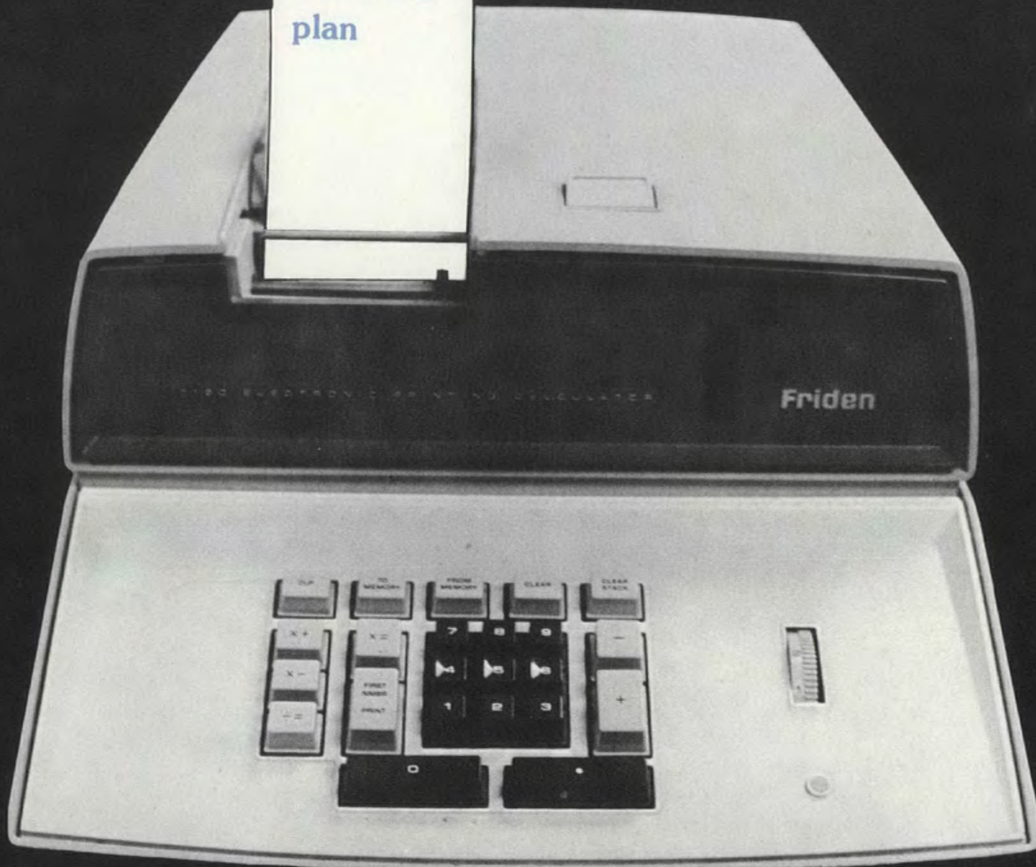
JUNE
1977

Title News

In this issue:

The value of a uniform financial reporting plan



a message from the President-Elect

The reports we receive from all over the country indicate that our members are enjoying the best business year in history. The recently announced statistics showing substantial increases in housing starts and housing permits give evidence that this strong market should continue through the balance of the year. That's the good news. What's the bad news, if any?

We must be aware of certain elements that can dampen the boom. President Carter, in his recent remarks on the energy crisis, indicated that all Americans will be asked to make sacrifices to conserve energy. This can have an impact on the type of housing that is built . . . the additional cost to properly insulate and inspect housing . . . make housing closer to metropolitan areas more attractive and suburban areas less so because of the cost of commuting. And, of course, inflation and higher construction costs have already priced some of our citizens out of the market.

There is a continued effort on the part of conservationists and state governments to restrict construction and development. Some of these limitations are desirable and necessary but unfortunately the tendency of government is to go too far, too fast without considering the consequences that result from some of its actions.

The water shortage in many parts of the country is creating concern not only as far as our agricultural economy is concerned, but also because of the needs of our growing urban communities. President Carter's decision to curtail a number of irrigation projects has caused considerable apprehension in a number of states.

Despite these factors, this should be the best year ever for our industry. Planning for the future is something that all of us must do in our business and the ALTA officers have felt a need for a long-range plan on behalf of the Association as well. As a result, a meeting of the officers of the Association, which comprises the ALTA Long-Range Planning Committee, was held in Chicago on May 9-10. An excellent start toward a meaningful five-year plan was accomplished.

Speaking of the future and planning—it is not too early for you to start making plans to attend the annual convention which will be held in Washington on October 12-15. We have some exciting plans for a Capitol Hill "blitz." Our members will be asked to call on their Congressional delegations on October 11—the day preceeding the convention. I hope you will be a part of that effort as well as enjoying the excellent convention program that is being formulated right now.

Cordially,

C. J. McConville

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Reporting plan examined in conference talk

by Charles L. Coffman, Chairman
ALTA Accounting Committee

Editor's note: The following article is adapted from a commentary delivered at the 1977 ALTA Mid-Winter Conference. Views stated therein are those of the author and do not necessarily reflect the position of any other individual, group or organization. The author is executive vice president of Title Insurance and Trust Co., Los Angeles.

Many of you—particularly agents—are just beginning to get involved in the statistical reporting process now required by several states and may not be aware of the political, statutory and regulatory background which has resulted in the development and implementation of these special financial and statistical reporting requirements of those states. Other states will undoubtedly adopt these or similar requirements in the near future and therefore, I think it is important for each of us to be aware of the background of these requirements in order that we recognize the importance, at least in the short range, of devoting ourselves and cooperating with state regulatory agencies in establishing methods for regulating title insurance rates.

A little understood industry

The title insurance segment of the total insurance industry has historically been so small that it warranted and received only nominal attention from most state regulators. The result has been that state regulators have shown little or no understanding of the business or its problems. On the other hand, the title insurance industry, accustomed to nominal regulation, has been unfamiliar with the far more comprehensive statutory provisions and active regulatory process applicable to other lines of insurance.

In the early 1970's when national attention was focused on the industry by Senator Proxmire and others, there followed a flurry of activity in many states and by the National Association of Insurance Commissioners (NAIC) to demonstrate that, in fact, state regulation was alive and doing its job.

With industry support, new laws regulating title insurance were enacted in several states—Arizona, Ohio and California to name three—while existing statutes were applied in other states. In general, these laws and regulations provided for, among other things, rating plans and *financial and statistical data* appropriate to support and justify rates.

