Title News

the official publication of the American Land Title Association

Abstractor-Agent Seminars Set For May

May, 1970

A Message from the Chairman, Title Insurance and Underwriters Section

MAY, 1970

"When It's Springtime in the Rockies", I am certain, is a tune familiar to all of you. As this greeting is written, that time has arrived in Colorado.

The arrival of spring has many values for all. For the robin, it's a fat worm; for the flower fancier, new buds bursting forth; for the golfer, an opportunity to confront par; for the housewife, spring cleaning.

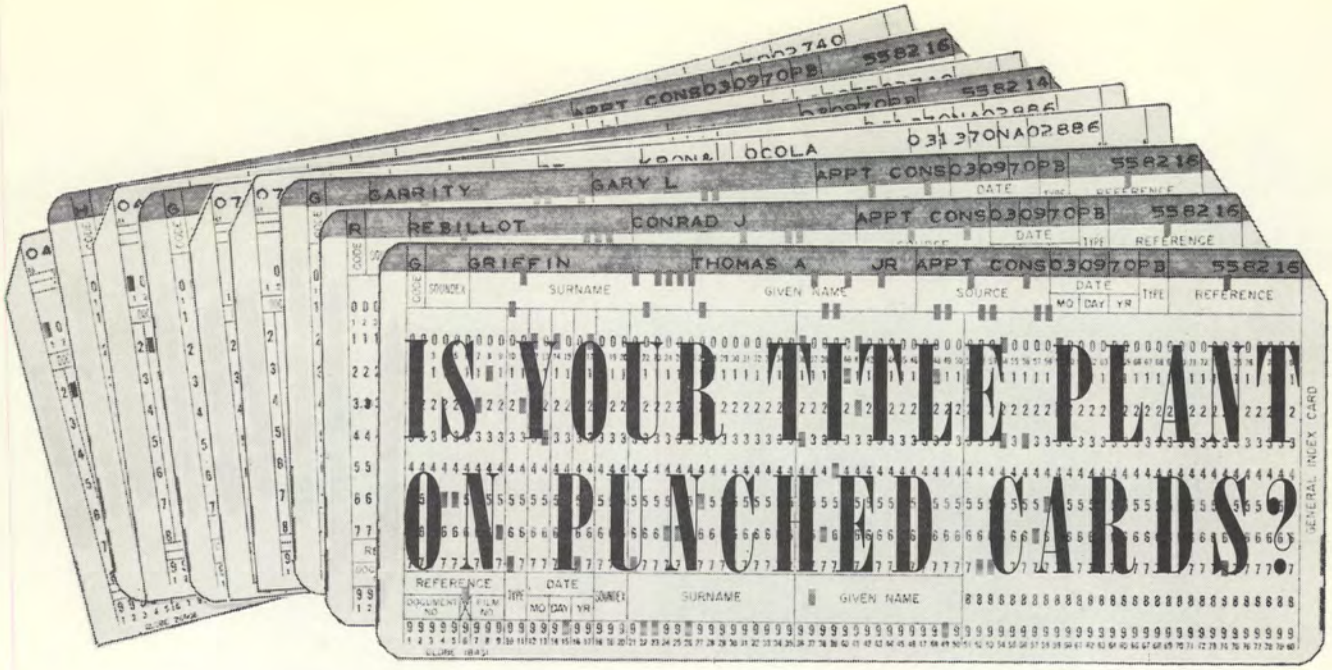
For those in the title profession, spring means another benefit for this is the time many of our State Association meetings are scheduled. Those meetings have all the same attractions of spring rolled into one: perhaps rather than getting the worm, the title man will land a fat contract; or rather than new buds, a meeting will present new ideas; and, challenging as golf is, it can't compare with our concern in fighting the problems of today's money market. I am certain there will be a pro at these meetings to give you tips on how to meet the challenge. As for spring cleaning, isn't it just as appropriate to discard outmoded methods of operations?

So come along, take advantage of the opportunity offered by your State Association and plan to attend the meeting for your state. One of your ALTA officers will look forward to seeing you there.

Sincerely,

James O Hickman

James O. Hickman



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Features

Departments

ON THE COVER: Members of the ALTA Abstracters and Title Insurance Agents Section exchange thoughts on personnel training and retention April 2 during the Association's Mid-Winter Conference in New Orleans. Round table discussions on this and other subjects proved so successful at the Mid-Winter that they have been incorporated into the format of Section Abstracter-Agent Seminars to be held in May. The Seminars are scheduled for May 22 at the Hilton Inn in Kansas City and May 23 at the Marriott Motor Hotel in Chicago. Both locations are near the airports serving the communities concerned. Plan now to attend one of these important meetings.

VOLUME 49, NUMBER 5, 1970

TITLE NEWS is published by American Land Title Association, 1828 L Street, N.W., Washington, D.C., 20036; (phone) 202-296-3671

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Mortgage Money in the 1970's

Editor's Note: This article was adapted from remarks presented March 12 at a Los Angeles Seminar sponsored by the National Association of Business Economists.

* * *

I am most grateful to speak on "Mortgage Money in the 1970's," rather than in 1970. From experience, I know the farther you move your conjectures into the future the greater your chances of accuracy. You are not bedeviled by all the cross-currents, failures in adjustment, movements in expectations, and policy decisions that make estimates so difficult for the year ahead—plus the fact people are less apt to check your statements after 10 years.

Let me summarize my views of the 1970's by three short questions and answers. I will then use the rest of my allotted time in explaining how I arrived at these answers.

1. How much mortgage money will be required in the 1970's? Less than the majority are guessing but, until the census is available, most effort spent analyzing this problem will be wasted.
2. Will a shortage of savings make it impossible to achieve the nation's housing goals? No. The sums involved are quite small, compared to total output or government expenditures. A failure to achieve these goals will be the result of an unwillingness to make the political decisions necessary to transform rhetoric about housing goals into concrete programs.
3. Granted that the total pool of savings will be sufficient to meet our investment goals, will we be able to channel it to the mortgage market? Probably yes, although we could create enough impediments to the normal flow of mortgage funds to cause a permanent shortage. The number of errors and degree of interference would have to rise a good deal beyond present levels, however, to keep a major financial market such as that for mortgages permanently out of equilibrium.

Author Maisel

Waiting for the Census

A year ago, when I spoke here in Los Angeles, I stated that I believed most analysts and certainly the trade papers were overestimating the need for traditional housing starts—and, therefore, the need for mortgage money—by 20 to 30 per cent. Since then estimated requirements for the decade of the 1970's have been revised down sharply.

I still think many guesses are high. If I were a business economist concerned with markets or investments, I would differentiate rather carefully between a "goal" and a "projection." Webster defines a goal as "an object that one strives to attain." Unfortunately, no matter how hard one strives, goals are frequently missed. On the other hand, Webster defines a projection as "an estimate of future possibilities based on a current trend." This, I take it, would include careful studies of expected supply and demand.

From bitter experience, however, I know this is the wrong time to debate or discuss in detail the desirable or probable number of housing starts or volume of mortgage money. We are on the brink of the decennial census. Each previous census has caused major revisions in our views

as to the housing stock and the demand for shelter. Anybody trying to build on existing data is likely to find, when the new census appears, that his foundation has disappeared. Rather than suffer in this way again, I will merely suggest that six months or a year from now we will have a much sharper picture of the mortgage demands for the 1970's than we do now.

The Total Pool of Savings

One approach to the housing market of the 1970's is to ask whether or not we can expect the pool of available savings to equal the desired level of investment for the economy as a whole. If the desirable (*ex ante*) investment level exceeds the scheduled *(ex ante)* desire to save, equilibrium must be reached by higher output if resources are available; otherwise by a cut in wanted investments through some combination of inflation, higher interest rates, and credit rationing.

Over the decade, the schedules should disagree in some years. The significant question is whether a disequilibrium is likely to exist for much of the period or whether one will occur so frequently that the decade's housing production will fall below appropriate levels.

To get a picture of a possible desirable schedule for investment and spending, I have drawn on the excellent discussion of future national output and the claims upon it contained in the 1970 annual report of the Council of Economic Advisers. Table 1 is my translation of key portions of their analysis into current dollars (assuming a 2.5 per cent increase in prices per year) and into the somewhat more familiar concepts of a savings and investment equilibrium.

Let us examine the year 1975 in which available national output is estimated at $1,400 billion. Personal consumption and transfers are assumed to average 93.5 per cent of disposable income—just about the average for the past five years. This would mean, in 1975, $63 billion of personal savings.

The two government sectors, federal and state and local, under existing programs with expected population growth and price increases are expected to spend $267 billion and lend $12 billion. With existing tax rates, their total revenues would be $285 billion. If, contrary to everybody's expectations, no additional programs were added or taxes cut, they would have a combined surplus of $6 billion.

