Title News

DO NOT REMOVE

the official publication of the American Land Title Association

January, 1970

President's Message

JANUARY, 1970

Many things interest your officers and Washington staff during the winter months. You should hear about them.

The staff visits to the smaller offices of our Association have taken off to a flying start with a lengthy trip to Florida by Gary Garrity. This project was received enthusiastically by the members visited. No plans have been made to report to the membership but we will surely hear about this project up to the date of the New Orleans meeting. Plans will be completed this month for the next few states or areas to be visited. Again, I appeal for the utmost cooperation from all our members when they are approached.

Plans are also well along for the New Orleans Mid-Winter Conference. This will be an important meeting at the beginning of what might be a very difficult time for some, if not all of us. You should be there —if only to present your "two-bits worth."

I cannot fail to compliment all our officers and staff, and especially the members of our hard working committee, for their efforts. Of all the appointments, some 250, only one could not serve, and he had a legitimate excuse. Truly, these must be what are known as "laborers in the vineyard"! Being somewhat retired, I can devote time to the Association; however, I will never know how our officers, who are already doing excellent and full-time jobs in what to me are very large corporations, can assume the time-consuming burden they have.

The economic picture can only be described as "lousy". I can think of no better word—nor a more descriptive one. This in spite of some reports of "best year ever"! Everyone seems to want to do something about housing, but no one comes up with any money. Let us hope the battle against inflation will be won in our lifetime—or sooner. Everything seems to hinge on that. Perhaps we had better develop the attitude of the cross-country runner who did not run well, but always placed first. When asked how he did it, he said, "I just hang in there with them for three miles, and then for the last two I gather my guts and come on in."

Sincerely,

Thomas J. Holstein

Title News

the official publication of the American Land Title Association

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GARY L. GARRITY, Editor

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GENERAL SESSIONS

THE 1970 ECONOMIC PICTURE—BOOM OR . . .

DR. WILLIS WINN
Dean, Wharton School of Finance and Commerce,
University of Pennsylvania, Philadelphia, Pennsylvania

I could not help but muse a bit about your program difficulties as perhaps the best illustration I could think of for a talk on forecasting, and that the best advice I can give you is to expect the unexpected.

In listening to your previous speaker, I thought if I ever got into legal difficulties I certainly wanted to go to Little Rock because it would give me great confidence to enter a case with the feeling that right is on my side. And yet I thought if you were to use the same theme and take me with you to your racetrack experience tomorrow I might prove that a name—namely, Winn—might be false advertising.

I thought that your program committee had shown a great deal of judgment and juxtaposition of topics they had arranged for you this morning because "The Power of Positive Thinking" might give you courage to look ahead at some of the problems we may be encountering, or give you the foresight to look over the valley, if you will, into the peaks of undoubtedly what lies ahead.

It is also a reminder that it is important in forecasting to try to be optimistic and constructive and not pessimistic; or perhaps it was to numb you, innoculate you, if you will, against the bumps and airpockets that we will undoubtedly encounter.

I do share your feeling that Dr. Peale will recover, and our thoughts are certainly with him. But without his reminder and connections with the only One that really has foresight into the future I hope you will fasten your seatbelts and share with me some thoughts, as we think out loud, about some of the problems ahead.

Your program committee could be faulted a bit in picking a nearsighted academic to work with the crystal ball this morning. And if you will pardon this oversight, perhaps we can grope our way into the future.

But seriously, I do welcome this opportunity to share a few thoughts with you and point out to you that all of us are forecasters whether we like it or not. You made your forecast in coming here today, and I will not go into the assumptions that led you here this morning, whether it is to get away from home, get out in the sun, a feeling of great gain in terms of this fraternal fellowship in this group, or what your assumptions were. But behind every action there are assumptions, and it is important for us to recognize these, because, after all, in all of our activities we are forecasting ahead, whether we are to spend or to save, whether we are to invest and how and when, whether we are to build or to rent, and all the actions we take involve a lot of implicit forecasts.

And so I thought I might spend a few minutes asking us really how we go about this problem of forecast and to point out to you that no action is really an action, and whether this is the wisest action you can take is really up to you to decide.

For example, the decision not to take any action with respect to the market, if you have funds to invest, is really an action that you have taken. The ostrich, by sticking his head in the sand, has taken an action with respect to the problems facing him.

Most of us, whether we know it or not, however, have some models we use in attempting to develop our forecasts, and often these models are very simplistic and perhaps quite incorrect.

For example, perhaps the most common one is the one of past trends; namely, to take today's experience and project it into tomorrow. Because we really know that with rare exceptions tomorrow will differ very little from today in terms of weather, our age, or any of the factors that we might mention.

This, however, has led to very many mistakes, as we recognize that trends do not continue forever, and there are turns we tend to miss with this type of approach. Yet even today this is probably the most common tool that the forecaster is using, not getting too far away from today's experience with respect to his projections about tomorrow.

As a result, we see this perhaps most dramatized in the area of Wall Street where you see the mood swinging very rapidly from extreme optimism to extreme pessimism, based upon the very rapid activity in this area.

Other models tend to use what we term the sensitive indicators, and people tend to watch the flashing lights, and the sensitive indicators are supposed to lead economic activity and some tend to lag, and so you watch some figures on employment and want ads and prices and wages, and so forth, as giving you some indication of what lies ahead.

Then we have gone to a somewhat more sophisticated approach in the development of what we term econometrics models. These are nothing but mathematical descriptions, if you will, of the economy. Some of them are very simplistic, using only one or two variables, such as consumption expenditures or government expenditures. Others are quite complex, using hundreds of variables and running through the computer with really hundreds of simultaneous equations in which you have submitted various assumptions to your model, and you are interested in analyzing the impact.

The model we have developed at Wharton School, which was publicized in *Business Week* tends to be used for understanding the impact of certain changes in our economy upon the economy, but popularly it has become used in terms of the grand total.

For example, it is important to know what impact a strike would have in a certain sector of our economy upon the total economic activity. It is important to examine what impact the proposed tax legislation may have on our economy, price changes, any of the variables you might think of, and it is important to have some understanding of the magnitude of these impacts.

Unfortunately, most of the use of the model has tended to be on what is going to happen in the total, and the total too often is the accumulation of the errors of the various assumptions leading to this final result. But I think it is important to recognize what the use of such models can be rather than the misuse that so often happens.

Then, in addition to the modeling approach, we have various occult approaches to the future activities of our economy, and we have the sunspot theory or the rainfall, the tides, or the hemline. And I must confess that as trends were going recently in society, and I observed them, it seemed like the hemline theory was eventually leading us to a bust—but it now looks, with the maxicoat coming into being, that things are really going to be all right after all.

Taking our models, whatever they may be, or our various approaches, I think one should be aware of some of the problems one encounters in the forecasting area. While we have made great strides in the development of an economic base for economic understanding, I would point out that our signal system is far from perfect.

For example, there is a school of thought that says that all we have to do is control the money supply and that controls economic activity. And one of the real probems is how you define

money supply. The two definitions this summer led to the fact that the money supply was moving in two different directions at the some time. That is like having the red and the green light on your traffic signal appear simultaneously.

The second problem is flashing lights—which ones are important. For example, if one wanted to be optimistic at the present time, one points to the fact that incomes are still rising, prices are still going up, employment is still quite strong, the projections of plant and equipment expenditure for next year are up rather markedly, the tax problem or the prospects are a puzzle at the moment, what is it—a cut or an increase? But here are some positive elements.

On the other hand, if one wants to feel negative at the moment one can look at what is happening in the stock market, the expectations of consumers, that their spending is going to be sharply cut, interest rates certainly do not give one a great deal of encouragement with respect to the future, and the housing market is not one to make you want to throw your hat in the air very quickly.

You have a further complication, however, in the fact that there are shorts in the wiring of some of this lighting system that I have mentioned. For example, over a recent holiday we had a slight breakdown in transportation, and the float in our monetary system far exceeded any possible forecast, and the final result appeared to be some change or easing of monetary policy, and it merely represented a breakdown or a misinterpretation of the expectations and the final results.

Recent statements of some of our national leaders appearing in the press have been either misquotations or misinterpretations—rumors which proved later to be unfounded. We adjust policy to what we expect is going to happen. If this does not actually follow, the readjustment problem is never done easily or quickly, and consequently this leads to misinterpretation of what these numbers or signals are indicating for us at any particular period of time.

Then you have the problem that the rate and extent of the response of various changes in our economy do not always appear in the system in the same way and in the same form. Today our system is operating in what we would term a rather tight or inelastic manner. There is very little freedom or flexibility with respect to employment. We have very little freedom with respect to certain resources in our economy. They are being used to the fullest extent possible, and certainly in the whole financial structure tightness is more or less the key word, and our reactions to these developments tend to differ from time to time, and optimism and pessimism tend to creep in in a most unexpected way.

For example, if you expect that prices are going to rise rather sharply or there is going to be a shortage of material, and you rush out to buy inventory to hedge against those contingencies, this investment is looked at as being a very positive, very constructive, very bullish sort of development.

If, as at the present time, inventory is tending to go up as a result of some fluttering in the sales area, the investment increase is the same but our reading of the results is really quite different in terms of its implication with respect to the future. Then we find that new variables are continually arising, and this becomes the clue, and the important one, with respect to future activity.

Then we have a lag in reporting, some of which we are not quite sure of the figures, some of which may be deliberate, we do not want to look at what is happening, and then we have a misinterpretation of when the impact will be felt.

For example, the problem of contracts versus expenses. We can let a contract today for a new power plant and we will not get around to the expenditure perhaps for three or four years. Well, the impact on the economy comes when the expenditure occurs, not when the contract is let. And so these leads and lags tend to cause great confusion in terms of the interpretation of these flashing lights, some of which are miswired and are flashing because of shorts in the system.

Finally, the problem facing us today, is the difficulty of trying to restrict without incurring friction in the system. This is very much before us as we look at the effects of inflation which are becoming more and more of a problem, tearing our society apart. Yet we are fearful of the other side of the coin, namely, that if we curtail inflation there may be a rise of unemployment, particularly in the minority in our society. These two fears are causing all kinds of confusion, turns and twists in all of the public sectors and public statements and all of the features.

For example, the President's order that construction be cut back in the federal and state governments. Is this a cutback in today's expenditures or a cutback in the future, and are future cutbacks going to occur at the time when people suspect we may be facing employment problems? So, you get all kinds of opposition to any kind of move.

The tight money problem is being resisted. In almost every phase everybody is willing for someone else to make the sacrifice in order to bring the economy in balance, but never accept it as an individual responsibility. And the excuse, no matter where it may come from, always points to the employment problem as contrasted to the price problem we are trying to avoid at the moment.

So there is some tendency to want to toss in the sponge, or take the ostrich approach, and consequently people begin to lose confidence in the floods of forecast which tend to inundate society from now on until the turn of the year.

The records for forecasting are by no means infallible, and sometimes I think that the contrary opinion approach is perhaps the most useful one to adopt. You take the consensus of all the forecasts and then you reverse this, and more than likely you will be right rather than wrong.

And so I would use the theme from your previously scheduled speaker: think positively—in the opposite direction.

But seriously, the real economy is continuing to expand and the dollar economy is rising even more rapidly. This is another way of saying that we still are faced with somewhat of a problem of inflation. The two per cent price rise in 1965 is accelerated to a four per cent price rise in 1968. It is not quite clear how we are going to come out even this year.

Employment is tight, financial structure is very tight; debt approaching limits from any corporations; the banks being squeezed with respect to the funds available to them; and rates are reflecting this tightness in all respects; resources are tight.

On the other hand, our population is continuing to grow, our productivity is continuing to increase with the impact of our research and development expenditures, and certainly we have the ability to tailor our financial resources to anything that we consider right with respect to the future.

The big factor in the past several years in all sectors of our economy is our involvement in Vietnam. Our defense expenditures have gone up from 50 billion dollars in 1965 to 80 billion dollars in 1969. And at the same time we try to do this with guns and butter too, and as a result our government deficit increased to 25 billion dollars in 1968. This has really been adding fuel to the fire of the economic push that we have most recently been experiencing.

We see behind the scenes this problem which is tearing us apart in our economy, in our schools, in all sectors of our economy. We made a great effort to achieve a balance in 1969. But the surtax came on a bit too late and too little perhaps. It did not bite as people had expected it to bite, and consequently we are now in the process of trying to throw it out.

We have applied the brakes in terms of the monetary side, and this too has perhaps been a low and continuous pressure, and again it did not bite quite as hard as many people had predicted. But I remind you that these forces are there and they continue to be there, and there is some evidence that they are being successful in at least slowing down the rate of change.

It may be surprising to many of you to realize that in the past several years, the wages of the non-union group have gone up much faster than that of union employees. This is perhaps the character of non-union labor, its heavy concentration in the service sectors of our economy —hospitals being perhaps the best illustration—and now we are beginning to see a closing gap as unions are striking out for larger and larger increases.

This is a bit sobering, because the wage increase was three per cent and then it was five per cent last year. But when you see current settlements in the range of 15 per cent you realize that this is not a sustainable sort of development for any length of time.

In looking ahead, the projections for next year are mixed, as they always are. The planning and equipment expenses are sobering, as many people are still assuming that they have to make the expendi-

tures in order to avoid the competitive pressures presented by the labor developments. They want to make the savings in terms of technological efficiency and they want to save because of their feeling that you do have a built-in element of inflation that is not going to be changed.

We are seeing an inventory build up which is perhaps more involuntary than voluntary, and that may lead to a short term adjustment in the next year. Housing starts, as you so well know, have dropped rather substantially, to under a million in November from over two million in February. This is the interest rate squeeze; some disintermediation in the flow of savings and certainly the supply of funds being a very great problem here.

The government construction cutback order is a little confusing at the moment. It tends to be on future contracts, not on the present ones. If we follow through, it will lead very sharply almost to a complete halt in road building because the pressure goes on the states to do the same as the federal government, and this is the only place they can effect a cut of 75 per cent of their total construction effort.

On the other hand, this may be merely a bargaining tool to be used to help break through on the minority group employment in the construction industry, and a policy, while it can be instituted at any time, can also be reversed at any time. Again, these are things to watch rather than to assume what the results may be.

Disinflation is certainly ahead, and that is not price stability, but I think we can be fairly confident of a decrease in the rate of increase for some months to come. Some people call it a mini recession; and the difference between a mini recession and a major recession is time rather than the size of the decline. I think gross income is going to continue to rise throughout all of this. Real income, however, may be negative; namely, the difference between the dollar amount and the real amount that we know.

But certainly, looking ahead with the population; the housing demand; the income maintenance; the public backlog of needs, which is growing at a frightening rate for roads, schools, hospitals, parks; the poverty problem; the city problem; the foreign problem, all of these give me great confidence that before many months you are going to see us with a gross national product in the billions, a hundred billion of very big change here from the nine hundred and some billion that we are running at the moment. This, however, will be in dollars. The real income measured in 1958 constant dollars will probably, by early 1971, be in the 750 billion category. But the number we will talk about will probably be up to a thousand billion.

Next year you have the uncertainties about the surtax removal and a social security increase, and all of these are going to provide a real push to consumption and tend to counter the consumer caution you are seeing at the moment.

The war end, whenever it may come, may not free as many resources as people think but it will certainly indicate some change in direction.

It looks like the investment credit can be reinstalled quickly and that will have a positive impact, monetary ease can be effected if the need arises, public policy is certainly going to be directed in spite of all the problems toward continued growth and the build up in backlogs I have mentioned certainly foretell bright days ahead for the seventies with respect to economic activity.

Getting there, however, may involve some squeeze on corporate profits. The price pressures and the wage pressures do not indicate great things for corporate profits next year. Unemployment could rise to a 4.25 or 8 per cent from about the three and a half percentage at the moment. Savings, however, in contrast to corporate profits are likely to be up next year. The government, in spite of all its efforts, is likely to go quickly from a surplus this year to a deficit in the year ahead. And housing expenditures will come back, but not as quickly as many people expect. The turnaround just cannot come that fast.

And so as we look ahead, we see the lights flashing amber, perhaps not red or green, but they can change in either direction tomorrow with changes in taxes and wages and wars and expectations and foreign problems. We do not operate too skillfully in this area of forecasting. Our tools are still very blunt, our leads and lags and our readings and actions and reactions cannot be forecast with great closeness.

The monetary side is likely to remain firm. We have made mistakes in the past of easing too quickly. If the mistake is made this time it will probably come on the other side of the coin. On the monetary side, however, we are concerned not only with the aggregate but with development in certain sectors. You are concerned about the housing construction area, public construction, the ghetto problems, and fluctuations undoubtedly, will continue to occur in our economy.

We have become far too sophisticated in our knowledge of economic affairs to repeat the cause of the 1930s, namely, the shortage of demand. I think we know how to effect demand to avoid this problem.

But my concern comes from quite a different source, and that is that we have started to stretch our economy with respect to its financial position from the standpoint of employment, from the standpoint of the use of resources, to the point where we do not have a great deal of flexibility with respect to the unexpected.

For example, I was quite puzzled and quite shocked by the impact that the dockworkers' strike had upon our economy. I do not know what the effect of a real big railroad strike might have. But these are not unimportant when we have our economy so tightly stretched.

Suppose, for example, that a major power breakdown on the east coast should occur which tied up the big plants for more than a day or two, and because we have no elasticity in that area, think what effect that would have on the output of many plants and think what that does to a financial system that is stretched very tautly at the moment.

They tell us in Philadelphia, for example, if we were to have four days without air movement the loss of life would be far greater than if an atomic bomb dropped on the area at the moment. Now, I do not expect four days of no air movement in Philadelphia, but this indicates how close we are to the edge and the impact of wiping out a city really tends to focus on the pollution problems of our society. These are very real problems which can be quite damaging to our overall economic position.

Sometimes I feel I am being buried in "no return bottles," and if you ever tried to destroy them you would realize what a permanent factor they are in our society.

Again, this points up problems that could cause economic activity that are not normally factored to our economic models. Wars are other elements that are very unpredictable, and all of these factors can alter our economic outlook very quickly.

While we can handle the problems we have encountered in the past, I am not quite sure that we have the ability to handle all the problems we may incur into the future. I would like to think that we could correct some of these problems before they become crisis developments, although I am not altogether hopeful on that score.

I am hopeful, however, that we can curb our inflation without destroying the real growth of our society, and that we will be successful and that you will be successful in the development of your forecasting techniques. How? By expecting the unexpected. And the squeezes that do occur in this process will be a toning-up experience for you, not the first symptoms of cancer in your system or society's system.

Finally, I would like to hope that your stay at this convention will be a productive and a challenging and constructive one, and that the 1970s will bring to you and yours the very best of everything.

PRESSURES AND PITFALLS IN HOUSING

HARRISON A. WILLIAMS, JR.
United States Senator, New Jersey

It is certainly a pleasure for me as a New Jersian to welcome this convention to our Garden State. As I understand it, it has been 25 years since you have have been here, and you certainly have fully toured the country in those 25 years for this annual convention.

I was sorry to hear that one of your most distinguished speakers, Dr. Norman Vincent Peale, is not well today and will not be with you. I do not know Dr. Peale personally, but I would say from the distribution of people in this room that I am sure he would feel very much at home. This is obviously a group of churchgoers.

I discovered to my dismay that one of the paradises that I have been living in for some 21 years is a fool's paradise indeed. I looked over the booklet here that describes the participation from the various states. I asked how many states were represented and I was told that all of the states were. I looked for a state where I once was a title searcher and I did not see it. New Hampshire is not among your membership. I wondered why, and that is when my paradise was lost, because I find that New Hampshire, the system that there prevails does not lend itself to title insurance.

I figured, well, now, what does prevail. And I learned that the system is one in which the county picks up the check if the county makes a mistake. I asked what if the county did not make the mistake, the lawyer made the mistake. Well, the lawyer picks up the check.

As a practicing lawyer in 1948 in New Hampshire—and my only business at that point was title searching—I am not as secure as I thought I was. So I am certainly, as a lawyer with a title searching record, grateful that they have forgotten me, I hope, in the state of New Hampshire.

I wanted to talk to you this morning about the housing crisis that faces our nation. Your work in the areas of title protection and consumer advice make this a critical matter, I am sure, for your organization. The title industry has a long and distinguished record of service to the home buying public. You should be commended for your efforts on behalf of mortgagees, first owners, and all families looking for economy in housing.

This morning I want to warn you that unless something happens to ease the squeeze on housing construction and mortgage money there will be no titles to protect, no one will be able to afford housing.

Just last Wednesday Secretary Romney said that housing construction could be cut in half by the end of this year. The housing industry in America is in deep trouble, and its peril comes from an inflationary spiral that drains off mortgage money, cheats the wage earner of his chance to become a home owner, and rolls ponderously along, skyrocketing interest rates in its wake.

We were first told by the Nixon Administration that high interest rates were supposed to be good for the economy, they were supposed to dampen the fires of inflation. But instead they have had the opposite effect. Consumer prices rose faster during the first half of this year, the era of high interest rates, than they did during the last half of 1968. Wholesale prices showed similar trends.

The housing industry—and therefore your industry—is most seriously affected by tight money and high interest rates. This is doubly tragic when we realize just how important housing is to the nation, just how big a part housing plays in America's renaissance.

For example, housing accounts for one-fourth of all private domestic investments. In 1967 Americans spent 131 billion dollars on housing, household equipment, furniture and other incidental household expenses. Throughout the country housing is one goal that must be met before we can have a truly decent society.

In the inner city, rat infested slums must come down and modern clean units fit for families must be built. In the suburbs new homes must be provided for the thousands of families that are flocking to our new bedroom communities. More and better housing must be provided for middle and lower income families.

Congress recognized these priorities last year when it adopted a national goal of 26 million housing units within the next ten years. Six million of these units have been pledged to meet the urgent needs of low and middle income families.

Here in New Jersey, some 660,000 units are needed right away to end the shame of ghetto and the squeeze of the suburb.

Faced with this enormous challenge, the housing industry should respond with vigor. New starts should be up, near the two million annual units figure, and that was described as absolutely necessary at the beginning of the year.

But this is not what has happened. New starts are not up. They are down—down for the seventh month in a row. The level is now about 1.3 million units annually. And if Secretary Romney's latest prediction is correct it will get worse. Let me remind you that the current 1.3 million is barely above the lowest level of 1966, when the credit crunch was at its worst.

In the face of this appalling situation, I was amazed to hear Secretary Romney's reaction to various proposals for easing the tight money situation. When a House Subcommittee asked Secretary Romney why he declined to use the special authority of the government National Mortgage Association and the Federal Reserve Board to pump money into the mortgage market Mr. Romney replied that these powers should be reserved for unusual circumstances. If the money crunch we are in right now is not an unusual circumstance then what catastrophe will we have to endure before the Secretary hears the alarm?

Clearly some kind of corrective action is required, in my judgment, immediately. The Senate Banking and Currency Committee is now considering a bill to bring relief to the hard pressed mortgage market. During our hearings earlier this month, the importance of its provisions were their highlight. I support quick adoption of these measures because I believe they offer the best chance for temporary relief. I want first to emphasize that the bill would support a philosophy which does not claim to weaken the fight against inflation, but, rather, spreads the bite more evenly throughout the economy.

The bill permits federal banking agencies to establish ceilings on time deposit rates paid by non-federally insured financial institutions. It would thus plug the drain of money from savings and loans, which are the primary lenders of mortgage money, of course, we know. The bill for the first time gives the Secretary of the Treasury the authority to make loans to the home loan bank system, money which would in turn be reloaned to savings and loans for their use in the mortgage market.

Two billion dollars is authorized for this process under the legislation that I am describing. The bill removes the Treasury Department's veto over borrowing activities of the home loan bank system. This would put home loan banks on an equal footing with other federal credit agencies operating exclusively on private capital.

Examples of these are banks for agricultural cooperatives and federal land

banks, that this bill would put home loans back in the running with these other two credit sources.

The bill would also provide regulatory powers for the Federal Reserve Board to curb activity in Eurodollars, which the large commercial banks have been exploiting in recent months. Under this loophole some large American banks have been borrowing American dollars in Europe at rates up to twelve and a half per cent and then relending them here in this country. This drives our interest rates up and adversely affects the mortgage market.

The bill provides standby authority for the President, enabling him to set up committees of financial leaders to draft a program of voluntary credit restraints similar to those used during the Korean War. Under these restraints credit would be reserved for the most essential users. Housing is our most pressing user and should head the list of priorities.

The message is clear and compelling: tight money means less credit. Less credit means fewer home purchases. Less demand and less money means fewer new starts. Fewer new starts means fewer jobs. And millions of Americans are affected by the squeeze.

Earlier this year I spoke with some savings and loan officials here in New Jersey and they commented that the situation was certainly grim in their point of view. At the time I said that I hoped voluntary curbs by the big banks would ease the pressure on housing and make it unnecessary for the government to step in. Now, as the situation worsens week by week there is no alternative.

The Administration puts its head in the sand, ostrich-like, and waits for a brighter tomorrow. No remedial legislation has been suggested from that quarter. All positive proposals there have been rejected. Therefore prompt and meaningful action by the Congress is vital to the future of housing and to all of the industries related to housing.

Your organization must stand by during this financial crisis to continue to speak out with a strong and persuasive voice on the necessity for effective action to ease this tight money crunch that we are in.

For my part, I am going to keep pressing the Congress to do what, in my judgment, it must. The legislation which I have described this morning is an important step in that direction. I am hopeful that it will receive prompt and favorable action.

Working together, I believe that we can make significant progress toward meeting our nation's housing goals. The need for shelter is too great to allow the spector of inflation to overwhelm our housing programs. We must work harder than ever before to guarantee safe, economical and attractive housing for every American. That is our mission: to have our government respond as it properly can to meet the housing needs of our nation.

Thank you very much.

CODE OF PROFESSIONAL RESPONSIBILITY TO THE ABA

EDWARD L. WRIGHT

Little Rock, Arkansas
President-Elect, American Bar Association

Since colonial times, there has been an interwining of interest and action between land title men and lawyers. Despite these historic ties, never before in the history of this nation has there been such a surging interest of common bonds. Land is constant while population explodes. And urbanization alone has forged new bonds between the land title man and lawyers.

In the past 25 years, all of us have witnessed title and legal problems interlaced incident to the geometrically expanding development of highways, airports, streets, urban renewal, public housing, river reformation, military establishments —to mention but a few.

I think it is safe to say that in the past 20 years more land has been acquired by government at all levels—federal, state and municipal, through the route of eminent domain than has been acquired in the prior 160 years of our constitutional history.

With the increasing complexity of our laws and regulations, it is inevitable that mutual interest in legal land title problems be heightened. Within the life-time of everybody in this room, we have witnessed increased regulation that touches the lives of each of us personally and economically.

We have in the past 25 years a burgeoning of regulations. Since 1933, every single national regulatory agency, with the sole exception of the Interstate Commerce Commission, has come into being. Within a relatively short time, the overwhelming number of Americans will be urban dwellers.

The phenomenon of urban living has created many legal and land problems which are often on us before we fully recognize them. Rural poverty is a sociological and an economic problem. But city or urban poverty presents not only sociological and economic problems but legal and land use as well.

The strong desires of all of us to remove urban blights, congested traffic patterns, and the frightening pollution of air and water, are bound to produce a further revolution in land use and land titles. All of this tends to bind us together.

Despite the natural points of difference between land title men and lawyers, I do not perceive any irreconcilable conflict between them. Each of us has his job to do, and each has, or should have, an expertise and a responsibility distinctive to himself.

It was in recognition of that fact that the American Land Title Association and the American Bar Association created two years ago a joint conference of lawyers and title insurance companies and abstracters.

As you all know, a distinguished group from this association and representatives of the American Bar Association have had many joint meetings and have had extended conferences. As the result of this, a statement of principles has been prepared.

The National Conference of Lawyers and Title Insurance Companies and Abstracters is the eleventh of national conferences between lawyers on the one hand and professionals in other fields on the other. There are outstanding, in addition to your conference, one with accountants, architects, banks, casualty insurers, claim adjusters, collection agencies, life insurance companies, publishers, realtors and social workers.

Mr. President, ladies and gentlemen, I would indeed be naive if I failed to recognize and to proclaim the existence of points of friction and disagreement between land title men and lawyers. They exist and they will not go away if we do not come to grips with them. I refuse to believe, however, that our respective groups are headed on a continuing collision course of mutual destruction.

Wall mottos and platitudes never solved a problem anywhere, but it is a demonstrated fact over more than half a century of experience that the national conference system has brought about many practical and effective statements of great benefit to both signatory groups. Those who have points of disagreement and points of abrasiveness necessarily have to yield in the spirit of conciliation and compromise in order to come to something mutually workable and practical.

In this regard, those of your group

and those of the American Bar Association who have labored so long, and, I trust, effectively, stood in the shoes of Benjamin Franklin. It is a matter of history that Frankln, who was the greatest force in the Constitutional Convention of 1787, wanted no United States Senate and he disapproved of the concept of checks and balances along with three departments of government.

So great, however, was his common sense and so fair was he that he compromised and conciliated his own views in some regards for the greater good, and two days before the convention was over he delivered his great speech entitled "Conciliation and Compromise", and in the two concluding paragraphs he said:

> I confess there are several parts of this constitution of which I do not at present approve, but I am not sure I shall never approve them, for having lived long I have experienced many instances of being obliged by better information or fuller consideration to change opinions I once thought right.
>
> Thus I consent to this constitution, not because I expect no better and because I am not sure that it is not the best; the opinions I have had of its errors I sacrifice in the common good. I have never whispered a syllable of them abroad. Within these walls they were born and here they shall die. If every one of us, in returning to his constituents, were to report the objections he has to them, we might prevent its generally being received and going forward together in the common good.

One of the great problems that faced the conference group—and I was not a participant but I have talked to many who sat at the conference table—was the fact that there is an extreme diversity of custom, of practice and tradition, from state to state in land title matters —or even within states we find a divergence. Some of these have become imbedded in the minds and in the economy of those affected, and there was a woeful lack of uniformity with which your conference had to deal.

All of you are familiar with the objectives and activities of ALTA. I would like to tell you briefly something about the organization of which I am president-elect.

The American Bar Association, like ALTA, is a voluntary association. In 1907, when ALTA came into being, this nation had a population of 91 million and you had a membership of far less than a hundred. The American Bar Association had a membership of 3100.

In 1927, when you all were 20 years old and this nation's population stood at 122 million, the ABA could muster a membership of only 22,000.

Today, with the population over 205 million, you have a membership of 2200 plus nominal members in the form of participating memberships, but with a membership many-fold in effective working personnel. The American Bar Association today has a membership of more than 141,000.

And so, with the population of this country slightly more than double what it was when you came into being in 1907, the percentage of your membership has increased a hundredfold, and so this is true of the American Bar Association; which points up a public responsibility that your and my predecessors did not have in the early days.

I should like to talk briefly about the American Bar Association Code of Professional Responsibility adopted on August 12 of this year. I was privileged to serve as chairman of the committee that drafted the 127-page code.

The canons of professional ethics of the American Bar Association, which have been superseded by the Code of Professional Responsibility, were drafted by a committee appointed in 1905. This committee copied practically verbatim the canons of ethics of the Alabama Bar Association, which had been drafted in 1887, and these in turn had been a little more than a bodily lift of the lectures of Judge George Sharwood of Philadelphia, printed in 1854.

And so our committee found upon critical analysis that the Bar of America, in its ethical precepts, was guided by a group of canons that were rooted in the customs and procedures and practices and English of the middle 19th century.

Speaking of mid-19th century English, I think without going into any technical details you can appreciate what I mean when I quote from Canon 44. It admonishes a lawyer never to seek lightly to be relieved of employment, and after speaking in very broad, quaint, delightful terms, it says: "A lawyer should never throw up the task lightly." The purist, who likes to use one word instead of two, suggested regurgitate instead of throw up.

The Code of Professional Responsibility is divided into three parts, the technical aspects of which I do not propose to heap upon your heads this morning; other than to say that for the first time in the history of any profession there has been drafted in clear and unambiguous terms not only the aspirational levels to which all should seek to attain but the black letter thou shalt nots. In specificity, the code tells what a lawyer cannot do without subjecting himself to sanction.

There is a deep bite in the enforcement of the lawyers' Code of Professional Responsibility. Violation of certain provisions of the code will result in permanent disbarment of a lawyer, and persistent violations of lesser provisions can have the same harsh result.

Therefore, to the extent that the statement of principles between ALTA and the American Bar Association are tied to or coincide with the Code of Professional Responsibility—and they clearly are related—there is a severe sanction in for lawyers. This briefly points up the Bar's understandable caution in writing down and signing specific instructions beyond the code itself.

Just one year ago today it was my privilege to hear Ralph S. Saul, president of the American Stock Exchange, who developed the thought of self-policing for voluntary associations. He pointed out that effective self-regulation is far more desirable than haphazard, weak or no self-regulation, and you of ALTA and the multiple of Tom Jackson and me and the American Bar Association, can harken to his words—Mr. Saul's words—that if professionals do not do an adequate job of self-policing then we can expect the federal and state governments to take over. Here are a few advantages of self-policing:

First, those applying the standards have a code of experienced knowledge in the problems involved and should be understandingly sympathetic of them.

Second, intelligent administration of a code affords the opportunity to upgrade business conduct beyond any standards that are or could be imposed by law.

Third, observance of general standards of business ethics flows over into the more controlled regulatory areas, and tends to create fewer problems there.

Fourth, self-regulation is more understandable to those who are regulated because their participation makes it more likely that they will regulate and control themselves wisely in the light of their own experience.

I am far too old to think that a code of conduct, regardless of how well drawn it may be, will act as a magic wand and solve all professional problems. The canons of professional ethics of the American Bar Association adopted by all of the states are general in terms. There is no clear delineation between the inspirational and the proscriptive.

I have read and studied your own code of ethics, which is cast in the same general terms of the canons. I am clear in my conviction that a sound modern detailed code is definitely in the interests of the membership it affects and of the public. Such a code provides a way, points up a way, for the aspiring and provides specific standards by which to measure the transgressor.

Naturally my hope is that the Code of Professional Responsibility of the American Bar Association will soon be adopted by all of the courts of last resort of the fifty states, and that it will serve as a guide in assisting other professionals in developing a detailed and workable code.

Mr. President, when Tom invited me at your suggestion to come, he said, "Ed, you are aware of the differences of opinion and the points of abrasion between a number of land title people, who are sincere, dedicated, honorable, and certain lawyers to whom we will grant the same sincerity." And I said, "Yes, I am." He said, "Your talk in Atlantic City will not dissipate any problems but it will possibly do one thing of value: it will show that the president-elect of the American Bar Association does not wear horns."

I hope I have achieved that laudable objective. If I have then it is time to conclude. In the matter of concluding I would like to tell a story told to me of the young barrister in England. This story was told by Sir Kenneth Diplock, now a Judge in England and a great trial lawyer in his day.

