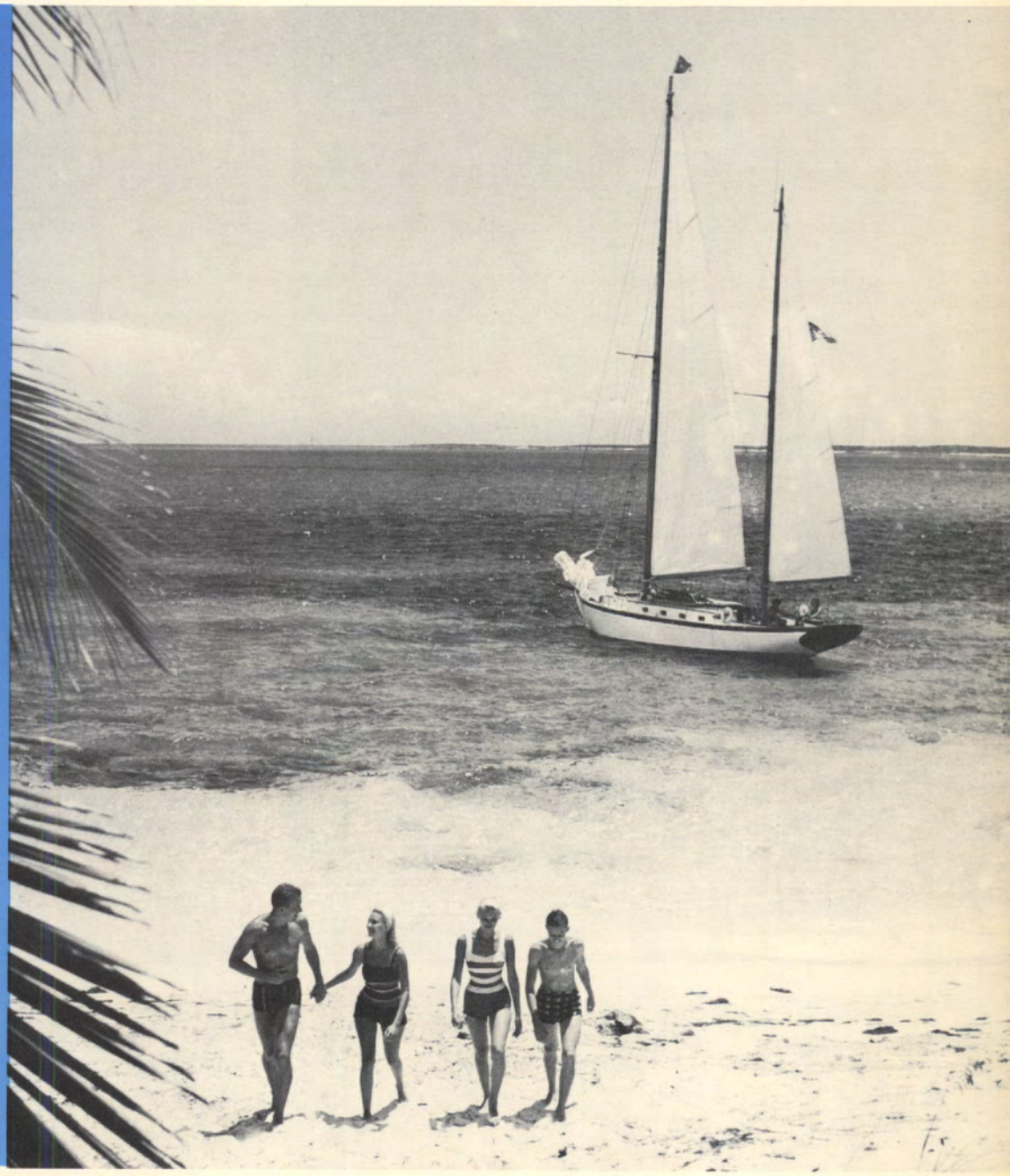
Title News

the official publication of the American Land Title Association



Bahamas Post Convention Tour Attraction

July, 1974

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

JULY, 1974

This nation of ours is now one hundred and ninety-eight years old. Conceived in liberty and dedicated to the proposition that all men are created equal, our nation was born on July 4, 1776. That doesn't seem so long ago in the span of time. America is young, and growing, and her life has just begun.

But, America did not survive and reach this age without her share of problems. Revolution, civil war, world wars, police actions and interplanetary explorations. Prosperity, depressions, gold rushes, land grabs, stock market crashes, riots, civil disturbances, floods and epidemics have plagued her history. Through all of these, America has come out on top. This is because America is America!

From thirteen colonies along the Atlantic seaboard, America has grown westward to the Pacific; yes, even beyond. Now she numbers fifty states. Every race, color and creed is represented within her family. It becomes more evident each day that the wisdom of our founding fathers was superb. "In order to form a more perfect union, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity." More than just beautiful words, these were the avowed goals of men with vision and purpose of life. They, and their descendants have met these goals. Inwardly, every American, native or naturalized citizen, still holds to these goals.

Each of us should stand tall as we reaffirm our faith in America as we repeat, "The American's Creed", written by William Tyler Page, Clerk of the United States House of Representatives in 1917.

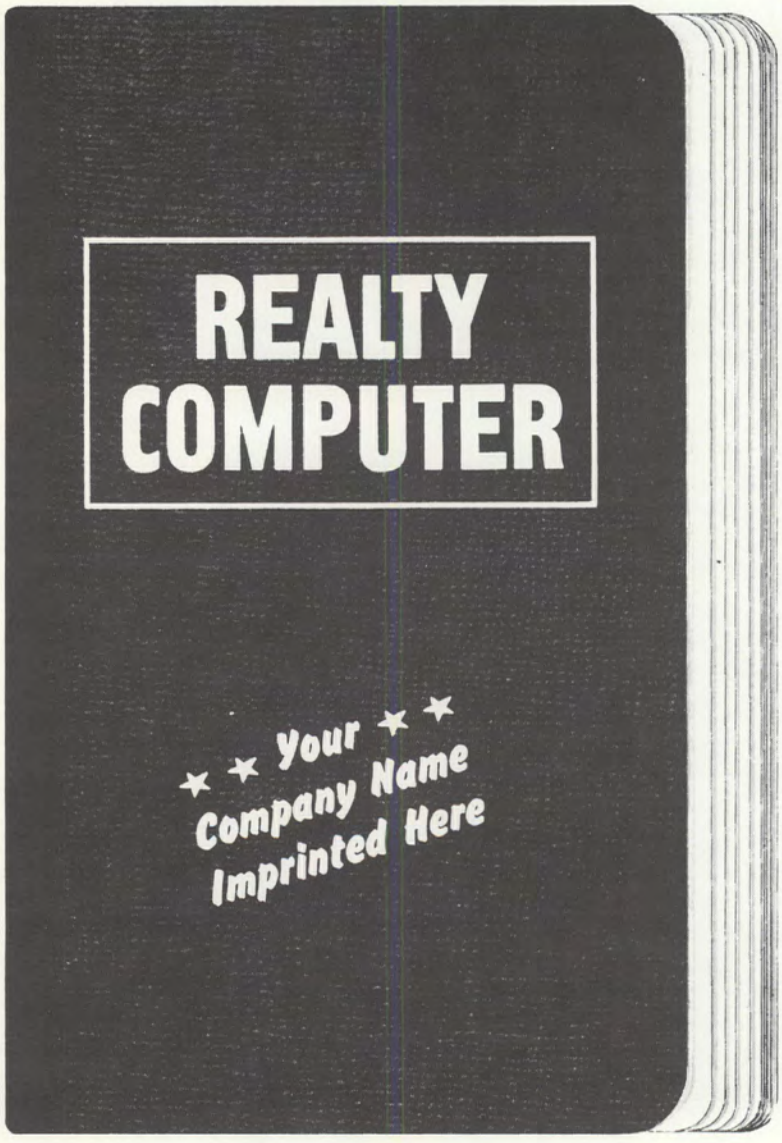
> "I believe in the United States of America as a government of the people, by the people, for the people, whose just powers are derived from the consent of the governed; a democracy in a republic; a sovereign nation of many sovereign states, a perfect union, one and inseparable; established upon those principles of freedom, equality, justice and humanity for which American patriots sacrificed their lives and fortunes. I therefore believe it is my duty to my country to love it; to support its constitution; to obey its laws; to respect its flag, and to defend it against all enemies."

