association of Real Estate Boards on November 16. His election came near the close of the 60th annual NAREB Convention held in Washington, D.C.

Mr. Davis has served as NAREB Treasurer for the past two years. In addition to his post as Treasurer, he is a member of the NAREB Executive and Finance Committees.

A member of the Dallas Board of Realtors since 1939, Mr. Davis served as its President in 1951. In 1955, he was named Realtor of the Year for Dallas and Realtor of the Year for Texas in 1960. He has served the Texas Real Estate Association as Vice-President, Treasurer and Director.

Mr. Davis, who will succeed Richard B. Morris, Buffalo, New York, will be installed at the NAREB midwinter meetings in Dallas, January 26-30, 1968.

MEETING TIMETABLE

February 3-4-5-6-7-8, 1968
Idaho Land Title Association
Honolulu, Hawaii

February 21-22-23, 1968
MID-WINTER CONFERENCE
American Land Title Association
The Roosevelt Hotel
New Orleans, Louisiana

April 25-26-27, 1968
Arkansas Land Title Association
Marion Hotel, Little Rock

April 25-26-27, 1968
Texas Land Title Association
Robert Driscoll Hotel,
Corpus Christi

April 26-27, 1968
Oklahoma Land Title Association
Camelot Inn, Tulsa

May 5-6-7, 1968
Iowa Land Title Association
Holiday Inn, Waterloo

May 9-10-11-12, 1968
Washington Land Title Association
Sheraton Motor Inn, Seattle

May 17-18, 1968
Tennessee Land Title Association
Continental Inn, Nashville

May 19-20-21, 1968
Pennsylvania Land Title Association
Tamiment-in-the-Poconos

May 22-23-24, 1968
California Land Title Association
Hotel Del Coronado
Coronado, California

June 19-20-21, 1968
Illinois Land Title Association
Bel Air East Hotel
St. Louis, Missouri

June 26-27-28-29, 1968
Michigan Land Title Association
Boyne Highlands, Michigan

June 27-28-29, 1968
Land Title Association of Colorado
Wort Hotel
Jackson, Wyoming

June 27-28-29, 1968
Montana Land Title Association
Wort Hotel
Jackson, Wyoming

June 27-28-29, 1968
Wyoming Land Title Association
Wort Hotel, Jackson

July 14-15-16-17, 1968
New York State Land Title Association
The Greenbrier
White Sulphur Springs, West Virginia

August 22-23-24, 1968
Minnesota Land Title Association

September 12-13-14, 1968
North Dakota Title Association
Holliday Inn, Bismarck

September 13-14-15, 1968
Missouri Land Title Association
Colony Motor Hotel
Clayton, Missouri

September 28, 1968
Oregon Land Title Association
Hilton-Portland Hotel
Portland, Oregon

September 29-30-October 1-2, 1968
ANNUAL CONVENTION
American Land Title Association
Hilton-Portland Hotel
Portland, Oregon

October 24-25-26, 1968
Wisconsin Title Association
Pfister Hotel, Milwaukee

American Land Title Association