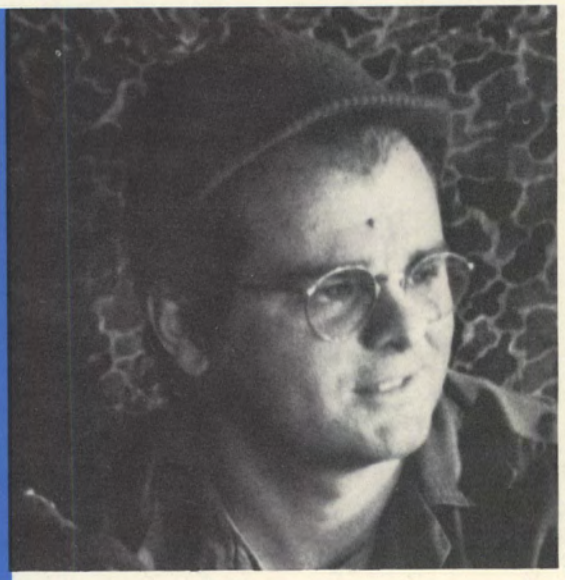
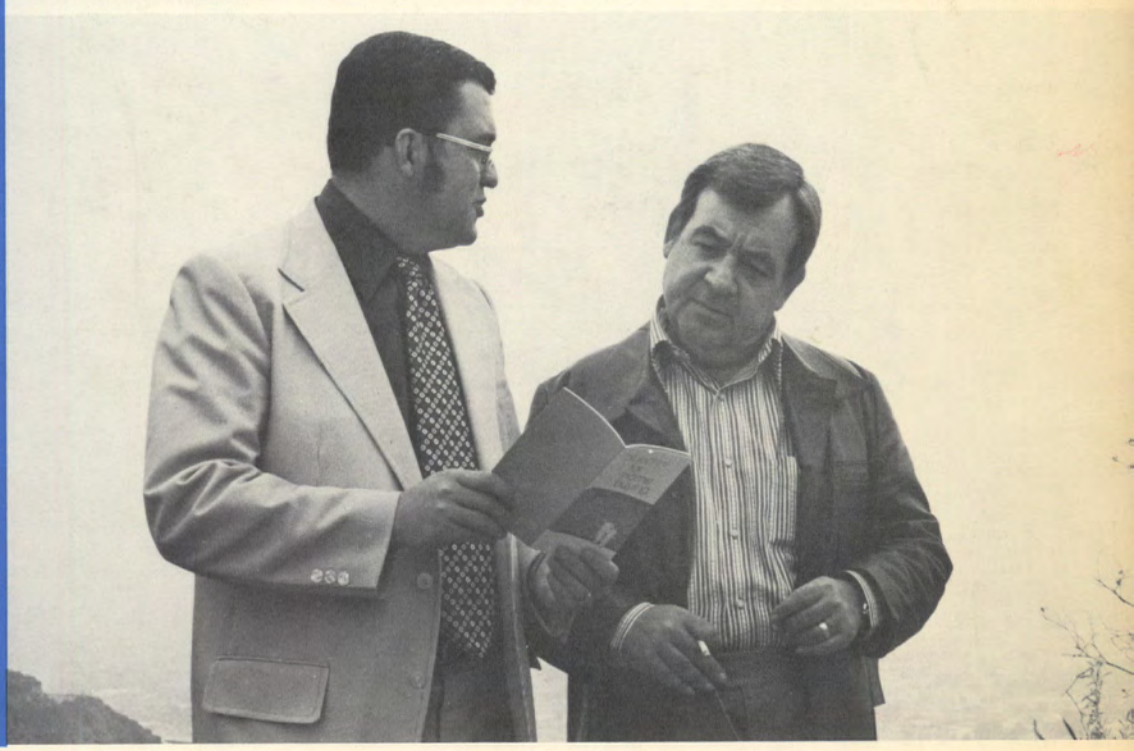
Title News

the official publication of the American Land Title Association





Celebrities Film ALTA Spots For Television

April, 1975

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

APRIL, 1975

Recently there was an action by the Executive Committee and the Board of Governors of the American Land Title Association disbanding and eliminating the Young Titlemen's Committee from the organizational structure of the Association. The writer was one of those voting in support of such action. The action was taken because of the continued inactivity of the committee for a period of several years.

It could not have happened at a better time in our history. The news fell upon the right shoulders, because several young title people voiced objection.

Representatives of one state association appeared before the Executive Committee and sought reversal of the action. All that was needed was for the right people to be placed on the committee and be given the green light and a vote of confidence.

This has been proved by the achievements of the committee in my own state. Members of this committee, working with the members of the educational committee, produced one of the finest regional seminars I have ever attended. Divided into three sections for presentation, i.e., Management, Closer/Secretary, and Examiner/Abstract, it involves six hours of excellent instruction for each section.

Hopefully, many of you saw and heard portions of this seminar at the ALTA Mid-Winder Conference in Coronado. If you did, I know you'll agree that the portions you heard constitute a mark of achievement. Since I have attended two presentations of the seminar, I know in advance that by the time this message appears in print, I can look back with pride and gratitude for a successful program in my section. I only wish we could have presented every one of the 17 speakers composing the original seminar.

In March of 1974, I wrote in this space on "The Youth of Today—Leaders of Tomorrow". More than ever before, I am convinced that was a timely article.

Another point to be observed is that, because of a challenge, involvement in Association affairs resulted. Because of involvement, a new generation has become evident in our Association. There has to be a message there—did you get it? I did!

Sincerely,

Philip D. McCulloch

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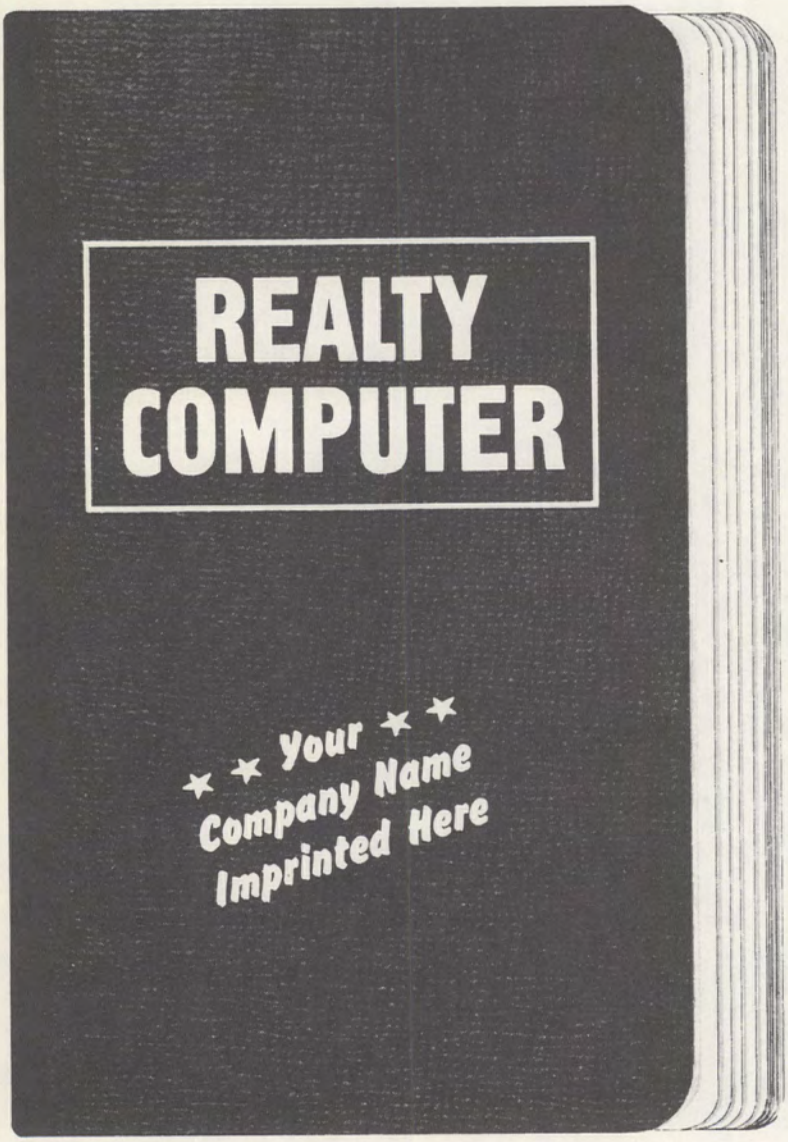