Confusion out of unfamiliarity

Then, as the regulatory process intensified, confusion reigned. The regulators knew little or nothing about the title insurance business and how it was conducted and title insurers knew little or nothing about customary rate regulatory practices as applied to other lines of insurance. Regulators were astounded to find that title insurers had not maintained the customary detailed statistical records of all policies issued, losses paid, etc., which are considered essential to the rate making process for other lines of insurance. Lacking this data, or an appreciation for its need, the industry was hard pressed to explain its rating structure and justify the various rates and could only point to the fact that bottom line profits, generated by the rates, appeared to be neither excessive nor inadequate. However, in the face of accusations that the industry's costs were too high because of inefficiencies and kickbacks, the fact that profits were not out of line has not entirely satisfied our detractors or those responsible for rate regulation.

C.L. Coffman addresses Mid-Winter

As the industry and the state regulators came together, first in Arizona, then in Ohio and Pennsylvania, to try to resolve the questions of a proper rate making process for title insurance, it became painfully apparent that the parties were worlds apart in their thinking and understanding and chances for amicable resolution of the problem seemed impossible. Fortunately, in my opinion, for both the industry and the state regulators an independent third party—Dr. Irving Plotkin of the Arthur D. Little Co.—was available to bridge this void in understanding and bring the parties together.

Two achievements

I won't dwell on the series of events which have taken place over the past five years where Dr. Plotkin and his associate, Dr. Nelson R. Lipshutz, have served both the industry and the regulators in developing a system for measuring title industry profitability and justifying title

insurance rates. It is sufficient to say that from the experience gained over these years, a uniform financial reporting plan and a uniform statistical reporting plan have been developed that have been accepted with minor variations for use in all the states now requiring data to support rate justifications. It is too early to conclude that these systems are final in terms of the regulatory process because that judgment can only be made when a sufficient body of data covering a period of several years is available for study and analysis. However, if these systems accomplished nothing else, they achieved two very important things.

First, their implementation shows that the industry and state regulators are in an active process of determining the proper method for regulating title insurance rates and have thereby given both the industry and the state regulators additional time to complete and perfect the process. However, I must point out that although we have been engaged in this activity for almost five years, not one year of good statistical data has been accumulated anywhere with the exceptions of Ohio and Pennsylvania and special studies done in New York. Our time is beginning to run out.

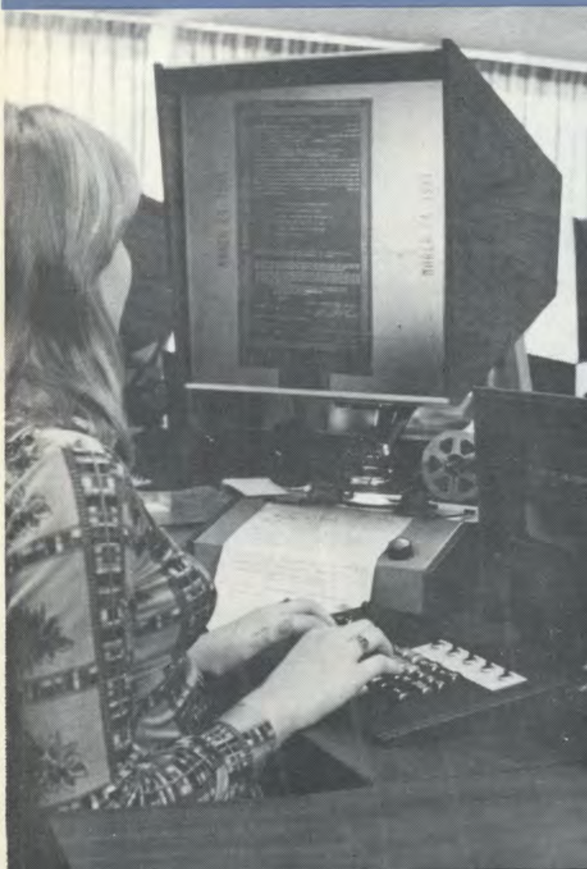
Secondly, the fact that the states are beginning to actively regulate title insurance rates and have a body of data from which to respond to consumers, consumer advocates, politicians and others, demonstrates that state regulation can be effective, which should be an important deterrent to additional federal regulation.

Systems reviewed

I would like to review these systems in more detail so that we can better understand their purpose. With the exception of Texas and California, title insurance agents do not now have a financial reporting requirement. I will nonetheless quickly review the financial reporting system for your information.

The purpose of the system is to establish a uniform method of evaluating the profitability of the title insurance business in each rating jurisdiction, *i.e.* state. Under the system, all income and expenses as well as all assets and liabilities of each company must be fully segregated by state, in order that a profit and loss statement and a balance sheet for each state in which the company does business, results. After that financial data is gathered from all companies and added together, the industry's profit or loss is determined and its rate of return can be measured.

There are various methods of measuring profitability, each of which has support of economic experts. I have neither the time nor the expertise to discuss with you the pros and cons of those various methods. However, Dr. Plotkin has concluded that the insurance industry—including title insurance—is best measured by the method of rate of return on total capital. Not only does this method serve for intra-industry comparisons but also for inter-industry comparisons. While both comparisons are necessary, the latter is particularly important to the title industry because it provides a means of comparing its profitability against that of other



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industries. Recent data prepared by Arthur D. Little, Inc.* shows that on a nationwide basis our rate of return on total capital for six years ending 1975 is 6.7 per cent compared to 10.2 per cent for other industries reported to the Securities and Exchange Commission and the Federal Trade Commission. This provides strong evidence that if we are to retain our ability to compete for the capital needed to maintain and expand our business, something must be done about our bottom line.

Two problems

I cannot pass the subject of financial reporting without comment on two problems which exist. First is the problem of title plant values. Title plants are carried on title company books at a variety of values such as:

- historic cost of construction
- purchase value under purchase method of accounting
- appraised value
- amortized value

It is the general consensus that in the aggregate those "book" values significantly understate the present value of title plants. Understated asset values, when used in the rate of return formula, cause an overstatement of the rate of return. Accordingly, then, the title insurance industry's rate of return may be lower than the figures presently indicate.

The second problem which exists is that, except for one state, the financial data for non-insurer owned title companies is not available for inclusion into this industry analysis. In those states where the title business is handled principally by underwriters, this deficiency may have relatively small impact on the profitability analysis. Conversely, in states where the bulk, if not all, of the title business is handled by title company agents there may be serious problems, because the agents retained portion of premiums, plus search and examination fees and their costs as well as their title plants and other operating assets and liabilities will be excluded from the analysis and thereby distort the results. The states of Texas and California now require certain financial reporting by title insurance agents. This morning you heard Roger L. McNitt, chief deputy insurance commissioner of California, state that further changes would be made in California underwritten title company reporting for 1978. I think that it is reasonable to anticipate that, as other states analyze the industry's financial data, they will require financial reports from title insurance agents.

