

Title News



ALTA Radio Kit
Helps Don Nichols
Reach Market

October, 1973



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

OCTOBER, 1973

All too often we hear that the young people of today "aren't what they were when we were growing up". Demonstrations, rock festivals, strikes against colleges and universities, long hair, blue jeans, barefeet and drugs connote an unstable, rebellious American youth.

This picture is reflected by reading newspapers, magazines, watching and listening to television and other media. It's easy to throw up your hands in a hopeless gesture. But, what if we stop, look around us and listen to young America? What picture is then reflected on our mental and emotional screen?

Over a period of time, experiences have made me stop, think and reflect about today's youth.

Naturally, they are different from you, me, or our parents. The religious, political, economic, scientific, everyday world is different because of advances of all sorts made in all fields of endeavor. The home in which they live, the cars they drive, the airplane and space ships, radio and television and instant communication and pictures from all over the world give our children advantages, wide horizons of knowledge and insight that we did not have at their ages. Parents, friends and society in general are much more permissive. More and more opportunities open up at a younger age for our children because of educational advantages and changes in thinking regarding speed and quality of education.

Understanding these facts, which influence and mold the young people, and observing their actions have led me to realize that there are far more good, ethical, industrious, hard-working youngsters today than the image projected by the media. The media headlines the thoughts and actions of a small minority. These groups exist but do not dominate our youth culture today.

I believe the youth of today are warm, sincere, intelligent, understanding and looking for principles and guidelines for life. They have the same hopes, fears, dreams and emotions as every generation of young people. They dare to be themselves, yet want the guidance and approval of parents, relatives, friends and peers.

Yes, they dream, and experiment! Haven't many great new ideas, inventions, concepts and relationships been created and carried through to a successful conclusion by those who dared to dream?

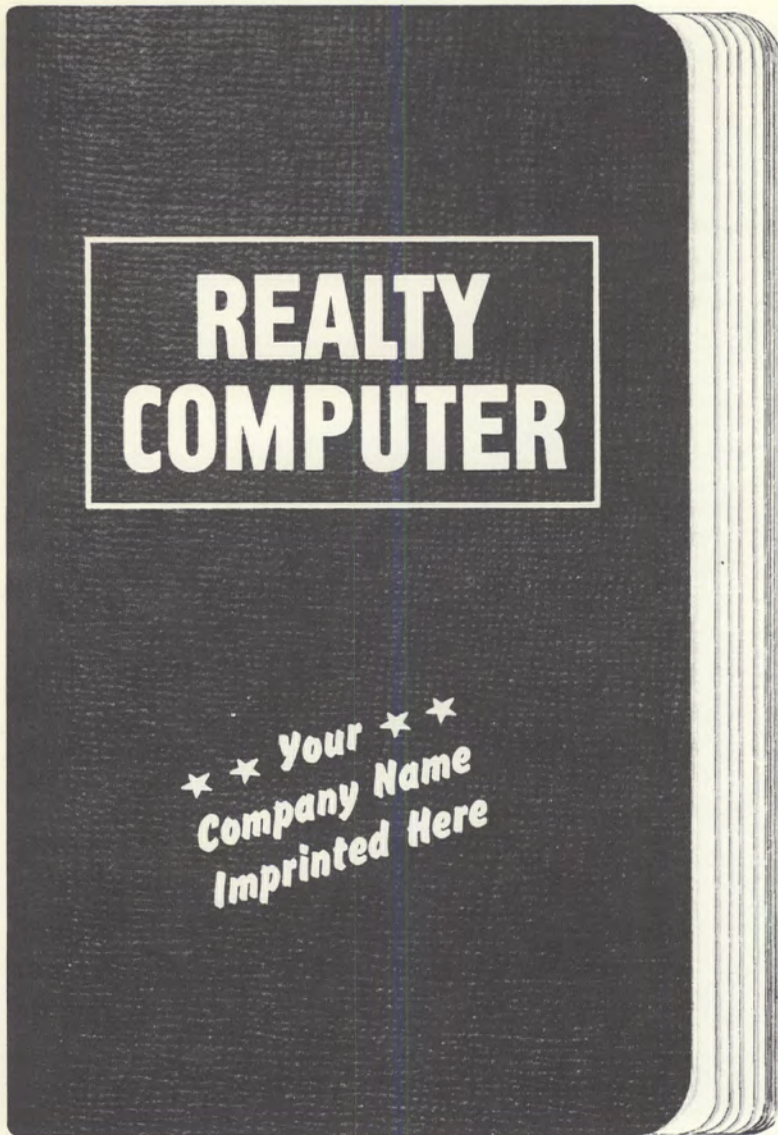
My observations are that the great majority of American youth are worthwhile individuals, and it's worth our while to listen to them.

Sincerely,

Robert J. Jay

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meeting timetable



1973

October 22-24, 1973

Mortgage Bankers Association of America
New York Hilton, and the Americana
New York, New York

November 7-10, 1973

Dixie Land Title Association
Sheraton-Biloxi
Biloxi, Mississippi

November 9-15, 1973

National Association of Real Estate Boards
Sheraton Park, and Hilton Hotels
Washington, D.C.

October 26-27, 1973

Carolinas Land Title Association
Foxfire Inn
Pinehurst, North Carolina

November 8-10, 1973

Land Title Association of Arizona
Francisco Grande Hotel and Motor Inn
Casa Grande, Arizona

December 5, 1973

Louisiana Land Title Association
Royal Orleans
New Orleans, Louisiana

October 26-27, 1973

Florida Land Title Association
Disney World, Florida

October 28-30, 1973

Indiana Land Title Association
Atkinson Hotel
Indianapolis, Indiana



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the official publication of the American Land Title Association

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ON THE COVER: Don B. Nichols, right, ALTA past president and owner of Montgomery County Abstract Co., Hillsboro, Ill., listens as radio commercials he taped with the aid of an ALTA Do-It-Yourself Commercial Kit are played at WSMI, local radio station. For the story on how the announcements were used to strengthen his local market identity, please turn to page 5.

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GARY L. GARRITY, Editor

CAROL MATHES HALEY, Managing Editor

This talented group wants to sing your praises



These talented performers are ready to sing the praises of your title company through local radio advertising. They're waiting—on tape—in the recently-introduced ALTA Do-It-Yourself Commercial Kit.

If you're an ALTA member, you can buy the kit—on a first come, first served basis—for \$50 plus postage. Just write Gary Garrity in the ALTA Washington office. You'll be billed later.

What's in the kit? The singers, of course. On 7½ ips mono tape. Furnishing high quality contemporary music for a 20, a 30, and a 60-second commercial. Plus instructions and suggested copy for three different title company radio advertising approaches. For promoting use of local attorneys or real estate brokers. For establishing local identity for a title company executive. For promoting simultaneous is-

sue and awareness of mortgagor title insurance. You decide which approach is best for your local need—or substitute another.

Here's how it works. First, order the kit. Then work out your radio advertising campaign with one or more local stations. Adapt the enclosed commercials to carry your message—or write your own. Have a local announcer—or other appropriate talent—record voice copy to link your message with the taped music. And—presto—you have a customized local radio campaign to strengthen your market identity.

What does the group sing? This jingle: "Who can ease all your worries . . . when you're buyin' a home . . . who can bring you protection . . . the title man can."

Better order now. They're doing your song.

American Land Title Association
1828 L Street, N.W.
Washington, D.C. 20036

Nichols Tapes Commercials, Hillsboro Takes Notice



In the upper photo, Don B. Nichols (left), owner, Montgomery County Abstract Co., tapes his portion of announcements adapted from the ALTA Do-It-Yourself Radio Commercial Kit at his desk in Hillsboro, Ill. Operating the tape recorder is Dave Hamblin of WSMI, a local radio station. The Nichols narrative later was mixed with modern music furnished as part of the kit for broadcast during a sponsored news program. Below, Harold Sitton (left), executive secretary of Security Savings and Loan Association of Hillsboro, Ill., talks with Nichols about the impressive public response generated by Montgomery County Abstract Co. commercials. After broadcasting of the commercials began, numerous Hillsboro residents greeted Nichols with "Who can help?", a line from the radio copy.

In recent weeks, Don B. Nichols, owner of Montgomery County Abstract Co., has received a curious greeting from numerous residents in his home town of Hillsboro, Ill.

Instead of traditional salutations, local folks have been hailing him with: "Who can help?"

Puzzling as this might be to someone from out of town, it's just what Nichols is hoping to hear. The line is from an ALTA Do-It-Yourself Radio Commercial Kit he adapted for broadcasting in his home area.

From the number of times Nichols has been greeted with, "Who can help?", it is apparent that his radio messages have impressively strengthened his market identity. With three active competitors for land title business in the Hillsboro vicinity, Nichols considers this radio advertising quite significant.

The increased market recognition that has come to Nichols and Montgomery County Abstract through radio is a result of four commercials that combine his narration with modern music furnished as part of the kit. His voice narrative is on tape and has been mixed with a musical jingle by singers that goes, "Who can ease all your worries . . . when you're buyin' a home . . . who can bring you protection . . . the title man can."

As recorded for broadcast, the Nichols advertising copy reads like this:

(60 seconds) "Buying a home? Here's a tip from Montgomery County Abstract Company in Hillsboro. This is Don Nichols of Montgomery County Abstract Company. Don't gamble on your investment when you buy a home. Protect yourself against possible land title hazards that could cost you money and even cause the loss of your property. Come and see us at Montgomery County Abstract Company for a free explanation of the protection that can be yours through an abstract and an attorney's opinion. That's Montgomery County Abstract Company, 107 South Main Street in Hillsboro. We'll be looking for you."

(20 seconds) "Before you buy a home, call Montgomery County

Continued on page 11

Part II: Uniform Land Transactions Code

*Robert Kratovil
Vice President
Chicago Title
Insurance Company*



(Editor's note: Author Kratovil serves as an adviser to a committee of the National Conference of Commissioners on Uniform State Laws that is developing a Uniform Land Transactions Code scheduled for completion by July 1, 1974. The completed Code will be submitted to the National Conference for approval and subsequent consideration by state legislatures. In this second of a two-part series of articles, he reviews work on the Code to date and provides commentary on elements of interest to the land title industry. The first installment of the series is published in the September, 1973, issue of *Title News*.)

* * *

Apparently the material intervening between the portion covered in Part I of this series and the part covered here is still subject to revision. It will be dealt with later. The portion covered in this Part II deals with mortgages. Most of it is in final form and it is therefore considered here. Later sections deal with default and foreclosure and will be dealt with later.

Article 3: Secured Transactions Part I

1. In the first place, greater protection is given a "protected party" than is given other debtors, as will later appear. A "protected party" is defined in Section 1-201 (19) as follows:

"Protected party means an individual who

"(i) contracts to buy or buys residential real estate* which at the time of the transaction he occupies or intends to occupy as his own residence; or

"(ii) contracts to give or gives a security interest in residential real estate which at the time of the transaction he occupies or intends to occupy as his own residence; or

"(iii) is an obligor in any obligation secured by residential real estate and is a person related to a person who (at the time of the transaction) occupies or intends to occupy that real estate and who would himself be a protected party if an obligor; or

"(iv) is a person related to a pro-

TECTED party under (a), (b), or (c) above and guarantees or otherwise agrees to pay the obligation of that protected party and an individual who assumes or takes subject to the obligation of a protected party under a security agreement has the rights of a protected party under this Act."

2. Section 3-102 is as follows:

"SECTION 3-102 (*Policy and Subject Matter of Article*.) Except as provided in Section 3-104 on excluded transactions, this Article applies to any transaction (regardless of its form) which is intended to create a security interest in real estate.

"This article applies to security interests created by contract including mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, and any other lien or title retention contract intended as security.

"If a security interest covers both real estate and personal property, this Article applies to the security interest in real estate but this Article does not prevent the

creation and foreclosure of a security interest in fixtures under Article 9 of the Uniform Commercial Code.”

Of interest is the fact that an installment contract now is treated as a mortgage and must be foreclosed as such. This is a major change in the law, for the worse. Installment contracts are often made where the buyer's down payment does not warrant mortgage financing. Couple this with the repeated cure of defaults provision later discussed, and you take all these people out of the market as possible home-buyers. Couple this fact with the new “pro-tenant” decisions and the money that can be made by converting even old buildings to condominium, and you have a situation where poor people cannot buy and there are few places to rent.

3. Section 3-103 (3) is as follows:

“(3) An advance is made ‘pursuant to commitment’ if the secured creditor has bound himself to make it, whether or not a subsequent event or default or other event not within his control has relieved or may relieve him from his obligation.”

This is one of the best sections in the Code. Especially where a construction mortgage is competing for priority against mechanic's liens, problems have arisen in the area of obligatory versus optional advances.

The authorities on this question are divided. 80 A.L.R.2d 199, 201. One line of cases says that once the mortgagor defaults under his construction loan agreement, further advances by the lender are optional. The other line of cases holds to the contrary. While the latter cases obviously represent the better law, both lines of authority are deficient in ignoring the real problem at issue. A lender's protection is by no means confined to cases where the lender is under a legal compulsion to advance funds. It also extends to situations where the lender is under an *economic* compulsion to advance the funds. A perfectly commonplace and universally accepted application of this rule relates to delinquent real estate taxes. Even though the lender is under no legal obligation to pay delinquent taxes, he may pay them to protect his mortgage against extinguishment by

tax sale and the amount so advanced becomes part of the mortgage debt. 2 Jones, *Mortgages* (8th ed. 1928) §1451; 60 A.L.R. 425; 84 A.L.R. 1366; 123 A.L.R. 1248. Likewise, although a mortgagee is under no *legal* compulsion to discharge a prior encumbrance, he may do so, and the amount so advanced becomes part of the mortgage debt. 1 Jones *Mortgages* (8th ed. 1928) §441; 55 Am. Jur.2d, *Mortgages*, §259. A chattel mortgagee of a fruit crop may make advances to preserve the crop, and these become part of the mortgage debt. *Ceda v. W. E. Roche Fruit Co.*, 16 Wash.2d 652, where the court said (p. 442):

“Advances made by a mortgagee after he has actual notice that others have acquired rights in the property will be postponed to the rights acquired by such other persons, unless the mortgagee be under a binding contract to make the advances, *or it be essential to his own security to complete the advances contemplated by the mortgage.* (Italics ours) 1 *Jones on Chattel Mortgages and Conditional Sales* (Bowers Ed.) 173, §97.”

Disbursements to complete an unfinished building also fall into this category. *Miller v. Wards*, 111 Me. 134; 2 Glenn, *Mortgages* (1943) §219; 35 Colum. L. Rev. 1255-1261. It is perfectly obvious why this is the law. A half completed structure is subject to vandalism and destruction by the elements. It produces no revenue to discharge the debt. The economic compulsion to complete is obviously present. One can only conclude that the cases discussed in 80 A.L.R.2d did not adequately present this point.

At all events the new language in the Land Code takes care of this problem.

4. Section 3-103(7) is as follows:

“(7) ‘Security interest’ means an interest in real estate which secures payment or performance of an obligation. If a lease is intended as security to the lessor, the lessor's interest is a security interest. If a seller's retention of legal title to real estate after the buyer enters into possession is intended as security, the seller's interest is a security interest. Whether a transaction is intended as security is to be determined by the facts of each case;

however, (i) the inclusion in a lease of an option to purchase (at a price reasonable in the circumstances) does not of itself indicate the lease is intended for security, and (ii) retention of the title to real estate by a seller under a contract right to retain title for not more than one year after the buyer enters into possession of the real estate is not a retention for security.”

An objection was made that this section might harm industrial development bond issues. In these developments some municipality buys land, erects a valuable building, leases it to a corporation, the rental being used to retire the bonds, and often the lease gives an option to purchase at the termination of the lease for \$1.00 or \$1,000.00 *Darnell v. County of Montgomery*, 308 SW 2d 373. Does the language “at a price reasonable in the circumstances” cast a shadow on these transactions?

5. Section 3-203 is, in part, as follows:

“SECTION 3-203. (*Enforceability of Security Interest; Formal Requisites.*)

“(a) A real estate security interest does not attach to the real estate unless

“(1) the debtor has signed a security agreement which contains a description of the collateral;

“(2) value has been given; and

“(3) the debtor has an interest in the collateral.

“(b) A security interest is not enforceable against the debtor with respect to the real estate until it attaches. Attachment occurs as soon as all of the events specified in subsection (a) have taken place unless explicit agreement postpones the time of attaching.”

It contains a serious oversight. As is well known, where a mortgage secures an advance that is not obligatory, the mortgage is nevertheless a lien from the date of its recording and primes intervening liens of which the mortgagor did not have actual knowledge at the date of disbursement. *Osborne, Mortgages* (2d ed) §119 (majority rule). The definition of “value” in Section 1-201 (26)

seems to confine value to money advanced or money committed to be advanced. In short, the majority rule would disappear and intervening liens would prime an optional advance. This, at present, is a minority rule followed only in three or four states. The situation is not cured by the section on future advances, since this does not provide that future advances, relate back.

6. Section 3-204 limits the operation of an after-acquired property clause as to a protected party. This provides needed protection. It is an improvement in the law. Section 3-204 (6) is as follows:

"Every security interest secures all future advances or other value given by the secured creditor to the debtor whether or not made pursuant to commitment, unless the security agreement provides otherwise."

One problem with this section is that quite a number of states have legislated on open-end future advances. Some limit the amount of such advances. We were not told how the Code would be reconciled with these statutes.

Another point is that the statutes on open-end advances generally provide that they relate back to the recording of the mortgage, thus priming most intervening liens. This is a wholesome provision, but is omitted in the Code.

7. Section 3-205 appears to enact the present majority rule that where a mortgage secures a negotiable note, a holder in due course of the note takes the mortgage free of defenses not good against a holder in due course, such as lack of consideration. Mortgage lenders will like this provision. It is the existing majority rule.

8. Section 3-206(b) is modeled after UCC Section 9-318 and deals with an assignment of a mortgage. It is as follows:

"(b) Any modification of or substitution for the security agreement made in good faith and in accordance with reasonable commercial standards by the debtor and assignor is effective against the assignee notwithstanding that the debtor has received notice of the assignment, unless the debtor has otherwise agreed or unless, at the

time of the modification or substitution, the assignee has notified the debtor that no modification may be made without his consent, but the assignee acquires corresponding rights under the modification or substituted agreement. The assignment may provide that any modification or substitution is a breach by the assignor. If an assignee has notified the debtor that modification may not be made without his consent, *the assignee may not unreasonably withhold consent to a modification*. A notification to pay to an assignee is not, of itself, a notification that the assignor has no power to make modifications in the agreement or that modifications must have the consent of the assignee." (Emphasis supplied.)

The UCC does not contain the provision that the assignee shall not unreasonably withhold his consent to a modification. Vast amounts of money are involved. Assignments of giant size mortgages take place daily. The notion that the mortgagor and mortgagee could modify the rights of such an assignee will come as a shock to investors.

The Code, incidently offers few Comments. Some will be added at a later time but most of the Code will have been considered by the Committee before that takes place, which places the Committee at a disadvantage. This particular section, however, does include a Comment as follows:

"Comment

"This section is patterned after 9-318 of the Uniform Commercial Code. Subsection (a) is a restatement of the general rule as to an obligor's right to assert defenses against an assignee. Subsection (b) which is patterned after subsection (2) of UCC9-318 modifies the ordinary contract rule that after an obligor learns of an assignment he may not, without the assent of the assignee, agree with the assignor to modify the contract. The commercial code section refers only to contract rights and accounts and does not permit modification as to accounts already due. The subsection here is made generally applicable to all real estate security

agreements and applies even to past due amounts. The section, however, does prohibit modifications without assent of the assignee after he has given notice that modification cannot be made without his consent. The effect of this section would be to allow the transferor of mortgages *who acts as servicing agent for the assignee* to modify the mortgage until the debtor is specifically notified to the contrary. Such a result would probably in most cases be reached under the terms of the servicing agreement or on principles of apparent agency, but this section makes the result a matter of law which does not depend on either the servicing contract or rules of principal and agent." (Emphasis supplied.)

The phrase, "who acts as servicing agent for the assignee", does not appear in the section.

Interestingly the Comment omits mention of the inability of the assignee to withhold consent unreasonably.

9. A clause similar to one already discussed is included in Section 3-207 with respect to an assignment of rents, giving the landlord and tenant the right to make the modifications in the lease that are binding on the assignee of the rents.

10. Section 3-208 (d) dealing with leases is as follows:

"(d) Any modification of or substitution for a rental agreement made by the debtor with the tenant in the ordinary course of the debtor's management of the property is effective against the secured creditor unless the tenant has otherwise agreed or at the time of the modification or substitution the secured creditor has notified the tenant that modification may not be made without his consent. If a secured creditor has notified the debtor that modification may not be made without his consent, *the secured creditor may not unreasonably withhold consent to a modification*.

"(e) The debtor and secured creditor may by agreement in writing, whether or not contained

Continued on page 16

PART VI: ALTA Judiciary Committee Report

(Editor's note: Members of the ALTA Judiciary Committee have submitted over 500 cases to Chairman John S. Osborn, Jr., of the Louisville law firm of Tarrant, Combs, Blackwell & Bullitt, for consideration in the preparation of the annual Committee report. Chairman Osborn reports that 116 cases have been chosen for the report. For previous installments of the report, please see the February, March, April, July and August, 1973, issues of *Title News*.)

* * *

RESTRICTIONS

(Continued)

McCrae v. Giteles, 253 So. 2d 260 (Fla. Ct. App. 1971)

County cited certain premises for about 80 violations of the housing code and served notice of the violations on the owners of the property. Shortly thereafter they conveyed the property by warranty deed. The purchasers brought an action against the sellers for breach of the covenant against encumbrances in the warranty deed contending that a housing code violation was an encumbrance within the meaning of that covenant.

Held: Neither the housing code violation, of which the sellers had notice, nor the condition of the premises constituting the violation, was an encumbrance within the meaning of the covenant against encumbrances in the warranty deed.

Burgess v. Putnam, 464 S. W. 2d 698 (Tex. Civ. App. 1971)

When a subdivision was opened the developer told his purchasers of the plan to develop the subdivision for one-family homes. The purchasers paid increased prices and received deeds which imposed restrictions, including the prohibition against the erection of mobile or trailer homes. There were no restrictions filed in the county clerk's office affecting the entire development nor did any of the deeds obligate the developer to proceed with the development. Later on the developer decided to permit buyers of unsold lots to use the site for trailer homes. Some of the original homeowners brought suit to restrain the developer from selling lots without imposing the restrictive covenant. Each contract of sale contained a provision setting forth that all representations, covenants and agreements between the parties are expressed in the writing and that no other shall be recognized unless reduced in writing and attached to the agreement.

Held: Oral testimony was admissible to establish the claims of the homeowner. The legal effect of the representation made by the developer is the same as if there were direct fraud. The same public policy that in general

sanctions the avoidance of a promise obtained by deceit strikes down all attempts to circumvent that policy by means of contractual devices. The representations made by the developer to the original buyers brought into existence an equitable right on their part to compel the developer similarly to restrict the use of any remaining lots of the developer. (A similar decision was reached in *Foro v. Doetsch*, 320 N. Y. 2d 778; Sup. Ct. 1971).

TAXATION

Harvey v. Orland Properties, Inc., 118 N. J. Super. 104, 286 A. 2d 711 (Super. Ct. App. Div. 1972)

In a mortgage foreclosure action, tax sale certificate foreclosure proceedings were upheld, although appellants claimed they were defective in not naming the heirs of the last record owner. The court ruled that they were not open to collateral attack by appellants who held quit-claim deeds from such heirs, knew of the proceedings, and, with knowledge of such deficiency, waited five years before seeking relief to the prejudice of those who purchased the property in good faith and for value subsequent to the final decree.

Chicago Title Insurance Company v. Nash, et al, 228 Ga. 719 (1972)

Judgment reversed denial of plaintiff's motion for summary judgment. The plaintiff's insurer brought action for declaratory relief seeking a declaration that a certain ordinance, levying license taxes "on all persons, firms, and corporations doing business in the unincorporated area of said county," was not applicable to it by reason of the fact that it had not been and was not doing business in the unincorporated area described in the ordinance. The trial court erred in holding that the mere insuring of property in the unincorporated area constituted "doing business" as stipulated in the ordinance as evidence showed that all the soliciting, negotiating, and transacting by insurer had taken place within the incorporated limits of a municipality and, therefore, the plaintiff was entitled to a judgment in its favor and the injunctive relief prayed for.

Four Freedoms House v. City of Philadelphia, 443 Pa. 215, 279 A. 2d 155 (1971)

The court held that an apartment house created by a non-profit corporation to provide low cost housing for the aged was considered a public charity and was entitled to a charitable exemption from municipal real estate taxes, notwithstanding that tenants paid rent where the rentals merely covered the operational expenses and did not include any margin of profit.

Walter E. Heller & Co. v. Kocker, 278 Atl. 2d 301, 262 Md. 471 (1971)

Under a statute providing that a final decree in a tax sale foreclosure proceeding should not be re-opened, except on the grounds of lack of jurisdiction or fraud in the conduct of the proceedings, where there was good faith and a successful effort by the counsel for the tax sale purchaser, to give

notice of the pendency of the foreclosure suit and the non-resident corporate beneficiary under a deed of trust on the property, had actual notice of the pendency of the suit, the failure of the tax sale purchaser to comply with the rules in regard to the service of process upon such lienholder, and the failure to comply with the statute requiring an affidavit of search, did not constitute a lack of jurisdiction or constructive fraud.

TITLE INSURANCE

Moe v. Transamerica Title Insurance Company, 98 Cal. Rptr. 547 (1971)

Defendant Anderson held a note with a balance of \$100,000, secured by a third deed of trust on property owned by Brookdale Lodge, a corporation of which Anderson was a shareholder and officer. After Brookdale filed its petition in bankruptcy for a Chapter X reorganization, defendant Ballarin met Anderson, represented he was a financial expert and that he could obtain a loan so that Brookdale could avoid bankruptcy and pay off the secured debts. Anderson opened an escrow with defendant Olsen, escrow officer at defendant City Title. The preliminary title report issued by Penniman Title Company showed the various liens against Brookdale and that it had filed a petition in bankruptcy. Anderson assigned his note and deed of trust to Ballarin and Penniman Title Company issued a \$100,000 title policy insuring City Title and declined to omit reference to certain prior liens and the bankruptcy proceedings. City Title, acting by Olsen, issued its policy insuring Ballarin in the sum of \$100,000 and deliberately omitted reference to the bankruptcy, and indicated that the Anderson note and deed of trust were subject to encumbrances totaling \$206,061.68 rather than \$264,637.26. Ballarin sold the note of a corporation secured collaterally by the \$100,000 note and trust deed to the father of the plaintiffs, who caused the title thereto to be placed in the names of the plaintiffs for \$80,000. City Title issued an assignee's indorsement to the policy it had furnished Ballarin. The bankruptcy proceedings resulted in the sale of Brookdale Lodge property free and clear of all liens and encumbrances, including plaintiffs'. Plaintiffs received nothing for their \$80,000 and filed this action alleging breach of the policy and conspiracy to defraud against City Title and its successor, defendant Transamerica Title Insurance Company.

The court affirmed a directed verdict on the policy in favor of plaintiffs for \$80,000. The court further held that the defendant title insurer, not being a party to the \$100,000 note and deed of trust, could not raise the defense of usury against its insured. Further, the indorsement being a part of the policy which omitted reference to the bankruptcy, the insurer breached the policy.

The court stated that the plaintiffs did not fail to comply with the notice of loss provision since their loss was not determined until the bankruptcy sale. Nor may the insurer

assert breach of a notice clause unless it was substantially prejudiced thereby, which it was not.

The court held the insurer liable for the attorney's fees incurred by the plaintiffs in their effort to preserve their security in the bankruptcy court, since it was precipitated by the insurer's tort. Transamerica as successor, by merger or consolidation, to City Title was liable for the latter's liabilities, \$80,000 compensatory damages, and \$50,000 punitive damages. The evidence of the insurer's fraud was overwhelming as to support a judgment on that count.

Nebo, Inc. v. Transamerica Title Insurance Company, 98 Cal. Rptr. 237 (1971)

Plaintiff Nebo opened a property exchange escrow at Title Insurance and Trust Company with Sacramento Savings and Loan Association under which plaintiff was to exchange certain San Diego property for 17 lots improved with rental houses in the Marysville area claimed to be owned by Sacramento Savings. This lawsuit concerns only four of the lots. Sacramento Savings claimed title to the four lots as the purchaser at trustee's sales held under construction deeds of trust which were recorded in 1960. However, Title Insurance and Trust Company's preliminary title report showed title vested in individuals named Jones (the Jones group) who had purchased at trustee's sales held under purchase money trust deeds recorded in 1959. Sacramento Savings contended the subordination contained in the purchase money trust deeds gave priority to the construction loan trust deeds. However, only a few months earlier, Sacramento Savings had made this same contention and lost, in defending a quiet title action brought by Jones (the Jones case) concerning 13 other lots in the same subdivision which had identical title problems. When the escrow with plaintiff was opened, Sacramento Savings had appealed the adverse quiet title judgment, but the plaintiff knew nothing about this litigation.

With full knowledge of the title defect and the pending litigation the defendant Transamerica Title Insurance Company was willing to issue a policy of insurance on the transfer to plaintiff because it had previously insured Sacramento Savings's title to the four lots. The escrow closed, the rentals were prorated, and the defendant ultimately issued its policy to plaintiff. The tenants of the houses on the four lots did not pay their rent to the plaintiff but paid the rent to a representative of the Jones group. Upon plaintiff's demand, defendant filed a quiet title action in its behalf but concluded that it should await determination of the appeal in the Jones case, which would be controlling since it was based upon identical issues. The Plaintiff acquiesced in this legal procedure. While defendant litigated, plaintiff paid out \$15,429.76 in payments and expenses on the four houses in question, and the Jones group continued to collect the rentals. More than two years later, the appellate court decided the Jones case, affirming the judgment of the trial court. Thereafter, defendant made a cash

settlement with the Jones group, purchased the lots in question, and delivered clear title to the plaintiff, three years, four months, and 18 days late. The plaintiff filed this action for damages for breach of the contract of title insurance.

The appellate court affirmed the trial court judgment awarding the plaintiff damages in the amount of \$16,240, the reasonable rental value of the four lots and houses from the close of escrow until the date plaintiff received clear title. The defendant first contended that it was relieved of loss because of the exclusion in Schedule B of the policy of any facts or claims which are not shown by the public records but which could be ascertained by making inquiry of persons in possession. The court held the exclusion inapplicable since the plaintiff's lack of legal entitlement to the rents for the period involved was due to the defect in title, which was of record, and not to the unrecorded possessory rights of the tenants in possession.

The defendant also contended that the alleged unmarketability of the plaintiff's title did not result in any loss or damage because the defendant stood willing at all times to re-insure title in any buyer. The court stated that the defendant's willingness to insure title, given the known defect in title, gives no real indication of marketability of title.

The defendant sought to avoid liability under the policy by contending that its actions in perfecting the plaintiff's title came within paragraph 7(c) of the policy's conditions and stipulations which provide that no claim for damages is maintainable if the insurer, after receiving notice of the alleged defect, removes the defect within a reasonable time. The court stated that what constitutes a reasonable time is a question of fact and that the trial court's determination that the defect was not so removed, was supported by substantial evidence, and cannot be disturbed on appeal.

Defendant finally contended that in perfecting plaintiff's title it in any event fulfilled its obligations under the policy of title insurance. The court held that the provisions in the policy permitted the insurer, at its own expense and without undue delay, to litigate defects in title to final determination in a court of last resort, do not specify the insurer is not liable for actual damages resulting from the defect while the litigation goes on. Any ambiguity in the policy in this respect must be construed against the insurer.

Next:
Title Insurance
(Continued)
and Usury

Abstract Company in Hillsboro about an abstract and information on an attorney's opinion. Ask for me, Don Nichols, at 532-2822. Who can help?" (immediately followed by sung tag line, "The title man can").

(60 seconds) (After the opening line, "Buying a home? Let Montgomery County Abstract Company protect you . . ." and music) "This is Don Nichols of Montgomery County Abstract Company. Don't gamble on your investment when you buy a home. Protect yourself against possible land title hazards that could cost you money and even cause the loss of your property. Come and see us at Montgomery County Abstract Company for a free explanation of the protection that can be yours through a title search and Chicago Title Insurance Company title insurance. That's Montgomery County Abstract Company, 107 South Main Street in Hillsboro. We'll be looking for you."

(20 seconds) "Before you buy a home, call Montgomery County Abstract Company about a title search and Chicago Title Insurance Company title insurance. Ask for me, Don Nichols, at 532-2822. Who can help?" (immediately followed by sung tag line, "The title man can").

Recalling his adaptation of the announcements, Nichols said, "With just a little practice I was able to read the message into the tape recorder myself. I believe this personal touch is most effective in our community."

A technician from WSMI, the local radio station involved, brought the recorder to Montgomery County Abstract where Nichols cut the tape without inconvenience.

The Montgomery County Abstract commercials are alternated each week for varied exposure. On Monday, Wednesday, and Friday, the company sponsors a 10-minute local news program at 4 p.m.—sharing sponsorship with a bank in a neighboring town that takes the first five minutes of air time.

During the Montgomery County Abstract section of the newscast, the station leads with the longer, 60-second commercial and follows 3½ minutes of news with the shorter, 20-second commercial.

"The cost of the air time and the type of utilization of the commercial varies in different localities," Nichols said. "Our 5-minute cost is \$7.25 per local news program, which we feel is not out of line with what we have spent in the past for advertising."

The talents of the singing group that provides the music for the commercials have added greatly to the effectiveness of the radio messages, Nichols added.

"We would like to learn of the kit being used in as many areas of the country, and especially our own state of Illinois, as possible," Nichols declared. "We believe it will develop a national identity for each of us more readily than any other means. And, we will be glad to discuss our use of the kit with any ALTA member on contact."

Joseph H. Smith Dies in Montana

Services were held in Boise, Idaho, for former ALTA Executive Vice President Joseph H. Smith, who died unexpectedly August 29 of an apparent heart attack while on a business trip in Montana.

Mr. Smith, who lived in Boise with his family, formerly served as executive secretary of ALTA and was later ap-

pointed executive vice president. In June, 1965, he resigned from the Association to accept a position with Lawyers Title Insurance Corporation and subsequently joined Title Insurance Company of Boise.

At the time of his death, he was a vice president for Commonwealth Land Title Insurance Company.

McDonald Honored for Insurance Trust Leadership



Morton McDonald, (center) first chairman of the Board of Trustees of the ALTA Group Insurance Trust, recently was presented a plaque on the occasion of his retirement from that office. With him are Group Insurance Trustees Robert M. Beardsley, (left) secretary, Douglas County Title Company, Roseburg, Ore., and Richard E. Fox, vice president, Chicago Title and Trust Company. McDonald is chairman of the board, The Abstract Corporation, DeLand, Fla.



New Jersey Convention Spotlights Environmental Legislation

Frank J. McDonough, West Jersey Title and Guaranty Company, Camden, recently was elected president of the New Jersey Land Title Insurance Association at its 51st Annual Convention. McDonough succeeds Raymond A. Buckman, Atlantic City office, Commonwealth Land Title Insurance Company.

Other newly elected officers are John A. Kiernan, Pioneer National Title Insurance Company, Newark, first vice president; James V. Lombardo, Chicago Title Insurance Company, East Orange, second vice president; and Barry W. Crelin, New Jersey Realty Title Insurance Company, Newark, treasurer.

"Environmental Law and Land Use Control—Wetlands, Flood Plains, Coastal Zone, Tidelands" was the subject of the meeting's speakers program. Commissioner Richard J. Sullivan of the state department of environmental protection served as program moderator. Speakers included Roland S. Yunghans and Dr. Edward B. Feinberg, environmental scientists in the office of Commissioner Sullivan; State Assistant Attorney General Morton I. Greenberg, chief of the civil trial section, and Deputy Attorney General Joseph M. Clayton, Jr., chief of the section on environmental protection.

Mr. Yunghans reviewed the recently-approved Coastal Area Facility Review Act. The law provides that anyone proposing to construct a coastal area facility, as defined by the act, must file an application for a permit with the commissioner of environmental protection. Such application must include an environmental impact statement. A hearing is held, and the commissioner may

grant or deny the permit, depending upon whether he finds facts to exist which reasonably promote public health, safety and welfare, protect public and private property, wildlife and marine fisheries, and preserve, protect and enhance the natural environment. A coastal area review board is set up and given the power to hear appeals from decisions of the commis-

sioner. Under the Act, the commissioner within two years is directed to prepare an environmental inventory of the environmental resources of the coastal area and of the existing facilities and land use developments within the coastal area and an estimate of the capability of the various areas within the coastal zone to absorb and react to man made stresses.



Attending the annual convention of the New Jersey Land Title Insurance Association at the Seaview Country Club in Absecon, N.J., are (above, left to right) Barry W. Crelin, James V. Lombardo, James A. Gray (ALTA vice president), John A. Kiernan, Frank J. McDonough, and William J. McAuliffe, Jr. (ALTA executive vice president). Below, members of the Minnesota Land Title Association enjoy a social break during their recent convention.

Machacek Elected Minnesota President

Joseph F. Machacek, Title Insurance Company of Minnesota, was elected president of the Minnesota Land Title Association at its recent convention held at Quadna Mountain Lodge, Hill City, Minn.

Additional newly elected officers are A. L. Winczewski, Winona County

Abstract Company, secretary-treasurer, and L. L. Thyen, Dakota County Abstract Company, director.

Convention speakers included James A. Gray, Fidelity Abstract Company, vice president of the American Land Title Association, and R. G. Gandrud, Title Insurance Company of Minnesota.



Photos from the Texas Land Title Association's recent highly successful convention in Mexico City include a view (above) of ALTA President James O. Hickman and Mrs. Hickman enjoying the banquet festivities and (below, right) John Coselli, Houston, outgoing TLTA president, passing the gavel to incoming President Robert A. von Doenhoff.

Mexico Site for Outstanding Texas Meeting

The 1973 convention of the Texas Land Title Association was held in Mexico City with a program featuring speakers involved in land transactions in Mexico.

Convention speakers included Oscar Ramos Garza, attorney, Jose Luis Arizti, civil engineer, Guillermo Grimm, marketing consultant, and Dr. Hermann Von Bertrab, bank official and economist, all of Mexico City. James O. Hickman, president of ALTA, addressed a luncheon meeting of the convention.

Robert A. von Doenhoff, Rusk, was

elected president of TLTA. Other newly-elected officers include Jack Rattikin, Jr., Fort Worth, vice president and president-elect; Hughes Butterworth, El Paso, secretary-treasurer; and Bob Stewart, Jr., Roland M. Chamberlin, Jr., Houston, George E. Neel, Jr., Laredo, and George M. Ramsey, Dallas, directors. Ramsey also was selected as Texas "Titleman of the Year".

Newly-elected officers of the recently formed "Texas Young Title People" include Chris von Doenhoff, Crockett and Melvin Morgan, Dallas.

FLTA, Florida Bar Co-Sponsor Seminar

The Florida Land Title Association and the real property probate and trust law section of the Florida State Bar recently co-sponsored an educational seminar on topics dealing with title insurance coverage, abstract examination, education of title industry people, title underwriting and the relationship between the title industry and attorneys. The seminar is the second of its kind to be co-sponsored by the two groups.

Panel members and speakers consisted of representatives of the title insurance industry and members of the Florida Bar. Co-chairman for the seminar were J. H. Boos, president, Peninsular Title Insurance Company, Fort Lauderdale and Robert B. Laseter, Jr., attorney, Jacksonville.

NYLTA Elects Moonan President

Paul D. Moonan, Jr., senior vice president and title officer, Monroe Abstract & Title Corporation, Rochester, was elected president of the New York State Land Title Association at the association's recent meeting at the Whiteface Inn, Lake Placid.

The following slate of officers was elected to serve under Mr. Moonan: vice president, southern section, Patrick L. Fucillo, vice president, Security Title and Guaranty Co.; vice president, central section, Edward Frisbee, president, Albany Title Co.; vice president, western section, William C. Jennings, vice president, Rochester Abstract Corp.; treasurer, Howard J. Missbach, first vice president, The Title Guarantee Co.; chairman, title insurance section, Richard A. Cecchetti, president, The Title Guarantee Co.; vice chairman, title insurance section, Frank E. Spower, chief counsel-senior vice president, City Title Insurance Co.; chairman, abstracters section, James V. Rinaldi, vice president, Hardenburgh Abstract Co.; vice chairman, abstracters section, Vincent P. Sarro II, vice president, Hudson Valley Abstract Co.; executive vice president, John A. Albert.

names names in the news names

John E. Flood, Jr., has been elected president and chief executive officer of Pioneer National Title Insurance Company and **Gerald L. Ippel** has been elected executive vice president.

* * *

Four persons have been elected to office by the boards of directors of Title Insurance and Trust and Pioneer National Title Insurance. Elected to office in TI was: assistant trust officer: **Louis M. Vitous**. Elected to office in PNTI were: vice presidents: **Dale Dow**, area manager, Washington state; **Anthony Zombolas**, senior associate counsel, Chicago; assistant vice president: **Raymond H. Benefield, Jr.**, assistant county manager, King County, Washington.

* * *

Richard H. O'Brien has been named president of Philip O'Hara Nassau Associates, Inc., agency of Lawyers Title Insurance Corporation in Nassau County (N.Y.).

* * *

Marva McCraw has been named manager of American Title Company's new escrow service center in Alvin (Tex.).

* * *

Commonwealth Land Title Insurance Company has appointed **Daniel H. Martin** and **John W. Parris** to vice president and assistant vice president, respectively, New York division; **William G. Walsh** and **Francis P. Chappell** to vice president and assistant vice president, respectively, Philadelphia; **David A. Yarnot** to assistant title officer, Waukesha (Wis.); **John A. Day** to assistant vice president and manager of the Norristown (Pa.) title plant.



FLOOD



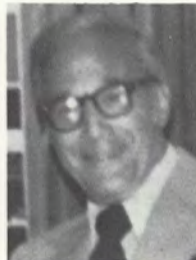
IPPEL



O'BRIEN



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MARTIN



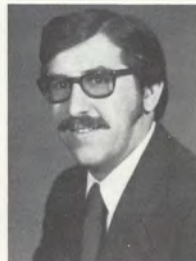
PARRIS



WALSH



CHAPPELL



YARNOT



DAY



GORDON



CORKILL



CLEMENTS



WILLHITE



GRAY



LASSETER



KNAPP



JOHNSON



AGEE



MOORE



DENT



BAXTER

Charles W. Gordon has been named associate counsel and will continue as an assistant vice president.

* * *

Stewart Title Guaranty Company has named **Bert B. Corkill** Greater Houston-Galveston regional manager; **Robert G. Clements** to manager of Galveston County operations; **Glenn Clements** to director of organization development; Houston; **John Polansky**, administrative assistant to Warren Miller, vice president; **James E. Willhite** to president, Stewart Title of Colorado Springs, Inc; **Sondra M. Gray** to manager, Stewart Title of Brevard County, Cocoa (Fla.); **Luke Brown** to western Louisiana district manager. Additional appointments include that of **H. David Lasseter** to vice president and north-eastern division manager, Princeton (N.J.); **Maitland F. Knapp** as president

of Fidelity Title, St. Petersburg (Fla.), a newly acquired Stewart subsidiary; **John W. Johnson**, manager of Stewart Title of Clearwater (Fla.); **D. W. Agee** as president, Stewart Title of Sarasota (Fla.); **Rick Brinson**, manager of

Stewart Title of Lee County, (Fla.); **Robert J. Moore**, president, Santa Ana office; **Eugene M. Dent**, president, San Diego (Calif.) office; **Bruce Baxter** to director of marketing, Detroit.

ALTA Home Buyer Benefit Activity Cited In New Fannie Mae – NAREE Publication

ALTA has contributed to the content of a comprehensive guide to home purchasing and selling, entitled *The Fannie Mae Guide to Buying, Financing and Selling Your Home*, which will be made available by Doubleday Company, Inc., in November, 1973.

The book is the joint effort of the Federal National Mortgage Association and the National Association of Real Estate Editors. Chapters are authored by different real estate experts—in most cases, members of NAREE.

An appendix on organizations in the housing and home financing industry contains a brief article on ALTA activity of benefit to home buyers, authored by William J. McAuliffe, Jr., executive vice president of the Association.

Also of interest is a chapter on property rights and other aspects of land transactions written by John S. Kellog, member of the American Bar

Association's section on real property, probate, and trust law. Another chapter, written by Barry Jacobs, Louisville *Courier-Journal* and *Times*, deals with forms of insurance of concern to the homeowner, including title insurance.

The book will be available both in hard cover at \$7.95 and paper cover at \$3.95. Orders will be handled by Doubleday and Company, mail order division, Garden City, New York.

Louisville Expands

The Louisville Title Insurance Company, headquartered in Louisville, Kentucky, recently has opened a new Indianapolis office to serve Indiana and Illinois. Bruce L. Nelson has been appointed vice president and general manager of the new office.



Toasting to Chicago Title Insurance Company's newly formed subsidiary in the United Kingdom, CTI-Dominion Title Insurance Company Limited, are Stanton S. Roller, (left) newly appointed managing director of CTI-Dominion, and G. Allan Julin, Jr., CTI senior vice president.

in the security agreement, confer on the debtor further leasing powers and on exercise of the power conferred, the lease shall take priority in accordance with the authorization.

“(f) While in possession of real estate (*sic.*) subject to a security interest a secured creditor as against all prior encumbrances, if any, and as against the debtor, has the same power to make a lease as the debtor in possession has been granted by subsection (b).” (Emphasis supplied.)

11. Section 3-209 contains a “due-on-sale” clause as follows:

“SECTION 3-209. (*Transferability of Debtor's Interest; Right to Treat Transfer as Default.*)

“(a) A debtor's right in real estate security may be voluntarily or involuntarily transferred notwithstanding a provision in the security agreement prohibiting any transfer. The security agreement may provide that a transfer without the consent of the secured creditor is a default or a ground for acceleration of the debt.”

In view of some recent decisions restricting this clause and in view of California legislation also restricting this clause, (see e.g. *Tucker v. Pulaski Fed. S. & L. Assn.* 481 SW2d 725), it would seem that that the Code here runs counter to a pro-consumer trend.

*The definition of “residential real estate” is given in Part I of this series, Par. 2.

Buyers Informed

John M. Hosking, board member of Nebraska Land Title Association and assistant secretary, Chicago Title Insurance Company, Omaha, Neb., draws attention to the need for home buyer protection with owner's title insurance in an article appearing in the Sunday *Omaha World Herald*.

Hosking cites faulty property titles which can “haunt” the buyer and mentions cases where the seller was not the actual owner of the property in question as well as cases of “phantom heirs”.

Riggs Heads Board

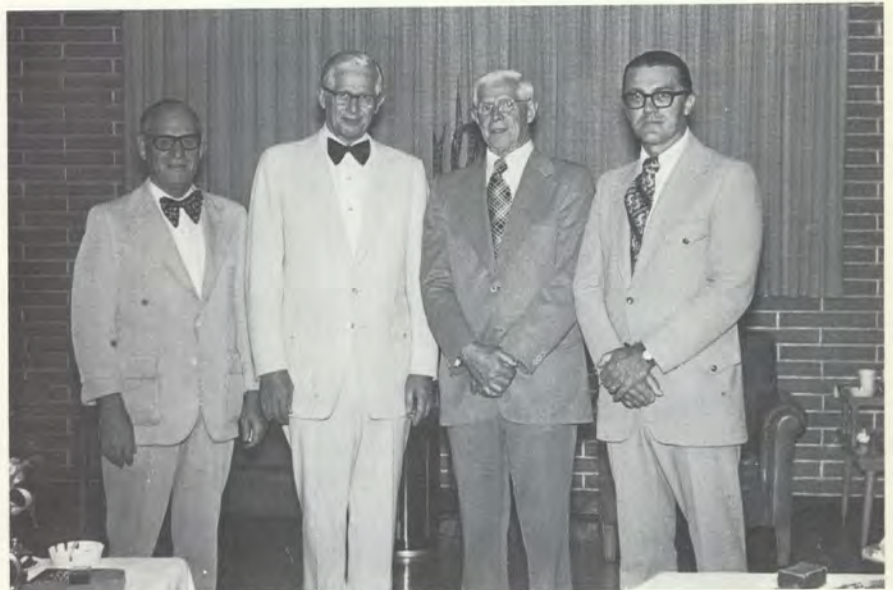
Albert R. Riggs, vice president and administrative assistant, guaranteed title division, American Title Insurance Company, New York, has been elected president of the New York Board of Title Underwriters.

Serving with Mr. Riggs are Richard Marcus, vice president, Commonwealth Land Title Insurance Company, as vice president; Justin Winston, Metropolitan Title Guaranty Company, alternative vice president, and T. Richard Kennedy, of the firm of Wener, Kennedy, French, Relyea & Molloy, as secretary-treasurer.

Morrato to Spain

Francis J. Morrato, Sr., senior vice president, New Mexico Title Company, will be a principal lecturer at a Graduate Realtor Institute seminar in Madrid, Spain, October 25-November 6. He will appear under the sponsorship of the New Mexico State Board of Realtors.

Over 150 Realtors from Texas, New Mexico and Arizona and guests from Spain will attend the institute. Morrato's lectures will cover real estate, real estate law, and Spanish and Mexican land grants in America.



The Hillsboro, Missouri, branch office of St. Paul Title Insurance Corporation recently was the site of a retirement party for Barney and Dwight Schubel, two of the former owners of the Jefferson County Abstract Company. Pictured above, from left to right, are Garvin Holland, divisional vice president, Dwight and Barney Schubel, and Theo V. Brumfield, branch manager.

Bannon to Helm

The Connecticut Board of Title Underwriters has elected Robert G. Bannon, Hartford office of Security Title and Guaranty Company, as president of the board.

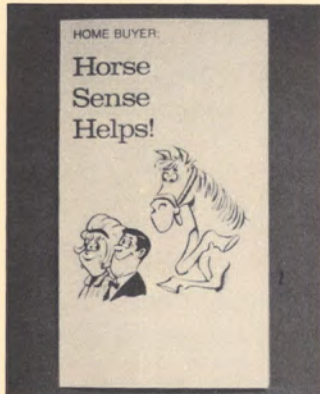
Richard W. Almond, Chicago Title Insurance Company, New York, has been elected vice president and T. Richard Kennedy of the firm of Werner, Kennedy, French, Relyea and Molloy, has been elected secretary-treasurer.

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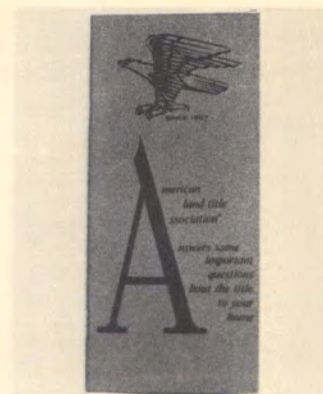
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1828 L Street, N.W., Washington, D.C. 20036)



HOME BUYER: HORSE SENSE HELPS! A concisely-worded direct mail piece that quickly outlines title company services. 1-11 dozen, 65 cents per dozen; 12 or more dozen, 50 cents per dozen; designed to fit in a No. 10 envelope.



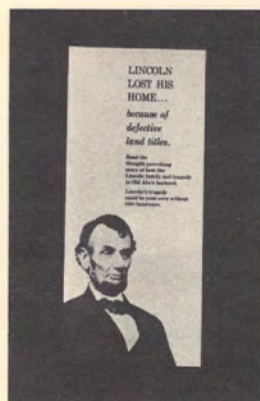
CLOSING COSTS AND YOUR PURCHASE OF A HOME. A guidebook for home buyer use in learning about local closing costs. Gives general pointers on purchasing a home and discusses typical settlement sheet items including land title services. 1-11 dozen, \$2.25 per dozen; 12 or more dozen, \$2.00 per dozen.



AMERICAN LAND TITLE ASSOCIATION ANSWERS SOME IMPORTANT QUESTIONS ABOUT THE TITLE TO YOUR HOME. Includes the story of the land title industry. \$16.00 per 100 copies of the booklet.



THINGS YOU SHOULD KNOW ABOUT HOME BUYING AND LAND TITLE PROTECTION. Folder designed for No. 10 envelope includes a concise explanation of land title industry operational methods and why they are important to the public. Narration provides answers to misinformed criticism of the industry. \$5.75 per 100 copies.



LINCOLN LOST HIS HOME... BECAUSE OF DEFECTIVE LAND TITLES . . . A memorable example of the need for land title protection is described in this folder. \$5.00 per 100 copies.



THE IMPORTANCE OF THE ABSTRACT IN YOUR COMMUNITY. An effectively illustrated booklet that uses art work from the award-winning ALTA film, "A Place Under The Sun," to tell about land title defects and the role of the abstract in land title protection. Room for imprinting on back cover. \$12.00 per 100 copies.

(RIGHT) **BLUEPRINT FOR HOME BUYING.** Illustrated booklet contains consumer guidelines on important aspects of home buying. Explains roles of various professionals including broker, attorney and titleman. \$18.00 per hundred copies, 20 cents each on 99 or fewer copies. (RIGHT) **ALTA FULL-LENGTH FILMS:** "BLUEPRINT FOR HOME BUYING." Colorful animated 16 mm. sound film, 14 minutes long, with guidance on home selection, financing, settlement. Basis for popular booklet mentioned above. \$95 per print. "A PLACE UNDER THE SUN." Award winning 21 minute animated 16 mm. color sound film tells the story of the land title industry and its services. \$135 per print.



American Land Title Association

