TITLE NEWS

THE OFFICIAL PUBLICATION OF THE
AMERICAN LAND TITLE ASSOCIATION

"OUR 62nd YEAR"

Speakers at ALTA Title Insurance Seminar Presented at NAIC Zone II Meeting

Gordon M. Burlingame

William H. Baker, Jr.

William H. Deatly

Richard E. Fox

JUNE, 1969

A MESSAGE FROM THE CHAIRMAN OF THE ABSTRACTERS AND TITLE INSURANCE AGENTS SECTION

JUNE, 1969

As Chairman of the Abstracters and Title Insurance Agents Section of your association, I have been privileged to make a number of recent visits to state title association meetings. These meetings are well planned and do a masterful job of presenting not only problems, but also solutions to problems that are being experienced in the title industry today. Usually the meeting place is conveniently located so as to be accessible to the given state membership without burdensome expense. Even so—many members fail to attend—why? Costs, I am sure, are a factor, but even one good idea received will repay several times over the total expense involved. Is it because we don't want to share for fear of losing our competitive edge? Some of our most successful title companies don't share this fear and are willing, even anxious, to exchange the results of their business experience. Or, is it that our temporary prosperity has given more independence and a feeling we no longer need the help we once felt necessary and perhaps available through organized meetings? The folly of this is apparent.

All of this points to one thing—the need for each of us to become involved, first, on the state level and then with our national trade association! Not only are widened friendships involved, but also widened business horizons as well.

Several state conventions are yet to come. Plans are being formulated for the fall convention of ALTA. All of you are involved, some, of course, with more pressing responsibilities. I hope you will be an active participant in this, one of the finest professions of our day.

Sincerely,

John W. Warren

John W. Warren

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FEATURES

DEPARTMENTS

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On The Cover: Four titlemen delivered talks in an ALTA Title Insurance Seminar at a meeting of Zone II, National Association of Insurance Commissioners, in Wilmington, Delaware, April 28. J. Mack Tarpley, vice president, Chicago Title Insurance Company, and chairman of ALTA's Committee to Establish Liaison with NAIC, was seminar moderator. For the text of the four talks, turn to page 14.

GARY L. GARRITY, *Editor*
DONAILEEN C. WINTER, *Assistant Editor*

A LOOK AT PROPOSED AMENDMENTS REGARDING ALTA MEMBERSHIP

BY GORDON M. BURLINGAME
President, American Land Title Association

Editor's note: In the accompanying text of the proposed amendments, underscored words are proposed additions and words with lines through them are proposed deletions.

The ALTA Board of Governors, at the 1969 Mid-Winter Conference in Chicago, recommended the adoption of three amendments to the Constitution and By-Laws regarding membership in this Association. The proposed amendments will come before the general membership for consideration regarding adoption during the Annual Convention in Atlantic City. These proposed amendments appear on the accompanying pages of this issue of *Title News* for review by the membership as required by Section 1, Article XI of the By-Laws.

The proposed amendments to Sections 2 and 3 of Article III, and to Section 2 of Article V of the Constitution, have been a subject of concern to the officers and members of some of our affiliated state associations. I would like to assure all of our members that a great deal of thought and time has been devoted to the need for the development of these amendments by several of our committees, including the Membership and Organization Committee, the Planning Committee, and the Constitution and By-Laws Committee, as well as by the Executive Committee and the Board of Governors.

On June 12, 1968, the Planning Committee of this Association met in Chicago to attempt to resolve several problems which had arisen as a result of conflicting and ambiguous membership requirements within the ALTA Constitution and more particularly b e t w e e n the American Land Title Association Constitution and the constitutions of various state associations. The Committee discussed the findings of the Membership and Organization Committee, which previously had reviewed the by-laws of many of the state associations.

Specific items discussed by the Planning Committee included:

1. The fact that qualifications for membership in affiliated associations varies substantially from state to state and, as a result, an applicant not qualified for membership in one state association

may well be qualified in another.

2. One state association will not allow a title insurance company member to vote on state association matters. On the other hand, another state association constitution denies full voting rights to members of its association who are not underwriting companies.

In both cases, those companies who may be fully qualified for active membership in the national association are denied active membership in the ALTA due to the provision under Article III, Section 2 of the national by-laws which states: "A member of such affiliated title association without full voting rights therein may not, unless otherwise eligible, be elected to active membership in this Association." The Planning Committee concluded that this provision was unworkable due to the peculiarities of the various affiliated association constitutions, and that enforcement of the provision on a national level was impractical.

3. The present ALTA Constitution and By-Laws provides for the dropping from the membership role of the ALTA any member: (a) who has resigned from the affiliated title association in the state where he is domiciled; (b) who has failed to pay his dues to the local or national association and (c) who has been guilty of misconduct. However, the Constitution and By-Laws are silent with regard to the membership status of members who are dropped from a state association for some reason other than those just indicated.

The following is a case in point. Recently, an affiliated state association abolished a certain class of membership with the result that five members who had been members in good standing in both the state association and the American Land Title Association are now no longer members of the affiliated state association. What is their status in the ALTA? They have paid their ALTA dues; they have not resigned; and they have not been guilty of misconduct.

The provisions of Section 2 of Article III and the second paragraph of Section 2 of Article V of the current national by-laws lead to the conclusion that the ALTA is precluded from admitting to membership any applicant who would otherwise be eligible but for the concurrent membership requirements of an affiliated association.

The Planning Committee concluded that clarification of situations such as these must be made through constitutional revision.

4. The varying requirements for membership in some state associations may make it difficult for a title company operating within only one state to be accepted, whereas the title insurance company operating in more than one state may be easily accepted. One state association will accept for direct membership a company insuring titles within its state only with the provision that the title company be a member of the affiliated state association in its home state, whereas another state association may require that a physical plant be located in its state. Another state association limits associate membership of insurers not physically located in that state to applicants operating only in adjoining states and makes no provision for applicants operating in other parts of the country.

The Planning Committee agreed that the obvious conflicts that exist between the by-laws of the various state associations dealing with membership can cause unfair discrimination between one applicant and another.

After full deliberation of the current membership requirements of the by-laws of the state association and the by-laws of the national association, the Planning Committee unanimously passed a resolution requesting the Board of Governors to "direct the Constitution and By-Laws Committee to prepare such proper amendments or revisions of the Constitution and By-Laws as will afford and reserve to the American Land Title Association the rights and duties to determine eligibility, qualifications and voting rights for membership in this Association." The Committee, in adopting this resolution, was of the opinion that the ALTA should be a strong national association. The Committee indicated however, that it did not want to take away any state association rights.

On September 29, 1968, the Board of Governors directed the Constitution and By-Laws Committee to amend Article III, Section 2 of the Constitution and By-Laws by at least eliminating:

1. The phrase, "or in this Association," appearing in the second to last sentence, and

2. The last sentence which states that a member of an affiliated state association without full voting rights therein may not be elected to active membership in the ALTA.

The Board of Governors also discussed at great length whether a state association should continue to have the power to veto an applicant's request for membership in ALTA. It was decided that the Constitution and By-Laws should be amended to require a vote of two-thirds of the *whole* ALTA Board of Governors to approve membership in this Association when an applicant receives an unfavorable recommendation from a state association.

Following the direction of the Board of Governors, and after giving much consideration to the report of the Planning Committee, the Constitution and By-Laws Committee submitted the proposed amendments thought to be necessary to strengthen the position of the American Land Title Association in determining eligibility and qualifications for membership in the Association.

The proposed amendment to Section 2 of Article III provides the language necessary to grant the Board of Governors the freedom of action which may be required to resolve the various problems which develop in such specific cases as have been previously described.

The concern of several affiliated associations has been that this amendment will weaken the position of our state associations and open the door for direct membership in the ALTA of unqualified companies by the bypassing of the state association in which the applicant is domiciled. It should be noted that this proposed amendment requires a two-thirds vote of the *total* Board of Governors to admit an applicant for membership in the ALTA who is not a member of a state association. The Board of Governors is desirous of maintaining high standards of performance for the title insurance industry. If a two-thirds vote of the *total* Board of Gover-

nors is required, the Board is not going to admit to membership an applicant who is not eligible for membership in an affiliated state association within whose jurisdiction he falls—unless the Board considers the reason for that ineligibility not to be in accord with the sound principles of the national association.

The proposed amendments to section 3 of Article III and to Section 2 of Article V are necessary to conform to the language of the proposed amendment to Section 2 of Article III, if it is adopted. The proposed amendment to Section 2 of Article V also provides new and appropriate language relative to reinstatement of members.

It is not the intention of the Board of Governors to diminish the important role that our affiliated title associations have in the American Land Title Association. It is the opinion of the Board and the many committee members participating in the development of these proposed amendments that their adoption would enable the national association to solve membership qualification problems in specific cases resulting from the lack of uniformity within the by-laws of our state associations.

