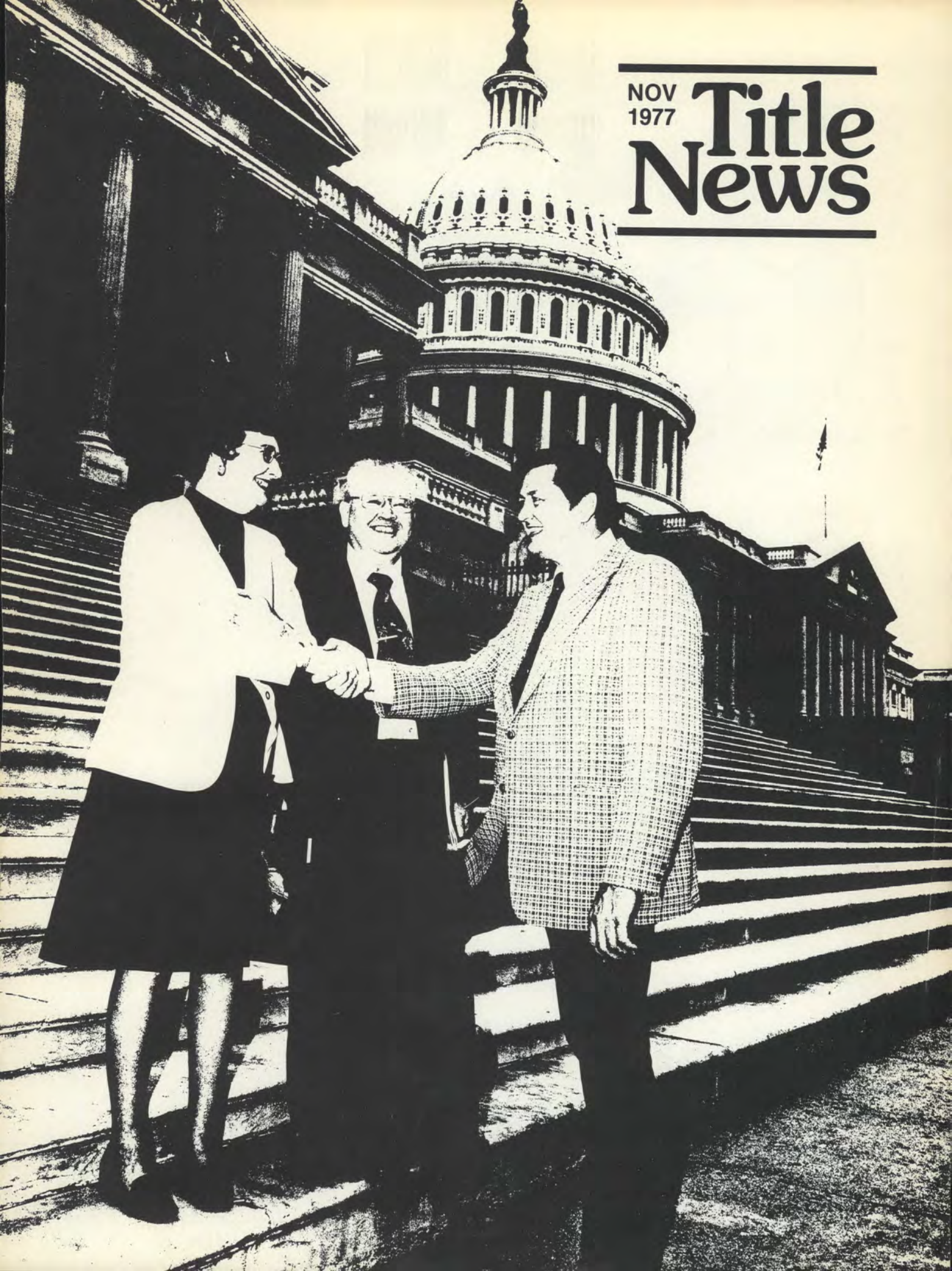


NOV
1977

Title News





a message from the President . . .

This is my first message to you as President—and the very first thing to say is thanks for affording me this honor. ALTA has been blessed with excellent leadership in the past and has made significant strides to bring us to where we are today. I assure you that I will do everything in my power to continue this progress.

Phil McCulloch provided excellent leadership as your president last year. In addition, he and Lois were outstanding emissaries to numerous state conventions. A big "thank you" to them on behalf of the entire membership.

The Annual Convention in Washington, D.C., last month was outstanding. It started in dramatic fashion with the United States Air Force Ceremonial Band saluting the colors, which were paraded by the Joint Armed Forces Color Guard. The first address, presented by Sen. Edward Brooke of Massachusetts, was a meaningful one. This set the tone of excellence for the entire program which highlighted a number of the challenges our industry is facing today and reports on what ALTA is doing about them.

The minutes of these proceedings will be published in later issues of *Title News*. I commend them to your reading so that you will be well informed on the significant issues with which we are being confronted.

I have set a number of major objectives for myself and the Association this year.

• Through the Government Relations and Public Relations committees, we will continue our efforts to correct misconceptions about our industry.

• Through the Federal Legislative Action Committee we will take positive positions before Congress on legislation affecting our businesses.

• We will involve a broader segment of our membership with ALTA activities through committee and Board of Governors work.

• We will expand the services to our membership by providing educational opportunities to our members and their employees as well as acting as a clearinghouse to disseminate information to you relating to items such as adverse Internal Revenue Service rulings, title plant innovations, Securities and Exchange Commission regulations, errors and omissions insurance, Indian claim problems and the like.

• We will dedicate ourselves to keeping the land transfer business as a part of the free enterprise system and resist all attempts by federal or state governments to preempt that field.

None of these goals can be achieved unless we all work together. This means your becoming personally involved and not relying on other members of the Association or the excellent staff to do the job alone. With your participation and cooperation, we can continue the Association's progress and realize our objectives.

Sincerely

C. J. McConville

Title News



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On the cover: Leonard and Helen Kingsford, owners of the Caribou Title Co. in Soda Springs, Idaho, were among participants of the September ALTA government relations activities in Washington, D.C. aimed at fostering better relations with government. They are pictured on the steps of the U.S. Capitol with Rep. George V. Hansen (R-Idaho) (right) whom they visited. Reports of the Capitol Hill visits, the Federal Reception and Seminar '77 begin on page 4.

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Government relations program draws good participation

The ALTA Government Relations Federal Reception, Capitol Hill visitations and Seminar '77 in mid-September attracted an impressive number of title industry participants from across the nation and have been termed a success.

Two such industry representatives, who traveled from Soda Springs, Idaho, to talk to their Senator and Congressman about title-related matters were Leonard and Helen Kingsford, agents for SAFECO Title Insurance Co. and owners of the Caribou Title Co. in Soda Springs. (See cover picture.)

They have been members of the Idaho Land Title Association and ALTA since 1959. Kingsford, a past president of ILTA, recalls that he and Mrs. Kingsford attended the ALTA Annual Convention in Philadelphia in 1964. Since that time and until now, they have limited their activities to the state association's functions.

The government relations program prompted them to make the trip from

Idaho to Washington, D.C. and Kingsford explained why when he said of their visit to the offices of Sen. James A. McClure and Rep. George V. Hansen, both Republicans, "I think you always get a better reception and are more effective with a personal contact. I've called both Senator McClure and Representative Hansen on separate occasions, but this is superior," Kingsford said, referring to the Capitol Hill visitations.

