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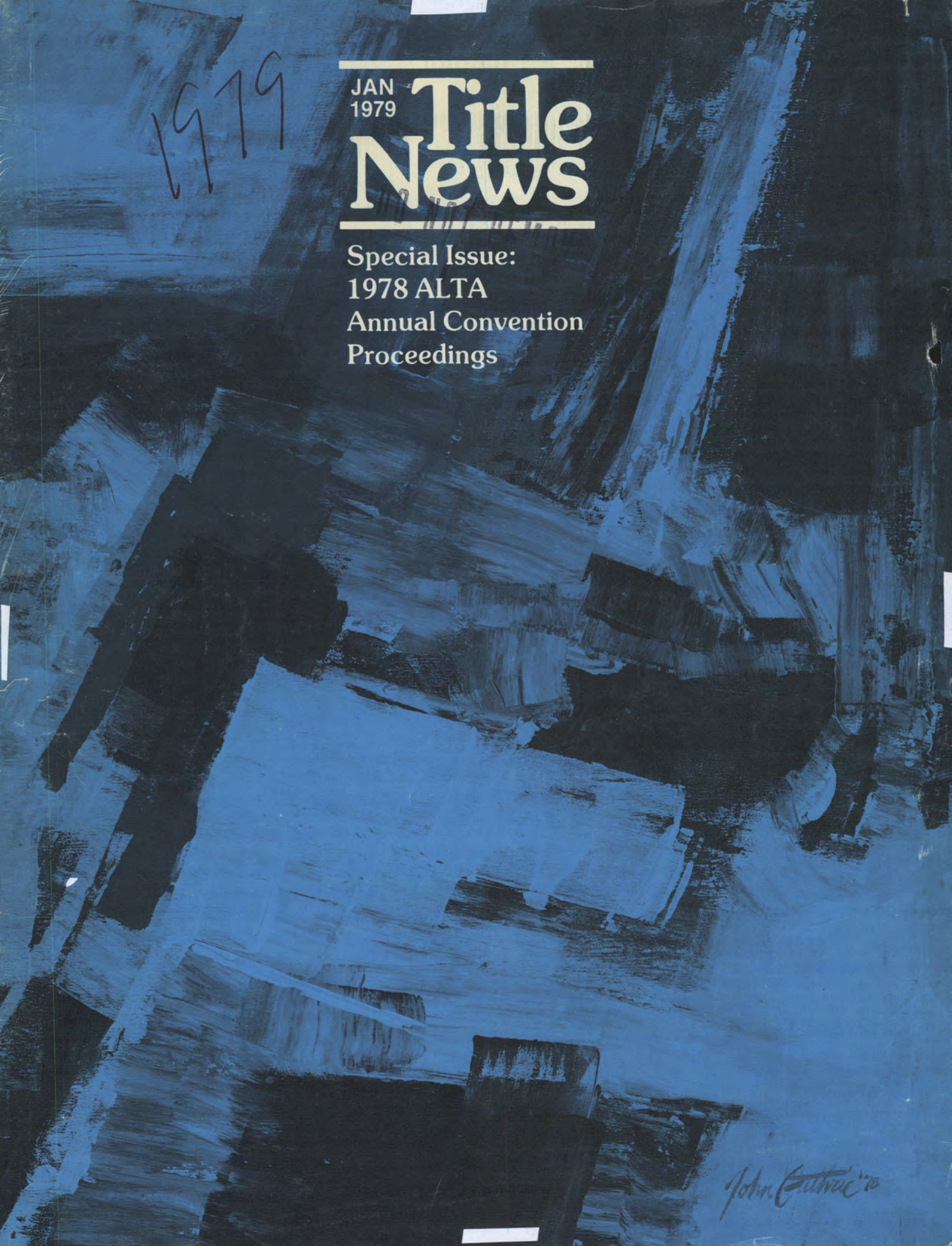
Title News

Special Issue: 1978 ALTA Annual Convention Proceedings



a message from the Chairman, Title Insurance & Underwriters Section . . .

It's time once again to think about those New Year's Resolutions that are designed to enrich our business and personal lives. Here are some that merit the consideration of every land title professional:

- I'm going to attend the ALTA Mid-Winter Conference March 21-23, 1979, in New Orleans;
- I'm going to attend the ALTA Annual Convention October 14-17, 1979, in San Francisco;
- I'm going to make a personal financial contribution to TIPAC—to help support the campaigns of congressional candidates with views compatible to those of our industry;
- I'm going to become better acquainted with my state legislators and regulators—and help them better understand the title business;
- I'm going to get more involved in service to my state association;
- I'm going to improve my knowledge about the various activities of ALTA at the national level, and help media, consumers and other important publics understand the title business in my state;
- I'm going to see to it that my employees obtain and read copies of the *ALTA White Papers*—especially Volume I which contains explanations about the nature and need for title insurance, its benefits, and popular misconceptions about the land title industry;
- I'm going to continue to compete fairly and ethically for my share of business.

Now is the time for beginning the work that will make these resolutions more than good intentions.

Your participation in national and state association activity will help make 1979 the best year ever for the title business.

Despite the economic predictions indicating a decline in real estate activity in 1979, we believe that the managers of our land title industry will provide leadership, expertise and efficiency to serve our customers well and make our business profitable.

Best wishes for a happy and prosperous New Year.

Fred B. Fromhold

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Title News

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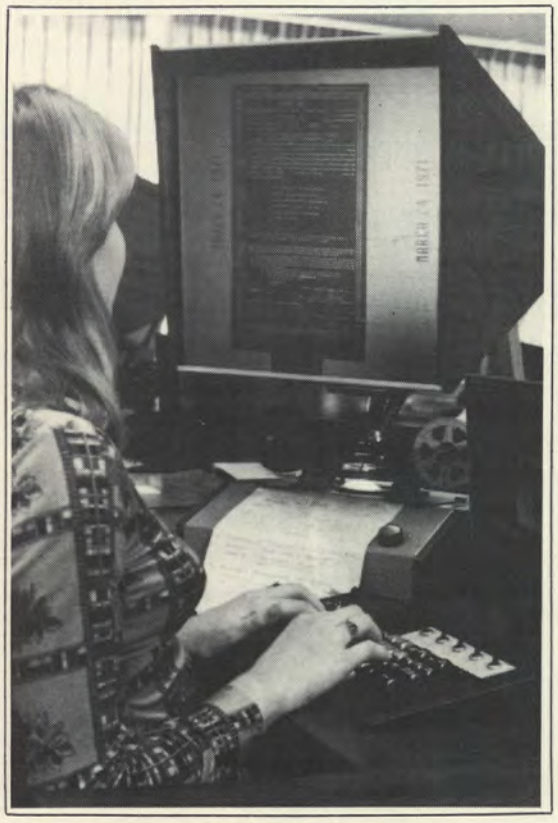

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General Sessions

President's Report

C.J. McConville, 1977-78 ALTA President
President, Title Insurance Company of Minnesota
Minneapolis, Minnesota

I want to give you a brief report of some of the things that have occurred this past year that are representative of the activities of your Association.

Last November in my first message to you which appeared in *Title News*, I outlined five major objectives that I wanted this administration to accomplish. The Executive Committee in January adopted those goals as a blueprint for 1978 progress. I'm happy to report to you that we have accomplished or exceeded all of these goals.

Let me just briefly review them with you. The first objective was that through the Government Relations and Public Relations committees we will continue our efforts to correct misconceptions about our industry.

We've done a lot of things in this area. Last May we held a congressional reception. It was very well attended. There were about 300 people in attendance—about 60 congressmen, 10 senators, 120 congressional staff people and a number of federal agency representatives. This provided a great opportunity for us to become acquainted with these very influential people who can impact our future so significantly.

Next month on Oct. 19, we will have our third federal seminar under the auspices of the Government Relations Committee. The subject this year will be RESPA—what has it accomplished and whether or not there is a need for additional legislation in the settlement area.

Since the beginning of the year, the Public Relations Committee has continued to develop favorable public awareness of our industry by reaching a nationwide audience of millions through the mass media. Perhaps you have seen the favorable items on owner's title insurance in *U.S. News & World Report* and in local newspapers—or have seen our public service film offerings on television—or have heard our public service spots on radio. All these results and more are being accomplished through our public relations program that wins free air time and print space to enable reaching a vast audience, again and again, on a relatively modest budget.

As part of the 1979 budget, the Board of Governors authorized the production of another movie. This has been, as you know, a very effective tool on television and also can be used by our members when they speak to customer groups or to luncheon service meetings.

Our second major objective was to take positive positions before Congress on legislation affecting our business. We are doing this and again the results are significant.

The third objective called for involving a broader segment of our members in ALTA activities. We started out by reviewing the way in which the Board of Governors is selected. Should we change it? Should we make it perhaps geographic in its makeup? Should there be some other criteria?

Secondly, I expanded membership of various ALTA committees through appointments. Results of this step are apparent in the high quality of committee work throughout the Association this year. And we created two new committees. One of them in particular should have future significance for the industry, and that is a liaison committee with the National Association of Realtors, our largest customer group. The other committee is a section committee within the Title Insurance Underwriters Section relating to internal audit.

The fourth objective was for ALTA to provide title industry members with educational opportunities, and also to be a clearing house for information concerning matters—whether at the federal or state level—that might affect you.

Again, progress is being made in several fronts here. I'm sure you read the August issue of *Title News* with interest. That was devoted totally to various systems available for use in title plants from the small to the large. The Plants and Photography Committee has scheduled an excellent panel presentation on this subject tomorrow morning. I know you'll find that of interest.

In another educational step, the Executive Committee has authorized the holding of a title insurance seminar in Boston next year. Also, the Ohio Land Title Association is working on an educational program with the Lorain County Community College and ALTA will provide educational course material for that.

And then, of course, we have the *White Papers*, Volumes 1 and 2, which are excellent and which continue to receive wide distribution. If you have boards of directors or others whom you would like to educate about our business, I suggest that you will find them to be a great tool, especially Volume 1.

And, finally, we took a strong position with regards to the American Institute of Certified Public Accountants (AICPA) exposure draft on title company accounting. We're very fortunate to have the chairman of that AICPA committee with us this morning who will talk to us on that subject.

The fifth and final objective was to keep the land transfer business as a part of the free enterprise system and to resist all attempts by state and federal government to preempt this field. We've been very active in this area. Recent examples have been our endorsement and support of several model laws which should help the land transfer business. They are the Uniform Land Transactions Act and the Uniform Simplification of Land Transfers Act.

In addition, the Board of Governors yesterday approved support of the new Uniform Condominium Act.

We also continue to work with the regulators. We have a fine committee that is maintaining liaison with the National Association of Insurance Commissioners.

Of course we've been working closely with HUD in connection with the Section 13 RESPA study. We anticipated there would be some push towards a national mandatory Torrens system, so we commissioned A.D. Little to do an analysis of that system. The study is now completed and is at the printers. It is being published and promoted by a national publishing house. Every ALTA member will receive a free copy of this work which I urge you to read. It is very important that our members be informed on why Torrens won't work. This excellent study sets forth the facts in depth.

I guess that when we look at our efforts this past year, it would be accurate to say that most of our activities are devoted to continuing to keep the title business within the free enterprise system where it can work best.

I would like to comment on a few other items that you might find of interest. As you know, some of our members are having problems in the unauthorized practice of law field and we have been, where requested, assisting state title associations in defending suits which appear clearly to be without merit but which might create undesirable case law if left unchallenged. We have also participated as *amicus curiae* in cases involving title issues with national significance.

Just before coming to this convention, I received a request from the Federal Home Loan Bank Board. They are conducting an inquiry at the moment in Arkansas and Louisiana concerning the practice of some savings and loan associations who insist that their counsel examine title and handle the settlement or closing, will not accept opinions from an attorney other than their own counsel, or will not accept policies of title insurance.

They have asked us for help. We will write to our members in those two states asking them to complete a questionnaire prepared by the Federal Home Bank Board so they can have the facts concerning these practices.

One other thing we did. We think ALTA is doing a good job. But we wanted to know what you thought. So we sent out a questionnaire that asked, "What do you think of ALTA's performance—in a number of areas? Do you have suggestions on how we can improve?"

On a weighted scale of 0 to 3, 3 being excellent, 0 being blah, we got a rating from those questionnaires of 2.4, which made us feel pretty good. But we're not resting on our laurels. We're taking the input from those questionnaires and the two section chairmen in particular are going to be working on programs to improve our performance in those areas where the members feel we can improve.

Well, as you can hear, our industry is in good shape, but it's your active involvement in ALTA—the committee work—that's the guts of making us effective. It's through your continued support and your continued work that we can prosper as an effective industry.

We have a great program set for this convention. We have wonderful facilities here in Boca Raton as well. I think you'll find the program very informative and the facilities enjoyable.

The 95th Congress Looks at Taxes

Rep. Sam M. Gibbons (D-Fla.)
Member, House Ways and Means Committee

As your president told you, I feel perfectly at home with this audience. I have worked with your industry as a private citizen and as a public official most of my adult life. And I'd still be in the title business but the Morris brothers of Texas and Stewart Title decided that they would rather have the business and they were willing to pay the price. They left me with a little stock, but I even had to dispose of that after I went to Congress because of some vague conflict of interest that might arise.

But I understand many of the problems that you have. I very much enjoyed your president's report. I think what you're doing is important in that area. So few people understand how title and ownership relate to the free enterprise system and how they add to the flexibility and the growth of this nation. The reason this nation is still the envy of the world is because this is the place where if you make it, you've got a better chance of keeping it than any other place.

So these are the kinds of things that you need to do. You're an essential part of the free enterprise system. And if you struggle and fight and educate the public, then I think you'll help preserve this of which we're so proud.

As soon as I leave here you're going to see me streaking for the door. I would much rather be here in Boca Raton and with you folks than go back to Washington, but there are only three working weeks left for the Congress.

At adjournment, most members will go out and run for that new four-year term that we all have. Two years in the House and two years in jail. But believe it or not, we have imposed on ourselves some of those stupid laws that you find impinging on you and we have found out that we can't live with them either. So we've only got three working weeks left until we get hit with that new jolt.

I want to thank you also for being so nice to Martha and me last night and for the hospitality that those of you that I was able to meet and socialize with expressed. And I also want to thank you for the contribution from your political action committee to my political campaign that ended successfully a week ago. I won't get a chance to write all of you personally, but I want you to know there's nothing a person running for office needs worse during a campaign than a little pat on the back and a little money in the pocket to help pay those bills for television, radio and the newspapers and for all the other things that we unfortunately must spend money on to try to convince people that we should be either elected or re-elected. So it's an essential part of your activity, the contributions you make through that political action fund.

Congress has three things to do in the remaining weeks: energy, civil service and taxes. While inflation is not on our agenda, it is the most important thing that we face in Washington and I'm proud to report that we have cut the expected deficit by $20 billion from the beginning of this year to the end of this year that we're now approaching. Next year we hope that we can cut it even further.

I must say in retrospect, there is no reason why the budget should not be balanced right now. The American economy is moving along well and a part of the reason for inflation is the persistent deficit that your federal government insists upon running.

I hope that when you see those candidates wandering in and out of your title office that you'll tell them to get on the ball and get that budget deficit down to zero.

Actually, your federal government should be running a surplus right now rather than a deficit in order to help cure inflation.

"So few people understand how title and ownership relate to the free enterprise system and how they add to the flexibility and the growth of this nation. The reason this nation is still the envy of the world is because this is the place where if you make it, you've got a better chance of keeping it than any other place."

The energy program that is being passed this time is not much. If you think it's a whole lot, you're the kind of person that thinks that a honeymoon without love is a good honeymoon. Well, that's about all that this energy bill is. It will solve one particularly vexatious problem, we hope, and that is the pricing of natural gas.

For 30 years Congress has not been able to solve this riddle and you all know what has happened. Natural gas is not being produced at a fast enough rate. Natural gas, although it's probably America's finest fuel, is still America's cheapest fuel, which doesn't make good sense.

Next, and I think the thing probably most interesting to all of you is this matter of taxation. The tax bill is now in Senator Long's Finance Committee in the Senate, having passed the House earlier this summer. The tax bill will, in effect, take some of the inflation out of your tax bill and that's what it's aimed to do by reducing your taxes by about $15-20 billion in your next calendar year. It's essential that this be done in order to keep the federal government continually growing.

I know it looks like a riddle. You heard me speak a while ago about the fact that we should be running a surplus. Why do we cut taxes when we should be running a surplus? Well, the Congress seems to be able to concentrate more on the deficit than it can on the total amount of taxes or the total amount of spending. And we're using the deficit to bring down the spending and bring down the taxes at the same time, or else you're going to end up with a government that's even more bloated than it now is.

But in federal taxes, we'll be able to remove that very ridiculous provision that crept into the law by accident a few years ago, and under an amendment that I sponsored in the House and is in the Senate Technical Corrections Act and will be added to the tax act when it's passed this year, you'll have to go no farther than the local recording office, the courthouse or wherever it may be to find those federal tax liens from now on.

Also, in that same bill I hope we will have a provision that will allow a person once in a lifetime to sell his homeplace, a place that he has owned and occupied for at least two years, without paying federal income taxes upon the first $100,000 of so-called profit. I say "so-called profit" because most of those profits that are really out there are merely a reflection of inflation. Realizing that inflation has captured the value of many capital assets, I hope we will follow the House-passed bill and we will begin indexing for inflation in capital assets starting after next year. The investment credit will pass, allowing you a 10 percent tax credit on the equipment that you purchase and there will be a reduction of the individual tax rates in order to take as much inflation out of the system as possible.

One outcome that I can't predict is what will happen on the tax deductibility of entertainment expenses in business. As you know, the bill we passed through the House made very little changes in those laws. But the bill that is moving through the Senate right now has made some rather massive changes in those laws and while this is only still in the Senate committee, I can't predict what will happen on it.