Proposed Amendment to Section 2 of Article III

Sec. 2. AFFILIATED ASSOCIATIONS: With the approval of the Board of Governors any state, regional or territorial association of abstracters or of title insurers, or of both asbstracters and title insurers BUT NOT MORE THAN ONE SUCH ASSOCIATION REPRESENTING EITHER SUCH GROUP IN ANY STATE, REGION OR TERRITORY may affiliate with this Association. (Region, as used herein, shall mean two or more states forming a continuous geographical area.) Its application for affiliation shall be accompanied by a certified copy of its constitution or articles of association or incorporation and of its by-laws, together with applications of those of its members in good standing who or which have applied for membership in this Association and a certification of their eligibility for membership therein. An affiliated association shall possess such rights and privileges in this association as are provided by this Constitution and By-Laws and as may be from time to time prescribed by the Board of Governors of this Association. Any affiliated association may, at its option, undertake to collect and remit membership dues in this Association of those of its members who are or become members of this Association, and may also, at its option, require as a condition for membership ~~therein or in this Association~~ in such affiliated association that a prospective member having his or its principal place of business in the state, region or territory represented by such association be or become a member of both associations. ~~but~~ Any such requirement shall not affect membership in this Association of (a) any existing member or of (b) any prospective member who by reason of multiple state or territorial operation, may be eligible to apply for membership in this Association from another state, region or territory, or (c) any prospective member not qualified under (b) hereof but otherwise eligible for membership except

for any such requirement of an affiliated association unless (i) such affiliated association files with this Association in writing an unfavorable recommendation as to such prospective member and (ii) the Board of Governors of this Association fails to elect such prospective member to membership by a vote of two-thirds of the members of the whole Board of Governors. ~~A member of such affiliated title association without full voting rights therein may not, unless otherwise eligible, be elected to active membership in this Association.~~

Proposed Amendment to Section 3 of Article III

Sec. 3. QUALIFICATIONS FOR AND ELECTION TO MEMBERSHIP: Except as provided in Section 2 hereof election to membership of any class in this Association shall require the affirmative vote of a majority of the whole Board of Governors. Applications for active membership, in addition to the requirements of Section 1 of this Article and of Section 2 thereof, if applicable, shall contain evidence satisfactory to the Board of Governors of applicants reputation for integrity, reliability and responsibility in all business and professional relationships and that applicant owns, or leases, and occupies a bona fide office for the production of title evidence, staffed with applicant's own employees and located in one of the states or territories of the United States or in the District of Columbia.

Proposed Amendment to Section 2 of Article V

Sec. 2. DEFAULT IN PAYMENT OF DUES: Any member in default in the payment of dues, for a period of three months after the same shall have become payable, shall be notified in writing that unless said dues are paid within one month thereafter, such default will be reported to the Board of Governors. Upon such report being made to the Board of Governors, it may, without further notice strike the name of such member from the roll for nonpayment of dues, and the membership and all rights in respect thereto of such member shall thereupon cease; provided, however, that the Board of Governors in its discretion, by the affirmative vote of a majority of the whole board, may, subject to the requirements of Sec. 3 of Article III, if applicable, reinstate such member upon payment of all unpaid items.

~~Any member whose election to membership shall have required concurrent membership in an affiliated association, shall automatically cease to be a member of this Association upon~~ The Board of Governors may in its discretion terminate the membership of any member who is a member of an affiliated association following the filing with this Association of a notice signed by the Secretary of such affiliated association that said member has been dropped from its membership for nonpayment of dues following due notice of delinquency in said payment; provided, however, that if a membership be so terminated then the Board of Governors in its discretion, by the affirmative vote of a majority of the whole board, may reinstate such member upon ~~recertification of eligibility by~~ receipt of notice from such Secretary that such member has been reinstated to membership in such affiliated association.

OTHER AMENDMENTS TO BE CONSIDERED AT THE 1969 CONVENTION

Proposed Amendment to Section 4 of Article VII

Sec. 4 (A) OTHER COMMITTEES: 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, Liaison Committee with the National Association of Insurance Commissioners, Membership and Organization, Legislative, Federal Legislative Action Committee, 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 by the Constitution and By-Laws.

(B) Except with respect to standing committees, the composition of which is otherwise prescribed in these By-Laws, the Board of Governors is authorized and empowered (1) to create and establish such other committees, not provided for or specified in the Constitution and By-Laws, as it may deem necessary to carry out the orderly functions of the Association in accordance with its purposes and objectives; (2) to designate whether any such committee shall be a standing committee or a special committee; (3) to change the designation of any such committee from special to standing or from standing to special; (4) to specify the functions and powers of any such committee; (5) to determine and change from time to time the number of members and their terms; and (6) to abolish any such committee or terminate the term of any committee member.

The Liaison Committee shall be composed of the .....

Proposed Amendment to Section 3 of Article VIII

Sec. 3. (a) THE EXECUTIVE VICE PRESIDENT shall hold office at the pleasure of the Board of Governors. He shall be a full-time employee of the Association and receive such salary as the Board of Governors shall fix from time to time. He shall be the Chief Administrative Officer of the Association, and shall perform such duties as shall be from time to time prescribed by the Board of Governors, ~~have charge of the Association office and correspondence, keep accurate record of all meetings, collect all~~

~~monies due and remit the same to the Treasurer on or before the first day of each month following receipt thereof and perform such other duties as may be necessary for the proper conduct of the business of this Association. The Secretary shall assist the Executive Vice President in all his duties and act for him in case of his inability to act, and, in case of a vacancy therein, assume the duties of such office.~~

(b) THE SECRETARY shall hold office at the pleasure of the Board of Governors. He shall be a full-time employee of the Association and receive such salary as the Board of Governors shall fix from time to time and shall perform such duties as shall be from time to time prescribed by the Executive Vice President or the Board of Governors.

A FURTHER DEVELOPMENT NOTED IN CASE LISTED IN JUDICIARY REPORT

Further legal action reported in American Legion Ed Brauner Post No. 307, Inc., vs. Southwest Title and Insurance Company

An additional development is reported in the case of American Legion Ed Brauner Post No. 307, Inc., vs. Southwest Title and Insurance Company as presented on page 22 of the April issue of *Title News* in the ALTA Judiciary Committee report.

Lloyd Adams, Southwest Title vice president in New Orleans, advises that the opinion of the Court of Appeals adverse to the position of Southwest Title and sustained by the Lower Court has been involved in further legal action. The opinion rendered by the Supreme Court of the State of Louisiana, after writs were taken by the title company, completely reversed the reversal rendered by the Court of Appeals and concluded that there never was an arbitrary delay in Southwest Title's performance of its obligation under the policy—nor were there any circumstances when proof of less was submitted and therefore no statutory penalty was assessable.

Lloyd adds these comments:

"The decision of the Court of Appeals was that either you paid off upon the request of an assured, or, if you took Court action and were not successful, you not only paid off the face of the policy but, in addition, a 12 per cent penalty.

"The Supreme Court very clearly interpreted the terms of the Standard ALTA Loan Policy by saying that until less is definitely established, the insurance company, acting in accordance with the terms of its policy, defending the title secures a decision, no proof of less has been established, hence no penalty could be applicable."

SUCCESSFUL SCREENING OF CLERICAL APPLICANTS

BY WILLIAM F. RICHARDSON
Vice President, Burton Abstract and Title Company
Ann Arbor, Michigan

The Washtenaw Regional Office of Burton Abstract and Title Company has been using the Minnesota Clerical Test for the last 10 years as an aid in attempting to assess the success probability of job applicants. The Minnesota test measures speed and accuracy in performing tasks related to clerical work.

Two parts make up the test: number checking and name checking. In each part there are 200 items consisting of 100 identical pairs and 100 dissimilar pairs. The examinee is asked to check the identical pairs. The numbers in number checking range from three through 12 digits; and the names in name checking contain from seven through 17 letters. Separate time limits are used for the two parts.

The total testing time is 15 minutes. Over the time that this test has been used, we have employed 47 girls who have taken the test. We administered the test to many more applicants who were not hired. We do not have a control group because some of the girls who did not score very well on the test were not hired. Whether they would have been satisfactory employees if hired is a matter of conjecture.

On the first item of the test, name checking, we have had scored, among the girls hired, scores of between 81 and 154. Under the name checking section of the test we have had girls who scored between 77 and 176.

In our use of the test score in evaluating girls, we presently use a lower limit of 115 on the numbers score and a lower limit of 120 on the name checking. There is nothing magical about this cutting

score and a girl scoring slightly below it will not automatically be disqualified. From the success we have had with the girls who have scored above these figures, we think there is a correlation between scores above that amount and job success. We have had some girls who have not scored the minimum on one test but have scored considerably above the minimum on the other, and we think this should be taken into account in any hiring decision.

