Title News

the official publication of the American Land Title Association

Lorne Green: A Radio Voice For ALTA

April, 1970

A Message from the Chairman, Abstracters and Title Insurance Agents Section

APRIL, 1970

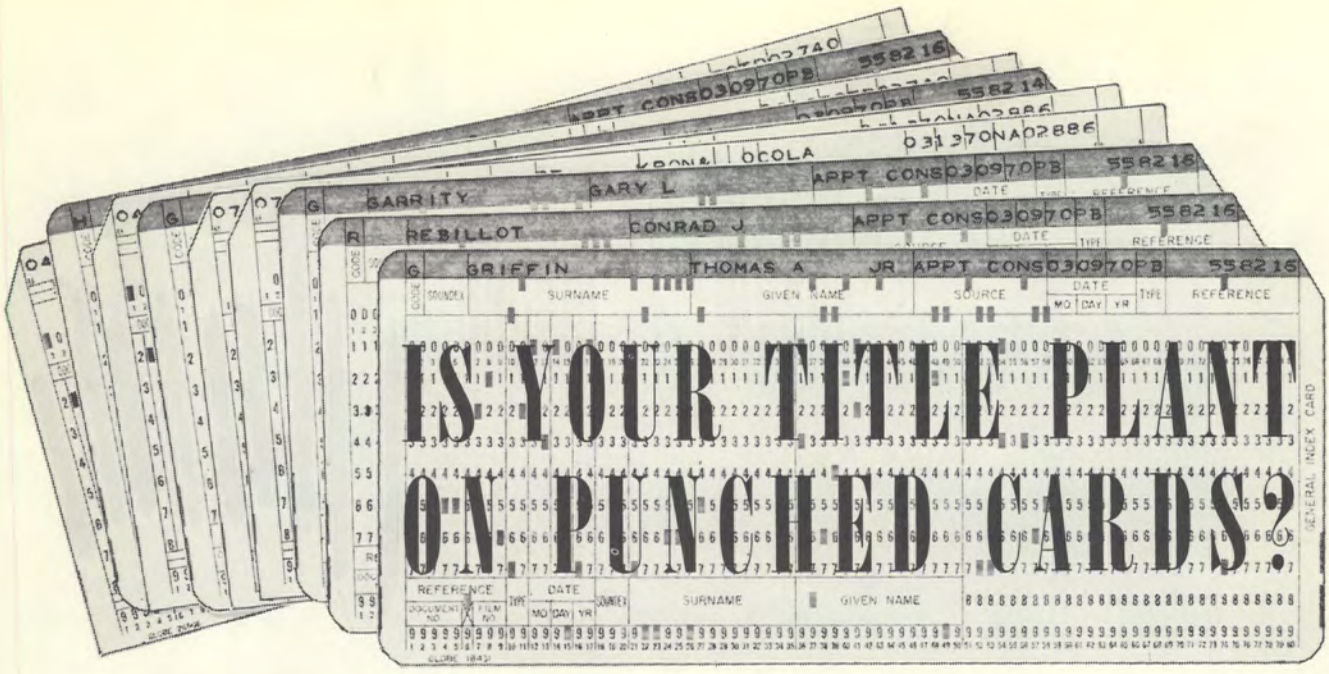
Most of us who are engaged in the title evidencing business are experiencing reduced or marginal profits from business operation, and this has been a way of life during recent months. Housing starts are down—property transfers are less numerous—oil and mineral explorations are fewer, all of which contribute to less work orders for us. We have experienced such conditions before.

Slack periods give us an opportunity to catch up on things we would like to have done but didn't have the time to do. Maybe it's improving our records—maybe trying new equipment—maybe reviewing systems—personnel—retirement plans—or any one of a number of things. It also gives time to educate ourselves, which is the point of this message.

The Abstracters and Title Insurance Agents Section of ALTA is formulating plans and program material for two one-day seminars—the first to be held in Kansas City, Missouri, on May 22 and the second in Chicago on May 23. Material will be aimed at the small abstracter-title agent operation. This is only another step being taken to make our trade organization of more value to its members. Make plans now to attend, respond to reservation requests, and help make these meetings a worthwhile venture.

Sincerely,

John W. Warren



IS YOUR TITLE PLANT ON PUNCHED CARDS?

If you have a substantial portion of your title plant abstracted on punched cards and are examining ways to more economically and effectively utilize this valuable asset, we may be able to help you.

If you are considering adding to, editing, reorganizing or rebooking your plant, our computer services could save you considerable time and money. Cost savings and operational advantages may be achieved from booking your plant on microfilm or from on-line computer processing or from a combination of these and other techniques. We have senior title people who know data processing, and senior data processing people who know title operations to help you make these determinations.

TELETITLE

If your plant operation is ready for on-line computer processing, you may be able to realize the cost and operational advantages of leasing our TELETITLE service. TELETITLE is a broad computer-based management information system designed especially for the land title industry. Through terminals connected to a time-shared computer, TELETITLE will permit you to update and search your title plant and get immediate title chains displayed on CRT tubes and/or printed.

If you are considering creating a punched card title plant or automating any of your operations, we can supply experienced management consultation to help you determine if, when, and how EDP or other forms of automation can improve your operational effectiveness and save you money.

For additional information on TELETITLE or other services, please contact Donald E. Henley, Executive Vice President, at the address below.

HW SYSTEMS, Inc.

1801 Avenue of the Stars, Century City, Los Angeles, Calif. 90067

Telephone: (213) 277-4321

H W Systems, Inc. is an independent computer system development company which specializes in providing management consulting and cost effective computer services to the land title industry.

Lorne Green Stars On ALTA Radio Spots

A well-known voice from NBC Television's "Bonanza" will join ALTA's nationwide radio home buyer education activity this spring.

Lorne Green, star of the famous western series, has recorded three of eight ALTA public service radio spots that will be sent to approximately 5,500 AM and FM stations for broadcasting. The radio material was developed as part of the continuing ALTA Public Relations Program.

The various spots range from 20 to 60 seconds in length and emphasize the need for home buyers to safeguard their real estate investments from financial loss due to land title defects. A title search and owner's title insurance are recommended in the radio material, and listeners are invited to write ALTA for free literature on what they should know in purchasing real estate.

In one spot, Green refers to the importance of land ownership since the early days of America—and talks about the great significance of protecting real estate from claims by others.