He said that he was waiting for a

young barrister to finish an argument to a judge, a single judge. He said the courtroom had very few people in it and he was waiting to present a matter himself. It was obvious that the young man had made his point and that he was just treating the judge like a hitched horse in a hail storm by raining words down. And we all know in the economy of the world that once you have made a sale, shut up.

So Sir Kenneth Diplock, then a practicing barrister, passed a note to the young man and said, "Shut up. The old bastard's with you."

The judge saw it and said, "Mr. Edmunds, was that a note passed to you?" He said, "Yes, my lord." He said, "Let me see it." "Oh, no, my lord, I cannot," he said, "It is something personal." He said, "Mr. Edmunds, let me see that note."

And so the young man, hoping that the floor would open up and swallow him, handed the note to the judge. The judge looked at it, looked down at Mr. Edmunds, looked at him again, and said, "Mr. Edmunds, have you read this note?" He said, "Yes, my lord." He said, "Very well. Read it again."

MORTGAGE CREDIT CRUNCH–SNAP, CRACKLE, AND POP

DR. OLIVER H. JONES
Executive Vice President, Mortgage Bankers Association of America
Washington, D.C.

Ladies and gentlemen, I have a very sad chore this morning, and that is to tell you a little bit about how bad things are, and the happiest news I can give you is things are very bad. We have been managing our economy much like the sound and fury of a popular cereal. That's where we got the title, "Snap, Crackle and Pop." As a matter of fact, the "Snap, Crackle and Pop" is caused by the same thing, that is the movement of hot air.

We have changed our view of economics from the old economics where people believed in savings and fixed interest rate securities.

Today, we are operating on what I choose to call the nonsense economics—higher wages, so they can buy more goods, divert a substantial portion of our production to war effort and to other nonconsumer items, so that you have people manufacturing goods that they do not buy. This stimulates the economy and we should just thrill to the ever-rising numbers.

The gross national product goes up year after year, unemployment figures stay down. We produce more automobiles, we hope we are going to manufacture or produce more houses.

With five years of continually increasing the money supply behind us—1961 to 1965—we arrived at 1966 wondering "Where did the inflation come from?" It was perfectly obvious where the inflation came from. It was at this point that the new economics as a system, or at least as the managers applied it—and I am not opposing a new economics—it is just that it is grossly mismanaged.

As they used it the system snapped. They began in the winter of 1965-66 to worry about inflation, and they began to do something about it late in 1966. It was clear that something had to be done. But what could you do?

The classical kind of response is to pay fewer people lower wages. Well, heaven forbid, we couldn't let the unemployment figure rise, and we certainly couldn't disinflate the economy.

We could also reduce the consumers' buying fervor through higher taxes. You know the record on this. The Johnson Administration refused to send up a bill until it was too late. When the tax bill was finally passed, the Federal Reserve was scared of an overkill. They blundered into offsetting the tax bill's increase by providing too much money and credit. Today, we still need increased taxes to slow the economy, but we will not get it if Congress can drag its feet long enough. If the present reform program is passed, we will have an easing of taxes over the next few years.

We can also stop the inflation by reducing defense and other government expenditures. This is a great idea. But what it really boils down to is: reduce the expenditures for the other fellow and increase expenditures to help me. This really left us with nothing more than monetary policy to halt the inflation.

It is very nice from the standpoint of the Administration and Congress to have a so-called independent agency that they can put the blame on when it becomes necessary to restrain the economy. The unfortunate thing is we have gone through this process several times during the postwar period—the most recent one is 1966—and we have learned very little.

I want to read a paragraph from a recent Federal Reserve bulletin pointing out what happened in 1966:

> In the summer of '66 a policy of monetary restraint led to conditions popularly called the credit crunch of 1966. The most publicized features were (1) the development in August of an alleged near liquidity crisis in the bond market.

What they really mean was in late August, dealers in bonds, including government bonds, nearly reached the point where they were afraid there would be no money available for investment in bonds at any price. They were right next door to a financial panic.

> The second most publicized feature, a record decrease in savings inflow into non-bank financial intermediaries, and the resulting reduced rate of residential construction.

Well, what is the difference between that and what we have seen in 1969? Little, if any—and, as a matter of fact, I would say that we are just at about the point we were in August of 1966. The Federal Reserve has been applying monetary restraints since December. The Congress has given it no help in terms of a tax bill, even an indication that it is going to pass a tax bill, that would restrain the demand for goods and services.

There are a lot of things economists do not know and there is a lot more that this economist does not know. But I am absolutely certain that there is only one way to stop inflation, and that is to reduce the demand for goods and services. This means that we have to stop the rise of credit. We have to stop expenditures through higher taxes or we will be back so close to the fire—and we are not far from that fire right now—that we will have to impose wartime controls, despite what the Secretary of the Treasury and the White House have said.

Money and credit today, certainly in the real estate markets, are as tight as at any time during 1966. Yesterday, a single-A utility bond issue was sold out at 8.95 per cent.

The housing market has been moving along reasonably well on existing commitments, but it is running out of commitments. The home builders and others have said that they anticipate housing starts to fall to a million units at an annual rate before the end of this year. I would not be surprised to see housing starts fall well below a million units before the end of this year.

The situation has become so critical that the only funds available in the FHA and VA market are those obtained from FNMA through the auction market. But here again we came the same vicious circle that we closed in 1966.

FNMA has done a tremendous job in supporting the market. The Federal Home Loan Bank System has done a tremendous job in supporting the savings and loan associations, keeping them in the home market.

The last issue of FNMA's securities, the cost of money to FNMA, was 8.30 per cent. About that time, the Federal Home Loan Banks borrowed at about 8.25 per cent. At the same time, we had Regulation Q operating, keeping interest rates generally around five and lower that we pay savings depositors.

As a result, disintermediation, which appeared in 1966, has reappeared with a vengeance. On every quarterly interest rate period in 1966, funds were withdrawn from the thrift institutions that make home loans. The pattern was repeated this year, beginning with the mid-year reinvestment period.

But this year is different. Disintermediation has not stopped between dividend-payment dates. It has continued through the month of July, well into the month of August, and I suspect when we see September figures we are getting at least —if not losses, minimum growth in savings deposits.

It is rather fearful, gentlemen, what will happen with the September 30, reinvestment period when thrift institutions are paying less than 5 per cent for money and the securities markets are paying in excess of 8 per cent for money. Small depositors are taking $5,000 out of savings and loan associations and taking it down to their local bank and saying, here, invest this in something. They are not sophisticated investors. But they can read the paper, and anybody can tell the difference between 5 and 8. And, they don't really care what it is invested in. When the banker says, what? He says, well, just get me some of that 8 per cent money.

Our economy is badly and seriously out of balance, and we are clearly at or near the brink of disaster.

One observer printed in his release at the end of the month:

"Today's marketplace is a mess. Interest rates are high and rising; money is scarce in many areas absent for mortgage lending; home loan demands are rising; vacancies are falling; devices are needed to produce a better flow of funds."

What I would like to do this morning, if I could contribute anything besides some more hot air, is to start a little bit of a fight or generate some interest in the people in the title business to become involved.

Yesterday, I believe it was—Lou Barba can correct me on this—some 2,000 home builders were marched on Washington for the purpose of calling attention to the present crisis in housing to the Congress. They have taken a number of positions with respect to what might be done to help housing.

Gentlemen, we have lost this battle, we have lost this round. We are already at either the peak or the crest of this present effort to stop the inflation with the sole reliance upon monetary policy. I am afraid that this peak is going to last a little longer than most. I suspect that we will see some climb in business activity in the fourth quarter. The Federal Reserve seems bound and determined to stick to monetary restraint this time until they actually see a slowdown in inflation. This means that "gradualism" can last a lot more than fourteen months. We can, and frankly probably should be restraining this economy much through 1970, and the only alternative to that—the only reason to deny that alternative—would be if we did succeed to generate a recession in the fourth quarter of this year or the first quarter of next year.

This sounds like miserable dismal economics, but having blundered over the past few years and there is only one way to make a correction, that is to take our medicine and get out. The longer we postpone taking our medicine the more convinced investors and savers will be that inflation is a permanent characteristic of this economy.

I personally am coming around to the view that we will be and are in the process of stopping the current inflation cycle. A crisis atmosphere will remain for a while, but I think they are getting hold of the thing now. That is not what worries me.

What worries me is, what they are going to do when they actually do slow the economy down, when they actually do generate some unemployment. Is the only thing we know in this country to stimulate business activity an expansion of Federal Reserve credit? If it is, if the Federal Reserve efforts to stop the inflation are not absolutely convincing, the business I represent and the business you represent are going to look considerably different a few years from now; because the inflation psychology, the expectation of inflation that is so deep-rooted in this economy today, will become a permanent feature of our investment patterns.

When I make a statement like this, I often get the question, "We have had inflation through the whole post-war period, it hasn't hurt too much. There are some well known economists who argue that a little bit of inflation is a good thing. What is so bad about some more inflation?"

I think there are those in this audience who are old enough to remember the depression. As these people managed investment policies in the postwar years, they went through a period of inflation, saw equities increasing in value, and the net return on fixed rate investments declining. Still they were not willing to take the risk of switching over to equity positions. They still remembered periods when equities were used to wallpaper rooms.

By the early sixties, many of these people are being replaced by very smart, well-trained young men. Consider one of these young men coming into an insurance company office or a savings bank office in the early sixties, and reexamining what has happened to their portfolio over the last twenty years. You can take almost any portfolio mix you would like. Fixed-interest rate securities came out second best every time. The fact that you had price stability for three or four years, followed by some inflation, followed by some stability, followed by some inflation does not remove the evidence that inflation over the twenty-year period had materially reduced the value of the principal invested in fixed-rate securities.

Even at the present 8 per cent-plus-rates available on fixed-interest rate securities, the present 5 per cent rate of inflation makes the anticipation of an after-tax return of any size very slim. This kind of thinking created the inflation psychology in 1966 and 1969.

As a result, these young managers, who do not remember the thirties, are more convinced than ever that the future will bring more inflation. And believe me, if we fail this time we will be over the brink. The future of a fixed-interest rate security will be in grave doubt. What kind of a rate will it take to sell a home mortgage in order to provide the investor with an after-tax return, if he is anticipating that he is going to hold the mortgage for twelve, thirteen or fourteen years and inflation is going to be five per cent, two per cent, one per cent. If the inflation is going to be there, he is going to try to get enough interest return to offset it.

It seems to me, therefore, that the mortgage banking and the mortgage lending business, and to some extent even the title business, are not going to come out of this unscathed, are not going to be doing business in the seventies in exactly the same way they did business in the sixties. It seems to me that we are going to have to find ways to finance housing through equity investments.

You have heard much about equity investments or participations in commercial properties. Some title companies probably hold some of these investments. This was a natural outgrowth of this anticipation of continued inflation. I do not think it has anything at all to do with what we hear on occasion that the investors were putting up more than a hundred per cent of the value, so they figure they ought to get an equity kicker.

It was a natural outgrowth of inflation. They are not willing to live with *any* fixed interest rate. They want protection against inflation or they are going to buy stocks.

I am not quite sure how we can provide an inflation hedge in housing, but I think the one way that it would affect the title business would be to see more and more single-family housing built by large corporations or partnerships of one type or another that would have a title to the total property, probably sell stock to the homeowner instead of selling him the house, and let him have the privilege of using the house.

There are a number of ways this can be done, but it is very clear that without a variable interest rate mortgage, without an equity kicker of some kind, the only other solution is an honest governmental policy of monetary restraint that is very, very convincing. And, we have been very, very unconvincing in the last three years.

I want to spend just a few minutes talking about the longer run, because it is a serious mistake to think wishfully that we will get over this period and go back to our merry old ways in the seventies, we can look for and anticipate continual capital shortages. This is a worldwide problem. We can look for an anticipated situation where the investment houses that have supplied money for homes,

savings and loan, savings banks and life insurance companies, will be under a continual pressure of a narrow spread between the interest return on mortgages and what it cost them to raise money.

We are looking at a substantial increase in our population; we are looking at an increase in the spending age groups, and a relative decline in the saving age group. If you don't believe these kids are spenders, ask yourself, are your own kids perfectly willing to spend your savings?

State and local governments—with the demand from population, crime, pollution, water problems, sewer problems, their expenditures and demands for long-term credit will continue to rise. And, there will not be any letup in corporate demands for credit for some years.

We talk too much about expansion of plant and equipment. The real problem is modernization. The real problem is replacing equipment. We are operating in this country in many of our major industries with 1860 technology. This applies to major industries like steel. Steel is going to have to modernize to compete with steel in Europe, to compete with aluminum at home. It is going to demand tremendous expenditures and tremendous borrowing.

Under these situations the home mortgage market, in particular—but any fixed-interest rate security—is going to find it tough sledding, and severe competition during much of the seventies.

I realize that this is not a very bright picture, but there is one part of this that can be brightened, and I think this is the place where I would like to get the title men here just a little bit mad.

How long are we going to permit this industry—and I'm thinking more of the housing industry at the moment—to live off promises? The Housing Act of 1949 promised this nation adequate housing. The Housing Act of 1968 repeated it. Again, "Snap, Crackle and Pop," this is just so much of the same hot air that makes the cereal make noise.

We passed a pretty good bill in 1968, but we do not fund the bill to make it work. The government-backed security is finally getting off the ground, but even here there is no sign of getting a truly marketable security. It is a series of promises, promises.

Congress says in nobly inscribed words in the laws of the land that housing has a top priority, housing is important, housing makes good citizens, and housing will avoid some of the social welfare problems of our central cities. But we need a great deal more than words.

I think the one issue, at least that the home builders are pursuing, the one recommendation of the Commission on Mortgage Interest Rates that makes sense, if we are really going to do anything about housing, is that the United States Congress—and that is not some fuzzy thing down in Washington, those are your representatives—is going to have to honestly give housing a top priority. In a fully-employed economy this means that something else must be cut back. You do not do it just by saying, "Okay, you are in the front seat." Like the school room when every seat is filled, if you move somebody up front somebody moves back.

This is a great country, we have done many great things. We can do all of the things we are trying to do now, but not at the same time. Choices must be made. The choice we should demand of Congress is to try to shift ten billion dollars of the nation's annual resources from non-housing to housing uses.

Now, that sounds like a lot of money. Actually, no human being, or very few human beings, can comprehend even what a billion dollars is. But it is really only one per cent of this nation's gross national product. It is only an amount equal to what we spent to get to the moon—and we're not housing anybody on the moon. It may yet be a fraction of what we will spend to invest in supersonic transport.

You people as well as our people as well as the home builders have to enlist, have to line up and get counted, have to let people know whether it makes sense to you to have the President say we are fighting inflation and we are serious about it, and therefore we are going to cut back federal construction by 75 per cent—at the same time we are going to increase social security payments, we are going to increase transportation expenditures by 8 billion, we are going to launch a new food program and we are going to start new welfare programs. We cannot do it all and we cannot do it all at one time.

THE CONGRESSIONAL HEARING

C. JOSEPH STETLER
President, Pharmaceutical Manufacturers Association
Washington, D.C.

Perhaps I ought to confess that when I first received the invitation to appear here, I was somewhat daunted. I wondered why an organization whose wide interests lie in real estate development and underwriting title insurance would want to hear from a representative of the manufacturers of pharmaceuticals. Then I learned that your industry may be the object of a Congressional investigation in the foreseeable future.

This, of course, is something with which the pharmaceutical industry has had long and painful experience, and the scars to prove it. We have been investigated, on and off, for ten years and the end is not in sight. There may be one or two exceptions, but I believe we are probably the most thoroughly investigated industry in the country today.

My subject, "The Congressional Hearing", allows me to review this decade of inquiry, and to offer you some comments and thoughts based on our experiences which may prove helpful to you at some later time.

As you all well know, there are two types of Congressional hearings in which industrial concerns or organizations may find themselves involved.

One, which might generally be termed the "friendly" type, is where the committee is considering a legislative proposal on which the experience or point of view of witnesses from business will be helpful. The drug industry is no stranger to these. Its advice often is eagerly sought by Congress when measures relating to drugs and other health matters are under study.

The other type, which I am going to talk about today, is the "adversary" hearing convened specifically for the purpose of investigating alleged conflicts between the public interest and the activities of business organizations. This is not the type of exercise or experience which a company, a trade association, an industry or a witness will find rewarding or pleasant. The best that can be achieved is to come off not too badly mauled. For to be summoned before a Congressional investigating committee in an adversary posture indicates, rightly or wrongly, to a large segment of the public and the press that there is at least some prima facie evidence that the person or organization involved is guilty of conduct adverse to the public interest. This may not be true. But it is a natural public assumption—that where there's smoke, there's fire.

The subject of an adversary hearing must accept the fact that it will be on the defensive from the opening fall of the gavel. It must anticipate a damaging attack which a skillful and experienced committee staff may have spent weeks or months preparing. Most assuredly, its representatives must be ready to sit mute and helpless while page after page of adverse testimony is provided by witnesses invited by the sponsor or sponsors of the inquiry for that purpose. Through all this, a constant flow of hostile publicity stemming from the inquiry must be expected.

I think you want the facts and I am not, as you see, going to sugarcoat this discussion. Nor am I saying that Congressional investigations are wrong and unfair per se. Investigation by legislative bodies is deeply rooted in the nation's history going back to Colonial

times. The first investigation by the United States Congress was mounted in 1792.

Within our memory, there have been many significant investigations from which the nation and the public have profited. Wrongdoing has been exposed. In some instances prosecution and punishment of the offenders have resulted. Corrective legislative measures have been taken where warranted. That is one side of the picture, the side consistent with history and with the obligation of the people's representatives to protect their interests.

But there is another side as well. Too often in recent decades, and with growing frequency, the historic purpose of Congressional inquiries—to gather information—has been secondary or even completely lacking. At times it has seemed that Congress' primary function of law-making is being submerged by the supposedly auxiliary function of investigating.

There can be do doubt that this is a sheer matter of publicity. The charge and counter charge, the breath of scandal and the clash of personalities, all unencumbered by the strict rules of judicial procedure, cannot fail to produce a spectacle absorbing to the public and therefore certain to spread the fame of the inquisitor and benefit his political career.

Surely, you remember the early 1950's when the late Senator Estes Kefauver's crime investigation hearings on TV featured gangster Frank Costello's hands and the whimsical testimony of Virginia Hill, an authentic gun moll. His production enraptured the nation and temporarily displaced the soap opera in the heart of the American housewife. Until then the Senator had been a public figure of limited renown representing a politically unpretentious border state, Tennessee. But not long afterwards he was nominated for the Vice Presidency.

The election of 1956 denied him that office and he returned to his Senatorial duties. Resuming his investigative pursuits, he turned the full force and fury of Congressional inquiry on the pharmaceutical industry and again captured national attention.

The industry was not prepared for this kind of attack. It knew less about itself, as an industry, than Senator Kefauver's staff did. It did not have industry-wide statistics to refute the selected figures obtained by subpoena from a relatively few firms.

The testimony over the next several years shows a continual and tempestuous outpouring of sensational allegations against the industry by the Chairman, members of his staff, and the majority of the witnesses. When drug company officials took the stand to reply, they found they were attending a lynching, their own, which did not detract from the excitement of the proceedings as viewed by reporters and broadcasters.

Thus the industry was belabored unmercifully while Senator Kefauver and his "investigation" remained prominently on display in the news until his death in 1963. Thereafter, the inquiry languished until another figure moved in to fill Senator Kefauver's role. This was Senator Gaylord Nelson of Wisconsin.

Late in 1966, Senator Nelson announced, with appropriate fanfare, that there would be a new drug investigation under his aegis as Chairman of the Monopoly Subcommittee of the Senate Small Business Committee. Quite by coincidence, the Senator faced a staff reelection campaign in 1968.

Unlike the previous occasion, the PMA faced the new inquiry with a staff of some size and considerable experience. It possessed a valuable store of information about the industry and the health field where none had existed ten years before. Beginning with the first industry-wide study prompted by the Kefauver investigation, the gathering of this material had become an established, ongoing staff function, much especially prepared and distributed to the public, and shared within the industry, during the intervening years.

With the approval of the Board of Directors and the agreement of the member firms, an Ad Hoc Committee was named to serve as the central coordinating force in putting together our case for the Committee and the public. This involved a multitude of duties such as realistically assessing problem areas, trying to fathom the form and substance of the attacks we could expect, roughing out the answers, and ascertaining what material we had and what further facts and figures or other information we needed to support our claims.

The group consisted of 20 members, a workable size. Company representatives included officials from the fields of science, marketing, public relations, law and management. A cross-section of PMA staff leaders were also members It was early recognized that the inquiry would reach into all aspects of the industry's operations, therefore, it seemed logical to call on all these specialized abilities for aid and advice in laying out our course.

Meanwhile, decisions on the need for additional information about the industry and its role in the economic and social life of the nation led to the retention of a number of research firms and certain recognized individual authorities to conduct particular studies of a character which required specialized knowledge and procedures.

To give you an idea of the kind of material developed, let me mention a few of the titles, which included: "Cost Analysis of Selected Diseases"; "Competition in Major Ethical Pharmaceutical Product Classes"; "Risk and Return in American Industry"; "Pharmaceutical Prices in Relation to General Prices"; and, "Analysis of Leading Drugs Regarding Brand and Generic Availability". In all, there were about 20 such studies financed by the Association.

A portion of these studies did result in a day of significant economic testimony when the PMA was finally, after months of hearings, given an opportunity to present the industry's case. However, our request to have other studies included in the hearing record as part of the PMA's testimony was surreptitiously vetoed by Senator Nelson. When we appeared, and the record so shows, we were assured by Nelson that the material would be printed in the published transcript. Not until the printed copies were distributed did we know that the material had merely been placed in the Committee's files. Not only is the subject of a Congressional investigation at the mercy of the Committee and staff as regards the structure of the hearings and the manner in which they are conducted, it also has nothing to say as to what exhibits or other supporting data appear in the permanent record.

Beside the special studies being done outside the Association, a voluminous amount of work was assigned to the PMA staff—ranging from papers on generic prescribing and other key issues, to compilation of questions expected from the investigating committee, and the culling of the files for material with which to rebut the most obvious lines of attack which we faced. A number of inhouse studies were initiated to produce comprehensive material on various aspects of drug manufacturing—some of it technical and statistical drawn directly from the government's own records—which we knew would be needed when particular sides of the industry's operations came under question. Further, the staff maintained a continuing surveillance of speeches, statements and published articles bearing on the investigation and, as warranted, drafted replies and press releases setting the record straight. And, of course, there was an extensive review of the pitfalls encountered by the industry in the Kefauver hearings. There were a total of 35 of these major undertakings.

The assignments were listed in a detailed log which was updated weekly to enable Association officials and staff and the Ad Hoc Committee to keep informed on the progress of this work as well as the status of the outside projects.

The expectation was, of course, that much of the material being gathered would find its way into the PMA's formal statement which even then was beginning a tortuous course through about a dozen drafts. But it was also decided that the bulk of this information should be widely distributed to broaden the public's understanding of the industry and to augment and support the PMA's testimony.

Another important staff responsibility was contacting and maintaining communications with the drug industry's allies among the other health professionals. Correspondence was initiated with state and national medical societies and pharmacy associations, with medical and pharmacy schools, and with scores of individual leaders in the health field. The industry warned that an investigation harming one component of the health care system, perhaps leading to hasty legislation based on false and non-scientific grounds, would damage the other components as well. Representatives of medicine, pharmacy and the academic community were urged to testify on the medical and scientific questions which the investigation was bound to raise.

Many did write directly to the Committee asking to be heard. But in most

cases they waited over a year for the opportunity while the investigation was listening to damaging and reckless testimony against the industry by the selected witnesses whom Nelson invited to appear.

Getting back to the preparations for the inquiry, an industry-wide legislative conference was sponsored by the PMA as the date approached for the opening hearing. The purpose was to brief representatives of member companies on the situation, what was being done, what was expected, and to answer the numerous questions in the minds of those far from Washington who were understandably concerned about the future.

Nelson rang up the curtain on his inquiry on May 15, 1967, in the caucus room in the Old Senate Office Building. It was a scene rivaling the Kefauver heyday and the other similar investigations of the past.

The high-vaulted chamber was jammed with spectators. The press tables were overflowing. The lenses of TV cameras were cocked at the witness chair and the committee dais. Photographers were "at the ready" and the floor was a mass of black wires snaking in every direction, the hallmark of the big story in the age of electronic journalism.

There was an eerie quality about it all too. Not only was the chamber and setting exactly the same as that in which the Kefauver hearings were held, but as the days went on, the familiar faces of the same witnesses began to emerge from the recesses of time. They were ten years older now, but they showed that their venom for the industry was undiminished by the passage of time as they gave forth with the same allegation they made a decade ago. It was like watching an old movie on the late show.

As did Kefauver, Nelson began by turning his heaviest guns on drug prices, a line of attack which couldn't fail to capture public attention in these inflationary times. And it quickly became apparent that he was as familiar as any of the masters who have gone before with the art of manufacturing conflict and acrimony so necessary to attract and hold interest in these affairs. Here are some of the headlines from the first day:

"4000% Price Spread for Drugs Alleged"
"Senate Witness Asks Drugs Probe by FBI"
"Drug Prices Vary 850% Probe Finds"
"Drug Costs Scored in Senate"

In the ensuing two years and more, a running fire of provocative statements by the Chairman, plus enthusiastic denunciation of the industry by a parade of selected witnesses, has sustained the charged atmosphere of the proceedings and provided meaty fare for public consumption.

"Shocking misuse of dangerous drugs . . . Brainwashing of physicians . . . Exorbitant prices . . . Unwarranted profits . . . Misleading advertising . . . Deliberate concealing of side effects" have been some of the terms employed in the relentless attack on the drug industry which has taken place.

One of the first decisions, and certainly a very basic one, made by our industry when it faced the prospect of another Congressional investigation was that it would not submit supinely to the abuse it knew was coming. As the industry has been attacked, the PMA has made it a practice to reply factually and with the least loss of time by means of press releases, statements, or press and TV interviews where requested. The importance of this activity in defending one's self during an investigation cannot be overstated.

It often appears that misstatements are seldom corrected in the news. Yet to demonstrate that you have answers to the charges being made and to keep distributing them is certainly preferable to letting erroneous or false accusations pass unchallenged. Twice during this inquiry the PMA has spent months and a great deal of money investigating elaborate statistical studies which Senator Nelson claimed were proof positive of the evils of the drug industry's pricing practices. We were able to show, and our findings have never been questioned in any open debate by Nelson or his staff, that both studies were laced with misleading, distorted and false information. One of the studies was made by the Committee staff itself. Not surprisingly, we are still waiting for the Senator to accede to our request to have the PMA findings placed in the hearing record alongside of the faulty staff study.

In speeches, too, the Association has not hesitated to discuss the biased manner in which the hearings have been conducted.

"Loaded investigation . . . Handpicked witnesses . . . False and misleading testimony . . . Myth of generic equivalency . . . Attempt to destroy confidence in physicians and drugs . . . Political demagoguery." These are some of the shots which have been fired back at the Committee by industry spokesmen.

Without apology, I acknowledge my own declarations along this line from a great many platforms during the months when the Committee's time was devoted almost entirely to hearing witnesses who could be counted on to discredit the industry. Since the beginning, there have been 55 days of hearings at which 120 witnesses have appeared. At least two-thirds of these have attacked the drug industry, practicing physicians, organized medicine, or certain basic scientific truths.

The PMA was not given an opportunity to testify on behalf of the industry until the investigation was six months old. The occasion, although a tense one, was not without its humorous side. Senator Nelson, with a perfectly straight face, bespoke his pained surprise that anyone could possibly say that his hearings hadn't been fair and impartial, designed solely to gather information desired by Congress. In tones of bereavement, the Senator read some of the most critical portions of my speeches back to me when I appeared. It's an odd experience to hear your own words echoing in the Senate caucus chamber.

We were aware, of course, that it is standard procedure for the Chairman to interrupt a witness whose views do not coincide with his, and otherwise monopolize the time of the hearing. The published transcript for the first of our testimony shows that the session was called to order on page 1317, but I was not permitted to begin reading my formal statement until page 1348. By the noon recess, I had managed to reach only page ten of my 30-page statement which had been designed to provide the Committee with the most comprehensive information we were capable of assembling.

I was informed recently that a college political science class which has been reviewing the Nelson hearings did a word count of the record for the day that I appeared. It showed that I spoke 16,837 words while 18,844 were spoken by members of the Committee and its staff. Of these, 12,616 were spoken by Nelson alone.

So much for the highlights of the inquiry. Somewhere beneath the hubbub are, or should be, the facts which Americans and the great majority of their representatives in Congress need in order for *them* to derive some real benefit from this exercise beyond its entertainment value. Parenthetically, it should be noted that the inquiry was not without its dividends for Senator Nelson. He was handily re-elected to the Senate eighteen months after the hearings began.

Be that as it may, very serious questions persist. How precisely, is the nation supposed to determine from more than two years of unseemly forensic brawling before a Congressional committee whether or not the U. S. pharmaceutical industry is scientifically, economically and socially responsible? What has the Nelson investigation actually produced in the form of constructive, trustworthy and readily comprehensible evidence to guide the American people in their thinking, and Congress in its actions, on future drug legislation?

Beyond these relatively narrow points, other questions can be raised about the Congressional investigation process generally, and the flamboyant, emotional overtones to these performances which have become accepted through common usage. Do they really serve a useful purpose, by and large, or are they merely a cynical apparatus through which individual lawmakers can promote their private political future? Have they become a means outside the law, certainly outside normal judicial procedures, for inflicting punishment on an enterprise or an industry which has done no wrong except in some manner to arouse the enmity of a member of Congress and his subalterns?

The subject should be of deep concern to Americans generally, and particularly to those who might find themselves at any time before an investigating committee defending their business practices. It merits serious consideration by present-day students of government with a view to finding a way to remove the legitimate, historical powers of legislative inquiry from the realm of P. T. Barnum.

THE CHALLENGES AND OPPORTUNITIES OF THE 70's FOR THE HOUSING INDUSTRY

LOUIS R. BARBA
Chatham, New Jersey, Acting President, National Association of Home Builders

Thank you very much. I did not realize he was going to read some of this stuff that NAHB sent out. But since he mentioned Vermont, let me tell you about a little title question I had in Vermont.

About 1952, '53, thereabouts, with five kids, I decided that staying in motels or hotels and having the kids get up at five in the morning was just a little too much, and if we had our own house it would be a lot easier; they could get up and roam around and go out in the yard and play. So we bought five acres in Stowe, Vermont. I think some of you are familiar with it. We decided to build a house.

Like most builders, I was in a hurry. So I built the house prior to actually closing the title on the property. I asked the owner if he would give me a little memorandum stating that I had the authority to build a house before the final closing. And so I proceeded. This was in, oh, I think the last week in October, and by Christmas we had the house finished.

Two weeks later, the lawyer had the search finished and he called me and said he was through, and so on. I said, "Impossible. How can you finish a search on a strange piece of property such as this in two weeks?" I did not know the attorney because I asked the Realtor to go ahead and get the attorney, and so on, because I did not know anyone up there.

I asked the attorney "How did you do your search? Everything I do I get a title policy on. But how do you fellows do your search up here?"

He said, "All we do is go down to the local hall of records down the street and we go back on a few pages there and that is pretty much it."

I said, "How far back did you go on this?" He said, "I went back to about 1938, where the man who sold you the property acquired it from the U. S. Government on default from some other factors."

I said, "That is not enough. I want a title policy." He says, "The trouble with you fellows that come up here, you're a bunch of city slickers from New York and New Jersey. Take your business somewhere else. We don't have title policies in Vermont."

I said, "Well, now, listen, I'm not a city slicker. I live in a suburban area," and so on, "get me a title policy." And he refused. I found out I could not get a title policy in Vermont.

Now, that is back in 1952, '53, or somewhere through there. So I called my law firm in Newark, New Jersey, and I said, "How could this be? Would you contact a law firm in Burlington, Vermont, and see if something cannot be done about this, because I have a house going up on this property and the day might come I want to sell, and if there's anything wrong I'm in this thing for good."

It was true, you could not get a title policy. And I had my law firm follow through. Let me tell you, it took two and a half years to clear that title. They had to go to Australia to get signatures, they had to go all over the world.

This indicates, I think, the times and the boom that is going on in Vermont right now has changed a lot of these old ideas, and I think there are probably law firms up there now dealing in title policies —at least I hope so.

Because when it came time to sell that house, if I had not had a clear title policy I would have been in deep trouble. And as it was, it worked out just fine. But the policy was obtained through a Newark law firm right here in New Jersey.

I looked at the program last night, or the day before, on Monday, I guess it was, and I saw Dr. Jones was the speaker coming on before me. We were both testifying before a banking committee in the Senate, and they decided to have this testimony in a roundtable discussion.

And I said to Dr. Jones, "I have just looked at the program for the first time and I see you are going to be on before me and I know you are going to pre-empt everything I have to say."

So the talk I had prepared to give you is right here. I am not going to look at it, because everything that is in there was said by Dr. Jones.

So last night I got in here about 1:30, I guess, and I made some notes, and I am going to talk on these notes.

The Housing Act of 1968 that Oliver mentioned says that in the next ten years 26 million housing units are going to be necessary just to meet the needs—that is the minimum, 26 million—in the next ten years. Of that, six million are going to be low and moderate income houses. Now, that is the goal for the seventies.

My topic is the challenges and opportunities of the seventies in housing, and I am not going to talk too long because I saw quite a few people go out, and apparently the weather is very nice outside and it is enjoyable to walk along the boardwalk here. Being a New Jerseyite I can appreciate that.

But let's look at this figure. We, NAHB, the National Association of Home Builders, had a lot to do with talking about goals and directing and advising the Administration and the Secretary of HUD that goals would be an advisable procedure to follow, because at least if we establish goals we know the amount of money we are going to need to satisfy those goals.

And we talked about this for about two years. Dr. Jones was involved in these discussions because he has been a good friend of our industry.

And so, the 1968 Housing Act—and again President Johnson in his final message indicated that 26 million units were required. Now, with that number required in the next ten years, let's look at what has happened in the past four or five years.

In 1966 we had that real tight credit crunch. In 1965 we produced about a million and a half units. In 1966, because of the credit crunch, we produced one million one, approximately a million units. In 1967, as we were coming out of that, we produced one million two hundred fifty thousand. In 1968, last year, we produced a little less than a million and a half units.

As we came into this year and things looked pretty good in January and February, although the statistics did not show that, our economics department, I am sure, Dr. Jones and other people, looking behind those statistics, saw some other bad news. And as he said all he had to talk about was bad news.

But our reporting factors are the builders themselves. We have 51,000 members, and each week, each month, they send in their summaries of what are their intentions, what are their projections. I think, therefore, that our statistics are the best in the country, because they are telling us. And they were saying in January and February that things looked good. They had commitments.

Now, keep in mind that the twenty largest builders in the country, the Levitts and Bendine's and the Ray Watts, and so on, which have merged, the largest twenty, still keeping their own identity, produced less than two per cent of the housing. However, they are smart enough to pick up commitments early in the year. They usually do this. So that whatever commitments they have will carry them through the year.