What the Kingsfords talked about with their legislators is somewhat typical of topics discussed by 38 other title people who delivered title industry information packets to their representatives' offices September 14.

Kingsford, who studied law with Senator McClure at the University of Idaho, said that he and Mrs. Kingsford went over the packets with their representatives and discussed Indian land claims to some degree. The packets included a copy of *The Title*

Industry: White Papers, Volume 1, a background paper on Indian tribal claims, a summary of the Arthur D. Little, Inc., Torrens study and a paper explaining ALTA and its function.

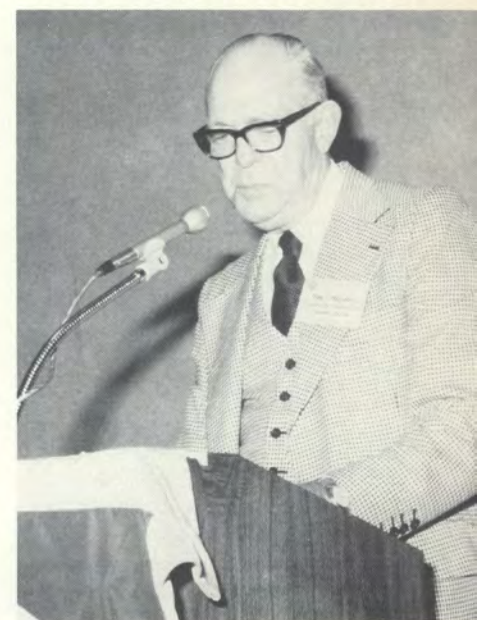
That evening at the Washington Hilton Hotel, title people again met with their representatives—this time in the informal atmosphere of a reception. The approximately 300 persons who turned out included Senators, Representatives, Congressional staffers, agency representatives and news reporters.

The following morning, the final phase of the two-day program got underway with Seminar '77 at the Hyatt Regency Hotel. Aimed at federal personnel, the event drew an audience of 100 and featured speakers who examined land recordation and title insurance and the Torrens land registration system.

Irving H. Plotkin and Blair C. Shick of Arthur D. Little, Inc., the Cambridge,



Seminar panel members included Blair Shick and Irving Plotkin of Arthur D. Little, Inc., and Thomas E. Horak.



Seminar moderator and 1976-77 ALTA President Philip D. McCulloch.

Focus is on Torrens at Seminar '77

Mass., research firm, discussed a study of land recordation and registration they conducted. (See story on page 6.)

Other speakers were Martin Lobel, a District of Columbia attorney, who delivered a commentary as a Torrens advocate; John E. Jensen, senior vice president, Chicago Title and Trust Co., and chairman of the ALTA Research Committee, who discussed Torrens from a practical viewpoint; Reid Patterson, attorney advisor for the Dept. of Housing and Urban Development (HUD), who provided an update on HUD's activities under Section 13 of the Real Estate Settlement Procedures Act (RESPA) (see story on page 7), and Thomas E. Horak, vice president, Commonwealth Land Title Insurance Co., Philadelphia, and chairman of ALTA's Committee on Improvement of Land Title Records, who presented observations on improving the present land recordation system. (See story on page 9.)

ALTA Immediate Past President Philip D. McCulloch moderated both the early segment of the program and the subsequent open discussion period.

Lobel's argument that the Torrens system he proposes for the District of Columbia would greatly simplify the land transfer process was refuted, most notably by Jensen who intimately knows the Cook County, Illinois, Torrens system and by Arthur D. Little, Inc., findings.

Citing an Illinois Appellate Court case concerning a procedure under Torrens for condemnation, Jensen simultaneously buttressed an observation concerning exceptions under Torrens made in the Arthur D. Little Torrens study and proved Torrens not to be as simple in practice as it might appear to be in theory.

A residence in Cook County which had been condemned was subse-

quently and repeatedly taxed and then put up for sale for delinquent taxes. Meanwhile, the Torrens office had not been notified of the condemnation. The purchaser under the tax delinquency went to the Torrens office to file his tax deed only to find that the property is now a part of the Ryan Expressway in Chicago. The Registrar refused to file the tax deed.

The court ruled that the Registrar didn't have to accept the recording because, the court concluded, even though there hadn't been under the Torrens statute a change in legal title, there was a change in equitable title.

"This decision added one more exception to matters being covered by the Torrens office," Jensen said. "In spite of 80 years of experience with this . . . we continue to have new situations arise where it is not at all clear what is covered by the Torrens certificate. . . ."

"In every jurisdiction there is a whole list of exceptions—things that are

not being certified to," Shick of the Arthur D. Little research team said. "The system—being state law—cannot control claims based on federal law," Shick said.

Lobel said in his presentation that Torrens would solve the Indian claims in Maine because they would have been cut off under Torrens. Those claims are based on the Indian Non-Intercourse Act of 1790 which remains as a part of the federal code today. Because of this fact, Jensen pointed out that Lobel was in error when, in effect, he said that a state law could control claims based on federal law.

Budget constraints, under which all arms of government labor, can translate to delays. According to Jensen this has been true particularly this year in the Cook County Torrens office. He indicated the office was not completely prepared for the high level of real estate activity.

(continued on page 6)



Three of the six seminar panel members were Reid Patterson, Martin Lobel and John E. Jensen.

Program—(concluded)

"It takes on the average six months for a real estate purchaser to get his Torrens certificate. Because Torrens is a budgeted government office, it doesn't have the freedom to increase its staff," he said.

This state of affairs has had economic implications for one developer in particular who has some proper-

ty registered in Torrens. Jensen said it has taken up to two weeks after closing to actually get the documents accepted for recording.

What this means for the developer is that he cannot get his funds on the proceeds of the sale. Without his funds, he cannot pay off his construction loans. This all restricts the developer's ability to continue his

building operation in providing residential properties in Cook County, Jensen said.

In addition to the speakers and a question and answer period, there was a showing of the new ALTA film, *The American Way* which tells of the role of title insurance in safeguarding the individual's interest in real property.

Arthur D. Little, Inc., research team reports Torrens study findings

The Torrens system, although it works well for a narrow set of problems related to unmarketable titles in Massachusetts and Minnesota, offers little justification for application elsewhere. In addition, Torrens produces taxpayer subsidy for commercial landowners, offers no positive impact on residential closing costs and does not alleviate the need for legal assistance and title insurance. It is also highly susceptible to bureaucratic abuses and inefficiencies.

This list of negative points against the Torrens system were among findings presented at Seminar '77 by Irving Plotkin and Blair Shick, an Arthur D. Little, Inc., research team who recently completed field work on an in-depth study of land registration systems in the U.S.

"We could not, because of our prior work with the HUD/VA report on real estate settlement costs, fail to be struck by an irony in this assignment," Plotkin said. "Much of the costs lumped under the title of settlement costs have nothing whatsoever to do with the costs of establishing evidence of good title."

Plotkin pointed out that HUD and other data have shown that title-related closing costs constitute less than 10 per cent of the typical settlement cost bill. "Accordingly, it seemed to us back in 1973 and again in 1977 that a disproportionate amount of time and effort has been devoted to one of the lowest elements in the settlement cost matrix."

