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SEPT 1977

Title News

In this issue: Wide airplay of ALTA public service spots reported

a message from the President . . .

The year draws to a close. What a magnificent and rewarding year it has been. I cannot relive one single minute of it. I would not change it if I could. I can only be very thankful that I have been afforded the privilege of having lived it, and having served as president of the American Land Title Association.

On October 12 through October 15, we shall convene at the Washington Hilton Hotel for our 71st Annual Convention. It promises to be one of the best ever. Topics of interest to all in our industry will be discussed. We will be brought up to date on the Indian claims problem; the tax, securities and exchange problems facing our industry; litigation problems, and legislative matters. We will honor two individuals who have served our industry, and our Association, with long and faithful service.

Social activities have been designed by Chairman and Chairlady Ralph and Anita Smith to make our stay a particularly pleasant one. There is so much to see in Washington, so much to do, so much to learn, and so much to remember. We'll all be sorry if you are not there.

As this will be my final message to be published in *Title News* while I am president, I would be remiss if I did not take advantage of the situation to say "Thank you." Lois and I have traveled over the nation this year, and we have met at all points "our kind of people". Your cooperation, enthusiasm, participation and warm love have strengthened and inspired us. For that, we do thank you.

We look forward to seeing you. Won't you plan now to join us at the Washington Hilton on October 12.

Sincerely,

Philip D. McCulloch

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Title News

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On the cover: This scene was lifted directly from an ALTA minidrama which portrays land title problems in an entertaining manner. It stars the querulous couple Henry and Portia who can agree on very little—much less on whether or not to sell their town house. After Portia stalks off with her suitcase—presumably to go home to mother—Henry forges her signature on the deed to their home. An account of the widespread use of the current ALTA television and radio offerings begins on page 5.

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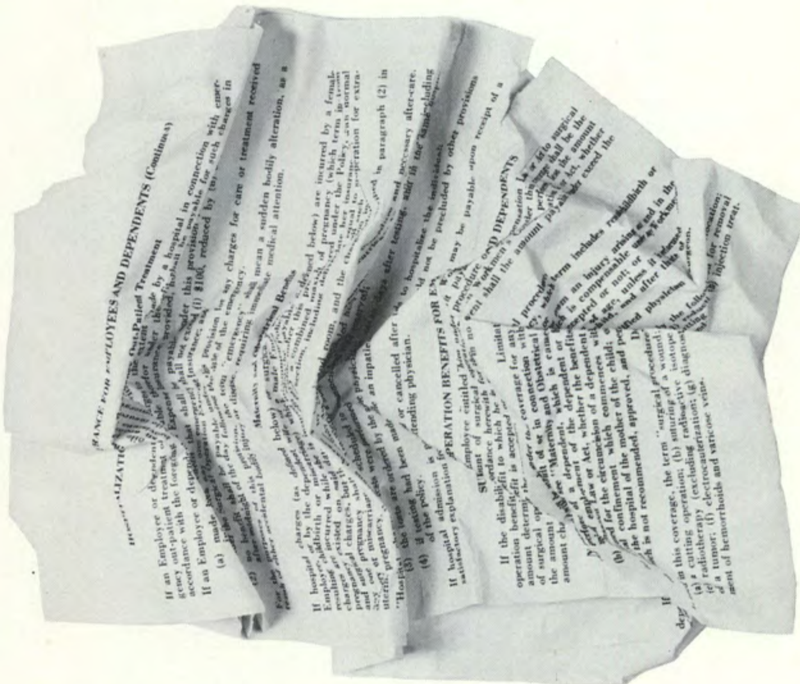

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ALTA minidramas, tv and radio spots enjoy wide airplay

This year, an ALTA public service radio spot that offers home buyer education in an entertaining format has received especially high acclaim and widespread use in free air time among broadcast media across the nation.

The spot is part of an ALTA public service radio package designed to meet a variety of station programming needs. In 60 seconds, this dramatization tells of a retired Canadian Mounted Policeman, Sgt. Braxton, and his lead dog, Zing, who purchase a home in the United States from a man claiming to be single.

All is well until the previously undisclosed wife of the seller arrives and orders Mountie and dog off of her property. When Sgt. Braxton protests, he is smacked with the woman's umbrella. Then an announcer cautions against being taken by surprise by home ownership problems—and suggests writing ALTA for free information on land title protection.

Local station program directors have been unusually warm in their praise of this superbly produced radio spot. Typical responses include the following:

WFBG, Detroit: "I loved the Mountie spot."

WPTX, Lexington Park, Md.: "Let's have more of Sgt. Braxton."

Celebrities starring in 1977 ALTA radio PSAs are (from top to bottom): Rue McClanahan, Abe Vigoda, LeVar Burton, Freddy Fender and Don Williams.

WHET, Waltham, Mass.: "Good 60-second cut."

KWBY, Edna, Texas: "Well produced, good talent."

WDOT, Burlington, Vt.: "Sgt. Braxton is great."

A listener in Carson City, Nev., wrote requesting the free ALTA literature and added, "I think your announcement with the Canadian Mounted Policeman is very entertaining and I enjoy listening to it over and over."

Recently, another impressive sign of recognition for the quality of this spot was received when Mutual Broadcasting System advised that the ALTA offering would be included in its public service radio log. Mutual, the world's largest radio network serving some 800 stations in the United States, is flooded with public service pieces from a variety of sources each month.

Widespread broadcasting of the Sgt. Braxton spot—and seven others comprising the rest of the ALTA package—demonstrates the importance of emphasizing production quality in public service announcements (PSA) developed by the Association. Presenting home buyer messages of public interest in an appealing format this year has resulted in airing the announcements over more than 1,000 stations from coast to coast in addition to the Mutual Broadcasting System.

Five celebrities also are featured on the 1977 radio PSAs. They are Rue McClanahan, featured on CBS Television's, *Maude;* Freddy Fender, country and western music star, and three

(continued)

ABC Television personalities—Abe Vigoda of *Fish*, LeVar Burton of the *Roots* series, and Don Williams of *The Waltons*.

Celebrities also are featured on three ALTA television PSAs sent out early this year, which have been aired repeatedly in free time by more than 200 stations in 44 states and the District of Columbia. Providing the talent for these are Larry Linville of the CBS *M*A*S*H* series; Marty Robbins, country and western music star, and Henry Mancini, contemporary music personality.

Another successful PSA television approach used by the Association consists of producing 60-second minidramas that portray land title problems in a humorous and entertaining manner.

In one minidrama sent to stations this spring, a husband forges the signature of his wife on the deed and sells their town house after she refuses to agree to placing the property on the market. The husband is about to wrap up the transaction when the wife returns home unexpectedly and vigorously ends the proceedings.

All this is filmed in fast motion to add to the entertainment. Toward the end of the film clip, the announcer reminds the viewer of owner's title insurance protection for home buyers.

A preliminary report that this particular film clip was telecast 2,390 times in 39.8 hours of free air time by 82 stations in 42 states would seem to indicate that the minidrama approach works well in ALTA-produced PSAs. This constitutes a cumulative audience of more than 128 million for this film alone.

A second minidrama, scheduled for fall distribution, tells of a young man who learns at the reading of a will in a lawyer's office that he has inherited the home of a relative. The new owner rushes out to inspect his property and finds a young couple about to purchase it by mistake.

Another effective offering for ALTA this year is a package of television public service slide announcements, which was aired by 53 stations in 29 states with a potential audience of more than 92 million. A number of these stations are in populous areas.

Also included in other ALTA television activity is distribution of the Association's award-winning film, *1429 Maple Street*, which by the end of this year will have been seen by more than 14 million people over a three-year distribution period. Despite its irregular 21-minute length for television, the older ALTA film, *A Place Under The Sun*, by the end of 1977 will have been seen by well over 11 million during a longer distribution period.

In planning for radio and television material as part of the ALTA Public Relations Program, the Association public relations committee and staff has recognized that meeting public service needs of broadcast media will bring repeated airing of messages in free time. These repeated broadcasts bring a positive impression of the industry to an ever-changing audience of millions.

ALTA radio and television activity is conducted by the Association public relations committee and staff. Members of the committee, chaired by Patrick McQuaid, are H. Randolph Farmer, Francis E. O'Connor, LeNore Plotkin, James W. Robinson, Edward S. Schmidt and Bill Thurman.

(continued)

Scenes from 1977 ALTA minidramas include (at left) a husband forging his wife's signature on the deed to their town house after she refuses to consent to the sale. Below, a young man who has just inherited a house scoops up his safety helmet before rushing out via motorcycle to inspect the property—which, meanwhile, is about to be purchased by an unsuspecting couple.

The following is a partial list of stations that reported airing ALTA television celebrity announcements, television slide announcements and radio spots.