In contrast to these two sectors which are net savers, we have the traditional borrowers. The investment in plant and equipment, inventories, and net foreign is estimated at $168 billion. Against this we can apply an estimated $153 billion of business saving (excluding housing), or the net requirement of funds by business from other sectors is $15 billion.

Finally, the requirements for investment in housing are shown as $57 billion, an amount stated to be consistent with the national housing goals. Part of this sum would be available from the $22 billion of depreciation on the existing housing stock. The difference, or $35 billion, would have to be borrowed from either households or the government. There would also be a residual $14 billion based on existing patterns of spending, taxes, and saving which could be split among the four expenditure and investment spheres. Obviously, this is a minimal amount given all the ways we would like to increase our private and public spending patterns.

The listing of the various numbers merely serves to re-emphasize the fact that, on the assumption that the private sector will continue to react as it has in the past, obtaining an adequate pool of savings becomes a problem for fiscal policy, that is to say, of government spending, tax, and lending programs. This, of course, is

Continued

Table 1

PROJECTED GNP, SAVINGS, AND INVESTMENT 1971-1975

(Billions of Current Dollars)

	1971	1972	1973	1974	1975
GNP available	1030	1122	1217	1300	1400
Personal consumption	650	713	776	831	894
Personal saving [1]	35	38	41	43	46
Government purchases					
Federal	94	95	96	98	101
State/local	126	135	145	155	166
Government saving	2	3	8	10	18
Gross private domestic investment	160	179	196	210	225
Business investment	124	136	145	155	168
Business saving [1]	106	120	130	143	153
Net business deficit	18	16	15	12	15
Residential investment	36	43	51	55	57
Depreciation on residential structures	17	18	20	21	22
Net deficit	19	25	31	34	35
Shortfall of claims	0	0	3	7	14

[1] That portion of business and personal saving attributable to capital consumption of residential structures has been included in "Depreciation on residential structures." The estimated breakdown is as follows:

	71	72	73	74	75
Personal saving	13	14	15	16	17
Business saving	4	4	5	5	5

the major point of the Economic Report.

The implications for housing policy and for the mortgage market are also clear. If the federal government desires to achieve certain housing goals, devising the necessary programs is not inherently impossible. There are some, but not great, technical problems. The critical problems are political. The government must determine what priority housing has in our national scale of values. It must then determine to translate this priority into actuality by a proper selection of policies.

In picking proper governmental policies there are critical questions of design, production, and costs on the supply side of housing. However, we need not dwell on these since we are only discussing funds. The government can influence available housing funds in three traditional ways: (a) by altering relative prices and, therefore, private investment and savings decisions; (b) by altering the savings pool through changing the budget surplus or deficit; and (c) by direct expenditures, direct lending, or not selling loans already being made.

Price Effects

The government has a vast number of programs in existence to alter private saving and investing decisions particularly in the housing sphere. Subsidies, tax credits, loan guarantees, special borrowing and lending rules for private and government-sponsored institutions, over-all monetary policy, and credit policies, all affect the costs and interest rates for housing, for competing investments, and for savings. How savings are used now reflects these existing policies.

Unfortunately, we have paid little attention to the total impact of these programs. Most analysis has been at the micro level for each separate program. Rarely has the effectiveness of different approaches been measured. Rarer still are considerations of their macro or over-all impacts. When a subsidy or tax credit program is instituted, it is assumed that it will increase housing. On the other hand, much of the discussion concerned with the over-all pool of savings and major investment flows makes it appear that all the individual price effects wash out and do not influence the amount of available savings or the level of investment. Such a dichotomy appears illogical. If there is no increase in real savings, all the programs are doing is redistributing the available sum to different uses. If so, many of the existing programs are probably doing no more than offsetting the impact of other polices.

The Budget Surplus or Deficit

Governments are direct contributors to the savings pool through any budget surpluses. Some have suggested that the government could assure adequate mortgage money by running a large surplus. I side with those who believe that such a policy is like running after a mirage, since there is a modification of Parkinson's Law which states that distant budget surpluses disappear into increased expenditures or tax reductions. Furthermore, running a surplus is an indirect and inefficient method of doing what can be done more directly.

Expenditures, Net Lending, or Reduction of Asset Sales

The idea that housing should be supported primarily through a large surplus neglects the traditional and most important form of support by the government, namely, inclusion in the budget. I see no logical reason why any item of high national priority should not have a place in the budget.

Housing has a very ambiguous role in the federal budget. Subsidies exist for operating expenses. Immense guarantees are authorized. However, in contrast to many other areas in which the government has an interest, few expenditures occur for housing capital. In the period of excess savings when most of our government housing programs evolved, such a lack of capital support may have made sense. If, however, the problem for the next decade is a shortage of savings relative to capital goals, failure to support capital investment is nonsensical.

No matter of principle appears to be involved. The government does lend money on housing through GNMA, the Farmers Home Administration, and, in the past, through FNMA. The amount of private loans available for government purchase are virtually unlimited. Under current programs, however, the government is not only not increasing available savings, it is actually reducing it. This subtraction from available savings occurs when the government finances part of its budget through sales of mortgage and other loan assets already in the government's hands. For the past five years, net financial assets sold have averaged over a billion dollars a year. These were in addition to sales of over $10 billion of participation certificates. The budget for fiscal 1971 shows this net sale-of-assets item at over $3.6 billion.

The net effect of selling off these mortgage and other loans is to reduce the contribution the federal government would otherwise make to the pool of savings assuming that the government would otherwise achieve the same unified budget surplus. If the government wanted to assist in reaching the housing goals, it does not have to increase its surplus. It could increase the pool directly either by halting the sale of loans or by increasing net lending. For the projected surplus to remain, of course, the halting of mortgage sales would have to be offset by a decrease in expenditures or an increase in taxes.

This analysis is one of the reasons why I have concluded that attaining the housing goals is more a political than an economic problem. Any potential imbalances between desired saving and investment are rather small in terms of a trillion-and-a-half dollar economy. The techniques are available to insure a decade balance. To achieve the goals, however, housing would have to be given an actual rather than a rhetorical position in our national spending priorities.

Continued on page 17

Telephone Recorder Aids Louisville Title

An agent outside the state recently called the home office of Louisville Title Insurance Company when it was closed. With the aid of an in-office telephone recording system, he directed his request to a particular individual—and referred to a file number in stating his request in detail.

The matter at hand soon was expedited at Louisville Title, without either party discussing it further by telephone.

This typical example, plus additional usefulness generated by the telephone recorder doubling as an office dictating system, provide an up-to-date picture of Louisville Title round-the-clock communications capability. Savings in time and costs are major benefits.

Louisville Title national business currently includes 31 states, and people in other regions of the nation occasionally forget about time differentials in calling the home office, according to Jesse M. Williams, company president. And, callers at times have something that needs to be communicated immediately—instead of on the following day. The availability of the telephone recorder system helps in such cases, while reducing the expense of returning and re-placing calls.

In the past, Louisville Title channeled its after-hours calls to an answering service. While this system often was satisfactory, there were occasions when company officials did not receive telephone messages promptly—or at all. In addition, information relayed by the answering service sometimes was inaccurate—and it was found that detailed information could not be reliably transmitted through personnel of this agency.

About a year ago, Louisville Title installed a device that automatically answers the telephone and receives messages. A few months later, it was replaced with the present system's machine, known as a "Code-a-phone."

A secretary dictates a telephone-answering announcement into a "Code-a-phone" tape recorder unit, which then is played in response to calls made when the office is closed. The announcement, which can be any length up to three minutes depending on need, identifies the office and asks the caller to leave his name, telephone number, and message.

The message receiving tape operates by voice actuation and has a recording capacity of two hours. Recording occurs only while the caller is speaking—it interrupts when the caller pauses. Capacity of the receiving tape has proved adequate, since many of the telephone messages are less than a minute in duration.

An advantage of the voice actuation feature is found in transcribing, since long pauses that might occur in dictating are eliminated.

Caller reaction to the "Code-a-phone" is favorable, reported Charles Keeling, Louisville Title senior vice president. Generally, enough information is obtained through the system's recording to allow the Louisville Title employee handling the matter to fully prepare for answering questions if a return call is necessary.

A message left with Louisville Title Insurance Company when the office was closed is transcribed for expeditious handling. The telephone recorder system used to take such communications also serves as an office dictation device.

names in the news

McINTYRE

Pioneer National Title Insurance Company has announced the promotion of **Trammell McIntyre,** Atlanta, to southeast regional vice president.

* * *

HARDEN

Douglas S. Harden has been promoted to executive vice president, and **Raymond D. Martin, Jr.,** to assistant vice president, of Title Insurance Company of the South, Jacksonville, Fla.

* * *

Philadelphia Title Insurance Company announces the following elections: **Lewis C. Anderson,** president; **William J. Hartenstein** and **James P. McDowell,** vice presidents; **Joseph E. Donis, Harrison Eastburn, Charles Moscony,** and **Dorothy Lysinger,** title officers; **William Jackson,** assistant title officer.

