Title News

the official publication of the American Land Title Association

DO NOT REMOVE

President Long
And FHLB's
Arthur Leibold

May, 1971

A Message from the Chairman, Title Insurance and Underwriters Section

MAY, 1971

Two years ago, Senator William Proxmire of Wisconsin asked the Federal Reserve Board to investigate title insurance premiums as part of its responsibility in administering the Truth-in-Lending Act. The Board refused.

"The latest authoritative data we have indicates that the loss ratio for title insurance companies was about 1.7 per cent," the Senator was quoted in an Associated Press story at the time. "This means for every $100 that the title insurance companies take in in premiums, they pay out only $1.70 in claims."

No data subsequently was made public by the Senator to support his allegations.

Now, in the spring of 1971, Senator Proxmire once again is reported to be on the doorstep of the land title industry. One of his staff aides has informed ALTA that the Senator is interested in closing costs; considers land title costs a significant part of these charges; and, in the words of his staff member, wants to determine whether land title costs are "too low or too high". A questionnaire on title underwriter operations has been developed by the Senator's staff for sending to at least some ALTA member insurers. And, it is reported that the Senator may hold hearings on title insurance—before the Senate Subcommittee on Financial Institutions he serves as chairman.

As before, ALTA officers are proceeding in a spirit of cooperation concerning Senator Proxmire's investigation, hopefully to clear up the misunderstanding that exists about title insurance. The Association has, at the request of the Senator's staff, submitted constructive comments on a draft of the previously-mentioned questionnaire in an effort to help gather meaningful data. Through its Research Program, ALTA over the past two years has gathered its own statistics—including those that show title underwriters do not realize high profits on low losses.

ALTA information and resources also may be needed in other federal legislative areas. At this writing, the possibility remains that the Association may become involved in an investigation of closing costs by the Senate Subcommittee on Housing and Urban Affairs, and in Congressional consideration of closing costs relating to the current study and other activity in this area by HUD and VA under provisions of the Emergency Home Finance Act of 1970.

As federal interest in land title affairs continues, your officers, committee members, and staff will keep up to date on developments—and will see that the industry viewpoint is accurately presented.

Sincerely,

James O Hickman

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Florida Land Title Association Launches Planned Public Relations Program

The Florida Land Title Association this year has launched a planned program of public relations activity on behalf of the land title industry in that state.

Emphasis in the activity is on educating the real estate buying public with regard to the nature and value of services provided by FLTA members. Endeavor now under way includes a statewide speakers' bureau that arranges for titlemen to address meetings of home buyers, lenders, lawyers, real estate brokers, and lenders—and a monthly "Helpful Hints for Home Buyers" column bylined by FLTA President Marvin A. Brooker, Jr., for distribution to approximately 160 Florida newspapers.

A two-color folder has been printed to provide information on the three talks available through the FLTA speakers' bureau. The talks are entitled, "Title Insurance Bridges the Generation Gap" (for real estate brokers, mortgage bankers, and savings and loan personnel); "Your Home—How Much of It Do You Own?" (for service clubs, home improvement groups, and civic and fraternal organizations); and "Mystery Thrillers in the Land Title Business" (for those who might buy or sell or invest in real property).

In addition, it has been decided that FLTA no longer will sponsor coffee bars for real estate boards and mortgage banker groups. The Florida Association will cooperate with such groups in other ways—such as submitting trade journal articles, furnishing speakers for meetings, and otherwise expressing interest. Plans are to send telegrams to the presidents of associations representing such groups at the times of their major meetings.

FLTA members spearheading the public relations effort are Ron Davis, Frank Armstrong, John Tatum, Bob Shirk, Waldo Wallace, and Jim Robinson.

Inter-County Title Completes Long-Term Eastern Seaboard Expansion Program

Inter-County Title Guaranty and Mortgage Company recently has qualified to write title insurance in Rhode Island. This brings to 21 the number of states where Inter-County is qualified and completes full coverage of the Eastern Seaboard for the company under a long-term expansion policy initiated two years ago.

Inter-County business in Rhode Island currently is being handled by Joseph V. Aguiar, Jr., Portsmouth, and William E. Parmenter, Jr., Providence. In addition to these two agencies, the approved attorney plan also is being introduced into Rhode Island to widen Inter-County's base of operations. Under this plan, an attorney can certify his own titles for the issuance of title insurance policies.

In addition to Rhode Island and New York, Inter-County is qualified to operate in New Jersey, Pennsylvania, Connecticut, Delaware, Florida, Georgia, Indiana, Kentucky, Maine, Maryland, Massachusetts, New Hampshire, North Carolina, South Carolina, Ohio, Tennessee, Vermont, Virginia, West Virginia, Washington, D.C., and the Bahama Islands.

Oregon Title Firm Acquired by PNTI

Pioneer National Title Insurance Company has acquired all stock of Salem (Ore.) Title Company for an undisclosed amount of cash. The acquisition includes all title plant facilities and real estate located in Salem and Dallas, Ore.

Wes E. Stewart, Jr., vice president, has been named vice president and manager of both the Marion and Polk County operations. James F. Whelan remains as Polk County manager.

Title Insurance Of Mobile Expands

Title Insurance Company of Mobile, Ala., has moved its branch office to the Bel Air-Springdale area of that community, where it features larger and more efficient quarters and ample parking space.

The company's main office is at 164 Saint Francis Street in Mobile.

New Colorado Units For First American

The Boulder, Colo., facilities of St. Paul Title Insurance Corporation recently were acquired by First American Title Insurance Company. The firm now is known as First American Title Company of Boulder County.

Donald P. Vance is vice president and manager.

In announcing the acquisition, First American also has reported that plans for coverage in the Denver area now are being finalized. The company qualified to issue title insurance policies in Colorado earlier this year.

Louisville Title Adds Agent in Florida

Midwest Title Guarantee Company of Florida, Inc., Naples, recently has opened for complete title insurance service, including escrow functions, as the exclusive agent for Lousiville Title Insurance Company in the Collier County, Fla., area.

E. F. Kniesel, has been named executive vice president and manager of Midwest Title.

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ON THE COVER: ALTA President Al Long, right, presents Federal Home Loan Bank Board General Counsel Arthur Leibold with a memento following Leibold's address March 4 at the 1971 Association Mid-Winter Conference in Coronado, Calif. An article based on Leibold's talk begins on page 9 of this issue. For a report on the Mid-Winter, please turn to page 4.

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GARY L. GARRITY, Editor, CAROLYN E. CAPPS, Assistant Editor

Mid-Winter Covers Timely Topics

Topics of first priority concern to the land title profession and a setting of Southern California sunshine attracted some 400 ALTA members and their families to Coronado-by-the-Pacific the first week in March for the Association's 1971 Mid-Winter Conference.

Discussion at meetings of the Board of Governors and Executive Committee—as well as at General Sessions, Section meetings, and other committee gatherings—covered a wide range of topics and emphasized the growing national identity of the land title industry. The timely nature of Mid-Winter subject matter was exemplified in a March 4 General Session commentary on service corporations delivered by Arthur W. Leibold, Jr., general counsel, Federal Home Loan Bank Board.

Noting that FHLB regulations allow service corporations of insured savings and loan associations to engage in activities including "acting as insurance agent or broker, escrow agent, or trustee, under deeds of trust", Leibold said: ". . . I believe that the Board would study very carefully an application for a service corporation to enter into the title insurance business as an underwriter and there could be some hesitation on the part of one or more Board members. I suggest that it is more likely that the Board would allow a service corporation to act as an agent for a title company."

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The Mid-Winter photographer found ALTA officers and their lovely wives to be excellent camera subjects. At left, from left, Abstracters and Title Insurance Agents Section Chairman Jim Gray, Association President Al Long, and Title Insurance and Underwriters Section Chairman Jim Hickman stand behind their wives, who, respectively, are Lola Gray, Kit Long, and Pat Hickman. At right, Association Vice President John Warren and wife Becky are photographed during the Conference Ice-Breaker.

MID-WINTER—Continued from page 4

Another March 4 General Session guest speaker—Robert J. Oster, economist, Bank of America—reviewed the outlook for the 1971 national economy including housing. He noted that, while economic prospects are better this year than in 1970, recovery nonetheless is gradual and care should be taken not to expect too much too soon.

In a General Session address the following day, a third distinguished guest speaker—James E. Murray, vice president and general counsel, Federal National Mortgage Association—commented on new mortgage forms being developed for use in connection with conventional mortgage operations of FNMA and Federal Home Loan Mortgage Corporation. During his talk, he stated: "I am sure that there has been a trend within the title insurance industry over the past several years toward the elimination of usury protection from title policy coverage. It may be appropriate at this juncture for insurers to consider a reversal of this trend."

Also at the March 5 General Session, ALTA Executive Vice President William J. McAuliffe, Jr., told Association members that a good deal of the national, consumerism-induced change coming through the federal government is of concern to the land title industry. He said the ALTA Executive Committee, Public Relations Committee, Federal Legislative Action Committee, Research Committee, general counsel, and staff are busily responding to the challenge of consumerism in the areas of governmental liaison and consumer information—and he urged Association members to join in the effort in their respective communities and states.

The texts of the Leibold, Murray, and McAuliffe talks are published elsewhere in this issue of *Title News.*

From the time ALTA President Al Long called the Executive Committee meeting to order at Hotel del Coronado on March 2, it was evident that the 1971 Mid-Winter would focus on numerous matters of great significance to the land title industry—as is illustrated in the following partial summary of items on the Board of Governors March 3 agenda.

