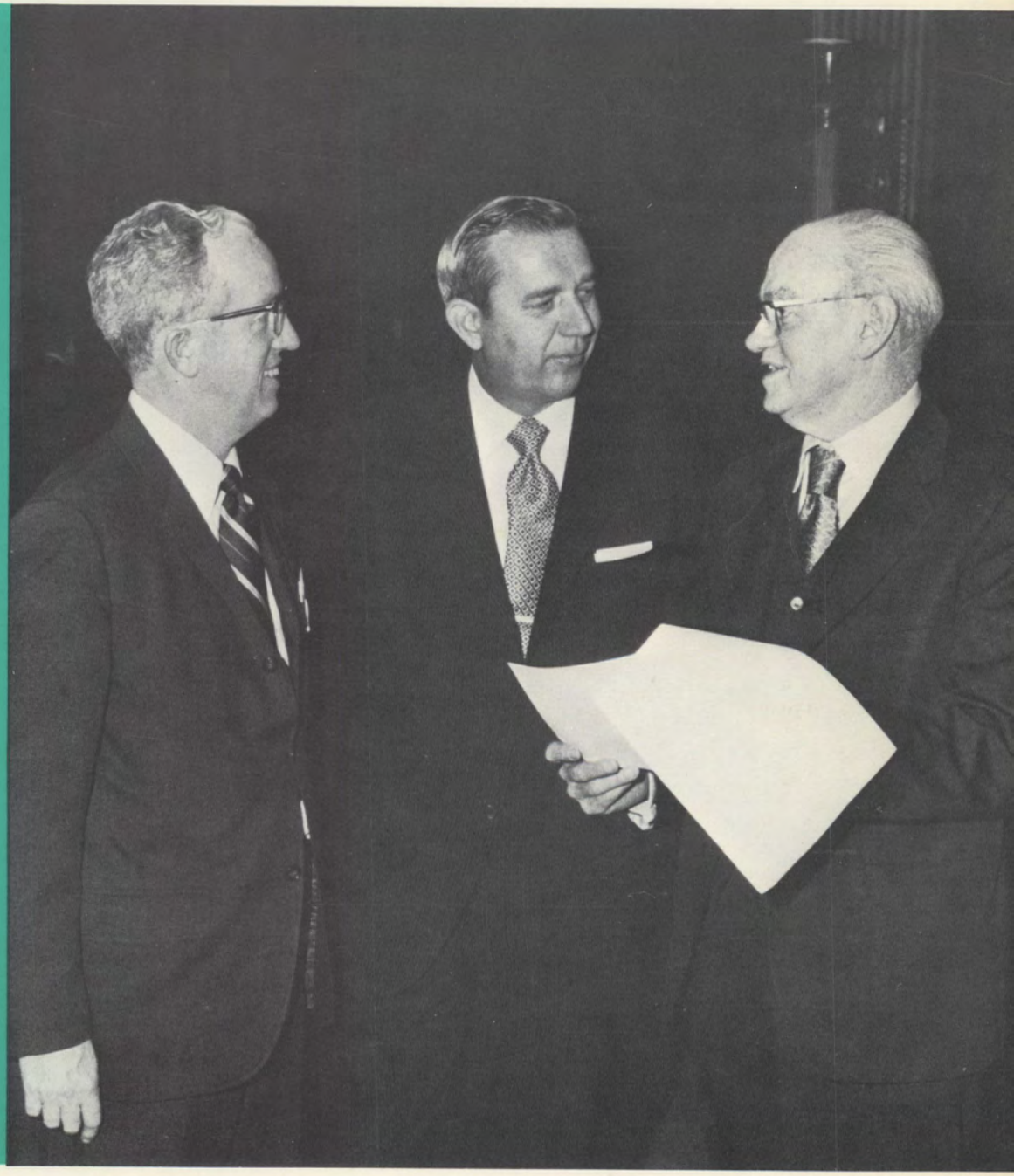
Title News

the official publication of the American Land Title Association



ALTA Presents
Testimony
To Congress

March, 1972

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

MARCH, 1972

History is the story of change; and with the swirl of of change around us and with the increasing unlikelihood of finding simple answers to the complex problems of the day, it might be well to pause for a moment and reflect upon our role in the society of man and our obligations, duties and functions as land title evidencers in these fluid times.

Perhaps this is a time to re-read the Code of Ethics of the American Land Title Association and to reconsider and rededicate ourselves to the high ethic of public service in our industry.

Public service is our business, and our business is to evidence titles to the end that they be easily alienable in the marketplace; and while we are entitled to a fair return for our experience, expertise, and investment, we should constantly strive to improve our services at less cost to the ultimate consumer.

Free and open private competition is the ultimate weapon to promote efficiency and reduce consumer costs to better serve the public in its need for safe and secure real estate ownership, which would also discourage an apparent trend toward governmental regulation.

Sincerely,

James A. Gray

James A. Gray

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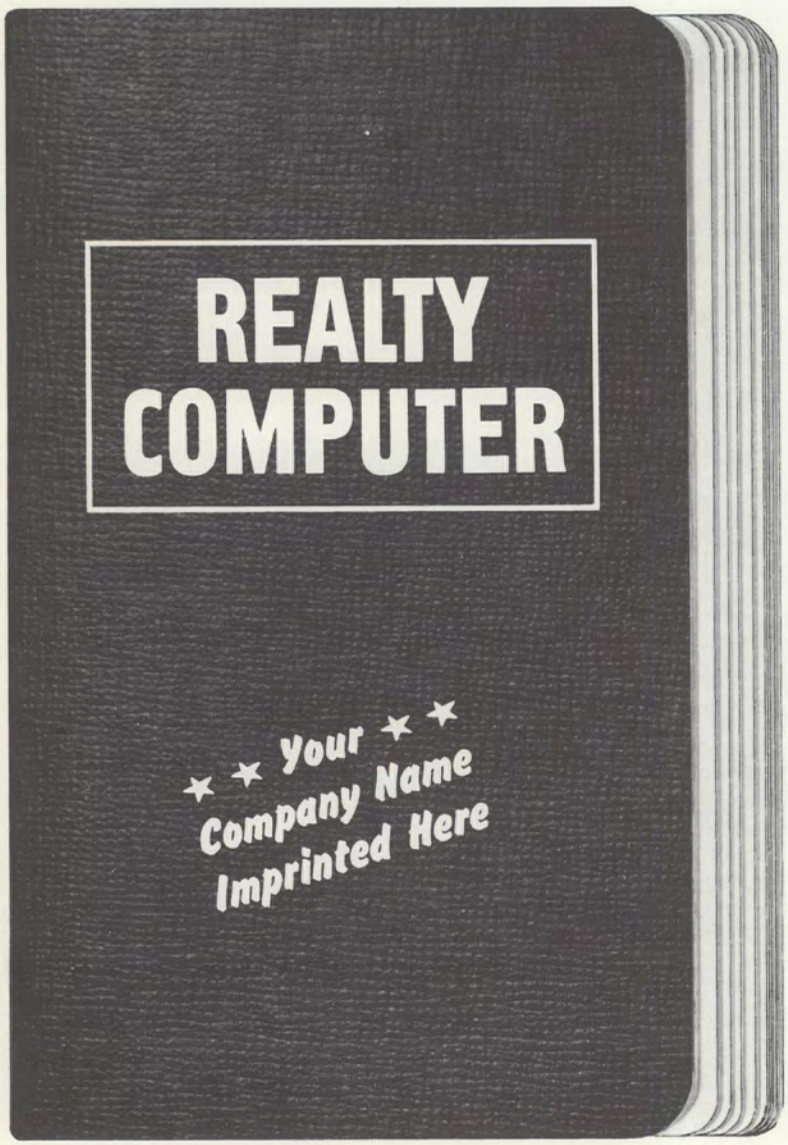

