OFFICIAL PUBLICATION OF THE AMERICAN LAND TITLE ASSOCIATION | JANUARY 1976

TITLE NEWS

DO NOT REMOVE

A Message from the President

JANUARY, 1976

With the beginning of each new year, it is incumbent on all of us to evaluate not only our personal achievements in our private and business lives but also the achievements of our industry. We can be justly proud of the contributions that the members of the American Land Title Association have made to the real estate industry and we should reaffirm our dedication to improving our services for the betterment of the public and the industry.

The American Land Title Association seeks to coordinate the efforts of the various state associations and the individual members in promoting public understanding of the value of our services to the public and in the improvement of those services.

Many feel that the economic conditions during 1976 will be somewhat better than what we have experienced in the past few years and we should use this opportunity to increase our activities as an association in those areas which will effectively inform the public and the members of various regulatory bodies of the necessity for and the value of our services.

The officers and staff of our Association seek the advice of the membership and, therefore, request and urge that you now plan to attend the Mid-Winter Conference at the Greenbrier in White Sulphur Springs, West Virginia, on March 21-24, 1976, so that your ideas and wishes can be directly communicated to your officers.

On behalf of the officers and staff of the Association, we wish to express our thanks for the helpfulness of the membership and we wish all a very prosperous New Year.

Sincerely,

Richard H. Howlett

Richard H. Howlett

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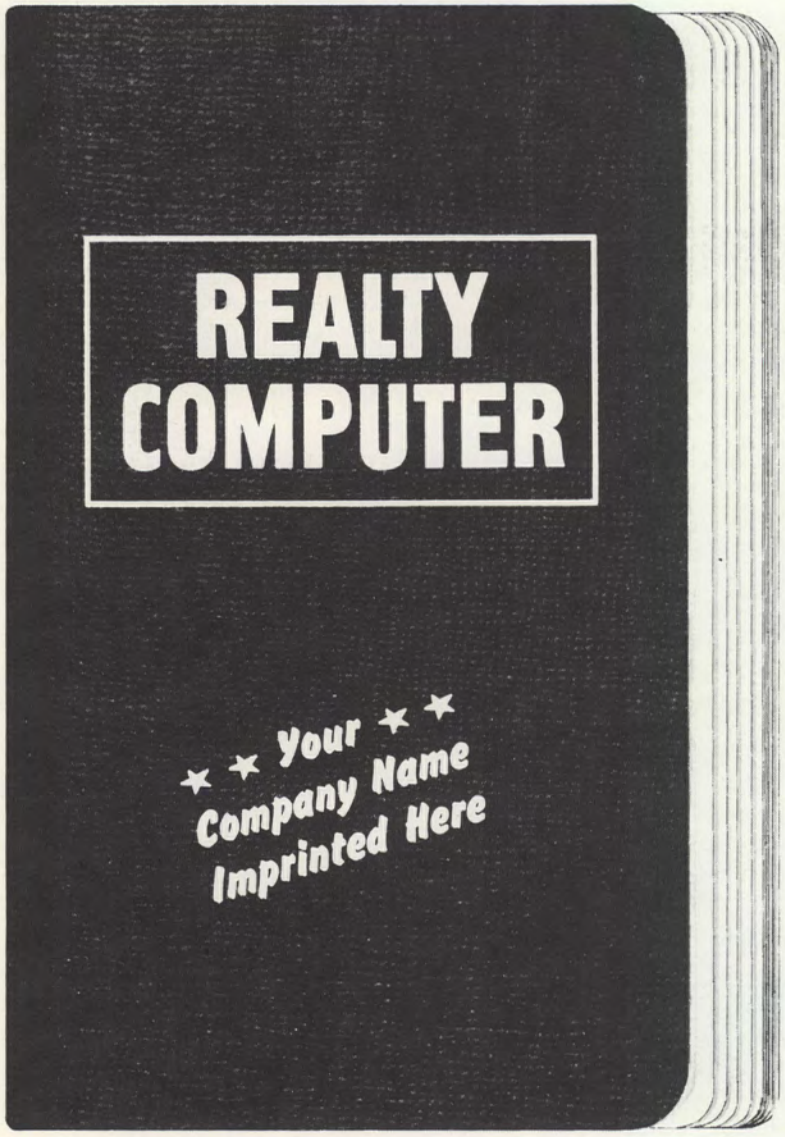

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The ALTA Executive Committee will meet January 17 in Phoenix, Ariz. Major topics on the Committee's agenda include the program for the 1976 Mid-Winter Conference and the assignment of ALTA representatives for attendance at affiliated state association conventions.

* * *

ALTA Director of State Governmental Affairs Ralph J. Marquis advises that state legislatures around the country are readying themselves for the 1976 session. In 1975, 49 state legislatures met in regular session, passing numerous bills of interest to the land title industry.

All pertinent legislation, as well as insurance department rulings and regulations, attorney general opinions, briefs of leading cases, and cases in digest form, is published monthly in the *State Legislative Bulletin,* which is sent to subscribing members of the service.

* * *

An increasing number of orders are being received from ALTA members in response to the Centennial Kit sent in October. The Kit, developed by the Centennial Ideas Subcommittee of the ALTA Public Relations Committee, suggests numerous ways by which one may publicize and celebrate the Centennial of Land Title Insurance.

Among the Kit's sale items, which include postage meter slugs, a Centennial ad, and a Centennial historical folder, the postage meter advertising slug has been the most popular item to date. A feature commentary on the Centennial appears elsewhere in this issue of *Title News*.

Members of the Centennial Ideas Subcommittee include Chairman Edward S. Schmidt, H. Randolph Farmer, and James W. Robinson.

* * *

ALTA Judiciary Committee Chairman Ray E. Sweat reports that the Uniform Probate Code has been passed, in whole or in part, by state legislatures in Alaska, Arizona, Colorado, Idaho, Minnesota, Montana, and North Dakota. The ALTA Executive Committee has requested that any cases relating to such state law be reported to the Association membership immediately. Any ALTA member knowing of a case relating to the code is asked to advise Chairman Sweat (Pioneer National Title Insurance Company, 433 South Spring Street, Los Angeles, Calif. 90054) as soon as possible and send a copy of correspondence to Executive Vice President William J. McAuliffe, Jr., in the ALTA Washington office.

* * *

A cumulative national audience approaching 6 million viewed the award-winning ALTA film, "1429 Maple Street", in local public service telecasts during the last eight months of 1975. Stations donate related air time free in the public interest. Television distribution of the film is continuing in 1976 as an activity of the ALTA Public Relations Program. Members of the Association who wish to order 11-minute, 16mm color sound prints of the film for $104 each plus postage, may do so by writing the ALTA Washington office. The film tells about a house, the families who own it over half a century, and the land title problems they encounter.

TITLE NEWS

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Features

Departments

ON THE COVER: Best wishes for a prosperous centennial year.

VOLUME 55, NUMBER 1, 1976

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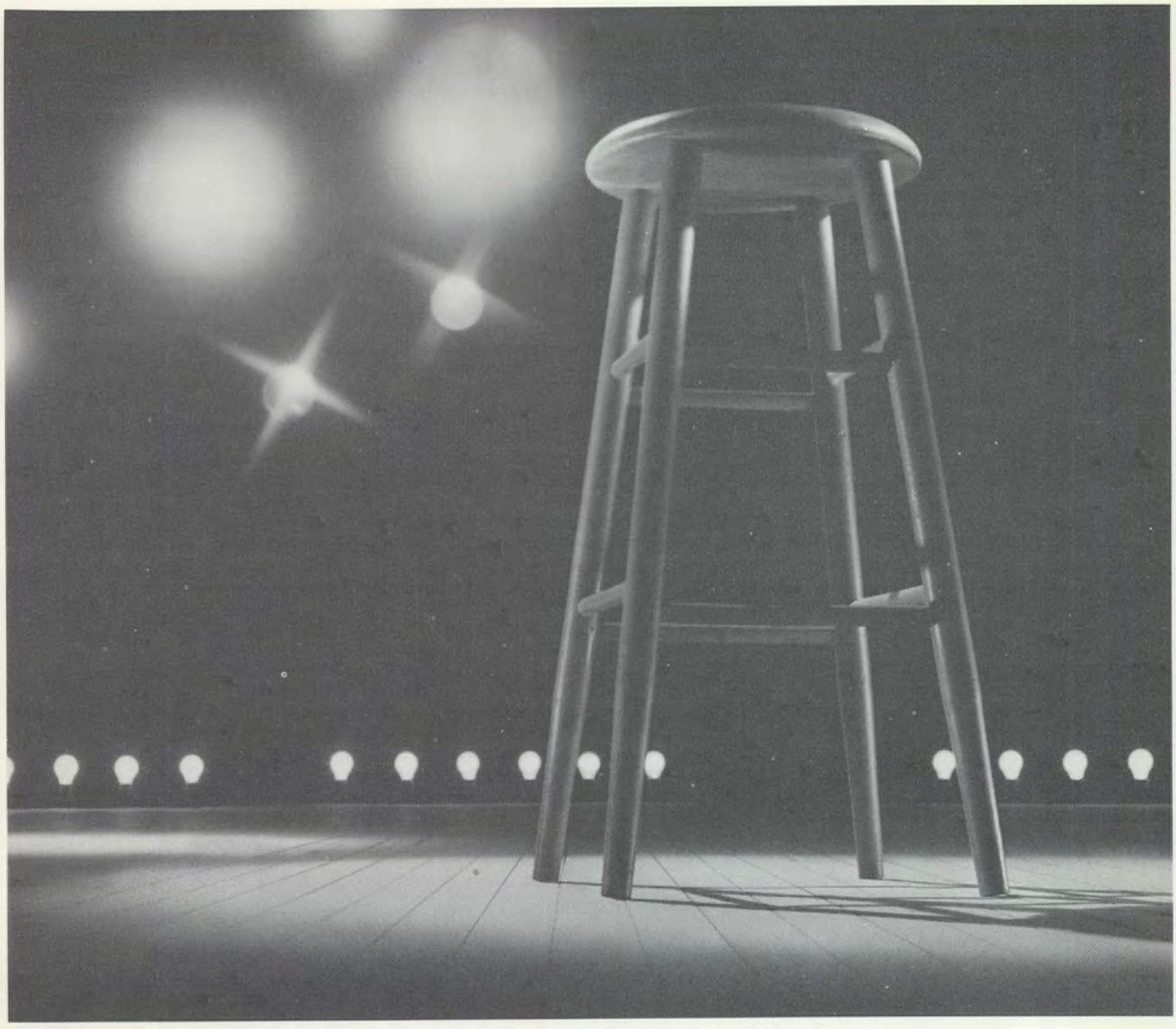
RICHARD W. RONDER, Editor



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AMERICAN LAND TITLE ASSOCIATION

Edward S. Schmidt, Chairman
Centennial Ideas Subcommittee

LET'S CELEBRATE

(Editor's Note: The author is vice president and secretary of Commonwealth Land Title Insurance Company.)

* * *

1976 Surely Can Be a Banner Year.
But It Takes a Good Many of Us
to Carry the Centennial Banner.

The 1976 Land Title Insurance Centennial is indeed a cause for national observance by the membership of ALTA.

Besides being the celebration of a significant historical event, our Centennial should be a meaningful, productive occasion that creates a lasting favorable climate for our industry.

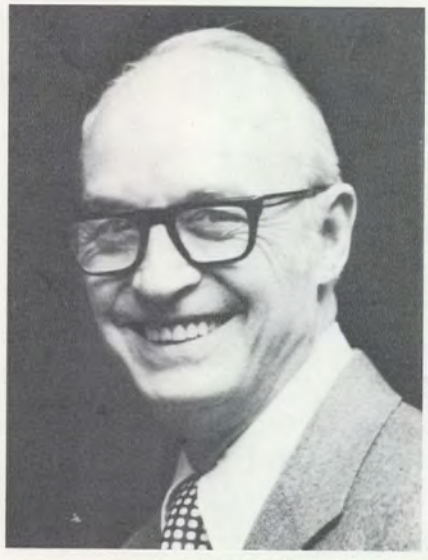
Based on a determined action program, 1976 should be a time for renewal within our field, and a time to generate – for those outside the industry – an understanding and appreciation of the real meaning, role and importance of title insurance.

All over the country, people's attention will be attracted to our nation's bicentennial. But this circumstance need not overshadow our 100th Land Title Insurance Birthday activities. Rather, it is up to us to join them together whenever possible – to use ingenuity and hard work in linking these two important events occurring in 1976.

The objective of our action program is to heighten awareness among those we serve of the excellent contribution of land title insurance services, the benefits derived by the real estate professionals through our work, and the ultimate security provided for the purchasers and investors.

There are many positive values inherent in our Centennial celebration. First of all it gives us very special opportunities and reasons to publicize our industry and the services it performs in our communities. Our program will demonstrate our pride in our work and our determination to maintain the excellence and integrity of our industry in the future. The net effect of a well-planned Centennial program can only be a reflection of credit on you and your company.

But the Centennial will be nothing more than an historical fact unless we implement it with our own enthusiasm, our own ideas and energy. Your ALTA Public Relations Committee and the Washington headquarters staff have anticipated your needs, and have prepared a number of ready-made ingredients for your own celebration. You will find them in the Centennial Kit recently distributed to all members. The Kit includes sample materials and information for your immediate use.



Author Schmidt

Here is a run-down on what has already been done for you:

(1) Folder for distribution – "Land Title Insurance, Consumer Protection Since 1876" – priced at only $9.00 per hundred copies. Add YOUR imprint!

(2) Centennial Logo – camera-ready art for imprinting on your stationery, envelopes, etc.

(3) Centennial Postage Meter slug – an extremely low-cost item providing year-long advertisement impact.

(4) A model Title Insurance Centennial Speech, ready for your personal use with just a few additions or changes you might want to make to add local color.
Look for and take advantage of the opportunity to explain the vital, valuable service our industry offers to most Americans. Do your bit to overcome the ignorance and misunderstanding of our product and service which seems to be at the root of our industry problems. Let's communicate!

(5) Suggested forms of news releases to announce or report on your

speech. This form of public relations activity costs nothing more than your energy and determination to make it happen. Here too, the job has been done for you, subject only to minor revisions to personalize it to your own advantage.

(6) A model TV Interview Script. Here is a concise, clear expression of the nature and advantage of land title insurance. Be a celebrity and promote yourself, or someone in your office, as a spokesman for Title Insurance. Do so, and the benefit will be all yours. This interview script can easily be converted to use on radio.

(7) Proclamation of LAND TITLE INSURANCE CENTENNIAL WEEK. Be a leader! Contact the politician of your choice and arrange for this excellent form of recognition. State Land Title Associations should take the lead in this endeavor and obtain a proclamation from the Governor. Others should take the initiative to get the job done at the city, county and other local levels of government. All kinds of publicity can be developed, not the least of which is the association of people in our industry with the leaders in local government. Once again, do it and the benefit is all yours! Model forms of publicity announcements relating to the proclamation are included in the Centennial Kit.

And, incidentally, naming a special week *each year* is a great American custom. If others can do it why can't we; so just think about getting a proclamation *every year* to advertise our business!

The PR tools are all there for you. So let's COMMUNICATE!

Another special opportunity for you to publicize your operations and the Centennial is available to you through use of the special advertisement prepared by the ALTA Public Relations Committee on behalf of all members. The ad, "It's not easy to avoid the limelight for 100 years", appears elsewhere in this issue of *Title News*. Camera-ready proof copies of this ad can be obtained and are recommended for your use in local newspapers, magazines, trade journals, – in fact wherever you are willing to sponsor this industry message over your name and at your expense. Preparation and production costs have already been underwritten by ALTA and the only cost to you is for the plate, mat or repro proof needed for publication. Price information is in the kit. We believe the message is important and that getting it across to the people in your community will be helpful to you in your business.

So far we've been talking external public relations. It's mighty important for us to remember the job we can do with internal public relations – to realize that the Centennial can be a beneficial influence within our organizations. Make your employees conscious of the legacy of service and stability the Land Title Insurance industry represents, and enhance their pride in continuing this standard of excellence. Encourage your employees to be speakers or authors of articles publicizing the positive attributes of our business – our protection of the purchaser, the security we add to the investment of the lender, the cooperation we offer to the real estate broker, mortgage banker, builder, attorney and all others having a role in the real estate transaction.

That's just about the whole story. This is your one and only chance to celebrate the Centennial of our industry. Do it right! It's all up to you, and it will only be as good and effective as you make it. You will gain positive publicity for yourself and your industry, or you will forfeit the opportunity.

Working together there is much we can accomplish. The Centennial gives a most unusual opportunity to gain visibility and recognition within our own communities for a most important service.

Look back through your ALTA Centennial Kit now, or request information from ALTA headquarters. Then add your own originality and personality to your program for success in your home town.

So, as I said when I started this article – "Let's Celebrate". □

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GENERAL SESSIONS

President's Report

Robert J. Jay

1974-75 President, American Land Title Association
President, Land Title Abstract Co., Port Huron, Michigan

Honored guests, members, Ladies & Gentlemen. Serving as your president has been a unique experience. It has enabled me to get to know may of you better, to meet many, many more people in the Land Title profession, and above all, given me a chance to work closely with many of you in functioning as your President.

I don't think that this job could be accomplished, because of the varied scope of the responsibilities, without the complete cooperation of your executive staff in Washington, D.C. headed by Bill McAuliffe.

I really feel that these men are probably one of the best executive staffs in the country working for a trade association. Any wish that you express or thought that you have, they're very willing to cooperate and carry out their responsibilities.

It's been interesting visiting many of your State Association Meetings and listening to the problems and challenges that are facing our industry. It is surprising that there are many different concepts as to what to do about these challenges. But I do feel that most of the members of the American Land Title Association feel that their Association is working for them.

There's no doubt that this association is made up of many diverse individuals with diverse and different thoughts. It is a job to bring and hold all these things together. Because you have abstractors, title searchers, abstractors and title agents, and you have your larger Title Insurance Underwriters, their aims and goals are different. But with the aid of the other officers and the staff, we try to work for each and every one of you.

This is difficult because of the varying views. But we do try to make a concerted effort. That's why the money is spent to send the officers or a member of the staff or both to your State Association meetings. This American Land Title Association is meant for each and every one of you, to help you in pursuing your chosen profession. I honestly believe that being in the Title industry is a profession. It takes many skills, it takes long hard work; and yet, it borders on the professional side.

It has been a challenge to accept these responsibilities. I certainly appreciate the active cooperation of the other officers and the staff and the support that each and every one of you have given to me as your President.

At this point, I would like to read several communications that I did receive since being here in Chicago. The first is from Charles H. Percy of the United States Senate.

"Dear Mr. Jay: Please extend my best wishes to everyone attending the 1976 Title Insurance Centennial Convention. I'm sure the convention will be an enjoyable and productive one. Welcome to Chicago. I hope you enjoy our city. Sincerely, Charles Percy."

We also have one from Adalai Stevenson of the United States Senate. "I am happy to welcome the members of the American Land Title Association to Chicago for their 1976 Title Insurance Centennial Convention. Please extend my best wishes to all for a pleasant visit and a successful convention. With best wishes, Sincerely, Adalai Stevenson."

Also the day before yesterday, I received the following telegram from Gerald R. Ford. "I am pleased to greet the members of the American Land Title Association, as you hold your Centennial Convention. The prospect of land ownership has always been part of our American dream. And through half of our nation's history, your organization has worked to help make that dream come true for millions of Americans. By offering insurance of land titles, you have assisted in providing valuable protection for home buyers and other investors in real estate. You have given buyers a firm basis for confidence as they undertake property transactions. And this confidence, in turn, has strengthened the entire real estate sector in our economy. You can be proud of your record of accomplishment and of your important part in advancing the well-being of our society." Signed, Gerald R. Ford.

I think it's a tribute to our industry that we do receive these communications. And to realize that our one segment of our industry, the Title Insurance segment, is half as old as the United States. Abstracting of land titles goes back further than that. As you know, the theme of this convention is the Centennial celebration of Title Insurance.

In that connection, I feel proud to be here acting as your President. Probably the biggest challenge facing us at the present time, is the Real Estate Settlement Procedures Act of 1974. As you know, it went into effect on June 20; it changed a lot of what many of us have to do regarding closings of real estate transactions. As you are probably aware, Senator Proxmire with his sub-committee on banking, called a meeting of the various consumer groups and industries to analyze what affect RESPA, as it's commonly called, was having on our industry and the other industries.

He conducted three days of hearings in Washington, D.C. The first day was for goverment officials and Mr. Elliott made what we feel is a classic presentation as far as his views on what RESPA should do in the future. The second day was the Trade Associations' chance to testify.

There were seven groups there including Mortgage Bankers Association, the American Bankers Association, United States Savings and Loan League, the Mutual Banks, and the Credit Union and also the American Land Title Association.

I was given the opportunity to testify on behalf of each and every one of you here in this room and on behalf of our association. To say the least, it was an extremely fascinating and interesting experience. All of you are aware of the fact that Senator Proxmire has had his eye on our industry for quite a few years.

We were, I think, surprised to find that his attitude on the second day of the hearings at which we testified, was that of a reasonable individual listening to the broad reaching effect that this act has had on every segment of our industry and also the lending institutions.

It was my impression that he realized that this legislation had tried to cut through so many procedures that had been long established, that perhaps we should take another look at RESPA. We are fortunate that Senator Garn from Utah was there with some very interesting comments and thoughtful ideas regarding RESPA.

As you may be aware, he introduced the bill to suspend Sections 4,6, and 7 until they can have further hearings in the House and in the Senate, and determine just what to do with RESPA. As Senator Garn said; "I believe that the United States Congress built an atomic bomb or a cannon to take care of a few isolated mosquitoes."

In view of these hearings we are optimistic regarding the future of RESPA.

It appears that these Sections may be repealed or various parts of the act repealed. However, I want to caution you to remember that at the present time and until something is actually done in the halls of Congress; that RESPA is still very much with us in regards to civil penalties and the criminal penalties. And as your President, I do urge you to comply in all respects with RESPA.

There are many details that I could go into in this report of the activities of the Executive Committee and of the Board of Governors. Many of them are technical and they will be reprinted at a later date. I've tried to make the thrust of my year in office that of listening to the problems of the various individuals and state associations, carrying messages back to our headquarters, back to the other officers; so that we can work together as one unit. With so many diverse elements, so many diverse views, it is difficult. But believe me, we are listening, we are trying.

And we certainly want you to feel free to come forward with any suggestions, any thoughts that you do have. Because, ladies and gentlemen, this is your association. I've been proud to be a part of it, and now we shall get on with the program.

In keeping with the Centennial, we thought that although Title Insurance won't become a hundred years old until 1976; we felt it appropriate that this convention should kick off the Centennial celebration of Title Insurance. And this will give you an opportunity to think about what you want to do in connection with perhaps your advertising, or your thoughts on the celebration of the Centennial.

Now a century, one hundred years, is a long, long time. But Dick Best of the Illinois Land Title Association has compressed our Centennial into a few exciting moments. And here's how he views the past one hundred years of our history.

The closing words of that pictorial episode, our challenges and opportunities for the future. The next hundred years will be determined by some of the things that you do or decide to do hopefully as a result of your attendance at this convention.

I think as I've spoken around the country and also in private conversations, the legislators and the regulators for Federal and State and Municipal, have their eye on the Title Industry. We've got to become political figures in one way or another. And for that reason, the whole theme of this 69th annual convention of the American Land Title Association, is to point up and awaken an interest in you as as far as what is happening in America today, as far as our Title industry is concerned.

I think you'll find many of the things shocking. I know you'll find them interesting. And I certainly urge your participation in all the meetings, because what you learn over the next few days and how you apply it, may determine and probably will determine the entire future of your own business and of our industry.

The 1976 Centennial of Title Insurance: Beginning a Second Century of Excellence

Comments by

H. Randolph Farmer

ALTA Public Relations Committee Chairman
Assistant Vice President and Director of Public Relations and Advertising
Lawyers Title Insurance Corporation, Richmond, Virginia

and

Edward S. Schmidt

Chairman, Centennial Ideas Subcommittee
Vice President and Secretary, Commonwealth Land Title Insurance Company,
Philadelphia, Pa.

MR. FARMER: Thank you Bob.

1976 will be a memorable year for America. While joining our fellow citizens next year and observing the National Bicentennial, those of us in ALTA also will celebrate the Centennial of Land Title Insurance. For us, 1976 will be a year in which we can point with special pride to the beginning of a second century of excellence in the insuring of land titles. Ed . . .

MR. SCHMIDT: Over the past several years, members of your ALTA Public Relations Committee, have been thoughtful of the once-in-a-century opportunity that awaits our industry in 1976. We're excited about this chance to use a Centennial celebration for gaining favorable public exposure and recognition.

In 1976 our regular ALTA PR program and existing state and local public relations activities, will be reinforced by the special interest generated through the observance of the Land Title Insurance Centennial. If you take advantage of it, it will be a banner year for telling the entire nation about our industry in a positive manner. Randy . . .

MR. FARMER: All this favorable impact on public opinion will depend on two major

elements. First, we must continue to communicate the values and benefits of our industry across the nation through regular ALTA state and local public relations activity. Then we must amplify the effect by a special industry wide celebration of the Land Title Insurance Centennial.

MR. SCHMIDT: The ALTA Public Relations Program and supporting activity by regional and state associations and individual companies, will create an impressive foundation on which to build a nationwide momentum in 1976.

Our ALTA PR Program continues to reach an audience of literally millions of people from coast to coast. Home buyer messages that tell about Land Title protection, are especially effective. They're widely used by television, radio and print media in free public service time and space.

MR. FARMER: Our overall success in public relations next year, will be enhanced and assured of success by the involvement of individual ALTA members and state associations in celebrating the Land Title Insurance Centennial. There are exciting things to be done, and it will take widespread state and local effort to make them a reality.

MR. SCHMIDT: The possibilities for state and local individual Centennial action are numerous. For example, a folder Land Title Insurance–Consumer Protection since 1876, that concisely states the history of Title Insurance and explains Land Title protection, will be very useful. Use it as a give away item to reinforce speeches. Use it as a direct mail piece, as an envelope stuffer. It has many other good applications.

MR. FARMER: The audience for Centennial speeches will be increased by distributing before and after news releases to local media. And basing these on speech content. Additional media exposure can be obtained by use of a model script as a basis for arranging local radio or television interviews featuring ALTA members.

The radio or television appearances also will be built around a Centennial theme and should be well publicized in advance.

MR. SCHMIDT: Newspaper and magazine advertising is another good way to call attention to the importance of Land Title Insurance. Advertisements can mention the unique nature of our industry in remaining out of the limelight for a century, while always providing vital information and protection for those who invest in real estate.

Advertising of this type is institutional in format and can be scheduled for local newspapers by groups of Land Title companies or by individual concerns. It can also be placed in professional and trade publications, as well.

MR. FARMER: A Land Title Insurance Centennial theme can be carried forward from the local company office in many ways. Continuity will be helped by using the Centennial logo seen at this convention on office stationery and a variety of other material. Another effective low cost effort will be including the Centennial logo on the office postage meter.

MR. SCHMIDT: And let's not forget local government. By working with their county or municipal officials, ALTA members will be able to arrange for local proclamations designating your choice of a specified time period as Land Title Insurance Centennial week. Model proclamations and the right local contacts, will expedite this activity and you will get the extra benefit of personal publicity.

Proclamations at the level of state government, should be a number one priority for all state associations.

MR. FARMER: Now that we have presented the Centennial ideas, it would be nice to offer assistance for implementing them. And assistance just happens to be available.

After a good deal of hard work, your ALTA Public Relations Committee and staff, have developed a Land Title Insurance Centennial kit that will be sent to association members in the near future. A sample of this kit is on display in the registration area here at this convention.

Included in the kit; are a folder, Centennial logo, order forms for postage meter slug and print ad, model Centennial speech, with model before and after news releases model radio and television interview script, and model proclamations with accompanying model before and after news releases.

MR. SCHMIDT: We urge and we hope that every ALTA member will use the Centennial kit in developing a program for individual celebration of this historic event in 1976, by planning and budgeting now, an impressive observance can become a reality in your community. Remember that this is a once in a century opportunity for all of us to apply some imagination in planning a memorable Centennial Celebration.

The Centennial kit is designed to stimulate your creative thinking, and we hope your activity will extend beyond what is suggested by its content. Whether your local activity includes media placement, speeches, planned tours, advertising, essay contests, scholarships, direct mail, or whatever else you create; we hope that it will reflect the pride of you and your employees in our industry.

If you need assistance in planning your Centennial activity, it is available through our ALTA staff in Washington. Similar assistance is being offered to affiliated associations.

MR. FARMER: Before we close, Ed and I would like to thank the ALTA officers and board members for their support that makes it possible for your national association to continue a public relations program that consistently registers impressive results on a budget that is modest in comparison to size of task.

And we extend special appreciation to our fellow Public Relations Committee members; Phil Branson, Pat McQuaid, Frank O'Connor, Jim Robinson and Bill Thurman, and to Bill McAuliffe, Gary Garrity and Richard Ronder of ALTA staff, for their dedication and hard work in this team effort.

In 1976 providing the public with accurate information about the services of our industry will be among the greatest challenges confronting us all. Through an industry-wide public relations effort, that includes the celebration of our Centennial, we will be seen and heard by an ever-changing national audience of millions.

Your participation in our Centennial program is essential. Let's tell the world we know what we're doing and that Land Title Insurance is the best real estate protection available.

TITLE PAC

ERRORS & OMISSIONS INSURANCE

Title Opinion Coverage

"A TITLE AGENT FOR TITLE PEOPLE"

R. J. GANTRELL AGENCY, INC.

Box 516 (918) 456-8883
Tahlequah, Okla. 74464

Presentation of Title Insurance Centennial Proclamation From Mayor Richard Daley of Chicago

Alvin W. Long

President, Chicago Title and Trust Company, Chicago, Illinois

Thank you Bob.

Several years ago our association made a decision to forego the former tradition of having a local public official give an address of welcome to our association at the opening session. If you recall, that was usually followed by a response to the address by our president-elect. We will follow the new custom this year, and will not have such an address of welcome.

However, upon learning of our convention and of our Centennial celebration, the great mayor of the city of Chicago did prepare a proclamation and signed one which I'd like to present this morning. I can't help but saying, this is one public official who sincerely believes in fiscal responsibility and who acts accordingly. Therefore, I'm doubly delighted to present this proclamation today. Mr. President, the proclamation reads:

"Whereas the nation's first Land Title Insurance policy was issued in 1876, and whereas Land Title Insurance service has since been developed as an industry operating throughout the United States offering protection against hazards of title to real estate investors and to dealers in real estate. And whereas the American Land Title Association is this year observing the Centennial of Land Title services, now therefore I, Richard J. Daley, Mayor of the City of Chicago; do hereby proclaim this week of September 29 through October 4, 1975, to be Land Title Insurance week in Chicago. And urge all citizens to take cognizance of the special events arranged for at this time. Dated this 29th day of August 1975. Sincerely, Richard J. Daley."

By presenting this proclamation, we do give a very warm welcome to our city and hope you enjoy your stay. Mr. President, the proclamation.

Presentation of American Revolution Bicentennial Liberty Bell to ALTA

Fred B. Fromhold

President and Chief Executive Officer, Commonwealth Land Title Insurance Company, Philadelphia, Pennsylvania

As we have all just heard this morning, through Dick Best's presentation, the first title insurance policy was issued in Philadelphia in June of 1876, by the Real Estate Title and Trust Company, a predecessor of Commonwealth.

Mr. President, I am very proud and happy to present you with a replica of the Liberty Bell commemorating our 100th anniversary.

Award of ALTA Honorary Membership to Hart McKillop

Alvin R. Robin

President, Guaranty Title Company, Tampa, Florida

Once or twice in a man's lifetime, he is accorded a privilege which he values so highly that it ranks with the great moments of his life. This is such an occasion for me. It is a great honor to be able to present to Hart McKillop this Certificate of Honorary Membership in the American Land Title Association.

Before doing so, however, I want to tell you something about this man, for he is no ordinary man. He is a man of vision and foresight. He is a man of extraordinary talent and ability whose illustrious career has embraced many diverse endeavors. He is a man whose imagination and ingenuity has been manifest in his unusual accomplishments. He is, in fact, a living legend whose achievements rank with the great men of our time.

Those of us who have known him over the years are aware of his long and distinguished service to the title industry. Although, his primary Company affiliation was with Lawyers Title Insurance Corporation, beginning in 1936, he was directly involved in the title business long before that. He was the prime mover, the organizer and the architect that created Florida Southern Abstract and Title Company in Winter Haven, Florida in 1925. He served as an officer of Florida Southern for many years and that Company which is presently an active member of ALTA still enjoys the

prestige of having Hart McKillop serve on its Board of Directors.

His career with Lawyers Title was particularly outstanding and he served the Company in various capacities until his retirement in December of 1970. At that time, he was Senior Vice President and a member of its Board of Directors, having served in the latter capacity since 1958. During those years, he established Lawyers Title's facilities in Detroit, Atlanta, Washington, D.C., Newark and Miami. He also created and supervised the Florida Agency System which has been one of the strongest and most productive in the country.

In addition, he established various other branch offices throughout the State of Florida. During his later years with Lawyers Title, he served as Chairman of the Continuing Education Department and was responsible for creating and administering the Company's employee training program.

After his official retirement, and I say it that way, because this man will never actually retire, he continued his efforts in this field by creating Land Title Institute and offering through its facilities an industry wide educational program. During the past several years, he has had thousands of students from many of our member companies processed through the Institute's correspondence courses with which some of you, I am sure, are familiar. In this way, he continues to serve the industry and is making a significant contribution to the education and welfare of many of our employees.

He has also served well our Association. He was a member of the ALTA Board of Governors from 1949 to 1951. He has been Chairman of the ALTA Committee on Advertising and Public Relations and has served on the Standard Forms Committee. He also served in other unofficial capacities and whan I first began attending these Conventions some 25 years ago, he was the perennial Master of Ceremonies at Convention Banquets injecting his own brand of Cajun, Scottish and Blacked Faced humor into the proceedings.

By profession, he is an attorney, having graduated from the University of Florida Law School in 1922, when he was still legally a minor. Because of that, he holds the unique distinction of having had his disabilities of minority removed by the Supreme Court of the State of Florida so that he could practice Law in that State. His initial practice was in Clearwater but he soon moved to Winter Haven where he continued to practice law until his association with Lawyers Title in 1936. In 1972, he was honored by the Florida Bar Association upon his 50th anniversary as a member of the Florida Bar.

He is also a prolific and very excellent writer. He has authored many, highly read educational articles on title insurance which have appeared in the University of Florida Law Review, The Florida Realtor Magazine, National Realty Board's Journal and other publications. In addition, he has provided text material for the University of Florida Law School and the Continuing Legal Education Department of the Florida Bar.

He is also a much sought after public speaker. He has appeared on many convention programs and has lectured widely in educational seminars throughout the country.

Now, let me enumerate briefly some of his other activities, not necessarily chronologically in the order of occurrence or importance, but as an illustration of the versatility of this man and the scope of his endeavors.

He was a co-founder of the Winter Haven Hospital.

He organized and helped develop the Winter Haven airport.

He is a 32nd degree Mason.

He helped organize and was the first President of the Florida Title Underwriters Bureau.

He has been a TV personality and was the central performer in a long running series which was aired from the West Palm Beach area.

He was the central organizer and served as Chairman of the Board of Directors of the Lake Region Bank of Commerce in Winter Haven, Florida which is now the First National Bank of Winter Haven.

He has designed and developed residential housing.

He has designed and built uniquely styled office furniture.

He has owned and skippered a seagoing vessel.

Prior to attending the University of Florida Law School, he was a student at the Georgia Institute of Technology more generally referred to as Georgia Tech, where in addition to studying architecture, he starred on the grid iron for the Yellow Jackets.

One of his more unusual endeavors was that of being a lion farmer. Yes, you heard me correctly. During the 1930's he was engaged in the business of raising African Lions, both for show and for sale. The entire project was eventually sold to the Clyde Beatty Circus.

He is a past President of the Florida Historical Society and has found the history of Florida to be so fascinating that he is presently producing a series of educational films on the history of our State. The pilot film has been completed and is now in post production. He writes his own script which is a complete motion picture scenario, camera and action directions. He has built all of the sets himself and he employs professional camera crews to do the technical work. He uses students from the local colleges for the minor casting parts.

He does the narration based on his own research of historical facts. As an indication of the scope and depth of this project, the first film deals with the geologic origins of the State of Florida going back as far as 200 million years and proceeding through various ice ages and land uplifts coinciding with the uplift of what is believed to be at the time of the rise of the Appalachian Mountain range. All of this is being done on his own initiative and with his own resources. He hopes that whoever sponsors this series of films will eventually make the series a gift to the children of Florida.

I think I must also relate to you a highly dramatic, but little known event that occurred in his life. As the war clouds gathered over Europe in 1939, he and his wife were vacationing in England. The beginning of hostilities in September of that found him rather urgently trying to book passage by ship back to the United States. He tried several but found no space available due to the general exodus that was occurring at that time. Finally, they were granted space on a ship only to learn a few hours before sailing time that their passage had been cancelled in the confusion of early wartime. The name of that ship was the Athenia and for those of you do not remember your World War II history, that was the first ship sunk by a German submarine during the war. He was later able to secure safe passage back home and was thus spared to make his contribution to the Title Industry and to all mankind.

I cannot conclude these remarks without adding a personal word of friendship and admiration. This man has been my business adviser, my personal counsellor and my friend for over 30 years. His advice and counsel has been invaluable and I might add, always, Sound and proper. It is with the greatest of pleasure that I now present to Hart McKillop this Certificate of Honorary Membership in the American Land Title Association.

Changing Patterns in Real Estate Development and Use

The Honorable Philip M. Klutznick

Former Ambassador to United Nations, Klutznick Investments, Chicago, Illinois

Mr. President, ladies and gentlemen.

Following the introduction of the act that preceded also reminds me of Mark Twain. There's nothing quite as hard to live up to as a good example. And what preceded me was a good example of the kind of devotion to your business. And perhaps he should have made this speech on the changes because his life indicates diversity, which unfortunately mine does not.

When I was invited here, I was told I was free to discuss any subject I feel appropriate. After I had written a few thoughts, I received the official program, in which my statement carried the title, Changing Patterns In Real Estate Development. Frankly, I want to say that which I had written on a plane returning from a hurried trip to Europe; so if you find a strange combination of ideas, charge it to my stubborness and to the fact that, as I was introduced, a good part of my life is spent in the international community. And even real estate patterns affect that community. And I may be speaking more from that perspective, than from the immediate challenge of what's happening in my town and yours.