The smaller builder, although he has become very sophisticated, does not have the same reliable source and supply of funds. He is only able to get perhaps five, ten, fifteen, whatever the number might be, in relation to his operation, he is only able to get a small number of commitments to follow through.

So we came into 1969 with January and February, one million nine. By mid-August we had dropped housing starts, housing permits, whichever indicators you want to use—and starts are the best as far as I am concerned—had dropped down to one million three hundred and fifty thousand. That is one — of a drop in less than six months. We estimate that before the end of the year we will be down to one million.

Now, the sad part is that we do not see things getting better. We see them getting worse right through the winter before they start to get better.

So what did we do? We had an executive meeting on September 19. The primary purpose of that meeting was to bid farewell to Gene Gulledge, our national president, because he had been selected by the Administration to become Assistant Secretary of Housing for Mortgage Credit and FHA Commissioner. We had hoped the Administration would put a builder in that job, a man who understands the industry very well, and that is the reason the meeting was called. And at that time I became acting president because Gene is being sworn in tomorrow. So I am going from here down to Washington again.

But during the course of that meeting, as the Executive Committee, made up of vice presidents from all over the country, got into the matters, got into other matters, it became apparent that things were so bad that we sure had to have what we call a call to action. And then we added something else to that: stand up for housing.

We had a call to action in 1966 and there were some matters in the Congress which the Congress could act on and if they acted promptly could see that some funds flowed into the industry. We had during the course of that strike—that is, the plane strike—600 builders show up—they walked in, they drove in, they hired private planes and they came in from all over the country.

We are uncertain on this one because the indicators showed that west of the Mississippi things were not nearly as bad as they were east of the Mississippi; at least that is what the builders were telling us in their reports.

Therefore, on short notice—the preparation and logistics involved are just tremendous, you have no idea—a little less than two thousand builders came into Washington, D. C., on Monday night and we had our meeting yesterday.

Builders are not that sophisticated on legislation. All they want to see is the final result. So we briefed them yesterday morning. We spent three hours doing that. And I must tell you that the call to action in 1966 was a mini affair compared to the one yesterday—with a turnout yesterday of from 600 to 2,000. And all we did in 1966 when you look backwards was to patch that ship. We really did not accomplish a great deal as far as solving some of the problems.

At eleven o'clock we asked the builders to go to see their Congressmen and Senators. The appointments had been made on Monday. We had builders from 48 states. The only builders that did not show up were the builders from Hawaii and Alaska. They could not afford it. It was too far. We had just about all the Congressional districts covered, that is, builders coming in from just about all the Congressional districts of the United States.

So all the appointments were prearranged and we gave them some written material and suggested they leave it with their Congressmen and Senators, and so on.

They came back at 2:30 so that they could give us a report—that is, the officers and staff—on what the Congressmen and Senators said in reply to the positions; we asked them to find out as to how they stood.

I will tell you what the questions were, because during the press conference yesterday afternoon, I asked one of the staff personnel to get me the results of the tally which were going on at that time. The first question we asked the builders to ask their Congressmen—this was all written out in a sheet and the Congressmen had to answer yes or no what his feeling was, or question mark—was he familiar with the crisis in housing, the mortgage crisis; second, will he support a congressional mandate to the Federal Reserve Board and Treasury to buy FNMA and Federal Home Loan Bank Securities; will he support Congressional authorization for FNMA to deal in conventional mortgages. That is 80 per cent of the market. VA and FHA is less than 20 per cent of the market. So that is a major segment of the market that FNMA is not supporting.

Will he support Congressional authorization for exemption from taxation of the first $750 of interest paid on savings in thrift institutions. This goes to the S&Ls, the mutual savings banks and the commercial banks, that part of the portfolio which they used toward mortgage investment.

We are saying that that category of savers needs some assistance. Otherwise, why is he going to put his money in S&Ls and just stand still. If inflation is going along at the present rate he is actually losing money by putting his funds in the S&L; he can do better elsewhere. Dr. Jones went into that very carefully.

So we are asking for some sort of tax benefits. Will he support the TEEG Bill. Well, that is an investment of VA trust funds into the mortgage instead of buying just treasury notes with the VA trust funds.

And finally—and this is a big one—will he support Congressional authorization for the imposition of selective credit controls. If nothing else works in this battle against inflation then he is willing to see that controls are placed upon the economy.

Now, as I say, they came back at 2:30. At 3:30 we were in a press conference on TV clear across the country—and it has been publicized tremendously—and I asked for a report of what was taking place in the big room, and here is what the congressmen said:

Most Congressmen and Senators are familiar with the mortgage credit crisis. We knew that.

Most indicate they will support legislation which would direct the Federal Reserve to buy FNMA and Home Loan Bank Securities to support the mortgage market. So we made our point there.

Most of those contacted will support Congressional authorization for FNMA to deal in conventional mortgages, that is, to support the conventional mortgage.

Most will support congressional authorization to exempt taxation of the first $750 of interest paid on savings in thrift institutions.

Most will support the TEEG Bill.

Most are generally unfavorable towards selective credit control.

This is a big package and it is complicated. Stating it in this form needs a lot of explanation and I am not going to get into that at this time. But it adds up to better than ten billion dollars if we accomplish this miracle.

We went over to the White House—because we don't like to do things underhanded—and we let the administration know what was taking place. I met with one administrative aide, another group met with another administrative aide, and we had another man meeting with the President. So we had pretty good coverage.

This is the kind of action that is needed to redirect the flow back into the mortgage market so that this housing industry can produce the housing that is absolutely essential.

There is a book called *Report of the Commission on Mortgage Interest Rates to the President of the United States.* Mr. Johnson created this Commission and there are some very bright guys on the Commission. Aside from certain Senators and Congressmen, let me indicate to you who are the outside appointees: Mr. Dustin Berry, Oliver Jones, Sol Klamen, Dr. Rogg, our executive vice president, and Mr. Weber is on it.

Let me just read one or two sentences here in the final report:

> For too long, housing has been treated as one of the postponements. Achieving of the housing goal requires a wholly different approach . . .

And we drop down another half a page and it says:

> To meet the housing goal, then, about one per cent of the national output must be shifted away from present uses and into home building.

I think that pretty well summarizes the whole book. It goes into various matters, how it can be accomplished, it has charts, and so on. It is a very fine study of the whole problem.

But the sad fact is that the Congress will sidestep the issue unless the Administration supports that concept, that is one percent be shifted away. And the Congress is not willing to accept that responsibility. They cannot get enough guys in there to want to do that. There are too many other private sectors: the consumer sector and the manufacturing sector and all these other sectors that have the congressman's ear also.

So housing is in for a tough time, and I think perhaps that call to action yesterday, when the builders were swarming through the halls of the Senate Building and all the other buildings over there, has made its impression. The publicity generated from it has been excellent.

Now, I'm going to conclude. There is only one other thing I want to touch on, and that is the present tax reform bill. There are some matters in there, the depreciation which the new apartment house will get but the second buyer will not get, and the capital gains aspect of it, are not favorable factors to the production of apartment housing. They will inhibit, in our opinion, that major factor of the market.

We are in an era right now when we have a lot of people between 20 and 25 who are not going to buy housing and who want to rent apartments, and we are going to have a lot of older people beyond 60 who want to rent apartments, so that the apartment sector is going to become like it is—a very large part of the market, i.e. 40 or 50 per cent of the market, for the next few years.

And yet the Congress deliberately—that is what is presently in the bill—put in this inhibitor to prevent investment. It has never been a real good investment. You can put your money elsewhere and do a lot better, particularly for the builder or the investor.

I testified on Friday for the second time, and hopefully they will see the light and make some changes in that tax bill. If they do not we are in for some trouble and you are going to get higher rents and you are going to get all sorts of things happening, and the young people are going to pay those higher rents, because no one is going to build apartments with all the problems involved in them for a two or three per cent return, and if he should find a buyer for it having to pay—what he picked up in depreciation—having to pay it all back, it does not make sense.

So it is toward a goal of equity that we are concerned with, that is, the NAHB, as we like to say, the spokesman for the housing industry, and it is that goal of equity that we are striving for and that is the challenge of the 70's.

Going back ten years, we had a man from this city who was then president of NAHB, a fellow by the name of Carl Metnick and I remember that he made several speeches and he talked about the Golden Sixties. I don't think there are many builders who saw the Golden Sixties. I would call it the Depressed Sixties. That is what happened.

So now they're talking about the opportunities in the seventies. And we have breakthrough and we have all sorts of things happening in the building industry. Well, breakthrough is a fine thing. All sorts of studies have been made, all sorts of public releases have been made, you have seen them, the cost of housing is coming down—it is just pure nonsense. Anyone who understands this industry knows that the cost of the house itself, that is, the bricks and the mortar, is only 50 per cent of the cost of the house. The rest of it is in the purchase of the land, in the fees and in the sales programs, all these factors make up the other 50 per cent.

How in heaven are you going to reduce the cost of that 50 per cent by 25 per cent? And that is what they are saying. I am telling you, because you are involved in this industry, that it is pure nonsense. The cost of housing has gone up 15 per cent in the past year, not because the builder is making any more money—he is making less—but because the cost of labor has gone up 15 per cent in less than a year alone. The cost of materials in some cases has gone up a hundred per cent. Lumber went up over a hundred per cent in a year. It has come down, most of that increase, because of the slowdown in building. That is the only reason it has come down. But that has not been solved, the cost of lumber, that situation has not been solved, and when housing gets back on the track the cost of lumber is going to go skyhigh again another hundred percent. That has something to do with the Agriculture Department policies on the national forests.

So that this Association which I represent would just like to build houses. We don't want to get involved in all of this other stuff.

We don't want to start talking to the banking committee and to all the other committees, about the social problems and all that stuff. We have had to, as a necessity of survival, involve ourselves in these major questions, and we have carried a lot of impact over there. Those of you who are familiar with us know that the Congress highly respects us and they ask our opinions and they ask us to come over there and testify. We have testified 22 times this year. It is because they want our advice. They understand we know what we are talking about and we do not exaggerate and we do not get into all the other nonsense.

I want to thank you very much for allowing me to speak. I hope this covered the subject. The opportunities will be there, very much, in the seventies, providing we get over this money situation, and hopefully, instead of patching the ship, I hope we can put it in the water in real good condition.

Thank you very much.

TOCKS ISLAND . . . 27 MILES OF WHITE WATER AND 27 TONS OF PAPER

JOHN H. McDERMITT

Title Officer, New Jersey Realty Title Insurance Company
Newark, New Jersey

"Tocks Island" is a combined U. S. National Park Service—U. S. Corps of Engineer Project involving the acquisition of approximately 72,000 acres of land in two states. Its formal title is Delaware Water Gap National Recreation Area.

This first slide will help you locate it. You will see in roughly the center of that picture the city of Port Jervis. This is the northerly anchor, so to speak, of the project. The Delaware River runs as the green boundary between New Jersey on the right and Pennsylvania on the left.

From Port Jervis down to the first major curve in the river is the extent of the project. As we stand here today, we are approximately at the period in the "N.J.", so that the project itself is diagonally across the state from us.

Those of you who came here from Pennsylvania have seen the coastal plain area of New Jersey. This project is in our mountain area. We are a small state but very varied geographically.

Upon its completion, this will be the largest national park east of the Mississippi River. It has now been renamed the Delaware Water Gap National Recreation Area. But the old names die a little hard—it is much easier to say Tocks Island.

Central to the project is a 37-mile stretch of the river from Columbia, New Jersey on the south, to Port Jervis, New York, on the north. The land acquisition will take in 871 year round homes, 1600 seasonal homes, 105 farms, 92 commercial establishments, 28 hotels and motels, 12 resorts and, at last count, 15 known cemeteries. I am glad to say that ten of those are on the Pennsylvania side of the river, because while generally we are in an excellent state on the equity side, our New Jersey law on cemeteries is somewhat obscure.

The land to be acquired lies in Monroe and Pike Counties in Pennsylvania and Warren and Sussex Counties in New Jersey. As I say, it totals approximately 72,000 acres.

This next slide will localize the project a little better. The project is shown in green at the center of this slide. To the lower right is the metropolitan complex of New York and northeastern New Jersey. At the bottom of the picture is the metropolitan complex of Philadelphia and Camden. Within a half day's drive of this park and its major entries almost 25 per cent of the population of this country resides.

Two of the new interstate highways pass the project, number 80 and number 287. The major park entry points lie about 50 miles from New York City and about 70 miles from Philadelphia. The park will be about a two-hour drive for almost 18 million people between Philadelphia and metropolitan New Jersey and New York.

This third slide gives you a more particular notion of the park. It marks the park's boundaries in pink. As you can see, it shows the dam on the left and the reservoir in dark outline. The Corps of Engineers is acquiring not only the black but also the green outline directly adjacent in order to have flood planes available in connection with the flood control aspect of the dam. The gap itself, which is one of the major features of the park, lies at the left near the bottom of the park and is the major entrance from the south.

The next slide shows a view to the south looking at the gap itself, the river at the bottom right, coming from the bottom right, and it is much as it would

appear today because autumn has already hit this higher mountain country.

The river formed the gap by cutting through the Kittatinny Ridge to a depth of approximately 1200 feet. This is very ancient stone, part of what geologists call the Laurentian Shield which runs northeast to southwest along the eastern coast of the entire continent. But the mountains are not extremely high. Those of you who are from the "Inland Empire" would call them "hills," I expect.

The Tri-State marker near Port Jervis has an elevation of 1600 feet, and on this slide you are looking at Mount Tammany, the local name for the New Jersey shoulder of the gap, and its elevation is approximately 1600 feet also.

The New Jersey portion of the Appalachian Trail runs from the gap northerly along the Kittatinny Ridge. This trail runs from Mt. Katahdin in Maine to Southern Georgia. Any of you who are hikers know this great hikers' path. It is beautifully maintained here by local hikers' clubs. The entry, as a matter of fact, at this point is approximately at the center of that brown patch with roads running through. It is one of the areas where one can leave his car and enter the trail if he is attempting to establish a hike over the years for the entire length of the trail.

The region today is one of large parks, rolling hills, deep shaded hemlock gorges and small lakes—beautiful mountain country.

One of the lakes, Sunfish Pond, which lies on the top of Kittatinny Ridge to the left in this photograph, is believed to have stood almost unchanged for a half million years. It has been the object of great interest to conservationists and as you might imagine, the object of some controversy between those conservationists and the power companies who are interested in utilizing the height of Kittatinny Ridge for hydro-electric power production.

This is a view of the river at the dam site. Central in the picture and on the right is Tocks Island itself. To establish it for those of you who are somewhat familiar with the area, this is approximately a mile and a half above Shawnee-on-Delaware.

I want to mention now for you who are concerned about conservation and nice places to go, that Shawnee-on-Delaware is not included within the park area. It is a logical piece to be included in it but for some, I am sure, proper reason it has been excluded.

The next slide is an aerial view of the lower portion of the valley and the Kittatinny Ridge in the far background to the upper right. That is LaBar's Island in the center of the river. The stream does not look very wild there, but, believe me, any river in mountain country like this, after a heavy rain, can rise very rapidly and there are times when the Delaware is a very wild river. Not the Colorado maybe, but it can be a very destructive force.

The cool summer temperatures of the region and the short growing season held it until recently to a grazing economy. It has been a dairy region for some time. Formerly, before the railroad surrendered completely, it was served by four and was a popular vacation resort. Today you visit it by car or by shank's mare.

In keeping with the general population trends in rural areas, the project has been losing its permanent population on an accelerating basis over the years since World War II and has become increasingly popular as a vacation resort.

In its early days, the Delaware River produced a rugged Durham boat which is designed for turbulent waters, and like the Conestoga wagon traveled across the country and lost its identity as a local thing. The Durham boat is familiar to all of you who know the painting of George Washington crossing the Delaware. These boats were wide, roomy vessels. He is portrayed carrying the flag and standing in the bow of a Durham boat crossing the ice-filled river. Most people believe that the artist took even greater liberties than usual because only a nut would attempt to stand up in a boat crossing an icy river at night during the winter. I am sure the Father of our country had better sense.

Next is a series of slides I had made from the present strip map. It is a black and white map and of extremely large scale, so it is rather difficult to pick out terrain features. But some of the major points can be identified. The dotted lines here are the park outline, and these are topographical lines (following the elevations). This rather heavy dark line is one of the handsomest features of the park. It is approximately 15 miles long and is a solid rock escarpment. From the top one can look to the southeast and see almost to the fall line in much of New Jersey and lower New York State.

A major feature of the project is the 15,000 acre pool which is now planned to form for a distance of approximately 27 miles up river from the dam. Engineers call it a pool. It seems to me it's a real "swinging" pool. Actually, of course, it is a large lake.

The dam, which is authorized under the Federal Flood Control Act of 1962, will be 2600 feet long, 3200 feet in width across the river at its main stem, and will rise 160 feet above the bed of the river.

The numbers involved are staggering. There are nine million cubic yards of earth and rock fill. There will be, as I say, a 15,000 acre lake. There will be, where there are now about 55 miles of shoreline, better than a hundred miles of shoreline. The reservoir will have 105 billion gallons flood control capability and 140 billion gallons of normal storage and immediate dam site hydroelectric output of 307 million kilowatts annually. In 1967 dollars it is anticipated it will cost approximately a quarter of a billion dollars.

The project, like so many in which the federal government has its hand, grew from comparatively small beginnings. The Delaware River Water Shed has served cities in the middle Atlantic states for a hundred years.

As the hinge of Megalopolis, New York City has constantly sought potable water over a wider and wider area. During the 18th century, they drew water from Westchester County and during the 19th century they were satisfied with the Catskills. But during the 20th century, they have reached out to the head waters of the Delaware River.

As a result of the inevitable conflict between the states of New Jersey, Pennsylvania, and New York, the Delaware River Basin compact was formed among them with the addition of the United States of America as a member. It was originally conceived as a water storage and flood control project. The Delaware River Commission and the Corps of Engineers began planning that water control project approximately 15 years ago.

Early in the game, the conservation organizations and local people supported the recreation use of the same area. This was formalized in 1965 under Public Law 89-186, which authorized the National Park Service to acquire approximately 50,000 acres around the dam and the reservoir with the Corps of Engineers acting as acquisition agent.

The Delaware Water Gap National Recreation Project is a multiple purpose project. It figures importantly in potable water supplies for the three large metropolitan areas: New York City, Northern New Jersey and Philadelphia, as I indicated.

Secondly, the Tocks Island dam, together with a series of smaller dams on major tributaries of the Delaware River, which are erected or have been, will be a major factor in preventing the dangerous flash floods which plague the river as far down as Trenton, New Jersey, and Bristol, Pennsylvania, with occasional disastrous loss of life and property.

Thirdly, as I say, the dam headwater will supply electric power at the dam face, and if present plans are carried out the waters of the main pool will be used in a pumped storage power project.

So far as that use is concerned, a major problem now being explored is the effect of the daily raising and lowering of the lake level resulting from recurrent emptying and filling of the upper reservoir in the pump storage projects.

The potential for harm to riverine plant and fish life is the subject of extensive experimentation. The results are expected to influence the whole future of this method of producing the electrical power so vital to urban life.

Fourthly, of course, there will be the recreation use of the project.

One of the major benefits of the project stems from the impetus it has already given to the creation of regional waste disposal planning and groups. There are now interstate groupings of municipalities in the four counties working on central fluid and solid waste disposal plants in the area. If this can be achieved it will be a major breakthrough, because only in such fashion is the pollution that we have been subjecting ourselves to, going to be controlled. It will be "creative federalism" at its best.

The improved quality of the river water should produce a substantially increased fish population. The dam will have fish ladders built into it. The Delaware, like many of the major Atlantic tidal rivers, is the subject of shad fish

runs. Anyone who has ever sat down to a meal of baked Delaware shad or shad-roe will be interested to hear that this is going to be one result of the project. Shad have been in short supply in both the Delaware and Hudson Rivers in recent years. So sports fishing in the lake should be one of the major recreational uses.

This next slide shows the central portion of the project. You can see that the land has opened up somewhat as we move to the north. The river itself here, when the damming is completed, will create a peninsula there in the central portion of the picture on land which is now used for grazing cattle. However, the recreation sites planned for this area are anticipated to be the scene of intensive use.

There will be nine boat launching sites along the pool. A system of hiking paths already exist and will be augmented. There will be ten picnic sites and, separately and apart, ten campsites.

This is the northern portion of the project at the extreme right hand portion. At the last major bend you can see how the pool has now reached its northernmost limits at the city of Port Jervis. The Neversink River comes in from the right on the northeast. It is now under consideration as one of the scenic rivers of our country.

There will be seven separate swimming and bathing areas, so that the whole area will be of wide appeal.

It is deliberately denominated a recreation area rather than a park so that hunting can be permitted in the area also. In this rolling mountain country some of the best deer hunting in the state can be found. The pine barrens behind us here have some great deer population too. They are a little larger up in the northern part of the state. And in recent years Sussex County has had some of the highest deer populations that any county in the state has boasted.

This slide, which was prepared by TIRAC, the Tocks Island Recreation Advisory Commission, which is the grouping of municipalities in the area, will give you some idea of the volume of people who are expected to use this park.

On the righthand side as you view the slide are the approaches from New York City. And as I recall the slide, it indicates something close to seven million people coming in from these approaches.

On your left of the slide approximately three and a half million people will come in from the west. The broad surface of course, indicate the major access roads to the park.

The black line at the bottom is the existing Interstate Route 80. They have not yet, I believe, put Interstate Route 287 on it. But the park, as I said, will be readily accessible to a very large number of people.

In the spring of 1966, the Corps advertised for bids for title examination and insurance, setting in motion the chain of events which leads to my being here today. I would not want to be parochial about it. New Jersey Realty Title Insurance Company is not the only title insurer in this project. We are, I think, the best, but not the only one. There are three companies involved on the Pennsylvania side of the river: City Title Insurance Company of New York. Title Insurance Company of Pennsylvania, Berks Title Insurance Company; and on the Jersey side of the river another title company, whose name escapes me at the moment, is involved. All of these are working through their agents in the area. As far as I know only New Jersey Realty Title Company went into the bidding on an aggressive company-managed approach. I do not know whether this is the smartest move we had ever made. There ought to be some lesson to be learned from that, but I am not sure what that lesson is.

The initial invitation to bid was for the title search and insurance work on 2100 tracts in a development on the eastern edge of the project area. It was selected for initial acquisition because news of the project had already begun to push land prices upwards. Developers were using the fact of the government's interest in the property as bait to attract buyers—actually advertising prices based on high markups when the government purchased the land after the happy lot owner had enjoyed several years of glorious summer vacation and winter hunting.

Corps regulations and the contract permitted the ordering of additional policies in the same township. But this is about the only flexibility involved in dealing with the Corps of Engineers, at least in this district. Those of you who have dealt with the federal government have some idea of the tightness of their contracts. They require the most accurate and complete information conceivable on a very tight schedule.

Each area of report and the standards to be met are spelled out in detail. Strict timetables for the production of reports and quantity to be delivered against 30 and 60-day periods from title order are established, without any minimum order obligation on the government.

This is a little difficult to live with. It is necessary because of the appropriations of money that reach the Corps. They can have no money at all in the last three months of a fiscal year, and come July 1 they are like drunken sailors—they want to close every title you have reported in the past eight or nine months because then appropriations reach them.

One of the requirements that is built into the government's land acquisition contracts that has been most useful is that the ALTA standard form of fee policy must be used.

My company disagrees, philosophically so to speak, with some of the language of the conditions and stipulations section of the form. We have found it to be very good otherwise. It has great flexibility of layout and an excellent Schedule B.

ALTA does not need my praise, but I do think I ought to report our happy experience with it. I am sure that our experience on this project will lead us to a better form on regular policies and also to economies in producing them.

My company has always competed actively for business of any sort, and this invitation was no exception. We had better compete or we'll die. Some of the challenges we heard about this morning and Monday give me pause.

I am forced again to recall the opening sentence of the soldier's handbook that was delivered to me, and probably a lot of you, when I first answered the call of Uncle Sam too many years ago. In a masterpiece of understatement that I have never forgotten, Army Field Manual 1-120, in its opening sentence, says: "The life of a soldier is sometimes very hard and difficult."

I cannot help but feel that the challenge of the seventies is going to make life for a title man a little harder and more difficult. It will, I am sure, make it a good deal more interesting too.

A team consisting of the executive vice president of our company, Walter Sprouls, the head of our Home Office Abstracting Department, Wes Eick, the sales manager, Charles Harvey, and myself as title officer, was convened to evaluate the invitation as to cost, its effect on existing staff and existing production commitments, the most effective means of producing the required policies and, of course, to come up with numbers for a competitive bid.

Although a time consuming method, we have found this approach to bidding on large bulk transactions most effective. I would commend it to all of you. It insures that all segments in your company have a voice in the final bid, and through sometimes bloody discussion, all of the factors involved in making the bid are considered.

The company had used this method successfully in preparing bids for the expansion of Fort Dix, the creation of the Camp Kilmer staging area, and the creation of the Earl Naval Ammunition Depot during World War II, and we use it also in preparing bids for federal and state highways and urban renewal projects.

So the members of the team work well together. As I say, it can be very time consuming for the members who are, of course, your key operating personnel, but it has been most effective in producing successful bids and also in effecting a unity of feeling, a sense of commitment among those key men, which is most important, and which can never be achieved by administrative fiat.

If the people who are going to be overseeing the production, managing it, feel committed to it because they have had a voice in the acquisition of the business, you are going to find, especially on a project which runs over a long period of time that other commitment will be of great value.

Those of you who have to deal with the very intense feelings engendered in your production department by the demands of aggressive sales people or the heart rending tales of woe of sales people whose promised delivery dates are not met because of the stubborness of production people insisting that a proper abstract be made and read, can appreciate this, I am sure.

There is a particular caveat in preparing the bid which I would mention—I wrote this piece before we heard this morning's speakers too—and that factor involves the impact of inflation on your reporting.

A single order for several thousand

policies appears to be and, of course, is a very attractive piece of business, particularly when it is spread over a fairly short period of time. It is the sort of thing that gives a harassed, overworked and quota-ridden sales manager, a warm sort of protected feeling—like a short-term security blanket.

But in these days of really rampant inflation, if I may coin a phrase, that beautiful single order for several thousand policies can fade into a money swallowing monster on your profit and loss sheet. The team spent a great deal of time in preparing this aspect of each of our bids —apparently too much so, since, as I say, another company was successful in one of the invitations. We were the successful bidders on the other three contracts awarded to date on the New Jersey side of the river.

Once we were notified that we had been awarded the contract, the abstracting department commenced establishing early title data in the area.

And I may say that we found viable land records in Sussex and Warren Counties running back to a time before the American Revolution.

The abstracting department commenced its work, men were sent to the office of the surveyors involved—in this case Aero Surveys of Philadelphia—to establish liaison, and we commenced training our reading and clerical help for the specifics of the job involved.

Except for the volume involved and the institution of some economies which it permitted, the title work is handled fairly routinely. We augmented our examination staff at Newton, which is the Sussex County seat, and we prepared a number of specialized control forms. Preprinting of forms of policy and reproduction of master easements and restrictions permitted us substantial time economies.

The contracts stipulate that policies must use descriptions which the Corps itself prepares or those prepared by its survey contractor. This, of course, was an enormous saving to us in time—and it was in the area of expensive reader time.

However, the descriptions which the Corps prepares are based on the national grid system. So that while you may have locateable descriptions in your deeds of record when you have a filed map it is rather a different dish of tea when you are dealing with descriptions which are drawn from deeds which were first created 100, 150 years ago.

The national grid coordinate system, of course, uses simple compass direction and lengths and its monumentation is limited to the location of points in the national coordinate system.

Our readers experienced a great deal of difficulty in determining the relationship between those grid coordinate descriptions and the deed descriptions which appeared in the local records. We adopted the practice of having the most modern descriptions in the chain of title plotted into the maps supplied by the Corps in support of their descriptions by journeyman examiners. This economy, which not only saved expensive reader time but also, God willing, will save us from omitting to certify some ownership, has been most useful.

A further Corps requirement that added enormously to the physical burden involved in this transaction is their requirement that everything that is submitted to them be in quadruplicate. We anticipated something like this, of course, but when it gets to the point where you are writing a letter to the Corps to tell them that you now have satisfactory proof on some judgments, and they can omit item 6 in Schedule B, and that has to go in six copies, it gets burdensome, time consuming.

The Corps has a passion for exactness. The description system they have imposed, which, of course, results in a nice net compact area when the acquisition is completed, carries over into the Corps's dealing generally. There is a rigidity of mind, an unimaginativeness that you will only find dealing with some branch of a thoroughly bureaucratic organization. Not only do you have to do the job, which, of course, we all expected to do, but you must do it by the numbers.

Control in a huge land acquisition program like this is vital. We are gaited for it because we do a great deal of examination and acquisition work for utilities in this state on their rights of way. If you do not have an adequate control system you can have chaos with a capital "C." But if the control is too rigidly applied it produces its own chaos.

The Corps maintains a computer supervising policy and endorsement production at the Philadelphia District Office. That same computer is used in the fiscal accounting operation. This results in a very laudable promptness in payment of title bills. Our accounting department submits the proper forms and prompt payment results. This is a very gratifying aspect of dealing with the Corps of Engineers. We have practically no accounts receivable in dealing with them. I had the first contract surveyed recently and in something over 2,000 policies to date found only eight open items, three of those we goofed on ourselves.

So a computer is fine in controlling orders and policies and can come up with the numbers every time. But it cannot digest the fact that closing cannot be had because the contract vendor has died intestate, leaving ten or twenty heirs, two or whom are in Vietnam, three of whom have not been heard from in thirty years, at least two of whom pursued marriage on a compulsive basis, and several of whom reside in obscure hamlets of India and Russia, served only by a semi-annual camel caravan mail service.

All of these things have really happened to us in dealing with land acquisition.

The professional savy of the closing attorneys in the Project Office of the Corps at East Stroudsburg has been a salvation. Jim Shepard is their chief closing attorney. They have a group of five men working with him who have a great deal of experience working in land acquisition. They represent an enormous store of experience in problems of this sort. Two of them are New Jersey attorneys, and this has helped greatly in dealing with the problems of acknowledgements, proofs as to judgment, marital status, and so on. As you can imagine, we maintain a very close relationship with them.

Closing an average of 25 titles a week, month in and month out, over a two-year period necessitates this. And the economies which it effects in the closing area are substantial in terms of time and money.

We have found it entirely practicable to have one man who is customarily a staff searcher for us handle almost all the closing work in the county seat. The Corps' policies, all four of them, that the with the deed prepared and ready for record, offer it to the clerk, and our representative simply acknowledges on the Corps' policies, all four of them, that the deed has been recorded. He then sends us photostats of the daily recording sheet of the county clerk and his work is done.

This has been most helpful, and I think that any of you who are operating in counties where there is that type of recording service available ought to consider it in your bidding.

The best spirit of cooperation and the best brains of the Corps and this company can bring to bear so far have not yet solved one problem involving about 400 acres. The Corps as a matter of policy is very reluctant to put land into condemnation.

On the first 2200 parcels acquired, involving almost 4,000 acres, they have only condemned 18 parcels. So this reluctance to condemn is more than just a word policy, it is a fact.

But as to the land that came through the hands of the Blue Mountain Development Company, the Corps ts going to have to face it, I think. In 1924, Blue Mountain Development Company acquired title to approximately 400 acres on top of Kittatinny Mountain, in an area very remote from human habitation, accessible only by a road so steep and winding that to this day it is called "Fiddler's Elbow."

Being a typical forward-looking land developer and very conscious that what he was doing might fix the nature of the land use in the area for generations to come, the Blue Mountain Development Company presented the lotting of its acreage to a group of engineering school students as a problem.

Predictably, they came up with a gridiron layout of 20 by 60-foot lots on 20-foot streets which would have done credit to the planners of the city of Mesopotamia about 4,000 years ago. As a matter of fact, the maps we have found of this area check out almost by footage with maps appearing in Wilson's *History of Cities*, of cities in Asia minor 2,000 years before Christ.

Because they loved their work or because these engineering students were simply eager, they got carried away with the thrill of the project and they proceeded to protract their gridiron northwesterly far beyond the northwest line of this property over hill and dale, down the cliff and across the Delaware River right into Pike County, Pennsylvania. If we could ever find all of the maps they produced on the scale of those which we have

in hand you would have a strip map much wider than this stage.

Any rational person would expect that having done this great labor they would have rested. God did, but not these young men. The lots have not yet been identified, and obviously any fool can see that this had to be done. I could see it myself.

It was accomplished—and this, of course, is 40 years ago—by simply beginning at the easterly end of the strip maps, numbering the northeast corner lot 1, and the southeast corner lot 1, and block A and B, respectively, and then running a 999 lot series endlessly in successive alphabetically lettered blocks which were established arbitrarily at lot 999 in each case. Of course, the men were working from two sides, from the outside of the map to the centerline, so you can see you had a very handy map situation to work with.

Not content with this—or, rather, with the damage done so far, I guess, and trying to find a way to do more—the developer went into a very intensive lot sales campaign. Not only did he advertise in newspapers and magazines apparently up and down the entire eastern seaboard, but he also persuaded local newspapers to give away lots with newspaper subscriptions, and some of the local furniture store operators to give them away as a come-on in the sale of furniture. He did all of this without filing any of the maps. So by 1932, when the real tough times finally reached up into Sussex County and sales ceased, approximately 1400 deeds had been recorded in Sussex County, each one conveying from one to 200 lots on unfiled maps.

This story does not end there. We are talking about a period of 30 years. In the interim after World War II, another enterprising land developer came on the scene. Of course, by this time, as you can imagine, the local bank had acquired title to this colorful 400 acres. They recognized an opportunity when it knocked, and the whole race was on again.

You would expect in this day and age —we are now in post World War II era —that the number two developer would acknowledge the previous mapping. You know, of course, that he did not. Gridiron layouts in 20 by 60 foot lots have no place on the modern scene. This new developer ordains a 25 by 100 foot lot on gracefully curved streets, a modern 30 feet in width, and being a modern man, he files some of his maps but not all of them. He does not want to spoil people completely—and he proceeded to sell his lots on a somewhat less hectic scale.

This went on for about ten years. The Township Planning Board's injunction against his selling from unfiled maps, a federal income tax lien, a state franchise tax lien, and the Corps of Engineers arrived on the scene in about that order, and sales have since ceased.

It does not take any imagination at all for those of you who are production title men to realize that the problems of location and certification of land like this is only the beginning. The location of heirs is fantastic.

This problem became clear to us about a year and a half ago, and I made it known to the Corps—original and four copies of a four-page letter. After this letter, a year and a half's time and a really full dress conference with the district engineer and the Regional Corps of Engineers representatives, at which we had lieutenant colonels emptying the ashtrays, we still have not gotten the decisions we must have from the Corps on the modus operandi to handle even the condemnation of this land.

It has been an interesting experience, even though there have been some rough spots in working with the Corps. As I have said, they are intelligent and knowledgeable about land titles. They are zealous in their devotion to duty, and far more conscientious and efficient in their work than the citizens of this country have a right to expect. They are good people.