* * *

ROBINSON

William L. Robinson, vice president, Burton Abstract and Title Company, Detroit, has been appointed Wayne County regional manager.

* * *

New Jersey Title Insurance Company, Newark, announces the election of **Robert Ford** as assistant title officer.

* * *

M. G. Davis has been elected president, and **A. R. (Bert) Kadell,** senior vice president, of Dallas Title Company, Houston.

* * *

The Title Guarantee Company, Baltimore, has elected **Edward L. Bowen** vice president and treasurer.

* * *

Robert P. Hoelter and **Peter T. Karabatsos** have been appointed assistant secretaries in the trust division of Chicago Title and Trust Company.

Lawyers Title Buys San Diego Company

Lawyers Title Insurance Corporation, Richmond, Va., has purchased all of the stock in Land Title Insurance Company, San Diego, Calif., for an undisclosed amount of cash.

Land Title is a long established title insuring company operating solely in San Diego County, with annual income reported in excess of $1,250,000. Its acquisition extends Lawyers Title southern California business—which also includes existing operations in Los Angeles, Santa Barbara, and Ventura.

The purchase includes Land Title's home office building, constructed about a year ago in San Diego's financial district.

Land Title will continue to operate as a wholly-owned subsidiary under its present management.

Titleman Retires After 46 Years

Missouri Title Guaranty Company, St. Louis, has honored Harold L. Kokes on occasion of his retirement after 46 years' service.

In the course of his career with Missouri Title, Kokes advanced to senior vice president and director.

Since his retirement, Kokes has become an advisor and consultant to the company.

Part V: 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 and April, 1970, issues of *Title News.*)

* * *

MORTGAGES AND LIENS

Manor Real Estate Co. v. Zamoiski, 251 Md. 120, 246 Atl. 2nd 240 (1968)

Suit by purchaser against vendor to determine which of parties was liable for unpaid benefit charge of sanitary commission for water facilities. Lower Court entered a judgment for purchaser and vendor appealed. Court of Appeals held that unpaid benefit charge of sanitory commission for sewer and water facilities was an encumbrance within the contract requiring vendor to convey to purchaser fee simple title "clear of all liens and encumbrances" and vendor was obligated to pay charge even though the charge, like county taxes, was collected annually and for the purpose of collection was treated as county taxes.

Union Bank v. Gradsky, 265 Adv. Cal. App. 48 (1968)

Appeal from a judgment of dismissal precluding recovery from a guarantor of a note by reason of a trustee foreclosure and specific statute precluding a deficiency judgment arising out of a nonjudicial foreclosure.

Held: A creditor cannot recover from a guarantor the unpaid balance upon a note following the creditor's nonjudicial sale of the security. The creditor is estopped to prevent him from recovering from the guarantor after he has exercised an election of remedies which destroys the guarantor's subrogation rights against the principal debtor.

Case of first impression in California.

Gates v. Crocker-Anglo National Bank, 257 Adv. Cal. App. 983 (1968)

Declaratory relief action to determine ownership of funds obtained through the sale of real property.

Co-owners executed and delivered to defendant Bank a promissory note secured by a deed of trust on real property. A covenant of the deed of trust provided that it was given to secure ". . . the payment of all other monies and indebtedness now and hereafter due or owing from Trustor or any of them to Beneficiary. . . ." On the date of execution one of the co-owners was indebted to the defendant on an unsecured personal note in the sum of $20,500. The obligation was at that time overdue and in default. The land was sold and after paying the indebtedness on the note there remained on hand from the proceeds of sale about $28,000 of which defendant Bank claimed to be entitled to approximately $25,000 by reason of the clause.

Held: The clause did not render one co-tenant's interest in the jointly-owned property liable for a pre-existing unsecured debt of the other co-tenant where there was no direct evidence that the parties intended the provision to apply. There is no evidence that the parties discussed the clause or knew that it was even included in the printed deed of trust form.

Mutual Building & Loan Assn. v. G. & G. Heating, 79 N. M. 673, 437 P. 2d 134 (1968)

The owner of mortgaged real property executed an "Agreement for Credit and Extension of Lien" to the lien holder.

Held: The term "credit" as used in Section 61-2-9, N.M. STAT. ANN. (1953) does not include agreements for extensions of time to foreclose, but is intended to include terms for payment made before filing of the lien.

Case of first impression.

Akron Savings and Loan Co. v. Ronson Homes, 15 Ohio St. 2d 6 (1968)

Plaintiff savings and loan had an oral agreement with construction borrower that the proceeds of the loan would be made available in the borrower's "loan in process" account for the payment of advances, but there was no agreement requiring plaintiff to disburse definite and certain sums under definite conditions or in a particular manner. Mechanic's lien holder claimed priority over mortgage as to funds disbursed after effective date of lien. Plaintiff's mortgage had been recorded prior to commencement of construction.

Held: The oral agreement did not make such advances obligatory on

the part of the mortgagee and the mortgage was subject to the lien.

Wayne Building and Loan Co. v. Yarborough, 11 Ohio St. 2d 195, approved and followed; see 3 Real Prop., Prob. & Tr. J. 11 (1968).

Reuben E. Johnson Co. v. Phelps, 156 N. W. 2d 247 (Minn., 1968)

The work of an architect in preparation of plans for improvement and the work of a surveyor in doing a preliminary survey of the premises so as to mark perimeters of property on which mortgage is to be placed does not permit liens filed after the mortgage to attach and take effect as of the time of the plans and preliminary survey under Minn. Stat. Section 514.05. The Mortgagee had knowledge.

Case of first impression.

Benner-Williams, Inc. v. Romine, 200 Kan. 438, 437 P. 2d 312 (1968)

Conditional sales contract provide title to materials and equipment used in improvements of real estate should remain in seller until price paid, and that materials and equipment should remain personal property.

Held: Such provisions do not preclude materialman from asserting mechanic's lien on real estate.

Extends previous decisions.

J. G. Laird Lumber Co. v. Teitelbaum, 14 Ohio St. 2d 115 (1968)

General contractor executed an affidavit which stated in a general way that construction was fully completed and that all subcontractors and all bills for labor had been paid in full. Subsequently, a mechanic's lien was filed by an unpaid supplier of material. Ohio Rev. Code Section 1311.04 provides, in substance, that the contractor shall give the owner or his agent a statement under oath showing the name and address of every subcontractor in his employ and of every person furnishing material, which statement shall be accompanied by a certificate signed by every person furnishing material. The statute further provides for the retention by the owner of enough to pay all demands due or to become due. Section 1311.04 provides that materialmen whose names have been omitted from the contractor's affidavit may serve their own notice upon the owner, and provides that the owner may rely upon such affidavit and notices in making payments.

Held: Where owner paid contractor in reliance upon affidavits which neither listed any materialmen nor negated their existence, and which were not accompanied by certificates from materialmen, and owner obtained none of the protection provided by the statute.

State v. Janing, 182 Neb. 539, 156 N. W. 2d 9 (1968)

Criminal action against contractor who received payment and failed to pay subcontractors in violation of Section 62.119, Neb. Rev. Stat. (1943).

Held: Statute is unconstitutional as attempt to create imprisonment for debt since the statute made no requirement of proof of fraud before conviction could be obtained.

Case of first impression in Nebraska, giving excellent analysis of the two lines of authority on this issue.

Lambert v. Newman, 245 Ark. 123, 431 S. W. 2d 480 (1968)

Suit for lien against land for work performed by bulldozer operator who removed underbrush and trees from subdivision.

Held: Not entitled to lien since improvement was "to" the land and not "upon" it, and mechanic's lien statute gave lien to persons performing work upon or furnishing materials for any improvement upon land.

Case of first impression.

In Re Luks, 16 Ohio Misc. 146 (1968)

In examining 1966 amendments to Section 17a(1) of the Bankruptcy Act and Sections 6321 and 6322, Title 26, U.S. Code, a referee.

Held: (1) Under Section 17a(1) a discharge in bankruptcy does not release or affect a valid tax lien which has attached to debtor's property prior to his bankruptcy; (2) all tax debts due and owing more than three years before the bankruptcy, and including those secured by liens, are released by the discharge; and (3) a tax so released may not be made the basis of an enforceable lien on any property not belonging to the bankrupt at the time of bankruptcy.

A case of first impression interpreting 1966 amendments referred to above.

Kingsberry Mortgage Co. v. Maddox, 13 Ohio Misc. 98, 233 N. E. 2d 887 (1968)

Case involved a priority contest between: (1) Mortgagee with prior recorded construction mortgage, with disbursements optional by the mortgagee; part of funds advanced were used to pay for construction, and part of funds apparently were not so used; (2) a purchase money mortgagee whose mortgage, also prior recorded, recorded, recited, "This mortgage is second and subordinate to a mortgage deed of even date from the grantors herein to The Kingsberry Mortgage Company in the principal amount of $13,650", and (3) a mechanic's lien.

