



# TITLE NEWS



ALTA OFFICERS  
AND  
BOARD MEMBERS  
INSTALLED







## A Message from the President

NOVEMBER, 1976

### *Where Do We Go from Here?*

We are concluding the year of our 200th anniversary as a nation. Our title insurance industry is now 100 years old. Our Association is entering its 70th year. Where do we go from here? Upward and onward is our goal.

In the year just completed, Richard H. Howlett has had a most successful ALTA presidency. Progress has been made in the operational organization and control of our Association. I know that your chair officers are more thoroughly briefed, and fully aware of the problems confronting our industry. By being continually informed, we are in a better position to meet new situations as they arise.

I feel that there now exists a better degree of communication between the national Association and the affiliated state and regional associations.

The success of our Government Relations Committee and its federal "Seminar '76" has given us a step forward in the battle to offset misconceptions about our industry. This important work must continue; and our position must be known to ourselves, our membership and the public in general.

While I am somewhat awed, astounded, and even perhaps in a state of panic at this point in my tenure, I know that I can count on this industry for support. I pledge you mine. Together, there is only one way we can go, and that is onward toward a higher goal in the economic picture of this great nation of ours.

Sincerely,

Philip D. McCulloch



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ACSM-Sherrill Snellgrove  
ACSM Program Chairman  
812 Carter Road  
Rockville, Md. 20852

AMERICAN SOCIETY OF PHOTOGRAMMETRY  
AMERICAN CONGRESS ON SURVEYING AND MAPPING



ALTA representatives will attend three affiliated association conventions and the National Association of Realtors convention this month. President Philip D. McCulloch and Executive Vice President William J. McAuliffe, Jr., will journey to the Florida Land Title Association meeting November 11-13 at Lake Buena Vista. President McCulloch also will attend the Land Title Association of Arizona meeting in Tucson, November 4-6.

ALTA President-Elect C.J. McConville and ALTA Director of Public Affairs Gary L. Garrity will attend the Dixie Land Title Association Convention November 3-6 in Gulf Shores, Alabama.

At a November 16 press banquet during the National Association of Realtors Convention in Houston, President McCulloch will present awards in the ALTA-sponsored consumer information category of the National Association of Realtors Creative Reporting Contest. Garrity also will attend the convention.

\* \* \*

Volume I of the land title industry "white papers", developed by the ALTA Government Relations Committee, has been mailed to ALTA members, according to Mark E. Winter, the Association's director of government relations. The papers deal with these subjects: The future of and need for title insurance services, the importance of title insurance in the development of the secondary mortgage market, the benefits of title insurance, popular misconceptions of the title industry and Torrens System. Additional copies may be obtained through the Washington office at \$1.25 each plus postage.

\* \* \*

Chairman Edward S. Schmidt of the ALTA Public Relations Committee Centennial Ideas Subcommittee reports that Association members have made impressive use of the Centennial Kit developed by his subcommittee for distribution to ALTA members early this year.

Especially significant, Chairman Schmidt said, has been the adaptation of Kit Centennial proclamations for signing by state and local government officials—with the work being handled by ALTA-affiliated associations and individuals within the industry. Proclamation signings of this type have been reported from time to time in 1976 issues of *Title News*, and have generated favorable publicity in states concerned.

After liaison activity by the Pennsylvania Land Title Association, a statement commemorating the Centennial was placed in the *Congressional Record* by Representative William J. Green of that state. Excellent publicity resulted and copies of the related excerpt from the *Record* have been widely distributed by the association.

An ALTA news release on the Centennial, quoting 1975-76 Association President Richard H. Howlett, has been used by a number of daily newspapers across the nation—including the *Chicago Daily News*, *Ft. Lauderdale News*, *San Diego Union*, *Jersey City Jersey Journal*, *Austin Statesman* and others.

Chairman Schmidt said ALTA members also have made effective use of Centennial folders, postage meter slugs, and print ads offered through the kit. The folder has been designed so that it will not become outdated after this Centennial year—and still is available for purchase by ALTA members at \$9.00 per hundred copies plus postage.

\* \* \*

Non-profit institutions, mostly schools, have virtually booked up the ALTA office file of loan prints of the Association films, "A Place Under The Sun," "The Land Is Yours" and "Blueprint for Home Buying," through August, 1977.

In recent years, schools throughout the country have become increasingly frequent borrowers of films from the ALTA office. Prints of these older films still are available to ALTA members who wish to purchase them. "Land" costs \$165; "Blueprint" \$95; and "Place" \$135 (all of these per-print prices are in addition to postage).







# TITLE NEWS

## Association Officers

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Hexter Fair Title Company  
Dallas, Texas

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## Association General Counsel

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**ON THE COVER:** The 1976-77 ALTA officers and newly elected board of governors members are pictured after swearing-in ceremonies at the 1976 annual convention in Seattle. In the top photo they are left to right: Immediate Past President Richard H. Howlett, Title Insurance and Trust Company, Los Angeles; Title Insurance and Underwriters Section Chairman Robert C. Bates, Chicago Title Insurance Company, Chicago; Treasurer Fred B. Fromhold, Commonwealth Land Title Insurance Company, Philadelphia; Abstracters and Title Insurance Agents Section Chairman Roger N. Bell, Security Abstract and Title Company, Wichita, Kansas; President-Elect C.J. McConville, Title Insurance Company of Minnesota, Minneapolis; President Philip D. McCulloch, Hexter Fair Title Company, Dallas; Finance Committee Chairman Robert C. Dawson, Lawyers Title Insurance Corporation, Richmond, Va., and Member-at-large Nic S. Hoyer, Wisconsin Title Service Company, Milwaukee, of the Abstracters and Title Insurance Agents Section. Elected to represent the Title Insurance and Underwriters Section as member-at-large was Carloss Morris, Stewart Title Guaranty Company, Houston, Texas. He is not pictured. Newly elected board of governors members pictured in the bottom photo are left to right: Marjorie R. Bennett, Menard County Abstract Company, Petersburg, Ill.; A.L. Winczewski, Winona County Abstract Company, Winona, Minn., and Betty Lunde, Lawyers Title of Pueblo, Pueblo, Colo. Also elected to the board but not pictured were Thomas G. Kenney, Transamerica Title Insurance Company, San Francisco, and Robert D. Dorociak, USLIFE Title Insurance Company of Dallas. The five were elected to terms expiring in 1979.