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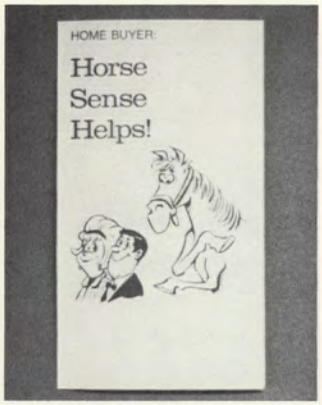

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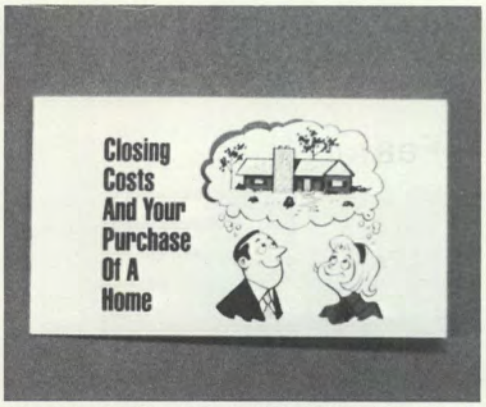

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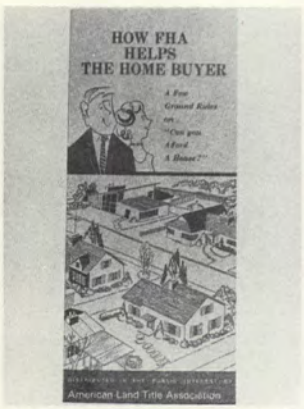

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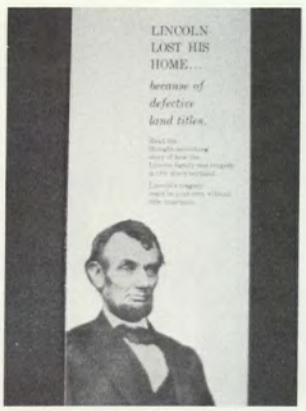

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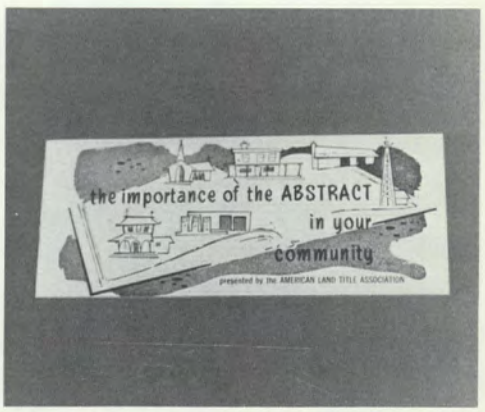

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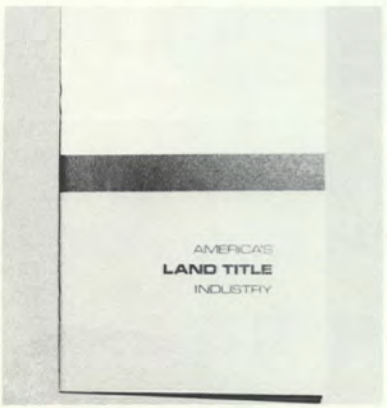

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Features

Departments

ON THE COVER: ALTA Immediate Past President Alvin W. Long, center, confers with ALTA Committee to Establish Liaison with the National Association of Insurance Commissioners Chairman J. Mack Tarpley, right, and Executive Vice President William J. McAuliffe, Jr., before testifying for ALTA at March 2 Washington hearings on closing costs and practices before the Senate Subcommittee on Housing and Urban Affairs. For details on this Congressional activity, please turn to page 4.

VOLUME 51, NUMBER 3, 1972

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GARY L. GARRITY, Editor, ELLEN KAMPINSKY, Assistant Editor

ALTA Testimony to Congress In Settlement Cost Hearings

(Editor's note: This ALTA statement was presented by Alvin W. Long, the Association's immediate past president and president of Chicago Title and Trust Company, at March 2, 1972, Senate Subcommittee on Housing and Urban Affairs hearings on settlement costs and practices. Related ALTA testimony was presented by Long at House Subcommittee on Housing hearings on settlement costs and practices February 24, 1972. The hearings were held in Washington, D.C.)

* * *

My name is Alvin W. Long, and I am immediate past president of the American Land Title Association. I am president of Chicago Title and Trust Company. I am here to present the statement of the Association on real estate closing services provided by the land title industry, and on related legislation now under consideration in the Senate. On behalf of the Association, Mr. Chairman, I thank you for the opportunity to present our views here today.

ALTA is a national association of approximately 2,000 companies that are in the business of providing title evidence. This evidence takes the form of title search, examination, and insuring to protect real estate investors including home buyers and mortgage lenders. ALTA members include small, independent abstracters and nearly all title insurers.

Members of ALTA view with deep concern the recent reports of abuses in closing practices and costs in a few areas of the nation. It is the recommendation of the Association that such abuses be corrected immediately in whatever area of the real estate industry they are found. We will assist in such correction in every way possible.

ALTA commends the current Congressional concern with closing costs to the home buyer, which has led to these hearings. The Association also commends the Congressional concern that led to the ordering of the recently-completed HUD-VA Settlement Cost Study under provisions of the Emergency Home Finance Act of 1970—and compliments those federal agencies on their handling of this difficult and demanding task.

After study of the HUD-VA final report, ALTA members are pleased to find that four of the report's recommendations are consistent with specific ALTA objectives determined earlier, that relate to charges for land title services. These HUD-VA recommendations are:

—HUD and VA requirement of a single uniform settlement statement for all of their insured or guaranteed transactions.

—HUD and VA requirement that buyers and sellers receive detailed estimates of probable individual settlement costs applicable to transactions.

ALTA points out, however, that such a requirement should not unduly delay closing in view of the home buyer's strong desire to move into a newly-acquired residence as soon as possible.

—HUD and VA recommendation of immediate state attention to the elimination of referral fees.

This Association long has been opposed to kickbacks. For example, the ALTA Model Title Insurance Code adopted eight years ago in an effort to achieve more effective state regulation, prohibits such referral fees in its Section 136. Similar prohibition is found in a Statement of Principles Relating to Real Estate Transactions that was drafted in 1969 by ALTA and American Bar Association Conferees of the National Conference of Lawyers and Title Insurance Companies and Abstracters.

—HUD and VA recommendation of stricter state regulation of title insurance rates and practices.

Further, ALTA supports most of the other recommendations of the HUD-VA study.

Before discussing our latest recommendations and related Senate legislation, however, I would like to offer

some comments that will provide a perspective on the land title industry.

ALTA membership includes less than 100 title insurers, along with almost 2,000 small title operations that mainly are owned by independent businessmen. Throughout the nation, these companies offer protection based on risk elimination before closing is completed so that home buyers, mortgage lenders, and other real estate investors have maximum assurance of good title before completing a transaction.

This emphasis on risk elimination is important to home buyers and other investors because it means the insured has the best possible chance of avoiding costly litigation, direct financial loss from claims, and actual loss of real estate itself due to land title hazards.

This system works, as is shown by a recent ALTA study that finds Association member insurers experiencing loss and loss adjustment expense averaging 4.2 per cent of operating income in the years 1968, 1969, and 1970. Such a low loss experience means that title companies are doing their work well, so home buyers and others can use and enjoy their real estate with peace of mind.

