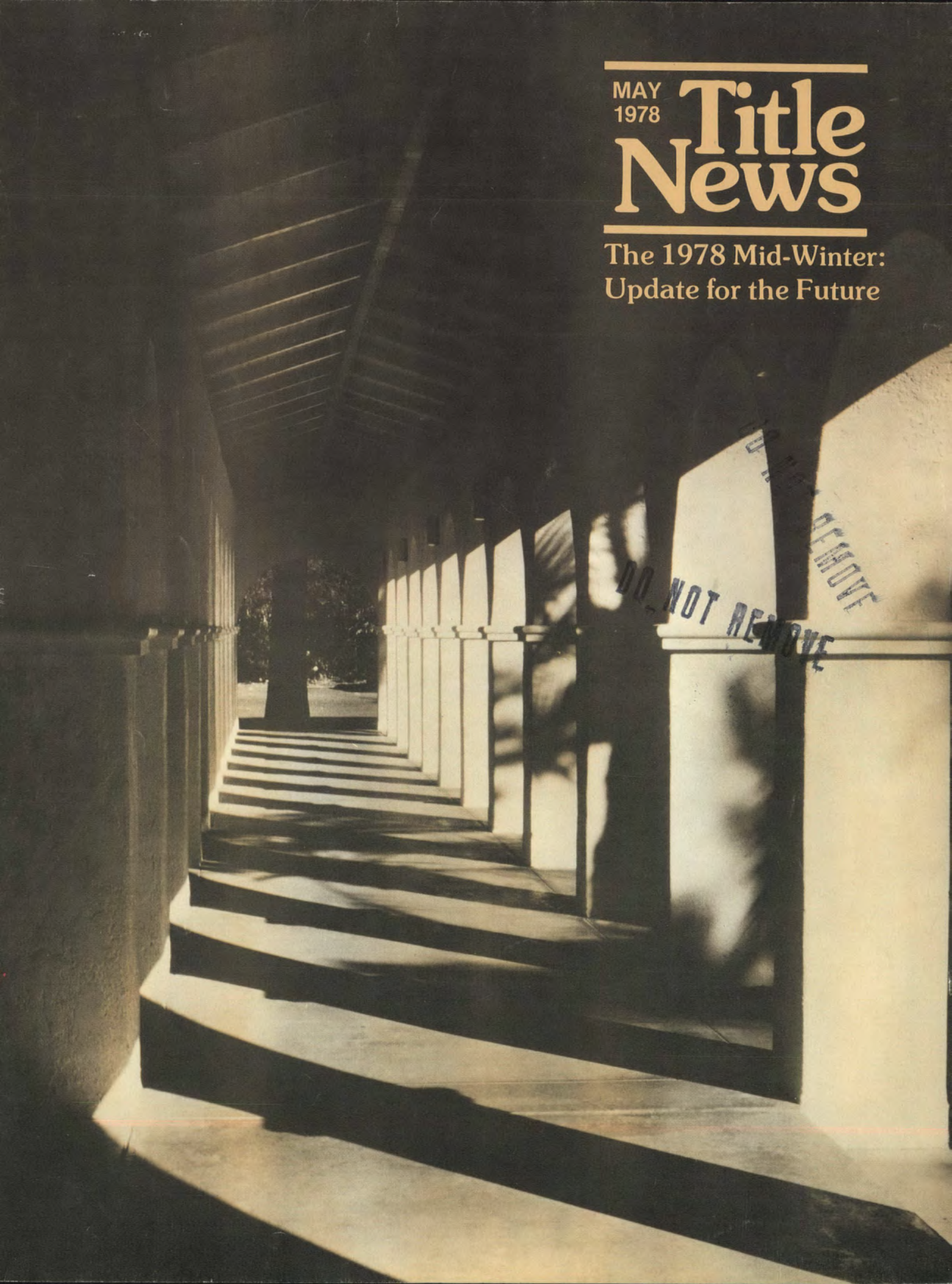

MAY
1978
Title
News
The 1978 Mid-Winter:
Update for the Future

a message from the Executive Vice President

Lack of knowledge of the title industry is a chronic difficulty facing ALTA. Leaders in your national Association recognize this and are working on the problem.

I am sure that many of you have been challenged at one time or another about the low loss ratio of title insurance and have been confronted by the inaccurate claim that title insurance is a "rip off."

Now, HUD, under Section 13 of RESPA, is in the preliminary stages of studying possible improvements in land transfer. Among the various alternatives being considered are changes in the recordation process, application of the Uniform Simplification of Land Transfers Act and implementation of the Torrens land registration system.

As a member of the RESPA Section 13 Advisory Panel, I have been exposed to the preliminary research work on the various land transfer alternatives by the outside consultant to HUD on this project.

ALTA supports cost-effective improvements in land transfer. But we have serious concerns about Torrens as a realistic and justifiable approach.

In the early stages of the Section 13 research work, the concept has been advanced that any Torrens system would have to be mandatory. At present, there is no economic data to demonstrate that conversion to Torrens would justify the considerable cost that would be involved or that consumers would realize any savings.

What led to even a preliminary conjecture that Torrens might be a worthwhile change? In my view, this thinking stems from a belief that the present system for handling land transfer in much of the nation is based on recording methods that are archaic, repetitive and overly expensive.

This feeling embodies a relative lack of understanding and appreciation for the efficient and, yes, economical system of land transfer that we now have in this country. Included in this unawareness is a basic misconception of the role of land title services in the safe, efficient completion of real estate transactions.

Once again, ALTA members are faced with the inescapable fact that —for preservation of their industry in its present form—they must remain actively involved in helping people understand the work of title professionals.

The education should include people in the title business. If title company employees don't understand their industry—if they can't respond effectively to unwarranted criticism —the job of informing others will remain more difficult.

Among ALTA educational activity, the Association *White Papers* are being used by some members. An excellent step would be for the *White Papers* or similar material to be required reading for every title company employee.

Title company customers also need to better understand our industry—as do consumers and opinion leaders. Literature, films and speeches will help. Such items are available from ALTA. Prompt and efficient service will go a long way toward increasing customer appreciation. And, at the national level, ALTA reaches consumers and opinion leaders through the print media and through our public service radio spots and television film and slide offerings. Recently, the ALTA Executive Committee asked the Public Relations Committee to formulate recommendations for increased activity in this area.

Among our major publics, legislators and regulators must have accurate information when title industry matters are before them. Along these lines, I anticipated that the ALTA-commissioned Arthur D. Little study on Torrens will be completed later this year. It will be available to HUD, and promises to be very effective in shedding light on the economic aspects of Torrens in this country.

The federal seminars of the Government Relations Committee and individual meetings with federal legislators by ALTA constituents also are useful in this regard.

In more than a century of existence, the title industry frequently has been misunderstood by its customers—and by those who have little or no contact with title professionals. With the rise of consumerism and federal-state interest in our business, ALTA members cannot allow this condition to remain unchanged.

ALTA is working on the problem at the national level.

What is being done in your state and your community?

Sincerely,

William J. McAuliffe Jr.

William J. McAuliffe Jr.

VOLUME 57, NUMBER 5

Title News

Features

Departments

Cover photo taken at the Heard Museum in Phoenix, Ariz.

Title News is published by the American Land Title Association, 1828 L Street, N.W., Washington, D.C. 20036, **Maxine Stough, Editor**

Which of these Policies is More Important?

Being in the land title business, you know that *each* of these policies is equally important and necessary.

Your customers rely on your expertise in furnishing them with a title policy that protects their interest in real property. When it comes to life and health insurance protection, doesn't it make equally good sense to look to the experts who know all about these coverages? That's why we recommend that you contact the ALTA GROUP INSURANCE TRUST OFFICE. Our specialist will help you determine how you might benefit from ALTA's program with a plan designed especially for you—to meet your firm's needs and budget.*

The trustees, the insurance company underwriting our program, the administrator and the plan consultants have been a successful team for many years. Why not join the other ALTA firms presently benefiting from their experience, integrity and genuine concern for ALTA members?

*Be sure to ask about the $1,000,000 Comprehensive Medical Plan and its outstanding features. The program is underwritten by John Hancock Mutual Insurance Company, Boston, Massachusetts.

AMERICAN LAND TITLE ASSOCIATION

ALTA GROUP INSURANCE TRUST

CLIP AND MAIL THIS COUPON TO HAVE SOMEONE CONTACT YOU.

OR

CALL JACK BRENNAN, COLLECT, AT 312-346-1221

ALTA Group Insurance Trust
209 S. LaSalle Street
Chicago, IL 60604

Request for Group Insurance Information

Name _____

Firm _____ Phone _____

Address _____

City _____ State _____ Zip _____

You are under no obligation.

Speakers stress participation in government

The ALTA members attending the Mid-Winter Conference in Phoenix were again exhorted to become more involved in government. The urgings came from speakers outside the title insurance industry as well as leaders of the ALTA Government Relations Committee and Title Industry Political Action Committee.

Rep. John J. Rhodes, minority leader of the U.S. House of Representatives, told ALTA members that it isn't just the money that counts, it's the manpower. "You are the manpower. So I hope you will become involved in some type of political action this year because that's where you're needed," the Arizona Congressman said. (Related story is on page 6.)

Federal National Mortgage Association Senior Vice President and General Counsel James E. Murray, who primarily discussed title protection for FNMA's new programs, also told members that unless they are willing to stand up and speak, institutions will be diverted from the purposes for which they were created. He was referring to the recent HUD-FNMA clash over FNMA's role in revitalizing inner-cities. (The full text of Murray's speech is on page 11.)

Joan D. Aikens, vice chairman of the Federal Election Commission, told members that the united voice of a political action committee is far more persuasive than the voice of an individual in influencing how elected representatives govern.

In addition to impressing upon her audience the importance of political action committees, Aikens outlined legal requirements to which trade association political action committees must conform.

Further ALTA participation in the area of resolving Indian land claims was encouraged by Allan van Gestel, partner in the Boston law firm of Goodwin, Procter & Hoar. Van Gestel, a defense counsel in the Mashpee, Mass., Indian land claim case said, "To the extent that the people in this audience can get the ear of anyone in Congress, it seems to me that it ought to be impressed upon them that this (the fact there is no legislation to deal with these cases) just isn't right." (The text of his remarks is on page 7.)

The Abstracters and Title Insurance Agents Section and the Title Insurance and Underwriters Section held a joint meeting in which a panel examined underwriting as a marketing tool.

Moderated by Erich E. Everbach, vice president and assistant senior title counsel of Pioneer National Title Insurance Co., Los Angeles, the panel included Donald P. Waddick, vice president, Title Insurance Company of Minnesota, Minneapolis; Chris G. Papazickos, vice president and general counsel, American Title Insurance Co., Miami, and Frederick L. Tomblin, senior vice president, Commonwealth Land Title Insurance Co., Los Angeles.

New approaches to mortgage lending and title insurance coverage was the topic discussed by a panel in the Title Insurance and Underwriters Section business meeting.

Moderated by Joseph C. Mascari, vice president and assistant general counsel, SAFECO Title Insurance Co., Los Angeles, the panelists discussed and compared variable rate mortgages, graduated payment

(continued on page 6)

ALTA President C.J. McConville presides at the Executive Committee meeting during the Mid-Winter Conference in Phoenix.

Speakers—*(continued)*

mortgages, flexible loan interest payment and rollover mortgages.

Panelists were David H. Ibbeken, vice president and counsel, Continental Title Insurance Co., Camden, N.J.; Robert L. Manuele, senior vice president, St. Paul Title Insurance Corp., Troy, Mich., and James M. Pedowitz, vice president and regional counsel, Pioneer National Title Insurance Co., New York.

Occupying the majority of time in the Abstracters and Title Insurance Agents Section business meeting was a discussion on word processing and productivity by Frank J. Ruck Jr., vice president, Chicago Title and Trust Co., Chicago.

According to Ruck, after all the word processing jargon is swept aside, the hardware can do basically two things for the title and abstract business. It can store information and play it back in a pre-determined sequential pattern or allow variable data insertion. Secondly, it provides an efficient text editing capability that requires only changes to be inserted. He noted these may be helpful provided an operation has enough volume so the added cost in equipment can be offset by savings in labor cost.

Two sections of the Real Estate Settlement Procedures Act (RESPA) were discussed in the final general session.

James J. Graham, chief of the Program Fraud Unit of the U.S. Department of Justice's Criminal

(continued on page 7)

Rhodes points the path into the political vineyards

Business is far behind organized labor in terms of effective political action, House Minority Leader John J. Rhodes (R-Ariz.) told ALTA members at the Mid-Winter Conference.

Rhodes said business has tried to fend off incursions by government instead of working aggressively in the political arena.

"For years, labor has worked in the political vineyards," Rep. Rhodes said. "They've organized, they've raised money and they provide manpower. I think the latter may be more important than the former because manpower is the moving force of politics."

Pointing out that there are 1,000 political action committees (PACs) in 1.8 million corporations, Rep. Rhodes said, "Big labor has something going in every unionized shop. Those who believe in the free enterprise system show 1,000 political action committees out of 1.8 million."

Rep. Rhodes urged that PACs representing business emphasize changing the makeup of Congress in the direction of private enterprise representation. "Unless you're going to do something to change the balance, then forget about a PAC," he said, adding that business PACs should not hesitate to support—through campaign contributions—the candidacy of appropriate congressional challengers.

"It isn't just the money, it's the manpower and you are the manpower," he said. "So I hope you will become involved in some type of political action this year because that's where you're needed."

Involvement of government in the private sector is a reality with more taxes and regulations, which translates into less freedom and more severe challenges for the free enterprise system, the Republican leader added.

Rep. Rhodes charged that recent congressional involvement in the affairs of the Federal National Mortgage Association (FNMA) is prompted by a desire to have FNMA serve as a "unit for funds to carry out federal housing plans in cities."

HUD has a congressional mandate to stay out of FNMA's business," he said. Adding that, in his view, FNMA is a business and should operate as a business, he declared, "It's (FNMA) not a charity and doesn't deserve being made a whipping boy for the frustrations of some members of Congress over insoluble problems in urban areas."