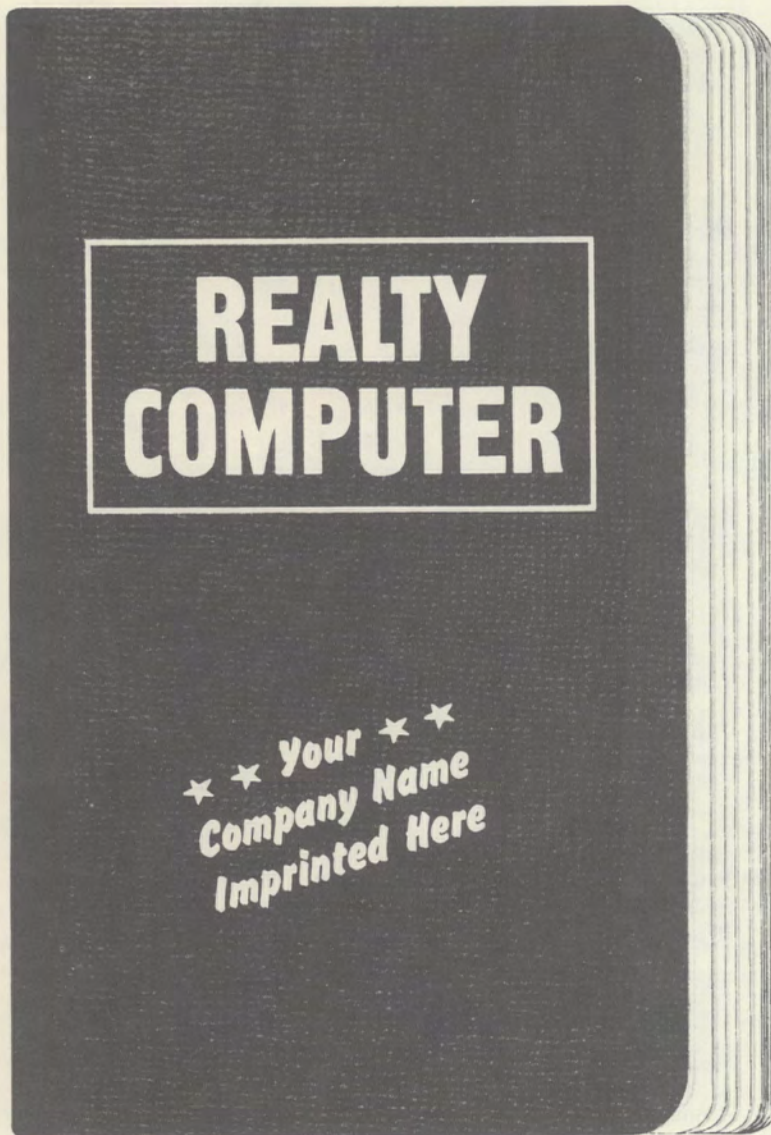
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R. MAXINE STOUGH, Managing Editor



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A panel where guest members asked consumer questions of land title industry representatives was an important feature of the September ALTA federal seminar in Washington, D.C. Standing is 1975-76 ALTA President Richard H. Howlett, who was panel moderator.

## Landmark ALTA Seminar Dispels Misconceptions

On a rainy September morning, 1975-76 ALTA President Richard H. Howlett stood before an audience of federal personnel and others in an Washington, D.C., hotel meeting room. He was about to open a landmark ALTA seminar designed to improve understanding of the land title industry.

"It is our opinion that the generalities that have arisen about the title evidencing and title insurance industry have led to some wrong conclusions," President Howlett told the assembled group that included Congressional staff, federal agency personnel, news media representatives and staff from other real estate industry associations. "Therefore, I would like to suggest that this is a program to give you information about the title insurance industry and the title evidencing industry—to explain what we are all

about. Maybe we can do away with some of the misconceptions."

What followed was a well-organized, half-day program that accomplished just that in meeting the objectives of the ALTA Government Relations Committee, which developed the seminar event.

Those in attendance heard an address by 1975-76 ALTA Title Insurance and Underwriters Section Chairman C.J. McConville on the purpose of title insurance; witnessed a slide presentation on title company operations, which was narrated by 1975-76 ALTA President-Elect Philip D. McCulloch; heard about land title evidencing and insuring in the national capital area from Samuel R. Gillman, chairman of the District of Columbia & Metropolitan Area Land Title Association, and were told about the inadequacies of the Torrens System in

Massachusetts by Bruce H. Zeiser, Boston, a member of the ALTA Federal Legislative Action Committee.

Then came a well-received panel presentation where guest members asked consumer questions of land title industry representatives. Serving as questioners were Robert Kuttner, a staff member of the Senate Banking Committee chaired by Senator William Proxmire (D-Wis.); Benny L. Kass, a Washington, D.C., attorney, who has testified as a consumer advocate at Congressional hearings; Robert F. Hollister, chief, Home Mortgage Section, Office of General Counsel, Department of Housing and Urban Development, and John B. Willmann, real estate editor, *Washington Post*. Responding to the questions as panelists were President-Elect McCulloch, Chairman McConville, Chairman Gillman, ALTA Standard Title Insurance





Land title industry representatives on the seminar panel were from left 1975-76 ALTA Title Insurance and Underwriters Section Chairman C.J. McConville; 1975-76 ALTA President-Elect Philip D. McCulloch; Samuel R. Gillman, chairman of the District of Columbia & Metropolitan Area Land Title Association Underwriters Section; John Hall of San Francisco, and ALTA Standard Title Insurance Forms Committee Chairman Marvin C. Bowling, Jr.