ALTA member concentration on risk elimination before insuring means that title companies must spend a great deal of time, money, and effort in maintaining the capability to search, examine, and insure land titles quickly and efficiently as required by the modern real estate marketplace.

The previously-mentioned ALTA study shows that Association member insurers spent an average of 84.9 per cent of operating income for operating expense in the years 1968, 1969, and 1970. These title insurers spent an average of 45.1 per cent of operating income for salaries, pensions, and other employee benefits over this three-year period. Studies by individual title companies have indicated that salaries in the land title industry are below those of banks and other financial institutions.

Through their emphasis on risk elimination before insuring, title insurers provide a service that differs greatly from casualty insurance. As

Alvin W. Long, second from right, ALTA immediate past president and witness for the Association, pauses before answering a question from Chairman John Sparkman of Alabama at March 2 hearings in Washington on closing costs and practices before the Senate Subcommittee on Housing and Urban Affairs. Appearing with Long, who presented the ALTA statement at the hearings, are, from right, ALTA Executive Vice President William J. McAuliffe, Jr., and ALTA Committee to Establish Liaison with the National Association of Insurance Commissioners Chairman J. Mack Tarpley. Bruce H. Zeiser, who testified at the same time but as president of the New England Land Title Association, is at left. Long presented related ALTA testimony at hearings on closing costs and practices before the House Subcommittee on Housing in Washington February 24.

mentioned earlier, title insurance losses are low because most land title problems are brought to light so they can be resolved before a closing is completed. A title insurance premium is paid only once by the insured, and this is at closing. There are no annual renewals as in casualty insurance. And, because of their concentration on risk elimination before insuring, title insurers realize a relatively modest pre-tax operating profit.

In the previously-mentioned ALTA study, ALTA member underwriters realized pre-tax operating profits averaging 6.7 per cent of gross operating income in 1970, compared to 13 per cent in both 1969 and 1968. As a measure of comparison, here are some other pre-tax profit margins for 1970: 14.2 per cent for 425 industrial companies, 57.7 per cent for finance companies, 20.9 per cent for small loan companies, and 11.4 per cent for surety companies.

Consumer protection is generally regarded as a new phenomenon but title insurance was created in Philadelphia in 1876, in response to a direct consumer protection need. A real estate buyer was advised by his lawyer that a judgment existing at time of purchase was not a valid lien. Later the lien was upheld in court. The buyer lost his investment. Subsequently, the Pennsylvania Supreme Court ruled the loss occurred without negligence on anyone's part. A group of interested individuals then decided something should be done to protect home buyers and mortgage lenders against this and other types of land title hazards, which led to formation of the first title insurance company. Similar occurrences through the years have helped produce a greater demand for title insurance protection.

Vast differences exist in the real estate laws in various states. By focusing their operations at the county level, title companies are able to accommodate local consumer needs in accordance with state law and custom, and make safe, expeditious land transfers possible. When a national lender is providing the financing, a land transfer is accomplished efficiently by obtaining title evidence from a local title company—even though lender personnel may not be familiar with local laws and procedures.

Not many years ago, it was difficult to obtain a home mortgage in many parts of the nation without having a down payment of substan-

tial size. The movement of lenders and other financial institutions into the national mortgage market is one of the major reasons this situation has significantly improved so that the home buyer today can purchase real estate with relative ease. Title insurance has made it possible for this improved home buyer market situation to develop far more quickly than otherwise would have been the case.

Most lenders now require title insurance to protect their investments in homes and other real estate. With the advent of a secondary market for conventional mortgages, title insurance has taken on even greater importance in assuring the marketability of mortgages. Title insurance helps to keep the supply of mortgage money at a desirable level for home buyers and other investors—besides offering home buyers and other borrowers security for their real estate investments.

Title companies see that up-to-date searches are made of separately located public records for matters affecting real estate ownership. They see that an expert examination is made of evidence from the public records, and arrange for title insurance to be issued on the basis of this evidence.

Offices in which searching of public records typically takes place include those of recorders or registers of deeds, clerks of state and federal courts, and of municipal and other county officials. Records searched include recorded documents and also judgments entered in the various courts, other liens, general taxes, street and sewer system assessments, and other special taxes and levies.

In some locations, title companies maintain their own plants based on up-to-date and highly efficient compilation of evidence from these diversely located public records. This makes it possible for lenders, home buyers, and other investors to be served with utmost speed and accuracy—particularly in areas where public records are voluminous and difficult to search. These title plants include up-to-date information on each parcel of real estate in the geographic areas they cover, normally one county, whether an order for title protection ever is received on a particular property or not.

In other locations, title examinations are made directly from the public records.

Experienced title company personnel provide a wealth of expertise regarding real estate transactions. Through searching and examination, matters of record that adversely affect titles are brought to light before transactions are completed. It normally is possible for most matters of this type to be resolved so that closing can proceed. Examples of such record defects are unsatisfied mortgages, judgments against real estate, and unpaid taxes and special assessments. Title insurance also protects against loss due to defects including those even the most thorough search cannot reveal, called hidden defects. Examples of hidden defects are forged documents, claims by previously undisclosed heirs and spouses, and mistakes in the records.

Title insurance pays for a defense against an attack on a title as insured and pays valid claims.

It is not generally understood that there are two basic types of title insurance. One is owner's title insurance, usually written in the amount of the real estate purchase price, the coverage of which lasts as long as the insured or his heirs has an insured interest in the real estate. Owner's title insurance coverage extends protection after the insured has sold his interest in the property concerned. The other type is lender's title insurance in the amount of the mortgage, for which liability diminishes as the loan is paid off. The two types involve different risk and underwriting practices, and therefore usually are sold at different rates when sold separately. In cases in which both an owner's and a lender's policy are issued simultaneously on the same transaction, the total cost is substantially less than the aggregate cost of an owner's policy and lender's policy issued separately at scheduled rates.

It should be pointed out that title company charges represent a small part of the costs that appear on settlement sheets of real estate sellers and buyers at closings. This is brought out in a November, 1970, ALTA study of 1,400 real estate settlements for single family residences in 15 metropolitan areas, which shows total combined buyer and seller land title and escrow settlement cost averages ranging from 5.24 to 15.85 per cent of selling price. In this same study, combined buyer and seller land title and escrow settlement cost averages range from only .74 to 1.66 per cent of selling price. Areas covered in the study include Philadelphia, Chicago, Detroit, Phoenix, Pittsburgh, Los Angeles, Houston, Miami, Indianapolis, Las Vegas, Cleveland, San Antonio, Milwaukee, Minneapolis-St. Paul, and Warren, Ohio.

The aforementioned ALTA figures compare favorably with the findings in the recent HUD-VA study of settlement costs. HUD and VA report that settlement costs as a per cent of sales price range from 6.08 per cent to 14.40 per cent and that title costs range from 0.32 per cent to 2.24 per cent. (See page 76, HUD-VA *Report on Mortgage Settlement Costs*, January, 1972.)

ALTA supports the Congressional objective of lowering the settlement costs for buyers of one to four-family homes, and favors doing this by effective state regulation. In the event of ineffective state regulation after states are given an opportunity to meet any appropriate federal standards for closing costs, ALTA would support federal regulation. In such state or federal regulation, ALTA would support a limitation on the share of charges for land title services to be paid by the home buyer.