The study findings clearly show that placing a piece of residential real estate in a registration system is an unwise investment from the viewpoint of the individual who must bear those costs or from society's point of view. In most cases, Plotkin said, such placement results in no

savings in closing costs even for future transactors. In the few cases where there may be some slight savings, their present value does not begin to approach the initial investment costs.

The Torrens system produces a perverse reverse cross subsidy from the small homeowner to the large commercial developer, builder or speculator. "They are the ones who have, wherever any benefit could have been had, if you want to allege a benefit exists, benefited at the cost of the general taxpayer," Plotkin said. Shick noted that users of the Torrens system are commercially oriented. There is little homeowner use. As far as continuing use is concerned, it is almost non-existent in Cook County, Illinois and there is a pattern of slight decline in other areas, Shick said.

Plotkin observed that, from his layman's viewpoint, "Torrens stands the jurisprudence of land ownership on its head, apparently primarily to ease the life of the bureaucrats who must administer the system." In a case of a forgery, Torrens shifts the burden to the rightful owner, Plotkin noted.

"I was shocked to learn that as an owner of registered land, I could innocently lose it when my neighbor, suffering the same set of circumstances, would retain his good title," he said.

After a thorough examination of the best of the surviving land registration systems—those in Massachusetts, Illinois and Minnesota—Plotkin and Shick agree that they did not find in them hope for societal savings in closing costs.

In outlining the basic operating principles of the registration systems, Shick noted that administration of a Torrens system requires quality and

(continued on page 7)



In the Federal Reception receiving line, (top), 1976-77 ALTA President Philip D. McCulloch (left) welcomes White House staffer Steve Selig. ALTA Executive Vice President William J. McAuliffe Jr. is pictured in the background. In the center photo, Margaret A. Thurston of the Converse Land Title Co. in Douglas, Wyo., discusses material relating to the title industry with Rep. Teno Roncalio (D-Wyo). Francis E. O'Connor (left in the bottom photo), senior vice president of Chicago Title and Trust Co., has an opportunity to visit with Rep. and Mrs. Robert McClory (R-III).

Torrens—(concluded)

therefore expensive personnel. He pointed out that the accuracy and content of the Torrens certificate will be determined solely by the quality of the custodian. He estimated "it is going to cost you four times as much to run the system (Torrens) as it does to run the conventional system," noting that existing Torrens systems are still subsidized.

"In every jurisdiction there is a whole list of exceptions—things that are not being certified to. The system—being state law—cannot control claims based on federal law," Shick said. Other exceptions he cited include unfiled mechanic's liens, current taxes and special assessments and interests arising under federal laws.

In addition to the relatively high cost to register land, there are more costs

subsequent to registration, there are no significant savings in closing costs and there are inadequate public insurance funds, Shick said.

Where Torrens is used, Shick pointed out, it is used predominantly to achieve title marketability, to protect against adverse possession, to simplify complex land holdings, to protect against errors in parcelling and, in Massachusetts, to determine precise boundary lines.

As a conclusion, Plotkin said, "We would urge those of you responsible for designing systems for our country to test the hypotheses and promises of theoretical Torrens systems against the substantial history of actual experience available in this nation. Any theory or proposal for reform should stand up to such tests."

HUD's attorney advisor updates seminar audience on RESPA

Differing views on the HUD approach to its establishment of demonstration land parcel recording systems under Section 13 of the Real Estate Settlement Procedures Act (RESPA) are not necessarily accurate, according to Reid Patterson, attorney advisor in HUD's office of the General Counsel.

Appearing as the lead-off speaker at ALTA's Seminar '77, Patterson said, "The Department, while plied with biased recommendations and buffeted occasionally by adverse criticism, has steadfastly adhered to the view that RESPA mandates an objective research and analysis of the state of the art, of legal constraints to improvement, of available means of eliminating repetitive title examinations, of title registration and of the role of maps and surveys in making improvements."

As part of his Section 13 speech, Patterson outlined a timetable of the Department's Section 13 activities which ranges from the contract award to the closing evaluation report on demonstrations.

HUD is on the brink of selecting a contractor to implement the evaluations and demonstrations, Patterson said.* It is expected the research

and analysis will be completed 23 weeks after the contract award. The study and demonstration will close with a final evaluation report, which is due 136 weeks from the date of the contract award. Additionally, an interim report will be made in the fall of 1979.

Patterson said it is obvious the five-year reporting-back requirement of Section 14 cannot be met. However, during the course of the study, monthly reports will be made to a government representative. Summary reports also will be made as each task and subtask is completed.

The state of the art analysis under Section 13 will "embrace an examination of innovative systems of record-keeping in selected sites in the country which are in use, in the process of development or merely planned and, which are based upon tract indices, privately owned title plants, title registration systems and computerized name indices." Patterson also said that the legal staff of the HUD contractor will prepare a state-by-state summary of the legal provisions regarding recordation.

Another aspect of the study will examine legal constraints to dealing with problems of technical defects in documents, non-land interests, such as judgment liens and the like, unrecorded and valid interests and exemptions—legislative and judicial—of the Marketable Title Act.



Two study proposals for the elimination of repetitive title examinations that Patterson named are shared title plants and the public recordation of title evidence.

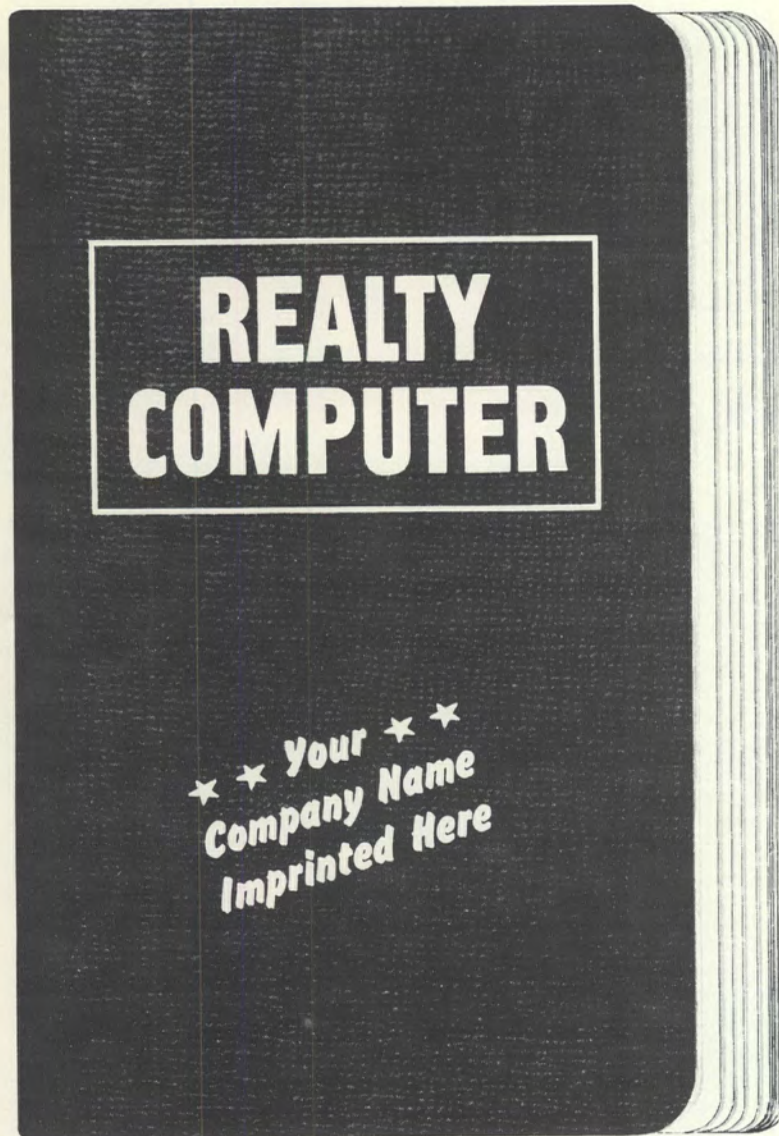
Addressing the Torrens aspect of the study, Patterson said that the Department's contractor will be expected to find ways in which registration