We feel that the test has value in giving a job opportunity to a girl who does not make a particularly good presentation in an oral interview—such as the quiet, withdrawn, introverted girl. When you give this type of girl the test, she really has a chance to show what she can do. Very often this kind of girl has proved to be a definite asset in our type of business. The reverse is also true. Someone who is a real "charmer" in the oral interview sometimes falls off so badly in the test that we think the girl might leave something to be desired when it comes to actual job performance.

The administration of the test has to be performed with care. There should be adequate working space which is well lighted, well ventilated, and free from distractions. One should have an administrator who is familiar with the directions for taking the test, and a stop watch to make sure of accurate timing. The test has proved very easy to administer. The number-checking portion of it takes eight minutes to complete; the name-checking portion takes seven. Whoever administers the test must stay in a position to stop the applicant at the end of the time limit, or any attempt to validate it will not work. The administrator also must be careful to use exactly the same words to each person taking the test.

There must not be any attempt to stress either the speed or accuracy, which could influence the way a girl will try to take the test. The test is very easy and quick to score. There is a cardboard scoring key that is used to check the items. The correct items are those in which the same items have been checked, and the different items have been left blank. The incorrect items include the same things which have not been checked and the different items which have been checked.

We have made the taking of the test a routine part of our hiring process. The applicant first fills out a job application form. After this is completed, it is submitted to the interviewer for his review while the applicant is being tested. The oral interview then is given while the test is corrected. The applicant is never told how she scored on the test.

The tests are very inexpensive. A package, with a scoring key and a manual, costs (at time of last order) $9.00 for 100 copies of the test. This test, of course, will not measure motivation. You can have a person who scores very high on both parts of this test, and, if she does not really want to work, it won't measure that. The test will, however, indicate to some extent her ability to do the work. Because of its ease of administration and value in evaluating applicants, the Minnesota test is a worthy tool in the employee selection process.

NAMES IN THE NEWS

JENSEN

BATES

Robert C. Bates and **John E. Jensen** have been named senior vice presidents of Chicago Title and Trust Company, Chicago, Illinois.

Mr. Bates also was elected executive vice president of Chicago Title Insurance Company, a wholly-owned subsidiary of Chicago Title and Trust. He will be responsible for the divisions, offices, agency operations and general counsel's office of Chicago Title Insurance.

Mr. Jensen will head the newly formed corporate planning and development division. He will continue as president of Employee Transfer Corporation, another subsidiary.

Chicago Title Insurance Company, Home Title Division, has announced the following administrative changes. **John H. Torborg** has assumed the management of the Jamaica office and **George W. Palmer** has been named manager of the Mineola office.

* * *

Directors of Alabama Title Company, Inc., Birmingham, Alabama, have announced the appointment of **Jay Mueller** to succeed **James S. Odom, Sr.** as president of the company. Mr. Odom resigned to enter active law practice, but will continue as a member of the board of directors.

William A. Beckwith, Jr. was reappointed vice president and chief title officer. **Mrs. Frieda Coggin** was named director of public relations, and **Charles H. Tingle** was named vice president and assistant title officer.

* * *

NEWLAND

The promotion of **Lawrence A. Newland** to manager of Solano County Operations for Title Insurance and Trust Company of California has been announced.

* * *

RAWSON

Mississippi Valley Title Insurance Company has announced the election of **H. E. Buddy Rawson** as vice president in charge of Alabama agents and **Kirby Ross** in charge of public relations.

Lincoln, Chicago Title Seek Exchange of Stock

Lincoln National Corporation and Chicago Title and Trust Company have announced that an agreement for an exchange of stock has been reached by the managing officers of both companies.

The agreement contemplates a tax-free exchange and acceptance by the holders of at least 80 per cent of the outstanding stock of Chicago Title and Trust Company. In addition, the agreement was to be submitted to the boards of directors of the two companies and is subject to amendment of the articles of incorporation of Lincoln National Corporation authorizing the issuance of preferred stock—which was scheduled to be voted upon at the annual meeting of Lincoln National Corporation shareholders late in May.

It was planned to make the offering by a registration statement and prospectus under the Securities Act of 1933.

The agreement provides for the exchange of the common stock of Chicago Title and Trust Company for cumulative convertible preferred stock of Lincoln National Corporation, on the basis of one share of Chicago Title and Trust Company common for one share of Lincoln National Corporation preferred.

Each share of the preferred stock of Lincoln National Corporation would be convertible into one share of Lincoln National Corporation common; would be callable after five years at $80.00 per share; and would provide an annual cash dividend of $3.00 per share.

Chicago Title and Trust Company has approximately 2,163,000 shares of common stock outstanding.

Commonwealth Directors Approve Combination

A previously-announced proposal by Provident National Bank of Philadelphia to combine ownership of Provident and Commonwealth Land Title Insurance Company through formation of a one-bank holding company has been approved by the Commonwealth board of directors.

Under the proposal, the holding company, Provident National Corporation (PNC) will make an offer to the common and preferred shareholders of Commonwealth Land Title Insurance Company (Commonwealth) to exchange preferred stock of PNC for the common or preferred stock of Commonwealth these shareholders now

own. This offer will be made by direct written solicitation of Commonwealth's shareholders by PNC. The preferred stock to be offered in exchange will be cumulative preferred voting stock, entitled to preferential dividends at the rate of $1.80 per share per year, convertible at any time on a share for share basis into common stock of PNC, entitled on liquidation to $40 per share plus any accumulated and unpaid dividends, and redeemable seven and one-half years after the date the exchange is consummated, at the option of PNC, at $40 per share.

The preferred stock will generally vote as a class with the common stock of PNC except as provided by law and if PNC fails to pay dividends on all outstanding preferred stock in an amount equal to six quarterly dividends, the preferred stock, voting as a class, will be entitled to elect two additional directors until all dividends are paid. The shareholders of PNC will not be entitled to cumulative voting in the election of the directors nor will they have any preemptive rights.

The holders of common stock of Commonwealth will be offered this convertible preferred stock on a share for share basis. Holders of Commonwealth preferred shares will be offered 3.3 shares of this convertible preferred stock for each Commonwealth preferred share.

The proposed exchange is subject to approval by the shareholders of Provident and a number of regulatory authorities, including the Insurance Commissioner of Pennsylvania who must pass on the fairness of the proposal at a public hearing.

Chicago Title Acquires Cleveland Company

The acquisition of Land Title Guarantee and Trust Company of Cleveland by Chicago Title and Trust Company has been announced.

A stock exchange offer has been accepted by holders of more than 80 per cent of the outstanding common shares of the Ohio company's stock. Shares of Chicago Title and Trust Company common stock were offered in exchange for shares of the Cleveland corporation's stock at a ratio of 1¼ shares of Chicago Title stock for each share of Land Title stock.

Under the acquisition, Land Title operates as a Chicago Title Insurance Company subsidiary.

Land Title has operated throughout Ohio for 65 years; the concern's home office is in Cleveland. Other offices are in Akron, Cincinnati, Painesville, Elyria, Youngstown, Madina, and Warren.

ATTENTION

1970 Directory

Listing Forms

are in the mail.

Watch for them!

TITLE INSURANCE SEMINAR

Presented by the American Land Title Association
At the Meeting of Zone II
National Association of Insurance Commissioners

Participants:
Gordon M. Burlingame
William H. Baker, Jr.
William H. Deatly
Richard E. Fox

Wilmington, Delaware
April 28, 1969

The Nature of Land Title Insurance and How It Differs From Other Insurance

BY GORDON M. BURLINGAME
President, American Land Title Association
Chairman of the Board, The Title Insurance Corporation of Pennsylvania

The vast increase in the writing of title insurance is attributable to the greatly increased national activity in the real estate market since World War II, especially in residential real estate; to the greater dollar value of real estate; to the general insistence of bulk mortgagees on insurance of title; and to the growing complexity of business, of the law and of title searching.

Before the second World War, real estate financing was largely a local matter, not to say an individual matter. The local banker appraised each risk; he considered the reputation and financial position of the title abstracter, of the title examiner, of the mortgagor, all the parties whose mistakes or dishonesty or financial situation might cause loss. This system worked well enough for the most part; at least if the banker suffered extraordinary losses during the depression, I do not believe they were caused by his misreliance on title opinions.

Eventually, however, the local financier found that he could exercise his talent for appraisal of individual risks more profitably in the financing of mercantile inventories and consumer chattel paper. It was less attractive for him to get money from wholesale lenders to invest in low-return mortgages. And at the same time, the investments available to the largest financial institutions were paying very low interest indeed, so that mortgage loans had become more attractive to them.