Held: The court termed the ordinary rules for establishing priority confusing, and it determined priority on the basis of what is considered to be equity. The construction mortgage was first as to the funds which were used in improving the property; the mechanic's lien was next; the construction mortgage was awarded next priority in the amount of $1,500; next priority was awarded to the holder of the purchase money mortgage, followed by the balance due to the construction lender.

The difficulty with the case lies in the replacement of a confusing, and perhaps inequitable, objective rule of law by an equally confusing and wholly subjective rule.

Equitable Life Assurance v. Scali 232 N. E. 2d 712 (Ill., 1968)

Lender required borrower to take additional life insurance. Premium payment clearly made the monthly payment exceed the 7% statutory rate. Upon foreclosure, the lower court granted a decree, the Appellate Court reversed (220 N. E. 2d 893).

Held: Appellate Court reversed. Lender has right to set own requirements of security. Legislature has acted in small loan field but not in this area, so public policy not violated.

Adopts majority view.

Colorado National Bank v. F. E. Biegert Co., Inc., 438 P. 2d 506 (Colo., 1968)

Lender beneficiary released original purchase price deed of trust to enable owner-borrower to secure construction loan, lender taking new deed of trust securing construction loan. Release and new deed of trust recorded after commencement of construction and furnishing material creating intervening mechanics' liens.

Held: Original deed of trust release and new deed of trust recorded contrary to stipulated condition, thus court set aside new deed of trust and reinstated original deed of trust with priority over mechanics' liens.

Case of first impression applying equity rules to conduct of parties in derogation of statutorily preferred mechanics' liens.

Wells v. Lizama, 396 Fed. 2d 877 (Guam, 1968)

Plaintiff, in possession of improved real property, had executed certain deeds which were intended to be mortgages, though absolute on their face. The land had been registered under the Land Title Registration Act of Guam (Torrens Title) and a certificate of title was issued in the name of the grantee in the deeds. The grantee executed a mortgage to defendant who had actual knowledge of the plaintiff's possession. Plaintiff sued to have the deeds declared to be mortgages.

Held: For defendant. Mortgagee was entitled to rely on the certificate of title held by the mortgagor *where such certificate was not the original registration of title,* even though plaintiff was still in possession. Apparently the rule is different if the rights of the party in possession have been ignored in connection with the original proceedings to register title to the land.

Modart, Inc. v. Penrose Industries, Inc., 404 F 2d 72 (Pa., 1968)

Judgment creditor had no lien or any vested right with respect to funds held by conservator where creditor's New York judgment constituted a lien on real estate in that State according to New York law, but since the New York judgment was not docketed in Pennsylvania until after appointment of conservator, the creditor did not acquire judgment lien on the property of defendant since it was then in custodia legis.

Alamo Lumber Company v. Lawyers Title Insurance Corporation, 439 S. W. 2d 423 (Texas, 1969)

In this case, the lumber company had furnished interim construction financing to Davis who gave it notes and deeds of trust on two separate properties. The lumber company then assigned a first and superior interest in each of these notes and liens to a local bank but retained a junior and inferior balance secured by liens on each property. An attorney acting as issuing agent for the title insurance underwriter sent releases to the lumber company with respect to junior liens retained by it on the two properties and it, in turn, returned those releases duly executed advising him where he could secure information as to the balance due. The attorney did not pay for the releases but filed them for record. After this was discovered by the lumber company, and after several conferences, it took new notes from Davis secured by liens on other properties. After foreclosure of these liens on other properties, a deficiency remained unpaid. The lumber company thereupon sued the title insurance underwriter on the theory that it had, through its agent, wrongfully filed the releases without paying for them, thereby causing the lumber company to suffer its loss. The Appellate Court denies the lumber company any right of recovery on the theory that it had waived its right to recover damages from the title company by taking a substitution of its security and new notes at higher rate of interest with liens on other property and that it might have repudiated the releases when it was first discovered they had been filed and might have brought a suit at that time to remove any cloud upon its title to liens on the two original properties but had failed to do so. Instead, it chose to ratify and affirm the act of such agent in recording such releases and to pursue its remedy against its original borrower by taking new notes and new security. It, thereupon, elected to ratify the act of the title company in recording the releases and waived any right to recover damages against the title company.

Oxford Consumer Discount Company v. Stefanelli, 246 A. 2d 460 (N. J., 1968)

The New Jersey court applied New Jersey law to second mortgage loans by Pennsylvania lenders to New Jersey borrowers secured by New Jersey real estate. This case voided certain mortgages and should be read in its entirety.

Security Nat. Bank v. Cohen, 41 Wis. 2d 710, 165 N. W. 2d 140

Where, to secure reduction in settlement of a son's corporate business indebtedness to a bank, the father executed and delivered to the bank a mortgage on family-owned corporate property, which fully recited the purpose for which it was given, the instrument constituted a valid lien, although no separate note was executed, for the underlying obligation was established by the document itself.

Wortham v. The Trane Company, 432 S. W. 2d 520 (Supreme Court of Texas, 1968)

The furnisher of labor and materials could perfect a mechanics' and materialmen's lien after assignment of his debt, and that lien inures to the benefit of assignee regardless of whether the original lien claimant was acting as agent of assignee or not.

Harrogate Construction Co. v. Joseph Hass Co., 250 Atl. 2d 376 (Md., 1969)

Contractor who filed mechanics' liens in form of joint claim against group of buildings which were part of a building development and who itemized charges for each building in the bill of particulars but failed to allocate unpaid balance to each individual building, could not amend bill of particulars to allocate unpaid balance among individual buildings and thereby perfect liens, after statutory period for filing had expired.

Hayward Lumber and Investment Co. v. Graham, 449 P. 2d 31 (Ariz., 1968)

Lessor leased certain unimproved land to the lessee. It was agreed in the lease that any improvements placed upon the premises by the lessee would remain and be the property of the lessee. The lessee did put improvements on the land and this action was started by unpaid mechanics' lien holders, who contended that the land was also subject to the liens since by the very terms of the lease the lessor had consented to the construction.

The court held that it was the intent of the legislature to give mechanics and materialmen a lien against the improvements primarily and incidentally against the realty. Thus, if the owner of the building is not the owner of the realty, the lien will extend only to the improvement. The court also held that mere cessation of labor without evidence of an intention to abandon is insufficient to constitute permanent abandonment with which to begin the period of limitation for the filing of mechanics' liens.

Earnshaw v. First Federal Savings and Loan Association of Lowell, 249 A. 2d 675, (N. H., 1969)

This was a suit to enforce a mechanic's lien. The court held that advances made by the defendant mortgagee under a construction loan secured by a mortgage to secure obligatory future advances had priority over the plaintiff's mechanic's lien, including advances made after the lien attached.

Strauss v. Princess Anne Marine and Bulk-Heading Company, Inc., et al.; American Acceptance Corp. v. Strauss, et al, 209 Va. 217, 163 S. E. 2d 198 (1968)

In a dispute among various lienors over a fund representing the surplus of the proceeds of a foreclosure sale of a seaside motel, it was held that a bulkhead constructed by a contractor to protect seaside motel was a "new structure" thereby entitling mechanic's lien of contractor to priority over pre-existing liens and encumbrances on the property.

Also, evidence, including facts that notes secured by second and third deeds of trust had not been marked "paid" and that the deeds of trust had not been released of record, supported finding that holder had purchased the notes and thus retained the liens of the deeds of trust.

Fred W. Beal, Inc. v. Allen, 287 F. Supp. 126 (Maine, 1968)

Action to foreclose materialmen's lien. Where U. S. Government's mortgage lien was perfected by recording prior to plaintiff's furnishing any labor or materials on the property.

Held: Under applicable federal law, mortgage lien was entitled to priority over plaintiff's subsequent mechanic's lien, in spite of state law permitting priority of mechanic's lien where labor or materials were furnished with "consent" of the prior mortgagee.

Held, also, so far as perfection of security interest is concerned, application of local law is appropriate, but federal law governs rights and obligations under security instruments, the basic federal rule in priority of lien cases being "first in time, first in right".

PARTNERSHIPS

Burns v. Gonzalez, 439 S. W. 2d 128 (Texas, 1969)

One member of a partnership whose business was restricted to sale of broadcast time over a radio station on a commission basis, executed a note purporting to bind the partnership. The non-signing partner resisted suit on the note on the theory that the character of the business of the partnership was not such as to require frequent resort to borrowing and borrowing did not constitute "carrying on in the usual way the business of the partnership," as that term is used in the Uniform Partnership Act, so that neither the partnership nor participating partner were bound by the note. There was no express authority in the partnership agreement authorizing the executing partner to make notes on the partnership's behalf. The critical question in this case was who has the burden of proof to establish that the party executing the note on behalf of the partnership was "carrying on in the usual way the business of the partnership" so as to bind the partnership. The court holds that the burden of proof is on the party seeking to enforce liability under the note to establish that the act of partner in executing such note was incidental to transaction of business of the partnership. Having failed to sustain this burden of proof, and there being no pleading or proof that the non-signing partner had ratified the act of the maker of the note, or had been guilty in any manner of acts giving rise to an estoppel, the judgment is that plaintiff take nothing by his suit. This case is particularly interesting in view of the vast growth in the field of partnership transactions where heavy reliance is placed upon the Uniform Partnership Act to sustain authority of partners executing notes, deeds of trust, and even conveyances to bind the partnership and partnership property. Simply demonstrates the necessity of identifying the transaction with the usual partnership business. It clearly demonstrates the desirability to have all the partners execute on behalf of the firm.