And so, with great pride, I say, Happy Birthday and God bless you America. The good old days are straight ahead. Right on, AMERICA!

Sincerely,

Philip D. McCulloch

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



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ALTA action

Members of the ALTA Executive Committee, Committee to Establish Liaison with the National Association of Insurance Commissioners, Standard Title Insurance Accounting Committee, and staff recently have met on three occasions with Dr. Dick L. Rottman, Nevada insurance commissioner and chairman of an NAIC Task Force on Title Insurance, and his staff concerning his interest in developing information about title insurance over the nation.

Among responsibilities of the Task Force is consideration of an NAIC model title insurance code for use by states.

As a result of the meetings, activity related to Dr. Rottman's interest is proceeding in two areas.

First, Dr. Rottman has accepted an ALTA offer to help pay for a review of existing literature and information on title insurance by a representative he selects. Subsequently, his representative is expected to develop a plan for a national study of title insurance.

Second, the ALTA Accounting Committee is working on the familiar NAIC Form 9 filed by title insurers with state insurance departments or their equivalents. This effort is geared toward making Form 9 more meaningful and thereby more useful to insurance departments and title companies. The improvements being sought in Form 9 may well mean changes in related state laws.

* * *

ALTA President Robert C. Dawson and Executive Vice President William J. McAuliffe, Jr., will attend the 1974 convention of the New York State Land Title Association—which will be held July 21-24 at Cooperstown, N.Y. It is the only ALTA-affiliated association convention scheduled this month.

* * *

A special presentation on the new ALTA promotional film for land title services was a feature June 4 at a national Public Relations Society of America Business & Professional Association Section forum in Washington, D.C. Theme of the forum was "Crises and Consumerism."

In the presentation, ALTA Director of Public Affairs Gary L. Garrity and Dick Ridgeway, producer, described how personnel of the Association and production company teamed to make an effective consumer film for nationwide use in spite of local differences in real estate settlement practices.

A premiere showing of the new film is planned for ALTA members at the Association's 1974 Annual Convention this fall in Bal Harbour, Fla.

* * *

Any ALTA member who has not yet received a listing card in the mail for the Association's 1975 *Directory* is asked to contact David R. McLaughlin, business manager, in the ALTA Washington office. All the cards were mailed early in June.

Listing cards should be filled out and returned to the Association office as soon as possible. There will be a penalty charge of $7 per line on all *Directory* listings received after September 1. Final deadline for the listings is November 1.

* * *

Kenneth E. DeShetler, director, Ohio Department of Insurance, has advised ALTA that the Association has been accredited as a rate advisory organization under the laws of that state. ALTA recently filed the forms for registering as a rate advisory organization in Ohio after being requested to do so by the department.

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Features

Departments

ON THE COVER: This idyllic view of the Bahamas is a reminder that reservations for the October 3-6 ALTA Post Convention Tour to the islands must be received at the travel agency by August 23. Appropriate forms have been mailed earlier to members of the Association, and should be returned to Travel Consultants, Inc., 1025 Connecticut Avenue, N.W., Washington, D.C. 20036. Just ahead of those dates, of course, is the 1974 ALTA Annual Convention September 29-October 3 at Bal Harbour, Fla. Plan now to attend.

VOLUME 53, NUMBER 7, 1974

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

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Thomas E. Horak, Chairman
ALTA Committee on Improvement of Land Title Records

Modernizing Land Data Systems

(Editor's note: The following is adapted from an address presented at the 1974 ALTA Mid-Winter Conference. The author is a vice president of Commonwealth Land Title Insurance Company.)

* * *

I would have liked to make this report a subjective one—that is, reviewing some of the improvements which we in the title industry, either individually or collectively, have made in the field of land title records. And, there has been considerable progress. For example, we have all noted the rapid growth of joint plants, as well as the continued computerization of land records in private title company plants. In this connection I would like to recommend for your reading an article by John Jensen, of Chicago Title, entitled "Computerization of Land Records by the Title Industry", which appears in the Winter issue of the American University Law Review. But our records are, after all, private records. Instead of a subjective approach, I would like to note what is happening to public land title records.

Shortly after becoming chairman of ALTA's Committee on Improvement of Land Title Records, I was asked to represent ALTA in a group which is planning a conference to be held next year, on the subject of modernization of land records. This will be the fourth in a series of meetings, which started in 1966. Sponsored and promoted by various private and professional groups, notably the American Bar Association, and on occasion, even our own ALTA, these conferences have had as their goal the design and adoption of a uniform system to easily identify a parcel of land, and to efficiently relate all pertinent data to the parcel by using data processing equipment and techniques. To effect this will necessitate some changes in surveying methods, and substantial revision of the land title recording system.

The first of these meetings was in 1966 in Cincinnati. Like the second, held at Mackinac in 1968, it was concerned with an overview of the whole problem. The third meeting was held two years ago in Atlanta, and was specifically oriented to select a parcel identifier.

Let us briefly review these conferences. How far have they come? How far are they likely to go? How will all of this affect us?

Let us start with a brief review of the accomplishments of the Atlanta conference, and its concern with the ideal compatible land identifier.

We are talking here about a numeric or alpha-numeric code which will replace the legal description in all documents to be recorded under the new system. The recording official will be able to use this number in maintaining either manual or automated tract indexes. A document will not be recordable without its proper parcel identifier. Metes and bounds or other descriptive language will be discouraged, possibly by a monetary penalty, because it would have to be verified. This would not be true, of course, if the document changed the boundaries of the parcel.

At the Atlanta conference, eleven new systems were proposed for consideration, in addition to six already in use. Egregiously oversimplified, there was a choice to be made basically between a coordinate type number, which gives an approximate geographic location, and a simple lot-and-block style number. While a lot-and-block system can be made roughly geographic, it does not have the same precision as the coordinate identifier.

We are more familiar with the lot-and-block type identifiers; many of our plants are organized around the system of identifying parcels by the lot and subdivision tract, or section, town and range descriptors. These systems have the advantage of incorporating data from the actual description into the indexing system.

Many of the Atlanta conferees preferred the coordinate type identifier. If universally adopted, it will pose some problems for us. It will mean changing our plants over to a new numbering system—no small feat.

The advantages of the coordinate numbering system are its worldwide adaptability, and the ability to compute distances and spatial relationships between parcels, near and far. I seriously question how valuable this will be. Most parcels in America are already incorporated in working lot-and-block systems. Most of the people working with land records are used to these systems. I feel their inconvenience in converting to a coordinate identifier may not be offset by the gain of the relatively few who want the facility of distance relationships. The answer may prove to be a cross reference grid or index for those needing this technical feature.

The disadvantages of a coordinate system, some of which were not mentioned in Atlanta, are:

1) It is entirely different from systems in popular use.
2) Its numbers bear no relationship to the legal descriptors such as lot, block, section number, etc.
3) It is a longer number, and more likely to result in erroneous transcription.
4) Even its proponents admit that in test projects it generated intolerable levels of error, which they propose to compensate by redundancy suffixes. A redundancy suffix is a series of digits bearing no relationship to the preceding significant numbers, except to check the accuracy of transcription by computer programming. This adds further to the length, and thus the potential for error.
5) A higher degree of skill and training is required to maintain a coordinate identifier system.
6) One purported advantage of the system is that it locates a parcel geographically. Yet its proponents say that since its accuracy may be limited to ten feet, it may not be practical to locate it within the boundaries of small parcels.
7) Some parcels may fall within more than one grid unit. The grid map is essential to the system. A parcel may fall into four units. This will be confusing.
8) There will be delay in assignment of a new number prior to recordation, when there is a change in boundaries. Delay is inherent in any system, but because it is more complicated and requires a greated degree of skill to maintain, more delay can be expected by using the coordinate identifier.
9) Unusually large parcels defeat the purpose of the cadastral system to assign pertinent data to geographic locations. Apparently no consideration was given to this at the Atlanta conference. Could we be designing a system which has incompatible goals?
10) And, last, is it really necessary to design and implement a system with the sophistication to literally direct an ICBM at Peking, in order to file a mechanics lien in Altoona?

Author Horak

In spite of these objections and the problem of changing our plants' parcel identifier numbers, the proposed system should be welcomed by us. It will drastically reduce, if not eliminate, the need to "locate" or "arb" many documents we now laboriously process. Our plants will also be posted closer to the current date than is now possible.

