OCT
1978
Title
News

Commercial Title Insurers vs. Bar Funds

a message from the President . . .

ll of you who attended the Annual onvention in Boca Raton, Fla., can ay, "*That* was a convention—an utstanding one." The hotel had old orld elegance and up-to-date ser- ce. It was a gorgeous setting for a eeting.

ur thanks to Doug and Doris arden and their committees for king such good care of us. The LTA staff, guided by Bill McAuliffe, d a superb job of planning.

he program was comprehensive. I elieve it covered just about every roblem or endeavor concerning the ssociation. Watch for the minutes a future issue of *Title News.*

Congratulations to Mac for a great year as president. He and Gloria did an outstanding job representing the Association. Mac mentioned in his farewell speech that he hoped at the end of my term I could say his presidency was a hard act to follow. I can say that at the beginning.

The first order of business for an incoming president is the appointment of committees. Along those same lines, I would like to thank those retiring committee chairmen who have contributed so much to the success of the Association: Phil McCulloch, ByLaws; Robert Dawson, Federal Legislative Action; Dick Howlett, Government Relations; Jim Hickman, Membership; Ed Schmidt, Public Relations; John Decker, Internal Auditing; Ray Sweat, Railroad Titles; Bob Bates, Mortgage Bankers, and Al Long, ABA Conferees. We are now well along in the appointment of new chairmen and the reappointment of those who, thankfully, have agreed to continue. Most of the committee members are in place and within a few weeks all should be completed. The success or failure of this Association is largely determined by the work and dedication of its committees. The positive response from the membership to a call for service has been splendid.

If I had a theme for the coming year, it would be "Let Us Continue." Let us continue those many programs we have underway in such diverse areas as government relations, Indian claims, research, public relations, accounting standards, legislative and judicial reporting, forms and liaison with customer groups, just to name a few. Through its staff, officers and committees this Association has painstakingly built a remarkable organization. We are getting the job done.

I will end this message as I did my acceptance speech with the wish that we all remember to have a little fun every day; and secondly, in the face of all our industry problems with increasing government, regulatory and consumer involvement, do not overlook the fact that our customers are our first priority. We have to provide them the service they need or all else is irrelevant. Prompt accurate service is the best protection we can have against any critics of our industry.

This year will be a memorable one for me. I look forward to it with enthusiasm and eagerness.

Sincerely,

Roger N. Bell

Roger N. Bell

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Editor: R. Maxine Stough

Title News

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There appeared in the Winter 1977 issue of Docket Call, **Section of General Practice, American Bar Association, an article entitled, "Bar-Related Title Insurers: Their Benefits to the Bar and the Public," by Douglas E. Miles. Among other credentials, Miles is vice-president, Chicago Operations of Attorneys' Title Guaranty Fund, Inc., and executive vice-president of The National Conference of Bar-Related Title Insurers. His article was described as the first of a two article series, the second one to be "authored by an official of the American Land Title Association on non-bar related title company operations."**

Miles' article discussed the origin of the American Bar Association's drive for the creation of Lawyers' Title Guaranty Funds beginning with its meeting in Honolulu; and as a result indicated that at the date of his publication there are nine bar-related title insurers, operating in 19 states. He described the organization and function of bar-related title insurers generally and their benefit to the Bar. As to benefits to the public he referred to an "increased availability of legal services, for counsel on both title and general real estate matters, and increased competition in title insurance." He said that Funds "may be able to provide peripheral services to lawyers and consumers that additionally benefit the public."

He argued that where lawyers are not involved in title assurance, legal service to real estate matters is often drastically reduced. After emphasizing that bar-related title organizations enhance competition in the title insurance field which, he said, "may well result in the Fund's members providing their clients with title insurance cost savings," he added that Funds may be able to "broaden their scope of services to lawyers and the public," by being involved in "referral services, prepaid legal plans, institutional advertising, law-focused education in schools, legal aid services and other public service practice projects."

Following is the second of the recent Docket Call **articles on bar-related title insurers. It was authored by ALTA General Counsel Thomas S. Jackson and published in the Summer 1978 issue. It is reprinted in** Title News **with permission.**

Commercial Title Insurers vs. Bar Funds

All wise homebuyers, and all others who acquire real property, will insist that their titles are insured by a commercial title insurance company. All competent and unbiased lawyers will advise their clients to do so. As compared with insurance by a lawyers' title guaranty fund, there are no advantages to the client in using the fund. Lawyers who believe otherwise, however sincerely, unintentionally deceive their clients and, more importantly, themselves. Whatever benefits there may be to anyone by the use of bar-related title insurance funds inure not to the buyer or lender, but to the lawyers whose practice consists primarily of conducting title business from their law offices.

Commercial title insurers generally provide more prompt and efficient service. To the general practice lawyer, except one exclusively in the title business, the handling of real estate transactions is just one activity competing for the lawyer's valuable time and attention: trials and other court appearances, preparing contracts and other legal matters, drafting wills, handling probate matters, tax work, doing corporate work, etc. In contrast, the issuance of title insurance, and doing those things which lead up to and are related to it, is the primary business of the commercial title company and the commercial title insurer.

Commercial title insurance companies are regulated by state insurance departments. Not all funds are as fully regulated. A study of the Connecticut Fund, for one, demonstrates surprising omissions in the statutory requirements. They are not held to the same standard of financial responsibility, supervision, regulation and auditing as commercial insurers. In organizing funds, lawyer-groups have often sought, and in some cases obtained, special statutes allowing significant exceptions to financial and tax responsibility requirements imposed on commercial insurers. The public is protected better by commercial insurers who are subject to audit by regulatory authorities and who are required to maintain substantial reserves and show a high degree of financial responsibility. It is also significant, indeed, that title insurance underwriters who do business in several states, which includes most of them, must conform to the standards imposed by the state having the most restrictive regulations.