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ALTA action

The ALTA Committee on the Commission on Uniform Laws met February 24 in New York City to discuss portions of the proposed Uniform Land Transactions Act. In a related matter, the Commissioners on Uniform State Laws have scheduled a public meeting for the purpose of obtaining comments on the Commission draft of a Uniform Land Transactions Act at the Drake Hotel, Chicago, beginning at 9 a.m. on Saturday, April 5.

ALTA committee members include Chairman James M. Pedowitz, The Title Guarantee Company; John Goode, Lawyers Title Insurance Corporation; Robert T. Haines, Chicago Title Insurance Company; and James J. D. Lynch, Jr., Commonwealth Land Title Insurance Company.

* * *

Representatives of ALTA and the Mortgage Bankers Association of America met on February 26 with J. Robert Hunter, Acting Federal Insurance Administrator, in Washington. Views on flood insurance were exchanged.

Chairman of the ALTA Liaison Committee with the MBA is Robert C. Bates, Chicago Title Insurance Company.

* * *

ALTA President Robert J. Jay, Land Title Abstract Company, Detroit, is scheduled to attend three affiliated state association conventions this month. He is scheduled to speak at the Oklahoma Land Title Association Convention April 17-19, in Oklahoma City, the Texas Land Title Association Convention April 24-26, in Brownsville, and the California Land Title Association Convention April 30-May 2, in Monterey.

* * *

Members of the ALTA Public Relations Committee and staff were in Hollywood, Calif., March 3 for a conference that resulted in approval of a soft-sell adaptation of the Association's award-winning film, "1429 Maple Street", for nationwide television public service distribution. The new, 13½-minute public service version of the film will be sent to stations from coast to coast later this year. Prints of the original, 11-minute promotional version of the film continue to be available to members of the Association for $104 each plus postage. Attending the Hollywood meeting from the committee were Chairman H. Randolph Farmer, Lawyers Title Insurance Corporation; Patrick McQuaid, Minnesota Title Financial Corporation; Francis E. O'Connor, Chicago Title and Trust Company; and James W. Robinson, American Title Insurance Company. Also in attendance was ALTA Director of Public Affairs Gary L. Garrity.

* * *

ALTA Director of Research Dale P. Riordan recently presented the Association Research Committee with a preliminary report on the current ALTA closing costs and practices study. Included were comments on the variety of closing practices throughout the country. The preliminary report indicates wide variation in the percentage of residential closings supervised by title companies in different locales and similar variation in who pays for closing services and who provides them. The study is expected to be complete by late spring.

* * *

Ralph J. Marquis, ALTA Director of State Governmental Affairs, notes that 49 state legislatures have convened or will be convening in 1975. While concentrating work of the ALTA State Legislative Reporting Service on legislation of interest to the title insurance industry, Marquis adds that a large portion of the current enacted state legislation deals with economic problems, such as extensions in unemployment and welfare benefits. Reports of the service are sent to subscribing ALTA members who share in its cost.

Title News

the official publication of the American Land Title Association

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ON THE COVER: Celebrities featured in 1975 ALTA television film announcements that have been aired in free public service time by more than 180 stations in 44 states are shown on the cover. The announcements positively identify the land title industry with serving the public interest and are an activity of the ALTA Public Relations Program in conjunction with ADS Audio Visual Productions, Inc., Falls Church, Va. At upper left is Gary Burghoff of CBS Television's "M*A*S*H". At upper right is Wayne Maunder, recently featured in NBC's, "Chase". And, in the lower photo, ALTA Director of Public Affairs Gary L. Garrity (left), discusses the Association booklet, Blueprint for Home Buying, with Tom Bosley, star of ABC's, "Happy Days", before filming of a third public service announcement. In their respective announcements, all three stars suggest that viewers write ALTA for a free copy of the booklet. For the story on ALTA television and radio material that reaches a nationwide audience of millions, please turn to page 11.

VOLUME 54, NUMBER 4, 1975

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GARY L. GARRITY, Editor *RICHARD W. RONDER, Managing Editor*

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Thomas S. Jackson
ALTA General Counsel

A Response To The ABA

(Editor's note: ALTA General Counsel Thomas S. Jackson on February 12 sent this response to the American Bar Association president and Board of Governors. The Jackson commentary relates to, *The Proper Role of the Lawyer in Residential Real Estate Transactions,* a draft of a report of the ABA Special Committee on Residential Real Estate Transactions.)

* * *

Dear Mr. President and Members of the Board of Governors:

Many members of the American Land Title Association, for which I act as general counsel, and substantially all of its leaders, have read with mixed feelings the above-captioned treatise. There are parts of it that are very good, indeed. There is useful information in it for people who truly seek to ascertain what is involved in assuring to the purchaser of a home that he has a good, clear marketable title to the real estate on which his home is situated.

Procedurally, we are disturbed that this paper has been forwarded to members of Congress, state legislatures and to state and local bar associations before it has actually been approved by the proper procedures of the American Bar Association. Thus, the conclusions and recommendations will undoubtedly be taken as fully sponsored and approved by the American Bar Association and this is not yet true. In a significant pending case, in which I participated, argued on January 29, 1975, in a Maryland court, a lawyer exhibited this paper as a report of the American Bar Association. With respect to those parts concerning which we will hereafter comment, we hope it will be true since some of the assertions are inaccurate and contrary to what we feel is in the best public interest. As a matter of fact, the title is misleading: most of the paper does *not* address itself to the subject of the "role" of the lawyer.

Several years ago, the American Land Title Association obtained special leave, while Mr. Fellers was Chairman of the House of Delegates, to have its counsel appear before the House of Delegates to contend against the adoption by the Association of resolutions promoted by the then Special Committee on Lawyers Title Guaranty Funds, which would have put the stamp of approval of the Association upon the creation of a national title insurance company sponsored by the ABA. Fortunately, that very dangerous and erroneous action was sidetracked* in favor of the creation of a joint conference which has adopted a Statement of Principles with respect to the respective roles of the lawyer and the layman in the matter of title transactions. That Statement of Principles, duly published in Martindale, is surprisingly not even referred to in the subject treatise.

Many of those who are identified with title companies and title insurance companies are lawyers, and very good ones. More important to you, they are also members of the American Bar Association and active in its affairs. Merely because they are employed by title companies or title insurance companies makes each of them no less a lawyer than one who is engaged in private practice. Several presidents of the American Bar Association have been employees of commercial insurance or other companies. Any action by the American Bar Association which unfairly misrepresents the role in the American economic system of lawyers who are employed, as distinguished from those who are engaged in private practice, is unwise, is unjust to the former group, and is wholly without sanction in the controlling documents of the American Bar Association.