By way of justifying the subtitle of this magnus opus, which is "27 Miles of White Water and 27 Tons of Paper," I weighed several specimen title boxes after revisions of descriptions, closing proofs, and so on, and the issuance of final endorsement, and they averaged a pound and a quarter.

So of the approximately 4500 titles, we have delivered to date approximately 2.7 tons. I am afraid that a decimal point got dropped somewhere. It makes a much better title, in any event.

The acquisition program has been well funded for this fiscal year and is about 50 per cent completed on the Jersey side of the river. We expect the bulk of it to be completed by 1973 unless the President's slowdown affects this too.

Whether our grandchildren will see all of the problems wrapped up is rather in doubt, but many portions of the park will be in use next summer. The Park Service is, quite, properly, anxious to get what they call viable portions of the park in use, and the vicinity of the gap will be available not only for visitors on a daily basis but also for campers.

This ends my story for the present time of Tocks Island. It remains only for me to thank you for your tolerance and courtesy, and I do very much.

Thank you.

THE ABC's OF ATC

E. L. SHOOP, JR.
Public Affairs Officer
National Aviation Facilities Experimental Center

I am delighted to be here to discuss subject of growing interest and concern to people throughout the country. Air traffic control has made headlines for only the past year or two. It is still one of the least known, but most essential ingredients of modern aviation.

Your association's practice of fitting remarks of general interest into a busy convention agenda is most commendable. In this instance, however, I think you may be surprised to learn of the relationship that currently exists between real estate and air traffic control's most serious problem.

Some wit said recently that today's airport/airway problem began when Wilbur turned to Orville and said, "Let's build another one." Many people think that air traffic control is the Achilles heel of our air transportation system. Others talk of air traffic congestion in terms of lack of concrete. To get to the ABC's promised, let us examine our air transportation system and look at some of the fundamental principles of air traffic control and the movement of air commerce.

The public demand for air transportation has been growing at a rate of nearly 20 per cent each year. U. S. Airlines in 1964 carried 82 million passengers. Last year this figure was 150 million and this year we are estimatng 170 million.

Certificated route carriers generate close to 100 million revenue passenger miles annually — with nearly 14,000 scheduled flights operating daily in this country. Operators of General Aviation Aircraft—many now using air traffic control services—spend about 25 million hours a year in the air, and the number of active general aviation aircraft is increasing rapidly.

Worldwide, the total number of passengers traveling the airways stood at 236 million last year—and will reach 770 million by 1980.

Airline passenger volume, of course, is not the only measure of air traffic activity. The nation's airways and aviation facilities are not there for the exclusive use of the airlines. They are shared by other civil and military users, and together, these customers compile some pretty impressive air traffic figures.

Last fiscal year, for example, at airport with control towers operated by the Federal Aviation Administration, control specialists handled 8.6 million instrument flight operations for the airlines. They also handled 3.2 million for the military and 2.9 million for general aviation. These instrument flight operations, however, represented less than one-third of the total number of takeoffs and landings handled by FAA control tower personnel during the year. The total volume ran to 53 million operations, of which some 40 million involved general aviation traffic. These totals have increased steadily every year since 1962.

By any yardstick, aviation today is a

thriving, dynamic industry—a $5 billion a year business in the United States alone —and with tremendous growth potential. Yet this otherwise healthy specimen now suffers from limitations which could seriously stunt its further growth and cripple its viability.

Air traffic control is not the weak link of our national aviation system, but a vital link that is now grossly overburdened.

The basic purpose of air traffic control is the safe, efficient and expeditious movement of air traffic—to protect life and property by preventing collisions. There are, of course, rules of the road which apply to the airways the same as they do to the highways and waterways.

These air traffic rules rely on the "see and be seen" or "see and avoid" principle. Obviously, "see and be seen" cannot apply when aircraft are operating in the restricted visibilities of bad weather, and is inadequate when aircraft are operating at speeds beyond the capability of human eyesight and reaction time or in heavily congested areas. Under these conditions, the control specialists on the ground assume the "see and avoid" responsibilities.

As aircraft speeds have increased (and even subsonic jets close on each other at better than 1,000 miles and hour), as congestion has increased (and schedules at Chicago's O'Hare average about two flights a minute during peak hours), and as more operations occur during bad weather, there is increasing reliance on the air traffic control system to both protect and expedite traffic.

Conversely, our airport/airways system —the system which must support and accommodate the airplane—has not kept pace with the tremendous growth experienced in other segments of aviation. As traffic outstripped the capacity of the total ground environment to handle the volume, many people assumed that the existing air traffic control system had broken down, but that the problem could be solved by the addition of a few "black boxes" here and there.

Certainly, it has and will continue to take more "black boxes." The electronics industry already has given us the marvels of digital computers, sophisticated displays and various other tools desparately needed to move air traffic more safely and more expeditiously. But not even the magic of the black boxes can produce the "instant" airports so sorely needed to efficiently accommodate the traffic volume already with us.

We have been building bigger, and better, and faster airplanes to meet the demand for quite some time. We have built good airplanes that could more than satisfy the demand for service right now —if they had places to land.

At the present time, we still permit only one airplane on the runway at one time. Piloting skills and brakes are simply not considered good enough for formation operations when passengers are involved. Since 35 to 50 seconds are usually needed for each takeoff and landing, theoretically, we need one runway to accommodate 60 operations per hour. In practice, especially during bad weather, 40 operations per hour is frequently more realistic. To handle more operations, we need proportionately more runways—or as some say, the present system is sadly lacking in concrete.

Even existing runways are not always available for maximum use at some airports because of noise. Kennedy airport in New York has the most glamorous electronics available. But under some wind conditions, it operates at about half the capacity of Chicago's O'Hare because of noise abatement procedures which prevail in the New York area. A "quiet" engine would increase the capacity of New York City airports as effectively as additional runways.

All of this is not to say that our present air traffic control system is not deficient. It is deficient. But the cure to the ills of delay and congestion must be sought in all elements of the system.

The safe, orderly, and expeditious flow of air traffic is a matter of capacity. And achieving the capacity needed, today and tomorrow, demands a more efficient use of both the airspace and the ground space.

FAA and the aviation industry are moving toward this more efficient usage in a number of ways. Many of the projects are being conducted here, locally, at the installation I represent—the national aviation facilities experimental center.

We are advocating more airports and assisting to the extent possible with the improvement of existing airports. The biggest obstacle here is money. Federal aid to date can best be classified as too little, too late.

We are developing and using more productive aircraft, planes that are larger —like the new jumbo jets soon going into service, and the supersonic transport.

Our technology is providing us with better instrument landing systems, better communications facilities, and soon, we hope, with an operational collison avoidance system.

And we are automating both the terminal and en route portions of the air traffic control system.

Additionally in this area, we are taking a hard look at the behavior of the components that make up the air traffic control system. Dependability has become essential to the avoidance of congestion. Therefore, it is vital that such deficiencies as now exist be corrected as quickly as possible.

To illustrate: It is obvious that as traffic increases, equipment outages and system failures will have an increasingly greater impact on the flow of traffic. It is equally apparent that as we switch from a manual system to an automated system, we switch a larger measure of our confidence from the man in the system to the machine in the system. In doing this we must guarantee equipment reliability levels consistent with the "people needs" of safety and schedules.

The reliability of our terminal radar is presently something like 99.7 per cent. This is high—maybe even remarkable. But at many locations, airport surveillance radar is needed 24 hours a day, seven days a week. On this basis, even a reliability average of 99.7 per cent means that the radar could be inoperative up to 26 hours a year. As outages could occur an hour at a time—and at peak travel times—we have to say that this high reliability factor is still not good enough to meet our needs.

Looking at it another way: If the baggage handling system were 99.7 per cent effective, still more than a quarter of a million pieces of luggage would be misplaced each year. To some of you, I am sure that this is not a remote possibility. But when a radar fails, lives and not luggage may be at stake.

Within the air traffic control system, the FAA maintains some 13,000 different facilities on call around the clock. These facilities involve many kinds of equipment, the components of which must all work right at the right time. With regularly scheduled inspections, preventive maintenance techniques, and the use of back-up and emergency equipment, the reliability of the system right now is just under 99 per cent. But with demands on this equipment constantly increasing, you can understand why even a one per cent failure rate could—at some point in the time—prove unacceptable.

The outage of a long-range radar patrolling the air approaches to such as the New York City area, for instance, means that controllers must immediately go to a ten minute time separation between all aircraft at the same altitude being tracked by the "down" radar. This means about a 90-mile interval for jets, and traffic is held and delayed until the non-radar separation is achieved. The consequences of this kind of action in a high density traffic area quickly becomes cumulative. Traffic "backs-up" and, obviously, delays are inevitable.

What, then, can be done to correct the problem, and what are the costs of correction?

To begin with, the FAA is proceeding with the automation of the en route air traffic control system to permit fully computerized flight-data handling and alpha-numeric displays for controllers. The $47.5 million requested for research and development this fiscal year represents a $20 million increase in this category over last year and is largely for automation purposes. This new system, first installed in the Jacksonville, Florida air route traffic control center last year, is scheduled to be implemented in all 20 of the FAA's continental control centers by 1973.

When implemented, the system will relieve controllers from many of the more menial, routine functions they now perform. For aircraft equipped with transponders, the alpha-numeric system will automatically record the altitude of aircraft, eliminating the need for the pilot to report altitude and altitude changes to the controller over busy communications channels.

Ideally, the automated system will perform many other air traffic control functions. These are: Automatic coordination and transfer of control between controllers and between adjacent control facilities; automatic updating of flight information; error checking of pilot and controller actions; automatic flight plan processing; and electronic display of inflight weather conditions.

Ultimately, this automation is expected

to take on such additional functions as predicting impending conflicts and suggesting resolutions, providing flow control advice, and pre-planning the sequence of airport arrivals. All of these services will greatly enhance the movements of en route air traffic.

Regretfully, the problems associated with terminal congestion are more challenging. It is in the terminal area where today's delays are most apparent. We read about the high density areas of places like New York, Chicago, and Los Angeles. These will only characterize many other cities if preventive measures are not taken very soon.

As mentioned earlier, the shortage of concrete is a large part of the problem. More airports and more runways are sorely needed. Most of the problems facing airport operators today, however, are not technical.

Otherwise, we do need more precise equipment with higher reliability. We need to be assured of accurate navigation aids and real time communication and control capabilities. We need equipment that won't fail at a critical moment and that can be relied upon in bad weather, when it's most needed.

Further over the horizon to what is not available today, we need better radar, fail-safe subsystems, and designers who can simplify these systems rather than complicate them. Nothing is more frustrating than a complex system that fails because of a minor component.

Writing out an air traffic control shopping list is much easier than filling the order. Electronics are the miracle workers of the age, but we are facing problems that are uniquely tough—and which are not purely technical.

For one thing, the market for the kind of products needed is comparatively small. The FAA is a customer with requirements so specialized that "off-the-shelf" items simply are not available.

Secondly, this means that development efforts must be tailored to small market and that development costs are therefore comparatively high.

And, thirdly, the dynamic state of the art is such that one has difficulty in freezing a design, making a decision, and placing an order. Something better, it seems, is always just around the corner.

Of all the challenges confronting the system, none is as compelling as the necessity to generate new sources and new supplies of revenue. When we take into account the economic vitality of civil aviation, and the degree to which our national commerce and prosperity depend on air transportation, the system today is under-funded and under-capitalized.

Air travel today is far and away the preferred form of common carrier transportation. But its surge in popularity has not been achieved without the discomfort of growing pains. Many of the problems causing the pains have been around too long and are now no longer deferable.

It has been estimated that we need to invest about $250 million a year over the next several years in new and improved air traffic control equipment. This would be used to catch up as well as keep pace with the growth of civil aviation. We also need between three and $5 billion worth of airport construction to catch up.

The cost seems high, but the cost of not meeting the need may be even higher. In a year of new passenger and cargo records, U. S. air carriers last year reported a 42 per cent decline in earnings. One of the contributing causes, according to the airlines, was an estimated loss of $100 million due to delays in the system and airport congestion.

We don't expect any instant solutions. The problem is one of patiently overcoming the deficiencies of the present system and taking positive steps to expand the capacity of that system.

Clearly, we will not reach either of these goals unless we are provided with funds required. The growth of civil aviation in this country simply has outdistanced the capability of the general treasury to support it. Continued growth depends largely on the willingness of the industry to invest some of its proceeds in the improvement and expansion of the system so necessary to its accommodation.

Quite simply, the kind of capacity needed isn't going to come about without a user tax. While there is agreement on this point within the government and in most of the industry, there has been widespread diversity with respect to the form, the extent and the substance of user charges. It is a matter we can ill afford to debate any longer. And FAA is extremely hopeful that legislation will be enacted by this session of Congress which will assure the availability of funds sufficient to pay the price of continued aviation progress.

In addition to better funding, we also need more participation from industry in planning. FAA does not claim to have all the talent and technology needed to produce a traffic control system which will satisfy all users. It is time for various segments of civil aviation to seriously integrate their capabilities and to assist in the development of system which will satisfy their needs.

The agency is now arranging conferences which will permit all segments of the industry to actively participate in the planning of our national aviation system. Out of such planning we can hopefully evolve a new aviation consciousness, a greater aviation competence, and a system which will stay in step with progress.

Most fortunately, the aviation industry has always put safety first. As a result, we pay for traffic congestion in costly delays and inconvenience, not in accidents. Consequently, however, the overall efficiency of our air traffic control system is measured in economics, rather than in safety.

The question is frequently asked, if we know enough to land a man on the moon, why can't we land a man in New York at 5 p.m., on Friday afternoon? The answer is we do know enough, but we have invested $24 billion in getting to the moon and only one and one half billion in air traffic control and navigation facilities since the Wright Brothers built and flew the first one. Perhaps it is now time to invest a few cents per gallon in fuel taxes and a small percentage of the passenger fare to assure our landing at points on this planet at the advertised time.

REPORT OF THE STANDARD TITLE INSURANCE FORMS COMMITTEE

RICHARD H. HOWLETT

Chairman, Standard Title Insurance Forms Committee
Senior Vice President, Secretary and General Counsel,
Title Insurance and Trust Company, Los Angeles

Pursuant to the direction of the Board of Governors of the American Land Title Association, the Standard Title Insurance Forms Committee has had under consideration the promulgation of a single form policy. A single form policy is one that can be used to insure an owner or a lessee or an owner of an indebtedness secured by a mortgage on the estate of an owner or lessee but it is not designed as a joint protection policy.

In considering the proposal of a single form policy, the Committee, pursuant to the requirments of the by-laws of the Association, had to consider the question of interpretation of existing policies that had been presented to the Committee in the past. The Committee asked the Board of Governors if existing policies should be modified to clarify those contracts as a part of this study or project. The Board of Governors directed the Committee to proceed with the development of the single form policy and in that development, as far as possible, eliminate discrepancies in coverage and clarify existing ambiguities or uncertainties in both the owner's and loan policies.

There has been distributed to you the ALTA Single Form Policy—1970. It is a good policy, defining with certainty the insurance contract and at the same time is responsive to the needs of the real

estate industry. There must be kept in mind that requirements and standards vary from one place to another and one class of customer from another. The submitted policy is designed to meet the normal and standard requirements.

To understand and appropriately vote upon the proposal, it now should be stated the Committee recommends:

1. The adoption of, as an ALTA Form, the ALTA Single Form Policy—1970. This policy affords marketability coverage for both an owner and lender. It does not afford coverage for a lender as to special assessments for street improvements afforded under the ALTA Loan policy—Additional Coverage—1962.
2. The elimination of the ALTA Loan Policy—Additional Coverage—1962.
3. That the ALTA Loan Policy—Revised Coverage—1962 be redesignated ALTA Loan Policy—1970 and the coverage be revised to conform to the submitted ALTA Single Form Policy—1970.
4. That both Owner's Policies be redesignated ALTA Standard Form A—1970, which does not afford marketability coverage, and ALTA Standard Form B—1970, which does afford marketability coverage, and that the coverage of both forms and the provisions thereof be amended to conform to the appropriate coverages of and the provisions of the ALTA Single Form Policy—1970.
5. That the Association approve coverage as to special assessments for street improvements where underwriting practices permit by endorsement or note, and that you approve ALTA Endorsement—Form 1 which affords this coverage to be made available in those areas where the members choose to afford such coverages. It should be kept in mind that if coverage as to street assessments is afforded by incorporation into the policy, then it will be necessary to make a further modification to amend the provisions of Section 3(d) of the Exclusions from Coverage to conform to the language of the similar provision of the ALTA Loan Policy—Revised Coverage—1962. Such modification would not be necessary if the coverage as to street assesments is afforded by the suggested endorsement.
6. The approval of ALTA Endorsement—Form 2 which provides limited coverage as to the Federal Truth in Lending Act.

The Committee has met with representatives of various groups such as the Mortgage Bankers Association, the Veterans Administration, Federal Housing Administration, Federal National Mortgage Association, U. S. Savings and Loan League, American Bankers Association, National Association of Real Estate Boards, Life Insurance Counsel, and many others. We thank them for their help and cooperation. As a result of these conferences, the Committee has finalized its proposal and in brief I would like to summarize the submitted form.

You will first observe that the insuring provisions have been abbreviated by the elimination of redundant provisions without reducing coverages now afforded.

The insuring provisions have been restated to include, where possible, the exceptions from coverage. Paragraphs 5 and 7 of the insuring provisions of the proposed policy are examples wherein the exception from coverage is stated as a part of the insuring provision.

The exclusion from usury from coverage has been retained as previously approved by this Association. The Committee still is of the opinion that in view of the difficulty of ascertaining the facts in all cases this exclusion is proper.

The Committee, after discussion with the groups I have referred to, concurred that the exclusion relating to truth in lending should be amended by striking the phrase "or similar laws" contained in previous drafts submitted to you.

The "doing business" exclusion has been shifted from the insuring provisions to the Excusions from Coverage for clarity that such exclusion was applicable only to the coverage as to enforceability of the insured mortgage.

The Exclusions from Coverage have been set up in a separate schedule, not buried in the tail sheet of the policy, for the purpose of achieving certainty of contract.

Paragraph 3(b) of the Exclusions from Coverage has been amended to clarify the time that the insured must give notice of his knowledge to the company as a time prior to the date such insured claimant becomes an insured under the policy.

Paragraph 3(e) of the Exclusions from Coverage has been modified and clarified to make it certain that the insurer is not responsible for loss which would not have been sustained if the insured claimant had paid value for the estate or interest insured by the policy.

Schedules A and B are self-explanatory. Special attention should be paid, however, to the instructions for the use of Schedules B-I and B-II. The insuring provisions of the policy require the vesting of the title as of the date of the policy and if the policy is used to insure a loan, it would follow that all matters affecting the title to the estate covered by the insured mortgage should be set forth in Schedule B whether prior or subordinate to the insured mortgage. Practices differ in the various areas of the country. To accommodate those differences, the instructions provide that if there are subordinate matters either there should be incorporated in Schedule B a general statement that such matters are not being shown, or Part II of Schedule B should be added in which such subordinate matters are set forth but affirmative coverage is afforded that such matters are subordinate to the insured mortgage.

The Conditions and Stipulations have been modified in the following respects:

1. The definition of "insured" has been restated to include specified successors to the named insured, an expansion of the existing definition.
2. The definition of "land" has been clarified.
3. Paragraph 2(a) defines the extent to which the policy continues in force as of its date after the insured lender forecloses or takes a deed in lieu of foreclosure and sets the amount of insurance that continues in force.
4. Paragraph 2(b) is applicable where the named insured conveys his title to the estate or interest covered by the policy. This paragraph provides that the policy continues in force as of its date so long as the insured retains an estate or interest in the land or holds an indebtedness secured by a purchase money mortgage or so long as such insured shall have liability by reason of covenants or warranty.
5. Paragraph 6 is a definition of loss, a definition of liability essential to a policy that continues in force as is provided by the definition of insured and by the provisions of paragraph 2.
6. Paragraph 7 is a restatement of existing provisions for the purpose of clarity.
7. Paragraph 8 clarifies the ambiguities in existing policies where additional advances are made after payments have reduced the original principal to provide that such additional advances do not increase the amount of insurance except to the extent that such amounts advanced protect the lien of the insured mortgage and are secured by the insured mortgage.
8. Paragraph 12 is a restatement of existing provisions to make it clear and certain that actions based upon the status of the lien of the insured mortgage or the title to the estate or interest covered by the policy must be based upon the policy.

The Committee determined, after conferences with lenders and others, that there was a definite need for coverage that a particular credit transaction was not subject to the rescission provisions of the Federal Truth in Lending Act either because the credit transaction was exempted or excepted under the provisions of the Act. Lenders as a whole did not seek coverage that there had been compliance with the law if the transaction was subject to rescission. The Committee asks your approval of ALTA Endorsement—Form 2 which affords this coverage. The limitation is achieved by a clear statement limiting the coverage thereof to the provisions of specific sections of the regulations promulgated under the law. This endorsement should not be used unless the credit transaction is one that falls within the specific exemptions or exceptions of the law. If the credit transaction is not exempted or excepted, then, if the endorsement is used, a coverage would be afforded that is not intended.

The Committee has been asked by Life Insurance Counsel present to advise you that they appreciate the cooperation of the Standard Title Insurance Forms Committee and believe that the form as drafted has much of merit. Life Counsel, however, cannot indicate a categorical approval both because the various individ-

uals can speak only for their own companies and, too, they feel they do not want to estop themselves by implication from asking for other coverages on a case basis. At least one representative has indicated that his company may continue to ask for the 1962 form. Others have indicated that they will feel free to request endorsements or amendments. Most Life Counsel present feel that the decision of the ALTA to recommend that no usury endorsements be given went too far, and request that in the future individual members not be discouraged from granting endorsements under circumstances they individually consider to be appropriate.

Life Counsel have asked me, however, to emphasize their appreciation for the time and courtesy extended to them by the Forms Committee.

The Committee has been informed by Robert Newton Reid, vice president and general counsel of the Federal National Mortgage Association, by letter dated September 22, 1969, as follows:

I am very aware of the tremendous effort by your committee in formulating the new Single Form Policy. The committee, in my opinion, is to be complimented. There are, however, uncertainties connected with any change from the familiar. At this time I have no additional recommendations for improvement. FNMA will be prepared to accept, generally, the new policy in connection with mortgages it purchases. The protection afforded by it must necessarily be forged by future experience and so also our attitude towards it. For this reason, FNMA is not in a position to urge upon others the adoption or use of the Single Form Policy.

THE INTERSTATE LAND SALES FULL DISCLOSURE ACT

A. M. PROTHRO
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In a colloquy with a friend a few days ago, I used the trite expression, "There are two sides to every question." I have been pondering his reply ever since. "Yes," he said, "and there are also two sides to a piece of fly paper, but it makes a tremendous difference to the fly on which side he lights!"

Fortunately, the subject of my discussion today is not controversial, and will not require the taking of sides. I am to talk about the Interstate Land Sales Full Disclosure Act, a new regulatory federal law in the administration of which the title industry has a very important stake. For the sake of brevity, I shall refer to this new law simply as the "Land Sales Act" or "the Act."

Unlike the Truth-in-Lending Act, which was widely publicized and which became a general topic of conversation as the July 1 effective date approached, the Land Sales Act became effective with little fanfare and little public notice. It was tucked away as Title XIV of the Housing and Urban Development Act of 1968 and became effective on April 28, 1969.

The purpose of the Act was clear. Congressional hearings were replete with examples of sales through the mails of swamps and arid-desert lots, unsuitable for use as building sites, and sometimes completely useless for any purpose. Some of the unsuspecting purchasers must surely be the same people—and I have been one of them—who plant large gardens every spring after pouring over the beautiful pictures in seed and shrubbery catalogs during the winter. Purchases through the mails—on the $25 down and $10 a month installment plan—and without the purchaser's inspection of the land is an accepted practice in the trade. The use of attractive brochures showing exciting painted sketches of lakes, golf courses, yacht clubs and other delightful amenities—some in existence but others more in the category of dreams and promises—is customary. Too often these dreams have faded into nightmares, and some installment purchasers have failed to receive title to their properties even though their payments have been made as agreed over an extended period of time. Others have received good title, but not the benefits described in the brochures.

As in the case of Truth-in-Lending, the Land Sales Act emphasizes full disclosure. A statement of record must be filed with the Office of Interstate Land Sales Registration (OILSR) before an offering is made to the public. This statement describes in detail the physical characteristics of the development, the arrangements made to complete promised improvements, the condition of record title and many other features of the offer. A property report containing a synopsis of the facts described in the statement of record must be in a form approved by OILSR. A printed copy of the property report must be delivered to each purchaser before the property is sold or leased. The purchaser's contract is voidable if he is not furnished a copy of the approved form of property report at least 48 hours in advance. Criminal as well as civil sanctions are provided.

In developing the regulations under the new law, the Department of Housing and Urban Development, of which the OILSR is a part, was handicapped by having no organization of land developers with which to consult. Comments and suggestions were received from the American Land Title Association and the National Association of Home Builders, but there was a seemingly unavoidable failure of communication with the vast majority of those whose interests were most directly affected. Typical of the comments I received on this point was the following quotation from a developer's letter dated April 14—just two weeks before the law and regulations became effective:

> There is no doubt in my mind that a great many people who sell lots will be affected by this Act, and are not aware of the Act; or if they are aware, are convinced that they are not covered.

In a recent meeting with 25 or 30 large builders present, I asked how many of them were occasionally or regularly selling lots at retail. More than half in the room indicated that they were. Yet none of the builders in that room other than myself, were aware of this Act.

In addition to the fact that the Land Sales Act received very little public notice, a serious misunderstanding developed about the scope and extent of the exemptions. The Act itself listed ten specific exemptions and the regulations added three more. Most of the exemptions were simply and clearly stated. For example, an offering of lots, each of which contains 5 acres or more is exempt. Land is exempt if it includes building improvements, or where the seller is obligated to erect building improvements within two years. Also exempt are cemeteries, sales restricted to builders, and offerings of less than 50 lots under a common promotional plan. But at least two of the exemptions were stated in very ambiguous language, which creates pitfalls for the developers and perhaps for the title industry as well. This is where we get to "the sticky side of the paper."

The Act does not apply to the sale or lease of lots where "the offerings are entirely or almost entirely intrastate." I need not dwell at length on the dangers inherent in attempting to interpret such language. We have had enough difficulty in the courts in trying to distinguish between "interstate and intrastate" commerce. The use of the term "almost entirely intrastate" is most unfortunate.

A source of even greater misunderstanding has been the so-called "on-site" exemption. Most developers don't even try to interpret "almost entirely intrastate" but many are apparently interpreting the language of the on-site exemption—and in a manner which is in complete disagreement with the OILSR interpretation. In speaking to the National Association of Home Builders earlier this year, I learned that a very large percentage of developers considered themselves to be exempt because their practice is to

make sales only at the development site, after inspection of the lot by the purchaser, and to convey title at the time of sale free and clear of mortgages or other liens.

They were surprised to learn that the "on-site" exemption requires not only the purchaser's inspection of property which is free and clear of all liens, but also requires the property to be free and clear of encumbrances and adverse claims except—to quote the law—"property reservations which land developers commonly convey or dedicate to local bodies or public utilities for the purpose of bringing public services to the land. . . ." What about restrictions, as a case in point? Practically all subdivisions have building and use restrictions designed to protect property values. But since a deed restriction is also an "encumbrance," the on-site exemption becomes almost meaningless. There is a strong belief in some quarters that this result was not intended by the Congress, but it is difficult to argue against the position taken by the OILSR that this is what the Act provides. Hopefully, the message is gradually getting around to the developers, since they are headed for serious trouble if they fail to register on the erroneous assumption that they are covered by the "on-site" exemption.

Let's assume that one of your customers is in this category—a land developer who is not exempt but is unwittingly not complying with the law. He is exposed to the danger of having his sales program suspended and to the revocation of sales contracts by his purchasers.

How would this affect a title insurance company? The right of the purchasers to revoke sales contracts and agreements on grounds that they were not furnished duly approved forms of property reports is quite clear; but the Act is not clear on the question of whether this right survives the delivery of the deed. If it does survive the delivery of the deed, it would seem that the interests of the title insurer may be in jeopardy, especially where the rights of third parties have become involved. If a purchaser may rescind and reconvey to the developer after you have insured title for the purchaser's mortgage—and this is certainly a possibility—you may have more exposure than you bargained for. Until such time as this aspect of the law is clarified, it may have some of the same consequences as you have encountered in dealing with the usury laws. My suggestion is that you talk to your lawyer about it.

Before leaving completely the subject of on-site exemption, let me say that there is reason to hope for changes in the Act to make the exemption meaningful. One approach might be to follow FHA's policy in defining the term "marketable title" for mortgage insurance purposes. The FHA regulations contain general waiver provisions under which customary building and use restrictions and other specified types of encumbrances do not render title unmarketable, but are waived. If the on-site exemption is so modified and becomes meaningful, a new problem of concern to the title industry will immediately arise. The regulations spell out in detail just *when* the property must be free of liens, encumbrances and adverse claims if the exemption is to apply. This is for the purpose of making a distinction between installment sales and cash sales. Where a deed is to be delivered within 120 days following the signing of the sales contract, the clearing of title may—with one important limitation—take place at the time the conveyance is made rather than at the time the sales contract is executed. The limitation is that any earnest money deposit, or similar payment made before conveyance of title, must be placed in trust "with an established institution or organization having trust powers under the laws of the jurisdiction in which the property is located." This means that, under the ordinary escrow arrangement with a title company which does not have trust powers, the title must be clear at the time the sales contract is executed rather than at the time of conveyance. In cases where the deeds are to be delivered within 120 days—I am not speaking now of long-term installment sales—this requirement for a "trust" with an institution having "trust powers under the laws of the jurisdiction" can only result in a competitive disadvantage for most title companies.

Turning next to the subject of installment sales, the Act requires full disclosure to the purchaser of any liens on the property, and a statement of the consequences to the installment purchaser of a lot where the blanket lien on the development is foreclosed. This is one of the primary objectives of the Act, the framers of which had in mind the bitter experience of installment purchasers who had made their payments regularly and on time, only to be wiped out completely if the developer's interests were foreclosed due to a soft market, or due to other unfortuitous circumstances. The Land Sales Act will undoubtedly encourage the practice, already being followed by many developers, of establishing trusts or escrows with banks, title companies and similar institutions for the protection of installment contract purchasers in the event of the developer's financial failure.

Under the typical trust or escrow arrangement, the purchaser's payments are released to the developer and used in the financing of land improvements; but credit is given to the purchaser for all such payments even if the blanket lien is foreclosed. If the installment contract purchaser continues making payments to the foreclosing mortgagee in accordance with the provisions of his contract with the defaulting developer, he will obtain title to his lot as originally agreed because the trust or escrow documents so provide.

As an alternative, the purchaser's payments may simply be held in trust or escrow—for release to the developer when title passes, or for refund to the purchaser if the developer defaults.

Regardless of the nature of the trust or escrow, the regulations should definitely be refined or, if necessary, the Act should be amended, to make it crystal clear that such a trustee or escrowee is not "the agent" of the developer within the meaning of the Land Sales Act and is not, therefore, subject to the criminal sanctions of the Act.

The importance of this problem was recognized at once by your executive vice president, Bill McAuliffe, who wrote to the OILSR about it two months before the final regulations were issued. I am taking the liberty of quoting the following from Bill's excellent letter of comments on the proposed regulations:

> It seems to us that the functions contemplated for such a title escrow service or similar service tend to protect the purchaser as well as facilitate the operations of the developer. The placing of the burdens of the Interstate Land Sales Full Disclosure Act upon such a title escrowee will severely discourage the offering of such services and particularly in the cases that need them the most. The Act and Regulations are not clear that such a title escrowee or trustee is intended to be covered and we believe it is appropriate to handle this by regulation. . . .

Bill's letter went on to suggest language for the regulations to the effect that no bank, title insurance company or similar organization shall be deemed a developer or developer's agent within the meaning of the regulations when holding title under a land trust or escrow, or acting as the escrowee for the purchaser's payments, or in receiving, holding and delivering instruments of title.

Although this recommendation was not adopted by the OILSR in its final regulations, I know that it was very thoughtfully considered and that questions of statutory interpretation prevented an easy solution. I believe that a solution will be found in the development of a standard form of trust or escrow agreement, acceptable to the OILSR, which makes clear the fact that the trustee or escrowee is not acting as "the agent" of the developer within the statutory definition of that term. Alfred J. Lehtonen, Administrator of the OILSR, has advised me that he is sympathetic with this approach and that he would be pleased to work with your Standard Forms Committee in developing a satisfactory form of agreement.

I also discussed with Administrator Lehtonen the failure of the OILSR to make a distinction in the regulations between the various types of title evidence submitted to it. The title evidence filed with the statement of record may be in the form of a policy of title insurance, a commitment for title insurance, a certificate of title or an attorney's opinion. Regardless of the type of evidence submitted, however, it must be accompanied by copies of all instruments in the public record, or an abstract of such instruments, relating to encumbrances, easements, covenants, conditions, reservations, limitations, or restrictions.

This requirement, equating a policy of title insurance with other types of title evidence, is at variance with the usual custom of accepting such a policy without an abstract or copies of recorded instruments. The administrator is receptive to suggestions for changing the regulations in this regard, provided only that the title policy or commitment describes

the encumbrances on title with a high degree of specificity.

Refinements of this kind will undoubtedly be adopted from time to time as problems are identified and experience is gained in the administration of the Act.

In closing, let me say that the OILSR is directed by an able and good-natured administrator, who is assisted by a highly competent staff. Although they are administering a consumer protection law, and can be expected to carry out their duties in this regard, their approach is reasonable and responsible in relation to the industries affected. The high quality of their performance, coupled with the effectiveness of ALTA's own splendid staff in Washington, suggests to me that problems of the nature here discussed can and will be favorably resolved. Your support will probably be needed, especially if amendments to the law are required, since much time and effort is a necessity in the legislative process.

The most urgent need at present—and I would especially like to leave this thought with you—is the need to bring to the attention of the land developers and subdividers around the country, first, the existence of the Interstate Land Sales Full Disclosure Act and, second, the hazards involved in any snap judgments that they are exempt from its provisions.

Since land developers are not organized and have no publication of their own to keep them advised of the ever-changing requirements, they are in need of assistance from their attorneys and title companies.

ANOTHER HAT FOR THE INSURANCE COMPANIES

ALBERT E. SAUNDERS, JR.
Associate Counsel, Phoenix Mutual Life Insurance Company

Time Magazine recently characterized the changing pattern of insurance company investments as the endeavor of dinosaurs to adapt themselves to a changing environment. As one manifestation of the change, *Time* noted a discontent with the passive role of lender of funds to finance the ventures of others and a growing appetite for being a part of the ventures financed. Perhaps the same observation, differently expressed, was behind Bill McAuliffe's invitation to talk about the life insurance companies growing role in real estate ownership and development.