How are we going to complete this massive tax bill within the amount of time that is left? The Senate committee will wrestle with it the rest of this week. It looks like the Senate will wrestle with it the following week and then the House and Senate conferees will wrestle with it in the third week and then it will end up on the President's desk the day we go home on October 14. This is a scenario that Congress has followed almost incessantly since I've been there. It is a part of the Russell Long technique of handling legislation. I don't like the crisis atmosphere that we have to make some of these decisions in, but sometimes it takes a crisis in order to force decisions.

Let me say before we go to a dialogue here, I think this has been probably the most pro-business session of Congress that I have seen in the 16 years that I have been there. There is a very certain awakening in the hearts of those in Washington that if we're going to lick inflation, if we're going to keep this economy moving and get full employment, then we have got to give business the tools to modernize and to be competitive and to stay competitive in a worldwide environment. And I think slowly, but surely, and sometimes almost imperceptibly, the Congress is moving in that direction.

It is not dropping our endeavor to make this a better land in which to live. But all of us realize the goodness of this land depends upon its wealth and its prosperity as well as its spiritual endeavors.

TIPAC Report

Francis E. O'Connor, Chairman
Title Industry Political Action Committee Board of Trustees
Executive Vice President, Chicago Title and Trust Co.
Chicago, Illinois

Before discussing TIPAC, I'd like to congratulate Rep. Gibbons for initiating some sound, practical and necessary legislation. This is the kind of representative whom TIPAC supports. Earlier this year, we let the Congressman know—through a TIPAC contribution—how proud we were of the job he has been doing. Elected officials like Congressman Gibbons are the key ingredient to a democratic system that reflects the thinking of the voting public. The Title Industry Political Action Committee wants you to know, Congressman, that we plan to continue to support your efforts in the future.

Happily, I'm not here this morning to tell a tale of woe. The 1977-1978 TIPAC campaign is a classic success story based on organization, effort, commitment and most importantly, your involvement.

From July, 1977, to date, TIPAC collected over $56,000—by far the most productive solicitation campaign in our five year history. A somewhat astonishing total of 1,378 ALTA members made personal contributions to TIPAC over this period. This very personal commitment on the part of you and your professional colleagues has enabled TIPAC to render financial assistance to 84 candidates for federal office.

You may be interested in knowing how recipients of TIPAC's support were chosen. Last year, the TIPAC Executive Board of Trustees, consisting of Jerry Ippel, Ralph Smith and myself, selected individuals from the various states to serve on the State Advisory Trustee Board. One of the main functions of the State Advisory Trustees is to channel political intelligence to the Executive Trustees regarding Congressional and Senatorial elections.

The TIPAC Executive Board and State Advisory Trustees held two formal meetings during the year culminating in recommendations regarding who should receive TIPAC's contributions. The Executive Board then analyzed the voting records of the recommended candidates on selected business-related issues, using material compiled by the U.S. Chamber of Commerce, Committee on Political Education (COPE) and consumer groups.

In addition, Mark Winter injected further commentary gleaned from his political colleagues in Washington. Finally, after much deliberation, the board approved a list of candidates—both incumbents and non-incumbents, as well as those seeking election for open seats. Fifty-four Republicans and 30 Democrats merited TIPAC support. The input provided by the state advisory trustees was essential for the judicious development of the TIPAC congressional contribution list, and we appreciate their effort and cooperation.

In 1976, just two years ago, TIPAC contributed to 47 congressional candidates. This time—thanks to your participation and interest—we were able to collect enough money to make meaningful contributions to 84 candidates. Already we have received positive feedback from several congressional recipients of TIPAC financial aid. Their responses not only express appreciation for our help, but also encourage members of our industry to call on them if we have any problems or questions. I'd like to share with you a sample of these responses.

- Sen. Sam Nunn of Georgia stated, "I appreciate the generous contribution from the Title Industry Political Action Committee. I'm grateful for your friendship and support."
- Rep. Mark Hannaford, who's a Democrat from California wrote, "It is a high compliment and an inspiration to me to be worthy of such support. In a political campaign early money is much more valuable than last minute donations. Don't hesitate to call if I can be of assistance."
- Rep. Bill Frenzel, a Republican from Minnesota, expressed his thanks and commented, "I hope we will all be repaid by better representation and more responsible policies at every level of government."

> "The 1977-1978 TIPAC campaign is a classic success story based on organization, effort, commitment and most importantly, your involvement."

- Sen. Ted Stevens of Alaska said, "Your assistance will help me to remain in Washington to fight for the issues that concern us all."
- Rep. Henry Hyde of Illinois stated, "In the bluntest possible terms, every election is a power struggle between those who believe that a healthy private sector is the best system for America and those who believe in federal intervention in every aspect of our economy. No one is untouched by decisions made in Washington and it is a welcome sign that people sharing our views are seeking to be heard more forcefully in the seat of government."
- Sen. John Tower of Texas expressed his gratitude for our support and said, "Campaigning across Texas takes considerable time and resources, but then, any battle for a worthwhile cause is never easy these days."
- And finally, a letter from Rep. William Armstrong, who's a Colorado Republican seeking election to the U.S. Senate, said, "Your recent contribution to my campaign committee comes at a crucial time. We are well on the way to winning the election. We are particularly grateful for the moral support and encouragement your campaign contribution represents."

All of you have cause to be proud of your efforts on behalf of TIPAC. It's because of your concern and understanding that TIPAC has made such substantial progress and I'm confident that the title industry PAC will continue to grow and serve as a persuasive, pervasive and responsible voice in the political forum. I especially commend the state advisory trustees who took time from their crowded schedules to make TIPAC the effective PAC that it is. Fourteen states either matched or exceeded their TIPAC contribution goals. At this time I'd like to give them some credit because I think they deserve it.

From Arizona, John Wilkie; Colorado, Mel Kensinger; Idaho, George Russell; Kansas, Joe Jenkins; Michigan, Ed Blaty; Mississippi, Rowan Taylor; North Dakota, Carl Elliott; Oklahoma, John Warren; Oregon, Lem Putnam; Tennessee, Jim Boren; Utah, Floyd Jensen; Washington, Dick Mohler; West Virginia, Charles Forbes, and Wisconsin, Nic Hoyer.

The board of trustees wishes to extend a special note of appreciation to these 14 advisory trustees.

Also, I'd be remiss if I didn't mention Mark Winter's dedication and extraordinary effort on behalf of TIPAC. He performed far above and beyond the call of duty.

As you know, this November marks another federal election. All members of the House of Representatives are up for re-election as is one-third of the Senate. In addition, an unusually high number of retirements or members seeking other elective offices has already been announced. The list stands at 66 replacements. This means that regardless of election results, the 96th Congress will contain many new faces. Our industry has a great stake in the composition of the 96th Congress. This Congress will be faced with a number of difficult title industry-related problems. Indian land claim questions cry out for a legislative solution; amendments to RESPA will doubtlessly be considered; Congress will look at the lender-pay concept. It will probe the need for federal legislation and the creation of a federal agency to regulate the insurance industry.

Changes in the 96th Congress, plus pending legislation that could severely hamper our current operating methods, certainly combine to convince us of TIPAC's value in making our voices heard in Congress.

The scope of our mission is enlarged because of Congressional turnover and it's intensified because of the specter of further federal regulations. The need for TIPAC to assert the title industry's point of view is increasingly apparent. TIPAC is the industry's main link with Congress. Through TIPAC, we hope to enhance our industry's visibility and credibility and to underscore Congressional accountability to us, the voters.

In closing, I congratulate all of you who responded to TIPAC's solicitations over the last couple of years. It is the hope of the board of trustees that even more of you will choose to become TIPAC contributors. To counterbalance the many serious forces which will confront our industry during the 96th Congress, we must be prepared to assert ourselves in the legislative arena. The representation that we so vitally need on Capitol Hill requires the collective support of our membership.

This coming January when you receive a TIPAC solicitation approval form, please respond favorably to our 1979 campaign.

ALTA Honorary Memberships Awarded to Morton McDonald and E. Gordon Smith

McDonald

Smith

ALTA Honorary Memberships were presented to Morton McDonald, ALTA past president, and to E. Gordon Smith, former member of the ALTA Board of Governors. Arthur L. Reppert, president of the Clay County Abstract Co. in Liberty, Mo., and an ALTA past president, presented the award to McDonald. Lawyers Title Insurance Corp. President Robert C. Dawson who is ALTA Finance Committee chairman and an ALTA past president made the presentation to Smith.

Arthur Reppert: Over the years, ALTA Honorary Memberships have been awarded to 17 distinguished members of our profession. Two more recipients will be added to the list this morning.

Ordinarily, ALTA Honorary Memberships are presented to outstanding title people who are retired or close to retiring. This is a fitting tribute as they reach an important transitional point in life.

Today, things are going to be different. Our first Honorary Membership will recognize an eminent leader in our industry who could be retired—but isn't—and may never be. He just doesn't seem to have time for retirement.

He has worked for a living since his father died in 1921, and he left his studies at the University of Georgia to support his mother and family. The title industry was enriched when he moved to DeLand, Fla., in 1923 to join the predecessor of the company that he now serves as chairman of the board. He acquired controlling interest in the company some 40 years ago.

He attended his first state title association meeting in 1927 and did not miss a regular or called meeting of the Florida Land Title Association (FLTA) from that time until the late 1960s. He served FLTA as secretary for 14 years—both before and after he became its president.

In addition, he attended his first ALTA meeting in 1934 and has been present at 32 Annual ALTA Conventions. He attended 22 consecutive ALTA Mid-Winter Conferences and served as ALTA president 1955-56.

His ALTA service also includes three separate terms on the Grievance Committee—one as its chairman—and duty as a member of the Uniform Title Insurance Code Committee.

Along the way, he was the prime mover in the founding of the ALTA Group Insurance Trust and contributed substantially to its development as trustee chairman before completing 15 years of service in 1973.

A glance at his many church and community activities will affirm his view that these worthy causes merit his time and energy.

He helped organize and served as first president of the West Volusia Council on Human Relations and still is active in that organization. His contributions as a leader were recognized by Stetson University in DeLand when he received its Algernon Sydney Sullivan Award.

In the text of the Sullivan Award, it is pointed out that his life is encouraging and inspiring—and justifies our highest ideals and hopes. That describes him very well. It is an honor to know him as a title person who has contributed greatly to the advancement of our industry.

He and his wonderful wife Thelma were married on March 7, 1926. They had three sons—one who is now deceased—and a daughter. His two sons, Tom and F. Morton, and his son-in-law Thad Bostic are now associated with the business.

He also was active in Boy Scouts for over 25 years and was a District Governor of Rotary 1948-1949.

In 1934, he helped to form the 1st Federal Savings and Loan Association of DeLand, which is now a $375 million association.

At this time, it is indeed a privilege to present this ALTA Honorary Membership to Mort McDonald.

Morton McDonald: It came as a surprise when I was notified of this a few months ago. So I wondered what I might say, although my wife has always said, "Where there's two or three gathered together, you'll find me talking."

I will say this much. This Association has meant much to me. The business of abstracting and title insurance has meant much to me. To be exact, I started 53 and one-half years ago last Saturday.

However, there's very few of us that can brag about the fact that we are still in the same business, in the same company in which we started. And I'm proud of that. I'm also proud that over 52 years ago, I started with the same wife that I have today.

I've tried to give of my time. I find that I get repaid more all the time for more time that I give. Sure I don't work quite as hard. But when I'm at the office and I'm there every day when I'm not traveling or playing golf, so I enjoy it. I find that there's different problems coming up all the time. There will be different problems. They can be solved by those who will try.

Today I think the most serious problem we have is the looseness of our morals. Many get business any way that they can. It's not peculiar to the title industry. It seems to be throughout our country and we need to solve that problem. I can proudly say I never took a bribe under the table and I never gave one and I'm still getting along.

Those are some of the things we need to watch. I take as my guide part of the Scripture, "What does it profit a man, if he gains the whole world and loses his own soul."

Robert Dawson: It is my very great honor this morning to have this privilege. In the history of Lawyers Title Insurance Corp., there has been only one individual who has ever achieved an employment record of 50 years. Not only did that person have a going record of achievement for a particular company, but he also has tallied a very long list of accomplishments on behalf of the American Land Title Association and on behalf of the title insurance industry generally.

It is my very great privilege to present to that individual an ALTA Honorary Membership.

It was back in 1927 that a vigorous, energetic, ambitious young man named E. Gordon Smith sat down to begin work as a switchboard operator for Lawyers Title in Richmond, Va., at the ridiculously high salary of $10 a week. I'm sure it comes as no surprise to all of you to learn that Gordon very quickly mastered every job in the house, and he began to look around to see what else he might do to put that young company on its feet.

I think his attention was quickly drawn to sales and promotion and involvement with the general public. He pretty much directed his energies, his efforts, and his attention in that direction for a great number of years.

Even later when he became almost totally involved in corporate management, administration and development, he managed to maintain that outstanding flair for sales and promotion, and the ability to generate good will with customer groups and the public generally.

But his title insurance career was interrupted by a military commitment. From 1940 to 1945, he served in the Coast Artillery Corps where he commanded an anti-aircraft artillery group and achieved the rank of major.

Then, upon his release from service, he moved to Dallas and was soon named manager of a newly established southwestern office for his company.

Gordon retired from Lawyers Title last year after a most illustrious career as a senior vice president and the company's liaison officer for all of its lender and major commercial accounts. But the very next day, he started another career as a senior vice president in investor relations for the Glenn Justice Mortgage Co. in Dallas.

Gordon Smith has worked in every phase of the title insurance business. He has traveled to almost all parts of the country where title insurance is utilized. His hobby has always been his business. As a matter of fact, on occasion he has been accused of being a workaholic. He once was overheard to say that the only time he took a coffee break was when he was visiting the Home Office. That was propaganda.

Gordon has long been active on our industry scene. He has served ALTA in a number of capacities including two terms on its Board of Governors, and membership on the Federal Legislative Action Committee and the Directory Rules Committee.

Among his host of achievements, he helped to found the first joint title plant in Denver. That concept, of course, is emulated

throughout our industry today. He is a past president of the Dallas Mortgage Bankers Association and he holds an honorary membership in the Texas Mortgage Bankers Association.

This man has a great capacity for work, and for meeting and making a lasting impression on a great variety of people, and for furthering the goals of the land title industry.

I can tell you with all sincerity that not only did Lawyers Title benefit immeasurably from Gordon's involvement and his efforts, but the entire land title insurance industry owes him a great vote of thanks for his efforts on its behalf.

Gordon and Mary Frances Smith make a great team. So I would simply say to Gordon that for his contributions of the past, ALTA commends him. For the future, we wish him continued success. And, to his long list of honors and accomplishments and achievements, we would add this ALTA Honorary Membership.

Gordon Smith: The receipt of this award means a great deal to me and I certainly do thank all of you and the Board of Governors for giving it to me.

I considered taking a minute or two to reminisce about some of the things that I have witnessed during 50 years or more in the title industry. But those of you who know me best, know that if I ever get started talking it's kind of hard to shut me off. So I'm going to spare you on that one.

But I have seen a lot of changes take place in our industry. Maybe we didn't like some of those changes, but it is certainly my decided opinion that our industry is much stronger and much better now than it was 50 years ago.

I'll offer just one little bit of nostalgia. In 1927, when I went into the title insurance business, the size of the average loan on a residence was $3,600 and the average title insurance premium for a title policy was $8.75. The agent in the field who issued that policy was compensated for his labors by receiving the magnificent sum of $2.50 flat for issuing a mortgagee or loan policy of title insurance and he got 10 percent of the premium for issuing an owner's policy. There weren't very many owner's policies issued in those days. But Mort McDonald can well remember the sum of $2.50 flat for issuing the mortgagee policy.

I'm going to miss you fellows a great deal and the frequent contacts I had with many of you. I'm going to miss seeing lots of other folks at the state conventions which I attended in some considerable number.

I think I'd be remiss not to say that I regard it a great privilege to have spent my entire business career with Lawyers Title. I am unable to adequately express how much I'm going to miss my daily association with the fine people in that company. Thank you very much.

Why the AICPA Exposure Draft, Statement of Position on Accounting for Title Insurance Companies?

John E. Hart, Chairman, Insurance Companies Committee
American Institute of Certified Public Accountants
Partner, Coopers & Lybrand, New York, N.Y.

I originally had intended my presentation to be a discussion as to why the need for a statement of position on accounting for title insurance companies. My reasons for choosing this route were really two-fold. First, and quite frankly it was the safest route to take with an audience of this type. Secondly, I wasn't quite sure that I would find myself in a position to really discuss any subsequent information due to a delay in arriving at conclusions affecting your industry. However, I'm happy to report that our committee did reconsider the subject of accounting for title insurance companies at our meeting last Monday and Tuesday. Therefore, I'll throw caution to the winds and present a status report as to the current thinking of the committee which will be contained in the new statement of position.

In the case of the title insurance industry, some background may be necessary. My committee is called the American Institute of Certified Public Accountants (AICPA) Insurance Companies Committee and is charged with the responsibility of recommending generally accepted auditing standards and accounting principles for all insurance related activities. These would include property and liability insurance companies, life insurance companies, accident and health insurance companies, mortgage guarantee insurance companies and title insurance companies.

I believe it's sufficient to say that my committee stumbled into the fray just at the time that the Securities and Exchange Commission (SEC) was about to invoke rules that would require title insurance companies to depreciate title plants in financial statements filed with the SEC. The SEC had originally, at the time we entered the fray, issued instructions to certain title insurers that beginning at a certain point in time they would begin depreciating and charging against their income statements the cost of title plant. This, of course, would result in lower earning to the title companies and diminish, more importantly, what the companies considered to be a unique asset. How many times have I heard the words "unique asset?" In the opinion of the title insurance industry, this was improper accounting and would result in misleading financial statements. Our involvement was purely coincidental. My committee was in the process of preparing a statement of position on property and liability insurance companies which would deal with inconsistencies in accounting and reporting practices within the property and liability insurance industry. As a matter of course, we prepared an inquiry to ALTA's accounting committee as to whether or not it believed the statement of position, as drafted, should be applicable to the title insurance industry. At this time, we were not considering abstract companies or title agents. We merely were dealing with the title insurance industry.

