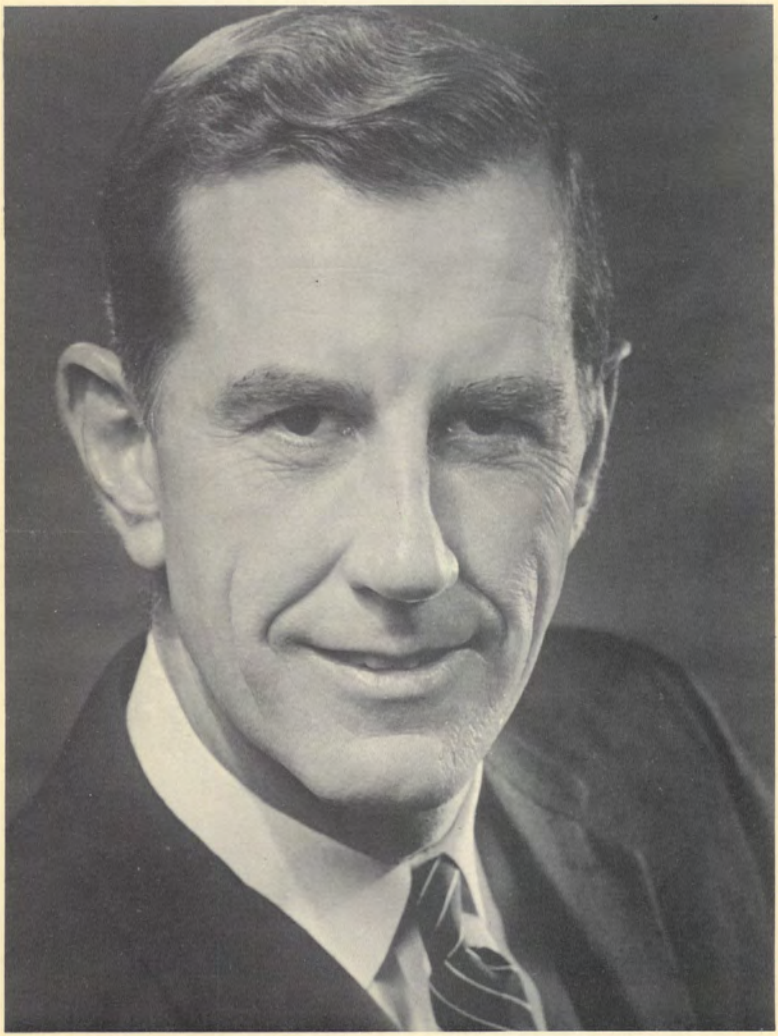
TITLE NEWS

THE OFFICIAL PUBLICATION OF THE
AMERICAN LAND TITLE ASSOCIATION

"OUR 61st YEAR"



NOVEMBER, 1968

PRESIDENT'S MESSAGE

NOVEMBER, 1968

I have just returned from the Florida Land Title Association Convention held at the Hollywood Beach Hotel, and from the 61st Convention of the Indiana Land Title Association held at Stouffer's Motor Hotel in Indianapolis.

It is indeed warming to learn that our state associations are in such good shape and are promoting the land title evidencing profession so well.

Unfortunately, since there were five conventions occurring on the same days, all of us could not attend all of the meetings. I do hope that scheduling of state conventions can be arranged in the future to avoid overlaps, so far as possible.

In Florida, I was particularly impressed by the progress being made in establishing rapport with the Insurance Commissioner. Commissioner Williams has exhibited a desire to at least listen to our side of the story, with relation to the problems confronting our members in that State.

In Indiana, I was impressed, when reading two of the news releases issued by the Attorney General of that State, which releases he distributes to 200 weekly and semi-weekly newspapers throughout the State. One of the releases, entitled "Buying a Home" sets forth the necessity of an abstracting or examination of title; and the second release, entitled "Title Insurance," in which he encourages the use of title insurance as a protection for purchasers.

The members of all committees of the Association have now been appointed, and the committees have begun to function, so that reports will be in the hands of the Executive Committee and Board of Governors before the Mid-Winter Conference in Chicago.

It is not too early to make plans to attend the Mid-Winter meeting, and I am looking forward to seeing all of you.

Sincerely,

Gordon Burlingame

Gordon M. Burlingame

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FEATURES

DEPARTMENTS

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ON THE COVER: John W. Warren was chosen by his fellow titlemen to be the new Chairman of the Abstracters and Title Insurance Section at the Annual Convention in Portland. Mr. Warren is a resident of Newkirk, Oklahoma, and has been active in Association affairs for many years. He has held many elective offices, including the President of the Oklahoma Title Association in 1962-63, and Chairman of the Southwest Region of Title Insurance Executives in 1963-64. We welcome Mr. Warren to the Executive Committee of the American Land Title Association.

MICHAEL B. GOODIN, *Editor*
DONAILEEN C. WINTER, *Assistant Editor*

NEW FINANCING . . . FOR PLANNED COMMUNITIES

By

Charles M. Haar, Assistant Secretary for Metropolitan Development, Department of Housing and Urban Development

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Mr. Haar discusses Title IV, the New Communities Act of 1968, of the recently passed Omnibus Housing Bill. In this exclusive article, Mr. Haar points out the potential benefits to be derived from these new government provisions for the financing of planned communities for both the community and the people that will live in them, and for the homebuilders and mortgage leaders. As Mr. Haar emphasizes, the new cash flow debenture authorized by Title IV will "open up new sources of private capital to the land development and home construction industries." He explains how this new program will work to bring "the private sector of investment, development, and entrepreneurial capacity into this area of managerial and technical challenge under a framework of public cooperation and goals."

No domestic need is more urgent than that of providing for the increasing concentration of our population in and around urban centers.

We must expand our housing supply; achieve more orderly, less expensive urban growth patterns; curb the unaimed drift of population from rural to metropolitan areas; preserve the dignity and quality of urban life; and provide more living choices for our people.

The New Communities Act of 1968, Title IV of the Omnibus Housing Bill, offers major opportunities for achieving these goals. It affords unique opportunities for a partnership of private initiative and public action to meet a major challenge of our time.

Twice before, the creative forces of our free enterprise system have been harnessed in the interest of assisting the development of better homes and communities for our people.

1. The homestead movement following the Civil War helped open up and secure the West for millions of settlers. The whole pattern of western development pivoted on this single action.

2. Federal mortgage insurance provided the stability necessary to unlock private industry and finance so that millions of homes could be made available at low cost and on reasonable terms. No single force has been more instrumental in postwar metropolitan growth.

The New Communities Act is a third great program in this tradition.

The New Communities Act of 1968 establishes a new program of federal support for private builders of new communities—balanced communities of new homes, stores, industries, and cultural and recrea-

tional facilities. These can be planned and developed "from the ground up" on sites of several thousand acres of land. Alternatively, they can build on existing centers.

A federal guarantee will be provided for a new instrument of private financing for large scale land development—*cash flow debentures.* These fully taxable instruments will be designed to tap the private bond market for the large amounts of capital needed to acquire and develop a site for a new community.

The federal costs for the program are minimal in comparison with its potential benefits. For example:

1. *New communities can provide a new pattern of urban living,* a major alternative to the runaway sprawled growth that is overwhelming our metropolitan regions with costly and inefficient development. With support from this program some of this growth can be channeled into wholly new suburban communities with homes, jobs, schools, and proper settings for raising children. The program also can aid in developing by-passed tracts within and adjacent to cities. The metropolitan resident, thus, will be able to live and work in the same community and avoid the traffic, congestion, and wasted time of daily commuting. Further, it can be used to help revitalize rural communities at some distance from urban centers, giving them the basic advantages of contemporary urban life, while strengthening regional economies and helping to stem the out-migration of people.

2. *New communities can substantially increase the nation's housing supply* by releasing new sources of investment funds, meeting the land supply needs of builders, and creating more efficient housing and community development operations.

3. *The unified planning and large-scale operation of the new community development process can achieve economies* not possible under present fragmented development, the tract by tract growth of sprawl. These economies benefit not only the new community itself, but the residents of the parent jurisdiction, such as a county or state, who eventually share in the public costs of haphazard growth.

4. *The housing provided in new communities can contribute directly and indirectly to meeting the needs of a wide range of income groups.* The economies of building housing in new communities on large areas of undeveloped land can be used to achieve a volume of housing at prices, and at desired densities, not possible in presently congested central cities. In addition, the volume of housing possible in new communities in attractive settings should free many existing suburban units for purchase by moderate-income people. Finally, the new program of home ownership for low- and moderate-income families, authorized under Section 101 of this bill, would be available for use in new communities.

5. *The new community process can help the home builders obtain a supply of building sites.* The rising cost of acquiring land, tying up capital in it for years in advance of use, and the subsequent investment needed to build streets and utilities, are increasingly difficult for the small builder to absorb. New communities can provide a continuing supply of housing sites —ready for building—for these smaller entrepreneurs.