The increasing interest in equity investments is an evolving response to a number of stimuli.

Appetites have unquestionably been whetted by involvement with loans within everyone's experience in which the insurance company has supplied the bulk of the money for acquisition or development of a property and watched its borrower walk away from the closing with little dollar investment and a rate of return approaching infinity.

That experience gains added significance in a tight money market which finds the industry bumping its head against usury laws which fail to keep pace with the demands of the market place and compel a search for other forms of investments. The usury problem is not unfamiliar to the American Land Title Association as evidenced by its categorical exclusion in the ALTA policy within the past year, but the life insurance companies cannot avoid it that easily. I am sure that several excellent articles and studies of the subject by life insurance lawyers well known to this Association have received a major impetus from the necessity to look carefully at what had for years been almost an academic question.

Added to that, inflation and the decline in buying power of the dollar has become a source of increasing concern to insurance companies, even as it has to all of us. The August 25, 1969 *Wall Street Journal* reported that consumer prices had climbed at a 6 per cent annual rate during July, which was a slight improvement over June but not a significant change in direction. With continuing demand for military spending, the demands of our social problems vastly beyond the capacity of a pay-as-you-go economy and the demand for a continuing high employment rate, some degree of continuing inflation seems to be a fact to be dealt with.

That same concern on the part of the purchasers of insurance has caused a demand for insurance programs whose benefits are expressed at least in some degree in buying power and lies behind the move of life companies into the mutual fund and variable annuity field, and the development of sales techniques oriented to a balanced estate planning program using both equities and fixed dollars. It also intensifies the search for investments which may be expected to maintain some constancy of value expressed in the purchasing power of any given time in history.

The historic avenues of bond and mortgage investments, in their very nature, have a built in adverse selection whereby the good loan is repaid with a ceiling return of interest at the preagreed rate, no matter how sophisticated a formula be used to express that rate, while the investment which does not work out as anticipated becomes a problem of salvage, but seldom profit.

As is true in so many other aspects of our current life, the tax law also plays its role. The opportunity to shelter a certain portion of real estate income for a period of time through the medium of depreciation, and the opportunity for capital gains treatment if all goes well, cannot be ignored.

The enormous growth in policy loans in recent years has created a further need for offsetting yield. We have sold, as one of the very real benefits bought by the purchasers of various forms of insurance having substantial reserves, the right to borrow against those reserves and in times past complaints have been voiced that a policyholder should have to pay as high an interest rate as 5 per cent on a risk free loan and much borrowing used the insurance as collateral but paid a rate of interest which was less than the policy loan rate. Current interest rates understandably have completely reversed all such borrowing.

So much for some of the reasons for the burgeoning interest in equities.

From an abundance of shop talk, it appears that the implementation has been and continues to be a groping and evolutionary process and lines are discernable more in pastel colors than in blacks and whites. That is particularly true in the areas where the so-called equity participation has developed as a "kicker," or add-on participation in the earnings of a particular property, or other form of additional compensation for the use of money.

A broad-ranging, scholarly and highly useful review of the myriad financing techniques of recent years was put together last year by Frank Gunning of Teachers Insurance & Annuity Association and Frank Roegge of Metropolitan and is published in the American Bar Association's *Real Property Probate and Trust Journal*. If there are those of you who are unfamiliar with that article, I urge you to get it and read it and reread it, and keep a copy where it is conveniently available.

In addition to the sundry equity participations resulting from what is still essentially sophisticated lending, there have also evolved true equity deals in which the insurance company is the real entrepreneur or is sharing that role.

Direct ownership by the insurance company without a confrere of any description unquestionably produces the simplest result. The entire management and judgment function vests in the owner and the flow of income and depreciation is clear.

Insurance companies of course have had a wide range of experience in this area. Some of that experience has been bitter as an outgrowth of the depression while some, particularly of more recent years, has been happier. That happier experience has included ventures into the acquisition or development of large multiple dwelling units, major office buildings, even complete communities, and

acquisition or development of a variety of buildings for occupancy by a high credit tenant under a long term lease.

Ownership through a subsidiary has the same clarity of result but its attractiveness will vary markedly depending upon whether we are considering the activities of stock or mutual companies and whether or not there are purposes other than producing the most simple and direct flow of income. In this area of other purposes fall such questions as subsidiaries formed to qualify investments which might otherwise not be available to the company, subsidiaries formed primarily for the purpose of insulating the parent, and subsidiaries formed for the purpose of isolating business done in a particular jurisdiction. Any operation through a subsidiary must take into careful account the drastic dilution of the dividends-received credit under the rule laid down in *U.S. v. Atlas Life Insurance Company*.

Offset against the clarity of operation that flows from the direct ownership, or ownership through a subsidiary, are the limitations imposed by that structure. Perhaps first on the list is the fact that absent a long term net lease to a strong tenant such ownership requires the insurance company to have on its own staff or at its command sufficiently numerous and diversified talents to cope with all of the varied problems associated with property acquisition, development, leasing and management. Secondly, a policy of sole ownership may preclude opportunity to consider many possible deals in which the promotor is seeking a co-owner or partner sufficiently like-minded to make a compatible bedfellow and sufficiently strong financially to be able to supply all of the financial muscle necessary that may be required—and it is this category which may produce some of the most interesting and most rewarding problems.

If we assume now that ownership and operation in conjunction with one or more other parties is desirable we are by that decision setting a course leading to its own peculiar problems, and the decision to deal with the problems in one way or another will be governed by the equilibrium struck between a variety of considerations.

There is always the question of whether the property involved is a going operation which is fully developed or whether it is to be developed. The problem becomes more complex if development is to be by stages, over an extended period of time, with a combination of unknowns to be taken into account.

There is also the ever present question of tax consequences to flow from differing methods of operation.

Every *joint enterprise*, and I use the term advisedly for the moment to avoid the term joint venture, involves reconciliation of business and legal problems. Some can be answered categorically but more are interrelated and involved and the answers cannot be unequivocal at best.

In the category that may be isolated as pure legal questions, lie those of corporate powers, limitations imposed by statutory definitions of permissible investments and qualifications to do business in a particular jurisdiction.

In the category of pure business questions to be resolved by the investment department are those of evaluation of the desirability of an overall proposal and definition of the particular skills expected to be contributed by the co-venturer.

Our typical co-developer may be prepared to devote time, effort and skill in return for capital, but he probably does not want to lose control of what he regards as his deal and he may want some or all of the following elements of motivation and reward:

(i) He may be vitally interested in the depreciation and early stage losses of the new venture to set off against profits and gains from other seasoned and presently profitably activities.

(ii) He is probably unwilling to work on a fee basis which will produce current ordinary income as his sole compensation.

(iii) While he obviously expects any proposed project to produce income within a foreseeable and reasonably short time he may be just as interested in the potential gains from future refinancing or sale.

Beyond this point blacks and whites become shades of gray more subjective in content and involving matters of degree. Not unexpectedly it is this area which produces most of the initial sparring and makes the most demand upon imagination, business judgment and drafting skills.

In the true equity venture, as distinguished from the so-called equity kicker participation, the insurance company and its co-developer must establish a basic rapport and from experience I suggest that it is enormously helpful to the lawyer in his role of draftsman to participate in the early stages of negotiations once it becomes apparent that there is sound basis to expect agreement to be forthcoming.

The next stage becomes the drafting of documents which will establish the ground rules for living together.

The company will undoubtedly require an overall power of approval of concepts, contracts, plans, budgets and schedules. These should be cast in the form of outside limits rather than hopeful possibilities both in fairness to the co-venturer and in order to determine realistically whether a performance within those limits will make the investment attractive.

Commonly the company may be looking to the co-venturer for assurances of completion of all development agreed upon. Understandably this is apt to be an area where the co-venturer wants some considerable range of discretion and a part of his undertaking may be to assure completion within outside limits as a quid pro quo for a measure of freedom.

A potentially sticky area upon which substantial agreement is imperative at the outset is that of what financing is contemplated. The insurance company may well agree to supply or assume responsibility for obtaining all monies requisite to bring a project to fruition. If that is to be the case there must be carefully spelled out definitions of what part of the money may be cast in the form of long-term debt and what sort of financing terms shall be deemed to be acceptable. This in and of itself can bring into play all of the variables of recent years in the negotiation of mortgage terms. Particularly if the insurance company is going to supply the long-term financing requirements must there be precise definitions of interest, amortization and rights of prepayment upon the happening of different eventualities. There must also be articulate and precise definition of when and on what terms and from what source equity monies are to be returned. If the co-venturer is to supply any significant or variable part of the capital structure dependent upon his ability to bring in the project as budgeted and forecast, these provisions will take on a different coloration.

There must be agreement at the outset on methods of depreciation acceptable to both parties and particularly on whether income sheltered by depreciation is to be distributed or whether it is to be used first to retire the equity position. From the co-venturer's point of view there is apt to be an expectation of distribution of all cash flow and a situation can be posited in which in the early years this amounts to a distribution to the co-venturer of an increasing equity position. If, however, income sheltered by depreciation is not distributed in proportion to ownership in the venture there may have to be some rough equivalence to the co-developer in the form of management fees or lease brokerage spread over a period of time.

There must be broad agreement on the division of responsibility which will probably take the form of delegation of power within pre-agreed limits and a requirement for unanimity beyond that limit.

A similar question arises with regard to leasing and management. If management is to be supplied by the co-venturer, or an alter ego of the co-venturer, as is often the case, provision must be made for an agreed standard of compensation and also for a method of discontinuing that management service without cause. Because management is so much a contract for personal services recognition must be taken of the fact that the co-venturer may not be able to render the same skilled service for an indefinite period of time and the compensation for management should in all probability be entirely separate from the participation of the co-venturer in the project. The situation takes on an additional complication if the management is closely tied to leasing and lease brokerage payable in part out of subsequently accruing rent.

General agreement may be expected on the subject of transferability of interests because the parties have selected each other with something more than a passing degree of care in the first instance. The developer-partner will have come to terms with his insurance company co-venturer at least in part because of a feeling of ability to get along with those persons whom he has met as well as confidence in the company's ability to fulfill

its financial obligations. In turn for the insurance company the selection of the co-venturer is a most important consideration and there is no thought of permitting a substitution here without its complete acquiescence.

The co-venturer may want a latitude to assign income to his wife or children or perhaps a trust, but he will also expect the continuing relationship to be conditioned upon his own continuing active participation. Also he will normally expect the cessation of his personal involvement to trigger buy-out rights.

Provision for termination of the common venture without cause may be one of the most difficult of satisfactory solution. Obviously it will be resorted to only in an atmosphere in which the parties have been unable to resolve their differences amicably and for that reason it must be objective and workable and calculated to produce a result fair to both parties.

Various vehicles suggest themselves to carry out the business purposes of the parties.

Ownership in common accompanied by a joint venture agreement or partnership agreement defining the respective rights, duties, powers and responsibilities of the parties will channel income and depreciation to the owners in proportion to their interest and will make it available to them for use in activities not confined to the operation of the particular property; but offset against those advantages are elements of awkwardness which may be created for any financing, particularly if the insurance company co-owner is to supply that financing. Ownership in common may also create tax problems for the co-venturer for it may well give him taxable income when his interest vests but at a time when there is no actual flow of dollars out of which to pay the tax.

The Illinois Land Trust is most useful but unfortunately it is available only in Illinois and Florida.

The vehicle which perhaps supplies tolerable solutions to the most problems in the largest number of jurisdictions seem to be the joint venture or partnership.

The joint venture is a creature of the American courts and we must accord it a measure of significance simply because the courts have used it frequently to rationalize and countenance what are for all practical purposes partnership activities engaged in by parties not possessing the power to be partners. A conspicuous example is the activity of corporations as joint venturers in jurisdictions where a corporation is not deemed to have the capacity to act as a partner.

However, having paid that obeisance to the joint venture it is hard to distinguish it from a partnership. Professor Cavitch says that cold scrutiny suggests that the classification may be no more than a form without substance and numerous cases endeavor to spell out distinctions and yet, after having found a joint venture to exist, treat it as governed by partnership law and even refer to it as a partnership. Judge Learned Hand has characterized the joint venture as "one of the most obscure and most unsatisfactory of legal concepts." With all of its nuances the term may give apt illustration to Mark Twain's observation that "the difference between the right word and the almost right word is like the difference between lightning and the lightning bug."

The thrust of historic objection to a corporation's participation in a partnership is addressed to the delegation of power which is basic to the partnership concept and the corresponding loss of control by the directors of the corporation. The suggestion that an insurance company may become a partner of any kind may evoke a similar visceral objection. However careful analysis may strike a balance in favor of a proper partnership as the device best suited to a particular need and good management may conclude that it is incumbent upon it to organize itself to administer the partnership in a manner which will hold any exposure within acceptable limits.

The question of corporate power must be answered individually after a careful examination of the powers enjoyed by a particular company under its charter and the laws of its domicile. At the present time the problem has been resolved in a number of states, including Connecticut, by statute.

The partnership vehicle generally does have the great advantage for its participants of being a tax reporter rather than a tax payer, and it is amenable to so many variations as to be limited only by the imagination and capacity to agree of the participating parties.

The insurance company can be cast in a role of a limited partner and insulated from exposure beyond that of its investment plus any further investment for which it may have committed itself and it can be given a totally acceptable participation in profits and tax consequences. However it will be precluded from participation in management except as certain negative restraints may be built into the agreement of limited partnership.

By contrast, as a general partner the company will have complete power to act and a matching exposure to any obligations growing out of the venture within the purview of the powers and purposes of the partnership, either actual or ostensible. However, the partnership agreement used for the type of transaction under consideration would ordinarily confine the activities and purposes of the partnership to the acquisition, development and operation of particular real estate and it should follow that anything more than that, e.g. a sale or mortgaging of partnership assets, could be accomplished only with the joinder of all general partners. (The result will be different of course, as will the tax consequences, if a purpose of the venture is to acquire and resell, or develop and sell in parcels.)

In the area of tort risk I think all of us today expect to look to adequate hazard insurance coverage dealing with virtually all foreseeable eventualities.

Another variation of the partnership format may cast the insurance company in the role of limited partner whose general partners are the co-venturer on the one hand and a subsidiary of the insurance company on the other. The use of the subsidiary raises all the tax problems of any other subsidiary but presumably will be kept at a minimal level. Arguably this is a paper shell and self-deluding. With full knowledge of the interrelationship shared by all parties interested in the partnership and with honorable dealings between the partnership and third parties there would seem to be no reason why the arrangement should be subject to impeachment.

Fundamental to the partnership or joint venture concept is the concept of fiduciary duty which was described by Justice Cardozo when he was a member of the New York Court of Appeals in the following language:

> Joint adventurers, like copartners, owe to one another, while the enterprise continues, the duty of the finest loyalty. Many forms of conduct permissible in a workday world for those acting at arm's length, are forbidden to those bound by fiduciary ties. A trustee is held to something stricter than the morals of the market place. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior.

This duty imposes no hardship on any partnership entered into in good faith but it does create an imperative of fair dealing, full disclosure and good accounting in dealings between the parties themselves.

The fact of such manner of dealings could also take on significance in negating any possible assertion at a later date that the whole transaction was simply the loan of money by any other name.

The partnership of course is a legal entity which can borrow money and to which either the limited or the general partner may lend money. As noted previously, the subject of where and how and on what terms the venture will or may borrow money is one on which there should be a meeting of the minds at the outset.

If one motivation of the insurance company in entering into the basic transaction is either a desire for leverage or a desire to limit its financial commitment in any given transaction it will obviously be found desirable to seek maximum loans from outside sources. On the other hand an insurance company may find it difficult to reconcile itself to borrowing in today's money market at rates which represent a higher price for money than it is receiving by way of return on its own overall investment portfolio. A related question is the realistic rather than legal one of whether the company can or would actually walk away from the particular transaction in any event. If the conclusion is reached that the company will not walk away in fact, for whatever reason, added weight is lent to the argument for the use of company funds for all financing needs.

There can be no valid reason for objection from the co-venturer and no transgression of fiduciary duty so long as the loan terms are known and agreed to by all parties or are arrived at by a formula or procedure agreed to by all parties.

Nonetheless, a loan made by a partner may raise its own problems and those problems are of particular significance to title insurance people.

The general partner can, without question, lend money to the partnership and may take security for the repayment of the money and the security will not be invalid because of the partnership relationship—however it would appear that any mortgage or security interest will be subordinate to the rights of other creditors. It would appear also that such a mortgage can scarcely qualify as the type of mortgage investment contemplated by the sundry state laws applicable to insurance company investments in mortgages.

Clearly, too, a limited partner may loan money to the partnership but the right of the limited partner to take security is not so clear. Section 13.(1) of the Uniform Limited Partnership Act says, in significant part, ". . . no limited partner shall . . . (a) Receive or hold as collateral security any partnership property, or (b) Receive from a general partner or the partnership any payment, conveyance, or release from liability, if at the time the assets of the partnership are not sufficient to discharge partnership liabilities to persons not claiming as general or limited partners."

The language of 13.(1)(a) would seem to preclude the taking of security by the limited partner but in the one case in which that section of the Act has been construed, the Court of Appeals for the Fifth Circuit held otherwise. That case was brought on by the petition of a trustee in bankruptcy to determine the validity of a mortgage held by a limited partner. The court sustained the mortgage on the premise that the partnership was solvent when the mortgage was made and that the prohibition against receiving or holding partnership property as collateral is also modified by the adjective clause which is a part of Subsection (1)(b).

In support of its conclusion, the court cited the California case of *Grainger v. Antoyan* and also the commissioner's notation following Section 1 of the Uniform Act.

The California case did not actually involve the issue of validity or priority of a mortgage—rather the question before the California court arose out of an endeavor of creditors to convert a limited partner into a general partner simply because the limited partner had received a chattel mortgage from the partnership and the California court was required only to find that the fact of the mortgage per se did not make the limited partner a general partner.

The commissioner's note accompanying the Uniform Act is obviously of interest and certainly is not inconsistent with the reading given it by the court, but it is editorial in nature and not a part of the Act and it too is not as clear or unequivocal as might be wished.

Cavitch describes the intent of the Uniform Limited Partnership Act as being to restore the limited partnership as a useful and effective form of business organization by relaxing the strict provisions on construction of prior statutes which have made it difficult for a person to invest in a partnership as a limited partner without sustaining the unlimited liability of a general partner. The concept of a secured position for the limited partner is hardly implicit or required to accomplish that end.

The case for sustaining the mortgage would not seem to be made stronger in a situation in which the limited partner controls one of the general partners.

To add interest but not light to the question, I was informed by our local counsel in one transaction that one of the large title companies had indicated a willingness to insure a deed of trust from a partnership to one of its partners, but in a conversation with a senior officer of the same company I encountered a quite different reaction.

In closing I suggest that life insurance company participation in true real estate equity development is still in its early and perhaps honeymoon stages, that there are a lot of answers not yet in, and that it augurs for a very interesting future. It is not inconceivable that it may also produce its moments of confusion as great as that of the little boy who dropped his gum in the hen house.

THE FUTURE OF TITLE INSURANCE IN NEW JERSEY AS I SEE IT

HORACE J. BRYANT, JR.

Insurance Commissioner, State of New Jersey
Department of Banking and Insurance

I have been asked to speak on "The Future of Title Insurance in New Jersey as I See It." I would like to tell you first that in New Jersey, the Commissioner of Banking and Insurance is one of four in the nation where you are charged with some other responsibility besides insurance. And so in that area I wear the hat of Commissioner of Banking, Commissioner of Savings and Loan Associations. Commissioner of Insurance, Life, Fire, Casualty and what have you, and then, just to even out your day, I am also in charge of the Real Estate Commission and the activities of real estate in New Jersey.

From this beginning, I would like to talk to you for a moment about the activities as they stand in New Jersey regarding banking, savings and loans, insurance, including title insurance, and then maybe for a moment about real estate, because you are concerned about the condition of real estate and real estate sales in New Jersey.

I suppose there would be no title insurance if you did not sell a piece of property once in a while. Of course, you would have some activities in connection with the mortgaging of a piece of property. But there must be some real estate activities in order to generate and move your activities.

So let me say to you first that we have been in a state of flux, a state of change, in every area of New Jersey in the last year.

As to banking and savings and loan associations, we started off in January of this year with the adoption of a new banking law which permitted regional banking rather than county banking. Up to that time a bank in New Jersey was permitted only to extend its branching facilities within the county of domicile, and then in January we were permitted—at least the legislature adopted and the governor signed a bill which put into effect six months later, or in July of 1969, the possibility of branching within an area.

To establish these areas, we started from the top of the state of New Jersey, touching the Pennsylvania and New York borders, and came down to New Brunswick, and that was called the northern region, which permitted the banks to branch within that area. Then we moved from the New Brunswick area down to the Trenton area, this is across state, and this became the central region. And just below Trenton down to Cape May we have the southern region. And that means that banks in Atlantic City can branch to the Delaware and they can branch to the end of the tip of Cape May point, but they cannot go above that line which separates them from the central and the northern region.

This has been a very active period during the last several months. During the time when we were preparing for this we got about 115 applications by various banks to branch. Now, these applications were also numbered almost equally by the controller of currency who was accepting applications for the branching of national banks, and during this period from January to July we attempted to do everything necessary to investigate and determine the feasibility of the branch applications, so that on July 17 we were prepared to announce the completion of 53 applications successfully and we are now proceeding to go through the remainder.

Now, this changed the complexion of

financing and deposits, the movement of funds in New Jersey, and has permitted some institutions to branch out and serve in an area which they thought represented truly the center of their activity.

And so we have banks in Atlantic County moving into Cape May and to Camden County, and we have them moving up to Ocean County, which is just above us. We have banks in the central part moving to serve people at the seashore areas in the center part of our state, and we have big banks at Newark and in Jersey City and more populous areas of New Jersey moving into fast growing communities in order to get a hedge against someone else, eliminate them in the meantime.

And so we have had a tremendous amount of activity in this area. This also means that in many instances where we have title insurance companies that are associated with banks or have similar ownership that they have had an opportunity to move across lines because there was no restriction about the movement across lines except that they followed their financial benefactor. And as a result we are having expansion of our title insurance companies, but primarily from the viewpoint of following the bank with which they were associated.

So that this activity is continuing because we have about 60 applications now that we have to continue to process, looking toward some determination to be made, we hope, before the end of the year as regards the feasibility of these branches being established where the banks have made application.

At the same time the statute that covered this also permitted the extension of savings and loan associations in the same three regions and in the same manner. Now, savings and loan associations have been a little slower to move, and as a result we have had only 25 applications from savings and loan associations to establish a branch in some other area beyond the community in which they are established. They are moving cautiously but we have had a pickup in this in the last three weeks since Labor Day, and I would expect that by December 31 we will have disposed of about 30 applications for branching from savings and loan associations.

This has a different impact in New Jersey because since I am both the Commissioner of Savings and Loan Associations and the Commissioner of Banks I have an obligation to see that by the extension of the bank we do not close up the savings and loan associations. By the same token, a savings and loan association which may be moving quietly and developing satisfactorily is not eliminated by the establishment of a branch for a big bank on the corner or next door to them. So that we do have to consider both the savings and loan associations and the bank in these terms.

We feel this particularly in connection with mutual savings banks because in their expansion they tend to bring into the community similar facilities and opportunities for investment as the savings and loan associations have developed or are developing in that particular community. So this has increased our problem.

But nothing connected with the banks or with the savings and loan associations approaches the problems we are having with insurance. We have had trouble with insurance, the insurance companies, and with the customers. So that at this time we are serving no particular person.

The insurance companies don't like our way of doing business in New Jersey, the agents don't like our regulations and rules in New Jersey, and the assureds, because they are having difficulty in getting insurance as the insurance companies close the gap and try to put pressure on the Department and on the courts at the same time, are disgusted because they would like to have a free and easy insurance market at whatever it might cost.

But in New Jersey we decided in 1967, and the then Commissioner, Charles R. Howell, in connection with an automobile insurance problem, decided that investment income should be a factor in the determination of the insurance rate, and therefore we turned down an application by the Insurance Rating Board—or at that time they were called the National Bureau of Casualty Underwriters—for a 20.6 per cent increase in automobile rates, and we said that they did not in their determination build up the total limits concept.

In other words, one of the things that has happened as a result of your affluence in the last few years has been that instead of buying in New Jersey—the minimum statutory requirement is $10,000 one person, $20,000 any one accident, and $5,000 property damage, so 10, 20 and 5 —it had previously been 5, 10 and 5— but because you were making more money and becoming more important we moved up the statutory minimums to 10, 20 and 5, and then you have waxed so financially substantial that 10 and 20,000 coverage was not sufficient, and now you are buying 50 and 100,000 plus 10, you are buying two, 5500 and 10, you are buying all combinations of higher limits because you do not want to be wiped out by any one particular act that might transpire while you are driving a car or your wife is driving a car or your very conscientious or very careful son or daughter is.

As a result of all this, you are just buying a higher limit. So in the course of buying these higher limits we said to the insurance companies some years ago that we were going to take a look at total limits business.

Now, total limits business means that the premium above the 10 and 20 and 5 should be included in your determinations. Why should you include that in your determinations. We are only involved in the statutory limits. And we said that is quite all right as long as the statutory limits represent the major part of your business.

But in 1966 when a filing was made by the insurance rating board the determination was that at that time the total limits business represented 22 per cent of the total premium, and that represented a substantial portion. And when they came in 1967 with a filing seeking a 20.6 per cent average increase in the automobile premiums we said, no, we are going to put into this experience the total premiums that you have received and the total losses that you have incurred and then determine whether you are entitled to an increase.

As a result of putting these total limits together—and New Jersey is the only state that does that—we were able to say to the insurance companies that this profit you have engendered out of this total limits business, together with the commission adjustments downward that you have made, together with the investment income that you should give the customer credit for is the biggest problem in the entire insurance rating procedure.

Most of you have a bank account, and you know the service charges you get each month for using your account. One of the requirements we have in connection with the service charge is that even though a checking account does not draw interest, the average balance of the checking account is entitled to an interest credit because it is being used by the bank and they are enjoying a profit. When they charge you ten cents for each check and ten cents for each deposit item we permit them to add that up and determine what this gross service charge is; then we say to them, well how about this average daily balance that you had the use of during the month. They then take this average daily balance and they add to that or multiply it by the average daily interest earnings of the bank, and that establishes the credit against this charge.

Instead of getting $2.50 charge for 25 items you get $2.50 less 96 cents, which brings you to $1.54. This is giving you credit for interest on your average deposit.

The insurance companies should work the same way, and we say to you that when you decide the value of this particular account—and let's say that this claim in your opinion is worth $100— you give us this $100 and you set that aside and continue to invest and reinvest this money.

Under usual circumstances it will take anywhere up to 63 months before a policy year, an accident year, will be completely settled, and all the claims satisfied. If this is true then when you come to the end of the fifth year and you settle that claim, instead of it costing you $100, it will cost you $110 or $115; you want to add that additional $15 to the losses paid and charge this particular accident year with that deficit.

This is quite all right. But at the same time, since you took $100 and set it aside to accumulate interest in the meantime because you are investing it and reinvesting it, we would suggest that it is allright to charge the $15 but give as an offset to that the interest that you earn on that $100 set aside five years ago to pay me this year, and maybe instead of it being $15 it might be reduced to $2 or $3 as a result of this interest offset.

This was the determination made by Commissioner Howell in 1967. We have been in New Jersey courts since then for the purpose of review, examination and determination. We have had the

courts looking at this because this is a different approach, and the insurance companies are angry—I am talking now of the fire and casualty insurance companies, not the title insurance companies—for another reason—but we try to keep everybody happy.

So the fire and casualty insurance companies are angry because we are taking this part of income and applying it to the losses incurred as an offset, and therefore as to the companies that were involved in the insurance rating board case we have established 4.6 per cent as the investment income that should be applied to the losses as a reduction, and as a result we ended up with that represented about three per cent as a probable increase in the experience.

The insurance companies decided in 1967 that the Commissioner should not be permitted to get away with this. This had not been done before and he had introduced an entirely new approach and something ought to be done about it. They took us to court, and the effect of taking us to court is that we have had to stand still and there have been no increases in automobile insurance since 1966. And the insurance companies, by various means, are attempting to convince everybody in New Jersey, except the Supreme Court and the Commissioner, that there ought to be an increase, and as a result of what we are not necessarily dealing with our closest friends when we are dealing with the fire insurance and casualty insurance companies in New Jersey.

This brings us up to date as to the banks, the savings and loan association of 1969, the Insurance Rating Board and the insurance companies, all of which would be subject to the determination as to what happens to the investment income.

In the title insurance field, they were, for a long time starving to death and not doing too much, and because we did not want to inject our activity or interfere with them, we did not do anything with title insurance companies until this year. We took a look at the title insurance companies and found that if we were to look at some of their practices we would have to more than likely put them all in jail to start out. That would be the first thing we would do. And then we would take the second string and try to give them a measure of education as to what we expect in the insurance field.

This idea of doing a big tract of land on examination and getting a special price for the contractor, then subject to refunds and kickbacks as you move along to a sale to an eventual owner would certainly not be in keeping with New Jersey practices in insurance.

We did not want to take all our leading citizens and cause them any difficulty, and we have stayed away from this field.

But as a result of an appearance at the New Jersey Land Title Insurance Convention in June of this year, we are taking a second look at them, and we are thinking very seriously now that with the cooperation of the title insurance industry we are going to attempt to devise some statutory procedures whereby rate making in the title insurance field will become subject to New Jersey Department of Banking and Insurance Regulations, and we are going to take a look at some of the practices that have prevailed in doing business in New Jersey that we do not exactly coincide or reconcile with good business practices.

If we are going to have title insurance then we are going to have it at rates that are uniform, not unfairly discriminatory, and that are published and filed and cleared with the Department of Banking and Insurance.

We don't think that the development of New Jersey can continue as it is going now unless we do have some regulations. Now, I do not expect there is going to be too much development in New Jersey.

One of the things that the legislature left with the Department of Banking and Insurance in 1968 was the determination of what would be the top interest rate in New Jersey. According to statute the top rate in New Jersey for several hundreds of years has been six per cent. Then in the summer of 1968, because of the hue and cry that you could get more interest on your money in some other areas, and so much of New Jersey money had moved to other states, we adopted enabling statutes which permitted the Commissioner to fix a rate not higher than eight per cent which would be the rate for payment of interest on instruments loans in New Jersey.

We recognize that in New Jersey by the same various means that you do it in other states you are paying higher than the established rate.

We had a hearing in the summer of 1968, and at that time the top that was possible was eight per cent, and we decided that seven and a half per cent would be the proper place to fix the maximum rate. We are not foolish enough to believe that seven and a half per cent is the highest rate being paid in New Jersey. In some places you have to pay a fee in order to go in and talk about borrowing money.

And then if they go in to study it there is an additional fee. There will be some points on the mortgage, and in order that no one will really feel it terribly, the buyer and the seller will both pay points. It eases up that way.

We are facing up to this in New Jersey and we expect that the top rate in New Jersey of seven and a half per cent will prevail until the end of the year. We expect that the impact of this will be that there will be less building of one-family dwellings, that there will be building of multiple-family dwellings, that this is in the concept of trying to keep the lid on inflation, and that in spite of desires by many in New Jersey that their ceiling should go up to the maximum of eight per cent.

We have raised the commission factor in New Jersey. It used to be five per cent on the sale of real estate. It is six per cent now. Seven per cent if it is vacant land. And if there are extenuating circumstances it may be even higher.

What I am saying is that the future in New Jersey for the title insurance business is tied up with the possibility of regulations, and maybe if we have the kind of regulations that we are thinking about, a convention of this size in New Jersey would not obtain in another year, because of the out-of-state companies will not find it so sweet to do business in New Jersey.

I have no objection to that. I think that you should be able to charge what the traffic will bear. But since I am just one, and there are a number of other people in New Jersey who do not think that way, I would think that maybe by this time next year you too might join the life insurance people who are angry with New Jersey because we are only going to permit them to have one holding company with the life insurance company, and that holding company must be related to life insurance and its production and service, you may be angry like the fire and casualty people because we have not opened up the doors for increases because you say that you need it, but because we have examined the statistics and found that you need it, and then you may join the mortgage bankers and the others who think that there should be no top to the interest charges on mortgages.

That does not close the door entirely. Because you are going to have a wonderful opportunity to levy and increase the charge from the cost of producing a title search and other material which is the basis on which you sell your insurance. You have one of the most lucrative lines of business in New Jersey, and we are not going to do a thing to interfere with it. But we are not going to stop casualty companies who find that if they cannot make money selling automobile insurance in New Jersey they might be able to sell casualty insurance in the form of title insurance on real property in New Jersey.

The future in New Jersey of title insurance is just as confused and upsetting, with no ultimate goal in sight, as we could say about all the other forms of financial operations in New Jersey. 1969 has been a bad year. But unless some of us get religion and decide to give the public and the consumer a decent break, 1970 is going to be a bad year too.

Thank you.

AWARDING OF HONORARY MEMBERSHIPS:

TO JOHN D. BINKLEY

(Presentation remarks by Lloyd Hughes, Senior Vice President, Midwest Division, Transamerica Title Insurance Company, and 1968-69 ALTA Finance Committee Chairman)

It is my real pleasure to be here this afternoon to award our longtime good friend, Jack Binkley, an Honorary Life Membership in our National Association.

This honor, as you all know, is not an automatic gesture in our organization. A life membership is a privilege for ALTA to award, in appreciation of the extra ability and extra service that a man has given to us during the period of his membership.

Jack's ability to expedite the business of our association with direct simplicity, is well known to all of us who have worked closely with him for many years —and is reminiscent of the story of the sage who solved an Arabian financial dilemma. A shiek died, leaving his property, seventeen camels, to his three sons. The will was quite explicit: the eldest son was to receive half, the second a third, and the youngest a ninth, of his seventeen camels. But fractional camels are almost worthless, and a wise elder of the tribe was called upon to help solve the young men's difficulty. He said, "Allah has blessed me with many camels, and for the love I bore your venerable father, I will add from them, one, to the herd he left you." The problem was now untangled; for the eldest son received nine camels as his half of the eighteen; the second, six as his third; and the youngest, two as his ninth—but nine, six, and two added up to the original seventeen; and so, the wise patriarch took back his camel, along with the blessing of those who had benefited.

Jack preceded me as Chairman of the Finance Committee of ALTA, and I know from experience that his wit and wisdom in solving problems are a match of the Arabian sage.

Jack's wit is native, and his wisdom came from a forty-three year association with the Chicago Title and Trust Company; from which company he retired last December, as the Chairman of the Executive Committee of the Board.

In our American Land Title Association, Jack has been successively, on the Board of Governors from 1953 to 1956, National President in 1956-57, Chairman of the Planning Committee in 1961-62, Chairman of the Finance Committee from 1963-67, and in 1968, Chairman of the Counsel of Past Presidents.

With the great affection of all of us, Jack, and as a small measure of thanks to you, for all you have done for all of us, the Board of Governors, on behalf of the entire membership of ALTA now has the honor to award to you an Honorary Life Membership in our Association.