And yet as I do so, I'm back last night from an annual meeting of a firm with which I'm associated, "Salomon" Brothers. Normally that firm has a wonderful evening as its annual meeting, especially when business has been good. We indulge in an intellectual discussion after eating too much and drinking enough. But the night before last, the Muhammed Ali-Joe Frazier fight was on, so they decided to celebrate it with a different kind of aftermath.

This was the first fight I've ever witnessed on television or anywhere else for that matter. I must say that maybe the idealism that I want to express in my remarks that follow, are inappropriate having witnessed four and a half million dollars of even devalued currency going into the hands of one, and a couple of million to another, who really knocked the hell out of each other and nothing more.

I came away with an impression that what I saw was realistic. I came away with another impression. I'd rather make money my way than theirs. Nevertheless, I'm at least constrained to touch tangentially on land. Although in these days, I consider it almost impossible to limit one's self to a small horizon, without touching at least on the broad political, economic and social issues that seem to impact everything and everyone.

A friend of mine who is one of the nation's largest developers, began a recent speech with an appropriate observation, which as far as I know is original with him. He said and I quote him: "Whoever isn't confused these days, isn't really thinking clearly." There may be just enough wisdom in these words to question the judgment of anyone who tries to talk meaningfully about the broad aspects of land and its real character in but a few minutes.

But until outer space or the seas become habitable, almost every key issue of our day involves land, its use, its abuse, its ownership, its productivity, etc. My friends, we fight for it, we debate and argue about it. We plan and replan it, some make fortunes and others lose fortunes over it. We cannot lightly dismiss the source of wars, the foundation of wealth, the means to feed humanity, the jealous storehouse of much of the energy that powers the world, and the direct means of happiness as well as distress.

This concerns not only the quality, but the character in the quality of this heavily endowed asset. I don't know how many of you would agree that we should be indebted to the Club of Rome and some distinguished MIT collaborators for a statement entitled Limits of Growth.

This emerged from a study that was begun in 1968. It produced a series of new formulae that related people to land, to environment, to production, to pollution, and to population growth. You name it, and they discovered a way to count it in one manner or another.

In global terms, this study was devastating as well as completely misunderstood. Some of us who criticized isolated conclusions, nevertheless, felt that the warning to both the industrial and developing countries merited careful analysis. And all this was going on while an enormous shift in wealth began with the "OPEC" Price Rebellion. So while the sophisticated leaders of industrial giant nations, were struggling with new questions of environment, ecology, pollution and limits of growth; the emerging new powerhouse of OPEC, with their threat of embargoes. Even the poor developing nations were fighting to get some dirt and pollution from growth on their hands and out of their lands, no matter how unlimited.

In this complex of almost revolutionary proportions, in one way or another, land has been substantially involved. We Americans with a wealth of square miles and with natural resources of unbelievable magnitude, have never really fully appreciated the predicament of other areas of this troubled world.

Let us glance at a few issues quickly and examine the role of land either in the question or the answer. One I've already briefly referred to, the oil embargo. It created a new universe of problems. The world system since post World War II has been based on a viable western alliance, that is; Western Europe, the United States, and Japan.

Domestic energy in Western Europe and Japan was always a major economic element. Our country is more blessed. But our people have become accustomed to an economy of waste, big cars, too much heat and too much air-conditioning at the wrong time. Even our relatively abundant resources have been abused and misused under the opiate of Middle East cheap oil.

When the international cartel demanded more, it was one thing. But when they said no oil, if our Arab cousins do not get what they want from Israel, the shock was enough, to painfully stress a compelling fact of life. Now my friends, why should we concern ourselves in this meeting with this matter?

In Israel, there's a witticism. That if Moses had turned left instead of right, Israel would have been a part of OPEC instead of Saudi Arabia, and the West would have had a friend in court maybe. But this also proves another point that I must make. Everything has a price.

It is true that Israel would have been in OPEC, but then what about the Ten Commandments, and for my people, what about the Torah? And a question mark in to what commitment would Jesus have been born? What has this to do with land? Simply that the greatest oil reserve known today, is in Saudi Arabia. Tomorrow there are rumors it

may be the Peoples Republic of China, either on dry soil or wet seas that adjoin them.

Whether it is land above or land below water, the destiny of our posterity will depend on the capacity of land to produce the indispensable quality of life called energy.

Now second, to offset these withholdings of the OPEC countries, the industrial world is feverishly looking for new sources to power its machinery and bring comfort to the people. They tell me here at home we possess a coal supply to meet our needs for over six hundred years. But it is either close to the surface, which means stripping the land, or in the bowels of the earth.

To get at it is a problem of how to use huge areas of land without abusing it. And collaterally there is shale oil, a reclamation which requires again, a use of land.

Third, all of this has already produced an enormous redistribution of material wealth. United States has dropped noticeably in the standings of per capita earnings and in the standings of monetary reserves held by nations. On the other hand, one factor that has slowed up that run has been our agriculture. Again, land and its productivity. Our balance of payments deficit has disappeared as our food has met the diet deficits of the world.

Surpluses are no longer our problem, nor is it popular to speak of limitations on crops. So where on one hand, the oil below the sandy land and water beds impose a burden on our life, the product of our farms lessens the load for the time being. And even now, (and I think this is pertinent to your business), the experts are eyeing the greater agricultural use of our land for these purposes.

The Department of Agriculture recently reported that while three hundred and sixty-one million acres, of three hundred and eighty-five usable acres, are being cultivated; it estimates that there are two hundred and sixty-six million acres that can be readily made usable and as much as an additional one hundred and thirty million acres with limited potential that could be tilled occasionally or used for growing fodder.

This totals in my calculation, over seven hundred and eighty million acres or about one-third of the expanse of our country. The magnitude of the figure is illustrated by the realization that it is about thirty times the amount of land used for dwellings, businesses, manufacture, and related common or public purposes.

Now, these few excursions into astronomical figures, is meant to preface a few remarks that may be reasonably unpopular in this presence. If we add land used for agriculture and available for this vital purpose nationally to the scattered multi-million acres of land used or sorely needed to be used, for; oil, gas, coal, shale oil and other indispensable efforts to achieve energy sufficiency if not independence, and our economic and social balance in the years ahead, it is fair to observe, that land is rapidly becoming a question of prime importance.

And I reiterate, prime national significance. It is not enough to say that the places where we live and we work, constitute but a few million acres of all of our land and there's more to go. It is important to understand, that while the Club of Rome brought us through the back door of limits to growth impressively demonstrated mans' failure to guard his environment; that because of this and obvious abuses, environmental and ecological questions have become public matters with an unusually long life span.

But if we add to this, the need to expand usage of land both above the surface as well as the ocean and water beds to sustain a decent standard of livelihood as well as a dwelling environment of our people, the character of the question that confronts our nation staggers the imagination.

This brings me to a position which seems inconvertible in logic, yet one that will not appeal to people customarily interested in the private aspects of land and its use. I am not sure what detailed proposals I am prepared to support, for I have not adequately surveyed the field. But I am sure of a general position with respect to the subject that I can no longer find comforting.

That position was expressed briefly but fairly in the key editorial of last month's issue of *Nations Business.* Most likely many of you recall it, so I quote only parts. "The American business community is firmly committed to using the nation's land resources in a sound manner that best serves all citizens."

That we can all applaud. But then it says that businessmen recognize that the most effective way to reach the goal, is to take a positive approach grounded on traditional American values, private property rights and decisions made at the level of government closest to the problem. It goes on depending on the scope of the issue, that could be local, county, regional, or state government. Note the omission of federal.

"Land use legislation pending in Congress meets few of these positive standards," says *Nations Business.* And then it states putting the power of decision in the hands of a federal bureaucracy is unsound and impractical. And good land use planning is sound and practical.

My friend who spoke about confusing times also made a statement that's of great interest to me. He is engaged in one of the great projects in New York City and he has been upset by the way planners have been getting into his hair. So in one of these speeches he said: "I don't like planning, I think it's an unnecessary so-called art." He said, "as a matter of fact, if the planners all quit planning tomorrow, nothing would happen." Nothing would be interfered with, everything would go on. But he said: "just let the electricians and the plumbers and the carpenters go on a strike, and everything will stop." Well, Sam Lefrak who is a pretty independent person likes to make these statements without recognizing that in his own business, he has been successful because he is a good planner. And there's no man in business today who can continue to exist and run a substantial business, without looking ahead five, ten, or fifteen years and attempting to build into his operation an appropriate planning mechanism.

And when you consider another fact of life. In this city is the headquarters of Arthur Anderson & Co. Harvey Kapnick, the Chairman of its Board, recently wrote an article on the importance of accountability in the federal government. And hidden in that article was a type of statement on assets and liabilities which he feels the federal government should publish regularly. I agree with him, although there is some resistance in the government itself.

But in his article was a very interesting observation. In a statement of assets and liabilities, on one little line there appeared an indication of land owned by the government carried at its acquisition cost. In 1974 that total cost was 6.7 billion dollars. In the explanatory article, there is a statement that a House Committee in 1972 determined that the then value of land holdings by the United States of America, was closer to 29.0 billion dollars, a fairly decent profit, although I think grossly understated.

That the number of acres of this land owned by the federal government at this moment, is like the agricultural land and its potential, 760 million acres or roughly one-third again of all the land in this nation.

When you consider the land uses which are keeping us out of trouble, that involves a third; the land uses in the future that we must put this land to, to get us some degree of sufficiency in energy, and the fact that the government owns one-third of the land, how can one possibly posit a proposition that you can reasonably consider land and its use in America, and exclude the federal government. It suggests to me, that you are excluding the principal actor, not because he doesn't belong in the act, not at all. Only because we are afraid of it, at a time in American history when we are going to have to quit fearing our governments and start improving them.

We have to quit fighting government and start to learn how to live with it. Willy-nilly, the era through which we're passing, is an era of enormous flux and change. There is no choice but to look at the totality of the land problem.

I must make another observation which gets closer to home. Those of you who are in this business directly or indirectly know that recent years have not been the easiest development years in American history, not altogether because of a recession. Our com-

pany continues to operate in or out of a recession. But in large measure because of the difficulties that are imposed by ecological, environmental and other standards, some of them real and some of them not so real.

In the midst of this to contend that we in the private enterprise field, can solve this problem alone, puts us in a position of wearing blinders. I spoke to a convention not too many years ago, a certain national association, one of the largest interested in real estate and investment in real estate. And we were then celebrating a thought, the great achievement of our industry when the government finally established Title 235 and 236 and gave the private enterprise field the privilege, if you please, of providing subsidized housing with interest rates reduced to as low as one percent.

In addressing that group, I cautioned them not to applaud too early. We are in a field that I don't think we in the private field are prepared to handle. We can build them but most of us can't manage them. We don't understand the uneconomic operation to which this is addressed. Today we witness a half million homes that were provided under that program in one year, and more a little before and after. And we also witness tragedies all over America, of houses that are bolted up, boarded up, neglected, and abandoned.

This is simply because we fought government. Instead of finding a way of working together in a process which was not exclusively private enterprise, we floundered badly. The tragedies are so that in the press, that the very good things that did happen under that program are forgotten.

Or let us look at another area. Some of my friends in Chicago know that I headed a company that built only new town that was built by private enterprise in post war America, that finished its job and didn't go broke. Quite recently, we started telling the government that private enterprise can build new towns if it only gets government assistance.

Title Seven was born. Fourteen projects with nearly two hundred million dollars of advance loans were made available to developers some of whom understood and some who didn't. But there was the gravy boat available for anyone who would take it.

Some of us who had lived through the misery of building a new town, said that the formula was wrong – there was too much money going in at the front end and it would take too long to get to the turning point from loss to profit. The government wanted to prove contrary-wise. The pressure of those who felt that real estate and land development are exclusively a private domain prevailed.

And right now we're in the midst of witnessing the debacle of one transaction after another. In our company we are reasonably well informed on this subject. We are still looking for one among the fourteen that may merge as being economically viable.

Therefore I suggest, that when we start criticizing the government in an assumed role, we should understand what that role is and the interest to the government. And when we start talking about private enterprise roles, the one thing we should remember is that private enterprise can only live by being free. And that means, not taking on uneconomic businesses which government can handle.

There will be all sorts of new ideas for the utilization of government strength in order to bring back the development business. And I plead with you that we accord to the government that which it can do best and that we seek for answers that have an element of free enterprise and private enterprise in them.

Permit me to talk about one other thing, and then to a conclusion. I have said this a number of times. We tend to be behind the times. The fellows ahead sometimes make that extra dollar. It was the most natural thing after World War II for most building to take place in the suburbs. There wasn't anywhere else to build except on abandoned lots. And land was so cheap and so easily developed. And like everything else, we perhaps overdid it.

We expanded boundaries to a point where it was difficult enough when commuting cost was cheap to travel that hour or hour and a half in some of the metropolitan centers each way each day. But today, when commuting costs are at all time highs and when driving a car to work is an expensive exercise, it becomes completely contrary to good economic and public sense to continue to multiply our problems.

Not that the suburbs don't have and won't continue to have a legitimate place in our society. But the time has come to look inward and see if we haven't neglected assets that have been lying waiting for us to use. I think we are going to turn inward.

I think we are going to see within the great cities of America what we're trying to prove here in Chicago in a project which time does not permit us to describe. I think we can find land that is as cheap for residential and related uses within walking distance of major work opportunities, as it takes today to develop new land in the suburbs under existing ecological and environmental conditions.

One of our better architects said the other day, that you can't afford more than five thousand dollars for a freestanding house if the total package is priced within reach of a twenty-five and thirty thousand dollar a year income. And to produce a decent sized lot today from scratch requires more than five thousand dollars in the Chicago or typical city area. It may be closer to eight or ten thousand. The only way you can do it for five or six, is to increase the density to eight to ten. Then it is really no longer a freestanding house even though it purports to be one.

It seems to me that under these conditions, if we talk about land use seriously, we should be talking about the use of land which has been ignored, mistreated, abused, and we must bring back the life to the city by bringing people back into the city to live as well as to work.

In short my friends, we are facing land problems that in the aggregate or even in the smaller dimension, are so unique and overwhelming, that we need all of our combined wisdom. And most of all we need a sense of understanding and willing cooperation between the public and the private sectors of our society.

There is every indication that the international, economic, social and political arrangements which enabled our nation to attain a premiere position since World War II, are in great flux. I suggest that we need not fear this kind of change. We can make it our ally if we will it, but we can be destroyed or diminished by it if we ignore pressing reality and indulge ourselves in yesterday's prejudices of platitudes.

As World War II ended, one of the better minds of our federal bureaucracy predicted that the post-war period would be characterized by the people seeking to satisfy their hunger for things. Our nation satisfied that hunger for many. For a long while it has helped satisfy similar hungers elsewhere in the world.

The achievements of our science, our industrial machine, and our labor mark one of our proud efforts in the history of man. Today, the evidence suggests that the people are not satisfied with things alone. They believe that there is a national weal emerging for something called conditions of life.

This is not yet clearly defined. But major shifts and emphasis are casting long shadows over the satisfactions of the past generation. I do not suggest nor am I wise enough to say, that I understand or even agree with all that has happened. But that it is happening and it is predicting new goals, new values, and even new restraints, is a fact of life we cannot and must not ignore.

It is fitting my friends, that in the year 201 of our republic, which will be ushered in in '77, that we also usher in a peaceful revolution to commemorate the birth of a nation created out of a clash of arms. In the cradle of the next century, there will be born new attitudes and new purposes for the precious land that is America. We owe it to the past, which has been so good to our nation, to grasp the call of the future by joining those who would urge that the land which has been so good, become better. And the life which was so rich in things, grow deeper in its sense of values and commitment.

This then my friends, will justify the prologue of two hundred years out of which I am certain will be reborn even a greater and a better America.

Do's and Don'ts of Labor Relations and the Effect of Equal Employment Opportunity Legislation on the Land Title Industry

Charles J. Griffin, Jr.

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The qualifications of the speaker are rather unique – he knows nothing of real estate uses, claims, mechanic liens, liability insurance, title searches, Real Estate Settlement Procedures Act of 1974. It is, in fact, up until your cocktail party last night the speaker believed that RESPA was a product sold during intermissions on late night movies.

The subject is also almost as ironic – the dos and don'ts in labor relations and the effect of equal employment opportunity laws could fill the entire agenda of this convention.

I guess the limited time allotted is in keeping with the many, many subjects you will be discussing in the three days of the convention. For that reason, I will attempt to limit my talk to a brief description of the problems and opportunities of the land title industry today in the area of labor legislation.

In discussing labor law, I will focus on two aspects of how federal personnel laws affect the title industry, specifically laws relating to this industry's relationship with its employees via the labor organizations, commonly known as unions, and this industry's relationship with its employees via the Equal Employment Opportunity Commission.

OVERVIEW

In attempting to decide which particular issues might be of most concern and interest to you, I surveyed both an operations officer of one of your member companies and a variety of my own partners. Their conclusions were radically different.

Your member said, we have been in the midst of planning affirmative action programs for the past. It has become old hat. The members of my firm said something to the effect that of their total work, roughly three to four percent is spent in combatting organizing campaigns of unions, while 25 percent is spent on EEO and AAP questions. Thus, they suggested that the more significant area to your members is EEO questions, at least when one considers that the odds of your confronting either situation are at least seven to one in favor of confronting equal employment problems.

On consideration of this advice, and knowing that my partners are somewhat less conversant about EEO, I will devote my time overall to unionization, although, as I shall attempt to point out later, the area of equal employment is of more practical significance for the simple reason that conformity with the EEO laws is perhaps one of the best methods of retaining unorganized, ununionized status.

But first an overview of the land title industry program for remaining unorganized with a squint here and there to the federal protector of this country's labor organizations, the National Labor Relations Board.

With respect to unions, the most important single thing that you can take from this speech is a decision that you will do all within your power to prevent union organization. And that you *will* take all of the steps required to prevent a repetition of the calamaties that Mr. Little has just spoken of.

THE UNION PICTURE

There are presently about 25 million Americans in the various labor organizations. Approximately 15 percent of that number are white collar employees, and of that 15 percent, the vast majority are in industries in which blue collar employment is much larger than white collar. Example – automotive.

A study in 1963 by the University of Chicago demonstrated that 45 percent of the potential union membership in the United States was white collar. At that time, the UAW formed T.O.P.; the Teamsters declared a nationwide white collar organizing attempt, and the AFL-CIO itself started two successive organizing campaigns in the L.A. area; Johnny Desmond sang at a rally in the Manhattan business district extolling the virtues of the Office and Professional Employees Union.

Twelve years have passed. The government has, at the beginning of this year, issued a report that by 1985, 53 percent of the entire workforce in the United States will be white collar – an increase of more than six percent.

Blue collar employment will decrease from 35 percent to 32 percent of the national workforce. It is time for unions to once again gird for action.

You may well point out that the unions' share of white collar workers has not significantly improved in the last 12 years – why should there be concern now. You may look at financial institution figures and see that .1 of one percent of financial industry employees are organized. Certainly, that is not much progress in 12 years.

On the other hand, the unions did not fail in the last 12 years. In 1963, the AFL-CIO stated that the white collar campaign would center on four main occupational types: School teachers, engineers, postal workers and retail trades.

Overwhelming successes have been achieved in two of these areas – school teachers and postal workers. In addition, one other area of white collar workers has become increasingly organized – professional nurses.

Three developments in the last 15 months have caused a lessening of union organizing pressure overall on the financial community, not a decline in union attempts to convert the white collar worker: (1) the amendment of the Taft-Hartley Law in 1974 placing employees of eleemosynary hospitals under the protection of the National Labor Relations Act. An example of the impact this has accomplished is District 65, RWDSU which, in New York two years ago, attempted to organize a unit of one of the member companies of 12 employees. Today, that union, formerly localized in the New York metropolitan area, is a party to several elections in hospitals and nursing homes here in Chicago. The population of these units is 600 to 1000 employees – not the smaller fish in the more typical financial organization. (2) University professors. (3) The California Agricultural Labor Bill – UAW, Teamsters, AFL-CIO.

Again, with the exception of nurses, most of these units are in psychology closer to the blue collar than the historic white collar of ALT industry. While the big fish are there, campaigns for the smaller financial units are generally going by the boards.

Remember, it is only a matter of time before the union starts – and almost any union will attempt organization when it is sought out by the employees.

This is a time, then, to put your house in order – as a university personnel director exclaimed in a speech this year – if you don't want your employees to organize, treat them as if they had a union; if you do, they won't.

The impact of nurses and school teachers organizing is difficult to gauge, but they would seem to be a significant indicator of the future – in that both are traditionally female occupations and both have a work identity similar to the usual *white collar worker.*

This female white collar turning to unions is a new phenomenon overall. Its impact must be carefully measured in consideration of the fact that approximately 56 percent of the employees in the insurance industry are female, according to EEO-1 statistics, and in conjunction with AAPS will more than likely increase in the future. In addition, both teachers and nurses are professionals. Today, 75 percent – tomorrow, higher.

As a general rule of thumb, union organization will occur when fulfillment cannot be found in an employee's job and in the relationship with his supervisor and the company. Unions know this and have attempted to train their organizers to be amateur psychologists.

In ascertaining what is required to remain in the highly enviable position of an unorganized enterprise, it is necessary to know about labor organizations and how they operate.

In planning its campaign, a union will involve itself with collecting as much information as it can on the company and its operations, including the personal idiosyncrasies of the managers. Among other things, union manuals instruct organizers for the need to determine immediately the racial and sex breakdown of the potential employee unit and the educational level of the group, so as to slant the campaign in different ways.

The major goal of the union organizer is using this storehouse of information to stimulate and develop complaints of the employees against the way they have been treated in the past and with respect to the various salary and benefits that are currently enforced at the office.

Creation of an in-office committee.

At the same time, the organizer has been instructed to make every effort to destroy the employee's identification with the company. It is not until the identification has been weakened that the union will generally begin an all-out effort to whip up enthusiasm for the union and open hostility against the employer. THIS IS THE POINT WHERE THE ACTUAL ORGANIZING CAMPAIGN WHICH IS HIGHLIGHTED IN ALL OF THE BOOKS ABOUT COUNTER ORGANIZING STRATEGY COMMENCES. At that point, it may just turn out to be too late to avoid a forced marriage to a union.

The way to prevent the campaign from beginning is obviously to prevent the insipient psychological probes of the union organizer and his allies – the in-office pro-union employees. As in marriage, the first and most essential ingredient to preventing the destruction of identification with the company is communications – communications both downward and upward. Communications at all times must emphasize the plusses of working with the company in the land title industry – e.g. The means of communication should include three different systems: (1) A formal employee handbook; (2) a carefully devised house organ; (3) verbal communication directed to the employees through their supervisors. In short, a campaign to build up the identity of an employee with the company before the union arrives at the doorstep.

Equally important are communications upward. One of the most emphasized points in any union campaign is that a union contract would provide the employee with the resolution of his complaints through a contractual grievance procedure. There is no reason not to have as effective a grievance procedure in an unorganized office.

A word of caution, the "open door" policy that many unorganized companies pride themselves on is often an open door to an empty office. ONLY HARM WILL OCCUR IF THE EMPLOYEE, WHEN HE OPENS THE DOOR FINDS EITHER NO ONE PRESENT TO HEAR HIS COMPLAINT OR NO ONE WITH AUTHORITY TO DO ANYTHING ABOUT A VALID COMPLAINT. An established grievance procedure starting with the first level supervisor and ending with a high-ranking official possessed of both good judgment and empathy toward the employee may be the most important single tool in preventing the soil in which union seeds will grow.

Another essential ingredient is a policy not only of fairness to the individual employee, but of striving to give the *appearance* of fairness in all actions dealing with the individual employee. An example: Linda Schein's promotion.

Fourth, the realization that unions are designed for the benefit of the *mass* of the employees as opposed to the individual employee. The individual employee's individual motivations must be kept carefully in mind in an unorganized office. I need not spend much time on such needs as feeling "in on things," recognition of diligent performance, opportunity for advancement, recognition of merit in dollar values and loyalty. The important thing is that the individual employee's values be discovered and tapped.

Supervisory training. As you recall, I earlier said fulfillment of the employee job and relationship with supervisors as well as the company.

In addition to the silent campaign I have referred to, it is also important as a purely technical measure, *e.g.,* no solicitation rules, pension and profit sharing eligibility wording, that any unit in which a National Labor Relations Board election could be held be structured in the best way possible for the employer. Depending on the number of people allowed to vote, the unions' chances to win the election obviously increase or decrease. A union can organize a smaller group of employees with much less effort and much less cost than a significantly larger group.

Making sure that any future election will occur in as large a group as possible should be one of the concerns of the company in many of its personnel activities on a daily basis. One theory which I subscribe to is that unions' failures in the true white collar organizational field has stemmed primarily from the enormous heterogenety of the voters as compared with the usual blue collar group. The engineer, draftsman, secretary, accountant, see themselves as something different from the file clerk, switchboard operator and pool typist and, interestingly enough, different from each other.

Within the white collar group, there is a great variation in the amount of education and personality trends. Group cohesion is diminished. Consequently, what I refer to as unionization melting point is necessarily increased. Interesting results in hospital elections.

To insure as much as possible the largest possible heterogenous unit, personnel policies should be structured so as to make as broad as possible the benefits and salary structure between the various groups of employees to encourage transfers across departmental or group lines and to carefully plan a table of organization and interlocking supervision. Characteristics such as these will, in the event of a union petition, be examined by the NLRB in determining whether to allow a department to vote separately or to require the entire office population (or several office populations) to vote.

It is heartening that the NLRB has thus far continued to apply *generally* wall-to-wall unit determinations in financial organizations; that is, in the appropriate unit for an election, all non-supervisory employees in the office are allowed to vote.

An aside here – the use of officers in the financial community, including the ALTA, has consistently been found by the NLRB not to create a separate status for voting. Thus, the Board will allow officers to vote if they are not true supervisors (possess authority to hire and fire) regardless of title.

Finally, it may be noted that with the accession of Betty Southern Murphy to the Chairmanship of the NLRB, the Board has not changed its overall view with respect to the right of the employer to speak out very forcibly on the dangers and evils of unionization during the election campaign. Thus, for example, just two months ago, Mrs. Murphy issued an opinion finding nothing illegal with an employer telling his employees that unionization could prove fatal to his job. On the other hand, Chairman Murphy's Board is more inclined to slap harsh punishments upon the company that

grants a wage increase or fires an employee without cause or surveils union activities during a campaign period, including bargaining orders requiring the employer to bargain with the union without regard to the outcome of any NLRB election. In addition, seeking immediate injunctive relief from the federal courts to compel an employer to bargain immediately after the unfair labor practice has occurred. The law will change because it is changed every four years in the past – the remedies will change because they, too, have changed often. Keep the incentive for your employees to remain ununionized, and you will not have to consult with counter organizing experts, management consultants, or even people like myself with respect to what you can and cannot do during a typical campaign.

EQUAL EMPLOYMENT

As mentioned earlier, equal employment legislation may be of more practical importance for several reasons – first, the chances of defending the company against the Federal or State Commissions seems greater mathematically than the chance of a union organizing attempt.

Second, the remedies for violations may be as sweeping or expensive as a successful union attempt. I am sure you are aware of the settlement of ATT and the Basic Steel Industry.

Every day, a class action suit is filed somewhere in the U.S. – millions of dollars are involved.

Thirdly, the effect of equal employment laws has been to compel every employer to operate as if he had a union contract. The reason I say this is based on a comparison of typical white collar union contracts with the present requirements imposed by Title VII on employers.

The labor agreement generally makes detailed provision for the salary structure – description of job positions and the amount, if any, of a merit spread, application of seniority to reductions in the work force, and promotions, leaves of absence, cause for discharge, promotional procedures, overtime work, grievances and fringe benefits.

Each one of these areas has been addressed by the EEOC; just to mention a few – the administration of the salary program is the normal subject for examination by the Insurance Compliance Staff in performing reviews for determining compliance with the Executive Order governing AA Plans.

The application of seniority is presently before the U.S. Supreme Court on the issue of whether length of an employee's service with the company will be allowed to operate as a criterion for promotion, reductions in the work force, or for any other reason when the employer had or was thought to have discriminated against protected classes in the past.

In addition, in determining whether a promotion was discriminatory, the EEOC looks to first seniority even where the employer has never had a policy of following seniority. [Tell about Yellow Freight Lines.]

On discharge, the EEOC has taken the position that unless a just cause exists for a discharge, or any form of discipline, it is presumed that the reason for the discharge was discrimination on the basis of race or sex.

Just cause, it should be noted, is not the employer's to determine, but is a supposed "objective" consideration devined by the EEOC staff. Thus, *e.g.*, while many in this room might consider the arrest of a messenger for theft as just cause to discharge him, the EEOC would find such action unlawful, if either a female or minority were involved.

Just cause not only includes the reasons considered legitimate, but the procedures followed in disciplining employees. These procedures, including warnings, counseling, detailed explanations of failures, are again not necessarily the employer's way of handling problems, but are required by the administrative practice of the EEOC.

And where did the EEOC get these rules they expect employers will live by – from primarily decisions of labor aribtrators interpreting union contracts. The EEOC has borrowed other items as well from union contracts. In fact, the EEOC can be said to have combed thousands of agreements and picked as its test of fairness the practices they thought most fair to the employee.

So, regardless of whether you know it or not, you have a contract with your employees covering most of the items ordinarily found in a labor contract, enforced not by the Teamsters, Office and Professional Employees Union, but by the Federal Government.

Careful discovery of the terms of this contract, and conscientious administration of its terms will lead not only to avoidance of EEOC investigations and class action suits, but, as I mentioned much earlier, will serve to avoid unionization.

Thank you.

Developments in State Legislation and Regulation

comments by

Gerald L. Ippel

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The publication of the HUD study in January 1972, and the subsequent publication of proposed maximum settlement costs in real estate transactions created an awareness of and interest in title insurance that never previously existed. The Congressional hearings and newspaper publicity that followed not only caused the title insurance industry to join ranks to vigorously oppose threatened Federal control but also moved it into an unprecedented state of self-examination. Concerns created by widely published, and often misleading, articles in newspapers and other media became a subject of interest to insurance regulators over the nation and attracted the attention of some state legislators. With premium volume of title insurers relatively small compared to the insurance industry as a whole, it is quite understandable why insurance regulators, with few exceptions, devoted so little attention to the title insurance industry.

Looking back to those rather hectic times and having in mind the protection afforded by the McCarran-Ferguson Act, it was expected, or at least anticipated by many of us, that there would be a veritable flood of new state legislation devoted to title insurance, especially in those states that had only a few sections on title insurance buried in their general insurance laws. And, also additional regulations from those states that already had rather comprehensive chaptered title insurance laws.

Although much of the title industry was

active in encouraging stronger state participation in the regulation of the industry, either through new legislation or enforcement of existing laws, and even though many of us were extremely busy with hearings before some state regulators and in reviewing proposed legislation and regulations, in reflecting on the last 3½ years and viewing the state activity in the field of title insurance overall since 1972, the expectation of a flood of new legislation was somewhat exaggerated.

A survey of the state insurance laws as they exist today reveals that as to *rates* 11 states do not require filing, 18 states require only that the rates be filed, 9 states require filing of rates which become effective after a specified waiting period unless disapproved, 9 states require filing of rates and specific approval and 2 states provide for promulgation of rates. *With only a few exceptions, this same situation existed in 1971.*

Although the enactment of new legislation may not have come up to expectations, many state regulators, acting under authority of existing statutes, were quite active in the issuance of new regulations. This activity not only occurred in the anti-rebate and prohibited practices area, but also in the field of rates, rate making and justification of rates. While we cannot this morning in the time allotted cover all of the new legislation affecting our industry in all its aspects, nor all of the various regulations that have been issued, I will try to cover those that have special significance and which may indicate possible trends.

Let me begin with my own state, California. In 1973, the California Legislature enacted a law which, among other things, redefined the business of title insurance and rates. These new, broadened definitions included the concept that *rates mean the charges for all services performed* in transacting the business of title insurance and as such, therefore, included for the first time, *the charges for performance of escrow services* by a title insurer.

In early 1974, following on the heels of the effective date of this legislation, the California Insurance Commissioner publicized and distributed Bulletin 74-2 which listed 33 prohibited practices which, if continued, constitute unlawful rebates. You may remember Don Kennedy's very incisive and enlightening discourse on this subject last year. I remember quite well Don saying, "We created a problem where one didn't exist."

Certain of the prohibited practices have been clarified and "softened" slightly by amendments to 4 of the rules, through a supplementary bulletin issued January 31, 1975. The regulations still constitute a formidable and somewhat unrealistic array of prohibited practices.

For instance, under Rule 3 a title company could furnish only the name of the ostensible owner of record without charge. By the amendment a title company may now furnish, without charge, the name of the record owner, a single photo copy of the deed of record, maps and plots of the property, provided no advertising or promotional material for the benefit of the person requesting the information is included, but the furnishing of information kits, appraisals, comparable sales information or similar packages cannot be furnished without charge.

Rule 24, which prohibited a title company from paying for all forms of entertainment, meals, beverages, lodging, etc., was amended to permit moderate expenditures for food, meals and beverages to the extent that (1) no more than $7.50 per month per person entertained is expended, (2) there is at least one title entity representative present for each two customers in attendance at the meeting, luncheon or business gathering and (3) the discussion of mutual business problems, objectives or service to the consumer is the primary purpose of the gathering. (Now doesn't that create a hellava bookkeeping problem?)

The amendment also permits plant tours or seminars for customers provided no more than $2.50 per customer in attendance is expended, and (2) the tour, seminar or gathering is dedicated exclusively to the presentation or discussion of title insurance and escrow products or services. But educational seminars, movies, closed circuit television presentations and similar programs, dedicated in whole or in part to subjects other than title insurance and escrow products or services is prohibited as an unlawful inducement.

Rule 26, as originally promulgated, prohibited paying for any advertising concerning the title entity in any pamphlet, magazine, brochure, or any other advertising material promoted or distributed or used by any customer. Samples given of the prohibited advertising material were advertisements appearing in newsletters distributed by real estate brokers, listings in exchange bulletins or information sheets published or paid for by a title entity, subdivision tract brochures issued by land developers or builders, jointly sponsored promotional magazines and other such advertising material.

This rule has been modified by amendment which provides that in determining whether there has been a violation of the rule, a presumption of "substantial subsidization" will be made whenever 50% or more of the advertising revenue or printing costs is paid for by one or more title entitles. The amendment also permits advertising novelties and gift items that bear the name of the title entity, but not the name of the recipient, may be given to customers provided it costs no more than $2.50 per item and is generally available for distribution among customers indiscriminately.

Under date of August 21, 1974, the South Carolina Insurance Commissioner issued a regulation which closely followed the California regulation in listing prohibited pratices. The South Carolina regulation dealt with "reverse competition" alleging that it tends to increase title insurance premiums or prevent lowering of such premiums. This is the same philosophy and concern over so-called "reverse competition" which was the underlying reason for Section 8 in RESPA.

This brings us to a consideration of the 1975 Texas Legislation which is cited as the "Texas Title Insurance Act" and which became effective September 1, 1975. Texas has long had strong title insurance statutes and is one of the 2 states which has complete regulatory power over rates and the promulgation thereof. With the 1975 amendments to Chapter 9 of the Texas Title Insurance Act, the announced finding of the Texas Legislature is that, "The business of title insurance, both the direct issuance of policies and the insurance of assumed risks, of every type, shall in all respects be *totally regulated* by the State of Texas for the protection of every consumer and purchaser of a title insurance policy."

While time does not permit reporting on a complete analysis of the new amendments to the Texas Title Insurance Act, there are some changes which are particularly significant.

The prior law was amended to include definitions of "residential real property," "Thing of value" and "person" with each such definition substantially following the definitions contained in RESPA.

The amended act then provides under the heading "Rebates and Discounts" the RESPA Section 8 prohibitions in almost identical language, *except that the prohibitions relate to the conveyancing or mortgaging of any real estate located in the State of Texas rather than the Federal limitation of "A transaction involving a federally related mortgage loan."*

The amended act also provides that the State Board of Insurance shall prescribe uniform closing statement forms to be used in the closing or settlement of any transaction whereby a title policy is issued, *excepting* those transactions regulated by the Real Estate Settlement Procedures Act of 1974, or a transaction not closed by a title insurance company or its agents, attorneys, or employees.

Another section provides for advance disclosure of settlement costs on transactions involving improved residential property upon the written request of the buyer, seller or borrower prior to closing except costs or charges which the lender is required by law to disclose to such party. This article also provides that it is not to be construed as placing upon any title insurance company any of the obligations imposed on lenders by RESPA.

Texas, however, did not adopt the penal provisions for violation of this article that are contained in Section 8 of RESPA.

Some other significant amendments to the Texas Title Insurance Act were: One, a new article which established the "Texas Title Insurance Guaranty Act." Covered risks up to $100,000 would be guaranteed against failures to pay claims by an impaired insurer. An "impaired insurer" is defined as one placed in temporary or permanent receivership because of insolvency by a court of competent jurisdiction or an in-

surer which has been placed in conservatorship after being deemed insolvent by the Insurance Commissioner. Upon the happening of either event, the Commissioner may assess individual insurers an amount equal to the ratio that the total net direct written premiums collected in the State of Texas by the insurer during the next preceding year bears to the total net direct written premium collected by all insurers (except impaired insurers) in the State. The assessment during a calendar year may be up to but not in excess of 2% of each insurer's net direct written premiums for the preceding calendar year. If this formula does not produce sufficient funds to cover payment of covered claims against the policies issued by impaired insurers, assessments may be made in the next successive calendar year.

"Covered claim" is defined as an unpaid claim of an insured, not in excess of the applicable limits of the title insurance policy issued by an insurer licensed to do business in Texas on real property in Texas, if such insurer becomes an "impaired insurer" after the effective date of the act. "Covered claims" also include any sum up to $100,000 for which any insurer is liable in connection with the fidelity or solvency of any agent of such insurer.

Two: Article 9.49, authorizes title insurance companies to issue insured closing and settlement letters, in the form prescribed by the State Board of Insurance, in connection with the closing and settlement of loans by title insurance agents for any title insurance company. Further provision is made that "The liability of the title insurance company shall not be changed or altered by the failure of the title insurance company to issue such insured closing and settlement letters as authorized by this article."

Other sections go into detail on marshalling of assets and how covered claims will be determined and approved by the receiver or conservator of an impaired insurer which has been placed in temporary or permanent receivership by a court of competent jurisdiction.

The Texas Legislature in connection with this article on the title insurance guaranty fund, provided that "it shall be unlawful for an insurer to advertise or refer to this act in any manner as an inducement to the purchase of title insurance."