6. *An opportunity to introduce new technologies for new ways of city building and deliveries of educational and social services.* Freedom of opportunity for technological experimentation is afforded by the fact that new communities have no "locked-in" decisions in facilities and services that impede innovations in existing cities. New communities provide ideal testing grounds for such imaginative, yet realistic, concepts as community heating and air conditioning systems, new construction methods (e.g., new tunneling techniques for utilities), and educational programs using television to bring school to the home.

7. *Aside from these basic benefits, new communities offer a number of other important advantages:* (a) a way to conserve more of the rapidly disappearing open lands in urban areas, and (b) a more positive method of creating sensible forms of metropolitan growth.

In short, the new program will provide another choice—in housing and community living—for the 46 million more Americans who will live in urban areas in less than 12 years. It will do this by giving new federal support to the public-private partnership that has traditionally been called upon to achieve the nation's objectives in housing and urban development.

Assistance to Private Developers

The program of federal guarantees for cash flow debentures recognizes two major obstacles to provide efforts to develop new communities.

First, the scale of new communities requires a vast amount of capital to acquire the land and install the basic facilities (sewer, water, streets, parks, and amenities) necessary to ready the land for private development. The investment can easily reach $50 million or more for a large community.

Second, a new community requires a long development period —for planning, land acquisition, and installation of improvements— before building sites are sold and a cash return is generated. Annual costs of overhead, repayments on borrowings, and local taxes severely strain the developer's financial resources during this period of several years.

The device of a federal guarantee for taxable cash flow debentures issued by private developers would resolve these difficulties. It would open up new sources of private capital, in large amounts, to the land development and home construction industries. Institutions not interested in the usual mortgage investment field would find the new debentures attractive ventures.

The cash flow debenture is particularly sensitive to the second problem of private financing for the development of new communities— the lengthy time lag between high initial expenditures and the beginning of returns from sales (a positive cash flow). The program permits the repayment of principal and interest to be geared to the realities of internal cash flow. Thus, repayments of principal would not be required until a positive cash flow is experienced, which might not occur until five or more years after the guaranteed private loan is obtained. The cash flow debentures system can get the developers over the hurdle of the heavy initial

investment followed by a period of no return on the investment. In the longer run, of course, the orderly development of a new community will produce economies and the returns necessary to pay off the loans and produce a profit to the developer.

The federal guarantee would cover a loan to a developer in an amount not to exceed the lesser of (1) 80 percent of the Secretary's estimate of the value of the property upon completion of the land-development, or (2) the sum of 75 percent of the Secretary's estimate of the value of the land before development and 90 percent of his estimate of the actual cost of the land development.

The outstanding principal of a guaranteed loan for a single project could not exceed $50 million. It would bear interest and provide repayment provisions satisfactory to the Secretary.

The bill limits to $500 million the total outstanding principal obligations guaranteed under tne program at any one time. To provide for the payment of any liabilities, a guarantee fund is authorized which would consist of receipts from any fees or other charges, recoveries, and such appropriations as are made.

It is expected that profit-making sponsors would be the predominant users of the program. However, nonprofit and limited dividend groups would be given encouragement to enter the field of new community building.

The Act specifically requires the Secretary to administer the program in a way to encourage the maintenance of a diversified local home-building industry, broad participation by builders (particularly small builders), and the inclusion of a proper balance of housing for families of moderate- or low-income.

The utility of this new program for small builders should be emphasized. Increasingly, this large segment of the building industry is faced with a shortage of improved lots at reasonable prices. The price of raw land in Baltimore, for example, increased by 64 percent between 1960 and 1964; in Los Angeles the increase was over 94 percent. Added to the cost of land are the costs of site improvements; a finished lot in Los Angeles was priced, on the average, at almost $10,000 in 1964. The small- and medium-sized builders simply do not have the resources to undertake a sustained land purchase and improvement program to supply them with an even flow of good building sites at these costs.

However, the experienced new community builder, with the guarantees under this program, can get the necessary resources for this process of land acquisition and development. Further, the economies and efficiencies for this large scale operation will enable him to furnish his products—finished sites ready for building—in adequate quantities over a period of several years. Thus, local home builders will have access to a steady supply of improved building lots with more assurance of the marketability of their houses because of the attractive environment of a new community.

In administering the program, the Secretary also must determine that:

1. The proposed new community

will be economically feasible and will contribute to the orderly development of the area of which it is a part.

2. There is a realistic plan for financing the new community and for marketing the land.

3. There is a sound and complete plan for the community, meeting state and local requirements and providing satisfactory supporting facilities for its future residents.

4. The plan is consistent with comprehensive planning for the area in which the new community is situated.

Incentives for Public Participation

To assemble land to create a site of sufficient size, the private community developer must often choose a location at some distance from existing public facilities—sewers, water lines, and adequate access roads.

Local governments, already faced with a long list of demands for capital improvements, are likely to give a low priority to the facilities needed by the new community developer. Thus, pressed for time, he must often finance and construct many municipal type improvements. In essence, the developer during the early stages of a project may have to perform many of the public works functions of a municipality. And he is, of course, ineligible for federal grant programs—such as basic water and sewer grants, and grants for the acquisition and development of parks—that may be provided to a municipality.

To encourage localities to use federal aid programs in support of privately sponsored new cities, the proposed new community program authorizes the Secretary to make supplemental grants. Under this provision of the program, a community constructing a federally assisted facility serving a new community is eligible, in addiiton to the basic grant, to receive a supplementary grant. This grant could cover an additional 20 percent of actual construction costs. The three federal grant programs that would be eligible for the additional grant assistance are:

1. The Basic Water and Sewer Grant Program, administered by HUD.

2. The Open-Space Land Program, administered by HUD.

3. The Water and Waste Disposal Facilities Grant Program, administered by the Farmers Home Administration in the Department of Agriculture.

Other federal programs, such as the Urban Planning Assistance Program, the Public Facility Loans Program, and the Advances for Public Works Planning Program, will also be available, without any supplemental aid, for states and localities wishing to use them in support of new community development. Some minor amendments (technical and conforming) are proposed in the first two programs in order to permit maximum utility for new communities.

The administration of these supplementary grants includes provisions for technical assistance and for a central point of information for interested states and localities. A local government will be able to direct to one place its preliminary inquiries on the "package" of federal programs that will be available to support the development of new communities. However, the final

approved decisions and procedural requirements of the federal agencies administering the basic programs will not be affected.

The New Communities Program is applicable to a variety of locations and local conditions. It can support the expansion and revitalization of existing rural communities exhibiting basic potentials for growth, as well as a complete new community with its attendant economic base or one within the growth area of a metropolitan region.

If we attempt to pierce the veil of the future and to perceive the nature of our urban areas of the next decade, I think it is clear that new communities can make significant contributions as a model and yardstick towards a better and more economical pattern of organization, as prototypes for redevelopment of our older cities, and as laboratories for successful economic, political, and social integration. The impact, therefore, will be greater than the immediate amenities they may provide their residents, but hopefully can extend to our whole society. It brings the private sector of investment, development, and enterpreneurial capacity into this area of managerial and technological challenge under a framework of public cooperation and goals. It is for such real and potential benefits that we must make the first starts today—with the small but concrete steps embodied in this New Communities Act of 1968.

APPRAISING OCEAN FRONT PROPERTY

By
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A comprehensive oceanfront appraisal incorporates problems generally not found in other types of valuations. Even though the appraiser may have a map, a title report, or a legal description of the property, he must realize he cannot treat the oceanfront property as a fixed parcel of ground—it is a property with fixed boundaries on three sides, and a fluctuating boundary on the fourth.

The seaward boundary in California fluctuates unless the mean high tide line has been adjudicated by either the state, the State Lands Commission, or by an agreement of all parties which is recognized by a title company. This boundary could be set by city council ordinance, a court decree, or a bulkhead line. In most areas of California, however, the location of the mean high tide line has not been defined. This line, actually an elevation along the oceanshore, is a certain number of feet above mean sea level at the location of a certain parcel of land.[1]

California Civil Code 670 provides that the state is the owner of all land below tidewater, and below ordinary high water mark bordering upon tidewater within the state. Thus, property bounded by the Pacific Ocean extends only to the ordinary high water mark. The state is the owner of the tide and submerged lands below that mark, subject to the public trust for navigation and fishery. As a result, at any tide lower than ordinary high water, a strip of state beach separates the upland owner from the water. This so-called ordinary high water mark has been defined in California by reference to the "neap" tide as opposed to the "mean" high tide. But this boundary is not a fixed one, since *Strand Improvement Co.* v. *City of Long Beach* held that the doctrines of accretion[2] and erosion to the property of a riparian owner, developed by common law, apply along the California coast.