Once a clear decision is made on the parcel identifier, the next step will be to design a system to contain and accomodate various unrelated data pertaining to the parcel. Heretofore our recording systems generally maintained either a grantor-grantee index, which, being person oriented, dealt with the parcel of land indirectly, or through a tract index, which might be relatively unsophisticated. But, in any event, records could be in various offices in the same building, in different buildings, or even different cities, yet all affecting a single parcel. A system uniting all of these, "showing or recording property boundaries, subdivision lines, buildings, and related details"—I am quoting from a dictionary—is called a cadastral system. I will repeat that—"a system showing or recording property boundaries, subdivision lines, buildings, and related details"—a cadastral system.

The title of the fourth and upcoming conference is "North American Conference on Modernization of Land Data Systems:" with a sub-title, "a Multi-Purpose Cadastre." There is that word again. Having chosen our parcel identifier, we must now define the cadastre, the system which will contain all of the data relating to the parcel. This is the goal of the fourth conference.

The concept of cadastre originated in ancient Egypt, where, as we all know, the only valuable land was that which was flooded each year, and blessed with a thick deposit of fertile silt. Unfortunately, in the process, all the monuments and boundaries were obliterated. Thus was born the science of surveying. A record was kept of the parcel descriptions, the names of the proprietors, and, inevitably, the taxes due the pharaoh. Thus the cadastre—the method for describing and recording data relating to a parcel of land.

The concept of cadastre has spread to many countries, and has been embellished. Sweden is reputed to be in the forefront of this movement, and the government computer contains, besides the parcel description, details on buildings, their use, the occupants, where they work, and their automobile registration. I understand that presently they are considering adding the occupants' health records to the cadastre.

I should mention that there is a great deal of interest on the part of many government agencies in the forthcoming conference. What would some of the uses of the cadastral system be? Well, for example, the Department of Agriculture might want to know what crops will a given parcel support. Is the soil acid or alkali, sandy or rocky, clay or loam? Other agencies would be concerned about likely mineral deposits, or if it is subject to flooding. Commercial interests would be served by knowing the use of the land, its commercial value, proximity to highways or public transportation. Political considerations would be police and zoning regulations, and metering of municipally supplied utilities. Certainly the judicious use of a computer with all of this cadastral information, would enable us to predict, within half a ton, the amount of garbage to be collected in a given area. Or, it is entirely conceivable that it will

be impossible to effect a vote fraud in the future if on entering the voting booth, the voter must identify himself and his cadastral unit to the computer, which will determine if he is qualified to vote. George Orwell did not write this—it is not a chapter out of "1984" —but all of these things would be possible with a modern cadastre and computer. And thus, the conference subtitle, a "Multi-Purpose Cadastre." The people who are planning these conferences are not limiting their consideration to the problem of recording a deed or mortgage. Their vision extends far beyond these limited horizons.

So now we see that the proposed 1975 conference is part of a series of meetings designed to achieve broad goals in the treatment of land data. Of course, these goals affect our industry.

Presumably, once the parcel identifier is set, and the style or form of the cadastre has been agreed upon, another conference will be necessary to consider legislative reforms necessary to implement the entire package. It is difficult to be optimistic about the chances of adopting uniform recording legislation in 51 or more separate jurisdictions. Political resistance at the local level will be intense.

Another prerequisite to final implementation is the adoption of the metric system.

It appears that the State Plane Coordinate System may be supplanted or affected by the new North American Datum Base, which will require a great degree of new surveying work. This would be done in the metric system. It is probably unwise to expect substantial appropriations to resurvey so much land with a new systems of measures until it has congressional approval. I think, based on extensive experience in title examining, that the quantity, quality, and cost of the maps required for the success of this system have been seriously underestimated by most of the conferees. I fear that some broad and unwarranted assumptions have been made in this area. The creation of a photogrammetric map, and designation of a parcel identifier number, is not going to solve the many problems in legal descriptions which occur in many rural and suburban locations. We would be most foolhardy to insure the title to a parcel of land because it has a computerized parcel number and appears on an artfully produced map, if the title history and boundaries have not been thoroughly checked out. Nothing is provided here for that most necessary function.

So, I think title companies are going to be around—permanently. Title plants may be ultimately affected—perhaps eventually made obsolete, if full implementation of these ideas can be made. The practical limitations on realization of these goals, are, however, very real and substantial. But if a few determined zealots have access to the public treasury, who knows what can happen?

We don't have to wait for universal adoption of the parcel identifier or the cadastral system to effect some improvements that could be more meaningful to us than the benefits of the proposed systems. I would like to make some suggestions as to things which can and should be changed. I ask our planners of the future to include these on their lists. Many people are making suggestions to reform the system. We have not only the right, but the duty, because of our experience in this highly complex field, to speak up concerning a system, which, if changed, will materially affect the way we do business. This is not an original nor all-inclusive list—I have borrowed heavily from two sources: current authors on the subject of land records, and my own experience with title companies in three large metropolitan areas. They may range from the ridiculous to the sublime, but nonetheless, here they are:

1) All documents affecting land or the ownership thereof within a political jurisdiction should be recorded and indexed in one place.
2) The law should require indexing as constructive notice. It is one thing to require a high degree of sophistication and effort on the part of a title company in dealing with public records, but it is another thing to expect the same degree of expertise from the casual user of the public records. If we are going to modernize and automate the records, let us make the index conclusive as to the existence of the record.
3) I suggest that each county with E.D.P. equipment maintain an annual ownership list, with a reference to the parcels owned by each party. In some states this is already being done. This could be supplemented by a private record of the address, social security number, age, occupation, spouse or whatever other information the owner might voluntarily submit, to help eliminate confusion over common name listings.
4) Require creditors, in preparing a lien, to use the name as furnished on the ownership list. A lien should not be constructive notice, otherwise.
5) Sponsor legislation for a lien list of undisclosed owners. If a debtor's name does not appear on the current owners' list, the creditor should not be foreclosed his opportunity to lien the undisclosed property of the debtor. A lien filed on the undisclosed owner list would attach to three kinds of real estate:
   a) that acquired since the publication of the list,
   b) that acquired by devise through an unprobated will, or inherited through an unadministered estate,
   c) interests in undisclosed trusts, if lienable in that jurisdiction.
6) Eliminate the idem sonans doctrine. This is a creature of an illiterate age. We have advanced far beyond this period in our history. It is completely out of place with the credit bureau, credit card, employer-reference, charge-account society in which we live. The idem sonans doctrine poses insuperable problems for automation. It should be abandoned. No system yet devised—Soundex, Russell, the name dictionary—is satisfactory from the standpoint of economy or accuracy. With automated public records and ownership

Continued on page 15

ALTA Radio Spots Heard By Audience of Millions

ALTA public service radio announcements for the fifth straight year are encouraging a nationwide audience of millions to learn the facts on home buying and land title protection before purchasing real estate.

The announcements are produced in conjunction with ADS Audio Visual Productions, Inc., Falls Curch, Va., and feature celebrities. They are an activity of the ALTA Public Relations Program.

Stations broadcasting the announcements donate the air time free in the public interest. All the announcements suggest that listeners write ALTA for free home buyer education literature.

Included in the 1974 ALTA radio package is a vareity of announcements developed to meet the programming needs of popular music, country and western, and soul music stations. Celebrities featured in the spots are Arthur Hill, recently starring in ABC Television's, "Owen Marshall, Counselor at Law"; Don Mitchell of NBC Television's, "Ironside"; and two prominent country and western singing stars, Loretta Lynn and Donna Fargo.

Hill is featured on two announcements. In one, he reminds that ours is a government of laws that include buyer rights in real estate—but also is a government of laws that allows other parties to make claims against property. The second Hill spot includes a commentary on the approaching American Bicentennial and the rights that citizens of the nation enjoy—including the right of home ownership. Both announcements suggest preparing for home ownership by learning the facts in advance.

Mitchell carries the same basic home buyer message in a spot styled for soul music and other stations, and Lynn and Fargo offer similar advice in a format designed for country and western stations.

Announcements in the package range from 10 to 60 seconds in length, and also include humorous spots using the old-time radio nostalgia frame (western and mystery programs).