It is our finding that effective regulation of land title services by the individual states is more responsive to the variations that exist in the laws and procedures of the various states. This Association developed its previously-mentioned Model Title Insurance Code to help with effective state

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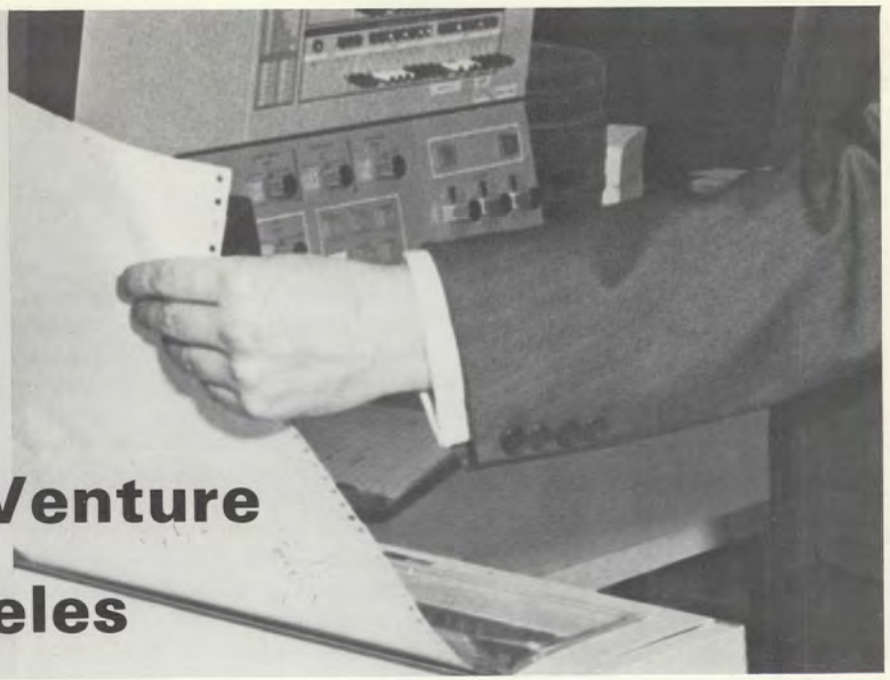


Joint Plant Profitable Venture In Los Angeles

William McCreary, President
Southern California Division
Chicago Title Insurance Company

(Editor's note: This article is adapted from a talk presented at the 1971 New York State Land Title Association Convention.)

* * *

In Los Angeles, work is under way on what is, or what may be, the most sophisticated joint-plant operation in the country.

Before I go further, you should know that I'm really not a joint plant expert. I'm just an operations officer, who tries to increase the net profit in any way that I can.

And everyone knows, I think, that there are about three ways that you increase net profit. One is to increase gross income, and increasing gross income is becoming more and more difficult. The next way to increase net profit is to reduce expenses, and anybody who's a manager knows about reducing expenses. The third is to get a price increase, and you might as well forget about the price increase because by the time that you get it, you need another one.

Now I'm here to tell you that at least for our particular area of the country, the joint-plant, including a starter exchange, can get all of this done for you in one fell swoop. At least it's worked that way for us.

I don't presume to tell you what to do. But I think, however, that sometimes, and, I find this is true from my own personal experience, you get in a position where you live only in your own little world. You don't look outside. You see just what you've always seen. You learn to live with what you have, without ever looking anywhere else for any new ideas from anybody else.

I acted this way for a long time. There was a long period in my growth when I believed that there wasn't anybody anywhere in the country who could tell the California title insurers anything about title insurance, or how to operate a title company.

I've traveled a bit more in recent years, though, and I've gotten attitudes and ideas from others that are very useful. I find that if you just view what you see with an open mind, and attempt to utilize what's being done someplace else in your own area, it may be worth your while. I must hasten to add that it isn't everything I see someplace else that will work in our area.

And it won't be everything that you see someplace else that will work in your area, either. But at least take a look at it to see if it won't.

I think probably the best thing that I can do for you is to give you the story of what has happened with regard to our plant in southern California and let you compare your situation with ours.

Now I'd like to tell you that this operation in southern California came about as a result of somebody's grand plan. And I'd like specifically to be able to tell you that it was a result of my grand plan. But I just can't do that. I must confess that it just happened. It was a matter of one step following another and the current result is a beautiful thing.

When we first started in Los Angeles something over 10 years ago, the attitudes of the title company officers were substantially different from what they are at the present time. You very nearly measured the competence of a

title company by the kind of title plant that it had.

If you had a gold-plated, elaborate title plant, and I had something less, then your company was better than mine. That was the thinking that permeated the entire industry.

When we began, we knew that a title plant was very expensive, especially in Los Angeles. We felt, however, that if you couldn't search from the public records then the law would have to be different from what it is. There isn't any rule or any law that says that a purchaser of property has to buy title insurance. All that purchaser has to do to protect himself is to examine his title in the recorder's office and the recorder is required to keep a chain of title and other records in such condition that a title can be examined from a search in his office.

As a consequence, why couldn't we, as a title company, do exactly the same thing?

Well, we found after we were in business for some time that there was a reason that we couldn't. You can do it for a lesser amount of business but once you reach a particular volume, you begin to have to hire people in direct proportion to the number of orders that you take.

And very soon you have people walking on each other's toes. In our area we found that our breaking point was something like 300 orders a month. You average about 300 orders a month and very soon you're adding one person for every two title orders, and soon they begin pushing each other out of the way to get their examinations done. And so you find you must have some help.

Our recorder's office is set up essentially like others around the nation. There are several different areas to search. There is first the chain of title. Then you must search the federal courts for the bankruptcies that have to be examined in addition to the chain of title. There are releases of mortgages and that kind of thing that have to be searched separately. There is a federal tax lien index that must be searched separately. There are also superior court indices and that kind of thing that must be searched separately.

So, we decided, "Why not get rid of the search for all this peripheral material?" I consider everything other than chain of title peripheral material. The important search is the chain of title. So we picked up all of that fringe type material, which took it out of the search; this was all put into the title plant.

Incidentally, we began to build this title plant by putting holes in cards, using the IBM tab cards. We did it that way because we felt that once you put the holes in the cards, people can quit handling them—machines can take over. You must also remember that IBM didn't have the sophisticated equipment then that they do at the present time, but at that time we felt it was better than anything else currently available.

There are many ways to build a title plant—but you know that. After we started putting the holes in cards, there were a couple of other companies that had started in business near the same time we did and they started to do the same thing. They punched holes in some cards too, and so we started to thinking that if they were putting holes in cards in the same fashion, why not just put holes in half the cards and they'll put holes in the other half, and we'll run them through a reproducer to duplicate each half then exchange and we'd each have the whole.

That worked well, at least for a while. We did it that way for two or three years. Soon then we had all of that peripheral material picked up and we were current on it. At that point we decided that our business was increasing and it would be helpful if we began to pick up the entire chain of title, and so we began to take everything on.

Then two other companies indicated that they wanted to join with us and after much soul searching we said, "Fine, we'd like to have a couple of partners to share expenses." We first, however, fell into the same trap that all the old-line companies fall into.

We thought: "It's all ours and maybe we're going to keep them out of business if we don't share, maybe we're going to do bad things to them if we don't let them have any part of this gold-plated plant."

But you're not going to keep them out of business. You might as well forget that. People are ingenious. People have the ability to succeed no matter what obstacles you put in the way. Somehow they're going to get the job done.

You must remember that the title insurance business is still a matter of people and service, title plants are just tools. They're tools to make it easier for you, that's all. Tools to make it easier for you to sell title insurance.

You should know that we have five companies in our joint plant right now. All five of those companies have absolutely the same information furnished to them. The title plant is totally available to every one of them in the same fashion as it is to each other.