The statements, conclusions and recommendations contained in the treatise must first and foremost be tested against the public interest. It is too late in the history of the American lawyer to assume that, in an economic sense, "what is good for the lawyer is good for the country". To take such a position would go back to the days of J. P. Morgan before a Senate committee

*But, through the ABA's Committee on Lawyers Title Guaranty Funds, the policy of the Association expressed through the Board of Governors and approved by the House of Delegates during Mr. Wright's term, is being circumvented.

with a midget on his knee.

On page 23 of the pamphlet, the paragraph entitled, "Title Insurance" begins with the following words:

> "In some sections of the country the use of title insurance has eliminated the lawyer from conveyancing; in others it has drastically reduced his role."

The author of the report recognizes that any statement of the proper role of the lawyer in residential real estate transactions which ignores the relation between the title insurers and the bar is utterly unrealistic. The author then "assumes the continued use of some form of title insurance". This is a remarkable understatement. He recognizes that public land records, which (he says) should be self-proving, are not in fact sufficient. This is, of course, an indirect and negative way of continuing the kind of misconceptions regarding land title protection that we have heard over and over again in the legislative halls of the national Congress and the states.

It is a provable fact, which the author must be aware of, that public land records do not in themselves fully reflect the state of a title. There are too many matters off the record, such as forgery; so that however perfectly the records are kept, they cannot be complete. It makes no difference whether the title examiner is a private lawyer, or one employed by a title or abstracting company, or—as is more frequently the case—a trained layman reporting title information to a lawyer and trained conveyancer.

Title insurance came into being because it was an absolute economic necessity, and this necessity arose in large measure from the absence of such financial responsibility on the part of lawyers as would enable them to make good to property owners their losses even from the lawyers' own errors in the examination and reporting of a title. This is, in no way, saying lawyers as a whole are not responsible because it is my view that they are the *most* honest of the professions; and they operate under greater temptations than most other professionals. But they are not generally rich enough (more's the pity) to respond in damages in the same way an insurance company is. Nevertheless, the record of title lawyers in matters having to do with the handling of money, is not perfect. While few, if any, property owners have lost any money whatever as a result of dishonesty of the employees of a title insurance company, it is also true that many home owners without title insurance have lost a great deal, and so have some lenders, in instances where lawyers have failed to meet the standards of the fiduciary in the handling of funds. Title companies have often had to stand the loss. It ill becomes the American Bar Association, therefore, to suggest to the public that title insurance is unnecessary or is in some way an imposition on the home buyer.

Beyond that, of course, there are many possible title defects which do not involve the examiner's negligence. Many titles, involving many hundreds of thousands of dollars, have been defective as a result of matters *dehors* the record which may nevertheless result in a major financial loss to a property owner. We all know this, but somehow it seems that it is necessary to be repeated over and over again in the light of suggestions that when a lawyer, however competent, reports the state of a title, the buyer needs no more.

The author of the treatise acknowledges that it is a "legitimate question whether the public can be better served by corporations or the bar." The author continues that "the role of the title company should be confined to pure insurance. All of the work of conveyancing should be left to independent lawyers." We assume that the author means, by the term "independent lawyers", those in private practice. He fails to explain just why a lawyer who happens to be employed by a title company, whose whole life is involved in conveyancing, serves the public less well than what the author calls the independent lawyer. We think it may be easily demonstrated that the opposite is the case. A statement to that effect may serve the economic welfare of the private Bar, but it is not in the interest of the home buyer or the consumer.

The issue has been confused by the author: The role of the lawyer is as an advocate, that is, the unequivocal and nonconflicting representation of a client. The lawyer who attempts to examine the title for all of the parties, and handle all the funds in closing for all of the parties, and do all of the conveyancing for all of the parties is not representing a client. None of those parties can have the lawyer's independent good faith, judgment and advice which the author seems to think would follow if all title examinations and closings were the exclusive province of the lawyer in private practice. We think that the role of the private lawyer in the real estate transaction is to represent any one of the parties to the transaction . . . he must choose to represent the seller *or* the buyer *or* the lender just as the litigating lawyer must choose between the plaintiff and the defendant.

The work of title examination, the preparation of drafts of conveyances for submission to the respective parties and their counsel, and the preparation of settlement statements and other aspects of the closing, may very well be done better, more promptly, and more cheaply by title companies who employ lawyers whose exclusive business is to do that work. I do not personally subscribe to the premise that lawyers have been eliminated from conveyancing to any significant degree, but wherever title companies are doing the work of conveyancing and closing real estate transactions, lawyers must—as any other businessmen—be prepared to meet their competition in the public interest.

There is so much need for the skill and talent of lawyers in this age that the use of the lawyer in private practice for such activities is a public economic waste. There is so much lawyer work to be done that it denigrates the legal profession to inhibit this work by others who have proved their efficiency.

The true role of the lawyer has not in any way been affected by title insurance per se. Title insurance has improved the lawyers' product to the benefit of the property owner. Secondly, the lawyer has not been eliminated from conveyancing—even if his role in the closing of transactions has been in many places reduced. In a few places, perhaps, laymen who are trained conveyancers do prepare the drafts of these and similar instruments; but such has been true historically since colonial times. It is

nothing new.* Besides, if the lawyer is properly representing a client, he reviews the work of the title company conveyancer, which merely saves the lawyer the drudgery all lawyers in private practice correctly try to avoid.

When we turn to the Conclusions and Recommendations, we are concerned that they address themselves neither to the title of the paper nor to the public interest; and in today's atmosphere in large measure they may serve as grist to the mill of those who misinform the public by uninformed criticism of the means of handling real estate transactions by *both* lawyers and title companies.

The author's first set of Recommendations is:

1. The Congress should, after study and consideration:
   (a) Authorize and fund a program of drafting of model legislation, for submission to state legislatures, covering the fields of the recording acts, marketable title acts and curative acts; and
   (b) Authorize or carry out an investigation of how lenders in the national mortgage market can be induced to reduce their demands for title proof; and
   (c) Enact legislation making marketable title acts and title registration acts conforming to certain standards applicable to federal land; and
   (d) Require all federal agencies dealing in, or insuring home mortgages to submit programs for the reduction of red tape forced on the buyer or lender; and
   (e) Establish uniform closing cost forms for use whenever a government related mortgage transaction takes place.

Thus, under item 1, there is in (a) an apparent lack of awareness on the part of the author of all that is being done in this field, by the American Land Title Association and by others; and in (b) there is an implication that lenders in the national mortgage market are making unreasonable demands for title proof, an assumption which cannot be proved.

Subparagraphs (d) and (e) may be construed as an attack on recently enacted consumer legislation, particularly the Real Estate Settlement Procedures Act of 1974 (Public Law 533)—and the Truth in Lending Act. While much can be said about both of these statutes, the Real Estate Settlement Procedures Act of 1974 (which was very much in the mill when the report went to press) was a compromise, more or less, to avoid federal regulation of closing cost rates. The enactment of such legislation would generally have been regarded as a disaster by attorneys handling real estate title matters, as well as by members of the American Land Title Association.

In (e), it is hard to explain why the American Bar Association should be preoccupied only with government-related transactions—just why is the home buyer who either uses his own money or borrows his purchase price from conventional sources less favored, than one who borrows with government assistance? This certainly isn't my philosophy and I doubt if it is the majority sentiment in ABA.

2. State legislatures should, after study and consideration:
   (a) Adopt programs of legislation designed to make title proof simple and economical. (A minimum program will include a reorganization of the recording system, the adoption of an effective marketable title act and the enactment of a large body of curative legislation); and
   (b) Require title insurers issuing mortgagee policies to notify the mortgagor that he is not covered.