As an indication of the widespread acceptability of the ALTA spots, here is a partial list of stations that to date have reported broadcasting these public service offerings.

Alabama—WDJC, Birmingham
California—KFSG, Los Angeles, and KGO, San Francisco
Colorado—KFKA, Greeley
Delaware—WDEL, Wilmington
Florida—WAXY, Ft. Lauderdale
Georgia—WSAV, Savannah
Idaho—KLIX, Twin Falls
Illinois—WDWS, Champaign
Indiana—WHME, South Bend
Kentucky—WLBJ, Bowling Green
Massachusetts—WHYN, Springfield

Continued on page 16

Lynn

Fargo

Hill

Mitchell

Part IV: ALTA Judiciary Committee Report

(Editor's note: Members of the ALTA Judiciary Committee have submitted over 450 cases to Chairman John S. Osborn, Jr., of the Louisville law firm of Tarrant, Combs, Blackwell & Bullitt, for consideration in the preparation of the 1974 Committee report. Chairman Osborn reports that 98 cases have been selected for publication in this year's report. For previous installments, please see the February, April, and June, 1974, issues of *Title News*.)

* * *

LANDLORD & TENANT *(Continued)*

Gray v. Foto Fair, 288 N.E. 2d 341 (Ohio Appeals - 1971)

Action by drug store lessee to enjoin placing a prefabricated drive-in structure on part of shopping center's parking area. The lessor in its lease to the drug store convenanted not to obstruct the parking area with "any building or other structure."

Held injunction granted and defendant was enjoined from erecting, occupying or maintaining any building or structure on any portion of the parking areas, concourses or crusing lanes during the term of the lease or any extension thereof; and ordered to do all things necessary to rescind any agreements with respect to the construction of a building or structure thereon; and to remove such structure or portion thereof from such areas, concourses or crusing lanes.

Gray Drug Stores v. Foto Fair Internation, Inc., 32 Ohio App. 2d (1972)

In a lease dated August 10, 1961, to plaintiff, the developer of a shopping center agreed to "Construct paved parking areas where shown in Exhibit A . . . and to grant unto tenant . . . Said parking areas . . . shall not be fenced or . . . and shall be kept open for use without expense of any nature to the tenant . . ." On November 4, 1969, the shopping center developer and owner entered a lease with defendant for the construction of a "kiosk" for the sale and processing of photographic film. The kiosk was placed on an area designated and used for parking. Plaintiff claims that such construction violates its rights as set forth in its 1961 lease.

Held: Lessor-developer was enjoined from obstructing the parking area in violation of the terms of the original lease.

Court adopts a "strict construction" view; the construction of the kiosk could have been considered de minimis.

Johnston v. Harris, 198 N.W. 2d 409 (Mich. 1972)

An aged tenant in a Detroit apartment house was returning home after dark. As he reached for the doorknob of the front door to his apartment building, the door was suddenly jerked open and he was struck and robbed by an intruder who had been lurking in the poorly lighted and unlocked vestibule. The apartment house was located in a high-crime area. Action was taken against the landlord for negligence.

Held: In a high-crime area, the failure to provide lighting and locks creates a condition conducive to criminal assault on tenants; such assaults are foreseeable by the landlord; and as a result, he is under the duty to guard his tenants against them or suffer the risk of paying damages when they are assaulted for lack of protection. A landlord of an apartment building in a high-crime area is guilty of negligence when he fails to provide adequate lighting and frontdoor locks. One injured by another's negligence can recover if the negligence is the proximate cause of the injury. It need not be the immediate cause. The absence of lighting and locks was the proximate cause of the assault in question because the landlord should have realized that it involved an unreasonable risk to his tenants from the criminals which he knew or should have known were present in the neighborhood.

Kopke v. AAA Warehouse Corp., 494 P. 2d 1307 (Colo. App. 1972)

Snow had fallen on Friday and Saturday and, because of icy conditions, plaintiff, 70 years old, did not come to his office until the next Tuesday. During that period of time, alternate thawing and freezing occurred. Plaintiff had rented an office and parking space from defendant landlord. The landlord had made no effort to clear the lot of the earlier snow or resulting ice. Plaintiff slipped and fell on ice in the parking lot and sued to recover damages for personal injury. Defendant was granted a directed verdict at the conclusion of plaintiff's case.

Held: In the absence of statute or agreement, the landlord is under a duty to tenants to exercise reasonable care to keep common passageways, approaches and parking facilities within his control in reasonably safe condition.

Case of first impression. Court adopts Connecticut rule rather than Massachusetts rule.

Polk v. Gibson Prod. Co., 257 So. 2d 225 (Miss. 1972)

A lease was made with a tenant who operated a department store which called for $18,000 a year base rental plus 1-1/2% of all gross sales over $1.2 million made in, upon, or from the premises. Later the lessee asked the landlord to enlarge the floorspace so that it could compete with new discount stores then in the area. Upon the landlord's refusal, the tenant gave notice of its intention to move and sublease to a fabric store. Thereafter, the base rental continued to be paid by the lessee but the additional rent, which in past years had been as much as $10,000 per year, was not for the simple reason that the fabric store did not have an annual sale in excess of the $1.2 million. The landlord then sought damages to the extent of the bonus rentals.

Held: This lease constituted a valid contract and required no construction. The lease is specific in that there is no provision that specified that the tenant was required to continue to occupy the premises for the entire term of the lease. Therefore, so long as the landlord was receiving the base rent, he had no quarrel.

Waite Lumber Co., Inc. v. Masid Bros., Inc., 200 N.W. 2d 119 (Neb. 1972)

A tenant cannot, without the authority of the landlord, charge the land with a lien for materials for constructing or improving a building thereon. The mechanic's lien laws of this State, Nebraska, require that a contract for material, labor, etc. for improvements on real estate shall be made with the owner thereof, or his agent; and a tenant of real estate, because of his tenancy, is not the agent of his landlord for that purpose.

Musselman v. Spies, 343 F. Supp. 528 (M.D. Pa.) (1972)

In this class action attack against the distress sale provisions of the Penna. Landlord and Tenant Act (the class consisted of all tenants in York County who had an income not higher than the OEO poverty guidelines), the Court declared the provisions of the Act violative of the Fourteenth Amendment due process requirement and void insofar as it enabled a landlord to take possession of property found on his leased premises and, thereafter, sell the property, without a prior judicial determination of his rights, to recover rent claimed. The Court did not have to determine whether replevin by a tenant without bond would validate the distress sale provisions, because the Act specifically required replevin with bond in order to halt the sale of distressed property.

Gross v. Fox, 349 F. Supp. 1164 (E.D. Pa.) (1973)

In a class action, the Court, citing *Fuentes v. Shevin,* 407 U.S. 67, 92 S. Ct. 1983 (1972), declared the distraint proceedings provisions of the Penna. Landlord and Tenant Act unconstitutional as a denial of Fourteenth Amendment due process. Such proceedings permitted the landlord, acting unilaterally on a claim that rent was owing, to levy and obtain possession of property found on the tenant's premises without prior notice and hearing. The Act provides only that the landlord give five days notice after distraint to the tenant, who, in order to regain control and possession of the property, was required to initiate an action in replevin.

Margaret Jackson v. Claire Eichenberger, et al, 205 N.W. 2d 349, 189 Neb. 777 (1973)

Where possession of real estate is entered upon under an agreement with the owner with reference to the occupancy and not as owner, the occupant cannot assert ownership by adverse possession unless he first surrenders his possession, or by some unequivocal act notifies the landlord that he no longer holds under the agreement made. The mere nondemand and nonpayment of rent are not sufficient to bar the landlord's title.

Moolenar v. Co-Build Companies, Inc., 354 F. Supp. 980 (Virgin Islands 1973)

In an action to enforce a renewal clause in a lease executed between plaintiff tenant and the defendant's predecessor in title which entitled the tenant to a five year option on the same terms as first lease, excepting that rental would be renegotiated, the Court held that such a renewal clause was valid and enforceable despite the fact that the rental price was not specified. The Court rejected defendant's contention that the renewal clause was unenforceably vague by holding that the parties intended to establish a reasonable rental, and that reasonableness is to be determined by the use of the land as originally contemplated by the parties, not the use to which, due to change in circumstances, it could now most profitably be put.