In another, he reminds that most of us could stand to be more like Abe Lincoln in service to our country—but adds that none of us want to be like Abe's father when it comes to home buying experience. He goes on to explain that the father of this nation's sixteenth president lost three farm homes because of land title defects when Abe was a boy—and suggests that home buyers look into protecting themselves from land title defects.

A third spot finds Green pointing out that wild creatures often risk their lives to protect their territory—and that man's battle against challenge to his interest in land usually takes place in a courtroom. He goes on to state that, whether claims against land ownership are valid or not, the owner needs financial protection.

All of Green's spots—and the other five in the package—are augmented with appropriate music and sound effects.

Another spot in the group features ALTA Executive Vice President William J. McAuliffe, Jr., who reminds that the purchase of a home is the largest single investment most people ever make—and suggests a land title search and owner's title insurance to protect this substantial investment.

The other four spots include the sound of a revolver cylinder and hammer as the announcer advises against "playing Russian roulette with the security of your home ownership"; the sound of papers being turned as the announcer talks about a "quiet

Continued on page 10

Arthur D. Stamler of AAVP ADS Audio Visual Productions, Inc., left, and Gary L. Garrity, ALTA director of public relations, during sound mixing for home buyer education radio spots in the company's Fairfax, Va., studio.

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Features

Departments

ON THE COVER: Lorne Green, star of NBC Television's, "Bonanza", this spring will join ALTA's radio home buyer education activity. For details, please see the opposite page.

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GARY L. GARRITY, Editor

NAREB Seeks Changes In Residential Financing

Structural changes in residential financing are imperative if housing is to compete on more even terms with other leading users of savings dollars, a member of the Realtors' Washington Committee of the National Association of Real Estate Boards told the U.S. Senate Subcommittee on Housing and Urban Affairs in March.

More concentration on long-range solutions to the problems of the residential mortgage market was recommended by Realtor Charles P. Landt, Raleigh, N. C., in testimony before the Subcommittee in Washington, D. C.

In criticizing what he termed excessive preoccupation with short-range answers to the difficulties of the residential mortgage market, Landt pointed to activity he said has "totally disregarded the fundamental reasons why our highly technologically advanced society cannot produce systems of home financing without crises."

Speaking for NAREB, Landt said, "We are encouraged by Secretary Romney's recent statement that the administration has urged three major sources of investment money which in recent years have avoided or sharply reduced home mortgage investments—the commercial banks, the insurance companies, and the pension funds—to allocate voluntarily approximately $6 billion to the residential mortgage market. This action would significantly help to redistribute savings dollars on a more equitable basis and is responsive to the basic long-term problem."

Landt then referred to an eight-point program approved last year by NAREB's Delegate Body as a means of helping solve the mortgage money crisis. The program reads as follows:

1. Direct the Treasury to lend funds to the Federal Home Loan Bank Board sufficient to assure availability of an adequate supply of residential mortgage money;
2. Exempt FHA and VA loans from the application of any state usury laws;
3. Free the interest rates on FHA-insured and VA-guaranteed mortgages;
4. Authorize Federal National Mortgage Association to deal in conventional mortgage loans;
5. Direct HUD and Government National Mortgage Association to carry out immediately the mandate of the Congress by guaranteeing marketable securities issued by FNMA or other originators against pools of mortgages thereby moving from the present policy of guaranteeing only pass-through securities which have a limited effect on attracting new money into residential mortgages;
6. Authorize use of a portion of the National Service Life Insurance Fund to be made available to purchase VA-guaranteed mortgages;
7. Exempt from federal income taxation a portion of the interest paid to depositors in mortgage-oriented thrift institutions;
8. Increase the minimum denominations of government agency bonds to minimize depositor withdrawal of funds from mortgage-oriented thrift institutions.

One of the most important steps in the eight-point program, Landt said, is "creation of a national secondary market for conventional loans" which, when accomplished within either FNMA or the Federal Home Loan Bank Board, or both, would bring about "the necessary changes in state laws to rid the conventional mortgage of the legal rigidities and impediments which make its marketability across state lines almost impossible at present."

He added that NAREB favors a proposal in Senate Bill 3442 calling for a "dual market" system for determining the allowable interest rate on FHA and VA mortgages. Landt commented, "We favor this provision because we believe that more money will be available to mortgage borrowers under a comparatively regulation-free system than under a system which imposes from time to time an unrealistic statutory ceiling not responsive to market demands."

Landt termed as a high priority objective "the requirement that federal agency obligations bear high enough minimum denominations to minimize competition with mortgage-oriented thrift institutions," adding, "We are not unmindful of the arguments of those who contend that such an action would discriminate heavily against the less affluent savers in our country. It would, but at the same time it might provide some mortgage financing to people in that same category who today cannot obtain it. However reluctant we might be to take this step, we must face the incontrovertible fact that it would help the beleaguered mortgage market."

In addition, Landt voiced support for Senate measures that would authorize the Federal Home Loan Bank Board to set an administrative ceiling above which savings and loan associations would be required to maintain special accounts in lieu of the present statutory $40,000 mortgage ceiling; that would permit savings and loan associations to act as trustees for Keogh-type self-employed

retirement trust funds; and that would expand the "primary lending area" beyond the present 100-mile limit to any area authorized under state law.

The NAREB spokesman also expressed support of a Senate measure that would permit national banks to make mortgage loans of up to 90 per cent of value over a 30-year period instead of the present limits of 80 per cent and 25 years.

Move Historical For District-Realty

District-Realty Title Insurance Corportation has moved its main office to new quarters with 17,000 square feet of space on the sixth floor of the Executive Building at Fifteenth and L Streets, N. W., Washington, D. C.

During the move, company officials encountered a wealth of history in District-Realty records dating as far back as 1791, when the city was formed. For example:

—One file contains the history to title of the home of Francis Scott Key, where he lived when he wrote the "Star Spangled Banner."

—Another contains the story of the Georgetown home of President John F. Kennedy, and reflects the dramatic increase in property value from the time he took title. Recorded in an index are facts surrounding sale of a home subsequently purchased by his widow after curiosity seekers caused her to leave Washington.

—Files dealing with the purchase of homes by Lyndon B. Johnson and Hubert H. Humphrey in the Washington area when both were Vice Presidents of the nation reveal that each, before completing purchase, insisted on a "disclaimer", nullifying to the extent legally possible restrictions regarding sale to minority groups.