Television Celebrity Announcements

Alabama—WKAB, Montgomery; WKRG, Mobile

Alaska—KTVA and KENI, Anchorage

Arizona—KVOA, Tucson

Arkansas—KFPW, Ft. Smith

California—KMUV and KOVR, Sacramento; KLOP, Hollywood

Colorado—KKTV and KROO, Colorado Springs

Connecticut—WTNH, New Haven; WATR, Waterbury

District of Columbia—WRC and WTOP

Florida—WDBO, Orlando; WOTB, Panama City

Georgia—WALB, Albany; WHAE and WTCG, Atlanta

Hawaii—KHON and KITV, Honolulu

Idaho—KTVB and KBCI, Boise

Illinois—WHBF, Rock Island; WEEK, East Peoria

Indiana—WTHR, WRTV, WISH, Indianapolis

Iowa—KCAU and KTIV, Sioux City

Kansas—KAKE, Wichita

Louisiana—WGNO, New Orleans

Maine—WVII, Bangor

Maryland—WBAL, WMAR, WBFF, all Baltimore

Massachusetts—WSBK, Brighton

Michigan—WOTV, Grand Rapids; WUHQ, Battle Creek

Minnesota—WTCN, Minneapolis; WDIO, Duluth

Mississippi—WAPT, Jackson; WTOK and WHTV, Meridian

Missouri—KSD and KPLR, St. Louis; KCMO, Kansas City

Montana—KTCM, Helena; KRTV, Great Falls

Nebraska—KSTF, Scottsbluff

Nevada—KCRL and KTVN, Reno

New York—WTVH, WSYR and WNYS, Syracuse; WTEN, Albany

North Carolina—WSOC, WCCB, Charlotte; WRDU, Durham

North Dakota—KFVR, Bismarck

Ohio—WJW, Cleveland; WDTN, Dayton

Oklahoma—KOCO, Oklahoma City; KOTV, Tulsa

Oregon—KOIN, Portland; KVDO, Salem

Pennsylvania—WTAE, WPGH and WIIC, all Pittsburgh; WKBS, Philadelphia

Rhode Island—WSAR, Providence

South Carolina—WFBC, Greenville; WCSC, Charleston

South Dakota—KSFY, KELU, Sioux Falls

Tennessee—WTVF, WSM, Nashville; WATE, Knoxville

Texas—KTVV, KTBC, Austin; KDFW, Dallas; KTRK, Houston

Vermont—WCAX, Burlington

Washington—KNDO, KIMA, Yakima

West Virginia—WTRF, Wheeling

Wisconsin—WKOW, WISC, Madison; WXOW, La Crosse

Wyoming—KYCU, Cheyenne

Television Slide Announcements

Chicago—WGN

Dallas—KXTX

Cincinnati—WCPO

Charlotte, N.C.—WRET

San Mateo, Calif.—KCSM

Fresno, Calif.—KJEO

Columbus, Ohio—WBNS

Nashville, Tenn.—WTVF

New Orleans—WWL

Battle Creek, Mich.—WUHQ

Miami, Fla.—WLTV

Jacksonville, Fla.—WJKS

Topeka, Kans.—WIBW

Montgomery, Ala.—WSFA

Augusta, Ga.—WJBF

La Crosse, Wis.—WXOW

Tacoma, Wash.—KTEN

Reno, Nev.—KCRL

Great Falls, Mont.—KRTV

Lancaster, Pa.—WLYH

Radio Spots

Alabama—WKSJ, Mobile; WHOS and WBQM, Decatur

Alaska—KFRB, KIAK, Fairbanks

Arizona—KASA, KMEO, Phoenix

Arkansas—KBJT, Fordyce

California—KLRO, San Diego; KBON, KQLH, San Bernardino

Colorado—KVMN, Pueblo; KOSI, Aurora

Connecticut—WINY, Putnam

Delaware—WDSD, Dover

Florida—WKAT, Miami; WAXY, Ft. Lauderdale; WJNO, West Palm Beach

Georgia—WJCL, WSGF, Savannah; WISK, Americus

Hawaii—KNDI, Honolulu

Idaho—KADQ, Rexburg

Illinois—WXFM, Chicago; WTAX, WVEM, Springfield

Indiana—WLTH, Gary; WAKE, Valparaiso

Iowa—KBCM, KWSL, Sioux City; KCRG, Cedar Rapids

Kansas—KSWT, Topeka; KWBW, Hutchinson

Kentucky—WAMX, Ashland; WDOC, Prestonsburg

Louisiana—WQXY, WLUX, Baton Rouge

Maine—WFST, WDHP, Caribou; WAGM, Presque Isle

Maryland—WITH, Baltimore; WFMD, Frederick

Massachusetts—WARA, Attleboro; WHET, Waltham

Michigan—WBFG, WLDM, Detroit; WHTC, Holland

Minnesota—WGGR, Duluth; KDWA, Hastings

Mississippi—WBAQ, Greenville; WOKK, Meridian

Missouri—KBIL, Kansas City; KMAM, Butler

Montana—KOOK, Billings; KYSS, Missoula

Nebraska—KICX, KBRL, McCook; KAHL, KJLT, North Platte

Nevada—KKBC, Carson City

New Hampshire—WPLR, Hanover; WMOV, Berlin

New Jersey—WNNJ, Newton; WCRV, Washington

New Mexico—KVSF, Santa Fe; KKIM, Albuquerque

New York—WRNW, WHBI, New York City; WEOK, Poughkeepsie

North Carolina—WGNI, WKLM, Wilmington; WPGD, Winston-Salem

North Dakota—KBOM, Bismarck

(continued on page 19)

Editor's note: This is Part One of Chapter Five of *The Title Industry: White Papers, Volume 1.* Chapters one, two and three appeared in the February, March and April issues of *Title News.* Parts one, two and three of Chapter Four were published in the June, July and August issues.

The Torrens System

The goals of simplifying the process by which title to real estate is transferred and keeping such costs to reasonable levels are shared by many groups that have an interest in the real estate settlement process—including consumers and the members of the American Land Title Association. Many different suggestions have been made to achieve these goals. One proposal that is sometimes advanced is the adoption of a Torrens or title registration system to replace the recordation systems used by the vast majority of counties throughout the United States.

The principal arguments made on behalf of the adoption of a Torrens system are several. They are that such a system can make the transfer of title to real estate as simple and as inexpensive as the transfer of title to an automobile; that the difficulties and costs of initial registration under a Torrens system are not significant; that the difficulties and costs of transferring registered property are substantially less than those incurred in the transfer of property under a recordation system, and that a Torrens system offers property owners, mortgage lenders and others who have an interest in real property the same security and safety that exists under present methods of transferring interests in real property—including the protection afforded by title insurance.

The purpose of this paper is not to present a comprehensive analysis of the workings of the Torrens system or to discuss in detail the many justified criticisms that could be made of it. Rather, it is to examine some of the claims that have been made about the benefits of the Torrens system in light of actual experience with the system and to clarify some of the misconceptions held by proponents of the system who frequently do not understand what the Torrens system does and does not do.

Background

The Torrens system was first developed in Australia in the mid-19th Century by Robert Torrens, a commissioner of customs who subsequently became a registrar of deeds. As a customs commissioner, Mr. Torrens had become familiar with the system of registering the ownership of ships under the English Merchants' Shipping Law, whereby each registered ship was assigned a registry page, and a copy of that page—which included a description of the vessel, her name, the names of the owners and the names of persons who had liens on the vessel—was given to the owner as a certificate of ownership. When the vessel was sold, the seller surrendered his certificate for cancellation and a new registry page was prepared and a copy of the new page given to the new owner.

In 1858 Australia adopted a registration system for land based on this ship-registration system. In subsequent years, England, Canada and several counties and states in the United States adopted land registration systems based on the Australian Torrens system.

The operation of the Torrens system in the United States can best be explained briefly through a comparison of its operation with that of a recordation system, under which the vast majority of land transfers take place in the United States.

The basic characteristic of the recordation system is that the creation and transfer of interests in land are accomplished by the delivery of deeds and other title documents executed by the person creating the interest (*e.g.*, the seller, the mortgagor, etc.). Public notice of the creation and transfer of these interests to those who may subsequently purchase the property or acquire interests in it is effected by recording the deed or title document in an appropriate governmental office in the political subdivision (county, city, or borough) where the property is located. Typically, most land title documents are filed with the office of the Recorder of Deeds, although various documents affecting the property or the owner of the property such as wills, court judgments and tax claims may be filed in other offices, such as the office of the Register of Wills, Federal District Court, the office of the Tax Assessor, etc. The recording of these documents provides notice to anyone interested in acquiring an interest in the property of the existence of the ownership interests, liens and encumbrances reflected in these recorded documents, and the prospective purchaser must then evaluate these documents to determine which of them will affect the interest in the property he wishes to acquire.