Estate of Van Epps, 40 Wis. 2d 139, 161 N. W. 2d 278 (1969)

Election by the surviving partner to exercise the option to purchase the estate partnership asset at a price less than the fair market value against the objection of the heirs and contrary to the testator's expressed desire, gave precedence to the executor's individual rights under the partnership contract over his fiduciary duties, which prohibited him from exercising the option.

REFORMATION OF INSTRUMENTS

In Brown v. Mitchell, 225 Ga. 115, 166 S. E. 2d 571 (1969)

It was held that a sales contract which contained an insufficient description was not aided by the additional statement that the property "will be more fully described in a plat

of survey which is to be made at the expense of the purchaser herein". The court said a survey to be made in the future fails to provide a key by which the land may be identified.

Sears v. Polan's Store, 250 Md. 525, 243 Atl. 2d 602 (1968)

Vendor brought a bill in equity seeking to rescind a contract for the sale of real property and the vendee sought specific performance. The cases were consolidated and the Chancellor dismissed the vendor's bill and ordered specific performance.

Affirmed.

The contract described the property as 40 acres on the south side of Best Gate Road and on the east side of an abandoned railroad right of way and being a portion of the land described in a certain deed. The exact area sold to be determined by a survey, at the buyer's expense and "a copy thereof made a part of this agreement". An addendum provided for an adjustment of the purchase price at the rate of $2,500 per acre pending the result of a survey.

The vendor contended that the description of the land contained in the contract was so vague and insufficient as to render the contract unenforceable. The fact that the agreement itself calls for a survey to render the description more precise does not affect the validity of the contract, providing there is sufficient identity of the land to have allowed a meeting of the minds of the parties to the contract.

RELIGIOUS SOCIETIES

Presbytery of Indianapolis v. First United Pres. Ch., 238 N. E. 2d 479, 240 N. E. 2d 77 (Indiana, 1968)

Title to real estate was held in a church corporation which was affiliated with the United Presbyterian Church of North America. The congregation adopted a resolution requesting permission to withdraw from the denomination and to retain its property. The request was denied and the State Presbytery dissolved the Indianapolis Church and instituted a procedure to recover and assume possession of the property.

Held: Regardless of how the title to the real estate was held, it was held for church purposes in trust. The Indianapolis Church was a trustee under an express trust, and the property in the hands of the trustee was impressed with an implied or constructive trust, which property was held subject to the law and tenets of the general organized church or parent of which the local congregation was a part.

Presbyterian Church v. Eastern &c. Church, 224 Ga. 61, was reversed in *Presbyterian Church v. Mary Elizabeth Blue Hull Memorial Presbyterian Church,* 89 S. Ct. 601, decided January 27, 1969

Two Savannah Presbyterian churches seceded from the national demonination known as Presbyterian Church in the United States, claiming that the national denomination had abandoned or departed from its original tenets of faith and practice by making pronouncements on civil, economic, social and political matters, and teaching doctrines alien to the Confession of Faith and Catechisms, subverting parental authority, and encouraging civil disobedience. They claimed the right to take over the land and buildings of the church, free of any interest in the national denomination. The Georgia Supreme Court held that the question was properly submitted to the jury as to whether there was such abandonment or departure by the denomination, and the jury found that there was. The United States Supreme Court reversed the decision and held that a civil court has no authority to pass upon questions of church doctrine or teaching, and therefore the local churches would have no right to claim title to the church buildings and real estate as against the national denomination.

REVERTER

VanZant v. Chan., 7 Ariz. App. 360, 439 P 2d 523 (1968)

The defendants received property by deed that contained a condition which created a possibility of reverter upon the sale of liquor on the property. The defendants sold liquor on the property, and the plaintiff, the successor in interest to the grantor, brought this action to quite title more than three years later.

The Court of Appeals affirmed the Judgment for the defendants holding that they had title, or Color of Title, and inasmuch as they had been in peaceable and adverse possession of realty for more than three years before the filing of this action, and since the sale of liquor on the premises, they were entitled to the protection of the three-year statute of limitations.

SECURED TRANSACTIONS

Levine v. Pascal, 236 N. E. 2d 425 (Ill., 1968)

Judgment creditor served citation on bank to obtain beneficial interest in an Illinois land trust. Bank had taken assignment of beneficial interest from judgment debtor, but had not filed security statement with Secretary of State.

Held: Beneficial interest in an Illinois land trust is personal property and a "general intangible" under the Commercial Code. Since no filing was made by the assignee bank, the judgment creditor had a superior lien to the bank's assignment.

Case of first impression in Illinois.

Florence v. Friedlander, 165 S. E. 2d 388 (Va., 1969)

Here notice of acceleration and the check for interest due on a note were received by the respective parties on the same day, thereby raising the question of when does tender of payment not defeat acceleration.

Held: Where tender and notice of acceleration were simultaneous, receipt of the check was enough to constitute tender which cut off the alleged right to exercise the option of acceleration.

House v. Long, 426 S. W. 2d 814 (Ark., 1968)

In a case involving conflicting

priorities of a prior recorded construction mortgage and a security interest on fixtures, the court held that if the security interest in the goods, although not yet perfected, attached to the goods before they became fixtures, it would take priority as to the goods only, over the prior recorded mortgages to the extent that advances were made under these mortgages before the goods were affixed to the realty.

SUBDIVISION TRUSTS

Lane Title & Trust Co. v. Brannan, 103 Ariz. 272, 440 P. 2d 105 (1968)

In its first opportunity to analyze the effect of a subdivision trust as it has been developed in Arizona, the court held that such a trust is to be treated as a common law trust. The duties and liabilities of a Subdivision Trustee are the same as a Common Law Trustee.

TAXATION

Styres v. Dickey, 252 Md. 552, 250 Atl. 2d 615 (1969)

Article 81, Section 99A of the Maryland Code states: "When any tax sale made prior to January 1, 1944, has been finally ratified, then no court of equity or law in this State shall on or after June 1, 1966, entertain any proceedings to set aside or modify any title to any interest obtained in such sale."

Held: That "the plain and simple meaning of Section 99-A is that since June 1, 1966, with reference to any tax sale made prior to January 1, 1944, which sale was finally ratified, the courts of this state are without jurisdiction to set aside or modify any title to any interest obtained in such sale."

Frederick Bldg. Co. v. Bd. of Revision, 13 Ohio St. 2d 59, 233 N. E. 2d 594 (1968)

Board of Revision assessed residential property as 39% and commercial and industrial property at 42.9% of fair market value, relying on a statute reading "any valuation which varies from said common level of assessment by more than ten per cent thereof is prima facie discriminatory."

Held: All property, whether commercial, residential, or vacant must be assessed on the basis of the same uniform percentage of actual value in conformity with the provisions of Section 2, Article XII of the Ohio Constitution and Section 1 of the Fourteenth Amendment of the United States Constitution.

This case finally settles in Ohio the method of assessing real property which has been a matter of contention for many years.

The State of Texas v. Fred Smith d/b/a Aragon Ballroom et al, 434 S. W. 2d 342 (Texas, 1968)

This important tax case was reported in the April, 1969, ALTA TITLE NEWS, Page 21. The State Supreme Court has withdrawn its original opinion reported 420 S. W. 2d 204, but still makes the following important holdings with respect to creation and priority of the State's admission taxes arising out of operation of an amusement business on real property. The Court continues to hold that even though the taxes were incurred by a tenant holding under fee owner, the lien for delinquent admission taxes attaches not only to the estate of the tenant but also that of the landlord, largely because of peculiar language of the statute making it susceptible of that construction. Prior to the legislative amendment in 1961 (Acts 1961 57th Leg., P. 201, ch. 104, now Art. 1.07(1) of Title 122A, TAXATION), there was no requirement for filing of notice of the lien in the county where the land affected was situated and there were no limitations on the priority of the lien of the State over existing contractual and other private liens. Under the 1961 amendment before such taxes shall become a lien on real estate, notice thereof must be filed in the county where the real estate is located on which the lien is sought, and, following the express language of the statute, such lien shall not be valid of effective as against any mortgagee, holder of a deed of trust, purchaser, pledgee, or judgment creditor acquiring title, lien, or other right or interest before such notice has been so filed and recorded. The 1961 amendment is prospective only and not retroactive, and its passage did not affect the validity or priority of State liens for admission taxes which came into existence prior to its passage. The State Supreme Court refused to withdraw from its position that the liens for admission taxes affected both the fee title of lessor as well as the leasehold or tenancy of the tenant who incurred the tax during the course of his operation of an amusement business on the property.