We sent similar inquiries to the mortgage guarantee insurance industry and others. The ALTA committee responded by stating that it did not believe that the statement of position, as drafted, should be applicable to the title insurance industry. In fact, they went so far as to courteously reprimand me for even putting the title insurance industry in the same category as property liability companies. I assure you that I have become a believer.

Your committee also responded by saying that it believed that our assistance was necessary to review the title industry accounting practices and in particular the accounting for title plants. It believed that we should review at least the accounting for title plant and hoped, of course, for our concurrence with the existing industry practice. This is the point, as I said previously, that my committee entered the fray.

We were looking at our accounting practice for title plants where three authoritative bodies—namely the title industry, the SEC and the Internal Revenue Service (IRS)—had already, to some extent, arrived at different conclusions.

For those of you who wish more background, as far as the involvement of the Internal Revenue Service and the Securities and Exchange Commission, I refer you to an article by Charles Coffman which was published in the January 1978 *Agents View*, entitled "Up and Down Your Title Plant."

Our committee then turned to its process of review and proceeded to do its homework. We met on several occasions with the ALTA Accounting Committee and representatives of CPA firms who were auditors for title insurance companies. We received and reviewed numerous copies of statutory and regulatory financial statements, as well as the annual reports to shareholders of the various title insurance companies.

I would like to emphasize that our recommendations—as they deal with the accounting principles to be followed by anyone—strictly deal with those statements which are prepared in accordance with generally accepted accounting principles. It is not our intention to in any way change or recommend changes to the regulatory accounting practices which the insurance departments promulgate. Likewise, it is not intended in any way to influence or recommend changes to the taxing requirements which are imposed by the IRS.

The committee, after approximately one year of considering the issues, published an exposure draft for public comment May 1, 1978. As your president pointed out, a public hearing was held July 17 in Los Angeles.

I would like to commend your industry for becoming fully involved with the issues. Your committee, as early as 1974, attempted to promulgate authoritative accounting

principles within your industry to be followed on a uniform basis. You must be commended for that. Most people in the insurance industry have a tendency to sit back and allow another authoritative body to write the rules for them and then merely react. I must say that your committee and your industry, was completely prepared for the Insurance Companies Committee. It was not necessary to scramble for authoritative documentation in order to support their conclusions.

Your response to the exposure draft was overwhelming. We received over 200 responses to the exposure draft. Your presentations at the public hearing were equally impressive and professional, as well as being informative.

Two very important factors emerged from both the responses and the public hearing. One was the universal acceptance of the accounting practice followed within your industry for title plant. Two, the impact of our proposals on entities other than the title insurance companies.

In the published exposure draft of the statement of position, the committee only considered its applicability to the underwriting title insurance company. We were concerned with the very limited number of title insurance companies that were filing with the SEC. The number of title insurance companies, while many, were not comparable to the number of abstracters and title agents that would possibly be affected as a result of adopting accounting procedures relating to the title plant.

The committee, I must confess, had not considered the impact on companies other than title insurance companies.

Secondly, our committee had consistently said we were not trying to adjust or change statutory accounting principles. It came to our attention at the public hearing that many of the title abstracters and many of the agents were impacted. Particularly affected were those title abstracts and title agents in Texas and California where it is necessary to file financial statements in accordance with generally accepted accounting principles. As I previously said, the committee had consistently taken the position that we are not attempting to adjust statutory requirements, therefore, regulation would not be affected by the adoption of this proposal. It was pointed out to us that this was an erroneous conclusion and that agents and abstracters who were required to file with various regulatory authorities would have to adopt generally accepted accounting principles. This would purportedly require the amortization or the depreciation of a title plant, which in many cases would affect their ability to do business within those particular states.

There will be a new exposure draft. A new exposure draft, as opposed to the promulgation of a final statement of position, which will redefine the problem. The exposure draft will be issued sometime, hopefully, within the next two months.

Let's talk about what will be in the new exposure draft. As you know, the old exposure draft addressed itself to four principle issues: premium revenue recognition, losses, loss adjustment expense and title plant. The new exposure draft also includes these issues, plus two additional issues: one, evaluation of investments and recognition of realized and unrealized gains and losses; and, two, real estate used in the operations of the business of the title insurance company.

The committee believed that it was understood that the sections in the property and liability statement of position dealing with investments and real estate would apply to title insurance companies. However, it became quite clear at the public hearing that this was not understood by all companies. We agreed that in order to completely separate the title insurance industry from the property and liability industry and to fairly have a due process, that these new proposed principles, should be exposed to the title insurance industry.

The details of the proposals as they relate to valuation of investments and the recognition of realized gains and losses I'll leave for your reading in the new exposure draft. Primarily there are no surprises. They, in effect, address themselves in most cases to current statutory accounting principles, such as bonds should be carried and amortized, provided that the company has both the ability and intent to carry them to maturity, that temporary decline in investment of bonds should not be recognized but that permanent decline in the value of bonds should be written off. Stocks, investments in equity securities, should be carried at market value. Preferred stocks with redeemable provisions should be accounted for as bonds. Nonredeemable preferred stocks should be accounted for at market.

I don't think there will be any surprises, however. To be fair to the title insurance industry, we felt that it was necessary to expose the section.

In the premium revenue recognition section, there was general agreement that front end recognition of revenue was appropriate, however, some inconsistencies between title companies became quite apparent, particularly during the public hearings. Two issues were raised.

First, when should binder premiums be recognized as revenue. And, two, the need to estimate premiums on policies issued by the agent but not yet reported.

We noticed at the public hearings that testimony, as it related to both of these problems on premium revenue recognition, conflicted. The committee's conclusion as it relates to this is as follows:

Revenues should be recognized as earned when the title insurance company is legally or contractually entitled to collect the premiums. In most circumstances, revenue would be recognized on the effective date, however, the binder day would be appropriate if the title insurance company is legally or contractually entitled to collect the premium on that date.

The revenue recognition, as it relates to agents, was one we believe of a late reported nature. We came to the conclusion that if reasonably estimable, revenues relating to policies issued by agents should be recognized when the policies are issued using estimates based on past experience and other sources. If not reasonably estimable, the revenues should only be recognized when the agent reports the issuance of the policy company.

All these changes, of course, will be subject to your review and comment as a result of the reissuance of the exposure draft.

There have been no substantive changes in the exposure draft in the loss section. The committee still concludes that losses, including a provision for incurred but not reported losses, should be estimated at the time the premiums are recognized as revenue, and should include an estimate for recoveries.

Estimated recoveries on unpaid losses should be reported as a reduction of the unpaid losses with disclosure in the financial statements as the amount so deducted. Recoveries on paid losses should be reported as an asset. Very little change, with the exception of the classification of the recovery.

The committee's recommendation in the area of the loss adjustment expense will not require the accrual of internal settlement expenses. This change again shows the unique nature of the title insurance industry as compared to property and liability companies. In the title insurance industry, we subsequently learn that most companies considered any settlement expense of an internal nature to be period or fixed costs and charged them against their financial statement currently. We now concur with that position.

Now, let's get to the area probably of most concern to everyone and that is the title plant. As I mentioned earlier, the committee did not intend the statement of position to be applicable to entities other than underwriting title insurance companies. However, it became quite apparent that the effect of any promulgation that we would have on title plants would be interpreted as being applicable to all entities who own and operate a title plant in their operation.

The committee considered whether or not we should recommend that the entire statement of position should be applicable to title agents and abstracters. We concluded that we had not done a sufficient amount of work as it related to the revenue, expense stream and balance sheet presentation of title abstract companies and title agents. We did, however, feel that in the area of title plant, this statement of position also should be applicable to title insurance companies, title abstract companies and title agents.

I'd like to give you some idea of the committee's conclusion as it relates to title plant. The committee has concluded that a title plant is a tangible asset that is unique to the title insurance industry. If properly maintained, the historical information in the title plant has an indeterminant life and does not diminish in value with the passage of time.

Cost incurred to construct or purchase a title plant should be capitalized as an asset and should not be depreciated because the costs provide a reasonable historical cost basis for presenting the title plant in the balance sheet.

That's some good news and some bad news. The committee has then said that we believe that there is a portion of the title plant which is comprised of information storage and retrieval, the cost of which is distinguishable from the initial cost incurred to organize and summarize the historical information in an effective and useful manner. This, we believe, has a determinable useful life. There is substantial discussion in the exposure draft relating to the various storage and retrieval systems. Therefore, we concluded that cost incurred to design or acquire a

system to store and retrieve historical information in the title plant; transcribe the summarized information into the storage and retrieval system; convert the information from one storage and retrieval system to another, or modify or modernize the storage and retrieval system may be expensed or capitalized and depreciated over its useful life with the option of the immediate expensing or capitalization over its useful life which would mean the separation of the cost, the storage and retrieval system from that of the title plant.

We would like comments from the title industry relating to the separation of the storage and retrieval systems from the title plant. That's the purpose of the exposure draft. We realize that we're asking for something that may be rather difficult. However, we believe that a discipline is necessary in determining the cost of storage and retrieval systems as opposed to the title plant.

The committee also concluded that while we believe the title plant has an indeterminant life and does not diminish in value with the passage of time, certain circumstances may indicate that its value has been impaired.

Those circumstances may include the following:

- Changes in legal requirements of statutory practices
- Effects of obsolescence, demand and other economic factors
- Actions of competitors or others that may affect the present competitive advantage
- Failure to update or maintain the title plant properly on a current basis
- The sale of the right to use or copy a title plant
- Abandonment of a title plant or other circumstances that may indicate obsolescence.

Again, we say that these are factors that would require a review of the impairment of the title plant.

We then go on to state that if the value of a title plant has diminished below its carrying value, the plant should be written down to its estimated net realizable value. Estimated realizable value could be defined as the lesser of the capital amount of future net income or cash flow, using an appropriate rate of return or the amount that would be obtained from the sale or disposition of a title plant to an unrelated third party at an arm's length transaction.

There are other areas in the title plant section that I urge you to read when the exposure draft becomes available. In that section we also discuss cost to be capitalized, which cost should be capitalized, including capitalization of back plant; the purchase of a title plant either separately or as a business combination and recommended accounting procedures; the treatment of maintenance expenses; the treatment of cost of title searches, and guidance as to when the value of the title plant may become impaired and the recommended accounting for the impairment. We also covered the sale of all or part of a title plant. These are all areas which will be separately discussed in the new exposure draft. I shall leave the details for your review and perusal.

I intend to forward a draft copy of the new exposure draft to the ALTA accounting committee for their review of factual information. A meeting is to be scheduled with the Securities and Exchange Commission sometime during the first two weeks of October. I would like to explain that the SEC has stated in response to our exposure draft that they believe that a title plant is an intangible asset and should be amortized over a period not to exceed 40 years.

I can understand how someone can come to that immediate conclusion. I believe without the work that our committee did in arriving at our conclusions it is logical to look at title plant and conclude that it is an intangible asset. However, I don't believe that anyone would arrive at that same conclusion after involving themselves totally with the title plant, the processing, the value and the historical nature of the plant. What possibly could happen is that the SEC may invoke rules different than those recommended by my committee to the Financial Accounting Standards Board. It happened very recently in the oil and gas industry.

I intend to present the revised statement of position to the Accounting Standards Executive Committee during their meeting in the first week of November and request approval to re-expose. Once approved, it will be distributed within the title insurance industry including the title agents and abstracters. I would urge you to respond as vigorously to the new exposure draft now that it may contain matters more to your liking as you did in the circumstances where it contained matters which you strictly opposed.

It would be extremely helpful that the vigorous response from the title abstracters, title agents and title insurers pointed out areas of controversy or areas where there is disagreement. By the way, I don't expect complete and total agreement with the statement of position as currently drafted.

I would like to hope that the due process that our committee followed and the reissuance of a new exposure draft, after giving consideration to the submissions by industry representatives, would serve as an example for the necessity of cooperation between the industry and rulemaking bodies. I would like to commend your industry, particularly for the professional and gentlemanly-like conduct, in dealing with an extremely difficult problem.

In closing, I'd like to remind you—as I did my committee at our last meeting—of the words of former British Prime Minister Benjamin Disraeli, who said, "It's much easier to be critical than to be correct."

Congress vs. Carter: The Guns of Autumn

Don Farmer, Senate Correspondent
ABC News, Washington, D.C.

Good morning, ladies and gentlemen. Harry Reasoner, whom I know you know of, who used to work for ABC and is with *60 Minutes* again on CBS, once told me that every reporter in Washington should be bodily dragged out of the capital city at least once every three months so that they can go out into the countryside and see how the real people live and get in touch with reality.

I think Reasoner's a wise man and so I thank you for giving me this chance to drag myself out of Washington to come here to this place—this typical middle class American community—to find out how Americans really live. I thank you for that. If this is Middle America, we've been making a mistake for quite some time.

A highly placed, sometimes reliable source at the Capitol told me just before I left last night, that the president in fact, behind the scenes, was pushing very hard to make the speaker of the House, Thomas "Tip" O'Neill, the new Pope. Apparently, the president felt that then he only would have to kiss O'Neill's ring.

I'm going to tell you a story about O'Neill just a little later. He's an incredible man and he gets exactly what he wants. But there's another report I need to give you first. There is a computer in the office of Rep. Robert Dornan. He is a Republican and a very conservative congressman from Southern California. He has a computer, as many of the members of the House and Senate do, and his is called the Diablo 1260.

Well, I'm told—and this is a true story—it has been given a wide berth by all of his female employees. Did you read about this? It's true. The last four women who have had any dealings with that computer within two weeks have become pregnant. And it's causing quite a stir at that end of the Capitol. There's no punchline to this. It's a true story. His female employees have refused to go anywhere near the Diablo 1260 and he's now having to use his male employees on the thing.

And the congressman, with his sense of humor, is pinning diapers on the sides of the computer.

I'm also told that Sen. Proxmire's very unhappy these days. He's always unhappy about this or that. He's especially unhappy now because mice are infesting the Senate building and the Senate office buildings as well as the Capitol. Proxmire, as you know, is a champion of attacking the bureaucracy with his golden fleece awards. And I know that your organization has dealings with him from time to time. He's now very upset because apparently in its bureaucratic wisdom, Senate leadership has, rather than hire people to catch the mice, hired people to go around and scare them away every morning and go bang boards together in front of the holes through which the mice come in.

I don't understand that, but Proxmire is doing a report on it and we'll hear about it shortly. I've seen no mice around here in this place, so I'm very happy to be with you. It's good to be away from Washington, even briefly.

It's no longer true, as David Brinkley once said, that Washington has all the charm of the North and all the efficiency of the South. It really has changed. As I recall, you had your convention there last year. So if many of you were there, you'll remember Washington as a city which is no longer a sleepy Southern town with terrible weather and a very high crime rate. It's an improving city. The prices are unbelievable, as your staff who lives and works in Washington has begged me to report to you. The cost of living there is extremely high.

About six months ago, a *7-foot-wide* house in Georgetown sold for $120,000. And they just built a new YMCA in downtown Washington for all of the middle class people to join and the annual dues are $650 a year at the YMCA. It's a strange city and it is out of touch with reality.

When I told some friends of mine that I was coming to be with you here today, I was cautioned not to tell any title insurance jokes. And I thought what I should do is tell all the title insurance jokes I could think of. And I was told not to do that and I asked why not.

My friend answered, "Because if you do they just may laugh at them."

And I said, "Well, what's wrong with that? That's the purpose of jokes."

And he answered, "You show me an industry that can laugh at itself, and I'll show you an industry that bears watching."

One other example about why I should not talk to you about what you know a lot better than I do happened to your president-elect just last night in the cocktail lounge. Roger Bell was in the bar and he saw a man standing at the other end of the bar coughing and wheezing. Roger Bell, being a gregarious and outgoing fellow and an expert on many things, went over to him and said, "Excuse me, but I couldn't help but notice that you have a cold and I can help you. What you have to do is take five aspirin and drink about a gallon of orange juice and stay off the hard stuff. Go up to your room. Ask for extra blankets. Get under the covers. Sweat it out and you'll be okay."

The guy said, "Yeah, thanks very much."

And Mr. Bell said, "I'm serious. I know what I'm talking about."

And the guy said, "Yeah."

"I can really help you. I'm Roger Bell. I'm the president-elect of ALTA." The guy said, "Thank you, Mr. Bell. I'm Dr. Mayo of Rochester, Minn."

So I'll not be telling you any title insurance jokes today or talking about your business very much. I'll try to talk a little bit about what I do know a little bit about and that's Congress and the television news business in Washington where some of the biggest jokes of all time live and work.

"So congressmen and senators control the tools of our trade to the point where they often control what we, in fact, can report. We don't use sketches of floor action in the House and Senate because we want to."

I left behind 435 members of the House last night when I came here. Well, 434. I understand Mr. Gibbons was here this morning. So there are 434 members of the House and 100 senators or so who were hard at work solving our problems or creating some more for us. Several laws of nature are at work in Washington whenever Congress is there.

I don't know who Murphy was, but he had a lot of laws named after him and I'm sure you've heard some of the more humorous ones. Some of them really do apply to Congress and I wrote down a couple.

One is, "Everything takes longer than you think it will." That's certainly true there.

"It will always cost more than first estimated." That's always true in Washington.

Every solution brings new problems. And I guess most pertinent is the one that says, "Blame will never be placed if enough people are involved."

Later today the Senate is scheduled to begin arguing once again the appropriations bill for the departments of Labor, and Health, Education and Welfare.

It seems simple enough—just another money bill; but it's not. That is, as you may recall, the vehicle for what has become one of the saddest and most emotional arguments in the country, every year, the abortion bill.