In comments relating to Indian land claims, Rep. Rhodes said, "*Ex post facto* claims on land areas involved in old treaties should certainly not take years to go through the courts." He said Indian claims are a national problem and "I feel that Congress should take action toward working out just settlement of the commitments made by the U.S. Government."

ALTA member Marie Berger takes an opportunity to speak informally with U.S. House of Representatives Minority Leader John J. Rhodes (R-Ariz.) (left) and Joan D. Aikens, vice chairman of the Federal Election Commission.

Indian claims are Congress' responsibility

Editor's note: The following is adapted from a speech given at the 1978 ALTA Mid-Winter Conference in Phoenix by Allan van Gestel, partner of the Boston law firm of Goodwin, Procter & Hoar. Van Gestel was counsel for one of the defendants in the recently decided Mashpee, Mass., Indian land claim case.

Chairman of the ALTA Indian Land Claims Committee Marvin C. Bowling Jr. (right) confers with Allan van Gestel shortly after van Gestel's address to a Conference general session.

I don't know the extent to which the members of the audience are familiar with the Eastern Indian land claims that have been around now since about 1970. I think it best, perhaps, to start out discussing these claims by providing a hypothetical situation within which you can understand the framework in which these claims arise.

Assume for a moment, if you will, that you are asked by an elderly couple who wants to buy a retirement home, who is living on a fixed income, who wants to sink essentially all their savings into that home, and they would like you to tell them, either as a lawyer searching title, as an abstracter searching title, as a title insurance company about to provide insurance on this home or as a bank lending money, whether this is a worthwhile investment and whether the title is any good.

And I'd like you to assume the following set of facts, if you will. Assume that this house that this nice couple intends to buy is located in one of our Eastern states—pick any state you want from Georgia through Maine on the coast.

Assume the house is located on a nice half-acre lot in a well-developed part of town. Assume that in all respects it complies with all local zoning, environmental, building, health and other codes. Assume, if you will, that the title to this house was registered as recently as 15 years ago under the state's local Torrens registration system.

Assume that there was a hearing in the appropriate court, in an *in rem* proceeding, in which that title was approved under state law. Assume, if you will, that the lawyer engaged to search the title has discovered not only the registration, but that in fact this property has remained, up until the present time, in one family for well over 100 years. That it has descended by will to the eldest son in the family.

Assume that it was acquired by that family 100 years ago after having been taken by the local town for non-payment of taxes. The taking was not from an Indian, but from a white man who also had owned the property for a number of years. And that this house was acquired from that white man at an auction sale, a tax title auction sale.

Then assume, if you will, that this lawyer, being even more cautious, searched the title and he found that the earliest recorded deed was in August of 1970 from a lady named Mary Pocahontas to a man named John Alden.

Assume, if you will, that this elderly couple was particularly cautious,

(continued on page 8)

Speakers—*(concluded)*

Division, discussed his department's philosophy in enforcement of Section 8, or the anti-kickback section of RESPA. (See related story on page 14.)

Members also were given a glimpse of the Section 13 study of land transfer being conducted for HUD by the Chicago-based consulting firm of Booz, Allen & Hamilton, Inc. (A detailed report of Booz-Allen Senior Associate David Matthews' speech is on page 9.)

Director of the Massachusetts Institute of Technology-Harvard University Joint Center for Urban Studies Dr. Arthur P. Solomon discussed the cyclical nature of the housing market. His discussion also included references to smoothing the cyclical bumps of the market—a subject of particular interest to the title industry, tied as it is to housing market fluctuations. (The text of his remarks appears on page 21.)

In addition, the approximately 700 persons who attended the meeting were updated on ALTA committee activities. Committee chairmen giving reports included the following: Richard H. Howlett, Government Relations Committee; Robert C. Dawson, Federal Legislative Action Committee; Edward S. Schmidt, Public Relations Committee; Marvin C. Bowling Jr., Title Insurance Forms Committee; William A. Towler III, Abstracter-Agent Section Educational Committee, and F. Earl Harper, Abstracter-Agent Section Errors and Omissions Liability Insurance Committee. Also reporting was Francis E. O'Connor, chairman of the Title Industry Political Action Committee Board of Trustees.

"These are cases in which the most careful person searching title . . . would have no way of knowing that the claim exists."

was aware of history and said to their lawyer, "I know everything sounds very good about the title. I hear what you say, I understand what happens when you buy from a tax title sale. I understand the Torrens system. You've explained it to me. I understand everything you've said. But, I've also heard about Indians. Would you check and see what there is to find out about Indians in connection with this property?"

So this lawyer went to Washington himself, personally. He went to the Department of the Interior, to the Bureau of Indian Affairs; he went to the Department of State; he went to every agency he can think of, and he found that there never was a treaty with any tribe of Indians in this particular state. In fact, there are no tribes of Indians that have ever been federally recognized in any way in this particular state.

He decided to double check. So he went back to the local state and found that there was never a tribe of Indians recognized by that state. There has never been a treaty or agreement with any tribe of Indians in this particular area. So he goes back to the elderly couple and he's faced with the question, "Well, will we get a good title?" Well, the answer is, not necessarily.

Three questions have to be addressed before that answer can be given. Those three questions are:

- In 1790, in August, when Mary Pocahontas gave that first deed to John Alden, was there an Indian tribe that hunted and fished in the area and set up their tepees there, even though that Indian tribe, for all intents and purposes insofar as anyone can determine doesn't seem to exist today? At least it's not recognized by the state or federal government and there's no treaty recorded with any Indian tribe.
- Had that Indian tribe existed continuously from 1790 to the present time, even though not necessarily in that area, or living on a reservation nearby?
- And further, was Mary Pocahontas' deed approved by the federal Congress?

Now, if the answer to the first two questions is, "yes," there was a tribe, even though it's not federally recognized, even though there's no particular evidence that it is there now; and, "yes," that tribe still exists today in some fashion at someplace, and the answer to the third question is "no," the federal Congress did not pass upon this conveyance from Mary to John, then you have a problem, which is what the Eastern Indian problems are about.

You have a problem that is magnified. In our example, we have one little house. In the cases that I have been involved in, the entire town of Mashpee, Mass., is at stake. In the Rhode Island case, a major portion of the town of Charlestown is at stake. In the Oneida case in New York, significant portions of the counties of Madison and Oneida are at stake. I learned that just last Thursday another claim was filed in New York state laying claim to 5 million acres in upstate New York. You're probably aware of the case pending in Maine where 12 million acres of land are at stake. That's an area of over half the state of Maine. That's larger than the states of Massachusetts, Connecticut and Rhode Island put together.

These cases are all pending and are all available because of the provisions of a statute that was passed by the first Congress in July of 1790, a month before Mary conveyed to John.

That statute is known as the Trade and Intercourse Act, or, improperly characterized, but nevertheless referred to as the Indian Non-Intercourse Act. It provides in general that no sale, conveyance, or any kind of transfer of land from an Indian nation, or tribe of Indians, shall be valid unless that sale is made by a treaty or convention approved by the federal Congress.

In the mid-1800's, laws were passed by Congress providing that it would not make treaties with Indians anymore, so the courts have now construed the Trade and Intercourse Act that although you no longer need a treaty or convention, you do have to have the approval of Congress.

These cases are a tremendously serious problem. But I think it important to note at this time the division between these cases and the kinds of Indian claims that perhaps you're more familiar with.

These are *not* cases brought by federally recognized Indian tribes. These are *not* cases brought by tribes of Indians living on reservations or designated areas in which they're attempting to protect themselves from encroachment. These are *not* cases in which there were treaties entered into by the federal government with tribes of Indians that are now being breached, or that breaches have occurred in the past.

These are cases in which the most careful person searching title, searching history and searching the situation would have no way of knowing that the claim exists.

And these are cases, in many instances, in which the activities that are complained of occurred 180 years ago. And yet the cases are here. They're pending in our federal courts. They're given credence by the courts and they're giving enormous problems to members of this industry and to the public affected by them.

Now, you may say, "Well, what about all of those things we learned about in the law that protect against ancient claims of this nature?" The statute of limitations, that says in effect, you have to bring your suit within a reasonable period of time or a period of time set forth by some legislature. Two years, five years, 20 years, certainly there are no statutes of limitations talking about 180 years.

What about the equitable doctrine of laches, which says that you cannot sit by and watch somebody do something to property over which you have a claim, and change his position drastically and leave him in that postition and do nothing until after he's completed it? Shouldn't that apply?

What about theories of adverse possession? Those things that we are all familiar with where people take over someone else's land adversely and possess it and hold it for a period of time that's set forth in either the common or statutory law of the state. Twenty years, 21 years —it varies—but certainly not 180 years. Why don't these concepts of the law apply to these cases?

Well, there's an extra wrinkle in these Indian claims, and the extra wrinkle is one that causes a very serious problem. The Indians are

(continued on page 10)

Consultant traces RESPA research picture

Research under Section 13 of the Real Estate Settlement Procedures Act (RESPA) by Booz, Allen & Hamilton, Inc., is being conducted in two parallel directions—operational and legal—according to David Matthews, a senior associate of the Chicago-based consulting firm.

Matthews, speaking at the Mid-Winter Conference in Phoenix, explained that the operational aspect is a state-of-the-art study of land title recordation operations and practices.

"Booz-Allen has conducted site visits to both public and private sector recordation operations as well as public sector registration operations in this country," he said.

In visiting these sites, Matthews said it is clear that the private sector—specifically members of ALTA—has taken the lead in the development of sophisticated automated land record-keeping systems. The public sector, Matthews continued, "can do well to follow the lead of title insurance companies" regarding implementation of innovative techniques in the management of land title records.

Matthews named four examples of innovations which he said would

greatly improve public sector recordation operations. They are micrographics, tract indices, automated grantor-grantee indices and rapid recording or the creation of a duplicate copy of the document being recorded.

"These examples (the four) are representative of operational research that we have conducted during the project and that are representative of the types of recommended features we intend to propose to HUD to improve public land records management," Matthews said.

In addition to studying operations in recorders' offices, the researchers also are examining the role of mapping and surveying in title recordation. Matthews said it is the researchers' intention to develop definitive statements about the utility of and need for maps in the public sector title recordation operation.

In carrying out the second part of legal research of the project, Matthews reported that Booz-Allen retained Lane and Edson, a Washington, D.C., law firm which specializes in real estate practice.

Lane and Edson will address three primary problem areas, Matthews said. As outlined by Matthews, the areas are the current condition and utilization of locally maintained land title and ownership records; the legal impediments which inhibit the expeditious determination of title condition and ownership, and the inherently duplicative nature of title searching practices and procedures.

The Uniform Simplification of Land Transfers Act (USLTA) has acted as a cornerstone for the legal research, Matthews said. He cited three major items of interest in USLTA: USLTA addresses the critical problems of title examiners; it addresses the problems of title searchers—notably in the areas including parcel indexing and marketable title—and it addresses the issue of mechanic's liens.

Additional legal research is being conducted to supplement USLTA, Matthews said. "Where it is unresponsive or incomplete, Lane and Edson will supplement with model legislation," Matthews said.

This additional research will cover "legal constraints that impact efficient positive title registration (Torrens)," he continued.

Torrens statutes and title registration laws will be evaluated in an attempt "to simplify the legal and operational log jams that currently prevent the efficient operation of a title registration system in the United States," Matthews said.

The research will result in five reports which will be reviewed by a land title advisory panel. The reports will deal with the following topics:

- The state of the art of land title information recordation
- The roles of mapping and surveying in the modernization of land title records
- The legal constraints impacting efficient land title recordation
- Approaches to reducing the repetitive nature of title searches
- the legal modifications required to improve positive title registration systems.

The panel, which also will review other project products, is made up of representatives from the following organizations: The International Association of Clerks, Recorders, Election Officials and Treasurers; the National Conference of Bar-Related Title Insurers; the American Bar Association; the American Congress of Surveying and Mapping; the National Conference of Commissioners on Uniform State Laws; the Consumer Federation of America; the California Commission on Housing and Community Development; Federal National Mortgage Association; the National Association of Counties; the National Association of Clerks and Recorders, and the North American Institute for the Modernization of Land Data Systems. ALTA is represented on the panel by Association Executive Vice President William J. McAuliffe Jr.

deemed to be wards of the U.S. government. The U.S. government is considered to be a guardian for the Indian tribes. The government is considered to be in a trustee capacity. The courts, at least thus far, have said that you cannot raise defenses against a ward that you can't raise against its guardian.

So then you have to see if you can raise any of these defenses against the federal government, and the courts also have said, thus far, you can't. You cannot raise a statute of limitations against the United States unless Congress says you can. And Congress hasn't said you can in these kinds of cases.

Also, in Indian land claim cases, you can't raise the equitable doctrine of laches and you cannot have adverse possession against the federal government. For these reasons, among others, Judge Pettine, in the federal court in Rhode Island, did a rather extraordinary thing in the Narragansett case pending there. He allowed a motion by the Indians to strike these defenses pleaded by the defendants prior to trial. He said these defenses are of no merit in this case and therefore they cannot be raised.

Now, admittedly that ruling by Judge Pettine has not yet been tested in the Court of Appeals for the First Circuit, or the U.S. Supreme Court. But, to date, it stands and people are looking at it concernedly, suggesting that perhaps Judge Pettine is right on that issue. So you really are faced with a very difficult situation when one of these claims is filed because many of the normal defenses that would be raised are just not available to you.

I'd like to talk a little bit now about what happens when you're faced with one of these cases and how you go about defending them and how a plaintiff goes about proving a case. It may be an interesting sidelight.

Understand that in these cases we're talking about years of history. In the Mashpee case, for example, which is the one I'm most familiar with because we've just completed the trial, we went back and covered 400 years of history in eight and a half weeks of trial in the federal court.

How do you prove these cases? What kinds of witnesses are used? Well, first, there are two aspects of the cases. There's the *then* part, and the *now* part.

The then part is that part of history that indicates what was happening back then when something *happened* that this Indian group is now claiming as a violation of the Trade and Intercourse Act. That's proved in a number of ways, primarily through the use of expert witnesses. The experts are basically historians, people with doctoral degrees and beyond. They are people who study history, teach history and are well versed in the subject.