The various studies that are presently in process regarding the computerization of land title records and the simplification of land title record keeping (including the development of model land recordation systems under Section 13 of the Real Estate Settlement Procedures Act (RESPA) are primarily directed at improvements in the filing, indexing and retrieval of these documents.

The basic theory of the Torrens system, on the other hand, is that while the execution and delivery of title documents will still be required in order to authorize the creation and transfer of interests in land, the actual creation and transfer of these interests will be effected by the issuance of a "Torrens certificate" by a public official. This certificate, which is prepared by a Registrar of Titles after the executed title documents have been delivered to him (and who, in a fully implemented Torrens system, would supplant the Recorder of Deeds), identifies the persons owning the interests created and the nature of those interests. To bring a parcel under the Torrens system initially, a judicial proceeding is required in which the nature of all interests in the property are identified and conclusively established. After the initial registration, any new interests must be registered on the original certificate maintained by the Registrar of Titles in order to be valid. Likewise, the transfer of a piece of property to a new owner must be reflected in the cancellation

of the seller's certificate and the issuance of a new certificate to the buyer. Once the new certificate is issued, all prior interests not reflected thereon are extinguished as a matter of law. Because of the possibility that persons might be deprived of valid interests in the property for a number of reasons (including the lack of actual notice of the registration proceedings, the forgery of documents, or the incompetency or minority of a person with an interest in the property), and because of the possibility that the registrar may make errors in registering an interest or claim on the Torrens certificate, provision is made for the establishment of a Torrens assurance or guaranty fund, supported by fees generated by the registration process, out of which valid claims are paid.

The problems and drawbacks of the Torrens system

A. *There are substantial costs and inconveniences in the initial registration of a parcel in the Torrens system.*

The Torrens system requires the owner who seeks to bring a parcel of real property into the system to institute a judicial proceeding in the nature of a suit to quiet title in which personal service must be made on all persons who are known to have an interest in the property, and constructive notice—usually by publication in local newspapers—must be given to all others who may have an interest in the property. While an administrative officer of the court may make initial findings of fact and law as to the interests of all persons in the property, these determinations can be appealed to an appropriate court, which may hold a *de novo* hearing before issuing a final decree. In some jurisdictions, the court itself will make the determinations without the assistance of an administrative officer. The decree finally issued by the court is generally held to be final and conclusive against all persons and the title findings of the court are embodied in the resulting title certificate that is issued by the Registrar of Titles.

The judicial proceeding that is needed to register a parcel in Torrens—a proceeding that may become quite complex and invariably will involve the services of an attorney experienced in Torrens matters—is necessary in order to ensure that the rights of parties with interests in the property are not arbitrarily cut off by the registration process.

But fulfilling this requirement that all those with pre-existing interests be afforded due process of law through such a proceeding can involve a substantial amount of time and money. For example, in Suffolk County, Massachusetts, it is estimated that it takes between one and two years to register a parcel with the land court. In Hennepin County, Minnesota, which has a large staff of deputy examiners to process applications, an uncontested registration takes approximately six months, and a contested registration may take up to three years.

Even in London, which is often cited as an excellent example of the feasibility of the Torrens system, registration invariably takes at least six to eight weeks, and frequently longer. A home owner may find that once he has initiated the registration process, he is unable to sell the property until the title certificate is actually issued. This is because a potential buyer may be unwilling to go ahead with the purchase while the registration litigation is pending.

The costs to the home owner of registering a parcel in Torrens are also substantially higher than the costs of transferring title under a recordation system. For example: In Suffolk County, Massachusetts, the average cost is approximately $1,500. In Cook County, Illinois, the costs of registering a $50,000 parcel average about $500 to $600. In Hennepin County, Minnesota, the average cost for an uncontested registration is between $500 and $750.

The costs of trying to register all of the parcels in a given county under the Torrens system would involve astronomical sums. (As will be discussed shortly, to date only a relatively small proportion of the total parcels in the counties that have adopted Torrens have actually been registered.) For instance, the costs of registering all of the 280,000 assessed parcels of real estate in Hennepin County—a county with a population of less than one million—would be $140 million. It has been estimated that the costs of registering all of the parcels in Pennsylvania would exceed $2 billion.

Three additional points should be noted in connection with the high initial costs of Torrens registration. First, contrary to the belief that the high initial costs are justified because of the savings that may be realized on subsequent transfers of the property, the fact is that the costs of subsequent transfers (for reasons that will be discussed below) may not be reduced substantially. Moreover, it is little comfort to a present owner of real property that he may have to incur very substantial expense, time and inconvenience in registering a parcel so that subsequent purchasers may realize some minor savings in title transfer costs.

Second, it has been argued by some that the government can solve the problem of the high initial registration costs of the Torrens system by subsidizing these costs. Apart from the many reasons why subsidizing uneconomic or undesirable ventures, such as a wholesale conversion to a Torrens system, makes little economic or political sense, there is a serious question of whether it is fair or equitable to ask taxpayers in general—many of whom may be in low or middle income brackets and who may never purchase a piece of real estate or who may only purchase a single home in their lifetime—to subsidize the costs of a real estate transfer system that will benefit primarily only a comparatively small number of people or corporations that are frequent sellers or purchasers of real estate.

Finally, an owner of a parcel of land registered in the Torrens system may not be finished with the courts after the initial registration. In some states, an owner of a lost certificate must petition the courts to have the Registrar of Titles issue an owner's duplicate certificate. Similarly, because of the conclusive nature of the Torrens certificate, the registrar may be unwilling to run the risk of issuing a new certificate to the heirs or devisees of a deceased registered owner, or to a person who may acquire the property by involuntary transfer, without the specific direction (and protection) of a court order. In fact, transfers by executors,

(continued)

trustees, guardians and attorneys-in-fact generally require court approval. All of these transfers involve additional time and costs beyond those that would be incurred in the transfer of the property under a recordation system.

B. *The problems and costs of transferring property registered under the Torrens system are substantially greater than may be commonly understood.*

Proponents of the Torrens system frequently claim that while the costs of initial registration may be high, once a parcel of real estate is registered the owner can easily transfer the property by delivering the Torrens certificate to the buyer, that there is no need for any search of title records prior to the transfer, that the services of an attorney or title company can be dispensed with and that the new owner can quickly and easily obtain a new Torrens certificate from the Registrar of Titles. Each of these claims warrants close scrutiny.

1. *A search of various title records is still required before registered property can be transferred.*

No Torrens system purports to require that *all* interests or rights in registered property be reflected in the Torrens certificate. As a result, any time registered property is sought to be transferred, a determination must be made —which generally involves a search of various title related records—of what other rights or claims must be taken into account by the buyer. Among the more common rights or claims that are not reflected in the Torrens certificate are these:

- Rights or easements that have arisen through use or adverse proscription (*e.g.*, rights that a neighbor may have acquired because his fence has encroached on the property in question for a number of years)
- Federal tax liens that have arisen as a result of delinquent taxes
- Liens in favor of state and local taxing authorities that have resulted from the failure to pay real estate taxes or special assessments
- Rights or claims arising out of bankruptcy proceedings
- Rights that may arise if one of the registered owners whose interest is purportedly being conveyed is deceased, incompetent or a minor
- Building or use restrictions contained in a recorded plat
- The rights of mechanics or materialmen who have not yet filed their mechanic's or materialmen's lien notices but who, under state or local law, have anywhere from 60 days to six months after they furnish material or labor to the owner to file their lien notices.

To determine whether any of these potential claims may exist, a search and examination of tax, probate and court records is still required even under the Torrens system.

2. *The services of an attorney or title company will still be required in the transfer of registered property.*

While the scope of the title search required in the subsequent transfer of registered property may be narrower than under a recordation system, the buyer's need for professional assistance in examining and evaluating the title information contained in a title certificate—and the attendant costs—will remain. A title certificate, after all, merely embodies in one document the various claims that have been registered against the property; the determination of the scope and effect of the various liens and claims memorialized in the title certificate—and the extent to which such liens and claims will affect the buyer's interest—will continue to be borne by the purchaser.

(continued on page 15)

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ALTA Judiciary Committee reports court decisions

Editor's note: This is Part Four of the ALTA Judiciary Committee report submitted by Ray E. Sweat, chairman. Parts one, two and three appeared in the June, July and August issues of *Title News*.

Records and recording

Harper et al. v. Paradise, 233 Ga. 194, 210 SE 2 710, (1974).

This appeal involves title to land. It is from a judgment and directed verdict granted to the appellees and denied to the appellants in the Superior Court of Oglethorpe County.