After all, the entry of bar-related funds into the insurance field is rather recent. While the Florida Fund has existed for more than 25 years, and is now truly a competitive factor in the trade (largely because of the advantage it has in lawyer membership) other funds with few exceptions are really johnny-come-latelys. None could operate without commercial title company reinsurance. During the more than 100 years that commercial title insurance has been available, it is evident that the service and financial security it has provided to those who acquire interests in real estate has made it possible for real estate transactions to progress from the negotiation stage to the payment of the purchase price and possession of the property in a manner unequalled anywhere else in the world. By this part of the economic ingenuity of Americans, the United States is the only country in the world where mortgage lending on a nationwide, mass-production scale has become standard operating procedure for institutional lenders. The accomplishments of commercial title insurance are greatly underappreciated as a factor in the incredible building of homes, office buildings, and other structures which has made America the envy and the model of the rest of the world. Lawyers have profited and prospered under that system. They do not need to provide a new or different system; not for their clients, at least. The purpose is to capture a "share of the business" for themselves.

Lawyers, trading on their exclusive right to practice law, should no more organize a title insurance company than they should organize a life, casualty or other type of insurance company, wherein the only stockholders are lawyers, and the insurance is sold solely through lawyers. We would hardly approve a bar-sponsored real estate company, bank and trust company, or tax preparation company with only lawyers as stockholders if its transactions are limited to lawyer-intermediaries. The movement to promote bar-sponsored funds is dangerous to the dignity and independence of the bar and the profession. The same myopia which guided lawyers in defending minimum fee schedules and resulted in the *Goldfarb* decision is causing them to defend bar-sponsored title insurance.[1] And this is not to be the end of it. *See Virginia State Bar v. Security Title Co.,* 571 F.2d 205 (4th Cir., 1978) remanding to the district court, with directions to hold for state action, a judgment of the federal district court that certain ethics opinions and unauthorized practice rulings of the State Bar violated anti-trust laws and were otherwise illegal.

The author of the *Docket Call* article promoting the benefits of bar-related funds suggests the public is benefited because funds enhance competition in the title insurance field. This argument would be more persuasive if it were not for the fact that membership in funds is restricted to lawyers and that title insurance is available only through lawyers. In these circumstances the effect is to reduce competition. Insofar as competition is concerned, surely everyone is aware of the intense competition among title insurance underwriters.

In discussing "costs" to the public, the same author, referring to the funds' charges, states that ". . . the underwriting fee is generally in the area of one-third to one-half of the comparative competitive total title insurance charges." No authority for the statement is made. In fact, it is at best misleading. By "underwriting fee," presumably, the author is referring only to that part of the lawyer's total charges which are remitted by the lawyer to the fund and characterized as the "premium." Total closing costs are usually lower where real estate transactions are handled by commercial insurers. The public is able to compare charges of title companies since they publish their rates. Lawyers have not done so in the past. (Perhaps the new concepts of lawyer advertising resulting after the *Bates* decision will have some effect on that.[2])

There are two other reasons advanced for the movement to create bar-sponsored title insurance funds. The first is purely selfish, as amply appears in the *Docket Call* article. Many of us, trained in a different tradition, were shocked by the editorial in *Judicature* (the name then of the journal of the American Judicature Society) which conceded, in an apology for the movement, that

1. Goldfarb v. Virginia State Bar, 421 U.S. 773, 95 Sup. Ct. 2004 (1975).
2. Bates v. State Bar of Arizona, 429 U.S. 813, 97 Sup. Ct. 53 (1976).

Thomas S. Jackson

> . . . Lawyers' professional organizations, when they establish their own title insurance operations, are taking effective steps to maintain their place in the real estate picture by using bar-related title insurance to meet the competition of insurance-related legal services . . . Editorial from *Judicature* (the Journal of the American Judicature Society), Vol. 51, No. 4, p. 112, Nov., 1967

The American Bar Association, notwithstanding its ill-advised action at its Hawaii meeting in 1967, and its equally unwise conversion of the Special Committee on Lawyers' Title Guaranty Funds to a standing committee in 1971, when faced directly with the issue, adopted a firm and unequivocal policy that the ABA does not sponsor any title insurance company or fund and no committee, officer or agency has any authority to state that the ABA does so.[3] This policy has been ignored by the Standing Committee.

The other reason given for the creation by lawyers of bar-sponsored funds is: that "the client is entitled to the independent advice of the lawyer." When a client is the purchaser of real estate, the lawyer is often asked for a recommendation of a title insurer, or the lawyer selects the insurer without the client's really understanding what are the relative

3. The Minutes of the ABA Board of Governors February 4-5, 1971, should reflect this action.

(continued on page 12)