In the Mashpee case, the testimony of the historians—the two historians primarily who testified—covered almost three weeks of the trial. And what these gentlemen did, both for the plaintiff and the defendants, was they went to the area and searched out everything they could find that dealt with the history. They went to the registry of deeds, they went to all kinds of historical associations, they read history books and they obtained ancient statutes and documents.

We went way back in the Mashpee case. As an example, the very first bit of evidence presented by the plaintiff's historian was a letter from an explorer named Verazano to the King of France in 1580. It was amusing. In some respects the letter was Verazano's description of what he found when he explored the New England coast. And interestingly, there was a significant degree of comment by Verazano's crew as to how attractive the native women were.

Now, you can picture a boatload of sailors who perhaps have been at sea for two years and haven't landed. I'm sure the native women were very attractive to them. We started that early in the Mashpee case with writings by Verazano, by Champlain and by Gosnold and led up to the contact time. The time when the famous Pilgrims arrived.

These historians presented their case primarily through documents, then threaded the documents together to tell the entire history. It was fascinating to dig into aspects of history that we've always assumed we know and find out that it wasn't really quite that way.

I think you're all familiar with the story that is in most of the history books, that when the Pilgrims landed, they were greeted by friendly Wampanoag Indians in Plymouth. Well, it just didn't happen that way. When the Pilgrims landed, there were no Indians there. There had been a plague in 1617 which wiped out essentially 90 percent of the New England Indians. The first Indian to show up at Plymouth arrived alone, six months after the Pilgrims arrived.

There are other amusing bits of history that we learned. We learned that Paul Revere wasn't an Englishman, but rather was from a French Huguenot family that ended up in Boston.

Primarily what I'm trying to tell you is that in the proof of the history part of these cases experts are needed. They're expensive and it requires many hours of searching many documents to put together a history that isn't otherwise readily available. It certainly isn't available to someone from the title industry or some lawyer who wants to be extra cautious and search titles in a real estate transaction. There is almost no way to know the history without hiring one of these experts and spending literally months of study to find out what occurred.

One of the things that facilitated the establishment of the history of the Mashpee case was the religious fanaticism, if you will, of the early Pilgrims. Those were indeed bizarre times. And almost every one of the Pilgrims considered himself a missionary. They spend a great part of the early years of the New Plymouth Colony and Massachusetts Bay Colony trying to Christianize the natives that they found. The Pilgrims wrote copious letters and that was really one of the sources that both historians used to put together just what was occurring prior to the Revolution in colonial Massachusetts.

We had another interesting problem in the case in that the registry of deeds in Barnstable County, where the town of Mashpee is located, burned to the ground in the early 1800's and all the recorded instruments were lost. For that reason many of the early deeds in

(continued on page 14)

"Also in Indian land claim cases, you can't raise the equitable doctrine of laches and you cannot have adverse possession against the federal government."

FNMA's Murray discusses the title industry and FNMA's new programs

Editor's note: The following is adapted from the speech that James E. Murray, senior vice president and general counsel of the Federal National Mortgage Association (FNMA), gave at the ALTA Mid-Winter Conference in Phoenix.

FNMA is tied in very closely with your industry. It is very dependent upon title insurance and to some extent, title insurance companies are dependent upon the health and vitality of FNMA.

Rep. Rhodes anticipated some of my remarks this morning by mentioning the problems FNMA is having with regulations proposed by the secretary of HUD in the last 10 days. I will comment on the proposed regulation after I have spoken about some of our new programs and how they impact on the title insurance industry.

FNMA is experiencing a very interesting period. Interest rates are heading up, causing a great deal of pressure on the corporation to provide further liquidity. The prospects for a good year for housing do not look optimistic, as originally had been anticipated, partly because of the action of interest rates.

There are a number of new programs which FNMA recently introduced, which I will comment on briefly. A new program recently introduced is intended to help solve a major problem in the condominium market, specifically, the financing of the resale of units in existing condominiums.

Most condominium projects are underwritten initially by one lender, primarily because of the expense of examining the master deed, the various covenants of the project, the terms of the owner's association, and other legal situations that all must be reviewed by attorneys. Often after a project is sold out there may come a point in time where the original lender, because of disintermediation or for some other reason, does not care to lend anymore in that particular project for resales. Because of this, it becomes difficult to sell individual units in the project because other lenders have to review and underwrite the entire condominium once again in order to decide whether or not to finance the spot loan. They feel it essential to review the documentation *de novo* and this then becomes a very expensive proposition. We have tried to eliminate this problem for condo resales by adopting a program that attempts to determine, in-FNMA, just what the legal risks are and to what extent we can go in order to provide liquidity to the existing condominium market, without requiring costly outside attorney opinions.

Pictured in conversation with FNMA's James Murray are ALTA Director of Government Relations Mark E. Winter (center) and U.S. House of Representatives Minority Leader John J. Rhodes (R-Ariz.).

The following criteria have been formulated. If a project has been in existence for at least two years since passage of control of the common elements to the community association, and the documents have been recorded for at least three years, with 90 percent of the units having been sold, then FNMA will consider giving its approval to purchase any unit in that particular project. Also significant is the fact that, if FNMA is willing to give its approval to purchase any unit in that particular project, it will serve to encourage other lenders to come in and make spot loans also, knowing that there is a secondary market facility in FNMA in the event of disintermediation.

The title evidence required for this program is very similar to that which is required for our normal condominium program. Certainly, the title evidence has to show that FNMA has a valid first lien. There must be an adequate legal description of the condominium regime, and it must insure against loss of title caused by any violation of the master deed or the bylaws. There must be assurance that there are no encroachments by any units onto the common area or onto other units. The condominium must comply with state law, and the condominium unit must be taxed as a separate unit by the taxing authority. It is realized that some of these items may be difficult to insure against in some of the states, and so FNMA is prepared, depending on state law, to make variations, as long as FNMA feels it is getting substantially equivalent protection.

Secondary financing

Also recently announced was FNMA's decision to purchase mortgages that are also subject to secondary financing. That is a change in our conventional mortgage program, since traditionally, FNMA has not permitted secondary financing. It will now be permitted, but the title policy will have to list

(continued on page 12)

FNMA—*(continued)*

the secondary financing and insure that it is clearly a junior lien.

Urban Lending Program

No one can be unfamiliar with the problems that the inner-cities have, especially the charge that is being made by many, rightly or wrongly, that lenders have redlined older areas in the cities. There may be redlining and in some cases it may be justified. That is, there may be areas in which no lender could make a loan and expect to be repaid.

In an effort to try to do more in urban areas, we have announced a $200 million urban participation program. There are several reasons for favoring a participation program over a program for the sale of whole loans. One reason is that most of the sellers who do business with FNMA are mortgage bankers who are not heavily capitalized and are traditionally not portfolio lenders. Many of them do not do much lending in the urban areas, but rather are oriented towards suburban lending. Most loans that are made in the urban areas are made by commercial banks, mutual savings banks, and savings and loan institutions.

The participation program will not have FNMA's usual whole loan program requirements, nor will these mortgages be required to be originated on FNMA forms. Also, FNMA's underwriting and appraisal criteria will not be applied as strictly. Instead, FNMA will require that the original lender retain at least a 10 percent interest in the pool of mortgages from which we purchase our interest. The philosophy of the program is, that as long as the original lender is going to share any potential loss with us we are protected to the extent that he has to make reasonable underwriting judgments in originating the loan.

To the extent that FNMA invests in these pools of loans it is required that the funds it invested be used by the lender to reinvest in those same areas. The program was announced on Feb. 1. In the first month, $35 million worth of commitments have been issued. $35 million is a good start. There is a historic problem confronting the lender in the older urban area. There just are not that many urban areas where lenders are willing to risk their funds without a secondary market facility. If this program is successful and if it works the corporation will no doubt expand the funding for the program. Title insurance is required, naming the original lender covering the mortgages in the pool.

Those are a few of our most recent programs which I think will be of interest to you.

Problem areas

There have been some problems with title insurers over the past year. They are not great problems but, I think if unchecked, they could be serious in the future. One problem, and it has been episodic in different parts of the country, is the difficulty of getting delivery of title insurance endorsements and policies.

The housing market has become much more of a financial market in recent years. The days of the past when the transaction was conducted in a more leisurely way are fast disappearing. That is especially true in the FHA and VA markets where there are really a number of alternatives for sale of such mortgages. Mortgage lenders have the ability to either package pools of FHA and VA loans and sell them as Government National Mortgage Association (GNMA) mortgage-backed securities, or they can sell the loans to FNMA, or other investory. Usually lenders will wait until the very end of the FNMA commitment period before they make that decision. That places a great deal of pressure in so far as delivery of mortgage documents is concerned. As a result, if the loan is sold to FNMA, there must be a reliance on representations of the mortgage lender that the recorded assignment and the title insurance endorsement are on the way. However, those documents of assignment, especially the title insurance endorsements, are not being received in a timely fashion.

There are recent cases in which mortgage bankers have gone into bankruptcy. In several cases there were loans in which the originating mortgage banker had given a lien to a warehouse bank on mortgages sold to investors. In those cases, there may be a questionable first lien on loans purchased by the investor, based upon representations that the title insurance was forthcoming.

FNMA cannot be certain that the title insurance will be delivered. FNMA does not insist upon a complete rundown of the title to show that the assignment has been

(continued on page 18)

PACs—Force in a collective voice

The united voice of a political action committee (PAC) is far more persuasive than the voice of an individual in influencing how elected representatives govern, Joan D. Aikens, vice chairman of the Federal Election Commission, told ALTA members at the Mid-Winter Conference.

Trade associations and membership organizations as a group were the most successful fund raisers and contributors in 1977, Aikens noted. As a group, they raised $8.1 million as compared to the labor organization's approximately $7 million and the corporate PAC's $4 million, she said.

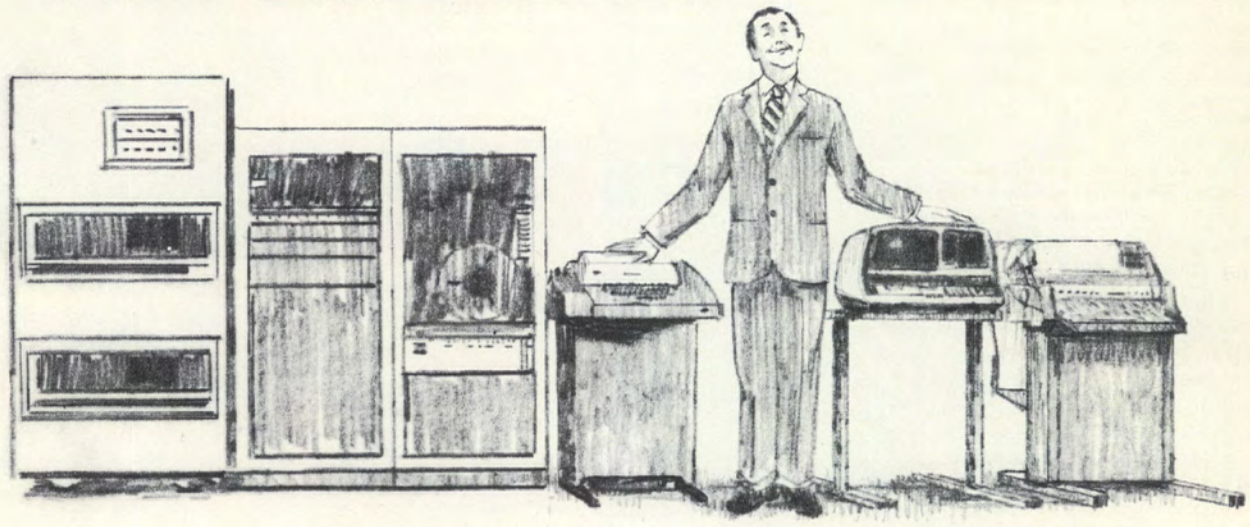
Her remarks primarily were confined to outlining the following general requirements under the law that regulates trade association PACs:

- There is no such thing as an anonymous contribution over $50. Any such contributions are to be given to charity or "returned anywhere" so long as the candidate does not use them in his campaign.
- An individual may not make contributions to federal candidates or committees in excess of $25,000 in a year.
- It is unlawful to make or receive cash contributions over $100.

A trade association may solicit the executive or administrative personnel and shareholders of its member corporations provided that the member corporation separately and specifically approves the solicitations and that it does not approve a similar solicitation right to any other trade association in the same calendar year. Under the current statute, separate corporate solicitation permission must be obtained each year.

On the other hand, a trade association may solicit its non-corporate members at any time, in any manner and as often as it wishes, Aikens said.

YOUR OWN SYSTEM FOR PLANT AUTOMATION:



IT'S CALLED LANDEX®

You own it. Or lease it. LANDEX goes into your offices, where your people run it. They don't need computer experience.

You can put terminals in other offices, even other cities. You can use LANDEX for more than one county.

Twenty-one title companies in seven states own LANDEX systems or share in the ownership. Should you join them?

We'd like to tell you more. Just write or telephone —

Donald E. Henley, President
INFORMATA INC, *makers of LANDEX*

Landex®
TITLE INFORMATION MANAGEMENT SYSTEM

INFORMATA INC / 23241 VENTURA BOULEVARD, WOODLAND HILLS, CALIFORNIA 91364 / (213) 346-9203

RESPA Section 8 as seen by Justice

A significant increase in investigations under Section 8 of the Real Estate Settlement Procedures Act (RESPA)—the anti-kickback section—could be ahead, according to James J. Graham of the U.S. Justice Department.

Graham, who appeared at the Mid-Winter Conference in Phoenix, said the volume of Section 8 investigations has not been heavy to date. The department's enforcement philosophy has been to give the real estate industry some time to get its house in order, he said.

In explaining how Justice interprets Section 8, which carries criminal penalties, Graham said the department "goes to the elements."

In Part A of Section 8, there are three basic elements, he continued. There has to be an acceptance of a give or kickback; the acceptance has to be pursuant to an agreement to refer business, and it has to be part of a real estate settlement involving a federally related mortgage.

Graham noted there are various definitions as to what constitutes a "kickback" and what an "agreement" is.