Under natural conditions, therefore, the mean high tide line is the boundary between upland ownership and state ownership of the tide and submerged lands. However, the line may change by action of the water or other natural causes. This would add to or subtract from the upland property. But when the

shoreline is changed by unnatural or man-made conditions, the last known natural mean high tide line is referred to as the ordinary high water mark. The state, through its Land Commission, will claim ownership of all artificially created land lying seaward of that mark. Artificial accretion is caused by depositing fill material directly on the tideland; erecting jetties which suppress the wave action on a portion of the shore, causing more sand to be deposited on the beach; and depositing fill along a considerable length of the shoreline (which acts to decrease the wave action and build up portions of beaches).

Accretion and Erosion

The question of title to land formed by accretion has been considerably more troublesome than title to land lost by erosion. General common law rules that gradual and imperceptible accretion benefits the upland owner; and the rule is apparently the same whether the accretion is natural or artificial. This is based on an axiom of justice: that one who bears the risk of loss to his property through the inroads of the sea should benefit by corresponding gains.

However, unless an upland owner can prove to the satisfaction of a court or jury that the accretion to his property resulted from nature, the court will rule that the accretion is artificial and belongs to the state. Whether a particular beach in its natural state was prograding, regressive, or in equilibrium, is a fact which for the most part has been obscured by the continuous effect of man-made structures. Maps and surveys of the coastline's original state are rare and unreliable, eyewitnesses are not available, and cases show that expert witnesses reach conflicting opinions. In California such cases appear to be establishing a rule which is contrary to settled common law concepts: although the upland owner loses title to property washed away by the gradual and imperceptible inroads of the sea, any corresponding accretions belong to the state.

Consistent with the general common law, however, California has maintained that a riparian owner adjacent to the Pacific Ocean risks losing title to his property which is inundated by the sea's gradual and imperceptible inroads. This rule appears to be the same whether the loss is naturally or artificially caused. But if the loss is caused by avulsion (the sudden and discernible invasion of the sea, as in a fierce storm), title from the original boundary is not lost and the upland owner along the ocean could reclaim up to the original boundary. The doctrine that avulsion does not effect a change in boundaries is common law (although factually it is probably more applicable to rivers, which are more subject to sudden course change than the sea). If an upland owner loses his property due to natural erosion, he has no right to be compensated for his loss. But if his loss is attributable to the acts of third parties, he might be compensated.

However, a littoral owner does have a right to the uninterrupted flow of sand added to his land by ocean currents. An upland owner who constructs a pier or breakwater to improve his shoreline, thus injuring his neighbor's shoreline, has created a nuisance which may be

abated and for which he is liable. This is not altered by the fact that the upland owner may have received prior authorization from the State Lands Commission to build a structure on the state-owned tidelands as required by Public Resources Codes 6321.

Appraising Beach Frontage

The method used to appraise beach frontage differs with each assignment, and varies from one area to another. Metropolitan area beach lots are valued on one premise, and shoreline acreage in outlying areas on another basis.

The common denominator used to appraise oceanfront property in California metropolitan areas is the price per front foot, measured along the frontage street. The frontage road is either the local feeder street to the first tier of lots on the ocean or, as in many cases, California highways 1 or 101. Where coastal access roads are close to the beach in less heavily populated areas, the ocean frontage lying seaward of the road should also be taken on a front foot basis.

When an oceanfront property is purchased for a single-family homesite, it is really the ocean frontage that is bought. (You can see hundreds of examples of this in the Malibu and Santa Monica areas of Los Angeles County.) It makes little difference, in this case, whether the lot is 200 feet deep or 400 feet deep. Beach frontage is not bought on a square foot or price per acre basis; it is bought—and it is valued —by the front foot. Depth of the lot is an extremely significant factor only in residential income properties, where lot size controls the number of units which can be developed; or on commercial lots, which must allow for parking.

In most instances, the oceanfront single-family home lot in an adequately planned subdivision will bring more and will generate a higher value than apartment zoning (other than high-rise) or commercial. This also is illustrated by sales in Los Angeles County. For example, the latest sales data for a strip of beach at Malibu, on which the width and depth are fairly consistent, shows 40-foot lots selling from $1,700 to $2,000 per front foot. Three commercially zoned lots in the same tract sold for $1,200 per front foot, R-3 and R-4 (multi-residential) zoned lots in that tract are selling for $1,300 to $1,400 per front foot.

Why do we find such price variation? The reason has to do with people's motivations in purchasing single-family homes or homesites along the ocean.

First, most purchasers are, wealthy, and many of them are buying a second home (which speaks for itself).

Second, they buy to hold as an investment. Up to two years ago in metropolitan Los Angeles and Orange County it was a rule of thumb that oceanfront prices increased at the rate of 2 percent per month. For example, if a single-family beach lot sold at $500 per front foot in 1962, one could expect to pay $625 to $650 per front foot one year later.

A third reason people buy oceanfront property is for the tranquility, prestige, peace, and enjoyment of the home—the amenities of this type of property.

R-3 and multi-residential lots, however, are geared to rents, which in turn reflect the land sale price. Rents from beach apartments generally do not return the amounts necessary to cover the high cost of oceanfront land. The same is true for motels, hotels, and beach clubs, because beach use is only seasonal.

On both single-family and small apartment rentals on the first tier of oceanfront lots, we have found that:

1. The highest and best use is the existing use.

2. There is an obvious downward trend in unit prices as the frontage of a lot increases. This is true of both vacant and improved lots. Usually the improvements are more significant on smaller parcels, and will increase the unit price accordingly. Conversely, with normal market action, a greater unit price is developed as the parcel width decreases primarily on single-family homes.

3. Owners lease on a winter rate for nine months and a summer rate for three months (one week's summer rental is equal to one month's winter rental). In close-in urban communities, however, most apartment houses rent on a year-round basis, especially in the better established communities.

4. On a weekly tenancy, expenses naturally are much higher because of additional management, maintenance, clean-up, etc.[3]

5. Building costs generally follow area trends. In the older beach communities, there may be a conglomerate type of building construction—even single-wall construction. Also, in many areas "bootleg" uses often exists; that is, in many homes part of the residence has been converted to rental units in violation of zoning ordinances.

Current Market Reaction

In southern California the rise in values was most pronounced during 1962 to 1965, leveling off since then. Sales today are not less than 1965 prices, but neither are they above 1965 prices. On acreage transactions, the predominant type of financing is prepaid interest. There are also many syndicate sales.

On vacant lot sales, the highest and best use is usually as zoned or deed restricted. Single-family uses generally show the highest return to the land. On larger holdings (acreage transactions), the highest and best use is not known conclusively. The existing county zoning is of a holding nature; most county planning departments and commissions want to hold open as much of the ocean frontage as possible.

Benchmarks of Comparison

Location. This is most important. A parcel of shoreline close to a densely populated area is more valuable than one closer to a rural area. An exception is the small development catering to the wealthy; this type makes its own market and develops a unique environment. Parcels in this category will have to be keyed to sales in similar areas.

Good access to the water is also important for oceanfront property.

Physical characteristics. The value of single-family residential properties increases with additional depth, but at a decreasing ratio. Purchasers of beachfront homes buy a site for its amenities. In a typical close-in beach community, it

is poor land planning to have lot widths greater than 40 feet.

Beaches in Southern California can be classed as swimming beaches and as bluff oceanfront with limited swimming, where the use is primarily scenic. Property with wide sandy beaches available for recreational use brings the highest prices.

Public utilities. If the property contains public utilities and sales do not reflect this benefit, adjustments must be made. Where septic tanks are used, additional costs must be allotted for protecting this system from the ocean's effects; and some dry land must be provided for leaching.

Freedom from hazards. Tides change the lot depth by season, and erosion is a constant problem along a shoreline which man has changed substantially by erecting piers, roads, jetties, and breakwaters. Geological maps must be checked for areas which are subject to slippage. (Construction is prohibited in several Los Angeles areas because of soil instability.)

Pride of ownership. This refers to any condition which raises the property value to the public. Examples are prestige developments or areas which offer senic attractiveness and freedom from hazards.

Acreage Appraisals

California has acquired several large undeveloped holdings which comprise both ocean frontage and inland acreage. Sales of this type of property are infrequent, and in such appraisals the subject property is divided by a land classification method. The property's various parts are then compared with similar acreages. Appraisers using this method refine the value of the larger parcel by examining the values of divided land portions, and for large acreages they must analyze many sales of different types of properties.

Another method uses a subdivision study of the beach frontage when there is an immediate demand for beach lots. The appraiser follows the same subdivision study techniques as he would for any other type of property.

The first tier of beachfront lots is the 100 percent value, and the other tiers decrease in value. I have found this sales pattern:

1. On inland lots developed to have a view, the first tier off the frontage is marketable at 65 to 70 percent of frontage sales, with some higher if the owners have rights to use part of the ocean frontage as a private beach (as is evident in the fine beach subdivisions in Santa Barbara and Orange counties).

