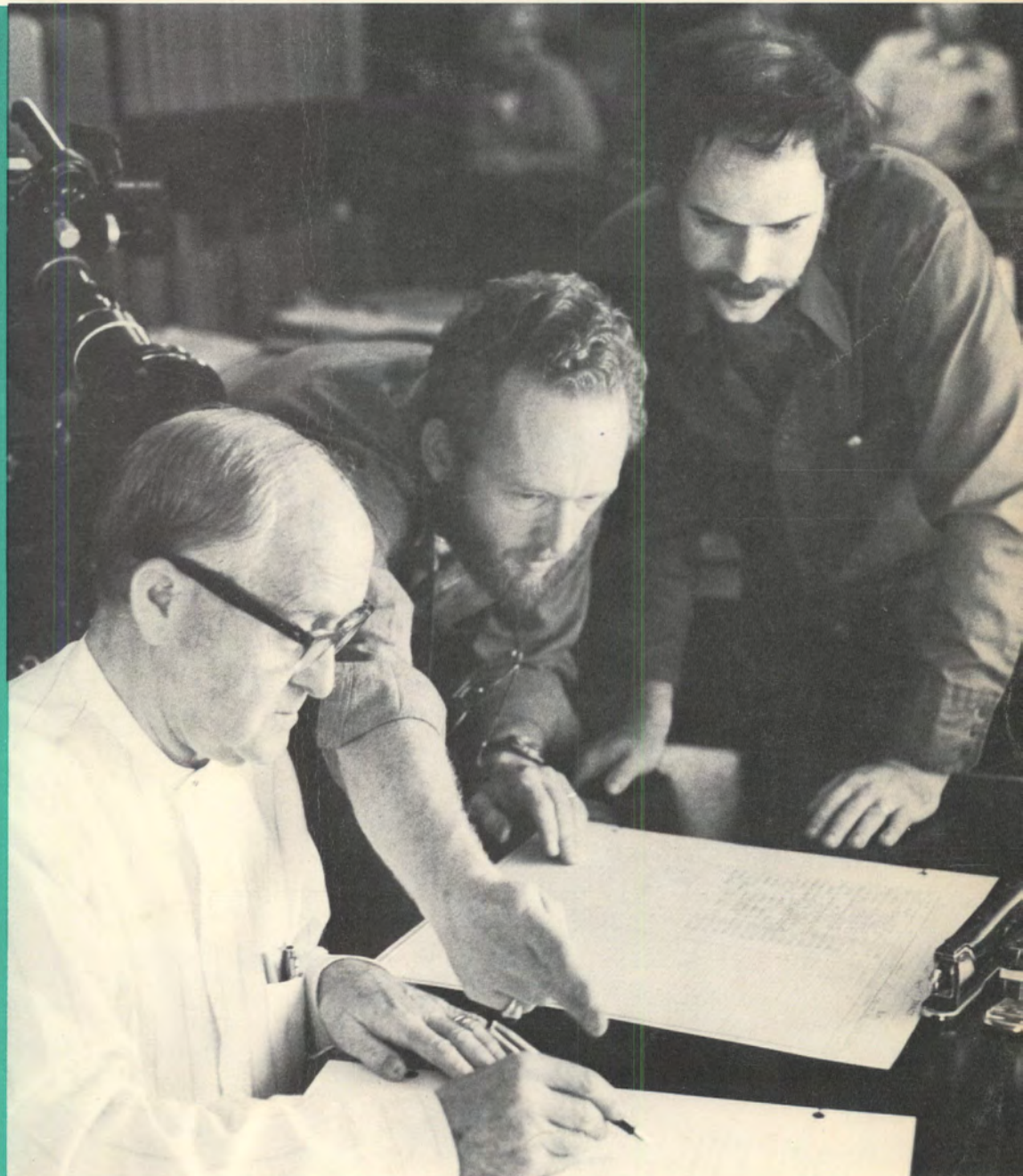


# Title News

*the official publication of the American Land Title Association*



**Shooting  
An Impressive  
ALTA Film**



October, 1974



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

October, 1974

It is a changing, and fast moving, world in which we live. This could not be illustrated more emphatically than by a look at the year that has just been concluded with our Annual Convention.

The economic situation that has faced our nation during the year has approached disaster. We have all faced declining volume of orders, rising costs of doing business, and a period of tight money and prime rates soaring to record highs.

The political situation, believed by many to be the underlying cause for much of our economic stress, is changing so rapidly that I dare not make a statement in an article written today for future release. History alone will record the moves being made today, and whether or not the actions and decisions reached are wise or foolish.

As an industry, and as members of an organized trade association representing that industry, we can only band together with certain lofty yet basic resolutions. First, we must resolve to be informed about the world around us as well as the intricacies of our own trade. Second, we must resolve to preserve our integrity, and respect the integrity of those with whom we deal on a day-to-day basis. We must recognize the fact that our individual acts may have a far reaching effect on our entire industry. We should so conduct ourselves that our actions, rather than being suspect, may be cited as exemplary and as being in a correct and upright manner.

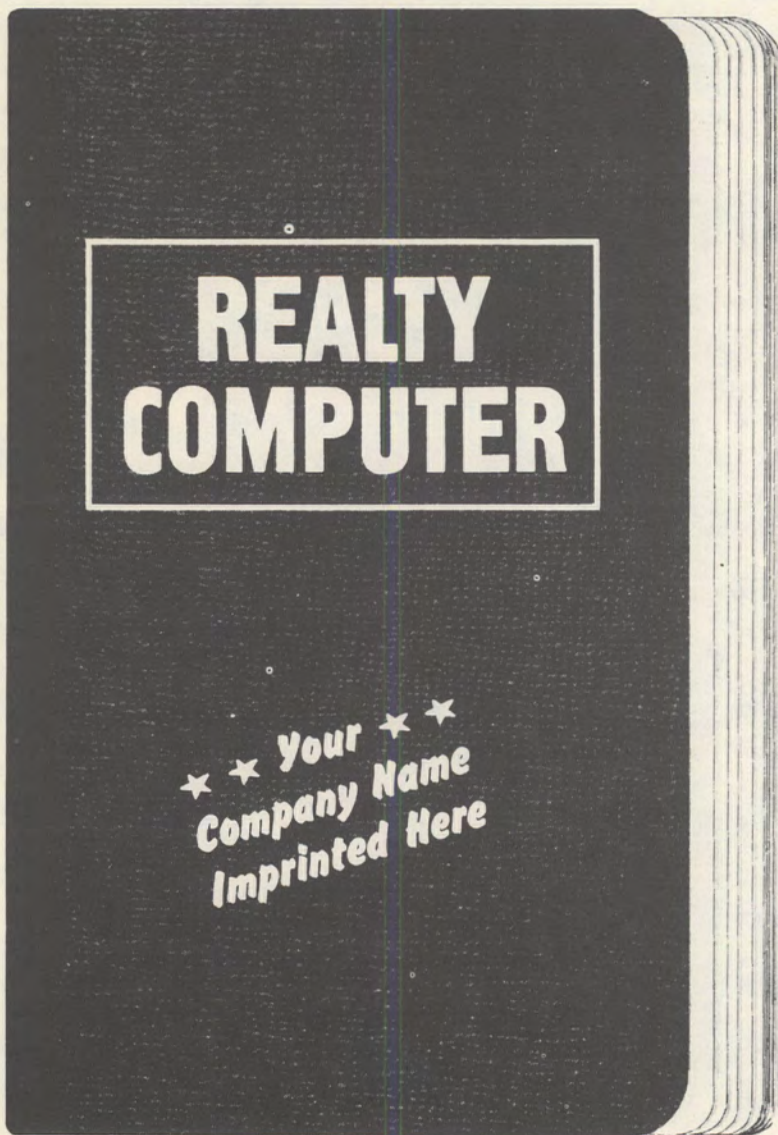
We are a growing and important industry. For the protection of all concerned, the industry and our users, it is apparent that regulation is a "must". Regulation will preserve our industry, and will protect the public. I feel strongly that it must be done on a state level, under local conditions, and under local laws. I urge you—make it work.