Forms Committee Chairman Marvin C. Bowling, Jr., and John Hall of San Francisco. President Howlett served as panel moderator and also referred individual questions to appropriate members of the land title industry in the audience.

There was a period for questions from the audience following the panel presentation. Then the seminar closed with lunch, where those in attendance received copies of "white papers" developed by the Government Relations Committee on important land title industry topics. These include:

- The nature of and need for title insurance services
- The importance of title insurance in the availability of mortgage funds and in the development of the secondary mortgage market
- The benefits of title insurance
- Popular misconceptions of the title industry
- The Torrens System

Seminar speakers dealt with a wide range of subject matter in their talks. For example, Chairman McConville addressed the question of why land titles cannot be transferred as simply as automobile titles.

Chairman McConville explained that common law always has recognized there is "something unique about this

product (land), and built up certain safeguards to protect interests in real estate."

Land, he went on to say, has different dimensions:

- length and width
- depth, or the minerals below the land or in the air space above it
- time, meaning it can be owned forever, fee simple title, or for a limited period
- quality, it can be owned by one person or jointly with others

The dimensional aspects of land do not apply to automobiles, which waste away, Chairman McConville added. He cited some of the limitations inherent in an examination of title and illustrated them through anonymous case histories. He concluded that, because of these limitations, title insurance came into being.

Chairman McConville enumerated the three basic ways in which title insurance differs from other types of insurance. He pointed out that title insurance guarantees against problems of the past instead of the future; that a title policy is issued only after a careful search of public records, and that there is only one premium payment—this at closing.

In summation, Chairman McConville said the purpose of title insurance

is to provide peace of mind and protection against loss of real estate. Title insurance makes closings faster and is instrumental in getting funds to flow from capital-rich areas to capital-poor areas, he said.

"In D.C. you really can't do a title without a title plant," said Chairman Gillman at the beginning of his talk—in which he outlined problems of searching a land title in the District.

He pointed out there is no marketable title statute there. This means that in D.C. it is necessary to search title back to 1792, the founding date. Title records in the District are so scattered, Gillman joked, that "you have to get a Honda or bicycle to make your rounds to do a title."

"On top of everything else," he continued, "you have the problem of the budget." Budgetary cutbacks took their toll on the number of employees in the local government offices which means it takes remaining employees longer to do their jobs. As an example, Chairman Gillman pointed out it takes three to four months for a land survey to be completed.

Court records in the District of Columbia prior to five years back are stored in Suitland, Maryland, and there are frequently problems in procuring the correct records when you order them, he said.

"There is no being clause in any conveyance. In some parts of the country you say 'being that property in deed, dated and recorded in library and folio,' or 'being that property willed by a certain will book and page'. None of that is here in the District so in running the grantor-grantee indices, if you run into a name that has changed, or the particular original grantor is deceased, you will just have a gap in your title," Chairman Gillman said.

"We have another very peculiar situation in the District of Columbia. Water is a lien on real estate." Chairman Gillman explained that it can take six months to a year to obtain a water bill from the District of Columbia.

"Now bear in mind, since we have to collect this, it's a lien on real estate. We have to collect this from the seller until the bill comes in. Now every day we have a call from some irate seller



or the broker, giving us holy heck about keeping his money. Well, we can't pay the bill until we get it," Chairman Gillman said.

Speaker Zeiser, who is a representative in the Massachusetts state legislature as well as a titleman, outlined nine steps followed to register an uncontested case in the land court under Torrens in Massachusetts:

- The petitioner who wants to get his land registered hires a lawyer and registered land surveyor. The former prepares his petition, lists all encumbrances and gets tax and assessment information and the latter makes a full instrument survey of the property to be registered.
- The attorney files the petition and plan made by the registered land surveyor in the land court. He lists the encumbrances and gives the tax information and assessment information.
- A land court examiner examines the title and makes a full abstract of title, then writes a narrative of the title. Both are filed as abstract and narrative.
- Notice is given to all abutters, to all interested parties, to anyone who appears from the abstract or narrative to have an interest in the title.
- The court personnel, after reading the abstract, will determine what is necessary for the petitioner to sustain the burden of proof.
- The judge reads the abstract and narrative and prepares a preliminary decree.
- All the papers and the land survey filed in step one go to the engineering department, which requires preparation of a land court plan subsequent to which the case goes back to the law side of the land court.
- The final decree is prepared and the accounting is done.
- The papers go to the equivalent of the county recorder, where the Torrens certificate is prepared.

Limitations of the Torrens System, according to Zeiser, are time and money. The average uncontested residential transaction costs \$2,000 under Torrens in Massachusetts and it takes 12 to 15 months to complete registration from the time of petition.

Another major disadvantage to

Torrens coverage are the exceptions in coverage, Zeiser said. They are statutory exemptions which do not show in the duplicate owner's certificate. As exceptions, he named a variety of federal liens.

Zeiser said in Massachusetts the title insurance fund in the state treasury totals \$346,822.14. "I look at a number of title insurers here and I wonder how many of you would be able to sell policies to your customers if you had to say that your total capital surplus and reserves available for the payment of claims was only \$346,000," Zeiser remarked.

"In the Torrens System what can happen is, if the state gets into some trouble (and those of you who may have been reading the newspapers may know that in the last year, Massachusetts was within one week of bankruptcy three times), funds of this kind may not always remain available for the payment of claims," Zeiser said. He pointed out that the state government probably would transfer funds where they are needed—leaving the title insurance fund, among others, depleted.

Between 5 and 10 per cent of the land in Massachusetts is registered

under Torrens today, Zeiser said. "If we didn't have the land court we would have something else," he added. "Some of its functions would of course be performed by other courts in the Commonwealth but every state needs a procedure for a judicial clearance of title. Ours is necessary. It is necessary probably in every state because there are titles that either examiners or title insurance companies cannot insure. But to conclude that it would be advantageous to the consumer to mandate a total requirement of land registration, I think would be throwing the baby out with the dish water and would be extremely counterproductive when you got down the road."