*Report to the Insurance Department, State of California, and the California Land Title Association dated January 7, 1977.

Now let's look at the statistical system. Prior to last year—except for those companies operating directly in Pennsylvania and Ohio—few of you have had much familiarity with, or concern for the additional workload profitability reporting has placed on your company. However, 1976 was a year of implementation of policy statistics gathering systems in many states including California, Colorado and Oregon. Operating people, burdened for the first time by these new reporting requirements, now recognize the problems of being regulated.

A recurring question

As I indicated in my opening remarks, the question is continuously being asked as to how this statistical data is going to be used, and in view of the cost of obtaining it, is it absolutely necessary? While many questions remain open as to how the state regulators will use the statistical information, I think that it is very clear that first of all both the regulator and the industry must be able to accurately demonstrate the effect of any rate change on consumers and on industry profitability. This cannot accurately be computed without knowledge as to how many of which kinds of policies are sold for what price. Furthermore, the regulation of rates in all other lines of insurance require policy data and from the regulators' viewpoint, title insurance is no exception. Therefore I am certain that, regardless of its ultimate uses, the state regulators in those states now actively regulating title insurance would not have accepted any proposal for a regulatory system which excluded policy data. In addition, the title insurance rating structure differs from other insurance rating structures in that it provides cross-subsidization by purchasers of large policies to purchasers of small policies and by the large number of small policy purchasers to the fewer number of large policy purchasers. How much are these subsidies? Are they fair? Are they justified? No one can answer these questions adequately until a sufficient body of policy statistical data is provided for study. Some state regulators are not convinced at this time that cross-subsidization is justified. Certainly more data is needed and more work and study of this problem is necessary if we are to adequately answer the question. Finally, how can the industry respond effectively to demands for rate decreases as has occurred in at least one state, if it does not have data readily available for use?

This is the age of consumerism and lawsuits. Every title insurer doing business in Colorado was subpoenaed last year to provide policy data for three years. Title insurers in New York last year gathered 10 years of policy data retroactively on which to base their justification for significant rate increases in that state. What were the costs of complying with the Colorado subpoena or gathering the New York data? How many more similar cases will we see in the future? How many hearings, lawsuits, etc. could be avoided if the regulator had a good body of statistical and financial data from which to effectively respond, in the first instance, to questions and inquiries? I don't know, but I am convinced that this statistical data is needed and that the title industry should delay no longer in obtaining it.

The questions that remain are: What statistical data must be gathered and maintained? And what form of reports on this data must be given to the regulator?

Effort thwarted

Together with Arthur D. Little, the industry tried in California to get the commissioner to accept a bare minimum of basic data, namely—date of policy issue, type of policy, *i.e.* owners or lenders, premium amount, liability amount, endorsement premium and property type insured, *i.e.* 1-4

(continued on page 14)

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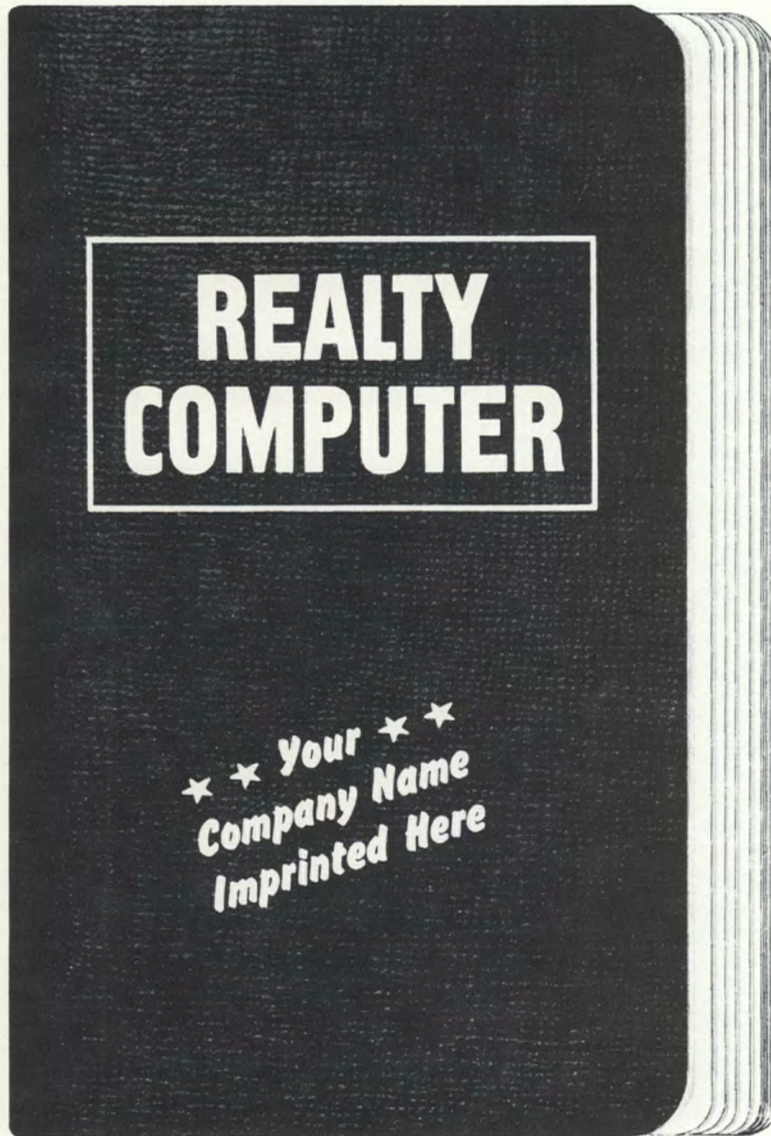

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Editor's note: **This is part one of Chapter Four of *The Title Industry: White Papers, Volume 1.* The remainder of Chapter Four and Chapter Five in its entirety will be reprinted in future issues. Reprints of chapters one, two and three appeared in the February, March and April issues of *Title News.***

Popular misconceptions of the title industry

Misconception

Title insurance charges are unreasonably high because title insurance companies pay out only 3 per cent of their premiums in losses, whereas most other types of insurance companies pay out well over half of their premiums in losses.