United States v. Amos, 287 F. Supp. 886 (Ill., 1968)

This is a most confusing case. Apparently the court takes the position that while it is true that the Federal Tax Lien Act of 1966 now gives a super priority to real estate tax liens over federal tax liens prior to that time, and that the section operates retroactively, these changes in the law would not be applicable in a situation where the rights of a person claiming under the real estate tax liens were fixed by an adjudication of those rights prior to the enactment of the 1966 Federal Act.

TITLE INSURANCE

Guarantee Abstract & Title Insurance Company v. St. Paul Fire and Marine Insurance Company, 216 So. 2d 255 (Fla., 1968)

Title insurance company issued policy and missed recorded easement for water line which was in place but buried underground. Title policy excepted right of parties in "actual possession".

Held: That the exception to rights of parties in actual possession did not relieve title company from liability since *actual* possession means open, visible, and exclusive possession and since the pipe lines were underground the possession was not visible. Consequently there was no "*actual* possession" within the legal meaning of that term as used in the title insurance policy, and title insuror was liable.

Bank of Miami Beach v. Lawyers' Title Guaranty Fund, 214 Southern 2d 95, (Fla., 1968)

Bank sued to foreclose mortgage insured by title insuror. At the foreclosure action it was established that the mortgagors' signatures on the mortgage were genuine but were forged on the note. As a result of the forged note the bank suffered loss. The bank then instituted the present action against title insuror under the title insurance contract.

Held: That a loss caused by a forged note was not a defect in the mortgage, the forged note did not render the mortgage lien invalid, that a defect in a note secured by a mortgage is not a defect in title, and accordingly the title insuror was not liable.

American Legion, Ed Brauner Post, No. 307, Inc. v. Southwest Title and Insurance Co., 218 So. 2d 612 (La., 1969)

In a suit under a 1962 ALTA owner's policy, the court found that Southwest incurred no monetary liability to its insured upon learning of an adverse claim, but rather, there was imposed upon it the obligation of vindicating its insured's title rights by defense or prosecution as the case may be. Failing in its efforts, it must respond in any loss suffered by the insured only after its "liability has been definitely fixed," such loss being payable "within thirty days thereafter".

The court also commented that the insured was placed in possession of the property as rapidly as the process of court permitted and that there never was any arbitrary delay in Southwest's performance under its policy.

Woods v. Southwest Title Insurance Company, 441 S. W. 2d 668 (Texas, 1969)

In action on a title policy for loss resulting from cutting of timber on land by grantee under timber deed recorded before issuance of policy, fact question, precluding summary judgment for defendant, was presented as to liability for timber cut from tract without notice to plaintiff at or prior to time of purchase.

Paramount Properties v. Transamerica Title Ins., 273 A.C.A. 336 (Cal., 1969)

Plaintiff had a $35,000 note secured by trust deeds against two pieces of realty. Defendant title insurance company had issued title insurance under policies which called for it to defend plaintiff at its own expense any claim of title defect. Giubbini filed to quiet title to the realty, and the title company entered a defense. Thereafter, the suit was terminated when Giubbini paid off plaintiff's $35,000 note plus extras in full. Two months later, Giubbini commenced a second action against plaintiff to recover his payment on basically the same theory as his original one. The title company refused to defend. Plaintiff won the action, and now sought recovery of its defense costs from the title company.

Judgement: Affirmated for defendant. Interpretation of the title insurance policy requires the conclusion that once a lender such as plaintiff has been paid off, defendant had no further obligation for defense expenses.

City of Fort Worth v. Pippen, 439 S. W. 2d 660 (Texas, 1969)

Title company which received City's funds to be used to acquire property on which policy of title insurance was to be issued to City, and which disbursed funds in such manner that City land agent acquired part of funds for his own benefit was liable to City for knowingly participating in land agent's abuse of his fiduciary obligation to City. Where vice president of the title company was completely in charge of the transactions under which the City had deposited money with title company for acquisition of property, the company was bound by constructive notice of every material fact involved in the transaction and known to its vice president, and such vice president's failure to disclose misapplication of City's funds resulted in violation of title company's duty to City and subjected it to liability for amount of funds actually paid out improperly.

Houston Osteopathic Hospital v. Meisler, 441 S. W. 2d 636 (Texas, 1969)

Houston Osteopathic Hospital contracted to and did purchase from Meisler et al Gulfway General Hospital for one million dollars, assuming a Gibralter and a CIT Corporation note and lien against that property and, in addition, give its negotiable promissory note for $315,000, secured by its deed of trust on its old Houston Osteopathic Hospital on Montrose Boulevard. The contract provided that by a certain deadline date Houston Osteopathic Hospital might tender a deed to its Montrose property and a title policy without encumbrances to the holder of the $315,000 note in payment of such note. Another condition of cancelling the $315,000 note in such manner was that the indebtedness owing to Gibralter and CIT Corporation should be released and discharged. Houston Osteopathic Hospital failed to comply with all these matters by its deadline date and one of the important factors of its failure is that the Capital Title Company policy which was being offered would have contained exception as to rights of parties in possession and also all matters which a correct survey would show. In addition, it would have shown current year's taxes for the year in which the tender was being made. These taxes were due payable, but not delinquent, at the date of tender.

The Court commenting on a report on the title to the Montrose Boulevard property in the testimony of the Title Company's president speaks as follows:

> "From that report, a copy of which was in evidence, and from the testimony of the Title Company president, it was shown that the title policy to be issued would have been subject to the rights of the parties in possession and subject to any discrepancies in areas or boundaries. The tender of such a title policy did not constitute the tender of the performance required by the November 11, 1963, contract. That Contract called for the issuance of a title policy showing

no encumbrances. The title policy which appellant was prepared to furnish did not comply with that contractual requirement. *Suiter vs. Gregory,* Tex. Civil App. 279 S. W. 2d 909, no writ. hist.; *Alexander vs. Murray,* Tex. Civ. App. 405 S. W. 2d 217, writ. ref. N. R. E."

Podren v. Johnson, 246 A. 2d 817 (R. I., 1968)

"The circumstances out of which the litigation arose lend substance to the common belief that there are instances where fact is barely, if at all, more credible than fiction." These remarks of the court were prompted by a situation which is reported here only because a title insurance company was made a party to the litigation.

X took title to one of two adjoining vacant lots. The lots were separately owned and almost identical in size and shape. X's surveyor by mistake surveyed and staked out the next door lot, and X proceeded to build a foundation on the staked-out lot, placing a house on it which he had moved from another part of the city. X, apparently in all innocence, sold the lot which he did not own with the house on it to Y, who applied for a bank mortgage to finance the purchase. Y's deed and mortgage, of course, conveyed the vacant land of which X had been the record owner. Y occupied the house for over a year before the mistake was discovered.

Y brought proceedings against X, the mortgagee-bank, and the title insurance company which had insured the mortgagee's title. Later on, the owner of the lot on which the house was placed brought proceedings against X, Y, and the surveyor. In the meantime the house which had been vacated by Y several months after bringing his court proceedings sustained substantial fire damage.

The two cases were tried together. The trial justice entered identical and elaborate judgments in each case, which, if carried out, purported to straighten out the title and do justice to all concerned, the necessary money to be supplied by the surveyor.

On appeal taken by three of the parties, the higher court expressed some hesitation with the way the matter was handled in the lower court and, because of certain errors found in the proceedings, decided that the ends of justice could be best served by sustaining all appeals and remitting both cases for new trials.

In the course of its opinion the court commented that the answer of the title company, *viz,* that it was under obligation to the bank but not to Y and that it had not been engaged to verify that the house was located on the lot that X owned, was "a defense clearly established by the terms of its policy of insurance".

Bronfman v. Greene, 250 At. 2d 577 (Md., 1969)

A mortgagee, who had expected to hold a second mortgage but, in fact, received a third mortgage, sued the title company for failing to reveal the intervening encumbrance. The title company had agreed to search and to issue a title policy. The intervening mortgage was recorded after the title company had issued a binder based upon a preliminary search.

Counsel for the claimant says he notified the title company that he had to close on a specified date because time had been made of the essence on a related sale, and that he ordered a run-down and report to be made on the date fixed for closing, to which the title company agreed. The trial court found that this order was made, and that the officer of the title company either misunderstood or forgot. The trial court, however, concluded that the counsel for the mortgagee should have detected from the letter, hand-delivered to his representative on the date of the closing, that the search had not been continued.

Held: We think the conclusion as to the effect of the letter delivered at the closing was incorrect, not because of any conceptual problem in barring a contractual claim upon a finding of contributory fault, but rather because under the circumstances the letter did not alert counsel to the error. The judgment is therefore reversed.