—George Garber, chairman of the ALTA Conferees, Conference of ALTA and American Bar Association, reported to the Board that ABA has disclaimed sponsorship for any

Views from the 1971 Mid-Winter Conference include George Garber, chairman of ALTA Conferees, Conference of ALTA and American Bar Association, reporting on developments relating to that body (top, left). ALTA President Al Long (right) and Executive Vice President Bill McAuliffe (left) visit with a distinguished guest speaker, Bob Oster, Bank of America economist (top, right). In the lower photographs, ALTA Past President Art Reppert and wife Louella head for a Mid-Winter function (left), Wisconsin Title Association President Otto Zerwick checks papers (center), and (right) ALTA Membership and Organization Committee Chairman Larry Davis (at right) asks a question at a Section meeting while New York State Land Title Association President Tom Pearson listens at his immediate right.

title insurance company or fund following an ALTA request that this be done. The ALTA Conferees on October 12, 1970, submitted a resolution to the ABA Conferees calling upon ABA to disclaim sponsorship of National Attorneys' Title Insurance Fund, Inc., or any other title insurance company. Of special concern to ALTA was activity of the ABA Special Committee on Lawyers' Title Guaranty Funds in using the ABA name in a preliminary inquiry to leaders of the organized bar to determine support for a possible stock subscription campaign for the National Attorneys' Title Insurance Fund, Inc. Developments subsequent to submitting the ALTA resolution included sending a written ALTA plea to the ABA Board of Governors, requesting a forthright and unequivocal ABA disavowal of sponsorship of the National Attorneys' Title Insurance Fund, Inc., or any other title insurance company. After considering the ALTA plea at its meeting Febuary 4 and 5 in Chicago, the ABA Board of Governors unanimously adopted the following policy: (1) ABA does not sponsor any title insurance company or fund and has no financial interest in any such enterprise; (2) No committee, officer, or agency of ABA is authorized to state that ABA does or will engage in such sponsorship; and (3) No committee, officer, or agency of ABA has any authority in its or his official capacity to participate in a stock solicitation drive of any such company or fund. Chairman Garber was asked to seek another meeting of the ALTA and ABA Conferees on matters of mutual interest in the near future, and it was agreed that ALTA will closely watch activities of bar-related title funds at the national and state levels.

—The Board agreed that ALTA assistance will be offered for presenting testimony at hearings on the mortgage forms for use in connection with conventional mortgage operations of FNMA and FHLMC.

—Members of the Board were advised of ALTA Executive Committee action to see that ALTA, in response to a request from the Wisconsin insurance commissioner's office, presents an explanation to that office on why ALTA should not be required to file as a rate service organization under Wisconsin law.

—Members of the Board heard a

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Organization and Claims Committee Chairman Bill Galvin reports on work of the Committee at the Mid-Winter meeting of the Abstracters and Title Insurance Agents Section. Seated at his left is Jim Gray, Section chairman.

Panelist Mack Tarpley comments during a discussion on effective assistance to agents, which was held at the Mid-Winter meeting of the Title Insurance and Underwriters Section. Section Chairman Jim Hickman is at his right and from left are Bob Dawson and Charles Murrell, panelists.

Underwriters Hear Panel Discussions

Two excellent panel presentations highlighted the Mid-Winter meeting of the Title Insurance and Underwriters Section.

Following each presentation, Section Chairman Jim Hickman presided over useful question-and-answer periods.

Participating in a panel on underwriter problems were these speakers on the following subjects: Don Waddick, disbursement of construction loan funds; Jack McAninch, outstanding mineral interests; and John Ely Weatherford, tidelands.

The other presentation featured a discussion on effective assistance to agents through auditing practices. Participants were Mack Tarpley, Bob Dawson, and Charles Murrell.

Abstracter-Agent Agenda Busy

An interesting talk on the outlook for the land title industry as seen by an abstracter; a comprehensive ques-

Continued on page 11

Arthur W. Leibold, Jr., General Counsel
Federal Home Loan Bank Board

Outlook: Service Corporations

(Editor's note: This article is adapted from a talk presented at the 1971 ALTA Mid-Winter Conference.)

* * *

Thank you for your invitation to be here today in Coronado. For those of you who have spent the winter in Washington, you know what a hardship it was for me to leave that "semi-tropical" garden place. A number of seed catalogues graphically show that the District, in fact, is in a southern clime, and a dermatologist recently advised one of my friends that certain skin diseases which thrive in Washington are of a semi-tropical type. However, just as the local politicians blow both hot and cold, so do the winds in our nation's capitol, and I am pleased to be here.

I know some of you have contemplated that it must be wonderful to be a government bureaucrat; one entire area of annoyance is removed from day-to-day existence. Let me assure you that being a bureaucrat doesn't give you a pass to happy living with the many arms of government. I recently began what I thought was a simple quest to get a passport in order to attend the American Bar Association's 1971 Annual Meeting in London. As you are aware, it is necessary to have a certified copy of your birth certificate. By now, being an expert in government, I asked my secretary to call Springfield, Illinois, to find out if I applied for the certified copy in Springfield or the county seat of La Salle County, Ottawa. The reply was I should send two dollars and an application to Chicago. In my heart I knew that was wrong, but as a responsible citizen and a civil servant, I did as I was told. Some time later, I got back a reply requesting that I send my application to Ottawa, Illinois. That reply was the first form letter—that is, consisting primarily of checked boxes—which I'd ever seen which dripped with sarcasm.

Author Leibold

My letter to Ottawa, Illinois, with accompanying check, was promptly answered, and a certified copy of my birth certificate was in my eager hand —but my name was misspelled. A form also was enclosed which requested that I send documentary proof, nature unspecified, and my notarized statement to Springfield to prove that "Liebold" (Lee bold) was really me.

Of course, I keep a whole houseful of documents which conclusively prove that "ie" should have been "ei" in both my name and my father's name on that birth certificate prepared in 1931. Trying to be analytical, practical and lawyerlike, I made copies of my social security card and my Selective Service System registration, both of which were obtained relatively early in my existence, both contained the same address as my birth certificate and both contained the proper spelling, and I dispatched them to Springfield. They reply stated, among other salient things:

> "Proof should be a certified copy of the parents' marriage record, which is obtainable from the present county clerk of the county of marriage."

After an agonizing, negative reaction of, "Why didn't someone say that on the earlier form?", I realized I now was one more document, one more letter and one more check away

from a passport. But I know how to handle it—I'm going to turn it over to an intermediary, my mother—she may not get me a corrected birth certificate, but she'll annihilate substantial chunks of the bureaucracy in Illinois.

I might add that the 1931 form of birth certificate contained such tongue wagging items as, "Premature? . . . Full Term? . . ." and "Legitimate?" Considering both how dull things probably were in small towns in Illinois in the 1930's, and the difficulty of obtaining jobs, I'm certain there were volunteer lines of local gossips to fill the position of secretary for the county clerk.

I assume bureaucratic forms do change, and some of the questions are brought up to date. If the forms from ancient Greece were used presently, one of the questions might be: "Father—human or horse?" Today, that could be considered an insult.

Regardless of how confused you may be about the subject matter of my speech, I was in fact invited here today to discuss federal savings and loan association service corporations. My comments about my birth certificate (unfortunately not apocryphal) are relevant, however. In developing the procedures for obtaining approval for certain service corporation activities, we attempted to cut down "red tape" as much as possible and to allow certain activities without an application to the Board. Otherwise, the initial energy for engaging in a new project could dissipate with barrier after barrier of forms, frustration and delay.

But before we get to service corporation activities, it may be helpful to give you a synopsis of what a service corporation is and the legislative and regulatory background of its existence. On September 2, 1964, Section 5(c) of the Home Owners' Loan Act was amended to include the authorizing language.*

The important guidelines which are included in the statute are as follows:

(1) Investment authority is granted only to federal savings and loan associations; state chartered associations are governed by state law.

(2) The authorized investment may not exceed 1 per cent of the investing association's assets.

(3) The investing association has the option of investing in capital stock, obligations or other securities.

(4) The service or subsidiary corporation must be organized under the law of the state where the principal office of the owner association or associations is located.

(5) Stock can not be held by an individual or any business entity other than a savings and loan association.

The Bank Board first implemented the statutory authority by a regulation which became effective in October, 1965. The present Board substantially amended the regulation, effective July 2, 1970.

The regulations refer to "a" and "b" type corporations. The "a" type —and the reference is from the subheading of the regulation—is one which might be called "state-wide"; the capital stock is available for purchase in equal amounts or on a uniform basis by all associations, state or federal, in the state. The Central Corporation of Savings and Loan Associations in New Jersey is an example.

The present "b" type can be owned by a limited group of associations, *or just one federal association*. The former category is further broken down into those service corporations which are multiply owned by five or more associations and those which are owned by less than five, and no one of the five in either subgroup own more than 40 per cent of the stock.

Rather than go into further detail as to the various subgroups, I shall speak generally about the "b" type corporation which is owned by one or a limited number of associations. I also shall refer to the regulations** adopted by the present Bank Board in July, 1970.

There are a number of activities which need not be approved by the Board before a service corporation engages in them, and I shall refer to some of them:

> Performing the following services, primarily for savings and loan associations with home offices in the same jurisdiction: clerical services, accounting, data processing, internal auditing, credit information, appraising, construction loan inspection, abstracting (we'll return to this item shortly), administration of personnel benefit programs, including life and health insurance and pension plans, research, studies, surveys, purchasing of office supplies, furniture and equipment, development of storage facilities for microfilm or other duplicate records and advertising and other services to procure and retain savings accounts and loans.

Although I'll mention a number of other so-called pre-approved activities, and the written version of my remarks will contain a summary of all such activities, my reference to "abstracting" makes it appropriate that I direct your attention to activities which must receive prior Board approval. They include:

> "such other activities, including acting as insurance agent or broker, escrow agent, or trustee, under deeds of trust. . . ."