MINES & MINERALS

Kerr-McGee Corp. v. Bokum Corp., 453 F. 2d 1067 (10th Cir. New Mexico 1972)

A mineral lease gave the lessee the right to "own and dispose of all uranium-bearing ores or uranium-bearing materials and bi-products." When the lease was first made, the lessee processed the ore and sold yellow cake. Beginning in 1968, however, a market for raw ore developed when utility companies began to use nuclear energy. Royalties on the sale of raw ore exceeded those on the sale of yellow cake produced from the same ore. The lessor demanded that the raw ore be sold without processing it into yellow cake. This demand was rejected and resulted in this lawsuit.

Held: While normally there is an implied covenant by the lessee of a mineral lease to market the ore which he mines at the highest price obtainable so that the lessor will realize the maximum royalties, no such covenant can be implied in the insant case because the lease expressly gave the lessee the right to "own and dispose of all uranium-bearing ores or uranium-bearing materials and bi-products."

LaVoy O. Taylor v. Alpine Retreat, Inc., et al, 508 P. 2d 15 (Wyo. 1973)

The Supreme Court held that deed reserving interests in oil, gas and kindred minerals, together with right to receive share in monies received from mineral leases, restricted grantor's interests to oil, gas and kindred minerals and did not entitle grantor to share in return from uranium lease. Deeds must be considered as a whole and intent of parties gathered from plain and unambiguous language contained therein.

MORTGAGES & LIENS

Cook v. American States Ins. Co., 275 N.E. 2d 832 (Ind. 1972)

Mortgagor Cook sold property to McIntire who assumed the mortgage indebtedness. Indiana law provides that as between the mortgagor-grantor and the grantee that the mortgagor-grantor becomes surety and the grantee becomes the principal obligor. Mortgagee accepted a deed from the grantee in satisfaction of grantee's obligation under the mortgagor indebtedness. Mortgagee than instituted action against mortgagor-grantor on the promissory note, reasoning in part that although the mortgagor-grantor was a surety, he was also still a principal obligor and, thus, not released when the grantee was released.

Held: Mortgagor-grantor is discharged of liability based upon principle that a surety is discharged when the liability of his principal is extinguished.

Clarification of Indiana law relative to suretyship.

Davis v. Davis, 196 N.W. 2d 473 (Minn. 1972)

Held: An acceleration clause in a mortgage does not require mortgagor to tender entire principal balance in order to reinstate mortgage after default under statute which provides for reinstatement by payment of amount actually due and the default actually existing.

A case of first impression, adopting minority view.

Milstein v. Security Nat'l. Bank, 27 Cal. App. 3d 482 (1972)

This case involved the right of an encumbrancer to the proceeds of a condemnation action. The trust deed contained a provision obligating the trustor to restore the damaged building and also provided that the beneficiary would be entitled to any condemnation award and that it could release the money so received or apply these funds to the indebtedness.

Held: Under the rule of good faith and fair dealing, the award should be released to the trustor for purposes of repair regardless of any decision by the beneficiary to the contrary.

Oklahoma Hardware Co. v. Townsend, 494 P. 2d 326 (Okla. 1972)

B&B Home Builders, Inc. owned a building lot and entered into an executory contract with Townsend to build a house on the lot according to certain plans and specifications and to convey the improved premises to the Townsends free and clear of all encumbrances. Pursuant to an agreement with B&B, plaintiff in error's assignor furnished materials for the construction of the building. The lien statement was filed but written notice of the lien was not served upon the Townsends. The Trial Court found that the Townsends, the purchasers of the property, were the "owners" within the lien law; that the materialman failed to give written notice to the "owners" as required by statute; and that the property was not subject to the materialman's lien. The materialman appealed.

Held: When an owner of a building lot (an executory vendor) contracts with another (an executory vendee) to build a house on the lot according to certain plans and specifications and to convey the improved premises to the executory vendee, a materialman, who furnishes materials to the executory vendor for the construction of the improvements prior to the time the executory vendee obtains record title to the premises, comes within the purview of the statute. Under the above circumstances, the executory vendor is the "owner" of the premises within the meaning of the statute, and it is not necessary to serve written notice of the lien upon the executory vendee, even though the materialman may have furnished some of the materials for the construction of the improvements and may have filed his lien after the executory vendee obtained record title.

Tucker v. Pulaski Fed. Savings & Loan Ass'n., 481 S.W. 2d 725 (Ark. 1972)

Purchase money mortgage in the amount of $23,000 was made by the lending institution. The mortgage contained a clause providing for acceleration of the debt if the mortgagor sold the property without the mortgagee's consent. Subsequently, he did sell the property, although the mortgagee had informed him beforehand that it would not approve of the transfer. The mortgagee thereupon declared the mortgage debt to be due and payable under the acceleration clause

and instituted foreclosure proceedings. The mortgagor claimed the acceleration was invalid as an arbitrary restraint on alienation. In addition, the mortgagor counterclaimed claiming that the mortgagee, by collecting monthly payments for taxes and insurance premiums and not paying interest thereon to the mortgagor, violated a fiduciary duty alleged to have been created because the mortgagor claimed the funds so accumulated were held in trust for the mortgagor.

Held: The acceleration clause was a restraint on alienation. It could be upheld only if it were not an absolute restraint. It would not be an absolute restraint if the bank was required to justify its action by proving it had grounds which were clearly reasonable. An action to accelerate and foreclose a mortgage being an equitable proceeding, it is not enough to allege merely that the acceleration clause has been violated. Absent an allegation that the purpose of the clause is in some respect being circumvented or that the mortgagee's security is jeopardized, a plaintiff cannot be entitled to equitable relief. As to the mortgagor's claim that the mortgagee was liable for interest on both the tax and insurance escrows, there is no evidence that appellee coerces its borrowers to establish escrow accounts; in fact, the mortgagors, on their present loan, do not pay any moneys into an escrow account. Actually, the escrow account results in a service to the borrower for it absolves him of the responsibility and trouble of paying the taxes and insurance. A mortgagee is entitled to be in a position where he knows that the taxes and insurance will be paid, otherwise his security would be very much in jeopardy.

Waite Lumber Co., Inc. v. Masid Bros. Inc., 189 (Neb. 10, 1972)

Action to foreclose mechanic's lien against fee owner of the property. The lien had been created under contract between him and a tenant of the property. The tenant, after creation of the indebtedness and the lien, abandoned the property, whereupon the landlord retook possession.

Held: The lien was a valid lien upon the fee title to the property for the reason that the landlord had merged the tenant's estate into the fee estate when he retook possession and accepted the surrender.

Clarifies Nebraska law on the rights of mechanics' liens claimants as against a landlord.

White Lakes Shopping Center Inc. v. Jefferson Standard Life Ins. Co., 490 P. 2d 609 (Kan. 1971)

A life insurance company issued a commitment for a permanent mortgage loan of $3.5 million conditioned upon the completion of the proposed shopping center. The builder was required to make an advance payment of $77,000 which was to be refunded promptly on the closing of the loan, but "if the loan is not closed, then the $77,000 deposited is to be retained by Jefferson as liquidated damages." As the work progressed, the builder requested the mortgagee to increase the amount of the commitment which it did on two separate occasions, finally raising the loan to $3.85 million. When the mortgagor made a third request for an increase to $4.25 million, it was denied. The mortgagor then secured a loan for that amount from another lender. It thereupon sued the mortgagee for the $77,000 claiming (1) that the money should not be retained because it was in the nature of a penalty and (2) the mortgagee had violated its own agreement to provide full and adequate financing.

Held: Advance payments, which are to be forfeited in the event of a breach by the borrower under a loan commitment, are properly to be regarded as liquidated damages if (1) the amount is within the customary percentage required for similar loans and is reasonable in view of the probable and presumptive loss to the lender in the case of breach; and (2) the amount of the actual damage in case of breach could not be easily and readily determinable. These two facts were found in this case. The mortgagor could not use parol evidence in order to vary the terms of the written commitment to prove its claim that the mortgagee had promised to loan an amount sufficient to meet its ultimate financial needs.

In Re Riss Tanning Corporation, 468 F. 2d 1211 (New York 1972)

A federal tax lien could not achieve priority over the effect of a "dragnet clause" in an earlier chattel mortgage made by the debtor corporation.

Simultaneously with the execution of a real estate bond and mortgage, debtor also executed a chattel mortgage (and filed pursuant to the U.C.C.) providing that it was also "security for the payment of this note or any note given in extension or renewal thereof *as well as* for the payment of any other obligation direct or contingent [Riss Tanning] to the Bank due or to become due *whether now existing* or hereafter arising. . . ."