Facts

• The fact that losses account for a significantly smaller percentage of revenues in the title insurance industry than in the life or casualty insurance industries should not be surprising. While the sole purpose of life or casualty insurance is *risk assumption* — providing financial compensation for unavoidable and unknown future risks — the *risk elimination* aspects of the services provided by title insurance companies are as important as the risk assumption aspects of title insurance.

In excess of 40 per cent of the operating revenues received by title insurance companies are paid out in salaries and other employee-related expenses for the essential risk elimination purposes of searching and examining a title before a policy is issued and for researching and evaluating complex problems of insurability between the completion of the examination and the issuance of the policy. Not only do the title search and examination and skillful underwriting minimize the losses that otherwise might occur, but they also perform the important function of allowing all of the parties — particularly the buyer and the lender — to know precisely what rights or interests they are acquiring and the risks they may be incurring *before the purchase is consummated.*

Thus, focusing on the losses suffered by the title insurance industry as a way of measuring whether the industry is performing its function effectively is misleading. Rather, the effectiveness of the title insurance industry should be judged, in great measure, by how well these companies are identifying and eliminating title problems for real property owners and lenders before they produce losses. Within the industry itself, high loss ratios frequently indicate that a title insurance company may not be performing its risk elimination functions well.

• No matter how well title insurance companies perform their risk-elimination functions, title losses and related expenses can and do occur. In 1975, for example, title losses and loss adjustment expenses amounted to 9.74 per cent of gross title fees — not the 3 per cent figure that is frequently cited. Moreover, this percentage does not include all of the loss adjustment expenses incurred by title insurance companies — including substantial overhead expenses incurred in the use of management and employee time — in dealing with title claims and losses.

• Finally, the intimation that title insurance companies enjoy unreasonable profits because their loss ratios are unreasonably low is clearly refuted by the facts. In 1975, for example, approximately 99 per cent of the $590.4 million reported revenues of the title insurance industry were expended for operating expenses and losses. This left title insurance companies with a pre-tax operating margin of $6.2 million or 1.1 per cent of gross revenues, and a post-tax margin of $3.2 million or approximately 1/2 of 1 per cent of gross revenues. In contrast, the return on gross revenues realized by the companies that comprise the *Fortune 500* list was 4.3 per cent.

The total after-tax profits of the title insurance industry in 1975 (including operating income and investment and interest income) amounted to $34.9 million on total assets of approximately $1 billion. This represents a return on total assets of approximately 3.41 per cent — well below the average return of 5.6 per cent realized by the *Fortune 500* companies. Whatever else may be said about the loss ratios of the title insurance industry, the one claim that cannot be made is that as a result of the allegedly low loss ratios the industry enjoys an excessive rate of return.

Misconception

Consumers are adversely affected by the fact that rates for title insurance services are based upon the sale price of the property or the amount of the mortgage, rather than on the costs of providing the particular services and the risks assumed.

Facts

It is true that the general rate structure for title insurance services usually bases the charges in a particular transaction on the sale price of the property or the amount of the mortgage. This does not mean, however, that these charges do not reflect the costs and risks of providing the services involved or that consumers are adversely affected by a rate structure of this kind. The very modest after-tax operating margin earned by the title insurance industry (0.5 per cent of gross operating revenue in 1975) and the total return on assets from all forms of income (3.41 per cent in 1975) demonstrate that the rates charged on *all* transactions are just sufficient to cover the costs and losses incurred in providing title insurance services and to provide a minimal return on investment.

It is true, nonetheless, that the rates charged in *any particular transaction* may be greater or lower than the costs of providing the services in that particular transaction. Contrary to the allegation that this type of rate structure works to the detriment of most consumers,

the fact is that it provides significant benefits — including cost savings — to the low and middle income home buyer and provides benefits to society as a whole in ensuring that all parcels of real estate may be transferred at reasonable costs.

First, the type of rate structure utilized by title insurance companies eliminates many of the problems and inequities that would result if charges were determined on the basis of the costs of providing title services in particular transactions. If charges for title search and examination were based on work actually performed in the particular transaction, the home buyer would not know in advance what his total charges would be, since the charges could only be determined after the work was actually performed. This uncertainty would make it very difficult, if not impossible, for a buyer to know the costs of his prospective purchase, and would hinder his ability to comparison shop among providers of title insurance services.

Moreover, many examples exist of the unfairness or inequity that might result if the rates for title services were based on the work actually performed in a particular transaction:

- If a given title were particularly difficult to search, a buyer might be unpleasantly surprised to find that his charges were significantly greater than the charges made to a neighbor who purchased a similarly priced house that had a relatively easy title to search.
- A purchaser of a $100,000 home where tax, probate and marital records and deeds were in good order might end up paying significantly less than the unfortunate purchaser of a $25,000 home in the inner city, which might have a difficult title to search because adequate records were not kept, or because of the existence of intestacies, etc. in the chain of title.

These examples — many others exist — demonstrate the difficulties and possible inequities that would result if charges for title services were based on the work actually done in a particular transaction. Indeed, under such a system, the cost of performing a search or examination on a particularly difficult title that could involve days or weeks of effort might be so high as to render the property unsalable.

Moreover, there is a second type of benefit that lower and middle income home buyers realize under the rate structure utilized by the title insurance industry. Since title insurance charges are based on an averaging of costs for all transactions, the charges made for transactions involving lower priced homes will fall below this average cost whereas the charges made for transactions on higher priced

parcels will be greater than this average cost. This results in a situation whereby buyers of lower-priced homes are, in essence, subsidized by the charges made for higher priced transactions. A 1973 study performed by Arthur D. Little, Inc. on title insurance rates in Pennsylvania demonstrated that title insurance policies written for less than $30,000 of liability are written at a loss and that the reasonable profits derived by title insurance companies come from a relatively small number of large liability policies written on very high value commercial and residential properties.

Thus, eliminating the present sliding scale rate structure in favor of a rate structure based upon the amount of work performed in a particular transaction will eliminate this socially desirable cross-subsidization and can only result in higher, rather than lower, charges to those consumers who purchase low and moderate priced housing.

ALTA action...

The ALTA Federal Legislative Action Committee met May 18 in ALTA offices in Washington, D.C., to discuss possible legislative action ALTA should take in the Indian land claims matter.

Attending were Indian Land Claims Committee Chairman Marvin C. Bowling Jr., ALTA Special Indian Research Counsel John Christie Jr., Executive Vice President William J. McAuliffe Jr. and Director of Government Relations Mark E. Winter.

A discussion of buyer protection model acts was one of the agenda items when ALTA representatives attended a meeting on residential conveyances at the American Bar Association offices May 19.