Thus far, the Board has not received an application by a service corporation to engage in the business of underwriting title insurance. By piecing together various references in the regulation including "abstracting", "escrow agent," and "insurance

* That section contains a long list of items in which Federal savings and loan associations may invest their assets. The relevant provision states:

"Any such [federal savings and loan] association is authorized to invest in the capital stock, obligations or other securities of any corporation organized under the laws of the . . . [jurisdiction] in which the home office . . . is located, if the entire capital stock . . . is available for purchase only by . . . associations of that . . . [jurisdiction] and by federal . . . associations having their home offices therein, but no association may make any investment under this sentence if its aggregate outstanding investment under this sentence, determined as prescribed by the Board, would thereupon exceed 1 per centum of its assets." 12 U.S.C.A. § 1464(c)(1969)

** Section 545.9-1; 12 CFR § 545.9-1 (1970)

agent", you can find some characteristics of a title insurance service. However, I believe that the Board would study very carefully an application for a service corporation to enter into the title insurance business as an underwriter and there could be some hesitation on the part of one or more Board members. I suggest that it is more likely that the Board would allow a service corporation to act as an agent for a title company.

Although by no means controlling, some factors which might be taken into account are:

(a) When the Savings and Loan Holding Company Amendments were before the Congress in 1967, the then chairman of the Federal Home Loan Bank Board testified that he did not consider that a title company was a proper incident of the operation of insured subsidiary institutions of a multiple savings and loan holding company.

(b) The Federal Reserve Board did not include title insurance companies as "proper incidents" of a bank holding company under its draft regulations of January, 1970.

It takes no great stretch of imagination to show why a wholly owned subsidiary of a savings and loan association differs materially from an affiliate of a banking or multiple savings and loan holding company. There may be a suggestion that thrift institutions and title insurance companies are not a natural fit. One of the reasons may be the amount of capital which is necessary to maintain the reserves of a title insurance company. However, I question if the losses have been sufficiently substantial to make this a major factor other than one affecting liquidity of the subsidiary or affiliate.

With reference to savings and loan service corporations, a title insurance company could be complimentary to the additional activities specified in the regulation, which include***:

(a) Originating, purchasing, selling and servicing mobile home loans, whole loans and participations which are first liens on real estate, and educational loans;

(b) acquisition of unimproved real estate for the purpose of prompt development and subdivision, principally for construction of housing or for use as mobile home sites;

(c) development and subdivision of real estate just referred to;

(d) acquisition of improved residential real estate and mobile homes to be held for rental;

(e) acquisition of improved residential real estate for remodeling and rehabilitation for sale or rental;

(f) maintenance and management of rental real estate referred to above and real estate owned by the association or associations which own the service corporation;

(g) conducting activities reasonably incidental to described activities; and

(h) conducting such other activities, including joint ventures in the above referred to activities, or in the other approved activities, which are approved by the Board.

The Board regulations applicable to the 1 per cent investment, the amount of debt owed to others and leveraging have evoked a number of inquiries. Within the 1 per cent limitation are any loans, secured or unsecured, from the parent association.

As to service corporations owned by less than five associations, or if one savings and loan association owns more than 40 per cent of the stock of a service corporation, the amount of *unsecured debt* which a service corporation may have outstanding to third parties is limited by the amount of parent association investment but excluding secured debt (*e.g.*, a mortgage).

The amount of *secured debt* which a service corporation may have outstanding to third parties is no more than four times the parent associations' investment, again excluding secured debt to the parent associations.

It is no secret that the service corporation provides a medium for using a small percentage of the assets of a federal savings and loan association for higher risk, higher profit, primarily housing oriented activities. It is hoped, and strongly suggested, that service corporations, either individually or by means of joint ventures, direct some of their investments into inner city housing.

The service corporation also may be used as a vehicle for engaging in businesses which were closely akin to the savings and loan business but were not considered in the past as activities which were within the express or implied powers of a federal savings and loan association. What sometimes happened was that such businesses were operated by officers and directors of the association. The increase in size of associations, which better provide the capacity for paying appropriate salaries, and changes in the law applicable to "corporate opportunity" and "fiduciary duty" make the service corporation an appropriate vehicle for such affiliated businesses.

As of January, 1971, there were approximately 185 service corporations owned by federal savings and loan associations. There were another 150 owned by state chartered associations. The service corporation is becoming a popular vehicle, and the Board hopes that it will generate additional dollars for parent savings and loan associations which can be used for housing the people of this country.

*** The various activities are not copied verbatim from regulation § 545.9-1; 12 CFR § 545.9-1 (1970).

ABSTRACTER-AGENT—Continued from page 8

tion-and-answer session on plant automation; and impressive committee reports were features of the Mid-Winter meeting of the Abstracters and Title Insurance Agents Section.

Mrs. Gertie Alderman delivered the talk based on her extensive knowledge of abstracting and O. B. Taylor moderated the discussion on automation, calling on his considerable experience in this field.

Section Chairman Jim Gray presented these committee chairmen, who reported on their highly significant work in the following areas: Ray Frohn, schools; Otto Zerwick, plants and photography; Bill Galvin, organization and claims; and Jim Vance, errors and omissions insurance.

James E. Murray, Vice President and General Counsel
Federal National Mortgage Association

Fannie Mae and the New Forms

(Editor's note: This article is adapted from a talk presented at the 1971 ALTA Mid-Winter Conference.)

* * *

One of the principal benefits expected to be realized from the establishment of a secondary conventional mortgage market, as reflected in the Congressional history of the Emergency Home Finance Act of 1970, which authorized FNMA to deal in conventional mortgages, was the drafting and introduction of standard loan document forms, with a view toward achieving the greatest practicable measure of uniformity obtainable across the nation.

It has long been appreciated, particularly since the advent a generation ago of FHA forms for federally-underwritten mortgages, that mortgage purchases and transfers are greatly facilitated by reason of the more expeditious examination of documents permitted through the use of uniform forms. This also benefits borrowers by reason of the resulting reduction of overhead expenses of lenders. The FHA forms achieved an admirable uniformity on a state-by-state basis, but the wide and confusing diversity of laws and practices among the several states has continued to plague the national mortgage market.

Author Murray

We believe that we have been presented with an unprecedented opportunity and challenge to overcome a significant part of the difficulty through the introduction of documents possessing uniformity on a truly national scale.

Developing these uniform documents has been an exciting challenge for us. Preliminarily, I will explain briefly how we approached this undertaking. First, as to specific legal requirements, prohibitions, and procedures peculiar to given states, we consulted with FNMA counsel in the five regional offices and directly or indirectly with legal practioners in the individual states.

To take full advantage of this unusual opportunity to set certain standards and precedents in the field of conventional mortgages, we sought the thinking and advice of individuals, firms and organizations covering the broadest possible spectrum of interests, concerns and points of view, in addition to persons knowledgeable within the several fields of law involved. Toward this end, in conjunction with attorneys representing the Federal Home Loan Mortgage Corporation, we developed an initial exposure draft, which was widely circulated in November, 1970, in every section of the country.

All of the major investment and consumer groups have been made aware of our efforts and have been furnished with copies of our exposure draft. Among those groups and individual are: the National Association of Home Builders, the Society of Real Estate Appraisers, Appraisal Institute (MAI), the Mortgage Bankers Association, the American Bankers Association, the National Association of Mutual Savings Banks, the National Association of Real Estate Boards, the American Land Title Association, the U.S. Savings and Loan League, the National Association of Real Estate Brokers, the American Life Convention, the Rural Housing Alliance, the National Consumer Law Center, the National Commission on Consumer Finance, the Secretary of Housing and Urban Development, Mrs. Virginia Knauer (consumer adviser to the President), the Senate and House Committees on Banking and Currency, Ralph Nader of the Public Interest Research Group, legal scholars in the housing, commercial, consumer and related fields such as Professor Marion Benfield of the University of Illinois, the Consumer Federation of America, and many more groups and individuals. The exposure

draft represented an effort to join with the Federal Home Loan Mortgage Corporation in producing a common draft that would employ the greatest degree of uniformity possible in an industry which is national in scope but is hampered by divergencies in local practices.

It is at this point that we expected resistance from some investors and lawyers representing investors. That resistance has proved to be minimal. While it is true that some mortgage or deed of trust provisions peculiar to a particular jurisdiction are absolutely essential, due to the vagaries of local law, it is also true that mankind, especially lawyers, often display a tendency to resist the new or unfamiliar. Some regional or local preferences have, therefore, been overridden in our forms in the belief that new and improved draftsmanship will eventually prevail, replacing outmoded or unnecessary provisions.

There is a limit, however, to the degree of uniformity that can be achieved, owing to the diversity of laws and practices from state to state. Indeed, we have concluded that an entirely uniform document is not feasible under these circumstances. Instead, separate forms for each jurisdiction will be prepared, each containing "uniform covenants" and "non-uniform covenants". The uniform covenants will contain those provisions of the instrument which are susceptible to uniformity among the various states, while the non-uniform covenants will be those necessary for a particular jurisdiction. There will be a significant degree of uniformity among the non-uniform provisions, however.

With the secondary market now being extended to conventional mortgages, and nationwide programs being applied increasingly toward achievement of housing goals, it is becoming more clearly and widely recognized that financing must be obtained and security paper handled and transferred on a nationwide basis. I believe this is a major step toward eventual uniformity in all real estate transactions, documentation and remedies. Only then can truly uniform forms be put to nationwide use.

We at Fannie Mae and our colleagues representing FHLMC have made every effort to eliminate archaic, redundant and obscure language, as well as superfluous remedies serving no really valid purposes, which would make the instruments appear too one-sided in favor of the lender. We hope that the language which has emerged from these joint efforts is as clear and staightforward as possible for a legal document of this nature.