Section 12 of the article on Title Insurance Guaranty Fund creates an association to be known as the "Texas Title Insurance Advisory Association" to be composed of four insurers, which the State Board of Insurance shall appoint. The duties of the Advisory Association include advising and counseling with the Commissioner upon matters relating to the solvency of insurers.

As far as I am aware, Texas is the first state to create such a guaranty fund specifically with reference to title insurance. Many states have created guaranty funds or pooling arrangements with respect to property insurance and, until the passage of the Texas Guaranty Act, some of us have been successful in taking the position that title insurance was not included under property insurance and therefore *not subject* to such guaranty or pooling funds. We have pointed out that the solvency requirement of title insurers is different from property insurers, because catastrophic loss is not as probable in title insurance as it is in property insurance. The entire approach to the risk and loss prevention characteristic in title insurance is different than the approach of property insurance.

Another provision of the new Texas law requires the issuance of owner and mortgagee title policies on a residential transaction (defined as improved real property designed principally for occupancy by one to four families including individual units of condominiums and cooperatives) *unless the purchaser rejects in writing,* on a form prescribed by the State Board of Insurance, *the owner title policy.*

The State Board is required under the new act to hold an annual meeting at the request of a title insurer or agent, et al to consider RATES. It also keeps the requirement that reinsurance sources be exhausted from licensed Texas companies before seeking reinsurance from non-licensed companies.

A new article provides for the creation and operation of attorney's title insurance company. It defines an "Attorney's Title Insurance Company" as any domestic company organized for the business of attorney's title insurance. Provision is made for private corporations that may be created by 15 or more Texas resident members of the State Bar of Texas to insure titles to real property in Texas. If the corporation is created *as an affiliate or subsidiary of the organized State Bar of Texas or any foundation created by or through the State Bar of Texas* it must have a paid-up capital of not less than $250,000 and a surplus of not less than $150,000. Any other attorney's title insurance company must meet the capital and surplus requirements upon organization as required by Article 9.06 which requires paid-up capital of $1,000,000 and a surplus of not less than $400,000.

Any attorney's title insurance company is expressly made subject to The Texas Title Insurance Act, except as otherwise provided. The only exception I can find is with respect to the capital and surplus requirements which, as is apparent, are considerably less than required for other title insurance companies.

The new article goes into detail regarding qualification of "title attorneys," licensing, surety bond payable to the State Board of Insurance in the amount of $7,500, and annual audits and reports.

Puerto Rico enacted in 1974 a law which creates the "Insurance Guaranty Association." In April 1975, the Commissioner, for the purpose of administration, has set up four separate accounts, that is, (a) vehicle insurance, (b) accident insurance, (c) warranty insurance and (d) other insurances. The Commissioner has taken the position that title insurance is included in "other insurances" and we are presently exploring some clarification as to just what insurances are included in the classifications. The insolvency of an insurer in the particular classification or account would trigger an assessment against the other insurers in that particular account up to 2% per year.

For over 35 years a section of the New York Insurance Law provided that "a title insurance corporation may pay a commission to a licensed real estate broker or to an attorney and counselor-at-law for procuring business for such corporation." As a result, it has been the customary procedure to pay a commission amounting to 15% of the premium to real estate brokers or attorneys who place the order for title insurance.

The last general increase in title rates in New York was on November 1, 1968 and the increase amounted to approximately 11%.

In 1971 the New York Board of Title Underwriters applied for an increase in title insurance rates and were advised that no rate increase would be granted so long as the title companies continued to pay commissions for the placement of business. This was about the time price controls were imposed and the refusal to grant an increase was based on the existence of price controls.

Although attempts had been made to amend the law to abolish the commissions it was not until RESPA came into being that New York finally passed an amendment to this section of the Title Insurance Law which became effective June 20, 1975, the same day that RESPA became effective.

The section as amended now reads, "No title insurance corporation or any other person acting for or on behalf of them, shall make any rebate of any portion of the fee, premium or charge made, or pay or give any applicant for insurance, or to any person, firm, or corporation acting as agent, representative, attorney, or employee of the owner, lessee, mortgagee or the prospective owner, lessee, mortgagee of the real property or any part of its fees or charges, or any other consideration or valuable thing, as an inducement for, or as compensation for, any title insurance business."

A new sub-section has been added to provide for a penalty of $1,000 or 5 times the amount of the unlawful commission or rebate, whichever is greater, against any person or entity who *accepts* or *receives* such unlawful commission or rebate.

In addition, and this is a step beyond RESPA, a new sub-section was added which provides, "premium rates for coverage effected on or after June 20, 1975, shall be reduced to fully reflect the prohibition of commissions prescribed by this section."

As a result, title insurance rates for New York have been reduced by 15% across-the-board, effective June 20, 1975 even though the previously authorized 15% commission payment had not been applicable to all orders received.

Finally let's look briefly at New Jersey. The New Jersey Title Insurance Act was enacted into law May 29, 1975. This new law is significant because it is a comprehensive title insurance regulatory statute in

a state where we find a high volume and use of title insurance. But, prior to the enactment of this new law, the only reference to title insurance in the New Jersey statutes related to premium tax and "unearned" premium reserve. So in this case we have a new law which fills an almost absolute void in the law on title insurance. I may add its adoption was strongly urged by the New Jersey Land Title Association. The complete lack of regulation before the new act, plus the forces of intense competition led to negotiated title insurance fees and the payment of commissions for the placement of business – practices none of us liked but were apparently unable to control.

While the New Jersey Title Insurance Act does not go as far as Texas, which totally regulates the industry, the act is a strong regulatory one.

Title Insurance is defined essentially as it is defined in the ALTA Revised Model Title Insurance Code, except for the added provision of "guaranteeing, warranting, or otherwise insuring by a title insurance company the correctness of searches relating to the title to real property.

"Premium" for title insurance is defined as "That portion of the fee charged for the assumption by the title insurance company of the risk created by the issuance of the title policy."

After defining "premium" the New Jersey Act then defines "fee" for title insurance as including the premium for the assumption of the insurance risk, charges for abstracting or searching, examination, determining insurability, and every other charge, whether denominated premium or otherwise, made by any of them, but the term "fee" shall not include any charges paid to and retained by an attorney at law whether or not he is acting as an agent of a title insurance company, or an approved attorney.

You will observe the difference in the treatment of attorney fees under the definitions of "rate" in the Model Code and the definition of "fee" in the New Jersey Title Insurance Act. Under the Model Code definitions of "rate" attorney fees are *excluded* if the attorney is acting *other than* as a title insurance agent and on behalf of a client *other than* a title insurance company. The New Jersey Act, however, *excludes* attorney fees *whether or not* he is acting as agent of a title insurance company or an approved attorney.

"Personal" or controlled insurance is defined in the same language as is contained in the Model Code, except that the New Jersey Act in addition to defining such insurance as meaning a policy of title insurance "where the insured or one of the insureds under such policy is, or the loss thereunder is payable to" the specifically defined classes, includes "a policy of title insurance where the *source of origination* of the application for insurance" is one of the specifically defined classes and defines "source" as meaning and including clients and customers of attorneys and real estate brokers, where such attorney or broker acts as a title insurance agent in an individual, partnership or corporate capacity.

Other sections provide for the examination, licensing and regulation of title insurance agents. This is not remarkable except for a sub-section which provides as follows: "No bank, trust company, bank and trust company or other lending institutions, mortgage service, mortgage brokerage or mortgage guaranty company, or any service company of or for any lending institution or any officer or employee of any of the foregoing shall be licensed as or permitted to act as an agent for a title insurance company. No bank, trust company, bank and trust company, or other lending institution, mortgage service, mortgage brokerage or mortgage guaranty company, or any service company of or for any lending institution shall make the selection of a particular title insurance company or agent a condition precedent to the granting of any mortgage loan."

There is also a prohibition against the payment of commissions except the payment of a commission or other compensation to a regular full-time employee of a title insurance company or agent of a title insurance company as part of the regular compensation of such employee or agent.

Section 35 prohibits rebates or reduced fees by providing, "(a) No title insurance company and no title insurance agent shall pay, allow or give, or offer to pay, allow or give, directly or indirectly, as an inducement to insure, or after insurance has been effected, any rebate, discount, abatement, credit or reduction of premium or special favor, advantages, or other benefit to accrue thereon or any valuable consideration or inducement whatever, not specified or provided for in the policy, except to the extent provided for in an applicable filing with the commissioner as provided for by this act, and (b) no title insurance company and no title insurance agent shall quote any fee or make any charge to any person *which is less than* that currently available to others in a like amount and allowing the same factors as set forth in the schedule of fees and charges established pursuant to Section 41 of this act or otherwise make or permit any unfair discrimination in the premium or rates charged for insurance or in the fees and charges or in other benefits, or in any other of the terms and conditions of the insurance policy, except to the extent provided for in an applicable filing with the commissioner as provided by this act. The amount by which any fee or charge is less than that prescribed by the schedule of fees and charges established pursuant to Section 41 of this act is an unlawful rebate and (c) no applicant for insurance, nor any insured, nor any owner, lessee, mortgagee, existing or prospective, of the real property or interest therein which is the subject matter of the application for insurance, nor any person acting as agent, representative, attorney, broker or employee of such applicant, insured, or such owner, lessee or mortgagee, shall knowingly receive or accept, directly or indirectly, any commission, rebate, discount, abatement, credit or reduction of premium, or any special favor or advantage or valuable consideration or inducement prohibited by this act."

Section 38 provides for a permitted division of fees and charges between title insurance companies or between one or more title insurance companies and one or more title insurance agents representing the same title insurance company or among two or more title insurance agents representing the same title insurance company.

Another section covers personal or controlled insurance by providing that if the rates and charges for personal or controlled insurance from any one source so issued in any one calendar year received by a title insurance company or by a title insurance agent shall exceed 25%, or from all such sources shall exceed 50% of the total rates and charges received by such title insurance company or by such title insurance agent for title insurance issued in the same year, *the excess shall be deemed unlawful rebate.*

So here we see in New Jersey a good example of a state moving from zero regulation to a comprehensive and strong regulation of the title insurance companies and title insurance agents.

There is no question that our industry is one "affected with a public interest" and as such is subject to regulation. We have seen that presently the state laws on title insurance run the gamut from no regulation at all, except from statutes on premium taxes and "unearned" premium reserves, to total regulation.

I believe that we should view the continued reasonable regulation of our industry both as a challenge and as an opportunity. Our industry does not have the legal authority and power to effectively police itself despite our own good intentions. We need intelligent regulation by the several states. And without regard to prescribed penalties we should, simply as good businessmen and for the preservation of the industry, operate within the letter and spirit of the statutes and regulations. It can bring nothing but discredit to our industry to do otherwise. The action of the Texas Legislature in extending the RESPA prohibited practices to all transactions is, in my opinion, quite proper and perhaps the industry should adopt the same philosophy without waiting for specific legislation to that effect.

We have entered into a period of enforced self-examination which cannot help but have beneficial results. Just one phase of this process, the justification of rates, has revealed how little we really know about our business, outside of the technical expertise of examining and reporting on the state of the titles.

comments by

Dr. Irving H. Plotkin

Arthur D. Little, Inc., Cambridge, Massachusetts

Thank you for the kind introduction. Your Chairman could have added, "He knows very little about title insurance and is constantly learning with the help of the industry." I listened carefully to Gerry Ippel's remarks because I think that it is instructive and very important to find out what the legislatures are doing. To the extent you have chosen, and I think wisely, to cast your lot with State rather than Federal regulation, these statues will certainly give the boundaries and the playing field and also perhaps one could say, the tenor of your interaction between running a business as a private entrepreneur and the necessary quantum of State regulation.

However, having good laws is only a part of the problem. It's also necessary to have a good regulatory environment and understanding with the insurance departments of the several States. Let me take as an example of this theme the last State that Mr. Ippel discussed in detail: the regulatory developments in the State of New Jersey.

I think it's fair to say that overnight – and this is part of the trauma that I think upsets the industry because things are happening overnight – overnight you have moved from, if you will allow me to be an economist for a moment, from a laissez faire environment (do what you will as long as you don't obviously break some of the criminal statutes) to a fully regulated environment equivalent to that which the property/casualty industry has been in for at least thirty, forty, fifty years in the State of New Jersey. Accordingly, I think it is very useful and instructive to find out what is happening right this day in the State of New Jersey with the property/casualty industry.

The property/casualty business is an industry which counts its premiums and assets by a factor of one hundred compared to yours. You speak in millions; they speak in billions. An industry that the average consumer deals with not on an average once every seven years or once every ten years, when he may be involved in a real estate transaction, but yearly and sometimes more frequently than yearly, as he deals with his automobile, his fire, his liability protection and the various kinds of insurances that he has. An industry considered (and rightfully so) absolutely essential to the smooth functioning in the economy.

Everything I'm going to say is a matter of public record. You can read this if you follow the Casualty Press, although some things may sound a little shocking, I am not giving you any privileged information nor am I exaggerating.

The casualty industry during the last seventy years of rate making has coordinated and built up a system of national statistical gathering and where it is still permitted, it is represented in individual States by a national rate-making bureau. The name of that particular bureau has changed over time. There use to be one for the fire insurance industry separate from the casualty industry. When those two industries were joined, the rate-making bureau joined. It was fairly recently known as the Insurance Rating Board; The I.R.B. That organization emerged in a few more companies and with the spread of open competition in States other than California, they changed their name to the Insurance Services Office. The I.S.O. It's President is Daniel McNamara, an attorney and an actuary. I go through all this for an important setting.

A few weeks ago, Mr. McNamara sent a letter to the Chief Executives of all the companies subscribing to the Insurance Services Office; these are virtually all the companies operating in New Jersey and include all the companies you commonly think of as the large property casualty insurers – Hartford, Aetna, Travelers, Fireman's Fund, U.S.F. & G., Maryland Casualty, more than likely, your own insurers for those services.

He advised in the letter that the I.S.O. had expended vast amounts of time and energy and had produced enumerable statistical reports; all in an attempt to convince the New Jersey insurance regulator and his Chief Actuary of the desperate state in which the industry finds itself. A lost ratio such that they lose eight cents on each dollar of premiums they write. That's on average.

Specifically in auto insurance, in New Jersey, that loss might be up to twelve cents, although I have not personally reviewed the data. Mr. McNamara went on in his letter to say that he has no reason to expect that there will be any rate relief granted in New Jersey and is advising his Chief Executives to expect guaranteed losses for two years in the future. It's an unprecedented letter in the world of casualty insurance. It's a letter with certain legal implications and I suppose may be perhaps potentially actionable by the Commissioner. As an attorney I'm sure Mr. McNamara considered that well.

He is in effect telling the casualty people that he has done in their behalf as much as he can and yet he cannot move the Department to grant rate relief. I think, and again, I haven't researched the laws, if you will look at the legislative standards for rates (non-excessive, adequate and not unfairly discriminatory), you'll find a parallelism between the rate regulation in your title statute and the rate regulation of the casualty statute.

The invitation and implication of Mr. McNamara's letter was: if you can, get out of the State of New Jersey, because that is the only thing we feel might move the Commissioner to reconsider his actions. Such a thing is not unprecedented. It happened in the late 1960's when there was a so-called capacity crisis in New Jersey and a few other States.

Some of you know that various companies, such as the Aetna, have put agents in Pennsylvania on notice that they will take on no new business. The law requires them to renew their existing book of business but they will take on no new business. Almost every major casualty company in Massachusetts has gone through the first required legal steps of notifying their agents that they intend to discontinue writing all automobile insurance in Massachusetts. They are putting the legislature on notice that unless the laws change and the Commissioner acts on it, they will follow through with that as far as it is legally possible. By the automatic renewal provisions put into certain laws, the industry's ability to cut down is much reduced. There was a time when they just cut everyone off as of the expiration of the policy. Now in some states they can only cut off new applicants or withdraw from the whole state.

I won't pause anymore to talk about the casualty business, but, I hope my point has been illustrated – getting a good law is only part of what you need to be successfully regulated under a State system.

Why are the Regulators acting so? Is it that they are malicious? Is it that they don't understand? that they can't see the implications? I think none of those is the answer. The answer lies more in the fact that granting a rate increase to an insurance company other than under the threat of removal of coverage and leaving the State, gives them no benefit whatsoever and costs

them and their employer, the Governor, a great deal of good will with the public and the ire of the consumer advocates. This is so because it is alleged in every State that insurance is an out and out rip off, a cornucopia of endless profits for the companies.

This charge is levelled against your industry by the Proximire's and by others, as it is levelled against other aspects of the insurance industry – except oddly enough the life insurance industry, where it has a chance of being true. (laughter)

The problem is severe. I do not at all mean to paint with an overly broad brush and include all States and all Regulators. Even when we talk about a State, we have to specify when, under what Administration. New Jersey was not always the New Jersey it is now. Texas was never the State that New Jersey was. And, it is interesting to note that the form of rate regulation – whether it is no filing at all or filing and use, prior approval or promulgated rates – does not appear to be the explanation.

For example, both Texas and Massachusetts are promulgated rate states. One of them, Texas, has excellent regulation, not legislation, but excellent regulation and understanding of the insurance companies needs. I'm talking not only about title, but about property as well. Texas strikes a reasonable balance between the consumer and the industry.

Massachusetts has a yearly crisis on its hands, at least in automobile insurance, and this is true year in and year out for the last fifteen years. Such a crisis that the rates are never determined. All policies go into effect the first of the year. The companies can't send out a bill usually until at least April or May. It went into June this past year because they were still arguing over what the rates should be and they made provisional billings.

The one year when they made a profit, the one year out of eleven, they made a profit (even though the total eleven years showed a significant loss), a new law quickly passed by the legislature remanded back to the public in a rebate 95% of the underwriting profits that they made. I'm not making this up. It's all a matter of public record.

I was asked to discuss with you what do the regulators expect of the industry. Mainly the regulators expect the industry to keep them out of political trouble. To keep them out of embarrassment.

Tom Finley will probably institute a suit against me because he'll say, "What is an economist doing talking more like a lobbyist." But, I really think that the data and everything else that we've talked about is necessary, but, it can be appreciated for what it is only with this understanding, so I hope you will bear with me.

To keep them out of embarrassment – even in those States which, because of various political interests, do not want to do a total job of regulation. Those which do not reach the totality of your charge but say that only the risk rate is regulated and the work charge is unregulated. They are potentially politically embarrassed if that could be brought out in a Court such as the AFL-CIO has tried to do in property insurance. One could claim that this type of regulation is very carefully locking and guarding of the front door of the house and leaving the back door wide open. So, that the appearance of a total system must be there despite the way the particular legislation is drafted or the way the regulator is acting.

They also want you to keep Washington away. The only other thing that State Regulators are fearful of – other than companies getting out of the State or failing – is the States' Rights Issue, the fear of Washington superseding them.

I assign a great deal of the credit (or blame) to the rejuvenation of State and NAIC interest in title insurance to the publication in the early '70's of the HUD/VA Report. This report on title insurance set out a mechanism for Federal regulation.

There is no way to get a Senate Committee more interested in passing a law in a particular area than for another committee to try to study that area if the first committee feels that it is in its jurisdiction. Well, as soon as the NAIC and the State Regulators perceived that via Title Insurance Washington was challenging their control of regulation of insurance on the State level, they reacted strongly. They spurred on the NAIC Task Force to try to tighten things up on the State level.

The regulators want the industry to keep Washington away. They also want the companies to remain solvent because failure is an embarrassment. Though with the institution of insolvency funds in property/liability, some have claimed that the Commissioners are now less concerned about solvency because if there is an insolvency in their State, the consumer, the voter, the political force, does not get hurt. The fund, which really is the other companies, is assessed for the damage. I think that the State of Wisconsin would argue that title is already included in their insolvency fund and maybe also the State of Maryland, although, I don't know whether any assessments have been levelled against these companies.

Insolvency funds are very, very important for making effective the states regulating system, because insolvency is the weakest link in the armor against Federal regulation. Much reasoning could be deduced to support the idea that you must have insolvency regulation on a national level such as the FDIC if it is not provided on a State level.

That accounted for the passage in '68 of the individual state insolvency funds in a matter of two years. Anyone can clearly see the effect of the threat of Federal intervention on the State level by noting that a Model Code, each with its own State variation, could be passed in 48 States in just two years!

The Regulators would also like you not to ask for rate increases, because that brings them into direct confrontation with the consumer interests and with their Governor's and sometimes as in the State of Florida, their own running for office as defenders of the consumer interests. That the non-granting of rate increases is sometimes inconsistent with expectation of company solvency and the availability of product, they say is your problem and not their problem, as far as they can make it out.

Therefore, in my mind, to be reasonably regulated you must make a very, very strong case. You must give the appearance on the Regulator's behalf, that he has access to all the data which reasonably could be used by a man discharging his duties fairly and honestly in a workmanship like manner. He must be able to review what the industry is doing, what it is charging, whom it is charging, and what benefits it is getting so he can say the rates are not excessive, inadequate, or unfairly discriminatory. It is not sufficient to say just look at my bottom line. These people are trained to look at almost every single class and type of occurrence in all other insurance.

It is incredible to them; they have great difficulty believing – one Regulator made me swear under oath that it was the truth – that the companies really did not know how many policies of each type they wrote and how many dollars of premiums they collected for each differentially designed and identified rate in the Rate Manual. The regulators really believed the companies were lying to them when they said they didn't know that. I'm talking about the Pennsylvania situation. There it took a great deal of effort to convince the Regulator that the individual numbers were not known and more so, the Ohio situation, to convince the Regulator that the companies could not go backwards five years and create these data.

Well, let me run through briefly the several States in which we've been working with the industry to see where they stand and what has to be done. Ohio has undertaken an extensive (and I think if there hadn't been as much hard feelings between the industry and the Regulator, it wouldn't have been quite so extensive) data collection on an individual transaction basis and an income and expense report. The industry has filed the plan with the Department, so it is now the Department's official plan. The method of gathering the data has already been adjudicated if you will, has been specified by the Department, so that in any rate filing they may choose to make or may be called on to make, no one can argue with the method of data collection. The results have been filed for 1973. There seems to be some dawdling about getting everything in for 1974.

I do hope the companies appreciate and I'm sure they do, that they have entered into a firm commitment with the Department – and the quid pro quo was allowing them to stay in the State if one goes through the history – to regularly report and maintain those numbers on an up to date basis. This must be done. It has

removed all pressure from the Department on the industry in that the Department is no longer calling the industry in every week or every two weeks to ask what it is doing.

Rather, it's shifted the ball to the industry: When they look at their numbers, do they want to ask for a rate increase, if they do, they have the material to set out what revenue new rates would generate and answer the question whether or not that would be reasonable.

Pennsylvania was one of the very few States that had an existing, but not complete, data capture mechanism. Based on its results the industry filed for a rate increase. The new rates captured the old procurement commission, an inflation adjustment, and increased the profit margin.

Approval was not easily forthcoming. Not only did the industry make a very substantial statistical and economic record, but entered into over one year of negotiation with two different Commissioners. Only on the threat of legal process and after making the threat very real by showing the papers, which if the meeting did not end successfully would that day be filed in Court, did they finally get, after four go rounds, an acceptable adjudication. It was acceptable in the sense that it accepted the manual as presented. It had a lot of poor "dicta" in it, but, "dicta" hopefully can be ignored in this type of situation or be remedied the next time around.

In Washington, D.C. the industry which has no rating bureau, pulled together on an "Ad hoc" basis, and did create a summary of its income and expense and rates of return for the previous five years. Because Congressional pressure has been elsewhere, no use has been made of that analysis.

California has adopted, with the Regulator's approval, an income and expense plan and is in the process of negotiating a data collection network where each company will individually keep its own numbers holding them ready for reporting. It is instructive to note that the Chief Rating man in California expressed grave doubt that the companies will actually perform what they promised to perform. He would rather that they send the data into a designated statistical agent, a much more expensive process. He has begrudgingly agreed to go along with the industry, allowing each company to maintain its own data subject to proof that it is actually doing it. The industry has a real opportunity, but if they make a commitment, they must follow through on it.

New York did not attempt to recapture in its rate through an interim adjustment the 15% procurement commission which they stopped paying pursuant to the new law. The Department had said as soon as the industry gives it up the Department would be willing to entertain a rate increase application. They have just now put together a five year history of profits and a distribution of business which shows the great progresscivity of the rates. I think this progresscivity is one of your strongest points with the consumers.

Over the past five years three quarters of one percent (3/4%) of the policies issued in New York by count, produced roughly 20% of the total net revenue. By net revenue, I mean, gross revenue less direct commissions, procurement commissions and agents commissions. Those were the very, very large policies. I forget the break point, but it was probably the policies over three million dollars. That's how strongly levered the rates are in favor of the smaller house owners.

Whether that is even too strongly levered to cause strains in the system is a real question and maybe some adjustments ought to be made in the manual. The New York people must now present a manual and rate filing and that's a hard decision for them to make, but, they must come to it if they want to obtain rate relief.

I would pick up on a point that was mentioned about Texas, where the law requires an annual meeting of the Board of Insurance at the request of the companies if they want to have a rate review. Let me advise you to take a lesson from that law.

The casualty people have been operating under that same law for many years and every single year they make a rate filing. They usually wind up with about half of whatever they asked for in the promulgated rate and they know it, so they double their request accordingly.

But, why don't you people go to the well a bit more often in terms of making your case with the Regulator. You don't win every time. It's much like the man standing on the corner propositioning every gal that passes, and saying, "Sometimes I don't get slapped." (Laughter) But, it's important to understand that you have to create that environment. You don't get many brownie points by standing up to the Regulator and saying, "We haven't been here in ten years." and they respond, "Why, because you've been ripping off the public so much. . . . " (laughter).

I'm not saying go every year, and I'm not saying go when it's not justified. But, think about the Texas Law and consider what you can learn from the operations of your brethren in the casualty industry. Because they know how to work the regulatory system (or did until these recent consumer problems in some States) like a finely tuned violin. You're still beginning students at it. You're trying to learn in five years what they developed over seventy years.

I'll go very quickly over some of the other States. Wisconsin held a very interesting hearing. They had under statutory authority revoked or made the first steps to revoke open competition and reimposed prior approval into title insurance. It's a legislative intent that the Regulator not use prior approval unless it is absolutely necessary. The Commissioner, in his statement to reapply prior approval and revoke open competition, used two bases.

One, that there was just not the preconditions of self-policing. There was preconditions perhaps of inverse competition. Two, that the rates that were charged have led to vastly excessive profits. He "proved" this by noting that the margin on sales as reported in the annual statement could sometimes approach twenty percent. Well, you know, if you make five cents but you only record your after commission sale, it looks like a twenty percent profit margin when, in fact, it's a five percent profit margin from the point of view of the consumer's dollar.

I think we have been successful, although he has not actually dropped the second shoe and rejected the second basis. He may reimpose prior approval. The industry was in favor of that, but without the finding that excessive and monopolistic returns have been made.

Colorado and Oregon are in the process of establishing statistical and income and expense plans. Very interestingly, and let me complement the industry, in these two places they acted without a direct threat or necessary gun at their heads by the Regulator or in consequence of an immediate rate justification. But, rather to set the stage for good regulatory review, and to fend off even baseless but still expensive to defend private anti-trust cases. They acted to give the appearance of regulation as well as the fact of regulation. Delaware is just beginning to collect data pursuant to certain agreements with the Commissioner.

I want to end by calling your attention to three items. The first one is a document circulated by the Nevada Commissioner somewhat haphazardly at a Nevada Title meeting. I want to speak specifically to this but use it as an example and echo something Mack Tarpley said yesterday. This, ladies and gentlemen, is a booby trap. It is a quagmire. Such innocent questions as total assets in Nevada; total premiums collected; consolidate all your operations; total net profit. All are completely undefined. If filled out by the most well intending people at the local level this form could do nothing but sabotage your presentations not only in Nevada but at the NAIC level and in the other states.

Please set up systems so that any requests from individual Regulators to your local people be sent directly to identified individuals at the head office.

Further, as far as you will not run afoul of the Anti-Trust Laws – I can not give you opinion on this, but I think that you do have the right to do it – you might coordinate with someone like Mack Tarpley, who has offered his help to see whether some of these questions, undefined as they are, are possible to answer or might appear at great variance with what your company is saying in other States and other jurisdictions or even plans to say in the particular State at issue.

I will devote just half a minute, because my time has run out, to telling you to listen very carefully to tomorrow's report

by Jack Jensen on the Uniform Income and Expense and Uniform Statistical Plans. It is time that the individual companies realize that they should not deal with States completely on an "ad hoc" basis.

Much of the data that individual state plans have to collect, especially the income and expense data, is more economically done in what we call a 50 State Spread Sheet, done once a year when you fill out your annual statement then try to crack up for each emergency.

The ALTA is desirous of defending you in Washington; making your case known. The problem is they do not have the numbers to work with. If you will seriously undertake to fill out these forms despite their expense and inconvenience, I think you will put yourself in a position to give those working on your behalf the material to bring your cases and your arguments to a successful and happy conclusion.

However, if you don't undertake this expense, if you don't undertake this trouble, you stand to be the favorite kicking target of people like Proxmire and people like the authors of the HUD Report. Those people can always gather information about your gross charge, observe that in most years your loss ratio is 2%-5%, and conclude that you have a 95% profit; and do so in the press!

So, please give careful consideration to these things, not in the interests of your consultants or your Trade Associations, but, in my opinion, in your own interests. Thank you very much.

The Real Estate Settlement Procedures Act of 1974: Where are We Now ?

comments by

Donald P. Kennedy

President, First American Title Insurance Company, Santa Ana, California

Ladies and Gentlemen, and I think that the respective statutes of the State and Federal Government will allow me to call you that. (laughter) As President Bob pointed out, material prepared for this meeting may no longer be valid. I think that Mr. Finley will be able to help us with that as he gets into his remarks.

You will recall that on December 22nd-27th, 1974, Public Law 93533 was enacted into law to be effective on June 20th, 1974. It was given the affectionate title of "RESPA." Which reminds me, I was in Anchorage about three weeks ago. I say that to show how far flung our operations are. (laughter) I was having lunch with head of the largest savings and loan in Anchorage and asked him how he was getting along with RESPA problems. He said he didn't know what it was, and, therefore, he was getting along fine. (laughter)

In any event, the preamble of the Act states that significant reform in the real estate settlement process is needed to ensure that the consumers throughout the nation be provided with greater and more timely information on the nature of cost and settlement.

It futher provided that the Secretary report not less than three years nor more than five years as to whether additional corrective legislation was needed.

During the past six months I've had the uneasy feeling that I've been through this situation before. Recently during a bout with the flu and high fever, I recalled why I thought this was all so familiar.

When I was in the Navy I served on a very small ship which received directives from the Chief of Naval Operations. These directives attempted to deal at the same time with the battleship, the cruiser, the submarine and the little dinky ship I was on. This, I think, is the basic problem with RESPA. There are so many different varieties of closing situations that it was very difficult for Congress to produce one Bill covering all areas.

It was easier at the lower levels in the Navy. We threw away directives felt to be impractical – not a workable solution as to RESPA.

One last personal comment, which I know none of you are sitting on the edge of your chairs waiting for, I've come to the conclusion that from now on, the only Federal Legislation I would wholeheartedly support would be a resolution which stated that Congress couldn't pass any more laws for at least two years. (Applause)

In any event, the purpose of this panel is to bring you up to date on what has happened since the mid-winter meeting, where we heard some interesting remarks from Mr. Witkowski. We'd like to find out what HUD's present viewpoint is in reference to the Act. Tom is going to talk to us about some of the recent developments as far as the Congress is concerned.

The first panelist is Mr. Sanford Witkowski. In talking to his secretary I learned that he has been promoted since the mid-winter. He is now Executive Assistant Commissioner of FHA. He formerly was Acting Executive Assistant Commissioner of FHA. He is no longer Acting.

At this point, we're going to hear for about 25 minutes from each of the panelists, and then we'll handle questions from the floor. I would hope that you will ask questions and I would hope also that you would interrupt, even though I realize that's rude, at anytime the questions occur to you.

He was formerly Acting Director, Policy and Program Analysis and Development Division, U.S. Department of Housing and Urban Development, Washington, D.C. He is now Director. He is no longer Acting Director. Congratulations. (laughter)

Sandy received his degree from Southeastern University in 1942, Southeastern being in Washington, D.C. He is admitted to the D.C. and Maryland Bars. Prior to 1962 he was employed in the title industry. He worked in Oregon for Title & Trust, which is now Pioneer. He was able to overcome that obstacle, and (laughter) returned to Washington, D.C. in 1962 for private practice. It's my pleasure now to introduce Sandy Witkowski for remarks in connection with RESPA.

comments by

Sanford Witkowski

Director, Policy and Program Analysis and Development Division,
Department of Housing and Urban Development, Washington, D.C.

"Where Are We Now"? That's the title for the panel. It's a good title for a panel, but it's a darn tough question. I must insert the usual disclaimer that any similarity between anything that I might say and where RESPA will be a few months, or even a few days from now, would be purely coincidental.

I think we're really missing someone on this panel and that's Jeanne Dixon or some other fortune teller. (laughter) Six months ago, I believe the title industry favored the use of the Uniform Settlement Statement as a way to demonstrate that the lion's share of closing costs did not go to the title industry. Now, who knows whether the other problems of RESPA are really worth what any industry sees as a benefit.

RESPA on June 20th. RESPA on October 3rd. Are they at all alike? The answer is really "yes" and "no". We're still operating under Regulation X, regardless of what you may hear. The regulations haven't changed too much so far. And, yes, RESPA is still on the books – today, but maybe not tomorrow. No, we all see it a bit differently now with the benefit of just three short months of experience. Another no – RESPA is going to change shortly.

The change is coming from two directions – administrative action by HUD and from the Congress. As you probably know, HUD provided a sixty (60) day comment period on RESPA and Regulation X which closed just this past week. As of September 30th, we had received about 300 comments. Many of these comments were very well developed and very cogent, but few dealt with regulatory change which is really what we were asking for. Most urged repeal, attacking the basic concept of the usefulness of prior disclosure weighed against the costs. Even though most viewed it that way, we recognize that if RESPA stays, regulatory change is needed.

We know that change is also coming from another source, the Congress. The Senate Committee on Banking, Housing and Urban Affairs held oversight hearings on RESPA on September 15th, 16th and 17th. Witnesses appeared from HUD, other government agencies, lenders and consumer groups; Bob Jay capably represented ALTA. I'm sure those who attended the hearings know that the hearings established that RESPA has some problems. What they didn't establish was a consensus on how to solve them. There is just no way of satisfying every interest. Several witnesses advocated repealing the entire Act, others only the advance disclosure provisions. Still others thought it could be "cleaned" up by HUD without any statutory change.

When I called my office yesterday – I've been away from the office for about a week now – I talked to Bob Elliott, the HUD General Counsel. He said it looked like the Senate Committee would probably report on the Garn Bill. Last evening, Jack Jensen of Chicago Title told me that the Committee had in fact done so.

I'm picking up as much information in the halls as I am anyplace else. (laughter) I had a phone call this morning from one of the fellows in my office, just to make sure that I knew something had happened yesterday. The House Committee intends to hold hearings sometime this month. Now, I understand that the Senate bill was passed and I don't know whether it was passed yet or not. It depends on what time it is. But if passed, it may go directly to the floor of the House without hearing. It depends on what the parliamentary maneuver is.

Although it looks like Sections 4, 6 and 7 of RESPA, the sections which require the uniform settlement statement, advance disclosure and disclosure of the previous selling price of existing property under certain circumstances, may very well be suspended under the Senate Garn bill, I think a discussion of some of the other possibilities may be worthwhile.

On August 1st, as I mentioned, HUD published an Advance Notice of Proposed Rule Making in the *Federal Register,* in which we solicited comments on Regulation X, which implements Sections 4, 5 and 6, and on Sections 7 and 8, which at that time had not been interpreted by a Federal agency. RESPA Legal Opinion No. 2, which was dated September 12th and published on September 25th, gave our interpretations of certain situations and their relations to Section 7. I will explain those in more detail shortly.

As I said, we received nearly 300 comments in response to the August 1st Notice, nearly all of them from lenders, realtors, and settlement attorneys. By far, most of the comments addressed the added costs, the added delay and the added confusion caused by RESPA.

Invariably, industry comments argued that advance disclosure was not really helping the consumer. In fact, it had the opposite effect. Homebuyers were waiting unnecessarily because of the 12-day disclosure requirement. Most of these letters urged a substantial revision of the disclosure requirements. A minority advocated repeal of the whole Act. Quite a common comment was "Stop trying to protect the consumer" or "This is only adding to the consumer's confusion". (The one consumer who bothered to write in about advance disclosure was actually quite pleased with it!) The consumer advocates who testified at the Senate hearings still either see merit in advance disclosure or want the closing costs to be absorbed in the interest rate by the lender.

Consumer advocates are also making another point, that even though we only get one letter from a consumer in response to an invitation for comments in the *Federal Register* (which is like tacking a notice on the courthouse door), consumers don't write in to tell you when they are satisfied with something. You only receive mail from them when they're dissatisfied. Therefore, we can't assume that one letter, or the absence of a thousand letters, has any real significance.

We also received quite a few letters relating to the coverage of Sections 7 and 8. There are many questionable situations under both sections. Probably the most pressing is Section 7. Under what circumstances does disclosure of the previous selling price have to be given? Although it may look like it's fairly clear in the statute, what about the newly constructed home, more than a year old, sitting in a builder's inventory? How about estate sales or condominium conversions? As I mentioned, in September HUD issued RESPA Legal Opinion No. 2, which addresses many of these questions.

Although I won't try to go over every part of it, I would like to highlight some of the major points. First, it states once more that the previous selling price need not be disclosed unless the seller has not owned the property for two years prior to the date of loan application *and* did not use it as a place of residence. Note that we said "and" and not "or". Both conditions must be met. This is probably one of the most misunderstood sentences in RESPA. We get several calls a week on it. Many lenders are interpreting it to say that if either of the

conditions are met, the price must be disclosed, but this is simply not true.

Second, RESPA Opinion No. 2 provides that a lender may accept an affidavit from each and every purchaser, in lieu of the Section 7 Disclosure, stating that he or she tried unsuccessfully to obtain the disclosure from the seller, listing the specific attempts. This will enable the lender to go ahead with the transaction when the seller simply doesn't want to give the statement.

Third, Section 7 will not apply to forced purchase sales, court-approved sales, assumptions, newly constructed housing, co-owner transfers or estate sales. Section 7 does, however, apply to condominiums and cooperative conversions. There is no way as we read it that we can get around that. We think this opinion goes a long way towards solving a number of the problems that have come up under Section 7. The most pressing of these were the estate sales and the newly constructed inventory housing.