Yet the service furnished by each of those five companies is extremely different. There are companies who give better service than we do and we give better service than some other companies.

And we use the plant for different reasons than other people do. We are high on customer service. We want to furnish the real estate broker and the escrow company and the lending officer all the customer service he needs. Other people don't think that's a very good idea. They have other uses for it that we don't think are so good! And so we use it for what we think is best, they use it for what they think is best.

At any rate, when this thing got into operation we fell into the same old trap. We thought: "We have this gold-plated plant and we're not going to share it with anybody"—and we forgot that the important thing in this scheme of things, the important objective is money. Net income is what it's all about.

And we finally shook each other a bit and said to ourselves: "Now just a moment, let's get back on the track here. Remember what it's all about."

So we did get back on the track, and at about that time IBM developed their Series 360 computer with data cells. We decided that would be a nice device for us to use, because then we'd take our cards and put them in the computer and the computer would do

Continued on page 13

Part II: 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 82 cases have been chosen for the report. The first installment may be found in the February, 1972 issue of *Title News*.)

* * *

IMPROVEMENTS

Carter v. Long, 455 S. W. 2d 812 (Tex. 1970)

Carter leased to Long for ten years 7,500 acres of land for hunting, fishing, and recreational purposes, with certain requirements of improving the property for a club with members, the income from which Carter was to share with Long. Long assigned his lease to Wyche with Carter's approval. The improvements were not made as agreed upon, the members were not obtained, and Long was arrested for liquor violations, thereby closing up the club-house. Carter filed forcible detainer proceedings against Long and Wyche, alleging breach of the lease agreement as a result of liquor violations. Carter then sued Long and Wyche for the balance due on the lease, and Long cross filed against Carter for the value of the improvements made by Long and Wyche on the property.

Held: Carter elected his remedy when he brought his forcible detainer suit. That effectively terminated the lease held by Long and Wyche. Therefore, Carter could not obtain damages for future lease rentals. Long and Wyche violated the lease agreement as a result of the liquor violation and, therefore, could not recover from Carter for the value of their improvements.

Forcible detainer suit will effectively terminate a lease agreement, thereby eliminating any future damages under the lease.

Weaver v. American Oil Co., 261 N. E. 2d 99, amended, 263 N. E. 2d 663 (Ind. 1970.)

Each year from 1957 through 1961, lessee entered into a one-year lease with oil company to operate a gasoline station. Each lease contained an exculpatory clause which in essence provided that the lessor, its agents and employees would not be liable for any loss, damage, injury or other casualty caused to the person or property of anyone, including the lessee. A repairman for the lessor demonstrated certain equipment after its repair, and gas was sprayed on the lessee which ignited and burned lessee. Lessee sued lessor, which raised the defense of the exculpatory clause.

Held: When contract imposes upon weaker party a considerable burden, such as that imposed by an exculpatory clause, such terms will only be enforceable where it appears that the party who assumed the burden was aware of such terms and their implications. Where there is a patent disparity of bargaining positions between the parties, it is rebuttably presumed that there was not the requisite notice or understanding. Since there was no evidence to indicate that lessee was aware of the clause or its implications, the presumption remains unrebutted and the exculpatory clause was not enforceable.

Union Camp Corporation v. Youmans, 227 Ga. 686, 182 S. E. 2d 468 (1971)

Confronted with the mounting losses from the management of the estate of her six-year-old daughter and ward, which estate consisted of approximately 1650 acres of land, the mother, as guardian, petitioned the superior court for permission to grant a lease of 66 years and an option to purchase the land to a paper company. She set forth in detail in her petition the reasons for the

Continued on page 14

names in the news

Stanton S. Roller, president of USLife Title Insurance Company of New York (formerly Inter-County Title Guaranty and Mortgage Company), and ALTA Board of Governors member, has been named a director of USLife Title Insurance Company of Dallas (formerly Dallas Title and Guaranty Company).

Robert Dorociak, executive vice president and chief executive officer of USLife of Dallas has been named to the board of directors of USLife of New York.

Further promotions by USLife of New York include **Vincent Pillitteri,** former Inter-County vice president and Bronx office manager, to regional vice president in charge of the Bronx, Staten Island and Manhattan offices; and **Fred R. Dillman,** former Inter-County vice president and Nassau county office manager, to regional vice president for Long Island. He will supervise work of the Floral Park, Riverhead, Jamaica and Brooklyn offices. **Donald J. D'Amato,** former assistant vice president and assistant office manager at Floral Park, has been named vice president and succeeds Dillman as Nassau county manager.

New positions have also been announced by USLife in connection with the opening of a new office in Stamford, Conn. **Charles A. Mucci,** vice president in charge of the national division, will supervise the office, with **Mrs. Marie Brennan** of Stamford as administrative assistant.

* * *

John R. Henderson has been promoted vice president and general manager of Black Hawk County Abstract Company.

C. L. "Chuck" Potts, Security Title Insurance Company's sales representative for the South Bay (Calif.) area, has been appointed sales manager of the Orange County operation, with headquarters in Santa Ana.

* * *

George A. Wilkinson, Jr., has joined the staff of **Hubert K. Arnold,** Hyattsville, Md., as a partner, changing the firm's name to Arnold and Wilkinson. **Thomas E. Walker** and **Tyler G. Webb** have also joined the firm.

* * *

Lawyers Title Insurance Corporation has elected two new state managers: **Bruce H. Zeiser,** Boston office manager and president of the New England Land Title Association, for Massachusetts; and **David S. Mellichamp,** Columbia, S.C., office manager, for South Carolina.

At the Florida state office in Winter Haven, state manager **James H. McKillop II** has been elected vice president; and **Ronald I. Davis,** state sales manager, elected assistant vice president—sales. McKillop is also chairman of the ALTA Uniform Probate Code Committee, and Florida Land Title Association zone vice president.

Two new state counsels have also been elected: **Woodrow W. Bledsoe,** former assistant branch counsel, Atlanta; and **Frederick B. Price,** Washington, D.C., for Maryland and D.C. **Patrick J. Egan,** Detroit, former branch counsel, was elected assistant state counsel.

The following senior title attorneys have been elected assistant branch counsel: **Ronald D. Feldman,** Pontiac (Mich.); **Cyrus Leland,** Washington, D.C.; and **Robert S. Olivier,** Detroit.

Nelson G. Harris has been elected president of Industrial Valley Title Insurance Company, succeeding **Richard W. Havens** who was elected chairman of the board. Harris is president of


PILLITTERI


DILLMAN


D'AMATO


HENDERSON


POTTS


ZEISER


MELLICHAMP


McKILLOP


DAVIS


BLEDSOE

Central Valley Company, Inc., an affiliate of Industrial Valley Bank and Trust Company, of which Havens is president.

* * *

PRICE

EGAN

FELDMAN

LELAND

OLIVIER

MAGIONCALDA

VITOLO

HOOVER

ECKER

JENKINS

Northeastern Title Guaranty Corporation has named **Walter Krinsky** vice president, with responsibility for statewide expansion of the corporation. Krinsky, of Woodmere, Long Island, has been president of his own real estate and investment firm, Walter Krinsky Associates, and vice president of a chain of retail stores.

* * *

American Title Insurance Company has announced two promotions: **Albert J. Magioncalda,** continuing as division chief counsel, to division senior vice president of the guaranteed title division; and **Ralph G. Vitolo,** former division assistant vice president, to division vice president.

* * *

Southwest Title Insurance Co. has named **Payson Hoover** regional manager for its new southeast regional office in Decatur, Ga. The operation covers Mississippi, Alabama, Georgia, South Carolina and Tennessee.