(continued on page 16)

In the top photo, Indiana Republican Rep. John T. Myers (left) talks with Charles Jones of Boone County Abstract Co., Lebanon, Ind., during the Federal Reception. In the center photo, Philip B. Branson, senior vice president, Title Insurance and Trust Co., Los Angeles, (right) greets Rep. Jerry M. Patterson (D-Calif.). Pictured in the bottom photo, Ida Edith Romero of the Espanola Abstract Co., Inc., Espanola, N.M., chats with Rep. Manuel Lujan Jr. (R-N.M.).

*Early in October, HUD announced the RESPA Section 13 study contract was awarded to the Chicago-based consulting firm of Booz, Allen and Hamilton, Inc.

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Standardizing, simplifying and shortening were words that Thomas E. Horak, chairman of the ALTA Committee on Improvement of Land Title Records, invoked in one form or another as he covered 20 ways to improve land title records in his speech before the ALTA Seminar '77 audience.

Entitled, "Improving the Present Land Recordation System," Horak's speech lent an introspective angle to the program.

He noted that the 20 suggestions, results of his ALTA committee's study, "are structured within the spirit of existing constitutional law and call for the use of proven technology." ALTA recommended these improvements to HUD in 1975.

He assured the audience that if all 20 points were adopted nationally, the impact on public land records would be significant. "We would have a system far superior to the Torrens method and without the higher costs and risks."

"I think it is important to remember, particularly now, that these suggested changes involve no massive, expensive, drawn-out surveying effort. They involve no monster computers,

Horak explains ways to improve existing system of recordation

no new bureaucracy and no capital expense. In other words, they solve all of the problems and don't prove a burden to the taxpayer," Horak continued.

In summation, he said, "I hope we have demonstrated that by reason of the fact that we operate in all of the states and territories and have worked and grown with our public land records for well over 100 years that we can make a meaningful contribution to the program to improve these records."

Here are the 20 points that Horak outlined for an audience of 100 Congressional staffers, agency personnel and media:

- Whatever system is created for the American record system should be in index form. Very recently technology has developed a means to combine the document with an index mechanism. Systems and equipment manufacturers are attempting to sell this at the present time. To the unin-

itiated, it looks great. However, it is a terribly expensive process and really doesn't save that much time.

- The index for geographic documents such as deeds, mortgages and mechanic's liens should be in tract form or tract book form.

- When we adopt computerized land records, one technical point should change. That point is that in most jurisdictions, it is the recording of the document, not the indexing that creates legal notice.

- All records dealing with real estate should be filed and stored in one office under the jurisdiction of one officer.

- Recommendation of a *lis pendens* system. Any court action which could affect the title to real estate would require that a special notice be filed with the land records officer.

- Recommendation of a certified judgment system. No court judgment or decree would have the effect of a lien on real estate until a memorandum of the judgment, certified by the proper court official, is filed with the records officer.

- A hierarchy of liens should be established.

(continued on page 15)

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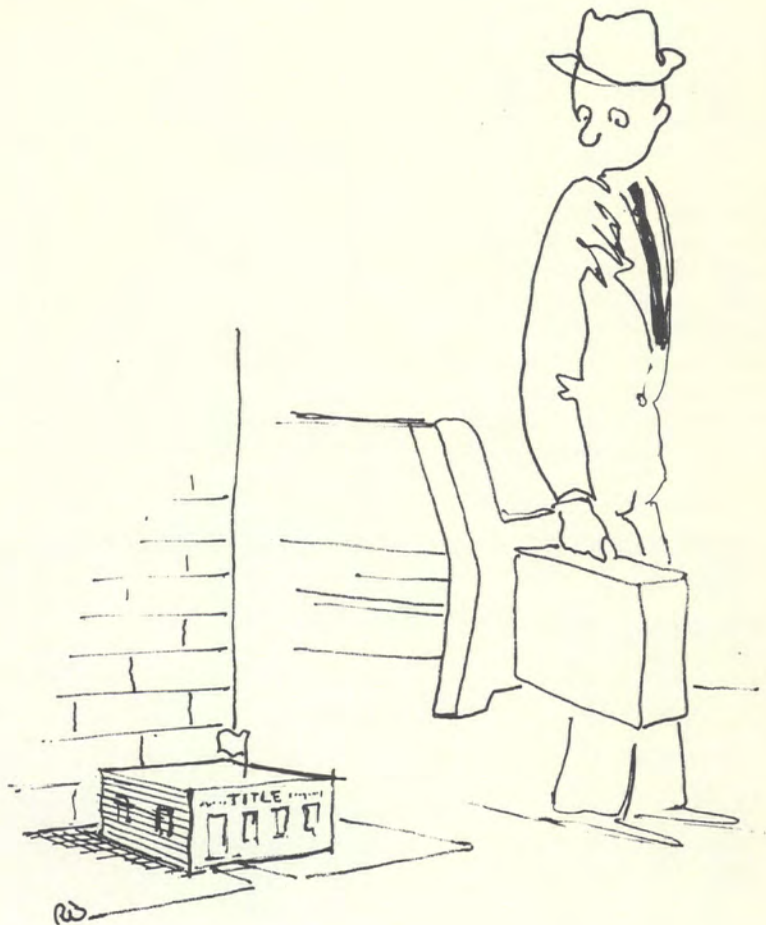
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TITLE INFORMATION MANAGEMENT SYSTEM

Editor's note: This is Part Two 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. Part One of Chapter Five was printed in the September issue.



C. *The Torrens system offers substantially less protection to owners and others who have interests in real property than title insurance offers under a recordation system.*

Rights in real property have always enjoyed a unique place in American society. The encouragement and protection of home ownership has been a cornerstone of our laws and the growth of our economy.

A fundamental aspect of the Torrens system, however, is directly contrary to these principles. To ensure that the Torrens certificate represents a conclusive determination of the state of the title, the Torrens system provides that an administrative mistake or oversight in the registration of an interest or lien, or the registration of an interest in property acquired by fraud, may have the effect of summarily taking away a right in real property and substituting for it a right to financial compensation from the Torrens assurance fund.*

As Justice Oliver Wendell Holmes concluded in *Eliason v. Welborn*, 281 U.S. 457 (1930), when one deals with the Torrens system, all constitutional rights of due process are considered voluntarily waived.

But even assuming that financial indemnity can be an adequate substitute

*Contrary to general American jurisprudence, including the very liberal laws on negotiable instruments, there is case law under the Torrens system that a person in possession of an owner's certificate of title can convey that property to an innocent purchaser by a forged deed.