Subsequently, federal tax liens were filed against the debtor. A foreclosure of the real estate mortgage resulted in a deficiency of $5,137.52.

The "dragnet clause" the provisions of U.C.C. 9-204(5) as adopted in New York State, which law was applied, resulted in a priority in favor of the chattel mortgagee over the federal lien.

Home Savings Association v. Southern Union Gas Company, 486 S.W. 2d 386 (CCA Texas El Paso 1972)

This was a suit by the seller of gaslights and air conditioners against several defendants, including a savings association, to recover for equipment sold that was installed as fixtures in an apartment house complex.

On April 8, 1966, one Black executed a note to Home Savings secured by deed of trust of even date for the construction of an apartment house complex. Deed of trust was properly filed for record on April 19, 1966, and recorded on April 22.

On March 31, Black purchased 12 gaslights from Southern Union and executed a security agreement and financing statement. On June 14, 1966, Black purchased 16 air conditioning units from Southern Union and executed a security agreement and financing statement. Southern Union filed the financing statement as to the gaslights on May 1, 1966, and filed the financing statement as to the air conditioners on November 2, 1966. Southern Union did not notify Home Savings of its claims until a full five days after Home Savings had foreclosed under its deed of trust. This foreclosure sale occurred on June 6, 1967. Home Savings had no actual knowledge of the claims of Southern Union and the latter received no notice of the foreclosure sale, although notice of the sale was given by Home Savings to Black.

The Court pointed out that there were three possibilities under which Southern Union would have a valid lien. Namely, a Constitutional mechanics and materialmens lien under Article 16, Section 37 of the Texas Constitution; second, a statutory mechanics and materialmens lien; and, third, a lien under the Uniform Commercial Code.

The Court reviewed the doctrine of inception of lien and found that the delivery of those gaslights, as well as air conditioners, occurred after the execution and recording of the deed of trust. The Court, therefore, held that the Constitutional lien of Southern Union had its inception for priority purposes after the deed of trust held by Home Savings and was, therefore, subordinate to the deed of trust.

The Court then reviewed the Uniform Commercial Code provisions and found that the financing statements as filed did not contain a description of the property as required by the code and were, therefore, ineffective to affix a lien. The only description contained on the financing statement was the address of the debtor which the Court held was insufficient under the provisions of the Code requiring a description of the property.

The Court then held that no statutory lien was affixed because the claimant did not file any of the proper mechanics lien affidavits under and by virtue of the terms of the statute.

Eva M. McClellan, et al v. Commercial Credit Corp., et al Berta Phillips, et al v. Royal Fuels, Inc., et al, 350 F. Supp. 1013 (R.I. 1972)

Defendants had attached automobiles (and personal property) under 1956 R.I. General Laws 10-5-1 et seq. which provide for attachment by creditors on commencement of suit.

Held: That attachment prior to judgment was unconstitutional as violative of "due process," citing *Fuentes v. Shevin*, 407 U.S. 67 (1972).

Note: Statute as a whole was declared unconstitutional, although instant cases did not concern real property attachment.

O'Hara Plumbing Company, Inc. v. Larry Roschynialski, et al, 207 N.W. 2d 380 (Neb. 1973)

The lien of one who furnishes material for the repairs and alterations of a building upon land in the possession of the vendee under an executory contract of purchase, is subordinate to the lien of the vendor who retains the legal title to secure deferred installments of the purchase price, except in cases where the

vendor himself promotes the improvement or causes it to be made.

The United States of America, on behalf of its Agency The Small Business Administration v. Donald W. Hans, individually and t/a Modern Bridal Shoppe, and Elizabeth L. Hans, his wife, Civil Action No. 72-1010, in the United States District Court for the Eastern District of Pennsylvania, decided April 12, 1973.

In this case, the defendants filed a petition to vacate and set aside a judgment entered by confession on a warrant of attorney contained in a promissory note executed by defendants in connection with a $45,000.00 loan guaranteed by the Small Business Administration. The petition also sought to vacate and set aside the judicial sale of the defendants' residence that was sold on execution issued on the judgment.

The defendants relied completely upon the case of *Swarb v. Lennox,* 314 F. Supp. 1091 (E. D. Pa. 1970) (3 judge court), aff'd 405 U.S. 191 (1972), the landmark case in Pennsylvania which held that the entry of judgments by confession in certain cases violated the due process clause of the Fourteenth Amendment of the United States Constitution. In *Swarb,* the Courts had held that the entry of judgments by confession against individuals having aggregate income of less than $10,000.00 per year in connection with leases and consumer financing documents was invalid.

Although the defendants in this case were found to be individuals with less than the $10,000.00 per year, the Court held *Swarb* not to be applicable because it concluded that the promissory note was issued in connection with a commercial transaction.

The case indicates that Courts interpreting *Swarb* will limit it strictly to its facts and will not extend the unconstitutionality of judgments by confession beyond the specific language of the Supreme Court in *Swarb.*

National Bank v. Equity Investors, 81 Wn. 2d 886, 506 P. 2d 20 (Wash. 1973)

An unrecorded construction loan agreement giving the lender broad discretion in deciding what sums he must advance, or in deciding if he must make an advance, renders the advances optional rather than obligatory and subject to intervening labor and material liens. Accordingly, the advances secured by a construction loan mortgage are subordinate to such intervening liens.

A title insurance company acting as escrow agent occupies a fiduciary relationship to all parties to the escrow. It acted properly in handing a subordination agreement to one of the parties "without orally advising him of its legal effect or orally directing him to consult a lawyer" where the prior instructions were prepared by the party and the subordination agreement stated in bold type its legal effect and suggested that the party consult his attorney. Had the title insurance company given such advice, it would amount to an unauthorized practice of law and would amount to an "intrusion of one professional consultant upon the affairs of another without the latter's knowledge and consent."

In the Matter of Hi-Tek, Inc., Bankrupt, 352 F. Supp. 1390 (Ky. 1973)

Proceeding upon petition for review of a decision of a referee in bankruptcy disallowing claims as secured claims. The District Court, Swinford, J., held that where, though the bankrupt's lot 5 had been improved by erection of apartment buildings thereon, no contracts had been negotiated for improvement of lot 5a, also owned by the bankrupt, and no construction had been undertaken on lot 5a, petitioners were not entitled to mechanics' liens upon lot 5a.

Kaplan v. Ruffin, 193 S.E. 2d 689 (Va. 1973)

A trustee under a second deed of trust in Virginia can sell only what he has, namely an equity of redemption. In spite of this rule, the Supreme Court held in this case that the trustee could properly agree with the purchaser at foreclosure to satisfy a prior deed of trust out of the sale proceeds and that junior judgment creditors were not prejudiced thereby.

Jamerson v. Lennox, 356 F. Supp. 1164 (E. D. Pa. 1973)

In this class action, plaintiffs attacked the validity of confession of judgment provisions contained in bonds and warrants of attorney executed incidental to the purchase of real estate. The Court held that the decision of *Swarb v. Lennox,* 405 U.S. 174, 91 S. Ct. 2243 (1972), expressly ruled that while confession of judgment provisions employed in consumer financing transactions and leases were unenforceable against the class (composed of natural persons resident in Pennsylvania who earn less than $10,000.00 annually), such provisions were enforceable against the class when contained in bonds and warrants of attorney executed in real estate matters and, accordingly, the Supreme Court decision was resjudicada.

OIL & GAS

Alamo National Bank of San Antonio v. Harry H. Hurd, 485 S.W. 2d 335 (CCA Texas San Antonio 1972) Ref. Nre.

This was a will construction case. The will devised to Jenny "all producing and non-producing oil, gas and mineral royalties, mineral interest, both participating and non-participating, perpetual and term owned by me at the time of my death as distinguished from oil, gas and mineral leases and interest in such oil, gas and mineral leases, all of which are excepted from this special devise to Jenny."

The question was whether or not certain overriding royalties and production payments were included or excluded from the devise to Jenny.

The Court pointed out that an overriding royalty means a given percentage of the production carved from a working interest, but by agreement, not chargeable with any of the expenses of operation.