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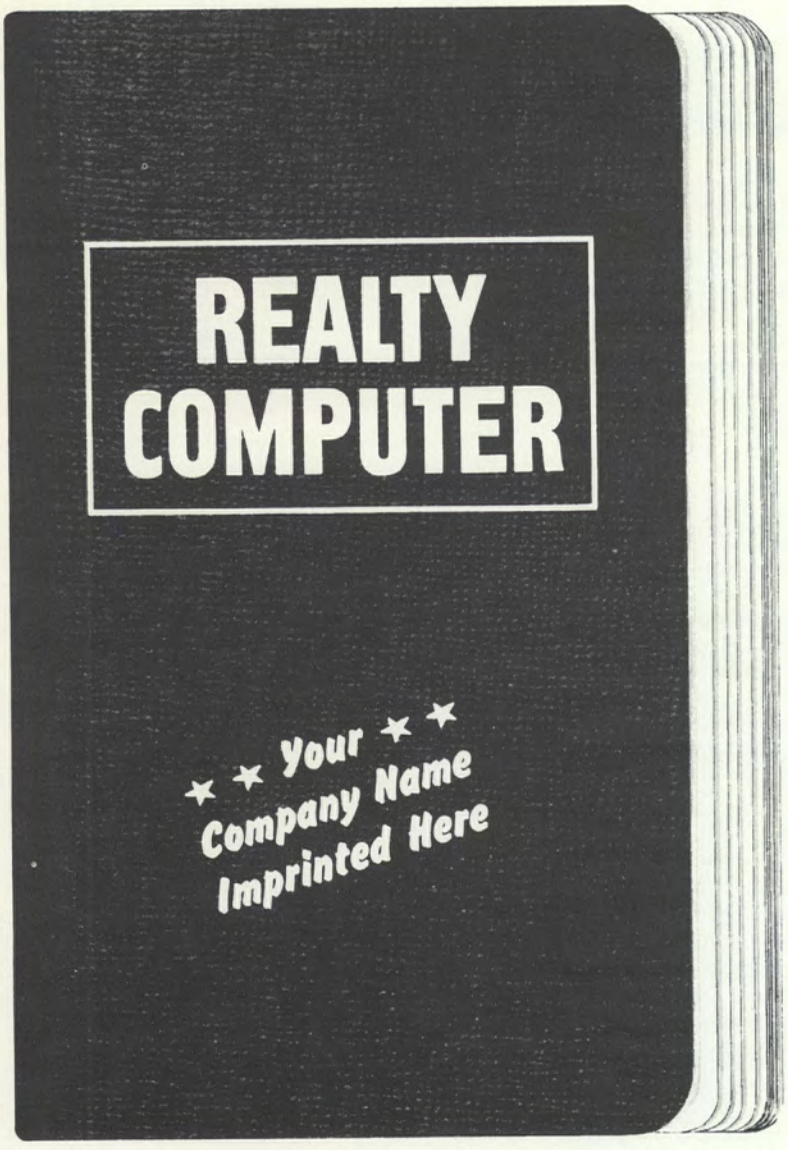

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ALTA Judiciary Committee reports court decisions

Editor's note: Following is Part Two of the ALTA Judiciary Committee Report submitted for publication by Chairman Ray E. Sweat. The balance of the report will be published in future 1978 issues of Title News. **Part One appeared in the September issue.**

Subdivisions

Norway Hill v. King County Council, 87 Wn. 2d 267 552 P. 2d. 674 (Wash., 1976)

After extensive hearings, the county council approved a preliminary plat on the second appeal. The county land use management division had determined that an environmental impact statement was not necessary.

Held: The Washington State Environmental Policy Act (which is patterned after the National Environmental Policy Act of 1969) requires government agencies to prepare an environmental impact statement for any project which constitutes major action significantly affecting the quality of the environment. Such statement must be prepared before a local governmental unit can approve or disapprove a preliminary plat application despite the findings that the application was not a major action significantly affecting the environment. The standard of review of the local body was not of action that is "arbitrary and capricious" but of action that is "clearly erroneous."

Ocean Island Inn, Inc., v. City of Virginia Beach, 216 Va. 474 220 S.E. 2d 247 (Va. 1975)

The city directed a property owner to remove improvements, alleging that they were located in a dedicated street right of way. The Supreme Court of Virginia held that the fact that a receiver of a corporation, who had succeeded in title to the original subdivider, conveyed the fee in the streets to a third party did not constitute a revocation of an offer made by the subdivider 30 years previously when the subdivision plat was recorded. The court also held that when the governing body shows no intent to limit its acceptance, then its acceptance of a substantial number of streets on a plat was an acceptance of all of the streets shown on the plat.

Surveys

Commonwealth Land Title Insurance Co. v. Conklin Associates, 152 N.J. 1 377 A. 2d 740 (N.J. 1977)

Issue: Whether a land surveyor can use a 10-year statute of limitation to avoid liability for the misplacement of a dividing line by 25 feet when the original error was made in 1963 and perpetuated by individual lot surveys done in 1973.

Facts: In 1963 a perimeter survey of a tract located in the neighboring municipalities of Ramapo, N.Y., and Upper Saddle River, N.J., was prepared in connection with the sale of the subject property. After the conveyance, a subdivision map was prepared and filed with the county clerk; roads and utilities were constructed and installed, and individual lots were sold and residences were built.

In 1973 a successor in title to a part of the property hired another engineering and surveying firm to prepare a survey of the property. As a result of this survey, it was discovered that the 1963 survey had misplaced the New York-New Jersey boundary line by approximately 25 feet. The title companies involved were compelled to resolve the encroachment problem for $30,000 and as subrogees brought an action against the land surveyors.

The surveyors raised as a defense a 10-year statute of limitations arguing that even though separate surveys on individual lots had been done within the 10-year period, the work which was the source of the error had been done in 1963.

Held: The court found that the surveys for the individual lot owners from a statute of limitations point of view were acts separate and distinct from the original 1963 survey and therefore the 10-year statute of limitations was not available to the defendants and they were therefore liable for negligent surveys on the individual lots.

Tax Deed

Blair v. C.I.R., 538 F. 2d 155 (7th CCA, 1976)

In July 1965, the University of Illinois filed a petition in the state court for condemnation of a lot in Urbana, Ill. Named in the petition were the record owners, the first and second mortgagees, the holder of a deed of trust, and various tenants. A lis pendens notice was simultaneously recorded. Before the court passed judgment on this suit, the lot in question was sold at public auction by the county collector for delinquent taxes to the assignor of the petitioner, Allan Blair. Having paid the unpaid taxes to the collector, the assignor received a certificate of purchase.

Finally, in June 1966, judgment was entered in the condemnation proceedings granting the university's petition and valuing the property at $62,000. After the university had deposited this amount with the county treasurer, the state court entered an order directing the disbursement of the condemnation award to the mortgagees in the approximate amount of $37,000, to the county collector for the 1965 real estate taxes, and to the record owners the balance of the proceeds. There was no reference to the 1964 taxes which had been the basis of the tax sale.

In April 1968, proceedings were initiated by the purchaser of the certificate of purchase to secure a tax deed if no redemption was accomplished by the end of the redemption period, August 26, 1968. On that latter date, the certificate was transferred to Blair with the payment therefor being $630.97.