The Torrens System

for the secure ownership of one's property, the protection offered by the Torrens assurance fund is significantly less than the protection afforded by title insurance.* This Torrens assurance fund is generally established within each county by taking a portion of the registration and filing fees and setting them aside in a guaranty fund.

In general, to recover from this fund, a person who has been deprived of an interest in land other than by the wrongful act or omission of an employee in the registrar's office, must first attempt to recover against the person liable (e.g., the forger who has conveyed the real owner's interest). Only if the injured party cannot recover damages in this matter is he entitled to recover against the Torrens assurance fund. To do this he must bring suit against the fund.

The registered owner who must defend his title against challenges by parties whose rights are not cut off by the registration process** also has less protection than the owner who is protected by a title insurance policy. One of the most distinctive aspects of a title insurance policy is that the title insurer will pay for the costs of any legal defense against all claims to the title as insured, whether or not the claim is successful or unfounded.

An owner of a Torrens certificate, on the other hand, must defend at his own expense his rights against all claims made against his title. Even if he is successful in this defense, he will have suffered expenses of litigation that are not reimbursable from the Torrens assurance fund.

An owner covered by a title insurance policy who suffers a title loss can re-

*It should be noted that under a recordation/title insurance system, the rightful owner of real property retains title to the property and is protected against financial loss as a result of the claims of other parties. Under a Torrens system, the rightful owner may lose his title as a result of fraud or error and must thereafter seek indemnity from the Torrens assurance fund.

**For example, anyone who has an interest in or claim against the property such as a missing heir or a lienor who wasn't properly served with notice about the registration proceeding can bring suit against the registered owner.

cover up to the full face amount of the policy and can voluntarily increase his policy coverage to cover the increased value of his property.* Under many Torrens systems, however, a person who has a valid claim against the Torrens fund can recover only up to the value of the property at the time the last payment into the Torrens fund was made with respect to the property.

Finally, the balances of most Torrens assurance funds are woefully small in relationship to the potential claims that may be made against the fund.

Sloppy administration of a Torrens system can result in claims against the fund that are far in excess of the fund's resources. This is precisely what happened in California in the early 1950's which produced failure of the Torrens fund and the subsequent repeal in 1955 of the California Torrens Act.

Moreover, the total amount in the Hennepin County Torrens Guaranty Fund as of December 31, 1975, was only \$148,000, even though the fund has been in existence since 1901 and approximately one-third of the land in Hennepin County is under the Torrens system.

The limited protection offered by the Hennepin County fund is highlighted by a near-disastrous incident some years ago involving the 28-story Foshay Tower in Minneapolis. This building was sold in a complicated transaction in which the land under the tower was retained by the seller with the purchaser acquiring only title to the tower itself. The Torrens clerk, however, inadvertently issued a new certificate to the purchaser covering both the tower and the land.

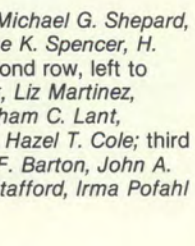
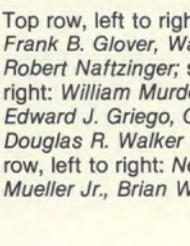
Fortunately, this mistake was caught before the owner of the tower conveyed both the land and the tower to another party—although the registrar required the owner of the land to obtain a court order at the owner's expense directing the registrar to issue two new certificates. If the title had been transferred before the mistake was caught, the resulting \$10 million claim would not only have wiped out the Torrens fund but would have left the real owner of the land without any adequate remedy.

*In fact, some title insurance companies presently offer inflation protection that automatically increases the policy coverage based upon increases in the Consumer Price Index.

(continued on page 17)



Names in the News...



Top row, left to right: *Michael G. Shepard, Frank B. Glover, Wayne K. Spencer, H. Robert Naftzinger*; second row, left to right: *William Murdock, Liz Martinez, Edward J. Griego, Graham C. Lant, Douglas R. Walker Jr., Hazel T. Cole*; third row, left to right: *Neil F. Barton, John A. Mueller Jr., Brian W. Stafford, Irma Pofahl*

Lawyers Title Insurance Corp. (LTIC) recently announced the retirement of two vice presidents. **Albert E. Reed** of New York City, an LTIC vice president since 1962, and **Hazel T. Cole**, treasurer of the company and a vice president since April of this year, recently retired.

Pioneer Title Company of Ada County, Idaho, an agent for PNTI-Los Angeles, has elected **Thomas T. Wright**, an Idaho Real Estate Commissioner and a partner of Wright-Leasure Co., Idaho's largest commercial-investment real estate company, to its Board of Directors.

Samuel R. Gillman has resigned as president of Columbia Real Estate Title Insurance Co., and the Board of Trustees has named **William Murdock** executive vice president. He will assume Gillman's responsibilities for the Washington, D.C., firm.

Commonwealth Land Title Insurance Co. has named **Douglas R. Walker Jr.** vice president and manager of the Orlando, Fla., office, which handles the company's business in Florida and the Caribbean. Walker has been a titleman for 18 years.

H. Robert Naftzinger has been appointed a vice president of Commonwealth. His department is personnel and industrial relations.

In other Commonwealth news, **James E. Berghammer** of Commonwealth's Milwaukee office has been named state agency representative of the company; **Kenneth J. Brennan** of the Media, Pa., office has been appointed title officer, and **Jeffrey C. Wrostad** and **Thomas E. Mueller**, both of the Milwaukee branch, have been named assistant title officers.

Dr. Mark J. Riedy, vice president and chief economist for the Federal Home Loan Bank Board of San Francisco, has been named executive vice president of the Mortgage Bankers Association of America. He succeeds **Oliver H. Jones**, who resigned effective October 31, 1977.

George A. Boehm has been named a senior vice president of Midland Title Security, Inc., Cleveland, Ohio. Boehm is currently president and chief executive officer of Midland of Pennsylvania, Inc., a subsidiary of Midland Title Security, based in Pittsburgh.

Lawyers Title of El Paso has announced the appointments of **Brian W. Stafford** as assistant treasurer and **Irma Pofahl** as assistant secretary. **Liz Martinez** was promoted to assistant vice president.

Dennis L. Plank has been appointed to head North Central division opera-

tions for Pioneer National Title Insurance Co. (PNTI). Plank will assume his position in PNTI's central region office in Chicago and will supervise the company's title operations in Illinois, Indiana, Minnesota and Wisconsin.

Michael G. Shepard has been named associate counsel of PNTI's Central Atlantic division, encompassing most of Virginia.

Graham C. Lant has left his position as vice president and sales manager for PNTI in Chicago to assume the presidency of North Star Abstract & Title Guaranty, Inc., Minneapolis.

Title Insurance & Trust Co. of Los Angeles (TI) has announced the following appointments. **Edward J. Griego**, vice president and a 17-year TI employe, has been named Los Angeles central district manager. **Neil F. Barton**, vice president and a 25-year TI employe, will manage Los Angeles County's special title operations.

Jerald S. Shockley has been appointed vice president-sales and marketing of First American Title Company of Fresno. He began his career 10 years ago in First American's home office in Santa Ana.

The First American Title Company of Colorado office in Colorado Springs recently underwent a management

(continued on page 13)

change when **Donald D. Vance** of First American's Boulder branch became vice president and manager there. He succeeds **Kenneth R. Purcell** who went to the Fresno office, where he is vice president and manager.