The exposure draft prepared and circulated by FNMA and FHLMC did not embody firm decisions with respect to all of its provisions, but in some instances represented compromises between the two corporations concerning matters which were left unresolved in the interest of printing a draft. The circulation of copies of the instrument proved to be of great benefit to us by reason of the hundreds of comments received in response. Many of the suggestions received have been incorporated in the second exposure draft, which was released on February 5, 1971, and is now being circulated nationwide among the same diverse groups and individuals.

The very extensive distribution of our draft among such varied investor and consumer groups is an indication of our awareness of the public responsibility we have to establish a secondary mortgage market which will benefit everyone having an interest in adequate housing for the nation. We, no less than the most ardent consumer advocates, are deeply concerned that the provisions of our security and debt instruments deal fairly with the borrower. At the same time, we recognize that the mortgage covenants and the remedies prescribed, as well as the debt instrument, must afford protection to the security interest of the lender, and that neither the borrower-consumer not the lender is served if the marketability of the mortgages is impaired.

Turning now to specific items in the documents themselves and the contents of the instruments, we first note that prevailing local practice dictates use of mortgages in approximately 60 per cent of the states and deeds of trust in the remaining 40 per cent of the jurisdictions. Unless I make specific use of the term, "deed of trust", the word, "mortgage", is intended in its broad generic sense, meaning any security instrument, including a deed of trust.

Our current mortgage draft shows a model first page, which is subject to local variation, followed by a set of, "uniform covenants", for use in both the mortgage and deed of trust in any jurisdiction. The, "non-uniform", covenants shown thereafter, as well as the execution and acknowledgment of the forms, would vary, depending upon the particular jurisdiction involved. As noted earlier, a significant degree of uniformity will be found in the language of even the non-uniform covenants. The important point is that as much as 85 to 90 per cent of the provisions in the documents will be the same throughout the country. Of approximately 20 paragraphs found in the typical mortgage, 17 of the provisions will be identical throughout the United States. Some of the significant provisions in the uniform mortgage covenants are:

(1) *Payment of Principal and Interest*—This is a standard paragraph setting out the obligations evidenced by the note.

(2) *Funds for Taxes and Insurance*—This is a provision like those normally found in conventional mortgages, except we believe it is fairer to the borrower by requiring the lender to pay any excess funds promptly to the borrower or credit the excess to him over the following 12 months, and by requiring the borrower to advance only those taxes which may be accorded priority over the mortgage. We are closely following the litigation occurring over the country concerning the payment of interest on trust funds. Although most of these actions are still in progress, there is an Illinois suit filed by a borrower as a class action in Cook County *(Sears, et al., v. First Federal Savings and Loan Association of Chicago, et al.),* where the trial court has dismissed the action on the merits for the reason that the mortgage provides expressly that if the mortgagee elects to treat the deposits as trust funds, it is

not liable for any earnings thereon. Of course, many forms in use, including some now in litigation, are silent on the treatment of escrows. Our latest form draft unambiguously states that no interest will be paid the borrower on these funds.

(3) The *Application of Payments* paragraph also is a standard provision, with more specificity and clarity, however, as to treatment of the payments.

(4) A standard *Charges and Liens* provision also is included, the lender being authorized, however, to permit the borrower to pay the taxes directly and the borrower being permitted to refrain from payment of an overdue tax assessment if he contests the assessment in good faith.

(5) The *Hazard Insurance* paragraph also is rather standard, with the additional advantage to the borrower, not found in all conventional forms, of authorizing the lender to consent to direct payment of insurance premiums by the borrower. Also notable is the absence of any provision permitting the lender to settle or compromise an insurance claim.

Fairly typical uniform covenants also have been drafted (with certain improvements lending more clarity and fairness, as you will see when you have read the entire proposed instrument) to cover:

(6) *Preservation and Maintenance of Property;* (8) *Inspection of the Premises;* (9) *Condemnation;* (10) the usual provision that the *borrower is not released* by any extension of time for payment or any modification of re-amortization granted by the lender to a successor of the borrower; (11) agreement that *forebearance is not a waiver* of any right or remedy by the lender; (12) a statement *that all remedies of the lender are distinct and cumulative* to any other right or remedy afforded by the mortgage or by law or equity; and (13) agreement that the *successors and assigns of the parties shall be bound.* The paragraph calling for reconveyance or release of the mortgage by lender upon payment in full is in the non-uniform section of the instrument, due to the different requirements in the various title or lien theory states; however, this section will uniformly provide that the borrower is entitled, without payment of any fee, to a release. *Paragraph 7* of the uniform covenants, *protection of lender's* security, contains one unusual requirement, namely, that the lender give notice to the borrower before intervening in any proceedings, disbursing funds to protect the security or making repairs. Also somewhat unusual is the specific *notice provision* in *paragraph 14,* prescribing the mechanics for giving notices and permitting the borrower to stipulate an address for receiving notice other than the property address. Important to a form having uniform covenants is the declaration in *paragraph 15* that the document is intended to be a uniform mortgage for use in all states where such form of security is permissible, to be governed by the law applicable where the property is located. The paragraph also states that if any provision of the mortgage conflicts with local law, the other provisions shall be given effect. Additionally, the paragraph provides that in the event any payment or payments under the mortgage or note (considered either separately or together) should be construed to be usurious, the amount paid shall be reduced to the extent necessary to eliminate the violation. The *acceleration* provision in *paragraph 17* allows the borrower 30 days to cure a remediable default before acceleration can take place. Acceleration of the debt installments is permitted where the lender sells or transfers the property without the consent of the lender, but it is expressly forbidden in the case of certain transfers, such as those occurring through devise or descent. Acceleration is not permitted solely by reason of bankruptcy or the foreclosure of a junior lien.

A number of provisions sometimes found in mortgage instruments which we feel are not necessary and in some instances may give the appearance of "onesidedness" in favor of the lender, were omitted. Among such clauses are (1) a prohibition against junior liens, (2) authorization for frequent search of the property at borrower's expense, (3) waiver of statutes of limitations, (4) the so-called "dragnet" clause, under which the lender, upon default, may apply any of the borrower's assets held by lender to satisfaction of the mortgage debt, and (5) the "Brundage clause", which attempts to pass on to the borrower any new mortgage taxes that may be imposed. The "Brundage" device, though favored by some investors, permits acceleration for an event outside of the borrower's control, in effect shifting a business expense from the lender to the borrower.

The waivers of statutory redemption and of homestead, curtesy and dower rights have been eliminated altogether as uniform covenants. If a specific waiver of redemption or homestead exemption should be considered necessary in a particular state, it would be added as a non-uniform covenant. The homestead waiver would be used only when necessary to assure a marketable title after foreclosure, as in Illinois, or where, by statute, property cannot be mortgaged without an express waiver of the existing homestead rights. In the latter groups of states, failure to provide a waiver may in substance leave the lender with an unsecured loan. In Texas, the homestead exemption is created by the state constitution and cannot be waived.

The waiver of statutory redemption after foreclosure sale is also, in the present draft, a non-uniform covenant. Most states do not permit any redemption period, although a few, such as Kansas, have a statutory period which cannot be waived by contract. The remaining states permit reduction of the redemption period if specifically provided in the mortgage and it is in these jurisdictions that a form of waiver would be included in the mortgage forms. Statutory redemption is an ineffective and unwise right, which FHA and the Department of Justice have long sought to overcome with respect to FHA-insured mortgages. On this point, the case of *U.S.* v. *Stadium Apartments, Inc.*. 425 F.2d 358, a 1970 9th Federal Circuit opinion on a case arising in Idaho, illustrates the policy reasons against statutory redemption. The

right of redemption generally is of no value to the borrower, who usually is unable to raise the redemption money within the designated period, and repairs of the property during the period, except possibly in Alabama, are made at the lender's peril. A waiver of statutory redemption does not deprive the borrower of any significant right and does permit a more rapid sale of the property after foreclosure.

I think that careful reflection upon the effect of the provisions which we have eliminated from the mortgage will confirm our belief that they are not actually of vital importance to the lender and in some instances have no conceivable utility, constituting a kind of "overkill". With the recent trend of court decisions and legislation, which look increasingly toward consumer protection, a trend which I believe is likely to continue for the foreseeable future and be consolidated, we probably will see the eventual total elimination of many of these overextensive verbal monstrosities, which present an appearance of unfairness to the borrower. I think that in the case of our forms we have made strides in this direction, while fully preserving the marketability of the mortgages.

Turning to the debt instrument (in most jurisdictions a promissory note), the draft of the note form contains largely standard terms, with a few exceptions. For example, a rather unusual 30-day grace period is provided and the lender does not have the right to raise the rate of interest.

The note, of course, provides for a late charge; however, it is collectable only with respect to principal and interest and not as to other portions of the monthly payment. Here, we were concerned with preserving the negotiability of the paper, for under the Uniform Commercial Code, such a reference to mortgage provisions would impair or destroy negotiability. On this point, it has been urged by a consumer group representative that the negotiable promissory note be eliminated. Persons who are not knowledgeable in the mortgage field may very well not realize that the whole concept of a secondary market presupposes negotiable paper. The legislative history of the act authorizing us to deal in conventional mortgages attests to the awareness of that fact by Congress and indicates a specific Congressional intent that negotiable notes are to be employed.

Provision for a prepayment fee, which is customarily employed in conventional mortgages, is included in our uniform draft. The amount of the fee is left blank, due to the diversity of state laws and variations in local markets. Some states forbid such fees, while others limit the amount which can be charged or the age of a loan as to which it can be assessed. Where, as in New Jersey, a sliding scale is prescribed, the lowest figure on the scale should be inserted in the blank. We do not favor use of confessions of judgment or cognovit notes, which, as you are aware, have currently become the subject of widespread litigation, most of which has not been resolved.