The challenge is today, and tomorrow. Our past is behind us, but our life is ahead of us. Let's make it a good one.

Sincerely,

Philip D. McCulloch

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Two ALTA Executive Committee members will represent the Association at affiliated state association conventions this month.

Philip D. McCulloch will travel to Myrtle Beach, South Carolina, for the Carolinas Land Title Association convention, October 25-26. Richard H. Howlett will speak at the Indiana Land Title Association convention, which will be held October 27-29 in Indianapolis.

\* \* \*

The ALTA Standard Title Insurance Accounting Committee met recently in San Antonio, Tex., to discuss changes that may be proposed to the NAIC for its NAIC Form 9. Twenty-three ALTA members attended the meeting, including both committee members and other land title professionals.

\* \* \*

During a recent ALTA Research Committee meeting in Chicago, discussion included changes in the annual ALTA claims report—as well as the ALTA annual report of title insurer operating statistics based on NAIC Form 9 information. In addition, the committee discussed plans of a task force to be headed by Leroy F. King, committee member, which will study the feasibility and desirability of a national title insurance statistical service facility. The task force was scheduled to meet in late September.

\* \* \*

ALTA Director of State Governmental Affairs Ralph J. Marquis advises that a number of state legislatures have reconvened after summer adjournment, while a significant percentage of other state legislatures may not return for the remainder of this year. Since inception of the ALTA State Legislative Reporting Service under Marquis, earlier this year, six State Legislative Bulletins have been issued to member subscribers; they report, in digest form, legislation enacted in the various states that is of interest to the land title industry.

A meeting of the State Legislative Reporting Service Committee—comprised of Joseph D. Burke, chairman; Robert Kratovil; and Ray E. Sweat—has been scheduled for the 1974 ALTA Annual Convention.

\* \* \*

ALTA this year will again sponsor the Consumer Information Category of the National Association of Realtors tenth annual Creative Reporting Contest. This is the sixth consecutive year that ALTA has sponsored this category in the contest for journalists.

The National Association of Real Estate Editors had commended both ALTA and the Realtors Association for their decision to arrange this sponsorship instead of ALTA establishing a separate award program in these days of proliferated award-giving.

The sponsorship is an activity of the ALTA Public Relations Committee, chaired by Bill Thurman.

\* \* \*

ALTA Business Manager David R. McLaughlin advises that due to the rising costs of printing, the price of the 1975 ALTA Directory will be \$3.00 per copy plus postage.



# Title News

*the official publication of the American Land Title Association*

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ON THE COVER: Jim Andrews (nearest camera), employee in the Title Insurance and Trust Company Los Angeles closed file-records center, wears a shirt common in earlier years of the land title industry as he prepares to appear in a scene of a new ALTA promotional film for member use. Offering pointers are Bob Brown (center), cameraman, and Mike Tomack, director, both part of the film production unit. For additional details, please see page 4.

*VOLUME 53, NUMBER 10, 1974*

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*GARY L. GARRITY, Editor*

*RICHARD W. RONDER, Managing Editor*



# ALTA Completes An Impressive Film

*The production tells about land title protection in a warm, appealing way—and allows time for local details after showing*

**P**ictured above is a house in Los Angeles that will help ALTA members across the nation tell the story of land title protection in a warm, appealing way.

The home is featured in "1429 Maple Street", a new ALTA 16 mm color sound promotional film now available for purchase by members of the Association. An 11-minute running time allows a period after showing the film for explanation of local land title protection to audiences in particular communities.

In the film, the story centers on a house, the different families that own it over half a century, and the land title problems they encounter. Emphasis is on the benefits of a title search, review of title evidence, and owner's title insurance as the land title industry provides security against related hazards for real estate investors.

Filming of "1429 Maple Street" was completed in the Los Angeles area earlier this year. Corporate Productions, Inc., the Hollywood-based producer, worked closely with the ALTA Public Relations Committee and staff on the project. Stars of the film include employees of Title Insurance and Trust Company—and employees of the Los

Angeles Tri-Plant owned by California Land Title Company, Chicago Title Insurance Company, Lawyers Title Insurance Corporation, Los Angeles Land Title Co., and West Coast Title Company. All performed admirably in this

Continued on page 16

Photographs taken during the shooting of the new ALTA promotional film, "1429 Maple Street", earlier this year include, top, left, Jim Greer, unit production manager, checking properties on desk before Dennis Plank of Title Insurance and Trust Company (right) plays an attorney in a scene. Engaged in a script conference on location at top, right, are (from left) Mike Tomack, director; Dick Ridgeway, producer; Gary Garrity, ALTA director of public affairs; and Jack Jones, writer. In middle row, left, a scene is shot in which the son of a former owner of the house in the film presents a land title claim under the will of his late father. At center in middle row, Mrs. Gladys Snyder of Title Records, Inc., initiates a computerized land title search before the camera. The film crew gaffer checks a light meter reading before the shooting of another scene at middle row, right. In the lower photograph, another scene shows the son of the deceased former owner and his attorney discussing the son's land title claim with attorneys for a title insurer. Three TI employees featured in this scene are, from left, Pat O'Toole, Larry Newland, and Robert Hanson.



# Part VI: 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 Osborne reports that 98 cases have been selected for publication in this year's report. For previous installments, please see the February, April, June, July, and September, 1974, issues of *Title News*.)

\* \* \*

## TITLE INSURANCE (Continued)

*Horrox v. Duplicki*, 20 Chester 265, 55 D.&C. 2d 725 (Pa. 1972)

Title Company listed as an exception on its interim binder certain mineral rights to which reference was made in a deed recorded in 1791. At the settlement between the sellers and buyers, the Title Company refused to remove the exception and both buyers and their mortgagee refused to accept the premises subject thereto.

The sellers subsequently obtained a commitment from another title company to insure the premises without exception as to the mining rights.

Upon suit by the sellers for specific performance of the contract to sell, the only issue was whether or not the sellers were able to convey a title which complied with the title requirements of the contract of sale. The contract provided that "... title ... shall be good and marketable or such as will be insurable by any reputable title insurance company at its regular rates."

The Court held that the production by the sellers of a commitment from a reputable title company satisfied the contractual obligation and the fact that one or more title companies determined the title to be unmarketable was not material.

*Maudine D. Neese Conway v. Title Insurance Company, a corporation*, 7ABR Decided in the Supreme Court of Alabama (1973)

Gulf Development Company made a mortgage to the appellant herein to secure a loan made by Gulf by the appellant. The land covered by the mortgage included a large number of lots in two subdivisions being developed by Gulf, including Lot 8, of the First Unit of Gulf Hills Subdivision. Lot 8 was sold to one Andrews and Andrews subsequently made improvements on the house and lot amounting to \$5,500.00. As each lot in the subdivision was sold, by Gulf, the lots would be routinely released from the mortgage upon the payment of \$1,200.00 to Mrs. Conway, the mortgagee. All the lots in the subdivision had been so released, except Lot 8 which was sold to Andrews. Andrews, upon purchasing the lot, failed to obtain a release from the appellant, Conway. Appellant, Conway, was fully aware of this releasing procedure.