The Court further pointed out that an oil payment is a share of the oil produced from the described premises free of cost of production terminating when a given volume of production has been paid over, or when a specified sum from the sale of such oil has been realized.

The Court then held that overriding royalties and oil payments were included in the devise to Jenny and much stress was placed upon the Court's construction of the testator's intent not to make any distinction between royalties, overriding royalties and production payments, all of which are non-operating interests and which have basically the same characteristics.

PLANNING & ZONING

Deerfield Estates, Inc. v. Township of East Brunswick, 60 N.J. 115, 286 A. 2d 498 (1972)

Action by a developer to compel the township to install water mains to the subdivision. The final subdivision approval contained a condition imposed by the planning board that water mains must be installed or their installation effectively guaranteed. The developer wrote a letter to the township requesting that the township undertake the required installation and upon refusal, suit was instituted to compel the same.

Held: A municipality which has a planning board and has adopted an adequate subdivision ordinance may impose as a condition of subdivision approval a requirement that necessary water mains be installed and that under certain circumstances, the expense of such installation may be required to be borne by the developer. The case was returned for further proceedings before the planning board and the township committee.

Case of first impression.

Hobbs v. Smith, 493 P. 2d 1352 (Colo. 1972)

Defendant kept two horses in his back yard and exercised all reasonable skill and care in maintaining the property where the animals were kept. No health regulations and no zoning regulations were being violated, but flies were attracted to the general area by the horses, and noxious odors permeated the area of the adjoining property of plaintiff.

Held: Even though no zoning regulations and no health regulations were violated and even though the owner exercised all reasonable skill and care, the Court may grant relief, including injunction, where it is found that the acts complained of constitute a private nuisance.

Adopts modern and majority view that a private nuisance can be enjoined, even though it is permitted under zoning laws.

Next:

Planning & Zoning (Continued)

Constitution and By-Laws Amendments Proposed for Consideration at Convention

(Editor's note: In accordance with Article XI, Amendments or Revision, ALTA Constitution and ByLaws, the following proposed amendments to the ByLaws will be submitted for approval at the 1974 ALTA Annual Convention, September 29 through October 3, in Bal Harbour, Florida.

The proposed amendments are published here and on the following page to provide an opportunity for ALTA members to study them in advance of the upcoming convention. The amendments precede the Article(s) to which they pertain, and hereafter, all copy shown in italics is proposed for deletion. All other words shown are proposed to be left as they now exist in the ByLaws.)

* * *

1. At the 1973 ALTA Annual Convention, amendments to the ByLaws were adopted to replace the former office of Vice President of the Association with the office of President-Elect. It was necessary to include in the adopted amendments transitional language to convert from the office of Vice President to President-Elect. As the transition from Vice President to President-Elect is now complete, it is the recommendation of the ByLaws and Executive Committees that the language presently found in Article VII, Section 1 (a) (2) of the ByLaws be deleted. This Subsection reads as follows:

Article VII, Sec. 1 (a) (2)

(2) *The President shall be elected at the Annual Convention at which these ByLaws are adopted for a term of one year commencing with the adjournment of this Convention and continuing until the adjournment of the next Annual Convention at which time he or she will be succeeded in office by the President-Elect. The former office of Vice President is hereby designated as President-Elect.*

If this Subsection is deleted, present Subsections (3), (4), and (5) will be renumbered (2), (3), and (4), respectively.

2. The Board of Governors has approved the recommendation of the Executive Committee that both the Young Titlemen's Committee and the Liaison Committee be abolished as these Committees have been inactive in recent years. To comply with this action of the Board of Governors, the ByLaws Committee recommends the deletion of all language in the ByLaws referring to both Committees. The language recommended for deletion is as follows:

Article VII, Sec. 4 (a) OTHER COMMITTEES:

The President within thirty days after election shall fill expired terms and vacancies, if any, in *the Liaison Committee,* the Grievance Committee, the Standard Title Insurance Forms Committee and the Standard Title Insurance Accounting Committee and shall appoint all members of the Planning, Judiciary, Liaison Committee with the National Association of Insurance Commissioners, Membership and Organization, Legislative, Federal Legislative Action Committee, Public Relations, ByLaws Committees, *and Young Titlemen's Committee,* and such other committees as may have been authorized by the Board of Governors or by the members at any convention, each to consist of a Chairman and such number of members as he shall deem advisable, unless otherwise provided by these ByLaws.

Article VII, Section 4 (b), Second Paragraph

The Liaison Committee shall be composed of the Immediate Past President, the President-Elect, the Chairman of the Abstracters and Title Insurance Agents Section, the Chairman of the Title Insurance and Underwriters Section, the Chairman of the Standard Title Insurance Forms Committee, and four appointed members. The four appointed members shall be selected on a basis that will at all times afford the Committee broad geographical representation. The President-Elect shall be Chairman of the Committee.

Article VII, Section 4 (b), Sixth Paragraph

The Young Titlemen's Committee shall be composed of persons under a maximum age to be established from time to time by the Board of Governors and who, individually or through company membership are active members of the Association.

Article VIII, Section 10

The LIAISON COMMITTEE, or a subcommittee thereof named by the Chairman, shall work and cooperate

with other national professional or trade associations and with federal government departments and agencies, or with committees or authorized representatives of such associations, departments or agencies, to promote sound legislation and regulations, to prevent unsound legislation or regulations or to accomplish other desirable lawful objectives. Such cooperative effort shall be undertaken only upon specific authorization by a majority of the whole number of the Board of Governors or of the Executive Committee and any undertaking or agreement on behalf of this Association, that shall evolve out of such cooperative effort, shall be subject to ratification by a comparable majority of said Board of Governors or said Executive Committee.

Article VIII, Section 21

THE YOUNG TITLEMEN'S COMMITTEE shall meet semi-annually at the same time and at the same place as the Mid-Winter Meeting and the Annual Convention of the Association, for the purpose of the advancement of the title industry, as well as to arouse the interest of young titlemen and potential titlemen in the American Land Title Association; the encouragement of cordial intercourse among its members; the improvement of the relations between the title industry and the public; and the furtherance of the professional interests of the young members of the Association.

If the listed Sections of Article VIII are deleted, present Sections 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 22, and 23 will be renumbered 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, and 21 respectively.

Mayor Joins in Dedication Ceremonies For Award-Winning Commonwealth Front

Philadelphia Mayor Frank L. Rizzo recently was on hand to help Commonwealth Land Title Insurance Company dedicate a new front on its headquarters building at 1508-10 Walnut Street in that city.

The remodeled structure has a colonial style front, partly in keeping with the company's Philadelphia heritage and partly to symbolize the extent of the company's real estate records, Fred B. Fromhold, Commonwealth president, explained at the dedication.

After the decision to remodel and improve the building, the Walnut Street Association, an organization of neighboring businessmen, presented the company with the association's first "Good Neighbor Award."

At top, left, Mayor Rizzo prepares to cut the ribbon symbolizing dedication of the new front as Fromhold and two Commonwealth employees dressed in colonial costume lend a helping hand. In the photo at lower left, Milton Murland, president of the Walnut Street Association, presents Fromhold with the association's "Good Neighbor Award." A glimpse of the new front is provided at lower right.

names in the news

Richard H. Howlett, executive vice president, secretary, and general counsel of The TI Corporation, has been elected a director of the company.

Howlett, a past president of the California Land Title Association, is active in the American Land Title Association, presently serving as chairman of the Title Insurance and Underwriters Section and on the Executive Committee and Board of Governors of the national association.

* * *

J. D. Eaton has been elected president of USLIFE Title Company of Albuquerque and New Mexico State Manager for that concern.

* * *

Stewart Title Guaranty Company announces the formation of its Fort Worth national division office and the promotion of **Milton Biles,** senior vice president, to its management.

Also, **Edward Macleod** has been named manager of Tarrant County (Tex.) operations for the company.

* * *

Peninsular Title Insurance Company announces the appointment of **Lawrence S. Rosenstrauch** as assistant vice president and assistant counsel with the company's claims department.

* * *

Joseph P. Taylor has been promoted to vice president-chief title officer for First American Title Company of San Francisco.

* * *

The TI Corporation also announces the following appointments; **Maureen L. Brown** and **James T. Yoshioka,** assistant controllers, and **Daniel C. McGill** and **Jack L. Dreiss,** senior accountants.