In item 2, subparagraph (a) is a mere platitude and does not concern itself with the role of the lawyer in real estate transaction procedures as they exist now or in the foreseeable future. As we have said above, the members of the American Land Title Association have spent many dollars and much thoughtful labor in this field. If the author means the creation of a public title "plant" at huge public expense, let him say so. The title plants of the members of this industry have cost millions of dollars. Does the author advocate buying these with tax money or—in the alternative—spending literally billions to create new ones as public facilities?

In (b), there is an inference that title insurers are either not now notifying the mortgagor "that he is not covered", a statement which is wholly untrue . . . in Maryland and other states, the law requires that title attorneys inform home buyers that owner's title insurance is available to them. The new Real Estate Settlement Procedures Act of 1974 (Public Law 533), which becomes effective June 20, 1975, has been under study for several years by organizations including both ALTA and ABA. It requires the very thing that is advocated above. Of course, the title insurer has no greater, (or even as great) a duty to take this action than a lawyer who is handling the transaction. But the statement is on its face a remarkable inconsistency with his implied denigration of title insurance as a necessity to home buyers.

3. The American Bar Association should after study and consideration by all interested sections and committees:
   (a) Set up a joint conference with mortgage lenders for the purpose of encouraging the acceptance by mortgage lenders of certificates of title proffered by attorneys for home buyers; and
   (b) In cooperation with state and local bar associations, embark upon a long-term educational project designed to make buyers and sellers of houses aware of their need for legal services and the desirability of employing an attorney before any binding commitments have been entered into; and
   (c) Present to state and local bar associations a plan for the certification of land title specialists; and
   (d) Encourage the use under the supervision and responsibility of a lawyer of paraprofessionals in land title transactions.

In item 3, paragraph (a) is an apparent revelation that the author does not understand that the mortgage lend-

Continued on page 12

*See, "Notes on the Preparation of Conveyances by Laymen in the Colony of Maryland", Benson, Carville D., Maryland Historical Magazine, December, 1965.

Stephen G. Johnakin
Senior Title Attorney
Lawyers Title Insurance Corporation

Federal Condominium Regulation: Contra

(Editor's note: The following is adapted from remarks delivered at HUD condominium hearings February 10 in Washington, D.C.)

* * *

I appreciate this opportunity to speak in opposition to any scheme for federal regulation of condominiums. I think the states can do a better job. In my own state, Virginia, we have already adopted and implemented a system of purchaser protection in the condominium realm far more comprehensive and far more sophisticated than anything that has even been proposed at the federal level. At the state level we are closer to the problems, and faster with the solutions. Other states can do just as effective a job as Virginia has done, if they choose to. Right now, Virginia is way out in front. But our experience shows how the job can be done at the state level.

Back in 1973, the Virginia General Assembly decided that the time had come for a fresh look at our Horizontal Property Act. The legislature directed the Virginia Real Estate Commission to appoint a condominium study committee comprising representatives of mortgage lenders, title insurers, developers, and the public at large. After a year of hard work, including public hearings throughout the state, the study committee submitted a report to the General Assembly recommending the enactment of a wholly new Condominium Act which has already been hailed as a model for the whole country.

The first generation of American condominium statutes, adopted by all the states between 1961 and 1968, were all based on the Puerto Rican prototype or the so-called "model" statute promulgated by FHA. These early condominium statutes all shared two principal deficiencies. First, they all seemed to contemplate the single structure, high-rise condominium which had set the pattern in Puerto Rico, and they were ill adapted for the needs of other types of condominiums. Second, and more relevant to our purpose here, they failed to provide adequate safeguards to protect purchasers buying into this novel form of home ownership.

As a result of this latter defect in the first generation of condominium statutes, condominiums began to get a bad press. "Condominium" became the dirtiest eleven letter word in the English language. (Or the Latin language.) Condominium "horror stories," emanating primarily from Florida, attracted national attention. Everyone has read about condominium instruments that provide for potentially infinite periods of developer control. We've all read about the 20-year management contract with the developer's brother-in-law, the 99-year recreational land lease, and the condominium sold on the basis of a promised package of recreational amenities that never materializes.

In Virginia we decided to do something about it. The Virginia condominium study committee found that *all* groups concerned with condominium development favored a higher degree of consumer protection. The rip-off artists were not operating in our state yet, but their activities elsewhere were giving condominiums a bad name throughout the country. Bad developers and bad developments can drive out the good ones—especially in the newspaper headlines—by the operation of a sort of variant of Gresham's law. We were determined not to let it happen in Virginia. We were determined to provide the maximum degree of purchaser protection consistent with fostering, rather than chilling, condominium development.

The draft statute proposed by the condominium study committee contained a range of purchaser protections unparalleled in this country, and those protections were strengthened further before the Virginia General Assembly enacted it into law. I had the honor to serve as counsel to the study committee, and in that capacity I drafted much of the new statute. I also worked with the legislative subcommittee which revised it before its adoption and modified it further this year.

Other states can do the same as Virginia did. I know that from first hand experience. I followed the course of Virginia's new statute from its earliest conceptual stages to its signing

by the governor. I was present at every stage. Not one interest group opposed it. The consumer interests applauded it because it vastly enhanced the protections afforded unit purchasers against the abuses we have all heard so much about. Tenant groups in northern Virginia endorsed it because it protected the rights of tenants in rental projects slated for conversion to condominium. Developers liked it because it unleashed the inherent flexibility of the condominium concept from the artificial restraints imposed by the primitive first-generation statutes. Henceforth, Virginia developers would be free to create any kind of condominium they might envision; so long as prospective purchasers are afforded full and fair disclosure, the new statute actively facilitates the development process by showing the developer how to go about providing a sound legal infrastructure for any type of condominium you might imagine. Mortgage lenders and title insurers welcomed the new Virginia act because it eliminates the legal pitfalls that arose when innovative developers proposed types of condominiums that did not conform to the stereotype on which the procrustean first-generation statutes were based.

I have designated Virginia's new Condominium Act the first of a second generation of condominium statutes. Other states are already in the process of improving their condominium statutes by providing more protection for the unit purchaser. When Virginia's new statute went into effect last July 1, we were immediately deluged with requests for copies of it and more information about it. The inquiries came from a large majority of the states and from several foreign countries. We know of active efforts currently in progress in some jurisdictions to secure the adoption of the Virginia statute with appropriate local modifications.

Yet if anyone proposed the adoption by *Congress* of a version of Virginia's Condominium Act to regulate condominiums throughout the whole country, I would oppose it vehemently. My reasons are philosophical, practical, and constitutional.

First, philosophical. There is a sociological principle known as the principle of subsidiarity. *Webster's Third International Dictionary* provides as good a definition as any. It defines subsidiarity as the principle which holds that "functions which subordinate or local organizations perform effectively belong more properly to them than to a dominant central organization."

That means that if the states can do an effective job, the federal government ought to leave them alone. I think that Virginia has proved what a superb job can be done at the state level. We're closer to the problems, so we can better identify them and devise ways of coping with them. We know how to balance the equities between competing interests in our particular part of the country at a particular time because we live there and work there and see what is going on with our own eyes. We can act very quickly and effectively to adapt our law to changing circumstances in our state, and we have done so. We can set up a scheme for condominium registrations with a minimum of bureaucracy, a minimum of red tape, and a minimum of delay for the registrant—and we have done so in Virginia.