Upon becoming aware of this action, the university filed objections to the issuance of a tax deed, asserting that any rights Blair had as a result of his certificate of purchase related solely to the funds which it had paid to the county treasurer and not to the land itself.

Two days later, an agreement was reached whereby Blair, an alumnus of the university, agreed to deed the lot to them if they would withdraw the objections. At a hearing that same day, the state court on the understanding that petitioner would immediately transfer the lot to the university, entered an order directing the county clerk to issue the tax deed to Blair. The lot was then deeded to the university pursuant to the agreement. The fair market value of the lot was not less than $61,000, and Blair attempted to claim this amount as a charitable contribution in his 1968 income tax return. The tax court permitted a charitable contribution in the amount of $630.97 and this appeal followed.

Faced with deciding "whether the right to a tax deed after the period of redemption has expired is extinguished when [a] condemnation judgment has been entered prior thereto," the Court of Appeals found the Illinois Supreme Court's decision in *Delano, Inc. v. Arnold,* 46 Ill. 2d. 498 (1970), to be "substantially dispositive of the issue before [them]." Quoting with approval Justice Schaefer's language in that case, the court said that "after an eminent domain proceeding has been completed and the award deposited with the county treasurer, *it is impossible* for a tax deed to convey merchantable title." (emphasis by the court). Noting that this language "permits no other construction," the court concluded that the purported tax deed was invalid, and that the Blair deed to the university served to extinguish the equitable lien which came into existence upon the consumation of the eminent domain proceedings. Accordingly, the judgment of the tax court was affirmed.

Tax Sale

Dow v. State of Michigan, 396 Mich. 192 240 NW 2450 (Mich. 1976)

At issue was whether the due process clause of the U.S. Constitution barring a state from depriving any person of property without due process of the law precludes foreclosure of the state's statutory lien for unpaid property taxes absent notice other than newspaper publication, to owners of significant interests in the property. In this case, there was notice by newspaper only.

It was held that personal service is not required. Mail notice must be directed to an address reasonably calculated to reach the persons entitled to notice. If the state exerts reasonable efforts, then failure to effectuate actual notice would not preclude foreclosure of the statutory lien and indefensible vesting of title on expiration of the redemption period.

It would satisfy constitutional requirements if the state were to adopt a procedure providing for:

- Ordinary mail notice before sale, to the person to whom the tax bills have been sent and to "occupant."
- After sale to the state, formal notice to all owners of significant property interests of the constitutionally required opportunity for hearing and redemption.

Title Insurance

Strass v. District-Realty Title Insurance Corp., 31 Md. App. 690 358 A2d 251 (Md. 1976)

Action by lot owners to recover from title insurance company for assessments levied by the city of Rockville against the properties for benefits resulting from the installation of water and sewer lines. The assessments were levied by virtue of an ordinance which was adopted by the city on a date subsequent to each of the title insurance policies. The plaintiffs contended that the assessments were liens or encumbrances insured against by the title policies.

Held for the defendant. The assessments levied by the ordinance became liens on the properties of the insureds on the date of approval of the assessments by City Council, which was after the effective dates of all of the policies. The assessments were not en-

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cumbrances until they were inevitable and as long as the city had an option to levy them, they were not inevitable and thus such potential assessments were neither liens nor encumbrances when the title policies were issued.

Hedrick v. Title Guaranty Company of Wyoming, CIV C76-122-B

This is a situation whereby the plaintiff, acting through a nominee, was attempting to purchase Seven Levels Inn, Teton County, Wyoming. Before any money was paid on the purchase contract, a deed to the nominee was recorded in error by an attorney's secretary. The sales transaction fell through. Plaintiff ordered and paid for a title policy. The policy was duly issued to nominee in the amount of $300,000. Action was initiated by Seven Levels, Inc., and was successful in upsetting the deed in State District and Supreme courts. The title company denied liability, but defended the insured in the District Court and withdrew defense following appeal to State Supreme Court.

This case was an attempt by the plaintiff to collect the amount of the policy, $300,000. On request for summary judgment, Title Guaranty was awarded the judgment plus costs. The claim was denied because plaintiff suffered no loss. The case was appealed but dismissed. On counterclaim, by trial, Title Guaranty was awarded attorneys' fees and other costs of the State Court defense action.

Lawyer's Realty Corp. v. Peninsular Title Insurance Co., 428 F. Supp. 1288 (5th CCA 1977)

A title insurance agent sued two title insurance companies and their Louisiana agent for illegally conspiring in violation of federal antitrust laws to exclude them from the title insurance business. Plaintiff contended that it was driven out of business as an agent because the defendants conspired to commit acts that resulted in the cancellation of its title insurance agency license by the Louisiana Commissioner of Insurance.

A motion to dismiss was granted because a suit in federal court is barred by the McCarran-Ferguson Act. The court was not moved by the argument that the act does not apply to the relations between insurers and their own agents (as distinguished from relations between insurer and insured) or by the contention that the agency of the Commissioner of Insurance might have been an unintentional participant in a scheme devised by defendants.

Pulte Home Corp. v. Industrial Valley Title Insurance Co., 73 D & C 2d 320 (Pa. 1975)

Defendant title insurance company, acting pursuant to an oral contract, provided plaintiff with a report of title to a certain tract of land which plaintiff desired to subdivide into lots of 90 feet width. Relying upon that report, plaintiff purchased the tract and defendant provided title insurance. Defendant's report, however, failed to mention recorded restrictions which established minimum width of lots to be 100 feet. Consequently plaintiff was forced to alter its subdivision scheme and to provide three lots less than originally planned.

Plaintiff asserted three theories of recovery: That defendant was negligent in searching title; that defendant breached their oral contract to provide an accurate title report, and that defendant breached the title insurance contract.