The evidence in the Lower Court showed that Mrs. Conway was aware of the sale of Lot 8 to Andrews and that the lot had not been released from her mortgage. Subsequently, Gulf became in default on the mortgage and Mrs. Conway foreclosed the Gulf mortgage and obtained a foreclosure deed; and the very next day she procured, from title insurance company, the policy of title insurance here sued on. The Circuit Court of Mobile County set aside the foreclosure sale because of the misconduct of appellant or her agents in attempting to conceal from Andrews the fact that he could clear his title by paying \$1,200.00 for release of his property from the mortgage. The decree was based on the fact that the appellant engaged in conduct deliberately calculated to conceal from Andrews the existence of a mortgage lien upon his home.

Whereupon, Mrs. Conway appealed to the Supreme Court of Alabama, brought an action at law for damages against title insurance claiming she had suffered damages resulting from a defect in the title to the property which had been insured by title insurance. The policy issued to Mrs. Conway insured her against loss or damages not exceeding \$50,000.00 which she could sustain

by reason of "any defect in, or lien or encumbrance on the title to the estate, or interest covered hereby in the land described, or referred to in Schedule 'A,' existing at the date hereof, subject to the provisions in Schedules 'A' and 'B,' and to the conditions and stipulations hereto attached, all as of the effective date of this policy." It was stipulated in Schedule "B" that: This policy does not insure against loss or damage by reason of the following: defects, liens, encumbrances, adverse claims against the title as insured or other matters known to the insured, either at date of this policy or the date such insured acquired an estate or interest insured by this policy, and not shown by the public records, etc.

Held: The Court held that Mrs. Conway should not recover under the policy herein involved because a defect in the title was known to Mrs. Conway and was not of public record and had never been made known to the insured in writing, and, further, that such defect resulted from the fact that Andrews was in possession of the property at the time the policy was issued. The Court ruled that it is not uncommon for title insurance policies to contain clauses excluding or excepting from coverage "defects, liens, encumbrances, or adverse claims against the title as insured or as other matters," when such defects are created, suffered, agreed to or assumed by the insured, and are known to the insured, at the date of the policy, but are not shown by the public records, nor disclosed by the insured in writing. Such limiting conditions are not unreasonable, are set forth in clear and unambiguous language, and have been recognized repeatedly. *Lawyers Title Insurance Corp. v. Research Loan and Investment Corp.*, 361 F. 2d 761.

*Southern Title Guaranty Company, Inc. v. Prendergast*, 494 S.W. 2d 154 (Texas 1973)

Prendergast brought suit on his title insurance policy after losing a \$25,000 sale of 22 acres when the purchaser claimed that a one-tenth undivided interest in the tract remained outstanding in Theresa Matlage. Two trials and two appeals preceded the present opinion of the Supreme Court of Texas.

The questions presented were: (1) Whether the insured can sue on a title policy merely because of failure of his title. (2) Whether



Prendergast proved the existence of an outstanding interest. (3) How are damages to be computed under the "proportionate reduction clause" found in Texas title policies?

The company insisted that eviction should be a prerequisite to such a suit because of a policy clause which stated, in part: "\*\*\*and said Company shall not be liable until such adverse interest, claim, or right shall have been held valid by a court of last resort to which either litigant may apply..."

The Court rejected the company's argument saying: "The policy contract begins by saying in emphatic type: 'The Southern Title Guaranty Co., Inc. . . . Does hereby guarantee to Vincent Prendergast and wife, Leola Prendergast . . . that they have good and indefeasible title to the following described real property . . .' This is the basic assurance of the contract, and a failure of that guarantee gives rise to a cause of action for damages. It would be a substantial reduction of that assurance to make the insured bear his detriment until the owner of the superior title is found and sued to judgment; the policy will not be given that effect in the absence of language more explicit than the provision advanced by the company and quoted above."

The Court went on to hold that Prendergast, by showing that a previous title holder acquired title while married and that he had acquired the interests of all of the children of that owner except one, had proved the outstanding interest. The Court noted that it is presumed that the property was acquired as community and referred to insufficient evidence of any suggested adverse holding.

Reaching the damage question, the Court encountered the "proportionate reduction clause" of the policy. It provided that if there is established an outstanding interest in "less than the whole of the property, then the liability of the Company shall be only such part of the whole liability limited above as shall bear the same ratio to the whole liability that the adverse interest, claim, or right established may bear to the whole property, such ratio to be based on respective values determinable as of the date of this policy."

The Court said that this clause was not limited to the situation where title to a physically identifiable segment of the acreage is established.

"It applies in all cases where there is a loss of title 'for less than the whole of the property' - meaning anything less than the title and acreage insured. It simply means that the parties deal with the insured property on the assumption that its value is equal to the amount of the policy, and this assumption is to be applied whether the insured loses part or all of what the policy insures."

The Court, in holding thus, overruled *Shaver v. National Title & Abstract Co.*, 361 S.W. 2d 867 (Texas 1962) "to the extent of the inconsistency."

The formula stated by the Court for determining Prendergast's recovery under the "proportionate reduction clause" was: "[T]he liability of the insurance company (X) is to the whole liability or policy limit (A) as the

value of the outstanding interest (B) is to the value of the whole property without an outstanding interest (C), or  $X/A = B/C$ . \*\*\*Under the express terms of Prendergast's policy, the values of B and C are determined as of the date of the policy.

"If the amount of the policy is the same as the value of what is insured, the assumption of the policy is correct and the recoverable loss is the value of the outstanding interest. This value may or may not bear the same fractional relationship to the total value as the undivided interest or portion of the land area (lost to the insured) bears to the whole title and property. \*\*\*If the market value of the whole property and the policy amount differ, the ratio of the quoted provision must be applied."

The Company had tried during the trial to introduce a quit-claim deed from the heirs of Theresa Matlage which it claimed cured the defect, but the Trial Court refused to admit it. The High Court found that the deed should have been admitted and remarked that, "if upon a new trial . . . the defect [appears] cured, [the] damages will be no more than nominal."

*Transamerica Title Insurance Company v. Ramsey*, 507 P. 2d 492 (Alaska 1973)

Mary Ramsey sued the title company alleging that it had breached its contract to furnish a suitable title insurance policy and had negligently breached a duty owed her. The Trial Court directed a verdict for the defendant on the contract claim, but submitted the negligence claim to the jury which returned a verdict for plaintiff of \$30,000.00 special damages and \$5,000.00 general damages.

Ramsey had advised the title company that she wanted "whatever is supplied by a title company to permit me to sell a valid piece of merchandise . . ." She owned the tract as a tenant in common with her former husband, Smith. She explained that Smith was out of town and that she intended to use a power of attorney Smith had given her in 1952. After examining the power of attorney, the company issued a commitment letter showing that title was vested in Stanley E. Smith and Mary Smith, his wife. It did not mention the power of attorney. Unknown to Ramsey, Smith had recorded a revocation of the power earlier that year and a copy was on file with the title company.

A few months after Ramsey concluded the sale (for \$45,925.00), Smith returned and sued, claiming the sale invalid and, alternatively, half the proceeds. After tendering defense of the suits to the title company, Ramsey's attorneys settled with Smith for \$25,000.00. The purchasers stopped payment for a time after Smith's suit, but eventually paid Ramsey the full price. Meanwhile, however, she had been forced to borrow \$4,500.00 and to incur attorneys fees and interest charges.

The title company contended that since the Court found it to be not liable for breach of contract, that the issue of negligence should not have been submitted to the jury. The Supreme Court of Alaska rejected this argu-

ment, and noted that there were sufficient facts for the jury to have found that the title company knew of Mrs. Ramsey's intention to enter into the contract of sale by use of the power of attorney and that it knew she intended to rely on the information she received as to her capability to conclude the transaction. Under those circumstances, the jury could find that the company breached a duty owed to Ramsey by failing to reveal that the power of attorney had been revoked.