* * *

USLIFE Title Insurance Company of New York announces the following appointments; **William E. Pfefferle,** vice president-customer relations for Suffolk County; **Stanley A. Shirreffs,** vice president-office manager, Riverhead office; **Edward J. Klinger,** vice president-office manager, Queens County office; and **Michael J. Moriarty,** title officer.

* * *

Michael B. Goodin has resigned as ALTA director of research to become executive vice president of the Texas Land Title Association. **Goodin** had been an ALTA staff member for more than seven years. He also served as executive secretary and assistant treasurer of the Title Industry Political Action Committee (TIPAC).

HOWLETT

EATON

MACLEOD

TAYLOR

ROSENSTRAUCH

GOODIN

Advisors Appointed By Commonwealth

The Advisory Board of Commonwealth Land Title Insurance Company's Metropolitan Washington Division has appointed three new members, according to Hubert A. Mitchell, division president and vice president of the parent company.

The new appointees are: Franklin D. Coburn, president of Northwestern Federal Savings and Loan Association; Charles E. Diehl, vice president and treasurer of George Washington University; and Edward J. Walsh, Sr., president of Thos. D. Walsh, Inc.

New Honolulu Office For First American

First American Title Company of Hawaii, Inc., has moved its headquarters for operations to the new Pacific Trade Center in Honolulu. Company growth since its establishment in 1969 prompted the move, according to Vice President and Manager Amy Yamaguchi.

The concern is a subsidiary of First American Title Insurance Company, Santa Ana, Calif.

St. Paul Acquires Wisconsin Concerns

Two Madison, Wis., title concerns—Abstract and Title Associates, Inc., and Capitol Land Title Agency, Inc.—have been acquired by St. Paul Title Insurance Corporation and have been merged into one branch.

Howard M. Severson, former owner of Capitol, is the new manager and Otto Zerwick, former principal stockholder of Abstract and Title, is serving St. Paul Title as a full-time consultant in business development. Robert Carlson, former major stockholder in Abstract and Title, is now chief title officer.

LAND DATA—Continued from page 6

lists, as suggested above, it will be unnecessary.

7) Require a certain minimum dollar amount for a lien. It will cost the county more to data process some small liens than they are worth. In Philadelphia it is not uncommon to find $2.00 municipal liens. And they are refiled regularly, every five years—over and over again.
8) There should be a reasonable but strict limitation of term on creditors' liens. Five, six, or seven years should be enough time for a creditor to collect the sum due. Renewals should be limited, or prohibited.
9) We should urge universal adoption of one-page standard conveyances. Certain release forms could even be limited to one half page. This would effect a great saving of space in our public offices. One way to enforce this would be to tax a standard document not using a standard abbreviated form.
10) I suggest legislation that all current taxes, special levies and assessments, and all past due taxes, levies, and special assessments, appear on the current tax roll. In other words, if there is any current or past debt, it should appear on the current record. I recall a few years ago in Chicago paying a claim on taxes 35 years old. How can we be expected to economize on a search if we have to examine separate annual tax records for such long periods? Who gains from this archaic practice?
11) Require the same degree of care in preparation and treatment of documents on the part of federal, state, county, and city officials, as private filers. Regrettably, some of the worst record pollution comes from those agencies which seem most willing to accuse us of unreasonable search charges. A deficiency in the income tax of Jeremiah Aloysius Smith should not result in a Federal Tax lien against J. Smith. Yet this is being done. A judgement against Bankers Investment Company should not be indexed under "Company".
12) If and when public records are computerized, we must insist that copies, at cost, be made immediately available, if needed, to title insurors, abstracters, attorneys, lenders, and any other interested party—or combination thereof. This will provide security for the public records, and insure against a later posting or alteration, to the prejudice of anyone relying on the record in the interim. Changes in manually maintained records are obvious. They will not be apparent in a computerized record. Our experience with computerized records would indicate that many changes are going to be made.
13) My last suggestion is out of the blue, but I urge its consideration. I would like to see established on a national level, or a regional or state level, a liaison between ALTA and the National Association of County Recorders and Clerks. These groups could mutually help to solve problems affecting the public records. Our experience shows many public officials welcome title company

expertise, if it comes with no strings attached. The minimum we could do is have observers at one another's conventions.

It is unfortunate that many public officials, especially those newly elected, seem to fear even talking to a title man, lest they be accused of surrendering their judgement to private interests. Let us establish with the NACRC that we have joint legitimate interests, which can be solved easier by cooperation—that we are quasi-public servants—that we are friends and helpers, rather than pirates and profiteers. If the local official knows that we are meeting and talking on a national or state level, he will feel freer to work with us on local problems. Just as important, this dialogue will help us understand the problems facing the public officials.

Let us together try to solve our mutual problems with an interchange of ideas. Let us not fear innovation—let us explore constructive suggestions, because if we do not lead, we will be led. We don't have to wait for the metric system, the parcel identifier, and the cadastre, to start improving our public records. □

ALTA RADIO—Continued from page 7

Minnesota—WWJC, Duluth
Mississippi—WSWC, Greenwood
Missouri—KFRU, Columbia
Montana—KYSS, Missoula
Nevada—KLUC, Las Vegas
New Jersey—WVNH, Princeton
New Mexico—KRKE, Albuquerque
New York—WQBK, Albany
North Carolina—WRNC, Raleigh
Ohio—WTOD, Toledo
Oklahoma—KBYE, Oklahoma City
Oregon—KPDQ, Portland
Pennsylvania—WRIE, Erie
Rhode Island—WICE, Providence
South Carolina—WMVU, Greenville
South Dakota—KXRB, Sioux Falls
Tennessee—KWAM, Memphis
Texas—KCCT, Corpus Christi
Utah—KMOR, Salt Lake City
Vermont—WSYB, Rutland
Virginia—WIKI, Richmond
Washington—KAYO, Seattle
West Virginia—WVPB, Beckley
Wisconsin—WBAY, Green Bay □

meeting timetable

July 21-24, 1974
New York Land Title Association
The Otesaga Hotel
Cooperstown, New York

August 16-17, 1974
Kansas Land Title Association
Salina, Kansas

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 22-24, 1974
Ohio Land Title Association
Sawmill Creek Lodge
Huron, Ohio

September 29-October 3, 1974
ALTA Annual Convention
Americana Hotel
Bal Harbour, Florida

October 27-29, 1974
Indiana Land Title Association
Rodeway Inn
Indianapolis, Indiana

November 13-16, 1974
Florida Land Title Association
Host Airport Hotel
Tampa, Florida

December 4-6, 1974
Louisiana Land Title Association
Royal Orleans
New Orleans, Louisiana

March 4-7, 1975
ALTA Mid-Winter Conference
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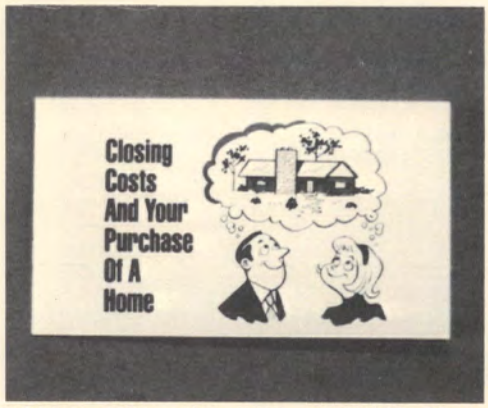

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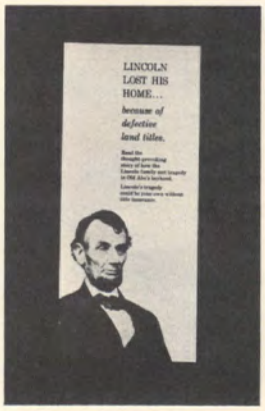

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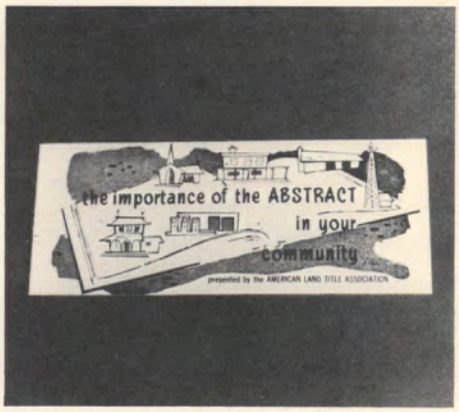

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American Land Title Association