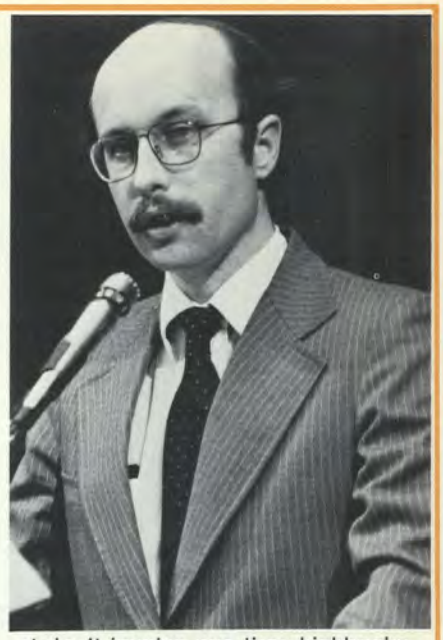
"Proof of an agreement can be direct or indirect, can be circumstantial," Graham said.

The three parts of the B segment are what Justice calls the elements of crime. These are: The gift or acceptance of a portion of a fee for settlement services; a fee not for services actually performed, and again, it has to involve a federally related mortgage.

As prosecutors, Graham said the department interprets Section 8 on both a technical and a practical level. The technical level covers the elements while the practical level "touches on prosecutive discretion" based on the following:

- The frequency of the alleged transaction
- Knowledge of the participants that it was of an irregular nature
- Whether or not there was any concealment of the transaction
- What the costs are to the consumer.

"The type of matters we are looking at don't involve one time kickbacks or one time gifts. It's a continuous transaction. It happens day in and day out," Graham said.



Graham added, "We are not going to reform through prosecution of the real estate industry. What we may do is deter a few but keep the voluntary compliant. And we'll help you along with a little deterence, but, in 1980, I expect the whole industry again to be looked at by the Congress."

Indians—*(continued)*

that area just don't exist, or only exist, if you will, in people's attics, or in old boxes under their beds and other obscure places like that.

We found that, as the trial went on, people would call us and say, "I found an old document, I wonder if it's interesting." We would then get the historian in his car and send him to Cape Cod to pick it up. As it turned out, one man produced for us 20 deeds which were old, wrinkled, falling apart and all dated from 1680 to 1692. We had them photographed by an infra-red process, and then presented some of them to the jury. They were very effective in demonstrating the nature of landholdings in Mashpee 100 or so years before the Revolutionary War.

We had a number of intriguing ways of digging at the history and presenting the case. But we also had to shift in this particular case, as you would in any of these cases, to the *now* part—that is, to the part as to whether a tribe of Indians exists today. This is because there must be a tribe of Indians under the Trade and Intercourse Act to bring one of these cases. In this part of the case we had a fascinating parade of witnesses presented by the plaintiff.

The power and ability of the Indian organizations to gather witnesses and present them was striking. These cases in the East generally are being funded and presented by a group called the Native American Rights Fund (NARF). For that reason there is no pull on the pocketbook of the particular groups that are involved. NARF is a group that has power over the Congress, a spell over Congress that you wouldn't believe.

Witnesses from all kinds of government agencies flew willingly to Boston to testify on behalf of the Mashpee Indians. Those of you who are attorneys and have ever tried cases and attempted to get a witness from the government to come to court and say anything will understand what it's like. These people were well beyond the reach of a subpoena and yet even the solicitor of the Department of the Interior flew up to testify as to what the requirements are for federal recognition of an Indian tribe. People from the Bureau of Indian Affairs (BIA) flew in on a daily basis to describe how tribes are recognized and what tribes do.

This description of tribal activity is one of the aspects that the plaintiff used as a means of proving tribal existence by a comparative process. They would call in the government witnesses who would describe in intimate detail federally recognized Indian tribes—tribes that had treaties with the government, tribes that have ongoing relationships with the government and tribes that are real and exist. In one way or another it would be shown that each of the federally recognized tribes that was described had what might be considered a deficiency. Some federally recognized tribes, for example, don't live on a reservation. Other federally recognized tribes don't control or possess any land. Some federally recognized tribes don't speak an Indian language.

(continued on page 15)

Some federally recognized tribes. don't have their own court system. Some federally recognized tribes don't have their own system of laws or regulations. Some federally recognized tribes don't participate in Indian dances or have any kind of Indian customs that they regularly deal with.

What the plaintiff really attempted to do in the Mashpee Case, and what indeed they have to do in many of these Eastern cases, is take all of the things that the federally recognized tribes separately don't have and put them all together and say, in effect, as they did in Mashpee, "We don't have any language; we don't have any land; we don't have any rules and regulations; we don't have any court system; we've never had a treaty, and we don't have a reservation. But neither do a lot of federally recognized tribes have any number of some of these things and, therefore, we're just like them."

We also saw as witnesses a significant group of what I would characterize as the Indian activist people—people who had participated in the takeover at Alcatraz, at the Wounded Knee situation, and in what's referred to as the "trashing" of the BIA a few years ago.

We saw the fairly well known Indian author, Vine Deloria testify. These people also were a demonstration of the ability of NARF to present witnesses to support these claims, however tenuous. Each of these witnesses described his Indianness and his understanding of what it is to be an Indian.

These witnesses would say things like, "Two days ago I took a ride to the Cape and I drove through Mashpee and I talked with some of the people involved in this case, and they're Indians just like me." We saw witness after witness coming in from all over the country to make statements like that.

Another thing that the plaintiff did in its attempt to prove its tribal existence was to present its own people and have them describe what they characterized as Indian customs still being followed by this otherwise imperceptible "tribe" in Mashpee.

We had people describe Indian remedies such as skunk grease liniment for aching muscles. One lady described her remedy for curing a fever. She said that what you do is you cut up onions into tiny pieces and put them in your socks. Put the socks across your chest and wrap yourself in an Indian blanket and every two hours the smell of the onions will draw the fever right out of you. We were tempted to point out that the early Indians in Massachusetts didn't wear socks and so probably that wasn't really a genuine Indian remedy.

"The power and ability of the Indian organizations to gather witnesses and present them was striking."

In some instances, these people were just plain wrong in the kinds of things that they suggested were Indian customs. Plaintiff's counsel, to this day, doesn't seem to realize that Indian pudding is not an old Indian dish, but was rather something created by the colonists to take care of the bread that they had left over and mix it with molasses.

These are fascinating cases to be involved in. They're a lot of fun to talk about. But really they are very serious. They present an extremely serious challenge to this industry and to people in the real estate business. They cause enormous disruption, and economic and personal discord to the people who are affected.

In Mashpee, again as an example, we have a small town of approximately 5,000 people on Cape Cod. Eighty percent of the town is underdeveloped. Its primary industry is the real estate industry and the tourist trade. Most of the people in town are involved either in development, working for the contractors, in the summer vacation real estate business, or they're people who have retired to the town.

On the date that the complaint was filed in the federal court in Boston, which is now over two years ago, that town came to a standstill. Extremely serious things have happened to the town itself and to the people in it. For example, the town is not able to sell its municipal bonds to finance the kinds of things that towns have to finance such as the building of a new school, the building of a fire station and the building of a town hall. This is because bond counsel will not approve the town's interest in the land because this claim is pending.

People affected by the claim are not paying their real estate taxes because they're taking the position that they may not even own their land. Further, they're seeking abatements of taxes filed or paid in earlier years on the grounds that the fair market value of their property is not what the town said it was, because of these Indian claims. The industry in the town—what little there is that supported the town and that provided a limited tax base—has dried up. People in the real estate business have closed up. Some of them have gone into bankruptcy, some have attempted to move elsewhere.

People in the town who need their property for a source of income, or for use in their daily lives, have been utterly frustrated. There are a number of cases of personal bankruptcy.

There are instances of elderly couples living in retirement homes on fixed incomes who have been critically affected. One of the couple becomes seriously ill and they need to raise money. They have no ability to raise it however, because the only thing that they own is their home and no bank will lend money on that home now, as long as this claim is pending.

There have been people running small businesses in the town. One of the other businesses aside from the real estate industry is the cranberry business. The cranberry business involves the use of land. It involves borrowing by the crop farmer from federal and other agencies to finance their crops in anticipation of the harvest. They now can't use their land as their security for that borrowing. These are some of the intangible effects that this case has in the town of Mashpee.

There is also a terrible and bitter schism that has grown up between the Indian, or so-called Indian, and non-Indian people. Real bitterness. People in some instances are carrying guns in what used to be a quiet little town on Cape Cod. And that's just one place; that's just Mashpee.

(continued on page 20)


JIM HOPE
FRANK O'CONNOR


FRED BENSON
THOMAS JONES


DON NICHOLS


RICHARD HOWLETT

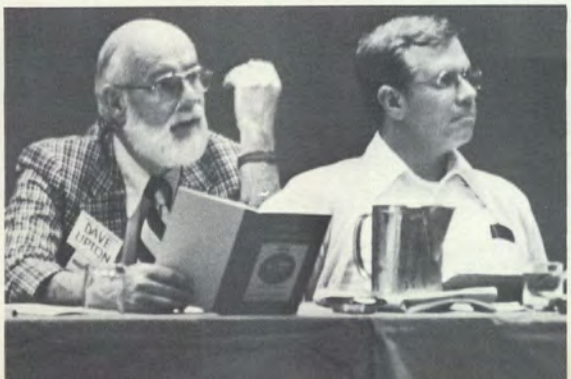

RAYMOND


THAMES HICKMAN


EXIT
MICHAEL GOODWIN


HAROLD DILWORTH
JERRY KING


WILLIAM TOWLER


DAVE LYNCH


CARL
ELLIOTT


GLORIA


JOHN


JOE
SKEEN
KIT
LONG


CHARLES
STITES


EARL
HARPER

FNMA—*(continued)*

recorded, but it may have to do so in the future. If so, a problem is presented to the mortgage lender in that it cuts down his flexibility to hedge his transaction. In terms of FNMA's risk, it does not appear to be appreciable because we have not suffered great losses. There is a risk nevertheless, and it is something that the title industry should be concerned about. Title insurance is a service to lenders. Lenders need it—other investors need it—and I think the industry should always be on the alert to find ways to make that service better and to make it more prompt.

Other problems, principally limited to the northeastern part of the United States, have arisen with respect to taxes or special assessments that are being levied by local jurisdictions. There have been title policies it issued where such charges have been listed as prior liens when in fact they were not. Particularly difficult is the case of FHA insured project mortgages. Many of these special charges are in lieu of taxes that have been abated so as to encourage FHA project housing. In the past, where the title policy has shown those charges as priming the first liens of our mortgages FNMA has paid them. The difficulty comes when the project goes under financially and is assigned. HUD reaches a different opinion of the status of the lien evidenced by the service charge and FNMA is caught in the middle and its claim is surcharged. HUD will reduce our claim by the amount of the service charges that have been paid to the jurisdiction, claiming that it was not a lien prior to the first lien. It is a problem that FNMA is trying to work out with the help of the title insurers.

There is also a problem which has become somewhat more serious in the past year, and that is the problem of premature endorsements. In these cases the title policy will show FNMA having a first lien, when in fact the mortgage proceeds have not as yet been disbursed. The title policy, therefore, does not show the true state of the title, only how the record will show title at a future date.

There are reasons why this occurs in some parts of the country. Reasons caused by delays in recording offices no doubt, but I think in many instances it is caused by title insurance companies trying to accommodate an originating lender. I believe it is a practice that can be very dangerous not only to investors like FNMA, but also to the title company concerned. It is something that has been addressed by the ALTA/MBA liaison committee. ALTA should cooperate with the mortgage lenders in trying to find ways that they can deal with the problem, while not overly restricting the way the mortgage market operates.

HUD regulations

In closing, I will discuss HUD regulations concerning FNMA which were published Feb. 24. On that date, for the first time, we received notice of the proposed regulations when the secretary released them to the public for comment. The regulations have many serious repercussions for FNMA and for the title insurance industry.

As you know, FNMA was separated in 1968 from government and was turned over to its shareholders. It is now managed by a board of directors as a private corporation with stock publicly traded on a number of stock exchanges. These regulations, if they become effective, would be very destructive to the concept of FNMA as a privately owned and managed corporation.

A number of the regulation's provisions should be of concern to all who are interested in housing. The regulations would mandate that in 1978 FNMA commit to invest 30 percent of its funds in urban areas and in existing housing. 30 percent of our investments also would have to be in low and moderate income inner-city loans. However, where will low and moderate income loans in rural and suburban areas get their financing?

There is a provision in FNMA's charter act that the secretary may require a reasonable portion of our purchases be related to low and moderate income housing. FNMA has invested in, or has accounted for, about 60 percent of all the low and moderate income housing that has been built in this country in the past 10 years. Presently, our purchases in low and moderate income housing are not substantial because the federal programs for low and moderate income housing, such as HUD programs 235 and 236, are now dormant. HUD now proposes by its regulations that FNMA revitalize inner-cities by investing in low and moderate income housing that is below the median level of any metropolitan area. Of course, that could be a home for a millionaire in

(continued on page 31)

Members to vote on Bylaws change

An amendment to the ALTA ByLaws providing a new membership category will come before ALTA members for a vote at the 1978 Annual Convention in Boca Raton, Fla.

The ByLaws change which would create a Member Emeritus category was one important action the ALTA Board of Governors took in its meeting at the ALTA Mid-Winter Conference in Phoenix. The category was created to enable officers and employees of member companies to retain membership in ALTA after retirement.

Also approved by the board was the report of the ALTA treasurer. The budget for 1977 reflected an operating loss of $195,703 which is primarily due to legal services involving various aspects of Indian land claims, according to Treasurer Fred B. Fromhold.