2. Price ratios for the first tier of inland lots, with private beach rights but no ocean view, carry a 40 to 50 percent marketability.

3. Single-family residential lots in the first tier, without a view, beach rights, or proximity to a public beach, have sold for 25 percent of frontage.

The appraisal thus presents a problem in economics—frontage is lost because of private beaches, yet it adds value to the interior lots. The private beach is significant in appraising areas where swimming is important. It is less significant where property is desired for its view and tranquility. Access to a public beach is paramount for lots with residential income use, and will bring a higher value if such a facil-

ity is within easy walking distance.

Marina Developments

For marina development,[4] which has also created the need for oceanfront appraisals, the following points are important to watch and analyze:

1. Retail values are greater for properties on a stillwater bay with an engineered access to the ocean than for similar oceanfront lots where swimming is the prime recreation.

2. Offshore physical conditions should be investigated thoroughly. Wind, waves, currents, tides, and shallow water may require extensive breakwater construction and expensive dredging to reduce the swells that can hurt a potential slip area. Poor littoral drift requires constant dredging to maintain open waterways.

3. A good marina location should be relatively close to a large mass of people and have convenient access to utilities.

4. At least a 1-to-1 ratio should exist between water acreage and upland acreage. The upland should have sufficient space devoted to access roads, parking, boat and trailer storage, snack bar, boat and marine supply sales facilities, and other allied services.

5. The usual marina location along the California coastline is a swamp or mud flat or salt marsh, developed by dredging and filling. Your files should contain substantial data on development costs. (Several engineering firms in the state specialize in this type of work.) Marina costs vary greatly from location to location, due to the sub-soil's physical characteristics.

6. If your property's highest and best use is a marina, your sales search should be keyed to sales of similarly located suitable properties. Land costs vary from area to area, as do development expenses.

The history of marinas shows a five- to ten-year maturity program. The developer starts to show profits only on the last lots sold and on commercial developments. The latest slip rents I have are in the Los Angeles Marina at Playa del Rey where moorage is $1.75 per foot per month on a year-round lease. Most marina operators try to concentrate on slip rental, fuel sales, and dockside services. Restaurants, bars, and other sources of revenue are generally leased to experienced operators.

A total-use marina is a relatively new concept. Of all oceanfront properties, stillwater lots with ocean access sell at the highest price in southern California.

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[1] *The mean high tide line is determined by geologists who apply a mathematical formula to sea level data gathered by ocean-level recording instruments of the U. S. Coast and Geodetic Survey System. This is done to adjust for the distance between tide measuring stations and high tides over a period of 18-plus years, on the theory that the physical relation of the moon to the earth is on a cyclical basis of about 18 2/3 years.*

[2] *Accretion may be defined as the process of gradual and imperceptible addition to riparian or littoral lands, caused by the water's action in washing up sand, earth, and other materials. The land formed by accretion is called alluvion; accretion and alluvion are ordinarily used interchangeably. The gradual and imperceptible alluvion deposit by the process of accretion is to be distinguished from avulsion, which is the sudden and rapid change of a stream's channel. The rule generally recognized is that avulsion does not change boundaries.*

[3] *Deferred maintenance causes greater problems along the coast. Beach air has a corrosive effect, and it is necessary to paint more often. Screens and hardware tarnish easily.*

[4] *The author wishes to acknowledge the contribution of Peter M. Wilson, Secretary of the National Association of Engine and Boat Manufacturers as given in "Marinas: Development and Economic Factors." The Appraisal Journal. April 1967. pp. 199-205.*

NAMES IN THE NEWS

ROCHAMBEAU

PIAZZA

Hale Warn, President, Title Insurance and Trust Company, Los Angeles, California, announced the promotion of **George L. Piazza** to Manager of the San Benito County Operation. Mr. Piazza was formerly Title Officer for the company in Shasta County; and he succeeds **Vincent Balbi,** who has been named Manager of the Merced County Operation.

Mr. Warn also announced the election of **Donald R. Rochambeau** as a Vice President of Title Insurance and Trust Company. Last month, Rochambeau was named Manager of Northern Nevada Operations for the company.

* * *

Jack Sommerfield, Vice President of Dallas Title and Guaranty Co., Dallas, Texas, announced the appointment of **Robert Keegan** as the Company's Agency Department Counsel and Claims Manager. Mr. Keegan will serve as Advisor to Dallas Title agents and management in the areas of underwriting and general corporate legal matters.

* * *

Elwood F. Kirkman, President of Chelsea Title and Guaranty Company, Atlantic City, New Jersey, announced the recent appointment of **Emil E. Kusala** as Assistant Vice President and Manager of the newly-acquired branch operation of Central Guaranty Mortgage and Title Company, Rutherford, New Jersey. Mr. Kusala, who resides in Woodcliff Lake, New Jersey, has served in all facets of the Title Business for the past 41 years and has been the Secretary of the New Jersey Land Title Insurance Association for 7 years. Mr. Kirkman also announced the appointment of **David E. Wicker** as Manager of the Miami, Florida, branch office. His past assignment was with the West Palm Beach branch office, where he was also active in the Board of Realtors and Homebuilders Association and with the Palm Springs Jaycees. Mr. Wicker brings 8 years of title experience with him to the Miami branch.

WICKER

KUSALA

* * *

Jesse M. Williams, President of Louisville Title Insurance Company, Louisville, Kentucky, announced the promotion of three Pittsburgh office personnel. **Harry**

E. Leas has been elected Vice President and Eastern Regional Manager of the National headquarters in Pittsburgh.

Mr. Leas attended the University of Pittsburgh and received his L.L.B. Degree from Duquesne Law School.

Saul W. Goldberg was elected Assistant Vice President and Branch Manager of the Pittsburgh branch. Mr. Goldberg is a member of the Allegheny County Bar Association. **Mrs. Hilda Beck** was also elected Assistant Secretary.

* * *

BINKLEY

John D. Binkley, Chairman of the Executive Committee of the Board of Chicago Title and Trust Company, California, will retire December 31. He has been associated with the Company since 1925. Mr. Binkley was elected President of Chicago Title Insurance Company, wholly-owned subsidiary of Chicago Title and Trust Company in 1963, at which time he continued as Senior Vice President and Director of the parent company.

Mr. Binkley received his L.L.B. Degree from Loyola University and his M.B.A. from the University of Chicago Graduate School of Business Administration.

Mr. Binkley served as President of the American Land Title Association in 1956-57, and on the governing boards of both the National Association and the Illinois Land Title Association. He is currently Chairman of the Council of Past Presidents of ALTA.

James G. Schmidt, President of Commonwealth Land Title Insurance Company, announced the promotion of **Ralph Trabb** to Title Officer in the Company's Title Claims Department and **William E. Schmidt** to Manager of Commonwealth's Lansdale branch office.

Mr. Trabb, who joined Commonwealth in 1967, is a member of the American Bar Association and received his law degree from George Washington University.

For the past 22 years, William E. Schmidt has served the Company in a variety of positions obtaining the broad training and experience in real estate titles required in his new post.

WM. E. SCHMIDT

TRABB

* * *

Joseph J. Hurley, President, The Title Insurance Corporation of Pennsylvania, announced the assignment of **Richard Burroughs,** Vice President of the Philadelphia office, to the management of the Company's National Department, at the Home Office in Bryn Mawr, Pennsylvania; and the advancement of **William J. Hoolahan** to Manager of the Philadelphia office at 1500 Chestnut Street.

BURROUGHS

HOOLAHAN

HERE'S A SEC

With the help of an interesting and informative brochure or movie, YOU can educate the public on the subject of Title Insurance. The American Land Title Association has ample stock ready to supply you.