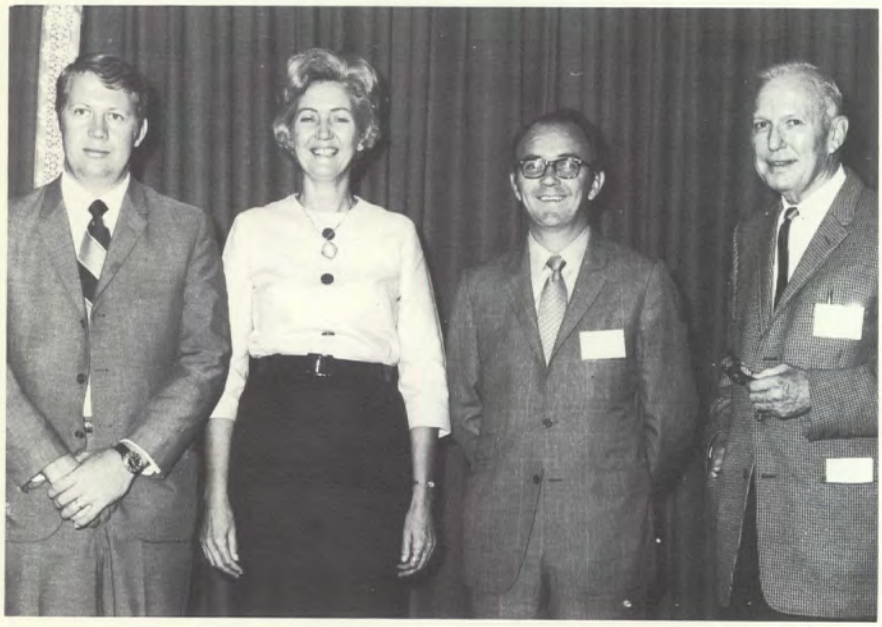
—Other recollections of historical developments in District-Realty's former quarters at 1424 K Street, N. W., Washington include U. S. Supreme Court Justice William O. Douglas and his wife settling a transaction on a home; General Omar Bradley attending a settlement; and Franklin D. Roosevelt, Jr., taking part in setting up an escrow.

Special care was taken in the moving of the "embryo", a unique volume setting forth the ownership of land transformed into lots and squares by the recording of the first plat of Washington just five years after the Revolutionary War.

Members of the ALTA Young Titlemen's Committee met in Houston, Tex., February 26 to plan nationwide distribution of three land title industry recruiting folders developed as a committee project. In addition to committee dissemination to important groups outside the land title business, the folders also are being made available to ALTA members for use in recruiting activity by individual companies. One folder is designed for high school graduates, one for college graduates, and one for law students and attorneys with several years experience. Shown here are Jack Rattikin, Jr. (committee chairman), seated, left, of Rattikin Title Company, Fort Worth, Tex., and Tom McDonald of The Abstract Corporation, Sanford, Fla., seated at Rattikin's left. Standing, from left, are Bill Holstein of LaCrosse (Wis.) County Title Company; Vic Gillett of Stewart Title and Trust of Phoenix (Ariz.); Jim McKillop of Lawyers Title Insurance Corporation, Winter Haven, Fla.; and Paul F. Dickard, Jr., of Transamerica Title Insurance Company, Fort Worth, Tex. Gordon M. Burlingame, Jr., of The Title Insurance Corporation of Pennsylvania, Bryn Mawr, Pa., committee member, was unable to be present when this photograph was taken.

association corner

state



Murdock to Helm Of Dixie Association

William Murdock, Chicago Title Insurance Company, Atlanta, is serving as president of the Dixie Land Title Association after being elected at the organization's third annual convention last fall at Calloway Gardens, Ga.

Other officers of the association are: Harold R. Barber, Mississippi Abstract Title & Guaranty Company, Gulfport, Miss., vice president; and C. Everett Royal, Lawyers Title Insurance Corporation, Atlanta, secretary-treasurer.

Speakers at the convention included:

—Alvin W. Long, vice president, ALTA, and president, Chicago Title and Trust Company, "Current Activities of the ALTA"

—James H. McKillop, Florida state manager, Lawyers Title Insurance Corporation, "Single Form Policies—Another Step Forward"

—Marshall Smith, Lauderdale Abstract Company; Ellen G. Irby, Lee

Officers of the Dixie Land Title Association are, from left: C. Everett Royal, secretary-treasurer; Ellen Graves Irby, chairman, finance committee; William Murdock, president; and Harold R. Barber, vice president. Gathering around the piano (below) for an impromptu song fest, members and guests of the Dixie Land Title Association enjoy one of the convention's lighter moments at Calloway Gardens, Ga. Al Long, ALTA vice president, lends vocal support at left.

County Abstract Co., Inc.; and Jack Smith, Montgomery Abstract & Title Co., panelists for "Problems of the Abstracter"

—Jackie Williams, chairman and chief executive officer, AAA Enterprises, Atlanta, "The Impossible Dream"

—Guy C. Bell, Commonwealth Land Title Insurance Company, and Ray Sweat, Pioneer National Title Insurance Company, "Over The Barrel"

—John T. Cossar, Mississippi Valley Title Insurance Company, "Public Relations—A Localized Effort."

St. Paul Publishes Employee Handbook

St. Paul Title Insurance Corporation recently published an *Employees' Handbook*. Prepared by Theo. V. Brumfield, assistant secretary, the publication is designed to help new employees become better and more quickly acquainted with the land title industry.

In its introduction, the publication states:

"This booklet is . . . to give you a brief insight of the company for which you will work, some facts about the products we produce, and how we go about it."

Written in concise, clear language, the *Employees' Handbook* is divided into the following sections: Introduction to St. Paul Title Insurance Corporation; Title Insurance—What Is It?; How Is A Title Search Made?; Title Plant; Regular Escrow Services; Construction Escrow Division; Special Title Services; Agency Operations & Approved Attorney System; and Glossary of Title Terms.

Inter-County Adds Tennessee Business

Inter-County Title Guaranty and Mortgage Company, New York has announced that it now is qualified to issue title insurance polices in Tennessee. This brings to a total of 20 states in which Inter-County is licensed.

Other states involved in recent expansion of Inter-County operations are Maine, Vermont, and New Hampshire.

Welcoming the first Virginia affiliate member to the District of Columbia & Metropolitan Area Land Title Association is Hubert A. Mitchell, right, executive vice president, Columbia Real Estate Title Insurance Company, Washington, D. C., and association president. On the other side of the handshake is Edward Foreman, president, Alexandria Title Corporation, Alexandria, Va. The association has established an affiliate membership classification to include policy-writing agents of its insurer members.