Under each of these theories, plaintiff claimed identical damages, for anticipated profits on the three lots; loss of use of three lots; additional engineering expenses, and additional interest computed a 1 percent monthly.

Preliminarily, defendant objected to plaintiff's first, second and fourth measures of damages and contended that plaintiff could recover only by an action on the title insurance contract because of the policy's 12th clause, which restricted any claim "whether or not based on negligence" to the "provisions and conditions" of the policy.

The issues presented by the case focused on: (1) Whether or not the validity of a title insurance contract clause which purported to limit the liability of the insurer in certain respects could be tested by preliminary objections; and (2) Whether or not anticipated profits, loss of use and "additional interest" were proper measures of damages in an action for breach of title insurance contract.

The court resolved the first question on the principle that in the preliminary stages of litigation neither the relationship of the parties had been developed nor had the matter been fully presented to the court to the point where the effect of the clause in question could be decided appropriately.

Answering the second question presented for determination, the court denied plaintiff recovery for loss of use on the grounds that plaintiff's use of the land was restricted but not lost. In contrast, defendant title insurance company's failure to note an easement on land in question in *Pennsylvania Laundry Co. v. Land Title & Trust Co.,* 74 Pa. Super. 329 (1920) denied plaintiff the right to use the land in any way but the established use. The court there equated that kind of lost use to loss of possession of the property and affirmed a verdict for plaintiff.

For that reason, the court in the instant situation held that the proper measure of damages here was the difference between the market value of the tract subdivided into 90 feet lots less the market value of the same land divided into lots of 100 feet minimum width.

With regard to loss of profits and "additional interest," the court disallowed both claims. In the first instance the lost profits based on the subsequent sales were "too remote and too speculative" to permit recovery. Moreover, "additional interest" was not recoverable, as plaintiff had not indicated that factual basis for the claim or the way in which the expense related to the alleged injury.

In sum, the court held that plaintiff's first, second and fourth claims—lost profits, loss of use and additional interests—were improper measures of damages.

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New ALTA Leaders Sworn In at Convention

Newly elected ALTA officers, Board of Governors members, section chairmen and Executive Committee members-at-large sworn in at the ALTA Annual Convention in September in Boca Raton, Fla., are pictured left to right: ***Floyd B. (Shum) Jensen,*** *Salt Lake City, Utah, member-at-large, Executive Committee;* ***Glenn Graff,*** *Lakeland, Fla., to the board;* ***John J. Gehringer,*** *Waukesha, Wis., to the board;* ***James L. Boren Jr.,*** *Memphis, Tenn., chairman of the Abstracters and Title Insurance Agents Section;* ***John R. Cathey,*** *Durant, Okla., to the board;* ***Roger N. Bell,*** *Wichita, Kan., president;* ***Robert C. Bates,*** *Chicago, Ill., president-elect;* ***Robert C. Dawson,*** *Richmond, Va., chairman of the Finance Committee;* ***Richard J. Shramm,*** *Los Angeles, Calif., to the board;* ***John E. Flood Jr.,*** *Los Angeles, Calif., treasurer;* ***Fred B. Fromhold,*** *Philadelphia, Pa., chairman of the Title Insurance and Underwriters Section. Not pictured are* ***Don P. Kennedy,*** *Santa Ana, Calif., member-at-large, Executive Committee and* ***Richard A. Cecchettini,*** *Chicago, Ill., Board of Governors.*

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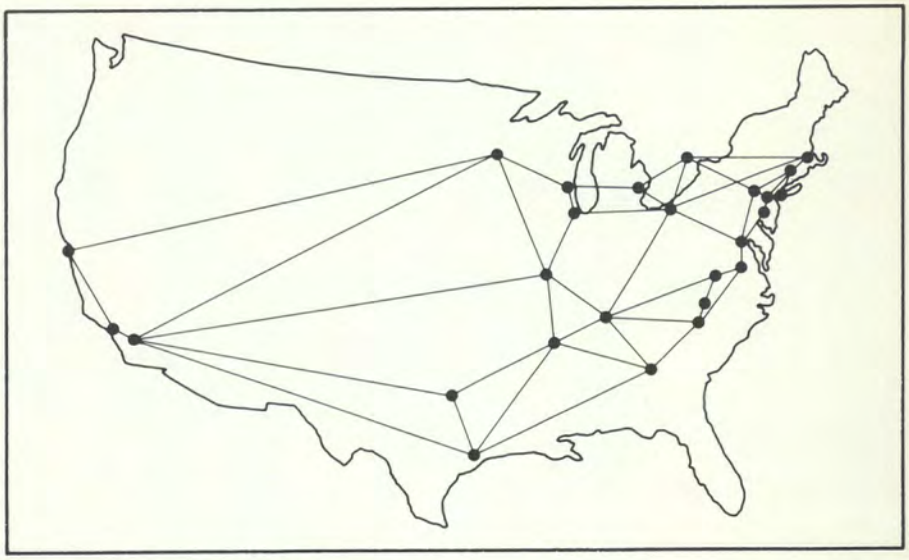

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Recent court rulings reported

Editor's note: Kansas and Washington reporters of the ALTA Judiciary Committee reported the following recent cases decided in their respective states. The Washington reporter is Charles C. Gleiser of Commonwealth Title Insurance Co., Tacoma. J. Robert Wilson of Charlson and Wilson in Manhattan reported the Kansas cases.

Luthi v. Evans, 223 Kan 622, _____ P 2d _____. (Overrules Luthi v. Evans, 1 Kan App 2d 114, 562 P. 2d 127.)

An instrument of conveyance which describes the real property conveyed as "all of the grantor's property" in a certain county or other geographical area (commonly called a "Mother Hubbard Clause") is valid, enforceable and effectively transfers the entire interest as between the parties to the instrument. However, such a transfer is not effective as to subsequent purchasers and mortgagees unless they have actual knowledge of the transfer. Recorded instruments of conveyance, to impart constructive notice to a subsequent purchaser or mortgagee, must describe the land conveyed with sufficient specificity so that the specific land conveyed can be identified. This is an important case to abstracters, title lawyers and title insurance companies.