What about Section 8 – the prohibition against kickbacks? So far, no opinion has appeared on Section 8. We've been discussing the issue with the Department of Justice for some months, but nothing has been finalized. Mr. Finley has also been discussing it with them and probably will talk a little more about that.

In HUD's proposed legislative amendments to RESPA, we request the authority to prescribe rules, regulations and interpretations for every section of the Act, including Section 8. One of the major problems is that the Act didn't give us the authority to issue interpretive regulations on most of the sections so that we can say what we think it means and absolve a lender or other person relying on the opinion from future problems, even if it turns out that we are wrong.

Several letters we received addressed another section of RESPA which certainly needs some interpretation, Section 10. It is generally agreed that the purpose of Section 10 is to prohibit excessive amounts being required to be deposited in an escrow account. After the taxes and insurance bills are paid, there should be no more than a month's worth of taxes and premiums in that account. However, this is not what it says and we defy you to read it and get that out of it. What it says is confusing. It attempts to cover a lot of situations and doesn't do too good a job. We have offered proposed changes which we think will help clear it up or at least give us the authority to try to clear it up in the regulations. Among the suggested changes we made was to allow lenders to require at least two additional months escrow so that there is a little more leeway.

Another part of RESPA we received comments on was Section 9, which prohibits a seller from requiring the buyer to purchase title insurance from a particular title company. These letters suggest that the lender not be allowed to select a title company either. This idea was also expressed by many at the Senate hearings and was a part of Senator Proxmire's bill which would amend RESPA.

Most of the comments received mentioned the added delays and expense in complying with RESPA. Inevitably, the culprit for the delay was singled out as the waiver requirements, which are very strict. This was done because that was how we interpret the legislative history, as discouraging the use of the waiver. This was one point that everyone seemed to agree on last March at your mid-winter convention in San Diego.

However, since that time a completely different picture has emerged. Everyone, including the Congress, thinks the 21 day rule is too strict, that there shouldn't be any conditions attached to the use of the waiver. The letters paint a very dreary picture of the use of the waiver and its effects – families living in motels and hotels, moving vans all packed up, and families renting homes prior to moving in. These may be isolated cases or they may be exaggerations, but it really does appear that many consumers, not only the lenders and the title people and opposing attorneys, but many consumers, really do want some relief from the waiver provisions. Many would just as soon wait. Many just know there is not much they can do after they get the advance disclosure anyway.

Finally, a number of the comments touched on more technical issues. Some urged that taking title subject to an existing mortgage be exempted when the lender has no knowledge of the transfer until after the fact. Others complained of invasion of privacy, pointing to the confusing paragraphs in Regulation X as to whether or not the seller should get a copy of the Truth in Lending Statement. (Incidently, there is no Regulation Z requirement that the seller receive it.) Still others asked about the coverage of construction loans, refinancing, the definitions of loan commitment, settlement date and home mortgage. At last count, there were some 50 separate subject areas covered in the comments.

Addressing these will be a rather major job for HUD. The answer as to how we are going to do it is not clear today, because we are not really sure what the Congress will finally do with Sections 4, 5 and 6.

Although legislative remedies generally take a long time, RESPA has kicked up quite a storm. I think it is clear that the Congress is going to pass a bill very soon. The mail is just simply too heavy for the the Congress to take no action.

Although Senator Proxmire's bill has apparently been bypassed in favor of the Garn bill, perhaps it would be useful to discuss its content for a moment. It would repeal Section 6 – the advance disclosure provision; amend Section 9 by prohibiting lenders, as well as sellers, from requiring the title insurance be purchased from a particular company; and, it would give lenders the option of paying closing costs and passing them along to homebuyers in the form of higher interest rates. Lenders agreeing to "pay" would be exempt from State usury laws.

Although Senator Proxmire's bill would repeal Section 6, he "expressed hope for some kind of arrangement by which the lender could give a simplified good faith estimate of total closing costs in advance." Lenders would still have to hand out the special information booklet and use HUD-1 as the standard settlement sheet.

My impression is that the lender-pay provision doesn't have much support. although the other provisions certainly do. So far as lender-pay is concerned, probably no more than 25 or 30 percent of the closing costs would really be affected. Therefore, the homeowner still has to write a sizable check at closing, and he pays a higher interest rate.

Senator Garn's bill will suspend for a year Sections 4, 6 and 7 of RESPA, presumably until something more appealing could be worked out. Although there is wide support for either a temporary suspension or an outright repeal of Section 6, (and to a somewhat lesser degree Section 7), there just doesn't appear to be a uniform industry-wide position on Section 4, the uniform settlement statement. Some like it and some don't.

You may notice that none of the bills we've talked about would repeal Section 5, the special information booklet. Generally, the booklet has received pretty high marks. It is a slight added expense to the lender – anywhere from 15¢ to 50¢ depending upon whom you buy it from – but it doesn't take any special effort to pass it out. That's the nice part – you hand it out and that's it. As a matter of fact, the booklet was cited at the hearings as a possible solution to the advance disclosure problem. The lender or HUD, no one seems quite sure, would be required to insert a range of costs statement in the booklet instead of providing a detailed advance disclosure on Form HUD-1.

As you probably know, HUD's right now in the middle of the section 15 Range of Settlement Costs Survey required to meet the statutory direction to provide ranges of settlement costs to home buyers in selected market areas.

We've collected copies of HUD-1 used at settlement from seven areas: Bridgeport, Boston, Washington, Orlando, Des Moines, Denver and Los Angeles. My staff is developing a Range of Settlement Costs for each of these areas, which will be printed as a supplement to the booklet. These supplements will be furnished to the home buyer at loan application along with the booklet, and a questionnaire will be placed in that supplement to be completed by the home buyer and returned to HUD. The questionnaire will solicit information on how helpful the range of settlement costs were. I'm sure there's going to be a lot of interest in the Congress on the results of the survey.

What I am suggesting to you is that a suspension of Sections 4, 6 and 7 does not shelve all of RESPA. Some legislative solution is still going to be required for the other sections of the Act which are not affected by the Garn bill. This leaves a

question – how does one gather data if there is to be no uniformity in the data base?

I promised a little while ago I'd give you my prognosis on where RESPA is going. Let me tell you first what we proposed, particularly as it applies to the parts of RESPA not affected by the Garn bill. We've recommended several changes in the statute that we think will go a long way toward "civilizing" RESPA.

First, we would like to change the definition of a Federally related mortgage loan so that it would apply only to first mortgages. Currently, second trusts used for paying part of the downpayment are covered. This doesn't seem particularly necessary and it does cause a lot of problems.

We would also like to change the definition of home mortgage from "is eligible for purchase" to "is intended by the originating lender for purchase" in the secondary market. This would exempt from RESPA those transactions where a seller takes back a mortgage. With the present language in the statute, because of the wide authority that GNMA and FNMA have to buy mortgages, anything could be eligible for purchase.

We recommend amending Section 6 by requesting that the Secretary of HUD be given the authority to exempt those types of transactions which she determines would serve no adequate purpose of consumer protection. I might add that we proposed these changes prior to the Senate hearings.

We would propose amending Section 7 by requiring disclosure in very limited circumstances – when the property has been owned by an investor for less than two years and he hasn't lived in it. Otherwise, we simply see no value in the Section 7 Disclosure. We would also statutorily exempt estate sales, Federal agency sales, sales of newly constructed property and condominium or cooperative conversions from Section 7, rather than relying on interpretation. In addition, we would put the burden of disclosure on the seller, not the lender, prior to the time that the buyer is bound to a contract.

Section 8 would be amended by specifically exempting real estate broker's multiple listing services as being construed as a kickback.

We recommend rewriting Section 10, the section limiting the size of the escrow or impound accounts.

Finally, we would like to amend Section 18(b) of the Act to give HUD regulatory authority to issue rules and regulations for any section of the Act.

As far as amending the regulations, which we can do within the present law, we are aiming to have amendments to the regulations published by the middle of this month. Were it not for the rapid Congressional action, we probably would have eliminated the 21 day restriction on waivers and shortened the three day waiver period to one day. Thus, a transaction really could be closed one day after receiving a disclosure.

As far as using abbreviated forms for advance disclosure or using some other vehicle like the booklet, we were and still are undecided. I think there are good reasons on both sides for whether you should use the same form for advance disclosure as for settlement. Aside from this issue, the form could be significantly shortened and we could permit that in the regulations.

We also would make it clear that *only* good faith estimates are required on advance disclosure, and not exact costs. One of the problems over the last three months is that lenders have rather deliberately interpreted the regulations as strictly as possible. They didn't want to take any chances. This caused a lot of delay and extra cost that probably wasn't necessary. We've repeatedly told lenders and consumers that advance disclosure could be given before a loan commitment. In fact, we encouraged it, but very few have followed that advice.

Another change we probably would make is to exclude assumptions from RESPA, where the lender has no previous knowledge that an assumption is going to take place. Assumptions where the buyer is assuming a builder's loan would still be covered.

As I said, we could probably clear up a lot of the minor problems. We could have probably made sure that the regulations covered more situations than just the Eastern "Sit Down" closing. The Western Escrow Closing is not too clear in the regulations. We also need to change the definitions of loan application and loan commitment so that potential homebuyers are not prevented from getting loan cost and settlement cost information on the phone.

As to what's going to be the final Congressional action, it's anyone's guess, as Mr. Jay has already indicated. Probably (and I'm guessing), advance disclosure in Section 6 is going to be killed.

Section 4, the uniform settlement statement, is apparently tied in the mind of the Congress with advance disclosure and although Bob testified in favor of the uniform settlement statement, I'm afraid that it could go also. The reason I say I'm afraid of it is, that if we're going to use any form as a data base for anything, it has to be standardized or you just can't gather accurate data rapidly and use it for any purpose.

Let me say this, the Garn-Morgan bill calls only for a suspension of Section 4, 6 and 7, but anyone who believes that there is any importance in developing accurate data on settlement costs would really want to retain Section 4. What we're talking about is a suspension, not a repeal. Without data, how can there be an informed legislative consideration of what to do when the suspension period runs out?

So, I return to my original question, RESPA on June 20th and RESPA on October 3rd. Are they the same? One thing is certain. We know a lot more now than we did then. Every law and every regulation has some natural growing pains and Regulation X has certainly caused other pains as well. It is our responsibility and yours to try to ensure that any change made will be constructive and better balanced to serve the consumer – and we're all consumers – but with more regard to providing useful information without complicated procedural requirements.

We should try to avoid the situation in which HUD was given authority under Section 701 of the Housing Act of 1970 to regulate closing costs for VA and FHA mortgages. Although repeal of that authority was considered at the time the Congress considered passage of RESPA, they decided to leave that authority in effect, the theory being that HUD could crank it up at anytime to curb abuses. My concern is that repeal of RESPA would leave a vacuum which can attract almost anything.

I should also like to point out that suspension of Sections 4, 6 and 7 leaves in effect the requirement for delivering the special information booklet, Section 5; the prohibition against kickbacks, Section 8 (which is badly in need of clarification); the prohibition against the seller of property requiring use of a specific title company, Section 9; and the limitations on escrow deposits, Section 10, which is also in need of clarification.

On that happy note, I thank you very much for bearing with me and I leave to you the solutions to the problems. (Applause)

Political Involvement—Our Heritage In a Democracy

PAC Means Act

comments by

Mrs. Lee Ann Elliott

Associate Executive Director and Assistant Treasurer, American Medical Political Action Committee, Chicago, Illinois

It is indeed a pleasure to have the opportunity to talk to you again about the political action movement in America. When I was with you in 1973 in California, your own political action committee – TIPAC – was just getting started.

While my visit with you was just two years ago so many things have happened politically in this nation that I sometimes feel that 1973 was in another lifetime.

There have been changes in the country's leadership.

There have been changes and ever increasing regulations so that business and finance and industry are battling against mountains of over-regulation.

But the biggest change of all has occurred within the process that we call politics. These changes make it more difficult for you and me to be involved politically. Some of these changes are so insidious that both you and I must be alert to every twist and nuance of the changing political scene.

Today's economic climate has presented problems for all industries and all professions. The mere problem of continually meeting deadlines is so pressing that we are in danger of becoming so preoccupied with the very short run that we fail to see some of the political changes in perspective.

For that very reason I want to take advantage of your invitation so that I might discuss important changes in the political direction of this country and suggest to you some of the things that you can do, and must do, to reaffirm our traditional values.

The biggest single change in American politics occurred when the 1974 amendments were added to the Federal Election Campaign Act of 1971. The law has been challenged by an assortment of liberal and conservative politicians and organizations. They are united only in their common concern that the law passed by Congress, in response to the Watergate revelations, went so far in limiting campaign contributions and expenditures as to jeopardize freedom of speech, and inhibit the competitive forces in U.S. politics.

In the middle of August the U.S. Court of Appeals for the District of Columbia upheld the constitutionality of the key provisions of the Federal Election Campaign Act of 1974. This decision has been appealed to the Supreme Court of the United States. A decision is expected in December.

In his dissenting opinion, Judge Edward A. Tamm showed that he, at least, understood the issues the plaintiffs were trying to raise. He wrote "never before in our history has the government attempted to regulate the quantity of debate in the political arena . . . This type of paternalism in the area of ideas and political communication is, or should be, completely alien to our Democratic system of government."

But as restrictive as this law is and as unfortunate as this court's decision was, it is the law under which 435 Congressmen, 33 Senators and a President will be elected.

I can't take your time today to point out all of the things which I feel are wrong with the new laws, but I would like to point out those provisions of the law which are most important to you as an individual and which are most important to you because it involves TIPAC and all other political action committees.

One of the primary provisions of the law says that candidates for the U.S. House of Representatives can spend only $70,000 in a primary and $70,000 in a general election. While this might seem to be a lot of money, it is less than one-third of the amount that was spent in my own congressional district by each of candidates in the 1974 elections.

This regulation has a great deal of importance to you as an individual because you are a community leader and a person who feels social responsibility. Responsibility walks hand-in-hand with capacity and power.

Every campaign must have a headquarters, a certain amount of literature, a campaign manager, an allowance for travel and other general campaign expenses.

The $70,000 allowed for each election will not permit a candidate for federal office to send even one communication to each of the registered voters in his district.

Since the candidate will have less and less money with which to communicate with his constituents he will be looking to community leaders who in turn can spread the message for him.

In some districts this will look like cronyism, but in other districts each candidate will be appealing to community leaders to do what they can to spread the message on his behalf.

It is extremely important that you become personally active so that others in the community will follow your lead in supporting candidates who are interested in the free enterprise system and who share your concern of governmental over-regulation.

There is another provision of this law which says that a person can spend up to $500 on reception-related items for a candidate without this amount applying to either the candidate's or the individual's spending limitations.

The law permits you, as an individual, to hold a fund-raiser, or a reception of any type, for the candidate of your choice as long as you ask the candidate to attend and he *does not* ask you to hold the party. This function that you sponsor must be within your *residence.* This regulation is very specific in the law and is being tightly interpreted by the Federal Election Commission which was created by the 1974 amendments.

If you live in an apartment building that has a party room you may *not* use it for a political event. It cannot be in the country club, it cannot be out in the street where block parties are held. It must be in your residence. As a person interested in good government, you have the opportunity to invite the candidate and your friends into your home to help the candidate get his message across.

Remember that I said that an *individual* could hold this reception. If your neighbor brings a cake or a plate of cookies then you are now a committee and must file.

Even worse, your expenditure will go against a candidate's $70,000 limitation and against your personal $1,000 limitation.

1976 has been characterized as the "year of the volunteer." The reason for this is that within the new law and its strict interpretation there is no substitute for volunteer efforts.

Another important provision of the law says that an individual can give no more than $1,000 to any candidate for federal office. The law goes on to limit individual contributions to an aggregate amount of $25,000 for Federal candidates.

I expect many of you here have contributed more than $1,000 to a congressional candidate. This will no longer be possible.

But even if your contributions have been substantially less than $1,000, your contribution, whatever it is, is proportionately more important to the candidate than it ever was before. Since candidates will have to raise money in small amounts, any contribution is more precious than ever.

Your reputation and your experience as a community leader makes it important for you to join the volunteers for your candidate in making sure that each of your friends and acquaintances are asked to make even a minimal donation to your candidate.

AMPAC commissioned a nationwide survey within the last month concerning the mood of the American people. This survey produced some very interesting results. When the respondents were asked whether they would volunteer to take part in a political campaign, 70% of the total sample, comprising hundreds of interviews coast to coast, said yes, *if asked.*

When asked whether they would contribute money to a candidate, over 80% said yes, *if asked.* This survey went on to show that Americans perceive themselves as responsive to grass roots participation and responsive to an opportunity for involvement.

The real test will be if candidates, and the volunteers who join them, will be willing to *ask* the grass roots constituents for volunteer help and for political dollars. If you, as a community leader, will join the ranks of those who are asking for political participation, you contribution to the political scene will be more than substantial.

There is only one way in which more than $1,000 may be contributed to a candidate for the Congress. This way is multi-candidate committees.

Political action committees such as TIPAC and AMPAC *can* contribute more than $1,000.

The federal law permits multi-candidate committees to contribute $5,000 in a primary campaign and $5,000 in the general election.

To meet the definition of a multi-candidate committee, within the confines of the law, a political action committee must:

1. Have 50 members
2. Receive or spend more than $1,000
3. Contribute to at least five federal candidates.

What this means is the full political spectrum is political action committees, such as TIPAC, have never been more important than they are today.

The fact that you began TIPAC several years and have encouraged its growth, is a salute to your perception of things to come. TIPAC was never more important to you as an individual or to your association as it is under the new law.

Over the years AMPAC has worked with approximately 125 groups in the formation of political action committees. This week alone we had calls from several organizations asking how to set up multi-candidate committees.

Since political action committees are more important to the political process than ever before, the money that you contribute to TIPAC is the most important money that you contribute because it has the effect of creating identity for you as an individual and identity for the association to which you belong.

This was a concept that was hard to sell to physicians in AMPAC's earliest days. Many people wanted to spend all their money solely for the candidate of their choice within their congressional district. Certainly AMPAC encourages its members to give to the candidate of their choice, but much of this money was wasted. It was wasted in several ways. Some of it was given to candidates that didn't have a prayer of winning. Some of it was wasted because it went to candidates that were sure to be elected.

Some of it was wasted because it went to candidates who espoused the platitudes of free enterprise, but who systematically voted against the association's interest in Congress.

Contributing your political dollars to your political action committee eliminates much of this waste. Notice I did not say all of this waste. A political action committee that spends money only on winners is not doing much more than keeping the status quo. The job of political action committees is to change and improve the climate in Congress and, in fulfilling this function, will not always support winners. Some of a PAC's contributions must be looked upon as long-term investments and this year's loser might be a winner when he runs again two years from now.

It is often important for an association to make contributions to the members of key committees in the Congress. Only persons who do not understand the political process construe this as vote buying. Individuals or political action committees do not contribute to candidates because they hope their contribution will sway the candidate to their point of view. They contribute because the candidate already holds a position they support. Political action committees support candidates who understand and share their philosophy. They know that it is both naive, impractical and virtually impossible to persuade someone to change their point of view because of a political contribution.

The directors of a political action committee study both the legislative implications and the political realities concerned with each of the races and spend its funds in a way where they are used to the best advantage of the association.

When you really examine it closely, it is just as important for a Congressman on a key committee from Nebraska to have your support as it is for your own Congressman to have your support, when he may not serve on a committee important to your association.

The thing to remember is that the legislation that will be passed in the next Congress is determined by the philosophy of the persons elected in November 1976.

The legislation in which you are interested in the current Congress will die when Congress adjourns in the election year. The persons you support will be looking at entirely different legislation when the Congress is seated the following January.

The first responsibility for a political action committee is to support those incumbents that are its friends. It is more important for a friendly incumbent to continue in the Congress than it is to replace a member of Congress who does not share your point of view. Persons already in the Congress have some seniority and experience and are more important in the legislative process than a Freshman Congressman.

The next most important group to support are the persons challenging those Freshman incumbents who do not share your point of view. It is easier to defeat a Freshman than it is a long-term Congressman.

Likewise, if many of the persons who share your views are Freshmen, they are more vulnerable in the second election than are long-term incumbents and should be helped.

The expertise of your political action committee will be very important in making these decisions. They are not decisions to be made lightly or for emotional reasons. They must be made in the cold, hard reality of electability and practicality, and all wishful thinking must be put aside.

The concept of the PAC movement incorporates all of the good aspects of federated giving. The PAC movement allows members of your association in Florida to help your members in Minnesota elect a key Congressman. It permits members of your association in Indiana to help elect a key Congressman in Arizona.

TIPAC also fulfills the functions of providing continuity to the momentum of political contributions. This continuity is extremely important and should be developed and nurtured.

During AMPAC's organizational days there was a group of physicians in one state who thought that they would raise their political dollars and have it distributed by a physician who had a long record of political involvement in the state. We tried all manner of persuasion to get this physician to include others in his political activity and to spread the identification.

Quite frankly, this physician's political activity was his ego trip. He basked in the personal identification. He was unwilling, or unable, to share his expertise and his contacts. Unfortunately this physician was killed in an automobile accident and his years of political involvement and identification were buried with him. There was no continuity to his efforts since it was based solely upon his name and reputation.

Another less tragic incident occurred when one physician was involved with a candidate to the exclusion of other members of the profession. He was a PAC supporter but his contacts with his Congressman, who was his neighbor, were always on a personal basis. He never stressed the PAC, he never mentioned it. He never included other members of the PAC when he talked politics with his Congressman.

One day the physician invited the Congressman to speak to his local medical society and when the Congressman arrived he was amazed to find out that this physician was the Chairman of his state PAC. The Congressman had never put the two things together because it had been a one-on-one personal relationship.

Continuity of effort and identification both with the association and with individuals is important. TIPAC provides this bonus.

Everything that you can do to encourage your colleagues to support TIPAC is needed. Your efforts will be rewarded in a stronger America.

1976 will be the year of participatory politics. The success of this most significant period in our political history will be more dependent on the number of participants than on the number of spectators.

Participation in politics is not a new problem. Over one-hundred years ago, George William Curtis, an American journalist and one-time editor of the New York Tribune wrote:

"If ignorance and corruption and intrigue control the primary meeting, and manage the convention, and dictate the nomination, the fault is in the honest and intelligent workshop and office, in the library and the parlor, in the church, and the school. When they are as constant and faithful to their political rights as the slums and the grogshops, the poolrooms and the kennels, when the educated, industrious, temperate, thrifty citizens are as zealous and prompt and unfailing in political activity as the ignorant and benal and mischievious, or when it is plain that they cannot be roused to their duty, then, but not until then – if ignorance and corruption always carry the day – there can be no honest question that the Republic has failed."

"But let us not be deceived. While good men sit at home, not knowing that there is anything to be done, nor careing to know; cultivating a feeling that politics is tiresome and dirty, and politicians vulgar bullies and bravoes; half persuaded that a republic is the contemptible rule of the mob, and secretly longing for a splendid and vigorious despotism – then remember, it is not a government mastered by ignorance, it is a government betrayed by intelligence; it is not the victory of the slums, it is the surrender of the schools; and it is not that bad men are brave, but that good men are infidels and cowards."

Each of us must share the responsibility for making sure that the best and the brightest are in government. Your effectiveness in politics is expanding every year through TIPAC, and there is every reason to be optimistic about future successes. The future is purchased by hard work invested in the present.

In the words of Thomas Wolfe – "I think the true discovery of America is before us. I think the true fulfillment of our spirit, of our people, of our mighty and immortal land is yet to come. I think the true discovery of our own Democracy is still before us, and I think that all these things are certain as the morning, as inevitable as noon. And I think I speak for most men living when I say that America is here and now and beckons on."

The Land Title Industry Challenge

comments by

Francis E. O'Connor

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

Thank you Robert. After hearing from Congressman Michel and Mrs. Elliott this morning and some of the presentations that we've heard over the last few days I don't think there should be any doubt remaining of the importance of Political Action within our industry.

Now I'd like to get this a little closer to home. As you now know, the passage of RESPA has not taken the Title Industry off the political hook. All indications point to increased interest, and activity toward more legislation and regulation. It is clear that congressional opponents on the liberal side will continue their efforts to replace the reform approach of this act with their own proposals.

The RESPA situation is just one illustration of why we must remain vitally concerned with the makeup of Congress. There is a vigorous anti-business element on Capitol Hill in Washington at this very moment. If our industry is to survive in its present form, every one of us in the title business must join in supporting Congressional candidates who believe in private enterprise – so that we can achieve representation capable of countering bad legislation. In short, we must become far more active than ever before in backing Congressional candidates with views compatible to ours.

One of our primary protective tools is TIPAC – Title Industry Political Action Committee. Surely the idea of *protecting your interests* is nothing new to the Title Industry! We just never applied it until 1973, when TIPAC was created. Now we know that collectively we can begin to protect our interests by assisting financially those candidates whose political views we support. I know that a very great number of us provide individual assistance to candidates and this is fine and it should be done. But a coordinated effective political action effort, depends directly on TIPAC membership.

TIPAC is essential because much of the work in Congress is performed by committee. And this is where it is most important for our views to be heard. *Your* particular Senator or Representative may be a member of one or more committees considering legislative matters, but not necessarily those which concern our industry. And, if bills on important issues are voted out of committee and reach the Senate or House floor, their fate falls into the hands of 100 Senators and 435 Representatives with results impossible to influence or even predict.

TIPAC is a collective voice that will be heard in Congress, and which will identify our industry to the Senators and Representatives from various states who together can make the difference on what happens to critical legislation. Through TIPAC contributions to the campaigns of appropriate Congressional candidates, our voice will be amplified on Capitol Hill.

Incidentally, there's nothing underhanded about this. It's been an effective strategy for many groups, from airline pilots to zinc miners' unions. YOU SUPPORT PEOPLE WHO SHARE YOUR POLITICAL PHILOSOPHY. It's part of the American system. You assist those who reflect and represent your viewpoint. However, we can develop a great deal more impact as *a group* than as individuals. Our collective bargaining power is greater; certainly our pooled resources are synergistic in nature – that is, the total effect is greater than the sum of its parts.

To purists, it may sound a bit like packing the jury. But in practical fact, it's the way our government runs and always has run. We in the title industry were just a little slow to catch on to the techniques that labor and other groups have been utilizing constructively for years to aid their causes or underscore their positions on vital issues.

Your membership in TIPAC during its early stages has raised some money for campaign contributions. Our advisory trustees will assist the Executive Trustees of TIPAC in determining the Congressional candidates who warrant our support. Your suggestions on worthy candidates are welcome as well. Please send them to my attention.

If TIPAC is to continue growing in effectiveness, we must retain the continuing membership of every person employed in the land title industry. Title people in attendance at this convention, are the leadership of our industry – and your help is urgently needed in extending TIPAC membership to your thousands of employees and agency personnel from coast to coast.

The time has passed when our industry can afford to ignore its political responsibility. Political involvement no longer is an option for us. It is an obligation.

Another function that TIPAC performs and will perform I hope, is the education of our legislators. You've heard a little bit about this earlier in the sessions. How many of us here have all but given up trying to explain that the rendering of title services is NOT a rip-off – why title insurance should not be compared to auto insurance or life insurance? People generally – and some legislators in particular – simply do not understand the nature of our business. Because people tend to think in terms of actuarial tables, their comparisons are based on misconceptions that show the title industry in a *most* unfavorable light. Those of you who read the August, 1975 issue of *Consumers Report* know exactly what kind of distortions I'm talking about.

These are the kinds of misunderstandings that must be overcome through our communications with legislators – and the general public, too, of course – but especially the lawmakers first . . . and *fast.* They must learn how we operate and why.

Now there is one further, very long-term goal which TIPAC will help to accomplish. In a real, yet philosophic way, TIPAC attempts to use our country's political system to strengthen its economic structure. More and more frequently, it appears that some of our legislators work relentlessly to create laws that tax away or restrict business efforts – or to over-regulate entire industries.

The cost of responding to government regulations runs into billions of dollars nationally each year for both businesses and the general public. This takes money away from all of us. *U.S. News and World Report* calculates that government regulations cost every American family two thousand dollars each year. As an example, required safety and environmental devices added three hundred and twenty dollars to the price of a typical 1974 automobile.

The federal government today employs in regulatory functions over sixty-six thousand people who process more than seven hundred thousand forms each year. Most of which are filled out by business firms.

Government red tape adds to the cost of nearly everything you and I buy. When the government regulates business, the cost of compliance could mean a company losing the struggle to stay alive and prosper.

Every year on the state and federal level, thousands of new regulations are passed. Often little or no thought is given to what their true cost will be. It's this heavy-handed attitude that makes both of our "hidden tax bills" higher each year.

Legislators need to hear a message from all of us: Government red tape means you and I are forced to spend more dollars to buy what we need. For many companies, more red tape means more of a chance of layoffs, production cutbacks – maybe even closings . . . and they clearly have an impact on business profits which are so badly needed for business expansion and the creation of new jobs.

The current negative and restrictive attitude toward business in general is not very healthy for our country. Our free enterprise system functions better without too many fetters. We cannot allow our industry to be strangled by increasing federal regulation, onerous controls, and price-setting under *any* disguise. It's not only unhealthy for our industry, but disastrous when applied across the board to our country's economic system.

This larger fight for survival is part of TIPAC's mission, too.

But back to the level with which we are more immediately concerned . . . it's in the key U.S. congressional and senatorial races that TIPAC will serve our interests.

In this, our upcoming Bicentennial Year, let's concentrate on influencing the course of human events a bit ourselves – together, through TIPAC.

In the near future, you will receive a mailing that will invite your continuing membership in TIPAC. I hope that you will respond generously – and ask your employees and agency personnel to do the same.

It has been wisely stated that the future belongs to those who prepare for it. The time of preparation is upon us and the future of our industry lies in the balance. I hope every one of you will immediately begin a commitment to political involvement and TIPAC membership. By responding with the vigor that characterizes our industry, we will preserve I am sure what we have become over the past century – for the greater benefit of all. Thank you.

The Economy and Housing

Herbert E. Neil, Jr.

Vice President and Economist
Harris Trust and Savings Bank, Chicago, Illinois

Thank you Mr. Jay. I'm delighted to be with the American Land Title Association this morning, and share my views on the economic outlook.

Judging from your favorable remark on the University of Michigan, let us hope that Michigan will win its first game in three this afternoon.

Although your chairman indicated a switch in the program from politics to economics; I would submit that the economy of 1976 is likely to be the most crucial factor in terms of the results of the elections of next November. I think the subject is quite relevant to politics and as I go through my remarks, I think you will gather that there are some political implications in the economic situation as it is developing.

It's generous of you to invite an economist to speak at your conference, because economists are not always accurate. In fact, you may recall just about a year ago, President Ford recommended to Congress that a surtax be imposed. The economics profession must take a fair degree of credit for that recommendation which, of course, turned out to be rather poor for that particular time. President Ford had just completed his so called summit conference in which all the top economists in the country sat with him. From the summit meeting the conclusion was reached that the great problem of the United States was inflation.

None of his economic advisers, public or private suggested that the unemployment rate would approach nine percent of the labor force. Consequently, the economics profession is a bit red-faced at some of the predictions that were offered a year ago.

Shortly after the major recession commenced, a commission of economists was set up to analyze why the economists did such a poor job in forecasting the American economy. Some of the most learned gentlemen and ladies were put to work on this task. They developed very sophisticated econometric models, including the use of economic theories, statistics, and mathematics in setting up a huge number of equations, perhaps as many as two hundred.

After grinding all this data through their computers, they came out with the conclusion that there was one factor which was most important in terms of the poor forecast: the economists had their charts upside down. (Laughter)

However, I have brought some charts with me. When I told this story at a meeting last summer, I put my charts on the screen and they were not upside down, but were backwards. However, the charts have been checked out this morning, and that will not occur.

The American economy, in my judgment, is clearly on the upturn and I think this has commenced during the latter part of the spring. Industrial production, which had dropped 12% in the final months of 1974 and early '75, began to turn up slightly in May. In the past few months it has been rising at a faster rate. Consequently industrial production index is now going up at about a 10 - 12% annual rate.

One observes the same strength in terms of employment. Employment plunged very sharply between last September and this March, by about 2½ million. However, a rather significant rise has taken place in the past six months, including the numbers that were announced yesterday for the month of September.

Employment has increased by about 1½ million since March, erasing 60% of the earlier decline. The unemployment rate continues to remain high, in the neighborhood of 8½% of the labor force because the labor force is now again expanding. During the major part of the recession, there was no growth in the labor force due to discouraged workers.

It's my judgment that the employment will continue to rise at a rather substantial rate as the economy picks up in terms of overall industrial output. Real gross national product, spending that is corrected for inflation, plunged at a 10% annual rate in the latter part of 1974 and early 1975.

However, by the second quarter of 1975, the economy had stabilized and real gross national product was rising for the first time since the fourth quarter of 1973. The increase occured despite a mammoth liquidation of inventories.

Inventories were cut at an annual rate in excess of $30 billion during the spring quarter. If one takes out the inventories and concentrate only on final sales, the economy was actually rising at about a 4½% annual rate.

I have referred to the gross national product, employment, and industrial output, all of which are coincident indicators.

If one is to forecast future economic trends, we must focus on indicators that move ahead of the economy. What is the status of these indicators at the present time? They are very favorable. In 1973, the leading indicators began to turn down while the economy was still quite strong. Throughout 1974 the leading indicators plunged downward as the industrial production weakened very modestly.

The sharp downturn in the economy, which developed in the fall of last year, was clearly suggested by the performance of the leading indicators. Then the leading indicators began to turn up in early 1975, accurately forecasting a recovery by at least mid year.

The latest reading of the indicators is very strong, which leads me to forecast that industrial production and other overall measures of the economy will be rising rather sharply in 1976. In fact, from now until the middle of next year, the indicators would suggest that the economy can rise at about an 8% real rate of growth.

One of the most important leading indicators, from a standpoint of real output, is the durable goods new orders. The durable part of our economy is the most fluctuating question of the economy. Durable goods new orders fell 30% from last August through about March. However, they turned up in the spring and in the summer of this year by about 20%.

In the month of August orders were slightly above the sales; so that unfilled orders are again increasing. If unfilled orders are moving in a positive direction, it is very likely that production will also expand. Where will the strong recovery occur? Inventory policies are in the process of a shift.

Last year when the economy plunged so sharply toward the end of 1974, most businesses found that they had highly excessive inventories. Sales were dropping sharply resulting in unwanted inventories.

If sales are declining and inventories are going up, the inventory/sales ratio can rise very sharply. Retailers cut their stocks in

the early months of 1975. The combination of a 5% reduction in inventories in the first half of the year, and an increase in sales of about 9% enabled retailers to get their inventories back in line by the middle of the year. Retail inventory/sales ratios are now down to the lowest point in the last two years.

In contrast, manufacturers were a bit slower in reducing inventories. In fact, stocks were still going up through the month of February. However, beginning in March, manufacturers have been reducing their inventories at a rate of $1 billion per month. Purchasing agents anticipate that manufacturers will have completed their inventory liquidation by this fall, within a month or two.

However, the liquidation of manufacturing inventories will probably continue through the fourth quarter of this year. However, retailers are definitely adding to their inventories. As retailers increase their stocks, manufacturers' sales will advance.

Manufacturers did not enjoy a pick up in sales in the first half as did retailers. However, they are beginning to experience sales gains as retailers add to their inventories. The combination of higher sales and declining inventories will lead to a correction of excessive manufacturing inventories within the next four to five months.

In the quarter the major part of the inventory liquidation has been completed. Retailers are adding to their inventories, at least moderately, while manufacturers are liquidating inventories at a slower rate than earlier. The economy will return to a zero rate of inventory accumulation as compared with negative $30 billion in the second quarter.

Final sales plunged very sharply in the fourth quarter of last year. Total consumer spending in the fourth quarter of last year when corrected for inflation, declined at a 13% annual rate.

That is unprecedented for American consumers since the 1930's. But with the beginning of the year, there was a pick up in all types of consumer purchases, not only durable goods but non-durables and services as well. Retail sales are running 12% above their level of last November and December.

With this pickup of retail sales, there has been a recovery in automobile purchases from a six million annual rate in March and April.

In the month of August sales were running at approximately an eight million rate. With the inclusion of imports, which have been very strong, car sales have recovered to a ten million rate. Car sales seem to be holding up pretty well with the introduction of the new models.

The pick up in consumer spending is genuine and it will continue. Personal income is moving ahead at a good rate. In the month of August, private wages and salary, which were weak, during the recession period, showed the largest monthly advance on record. People are being called back to work and they are working longer hours.

With a moderation in the inflation in 1975 as compared with '74, there has been a good recovery in real income. Real income represents the average wage of clerical and factory workers, corrected for inflation, changes in social security taxes, and the progressive nature of the federal income tax which continually pushes people into higher tax brackets.

Throughout 1973 and 1974 and into the early months of '75, real income was steadily declining. With the tax rebate and moderation in inflation, real income turned up.

The combination of a change in inventory policy, and strong consumer spending leads me to believe that the American economy will be rising at an 8% annual rate through the next nine to twelve months.

The only weak part of the economy at the present time is capital spending, new plant & equipment outlays, which have declined moderately in terms of dollars in 1975. In terms of real dollars, there has been a drop of about 1/6 in real spending for new plant & equipment since the middle of 1974.

In the second half of the year capital spending is rising slightly, but only in dollar terms. Moreover, during the past year each of the surveys conducted by the Department of Commerce has tended to overstate capital spending. The actual numbers have steadily come in lower which will probably happen again for the third and fourth quarters.

Real capital spending will be down throughout 1975. However outlays are likely to join the parade of strong economic forces in 1976. The operating rate of manufacturers plunged so sharply in the final months of 1974 and early 1975, that approximately 1/3 of total manufacturing capacity was not being utilized last spring. Currently utilization rates are definitely up as industrial production moves ahead at a 10 to 12% annual rate.

In addition, the corporate profits picture will be improving. Corporate profits declined one-third between the middle of 1974 and the first quarter of 1975.

However, in the third quarter of last year, 1/3 of after tax profits represented inventory profits. Businesses were buying raw material, at one price. And after processing them into goods were selling products at higher prices. Over $30 billion of $90 billion dollars in corporate profits after taxes represented inventory profits.

The reported decline in profits was the sharpest drop in profits since the 1930's. However, if we remove inventory profits, earnings declined not by 1/3 but by only 11%.

An 11% decline in corporate profits in the recent recession was the smallest decline in profits in any of the post-war recessions. Operating earnings held up well during the recession and in the second quarter very moderately registered an $8 billion recovery.