We believe the use of these standard mortgage documents will bring with it marketability to the conventional mortgage. This will be a revolutionary advance in housing finance in America.

I will turn now to the subject of state usury laws as they affect FNMA in the conventional mortgage market. Due to recent declines in mortgage market interest rates, local usury laws present far less a problem than they did a year ago. It may not be long, however, before those problems are back.

Lenders on the West Coast and nearby areas, where interest maximums range upward from 10 per cent may not appreciate the extent of the problem presented by interest rate restrictions in certain other areas of the country. Difficulties in this area became pronounced over the past two or three years as interest rates pressed against the statutory ceilings that once chiefly affected small loan operators but which left real estate lenders in most states with ample room in which to operate. With this relatively new emergence of usury problems as a significant factor in mortgage transactions, widespread confusion and uncertainty resulted among investors in the secondary mortgage market. Builders and investors in some states were totally excluded from selling on the secondary market.

The basic difficulty, as in the case of non-uniform mortgage documents, was the non-uniformity of state legal requirements. Where there is a marked disparity between current yields on the secondary market and local interest ceilings, the ability of some potential investors to compete in the national market is seriously affected. Within the past year, as general interest levels continued to climb, market yields on FHA and VA mortgages traded in Fannie Mae's free market system auction (which reflects market conditions over the country) rose above 9 per cent. When conditions such as these are reached, it is no longer feasible for many home builders and investors in states having interest maximums below prevailing market levels to undertake new activities.

With these conditions, efforts were made to find a means of keeping states with the lowest usury interest ceilings in the secondary mortgage market. A number of states exempted federally-underwritten mortgages from the provisions of their usury laws and other states are considering such legislation, even though the immediate crisis has temporarily passed with the recent easing of interest rates. Implicit in this action is a heightened awareness on the part of some states of the significance of a truly national mortgage market which transcends the boundaries of individual states. It also recognized that interest levels in the case of FHA and VA loans are confined within certain limits by federal regulations. I think that we may expect in coming years, as the function of the secondary market becomes more widely understood, an emergence of greater uniformity of laws governing interest rates, as has occurred with respect to other areas of commerce.

In the early stages of the rising interest rate market, as problems with usury restrictions became severe, FNMA assessed the situation and established policy guidelines under

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William J. McAuliffe, Jr., Executive Vice President
American Land Title Association

Consumerism Comes of Age

(Editor's note: This article is adapted from a talk presented at the 1971 ALTA Mid-Winter Conference)

* * *

Americans in record numbers have —in recent years—become extremely dissatisfied with the quality and price of many goods and services in this nation. Their unhappiness—and their clamor for government to do something about the problem—have thrust us into what has been described as a consumer revolution.

Government, in turn is responding to the consumer outcry with actual and proposed measures of sweeping magnitude. This governmental reaction has cast the nation into an era of rapid change. Much of the change is coming at the federal level—and a good deal of this concerns the land title profession. The scope and significance of current federal activity makes it most important that you—as ALTA members—be aware of proposed federal legislation and rules, and that you make known your views to those responsible for effecting such change by reaching members of Congress and those in federal agencies.

In addition, your own American Land Title Association can be an effective vehicle for you to use for this purpose.

The rapid changes of consumerism parallel and sometimes overlap the many dramatic developments that recently have emerged in the housing industry. And, needless to say, what is happening in the housing industry materially effects the land title profession.

Author McAuliffe

Experts tell us that our population, which is now a little over 200 million, will approach 300 million by the year 2000. They say we need to build as many housing units in the next 30 years as we have built since the Pilgrams landed at Plymouth Rock.

In 1968, Congress placed the nation's housing requirements at an additional 2.6 million units annually for the next 10 years. This compares with our production rate of between 1.4 and 1.6 million dwelling units over the last several years.

In a speech in Michigan last December, HUD Secretary George Romney predicted that the decade ahead is going to see a revolution in housing construction unmatched since men came out of caves and started building dwellings with their hands.

Here are some of the things he said would happen. Industrialized housing will dominate the market; two-thirds of all housing production in the United States will be factory produced; labor costs will be reduced through direct government action, new labor legislation, and the switch to industrialized housing; financing costs will come down as industrialized housing is built in far less time than conventional housing; local governments will make significant changes in their property tax structures to help solve the problem of ever-increasing land costs; local building codes will be changed to permit nationally acceptable industralized housing in any locality regardless of local codes—and if state or local initiative is too slow in this area, there will be some type of federal action; and new materials will be introduced to overcome present shortages of lumber, copper and other conventional items.

Our ability to use industrialized housing techniques and to otherwise meet housing needs will be controlled to a large degree by housing costs and availability of mortgage funds. When we get into the area of costs for suitable housing that Americans can afford, we cross the boundary into consumerism. Today, we find that housing costs are part of the reason for consumer unrest and related governmental concern. As a result, construction costs, labor costs, and settlement costs are receiving a great

deal of attention at the federal level.

Let's reflect for a moment on what has happened to wages in the construction industry. Here are some of the facts which undoubtedly influenced President Nixon to suspend a provision of the Davis Bacon Act in order to hold down construction wage levels on federal projects.

For at least 20 years, both the average level and the annual rate of increase in the earnings of construction labor have exceeded the average levels and rates of increases in industry generally. Since 1947, average hourly earnings of construction workers have increased almost 2½ times, while those from manufacturing have risen 1¾ times. During 1969 and 1970, average hourly construction earnings increased 8 per cent and 9 per cent respectively, while average hourly earnings in manufacturing rose 6 per cent and 5 per cent in the same years. At the end of 1970, average construction earnings stood at $5.20 an hour, while average hourly earnings in manufacturing were at $3.35 an hour.

The latest figures available for actual hourly wage rates show that in the third quarter of 1970, first year wage settlements in the construction industry averaged 22 per cent compared with an average increase of 9 per cent in manufacturing. This increase came in spite of an 8 per cent unemployment rate in the construction industry for 1970, which compares with a 5 per cent unemployment rate for manufacturing.

In his address at the 1970 Annual Meeting of the Mortgage Bankers Association of America late last year, Secretary Romney strongly objected to the runaway increase in construction wage rates. He said this problem is illustrated by a 1970 Kansas City strike, where 22,000 construction workers were off the job for months. The entire metropolitan area was affected. During one period, the Kansas City strike cost the local economy $14 million a week. When a settlement finally was reached, laborers who were making $4.01 an hour received a raise of an additional $4.15 an hour spread over four years—or more than double the current rate. That will be enough by 1974 to gross for a laborer some $16,000 per year, an increase that far exceeds expected growth in productivity.

While labor has voiced strong disapproval of President Nixon's recent wage control action, the President on the other hand has received the wholehearted support of the National Association of Home Builders—who characterize the President's move as being a vital step in restraining excessive wage increases in the construction industry.

With developments like these, there's little wonder that the public and the federal government are disturbed about housing costs. With respect to settlement costs, Carl A. S. Coan, Staff Director, Senate Subcommittee on Housing and Urban Affairs, at the 1971 National Association of Home Builders Convention in Houston in January, stated that the Subcommittee has received complaints about closing costs which have "incensed" its members, and—as a result—the Subcommittee will investigate settlement costs this year and do something about them.

As you may recall, the Congress last year passed the Emergency Home Finance Act of 1970, which directs the Secretary of the Department of Housing and Urban Development and the Administrator of Veterans Affairs to make a joint study of settlement costs and recommend to Congress by July 24, 1971, legislative and administrative actions that should be taken to reduce these costs and standardize them for all geographic areas.

Pursuant to that directive, HUD and VA plan to study FHA and VA closings for the month of March, 1971. We are informed that they plan to collect settlement sheets from all over the country. Someone in Washington will have to interpret this data before it is fed to the computer. I anticipate that they will encounter many difficulties because of the lack of uniformity in settlement reports and local settlement practices.

To focus more on what federal study of settlement costs can mean to ALTA members, let's recall the charges made a few years ago by Senator Proxmire—and a little more recently by those connected with Senator Hart's Senate Subcommittee on Antitrust and Monopoly Legislation—concerning land title related settlement costs. In both cases, it was alleged that charges for land title services are much too high.

In addition to settlement costs, there are other matters of great concern to the land title profession—which have been accented by the consumer revolt arising from repeated overall failure to meet public expectations for goods and services.

An example is the Fair Credit Reporting Act, which President Nixon signed into law on October 26, 1970. The purpose of this consumerism-induced legislation is to require credit reporting agencies to issue fair, impartial and accurate credit reports on consumers. Under certain circumstances some information available through land title companies is subject to its provisions.

In late January of this year, proposed new mortgage lending forms of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation—to be used when Fannie Mae and Freddie Mac purchase conventional mortgages—were attacked by Ralph Nader, with concurrence from Senator Proxmire, as favoring the lender over the buyer. Nader charged that the forms as proposed would unjustifiably enrich lenders, fail to adequately protect the consumer, and run against current trends in consumer legislation.

Recently, Assembly Bill Number 201 was introduced in the Nevada legislature—and would require that explanatory material accompany insurance policies. The act provides in part as follows: "(1) Each policy issued for delivery in this state to an individual or group of individuals shall be accompanied by an explanatory folder, in type not smaller than 10-point, which shall contain: (a) A concise explanation in language understandable by a lay person of ordinary education of coverage provided; (b) A list of the money limits of each coverage; and (c) A statement in language similar to the explanation, of any exclusion from a coverage of any property or event which would fall within the common under-

standing of the name applied in the explanation to such coverage."

And, last week, the President himself further acknowledged the political potency of the consumer movement when he appointed Mrs. Knauer to head a consumer agency.

There's little doubt on what all this means to ALTA members.

No longer can one rely on the caveat emptor philosophy.