Carnation Company v. Midstates Marketers, Inc., 2 Kan App 2d 236, _____ P 2d _____.

Where KSA 60-2202 provides that the lien of the judgment shall be effective from a date four months prior to the entry of the judgment, the fact that an erroneous date is entered on the judgment docket does not defeat notice to third party purchasers, for the judgment docket is only an index which is designed to lead an interested party to specific and detailed information contained in the appearance docket and court file. Judgment was granted in the case on Sept. 20, 1973, and the journal entry of judgment was entered and filed of record in the clerk of the district court's office on the same date. However, the clerk of the court entered the judgment on the judgment docket showing the date to be Sept. 20, 1974. The court held that the judgment docket is an index, and the entry of judgment on the judgment docket has no bearing on the effect of the judgment.

Linson v. Johnson, Executrix, 223 Kan 442, 575 p 2d 504. (Affirmed *Linson v. Johnson, Executrix,* 1 Kan App 2d 155, 563 P 2d 485.)

The question determined in this case was whether the decree of separate maintenance which made a division of the property is final in the sense that property set apart to one spouse cannot be inherited by the surviving spouse under the separate statutes governing intestate succession. KSA 60-1610 (c) broadened the power of the trial court concerning the division of property in both separate maintenance or divorce actions. It changed the prior law (*LaRue v. LaRue,* 216 Kan 242, 531 p 2d 84). The trial court can now set property apart to a husband or wife for a period of years until the children are grown or finish school, can place property in trust for the benefit of the wife or husband, as the case may be, can create a life estate in one of the parties with remainder over to the other, payable out of the proceeds at the expiration of a certain period of time when the property is to be sold. In other words, the trial court can now decree disposition of the property in such a manner as may be appropriate under the circumstances of the case. But, *when a decree of separate maintenance is entered, the decree must be specific and clearly indicate an intent on the part of the trial court to terminate the rights of inheritance by either of the parties to the marriage in the estate of the other.*

Ford v. Guarantee Abstract & Title Co., 220 Kan 244 (July 1976). 553 P 2d 254

This case is of prime concern to abstracters and title insurance agents. It resulted in damages, including substantial punitive damages, being assessed against a title insurance agent and a title insurance company for alleged breach of escrow instructions without either firm being the escrow agent or without either firm receiving written instructions from the escrow agent. The only instructions given the title insurance agent by the escrow agent realtor were of conversational and inquiring nature at the time of the order for the title insurance commitment, not at the closing.

The case has a bizarre set of facts. Clay contracted to sell his house to Ford through the efforts of a real estate broker who acted as escrow agent. Clay had bought the house from Slaven a year earlier, and at that time Clay had obtained a mortgage from Empire (now defunct), but Empire had not paid off the Slaven-Clay Escrow nor the Slavens' mortgage to Empire which had been assigned to Wornall, nor did Empire record the Slaven to Clay deed (Empire was the escrow agent in the Slaven to Clay contract) nor Clay's new mortgage to Empire. Clay and Slaven did not know of these omissions. The real estate broker talked with one member of the title insurance agent's staff about these facts at the time the broker prepared the Clay to Ford contract. The title insurance commitment issued to the Clay to Ford real estate broker required the instruments to be furnished the title insurance agent for inspection prior to closing. The real estate broker closed the escrow and issued the closing statement and a money order to Empire to pay the Slaven mortgage owed Wornall. He delivered the Empire money order plus a copy of the letter from Empire indicating the amount of principal and interest necessary to pay the Slaven mortgage to Wornall to the title insurance agent who then delivered the money order to Empire. (Note that the real estate broker's money order to Empire was delivered to the title insurance agent the same date it had to be delivered to Empire because of the interest factor, so the title insurance agent had no time needed to check out the real estate broker's closing figures and procedures.) Empire returned the Slaven mortgage release to the title insurance agent the next day. Since the deed from Slaven to Clay was never received nor recorded, the title insurance agent refused to issue the title policy and Empire refused to return the money order amount.

First, note that this is not an action on nor a claim against a title insurance policy. Note further the title insurance agent was not the escrow agent. Nevertheless, the court held the title insurance company and its agent, with no direct relationship with the purchaser, still had attorney-client responsibility to the purchaser by their dealings with the realtor escrow agent who was an agent for both the seller and the purchaser. The court held that the negligence of

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merits of commercial insurance versus bar fund insurance. If the lawyer is a member of a fund, entitled to share in its earnings through one device or another, such advice cannot be given free of a conflict with his personal interests. The client is entitled to the lawyer's untrammelled independent advice, based on what is best for the client, and not what is best for the lawyer. There is a fiduciary duty on the part of the lawyer to have no personal financial interest to compromise his or her judgment. No amount of rationalization can overcome this circumstance. This contention is usually tied emotionally and illogically by some lawyers to apprehension that laymen are "taking over" the business of handling real estate transactions. Whatever may be the validity of that proposition,[4] it is irrelevant to the selection of a title insurer.

Commercial title insurance is available to every lawyer's clients. Bar-related title insurance funds are not needed. The movement to create them is surely leading to more regulation of lawyers by the government. We have enough of that now.

4. Which may very well be true, and the "consumer interests" are not alone in answering: why not, if highly qualified and financially responsible laymen have shown that they can do the job cheaper, more efficiently, and with equal or greater safety to the public?

ULTA elects Newman president

President of the Utah Land Title Association for 1978-79 is Alfred J. Newman, vice president of the Utah Title & Abstract Co., Farmington.

Elected first and second vice presidents at the ULTA convention in Sweatwater were Wallace E. Buchanan and Dan Robison, respectively.

Branch opens

Commonwealth Land Title Insurance Co. has opened a branch office in Wilkes-Barre, Pa.