Turning to the issue of damages, the \$5,000.00 award of general damages was for Ramsey's mental suffering, anguish, embarrassment and humiliation. This award was not contested by the company. In examining the special damages awarded by the jury, the Court stated: "In suits based on misrepresentation the damages must be established with reasonable certainty and must not be speculative or contingent. Mrs. Ramsey is entitled to be replaced as nearly as possible in the position she would have occupied had the title company advised her that the power of attorney had been rescinded. She is not, however, entitled to recover more than the loss actually suffered. Moreover, the loss must be proximately caused by the defendant's conduct."

After examining the various attorneys fees claimed as part of the special damages, the Court found some of them to have been incurred in matters not proximately caused by the title company's breach of duty and reduced the allowable special damages to \$12,331.00.

The title company also contended that Ramsey was contributorily negligent because she had retained an attorney other than the firm which represented her in this case to handle the sale of the property out of which this case arose. The title company's position was that if it was negligent in failing to advise that the power of attorney had been revoked, that Mrs. Ramsey's attorney was likewise negligent and that this negligence should be imputed to her and bar her recovery. Contributory negligence was not pleaded as a defense in the company's answer as required by the Alaska Civil Rules. The Supreme Court held that the Trial Court did not err in refusing to instruct on contributory negligence.

The Court also ruled:

(1) That the title company could not contend that a client is barred from recovery due to constructive notice of a recorded instrument, since ascertaining the status of records is one of its principal functions.

(2) That there was no error in the Trial Court's admitting a title insurance policy subsequently issued by defendant to an Alaska bank on the property which policy also failed to mention that the power of attorney had been revoked. The Court noted that the evidence was relevant in reflecting on the credibility of the title company's agent's testimony that he had qualified his opinion with a warning that the power had been revoked tending to prove that the failure to find the

Continued on page 14



*William J. McAuliffe, Jr.*  
*ALTA Executive Vice President*

## ALTA Group Insurance A Competitive Benefit

Since 1957, ALTA members have been offered a competitive fringe benefit for their employees through the Association group insurance program. At present, this includes life, medical, accidental death and dismemberment, and salary continuance protection. In life insurance alone, there are 177 title companies insuring nearly 1,200 employees in amounts up to \$25,000 for an aggregate total of more than \$12.5 million.

A major advantage of ALTA group insurance is found in money-saving low rates—and in dividends that are paid to participants of record whenever conditions permit. In this latter regard, it should be pointed out that—despite current inflation—the ALTA Group Insurance Trustees have been able to approve a return of 30 per cent of annual premium on life insurance to participants of record on August 2, 1974. Also, the Trustees have approved a return of 5 per cent of premium to medical plan participants of record.

ALTA Group Insurance Trustees include working titlemen who are directly acquainted with the needs and problems of our industry. They are Chairman Robert M. Beardsley, Douglas County (Ore.) Title Company; Richard E. Fox, Chicago Title Insurance Com-

pany; Arthur L. Reppert, Clay County (Mo.) Abstract Company; and myself.

In addition, the ALTA group insurance program is professionally administered by a consulting organization according to guidelines set down by the Trustees. This has allowed prudent and well-directed management.

While ALTA group life insurance is relatively familiar, it will be helpful to use this space as a reminder of outstanding features in the three other types of coverage mentioned above.

The medical plan pays for many typical medical and hospital expenses in full. After these basic benefits are exhausted, the insured or his/her employer pays the next \$100 in related expense. After that, the plan pays 80 per cent of most additional expenses—with the insured or his/her employer paying the other 20 per cent. Regardless of how extensive hospital and medical expenses may be, the most the insured or his/her employer will pay in a calendar year is \$1,000. Depending on age, employees under 40 and their families can obtain this excellent medical protection for \$37.21 to \$47.33 per month at current rates—with specific charges relating to coverage options selected.

The accidental death and dismemberment plan provides coverage up to

\$15,000 and coverage may be purchased by any ALTA member or employee thereof. This coverage may be purchased in amounts of \$10,000 or more at \$0.77 per \$1,000 per year.

The salary continuance protection plan is the most recent coverage available through the ALTA program and allows member companies to provide a benefit of 50 per cent of salary up to \$1,000 per month. Historically, only larger companies have been able to offer this type of benefit that is now available to any ALTA member.

In the future, ALTA Group Insurance Trustees will continue to offer the best possible coverage through the program—at the lowest attainable rates. There is no financial profit to ALTA in this activity—although the Trustees do realize personal satisfaction from helping members better meet their insurance benefit needs.

For ALTA members who have not already enrolled in the program, it would be worthwhile to write for related information to ALTA Group Insurance Trust, 209 South LaSalle Street, Chicago, Illinois 60604. There is no obligation and the information received just might help in structuring a more competitive employee benefit package.

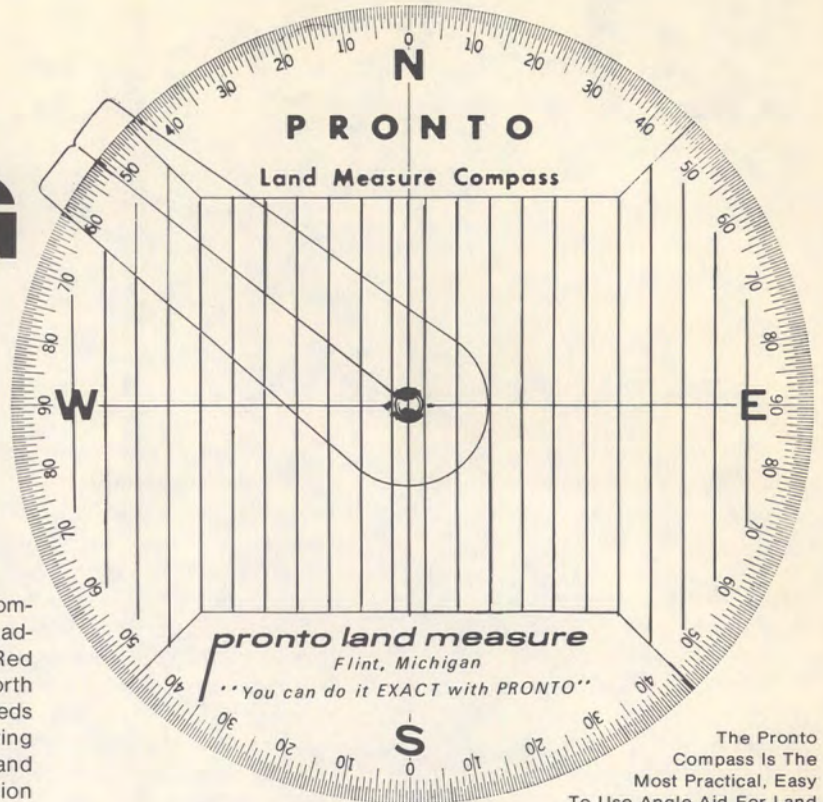
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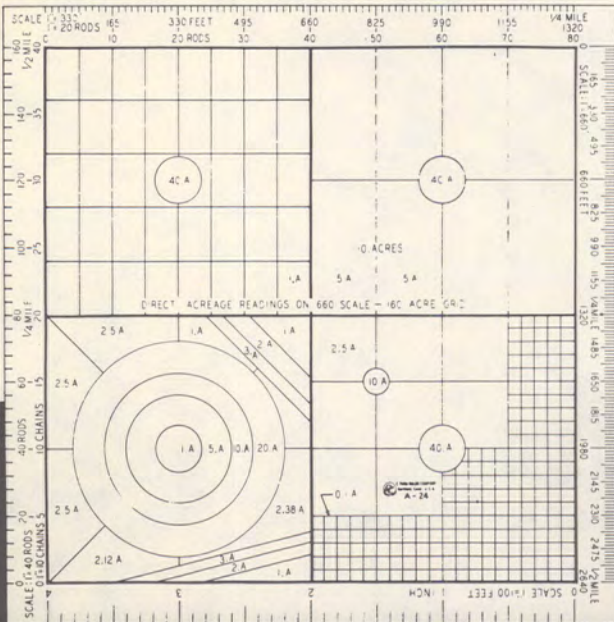
4 Square Area Scales may be used for direct acreage readings from Aerial Survey Maps to 660 feet = one inch. Agencies of the United States Department of Agriculture, Agricultural Stabilization and Conservation Service (ASCS), Soil Conservation Service and many other governmental agencies use 660 scaling in their land plotting.