Nader and others have managed to make the subject of consumerism a very live issue.

We in the land title industry—a public service industry—must effectively cope with the consumer movement and what it brings from government.

To ignore consumerism sows the seeds of trouble.

ALTA already is responding to the challenge. Our public relations activities, for example, are designed to make the public more aware of not only land title matters—but of all the elements that are of importance in the transfer of land. In this manner, we perform an important public service. Later this morning, the ALTA Public Relations Committee will report on what it is doing in the area of consumerism. I am confident that you will be pleased.

In addition, the ALTA Executive Committee, Research Committee, Federal Legislative Action Committee, General Counsel and staff are actively involved in consumerism through continuing governmental liaison.

But each ALTA member, in his own community, also has a job to do where consumerism is concerned. He must be sure consumers—home buyers—are provided with adequate information about his services. Such information must bring an adequate home buyer understanding of the land title evidencing and title insurance coverage the buyer pays for; and this understanding must come before his real estate purchase is completed.

Certainly, ALTA must continue to work with government in the consumer area, develop educational materials, and inform the public about land title services.

But part of the effort must come from the local title company. So, cooperate with the builder, the Realtor, the attorney, and others in the market to improve the informing of the home buyer on matters relating to settlement and land title.

If the various disciplines of the real estate industry work together to better educate home buyers, we—and the public—will be the better for it.

Consumerism has indeed come of age in this era of rapid change. By recognizing its challenges—and meeting them at local, state, and national levels—members of this Association will greatly improve the chances of favorable solutions to consumer problems—solutions that are truly in the public interest. In doing so, we will preserve the time-honored integrity of a land title profession that has achieved its present excellence through determining its own destiny.

There is still time to prevail in this day of consumerism. How we use that time in the near future will mean much to the home buyer, to the real estate market, and to the legacy of our profession.

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report from ALTA Research Committee Chairman Jack Jensen in which he stated that the Committee and Mike Goodin of ALTA staff are continuing to develop closing costs data from selected cities—in order to obtain comparative data to that being collected by HUD and VA under provisions of the Emergency Home Finance Act of 1970. The Act calls for the Secretary of Housing and Urban Development and the Administrator of Veterans Affairs to standardize and study closing costs related to housing financed by federally guaranteed mortgages and to—by July 24, 1971—recommend to Congress legislative and administrative actions that should be taken to reduce closing costs and standardize these costs for all geographic areas.

—ALTA Public Relations Committee Chairman Randy Farmer reported to the Board on progress in production of a new 14-minute ALTA animated color sound film for national public service television distribution. The film will educate home buyers on land title protection and other important aspects of purchasing real estate. Plans are to have the film completed by late 1971; prints also will be available for purchase by ALTA members. It was also reported that, through the work of the Committee and Gary Garrity of ALTA staff, the Association is continuing its nationwide Public Relations Program this year with emphasis on home buyer education. During 1970, a home buyer education approach carried ALTA public relations messages to an audience of millions in all 50 states—through "free" public service air time and print space of media from coast to coast.

—ALTA Directory Rules Committee Chairman Al Julin advised the Board that the Committee has set a June 15 deadline for completion of its recommendations and revisions regarding rules—and that these then will be submitted to members of the Board for comment. The Board approved a Committee recommendation that, beginning in 1972, a flat $50.00 will be charged as dues for ALTA associate members including individual attorneys, law firms, counsel for supervised lending institutions, counsel for mortgage bankers, and counsel for life insurance companies.

—The Board directed the ALTA Standard Title Insurance Forms Committee to develop standard ALTA forms of endorsement for zoning coverage. Published elsehwere in this issue of *Title News* is the Mid-Winter report of Committee Chairman Dick Howlett.

—Bob Bates, chairman of the ALTA Liaison Committee with the Mortgage Bankers Association of America, reported to the Board that representatives of ALTA and MBA have held useful discussion on such subjects as closing costs, survey coverage in standard ALTA forms, a standard ALTA form of endorsement for zoning coverage, subordinate items in 1970 ALTA standard form policies, procedure in developing ALTA standard form policies, and

scheduling ALTA representatives as speakers at MBA functions.

—Ivan Peters, chairman of the ALTA Committee on Improvement of Land Title Records, advised the Board of his recommendation that Committee members be present at conferences of university professors on means to develop electronic data processing systems for recording titles to real property. He also commented on his activities as a member of the National Advisory Commission on Metric Conversion in the United States, reminding that the final report of the Advisory Commission will be submitted to the Secretary of Commerce in July for consideration in his presentation on the subject that will be made to Congress in August.

—The Board agreed that ALTA will incorporate as a non-profit corporation, and directed that steps be taken to accomplish such incorporation. An advantage set forth for incorporation of the Association is that ALTA officers will be protected from possible litigation.

—President Long advised the Board that the Executive Committee had agreed that, beginning in 1972, ALTA will pay for expenses of the Annual Convention Ice-Breaker reception—with host affiliated associations continuing to bear other Convention costs they previously have paid. President Long also reported that the Executive Committee has established the 1975 ALTA Annual Convention for October 1-4 at the Palmer House, Chicago, and the 1974 Mid-Winter Conference for March 6-8 at the Fairmont-Roosevelt in New Orleans.

There were, of course, many other impressive highlights. The opening Ice-Breaker upheld its tradition as a superb and enjoyable event. Well-attended meetings of the Abstracters and Title Insurance Agents Section, and the Title Insurance and Underwriters Section, featured excellent program activity that is reported on elsewhere in this issue of *Title News*. During the March 5 General Session, Public Relations Committee Chairman Farmer narrated an impressive 15-minute audio-visual report of the Committee—which included color slides and film clips, radio spots, and music—and which provided those present with an in-depth view of the effective ALTA Public Relations Program. Also on March 5, executives of affiliated associations met with ALTA staff for helpful discussion at a breakfast gathering.

In the leisure time category, a group of 233 boarded buses the evening March 4 for an "Old Mexico" tour to Tijuana—and more than 50 men and women turned out for a post-Conference golf tournament the afternoon of March 5. Mrs. Tom Clarkson of San Diego and ALTA Vice President John Warren turned in women's and men's low gross golf scores, respectively. And, the much-admired attractions of San Diego received ample attention from those attending the Mid-Winter.

As is traditional, the highly significant and enjoyable activity of the Conference seemed to conclude all too quickly. The growing land title industry role in national affairs was clearly evident. And it was obvious that future Mid-Winters and Annual Conventions will deal with matters of comparable importance to those noted at Coronado . . . which may be why many ALTA members left the 1971 Mid-Winter discussing plans for attending this fall's Convention in Detroit.

FANNIE MAE—Continued from page 15

which Fannie Mae could continue to purchase mortgages originated in states where the problem was acute. In most cases, there was little indication in the governing statutes or in the decisional law as to how discount points and similar charges imposed by lenders would be treated by the courts in passing on usury questions. The guidelines in most states established limitations with respect to the face amounts of interest on loans which would be purchased, based upon our interpretation of the applicable usury laws. In a few states, certain express representations were required to be made by our sellers as to the nature and amounts of any charges in addition to interest, made by the original lender.

FNMA, removed as it is from the original mortgage transactions and acting as a good faith purchaser in the secondary market pursuant to its Congressional mandate, is unquestionably a holder in due course in the absence of actual notice of usury in a particular case. As such, it should prevail against any party asserting usury as a defense, except in those jurisdictions where usury may be a good defense even against a holder in due course. However, in view of the magnitude and scope of our purchasing activities and the usual hazards presented in the event of litigation, it was necessary as a business precaution to obtain additional protection against claims of usury. Our duty of care in the purchase of mortgages, imposed by the Federal National Mortgage Association Charter Act, applies with even greater force to our purchase of conventional mortgages. It is quite clear, from the express terms of the Charter Act Amendment granting FNMA the authority to deal in conventionals, as confirmed by the background and history of this legislation, that Congress contemplated a cautious approach to FNMA's conventional mortgage operations. In the Senate Banking and Currency Committee's report it is stated that FNMA should avoid the purchase of high-risk mortgages and thus assure the continued integrity of FNMA's portfolio.

FNMA must directly rely upon its mortgage sellers for the assurance that the loans which we purchase, from whatever jurisdiction, are of the highest quality. The FNMA Selling Agreement and related contracts always have contained warranties sufficiently broad in scope to protect the corporation against any claim or defense of usury. The FNMA Conventional Selling Contract Supplement will contain warranties and representations of equal scope, including express warranty language that the mortgage purchased is not usurious.

The mortgage seller need not make such a warranty, however, if a title policy affording similar protection to FNMA is provided by the mortgage sellers.

It may be necessary to issue special

policy statements regarding FNMA purchases in some jurisdictions, especially where it has been clearly established that origination fees, discount points or other charges will be considered as interest or where such charges are expressly prohibited.

The law of one state in which FNMA does a considerable volume of business, Michigan has confronted us with our first special usury law problem under our conventional program. There the statute removes, until the end of 1971, all limitations upon interest rates, except the 25 per cent ceiling imposed by a seperate criminal statute. The law, however, forbids any charge, "in nature of a discount, point or similar system", for making a conventional loan secured by a single family dwelling. There is considerable doubt in Michigan as to what is meant by the term, "other systems", as used in the act, particularly with respect to bona fide commitment fees charged to a borrower prior to consummation of the loan transaction.

Charges prohibited by this act may not constitute usury in the technical sense, there being no present restriction upon interest, *per se*, which does not exceed 25 per cent. Therefore, we may ultimately require an additional representation from our Michigan sellers that no fees within the proscribed category were charged.

I am aware that there has been a trend within the title insurance industry over the past several years toward the elimination of usury protection from title policy coverage. It may be appropriate at this juncture for insurers to consider a reversal of this trend.