TO CHARLES H. BUCK

(Presentation remarks by Harold F. McLeran, McLeran and McLeran, and 1968-1969 chairman, ALTA Council of Past Presidents)

The Boy Scouts of America have this philosophy regarding boys:

"A hundred years from now it will not matter what my bank account was, the sort of house I lived in, or the kind of a car I drove. But the world may be different because I was important in the life of a boy."

In 1941 Charles H. Buck was elected President of the American Land Title Association. It was important to ALTA that we had his leadership not only for the title industry but also for the trying years in the outbreak of World War II.

In his annual report, Charles Buck emphasized that the title industry of the United States would prosper in direct ratio to service given.

He has lived a life of service, not only to the title industry, but also to the betterment of his fellow man.

The time has come when younger hands will take over the responsibilities which Charles Buck so conscientiously carried. We have been honored by his association with us.

In the words of our late president, John F. Kennedy, "A nation reveals itself not only by the men it produces, but also by the men it honors, the men it remembers."

We shall always remember Charles Buck. In order to assure his continued presence with us, we are proud to present to him an Honorary membership in the American Land Title Association.

ELECTION OF NATIONAL OFFICERS

By proper nomination and second, the following officers were unanimously elected for 1969-70:

President—THOMAS J. HOLSTEIN, LaCrosse, Wisconsin
President, LaCrosse County Title Company
509 Main Street, P.O. Box 969, 54601

Vice President—ALVIN W. LONG, Chicago, Illinois
President, Chicago Title and Trust Company
111 West Washington Street, 60602

Chairman, Finance Committee—HALE WARN, Los Angeles, California
President and Chief Executive Officer, Title Insurance and Trust Company
433 South Spring Street, 90054

Treasurer—JAMES G. SCHMIDT, Philadelphia, Pennsylvania
President, Commonwealth Land Title Insurance Company
1510 Wanut Street, 19102

BOARD OF GOVERNORS
Term Expiring 1972

WILLIAM H. BAKER, JR., Richmond, Virginia
Senior Vice President, Lawyers Title Insurance Corporation
3800 Cutshaw Avenue, 23230

HARRY H. ST. JOHN, JR., Topeka, Kansas
Vice President, The Columbian Title and Trust Company
110 West 6th Street, 66603

JAMES L. BOREN, JR., Memphis, Tennessee
Executive Vice President, Mid-South Title Company, Inc.
12 South Main Street, 38101

W. W. WALLACE, JR., Panama City, Florida
President, Panama Title Corporation
240 East Fourth Street, P.O. Box 19, 32401

GERALD L. IPPEL, Los Angeles, California
Senior Vice President, Pioneer National Title Insurance Company
433 South Spring Street, 90054

ABSTRACTERS AND TITLE INSURANCE AGENTS SECTION

Report of Section Chairman

JOHN W. WARREN

Vice President, Albright Title and Trust Company, Newkirk, Oklahoma

I suppose it might be said that this past year has been a tough time for abstracters. We have been confronted by such matters as:

> High interest rates and their impact on residential construction and transfers;
>
> The threat of investigation over closing costs in a real estate transaction, which are said to be disproportionately high;
>
> The lack of trained personnel and the inability to secure same;
>
> Inadequate protection at excessive rates for the errors and omissions that are a natural part of doing an abstract business;
>
> The possible loss of business that would result from the formation of a national American Bar Association sponsored title insurance company; and,
>
> The immediate and long-range effect that may result in our business from proposed changes in internal revenue laws now before Congress.

This all points to the need for a strong state and national title association composed of individuals and companies that are dedicated to the principle that the transfer of property must be evidenced under a system that will prevent unreasonable delay; that will permit a fair return on plant and personnel; and, that will not render insecure the ownership of property.

I have been privileged to represent you and appear as spokesman of our national association at a number of state conventions during the past year. I have only scratched the surface in learning of the many good practices that are being followed by states in presenting objective and informative programs to their membership, stressing, among other things, the objectives which I have listed. I have tried to alert our industry to some of the problems which now confront us or with which we will be involved shortly. I have tried to give assurance by specific reference to the positive steps that have been taken—that you have an alert national organization actively undertaking to meet the challenge. Some have doubted the value of national membership. Some have expressed concern that we not allow special interest groups to dominate association affairs. So we have internal problems as well. Trying to convince our membership to cooperate in furnishing industry statistics is only one. Yet, how can we successfully resist what we believe are false accusations of profit, loss, costs industry employment figures, and plant and office investment, without having accurate information at our disposal? Your part—and it is *vital*—is to cooperate! Further, you are urged to be active in the affairs of this Section—in this Association—as well as in your own business community and state association affairs. The leadership will be no better than you, yourself, are willing to offer.

As I have gone about, I have tried to emphasize these points. Public relations involves many things, but in our industry it is one of the most important. It starts by making the public aware of the need for our product; by enlightening the public that we are a profession with special skills and special tools; that we desire to be employers and contributors to society; and that our product is the evidencing and assurance of title to property—the continued ownership and free exchange of which is basic to the American way of life as we now enjoy it. There are many ways we can accomplish this and we can spend as much or as little as we desire; but whatever effort each of us spends will inure to the ultimate benefit of us all.

We need continued technical education. Later this morning you will hear the report of the Schools Committee. As you will see, there has been assembled a great deal of information and know-how available through your state secretary, the work of many of you here today, but for the benefit of us all.

We have been making progress on achieving better protection at competitive costs through the work of the Committee on Errors and Omissions Insurance. That report will also be presented later this morning.

We have tried to give you an opportunity to express the areas of your interest. Provocative problems were presented at an open forum at the Mid-Winter meeting and there followed the free exchange of answers based upon the personal experience of participating members.

We have had presented at our workshop sessions yesterday a most enlightening panel presentation on a most pressing problem—that of selecting and keeping personnel. We will hear a current report on the status of the National Conference of ALTA and the ABA presented later this morning by our national vice president. We will also learn how to evaluate our plants.

So we are constantly exposing our selves to information—and why shouldn't we? Our financial existence, yes our business existence, is dependent upon the furnishing of information that others either cannot provide for themselves, or lack the technical know-how to provide for themselves.

Where shall we go from here? I believe we should continue many of the active programs that we keep stressing: public relations, education, technical training, schools, and automation, and perhaps we should add others. Is there any likelihood that some of the less populous counties will be consolidated with the more populous and perhaps changes made in record keeping that will do away with our business? When will this come, if it does come, and what can we do to fit into the professional picture? Perhaps studies should be made on this.

What has been our loss experience? Are the losses due to an imperfect plant, imperfect personnel, faulty county records, or combination thereof? What relationship do we have with our title insuring principle with respect to title losses on policies issued through our agency? Time for a further study and free discussion.

Are the photographic methods of abstracting doing the job better than the historic method of briefing instruments in typewritten form? Would our answer be different if we were behind in title orders? Is there greater or lesser protection to the buying public in one system over the other? Time for another study.

Would we more effectively tell the story of the importance of our national organization and our mutual exchange of ideas in a well-planned one day regional meeting aimed more directly at abstracters' problems? Would you come and participate and make it a point to bring at least one of our members who is a known irregular attender at conventions such as this?

If you will express yourselves at this meeting in writing either to me or to our national office, perhaps another year will be even more meaningful and you will have had a part in bringing this about.

I appreciate the help and assistance that was freely given me by the other officers and the executive committee of this Section in establishing objectives to be achieved and suggesting program material as well as the names of our members best suited to carry this labor on.

I thank you for the privilege you have given me to serve you and I especially appreciate the co-operation which you have extended to me and the courtesies you have showered on both my wife and I.

SECTION WORKSHOP: PERSONNEL RECRUITMENT AND ATTRITION

Commentary by

JACK RATTIKIN, JR.

President, Rattikin Title Company, Fort Worth, Texas

After John Warren called me and asked me to appear on this panel, many thoughts ran through my mind, the main one being, "What do I know about personnel recruitment that would be informative and also make it sound as though I knew what I was talking about?"—which is doubtful at best. I began to think of my own problems in my company at home and all the trouble I have in trying to locate people, both professional and non-professional, to work for us. Through the years this has been an almost impossible task, and because of this I had previously jumped at the opportunity to guide the Young Titlemen's Committee into a project of attempting to use the services of ALTA to bring more qualified young people into our industry.

My job here today is not to prevail upon your time to expound on the accomplishments of this committee, but I hope you will hear more about them later on. My particular topic assigned covered the area of recruitment of the attorney, and possibly others, in companies such as most of you represent, i.e., the agencies of underwriters and local abstract companies. Since I have my own local company, and also work for a major underwriter, I feel qualified to state that local companies, like yours and mine, have a much greater problem in the area of recruitment, as well as retention, than do the underwriting companies, for very obvious reasons, the major one being their ability to pay the salaries requested. We all know the problems involving money, so I will not dwell on that here. I want to discuss the areas involving the recruitment of attorneys and others, assuming the monetary question is equal to other industries in any given area.

Since my major category is the attorney, let's study him somewhat. My first thought was "What is an attorney anyway? What makes him tick? Why would he want to get involved in the field of title insurance or abstracting? and, Where would he rather be?" As you can see, these questions go back to the old What, Where, When, and Why.

Being an attorney myself, I have often wondered what I really was supposed to be. Why is the magic word "attorney" so important in our industry?

In my search, I looked up the meaning of the word "attorney" and found that an attorney was a person who is duly appointed or constituted to act for another in business and legal matters. However, in my own mind, an attorney is only one who has gone to school for the purpose of learning where to find the rules and laws that affect our lives so completely. OK, so you have determined that you need an employee who is an attorney. How do you proceed? First, you must secure that interview. Without someone to talk to, you are dead. I have tried any number of methods, including hypnosis. Each method must be designed to catch the attention of the type of person you want. The message must be brief but tell a complete story. You have to sell your company and your industry quickly and firmly. There are two areas in which to begin looking.

One such area is within the industry itself. Of course, this involves theft from another company. This is sometimes called "proselyting". Most employer's find this area is the easiest one to tap, but there is always the take from you. Many months are required to adequately train an attorney in our industry, and taking the easy way doesn't give one the feeling of too great an accomplishment or very much pride. Besides this, the industry has not been enlarged by one single man. Since we all need new blood so badly, I suggest that we all concentrate our efforts in the other area, that of getting a newcomer to the industry into our shops.

I have found that three types of printed media are most successful. These are the bar journals, or bar newsletters, which each state bar association publishes, the various state title association newsletters, and the local newspaper. By far, the local newspaper appears to be the best. In this area, let me suggest that the ad for employment be placed in the sports section rather than the regular classified ad section. Most attorneys are not really looking for another job, but a catchy ad in the section of the paper that almost everyone reads will set them thinking. Give this a try next time. I think you will be amazed at the results.

In the area of getting new blood, thought should be given to the type of attorney you have the best chance of getting—and keeping. You must realize that almost every attorney comes out of law school thinking he is Clarence Darrow, and deeply desires to make his way in the world by oratory on the rights of man and the defense of his liberties. In other words, he wants to try his hand at the court house. I really believe that this is a feeling that must be removed from his system one way or another. Generally, this time of an attorney's life lasts only about one or two years, and then he realizes that security for his family and his possibility for achievement is foremost in his life, and he is willing to consider the business world itself. This is the time when he either has it made as a practicing attorney, or he realizes that the use of the knowledge he has attained is more rewarding in business other than in actual law practice itself. Of course, this is not always the case, but we must base our conclusions on the percentages. How does this relate to our problem of recruitment? It's simple. Merely try to focus your attentions on attorneys who are ready to do something else. This is the area I suggest you try first. The man you get will be much more permanent in nature. Our industry is closely related to the law, and therefore, the attorney will not get the feeling that his experience has been wasted. The land title industry is a natural. Show him how necessary he is and how he must make decisions that may be worth millions of dollars to someone. In other words, give him responsibility. An attorney needs this to feed his ego. If you feed on his imagination and let him see where he can actually accomplish something, you will have yourself a new professional employee.

OK, now you have an attorney in your employ. How do you keep him? This is also simple. Merely follow through with the ideas you presented him when you first inspired him to come with you. All attorneys are egotists to a degree, and if they get a feeling of importance and understand the reason why they are there, you should have no real trouble. The main thing to remember is that until most attorneys get tired of law practice, a real future in the land title industry will never have the meaning it should. I finally realize this fact, and ever since then, I have had no real problems in the area of hiring attorneys.

Now, what about the title searcher, the title officer, the escrow officer and others? I firmly believe that recruiting any employee today depends on offering him a challenge—even more than the money involved. Young people are now in the throes of feeling that doing something for the world and its people is the most important factor. The old selfish attitude is still prevalent, but it is not as outwardly pronounced as it was in the past. Therefore, our first objective *must* be to convince these prospective new employees of the vast contribution that the land title industry makes to the populace by making home ownership not only possible, but probable. The young people today want to be where the action is, and they want to do their own thing. Therefore, why not convince them to join the action and contribute their own personality in direct dealings with those who want to make a place for themselves in the world, and make the world a better place to live. This type of maneuver will catch their attention and make them willing to listen. Then it's up to you to establish a groundwork from which to proceed.

Attrition is always a problem in a local title or abstract company. A truly successful company is one who holds its employees and consequently impresses on the public how many experienced people are available for their use. Therefore, we must ask ourselves what holds an employee? What makes for loyalty? Well, money certainly hasn't gone out of style. But, as I have said, the modern personnel today talks about other things, such as social motivation, and surprisingly, some of the "little things" help hold employees in today's mobile market. I feel that one of these "little things" is your personal thoughtfulness and interest in your employee as an individual.

One example of this came to my attention several days ago. A business customer of mine from out of town was in my office and stopped to chat, and at that time he asked if I knew where he might get a certain brand of perfume to take back to his secretary. Naturally, this was a great opening for me, and I must say that I kidded him a little bit. However, after finding out that he was strictly on the level, my kidding stopped, and I went on to find out that his secretary had been a faithful aide for years, as had over 90 per cent of all the members of his staff, both men and women. What was the key to his success? I imagine that his continual recognition of each employee and the true spirit behind his thoughts had a great deal to do with it. In this day of constant rush, it is far too easy to miss giving that compliment for a job well done, or merely a pat on the back. Of course, working conditions, atmosphere and other such things contribute to the overall feeling of satisfaction of each individual.

Attorney, escrow officer, searcher and every other employee, or possible employee, have one thing in common. They are all human beings. Be sure to give them credit for good sense, a general willingness to work, and an extreme need to be recognized. With these things in mind, the problems of recruitment should be little ones.

Above all, honor the profession you have chosen, and make the potential or present employee absorb your enthusiasm, so that he will be proud to admit that his job involves work in the land title industry.

Commentary by

BOB RUSHING

Employee Relations Manager, Title Insurance and Trust Company, Los Angeles

Those of us charged with the responsibility of recruiting and developing talent have—the last few years—been witnessing literally, a "no holds barred" scramble for executive talent. There are signs the demand for this commodity we call "executive talent" could reach boom proportions by the 1970's, as a result of:

The low birthrate of the 1930's;
The unprecedented expansion in the size of the average corporation in recent years;
The growing demand for executive talents outside industry—notably the governmental and educational sectors; and,
The increasing complexity of the management process.

Already, a number of highly regarded companies on the West Coast—that have a reputation for doing an outstanding job of recruiting and developing talent—are being subjected to persistent raiding by recruiters on behalf of their competitors. As a matter of fact, the better a company's reputation as a talent developer, the more aggressive the raids. To counter this threat to a hard-earned wealth of talent, we at Title Insurance have taken a number of steps to protect our manpower position. In order to hold our present good executives, we've designed and implemented total benefits programs made up of both current and deferred income, profit sharing, pension, stock options, a variety of insurance plans, and a merit increase compensation package. In addition, we have established a recruiting program designed to increase our future supply of executive talent.

It is our recruiting program with which I am directly concerned at the present time, and I'd like to share with you this afternoon some of our thoughts on executive recruitment.

Top management recognized five years ago, that in order to recruit effectively and attract top executive talent, three things had to be done:

First, the total recruiting effort including the training function had to be centralized.

Second, there was general awareness that the personnel function had to be provided with muscle it needed to get the job done—if the personnel group was to function professionally and cope with tomorrow's manpower problems.

Third, top management has also begun to appreciate the fact that next to promotion, compensation is the most powerful signal the company can use to let an individual executive know how he's doing. Out of this realization developed our philosophy toward salary administration. We call it the "merit philosophy" and enables an individual to advance in direct proportion to his personal contributions to the company. We feel a compensation signal can be given more often, and also in greater variation than a promotion signal.

Historically, TI, which was founded in 1893, has attracted an adequate supply of talent at all levels on the basis of corporate identity and reputation. This is no longer true. Now, we have found it necessary because of changes in the title insurance business, to move out aggressively seeking executive talent, which is growing scarcer.

Our recruiting efforts now go well beyond the natural borders of southern California. We have methodically increased our recruiting sources by establishing local, state, regional and national contacts. Our total recruiting sources are many and varied. For example, we advertise in newspapers, trade journals and foreign language papers. In southern California we have developed contacts in veterans organizations, churches, public agencies, schools (both public and private), business colleges, trade associations, such as the Personnel and Industrial Relations Council, company customers, employee referral programs, and temporary help agencies. We have 37 such contacts in Los Angeles alone—but for top-salaried executives from $15,000 up, the core of our executive search effort has developed three or four well-known professional executive search firms, and a number of reputable, reliable and well-established private recruiting agencies over the past two years on a local, regional and national basis.

Statistically, approximately two-thirds of our applicants (as compared to one-third advertising, one-third agencies, one-third referral, three years ago) are now being referred to our corporate offices in Los Angeles by employment agencies. This realization brought a new attitude towards the private agency. Accordingly, we have identified a certain number of agencies which are effectively run and staffed by competent people who conduct their business with acumen and honesty. We feel that any recruiting service, public or private, that can provide us with the right applicant at the right time for the right job, is well worth the investment in agency fees.

We also found that we could increase our ability to obtain prompt referrals, and an adequate supply of qualified applicants from many and all of our recruitment sources by developing the following approaches to these sources:

1. Our recruiters let the recruiting source know exactly the kind of applicant we need. This not only cuts down on needless preliminary interviewing, but it serves as an added screening service. Since our recruiters have responsibilities other than recruiting, preliminary interviews serve only to increase personnel costs. To a large extent, we have de-emphasized the interview itself.

We now instruct recruiting sources to send in screened applicants for a face-to-face conversation—not a structured interview. The procedure is simpler and the results have been gratifying. For years now, the employment market has favored the applicant—consequently, I think we really don't interview applicants anymore in the traditional sense—they are interviewing us.

2. We have gone to greater lengths to develop a working relationship with individual recruiting sources. We invite them to visit our corporate offices, and many times at lunch, we:

a. Take time to sell ourselves as individuals and as a company. We motivate them to pull out all the stops in their efforts to provide TI with that right applicant, again for the right job and at the right time.

b. In their referral process, we give them direction when they miss the mark —conversely, we let them know when they do good job.

Up to this point, I have given you some idea of our approach to recruiting, and an insight into the internal operations of our recruiting activities—how we identify and effectively use the recruiting sources available to us. In the time remaining, I wouldn't want to overlook what I consider the most important part of our total recruiting effort—and that is, the emphasis we are now giving to "working environment". The most effective techniques in attracting resourceful applicants today involve the human consideration of the working environment. We concentrate on the human relations factors—we emphasize a man's ability and willingness to contribute, how it relates to the total performance of the company—and we ask them to participate in an experiment to "unlock the human will to work".

If you're thinking this sounds too idealistic to work on a functional basis, let me share with you our experience from one of our most successful recruiting efforts this year. In January this year, we received a referral on a young man who was to receive his MBA in August from The University of Southern California. He carefully set forth his objectives in a transmittal letter accompanying his resumé. His academic background, combined with his brief experience was of interest to us. We made arrangements for an initial exploratory conversation. We were so impressed with the young man's behavior, ideas and academic concentration, we referred him to the Vice President, Information Services Division at TI. The initial favorable impression was sustained after this conversation, and we agreed to extend him an offer of employment upon completion of his Masters Degree at Southern California in August.

Accordingly, two weeks ago, we made a formal job offer, along with three other companies equally impressed with him. He accepted our offer. I think you'll be interested to know why he accepted TI's offer over three other exceptionally fine companies. Here, in capsule form, are his ideas on the role of a corporation in attracting and motivating talent at all levels:

First, young executives today feel that business is too often inclined to forget that business fulfills a function that transcends the concept of profit. I think he has a point. What he's saying is, we have become so enmeshed in talk of dollars and cents that we forget these are only the symbols of the true role of business.

Second, business does not exist merely to produce more goods or better services (though I think you and I will insist this is no small part of its obligation to stockholders).

Third, in today's changing era, business should afford the principal means whereby individuals may gain the satisfaction of accomplishing something more than merely sustaining their own lives.

And finally, managerial talent today—individuals who will be the creative innovators in the coming decades—are increasingly interested in a company's concept of employee relations and how a company utilizes its human resources.

Today, young people who have the capabilities of being our innovators and young executives of tomorrow are responsive to forces at work in our society. These same forces are rearranging our old concepts of traditional "working environment".

Traditionally, management has mainly concerned itself with the efficiency of its production process. The new management people seek the optimum use of all corporate resources—its cash securities, its borrowing power, its real estate, and its executive talent.

Obviously, a working environment succeeds because of its affect upon people. Since we are now dealing with young people, I think the key points in our attempts to create and sustain a desirable working environment at TI are:

First, Title Insurance is performing a desirable service for society.

Second, we try to emphasize an individual's opportunity to help people and society.

Third, we try to help our employees to accomplish more than "just sustaining their life".

Fortunately, for people in the title business, this should be easy to meet because of the fact that we are a service industry.

You may have seen a recent article in the September issue of *Forbe's* which reported the results of a recent countrywide survey having to do with the kinds of jobs young executives are looking for.

A decade ago marketing was the big choice, today that field ranks well down the list. Most shy away from operating jobs. 26 percent of those surveyed preferred financial positions—15 percent preferred consulting positions. Only 12 percent now choose marketing. Management administration ranks a low 5 percent—and even more interesting to us here today—the most unpopular industries are petroleum and real estate!

This commentary ought to compel our attention. I suggest we think a little more about our working environments—whether they are under-developed, misdirected, not fully appreciated, or nonproductive. I think the time has come for us to re-examine our comfortable, but not longer profitable employee practices —then we can cut down on the industry attrition rate and begin to attract and hold people who are in tune with the forces of the time—people who are not only trying to make a living, but people who are also trying to make a life! In the final analyses, it is people—not technology—that will determine our industry's survival and prosperity.

TITLE PLANT EVALUATION

OTTO ZERWICK

President, Abstract and Title Associates, Inc., Madison, Wisconsin

There are, of course, significant differences in the daily appraisal which the market makes of a business and the approach which concerns a would-be seller or would-be buyer of a business as a going concern. Perhaps there is an approach to our kind of appraisal when an effort is made to secure control of a company through offers contingent upon acceptance of a majority so that the offeror comes into actual management of the company. But in the day-to-day bidding on the market, there is an element of speculation in which the "bulls" and the "bears" do not entirely cancel each other out, and in which near prospects and long-term prospects create different pressures at different times. Forced sales deflect the market while the judicious seller and long-term investor stabilize it, and the optimistic novice and the manipulator often create unreal highs.

I make these comments as openers only. They suggest that millions of appraisers working for their own individual interest—some highly skilled, some simply gullible, some working from optimism, others working from pessimism —arrive at a strange moving reappraisal

which ebbs and flows from day to day, week to week, month to month. In somewhat altered form, you and I put together facts and fancy, rumor and wish, hard reality and gaze into crystal balls when we attempt to evaluate a title plant for purchase or sale.

Value

What is it? What are we trying to define? Commercial value, of course. The economic value of a business unit, a title plant. Webster simply calls it "that which is considered an equivalent in worth—a fair return in money, goods, services, etc., for something exchanged. monetary worth of a thing; marketable prices." Less closely connected to economics, he refers to value as a relative worth, importance, or utility. More closely connected to economics we find it defined as "power which an object confers upon its possessor, irrespective of political compulsion or personal sentiment, to command the commodities and services of others."

For our business purposes, as Edwin M. Rams says in his revised edition of Schmutz' *Condemnation Appraisal Handbook*, value is basically and essentially a derivative consequence, and a reflection of rights—i.e. legal rights.

As I shall point out, even the studious, constant attention of our security exchanges cannot come up with a static value. Value is a plastic, even a liquid thing. Its direction of flow tells even more than its relative position on the scales of value of a single day or single valuation performance.

The value of a single company is a complicated interlacing of internal and external factors—it includes everything from the cost of reproduction of the physical or material particles which, brought together, make up the business entity—through the weighting of the record of profitability of that enterprise in the past, to a projection of its performance into a future clouded and beckoned and bent by every glint of the sun, pressure of wind, and shadow of cloud that makes up the environment of the business community in which it exists.

These are formidable considerations.

I have a hunch that bigness lends a stability factor which enhances the values, while smallness jeopardizes these values. I think we tend to over-value the advantages of insignificant competition, while we under-value the potentials which exist in many companies for augmented profits through the introduction of better methods and better administration and better equipment. This is part and parcel of what realtors refer to as "the use concept", wherein the estimation of fair market value involves essentially a discounting of future potential and anticipated benefits to which a dollar value is ascribed.

It seems to me that each of us owes it to himself to ascertain that his own plant is being run as efficiently as modern know-how can make it, else at a sale, a knowledgeable prospective owner will consider a bargain what you are limping along with. He can see through the cobwebs of your system to the profit increment he can expect from a more efficient plant. You or your estate are the loser. The buyer is the advantaged. While in the evaluation of land in condemnation the "highest and best use" concept is the basis of valuation, the fact that you are growing hay on a motel site does not limit your recovery to farm field prices. But the seller of title plants seldom has the advantage of outside appraisal.

The courts—at least in theory—rule out speculative use of land in condemnation, so that it is very difficult to extend the curve of your profit and loss or gross income history very far into the future. But the directon of your volume, your net, your comparative growth—factor after factor certainly prepares the basis for harder bargaining when the outlook, through numerous avenues of examination, is, in the words of the space age, "go".

I submit that the problems facing the title plant appraiser are akin to those facing the appraiser of special purpose real property. Such real estate has a very limited or "non-existent" market, as they refer to it in the texts. Three basic conditions are prevalent in such properties: physical design features peculiar to a specific use; no apparent market other than to an owner-user; and, no feasible economic alternate use.

This is specifically the problem in appraising a title plant. *National Waterworks vs. Kansas City*, 62 Fed. 853, involved the valuation of a city water company. The court was concerned particularly with the "going value" of the enterprise. Circuit Justice Brewer said:

> We are not satisfied that either method (capitalization of earnings, or the mere value of the naked physical property) by itself, will show that which under all the circumstances can be adjudged "the fair and equitable value". Capitalization of the earnings will not, because that implies a continuance of earnings, and a continuance of earnings rests upon a franchise to operate the water works. The original cost of the construction cannot control, for "original cost" and "present value" are not equivalent terms. Nor would the mere cost of reproducing the water works plant be a fair test, because that does not take into account the value which flows from the established connections between the pipes and the buildings of the city. . . . It (the city) steps into the possession of a property which not only has the pledge to earn, but is in fact earning. It should pay therefore not merely the value of the system which might be made to earn, but that of a system which does earn.

In one view, what we have come to, I suppose, is the fact that value cannot be determined. Value is a relationship between a desirous person on one hand, and the rights of use of a thing desired. You've got the impossible problem of precisely determining human reactions. And this is the explanation of the gyrations of our securities exchange.

Value is estimated, and the appraiser or the owner or the buyer seeks to reach a reasonable estimate. Certain techniques are of assistance beyond and above the actual value exchanges of similar properties and again tend to explain why one title plant may sell for less than its annual gross while another may sell for three times that gross.

The areas of greatest sensitivity in my opinion are these:

1. A knowledge of what is being sold or bought. Is the title plant being efficiently operated? What would improved management or techniques or equipment mean to the productivity of the business? It is similar to the real estate approach as I have suggested—what is the most profitable use of the real estate under study?

2. Analysis of the known facts. This is the process of evaluating information to determine the degree of relevance, the weight of each item making up the bundle of stocks, which are rights—which is ownership. Some of these might be mentioned as competitive situations: trends; location; market outlook —local, state, and national; personnel; management; and the comparative productivity of this particular plant; and, all the variations and ramifications to which each of these is susceptible. The depth of your study is almost bottomless.

With these basic factors in mind, remember that some purchasers have bought title plants at less than a single annual gross and been disappointed in their bargain, while others have paid in excess of three times annual gross and found themselves extremely fortunate.

The Concept of Market Value

As used by the General Service Administration, the concept of market value, or "fair market value" as we are accustomed to saying, is:

> The highest price estimated in terms of money which the property will bring if exposed for sale in the open market by a seller who is willing, but not obligated to sell, allowing a reasonable time to find a buyer who is willing, but not obligated to buy, both parties having full knowledge of all uses to which it is adapted and for which it is capable of being used.

The critical factors expressed, inherent in any concept of fair market value, are these:

1. Presupposes a market for the property to exist, i.e., a reasonable number of buyers are in evidence.
2. The property will be exposed in the open market.
3. A reasonable time will be allowed to find a buyer.
4. Both buyer and seller have full knowledge regarding the adaptability and capability of the property for various uses.

George L. Schmutz, in his *Condemnation Appraisal Handbook*, revised in 1963 by Edwin M. Rams (Prentice-Hall, Inc.) discusses these concepts in relation to real estate, of course, and I submit they are equally appropriate to a consideration of title plant values.

As with real estate, there is no common trading place, so that evaluation is not the "simple" matter that attends the evaluation of listed stocks, bonds, and other commodities commonly exchanged in a central market. On these markets, the seller is dealing with all prospective purchasers, who, collectively, regulate the price that will be paid. With a title plant, there is little certainty of finding the purchaser who will pay the highest price, so that, as in real estate, the value of a title plant is variable, within limits owing to the absence of such a focal point and its influence.

And, as with real estate, there are times during which there is no market, when in the strict sense of the term, there can be no market value. A willing buyer and a willing seller cannot be found in time of severe depression, as some of you here today may remember. And at a time such as that, I think the market value may be the opinions of well-informed persons. In times of frequent exchanges, then, the market value becomes the price obtainable on the market.

Interplay of Values

Every opportunity for investment in this country has an almost magical connection with every existing and prospective investment.

The amazing fall of the stock market in the past year has made this crystal clear. As the cost of money rose, the value of stocks across the board were related to these rates, and the market digested the current return and the business prospects, and the managerial skills, and the intrinsic values of real and personal property. If a gilt edge bond will bring 8 percent, should a common stock bring 5, 10, or 15 percent?

Nor did the re-evaluation of business represented by chips in the great exchanges react any differently from the value of your title business and mine. Nobody in his right mind would risk his capital on a business venture at a prospective 8 percent return, if he can find a security requiring no management yielding the same figure—no other factors being considered. It would seem to me that, taking the rise in interest rates as a single factor, the value of every title plant in the country was substantially undermined as this cost of borrowed money steadily rose.

But in all sales of property, there is a prospective value which is likewise thrown into the scales. These inflict long-term and short-term considerations into the evaluation of our title plants. Inflationary prospects have, to an important measure, counteracted the rising interest rates. The pressure of a growing population stimulates in the same direction, and in areas where population is static or shrinking, these again are comparative depressants. Even in the area of real estate, the generalization is made that the more individual or uncommon the property, the more difficult it is to appraise it, and the more difficult it is to find a buyer.

Management

From sad experience, I have discovered that this factor in value is perhaps that consideration most seriously overlooked in the evaluation of a title plant. The sale of a grocrey store—at least the kind of grocery we used to know—where the stock of goods had pretty definite values, and the ability to be a grocer came naturally, the value of the business was not too difficult to ascertain, and the personnel to run it was of a very minor consideration. Most any ambitious high school boy could soon learn the ropes.

With a title business, the skills required to operate the business are special, infrequent, and complicated. The sole owner and operator of a title plant who wants to retire and who has no one trained to succeed him, is met with almost an air-tight barrier between him and any value to a prospective buyer, unless that prospective buyer happens to be a title person who wants to move into that community and operate the one-man show that is that business. If it is a business whose prospects are sufficiently interesting, it probably suggests that there is open opportunity that will attract competition in the foreseeable future.

I am pointing up to the fact that the one-man title operation is mostly management. No matter how good the indexes, no matter how great the demand, no matter how juicy the take, he is the main contributing factor. You are not buying a business—you are buying a job—and the tools.

The ability to continue management is thus a great factor in the evaluation of a title plant. It should not be minimized. The careful investor in any business is always concerned about management, but I submit that in small, technical businesses, the importance is proportionately far greater than in the larger business where one or more are constantly in training for the required management positions.

This places a heavy hand on the value of the smallest plants—a fact reflected in the current decimation in the ranks of small business everywhere in this country.

Technology

This is a factor which I think title men sometimes sweep under the rug. By its very nature, we smaller plant people tend to do more sweeping than the larger ones. Yet during the last thirty years, we have seen the shadow—if not the items themselves—of a galaxy of the products of inventive genius cross the stage of our field of enterprise, many make an everlasting impact upon our businesses. Micro-film, the electric typewriter, the tape-controlled typewriter, sound recording equipment, and now computers and data processing instruments—real objects and shadows of objects yet to concern us. Thirty years ago, many plants were long-hand records, and many abstracts were written in long hand. The slow pace of execution in those days is almost no more than a pleasant memory today. Instead, it is a concern in its potential that the title process in an entire state may be centralized for title purposes, entirely eliminating the business of abstracting as we know it.

I do not think this will come to pass. Yet, in Hawaii, all recording is done in Honolulu for every county in the state, and the title industry is entirely concentrated in that single city. The potential, the danger, or the opportunity—whatever you choose to call it—is there, and to the extent that it is real, it affects the value of your title plant. Indeed, to the extent any prospective buyer or challenger thinks it is real, it affects the value of your title plant.

Highest and Best Use

This is a term used, of course, in real estate appraisal, and though I use it a bit facetiously here, I use it because I think it is an item often overlooked in appraising title plants, where the question is, is the business being run as efficiently as it might be?

This is the uncut gem that is often lurking in a title business. Some of us get "sot" in our ways. We may have continued a system which is actually long out of date. We may have equipment which is obsolete, or slower than newer products. We may have gone all-out for some innovation that served its usefulness and is a drag on efficiency today.

It is the hidden opportunities in a title plant which I suggest here which make me feel that the gross sales approach is an important—perhaps the most important—indicator of potential value.

If I were buying a title plant, I would like to know what changes might make a moderately profitable plant a more highly profitable plant; and, if I were the seller, I think my sales pitch would be a lot more weighty if I could point out that I've been too busy to do this and that which I am well aware would greatly reduce my overhead and speed up my output.