Meanwhile, the first mortgage has been forclosed. Whether the claimant has been damaged by the title company's breach, and if so, in what amount, will depend upon further proof.

Arizona Title Insurance and Trust Company v. Pace, 8 Arizona 269, 445 P. 2d 471 (1968)

Action to recover on title insurance policy. The Court of Appeals held that where insurer retained attorney to represent insureds and attorney effectuated settlement which was paid by insureds, insureds were justified in assuming that attorney had authority to effectuate settlement and insurer was bound by acts of attorney, and that where title policy provided that insurer in addition to any loss incurred would pay costs imposed upon insured in litigation carried on by insured with written authorization of company but not otherwise, insureds were entitled to recover fees paid their attorneys prior to insurer's retaining attorney to represent insureds, but insurer was not required to reimburse insureds for fees paid their attorneys who continued in case after insurer appointed attorney for them.

Remanded with directions.

Enterprise Timber Inc. v. Washington Title Ins. Co., (not yet reported) (Wash., Aug., 1969)

This is an action to recover on a policy of title insurance issued by defendant, and for attorney's fees. The $30,000 title policy insured a timber mortgage held by plaintiff against all loss caused by defects in the mortgagor's title, except for defects arising from "rights or claims based upon instruments or upon facts not disclosed by the public records but of which rights, claims, instruments or facts the insured has knowledge".

In holding for the title insurance company the court found the insured had knowledge of facts which should have put it on inquiry and that an inquiry would have disclosed the fraud. This notice of facts made the policy exception applicable.

USURY

Equitable Life Assurance Society v.

Insurance Commissioner, 251 Md. 143, 246 Atl. 2d 604 (Decided: 1968)

The term "interest" as defined in Maryland's new Usury Law, Chapter 453 of the Laws of Maryland 1968, includes insurance premiums received by the life insurance company lender, on life policies assigned to it as additional collateral security for the repayment of residential mortgage loans, since the premiums are retained by the lender.

Mission Hills Dev. Corp. v. Western Small Business Inv. Co., 260 Adv. Cal. App. 974 (1968)

Plaintiff owned 182 acres of land of which 120 acres had been developed into a golf course and the remainder having a fair market value of $6,000 per acre was held for residential development. A loan was necessary for completion of the golf course and a teamsters' union pension fund agreed to lend $500,000 on the security of the total acreage, but would not fund the loan for two years. Plaintiff negotiated with defendant for an interim loan which was granted and evidenced by two five-year promissory notes totaling $500,000 bearing interest at 9½% per annum. Additionally, defendant was granted an option to purchase the 62 acres at $3,000 per acre after the loan was repaid. At the same time the defendant granted back to plaintiff an option to purchase the same 62 acres at an annually increasing price which the trial court found was a device to hide an agreement to pay an additional 10% interest per year over and above the 9½% called for under the terms of the note.

Held: Courts will not permit an evasion of the usury law by a subterfuge and it is always permissible to show that a transaction ostensibly lawful, is in fact a usurious loan. The test is whether there was an intent to evade the law. It is immaterial whether the borrower or the lender takes the initiative in usurious transactions.

(Usury Section To Be Continued)

Gerald H. Ullman Titleman, Succumbs

Word has been received of the death of Gerald H. Ullman, senior vice president, Metropolitan Title Guaranty Company, New York City, on March 23 after a short illness.

He joined the company in 1940 and was primarily engaged in mortgage operations until its acquisition by Commercial Standard Insurance Companies in May, 1969. At that time, he became senior vice president in charge of public relations and branch management.

In addition, he was responsible for the company's liaison with the New York Board of Title Underwriters, the Connecticut Board of Title Underwriters, and the New York State Land Title Association. He was a member of the board of governors of the New Jersey Land Title Insurance Association.

Survivors include his wife, two sons, his father and his stepmother.

Utah PR Program Reaches Students

An educational presentation before approximately 500 high school students is a recent highlight of activity in connection with the Utah Land Title Association Public Relations Program, according to Warren H. Curlis, Association president.

The presentation was made in cooperation with the Utah Real Estate Educational Foundation. Two real estate men spoke on the advantages of home ownership over renting and on the cost of financing real estate purchases, respectively, and President Curlis discussed real estate titles. The following day, the same students viewed the ALTA feature film, "A Place Under The Sun."

Plans are to make similar presentations elsewhere in the state, President Curlis said.

Other talks on land title industry subjects and showing of the film before civic groups also are among recent Utah program endeavors.

West Jersey Stock Purchased by SRC

Thomas T. Fleming, president, Scientific Resources Corporation, Philadelphia, and Edward McConnell, chairman of the board, Central Mortgage Company, have jointly announced that SRC has sold its 99 per cent stock interest in the West Jersey Title & Guaranty Company to Central Mortgage Company.

West Jersey Title & Guaranty Company will continue to operate under it present officers and board of directors, except that CMC will nominate replacements for the representatives of SRC who resigned from the board of West Jersey.

MORTGAGE MONEY—Continued from page 6

A Shortage of Mortgage Money?

The final question I asked is whether a shortage of mortgage money is likely if the over-all levels of saving and investment are in balance. Can a maldistribution among financial channels occur? The existence now of a major shortage of mortgage funds is only too evident. This raises the fear that major structural problems exist in the mortgage markets which could continue to hold back housing in the future.

In analyzing this problem, we must differentiate between shortrun cyclical problems and those of longer duration. We all recognize that the current situation reflects primarily the manner in which our financial system reacts when investment desires far exceed planned saving. The necessary equilibrium has been brought about by inflation, but also by price and interest rate changes, and the rationing of credit to many potential borrowers. The last half of 1969 was a classic—although extreme—case of balance being brought about through disintermediation. The flow of funds through

deposit institutions fell from 50 per cent of the total for 1965-68 to less than 11 per cent. Since deposit institutions traditionally put a large share of their funds into mortgages, potential borrowers in this sphere were particularly hard hit.

Why do I think that such imbalances are unlikely over longer periods? I have partially hedged by assuming that the government will take the necessary policy steps to insure a balance of desired saving and investment so that there is no need for inflation or monetary policy to wrench financial flows from their normal channels. With this proviso, sufficient techniques exist to insure that structural problems need not exist for adequate mortgage flows in equilibrium.

One obvious reason for this optimism is the development of the sponsored agencies, particularly FNMA and the Federal Home Loan Bank Board. In the last half of 1969, these agencies were able to issue a wide variety of market instruments and to channel funds into mortgages at an annual rate exceeding $10 billion. Since this was more than half the total mortgage flow, I conclude that we already have the necessary tools to make mortgages, or instruments backed by mortgages, fully competitive with other debt instruments.

There seem to be three major reasons why people think there can be a mortgage shortage even in a period when saving and investment are in balance.

The Equity Argument

Some, observing the scramble by traditionally conservative institutions to enter the stock market, believe that debt instruments will not be competitive in the future. This is possible although improbable. I have too much faith in American investors to assume that no relationship between stock and bond yields exists which would enable the mortgage market to attract necessary funds. I don't know what equilibrum rates might result, but I cannot see why many people would be willing to accept a 5 per cent expected yield in order to invest in stocks if they were offered a 7 per cent expected yield on a mortgage. I think the necessary marginal shifts between markets will occur before tremendous disparities arise, but it should be clear that the equilibrium will arise in terms of expected real—not false nominal —rates of return.

Inability to Pay

Some people seem to worry that the equilibrium market rate at which mortgages could be sold will be so high as to bar too many potential borrowers from the market. This argument assumes a large gap between the socially desirable and economically viable family spending for housing. Such a gap is, of course, possible. It is the reason why the housing sphere is already full of many subsidies, tax credits, and other support programs.

Again, however, the problem seems more political than economic. We are already using from $6.5 billion to $8 billion of actual or potential tax revenue annually to support the housing market. I happen to think that as a nation we are not getting our money's worth. To reach our housing goals may require a rethinking and readjustment of our current programs. There is no reason, however, to assume that any major necessity such as housing can price itself out of the market.

Institutional Inflexibility

Others seem to believe that mortgage money will be short because this type of borrowing has been too closely tied to a group of inflexible institutions. Part of this fear arises from a confusion of the cyclical and longer run periods. Some, however, apparently believe that existing deposit institutions will use the legislative process to commit hari-kari.

They point out there are a large number of bankers and savings and loan executives who seem eager to use legislation and the regulatory agencies to protect themselves from the market. Such action only results in protection if the institutions' monopoly position is strong enough to allow them to continue to attract funds even when the spreads between deposit and market rates become large. This, I believe, is unlikely.

Obviously, deposit institutions can attract some funds even with very low rates. Some people who want instant liquidity, safety, and convenience are willing to pay for it.