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## Underwriter Boards Choose Presidents

Two titlemen have been elected president of their respective state boards of title underwriters. Richard Marcus, executive vice president of the New York division of Commonwealth Land Title Insurance Company, New York City, is the new president of the New York board and Burton A. Steen, resident vice president of Chicago Title Insurance Company, Boston, will head the Connecticut board.

Other New York board officers include Lee B. Freedman, Lawyers Title Insurance Corporation, vice president, and Justin Winston of Metropolitan Title Guaranty Company, alternate vice president.

Donald C. Holden, Pioneer National Title Insurance Company, has been elected vice president of the Connecticut board.

T. Richard Kennedy of the firm of Werner, Kennedy and French, will serve both the New York and Connecticut boards as counsel and secretary-treasurer.

The New York and Connecticut Boards of title underwriters are voluntary associations of title insurance companies licensed by their respective state insurance departments as title insurance rating organizations.

## Burton Steen Elected NELTA President

Burton A. Steen, resident vice president, Chicago Title Insurance Company, Boston, was elected president of the New England Land Title Association at its convention recently held in Falmouth, Mass. The convention was well attended by members from its six-state region.

Other newly-elected officers are: Donald C. Holden, Pioneer National Title Insurance Company, first vice president; C. Willis Thompson, Commonwealth Land Title Insurance Company, second vice president; T. Raymond Pearson, Security Title and Guaranty Company, secretary; and Lawrence F. Scofield, Jr., USLIFE Title Insurance Company, treasurer. Marcellus Best, Union Trust Company, Henry Kellerman, Lawyers Title Insurance Corporation, and H. David Leventhal,

Leventhal & Krasow, were elected as members of the executive committee.

Current ALTA activity was discussed by Gary L. Garrity, the Association's director of public affairs. Among the convention's highlights was an address on federal settlement reform legislation by Congressman Robert G. Stephens, Jr., (D-Ga.), a member of the House Banking and Currency Committee. Other aspects of federal settlement legislation were the subject of a separate address by William T. Finley, Jr., Washington, D.C., attorney.

The program, which focused on varying topics, included a panel discussion of "New Methods of Financing" featuring—as panelists—George Steiner, Marvin C. Bowling, Jr., John Kramer, and H. David Leventhal.



Recently-elected New England Land Title Association officers are pictured above. They are, standing, from left, Lawrence F. Scofield, Jr., USLIFE Title Insurance Company, treasurer; Robert G. Bannon, Security Title and Guaranty Company, past president; Henry Kellerman, Lawyers Title Insurance Corporation, executive committee member; and, seated, from left, T. Raymond Pearson, Security Title and Guaranty Company, secretary; Donald C. Holden, Pioneer National Title Insurance Company, first vice president;

Burton A. Steen, Chicago Title Insurance Company, president; and C. Willis Thompson, Commonwealth Land Title Insurance Company, second vice president. Marcellus Best, Union Trust Company, and H. David Leventhal, Leventhal and Krasow, (not pictured) are newly-elected executive committee members. In the photo at right, ALTA Director of Public Affairs Gary L. Garrity (left) talks with Congressman Robert G. Stephens, Jr. (D-Ga.), during a break in convention proceedings.



## TI Home Owner Coverage Expanded

Title Insurance and Trust Company has announced that the coverage of its standard home owner's title insurance policy is being expanded in California.

According to a news release, coverage of this standard policy in the past has been limited to defects revealed by examination of public records and certain off-record hazards such as forgery of a deed or legal incompetency of former owner. The new "T.I.PLUS" California policy broadens coverage to protect owners against:

- Lack of access from property to a public street
- Hidden taxes or assessments that are liens against property at date of purchase but are not disclosed until a later date
- Existence at date of purchase of unrecorded liens for labor or materials for which purchaser has not accepted liability
- Damage to residential improvements if they encroach onto adjoining land, onto recorded easements, or onto unrecorded subsurface easements
- Violation of covenants, conditions, or restrictions shown in the policy or any violation of municipal zoning ordinances which interfere with the use of property for residential purposes
- Damage to residence or other improvements that results when the holder of reserved mineral interests in the land elects to exercise his right to explore for and remove minerals

In addition, the company announced that the new home owner policy will protect against inflation by increasing the insurance in force up to ten per cent of the original policy without extra

of the new policy have been available to owners in California with extended coverage premiums.

being made available, one-to-four-

## Merrill New Idaho Association President



Pictured above are newly-elected officers of the Idaho Land Title Association at their 1974 convention, held this year at the Shore Lodge, McCall, Idaho. The officers are, from left, E.B. Ponack, Nez Perce County Title Company, vice president—northern district; Jeanette Pauli, The Title Insurance Company, vice president—southwestern district; L.S. Merrill, Land Title Company, Inc., president; Lois Jepson, Jerome Abstract and Title Company, secretary-treasurer; and Gary E. Brown, American Land Title Company, Inc., vice president—southeast district. Convention speakers included William J. McAuliffe, Jr., ALTA executive vice president; Oscar H. Beasley, vice president and counsel, First American Title Insurance Company; Robert C. Mitchell, assistant general counsel, The Title Insurance Company; Jack H. Johns, vice president, Lawyers Title Insurance Corporation; and H. Collyer Church, associate counsel, Pioneer National Title Insurance Company.

family dwellings and condominiums.

Also, the company announced that it has filed with the state insurance department a schedule that includes a rate increase described as modest. This increase is the first for the company since 1971 when rates went up an average of 5 1/2 per cent.

## Winston Named To New York Helm

Justin Winston, Metropolitan Title Guaranty Company was elected president of the New York State Land Title Association at its fifty-third Annual Meeting and Convention in Coopers-town, N.Y.

Other newly-elected NYSLTA officers are: Gary Seltzer, Commonwealth Land Title Insurance Company (New York Division), vice president; John H. Watson, Central New York Abstract Corporation, vice president; Robert W. Gericke, The Title Guaranty Company, vice president; Howard J. Missbach, The Title Guaranty Company, treasurer. John A. Albert was named to continue as executive vice president.

## Revision Completed



Arthur G. Bowman, left, discusses his two-year job of revising the 900-page *Ogden's Revised California Real Property Law* with Richard H. Howlett, The TI Corporation executive vice president and chairman of the ALTA Title Insurance and Underwriters Section. The two-volume book was revised by Bowman, a real estate law specialist, in coordination with Tigor and was published by the Committee for Continuing Education of the Bar, University of California Extension, Berkeley. The book emphasizes title insurance aspects of real property law in California.

names  
 names in the news  
 names

Lawyers Title Insurance Corporation announces the following promotions: **Charles T. Kimery**, assistant vice president—sales and marketing; **Marvin H. Barish**, Illinois state counsel; **Robert P. Craig**, assistant Florida state counsel; **Nicholas Volino**, Michigan state counsel; **Ronald D. Feldman**, Detroit branch counsel; and **Gabriel A. Ivan**, **Stephen G. Johnakin**, and **Peter F. Welch**, all senior title attorneys at the company's home office in Richmond, Va.