Commonwealth Unit Gets Advisory Board

Commonwealth Land Title Company, Washington, D.C., has announced the formation of an advisory board.

Functions of the board, according to Ralph C. Smith, president, are "to assist Commonwealth Title in its continuing search for excellence in title and settlement operations, to provide general market information, and to otherwise guide management in planned development and growth in the (D.C.) metropolitan area."

Members of the new board: Herbert A. Callihan, vice president and house counsel, Weaver Bros., Inc.; Ralph S. Childs, Jr., vice president, secretary, and director of Home Federal Savings and Loan Association; Charles J. D'Arco, executive vice president and director, Floyd E. Davis Mortgage Corporation; Peyton B. Fletcher, III, vice president, The Riggs National Bank; Phillip L. Green, president, National Mortgage Corporation; Thomas E. Kelley, Jr., vice president, Madison National Bank; Louis H. Mann, partner, Wilkes & Artis; Donald C. McCandless, M.A.I.; Frederick F. Repetti, attorney-at-law; J. Robert Ritenour, assistant vice president, American Security & Trust Company; J. Anthony Romero, vice president and real estate officer, National Savings and Trust Company; O. Mallory Walker, Jr., vice president and director, Walker & Dunlop, Inc.

names in the news

DIEFENDERFER

SNYDER

Leroy G. Snyder has been elected president, Berks Title Insurance Company, Reading, Pa., succeeding **Wilbur I. Diefenderfer,** who retired as president effective December 31 after 43 years with the company. Diefenderfer will remain with Berks Title as a member of the board of directors and a consultant.

Before becoming president of Berks, **Diefenderfer** served the company as title officer, vice president, and executive vice president.

Snyder began his career in 1939, and served as assistant title officer, title officer, and vice president before being named executive vice president in 1969.

* * *

Columbian Title and Trust Company, Topeka, Kans., has elected the following officers: **Harry H. St. John, Jr.,** president; **John W. Dozier, Jr.,** executive vice president; **Clark A. Gray,** vice president-treasurer; **Dan O'Brien,** vice president-secretary; **John P. Wheeler, Florence James,** and **Clifford Brown,** assistant vice presidents.

ELOWSKY

ALLISON

BARNES

WILLIS

TROTH

NEWLY

PETTERSON

Lowell P. Elowsky has been elected assistant vice president, sales, for Lawyers Title Insurance Corporation. He is headquartered in the company's Saginaw, Mich., office.

Lawyers Title also has announced the appointment of **Joseph M. Allison** as branch manager of its Reno office and **James R. Troth** as branch manager of its Newport News, Va., office.

* * *

Kansas City Title Division of Chicago Title Insurance Company has announced the following promotions: **John J. Barnes, Jr., Charles A. Willis,** and **James E. Newly,** vice presidents; **John D. Petterson,** vice president and secretary; **Benjamin L. Grant** and

GRANT

ADAMSON

BOONE

RIFFEL

Howard B. Adamson, assistant vice presidents; **Charles A. Boone,** manager, construction escrow department; **Jerry D. Riffel** and **Mildred C. Nelson,** assistant secretaries.

* * *

McANINCH

Jack W. McAninch has been promoted to Southwest regional vice president for Pioneer National Title Insurance Company.

* * *

ROBINSON

James W. Robinson has been named a senior vice president of American Title Insurance Company, Miami.

* * *

PEDOWITZ

James M. Pedowitz has been elected senior vice president and chief counsel for The Title Guarantee Company, New York City. He succeeds **William Wolfman,** who retired last year. Wolfman will continue as a consultant to the company.

Wolfman has served the company as specialist in real estate law since 1925. He is an active member of ALTA, currently working with the Standard Forms Committee.

Pedowitz has been with the company since 1935, serving as counsel for the Nassau and Queens County offices and member of the board of counsel. Since 1964, he has been senior vice president for the Long Island region.

* * *

NORSETH

Richard S. Norseth has been elected controller for Security Title Insurance Company, Los Angeles.

* * *

New Jersey Realty Company announces the following promotions: **Gilbert Flaherty,** vice president, commercial mortgage loan department; **John Farrell,** assistant vice president, residential mortgage loans; **Raymond J. Narwid** and **Frank J. Pietrucha,** assistant secretaries.

* * *

William G. Foulke, chairman of Provident National Corporation and Provident National Bank, has been elected a director of Commonwealth Land Title Insurance Company, Philadelphia.

Commonwealth has reorganized its national division into two sections: the national agency division and the national branch office division. **Robert F. McMackin** has been named head of the national agency division and **Joseph D. Burke** has been appointed head of the national branch office division. Both continue as vice presidents of the company.

In other changes, Commonwealth has named **Irving Morgenroth,** a vice

FOULKE

McMACKIN

BURKE

MORGENROTH

McDERMITT

PAPAZICKOS

NEIL

president, to the position of chief counsel; **John H. McDermitt** to New Jersey state counsel; **Chris G. Papazickos** to assistant vice president and associate counsel; and **Charles J. Neil** to director of personnel.

* * *

Marden Miller and **Arthur A. Dunn** have been elected to the board of directors of Inter-County Title Guaranty and Mortgage Company.

* * *

Chicago Title and Trust Company announces the appointment of **Sol D.**

Koppel as assistant secretary and manager of the final examining department.

* * *

JONES

Harrison H. Jones has been elected to the board of directors, Louisville Title Insurance Company. He is a senior vice president with the concern.

* * *

LORE

Kurt W. Lore, partner in the law firm of Thacher, Proffitt, Prizer, Crawley and Wood, has been appointed a member of the metropolitan Title Insurance Advisory Committee of The Title Guarantee Company, New York, N.Y.

* * *

EDWARDS

McCREARY

Jack J. Edwards, chairman of the board and chief executive officer, California Land Title Company, and **William F. McCreary,** division president and legal counsel, Southern California Division of Chicago Title Insurance Company, have been elected to the board of directors of HW Systems, Inc., Los Angeles-based computer system development firm.

LORNE GREEN—continued from page 2

plant" important to every home owner, which then is identified as a title plant; the voice of a child praying before the announcer suggests that a secure home, protected from the hazards of land title defects, is something to be thankful for; and the sound of footsteps as the announcer comments on walking with confidence in the purchase of a home through the help available in ALTA literature offered free to home buyers.