If you examine the statistics of wealth, however, you find that most savings are held by a small share of the population. Consequently, most of the economy's savings are in portfolios of a sufficient size so that the time and expense of changing portfolio composition is minimal, compared to the extra income to be derived by responding to changes in rates of return on financial investments. As a result, the larger the difference in rates and the longer they last, the more will savings flow through non-deposit institutions. Deposits can be held for limited periods with major rate differences, but they won't grow. As depositors become aware of other opportunities they will decline.

The fact that deposit institutions must compete with other markets for savings is one of the reasons why the form of the mortgage should change. Variable interest rates, equity participation, differences in amortization forms are all ways of allowing deposit institutions to bring their assets more in tune with their liabilities. Unless innovations are made, they will not be able to compete with other investments nor will they hold or expand their share of savings. I believe that viable financial institutions must follow the concepts of Lincoln—not Barnum.

While a decline in deposit institutions' share of the financial flows would slow adjustments, it need not cause a shortage of mortgage money. The history of financial institutions is that new ones arise if existing ones fail to adjust. One can picture many ways in which the mortgage market could continue to operate even if the share of deposits in total financial flows fell. The fact that agencies raised more than half the money for the net growth of mortgage funds in the last half of 1969 is a good example of how the system achieves an adjustment.

Conclusion

I think you can now see why, with guarded optimism, I predict a reason-

ably healthy mortgage market in the 1970's. There are no obvious or intrinsic reasons why one of our major financial markets should fail to function in the future.

On the other hand, if we establish a specific goal as a matter of national policy, there is no reason to assume that it will be reached merely by maintaining the status quo. The housing sphere contains a plethora of private-public relationships. Over time, these have been quite successful in insuring that the total number of housing units has grown roughly in line with household formation. They have not, however, protected the industry from major cyclical shocks, nor have they furnished the quality of housing deemed desirable on social grounds.

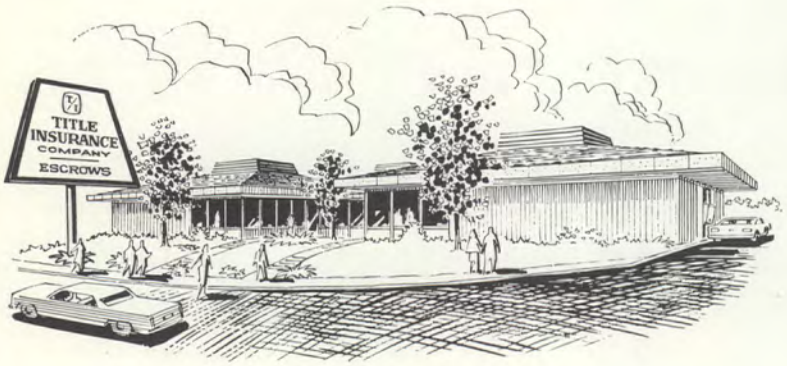
With a large number of existing and possible programs, the problem of constructing enough units to meet national goals does not appear any more difficult for the next decade than it has been in the past. The estimates show no large required shifts in resources or income. The basic tools already exist in the budget to insure that we can raise the total amount of savings needed to pay for the desired investment. Whether or not such decisions will be made will depend on the political process.

While, given the size of past programs and the economy, the additional resources needed for a desired equilibrium do not appear large, a specific effort may be required to achieve them. The important requirement is that the level of savings, including that produced by the government's surplus or net lending, equal the desired level of investment. When such an equilibrium occurs, most of the problems of the mortgage market will disappear.

While other difficulties may be created if attempts are made to maintain outmoded practices, hold monopoly positions, or frustrate normal market reactions too long, such attempts are likely to be self-defeating over a period as long as a decade. Our institutional structure is unlikely to remain static. Adjustments, whether welcomed or fought, are likely to occur. The need is that they be recognized and planned for so that the costs and suffering to existing institutions from change can be minimized.

Those concerned with housing need to re-examine the logic of their position in several public policy spheres. Personally I believe—and have for many years—that too much stress has been placed on specific programs and hoped-for panaceas. In developing policies, many programs simply shift resources from one sector of the housing market to another without making more available. Others pay for the housing of people who could well afford to pay the entire bill themselves. More attention must be paid to the macro, or over-all, program. When a program is proposed, we should ask whether it really increases resources or saving available for housing or whether it simply reshuffles a limited total.

Title Insurance Company of Oregon Completes New Office



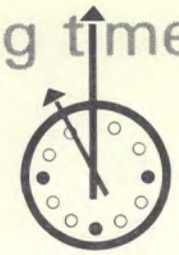
BURNIE

SMEATON

BONTTY

Budd G. Burnie, president, Title Insurance Company of Oregon, Portland, has announced the opening of a new office in Oregon City—which completes, at present, the company's expansion program covering the three counties included in the greater Portland area. The newly-constructed building, located at 112 Eleventh Street, includes facilities for a bank branch, with parking for 22 cars. John M. Smeaton, vice president of Title Insurance Company, is manager, and Richard H. Bontty assistant manager. They are assisted by a staff of 14 in operating the Oregon City geographic-index plant. The use of a conserva-file system for the index saves space and time.

meeting timetable



1970

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

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, 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

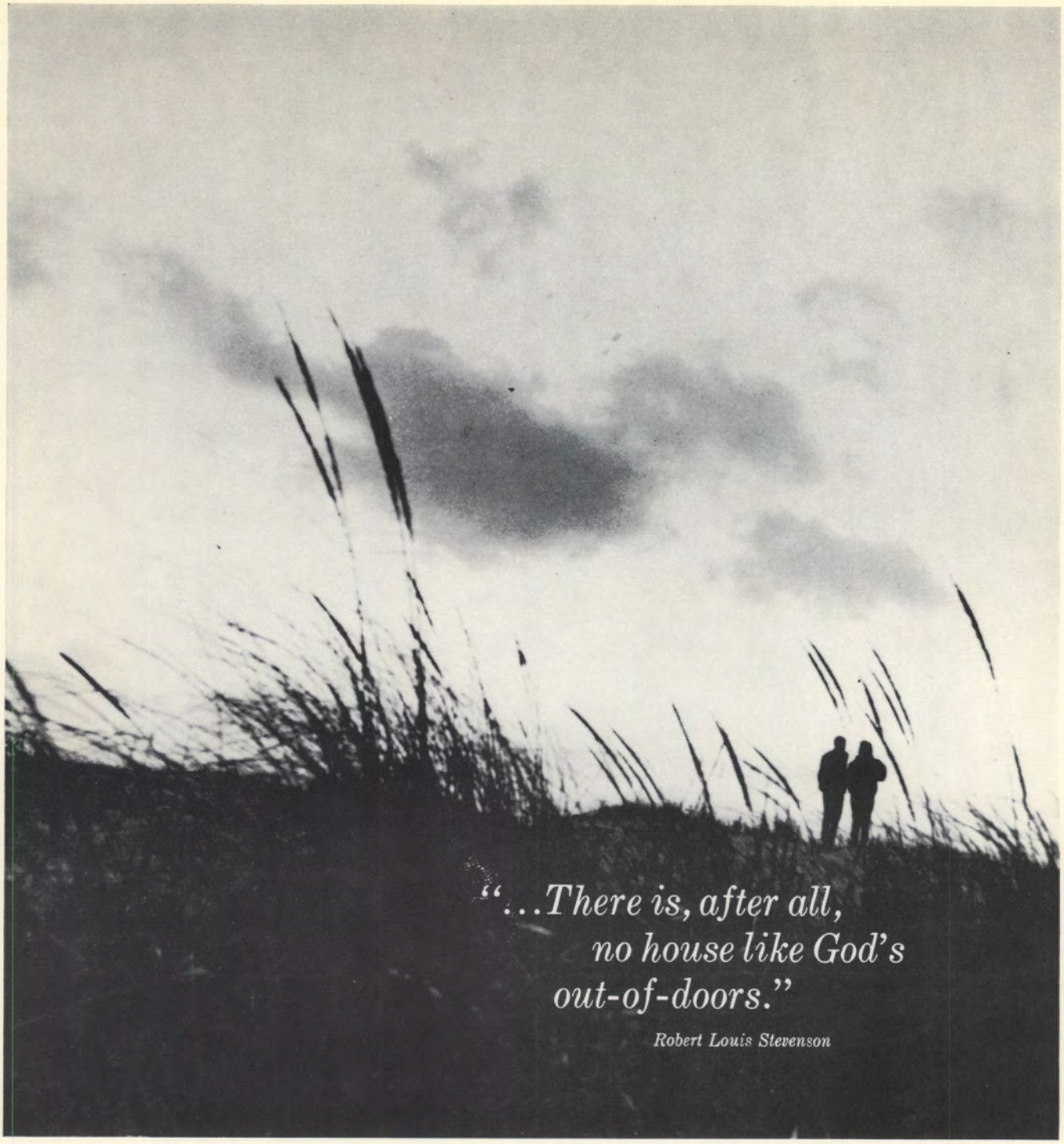
November 6-7, 1970
Land Title Association of Arizona
Tucson, Arizona

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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