He said that where private industry is doing a creditable job, the government should not compete with private enterprise to perform the title evidencing function. "I am convinced that the proper role of government is to regulate rather than to compete," Zeiser declared.

A report on the consumer panel, conducted in a "Meet the Press" format, is in a separate story of this *Title News* issue.



Consumer panelists at the ALTA government seminar are from left, Robert Kuttner, staff member of the Senate Banking Committee chaired by Senator William Proxmire (D-Wis.); Benny L. Kass, a District of Columbia attorney, who has testified as a consumer advocate at Congressional hearings; Robert F. Hollister, chief, Home Mortgage Section, Office of the General Counsel, Department of Housing and Urban Development, and John B. Willmann, real estate editor for the *Washington Post*.



## ***Title Recordation Research Program Under RESPA Among Topics***

# **Titlemen, HUD Staff Member To Address ASP-ACSM Meeting**

Plans for the Department of Housing and Urban Development land title recordation research program, under requirements of Section 13 of the Real Estate Settlement Procedures Act (RESPA), will be one of the topics at the 1977 convention of the American Society of Photogrammetry and American Congress on Surveying and Mapping. Discussing the subject during the February 27-March 5 meeting at the Washington, D.C., Hilton will be HUD Policy Analyst Gilmer Blankespoor of the Policy and Development Division.

At the same convention, two prominent titlemen will speak during a Thursday afternoon session focusing on parcel conveyance in a land data system. They are Thomas E. Horak, chairman of the ALTA Committee on Improvement of Land Title Records and vice president, Commonwealth Land Title Insurance Company, and James H. Vorhies, vice president and director of SAFECO Title Insurance Company's data processing department.

"Time for Common Sense" will be the title of Chairman Horak's presen-

tation. Vorhies will talk on the subject of computerized land records system.

According to James Stem, ASP-ACSM convention program committee member, theme for the program is "Modern Land Data Systems—A National Objective." In keeping with the theme, the first joint session is entitled, "Land Data System—(A Cadastre, A Simultaneous Solution to Three National Problems)".

The three problems referred to are land conveyancing, accurate and current property assessment and intelligent planning and resource inventory, Stem said. An individual paper will be presented on each problem.

An academician well known in the field of land records systems, Kenneth Dueker, director of the Institute of Urban and Regional Research at the University of Iowa, is scheduled to address the convention on land conveyancing.

A single paper will be presented on each of two solutions proposed by their authors as common solutions to the aforementioned three problems. The solutions as outlined in the papers

will be geoprocessing and data base integration.

In general, the ASP-ACSM sessions will cover recent applications and advances in remote sensing and interpretation; photogrammetric control and land surveys; photography and cartography.

Another feature of the 2½-day meeting will be displays in which some 100 commercial, government and university exhibitors will show the latest developments in instrumentation, service, and supplies related to photogrammetry, surveying, mapping, photographic sensors, graphic arts, photo-interpretation, data collection and processing.

Other participating societies besides ALTA include the American Bar Association, the National Association of Counties, International Association of Assessing Officers and Urban Regional Information System Association.

Program and registration information may be obtained by contacting Sherrill Snellgrove, ACSM Program Chairman, 812 Carter Road, Rockville, Maryland, 20852.



# Part IV: ALTA Judiciary Committee Report

(Editor's note: Members of the ALTA Judiciary Committee have submitted over 400 cases to 1975 Chairman John S. Osborn, Jr., of the Louisville law firm of Tarrant, Combs, & Bullitt, for consideration in the preparation of the 1976 Committee report. 1975 Committee Chairman Osborn reports that 64 cases have been selected for publication in this year's report. For Parts I, II and III of the report, please see the May, August and October editions of *Title News*.)

## TITLE INSURANCE (continued)

*Lincoln Sav. & Loan Assn. v. Title Ins. & Trust Co.*, 46 Cal. App. 3d 493 (Cal. 1975)

Plaintiff, Savings and Loan Association made two loans secured by deeds of trust on two lots. The Defendant, Title Insurer, insured the plaintiff with respect to those trust deeds and subsequently insured the plaintiff as owner of the two lots when it acquired the title to those lots by trustee's deeds following foreclosure. All four policies contained Conditions and Stipulations sub-paragraph 3(c) which provides, in relevant part, "This Policy does not insure against loss or damage by reason of the following:

"(c) . . . Title to streets, roads, avenues, lanes, ways, or waterways on which such land abuts, . . . or any rights or easements therein . . . except that if the land abuts upon one or more physically open streets or highways this policy insures the ordinary rights of abutting owners for access to one of such streets or highways, unless otherwise excepted or excluded herein."

All four policies and both preliminary title reports reflected certain deed restrictions relating to adjoining strips of land which afforded access to the subject lots from Amalfi Drive, the only physically open street in the immediate vicinity of the subject lots. These strips lay in another subdivi-

sion and an appellate court, in another decision, had affirmed an injunction against plaintiff's use of the strips as a driveway to Amalfi Drive. Plaintiff thereafter instituted this action to recover from the defendant its loss resulting from the alleged loss of access together with the costs of its unsuccessful litigation to obtain access to Amalfi Drive for the subject lots. Plaintiff's action was based, solely and exclusively, upon sub-paragraph 3(c) of the Conditions and Stipulations.

The appellate court affirmed a summary judgment in favor of the defendant as to two of the policies and a judgment on the pleadings in favor of the defendant as to the other policies. The Court did not reach the issue whether the concluding phrase of sub-paragraph 3(c) "unless otherwise excepted or excluded herein," excluded the plaintiff's loss from coverage by any of the policies in view of the deed restrictions that were shown as specific exceptions.

The Court held that the exception in sub-paragraph 3(c), entirely apart from the limitation therein embodied, did not cover the loss plaintiff suffered. An abutting owner's right of access to a public street consists of an easement in the street itself to the convenient use thereof and in a right of direct and reasonable ingress to and egress from the abutting land to the street. These rights are essentially only to the use of the street and are not rights to the use of the land abutting the street, aside from a right to cross the boundary common to the land and to the street to get from one to the other. However, such rights do not extend onto the abutting land beyond the common boundary. This being so, these rights were neither substantially impaired nor destroyed by the enforcement of the deed restrictions which extend upon the abutting land only to the common boundary between it and the street, and not beyond.

*Fohn v. Title Insurance Corporation of St. Louis*, 529 S.W.2d 1 (Mo. 1975)

The Plaintiffs purchased land in Camden County, Missouri, from non-resident sellers, securing a warranty deed and paying \$6,400.00. Thereafter, they applied for title insurance which was issued for \$20,000.00

on the 24.76 acres and began development. At the time of purchase, there were two signs on the property, one advertising Bridal Cave, and the other Don's Boat Dock. After work commenced, a Bridal Cave representative informed the plaintiffs they had title to a portion of the land so insured and filed an injunction.

The Plaintiffs notified the insurer who failed to respond. Fohn's retained counsel and litigated the claim of Bridal Cave and lost a .52 acre triangular portion of the tract which had extensive frontage on State Highway No. 5. The Plaintiffs then filed suit against the insurer for \$20,000.00 with interest, \$2,000.00 for vexatious refusal to pay, and attorney fees of \$6,200.00 (\$1,200 in the losing effort to defend their title, and \$5,000.00 in the present action).

The trial court, without a jury, found in favor of the plaintiffs on all the issues and granted the relief prayed for on appeal reversed only as to interest.

a) The fact that the plaintiffs did not rely on the defendant's policy in making their purchase is irrelevant. A present owner who insures his own title, which subsequently proves to be defective, although in fact he has lost nothing because he never did have the interest he supposes he had, may recover for the loss of what he supposedly had. . . .

b) The conditions excluding coverage for known defects, etc. did not include knowledge that there were signs on the real estate where there was a proliferation of signs abounding on the property.

c) The measure of damages is the difference in the value of the whole with and without the lost acreage.

d) Ten per cent penalty and reasonable attorney's fees can be recovered from a title insurance company for vexatious refusal to pay, the Court referring to the fact that the insurer totally abandoned the insured.

*Freeman v. Chicago Title & Trust Co.*, 505 F.2d 527 (Ill. 1974)

The Plaintiff sued for treble damages, alleging the Defendant's practice of allowing prompt payment discounts to financial institutions placing orders for title insurance at the behest of customers such as the Plaintiff was violative of Section 2(c) of the Clayton



Act as amended by the Robinson-Pattman Act. The Clayton Act provides that payment of such compensation is illegal "...except for services rendered in connection with the sale or purchase of goods, wares, or merchandise..." The Plaintiff argued that the prohibition applied to this situation.

The Court held, however, that the prohibition applied to sales of tangibles only, not intangibles such as was the case here. Against the Plaintiff's theory that a title policy and title report are tangible goods, the Court found that the essential part of the transaction was the service of searching title; the documents necessary to show and insure title were incidental.

The Plaintiff also argued that Section 2(b) of the McCarran Act operated to subject insurance companies to the provision of the Clayton Act. The amendment to McCarran did not more than recognize the extent

to which the anti-trust laws were applicable to the insurance industry as a result of *United States v. South-Eastern Underwriters*. No congressional intent to provide a greater extension could be found.

## USURY

*Fletcher v. Tuscaloosa Federal Savings and Loan Association*, So.2d

This case before the Alabama Supreme Court relates to real estate mortgage loans in an amount greater than \$2,000.00 and less than \$100,000.00. The parties stipulated the facts to the effect that the interest rate on a mortgage loan in the amount of \$11,600.00 with interest at the rate of 9% exceeded the interest rate allowed by Title 9, Section 60, of the Code of Alabama, revised 1958.

The question that this case answered was

whether the Legislature intended that Title 5, Section 316, et seq. (called the Mini Code) repealed those portions of Title 9, Section 60, et seq. which provide that "the rate of interest by written contract is not to exceed eight dollars upon one hundred dollars for one year, i.e. a maximum interest rate of 8%."

The Court held that real estate mortgage loans were expressly within the regulatory purview of the Mini Code and hence the 8% interest ceiling no longer applied. The Court took judicial notice of the fact that the Mini Code was passed by the Legislature at a time when interest rates on the national money market had already exceeded those of Alabama's usury law, thus making Alabama a "borrower" state. In order for there to be a continuing supply of mortgage money available for in-state borrowers, the Court held that the Legislature intended, by adoption of the Mini Code, to "repeal by implication" Title 9, Section 60 inasmuch as Title 9, Section 60 and the Mini Code are inconsistent, hence the latter repeals the former.

## WATER AND WATER COURSES

*Department of Natural Resources v. Mayor and Council of Ocean City*, 332 A.2d 630, 274 Md. 1 (Maryland 1975)

This case raises for the first time the extent of the rights which neighboring owners and members of the public may respectively have in the littoral at Ocean City, Maryland, i.e., that portion of the beach which lies west of the mean high water mark of the Atlantic Ocean.

The owner of land lying generally to the rear of ocean front property brought an action to enjoin the construction of a condominium project on the ocean front property. The State was permitted to intervene as a party plaintiff.

The land owner's complaint was grounded on the contention that it, along with the general public, had acquired an easement by implied dedication, prescription, or custom, permitting use, as a public beach, of the area between the mean low water mark on the east and the line of vegetation on the west, and particularly the dry sand area lying between the Davenport's lot line on the east and the line of vegetation on the west. It was contended that the building to be erected would have its eastern front at the Ocean City building limit line and would be almost entirely to the east of the dune line, which is generally the same as the line of vegetation. As a result, the dry sand beach would be narrowed and might at times be covered by wave action, thus effectively denying the public use of the beach.

The Court of Appeals held that the evidence failed to establish that the dry sand area of the tract between the mean high-water mark and the vegetation line had been dedicated to the public or that the public had acquired the right to use this area through prescriptive use; that even if the Charter of Maryland contemplated the right of the public to carry on certain activities



The former Aristar Building in Miami, Fla., now houses the American Title Insurance Co. home office staff and its Greater Miami Division—and has been renamed the American Title Building. The move represents the first of two for the company in Miami. The 150 Southeast Third Avenue office—formerly headquarters—will be remodeled and occupied by American's Miami Title and Abstract Division.



on the littoral, so long as there was no significant interference with the owner's rights, that precluding the owner from constructing a condominium would interfere with the owner's rights, and that inundation of a tract during a storm does not cause the title to the flooded lands to revert to the State.

*Department of Natural Resources v. Cropper*, 332 A.2d 644, 274 Md. 25 (Maryland 1975)

Issues were the same as the previous case and decision the same.

*Phillips v. State of Delaware*, 330 A.2d 136 (Delaware 1974)

This was an Action by the State to establish its title to a tract of beach land located along the Ocean between Bethany Beach and Fenwick Island in Sussex County.

Held: The territory granted to William Penn by the Duke of York in 1682 and held by Penn by estoppel, by virtue of letters of patent issued by Charles II to the Duke of York in 1683, was held by Penn and his heirs in a dual capacity, as owners and governors, with their title to the land being inextricably related to their power to govern and, thus, title to those portions of the land which had not been conveyed away by Penn or his heirs prior to 1776 passed from the heirs to the State of Delaware by sovereign succession when the Penn governmental powers ended in 1776.

## WILLS

*Estate of Ghiglia*, 42 Cal. App. 3d 433 (Cal. 1974)

A testamentary gift to "all" the testator's grandchildren violated the rule against perpetuities where, under the terms of the Will, the surrounding circumstances, and the state of things at his death, it appeared that he intended to include grandchildren born after his death, and there was a possibility that the testator's living children could have a child who might not reach the age of 35, set in the will for receiving the gift, within 21 years after its parent's death. However, it was also concluded that had the testator been faced with the realization that by postponing the vesting to age 35 of the youngest grandchild the trust would be invalidated he would have chosen to have the vesting take place at age 21. Accordingly, the trial court was directed to exercise its powers, pursuant to Statute, to reform the will to call for distribution on attainment of 21 of the youngest grandchild.

*Spicer v. Wright*, 215 Va. 520, 211 S.E.2d 79 (Va. 1975)

In this case the Virginia Supreme Court was called on to interpret a will provision as follows: "My estate of every kind and description . . . I give to my sister . . . to be disposed of as already agreed between us."

The Court found such language to be precatory and that extrinsic evidence was insufficient to render the language imperative or to establish a testamentary intent to impose a legal obligation to make a particular disposition or to create an express trust, and

that it constituted an absolute testamentary grant.

*Jones v. Endslow*, 328 A.2d 339, 23 Md. App. 578 (Md. 1974)

A Testator who died in 1963, owning real property and personally devising all of his property to his oldest son, D. T. A., "for life, the income therefrom to be paid into his hands and not into the hands of another." The Will also contained provisions by which fractional interests in all of the property of the decedent were devised to four individuals upon the death of his oldest son. A trustee was not named in the Will.

With the closing of the administration of the personal estate, a petition was filed in the Circuit Court by the four remaindermen, which prayed for the appointment of a trustee to administer the "Spendthrift Trust" which was created by the Will. The Court appointed a trustee who administered the trust for several years and then was permitted to resign pursuant to a petition filed in the Circuit Court. Simultaneously, pursuant to a petition filed by the same original petitioners, a substitute was appointed by the Court to act as Trustee of the Spendthrift Trust. Subsequently, the Trustee entered into a contract for the sale of the real estate which occasioned a bill filed by one of the remaindermen in which it was prayed that the sale be enjoined contending that the Trustee executed his authority in selling the property.


The Court held that the testator did create a trust of all of his property, for the life of his son, subject to the restrictions upon voluntary or involuntary alienation and upon anticipation by the beneficiary, which are associated with what is commonly

known as a Spendthrift Trust. The equitable title thus restricted is in the beneficiary for his life. With respect to the real property, the Trustee holds legal title to the life estate only and has no power to sell the fee simple because he does not have title to the fee simple interest and his attempt to sell is a nullity.

*Nakoneczny Estate*, 456 Pa. 320, 319 A.2d 893 (Pa. 1974)

Testator devised certain described real estate to his son, but between the time of the execution of the will and two codicils thereto, the property had been acquired by a redevelopment authority and the proceeds used by the testator to purchase certain bonds which were in his possession at his death. The son appealed from the dismissal of his exceptions to an adjudication filed dismissing claims against the estate and directing entry of a decree of distribution.


Held: The Court considered at length the issue of whether the devise of realty was specific and therefore adeemed. It concluded that, since the gift was of a specific parcel which was identified and distinguished from all other parcels and could be satisfied only by delivery of the particular parcel of property, the devise was specific rather than demonstrative, and was adeemed by virtue of the non-existence of the described real estate at the time of the testator's death. The son was thus not entitled to the proceeds received upon sale of the property to the re-development authority, the Court citing the well-established principle that a specific legacy or devise is extinguished if the property is not in existence or does not belong to the testator at the time of his death.



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## Freedman New NYLTA President

Lee B. Freedman, state counsel of Lawyers Title Insurance Company, was elected president of the New York Land Title Association at its 1976 annual convention in Liberty.

Recently-elected vice presidents for the southern, central and western sections respectively, are Richard Marcus of Commonwealth Land Title Insurance Company; John J. Yanas of Casey, Yanas and Mitchell, Esqs., Albany, and Anthony J. Brindisi of Rochester Abstract Corporation.

Elected treasurer at the August 16-19 gathering was Michael A. Lewis of the Title Guarantee Company, New York City.



FREEDMAN



SCHWARTZ



SHEETZ



WHITELAW



JEFFRIES

**Bernard L. Schwartz** was appointed to the Commonwealth Land Title Insurance Company Board of Directors. He is chairman of the board and president of Loral Corporation, which is headquartered in New York City.

**William R. Whitelaw, Jr.**, of West Chester, Pa., was promoted to the position of Commonwealth vice president. He has been with the company 13 years.

\*\*\*

**James Sheetz**, senior vice president and treasurer of Commonwealth Land Title Insurance Company, has been elected a national director of the Financial Executives Institute. In this capacity he will play a leading role in FEI activities throughout the eastern area.

\*\*\*

Pioneer National Title Insurance has announced the appointment of division counsels. They are Roger Blauvelt in the Northeast Division and **James J. Mooney** in the Central Atlantic Division.

The company's newly opened Charlotte, N.C., office will be headed by **William T. Jeffries**. Prior to joining PNTI, he was a practicing attorney in a Charlotte firm. The Charlotte office is the company's first in North Carolina.

\*\*\*

**John R. Johnson** was elected manager of the Macon, Ga., branch office of Lawyers Title Insurance Corporation. Before joining LTIC in March, he was in private law practice in Jesup, Ga.

\*\*\*

**Albert E. Saunders, Jr.**, was promoted to associate general counsel by Phoenix Mutual Life Insurance Company. An associate ALTA member, the West Hartford, Conn., resident joined Phoenix Mutual in 1937.

\*\*\*

St. Paul Title Insurance Corporation has established formal operations in Texas with the appointment of **Lynn E. Nicholson** as regional general manager and state counsel for the southwest region. Nicholson has offices in Dallas.

In Florida, St. Paul Title has opened an office in Clearwater.

**Rodney A. Bailey**, southeast region general manager, has relocated to the Tampa-Clearwater area and will continue as the administrative head for the Atlanta-based southeast region.

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An important highlight of the ALTA federal seminar in September was a panel where guest members asked consumer questions of land title industry representatives.

Panel moderator was 1975-76 ALTA President Richard H. Howlett, who directed questions to panel members or titlemen in the audience.

Questioners were Robert Kuttner, professional staff member of the Senate Committee on Banking, Housing and Urban Affairs; Benny L. Kass, a Washington attorney and consumer advocate; Robert F. Hollister, chief of the Home Mortgage Section, Office of General Counsel, Department of Housing and Urban Development, and John B. Willmann, real estate editor of the *Washington Post*.

Land title industry representatives who served on the panel were C.J. McConville, 1975-76 ALTA Title Insurance and Underwriters Section chairman; Samuel R. Gillman, chairman of the District of Columbia & Metropolitan Area Land Title Association Underwriters Section; 1975-76 ALTA President-Elect Philip D. McCulloch; ALTA Standard Title Insurance Forms Committee Chairman Marvin C. Bowling, Jr., and John Hall of San Francisco.

Here are some highlights of the question-and-answer exchanges.

In the lead-off question, Kuttner stated there are countries older than the United States that do not have title insurance and asked whether the title industry is needed in this country.

Chairman McConville answered that, while improvements in our present land transfer system may be possible, the need for title insurance in this country will remain.

"We would rather have a simplified system," Chairman McConville said. "But you are not going to do away with the need for people—professionals, experts—who are going to have to make a determination of the rights that exist in a piece of property."

Kass wanted to know why the home buyer should get owner's title coverage beyond lender's title insurance and why owner's coverage is more limited than lender's title insurance.

Chairman Bowling answered that there are buyer-related defects in title that will not hamper or impair the

## **Panelists, Audience Engage In Dialogue At ALTA Seminar**

### ***Title Industry Representatives Field Consumer Questions From Audience, Panel***



right of the lender to recover his loan money.

"For example, there may be overlaps in description, there may be encroachments by hedges and fences and easements, and tax bills; this sort of thing will not in any way hamper the lender as he forecloses because there is equity in the property," Chairman Bowling explained.

"As far as the owner is concerned, as soon as there is an encroachment or unpaid tax bill, or any problem whatsoever, the title company must step in and settle it," he added.

Hollister asked about what he described as a delay in giving title evidence in certain locales in transactions involving HUD. He said HUD has had to grant extensions of time in such cases, which causes additional expense to the agency since it has to pay insurance benefits and debenture interest during the wait.

Industry respondents said they would check into the problem in areas concerned.

"Why can't the prospective buyer ask at settlement if the owner has a certificate of clear title?" Willmann asked.

"It seems to me that the clear title certificate could be defined as an owner's policy. And one of the things our industry does is to encourage

but not mandate to people that they purchase an owner's title insurance policy," Zeiser answered.

Hall added that Willmann's question emphasizes the reason for title insurance. "No seller, warranties or not, could give a clear title that a buyer or lender is willing to rely on," Hall said.

Kass asked why an owner's title policy cannot be transferred so the new purchaser can obtain that policy for a lower cost.

Chairman McConville explained that a search must be conducted from the issuance of the last policy to the current date before a new policy can be issued. Even if the property was transferred as recently as two years ago, the search still covers all of the same records checked in the initial examination, he added.

"In our particular part of the United States (Minnesota), there is a 40 per cent reduction in the premium charge and in the search charge when we have a new owner coming into title where the previous owner was insured," Chairman McConville stated.

After the panel period ended, President Howlett opened the discussion to questions from the audience.

First to make his way to the floor microphone was Martin Loebel, D.C. attorney and former staff member of

Senator William Proxmire (D-Wis) as well as a frequent critic of the land title industry. He asked why ALTA opposes Senator Proxmire's legislative proposal which would require federally related lenders to pay for the title evidence and title insurance of home buyers in related transactions.

Hall responded that there are many questions surrounding the lender pay issue which should receive extensive study before the proposal is considered further. These questions go to the structure of other industries such as mortgage lending, and perhaps even the public sector, to the government insured areas, he said.

Hall asked, if the lender pays the cost of a title search and insurance, how will it affect the price of housing. Banks and savings and loans could try to recover their costs in this area prior to resale of the house by raising the monthly house payments, he said.

Title insurers do not want government regulation of the industry to require that banks and savings and loan institutions pay their premiums, Hall stated.

President Howlett added that the questions of lender pay and seller pay have not yet been addressed in ALTA white papers for similar reasons. "There are questions of how it's to be handled, who ultimately ends up



During the seminar, Veterans Administration Assistant Director for Loan Policy Meyer Bronstein uses the floor microphone to question the consumer panel about any reductions in title company charges

since the Real Estate Settlement Procedures Act became law and began its prohibition of kickbacks.



paying more than he otherwise would have paid, things like that, that haven't been thoroughly studied," he said.

The last question from the floor came from Meyer Bronstein, assistant director for loan policy, Veterans

Administration, who asked if—in view of the ceasing of payment of kickbacks in the title business as a result of prohibition under the Real Estate Settlement Procedures Act—title companies had reduced their charges to consumers. President Howlett replied there was an assumption because of isolated problems that kickbacks were prevalent in the title industry—when this is factually incorrect.

To the extent there was any overpayment for services, this practice has disappeared, President Howlett said. The result has been to permit the legitimate payment of fees in efficient operations. President Howlett continued, "Where there has been some overpayment, it has been compensated for by the fact that we have not had to increase our rates for the additional coverages or the additional services to meet our rising costs—as everybody else is in inflation."



ALTA Board of Governors member John E. Jensen answers a question regarding what Robert F. Hollister, chief of HUD Home Mortgage Section, termed a delay in giving title evidence in certain locales where HUD transactions are concerned. Besides the ALTA panel, title industry representatives were called upon to answer questions from the audience.



Rehearsal for the ALTA government seminar was held the preceding afternoon. Shown during the practice session, from left, are ALTA Executive Vice President William J. McAuliffe, Jr. conferring with William T. Finley, Jr. of the Washington, D.C. law firm of Sharon Pierson Semmes Crolius and Finley, and Bruce H. Zeiser, ALTA Federal Legislative Action Committee member, who presented a speech on the Torrens System. ALTA Business Manager David McLaughlin is pictured in the background.

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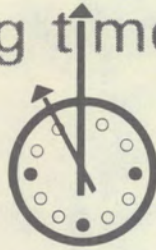
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## meeting timetable



**November 14-18, 1976**  
National Association of Realtors  
Houston, Texas

**November 14-19, 1976**  
United States League of Savings Associations  
New York, New York

**December 1, 1976**  
Louisiana Land Title Association  
New Orleans, Louisiana

### 1977

**February 27-March 5, 1977**  
American Society of Photogrammetry –  
American Congress of Surveying and Mapping  
Annual Convention  
(Theme: "Modern Land Data Systems –  
A National Objective")  
Washington Hilton  
Washington, D.C.

**March 2-4, 1977**  
ALTA Mid-Winter Conference  
South Coast Plaza  
Costa Mesa, California

**April 14-16, 1977**  
Oklahoma Land Title Association  
Skirvin Plaza  
Oklahoma City, Oklahoma

**May 5-8, 1977**  
Texas Land Title Association  
St. Anthony Hotel  
San Antonio, Texas

**May 12-14, 1977**  
New Mexico Land Title Association  
Four Seasons  
Albuquerque, New Mexico

**May 22-24, 1977**  
New Jersey Land Title  
Insurance Association  
Seaview County Club  
Absecon, New Jersey

**July 28-30, 1977**  
Colorado, Idaho, Utah and Wyoming  
Land Title Associations  
Jackson, Wyoming

**October 12-15, 1977**  
ALTA Annual Convention  
Washington Hilton  
Washington, D.C.

## ALTA'S McConville Installs Minnesota's New Officers

L.L. Thyen, vice president of the Dakota County Abstract Company, Hastings, was elected president of the Minnesota Land Title Association at the group's annual convention held September 9-11 at Brainerd.

Elected vice president was Henry Whiteman of Fairmont. A.L. Winczewski was re-elected secretary treasurer; he is president of the Winona County Abstract Company. D.P. Waddick, vice president of the Title Insurance Company of Minnesota, Minneapolis, was elected to a three year term on the board of directors.

Speaking at the Convention were 1975-76 ALTA President Richard H. Howlett, Ron Gandrud, Martin Sathre and Russ Lowry.

Walter S. Engman of Duluth was awarded an MLTA honorary membership at the meeting.



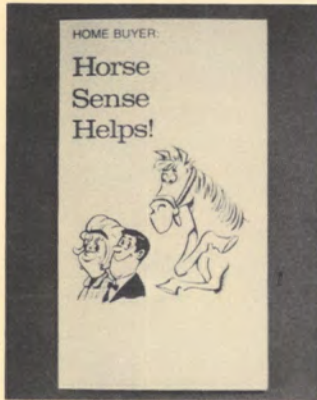
The 1975-76 ALTA Title Insurance and Underwriters Section Chairman C.J. McConville (left) installed newly elected Minnesota Land Title Association officers at the organization's annual convention in Brainerd. Left to right the new state officers are L.L. Thyen, president; Henry Whiteman, vice president, and A.L. Winczewski, secretary treasurer.



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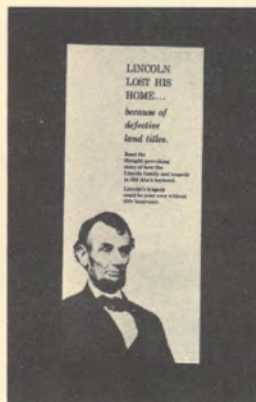
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