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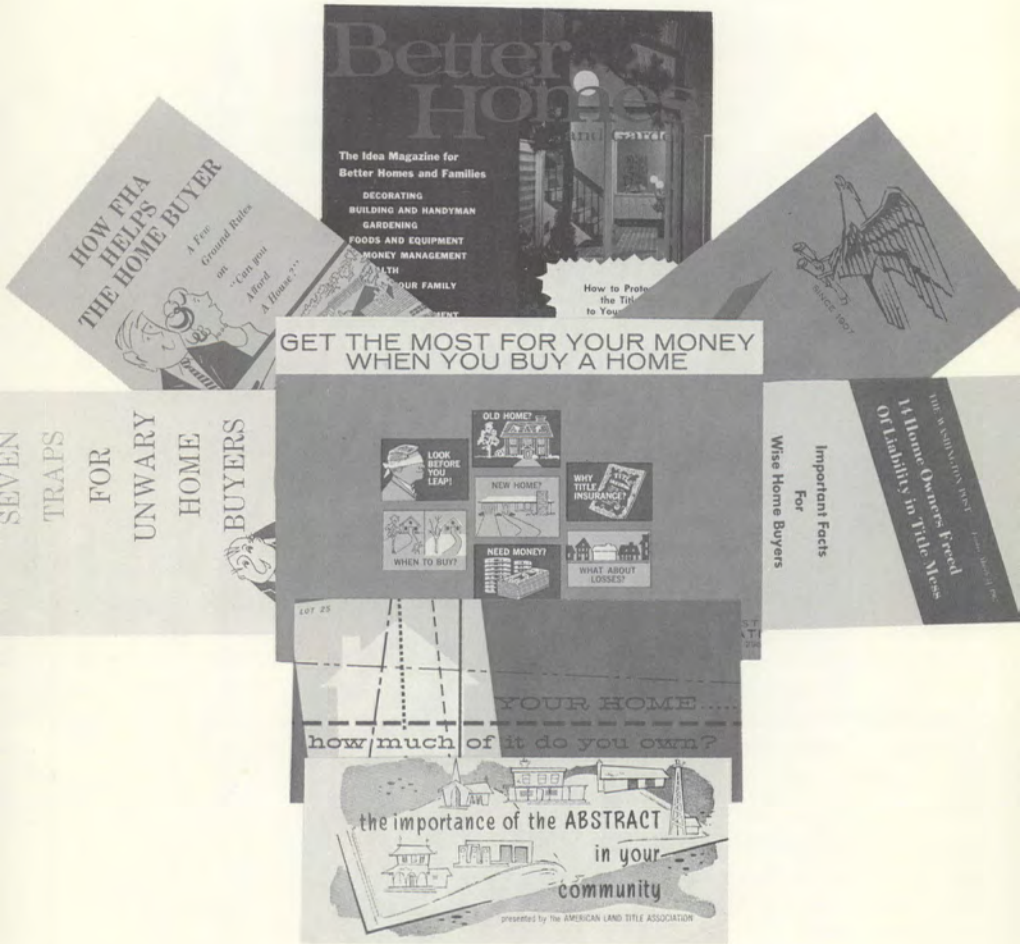


DEVELOPMENT OF AN ESCROW DEPARTMENT

By Alfred Newman, Vice-President,
Pioneer Title Company, Salt Lake City, Utah

What is an escrow? There are many definitions and each of us have our own ideas. Historically, the escrow was the document or deed deposited with a third party to be held until the performance of a condition or happening of an event and then delivered to the obligee or grantee. Today much more is involved. The elements of a pure escrow are present, but we are also concerned with instructions concerning the insurability of title, account for funds, pro-rate taxes and rents, record the instruments and numerous other details.

For a minute, I would like to attempt to analyze some part of an escrow transaction so that we might see how the courts have interpreted various problems that might arise. The question often arises as to whether or not there is in fact an escrow. The courts usually rule that this is a question of fact to be decided by the jury. It is not necessary under the law that escrow instructions be in writing; and therefore, when we are acting on verbal instructions we might in fact be acting as an escrow agent. It is clear that an escrow agent must be a stranger to the transaction. The Idaho Court ruled that a deed absolute on its face cannot be delivered to the Grantee to be held by him in escrow and a delivery which purports to be such, will operate as an absolute conveyance and title will vest at once, Whitney vs. Dewey, 80 Pac. 1117. Many times the courts will go overboard to find a valid escrow and thereby follow what they feel is the intent of the parties. The Utah Court held that a contract whereby deeds are executed by a mother to her children and placed with a lawyer to be delivered, upon her death, but charging the land with an annual payment to her an agreed sum for life with a recision penalty, was an escrow, and the deeds were valid even though delivered after the death of the Grantor. Love vs. Phillips, 208 Pac. 882.

What is the status of the Escrow Agent? The escrow agent is acting for both parties and is said to be the agent for both. There are, however, some fine lines in this area. Your authority to act is governed by your instructions. The courts will strictly construe these instructions and follow other general rules of construction. This means that any uncertainty will be construed against the party that drafted the instructions. If they are incomplete or indefinite, parol evidence may be introduced to support them. The question of whose agent usually depends on the stage of the transaction. It is said that an escrow agent cannot be the agent for only one of the parties, but in many cases he is. For example: Fast Shift Title Company employs Smooth Sam escrow agent, who is handling an escrow which is complete except for one condition. Sad

Seller has compiled with all instructions except delivery of the termite inspection; Anxious Buyer has deposited his $25,000.00 cash. At this point Smooth Sam desires a Hawaiian vacation—and takes it (the vacation and the cash.)

Who will bear the loss? When the escrow is complete and all of the conditions are met, the escrow agent is not a dual agent, but the agent of each party for his part of the escrow. Todd vs. Vestermark, 302 Pac. (2d) 347. In our example, the buyer must suffer the loss. Title to the deposited instruments or money does not pass until all conditions are met. If the termite inspection had been received prior to Sam's vacation, the funds would then be the property of the Seller and he would suffer the loss. It seems that the transfer is considered to be instantaneous when all of the conditions are met. Put yourself in the position of the poor escrow agent who found himself in the following dilemma: His instructions from the vendor were to deliver the deed only upon payment of a stated amount of cash to the escrow agent for the vendor's account. The vendee instructed the poor chap not to deliver the funds until the conveyance had been delivered and recorded. This gave the escrow agent a great deal of trouble, but the Washington Court disposed of it in short order. They said that the agent need only record the deed and thereafter deliver it to himself as agent for vendee and receive the escrow funds for the vendor (from himself) simultaneously. Leb vs. Webster, 190 Pac. (2d) 701.

It is generally held that delivery into escrow is tantamount to delivery to the Vendee. Such delivery is irrevocable and once the conditions are fulfilled the agent must deliver the instruments to the Grantee. The Colorado Court held that a depositor cannot forbid delivery from escrow in absence of default. Kauffman vs. Kauffman. 278 Pac. (2d) 179. Actual delivery upon completion of the conditions may not be necessary. It is usually held that once the conditions are met the actual delivery to the Grantee is merely a formality. Another question that arises in this area is the time when an instrument becomes effective. In most cases the time that all conditions are completed is held to be the effective date. There is, however, an exception to this general rule known as "Relation Back Theory." In some cases the courts have ruled that the instruments take effect as of the time they are delivered to escrow. The question is, when will this theory be applied? The Kansas Court indicated that the question of whether a deed in escrow related back to the date of execution so as to vest title in the Grantee at that time or whether such conveyance becomes effective only upon full performance depends upon which of the two theories will promote justice under all circumstances. The usual case applying this theory is the death of the Grantor after the escrow was established, but prior to the conditions being completed.

What is the effect of an unauthorized or wrongful delivery from escrow? The general rule holds that delivery before all conditions are met is a nullity and no

title passes. This has been carried to a point where an instrument wherein the description was altered by the escrow agent without authority of the Grantor was held to be a nullity. The escrow agent was required to pay all attorney's fees and costs of recovering title from the Grantee. A New Mexico case found that the Grantor's damages in a case where a deed in favor of the Grantee was recorded just before his check bounced was the cost of a quiet title action to clear the title of said deed.

I would like to give you some of my ideas on what can be done to develop an escrow department or more escrow business. There is no question in my mind that the practices and needs of the customers will differ in each area in which we operate, therefore, it is essential that each office analyze the type of escrow business available. Some real estate brokers may want us to close sales; banks, savings and loans, or mortgage brokers may require a closing service. There is another service which few title companies attempt and that is the collecting of monthly payments on contracts or like transactions. The cost of this service is far in excess of the fees involved and can ordinarily be profitable only on a high volume business.

What can we do to increase our escrow business? Real estate brokers hesitate to pay us the closing fee for something that they feel they are capable and qualified to do themselves. It is difficult to convince a broker that his time is better spent selling estate than closing completed sales. We can try to point out that if the broker made one additional sale a year in the time he would ordinarily spend closing previous sales our closing service would make him a profit. In many cases the broker does not pay the escrow fee and therefore he should be more than happy to have us do the work. The same theory should apply to banks, savings and loans, and mortgage brokers. The overhead in the mortgage loan departments could be cut considerably if the loan, when approved, was sent to the title insurance company for closing.

One of the biggest selling points is the one which we use infrequently and tend to play down. That is the liability assumed by the closing agent. It is a definite advantage to a broker or lending institution to have a third party that is liable for all errors or omissions arising from closing of a sale or loan. The common practice in California and Arizona is to have virtually all sales and loans closed by the title company. One of the main reasons for this is the liability aspect. Our escrow business will grow as the area of our operation becomes more urbanized. In the larger metropolitan areas the people involved in real estate and mortgage lending realize that the escrow service is one of the more important parts of our operation.

I think the best area for developing our escrow business is the manner in which we handle the escrow business available. It is important that we remember that an important rule of an escrow agent is to be impartial. We should not give advice to either party, nor should we cast doubts on the broker or lending institutions or their method of operation. Escrow agents are often too ready to criti-

cize an aspect of the transaction, which can only insure the loss of a customer. We should not advise the parties to accept or reject a proposition, but only point out the ramifications of each alternative.