Development of the 1970 radio spots is an endeavor of the ALTA Public Relations Committee and staff, and AAVP ADS Audio Visual Productions, Inc., Fairfax, Va.

Mayo Land Title Co. Moves from Rented Quarters into Its Own New Office Building

Mayo Land Title Co., Inc., has moved into its own new office building at 1107 Bilbo Street, Lake Charles, La., according to Claudius A. Mayo, company president.

The new quarters are in a full masonry building with solar bronze glass front, spaced with masonry pilasters, and include 1,800 square feet of ground floor space and ample parking. Location is one block from the court house.

Mayo Land Title previously had occupied rental quarters since its founding in 1946.

Major Expansion Project Will Add Over 1,100 Square Feet to Chautauqua Abstract

A major expansion project will add more than 1,100 square feet to present facilities of Chautauqua Astract Company, Mayville, N.Y., according to Willard R. Morton, manager.

The expansion will blend with the architecture of the original building now occupied by the 60-year-old company.

Chautauqua Abstract's merger with American Abstract Corporation in 1968 and its association with Lawyers Title Insurance Corporation this year as an agent led to the expansion, Morton said.

Riverside Operation Extends Transamerica Title Business in Southern California

Transamerica Title Insurance Company has expanded its operations into Riverside County, Calif.

The new title plant, Transamerica's most modern, has a complete record of documents relating to the ownership and transfer of all real estate in Riverside County, with records going back to original land patents.

Ernest R. Petrucci, who was named manager of Riverside County operations, previously was manager of Transamerica's financial district office in San Francisco.

In southern California, Transamerica also currently operates in Los Angeles, Orange, San Diego, Kern, and San Bernardino counties.

Part IV: ALTA Judiciary Committee Report

(Editor's note: Members of the ALTA Judiciary Committee have submitted over 400 cases to Chairman John S. Osborn, Jr., executive vice president and general counsel, Louisville Title Insurance Company, for consideration in the preparation of the annual Judiciary Committee Report. Chairman Osborn reports that 142 cases have been chosen from this number for the report. Earlier installments may be found in the November and December, 1969, and the February, 1970, issues of *Title News*.)

* * *

EASEMENTS

Angelo v. Biscamp, 441 S. W. 2d 524 (Texas, 1969)

The Texas Supreme Court now specifically holds that where a party purchased lots abutting an existing railroad right of way and the right of way is abandoned during the time that such owner was vested with title to the adjacent lots, the half of the right of way abutting such lots vested in fee simple in the abutting lot owner so that a deed thereafter made by such lot owner describing only the lot and not the abandoned right of way carried no presumption of an intent to convey the abutting easement area. The court expressly holds that the so-called "strip and gore" doctrine, which creates a presumption of intention to convey small strips of land along and abutting a larger tract where such strips standing alone would serve no useful purpose to the vendor, was not applicable to a tract consisting of half of an abandoned railroad right of way where the disputed area was commercially valuable property and the lot conveyed was smaller and presumably less valuable than the adjoining abandoned railroad right of way.

Rio Bravo Oil Company v. Hunt Petroleum Corporation, 439 S. W. 2d 853 (Texas, 1969)

Where granting clause in deed to railroad company declares purpose of grant to be right of way over and across the tract, it is conveyance of mere easement in the property and not of fee simple estate therein. Such a deed would not sustain title by adverse possession to a fee simple estate under the three, five, or twenty-five year statutes of limitation. Railroad company entering upon the land under such easement instrument and in recognition of owner's fee title could not claim title by adverse possession under the ten year statute of limitation as against true owners without bringing to their notice a repudiation of the recognition and of assertion of adverse claim. Railroad company's fencing of right of way and grant of agricultural leases and licensing of various of its customers to construct buildings, seed houses, lumber yards, vegetable sheds, pickle plants and rock crushing facilities on right of way was not sufficient to amount to notice to fee owners of repudiation of their fee title and of an adverse claim by railroad company.

Callahan v. Ganneston Park Development Corp., 245 A. 2d 274 (Me., 1968)

The court held that where one sells lots by reference to a plan showing streets and ways upon which the purchaser must rely for access to his property and, indeed, for the very value of the property purchased, an attempted reservation in the granting instrument which would empower the grantor later to nullify all the proposals for streets and ways shown on his plan contravenes public policy.

Ziegler v. Ohio Water Svc. Co., 18 Ohio St. 2d 101, 247 N. E. 2d 726 (1969)

The construction and maintenance underground of a water pipeline, for public purposes, in real property outside a municipal corporation which is subject to an easement for highway purposes, is not an added burden on such property for which compensation must be awarded. (*Hofius v. Carnegie-Illinois Steel Corp.,* 146 Ohio St. 574, overruled.)

EMINENT DOMAIN

W. S. Ranch v. Kaiser Steel, 388 F. 2d 257 (1968)

N. M. Stat. Ann. (1953 Comp.) Section 75-1-3 provides:

". . . any person, firm . . . or corporation, may exercise the right of eminent domain, to take and acquire land right-of-way for the construction, maintenance and operation of . . . pipe lines or other works for the storage or conveyance of water for beneficial uses."

Kaiser sought to condemn ranch land for purposes of bringing water to Kaiser's coal mine.

Held: The ranch land could not be taken by eminent domain for the purpose of securing water to be used in the operation of a private coal mine. The ultimate use of the water must be beneficial to the public.

Precise question is undecided by state courts.

Wichita v. Unified Schools District, 201 Kan. 110 (1968)

School building and land owned by one government body was condemned by another for highway purposes.

Held: Proper measure of damages was not market value, but cost of providing facilities to replace those

taken, without deduction for depreciation or obsolescence.

Case of first impression.

Pullman v. Glover, 73 Wash. 2d 597, 439 P. 2d 975 (1968)

City sought condemnation of unimproved land. A portion was held under lease by the United States but not included in area taken by city; United States was not made a party defendant. The federal government moved dismissal on two grounds: Lack of jurisdiction, and failure to obtain consent of United States before institution of action.

Held: Authority of city to so condemn upheld. It did not take the portion of which the United States is a lessee. The lessee's interest was not diminished or otherwise affected as a result of the condemnation.