Donald Williamson, who has over five years of real estate experience in the Wilkes-Barre area, manages the office.

Names in the News...

William McGowan

Robert Steinberg

Robert M. Steinberg recently was elected to the board of directors and the executive committee of Commonwealth Land Title Insurance Co. In addition to his new position, Steinberg also serves as vice president-administration and member of the board of directors of Commonwealth's parent company, The Reliance Group.

Allan M. Kleinsmith has been named manager of Commonwealth's Salem, Ore., office. Kleinsmith has had over 21 years experience in the land title industry.

John M. Schubert has joined the corporate staff of the Title Insurance Corporation of Pennsylvania as executive vice president. He is a 25-year veteran of the title insurance and real estate industry.

Boyce C. Outen, vice president and associate general counsel for Lawyers Title Insurance Corp., retired last month. Outen was with the company's home office in Richmond, Va. He joined Lawyers Title's Atlanta branch office in 1941.

Bruce C. Sutton, Dallas, Texas, has been elected senior title attorney for Lawyers Title. Sutton joined Lawyers Title in Dallas in 1974 as a title attorney.

Lawyers Title also announced the election of two branch counsels. They are **Irvin R. Shupack** in the Ft. Lauderdale, Fla., office and **Lawrence E. Lawn** in Bloomfield, N.J.

George Harvey

Bertram Rosen

Edward Norton

Guy Ridout

City Title Insurance Co., New York, has announced the following appointments. **George E. Harvey** has been named vice president and senior sales manager. He will supervise the company's expanded sales force throughout its branch operations. **William J. McGowan** has been promoted to vice president-branch operations. He is responsible for developing and coordinating title operations among City Title's five branch offices. **Edward W. Norton** was appointed vice president and associate counsel and **Bertram W. Rosen** will serve as comptroller.

Judith H. Gonnerman has been appointed branch manager of American Title Insurance Co.'s Lake Worth, Fla., office. Prior to joining American Title, Gonnerman formerly supervised the mortgage department of a major area savings and loan company.

Commonwealth Mortgage Assurance Company recently announced the appointment of **James V. McCarthy** of Norristown, Pa., as vice president/national sales manager. In this position, McCarthy heads all sales and marketing programs for the company. Recently named regional operations manager for the six-state Southwest region of Title Insurance Company of Minnesota is **Guy Ridout.** Ridout's responsibilities include administration of the regional office staff in Houston, Texas, as well as agency development and service.

Minnesota's president is Wermerskirchen

Elected president of the Minnesota Land Title Association at the annual convention in Duluth recently was Paul W. Wermerskirchen. He is president of Paul W. Wermerskirchen Abstract Co., Inc. in Shakopee. Vice president is Eugene Prestegaard, owner of the Pennington County Abstract Co. in Thief River Falls.

Jack Lewis, vice president and division manager of Chicago Title Insurance Co., Minneapolis, was elected to a three-year term on the board of directors. A. L. Winczewski, president of the Winona County Abstract Co., Inc., Winona, will continue as secretary-treasurer.

ALTA past president dies

Edward T. Dwyer, the 1952-53 ALTA president, died Sept. 5 in Portland, Ore., at the age of 83.

The former president and board chairman of the Title and Trust Co., Portland, the predecessor firm of Pioneer National Title Insurance Co., Mr. Dwyer had been in the title insurance industry for over 60 years.

He was a past president of the Oregon Land Title Association and a member of the Portland Realty Board and Chamber of Commerce.

Surviving are his wife, Madeline, a son, five sisters and four grandchildren.

Judiciary report—*(concluded)*

Surety Title Insurance Agency v. The Virginia State Bar, 431 F. Supp. 298 (1977)

The plaintiff had alleged that the Virginia State Bar's practice of issuing advisory opinions relating to ethics and the unauthorized practice of law, along with the threat of disciplinary proceedings, illegally restrained commerce in the area of title insurance. The court held that the issuance of such unauthorized practice opinions by the "council" of the Virginia State Bar was unlawful and violated Sections 1 and 2 of the Sherman Act. The court enjoined the Virginia State Bar from issuing further unauthorized practice of law opinions and the court directed the Bar to expunge from its record all such prior opinions.

Scott M. Edwards v. St. Paul Title Insurance Co., 563 P. 2d 979 (Colo. 1977)

Facts: St. Paul issued to Edwards a title insurance binder and subsequently a policy on property. No mention was made in either the binder or policy that the property was situated within Ace Water and Sanitation District. The district had been formed and a copy of the decree evidencing formation had been filed with the county clerk and recorder in 1965. The title insurance policy was issued in 1967. The first levy for ad valorem taxes against the property in the district was made in 1969 and 1970. The result was some $4,000 in district taxes charged against the Edwards' property. Edwards claimed that the inclusion of the property in the district and the consequent exposure to assessment for district taxes was a defect in, or lien or encumbrance on the title or rendered the title unmarketable and, therefore, St. Paul was liable to him under the policy. The court recited the insuring provision and indicated that Schedule B refers to tax liens or encumbrances and other matters against which the company does not, by this policy, insure, including "taxes and assessments not yet due or payable and special assessments not yet certified to the treasurer's office." Thus St. Paul was not liable under its policy.

Holding: Affirmed. Absent any statutory provision, the district taxes would not be liens against the property. There was not, in 1967, district taxes or assessments due or payable or certified to the treasurer's office and there was no lien against the property for such taxes. The 1969-70 taxes were certified and levied two years after the date of the policy and were, therefore, excluded from coverage. It follows that if it requires specific legislation for even the current year's taxes to be a lien on the property, the mere existence of the district and the prospect of taxes in the future was not a lien, encumbrance or defect as of the date of the issuance of the policy. The existence of the inclusion of the property in the district does not render the title unmarketable. The value of the property is affected by the amount of taxes but this has nothing to do with title of the property or marketability of the title. St. Paul therefore did not contract to indemnify Edwards against loss due to district taxes or assessments to be levied against his property after the date of the policy.