Profits next year will be up by 25 to 30% from the level of '75, encouraging capital spending. Prospects look favorable for the economy in 1976.

Concern for inflation continues with the acceleration in inflation last summer.

Inflation in terms of consumer prices was reduced to a 5% annual rate earlier in the year, but has moved up to an 8% level through the summer. The wholesale price index, which is often a leading indicator for consumer prices, rose at an annual rate of only 3% through the early months of this year. However, it accelerated to an 8% rate during the summer raising few of a return to the double digit pace of 1974.

The major contributor to the upsurge in prices during the summer was farm prices.

They have gone up almost 20% just since March. The Russian grain deal is one of the major contributors to higher farm prices that played into the markets there. Increased food prices combined with some higher gasoline prices to lift consumer prices sharply.

United States crop harvests will be close to record levels for wheat, corn, and soybeans. This augers well for limiting the rise in meat prices next year. The United States can accommodate substantial grain exports in the next six months without generating substantially higher food prices.

Industrial prices have been trending upward throughout the recession. However, announced increase in prices may not stick, such as aluminum. The steel industry announced a number of price increases effective on October 1. However, many steel companies have told their customers that they will honor all orders placed prior to October 1 at the old prices even if shipment takes place later.

Many manufacturers are interested in raising their list prices because of fear of price and wage controls. However, if they discount these prices, the indexes do not pick up the moderation in inflation that has occurred in the industrial sector.

Consequently, I expect the inflation rate to run 5 to 6% in 1976. Of more concern are interest rates. After the prime rate fell from 12% last fall to 7%, it moved back up to 8% in the early stages of the recovery.

The major cause of this rise in interest rates during the summer, was a tightening of Federal Reserve policy.

During May and June, the money supply advanced at a 15% annual rate, well above the 5-7½% objective set by the Chairman of the Federal Reserve, Arthur Burns.

Tax rebates distributed in May contributed to the sharp rise in the money supply since many people passed their $100 or $200 checks into their checking accounts.

However the 15% number was alarming. Consequently, the Federal Reserve took action to slow growth in the money supply. Since June the money supply has been rising at an annual rate of just 3%. The Federal Reserve has brought the growth of the money supply back within their objectives over a six month period.

The central bank is attempting to control the money supply and permit it to rise at only a moderate rate. This is a favorable sign

in terms of longer run inflation. However the cost has been a rise in interest rates.

The Federal Reserve now is in a better position to permit the money supply to grow at a somewhat faster rate in the fall of this year and into early 1976. This will alleviate any sharp rise in short term interest rates, if the Federal budget can be controlled.

Congressman Michel gave what I consider some favorable comments on congressional action spending. The new Congressional Budget Committee is having a modest impact on holding the line on spending.

However, the federal government will be obliged to finance a deficit of over seventy billion dollars in the current fiscal year. The deficit actually ran at an annual rate of 105 billion in the second quarter because of the tax rebates. It has declined to $65-$70 billion in the third quarter. Unfortunately it's going to remain high although the Treasury may be underestimating receipts. Expenditures may rise more rapidly than anticipated, however.

Major increases in spending are taking place in transfer payments, including food stamps, Welfare payments, Social Security benefits, and federal grants to state and local governments for various programs including revenue sharing. The sum of transfer payments and Federal grants will exceed $200 billion in the current fiscal year and make up over 50% of the total federal budget.

These expenditures in the past four years have risen 80% rate. The large deficit in the first half of the year created little problem for the American economy. Consumers were liquidating their installment credit, but in the past couple of months with the rise in consumer spending, households again are borrowing. The Treasury deficit could be financed by the commercial banks in the first half of 1975 because the commercial banks had a sharp run down in business loans.

They declined at a 15% annual rate during the first half of the year. The drop has continued through the third quarter of 1975, but as manufacturers and retailers begin to add even modestly to their inventories, business loans are no longer going to go down. In fact, they will show some increase in the fourth quarter of this year.

Commercial banks were able to finance $25 billion of the $40 billion deficit in the first half of the year.

Other financial intermediaries absorbed approximately $10 billion of federal debt in the first half of the year because of the strong savings flows. Foreign central banks invested $5 billion in U.S. Treasuries when the dollar was weak. However, the Treasury was forced to attract individuals to finance recent note issues. Non-competitive bids, largely represented by individuals, have accounted for half of the new offerings.

During the summer Treasury bill rates, municipal yields and intermediate-term government rates advanced to some extent. Some savings and loan associations experienced outflows of funds in August and September, but less in the summer of 1973 and in 1974.

Savings and loan associations had a net inflow of funds of nearly $3 billion in July, a sharp drop to $1-1/4 billion in August, and probably less in September. The marked stackening in savings inflows to financial intermediaries raises questions as to prospects for home building. Residential construction has just begun to show some improvement in the second half of this year after a sharp drop running through most of 1973 and 1974.

Non-residential private construction has continued to decline in recent months reflecting weak capital spending.

Residential building turned up in May, and has advanced 10% in dollar terms. Housing starts, running at a million annual rate earlier in the year, have shown some recovery to a 1-1/4 million pace. Mortgage commitments of savings and loan association are up some 70% from the end of last year. Building permits in the summer quarter advanced 50% from the tough first quarter. Consequently, there is considerable momentum lifting housing, which I expect will reach a 1½ million rate by the end of this year.

However, savings inflows to the savings association must improve again if housing starts are to exceed 1½ million. At the current time, I'm afraid that is rather doubtful. Federal Reserve policy must maintain a just a fairly moderate growth in the money supply, which may push up interest rates in 1976. In the longer run moderate monetary expansion limits inflation and a rise in interest rates.

In terms of a forecast for 1976, I'm quite optimistic on the total economy. The gross national product in dollar terms will be up by about 13% after only 4½% this year. Real growth is likely to run around 7%. This implies 6% inflation which is only half as severe as in 1974.

Industrial production will increase approximately 12% and the unemployment rate will drop, but remain around 7½%. Finally, corporate profits, after their drop of 1/6 this year, will be up nearly 30% in 1976.

In conclusion, I am quite optimistic for the economy, through at least the middle of 1976. Beyond mid-year prospects will reflect how effective the government is in controlling its deficit position, and the determination of the Federal Reserve in adhering to its announced monetary goals.

Washington Report

William J. McAuliffe, Jr.

Executive Vice President, American Land Title Association, Washington, D.C.

There have been many reports made during this convention concerning Association activities and involvement. But there is one matter which has not been discussed and I shall cover it.

Over a year ago, the Federal Trade Commission began an investigation of competition in the title insurance industry. The nature and scope of the investigation includes but is not limited to an investigation to determine whether corporate acquisitions, affiliations by directors of title insurance companies with other corporations, attempts to monopolize, and other acts and practices within the industry may violate Section 7 or Section 8 of the Clayton Act or Section 5 of the Federal Trade Commission Act. At that time the FTC issued a number of subpoenas to title insurance underwriters.

On April 29, 1975, I received from FTC a subpoena duces tecum requiring the production of 22 different categories of documents. Basically, the period of time covered by the subpoena was from January 1, 1969, to the date of the subpoena. But one

specification requested material back to 1940, another to 1950, and a third to 1960.

Tom Jackson, the ALTA General Counsel, and I met with attorneys from the Commission concerning the subpoena. We inquired if they wanted me to testify under oath when producing the material. The indicated that initially all they sought were the documents. With respect to the material requested, they said that they would take the original documents or copies made at ALTA expense. They said that they might have to keep these documents for as long as 5 years. Accordingly, we xeroxed copies of the documents called for by the subpoena.

One specification called for "documents sufficient to show ALTA's current document retention and destruction policies and procedures." ALTA had nothing in writing relating to this. I suggest that every title company consider establishing such a policy in writing.

FTC sought documents relating to standard forms. They wanted information concerning legislative action by the Association, both federal and state. Inasmuch as ALTA does not become involved in state legislation, we had virtually no information on this subject. The Commission asked for material relating to title fees. We had very little on this subject. They asked for membership applications, all the way back to 1960. I inquired of one of the FTC attorneys, why the Commission wanted to go back so far and why did they require all documents relating to the applications when ALTA correspondence on membership involves form letters, for the most part. The response was, ALTA may violate the antitrust laws by denying applicants membership. However, FTC relented on requiring us to produce form letters relating to each application.

Other materials sought by the FTC concerned market share of business and communications with state or local bar associations. Of course, they required us to produce minutes of the meetings of the Executive Committee and Board of Governors.

We were given a month to comply. We responded and turned over all documents in our files in a timely fashion.

Since then, we have heard nothing directly from the FTC. However, we have obtained a copy of an intra-agency report concerning this investigation. It is called a Mid-Year Review, January 1975. The paper was leaked by an FTC staff person to the Bureau of National Affairs. The Bureau published a short story on the Review. As a result, we have been able to obtain a copy of the article. Some of the statements and conclusions are most interesting. I'd like to read excerpts from the Review.

"I (the Bureau of Competition) suggests that substantial consumer benefit could result if the price of title insurance could be brought down.

"We agree that substantial benefit could result if such prices could be brought down. We also believe that they probably could be brought down. We raise, however, some question that they can be brought down by the FTC because of the possible limitations created by the McCarran-Ferguson Act (MFA).

"We agree with both the Bureau of Competition and the Bureau of Economics estimates that the performance of this industry is very poor. We are not sanguine, however, about the chances of Commission success in bringing prices down at all in those states as to which the FMA would oust the Commission from jurisdiction over the sale of title policies.

* * *

"High concentration in this industry, however, has essentially no competitive significance so long as state authorized and assisted price fixing exists in setting premiums. It appears that such legalized price fixing does exist to a significant degree in this industry. (Footnote. The Bureau of Economics reports that 20 states do not have statutory authority to disapprove or set title insurance rates. One state prohibits title insurance. The other 29 apparently do have laws on the question, but the Bureau of Economics says only seven appear to have taken serious steps to regulate title insurance rates.)

* * *

"Mr. Halverson does not believe that title insurance should be regarded as part of the business of insurance for the purposes of the antitrust exemption contained in the MFA. He believes that the only case on this point, which holds to the contrary, is 'clearly wrong'.

* * *

"What about those states in which the MFA exemption is not or will not be applicable? If it is correct, as the Bureau advises, that title insurance rates 'vary only slightly throughout the country,' there is something very fishy present here. We would not ordinarily expect to find the same rates in states where price fixing has been exempted from the application of federal antitrust laws (under the MFA) and in states where it has not been so exempted.

"The facts tend to suggest the existence of collusion everywhere. (Footnote. Either that or a high degree of competition, which we do not believe to be the case in this industry.) The question then becomes how best to attack it."

This investigation is a very serious matter. It obviously has the attention and concern of your ALTA officers. They shall keep on top of this matter and if it requires our legal counsel's further attention, I am sure that such assistance will be sought. In my opinion it is one of the more important issues facing the industry at the moment.

TITLE INSURANCE AND UNDERWRITERS SECTION

Some Disturbing Developments in Claims and Suits

Tort Liability Under Title Policies

comments by

Joseph Mascari

Assistant General Counsel, SAFECO Title Insurance Company, Los Angeles, California

What is one of the most dynamic and fastest growing areas of the law today? According to a recent advertisement in a California legal publication, it is the pursuit of legal action against insurance companies for their tortious conduct, rather than for breach of contract. Many state bar affiliated associations have also conducted seminars on new tort remedies in insurance cases. Any practicing attorney can now purchase a "How To Do It" kit, with textbook and tapes, on the successful techniques to be used in cases for punitive damages and bad faith.

We are all familiar with the law of abstractor's liability, which has been with us since the first abstract of title was ever issued ("Title Abstractor's Liability in Tort and Contract" THE AMERICAN UNIVERSITY LAW REVIEW, Vol. 22, No. 2, Winter, 1973; "Title Searches: Tort Liability in California" Santa Clara Lawyer, Vol. 7, No. 2, Spring 1967) however, tort liability under a title policy is a relative newcomer to our industry.

The very term "tortious breach of contract" is inconsistent.

The word "tort" comes from the Latin, "torquere" which means "twist, twisted or wrested aside." It is a private or civil wrong or injury, independent of contract. Once the tort is established, the court is then free to impose punitive damages on the title insurance company, if, in the opinion of the court, the facts warrant punitive damages. The purpose of imposing punitive damages is: (1) to punish the title insurance company involved in the subject case and (2) to set an example to the entire insurance industry. From the recent cases that have been reported, the court is accomplishing both objectives all too well. We are getting the message loud and clear. The essential elements of an actionable tort are (1) existence of a legal right in favor of the plaintiff, (2) a corresponding legal duty from defendant to plaintiff, (3) a breach of that duty and (4) damage as a proximate result of the breach of this duty. There must always be a violation of some duty owing to the plaintiff, and generally such duty must arise by operation of law and not by mere agreement of the parties. (4 Witkin, Summary of Cal. Law (8th Ed. 1974) Sec. 488, P. 2749).

When all of these elements prevail, the courts have held that the title insurance company is liable for damages resulting from this tort, including punitive damages.

In general terms, the tort liability under title policies can be segregated into four categories: (1) bad faith, (2) duty to defend, (3) fraud and (4) negligence. Each of these areas of legal liability is founded on duties owing to the insured which are codified as well as in case law.

California has the dubious distinction of being in the vanguard of holding title companies liable for their tortious conduct. In 1972, the legal duties involving fair claim practices were imposed on all insurance companies doing business in the state (Ins. Code Sec. 790.03); Exhibit A. Thirteen unfair claims settlement practices were expressly prohibited, the more significant of which are:

(5) Not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear.

(6) Compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by such insureds, when such insureds have made claims for amounts reasonably similar to the amounts ultimately recovered.

Almost all of the reported cases involve insurance coverage other than title insurance, such as auto, health, fire and general insurance. The decisions in these cases, imposing duties and obligations on the insurance companies, apply equally to title insurance companies. In a case involving a legal description problem, the court held that a policy of title insurance, being a contract of indemnity, is subject to the same rules of construction as any other insurance policy. (*Lagomarsino V. San Jose, etc. Title Ins. Co.* 178 Ca 2d 455; *Sala V. Security Title Ins. & Co.* (1938) 27 Ca 2d 693). In another case, the court stated: "Policies of title insurance furnished no exception to the general rules of construction . . . applicable to contracts of insurance . . . ." (*Coast Mutual Bldg. Loan Assn. V. Security Title Ins. & Guar. Co.* (1936) 14 Ca 2d 255, 57 P. 2d 1392). A 1972 case in which a title insurance company was held liable to the United States for ad valorem tax assessments, the court again stated that ". . . in considering (the exclusions from coverage), we bear in mind that title policies are subject to the same rules of construction as are other insurance policies (*United States V. City of Flint* 346 F. Supp. 1282 (1972); 9 Appleman, *Insurance Law and Practice,* Section 5201.)

BAD FAITH

Every contract contains an implied in law covenant of good faith and fair dealing; this covenant provides that neither will interfere with the rights of the other to receive the benefits of the contract. (*Gruenberg V. Aetna Ins. Co.,* 9 Cal. 3d 566; *Comunale V. Traders & General Ins. Co.,* 50 Cal. 2d 654).

Breach of the covenant provides the injured party with a tort action for "bad faith," notwithstanding that the acts complained of may also constitute a breach of contract. (*Crisci V. Security Ins. Co.*, 66 Cal. 2d 425; *Fletcher V. Western Nat'l Life Ins. Co.*, 10 Cal app. 3d 376). The cause of action is applicable to all insurance contracts, including policies of title insurance. (*Kapelus V. United Title Guaranty Co.* 15 cal. app. 3d 648)

There are two allegations which must be proven in order to establish a case of bad faith: (1) the absence of a reasonable basis for denying a claim, and (2) the denial of a claim while knowing, or recklessly disregarding, the fact that there was no reasonable basis for denying the claim. Obviously, what is or is not reasonable in a given case is a question of fact. In each case, we must ask ourselves: (1) was there a full investigation of the facts on which the claim was made, (2) was there a fair and reasonable review and evaluation of the results of the investigation and (3) was the decision to deny liability a reasonable decision?

The Jachow case (*Jachow V. Transamerica Title Ins. Co.*, 48 ca 3d 917), which awarded general damages of $200,000 for emotional distress, was decided in part on the reasonable expectations of the insured. It affirmed the decisions in *Gray V. Zurich* (*Gray V. Zurich Ins. Co.*, 65 Cal. 2d 263, and *Coast Mutual V. Security Title*) *Coast Mutual S-L Assn. V. Security T.I. & G. Co.*, 14 Cal. app. 2d 225) in holding that the provisions of the policy "must be construed so as to give the insured the protection which he reasonably had a right to expect."

DUTY TO DEFEND

The duty to defend is found in the conditions and stipulations of both the ALTA policies as well as most, if not all, of the standard coverage policies issued throughout the country. To paraphrase the language, the title company, at its own cost and without undue delay, is required to provide (1) for the defense of the insured in all litigation consisting of actions commenced against the insured or (2) for such action as may be appropriate to establish the title as insured, where the litigation is founded upon an alleged defect, lien or encumbrance insured against by the policy.

This imposes two obligations on the insurance company: (1) to defend the insured's title if a third party claims, in a judicial proceeding, an interest insured against by the policy and (2) in the event that a third party claimant chooses not to litigate his claim, to take affirmative action, either by filing an action to quiet title or by offering to compromise a third party's claim, so as to provide the insured with title as stated in the policy. Failure to respond to either of these two obligations gives rise to a cause of action in tort, and is an extension of the tort of bad faith.

The duty to defend, or quiet tile, arises when the insurance company is notified of the existence of the defect. (*Overholtzer V. Northern Counties Ins. Co.*, 116 Cal. App. 2d 113). This notification, incidentally, need not be from the insured, but may originate from other sources such as a complaint which has not yet been served on the insured. (*Hartford Accident and Indem. Co. V. Civil Service Employees Ins. Co.*, 33 Cal. App. 3d 26).

In many cases, the action against the insured has a number of causes of actions, with perhaps only one cause of action imposing an obligation on the insurance company to defend. If the action filed against the insured states several causes of action, some of which are within the coverage of the policy and some of which are not, the insurance company still has the duty to defend the insured. (41 ALR 2d 434, 435-438 Sec. 2, Sec. 3(a)(b); 50 ALR 2d 458, 506-511 Secs. 24 & 25.)

In this type of case, there are serious problems involving reservation of rights and conflict of interests. *U.S. Steel Corp. V. Hartford Acc. & Indem. Co.*, 511 F 2d 96 (1975); *Duke V. Hoch*, 468 F 973 (1972).

The title insurance company has a reasonable time after receiving notice of a defect insured against, to perfect the title. In a 1971 case, it was held that three years was not a reasonable time for the title insurance company to clear up the title defect. (*NEBO, Inc. V. Transamerica Title Ins. Co.*, 21 Ca 2d 222). The fact that the insurance company was willing to reinsure title in a buyer with reflecting the defect in title did not release the title insurance company from liability.

What should a title insurance company do if it firmly believes that it has no liability under a claim being made against it, but is concerned with the potential liability in tort should this denial of liability, or refusal of the tender of defense, be subsequently held erroneous? One obvious solution is to resort to a declaratory relief action, in which the court can determine the rights of the parties before these rights have been violated. If the court exercises its discretion to grant declaratory relief on both the duty to defend and the duty to indemnify, the title insurance company can ascertain its obligations under the policy and have any disputed facts decided before undertaking the insured's defense. However, even this option is not without some risks.

In the Johansen case (*Johansen V. California State Automobile Association Inter-Insurance Bureau*, 41 Ca 3d 974) decided as recently as August 11, 1975, the California Supreme Court held that an insurance company breaches an implied covenant of good faith when it fails to settle a lawsuit against the insured during the pendency of a separate action for declaratory relief by the insurance company. If the settlement of the claim is reasonable, the insurance company should have satisfied or paid the claim, if it then is subsequently determined that the insurance company was, in fact, not liable under the policy, "it could have sought reimbursement from its insured."

FRAUD

Assuming underwriting risks is an everyday occurrence in our industry. In the event a defect, lien or encumbrance is omitted in a policy of title insurance on a risk basis, with or without an indemnity, and with or without a security deposit, we are under a legal obligation to advise the proposed insured of the fact that the exception to title will be omitted on a risk or underwriting basis, and not on the basis that the defect has been cured. Each company has its own standard operating procedures to be followed in communicating this information to the proposed insured.

In *Moe V. Transamerica Title Ins. Co.* (1971), 21 Ca 3d 289, the title company issued its policy insuring the assignment of a secured note, and in doing so intentionally omitted reference to pending bankruptcy proceedings affecting the property secured. As a result of these proceedings, the insured note became valueless. The court found that the title company had conspired to commit fraud on the insured and rendered judgment in favor of the insured for compensatory damages in the amount of $80,000, interest and attorneys' fees in the amount of $35,000 and punitive damages in the amount of $50,000. The court held that the intentional failure to disclose a material fact is actionable fraud if there is a fiduciary relationship giving rise to a duty to disclose it, Citing *Black V. Shearson, Hammill & Co.* (1968) 266 Cal. App. 2d 362.

NEGLIGENCE

For many years, the ALTA conditions and stipulations contained the following language:

> "Any action or actions or rights of actions that the insured may have or may bring against the company arising out of the status of the lien or title insured herein must be based on the provisions of this policy."

In October, 1970, this provision was amended to read as follows:

> "Any claim of loss or damage, whether or not based on negligence, and which arises out of the status of the title to the estate or interest covered hereby or any action asserting such claim, shall be restricted to the provisions and conditions and stipulations of this policy."

This was a noble effort, I am sure, to avoid liability under the tort of negligence, but numerous court decisions have appeared to ignore this provision. In a number of cases, the courts have rejected the title insurance argument that in issuing the policy it was acting as an insurer and not as an abstractor of title, and therefore could only be liable on the insurance contract and not in tort.

In *Banville V. Schmidt* (1974) 37 Ca 3d 92, the buyer accepted a note secured by a deed of trust on other property as part of his down payment. Six days prior to closing, the owner of the other property had deeded it to a third party. The title policy had failed to reflect this transfer and reported

the title to the other property in the name of the prior owner. No payments were made on the note and the sellers brought this action against the title company on the theory of negligence. The appellate court held the title insurance company liable for negligence on the theory that a portion of the premium is attributable to a title search and examination, since the amount of the premium was identified in the policy as being for the "total fee for title search, examination and title insurance." It logically followed that the title insurance company had the usual abstractor's liability "to reasonably and carefully perform their search and examination." (*Northwestern Title Security Co. V. Flack,* 6 Cal. App. 3d 134; *Viotti V. Giomi,* 230 Cal. App. 2d 730).

The Contini case (*Contini V. Western Title,* 40 Ca 3d 536), on the other hand, respected the distinction between a title insurer and an abstractor of title. In that case, a lis pendens had been recorded sixteen years prior to the issuance of the policy. The title policy failed to reflect it, but the title insurance company was not held liable. The agent, or abstractor, was held liable because, "unlike a title insurer who can define the extent of his liability under its insurance policy, an abstractor must report all matters which may affect his client's interest and which are readily discoverable from those public records ordinarily examined when a reasonably diligent title search is made."

It is easy for us to editorialize by saying that the consideration of the title insurer's liability in tort ignores the realities of the transaction, the expectations of the parties and the contracts they have made. The buyer wants his title insured in a designated fashion and he does not want any extraneous matters shown in the policy which must be shown in an an abstract. It is our position that a title policy is not a summary of public record; on the contrary, it is a contract of indemnity, and the liability of the title insurance company should be limited to the law of contract and not the law of tort. However, we must recognize that the courts are tending to rely upon the restatement of torts, section 552, (exhibit B) which states the rule regarding a "supplier of information."

Unfortunately, we can see the handwriting on the wall very clearly. The current judicial climate is to expand the tort liability under title insurance policies. We have no alternative but to perform all of our duties in such a professional manner as to minimize this exorbitant potential loss.

Class Actions

comments by

John C. Connelly

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Commencing in about July of 1971, a new wave of litigation came on the horizon for Title Companies, known as the "Class Action". Originally the cases were based upon Federal Law and brought in Federal Court. The allegations were founded upon alleged violations of various Acts of Congress relating to antitrust and the defenses interposed raised the question of whether the business of title insurance was commerce and controlled by the Federal Government or by the States. Several of the later cases have been brought in State Courts, alleging violation of State Law. These are all in the preliminary stages and as yet, no decisions have been handed down. I will refer to those later on, but for our purpose much of my discussion will apply to two cases in particular, which have gone to the Circuit Court of Appeals, and in both, the Title Companies have prevailed.

Because Acts of Congress are referred to by common name, such as, Sherman Act, Clayton Act, and McCarran Act, I believe it wise to briefly tell you essentially what these Acts of Congress provide. They are all pursuant to the Commerce Clause of the U.S. Constitution.

The first enactment was known as the Sherman Act, which was passed in 1890. This essentially related to price fixing. Next in line was the Clayton Act, which was passed in 1914, and related essentially to monopolies and restraint of trade. Mergers, consolidations, and such, fall under this Act. Also enacted in 1914, was the Federal Trade Commission Act, which related to unfair competition. The next important Act of Congress in this area, was the Robinson-Patman Act in 1936, which related essentially to price discrimination. And then finally came the McCarran Act in 1945, which related specifically to Insurance and the regulation thereof either by State Law or Federal Law. I believe a little more historical background may help to understand the basis for the McCarran Act.

In 1868, the United States Supreme Court held in the case of Paul v. Virginia, that the issuance of a policy of insurance, even though the parties were domiciled in different States, was not interstate commerce, but only a simple contract of indemnity and subject to regulation by the State. In light of this it was thereafter for 76 years until 1944, generally assumed in the insurance industry that the Sherman Act and other Federal antitrust laws, were not applicable to the insurance business. But in 1944, that assumption was knocked for a loop when the United States Supreme Court in U.S. v. Southeastern Underwriters Association held that a fire insurance company, which conducted a substantial part of its business across State lines was engaged in interstate commerce and subject to the Sherman Act. The reaction to this was immediate by the NAIC, the insurance industry as a whole, and State public officials, and Congress was prompt in introducing remedial legislation, so that in the following year, hot on the heels of the Southeastern Underwriters case, came the McCarran Act, which provided that no Act of Congress shall be construed to invalidate, impair or supersede any law of any State for the purpose of regulating the business of insurance unless such Act specifically relates to the business of insurance, with the following proviso, which is important: Provided that the Sherman, Clayton and Federal Trade Commission Acts shall be applicable to the business of insurance *to the extent* that such business is not regulated by State Law.

Class Actions in Federal Court can be maintained under Rule 23(A) of Federal Rules of Civil Procedure.

The first case I want to discuss is one which was commenced in Colorado in July of 1971, known as Commander Leasing Company v. Transamerica Title Insurance Company and all other Title Insurance Companies and some Title Insurance Agents doing business in Colorado, and brought in Federal Court. For lack of sufficient time, I will not go deeply into the facts, but merely say there were two main issues: (1) Whether the business of title insuring is the business

of insurance within the meaning of the McCarran Act; and (2) Whether Colorado regulates title insurance to the end that by virtue of the McCarran Act, the Sherman and Clayton Acts are not applicable. The defendants main defense was the McCarran Act and the Trial Court granted pretrial motions to dismiss and answered both questions in the affirmative. The Tenth Circuit Court, by its decision in 1973, affirmed this holding. The trial court did dismiss, however, without prejudice to file an amended complaint in connection with abstracting services not connected with the issuance of a title insurance policy. No such amended complaint was ever filed. In this case the plaintiffs argued the mere pretense rule, which the Court rejected. In the interim, cases were commenced in Federal Court in Northern California, Kansas, Alabama, and Pennsylvania. I am not familiar with the first Pennsylvania case, only to know that it was decided last year on summary judgment in favor of the defendants, and no appeal has been taken. The acts complained of there, was a service charge against seller. I understand there are two related cases now pending in Pennsylvania with identical complaints: one in Federal Court; one in State Court, which involve an additional charge for mechanic's lien coverage.

The next decision came at the District Court level in the Alabama case of Crawford vs. American Title Insurance Company, et al, in April of 1974. The theory of the allegations was a conspiracy in restraint of trade and commerce to raise and fix prices in the Birmingham area and to monopolize. The defendants moved to dismiss for lack of jurisdiction over the subject matter and failure to state a claim on which relief can be granted, grounded upon the McCarran Act. The District Court dismissed in April of 1974, and the plaintiffs appealed. The decision from the Fifth Circuit Court of Appeals was just handed down August 27, 1975, and after a brief comment about two other cases, I will go into that quite thoroughly.

In the meantime following the Circuit Court decision in the Colorado case and the Federal District Court decision in Alabama, the Federal Court in Kansas in July of 1974, adopted the same basic approach as the Alabama District Court and dismissed the plaintiff's case based upon the McCarran Act. Likewise, the Federal Court in Northern California, dismissed that case in October 1974, on the grounds that California now regulates rates so that the State law at present was sufficient to create the exemption under the McCarran Act.

In the Circuit Court decision in the Alabama case, five weeks ago, the court affirmed the lower court and held that the Alabama statutory scheme for regulation of the title industry was sufficient to bring the industry within the exemption under the McCarran Act. A dissenting opinion, however, was filed by Judge Godbold, and I understand that plaintiffs encouraged by this dissenting opinion have filed a motion for rehearing. The dissent is centered mainly on the regulation of rates. In the Colorado case, state law provided for rate regulation. Plaintiffs sought to overcome this by claiming the Commissioner's enforcement was a mere pretense. This was rejected by the Court. In Alabama, the state law gave authority to the Commissioner to regulate unfair trade practices and unfair methods of competition, but with respect to rating provisions, the Alabama code charges the Commissioner with the duty of regulating rating bureau provisions applicable to insurance companies, except Life, Accident and Health, and Title Insurance. Because of this, plaintiffs argued that the Commissioner had no authority to enforce rates and thus unfair methods of competition. This the majority of the court rejected.

The main question raised by the dissenting opinion of Judge Godbold is how closely the Federal Courts should scrutinize State schemes for regulating insurance practices before determining that the McCarran Act for exemption applies. As we said Alabama statute specifically prohibits the unfair method of competition. State regulation varies from Texas which is strict, to others which are almost at a minimum. The District Court took a middle of the road approach in deciding that the Alabama scheme was sufficient and the majority of the court held that decision was correct. However, the dissenting opinion goes deep into legislative history and Congressional Records in connection with the passage of the McCarran Act, and the Judge notes that in Commander Leasing, the title companies were subject to rate setting regulations. The Court in that case said: It's task was to determine whether there was regulation and not if it could be done better. Judge Godbold takes the view that the principal purpose of Congress was to authorize State rating systems and that it was opposed to private price fixing. He also feels that regulations in general, such as forms of policies, licensing of agents, adequate capital structure and such, are not enough without adequate rate and price regulation. He states in his concluding paragraph of the dissent, that he would prefer to hold in this case that the State's machinery is inadequate on its face and at a minimum he would remand the case to the District Court for consideration of adequacies of the statutory scheme in the light of the Act and for detailed findings, and he would direct the District Court to consider on remand the extent if any, to which the Commissioner has actually utilized the antitrust enforcement power given him. So, while at this stage of the Court proceedings we have won the battle, we have not yet won the war, and there remains to be seen whether a rehearing will be granted, or if not, whether a petition for certiorari will be filed with the U.S. Supreme Court, and whether the Supreme Court will take the case.

Now for a few comments with respect to the other cases which have been filed in State Court and involve not only antitrust type of allegations, but also other grounds. Most states have statutes on antitrust and restraint of trade, and also court rules permitting class actions under certain circumstances. In the cases under State laws, the McCarran Act is not available as a defense. All of the cases which I will mention are in the preliminary or discovery stages or have had hearings on motions and none have at this point, gone to trial. In fact, the cases I hereinbefore mentioned in Colorado, Northern California, and Alabama, were dismissed prior to trial.

The first of the cases in State Court was commenced in Los Angeles in January of 1973. It alleges conspiracy to restrain price competition. The Court in April 1973, stayed the case to permit plaintiff to proceed with the Insurance Commissioner; the Insurance Commissioner did not act and now the case is back in Court on preliminary motions and discovery. It has not yet been determined if plaintiffs can proceed as a class. This case is important to title underwriters and may be expected to move along from here on at a faster pace. Also, in 1973, in Washington, D.C., a class action was commenced against title underwriters, grounded upon the unauthorized practice of law. The plaintiffs sought an injunction, ask that a constructive trust be imposed based upon allegations of fraud and deceit, and ask for damages of monies which have been paid and which will be collected on account of unauthorized practice of law. The case is pending on motions to dismiss and to deny injunctive relief and a constructive trust. The following year a similar action was commenced in Maryland by the same plaintiffs, based upon the same type of allegations, but because of some differences in Maryland law from District of Columbia, the complaint varies some in form and is also more comprehensive. Essentially, this complaint is a four-count declaration based upon (1) deceit, (2) negligent misrepresentation, (3) breach of contract, and (4) public nuisance. Each count asks for injunction and damages. The Court has already sustained a demurrer with leave to amend the complaint, and an amended complaint has been filed.

Another theory as grounds for a class action against Title Companies has been advanced in an action started in 1974 in Nebraska, which is based upon Arizona lot subdivision sales and alleges fraud and deceit in the sale of unregistered securities under the U.S. Securities Act. The claim against the Title Company is that because it was involved in insuring purchasers of lots and held the legal title and handled collections from lot buyers under an Arizona-type land trust agreement with the original land owner the first beneficiary and the promoter the second beneficiary, that the Title Company aided and abetted in the sale of securities. In this connection, both the Federal and State Courts in Minnesota have held that the sale of investment contracts for lot sales was the sale of securities. The main thrust of the

defense is that a Title Company acting as Trustee under such a trust agreement was doing so only in the performance of a service. The case has not yet proceeded to the point where it has been determined it may be maintained as a class action.

A similar case has been filed in South Dakota, in July 1975, where jurisdiction is based upon the sale of unregistered securities. Plaintiffs claim that land contracts were securities; that sale of vendor's interest in such contract to investors violated SEC law. There are no further developments in this case.

I also understand that that Kansas case heretofore mentioned has been refiled in State Court.

From this, I believe you can see that the class action has been quite a burden to Title Underwriters and in some cases, Title agents, and has cost a fortune in litigation expense. My personal feeling is that if we can prevail in the Alabama case, this should just about mark the end of the cases where the McCarran Act is available as a defense. However, the end is not yet in sight with respect to the cases in State Courts, and until at least some of the cases now pending has been concluded favorably, our burden will continue.

Mechanics Liens

comments by

Jack Tickner

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Hatch, I believe this is not working out as we had planned it at lunch today. You said the panel was supposed to scare the audience. They're holding up pretty well and I'm terrified.

Maybe all's not so bad though. I have been told the story that one of Bob Dawson's predecesors, Mr. Laurie Smith of Lawyers Title, years ago used to frequently pronounce that what the title insurance industry needed was more and bigger claims. Well, in our Centennial Celebration, I think he'd be proud of us.

(Laughter)

Two years ago, I addressed this group on a rather broad subject of Trends of Title Insurance Claims. At that time, I started the discussion by talking about mechanic's lien claims; and as I reread my notes of that discussion, I predicted some rather dire things.

If I said that things were going to be worse before they are better, I'll take no pleasure in being right. Mechanic's lien claims got worse and still are. I'd like to run over some figures very quickly here, maybe put a little perspective on the thing.

In 1970, the title insurance underwriters who furnished claims information to ALTA, reported that 8.7% of their total claims payments were for mechanic's liens. In 1971, it was 11.7; in '72, 19%; some reason it dipped to 17% in '73; and then in 1974 it was 22%.

I have an idea that that percentage possibly should be a little higher, but we don't always agree on assignment of claims to a category, and there may be some claims that are assigned to other than the Mechanic's Lien category that are really mechanic's lien related. But in any event, the percentage is rather substantial and we're getting up very close to 1/4 of all of our claim payments being for mechanic's liens. And from what I've heard since I've been here the last couple of days, I don't think that '75 is going to show any improvement, but probably will be worse than '74.

I believe we can see that it has been an expensive school that we've been to, and hopefully we can benefit a little from the education. To that end, I would like to try to get a profile of what we have today as a typical mechanic's lien claim.

To start off with the project is a multi-million dollar, multi-family or commercial development. The project was commenced and the title insurance coverage was written in 1972 or 1973.

The construction was to be completed over a period of several years. The construction lender is a bank or an REIT. The project is not now completed. The developer is now in bankruptcy. The lien claims are at least in six figures. The construction mortgage priority is either not there or is being seriously questioned.

Now, John Connelly is mumbling; he says I'm talking about his claims. John, I am; I'm talking about mine and I'm talking about all the rest of them. Can we learn anything from this simple profile? Possibly not, but let's take a shot at it.

In 1972 and 1973, those were the glory years, everything was go. Developers, lenders, title insurance companies were riding the crest of the waves. Everything was rosy. No title insurance company wanted to risk losing a big order by making a stringent mechanic's lien requirement for waiving the mechanic's lien exception. After all, this particular builder had a fine track record; he would never go broke.

If any emergencies did develop, the developer could always refinance, get some extra money, so it was a good bet. Well, we're looking at it three years later. Was it a good bet? Each company will have to answer that. For some maybe it was. I know for a lot of others, it wasn't. If you think that it was, how much would you like to gamble today that three years from now mortgage financing will be more readily available, or that building costs will be subject only to a "reasonable" rate of inflation?

To state this in another way, I think the significance of this profile is that we were putting out a risk on a thing that took a long period of time, during which time the risk continued, got greater; and the things that could affect it, we had no control over.

In recent years, the title insurers have taken the underwriting view that giving lien coverage by priority of recording is a fairly safe method and much to be desired. And I certainly don't knock it. I love to get a case with priority. I would only ask or only say that I would like to see a little more evidence of priority in the file to prove it.

If priority is not available, then we believe that a risk was acceptable if the title insurer was satisfied that the disbursement of the construction loan funds would be made to those who could claim a lien. If the disbursement was made by the insurer or lender directly to the sub-contractors, the risk was thought to be minimal.

The method of greatest risk would be to disburse to the general contractor and trust that he would pay his subs. I think that's a little bit of what we just talked about. However, we have now seen a new element in this picture. Any large building project gathers momentum to the point that the construction cannot be stopped on a moment's notice. What happens when a lender decides, for whatever reason, that the

borrower is in default and the lender will make no further disbursement? Well, first you'll always have at least a month's backlog of unpaid bills. Second, the borrower will usually keep the job going for a time hoping to either convince the lender to continue the disbursement, or to obtain refinancing. Third, as certainly as night follows day, the unpaid bills will become mechanic's liens.