So, if you ever yearn to be in Congress and think that you can do a better job (and you might well could), just consider today you are here in this beautiful place with good friends and good people. Back there senators are yelling at each other and being yelled at by hundreds or perhaps thousands of angry women on both sides of the issue carrying those signs, trying to decide what to do about what has to be one of the most unpleasant controversies of our time.

It's a busy week there. That's one thing that's coming up today. Tomorrow the House, I'm told, will try to decide on an ethics bill. They've been arguing about ethics I suppose since the first election ever. They're trying to police the incomes of their own members of the House. The bill would set limits on how much the United States representative can earn outside of his congressional salary, which as you know is $57,500.

The ethics bill, I think, is one of the major reasons (and I doubt that very many members of the House or Senate would admit it) why so many people are leaving the Congress this year. It's an all time record. Ten senators that I know of are retiring voluntarily. These are not people who are running for something else. These are people who are retiring from the Senate.

Thirty-one congressmen—that was the figure I had as of an hour ago—have given up their seats to retire or to run for other office. At least five of those who ran for other offices—governor or senator in most cases—were defeated. Maybe some are from your home states. In Arkansas, two congressmen were defeated—Tucker and Thornton. Kasten of Wisconsin, Fraser of Minnesota and Frey of Florida all lost when they tried to run.

I've asked a lot of members of the House and Senate why they're leaving. Those who are willing to tell the truth will tell you that it is simply not much fun anymore. I suppose that could be viewed a couple of different ways.

But one congressman said recently, "Politics has gone from the age of Camelot when all things are possible to the age of Watergate when all things are suspect."

Sen. Brooke of Massachusetts confirmed that assessment when I talked to him last week. He's been through a bad time recently. And I don't know what the truth is on that one yet.

The press—and I include myself—is especially interested in the wrongdoings of our public officials and should be. But sometimes I think we go overboard just as sometimes they do in milking or bilking or cheating the public and that kind of mentality is not creating a good situation for the members of Congress.

They are quitting in droves. Some of whom are leaving, of course, would simply like to make more money. A person who is talented enough or lucky enough to be elected to the U.S. Congress, often is talented enough or lucky enough or well placed enough to make a lot of money in some other private concern. Disillusionment and dissatisfaction are major factors. One good example of that is Rep. Otis Pike, a Democrat from Long Island, N.Y. Pike is one of the more articulate and frank members of the House. He's retiring and as he explained in a newsletter to constituents last spring, "Quite frankly, my motivation is slipping. People bug me. I have no privacy. I don't like campaigning. I don't like fund raising."

Pike went on to say that the wisdom of the ages has not been secretly entrusted solely to Democrats. Both parties, he said, are indifferent to the national debt, the deficit or any obligation to pay our bills or balance our budget. Said Pike, "I am tired of wasting my time on drivel. I'll get a good pension anyway."

Well, you don't hear congressmen talk that way very often. He means exactly what he says.

Pike was ahead of his time, I think, in some ways. But also, I think he's wrong in a sense. And I think that feeling has changed somewhat, even though there are record numbers of people retiring. There was that election in California this year and that has really changed the mentality right now.

One congressman often quotes Murphy's law and she says, the more urgent the need for a decision, the less apparent becomes the identity of the decision-maker. And that's that kind of feeling that has caused some people like Otis Pike, good men, to retire.

Things have changed since Pike and some of the others have decided to quit and to go into private life. Howard Jarvis of Proposition 13 came along, for one thing. In one sense, California has come to Washington. Thirteen may be the luckiest number for fiscal conservatives who truly believe that lower taxes and lower budgets and less spending and less regulation are not only helpful, but necessary to the future economic health of this country.

I think that kind of thinking is here to stay and there are some good examples right this week. The House is doing money matters. Already this month the House has voted on severe spending cuts and several appropriation bills—labor, foreign aid and others. There is a certain cynicism, I think

you might apply to the House of Representatives in this, because what it's been doing is it has been cutting, say, two percent or four percent across the board from a particular department's budget and saying in effect to the bureaucrats, "Okay, you're spending too much money. Take this much off and you figure out where to make the cuts."

That's not very gutsy because it's much easier to do that than it is to say, "Well, let's take the money out of this or let's take the money out of that, because when you do that, the screams start rising from the district and all of the interest groups, special and otherwise, say, "Yeah, we need to cut, but we don't want to cut our budget."

So while they are cutting, it is not the kind of stand-up-and-be-counted bravery that you might otherwise hope for.

Russell Long, known as Mr. Tax in Washington and chairman of the Finance Committee, is all powerful on tax legislation and his way to cut spending is to cut taxes because he figures eventually you're going to have to cut the spending because you're cutting the revenues. Russell Long's motto is—"Don't tax you. Don't tax me. Tax the fellow behind the tree." That's what he says in every committee meeting when he's talking to make the point. Don't come to me about a tax cut for you. We've got to talk about the whole picture.

There's another Russell Long story that I like, having to do with ethics in Congress. Russell was a young high school lad and his Uncle Earl Long, as you know, was then lieutenant governor and became the governor of Louisiana. Russell went to his Uncle Earl and said, "Uncle, I'm in junior high school now and I'm on the debating team and on Friday night we will debate the topic of should ideals be used in politics. Should I take the affirmative or the negative?"

And Uncle Earl said, "By all means take the affirmative."

Russell was a little surprised, considering the history and tradition of the Long family in Louisiana politics. He said, "You mean to say that ideals should be used in politics?"

To which Earl replied, "Hell, yes, use ideals in politics. Use anything you can get your hands on."

The voters are saying something new this year. Jerry Brown was one of the first people who realized it. As you know, he changed overnight from a swaggering anti-Proposition 13 governor to a somewhat shuffling, born again tax-cutter. And he looks as though he may very well win re-election in his new posture.

Just last Tuesday, the governor of Massachusetts, Michael Dukakis, was confident of re-election in his party's primary. Unfortunately for Dukakis in his campaign when he ran the first time his slogan on all the billboards was "No New Taxes."

Well, it took 18 months or so until he started raising taxes and he was defeated on Tuesday in his own party's primary by a man who was the chairman of the Massachusetts Port Authority but not terribly well known outside the state. His name is Edward King, a fiscal conservative, who ran on a Proposition 13 type ticket. King also ran against abortion; in favor of capital punishment, and against the Equal Rights Amendment. He beat the incumbent governor in a surprise and I think the message is clear. Proposition 13 and all that it implies is something that politicians from every state in the country now have to pay attention to. And I think so do you and so do we as interested media.

Sen. Brooke almost lost. He won by 53 to 47 percent. He was almost defeated by a 36-year-old television talk show host, a far right conservative, named Avi Nelson. He's a Rhodes scholar and a very bright young man, who campaigned again on the Proposition 13 kind of campaign. He almost beat Brooke who's a 12-year incumbent, a liberal-moderate, and who of course is having some other troubles at the moment. But the consensus in Boston was that Brooke's personal and financial problems were not the cutting edge in the campaign after it all got in the papers and got out again. It was that issue, fiscal conservatism—Proposition 13—and it almost cost the country the only black member in the Senate and the only state-wide Republican office-holder in Massachusetts.

Brooke said afterwards that anybody who doesn't realize that the voters are fed up with government spending must be smoking something strange. And he's right.

Another senator said the other day that the boys here—meaning the Senate—are in such a mood that if someone introduces the Ten Commandments, they'll cut them down to eight.

Speaking of cutting, the Senate and House conferees have approved a fiscal 1979 budget which is the lowest budget deficit in five years.

The Congress has approved a fiscal year 1979 budget. It's almost $39 billion, but it is the lowest in five years. That is impressive, I think. The question is really whether Americans trust Congress to spend all the money that they are still spending. Will Rogers never did. He said that the country has come to feel the same when Congress is in session as when a baby gets a hold of the hammer. I don't think it's that bad. I think it's more a matter of communicating.

That's one of our favorite words in Washington—communication. When you're in the business of communicating or trying to, it's an unfortunate word not to understand. Communication has to do with the way we report the news and it also has to do with the way your members of Congress relate to themselves, to their constituents, to the president, and to the media.

President Carter may have had some of the most difficult moments with communication in the history of the presidency when he first came to office. As you recall, he won the presidency by campaigning against Congress and against Washington. Then he got there and he found there were no red carpets and no palm fronds strewn for him when he arrived. And, boy, he had some trouble.

Jimmy Carter's way of dealing with Congress back in the early days of his administration was to throw at Congress tons of proposed legislation aimed at reforming the entire world overnight, and then sit back and refuse to answer his telephone and wait for success. Well, it doesn't work that way. He tried. God knows he tried. He brought with him a loyal staff of helpers and experts and within probably 60 to 90 days, they managed to alienate every literate member of the House and Senate.

"It's very important for us to try to continue to tell it like it is. Our job is to keep on explaining what's going on in the world as best we can."

The Speaker of the House used to call Hamilton Jordan, Hannibal Jerken. They really didn't get along. Some members of the House and Senate—who would deny it today—used to refer to Frank Moore, who is President Carter's congressional liaison man as the Fool on the Hill. It was really bitter.

Mr. Carter proposed an energy plan. It was so confusing and so inadequate in some ways and so tempting for congressional sharpshooters that the president's people are still picking the shrapnel out of their skins. It was a most incomprehensible program. And on a subject like energy, which is regional and parochial and special interest in design, there just was no communication between the White House and the Capitol.

The President decided to shut off a couple of dozen water projects, which were the prize possessions of some members of Congress. You just don't do that on the first day in a new building. You just don't say, well, it's really nice to be here; I'm taking away your new dam, senator. It doesn't work, and it didn't work. It took him a long time to figure that out.

He said no when a lot of military men wanted to build a new aircraft carrier. He's won that one. He said no when they wanted to build a new B-1 bomber. He's won that one too. But, he made a lot of enemies over it.

He also, however, has shown a lot of courage And sometimes when we start to play the communications game—the president against the Congress—we forget that whether we agree with him on the issues or not, he has shown a lot of guts. I think Panama's a good example of that. It probably is the most unpopular foreign policy decision since World War II that I can think of. The president decided it was time to do it and he went ahead with it. And as you know, it took up one-fourth of the entire calendar year of the Senate's working days to debate, filibuster and worry about the Panama Canal treaties.

Like it or not, the treaties passed. I think it took guts for him to do it, even though it may have seemed at the time like political suicide.

On energy, as I mentioned before, as unsatisfactory as the current natural gas bill is and it is unbelievable. It has something like 17 different pricing provisions in it and is voluminous.

Still he has tried it. He's the first president to attack energy in a comprehensive, fundamental way. It's not a very good bill, but it's better than anything that has been proposed so far. It was March of 1977 when he made the speech calling the energy situation the moral equivalent of war and

we're now almost into October of 1978. We have gone 18 months with no energy policy.

And a lot of it was his own fault. He did not communicate. He threw a massive piece of social, political and economic legislation to Congress and said, "Okay, you guys, do it." Well, Congress is not the Georgia legislature and he learned that very quickly. Communication was a problem.

He did have some successes and energy is about to be one. He signed the strip-mining bill after President Ford had vetoed it at least twice. He simply was willing to fight for it.

Do you remember last summer that the President was all in favor of a $50 tax rebate for everybody and they told him he was crazy? They said it wouldn't do any good, that it would be like throwing money out of an airplane or throwing money down the stairs. But the president insisted. Then Al Ullman, chairman of Ways and Means Committee, bit the bullet and bit his tongue and said, "Okay, Mr. President, I'm for it."

About a week later the president said, "Well, we don't need that."

I'll tell you, that is not the way to make friends on Capitol Hill.

Ullman is bitter to this day in private and it's made things difficult for the president on the tax reform bill. It has gone through the House not the way he wanted it, and Russell Long is going to change it even more before it gets out of the Senate.

Mayor Daley once had some troubles in Chicago and he said, "They have villified me. They have crucified me. Indeed, they have even criticized me." I'm sure that Jimmy Carter has felt this way, too.

Clearly the president was not communicating to Congress and they were not communicating with him and things were really looking terrible.

Then all of a sudden came Camp David. For 13 days the reporters hung around up there on the mountain top interviewing each other, the maids in the motel and the gas station attendants and asking them what they thought about peace in the Middle East. It was really nonsense. It was not one of our finer 13-day periods.

But inside, as we found out later, Mr. Carter was butting the heads of the two states together and he came out with a dramatic, if yet unproven, set of agreements.

In Congress it was sort of like Clark Kent dashing into the closet as the mild mannered reporter and coming out with a big "S" on his chest and saving the world. It was that kind of transformation. And the "S," as we found out, stood for Shalom and Ma'a·Salaam, the Hebrew and Arabic words for peace, and it was quite an achievement.

Begin and Sadat kissed and made up again on live television in the White House. I hadn't seen Jimmy Carter smile so much since he found out how much money his brother was making in the public relations business.

Ironically, at ABC News headquarters in New York that night, there were at least 500 phone calls from viewers who were irate that we dared to interrupt *Battlestar Gallactica* for peace in the Middle East.

But I thought it was a good thing they did interrupt. I think it was one of the nicest things I've seen on television in a long time. One-half hour live of current events becoming history before our eyes. And after all, *Battlestar Gallactica* will be back next week.

Jimmy Carter became a hero overnight in Congress and I don't know what that says about the Congress or about us, but it's true. He went from being the bad guy in the black hat to the good guy in the white hat almost overnight.

He spoke to a joint session of Congress Monday evening in the House of Representatives and I've never heard the president get that much applause in a long time.

Well, the euphoria has waned a bit. The Arabs are fighting among themselves over how best to destroy Israel. And the Israelis are fighting among themselves as to whether they can settle this sand dune or that, in the West Bank or Sinai. And the resolution of that dispute will not come so easily. We can, of course, hope.

A man who spoke to you earlier today—Sam Gibbons of Florida—a Democrat on the House Ways and Means Committee. He's a nice man and he tries to help out his constituents.

About a year ago, one of his constituents came to him with a problem. His name was Joe Cortina and he lived in Tampa, Fla. Joe Cortina imports musical instruments from Europe. In about 1970, Joe Cortina imported a large supply of musical instruments from what he thought to be West Germany, and he paid the duty. They put them in a brokerage warehouse. About a year later, while still in storage, the Customs Bureau came down on Joe Cortina's head, saying that the instruments were not from West Germany, but East Germany. He had to pay a penalty and enormous customs duty. I think the duty is something like four times that on goods from the East Bloc countries.

Well, of course, Cortina, a small business man, is a man of modest means. He was very upset and didn't know what to do. He couldn't touch the East German exporter because he was in East Germany. The brokerage house had gone out of business, and Cortina was going to be stuck for $100,000 in duties and penalties.

So he went to his congressman as we're all taught to do from childhood. So he went to see Sam Gibbons and said, "Congressman, can you help me? I'm not a criminal. I didn't break any laws intentionally."

Sam Gibbons is a nice guy. He said, "By God, Joe, if there ever was a case for a private bill, this is it." As you know, a private bill is a piece of legislation introduced to help one person with one problem. They're routine and they're done by the hundreds every year.

Sam Gibbons then introduced a Joe Cortina relief private bill. And Joe figured that it was only a matter of time; that it would go through the House and Senate—as private bills do—and that he would be relieved of his troubles.

What Sam forgot about and what Joe never knew about, but does now, is that when the bills go from one house to the other, often legislation is used as a vehicle for other legislation. And so what happened was, the Senate used the Joe Cortina private relief act as a vehicle for another minor piece of legislation. It was called the Natural Gas Pricing Act of 1977.

Joe couldn't believe it. His little problem with the tubas and the flutes from East Germany suddenly became the most controversial piece of domestic legislation in this decade.

I understand Mr. Gibbons has since introduced another piece of legislation, not willing to wait a year and a half for the natural gas bill, and that Joe is out of trouble. I guess that's failure to communicate.

Things are improving, however. Some congressmen are learning very well how to manipulate the media. Often at the beginning of an interview they will ask how are things going and how much time we have. I'm afraid to tell them sometimes, although we should, because it's not fair to ask a question and have a senator launch into a ten-minute answer if you only have a one-minute interview. So you try to tell them. But if you tell them, some of them are very clever at answering a question you didn't ask for the exact amount of time you've told them they have. On live television you can't say, "Shut up, dummy. That's not what I asked you."

The other night after the president spoke and before the Patriots football game, we had no trouble getting Senators Byrd and Baker on our air. That's a good example of harmless manipulation of the media because they both knew—and in fact admitted to me the next day—that the reason they came was not because of my sterling questions, not because they wanted to be on national television, but because they knew how many people would be watching since the Patriots game was coming on in about ten minutes.

I guess that is harmless manipulation. But I want to take just a minute to tell you how congressmen, senators and politicians use the media in a way that I think is wrong. Maybe you can help us with it somehow.

The president has Jerry Rafshoon now whose job it is to make him look good. I guess that's all right, but I think the Congress is the worst offender.

I'll give some examples, very briefly. Vice President Mondale is the chief lobbyist of the natural gas bill. He's spent a lot of time on Capitol Hill twisting arms of senators. We wanted to do a story to show how important it was to the vice president to be up there. They repeatedly refused us permission to show his picture. They can do that because we, as legitimate members of the media, have to have permission to take cameras anywhere in the U.S. Capitol. However, if you're a tourist and come with your Instamatic, you can photograph anything you want except in the chamber itself.

The day when the D.C. voting representation bill was up and Mrs. Martin Luther King, Jr., and some other important people were coming up, we wanted to get a picture of them going up the Capitol steps into the chamber. We were denied, because the sergeant-at-arms was unhappy because a local television station had stood on the steps the week before and had done an interview with somebody without asking permission. It's that kind of thing which makes our job very difficult.