Iske v. Metropolitan Utilities District, 183 Neb. 34 (1968)

Condemnee was permitted to offer in evidence an exhibit showing the possible prospective use of the property for recreational purposes. The exhibit constituted a graphic portrayal of a plan for such future use.

Held: The jury could reasonably infer that the development for recreational purposes was a prospective use which, in turn, was a factor affecting the present market value of the property; therefore, the exhibit was admissible in evidence.

Case of first impression in Nebraska, making a choice between the two lines of authority passing on this question in other jurisdictions.

Curtis Shipp et ux v. Louisville and Jefferson County Air Board et al, 431 S. W. 2d 867 (Ky., 1968)

Suit by county airport for declaration that it had prescriptive right to the public, unobstructed use of stratum of airspace over defendant's property for the purpose of landing and taking off of aircraft, including space in which VASI equipment operated.

Held: As right of landowners, whose property was located near airport runway, to maintain and enjoy their trees was acquired before public right of transit through navigable airspace was fixed by federal statute, landowners' right to maintenance and enjoyment of their trees was protected by constitution and could not be taken except by condemnation.

Foster v. City of Detroit, Michigan, 405 F. 2d 138 (Mich., 1968)

The City of Detroit brought condemnation proceedings and after 10 years dismissed the proceedings. During that time, the property greatly deteriorated and the area became decayed and blighted. Later, the city brought a second condemnation and the owners were awarded the value of the property at the time of the second proceedings. The owners brought this action in the federal court, claiming that they were deprived of their property without due process of law.

Held: The owners were so deprived of their property by the first condemnation proceedings and there was a taking without just compensation in violation of the Fifth and Fourteenth Amendments.

ESCROWS

Aikin v. Business Title Corp., 264 Adv. Cal. App. 173 (1968)

Action for damages for negligence in failing to properly record a real estate transaction. Defense was based upon exculpatory clause in printed escrow agreement.

Held: While the general rule is that an exculpatory clause relieving individuals of liability from their own ordinary negligence does not contravene public policy, a contract entered into between two parties of unequal bargaining strength, expressed in the language of a standardized contract, written by the more powerful bargainer to meet its own needs, and offered to the weaker party on a "take it or leave it" basis, carries some consequences that extend beyond orthodox implications.

Ruth v. Lytton Savings & Loan Assn., 266 Adv. Cal. App. 908 (1968)

Agreement deposited with escrow provides that the sellers would subordinate their two first deeds of trust to construction or take-out loans not to exceed 7.2% interest, and which were not to be in excess of 66 2/3% of the lender's appraisal of the land and the improvements to be constructed.

Held: Escrowee is responsible where, contrary to its instructions, it closes a transaction involving a loan secured by a first deed of trust which was excessive both as to interest and amount and which was used in part to pay the down payment on the land. The sellers thus did not receive that which they bargained for, and which was specifically provided for in the purchase and sale agreement.

This case emphasizes that a loan for a down payment of real property is not part of a construction or take-out loan.

HIGHWAYS, STREETS, and ALLEYS

Albee v. Yarrow Point, 74 Wash. 2d 461, 445 P 2d 340 (1968)

Owners of property abutting certain streets sought to enjoin Town of Yarrow from making improvements in an area Town claims as a street in plat established along border of navigable lake; street originally extended across second class tidelands to line of navigability. Since platting the level of lake has lowered considerably.

Held: Injunction denied. Although street in original plat was used for transporting residents to dock and ferry landing, which is no longer required, conversion to pedestrian way to lake for recreational purposes, including minor improvements therefore, approved. Platted street extends to the new line of navigability, resulting from lowering of lake level shortly after platting.

Case of first impression as to resulting use of streets which dead-end at lakeside.

Prewitt v. Whittaker, 432 S. W. 2d 240 (Mo., 1968)

Plaintiff's parent purchased and took possession in 1945 of four lots, a vacated street lying immediately west thereof, and other property west of the vacated street. The street had been vacated by ordinance in 1910 and subsequent deeds to property east and west of the vacated

street had not made reference to it. Defendants purchased the four lots in 1952 from plaintiff's parents by a grant which did not mention the vacated street. The defendants relied on a presumption that the grantors did not intend to withhold any interest in the vacated street.

Held: "There is an obvious practical difference of reason for the method of rebuttal of the rule of construction or presumption as to an existing street and one which has been vacated. In an existing street the owner has no right to use it as to interfere with the rights of the public. . . . In the case of a conveyance after a street has been vacated, the adjoining owner has full title (under the statute or ordinance) unencumbered by the public use. . . . The owner of the vacated street should not be bound by the hard and fast rule that the rule of construction or presumption may be rebutted only by something stated in the deed, as by a reservation (which would be better conveyancing practice). Rather, his intention to withhold the vacated area should be permitted to be shown by the surrounding facts and circumstances as will clearly and unequivocally show such intention." The court concluded that the evidence of this case clearly and unequivocally showed an intention not to convey the vacated street area.

Case of first impression.

HOMESTEAD

Henry S. Miller Company v. Shoaf, 434 S. W. 2d 243 (Texas, 1968)

The property in litigation was used and occupied by the husband and wife as their residence homestead and was similarly occupied by the wife's mother whom the wife partially supported and to whom she owed moral obligation as support. The property was community property of the husband and wife. A judgment was rendered against the husband alone. In a divorce action between the husband and the wife, divorce was granted and the property was awarded to the wife who continued to occupy it, using it as a home for herself and her mother. This was the situation when the judgment creditor of the husband levied upon the property and had it sold under execution and bid it in at execution sale. In contest between such judgment, creditor and the wife who claimed the property was exempt as her homestead, the execution sale and deed thereunder to judgment creditor was held to be void and to pass no title on the theory that the divorced spouse and her mother to whom she owned a moral obligation of support and did, in part, support, constituted a family which preserved the homestead exemption and rendered the property immune from execution sale under ordinary judgment.

HUSBAND AND WIFE

In Richardson v. Strickland, 225 Ga. 319, —— S. E. 2d —— (1969)

A Georgia husband went to Nevada and obtained a decree of divorce by publication service, apparently without any actual knowledge on the part of the wife. Upon his subsequent death, she applied to the Georgia court for a widow's allowance covering her support for the first year after his death, and the court awarded to her for that purpose fee simple title to Georgia property belonging to his estate, as provided by the Georgia law. The husband's heirs attacked the award, claiming that the relation of husband and wife no longer existed, but the alleged widow contended that the Nevada decree was void because the requirements of Nevada law as to service were not met. The court held that the Georgia courts must give full faith and credit to decrees of other states unless they are void for fraud in their procurement, and that the decree was binding upon the wife.