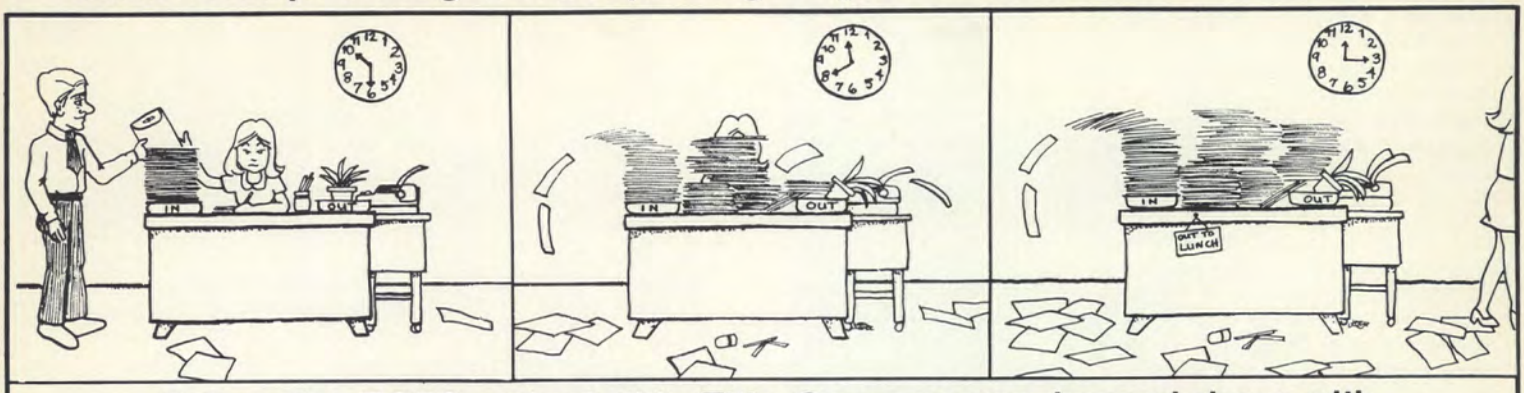
Despite this loss, the ALTA financial picture remains strong. It was not necessary, Fromhold reported, to dip into reserve assets to cover losses in 1977. With a 10 percent across-the-board dues increase, the 1978 budget is projected to reflect a slight gain.

The board approved 1978 Convention registration fees of $80 per attendee. This figure remains unchanged from the 1977 Convention.

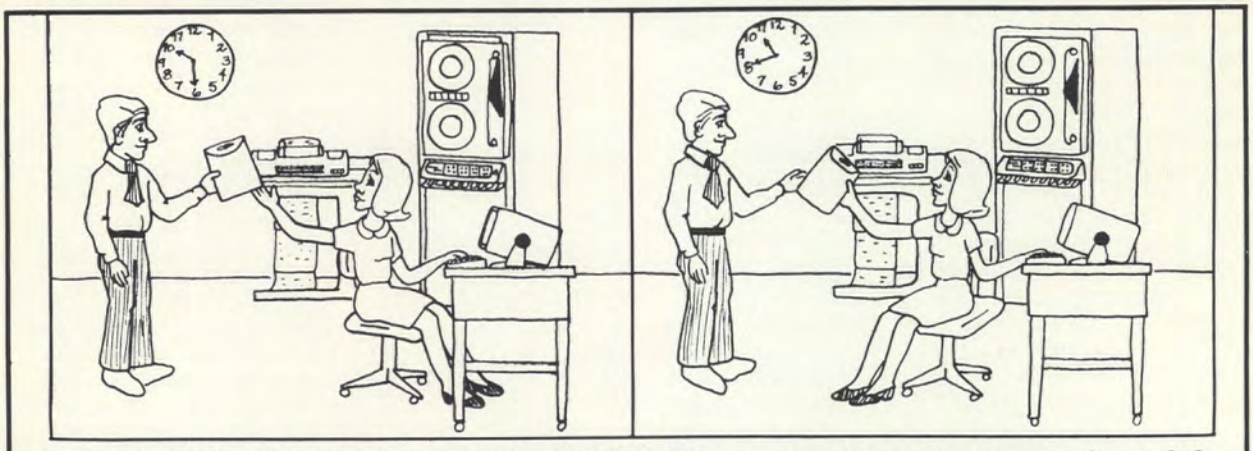
As a means to addressing the possible need for greater involvement of the Board of Governors in ALTA affairs, a questionnaire has been sent to board members to determine if a special board meeting should be held prior to the 1978 Convention to discuss the role and function of the board.

The Many Advantages of TOPS

TOPS, the Title Order Production System from Title Data, Inc., is a mini-computer system for all processing of a title insurance order — from initial receipt through final reporting for your underwriter or home office.



Before the TOPS arrived, this Title Company was bogged down with paper. The typists were sometimes surly, and orders were hours in production.



Now this Title Company has the TOPS. The paper is under control, and the pleasant, smiling typists can produce title orders in ten minutes.

TOPS:

- **Produces commitments, policies, and related documents**
- **Provides immediate access to each active case for inquiry and change**
- **Controls invoicing, cash receipts, and receivables reporting**
- **Produces month-to-date and month-end activity reports**
- **Generates upon demand individually-tailored management reports for all cases in process.**

We feel that the TOPS can be cost-justified for any company producing 300 orders per month. Expanded with additional terminals, the TOPS can process 10 times that volume.

We would like to tell you more about the advantages of the TOPS. Please call or write our President, Stanley Dunin.

Title Data, Inc.
1835 Twenty Fourth Street
Santa Monica, California 90404
(213) 829-7425

I mentioned the claims pending in other places as well. In South Carolina, if my memory serves me correctly, the claim is for approximately 140,000 acres of land. With the new claim filed, it appears that over 5 million acres of land in central New York state are in jeopardy. The bonding problems, the tax problems, the shutdown of the real estate industry will all happen there. The state of Maine has 12 million acres in jeopardy.

So you multiply the agony, the problems, the unrest, the economic costs to the people of Mashpee, which is a town of about 15,000 acres, by the 12 million acres in the state of Maine. Consider also what federal government has suggested for the state of Maine, not only in the proposed settlement, but early on. The Department of Interior has submitted a memorandum to the Justice Department which I've had occasion to read and I know others have. Interior has suggested that the Department of Justice should go forward with the Maine case on behalf of the Indians even if it means dispossessing the approximately 350,000 people of non-Indian descent who live in the affected areas of Maine. Think of what it would mean to dispossess 350,000 people in the city of Bangor and much of Washington County and Aroostock County in Maine. These cases are of an unbelievable magnitude and yet the people responsible, if there are any people responsible, seem in my view to be doing nothing about it.

If there ever was a situation in which at some time in history some law was not complied with, and congressional approval was not obtained at the time of the land conveyance involved, certainly that should not be the responsibility of the man who owns that house today. He did nothing to cause that problem. And the person who's suing him had no harm inflicted upon him either. He's relying on a claim that, maybe, his ancestors had; but, if they had it, they had it rightly against the government for doing nothing.

These claims are extremely tenuous in many regards. Let me tell you what the underlying problem is in the Mashpee case. It isn't that some white men got a group of Indians drunk and stole their land. The complaint is that for many years in Mashpee there were

"The federal government really should not leave private people in the position of being held hostage to these kinds of claims."

people of Indian descent. Their bloodlines were thinned by intermarriage and by assimilation into the general community. But they had requested at an early time protection for themselves. They had requested a law from the state of Massachusetts which in effect prohibited them from selling their own land.

There came a time in 1869 when the Indian residents, or the people of Indian ancestry in Mashpee, decided they had had enough of that situation. They wanted Mashpee to be a town like every other town in Massachusetts. They wanted to be able to freely alienate their land like everybody else. So they petitioned the Great and General Court, which is our legislature in Massachusetts, and they asked it to lift or remove that law that prevented them from selling their land. Also they sought to create what was then the district of Mashpee into the town of Mashpee and make it a town like every other town in the state of Massachusetts.

The legislature heard the petitions, allowed them and passed laws that lifted the inhibition on selling land by people of Indian ancestry in Mashpee and created the town. That was in 1869 and 1870.

In 1976 a group calling itself the Mashpee Tribe has brought suit in the federal court claiming that it should have the entire town of Mashpee back because the state of Massachusetts did not get congressional approval when it lifted the inhibition on the Indians selling their land and created the town of Mashpee. That is the tenuous nature of the claim that we tried for almost nine weeks in the federal court in Boston, and which has torn this little town apart. That has caused a cost to defend that claim which I would estimate to be close to three-quarters of a million dollars in fees for lawyers, experts, research people, just related to the tribal aspect of the case.

If there's one thing that's clear from these cases, it is that they don't belong in the courts. The courts are not the place to resolve the problem. They're not the place, primarily, because the people in court aren't the people who ought to be involved in the problem. The plaintiff groups, the groups claiming to be Indian tribes, should not be permitted, in my view, to bring suit against present day owners of land for wrongs that occurred 180 years ago.

If anyone was at fault, it was the federal government. If there was an obligation to protect these people, if the law means anything, it was the federal government which was at fault. The federal government really should not leave private people in the position of being held hostage to these kinds of claims. It is a disgraceful abdication of the representative responsibilities of members of Congress to do nothing about these cases. Essentially I really must say that nothing has been done.

The Maine case has been around since 1970. It would be very simple for Congress to pass a law. There is plenty of legal support for it to pass a law, which would in effect extinguish these claims which are based on a concept of aboriginal title or for claims based on the recognized title, to extinguish the claims and allow the people who presently own the land to go about their business. At the same time Congress could create a system whereby, if there are Indian people who have been wronged and who can establish their right to a remedy, the federal government would in effect stand up to its responsibility.

We have a pattern for it already. There is an agency called the Indian Claims Commission which was created by Congress in 1946. The Indian Claims Commission was designed to give Indians a vehicle, an agency, whereby they could bring claims against their government for wrongs. If the Congress feels that such a commission of a different fashion, but nevertheless similar, ought to be created to deal with these things, then Congress ought to act upon it. But Congress shouldn't sit back and allow these claims to go forward against innocent landowners.

(continued on page 22)

Smoothing the cyclical bumps in the housing market

The author is Dr. Arthur P. Solomon, director of the Massachusetts Institute of Technology-Harvard University Joint Center for Urban Studies, Cambridge, Mass. Dr. Solomon presented these ideas at the 1978 Mid-Winter Conference.

There are two parts to my presentation. First, I shall forecast housing construction requirements through 1985. Then I'll discuss the problem of the housing cycle, the ups and downs of housing construction, in the context of the nation's housing construction requirements.

Let me start by giving you the bottom line. The Harvard-MIT forecast of new housing in the United States between 1975 and 1985 is 20.2 to 22.6 million units, roughly 2 million to 2.3 million units a year. That's the number of mobile home shipments, single family houses and multi-family houses likely to be built to accommodate the growth in households, the replacement requirements for accidental losses, the demand for second homes, the provision for normal vacancy rates and the demand for improved housing and location. Through the rest of this decade we expect that we'll be closer to 2.3 per annum. And in the early 1980s housing starts are likely to drop off somewhat.

This forecast does not represent the 10-year target for the federal government. It's not the number of new housing units necessary to meet both market demand (those able to afford new housing units) as well as the social needs of low-income families. Instead, the Joint Center forecast includes only the number of units likely to be built to accommodate new household formation, replacement requirements and so forth if we assume no exceptional changes in the economy with respect to the supply of mortgage capital, or to the availability or cost of fuel and a continuation of current federal tax deductions and housing credit programs.

This forecast of residential construction for 1985 is divided into two separate parts. First, the growth in the number of households anticipated over this 10-year period. And secondly, the other construction requirements that I mentioned before, the replacement requirements, second homes, maintenance of normal vacancy rates, and improved housing. I'll now zero in on the growth of households because household formation is the most important source of demand for new housing in the United States and it's also the area that's really least understood.

Projections of household formation are extremely important because, since the end of the World War II, two out of three new homes constructed in the United States were constructed to meet the increase in households. So any projection of future residential construction has to start with an understanding of household formation.

The number of households in the United States can increase in two possible ways. First, we can have an increase in the number of adults in the total population—those in household formation age. For example, the post-war baby generation has now entered the traditional age for first-time home buyers. That alone would increase the number of households.

In addition, we can have exactly the same adult population in the United States, but there may be an increased tendency for adults to form their own households. In other words, more adults may choose to head their own households. The increase in the amount of

separations and divorces in the United States in the last 10 years, for example, have increased the number of single parent households.

Using cohort-survival methods it's relatively easy to project the number of adults in the United States through 1985. However, it is far more difficult to project the preference or tendency of the American people to split off and form their own households. And there are a couple of factors now at work that are likely to change the household formation rate in the United States.

In the last 10 years, we've had the most rapid increase in household formation rates we've ever had. If you go to a state like California, for example, 60 percent of all households are comprised of one or two persons. The growth of households headed by just one person, or with two people, has shown a phenomenal increase in the United States. But there are some factors that are likely to slow down the rate of household formation. That doesn't mean we won't have more households in 1985, but the rate of increase is likely to slow down. That's why I'm saying that the construction forecast is going to level off in the 1980s.

Why is the rate of household formation likely to slow down? One reason relates to the change in family size. As all of you know, birthrates in the United States have been falling since the early 1960s. And now we have a situation where we have both smaller households and a lot more space available in the existing housing stock due to the substantial number of large housing units built in the 1950s and early 1960s to accommodate the post-war babies and their families. This means that there is more space available in the existing housing stock to accommodate boarders and renters. In fact, for the first time in 25 years, the number of adults per household in the United States has increased.

Secondly, we anticipate a modest rate of growth in real income. In other words, we expect that the next 10 years will be more similar to what we've experienced in the 1970s so far, than the higher growth rate experienced in the 1960s.

The most important factor is that the cost of splitting into two separate households is rising. If a family

(continued on page 23)

Indians—*(continued)*

You have a bizarre twist to this situation which is based upon the decision in the Passamaquoddy case in Maine. The federal court in Maine has in effect told the federal government that it must bring suit on behalf of the Indians. So we have the federal government who probably, or at least arguably, failed to do something a couple of hundred years ago bringing suit against private citizens to seek redress for wrongs caused by the government itself. It's an insane situation. To the extent that the people in this audience have an ear—can get to the ear of anyone in Congress—it seems to me that it ought to be impressed upon them that this just isn't right. There ought to be legislation to deal with these cases and that immediately clears these titles.