The title industry always has displayed an ability to fulfill the needs of business and the general public as those needs have developed. Once again, a need has arisen by those concerned with housing and other real estate, as high costs of borrowing have caused usury to become an item of major concern to purchasers of negotiable paper secured by real estate mortgages. I believe title insurers should give serious consideration to a resumption of this needed service, if it can be accomplished upon a sound acturarial basis. Protection against usury, as well as against violations of truth-in-lending legislation, which is also covered by specific warranty in the FNMA Conventional Selling Contract Supplement, are logical components of a title policy.

In closing, I thank you again for inviting me. I look forward to working with the title association in the exciting new developments that today are taking place in housing.

Report of the ALTA Standard Title Insurance Forms Committee

(Editor's note: This report was presented by ALTA Standard Title Insurance Forms Committee Chairman Dick Howlett during the Association's 1971 Mid-Winter Conference.)

* * *

Several years ago, the Association adopted procedural regulations affecting the work of the Standard Title Insurance Forms Committee, and as a way of keeping in touch with that Committee, required that we report at each Convention and Mid-Winter Conference. For the past several years, we have asked for some action by the Association which could cause each of us to destroy all existing policies and start over again. During the interval since our last convention, it has come to our attention that our Planning Committee proposes to suspend the Forms Committee for a minimum period of seven years. The message was understood, therefore this is a report, and we now report, the Committee has met, and met, and will meet again. We are considering many things—all will be thoroughly discussed, and at this time we call your attention to certain matters that you, too, should consider.

You will recall that prior to the adoption of the 1970 policies, our recommended insurance forms consisted of the insuring provisions, cover sheet, Schedules A and B, and Conditions and Stipulations. The approved Commitment to Insure referred to that policy and to those Schedules and the Conditions and Stipulations. In the new policies, we have designed a new format which added to the Schedules and Conditions and Stipulations a new section designated as Exclusions from Coverage. As a matter of format, the Committee recommends that when you reprint the ALTA Commitment to Insure, paragraph 3 of the Conditions and Stipulations be amended to add a reference to the Exclusions from Coverage. Phraseology for such amendment will be furnished through our ALTA national office with this report. Since this is merely a matter of format, the policy to be issued being definitely defined, no action need be taken by the Association.

The Association has formed a liaison committee with the Mortgage Bankers Association. We are working closely with that committee considering requests for changes of coverage meeting the needs of that industry. We will report to you in detail at the Convention the results of these deliberations. I mention this only to indicate to you that the mortgage bankers, our customers, are seeking standardization of those coverages which each of us is now affording—each in his own way—resulting in considerable confusion and doubt of what in fact is being afforded. We will attempt to recommend to you action that will meet this legitimate need.

The Committee has considered the provisions of the Fair Credit Reporting Act which becomes effective April 24, 1971, and we report these views:

> That the issuance of policies of title insurance, commitments to insure or binders, full reports of title and full abstracts of title in the normal course of business are not used or expected to be used in establishing the consumers' eligibility for credit, insur-

Continued on page 22

names in the news

Pioneer National Title Insurance Company, Los Angeles, has announced the election of **James O. Hickman** as a senior vice president. He is responsible for title insurance operations and related financial services in all southwestern and northwestern states.

Hickman currently is chairman of the ALTA Title Insurance and Underwriters Section, and has more than 25 years experience in title insurance, escrow, and related areas. Before recently joining PNTI, he served as executive vice president of midwestern operations for another major title underwriter and his offices were in Denver.

PNTI also has named **Richard Q. Scott** vice president and manager of Pima County-Arizona operations; **Jay Francis Mueller,** Florida manager, with headquarters in St. Petersburg; and **Louis C. Lomax,** business development representative in its Washington County (Ore.) operations.

* * *

Allan K. Ricketts has been elected president of Lauderdale Abstract and Title Company, Ft. Lauderdale, Fla.

* * *

Gerald L. Lawhun has been elected vice president and California state manager of Lawyers Title Insurance Corporation, with headquarters in Los Angeles. He replaces **Fred A. Ballin, Jr.,** who retired April 1.

Lawyers Title also has announced the election of **Carl E. Boggs** as manager of its Washington, D.C. national division office.

* * *

Robert B. Shackley, Jr., has been appointed manager of Lake Worth Title and Guaranty Company, Lake Worth, Fla., a recent acquisition of Chelsea Title and Guaranty Company. The Lake Worth acquisition

HICKMAN

RICKETTS

LAWHUN

BALLIN

BOGGS

SHACKLEY

ANDERSON

CLARK

STICK

LITTLETON

CHAMBLISS

KRAMER

brings to 22 the total of Chelsea Title offices in Florida.

* * *

Fidelity Title Insurance Company of Omaha, has announced the promotions of **Paul G. Anderson** and **K. Stanton Clark** to vice presidents, and of **Larry G. Stick** to assistant treasurer.

* * *

Southwest Title Insurance Co., Dallas, has announced the appointment of **Spencer Littleton** as manager of Southwest's new regional offices in Lafayette, Ind. The office will serve agents in Illinois, Indiana, Kentucky, Ohio, and West Virginia.

Gene Chambliss has assumed Littleton's former duties in Southwest's Dallas offices.

* * *

Frederick L. Kramer has been appointed manager—construction escrow and mechanics' lien coverage, in the Kansas City Title Division of Chicago Title Insurance Company.

* * *

Mrs. Jane De Freitas has joined Metropolitan Title Guaranty Company as an assistant secretary. Her responsibilities include management of the processing of all coinsurance matters, the handling of all reinsurance, interbranch liaison, and coordinating production details.

* * *

Commonwealth Land Title Insurance Company has announced the appointments of **Philip F. Blanch,** Hackensack, N.J., as title officer, and **Rudolph G. Weisenbach, Jr.,** Philadelphia, as auditor.

* * *

Sam W. Irby has been elected associate counsel for Title Insurance Company, Mobile, Ala.

* * *

Inter-County Title Guaranty and Mortgage Company has announced the appointment of **Frank K. Haley** as assistant vice president.

Roger B. Manley has been promoted to manager of the Title Insurance and Trust Company San Francisco County office. **William H. Mince** has been named to manage operations of TI's Santa Barbara (Calif.) County office.

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TICP Opens New Pennsylvania Agency

The Title Insurance Corporation of Pennsylvania has opened a new agency in Wayne, Pa., to serve the suburban Philadelphia area.

Staffing the agency—which is known as The Great Valley Abstract Company, Inc.—are William M. Parks and William W. Rice, III, who together have a 50-year background in land title work.

D. P. Kennedy Elected Chairman

In the April, 1971, *Title News,* it was erroneously stated in "names in the news" that D. P. Waddick has been elected chairman of the board of First American Title Company of San Francisco. D. P. Kennedy has been elected to this position with that San Francisco concern.

REPORT OF THE ALTA STANDARD TITLE INSURANCE FORMS COMMITTEE—Continued from page 20

ance, employment, or other purpose specified in the act and therefore are not within the purview of the act.

That certain specialized reports or other forms of title evidence might be so used and therefore would be within the purview of the act, and members of the Association should consult with their counsel for advice as to procedures to be followed in the issuance of such specialized title evidence.

The Committee is pleased with the acceptance of the new policies and is working towards their general use. If you are having any questions raised by any of your customer groups, please communicate with us so that we can be helpful in obtaining this acceptance.

Recommended paragraph 3 of Conditions and Stipulations of ALTA Commitment to Insure

3. Liability of the Company under this Commitment shall be only to the named proposed Insured and such parties included under the definition of Insured in the form of policy or policies committed for and only for actual loss incurred in reliance hereon in undertaking in good faith (a) to comply with the requirements hereof, or (b) to eliminate exceptions shown in Schedule B, or (c) to acquire or create the estate or interest or mortgage thereon covered by this Commitment. In no event shall such liability exceed the amount stated in Schedule A for the policy or policies committed for and such liability is subject to the insuring provisions, the Conditions and Stipulations, and the Exclusions from Coverage of the form of policy or policies committed for in favor of the proposed Insured which are hereby incorporated by reference and are made a part of this Commitment except as expressly modified herein.

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 Committee report. Chairman Osborn reports that 81 cases have been chosen from this number for the report. Other installments may be found in the December, 1970, February and April, 1971, issues of *Title News.*)

* * *

PLANNING AND ZONING

Frank Ansinni, Inc., vs. City of Cranston, 264 A. 2d 910 (R. I. 1970)

A regulation adopted by a city planning commission, which required the developers of residential plats to deed, voluntarily, at least 7 per cent of the land area to the city to be used for recreational purposes was held to be an invalid exercise of police power and therefore unconstitutional and void. A regulation requiring the voluntary donation for recreation purposes of such portion of the land to be developed as may be needed for such public use as will result from specifically and uniquely attributable to the particular development would be a valid exercise of police power. Requiring a donation of at least 7 per cent is clearly arbitrary on its face.

Wrentham v. Monson, 247 N. E. 2d 364 (Mass. 1969)

Town sought an injunction to close trailer and mobile home storage lot operating as a nonconforming use where use had antedated an ordinance forbidding trailer parks because the owners had never obtained a license from the local board of health.

Held: A valid nonconforming use is not destroyed by failure to comply with the local or state licensing provisions where the defect can be easily remedied.

Precise question not previously decided in the state.

Tate v. City of Malvern, 246 Ark. 316, 438 S. W. 2d 52 (1969)

Owner sought unsuccessfully to take property spot zoned from residential to business and primarily relied upon the desirability of putting the land to its most remunerative use.