The escrow agent usually finds that he has more time in a transaction than the fee justifies. The reasons for this are many, the main one being competition, not only between title companies, but with the brokers, lending institutions and attorneys. One might ask why we continue to solicit escrow business? I think there are three main reasons, the first being that title insurance business is generated around escrows. Title insurance business is tied up more effectively if we are handling the customer's escrows. Repeat customers arise far more frequently from escrows than on the ordinary title insurance order. In the Salt Lake area we face twelve competitors and it is a real advantage to get a buyer and seller in our office. If the work is completed efficiently and accurately and the agent leaves a favorable impression, the chances of a future referral or reissue from the buyer or seller is far greater. The broker or lending institution that is using us as an escrow agent will do everything possible to send us their title insurance because we are knowledgeable of their own peculiarities and mode of operation. The third reason I have mentioned before. That is the fact that in larger metropolitan areas most transactions are closed in escrow. Start developing your escrow business now so that you will have the customers as the gradual increase takes place. The day could come when our states have escrow laws such as those in California and other states which require virtually all transactions to be closed in escrow. We also feel that we are much safer insuring titles when we have closed the escrow. The risks of something being handled improperly in the closing are greatly reduced.

Accurate preparation of the closing papers is imperative. The customer we are serving will not tolerate errors and the liability on our part can be great. This high degree of accuracy must include not only the closing statement and escrow instructions, but also all instruments prepared and executed. The escrow agent should also be accurate in his explanations to the parties. Partial or incomplete explanations encourage later disputes and unhappy customers. When an escrow is completed, we should have a file which shows the entire transaction clearly and in detail. We never know how many years will pass before we will be asked why we charged the Buyer an extra two dollars, or why we gave the Buyer credit for the uneven penny on the tax pro-rations. Questions that come up can border on the ridiculous. We attach a copy of the closing statement and escrow instructions to the broker's check.

To top off a good escrow I think that it is a good idea to have a labeled envelope for the buyer and seller together with copies of all necessary papers from the transaction and one of your company calling cards. When the buyer becomes the seller, he needs his papers and the first thing he will find is your card and hopefully he will want to be sure that the nice fellow down at "Beep Beep" Title Company gets his business.

IN THE NEWS

ALTA President, Gordon M. Burlingame, congratulates John W. Finger, Chairman of the Executive Committee of Inter-County Title Guaranty and Mortgage Company, on the plan of USLIFE Holding Corporation to acquire the Title Company.

Andrew Stewart climaxed a 39-year career with San Mateo County Title Company, Redwood City, California. Mr. Stewart managed the San Bruno branch operation from its opening in 1963 until his retirement in June.

Robert L. Korte succeeds Mr. Stewart. Mr. Korte joined the staff in 1958 in the Title Searching Department and has been in Escrow work in the San Mateo office since 1963.

Philadelphia Mayor James H. J. Tate (second from left, seated) holds the deed to the $54 million Federal Courthouse and office building to be constructed in Center City. Commonwealth Land Title Insurance Company provided the title search for the site of the new complex.

(Standing L to R) P. F. Cirillo, Regional U. S. Counsel; J. A. Byrne and W. A. Barrett, U.S. representatives; T. P. McCreesh, State Senator J. G. Schmidt, President of Commonwealth Land Title Insurance Co.; (seated L to R) T. J. Clary, Chief Judge of U. S. District Court; Mayor Tate and G. G. Amsterdam, Redevelopment Authority Chairman.

PART II

REPORT OF THE ALTA JUDICIARY COMMITTEE

The members of the Judiciary Committee of the American Land Title Association have submitted over 300 cases to Chairman, John S. Osborn, Jr., Senior Vice President, General Counsel, and Title Officer, Louisville Title Insurance Company, for consideration in publishing the Annual Judiciary Committee Report. Chairman Osborn has chosen 126 cases which constitute a very lengthy report. Part I of this report appeared in the October issue of TITLE NEWS. *Part II includes additional interesting decisions. Further issues of* TITLE NEWS *will carry the remaining segments of this important article.*

EASEMENTS

Hasty v. Wilson, 223 Ga. 739, 748, 158 S.E. 2d 915 (1967)

Here the Court dealt with easements of necessity which the Court says arise whenever a common owner sells the dominent and retains the servient estate. However, the Court held that it is essential to the plaintiff's claim of a way of necessity on this basis that he allege that his deed was first in order of time from the common grantor.

Dixon v. Frantz, 249 Md. 138, 239 Atl. 2d 80 (1968)

Portion of farm sold in 1905 "save and excepting the right of way **or road as now located** and used leading from Garrett V. Dixon's house up to the County road by way of big barn and brick house, which right of way is hereby reserved unto the said Garrett V. Dixon (the grantor)". A dispute arose in 1966 by reason of obstruction to the road by successor of grantee in original grant. Lower court concluded that because no width had ever been designated for the right of way since its creation in 1905 "the only issue to be decided" was its width. It was of the opinion that 20 feet between fences or posts was "entirely reasonable and necessary" and so ordered.

Court of Appeals reversed Lower Court holding that the reservation was over a "road as it is now located and used" and the evidence excludes any notion that it was ever anything but a single track country road. Indeed Dixon's concession that the width is 16 feet bespeaks a modicum of generosity, since the evidence might well support a more restrictive limitation on the width of the easement.

Lickle v. Frank W. Diver Inc., 238 Atl. 2d 326 (Del. 1968)

Action by plaintiff to establish easement over street and cause removal of fence enclosing same.

Plaintiff purchased two lots on "southerly side of 13th Street extended' from original grantor who owned street bed and land on both sides.

At about same time original grantor conveyed remainder of tract north of southerly side of 13th Street extended to another. This latter conveyance included the bed of said 13th Street.

The plaintiff claims easement by implication is only reasonable conclusion to be drawn from these facts and circumstances, otherwise his property was landlocked.

The Court denied the easement because the original grantor had not made and recorded a plot plan of the tract showing 13th Street as a thoroughfare; that neither of the deeds to plaintiff's two lots expressly granted a right to use 13th Street or indicated the width thereof; that the so called 13th Street at that time was used for farming and had no physical existence; therefore no easement by implication arose.

Taylor v. Solter, 231 Atl. 2d 697 (Md. 1967)

Where original owner of a large tract sold separate parcels and reserved to parcel owners a 16 foot driveway (with an inadequate description) for access to public road from their parcels and the road as it existed at time larger tract owner made conveyances was still in existence at the present time, such road was the location of the right of way granted. If right of way is granted without defined limits, practical location and use of such way by grantee under deed acquiesced in for a long time by grantor will operate to fix location.

Williams v. Humble Pipe Line Co., 417 S.W. 2d 453 (Tex. 1967)

In 1936 Plaintiff's predecessors in title granted pipeline easement to Defendant, Humble. In 1959 it was amended to give Humble right of assignment and to lay additional lines. Held these easements are presently vested expansible easements, not subject to rule against perpetuities and that delay from 1959 to 1965 does not raise an issue of fact of unreasonable delay. That time of exercising the right to lay additional lines in same easement area is not limited.

Scoville v. Fisher, 181 Neb. 496, 149 N.W. 2d 339 (1967)

Action by plaintiff to establish prescriptive easement for ingress and egress over defendant's unimproved and unenclosed town lot, which had been used for many years by plaintiff, as well as other neighbors for parking and delivery purposes to other buildings and business in the area which use had been without objection for many years.

HELD: When an owner permits his unenclosed and unimproved land to be used by the public or by his neighbors, a user thereof by neighboring landowner and others, however frequent, will be presumed to be permissive and not adverse; and where the use has been along with others in the neighborhood, such use could not be considered as exclusive until claimant had performed some act, with the knowledge of the owner, clearly indicating his individual right or claim.

Marinclin v. Urling, 384 Fed. 2d 872 (Pa. 1967)

Grant of private road (as a way of necessity under Pa. law with compensation) through plaintiff's land to adjacent highway to defendant who had purchased a lot knowing that it had no access to a public road due to previous condemnation of part of lot for a limited access highway was not a taking of private property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

EMINENT DOMAIN

Public Utility District No. 1 of Pend Oreille County v. City of Seattle, 382 Fed. 2d 666 (Wash. 1967)

The question was whether the holder of a Federal Power Commission license to build a hydroelectric project on a navigable stream must compensate the owner of the shorelands and adjoining uplands which are needed for the project.

HELD: Yes. The navigational servitude in favor of the United States does not destroy property rights in the beds and banks of navigable rivers, and its licensee, in order to use said lands for a power dam, must comply with the requirements of the constitutional taking, including compensation.

Brunson v. State, 418 S.W. 2d 504 (Tex. 1967)

Where condemnation decree is silent on matter of disposition of improvements on strip of land condemned for road purposes (easement, not fee condemned) the condemned owners had right to remove the improvements because he still owned them. Where State elects to condemn only an easement, it does not get title to improvements, but may remove them if condemnee does not.