Leslie v. Midgate Center, 72 Wash. 2d 964, 436 P. 2d 201 (1968)

Action by husband and wife to recover community interest in certain real property purchased by husband, as trustee, under joint venture agreement with others and subsequently reconveyed by him pursuant to the join venture agreement.

Held: Marital community acquired no interest in property which husband acquired for the joint venture in his dual capacity of trustee and co-adventurer. The wife's joinder in conveyances was not necessary.

Case of first impression.

St. Pierre v. St. Pierre, 381 Mich. 44 (1968)

Involved in this case were a number of conveyances to certain grantees as husband and wife, and subsequent conveyances from these grantees, so describing themselves. The parties were never legally married, the man having been married to someone else. After he died, survived by a lawful wife and seven children, his supposed wife brought an action to quite title to the property conveyed to them as husband and wife. Defendants were his administratrix and heirs. Defendants relied upon several decisions holding that when conveyances are made to parties described therein as husband and wife, but who are in fact not married to each other, they hold the property conveyed as tenants in common. The plaintiff relied upon holdings that parties challenging the relationship of grantees taking as husband and wife are estopped to offer proof that such relation did not exist, since they may not disregard any of the provisions in the governing instrument.

Held: This last mentioned group of decisions was based upon the rights of third parties and that as to any property conveyed, or contracted to be sold, to third parties without notice defendants were estopped, and had no interest. This rule was also applied to instruments executed by the surviving grantee after the death of her supposed husband. His estate was held to have no interest in the proceeds of any such transactions. As to any other property the grantees were tenants in common.

JUDGMENTS

Eastern Shore Building & Loan Corporation v. Bank of Somerset, 253 Atl. 2nd, 367 (Md., 1969)

Appeal involves the question of whether or not a judgment creditor of one joint tenant of fee simple land may, after the conveyance of the

land by both joint tenants to a purchaser for a valuable consideration, enforce its judgment against the land.

A and B owned property as joint tenants. On October 7, 1966, the Bank obtained a judgment against A which was duly recorded. On October 5, 1967, A and B, without having executed any prior contract of sale, conveyed the property to others, for a valuable consideration and on the same day the purchasers executed a purchase money mortgage to the Building & Loan, both the deed and the mortgage were duly recorded. On November 3, 1967, the Bank caused a writ of fieci facias to be levied on the property by the Sheriff, directing him to levy upon the one-half interest of A. Building & Loan intervened in the execution proceedings. Held that there was no execution by the judgment creditor prior to the conveyance by the joint tenants, nor was there any contract of sale or lease by one joint tenant or other action prior to the conveyance of October 5, 1967, by the joint tenants which might possibly result in a severance of the joint tenancy prior to the conveyance. The conveyance terminated the joint tenancy, but simultaneously with the conveyance title to the property vested in the grantees. There was never a time, therefore, that A and B even held title as tenants in common so that there was no estate in the land which A, alone, held in severalty to which the lien of a judgment against him alone could attach. Although as the appellee Bank correctly stated, we did not specifically pass upon the question presented in this case in *Eden v. Rothamel,* 202 Md. 189, we are of the opinion that the rationale in Eden is applicable to the instant case.

Hersh v. Allnutt, 252 Md. 513, 250 Atl. 2d 629 (1969)

Mortgagors who did not appeal from an order ratifying foreclosure sale or order ratifying auditor's report, could not upset foreclosure sale by raising, in deficiency proceeding, objections to foreclosure sale which were not based upon defenses arising after confirmation of the sale and which did not involve payment or release. Also held that the mortgagors' petition to rescind sales contract and to set aside deed, foreclosure and deficiency judgment for fraud was insufficient inasmuch as it gave no facts to support allegation of fraud. The final ratification of the sale of property in foreclosure proceedings is res judicata as to the validity of such sale, except in case of fraud or illegality, thence its regularity cannot be attached in collateral proceedings.

LANDLORD AND TENANT

Crow Lumber and Building Materials Co. v. Washington County Library Board, 428 S. W. 2d 758 (Mo. App., 1968)

Plaintiff owner sued defendant tenant for nine months of unpaid rent allegedly due under a written lease for "the street level floor only" of a business building which had been rendered untenantable by an accidental fire. The lease contained no covenant requiring the owner to rebuild and no provision excusing the tenant from paying rent in the event of fire.

Held: Although the general rule is that the lessee continues paying the rent for the duration of the lease, there is an exception where the lease does not include any interest in the land itself. The lease of the "street level floor only" of the building did not grant any interest in the land and in the absence of a covenant to rebuild or a provision for termination because of destruction, the lease was terminated and liability for rent ended by operation of law.

A case of first impression which follows the weight of modern authority

Lemn v. Gould, 425 S. W. 2d 190 (Mo., 1968)

Three-year old minor and his parents sued defendants, husband and wife, for injuries to the minor sustained when he climbed through an opening between a baluster and a wooden column and fell four floors. Title to the property was vested in the defendant wife and defendant husband claimed he could not be held liable because he did not have title.

Held: From defendant husband's "knowledge of the property, his close identity with its management, his legal possession and general control of the building, and his acting like a landlord, it may fairly be said that he assumed the duties and responsibilities of a landlord. In such case it is no defense that he has no legal title."

A case of first impression.

Osterling v. Sturgeon, 156 N. W. 2d 344 (Iowa, 1968)

Lease for bowling alley contained no covenant by the lessor to repair nor any provision for abatement of rent in the event of casualty to the premises. There is no applicable statute. The bowling lanes and equipment were owned by the tenant. The worst flood in the history of the community flooded the building three feet deep. Lanes were damanged beyond repair. The building itself was not damaged except for the paint and could have been occupied in about a week after the flood. Tenant defended an action for rent on the grounds of destruction of the premises.

Held: In order to relieve lessee from liability for remaining rent of term, the leased premises must be totally destroyed and the destruction of tenant's equipment in the premises is not destruction of the leased premises.

Case of first impression in Iowa.

Margaret A. Shearer v. Allegheny Land and Mineral Company, 105 S. E. 2d 369 (W. Va., 1969)

Lessee under an oil and gas lease has a mere right of exploration, and therefore no estate vests in lessee until discovery of oil or gas in paying quantities.