Congress is the worst offender. We have to have permission to take pictures anywhere. And I'll give you another good example. During the Labor Law Reform Bill, we wanted to make videotape of the Senate

post office to show the enormous amount of mail that had come in perhaps from some of you against the Labor Law Reform Bill. The mail to Senators from people opposing that legislation doubled over three weeks. The Senate leadership was in favor of that legislation so when I went to them asking if I might take pictures in the post office, they refused permission. It took me a week of phone calls and meetings with the sergeant-at-arms. They finally consented because we were starting to put the heat on them. We were to be there at 6 a.m. Monday. At that hour on Mondays is when the mailbags come in from the downtown post office and we thought to get a good picture to show our viewers how many people out in the country didn't want that piece of legislation. Our camera crew arrived at 6 a.m. and was admitted into the post office at 9:15 a.m. By that time all the mailbags had been sorted and dispersed. They got there in time to get wonderful pictures of empty mailbags. That's the kind of manipulation that politicians can use if they want the media not to be able to report. This is the case at least with *our* tools which are cameras and microphones. Print reporters can describe the scene; but when you see it with your own eyes or hear it with your own ears, I think it has more impact.

There is a rule in the House that you're not allowed to take pictures of any House employee in the exercise of his or her duties. Well, that sounds wonderful. It's to keep us from intruding on them since they're all working so hard that we don't want to waste their time, right? Wrong.

Wayne Hays, whom you may remember, once got angry at an elevator operator. So he took all the stools out of the elevators so they'd all have to stand up. We wanted to do a story on that and were not permitted photographs since it would be against the rules. The real reason we couldn't was because the elevator operators—mostly young people—are making $8-10,000 a year part time running automatic elevators. I'm not kidding. The elevators are automatic. Any child could run them.

But when we try to do a story on how dumb it is to be paying taxpayers' dollars for people to run automatic elevators, it's not allowed. Well, you can't do this story on television very well without showing it.

We're not allowed to take pictures in the recording studios where senators and congressmen have free use of very sophisticated broadcast equipment to make videotapes and radio programs to send back home to the local stations.

We're not allowed to take pictures at any time in the gymnasiums—there are two and they're building a third—or in the saunas or the swimming pool where the senators go to improve their bodies and their minds at our expense. I'm not opposed to them having a gymnasium. I just think we ought to be allowed to take pictures of it, if it's relevant to something that we're trying to do. I perceive that to be in the public interest.

So congressmen and senators control the tools of our trade to the point where they often control what we, in fact, can report. We don't use sketches of floor action in the House and Senate because we want to. We use them because we're not allowed to take pictures.

We don't always stand in front of the Capitol dome because we like it, we do that because we have to.

I want to mention the Labor Law Reform Bill very quickly. I think it's important to you as an organization of businessmen. Not since World War II has small and medium business been as effective in Congress as it is today. The watershed was Labor Law Reform.

The U.S. Chamber of Commerce and others got into that thing. They discovered that in terms of fund raising political action committees were becoming as popular as having rock stars do concerts for you. They discovered that they could beat labor in its own territory with lobbying members of Congress. It was a phenomenal thing to watch, and, I think, one of the healthiest things that's happened to political maneuvering of congressional action in a long time.

It's not big business. Big business has very effective lobbies. General Motors, for example, knows just how to do it. Big steel and big labor know how to do it. They've got thousands and millions of dollars to hire very talented people. Small and medium businesses have good people but they haven't done a very good job until the last couple of years. When you beat the Labor Law Reform Bill (which was filibustered to death under the leadership of a core of very conservative and very smart young senators), you suddenly realized how much power you could really have.

I mention it only because Labor Law was a bill that a lot of people never heard of and didn't care about. It was one of the most highly contested and hard fought pieces of legislation this year and business won.

It's very important for us to try to continue to tell it like it is. Our job is to keep on explaining what's going on in the world as best we can.

Federal Legislative Action Committee Report

Robert C. Dawson, Chairman
President, Lawyers Title Insurance Corp., Richmond, Virginia

Before I begin I would like to say that I will be retiring as chairman of this committee after this convention. It has been a very great honor to have served the Association in this capacity. I want to thank the members of this committee, who have worked long and diligently on behalf of the industry and the Association over the years. I want to mention Bob Bates, Joe Burke, Bob Dorociak, John Flood, Jim Gray and Bruce Zeiser. They've all devoted numerous hours towards developing the sound federal legislation and regulatory positions on behalf of this Association.

Equally important, I want to thank the membership of ALTA for its involvement and its support because, as you know, Congress and several federal agencies have just seemed to all of a sudden focused a permanent spotlight on our industry. The continued commitment and assistance of this Association and its membership are very important ingredients for a successful title industry federal legislative program.

In these few years that I have served as chairman of this committee, 1978 was by far the busiest and the most difficult year. But, by the same token, perhaps it was the most interesting year also.

The primary focus of the committee's attention was directed to the pending Indian land claims disputes; and as you know, we had the very capable assistance of Tom Finley, Sheldon Hochberg and John Christie. With their guidance and support and direction, the committee recommended legislative language to Congress that would clear land titles and make title marketable in the Indian claims areas. Later this morning, Marvin Bowling, who is chairman of ALTA's Committee on Indian Land Claims, will report on the status of this very important subject.

In addition to the Indian land claims disputes, your committee was involved with a number of other proposals, which included the pending Revenue Act of 1978; a recently issued HUD request seeking comments on the RESPA regulations; the extension of Regulation Q, the Financial Institutions Regulatory Act; RESPA Sections 13 and 14; some housing legislation; the HUD regulations regarding FNMA, and a Federal Trade Commission real estate industry study.

This year, your Association submitted five letters of comment on various federal legislative proposals for inclusion in the Congressional Hearing Record. I want to take just a few moments to summarize the positions that were taken by the Association.

To start, you've read about at least The Revenue Act of 1978, which Congress presently has under active consideration. The House Ways and Means Committee and the House of Representatives, under the sponsorship of our featured Monday morning speaker, Rep. Sam Gibbons of Florida, have approved a provision that would provide homeowners with a new one-time tax exclusion for the first $100,000 in profits on the sale of a private home. Your ALTA president, Mac McConville, submitted a letter to the Ways and Means Committee supporting the home sale tax exclusion proposal. The letter stated and I quote, "The present tax formula imposed upon homeowners with respect to capital gains realized on the sale of a principal residence is unduly high, especially in view of recent inflation levels and the increasing cost of housing."

The Senate Finance Committee is in the midst of consideration of this tax bill, and although the Senate version will differ from the House bill, it is likely that some form of a home seller tax exclusion will survive. *Capital Comment* will continue to report the details on this legislation as they become available.

Earlier this month, the Department of Housing and Urban Development issued an advance Notice of Proposed Rule-making on

the need for additional RESPA regulations. In the near future, ALTA members will be asked to submit their comments to the Federal Legislative Action Committee on just how the RESPA law has affected the land title industry in general, and your particular operations specifically. These comments will serve as the basis for ALTA's submission to HUD regarding the need for additional RESPA procedures. And HUD has expressed particular interest in hearing from the real estate community regarding the enforcement of Section 8, which is the anti-kickback provision of the RESPA law, and also Section 9 which, you'll recall, prohibits sellers from requiring as a condition to the sale of property that title insurance be purchased by the buyer from any particular title company.

In addition, HUD has received complaints from lenders who are not sure just how to comply with RESPA and also complaints from home buyers who, in essence, say they are not being informed about additional charges before the settlement actually takes place.

Also on the RESPA front, Section 13 is well on the way. The purpose of this section, as you'll recall, is to develop and implement demonstration land title systems, which in essence are designed to simplify title search and land transfer procedures and reduce their costs. Model recordation, as well as registration, are under consideration for the $2.4 million grant funding which is available under RESPA Section 13.

Your ALTA officers and staff recently met with HUD officials to discuss the Section 13 program, and later this afternoon, Gil Blankespoor, who is one of HUD's chief staff persons involved on the RESPA Section 13, will bring us up to date on the model recordation project. I might just say that ALTA has assured HUD that we intend to closely monitor its activity in an effort to assure that the RESPA Section 13 projects are meaningful and, to the extent possible, technically sound.

On Aug. 4, 1978, HUD let its request for proposals pursuant to RESPA Section 14, which analyzes the status and the impact that RESPA has had since it became operative in 1976. You recall that Section 14 authorized the Secretary of HUD to submit a report to Congress by mid-1980; included in that report which will be made to Congress will be recommendations on the desirability of lender pay, federal regulations for charges of real estate settlement services, and ways in which the federal government can assist local governments in modernizing their methods for the recordation of land title information.

In other words, between now and mid-1980, we will be back with Congress, with the various committees, and with HUD in a complete rethinking and perhaps redebating of the entire RESPA situation.

In a related development, ALTA has commissioned Dr. Arthur Warner, who is the chair professor of real estate at the University of South Carolina, to analyze the impact of a lender pay and a seller pay system and the impact that these systems would have on the real estate and the mortgage markets. Also, ALTA is collecting information from the state affiliated associations and title insurance underwriting companies to determine what changes have transpired in the industry since the inception of RESPA. So, RESPA obviously has taken a lot of our attention and efforts and will continue to do so in the future.

On other legislative fronts, the Association submitted a letter supporting H.R. 13748, which was a bill to extend Regulation Q for three more years. Under the present law, Regulation Q is due to expire Dec. 15. In our statement to members of the House Banking Committee, we indicated that the proposed three-year Regulation Q extension with differentials will assist the thrift industry in competing for the capital funds necessary for future mortgage commitments. The three-year extension will provide a measure of certainty that will help the thrift industry meet the mortgage credit needs of the housing industry at this critical point in time. The House of Representatives is expected to vote on a Regulation Q extender within the next two weeks, and it is expected that Congress will approve an extension prior to its scheduled mid-October adjournment.

Another bill that was considered by the House Banking Committee would have prohibited so-called interlocks between management officials of depository institutions and management officials of insurance, title, appraisal, or real estate closing companies. That bill, which is known as the Financial Institution Regulatory Act of 1978, attempts to address the so-called banking abuses with regard to insider loans and other business arrangements with members of the financial institutions' boards of directors.

In a statement which we submitted to the House Financial Institutions Subcommittee, of which the Chairman is Rep. Fernand St Germain of Rhode Island, ALTA stated that the flat interlock prohibition is unwarranted and undesirable. Our statement simply cited that the present composition of title insurance company boards are sources of expert advice and judgment that is of invaluable assistance to title companies and their operations, from both the standpoint of insuring sound underwriting practices and continued high quality service. I'm pleased to report that the interlock prohibition provision was deleted during markup considerations of legislation; and other provisions of the bill setting forth certain financial reform guidelines are expected to pass Congress later in this session.

Another issue with which your Association was involved during 1978 was the HUD regulations' tightening the department's control over FNMA. The new rules mandate additional reporting requirements regarding the operations and activities of FNMA to HUD. In addition, HUD will have the authority to audit FNMA on an annual basis.

ALTA became involved in the HUD-FNMA controversy after we had an opportunity to review the proposed regulations which were issued this past spring. The HUD proposals would have required FNMA to allocate a specific percentage of its commitments to inner-city mortgages. Your Association submitted a letter of comment to HUD opposing the proposed benchmark criteria. The letter simply stated, "Any regulatory determination that a fixed percentage of FNMA funds be utilized for certain types of loans is very likely to run counter to the actual demands of the marketplace, and may, therefore, adversely affect the current FNMA auction system and weaken FNMA's ability to adjust its operations to the needs of the marketplace." The final regulations did not include the originally proposed quota system.

As reflected in my report, ALTA has become more and more involved in the federal legislative and regulatory arena, and 1979 is shaping up to be a very busy federal year for our industry.

The Indian land claims problem is still with us, but hopefully Congress will be able to fashion an acceptable legislative solution during the next session.

In addition, the federal government will take another look at the perceived problems of excessive settlement costs. HUD has two projects under way—RESPA Sections 13 and 14. They are charged with the responsibility to study modern methods to maintain land records, and the need for federal rate regulation on settlement charges. Furthermore, Congress through Section 14 of RESPA requires HUD to analyze the lender pay concept and the impact that such a system would have on the real estate market. Also, perhaps something will come of Section 8.

You heard Frank O'Connor on our program Monday morning give you an update on TIPAC. Frank has done an outstanding job heading the TIPAC effort in our Association. I simply want to add my recommendation to his. It's obvious that this Association and this industry are going to be more and more involved and interested in the federal legislative scene. Although TIPAC is certainly no panacea, it does give this industry and this Association a base from which a sound legislative effort can be implemented. I would simply encourage each of you personally to support TIPAC; not only that, but to encourage support from the other members of your respective operations, because it's so important.

I want to tell you a little story that might illustrate the point that I'd like to make here—the baseball story about the pitcher, the batter, the catcher, and the little umpire who appeared to be totally out of place. He was a little, frail fellow, and he had a high-pitched voice. A great, big batter came to the plate with a big, black bat over his shoulder. The pitcher wound up, and he threw that ball, and it came into that catcher's mitt, and the umpire called, "Strike One."

The big batter turned around and bellowed, "What did you say?"

The umpire squeeked, "Strike One."

Then the batter said, "Look, if you miss another call like that during this game, I'm going to shove this bat right down your throat and you'll be spitting toothpicks the rest of your life."

And the umpire said, "Play Ball."

So the pitcher wound up, and another ball came in and smacked that glove, and the umpire called, "Ball One."

The big, burly catcher stood up and said, "What did you say?"

The little umpire said, "Ball One."

The catcher said, "Look, if you miss another call like that during this game, I'm going to shove this catcher's mitt right down your throat and you'll be spitting cotton balls for the rest of your life."

The umpire said, "Play Ball."

(continued on page 71)

Housing Market Outlook*

Dr. Thomas R. Harter, Chief Economist
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I want to briefly discuss my outlook for the economy and then go into specifics of the housing market and discuss some of the current issues in the financial area that will impact future housing markets.

The gross national product (GNP) is the basis from which most economists start their forecast. Since it's a very boring topic for most people, I will not belabor it. GNP in 1978 will be just under $2.1 trillion. This is 10.9 percent higher than a year earlier. In 1979, GNP should grow about 9.7 percent from 1978. In terms of real growth, this year we should see about a 3.9 percent increase in GNP. For next year I predict about a 2.9 percent increase, which is below the average predicted by most economists.

Almost 21 percent of that GNP is derived from government purchases. In 1979, such purchases will be $486 billion. That represents an 11 percent increase over 1978, which was also an 11 percent increase over 1977. And the government wonders why there is inflation. Another category of the GNP currently giving us some trouble is net exports—that is, exports of goods and services from this country, minus imports to this country. The 1978 deficit of net exports should be about $20 billion. In 1979, I expect it to be about $10 billion. That's quite a reduction. That reduction, in large part, is due to the fact that our economic growth will slow substantially. The growth of West Germany and Japan should increase. The devalued dollar will stimulate more export, so you can start to see that there is going to be increasing exports with reduced imports—both acting to reduce the net exports deficit substantially during 1979.

Government purchases of goods and services next year are not likely to decline because next year should be a very slow year economically for this country. So there is little likelihood that government will cut back on purchases. Because of the slowdown in the economy, the unemployment rate for next year should be on its way toward 7 percent. It should end this year at 6.3 percent. As a cushion to the rising unemployment rate, government will not substantially reduce purchases.

Another major component of the GNP is personal consumption expenditures that represent consumer purchases of durable and nondurable goods. This component has been the mainstay of the economic growth that we have experienced since the 1974-1975 recession. However, consumer purchases are about ready to suffer a substantial reduction in the rate of real growth, while the current dollar personal consumption expenditures should grow about 11 percent—the same as the government purchases. Real growth in this sector should be about 3.9 percent this year and only 2.2 percent next year; that is substantially lower than most countries have projected.

Personal consumption expenditures are largely comprised of items such as automobiles, furniture, food, and services. Based on expectations of continued inflation, most consumers have stockpiled large amounts of durable goods. We have seen the impact of expected inflation in the housing market this year with the tremendous increase, or at least, the holdup in housing starts when everything indicated they should fall. I attribute a large part of that to inflation psychology. You cannot afford to wait. You have to buy now. Housing is an investment. It is not the purchase of shelter as much as it used to be that spurs the housing market to new heights. Anticipatory buying has been going on in almost all durable good areas. Along with the accumulation of durable goods, consumers have drawn up record volumes of installment debt. While the level of the debt burden faced by the consumer is not a widespread indication of financial difficulty, or potential difficulty, it does reflect the fact that consumers are spending future incomes for current purchases. As that future income is diverted, it will be diverted from current consumption in future years.

Population growth in the household formation age group has been and will continue to be very strong. The age group between 25 and 34 years old has been growing phenomenally for the past few years and will continue to grow through 1988. That is the famous "baby boom." You can follow the baby boom and the growth industries right along with it. It went from Gerber, to Pepsi, to Camaros, and now it is in the housing market. This sharp gain in population is what has held sales up in the housing market and will sustain sales at least through the next decade.

The fourth and final component of GNP, and the one that really reflects the housing market, is gross private domestic investment. This component is comprised of business-fixed investment, producer durable goods, nonresidential and residential construction.

In this area, the greatest interest to mortgage bankers, Realtors, builders, and anybody associated with the real estate business is obviously construction activity. I estimate that the domestic investment figure will be about $335 billion in 1979. That is 11.5 percent above 1977. However, the real growth in this component only will be 7 percent during 1978. I estimate 1979 will achieve $359 billion, or 7 percent above the 1978 level. However, real growth in this component will be almost zero. The increase will be almost totally an inflationary increase.

In the investment sector, real growth translates into slight real growth in the nonresidential construction area, as it plays catch up to the tremendous levels of residential expansion in the recent past, and an actual decline in the level of residential construction.

Housing starts are the measure of the real level of residential construction. After reaching 1.97 million units started in 1977, housing starts are expected to decline to about 1.9 million units for 1978 and only 1.75 million units in 1979.