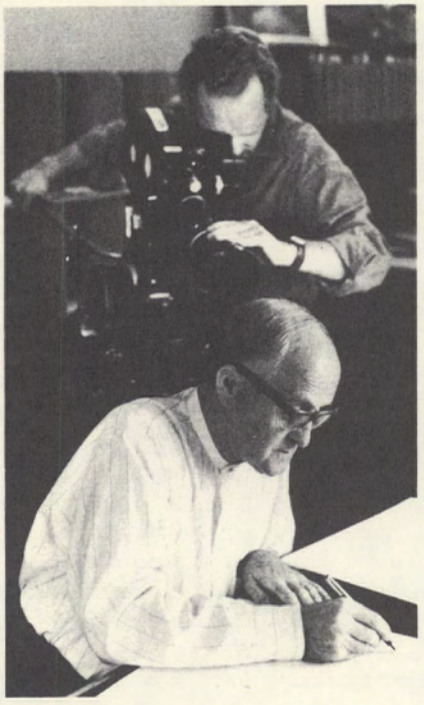
Other states can do the same thing. Some have already made enormous progress, though admittedly Virginia is leading the pack. If you want to *stop* progress at the state level, there's no better way to do so than by raising the spectre of federal regulation of condominium offerings. Al Highsmith, then the energetic and forceful chairman of Virginia's Real Estate Commission, certainly would not have wasted his time on the Virginia condominium study committee if he had thought his efforts to protect the buyers of condominium units in Virginia would be superceded in a couple of years by federal legislation. Bill Thomas, the capable and intelligent northern Virginia lawyer who drafted the part of our Condominium Act that requires registration of condominiums and full and fair disclosure to prospective purchasers through the medium of an approved public offering statement, certainly would not have given so freely of his time if he had thought the federal government would impose its own redundant requirements. Boyce Outen, my boss at Lawyers Title Insurance Corporation, would not have urged my company to donate his time and mine to this *pro bono publico* work in Richmond, Virginia, if he had thought that the real action would ultimately be in Washington, D.C. I doubt Virginia's General Assembly would have done such a magnificent job at the state level if its members had contemplated the federal government moving into this realm and taking over. And I know full well that our statute in Virginia would not be half as good as it is in the realm of purchaser protection if the consumer interests had focused their attention and energies on movements for national legislation instead of prompt, comprehensive, and effective action by the state.

That is a practical consideration. There is another practical reason why I oppose federal legislation. It is because I have worked long and hard in the condominium realm with people all around the country, and I have not met anyone who knows all the answers yet. The *last* thing I want to see is a straitjacket of uniform federal controls for condominiums throughout the country. It will chill experimentation by the states at the very time when valuable experimentation has begun and more experimentation is needed. This field is too novel and too complex for anyone to propose that he knows the best solution. The genius of our federal system is that the states may undertake a variety of approaches and learn from one another's experience. Federal regulation would be cumbersome and expensive to administer and would not yield itself to the kind of comparative analysis that can be undertaken while the field is left to the states.

Now I know perfectly well that some advocates of federal legislation in this area will tell you that they only want federal legislation as an adjunct and supplement to regulation by the states, and not as a substitute for purchaser protection at the state level. That's nonsense. No one could be so naive as to believe it. Once Washington steps in, that will be where the action is. Once you have a federal regulatory scheme, the advocates of reform will inevitably

Continued on page 14

Shouldn't You Be In Pictures?



You've probably heard about the award-winning promotional film for ALTA member use. It's called "1429 Maple Street".

The film story is one most anybody can understand: a house, the people who own it over half a century, and the land title problems they encounter.

Running time for the 16mm color sound film is 11 minutes. That gives you a period after showing for explanation of local details.

Price is $104 plus postage, which includes a permanent shipping container. Just write the ALTA Washington office.

The public needs to better understand what the land title industry really is—not what the critics say it is.

Shouldn't you be in pictures?

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

ALTA Television, Radio Messages Reach Audience of Millions

In 1975, ALTA is once again reaching a nationwide audience of millions with messages that identify the land title industry with serving the public interest. This widespread impact is made possible through television and radio material produced as part of the ALTA Public Relations Program.

Since the beginning of the year, ALTA television and radio activity includes the following:

- —A package of three, 30-second television celebrity film announcements was sent to stations across the nation; celebrities in these spots suggest learning the facts on home buying in advance—and suggest writing ALTA for free information on the subject
- —Production is under way on two, 60-second television film mini-dramas emphasizing the importance of land title protection; these will be distributed from coast to coast, one in the spring and the other in the fall
- —Work is in progress on adapting the award-winning ALTA promotional film, "1429 Maple Street", into a soft-sell version for nationwide television public service distribution and subsequent use in quarter-hour time slots
- —Production is near completion on an ALTA television public service slide announcement package that this spring will be sent to stations over the nation
- —National television public service distribution is continuing for the older ALTA film, "A Place Under The Sun"
- —Nationwide distribution is scheduled for this spring for the 1975 ALTA public service radio spot package featuring celebrities who advise writing the Association for free home buyer information.

Stations air this material in time they donate free in the public interest, and do so because of the informative nature and creative quality of the ALTA messages. As a result, these electronic media offerings reach literally millions of people from coast to coast.

As evidence of the effectiveness of the ALTA announcements, the package of 30-second television celebrity film offerings sent out early this year has been aired by more than 180 stations in 44 states. Featured on the film clips are Gary Burghoff of the CBS show, "M*A*S*H"; Tom Bosley, star of ABC's, "Happy Days"; and Wayne Maunder, recently starring in NBC's, "Chase".

Although the 60-second television film mini-dramas have not been distributed at this writing, a typical use performance was turned in by two offerings of this type that ALTA sent out last year. A film clip distributed in the spring was telecast by 76 stations in 69 cities in 37 states, receiving 1,896 telecasts for 31.6 hours of free air time and reaching an audience of more than 64 million. For a second television clip distributed in the fall, there were telecasts by 69 stations in 67 cities in 36 states for 30 hours of free air time and an audience in excess of 71 million.

The 1975 slide announcement package has not been distributed at this writing. Last year, a similar group of television announcements was aired by 60 stations in 37 states with a combined audience of 42 million.

Last year, "A Place Under The Sun" was seen by a television audience of nearly 735,000 despite the film's irregular 21-minute running time for the video medium. During the years this film has been in television public service distribution, it has been seen by a cumulative national audience of more than 8 million.

Each year, ALTA public service radio spots have been broadcast by more than 1,000 stations across the nation. Celebrities who have recorded 1975 ALTA public radio spots at this writing include Roy Clark, country music star featured on ABC's "Hee Haw", and Mike Evans, who appeared as Lionel Jefferson—Archie Bunker's neighbor—on the CBS show, "All In The Family". As this is written, the remainder of the ALTA radio recordings are scheduled for completion soon.

The positive impressions of the land title industry generated by these radio and television offerings are of considerable importance in this era of consumerism and unwarranted criticism directed at the land title business. Here is a sample of stations telecasting the ALTA 30-second celebrity film announcements, which illustrates the nationwide outreach of ALTA electronic media messages.