Now remember that these bills would have been paid if the disbursement continued on a normal schedule. And also that the work and material were contemplated by the construction loan agreement. Since the title insurance company has issued a policy without a mechanic's lien exception, we find that a number of lenders see nothing wrong with asking the title insurance company to pay for this work and material that has resulted in a mechanic's lien.

Well, I tell you I see something wrong with it. I find the demand most objectionable. I grant you that there are variations on the facts that I have given; the facts may not always be that clear. But I see no reason why a lender should accept the benefit of an improvement that was to be paid for from the proceeds of the mortgage loan, withhold those payments, and then expect the title insurance company to pick up the tab when they have become converted to mechanic's liens.

There is another area of concern that I have noticed. In many cases, the underwriter may have weighed the mechanic's lien risk and issued instructions concerning disbursements, collection of lien waivers, whatever other requirements they have made; and the task of compliance with these instructions ultimately fall upon an approved attorney to see to the protection of the company.

After the case has blown up, we are able to see that the borrower is the primary client of the attorney, not the title company. The interest of the borrower and the title insurance company have not coincided in this case. And there are some other cases where we have found that the approved attorney is not only certifying the title and ultimately the underwriting, but is actually the borrower or is financially interested in the borrower. The conflict there is obvious.

It does seem to me that both underwriters and agents should be interested in knowing to whom the approved attorney in a particular case owes his allegiance.

On the litigation front, we're finding that the courts would still rather give a judgment for lien claimants than they would for motgage lenders or purchasers or particularly title insurance companies. We continue to see the departure from the traditional mechanic's lien suit and find that the lien claimants are alleging not only their statutory lien rights, but claim alternatively numerous equitable rights to a lien.

Most of the suits in which these equitable rights are being asserted have not reached the appellate courts. And I don't know whether I hope they do or not. One case somewhat along that line was decided by the Minnesota Supreme Court in the past year. The lien claimants were contending that the construction lender disbursed in a negligent manner by not seeing that the proceeds went to the suppliers, and consequently that the lender should be estopped to claim priority by recording.

The trial court had John Connelly nervous for a little while on this. But then the Supreme Court reversed the trial court, and found that the construction lender had no duty, as a matter of law, to protect the supplier. I think this was a rather limited holding. It's good as far as it goes, but the facts were rather limiting.

I thought that an even more interesting aspect of that particular case was the definition of a reasonable inspection by a construction mortgagee to determine whether or not construction had commenced prior to the recording of the mortgage. The lender had – or an inspector for the lender had made an inspection by standing on the side of the road and looking over the forty acres, and reported that he saw no signs of commencement. As a matter of fact, there had been some disturbance out there that was apparently covered up by weeds. The court held that notice of commencement is not given where nothing can be seen of the construction from the edge of the field. (I used a double negative, but I'm quoting precisely from the court's language.) In other words, the inspector was not required to walk every square foot. I think that's rather new. I don't know of another mechanic's lien case that holds exactly that. I've always thought you had to walk every square foot.

The appellate court in Hawaii recently barred an other-wise valid mechanic's lien from enforcement against an owner of property, for the reason that the claimant knew that the general contractor was at the point of insolvency, and found the duty upon the lien claimant to notify the owner of this situation. This is certainly a switch from the considerations previously mentioned in favor of lien claimants. I think the court would have had a much harder case if they were looking at a mortgage lender rather than a purchaser or an owner of property.

There's another development. I wouldn't say that it's a new one, but it still seems to surprise a lot of people. And that's the rule that a federal mortgage has priority over a mechanic's lien claim that has not been reduced to judgment. This is a situation where, under state law, the mechanic's lien would be prior. But federal law requires a lien to be cohate to obtain priority over a federal lien. In the case of a mechanic's lien, it is not cohate until it has been reduced to judgment. And we have seen several cases where the Department of HUD has taken an assignment of a mortgage pending the mechanic's lien suit, and the suit has been dismissed on summary judgment.

I believe that the development of greatest consequence, and I'm sure one you've all heard of, is the decision by the Supreme Court of Connecticut; that the Connecticut mechanic's lien statute violated the due process clause of the Fourteenth Amendment of the United States Constitution.

The court, primarily following the Fuentes decision, found that the statute did not make provision for the property owner to obtain a reasonably prompt hearing as to the right to file a lien, and therefore, lacked procedural due process. Even more recently, two courts at the trial level in Maryland have ruled in a similar fashion. I understand that certiorari has been applied for to the Supreme Court of the United States, in the Connecticut Case. If the same reasoning holds up, there are a number of states that have the same infirmaties in their statutes and they may suffer the same fate.

In defending mechanic's lien suits the constitutional issue certainly gives us more to go on than we have had in the past. Mechanic's liens in Maryland are somewhat easier to settle in the past few months. I doubt, however, that we can take long range comfort from this turn of events. Most of the statutes can probably be patched up if the legislatures decide to do so. Most mechanic's lien statutes are relics of the 19th Century, and we might hope that this will be a good opportunity for the various legislatures to start all over on a mechanic's lien law that will be fair and equitable to all parties.

ABSTRACTERS AND TITLE INSURANCE AGENTS SECTION

Problems Encountered in Rewriting Chapter Nine, Texas Insurance Code

Robert C. Sneed

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To the specifics of change in Texas.

My old granddaddy used to tell me many years ago that while New York was the biggest state, it wouldn't be too long before California would pass New York – and subsequently in like manner thereafter Texas would pass California in size. He also taught me that at any time you wanted to judge the future of Texas, look to see what had already happened in New York and in California.

Though many years have passed, the old gentleman has proven himself right.

Within the broad expanse that is Texas three of our cities at the next Federal census may well be within the top 15 cities of the United States – possibly the top ten.

What many of you visualize as sand, cactus and a burning desert is now a melting pot of the old frontier, cattle, cotton, grain, oil, gas, vast developing cities and expanding industries that have brought in people from other areas.

For example – Austin – our state capital – when I was a boy it had a population of 35,000. Today its metropolitan area population exceeds 300,000 – and 40% of that population has lived there five years or less.

With that population and economic change – views and ideas have changed. Consumerism, regulation of business, environmental controls and growth restraints are no longer items for discussion – they are the enumerated commandments of a politician's bible.

Not only is the change passed on from else where within the United States but it is modified by cultures from our Black citizens and the ever increasing input of the Mexican-American population moving north from south of the border.

Thus the ideals – both socially and economically – of yesterday as so vividly portrayed in "Giant" have been modified and amended.

You are each aware of the Federal changes – changes that are so great and so swift that we – at least in Texas – are unable to comprehend

But before we get to specifics about title insurance, let me give you a little background of our insurance history and tradition.

Until the economic upsurge following World War II – the insurance industry was almost totally dominated by its domestic industry; and for two reasons: (i) we were so poor no one really wanted to do business with us; and (ii) a 1913 Act known as the "Robertson Act" required foreign companies to invest policy reserves in Texas investments or pay approximately 3 times a greater premium tax than was paid by the domestic companies. Following the Robertson Act, the limited number of out of state companies departed. But before doing so, the foreign companies were able to obtain a referendum on that Robertson Act.

The people voted for the Robertson Act – the people have since remained responsive to the subject of insurance.

They have demanded strict regulation – there has grown up with that regulation a demand of rate regulation – regulation that is one of rate setting – not merely rate approval.

As to title insurance – the demand for change continued to mount.

First. In the 1973 legislative session, a committee of the Senior Bar and the Junior Bar sponsored legislation to create a special type of company to be a Bar Related (and in part Bar owned) title company. At least as to the first version, the bill would have allowed such a company to exist without regulation and State Control. While the bill was soundly defeated, obvious efforts were again being made for its revival.

Secondly. It was certain that by the efforts of ALTA and the critics of title insurance some substantial change would come from Washington. We were concerned that our strong (and then existing) state law could well be in conflict with whatever Congress might finally enact.

Third. We thought it obvious that both the Bar and the title insurance industry would inevitably face a microscopic examination as to business competition and anti-trust. At least some of us correctly anticipated the outcome of the Goldfarb case. We did then – and still do – believe that the present FTC investigation will follow the approach that title insurance is not really "insurance" within the meaning and concept of the McCaran-Ferguson Act – partly because of the attorney involvement and partly because of – in many instances – a failure on the part of the states to regulate title insurance as strictly as was that of other types of insurance.

But to fully understand our conflicts and our difficulties other Texan historical facts must also be explained. Texas has existed – government wise – under six separate and distinct sovereignties. And we have titles granted from four of those six sovereignties.

You must remember that when Texas joined the Union, the United States took such a dim view of Texas economic condition that it would not assume the bonded indebtedness of the Republic of Texas. It let the new State of Texas keep title to all of its public lands. Such were the terms of the Treaty of Guadalupe-Hidalgo.

Thus with the state having four sources of title and 254 counties – you can easily see we have many complicated title problems. The best way I know to explain the complications is that in 1925 the State of Texas paid two little old ladies $25,000 for a quitclaim deed to the state capital building built back in the 1800rds.

With these pressures, the industry was confronted with a judgment requirement – which way the future.

The frontier heritage simply would not permit the industry to opt for Federal regulation. We knew that title insurance was insurance – we believed that the McCaran-Ferguson Act intended for the states to regulate and that the states with adequate tools could do it best – not because the people at the state level were any smarter but because the people at the state level could better understand – the old and the new, the big and the little that was Texas. Likewise dual regulation was and is simply pure waste.

It was obvious that any effort should be the joint project of the State Board of Insurance, the State Bar of Texas and the title industry. The question followed as to how to put it all together.

And we had one other major problem. How to get the title industry together. How to blend the economic differences – and the emotional differences, particularly when it came to any concession as to Bar Related Title insurance.

The title industries economic divisions were:

1. the title underwriters
2. the title agents of the metropolitan areas; and
3. the rural abstractors and agents.

Any major legislation in this day of consumerism would necessarily include a guaranty act as to underwriters solvency in at least the area of residential properties. While this is an accepted way of life among property-casualty companies and to a lesser degree among life companies, it was unknown to title underwriters. It was a big step, but a must ingredient if total regulation is to exist on a state level. Texas consumers ultimately will demand no less protection.

All the time, the State Bar's PEER Committee continued to urge to the Real Estate, Probate and Trust Section that a Bar Related Title Company be free of rate regulation and devoid of any requirement for geographical abstract plants.

In May of 1974, Texas Land Title Association presented its position to the Real Estate, Probate and Trust Section of the Senior Bar as follows:

"TLTA does not seek (nor is it entitled to receive) special legislative protection from competition. But by the same token, it opposes legislation which (i) weakens regulation, and (ii) confers through non-regulation competitive advantages upon a new type company.

"The position of the proponents is to weaken regulation so as to accomplish the desired result.

"TLTA urges that if the Bar or any of its members desire to enter the field, each should come under and comply with present strict statutory provisions and regulations."

Finally, that section of the Bar, set up a hearing committee to receive arguments on Bar Related Title Insurance; the confrontation was a simple old time debate.

Mr. Stanley Balbach, of Urbana, Illinois, and his Texas counterpart, Gerald Gordon, of Houston, spoke for the unregulated concept of rate, non-disclosure and no abstract plant requirements.

We opposed – we urged strict regulation, a guaranty act, full disclosure, increase in capital and surplus requirements, uniform closing statements and regulation of reinsurance.

From that point on discussions continued. And we continued to work within our industry. We had made it clear to the Bar Committee that at this point we spoke only for our committee and not for the entirety of TLTA.

Likewise at this point in time we had not gone to the State Board of Insurance because of the strict regulation of the Texas Lobby Registration Act. Any discussion of proposed legislation with the administrative body requires immediate registration as a lobbyist – this was one of Common Causes' contribution to Texas governmental processes.

We pursued the dual problem – compromises within the industry, and compromise with the Bar.

At times both seemed too large a cross to bear.

Within the industry conflicts continued to grow. At times almost reaching the breaking point.

Would the underwriters agree to a guaranty fund arrangement? Whoever heard of a uniform closing statement? Why should attorneys be permitted to steal away the huge investments in abstract plants? Why didn't we learn from Florida's title industries problem with bar related title insurance? But most of all – why didn't we have guts enough as an industry to just stand up and fight?

It is well to note that at this point the TLTA committee was composed of mostly young men – the officers and directors of the Association were mostly young and the managing executive was new, young and from the Washington scene. Put them all together and they could see the future – their feet of judgment were not in the concrete of the past.

They could – individually and collectively – understand each persons personal and economic conflicts yet never lose sight that the real issue was the consuming public.

Finally, it was time to present TLTA's much revised work product to the State Board of Insurance. It is an outstanding Board headed by a strong consumer advocate.

Meetings with the Bar Committees continued – at one such meeting only one Bar member attended. But finally in January, the Bar conceded to the two largest issues: (i) rates would be set and regulated; and (ii) titles would be based upon information obtained from a geographical abstract plant.

We thought that the issues were settled – but we were to later tragically understand that both committees had failed to understand each other as to geographical abstract plants.

Despite the disagreement, the bill was introduced in both legislative houses on the last day for free introduction of bills. Sixty days of the 140 day session were now gone and we were back at the place of beginning.

The issue was simply how, under what conditions and at what price would the attorney obtain information from a geographical abstract plant. Would an abstractor be statutorily "required" to furnish title information to the title attorney?

Now I wouldn't say that the situation became violent – but it sure didn't become tranquil.

It was even rumored that there was some name calling – some which did proud to the memory of Harry Truman.

And about this time TLTA had its annual convention; a full one-half day was devoted to the confrontation. The hitting was so hard I thought for a moment that Vince Lombardi had returned and was coaching both sides – or at least Dick Butkus was playing middle line backer.

Anyway, the Board of Directors survived and voted to work out a solution.

One month of the legislative session remained – the bill was just now to be heard in committee. With the usual problems and degree of good luck the bill suddenly out of the Senate by a unanimous vote. With two weeks of the session left it came out of the House Committee only to be met with great opposition on the House floor.

The make up of the opposition was –

1. The liberal wing – those who oppose business sponsored legislation. They could not believe that industry would sponsor true consumer oriented legislation.

2. The lawyers of the smaller towns and rural areas who examined titles, prepared papers and wanted everything left as it was.

3. Those of the junior bar membership or thinking who were not satisfied with the Senior Bar Committee and Board of Directors agreement and thought that the bill was designed to eliminate the attorney from the title business.

This combination produced just enough votes so as to postpone consideration of the bill by a 65 to 63 vote.

At this point, the effort of so many months appeared lost. Negotiations started again.

Two days later, back on the floor, the bill was engrossed by a voice vote. With three days left in the session and at 1:00 AM in the morning it passed the house with 93 favorable votes. The Senate concurred and after the session ended the Governor signed the bill. Thus the curtain closed on this 62 page production.

Starting January 1, 1976, we have a new eve. Briefly stated:

1. Rates will be set at an annual hearing – rates to be established reasonable to the public and non-confiscatory to both *underwriter* and *agent* – a standard unparalleled in rate regulation.

2. All forms promulgated by the Board.

3. The only title insurance guaranty act in the United States – increased capital and surplus requirements to add to that protection.

4. Uniform closing statements – applicable where RESPA ceases.

5. Board promulgated insured closing letters.

6. Licensing of abstract plants used in connection with all types title insurance agencies.

7. Full regulation of Bar Related Title Insurance Companies.

8. Full disclosure of all persons receiving any proceeds from title insurance.

9. Compatibility with RESPA requirements.

10. Total regulation of reinsurance except as to rates for reinsurance.

We have thus tried to move our title industry and its future into today. For sure this is not the end of the story, nor is it perfection.

Tomorrow will present more problems and require more solutions.

But it is the effort of the last of the frontier – a frontier modified, changed and altered by a new approach and in particular by an industry willing to accept the demands of consumerism, full disclosure and total regulation. An industry that above all has learned it must work together.

Much credit must be given to the men and women of this industry who would accept such a challenge.

Whatever the appearance, we sincerely learned that there is much in America on which to build. We rejected the vision that ours is a society coming apart – rather we believe – it is a new society trying to come together. It is a new, forming society, government and business yearning for order, not rejecting it – yearning to create values not destroy them.

These are the functions for which business and government must exist. If harmony and balance are to be maintained in the future, industry as much as politics must be responsive to the new realities of these new times.

In our government and business, there cannot be two Americas – one old, one new. "The earth belongs to the living", and business and government cannot belong to the past.

Despite our shortcomings and sins, we sought and hope we have found and taken at least "one small step" toward the future.

Liability Under Title Insurance Agents Contracts, A Confrontation or Cooperative Survival

comments by

William B. Boyd

President, Boyd & Boyd, Fulton, Missouri

My opening remark is that I am proud to share this panel with a person like Bob Saville. He has earned the many friends and wonderful reputation that he has in our industry and I consider this a compliment to share the platform with him. Phil, I appreciate it.

Quite naturally Bob and I agreed to treat this subject as a discussion and not as a debate. We agree that our job here today is to see if there is a problem in the field of Liability, then if we find a problem, to attempt to seek and answer it, but mainly both of us want to believe that there is not a problem.

Because each dice has 24 corners Bob and I have agreed that we are going to dig deep and come up with some dark ideas, let them have a few moments of daylight and then allow most of these ideas to again sink to their proper dark places.

Because I am the first speaker it will be my job to be the one that cries "There is a Wolf" in the loudest voice, then Bob can torpedo me – therefore I open this panel with two controversial statements:

First I am on record as being opposed to abstract agents having to furnish insurance to pay losses to title insurance companies caused by their own errors and ommissions.

My next controversial statement is that I am on record as opposed to those contracts between an abstract agent and an insurer that require the abstract agent to participate in any and all losses including losses caused by errors and ommissions.

Now that I have made two controversial statements I will spend most of the next 18 minutes walking backwards away from them.

Let me first start walking backwards by stating that I, myself, my customers and my national title companies (spell that with an s) all agree that we are proud of my work, we are proud of my title plant, we are proud of my crew, we are proud of my product, we are proud of my reputation. We know that I cannot shirk my responsibilities. We believe that my office is an integral part of my community.

Secondly let me walk backwards by asserting that any responsible abstract agent requires himself to have liability.

Title Insurance Companies know that volume is the life blood of their operation. Because volume is their life blood, many years ago some of the more aggressive companies took on a few of the abstracters as agents. Then the smaller and less aggressive companies decided to take on agents. Later many of these agents became title insurance companies and then in time they too took on abstract companies as agents. Then the competition for the better abstract companies became too keen and the title insurance companies took on the inferior abstract companies as agents. Then they took on lawyers, real estate agents, bankers and insurance brokers.

Somewhere back in all of this confusion my office in an attempt to improve our service and increase our own revenue took on a title insurance agency. We vaguely remember the early HOLC days. We remember some of the early Farm Security Administration closings. We remember the early Federal Housing Administration programs. While I was in the Marine Corps in 1944 my congressman sent me a copy of the GI bill so that I would be ready to go to work when I got home.

With all this background we will return to our subject of Liability. In considering Liability I want to ask this body six questions.

Question One: Is there one, two or several abstract companies in your particular county?

If there are more than one, how many of them are well established by having a plant, experienced personnel and a responsible reputation?

In counties where there are two or more abstract companies it is necessary for any given abstracter agent to issue policies based on information furnished by a competing company. To the question of what is the liability of the competitor we think of several answers.

In counties where there is only one reliable abstract plant what is the liability of this abstract plant to title insurance companies that do not let him participate in their commissions.

Question Two: What is the financial ability of each of the abstract agents to participate in liability? Let us say the liability of a $5000.00 loss. Certainly a

strong abstract company with a complete plant and competent personnel is more able to meet the liability or loss than the weak company, or a company with a group of young or inexperienced personnel. Especially if this weak plant bases its title evidence on name running of the public records.

Question Three: In the event that there is a title loss wherein the agent has to participate what rights, if any, does the agent have in helping determine the amount of the loss or settling the claim?

If I am to participate in a loss that is going to damage my savings account I want the right to go fight that claim in the highest court in the land. I do not want some executive back in the home office saying we only have to pay a fraction of the claim, it won't hurt us so let us pay it.

Because most of us agents have had experience selling on the local level we would also like to have some voice in paying the claim. For example when I do know of a loss being paid I like to have that check delivered in a red truck equipped with flashing red lights, sirens and bells.

Personally I once became quite unhappy with one of my national companies wherein we had a large loss on one of my policies and the young executive who was in charge of losses at that time hired one of his law school buddies in another county to represent the company in that loss. Naturally I preferred to have an attorney with more experience. I preferred to have an attorney who was local. I preferred to have an attorney whom I knew to be approved as an examiner by some of my title insurance companies. Finally I preferred to have an attorney who was a good customer of mine and who had thrown me some business in the past.

Question Four: How much is the agents commission?

Many of you, like myself, remember the days when the agent received what, by todays standards is a very small commission. I remember many years ago when I was in the National Title Insurance Field I loved to proselyte the agent who was on an 8 or 10 per cent contract. Today I am still amazed at the wide variation of the several agent's contracts. Yet it is still quite important on both sides of the coin as to the participation of the agent in liability with the participation of the agent in premium.

Then does the agent with the complete title plant, experienced personnel and established reserves participate in the commission identical with the agent who is by many definitions inferior.

Question Five: Let us call this question training. It is composed of numerous short questions, that is: What training has the agent received from our associations? From the Title Insurance Company? Are there adequate schools? Does the home office or the district office have adequate field men? Can the agent call the district office or the home office and get a definite answer? How do the salaried employees of the Underwriter handle a problem?

Question Six: Right now I want to call your attention to the very conspicious and embarrassing fact that so far I have only discussed, the Abstract Agent. Again the record will show that I am quite opposed to the abstract agent being the only agent who participates in liability. There is not a person in this room who chooses to stand idly by after spending many dollars to maintain a title plant, spending many dollars to train employees, spending many dollars on an advertising program, spending many hours each month on community services while that lawyer across the square or the real estate agent out on the Federal Highway can issue ALTA policies for the same commission we receive without investment, no training, no advertising, no liability.

However, the subject of discussion today is liability. In discussing liability there are certain truths that we must recognize and hold.

It is a proven fact that the greatest liability of an insurance agent is to the insured. While there are a few chapters written on the liability of an agent to his principal there are volumes written on the liability to the customer. For example:

It is the duty of the agent to give the best placement.

The customer looks to the agent first as his claims adjuster.

The agent always must maintain a professional status to his customer.

There are court decisions insisting that the agent must practice law.

At the present time I have a big fat loss being suffered by one of my customers. This loss has been removed from the hands of my company in that the attorney for my customer has given my customer improper advice. Because trial has already been completed my customer has passed all of his proper time in which to file a loss claim. My customers attorney has lost my customer's very good case. Somewhere in the not too distant future I have a liability to my customer. To tell him what happened.

My customers do not read their policy. They call me up and say "Am I insured against a particular tax bill?" Or, "Am I insured against this item or that situation?"

There are situations wherein I must inform my customer that he has a loss and I must advise him on how to file a claim.

We are discussing liability.

Then What is our liability to the insurer??

There are test cases out of court on the following subjects:

1. Failure to cancel a policy upon request of the insurer.
2. Failure to perform properly – this includes our duty to supply information on our duty of reasonable care.
3. The giving of unauthorized instructions to the insured.
4. Delay in forwarding of underwriting information.
5. Dishonesty and conspiracy.
6. Relationship of misconduct to damage, including insurors knowledge or ratification (again this includes training).
7. The giving of unauthorized interpretations.
8. The binding of imprudent risks.
9. Negligent failure in making full disclosure of the nature of the risk.

In the last two above we must pay particular attention to our being too eager to make a sale and our not being selective in our risks. There are several test cases wherein we as agents assume risks because we are too anxious of our commissions. This also includes our being too anxious to please our customer. This also includes our being concerned bout our competitor writing the policy.

ARE WE CONCERNED ABOUT OUR COMPETITOR WRITING THE POLICY? In this event I am going to also charge our national company with being too anxious to write the policy. It is no secret in my county (and I assume that my county is like your county) that my competition writes more policies on titles that I turn down than they do on orders that they originate. In my opinion (for what it is worth) this is much more the fault of the title company that appointed that attorney agent than it is the fault of the abstract agent.

I will charge that the lawyer who writes a policy on a title that an abstract agent has turned down hurts our professional image.

* * *

Other liabilities of an insurance agent would have to include Federal and State Taxes; unauthorized practice of law; Invasion of privacy; competiton; malpractice and liability to the state.

* * *

When we discuss liability we have to include the field of errors and ommissions.

In law the field of errors and ommissions is quite small. It is changing rapidly; most of the experiences are based on claims against doctors. We do have records of some experiences on lawyers and other professionals – the barber has clipped an ear or two – the tatoo artist has had his problems.

As of 1974 there are no known errors and ommissions forms prescribed by the statutes in the United States.

There are a few standard items or ground rules such as insured cannot make a settlement – that there is a time element during which time the insuror must be notified – that the policy does not include fraud; dishonest acts; criminal acts or defamation.

At this time we still have scattered ideas of how the liability companies will accept or reject the settlements of the title insurance companies.

During the past many months considerable progress and understanding has been accomplished.

In Conclusion I am going to ask this body these three questions?

(1) Is it feasible for the national underwriter to obtain errors and ommissions insurance for all of their agents? On the positive side of the answer I do believe that the national underwriter could obtain a better understanding with the errors and

ommissions underwriter; that by their volume they could get better rates and better service.

(2) Because the National Underwriter is in the underwriting business is it feasible for him to become the underwriter of a policy on errors and ommissions? On the negative side of the answer we know that this is against the insurance codes of some states.

(3) A stinger, any given 10 of you could come up with at least 5 answers: Is errors and ommissions on the part of the agent included in the premium charge that we make to our customers?

My last backward step would be for me to say that in my opinion the abstract agent and the underwriters have been like a large happy family. I have always looked upon my underwriter as a big brother. He has given me golf balls, he has bought me coffee, but also he has given me advice, he has run errands, he has helped me in many ways to improve my services and my customer relations. He has helped me show a profit.

Please know that while I here cast negatives at my big brother I also love him, I respect him, I respect his judgment, I will defend his integrity and I am proud of him.

comments by

Robert L. Saville, Jr.

Vice President, Lawyer Title Insurance Corporation, Richmond, Virginia

Thank you Phil, and thank you Bill, for those kind words. I hope we can continue to be friends and I'm sure we will. Bill and I do have different viewpoints on some of the portions of this subject under consideration. As Phil said, our appearance here was caused by an Article which Bill wrote for the Missouri Titlegram, and my reply thereto.

The main part on which Bill and I disagree is his statement, and I quote. . ."I would like to go on record against those contracts between Underwriter and Agent that contain a clause requiring the agent to participate in payment of any loss even including those losses caused by an obvious error or omission on the part of the Agent."

In the next paragraph of Bill's Article, he retreats from that stand somewhat to indicate his pride in the work performed by his concern in Fulton, Missouri, and his desire to stand behind his product, which he produces by searching title from the County records and from his plant.

My disagreement with Bill is in the last clause of his statement in which he asserts a desire to escape liability for the errors made by him in his operation that were obviously his own errors.

I believe that anyone who does a job should stand behind that job. And, if there are flaws, errors and omissions, which an expert in that field should not have made, then the person who performed that job should stand behind his own work and make it right to the customer.

I believe that this is a philosophy of the United States of America. And the swing toward consumerism is a definite indication that the general public expects everyone of us to stand behind the work which we do and make it right if we err.

When you come down to the nitty gritty of the subject, the Title Insurance Company, the Underwriter, must stand behind this policy. It must defend its insured and pay off any losses the insured sustains which are covered by the Title Insurance policy.

That's the first step. Then, the second step comes in the contract of Agency between the Agent, such as Bill Boyd and the Underwriter, such as my Company. The title insurance policy protects against those flaws of record which are not excepted and those hidden defects in the title which could not have been ascertained by the most exhaustive search of all the records there are.

If there is a combined fee charged for the job that Bill and his underwriter jointly perform, it follows that the Underwriter should be paid on the basis of the risk it takes under the policy and expects Bill to do correct, adequate and complete work in the search of title. Then Bill should be responsible for the errors which he makes.

The combined of all inclusive fee is split between Bill Boyd, who is the Agent, and his Underwriter on that basis. Each is adequately compensated for the work he performed and should stand behind that work.

Now, a slight parenthesis here, we all think that we are underpaid. And, costs are going up and quite often we haven't been able to raise our fees, but, forget that for right now.

I must agree with Bill that the Agent, Abstractor or Attorney would not have to participate in any loss not caused by the mistake, error or omission on his part. Those losses should be completely borne by the Underwriter.

I had seen contracts which require a participation in any loss by the Agent. And, I know one of the reasons for these contracts. It is an attempt on the part of the Underwriter to call the Agent's attention to the fact that he is expected to do his job perfectly the first time. And the Agent participation in loss not caused by his own error are the penalties agreed to by contract for the agent's carelessness. Now, that may be outmoded and improper thought.

This type of participation in loss is somewhat outmoded and in some States it is outlawed by statute. There are several States which prevent the Agent from participating in any loss not caused by his own error or omission unless the Agent has qualified as an insuring company or Underwriting Company. This philosophy I agree with.

As a participant in the extension of title insurance facilities in the days gone by, that Bill speaks of in his Article, I know that most contracts drawn 25-30 years ago varied one from another.

The contracts for the first group of Agents were tailored to the situation and they were tailored by the people who participated in those contracts.

We had some pretty high caliber people back 25, 35, 40 years ago. One of whom was honored this morning. I have seen Hart McKillop and Laurie Smith who was President of Lawyers Title a number of years ago, sit on the dock in Laurie Smith's place in Virginia and argue all afternoon about the provisions of a contract with Hart's abstract company in Winterhaven, Florida.

I've similarly watched Laurie Smith do the same thing with Lionel Adams of New Orleans. Mr. Adams indicated that he was Moravian and Laurie Smith swore he was a Scotchman. And they loved to sit there and see who could take the other one, for five cents or three cents or even two cents.

For some years now, contracts of Underwriting Companies, offered to Agents are pretty well standard. They are not those individually tailored contracts that I just spoke of 35 years ago. So, the thrill of negotiations has been reduced now from that which those men indulged in as a pastime, to a somewhat more mundane business operation.

It has been called to my attention that one of the Underwriting Companies that compete with mine, makes no mention in the contract with its Agents, as to the liability and responsibilities to Agent. I thought that this might come up today, so I put it in my talk.

I am advised by my lawyer associates, that this does not mean that the Agent has no responsibilities for the correctness and completeness of his work. On the other hand, it does mean that the Agent is charged with all of the responsibilities and liabilities which would normally accrue to him under the general laws of the Agency in his State.

Some companies delineate in their Agency contracts the extent of the Agent's liability and responsibilities by naming all the responsibilities of the Agent.

This type of contract which, by the way, my Company uses, does limit the Agent in his responsibilities and liabilities to those things which are affirmatively included as his liabilities and responsibilities in his contract with the Underwriter.

Bill calls attention to the varying situations where in some Counties, there are two or more existing abstract companies willing to be Agents of Underwriter Companies and the other situation where there is only one abstract company.

In the cases where there are several abstract companies, each Underwriting Company will try to get as his Agent, the one abstract company that they consider the most responsible and has the best title plant.

In many cases, the Underwriting company which gets there last either has to sign up as an Agent one that already represents somebody else or an Agent which does not have as good or complete title plant or experienced personnel as the one we spoke of, or the Agent who may be in the Real Estate, law, or some other line.

Taking on an agent without expertise in the field of searching titles and in many cases where indices are inadequate or where a prospective agent does not have good and sufficient plant, is a dangerous practice. Very dangerous.

Bill goes into the question of how much commission an Agent should receive from total charge. Let's distinguish right here between "risk rate" and "all inclusive rate". Risk rate by my definition is the rate that the Underwriting Company has used when their sole responsibility is to accept a complete search and examination of title and insure based on that search. The all inclusive charge is the total charge made to the buying public which includes abstract search, policy writing, underwriting and in some instances, closing costs.

Let's talk first about the all inclusive rate. The Agent should receive that portion of the all inclusive rate which is made as a result of the work performed by the Agent in searching the records or his plant or in doing the necessary underwriting to determine the insurability.

The complete portion of the all inclusive charge which is attributable to this portion of the job, should be paid to the Agent, leaving us with a risk rate to deal with. It is obvious that if the Agent is doing underwriting, typing the policy, collecting the premium and forwarding the necessary papers to the Underwriter, then he is doing part of the job that the Underwriter would do if the Underwriter were operating a branch office or if he were doing a mail order business from a distant point.

Therefore, the Agent should be compensated by a portion of the risk rate equal to the portion of the job which he is doing. I prefer rather than to call this "commission" to call it a work charge for work performed.

In the division of the portion of the all inclusive charge known as "risk rate" one of the determining factors is how much of the total work is performed by the agent and how much the Underwriting Company is going to need in order to keep the Underwriting Company solvent and to set up the necessary reserves and pay the necessary losses.

Within the past year and a half, losses incurred and paid by Underwriting Companies have increased drastically, and, at the same time, the volume of business has decreased equally drastically due to the financial condition of our Country.

In order for Title Insurance to be a saleable product, and one which will protect the insured, then the Underwriting Company has to receive enough of the risk rate for it to maintain its solvency and pay its claims. We do not have time here to go into this subject in depth. As a matter of fact, it's a subject under continuous discussion in each of the Underwriting Companies and between the Underwriter Companies and the Insurance Commissioners because we've got to exist. We can't exist without our Agents and we've got to maintain our solvency in order for our product to be saleable product.

Bill goes into one other subject and that is "errors and omissions" insurance. As he indicates, it is somewhat new. I think we all know what it is.

I'm going to assert that errors and omissions insurance or errors and omission insurance for abstract title insurance agents, is a means by which the abstractor and/or title insurance agent can protect himself and his company against a catastrophic loss. In these days and times, a million dollar policy is not unusual. I can remember times when a one hundred thousand dollar policy only came by once every six months.

Errors and omissions insurance takes care of these large losses and keeps the agent company solvent. Now, I know that I have not replied to all of the points made by Bill Boyd, but, now is the time for you folks out there to ask us any questions you have or to get deeply into any of the points that we've raised in our talks. Thank you. (applause)

Mr. MC CULLOCH: Thank you, Bob. Well, how about it. Have you got anything that you'd like to bring up? Bear in mind, if you ask a question, I'm only going to field it one way or another, so, go ahead, if you wish. Alright. Jim.

JIM: I've heard that some insurance policies and some contracts were recorded as being convinced that it is an unequal bargaining situation at the time of entering into the contract. I'm wondering maybe there might be when the standard contract which you speak of, is presented, differing from 35 years ago, when it was negotiated paragraph by paragraph, where the small abstractor who doesn't have a business at all enters into a contract with an Underwriter that is a standard contract, and he just signs this, he doesn't have the opportunity to negotiate. I would like to ask whether you think the Court may rewrite that contract more favorable to the Agent because of the unequal bargaining position that the Agent might get into after entering into this contract?

MR. MC CULLOCH: Bob, do you want to take that one?

MR. SAVILLE: First off, I don't think that the Agent is unequal in his bargaining power because the Underwriters want an Agent and the Agent can go to anyone of 10 or 15 places and represent anyone of more of 10 to 15 Underwriting Companies. So, the Agent is actually sitting in the drivers seat right now.

I said that the contracts were standard and they are. But, there are portions of the contract, each and every contract, which vary in accordance with the circumstances. Again, I'm not a lawyer, but I understand that in law the contract is always construed against the person or company which drew it and that would be the Underwriter, so, we're going to have it determined against us. Does that answer your question?

MR. MC CULLOCH: I don't think the Court will rewrite the contract but I think they could probably construe in favor of the defended party. Anthing else? Hank? In the back.

HANK: I'd like a couple of things addressed here by Mr. Saville. For instance, Mr. Boyd said possibly there was a situation where the Underwriters might get into the field of writing errors and omissions coverage for their agents. I'd like to have Mr. Saville's position on this and the second thing, that Mr. Boyd mentioned, that I'd like commented on, it was mentioned that in the cases of trying to negotiate a settlement generally, the Agent has no ability to enter into the choosing of an attorney to represent the defense of the claim or to have any decision making power in effecting the settlement and I'd like Mr. Saville to address his position on that.

MR. MC CULLOCH: Do you want to stand while you're doing that or do you want to rest on your laurels?

MR. SAVILLE: I'll sit. (laughter) Let's take the easy one first. There are at least 18 States which prevent Title Companies from writing any other line except title insurance. Now, my company happens to be part of a conglomerate or maybe not a conglomerate, but a holding company, and we do have other lines of insurance within the holding company, but each company is separate and distinct within the holding company.

Now, there is a possibility that one of the other companies owned by Richmond Corporation might at sometime get into

writing errors and omissions insurance. So far, none of them have ever evidenced any desire of getting into that field. And, we cannot, because if we did, we would automatically lose our ability to do a Title Insurance business in about 18 States. Now, as to the choosing of claims attorneys, by the company or the Agent, we generally feel that the Agent is closer to the local situation than we are back in Richmond, and the first thing that our claims department does is to call the agent and say. . ."who are we going to get to represent us in settling this claim?"

Now, Bill, I don't know which Underwriter you had, I hope it wasn't Lawyers because that's not how you drew customers.

MR. MC CULLOCH: Let me say that I happen to have rights for Bob's Company and they of course, reserve the right to approve or disapprove of my selection of counsel since it has primary obligation under the insurance contract that has been issued, I feel that this is their right. We don't have an over abundance of claims in my agency, but we have had some pretty good ones. And, I've never, with that particular Underwriter, had any difficulty at all in having a voice in selection of counsel. And, I think from an observation standpoint, that the same basic situation exists with other Underwriting Companies, but, I can speak for Lawyers in that sense. Any others?

VOICE: In answer to the first question, to say that there will be an inability under a number of state laws, would a solution perhaps to this particular problem between the Agent and the Underwriters, possibly be solved by an adjustment in the division of commissions with a rewriting of the contract in which the underwriter assumes his responsibility for errors and omissions.

MR. SAVILLE: As indicated previously, the Underwriter could not insure the agent against the agent's own errors and omissions because of state laws previously mentioned. There is the possibility that the contract between an Underwriter and Agent could relieve the agent of the responsibility for his own act, but that is the subject we have been discussing here today and it is my contention as an Underwriter that the agent should be responsible for his own act. I would like to note here that several alternatives have recently been suggested. Underwriters who write errors and omissions insurance advise those interested in purchasing this type of insurance that it can be purchased cheaper when purchased on a group basis. State title associations have been approached to become the group sponsor so that all members of a state title association can get errors and omissions insurance under a group policy the premiums for which would be paid to and collected by their own state title association. At the same time the Casualty Underwriters writing errors and omissions insurance have approached the Underwriters of title insurance suggesting that they might become the group sponsor for those of their agents desiring errors and omissions coverage.