Appellants claim title as remaindermen under a deed to a life tenant with the remainder interest to the named children of the life tenant. This deed was delivered to the life tenant but was lost or misplaced for a number of years and was not recorded until 35 years later.

Appellees claim title as uninterrupted successors in title to an intervening mortgagee who purchased the property at a sheriff's sale following the foreclosure of a security deed given by the life tenant to secure a loan which became in default. Prior to the execution of the security deed by the life tenant, she obtained a quitclaim deed from all but one of the then living heirs of the original grantor who died earlier. Appellees also claim prescriptive title as a result of the peaceful, continuous, open and adverse possession of the property by them and their record predecessors in title for more than 21 years.

The life tenant died in 1972 and her children and representatives of deceased children, who were named as the remaindermen, then brought the present action to recover the land. The trial court determined that appellees held superior title to the land and it is this judgment, adverse to the remaindermen, that produced the present appeal to this court.

The above condensation of the title contentions of the parties can be understood best by reciting in detail the sequential occurrence of the facts which produced these conflicting claims of title.

On February 1, 1922, Mrs. Susan Harper conveyed by warranty deed a 106.65-acre farm in Oglethorpe County to her daughter-in-law, Maude Harper, for life with remainder in fee simple to Maude Harper's named children. The deed, which recited that it was given for $5 and "natural love and affection," was lost, or misplaced, until 1957 when it was found by Clyde Harper, one of the named remaindermen, in an old trunk belonging to Maude Harper. The deed was recorded in July, 1957.

Susan Harper died sometime during the period 1925-1927 and was survived by her legal heirs, Price Harper, Prudie Harper Jackson, Mildred Chambers and John W. Harper, Maude Harper's husband. In 1928, all of Susan Harper's then living heirs, except John W. Harper, joined in executing an instrument to Maude Harper, recorded March 19, 1928 which contained the following language: "Deed, Heirs of Mrs. Susan Harper, to Mrs. Maude Harper. Whereas Mrs. Susan Harper did on or about the . . . day of March, 1927, make and deliver a deed of gift to the land hereinafter more fully described to Mrs. Maude Harper the wife of John W. Harper, which said deed was delivered to the said Mrs. Maude Harper and was not recorded; and Whereas said deed has been lost or destroyed and cannot be found; and Whereas the said Mrs. Susan Harper has since died and leaves as her heirs at law the grantors herein; Now therefore for and in consideration of the sum of $1, in hand paid, the receipt of which is hereby acknowledged, the undersigned Mrs. Prudence Harper Jackson, Price Harper and Ben Grant as guardian of Mildred Chambers, do hereby remise, release and forever quit claim to the said Mrs. Maude Harper, her heirs and assigns, all of their right, title, interest, claim or demand that they and each of them have or may have had in and to the (described property). To have and to hold the said property to the said Mrs. Maude Harper, her heirs and assigns, so that neither the said grantors nor their heirs nor any person or persons claiming under them shall at any time hereafter by any way or means, have, claim or demand any right, title or interest in and to the aforesaid property or its appurtenances or any part thereof. This deed is made and delivered to the said Mrs. Maude Harper to take the place of the deed made and executed and delivered by Mrs. Susan Harper during her lifetime as each of the parties hereto know that the said property was conveyed to the said Mrs. Maude Harper by the said Mrs. Susan Harper during her lifetime and that the said Mrs. Maude Harper was on said property and in possession thereof."

On February 27, 1933, Maude Harper executed a security deed, recorded the same day, which purported to convey the entire fee simple to Ella Thornton to secure a $50 loan. The loan being in default, Ella Thornton foreclosed on the property, receiving a sheriff's deed executed and recorded in 1936. There is an unbroken chain of record title out of Ella Thornton to the appellees, Lincoln and William Paradise, who claim the property as grantees under a warranty deed executed and recorded in 1955. The appellees also assert title by way of peaceful, continuous, open and adverse possession by them and their predecessors in title beginning in 1940.

The appellees trace their title back through Susan Harper, but they do not rely on the 1922 deed from Susan Harper to Maude Harper as a link in their record chain of title. If appellees relied on the 1922 deed, then clearly the only interest they would have obtained would have been Maude Harper's life estate which terminated upon her death in 1972. "No forfeiture shall result from a tenant for life selling the entire estate in lands; the purchaser shall acquire only his interest." Code Section 85-609. See *Mathis v. Solom,* 188 Ga. 311 (4 SE 2d 24); *Satterfield v. Tate,* 132 Ga. 256 (64 SE 60); *New South Building & Loan Assn. v. Gann,* 101 Ga. 678 (3) (29 SE 15); *McDougal v. Sanders,* 75 Ga. 140.

Appellees contend that the 1928 instrument executed by three of Susan Harper's then living heirs must be treated under Code Section 67-2502 as having been executed by the heirs as agents or representatives of Susan Harper, thereby making both the 1922 and 1928 deeds derivative of the same source. That Code section provides: "All innocent persons, firms or corporations acting in good faith and without actual notice, who purchase for value, or obtain contractual liens, from distributees, devisees, legatees, or heirs at law, holding or apparently holding land or personal property by will or inheritance from a deceased person, shall be protected in the purchase of said property or in acquiring such a lien thereon as against unrecorded liens or conveyances created or executed by said deceased person upon or to said property in like manner and to the same extent as if the property had been purchased of or the lien acquired from the deceased person."

Appellees argue that since both deeds must be treated as having emanated from the same source, the 1928 deed has priority under Code Section 29-401 because it was recorded first. Code Section 29-401 provides: "Every deed conveying lands shall be recorded in the office of the clerk of the superior court of the county where the land lies. The record may be made at any time, but such deed loses its priority over a subsequent recorded deed from the same vendor, taken without notice of the existence of the first."

In opposition to the appellees' reliance on Code Section 67-2502, the appellants cite the case of Mathis v. Solomon, 188 Ga. 311, 4 S.E. 2d 24, supra. In that case, the grantor by deed of 1923 conveyed to his wife for life, then to his heirs in remainder. This deed was not recorded until 1928. In 1926, the life tenant and one of the remaindermen conveyed the fee simple by warranty deed, recorded in 1927, to B.L. Fetner. Fetner conveyed by quitclaim deed to the defendants in 1930, and that deed was recorded in 1937. The remaindermen who had not joined in the 1926 deed to Fetner sued the defendants to recover the property. This court held in favor of the remaindermen, saying that Code Section 67-2502 "enacted in favor of bona fide purchasers from 'distributees, devisees, legatees, or heirs at law, holding or apparently holding land or personal property by will or inheritance from a deceased person,' cannot be extended beyond its terms so as to aid a bona fide purchaser from a life tenant as against a remainderman who does not join in the conveyance." The Court further said that Code Section 96-205 (relating to voluntary conveyances and re-enacted, in substantially the same form as Code Ann. Section 29-401.1), "while including bona fide purchasers from administrators, executors, and others who in effect sell land as agent of the grantor making the voluntary conveyance, does not include purchasers acquiring title from other sources."

In Mathis, the deed to the life tenant conveyed the remainder interest to the grantor's heirs. Thus, a subsequent purchaser from the life tenant and only one of those heirs could not rely on Code Section 67-2502 since the remaining heirs of the original grantor did not join in the deed. As these heirs of the original grantor were remaindermen, their interests could not be defeated by the later deed which was recorded first.

In the present case, the remaindermen in the deed to the life tenant were not the heirs of the grantor. They were named children of the life tenant grantee. Therefore, after the death of the original grantor, Susan Harper, her heirs could have joined in a deed to an innocent person acting in good faith and without actual notice of the earlier deed. If such a deed had been made, conveying a fee simple interest without making any reference to a prior unrecorded lost or misplaced deed, Code Section 67-2502 might well apply to place that deed from the heirs within the protection of Code Section 29-401.

However, the 1928 deed relied upon by appellees was to the same person, Maude Harper, who was the life tenant in the 1922 deed. The 1928 deed recited that it was given in lieu of the earlier lost or misplaced deed

(continued)

from Susan Harper to Maude Harper and that Maude Harper was in possession of the property. Thus Maude Harper is bound to have taken the 1928 deed with knowledge of the 1922 deed. See *King v. McDuffie*, 144 Ga. 318, 320, 87 SE 22. The recitals of the 1928 deed negate any contention that the grantors in that deed were holding or apparently holding the property by will or inheritance from Susan Harper. Indeed, the recitals of the 1928 deed actually serve as a disclaimer by the heirs that they were so holding or apparently holding the land.