It is in this area that Robert Carlson and I have felt that we could contribute significantly in many cases to plant value—not necessarily in contemplation of a sale—but in contemplation of continued use and satisfaction by the present owner. We have had the pleasure of accomplishing this sort of thing, and yet, I have been quite startled by the reluctance of many to make even a modest investment in what we felt was certain profit improvement.

I am not making a plug for business. We have found very little opportunity for profit in what we do. But the opportunities which exist in so many plants to use other equipment, or cut out historical methods, or eliminate duplication are something which often an outsider can spot with a minimum of expense and time, and, after all, most of your are not selling your title plants but are living with them, and it is how well you live that concerns you.

Official Records

To a large extent—a larger extent than most of us stop to realize—the condition of the public records, the system used by the public recorder, have a heavy impact on the value of our title plants.

In one sense, all of us owe our livelihood to the failure of the public recording system. Had it worked out as planned, any inquiry as to title could have been answered by the recorder. No system of private abstracting or title insurance was ever contemplated when the refinements of the European system of recording became our recording acts on this side of the Atlantic.

Refinements are coming to the public records, though perhaps "changes" is a more accurate description. In California and a few other places, much recording is done on micro-film. This eases the pressure on space, but I think indirectly it enhances the position of the title company. It is just a bit more difficult for the public to understand and use the public records.

Refinements in record keeping within the recorder's office, on the other hand, have cut into the value of the plants of independent abstracters and title insurers. In the counties which make up what we call greater New York, for example, several title people have abandoned their plants after careful cost studies.

Laws and Regulations

I cannot resist mentioning the unfair impact of our anti-trust laws on the smaller abstracter. I say unfair because that is a word of subjective thrust. Maybe it should be referred to as the greater burden of laws and regulations on the small title person.

The small operator cannot look to the acumen and resources of many people. He does not have the opportunity to determine the prices charged by his competition as larger companies may do, and if he tries to find out by direct contact or surreptitiously, he runs afoul of anti-trust laws, which are merely rules of the game to the larger operator where the very operation of the market makes each competitor entirely visible to every other competing business. Thus, the skills required of management are observably greater in the smaller companies, and the value left in the business intrinsically may be diminished to the vanishing point —or to the value of the furniture and fixtures—or the difficult estimate of the costs of reproduction of the records in his office.

Value-in-Use

This is an exception in the real estate appraisals, to the highest and best use premise. It is the situation where the improvements on land reflect specially designed features which result in value to the user. Such types of properties are steel mills, cement mills, grain elevators, brick plants, and much public property—libraries and government buildings, for example. As to this kind of property, "value of the property results from the use to which it is put, and varies with the profitableness of that use, present and prospective, actual and anticipated. There is little or no peculiar value outside of that which results from such use."

The rule in appraising real estate of this nature is to "determine the cost to acquire a substitute property having equal facilities in which an owner could continue his business or activities."

These concepts are close to the cost of reproduction approach which I have suggested as one of the methods properly weighed in evaluating a title company. As with the value-in-use approach in real estate, this analysis must be weighed carefully, since statutes of limitation, for example, much like technological changes, would render ridiculous the reconstruction of a petro-chemical plant on blue prints even a few years old.

So, I leave you with the intangibles. They are the life of the body. They make it more than just a pile of inert material. Your community, your workers, your competition, your belief in yourself, your determination and drive, your imagination and your ability as a title man, and perhaps above all, the integrity you will establish or have established, and which includes not only the basic factors of good title service, accuracy, and dispatch, but that strange something we refer to as confidence—that mixture of time and experience and responsibility.

I agree with George Harbort. One and one-half times annual gross income is a good marker. Season it with the ingredients I have called subjective; temper it with historical inspection, and place it in a frame of imagination and determination, and I think you will have reached a basic value which you will justify.

ELECTION OF SECTION OFFICERS

By proper nomination and second, the following officers were unanimously elected to serve for 1969-1970:

Chairman—JOHN W. WARREN, Newkirk, Oklahoma
Vice President, Albright Title and Trust Company
100 North Main Street, P.O. Box 51 74647

Vice Chairman—JAMES J. VANCE, Jefferson, Wisconsin
Secretary-Treasurer, Jefferson County Abstract Company
131 East Milwaukee Street, 53549

Secretary—LEONARD H. BARTELS, Greeley, Colorado
Executive Vice President, The Weld County Abstract and Investment Company
P.O. Box 370, 80632

EXECUTIVE COMMITTEE

MARJORIE R. BENNETT, Petersburg, Illinois
Manager, Menard County Abstract Company
210 East Douglas, 62675

JAMES A. GRAY, Benton, Arkansas
President, Fidelity Abstract and Guaranty Company
126 North Main Street, P.O. Box 644, 72015

JOHN C. KIRKPATRICK, Tulsa, Oklahoma
Vice President, Guaranty Abstract Company
320 South Boulder, P.O. Box 3048, 74101

EARL B. MORDEN, Bad Axe, Michigan
Owner, Huron County Abstract Company, 48413

TITLE INSURANCE AND UNDERWRITERS SECTION

SECTION WORKSHOP: MARKETING

MARKET RESEARCH IN THE TITLE INDUSTRY

ARNOLD C. SCHUMACHER
Vice President, Chicago Title and Trust Company

Market research is a relatively new development in the title industry. However, as the industry has become more competitive, with an increasing number of companies becoming regional and national in scope, a need has arisen for a more detailed analysis of markets. We believe there are two major functions in marketing research. The first is the collection of data and the second is the analysis of information and formulation of recommendations.

The county, as a geographic division, is probably the most logical unit to use in assembling data. Records of real estate transactions are maintained on a county basis and most title company offices tend to concentrate their interest within a single county or a small group of counties. We at Chicago Title and Trust Company maintain information on about 200 major counties in which we have markets. This data is being placed in a master computer file in order that it may be quickly analyzed and used in comparative studies. These files include information, by county, on population and household trends, building and real estate activity, mortgage recordings, income patterns, employment, land use, and other pertinent statistics. This enables us to compute relative growth rates, character of real estate activity, overall potential markets, and possible long range prospects.

In addition to this more generalized market data, it is important to maintain internal operating statistics. This involves such items as revenues, average price per order, orders classified by type of property and geographic location, orders classified by type of customer, sales and promotional expense as well as any information that may be available on operations of competitors. Again, as far as possible, this is maintained and updated on a county or office basis.

The next question is what do you do with this mass of figures after they are compiled? Market research cannot be a mere academic exercise. It must be directed to maximizing revenues and profits. We have found some very useful applications. One is in the general area of forecasting. Once each year, we attempt to project for five years ahead trends in each county. This, in turn, is used as a basis for a long-term projection of company revenues. We also do a more intensive forecast covering the four quarters of the next year. This is revised and updated once each quarter. It is interesting that we have been able to project title revenues ahead for six months with an accuracy of one or two percent of actual results. This forecast is built by estimating revenues for each operating office and major agencies. While there may be some rather wide variations for individual units, our estimates of total corporate title results have proven accurate within one or two percent.

Another area which holds considerable promise is the computation of share of market. We have found in many areas that a high degree of correlation exists between overall title revenues and mortgage recordings. Using this relationship, we have constructed share of market indexes on a monthly basis which gives us an indication of the trend of our markets. This technique does not provide us with a true share of market figures. The index value is primarily directional. If it is going down for several months, we have reason to believe that we may be losing share of market. Likewise, if it is rising for a particular market, we believe our share is increasing.

There are a great many other applications of market research including such things as the development and analysis of standardized call reports, establishment of key account lists, direct aid in sales analysis for local offices, determining the effectiveness of sales and promotional efforts and aiding in solving special sales problems. Sales and market research must go hand in hand. Selling is concerned with the actual process of getting an order while marketing should be directed toward making the overall sales effort as productive as possible. As a matter of fact, many sales problems are in reality marketing problems.

The title insurance industry is moving from being production oriented to becoming sales and marketing oriented. It is changing from a semi-monopoly to a highly competitive business. It is shifting from merely providing a title policy to supplying a broad package of financial and real estate services. Thinking and acting creatively with regard to these new opportunities can be a potent tool to increase revenues. The first step in this direction is to learn as much as possible about the markets in which you operate. This involves the collection and analysis of data, a revamping of sales programs and an appraisal of market potentials. The company which is able to do this job well is the company that will reap the greatest rewards.

DEVELOPING A PUBLIC RELATIONS PROGRAM

JAMES W. ROBINSON

Senior Vice-President, District-Realty Title Insurance Corporation, Washington, D.C.

In preparation for this panel, I reviewed many articles and speeches on "How to Plan and Organize a Public Relations Program," including the fine article by Richard R. Conarroe, appearing in the Summer, 1967, *Public Relations Quarterly,* and the excellent speech, "Four Steps to Better Public Relations" by Congressman Larry Hogan (R., Md.), a distinguished public relations practitioner turned legislator. I give full credit to each of them for the outline I am about to present.

An effective program of public relations includes four separate operations: *fact-finding, planning, communication and evaluation.*

Fact-finding is more than market research. It includes an analysis of employee attitudes and an extensive knowledge of company routine and policy. Some of the background data gathered will be common to more than one public, but some will not. All of it will be helpful in determining how to communicate effectively with these special groups. Such information helps the public relations man to beam his messages onto his target accurately and with impact. Initiating a public relations program without this basic data is similar to embarking on a trans-world airplane flight without maps or weather information.

In public relations one does not go helter-skelter from one project to another—all problems are analyzed, possible solutions are created, and all are fitted into an overall pattern. Research is for everyone—not just large companies.

The second step in our process is *planning.* After gathering all pertinent facts, a set of blueprints must be drawn for systematically building the company's reputation. These blueprints are as important to a public relations man who wants to build a reputation as they are to an architect who wants to build a skyscraper. Strategy is formulated for attacking the problems which were uncovered during the fact-finding process. In this planning stage, an effort must be made to educate everyone in the company about his individual role in the company's overall public relations program. Just like a football team, public relations people have short-range and long-range goals and sets of plays to accomplish them.

Let's see how that might be applied to the title business. During your analysis of the company's situation you discovered that your company, a fine old institution with an illustrious history of service, is heavily oriented toward lenders. Fine relationships have been established over the years with bankers, savings and loan presidents, and with the top echelon of the community's mortgage bankers. But somehow these strong ties no longer result, as they used to, in daily orders for title services. You discover that two things have happened. First, the lender no longer makes the decision to the extent he used to with regard to where title insurance will be placed. Gradually, over the years this decision-making has been preempted by the city's real estate brokers—and your relationships with the real estate fraternity are not nearly as strong as they should be. Second, you discover you are top heavy with regard to the lending institutions. Your officers and board members are on a first name basis with the chairman, the presidents and the senior vice presidents of the financial institutions. But somewhere down the line is an assistant vice president who is really dealing out the title business and you don't even know his name. You discover further in your first step of fact-finding that your company is regarded as financially reliable and the last word in the legal expertise but also as old-fashioned and slow.

In the planning stage of your program, you must determine what steps should be taken to overcome these major impediments to increase business. Undoubtedly, you will step up your personal contact with the community's real estate brokers. You will concentrate on the younger officers of the banks and savings and loan associations. You will consider all of the tools available to a good public relations man for breaking down these barriers and increasing the company's business.

The third step is *communication.* This involves the actual dissemination of pertinent information to the various publics in order to accomplish the goals set forth during the planning stage. Certainly there is no time here to discuss all the various techniques available to the public relations practitioner. ALTA's September, 1969, *Title News* contains a wealth of information which will guide you in conducting your own programs. Having determined what message you wish conveyed to various groups, you have in your arsenal a great many weapons. These include advertising, publicity, direct mailing, personal solicitation, company tours, a speakers' bureau, entertainment, company literature, a house organ, special promotions, the annual report, giveaways, civic activities, and participation in the affairs of related professional groups. With such a bag of tricks, how can you miss?

Now we come to the fourth step in the public relations process and it is as important as the other three—*evaluation.*

Upon completion of the various phases of the program it is essential that the public relations practitioner step outside himself to measure as objectively as possible the results of his work. This evaluation is not a self-serving form of research to prove that he earned his salary and it doesn't mean measuring column inches of newspaper clippings or a totaling of free broadcast minutes because public relations should definitely not be equated with publicity. It means, rather, a frank appraisal of the success in achieving the goals which were set during the planning stage. If the techniques employed were not effective, new ones must be fashioned.

These four steps, *fact-finding, planning, action and evaluation,* comprise a scientific approach to an unscientific subject. Public relations is far too nebulous to be reduced to a clear-cut formula. But sound principles and guidelines have evolved in public relations and the professional practitioner takes advantage of them.

Now if I may, we'll depart from the textbooks and say a few random things which need to be said.

The topic assigned for my part in this very important seminar presupposes there will *be* a public relations program and that everyone in this room recognizes the need for and is dedicated to the development of a well-planned program of public relations, both for his company and for the American Land Title Association. I suggest the opposite is true; that public relations, as a management tool, is in its infancy in the title insurance business; that, with some notable exceptions, title men and women generally accept public relations as a necessary evil, the last corporate operation to be adequately funded, and the first to be cut when profits begin to decline. We all pay lip service to the concept of public relations much as we acknowledge the righteousness and desirability of peace, prosperity, brotherhood and progress, but not all of us are willing to pay the price in terms of money, effort and sacrifice required to accomplish these worthy objectives.

If you will forgive a platitude—no company has a choice with regard to whether or not it will have a public image. Every corporation has a public image just as every individual has a reputation. The only question is whether or not it is a good reputation, a mediocre one, or a bad one.

We all recognize, of course, there is no substitute for good service provided at a reasonable cost. But whoever coined the phrase "If you build a better mouse-trap the world will beat a path to your door", was either lazy or misinformed. Certainly he was not in daily confrontation with the emery wheel of competition. Public relations is not a whitewash, nor is it a cover-up for inferior services or products. It is rather a process of educating the various publics with regard to the nature and value of services performed by your company.

I readily concede that personal contact, a subject assigned to Randy Farmer, is the most important element in any program of public relations. Given your choice between one truly effective sales representative and a substantial increase in the advertising budget—take the salesman every time.

In planning a program of public relations it is important to remember that individuals react depending upon their individual bias and that the target of a company's promotional program is not a mass—it is a group of individuals.

Most of us are problem-oriented. A public relations program should offer solutions to the problems that people have.

Most of us are guilt-ridden. We need assurance and confidence.

We hear a lot about communication and so little about the art of listening. In our business and political lives we discover groups shouting at each other and when the shouting is done each little group has retained its original point of view. Why? Because no one bothered to listen. Public relations people should learn to listen and should realize that communication with the various publics is not a two-way effort, it is a four-way effort. Both parties must send and both parties must receive.

Your public relations effort is concerned with every single phase of your business. It includes the manner in which your receptionist answers the telephone, the quality of the letterhead used by your officers, the condition of the lobby of your building and indeed every other facet of your operation which might be heard or observed by any member of the public.

A public relations program is a combination of ideas and words—another way of saying "motivation and communication." Sometimes we become so involved with technique we overlook the importance of the message. When the first cablegram was transmitted on the newly installed trans-Atlantic cable, the world was astounded by the sophistication of the techniques which made possible the laying and use of this giant cable stretching from shore to shore on the floor of the Atlantic Ocean. Only one statesman—an early public relations practitioner—bothered to ask, "What did the message say?"

Let's consider some of the ideas which will help us project a favorable image for our companies, for our industry and for our association. Title insurance companies and abstract firms help mankind fulfill a basic human desire, the secure ownership of real property. Let's tell our customers about it. Title companies provide a needed service at a reasonable cost. We constitute a vital link in the real estate process. We are the land historians of the nation and our contribution to the economic well-being of the communities and the nation is a tremendous one.

Let's translate the spirit of excitement and fulfillment as we contribute to the growth and development of the areas we serve. Enthusiasm is contagious and we should infect the lawyers, realtors, lenders and home builders with whom we work with the spirit of adventure that characterizes our role. There is more drama—more human interest—in a single page of any one of our tract indices than we find in most broadway plays or television shows. Let's capitalize on this wealth of dramatic material.

In summary, your public relations program has two main divisions—ideas and words. The four basic steps to be followed are *fact-finding, planning, communication* and *evaluation.*

SALES AND CUSTOMER RELATIONS

H. RANDOLPH FARMER

Director of Public Relations and Advertising, Lawyers Title Insurance Corporation, Richmond, Virginia

The sale of title insurance differs materially from the sale of appliances, clothing and other tangible goods. The title insurance salesman must sell an idea—an idea which will result in orders for title policies.

Obviously, a title insurance salesman has opportunities to sell a policy in a specific project, but in the main he has to sell the idea that title insurance is a better form of evidence of land titles and it should be used on future land acquisitions or mortgage loans in preference to the method formerly utilized.

The sale of title insurance usually involves the tenacious build-up of relations with the customer over a period of time. This process usually requires repeated calls on the prospect, and in many instances we have come to evaluate a salesman's performance primarily upon the number of calls he makes.

In the past, because of the peculiarities of our business, we seldom evaluated a salesman on results. We were hung up on what is known as "courtesy calls" —calls generally unplanned and with no particular purpose other than the hope that something favorable might happen.

Within recent years we have come to realize that there can be a planned scientific approach to the sale of title insurance. Sales staffs are now being taught the psychology of salesmanship, the effective approach, and the analysis of the needs of the prospect. Naturally, so-called courtesy calls are not passé. A type of courtesy call which is better described as a "get acquainted call" is necessary when approaching a new prospect . . . but such calls should always be made *with a definite purpose in mind,* such as sizing up the prospect and his potential; determining his idiosyncrasies and interests; identifying his personality type; developing information as to where he might need help, and how we might help him.

It is elementary that a salesman must know his product, but becoming knowledgeable with respect to title insurance is quite a different matter from acquiring knowledge of such products as soap and cigarettes.

The importance of salesmen knowing the various aspects of the title business cannot be overemphasized.

All members of a title insurance organization who come in contact with the public are title insurance salesmen.

Successful promotion and sale of title insurance is not dependent upon so-called "high pressure salesmanship." Best results are obtained by salesmen who have acquired a thorough understanding of the title company's policies, and practices, and achieved a working knowledge of the operation procedures and problems of the company's major sources of business.

The salesman must understand the service and protection which are furnished by the title company. He must know how titles are searched and policies and binders issued and he must have a basic understanding of the coverage furnished by the title policy and how it can be used by the customer.

The title insurance salesman should be familiar with all of the governmental agencies which affect our business and possess some knowledge of their rules and regulations which directly affect our operations. He should be knowledgeable about the real estate, mortgage loan and building businesses and be able to speak their language. He should have an understanding of attorneys' attitudes and he should be familiar with the canons of ethics.

Courtesy calls are useful in maintaining a close relationship with established customers, but salesmen today are taught that each time they make a courtesy call, instead of simply passing the time of day and engaging in routine pleasantries, they should plan such calls in advance with the purpose of presenting some new help or problem-preventing suggestion, or other matter of interest to the customer.

The salesman today must think and plan. He enjoys the greatest challenge in the land title industry—matching wits with those who control the life blood of our business.

The salesman is of much more importance to corporate existence than he is usually given credit for. In organizations like ours where particular departments such as the legal department and the escrow department are held in high esteem, salesmen sometimes develop a second-class citizen complex. They sometimes develop a feeling of corporate inferiority. We should never overlook an opportunity to build up the ego of our salesmen and establish in their minds the real importance of their position in the corporate structure. A salesman who feels that the well-being of his company and of his fellow employees is dependent upon his performance is different from the salesman who just tries to get a certain number of names on his call report each week.

The personal call is by far the most effective method of selling title insurance. It also is one of the most expensive, but as distinguished from television, radio, newspaper and other forms of advertising which are costly, we can measure the effectiveness of sales calls. This permits us to establish the necessary budgetary controls in relationship to a fairly accurate prediction of results which will be achieved.

The personal sales call is effective in our business because the source of most of our business is concentrated in the hands of a limited number of attorneys, bankers, real estate brokers, mortgage loan correspondents, builders, etc. If our business were controlled *equally* by people in *all* trades and professions, it would be wholly impractical for us to attempt to sell our product based upon personal solicitation. Under these circumstances, we likely would resort to, and probably find more effective, certain advertising programs.

It should be remembered that aside from recognized advantages, personal selling also enables salesmen to develop cordial personal friendships which ultimately may result in important orders. We frequently compete for business on the basis of personal friendship and effective friendship can be created only by personal contact. Radio, TV, billboards, newspapers and mail can create an interest in our product, but it is only through personal contact that we can develop the effective degree of friendship which, in many cases, is a deciding factor in the placement of a title order.

Before making a promotional call, a salesman should "type" his prospect and plan his sales approach. We do not advocate a stereotyped approach, but in the case of each type prospect, certain similarities will exist. Certain selling points should be emphasized with each type prospect.

For example, real estate brokers are primarily interested in service, convenience, and closing experience and ability.

Brokers and salesmen who control title orders are interested in the speed with which they can close their sales. Notwithstanding other important considerations, they are inclined to do business with the title company offering the fastest service.

A service point, from which binders and preliminary title reports are issued, should be conveniently located to the real estate brokers. The convenience of a location to the broker is more important when a company also will close the loan and it is the practice of the broker to attend the closing. Past experience proves that real estate brokers will not consistently drive to a downtown title office for a closing when it can be arranged in a more convenient suburban office of the title company.

The real estate broker's commission is dependent upon the sale being closed. He is vitally interested in the escrow or settlement officer being experienced, able and possessed of the tact and diplomacy frequently necessary to the successful consummation of the sale.

Builders are primarily interested in cost and service. In those localities where it's customary for the builder to pay the title expense, cost frequently is the deciding factor in where the title order is placed.

For a builder, service involves promptness, efficiency in closing, and a willingness to assist the builder in curative work necessary to achieve a status of title which will prove acceptable to the lending institution financing his construction.

Mortgage loan correspondents are primarily interested in service and policy acceptability. Service to a mortgage loan correspondent involves the ability of the title company to comply exactly with his loan closing instructions and issue the mortgage policy promptly.

Mortgage policies issued to mortgage loan brokers ultimately are delivered to institutional investors. It is vitally important that the financial responsibility of the title insurance underwriter be acceptable to the investor and that the company possess the "know how" and experience to issue the policy in such form as to comply with the investor's requirements.

Life insurance companies and other national investors are interested in financial responsibility and dependability. Investors in long-term real estate loans accept mortgage title policies as sole evidence of good title to the property securing their loans. They depend upon the indemnity provisions of such policies and, therefore, make diligent inquiry into the financial responsibility of the title underwriter.

All investors demand thorough and dependable services. They desire to give their title business to a company upon which they can rely to issue a policy that will reflect the true status of title. They also desire prompt service.

An effective salesman not only must be familiar with the policies and operational procedures of his own company, but he also must enjoy a wide familiarity with the business activity and problems of his customers and potential customers. In our business, knowledge of our customers' activities and problems can best be secured through membership and active participation in trade associations, such as the home builders, mortgage bankers, real estate boards and bar associations. Membership in these associations is not enough. Active participation in the associations' programs and activities is essential if we are to capitalize fully upon our efforts. Association activity provides a means of acquiring personal contact with officials of concerns constituting large sources of title insurance business. With proper cultivation, these contacts should ripen into personal friendship which produce business.

One of the most important advantages of membership in related trade organizations is the opportunity which it provides to become thoroughly familiar with the operational aspects and problems of our customer's business. Obviously, this familiarity will enable us to serve our customer better and where unusual problems of specific nature are involved, our background of knowledge of our customer's business offers a firm foundation for arriving at an intelligent solution of the problem. Care should be taken to read and study articles appearing in the monthly publications of these trade organizations. Many of them are written by men of exceptional ability in their particular field. The importance of taking advantage of this medium of gaining familiarity with our customer's business cannot be overemphasized.

Particularly in those areas where all title companies render relatively the same prompt, accurate service, "good will" is the term used to express the extra something which frequently enables one title company to get the jump on its competitors. Good will is a multi-pronged fork. It may involve a company offering its potential customers many types of extra services for which no fee is charged. More often than not, a single extra service will create an appreciable amount of good will. The type of extra service will depend largely upon the type of customer. For example, real estate agents often need to know the name of the owner of a specific tract of land. Where we have an abstract plant, we can furnish the desired information with little additional effort. When we make a setup to supply the needed information and publicize the fact that it is available, we have established a new facility to create good will.

Mortgage loan correspondents are constantly seeking connections with additional investors to whom they can sell loans. As a part of our business, we regularly call upon investors who purchase loans from loan correspondents. In making such calls, we should be alert to discern opportunities which might lead to the origination of new correspondent relationships. In bringing together the investor and correspondent, we will reap

the benefits of good will created through our efforts.

Before any *effective* planning can be done with respect to sales promotion, market information must be obtained and analyzed. This is the task of market research.

When the market information is obtained and analyzed, it is possible to make a plan for sales promotion. The plan must relate to carefully selected potential business sources. Plan makers should shoot with a rifle rather than a shotgun. This does not mean that our efforts should be restricted to the well-known main street sources of business. Many times the better prospects are on the side roads.

The plan may require the support of a particular type of advertising. If the company is not well-known in the area, a programmed public relations effort may be required.

The plan may have several prongs, each involving a different approach. One part may contemplate a crash program whereas another part may be long-range. In its refined form it includes an analysis of the individual personality types of prospects and pin-pointing the things which are of primary interest or concern to them.

No plan is worthwhile without execution, and efficient execution requires system and system requires records. Throughout the land we hear salesmen cry, "Do you want me to get out and get some business, or spend my time making reports?" A frank answer is that we want them to do both. No one ever said that a salesman's job was easy. It is one of the most challenging and gratifying jobs in the business, but no one ever said it was easy.

Plans for sales promotion are made through the combined and coordinated efforts of the sales staff and management. The responsibility for supervision of the sales effort rests upon management. It is management's responsibility to see that market research is carried out, that a plan is constructed and the plan executed. The salesman does not occupy a remote island base from which he makes up his tune and whistles it as he goes. He is an important, intimate cog in the internal operational machinery of a company. His complaints about record keeping make about as much sense as would similar complaints from the legal or escrow departments. In order to be of help, management must be kept informed as to the progress of the sales effort.

The most important element in the overall sales program for which management must assume responsibility and with which management must deal, is the development of a sense of awareness of the importance of a sound sales effort within the minds *and* hearts of every officer and employee of the company, whatever his or her specific job might involve.

The development of a sales philosophy or concept throughout an organization is an absolute necessity. The development of the realization on the part of the gal at the front desk that she is a most important spoke in the sales wheel and that every time she has occasion to deal with a person at that desk other than one of her fellow employees, that—at the moment—*she is the company* and her efforts to create a favorable image, to put the best foot forward, to "sell" the company, is a most important element in her overall job responsibility. The development of the realization among the closing or settlement personnel that their's is indeed a top *sales* position—not simply a clerical or a service job, but truly a top *sales* position, is also important. And we can go on —right through the ranks of a company and apply the same concept or philosophy to practically every position in the company.

The development of this concept or philosophy throughout the entire company is the primary responsibility of management.

The sales techniques that can and must be mastered and properly utilized by our salesmen are so numerous—but also basic—that it is difficult to attempt to enumerate or discuss them here. Let us simply say that it is incumbent upon management to make every effort to become learned in the psychology of sales in all of its aspects and reasonably proficient in the utilization and application of techniques, because management has the responsibility of making sure that sales personnel are well informed and proficient.

This then is part of the great challenge that faces all of us who are involved in the land title industry today. Ours is a very great responsibility when related solely to sales efforts and becomes almost monumental when viewed in its entire scope. But, along with the challenge and responsibility lies unqualified and unlimited opportunity. In this day and age, those who are able and willing to properly prepare themselves; who are willing to accept the challenge of the changing times ahead; who can recognize and anticipate the opportunities that lie ahead; and—most important—who are willing and able to accept the responsibilities of leadership, the future prospects and possibilities in the land title industry are truly unlimited.

TITLE INSURANCE AND THE SAVINGS BANK

HENRY ALLEN MARK

Partner in the law firm of Cadwalader, Wickersham & Taft, New York, New York

At the outset I want to say a sincere thank you for your giving me the opportunity to address you this morning.

As Al Long has said, I am a director of the home title division of the Chicago Title Insurance Company. My main connection with the business of title insurance stems from my contact with lending institutions, and therefore I am in large measure connected with your business in the role of a customer rather than in the role of an executive.

Bearing this in mind, I think that the men who asked me to speak this morning are to be commended for their courage. It is not unlike inviting a Long Island railroad commuter, of which I am one, to speak at a convention of the Association of American Railroads—or allowing the fox to take up residence in the chicken coop. I will, however, try not to take too much advantage of your hospitality.

My firm has the privilege of being general counsel for the Bowery Savings Bank and for the Manhattan Savings Bank, both of New York. We are also privileged to do a substantial amount of loan closings for the New York Bank for Savings, an institution which was organized under the auspices of my firm in 1819, and for which we have been general counsel until recently.

So you can see that we are particularly interested in title insurance as it affects our savings bank clients.

Until 1966, New York savings banks were empowered to make conventional loans only on properties in New York and in adjoining states, although they have for many years been allowed to purchase VA and FHA loans on a nationwide basis.

As a practical matter, conventional loans on properties in adjoining states were limited largely to properties in New Jersey and in Pennsylvania; and over the years we, with the aid of local council in those states, obtained a knowledge of law and procedures which enabled us to work quite comfortably with loans on properties in New Jersey and in Pennsylvania.

In 1966, Section 235, Subdivision (6) of the New York Banking Law, which is the statutory authority for the making of mortgage loans by savings banks, was amended to permit investments in mortgages on properties in any other state of the United States, the District of Columbia or the Commonwealth of Puerto

Rico. This amendment in effect started what might be called a whole new ballgame. Although in connection with the FHA and VA programs we had been required to deal with the problems of doing business, local taxation, limited qualifications in foreign states, the properties on which loans were permitted to be made were residential properties.

The 1966 amendment obviously permitted loans in foreign states on commercial properties such as office buildings and shopping centers in addition to residential properties. We were thus confronted with a whole new array of legal problems, some of which I would like to discuss with you this morning. Some of these are problems on which you are presently able to be of direct assistance and the curing of which is within your direct control. Others are problems probably requiring the assistance of the legislatures in the various states, and as to these I would solicit the assistance of the great nationwide influence of your Association.

One of our problems, of which you are in direct control, is the usury exception which appears in your revised standard form of policy. As you know, a great number of states have for many years had laws which exempted FHA and VA loans from the operation of state usury statutes. Such a statute is Section 201 of the Unconsolidated Laws of New York.

Obviously the protection afforded by such statutes does not extend to conventional loans, and therefore many counsel for lenders join with me in an effort to persuade you to change your present usury exception which reads: "usury or claims of usury."

As you know, until recently your standard form of usury exception read: "usury or claims of usury not shown by the public records."

I submit that the deletion of the words "not shown by the public records" is unfair to your customers and their counsel and is not in the long run in your best interest. Many of my colleagues agree with me that it is unreasonable to ask a title insurance company to insure against usury of which the title company has and can have no knowledge.

We do not expect a title company to read commitment letters, to make certain that illegal commitment fees or other charges are not called for by the commitment. We do not expect a title company representative at a loan closing to act as a policeman to make certain that moneys are not being passed under the table or in one of those inevitable gatherings which takes place in the corridor outside the room in which the closing is being held. Nor do we expect you to issue title insurance based on the use of ouiji boards, divining rods and crystal balls. But most emphatically, however, we do expect them to tell us what the record shows and to insure us based on the conditions shown of record.

Your recent amendment of your usury exception says to us that you will not insure us against usury or claims of usury whether or not usury or a claim thereof is shown of record. I say to you that many of us feel that you should most definitely insure us against usury shown of record.

One of the basic functions of your industry has been to report to us the state of facts shown of record and to insure us on that basis. We completely fail to understand what has prompted such a complete and drastic change of direction.

If you refuse to insure us against usury shown of record, why is it not equally logical to refuse to insure us against restrictive covenants or judgments or mechanics' liens or tax liens or any other specific condition shown of record?

It seems to me that your recent amendment may indicate a trend evident in other lines of insurance to limit coverage and increase premiums. For the customer this trend is unfortunate, but I think it is also unfortunate for the insurance companies, in that it tends to destroy public confidence in them.

Most people would, of course, be utterly unwilling to become self-insurers so far as fire and liability are concerned. And thus they have no alternative to paying whatever premiums are demanded for whatever coverage the company will give. There are, however, alternatives to title insurance.

One is reliance on an abstract prepared by a competent attorney. Another is the torrens system. For attorneys there is the alternative of conducting their own service, a system, although discontinued in my firm, was so widely practiced by my predecessors that when the New York County Register's Office burned towards the end of the last century my firm's title plant was used extensively by the Register in restoring the public records of New York County.

Both as a customer and as a small part of management in the title industry I strongly urge you to restore your usury exception so that it will once again insure against usury or claims of usury shown of record. Such action by your industry would restore to your insureds a protection to which many of us feel they are entitled. Such action would also greatly benefit the public image of the title business by showing your customers that you are willing to correct a mistake and to carry on your classic tradition of insuring titles based on the state of facts shown by the record.

Another problem, the solution of which is within your direct control, is the question of insuring the state of facts on a survey made by a surveyor approved by the insuring title company.

As many of you know, it is the standard practice in New York to read the survey exceptions into the title report and the policy, the effect of which is to insure that the only survey exceptions or title defects shown by the survey are those noted in Schedule B of the policy.

In a large number of states this is not done, and as a result we are left with no insurance coverage at all so far as survey exceptions are concerned. It is, of course, unnecessary to point out to this audience that survey exceptions can raise horrendous questions of the marketability of title, street encroachment, encroachments by adjoining buildings, encroachments over adjoining lands, failure to comply with setback restrictions in deeds or zoning ordinances, lack of access to public streets, rights of way in favor of adjoining owners over the subject property. All these are matters which would be shown on an accurate survey, and all of them present situations which might render a title fatally unmarketable.

It is not enough for a title company to state either by letter or an endorsement on a survey that it approves a particular survey, since we are without knowledge as to the legal liability of the company arising out of such approval. What we need and what we would like to have is a reading into a title report and into a policy of all the survey exceptions shown on a survey made by a surveyor approved by the title company, with the effect that the company will or does insure that other survey exceptions do not exist as of the date of the last redating of the survey prior to the date of issuance of the title report or policy.

This is a matter which is clearly within your control, unless you have state regulations prohibiting insurance of survey exceptions. If you have such regulations they should be changed. You are in an excellent position to approve as surveyors experienced persons in whose work you have confidence. If you lack confidence in a particular surveyor you are not required to use him, and indeed we as prospective assureds urgently need your help in obtaining accurate surveyors in various states.

You are equipped with expert technical people who can look at a survey and comprehend what the surveyor is reporting. We too have people who can do this, but it is my view that not only should you read the survey but also insure the state of facts shown on that survey.

With laws and procedures varying from state to state, we are not sufficiently experienced to draw the legal implications and note the difficulties which may be reflected on a survey of out-of-state property. You, however, are employed because of your skill in matters of local laws and procedures. You know whether under a state law a particular survey exception renders a title defective.