Held: Where property sought to be rezoned commercial is surrounded by property zoned residential, which requires spot zoning, additional burden of proof is placed on the applicant to show that the character of the zoned area has become so changed that a modification is necessary to promote public health, morals, safety, and welfare. Mere economic gain to the owner of a comparatively small area is not sufficient cause to amend.

Case of first impression.

Piper v. Meredith, At. ___, (N.H. June, 1970)

Petition for a declaratory judgment that a town ordinance regulating building heights was invalid.

One of the plaintiffs bought property on Lake Winnipesaukee and leased it to another plaintiff for 99 years for the erection of nine-story condominiums. Shortly thereafter, a special town meeting was held, at which there was at least an expression of opinion or at most definitive action in the form of an ordinance limiting the height of buildings in the town to five stories or seventy-five feet in height, and within fifty feet of each other or within one hundred feet of any lake, to three stories or forty-five feet in height. A later special meeting adopted a warrant to the same effect. The statutory prerequisites for the adoption of a zoning ordinance were not met as to either meeting. In the meantime, the plaintiffs had unsuccessfully sought an injunction and had continued to spend money for various preliminaries to construction.

A master viewed the premises, heard the evidence, and recommended that the ordinance be declared invalid. The superior court approved the master's report and entered a decree accordingly. On exceptions to overruling of objections to the master's report and on exceptions to the decree, it was,

Held: (1) The ordinance was a valid exercise of the police power over "health, welfare and public safety," following cases approving ordinances establishing set-backs and "construction and location of buildings in a certain area," and aesthetic elements were legitimate factors in such exercise. (2) The plaintiffs, having been aware of the petition leading to the first town meeting and subsequent controversies, took a "calculated risk" in their spending and had not acquired a right to completion vested against the ordinance adopted after they took title and started to spend their money.

In view of some rumors in the New England area that the New Hampshire court "knocked out a condominium," it should be emphasized that the case did *not* involve any question concerning condominium law.

Judiciary Report
To Be Continued

meeting timetable

1971

June 4-5, 1971
South Dakota Title Association
Sioux Falls, South Dakota

June 5-8, 1971
Pennsylvania Land Title Association
Pocono Manor Inn
Pocono Manor, Pennsylvania

June 10-12, 1971
Land Title Association of Colorado
Ramada Inn
Pueblo, Colorado

June 23-25, 1971
Illinois Land Title Association
Drake Hotel
Chicago, Illinois

June 23-26, 1971
Michigan Land Title Association
Boyne Highlands
Harbor Springs, Michigan

June 24-26, 1971
Oregon Land Title Association
Bowman's Golf & Country Club
Wemme, Oregon

June 24-27, 1971
Wyoming Land Title Association
Idaho Land Title Association
Ponderosa Inn
Burley, Idaho

June 30-July 3, 1971
New York State Land Title Association
The Otesaga
Cooperstown, New York

July 8-10, 1971
New Jersey Land Title Association
Seaview Country Club
Absecon, New Jersey

August 12-14, 1971
Montana Land Title Association
Florence Hotel
Missoula, Montana

August 26-28, 1971
Minnesota Land Title Association
St. Paul Hilton
St. Paul, Minnesota

August 26-28, 1971
Nevada Land Title Association
CalNeva Lodge
Lake Tahoe, Nevada

September 15-17, 1971
Nebraska Title Association
Villager Motel
Lincoln, Nebraska

September 17-19, 1971
Missouri Land Title Association
Downtown Holiday Inn
Kansas City, Missouri

September 17-18, 1971
North Dakota Land Title Association
Tumbleweed Motel
Jamestown, North Dakota

September 17-18, 1971
Wisconsin Title Association
Racine Motor Inn
Racine, Wisconsin

September 23-25, 1971
Ohio Land Title Association
Sheraton-Columbus Motor Hotel
Columbus, Ohio

September 24-25, 1971
Kansas Land Title Association
Holiday Inn Towers
Kansas City, Kansas

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

October 24-26, 1971
Indiana Land Title Association
Indianapolis Hilton
Indianapolis, Indiana

October 28-30, 1971
Florida Land Title Association
Colonnades Beach Hotel
Palm Beach Shores, Singer Island, Florida

November 4-5, 1971
Dixie Land Title Association
Mobile, Alabama

December 1, 1971
Louisiana Title Association
Royal Orleans Hotel
New Orleans, Louisiana

1972

March 1-2-3, 1972
ALTA Mid-Winter Conference
Regency Hyatt House
Atlanta, Georgia

October 1-2-3-4, 1972
ALTA Annual Convention
Astroworld Complex
Houston, Texas

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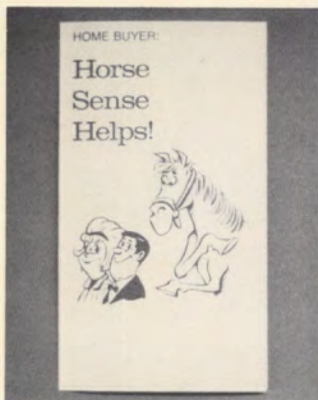

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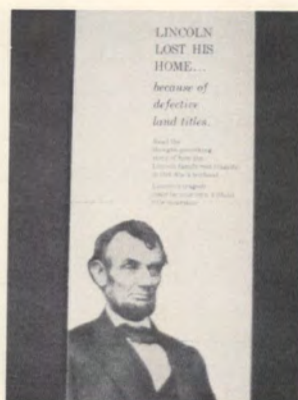
AMERICAN LAND TITLE ASSOCIATION ANSWERS SOME IMPORTANT QUESTIONS ABOUT THE TITLE TO YOUR HOME. Includes the story of the land title industry. $11.00 per 100 copies of the booklet.

HOW FHA HELPS THE HOME BUYER. This public education folder was developed in cooperation with FHA and basically explains FHA-insured mortgages and land title services. $5.50 per 100 copies.



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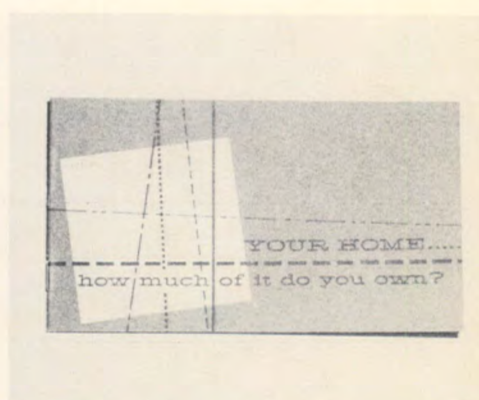

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(CENTER) PERSPECTIVE: AMERICA'S LAND TITLE INDUSTRY. A collection of six articles by experts that comprehensively explain the land title industry and its services. This attractive booklet is available at 35 cents per copy for 1-48 copies and 30 cents per copy for 49 or more copies. (RIGHT) THE AWARD-WINNING ALTA FILM, "A PLACE UNDER THE SUN." Eye-catching color animation and an excellent script bring the story of the land title industry and its services to life in this highly-praised 21-minute sound film. Prints may be obtained for $135.00 each.

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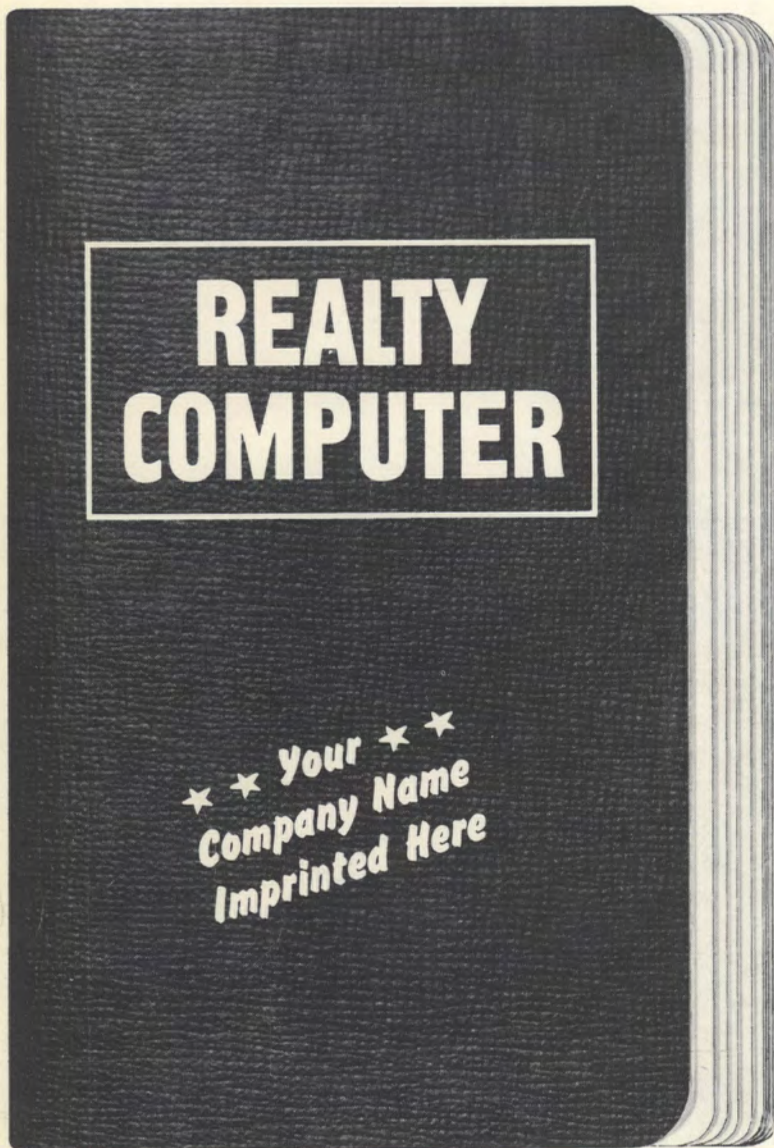

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