Even more, federal VA and FHA mortgage guaranty laws promoted the interest of the big lenders. The guaranty feature tended to minimize the need for evaluation of individual cases. The standardization of mortgage provisions dictated by the requirements of the federal guaranty laws and regulations eliminated the need for individual drafting. The legislative policy embodied in the guaranty statutes only reflects, of course, the prestige and security which individual home-owning confers in our country. And savings were at a high level after the war.

So the desire of Americans for their own homes, their savings which enabled them to meet down-payment and closing costs, the federal guaranty laws, and the willingness of the big institutional lenders to enter the

residential mortgage market all contributed to the post-war housing boom.

Since the big investor had standardized its contract, and delegated to a mortgage service company the policing of the contract, and received a federal guaranty, it wanted also to eliminate or standardize title risks. The prior local procedure would not necessarily do, because the national lender could not know the competency or responsibility of local abstracters and title examiners.

In such circumstances, the growth and specialization of title insurance companies was inevitable. The competency and responsibility of a relatively small number of such companies was more easily assessed. Those companies could organize the capital needed for a proprietary title plant, they could be expected to maintain appropriate loss reserves and they could, and are continuing to, help standardize contracts and procedures.

I find that the states are moving toward regulation of title insurance by insurance departments under statutes specifically directed to the problems of title insurance. I regard this as most desirable for the following reasons.

When fire insurance arose at the end of the eighteenth century, the merchant or large householder astute enough to insure, was astute enough to deal with reputable local insurance offices.

But life insurance, a nineteenth-century development, presented another picture. For obvious reasons, a life insurance company had to be run on reserve principles rather than on assessment principles. The life insurance buyer was more likely than the marine or fire insurance buyer, to be without the time or knowledge to learn what his policy meant. Hence, the inevitable rise of regulation.

There was never any substantial question that insurance was affected with a public interest, so that the states might properly regulate it, but in 1869, the Supreme Court decided that it was not commerce, so the federal government could not regulate it. Shortly thereafter, in 1871, I believe, your Association, the National Association of Insurance Commissioners, was organized by the Commissioners of the various states, to assure coordination of the various state activities. This Association has enabled the states to take the lead in publicizing and promoting regulatory devices. It has given insurance regulation a degree of homogeneity not to be anticipated among so many different jurisdictions. And it performs services most conveniently rendered on the national level.

When the Supreme Court decided that insurance was, after all, commerce, Congress immediately passed the McCarran Act to insure that the states could continue as the sole source of regulation, and it has been felt generally, that the Act effectively prohibits federal regulation where the states have enforced regulation adopted following the Act. The states have reacted to the McCarran Act with considerable, but differing, activity, including revisions and adoptions of comprehensive insurance codes. Although regulation of title insurers by the insurance departments is on the whole desirable for the industry and for the insured, there are some factors mili-

tating against it. I set them forth here, together with some proposals to remedy the difficulty.

1. Title insurance is not periodic as is casualty insurance or term life insurance. Title insurance is not periodic even in the sense of ordinary or twenty-payment life insurance. There is no useful analogy to single-payment life, because the life "risk" is certain to materialize, while title risks do not often materialize. The title policy covers existing and usually unknown risks, but it covers such risks for an indefinite period. This want of periodicity makes the assimilation of title risks to other insured risks almost arbitrary.

2. Title insurance looks to *risk avoidance* or *risk elimination*, rather than to *risk assumption* and *distribution*. In fact, while the issuance of title policies on casualty principles, without the exhaustive title search made by most insurers, might arguably be both safe and profitable from the "pure insurance" point of view, it would tend to defeat one of the principal virtues of title insurance, the discovery and cure of title defects. Title insurance can assure the mortgagee, on failure of title, that the mortgage debt will be paid, but it cannot assure the owner that he will keep his property—it can only pay him if he loses it. Insurance on casualty principles would tend to substitute a welter of money obligations for the secure ownership of the property; insurance on risk *elimination* principles tends to promote security of ownership. It does require some sophistication to grasp the principle, that the likely costlier policy which actually minimizes the risk to be accepted, is to be preferred to "true insurance," when we consider the security of ownership of property.

Owing to the risk-elimination principle, I suggest that explicit statutory regulation of title insurers as such, evincing legislative and administrative understanding of and sympathy toward the risk-elimination principle (as well as the rate problem), is the best protection for the home buyer and the lender.

3. The rate problem must be considered in connection with the history of title insurance. However strong the case can be made for the modern title insurance corporation—historically, title insurance was most often an adjunct to banking services, mortgage guaranty, mortgage service, and, only rarely, insurance of other kinds. Title insurance was an auxiliary service, and its principal purpose was the investigation of titles rather than underwriting. The banking commissioner, rather than the insurance commissioner, might claim jurisdiction of the field into which title insurance fell. Growth and specialization of title insurers seem now to justify classing this service broadly as insurance, rather than as a collateral banking function, but the non-insurance service rendered by title insurers is considerably greater than that rendered by most insurers, and in point of cost, greatly outweighs pure insurance. The difficulty and expense of a title search and the skill needed to render title opinions are difficult for the layman, even the layman in the insurance department, to appreciate. If this work is properly done, the actual insurance under the principle of risk elimination rather than risk assumption, involves a minimal chance of ultimate liability for the insurer. An officer of the New York Insurance Department one time

suggested that title insurance might for this reason be compared most readily with boiler insurance, where the insurer spends a great deal of money to *prevent* boilers from exploding, rather than accepting such risks as are offered and relying upon ordinary actuarial principles to determine rates, reserves and so forth. Other writers have likened title insurance as a service with a warranty.

Accordingly, the rate charged for title insurance cannot be a function of the risk assumed, because it must cover the cost of the services rendered. If the loss ratio were regarded as the controlling element in the making of rates, the title insurer operating on casualty principles could justify a substantially higher rate than the insurer operating on the higher-cost, risk-elimination principle. A hypothetical legislator, being asked to give the insurance department powers to regulate title insurance, might well ask, in turn, "Why do you ask me to class as insurance, an activity which looks as if it is predominantly a service, and in which there is as likely as not an inverse relationship between insurance losses and the title cost of doing business?" This is a good question. Thus we are here. The case we would make is set out as follows.

I feel that title insurance should be regulated as insurance in the interest of the insured public and of the industry itself.

1. The want of periodicity is a distinctive feature of title insurance, but it is not basically foreign to the insurance concept. At one time, marine insurance was written on voyages that might already have been successfully completed or might have already ended in the disaster insured against. Such insurance dealt, as does title insurance, with past, but unknown, events.

2. Risk elimination is not merely permissible, but is a service title insurance companies should be encouraged to render. Workmen's compensation carriers spend large amounts on safety research and policing of policy-holders' safety practices. Even the life underwriters buy advertisements warning of the risks of obesity.

3. While rate determinants should be based on losses where the pure insurance principle is applicable, loss ratios should not be controlling, and should be ignored, once the propriety of collateral loss-prevention services is conceded. That is, if what a title insurer does is worth doing, then the rates he charges should bear an appropriate relation to to the cost of doing it and should reflect the value of the total service, rather than the loss from bad guesses.

4. The insurance departments of the various states are an existing apparatus to regulate title insurers. The problems to be solved by regulation, such as reserves, investments, adequacy of capital, adequacy and reasonableness of rates, discrimination, reinsurance of large risks, and insolvency administration, are the usual work of the insurance departments, rather than of any other existing agency. It

seems that title insurance is not by itself a large enough business to justify an *ad hoc agency*. Therefore, the insurance department is the appropriate agency to regulate the title insurance industry.

5. As I said before, there exists a public relations problem for the title insurance industry. Fees may seem to be high in proportion to losses. There is, to be candid, emotional reaction against the insurance company which does not bear a "fair share" of the losses of the kind it insures against. True, this misapprehends the purpose of insurance service: to say that an insurer which works to prevent losses is "cheating" supposes a complete analogy to gambling, where it is "unfair" to reduce the insured's chances of "winning."

There is probably a popular belief that insurance companies should accept such risks as offer themselves, much as a public utility must sell its services to all comers, even though the life insurance physical is well known. Insurers have no such duty under the law, except in a few troublesome areas as compulsory automobile insurance.

In general, the prophylactic value of risk selection and collateral prevention services seem to justify them on policy grounds.

I feel that public understanding of loss prevention and risk selection would wholly avert any adverse publicity. But such understanding is much more difficult to establish than an unsophisticated reaction in favor of pure insurance. Appropriate regulation can certainly mitigate any public *mis*understanding of title insurance. A comprehensive and specific statute, administered by an alert state insurance department, can promise strong evidence of rectitude for the title insurers complying with it, as well as providing the usual regulatory protection which eliminates exactly those operations likely to call down bad publicity on our industry.