We therefore look to you to share this knowledge with us by insuring that the survey is accurate and that the only survey exceptions are those listed in your title report and policy.

A third matter in which we solicit your cooperation is a revision of your attitude toward co-insurance. As you know, many counsel for large lending institutions are strongly in favor of co-insurance of large loans.

As you also know, many of you try to talk to us about requiring co-insurance and seek to persuade us that reinsurance is the answer to the problem arising out of our desire to spread the risk of a defective title over a number of title companies.

For reasons which you know better than I, to suggest co-insurance of a large title among three or four companies is to render one's self less than popular

with either the companies or the borrower. However, we continue to run the risk of being unpopular for this reason.

Our desire for co-insurance does not stem from a lack of confidence in the system of reinsurance. We are aware of the binding nature of reinsurance treaties and contracts, and we are also aware of contract provisions which give the insurers direct access to the reinsuring company.

Our desire for co-insurance stems from our desire to have multiple service performed by more than one company, so that one company may pick up an error or omission made by another co-insuring company and have that error disposed of, cleared or accepted at a conference held by the lead company to conform the various reports.

Sad personal experience has pointed out to me the desirability of having a title report issued by more than one company. When my father died during the early part of the depression a presumably well-intentioned friend persuaded my mother to invest a substantial part of the life insurance proceeds in what were then known as guaranteed mortgages, a folly which she perpetrated.

One of the choice properties in which she invested was a colony of sixteen summer bungalows on Coney Island. After the guarantee of the mortgage had gone by the boards there was a default, whereupon she foreclosed and took title. Great efforts by the broker finally unearthed a purchaser who signed a contract and obtained a title report from a company other than the one which insured my mother.

The new title report unfortunately contained an exception which did not appear in my mother's title policy, namely, that she had no title to the northeast corner of the property, since title was in the city of New York, which had acquired it from the town of Graysend at the time of the consolidation of the city in 1895. The excepted portion had been land under water and owned by the town.

When I called this unfortunate state of affairs to the attention of my mother's title company they investigated, and finding the second title company to be correct, they paid her the contract price and took a deed from her. This experience vividly impressed me with the virtues of title insurance. It also greatly impressed me with the desirability of having co-insurance in large transactions.

None of us is infallible, not even the most experienced. Your searchers and readers are busy men under a large amount of pressure. That they make so few mistakes is a great tribute to them and to you who have trained them. But as with all of us it can happen to any one of them, and when it happens on a large title it can be very serious. It is for this reason that we like to have co-insurance. And I am sure that if you were in our position you would want it also.

It is no answer to us to state title defect not excepted makes no difference because the title company is obligated to make good damages which the title defect has caused.

In the first place, we are not looking for lawsuits or claims against our friends in the title insurance industry. Secondly, I, like many of my colleagues, am interested in marketable titles, not insurable or insured titles. I look upon title insurance as the frosting on the cake. It is nice to have it but first you need a good sound cake.

Title companies sometimes fail and claims against a defunct title company are no improvement on claims against any other bankrupts.

But if we are convinced that we have a clear title we are not too worried about the continued solvency of the insurer.

So there you have my reasons for wanting co-insurance. I hope these reasons will appeal to you and that opposition many of you have toward co-insurance will begin to mellow a bit. After all, we are only trying to do the best job for our clients, and we think this is one way to do it.

A fourth matter clearly under your control is the problem of a major exception which appears in many title reports and policies relating to mortgage loans on leasehold estates.

It is quite common for a title report or policy insuring a mortgage on a leasehold to contain in Schedule B an exception consisting of a description of the very lease on which the insured mortgage is a lien. Since the mortgage is a lien upon the lease I have always been baffled by the circuity of reason which results in an exception consisting of a description of the instrument creating the estate on which the mortgage is a lien.

A deed into the borrower per se is never recited as an exception in fee mortgage loans, and by a parity of reasoning a ground lease should not in my opinion be recited as an exception in a report or policy relating to a leasehold loan.

We have finally won the battle in New York and we no longer have the exception thrown at us. In fact, we have made it known that we will not accept title policies in which the exception appears. I hope that you will follow New York's example, if you have not done so already, since we will be equally unwilling to accept out of state policy with the lease excepted as we are unwilling to accept them in New York.

A fifth matter as to which you are directly in a position to be of assistance relates to the recently and unfortunately enacted federal Truth in Lending statute. As you know, it has become widespread, if not universal, practice for title companies to insert in all title reports an exception relating to the federal Truth in Lending statute. It is obvious that you cannot avoid inserting the exception in reports which relate to mortgage loans made to individual borrowers which are not loans for commercial purposes.

On the other hand, I received a title report last week dealing with a loan of $500,000 on an office building owned by a corporate borrower, and that title report contained an exception about Truth in Lending. I am sure the company will remove the exception when I ask them to do so. But the point is I did not have to ask. The exception should never have been included in the first place. It took someone time to type it in. It will take me time to ask that it be deleted. The deletion will take up time of a title officer and more time will be consumed in advising me of the deletion. All of this time will be utterly wasted, as the exception should never have been inserted in the title report at all. We earnestly solicit your help in this regard.

I have one other thought on Truth in Lending, and that is repeal, at least so far as it relates to mortgage loans. I am sure that I am not alone. This statute allegedly was enacted to permit borrowers to shop around to see where credit could be obtained at the lowest price. When the statute was being considered I did not see how this purpose would be accomplished by it so far as mortgage loans were concerned. The statute as enacted shed no light on the subject, nor did the proposed regulations.

The final regulations have done nothing to illuminate this gloom, and nothing in my experience or that of my associates or colleagues has indicated that any borrower on a mortgage loan has done any shopping around at all.

I assume without arguing in favor of the assumption that there may be political objections to the repeal of any part of the Truth in Lending statute or the state statutes, and that therefore such repeal may not be capable of achievement. I also assume without the foregoing qualification that our citizens unfortunately lack information as to whether the repeal of Truth in Lending or any part thereof would in any way adversely affect them, and quite properly could take the position that a paternalistic law adopted after such widespread publicity of its alleged benefits should not be repealed so soon after its enactment.

It is my view that there is no evidence that the law accomplishes the purpose of allowing a borrower on a mortgage loan to shop for credit, and therefore the law is of no benefit to such a borrower except to allow him to rescind a transaction to which he has already agreed.

On the other hand, the law imposes obligations and penalties on a lender which are far more onerous than the alleged counterbalancing benefits to borrowers.

I believe that the time has come to seek relief from the requirements of a statute and regulations which so far have proven to be of no benefit to the persons they were allegedly designed to protect, at least so far as mortgage loans are concerned, and which has so far proven to be a useless and substantial burden on the lending institutions of our country.

Since the view I have just expressed is a matter of politics, I should state that what I have said expresses my own personal view and is not intended to represent the attitude of either my firm or my clients. They are quite able to hold forth on their own ideas, and I hope they will.

I now turn to matters relating to out of state conventional lending by savings

banks which are not within your direct control but as to which your assistance with state and federal legislatures may prove of greatest value. These matters are complex, related to local business shibboleths, and other difficulties which you and I could readily imagine and would rather not contemplate.

I would like to discuss with you some of the prime questions which confront us on out of state conventional lending and as to which some uniform legislation would be most helpful.

The *New York Law Journal* of September 17, in commenting on the conference between the American Bar Association and the ALTA, stated that if the statement prepared by the conference were established this will be followed by efforts to have your Association and the ABA jointly seek to simplify laws and procedures governing real estate transactions. This indeed sounds like an auspicious beginning, and with a carefully restrained sense of modesty I can think of no better place for the joint effort to start than with the points which I am about to mention.

One of the real needs for the successful development of our out-of-state lending by savings banks is a uniformity of the doing-business statutes in the various states. You are all familiar with this problem, for you must run into it in trying to do an out of state title business.

I am aware of the fact that historical backgrounds and varying local points of view, in attracting money or protecting local vested interests, play a large part in what kind of doing-business statutes a state decides to have.

I submit, however, that the needs of the nation's economy for a free flow of mortgage funds across state lines transcends the local vested interest and requires that each state have a liberal doing-business statute which will permit foreign savings banks and other lending institutions to make or purchase loans on properties within the state without risk of non-access to the local courts or penalties such as an unenforceable contract or fines.

Many states, like Tennessee, have adopted statutes which invite foreign investment. Many states, like Massachusetts, have clung to statutes which actively discourage and effectively prevent such investment.

I submit to you that your business and that of my clients would be greatly assisted by a uniform doing-business statute patterned after the Tennessee statute, and I ask that if you agree you lend your weight toward enactment of legislation of that type in the states which have not already adopted it.

Another subject on which uniform legislation would be of the greatest help is the subject of mechanics' liens. In fact, I know of no one phase of our practice in which greater confusion exists in our minds. We hear of the necessity of taking pictures, of filing affidavits, of obtaining waivers, and so it goes on and on. You people undoubtedly know your local law on the subject and probably think that it is adequate.

Possibly I am prejudiced in favor of New York, but I honestly believe that the New York statutory scheme for dealing with mechanics' liens is superb compared to others which I have had the misfortune to encounter. The New York system is based primarily on the theory that where by deed or mortgage covenant a seller or mortgagor agrees to hold the purchase price or loan proceeds as a trust fund for the payment of suppliers of materials or services of a property the purchaser or mortgagee takes his estate in the property free of claims of mechanics or suppliers who have not filed liens but who have supplied labor and materials and have not been paid.

I do not mean to say that the questions of priorities of mechanics' liens in New York present no problems. Problems exist and litigation is frequent. I suggest, however, that compared with the far less sophisticated mechanics' liens statutes and procedures in other states New York's scheme is a model of orderliness and simplicity. I commend it to your attention with the hope that if it appeals to you it might form the basis of some uniform legislation. Once again, local vested interests in existing procedures may make change difficult, but I hope you will agree that it is worth the effort.

My last two points relate to leases. In the FHA and VA investment programs leases were relatively unimportant, since the only leases involved were quadrant leases, and VA dealt with single or two-family homes. However, with the advent of the nationwide conventional lending program the question of leases, their subordination and control, has become one of vital importance.

It is unnecessary for me to point out that in a loan secured by an office building or a shopping center there is nothing more important than the leases which will pay the rent that will carry the loan or will pay the debt. This problem breaks down into two aspects, both of which relate to the preservation of the lease in status quo before and after foreclosure.

As you know, there are states, of which California is one, in which the foreclosure of a mortgage cuts off a lease which is subordinate to a mortgage, whether or not the tenant is joined as a defendant in the foreclosure action. Thus to make certain that following foreclosure the mortgagee will not wind up with a building devoid of tenants, it is necessary to make certain at the time of loan closing that the mortgage is subordinate to the leases.

Since, however, our savings banks can lend only on unencumbered properties, and since some leases can without difficulty constitute encumbrances, if not subordinated, we at times find ourselves in a bit of a bind. The bind seems to me to be totally unnecessary.

There is no basic reason why in some states a subordinate lease is automatically cut off by foreclosure and in other states it is not. No fundamental rights of tenants are preserved by cutting them off.

I submit that this problem also is susceptible of solution by the enactment of a uniform law which would define the respective rights of tenants and mortgagees, and would in effect provide that that leases subordinate to mortgages would be cut off by foreclosure only if the tenants were named in the foreclosure action.

The regularizing of this aspect of mortgage financing would remove one thorn in the side of the nationwide lender and would greatly simplify the task of his counsel. I commend it to your attention.

There exists an analogous problem relating to leases of mortgaged properties, that is, how to protect a mortgagee against modifications or cancellations of a lease on which the mortgagee relied at the time of the issuance of its loan commitment or at the time of the closing of the loan.

So far as leases in existence at the time of the issuance of commitment the problem is simple. As a lender you ascertain that the lease is in force at the time of the closing of the loan or you decline to close.

The problem is far from simple as it relates to leases in effect at the time of closing and which may be modified or terminated without mortgagee consent prior to maturity of the mortgage and prior to default thereunder.

Fundamentally, the problem relates to the fact that in the making of many mortgage loans lenders rely on certain leases and need to be protected against modifications or surrenders of those leases by agreements between the tenant and the owner-landlord-mortgagor, which agreements are entered into without the mortgagee's consent.

Without citing authority, I can summarize the judicial thinking on the subject. The courts generally agree that where a lender has relied on a lease in making a mortgage loan a modification or surrender of such a lease is void as against the lender if such modification or surrender is fraudulent as against the lender. The trouble is that the courts do not agree on what is fraudulent. The cases are split right down the middle, with different judges and sometimes the same judges arriving at opposite conclusions on almost identical states of facts.

Several years ago I wrote an article on this subject which appeared in the *New York Law Journal* of October 5 and 6, 1955. I concluded that in view of the importance to lenders of the preservation of important leases against collusive surrenders or modifications, a statute was needed to afford the appropriate protection. The result of this initiative and the subsequent activity of the real property committee of the New York City Bar Association was the enactment in 1960 of what is now Section 291(f) of the New York Real Property Law. Since the section is short I will read it:

> An agreement referring to this section contained in a recorded mortgage of real property or in a record instrument relating to such mortgage restricting the right or power as against the holder of the mortgage without the consent of the owner of the mortgaged real property to cancel, abridge or otherwise modify tenancies, subtenancies, leases or subleases of the mortgaged property in existence at the time

of the agreement, or to accept prepayments of installments of rent to become due thereafter, shall become binding on a tenant or subtenant after written notice of such agreement accompanied by a copy of the text thereof, and any such cancellation, abridgement, modification or prepayment made by such tenant or subtenant after such notice without the consent of the holder of such mortgage shall be voidable as against the holder at his option.

Then it goes on to recite when this constitutes constructive notice and to whom. The statute does not apply to residential properties nor does it apply to leases of a term of less than five years.

Although this statute has not been tested in the courts, those of us responsible for it have no doubt as to its constitutionality or enforceability. It provides an easy way to protect important leases from sweetheart deals between a landlord-mortgagor and a tenant, and most importantly, it requires no action or acquiescence by the tenant for which the tenant could demand a quid pro quo from his landlord.

It is thus unlike the customary three-party agreement between mortgagor-landlord, mortgagee and tenant. It obviates the necessity of assignment of leases to the mortgagee, a procedure whose efficacy is open to question in many states.

The adoption of a uniform statute like Section 291(f) on a nationwide basis would go far to eliminate another difficulty which is faced by savings banks participating in a nationwide conventional lending program. It would be another step in a program to make uniform the laws and procedures of various states relating to real estate transactions.

If this proposal appeals to you I solicit your active support in its favor.

In conclusion, I want to thank you for your hospitality in asking me to address you, and for your patience and kind attention to my remarks. My wife and I have greatly enjoyed meeting and being with so many of you, and I hope that the balance of your convention will be as successful as that portion which preceded my remarks.

Thank you very much.

ELECTION OF SECTION OFFICERS

By proper nomination and second, the following officers were unanimously elected to serve for 1969-1970:

Chairman — JAMES O. HICKMAN, Denver, Colorado
Executive Vice President, Midwest Division, Transamerica Title Insurance Company
1720 California Street, 80202

Vice Chairman—JOSEPH H. SMITH, Richmond, Virginia
Vice President, Lawyers Title Insurance Corporation
3800 Cutshaw Avenue, 23230

Secretary—ROY P. HILL, JR., Casper, Wyoming
Executive Vice President, The Title Guaranty Company of Wyoming, Inc.
535 South Center, 82601

EXECUTIVE COMMITTEE

WALTER A. SPROULS, Newark, New Jersey
Executive Vice President, New Jersey Realty Title Insurance Company
830 Broad Street, 07101

JOSEPH A. WATSON, Baltimore, Maryland
Senior Vice President, The Title Guarantee Company
St. Paul and Lexington Streets, 21202

JAMES H. McKILLOP, Winter Haven, Florida
Florida State Manager, Lawyers Title Insurance Corporation
99 Sixth Street, S.W., 33880

ERNEST J. BILLMAN, Los Angeles, California
Chairman of the Board, Security Title Insurance Company
3444 Wilshire Boulevard, 90054

COMMITTEE REPORTS

REPORT OF MEMBERSHIP AND ORGANIZATION COMMITTEE

LAWRENCE A. DAVIS, JR.

Chairman, Membership and Organization Committee
Manager, Lawyers Title Insurance Corporation Branch, Pittsburgh

The Membership and Organization Committee of the American Land Title Association wish to submit the following report of its activities for the 1968-1969 year.

The primary responsibility placed upon this Committee for this year was development of affiliated state or regional associations in those areas where none now exist, i.e.—Kentucky and New England. The substance of this report will be the results to date of our efforts in these directions.

Kentucky: It would seem that with one nationally operating company domiciled here that the success of any state affiliated association would be entirely dependent upon the strong support of that company together with the foreign insurers qualified there. In conversation with Louisville Title Insurance Company and officers of other qualified insurers, it appears to your Committee that at the present time there is insufficient interest in formation of a State Association to make any serious effort in this direction. However, your committee would recommend the possibility of annexing Kentucky to the Carolinas (geographically better, we believe than the Dixie) Association and thus bring the area under an affiliated association banner.

New England: Following discussions with Gordon M. Burlingame and William J. McAuliffe, Jr., at the ALTA Mid-Winter Meeting in Chicago, a plan of action was proposed to bring our desires to the industry in New England.

June 26, 1969, was set for an organizational meeting for the Boston Area. Invitations to this meeting were prepared by the National office and mailed to company officers and representatives pertinent to our proposal.

The meeting held at the Charter House Hotel, Cambridge, Massachusetts, June 26, 1969, at 4:30 P.M., was attended by thirteen officers representing seven companies. The committee chairman and William J. McAuliffe, Jr. represented the national association.

In preparation for this meeting our national office, through the efforts of Gary Garrity, prepared a slide presentation of activities and effort on behalf of the industry throughout the country.

The slide documentary was presented

after introductory remarks and this was followed by a serious period of questioning and investigation into the advisability and desirability of such an association.

Those present from New England deemed it not only desirable but necessary to proceed and appointed the following organizational committee: Bruce H. Zeiger, Lawyers Title Insurance Corporation, Boston, Mass., chairman; C. Wallis Thompson, Title Guaranty Company of Rhode Island, Providence, R.I.; Richard S. Forrest, Chicago Title, Stamford, Conn.; Henry W. Keyes, Massachusetts Title Insurance Company, Boston; Mitchell S. M. Krock, Massachusetts Title Insurance Company, Boston, and Robert G. Bannon, Security Title and Guaranty Company, Stamford.

The New England Committee has since been investigating many facets of organization primarily through contacts with responsible persons in the two recently organized regional associations. Information has been requested and received from John Matthews of the Dixies Association and Bruce Boney of the Carolinas group.

Present plans call for an early spring association meeting for formal establishment of the "New England Land Title Association", calling for and including a program of mutual interest to prospective members. This meeting will be placed on the calendar of the national association and it is the desire of the Membership and Organization Committee that all possible aid and assistance be granted at the national level to the new Association.

Henry W. Keyes has been appointed delegate from the area to the 1969 National Convention and your chairman has requested that he be tendered an invitation to the Affiliated State Officers Meeting to be held on Sunday, September 28, 1969, prior to the opening of the general convention.

We further recommend that the Membership and Organization Committee for 1969-1970 keep the formation of the New England Association at the forefront of its interest and endeavor for the next year and make every effort to encourage its completion and sound beginning. Because of the nature of our industry and its operation in the area we believe that such an association properly based and competently run can do much for the image and growth of title insurance in New England.

REPORT OF THE LEGISLATIVE COMMITTEE

WARREN J. PEASE

Chairman, Legislative Committee

Vice President, Pioneer National Title Insurance Company, Seattle, Washington

Responses to our request for reports were received from committee members in 26 states and the District of Columbia. Much of the legislation affecting our industry involved increased regulatory measures, changes in the usury laws, adoption of truth-in-lending acts and some interesting individual acts in some states.

Increased regulations, in some cases desirable, resulted from adoption of new insurance codes in Colorado and Delaware, from a "Uniform Unauthorized Insurer's Act" in New Hampshire and from licensing requirements with respect to abstracters in Arkansas and Nebraska. Regulations pertaining to rates were adopted in Connecticut, Nebraska and North Dakota should be of interest to our industry generally. North Dakota gave recognition to the "inflationary spiral" by authorizing a 50 per cent increase in maximum charges by abstracters. This is the first increase allowed since 1953 in that state. Nebraska requires that the title company must advise a borrower of his right to obtain owner's insurance and, if the borrower does not wish owner's coverage, the company cannot deliver the mortgagee's policy until it has obtained a waiver in writing from the borrower. In Massachusetts the obligation to inform the mortgagor of this right falls on the mortgagee.

Acts or amendments to acts relating to usury were enacted in Alabama, Alaska, Delaware, Mississippi, North Carolina, North Dakota, South Carolina, Tennessee, and Washington. In all of these, interest rates, at least as to written contracts, were increased and in many states provisions for exclusion from usury law are applicable to corporations, business associations, etc., and on business loans generally.

Truth-in-lending acts to bring the state in line with the Federal Act were passed in Kansas, New Jersey, and Tennessee.

We note among individual acts in state legislatures the following:

—Forty year marketable title acts in Connecticut and Iowa;

—Massachusetts has enacted a law which provides that a deed, executed by two officers of a corporation, shall be valid as to a bona fide purchaser, or to any purchaser, relying thereon in good faith, notwithstanding any conflict with the provisions of the corporate charter or its by-laws;

—Massachusetts also requires that a deed reveal that full consideration in dollars or nature of other consideration;

—In New Jersey the name of the person who prepares a recordable instrument must be endorsed thereon.

I would like to pass on a suggestion made by Virgil Shepard, of Iowa, that the ALTA committee hereafter be composed of the chairmen of State Legislative Committees appointed by State Associations.

Finally, I want to thank each member of my committee for the time and effort given to supply me with the material for this report.

What about 1970, and our budget for that year which had to be and was approved by your Board of Governors last Sunday afternoon? For our association, as you know, the big answer as to what our dues income will be next year, is how has the title business been this year. For an indication of this, questionnaires were sent out recently to our larger member companies. Their replies indicate, that on the average their gross incomes for 1969 may be 7 per cent higher than in 1968. From this, we have estimated that our dues income, and miscellaneous and investment income, will total $372, 800. We hope this will turn out to be right, because the expense side of our budget is also going up. As you would expect, salaries for our staff in Washington will go up; rent for more office space will be up; costs of our public relations and advertising program will be up; and possibly, the most important of all, research for "industry wide statistics" will be up. These and other expenses for things that your Board of Governors feel our Association has to do at this time, total $369,795. Big figures, yes, but if our estimates turn out right, we should again in 1970 add to our reserves.

What actually happens will be brought to us by a new chairman of the Finance Committee. It looks now like that will be my good friend, Hale Warn. To Hale, I would just like to say that I will be looking forward with special interest to your reports—and personally, to not working on Saturday and Sunday.

REPORT OF RESOLUTIONS COMMITTEE

WALTER A. SPROULS
Chairman, Resolutions Committee
Executive Vice President, New Jersey Realty Title Insurance Company, Newark, New Jersey

Your Resolutions Committee's Report will inadequately express the unfathomed appreciation we all feel toward our generous associates who are responsible for this wonderful convention.

WHEREAS, the New Jersey Land Title Association, as host of our 63rd Annual Convention in this exciting seashore resort, Atlantic City, has accomplished the ultimate in hospitality and in providing a thoroughly enjoyable and profitable convention; and

WHEREAS, Frank S. McDonough, General Convention Chairman and his lovely wife, Mary, with their committees, have by their unstinted efforts planned and implemented this most successful convention;

THEREFORE, be it resolved that the officers, staff and members in attendance of ALTA express and record their grateful appreciation to Frank J. McDonough, Mary T. McDonough, the members of their committees and the New Jersey Land Title Association for their hospitality and dedicated work which insured the great success of this convention;

AND WHEREAS all in attendance at this Annual Convention have been enriched by the wisdom and stimulating presentations of our speakers;

NOW THEREFORE, be it resolved that the delegates here assembled express and record their sincere appreciation of the participation of:

THE HONORABLE RICHARD S. JACKSON, Mayor of Atlantic City;

DR. NORMAN VINCENT PEALE, Minister, Marble Collegiate Church, New York, New York;

DR. WILLIS WINN, Dean, Wharton School of Finance and Commerce, University of Pennsylvania, Philadelphia, Pennsylvania;

SENATOR HARRISON A. WILLIAMS, JR., United States Senator, New Jersey;

EDWARD L. WRIGHT, Little Rock, Arkansas, President Elect, American Bar Association;

HENRY ALLEN MARK, Esquire, Partner in the law firm of Cadwalader, Wickersham & Taft, New York, New York;

DR. OLIVER H. JONES, Executive Vice President, Mortgage Bankers Association of America, Washington, D.C.;

C. JOSEPH STETLER, President Pharmaceutical Manufacturers Association, Washington, D.C.;

LOUIS R. BARBA, Chatham, New Jersey; First Vice President, National Association of Home Builders;

E. L. SHOOP, JR., Public Affairs Officer, National Aviation Facilities Experimental Center, Department of Transportation, Federal Aviation Administration, Atlantic City, New Jersey;

A. M. PROTHRO, with law firm of Krooth & Altman, Washington, D.C.;

ALBERT E. SAUNDERS, JR., Associate Counsel, Phoenix Mutual Life Insurance Company, Hartford, Connecticut;

HORACE J. BRYANT, JR., Insurance Commissioner, State of New Jersey, Department of Banking and Insurance, Trenton, New Jersey;

WHEREAS, the members of this Association have welcomed and enjoyed the participation, advices and friendships of learned counsel for the life insurance companies who share many of our problems and interests;

NOW THEREFORE, be it resolved that the delegates express and record their thanks and appreciation to life insurance counsel for their continued interest and cooperation in our efforts to provide title evidences and insurance of the very best quality;

AND WHEREAS the direction and objectives of our Association has been entrusted by the membership to our officers, members of the Board of Governors and Chairmen of the Executive Committee and Sections together with the members of their committees, and to the executive and administrative officers and staff at our National Headquarters in Washington, D.C., and;

WHEREAS, each of them has enthusiastically served with distinction during this last year which will be remembered for the many and serious problems which confronted the industry. They have expertly coped with these problems and prepared the foundations to solve and avoid future problems. The inspiring and rewarding sessions of this convention are a further indication of the contribution made by them.

NOW THEREFORE, be it resolved that the delegates here present, on behalf of all members of the Association express and record their grateful appreciation to President Gordon M. Burlingame; Vice President Thomas J. Holstein; Chairman of the Finance Committee Lloyd Hughes; Treasurer James G. Schmidt; Chairman of the Abstracters and Title Insurance Agents Section, John W. Warren; Chairman of the Title Insurance and Underwriters Section, Alvin W. Long; members of the Board of Governors, and Chairmen and members of the various committees and to all members who have contributed to the achievements of the Association during the past year, and to William J. McAuliffe, Jr., our Executive Vice President, Michael B. Goodin, Secretary, Gary L. Garrity, Director of Public Relations, David R. McLaughlin, Business Manager of our National Headquarters for a job well done.

Mr. President, on behalf of the members of this Committee who are: Bob Marton, Jack Rattikin and Dwayne Stufflebeam, I move the adoption of these resolutions.

names in the news

GERSTNECKER

J. SCHMIDT

FROMHOLD

E. SCHMIDT

GOODRICH

Lincoln National Corporation announced the election of **Paul W. Goodrich,** chairman of the board and chief executive officer of Chicago Title and Trust Company, to the board of LNC.

William R. Gerstnecker has been named chairman of the executive committee of Commonwealth Land Title Insurance Company, Philadelphia. He also is vice chairman and director, Provident National Corporation and Provident National Bank (which has acquired the capital stock of Commonwealth), and a director of Commonwealth.

James G. Schmidt has been named chairman of the board for Commonwealth, and retains his present position as president of the company. **Fred B. Fromhold** has been appointed executive vice president. **Edward S. Schmidt** has been promoted to vice president, and retains his present position as secretary of the company.

In other promotions at Commonwealth, **John D. Gardner** and **William R. Gilbert** have been named vice presidents, and **James L. Hemphill** has been elected an assistant vice president.

Don't Miss ALTA's 1970 Mid-Winter Conference

April 1-2-3 Roosevelt Hotel New Orleans

Plan Now to Attend

William Gill, Sr. Dies in Accident

Word has been received of the death of William Gill, Sr., an eminent title man and outstanding contributor to national and state title association development, December 23 from injuries suffered in an automobile accident in Oklahoma City.

He was 1937-38 president of ALTA, and a former president of the Oklahoma Land Title Association. In 1959, he retired from American-First Title & Trust Co., Oklahoma City, a concern he served as president.

Many in the land title business credit him with farsighted leadership that has meant much to the growth of the industry. For example, the idea for a "Fourteen-Point Program" of the ALTA Abstracters and Title Insurance Agents Section—which received high praise following its adop-

Continued on page 52

meeting timetable

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

April 30-May 1-2, 1970
Arkansas Land Title Association
Velda Rose Tower
Hot Springs, Arkansas

May 3-4-5, 1970
Iowa Land Title Association
Holiday Inn
Davenport, Iowa

May 7-8-9, 1970
Texas Land Title Association
Astroworld Hotel
Houston, Texas

May 7-8-9-10, 1970
Washington Land Title Association
Bayshore Inn
Vancouver, British Columbia

May 14-15-16, 1970
Oklahoma Land Title Association
Oklahoma Hotel
Oklahoma City, Oklahoma

May 21-22-23, 1970
Utah Land Title Association
Tri-Arc Travelodge
Salt Lake City, Utah

May 22-23, 1970
Tennessee Land Title Association
Gatlinburg, Tennessee

May 24-25-26, 1970
Pennsylvania Land Title Association
Shawnee Inn
Shawnee-on-Delaware, Pennsylvania

June 17-18-19, 1970
Illinois Land Title Association
Stouffers Riverfront Inn
St. Louis, Missouri

June 18-19-20, 1970
Colorado Land Title Association
Antlers Plaza
Colorado Springs, Colorado

June 24-25-26, 1970
Michigan Land Title Association
Holiday Inn
Traverse City, Michigan

June 24-25-26-27, 1970
Oregon Land Title Association
Sunriver Lodge
Bend, Oregon

June 25-26-27-28, 1970
Idaho Land Title Association
Shore Lodge,
McCall, Idaho

June 26-27, 1970
New Jersey Title Insurance Association
Governor Morris Inn
Morristown, New Jersey

July 19-20-21-22, 1970
New York Title Association
Whiteface Inn
Lake Placid, New York

August 13-14-15, 1970
Montana Land Title Association
Northern Hotel
Billings, Montana

September 10-11-12, 1970
Minnesota Land Title Association
Fairhills Resort
Detroit Lakes, Minnesota

September 10-11-12, 1970
Wisconsin Title Association
Conway Hotel
Appleton, Wisconsin

September 11-12-13, 1970
Missouri Land Title Association
Stouffers Riverfront Inn
St. Louis, Missouri

September 17-18-19, 1970
North Dakota Land Title Association
Ramada Inn
Minot, North Dakota

September 18-19, 1970
Kansas Land Title Association
University Ramada Inn
Manhattan, Kansas

October 14-15-16-17, 1970
ANNUAL CONVENTION
American Land Title Association
Waldorf-Astoria Hotel
New York City, New York

October 25-26-27, 1970
Indiana Land Title Association
Indianapolis Hilton
Indianapolis, Indiana

December 2, 1970
Louisiana Title Association
Royal Orleans
New Orleans, Louisiana

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GILL—*continued from page 51*

tion in 1935—is attributed to him. The program was designed to strengthen activity of state title associations. It covers such areas as the importance of having state officers attend national association meetings; utilizing the experience of past association officers; holding regional or district meetings; keeping association members well informed; industry public relations; and a course of education for title company personnel. In line with the last point, he had authored books and papers on abstracts and land titles—some of which were used as college text material.

He is recognized as one of the organizers of the only automatic reinsurance treaty group of single state independent title underwriters — a unit that still is in operation.

WILLIAM GILL, SR.

"Meeting heaven with earth,
Leaving on craggy hills and running streams
A softness like the atmosphere of dreams."

Lady Maxwell

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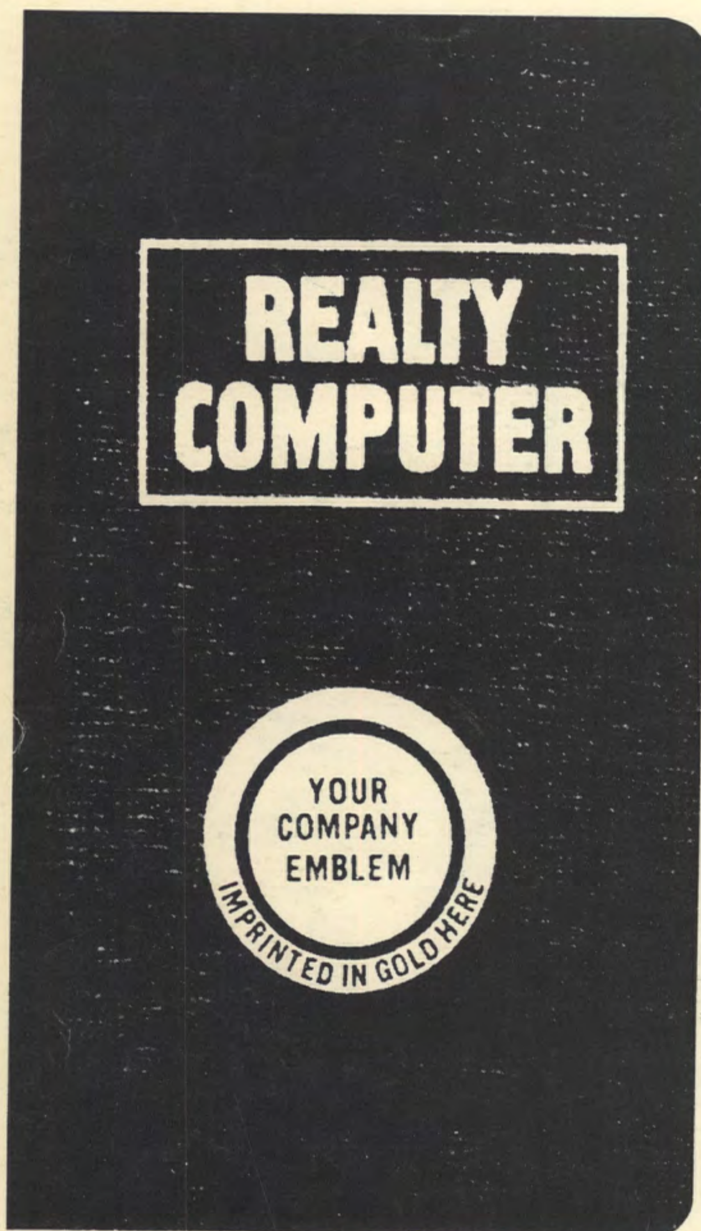

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