Recent rulings—*(continued)*

the title insurance company (which apparently had no part in this series of blunders other than being the principal for its agent) and the title insurance agent (with no written instructions from the escrow agent realtor and with a money order delivered to it made payable to the mortgagee) were both so negligent that it awarded $35,000 punitive damages against the title insurance company and $17,500 punitive damages against the title insurance agent, above the actual damages also assessed to them.

Reporter's note: It seems to me that the title insurance agent should have had no responsibility because the responsibility lay with the escrow agent realtor.

This case has three implications. To avoid liability of the nature imposed in this case, (1) either we abstracter-title insurance agents must be the escrow agents all the way and supervise the closing, including the issuing of the closing statement, or (2) we must refuse to deliver to anyone

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Recent rulings—*(concluded)*

any checks which are issued by an escrow agent other than ourselves, for fear the courts will hold us liable under the above described attorney-client responsibility, or (3) we must check out fully the escrow, the title and the closing statement, before we permit ourselves to deliver checks on instructions of the escrow agents other than ourselves in order to make certain the escrow is being closed properly, and that the purchaser will obtain title.

Keiffer v. King County, 89 Wn. 2d 369, 572 Pac. 2d 408 (December 1977)

The county widened a two-lane road in front of business property to four lanes and installed curbs all within the county's right-of-way reducing the use of the right-of-way by the abutting owner so that he could park only two cars instead of 18 cars.

Held: Whether impairment of the abutting owners' access is substantial and compensable as opposed to changing of traffic flow is a question of fact to be determined by the trier of the fact. The dissent said access was not impaired but that the private use of parking on the public right-of-way was reduced for which there should be no compensation.

Save v. Bothell, 89 Wn. 2d 862, 576 Pac. 2d 397 (March 1978)

Despite the fact that a majority of the voters in a city approved a rezone of land inside the city, the rezone was set aside because: (1) The city did not give sufficient consideration to the environmental effect of the rezone on neighboring jurisdictions, and because (2) one member of the planning commission was the executive director and another member was on the board of directors of the Chamber of Commerce which had endorsed the rezone.

Polygon Corp. v. Seattle, 90 Wn. 2d 59 (May 1978)

The Washington State Environmental Protection Act, which is substantially the same as the National Environmental Policy Act of 1969, confers upon a city, acting through its superintendent of buildings, the discretion to deny a building permit application on the basis of adverse environmental impacts. Such denial of a project which complies with existing zoning regulations is not a de facto rezone of the property because the denial is on environmental impacts, and the owner can develop his property under the zoning without environmental impacts. Neither is it an unconstitutional delegation of legislative power because there are adequate procedural safeguards.

Atlanta computer meeting reset

The Department of Real Estate and Urban Affairs of Georgia State University has rescheduled its third "Colloquium on Computer Applications in Real Estate" for Nov. 28-29 in Atlanta, Ga., instead of the previously announced dates in October.

This year's seminar will focus on financial analysis models, minicomputers and programmable calculators, data base models, land development models and appraisal/valuation models.

A one-day session introducing the use of computers in real estate analysis also will be held.

The registration fee for the two-day seminar is $125. For more information, contact the Division of Public Service, Georgia State University, 1 University Plaza, Atlanta, Ga. 30303.

October 25-27, 1978
Land Title Association of Arizona
Skyline Country Club
Tucson, Arizona

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

October 29-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

December 7-8, 1978
National Title Underwriters Association
Annual Meeting
Royal Orleans Hotel
New Orleans, Louisiana

January 20-23, 1979
National Association of Home Builders
Las Vegas, Nevada

March 21-23, 1979
ALTA Mid-Winter Conference
Hyatt Regency New Orleans
New Orleans, Louisiana

March 29-31, 1979
North Carolina Land Title Association
Mills Hiatt House
Charleston, S.C.

April 19-21,1979
Oklahoma Land Title Association
Holiday Inn West
Oklahoma City, Oklahoma

Calendar of Meetings

May 6-8, 1979
Iowa Land Title Association
Eddie Webster's Inn
West Des Moines, Iowa

May 17-20, 1979
California Land Title Association
Marriott's Las Palmas Resort
Rancho Mirage, California

June 3-5, 1979
Pennsylvania Land Title Association
Host Corral Resort
Lancaster, Pennsylvania

June 7-10, 1979
New England Land Title Association
Sea Crest Hotel
Falmouth, Massachusetts

June 10-12, 1979
New Jersey Land Title Association
Seaview Country Club
Absecon, New Jersey

June 21-23, 1979
Land Title Association of Colorado
Keystone Lodge
Keystone, Colorado

June 21-23, 1979
Oregon Land Title Association
Valley River Inn
Eugene, Oregon

June 28-30, 1979
Wyoming Land Title Association
Saratoga, Wyoming

August 2-4, 1979
Idaho Land Title Association
North Shore Lodge and Convention Center
Coeur D'Alene, Idaho

August 8-15, 1979
American Bar Association
Dallas, Texas

August 10-11, 1979
Kansas Land Title Association
Glenwood Manor Motor Hotel
9200 Metcalf
Overland Park, Kansas

August 16-18, 1979
Minnesota Land Title Association
Thunderbird Inn
Minneapolis, Minnesota

September 12-15, 1979
Washington Land Title Association
Admiralty Resort
Port Ludlow, Washington

October 6-10, 1979
American Bankers Association
New Orleans, Louisiana

October 14-17, 1979
ALTA Annual Convention
Hyatt Regency San Francisco
San Francisco, California

October 14-17, 1979
Mortgage Bankers Association of America
Chicago Marriott Hotel
Chicago, Illinois

October 28-November 2, 1979
U.S. League of Savings Associations
Chicago, Illinois

November 6-15, 1979
National Association of Realtors
Annual Convention
New Orleans, Louisiana

American Land Title Association

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