State Road Commission v. Papanikolas, 19 Utah 2d 153, 427 P. 2d 749 (1967)

In condemnation proceeding condemnee claimed damages for fixtures contained in part of building taken and also severance damages to fixtures in part of building not taken. Evidence showed that machines used for prefabricating houses were not fixtures and that machines remaining were no longer useable for purpose for which designed having been integrated with each other in a particular use.
HELD: That fixtures are part of the realty and condemnor is liable to compensate condemnee for fixtures taken. Evidence was insufficient to justify severance damage to remaining fixtures.

Colberg v. State, 62 Cal. Reptr. 401 (1967)

This was a consolidated action for declaratory relief to determine whether shipyard owners had any course of action on basis of eminent domain for impairment of access to a deep water channel.
HELD: Right of access from respective riparian properties to waters of navigable channel was burdened with servitude in favor of state . . . and owners are not entitled to compensation for abridgment or diminution, if any, of right of access resulting from construction of low level parallel freeway bridges which would prevent vessels with high masts from reaching shipyards.

Gottus v. Redevelopment Authority of Allegheny County, 425 Pa. 584, 229 A. 2d 869 (1967)

The Redevelopment Authority of Allegheny County condemned certain land following which the Board of Viewers awarded the owners damages. From this both parties appealed to the Court of Common Pleas which entered a verdict upon which judgment was entered. The Redevelopment Authority of Allegheny County appealed from this judgment claiming that the machinery of the commercial laundry, although it was bolted to the floor, should not have been an element of damages.
HELD: The award of damages is upheld. The laundry premises were adapted to use of the equipment by the installation of piping and special electrical wiring and, consequently, the machinery constituted realty for the purposes of eminent domain within the Assembled Industrial Plant Doctrine.

ENCROACHMENTS

Arnold v. Melani, 73 Wash 2d 217, 337 P. 2d 908 (1968)

Plaintiffs relying on a 1947 survey in 1956 put improvements on his land and erected a fence on the line as surveyed. In 1962, defendants obtained their own survey, which disclosed the fence encroached about eight feet on their land and the house encroached about three feet. The variance resulted from an error in the 1908 plat and the trial court found that the recent survey was the correct one, and that the plaintiffs had not perfected an interest through adverse possession. The trial court, however, refused to grant the defendant equitable relief and did grant plaintiff an easement to maintain their improvements except for the fence in the present location for so long as they continue to exist, and gave defendants a judgment for $125.00.

HELD: The trial court was correct in withholding the mandatory injunction as oppressive, as the following elements were present:

1. The encroacher did not simply take a calculated risk, act in bad faith, or negligently, willfully or indifferently locate the encroaching structure;
2. The damage to the landowner was slight and the benefit of removal was equally small;
3. There was ample remaining room for a structure suitable to the area and no real limitation on the property's future use;
4. It is impractical to move the structure as built;
5. There is an enormous disparity in resulting hardship.

The defendant was, however, allowed reasonable compensation for use during each year the encorachment remains in place.

ESCROWS

Arizona Title Insurance and Trust Co. v. Realty Inv. Co., 6 Ariz. App. 180, 430 P. 2d 934 (1967)

After the owner of realty and the lender from whom he obtained the construction loan signed the loan escrow instructions and placed the loan funds in escrow the plaintiff, Realty Investment, submitted a statement for a "finder's fee" for the loan to the escrow agent, the defendant title company. This statement had been approved by the owner. The title company refused to pay on the basis there were insufficient funds in the escrow.

HELD: That unilateral agreement between the borrower-owner and plaintiff could not change the explicit escrow instructions signed by the borrower and the lender. Such instructions stated that the escrow agent was to use the fund solely for the purpose of paying materialmen and laborers on the project to the end that no liens would be outstanding to affect the mortgage. Expenditure of the funds for items other than labor or materials did not alter the terms of the escrow to create any obligation on the part of the title company toward plaintiff.

ESTOPPEL

Travelodge Corporation v. Carwen Realty Company, Inc., 223 Ga. 821, 824, 158 S.E. 2d 378 (1967)

In this case it was held that an owner who builds a swimming pool so as to encroach upon adjoining land belonging to the City, which he had been assured by an official would be sold to him, was not protected against loss of the land and the encroachment by the fact that such assurances were given since he knew at the time that he had no title to the property.

HIGHWAYS

Pilgrim v. Chamberlain, 91 111. App. 2d 233, 234 N.E. 2d 75 (1968)

Action for mandatory injunction to require owners to move fences so that road could be maintained at 66 foot width. The Appellate Court held that where in 1858 the town commissioner of highways refused to lay out road and upon appeal supervisors established road the width of which was not established on plat and road as actually used for many years followed fence lines, even if there was a statutory dedication, there was no acceptance of any more of the road than portion inside fence lines.

County of Santa Barbara v. United States, 269 Fed. Supp. 855 (Cal. 1967)

The United States owned a water distribution system located within county roads easements and along and under county highways. Improvement of the road required relocation of the water pipes. The question was whether the cost of relocation should be borne by the county or by the United States.

HELD: California law, not federal law, applies, and the cost of relocation falls upon the United States. The United States is under the same obligation here as a private citizen, and the federal function does not override the obligations connected with its ownership. This, in spite of the fact that the ownership of the United States was in the nature of title held for security purposes.

HOMESTEAD

Aetna Insurance Co. v. Ford, 424 S.W. 2d 612 (Tex. 1968)

In suit to enjoin sale under execution of tracts claimed to be business homestead, the judgment creditor contended that two lots in same block, but separated from each other, and both used for business purposes, cannot both be business homestead. Homesteader must elect which he will claim as exempt. He cannot have two business homesteads. Texas Supreme Court held business homestead can be in separate tracts—rule is whether they are necessary to conduct of homesteader's business.

HUSBAND AND WIFE

Resthaven Memorial Gardens, Inc. v. Snyder, 248 Md. 710, 238 Atl. 2d 79 (1968)

Option for purchase of realty executed in favor of husband and wife and held by them as tenants by entirety could not be enforced by purchaser of stock and assets of corporation formed by husband and wife, where concontract for sale of assets was amended to contemplate assignment of purchase option, but amendment was signed by corporation and husband and there was no proof that wife had assigned her interest in option. Court disregarded confirmatory assignment which wife did sign because it was dated after expiration of the option and because there was no prior assignment and therefore nothing to confirm.

Hartz v. Hartz, 248 Md. 47, 234 Atl. 2d 865 (1967)

Where there is neither proper disclosure of worth of property as to which there is to be waiver of rights in whole or in part in antenuptial agreement or actual knowledge and allowance made to the one who waives rights is unfairly disproportionate **to the worth of the property involved at the time agreement is made,** burden is cast upon the one who relies upon the agreement to prove that it was entered into voluntarily, freely and with full knowledge of its meaning and effect.

Callicoatte v. Callicoatte, 417 S.W. 2d 618 (Tex. 1967)

Oral partition between husband and wife where he took new paid for car and his tools and clothes, abandoned her and she took two tracts both encumbered which she paid off, would be sustained. A third tract purchased by her after abandonment, while community, she had power to convey alone because of the abandonment.

Bradley v. Scully, 255 A.C.A. 121, 62 Cal. Rptr. 834 (1967)

Declaration of homestead recorded by husband and wife in 1937 never abandoned. Vesting as joint tenants recorded in 1963. In 1964 wife, without husband's knowledge, conveyed her undivided one-half interest in the homestead property to her brother and sister and executed a will devising any real property interest she had to them. Husband did not learn of will or deed prior to wife's death in 1964.

HELD: Statutes and case law prohibit a husband or wife, acting unilaterally, from conveying or devising to a third party, any interest in real property whether separate or community, which the husband and wife had jointly homesteaded and never abandoned.

JUDGMENTS

Harris v. Harris, 428 Pa. 473, 239 A.2d 783 (1968)

Property was held by Entireties. Bank confessed judgment against husband and wife on judgment note apparently signed by both parties. Execution was issued and property sold to an innocent purchaser. Wife then brought suit alleging her signature to the note was forged.

HELD: A judgment entered on a forged judgment note is null and void. Since an execution sale based upon a void judgment is itself void, title will not pass to any purchaser, innocent or otherwise.

United States of America v. Tacoma Gravel & Supply Company, 376 Fed 2d 343 (Wash. 1967)

The United States (RFC) obtained judgment against Tacoma Gravel & Supply Company in a state court (Washington). Ten years later, the United States brought an action in U. S. District Court to renew the judgment. The Washington Statute provides that a judgment ceases to be a lien after six years. The U. S. contended that it was not bound by the State's Statute of Limitations.

Held: Judgment has ceased to exist. The Statute is not one of limitations, but one of extinguishment. The judgment is gone. The Statute operates against the United States equally with private creditors.