Alabama—WRBC, Birmingham; WALA, Mobile
Alaska—KIMO, Anchorage
Arizona—KPAZ, Phoenix
Arkansas—KFSM, Fort Smith; KARK, Little Rock

California – KFSN, Fresno; KWHY, Los Angeles
Colorado – KBTV, Denver; KREY, Montrose
Connecticut – WHCT, Hartford
Florida – WKID, Fort Lauderdale; WJKS, Jacksonville
Georgia – WSB, Atlanta; WSAV, Savannah
Hawaii – KIKU, Honolulu
Idaho – KBOI, Boise
Illinois – WICP, Champaign; WHBF, Rock Island
Indiana – WRTV, Indianapolis; WTHI, Terre Haute
Kansas – WIBW, Topeka; KTVH, Wichita
Kentucky – WDRB, Louisville
Louisiana – KALB, Alexandria; WWL, New Orleans
Maine – WEMT, Bangor
Maryland – WHAG, Hagerstown
Massachusetts – WLVI, Boston; WWCP, Springifeld
Michigan – WJRT, Flint; WPBN, Traverse City
Minnesota – KDAL, Duluth; KEYC, Mankato
Missouri – KOTV, St. Joseph; KPLR, St. Louis
Montana – KXIF, Butte; KFBB, Great Falls
Nebraska – KHAS, Hastings; KHGI Kearney
Nevada – KCRL, Reno; KLAJ, Las Vegas
New Jersey – WCMC, Wildwood
New Mexico – KIVA, Farmington
New York – WROC, Rochester; WNYS, Syracuse
North Carolina – WANC, Asheville; WRDU, Durham
North Dakota – KFYR, Bismarck; WDAY, Fargo
Ohio – WEWS, Cleveland; WCBI, Columbus
Oklahoma – KTEN, Ada
Oregon – KOBI, Medford; KPIC, Roseburg
Pennsylvania – WKBS, Philadelphia; WTAE, Pittsburgh
South Carolina – WOLD, Columbia; WGGS, Greenville
South Dakota – KRSD, Rapid City
Tennessee – WATE, Knoxville; WLAC, Nashville
Texas – KDFW, Dallas-Fort Worth; KHOU, Houston
Vermont – WCAX, Burlington
Virginia – WSVA, Harrisonburg; WTVR, Richmond
Washington – KNDO, Yakima
West Virginia – WSAZ, Huntington; WTAP, Parkersburg
Wisconsin – WKOU, Madison; WISN, Milwaukee
Wyoming – KYCU, Cheyenne; KWRB, Thermopolis □

RESPONSE – Continued from page 8

ers were the prime movers in the development of title insurance dating from around the turn of the century to this date, because there is *no way* that a mortgage lender or a home owner can be fully protected by a certificate of title alone; such protection only comes from title insurance. There are not even any laws which require that such certificate be backed up by errors and omissions or malpractice policies. It is really incredible from a consumer point of view that the author would fail, in a report presented as a scholarly study, to make clear to the home buyer the difference between full assurance on the one hand and protection only against negligent title examination or *record* title defects, on the other. The home buyer can only recover damages for loss of title if the examining attorney has sufficient assets in his own name, and not jointly or in a trust or some other self-protective device. Also the general rule is that the attorney must be alive at the time the title defect is discovered, or the possibility of collecting damages is almost hopeless.

We fully agree with (b), for there is the best and truest role of the lawyer, in consultation with a home buyer at and before the time of the making of the contract of sale and purchase; and it is not the purpose of this communication to dispute (c), provided such certification is not a device for building a monopolistic fence around the lawyer at the expense of the public. But we suppose the author is aware that this recommendation places the Committee on the side of those contending for advertising of specialties by lawyers. In a sense, of course, the "approved attorney" system of some title insurance companies accomplishes the result urged by the author. Item (d) is an implied recognition that the work of the examination of the public records, does not in every phase require the personal attention of a lawyer as distinguished from a layman. We fully agree.

4. State and local bar associations should after study and consideration:
   (a) Attempt to mobilize support for the state legislative program outlined above; and
   (b) Attempt in every way possible to induce mortgage lenders to accept certificates of title submitted by the buyer's attorney; and
   (c) Implement a program for the certification of title specialists and encourage such specialists to abandon repeated reexamination of the same title; and
   (d) Create at the local level panels of

qualified title specialists willing to represent the buyers of homes; and

(e) Create special committees, wherever they do not already exist, to give continuing study to means for improving title practice and for increasing services rendered purchasers of houses; and

(f) Cooperate with the American Bar Association in the educational program set out above.

In addition to our comments on Recommendation 3(a), which are applicable as well to 4(b), we do not understand the implications contained in certain parts of item 4 where state and local bar associations are adjured to create panels of title specialists "willing to represent the buyers of homes", etc. Does this mean that the American Bar Association has departed from its long-standing canons against advertising? Or are the "qualified title specialists" to include persons who are employed by title companies, or title companies themselves? And why only buyers?

5. Miscellaneous

(a) Lawyers receiving rebates, commissions or fees from title insurance companies for directing business to them should account for them to their clients.

(b) Lawyers should abandon a set scale of fees for representing the parties to the purchase of a house. They should negotiate fees at the time they are employed and should base such fees on a work-done-plus-responsibility formula. The work done should take into account whether the attorney has previously examined the same title.

In item 5, it is surprising that lawyers should have to be reminded that they are not entitled to keep and fail to account to their clients for rebates, commissions and fees. Such provision is contained in the legislation recently enacted by Congress, in the statutes of most states, in the canons of ethics, and in dozens of ethics opinions of sundry bar associations, including the American Bar Association.

In (b), it is difficult to tell whether the recommendation is urging once again the now discarded concept of the minimum-fee schedule which may very well soon be held, by the Supreme Court, to be illegal and improper. This writer has always been personally opposed to minimum-fee schedules as contrary to the dignity of the lawyer; and I correctly predicted they would one day bring opprobrium to the Bar. One thing in this regard is certain, if lawyers negotiate for their fees on a "work-done-plus-responsibility formula", on a client by client basis, the lawyer cannot possible compete price-wise with the title companies. And it ought to be manifestly clear that it is in the public interest that such competition should be open and that system used by home buyers which is the most efficient and the least costly.

In summary, it is my view, and that of many other lawyers in private practice, that far from attempting to pre-empt the field of title examination and closings for lawyers, we should welcome the place in these business activities of lay organizations such as title companies, much as the Bar now recognizes the para-legal movement, leaving to lawyers their proper and necessary function, where there is plenty for them to do, of representing only one party to the real estate transactions. In this way, the client may have the lawyer's actual, independent and exclusive advice and attention; and the lawyer will not be representing the home buyer with one hand and at the same time the developer, the Realtor and the mortgage-lender with his attention always glued to which one of them is the chief producer of clientele.

Practicing attorneys are constantly searching for ways to reduce their detail work and the mounting minutiae of day paperwork. Law-office management specialists urge the use of all sorts of labor-saving machines, as well as para-legal personnel. Why, then, does it so upset a few lawyers that there are these specialty houses to take on the chore of title examination and the preparation of title closing statements? The general-practice and the trial lawyers intelligently make use of dozens of other specialties.

The foregoing is not intended to be truculent or discourteous. It is intended, on my part, to be pragmatic and realistic. The title industry, and certainly all title insurers, have nothing but respect for the legal profession, of which many titlemen are themselves respected members. But, I think that the pamphlet that has been prepared by the Special Committee presents grave dangers to the Bar and seriously misleads the public, no matter what it may tend to do to create or foster false notions about the title industry. □

Scholen Chairs Rates Committee

Margaret T. Scholen recently was named the first women to act as chairperson of the Rates Committee of the New York Board of Title Underwriters. Miss Scholen, a title insurance veteran with more than 30 years of experience in the industry, is vice president of American Title Insurance Company's Guaran-

teed Title Division in New York, and head of the division's business department.

The Board's membership includes all the major title companies doing business in New York state. The organization's purpose is to foster ethical practices in the title insurance industry; it works closely with the state superintendent of insurance toward this end.

W. L. Thomas Dies In Reno, Nevada

Word has been received that W. L. "Tommy" Thomas, president of Stewart Title of Northern Nevada in Reno, died on December 10, 1974. Thomas was active in the title and escrow field for over 25 years.