Southwest has also announced that **Milton Ecker,** former counsel for National Homes Acceptance Corporation, has joined the staff as vice president and national counsel.

* * *

Several promotions have been announced by Commonwealth Land Title Insurance Company. **LeRoy F. King,** of the Philadelphia headquarters accounting department, has been named senior vice president while continuing as assistant treasurer. **Robert M. Schwartz** has been named vice president and placed in charge of the claims department.

Three newly-elected assistant vice presidents are: **Louis A. Cicales,** Philadelphia headquarters, also named associate counsel; **Thomas B. White,** Philadelphia title plant; and **Robert L. Sweeney,** West Chester (Pa.) office and title plant.

Stephen M. Jenkins, of the Philadelphia headquarters business development department, has been promoted assistant title officer.

ALTA TESTIMONY—Continued from page 6

regulation of the land title industry. We are ready to work with federal and state legislative and regulatory interests to update this code and otherwise assist in improving regulation of our industry.

Since the regulation of land title services as closing cost items is inherent in the current Congressional consideration of settlement costs, I now offer the views of ALTA on the two related legislative measures now before the Senate, Senator Proxmire's amendment to Section 701 of the Emergency Home Finance Act of 1970, and S. 2775.

ALTA would support promulgation of HUD standards for settlement costs.

With respect to Section 701 of the Emergency Home Finance Act of 1970 and Senator Proxmire's amendment thereto, the Association needs answers to the following related questions:

(a) Whether or not the Administrative Procedures Act will be applicable to such rule-making processes as the Secretary of HUD will apply, including the right of the land title industry to receive notice of and be heard upon proposed standards in advance of their adoption;

(b) Whether standards as to specific amounts with respect to closing costs if intended to, will in fact, constitute federal title insurance rate making; whether such standards would acknowledge the continued applicability of the McCarran-Ferguson Act, 15 U.S.C.A., Sections 1012-1014, to the business of title insurance; and, if so, whether such rate making would occur under circumstances which would exempt the land title industry from the provisions of state and federal anti-trust laws;

(c) Whether standards would apply to transactions other than those in which mortgages are involved;
(d) Whether federal standards would govern exclusively, or would serve as a norm applicable as regulation only in cases of state regulation that would not meet the federal standards.

Turning now to S. 2775, ALTA is opposed to this bill because it is not in the best interests of the home buyer. Shifting closing costs to the lender as the bill provides in the opinion of ALTA would not necessarily have an adverse effect on the land title industry. But, any closing costs shifted to the lender as this bill provides most certainly would be passed back to the buyer through higher interest rates or additional loan "points", which are not as identifiable to the home buyer as closing costs are when itemized on settlement sheets. In addition, such higher rates by lenders could exceed the limitations set by state usury laws.

Shifting such closing costs to the lender would increase the buyer's overall closing cost burden in locales where the seller now pays part of the closing costs. If lenders were required to absorb closing costs now paid by buyers and sellers, the result could well be a diminished supply of mortgage money as some lenders left the market. And, S. 2775 attempts to effect control of one regulated industry—the land title business—by another regulated industry, mortgage lending, which in the ALTA view would be a totally improper and ineffective source of regulatory power.

It is the ALTA conclusion that S. 2775 is based on a premise that price discrimination exists for comparable title services between the buyer and the lender, but ignores completely a valid precept of the insurance business that the greater subject of risk shall bear the higher charge.

Under the existing laws relating to real estate and conveyancing, the insuring of the ownership of a fee simple title requires different underwriting and risk assumption judgments and documentation than the insuring of the validity and priority of the lien of a mortgage. The two estates are substantially different in quantity, and, usually different in insurable value. Certain title defects which could result in an immediate loss under an owner's title policy could conceivably be of no concern to the insured lender so long as the defect did not, in the lender's judgment, affect the quantity and quality of the security for the loan.

The coverage of lender's title insurance is terminable, lasting only as long as there is outstanding indebtedness and the amount of liability decreases as the morgtage is paid off, while the coverage and amount of liability of owner's title insurance lasts as long as the owner or his heirs have an insured interest in the real estate concerned.

The enactment of S. 2775 as introduced could well result in the costs of title insurance to the public being increased.

ALTA believes the recently announced HUD program to regulate settlement costs would accomplish the objectives of S. 2775.

In this statement, ALTA has placed much emphasis on the importance of encouraging effective state regulation because this form of regulation can be most responsive to specific local needs and problems. With the wide variation that exists in state laws and in local land transfer practices across the nation, regulation by a single state can be more workable than attempting to regulate on a national basis. Two excellent examples of states that have effective regulation are Oregon and Texas.

In Oregon, regulation is by the state insurance commissioner, who consults with a rating bureau of title insurers. Typical home buying transactions find the seller paying for the buyer's owner title insurance upon simultaneous issue, with the buyer paying an additional $25.00 for lender title insurance. Buyer and seller typically split the escrow fee. In Oregon, search, examination, and insurance are regulated. Kickbacks are prohibited. Effective January 1, 1973, escrow practices of title insurance agents will be regulated and licensed by the state.

In Texas, regulation is by a three-man insurance board, of which the state insurance commissioner is a member. Typical home buying transactions find the seller paying for owner title insurance, with the buyer paying $15.00 for lender title insurance upon simultaneous issue. In Texas, search, examination, insurance and closing are regulated. Both title insurance rates and forms are promulgated by the state insurance board. Once again, kickbacks are prohibited.

While ALTA advocates effective state regulation, members of the Association also realize that—if states fail to meet their regulatory responsibilities—federal regulation will be the only apparent alternative in the public interest.

As you know, Mr. Chairman, other proposals affecting the regulation of closing costs now are under consideration. I have previously stated that ALTA generally supports the HUD-VA recommendations in this area.

Last week, it was my privilege to testify at hearings on closing costs before the House Subcommittee on Housing—which now is considering H.R. 13337 as introduced by Congressman Patman. I have already presented the ALTA position on a number of matters that also are contained in H.R. 13337.

However, there are two additional provisions of this bill which require ALTA comment.

First, the bill would require that HUD establish a federal title insurance program. ALTA strongly opposes the creation of a federal title insurance program. Such an activity would mean government intervention in an area of endeavor where land title insurance already is expertly and efficiently provided by private enterprise at reasonable charges. Federal title insurance would mean creation of an entire new bureaucracy at massive new expense to taxpayers in general for the benefit of only those who invest in real estate. In other words,

more of the cost of land title services would be shifted from immedate users of these services to taxpayers in general.

Second, H.R. 13337 would require that interlocks among title insurers, lenders, real estate brokers, and developers be prohibited. I am presently aware of no evidence to support a conclusion that interlocks among title insurers and other segments of the real estate industry increase title insurance charges to home owners. If such a prohibition of interlocks were effected, it would deprive companies of the counsel and services of experienced financial leaders as directors, which inures to the benefit of the consumer. And, price discrimination through interlocks is illegal under present federal law.

The Bank Holding Company Act of 1956 as amended, and federal anti-trust laws, are sufficient to regulate effectively—in the consumer interest — the relationships of banks, other lenders, brokers and developers, to title companies.

In summary, ALTA strongly supports the objective of lowering settlement costs for buyers of one to four-family homes. The Association favors the accomplishment of this objective in regard to land title services by effective state regulation. ALTA does not oppose achieving this objective by promulgation of federal standards for closing costs although, again, the Association recommends applying such standards only in case of ineffective state regulation. And, in such state or federal regulation, ALTA would support a limitation on the share of charges for land title services to be paid by the home buyer.