We cannot have a situation—and you people know it better than I do, I'm just a trial lawyer, but you people are in the title industry—in which the question of good title is in jeopardy when no amount of research, no amount of search in the registry of deeds and the appropriate agencies, will tell you whether there is a claim or not, when you will only find out after an eight-week, three-quarters of a million dollar trial in a federal court. It just should not happen. And it's a situation that can be cured. It's a situation that should be cured.

I can't say more strongly that I urge upon you, and I urge upon anyone in Congress who's aware of these cases, to face up to the situation and to pass the kind of legislation that's needed to take care of this problem. There will be an opportunity, we hope fairly soon, for Congress to focus on this situation because I think we have worked out a settlement in the Narragansett case in Rhode Island. I say, "I think," because it does ultimately depend upon an act of Congress. But that settlement is one that perhaps can provide a model for resolving these cases.

In Rhode Island what everyone—the Indians, the non-Indians, the state of Rhode Island and the local town—has agreed to do is to create a state agency which will acquire a certain amount of state land and a certain amount of private land to be held essentially for conservation purposes for the benefit of the Narrangansett Indian tribe.

But in Rhode Island, the private land does not mandatorily have to go into that agency. Rather the private parties can sell their land to the agency if they wish to. And they'll be paid fair market value with money put up by the federal government. At the same time, this settlement will provide, if Congress goes along with it, for the extinguishment of all Indian claims in the state of Rhode Island. It will provide that this agency holding the land will be subject to all of the laws of the state of Rhode Island. It will provide that the criminal laws of the state of Rhode Island will apply. It will provide for a land-use plan regulating the use of the land involved. It seems to me that's what Congress ought to be thinking about on a national scope.

I will say in the Rhode Island case we received, as counsel, tremendous help from the American Land Title Association. The legislation or the legislative aspect of that settlement, which would call for the extinguishment of the claims, was essentially drafted by your people here so that we feel confident that if it gets through Congress it will solve the particular problem. But it again should not have to happen on a case by case basis, on a town by town basis, on a place by place basis. It ought to happen nationally and Congress ought to face up to it and do something about it.

Commonwealth acquires former agent

A Doylestown, Pa., title and abstract company which has been a Commonwealth Land Title Insurance Co. agent since 1961 was acquired recently by Commonwealth.

The 50-year-old Doylestown Title and Abstract Co. will now operate as a branch office of Commonwealth and retain both its main office in Doylestown and its branch office in Quakertown.

Don Roberts, associated with Doylestown Title for 15 years, has been appointed closing officer and branch manager. Mendelsohn Price, a 10-year employee, has been named title officer and plant manager. J. Allen Gowan will remain as branch manager of the Quakertown branch.

Solomon—*(continued)*

needs more housing space, they have three options. They can move from a smaller unit to a larger unit; if they own their own home, they can build on some additional rooms, or an older teen-ager, sister-in-law or a grandparent could leave the household to move into their own efficiency or one-bedroom apartment. Those are three ways in which a household can increase its space.

What has happened over the last few years is that family sizes have decreased, thereby increasing the demand for smaller units. At the same time, because multi-family housing starts have declined sharply in the last three or four years the supply of newly built smaller units is not keeping pace with the increase in demand. This imbalance in supply and demand is driving up the relative price of small efficiency and one-bedroom apartments, thereby making it more costly to solve the space problem by household members leaving to set up a second household. What this means is that the rate of household formation is going to level off in the early 1980s, reversing the trend of the last 10 years.

In the terms of the other components of housing demand, I won't say very much about the need to replace dwellings lost from the existing housing stock because of losses or public demolitions, nor for the demand for second homes. But I shall discuss the demand for new construction resulting from the need to replace older obsolete mobile homes and the effect of inter- and intra-regional migration. Both of these factors will have an important influence on future housing requirements.

With respect to mobile homes that is—manufactured homes produced in factories—they have represented an increasing share of the new housing market in recent years, reaching a peak of 22 percent of the market in 1973. It's dropped since then to about 15 or 16 percent.

What does this brief review of changing trends in the housing market add up to? Even though the rate of new household formation is slowing down, the tremendous number of post-war babies now grown up and entering the housing market will swell the demand for new homes over the next decade. And the increase in migration as well as the replacement of obsolete mobile homes will increase this demand further. So while the overall outlook for housing starts is quite good, the cyclical ups and downs will continue to cause havoc in your industry and all other industries related to residential construction.

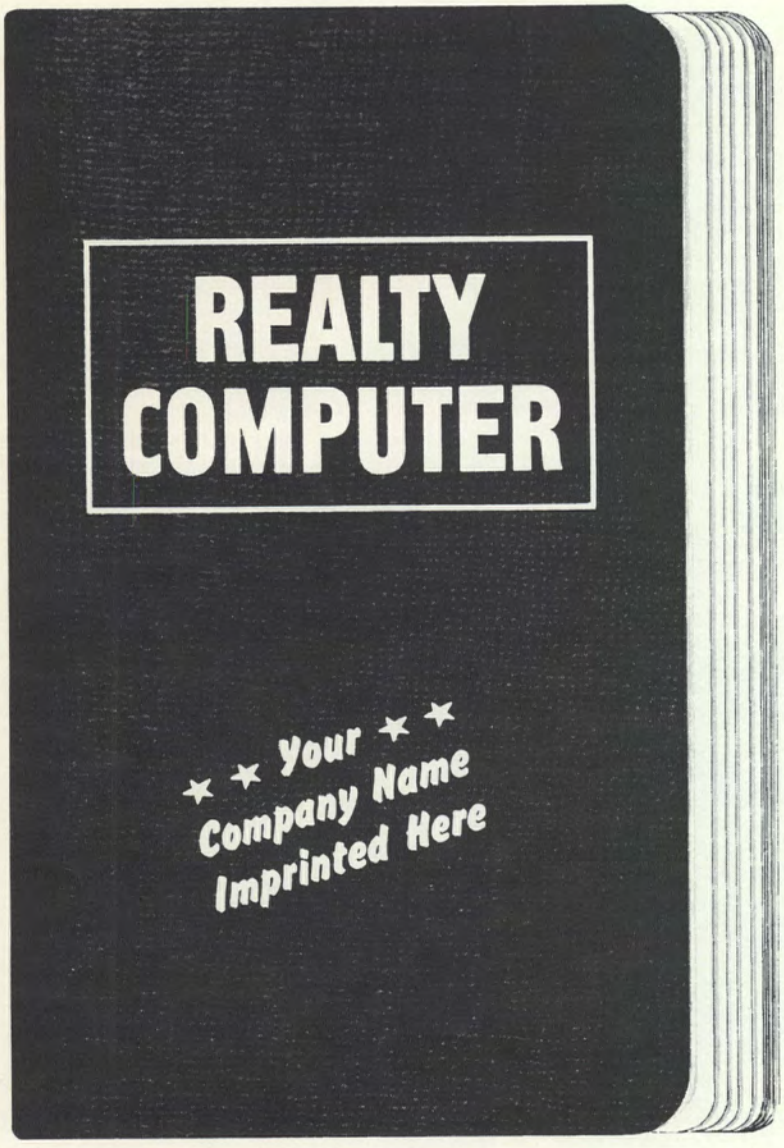
I'd like to spend the rest of my time, therefore, talking about this cyclical phenomena.

Since the end of the World War II we've had seven major cycles in the United States. In the most recent one, housing starts fell from a peak annual rate of 2.5 million units in the first quarter of 1972 to a low of 953,000 units in the second quarter of 1975.

Whenever the federal reserve restricts the money supply in order to restrain inflationary pressures, or the treasury has to finance a large federal budget deficit, short-term interest rates rise. Whenever short-term interest rates rise (as a 90-day treasury bill) smart depositors just take their money out of the thrift institutions, savings and loan associations and mutual savings banks, and purchase treasury bills or

(continued on page 25)

PUT YOUR NAME IN EVERY REALTOR'S POCKET!



YOUR
Hard-Working

GIFT FOR REALTORS!

Created by Realtors for Realtors

In addition to the conventional loan amortization payment tables, the latest 260-page ***Realty Computer*** provides over 30 real estate tables badly needed by real estate people in their daily transactions.

A quality edition that fits pocket or purse.

You owe yourself an appraisal of the ***REALTY COMPUTER*** — one of the finest professional fact-finders you have ever seen.

YOUR REAL ESTATE CLIENTELE WANTS IT!

Write today for your complimentary copy

(to Title Companies only)

PROFESSIONAL PUBLISHING CORPORATION

122 Paul Drive • San Rafael, California 94903 • (415) 472-1964

Solomon—*(continued)*

other short-term instruments that provide a much higher gain. This phenomenon of disintermediation periodically, of course, dries up the major source of money for housing starts.

Despite the fact that there's been a growth in long-term certificate deposits and despite the fact that the secondary mortgage market is beginning to expand, the housing industry is still the most cyclically unstable in the American economy. This industry has at the same time borne the brunt of counter-cyclical monetary policies and the brunt of having to fund the federal government's deficit. While it has been universally accepted by economists, industry members, and Congress that monetary policy destabilizes the housing sector, the conventional wisdom holds that these sharp fluctuations in housing starts are a necessary cost that our economy must accept in order to promote more stability in employment and output for the general economy.

In the last 10 years there has been a significant improvement in the type of manufactured homes being produced. In order to broaden their market what has happened is that the largest manufacturing housing producers have begun to comply with national building codes. And, more and more manufactured homes are located on single family lots rather than mobile home parks. In addition, the manufacturers have gotten away from the 10-foot-wides and are shipping double-wides and triple-wides. If you look at most of the studies produced by the industry, as well as those outside the industry, there is a consensus that the pre-1970 mobile homes have about a 15-year economic life. There is more controversy about the economic life of the new mobile homes, but there is agreement generally that the units in existence before 1970 have a 15-year life as year-round housing. Subsequently they may be used for recreational needs, school classrooms, or offices on construction sites. But if you accept the 15-year estimate, that means that most of the mobile homes that were in the housing stock in 1970 will have to be replaced by 1985. And conservatively assuming that only two-thirds of those in the occupied stock would need to be replaced, that alone adds the requirement for two million additional housing units.

The reason why I point this out is that this is a new factor in projecting residential construction needs in the United States. About two million units will be needed merely to replace obsolete mobile homes.

Secondly, when you read most estimates of construction needs in the United States, most of this work is done with macro economic models. We have those models, as well, at Harvard and M.I.T., but we do not believe that the aggregate or national models are appropriate for the projections. Instead, we make our projection on the basis of local housing market analyses. This difference is important because the large models of the whole economy assume that when a household moves from one metropolitan area to another that the migration does not add to the need for new units. The macro models assume that one unit is lost in the metropolitan area they leave and one more unit is demanded in the area they move to. This assumption really biases the housing projections. Let me illustrate this point. If, for example, you have a household that moves from a declining area, like the city of St. Louis, to a growing area like Orange County, California, what happens is that in Orange County there is a demand for one more housing unit. But in St. Louis, because the population is declining, either the unit that the family vacated or, through the filtering process, another unit at the bottom of the housing market is abandoned or demolished because there is no demand for that unit. The result of migration from declining to growing regions of the country, then, is to add to the national demand for new housing. The unit left behind in the declining area does not offset the need to add another unit in the growing area because there is no demand for the unit vacated in the declining region.

"Despite the fact that there's been a growth in long-term certificate deposits and despite the fact that the secondary mortgage market is beginning to expand, the housing industry is still the most cyclically unstable in the American economy."

The basic argument is that the construction sector is dependent upon mortgage funds and the flow of mortgage funds and their cost should remain fluid so they can counter-balance the overall business cycle.

The problem with this argument is that it has not taken sufficient account of the cost to private industry and to the American homebuyer of this roller coaster behavior. First of all, the sharp fluctuations in housing starts have actually increased housing costs because of their pervasive effect on the efficiency of the whole housing industry. Second, the presumed conflict between the housing sector and other macro economic objectives is grossly exaggerated and is probably wrong. So let's first examine the impact of residential construction cycles on housing costs.

The underlying instability in housing production, hitting 2.5 million and then dropping to 950,000 during the last cycle has a pervasive impact on the industry's technology, its structure, its organization, and the rate of return it needs. The extreme cyclical instability raises the cost of all real and natural factors—land, labor, building materials, financing and profits.

You're all familiar with the short run effects of this cycle. In regard to long run effects this cyclical behavior puts a premium on a business' ability to adapt to business conditions that are difficult to predict, and it puts a premium on flexibility and adaptability rather than on economic efficiency.

The constant need to adapt to wide fluctuations and production levels leads home builders and building material producers to use less efficient technology in order to minimize their fixed costs in plant and equipment over wide ranges of output levels. A business will invest much less in fixed costs when it knows that some years it will produce half as much as it produces in other years. Also, in the face of such large swings, builders and producers are less capital intensive so they can minimize the costs of under utilized plant capacity during slack periods.

Lumber prices in particular, as well as other building materials, follow these same cyclical ups and downs,

(continued on page 26)

Executive committee meeting recap

The ALTA Executive Committee approved an amendment to the ByLaws, as recommended by the ByLaws Committee, creating a new Member Emeritus category of membership for retired members.

Because of difficulties experienced by the Membership and Organization Committee with respect to interpreting the meaning of "counsel" in connection with Associate Membership applications, the ByLaws Committee was directed to define counsel and other types of members provided for under Associate Membership.

The ByLaws Committee is also to develop amendments to the ByLaws which would authorize the Executive Committee to hold conference call meetings.

In other Executive Committee action, ALTA General Counsel Thomas S. Jackson was authorized to meet with local counsel regarding participation in defense in an Alabama unauthorized practice of law case. The case involves an ALTA member—Abstract and Appraisal Service, Inc., of Russellville.

Jackson reported to the Executive Committee that ALTA's motion for leave to intervene and join the Florida Land Title Association in a motion to dismiss on jurisdictional grounds in the *Escrow Disbursement Agency, Inc. v. the Florida Land Title Association* had been granted in part. The case involves the so-called "gap" period in land title evidencing. Jackson further said that state legislation is anticipated in May that would clear up the problem.

Chairman of the Forms Committee Marvin C. Bowling Jr. reported that his committee is nearing completion of a proposed condominium endorsement for both owners and loan policy that will include five affirmative coverages and a printed exception.