Robert G. Noe has been appointed regional counsel for First American and manager of the company's San Francisco office. Noe succeeds **Albert J. Lagomarsino**, who was named vice president and regional manager of First American's San Mateo office.

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Frank B. Glover, president and chief executive officer of American Title Insurance Co., Miami, has been named Chairman of the Board for the company. A 28-year member of the title profession, Glover joined American Title in 1970, and was elected president and chief executive officer in 1974.

American Title has announced the appointment of two senior vice presidents. **Wayne K. Spencer**, formerly vice president/branch administration, assumes the position of senior vice president/operations and **John A. Mueller Jr.**, vice president/treasurer, is now senior vice president/treasurer.

Southern Title opens branch

Southern Title Co. in Houston has opened a branch office in the Lakeside Westheimer area of the city to be headed by Ron Burns.

Headquarters for the company, founded in 1954, are located at 1415 Fannin. There are three other branch offices in addition to the recently opened one.

Officers elected

Elected president of the Montana Land Title Association at the group's 1977 convention in the state's capital was Glenn Kenney of Helena. Allen Leppink of Billings and Brad Stratton of Bozeman were elected vice president and secretary-treasurer respectively.

Wyoming company changes name

Wyoming's oldest and largest title insurer, The Title Guaranty Company of Wyoming, Inc., has changed its name to First American Title Guaranty Co.

The firm, a subsidiary of First American Title Insurance Co., has principal offices in Casper with branches and affiliates throughout the state.

Tracing its origin to 1914 as Natrona County Abstract Co., the Wyoming firm became the state's first domestic title insurance company in 1955, a year after incorporation as The Title Guaranty Company of Wyoming, Inc. It has been affiliated with First American Title since 1968.

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ALTA Judiciary Committee reports decisions in five recent Iowa court cases

Court decisions in Iowa concerning quiet title, streets and wills recently were submitted by the ALTA Judiciary Committee. The following are summaries of the cases.

Quiet title

Council Bluffs Savings Bank, Executor of the Estate of G. William Coulthard, Appellee v. Clifford L. Simmons and Helen H. Simmons, Appellants, No. 55882, 243 NW 2nd 634 (June 30, 1976)

Defendants appealed from a judgment of the District Court quieting title to real estate in plaintiff. The Supreme Court held that the evidence established that the plaintiff had proven his title by clear and convincing proof of adverse possession for 15 years, notwithstanding fact that defendant had paid taxes on the land for 13 of those years.

Affirmed.

Sheldon H. Pearson et al, Appellants v. City of Guttenberg, Iowa, Appellee, No. 2-57057, 245 NW 2nd 519 (Sept. 22, 1976)

Homeowners brought action seeking to quiet their asserted titles to certain residential property and seeking to extinguish city's right to strip of land lying between their homes and ordinary high water mark of river. The District Court entered judgment in favor of city, and homeowners appealed. The Supreme Court held that provision in homeowners' chain of title instruments referring to recorded plat in describing property referred to original 1848 plat which designated disputed strip of land as land dedicated for public use as street and public landing, rather than 1905 plat which omitted street; that even if 1905 plat was incorporated in homeowners' deeds, plat would not have entitled homeowners to portion of disputed land between rim of high bank and water's edge; that city was estopped from claiming title to portion of disputed strip of land which had originally been designated as public street, but which city had abandoned; that evidence failed to establish homeowners' right to portion of disputed strip along river's edge as against city; that fact that homeowners prayed for more relief

than they were entitled to did not preclude award of portion of relief sought.

Modified and remanded with directions.

The Clinton National Bank, as Conservator of Hilda Schuster, Appellee v. The City of Comanche, Iowa, et al, Appellant, No. 2-57572, 251 NW 2nd 248 (March 16, 1977)

Appeal was taken from decree of the District Court, enjoining municipal utilization of land located between plaintiffs' residential property and the Mississippi River. The Supreme Court held that where property owners, acting in good faith and under claim of right, upon city's nonuser of platted street for more than a century, expended time, labor and money in improving their front yard to and including retaining wall at top of riverbank and notoriously used and occupied same for more than 30 years before city evidenced any claim of municipal right thereto, and since construction of municipal park reaching to property owners' front doorstep would clearly have an adverse effect on the enjoyment and value of their residential property, city was estopped from asserting right to use land down to the retaining wall as a city park, but where maintenance and improvement by property owners extended only to the retaining wall and no one was even prevented from using the beach, occasionally utilized by fishermen and children, property owners' superior and paramount right extended only to the riverward side of the retaining wall; and that no reversible error resulted from trial judge's effecting a sua sponte evidential view of the premises.

Affirmed in part, modified in part, and remanded with directions.

Streets

Laverne L. Goss and James L. Nielsen, Appellees v. Efford Johnson and George W. Collins, Jr., Appellants, No. 2-57252, 243 NW 2nd 590 (June 30, 1976)

Action was brought to prevent representatives of an unincorporated association of homeowners in rural subdivision from barricading entrances to certain streets in the subdivision from county highway, to prevent outside traffic from using streets as shortcut to state highway.

(continued on page 15)

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The District Court required defendants to remove barricades and restrained them from interfering with use of the streets, and defendants appealed. The Supreme Court held that certain deeds from the subdividers with respect to two of the lots in the subdivision granted residents in the subdivision right-of-way over the streets in question, including their entrances from county road; and that the residents of the subdivision were not entitled to impede the use of the common easements, even when acting for a majority of the members of the homeowners association.

Affirmed.

Wills

Elkader Production Credit Association, Appellee v. Ray F. Eulberg et al, Defendants, Theodore Berns et al, Appellants, No. 2-58005, 251 NW 2nd 234 (March 16, 1977)

Declaratory judgement proceeding was brought by mortgagee for interpretation of will and codicil. The District Court held that fee title in farm vested in decedent's widow to exclusion of all children and a mortgage

given by widow and her present spouse was attendantly upheld and some defendant children appealed. The Supreme Court held that new and different issue of law attempted to be injected by defendants for first time on appeal was not properly before Supreme Court for consideration; that where will granted spouse conditional life estate in farm and devised to testator's surviving children, not named, the remaining two thirds, but codicil unequivocally stated that testator, having his children, individually named, in mind, made no provision for them or any child later born or adopted, and in other respects ratified and confirmed will, the children were unmistakably disinherited and, since will bequeathed all residue and remainder to widow provided she survived testator, fee simple title in farm vested in widow.

Affirmed.

Horak—(continued)

- To be a lien on real estate, a document should describe the land.
- Wider use of short-form documents should be encouraged even more.
- The same terms and recitals in many identical documents should not be repeated. Reference can be

made to the same language in a previously recorded document.