MR. MC CULLOCH: Charlie, did you have one just a moment ago?

CHARLIE: Yes. I would like the position of primarily the Underwriter and perhaps some standards that I am hearing and seeing, Underwriters coming into States as most States have qualified in the business, promiscuously, signing up agents for "Bock" because this particular realtor or banker or whatnot, has a happy client that were not members of the State Association, and are not members of the ALTA, and yet, these Underwriters promoting ALTA are defeating the State Association which in turn dilutes the entire operation.

MR. MC CULLOCH: I'm not sure I understand exactly what the question is yet, do you?

CHARLIE: The position of.

MR. MC CULLOCH: Partially, anyhow. I understand the situation you were referring to but I was waiting for the specific question, Charlie. Go ahead.

MR SAVILLE: I think you want to know. . .

CHARLIE: Mr. Mc Culloch, excuse me. Primarily this doesn't tell me. . .we've got to have a liability under title insurance agents and contracts. I think we have the inferred contract in the State Associations and also to the ALTA and I think it is presented as being promiscuous.

MR. SAVILLE: Number one, I think you need to look at your own legislative proposition and see where the approval of agency contracts has to come from. It is a straight agreement between Underwriter and Agent. Does any regulatory authority have to approve it? In Texas every agency contract must be approved by the State Board of Insurance, before you can enter into it. That's an answer to some of us, but, there are a lot of headaches there. That's a matter of business practice not necessarily deceptive but I think what Charlie is saying and what I am echoing is that. . .less than honorable under the circumstances.

MR. MC CULLOCH: And, the Agent has to have a 25 year plan at least.

MR. SAVILLE: He must. This may not be true in Indiana. He also has to be licensed and bonded in Texas.

MR. MC CULLOCH: One more, Jim?

JIM: What about Title Insurance Underwriters requiring Agents to furnish financial statements. I'm talking about existing Agents and not the signing of new Agents, I'd like Mr. Saville to comment on that.

MR. MC CULLOCH: I think it's a darn good idea to be perfectly honest with you. And, that's from an Agents standpoint. That's my personal opinion. Bob?

MR. SAVILLE: Those of you who have looked at a Lawyers Title Contract, probably realized that the contract does permit us to look at your books to see that you are solvent. We don't exercise that prerogative very often. But, there have been instances where we were concerned with our customers dealing with one of our Agents and we thought that maybe the agent was a little bit overboard financially and in those cases, we have made investigations and this is as much for the Agent's benefit as it is for ours.

Because quite often, we can stop whatever was causing the drain of funds and get the Agent back on stream and into a solvent position. It's just good business to see that both parties to a contract remain solvent.

MR. MC CULLOCH: Bill used the term earlier referring to the Underwriter as a "big brother", I would take the same position there, on the receiving end, that if the Underwriter wants to see the company financial statement or my personal financial statement, I think he's just as entitled to see it as my banker is. And, my banker has no qualms about calling for one every year. And, I have no qualms about furnishing it. Any others? Alright.

VOICE: To get to the heart of the whole thing, we're talking about the possibility of a title insurance underwriter going back to the agent to pay for a loss because of an error or omission on the part of the agent. How many times has Lawyers Title requested an agent to reimburse under these circumstances this year.

MR. SAVILLE: Frankly, I don't have those figures. I'd say less than 10. And, this is not always an Agent. This could be, in our case in the Middle Atlantic States, we don't have agents, we have approved attorneys who examine titles and send their certificates or their results of their examination into us, we write the policy. But, they are covered by errors and omissions insurance. And, where a claim has occurred as a result of their negligence, we have asked them if they have errors and omissions insurance.

VOICE: Would you say that this is more than it was last year or the year before? Is it increasing, the same or decreasing? Do you have any comment on that?

MR. SAVILLE: Again, I don't have any figures but I have not realized that there has been an increase recently, no.

MR. MC CULLOCH: Alright. One more and then I'm going to have to cut it off.

VOICE: The Mid Atlantic States approved attorneys in New Jersey, specifically, very few approved attorneys go to the Courthouse and prepare a search. They hire an independent abstractor to prepare it for them. The abstractor is paid strictly for his work. Now, is that abstractor liable for any errors and omissions? Does he participate in any fee, any premium?

MR. MC CULLOCH: I think that's a case of following the chain of command back. I think the Underwriter could possibly have recourse aganst the approved attorney and the approved attorney to the furnisher of the service.

MR. SAVILLE: However, in some cases, the abstractor in New Jersey might also be a title insurance agent. A number of them are.

VOICE: But, an abstractor could get $35.00 for an abstract which would eventually lead to a "50,000 dollar" policy.

MR. SAVILLE: What part of New Jersey did you get that abstract search? (laughter)

VOICE: Where it will lead to a large policy.

MR. SAVILLE: I worked in Jersey a little while back, like ninety years, and, when I was there, the attorney was fully responsible under his certificate to us, his examination certificate. We, then, also investigate the abstractor who prepared his search and we wouldn't take the abstract of some abstractors in New Jersey because we didn't think they were properly qualified. Neither did we take every attorneys examination to title.

Again, as Bill says, I think probably it would be chain of command back to the attorney who hired the abstractor. And, frankly, I don't know.

MR. MC CULLOCH: I think the point to be observed is that each of us take pride in our ability to perform a certain task. We do our work and we are proud of it. We stand behind it within reasons of our financial responsibility. Realizing, that we are human and that the records which we work with are prepared by human hands, there can be mistakes. It's a matter of personal financial stability to be able to provide coverage for ourselves in the event of that mistake. I don't think there has been any indication of anybody being overly abused by the Underwriter or the Underwriter being abused by the Agent, this is the whole part of the product that we sell.

Thank you gentlemen for participating in this particular Section of the afternoon program. I'm indebted to both of you. (Applause)

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1422 H. Street, N.W. 20005

COMMITTEE REPORTS

Navigational Servitude Committee Report

Ray E. Sweat

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

Mr. Chairman, Ladies and Gentlemen:

I would first like to acknowledge the members of my Committee. They are Mr. John H. McDermitt, New Jersey State Counsel, Commonwealth Land Title Insurance Company, Paterson, New Jersey; Mr. James H. McKillop, II, Vice President, Lawyers Title Insurance Corporation, Florida State Office, Winter Haven, Florida; and Mr. Albert E. Pentecost, Senior Vice President and Secretary, The Title Insurance Corporation, Bryn Mawr, Pennsylvania.

Since I am going to be talking about jurisdiction, I thought it might be well to define jurisdiction of your Navigational Servitude Committee. I asked Mr. C. J. McConville, former Chairman of your Committee to fill me in on the Committee's jurisdiction. Mr. McConville defined the Committee's responsibility as keeping track of any developments, including statutes, case law, propositions, etc., relating to tidelands, meadowlands, broadening of public or governmental rights in beaches, Environmental Impact laws as well as any of the above which may affect navigational servitude.

In order to orient your committee's report I believe that we should review the development of the navigational servitude and the jurisdiction asserted under this servitude down to the present time.

Clause 3 of Section 8 of the United States Constitution provides that Congress shall have the power to regulate commerce with foreign nations and among the several states and with the Indian Tribes.

For many years Congress did little or nothing to establish a federal navigational servitude. In 1878 the State of Oregon enacted legislation authorizing a bridge over the Willamette River connecting Portland with East Portland. Hatch and Lownsdale, warehousemen, filed a bill in the Federal Court for an injunction to halt construction and abate the work done as a hazard to navigation. The Court held that there was no common law which prohibited obstructions and nuisances in navigable waters and that until Congress acted, a state could authorize the obstruction of a navigable stream (*Willamette Iron Bridge Company vs. Hatch, 125 U.S. 1, 1888*). In reaction to this case, Congress passed the Act of September 19, 1890, Chapter 907 Section 10, 26 STAT. 454, prohibiting the creation of any

obstruction not affirmatively authorized by law to the navigable capacity of any waters in respect to which the United States had jurisdiction.

In 1899 the enactment of 1890 was superseded by Section 10 of the Rivers and Harbors Appropriations Act of 1899 which prohibits the creation of any obstruction not affirmatively authorized by Congress to the navigable capacity of any waters of the United States and further provides that it shall be unlawful to build any structure outside of the harbor lines, or where no harbor lines has been established, except on plans recommended by the Chief of Engineers authorized by the Secretary of the Army *(33 USCA 403)*. This Section 10 has become known as the permit section.

Section 11 of the same Act provides where it is made manifest to the Secretary of the Army that the establishment of harbor lines is essential to the preservation and protection of harbors, he may and is authorized to cause such lines to be established beyond which no piers, wharves, bulkhead or other structures shall be extended or deposits made except under such regulations as may be prescribed from time to time by the Secretary of the Army *(33 USCA 404)*. Under this section of the Rivers and Harbors Act, many harbor lines were established.

For many years the establishment by Legislative authority of a harbor line in navigable waters was regarded as an implied grant to the owners of the adjacent upland of the right to build on or fill in the land under water to such line. The establishment of the bulkhead or pier line denoted the Federal Government's consent to reclaim land shoreward of such line. The establishment of the line did not of itself, prior to reclamation and further action by the State, abrogate the navigational servitude and until filled, the public rights remained as before (*Corporate Juris Secum Navigable Waters Section 113(2)*).

The Corps of Engineers which administers the Federal Navigational Servitude under the Department of Army and Secretary of the Army, formerly Department of War and Secretary of War, for many years concentrated on keeping the channels of commerce free of obstructions, that is, the Corps limited its jurisdiction to coincide with admiralty jurisdiction.

In England, navigable waters were waters subject to the ebb and flow of the tide. This legal concept coincided with the factual situation as it pretty much did in the early American colonies along the Atlantic Seaboard. Our courts, however, began to struggle with this concept which was out of step with actuality in the Central and Western regions of the United States and to enlarge or expand this jurisdiction (*The Steamboat Thomas Jefferson 23 U.S. (10 WHEAT) 428, 1825), (The Steamboat Orleans vs. Phoebus 36 U.S. (11 PET) 175, 1837). The Genesee Chief 53 U.S. (12 HOWARD) 441, 1851*).

In 1871 the United States Supreme Court handed down Daniel Ball vs. United States which held waters were navigable in law which were navigable in fact and that they were navigable in fact when they are used or are susceptible of being used in their ordinary condition by themselves, or by uniting with other waters, as highways for commerce under which trade and travel are or may be conducted in the customary modes of trade and travel on water. (*Daniel Ball vs. United States 77 U.S. (10 Wall) 557, 1871*).

It should be made clear that we are talking about jurisdiction and not about riparian rights or the ownership of lands under water. These rights are to be determined as of the formation of the union in the original states or the admission to statehood of those formed later. (*United States vs. Appalachian Electric Power Company, 311 US 376*).

In 1874 navigability for the purposes of commerce clause was enlarged to embrace waters that had the capability of commercial use not only those in actual use (*The Montello 87 US (20 Wall 430, 1874*) and again in 1921 to bring in water bodies whose past history of commercial use made it navigable despite subsequent physical or economical changes preventing use for commerce (*Economy Light and Power Company vs. United States, 256 US 113, 1921*). In 1940 it was held that a waterway would be determined navigable in fact if by reasonable improvement it could be made navigable. (*United States vs. Appalachian Electric Power Company, 311 US 377, 1940*).

On May 6, 1975 the Corps of Engineers published four alternate proposals entitled Department of Defense Corps of Engineers and Environmental Protection Agency Navigable Waters Procedures and Guidelines for Disposal of Dredged or Fill Material, to supersede portions of the then current regulations and invited comments on these proposals (*40 Federal Register 19776*). The Corps says that these propsals were published in response to an order of the United States District Court for the District of Columbia in *Natural Resources Defense Counsel vs. Callaway, (392 F. Supp. 685, 1975*).

As a result of these four proposals, the Corps of Engineers on July 25, 1975 published alternate 1 of May 16, 1975 as a proposal entitled Department of Defense Corps of Engineers Permits for Activities in Navigable Waters or Ocean Waters to supersede portions of current regulation found in *33 CFR 209.120*.

This proposal defines navigable waters of the United States as follows:

(1) "Navigable waters of the United States." The term, "navigable waters of the United States," is administratively defined to mean waters that have been used in the past, are now used, or are susceptible to use as a means to transport interstate commerce landward to their ordinary high water mark and up to the head of navigation as determined by the Chief of Engineers, and also waters that are subject to the ebb and flow of the tide shoreward to their mean high water mark (mean higher high water mark on the Pacific Coast). See 33 CFR 209.260 (ER 1165-2-302) for a more definitive explanation of this term.

(2) "Navigable waters", (i) The term, "navigable waters," as used herein for purposes of Section 404 of the Federal Water Pollution Control Act, is administratively defined to mean waters of the United States including the territorial seas with respect to the disposal of fill material and excluding the territorial seas with respect to the disposal of dredged material and shall include the following waters:

(a) Coastal waters that are navigable waters of the United States subject to the ebb and flow of the tide, shoreward to their mean high water mark (mean higher high water mark on the Pacific Coast);

(b) All coastal wetlands, mudflats, swamps, and similar areas that are contiguous or adjacent to other navigable waters. "Coastal wetlands" includes marshes and shallows and means those areas periodically innundated by saline or brackish waters and that are normally characterized by the prevalence of salt or brackish water vegetation capable of growth and reproduction;

(c) Rivers, lakes, streams, and artificial water bodies that are navigable waters of the United States up to their headwaters and landward to their ordinary high water mark;

(d) All artificially created channels and canals used for recreational or other navigational purposes that are connected to other navigable waters landward to their ordinary high water mark;

(e) All tributaries of navigable waters of the United States up to their headwaters and landward to their ordinary high water mark;

(f) Interstate waters landward to their ordinary high water mark and up to their headwaters;

(g) Interstate lakes, rivers and streams landward to their ordinary high water mark and up to their headwaters that are utilized:

(1) By interstate travelers for water-related recreational purposes;

(2) For the removal of fish that are sold in interstate commerce;

(3) For industrial purposes by industries in interstate commerce; or

(4) In the production of agricultural commodities sold or transported in interstate commerce;

(h) Freshwater wetlands including marshes, shallows, swamps and similar areas that are contiguous or adjacent to other navigable waters and that support freshwater vegetation. "Freshwater wetlands" means those areas that are periodically inundated and that are normally characterized by the prev-

alence of vegetation that requires saturated soil conditions for growth and reproduction; and

(i) Those other waters which the District Engineer determines necessitate regulation for the protection of water quality as expressed in the guidelines (40 CFR 230). For example, in the case of intermittent rivers, streams, tributaries, and perched wetlands that are not contiguous or adjacent to navigable waters identified in paragraphs (a)-(h), a decision on jurisdiction shall be made by the District Engineer.

It is apparent that this is a pretty all-inclusive definition and includes most water or wetland areas other than drainage and irrigation ditches, stock watering ponds and settling basins, other than those that result from the impoundment of a navigable water.

Up to this point we have been talking about the lateral jurisdiction of the Corps of Engineers in the exercise of the Federal Navigational Servitude.

You will note, however, that in the proposed definition of navigable waters on the Pacific Coasts, the Corps now asserts jurisdiction to the mean higher high water mark not merely to the mean high water mark.

I am at a loss to explain the origination of the concept of extending jurisdiction of the Corps of Engineers to the mean higher high water mark on the Pacific Coasts. The property line between the Sovereign and the private property owner was the line marked by the highest tide under the civil law which has been recognized in some cases involving Mexican grants (*American Law of Property, Section 12.28*).

This concept is fraught with danger from the title insurance companies' standpoint for if the navigational servitude extends to the higher high on the Pacific Coasts while private property ownership extends to the mean high tide there is a strip between high and higher high subject to an easement or servitude which the United States can take possession of in the exercise of its navigational servitude without paying compensation (*United States vs. 422,978 Square Feet of Land, San Francisco 445 F.2d 1180, 1971*). An easement may not, and probably isn't contained within the government regulation exclusion.

I believe the industry must either:

(1) seek Congressional assistance in redefining the Corps jurisdiction under the Rivers and Harbors Act to the mean high water line on the Pacific Coasts

(2) enter any litigation as Amicus Curiae to obtain satisfactory limitation on the Corps jurisdiction, or

(3) add an appropriate exception to our contract of insurance

The Corps says that the expansion of their jurisdiction to the mean higher high on the Pacific Coasts was mandated by *United States of America vs. Freethey*, a case decided in the United States District Court, Northern District of California as Cause No. C-73-1470 S.C. This case decided in 1975 appears to base the higher high concept on Public Notice No. 71-22 issued by the San Francisco office of Corps of Engineers June 19, 1971 and regulations promulgated by the Corps of Engineers September, 1972 which purported to define navigable waters of the United States on the Pacific Coasts to the line reached by the mean higher high water (*33 CFR 209.260 (k) (1) (ii)*). Although the Court in its statement of "Findings of Fact" stated "The authority of the United States over navigable waters extends (and has always extended since the enactment of the Rivers and Harbors Act of 1899) to the mean higher high water line on the West Coast."

On May 27, 1970, the Corps of Engineers took another action to expand their territorial jurisdiction. The Corps announced a new policy and stated that the term "harbor line" as used in the regulations was used in its generic sense (general, typical and concrete) and includes types of harbor lines frequently referred to by other means include, for example, pierhead lines and bulkhead lines. It also stated that under previous policy, practices and procedures riparian owners could erect open pile structures or undertake solid pile constructions shoreward of established harbor lines without obtaining a Section 10 permit and that this practice was now of great concern, particularly in cases involving long established harbor lines since all factors affecting the public interest may not have been taken into account at the time the lines were established. Accordingly there was danger that work shoreward of existing harbor lines could be undertaken without appropriate consideration having been given to the impact which such work may have on the environment and without a judgment having been made as to whether or not the work was, on balance, in the public interest. It also stated that all existing and future harbor lines are declared to be guidelines only for defining with respect to the impact on navigational interests the off-shore limits of open pile structures (pierhead line) or fill (bulkhead lines). A permit will be required under *33 USC 403* in each case for any work which is commenced shoreward of existing or future harbor lines after May 27, 1970. But for work already completed or commenced in conformance with existing harbor line authority before May 27, 1970, no permit is required *(35 Federal Register 8280, 33 CFR 209. 150)*.

On May 23, 1974 the Third Circuit Court of Appeals, reversing the District Court in U.S. vs. Stoeco Homes, Inc., held that the navigational servitude had been abandoned in the instant case. In 1927 a tidal salt water marsh was filled by hydraulic means without permit from the Corps of Engineers for either the dredging or the fill. This land was acquired by Stoeco in 1951, who also acquired from the State of New Jersey a quitclaim of any interest which the State may have had in any of the lands as may have been or was "flowed by the tides". At this time the land was substantially above mean high tide and overgrown with bayberry. In 1951, Stoeco filed with the Corps of Engineers a plan to make two separate waterway openings and on November 2, 1951 the Corps, under Section 10 of the Rivers and Harbors Appropriations Act, granted a permit to dredge the two openings to be completed by December 31, 1955 and which were completed and accepted by the Corps June 16, 1955. The Corps of Engineers, on April 23, 1971, took the position that further permits were needed and commenced suit in the District Court.

The District Court found that run-off from the hydraulic process caused silting in the dredged canals and that some dikes had failed causing additional silting and that all of the premises including the already built upon area were within navigable waters of the United States. The Third Circuit Court of Appeals reversed, holding that when the Secretary of the Army issues a permit under the Rivers and Harbors Act of 1899 to undertake dredging and filling operations in navigable waters of the United States with no reservation of the right to compel removal, such consent must be considered to be a surrender of the federal servitude over the fee.

The Court went on to point out that Section 10 of the Rivers and Harbors Act is silent as to the method of giving consent, but textually a blanket consent with respect to a class of properties does not appear to be prohibited. The longstanding administrative practice, at least prior to 1970 was to require consents for encroachments only beyond pierhead or harbor lines. When Stoeco purchased in 1951, what had then been fast land for 24 years the navigational servitude had long since been surrendered. This concept was approved by the Fifth Circut Court of Appeals in *United States vs. Diamond, 512 F.2d 157, 1975,* however, the Fifth Circuit Court case held harbor lines must have been established under *33 CFR Sec. 209.150(c)* and its predecessors.

In reliance upon Stoeco, the U.S. Army Corps of Engineers in San Francisco, on May 8, 1975, after the Supreme Court on 18th day of February, 1975 let stand the Third Circuit Court of Appeals decision, announced that their Washington office had decided to release the Corps' jurisdiction of a proposed shopping center in the San Francisco area.

In *United States vs Sexton Cove Estates, Inc.*, handed down September 6, 1975 by the United States District Court, Southern District of Florida on an action brought under the Rivers and Harbors Act of 1899, the Court ordered a developer who commenced canal building and modification in June, 1970, without a Corps of Engineers permit, to restore pre-existing canals to their original depth, plug and fill in those canals it had constructed and replant the mangrove fringe along the banks of the restored canals. The Court further held that man-made canals on private property became navigable waters of the United States and thus subject to the Act's permit requirements when

connected to tidal waters. Once connected, such canals remain navigable waters even if subsequently plugged at their seaward entrance. The Court also held that a canal is a "structure" within the meaning of the statutory provision authorizing injunctive relief to prevent the construction or seek the removal of unlawful structures. Neither equitable estoppel or laches precluded the government from enforcing the statute by seeking relief. The developer was enjoined from selling any property at the development site without prior approval of the Court until mandated restoration had been accomplished (*United States vs. Sexton Cove Estates Inc., 5 Environmental Law Reporter 20348, 1975*).

It has become fashionable to use type of vegetation and other exotic tests to establish the demarcation between upland and wetland and the proposed regulations of the Corps of Engineers define "freshwater wetlands" to mean those areas that are periodically inundated and that are normally characterized by the prevalence of vegetation that requires saturated soil conditions for growth and reproduction (*40 Federal Register 31324*).

The New York Court of Appeals, in a case participated by the New York Land Title Association as Amicus Curiae found these tests intellectually fascinating but held that stability and predictability of property lines in accordance with the expectations of the parties must control and fixed the line in accordance with conventional concepts (*Dolphin Lane Associates, Ltd., vs. Town of Southampton, 333 N.E. 2d 358, 1975*).

The New York Times reported on September 10, 1975, that the Bergen County, New Jersey Superior Court in a meadowlands case, was not swayed by expert witnesses for the State who testified that some of the plant life in the area was "unhealthy" – a sign it was washed by the tide. The Judge said such evidence was "too chancy a method" and "too slender a reed" on which to rely (*New York Times, page 49, column 7, September 10, 1975*).

Not only was the Corps extending jurisdiction as to area, it was also expanding jurisdiction as to subject matter. The former expansions were the result of judicial interpretation but meanwhile the Corps of Engineers was becoming involved in areas other than traditional commerce as various Congressional enactments were influencing the role of the Corps of Engineers.

The Fish and Wildlife Coordination Act requires that any federal agency granting a permit or license to modify any stream or body of water shall first consult with the United States Fish and Wildlife Service, Department of the Interior and also with the head of any agency exercising administration over the wildlife resources of the particular state (*16 USC 662a*). The National Environmental Protection Act of 1969 requires that for every major federal act significantly affecting the environment requires a federal agency involved to prepare an Environmental Impact Statement (*42 USC 4331-47*).

In addition to the Fish and Wildlife Coordination Act and the National Environmental Protection Act of 1969, the Corps has also become involved in the Federal Waters Pollution Control Act, Endangered Species Act, Coastal Zone Management Act of 1972, Submerged Lands Act of 1953, Fish and Wildlife Act of 1956, Migratory Marine Game and Fish Act and other Acts which express Congress' concern with the quality of the aquatic environment as it affects conservation, improvement and enjoyment of fish and wildlife resources.

On July 20, 1975 The Tenth Circuit Court of Appeals handed down *Scenic Rivers Association of Oklahoma vs. Lynn,* which held that the office of Interstate Land Sales Registration cannot accept filings unless accompanied by Environmental Impact Statement (*5 Real Estate Law Report, September 1975*). Because of the time periods prescribed by these two Acts, an almost impossible situation is created and the real estate industry is caught in the middle.

Mr. Chairman this concludes the report of your Navigational Servitude Committee.

Report of the Committee on the Commission on Uniform Laws "(Uniform Land Transactions Act)"

James M. Pedowitz

Committee Chairman

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A "Uniform Land Transactions Act" (ULTA) has been approved by the National Conference of Commissioners on Uniform Laws. Normally such uniform acts are submitted to the American Bar Association for approval in advance of introduction in any of the state legislatures, but this procedure is not mandatory and it is possible that the Act may be introduced in some legislatures prior thereto. It is anticipated that the American Bar Association will receive the act for consideration at its February 1976 Mid-Winter meeting. It's adoption by any state, would effect radical changes in that state's existing law.

This ULTA is a drastically abbreviated version of the ULTA that was submitted to the Commissioners on Uniform Laws. It merely consists of the first three (3) out of an original eight (8) articles, and presently only covers real property contracts, sales and secured transactions (mortgages/deeds of trust), plus some general provisions.

Separated out for possible future action are the articles on "Condominiums," "Construction Liens", "Other Statutory Liens", and "Notices of Pending Proceedings", "Conveyancing, Recording and Priorities", and "Public Land Records".

Although the first stated purpose of the Act (Section 1-102(b)(1)) is "to simplify, clarify and modernize the law governing real estate transactions" this act, though modern, is neither simple nor clear. Let all who will read it be warned – it is slow and difficult reading! There are numerous defined words and terms, with definitions which themselves require explanation, amplification and clarification. Most of the definitions are in Article 1, but Articles 2 and 3 have additional definitions applicable to those articles.

For instance, there are separate definitions for "agreement" (Sec. 1-201(2)) and for "Contract" (Section 1-201(3)) under the General Definitions in Article 1. In Article 3 there is a definition for "Contract to Convey". It reads: "Contract to Convey" includes a present conveyance for consideration as well as an option or contract to convey at a future time." (Section 2-103(1)). It is confusing to say the least.

Many of the sections have official comments. It is strongly recommended that the comments be read in advance as an aid in understanding what the section is supposed to mean. Students of the Uniform Commercial Code may have an easier time with the Act, which was designed to track the language, terminology and concepts of the U.C.C. to the maximum extent possible. However, real estate is unique, and historically the law of real property has differed in

many respects from the laws applicable to personal property or negotiable instruments, and the changeover, if adopted, will be a difficult one.

Herewith are some highlights of the Act that are of particular significance to the title industry:

1. The Act creates statutory obligations of good faith, diligence and reasonable care which may not be disclaimed (Sec. 1-103(b)). Unconsionable agreements for provisions will not be enforced (Sec. 1-311).

Even a written waiver made for a consideration may be held to be invalid if a court as a matter of law finds it unconscionable (Section 1-305).

2. The definition of "real estate" (Sec. 1-201(16)) takes in both estates and interests in over or under land, including easements and minerals. The leasehold interest of a tenant is also "real estate".

3. The concept of a "protected party" (Sec. 1-203) is created. Such a party is entitled to special treatment and extra protection in a transaction involving "residential real estate" and the definition includes almost any owner of such property. These protections start from the time of the initial contract and continue through settlement. They also impose additional restrictions on enforcement procedures in the event of defaults by a protected party. Although the mere phrase "protected party" conjures up a picture in one's mind of John Q. Public, the typical consumer, the definition is broad enough to encompass many parties not deserving of or requiring a statutorily protected status. Robert Kratovil, in a recent article, (St. John's Law Review, Spring 1975, Vol. 49 No. 3) pointed out that this concept of protected party would likely provoke controversy since it will bring within its ambit seemingly unintended individuals. For example, the owner of a million-dollar mansion is a protected party, as is one who acquires a residence subject to a mortgage placed thereon by a protected party. Thus, a large corporation acquiring a mortgage home from an employee in an employee-transfer program is a protected party.

4. The doctrine of merger of the contract into the deed is abolished (Section 1-309). This will create additional "off record" problems.

5. Elimination of "holder in due course" protection for assignees of mortgages (deeds of trust, etc.) other than first mortgages as to any defenses that could have been asserted by a protected party mortgagor. Written estoppel certificates, however, remain effective in the hands of a good faith assignee for value and without notice of the defense (Section 1-314).

6. A description of real estate is deemed sufficient "if it reasonably identifies the real estate" (Section 1-312). Such a trend away from specifics could create more problems than are cured.

7. The statute of frauds is watered down. Oral agreements can be enforced in various circumstances. (Sec. 2-201). A purchaser for value, with notice of oral negotiations that are later construed as a contract, could lose his title to the earlier oral contract vendee. Not only is the necessity for a writing eliminated in many situations, but Section 2-202 provides that a contract to convey does not fail for indefiniteness if the parties intended to make a contract, even though the parties have:

1. Left one or more terms for future agreement; or

2. Not included in the agreement a term dealing with one or more aspects of the contract.

This applies even though the price is not settled (Sec. 2-203).

8. Absent specific provision to the contrary, a seller's title obligations are that:

a) title must be marketable at the time for conveyance, even if the contract only calls for "good" or "good and sufficient" title, and even if the purchase agreement only calls for a quit-claim deed; (an exception is made if the agreement is only for whatever interest the seller may have in the real estate);

b) The deed will automatically contain all the warranties as set forth in Section 2-306, thus making it a general warranty deed, unless the sale is made under a court order which does not provide for them;

c) possession must be available to purchaser at the time of the delivery of the deed; and

d) title evidence and documentation is to be provided by seller at seller's expense either by;

1) an abstract, or

2) a title report or commitment to insure by a title insurance company, or

3) a title opinion, certificate or report prepared by an attorney acceptable to the buyer; or

4) in those states where there is a history of such usage, a Torrens certificate or other acceptable title evidence (Section 2-304)

The sellers warranty of title runs both to the buyer and to successors in title (Section 2-312(a)).

9. A lessor is also called a seller. The seller of the leasehold warrants:

a) availability of possession at the beginning of the term and continued quiet and peaceable possession; and

b) that the seller has power and right to convey the interest.

10. There are specific provisions with respect to revocation of the transaction for breach of warranty or other obligations. (Section 2-401 and 2-402). The revoking buyer must tender an instrument that would revest title in the seller as it was prior to the seller's conveyance. This may be a difficult hurdle to overcome in most situations, because of subsequent financing, etc.

11. A party with "reasonable grounds for insecurity" is given the right to demand adequate assurances of performance, and if it is not furnished may refrain from performance (Sec. 2-403). This could create additional loss exposure problems, such as if tenants stop paying rent because of a pending title claim.

12. Remedies for breach are also set forth in detail (Part 5), and vary based upon whether or not the breach is "material" or "with respect to a substantial part of the contract".

A seller's right to specific performance is severly limited (Sec. 2-506).

Buyers remedies include the right to a lien on the real estate for partial payments and direct and incidental damages, (Sec. 2-512) and the right to specific performance (Sec. 2-511).

13. A comprehensive scheme is created covering the creation, priority and enforcement of all consensual liens, as there is no differentiation in treatment between consensual security interestes, regardless of form, whether or not legal title passes (Sec. 3-202), and whether in form a mortgage deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, or an assignment of rents, so long as it is intended as security for an obligation. (Sec. 3-102)

A "security interest" is defined as an interest in real estate which secures payment or performance of an obligation (Sec. 3-103(7)). As an interest in real estate it would no longer be treated as personal property.

14. There is no differentiation between a "purchase money security agreement" taken or retained by a seller, or taken by a third party who furnished value to enable the debtor to acquire the collateral *or to make improvements thereto.* (Sec. 3-103(a)(4)). This is a radically new concept.

15. A security interest is ineffective *until value has been given.* (Sec. 3-203(a)(3)), but as to all future advances value is deemed to have been given at the time value was first given. (Sec. 3-203(c))

16. A debtor may be given the power to dispose of the collateral free of security interest. (Sec. 3-204). It is difficult to imagine circumstances under which this might occur, except as to rents.

17. After-acquired property can be covered by a security interest, but such provisions are ineffective as to non-contiguous residential real estate of a protected party (Sec. 3-205)(b); but how does the title searcher pick it up?

18. The security interest is effective to cover future advances as well as present advances (Sec. 3-205)(c), but notwithstanding any agreement to the contrary, future advances can only be incurred by the then owner of the collateral (Sec. 3-205(d)).

Even though the security interest does not provide for future advances, or provides for future advances up to a specified maximum amount only, it nevertheless will secure future advances or obligations incurred by the secured holder for the completion of a contemplated improvement under a construction loan, or if made "for the reasonable protection of the security interest in the real estate". (Sec. 3-205(e)).

19. Priorities between competing security interests in the same collateral are determined based partly upon time of recording,

partly on whether advanced pursuant to a committment and partly on prior knowledge of the competing interest (Sec. 3-301).

However, an advance under a construction security interest to enable completion of the contemplated improvement is given priority over a known intervening recorded security interest. (Sec. 3-301(b)(4)). This provision should bring some cheer to the hearts of construction lenders. Unfortunately, mechanics' liens do not come within the ULTA definition of "Security interest".

20. A lease made in the ordinary course of business may be effective as against a pre-existing security interest for up to two years under certain conditions (Sec. 3-207(b)). The debtor may also modify existing leases in ordinary course in most situations, and those modifications can be effective as against the holder of its security interest (Sec. 3-207(d)).

21. "Due on sale" clauses are recognized as effective, but restraints on sale without consent of the secured creditor are banned. (Sec. 3-208)

22. On default the secured creditor may enforce by one of the following several methods, after first having served a written "Notice of Intention to Foreclosure", the contents of which are specifically prescribed (Sec. 3-505 and 3-506).

1) By exercise of a power of sale (Sec. 3-508). This is the preferred method of enforcement.

2) By judicial sale (Sec. 3-509).

3) By taking title in satisfaction of the obligation (Sec. 3-507). This remedy is a form of strict foreclosure without the necessity of a judicial proceeding or of a sale of any kind. However, this remedy is unavailable as against a protected party.

NOTE: A prerequisite to the giving of a Notice of Intention to Foreclose, as to realty containing a dwelling unit occupied by a protected party or a person related to a protected party, is that there has been a default for at least 5 weeks (Sec. 3-505)(d)).

Enforcement against a protected party cannot be completed for at least 10 weeks after default under any of the methods.

23. There are also requirements for Notice to junior lienors and others having an interest in the real estate as part of the enforcement process. (Sec. 3-508(a) and 3-509(c)).

24. Upon disposition of the property pursuant to an enforcement proceeding, a purchaser for value takes title free of any defects or omissions in the required procedures. (Sec. 3-511(a)). Recourse, if any, is against the enforcing creditor. (Sec. 3-513). The purpose of this radical provision is to eliminate "the necessity of a rigorous title examination" (See comment to Sec. 3-511).

It is entirely possible that the act in its present condition will not receive active consideration in many state legislatures. There has been very little support expressed so far, except from the drafters.

If adopted in any state, ULTA would have far reaching effects upon title abstractors and insurers. It contains matters that are both favorable and unfavorable to use. A decision as to whether to support, oppose, or remain passive should not be made hastily.

It should, however, continue to be studied carefully by all of us, so that whatever decision is to be made, will be based upon a proper understanding.

Report of the Committee on Improvement of Land Title Records

Thomas E. Horak

Committee Chairman

Vice President, Commonwealth Land Title Insurance Company, Philadelphia, Pennsylvania

The past year has been very eventful for the field of records improvement. I would like to report on a number of important developments.

The most significant event of the year was the April conference held in Washington, D.C., called the North American Conference on the Modernization of Land Data Systems, or "MOLDS". This conference was in direct succession with the series of meetings, starting in 1966 in Cincinnati, continuing with Mackinac in 1968, Atlanta (the CLIPP Conference) in 1972, and the Ottawa Conference of 1974. The Ottawa Conference, on concepts of a modern cadastre, concerned itself with the problems facing Canadian governmental units, but was open to all comers, and ALTA was represented by your chairman. I mention the Ottawa meeting because many of the same people were instrumental in planning the April meeting. The Washington Conference was attended by two hundred people, representing government, private industry, and professional groups of several countries. A number of speakers from Europe and Latin America gave an international flavor to the affair. I am happy to say that fourteen members of the title industry were present at the meetings. ALTA gave a substantial grant to help sponsor this conference.

This conference covered four full days, and the topics ranged from highly technical reports on surveying methodology to abstract musings on the philosophical approach to the treatment of public records. The theme of the conference was the development of a multi-purpose approach in handling public records for the conveyancer, title insurer, attorney, public official, the public and private organizations which depend on this data for their work. The problem is to fill the need for land record data quickly and efficiently for more users. The computer is seen as the tool for accomplishing this.

I used the word "cadastre". For those of you who may not be familiar with the word, which seems to be popping up more and more in our journals and technical publications. It is defined as "a methodically arranged public inventory of properties, within a certain district, based on a survey of their boundaries, systematically identified by means of a separate designation on a map, together with registers, showing, for each parcel, the legal status, and other relevant data". Some people mistakenly think that cadastre is a combination of "catastrophe" and "disaster". Its mystique is not helped by appearing in the dictionary between "cad" and "cadaver". I have made it a point to research this word, and have found a definition which traces its derivation to the latin catasta, or scaffold, which was a place for the public burning of unbelievers in the middle ages. The word seems to have unfortunate connotations, either by association or derivation.

The proceedings of the 1975 conference have been recently published, and are available from Secretary of MOLDS, 733 15th Street, N.W., Suite 430, Washington, D.C. 20005. Single copies are five dollars each.

It would be impossible, in this short time, to summarize all of the various presentations made, but let me give you some of the highlights, seen from the standpoint of a title man.

There is going to be a serious shortage of surveyors in the United States. In 1975, we will graduate only half the surveyors that Canada will license – and Canada is concerned with what they consider the

inadequacy. Russia and West Germany, for example, are training ten times our number. If we are to do all the surveying required for a cadastral system, we will temporarily need many times the existing number. This could be a serious deterrent to the whole project.

Two eminent legal scholars, Allison Dunham and Luther Avery, leaders in the real estate section of the American Bar Association, voiced their opinions that the existing system of deed registration and owner protection, was apparently satisfactory and needed no drastic revision. They saw no need for a Torrens System. We should feel gratified that such erudite and experienced men have recognized the worth of our services, even given some of the shortcomings we are working to overcome.

We should be aware that certain Canadian provinces have a head start on computerized registry systems. Because the relative ease with which this is being done, let no one confuse you into thinking it will be similarly easy here. There is no real comparison between the very simple Canadian Torrens system and our complex state recording systems. And remember that many Canadians are not happy with the many shortcomings of their Torrens systems.

Speakers from the title industry and related companies gave important contributions, which I would like to summarize here.