The level of housing activity projected for 1979 will require about $106 billion in financing. This represents a 6 percent increase over the expected $100 billion necessary to finance 1978's residential activity. An 8 percent decline in physical housing starts during 1979, combined with a 6 percent rise in the value of residential construction, illustrates the effects of a 14 percent increase in the price of new homes next year.

I do not think that 14 percent is an unreasonable estimate of house price increases for 1979. The Carter Administration has put out a 10 to 12 percent estimate, and we already are experiencing a 12.5 percent increase. Next year should be worse in terms of price inflation in housing because of a reduced supply of new housing, without a corresponding reduction in the demand for housing.

Demand factors in the housing market remain strong, not only for the next year, but, as I mentioned, for the next decade. The post-war "baby boom" has swollen the ranks of the population aged 25 to 34. That particular age group is the prime housing-buying segment and accounts for 47 percent of house sales. Although that is not necessarily new house sales, existing house sales are necessary to attract existing owners into the new house market. The 25- to 34-year-old age group is an extremely important factor in the housing market.

Combined with the growth in the household formation age group is the fact that the size of households has been declining due to changes in lifestyles and other sociological patterns. The average household size has dropped from 3.3 persons to 2.8 persons over the past five or six years. So, not only is the population in the prime housing-buying age group increasing rapidly, actually accelerating, but the number of households in that group is accelerating even faster because of the decline in the average size household.

The increased population, coupled with the declining household size, means that there will be an increasing demand for housing brought on by that 25- to 34-year-old age group.

During the 15 years from 1959 to 1973, there were, on average, 15.5 people aged 25 to 34 for every housing start, and that was a fairly stable relationship, bouncing between 13.5 and 17 persons per start. From 1974 to 1977, there were, on average, 21 persons aged 25 to 34 for every housing start. The shift in the prime housing-buying population relative to the supply of houses represents a 40 percent increase, or an annual average increase of 10 percent per year. The number of people in that prime buying group per housing start is increasing on the average of 10 percent a year. That 10 percent increase in demand relative to supply is approximately equal to the average annual increase in new house prices over that period.

The change in relationship of supply and demand factors in the housing market is causing traditional inflation where demand far exceeds supply.

The increase in demand for housing created by the post-war baby boom in not temporary. It should continue through 1988 before

*As of September 27, 1978

starting to level out. In other words, the population in the 25- to 34-year-old age group is going to continue to increase every year through 1988, and then it will start to decline.

Based on the 1959 to 1973 average of persons per year in the 25- to 34-year-old age group, we should see housing starts close to 2.5 million within the next couple of years, if historical relationships hold. Continued growth in the prime first time house-buying population will continue to press upward on housing prices unless the supply can be brought into line with the growing demand. Since a decline in housing supply is anticipated next year, we can expect added upward pressure on new house prices.

Rapidly increasing demand for housing places increased demands on financial institutions to generate even larger amounts of mortgage money to finance housing. Whether increased demand for housing translates into increased units, or increased prices, is irrelevant to financial institutions. They still have to increase the amount of dollars provided to the mortgage market.

The average price of a new single-family house sold between 1974 and 1977, climbed from $38,900 to $54,200—a 39.3 percent jump. Over the same period, the consumer price index increased about 23 percent. House prices are increasing faster than prices in general. Thus, financing requirements continue to grow, even when physical production drops slightly.

The weakest year in the construction industry occurred in 1975 when housing starts totalled only 1.2 million units and represented a total residential construction value of $51.5 billion. There has been a 100 percent increase in the amount of money needed to finance single-family construction in the past three years. Almost twice the level of the 1975 financing will be required in 1979, when residential financing alone should require close to $100 billion. Commercial activity should require about $32 billion as commercial property prices and activity both increase.

In total, the mortgage market will be called on to provide about $132 billion in support of reduced levels of physical activity during 1979. That means lenders will have to provide the same number of dollars as in 1977 to achieve about 88 percent of the actual physical output. This is the impact of inflation. That is why inflation is our primary problem.

Faced with an environment of relatively high short-term interest rates (and they have not yet peaked), the thrift institutions, in particular, would be expected to face a difficult time maintaining the necessary flow of funds to the mortgage market. However, the new money market certificates and the relatively high liquidity levels that they now have, should allow the thrifts to continue to provide about 46 percent of the needed mortgage funds in 1979.

The money market certificates are being heralded by the savings and loan industry, but not by the mutual savings banks. The controversy is not whether these institutions will have money, but what it is going to cost them to have money. The current rate on the six-month certificate with interest compounding is over 8.6 percent. What that means is, the average cost of new funds is basically coming from certificates, allowing 1 to 1.5 percentage points spread for operating costs and profit, mortgage rates must be somewhere between 9.7 and 10.2. That is currently where mortgage rates are sitting.

In line with a forecast of increasing interest rates, commercial banks are likely to provide a smaller share of the total mortgage market during 1979. That doesn't mean dollar amount; that means share of market, largely because banks will divert funds to business loans and consumer loans that carry higher rates than mortgages.

Insurance companies should provide an increasing share of the market, and I would expect them to provide about 7 percent of the net mortgage flows during 1979. They will do so because mortgage rates are more attractive relative to other long-term investments. Life insurance companies should divert more of their funds into the mortgage market as rates become even more attractive.

Mortgage funds provided through mortgage pools and sponsored credit agencies should grow substantially in 1979 because of the expectation of the depressed residential construction market. Mortgage pools and sponsored agencies should combine to provide about 26 percent of the necessary mortgage flows to support the 1979 market. The remaining 9 percent will come from individuals, state and local governments, and other small contributors.

It is amazing when you look at that figure for the government sponsored agencies and pools of 26 percent. Consider the Federal Home Loan Bank advances to savings and loans, and the Federal Reserve funds going into the commercial bank system. The government has its finger in over one-third of the mortgage market, in one way or another. The more it gets a hold of, the more I think you can expect government control of the mortgage market.

The projected distribution of the mortgage market shares should place no undue burden on any particular institution.

The cost of mortgage money should remain relatively high during 1979. As I mentioned, the cost base not only for S&Ls but for all institutions has been increased and, therefore, there is more rigidity in the downward movement of mortgage interest rates. Since 1966, each cycle we have gone through sees rates peak and come back down, but they come down to a higher low than they did in the previous cycle. This phenomenon is partly caused by building up the cost structure of lenders during the cycle and, therefore rates cannot come down as far as they did the time before.

Hopefully, the money market certificate will allow that floor to come down further than otherwise would have been possible, as the treasury bill rate comes down during 1979 and six-month certificates are renewed at lower rates. Do not expect too much to happen until after the first quarter of 1979, and then nothing radical.

The rapid increase in house prices and the growing demand for houses among young households have created significant problems for many young families. Based on the average price of a new home sold in 1974 and 1977, assuming traditional financing with a 20 percent downpayment and a 25 percent ratio of income to average monthly payment, with a new house price increase from $38,900 to $54,200, that means the downpayment has increased by a little over $3,000. A loan fee of 1 percent would increase loan fees $150. The monthly mortgage payment for 30 years at 9 percent would have increased $100 a month, and the annual income to support the average house would have gone from $12,000 in 1974 to $16,750 in 1977.

So, the longer a young family waits, the further behind they get. With those increases, you cannot afford to wait. This results in anticipatory buying that has been a major factor holding starts at the 2 million unit level throughout this year with the high mortgage rates.

Another interesting thing that happened this year that is not typical of the past, was that the mortgage lending institutions did not run out of money. They simply raised the cost of the money. It was there for people who wanted to pay the price.

In order to help young families, alternative mortgage instruments provide various advantages to both the lender and the borrower to more easily qualify for a loan, and the lender to adjust his return closer to current rates.

One of the most widely received alternative mortgage instruments is the graduated payment mortgage. The graduated payment mortgage is designed in such a manner that monthly loan payments rise during the early years of the loan, hopefully, in line with the rising income of the borrower. Such an arrangement allows house buyers with low but rising incomes to qualify for larger loans and, therefore, not have to postpone purchases.

In an economy facing continuing rapid price increases, the graduated payment mortgage offers a means by which lenders can tailor the loan terms more to the borrower's needs. The one program that has had a fairly wide acceptance in this area is the FHA 245. The FHA 245 loan has been available mainly through mortgage bankers. A problem with the FHA 245 program is that the only secondary market of any significance for these loans has been the Federal National Mortgage Association, and that limitation has restricted the growth of the program. Although there is a tremendous potential demand as witnessed by the initial activity in the graduated payment mortgage, the lack of a broad secondary market will restrict the future of this type of loan arrangement.

Another alternative mortgage instrument in wide use, mainly on the West Coast, is the variable rate mortgage (VRM). The VRM offers the borrower an opportunity, although limited, to ride interest rates up and down through the cycle. The real advantage in the VRM accrues to the lender, and, hopefully, to the new mortgage borrower. As the rate on the outstanding VRM's is increased with an increasing market interest rate, the lender can increase the return on his existing portfolio. This allows the lender to maintain his profitability, and at the same time, compete more effectively for funds to maintain a flow into the mortgage market.

In other words, when the money market certificate's costing 8.6 pe·cent, the interest rate on a VRM already in the portfolio can be increased. The lender can generate additional revenue to offset the increased cost of new funds. That will, hopefully, maintain the profitability of the lender and the flow of new funds for lending. Benefits will, hopefully, pass on to new borrowers in

the sense that the lender does not have to raise the rate on new loans as high as he would have had to raise it otherwise.

This is a very difficult benefit to measure and one that is being fought in Congress constantly. What is the benefit of the VRM? This is similar to the fight that the title insurance industry fights over fees and profits. It means you can increase revenue and, therefore, be very profitable. Well, they ignore the fact that while you are increasing revenues and being very profitable, you are also increasing costs and the profit just is not there.

Other alternative mortgage instruments currently receiving attention are the rollover and the reverse annuity mortgage. The rollover is simply a short-term mortgage that is renegotiated every so often. Mortgage terms are renegotiated every three to five years. The reverse annuity mortgage is designed for the older household to enable them to cash out the equity in their home so they do not lose it because of excess government spending which increases inflation and other taxes.

All these alternative mortgage instruments, in my opinion, are being developed because the mortgage industry is overly regulated. The approach to these alternative mortgage instruments has been politically oriented and actually designed with the expectation of continuing inflation. Inflation is not an unrealistic assumption, but at some point, prices are going to turn down. If the regulatory authorities and the Congress would work more on deregulating the types of loans that can be made instead of spelling out every detail in what can be done, I think the industry and public would be much better for it. We will see a much more efficient mortgage market if the borrower and lender can negotiate the loan to fit the needs of both.

In the current situation, the loan fits the needs currently, based on expectations of inflation. What happens in 1988 when the demand for housing begins to fall because the prime house-buying population is no longer growing. Then all of these instruments may become obsolete and we will be negotiating back to the fixed rate, fixed term, 30-year amortized loan.

Loan structure depends on the economic situation and that is what brought about these alternative market instruments. The regulatory mentality has fostered these loans. The alternative mortgage instruments offer specific solutions to problems faced by participants, and do not offer a general solution that will adapt to any type of economic environment that may occur.

Also, developments in secondary mortgage markets are underway that can potentially expand the sources of funds for mortgage financing. Conventional mortgage-backed securities, similar to the current GNMA securities, would provide a tremendous potential for expanding sources of mortgage money and increasing competition in the mortgage origination field. Stated simply, it would open the conventional financing market to the mortgage bankers who would then offer competition to the savings and loan, and you would see greater competition in the conventional mortgage market.

Progress in developing the alternative mortgage instrument and the conventional mortgage-backed securities is very slow. The political process is examining every aspect of each proposal to assure consumer safeguards and value. The AFL-CIO has been fighting all the alternative mortgage instruments tooth and nail. However, we are approaching a time when something must be done. It is time to act.

If the process drags out for another decade, the need for these instruments is likely to pass, as the inflationary pressure in housing is reduced after 1988 because of the reduced demand as the baby boom ages. The problems in the late 1980's and 1990's will shift away from the housing and mortgage markets and begin to center on pension funds, health care, nursing homes, and excess capacity in the manufacture of durable goods, largely because of the population aging process.

Current policies designed to conserve resources that are primarily used in housing production, such as timber, increase the cost of housing by holding down the supply in the face of accelerating demand. Those of you from the West Coast or Midwest, know that you may have a little trouble finding cement. Environmental protection requirements have cut down on the expansion of cement plants because pollution controls are expensive, nonproductive investments. Thus, the capacity is not there to supply the demand and we are running into shortages in the cement area, as well as in other areas.

Timber prices increased tremendously, in part because the Agriculture Department that controls the cutting of timber in many areas does not consider the demand for housing in its controls. There is little, or no, coordination between the Agriculture Department, HUD, and the various other agencies that control the resources to provide housing. We are subjected to tremendous price swings because of poor management policy.

Why are we conserving such resources? If the demand for housing in 1990 declines substantially as the prime house-buying population ages, should we not satisfy current demands when we know future demands will decline? Are we not saving the forests for something that is not going to happen? It is a question to which I do not have an answer.

Not only is the mortgage market attempting to develop new methods for dealing with existing problems, but the political structure is reevaluating priorities and is attempting to adapt to the changing environment. Broadening access to the Federal Home Loan Mortgage Corp., the Housing Act of 1978, the Congressional Task Force on Housing Affordability that is a subcommittee of the House Banking Committee, are steps to try to find answers to these problems. Part of the problem is the appropriation time for HUD. One-year appropriations caused the introduction of a program just in time to see it disappear. We need longer appropriation times in the housing field.

We need cooperation and coordination between the various departments involved, such as the Agriculture Department and HUD. So, it is not an easy problem to solve. It is quite complex, many faceted, involving government, agencies of the government, lenders, and consumers. Everyone fighting for their own self-interest which is probably the way it should be, except for the government agencies that fight for everyone else's self-interest.

I do not expect any cure-alls or economic miracles. The 1979 economy should be substantially slower; housing starts should decline; interest rates will be relatively high, and short-term rates will peak around a prime of 11.5 percent early in the year.

Although we are not going to solve the international problem, it should improve somewhat. Everybody will herald how great the improvement is, but in reality the situation will remain very bad. We are not going to see a reduction, in absolute terms, of government spending. Therefore, we probably will continue to have inflation around 8 percent during 1979. Inflation is our number one enemy in terms of economic environment for the coming year.

Report of the Committee on Indian Land Claims

Marvin C. Bowling Jr., Chairman
Senior Vice President and General Counsel
Lawyers Title Insurance Corp., Richmond, Va.

I'm sure that you realize that the Indian claims matter is a serious matter.

A great deal has come of it and in the next 15 minutes, I hope to give you both the good and bad news involved in Indian claims.

I think the good news is that you can be proud of your Association in its accomplishments of the past year that it has made in the Indian claims area, especially in the legislative area. Our counsel and ALTA have become recognized for their ability to help draft legislation. I believe the people at the White House, in the administration and the staff, in Congress in the Indian committees, will not make significant plans for legislation without involving our people. And we have given input, and I will talk to you first, about an Act that has passed both houses of Congress, which is to a large extent our Act.

The committee has been involved in at least three areas along with the Federal Legislative Action Committee, which has given us a great deal of support.

First, we have drafted a piece which explains the constitutionality and need for a legislative solution to the Indian problem. I believe it constituted some 134 pages of good legal research and contained a suggested model statute for clearing land titles. This piece was well received. It's been distributed to many members of Congress and their staffs, to the White House, to the administration and to other counsel who are defending Indian land claims. It has brought good results.

Secondly, our research counsel, John Christie, has prepared 15 research memoranda. Copies have been furnished to six counsel, who are now defending on-going Indian land claims.

These research memoranda have met with much appreciation from these counsel because of their expertise. The idea is that any member of the American Land Title Association that has to defend an Indian claim on behalf of its insured, is eligible to have its counsel receive these 15 memoranda.

As new questions arise, we find new and unusual areas of law in connection with Indian claims. Research memoranda will be prepared as needed.

There is one other instance of ALTA's involvement. This is in the Omaha Indian tribe versus Wilson, a suit in which one of our members is involved and defending and which has been lost in the Federal Circuit Court level.

An Omaha tribe has sued for a two-mile strip of land settled by white people, on the basis that the Missouri River 90 years ago had shifted quickly—avulsion—so that the reservation boundary did not shift. The settlers say the river moved slowly—accretion—and that the reservation lost this strip.

Now the District Court put the burden of proof on the Indians to show that there had been this quick shift so that they had not lost title to two miles of their reservation. On appeal, however, the Indian counsel cited a statute which was enacted back at the same time as the Indian Non-Intercourse Act, which says that all trials about property in which an Indian and a white person are involved, the burden of proof shall rest upon the white person whenever the Indian shall make out a presumption of title in himself from the fact of his previous possession or ownership.

Now certainly the Omaha tribe could show that this area at one time had been theirs. It was part of their reservation. So the burden of proof then shifts to the white settler to show that there had been a slow shifting of the river and therefore a loss of title.

There is now an appeal to the U.S. Supreme Court. ALTA, through John Christie, is filing an *amicus curiae* brief, asking for *certiorari* in the hope that the U.S. Supreme Court will say that this statute is unconstitutional because it is clearly based entirely upon race.

The other instance, of which we're quite proud, is the passage of the statute in the Narragansett case. You will recall that in Rhode Island they were asking for 3200 acres in Charlestown. The suit was ongoing. However, there has been a settlement agreement and under the statute which has now passed both houses of Congress, it is awaiting President Carter's signature. Under this statute, the ALTA language for clearing the title appears.

It retroactively consents to transfer title from the Indians to the purchasers and extinguishes aboriginal title. Under this settlement, the state will contribute 900 acres and Congress will contribute $3.5 million—part of which will be used to purchase 900 more acres from private land owners at market price. A state corporation controlled by the Indians will administer the land. So we have our first settlement and congressional action.

We hope this will serve as a precedent for Congress to have some backbone and go forward with taking care of Indian land claims on the basis of legislation.