- Statutes of limitations on similar documents should be required to be identical.
- When a lien expires, it should be allowed to die. We shouldn't permit repeated revivals and refilings of these items.
- Liens should be substantive. A lien should have some real value before the records are cluttered with it.
- Legislation similar to the Pennsylvania State Fiduciary Code should be adopted universally. Under the Pennsylvania Fiduciary Code, liabilities arising from the improper administration of an estate are put upon the fiduciary and his bond rather than the real estate.
- Universal adoption of the non-judicial foreclosure process to alleviate problems arising from foreclosures.
- Abandonment of the legal doctrine that requires persons using the public records to find any item filed under a name which sounds like the name they are searching.
- All taxes, levies, assessments, penalties, etc., should be entered upon a single record for that purpose regardless of the taxing authority. No tax

(continued on page 16)

Swearing in of new ALTA leaders at convention



Newly elected ALTA officers, board of governors members, section chairmen and executive committee members-at-large sworn in at the ALTA Annual Convention in October in Washington, D.C. are pictured left to right: **David F. Upton**, president, Southwestern Michigan Abstract and Title Co., St. Joseph, to the board; **Robert C. Bates**, executive vice president, Chicago Title Insurance Co., Chicago, chairman of the Title Insurance and Underwriters Section; **Fred B. Fromhold**, president and chief executive officer, Commonwealth Land Title Insurance Co., Philadelphia, treasurer; **Robert C. Dawson**, president, Lawyers Title Insurance Corp., Richmond, chairman, Finance Committee; **Thomas S. McDonald**, president, The Abstract Corp., Sanford, Fla., member-at-large, Executive Committee; **C. J. McConville**, president, Title Insurance Company of Minnesota, president; **Roger N. Bell**, president, The Security Abstract & Title Co., Inc., Wichita, president-elect; **John E. Flood Jr.**, president, Title Insurance and Trust Co., Los Angeles, member-at-large, Executive Committee; **J. L. Boren Jr.**, president, Mid-South Title Co., Inc., Memphis, chairman of the Abstracters and Title Insurance Agents Section; **W. H. Little**, president, SAFECO Title Insurance Co., Los Angeles, to the board. Not pictured are the following members also elected to the Board of Governors for a term expiring in 1980: **Francis J. Morrato**, senior vice president, New Mexico Title Co., Albuquerque; **Carlross Morris**, chairman of the board, Stewart Title Guaranty Co., Houston, and **Joseph J. Hurley**, president, The Title Insurance Corporation of Pennsylvania, Bryn Mawr.

Ticor's new cash-reporting system works more rapidly and accurately

Ticor Title Insurers have a new internal financial reporting system which is faster and less prone to error than the old person-to-person transmission. At the heart of the system is a computer which talks and listens, then processes and transmits the information.

The voice mechanism of the computer collects by telephone financial data from the Ticor Title Insurers' 140 branch offices across the country. The information is reported each working day until 4 p.m. (Pacific Time) by branch office employees who call an 800 number.

"Hello. Enter user number," says RAPIDVOICE, the voice mechanism. The caller responds by touch-tone dialing the appropriate number on the telephone. "Ticor Cash Reporting System," replies RAPIDVOICE. "Enter bank transaction." The Ticor employee then responds by punching numbers and symbols on the telephone until the day's report is finished.

Daily at 4 p.m., the computer starts digesting its conversations. In seconds, the system is ready to transmit the information directly via RAPIDLINK, a computer-to-computer software line, to the in-house computer systems of Ticor Title Insurers and the United California Bank. Fifteen minutes later, the Ticor Title Insurers Treasurer's Department has a fully processed cash-flow record of that day's business transactions.

With the company's old cash-flow reporting system, a chain of person-to-person transmission, transcription and transfer of information created a significant risk of human error. Moreover, there was no sure way to identify where an error might have occurred and where corrective action might be needed. At its best, the old system made the processed information available to management the next day.

"The new system works even better than we hoped," said Marty Wool, assistant treasurer of the company and one of the system designers. "We worked closely with RAPIDATA in developing this system once we realized that no one had anything immediately available that could meet

all our requirements. Fast accurate cash-flow information is vital in this business and now we have a state-of-the-art system that gives us same-day information with built-in error control."

Patterson—(concluded)

can be facilitated. "It has been suggested that it would be feasible to register on the basis only of ordinary searches and that title could be registered without the guarantee of boundary lines."

However, Patterson said he recognizes that the danger of such tinkering with Torrens is that every suggested method of simplifying registration results in a lessening in the value of the certificate as a statement of title condition.

Remaining tasks of the Request for Proposals that Patterson named are monitoring and evaluating the demonstrations, promulgation of results and additional resource evaluation.

Dissemination to the public of the Section 13 study findings will be at the discretion of HUD. How much and how often information is released will depend on how much interest is generated in the reports as well as the quality of the reports, Patterson said.

Horak—(concluded)

would be a lien until entered on that record.

- If the previous rule was adopted, then all past-due taxes would be on the same record.
- Copies of all public documents should be available to the public at cost and the ability to acquire such records should not depend upon the whim of the public official.
- We would like to see a better attitude on the part of some public employees working with the public records. While the majority of public officials are cooperative and helpful, the exceptions are noteworthy and costly. An example he cited is the practice in some areas which limits the number of documents that can be examined at any one time and then only after a requisition is filled out.

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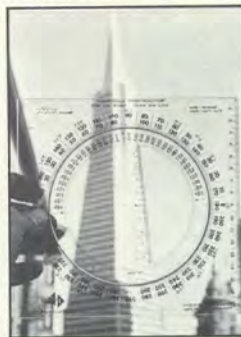
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White Papers—(concluded)

D. *Because of the difficulties, inconveniences and costs associated with the Torrens system, its use in areas where it has been adopted has been limited.*

While at one point or another, 20 states and the Commonwealth of Puerto Rico have experimented with the Torrens system, at the present time, the system exists in only 10 states—Illinois, Minnesota, Massachusetts, Colorado, Georgia, Hawaii, New York, North Carolina, Ohio and Washington. Even in these areas, in spite of the fact that the Torrens system may have been adopted 75 years ago or more,* the overwhelming majority of transactions still take place under the recordation system.

For example, only 20-25 per cent of all the tax parcels in Cook County have been registered in Torrens, and in 1975 only 14 per cent of all real estate transfers in the county fell under that system. (Only nine applications for Torrens registration were filed during the year.) In Suffolk County, Massachusetts, less than 10 per cent of the deeds recorded in the county in 1975 fell within the Torrens system. In Ramsey and Hennepin counties in

*The Torrens system was adopted in Cook County, Illinois, in 1895 and in Suffolk County, Massachusetts, in 1898.

Minnesota, approximately one-third of the parcels are registered.

The experience abroad is not much better. Ontario, Canada, has had a Torrens system since 1855, but it is estimated that only 15 per cent of the parcels in the province are registered under the system. While London, England, has had a Torrens system for 80 years, approximately one-half of the parcels are presently under the system.

Moreover, even in the areas where the Torrens system is used, purchasers of real estate and mortgage lenders frequently require the added protection of title insurance because of the uncertainties of the Torrens system and the lower level of protection it affords. In Cook County, for example, in approximately one-third of all of the transfers involving a Torrens title that took place in 1975 title insurance was also requested.

Conclusion

The United States presently has a workable, effective system for the recordation and transfer of interests in land. While there may be certain shortcomings in this system, efforts are currently being made to modernize and simplify the ways in which title records are maintained, indexed and

retrieved. Moreover, the goal of minimizing the costs and complexities of transferring title to real estate is a desirable one that is shared by the members of the American Land Title Association.

The belief, however, that broader use of the Torrens system can achieve the goals of simplifying land transfers or reducing the costs of such transfers, while at the same time maintaining the high level of protection and security that our society demands with respect to interests in real estate, is not supported by experience under the Torrens system.

From a distance, the Torrens system appears to be an easy solution. But, any examination of how the system really works, the costs and problems associated with it, and its lack of success in those areas where it has been tried, inevitably leads to the conclusion that home owners, home buyers and all who have interests in real property would not be well served by wider use of the Torrens system.