Therefore, Code Section 67-2502 is not applicable under the facts of this case and cannot be used to give the 1928 deed priority over the 1922 deed under the provisions of Code Section 29-401. The recitals contained in the 1928 deed clearly put any subsequent purchaser on notice of the existence of the earlier misplaced or lost deed, and, in terms of Code Section 29-401, the 1928 deed, though recorded first, would not be entitled to priority. See *King v. McDuffie*, 144 Ga. 318 (2), 87 SE 22, supra; *Hitchcock v. Hines*, 143 Ga. 377, 85 SE 119; *Stubbs v. Glass*, 143 Ga. 56, 84 SE 126; *Holder v. Scarborough*, 119 Ga. 256, 46 SE 93; *Zorn v. Thompson*, 108 Ga. 78, 34 SE 303.

We conclude that it was incumbent upon the appellees to ascertain through diligent inquiry the contents of the earlier deed and the interests conveyed therein. See *Henson v. Bridges*, 218 Ga. 6 (2), 126 SE 2d 226. *Cf. Talmadge Bros. & Co. v. Interstate Building & Loan Ass'n*, 105 Ga. 550, 553, 31 SE 618, holding that "a deed in the chain of title, discovered by the investigator, is constructive notice of all other deeds which were referred to in the deed discovered," including an unrecorded plat included in the deed discovered. Although the appellees at trial denied having received any information as to the existence of the interest claimed by the appellants, the transcript fails to indicate any effort on the part of the appellees to inquire as to the interests conveyed by the lost or misplaced deed when they purchased the property in 1955. "A thorough review of the record evinces no inquiry whatsoever by the defendants, or attempt to explain why such inquiry would have been futile. Thus it will be presumed that due inquiry would have disclosed the existent facts." *Henson v. Bridges*, supra, p. 10, of 218 Ga., p. 228 of 126 SE 2d.

The appellees also contend that they have established prescriptive title by way of peaceful, continuous, open and adverse possession by them and their predecessors in title beginning in 1940. However, the remaindermen named in the 1922 deed had no right of possession until the life's tenant's death in 1972. "Prescription does not begin to run in favor of a grantee under a deed from a life tenant, against a remainderman who does not join in the deed, until the falling in of the life-estate by the death of the life tenant." *Mathis v. Solomon*, supra, p. 312, of 188 Ga., p. 25 of 4 SE 2d. See also *Ham v. Watkins*, 227 Ga. 454 (3), 181 SE 2d 490; *Biggers v. Gladin*, 204 Ga. 481 (6), 50 SE 2d 585; *Seaboard Air-Line R. Co. v. Holliday*, 165 Ga. 200 (2), 140 SE 507; *Brinkley v. Bell*, 131 Ga. 226 (5), 62 SE 67.

A remaining enumeration of error asserted by appellants which deals with the admissibility into evidence of a title examiner's certificate of title is unnecessary to decide in view of the conclusions reached above. The trial court erred in granting appellees' motion for directed verdict and in overruling the appellants' motion for directed verdict.

Therefore, the judgment of the trial court is reversed with direction that judgment be entered in favor of the appellants.

Judgment reversed with direction.

Taxes

City of Atlantic v. County Board of Review, Iowa Sup. 75, 234 NW 2nd 880

Taxpayers filed protest before county board of review asking board to raise tax valuation of certain property. The board affirmed assessor's valuation; taxpayers then brought action against county board and others. The District Court affirmed the board's denial of claimed undervaluation, and the plaintiffs appealed. The Supreme Court held that sale and leaseback arrangement was not a "normal sale" as is required by provisions of property tax statute before sale price is to be considered in arriving at fair market value for assessment purposes; and that taxpayers had failed to meet burden of proving valuation was inadequate, inequitable, or capricious.

Affirmed.

Prince George's County, Maryland v. White, 340 A2d, 236, 275 Md. 314, (1975)

County appealed from a Maryland Tax Court decision in favor of taxpayers who had sought partial refund of recordation (stamp) taxes which were paid upon the recordation of certain deeds of trust.

At the 1968 session of the General Assembly, several changes were made in Section 277 of Article 81 of the Code.

Chapter 301 of the Laws of 1968, which was approved on April 10th, 1968, became effective on July 1st, 1968 and added a new subsection (r) "to follow immediately after Section 277 (q)." Subsection (r) reads: "Notwithstanding the other provisions of this section the County Commissioners of Prince George's County in lieu of the rate of tax provided in subsection (b) above, are authorized by resolution to adopt a rate of tax as follows: In the case of instruments conveying title to property, the tax shall be at the rate of $1.10 for each $500 or fractional part thereof of the actual consideration paid or to be paid; and in the case of instruments securing a debt, the tax shall be at the rate of $1.10 for each $500 of the principal amount of the debt secured—."

Chapter 452 of the Laws of 1968, which was approved on May 7, 1968, also became effective on July 1, 1968 and added a new subsection (q), which reads: "Every county and Baltimore City may, by resolution or ordinance duly enacted by its governing body, fix the rate imposed by this subtitle. In the absence of such resolution or ordinance, the rates specified in this subtitle shall continue to apply."

On May 10, 1968, the County Commissioners, expressly acting pursuant to Chapter 301, adopted General Resolution No. 21, which set the recordation tax rate at $1.10, effective July 1, 1968. On September 13, 1968, the County Commissioners adopted Resolution No. 32, which repealed and reenacted Resolution No. 21, effective immediately. The result of that action was to increase the recordation tax rate to $1.65 for all instruments executed thereafter.

Judgment affirmed. The Court of Appeals reasoned that the basic rates are set at $0.55 in subsection (b). By subsections (m), (n), (o), (p) and (r), the rates in Baltimore City and in 16 of the 23 counties, including Prince George's, are fixed in some other specific amount. Subsection (q), which merely allows every county and Baltimore City to fix the rate by resolution or ordinance, is presently not operative in any of those counties and in Baltimore City. In the remaining counties, presently seven in number, the rate specified in subsection (b) apply in the absence of a resolution or ordinance adopted pursuant to subsection (q), setting the rate in some other amount.

Tax sales

Green Acres Realty Inc. v. Rocchio, — R.I. —, 347A 2d 407 (1975).

Petitioner bought real estate at a tax sale held on March 26, 1966. The tax deed was not recorded until June 15, 1966. Statute provided that the deed would not be valid unless recorded within 60 days of the sale. On petitioner's petition to foreclose all rights of redemption arising from the tax sale brought seven and one-half years after the sale, the Rocchios who were the record owners of the real estate at the time of the sale and made parties to the proceedings, challenged the validity of the sale and asked that the petition be dismissed and that they be allowed to reclaim their property. A report of title examination, which is part of the record of the proceedings, showed that on December 30, 1963 the Rocchios' real estate had been attached by a creditor who obtained judgment on February 27, 1964 and levied execution against the real estate. The real estate was sold by sheriff's sale to the creditor in October, 1964, but, although the sheriff's deed to the creditor was executed on November 5, 1964, it was not recorded until December 28, 1967 — long after the March, 1966 tax sale.

The trial justice ruled that, because of the 1964 sheriff's sale and subsequent deed, the Rocchios had no standing to question the late recording of the tax deed and no right to redeem the real estate. The appellate court agreed.

The sole reason for the Rocchios being named parties to the proceedings was because they happened to be the record titleholders of the real estate at the time of the tax sale resulting from the belated recording of the sheriff's deed. Since by long-standing statute, a sheriff's deed passes all right, title and interest that the debtor had in the real estate at the time of the attachment, it follows that whatever claim the Rocchio's might have had to exercise the statutory right of redemption had been lost because of the 1964 sheriff's deed.

Bell v. Myers, 345 A 2d 105, 28 Md. App. 339, (1975).

Plaintiffs filed a bill of complaint for declaratory relief seeking a decree declaring them to have fee simple title to certain lots in a subdivision. Plaintiffs based their prayer for relief on what they allege is an unbroken chain of title beginning in 1908 and ending with a recorded deed to them in 1961. The defendants' answer to the bill denied the validity of the plaintiffs' title and alleged title in themselves by virtue of a chain of title beginning with a tax sale in 1915 and ending with a recorded deed to them in 1957.

The tax sale was brought against certain assessed owners to whom there was no record of any deed. The tax sale had been ratified and confirmed by the Circuit Court for Anne Arundel County in 1924.

Held that the defendants, through their chain of title commencing with the tax sale, acquired record title to the property in

(continued)

dispute, free and clear of any claims of the plaintiffs. The Court of Special Appeals applied Section 99A of Article 81 of the Maryland Code which provides: "When any tax sale made prior to January 1, 1944, has been finally ratified, then no court of equity or law in this State shall on or after June 1, 1966, entertain any proceeding to set aside or modify any title to any interest obtained in such sale." The only exceptions to the bar of this statute is where it is shown that the court ratifying the sale lacked jurisdiction or where it is shown by clear and convincing proof that the tax sale as ratified was procured by fraud perpetrated by the purchaser. There was nothing in the record suggesting the application of either of these exceptions.