This form along with a proposed notice and waiver form are expected to be presented to the members for a vote at the 1978 ALTA Convention. The waiver form is to alert home buyers to the availability of owner's title insurance in residential real estate transactions where lender's title insurance is being obtained.

Title Industry Political Action Committee Chairman Francis E. O'Connor reported TIPAC has set a 1978 goal of $70,000 for campaign contributions.

After an update on the 1978 ALTA Public Relations program by Public Relations Committee Chairman Edward S. Schmidt, the Executive Committee asked that the Public Relations Committee develop recommendations for increased activity of the program.

President C.J. McConville announced that he has named members of a new ALTA liaison committee with the National Association of Realtors and has requested Chairman of the Committee on Improvement of Land Title Records Thomas E. Horak to appoint a subcommittee to study metric conversion as it relates to the land title industry.

Members of the ALTA-Realtor committee, to be chaired by D.P. Kennedy of First American Title Insurance Co., Santa Ana, Calif., are: Robert Dorociak of USLIFE Title Insurance Company of Dallas; Joseph Burke of Commonwealth Land Title Insurance Co., Philadelphia; William Hanschmidt of Fidelity National Title Insurance Co. in Denver and Julius Nahmensen of Missouri Title Co., St. Louis.

Solomon—*(continued)*

as you know. What is more, the industry invests less in job training in order to cut down the cost of uncertain demand. It is reluctant to spend good money training the labor force when it knows that every other year it will have to let a third of that labor force go.

The costs of these fluctuations are not lost on the labor unions either. They negotiate for much more restrictive jurisdictional rules in order to safeguard their jobs. They try to keep the supply of labor limited, they also negotiate for much higher wages so that they can stabilize their income over several years.

The consequence is that the industry, for example, will gear to produce about 1.6, 1.7 or 1.8 million units a year. In years when we build 2.2 million units, a lot of less productive workers are taken in to perform construction jobs; a lot of less efficient equipment is used, and the industry works a lot more overtime with more accidents and so forth.

The construction industry (in addition to higher labor costs and lower productivity), land developers, and builders all require a higher rate of return on their equity to compensate for the risk and uncertainty associated with their investments. And, finally, financial institutions set higher prices for items such as construction loans and settlement charges to offset the risk of the highly volatile swings in business volume. Obviously if there are risks and uncertainty in holding land and if the cost of holding the land increases, or if the volume of business is uncertain, a business will ask in the whole risk-reward structure for higer rewards and a higher return on equity.

Although it is difficult to quantify these costs, it is still clear that the price Americans pay for housing is far higher than would be necessary under more certain production levels. During the peak of the cycle, relatively more housing is built and prices are at their highest. New homebuyers have to pay much of the premium for what is, in effect, instability insurance.

These higher housing costs may be justified if it is clear that the sharp fluctuations in residential construction are necessary to achieve more stable output and more stable employment in the overall economy. It might be a price we shall have to pay, or it might be a price this industry has to absorb, if the result is a healthier economy.

But while this alleged conflict between the housing sector and macro economic stability has been asserted, it really hasn't been proved. There has been very little systematic evaluation of the historical record and very little analysis of the impact of a more stable housing sector on such other macro economic goals as growth in real GNP or the overall inflation and unemployment rates.

The Joint Center decided to study the historical record to see whether,

(continued on page 27)

Solomon—*(continued)*

in fact, there was a conflict in economic goals—to see whether the housing sector was needed to play a significant counter-cyclical role and to act as the roller coaster of the economy. And I report to you the results of what, in my opinion, is probably the most important study on this topic to date: We found that a more stable housing sector and a more stable economy are not necessarily competing goals. We took one of the best known models of the whole economy, the MPS (Massachusetts Institute of Technology-University of Pennsylvania Social Science Research Council) model to look back on two earlier cycles—1969 to 1971 and 1974 to 1976.

We found that because housing fluctuated so much, the economy lost somewhere between 10 and 12 billion dollars in real GNP. The overall unemployment rate was higher than it would have been by about three-tenths of one percent. Inflation was about the same in both periods, although in the last one, inflation might have gone up about one-tenth of one percent with a more moderate cycle. This should make some sense in that the investment in housing, one sector of the economy, represents only about four percent of the GNP, but this one sector assumes almost the entire burden of counteracting the other 96 percent of the GNP.

Thus, the conclusions of the Joint Center Study are that not only would a more stable housing sector lower the costs to the American homebuyer, but that the presumed benefits achieved by having an unstable housing sector is really highly questionable.

Since federal government financial regulations and budget deficits cause much of this instability, I think it's the government's responsibility to eliminate or at least lessen the problem. So let me talk about several possible ways, without endorsing any, in which we can begin to try to moderate this very costly cycle in housing construction.

First of all, there's a need to keep the federal budget deficit down because it is so often the funding of this deficit through the sale of treasury bills, particularly short-term bills, that compete for deposit funds in the thrift institutions.

Secondly, assuming that the basic problem is the lack of a stable pool of mortgage money for the thrift institutions, a more stable source of funds could be created. An expanded secondary market would provide some additional sources of funds, particularly at times when there is hot money leaving the depository institutions.

As all of you know, the private secondary market is beginning a period of considerable expansion. It is certainly one of the growth areas in the whole industry. This activity should be encouraged as much as possible.

The federal government's financial institutions, Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation and Federal Home Loan Bank Board should really reinforce what the private secondary market is doing in its expansion.

Third, I think there's some need to alter some of the financial institution regulations. This approach assumes that one of the basic costs of cyclical instability is the inability of thrift institutions to compete for funds when short-term interest rates go up for other instruments like the 90-day treasury bills. And as you know, Congress has been considering reforms that would allow the thrifts to diversify their assets and liabilities so they can better match the maturities of their assets and liabilities. At present, they borrow short mostly with demand deposits and they lend long, in their mortgage loans. Obviously, there is a need for a better matching so that the financial institutions who provide most of the mortgage funds would be in a position to keep and hold on to more of their deposits.

A fourth area that really needs much more attention is the expansion of the non-standard mortgage instruments, variable rate mortgages, graduated payment mortgages, reverse annuity mortgages, price level adjusted mortgages and so forth.

As I said before, thrifts mostly rely on short-term liabilities as a major source of funds for long-term fixed interest rate investments. But they cannot earn a return that allows them to compete for short-term funds. If they have a lot of mortgages in their portfolio at 6, 6.5 or 7 percent (and now Treasury bills pay 8 or 9 percent) they cannot rely on short-term liabilities; they cannot rely on these instruments when the mortgage is fixed for life and, therefore, assume all the risks of inflation. Therefore, these non-standard mortgage instruments have to be of the kind where the interest rate can increase gradually over time as the cost of funds increases.

And finally, I think we have to expand the sources of funds for the housing industry. This approach assumes that the most effective method of stabilizing the flow of mortgage credit for housing is to increase the participation of institutions with more stable sources of funds such as pension funds and life insurance companies. Thrift institutions, as I just mentioned, have to compete for household savings on a continuous basis whereas the net flow of pension funds or life insurance reserves comes in on a contractual basis so that there is far more stability.

So let me just sum up by saying that I think that the fluctuating housing cycle has very serious costs for all the different industries that constitute the real estate field. It has a higher cost for the American homebuyer and its presumed benefits are really questionable.

ABA institute to examine antitrust laws

Antitrust laws as they relate to the insurance business will be the focus of a national institute sponsored by the American Bar Association June 9-10 at the Washington Hilton Hotel, Washington, D.C.

Program participants will analyze the current scope of the insurance antitrust exemption following recent federal court decisions, evaluate new proposals for repeal or modification of the McCarran Act and consider antitrust problems relating to insurance company mergers or acquisitions.

Two of the panelists are Irving H. Plotkin of Arthur D. Little, Inc., and Robert Reich, director of the Federal Trade Commission's Office of Policy Planning and Evaluation.

Information and registration forms may be obtained from ABA National Institutes, ABA, 1155 E. 60th St., Chicago, Ill. 60637 or from Miss Barbara Wey of Cabell, Kennedy, Hammer & French, 330 Madison Ave., New York, N.Y. 10017.

John Maddie

Randy Swingly

Names in the News...

USLIFE Insurance Company of New York has named **William Kenneth Mitchell** to be first controller. Mitchell comes to his position after serving since 1973 in the capacities of accounting department manager and, later, assistant treasurer.

Roland M. Chamberlin Jr., president and chief executive officer of American Title Co., Houston, recently became a member of the Young Presidents' Organization, Inc. (YPO). YPO is a worldwide association of under-40 company presidents, with more than 3,300 members.

Michael J. Desmond is American Title Insurance Co.'s new Connecticut branch manager. He will run the Norwalk, Conn., office formerly managed by **Frank E. DeToro.** DeToro now oversees general operations in New England for American Title.

American Title has announced the appointment of **Jonathan Childress** to Rhode Island sales representative. He also will operate from the Norwalk, Conn., office.

Lawyers Title Insurance Corp. has announced the following staff promotions. **Leora P. Siewert** of the Richmond, Va., home office has been named assistant treasurer. She will retain her title of assistant secretary of the company. **Randy J. Swingly** of the Williamsburg, Va., office has been elected senior title attorney. He joined Lawyers Title in 1976. **Carl E. Ergenbright Jr.** has been appointed Virginia state manager and **Gerald W. Sklar,** Virginia state counsel. They both will work out of the new Virginia state

Stephen Kelsall

Douglas Donovan

Donald Young

Leora Siewert

Carl Ergenbright Jr.

Gordon Taylor III

office in Richmond. Ergenbright was formerly Roanoke, Va., branch manager. Sklar joined Lawyers Title in 1965 as a title attorney.

Richard M. Klarin has been named vice president and regional counsel of Commonwealth Land Title Insurance Co. for the region encompassing California, Nevada, Utah and Arizona. Klarin, who is the president of the Association of Real Estate Attorneys, is headquartered at Commonwealth's Los Angeles regional office.

Stephen J. Kelsall has been appointed branch manager and closing officer of the Allentown, Pa., office of Commonwealth.

Title Insurance and Trust Co. has appointed **Gordon R. Taylor** manager of escrow operations for its Santa Clara County, Calif., headquarters. Taylor previously was title and escrow officer for the company's Los Angeles main office, and most recently worked for the Wells Fargo Bank in San Francisco as assistant vice president of escrow administration.

TI has named **Joseph J. Poci** of San Jose, Calif., and **Carolyn Smith** of Los Gatos, Calif., account managers for the company. Poci has been

Michael Desmond

Jonathan Childress

Don Still

William Mitchell

Gerald Sklar

Robert Rove

assigned to the Los Altos and Palo Alto offices while Smith has been assigned to the Cupertino branch office.

Three senior vice presidents have been elected at Title Insurance Company of Minnesota. They are **Douglas D. Donovan, Robert G. Rove** and **Don H. Still.**

Donovan, who is also treasurer and chief financial officer, will handle finance and administration for the company. Rove, secretary and general counsel, will concentrate on legal matters. Still, who was southwest regional vice president prior to his promotion, will be responsible for operations of Minnesota Title branches and agents throughout the country.

John E. Maddie has been elected executive vice president of Security Title and Guaranty Co. in New York. He joined the company in 1965.

Other Security appointments include the naming of **Donald G. Young** senior vice president and secretary. **Harry Bernstein** was elected associate counsel; **Paul Clifford** was named assistant vice president of the national division, and **Brian Reardon** was appointed title officer in the Staten Island office.

ALTA to meet in Florida for 72nd annual convention

Florida will host the 1978 ALTA Annual Convention Sept. 24-27 in one of its most prestigious hotels.

The Boca Raton Hotel and Club, located on the Intercoastal Waterway, was reputed in the twenties to be the richest millionaires club in the world and lodged royalty as well as stage and screen stars.

The property still enjoys a reputation for luxury and good service and for 11 consecutive years has received the Mobil Five Star Award.

For members planning to attend this important ALTA event, deadline for reserving a room with the hotel is Aug. 24. Appropriate forms to fill out and mail to the hotel will be included in the first convention mailing which should reach members by mid-June.

The three airports that members may use for arrival and departure are connected to the hotel by ground transportation. The nearest airport, Ft. Lauderdale, is located 22 miles to the south and offers the least expensive ground transportation. For $7 per person, Airocar, Inc., will ferry passengers to and from the club and the Ft. Lauderdale airport around the clock. Passengers may get Airocar in front of Delta, Eastern and United airlines desks at the air terminal.

Although Airocar does not pick up passengers at the Miami airport, 45 miles away, it will drive them from the hotel to the Miami airport for $11.50 each. Airocar does not serve the West Palm Beach airport, located 29 miles north of the hotel.

All three airports are connected to the hotel by taxi cab. Approximate cost for a one way trip between the Ft. Lauderdale, West Palm Beach and Miami airports is $28, $35 and $60 respectively.

Another ground transportation alternative is limousine service which will meet all planes upon notice of date, time of arrival and carrier name. Cost from the West Palm Beach and Ft. Lauderdale airports is $50 per limousine (1-4 passengers) with extra passengers assessed at $12.50 each. From the Miami airport, cost is $70 per car for 1-4 passengers. Extra passengers will be charged $17.50 each. A limousine may be reserved by contacting the Yellow Cab Co., Inc., Boca Raton Hotel and Club, Boca Raton, Fla. 33432.

This will be the first ALTA Convention where the cost of breakfast and dinner is included in the daily hotel rate. This modified American plan price includes gratuities for breakfast and dinner and for the chambermaids.

The recreational facilities at the hotel include three championship golf courses and 20 clay tennis courts. A nearby mile-long ocean beach , dotted with 200 cabanas, features a salt water pool. The fresh water pool at the hotel is surrounded by a sun deck. Members also may want to shoot skeet or take advantage of the hotel's deep sea fishing fleet. Late September temperatures are typically in the 70's.

Plans for the Convention program are not yet complete; however, activities will get underway Sunday evening with the traditional Ice-Breaker and conclude with the annual banquet and dance Wednesday night.

The Saturday meeting of the Executive Committee will be followed on Sunday morning by the Board of Governors meeting. General sessions are scheduled for Monday morning and all day Wednesday. Workshops or section meetings are planned for Monday afternoon and Tuesday morning. The ladies luncheon will be held Monday and Tuesday afternoon will be left free.