The Different Methods Of Operations Of Title Insurance Companies

BY WILLIAM H. BAKER, JR.
Senior Vice President and General Counsel
Lawyers Title Insurance Corporation

The topic assigned me this afternoon is "The Different Methods of Operations of Title Insurance Companies." I am sure that each of you is familiar with the method of operation in your particular jurisdiction but the very geographic make-up of Zone II has a limiting effect on the number of different approaches employed in the conduct of the title insurance business. I say this because, except in the District of Columbia and in varying degrees in the population centers of Baltimore, Cleveland, Philadelphia and Pittsburgh, the land records in the areas comprising this Zone are not yet so numerous that the examination of a title to real property from the local public records would be an unprofitable business for the local practicing attorney.

Basically, therefore, in the area of Zone II, a purchaser of real estate employs a local attorney engaged in general practice to furnish him an opinion on title to Blackacre. To produce this opinion the attorney goes to the local recorder's office, and related offices, and examines all matters affecting the title directly from the public records as has been the custom in this area from the establishment of the local recording offices. If the purchaser desires his title insured he directs his attorney to apply to a title insurance company for issuance of a policy. The attorney accompanies such application with his certificate that in his opinion, based upon his examination of the public records, A is vested with fee simple title to Blackacre subject only to such matters as will be listed by the attorney as outstanding defects, liens or encumbrances. The Company, if satisfied to rely upon the attorney's opinion, then issues its policy to the purchaser insuring him against loss or damage resulting from any defect, lien or encumbrance not specifically excluded or excepted from the coverage of the policy by language set forth therein.

From this procedure has evolved the so-called "Approved Attorney System." This simply means that an insurer has "approved" attorney John Doe of Dover, Delaware, as an attorney so experienced and skilled in real estate law that the insurer will rely upon the opinion of John Doe and issue a policy to Doe's client. Customarily, Doe's "approval" is initiated by

his own request supported by a factual statement as to his training and experience. This is supplemented by a careful, confidential, investigation made by the insurer among other members of the local bar, sometimes including members of the local judiciary and local business leaders. If everything appears to be satisfactory the name of Doe is then added by the insurer to a list of attorneys upon whose opinions of title it is willing to rely. It is possible, even likely, that Doe will be "approved" by several and perhaps all of the insurers competing for business in the Dover area. Richard Roe, also an attorney in Dover, may have applied but was turned down. That might be because of lack of training and experience in real estate law or because of questionable matters disclosed by the investigation. An insurer, therefore, does not automatically "approve" an attorney merely because he is an attorney.

This is the method of doing business most often encountered East of the Mississippi. But the Approved Attorney System is not confined to those boundaries. In some states east of the Mississippi, such as Florida, and in many states west of the Mississippi, the "Approved Attorney System" exists but with a difference. The difference lies in the production of the title evidence upon which the attorney formulates his opinion. And where this difference exists the attorney who will render the opinion seldom leaves his office. Upon what then does he rely as evidence of the status of title?

In New Jersey and parts of Maryland the "Bulling of the records" or the digging for the data in the recording offices is done by a group of individuals called abstracters or searchers who, in a sense, have been brought up in the business. They may have legal training but most often such is not the case. However, they are careful abstracters whose reports to the attorney reflect the content of the records in an abbreviated abstract form.

In other areas, the attorney formulating his opinion without leaving his office, does so after reading an abstract of the title prepared by a commercial abstract company. Such a company may prepare for sale an abstract of the title to Blackacre by abstracting direct from the public records on order but most often the existence of such a company has resulted from the volume of records or the unreliability of the public indices. In that event such company will maintain a "title plant" in which will appear every document that has been recorded so as to affect real property titles in the county. These will be indexed in the plant and the data of preparation of the abstract retrieved from the plant in different ways but in essence the abstract company's plant is kept up-to-date by a daily take-off of daily recordings in the recorder's office, the plant will tend to be much more accurate than the public records and the abstract order can be produced more quickly from the plant than from the public records. It is this abstract that the approved attorney then examines.

The abstract may be made entirely by one company from the source of title to date. Again, the abstract may consist of several partial abstracts, each made by a different abstract company, each covering a different period of time. Each is a complete abstract for the period of time covered thereby. Taken together, such partial abstracts comprise a complete abstract from the source of title to date. These partial abstracts are called "continua-

tions" or "supplements." They arise out of the necessity of bringing the abstract information to date each time there is a title transaction involving the property. Frequently the early period of the title history is long and complicated and many abstract companies have had the early part of the title history printed so that the same may be readily incorporated into the initial abstract.

The abstract, or at least the early parts thereof, may cover two or three or more parcels of land which make up a larger tract. Each parcel may have a separate history of title, or partly so. The abstract or abstracts must cover the separate as well as the combined histories. Suppose the abstract was made for location of a big shopping center, such as a Sears Roebuck & Company store. It may cover two city blocks, involving the closing of one or more streets and two or three alleys. The complete abstract may be large, bulky, a hundred or several hundred pages, requiring concentration for hours in order to analyze it.

Title insurers will exercise care in approving the reliability and acceptability of abstracts prepared by particular abstracters and abstract companies and where this method of production of title evidence is followed the approved attorney is permitted to base his opinion only upon approved abstracts.

Where the Approved Attorney System exists the attorney submits the application for policy and opinion on title to the insurer either at its Home Office, or a local or regional Branch Office, or to a local issuing agent duly authorized by contract. In the areas where the attorney examines the records, the local authorized issuing agent may be that attorney, or another attorney in the community or a corporation formed and owned by one or more attorneys or Realtors or even mortgage loan correspondents. Most all companies have agents falling in one or more of these categories. The difficulty is that while these types of agents are experienced in real estate matters generally they do lack experience and training in underwriting and they must therefore be closely supervised and act under limited authority in determining insurability.

In the areas where the attorney does not go to the public records, the local authorized issuing agent will most likely be one of the local commercial abstract companies. At this point in time most abstract companies will have acted as an issuing agent for one title insurer or another for many years and will have gained considerable experience in underwriting and generally can be entrusted with more extensive authority on that account.

It should be pointed out that in its approved attorney and agency operations, a title insurance company receives as income only a portion of the total fee charged to the applicant while the major part of the charge is retained by the approved attorney and abstracter for their charges for searching, abstracting and examining the title.

When we leave the Approved Attorney System in the conduct of the business it is because we have entered areas in which the attorneys have long since abandoned title practice for more lucrative fields. They may keep a finger in the pot through the preparation of papers or the closing of the

deal but they are glad to have someone else perform the drudgery and assume the responsibility of preparing the title evidence and formulating the opinion. The metropolitan centers that I mentioned earlier are examples of this. In these areas to one degree or another, the title insurer, through its own title plant and its own staff of examiners, will produce the title evidence and the title report. The order therefor may come from an attorney or a realtor on behalf of their respective clients or direct from the purchaser or borrower himself. In these areas it may be theoretically possible for an attorney to examine from the public records but the very volume thereof, the manner of indexing, etc., will make it practically and economically unfeasible. It has been said that the attorney could make more money as a day-laborer and making money is still, I guess, the name of the game.

By the operation and maintenance of its own title plant, the insurer is in a position to provide the public with a fast, reliable and economic service but it is an expensive operation requiring a high level of insurance activity. There are only three states that can be really classified as title insurance states, that is, states in which practically every real property transaction is a title insurance transaction. They are the West Coast states of California, Oregon and Washington. In the rest of the country there are localities that might be classed as title insurance localities but they will be in states in which many real estate transactions are still handled only on the basis of an attorney's opinion.

Even where the title insurer owns and maintains a title plant its services to the public may vary. In some areas it may close the transaction while in others it does not. In some it may prepare papers while in others it does not. These activities are generally controlled by local judicial decisions or by agreements or treaties with the local Bar Associations.

A recent development in the title insurance business is the formation of title insurance companies that are sponsored by or financially related to State Bar Associations with some present agitation for a national company to be sponsored by the American Bar Association. The motives are asserted to be to preserve to the attorney his historic place and function in the examination of titles and to provide the public with both the advice of an attorney and a title insurance policy. The real thrust of course is money. Under the usual plan of operation of a bar-related company, each member attorney is generally an issuing agent. The attorney is at once both the champion of the insured and the agent for the insurer—and perhaps the attorney for the lender as well. It would seem to many of us that this procedure would present substantial ethical considerations for the attorney but that really is his problem. It would also seem questionable whether the image of the Bar will be enhanced by engaging in a business enterprise but that is the Bar's problem. So far as the commercial companies are concerned they are interested in maintaining the standards of their industry and cannot complain of competition that comes from financially established companies that are similarly regulated and required to maintain like standards and reserves.