Other appointments include **Lana F. Wittруп**, manager of the Adrian, Mich., office; **Leonard L. Spangler, Jr.**, manager of the West Palm Beach, Fla., office; **William J. Pudlo**, manager of the new branch office in Springfield, Mass.; and **Louis J. Poggione**, manager, and **Wallace W. Bohning**, counsel, of the newly-created Jackson County (Ore.) title division branch office. The Jackson County Title Company—predecessor of the aforementioned branch—was formerly a Lawyers Title subsidiary.

\* \* \*

The Title Insurance and Trust Company has named **Gene D. Merlo**, manager, and **Thomas L. Pellerin**, sales manager, of the company's El Monte (Calif.), office.

\* \* \*

**Robert E. Ellis** has been elected vice president and associate general counsel of Chicago Title and Trust Company and its wholly-owned national subsidiary, Chicago Title Insurance Company.

\* \* \*

USLIFE Title Insurance Company of Dallas announces the transfer of **Sid W. Terry** from the company's accounting department to its agency department.



KIMERY



BARISH



CRAIG



VOLINO



FELDMAN



IVAN



JOHNAKIN



WELCH



WITTRUP



SPANGLER



PUDLO



POGGIONE



ELLIS



TERRY



SELMI



ANDERSON



KARAHAL



TRUDEL



RIORDAN

**William Selmi, Jr.** has been appointed assistant counsel for the American Title Insurance Company.

\* \* \*

**Brian E. Anderson, Jr.** has been appointed assistant vice president of Peninsular Title Insurance Company in charge of the company's new Atlanta, Georgia, divisional marketing office.

\* \* \*

**Arthur M. Guy, Jr.** has been appointed to the staff of First American Title Insurance Company's national business development division.

\* \* \*

Southwest Title Insurance Company announces the appointment of **George A. Karahal** as treasurer of the Dallas-based company.

\* \* \*

The following appointments have been announced by Commonwealth Land Title Insurance Company: **John P. Rapp** and **Bernard Auerbach**, vice presidents and regional counsel; **Lawrence E. Kirwin**, vice president; **Noah D. Cutler**, vice president and associate counsel in charge of the title claims department; **William S. Clark**, assistant vice president; and **Robert J. Hassell**, assistant manager of the West Philadelphia office.

**Robert F. Wessler** has been elected a vice president of Commonwealth after the company's acquisition of the Louisville Title Agency of Northeast Ohio, Inc., Cleveland, with whom he was previously associated.

Special corporate appointments for the company's Gulf Coast Division include **Harold E. Goubil**, vice president and division head; **Herbert Baumer**, **Paul O. Burch**, **William M. Heard, Jr.**, and **Roberdeau D. Geist, Jr.**, all assistant vice presidents; **Nita F. Childs**, assistant treasurer; and **Robert H. Goodloe, Jr.**, **James K. Merrihew, Jr.**, **Terrence W. Nash**, and **Lawrence A. Gardina**, assistant secretaries. Also appointed are **Diane S. Wacker**, assistant secretary and escrow branch manager; and **Rebecca Buck Fountain**, **Cecil E. Brinson**, and **Marshall J. Spurlock**, title officers.

St. Paul Title Insurance Corporation has appointed **Jack W. Dorricott** to the newly-created position of training director in the employee relations department.

\* \* \*

**Robert P. Trudel** has been elected an assistant vice president of the Security Title and Guaranty Company.

\* \* \*

**Ray Constand** has been appointed vice president and manager of the newly-established Arapahoe County office of First American Title Company of Colorado.

\* \* \*

Investors Title Insurance Company announces the appointments of **Gil Bocetti, Jr.** as president and director and **Carl E. Wallace, Jr.** as vice president.

\* \* \*

**Dale P. Riordan** and **Richard W. Ronder** recently have joined the ALTA Washington staff.

**Riordan** is ALTA director of research. An economics graduate of the University of Maryland, he previously was engaged in economic research for the past year with The Urban Institute in Washington.

**Ronder** is ALTA public relations associate. His responsibilities include serving as *Title News* managing editor. He is a graduate of Tulane University and previously was active in newspaper work and free-lance writing in the Boston area for two years.

## Mid-South Awards Law Scholarship

An annual, full tuition scholarship to the Law School of Vanderbilt University has been awarded to Louis Jay Miller by Mid-South Title Company.

George M. Houston, chairman of Mid-South, presented the scholarship after Miller, 22, was selected from among a group of candidates by a Memphis and Shelby County Bar Association committee.

Miller was graduated from his undergraduate studies at Vanderbilt last June.

## New Branch Opened By Commonwealth



Commonwealth Land Title Insurance Company recently opened a new branch office in Indianapolis. Pictured above at dedication ceremonies are, from left, Ferril Ressinger, executive director of the Indiana Real Estate Association; Bruce L. Nelson, Commonwealth vice president and branch manager; and Robert M. Carriger, vice president of the Indianapolis Board of Realtors.

## Computer Speeds Chicago Title Work

Chicago Title Insurance Company has recently installed a new computer in its Cook County (Ill.) title plant. In describing the new system, E. Russell Sherman, vice president of Cook County Operations for CTIC, stated that "with a capacity of one megabyte (one million 'characters'), the IBM System 370/Model 158 virtually digests land records in an instant."

This will mark the first time in Cook County where a computer will be employed to actually produce complete chains of titles. Such a computerized title search will offer the advantages of faster service, systematic consistency, and a hard-copy printout notable for its accuracy, neatness, and uniformity of expression.

Concluding, Sherman added, "we've proved that computerization of the title bank is no longer theoretical; we're doing it."

revocation was due to negligence in the title company's procedures and tending to prove that the omission of the revocation was not due to the lack of a specific request since the bank would have requested a search of all instruments relative to Mrs. Ramsey's ability to convey title.

(3) That it was proper for the Trial Court to allow an expert witness (a former vice president of the company) to testify concerning the operations of the title company since such operations are not matters of general knowledge and such testimony may be of assistance to the jury.

## TORTS & NUISANCE

*Kimberlin v. Leer*, 500 P.2d 1022 (Nev. 1972)

Vendor of real property was sued for wrongful death of minor trespassers. Two children drowned in one of several 15-foot deep test holes dug with consent of vendor in a shallow lake containing winter run-off water. The drowning occurred six days after vendor had conveyed title to vendee. The Lower Court dismissed for failure to state a claim.

Held: Affirmed on the authority of the RESTATEMENT (SECOND) OF TORTS §353, that vendor's failure to disclose to vendee concealed conditions on the premises which involved unreasonable danger to the health and safety of those on the premises imposes liability on the vendor for injury only to persons upon the land with the consent of the vendee.

This jurisdiction still refuses to accept the attractive nuisance doctrine, although the vigorous dissent would have adopted it.

*Wright v. Creative Corp.*, 498 P.2d 1179 (Colo. App. 1972)

A home builder was charged under the negligence, strict liability and implied warranty theories for his failure to use tempered glass in a plate glass door. A remodeler of the same house was also charged under these theories for having moved the plate glass door to a different location and having created an illusion of space. The Trial Court dismissed the complaint for failing to state a claim.

Held: (1) The complaint stated a claim for relief under the negligence theory. (2) No claim was stated in strict liability because there did not exist any difficulty in determining the negligent party. (3) No claim for relief can be established under the implied warranty theory except where the claim is by a purchaser against a builder-vendor.

Further extension of *MacPherson v. Buick*, 217 N.Y. 382, 111 N.E. 1050, to structures on real property.

## TRUTH-IN-LENDING

*Young v. Tri-City Remodeling*, 335 N.Y.S. 2d 308 (City Ct. 1972)

A homeowner contracted for a new roof

and signed an agreement to pay for the same in a number of installments. It appeared that the roofer would have charged the homeowner the same price whether he paid in cash or over installments. The promise to pay was secured by a note and mortgage on the house. Before any work was done, the homeowner attempted to cancel the contract because the roofer had not complied with the requirements of the truth-in-lending act.