Tenancy by the entirety

D'Ercole v. D'Ercole, 407 F. Supp. 1377 (D Mass. 1975)

In this case an estranged wife brought a declaratory and injunctive action against her husband relating to the constitutionality of the common law concept that in property held in Tenancy by the Entirety the husband has the right to possession during his lifetime. The court entered judgment for the defendant holding that Tenancy by the Entirety although male oriented is but one option open to married persons taking title to real estate, and is therefore a constitutionally permissible classification. In this case the court followed in its reasoning—*Klein v. Mayo* F Supp. 583 (1973), affirmed 416 U.S. 953.

Title insurance

Lawyers Title Company of Missouri v. St. Paul Title Insurance Corporation, 526 Fed. 2d 795 (1975)

One title insurance company brought an antitrust action against another, claiming that defendant unfairly restrained competition through predatory pricing of title insurance in the metropolitan area of St. Louis, Missouri. Defendant raised the defense of the McCarran Act and the trial court dismissed the complaint; plaintiff appealed, and the Appellate Court affirmed. The Circuit Court held that the practices challenged in the complaint were regulated by Missouri insurance laws and not subject to federal antitrust statutes because of the McCarran Act. The court further held that if a state generally regulates the pricing conduct of insurance companies, this suffices to exempt insurance carriers so regulated from federal antitrust suits. The court further stated that the McCarran Act exemption does not depend on the zeal and efficiency displayed by a state in enforcing its laws and the exemption applies whenever there exists a state statute or regulation capable of being enforced.

In American Title Co. v. Anderson 52 Cal. App. 3d 255 (1975).

The Andersons executed and delivered to the defendants a grant deed of the subject real property which was in fact a mortgage to secure the payment of a loan. The Andersons filed an action against the defendants seeking to quiet title to the property and to have the grant deed declared to be a mortgage. Contemporaneously with the filing of that action the Andersons recorded a lis pendens as to the subject property. During the pendency of the action defendants conveyed the subject property to purchasers whose title was insured by a policy of title insurance issued by plaintiff. The policy failed to reflect the lis pendens. Subsequently, a judgment was entered quieting title in the Andersons, declaring that the deed by which the defendants had purported to hold title to the property was in fact a mortgage to secure the payment of a loan and declaring that the loan had been fully repaid. Thereafter, plaintiff settled with the insured purchasers by paying them $13,500 on the scheduled policy liability of $19,000. Plaintiff then brought this action, by way of subrogation, for a common count, money had and received to recover the $13,500 paid to the insureds.

The appellate court reversed a summary judgment in favor of plaintiff in the amount prayed for. The court first held that plaintiff was equitably subrogated to the rights of the insureds against defendants. Defendants had an obligation to the insureds stemming from the fact that they purported to grant a fee simple estate in real property in which they had no title whatsoever. Plaintiff was obligated to the insureds since the title policy did not reflect a defect in title of record, i.e., the lis pendens. As between the two obligors the equities however, were with plaintiff since its obligation arose from an omission while the obligation of the defendants was one of commission. Plaintiff's issuance of the policy of title insurance did not cause the failure of the title. On the other hand, defendants were parties to the original transaction with the Andersons and were parties to the quiet title

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American First Title and Trust Co. of Oklahoma City recently underwent a change of leadership when President **John R. Cathey** resigned in order to purchase and operate the Bryan County Abstract Co. in Durant, Okla. The former owner of the abstract company, **Bill Cooper**, retired.

William A. Towler III, formerly executive vice president of Rattikin Title Co. of Fort Worth, Texas, will become the president and chief operating officer of American First. Towler is currently chairman of the ALTA Young Title People Committee and also serves on the Abstracter and Title Insurance Agents Section Educational Committee, which Cathey chairs.

Cathey left American First Title and Trust Co. after over 15 years because, he said, "For several years I've wanted to own a company and not work for someone else. But a business doesn't become available everyday."

Other American First personnel changes include the election of **John W. Cox** as vice president and controller; **Kenneth E. McBride** as vice president and general counsel; **Kenneth E. Schuerman** as savings officer; **Phil G. Busey** as title officer and **Bernadine Abernathy** and **Karen Hart** as assistant secretaries.

A Pioneer National Title Insurance Co. vice president, **Joel L. Wilson,** has been named manager of a five-county area in Missouri and Kansas. Prior to his promotion, Wilson managed the Jackson County, Mo., operation for PNTI.

Jeanne H. Mahoney has been elected a vice president of Title Insurance and Trust Co. She is a 20-year veteran of the real estate-title industries.

Since the Continental Group's recent acquisition of Lawyers Title Insurance Corp., four Continental officers have been elected to the Lawyers Title board.

They are **Robert S. Hatfield,** Continental's chairman and chief executive officer; **S. Bruce Smart Jr.,** president and chief operating officer; **Donald J. Donahue,** vice chairman, chief financial and administrative officer, and **Edgar O. Bottler,** vice president and general counsel.

In the merger, Continental Group acquired the Richmond Corp. and its affiliates, one of which is Lawyers Title.

Names in the News...

Top row, left to right: Joel L. Wilson, Warren A. Kennedy. Second row left to right: K. L. Frandsen, Robert G. Bannon.

Lawyers Title Insurance Corporation also has announced the following promotions. **K.L. Frandsen** of Chicago has been appointed national division manager of the company's Chicago office. He has been with LTIC since 1964.

J. Henry Godwin III has been named assistant manager of the Norfolk, Va., Lawyers Title branch office. He joined LTIC in 1974.

Lee B. Freedman has been elected New York state manager for LTIC. The immediate past president of the New York State Land Title Association, Freedman brings 17 years of title industry experience to his new position. He will retain his current title of state counsel.

William J. Hassett of Troy, Mich., has been appointed an assistant vice president of the corporation. He is currently chief escrow officer in Lawyers Title's Troy branch.

Warren A. Kennedy has been appointed a senior vice president of Commonwealth Land Title Insurance Co. He has also been named northwest regional manager for the company, and in that capacity will assume responsibility for title operations in Washington, Oregon and Alaska. Kennedy has been in the land title business for 28 years.

Robert G. Bannon, a newly appointed Commonwealth vice president, will head the recently opened Hartford, Conn., office. He has been in the title industry since 1964, and is a past president of the New England Land Title Association, as well as a co-author of *The Connecticut Condominium Manual.*

Robert J. Hauser Jr. will serve as assistant manager for the new branch office. He was recently named an assistant vice president of Commonwealth.

J. Laura Hollander of Commonwealth's Philadelphia headquarters has been named an assistant vice president of the company.

Commonwealth also has announced the appointment of **Ellen Eshenbaugh** of the Pittsburgh office as assistant treasurer. **June R. Watson** of the Washington, D.C., branch and **Annette Howard** of the Tucker, Ga., office were appointed assistant secretaries of the company.

John R. Perkins III has been named assistant counsel of the Salem, Ore., office of Commonwealth.

NYSLTA elects Seltzer president at convention

Elected president of the New York State Land Title Association at the annual convention in July was Gary Seltzer, vice president of Commonwealth Land Title Insurance Co.

Other officers elected at the Playboy Club in McAfee include three regional vice presidents. They are Richard L. Pollay, vice president of the Chicago Title Insurance Co., the southern section; Edward Frisbee, president of the Albany Title Co., central section, and Jacob J. Fricano, senior vice president and title officer of the Monroe Abstract & Title Corp., Syracuse, western section.

Michael A. Lewis, first vice president of the Title Guarantee Co. was elected treasurer and Frank E. Sprower, senior vice president and chief counsel of the City Title Insurance Co., will chair the Title Insurance Section. Ben Valentine, vice president and general manager of the Mid-State Abstract Corp. in Utica, was elected chairman of the Abstracters and Title Insurance Agents Section.

Few purchasers of real estate, when presented with a title certificate by the seller indicating that various other persons (*e.g.*, mortgagees, judgment creditors or other lienors, adjacent landowners claiming rights-of-way, government authorities, etc.) have registered claims against the property, are competent to interpret the significance of those claims. Consequently, most purchasers will not be willing to proceed with the purchase until they obtain professional assistance to determine the nature, scope and validity of these other claims or interests.

Moreover, the Torrens system does not eliminate the need for the drafting of documents, the handling of the closing or settlement, the proper disbursement of settlement funds and the filing with appropriate public authorities the various title documents—services that will continue to have to be performed by skilled professionals, whether private attorneys or title company personnel.