Attending were Bowling, McAuliffe and ALTA General Counsel Thomas S. Jackson.

A lengthy meeting itinerary recently has taken Executive Vice President McAuliffe to Hershey, Pa. for the Pennsylvania Land Title Association annual convention June 5-7; to Colorado Springs for both the Southwest Title Insurance Executives meeting, June 9-10, and the Executive Committee meeting June 11, and to Mackinac Island for the Michigan Land Title Association meeting, June 16-18.

Chairman of the Committee to Establish Liaison with National Association of Insurance Commissioners J. Mack Tarpley, Accounting Committee representative James M. Dodson and McAuliffe attended the NAIC annual meeting June 7-8 in Minneapolis, Minn.

ALTA Judiciary Committee reports court decisions

Editor's note: Ray E. Sweat, chairman of the ALTA Judiciary Committee, has submitted 79 cases which the committee judged to be of interest to *Title News* readers. What follows is part one of the 1976 Judiciary Committee Report. The remainder of the report will be published in future issues of *Title News*.

Acknowledgment

Berean Bible Chapel, Inc. v. Ponzillo, 346 A.2d 702 (Md. 1975)

The purchaser of real estate at a foreclosure sale of a mortgage executed and recorded in 1972, filed exceptions to the proposed ratification of the sale, contending that the trustee could not give a good and marketable title since the mortgage was not acknowledged, or was improperly acknowledged and that there was also a lack of acknowledgment or affidavit of consideration. The acknowledgment on the mortgage was dated, the notary subscribed her name and affixed her seal, however, the space for the name of person acknowledging the mortgage was left blank as was the space for the name of the agent who made the affidavit of consideration and the affidavit of agency.

The lower court overruled the exceptions and ratified and confirmed the sale, which order was affirmed on appeal.

The Curative Act, Section 4-109 of the Real Property Article provides as follows: (a) If an instrument was recorded before January 1, 1973, any failure of the instrument to comply with the formal requisites listed in this section has no effect, unless the defect was challenged in a judicial proceeding commenced by July 1, 1973. (b) For the purposes of this section, the failures in the formal requisites of an instrument are: (1) A defective acknowledgment, and (2) A lack of or improper acknowledgment or affidavit of consideration—.

Since the legislature could have abolished the statutory requirement of acknowledgment and affidavit and could have shortened the statute of limitations, so long as no one's substantive rights were impaired, it could and did validly enact the curative provisions of the Real Property Article. In the instant case, the final date for a creditor to commence a challenge to the mortgage was 15 months past at the time of the foreclosure sale. Neither prior nor subsequent creditors were any longer allowed to challenge the validity of the mortgage. Thus, the mortgage was valid, the trustee could convey good and marketable title and the exceptions to the sale were properly denied.

Adverse possession

Walton v. Rosson, et al., 216 Va. 732, 222 S.E. 2d 553 (1976).

Involving a defendant's counterclaim of adverse possession, the court held that a party need not enter into possession under a deed or some other form of writing for the purpose of adverse possession.

Rosencrantz v. Shields, Inc., 346 A.2d 237 (Md. 1975)

Action was brought to quiet title and establish boundary lines in which the Plaintiff's claim to the land was based on adverse possession. The defendant is the record owner of the disputed land. Several years prior to the commencement of the quiet title action, the plaintiffs had brought an action at law in trespass against the defendant which resulted in a judgment for the defendant which was affirmed by the Court of Special Appeals and certiorari was denied. Several months prior to the trespass action, surveyors hired by the defendant had appeared on the disputed land and began taking measurements and placing markers. When the plaintiffs asserted their ownership of the land the surveyors immediately left. The defendant had not attempted to gain possession and had not entered the disputed area at any time since the surveying incident.

The Court of Special Appeals in affirming the Circuit Court's dismissal of the bill of complaint held that the entry on the disputed land by the surveyors for the record owner, did not as a matter of law, interrupt the adverse possession of the plaintiffs. The Court further held that the plaintiffs did not interrupt their adverse possession by filing the trespass action against the record owner but the owner's opposition to the suit conditionally interrupted the continuity of the adverse possession, that such conditional interruption became absolute with the judgment favorable to the record owner and such judgment carried with it, constructive possession by the record owner and wiped the slate clean of prior adverse possession.

Doe v. Roe, 234 Ga. 127, 214 S.E.2d 880 (1975)

In this ejectment action in fictitious form, filed in April, 1974, Gayle N. Manley is the real plaintiff and Pinewood Plantation, Inc., the real defendant. The appeal is from a judgment in favor of the defendant, pursuant to the direction of a verdict.

Error is enumerated on the failure to direct a verdict for the plaintiff (appellant), the direction of a verdict for the defendant (appellee), and the admission in evidence of one of the deeds in the defendant's chain of title.

The plaintiff's only written claim of title is a quitclaim deed, dated April 26, 1972, from a person who held no written or prescriptive title. The plaintiff erected a fence on the property in March and April, 1973. This fence was removed by M. M. Warren , the immediate predecessor in title of the defendant, in August, 1973.

The plaintiff claims the right to recover the land by reason of "prior possession alone, against one who subsequently acquires possession of the land by mere entry and without any lawful right whatever." Code Section 33-102.

The defendant has a record title for more than 40 years. (See Ga. L. 1935, p. 63; Code Ann. Section 38-637). Its chain of title is as follows: In 1921 G. A. Wallace conveyed the land to James J. Nielson. In 1940, 1941, 1943, and 1944, after levy on this land of Nielson's, tax deeds were executed by the Sheriff of Lee County to Lee County as purchaser at the tax sales. In June, 1970, Lee County conveyed the land to M. M. Warren. In March, 1973, Warren conveyed the land to the defendant.

The plaintiff contends that the deed from Lee County to Warren was a deed of redemption and created no title in Warren, and that, without this deed in his chain of title, the defendant has no lawful title to the land.

The quitclaim deed from Lee County to Warren is accompanied by a resolution of the Board of County Commissioners of Lee County which recites that the county purchased the land at sheriff's sale under tax executions against J. J. Nielson, that M. M. Warren, a creditor, desires to redeem the land, and that Warren has paid the stated redemption price. The consideration recited in the deed was the redemption price and the resolution. The deed further stated that the consideration was furnished by Warren, "a creditor of grantee."

The evidence shows without dispute that Warren was not a creditor of Nielson. If he had been such creditor, the redemption deed should have been made to Nielson, the defendant in fi. fa. Code Section 92-8304. The attorney who drew the deed testified that it was drawn on a printed form used by Lee County on all conveyances.