In conclusion, Mr. Chairman, I would like to point out that the land title industry is an established, efficient, well managed, and responsible member of the financial community of this nation. It provides an essential service of substantial importance to the housing industry, to the home buyer, and to the mortgage lender. Through the service of the land title industry, home buyers and other real estate investors can look forward to the use and enjoyment of real property with maximum assurance they will not be troubled, or suffer financial loss, because of land title hazards. All for a one-time charge at closing.

While we recognize there have been questionable practices in land title services in a few areas of the nation, and while we will cooperate fully in the correction of related abuses, we nonetheless deeply regret that this problem has been interpreted by some to be far more widespread than it is.

I thank you again for the opportunity to appear here today.

JOINT PLANT— Continued from page 8

all the sorting and filing and printing out of title plant information.

In addition, there would be four of us paying for it rather than two of us and that's great. It's true that the cost would increase, computers aren't cheap. The service would be better, the cards would be easier to handle because all you have to do is punch them and put them into the machine. The machine sorts and files and does all the rest of the handling.

Where you used to have other, less sophisticated kinds of machines or maybe no machines doing this, and more people doing it, now you would have more sophisticated machines and fewer people. The job would become less of a bore for your people. The work would be more accurately done as a matter of fact. The total cost had increased but now we'd be dividing it by four so the cost to us is less.

Then another company came along and we thought: "Well, we had originally designed this arrangement for five companies so why not?" We did so because we felt that we could install this computer and have five companies around it easily and comfortably and we wouldn't again have a situation where we had so many people that they would be tramping on each other's toes again.

This mattered, plus the fact that costs aren't going to change because of this addition. If we divided those costs by five now rather than four, it would cause a significant reduction in expenses to each of us, and we'd all be getting the same old service that we were always getting. And yet we wouldn't have so many people around that they would be getting in each other's way. So far that has worked well.

You always have to keep in mind the fact that you can't put too many people in the same location, but we try to share wherever we can. We take off the microfilm of the source documents and store it together with other kinds of materials that title companies use—i.e., maps, tax books and the like —in one central location.

Then we took our computer and put it in the same central location. We took the keypunch people who punch the cards—the ones who daily update the title plant—and put them in the same location.

Each one of the five companies has an office around that computer. When we have a search, or request for customer service, it is transmitted to our searching department at the computer location for searching. All of our plant materials are located there. We keep the computer in a separate location for it has too great a public relations value to be on the premises of any one company. For instance, if it were on our premises, and though it were owned by four other companies, the people who work for us and I would have a tendency to impress our customers by making them believe that it was all ours and that the other companies used it at our sufferance. When you put it on separate premises, you're less inclined to be able to do that.

So in effect you have joint public relations. Customers are actually impressed by the fact that the companies could get together to cut costs so drastically.

I started to tell you about the fact that we had the five companies in association and I said the same physics rule still applies no matter how many partners you have. You don't want people crowding into each other—if you do you lose efficiency.

There is, however, another group of companies that operates a joint plant across town. Those companies operate on a system that is quite different from ours. They use a computer but the

computer prints out a listing every day. These listings are continually compiled and re-compiled to make the consolidated lot book.

That's all right, except in a county like Los Angeles where the volume is as great as it is. There are something like 80,000 documents that are recorded in Los Angeles County every month. Plant building with that many documents requires a great deal of paper shuffling.

The system used by our competitors especially requires much paper shuffling. Both groups for some time now have been trying to work out an arrangement whereby they could join in our operation and use the title plant material stored in our computer. There is no question but what it would be more economical for us to join with them and permit them to search exactly as we do. That is to say, instead of five concerns searching at offices surrounding the computer, we would have eight.

We feel, however, that this arrangement would get us into the situation of too many people using the same facility. We would be in each other's way. We have decided, since the computer is peculiarly adaptable to a system of remote inquiry, to make arrangements to associate, but to permit inquiry only through remote terminals. Using this system, each of our groups will be able to inquire of the computer and neither will realize the other is present.

The expenses will be a little higher because of the remote inquiry, but the problems of the great number of users will be solved and thus expenses will now be divided by eight rather than five.

The net result of all of this is that you have a title plant which you can afford to make "gold-plated" and which would cost you nearly the same if you were doing it alone, except that now your expenses are paid by the number of users involved. You must remember, however, that the basic foundation for this whole discussion is the need for a title plant. If you can do your work effectively without one, it is my opinion you should continue. Permit me to tell you, though, that our operation is much more comfortable using a title plant than it would be otherwise.

The volume in Los Angeles County has nearly doubled in 1971; I know that if it were not for this title plant we would be unable to take advantage of the increase in the market.

At this point, permit me to add one additional thought. When we began our operation, we used keypunch machines to punch holes in cards. You don't need to be very sophisticated to do that. We now use an extremely sophisticated computer which requires highly technically oriented people to manage it.

I, for one, am fearful of "computer-type" people because I don't understand what they do. I don't know what the machines are capable of and as a consequence, I can't tell whether the "computer-type" people really know what they are doing.

We have been real lucky in that our computer is operated by a company we sort of grew up with. It is a company called HW Systems. Some of their people were instrumental in our original programs. They know our systems since they have spent so much time with them. The more volume we deal with, the more companies who are involved with us, the more sophisticated our equipment needs to become, and the happier I am that our setup is the way that it is.

Creation and use of a joint-plant requires a change of attitudes. Historically, title companies are slow to change. New ideas come slowly. I'd like to tell you that I am certain that our attitude and practice are correct. I'm afraid however, I can tell you only that, thus far, I am happy we did what we did, I wouldn't like to undo any part of it, and I think if you can use a title plant you would also be pleased to develop some sort of joint-plant system.

The final chapter to our saga has not yet been written. We are still in the midst of the development of a very exciting thing. I hope it continues as it has in the past.

JUDICIARY REPORT—Continued from page 9

proposed lease and option to purchase (a deteriorating timber crop, difficulty in finding tenant farmers to grow crops, and difficulty in managing farm so as to meet the cost of maintenance) and its purpose to invest and reinvest the proceeds for the benefits of her ward. The court found the application in the best interest of the minor ward and entered judgment authorizing said lease and option to purchase with the paper company. Upon reaching her majority the ward brought a complaint in equity against the guardian and lessee paper company to set aside the said judgment of court with a principal contention that the order of court authorizing her guardian to lease her lands for 66 years to the paper company at a yearly rental, with an option to purchase the land for $20.00 an acre at any time after 20 years if the lease had expired, was void as contrary to public policy and because no right existed for the court to authorize an option to purchase in connection with the lease.

Held: There is no law to the effect that an owner of land or a court having jurisdiction of a minor's property may not authorize a lease of and option to purchase his land or land of a ward of the court upon legal application to the court. The option to purchase was a condition of the lease, without which the lease could not have been negotiated, in which event the ward would in all probability have lost her land and the very material benefits she could have received if the lease and option to purchase had become a reality. The Georgia code sections upon which the original application were based give concurrent jurisdiction to law and equity in cases involving the property of wards and sales of their property, inasmuch as in such case the minors become wards of the court. When this jurisdiction of equity attaches, the court's action is not limited by any narrow bounds, but it is empowered to stretch forth its arm in whatever direction its aid and protection may be needed.

Mossgrove v. Oil & Producing Co., 24-Ohio App. 2d 128, 265 N. E. 2d 299 (1970)

A properly recorded oil and gas

lease which is regular on its face but subject to the latent defect that one of two attesting witnesses did not actually attend or see the act of signing is validated by a subsequent deed from the lessor to a third party which recites that it is subject to the recorded lease and that the grantor assigns all his right, title, and interest in and to such lease to the third party grantee. In such a case both the grantor and grantee are estopped by the recitals of their deed to show the latent defect in the lease.