"I believe you can see from what I'm saying that while there does seem to be a rising flood of agreement that Congress must do something and Congress is beginning to do something; on the other hand, the Indian land claims are proliferating. Your committee will continue to be involved and work with Congress in trying to come up with some sort of process solution by which the land claims are settled. . . . "

Some of the debate is interesting and should give the Indians cause for pause. Some of the members of the House particularly were very much concerned about spending taxpayers' money for a tribe when there had been no real determination as to whether they actually had a claim.

I will run down very briefly the proliferation of Indian claims and tell you where they stand today. Now I realize there is no way you can take all of this in. I would simply say that when you hear of a claim in your area, if you wish to talk with me later and find out a little more about it, I'll be glad to tell you what I know and give you the citation on the case.

In Maine, which is our largest case, Attorney General Bell has decided that the suit will be only against the state of Maine. The Justice Department had talked about suing only land owners who had over 50,000 acres. He has decided that this is not fair and that all land owners, regardless of how much land they own, should be treated equally. The suit will be against the state of Maine only, he says. He has now asked for a six-month stay—until March 11 in the case—so that the Justice Department and the Indians and the state can work out a legislative solution.

If the court grants that stay, there is a good chance that good progress will be made on a legislative regarding 12 million acres in Maine.

In the Mashpee case, the Indians lost because they were unable to prove that at the time of the Indian Non-Intercourse Act and at the time that they brought the suit, they were a tribe. That case is on appeal and arguments are scheduled for December or January.

In New York, the Oneida tribe—there seems to be little question but that they are a tribe—won their first suit in Oneida and Madison counties. Their first suit was simply for damages for use of their land by the county, so that they could establish the precedent. The Justice Department says that they'll bring suit on behalf of the Oneidas. There should be some type of legislative solution there.

Now, the most unusual suit was filed by the Oneida tribe in March against the New York Thruway Authority and the state of New York and other state agencies, in which they claim title to 6 million acres of a 50-mile swath running from Canada to Pennsylvania. They claim breach of state treaties and violation of the Articles of Confederacy of our former government.

They've asked for the return of the land and damages including all tolls ever collected on the New York Thruway. This includes most of five counties and part of another seven counties and the towns of Rome and Utica and Watertown.

In Connecticut, we have three suits in the interrogatory stage—Schaghticokes in Kent, Pequots in Ledyard and the Mohegans in Montville.

In Louisiana, the Chittimacha tribe case goes on. They're asking for 7,000 acres in St. Marry's Parish. They say they may expand it to include all the land south of Route 10 between New Orleans and Baton Rouge. That case is in the discovery stage.

In Florida, the Seminole tribe brought suit July 14 against the Florida Board of Commissioners and Trustees of the Internal Improvement Fund, claiming damages because of unauthorized flooding of their reservation, East Big Cypress Swamp. They're claiming beneficial ownership of 16,000 acres and asking for fair rental value. That is a small area compared to some others, but there's always the possibility that they'll ask for the lower three-fourths of Florida. A large amount of money has been set aside for the Seminoles for the rest of Florida but they have not collected it and they may bring a larger suit.

In South Carolina, the Catawbas continue to claim all of York County—144,000 acres. The suit has not been started. There's been a great deal of talk back and forth between the governor and their representative. They have a little problem there because the tribe split. Some of the tribe hired lawyers and said they wanted cash for themselves, instead of land for the tribe.

There's a case in Nevada, involving 22 million acres of land. It could involve that much in an action for trespass brought by the United States against the western Shoshone who are grazing cattle in Nevada. The court held that the Indian Claims Commission's decision that they didn't have title was not binding.

In western Oklahoma, a Kiowa Indian has asked for 160 acres. The basis of his claim could open up the whole question of western Oklahoma wherever occupied by the Kiowas, Comanches and Apaches.

In Alaska, we know that there has been a lower court decision that the Alaska Native Claims Settlement Act did extinguish all titles. However, that decision is on appeal to the 9th Circuit Court. If the 9th Circuit reverses, then we will have the native Alaskans claiming many millions of acres of property.

I believe you can see from what I'm saying that while there does seem to be a rising flood of agreement that Congress must do something and Congress is beginning to do something; on the other hand, the Indian land claims are proliferating.

Your committee will continue to be involved and work with Congress in trying to come up with some sort of process solution by which the land claims are settled and the Indians are left to receive compensation based on whether they had valid title.

Hopefully, by the time we meet again, we will have come up with some good precedents or some process by which land titles can be cleared and, however, the Indians left to some proper method by which they can be compensated for those areas in which they have indeed been unjustly deprived of their land holdings.

Energy: Crisis Past or Crisis Future?

J.J. Rouse, Public Relations Manager
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The relationship between the land title business and the petroleum industry is an old and continuing one. The United States is one of the few countries in the world where private ownership of land ordinarily carries with it ownership of the mineral rights. This makes land titles, of course, a matter of prime importance in petroleum exploration.

For a few minutes this morning, I would like to share with you some thoughts on an issue closely related to that search—the nation's energy situation.

The amount of rhetoric generated by the subject of energy has been tremendous, yet public understanding of the problem remains limited.

This lack of understanding is illustrated in the confusion and skepticism which still exist as to whether we really have a serious energy problem in our country.

Moreover, unless we can agree that the problem is a real one, and unless we have a fairly good idea of its parameters, there can be little hope of developing a national consensus about the best way to overcome it.

Is there really an energy crisis in the United States? You bet there is. There's a Crisis Past, a Crisis Present and a Crisis Future.

Let me start by reminding you of the first of these three crises—the one that began Oct. 17, 1973, when the Arab countries placed an embargo on shipments of their oil to the United States.

This embargo was unexpected and caused a severe shock to an already taut energy supply system. Normally, an industry has a reasonable amount of time to adjust to major changes. The oil embargo, however, came at a time when the energy industries had been deprived of much of their flexibility by factors such as a peaking of production for both oil and natural gas, environmental restrictions on the use of coal and substantial delays in the startup of nuclear generating capacity.

For years, of course, knowledgeable spokesmen for the petroleum industry issued warnings about a prospective energy shortage and urged remedial action. But too many people just weren't listening.

They didn't listen back in 1954, for example, when Hines H. Baker, then president of my company, warned in a speech made just a few miles south of here about the danger of imposing artificially low prices on a premium product like natural gas. The end result, he pointed out, would be to weaken incentives to explore for and develop new reserves. "With demand increasing," he said, "and the rate of discovery decreasing, after a time a definite shortage of gas occurs."

Nor did they listen back in 1960—18 years ago—when a highly respected and well-known geologist and independent oilman named Mike Halbouty ticked off the signs of an approaching energy problem and told a Los Angeles audience: "I can safely predict that between now and 1975 we will have an energy crisis in this country. Then the people will say: 'The industry is to blame—why weren't we told?' "

The remarks of Baker, Halbouty, and others who in the 50's and 60's voiced concerns about future oil and gas supply problems just weren't heard. The regrettable thing is that it took a renewal of the Arab-Israeli conflict, and the resultant embargo, to get the full attention of not only the general public but also many in government. There is no doubt about it—the embargo did get everyone's attention.

Before the embargo, we had been importing some 2.7 million barrels of crude oil and products per day that had their origin in the Arab oil-producing countries. The loss of these imports worsened the nation's energy situation almost overnight. You will recall the long lines that materialized at service stations. Some stations were open only four or five hours a day. Others imposed purchase limitations of five to ten gallons. Many closed on Sunday. Subsequently a 55-mile speed limit was imposed. There were predictions that gasoline would go to a dollar a gallon, and there were rumors of rationing.

The impact of the overall economy was particularly severe. The Federal Energy Administration estimated that in the first quarter of 1974 the output of the economy fell by as much as $20 billion as a result of the embargo. During early 1974, for example, the production of new automobiles dropped 34 percent from the first quarter of the year before. Layoffs in the civilian labor force attributable to the embargo were estimated to have reached about 500,000 workers.

The embargo was called off in mid-March of 1974. But, by then, the panic atmosphere created by a sudden energy shortage had already given rise to a proliferation of hastily drawn and sometimes contradictory government regulations covering the petroleum industry. It also spurred a rapid growth in Washington's energy bureaucracy. An additional result was a considerable amount of ill-feeling toward the nation's oil companies.

The oil companies were accused of being responsible for the energy shortage, of withholding oil supplies and of doctoring their statistics. There were stories about hundreds of tankers anchored off the Atlantic coast waiting for prices to go up before they entered port. There were other stories about the withholding of natural gas. Unfortunately, government studies which factually disproved such allegations received back page coverage.

Oddly enough, despite the sensational news coverage and many unsupported accusations, it was the hearings of the Senate Permanent Subcommittee on Investigations, chaired by Sen. Henry Jackson, that brought facts and reason to the issue.

At the end of the hearings Sen. Jackson said publicly that "these hearings have not turned up any hard evidence that the major oil companies created the crisis—either by parallel or in concert."

In a sense, that remark dropped the curtain on the first of the three crises—the Crisis Past.

Turning to the present situation, for the most part cries of a few years back about "contrived shortages," "obscene profits" and "multinational conspiracy" have abated. However, too many people have thrown out the facts with the myths. The energy problem has not vanished. It is still with us and ticking away.

The big difference is that it is today what Walter Cronkite has called "the invisible crisis."

The fact that our present energy situation has few of the outward and visible signs associated with the 1973-74 embargo makes the Crisis Present even more difficult for people to understand.

It is true, of course, that there are no long lines of impatient motorists waiting their turn at service stations. Consumers can buy gasoline, heating oil and natural gas with relative ease.

Energy has increased in price, but it is still a bargain in this country compared to costs in most other countries. It's also a bargain compared to many of the other things we consume. For example, a gallon of beer costs five times more than a gallon of gasoline—and the beer is 94 percent water.

But a very real crisis exists nonetheless. At the time of the embargo, we were importing only about one-third of our oil needs. This year, the U.S. will import about 8.3 million barrels a day of crude oil and petroleum products, or about 43 percent of our petroleum requirements. Our oil imports last year cost the nation more than $45 billion, or about $1,400 per second.

The impact of this monetary outflow on our balance of payments, on the value of the dollar, and on our battle against inflation is a serious economic challenge for this country. Even more serious is the threat that this heavy dependence on oil imports poses to our national security.

The possibility of supply interruptions has given many Americans an uncomfortable feeling or reduced self-reliance. For without adequate supplies of energy, our country's defense establishment would be severely handicapped.

A fundamental cause of the invisible crisis we are now experiencing is that since 1970 the United States and the world have been consuming oil and gas faster than new oil and gas reserves are being discovered. Thus we are depleting our inventory of known petroleum resources, and we are no longer able to meet our growing energy needs entirely with increased oil and gas production.

We are now consuming energy in the United States at a rate equivalent, in terms of heat values, to more than 38 million barrels of oil a day. Because of higher energy costs and slower economic growth, the annual increase in overall energy demand has dropped from the 4 percent rate that marked the decade preceding the Arab embargo, but demand nevertheless continues to grow. Exxon estimates that between now and 1990 the growth in energy demand will average slightly more than 2 percent a year. Thus by

1990 we will be consuming 51 million barrels a day of oil equivalent.

This growth rate would be considerably higher were it not for the effects of economically driven and government-mandated energy conservation. Last year these conservation measures saved the United States the equivalent of nearly five million barrels of oil a day compared to pre-embargo consumption trends.

By 1990 the savings from conservation are projected to reach the equivalent of 17 million barrels a day. The largest saving will be in the transportation sector, mainly because of increased automobile fuel efficiency, lighter cars, and a slower rate of growth in the number of passenger car miles driven.

Even so, we can't hope to save our way out of the energy problem. Conservation can be taken only so far. If energy *consumption* is forcibly restrained too fast or at too low a level, the effect is not to eliminate useless fat but to cut into economic muscle. Reductions in energy consumption beyond that point translate into lower industrial activity, increased unemployment, more inflation, and sharply reduced standards of living.

The sobering fact is that, even with all this energy conservation and improved energy efficiency, we'll still require—according to Exxon's projections—about one-third more energy in 1990 than we are now using. And one almost certain result of this increased energy use will be to make the energy crisis, which is now largely invisible, obvious to one and all.

To a large extent, the crisis of the future will be the need to make a transition from an oil-based economy to one embracing increased use of coal and nuclear power. Since petroleum will not be able to maintain its share of the growing demand for energy, much of the future demand growth will have to be met by other fuels. In short, the United States—and the rest of the world as well—will have to shift from a predominantly petroleum-based economy to one driven by some new combination of fuels.

This is not a new phenomenon. During the last century, the industrialized world shifted from a wood-based economy to a coal-based economy. Early in this century, coal gave way to a petroleum-based economy. These transitions, when viewed in historical perspective, seem to have gone rather smoothly.

One reason, of course, is that in each instance the shift was to a fuel that was either lower in cost or more convenient or both. Another is that government saw fit to permit economically driven market forces to take their course without imposing a series of oppressive regulations.

The energy transition we now face, however, is much more complex. And it will not be a matter of choice this time. Instead, it will be a matter of necessity. The transition will also be one to a new era of high, and probably rising, energy costs.

The challenge before us, then, is how to manage this transition to a rearranged mix of fuels, thereby preventing the Crisis Future.

Let me briefly outline how Exxon sees this transition developing during the time frame between now and 1990. The projections I'll give you are from our latest energy outlook. They are based on a number of assumptions and are not intended to be firm forecasts. They do, however, shed light on the size and scope of the problem we face.

I mentioned earlier that we look for energy demand to grow by about one-third—from the equivalent of 38 million barrels of oil a day this year to 51 million barrels a day in 1990. Just how do we see this sizable increase in demand being met?

First of all, the inexhaustible forms of energy such as solar power and nuclear fusion have great potential over the long run, but they are not expected to make a significant contribution between now and 1990.

Hydropower and geothermal energy are also expected to have only a limited potential because of the scarcity of available sites. Combined, these sources will supply only about 3 percent of our total energy requirements.

Much the same can be said of synthetic fuels. The technology exists for extracting oil from shale and gas from coal, but as yet no commercial plants for these processes have been built. High capital costs, along with regulatory uncertainties and constraints, are causing investors to proceed cautiously.

As yet, no proven commercial technology exists to produce liquid fuels from coal, but I might mention that Exxon and a number of other participating companies have a research project under way to develop such a process. The total cost of this project will be $240 million.

The bottom line is that through 1990 the nation will have to rely primarily on nuclear fission, coal, natural gas and oil for its energy.

We see most of the burden falling on coal and nuclear energy. These two fuels are expected to supply more than 80 percent of the demand growth. This will increase their combined share of our total energy supply from about 21 percent today to 37 percent in 1990.

Oil and natural gas together, on the other hand, are expected to supply only about 14 percent of the demand growth, but they will remain critical to our needs for many years. Today, we rely on oil and gas for three-fourths of our energy supply. In 1990, they will still account for 60 percent. But there'll be some changes in where we get these fuels, and that constitutes one of our main concerns.

Exxon's projections indicate that more than one-half of our oil in 1990 will come from imports. The decline in domestic production is expected to continue until the early 1980's when new discoveries—most of them in the frontier areas of Alaska and the outer continental shelf—should turn production upward.

Of special significance is that nearly one-half of our 1990 production of both oil and gas must come from reserves yet to be discovered. It is thus of vital importance that government policies should be directed toward expediting domestic exploration and development. Unfortunately, however, the trend in recent years has been in the opposite direction, and this poses one of the most formidable obstacles to an orderly transition to a new energy era.

Natural gas regulation is a case in point. The result of setting field prices of this premium fuel at artificially low levels has been to stimulate demand on the one hand while, on the other, discouraging exploration for new reserves. However, natural gas production peaked in the early 1970's and has been declining ever since.

Federal price controls on domestic crude oil ignore this lesson. Continuation of these controls will inevitably retard efforts to find and develop new fields, while controls on motor gasoline will inhibit investments needed to make high octane unleaded gasoline components.

Then there is the matter of a proper balance between environmental protection and energy development.

Protection of our environment rightly ranks high as a national priority, and Exxon supports this position as we always have. But it does not follow that every use man makes of the earth despoils it. A wise use of the land can actually improve the environment. In fact, it is the economic prosperity that we currently enjoy that has allowed this generation to direct more of its attention to environmental preservation than any other generation in history.

Environmental regulations are needed, but excessive zeal has caused the pendulum to swing too far.

For example, environmental overreactions delayed the Alaska pipeline for years, and they have also held up coal mining in Wyoming. Just recently, the nation lost a year and a half that could have been spent exploring for oil in the Atlantic. This delay, incidentally, cost Exxon about $2 million a month in lost interest on the $342 million it had invested in the Baltimore Canyon leases. With each day's delay in the exploration and development of domestic energy resources, the country imports more foreign energy, worsens its balance of payments and weakens the dollar.

The regulatory demands on the energy industries are not only excessively time-consuming, but they are also very costly in other ways. At Exxon last year over 1,000 employees devoted significant portions of their work time to compliance activities associated with federal regulations. It is estimated that all this regulatory activity costs Exxon about $72 million per year.

Time doesn't permit my going into the many pieces of proposed or recently enacted legislation which would also roadblock industry efforts to provide the energy the nation will need to prevent the Crisis Future. I have in mind such items as the OCS Lands Act Amendments, recently signed into law, which mandate the use of untried leasing methods and add several new layers of permit requirements; the Alaska Lands Act, now under debate in Congress, which would effectively withdraw 130 million acres of federal lands from mineral exploration; and various proposals to prohibit vertical or horizontal diversification in the energy business.

Of overriding interest at the present time, of course, is the legislation now before the Congress designed to implement the National Energy Plan that President Carter announced in April of last year. That plan was controversial in some respects, but more people in our industry, I believe, were pleased by its emphasis on the need for a wiser use of energy and for replacement cost pricing of oil and gas.