It thus appears that the deed improperly recited that it was a deed of redemption. It was, in fact, a quitclaim deed conveying whatever title Lee County obtained by purchase at tax sale. The title of Lee County under tax sale had ripened by prescription, even though no notice to foreclose the right to redeem had been served on the defendant in fi. fa. See Ga. L. 1937, pp. 491, 493 (Code Ann. Section 92-8306); *Herrington v. LaCount*, 225 Ga. 232, 167 S.E.2d 631.

The appellant contends that if the deed from Lee County is merely a quitclaim deed, and not a deed of redemption, the county authorities violated Ga. L. 1959, pp. 325, 326, as amended, 1961, p. 195, 1962, pp. 65, 66 (Code Ann. Section 91-804.1), which requires that the sale of property belonging to the county (with certain exceptions) be made at public sale. The recitations of the deed and the oral testimony indicate that the county authorities did not comply with this statute.

No evidence was introduced that this deed has been set aside as void because of the failure to comply with Code Ann. Section 91-804.1. It is at least color of title.

The defendant did not enter the land "without any lawful right whatever," and the plaintiff did not prove that he has the right to recover possession under Code Section 33-102.

The trial judge did not err in allowing the deed from Lee County to Warren in evidence, or in directing a verdict in favor of the defendant.

Judgment affirmed.

Bankruptcy

In the Matter of Colonial Realty Investment Co., 516 F.2d 154 (1st Circ. 1975)

The Appeals Court affirmed Massachusetts federal district court's decision holding that a district court in a chapter XII proceeding (real property arrangements other than corporations) has a summary jurisdiction to order a turnover of property in the hands of a mortgagee to the Trustee but that within a reasonable time thereafter the court should hold a hearing adequate to determine whether

debtors petition had been filed in good faith and whether there is sufficient possibility of a successful arrangement to justify whatever risk to the collateral of secured parties may be entailed. The court noted that a bankruptcy court did not have such power in Chapter I - VII. proceedings (straight bankruptcy).

Bills and notes

Kerr v. DeKalb County Bank, 135 Ga. App. 154, 217 S.E.2d 434 (1975)

The appellee bank filed suit against Kerr, Mott and Thurston on a promissory note signed by these three individuals in the lower right hand corner, dated December 29, 1972, and stating in the body: "Time 180 days, note due June 18, 1973." Demand for payment and notice of intention to recover attorney fees was sent to each of these persons by letters dated January 15, 1974. Summary judgment was eventually granted against Thurston, and this appeal involves only the subsequent grant of a summary judgment against Kerr and Mott.

Held: 1. These appellants urge that they signed the instruments only in the capacity of accommodation parties and received no benefit from the loan. All three signed the note as makers, and the amount of the loan in the form of a certified check shows all three as named payees therein. While Kerr and Mott contend they were no more than sureties, and while the bank readily admits that Thurston's credit rating was insufficient to support a loan in any amount, the affidavit of its president shows that "the loan was made by me to Thurston, Mott and Kerr as co-makers and joint principals and each of them signed the instrument in this capacity" and also that both Mott and Kerr "indicated that they had a percentage interest in this production" for which Thurston, their business associate, was specifically seeking the funds. "When the instrument has been taken for value before it is due the accommodation party is liable in the capacity in which he has signed even though the taker knows of the accommodation." Code Ann. Section 109A-3-415 (2). Here Mott and Kerr signed in the capacity of makers and the check was made out to them equally with Thurston. In *Smith v. Singleton*, 124 Ga. App. 394, 184 S.E.2d 26, where one party, although known to be lending his credit for accommodation purposes, signed as a maker, it was held under this section that his plea that he in fact signed as a guarantor was unavailing, in an action brought by the payee against the comakers. "An accommodation maker . . . is bound on the instrument without any resort to his principal, while an accommodation endorser may be liable only after presentment, notice of dishonor and protest." Uniform Laws Anno., Uniform Commercial Code, Vol. II, Sec. 3-415, Official Comment. The knowledge of the payee that one is signing a promissory note as an accommodation maker would not relieve such signatory from liability thereon. *Nat. Sur. Corp. v. Crystal Springs Fishing Village, Inc.*, D.C., 326 F. Supp. 1171. Mott and Kerr were, along with Thurston, primarily liable on the instrument.

2. In opposing the motion for summary judgment, Mott and Kerr contended that the note was a 90-day note rather than a six-month note. This is a mere conclusory statement, in view of the instrument itself, admitted by these defendants to have been signed by them, which shows that it is a 180-day instrument. This is related to the contention that the maker delayed unnecessarily in demanding payment after maturity of the instrument, as a result of which the defendant Thurston removed from the state various assets which might have been seized and subjected to the payment of the indebtedness.

The note was due June 18, 1973. Suit notice was received January 15, 1974. The note stipulated that the note was payable on maturity at its office. "A demand for payment is not necessary in order to charge the maker of a promissory note; and hence . . . is not a prerequisite to the institution and maintenance of a suit on the note against the maker." *Lunceford v. Nunnally*, 65 Ga. App. 234(3), 15 S.E.2d 620.

The court did not err in entering up summary judgment against Kerr and Mott as co-makers of the note in question.

Judgment affirmed.

Boundaries

Cothran v. Burk, 234 Ga. 460, 216 S.E.2d 319 (1975)

This is an appeal from a final judgment of the Superior Court of Floyd County in a landline case. Appellants own land adjacent to and north of land owned by appellee. The parties agree that under their deeds the lien between them is an original land lot line, but the location of the line on the ground is in dispute. Generally, the line runs from a point in a wooded area on the west through the woods and across an open field to a creek on the east.

Appellants filed suit, alleging trespass and seeking damages and injunctive relief. Appellants claimed that the line had been established by acquiescence in a fence line for more than seven years. Appellee answered and counterclaimed, also seeking damages and injunctive relief. Appellee claimed that the true line was a line running 30-70 feet north of the fence, which was surveyed and marked in 1972 and orally agreed to by appellee and a predecessor in title of appellants. The case was tried before the judge without a jury. The judge found that the survey line had been established by an oral agreement and granted a permanent injunction to appellee.

Appellee purchased his land with his brother in 1956. In 1958 he bought his brother's interest. Around 1960, he built a fence along most of the north boundary of his property in the general area of the line. Appellee testified that the purpose of the fence was to keep cattle in and that he was careful to keep the fence on his side of the line. The fence consisted of strands of barbed wire running through the woods from tree to tree in a zigzag manner and running across the open field from post to post in a generally straight line.