LIMITATION OF ACTIONS

Continental Casualty Company v. Westinghouse, 403 F. 2d 761 (Fla., 1969)

Facts: A subcontractor put up a bond not required by Statute, even though the work was public; namely, a school. The prime contractor fur-

nished the statutory bond. The subcontractor's bond provided for a one-year limitation of liability after the subcontractor ceased work on the project. Westinghouse commenced an action against the subcontractor and Continental after one year. Continental interposed defense that action was barred by time.

Decision: The court held that since bond was not required by Statute, it was a contract under seal for which the statutory right of action was twenty years. Court cited Sec. 95.03 of the Florida Statutes to the effect that a stipulation in a contract shortening the period of limitation is illegal.

The court also held that delivery of a lien waiver is not a release of the debt, but merely a release of the right to proceed against the land.

MINERAL INTERESTS

Department of Forests and Parks v. George's Creek Coal and Land Company, 250 Md. 125, 242 Atl. 2d 165 (1968)

George's Creek, the owner of the fee simple title in a large tract, conveyed the tract by deed which contained the following exceptions and reservations: "Excepting, however, from the operation of this deed and reserving to the George's Creek Coal Company, Incorporated, its successors and assigns, all the coal, clay and other minerals, and all the oil and gas underlying said land hereby conveyed, together with the right to enter in, upon and under said land and to mine, excavate and remove all said coal, clay and other materials . . . all without being in any manner liable for the breaking or subsidence of the surface of said land or for any injury or damage done to the overlying surface thereby or to anything therein or thereon, by the exercise of the rights hereby excepted and reserved. . . ." The State of Maryland subsequently acquired title to a portion of the original tract. It is now part of the Savage River State Forest.

George's Creek applied to Board of Public Works for permission to remove coal from the property by strip mining which was granted subject to the approval of the Department of Forests and Parks. The Department refused to give its approval. George's Creek filed a bill for a declaratory decree. The Chancellor decreed that George's Creek was entitled to strip mine the coal. Affirmed.

Absent other limiting words or circumstances, the right "to mine, excavate and remove" would seem ordinarily to be broad enough to include any method of recovering the coal.

Gerhard v. Stephens, 68 A. C. 927 (Cal., 1968)

Plaintiffs brought these four actions to quiet title to undivided mineral interests. They claimed these interests as successors of stockholders in two now-defunct corporations which were grantees of "all petroleum, coal oil, naptha, asphalt, maltha, brea, bitumen, natural gas and other kindred or similar substances and deposits and rocks, gravels, or other formations containing or yielding any said substances". Defendants occupied the surface for a long period of time before striking oil.

Under California law, oil and gas are fugacious substances not subject to ownership in place. The holder of these mineral interests has a right to drill for and produce oil, a right to remove a part of the substance of the land. This right or interest in the land is a profit a prendre, an incorporeal heriditament, essentially indistinguishable from easements and thus, like easements and other incorporeal heriditaments, can be abandoned. The cases have used the term "fee interest" in two different contexts:

(a) To indicate the perpetual nature of the interest (duration);
(b) To indicate the possessory, or corporeal, nature of the interest.

A fee interest in the sense of a possessory interest cannot be abandoned, for, if such interest could be abandoned, there would possibly be a void in titles. On the other hand, a non-possessory interest, such as a profit a prendre, though owned in perpetuity or fee in the durational sense, can be abandoned and the interest reverts to the servient estate and no void is created.

The conveyances of the fugacious substances transferred profits a prendre which interests were subject to abandonment. Further, although the deeds also described non-fugacious minerals, the grantors in conveying their rights in a single deed to each corporation did not intend to convey two different types of estate in the same instrument. The court thus treated the incidental conveyance of the asphalt as a conveyance of a profit a prendre. As to plaintiffs in three of the actions, the court, however, found no abandonment.

Defendant-surface owners did not establish title to the minerals by adverse possession since continued possession of the surface following a conveyance of the oil and gas rights apart from the surface (severance) does not establish the possessor's rights against the legal owner; there must be some visible activity sufficient to impart to the true owner of the minerals notice of an adverse claim and the surface owners' execution and recording of leases does not by itself constitute such visible activity.

Plaintiff's profit a prendre was not extinguished by defendants' fencing of the land and their use of the surface for cattle grazing as such acts were not inconsistent with plaintiffs' right to enter upon the land and explore for oil.

MORTGAGES AND LIENS

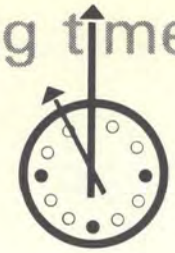
D. A. D., Inc., a Florida corporation v. Moring et al, 218 So. 2nd 451 (Fla., 1969)

Title held as joint tenants with right of survivorship. Only one of joint tenants gave a mortgage.

Held: That giving of mortgage did not destroy the joint tenancy (Florida is a lien state) and upon death of the tenant giving the mortgage the lien thereof terminated and the lien was not enforceable against his undivided one-half interest in the property.

(Mortgages and Liens Section To Be Continued.)

meeting timetable



1970

April 8, 1970
New England Title Association
Hartford, Connecticut

April 16-17, 1970
California Land Title Association
Palm Springs, California

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
New Mexico Land Title Association
Los Alamos Inn
Los Alamos, New Mexico

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 14-15, 1970
Wyoming Land Title Association
Downtowner Motor Inn
Cheyenne, Wyoming

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

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, 1970
South Dakota Land Title Association
Kings Inn
Pierre, South Dakota

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

September 24-25-26, 1970
Ohio Land Title Association
Statler Hilton
Cleveland, Ohio

October 14-15-16-17, 1970
ANNUAL CONVENTION
American Land Title Association
Waldorf-Astoria Hotel
New York City, New York

October 22-23, 1970
Dixie Land Title Association
Broadwater Beach Hotel
Biloxi, Mississippi

October 22-23, 1970
Nebraska Land Title Association
Lincoln, Nebraska

October 25-26-27, 1970
Indiana Land Title Association
Indianapolis Hilton
Indianapolis, Indiana

November 6-7, 1970
Land Title Association of Arizona
Tucson, Arizona

December 2, 1970
Louisiana Land Title Association
Royal Orleans
New Orleans, Louisiana

1971

March 3-4-5, 1971
ALTA Mid-Winter Conference
San Diego, California

October 3-4-5-6, 1971
ALTA Annual Convention
Statler Hilton
Detroit, Michigan

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