At the beginning of this talk I said that the geographic makeup of Zone

II had a limiting effect on the number of different approaches employed in the conduct of the title insurance business. That was inaccurate for on reflection we have within the bounds of Zone II the approved attorney system employing both the public records and the abstract examination procedures, with individual attorneys or corporations owned by attorneys or Realtors as authorized issuing agents, we have abstract company agents, the Company owned and operated title plant and, in Ohio, a bar-related company. We also have the insurer that operates only in part of a state or only in a state and we have regional insurers operating in only a few states as well as the so-called national insurers which may operate in almost all of the states as well as some territories and even in a foreign country, Canada.

Solvency Aspects Of Title Insurance Regulation

BY WILLIAM H. DEATLY
Senior Vice President
Title Insurance and Trust Company and
Pioneer National Title Insurance Company

As has been stated, insurance of title to interests in real property (title insurance) is distinguishable from virtually all other forms of insurance chiefly in that:

a) liability is assumed only after an examination of the risk;

b) insurance protection is afforded, with some exceptions, only against events that have transpired up to the date of the policy, and

c) coverage continues, as of the date of the policy and without recurring premiums, during the life of the insured interest, as with a lease or mortgage (deed of trust) or, as with fee ownership in the land, as long as such ownership is retained by the insured or by his successors in ownership who acquire through inheritance or devise.

Being thus unique in form of insurance protection, title insurance requires a somewhat unique form of regulation to assure the solvency of the underwriter of such insurance.

An exhaustive discussion of the subject is obviously impossible in the time available at this meeting. A "Model Title Insurance Code" developed some five years ago by the American Land Title Association, after several years of exhaustive study by a special committee composed of underwriter and agent members of that association, deals with the subject in complete detail. Since that time, a number of states have established codes for the regulation of title insurance where none had theretofore existed, and other states have taken steps to modernize and update existing statutory provisions for the regulation of title insurance.

Twenty-five years ago most title insurance was written by companies which operated entirely within the states of their respective domicile. Today the opposite is true. By far the greatest number of policies and the largest aggregate dollars of title insurance are written by companies which operate in ten or more states, and a large part of this volume by companies that are licensed in virtually all state jurisdictions. In your speaker's opinion, this trend toward multi-state operation will continue, just as it has with other forms of insurance. Therefore, what now is needed, more than anything else, is greater uniformity among the states in the solvency as-

pects of title insurance regulation. In the time remaining, I shall try to deal with the more important solvency aspects of title insurance regulations in which greater uniformity among the states would be beneficial, both to the regulatory authorities and to the industry.

DEPOSIT REQUIREMENTS

Deposit requirements now vary from none whatever up to 40% of aggregate capital, and in some states the requirements differ as to domestic and foreign insurers. Relating the deposit requirements to *aggregate* capital discourages adequate capitalization, which is one of the more important sources of protection to the title insurance policyholders. A preferred method would seem to be:

a) a substantial percentage, say 40%, of the minimum capital requirement for doing business in the state of domicile, and

b) a reasonable, uniform, increase in the dollars of deposit requirement for each additional state jurisdiction in which the underwriter is licensed to operate; and

c) maintenance of all deposits in the state of domicile in assets eligible for minimum capital investments in the state of domicile, and held for the protection of all policyholders wherever situated.

This would avoid the effect of retaliatory statutes, simplify the administration of deposit requirements for the regulatory agency and the underwriter, encourage larger capitalization by the underwriter and recognize the additional risks which are inherent in multi-state operation where the underwriter is often not in control of the production of title evidence upon which its policy is based.

EXAMINATION OF THE RISK

Few, if any, states now have any requirement in their statutes that policies of title insurance be written only after a reasonable examination of the insurance risk has been made. Since title insurance rates uniformly contemplate pre-examination of the risk insured and a consequential low loss ratio compared to most other forms of insurance, it is submitted that a reasonable, uniform, provision of this nature would be a desirable aspect of solvency regulation of title insurers. The importance of uniformity in such a regulatory statute is apparent in contemplating multi-state operation. Maintenance by the underwriter for a reasonable period of time of the evidence of insurability which supports each policy would also be an essential ingredient to this element of regulation.

PROHIBITION AGAINST MULTI-RISK UNDERWRITING

A few states now have this requirement. Assets of title insurers are considerably lower in relation to outstanding policy liabilities (the totals of which are not readily determinable because the term of the insurance coverage is not within the knowledge or control of the underwriter) than in most other forms of insurance. Therefore other types of insurance risk, in which the casualty element in relation to premium is considerably greater, should not be superimposed upon the capital funds and reserves of a title insurer.

In recent years many states have added this aspect of solvency regulation to their statutes. There is, however, wide divergence in the formulae for accumulation and period of maintenance. Most states base the rate of accumulation as a percentage of the premium charge for the policy. I venture the most common percentage is 10%, but some are as low as 3%. The most common period for maintenance of the reserve appears to be twenty years, with 5% recovery each year following the year of policy issuance. Even these most common forms of accumulation and recovery produce varying results, state by state, because of the variable elements of cost which go into rate-making procedure. In some states the premium rate is a pure risk rate, excluding much of the element of cost of risk examination, which is incurred by others than the underwriter and charged to the insured as a service fee in addition to the insurance premium. In other states the premium rate includes all elements of cost of doing the business; acquisition cost, cost of risk examination, loss ratios, as well as profit. In many states both forms of rate-making are in use and consequently the unearned premium computation will vary from policy to policy depending upon the manner in which the title evidence is produced.

In my opinion the soundest, and at the same time the most uniform, formulae for the accumulation of unearned premium reserves for a title insurer are in use in Pennsylvania and in New York State where these formulae are related both to the number of policies issued and to their aggregate insurance amount. The "model code," mentioned earlier, also suggests this method of unearned premium reserve accumulation. Allowance should, of course, be made for that proportion of any risk for which the underwriter purchases and obtains reinsurance.

Experience has shown that most losses (up to 80% to 90%) on policies of title insurance are incurred and paid within five years of the time of issuance of the policy and that only very rarely does a loss occur after twenty years from the date of policy issuance. This suggests to me that a conservative, uniform, formula for recovery of the unearned premium reserve would be similar to that adopted by California, to wit: 10% each year for the first five years following issuance of the policy and the remaining 50% in equal annual installments over the next fifteen years. This is also the formula which was suggested by the "model code" which was adopted just prior to the enactment of the California statutes. I would suggest modification to both the "model code" and the California statute, in respect to recovery from the unearned premium reserve, but only to permit such recovery in monthly installments (1/12 of the annual recovery), thus to coordinate the timing of the recovery formula with the accumulation formula, thereby enabling more uniform reporting of income for periods of less than one year.

It should also be borne in mind that the primary purpose of an unearned premium reserve of a title insurance company is to require a supplement to capital funds, for the protection of policyholders, by preventing payment of all earnings to shareholders in the form of cash dividends. Its nature is,

therefore, deferred income and in no sense a true liability of the underwriter. Annual statements should reflect this distinction.

Statutes requiring the establishment and maintenance of an unearned premium reserve should also without question restrict interim availability of the reserve (a) to the purchase of reinsurance of all, or substantially all, policy liabilities as to which no claim has been asserted, (b) to circumstances such as insolvency, dissolution or liquidation, and (c) as to both, approval by the regulatory authority.

SINGLE RISK LIMITATION

Some regulatory jurisdictions have ignored this aspect of solvency regulation. A few, in my judgment, have been far too restrictive, by practically ignoring the differences between title insurance and other forms of insurance that rely more upon diversification of risk than upon prior examination of the risk insured. It is probably the most controversial of all of the aspects of solvency regulation. While most underwriters have imposed upon themselves some formulae for limiting the size of any single risk liability beyond which they will seek and obtain faculative reinsurance, it does appear that solvency regulation should include some provision in this regard. The best thinking in the industry in this respect is, I think, expressed in the formula set up in the "model code," to wit:

> "50% of the net amount remaining after deducting from the sum of its (the insurers) capital, surplus, unearned premium reserve and voluntary reserves, the value, if any, assigned in such summation to its title plants, all as shown in its most recent report on file with the Commissioner (of Insurance)."

Such a formula is liberal enough to avoid the charge of excessive restriction by any fair-minded member of the industry, is expressive of what many knowledgeable purchasers of title insurance coverage now require by way of single risk limitation on insurance of their own investments, and would afford the less knowledgeable policy-holder reasonable protection against any insurer who would wholly disregard this aspect of sound underwriting policy. In viewing this aspect of solvency regulation, we should all bear in mind that no title insurer, to my knowledge, has ever become insolvent because of an excessive single risk retention.

RESERVE FOR UNPAID LOSSES AND LOSS EXPENSES

I believe the regulatory statutes in most states now require provision, in the published statements as well as the accounts of title insurers, for reserves against losses on claims as to which the underwriter has knowledge, and some reasonable provision for expenses to be incurred in the disposition of all such claims. The subject is mentioned primarily in order that no important aspect of solvency regulation will have been omitted and to urge upon any state regulatory authority, whose powers may not now include the ability to appraise the adequacy of such reserves upon examination of a title insurer and to require reasonable provision therefor, the necessity in the public interest of obtaining such statutory authority.