If hotel room confirmation is not received within a reasonable length of time after mailing reservations and room deposit, members are encouraged to check with the hotel by telephoning (305)-395-3000.

Fresh water pool at the Boca Raton Hotel and Club

HUD will issue RESPA Section 13 request for grant applications

The Department of Housing and Urban Development (HUD) plans to issue a Request for Grant Application (RFHA) in mid-May for demonstrations of model land title recordation systems. These two-year grants will be provided to local governments under the authority of Section 13 of the Real Estate Settlement Procedures Act (RESPA) of 1974.

The purposes of the demonstration grant program are to develop and implement model land title systems which simplify and reduce the costs of title search and land transfer procedures. Local government jurisdictions will have six to eight weeks to develop their grant applications.

Grant applicants are encouraged to develop systems based on one or more of the model systems defined during the first phase of the RESPA Section 13 research which will be described in detail in the RFGA. Local demonstration projects must address as many aspects of land title information as possible, including collection, storage and retrieval functions. The projects must result in improved procedures for processing a wide range of title-related data, including deeds, mortgages, mechanic's liens, federal liens and judgments, state and local liens and judgments, short-term leases, bankruptcy, and marriages and divorces.

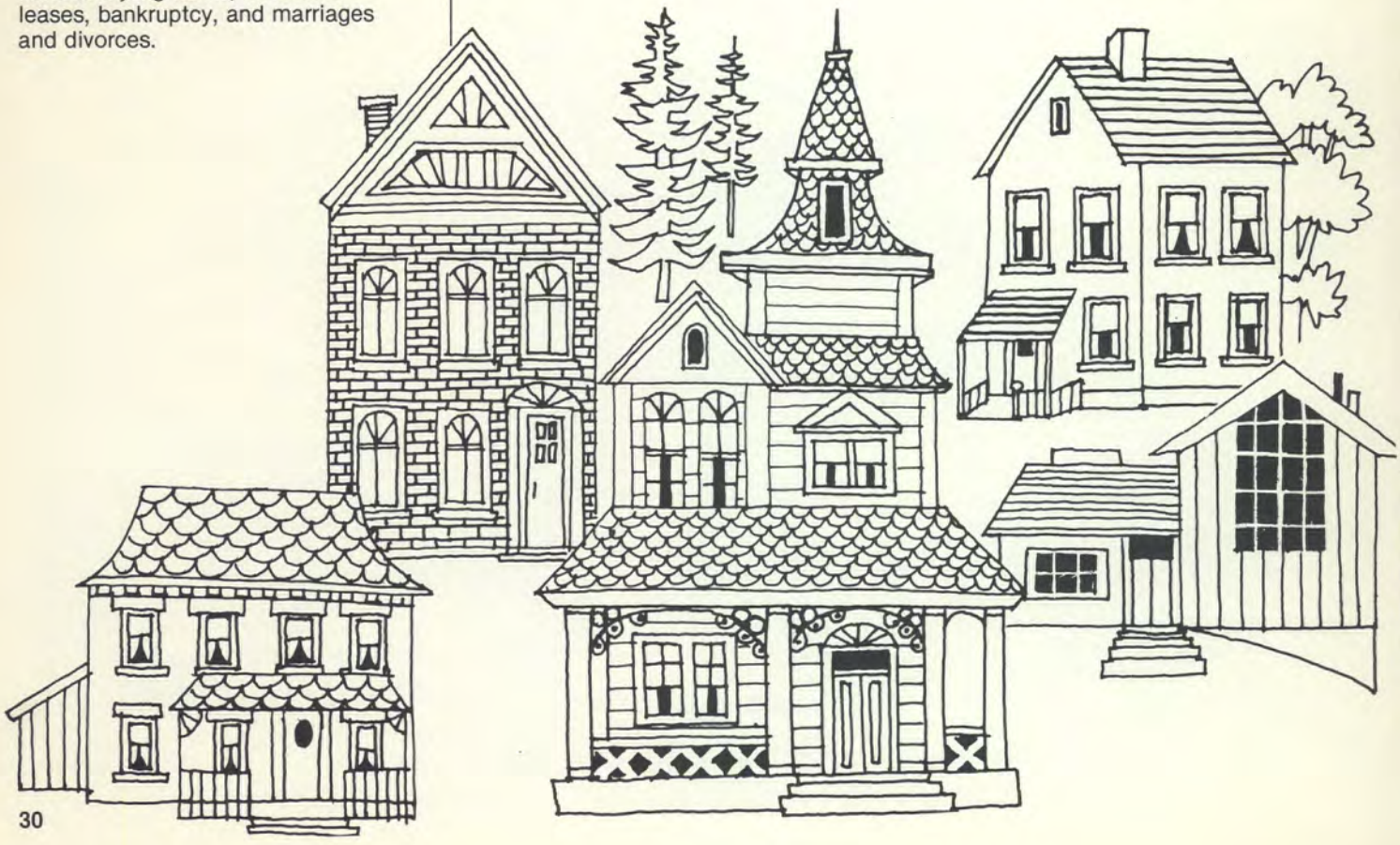
Model recordation as well as registration (Torrens) projects will be considered for funding in both large and small jurisdictions. Consideration also will be given to demonstrations involving multipurpose and regional land data systems or title systems which can be expanded into multipurpose systems. However, grants will be restricted only to the cost of developing land title system components. Components of a model system include:

- Manual or automated tract indexes
- Automated grantor/grantee indexes
- Rapid recording
- Micrographic support
- Management controls

While every model system proposal may not contain all of these innovative features, they provide a basis for comparing proposed systems. Deviations from the model systems defined in the RFGA will be permitted if the purpose of each modification is justified.

Major consideration will be given to innovative arrangements between the public and private sectors. Examples of these arrangements include the purchase of a private title plant by the jurisdiction or the licensing of a private title plant to maintain title-related information for the jurisdiction.

Participation in the design of proposals by the private sector and citizens is encouraged. While only recognized government agencies or jurisdictions can apply for a grant, local jurisdictions may retain professional assistance to provide required expertise and resources. Representatives of local governments who might be interested in responding to the RFGA should contact HUD within the next two weeks to be placed on the RFGA distribution list. Written requests should be addressed to the Department of Housing and Urban Development, Land Title RFGA, Room 922, 711 14th Street, N.W., Washington, D.C. 20410



ALTA action...

In the "NEWS You Can Use" section of the April 17 issue of U.S. News & World Report, *an item attributed to ALTA states that "Insisting on owner's title insurance . . . is the best assurance of a clear and sound title."*

The item goes on to point out that New Jersey, Maryland, Tennessee, Pennsylvania, and Florida require that buyers paying for lender's title coverage be informed in writing that owner's title insurance also is available.

Placement of this item in U.S. News—*which has a circulation of more than 2 million—is a result of ongoing contact between ALTA Director of Public Affairs Gary L. Garrity and the magazine's editorial staff.*

Members of the newly created ALTA Liaison Committee with the National Association of Realtors met for the first time May 4 with the NAR counterpart committee in Chicago.

The committee was appointed recently by ALTA President C.J. McConville and is chaired by D.P. Kennedy of First American Title Insurance Co. of Santa Ana, Calif. Members are Robert Dorociak of USLIFE Title Insurance Company of Dallas; Joseph Burke of Commonwealth Land Title Insurance Co., Philadelphia; William Hanschmidt of Fidelity National Title Insurance Co., Denver, and Julius Nahmensen of Missouri Title Co., St. Louis.

The liaison was established for discussion of mutual problems and to foster a better understanding between the two entities of their respective industries.

William J. McAuliffe Jr., ALTA executive vice president, attended the Real Estate Sector meeting of the American National Metric Council May 6 in Chicago. The group meets to discuss aspects of metrification and its anticipated effects on the real estate industry.

The Executive Committee of the Title Insurance and Underwriters Section will meet May 31 in Denver. One of the items to be considered is the Section's program at the 1978 ALTA Annual Convention.

The Section is chaired by Robert C. Bates of Chicago Title Insurance Co. Vice chairman is Frank Lucente of Title & Trust Company of Florida. Fred H. Benson Jr. of St. Paul Title Insurance Corp. is secretary.

Committee members are Joseph D. Burke of Commonwealth Land Title Insurance Co.; Seymour Fischman of Security Title & Guaranty Co., New York; Richard C. Mohler of Pioneer National Title Insurance Co., Seattle, and Morris E. Knouse of Berks Title Insurance Co., Reading, Pa. Also attending was ALTA Executive Vice President William J. McAuliffe Jr.

The Title Industry Political Action Committee (TIPAC) Board of Trustees and Advisory Trustees met in Washington May 10 to discuss TIPAC campaign contributions to appropriate congressional candidates.

TIPAC has collected nearly $50,000 during its 1977-78 solicitation program. Francis E. O'Connor is chairman of the Board of Trustees.

Over 300 persons attended ALTA's May 9 Federal Reception in the Cannon House Office Building in Washington, D.C.

ALTA President C.J. McConville, Government Relations Committee Chairman Richard H. Howlett and Federal Legislative Action Committee Chairman Robert C. Dawson greeted the guests, including members of Congress and staff from approximately 70 Capitol Hill offices.

FNMA—*(concluded)*

Washington, DC, because the median home value in Washington is around $70,000.

For all practical purposes, our present mortgage auction system would be destroyed. FNMA would not be able to conduct a free market system auction because under its present procedures the market dictates where the demand for housing is the greatest and what the mortgage interest rates should be.

Under FNMA's present system, interest rates are determined competitively. Delivery of the mortgages is not required, because the concept provides a facility for liquidity to the mortgage market. If there are other investors who are willing to invest in those mortgages, FNMA is happy to allow those lenders to so invest. But, the proposed regulation would lead to mandatory delivery and take away this flexibility.

HUD is without legal authority to do any of this. If the regulations as promulgated become permanent, FNMA will have to challenge them in the courts. Before that happens, everyone who is interested in the future of FNMA should do whatever they can to try and prevent this from happening. You can do a great deal, individually or as an association, if you take a stand and make yourselves heard, just as other groups are making themselves heard.

NELTA adopts surveyors form

The New England Land Title Association Executive Committee recently adopted a standard surveyors report form.

The form is the result of over two years of committee work. All New England states and New York were represented on the committee chaired by Paul Kaye, a surveyor of Haddam, Conn.

Title insurance companies, bankers and attorneys in New England will now be able to use a single report from when working with insured land surveys.

Calendar of Meetings

May 12-13, 1978
New Mexico Land Title Association
Inn of the Mountain Gods
Mescalero, New Mexico

June 4-6, 1978
Pennsylvania Land Title Association
Pocono Hershey Resort
White Haven, Pennsylvania

June 11-13, 1978
New Jersey Land Title Insurance Association
Seaview Country Club
Absecon, New Jersey

June 15-17, 1978
Land Title Association of Colorado
The Inn at Estes
Estes Park, Colorado

June 15-17, 1978
Utah Land Title Association
Sweatwater Hotel
Sweatwater, Utah

June 15-18, 1978
New England Land Title Association
Granite Hotel and Country Club
Kerhonkson, New York

June 16-17, 1978
South Dakota Land Title Association
Holiday Inn
Aberdeen, South Dakota

June 18-20, 1978
Michigan Land Title Association
Grand Hotel
Mackinac Island, Michigan

June 22-24, 1978
Oregon and Washington
Land Title Associations
Thunderbird Inn at Jantzen Beach
Portland, Oregon

June 23-25, 1978
Illinois Land Title Association
Breckenridge Pavilion Hotel
St. Louis, Missouri

July 13-15, 1978
Idaho Land Title Association
Sun Valley Lodge
Sun Valley, Idaho

July 20-22, 1978
Wyoming Land Title Association
Fountain Motor Inn
Newcastle, Wyoming

August 3-10, 1978
American Bar Association
Annual Convention
New York, New York

August 10-12, 1978
Montana Land Title Association
Big Mountain Ski Resort
Whitefish, Montana

August 11-12, 1978
Kansas Land Title Association
Holiday Inn & Holidome
Hutchinson, Kansas

August 17-19, 1978
Minnesota Land Title Association
Normandy Hotel
Duluth, Minnesota

September 9-12, 1978
Indiana Land Title Association
Indianapolis Hilton—Downtown
Indianapolis, Indiana

September 10-12, 1978
Ohio Land Title Association
Stouffer's Dayton Plaza Hotel
Dayton, Ohio

September 10-13, 1978
New York State Land Title Association
Buck Hill Inn
Buck Hill Farms, Pennsylvania

September 14-15, 1978
Wisconsin Land Title Association
Midway Motor Lodge
Green Bay, Wisconsin

September 14-16, 1978
North Dakota Title Association
Williston, North Dakota

September 15-18, 1978
Missouri Land Title Association
Tan-Tara Resort
Lake of the Ozarks
Osage Beach, Missouri

September 20-22, 1978
Nebraska Land Title Association
Lincoln Hilton
Lincoln, Nebraska

September 24-27, 1978
ALTA Annual Convention
Boca Raton Hotel & Club
Boca Raton, Florida

October 11-13, 1978
Dixie Land Title Association
Holiday Inn—Callaway Gardens
Pine Mountain, Georgia

October 11-14, 1978
Florida Land Title Association
Colony Beach & Tennis Resort
Sarasota, Florida

October 13-15, 1978
Palmetto Land Title Association
Palmetto Dunes Hyatt
Hilton Head Island, South Carolina

October 19-20, 1978
Nevada Land Title Association
Hyatt Lake Tahoe
Incline Village, Nevada

October 21-25, 1978
American Bankers Association
Annual Convention
Honolulu, Hawaii

October 29-November 2, 1978
U.S. League of Savings Associations
Annual Convention
Dallas, Texas

October 30-November 1, 1978
Mortgage Bankers Association
Annual Convention
Atlanta, Georgia

November 10-16, 1978
National Association of Realtors
Annual Convention
Honolulu, Hawaii

December 6, 1978
Louisiana Land Title Association
Royal Orleans Hotel
New Orleans, Louisiana

American Land Title Association

1828 L Street, N.W.
Washington, D.C. 20036