CONDOMINIUM — Continued from page 9

concentrate their efforts on Washington rather than their state capitols. And many people like me who favor responsible regulation at the state level will turn right around and argue for *repeal* of the state regulatory scheme once the feds move in, because we will not want condominium development in our states subjected to the useless and burdensome requirement of dual registration and two sets of standards.

Those are the practical considerations militating against federal condominium legislation. I have a constitutional objection, too. An objective reading of the federal Constitution would not lead one to suspect that the federal government has the right or the power to regulate condominiums. But we all know full well that under prevailing interpretations of the commerce clause the federal government can regulate just about anything it wants to. It may not have the *right,* but owing to the political preferences of those who have dominated the Supreme Court in recent decades, it certainly has the *power.* Nevertheless, it is *wrong,* and I would be shirking what I believe to be my duty as a citizen and a lawyer if I ignored this opportunity to say so.

Moreover, the purported constitutional justification for a federal statute would probably be cooked up by limiting the scope of the statute to projects for which the federal government or its agencies provide the financing or the secondary mortgage markets. That would create exceptionally stupid instances of gaps in the protection afforded consumers. Why should the degree of protection afforded a prospective unit purchaser have anything at all to do with whether the condominium is financed through some entity with a federal connection?

Let me conclude by summarizing, quite briefly, how Virginia's Condominium Act deals with three issues of considerable importance to consumer interests in the codominium realm.

First, the potentially infinite period of develop control. It is not unusual for condominium instruments to reserve to the developer the right to control the condominium until the very last unit is sold. The developer could retain ownership of the last unit forever—while renting it out perhaps—and thereby remain in control indefinitely. But not in Virginia. Our statute provides that the developer must relinquish control within a definite time limit: two to five years, depending on how the project is phased. Moreover, as soon as he conveys units having a total of 75 per cent of the common element interests he loses control anyhow, even if the time limit has not yet expired.

Second, the self-dealing management contract and recreational land lease. Our statute in Virginia currently provides that *all* contracts and leases entered into during the period of developer control expire automatically, by operation of law, as soon as the period of developer control comes to an end. For the benefit of the unit owners themselves the General Assembly this year is considering an exemption from this rule for "bona fide" "commercially reasonable" contracts and leases which do not involve the developer or any entity controlled by the developer.

Third, the tenants in a conversion project. When the owner of rental property thinks about going condominium, he frequently puts his tenants on month-to-month leases, allowing him to send out wholesale 30-day eviction notices if and when he decides to convert. The Virginia statute provides, however, that even if the tenants are on month-to-month leases, the developer must give them at least 90 days notice of his intention to convert to condominium. Moreover, during the first 60 of those 90 days, the developer is prohibited from contracting for the sale of a unit to anyone other than the tenant who occupies it.

These, of course, are only a few of the protections offered by Virginia's new Condominium Act. I would appreciate the opportunity to discuss others, but I also want to allow time for any questions you might have. In front of me are some written materials which I would like to submit at this juncture. They include papers which explain Virginia's new Condominium Act, and among them you will find an article by me which appeared last October in HUD's magazine, *Challenge,* together with a copy of the Act itself. Some of the other articles describe the system of condominium registration in Virginia and tell how our new statute has dealt with the abuses we are all concerned about. I now yield for questions about those safeguards, or about anything else of interest to this panel. □

names in the news

Clements

Spoerl

Doak

Stewart Title Company announces the election of **Glenn H. Clements** as a vice president of the company with offices in Houston.

* * *

Robert L. (Bob) Ring has been transferred to the home office of The Title Insurance Company in Boise, Idaho. **Stuart Romaneschi** has been promoted to manager of Idaho Title Company in Boise, where he will replace **Ring.**

* * *

Arthur G. Spoerl has joined American Title Insurance Company's Milwaukee office as marketing manager.

* * *

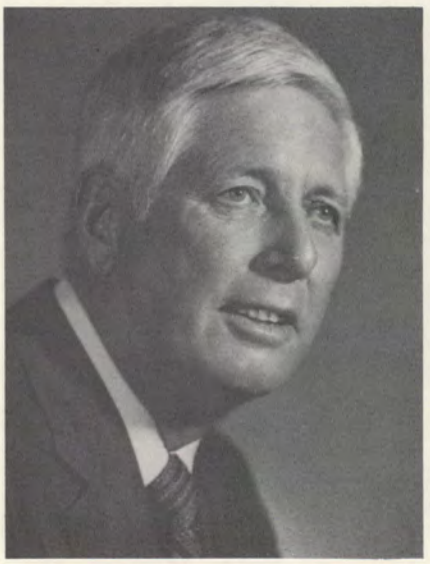
Rattikin Title Company announces the appointment of **Jim Thomas** as manager of the company's Riverside (Tex.) office. He will also continue to supervise the Grapevine (Tex.) office.

Allen J. Doak has been elected manager of the Bridgeport, Conn., branch office of Lawyers Title Insurance Corporation.

Former Officer Of ALTA Retires

Hale K. Warn, former ALTA officer, has retired effective December 31, 1974, as chairman of the board, Title Insurance and Trust Company. James D. Macneil replaces him as Ticor chairman of the board.

Warn was elected chairman of the ALTA Finance Committee in 1969, and



served in that office as a member of the Association Executive Committee and Board of Governors until 1972. He is also a past president of the California Land Title Association.

Warn has been active in many land title industry, additional business, and civic endeavors.

Morris Chairs ABA Committee

Carloss Morris, president of Stewart Title Guaranty Company, has been named chairman of the Advisory Commission of Housing and Urban Growth, a special committee of the American Bar Association.

Backed by a $276,000 grant from the Department of Housing and Urban Development, the Commission will, among other tasks, study housing and urban growth; controlled growth ordinances; existing urban use laws and ordinances; and work on a book for use by courts in adjudicating urban growth problems.

Investors Acquires Columbian Title

The Investors Title Company, Inc., Olathe, Kans., has announced the acquisition of approximately 97 per cent of the outstanding shares of Columbian Title and Trust Company, Topeka, Kans.

Established in 1920, Columbian Title and Trust is the largest domestic company of its kind in Kansas.

Sam McCaffree, above, was elected president and chairman of the board of Columbian Title and will continue as president of The Investors Title Company, Inc.

meeting timetable

April 17-19, 1975
Oklahoma Land Title Association
Lincoln Plaza Inn
Oklahoma City, Oklahoma

April 24-26, 1975
Texas Land Title Association
Fort Brown Motor Hotel
Brownsville, Texas

April 30-May 2, 1975
California Land Title Association
Del Monte Hyatt House
Monterey, California

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 8-10, 1975
New Mexico Land Title Association
Hilton Inn
Santa Fe, New Mexico

May 14-17, 1975
Washington Land Title Association
Rosario Resort on Orcas Island
San Juan Islands, Washington

May 23-24, 1975
Tennessee Land Title Association
Holiday Inn Rivermont
Memphis, Tennessee

May 30-31, 1975
South Dakota Land Title Association
Brookings, South Dakota

June 1-3, 1975
Pennsylvania Land Title Association
Hotel Hershey
Hershey, Pennsylvania

June 5-8, 1975
New England Land Title Association
Seacrest Hotel
North Falmouth, Massachusetts

June 8-10, 1975
New Jersey Land Title Insurance Association
Seaview Country Club
Absecon, New Jersey

June 8-13, 1975
National Association of Insurance
Commissioners
Annual Meeting
Olympic Hotel
Seattle, Washington

June 12-14, 1975
Colorado, Nebraska, and Utah
Land Title Associations
Tamarron
Durango, Colorado