The least rewarding of all investments in the last ten years have been those of a fixed income nature. In the last few years most such investments have produced no return whatsoever when recovery value of the principal sum and decline in the purchasing power of the dollar are considered. Yet this type of investment predominates among the types of investment permitted title insurers in virtually all state regulatory statutes.

If capital is to be attracted to or permitted to remain in the title insurance business these aspects of solvency regulation should be re-examined and modernized. In my judgement the "prudent man" theory of investment should be allowed by statute to apply to all investments of title insurers, except perhaps those which apply to minimum capital requirements, so long as the equity-type investments are (a) restricted to those companies which have a continuous record of cash dividend payments during the most recent ten-year period and (b) do not exceed a small percentage of the outstanding common stock of the company whose shares are purchased for investment. Even the "model code," in my judgment, is now outdated, in this respect, in that it should have provided that at least 50% of the unearned premium reserve of title insurers may be invested in equity-type securities. In the long run this would be a desirable provision for the title insurer and for its policyholders, and a sound provision from the viewpoint of the regulatory authority. The reserve assets would at virtually all times be more readily marketable should the need to use them arise, and more than likely to yield upon sale not less than their original investment value. This is not to suggest that unrealized appreciation in the market value of equity-type investments should be allowed to reduce the unearned premium reserve coverage otherwise required, but a cushion in the form of such unrealized appreciation should be a comfort to the regulatory authority as well as the policyholder, not to mention its attractiveness to the investor in title insurance company securities.

Under this subject of title insurance company investments, I would like also to mention the category of "title plants." These are the organized indices, copies and digests of public records which facilitate examinations of titles to real estate and interests therein and include legal determinations of insurability as of a given date. In many instances title plants are owned by the insurance underwriter, in other instances by their policy issuing agents. In some instances they were produced directly from the public records by the title insurance company owner, in others purchased from the producer of the plant, a former title insurer or an agent. In most instances they are updated daily so as to remain current at all times; in fewer instances they are brought to a current status, as to a given parcel of real property, only when a title insurance application is processed thereon.

The "model code" deals with investment in a title plant by a title insurer as follows:

> "Provided it shall at all times comply with minimum capital investment requirements . . . . . a title insurance company may invest in a title plant. The title plant shall be considered an asset at the fair value thereof. In

determining the fair value of a title plant, no value shall be attributed to furniture and fixtures, and the real estate in which the title plant is housed shall be carried as real estate. The value of title abstracts, title briefs, copies of conveyances or other documents, indices and other records comprising the title plant shall be determined by considering the expenses incurred in obtaining them, the age therof, the cost of replacements less depreciation and all other relevant factors. Once the value of a title plant shall have been determined hereunder, such value may be increased only by the acquisition of another title plant by purchase, consolidation or merger; in no event shall the value of the title plant be increased by additions made thereto as part of the normal course of abstracting and incurring titles to real estate."

I submit this as a good statutory provision for ascribing "admitting asset" value to a title plant. I personally would add a further limitation upon its admitted asset value, limiting its maximum "allowable" value to a stated percentage (say 50%) of the capital stock of a title insurer as does the State of California. I further believe that unless a title plant is continuously updated and the cost of updating is charged as a current expense by the owner, the admitted asset value orginally determined should be regularly depreciated, probably at a rate of 5% a year, until the original value has been exhausted.

A well-maintained title plant would, except perhaps in periods of abnormal economic conditions, be a marketable asset even at a time of liquidation or dissolution of a title insurer and should therefore be allowed as an asset at a conservative value in the financial statements of a title insurer. This will be a greatest importance to the new companies who most often will find it necessary to have, or obtain access to, a title plant to enable it to compete with longer established companies.

CONCLUSION

I am sure that detailed research of the title insurance statutes in all the states would have led to the inclusion of other aspects of solvency regulation in this presentation. I feel sure, however, that the major aspects thereof have been discussed, admittedly in brief, but I hope you will find the discussion useful in the discharge of your regulatory responsibilities.

The Desirability of Uniformity In Record Keeping And Reporting

BY RICHARD E. FOX
Treasurer and Comptroller
Chicago Title Insurance Company

The statutory accounting principles for title insurance are somewhat difficult for accountants, trained in generally accepted accounting principles, to accept. Even examiners from various insurance regulatory authorities have some difficulty in attuning their thinking to the title insurance business in view of their greater exposure to other forms of insurance. For these reasons, examinations and audits of title insurers create burdens not only on the regulatory authorities but also on the accounting staff of title insurers.

These remarks clearly indicate that the accounting and auditing procedures of this industry are highly specialized. It is the title insurance accountants' goal that through an interchange of professional knowledge, experience and information the Departments of Insurance of the various States and the title insurance companies will mutually benefit.

The American Land Title Association maintains a Standard Title Insurance Accounting Committee, of which I am a member, 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. It is within these areas that the American Land Title Association would appreciate and seek cooperation within the National Association of Insurance Commissioners, working to the public interest.

All business organizations have a comparable problem at this time—that of hiring capable employees. Each of our groups is interested in having a new employee become a productive employee with a minimum period of training. That can be done by keeping our administrative procedures as simple as is possible. The title insurance industry feels that uniformity in record keeping and reporting will be of benefit to

—The various Departments of Insurance

—The title insurance companies

—And, a person most important to each of us, the policyholder.

One of the areas that we propose that members of our combined groups discuss is a uniform set of instructions for preparation of the NAIC form of Annual Statement (Form 9 for title insurers) and for other reports that we file with the various States.

Our committee feels that with more uniformity in instructions there will be fewer errors in reports. That would result in less paperwork for each of us, which would mean

—savings in the administrative expenses of the various Departments of Insurance.

—savings in the administrative expenses of the title insurance companies.

The reports that we file in the various States are comparable in nature. However, we find that in some areas of reporting, the information sought is the same, but the format required differs to varying degrees among the states. This tends to create confusion for our clerical staff. It is difficult to hire the accounting technician who is capable of making the fine discernment in reporting rules of one State as compared to those of another State. Consequently, there are errors in some of the reports and you must request that we correct them or explain them to you. We would enjoy filing an error-free report just as much as you would enjoy receiving such a report.

We feel that the standard instructions for the completion of the NAIC Annual Statement Form are susceptible to individual interpretation by various companies and such interpretations could result in some statistical inconsistencies not desirable in the interest of proper regulation. Each of the title insurance companies prepares their Annual Statement primarily on the basis of requirements of their domiciliary States and where those requirements differ from another State's requirements they must make some compromises. Those practices lead to the inconsistencies in our Annual Statements. Representatives of ALTA would like to sit down with representatives of the NAIC group to work up a set of instructions on preparation of the Annual Statement forms that would provide much more uniformity between companies and between the several states.

About ten years ago, The National Association of Insurance Commissioners authorized the use of the present form of Annual Statement. There has been much greater uniformity through the use of that form than there was prior to its adoption. However, the title insurance industry feels that the present report form is still susceptible of improvement. We have many ideas as to how that form can be improved.

Here are some examples of procedures of preparation of the Annual Statement or portion of its contents that we feel should be reviewed:

1. *Basis of accounting*—The present Annual Statement form is prepared primarily on the cash basis of accounting, but it is interspersed with some accrual basis accounting. For example, the statement recognizes premium income on an accrual basis. The cash basis of accounting considers an item as income when the payment is received, and expenses

are incurred only at the time of disbursement of funds. In the accrual basis of accounting, income is accounted for when it is earned and expenses are accounted for when they are incurred.

Title insurance accountants feel that the only true form of reporting is on an accrual basis. We would like to prepare the Annual Statement on an accrual basis.

2. *Agency and escrow funds*—The present report form includes agency and escrow funds as a part of admitted assets, with a contra account on the liability side of the statement.

The unsophisticated reader of the Annual Statement, or a published form of the statement, often considers the total of admitted assets as the item indicating the financial strength of a title insurance company. Our association is concerned with the fact that the inclusion of agency and escrow funds as a part of admitted assets can be misleading to the general public.

A company's admitted assets may be substantially increased from one year to the next year because of a large escrow balance that was held for a few days over the end of a year. Even though there were not material changes in the remainder of admitted assets, the erroneous interpretation is made that the company had a fine year of operations. On the other side, a company might have had substantial growth in admitted assets because of excellent operations, but a decline in agency and escrow balances might have provided a net decrease in admitted assets. That result can be interpreted as an indication of poor operations.

Of course, we recognize that asset footings are not a measure of financial strength. We feel that it would be to the advantage of most title insurance companies to put more stability in the total of admitted assets by eliminating the major swings that are caused by the inclusion of agency and escrow funds as admitted assets.