Jim Schmidt, of Commonwealth in Philadelphia, reviewed the various systems for treating public records and title registration in the fifty United States and many foreign countries. Jim's very thorough study set the stage for the rest of the speakers who dealt in various details of existing or proposed systems.

Gurdon Wattles, of TI in Los Angeles, gave a studious review of some of the problems which are met in attempting to adopt current sophisticated surveying methods to deal with traditional boundaries established years ago by various types of monuments, watercourses, shorelines, etc. This talk demonstrated the critical need to include in system planning for a cadastre, men of practical experience in boundary surveying and title engineering.

Stanton Wong of H & W Systems in Los Angeles, described the computerized system his company is implementing for Hawaii, where public geographic records are four months behind, and the general index is three months out of date. This work is being done for private title companies, and demonstrates the economic feasibility of a well studied, thoroughly planned system devised and implemented by title experts. Wong makes the point that successful conversion to a computer system can be started prior to the implementation of sophisticated parcel identifiers. The standardization of parcel identifiers, of course, will reduce the cost for file maintenance and updating.

Ed Grskovich of Chicago Title gave a splendid talk on the dangers of over-sophistication in computer programming. He stressed that for each successive level of sophistication, there are trade offs of accuracy or expense. He cited several large projects for which computer programs had failed. He warned those who are insisting on continuous and instantaneous updating that these words are not necessarily synonymous with "fast". While hardware that could assign parcel identifiers on current transactions already exists, it is unreasonable to expect all land record keeping units to pay the necessarily high price for such capabilities. He also warned that the more diverse the uses of the file, the more it will cost; the harder you make the programmers job, the less reliable will be his coding. He quoted from a recent computer periodical, "the price of perfect reliability is infinite cost. A system tends to grow in terms of complexity rather than of simplification until the resulting unreliability becomes intolerable".

Ed's talk induced quite a number of questions on the practicability of instantaneous updating, and certainly was an eye opener into some of the technical problems which will be encountered in attempting to make any data bank capable of instantaneous questioning.

Representatives from West Germany and Sweden gave descriptions of their computerized cadastral systems which were quite interesting. There is not time to describe both to you, but since Sweden's system is more ambitious, I will give some facts on that project.

All land in Sweden, 3.5 million units, is registered, or Torrenized. Sweden's registry system traditionally operated through 100 lower courts. All transactions are currently handled on a once a week basis. The Swedish speaker had this to say about the pre-computer registry system: "Faults in the land registration system involve trouble for turnover of real estate and mortgage credit, which often results in decisions and extracts from registers being delayed by several weeks". Proponents of Torrens, take note!

There are five data banks in the computer system. They contain data on ownerships, size of parcels, number and type of buildings, occupation of the residents, auto registrations, etc. The first application of the computer is being used in parallel with the manual system through 1975, in one County – Uppsala. Private organizations, such as banks and insurance companies, are permitted to have terminals linked to the data bank. Files are not expected to be current until twenty-four hours after any transaction.

Property is entered by coordinates, street addresses, and a third descriptor, described later. The one operational county, Uppsala, has 100,000 land units, and annually processes 50,000 cases!

The current goal is to have 1/3 of all the land units covered by the computer system. Of the 24 departments or counties in Sweden, 5-1/2 currently are registered by coordinates, and 4 more are in the process of being assigned numbers. Quantitatively this accounts for about one-fifth of the land area of the country.

Curiously enough, the Swedish parliament, in its wisdom, decreed that a parcel must be capable of referencing not only by its coordinate, and street address, but by a third method, a unit descriptor consisting of a name and number. This would be the equivalent of our block and lot. Thus a description could be Ekeby 1 (Lot one, Ekeby Block) Dannemora (Town) Uppsala (County). American planners, take note.

One of the officials of the Swedish cadastral system told me that although only 1/3 the country is expected to be serviced by this facility, they are not sure if they will apply it to the rest of the country because of the expense. If a highly taxed, highly socialistic state such as Sweden is given pause over extending this highly touted public service because of cost, doesn't this tell us something?

As to costs of public registry or record projects, let me give you some sobering facts:

In the state of Rhine-Westphalia, largest of the states of West Germany, whose registry system is incomparably simpler than that of any one of our states, it takes 11,000 people to administer a computerized cadastre system covering eight million parcels.

The following is not from the conference, but private research:

In Bavaria, the average cost of title registration (torrens) is 1% of sale value. Remember also that the Notary gets an equal fee. In some German states the registration fee is 3% – and add the same for the Notary. If we charged 6% or even 2%, how long do you think we would get away with it?

There is every indication that a computerized public record system is going to become the darling of every city, county, state and federal agency, each with its demands for data, each with different goals and objectives. Programmers will go mad trying to accommodate all the whims of taxing authorities, health officials, transportation chiefs, urban planners, highway departments, policy departments, census takers, building inspectors, licensing bureaus, internal revenue, HUD, HEW, Boards of Elections, environmentalists, conservationists, resource managers, and undoubtedly many more agencies which will see this data bank as a rich lode for mining. I wonder if there will be any room at the counter for the conveyancer, in whose name this is all being done? So much for the conference.

The work of the conference planning staff is continuing in this field through the agency of the newly incorporated North American Institute for the Modernization of Land Data Systems, headquartered in Washington, D.C. ALTA is represented on the Board and Executive Committee by your speaker.

Progress in the movement to improve land records is slow because the problems are really twofold. The first problem is to establish a definitive and uniform method of surveying with which all professionals will agree. There are a number of highly refined systems of map projection since Mercator,

but a surprising lack of agreement as to whether the state plane coordinate system, the two degree transverse mercator system, or the universal transverse mercator system should be adopted. I see no need for attorneys, title companies, or records officers to concern themselves with these technicalities.

The second and more serious problem is revision of the law to permit computerized indices, and the simplification of our present patchwork system of public records. We need a thorough review of the public record problem, a cleaning out of our deadwood, simplification of forms, standardization of liens, procedures and terminology in the 51 United States jurisdictions.

Your chairman has, on several occasions, attempted to channel the efforts of these people into these two directions, hoping to attack the problem on two fronts simultaneously, but to no avail.

In the meantime, as you heard from Jim Pedowitz, the National Council of Commissioners on Uniform Laws is developing its own program of extensive changes for the existing system.

In July there was a demonstration of a Canadian computerized cadastre system in the statehouse in Boston, where a terminal was set up connected to the provincial computer in Fredricton, New Brunswick. This was sponsored by the Massachusetts Land Records Commission, a very active and forceful group, and firmly committed to the further establishment and growth of the Torrens system. In Washington they proselytized their moribund philosophy to one and all.

In February of this year, Fairfax County, Virginia (suburban Washington), received a study from its office of Research and Statistics entitled "Feasibility of Computerized Land Title Search in Fairfax County".

The study was requested by county officials who felt that costs of conveyancing were too high, and the condition of the public records prevented economical title searching. The investigation considered a number of options, from building a public title plant to the actual searching, certification and underwriting of titles by the county. I think you would be interested in some excerpts from the conclusions reached by this group:

"Currently the cost of title search for property with the median price of $55,000 is an estimated $550."

"Research indicates that the title search often costs the attorney between $50-$80. The inflation in final fee to the buyer occurs due to office processing costs."

"If practices such as the requirement of the sixty-year search were corrected by law, and if the related fees were adjusted accordingly, the costs to taxpayers would be significantly reduced."

There must be something wrong with my arithmetic, because I don't understand how a significant reduction in the $50-$80 title search fee is going to have that much of an effect on the $550 charge being made to the consumer. I think someone is looking at the wrong end of the problem.

About a year or so ago, the Supreme Court of the State of Pennsylvania appointed a coordinator for standardizing the computerization of all court records in the Commonwealth. In September, it was announced that a computer will be acquired for this purpose early next year, and a program will be developed with the goal of eventually putting all court records (civil and criminal), taxes, and conveyancing documents on the computer, in index form. A committee of title people, including your speaker, has been asked to assist and advise the effort so that the final product will be a useful tool for the title industry, and will relieve the congestion of title people in public buildings. It appears that our presence has been more irritating than we may have thought. It seems even your best friends won't tell you.

IN SUMMATION: There is a remarkable unanimity in the idea of assigning a multi-digit number for the purpose of referencing a parcel of land in the future computer systems. We certainly will not quarrel with this approach, although we might wonder at the need for 17 or 19 digits, when you stop to consider that it takes only the eight digits of your social security number to make you unique. There is, however, no effort being made to simplify the problems of handling names in the general index – the idem sonans problem. I find it very strange that we are so smug in our assigning of numbers to describe parcels of land – no two of which are alike –, and if any one of the 17 or more digits is copied incorrectly, the identification fails utterly. Yet we are quite content to allow creditors under idem sonans, to exhibit the most flagrant and callous disregard in the spelling of names, among which there are almost limitless similarities and affinities. This is the most glaring inconsistency! When will we awake to the need for reform of this archaic rule?

At the last board meeting of the North American Institute, I urged the group to include in a tentative schedule of workshops the exploration of the problems involved in indem sonans, with the hope that some solution for treating names under this archaic legal doctrine can be found that will be compatible with computerization. I am happy to say that some interest was expressed in this idea.

This concludes my report on what has been a very busy and interesting year. Thank you.

Report of the Research Committee

John E. Jensen

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

Thanks Bob.

To show how well the Research Committee performs, we made a very careful, scientific, analytical study of the likelihood of attendance of a meeting on a Saturday afternoon when there are football games. I hope the rest of our work is more accurate than our prediction that only wives of speakers would be here this afternoon.

(Laughter)

As far as your Committee is concerned, there are only two purposes for trying to collect the data concerning our industry as a whole and our businesses individually. The first has to do with its use in dealing with regulators and legislators. The second is as a forecast device both for the industry and for individual firms in the industry.

In my remarks this afternoon, I would like to touch on both of these purposes. First, however, let me say that during the past year, your Committee has completed and is now putting into final form three studies: The Seventh Annual Analysis of Form Nine, NAIC Report; the Sixth Annual Analysis of claims payments and claims reported by underwriters; and an analysis of the industry's rate of return, a subject which is becoming one of increasing interest to regulators and legislators. As soon as these reports are completed, copies will be distributed to everybody who participated in the studies.

In addition, this week the Board of Governors authorized the Washington staff to distribute this same information to any member of the Title industry who requests it. I have a word of caution in distributing and using this information. Very carefully examine the caveats that accompany these studies. No two companies report all information in the same way as we have learned to our sorrow over many, many years. We have attempted to spell out as carefully as we can the limitations on the data. Use the information as you will. But use it within the constraints and limitations as spelled out in the reports themselves.

So much for distribution. As I went over the 1974 studies, I began to see that there were a number of parallels between what happened in 1974 as a result of a recession and what happened in 1970 when there was also a real estate recession. Insofar as I'm talking about the 1974 NAIC and Claims studies, I will be attempting comparisons between two recessionary periods in the real estate industry.

First of all, I will surprise no one by saying that the operating profits for Title Insurance Underwriters in United States during 1974 were the lowest in the last seven years. Operating Profits of 12.3 million dollars for all of us put together. The results of our study show that the pre-tax operating profits in 1974 fell 83% from 1973. And operating profits in 1973 were down 22½% from 1972. Why?

The most useful way to analyze this is to look at both sides of the profit equation, revenue on one side, expenses on the other, and see what happened. 1974 revenue for Title Underwriters was the second highest in the seven years we've been collecting data. By extrapolating from some of the major companies going back, it was the second highest revenue year in history.

However, that revenue had fallen by about 6% from 1973 ending up with gross operating revenue of about $582 million. The only other times (since we have been collecting data) when revenue fell from the preceding year was in 1970. In that last recession, revenue fell a little over 2%. So we're talking about a 6% drop this go-around compared with a 2% drop last go-around.

What was the effect of these kinds of declines in revenue in the two respective recessionary periods? One way to find out is to examine what happened to our expenses during these two recessions. Let's first of all, in order to keep everybody calm while we can get deeper into the data, let's talk about expenses and exclude loss and loss adjustment expenses.

Our operating expenses as an industry in 1974 went up 2%. In 1970, our operating expenses went up 5.2%. Now to put this in to some kind of perspective, there are a lot of various indices you can use to make comparisons. The one I have chosen because our economists were able to get it to me very fast is the Consumer Price Index which is just one way of measuring inflation.

In 1970, the Consumer Price Index increased 6.2% or about 20% faster than our costs went up. In 1974, the Consumer Price Index increased 11.3%, 414% faster than our expenses. And this at a time when the CPI itself was going up at a rate about twice as fast as in 1970.

Another index of what's happening in the real estate market is what's happening to mortgage interest rates. One measure of mortgage interest rates is the effective average FHA rate. That rate rose from 8.19% to 9.05% between '69 and '70, about an 11% increase. In 1974, there was a 17% increase in the effective average FHA rate from 8.08 to 9.47%.

In other words, to no one's surprise, we had a much sharper inflation and a much sharper recession in 1974 than we did in 1970. The preliminary hypothesis that can be drawn from the data disclosed so far is that our industry reacted to sharply rising inflation and rising mortgage rates with extremely effective cost controls. Our costs went up substantially less, for example, than the Consumer Price Index. One way of testing this hypothesis is by looking at the most important controllable operating cost in our industry, staff expenses.

In 1974, our staff costs as an industry went up about 4%. This is about 1/3 of the inflation rate, as measured by the CPI. In 1970, our staff costs went up 6.3% or about the same rate as inflation during that year. Since built into staff cost are a number of uncontrollable elements, such as automatic increases in Social Security and Withholding Taxes and so forth, it is not unreasonable to conclude that our industry reacted exceptionally well in 1974.

Another way of looking at this, is by looking at our operating profit margin before taxes and before losses. In 1973, the industry's profit margin before taxes and losses was 17%. It fell to 9.4% in 1974. In 1969, just before the drop in real estate market, the operating profit margin was also 17%, and then in 1970, the year of the recession, it fell to 11%. From 17% to 9.4% margins between '73 and '74, a slightly greater drop than the earlier recession but with sharply reduced revenue by comparison and under much more difficult economic conditions. Based on the information I have reported so far, you could conclude, I think, that as an industry we did very well in 1974. And, of course, if you made that conclusion, you'd be dead wrong. Because as an industry we did very poorly in 1974. And there is one explanation – losses.

In 1974, the losses for the Title Insurance Industry were the highest in history. They were up 29% from 1973. And if you compare them with 1970, our losses are up 225%. I tried to find some ways to dramatize the volume of losses and have some interesting comparisons.

There were only five companies whose gross revenue was equal to or greater than the aggregate amount of industry losses. Or putting it another way: aggregate 1974 losses exceeded the industry aggregate after-tax net operating profit for six of the last seven years.

As a result, the operating profit margin after losses, but before taxes was a little over 2%. In 1970, the profit margin including losses but pre-tax was 6.7%.

We had an original hypotheses on the efficiency of management in the industry. We can now come up with a conclusion concerning the entire operation of underwriters. In spite of ongoing management skills in 1974, in operations, we did about 1/3 as well in 1974 as we did in 1970.

I'm going to come back to this question of losses but first I'd like to put these industry results in some sort of perspective. I've been talking about operating margins and operating profits and underwriting losses. When you want to take a look at the whole picture for Title Insurance Companies, you add, in addition to operations, investment income, realized and unrealized capital gains and then apply a tax estimate.

Company profits including everything – gains, losses, investments, investment income, interest income as reported to the Research Committee was $16.6 million. To achieve a $16.6 million profit, our industry had invested one billion dollars. The after-tax return on assets invested in the Title industry, dollars that you could have put in a mattress or invested in savings accounts, stocks, bonds, government securities, tax exempts, whatever, was 1.68%.

Now, is that a good or bad return? In 1974, you will recall we were listening to the complaints of the industrials, the big companies in the United States. They were complaining about what a miserable year they were having and what a bad job everybody was doing. In 1974, that bad year for industrials, the return on the assets invested in Fortune's 500 was 6.5%; the return to us 1.68%. We did less than 1/3 as well as a group of companies who were complaining about the rotten year they were having.

Let's return now, reluctantly, to a look at losses. If losses in 1974 were at the same rate, not the same dollars but the same rate they were running in 1970, two things would have happened. We would still have had the highest dollar loss year in history. But our net after-tax income would have been more than double what it actually was. Losses incurred, as I pointed out earlier, were up 29% from 1973 and 225% over 1970.

A year ago I reported at this convention that there had been a sharp increase in closing or escrow procedure losses primarily in that category concerning instructions not properly being followed in connection with escrows and closings. I am pleased to report (with my fingers crossed) that in 1974, dollars paid under this loss category have returned to more normal levels. However, it appears that the number of claims that were opened in this area have stayed at an extremely high level. This may mean that those pending '74 claims will ripen into 1975 payments. I would urge all of you, both underwriters and Title Insurance agents, to continue to closely monitor your escrow and closing operations.

With one major exception, all other categories of payments and number of claims maintained within acceptable statistical deviation levels, the same relative percentage position of the total as in 1973. Although the dollars paid were frequently higher, percentages which are the tip-off as to what the trend is, remains substantially the same. The notable exception is the category Special Risks Authorized by Company Practice.

Payments under this category were up 165% over 1973 and exceeded payments for all losses of any kind during the years 1969, 1970 or 1971. When you zero into this one category, your attention is caught by a sub-category called Mechanic's Liens and Mechanic's Lien Related Losses.

You heard Jack Tickner speak yesterday concerning Mechanic's Liens. And certainly I am not competent to amplify what Jack said. However, I would like to do a little speculating as to what happened.

First of all, we had an economy with sharply rising costs and double digit inflation. There was an inability to obtain refinancing. There were material shortages. You've heard all of these things before and our natural response has been that these are the uncontrollable factors that have caused our Mechanic's Lien losses.

It appears, however, that most of the losses that we incurred during 1974 in this category arose out of risks we assumed during the boom years of 1972 and 1973.

Those were the years when the Title business was undergoing an explosive growth. We were overwhelmed with customer demands. And as a service industry we bent over backwards to try and accommodate our customers. I suspect, based on conversations within my own company and with many other representatives of underwriters, that some of us allowed our procedures to get a little sloppy. If my speculation in this area is correct, I would hope that our industry has learned its lesson. We have certainly paid enough to go to school. We are in the risk elimination business and this requires sound underwriting and the careful following of established company procedures. And perhaps it might be worthwhile for some of us to evaluate our established company procedures.

I've been comparing '73-'74 with 1969 and 1970. This comparison, I think shows the magnitude of 1974 problems. In addition, however, perhaps it allows for some speculation concerning 1975 and even more importantly concerning 1976. This speculation is personal. It has not been endorsed by the Research Committee.

First of all, I would expect losses, particularly in the Mechanic's Lien and Mechanic's Lien related area, to continue at an extremely high level throughout 1975 and then begin to drop off in 1976. We are still paying for those boom years. However, late in 1973, throughout 1974 and so far in 1975, there are much fewer large projects coming on stream. So none of us is taking on as many of those huge and dangerous risks that we took on in '72 and '73.

Secondly, I am convinced, again by talking to representatives of many companies, that we have all reviewed and improved our operating procedures. I think these two factors can make a substantial difference in our future loss picture.

Predicting Title revenue is a little harder. In 1975, it is now estimated that the CPI increase will average about 8½% and at least some economists are anticipating a Consumer Price Index rate during 1976 of between 6% and 7%.

Now these numbers, even the 8½%, are substantially below the 1974 11.3%, the well known double digit inflation. But by any historic standards, both the '75 and '76 inflation rates are going to be very, very high.

The FHA average effective residential mortgage rate fell to 7.78% in 1971 from 9.05% in 1970. Money became available for investments in mortgages as we worked our way out of the last real estate recession. In 1975 we estimate an annual effective mortgage rate on FHA's of about 9%, which is down somewhat from the all time high achieved in 1974 of 9.47.

Some of us are guessing that in 1976 this long term rate will begin to creep back up and end up somewhere between 9¼ and 9.4%. This is almost back to the historic 1974 level. Other factors impacting on our business will be unemployment, government deficits which must be financed, changes in the money supply, etc. ad nauseam. All of these impact directly on real estate and those things that impact on real estate, impact on our industry.

My conclusion, therefore, is that in 1975 there will be a modest increase in industry revenue as compared with 1974. However, continued heavy losses which I expect will continue to occur during 1975 will directly impact profits so that net results in 1975 are not likely to be much better than they were in 1974.

I do not see a boom year in 1976 but expect slow continued revenue improvement throughout most of the year. To turn improvement into bottom line profits, at least three things have to be done. Of course, we have to continue to operate lean. The cost comparisons made earlier show that the industry can do this.

In addition, we must continue to monitor and control our underwriting methods and procedures. Finally, we have to be prepared to explain our profits or lack thereof to regulators and legislators. And I would like to spend five more minutes covering this very important point.

A little over a year ago, a special Research Committee Task Force was appointed under the authority of the Executive Committee and the Board of Governors. This Task Force consists of members of the Research and Accounting Committees.

The Task Force was charged with the responsibility of developing a data collection plan to be used as a model for the Title industry. After much hard work, the Task Force has, almost in final form, developed a uniform income and expense plan and a uniform statistical gathering system.

The reason for trying to develop uniform plans in these areas are twofold. First, there are now about fifteen states that are requiring plans of one kind or another as a part of the justification of existing rates or as a part of any request for a rate increase. To the extent that we can achieve a uniform approach as to how we deal with the regulators in these areas, we will in the long run reduce our expenses. Instead of fifty different approaches to statistical gathering, we could have one basic system which, of course, would be modified to meet unique local requirements.

In addition, it appears, based on the experience of the Property/Casualty industry, that statistical systems which have industry approval are more readily accepted by regulators.

We hope to have these plans in their final form within the next several months. We then hope to have them approved by the Executive Committee and given wide distribution within the Title industry.

Report of the Federal Legislative Action Committee

James G. Schmidt

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

The Federal Legislative Action Committee had an all day meeting on September 4 and a two hour breakfast meeting on Thursday of this week, and yet I will only briefly refer to the subject to which we devoted most of our time. The reasons are self-evident, because yesterday the subject was very thoroughly covered by Sanford Witkowski and Tom Finley.

So let us turn our attention to a few other subjects. There is a Senate bill, S. 2273, also introduced by Senator Proxmire, which is called the Condominium Consumers' Protection Act. It affects all condominium units which might be sold or offered by mail or by means or instruments of Interstate Commerce, or units which might be financed by a federally related condominium housing loan, the definition of which is quite similar to a federally related mortgage as defined in RESPA.

The thrust of the bill is to protect the consumer from improper acts upon the part of the developer, such as the developer who wants to have a long term management contract, or who desires to retain an interest in the common elements after control of the condominium project is assumed by the Owners' Association. There are extensive standards of disclosure in the act with a right given to the purchaser to void the contract.

There is a provision that the Secretary of Housing and Urban Development might approve a state condominium plan, but even then the state law will be studied each year, and if the plan is not working out, then the federal act would become effective. This subject was covered in an article which appeared in April *Title News* by Stephen G. Johnakin, Senior Title Attorney of Lawyers Title Insurance Company. Johnakin was counsel to a study committee which was appointed by the Virginia Real Estate Commission at the direction of the Virginia Legislature to study the Condominium Law. He is responsible for the drafting of what well might be the best Condominium Law in the country. And in his article he expressed opposition to the possibility of federal legislation. Our committee discussed the problem. We found that Johnakin was going to appear at a hearing this coming Wednesday, and we considered whether ALTA should file a statement. We decided that even though we are opposed to federal legislation in this particular field, inasmuch as we are so involved with RESPA at this time, we would not file a statement, but would depend upon the knowledge and ability of Stephen Johnakin.

The second question which we wish to call to your attention is HR 8674 which is a Metric Conversion Act. It provides for the appointment by the President of a Metric Board which will study the question and would allow the gradual conversion to the metric system over an indefinite period of time. This differs from the Senate Bill, S. 100, which provides for a ten year mandate to convert. HR 8674 is going to come up for a hearing on the 23rd and 24th of this month.

Another question which we discussed was a proposed change in the regulation of the Federal Home Loan Bank Board as to conflict of interest. You will recall that we have been working for the last couple of years on this question of a service company of a Federal Savings and Loan Association acting as agent for Title Insurance companies. We were opposed to this for the following reasons: conflict of interest, controlled business and possible violation of the Anti-Trust Laws. At our meeting at Coronado, I made an appeal to all of the abstractors to send in their comments about this as to how it might affect their business in their area if a service company of the Savings and Loan Associations would become an agent for a national company and possibly take business away from them. I regret that no answers were received from the abstractors. However, our national office is working on this at the present time. Bill McAuliffe has been in touch with McGraw of the Federal Home Loan Bank Board and we're expecting some answer from the Board this coming month.

There is also a proposal by the Federal Reserve Board to make a change in Regulation Z dealing with Truth in Lending. It would provide that there would be a disclosure of closing costs in those areas which were not covered by the RESPA. And incidentally, the disclosure could be quite simple and it well might be that a similar type of simple disclosure would suffice under Section 6 of RESPA.

In any event, this brings us back to RESPA. Tom Finley commented yesterday that there had been an about-face on the part of the American Bankers Association, the United States Savings and Loan League, and the National Association of Insurance Savings and Loans. They had all approved the wording of the Real Estate Settlement Procedures Act last year, and now they are suddenly asking for its repeal. When they approved it last year, they had not informed the members of their association. Now certainly that has not been true of our Association. You have heard all about RESPA since it was first proposed and what has happened since its passage. You have heard it discussed at meetings such as this. You have been kept informed in issues of *Title News* and Capital Comment and in letters sent to you by Bill McAuliffe.

You have received this information, but what have you done about it? How many of you have written to the ALTA office and made comments as to the effect of RESPA on your operation? At this moment we don't know what's going to happen in the next two months, possibly the next two weeks. But whatever is going to happen, it is going to happen very quickly. Bill McAuliffe will be keeping you advised, and it is essential on your part to let us know what you think, your comments, your suggestions as to what should be done.

For example, the proposed S. 2349 of Proxmire would provide a lender-pay provision. Now can't you sit down and send us a comment as to how lender-pay would affect your particular business? Also, if you have any contacts with any of the officers, Board of Governors, or committee members of the American Bankers Association, United States Savings and Loan League, or the National Association of Insured Savings and Loans, please let us know because it is essential that we have those contacts at the present time.

This morning there were three addresses on the subject of becoming involved. There was never a time when it was more important for each one of you to become involved in the affairs of the Association than it is today. Three years ago in Atlanta I commented that every member of the Association should be considered a member of the Federal Legislative Action Committee and that is true today. *Please become involved.*

Index to 1975 Title News Articles

names in the news

First American Title Insurance Company has announced the appointment of **Robert N. Mistretta** as vice president and manager of its main office located in Mineola, N.Y.

* * *

Richard F. Cimpl has joined Chicago Title Insurance Company as customer service officer in its Milwaukee office.

Chicago Title Insurance Company also announced the appointment of **Margaret E. Elz** as assistant secretary in their North Central Region.

* * *

Roger W. Quan has been appointed market development manager for Title Insurance and Trust Company and Pioneer National Title Insurance.

Title Insurance and Trust Company also has announced the following new appointments in its Ventura county office: **John T. Porterfield,** vice president and manager; **Max Crist,** assistant vice president, sales and marketing manager; **Frank W. Lane,** assistant vice president, senior advisory title officer; **Michael J. Rose,** assistant secretary, manager of plant and title operations; and **Imogene McKenzie,** manager of escrow operations.

In addition, **Anton J. Ourada** has been named manager of Cook County operations for Pioneer National Title Insurance Company.


MISTRETTA


CIMPL


QUAN


PORTERFIELD


OURADA


BERRYHILL


JACKSON


ERGENBRIGHT


FERREE


PEYTON


PEASE


KAMP

The Title Guarantee Company announces the election of **Thomas C. Carlin** and **B.L. Treadwell** as assistant vice presidents.

* * *

Jan G. Berryhill has been named customer representative of USLIFE


KENT

Title Insurance Company of New York and assigned to their Metropolitan Regional Office.

* * *

Clarence J. Jackson has been named manager of the Clearwater, Fla., office of Commonwealth Land Title Insurance Company.

* * *

Lawyers Title Insurance Corporation has announced the election of the following branch office managers: **Carl E. Ergenbright, Jr.**, Roanoke, Va.; **Hobart G. Ferree, Jr.**, Vero Beach, Fla.; **Donald E. Grabski**, Milwaukee; **Lester G. Peyton**, Sandusky, O.; **Harlan Pease**, Elyria, O.; and **John Kamp**, Newton, N.J.

* * *

Terence Green has been promoted to assist state manager of First American Title Insurance Company's Texas operations.

* * *

Charles A. Kent has been appointed to the new position of national title operations manager for the Ticor Title Insurers.

* * *

Peninsular Title Insurance Company has announced the reassignment of **John N. Casbon**, assistant vice president-marketing, to New Orleans, La.

* * *

C.J. McConville, president, chief executive officer and chairman of the executive committee of both Title Insurance Company of Minnesota and Minnesota Title Financial Corporation, has been named 1976 Minneapolis Aquatennial vice president. **McConville,** currently ALTA Title Insurance and Underwriters Section chairman, is a past general chairman of the festival.

James Peterson Records 50 Years In Land Title Evidencing Industry

After 50 years with the Abstract and Title Corporation of South Bend, Ind., James Peterson, an Indiana Land Title Association past president, still plays an active part in the business' operation. In the photograph above, Peterson, at right, examines a land patent with Wayne Holleman, president of Whitcomb & Keller, the firm's parent company.

Beulah Hendricks Elected President of Minnesota Land Title Association

The 1975 Annual Convention of the Minnesota Land Title Association was held recently at the Holiday Inn Downtown in Rochester, Minnesota.

Mrs. Beulah Hendricks, president of the Cass County Abstract Company, Walker, Minn., was elected the first woman president of the Minnesota Land Title Association.

Philip D. McCulloch, then chairman of the ALTA Abstracters and Title Insurance Agents Section, and now ALTA president-elect, addressed the delegates. Other speakers included R.G. Gandrud, vice president and assistant counsel of the Title Insurance Company of Minnesota, Kenneth J. Judge, division counsel of Chicago Title Insurance Company, and Melville R. Bois, division vice president of St. Paul Title Insurance Company.

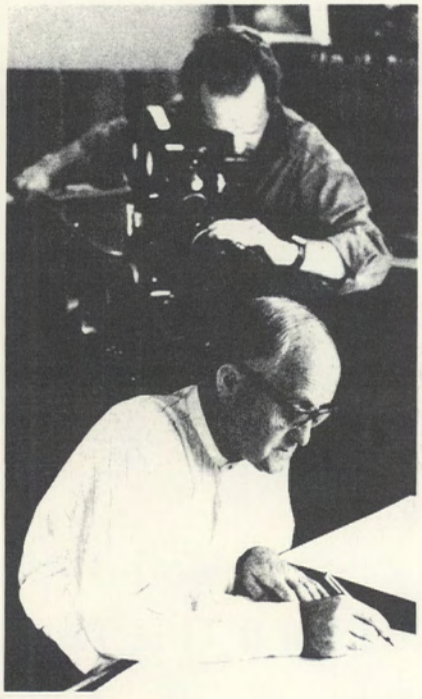
The meeting's well-planned program included a special tribute to Jay O'Connor, vice president of MLTA, who resigned from the board of directors for health related reasons.

PLTA Develops Consumer Table

The Pennsylvania Land Title Association has developed a table summarizing the changes effected by a new rate schedule and manual of procedures regarding land title insurance in the state.

Designed to aid the consumer, the table provides a simplified look at various procedures related to home buying.

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 Sponsors Realtor Editorial Contest Consumer Category for Seventh Year

Winners in the ALTA-sponsored Consumer Information Category of the 1975 National Association of Realtors Creative Reporting Contest are shown here. In the photograph at right (from left) ALTA President Dick Howlett and Realtor Association President Art Leitch talk with Charlie Evans, real estate editor, Houston *Chronicle,* third place winner, and Bob Brennan, real estate editor, Cleveland *Press* who accepted the second place award during a 1975 Realtor Association Convention banquet on behalf of Robert Modic of the Cleveland newspaper. Both Evans and Brennan are past presidents of the National Association of Real Estate Editors. Robert Marsh (shown at center in the other photograph), associate editor, *Changing Times* magazine, was unable to attend the Realtor Convention to receive his first place award in the category but the presentation was made later in the ALTA Washington office. Shown congratulating Marsh are Morris Knouse (left), president of the District of Columbia & Metropolitan Area Land Title Association, and Duke Brannock, president of the District of Columbia Board of Realtors. ALTA has sponsored the contest category as an activity of its Public Relations Program for the past seven years.

American-First to New Location

American-First Title & Trust Company has moved to new quarters in downtown Oklahoma City. The relocation, prompted by local urban renewal programs, will provide more adequate and more attractive facilities to better serve both commercial and consumer customers, according to John R. Cathey, company executive vice president.

Sentry Abstract Open in Reading

Sentry Abstract Company, a new firm providing land title insurance services, has been established as an agent for Commonwealth Land Title Insurance Company in Reading, Pa. Lawrence W. Hendrickson is president.

American Opens New Latin Division

The American Title Insurance Company recently announced the opening of its new Latin Division office in Coral Gables, Fla.

The new division will seek to provide personalized and efficient title insurance service to Spanish speaking people residing in the Greater Miami area.

The new department will place bilingual persons in positions involving public contact and will offer consumers Spanish editions of educational booklets on title insurance and other real estate related subjects.

TI Corporation Declares Dividend

The board of directors of the TI Corporation recently declared a quarterly dividend of 25 cents a share. An accompanying report indicated higher third quarter revenues and earnings than in the same period in 1974.

Ticor attributed the earnings recovery to the upturn in the national economy affecting its major operations in title insurance, financial printing, and employee relocation services.

meeting timetable

January 18-21, 1976
National Association of Home Builders
Dallas Convention Center
Dallas, Texas

March 21-24, 1976
ALTA Mid-Winter Conference
The Greenbrier
White Sulphur Springs, West Virginia

April 1-3, 1976
Oklahoma Land Title Association
Sheraton Skyline East
Tulsa, Oklahoma

May 2-4, 1976
Iowa Land Title Association
Holiday Inn
Amanas, Iowa

May 6-9, 1976
Texas Land Title Association
Hilton Inn
Fort Worth, Texas

May 13-15, 1976
New Mexico Land Title Association
Palms Motor Hotel
Las Cruces, New Mexico

June 6-8, 1976
Pennsylvania Land Title Association
Seaview Country Club
Absecon, New Jersey

June 6-11, 1976
National Association of Insurance
Commissioners
Annual Meeting
Fairmont-Roosevelt
New Orleans, Louisiana

June 10-12, 1976
Utah Land Title Association
Salt Lake Hilton
Salt Lake City, Utah

June 11-12, 1976
South Dakota Land Title Association
Towne House Motel
Sioux Falls, South Dakota

June 12-15, 1976
New England Land Title Association
Jug End Inn
South Egremont, Massachusetts

June 13-15, 1976
New Jersey Land Title
Insurance Association
Seaview Country Club
Absecon, New Jersey

June 17-19, 1976
Land Title Association of Colorado
Steamboat Village Resort
Steamboat Springs, Colorado

June 17-19, 1976
Michigan Land Title Association
Bay Valley Inn
Bay City, Michigan

June 17-19, 1976
Oregon Land Title Association
Salishan Lodge
Gleneden, Oregon

July 16-18, 1976
Idaho Land Title Association
Sun Valley, Idaho

August 5-12, 1976
American Bar Association
Atlanta, Georgia

August 12-14, 1976
Montana Land Title Association
Colonial Inn
Helena, Montana

August 20-21, 1976
Kansas Land Title Association
Ramada Inn
Manhattan, Kansas

September 9-11, 1976
Minnesota Land Title Association
Maddens Lodge
Gull Lake, Minnesota

September 9-11, 1976
North Dakota Land Title Association
Dickinson, North Dakota

September 17-19, 1976
Missouri Land Title Association
Marriott
St. Louis, Missouri

September 18-21, 1976
Indiana Land Title Association
Rodeway Inns-Airport
Indianapolis, Indiana

September 23-24, 1976
Nebraska Land Title Association
Omaha, Nebraska

September 23-24, 1976
Wisconsin Land Title
Association, Inc.
The Concourse
Madison, Wisconsin

October 16-20, 1976
ALTA Annual Convention
Olympic Hotel
Seattle, Washington

October 25-27, 1976
Mortgage Bankers Association of America
San Francisco Hilton
San Francisco, California

November 14-18, 1976
National Association of Realtors
Houston, Texas

November 14-19, 1976
United States League of Savings Associations
New York, New York

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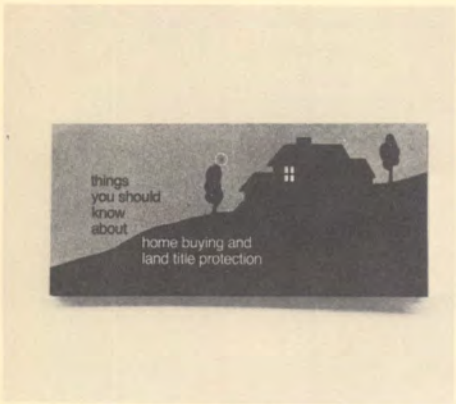

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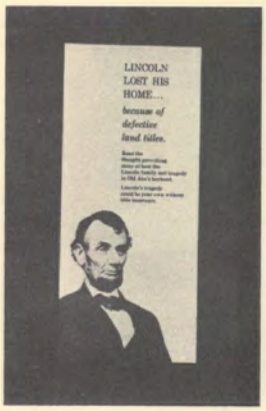

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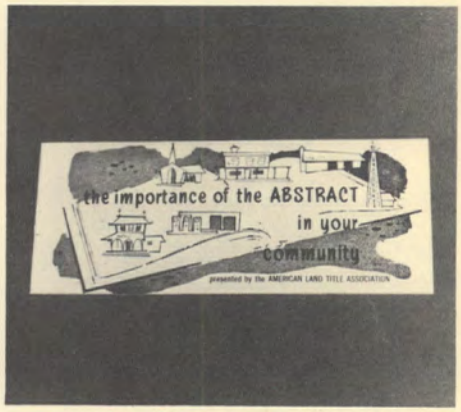

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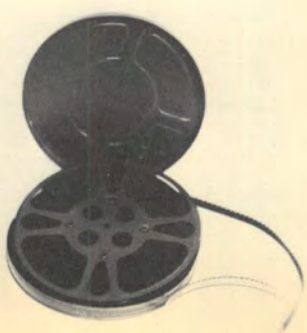

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