June 19-21, 1975
Oregon Land Title Association
Inn of the Seventh Mountain
Bend, Oregon

June 19-21, 1975
Michigan Land Title Association
Shanty Creek Lodge
Bellaire, Michigan

June 20-22, 1975
Illinois Land Title Association
Drake Hotel
Chicago, Illinois

June 20-22, 1975
Wyoming Land Title Association
Torrington, Wyoming

June 26-29, 1975
Idaho Land Title Association
North Shore Motor Hotel
Coeur d'Alene, Idaho

July 6-9, 1975
New York State Land Title Association
Sagamore Hotel
Lake George, New York

August 7-14, 1975
American Bar Association
Montreal, Canada

August 15-16, 1975
Kansas Land Title Association
Holiday Inn Plaza
Wichita, Kansas

August 21-23, 1975
Minnesota Land Title Association
Downtown Holiday Inn
Rochester, Minnesota

September 5-7, 1975
Missouri Land Title Association
Crown Center Hotel
Kansas City, Missouri

September 9-10, 1975
Wisconsin Land Title Association
Midway Motor Lodge
LaCrosse, Wisconsin

September 11-13, 1975
North Dakota Land Title Association
Minot, North Dakota

September 14-16, 1975
Ohio Land Title Association
Hollenden House
Cleveland, Ohio

October 1-4, 1975
ALTA Annual Convention
Palmer House
Chicago, Illinois

October 20-27, 1975
Mortgage Bankers Association of America
Conrad Hilton Hotel
Chicago, Illinois

October 26-28, 1975
Indiana Land Title Association
Rodeway Inn
Indianapolis, Indiana

November 6-7, 1975
Dixie Land Title Association
Holiday Inn
Callaway Gardens, Georgia

November 7-13, 1975
National Association of Realtors
San Francisco Hilton
San Francisco, California

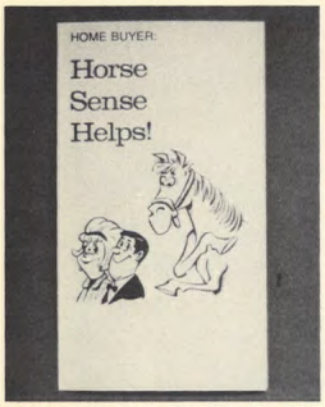
November 9-13, 1975
United States League of Savings Associations
Convention Center
Miami, Florida

December 3, 1975
Louisiana Land Title Association
Royal Orleans
New Orleans, Louisiana

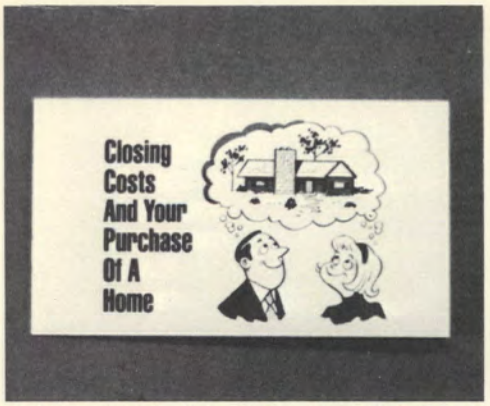
Tell Your Story More Effectively

. . . with these ALTA Educational Aids

(All orders plus postage; write Business Manager, ALTA, 1828 L Street, N.W., Washington, D.C. 20036)

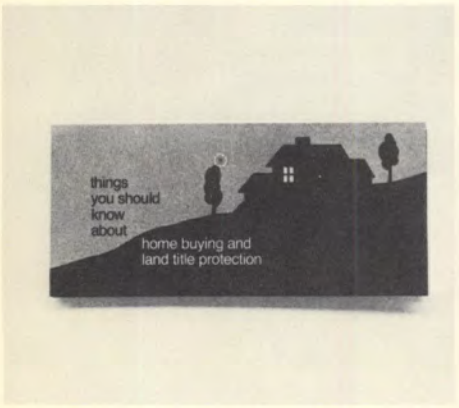


HOME BUYER: HORSE SENSE HELPS! A concisely-worded direct mail piece that quickly outlines title company services. 1-11 dozen, 65 cents per dozen; 12 or more dozen, 50 cents per dozen; designed to fit in a No. 10 envelope.

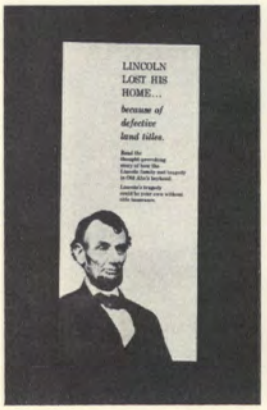


CLOSING COSTS AND YOUR PURCHASE OF A HOME. A guidebook for home buyer use in learning about local closing costs. Gives general pointers on purchasing a home and discusses typical settlement sheet items including land title services. 1-11 dozen, $2.25 per dozen; 12 or more dozen, $2.00 per dozen.

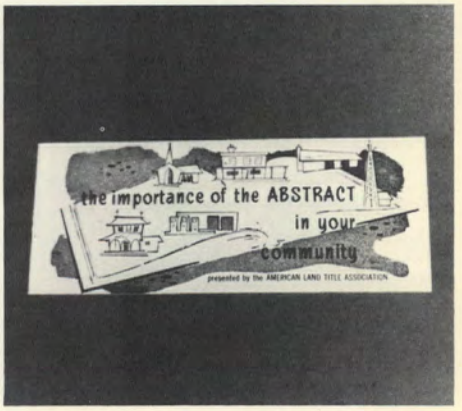
AMERICAN LAND TITLE ASSOCIATION ANSWERS SOME IMPORTANT QUESTIONS ABOUT THE TITLE TO YOUR HOME. Includes the story of the land title industry. $16.00 per 100 copies of the booklet.



THINGS YOU SHOULD KNOW ABOUT HOME BUYING AND LAND TITLE PROTECTION. Folder designed for No. 10 envelope includes a concise explanation of land title industry operational methods and why they are important to the public. Narration provides answers to misinformed criticism of the industry. $6.00 per 100 copies.

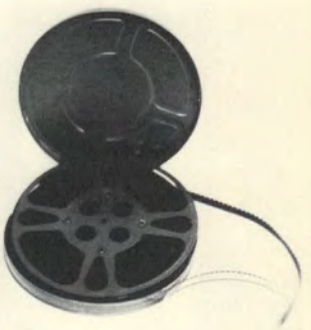


LINCOLN LOST HIS HOME . . . BECAUSE OF DEFECTIVE LAND TITLES . . . A memorable example of the need for land title protection is described in this folder. $6.00 per 100 copies.



THE IMPORTANCE OF THE ABSTRACT IN YOUR COMMUNITY. An effectively illustrated booklet that uses art work from the award-winning ALTA film, "A Place Under The Sun," to tell about land title defects and the role of the abstract in land title protection. Room for imprinting on back cover, $23.00 per 100 copies.

(RIGHT) BLUEPRINT FOR HOME BUYING. Illustrated booklet contains consumer guidelines on important aspects of home buying. Explains roles of various professionals including broker, attorney and titleman. $24.00 per hundred copies. (RIGHT) ALTA FULL-LENGTH FILMS: "BLUEPRINT FOR HOME BUYING." Colorful animated 16 mm. sound film, 14 minutes long, with guidance on home selection, financing, settlement. Basis for popular booklet mentioned above. $95 per print. "A PLACE UNDER THE SUN." Award winning 21 minute animated 16 mm. color sound film tells the story of the land title industry and its services. $135 per print.



American Land Title Association