3. *Title plant*—This is an area where there are major differences in reporting requirements, for instance:
   A. In the majority of States, the entire value of a title plant is allowed as an admitted asset.
   B. One State requires that title plants must be amortized over a period of ten years, commencing in the third year after acquisition.
   C. Another State does not allow title plants as admitted assets.

   The value of a title plant is not readily determinable. We believe that it is not proper to carry a plant at no value. It is always of value to a prospective purchaser. On the other hand, it is recognized that title plants sometimes are carried at an inflated value. Here again is an area for exploration between a proper group from our Association and representatives of the NIAC.

4. *Schedule T—Exhibit of Premiums Written*—The information contained in column 1 of this exhibit, Direct Premiums Written, is used in the preparation of statistical reports of various States. Occasionally, it may be used to compare the business of one title insurance company with that of another title insurance company. There may be little va-

lidity of comparison of reports which are based upon Direct Premiums Written because the companies can be reporting on a different basis. The instructions for completing the title insurance annual statement blank define direct premiums written as "premiums or amounts computed as premiums for assuming insurance risks." There can be wide variances in the portion of the title insurance fee that pertains to the assumption of risk.

Several States have promulgated or filed package rates for title insurance. A package rate may include risk premiums, search charges, determination of insurability charges, closing charges, finders fees, etc. The items included in the rate vary from one State to another State.

A recommended definition of the term "risk premium" is included in the booklet entitled *A Model Title Insurance Code*—which is part of a package of materials that will be distributed to you at the conclusion of this presentation.

These are just a few of the many areas of the NAIC form Annual Statement that we feel are in need of review and possible change.

While we are on the subject of the NAIC form Annual Statement for title insurers—we might consider the question of whether or not there is a better form of annual statement for the industry. Many of the people who are concerned with financial reporting feel that an audited Annual Report based upon generally accepted accounting principles would more properly suit the needs of the title insurance industry. Here are several comments that would support that change in reporting procedures:

1. The NAIC form Annual Statement is designed to produce information for the guidance of present and future policyholders, but the information is of little use to shareholders. Most of the large title insurers are publicly-held companies or are owned by companies that are publicly-held. They are audited by the major public accounting firms. Audit reports of those firms are designed to produce information to shareholders and to other investors. In our opinion, shareholders are entitled to more consideration than they receive in the present form of statement.

   We are required to spend much time in devising footnotes to Statements of Admitted Assets that will permit the investing public to convert our statutory form of reporting to a generally accepted accounting principles (GAAP) form of report.

   The question can be raised as to where a policyholder will get risk limitation information if a title insurer's Annual Report is prepared on the basis of generally accepted accounting principles (shareholders basis). Past experience indicates that major title insurance customers base maximum single risk limits on the liquid assets (cash and other assets that are readily convertible into cash) of a title insurer and not on the figure reported as Surplus as Regards Policyholders. The liquidity of assets is just as readily ascertainable from an Annual Statement prepared on a generally accepted accounting principles basis as it is from an NAIC form Annual Statement.
2. If the Annual Statement is prepared on a generally accepted account-

ing principles basis, title insurers very likely can get an unqualified opinion from their public accounting firms. Present auditors' opinions are qualified to the extent that statements have been prepared on a statutory basis of accounting—and, that they differ from generally accepted accounting principles.

It seems to me that you who are responsible for the examination of title insurers could accept more of the examination work done by public accountants if their reports contained unqualified opinions.

The requirements of most States are that a domestic title insurance company will be examined at least once in every three years. That is not frequent enough if a title insurer is not observing sound underwriting and operating practices. Receipt of an unqualified opinion of audit each year might give you some assurance that the insurer's practices were sound or the report might trigger an earlier than normal examination by you.

In this short presentation I have discussed some of the problems of the title insurance accountants. Regulations that govern the preparation of Annual Statements, tax reports, license renewals, unearned premium reserves, loss reserves, filing fees, etc. are anything but uniform. The American Land Title Association would like to work with you in the simplification and clarification of such regulations. We feel that a joint undertaking in this direction would be of great benefit to both of our organizations.

MEETING TIMETABLE

1969

June 8-9, 1969
Wyoming Land Title Association
Holiday Inn
Casper, Wyoming

June 11-12-13, 1969
Illinois Land Title Association
Drake Hotel, Chicago

June 12-13-14, 1969
Colorado Land Title Association
Steamboat Springs, Colorado

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

June 22-23-24-25, 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

June 30-July 1, 1969
New Jersey Land Title
Insurance Association
Seaview Country Club, Absecon

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

August 14-15-16, 1969
Montana Land Title Association
YoGo Inn
Lewistown, Montana

August 21-22-23, 1969
Minnesota Land Title Association
Edgewater Motel
Duluth, Minnesota

August 22-23-24, 1969
Ohio Title Association
Atwood Lodge
Dellroy, Ohio

September 4-5-6-7, 1969
Missouri Land Title Association
Plaza Inn, Kansas City, Missouri

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

September 12-13, 1969
Kansas Land Title Association
Lasson Motor Hotel
Wichita, Kansas

September 12-13, 1969
Nevada Land Title Association
Reno, Nevada

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

October 9-10-11, 1969
Nebraska Title Association
Lincoln, Nebraska

October 16-17, 1969
Dixie Land Title Association
Calloway Gardens
Pine Mountain, Georgia

October 26-27-28, 1969
Indiana Land Title Association
Stouffer's Inn
Indianapolis, Indiana

October 30, November 1, 1969
Florida Land Title Association
Causeway Inn Resort
Tampa, Florida

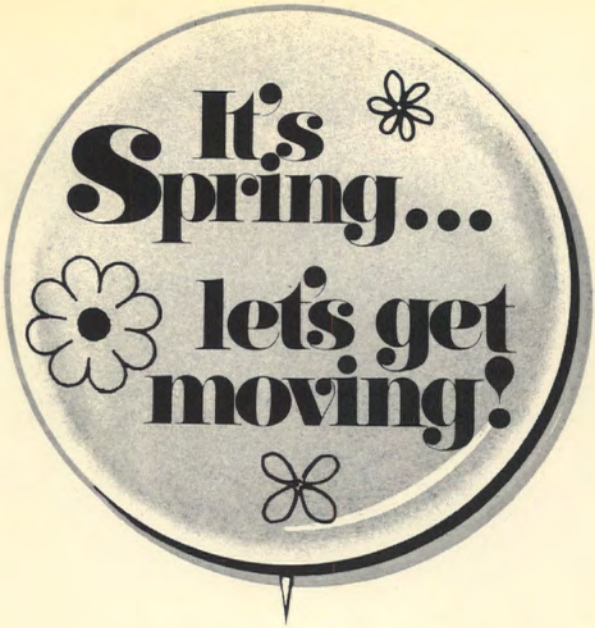
October 30, November 1, 1969
Wisconsin Land Title Association
Holiday Inn
Eau Claire, Wisconsin

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

1970

April 1-2-3, 1970
MID-WINTER CONFERENCE
American Land Title Association
The Roosevelt Hotel
New Orleans, Louisiana

October 4-5-6-7, 1970
ANNUAL CONVENTION
American Land Title Association
Waldorf-Astoria Hotel
New York, New York



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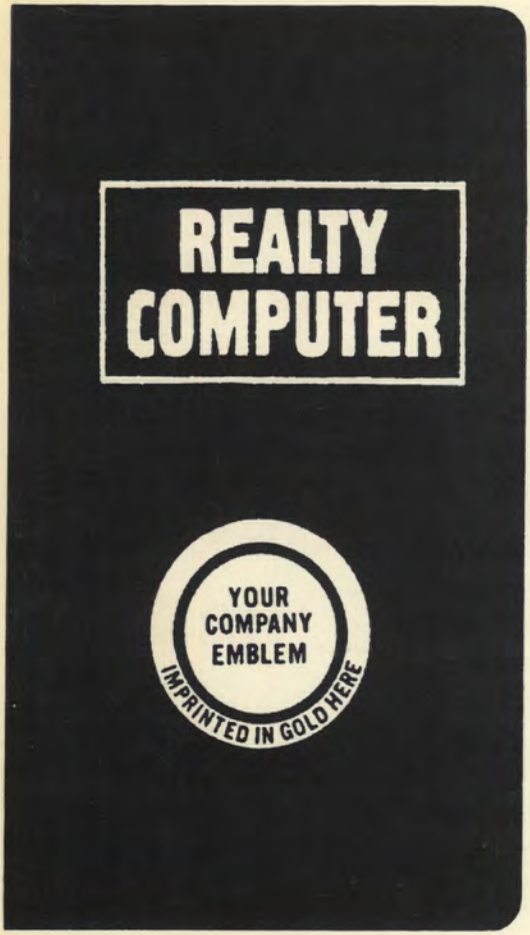

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