3. *The difficulties and costs incurred in the registration of interests that have been transferred are greater than may be popularly assumed.*

Under a recordation system, personnel in the Recorder of Deeds office do not have to make any substantive evaluation of documents presented to them for recording. As a result, relatively untrained personnel can be used, the number of employes needed can be kept to reasonable levels and generally there is little or no delay between the time a document is presented for recording and the time notice of the recorded document is given to the public.

Under a Torrens system, on the other hand, personnel in the Registrar of Titles office cannot simply register all documents presented to them, since the registration of a particular document—whether it be a deed, mortgage lien or other claim or encumbrance—has virtually conclusive legal effect. In fact, the registration of a forged deed may wipe out the interest of the previous owner whose signature on the deed was forged.

Because of the important consequences that derive from the registration of a document, Torrens personnel must be highly trained in title matters and therefore paid significantly higher salaries than clerical personnel in a Recorder of Deeds office. In addition, the number of Torrens personnel needed to handle a particular number of transactions is substantially greater than the number of employes that are needed under a recordation system,* and the delays and problems experienced in having a document or claim registered or in obtaining the transfer of a Torrens certificate are substantially greater than the recording of documents under a recordation system. In

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*In 1975, for example, while only 14 per cent of real estate transfers in Cook County fell under the Torrens system, the expense to the county of running the Torrens department was $1,574,000, compared to $868,000 for running the recorder's department, which handled 86 per cent of the transfers of real property in the county. In 1976, the county budget calls for the employment of 134 persons in the Torrens department and 81 in the recorder's department.

(continued on page 19)

New Jersey elects Burroughs unit president

One of the highlights at the New Jersey Land Title Association annual convention in Absecon, N.J. was a panel discussion entitled, "Title Insurance and the Institutional Lender."

Newly elected president of the organization is Richard Burroughs, senior vice president of the Title Insurance Corporation of Pennsylvania. First and second vice presidents are H. David Lasseter and Eugene J. Whitaker respectively. Lasseter is vice president and manager of the northeastern division of Stewart Title Guaranty Co. and Whitaker is a Commonwealth Land Title Insurance Co. vice president. John W. Nolen Jr., who is state counsel of Lawyers Title Insurance Corp., will serve as treasurer.

Iowa statute challenged in state high court

Chairman of the ALTA Judiciary Committee Ray E. Sweat reported a recent Iowa Supreme Court case submitted by the Iowa reporter, G. A. Harstad. The case concerns an Iowa statute prohibiting title insurance or insurance against loss or damage by reason of defective title, encumbranced or otherwise. (Section 515.48, (10) Iowa Code Annotated). This statute was enacted in 1947.

In 1972, Chicago Title Insurance Company filed an application with the Iowa Insurance Commissioner seeking admission as a title insurer. Admission was denied.

Chicago Title sought injunctive relief contending the denial of right to do business in Iowa denied it a property right protected by due process and equal protection clauses of Article I of the Iowa Constitution and the 14th Amendment of the U.S. Constitution.

In *Chicago Title Insurance Company v. William H. Huff, III, Iowa Insurance Commissioner, _____ Iowa _____, _____ N.W. 2d _____* (1977), the court held:

- Although not pleaded in the trial court, the Commerce Clause of U.S. Constitution has been in large measure nullified by the McCarran-Ferguson Act which mandates that the business of insurance shall be regulated by the states.
- The Due Process Clauses do not prohibit the state from exercising its police power to pass and enforce laws that will benefit the health, morals and general welfare of the people. Title insurance as allegedly practiced in some areas, with payment of commissions or rebates would be inimical to the public good and welfare.
- The Equal Protection Clause does not preclude the state from classifying commercial enterprises for the purpose of regulation. Insurance is peculiarly subject to special provisions and control, and title insurance has several characteristics which distinguish it from other forms of insurance. The general assembly could have reasonably concluded the preclusion of in-state title insurance activities was necessary.

Chairman Sweat speculates that if Senator Brooke's Federal Insurance Act of 1977, Senate Bill 1710, is enacted and a company elects to become a federally chartered insurer, the company in accordance with the act should be authorized to do business in any state.

Section 201(b) (2) (B) of the proposed act provides that upon issuance of the Federal Charter, the insurer shall be deemed to be authorized to do business in any state.

ALTA action...

For the ninth consecutive year, ALTA is sponsoring the Consumer Information Category of the National Association of Realtors Real Estate Journalism Achievement Competition. After the completion of contest judging, award winners will be announced this fall.

Both associations have been commended by the National Association of Real Estate Editors for the joint decision resulting in ALTA sponsorship of the category rather than establishing a separate editorial contest in a time of proliferating award programs.

The sponsorship is an activity of the ALTA Public Relations Program.

ALTA President Philip D. McCulloch and ALTA Director of Government Relations Mark E. Winter addressed the Kansas and Missouri Land Title Associations' joint convention in Kansas City August 13.

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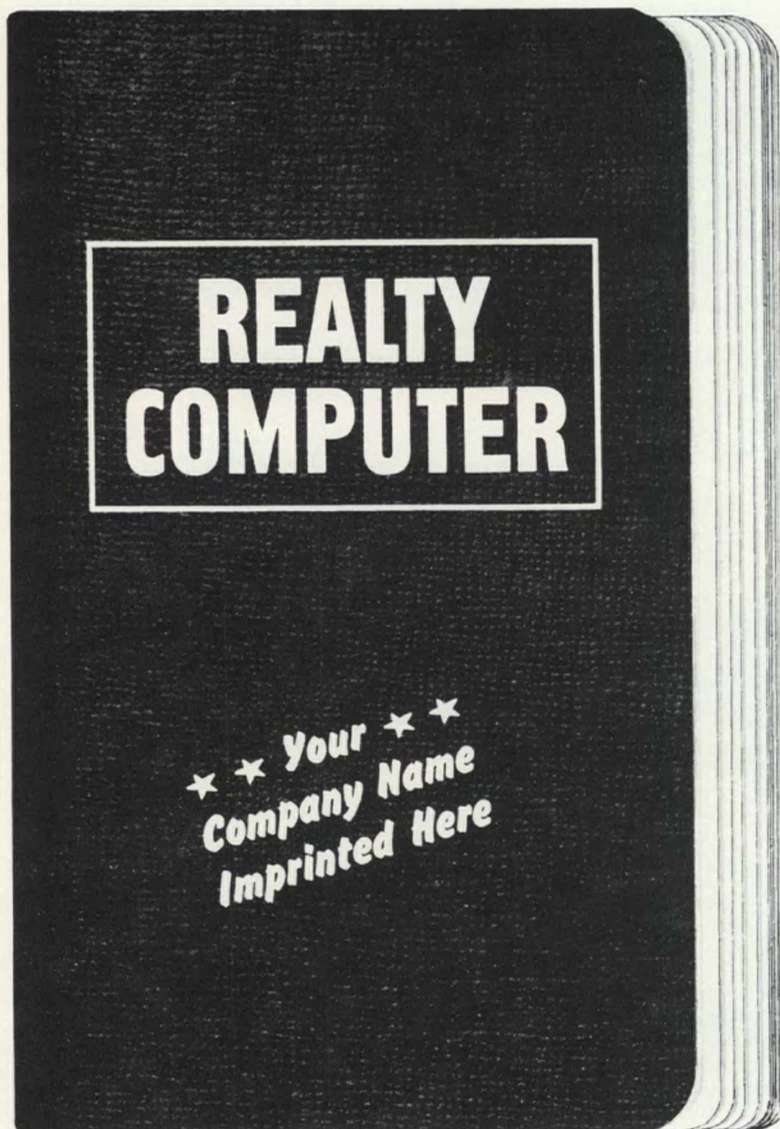

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Speeches, awards highlight Texas land title meeting

Texas Land Title Association's Membership Committee Chairman Sid Terry told persons attending this year's TLTA convention in San Antonio that "TLTA is within striking distance of having all title and abstract companies in Texas as members of the association."

Terry's was just one of the many presentations the 500 convention-goers heard during the three-day event. In another speech, ALTA President Philip D. McCulloch reported the legislative developments and activities of ALTA.

Recipient of the 1976-77 Titleman of the Year Award is William A. Towler III who, in addition to heading the TLTA School Development Committee, chairs the ALTA Young Title People Committee.

Alex H. Halff of the Alamo Title Co. in San Antonio was elected president; Diane Dietert of Guaranty Title Co. in Boerne is the new president-elect; Bill Thurman of Gracy Title Co. in Austin is vice president; Russell L. Abraham of Chicago Title Insurance Co. in Houston, is secretary, and Norman Moize of Southwest Land Title Co. of Dallas is treasurer.