LANDLORD AND TENANT

Cities Service Oil Company v. Estes, 208 Va. 44, 155 S.E. 2d 59 (1967)

Lease between landlord and tenant contained a right of first refusal to purchase in the event landlord received a satisfactory bona fide offer to buy. After death of one of the landlords suit was instituted by surviving landlord and decree was entered authorizing sale of property at public auction. Held: Right of first refusal granted tenant under lease applies to public judicial sale and tenant was entitled to acquire the property at the price offered by the highest bidder.

Webb v. Arrington, 249 Md. 46, 238 Atl. 2d 243 (1968)

Action by tenant in common against co-tenant in possession of farm for an accounting as to proceeds of sale of sod.

The Court held that owner of undivided one-half interest in farm who was in possession was obligated to account to his co-tenant for one-half of proceeds realized from sale of sod as well as rents which he agreed to pay co-tenant. Sod which had been on dairy farm but which had been cut and sold was not a growing crop, but was "fructus naturales" and part of realty to which a tenant was not entitled.

Davis v. Boyajian, Inc., 11 Ohio Misc. 97, 229 N.E. 2d 116 (1967)

Defendants held a five year lease which was executed subsequent to a mortgage given by lessor. The mortgage was foreclosed without making defendants parties to the foreclosure action. The land was purchased at a judicial sale by plaintiff-mortgagee who attempted to evict the defendants. Held: The lease of the defendants is not terminated by foreclosure action upon a mortgage in which defendants have not been made a party and where the mortgagee has never been in possession of the premises.

Williams v. Safeway Stores, Inc., 198 Kan. 331, 424 P. 2d 541 (1967)

Lease of property for retail business purposes at minimum rental contained provision for additional rental based on gross sales above stipulated amount and also provision expressly authorizing lessee to assign or sublet. Lessee used property itself for a number of years and then sublet for use which did not yield additional rental.

Held: Lease contained no implied restriction against assignment or sub-

letting for use which might not yield percentage rental comparable to rental paid by lessee.

LIMITATION OF ACTIONS

Gulf Coast Investment Corp. v. Lawyers Surety Corp., 416 S.W. 2d 779 (Tex. 1967)

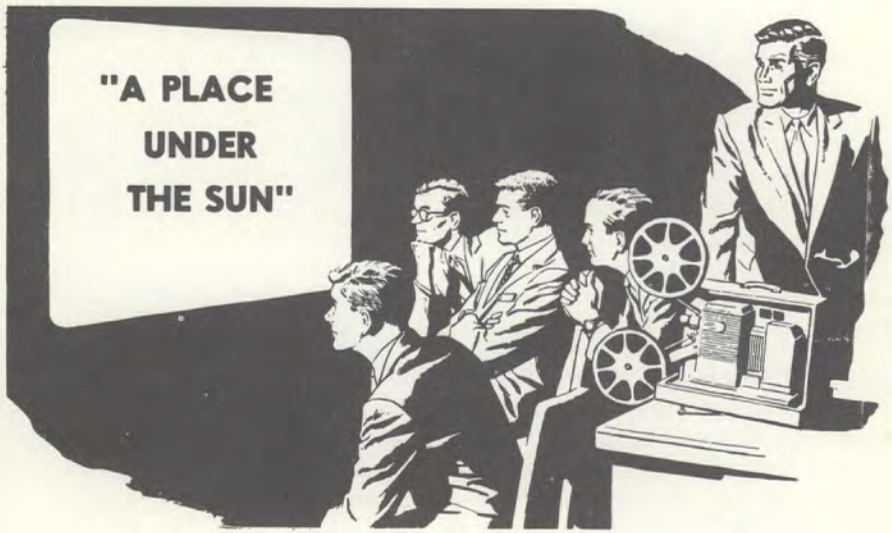
The two years Statute of Limitations governs suit against notary public and surety on his bond for notary's falsifying of certificate of acknowlegdment overrules Standard Accident Insurance Co. v. State, 575 S.W. 2d 191, writ. dism., so far as in conflict with this holding.

LIS PENDENS

Fannin Bank v. Blystone, 417 S.W. 2d 502 (Tex. 1967)

Husband gave deed of trust on non-homestead community property during pendency of a divorce action and after issuance of an order enjoining his conveyance or encumbrance of the property. Mortgagee foreclosed under power of sale and one of defendants bid in the property. No lis pendens notice of the divorce suit was filed.

Held: That purchaser was one pendente lite by virtue of the force of Article 4634 which provides that after suit for divorce is brought it is not lawful for husband to dispose of land belonging to the community, and that such alienation is void if made with a fraudulent view of injuring the rights of the wife. The court holds that Article 4634 is, in effect, a lis pendens statute so far as divorce actions are concerned.



MEETING TIMETABLE

1968

December 4, 1968
Louisiana Land Title Association
New Orleans

1969

March 5-6-7, 1969
MID-WINTER CONFERENCE
American Land Title Association
The Drake Hotel
Chicago, Illinois

April 3-4-5, 1969
Arkansas Land Title Association
Coachman's Inn
Little Rock, Arkansas

April 24-25-26, 1969
Texas Land Title Association
Texas Hotel
Fort Worth, Texas

April 25-26, 1969
Oklahoma Land Title Association
Oklahoma City, Oklahoma

May 5-6-7, 1969
Iowa Land Title Association
Holiday Inn
Sioux City, Iowa

May 8-9-10-11, 1969
Washington Land Title Association
Tyee Motor Hotel
Olympia, Washington

May 9-10, 1969
Tennessee Land Title Association
Downtown Holiday Inn
Chattanooga, Tennessee

May 15-16, 1969
Utah Land Title Association
Park City, Utah

May 21-22-23, 1969
California Land Title Association
Fairmont Hotel
San Francisco, California

May 25-26-27, 1969
Pennsylvania Land Title Association
Shawnee on Delaware, Pennsylvania

June 13-14-15, 1969
Colorado Land Title Association
Glenwood Springs, Colorado

June 18-19-20-21, 1969
Oregon Land Title Association
Gearhart Motor Inn
Gearhart, Oregon

June 25-26-27-28, 1969
Michigan Land Title Association
Hidden Valley
Gaylord, Michigan

June 26-27-28-29, 1969
Idaho Land Title Association
The North Shore Motor Hotel
Coeur d'Alene, Idaho

June 27-28, 1969
South Dakota Land Title Association
Holiday Inn
Aberdeen, South Dakota

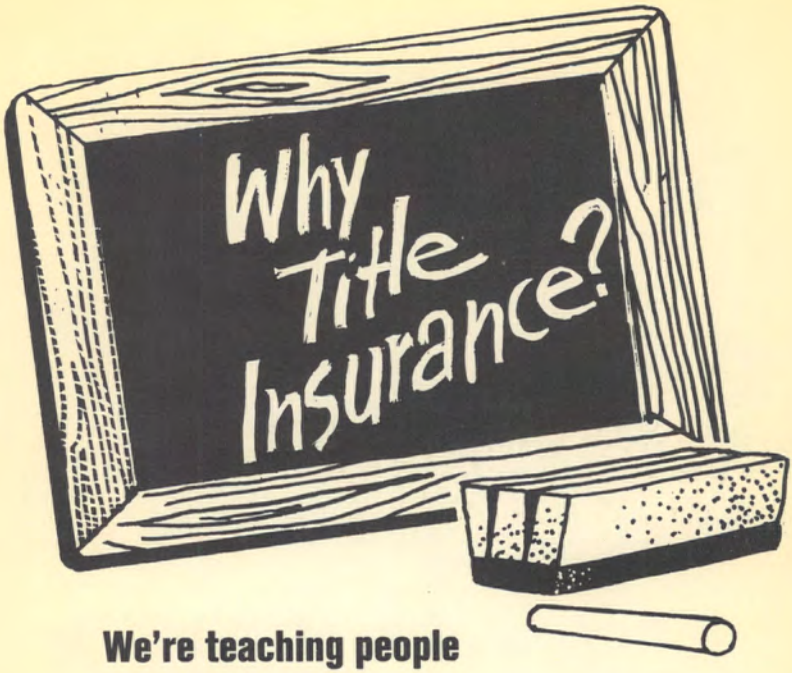
July 13-14-15-16, 1969
New York State Land Title Association
Whiteface Inn
Lake Placid, New York

September 11-12-13, 1969
North Dakota Land Title Association
Plainsman Hotel
Williston, North Dakota

September 28-29-30, October 1, 1969
ANNUAL CONVENTION
American Land Title Association
Chalfonte-Haddon Hall Hotel
Atlantic City, New Jersey

October 30, November 1, 1969
Wisconsin Land Title Association
Holiday Inn
Eau Claire, Wisconsin

December 3, 1969
Louisiana Land Title Association
Royal Orleans Hotel
New Orleans, Louisiana



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