Held: The mortgagor could not cancel because truth-in-lending did not cover the transaction. The fact that a homeowner is to pay for improvements in more than four installments does not of and by itself prove the existence of a finance charge. Therefore, in the absence of evidence of a finance charge, the truth-in-lending act does not apply.

This Court relied upon *Mourning v. Family Publication Service, Inc.*, 449 F. 2d 335 (5th Cir. 1971) which invalidated the four installment rule found in Reg. Z, §226.6(k) as being in conflict with §103(f) of the Truth-in-Lending Act itself. Certiorari was granted in the *Mourning* case on March 20, 1972, and, thus, the case was before the Supreme Court at the time of this report.

*Stavrides, et al v. Mellon National Bank & Trust Co., et al*, (DC, W.D., Pa.) (Civ. No. 72-242, 1-4-73)

In a decision by the United States District Court for the Western District of Pennsylvania, it has been held that disclosure of the terms of the loan in mortgage papers immediately before settlement is acceptable disclosure under the Truth-in-Lending Act.

The Court ruled that the legislative history of the Act clearly reveals Congressional intent to enact legislative remedies reflecting commercial realities—further noting it is apparent that Congress therefore intended that mortgage terms could be revealed in mortgage papers just before credit is extended and the loan consummated.

## URBAN RENEWAL

*Lindauer v. Oklahoma City Urban Renewal Auth.*, 496 P. 2d 1174 (Okla. 1972)

In a condemnation proceeding commenced by the Oklahoma City Urban Renewal Authority, Lindauer challenged the authority's right to condemn property on the grounds that the law violated the equal protection clause of the Fourteenth Amendment to the United States Constitution. The Trial Court held the act constitutional.

Held: Affirmed.

Case of first impression as to constitutionality of Oklahoma Urban Redevelopment Law.

## USURY

*Crocker v. Brandt*, 292 A. 2d 541 (Vt. 1972)

A contract of sale of real property and the purchase money mortgage given at the time of the consummation of the sale both provided for payment of the purchase price and interest in monthly installments of a specified amount. When these payments were broken down to principal and interest, the

result was that the interest amounted to 6 per cent, the maximum permitted by law. Both instruments also required monthly payments over the same period of time of an additional \$25 which was stated to be for consultation services. This made a total monthly installment payment of \$330. It further appeared that the parties had always treated the additional \$25 monthly payments as an additional interest except when it came to drafting the contract and mortgage. A memorandum signed by the parties provided that the interest rate was to be 8 per cent - to be divided into a 6 per cent interest payment and a 2 per cent consulting fee. The loan amortization schedule used by the parties also had a specified 8 per cent interest requiring monthly payments of principal and interest of \$330.

Held: These facts indicate an attempt to circumvent the usury law by disguising excess interest as a fee for consultations that never occurred. The interest rate was settled and agreed upon at 8 per cent and not 6 per cent and was thus usurious as a matter of law.

*Northland Mortgage Company, formerly known as General Mortgage Investments of St. Paul, Inc., a Minn. Corp. v. Royalwood Estates, Inc., a Neb. Corp.*, 206 N.W. 2d 328 (1973)

A corporation may agree to pay any rate of interest by an agreement in writing which sets out the amount or rate charged. Where a corporation succeeds to rights and responsibilities of a borrower, the corporation is bound by a commitment letter which provides for payment of an unrefundable fee on closing, notwithstanding the fact that the corporation did not sign the commitment letter. In the absence of connection between fee and duration of the loan, the fee did not constitute a charge made for deferred payment of the loan within the meaning of the usury statutes. The fee was collectible since the nature thereof was clearly specified in writing in the commitment letter which was an instrument made in reference and as a part of the transaction and should be considered and construed together.

## VENDOR & PURCHASER

*Andreoli v. Brown*, 35 Ohio App. 2d 53 (Ohio Ct. of App. 1972)

Agreement by which Andreoli agreed to purchase and Crane to sell and which provided that the agreement was "to be at the election of the seller anytime during his lifetime upon 60 day notice." If the agreement was not exercised during seller's lifetime, the buyer had the right to buy at the agreed price immediately thereafter. "In the event of the death of the optioner, this option expires unless the optionee has given written notice of his exercise of the option to the executor or administrator within 90 days after appointment."

Crane later conveyed to Brown, who, it was alleged, knew of the agreement and was not a bona fide purchaser for value. After the death of Crane, Andreoli notified his executors of his exercise of the option. The executors refused to convey. Action was



brought for specific performance and \$50,000.00. Brown moved for dismissal as to him.

The Court found for Brown, saying that this is not a promise ever to sell to Andreoli. Andreoli would have the right to purchase if Crane desired to sell to him or if Crane died owning the property and Andreoli gave proper notice. Nothing prevented Crane from divesting himself of the property by gift, sale or otherwise to some person other than Andreoli. Crane's promise under the circumstances was not an enforceable promise, but entirely illusory in character.

## WATER & WATERCOURSES

*Mather v. State of Iowa*, 200 N.W. 2d 498 (Iowa 1972)

Consolidated quiet title actions by riparian owners seeking to settle ownership of lands formed by accretion along river. The District Court entered decree quieting title in the State, and plaintiffs appealed.

The Supreme Court held evidence supported findings that title was in the State because of existence of body of land qualifying as an island to which disputed land could accrete and that land accreted first to such island and not to shore.

Affirmed.

*Harris v. Hylebos Industries, Inc.*, 81 Wn. 2d 770, 505 P. 2d 457 (Wash. 1973)

The owner of tidelands situated in front of an incorporated city or one mile thereof has the right to fill the same, and the owner of adjoining uplands has under Washington law no riparian rights, no easement and no right of access across said tidelands to reach a navigable channel.

*Roberts v. Brewer*, 276 So. 2d 574 (Alabama 1973)

This was a suit to abate an alleged nuisance resulting from a beaver dam on the land of the respondent.

Facts: Sometime during the fall of 1969, a dam was constructed on respondent's land by beavers. The water was backed up on the land of the complainants. The complainants at no time authorized the respondent to back water onto their land. The complainants advised the respondent that the water was being backed up on their property by said dam, and requested the respondent to remove the dam, so that the water would

flow without obstructing said stream, but the respondent has negligently continued to allow said dam to exist. Complainants alleged also that the dam on the respondent's property prevented the water of said stream from flowing from and through the complainant's property and caused it to accumulate. The complainants alleged that said dam was causing irreparable harm, inconvenience and damage to the complainant's property and was diminishing the value of the property.

Held: The basic issue of the case is the abatement of a nuisance causing injury to the complainants resulting from a beaver dam on the land of the respondent, Roberts. The Court held that a nuisance is anything that worketh hurt, inconvenience, or damage to another and the fact that the act done may otherwise be lawful does not keep it from being a nuisance. Also, the Court held that it is a legal right of every riparian proprietor to have a natural stream flow through his land in its natural channels without obstruction or alteration leaving its natural level. Any obstruction resulting in the unnatural enlargement of a stream to injury of an upper proprietor gives to the upper proprietor rights to remove or abate said obstruction.

## WILLS

*Haltom, et al v. Austin National Bank, Trustee*, 487 S.W. 2d 201 (CCA Texas Austin 1972)

This was a suit for declaratory judgment to construe a will.

The will provided, in part, as follows: "I, . . . . ., will, that in case of my death, all property of which I am possessed go to my wife, Margaret Burroughs Adams, as long as she lives, and after her death, if it has not been necessary to dispose of it, would like our home at 2815 San Gabriel, Austin, Texas, be given to the Texas

Fine Arts Association for a small museum." The wife died without having sold the residence.