In 1961, the land to the north of appellee was purchased by a man named Rhinehart. Appellee and Rhinehart remained adjacent landowners from 1961 to 1972. Both ran cattle in the fields separated by the fence part of the year and cultivated the fields part of the year. Both cultivated up to the fence, except that Rhinehart left an open area beside the fence as a passageway and turning area for his farm equipment. In about 1962, appellee built a drainage ditch along a part of the fence on the north side. Appellee and Rhinehart never disputed or even discussed the location of the boundary. Neither knew the exact location. Neither sought to relocate the fence. The location of the fence varied slightly from time to time because a substantial portion of the fence had to be replaced several times after spring floods.

Rhinehart's property was sold at auction in May, 1972. In connection with the sale, Rhinehart had his property surveyed. The line between him and appellee was run in the presence of them both. At trial, several witnesses testified that, at the conclusion of the survey, appellee and Rhinehart shook hands and agreed to the survey line as their boundary. That line was marked with wooden markers, iron pins and blazes on trees. The deed by which Rhinehart conveyed his property, and the deed by which Rhinehart's purchaser conveyed to appellants, described the property with reference to the survey.

When appellants went into possession, they began cultivating their field up to the fence. Appellee objected and began placing fence posts along the survey line. This litigation followed.

A boundary line which is in dispute, uncertain or unascertained may be established either (a) by oral agreement, if the agreement is accompanied by actual possession to the line or is otherwise duly executed or (b) by acquiescence for seven years as provided in Code Section 85-1602. *Osteen v. Wynn*, 131 Ga. 209 (62 S.E. 37) (1908); *Brown v. Hester*, 169 Ga. 410 (150 S.E. 556) (1929); *Williamson v. Prather*, 188 Ga. 545 (4 S.E.2d 140) (1939); *Collins v. Burchfield*, 215 Ga. 322 (110 S.E.2d 368) (1959). A line is uncertain or unascertained if its location on the ground is unknown even where the line is clearly described in the deeds (*Warwick v. Ocean Pond Fishing Club*, 206 Ga. 680 (58 S.E.2d 383) (1950)), and even where the line is an original land lot line (*Peacock v. Boatright*, 221 Ga. 661 (146 S.E.2d 745) (1966)).

A line may not be established by acquiescence unless there is some contention between the landowners over the location of the line as a result of which a boundary is established in which the landowners subsequently acquiesce. "Adjoining landowners might go on for years without knowing the exact location of their dividing line, and unless and until there is a dispute there would be no reason for establishing a line by acquiescence." *Seaboard A.L.R. Co. v. Taylor*, 214 Ga. 212, 218 (104 S.E.2d 106) (1958). See also *Israel v. Wilson*, 113 Ga. App. 846 (149 S.E.2d 839) (1966). Failure to dispute the location of a fence is not necessarily acquiescence in a boundary since a fence may be placed for purposes other than fixing the boundary. See *Bennett v. Perry*, 207 Ga. 331 (61 S.E.2d 501) (1950); *Robertson v. Abernathy*, 192 Ga. 694, 697 (16 S.E.2d 584) (1941).

An oral agreement establishing a boundary may be duly executed by marking the line with monuments or blazes with the consent of the adjoining landowners. *Tietjen v. Dobson*, 170 Ga. 123 (152 S.E. 222) (1930); *Osteen v. Wynn*, supra.

In the present case, the trial judge, sitting as the trier of fact, found that the parties and their predecessors had not acquiesced in the location of the fence as the location of the line. He further found an oral agreement as to the survey line which was duly executed by marking the line and by Rhinehart's act of conveying his property with reference to the survey. The evidence authorized these conclusions.

Judgment affirmed.

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Lawyers Title Insurance Corp. has announced the election of **A. J. Gilbert** to Pacific states counsel and **Douglas Powell** to manager of the Los Angeles national division office.

Gilbert joined Lawyers Title in 1970 as California state counsel after 13 years in the title insurance business in that state. Powell, a 25-year veteran of the title insurance industry, joined Lawyers Title in Los Angeles in 1974 as California state sales manager.

Anthony F. Brinkman and **Douglas S. McDougal** have been elected assistant branch counsels in the Troy, Mich., Lawyers Title office.

Brinkman joined the company in 1969 as an escrow officer. McDougal was hired in 1972 as a title examiner.

The names of two recently promoted Commonwealth vice presidents have been announced. **Gerald E. Shelpman** and **Richard R. Seiler,** each in the title industry over 20 years, are with the Pittsburgh office of the company.

Lyle F. Hilton has been elected executive vice president and chief counsel of Penn Title Insurance Co. He will be part of the home office staff in Reading, Pa.

left to right: A.J. Gilbert, Douglas Powell, Lyle F. Hilton, John E. Jensen, John Krout, Harold Spurway

Names in the News...

Chicago Title and Trust Company has announced the election of **John E. Jensen, John Krout** and **Harold Spurway** to the company's board of directors, replacing retiring directors Paul Goodrich, Otto Preisler and Tom Watson.

Jensen, chairman of the ALTA Research Committee, is a senior vice president with Chicago Title and Trust. Krout is on the boards of directors of several local and national banking associations in addition to serving as president and member of the board of managers of Germantown Savings Bank of Philadelphia. Spurway is president of Carson Pirie Scott & Co., Chicago, and is also president and a director of the Randhurst Corp.

TI Corp. changes name to Ticor

The TI Corporation's name was officially changed to Ticor at the annual shareholders meeting recently. At the same meeting, Dr. Robert R. Dockson was elected to the board of directors, replacing Burnham Enerson.

Dr. Dockson is presently chairman of the board and chief executive officer of California Federal Savings and Loan Association.

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reporting—(*concluded*)

family—other. The commissioner would not accept our proposal. He stated that he was constantly receiving inquiries and complaints about various policy and endorsement charges and therefore wanted data on every policy form, and endorsement type issued and all of the premium and other income related to the issuance of the policy.

Moreover, the income reported must be tied down to income reported in the financial statement. *In effect, data must be gathered on every form used in insuring and for every rate set forth in the rate manual.* I think that is the clear answer to the question of what, and how much data.

What form of report on this data should be made? The statistical system manuals specify that the data is to be maintained in such a manner that multiple cross tabulations can be produced. In other words, you must be able to produce almost any type of summary of the data. This requirement may not seem unreasonable to those of us with computers but for companies without computers it presents a serious problem.