Newly appointed regional vice presidents are Ralph Edwards of Lubbock Abstract and Title Co., Lubbock, Region 1; Sid W. Terry of USLIFE Title Insurance Co. of Dallas, Region 2; Joel Houston of Title Insurance Co. of Minnesota in Houston, Region 3; Leonora S. Wolf of New Braunfels Abstract Co., Region 4, and Ron Rush of Lawyers Title of El Paso, Region 5.

Outgoing TLTA President James H. Garst (left) presents the traditional Texas Stetson hat to ALTA President Philip D. McCulloch at TLTA's convention.

NJLTA ladies promote cookbook

A spiral-bound cookbook entitled *Abstracts from the Kitchen* has been produced by the ladies of the New Jersey Land Title Association. The collection of 92 tested recipes is available at a cost of $2.50 a copy.

Inquiries relating to the cookbook should be directed to Box 279, Belle Mead, N.J. 08502.

Judiciary—*(concluded)*

action in which their record title was under attack and by any standard of fair dealing should have disclosed the facts to either the insureds or plaintiff. Thus it could be said that defendant's attempt to sell something they did not own coupled with their failure to disclose was the primary cause of any loss suffered by the insureds. Further, and of importance, is the fact that defendants' retention of any consideration they received would amount to unjust enrichment.

Although plaintiff is entitled to subrogation the amount of the judgment to which plaintiff would be entitled would be limited to the amount which the insureds could have recovered had they proceeded directly against the defendants. In settling with the insureds for any greater amount, plaintiff would be a volunteer. Plaintiff's declaration in support of the motion for summary judgment did not lay to rest the factual issue of whether their settlement with the insureds was reasonable and within the limits of the potential libility of defendants to the insureds. Plaintiff's declaration did not with sufficient particularity set forth the basis of its settlement with the insureds so as to fix the amount of damages to be awarded on its action in subrogation. Accordingly, the appellate court could not affirm the summary judgment for plaintiff.

Nautilus, Inc. v. Transamerica Title Ins., 13 Wn. App. 345, 534 P (2d) 1388, (1975).

Action by insured against title insurer. Adjoining owner sued insured alleging ownership to a portion by land description (meander line v. line of extreme low tide as boundary) and by adverse possession. Title insurer refused tender of defense on ground that the dispute could be determined only by an accurate survey and it involved a claim of persons in possession, each of which were policy exceptions. The insured settled by conveying 350 feet of tidelands to the neighbor and sued title insurer for value of property conveyed plus costs of defense of the suit.

Held: Insured entitled to recover. The title policy shall be construed in favor of the insured. From the public records the title insurer knew of the boundary conflict and made no specific exception therefor. The filing of a plat by the neighbor was record notice of adverse possession. Where title insurer refused to defend it cannot complain that it was not given notice by the insured of the proposed settlement.

National Bank v. Equity Investors, 86 Wn. 2d 545, 546 Pac. 2d 440 (1976).

Hassle between Bank and sureties where materialman's lien found to be ahead of Bank's Deed of Trust. Sureties object that action was not consolidated with an action by Bank against title insurer asserting that if sureties pay the lien the title insurer will deny that Bank suffered a loss.

Held: That in answering for debt of principal the sureties are subrogated to any rights of creditors bank in the security pledged and "in collateral instruments affecting the value of that security." The sureties "have become equitable beneficiaries of any proceeds recoverable under that title insurance." If the title insurer is liable to the Bank, the sureties can recover from the Bank its unjust enrichment arising from the title insurer's payment of an already compensated loss.

Query: What is the value of the subrogation clause in a title insurance policy?

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Suffolk County, Massachusetts, for example, it can take anywhere from two weeks to two months—depending on the complexity of the certificate and the other searches that are needed—from the time a request for a new certificate is made until the settlement can be held.

While the registration of a simple document or the transfer of a simple certificate may not involve major delays, the registrar's office is naturally cautious and, consequently slow in reviewing and evaluating all documents presented for registration. The registrar's office must make sure that the document has the intended effect and that property rights are not mistakenly cut off by the registration of incorrect or invalid documents. Titles that come through an estate, complex documents or documents that are not in absolute conformity with the rules of the Torrens office or with the outstanding Torrens certificate are frequently rejected for registration. In many cases, a court order must be obtained directing the registrar to accept the document for registration.

In the case of documents that are technically defective, corrective instruments can be secured from the various parties. But even in correcting technical defects, substantial difficulties can arise if the seller has moved to another part of the country or, in the extreme case, if the seller dies before the corrective instrument is obtained. Also, any time an owner decides to sell only a portion of his property there are additional costs such as a survey from a registered land surveyor as well as delays in getting the registrar to issue two new certificates —one for the new purchaser and a "residue" certificate for the seller.

The inevitable result of these delays is that a buyer of a Torrens property may be reluctant to release funds to the seller until he is certain that the registrar will accept all of the documents in the purchase transaction and will issue a new certificate to him. For sellers of real property that are accustomed to closing a real estate transaction and obtaining the sales proceeds within a relatively short period of time after the sales contract has been signed, the long delays that are frequently experienced between the time a sale is completed and the time the seller receives the funds may be unacceptable.

The remainder of "The Torrens System" will be published in a future issue of *Title News.*

LTAC participates in home show

Two members of the Land Title Association of Colorado (LTAC) greet one of the visitors who stopped by their booth during the recent Colorado Springs Home Show. More than 25,000 visitors attended the event sponsored annually by the Colorado Association of Home Builders. LTAC erected the booth in response to Colorado Insurance Commissioner's statement that the onus of educating the consumer about land title services rests with the title industry. The ALTA brochure entitled "Things You Should Know About Home Buying and Land Title Protection" was available at the booth.

Ohio—WTVN, Columbus; WIMA, Lima

Oklahoma—KMMM, Muskogee; KCCO, Lawton

Oregon—KKEY, Portland; KORI, Salem

Pennsylvania—WYZZ, Wilkes-Barre; WSAN, Allentown

Rhode Island—WADK, Newport

South Carolina—WMRB, Greenville; WTND, Orangeburg

South Dakota—WNAX, Yankton

Tennessee—WIOK, Memphis; WOPI, Bristol

Texas—KOKE, Austin; KOUL, Corpus Christi

Vermont—WDOT, Burlington; WTSA, Brattleboro

Virginia—WRIS, Roanoke; WFAX, Falls Church

Washington—KLAY, Tacoma; KWWW, KUEN, Wenatchee

West Virginia—WEMM, WHEZ, Huntington; WTCS, Fairmont

Wisconsin—WKTS, Sheboygan; WLDY, Ladysmith

Wyoming—KEVA, Evanston

American Title opens three new Florida offices

American Title Insurance Co. recently opened three new branch offices in Florida, thus bringing the number of branches in that state to 16. The additions are Kendall, Lake Worth and Orange Park.

In addition to the new offices, the Sarasota and Madeira Beach bureaus have moved within their respective cities. Madeira Beach's address is 12911 Gulf Blvd., East and Sarasota's is 4402 S. Tamiami Trail.

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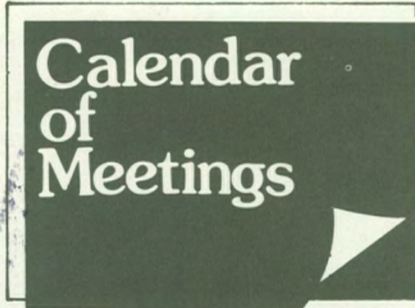

September 7-10, 1977
Dixie Land Title Association
Coliseum Ramada Inn
Jackson, Mississippi

September 8-10, 1977
North Dakota Land Title Association
Grand Forks, North Dakota

September 11-13, 1977
Indiana Land Title Association
Hyatt Regency
Indianapolis, Indiana

September 11-13, 1977
Ohio Land Title Association
Saw Mill Creek
Huron, Ohio

September 22-23, 1977
Wisconsin Land Title Association
Telemark Lodge
Cable, Wisconsin

September 24-25, 1977
Carolinas Land Title Association
Wrightsville Beach, North Carolina

September 29-30, 1977
Nebraska Land Title Association
Ramada Inn West
Omaha, Nebraska

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

November 3-5, 1977
Arizona Land Title Association
The Wigwam
Litchfield Park, Arizona

November 10-12, 1977
Florida Land Title Association
Sonesta Beach Hotel and Tennis Club
Key Biscayne
Miami, Florida

November 30, 1977
Louisiana Land Title Association
Royal Orleans Hotel
New Orleans, Louisiana

March 7-10, 1978
ALTA Mid-Winter Conference
Hyatt Regency Hotel
Phoenix, Arizona

April 21-22, 1978
Oklahoma Land Title Association
Hilton Inn West
Oklahoma City, Oklahoma

April 27-29, 1978
Texas Land Title Association
Houston Oaks Hotel
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