The Court held that the words "would like" were precatory and not mandatory, and Texas Fine Arts Association took nothing under the terms of the will.

*Mead v. Lane*, 203 N.W. 2d 305 (Iowa 1972)


Equitable action for specific performance of an alleged oral agreement not to revoke a joint will. The District Court entered summary judgment in favor of defendant executor, and an appeal was taken by plaintiffs, who had had an expectancy under their parents' joint will which their mother, now deceased, revoked by making a new will subsequent to their father's death.

The Supreme Court held that under joint will, in part providing that the survivor shall inherit all property of the other "to be used as the survivor may see fit" and that, in the event both shall die or when both shall be dead, "and no individual will shall have been made," then the property of both shall be treated as one and the same and disposed of as hereinafter provided, the spouses clearly, expressly and unambiguously granted each other the right upon survivorship to use the entire inheritance "as the survivor may see fit" and to revoke the joint will, and the language used negated any contractual obligation in the survivor to treat the joint will provisions as binding.

Affirmed.

*Crawford v. Crawford*, 296 Atl. 2d 388, 266 Md. 711 (1972)

Testator who owned real property died in 1922, leaving a will which provided, in part, as follows: "After all my just debts and funeral expenses are paid, I give and bequeath to my dear beloved wife Jessie Ethel Crawford all of my Real and Personal Property, to have and enjoy so long as she shall




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remain my widow. With power to divide said Real and Personal Property equally between my two sons Francis J. Crawford and Francis Albert Crawford, Jr., said Real Estate to be divided as aforesaid and not sold prior to A.D. 1935."

The year 1935 was of consequence, because in that year Francis Albert, the younger son, would attain 21. Francis J. died in 1967, intestate, leaving a wife and a son, who are the appellees.

In 1971, Jessie, in exercise of what she thought was a right conferred upon her by her husband's will, conveyed the real estate which was owned by testator at the time of his death, to a trustee, who reconveyed it back to her, for the term of her life, with power to sell, lease or encumber remainder on her death to her remaining son Francis Albert. Subsequently, Jessie filed a bill in equity seeking a declaration that fee simple title to the real property had been vested in her by her husband's will.

Held: That the testator's widow took an estate *durante viduitate*, an estate during widowhood, which is a life estate subject to a special limitation, an estate which would be terminated by her death or remarriage. By a

true and proper construction of the will, each of the testator's sons took by implication a vested remainder in an undivided one-half interest in the property or will take such interests in the event that the power is judicially executed on the death or remarriage of their mother. Should Jessie, by deed of conveyance during her lifetime or by the terms of her will, purport to exercise her power to divide the property, a partition may result. The deeds by which Jessie sought to vest fee simple title in herself without the joinder of the remaindermen, were null and void.

*Glenn Estate*, 450 Pa. 461 (1963)

Under decedent's will, which gave appellant the testator's real property and income from a residency trust, the Court held that appellant was not entitled to advances from the estate for use as counsel fees in his defense of a criminal indictment charging him with decedent's murder. Under the Pennsylvania Slayer's Act, the Court held that an adjudication of guilt was not necessary to disinherit an indicted slayer, and that the refusal of advances from the estate was permitted notwithstanding the presumption of innocence. □

ALTA FILM—Continued from page 4

film produced on behalf of their industry.

In developing the film script, special care was required to include land title problems that could be encountered in communities across the nation despite local differences in law and custom. ALTA General Counsel Tom Jackson provided important assistance to the Public Relations Committee, staff, and producer in this regard. Any differences between what is shown in the film and a local situation can be explained in the oral presentation by a title man or woman at the end of a screening.

Prints of the film may be purchased by ALTA members for \$100 each, plus postage and a charge of \$4.00 for permanent shipping container. Orders should be mailed to American Land Title Association, Room 303, 1828 L Street, N. W., Washington, D. C. 20036. □

## meeting timetable



### October 6-8, 1974

National Association of Insurance  
Commissioners  
Zone II Meeting  
(Maryland, Delaware, District of Columbia,  
North Carolina, Ohio, Pennsylvania, South  
Carolina, Virginia, West Virginia)  
Baltimore Hilton  
Baltimore, Maryland

### October 25-26, 1974

Carolinas Land Title Association  
Myrtle Beach Hilton  
Myrtle Beach, South Carolina

### October 27-29, 1974

Indiana Land Title Association  
Rodeway Inn  
Indianapolis, Indiana

### October 28-30, 1974

Mortgage Bankers Association of America  
Fontainebleau Hotel  
Miami Beach, Florida

### November 7-8, 1974

Dixie Land Title Association  
The Downtowner  
Montgomery, Alabama

### November 10-14, 1974

National Association of Realtors  
MGM Grand Hotel  
Las Vegas, Nevada

### November 13-16, 1974

Florida Land Title Association  
Host Airport Hotel  
Tampa, Florida

### December 1-6, 1974

National Association of Insurance  
Commissioners  
Regular Meeting  
Camino Real Hotel  
Mexico City, Mexico

### December 4, 1974

Louisiana Land Title Association  
Royal Orleans  
New Orleans, Louisiana

### 1975

#### March 4-7, 1975

ALTA Mid-Winter Conference  
Hotel del Coronado  
Coronado, California

### April 24-26, 1975

New Mexico Land Title Association  
Hilton Inn  
Santa Fe, New Mexico

### April 24-26, 1975

Texas Land Title Association  
Brownsville, Texas

### May 1-3, 1975

Arkansas Land Title Association  
Camelot Inn  
Little Rock, Arkansas

### May 4-6, 1975

Iowa Land Title Association  
Ramada Inn  
Waterloo, Iowa

### May 30-31, 1975

South Dakota Land Title Association  
Brookings, South Dakota

### June 8-10, 1975

New Jersey Land Title Insurance Association  
Seaview Country Club  
Absecon, New Jersey

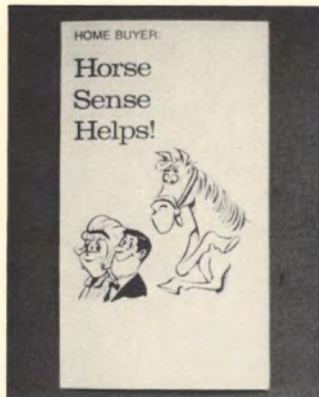
### June 8-10, 1975

National Association of Insurance  
Commissioners  
Annual Meeting  
Olympic Hotel  
Seattle, Washington

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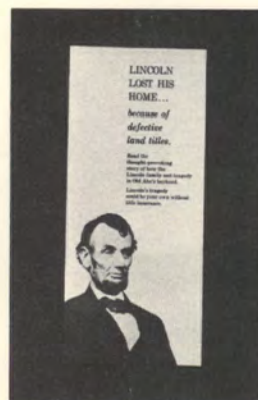
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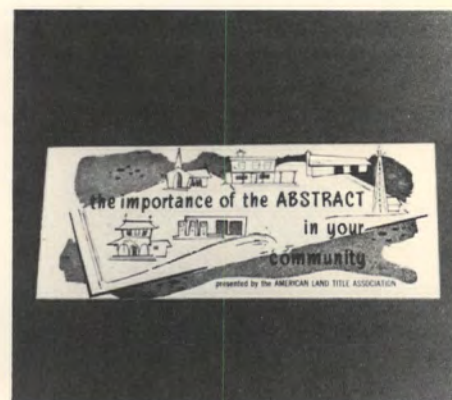
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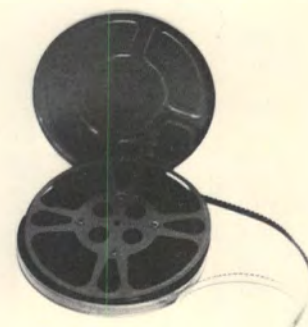


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# American Land Title Association

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