MARKETABLE TITLE ACTS

Marshall v. Hollywood, Inc., 224 So. 2d 743, aff'd, 236 So. 2d 114 (Fla. 1970)

The real property was owned by a corporation. A stranger to the corporation in 1924 executed a deed as president of the corporation conveying the property to himself and others. The estate of a deceased stockholder of the corporation brought suit to establish an interest in the property.

Held: The claim was barred by the expiration of time under the Marketable Record Title Act although the corporation's deed initiating the chain of title under which the record owner's hold was a forged or wild deed. A subsequent deed served as a root of title since it purported to transfer the title.

MINES AND MINERALS

Stamp v. Windsor Power House Coal Co., 177 S. E. (2d) 146 (W. Va. 1970)

Appellees purchased a house in 1954. In 1966 forced to vacate house because of surface subsidence caused by removal of coal by Appellee in 1917. Deed conveying the coal and mining rights included the right to mine with or without leaving any support for overlying strata and without liability to strata or surface.

Held: Under rights granted by the deed the grantee was not liable for damage to surface structures proximately resulting from mining activities, notwithstanding that grantee may have been negligent or grossly negligent in its mining activities.

MORTGAGES AND LIENS

United States v. Stadium Apartments, 425 F. 2d 358 (Idaho, 1970)

The U.S. Court of Appeals, Ninth Circuit, held that the Idaho redemption statutes are not applicable to the Federal Housing Authority's foreclosure of a mortgage which it had guaranteed.

Empire Homes, Incorporated vs W. C. Bradley Company, 241 So. 2d 317 (Ala. 1970)

W. C. Bradley Company filed a bill in equity against Empire Homes, Incorporated. Sunbeam Heating and Insulating Company, Incorporated, intervened. Both the complainant and the intervener sought to have their mechanic's liens declared superior to the liens created by a construction mortgage except as to the value of the land prior to improvements. Sale of the land and improvements was also sought to satisfy said liens.

Held: The supreme court held that where amounts advanced under a construction loan mortgage far exceed the value of the lots in their naked state, if removal of the finished houses on the lots would be detrimental to all parties, materialman's and mechanic's liens created subsequent to the recordation of the construction mortgage would not be given priority, since to do so would impair the value of the mortgages as to monies advanced which exceeded the value of the unimproved lot.

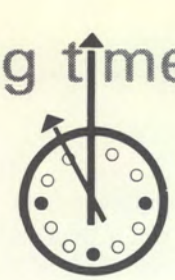
Tahoe National Bank v. Phillips, 92 Cal Rptr. 704 (1971)

Plaintiff bank agreed to lend $34,000 to defendant who together with three co-venturers needed further capital to embark on an apartment development. In return defendant gave plaintiff a promissory note and an assignment of rents and agreement not to sell or encumber real property (hereafter assignment). This document provided that as security for the loan defendant assigned to plaintiff all rent due from the realty described therein and agreed not to encumber or convey that property. The real property described in the assignment was not the venture's apartment development but defendant's unencumbered residence. Plaintiff recorded the assignment; thereafter, defendant recorded a declaration of homestead on the property. Defendant did not convey or encumber the property. Upon default in the payment of the loan, plaintiff brought suit and among other things asked that the assignment be construed as an equitable mortgage and that the court decree its foreclosure.

The supreme court held that the assignment was not an equitable mortgage. Plaintiff bank, which occupied the more powerful bargaining position and deliberately chose to use a standardized form providing for the assignment of rents and a covenant against conveyances, cannot be permited to transform this assignment into a mortgage contrary to the reasonable expectation of its borrower. As to the purpose and terms of the assignment, it is a type of agreement commonly used with unsecured loans, contains no words of hypothecation and includes language inconsistent with a mortgage. Accordingly, the court concluded that the assignment is not reasonably susceptible of construction as a mortgage at the instance of the bank and that the trial court erred in invoking extrinsic evidence offered by the bank to prove it to be a mortgage.

Mortgages and Liens Section To Be Continued

meeting timetable



April 15, 1972
Florida Land Title Association
Mid-Year Meeting
Sheraton Inn
St. Petersburg, Florida

April 16-18, 1972
Eastern Regional Convention
Seaview Country Club
Absecon, New Jersey

April 17-18, 1972
California Land Title Association
Mark Thomas Inn
Monterey, California

April 27-29, 1972
Arkansas Land Title Association
Sheraton Motor Hotel
Little Rock, Arkansas

April 27, 1972
New England Land Title Association
Sheraton Islander
Newport, Rhode Island

April 27-29, 1972
Oklahoma Land Title Association
Lincoln Plaza Motel
Oklahoma City, Oklahoma

April 30-May 2, 1972
Iowa Land Title Association
Julian Motor Inn
Dubuque, Iowa

May 4-6, 1972
Texas Land Title Association
Fairmont Hotel
Dallas, Texas

May 11-14, 1972
Washington Land Title Association
The Hanford House
Richland, Washington

May 18-20, 1972
New Mexico Land Title Association
Kachina Lodge and Motel
Taos, New Mexico

May 19-20, 1972
Tennessee Land Title Association
Nashville, Tennessee

June 4-6, 1972
Pennsylvania Land Title Association
Pocono Manor Inn
Pocono Manor, Pennsylvania

June 7-10, 1972
Southwest Regional Convention
Broadmoor Hotel
Colorado Springs, Colorado

June 9-10, 1972
South Dakota Title Association
Rapid City, South Dakota

June 15-17, 1972
Land Title Association of Colorado
Stanley Hotel
Estes Park, Colorado

June 16-17, 1972
Wyoming Land Title Association
Saratoga Inn
Saratoga, Wyoming

June 18-20, 1972
Michigan Land Title Association
Grand Hotel
Mackinac Island, Michigan

June 22-25, 1972
Idaho Land Title Association
Sun Valley, Idaho

June 22-24, 1972
Oregon Land Title Association
Village Green
Cottage Grove, Oregon

June 23-25, 1972
Illinois Land Title Association
Chase Park Plaza Hotel
St. Louis, Missouri

July 6-8, 1972
New Jersey Land Title Insurance Association
Seaview Country Club
Absecon, New Jersey

August 9-12, 1972
New York State Land Title Association
The Greenbrier
White Sulphur Springs, West Virginia

August 10-12, 1972
Montana Land Title Association
Holiday Inn
Bozeman, Montana

August 24-26, 1972
Minnesota Land Title Association
Winona, Minnesota

September 8-9, 1972
Kansas Land Title Association
Ramada Inn
Topeka, Kansas

September 15-16, 1972
North Dakota Title Association
Townhouse Motel
Fargo, North Dakota

September 15-17, 1972
Missouri Land Title Association
Stouffer's Riverfront Inn
St. Louis, Missouri

September 20-22, 1972
Wisconsin Title Association
Lakelawn Lodge
Delavan, Wisconsin

September 23, 1972
Nebraska Land Title Association
Holiday Inn
Kearney, Nebraska

October 25-29, 1972
Florida Land Title Association Convention
King's Inn
Freeport, Grand Bahamas

October 29-31, 1972
Indiana Land Title Association
Indianapolis Hilton
Indianapolis, Indiana

November 3-4, 1972
Land Title Association of Arizona
Tucson, Arizona

December 6, 1972
Louisiana Land Title Association
Royal Orleans
New Orleans, Louisiana

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