Branch office opens

American Title Insurance Co. has announced the opening of a new branch office in Lake Worth, Fla.

The new office will be headed by Manager Janet D. Emig and will supplement the company's Boynton Beach office.

First American Title expands headquarters



First American Title Insurance Co. has expanded its facility to include an entire city block in one of the oldest business districts in Orange County, California. The estimated \$3,000,000, two-building complex in Santa Ana houses national headquarters of the First American Financial Corp. and its principal subsidiary First American Title as well as First American Trust Co. and the Orange County title division. An award of excellence for outstanding design and use of architectural millwork in First American Square was presented to the company and architect Thomas F. Shoemaker by the Woodwork Institute of California.



Marvin H. New, Pennsylvania Land Title Association president and Industrial Valley Title Insurance Co. executive vice president, (left) is interviewed about title insurance on Philadelphia's WPVI television by Joe Hunter, producer and host of the station's Pennsylvania: Perspective.

Title insurance and PLTA focus of Philadelphia television interview

Title insurance and the Pennsylvania Land Title Association were subjects of a 30-minute interview on Philadelphia's WPVI television recently. Reaching an estimated audience of 10,000 viewers, the show was aired in the late evening hours of October 19 and the early morning hours of the following day and featured PLTA President Marvin H. New who is executive vice president of the Industrial Valley Title Insurance Co.

New fielded such questions as why a home buyer should be concerned with title insurance and who and what is covered under title insurance. He explained in great detail what could happen if a home buyer were to buy a home without title insurance protection and discussed the cost of title insurance services in Pennsylvania.

In talking about PLTA and the state association's goals, New mentioned the organization started a college this year to train young title professionals. The college, he explained,

will encourage young people to grow up in the industry.

Among other PLTA objectives that New named during the interview is the goal of educating the public on the value of title insurance.

According to a spokesperson at the advertising agency which handled the initial contact with Joe Hunter, producer and host of the show, this was a purpose in approaching Channel 12 with the interview idea.

Hunter, who had been provided with general information on title insurance and PLTA by the advertising agency, was reportedly very receptive to the idea from the beginning. The material given to Hunter included a pamphlet published by *Changing Times* magazine entitled, "The Ins and Outs of Title Insurance."

As a follow-up to the show, a photo caption release about the interview was distributed to 35 trade publications and local newspapers.

Ticor moves towards further diversification

In another move to broaden its diversification, Ticor has reached an agreement with Great American Insurance Co., a wholly-owned subsidiary of American Financial Corp., to purchase Constellation Reinsurance Co. at a price of \$35.4 million.

The agreement is subject to completion of a definitive purchase agreement and the approval of the boards of directors of Ticor and Great American. The sale is subject to the approval of the New York Insurance Department.

The purchase price of \$35.4 million consists of \$20 million in cash and \$15.4 million principal amount of a 7 per cent, 15-year subordinated note of Ticor.

Constellation, which was formed in 1954, writes a full line of property and casualty reinsurance, providing coverage for numerous primary insurance carriers. Total premiums written in 1976 were approximately \$51 million.

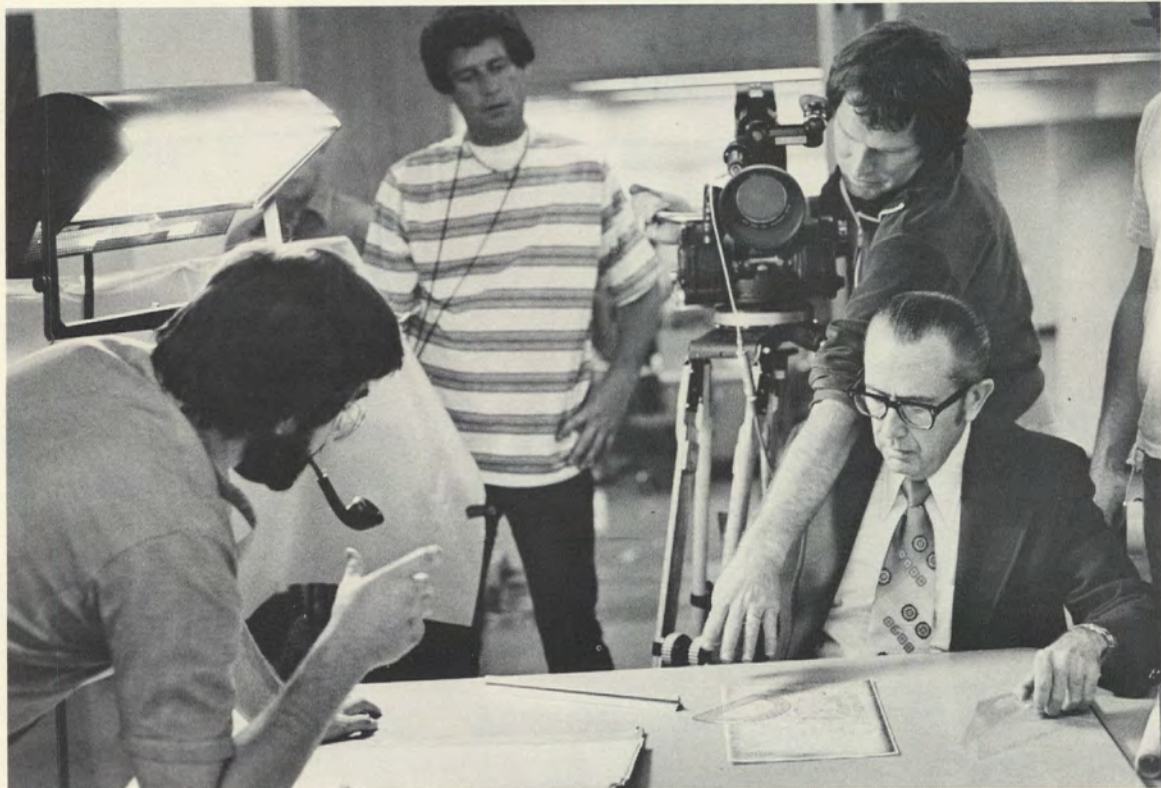
"We look forward to the addition of Constellation Reinsurance Co. to the Ticor family," Rocco C. Siciliano, chairman of the board and chief executive officer of Ticor, said. "We have been seeking a line of business which will broaden our diversification since many of our operations are in the real estate field. The acquisition of Constellation helps us to meet that objective. It will bring additional balance to our overall operations."

North Dakota title group elects Redman

L.H. Redman of the Divine Abstract Co. of Minot was elected president of the North Dakota Title Association at the 1977 convention in Grand Forks.

Other officers are Tony Goetz of Emmons County Abstract Co., Linton, who was elected vice president and Mrs. Toni Betting of Dickey County Abstract Co., Ellendale, who will serve as secretary-treasurer.

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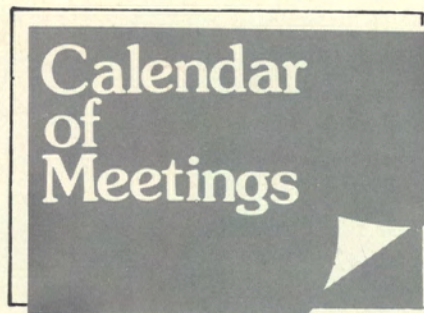
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