(continued on page 71)

Unauthorized Practice of Law Developments

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This paper is intended as an update on the continuing assault by several individuals within various bar associations on the commercial title insurance industry. The blame for the deplorable attitude that is reflected in these attacks cannot be focused on the entire legal profession, but, once again, it is a small, vocal minority that has engaged in illogical, misguided and misdirected acts and has induced professional associations to take positions that are inimical to the good of their clients and the real estate trading community. The harmful practices and attitudes that have been adopted by some of the members of the practicing bar are the work of attorneys who seem to have confused personal benefit with public interest.

The attacks on the title insurance industry have assumed many forms: they have resulted in court actions for injunctive relief[1]* and contempt proceedings against commercial title insurers for the alleged unauthorized practice of law;[2] the promulgation of unauthorized practice of law opinions issued by lawyers at the instance of other lawyers;[3] and the organization of bar-related or lawyer-controlled title insurance companies,[4] that raise a panoply of antitrust[5] and ethical questions[6] that are beyond the scope of this article.

The gist of the argument is the old refrain that title insurers engage in the practice of law when they perform any service that exceeds the mere issuance of a title insurance policy. The questions that inevitably must arise from this complaint are, first, what acts comprise the practice of law, and, second, who decides what constitutes the practice of law? Traditionally, the answer to the first question has been that "those acts, whether performed in the court or in the law office, which lawyers customarily have carried on from day to day through the centuries must constitute 'the practice of law.' "[7] In effect, the practice of law is what lawyers do.

The answer to the second question logically follows from the answer to the first: Lawyers define their own monopoly. The efforts of the organized bar to preserve a role for itself in the real estate title and land transaction have done nothing to enhance the esteem with which the public regards the legal profession. That the public is dissatisfied with such practices is evident from the following statement by President Carter in juxtaposition to his comments on the rate of inflation, expense of justice and the resistance of the organized bar to innovation. The President, in addressing the Los Angeles Bar Association, remarked, "In a great number of cases there is no sound reason for a lawyer to be involved in land transfers or title searches. Simplified procedures and use of modern computer technology can save consumers needless fees."[8]

*Footnotes for this paper appear on pages 25 and 26.

The motivation of the organized bar in defining its monopoly expansively is actuated by two concerns: To protect the public and to benefit financially those licensed to practice the legal profession.[9] The former concern is certainly pivotal to the definition of "practice of law." Whether the latter interest is worthy of further endorsement is subject to serious debate.

It is unfortunate, but clear, however, that the protection of private economic interests is often the primary motive for the bar's opposition to the activities of commercial title companies incident to the issuance of title insurance. The vested interests of the legal community clearly surfaced in *Surety Title Insurance Agency, Inc. v. Virginia State Bar,*[10] a recent case that will later be discussed in greater depth. There the court, in passing upon the validity of the process of issuing unauthorized practice of law opinions, reserved its judgment concerning the bar association's intent in narrowly defining the industry's realm of operation. It, however, ventured the following opinion: "It belabors the obvious to point out that lawyers in general would financially benefit from an expansive definition of the practice of law. The danger is crystalized under the facts of the instant case. An attorney engaged in the real estate oriented practice stands to lose substantial fees should the issuance of title insurance be held to lie outside the parameters of the Virginia Supreme Court's definition of the practice of law. This direct pecuniary interest highlights the infirmity of the system [of issuing unauthorized practice of law opinions] as it now operates."[11]

The economic motivation of the organized bar is also emphasized in the ABA Standing Committee's booklet concerning bar-related title assuring organizations,[12] a brochure designed to explain the purpose and principles of the bar-related title movement, which brochure opens with the following series of queries entitled "A Test for Every Lawyer Regarding the Extent of His Real Property Practice:"

"Survey your practice for a few weeks, tabulating daily your answers to these questions:

1. What is your gross revenue from real property work? Has it diminished because your former clients are patronizing lay agencies?

2. What percentage of your closings produce a fully adequate fee?

3. What percentage of your clients do you confidently expect to represent in future real property transactions?

Now, based on the survey data, make up your own mind as to how important the bar-related title movement is—or can be—to you."[13]

This sentiment is reflected in another publication by the same committee entitled *How-To-Do-It: Bar-Related Title Assuring Organizations.*[14] This pamphlet proposes four reasons why lawyers should provide legal services in real estate transactions. These reasons include (1) the perfection of legal rights of vendors and purchasers; (2) the occasion to be introduced initially to new clients in the relative tranquility of a real estate sale, which "provides an excellent opportunity to develop a good attorney-client relationship"; (3) the occasion for the attorney to conduct a legal "check-up" of the client's affairs; and (4) the remunerative possibilities afforded by the real estate practice.[15]

With the exception of the first of these rationales for the involvement of legal counsel, the question certainly arises as to whose interests are being served by the attorney's presence. In any event, it is clear that this economic self-interest has played a prominent role in the organized bar's definition of "the practice of law."

This self-interest has produced an unreasonably expansive definition of the practice of law resulting in the exclusion of title insurers from all aspects of the real estate conveyance except the mere issuance of title insurance, and the bar-related title insurance company reflects an effort to eliminate the commercial insurer from competition in this regard also.[16]

The 1971 suit brought by the state of Alabama at the instance of the Unauthorized Practice of Law Committee of the state bar against the Land Title Company of Alabama evidences this movement to erode the competitive position of commercial insurers. In *Land Title Co. of Alabama v. State ex rel. Porter,*[17] the bar argued that the title insurer, by issuing a commitment for title insurance after having examined the public records to satisfy itself about the state of title, rendered an opinion of title and, consequently, engaged in the authorized practice of law.[18] The court, confronted with the request that the title company be enjoined from "further engaging in acts which constitute the practice of law,"[19] viewed the case as one of first impression in which it was not bound by judicial precedent. Being, thus, free from the restraints of tradition, the court found that the commitment was precisely what it purported to be: a binder to insure the title to land, which fell far short of being a title opinion. Since the commitment constituted a statement of *insurability* rather than *marketability,* and no legal advice or opinion was given, the court concluded that the title company did not illegally undertake the practice of law.[20]

Although the defendant in *Land Title Co. of Alabama* escaped relatively unscathed after a protracted and seemingly unnecessary proceeding, the case represents a clear example of an attempt by the legal profession to impinge upon the proper business domain of a private enterprise. Certainly there are areas of activity in which the realms of business enterprise and the legal profession overlap, but it is difficult to justify the proposition that in these matters lawyers must be free of competition, unless such matters require the representation, skills, or advice of one who has had the benefit of a legal education.

Nevertheless, while the handling of settlements and closings, the examination of titles, and the preparation and completion of forms could be quite competently conducted, at less expense, by an experienced title company, in many

instances each party to the transaction would be best served by separate counsel. In all instances each party should be encouraged to secure independent legal assistance. But, in no instance should any party be *compelled* to. This is more than a difference in degree, it is a difference in kind, and this is precisely the effect of the current efforts of a few bar associations.

The concept "practice of law" must be redefined in a manner that will comport more closely with the public interest, which has all too often been neglected. Title insurers do not and should not wish to practice law. States have a legitimate interest in protecting their citizenry by limiting the practice of law, a dynamic and complex endeavor, to those who are educated, trained and licensed. The state judiciary uncontrovertedly has the inherent power to police the legal profession to ensure competence and compliance with ethical norms, all for the public welfare. What is not a proper component of the definition of the practice of law are those matters that, in the public interest, need not be reserved to persons who are licensed in the profession.

The principle that the practice of law must be defined in terms of the public interest recently has received judicial recognition. The courts are no longer content to live with the definition propounded by those in the legal profession who are trying to dictate the perimeters of their exclusive practice. An example of such judicial recognition may be discerned in the case of *Surety Title Insurance Agency, Inc. v. Virginia State Bar,*[21] an antitrust action initiated by a commercial title company to enjoin the state bar's practice of promulgating advisory opinions regarding the unauthorized practice of law. This suit was a consequence of the company's proposal to issue its insurance policy directly to the customer, thereby excluding the attorney, and incidently his fee, from the insurance transaction to lower the cost of title insurance. In neither this case nor in *State Bar of New Mexico v. Guardian Abstract & Title Co., Inc.,*[22] was the bar association able to discount the resulting public benefit in terms of increased services and reduced costs and delay.[23]

It is significant to note, and Judge Merhige emphasized in a memorandum that accompanied the order, that what the title company challenged in *Surety Title* was not the validity of a particular *opinion,* but the anticompetitive effect of the *process* of issuing unauthorized practice opinions.[24] The process itself is of considerable interest since it is by no means unique to Virginia and because of its adverse effect on licensed attorneys who are employed by or affiliated with title insurers.[25] Advisory opinions are issued by a council, comprised of lawyers, in response to inquiries, submitted by lawyers, without the participation of non-interested parties and without provision for judicial review. Indeed, the court noted that "the person who (sic) the state desires to deter and who will have the greatest need for advisory opinions are excluded entirely from the process presently under attack."[26]

Upon carefully weighing the competing public policies, Judge Merhige reached the following conclusion in his discussion of the state-action immunity defense offered by the representatives of the bar: "There is nothing in the record, moreover, that indicates that either the Legislature or the Supreme Court of Virginia intended to restrain competition between lawyers and laymen in areas which arguably do not lie within the definition of the practice of law. The state policy behind restricting the practice of law to licensed attorneys is to protect the public and not . . . to financially benefit a particular segment of society. That intent is thwarted when, as here, the regulatory activity serves an anticompetitive end without necessarily improving the services rendered to the consuming public.

"In summary, not only is the Unauthorized Practice of Law opinion process tenuously related to the state interest it purports to advance, but it operates in a decidedly anticompetitive fashion offensive to notions of basic fairness. It does not act to advance the consumer interest, but merely that of the attorney."[27]

Having found that the anticompetitive effects of the bar association's issuance of these opinions outweighed the public interest, the court refused to acknowledge the state action exemption[28] and enjoined the bar association from issuing further opinions of the matter.[29]

Of even greater consolation, and more directly pertinent, is the result achieved in the state court decision in *State Bar of New Mexico v. Guardian Abstract & Title Co.,*[30] in which the court indicated its willingness to grasp the significance of the arguments that not everything a lawyer does constitutes the practice of law. Similar actions have been initiated in Alabama and Maryland, and hopefully the result will be as favorable.

At the outset it is necessary to discount the contention that inevitably will be raised that the New Mexico case is distinguishable in almost every controversy that arises in any jurisdiction but the forum state because of the uniqueness of the statutorily approved forms at issue. It is true that the immediate effect of the opinion was that title insurers, who merely fill in the blanks of attorney-drafted, standard legal forms required in real estate sales or loan transactions, do not engage in the unauthorized practice of law. In fact, counsel for the title company argued at some length that the title company's agents performed a clerical act that required only the use of common knowledge and no exercise of judgment in selecting the appropriate forms.[31]

Thus, although this case, in which ALTA played a prominent role through its able general counsel, can be limited to a quite narrow holding, its lasting significance to the title insurance industry lies in the court's analytic approach to determining what was prohibited as the unauthorized "practice of law." In accordance with precedent, the court refused to render a comprehensive definition of what constitutes the "practice of law" and chose an ad hoc approach instead.[32] Even though this may be the path of least conceptual difficulty, the absence of a precise and clear definition has a decided chilling effect, since title insurers cannot be certain when they engage in proscribed activity.[33] Rather than engaging in the "onerous task" of formulating a definition, the New Mexico court limited the "practice of law" to those instances in which "doubtful legal questions are involved, which, to safeguard the public, reasonably demand the application of a trained legal mind."[34] It then determined that the test must be applied in a manner that would protect primarily the public interest.

In applying the test that it had propounded, the court noted the long acquiescence of the bar in the title company's activities and concluded, "There was no convincing evidence that the massive changeover in the performance of the service from attorneys to the title companies during the past several years has been accompanied by any great loss, detriment or inconvenience to the public. The uncontroverted evidence was that using lawyers for the simple operation considerably slowed loan closings and cost the persons involved a great deal more money. . . .

"It seems eminently clear that it would be a burden on the public for us to now decree that such acts constitute the unauthorized practice of law. We would be asserting impractical and technical restrictions that have no reasonable justification."[35]

The 16-year interim during which the title insurers had completed forms had inflicted no demonstrable harm on the public. The court reasoned that now to require the assistance of attorneys, whose involvement would only complicate the transaction, would be impractical, technical and unreasonable.

Though the court permitted title insurers to complete forms for real estate closings, it imposed four restrictions. First, the insurer may not exercise legal judgment concerning which form would be appropriate. Second, separate individual charges cannot be imposed for completing forms since this would emphasize conveyancing and legal drafting.[37] Third, a layman may not represent that he is an expert or consultant or has a knowledge of the law. Last, employees of title companies who obtain information from parties for purposes of rendering services about legal rights are engaging in the practice of law.

The express result of the New Mexico case, therefore, is that compelling attorney representation in the routine completion of standard forms cannot be justified, but that the public's interest might best be served by permitting title insurers to perform such services. The attorney, however, still plays an essential role when legal expertise is required.

Lawyers' attempts to compel the utilization of their services in all phases of the real estate transaction by prohibiting insurers from performing simple services that are crucial to the title insurance industry have begun to meet increasingly stiff opposition. Educating the public about the need for legal representation when potential conflicts are latent is one matter;[38] compulsion is another matter entirely. In Fort Wayne, Ind., for instance, some title companies may challenge a resolution by the Allen County Bar Association, which resolution states that title insurance will only be acceptable if it is issued pursuant to a written opinion of a licensed attorney based upon an examination of a current abstract of title.[39] The purpose of the Indiana resolution is evident: To interject the involvement of an attorney into every title insurance transaction. The resolution is particularly pernicious since it amends the county bar's rules of marketability. Formerly, the proviso to Rule 3.09 provided, "The members of this Association will accept a title guaranty policy in lieu of an abstract of title for a lot or lots in an addition where a title guaranty

policy has been issued on such lot or lots prior to April 1, 1951, if abstracts of title have not been prepared or are not available for lots in said addition."

Rule 3.09 has now been amended to read as follows: "If title insurance is provided, then said *title insurance shall only be acceptable if it is issued based upon a written opinion by an attorney licensed to practice in the state of Indiana which opinion is based on an examination of a current abstract of title,* which current abstract shall be furnished to the buyer and thereafter shall be the property of the buyer." (Emphasis added.)

The Fort Wayne situation, furthermore, serves as ample evidence that it is not the legal profession that is at war with the commercial title industry. Rather, the animosity flows from an overzealous few who are able either to impose their opinions on the remainder of the legal profession or influence their colleagues who really couldn't care less, but wish to avoid a controversy within the practicing bar. This instance evidenced minority domination in the following regard: the Allen County Bar Association currently has over 400 members of which 20 constitute a quorum. At the meeting during which the resolution was adopted only 25 members were present. Of the 400 odd members, 23 voted in favor of the resolution and happened to prevail. The resolution, in effect, was adopted by default. As a consequence of the Bar's resolution, commercial banks and savings and loan companies have refused to accept title insurance absent lawyers approval, and numerous Realtors are hesitant to engage in real estate transactions without assuming the additional cost of an abstract and examination by an attorney. This state of affairs has prompted a justice department investigation into possible antitrust violations, and further developments should be anticipated.

There are some acts done in the total title insuring function that can and should be done by title insurers that do not constitute the practice of law. Moreover, the reports of proceedings of title insurance associations, the writings of their representatives, and the formal positions taken by all of them are clear in the position that title insurance companies are not practicing law, do not practice law and do not want to practice law; that they do not want to replace attorneys in their legitimate functions in real estate transactions; but, that they will fight for the right to independently continue to practice their own business of insuring titles to real estate.

The law of Pennsylvania, which by all estimates is generally considered quite tolerant in regard to the extent to which real estate transactions are subsumed in the practice of law, reflects the ancient doctrine (which has received statutory approval) that conveyancing by a layman does not constitute the practice of law and is a distinct art.[40] The case of *LaBrum v. Commonwealth Title Company of Philadelphia*[41] firmly establishes that title insurers cannot be prosecuted for the unauthorized practice of law when they prepare documents (including deeds, mortgages and assignments) solely as an incident of and in conjunction with their practice of insuring titles and real estate. In reaching this conclusion, the court quoted an older Pennsylvania case,[42] which yielded the still quite pertinent observation that, "The drafting and execution of legal documents is a necessary concommitant of many businesses and cannot be considered unlawful. Such practice only falls within the prohibition of the act [proscribing the unauthorized practice of law] when the documents are drawn in relation to matters in no manner connected with the immediate business of the person drafting them, and when the person so drafting them is not a member of the bar and holds himself out as specially qualified and competent to do that type of work."[43] This pronouncement reflects a realistic appraisal of the scope of the practice of law.

One of Abraham Lincoln's favorite riddles which he used to illustrate a point went like this, "If you call a tail a leg, how many legs does a dog have?" The answer is, of course, four. Calling a tail a leg does not make it a leg. Calling the filling in of a form the practice of law doesn't make it the practice of law.

Courts more recently have addressed themselves to what some bar associations by fiat designated as the practice of law and are recognizing and beginning to define precisely what the practice of law includes and doesn't include.

A requirement that only lawyers perform some functions that do not, in the public interest, constitute the practice of law not only does violence to the title insurance industry, but is time-consuming and costly to the public, and also patently wrong and self-defeating to the legal profession.

Footnotes

[1]*See, e.g., Land Title Co. of Alabama v. State ex rel. Porter,* 292 Ala. 691, 299 A.2d 289 (1974); *The Florida Bar v. McPhee,* 195 So.2d 552 (Fla. 1967); *State Bar of New Mexico v. Guardian Abstract & Title Co.,* 91 N.M. 434, 575 P.2d 943 (1978).

[2]*See, e.g., Kentucky State Bar Ass'n., v. First Fed. Sav. & Loan Ass'n.,* 342 S.W.2d 397 (Ky. 1961).

[3]*See, e.g., