Title News

the official publication of the American Land Title Association

Happy New Year

January 1974

A Message from the President

JANUARY, 1974

As we roll into the year 1974 with high hopes for recovering from the cataclysmic events of 1973, the nostalgic aura of Christmas is still with us. As the Spirit lingers, which one of us does not momentarily, at least, hearken back to his boyhood and its poignant memories, and in an orderly progression of thought, reiterate our philosophical acceptance of the differences between Then and Now?

Perhaps as we face a ponderous 1974, we might do well to recapture some of the spirit of adventure in which we reveled when, as youngsters, we pored deeply into the exploits of *Sinbad the Sailor,* Captain Ahab in *Moby Dick,* worthy men of the sea in *Treasure Island, Mutiny on the Bounty, Two Years Before the Mast.* Was there ever a tale of high adventure on the high seas in which a stalwart sea captain did not at some point give the confident order, "Steady as she goes, boys"? We might adopt this classic cliche and draw relevant analogies as we prepare to deal with the conduct of our business in the coming year. True, conditions are not the best and there are serious problems which none of us can ignore. Leaders in business and education and the professions have characterized their comments on our times with one word which appears repeatedly in every trade journal, business magazine, and professional publication—the word "uncertain." Let us acknowledge the uncertainties, but let us also remember that it would be a mistake to underestimate our current economic capability, and our ability to hold steady until a new balance is restored to our national and international affairs.

In the meantime, we have work to do. We are in the midst of preparations for the Mid-Winter Conference, and I hope to see you all there. Our Association is the vehicle which will take us a very long way toward where we want to go, and our Association needs every one of us in there working.

Best wishes for your peace, happiness, and fulfillment in 1974.

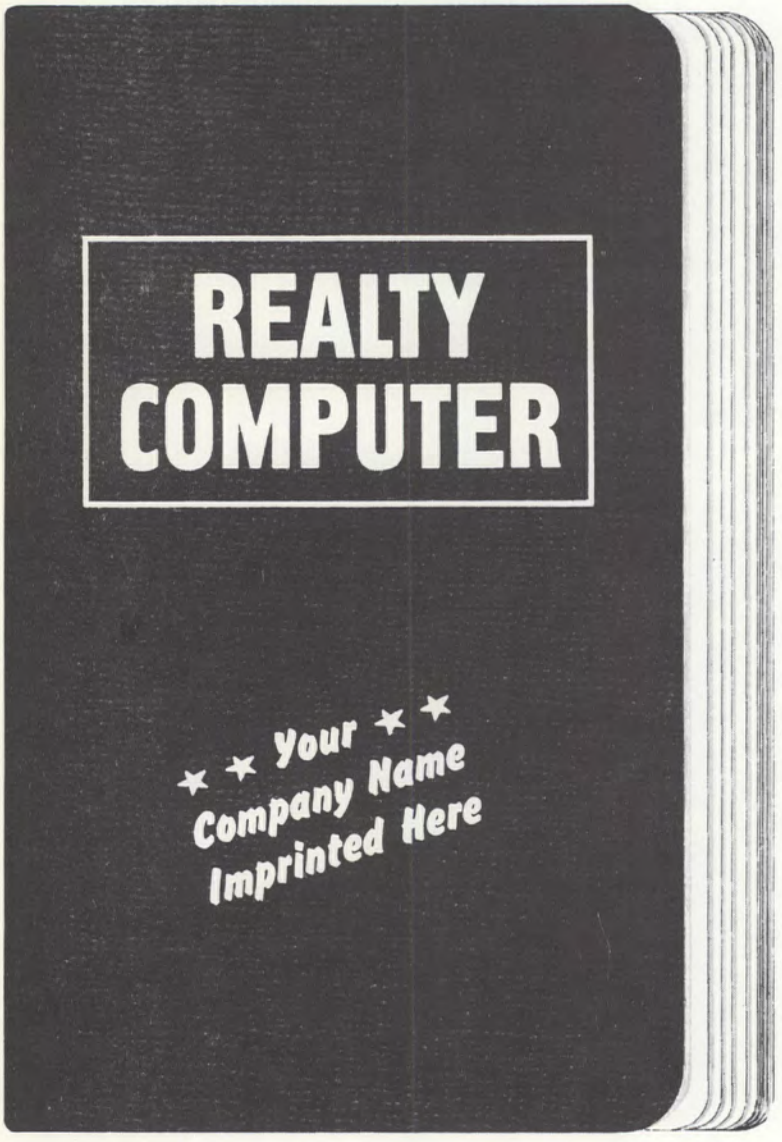
Sincerely,

Robert C. Dawson

Robert C. Dawson

FIRST MAJOR "BREAK-THROUGH" IN 25 YEARS IN REAL ESTATE TABLES!

NEW INTEREST RATES INCLUDED



Your NEW Hard-Working

GIFT FOR REALTORS!

Created by Realtors for Realtors

In addition to the conventional loan amortization payment tables, the New, 240-page *Realty Computer* provides, in shirt-pocket size, *thirty-eight tables* and checklists badly needed by real estate people in their daily transactions.

You owe yourself an appraisal of the ***REALTY COMPUTER***—one of the finest professional fact-finders you have ever seen. Your clientele will be asking for it.

Write today for your complimentary copy

(to Lending Institutions only)

PROFESSIONAL PUBLISHING CORPORATION

55 MITCHELL BOULEVARD • SAN RAFAEL, CALIFORNIA 94903

ALTA, PLTA Testify Before Subcommittee on Housing

Representatives of ALTA and the Pennsylvania Land Title Association appeared before the House Subcommittee on Housing December 5 in hearings on settlement charges and practices related to Subcommittee consideration of housing and community development legislation. Shown from left in the upper photograph are ALTA Executive Vice President William J. McAuliffe, Jr.; Research Committee Chairman John E. Jensen, Chicago Title and Trust Company; President Robert C. Dawson, Lawyers Title Insurance Corporation; and Federal Legislative Action Committee Chairman James G. Schmidt, Commonwealth Land Title Insurance Company. In the lower photograph, Joseph J. Hurley, left, PLTA president, The Title Insurance Corporation of Pennsylvania, confers with Moses K. Rosenberg, PLTA executive vice president, who is associated with the Harrisburg law firm of McNees, Wallace & Nurick. Testimony of both associations favors the approach of H. R. 9989, a bill sponsored by Congressman Robert G. Stephens, Jr. (D-Ga.) and 16 other House Committee on Banking and Currency members from both sides of the aisle, which provides settlement anti-abuse, disclosure and reform measures while repealing the existing federal authority to regulate settlement charges under the Emergency Home Finance Act of 1970.

Title News

the official publication of the American Land Title Association

Proceedings, 67th Annual Convention, American Land Title Association, Los Angeles, California

General Sessions

Address of Welcome, S. M. Marcus 4
President's Report, James O. Hickman 5
Even Number Three Tries Harder, Edwin O. Guthman 6
Joint Title Plants: Progress and Problems
- Comments by James H. Vorhies 9
- Comments by Louis Balocca 10
- Comments by Victor Gillett 11
- Comments by O. B. Taylor 11

TIPAC: Shaping Your Political Destiny, Francis O'Connor 12
Political Action: Now More Than Ever, Mrs. Lee Ann Elliott 12
Rating Bureau Perspective
- Comments by J. Mack Tarpley 14
- Comments by Moses K. Rosenberg 14
- Comments by Dwight Shipley 15

Zoning Endorsement 43

Abstracters and Title Insurance Agents Section

The Title Business—From A Woman's Viewpoint
- Comments by Mary C. Feindt 17
- Comments by Betty Lynde 17
- Comments by Phyllis Schnebelen 18
- Comments by R. Claire Wetherell 19

Title Insurance and Underwriters Section

Trends and Developments in Title Insurance Claims, Jack L. Tickner 20
Condominiums, Clark F. Staves 22
NAIC Update, J. Mack Tarpley 24
Mechanics' and Materialmen's Lien Coverage
- Comments by Ray E. Sweat 24
- Comments by Irving Morgenroth 28

Report of ALTA Standard Title Insurance Forms Committee, Marvin C. Bowling, Jr. 30

Election of Officers

National Officers 32
Section Officers 32

Workshop Session

Workshop on Considerations Affecting Sale and/or Valuation of an Abstract or Title Plant
- Comments by Charles Jones 33
- Comments by Thomas S. McDonald 33
- Comments by John B. Wilkie 34
- Comments by Otto Zerwick 34
- Comments by Ray Frohn 35

Committee Reports

Report of ALTA Federal Legislative Action Committee, James G. Schmidt 36
Report of National Conference of ALTA and ABA, Alvin W. Long 38
Report of ALTA Liaison Committee with the Mortgage Bankers Association of America, Robert C. Bates 39
Report of ALTA Research Committee, John E. Jensen 40
Report of ALTA Public Relations Committee, James W. Robinson 41
ALTA Resolutions Committee Report, Glenn Graff 43

Departments

A Message from the President Inside Front Cover
Index to 1973 *Title News* Articles 45
State Association Corner 48
Names in the News 50
Meeting Timetable 52
ALTA Educational Aids Inside Back Cover

VOLUME 53, NUMBER 1, 1974

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

GARY L. GARRITY, Editor CAROL MATHES HALEY, Managing Editor

GENERAL SESSIONS

Address of Welcome

S. M. Marcus

President
Board of Public Works, City of Los Angeles

Good morning, and welcome to the City of Los Angeles. Mayor Tom Bradley wanted very much to be here and personally observe the start of your convention. However, he is providing his dynamic leadership in so many new areas for our great city, and is presently in Washington, that it is impossible for him to be here today. So he has asked me, one of his new commissioners in this new administration, and as President of the Board of Public Works, to welcome you to the nation's third largest city and, we believe, most progressive city.

This city was founded before there was a United States of America. It began in 1781 with a nucleus of 11 families near what is today Olvera Street, an area I am sure you will wish to visit close to the present downtown area. In 1850, the new pueblo was only four square Spanish leagues in size—28 square miles. In 1870, there were 5,700 people living here, a population which rose to 50,000 by 1890. Today there are 2.8 million people living in the 463.7 square miles that make up Los Angeles.

The first settlers established their tiny pueblo along the banks of the Los Angeles River and never dreamed that that river course would not meet all the future water needs of Los Angeles. However, early in this century it was obvious that new water sources had to be developed and it was done. Water, today, comes from as far away as 250 miles from the snow fields of the High Sierras and from the Colorado River. So it was water that enabled the city to grow and develop from a desert community into a major metropolis—today, the largest American city of the vast Pacific Basin.

Los Angeles is a naturally arid area bounded on the south and west by the Pacific Ocean. Two major mountain ranges, the Santa Monica mountains and the Verdugo mountains, cut across the city separating the San Fernando Valley from the rest of the city.

The highest point in the city is almost a mile above the beaches at the foot of the Pacific Palisades.

The land-use patterns in the city are characterized by clusters of high intensity development (including skyscrapers) interspersed by undeveloped land, neighborhoods of single-family homes, and sections of low density industrial development. One hundred and thirty-three miles of freeways and a grid pattern of almost 7000 miles of streets and highways crisscross the city.

But it is not the hundreds of miles of streets or sewers or storm drains or any other such set of statistics that are important in Los Angeles. The most important and most outstanding feature of our city is the people who live in it. Consequently, there is a singleness of purpose at city hall to effect equity and bring about fair treatment for all residents. Gone is the unspoken priority system under which trees in Westwood are trimmed before those in Watts, or when one section of the city sees long delays between essential city services such as street sweeping, while another section gets almost overnight service.

In Los Angeles, the doctrine of impartiality is not debatable nor negotiable. As one example, any contractor now getting a city contract for $5,000 or more must ethnically balance his work force to equate fairly with the minority balance of the city's population. City investigators constantly check compliance and wipe out job-discrimination hiring practices. The city has a standard operating procedure, and fairness and equal treatment to all citizens are at the top of the list.

No great city can ever be said to be completed. Failure to progress results in stagnation, and cities that flourish, and grow quickly, can just as easily die. Not all the ghost towns in our nation surround abandoned gold or silver mines. Some of our major cities today, which placed too much emphasis only on size, are certainly dying now, if indeed, for all practical purposes they are not already dead as viable population centers.

The Board of Public Works, of which I have the honor to be President, is now starting its second century of existence, and a major goal is to assure that our city doesn't die, that it does not confuse mere change with real progress. One problem we work at every day is to assure that individual citizens are not lost sight of in city government's daily relationship with the nearly three million people it serves.

Your profession indirectly plays an important part in the processing of tract maps by the city and helping with the orderly control of development projects. Since you all have a specialized interest at this convention, you will be interested to know that the Board of Public Works administers many functions that affect the use and title of property, particularly in subdivision and parcel map procedures.

As the older areas are more intensely used, it becomes necessary to revise old improvement standards and to provide additional services into some areas. The city's capital improvement program for the current fiscal year is in excess of fifty million dollars. Approximately one-third of this amount is used to acquire property for city projects. Without going into procedural details, Los Angeles, currently, is processing about 500 division-of-land maps a year, each of which requires a title guarantee in some form. As the city acquires land in connection with capital improvement projects, the city must depend on private title companies to supply a substantial proportion of the necessary title reports. Last year, Los Angeles purchased about 1700 title reports from private title companies for public improvement projects.

Mayor Bradley, elected earlier this year by a predominantly white electorate, initiated many improvements for our local government, even as a councilman. Protection for the consumer was one of the most important. Recently, a new ordinance called "Truth in Real Estate" began to protect the buyer by making him aware of what he is purchasing. During the first six months, the requirement is not mandatory, but voluntary. After February 24, 1974, it becomes mandatory for the seller to provide basic information to the buyer regarding zoning, legal use and occupancy, and pending assessment liens.

Much credit belongs to your organization for its assistance, for its progressive thinking, and I hope you will continue to support whatever measures are necessary to take the buyer out of the jungle of misinformation and jeopardy when he or she buys a piece of property.

This nation has focused attention on Los Angeles and Mayor Bradley's new administration. We will not disappoint them. Good things, and exciting things, are happening daily and you are in a city where true equal opportunity for communities and individuals is not merely a campaign slogan or promise. If this is the dawn of a new tomorrow, a new beginning for Los Angeles, let it be the best.

Again, on behalf of the Mayor, permit me to extend his warmest welcome and best wishes. May you have a most successful meeting and I hope you also have the leisure time between meetings to avail yourselves of all that this great city has to offer in the way of entertainment and recreation.

Thank you for bringing your 1973 Convention to Los Angeles. I assure you, you come as honored guests.

President's Report

James O. Hickman

1972-73 President, American Land Title Association
Senior Vice President, Pioneer National Title Insurance Company, Chicago, Illinois

I appreciate this opportunity to add another chapter to the continuing history of the American Land Title Association. Our history has been replete in the past year with tales of money crisis, new systems, legislative woes, and I must report that this year's chapter will provide more of the same.

Before I list these events, I would like to pay tribute to our past leaders who have built the ALTA into its present position and strength.

I particularly commend their foresight in moving our headquarters to Washington, D.C. Today our Association, on a daily basis, is in contact with many departments on Capitol Hill. This, and by virtue of our having a strong, capable staff, has allowed us to keep abreast of the changing Washington scene.

During the Convention, you will receive a complete update on our federal legislative matters.

As a recap, however, we still have on the books as law the Emergency Home Finance Act of 1970. This act grants HUD the authority to set up standards for closing costs. Presently, there are three bills pending in Congress relating to closing costs. These bills have been submitted by Senator Brock, Senator Proxmire and Representative Stephens. I'm certain that you will be interested in our industry's position on these bills.

The Association was disappointed in the recent action taken by the Federal Home Loan Bank Board that permits service corporations of federally chartered savings and loan associations to engage in business as agents or brokers for title insurance companies, although the S & Ls were denied the authority to serve as title insurance underwriters.

We also still have in the wings the question whether the metric system will be adopted, and if so, if applicable to the title industry.

In connection with the legislative scramble that we have witnessed, our members have been most active. I know that our membership has come to the realization that they must become involved. It has been your involvement and your work with your legislatures that has allowed us to attain some degree of success.

The course of action that we have pursued has been guided by our committee and followed by the ALTA staff, headed by Bill McAuliffe, with a big assist coming from Tom Jackson. Also vital in these matters has been a special Ad hoc Committee under the guidance of Tom Finley.

On behalf of myself and the Association, I would like to extend our appreciation to these people for the outstanding work done.

Besides the legislative activity on the national level, we are also witnessing much activity on the state level. I'm certain that insurers are aware of the impact that rating bureaus and some rules and regulations issued by some insurance commissioners have on the industry. As to the activity of state legislatures at work, some examples that we have are as follows:

The Code of North Carolina now provides issuance of a title insurance policy is prohibited unless an underwriter first obtains an opinion of title from an attorney licensed to practice law in that state, who is not an employee of the underwriter.

In Texas, there was defeated a bill which would have permitted organization and operation of title companies without regulation of forms or rates by the Insurance Board.

New Jersey is reported to be progressing on a title insurance code which is expected to include a prohibition against kickbacks. Also, in the new code, it is reported that it contains a prohibition of closings by title insurance companies.

And so it goes across the land. In these days of our fast-moving society, our association cannot be complacent as to what is happening in one particular locale, for the action taken by one legislative body, or one insurance commissioner can soon have repercussions across the country.

It appears that the housing industry is once again the whipping boy of the economy. I know that I need not advise you that we are in a tight-money market. From visiting with you throughout the country, you have reported a decline in orders in the past few months.

During the Convention, we have on the program Dr. Julian H. Taylor, economist, who will give his views on what we can expect on the money market.

The state conventions that I have been privileged to attend have been most enlightening as well as entertaining. The agendas have been varied. Certainly they indicate that our industry has interest in joint plant computers and all of the varied new systems.

While we can view the matters that I have reported on this morning as problems, which they are, we also must be cognizant that ours is a changing industry. Many of these same types of problems of change confront us in our society today. And our measure of success will be measured on our ability to adapt and cope as they arise. The title industry has attained the status of being a highly professional industry. Our Association has never been in a stronger position. You the members are showing greater interest in working harder than ever before. Because of this, I can view our problems and our solutions with confidence.

I regret that time doesn't permit me to thank each of the committee chairmen and members that have served so well. I appreciate the officers of my company and my associate workers for their understanding for the time that this position entails.

A special thank you to Bill McAuliffe and his staff; they have always anticipated the needs and provided assistance for a course of action.

Pat and I have enjoyed the opportunity to have visited your state conventions. You have been wonderful hosts, and we will always cherish the fine memories of these moments. It has been a pleasure to have had the opportunity to have served as your President and I thank you for this honor. Thank you.

Even Number Three Tries Harder

Edwin O. Guthman

National Editor, Los Angeles Times

Mr. Hickman, ladies and gentlemen, thank you very much. I'm pleased to say it is a real pleasure to be invited to come and speak to the American Land Title Association. I've had a long association with TI here in Los Angeles. I've known George Garber when he was in Seattle for many years from the time I was a little boy. Carl Ronning, the auditor of TI is a long-time friend of mine and I go over there for lunch fairly often. Now, I've gone so many times, they don't charge me any more when I use the automatic shoe shining machine. I still have to pay for my lunch, but I'm hoping that maybe now that I have spoken to your organization and have had a chance to say what I have on my mind, that perhaps they will look with a little greater favor at the august company on Spring Street.

Well, the number three tries harder. I have to explain that, because I'm number three on the enemies list of the White House.

Allen McGurk and the good people at the title companies in your Association thought you ought to get a good look at a real enemy as you start your deliberations here.

You know a few days before John Adams died in 1826 his fellow townsmen in Quincy, Massachusetts asked him to send them a toast for the Fourth of July and his response was brief. He recommended that the patriots of Quincy drink to a simple sentiment—Independence Forever. And old John Adams' toast echoing down through the years seems quite appropriate these days.

I think that one of the bones of truth that has come out of Watergate with its disclosures of perjury, obstruction of justice and wiretapping and burglaries and suppression of dissent, preoccupation with the highest level of our government with compiling enemies lists, is that we, the American people, were coming close to losing our independence.

There were a few pieces of masking tape on a door in the Watergate complex in Washington that a night watchman spotted. They led to crisis in our internal affairs, which is still going on and is far from being resolved. Those few pieces of tape, leading to the revelations of what our leaders were doing and, perhaps, more important than exposing their states of mind, have given us the opportunity to revive our democracy and to reclaim our rights as free men and women. And in the last analysis, that's not so much what President Nixon does, or what the courts do, or what the Watergate Committee does, but what we do and whether we are worthy of those great traditions that we are heirs to.

And that will decide whether John Adams' toast will still be meaningful when our children are our age. And that's what I want to talk about today and also I can't stand these days as representative of the press without some reference to that, but first, of course, I have to deal with the fact that I do stand before you as number three, on a special list of White House enemies who were singled out for special attention from a master list that contained names of 201 individuals and the names of 18 separate organizations.

When I mentioned that I was an enemy, you all laughed and there has been a lot of joking about it. Everybody I meet congratulates me about it. It doesn't make any difference where I go. You know I don't think everybody down at the title company is a Democrat—there's a few Republicans down there, and even they have come up and said to me, "oh gosh, congratulations. That's really great." And I'll tell you, as number three, I'm not trying to be number two and I'm not trying to be number one.

And even though I found myself in the company of some very distinguished Americans, there was a Derrick Bock, the President of Harvard, Robert McNamara, the President of the World Bank, James Watson the head of IBM, and Carol Channing, Joe Namath, and I wouldn't have been surprised to see Rocco Siciliano's name on there.

Well maybe through the years, to have been marked as an enemy by that crew in the White House, whether deserved or undeserved, might become a badge of honor, but I don't feel that congratulations are in order.

Whether I had been on the list or not, I would feel that of all the White House horrors, as former Attorney General John Mitchell described them, nothing was more sinister or more threatening than that list. And nothing was more revealing or more damaging to the Nixon Administration.

I'll tell you why. Clark Clifford, former Secretary of Defense, he was also on the list, made what I believe was the real point about the list. He said one of the first acts of a police state in gaining control of a government is to list the names of persons for liquidation.

We have not got to that point yet. But here were people listed for retribution.

Now consider for a moment that you were on that list. And the way things were going, if you look at that list, really it's not so far fetched that any of you could have been on it.

Had you known that the White House was keeping an enemies list, the effect would have been chilling. Your independence as a law-abiding citizen would have been considerably lessened.

Now to find out after the facts, so to speak, at the least it would leave you very uncomfortable, even as in my case, you were not aware that the government attempted to harass you in any way.

I learned that I was one of the President's enemies when John Dean handed the Senate Watergate Committee a series of typewritten lists furtively prepared in the White House in the latter part of 1971 by Mr. Nixon's top aides and some of his assistants on the Committee to Re-elect the President. These lists were kept in the office of Charles W. Colson then a special counsel to the President.

And among them was this special list of twenty forwarded from Colson's office to Dean with this notation:

> "Having studied the attached material and evaluated the recommendations for the discussed action, I believe that you will find the list worthwhile for go status."

And there I was following Arnold M. Picker, Director of United Artists Corporation in New York, and Alexander E. Barkan, National Director of the AFL & CIO's Committee on political action.

Number three, Guthman, Ed, Managing Editor, Los Angeles *Times*. And below my name was this notation:

> Guthman—Former Kennedy aide who was a highly sophisticated hatchet man against us in 1968. It is obvious he is the prime mover against the current Key Biscayne project. It is time to give him the message.

Now it's bad enough to be on anybody's list; I don't want to be on anybody's list and I resent it. And I'm also puzzled. Really, I don't know whether I'm more puzzled or more resentful, but I'm very puzzled about the notations beside my name.

You know this list contained many mistakes. Enemy number fourteen was Dr. Samuel M. Lambert who until recent retirement was executive secretary of the National Education Association. Lambert not only voted for President Nixon in the last election, but had been asked by the Administration to suggest people for the various appointments, including that of U.S. Commissioner of Education, but apparently, he was executive secretary to the NEA and that automatically made him an enemy.

Joe Namath was listed as playing for the New York Giants.

Now in my case, except for spelling my name correctly and noting that I am a former Kennedy aid, everything else was inaccurate.

I'm not the managing editor of the Los Angeles *Times;* Frank Haven is and has been for many years. I've been the national editor since 1965.

My responsibility is for the coverage of the news in the United States, outside of southern California; that includes our Washington bureau.

I did not take part any way whatsoever in the 1968 Nixon-Humphrey campaign, so I don't know how I could have been a sophisticated hatchet man against the President. I suppose I'm the only sophisticated hatchet man ever to come out of Seattle, Washing-

ton.

But I'd like to know what caused that. What brought that on? Then, more important is the so-called Key Biscayne effort. Now, if I were to testify, I'd have to swear that I don't know what that refers to.

The *Times* did not undertake any investigation in Key Biscayne prior to the time the list was compiled; we have been interested in a little piece of property down in Orange County, in San Clemente, and we have looked into that from time to time, but we never looked into anything in Florida. We have never had anything remotely connected with a "Key Biscayne effort."

Now what I suspect is that the concern in the White House about a Key Biscayne effort referred to an investigation by three reporters of *Newsday*, a Long Island newspaper, who looked into the Florida business activities of the President's friend, C. G. (Bebe) Rebozzo in 1971.

Newsday is owned by the *Times—Mirror*, which also owns the *Times*.

Now mistakenly, I think that the men who compiled the list might have thought that the former Kennedy aide, and sophisticated hatchet man in Los Angeles, was able to instigate an investigation of Bebe Rebozzo through *Newsday*.

If that is the case, it shows how little the White House knows about newspaper reporting, about *Newsday*, and about the Los Angeles *Times*.

There's no way that I could have persuaded *Newsday* to do something that we would have wanted to do. If we had thought that there was something worth investigating in Florida, we would have done so ourselves.

And except for ownership, there is no connection between the two papers. But if my suspicion is well founded, a question has to be asked; who in the White House would be so concerned about *Newsday's* investigation of Bebe Rebozzo?

Is it a visible part of what the London Sunday *Times* in writing about all this called the tip of the iceberg of executive paranoia?

Of course, if I am correct, the references calling for it shows that the White House was not concerned with what the Los Angeles *Times* was doing. We have fifteen skillful, aggressive reporters in Washington. They've worked hard. They've worked to get at the truth during the Nixon Administration. But no harder than they did during the Johnson Administration to try to find out what our government was doing.

In the process, our Washington reporters brought to public attention considerable information which the White House, under both Democrats and Republicans, would have preferred the public not to know.

One article which I thought would really get to the Nixon White House detailed the planning and execution of the November 1970 raid to rescue American POW's from the Sontay prison in North Viet Nam. We had information from a source that we couldn't ignore that when they ordered that raid, they knew the prisoners weren't there. We investigated. We ran a story in early 1971 which exposed the bungled intelligence procedures which meant that the mission planners didn't have any good information on whether Americans were kept at Sontay, or whether, if indeed, it was a prison.

But that article and others, which were published, apparently didn't concern the White House as much as some kind of Key Biscayne effort, in which we were not involved at all.

I would have felt a lot better, I think, if the White House would have said that I was "obviously the prime mover behind the Sontay Prison story," rather than something that we didn't have anything to do with.

And finally, there is that sinister notation, "it's time to give him the message." Well what's the message? Harassment of my wife and four children; an attempt to get my job; a tap on my telephone; burglary of my home; a breakin to rifle my office files; an audit of my income tax returns; an investigation of my personal life by Tony Ulasewicz that jolly White House private eye?

Now the sad part of it is that any one of those acts was possible, as we've learned from Watergate. But as I said, nothing happened; if the message was sent I didn't get it. But possibly the publication of the list shed some light on a puzzling incident, a small incident which occurred last year.

John Ehrlichman, the former Presidential advisor for domestic affairs, and I are from Seattle. Although I was an investigative and political reporter up there for Seattle newspapers from 1945 to 1961, I never met Ehrlichman, although I did know his Uncle Ben, who was a prominent financier and Republican fund raiser.

Last year, at the Republican Convention in Miami Beach, John Ehrlichman was having lunch with two Los Angeles *Times* reporters. I happened to eat in the same restaurant and as I was walking out, our reporters saw me and motioned me to come to their table and they introduced me to Ehrlichman. And here's the way the conversation went as we shook hands: "You're from Seattle aren't you?" And I said yes. "You left in 1961 to work for the Kennedys didn't ya" And I said yes. And then he said: "Are you still working for them?" And I'll have to tell you I was taken aback, and I finally fumbled for an answer and I said: "well John, I'm not working for the Kennedys now, but I'd be proud to be if either one of them was alive."

And I have to give John Ehrlichman his due now. I think he, like John Dean, may have read that list from Colson's office and that might explain the insensitivity of his remark; or maybe that was his way of giving me the message.

I hope to find out some day, just to satisfy my curiosity, but besides being curious, I have been left ill at ease. And if my wife and I were the kind of people who looked over our shoulders, I think it would have affected how we went about our lives.

And besides being aware of that, I have some pity for these men who drew up the list. They are high in the counsels of the government, and yet they were spending their time drawing up lists of enemies.

And then, that was bad enough. But in the process they made many mistakes and they used atrocious judgment.

I want to cite just one more example. Number ten on this list of twenty is Sterling Monroe, Jr. He's Senator Henry Jackson's Administrative Assistant. He's worked for Jackson for fifteen years or more. He's an able, conscientious senate assistant. Above all, he is a very decent man. And here's the notation that was beside Monroe's name:

> "We should give him a try. Positive results would stick a pin in Jackson's white hat."

I think any reasonable interpretation of that is that the White House operators thought that it would be a good idea if Tony Ulasewicz, or some other White House private eye probed into Monroe's personal life and think of it. Monroe has worked on Capitol Hill for all these years without the slightest stain on his reputation. His crime in the eyes of the White House was that he worked for Senator Jackson, who was a potential candidate for the Democratic Presidential nomination. So he was marked for investigation. I was slated to be given the message. I don't think this is what we expect from our government. It does smack of a police state mentality.

But, I think of crusty Paul Vivia, a colonel in the regiment I served in in World War II, and he had a phrase which I think is particularly fitting. When he found one of us out of line, he would chew us out unmercifully and then he'd end by saying, "This is either blind stupidity or invincible ignorance!" And we'd stand stiffly at attention and he'd say, "alright is it stupidity?" "No sir." "Then God Damn it, it must be ignorance!" and then he'd turn and walk away.

I wish this list was a laughing matter. When the list was made public, Colson insulted our intelligence by explaining that the list was the counterpart of a friends' list, which was terribly helpful to the White House social office.

Reasonable people are more likely to believe John Dean's explanation. In a memorandum to H.R. Halderman and to Ehrlichman informing them of the problems involved in getting Enemies Enterprise off the ground he wrote:

> "This memorandum addresses the matter of how we can maximize the fact of our incumbency in dealing with persons known to be active in their opposition of the Administration. Stated more bluntly, how can we use the available federal machinery to screw our political enemies?"

Now we have to ask ourselves how could so many seemingly intelligent, well appearing men engage in such blind stupidity and lawlessness? Those men who talked so much about strict construction of the Constitution and who preached to us so often about law and order. What has come through loud and clear in the Watergate testimony is that so many of these said in effect that they were only following orders. The President's personal attorney said he had never done an illegal act before. But over and over in explaining why he undertook to participate in a cloak and dagger scheme to hand over thousands of dollars in cash to the Watergate defendants he said:

> "I was given a very important assignment and I carried it forward."
>
> No questions asked.

White House staffer E. Howard Hunt, Jr. in explaining why he falsified State Department cables in an unsuccessful attempt to smear a dead President and engaged in burglary, said:

> "I was acting on the orders of senior White House figures and my twenty-six years of service to the United States predisposed me to accept orders without questions."

And that is a problem. We elected an Administration which, while sneering at peace demonstrators and long-haired youth, raised to high office men who would ride roughshod on our basic rights and then explain blindly:

> "I was only following orders."

Now we've heard that before.

And I think it is something to be greatly concerned about. Nobody apparently asked any questions. All kinds of stupid illegal things were done. If not in the name of the President of the United States, then in an almost mindless ruthlessness to secure his re-election, no matter what the cost to the country, or what the cost to law abiding individuals.

In the name of the President, enemy offices were broken into. State Department cables were faked. All conversations in the Oval Office were recorded. Telephones were tapped illegally. Political opponents were sabotaged. The integrity of the FBI, the CIA the Internal Revenue Service and other government agencies was compromised and undermined.

The financing of the campaign to Re-elect the President was corrupted.

And finally, there was a massive effort to obstruct justice with perjury, destruction of records and undercover payments to silence seven men, so that they would take the rap.

Now, unfortunately, these are not figments of someone's imagination and they are not typical of the American political campaign. They happened and regardless of what more the Watergate investigation turns up, or who is proven to have told the truth and who is shown up as not telling the truth, these things have happened and we are all going to have to live with the consequences.

And I have to say that when the Watergate burglars were caught, I did not and would not have believed that that incident or the others that we later learned about were not figments of the imagination. I believed the President and his men were too smart to have been behind the break-in, even though I had come not to trust their public statements totally.

When the break-in occurred, we treated it first as a police story. There are, after all, roughly fifty burglaries daily in the District of Columbia. Most go unreported except in small type in a crime column in the Washington *Post*. And of course, this burglary was a little bit different. It was in the headquarters of a national political party and the burglars were caught with sophisticated electronic equipment.

So it was more than passing interest, and we followed it, but we didn't get into it very actively until a few days later when it became known publicly, thanks to some persistence on the part of two young Washington *Post* reporters, that the burglars had links with Howard Hunt of the White House staff and with Gordon Liddy of the Committee to Reelect the President. And at that point, we assigned two reporters of our Washington Bureau to the story. And ultimately, we had all fifteen reporters in Washington, and reporters in Chicago, New York and Los Angeles working to try to penetrate the official secrecy that shrouded the case.

This involved running down tips, some true, some false, trying to persuade reluctant men and women to talk, piecing together bits of information and running down many blind alleys.

And for several months, the *Times*, The Washington *Post*, *Time* Magazine and *Newsweek* were almost alone in disclosing the wider ramifications of the Watergate break-in. And it was very tough going.

The Justice Department sought in one instance to prevent us from publishing the first eye-witness account of the breakin. But it did not succeed.

John Lawrence, our Washington bureau chief, spent a few hours in jail because he refused to turn over a tape of a conversation we had. Furthermore, and most important, the White House was denying every fresh disclosure.

Now despite what you might believe, despite what many people in the Administration like to think, newspapermen do not get any pleasure in publishing stories which implicate our White House in unsavory activities.

What we're trying to do is get at the truth and that's a basic responsibility of a free press and a free society. It's an essential element in preserving freedom of expression. And it's your freedom of expression.

We need to be almost continually reminded these days of something that I think was best expressed by one of our wisest federal judges, the late Leonard Hand who said that "the interest protected by the first amendment presupposes that right conclusions are more likely to be gathered out of a multitude of tongues than through any kind of authoritarian selection." To many, Judge Hand said "this is and always will be folly but we have staked upon it – our all."

And so we have the first amendment, providing for freedom of religion, freedom of speech, freedom of the press and the right of the people peaceably to assemble to petition the government for a redress of grievances. It is a declaration of a national policy in favor of public discussion of all public questions. It does not set the fourth estate apart from society or give the press any special rights. But in our system, what it does do is give the press a responsibility not to accept government statements meekly, but to probe and question and to dig for the truth and to disclose it.

But that does not apply just to journalists. It applies to Mr. Nixon and to all of you. We're all in this together.

It would be a mistake, however, to give too much credit to the press and I think too much credit has been given to the press for the fact that the wider implications of the Watergate break-in ultimately were disclosed to the public.

The enemies list, which started out as a grand strategy for "screwing political enemies" some real and many imaginary, tailed off into Ad hoc instances of vindictiveness primarily because the White House could not bend the career employees of the Internal Revenue Service to its will. Even though the White House changed directors, it could not, except in a few instances, get the Internal Revenue Service to do what it wanted it to do.

And when the President's men sought to keep the lid on Watergate, there was, as Edward Epstein wrote recently in our newspaper in an appraisal of press coverage of the scandal, a revolt by career men and women in the FBI, in the Department of Justice and in other agencies of the government.

These were the sources of the unprecedented leaks that the White House denied so vehemently and complained so bitterly about. Civil servants were risking their careers because they couldn't go along with what they saw happening in our government.

Now what the press did, what our reporters and those of the Washington *Post*, and *Time* and *Newsweek*, did, was that had they not been out in the street probing and asking questions, it is very doubtful that these civil servants would have dared to do what they did.

I want to point out that neither the *Times* or the *Post* published any of the allegations which we did, that could not be checked out by at least two independent sources. And doing this, and giving outlets to the leaks of information from within the government, the press raised enough questions about Watergate so that when the Watergate burglars went to trial, a courageous federal judge was not satisfied with what he heard and saw in his courtroom and he took the steps that broke the case wide open.

Now what is the meaning of Watergate? As the story continues to unfold, I despair when I hear high officials say "I was only following orders." We have to wonder when we can be concerned about our youth and people who were dissenting against the war, it seems to me, that we also have to be concerned about the fact that we have raised a group of people in our country who say they are willing to do things on the grounds that they are only following orders. How far would they have followed those orders? How far would Howard Hunt have gone?

I share the feeling of Howard Simon, the courageous managing editor of the Washington *Post*, that the men closest to the President were evolving a unique notion of how best to commemorate the bicentennial in 1976. They were going to repeal the Bill of Rights.

And as I reflect on what has happened, I have to conclude that these men either did not understand what our country is all about or at least they had very little faith in our system. Rather they seemed to have felt that they had to manipulate, subvert, misuse, abuse, what is really still a very fragile political and social experiment called democracy.

Watergate and what it represents is no Whitehouse version of a panty raid as some people would have us believe. It was not "as American as applepie" as John Ehrlichman told a nationwide television audience. It is not something that every American political party has engaged in. It was no third-rate burglary, as the White House press secretary called it. And it was definitely not a patriotic action taken in the interest of national security.

And as we have come to learn, the break-in in the Watergate was the least of it.

One way to look at it is the way George Meany of the AFL looked at it. He said:

> "God bless the blunderers at Watergate. If they hadn't been so clumsy, America would never have known about things like this."

A few pieces of masking tape.

And that I think, is the good part of it. This system is working, thanks to a diligent judge, courageous civil servants, a free press and independent legislative branch of government. But, it seems to me there's a deeper meaning. That is that we can never remain submissive when our government engages in lawlessness. And we can never condone that the end justifies the means.

Justice Louis Brandeis responded eloquently, in support of that stand, and his words need no embellishment when he said in 1928 in words that have central meaning today:

> "In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously. Our government is the potent, omnipresent teacher. For good or for ill it teaches the people by its example. Crime

is contagious. If the government becomes the law breaker, it breeds contempt for the law. It invites every man to become a law unto himself. It invites anarchy. . . . . ."

What we need is a government of honor. Without it, our system cannot work. And that to me is what Watergate is all about.

Now in closing, and I've said several times in here that Watergate was not typical of the American political system. I urge you not to become cynical about politicians or about government because of Watergate. That's the easy way out. The harder and better course is to stay in the arena, and stand up for what you believe and work to improve our government on all levels, and to strenghten our rights as free men and women, so that our children and their children will live their lives in peace and freedom.

Robert Kennedy used to say:

"Above all, the spirit of youth is the conviction of possibility: The knowledge that we are not bound in chains of impotence, and that with courage and energy and purpose we can build a better nation, and attain a peaceful world."

And to know anything about him, whether you agreed with him or disagreed with him, is to know that had he lived, and won in 1968, he would have been a courageous President. Had he lost, he would not have despaired, blamed or retreated but he would have fought on the best he could.

And in either case, he would have called to us, as he so often did:

"Come my friends,
'Tis not too late to seek a newer world.
We are now that strength, which in the old days moved earth and heaven,
That which we are, we are.
One equal temper of heroic hearts.
Made weak by time and fate, but strong in will
To strive, to seek, to find and not to yield."

Thank you very much.

Joint Title Plants: Progress and Problems

Comments by

James H. Vorhies

Vice President, Security Title Insurance Co., Los Angeles, California

This morning our discussion will center around joint title plant operations. I think our program indicates that we are to speak on problems of progress and I sincerely hope that we report more on progress than problems.

In introducing our subject this morning I couldn't find anything more appropriate than something I had read recently that was written by Bob Dawson, who is President of Lawyers. This was an article that appeared in the July 8th issue of the ALTA *Title News;* so, if I may, I'm going to quote excerpts from that article which I consider timely and appropriate, and I quote:

"The success of any business in industry is directly related to creative, progressive thinking. We must hold fast to the sound business principles and the ethical practices which have made our industry great. And yet, thinking about new concepts, which will make our future even more impressive than our past has been. And although our present economic climate is a vital factor in determining success in any given enterprise, it is not the only factor. Even in the most adverse set of circumstances, there is always opportunity for achievement."

Now I would like to talk about California and some of the things we're doing in Los Angeles County and what we're doing outside the County of L.A. By comparison, I would imagine that Los Angeles County probably has a larger volume of public documents than you'll find any place in the country. We have been building an automated plant in our company since 1947, and to date we have accumulated about three million records in the general index file, that we update every day, and we've accumulated about 36 million records in the property index file. So when you work with a volume of 39 million records, it's nearly essential, or mandatory really, that you consider some type of automated operation.

Our company is operating with a completely computerized title plant. We've been operating in this environment for the past three-and-a-half years, and we also operate with remote video terminals. We do offer this service to other companies in Los Angeles County and currently have under contract some companies that link into our data base. They pay a monthly fee for using our service, and they operate just as if they had their own computer facility. If you were a customer observing them operate the video terminals, and getting a property chain print-out or a name print-out, you wouldn't know that the computer facility is not located on their premises.

I feel, and perhaps I'm prejudiced, but this has been an extremely successful operation. After getting started, and over-coming the barrier that a title plant service should not be sold or shared, is when Lou Balocca and others in the TRI Group and ourselves started talking about further joint efforts, and I think the starter exchange is one of the most significant things we have accomplished in Los Angeles.

Currently, there are nine companies that share in the exchange, and presently we have about 2½ million starters which all companies have access to. When we run onto a starter in one company that belongs to another, we have a point of contact that we call, plus a round-robin messenger service four times a day to all nine companies, where we pick up the policies and deliver them, or copies of the policies, and we all share in the cost of the messenger service.

Going beyond Los Angeles County, we have a slightly different concept. We started first in San Diego, by operating remotely as I just described, and there our total general index plant is on the computer and again we are offering that service to those companies who care to contract for a monthly fee. But, in addition, a new concept we are advancing is to "go forward" only. To go back where most plants are hand posted, or any type of posting to a lot book plant or the general index, the cost of creating a data base is nearly prohibitive. So we have agreed that it is best to freeze a plant as of a specific date and then proceed on the basis of sharing monthly operating costs on a "go forward" basis.

In San Diego, we have agreed that Security Title would manage this facility which includes data entry for about 1200 to 1500 documents per day. We will do all of the locating and the "arbing", the draftsman will be at that location, but they'll be a part of the facility that is under the management and control of Security Title. This means another company coming in on the service, such as—well, any company for that matter—will have two levels of searching, their back plant first, and then the current plant which will be accessed through video termi-

nals. The program is currently underway and it looks as if we'll have six companies sharing this type of service and cost.

This is being further extended into the next largest county which is Orange County in Santa Ana. It is operating in Riverside; it will be operating in San Bernadino, Ventura and Santa Barbara later this year.

And, again, it is a true sharing of the cost for such an operation. It means posting the plant only once, and, again, I emphasize that we have overcome the grey area—the barrier of sharing our plants, and I agree with Lou that the real competition lies in business development.

I believe we could sum up this type of operation by quoting a remark I heard Jerry Lawhun make recently: "A title plant is a necessary evil, it's a lot of work, it's a lot of expense, and I think with some intelligent thinking on the part of all of us, giving in just a little and agreeing to get along, we certainly can cut our operating expenses."

Another operation we are beginning to implement in California is similiar to the "Dynacomp" operation and this is being managed by Title Insurance and Trust Company. We have a prototype operation in "Kern" County, Bakersfield, California, and it is nearly identical to the "Dynacomp" operation in Phoenix. We're hoping this can be extended to other northern California counties, particularly into the Bay area and, again, this is opened to any company that cares to come in on the service, on a "go-forward" basis, and freezing their back plants.

Yesterday, we met on this and are planning to implement it in Portland, Oregon, and then bring in two adjoining counties, Clackamas and Washington Counties.

We're also entertaining the idea of implementing the system in Seattle and perhaps in Spokane, Washington.

I see that my time is running out, and the purpose of our discussion this morning was to share our experiences with you. We aren't saying that any approach is the ideal approach or the right approach. But we wanted you to know that these are some of the ways that we are doing business in various locations, and we hope that from this discussion perhaps you can take back with you some ideas that will help your operation to become more efficient, stabilize your cost, and enjoy a better business as a result of what we have been talking about.

Comments by

Louis Balocca

Manager, Division Title Operations, Title Insurance Company of Minnesota, Los Angeles, California

All too often our critics point to the joint title plant as the panacea, the remedy, for all of the problems which we, as members of the title industry face, individually and collectively. They forget, or ignore, the dramatic (or even traumatic) escalation of the costs of doing business affecting every facet of our operation.

The joint title plant, or any other joint endeavor upon which we embark, can only be regarded as a defensive move, absolutely necessary to our preservation and totally directed to those few areas in which expenses can be stabilized.

This is the philosophy which cornerstones Title Records, Incorporated, (or TRI as we call it) a joint activity the members of which are:

California Land Title Company
First American Title Insurance
Company through its affiliate, Los Angeles Land Title Company
Stewart Title Guaranty Company
through its affiliate, West Coast Title Company
Lawyers Title Insurance Corporation
and
Chicago Title Insurance Company

To go on to the mechanical, as opposed to the philosophical, our plant is completely computerized, using an IBM 370/135 as its basic work horse, IBM 3270 CRT terminal retrieval stations link each member directly to the computer.

Our computer, and our individual corporate searching components are located on one site; the rent is divided equally. We cooperate in the building and maintenance of an on-site map library and a covenants, conditions and restrictions library. Instead of five separate county recorder film libraries, we find that only an original and one copy of the film fulfills our searching needs.

Too, our combined TRI muscle is an effective device in purchasing that material where volume equates to either a lower price or higher quality.

Though not all of our TRI brethren are involved, we also have a combined drafting activity, three of us cooperate in that venture. It, too, is on site at our TRI facilities.

Our computer is operated by an independent computer facilities management firm. We have been very comfortable with that company, which is independently profit motivated. It's amazing how many things can be quickly accomplished when profit is the cudgel.

One might think that individual company loyalty or morale is subverted by putting five searching crews into one common facility; I can assure you such is not the case. Each crew operates independently of the other and responds solely to the directions of each company's searching supervisor.

The TRI group has devised an extremely workable method of combined control. It functions this way:

The five searching supervisors, each an employee of his respective company, meet on a monthly basis to discuss mutual problems and goals.

The results of that meeting are brought to the attention of what we call the TRI officers' board. It is comprised of an operational executive from each company. The officers' board meets the day following the supervisors' meeting, again on a monthly basis.

Although the officers' board has some limitations on its authority, it can either implement or negate most of the matters directed to its consideration by the supervisors.

Then we have the final authority, the TRI Board of Directors. It is composed of senior executives from each company and is presided over by the President of TRI; it meets quarterly. The presidency of TRI normally rotates among the members on an annual basis.

It may sound a bit complex—but it's not; and it works extremely well. It works because we've reached the epitome of a joint title adventure; individual greed has been abandoned!

The TRI facilities, by the way, are responsive to a TRI manager. This one man maintains control over the entire operation and acts as liaison between the supervisors, the officers, and the board. He attends all meetings at each level of the TRI strata. It's a hellish job because the poor guy is responsible to five bosses, but it pays well.

In Los Angeles, the joint plant philosophy has been the stepping stone to almost visionary arrangements.

The TRI group and Security Title and its joint title adventurers entered into a starter exchange about a year ago. It's worked extremely well for both groups. Prior to that very progressive move, TRI and Security Title sat down to discuss a joint data base take-off. We were both computerized, we used virtually the same format, so why duplicate a take-off. We couldn't answer that question logically because logic dictated that there should only be one take-off and, needless to say, logic prevailed; as a consequence the TRI group and the Security group make a common take-off.

The success in the joint or combined activities I just touched on ultimately led us to the consideration of a joint messenger approach. That, too, has been implemented and is operating with considerable success.

In Los Angeles, specifically, and California, generally, the industry has, I believe, realized that the real area of competition rests with our business development staff, our title officers and our escrow officers—and not in the title plant. That's a hard pill to swallow for many an old title man, it was for me, but once the pill has been ingested, the effect is remarkably salutary.

Comments by

Victor W. Gillett

President, Stewart Title & Trust of Phoenix, Phoenix, Arizona

Phoenix is the county seat in Maricopa County in Arizona. We have eleven title companies operating there, and these companies are very competitive in a very competitive area. For many years, it has been pretty hard for all eleven companies to agree on anything over there. We sit down and fight at land title meetings, but this is the environment in which our joint plant grew. The county records about 1200 to 1600 documents a day. All the title companies, all eleven, had their own title plants, all different types, all different methods.

In July, 1967, a group was formed called "Dynacomp", which is a separate profit oriented independent corporation. An ex-IBM man by the name of Buzz Flemming and an ex-Lawyers' Title man, Bruce Cameron formed Dynacomp. So you had people who were technically oriented in both title and computer oriented fields working together. And they worked out an arrangement with Lawyers Title and two other companies in '67 to furnish a "take-off" to three companies.

Now, this was Dynacomp's first venture into providing computerized title information. They continued to refine and work on their programs to where in 1970 they approached the rest of the companies in the area. In the nineteen years that I've been in the title business, I've been a poster, chainer examiner and so forth in all different types of plants. I've visited plants. I've visited the joint plant here in Los Angeles and other communities that have joint plants, and I was sold on the Dynacomp system, and I'd like to take a few minutes to tell you the reasons why.

We looked at the Dynacomp System and five other companies joined in together so that we had a total of eight companies out of the eleven, using Dynacomp to furnish title information.

Dynacomp furnishes to each of the eight companies a history film which goes back to approximately 1945, and this is a leased copy of the old Lawyers' Title Plant. Please remember and keep in mind that we all continue to have our own plants up to the date that we went into the joint plant. We also have the right at anytime to move out of the joint plant if we want to with a copy of the magnetic tapes. So we are furnished a history film, which goes back to 1945. We have a year-to-date tract book, which is the complete plant from January 1, 1973 through September of 1973. Then all eight companies are furnished daily, at seven o'clock in the morning, a tract book that is our month-to-date tract book and GI. Now this is, in other words, all of the recordings that were filed in Maricopa County, yesterday, by 5:00 p.m.

During the night the documents were merged with what was filed on the first day of October, and we have furnished a brand new tract book at seven o'clock this morning with all the up to date data just as you would have in the old days posted them in longhand. This is a computer generated tract book. Yesterday's information was keyed into a disc, verified, then put on the magnetic tape. It was then during the night, taken into an outside computer corporation where they used an IBM 370-135 and it prepared our printed out tract book for seven o'clock this morning.

Now, what is the advantage of this, as far as we're concerned? We, I think, because of the great competitiveness in our valley, all wanted to maintain our own personnel in our own offices, so that our customers all feel that they're dealing with our company and our plant; even though my plant is the same as seven other companies in the valley. This is an advantage, I think. Also it's an advantage for us to have our own plant there for ownership work. It's an advantage to have it for our philosophies of underwriting. Our examiners and other title personnel are in our office under our control and supervision, which is important in these days of rising costs and expenses in our business. We are able to sit there and manage our personnel properly because they're all under our roof.

The eight companies formed a corporation called the Maricopa Title Service. Each company has one vote. Each company has one man on the Board. And we also provide one person from each company who is a technician and works with the Dynacomp people on a Technical Committee. The Technical Committee meets once every month and irons out and refines new procedures and works out problems that several of the companies may be having. We also have automatic bringdown so that when a company has an open order and somebody files a federal tax lien or judgment, it's going to be thrown out and we're going to know about it and able to immediately get to clearing up that defect in the title before closing.

Now, the only thing Dynacomp continues to own is the program and the software and each of the eight companies own the copies of the plant.

This joint plant has stabilized our labor cost in maintaining the title plant. And this is something in today's rising cost of labor.

My company certainly feels that this is a good plant today. Its been very successful for our area. I've heard no complaints from the other seven companies of the Dynacomp Service. I know that today it's good, tomorrow there might be something better. We are never going to quit looking for progress. Title people, by nature, have to be pushed to look at new things. Tomorrow if there is something else that does a better job than the Dynacomp system, we're going to look at it.

Comments by

O. B. Taylor, Jr.

Chairman of the Board, Mississippi Valley Title Insurance Company, Jackson, Mississippi

I am going to try to relate to you this morning a situation that was created in Little Rock, Arkansas about two or three years ago which is in the nature of a joint title plant situation.

Now, I don't have to tell you people who are in this title business what a tremendous job it is to control your costs. Mississippi is a state where we do not have to have title plants because these are maintained by the recorder. There are three abstract plants in the whole state of Mississippi. One specializes in just oil field business. We are able to maintain a plant in Jackson because it is a large place and the lawyers have gotten out of the habit of going to the courthouse checking out the records. And then there is one down in Gulfport, Mississippi, which is able to stay in business because a lot of New Orleans people own land around the Gulfport and on the Gulf Coast and they are used to abstracts to some extent.

Being from a state where title information was obtained from the public records, it was a long time before I learned much about abstract plants. But as our company began to develop and spread out to other areas, the thought struck me immediately that when you go into a place where there are two abstract plants, you have built-in an enormous amount of waste and duplication of effort particularly on the input area of the thing.

We now operate in Birmingham, Mobile, Memphis and over in Little Rock. We have made some progress toward joint takeoff in all areas with the exception of Memphis and Mobile. In Little Rock, through attendance at Arkansas Land Title Conventions and getting acquainted with people in the business there where there were four abstract plants, we sort of began to have a respect for each other and we sort of lost some of this feeling of what you might say competitiveness. In other words, we began to realize that we were all human beings, that we were all in business, so all of a sudden one day the people in the Standard Abstract Company in Little Rock said, why don't we just go in and pool our efforts and make a joint takeoff and operate a joint plant. Well, we said that looked like a pretty good idea. So it began to come to fruition by our renting a separate office for this operation and moving our records into this office and their moving their records into this office. We took people off our payroll and put them on the payroll of the joint corporation which was to operate this plant. They took people off of their payroll and put them onto the joint operation. We were able to let go of some space which we didn't need anymore, so that just immediately there was some

savings to both companies; and it operated very well.

Now, we had some of the usual difficulties, I guess, that anybody who goes into a thing like that has. Our biggest difficulty was that we were using our punch card system, but it was being operated by the people in the other company who had been used to a tract book system. We had to do some shuffling of personnel, and we did run into a problem about the attitude that "my own way of doing things is better than anybody else's and nobody can tell me anything different." But we did some shifting of personnel and we hired an extra fellow there who kind of took charge of the whole thing, and it just worked out real beautifully.

Now, as a further development of that, we now have gotten to the point where the two companies are almost merged, you might say. The Standard Abstract of Little Rock is our agent in Little Rock and is doing a fine job for us. We have, in effect, leased our records which used to be known as the Arkansas Abstract Company to them. We have a rather complicated formula which we use to compute the lease rental, which leaves us in the same or better position we were when we were trying to operate independently. The people who own that plant are Jack Cameron, Gerald Cathey and a boy named Ken Jones. They are all extremely fine gentlemen, good title people, and we are very proud to be associated with them.

I would recommend to any of you folks, particularly if you're in a place, a smaller place where there are two or three or four plants, or something like that, take time to go to your competition and at least just sit down and broach the idea to them, you know, and see if it is possible for you to work it out. With the number of records increasing daily, and we have to keep them all you know, with the difficulty in securing good help, the rising salary scale all the time, it is just my firm opinion that unless we do take these economy measures, a lot of folks are not going to survive. So, I would recommend to you that you talk to your competition and see if you cannot do something to improve your own situation, if it's appropriate.

TIPAC: Shaping Your Political Destiny

Francis E. O'Connor

Chairman, Board of Trustees, Title Industry Political Action Committee
Senior Vice President, Chicago Title and Trust Company, Chicago Illinois

In politics, there is no such thing as an "off-season".

Our elected officials, at all levels, are in business throughout the year, every year. Most of the time, most of them are thinking strongly about the next election. Consequently, there should be no "off-season" for our people in the title industry who are concerned with what the government is doing and how it will affect us. All of us, I am sure, at this point in time realize that the land title industry needs a stronger voice in presenting its case to these elected officials.

Jim Schmidt's report of the ALTA Federal Legislative Action Committee, which was presented Monday morning by Bill McAuliffe, and Tom Finley's report from Capitol Hill, which will be presented later this morning, underline this need.

At this very moment, matters crucial to the future of our industry are pending in the Congress and in state legislative bodies throughout the country. This demands that we organize our efforts so that our voice may be heard by those having a vote on issues affecting us so vitally. TIPAC which is the Title Industry Political Action Committee, is designed to do just that for us.

Now, how can TIPAC present our case most effectively? Simply by supporting with financial contributions, the election of candidates whose views are acceptable to us in the title business. But the organization of such support is a rather demanding task. Experience has shown that isolated efforts and one-shot programs just do not get results. Effective candidate support requires politically knowledgeable people who keep up to date on issues, candidates and campaign techniques. If sufficiently supported and financed, TIPAC will do this for the title industry.

In the eighteenth century, Samuel Johnson stated, "A man should keep his friendships in constant repair." It will be TIPAC's function to keep in repair our friendships in the Congress and hopefully, if we are successful, in the various state legislative bodies. It also is designed, of course, to increase our circle of such friends. As many of you are aware, we are now in the important stage of seeking active financial assistance for TIPAC's activities. We can ensure the successful future of our industry only through effective support of, and communication with, legislators. As I have said quite often, it is time for us in the title industry to act rather than to be acted upon.

When you receive a request to become a member of TIPAC, I am confident that each of you will bear in mind that your contribution is an investment in the future of your industry. I urge you to inform your employees and associates about TIPAC and encourage them to join. Our success, or failure, depends on you.

The political action movement, of course, is an integral part of our American heritage and can be traced back to our revolutionary forefathers. More recently, major industries and professions have come to realize the value of establishing political action organizations as effective vehicles to communicate their viewpoints to legislators in particular and the public in general.

AMPAC, the American Medical Political Action Committee, has been a leader in this movement, and we are most fortunate in having Mrs. Lee Ann Elliott, associate executive director of AMPAC, which is headquartered in Chicago, with us today.

Mrs. Elliott's counsel in the formative stages of TIPAC has been invaluable, and I would like to take this opportunity to publicly express our sincere appreciation for all she has done on our behalf.

I also thank Jim Hickman for giving me the honor of making this official introduction.

An economics graduate of the University of Illinois, Mrs. Elliott worked in the American Medical Association Bureau of Economic Research and Legislative Department before joining the AMPAC staff. Mrs. Elliott has the distinction of being the first woman member of the Public Affairs Committee of the U.S. Chamber of Commerce as well as being the first woman president of the Chicago Public Affairs Group to which, incidentally, I belong. I certainly have been exposed to her tremendous work and effectiveness in that area.

I am certain that you will find Mrs. Elliott's discussion of political action and its crucial role in the future destiny of our respective spheres of interest most interesting and informative.

It's a pleasure to present Mrs. Elliott.

Political Action: Now More Than Ever

Mrs. Lee Ann Elliott

Associate Executive Director
American Medical Political Action Committee, Chicago, Illinois

Congratulations, and welcome to the political action movement. On behalf of the Board of Directors of the American Medical Political Action Committee let me take this opportunity to congratulate you for your commitment to good government and for this bold and imaginative step into creative politics.

The climate in America today presents problems for those who are taking their first step in coordinated political action. Today, the television and newspapers provide a ready-made excuse for every would-be dodger

of civic responsibility to use as his ultimate reason for inactivity. Of course, I refer to the Watergate Hearings. But I also refer to much more than that. I refer to political scandals from coast to coast at every governmental level and in both parties.

I live in Illinois, and in Chicago, you have to stand in line to get your political scandal on the front page. Since the Watergate Hearings began, we have sentenced a governor, several members of our legislature and several members of our city council. And so many other public officials are under indictment, that it is scarcely newsworthy anymore.

But these things that are happening today, or at least coming to light today, should not be our reason to avoid political action, but our reason to become involved politically.

There are those who will sit idly by on the sidelines bemoaning the excesses, abuses and inequities and by shrill denunciation, transfer any personal involvement concerning politics in America today.

But more Americans, and hopefully all of you here today, will use the avenues, opportunities, and possibilities unique to our system to leap into the fray, and by your own dynamic action, help to bring forth positive change in a time of flux. These things can happen with your concern and your commitment. Problems can be viewed positively as challenges; crises can be viewed optimistically as an opportunity for creative change.

Just as in the physical sciences, politics will not permit a vacuum.

If you and your like-minded friends fail to become involved in politics, these spots will be filled and decisions will be made for you by those who do not share your views or your ideals.

So congratulations are in order and we wish TIPAC every success.

I'd like to tell you a little bit about the American Medical Political Action Committee.

Let me begin by saying that AMPAC is the brain child of the American Medical Association, and that the AMA, at least in matters political, believes strongly in planned parenthood.

The AMA's decision to form AMPAC was not taken hastily. To the contrary, the AMA and its appropriate committees decided to form AMPAC only after thorough study, prolonged discussion, and a solid review of past experience dating from the late 40's.

AMPAC became official in 1961, and our first board meeting took place that October.

Like any parent, the AMA acknowledged its offspring publicly. It lent us two-thirds of its name, gave its full blessing, exercised its parental duty of guardianship by appointing the AMPAC Board of Directors, and generously supported its off-spring with corporate dollars.

Why AMPAC was formed is simple enough. AMPAC was badly needed. Through the AMA, the medical profession was conducting an effective legislative and lobbying program at the federal level. Through state and county medical societies, the same job was being done at the state and municipal levels.

In addition, a strong program of public education was working to build the climate for American Medicine with the general public.

But no matter how successful these programs were, the medical profession was, in fact, fighting with one hand tied behind its back. For it was fighting without the strong right hand of political action—of candidate support—against two-fisted opposition.

As one of our first chairmen said, "Lobbying plus climate building minus political action equals futility squared".

I do not want to leave you with the impression that until the formation of AMPAC, physicians and their wives were not active politically. As a matter of fact, they were very active. But this activity lacked one thing—identification.

Until the formation of the PAC movement, most politicians felt that physicians not only sat on their hands politically, but sat on their political pocketbooks.

Politicians are realists. It was realistic of them to ask: "Why, when you seek our support in your time of legislative crisis, do you turn away in our time of political crisis? Where are you when Congress adjourns and the campaign begins?"

The formation of AMPAC and the formation of state medical political action committees in all of the fifty states, the District of Columbia, and the Virgin Islands has brought identification to the political activity of physicians and their wives.

When we first began, we were often asked how we decide who we will support and what philosophy we espouse. First of all, we have no statement of philosophy other than the general statement that we support candidates who believe in the free enterprise system and constitutional government. We could have ceaseless arguments about philosophy, but when it comes down to a choice between two candidates in a congressional district, members of the medical profession pretty much agree on which candidate should be supported. It is the physicians and their wives in the congressional district who decide what candidates AMPAC will support.

Quite obviously AMPAC cannot support candidates in all 435 races for the House of Representatives or the 33 Senate races that are up for election every two years. Nor would we want to. We support neither sure winners or sure losers. We try to restrict our activity to the fifty per cent in the middle of the spectrum which may be marginal or vulnerable for one reason or another. We try to become involved in those races where an addition of a few more dollars may spell the difference between victory and defeat. The one thing we do not take into consideration when evaluating candidates is their political party. AMPAC is bipartisan and feels strongly that neither party is the sole repository of virtue.

Our criteria for support begins with the degree of activity physicians and their wives in a congressional district are giving to the candidate. We next want to know the political history in the district. We examine the candidate's position of leadership—present or potential. We look at his voter appeal, at the caliber of his opponent, the adequacy of his political organization, particularly his campaign manager, and whether his budget is realistic.

When it is decided that AMPAC will support a specific candidate, we do not give the money directly to the candidate. We send our money to the State Medical Political Action Committee that has requested the money, and they, in turn give it to the physicians and their wives in the congressional district to give to the candidate. We insist that the identification for this support remain at the congressional district where it belongs. It belongs to the doctors and their wives, and other medical volunteers at the grass roots level who work hard to elect the candidate.

But political action is only part of AMPAC's program. The other phase of our activity is what we call political education, and it is exactly that. Through brochures, films, and speeches, physicians and their wives are given the opportunity to learn how to spend their political hours more wisely, and their political dollars more wisely. Our educational materials include pamphlets and manuals on how to manage a campaign for the House of Representatives, how to evaluate a campaign, how to act as opinion makers, how to do political research, and other practical, professional tools for physicians and their wives in a campaign. This part of our program is educational and is not financed through our voluntary political account: It is financed through corporate contributions.

Our political education program has been extremely successful and physicians and their wives are active politically at every level of a political campaign from coast to coast. This part of our activity fully justifies all the work that went into the creation of AMPAC.

Elihu Root put it this way, "Politics is the practical expression of self-government and somebody must attend to it if we are to have self-government." Most of us have been too willing to let the somebody be somebody other than ourselves. We really can no longer endure the luxury of being neutral and disinterested in politics. If for no other reason, plain basic economic self-interest should motivate all of us to increase political activity.

Certainly your profession as well as medicine is affected every day by governmental action, either locally, in the state or at the federal level.

The reason for any type of political activity, is, of course, a legislative result. Only the most incredibly naive can believe that legislation will be substantially affected by appeals to reason and logic. The type of legislation that will be enacted in the current congress was substantially decided on election day in November of 1972. The philosophy and the views of the men who were elected on that day will influence and determine the legislation which will be enacted today. Those who would have a substantial influence on legislation must become involved politically, if they are to be effective. As one politician said so succinctly, "It is necessary to make the candidate feel the heat, not see the light".

Oliver Wendell Holmes once said, "It is required of a man that he should share the action and passion of his time at peril of being judged not to have lived". I like this quotation because it says "get involved". That's why AMPAC was formed, that's why TIPAC was formed.

Since we are in California today, I'd like to paraphrase California's Governor Ronald Reagan. He said, "If some among you fear taking a stand because you are afraid of reprisals from customers, clients, or even government, recognize that you are just feeding the crocodile, hoping he'll eat you last".

A republic is not something that once instituted, is sure to be perpetuated. It must be continuously earned. And it can only be earned if we work for it with our volunteer hours and our volunteer dollars.

Rating Bureau Perspective

Comments by

J. Mack Tarpley, Moderator

Vice President, Chicago Title Insurance Company

Ladies and Gentlemen. The avowed purpose of the panel today is to convince you that a Rating Bureau is more than a singing, sewing, marching and chowder society.

A rating bureau, actually, is a very important part of the regulatory processes in states in which provisions are in the statutes for a rating bureau. It has been said that a rating bureau, actually, becomes an arm of the regulator, for the purposes of aiding and abetting him in the discharge of his responsibilities to the people of his state.

Now there's a little bit of indication that some people in our industry have been approaching rating bureaus sort of in an unpregnant and semi-retired way.

Now, unpregnant is defined by Webster as 'inept.' Semi-retired is defined by Tarpley as the state of bringing the body to work but leaving the mind at home.

We believe we have people today, on the panel, who have had very close experience in the birth of rating bureaus, in the organization of rating bureaus, and the discharge of their responsibility. They can tell you what their problems were, and maybe assist you in solving some of your problems.

Comments by

Moses K. Rosenberg

General Manager, Pennsylvania Land Title Rating Bureau, Harrisburg, Pennsylvania

I had a speech prepared for delivery here, and I am tempted to demonstrate Mack's definition of someone who is semi-retired, by just reading it to you, because I would have liked to have left my brain outside and not worry about what I am going to say. I am however, dissuaded from doing that because of some of the other things that have been said from this podium before this, particularly the good report from the statistical committee and from the conversations in the hall about what has gone on and also, because of a communique I have just received last week from Dr. Herbert Denenberg, Commissioner of Insurance of Pennsylvania, in response to a recent filing. But I would venture that the most important reason I am not going to read that speech is that Mack Tarpley told me not to.

The Pennsylvania Title Insurance Code was enacted into law in 1963. Prior to that, the Title Insurance Industry was governed by the general insurance laws of Pennsylvania. Under the General Insurance laws of Pennsylvania, the Pennsylvania Title Insurance Rating Bureau filed in 1953 and 1960 a Manual of Rates under the old law. In 1969, we filed under the specific Title Insurance Law. This year we filed again under the Title Insurance Law. We have never in Pennsylvania in four filings come head on with the problem of how do you rate title insurance? We have never even discussed the statutory provisions, (even though the Pennsylvania Act antedates the Model Title Insurance Code by a year, it is similar to the Model Title Insurance Code) as to the proper method for pricing of title insurance.

For instance, the Pennsylvania Code says that in making rates, due consideration shall be given to past and prospective loss experience, to exposure to loss, to underwriting practices and judgment, to the extent appropriate to past and prospective expenses, including commissions paid to agents and applicants for title insurance, the expenses incurred by a title insurance company, to a reasonable margin of profit and contingencies, and to all other related factors both within and outside of the Commonwealth.

It continues, "Rates shall not be inadequate or unfairly discriminatory, nor shall rates be excessive. That is, such as to permit title insurance companies to earn a greater profit after payment of taxes upon all income than is necessary to enable them to earn over the years sufficient amounts to pay their actual expenses and losses arising in the conduct of their title insurance business, including commissions paid, and the actual cost of maintaining a title plant plus a reasonable profit."

You will see that the Pennsylvania legislature has cranked into the Act itself what is almost a definition and a compelling reason to determine title insurance rates on a revenue or rate of return method. As a matter of fact, the very nature of title insurance mandates that title insurance be rated and established on the basis of revenue or rate of return.

We cannot say, nor can any regulator say, that a title insurance rating must be governed on an actuarial basis; it is absolutely incapable of calculation on that basis. We are not a casualty company—we're not a casualty business, we cannot be governed or regulated on the same basis as casualty business. We know that approximately 85 per cent of our costs are in loss prevention in determining and evaluating risks before we ever assume them. So that the only possible method for us to determine how to set rates is on a rate of return basis.

In discussing this theory, I want to just quote a little bit from our most recent filing: "The establishment of a proper structure of rates for title insurance can best be carried out through a two-stage process. In the first stage, the regulatory authority should look into the capital employed in the title insurance industry and determine what level of aggregate revenue is necessary if the insurance industry is to retain and attract sufficient funds to provide an adequate supply of title insurance services. In the second stage, the regulatory authority must consider the rate structure through which this required total revenue should be raised, giving careful consideration to the relative burdens which a particular rate structure places upon specific segments of the public. By employing this two-stage procedure, the regulator can insure that his decisions taken in furtherance of his obligation to protect the consuming public do not conflict with his concomitant decisions in furtherance of his obligation to maintain the viability of the industry."

Pennsylvania is one of sixteen states that has a statute that has a specific rating method for title insurance. Of the remaining 34 states plus the District of Columbia, thirty-five (35) of them have no specific rating method at all. Nineteen (19) of these 35, the method of rating is included in the rating used for other types of insurance. Twenty-three (23) are excluded from rating from other

types of insurance. And in three states, including Pennsylvania, there is a provision in the code itself, which states that smaller insurances may be rated lower than cost and the excess charged to larger insurances without considering these smaller rates unfairly discriminatory.

In only six states, there is a method of setting a "risk" rate based on actuarial method plus cost of searches.

Which leads me to discuss "risk rate." In Pennsylvania we have completely eliminated from our filing those words, because they are meaningless. They are completely false. It is not a "risk rate," it is an underwriting fee, and I don't care if you call it a euphemism or what, it is more accurate, because there is no earthly way anyone can determine that $3.00 or $3.50 a thousand is a legitimate risk rate which implies based on an actuarial method.

So, I would hope and urge all of the members here to urge their legislators to eliminate any reference to this language, because it leads to wrong conclusions and wrong methods of rating.

Some of the questions that have been posed to the Pennsylvania Title Insurance Rating Bureau by our Commissioner are as follows:

To show your fair rate of return, we would like to see studies of rate of return on title companies not incorporated in Pennsylvania. We assume you are able to do this study through the American Title Association facility.

No so—American Land Title Association facilities, some of the figures we heard this morning, are based on the Form Nines of all of the member underwriters. (I think I am accurate on that.) They are not based on the more explicit and comprehensive statistical plan that has been developed by Ohio and in which Pennsylvania had participated for the past three years.

We have a three-year experience of a statistical plan that was engaged in and participated in by all of the licensed underwriters in Pennsylvania; we have filed composites of each year, and to support our filing, this year, we prepared a composite of the three years of the statistical plans. We have recalculated them and have projected them for the new rates as to what we could expect. There is no set of statistics available in all of the states that are comparable to those.

And, again, I urge the American Land Title Association, as an entity, to please do something to enable this organization, or an alter ego, if counsel says it should be by a separate organization, to be a duly licensed, if necessary, statistic and fact collecting agency which will enable us to support our rates and our presentation and rate filing in any jurisdiction in the country.

These things are vital, if we are to have the credibility before state regulators and to be able to beat off the advances of those proposing federal regulation. We must be armed with facts and we must be able to submit to responsible state regulation. We cannot do it without hard numbers, and only we are capable of collecting and collating those hard numbers.

Now, let's face it; a rating bureau does not only deal with numbers, because for the numbers to be significant they have to relate to a product, and the product is a policy or an endorsement; it's all of the forms we use everyday. When we use these and we relate our rates to these forms, the forms themselves become a part of the rate regulating process. So that even the ALTA, when its Standard Forms Committee has a recommended form, is, in fact, performing a function of a rating bureau.

There are other functions of a Rating Bureau. For instance, you've heard me read in connection with the Pennsylvania rates, a reference to commissions. Fortunately, the Pennsylvania Title Insurance Rating Bureau eliminated the propriety of the payment of any commissions in its filing.

This too is a part of a rating structure. The payment of commissions, the payment of any kind of inducement to anyone placing title insurance, the definition of an agent, which can be changed to avoid a proscription against payment of commissions, all are appropriate elements to be considered in the rating process.

There are so many things that are matters of policy of ALTA which normally would be functions of a Rating Bureau.

What I am really saying is, that we must get our own house in order, we must arm ourselves with the facts that are necessary for us to maintain a viable industry and a credible industry.

We must do other things in addition to all of these things. For instance, in a filing, we must prove we're not in violation of Phase 4, for the moment; and at the time that we filed, we had to file a legal opinion, we weren't in violation of the provisions of Phase 3½, and after the filing they came back and asked for more information as to Phase 4.

We must be, in effect, the arbiter of all our members activities, we must be statisticians, logicians, developer and dispenser of a philosophical concept governing the operation of the industry. We must be the Supreme Court handing down opinions of the legal justification of it and an economist developing and determining its justification.

We must do all of the things to keep our industry prosperous and to keep public acceptance.

Thank you.

Comments by

Dwight Shipley

Ohio State Counsel, Lawyers Title Insurance Corporation, Columbus, Ohio

Ladies and Gentlemen. It is a privilege to participate in this panel discussion of a subject that is likely to require attention from the title insurance industry for the remainder of our working lives. Those of you who served your stint in the military will recall that after a training exercise or a combat operation a critique was conducted. One of the reasons for a critique was to identify and to articulate the "Lessons Learned" from the operation.

My assignment will be to bring to you from the Ohio experience the lessons we have learned. To do that, it will be necessary to recount briefly what has been done in order that you will have a background on which to base an understanding of the practical problems which you may encounter during the formation and first operations of a Rating Bureau.

Many of you will no doubt recognize your own situation in your home state when you consider that it was not until 1967 that we had a title insurance chapter in the Ohio code. Until then, title insurance was recognized only by references in general insurance statutes, which references had been interlineated by amendments from time to time as title insurance began to be used in the state, and as the need developed.

With a clear need for clarification of existing statutes as they related to title insurance, and for more effective regulation on the state level, industry spokesmen in 1964 and 1965 began to suggest the need for a review of insurance laws, with a view to preparing and submitting to the Ohio General Assembly a title insurance code.

Working through a committee appointed by the Ohio Title Insurance Underwriters Association, a proposed code was prepared. The 1964 version of the ALTA Model Title Insurance Code was used as the starting point, but necessary modifications had to be made to adapt it to existing Ohio law.

Further major changes, deletions, and modifications were made prior to its introduction, and during its progress through the legislature, all made necessary as part of the inevitable process of compromise and trade-off in order to produce a bill which could be passed. Some of those compromises produced difficulties later, but such changes appear to be inevitable as a part of the practical legislative process if any grist at all is to come out of the legislative mill. Even then, it required work over 3 years and two General Assemblies before the bill was passed.

While title insurance companies had been under the general control and supervision of the Department of Insurance, it was not until the passage of Chapter 3953 ORC, effective December 12, 1967, that effective control of the industry was given to the

department. The passage of that chapter marked the first time, for example, that there existed a requirement for mandatory filing of policy forms.

But even with the passage of the title insurance chapter there was, as yet, no specific requirement in the Ohio Insurance Code for the filing of risk rates. It was not until amendments had been made in the general rating bureau sections, effective January 14, 1972, that filing of rates was required.

Faced with that requirement, industry representatives immediately formed a Rating Bureau and began the work necessary to comply with the statutory requirement. It is gratifying that the members of the industry doing business in Ohio, almost without exception, rallied to the call and joined the Rating Bureau in order to participate in the deliberations and to share the work load. Some idea of the work involved in this phase is apparent when I tell you that in all more than 40 working days in 1972 were used by the Rating Bureau to produce the initial filings. And most of those days were not measured by the usual quitting time.

Unfortunately, prior experience in other states proved not to be too helpful. Perhaps time and the tides and the stars conspired, because our time in Ohio came as consumerism peaked, and during the clamor raised by Senator Proxmire and other voices equally as ill-informed. The HUD study also appeared on the horizon during that period. All of these factors had their influence on the Ohio experience and contributed to the total result which will be produced when we have completed our work.

If my recollection is correct, eight or nine states had formed title insurance rating bureaus before Ohio. In most of those states the pattern had been for individual companies to file policy forms, and to support the rates by a consolidated compilation based upon the annual report, which consolidation was filed by the Rating Bureau.

The Ohio Department declined that approach and required that Rating Bureau forms be filed on behalf of all member companies. This requirement appears logical inasmuch as the Department's position was that if rates were filed in support of policy forms those forms must be uniform as between the companies else the rates would be useless.

It would appear obvious that if forms and coverage differ as between companies, any rate applied to the different forms would be meaningless if the terms and provisions and conditions and stipulations resulted in unequal basic protection to the insured.

As a result, in addition to rates, the Rating Bureau was required to consider forms of coverage, as that coverage related to rates. Being a somewhat complex state, the title insurance industry had developed along lines which were not completely parallel in parts of the state. In the end, however, some 17 different forms were prepared and adopted by the membership as Rating Bureau forms. Agreement as to forms was achieved by the membership through direct work in the Rating Bureau, and by the use of drafting committees. Preparation of and agreement on the major policy forms was simplified, of course, by the fact that this organization has long since taken the lead in promulgating standard forms. Without that prior effort to draw upon, our task in Ohio would have been enormously more formidable. The industry members pitched in and did accomplish miracles of a sort in some areas in a relatively short time, but it was done only by the willing efforts of all concerned.

The filing was made by the Rating Bureau, and supported by the consolidated statistical compilation which had been the pattern in other states. Since the Ohio Department deemed that statistical data inadequate, and faced with a dearth of available industry statistical data, the Rating Bureau agreed with the Department to employ expert assistance to help it in preparing a statistical data gathering plan in support of the rate filing. As a result, Arthur D. Little, Inc., of Cambridge, Massachusetts, was retained to assist in the preparation of the plan. The result will be in two parts: One plan relates to gathering statistical data related to policy forms and rates; the other, to company income and expenses as such income and expenses are allocated to Ohio operations.

With these developments, the administrative and financial problems of the Rating Bureau became pressing. The Articles and By-Laws provide for the employment of an Executive Director, and for the levy of assessments against the membership for operating funds. During the formation period, and while rates and forms were being developed preparatory to filing, we were able to operate with a minimum budget and use member personnel to staff the Bureau. Such use of membership resources was appropriate and desirable during the formation of the Rating Bureau and while the initial filings and forms were being developed.

With the more detailed administrative requirements arising out of the statistical plan, which included the preparation of a computer program and the employment of a data processer, it became apparent that a paid Executive Director was essential. It took some time to locate the right man to perform that function, but we now have an Executive Director who has ably taken over the day to day functions of the Rating Bureau.

The statistical plan will gather data pertinent to policies and all other rated and filed forms, and will require the continuing services of a data processer. Each member company monthly submits to the Executive Director the policy data for that company, who then sends it to the computer processer. This processing procedure takes time and attention and money, and will result in some return of rejected material to the companies for review and correction.

At the end of each year the data will be consolidated. The computer program has been designed to permit access to many areas of information. While there have been some suggestions that it is, perhaps, too sophisticated for our present needs, the answer is that at the moment we do not know precisely what statistical information our industry will need for the Regulator's requirements, nor what needs the industry may have. Accordingly, it was the recommendation of Arthur D. Little, Inc., that the program be flexible enough to avoid the need for redesigning within the near future, with all the attendant costs connected with any such second effort, and the program was prepared with that in mind.

I want to emphasize that much of the hard work in developing the Statistical Plan was done by members of a special Industry Task Force composed of computer experts, and others with special knowledge of industry statistical capabilities. The plan that was evolved has the approval of that Industry Task Force.

The Task Force approach was also used for the development of the Income and Expense plan. An Accounting Task Force of experts from the accounting departments of member companies, working with, and under the guidance of personnel from Arthur D. Little, Inc., put together an Income and Expense plan which provides the second part of the apparatus needed to meet the statistical requirements of the Ohio Department of Insurance.

Upon completion of those two plans, the administrative burdens of the Rating Bureau will largely be concerned with the day to day flow of statistical data to the data processor, and with the compilation of the necessary end product at the end of each processing year. It is, of course, essential that the confidentiality of each member company's material be maintained. The personnel to perform those operations must not be drawn from any of the membership for fear of violating that confidentiality.

While the initial high costs of preparing and implementing the necessary statistical plans will not be with us in the future, it is necessary to provide for the financial support of the operations on a continuing basis. No relief from that cost can be anticipated.

It must also be emphasized that a Rating Bureau can be concerned only with the matter of rates and, in the Ohio experience, with the filing of forms as agreed upon by the membership. A Rating Bureau may not be used as an arbiter of competitive practices in areas other than rates; nor can it be used as policeman over the industry, and any attempts to use the Rating Bureau for any purposes other than in the area of rates and forms must be firmly resisted.

What have we learned in Ohio? We have learned, as with any new endeavor, the process of growth and development can be painful. But the results, in my opinion, will be good and will be a mark of progress and maturity for an industry which is still in its formative stages. We have much to learn and to do, and I think we've made a good start. Thank you for your attention.

ABSTRACTERS AND TITLE INSURANCE AGENTS SECTION

The Title Business — From A Woman's Viewpoint

Comments by

Mary C. Feindt

President, Charlevoix Abstract & Engineering Company, Charlevoix, Michigan

Do you know the title insurance world has been invaded by women? I am one of those invaders and after 40 years I speak with authority on what it is like to be pulled and pushed and to be tossed and twisted in a world mostly dominated by men.

I compare it to a roller coaster. You are excited about the anticipation of the ride, you tremble while you are riding, and afterwards you wonder, would I do it again?

There are pros and cons brought on by our invasion. I am going to weigh them for you from my own personal point of view. I must tell you that my views are a bit more biased than those of most title women, because, as some of you know, I am a land surveyor, and for that reason my prevalent contacts with men have made indelible impressions on me. Life has been rugged.

The number one rule I have learned the hard way is that you cannot fight the law of nature. Men were born with ego, and their primary drive is to chase the female sex. Men were created with beards, like the male birds were created with the brilliant plumages, and the male deer with the antlers. On the other hand the females were created with cunning and guile with which to ensnare their counterparts. This distinction has been further enhanced by society in the way that children are reared. The male child is given toys with movable parts and things to interest him. He has been taught to strut and preen himself. The girl is given dolls and housekeeping toys and instructed to cogitate on man's existence. This mode of living is instilled from the moment a child is born. No matter how hard we females try, we cannot combat nature or change society except on a slow inch by inch movement.

The con of this battle is that there is no way for our sex to be accepted as an equal. Society is more lenient today than when I first entered engineering school. One of my professors alerted me to the fact I had no "hydraulic sense" and promptly flunked me in a course. I acknowledged I was handicapped, but I grew up in a world playing with dolls and sewing doll clothes. On the other hand, there were pros even then in my world. Some of the professors went overboard the other way. I particularly remember one who gave me all of the answers to the experiments I missed in a lab course when I went in after hours to make up some work. And then there was the con the day I was cornered in a dark room by one of the professors. Woe to that female enchantment.

All my life it has been a struggle to be accepted on an even keel. I will admit it was a real pro to be a woman, back a number of years ago when I made a mistake of 100 feet on a survey and I had to secure the signature of a male client on a Quit Claim Deed to release that 100 feet. I played my sex against his and I made the trip from Northern Michigan to Chicago where I met him. It took 12 hours of convincing and all of the charm I could muster, but I won. That was the day I was glad to flaunt myself as a woman.

Even last week, I was sitting alone in my branch office in the upper peninsula of Michigan and a man came in to order a survey and expressed his discontent at not having someone present who knew enough to take in an order for a survey. This is the con of being a woman. Even while I conversed with him, I wondered if he really believed or had confidence in what I was telling him, or that I do wear boots and I do carry a transit on my shoulder.

It is con to be a woman because society does not permit me to feel free to enter a bar. Oh sure, I can go, but if you were to see me there sitting alone, I know what would cross your mind. I could only be there for one reason. It is a con when I take clients out for lunch. I feel the necessity of asking my male escort (usually chosen from my office) to pay the bill.

It is pro to be able to flirt with a man and to win his confidence by praising his male ego. I recently had a client who enjoyed being in my presence so much, he would just stop by for chats. Of course, that was con too, because I couldn't get my work done.

There are all kinds of silly whims of being on the male side of the world, or the female side. On hot days, I am glad I don't have to forever wear a coat or have a tie around my neck. I am proud I belong to the sex that can wear any type of clothes whatever the mood or the weather. I can be comfortable. But it is con, when I put on slacks and have no pockets, and no pockets in my blouses. It is miserable not to have a place to keep my pencil when I am working. I am forever dropping one here and there.

In the title insurance business, it has been a terrific help to have invaded man's world enough to understand all phases of descriptions, not only from the paper standpoint and the legal standpoint, but from the physical standpoint of actually seeing how descriptions fit on the ground.

Let's check the scale. It leans heavily toward having the man at the helm. His training for this began in his youth and has continued throughout his life. But the weight on the other side of the scale is becoming stronger. I like being on that side. I like the challenge and even though the climb is more difficult, once I have reached the top, I have a feeling of accomplishment, which is life's greatest satisfaction.

I like being a woman and I love the title business, its legal problems, its crazy complicated descriptions and entanglements. I am privileged to work with men to solve the things I love doing most, and I am privileged to work with the opposite sex which adds spice to life. And what is more, there is always woman's world for retreat, so precious to my sex.

Even though I enjoy my role in life, I am still pulling and yanking to get that scale in balance.

Comments by

Betty Lynde

President, Lawyers Title of Pueblo, Inc., Pueblo, Colorado

Recently I attended a Testimonial Luncheon for former Gov. John Love in Denver. After 10½ years as Governor of Colorado, he has now become embroiled in the Washington scene as the so-called "Energy Czar". In his address he remarked that when people question him as to why he left the beautiful State of Colorado to go to, in his words, "Camp Runamuck on the Potomac", that he pleads temporary insanity.

This is my plea as to why I said yes to Bob Jay when he asked me to appear on this panel. I happened to mention to Jack Johns that I had been invited to appear on this panel and he inquired about the subject, and before I could answer he remarked: "I hope it isn't about women in the Title Business". Unfortunately for all of you, and for Mr. Johns, I am going to talk about this woman's view of the Title Business but I may digress somewhat from time to time.

Actually my view of our industry is probaably no different than my male counterparts.

Perhaps coming from a smaller city, and a smaller company, than many of you, I have a greater opportunity for more personal contact with my customers. Many of them are good friends as well as business associates. I am familiar with their hopes and plans for their projects. It isn't just some large development on paper but is very real and close to our office and to our employees as well. It is exciting to be included in many of the preliminary discussions and to know well ahead of the general public and the news media, of apartment and motel projects, of assisting in the acquisition of the many parcels necessary for a new shopping center, of watching the progress of a new high-rise office complex being built by one of our banks and the immense satisfaction of knowing that our office, and the entire Title Industry, plays such an important role in the individual home ownership so dear to most Americans.

It has been a challenge for me, as the first woman in our state to be elected President of our State Association, and to be serving now as the first woman Chairman of the State Board of Abstract Examiners. There are no finer people than those in the abstract and title insurance business. Without the encouragement of many wonderful business associates and friends, I would never have made it. These gentlemen are always ready with advice and assistance whenever the going was rough and they kept me from being discouraged. I know I can depend upon them anytime I feel the need of their counsel. It would not be possible to name all of them but there are several of them in attendance at this convention and I want them to know how grateful I am for their support.

As our business has grown from 5 employees to 25 it seems the problems have multiplied in the same proportion. More of my time must be spent attempting to solve the really difficult title cases and dealing with employee turnover, which for many years was not a major problem in our office.

The possible threat of more government interference is something else that concerns me, as it does our entire industry, and my way of attempting to do something about it has been to become active on our Chamber of Commerce Legislative Committee. Our Chamber has recognized the need for close liaison with our legislators and has arranged many opportunities for our business community to actually sit down and discuss our mutual concerns with them. Here I am digressing and speaking on a favorite subject which causes some teasing from my friends in my home town. This has to do with becoming active in community affairs. I feel it is closely tied into any successful business. Certainly the title business is not going to thrive if the economy of the area is not good. Since my work load is extremely heavy at the office, I must decide where my time will be best spent outside of the office. In my particular case, I have found our Chamber to be the most dynamic force working for the total good of our community. This is probably not true in some areas but we do not have a Chamber that just brags about our great climate, beautiful scenery and attempts to create the impression that we are Utopia. They attempt to take a realistic view of the situations as they arise and appoint a task force, as needed, to work out solutions. Working with them has been interesting, personally rewarding and has given me the opportunity of meeting important visitors to our city. I can trace several important orders we have received directly to contacts I have made through Chamber activities.

The advantages gained for our business have far outweighed the hours of service I have given to the Chamber and there has been this opportunity for community service at the same time. It is well to give back something to the city where you live and work. By devoting a minimum of 5 hours of public relations contacts for the Chamber each month, I am at the same time, doing public relations work for our business.

The Title Business is a great business for a woman who is seriously interested in a challenging and rewarding career. Woman's Lib notwithstanding, there are still many kinds of business and industry where a woman cannot compete on an equal basis with a man.

In the important detail work of the abstracting section of the Title Business, a woman can compete and in many instances do a better job. If you will check the ALTA Directory you will note ever increasing numbers of women who are managers, owners and in other executive positions. There are more and more women entering the real estate business, more women in executive positions with banks, savings & loans and other lendors. Many times they prefer dealing with another woman.

One of the most important projects our Company has handled, Pueblo West, was partially secured because the seller became seriously ill just as negotiations were reaching a climax. His wife was forced to take his place at the conferences before closing and the Realtor felt she would feel more secure and at ease with another woman present at these important meetings. He called upon me and she was pleased and relied upon my advice and we were the title company awarded the title insurance. The Realtor was so pleased at having her reassured and content that he has given us much additional business and McCulloch Properties is our biggest single customer. We now have 7,000 files covering their lot sales during the past 3 years.

However, a woman's touch can also help when only men are involved in transactions. Recently a very important closing was scheduled and the purchaser's attorney flew in from Pennsylvania to be present. When he arrived at the office, I could tell that he was not well. I inquired and he told me he had apparently developed a severe case of flu. He had been miserably ill all the previous night and doubted he could sit through the closing. Remembering that my doctor prescribed ice cold ginger ale when I was ill, I sent out and purchased a six-pack. All morning I kept the cold ginger ale beside our attorney friend. The closing was completed and he and all concerned were grateful. Perhaps a man would not have thought of this simple remedy.

You can tell I am happy in my choice of career and my view of the Title Business is that it affords the greatest business opportunity for women.

Thank you for letting me publicly express my gratitude to an industry that has been very good to me and to the fine gentlemen responsible for my being a part of it.

Comments by

Phyllis Schnebelen

Vice President, The St. Francois County Abstract Co., Farmington, Missouri

I doubt very much if the title business from a woman's viewpoint is very different from a man's viewpoint. None of us would be in this occupation, at least for very long, unless we were interested and enjoyed our work.

The title business is the history of the land. It has all of the romance, mystery and tragedy noted throughout the years—and all available from the public records. Each parcel of land has it's own story to tell. There are no two locations exactly alike on this earth, hence no two land titles are exactly alike. So it is with people. We work with people and the land.

One of the most important things in life to people, is the land they live on, their homes or their places of business located on the land. Their security is knowing that they own their own particular piece of real estate.

An abstracter searches the records to determine the condition of the title to the land which represents one of the most important investments made during a lifetime. Without assurance of the title company, there would be no real feeling of security. The average person contemplating purchase of real estate has no conception of what is entailed, hence he has to rely on some dependable source for the correct information about the condition of the title and guidance in the completion of the sale transaction.

In meeting the public we find all kinds of people. Some are old, some are very young. Some are impatient, others are very patient and understanding. Some are arrogant and hard to talk to. When we deal with all types, we have to be friendly, firm, patient, convincing, kind and knowledgable. We have to like the public—and show that we do.

Sometimes this takes more time than we have but I really believe that the right attitude pays off. In the years that we have been dealing with the public, I can recall only one person that was utterly impossible. This person was a man who apparently disliked all women—and guess who was handling the closing!!

Clientele have their preference. We try to know them and to suit their whims whenever possible. I believe that the older and more mature women prefer to have another woman take care of their needs rather than a man. If men feel that women are knowledgable, there is no discrimination.

A successful woman has to retain her femininity. When she tries to be masculine,

she loses her touch. In spite of the trend toward Women's Lib today, it is my personal opinion that if women would keep their ideas as they should be, they can have their cake and eat it too.

Each land title is a romantic history of it's own equalled by none other. Many of the abstracters and searchers are women. I believe they are more inclined to pay attention to detail and to be more exacting and meticulous than men. I think you all will agree that we simply cannot do without them. All of us who are speaking this morning are executives in our own companies. We did not reach our position by anything else but hard work. We have been interested in the title industry or we would not be where we are. Our training in all phases of our business ranges from indexing, microfilming, compiling chains, platting and examining to closings. There is much responsibility in each part of our work. I will not go so far as to say that women are better than men, but do say that any woman who is capable of doing her job, is at least equal to a man in the land title industry. We can recall people's names even after months or years have passed since they have come to us for our particular service. It should not matter what station in life a customer has, he should always be treated with respect, if his actions warrant.

Women can perform their best for human kind by determining and directing their sense of values in the right direction. Personally, I enjoy my life. I like to feel the satisfaction that comes from serving the public.

In closing, I would like to pass on a bit of advice read the other day—"Before you begin to give somebody a piece of your mind just make sure you can get by with what you have left."

Thank you.

Comments by

R. Claire Wetherell

Owner, Guaranty Title & Abstract Co., Mountain Home, Idaho

Being selected as a participant with this panel is a flattering and humbling experience. My father often reminded me that you can tell a man by the company he keeps. If he could see me today, with this group, he would really be proud of me and my friends.

Yes, I am a Woman in the Title Business. I took over the operation of my office following the death of my husband and have found it to be a rewarding and gratifying experience. I must say, without the encouragement and assistance of a lot of people in the industry, who instilled the confidence, and were there with the "helping hand", I would not be so involved today.

A Woman in the Title Business—What are her problems which differentiate her role from that of the man? Surely, we meet the same challenge when examining a chain or closing a loan; but, it does have its setbacks at times. As one of my colleagues stated when a customer comes to the office and asks for the manager. She stated, "I am the manager." He answers, "I mean the MAN in charge." Or, the man who asks, "Do you mean *you* found the Section corner?"

Why do these people feel that women do not have the ability or the knowledge to serve them? This is where we must assert ourselves and assure them that we, even though a woman, can serve them.

Seeing a woman in a title office is not new—but, usually they have been relegated to the lesser tasks and kept at the tract books or the typewriter, and not that of discussing land descriptions or loan closings, consequently, the question.

There has been a lot of talk these days about Woman's Lib, and I suppose I would be remiss if I didn't at least mention the term; Bobby Riggs wants to put us all in the kitchen, but Billy Jean showed him a thing or two. Why should we let such Chauvanists put us down?

I take heart from Pat Paulson's words, when he said, "I say no one should be denied equal rights because of the SHAPE of their skin." Him, I like.

Fortunately, I have never felt that I had to be liberated—granted, there are some minor problems, but I had a father who believed in education for all and a husband who always encouraged me to become involved. Women do have ability and a particular characteristic—is it called intuition?—that serve them well. Gratefully, I must say, the Title Industry is an area where the woman is particularly adept. You may accuse her of having a "nose for news", but she also has a nose for detail and a great deal of patience.

Reading a chain of title is likened to an historical novel—it's newsy and informative—isn't it fascinating? And, aren't some of the remarks and comments amusing? Such as: "Who consumes the mortgage?", "Can you make up a leaps and bounds description for me?", or, this one which tops them all—"If I am to get in and out of this property, they'll have to give me incest and excess!"

When examining these chains, I am sure, you as well as I are curious to know what drove our forefathers to develop, build and explore; and then to acquire, trade and sell—and, unfortunately, sometimes, meet with more depressing times and lose all because of inability to meet the tax demand. Yes, it is fascinating.

Yes, I am a Woman in the Title Business willing to help, willing to serve, willing to explain, willing to care and even willing to hold the baby while the closing papers are being executed.

Yes, I am a Woman in the Title Business, who is proud to be associated with a growing industry and realize more everyday that we will never be likened to the Obstetrician in Sun City, (Arizona) or St. Petersburg, Florida. We are going to be even more in demand for the services we provide, and we do provide a service. I have always enjoyed helping people whether it be physical or mental problems, and I feel that I am providing a need when I write a title report—and, like you, after I give the report—I PRAY A LOT.

TITLE INSURANCE AND UNDERWRITERS SECTION

Trends and Developments in Title Insurance Claims

Jack L. Tickner

Chairman, Section Committee on Claims
Vice President and Associate General Counsel, Chicago Title Insurance Company, Chicago, Illinois

When I was asked to speak on the subject of trends and developments in title insurance claims, my first reaction was that so many new things have been happening that my main problem would be to eliminate topics to talk about. As I reflected, however, I came to the conclusion that most of what keeps the claims people busy is not particularly new, but more of the same.

I realize that many in this group are involved in the claims activities of their companies, and you may very well be aware of new and novel things that I do not mention. There are, of course, certain types of claims that occur with greater and more expensive frequency, and there are others that appear to me to be somewhat new and unique. If you hear nothing new this morning, you can take comfort in the fact that someone is sharing your misery. If something is mentioned that you have not yet encountered, you can congratulate yourself that you have so far been spared.

To start our discussion, I would like to take up briefly the ALTA Claims Report. I will not go into this in any great detail since the Research Committee will include this in its report at this meeting. We now have a four-year history for this report. In 1972, 48 of the 91 underwriters, representing 75 percent of the gross premium, reported to ALTA. Within the obvious limitations of the report, it should be a fairly good barometer of the industry claims activity. An interesting feature of the 1972 report is the percentage by categories as to both new claims and payments made. Most of the categories have remained fairly constant, percentagewise, generally not varying more than several percentage points over the four-year period. I shall illustrate one category of the report, and it both confirms and contradicts my previous statement. B-1, better known as mechanic's liens. Of the new claims received in 1969, 3.8 percent were mechanic's liens. In 1970, it was again 3.8 percent. In 1971, 4.1 percent. In 1972, 3.3 percent. This is a reasonably constant percentage. In dollars of loss payment, however, in 1969 mechanic's liens represented 15.9 percent. In 1970, 8.7 percent. In 1971, 11.7 percent. In 1972, 19.5 percent. In dollars paid, mechanic's lien claims are the number one problem for the title insurance industry. The second place category, erroneous omission in the examination or opinion, was not even close at 10.6 percent.

I doubt that this comes as much of a surprise to any of you. Let us look behind this observation for a moment and see if there have been any subjective trends in mechanic's lien claims. Ten years ago we probably had as many lien claims as we do now, but a high percentage of those claims were on single-family residence. The insurance protection was generally given after the improvement had been completed and we had made some effort to determine that construction costs were paid. If the lien claims were for anything other than the finishing work, they probably had been filed before we insured. The claims on a single house were not too great in amount. In those days, a really bad lien claim involved a speculatively built subdivision with multiple liens on the last dozen or so houses.

My experience in recent years has been that the lien against the single family residence is the exception, with the five and six digit liens on multi-family and commercial projects being the rule. In addition, our underwriting procedure has changed and the insurance is now frequently written on a construction loan at the inception of the project. Instead of dealing kindly with an electrician or painter for a thousand dollars or so, we may have our back to the wall if, indeed, we are not surrounded by an army of material suppliers each intent upon sharing with the stockholders a part of the annual dividend.

Some states grant priority to a construction mortgage if the mortgage is recorded prior to the commencement of construction. Suppose that we are fortunate enough to have evidence of such priority. Our problems are over. Right? All we must do is to take our affidavit, photograph or other evidence to the lien claimant and he will graciously concede the point and release his lien. Well, if it is this easy, then I must be doing something wrong. The courts have always been solicitous of the right of a lien claimant to be paid for his labor and materials. That tendency has most certainly not decreased in recent years. Commencement of construction is largely a factual issue, and the evidence that will convince me does not necessarily convince the court. Seven years ago my company was involved in a lien suit that went to the appellate court of the state and received a construction of the lien statute that denied the lien. The opinion was in accord with prior decisions. Five years later we were involved with an almost identical set of facts and the same court gave a directly contrary finding. While the court did not directly overrule the prior decision, the writer of the opinion seemed rather amazed that his court could have arrived at its previous conclusion.

But let us assume that the evidence is overwhelming that the construction mortgage was recorded prior to commencement. No other finding is possible. Does that end the case? Not necessarily. There have been noticeable instances in the last year or so where claimants' attorneys do not rest their case solely on an interpretation of the lien statute, but in effect appeal to the conscience of the court. They will point out that the construction lender (or title company) is a trustee, a partner in the project, or that the construction loan was disbursed in such a negligent manner and with total disregard to the interests of the claimants that the lender (or title company) should be penalized for this gross and wanton negligence. I am not presently aware of any appellate decisions supporting this type of case, but I am pessimist enough to believe that it will happen. There is one decision in Arizona in which a disbursing title insurance company was held liable for a subcontractor's claim on the basis of representation to the claimant that he would be paid in due course.

All of you will agree that commercial real estate transactions have become increasingly

complicated and sophisticated. Couple this with the increased volume of business that we have all experienced and the perpetual pressure to close the deal, and it should be no surprise that we all have more claims because of having less experienced personnel at critical judgment making levels. The rather speculative insurance against mechanic's liens may be a prime example, but it is by no means limited to that.

Enough of that dreary subject. Mechanic's lien claims are not any fun. They are the pick and shovel work of the claims business. I know that you came here this morning to hear about condominium claims. Some parts of the country have gone condominium crazy, and it would naturally follow that we should have condominium claims by the score. So far as my company is concerned, I am happy to report a non-trend. We simply have not had many problems with condominiums. There have been some claims in which the fact that the project was a condominium had no bearing with the claim. It would have existed had it been an apartment, a farmhouse or anything else. The only feature worth noting in the true condominium claims is that they almost always involve some dispute over the common elements. "You parked in my parking space," "Your guests abused the swimming pool privileges," or some such thing. Most of the suits that I have seen are nothing more than testimony to the inability of people to live at peace in close proximity to each other.

The title insurance industry has not entirely escaped the effects of the ecology movement, if you will include within the definition of ecology the desire to maintain public rights in the natural habitat. Certainly, groups associated with the ecology movement have been strong forces in asserting public rights in property previously considered private and not subject to the public rights being asserted.

The Gion and Dietz cases here in California are prime examples. You will recall that the California court recognized an implied dedication of an easement across private property for the public to gain access to the beaches. Titles to ocean-front properties have been in confusion since those decisions.

In New Jersey, the claim by the state to the meadowlands has brought claims and apprehension to all title insurers doing business in the state. It probably will not be in the lifetime of any of us that there is a determination as to what land is and is not meadowland.

My company has been made a defendant in a suit involving beaches in one of the coastal states. The suit has numerous defendants including every county, state and federal official you can imagine. The plaintiff seems to allege that the ocean-front has been or is about to be desecrated by commercial interests, all with the blessing of the various governmental agencies. We have not yet been able to discover why we are in the suit. We know of no title insurance policies that we have issued on the land in question, and have about concluded that one of the other companies is the guilty party and should be there instead of us.

No more than two years ago, a complaint to an insurance department was a rare thing. Today, it is no longer an infrequent occurrence. Some of the complaints are justified. I believe that an insured is entirely justified in filing a complaint where he has received no recognition of the fact that he is making a claim. He is entitled to a "yes" or "no." If the insured presents a matter for which responsibility is accepted, he should receive some indication as to what the company plans to do to correct the situation. It is my experience that most of the complaints about inaction on the part of the title insurance company occur when the insured has reported the claim to and is dealing with an agent or branch office, and the matter has not been referred to the proper claims office of the company.

I would say that most complaints, at least to my way of thinking, are not justified. The third party claimant—a mechanic's lien claimant, or a judgment creditor, for example—does not have a justifiable complaint. Such claimants are adversary to the interests of our insured and the company, and we should be entitled to beat them in court if we can.

Most of us do not believe that the insurance department is the proper forum for construing liability under a title insurance policy, or for determining the amount of damages that may be due to an insured when a loss has occurred. While I have never been told so, it is my impression that most insurance departments are reluctant to step into the role of the courts.

There is another area of activity of recent vintage that does not directly affect the title insurers, but we seem to be caught in the backwash. Class actions. Most of you are familiar with the numerous class suits filed against the savings and loan institutions in California. Millions in damages are sought against the savings and loans because of late charges, pre-payment penalties, failure to pay interest on impound accounts, due on sale clauses, and any number of other restrictive provisions in a mortgage loan. The institutions have tendered defense of each and every such suit to each and every title insurance company doing business in the State of California. It is my opinion that the subject matter of these suits have nothing to do with the coverage of a title insurance policy, but we are confronted with the matter almost daily it seems, and it does not go away simply because we wish it. I am sure that the savings and loan institutions have even less reason to appreciate the situation.

The last matter that I will mention is very interrelated to what I have previously discussed. I will call it a "trend toward equity." It might have other names. Consumerism is certainly a part of it. However, I am talking about the cause of action as stated in a complaint. Of course, the rules of equity have always been with us and have not really changed much unless you consider legislative changes such as truth-in-lending and interstate land sales. In the real estate title business, we are used to thinking about contracts, deeds and other written instruments, and court decisions that determine from such written instruments the intention of the parties and which say "This is what you contracted for and this is what you get." We now see people appealing to the conscience of the court on matters that we have always thought of as contractual. The buzz words for equity are now "contract of adhesion" and "unequal bargaining position." I have mentioned this trend in mechanic's lien claims and matters of public rights. We are now witnessing across the country a massive assault upon the non-judicial foreclosure of security agreements as being violative of due process of law among other things. Whenever I read a complaint attacking the foreclosure process, I am reminded of a case I was involved in about 12 years ago. We had a foreclosed mortgagor making every allegation you can imagine as to why the foreclosure was invalid. The case went through the state appellate and supreme court and certiorari to the United States Supreme Court was denied. Although the foreclosure was upheld at ever level in this case, there was a strong and lengthy dissent in the Court of Appeals. One of the justices in the majority felt the need to comment in a concurring opinion that all of the arguments for the plaintiff would have more appeal to the court if the plaintiff at any time in the proceedings had shown any desire to pay back the money he borrowed to purchase the property.

Some years ago I researched the question of the "due on sale" clause frequently found in mortgages. Such clauses provide that if the mortgagor shall convey the title without the consent of the mortgagee, the mortgagee may accelerate the indebtedness. I found not one case in the United States that did not uphold and enforce such a clause as a matter of contract. Recently, the Arizona courts were presented with the question and held that, while the clause was valid, equity would not enforce the clause if the transfer of title by the mortgagor did not violate the purpose of the clause.

In one of the California class suits previously mentioned, the Supreme Court of California recently held that a late charge must bear some relationship to the expense imposed upon the mortgagee by the late payment, and anything in excess is an invalid penalty. I suggest to you that there is a trend that tends to diminish the value of the written contract and substitute the conscience of whoever is called upon to enforce the contract. I do not speak to the merits of this trend. We can all have our own opinions on that and they may differ from case to case. However, I submit to you that the trend toward equity does exist and the failure to recognize this trend will be to our peril.

Condominiums

Clark F. Staves

Vice President and Chief Title Officer
Security Title Insurance Company, Los Angeles, California

Although the philosophy of condominium, as a concept of separate and common ownership, transcends national boundaries, the implementation of that concept in this country is a matter of individual state statute and regulation.

In California, for example, where developments involving community or common ownerships have a more than fifty year (50 year) recognition in real estate commerce, a limited amount of legislation has been devoted to these varying programs. Such legislation that does exist, largely occurred through the result of pressure to protect the public from speculatory frauds and misrepresentations, for example, the full disclosure statutes under the Subdivided Lands Act (Cal. Bus. & Prof. Code Sec. 11000, et seg), and the powers delegated to local government to regulate subdivisions and other lesser divisions of land under the Subdivision Map Act. (Cal. Bus. & Prof. Code Sec. 11500, et seg). In only one of these California variations had legislation been attempted to improve the quality of the purchaser's title, that is, the so-called Condominium Act of 1963 (Ch. 860, Stats. 1963).

The California legislature wrestled long and heroically with the difficulty in reconciling then extinct law with the requirements of acceptability to, among others, Eastern investors, and certainly the approach adopted in that 1963 legislation was quite different from that adopted by other states. Despite the fact that the legislation clearly accommodated some new California rules with respect to such essentials as the ownership of free or occupied space, the jurisdiction of a court in a partition action involving both separate interests as well as tenancies-in-common, and the separate assessment of taxes on undivided interests, other considerations were less well established—often appearing as legislative suggestions rather than as changes in substantive law. Notwithstanding the several inadequacies and uncertainties of that legislation, it is significant that, in the ten years since it's enactment, there have been no substantive amendments and few, if any, cases reaching the appelate level requiring judicial interpretation of the Condominium statutes.

This happy circumstance is certainly not because of any dearth of condominiums in California. One title insurer, with respect to its office in one of the largest and fastest growing counties, reports that in the first six months of 1973, condominium units represented between fifty and eighty per cent of its subdivision business. Nor can it be said that condominiums have completely replaced earlier community versions. The more recent variations and refinements in community concepts of all types, conceived through the inventive genius of California developers, have produced some exciting—and exotic—programs.

I suspect that if there is any one factor which, more than any other, has reduced the incidence of condominium litigation in this state, it is due to the insuring practices of California title companies. Where those practices are premised upon conservative interpretations of the implementing legislation, recognizing that such statutes did not purport to override existing rules regarding the certainty of descriptions, proper conveyancing and other such fundamental elements of our concern, this experience is likely to continue. However if title people permit themselves to be overly dazzled by the optimistic and gradiose schemes of developers, or compete with one another in risk-taking, perhaps the courts will again tell us what we should have recognized.

While it is apparent that the scope of condominium legislation varies from state to state, in our zeal to secure business for our companies we may fail to fully examine and identify areas of potential risk, and to consider and suggest possible alternatives to those risks. Lest we get too carried away with the developer's enthusiasm, this may be an opportunity to discuss at least two recurrent concerns.

It will be noted that in such projects, title boundaries are usually intended to be coincidental with physical portions of improvements (that is, surfaces or centers of walls, floors, ceilings and the like). Where conveyances are made by reference to a map, such map ought to be a survey of the as-built location of those physical improvements which constitute boundaries. It is true that the California condominium statutes, under Civil Code Section 1351, require that diagramatic floor plans need only identify the "relative location" and the "approximate dimensions" of units, and impliedly sanction the use of "pre-construction" drawings for the condominium map. However, these requirements should be considered as minimal criteria for compliance with the condominium law; title insurance considerations obviously necessitate more stringent requirements—such as definiteness and certainty.

That requirement of a survey, after completion, to assure the size, shape and location of the land which is to be the subject of title insurance, was, understandably, met with a good deal of resistance from developers who nevertheless wanted to reap the benefits of the Condominium Act. Such a requirement would, of course, add to the developer's costs to bring his product to market, and might extend the time for his closings. Furthermore, because of the apparent willingness of some insurers to accept more casual mapping in connection with conveyancing under other concepts, it was difficult to convince developers that those earlier standards must be raised.

While those developers eventually became reconciled to the requirements of a survey, they did not easily relent on the "pre-construction" map idea. One ploy which was attempted involved the use of a map showing parcels, denominated "units", the boundaries of which were recited to be the (a) surface of the ground, (b) the vertical projections of lines so located horizontally as to embrace that part of the proposed building which was to contain a particular apartment, and (c) with no upper limitations. Such would result in the so-called "chimney of airspace" concept, or "a building in space". That concept, however, would not meet the statutory definition of a condominium unit in California as "space in a building" (Cal. Civil Code Section 783; i.e., "a building in space" is not the same thing as "space in a building").

A more modern variation on this theme of "pre-construction" drawings involves the use of a map which, instead of representing a survey of each "unit", delineates what is supposed to be the exterior boundaries of the buildings (intended to contain several units) within the project. There is also separately delineated the horizontal boundaries of a "typical" unit, with a notation as to which buildings are to contain "similar" units. Furthermore, critical dimensions and bearings, necessary to "tie" the buildings, and the units therein, to the surveyed boundaries of the project are generally lacking. Thus a conveyance of a unit by reference to such a map may be analogous to the conveyance of "five acres within the northwest quarter of Section 10, etc." That is, it may be void for uncertainty.

Another concern, which could be identified today, involves what we may commonly refer to as "annexation," sometimes referred to as "progressive" or "incremental development." Because of the rather sweeping consequences, perhaps one of the dominant considerations should be to ascertain whether the development is to be constructed and sold in increments. If so, it will be important to determine whether each of these increments is to be "free-standing", or whether there is involved an area, or areas, intended for use by the owners in all increments, i.e., involving "phasing" or "annexation."

Frequently, a developer owns or controls acreage sufficient to support a considerable number of housing units, yet he may be unwilling, or unable, to develop all of this acreage at the same time. Typically, the developer's sales program requires, or contemplates, an initial construction of a major recreational facility (for example, an Olympic-size swimming pool, elaborate clubhouse, golf course, tennis courts, and so on), designed to serve the entire community of owners. However because of limitations on the availability of construction funds, or because of an unwillingness to pay out maintenance expense until all homes are sold, or simply because the market is untested, the developer is advised to proceed with his

program on an increment or "phase" basis. Where such a scheme is contemplated, how should such community facilities be conveyed—and to whom—and when?

Real estate regulations in California are such that annexation of other property to an initial increment, which might substantially increase assessments, or might substantially increase the burden upon such common facilities, will not be approved unless (a) the procedure for annexation is reasonable and detailed in the original filing, or (b) if not detailed, provision is made for the approval of the annexation by at least a two-thirds majority of the voting power, excluding that of the developer (Regulation 2792.10). Furthermore, the Division of Real Estate requires that, at the time of acquisition by a buyer, title to his dwelling—as well as his interest in the common or community facility—must be free and clear of all blanket encumberances (liens other than those created or assumed by the buyer solely upon his interest) (Cal. Bus. & Prof. Code Sec. 11013.1).

Parenthetically, we should note at this point that the hypothetical program submitted for consideration requires the creation of insurable titles to such areas, not the mere recognition of some vague, "expanded common area" use through covenants in the enabling declaration. The structuring of that creation, within the context of condominium titles, in consistent documentation, will require considerable anticipation. The key, of course, will be to conceive of a program under which the developer may preserve his options to annex further increments, or not, for as long a period as possible. Although many variations and combinations have been put forward, there are really only four which merit comment.

One approach is to provide for an increase in the quantum of undivided interest conveyed to buyers in the first phase, in the event that subsequent increments are not developed. Sometimes such a program is discovered as a provision in the developer's enabling declaration, reading somewhat as follows: "If such additional lands are not annexed to the project within the time and in accordance with the provisions set forth above, the ownership of the common area shall automatically become one twentieth thereof as to each respective unit in lieu of one one hundredth thereof." (i.e., by some magic, the developer's remaining interest is to "automatically" vest in the owners of those developed increments). I think we will all recognize that titles cannot vest in the absence of a conveyance—in this instance from the developers. However, since the developer cannot assure, in advance, that such future conveyances would be free and clear of all encumberances, those reserved interests are customarily conveyed to a trustee (the purpose of which is to insulate those titles from liens and judgements against the developer). As successive increments are developed, such trustee would convey appropriate fractional interests to buyers—perhaps joining with the developer in common deeds. If the contemplated increments are not developed within the trust period, the trustee would then convey all remaining interest to those owners within the developed increments on a pro rata basis. The anomaly of this solution (even though it ostensibly meets the requirements of the Division of Real Estate), is that most trusts of this type are deliberately designed to provide for little or no discretionary powers in the trustee and, as a result, such a trust probably would not achieve the intended purpose.

Another, at least theoretical, solution would be to *decrease* the quantum of undivided interests conveyed to the first place purchasers as subsequent increments are developed. That concept is also referred to as the creation of estates subject to executory limitations (i.e., estates subject to a "shifting" or "springing" use). Under that concept it is contemplated that, in addition to the minimum, or basic, fractional interest in the common area, there would also be conveyed to each of the grantees in the first increment a larger fraction (representing their pro rata share if future increments are not developed). That larger fraction would be further expressed to be subject to defeasance, either in whole or in part, by the development of later increments within a specified time, portions of which fractions would then vest in buyers within those later developed increments. In addition to the difficulty in expressing this rather archiac concept in each of the developer's deeds is the probable lack of acceptance of such exotic titles by purchasers and lenders.

Another program, occasionally encountered, would provide for non-exclusive easements over all of the common area, for the benefit of and appurtenant to each unit in the first phase and all prospective increments. The creation of such easements will, of course, require appropriate reservations and grants in each deed in each increment. Even in this solution, however, several problems can be anticipated. One of these is the denomination of the easement area, as well as the identification of the grantees, or users, of the easement, so that the later extension to owners in future increments will not surcharge the servient tenement. Ideally, there should be some sort of limitation so as to cut off the easement if the subsequent increments are not developed within a definite period of time. But perhaps the most serious consideration is the limitation on the uses for which such easement may be exercised. In attempting to so circumscribe those uses, it is frequently difficult to categorize in a manner other than "for any and all purposes." That broad specification may simply be tantamount to a fee and, consequently, such a reservation may be repugnant to the purported grants of undivided interests in the same land.

It may well be that the simplest approach would be to segregate those parcels which are intended for use by the entire community from the common areas of each increment. If that can be accomplished, such would accommodate the use of a homeowner's corporation to hold title to such a community facility. Although initial membership in such corporation would be limited to owners within the first increment, provision would be made in the enabling declaration for the admission of additional owners, as members, when future increments were annexed, developed and sold. That program obviates the need for complicated conveyancing, or the creation of exotic interests and, because the title is, from the first sale, in an entity composed of the unit owners, the concerns of the Division of Real Estate are met. An additional advantage is that such a corporation may be formed, not only to hold title to the community facility, but also to function as the management body for each of the increments. While there are mapping considerations—such as to accommodate access from each increment, and zoning matters which could be anticipated—among sophisticated, knowledgeable attorneys, the homeowners' corporation is the vehicle most frequently selected to solve the increment problem.

The steady increase in population, together with the reduction of vacant, "close-in" land which can be economically developed, has created severe pressure areas in different parts of the country. To the real estate promoter, cluster or community projects provide an obvious solution to that pressure. We may expect future developments to consist, not only of conventional fee title ownerships, but also of leaseholds and subleaseholds. Title to airspace, or rights to occupy airspace, both inside and outside of existing buildings, combined with tenancies-in-common, easements, or rights through membership in a corporation, all may be involved.

We have recently noticed the current trend toward "sweetening" certain otherwise marginal developments through accommodation of tax shelter benefits. Resort condominiums, for example, which afford opportunities for rental income when not used by the owners, or the so-called "time sharing" concepts in which a buyer's purchase price represents his use of the dwelling for a limited time each year. Due to the ancillary existence of rental pool arrangements, or other management contracts, conveyances in some of these developments also constitute corporate securities and may involve SEC regulation with respect to advertising, sales and financing.

The spectrum of problems attendant upon the insurance of titles in these developments is staggering. That we may properly respond to the expected increase in requests for title insurance covering these developments, it is evident that we must reevaluate our practices—and reeducate ourselves—with regard to fundamental concepts. We may ultimately elect to insure—but we should be aware of these legal uncertainties and potential conflicts, and proceed, if at all, with that knowledge.

NAIC Update

J. Mack Tarpley

Chairman, ALTA Committee to Establish Liaison with the NAIC;
Vice President, Chicago Title Insurance Company, Chicago, Illinois

Subsequent to the adoption by the ALTA of the revised Model Title Insurance Code 1973, copies thereof were transmitted by members of this committee to the members of the NAIC Task Force with an appropriate letter of transmittal. On May the 8th, 1973, the chairman of your committee, accompanied by Bob von Doenhoff and John Wilkie, committee members, attended a meeting of the NAIC Task Force on Title Insurance held in Austin, Texas, at which time the committee chairman stated at open meeting ALTA's comments and suggestions relating to the NAIC's discussion draft of a Model Title Insurance Code.

The existence of that discussion draft has been previously reported to you. On June the 5th, 1973, the chairman of your committee, and Dick Howlett, committee member attended a meeting of the NAIC Task Force held in Washington, D.C. on title insurance in conjunction with the June meeting of the NAIC. At that meeting, John S. Kellogg of Colorado Attorney's Title Guaranty Fund and Mr. Philip S. Kappes, Chairman of the American Bar Association's Standing Committee on Lawyers Title Guaranty Fund appeared and made statements with respect to a Model Title Insurance Code. Copies of those statements have been delivered to the Washington office of the ALTA and are on file there.

Your chairman spoke to the meeting referring to the written comments of ALTA relating to the NAIC's draft which had previously been transmitted to the task force and requested permission to respond in writing to the comments of Messrs. Kellogg and Kappes. Your committee met in Chicago on June 18th and 19th and drafted written responses to those comments, which responses have been submitted to the NAIC Task Force. Copies of the responses are also on file in the Washington office of ALTA.

The NAIC Task Force decided in Executive Session to revise the discussion draft, submit it to membership of the NAIC and to interested parties, which has not yet been done and then to hold an open meeting with no date ascertained wherein anyone interested could appear with a view towards finalizing an NAIC Model Title Insurance Code to be submitted for adoption for NAIC at its December 1973 meeting.

As a further matter of interest to you, your committee has learned that the American Bar Association's Section on Real Property, Probate and Trust Law has designated an ad hoc committee to advise the section on a Model Title Insurance Code. The committee is composed of five members and its primary charge is to advise the section management committee with respect to matters which should be included in or excluded from a Model Title Insurance Code.

Now in trying to give you an update frequently things happen so fast in the NAIC and in other matters that frequently a written report is out of date. Commissioner Van Hooser of Michigan, Michigan being the chairman of the task force, has resigned his position effective September the 30th. If the NAIC follows its usual and normal practices wherein the states are designated to task force or to committees and not individuals then the new Michigan commissioner, a Mr. Demlow, will become Chairman of the NAIC Task Force on Title Insurance.

I thing Commissioner Van Hooser's resignation may result in a delay and a complete interruption of the timetable previously announced for the task force to submit something in December. Also the ABA committee is a new committee appointed only in August. I do not believe it has had a meeting; however, there is some indication that the posture of ABA will be to work to postpone anything that looks like a Model Title Insurance Code.

Mechanics' and Materialmen's Lien Coverage

Comments by

Ray E. Sweat

Senior Vice President and Senior Title Counsel, Pioneer National Title Insurance Company, Los Angeles, California

Mechanics' liens were unknown in England, either at common law or in equity. The first mechanic's lien law enacted in the United States was in Maryland in 1791. The Maryland Act was passed to assist in the establishment and improvement of the City of Washington, now in the District of Columbia and secured a lien on the buildings erected and land occupied in favor of master builders only. The next mechanic's lien law was enacted in Pennsylvania in 1803. Since then mechanic's lien laws, notorious for the extent to which they vary from each other in their application and operation, have been enacted in every state and the District of Columbia and in some states such as California *Art. XX, Sec. 15* and Texas *Art. XVI, Sec. 37* the lien is mandated or conferred by the constitution of the state. Since enactment of the original provisions for mechanics' liens, the legislatures have been prolific with amendments. Generalizations are difficult and the case law is unreliable since the decisions are meaningless unless the particular statute under which the case was decided and the precise language of the statute is closely studied.

There was an attempt to adopt a uniform mechanic's lien law originally drafted in 1932 after 8 years of work, but was adopted by only one state in 11 years *Florida*, and was withdrawn in 1943 for the stated reason that varied conditions made uniformity impossible.

There are two general types of mechanic lien statutes, one known as the "New York system" and the other the "Pennsylvania system". Under the New York system the holders of the lien cannot recover more than is due from the owner to the contractor, that is, mechanic's lien rights are derivative. Under the Pennsylvania system, the rights of mechanic lienors are direct as against the real property and do not depend on the existence of any indebtedness due from the owner to the contractor.

According to *68 Yale Law Journal 142*, the following states are believed to follow

the New York system:

Alabama	New Jersey
Connecticut	New York
Florida	North Carolina
Illinois	South Carolina
Louisiana	South Dakota
Massachusetts	Texas
Mississippi	Utah
Nevada	Vermont
New Hampshire	Virginia

as well as the District of Columbia; while the states next listed subscribe to the Pennsylvania system:

Alaska	Minnesota
Arizona	Missouri
Arkansas	Montana
California	Nebraska
Colorado	New Mexico
Delaware	North Dakota
Georgia	Ohio
Hawaii	Oklahoma
Idaho	Oregon
Indiana	Pennsylvania
Iowa	Rhode Island
Kansas	Tennessee
Kentucky	Washington
Maine	West Virginia
Maryland	Wisconsin
Michigan	Wyoming

Under the Pennsylvania system, not only may the owner be forced to pay "twice", that is, the contractor, mechanic and materialman, but the total amount due the mechanic lienholders may exceed the contract price.

As a matter of fact, a materialman may have a valid lien even though the material is used in such a way by the general contractor or his employees to result in damage or lack of benefit to the owner, *Tri-State Construction Company vs. Miller, 492 P. 2d 877, Colorado '71.*

Justice would seem to dictate "first in time – first in right" but as between the competing mechanic lien claimant and the construction lender we have a doctrine of relation back. In no case that has come to my attention can the construction lender relate subsequent advances back beyond the date of recording of his mortgage. Mechanics' liens are believed to attach at the time of commencement of the improvements in the following jurisdictions:

Alabama	Montana
Arkansas	New Jersey
Colorado	North Dakota
District of Columbia	Ohio
Georgia	Oklahoma
Iowa	Oregon
Kansas	Pennsylvania
Louisiana	Rhode Island
Maryland	South Dakota
Michigan	Wisconsin
Minnesota	Wyoming
Missouri	

However, in Arizona, California, Connecticut, Delaware, Idaho, Indiana, Kentucky, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, Tennessee, Virginia, Washington and West Virginia, the lien attaches when the lienor begins furnishing services or materials; while in Florida, Georgia, New York, South Carolina and Vermont, the lien attaches from time of filing the claim, *American Law of Property, Sec. 16.106F.* In Illinois, the mechanic's lien relates back to the date of the contract or commencement, whichever occurs first, *Secs. 1 and 21, Chap. 82 Ill. Rev. Stat.*, and in Texas, to the "inception" of the contract, *26 Southwestern Law Journal 24.*

We believe that in the following states, if the mortgage or deed of trust is filed prior to the commencement of improvements on the land the lender should prevail.

Arizona	Nebraska
California	Nevada
Colorado	New Jersey
Connecticut	New Mexico
Delaware	North Carolina
Florida	North Dakota
Georgia	Ohio
Hawaii	Oklahoma
Idaho	Pennsylvania
Kansas	Rhode Island
Kentucky	South Carolina
Louisiana	South Dakota
Maine	Tennessee
Maryland	Utah
Massachusetts	Vermont
Michigan	Washington
Minnesota	West Virginia
Mississippi	Wisconsin

as well as the District of Columbia.

In the states of

Alabama	Missouri
Alaska	Montana
Illinois	Oregon
Indiana	Virginia
Iowa	Wyoming
Mississippi	

no priority or at best, imperfect priority is gained by the lender recording prior to commencement.

Unfortunately, in the states which have statutes sufficient to protect the lender, mortgagors and contractors will many times be unwilling to wait to begin commencement until after the recordation of the mortgage, so in effect, in many instances, in all these states the lender is faced with a complete loss of priority.

Another iffy question is what constitutes commencement? Does demolition of an existing structure constitute commencement? How about dumping a load of sand or stacking lumber on the property in question? How about parking excavation equipment on the property? See *Ramsey vs. Peoples Trust & Savings Bank, 264 N.E. 2d 111, Ind. 70,* commencement for purpose of no lien contract. In most jurisdictions commencement is a question of fact to be determined under the statute and case law. In some states such as Florida there is a provision for recordation of an instrument known as Notice of Commencement, while Louisiana provides for concurrent recording with the mortgage, of an affidavit by an architect, civil engineer, or registered land surveyor certifying that the affiant has inspected the site on the date of recording and found no evidence of commencement. These statutes are a step in the right direction but do not resolve all of the problems. Under the Florida statute commencement must be made within 30 days, while under the Louisiana statute, lienholders claiming unpaid wages for labor will have a super priority which will prime the mortgage despite proper recordings.

In general, recording prior to commencement will only protect lenders who make mandatory or obligatory advances. If for some reason the lender is no longer bound under a building and loan agreement or other similar agreement to make advances or if the lender retains too much discretion, the court will find that the advance is optional and is primed by mechanics' liens. *Columbia Wood Products, Inc. vs. Equity Investors, 506 P. 2d 20, 1973,* but see *E. K. Wood Lumber Company vs. Mulholland, 118 CA 475, 1931.* There has been some attempt to give advances which are optional priority over mechanics' liens in certain instances. The State of Washington recently amended the mechanic's lien statutes to provide that certain advances for hard construction costs after proper certification by the general contractor and owner, absent filing of a stop notice, will be superior to mechanics' liens. *Chapter 47, Laws of Washington, First Extraordinary Session, 1973.*

In addition to recording prior to commencement and making only obligatory advances, construction lenders must also in some jurisdictions make sure that the mortgage contains "magic language" as prescribed by statute. For example, see *Public Act No. 73-545, January 1973 Session of the Connecticut Legislature.*

Except in New York and Texas, protection against mechanics' liens is most often afforded by using the American Land Title Association Loan Policy 1970. In Texas, the commissioner has promulgated Mortgagee Title Policy Binder on Interim Construction Loan (Form T-13), while in New York, either the New York Board of Title Underwriters Form or the American Land Title Association Loan Policy 1946 Form is used.

The New York Board of Title Underwriters Form insures the insured against all loss or damage by reason of

> "Any statutory lien for labor or material furnished prior to the date hereof which has now gained or which may hereafter gain priority over the interest insured hereby."

This language is not further explained in the conditions and stipulations of the policy.

The American Title Association Loan Policy 1946 Form insures the insured against loss or damage by reason of:

> "Any statutory lien for labor or material which now has gained or hereafter may gain priority over the lien upon said land of said mortgage or deed of trust."

The second sentence in paragraph 8 of the conditions and stipulations provides in part:

> "The Company will not be liable for loss or damage by reason of defects, claims or encumbrances created subsequent to the date hereof (excepting any statutory lien for labor or material insured against by this policy)."

The American Title Association Standard Loan Policy – 1960 insured against loss which the insured shall sustain by reason of:

> "The priority over the mortgage of any statutory lien, or right thereto, for labor or materials which lien or right exists at the date hereof, whether recorded or not, or arises from construction which is to become security for and is to be paid in whole or in part from the proceeds of the indebtedness secured by the mortgage which the insured has advanced or is presently obligated to advance."

Paragraph 3 (d) (4) of the conditions and stipulations of the 1960 Form provides

> "This policy does not insure against loss or damage by reason of defects, liens, encumbrances, adverse claims against the title as insured or other matters attaching or created subsequent to the date hereof. (Excepting any statutory lien for labor or material and . . . which are insured against by this policy.)"

When Mr. Ben Henley, then Chairman of the Committee on Title Insurance Standard Forms, reported this policy to the Convention in Dallas in October 1960, he said:

> "The clause insuring against loss resulting from mechanics' liens is modified to

make it clear that the insurance relates only to those liens or rights thereto which exist at the date of the policy or which arise 'from construction which is to become security for or is to be paid for, in whole or in part, from the proceeds of the indebtedness secured by the mortgage which the insured has advanced or is presently obligated to advance'."

The 1962 Form which allegedly accomplished a clarification of phraseology and did not change the actual coverage insured against loss or damage which the insured shall sustain by reason of:

"Any statutory lien for labor or material which now has gained or hereafter may gain priority over the lien of said mortgage upon said estate."

In the 1962 Form, paragraph 3 (d) (4) of the conditions and stipulations limited the coverage afforded by the insuring paragraph of the policy by excluding from coverage:

"Defects, liens, encumbrances, adverse claims against the title as insured or other matters attaching or created subsequent to the date hereof (excepting any statutory lien for labor or material insured against by the policy, provided, however, the Company shall not be liable for any statutory lien arising from the construction on the land contracted for and commenced subsequent to the date hereof which is not financed in whole or in part by the proceeds of the indebtedness secured by said mortgage which the insured has advanced or is presently obligated to advance)."

The 1969 American Land Title Association Standard Loan Policy Form was identical to the 1962 Form insofar as mechanic's lien coverage was concerned.

The 1970 Form insures against loss or damage to the insured by reason of:

"Any statutory lien for labor or material which now has gained or hereafter may gain priority over the lien of the insured mortgage, except any such lien arising from an improvement on the land contracted for and commenced subsequent to the date of the policy not financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at the date of the policy the insured has advanced or is obligated to advance."

In the 1970 Form the Schedule of Exclusions from Coverage expressly excluded in paragraph 3(d):

"Defects, liens, encumbrances, adverse claims or other matters attaching or created subsequent to the date of the policy (except to the extent insurance is afforded herein as to any statutory lien for labor or material)."

The operating people in California believe that they can afford mechanic's lien coverages to a lender who records prior to commencement by offering to the lender coverages by use of the 1970 American Land Title Association Loan Policy without including in the policy a pending disbursement clause. They believe that they are insuring the lender against mechanics' liens as to any advances made under the Loan Agreement at the date of the issuance of the policy and obligatory advances which are thereafter made.

Quite frequently when the question of mechanic's lien comes up, I am told there is no problem as far as the title insurer is concerned because the policy will contain a pending disbursement clause. Upon inquiry as to the nature of the clause, I am told it reads as follows:

"Pending disbursement of the full proceeds of the loan secured by the mortgage described herein, this policy insures only to the extent of the amount actually disbursed but increases as disbursements are made in good faith and without knowledge of any defect in or objection to the title up to the face amount of the policy."

There may also be a requirement for continuation down to the date of disbursement.

I believe this clause expresses the majority rule relative to additional advances made under a mortgage which secures such advances in all cases other than construction loans, *138 ALR 566,* but a Missouri case decided in 1972 styled, *Drilling Service Co. vs. Baebler,* reported at *484 S.W. 2d 1,* is illustrative of the so-called "first spade rule". The case stated that the theory of this rule is that the fact of improvements gives its own notice to all the world. Under the first spade rule a lender who makes additional advances subsequent to the recording of his mortgage is on notice that mechanics and materialmen are improving the security and that their lien may well relate back so that the construction lender must make any advances in a manner so as to relate back to the date of recording, that is, the advances must be obligatory.

In order to advise a lender as to his need to make only mandatory advances I would suggest a pending disbursement clause substantially as follows:

"Pending disbursement of the full proceeds of the loan secured by the mortgage described herein, this policy insures only to the extent of the amount actually disbursed as of the date of the policy but increases as obligatory advances are made in good faith and without knowledge of any defect in or objection to the title up to the face amount of the policy."

This clause may be supplemented by adding the additional sentences if desirable under the circumstances:

"Record title shall be continued down to the date of each disbursement and the company shall furnish to the mortgagee a continuation report stating whether since the date hereof or since the date of the last preceding continuation report, any liens or encumbrances have been recorded. Nothing contained in this paragraph shall be construed as extending the date of the policy or as limiting any exception under Schedule B or any printed provision of this policy."

Sometimes we are told that we should forget mechanic lien problems because there will be a labor and material payment bond written by a corporate surety company designating the title insurance company as an obligee as well as the lender and owner. Such bonds are actually a form of credit and the bonding capacity of each individual or entity is limited based upon their financial statement. In case of problems, the corporate surety company is oftentimes slow to respond and the title company may be asked to take over the loan and step into the shoes of the lender. Once the terms of the mortgage or building loan agreement has been breached the lender or the title company as assignee of the lender cannot put additional funds in the project and hope to prevail as against mechanic lienholders since such advances may well be optional and subordinate to other encumbrances. *Elmendorf-Anthony Co. vs. Dunn 116 P. 2d 253, Wash.* The only recourse at this point is to foreclose the mortgage and this, subject to all rights of redemption for periods, in some states, up to two years of not only the owner foreclosed against but junior encumbrances of such owner as well. The project must sit during the period of foreclosure plus the period of redemption since as far as I know, only Alabama undertakes to protect buyers at foreclosure sales who subsequently improve premises against redemptioners. In addition to the necessary action to foreclose it will in all probability be necessary to bring a legal action against the corporate writer of the bond.

Title insurance companies quite frequently excuse the contractor from furnishing such bonds and take an indemnity agreement from the owner and/or contractor to save the title company harmless from having insured against mechanic's lien. This is credit underwriting and must be based in large measure on the financial statement of the indemnitor and his ability to make a satisfactory financial response in case of difficulty.

Title companies sometimes engage in a form of funds control whereby they undertake to police construction lenders' funds to make sure that the proceeds of the loan go into improving the property. There seems to be some statutory recognition of this type of service in California, *Fin C Sec. 17005.1* and Nevada, *Chap. 627 Nevada Rev. Stat.* The statutes apparently contemplate furnishing of funds control service by title companies and others. Title companies very often combine their version of controlling funds with requirement for waivers of mechanic's lien rights.

In any of the above situations where the title company undertakes to afford mechanic's lien coverage by insuring paragraph 7 in the Loan Policy, with or without a pending disbursement clause, bond for labor and materials, indemnity agreement or funds control and a mechanic's lien is filed, the title company will have a problem. At best the title company will be charged with the costs of litigation, plus an unhappy customer whose reasonable expectation has been frustrated. In most cases there are questions which go over and beyond the mere priority between the mechanic's lien and the construction loan. In a recent case we had in Tennessee, in addition to the question of priority, we had the question of right of redemption for a period of two years because a Georgia deed to secure a debt was used rather than a Tennessee deed of trust. We had some question as to the effect of the trust deed sale since there was a substitution of trustee at the point of sale. Mechanic's lien claimants also contended that the lender and the trustor were joint venturers and that if, in fact, a loan existed, it was usurious. In a recent Kansas case there was no question of the relationship between the mortgagor and the mortgagee but the mortgagee had two separate mortgages without any provision for cross-default, the larger mortgage being on an apartment project and the smaller mortgage being on additional acreage for future apartment and other planned improvements. In case of foreclosure, the apartment project would likely be sold to the mortgagee but outside bidders were almost certain to buy the unimproved parcel. Our insured mortgagee was offered a deed in lieu of foreclosure. If we consent to the deed in lieu,

does this prejudice our right to test the priority of the mortgage as against the mechanic's lien claimants?

I believe that the Construction Disbursement Program as conducted by our company and other title companies is a reasonable response to the construction lenders' need for protection against mechanics' liens. The obvious way to avoid mechanics' liens is to pay all construction costs. This can only be done with money and the Construction Disbursement Program ascertains that the source of this money is other than monies held by the title company treasurer for the benefit of policyholders and finally for the widows and orphans who hold stock in the company.

Our company sees a Construction Disbursement Program as a proper escrow activity which affords an underwriting technique allowing us to offer mechanic's lien coverage superior to limiting our contract liability under paragraph 7 to obligatory advances, accepting bonds or indemnity agreements or any other technique presently known.

Our contract is a four-party agreement by and between contractor, owner, lender and our company, as escrowee, and is sufficiently broad to include all our rights and obligations as between our company and the other parties.

Our obligations are pretty simple and are spelled out in the contract as follows:

"Should owner and contractor fail to complete in accordance with the terms of this contract, escrowee is obligated to the lender, at escrowee's option either (a) to complete the improvements substantially in accordance with the plans and specifications, or, (b) to purchase lender's note and mortgage by paying all sums then due under said instruments wherein the lender shall endorse without recourse and deliver said note and assign the note and other security to the escrowee. Escrowee has no liability to owner or contractor to complete. Escrowee's obligations to lender to complete shall be consummate with the lender's acceptance of the improvements.

Provided, however, escrowee shall have no obligation either to complete pursuant to (a) above or to purchase pursuant to (b) above to the extent that completion is prevented or rendered more costly because of soil conditions, or by an Act of God, earthquake, fire or other casualty, vandalism, riots, civil commotion, war, National emergency, labor dispute, or order of court or governmental agency.

Escrowee has not been employed and has no responsibility to supervise construction or determine adequacy of design in plans and specifications. Escrowee shall have no liability for loss resulting from defect or deficiency of design or engineering, supervision, architectural administration, quality control, sampling, testing or defective material and workmanship provided by contractor, owner or those employed by either of them. Escrowee further agrees upon completion to issue, or cause to be issued by an affiliated title insurance company, an American Land Title Association Loan Policy—1970, without exception as to mechanics' and materialmen's liens."

An oversimplification of the application of our program would go something like this. Owner concludes that he would like to have an apartment house built and takes his plans and specifications to contractor who says "I can build the apartment house for X dollars". Owner then goes to permanent lender who commits to loan owner Y dollars when the apartment house is completed and a specified percentage of occupancy is attained. Owner then takes the commitment from the permanent lender to construction lender, who agrees to loan owner Z dollars, if disbursements are made under the title company's disbursement program. Owner then goes to the title company which will want owner's plans and specifications, the contractor and major subcontractors contracts, all of which will be submitted to a person skilled in construction costs, usually an architect who will estimate the hard construction costs presumably X dollars. The title company will then consider other costs such as interest during the course of construction, taxes, fees and other items which the owner must pay or accrue during the course of construction. When a sum sufficient to cover the hard construction costs plus the other items, plus a suitable contingency has been made available to the title company, the contract will be entered.

During the course of construction the title company will cause an inspection to be made prior to each payout and will only disburse funds to pay for items that have been incorporated in the premises in accordance with plans and specifications or suitably stored.

If problems should develop the title company may elect to purchase the construction loan under (b) above. This does not materially add to the option which the title company has under section 5 of conditions and stipulations, American Land Title Association Loan Policy—1970, but neither does it in any way restrict such option. In addition, the title company has the right under (a) above to complete the improvements substantially in accordance with the plans and specifications and this right is granted from the owner and contractor as well as the lender. The title company also has the right to use all funds of the owner and contractor held in escrow as well as all remaining funds unadvanced by the lender.

Following *Sniadach vs. Family Finance Corporation of Bay View,* decided in June, 1969, *395 U.S. 337,* which held that the Wisconsin garnishment statutes were unconstitutional, other customary and accepted practices such as attachment, cognovit notes, summary eviction, replevin and self-help under Section 9-503 of the Uniform Commercial Code have been attacked as violative of due process clauses of the state and federal constitutions by sanctioning the taking of property without prior notice.

This attack has run the gamut from replevin an ancient law remedy to the self-help provisions incorporated in the Uniform Commercial Code which is one of the most modern and well considered pieces of recent legislation, *5 Indiana Legal Form 300, Spring '72.*

The Superior Court in Los Angeles County, California, in a well reasoned case, recently held that the lis pendens statute is unconstitutional since the owner of real property is deprived of the use of his property by restricting saleability. The Court went on to say that this deprivation is as great as a depositor whose bank account has been attached or one who has been sued for claim and delivery, that is replevin. The Court further held that lis pendens procedures do not present any "extraordinary" circumstances or "countervailing state interest of overriding significance" which would distinguish the summary prejudgment procedure in the lis pendens statute from those already held to be unconstitutional. *Lake Tulloch Corporation vs. Dingman, Los Angeles County Superior Court Case No. WEC-27140.*

There is a contrary holding in the California Court of Appeals which concedes that the marketability of the property is impaired but points out the countervailing interest of the state in an orderly recording and notice system for transactions in real property makes imperative notice to buyers of property of the pending cause of action concerning the property, *Enfield vs. Spicka, Court of Appeals of the State of California, Second Appellate District, Division Two, Civil No. 42127.*

From a title industry's standpoint statutes providing for filing notice of lis pendens are desirable since in the absence of such statutes we would be back under the common law rule which says nothing relating to the subject matter of the suit can be changed while it is pending and anyone acquiring an interest in the property involved therein from the party thereto takes such interest subject to the party's rights as finally determined and is conclusively bound by the litigation. In the absence of a lis pendens statute providing for the recording of notice, suits affecting real property act as their own lis pendens in the state and federal courts where filed.

There are a number of very recent cases holding that an attachment of real estate, even though accomplished in full compliance with the state statutes, including the furnishing of a bond, but without providing owner with notice and an opportunity to be heard at a meaningful time and in a meaningful manner, violates the due process clause of the 14th Amendment. *41 Law Week 2492, March 20, 1973 Idaho; 42 Law Week 2035, July 17, 1973 Maine; 42 Law Week 2132, September 11, 1973 Massachusetts.*

In the Massachusetts case the United States District Court pointed out that in only a few limited situations has the court allowed outright seizure without opportunity for a prior hearing. First, in each case the seizure has been directly necessary to secure an important governmental or general public interest. Second, there has been a special need for very prompt action. Third, the state has kept strict control over its monopoly of legitimate force: the person initiating the seizure has been a government official responsible for determining, under the standards of a narrowly drawn statute, and it was necessary and justified in the particular instance. Such are the extraordinary situations which will justify suspending the due process clause of United States Constitution.

Aren't mechanic lien statutes subject to the same general attack on the basis of their constitutionality under the federal and state statutes? Such statutes, like lis pendes require no bond and also like lis pendens can be and often are misused. The filing of a mechanic's lien inhibits the transfer, sale or assignment by the owner and deprives him of the economic value of his property which amounts to an unconstitutional pre-hearing taking of property just as much perhaps even more than lis pendens or attachement. In lis pendens or attachment the moving party would normally be acting under advice and direction of counsel an officer of the court,

and would of necessity be required to pay filing fees, while in cases of filing mechanics' liens he probably would be acting pro se using a stationery type form with nominal filing fee.

Mechanic lien statutes may also be bad insofar as federally insured or guaranteed mortgages are concerned because of the mechanic lien relation back concept. Ever since 1942 when *Clearfield Trust Co. vs. United States, 318 U.S. 363,* was decided it has been the law that when the federal government acts to disburse funds or recover debts, it is exercising a constitutional function and federal law controls. The federal rule is "First in time, First in right". This rule gives no weight to state doctrines providing for attachment of real estate and allowing the relation back of a later perfected lien to some earlier event for the purpose of determining priority, *United States vs. Security Trust and Savings Bank, 340 U.S. 47, 1950,* nor is a FHA mortgage assigned to the United States inferior to subsequently filed mechanics' liens notwithstanding the state law which provides that mechanics' and materialmen's liens relate back to the date upon which the labor or material was first furnished, *T. H. Rogers Lumber Company vs. Apel, 468 F. 2d 14, 10th Cir. 1972.*

Statutory provisions which allow attorneys' fees to successful mechanic's lien claimants were found to be unconstitutional under the due process and equal protection provisions of the federal and state constitutions because the provisions were discriminatory since they permitted no such allowance to a successful defendant, *Gaster vs. Coldiron, Del. Supr. 297 A 2d 384, 1972.*

Mechanic's lien provided by statutes of the several states are an ancient remedy which may have lost some of their social justification. Most, if not all other creditors have to select their debtors with care and cannot look to property of third parties for security in the absence of contractual arrangements made before extending credit. In any event, I see nothing wrong with and I believe the industry should be willing to use Sniadach and its progeny to test the constitutionality of mechanic's lien law.

Comments by

Irving Morgenroth

Senior Vice President and Chief Counsel, Commonwealth Land Title Insurance Company, Philadelphia, Pennsylvania

You know, I don't recall speakers being applauded before they spoke earlier this morning and I feel like leaving at this stage, particularly if I could share the optimism of my learned colleague—and I suppose that is what I have to call Ray in the context of this debate today—if I could share the optimism of my learned colleague that Mechanics' Lien Statutes will be declared unconstitutional. She is an old lady, gentlemen, but she is not dead, and I don't see any indications of her last gasp.

I think that I'm most reminded in my invitation to come here today by my own position several years ago when I attended a convention at which a speaker was invited to discuss Mechanics' Lien coverage and Underwriting and at which, I, like yourself, sat waiting for something meaningful to emanate from the podium. To my amazement and somewhat to my chagrin, the major thesis of our expert was that there were as many different methods of underwriting Mechanics' Lien coverage as there were underwriters present.

I'm sorry to say that since that episode time has not demonstrated that that gentleman was wrong.

We're talking about Mechanics' Lien coverage today in the context of our loan policy ALTA form 1970 and we're making several assumptions.

First of all, that the lender requires the coverage. This is a justification that has been used frequently and although it's a justification, it certainly is not an excuse. The lender requires the coverage; he also would like to have insurance against the non-payment of principal and interest. He also would like to have a few Martinis with you, and he also might like to have a beautiful girl for the night. We can't supply him with all of these unfortunately. Perhaps we should move in the direction of the last two rather than the first two.

The other assumption that we're making is that we want to give this coverage and we want to discover some method to evaluate our position so that we can discover a method for giving it and giving it safely. We are often guilty of oversimplifying this very complex subject and then, having oversimplified it and creating a simplistic framework, weaving such a mysterious aura around it that we no longer understand it ourselves.

Ray has ably demonstrated that jurisdictions differ very drastically on the question of priority of mechanics' liens versus the priority of a construction loan mortgage. Some jurisdictions provide legal means for the achievement of priority by the mortgage. This may be in the form of prior recording or some other method to effect the junior date to which a subsequent mechanics' lien may relate. This priority may often be lost by the failure of the mortgagee to limit his advances to those he is legally obligated to make.

Other states do not furnish any means to protect the priority of the construction lender against the mechanic lien claimant. It would seem that in these areas problems of underwriting are more severe. Between these two extremes are jurisdictions in which priorities may or may not be established on behalf of a mortgagee, depending on a variety of factors such as whether or not waivers or releases are obtained or whether or not advances are made only after a search discloses no liens or notices of liens.

It is significant that when we talk about underwriting mechanics' lien coverage, we distinguish between two basic acts. The first act, the one which by custom and tradition and because we have assumed this responsibility, we're prepared, or ought to be prepared, to do and that is determining the applicable law of the jurisdiction, making the decision that all of the legal prerequisites have been met to entitle the insured mortgage to a priority over a mechanics' lien; or making the decision that we can obtain the appropriate evidence of later commencement of the work or later filing of the commencement notices or other legal devices that are permitted under the statute of the jurisdiction to protect the priority of the mortgage.

If continued priority depends on searches or waivers prior to each advance, then an appropriate "pending disbursement" clause, correctly limited as Ray Sweat has indicated, or other limitation in Schedule B, should condition coverage on such requirements. This underwriting is something with which we are all familiar, well within our abilities, with no greater risk, except numerically I suppose, than that undertaken in other forms of underwriting.

Notwithstanding that the determination may be one of extreme complexity or require the resolution of such questions as when does construction commence? Or what kind of advances are obligatory? Admittedly mechanics' liens are problems because they are so much a function of local law and history and are among the most difficult to fathom.

But if it is difficult to underwrite a risk within the framework of what appears to be an all out effort on the part of all the participants in the transaction to obtain priority for the insured mortgage or deed of trust, then it must merit canonization to underwrite situations involving no priorities or where the priority has been lost by actions of the participants.

Underwriting in that kind of environment is a gamble which at best can rise to the height of an educated guess; and I think we are being very foolish when we delude ourselves into the belief that somehow we have reduced what is essentially soothsaying to the certainty of scientific achievement.

Regardless of the music or the beat to which we dance, the lyrics of the song invariably relate to these factors. First, the stability and past performance of the principals, a form of credit underwriting. Second, the sufficiency and control of the disbursement and, third, the availability of indemnities or sureties and their value. None of these factors offer absolute protection al-

though certainly the availability of a substantial and valuable surety bond appears to come closest to that goal.

But I would like to direct my attention, however, to one significant area of controversy that seems to be developing over that protective device which my colleague euphemistically described as Construction Disbursement Program and which I like to call "completion guarantees", and I think thereby hangs the basis of our controversy.

Basically, control of disbursements is a highly effective means of limiting exposure. However a guarantee of completion is certainly not necessary to operate such a device successfully. If there is any justification for all the effort and analysis involved in determining the sufficiency of the funds, obtaining inspections and making certain that advances are not misdirected, it is to insure that those who have supplied labor and materials to the project have been paid rather than to insure or guarantee that available funds will purchase a given amount of labor or materials.

I have to raise the spector of "permissiveness" in this situation; or whether we're entitled to assume our statutory authority to engage in completion guarantees. But, without any equivocation, let me say categorically that I think completion guarantees are not title insurance.

Now that is a gauntlet and every time someone throws that down we walk away and I don't think we're going to resolve it in this forum, but let me read something to you if you'll permit.

"Title insurance is insurance of owners of property or others having an interest therein or liens or encumberances thereon against loss by encumberance or defect of title or invalidity or adverse claim to title." Or how about this one? "Title insurance means insuring guaranteeing or indemnifying owners of real property or others interested therein against loss or damage suffered by means of liens, encumberances upon, defects in or the unmarketability of the title to some property." Or this one, and I won't bore you too much further.

"Title insurance means the insuring, guaranteeing or indemnifying of designated owners of real estate or any interest therein against loss or damage which may result by reason of the title being vested in a manner than otherwise is stated in the title insurance policy or by reason of the title being unmarketable or by reason of the title being subject to liens, encumberances or other matters adversely affecting the rights of use enjoyment or disposition thereof"—now we might get something out of that—"and not excepted in the policy."

Now, I'll let you make the decision as to whether the various definitions prescribed by state statutes which regulate title insurance permit completion guarantees. I would just like to quote once again with your forebearance—and it's always nice to quote from someone who agrees with you—so I'm going to read this for a moment. The opinion of the Deputy Attorney General directed to the Secretary of Banking, on November 19, 1941, the Commonwealth of Pennsylvania—now that's a while ago, and that's why I thought it was particularly significant. After discussing what he refers to as completion bonds, he says, ". . . it is clear from the above that the purpose of the title insurance company is to insure the owner of real estate or a mortgagee or others interested in real estate from loss by reason of defective title liens and encumberances." The title to the land improved by an incomplete building can be free of defects, liens and encumberances as can the title to real estate upon which a complete structure has been erected."

The options that completion guarantees appear to present to the title underwriter are by no means all the options that I would want. Conditions of the policy would appear to give us a greater opportunity to resolve mechanics' lien claims than the alternatives provided by completion guarantee agreements.

Although it must be admitted that the practical result of many such claims may, after all, require us to step in with the funds necessary to complete, the completion of the structure is entirely irrelevant if we are able to establish, for example, the priority of the insured mortgage over such mechanics' liens that are filed or potentially filed.

Now my colleague indicated that this could be a complex lawsuit and I suppose the existence of a claimant on our title policy with impending litigation is never easy in connection with our obligation or desire to make the title as insured. But if we are able to establish that priority, certainly it is not necessary that we complete the structure. Under some conditions involving a cessation of work on the project it is not impractical to conceive of opportunities arising to defend on mechanics' liens on their merits or to settle and compromise the liens without completing the project, so that instead of offering additional alternatives to the underwriter completion guarantees would, in my opinion, appear to limit the options which the underwriter has available for consideration and often amounts to a waiver of those possible avenues of approach which the policy seems to provide.

In addition, the question of completion seems, itself, to imply that in a given situation of complexity, particularly the one that Ray Sweat described regarding usury—the allegation that the lender was in fact a joint venturer—that money or the availability of funds to complete is necessarily the essential element or the end all or be all in resolving the problem.

A sufficiency of funds to complete may not necessarily resolve all of the perplexities that may plague a situation in which the project is terminated or stopped and legal problems and mechanics' liens arise which would require the title underwriter to participate in litigation.

In addition completion guarantees do not attempt to resolve issues of marketability by reason of the exposure of a mortgage to the hazard of unfiled liens particularly in situations in which the law of the jurisdiction may provide a method where that mortgage could have obtained priority.

In such a circumstance it's entirely conceivable, particularly in our current market situation, for a permanent lender to reject the tender of the assignment of the loan, upon completion of the building but during the mechanics' lien period under the so called Pennsylvania system, because the mortgage is unreasonably exposed to that hazard notwithstanding the willingness of the underwriter to insure or to complete the project. This is a serious problem, I think, and one which we have often grappled with as to what our liability would be in such a circumstance. To be required to suffer a loss in that manner would be a particularly appalling thought since no liens might ever be filed and we would thus win the battle but lose the war.

There are other dangers in embarking on a project to find a cure for this disease. We're on the threshold of a substantial economic uncertainty and having said that—I suppose everybody says continuously that we're always on the threshold of economic uncertainty—the fact that that is a truism does not detract in any way from its applicability in this circumstance.

There is a certain element of conceit that the industry and the title underwriters have enjoyed. We always consider ourselves superlawyers because of our willingness to plunge headlong into making determinations that participants and their counsel are unwilling or unable to make.

Now should we also consider ourselves super-engineers and super-architects. Shall we have flying squads of experts dispatched to every geographical and financial environment with a greater ability to discern the unknown than the local contractors, engineers and architects. And particularly, a greater ability to discern the unknown than the local lender who is eager for this protection.

In addition we have to recognize there is no way to cope with fraud under any circumstance. There doesn't appear to be any way to stop a thief, and I don't think that the protection of a disbursement program are fraud-proof or thief-proof in this circumstance.

Drastic cost escalations are not unknown. How are we to protect ourselves? By larger and larger contingency funds? Is a form of competition, inverse rate competition if you will, to be based upon whether Company A will require a ten thousand contingency fund and Company B a seven thousand dollar contingency fund. And that really does bring up one of the important problems that we have to consider: whether or not we are willing to compete on this basis to offer this new coverage with rate competition in a basically unregulated area combined with rates which are basically regulated. Is this going to create instances in which our surety binding aspects may be a loss leader for our title insurance or vice versa.

Whether indirect rebating or other evils may result and whether, at best, we will recognize a tendency to increase risk taking and movement into areas of unsound underwriting on a casualty basis, is an important question.

Since the original justification of our mechanics' lien coverage is the establishment of priority, the maintenance of priority and the protection that was designed to minimize risk are now lost. Since we have enough money to complete this structure in any event, there is no reason for us to be more than casual about these problems.

I think I want to talk for a moment about the question of whether the customer really wants guarantees of completion. I can't deny their value, particularly to the least sophisticated lender, but there is no question that it interferes with the normal borrower-lender relationship. It is true that in the states and jurisdictions in which advance money mortgage doctrine applies, and the obligatory nature of the advance is all that saves the continued priority of the mortgage, that waivers of defects or defaults on the part of the lender would certainly tend to make present and future advances voluntarily and exposed to the mechanics' lien risk.

I think the lenders are well aware of this, and I think notwithstanding that they do not

foreclose as a practical matter, and often advance in the face of a default, primarily because they are appreciative of the relationship in which they are put, the situation in which they are sponsoring or financing the project.

What will be our decision when such an item arises? If we are participating in a completion guarantee program and the lenders advise us of a minor defect or default in the course of the construction, are we now going to begin overriding, or underwriting, if you will, these defaults because they're not significant or because we can get added protection.

The permutations and combinations of risks seem to be without limit. Jack Tickner tells us that mechanics' liens are not fun and I agree; and they do tend to create greater difficulties for us. There's no question that this problem calls for stricter controls on the part of the title underwriter, but rather than afford more insurance or potentially a different kind, I believe we should offer less. I think we should exercise sufficient discretion in our assumption of mechanics' lien risk so that our insureds come to recognize that such underwriting is not obtainable with the same ease as flight insurance.

We should exert greater efforts to convince the legislatures and the courts that they are not protecting carpenters and bricklayers any longer—that quite often sub-contractors and material suppliers have greater substance than the parties to the transaction, often with more financial resources than the title underwriter and sometimes the lender. We should stop being ashamed of requiring protection, such as controlled disbursement and professional evaluation and contingency deposits and we should stop being so ashamed of requiring that the buyer bear the expense of these protective devices, that we feel compelled to offer a bakers dozen of coverage. Thank you.

Report of ALTA Standard Title Insurance Forms Committee

Marvin C. Bowling, Jr.

Committee Chairman
Vice President and Counsel, Lawyers Title Insurance Corporation, Richmond, Virginia

Now, I want to give you immediately two items of relief. Number one, I'm not going to talk about z-o-n-i-n-g and number two, we have no amendments or endorsements or standard forms to recommend. Rather I want to refresh your memory on why the Standard Forms Committee is busy at work and what it is busy at work on.

At least three years ago this industry and our customers, the Board of Governors and the Standard Forms Committee thought it was about time we had a lease-hold policy. The present ALTA Owner's policy was not considered to be completely definitive in being used as insuring the interest of a lessee. So why a leasehold policy?

I'm reminded of a call that I got from an agent who had given some liberal and rather wild insurance and I said, "Why did you give this?" And he said, "Well, the customer wanted it"! Now, that's a pretty good reason, and it is certainly one of the reasons that we are working on a lease-hold policy. I think it is not just the customer who needs such a policy, but also our industry needs to better define what we intend to do when we insure a lease-hold estate.

What are the problems involved in insuring a lease-hold estate? And this will give you some idea of what our committee is wrestling with at the moment. What interests in land do you intend to insure in insuring a lease-hold estate? What is the value of a lease-hold estate? What should be the amount of the policy has been a continuing problem. What are the elements of damage we intend to pay in the event of a claim under a lease-hold policy and what amount of claim do you intend to pay on those elements of damage? So it involves, I suppose, four major problems: the value of the lease-hold estate, defining the interest in land insured, the damages that might be paid for eviction from that lease-hold estate, and the incidental damages that the insured suffers if he has to abandon or be evicted from all or part of his estate.

Now, let's just for a second take a look at a lease-hold estate. We have an idea that a fee simple interest furnishes all the rights and muniments of title, and we talk about the entire bundle of sticks; but when we look at a lease-hold estate we find a rather strange animal which has varying definitions from one state to another. Is it a chattel real? Is it an estate for years? A right to occupy? Is it privity of estate and privity of contract?

Well, certainly the lessee gets a right to occupy the property for a certain term of years; but, along with that right, he receives certain contractual rights which he may enforce against the lessor. So the lease-hold seems to take a dual aspect. Do we intend in issuing our policy to insure not only that he has the right of occupancy but that he has enforceable contractual rights against the lessor—types of contractual rights that might possibly be cut off by the bankruptcy of the lessor.

So our committee has been wrestling with showing in the policy which rights and privileges we intend to insure when we insure a lease-hold estate. We're also wrestling with what damages should be paid under a policy when that right of occupancy is lost. Insuring title to ownership other than lease-hold, the amount of the loss suffered by the insured can be calculated on the basis of the value of the interest much more easily than a lease-hold estate.

The value of the former can be appraised at fair market value and the insured has paid for his fee simple estate and suffered the loss of the amount of that payment. On the other hand, determining the value of the lease-hold estate is difficult because the insured doesn't have an interest that easily can be given a fair market value, but rather the right to use the property for a term of years. The value of this right is extremely difficult to determine. The insured has received the use of the land for the rent paid and in the event of title failure will lose the right of future use which, aside from any payment he has to make to the true owner, he will not ordinarily be obligated to pay.

We're confronted with this question, what will be the insured's loss in the future if he cannot use the land as contracted for in the lease? In looking at methods of evaluating lease-hold estates, we found that the most common method found in the cases was that used in condemnation. In those states in which the lessee's interest is condemned and paid for separately from that of the lessor, we found that in many instances this formula is used: he is paid for his loss of bargain, i.e., the difference between the actual rent he is paying and what is fair rent. So if the actual rent that he is paying is below fair rent, then he has a bargain. The difference is ten thou-

sand ($10,000.00) dollars a year, for example, and he has ten more years on his lease-hold estate and theoretically he has a bargain of a hundred thousand dollars and that amount is discounted and he is paid a lump sum.

This appears to be the most prevalent method of determining the value of a lease-hold estate. If we adopt this rule we seem to be talking about making sure the lessee doesn't lose the good bargain he's made by contracting to pay a lower than fair market rent. Then we talk about incidental damages he might suffer. In addition to losing his good bargain, he has the cost of moving out if he is evicted, and the values of moveables and immoveables.

The immoveables he must leave behind. The moveables he will suffer loss in having to transport them and any other possible loss that he might suffer by having to take them up and put them in another place.

Can we limit our liability just to the value of the insured's interest in the land? Does this mean that in the event of total loss we would not have to pay incidental damages? This probably would not appeal to the lessee for the value of his estate may be small. If he is paying more than fair market rent then he theoretically hasn't suffered any loss because he has gotten out of a bad deal.

We're considering then the spelling out of incidental damages which may flow from the loss of the use of the property. What do we mean by reasonable cost of moving severable improvements? How far can they be moved at our expense? Is a building a severable improvement? Do we pay for decrease in value of those improvements due to moving? Should we consider paying the difference in rent at a new location? What about loss of good will, and loss of profit?

How about rental or use and occupation claims against the lessee for past use by the true owner of the property who hasn't gotten his fair rent?

These are some of the questions that your committee has been considering in talking about a lease-hold policy and to some extent we have answered them by a tentative form which we are now working on which we feel is a definite improvement over issuing our owner's policy and saying we insure a lease-hold interest. We think it would be advisable to show on the face of the policy that the interest we are insuring is a lease-hold estate as defined in the policy in the conditions and stipulations, show by whom it is executed, where it is recorded and that it has a term of a certain number of years to run.

This ties in with our insurance against loss due to eviction and loss of use of the property over the remainder of the term, which then permits the title company, if it so desires, to include not only the original term but to include any options to renew so that in calculating valuation, we're talking about the use of the property by the insured for either the remainder of his original term or of renewed terms.

We're thinking about defining lease-hold estate as the right of possession for the term or terms shown on the face of the policy. In other words, you might insure that the insured at the date of policy has the right to possess the property for the remainder of the fifty (50) year term subject, of course, to the terms and conditions of the lease which are binding upon the lessee.

Now what have we done by defining this as the right of possession? You are aware, as I have mentioned, that there are other covenants and conditions enforceable by the lessee which in many cases are called contractual rights, -not real estate rights, but rights which are enforced in contract. It is this type of covenant and condition which the lessee may enforce against the lessor that we are of the opinion should not be an insurable interest in a title insurance policy. At the present time most of us include in our policies an exception to the terms and conditions of the lease. This is a very vague and difficult exception to explain, and it is our hope that this insurance can be clarified by defining a lease-hold estate as the right to occupy the property.

We then have put in a method of evaluation of the insured's interest, using the condemnation theory. We have stated that in the event that the insured is evicted from possession of all or a part of the land by reason of any matters insured against, the value of the interest of the insured will be determined pursuant to the above method, which is the method I have outlined to you, and that damages and obligations in addition thereto may be considered and these are the incidental damages that we are considering insuring against.

Loss includes reasonable cost of removing and relocating severable improvements situated on the land at the time of eviction and the reasonable cost of repairing improvements damaged in transporting them. We're considering the payment of rent and damages for use and occupation which the insured may become obligated to pay to any person having a title paramount to the lessor and paying the amount of rent which by the terms of the lease the insured is required to pay to the lessor after eviction. We are considering paying the fair market value at the time of such eviction of the estate or interest of the insured in sub-leases which he loses because of his eviction and the payment of judgements for money damages entered by a court of competent jurisdiction against the insured arising out of an action brought by sub-lessees on account of something insured against.

You can see that the coverage I have outlined to you relates to the eviction of the insured and this we feel is what the insured may lose under a lease-hold estate. We intend to insure the right of occupancy and losses arising out of the loss of the right of occupancy. Now this does not mean to say that our policy will not continue to insure against all other matters. We do intend that it continue to insure against judgement liens, Federal tax liens, and so forth.

These can ripen by their enforcement into a loss of occupancy, so there is not a diminution in our coverage being given to our insureds under the lease-hold policy, but rather a defining of that coverage so that in the event of loss of occupancy, the insured and the title company can look at the provisions of the policy and have some guidelines for the payment of that loss. We also hope that by putting in these guidelines of valuation of the insured's estate, some help will be given in determining what should be the amount of the policy issued to a lessee.

I hope this will indicate to you the reasons the Standard Forms Committee has not overnight produced a lease-hold policy. We are working vigorously and we do have some ideas, as you can see, which we are attempting to iron out.

Now before I leave I want to again thank this association for furnishing me an excellent committee. They have worked hard and done a good job in attending the meetings and sitting through the dotting of the i's and the crossing of the t's and the theorizing. They are a dedicated group of men who intend to provide our customers with the coverage they need but within sound underwriting policy that will protect us against undue loss. Thank you.

ELECTION OF NATIONAL OFFICERS

By proper nomination and second, the following officers were unanimously elected for 1973-74:

President—ROBERT C. DAWSON, Richmond, Virginia
President, Lawyers Title Insurance Corporation
3800 Cutshaw Avenue 23230

President-Elect—ROBERT J. JAY, Detroit, Michigan
President, Land Title Abstract Company (Port Huron)
2661 Guardian Building 48226

Chairman, Finance Committee—ALVIN W. LONG, Chicago, Illinois
President, Chicago Title and Trust Company
111 West Washington Street 60602

Treasurer—FRED B. FROMHOLD, Philadelphia, Pennsylvania
President and Chief Executive Officer, Commonwealth Land Title Insurance Company
1510 Walnut Street 19102

BOARD OF GOVERNORS
(Term Expiring 1974)

JOHN E. FLOOD, Los Angeles, California
President, Title Insurance and Trust Company
433 South Spring Street 90054

(Term Expiring 1976)

JOHN W. BROWN, JR., Baltimore, Maryland
Executive Vice President, The Title Guarantee Company
St. Paul and Lexington Streets 21202

NIC S. HOYER, Milwaukee, Wisconsin
President, Wisconsin Title Service Co., Inc.
700 North Water Street 53202

FLOYD B. JENSEN, Salt Lake City, Utah
Vice President, Western States Title Company
370 East Fifth South Street 84111

JOHN E. JENSEN, Chicago, Illinois
Senior Vice President, Chicago Title and Trust Company
111 West Washington Street 60602

JOHN B. WILKIE, Tucson, Arizona
President, Lawyers Title of Arizona
199 North Stone Avenue, Box 5406 85703

ELECTION OF SECTION OFFICERS

ABSTRACTERS AND TITLE INSURANCE AGENTS SECTION

By proper nomination and second, the following officers were unanimously elected to serve for 1973-74:

Chairman—PHILIP D. McCULLOCH, Dallas, Texas
President, Hexter Fair Title Company
1307 Pacific 75202

Vice Chairman—ROBERT G. FREDERICK, Salina, Kansas
President, C.W. Lynn Abstract Co., Inc.
115 South Seventh Street 67401

Secretary—MARY C. FEINDT, Charlevoix, Michigan
President, Charlevoix Abstract & Engineering Company
213 Bridge Street 49720

EXECUTIVE COMMITTEE

F. EARL HARPER, Bartlesville, Oklahoma
Secretary & Manager, Southern Abstract Company
221 East Frank Philips Box 966 74003

FRANCIS J. MORRATO, Albuquerque, New Mexico
Senior Vice President & Chief Title Officer, New Mexico Title Co.
301 Gold Avenue, S.W. 87101

JERRY D. NIXON, Pine Bluff, Arkansas
President, Pine Bluff Abstract & Title Co.
105 Main Street 71601

PHYLLIS SCHNEBELEN, Farmington, Missouri
Vice President, The St. Francois County Abstract Company
First & South Jefferson Streets 63640

TITLE INSURANCE AND UNDERWRITERS SECTION

By proper nomination and second, the following officers were unanimously elected for 1973-74:

Chairman—RICHARD H. HOWLETT, Los Angeles, California
Senior Vice President and General Counsel, Title Insurance and Trust Company
433 South Spring Street 90054

Vice Chairman—THOMAS PEARSON, New York, New York
President, Security Title and Guaranty Company
630 Fifth Avenue 10020

Secretary—O.B. TAYLOR, JR., Jackson, Mississippi
Chairman of the Board, Mississippi Valley Title Insurance Company
315 Tombigbee Street, Box 2428 39205

EXECUTIVE COMMITTEE

RICHARD H. GODFREY, Oklahoma City, Oklahoma
President, American-First Title & Trust Company
219 Park Avenue, Box 25225 73125

BRUCE M. JONES, Panorama City, California
Senior Vice President, Security Title Insurance Company
13640 Roscoe Boulevard 91409

CHARLES H. MANN, JR., Jacksonville, Florida
President, Title & Trust Company of Florida
200 East Forsyth Street 32201

RICHARD L. MARTIN, Chicago, Illinois
Vice President, Chicago, Title Insurance Company
111 West Washington Street 60602

Workshop on Considerations Affecting Sale and/or Valuation of an Abstract or Title Plant

Comments by

Charles Jones

President, Boone County Abstract Co., Inc., Lebanon, Indiana

This workshop as it says is a Workshop on Considerations Affecting Sale and/or Valuation of an Abstract or Title Plant. I didn't get any applause on that. Now this type of a workshop, if I may be so blunt, in fact I will be blunt. How many in this group are owners of abstract companies and plants? And I would like a show of hands if I may.

Now to feed the panel with further information. How many have plants with fewer than ten (10) employees? Let's go to twenty employees? Let's go to thirty? Okay. Underwrite fifteen, okay. Okay, we've laid the groundwork for a tremendous task. We're dealing with a group of fifty per cent under the ten or twelve bracket, probably the remainder, thirty or forty per cent up to twenty, and then the remainder over into the thirty, forty and fifty bracket.

This is going to be your part of the program. You have taken the first step and indicated to us that you are owners of a plant. You have taken that step. We're not here to tell you how to run that plant once you have assumed that ownership or management. Too often, too often the next step is a sorely neglected area. The plate has now been passed down front if you people would like to come up.

How do you prepare to sell your plant? How do you prepare to sell it for a profit? How do you prepare to sell it for the most money, net? How do you perpetuate the plant that you would wish to continue? Okay, let's go with one or two more questions. How many of these plants are solely owned? How many are a closed corporation? Closed corporation? All right, eight.

All right, then how many are a stock corporation? Or a partnership? Well, gang, you've seen the evidence as presented to us. You know where we stand, the first thing I think we will tackle will be what happens to us in relationship to Uncle Sam and that's the IRS bite, and Mr. McDonald from Florida has all the answers. Now, before he gets up here, I would like to make this very informal. If you choose I will stop the speaker whomever it may be, and we will or want to have a joint venture panel because all of you have taken a step to purchase and you went through certain routines, certain evaluations. This is going to be an exchange of ideas and this is going to be our opportunity as a group of abstracters to get together and let it all hang out. So I not only encourage you, but ask you to participate.

Comments by

Thomas S. McDonald

President, The Abstract Corporation, Sanford, Florida

A corporation is a tax entity separate and distinct from the individuals who own the stock of the corporation. In the closely held corporation, the stockholders often do not think of the corporation as an entity distinct from themselves, and operate the business as if they were the owners without regard to the distinction. You prepare title evidence, serve your customers and generally operate the business in the corporate name, but without appreciating the fact that the corporation is a separate entity.

When the occasion arises, and the owners feel that they wish to sell the business, either because they have had a good offer or because they wish to retire, they still feel that they, as individuals, constitute the business and can sell it without regard to the corporate entity.

It is at this point that the owners of the business have a rude awakening. When the owners negotiate a sale they negotiate for the sale of the business usually with the thought in mind that they will receive the proceeds from the sale of the business. They frequently ignore the fact that the corporation owns the business assets, and if the business assets are sold it is the *corporation* which must make the sale and receive the proceeds.

If the corporation makes the sale of its assets, the proceeds are in the *hands* of the corporation and *not* in the hands of the stockholders. These proceeds must somehow be distributed to the stockholders.

The sale of the assets by the corporation to the purchaser, and the distribution of the cash proceeds by the corporation to the stockholders are *two separate* and distinct tax transactions which, for tax purpose, must be separately accounted for.

Similarly, if the stockholders themselves wish to sell the assets directly to the purchasers, the corporation *must* somehow distribute the assets to the stockholders, who then can make the sale. The distribution of the assets to the stockholders by the corporation and the sale by the stockholders to the purchasers are two separate and distinct tax transactions which must be separately accounted for.

It is also possible for the sellers to sell their stock in the business directly to the purchasers.

Thus, there are several ways for the owners of a corporate business to sell that business. Each method may result in different tax consequences. Being aware of the various alternatives and planning the method of sale can save the sellers tax dollars. Proper planning can result in the seller receiving a greater amount of dollars on the sale of the business.

The owner of a corporate Title business who wishes to sell his business can (1) sell his stock in the corporation to the purchaser, (2) cause the corporation to sell its assets to the purchaser, or (3) cause the corporation to distribute its assets to the stockholder who can then sell the assets directly to the purchaser. If a sale of assets is made by the corporation directly to the purchaser, then arrangements must be made for the distribution of the cash to the stockholders if the stockholders want the sale proceeds.

Each of the above methods has advantages and disadvantages and the method finally decided upon may be the result of negotiation between the purchaser and the seller.

The individuals who wish to purchase a business being operated in corporate form also have a choice of the manner in which they wish to acquire the business.

The manner in which a purchaser pur-

chases the Title Plant will affect his future operations of and profits from the Title business.

Generally, a purchaser of a business being operated in corporate form can buy either the stock of the corporation or the individual assets of the business. If stock is purchased, the purchase price for the cost of the stock is allocated exclusively to the stock and has no effect on the underlying corporate assets. It is possible, however, providing certain prerequisites are met, to liquidate the corporation and allocate the purchase price for the stock to the underlying assets, which then would become the tax basis for the underlying assets.

The purchaser may purchase assets, in which case the purchase price is allocated to the various assets purchased in the same manner as if he were purchasing a proprietorship.

The sale of a Title Plant does require careful planning, expert advice of an experienced tax consultant, a competent negotiator (your corporate attorney, or one he recommends), and hard work on your part; however, it is worth it.

In our case we started planning to sell by getting our Title Plant in top shape, our buildings spic and span, and the bottom line of our Profit and Loss Statement at the maximum amount. In fact, we got things in such good shape, we decided not to sell.

Comments by

John B. Wilkie

President, Lawyers Title of Arizona, Tucson, Arizona

I feel a little bit like a fish out of water here. I've bought and sold about twelve title plants in an area where we're growing and all you're doing is adding new competition when you sell and getting into a new competitive area when you buy. It is a little different sort of approach than has been talked about here previously. Generally, we're not talking about a business, we're talking about the actual title plant itself. I have drawn up a few criteria which we use, some of which I intend to keep secret because I'm presently negotiating with some of the people in the room here.

One very interesting thing—we're negotiating for a title plant in a little county of about, oh I'd guess about twenty-five thousand people. In Arizona most of the title plants we own are on a computer or in some way computer related and I had been discussing the sale with them off and on. We're updating the plant next week so considering that we were doing this negotiation, I called up the software company and said you're updating this plant in X county and I may be selling a copy of it, how much would it cost me to run off an additional copy of the plant? He said, oh, about twenty-five dollars. The price that I'm asking or hope to get is about fifteen thousand dollars so that is a pretty good return.

This is the point I really want to bring out and forgive me if it is outside the realm of many of your companies, but this is what is happening to title plants because of the changes in procedures. The automation of title plants and their computerization gives the ability to take a title plant—and I'm talking about a complete title plant going back thirty or forty years—to put it on magnetic tape and reproduce it for about that length of time for about two hundred and fifty dollars. You can do it overnight at a cost of two hundred and fifty dollars.

Now what does that do to the cost of a title plant? It really knocks a lot of these formulas completely out of line. Regardless of what you're making or how much you spend to acquire a title plant, if someone can come in and reproduce that plant with some modern methodology it makes your plant go down in value. Any buyer who is buying is going to look at two things and keep in mind the area that I'm talking about is not selling a business to a new buyer and going out of the business. You're selling a title plant to someone who is going to come in and compete with you.

This is the type of thing that is going on in many parts of the country. You've got to look at the factors that he is looking at. You've got to put yourself in the buyers shoes and say at what cost can I go into that county? Here it is very important of course, what kind of a plant law is there?

In Arizona you cannot go into the larger counties without a title plant, and in the smaller counties you can bootleg all you want. So if the title plant gets too expensive, why buy it? Why not go in and run your titles at the court house and at the same time using these modern methods the people up on the nineteenth floor here will tell you about.

You've got to figure out what it would cost him to get into business to compete with you as opposed to what you want to try and get out of him. You've got to figure also how much time is involved. How much is it worth to him to get into business sooner than if he was to wait while he was constructing or building a title plant. These are the kind of factors that we look at. We also look at our proposed purchaser very carefully. What has he done before? Who has conned him out of a plant before at what price if you can find out. So you know what his past habits are. This type of thing. You can't negotiate with a buyer without knowing as much as you can about the buyer.

What kind of terms is he willing to pay? Do you want cash? We try to sell under a long-term situation rather than selling for cash. We do not want Internal Revenue looking at us and saying we're in the business of selling title plants and see what that does to your capital gains picture.

Recently we have further discussed swapping or trading. We'll trade almost anywhere in the United States title plant for title plant. This is a little different outlook than some of the others have brought up, but this is the kind of thing that we're involved in.

Another thing is joint title plants. What are they going to do to the cost of plants? What is the value of your plant if your competitors are all together in a joint plant? If they will allow somebody to come in and at what price? Also, what does it do for you as far as maintenance is concerned? You may be able to cut your maintenance cost. It never works out quite the way you think its going to, but if three companies are running a plant, it cuts your maintenance cost considerably and this is a very important factor. What percentage of the business are you doing? If you're doing only ten percent of the business in a particular area, you just can't afford high maintenance costs of a title plant. If you're doing a hundred percent of the business, and I don't know how many people have that situation, you can pay more maintenance costs. So therefore you go into a plant and pay more money for a title plant with lower maintenance costs.

These are the kind of things that we take a look at, kick around and flip a coin. I looked back at some of my past experience. I've purchased about nine and sold about five. I always bought high and sold low, so I'm right in the proper area. Thank you.

Comments by

Otto Zerwick

President, Abstract & Title Associates, Inc., Madison, Wisconsin

I'm not sure that I do wish to. After I saw the title they put us under up here, I told them by Golly if I had seen that, I'd never have appeared.

I think that we're faced, as has been indicated, with two standards—the objective, and the subjective. There is just no way to reconcile them and this is the unusual thing in appraising a title plant. Each is unique. Whether you're alone in a county or whether you're one of ten, your title plant is unique. It is not something somebody can run off on a machine.

I think the objective standards are (as mentioned) this multiple of gross. I don't

think you can tie youself to one and a half times gross or two times gross because that is affected by some of the subjective considerations which I will get to. I don't think you can strictly capitalize net earnings because, as the chairman pointed out, you can bury your net earnings—particularly in a small company. How much are you charging as your salary? This can make all the difference in the world between a losing proposition and a fashionably profitable one.

Historical cost, I think, gives you a perspective, it indicates to some extent what has gone into the plant, but as we've found out as many of us are dispensing with their plants, we don't have any historical cost. You have to reproduce this by a system of inquiry—what would it cost you to reconstruct the plant? And here, as our last speaker pointed out, you have a very excellent objective gauge. Nobody is going to come in and pay you more than it would cost to come into the county and reproduce that plant.

I said objectively, but then you get over into the subjective considerations. How many competitors will you have after you've made the sale? Of course, ordinarily we think of the sale in terms of getting out of the business, turning it over to somebody else. So I have worked under the theory that when you sell you are not multiplying the competition. The buyer is stepping into your shoes.

But the multiple of gross, for example, is very much affected by the trends, the economic trends, both national and local. I have made substantial blunders, I hope I don't make many more in underestimating the economic trends in a county. I missed one by a hundred percent not long ago. I didn't realize the tremendous economic force of a rapidly expanding vacation area. Farm lands were being rapidly sub-divided and changed from agricultural lands to private vacation lands. The potential was far greater than I had realized and caused a tremendous margin of error at least between what I figured the value of the plant was and what the sale finally took place at.

I think the efficiency at which a plant is being run is a most important subjective factor which plays into the hands of a knowledgeable abstracter. You see a man netting twenty-five thousand dollars and doing an operation that you know you can run twice as well. You have a secret weapon for evaluating that plant which nobody else has.

As I've also pointed out to the small abstracters (and most of us here are small abstracters) another wide margin of error is the matter of personnel. How are you going to sell a plant where you're "it"? When you're gone business may drop to zero particularly if at the same time that you sell a new competitor comes into the county? And I think more than one buyer has been fooled by this—including me.

I thought I had a great deal where I paid half of the gross income for a title plant and inside of four years I closed it out. I just hadn't appreciated how important the lady was who was running that thing. She had friends, I didn't have any.

The number of competitors of course is another factor. I think its somewhat of a stabilizing factor—the more there are the proportion of business that you get is probably not as immediately affected by a change in management as it would otherwise be.

The state of the public records is something that I think you should carefully appraise, *particularly* when you're buying. We know of areas where title plants have simply phased out because the public records were so satisfactory, or the cost of maintaining a plant was so great in light of the size and number of the competition. It became uneconomic for any one abstracter or title company to carry on the plants. Many title plants were terminated in the New York area not too many years ago. And then of course the state of the law.

In Wisconsin, we have a thirty year law. We've got a five year statute that may in time make much of what we thought was valuable worth a lot less. I think these are some of the secret and subjective things that we have to pay attention to when we're evaluating a title plant.

Thank you.

Comments by

Ray Frohn

Chairman of the Board, Nebraska Title Company, Lincoln, Nebraska

We've just recently gone through a number of comments here as to what a title plant is actually worth.

Now I think before I get into any of my thoughts and discussion regarding this, I'll have to make a comment about the panel. I talked to Otto Zerwick and I said, Otto have you seen our moderator and talked to him about what we're going to talk about? He said, no I haven't seen him. Charlie was out buying his coat.

Now there are so many variables we recently had a discussion at our own state title convention regarding the buying and selling of title businesses that it gets somewhat confusing, I know, to all of us. As soon as somebody starts talking about buying or selling, immediately the individual that's usually selling gets dollar signs in his eyes. Now this is true even when you go to an antique sale, and who can buy anything more antique than a title plant?

It really gets somewhat humorous and if you don't believe this go to an antique sale in the midwest, and you have buyers there from Colorado, Wyoming and then some of your metropolitan cities close by. You get quite an education. In fact, I was just to one two weeks before I came back here and I almost missed the convention because my wife didn't leave very much for me to make the trip.

Antiques are something that you sell and you evaluate at the time because of the fact that they publish books. We have so many variables in the selling and buying of title plants that for us to sit around here and discuss it reminds me somewhat of the discussion at our own state convention when the speaker got through and he read a long prepared topic, and that is it was quite a lengthy one and I had really thought I was going to present it here but we've had so many ideas presented so far that actually a lot of this is covered. But the one thing that interested me the most was when the speaker got all through and one of the fellows in the back of the room got up and said, now, he says, if you're through with your talk, and this was rather insulting to our guest speaker and I was embarrassed, he said, as I understand you, you haven't told us anything. Now how much more disrespectful to a speaker can you get than that?

I really feel that we have so many variables that we consider in the buying and selling of a title plant and I know that I was not picked on this panel because of the fact that I recently had out an option on my business. I don't know whether you can actually get for your business what you think its worth and the other fellow is willing to pay for it on that basis.

We have so many different systems around over the United States as to what actually comprises a title plant. Many states have a closed title plant law. A lot of states have licensing laws. We do in our state, but there are a lot of states where they don't. There are many states where attorneys will handle most of the closings. There are other states where this practice is followed by the title plant or the title people.

Now these are all variables that I know that we must consider and the buyer must consider if he is going to buy your plant or business. Many of them are not plants. Many of them have a daily takeoff, but they don't maintain a complete title plant, that is, as far as judgements and probates and things of that nature are concerned.

So what is it that really constitutes a fair price for your business? I have always heard that one and a half times the gross for one year or two years average is a fair price for your operation. But I think it all boils down to what has been fairly well discussed and that is, what does the business make after fair salaries are paid to your employees and your overhead is also taken care of. I think it is a profit picture. I don't think that we can get away from it. I think personnel enters into the price of what you're going to get for your operation.

I think all of us at some time or other during our operation, ask our employees if you were running a business would you hire yourself? And I think the same thing is true buying a title business. I think you have to say to yourself or, if you're selling it, if I was buying this business, would I buy it? And I think pretty much this is what it all boils down to.

I'm sorry I didn't discuss the tax matter more fully with Tom McDonald before I sold our business because I think that I probably could have done a bit better in some respects, but I do think that I speak for a lot of people that have tried to sell their title business and wondered what is it that constitutes a fair and reasonable price.

Concluding Comments by Mr. Jones

Okay, gang, I want to summarize if I may and if we have done one thing and this is the sole and only purpose as far as I am concerned and I do not wish to discredit our President-Elect in any way, shape or form, but if we have caused you to become better acquainted with each other, better acquainted with the problem and if you will open up and discuss these things with your fellow abstracters, I think possibly on a one on one situation you may get some answers, you may get some help.

But I think we have established one important factor and that is your IRS problem. This is not only important if you have a stock sale, or you dissolve the corporation, personnel sells the assets, whether it is a gift situation, whether it is for estate planning. Yes you must and I would encourage you to get all the help you can get from your tax attorney and your accountant. It is important who you sell to.

I think we have to assume a position as the title underwriters have and phase it out to a hundred and eighty degrees and that is, an underwriter takes the position if we have a loss, don't tell anybody. If you have a plant for sale, I think we're going to have to tell people this plant is for sale. I think this is one area, if I may, that the ALTA is not doing their part. I'm not being overly critical, but I think we are not using ALTA in this fashion when these things do come up.

You are going to be selling a plant. ALTA can, and should be, giving us help and guidelines and helping locate buyers. BUYERS! So you are in a position to negotiate rather than a secretive after-hours where you're not supposed to be seen with the prospective buyer, and you try and negotiate on a one on one situation. You have no place to negotiate. You don't have a middleman. There is no place to negotiate, he's mad and you're mad and you quit. Okay, do you sell it to a competitor? Do you sell it to an underwriter? Do you sell it to an investor? Do you sell it to a Mom and Pop operation?

These are things that you have to decide because it is a very, very personal thing, particularly the small operation. These are personal, very personal. We like to see our own little thing continued on for the next generation. Then also, a very important part, which has been brought out very vividly and that is the personnel that is with your plant. I have seen plants sold that the personnel didn't even know the plant was for sale. You have too. You didn't tell anybody. What if they would have all quit? And it may happen.

Hey! I want to say one thing. I have enjoyed California. I'm going to stay 'til the sun comes out, been here nine days. I appreciate your initial applause which indicates to us up here that that was faith. Two or three times during the speeches, there was applause, that is charity. And if nothing is said when you leave here and your plant is for sale, don't tell anyone, make it secretive and do the best you can.

You've been real great and I hope you've gotten to know the guy next to you, you've quizzed each other, you've quizzed us, quizzed the guy next to you in your neighboring states because this is a preparation for the next step that you're all going to have to take. We're all going to have to take it. And this is one area that we as an industry are sorely missing the opportunity for preplanning. You've been great, thank you so much.

COMMITTEE REPORTS

Report of ALTA Federal Legislative Action Committee

James G. Schmidt

Committee Chairman
Consultant, Commonwealth Land Title Insurance Company, Philadelphia, Pennsylvania

In the previous reports of the Federal Legislative Action Committee to this assembly, I have stressed the fact that all of the members of the American Land Title Association should consider themselves as members of the Federal Legislative Action Committee and that all of you should be girded for Federal legislative action. Our President, Jim Hickman, has expressed this same thought in his message appearing in the September *Title News* where, after commenming about how much work has been done by the ALTA officers, committees, the Washington staff and outside counsel, he states that "the backbone of our strength, however, has been you, the individual members".

There are many problems involving Federal action at the present time, but the most important still deals with the Federal regulation of closing costs. Three bills are now before Congress; H.R. 9989 introduced by Congressman Stephens, S 2228 by Senator Brock and S 2288 by Senator Proxmire. I have made a comparison of each of these bills, section by section, with the text of Chapter IX of the 1972 Housing Bill which was approved last autumn by the House Banking and Currency Committee. You will recall that this Chapter was re-written by Congressman Stephens. If you are planning to contact your Congressman relative to these bills, a copy of this comparison could be of value to you. If you will get in touch with the ALTA office in Washington, a copy will be sent to you.

H.R. 9989 is very similar to the former Chapter IX with an improvement in language. It repeals Section 701 of the Emergency Home Finance Act of 1970 which has been the source of all our problems. H.R. 9989 provides for the following: a uniform settlement statement; special information booklets covering an explanation of the uniform settlement statement and the choices available to the home buyer; advance disclosure of settlement costs; a prohibition against kickbacks and unearned fees; a limitation on the requirement of advance deposits on escrow accounts; a disclosure by the seller of certain information relative to the property being sold including previous selling price; no fee for preparation of truth-in-lending and uniform settlement statements; the establishment on a demonstration basis of a model land parcel system; a prohibition of seller of property requiring that title insurance be obtained from any particular title company; a disclosure of the identity of person having the beneficial interest where mortgage is created by a trustee; the authorization of a study to determine the feasibility of requiring lender to pay interest on escrow accounts. Congressman Stephens and the sixteen other Congressmen who introduced this bill think that the listed provisions of the bill will correct any existing underlying abuses and problems. The bill provides that the Secretary, after consultation with the Administrator of Veterans' Affairs, the Federal Deposit Insurance Corporation and the Federal Home Loan Bank Board shall within two years report to Congress whether in view of the implementation of these provisions there is any necessity for the establishment of maximum charges, and if there is such necessity, whether reasonable and justifiable charges can be effectively obtained by means of state or local regulation.

This bill differs from the former Chapter IX to a very slight degree. H.R. 9989 includes a definition of "settlement services" so that it is clear as to what is covered by the information booklet, the advance disclosure of costs, the anti-kickback provisions, etc. Chapter IX had provided for a one year study by HUD, whereas H.R. 9989 provides for a two year study. The former provision that a title company could not issue insurance where it was owned or controlled by the seller, has been changed to the prohibition of any seller requiring insurance by a particular title company. The word "model" is now used instead of "computerized" in the recommendation that there

should be an improved land recordation system. Those of us who have had problems in computerizing our own plants will appreciate that the change to "model" is advisable. You will also recall that when the Stephens Chapter IX was before the House Committee, Congressman Williams added to Section 906, dealing with kickbacks, language that a referral fee could be paid if (1) the thing of value is reasonable in relation to the value of the referral service, (2) the referral is performed by a person acting in good faith, and (3) the nature and amount of the thing of value is fully disclosed by the person accepting the thing of value to the borrower at the time of the referral. This language has been omitted from Section 106 of H.R. 9989.

The Brock Bill, S 2228, is an abbreviated Stephens Bill. It provides for a uniform settlement statement; information booklets explaining settlement statement; advance disclosure of settlement costs; and a prohibition against kickbacks. There is no provision for a further study by the Secretary. It does repeal Section 701.

The Proxmire Bill is quite similar to bills which he has introduced in 1972. One new feature is to extend the definition of "federally related mortgage loan" to also include a loan secured by residential properties sold as condominiums and co-operatives regardless of size. I think that the Senator meant "or" rather than "and". While there is no definition of "settlement services", it does define "title services" in the same way that it was defined in the first draft of Section 901 of H.R. 16704. Title services include the performance of title examinations, the furnishing of title abstracts, or similar documents, the escrow closing and the furnishing of title insurance and the furnishing of legal opinions on the status of a title and the routine preparation of all documents pertaining to the conveyance of title. His bill then proceeds to provide in Section 12 that any title company and its agent can perform these title services. Any lawyer reading Section 12 would not be blamed if he thought that the title industry was responsible for the wording of Section 12. Personally, I have given two reports to the Pennsylvania Bar Association on the subject of "Closing Costs" and on both occasions I have stressed that the ALTA was opposed to this provision. I stated that title companies were only interested in performing the very valuable service which we perform for someone who has an interest in real property, namely, the searching and/or the insurance of titles. I think that this understanding helped a great deal in the drafting and partial approval of a Declaration of Principles. This Declaration was unanimously approved by the Real Property, Trust and Probate Section in July and will go to the House of Delegates in January, 1974. I think that it would be advisable for all of you to advise your attorney friends that while we oppose Senator Proxmire's Bill in its entirety, we particularly oppose Section 12.

The Proxmire Bill goes far beyond the provisions of Section 701 of the Emergency Home Finance Act and empowers HUD to establish maximum amounts of closing costs for practically all mortgages. No lender shall make a loan where the maximum amounts of charges are exceeded and no such mortgage shall be guaranteed. A lender who makes a loan when the settlement charges are in excess of the applicable maximums is liable for damages and the costs of any action. If the settlement does not occur because any person who is furnishing services charges an amount in excess of the applicable maximum, then the prospective borrower is not liable to any person for any services rendered incident to or a part of such settlement. This would mean that the title company or the surveyor would not be paid if the termite inspection bill was excessive. Proxmire's Bill also provides in addition to the anti-kickback provisions, that an attorney shall not receive any commission in connection with the issuance of title insurance.

While the Federal Legislative Action Committee would support either the Stephens Bill, H.R. 9989, or the Brock Bill, S 2228, we think that the Stephens Bill is preferable. We are definitely opposed to the Proxmire Bill, S 2288. We hope that all of you will take this matter to heart and advise your Senator and Congressman that Federal regulation of closing costs would not work and that a bill such as H.R. 9989 would result in a reduction in closing costs. Bill McAuliffe, together with the Ad Hoc Committee and Tom Finley, will be making sure that every member of Congress will be contacted, but it will also be necessary for each of you, the backbone of our association, to do your part.

A second matter which has received our attention is the decision of the Federal Home Loan Bank Board. Back in January a proposed amendment was published in the Federal Register which would permit service corporations of federally-chartered savings and loan associations to enter the title insurance business as title insurance underwriters or agents. Subsequently, Bill McAuliffe, after consultation with Tom Jackson, the Executive Committee and our Committee, submitted two written statements opposing this proposal. On August 15 the Board voted on the proposal and voted against permitting service corporations being title insurers, but voted in favor of permitting them to act as agents. On September 6, Bill McAuliffe sent a letter to the Board protesting this regulation stating that it was contrary to the purposes of the anti-trust laws. Then in the September issue of Capital Comment, Bill asked ALTA members who might suffer loss of business as a result of service corporations acting as title insurance agents to write to the ALTA Washington office. This is of primary interest to the members of the Abstracters and Title Insurance Agents Section and we urge you to respond promptly to Bill's request.

A third matter being considered is a proposed "Federal Foreclosure Act" which is being prepared by counsel of the General Claims Section of the Justice Department. It has not been introduced as yet and I am not sure whether the final draft has been completed. The proposed act provides that where mortgages are made, owned, guaranteed or insured in whole or in part by a department, agency or wholly-owned corporation of the United States Government, the holder may designate a foreclosure commissioner who would have a power of sale to conduct a non-judicial foreclosure in the event of default. Bill McAuliffe, Tom Jackson and I had a conference with Russell Chapin, Chief of the General Claims Section of the Justice Department, and Lountz Hamilton and Robert B. Webber of the Small Business Administration. We discussed costs, delays in foreclosures, notice to parties, transfer of title possession, redemption, possible unconstitutionality and the disadvantages of not having a judicial sale. Here again we are calling on you for action because we would like some title man in each state to analyze the proposed act as to whether a purchaser at such a sale would acquire a good and insurable title to the property foreclosed.

Other matters which have received our attention during the year include S 268 cited as the "Land Use Policy and Planning Assistance Act of 1973". This bill practically provides for State and Federal zoning. This would just add one more problem to the proposed endorsement to afford zoning coverage. A further matter was the amendment to the Interstate Land Sales Full Disclosure Act making some changes in the title evidence required under Part V of the Act dealing with "Condition of Title, Encumbrances, Deed Restrictions and Covenants". We would advise any of our members who are requested to supply information under the provisions of this Act that they should study the provisions of this amendment.

At our Mid-Winter Conference we advised you that our national office had learned that a study of costs of title insurance to the federal government was undertaken by the General Accounting Office and the House Subcommittee on Conservation and Natural Resources. It had been recommended that agencies of the federal government would not require title insurance. On July 31, Bill McAuliffe and I met with Phineas Indritz, Chief Counsel of the Committee, and supplied him with certain information which he had requested. We had a very friendly conversation and we left with the impression that no action would be taken at this time.

In closing, I think that it would be of interest to you to know how our Committee works. Fortunately, our national office was moved some years ago to Washington and we are also fortunate to have a man like Bill McAuliffe as our Executive Vice President. Bill spends much of his time on Capitol Hill following the progress of existing bills and learning about any new bill which is introduced. Inasmuch as decisions relative to action on bills must be made quickly, most of the work of our Committee is carried on by correspondence and telephone. When there is discussion of action to be taken, statements to be filed, conferences to be held, each member of the committee receives a letter or a phone call and I commend them for their prompt replies. In the actual drafting of statements, Bill has excellent assistance from his staff and from Tom Jackson, our Counsel. In many cases the advice and help of the Executive Committee is sought and received. So you see that Federal legislative action is indeed a joint effort. But it also has to be a joint effort on your part. As I have stated above, Bill often makes an appeal to you in Capital Comment and I hope that you read these appeals and join with us in our efforts to have Federal legislation which will help our industry.

Report of National Conference of ALTA and ABA

Alvin W. Long

ALTA Conferees Chairman
President, Chicago Title and Trust Company, Chicago, Illinois

I last reported to this Association on our National Conference to the American Bar at our mid-winter meeting in Phoenix. If you recall, at that time, we were concerned about a resolution that was pending before the General Assembly of the American Bar Association which would have given formal recognition by the American Bar to the National Attorney's Guarantee Fund. At the annual meeting of the American Bar a year ago, this matter was brought before the General Assembly. At that time, based on a motion from the floor, it was referred to five separate committees or conferences of the American Bar Association for comment.

One of those conferences was our own conference with the American Bar Association. After considerable review of this matter, our Conference drafted a so-called substitute resolution which, in effect, would have simply recited the history of all of the previous actions taken by the American Bar Association in regard to the National Attorney's Guarantee Fund.

In addition, it would have recited the action taken by the Board of Governors of the American Bar Association, which clearly stated that the ABA does not sponsor any title insurance company or fund. Finally our substitute resolution recommended that it be enacted by the General Assembly by formal action. This substitute resolution was presented to our Conference at its meeting, immediately following our mid-winter meeting in Phoenix.

By unanimous action of our conferees, and the ABA conferees, the substitute resolution was adopted by our Conference.

Subsequently, by virtue of activity taken by members of our Conference, this resolution was presented to the Real Estate Probate and Trust Section and that section also adopted our so-called substitute resolution without change.

We then went to the American Bar meeting in August in Washington with a hope, at least, that this substitute resolution might be passed by the General Assembly of the American Bar Association. Unfortunately, however, by taking advantage of a Parliamentary Procedure, the proponents of this Georgia resolution withdrew the resolution, so that it did not appear on the agenda of the General Assembly.

Our substitute resolution was, in effect, an amendment to the Georgia resolution. Since the Georgia resolution was withdrawn, our substitute resolution had no standing. Therefore, it was not presented to the Assembly.

I think we can say that the original resolution was defeated. It was withdrawn and no action was taken upon it, but we do regret that our substitute resolution could not have been presented and that the Assembly could not have taken formal action to ratify the prior action of the Board of Governors of the American Bar Association. We do feel that our conference resolution was successful, at least, in having the Georgia resolution withdrawn.

I am sure that we have not heard the end of this. I am sure the Standing Committee for Attorney Guarantee Funds will again present that resolution, or similar resolution at some future convention of the American Bar Association. If so, we stand ready to fight it.

At our meeting in Phoenix, immediately following our Mid-Winter, we also took up several other matters, which I will comment upon briefly.

All of us are, of course, concerned, along with every other industry, about the increase in class action suits. As I mentioned at our Mid-Winter Conference, we did have this on our agenda for our meeting in Phoenix. At that meeting, a sub-committee was appointed to draft a resolution to be considered by our conference, and to attempt to have other trade associations adopt similar resolutions, so that we can attempt to make our voices heard on the tremendous problems created by this drastic increase in number of class action suits.

Such a draft has now been prepared by our sub-committee and it will be presented at our Conference, which takes place here in Los Angeles, again, immediately following this convention.

Another brief item. There has been a suggestion that our Conference merge with the Conference of Attorneys and Realtors. This was taken up again at our meeting in Phoenix. It was the decision of our Conference that the two Conferences should not be merged. While we do have many overlapping interests, there are many items where the interests are not identical, and it was our feeling that the two Conferences should remain separate.

However, it was felt that the work of the two Conferences should be coordinated. Therefore, we propose to exchange agendas, exchange minutes of the two Conferences, and from time to time, send representatives from one Conference to the other, when there are items on the agenda that indicate probable interest by the other Conference.

A third item, of course, is our continuing problems in Washington with regard to Congressional bills and HUD regulations, which your President referred to a moment ago.

The American Bar Association, of course, from the inception, should have taken a rather strong interest in this matter, but they did not. At our Conference a year ago, we brought this matter before our Conference, urging the American Bar Association to join with us in our efforts with regard to the Proxmire Bill and with regard to the proposed federal standards pursuant to the 1970 Emergency Housing Act.

Since then, the American Bar has taken a rather active interest.

We are now informed by them that they will support our position with regard to the Stephens amendment. They are opposed to the Proxmire Bill.

This was on our agenda in Phoenix. It will be on our agenda again here in Los Angeles. I think we can expect real support from the American Bar Association on both of these matters.

One last item. At our last meeting in Phoenix, we were advised that the American Bar Association has created still another new committee. And this committee has the purpose of determining the role of the attorney in residential real estate transactions. This is a separate committee and not related to our Conference now.

There is one common member, however, Mr. Stan Mullin, who is the Co-Chairman of our Conference, and who is also on this other new committee to determine the role or to try to define the role of the attorney in residential real estate transactions. He has been appointed by the American Bar Association to be a liaison between these two committees.

We are informed by Mr. Mullin that they have divided the subject into some six subheadings, including such items as role of the attorney who works for the escrow company, the role of an attorney who works for a title company. Each of these sub-headings have been given to a subcommittee.

We have now been informed that all six preliminary drafts of the study have been completed and they will be presented to our Conference here in Los Angeles on Saturday. We, of course, have a strong interest in what these drafts might say. We have not yet seen them. We'll go over them again on Saturday. The membership of ALTA will be subsequently advised, of course.

I think our Conference is most worthwhile. I think it has accomplished much for our Association. I think it should continue.

Report of ALTA Liaison Committee with the Mortgage Bankers Association of America

Robert C. Bates

Committee Chairman
Senior Vice President, Chicago Title and Trust Company, Chicago, Illinois

The ALTA-MBA Liaison Committee has had two meetings since I last reported to the general session of ALTA in Phoenix.

The first was held in Washington, D.C. on April 18 at the MBA national headquarters. All of our committee members were present. There are three representatives from ALTA and four from MBA. Bill McAuliffe, Executive Vice President of ALTA and Tom Finley, Special Counsel to the Ad Hoc Committee of the title industry, were also present. In addition, most of the Washington staff of the Mortgage Bankers Association was present, including Dr. Oliver Jones, executive vice present of MBA, and Lee Holmes, who is the legislative counsel for that Association.

Mr. Robert Ellis of Chicago Title Insurance Company was also in attendance because of some pending class action litigation as to which he has some special background.

There were eight items on our agenda—it was a very full day.

At all of our meetings we have a report from both an ALTA representative and a Mortgage Bankers representative as to the congressional activity on closing costs. Mr. McAuliffe made the report for ALTA.

We also had a discussion of class actions then pending against our respective associations.

We were looking for areas or avenues that we might follow together, the ALTA along with the MBA, in attacking the problem of the proliferation of class actions throughout the United States. The most practicable way to attack the problem of a proliferation of unjustifiable class actions appears to be to work toward a modification of Federal Rule 23 of the U.S. Code of Civil Procedures. That's a difficult objective to achieve. We have a long way to go before we will see any progress in this effort, but we will continue to work on it.

The next item that we discussed was the proposed change in the Truth in Lending Act. This proposal is better known as the Gonzalez Amendment.

Neither the MBA members nor the ALTA members felt that this proposal affected either industry any more than the Truth in Lending Act already affects us. There were a couple of changes as to which Tom Finley, our special counsel on closing cost legislation, had some mild concern, but we decided we would not attempt any joint action as to the proposed amendment.

An old subject that we continue to bring to the attention of the MBA is our goal of achieving more ALTA participation in the formal activities of the Mortgage Bankers Association. At this meeting Dr. Oliver Jones, Executive Vice President of MBA, did extend to us an invitation to discuss with him any specific proposals or subject matter that we would like to bring to the Mortgage Bankers Association as a part of their schools, regional meetings, or as a part of their annual conventions. He will give our request due consideration, and if he feels it is appropriate for us to implement our proposal by participating in the programs of any one of the many formal activities of MBA, he will ask us to do so.

Another item that we discussed was the future of the FHA. There appears to be a split in the MBA as to whether the FHA should be separated from HUD, its social programs should be dropped, and it should go back to being an insuring agency only. The consensus in MBA at this time seems to be that a split will not occur, and that the FHA will remain a part of the Department of Housing and Urban Development.

I think the most important result of this meeting was our decision to respond to the notice published in the Federal Register by James T. Lynn, Secretary of HUD, inviting those involved in the real estate industry or real estate-related industries to furnish comment to HUD as to what the future of the Department of Housing and Urban Development should be, what role it should play, and what role the Federal Government should play in the real estate and housing industries in the years to come.

This matter, as Bill McAuliffe reported, had been given earlier consideration by the Federal Legislative Action Committee of ALTA. We had about decided that there was no necessity in the ALTA furnishing a response to HUD's invitation.

MBA staff members stated that MBA was going to file a statement, and that in their judgment it would be a mistake for ALTA to not file one. They pointed out that we really did not know Mr. Lynn at that time and we didn't know his modus operandi. It was recommended by MBA staff members and Tom Finley that ALTA file some kind of statement to keep our options open and not be caught later with the argument that we had been given our chance to state our position and philosophy but had failed to respond.

As a result we immediately undertook to prepare a statement with the help of Tom Finley. I think every member of the Association received a copy. It was filed with HUD. Basically it was a restatement of the philosophies and the position we had already stated to Congress in previous papers with respect to the Federal involvement in regulating closing costs.

That was the last item of business conducted at our meeting of April 18, 1973.

The second meeting of the Liaison Committee was held in Chicago on August 14. This was triggered by a letter which our President, Jim Hickman, received from John Poehlmann. Mr. Poehlmann, as most of you probably know, is general counsel for the First Wisconsin Mortgage group, which includes the First Wisconsin National Bank of Milwaukee. His letter requested that ALTA give consideration to some specific problems involving mechanics lien coverage in mortgage policies. I think most of you also know that First Wisconsin is a very large national construction lender. John Poehlmann, as its general counsel, has been very much concerned with the subject of mechanics liens.

As 1973 unfolded, Mr. Poehlmann began to be particularly concerned with the problems that might arise between title insurance companies and between mortgage lenders with respect to the rights and obligations of the insurer and the insured when trouble develops under various circumstances during the period of construction.

We were not sure which committee of ALTA was most appropriate to deal with this request so it was initially placed in the hands of the ALTA-MBA Liaison Committee. Our August 14 meeting was called primarily for the purpose of considering this subject, and we invited John Poehlmann to attend.

We actually had four items on the agenda for that day. I will touch on those briefly and then get back to the subject of mechanics lien coverage.

Again, we had an updating with respect to the congressional activity on closing costs.

We had some discussion on the proposed Federal non-judicial foreclosure act that Bill McAuliffe just mentioned, and I think I also reported to you on that earlier in Phoenix. The position of the MBA remains pretty much the same. Generally speaking there are so many of them that are involved in the FHA types of transactions, they are very interested (particularly those mortgage bankers in states where complicated foreclosure procedures exist) in the adoption of the Federal non-judicial foreclosure act.

However, the MBA members did feel the proposed bill needed to be revised and improved, because the drafting left a good deal to be desired. Ray Jensen, who is co-chairman of this committee, is also an advisor of the committee that has been developing the Uniform Land Transaction Code, which will be a code presented to all of the 50 states.

A great deal of time and effort has been put into the development of an acceptable, meaningful, logical and workable non-judicial foreclosure proceeding which will affect all loans—commercial, conventional, and Federally-insured. Ray Jensen fears, and the Uniform Land Transaction Code Committee probably fears, that an adoption of the Federal act prior to the presentation of the Uniform Land Transaction Code to the 50 states might impair the adoption by the 50 states of a much more extensive and superior piece of legislation. That appears to be the only significant objection in MBA to the proposed Federal non-judicial foreclosure act.

Another subject which we discussed at our August meeting is a matter of serious concern to one of the past presidents of the Mortgage Bankers Association, Bob Pease. This is the

proposal of Secretary Shultz to amend the tax laws as they relate to real estate. Mr. Pease asked that we bring the proposal of Mr. Shultz to the attention of our industry and the mortgage banking industry through our committee.

There were four primary points made by Secretary Shultz when he appeared before the House Ways and Means Committee. The first point of concern is the recommendation that taking real estate losses as a tax deduction be limited to the specific project out of which the loss arose. Second, this proposal would not include the low or middle income, better known as subsidized, housing projects.

The third point of concern was that this provision would be retroactive to May 1, 1973. The fourth part of the Shultz proposal would require the capitalization of interest paid on construction loans.

The general feeling was that any attempt to oppose the proposal of Secretary Shultz at that time was at best premature. The consensus was that Mr. Shultz's proposal had not reached the stage at which it could be effectively challenged. However, there was some concern that we might wait too long, or not take advantage of some opportunities to oppose it at the appropriate time.

Another important factor is that everyone does not consider the proposal to be bad, particularly in view of the fact that Secretary Shultz himself has now retracted the recommendation that the effective date be retroactive. So there remains some doubt as to how seriously this would affect the real estate industry. It is therefore questionable that the ALTA-MBA Liaison Committee will consider this matter any further.

Now, back to the matter of John Poehlmann's letter and mechanics lien coverage.

As we all know, this is probably the largest single area of risk of the title insurer today. John Poehlmann opened this discussion by reviewing a two-page outline of items he wanted to discuss.

We agreed that our two industries are now working in an environment in which a number of specific conditions of fact exist concerning mechanics lien coverage, the rights of the insurer and the rights of the lender. I think it worthwhile for me to quickly read those to you today.

First, when a title insurer issues an ALTA loan policy, without exception as to unfiled mechanics liens, the liability and rights of the insurer can become very uncertain, and even confusing, depending upon the state of facts at the time trouble is recognized and the law of the jurisdiction in which the land is located.

Second, most title companies, in some cases, are giving mechanics lien coverage during construction in reliance on the credit of one or more parties to a transaction (that is, taking a written indemnity or guarantee from such parties that the title insurer will be saved harmless from having given such coverage). Many title companies are less qualified to evaluate this kind of risk than are the customers who are requesting the coverage, such as banks, savings and loans, and mortgage bankers. So we are being asked to give credit coverage or credit insurance to people who have more expertise in the area than we have, in many cases.

Third, the title insurance industry has allowed the practice of giving mechanics lien coverage during construction in reliance on credit in individual residential or commercial loans to evolve into the practice of giving this coverage in reliance on credit to large multi-state developers, incurring many millions of dollars of liability with respect to a single developer, often at little or no charge.

Fourth, although some states have statutes under which priority of construction mortgage can be achieved, insufficient care is used by title companies, lenders and developers to assure that this priority is not lost.

Fifth, mortgage lenders will accept as much coverage as to mechanics liens as a title insurer will furnish, even though the lender himself is of the opinion that such coverage might be too extensive or not justifiable from a title insurance standpoint.

Sixth, many kinds of endorsements are used in construction loan policies in an attempt to limit or qualify the coverage afforded as to mechanics liens, by providing, for example, pending disbursement clauses. Often these endorsements are confusing, misunderstood, or not applicable in light of the facts and laws of the state where the project is located. Title companies sometimes use these endorsements without fully comprehending the meaning themselves, and lenders frequently don't understand the full meaning of some endorsements.

Seventh, the standardization of mechanics lien qualifying endorsements would be difficult because of the wide variances of state laws, but if standardization by state could be achieved, it would be desirable.

And last, title companies are being requested more and more to handle the disbursement of construction loan funds under ambiguous and vague disbursing agreements, which may impose greater risks than those assumed under the policy coverage as well as potential liabilities for consequential damages.

These, as I said, were simply conditions of fact that we memorialized at our meeting, reflecting the environment in which we are now operating.

No other conclusions were reached except that we did agree that John Poehlmann would undertake to develop a report to the Liaison Committee outlining what he feels the mortgage lending industry is entitled to expect from the title insurance industry, with respect to mechanics lien coverage during all phases of construction from commencement to completion of the project. Mr. Poehlmann will document what he feels to be the requirements and demands that the lenders are entitled to make in various situations. Alex Marzek will then undertake to develop recommendations as to what the position of the title industry should be with respect to each of the suggestions of John Poehlmann.

Copies of these two reports will then be distributed to all members of the Liaison Committee. We will then have another meeting. At that time we will decide whether there is anything more our Liaison Committee can or should do as to this subject matter. We will consider whether we should recommend to the Board of Governors or the Executive Committee that the subject matter continue to be pursued by some other existing or special committee. We think it's a very serious subject that can affect the continued existence of some of our companies if unreasonable risks are assumed that result in catastrophic losses. We believe that the time has come for us to take a look at ourselves, to take a look at the title industry, and develop some recommendations that will bring a sane and logical approach to the subject of mechanics lien coverage.

Report of ALTA Research Committee

John E. Jensen

Committee Chairman
Senior Vice President, Chicago Title and Trust Company, Chicago, Illinois

Several years ago your Association decided that Bacon's advice "Knowledge is power" applies to the ALTA. So for the past five years, the Research Committee has been attempting to gather data concerning our industry. That five-year period has been a particularly interesting one encompassing a complete real estate cycle ranging from the tight money markets of 1969 and 1970 through the prosperous years of '71, '72 and now into what appears to be another downturn. It is especially appropriate at this time for me to report to you what your committee has observed about our industry.

Based on our analysis of statutory reports submitted by most title underwriters and on the excellent work done by the Organization and Claims Committee in their survey of title insurance agents and abstracters, it is estimated that I am addressing an industry at this moment that has assets in excess of one billion dollars. We are a large and important industry serving the real estate fraternity and serving the public.

What has happened to us over the past five years? One thing is for certain. Every year without exception, good years and bad, our costs have gone up. On average, our operating expenses have increased fourteen (14) per cent per year every year for the past five years. The bulk of these expenses have been in salaries and other staff costs. How much of this is a real increase and how much of it is inflation, I leave to the economists. They tell me that the GNP price deflator averaged about 4.8 per cent a year since

1968. That means we've been running a real increase in expenses and in salaries of about 9 per cent a year over each in the past five years.

Comparing 1968 to 1972, we've had a substantial increase in operating income. However, in the years between '68 and '72, we've had one or two years where our income declined. With costs constantly increasing, a small decline in the revenue of our industry has a drastic effect on pre-tax net operating income of the industry. For example, in 1970, the gross revenue for title underwriters dropped just two per cent (2) from 1969. As a result of that drop, the pre-tax net operating gain for the title underwriters fell fifty per cent (50). On average, the revenues of our companies have increased but with fluctuations. On average, the expense of our companies have increased but without fluctuations.

What does this mean then, and how do we compare with other businesses? Over the past five years, the percentage of our operating income that has been eaten up in operating expenses has been 82 per cent. This compares with stock life insurance companies that have average operating expense ratios over the past five years of about 30 per cent. Boiler and machinery companies—companies that have been frequently compared with ours because of their risk prevention, risk elimination approach as opposed to risk assumption—have averaged 58 per cent of operating income as operating expenses.

Our pre-tax operating profit margin over the past five years has in aggregate been 13.8 per cent of gross revenue. This compares with 15.4 per cent for 425 industrial companies as reported in Standard & Poor's. It compares with 20.9 per cent for small loan companies as reported in Standard and Poor's. It compares with approximately 25 per cent for the mortgage banking industry over the past five years.

One of the major elements of our expenses, not in terms of absolute dollars, but in terms of the services we perform, is our claims experience. For the past four years, we have been collecting data relative to claims in our industry. This is a result of work done by the special Claims Committee of the Underwriters Section.

I am pleased to report (after being displeased to report the last two times I tried to do it) that more and more companies are beginning to participate in the claims study; and although we do not yet have enough companies participating in this work so that the absolute dollars that have been reported have any meaning, the percentages are beginning to take on a pattern.

As was mentioned in one of the meetings yesterday, the highest percentage amount of claims dollars spent over the past four years has consistently been in the category defined as "special risks authorized by company practice" and most specifically in the category of mechanic's lien claims. The most steady growth in claims has been in the category of examination and opinion error—where the percentage of dollars expended has grown at a very steady 6 per cent per year. Does this indicate that we have to do a better job of training and supervising our examiners?

One of the areas that has concerned many of us for many years has been the effect of our closing and escrow procedures. No pattern as yet has been discerned as to the dollars being spent in claims in that area although it does rank just behind taxes and special assessments concerning the number of claims that we receive. We get a lot of closing and escrow claims but, up until now, this category is not a leader in dollars spent.

This is a very brief, a very summary profile of our industry that I thought you might find of interest.

During the past year, the major effort of the Research Committee has been to work with the Arthur D. Little Organization in attempting to understand and define proper measures of profitability for the title insurance industry. We feel this is a crucial task since either under federal or state regulation, we are going to have to justify the charges we make to our customers. As a part of this justification process, it has become apparent, on the state level at least, that insurance commissioners are devising unique profitability measures which are outside of the purview of the various statutory reports filed by insurance companies. The A. D. Little Organization has been working with the Ohio Rating Bureau and the Pennsylvania Rating Bureau on this problem. And I'm pleased to say that your Research Committee has received a great deal of cooperation from both of those organizations as well as the Texas Group, which is working with Professor Todd in Texas on exactly the same problem.

Our goal in this area is to develop an approach, a philosophy, if you like, which will satisfy the needs of you the members of the industry. We hope to demonstrate, either to the Department of Housing and Urban Development or to various state insurance commissioners, on a basis consistent one state with another, that our charges are reasonable and that our profits are not excessive.

One of the dangers we face is the tendency of regulators, state and federal, to look upon profit margin as being the key measure of a successful operation and of the justification of prices. We feel that this is incorrect.

A more realistic, a more useful and a more economically sound methodology, in our opinion, is to look at the assets we have invested in our business; look at the risks involved in committing these assets to the title industry; and determine the return on our investment as compared with alternative investments for these assets. This is an approach that will affect not only title insurance underwriters but title insurance agents and abstracters as well.

I hope that by this time next year, we will be able to present to the Executive Committee, to the Board, and to the membership, an approach that you will find helpful in your home state in determining your profitability and the profitability of the industry in your state.

Thank you.

Report of ALTA Public Relations Committee

James W. Robinson

Committee Chairman
Senior Vice President, American Title Insurance Company, Miami, Florida

Good morning everybody, you've just heard an example of market identity reinforcement by ALTA past president Don Nichols. His company radio advertising was produced with the help of ALTA's, "Do It Yourself," commercial kit, offered to members this year through the Association's Public Relations Program.

So far, this kit has been purchased by ALTA members in 18 states, but bear in mind that it was designed for members who wouldn't normally have the facilities of developing their own.

Development of this advertising tool is one of the many ongoing activities that the Association PR program uses to call attention to the importance of land title services.

By emphasizing messages that identify ALTA members with serving the public, the public relations program is able to reach a much larger audience then would otherwise be possible.

Because of the public interest and the educational value of our messages, television and radio stations and newspapers are able to give us a lot of free air time and print space.

Now, to provide an idea of what we are getting for our money, here are some highlights of the 1973 ALTA public relations action that is carrying our message to nationwide audiences in the millions. Since 1973 is a busy year in the legislative and regulatory arena, it was only natural that we would use our public relations capability for reporting the Association's position. Following member approval of a revised ALTA model Title Insurance Code at the Mid-Winter Conference, a news release, telling about this action, was published in an impressive group of dailies across the nation.

To further reinforce our position that title company charges should be regulated by state rather than by federal government, a related editorial, mentioning the ALTA model code, was sent to suburban and rural newspapers. It has been published in more than a hundred of these papers, with millions of readers, with additional clippings still being received.

Excellent newspaper visibility was received this summer on a release summarizing the testimony of Jim Schmidt, whom you know is Chairman of our Federal Legisla-

tive Action Committee. He appeared before a hearing of the Senate Subcommittee on Housing and Urban Affairs. The publicity emphasizes that ALTA favors reasonable safeguards.

Favorable exposure was also received with an early release supporting ALTA's President, Jim Hickman, on protecting home ownership against land title hazards. And with the 1973 version of the "Lincoln Lost His Home Story."

An ALTA release, quoting Bill McAuliffe on federal income tax deductible closing costs and pointing out that far more than title company charges make up the bottom line on a settlement sheet, received considerable newspaper coverage.

A release announcing the availability to the public of the pamphlet, "The Things You Should Know About Home Buying and Land Title Protection," has resulted in a great many requests for the publication.

A release quoting President Hickman on the importance of land title evidence also received good newspaper publicity.

Monthly "Home Buyer" advice columns, by-lined by ALTA officers and staff, and informative home buyer educational cartoons continue to receive excellent use among suburban and rural newspapers.

The useful life of ALTA home buyer educational messages has continued to be impressive. As an example, the Broken Arrow, Oklahoma *Ledger,* this summer, used an ALTA educational feature that was entitled "Avoid A Costly Title Victory." That release was sent out to suburban and rural newspapers from coast to coast more than four years ago.

Homebuyer's educational messages also are offered to print media through the publication *Editors Digest.* This recent release, explaining closing costs, was requested by nearly 200 editors and has appeared in a significant number of newspapers and other publications.

While on the subject of news media, let me report that the 1973 PR Program included continuing efforts by ALTA representatives to maintain contact with leading journalists, and I know that Gary Garrity was busy on the road. Some of those who were visited this year included the editorial personnel of *Barron's, Fortune, Forbes, Better Homes and Gardens, House and Home, Best's,* Associated Press, The New York *Times,* ABC Television News, and others.

Plans have been completed for the ALTA to sponsor, for the fifth consecutive year, a category of the National Association of Realtors' Creative Reporting Contest. Beside aligning an important land title customer group, this sponsorship in a contest to recognize outstanding real estate journalism also fits in very well with the ALTA homebuyer educational objectives.

Television has proved to be an eminently successful medium for PR program messages for your Association. Through television, ALTA films, film clips and slide announcements reach millions across the nation each year.

As an outstanding example, the ALTA film, "Blueprint For Homebuying" has just completed a period of national television distribution. This film has been seen by an audience of 20 million, all in free air time, donated by the stations.

ALTA homebuyer educational film clips of 30 and 60 second length also reach an audience of millions. A series of three clips, containing announcements by celebrities Ted Knight, Bob Reed, and Rod Sterling is a good example of the effectiveness of this activity. These announcements have been telecast this year by more than 180 stations from coast to coast, and I don't need to tell you the impact that has on their listeners.

Television and radio activity are quite prominent in ALTA public relations action, because they offer a highly effective means for developing public awareness of land title protection to a vast national audience. These two media have a key role in our 1973 activity and in our plans for 1974.

With us this morning to provide information about our public relations effort for next year is Marv Diefendorf, who has served as vice chairman of the Public Relations Committee this year.

Comments by Mr. Diefendorf

As mentioned, television continues to receive a major place in our public relations planning for 1974.

We plan to produce and distribute the following: Two 60 second film clips that contain many documentaries, stressing the importance of land title protection to home buyers, a package of celebrity film announcements and we plan to continue national television distribution of the ALTA fifth feature film, "A Place Under the Sun." And also produce a series of ALTA homebuyer education television slide announcements for distribution next year.

Thus far, this year, similar announcements have been telecast by stations in 32 states throughout the country.

Also, on the drawing board for 1974, are two new television activities: One, is a public service film announcement, where an ALTA representative tells about closing costs that are Federal income tax deductible. The other is a short television film subject of "Preparing For Settlement." These are designed for general audience viewing.

Radio also continues to be highly effective in reaching the public with ALTA's messages. In 1974, we plan more public service radio spots, similar to those broadcast by more than one thousand stations thus far this year.

The production of films will continue to be an important part of ALTA public relations activity next year. Our Association committee and ALTA staff are presently working on the script for a new promotional film to emphasize land title services.

While the new film is in production, demand should continue to be strong for loan prints of existing ALTA films. Title company customers, schools and others regularly borrow prints from the Washington office, and it is anticipated that the Association membership will continue to purchase prints of our films for their own use.

1974 will be another busy year for developing favorable ALTA publicity in print media and for continuing our contact with important news media personnel.

New on the horizon for next year will be the February 1974 issue of the *Mortgage Banker* Magazine, which will feature title insurance. ALTA is assisting with the planning and content for this issue.

A brisk demand for ALTA educational publications is expected from the public and from association members again next year. And professional public relations assistance, including such things as model speeches and counseling will continue to be offered our members.

Briefly, then, these are some of the highlights we are looking forward to in 1974. At this point, I would like to add that an exceptionally dedicated team works with Jim and me to make all of our activity possible.

Serving with us on the Association Public Relations Committee are Randy Farmer, Joe McNamara, Frank O'Connor, Ed Schmidt, and Bill Thurman—and there are three, very professional ALTA staff: Bill McAuliffe, Gary Garrity, and a new addition, Carol Haley.

Needless to say, a successful public relations effort would not be possible without the support of ALTA's Board of Governors, the Executive Committee and, most importantly, the individual ALTA members.

For this, we sincerely express our gratitude to you.

And I want to express special gratitude and emphasize the fact that Jim Robinson has been one fine guy to work with as the Chairman of our ALTA PR Committee this year.

Now, with that, I'll turn it over to Jim.

MR. ROBINSON:

Thank you very much, Marv. Thank all of you for the support you've given us in making the Public Relations Program possible. It's my personal conviction that the members of this Association receive $100 worth of value for every dollar we spend I hope that you all agree.

This concludes our report. Thank you so much for your patience.

Zoning Endorsement

The following two zoning endorsement forms were approved by ALTA members present during the General Session Limited to Active Members Wednesday afternoon October 3, 1973 in Los Angeles.

ENDORSEMENT
BLANK TITLE INSURANCE COMPANY
Policy No._____

The Company hereby insures that, as of Date of Policy:

(a) According to applicable zoning ordinances and amendments thereto, the land is classified Zone_____.

(b) The following use or uses are allowed under said classification subject to compliance with any conditions, restrictions or requirements contained in said zoning ordinances and amendments thereto, including but not limited to the securing of necessary consents or authorizations as a prerequisite to such use or uses:

There shall be no liability under this endorsement based on the invalidity of said ordinances and amendments thereto until after a final decree of a court of competent jurisdiction adjudicating such invalidity, the effect of which is to prohibit such use or uses.

Loss or damage as to the matters insured against by this endorsement shall not include loss or damage sustained or incurred by reason of the refusal of any person to purchase, lease or lend money on the estate or interest covered hereby in the land described in Schedule A.

This endorsement is made a part of the policy and is subject to all the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and prior endorsements, if any, nor does it extend the effective date of the policy and prior endorsements or increase the face amount thereof.

BLANK TITLE INSURANCE COMPANY

ALTA End. 3 (Zoning)

ENDORSEMENT
BLANK TITLE INSURANCE COMPANY
Policy No._____

1. The Company hereby insures that, as of Date of Policy:

(a) According to applicable zoning ordinances and amendments thereto, the land is classified Zone_____.

(b) The following use or uses are allowed under said classification subject to compliance with any conditions, restrictions or requirements contained in said zoning ordinances and amendments thereto, including but not limited to the securing of necessary consents or authorizations as a prerequisite to such use or uses:

There shall be no liability under this endorsement based on the invalidity of said ordinances and amendments thereto until after a final decree of a court of competent jurisdiction adjudicating such invalidity, the effect of which is to prohibit such use or uses.

2. The Company hereby further insures against loss or damage arising from a final decree of a court of competent jurisdiction

(a) prohibiting the use of the land, with any structure presently located thereon, as specified in paragraph 1 (b) above, or

(b) requiring the removal or alteration of said structure

on the basis that as of Date of Policy said ordinances and amendments thereto have been violated with respect to any of the following matters:

(i) Area, width or depth of the land as a building site for said structure.

(ii) Floor space area of said structure.

(iii) Setback of said structure from the property lines of the land.

(iv) Height of said structure.

Loss or damage as to the matters insured against by this endorsement shall not include loss or damage sustained or incurred by reason of the refusal of any person to purchase, lease or lend money on the estate or interest covered hereby in the land described in Schedule A.

This endorsement is made a part of the policy and is subject to all the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and prior endorsements, if any, nor does it extend the effective date of the policy and prior endorsements or increase the face amount thereof.

BLANK TITLE INSURANCE COMPANY

ALTA End. 3.1 (Zoning—Completed Structure)

ALTA Resolutions Committee Report

Glenn Graff

Chairman, Resolutions Committee
Executive Vice President, Florida Southern Abstract & Title Company, Winter Haven, Florida

It is a pleasure for me to present for your consideration the following resolutions:

Whereas, the cordiality expressed by Sol Marcus, President, Board of Public Works, City of Los Angeles, in his address of welcome has instilled a warm and hospitable atmosphere for this 67th Annual Convention of the American Land Title Association; and,

Whereas, The host Convention Chairman Allen C. McGurk and the many members of his California committee have worked so diligently to plan a successful convention program; and,

Whereas, Mrs. Ermal E. McGurk, chairlady of the Ladies Committee and the members of her committee have succeeded in presenting such an interesting program of events for the ladies; and,

Whereas, the California Land Title Association, as host of the Convention, provided the delegation a meaningful and most memorable convention in this great city of Los Angeles;

Therefore, be it resolved, that the members of the American Land Title Association express their appreciation and thanks to President Marcus, Mr. and Mrs. McGurk and the members of their committees, and the California Land Title Association for exposing all delegates to the very special brand of hospitality that can only be found in the City of Los Angeles, which does make us reluctant to leave Los Angeles.

Whereas, the delegates in attendance have benefited significantly by the challenging, stimulating and informative messages presented by a distinguished group of guest speakers who discussed vital issues of today which face all of us;

Therefore, be it resolved that the delegates here assembled express and record their sincere appreciation for their participation in this 67th Annual Convention of the American Land Title Association to:
William T. Finley, Jr., Partner, Sharon, Pierson, Semmes, Crolius and Finley, Washington, D.C.

Dr. Norman Sigband, University of Southern California, Los Angeles, California

Mrs. Lee Ann Elliott, Associate Executive Director and Assistant Treasurer, American Medical Political Action Committee, Chicago, Illinois

Dr. Julian H. Taylor, Vice President & Senior Economist, Bank of America, Los Angeles, California

Edwin O. Guthman, National Editor, Los Angeles *Times*, Los Angeles, California

Whereas, the 67th Annual Convention delegates have benefited not only from a discussion of recent developments in our business but also a frank appraisal of ourselves and of our industry;

Therefore, be it resolved that members of this Association express deep appreciation for the appearance on the program of our own industry speakers;

Whereas, the responsibility for the American Land Title Association during this year has been entrusted by the membership to the elected national officers, the members of our Board of Governors, the chairmen and executive committees of the respective sections, and to the appointed chairmen and members of all standing and special committees; and,

Whereas, each of them has made notable contributions of time, talent, and effort to the guidance of this Association during the past year; outstanding leaders in their own businesses, they have shared their broad knowledge, sage counsel and vision with the entire title industry; they have brought this organization not only an educated awareness of the problems with which we are faced, but also the kind of administrative skills and foresight required to provide the solutions to the problems;

Therefore, be it resolved that on behalf of all members of the American Land Title Association, the Convention delegates hereby pay tribute and express their very great gratitude for the significant role played in the direction and development of this Association to:

James O. Hickman, President
James A. Gray, Vice President
Alvin W. Long, Chairman of the Finance Committee
James G. Schmidt, Treasurer
Robert J. Jay, Chairman, Abstracters and Title Insurance Agents Section
Robert C. Dawson, Chairman, Title Insurance and Underwriters Section
John W. Warren, Immediate Past President
The members of the Board of Governors
The chairmen and members of all standing and special committees of this Association
And to other members of our Association who have contributed so generously to this convention

Whereas, the American Land Title Association again has completed a successful year of operations in its Washington office,

Therefore, be it resolved that the delegates here assembled express their sincere thanks to:

William J. McAuliffe, Jr., Executive Vice President;
Michael B. Goodin, Director of Research;
Gary L. Garrity, Director of Public Affairs; and
David R. McLaughlin, Business Manager;
of our National Headquarters, for a year of outstanding progress in the annals of our Association,

Mr. President, on behalf of the members of this committee, who are:
Mr. Clyde V. Devillier
Madison, Wisconsin
and
Mr. Bruce M. Jones
Los Angeles, California
I move the adoption of these resolutions.

Index to 1973 Title News Articles

ALTA Judiciary Committee Report
- Part I . . . February
- Part II . . . March
- Part III . . . April
- Part IV . . . July
- Part V . . . August
- Part VI . . . October
- Part VII . . . November

ALTA Home Buyer Benefit Activity Cited in New Fannie Mae-NAREE Publication . . . October
ALTA Presents Testimony at Senate Hearings . . . September
ALTA Radio, TV Spots Reach Millions in 1973 . . . April
ALTA Sick-Pay Plan Announced . . . January
ALTS Sponsors Realtor Editorial Contest Consumer Category . . . December
American Honors First Employee . . . November
American Title Honors 25-Year Employees . . . November
Attorney's View on Metrication . . . June
Awarding of Honorary Membership to William H. Deatly . . . January
Bank Holding Companies: Their Constraints Rewritten . . . March
Bannon to Helm . . . October
Buyers Informed . . . October
California Presentation for 1973 ALTA Annual Convention . . . January
Chelsea Acquires Four New Companies . . . September
Chelsea Acquires Garden . . . June
Commonwealth Campaign Cited . . . April
Commonwealth Expands in Two States . . . November
Commonwealth Campaign Wins "ADDY" . . . January
Commonwealth Conducts Housing Sale Survey . . . August
Commonwealth Develops New Ad Campaign . . . July
Commonwealth Opens Exton Settlement Office . . . June
Dixie Association Offers New Folder . . . November
District-Realty Honors Fitzgerald, Donohoe for Service . . . August
Election of Abstracters and Title Insurance Agents Section . . . January
Election of National Officers . . . January
Election of Title Insurance and Underwriters Section . . . January
Effective Political Action . . . June
Effective State Legislative Relations . . . January
Energy Challenge Ahead, The . . . January
Essay Contest for Mid-South . . . March
Federal Settlement Legislation Major Concern at Convention . . . December
First Land Title in Second Century . . . November
FLTA, Florida Bar Corporation Sponsor Seminar . . . October
First American Opens in New York . . . February
Gallagher Honored . . . January
Gehringer Elected . . . January
Giardina Aids Parade . . . June
Home Buyer Facts in NELTA Folder . . . August
Home Title of Fresno Changes Name . . . September
Howlett Addresses FLTA, Florida Bar Seminar . . . November
HUD Settlement Cost Regulation . . . January
HUD Settlement Regulation and Mortgage Banking . . . January
Index to 1972 *Title News* Articles . . . January
Interstate Land Sales Full Disclosure Act, Regulations Concern Title Companies . . . May
Joint Title Plant and Equipment Workshop . . . January
Legislation, Political Action Major Topics at Mid-Winter . . . May
Lasseter Completes ABA Service . . . August
Lawyers Title Qualifies in Territory of Guam . . . July
Local Title Company Public Relations Workshop . . . January
Louisville Expands . . . October
Louisville Title Beats Traffic with Facsimile Transmitting System . . . November
Major Expansion Planned by First American Title . . . June
Marketing of Title Insurance . . . August
Martins Ride to Retirement Luncheon in Style . . . August
McDonald Honored for Insurance Trust Leadership . . . October
Mid-Winter Conference Set for New Orleans . . . December
Missouri Concern Acquired by TI . . . June
Mid-South Awards 1973-74 Law Scholarship . . . November
Mid-South Honors Essay Contest Winner . . . June
Mortgage Insurance New TI Endeavor . . . March
Morrato to Spain . . . October
NELTA Convention Emphasizes Federal, State Legislation . . . August
Nichols Tapes Commercials, Hillsboro Takes Notice . . . October

NAIC Update . . . January
Obituaries
Burns, Eugene . . . February
Johnson, William . . . September
Sauers, George, Jr. . . . March
Smith, Joseph . . . October
Oregon Titleman Active 87 Years . . . November
Opening of New Chelsea Title Branch Marks 51 Years of Successful Operation . . . May
Outlook: Service Corporations . . . December
PLTA Retains Public Relations Firm . . . March
President's Report . . . January
Proposed Zoning Endorsement . . . January
Problem of Inflation, The . . . February
Proposal to Amend the Model Title Insurance Code . . . January
Public Is Your Not-So-Silent Partner . . . January
Proposed Amendments to ALTA By-Laws To Be Considered at 1973 Convention . . . August
Perspective: Pass-Through Securities . . . January
Resolutions . . . January
Report of ALTA Group Insurance Trust . . . January
Realtors Washington Committee at Work . . . January
Real Estate: The Economy and the Future . . . January
Revised Model Title Insurance Code (special insert) . . . May
Research Committee Report Shows Cyclical Nature of Title Business . . . June
Riggs Heads Board . . . October
Report of ALTA Federal Legislative Action Committee . . . January
Report of ALTA Public Relations Committee . . . January
Report of National Conference of ALTA and ABA . . . January
Report of ALTA Research Committee . . . January
Schmidt Awarded Citation . . . August
Sky No Longer Is The Limit . . . January
SLC Exchange . . . January
Silent Partner of the Realtor . . . July
Southwest Expands . . . July
Successful Campaign in Mobile . . . March
Secondary Mortgage Market: It's Challenges and Opportunities . . . April
Secondary Mortgage Market Behavior . . . July
Saving Through a Microfilm System . . . February
State Association Conventions
Dixie . . . March
Florida . . . February
Indiana . . . January
Kansas . . . February
Minnesota . . . October
Missouri . . . March
New Jersey . . . October
New York . . . October
New England . . . August
Oklahoma . . . June
Oregon . . . September
Pennsylvania . . . August
Texas . . . October
Wisconsin . . . November
TICOR Conducts Tax Probate Forum . . . June
TIM Acquires Baldwin . . . July
Uniform Land Transactions Code
Part I . . . September
Part II . . . October
Part III . . . November
Washington Report . . . January
Western TI Office Plans Fall Move . . . September
Wemhoener, Berry Acquire Missouri Company . . . June

Fight Inflation and Promote Your Industry!
Buy A Slightly Used "Blueprint" Film at Reduced Price

Here's your chance to fight inflation while promoting your industry! If you haven't already obtained a copy of ALTA's highly successful film, "Blueprint for Homebuying"—or if another print would come in handy for a new branch or to increase circulation—you can receive one now at reduced price.

ALTA has 50 prints of this public education film back from national television distribution and is making them available to members—on a first come, first served basis—for $55.00 which includes postage and shipping container. The prints are in good condition, and the reduced price represents a significant savings from the $95.00 cost for a new print.

This 16 mm color sound film takes home buyers through the basics in selecting, financing, and closing with regard to purchasing residential real estate. Featured on the screen are the various experts who provide closing services—including the land title professional. Most of the film consists of animated sequences, although a live narrator also appears.

Remember the supply is limited so order your print today.

Mr. and Mrs. Home Buyer as seen in the ALTA film

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

association corner

state

KLTA Elects Marjorie Wright President

The 1973 convention of the Kansas Land Title Association elected Marjorie Wright, a partner in the Logan County Abstract Company of Russell Springs, as its new president.

Other newly-elected officers were Roger N. Bell, president of the Security Abstract and Title Company of Wichita, vice president, and Robert G. Frederick, president of the C. W. Lynn Abstract Co., Inc., Salina, secretary-treasurer.

The 66th annual convention was held in Wichita at the Holiday Inn Plaza. Over 190 title people and guests attended the meetings.

Convention speakers included Robert J. Jay, ALTA president-elect; James W. Robinson, senior vice president of American Title Insurance Company; J. Mack Tarpley, vice president of Chicago Title Insurance Company and E. Gordon Smith, senior vice president of Lawyers Title.

Pictured above at the recent Kansas Land Title Association Convention are: (from left to right) newly-elected President Marjorie Wright; Harry H. St. John, Jr., retiring president of the association, and Mrs. St. John; ALTA President-Elect Robert J. Jay and Mrs. Jay.

Carolinians Name Pittman as President

The Carolinas Land Title Association held its seventh annual convention on October 26 and 27, 1973, at the Foxfire Golf and Country Club in Pinehurst, N.C. William B. Pittman, president of First Title Insurance Company, Raleigh, N.C., was elected president; John G. Martin, agent for Title Insurance Company of Minnesota, Columbia, was elected vice president; Mrs. Lucille Lee, vice president and manager of Commercial Standard Title Company of N.C., Raleigh, was elected secretary; and Carl E. Wallace, assistant vice president of Jefferson-Pilot Title Insurance Company, Greensboro, was elected treasurer.

The convention program included addresses by Gary L. Garrity, ALTA Public Affairs Director, on national activity of the Association; Joseph M. Parker, assistant counsel, Lawyers Title, Richmond, Va., on "What Title Policies Really Cover (and Don't Cover);" Charles L. Fulton, attorney, Raleigh, on responsibilities for disclosures from a title attorney to a title company; J. Troy Smith, Jr., attorney, New Bern, N.C., on 1973 state legislative highlights; and Clifton W. Everett, attorney, Bethel, N.C. on the North Carolina Marketable Title Act.

Also heard from was Julius Dees, Jr., attorney, Greensboro, reporting as chairman of the attorneys section. The newly-elected chairman is Charles L. Fulton, attorney, Raleigh.

Lawyers Acquires Oregon Company

Lawyers Title Insurance Corporation announces the acquisition of Jackson County Title Company of Medford, Oregon.

Louis J. Poggione, previously with Lawyers in California, serves as president of the operation. Neil O. Davidson, formerly president of Jackson County Title, will continue with the company in an advisory capacity; the company's present staff is being retained.

Mobile Company Active in Historical Effort

Pictured above is Thomas Burke (left) president of the Mobile, Alabama, Historic Development Commission who presented a citation to R. D. Geist, Jr., vice president of the Title Insurance Company of Mobile (second from left). Mrs. E. S. Sledge, (second from right) was the recipient of a citation from Mrs. William Tipler, (left) president of the Historic Mobile Preservation Society, for conveying a scenic easement on Georgia Cottage, her historically significant home, to the society. The citation received by the Title Insurance Company reads, in part: "The Title Insurance Company has shown civic responsibility in giving free access to title information necessary for the documentation of properties of historic and/or architectural merit."

Purchase Completed

Robert D. Dorociak, chief executive officer of USLIFE Title Insurance Company of Dallas, has announced the completion of the purchase of Fort Worth Title Company from Fort Worth Capital Corporation. Pictured at the final transfer are, left to right, Charles H. Newman, III, newly-appointed president and chief executive officer of Fort Worth Title Company; Dorociak; and Steward W. DeVore, president of Fort Worth Capital and former owner of Fort Worth Title, who will remain as a director of the title company.

Security Changes Name to SAFECO

Security Title Insurance Company changed its name to SAFECO Title Insurance Company, effective January 1, 1974. William H. Little, president of the firm, has announced that the name change does not reflect a change in ownership or management.

North Valley Title Changes Name

North Valley Title & Escrow Company of Redding, California has changed its name to First American Title Company of Shasta County.

In conjunction with its new identity, the firm, which is affiliated with First American Title Insurance Company, is embarking on an extensive remodeling program.

names in the news

Frank B. Glover has become president and chief executive officer of American Title Insurance Company, effective January 1, 1974. **Jay R. Schwartz,** one of the founders of the Miami-based firm 37 years ago and president of the firm since 1958, has been elected chairman of the board of directors and will remain as chairman of the executive committee.

Glover—who has more than 25 years in title insurance management and operations—joined American Title in 1970 and has served the past year as the company's executive vice president and chief administrative officer, following two years as senior vice president and director of agencies.

In addition, **George J. Abbott** has recently been appointed Connecticut state manager for American Title; **Paul M. Bloomgarden** has been appointed to supervise the policy review section of the national office.

* * *

Chelsea Title and Guaranty Company announces the following promotions in the company's home office: **Harry L. Heilig,** senior title officer and associate counsel; **Larry Galloway,** vice president-operations; **Carl Ekstrom,** vice president-auditor; **Dave Seymour,** vice president-corporate relations; **Vincent W. Alexander,** assistant vice president-corporate insurance; **Leslie R. Bratton,** assistant vice president-personnel.

* * *

Bernard W. Shiell, president of The Commonwealth Corporation, Tallahassee (Fla.), and **James L. Starnes,** chairman of the board, Phipps-Harrington Corporation, Atlanta, have been elected to the board of directors of


GLOVER


SCHWARTZ


ABBOTT


BLOOMGARDEN


HEILIG


GALLOWAY


EKSTROM


SEYMOUR


ALEXANDER


BRATTON


SHIELL


STARNES


CASBON


FERGUS


ANDERSON


KEAN

Peninsular Title Insurance Company. **John N. Casbon,** assistant vice president, has been appointed manager of the company's newly-established divisional office in New Orleans; the office serves Louisiana, Mississippi and Alabama.

* * *

William F. Fergus has been elected manager of the San Francisco branch office of Lawyers Title Insurance Corporation; **Stephen W. Anderson, Sr.,** has been elected manager of the company's Augusta (Ga.) office.

* * *

Harold C. Kean, president of Washington Federal Savings and Loan Association, Seattle, has been elected to the board of directors of The First American Financial Corporation and its principal subsidiary, First American Title Insurance Company. **Lawrence E. Rahal,** Wichita (Kansas), has been named regional vice president—midwest states for the title company; **Anthony Schembri,** Arlington (Va.) has been appointed regional representative in the Mid-Atlantic states.

* * *

Roger L. Surprenant, Hartford (Conn.), has been elected assistant vice president of Security Title and Guaranty Company. The company also has named **Edward Moskowitz** and **George J. Clarke** as vice preisdents and **Mildred Parra** and **Janet Huldack** as assistant secretary and administrative assistant.

* * *

Four persons have been elected to the boards of directors of Title Insurance and Trust and Pioneer National Title Insurance. Elected to office in TI were: vice president: **Timothy Ahlberg,** manager, marketing department, San Francisco County; trust officer: **Simon J. Aman,** trust administrator. Elected to office in PNTI were: vice president: **James A. Callahan,** Southeast agency manager, Georgia; assistant vice president: **Stephen C. Wilson,** New England area manager, Boston.

* * *


RAHAL


SCHEMBRI


SURPRENANT


MOSKOWITZ


CLARKE


PARRA


HULDACK


PERCONTI


HORVITZ


EASTMAN


WARBURTON


LARKINS


CLINE

Joseph A. Perconti has been promoted to assistant vice president at the Paterson (N.J.) office of Commonwealth Land Title Insurance Company. **Philip E. Horvitz,** Cherry Hill (N.J.) has been named an assistant counsel for the company and **Frank Cozzo** has been appointed title officer and manager of the Drexel Hill (Pa.) office.

* * *

George K. Eastman has been named manager of Colorado operations for Transamerica Title Insurance Company, and **Lawson Warburton** has been named regional manager in Colorado. **Norman E. Larkins** has been appointed manager of Boulder County (Col.) operations.

* * *

Don Cline has been named as manager of Galveston County (Tex.) operations for American Title Company.

meeting timetable

March 6-8, 1974
ALTA Mid-Winter Conference
Fairmont — New Orleans Hotel
New Orleans, Louisiana

April 18-20, 1974
Oklahoma Land Title Association
Lincoln Plaza Inn
Oklahoma City, Oklahoma

April 24-28, 1974
Texas Land Title Association
Hyatt Regency Hotel
Houston, Texas

May 5-7, 1974
Iowa Land Title Association
Holiday Inn of the Amana Colonies
Amana, Iowa

May 9-11, 1974
New Mexico Land Title Association
Four Season Motor Inn
Albuquerque, New Mexico

May 9-11, 1974
Washington Land Title Association
Quay Inn
Vancouver, Washington

May 22-24, 1974
California Land Title Association
Hotel Del Coronado
Coronado, California

May 31-June 1, 1974
South Dakota Land Title Association
Phil-Town Inn
Sturgis, South Dakota

May 31-June 1, 1974
Tennessee Land Title Association
Riverside Motel
Gatlinburg, Tennessee

June 2-4, 1974
New Jersey Land Title Insurance Association
Seaview Country Club
Absecon, New Jersey

June 6-8, 1974
New England Land Title Association
Sea Crest Hotel and Motor Inn
North Falmouth, Massachusetts

June 9-11, 1974
The Title Insurance Corporation
of Pennsylvania
Seaview Country Club
Absecon, New Jersey

June 14-16, 1974
Illinois Land Title Association
Stouffer's Riverfront
St. Louis, Missouri

June 20-22, 1974
Michigan Land Title Association
Boyne Highlands
Harbor Springs, Michigan

June 20-22, 1974
Land Title Association of Colorado
The Lodge at Vail
Vail, Colorado

June 20-22, 1974
Oregon Land Title Association
The Inn at Otter Crest
Otter Rock, Oregon

June 27-29, 1974
Utah Land Title Association
Park City Resort
Park City, Utah

June 27-29, 1974
Idaho Land Title Association
Shore Lodge
McCall, Idaho

July 21-24, 1974
New York Land Title Association
The Otesaga Hotel
Cooperstown, New York

August 15-17, 1974
Montana Land Title Association
Miles City, Montana

August 22-24, 1974
Minnesota Land Title Association
Holiday Inn
Anoka, Minnesota

September 12-13, 1974
Wisconsin Land Title Association
Pioneer Inn
Oshkosh, Wisconsin

September 13-15, 1974
Missouri Land Title Association
Marriott Hotel
St. Louis, Missouri

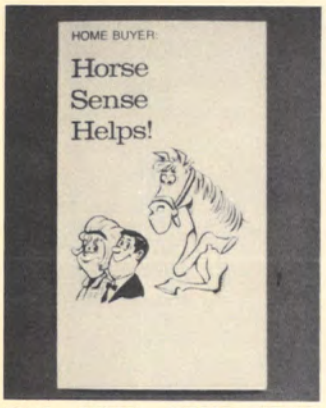
September 29-October 3, 1974
ALTA Annual Convention
Americana Hotel
Bal Harbour, Florida

December 4-6, 1974
Louisiana Land Title Association
Royal Orleans
New Orleans, Louisiana

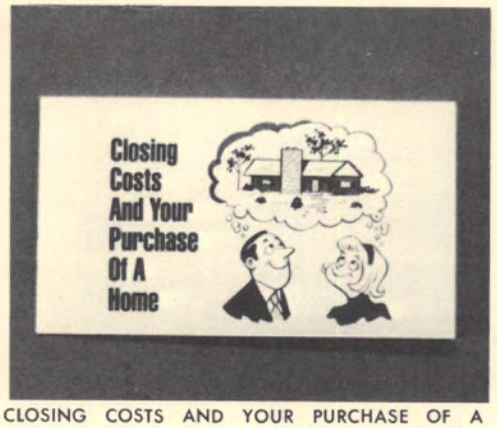
Tell Your Story More Effectively

. . . with these ALTA Educational Aids

(All orders plus postage; write Business Manager, ALTA, 1828 L Street, N.W., Washington, D.C. 20036)



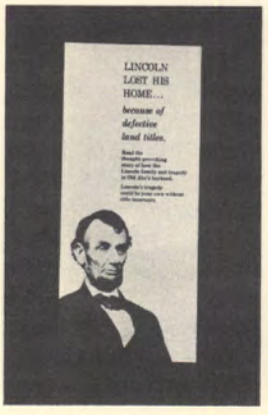
HOME BUYER: HORSE SENSE HELPS! A concisely-worded direct mail piece that quickly outlines title company services. 1-11 dozen, 65 cents per dozen; 12 or more dozen, 50 cents per dozen; designed to fit in a No. 10 envelope.



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