In California we have been given a report format by the regulator that will be permanent for three years. This format presently is a summary by 54 policy types showing total number of policies, total liability, total filed rate income and total other income; plus a summary for each of the 54 policy types by liability graduations, *i.e.*, $5,000 to $10,000, etc., showing again total number of policies, total liability, total filed rate income and total other income. This is not all of the data specified in the California statistical system and we have been told by the regulator that after three years he will review the report format and redefine its requirements, if necessary.

It is obvious that gathering this statistical data is a major and costly undertaking in which we would not be engaged without a regulatory requirement. However, I am sure that there are direct benefits to the companies to be realized from analysis and use of the data. For example, we find in California that out of 54 types of policies issued, just eight types account for over 90 per cent of the numbers of policies issued, liability assumed, and income received. Are all the other 46 products necessary? What are our costs to keep these little used products on the shelf?

We have learned from our statistical system that there are inconsistencies between some of our offices in the types of policies issued and their pricing. It is possible that, in California at least, our system is so complex that our people do not always know what form to issue or what price to charge. Wouldn't it be a surprise to us to find out that this statistical data is really useful to us? I think that will be the case—but if it's not—then we must make a strong case to the regulators for simplified methods or elimination of the task.

While I acknowledge that the statistical gathering systems are expensive, particularly in their initial phases, I know that the companies who have been working with them for the past few years are finding simplified ways of compiling the data that are proving to be much less costly and onerous.

For example, the treasurer of one company has told me that they have combined their statistical system with their billing system and that, except for the extra cost of keypunching the statistical data, he feels that little extra cost is involved. I know that several companies, including ours, are also combining their statistical and billing systems including their agents' billing system. By whatever systems we devise there will be a cost involved in gathering, maintaining and reporting statistical data. However we have a responsibility to use our resources and best efforts to make those systems cost effective and efficient before we say they are not worthwhile.

I must give you a few words of warning about this statistical data. Earlier I commented on the Colorado subpoena for three years of policy data. As we go forward collecting this data we are building a record that will be looked at, tested and analyzed by state and federal regulatory agencies. The record will be immediately available to the courts. Therefore the data had better be accurate and give the right answers. For example, pricing which does not conform to rate manuals can quickly be detected and if not corrected could lead to obvious consequences. For these reasons one company has aptly dubbed their statistical system "spy."

So, like the fellow whose mother-in-law drove over a cliff in his new Cadillac, we have mixed emotions on the subject.

However, if you believe in and support regulation of the title insurance industry by the states, I urge you to use your best efforts in seeing that these new systems, or their counterparts, are timely and accurately implemented as they become required by the various states.

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Lawhun elected CLTA president

Recently elected California Land Title Association President Gerald L. Lawhun (right) confers with outgoing CLTA President Jack R. Powers, manager of Transamerica Title Insurance Co.'s California and Nevada operations. Lawhun, vice president of Lawyers Title Insurance Corp. of Los Angeles, will assume his presidential duties July 1. Other CLTA officers elected at the annual meeting in the Napa Valley were: Louis A. Balocca, first vice president, Universal City; David R. Porter, second vice president, Los Angeles, and Darrel E. Pierce, treasurer, Placerville.

FNMA views bill as move to pack board

Legislation which would increase the number of presidentially appointed members of the Federal National Mortgage Association (FNMA) Board of Directors from five to nine has sparked FNMA opposition and was the subject of hearings June 6 of the full Senate Committee on Banking, Housing, and Urban Affairs.

The bill (S. 1397), introduced late in April by Sen. William Proxmire (D.-Wis.) and Sen. Alan Cranston (D.-Calif.), would increase the total number of board members from 15 to 19 and create a situation where FNMA shareholders no longer control two-thirds of the board membership.

In a statement voicing opposition to the legislation, FNMA has taken the position that the bill raises serious constitutional questions and may also inhibit the ability of FNMA to continue to function in the best interest of the homebuying public and to continue to raise capital at the lowest possible cost.

The statement went on to say that FNMA shareholders purchased their interest in FNMA with the expectation that they would control two-thirds of the membership of the board of directors, as stipulated in the corporation's Congressional charter.

"It is clear, for instance, that the charter cannot be changed by the Congress to impair or take away the rights of the corporation's shareholders without constitutional due process," the statement said.

FNMA has interpreted inclusion of provisions making it subject to the Freedom of Information Act as a desire for government control of the corporation because the law applies only to agencies which are controlled by the federal government.

The corporation has retained outside counsel to present its legal cause to the Senate Committee on Banking, Housing, and Urban Affairs; to the Congress, if necessary, and ultimately to the courts if the Proxmire-Cranston Bill becomes law.

Bar to appeal court's title search ruling

Virginia State Bar officials reportedly are planning an appeal of the recent court ruling that state-enforced regulations in that state prohibiting nonlawyers from guaranteeing titles violates federal law.

In his decision, U.S. District Court Judge Robert R. Merhige called the regulations "offensive to the notions of basic fairness," according to an article in the *Washington Post.*

Merhige held that the State Bar, a part of the state government, was in violation of the Sherman Antitrust Act in its regulation of title searches.

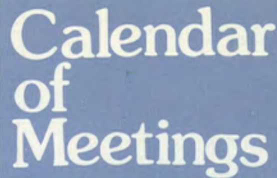
A good part of Merhige's decision dealt with the fact the Virginia State Bar, using only its own members, determines what constitutes the practice of law in the state. Merhige said this process "places attorneys in the unique position of being able to define the extent of their own monopoly. It belabors the obvious to point out that lawyers in general would financially benefit from an expansive definition of the practice of law."

The suit was brought by an attorney for a Ralph Nader group on behalf of Surety Title Insurance Agency, Inc., in Virginia Beach.

Two Commonwealth offices move

Commonwealth Land Title Insurance Co.'s Santa Ana, Calif., office is moving from 1220 N. Broadway to 888 N. Main, according to county manager James Simmons. After three expansions in the past five years, the company found it necessary to move to larger quarters. The new office will house an expanded, computerized title plant.

Commonwealth of Salt Lake City has also moved. The larger, more modern facilities are located at 560 S. Third East—next door to the previous office.



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June 11, 1977
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June 16-18, 1977
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June 16-18, 1977
Oregon Land Title Association
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June 17-18, 1977
South Dakota Land Title Association
Kings Inn
Pierre, South Dakota

June 17-19, 1977
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Coliseum Ramada Inn
Jackson, Mississippi

September 8-10, 1977
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Grand Forks, North Dakota

September 11-13, 1977
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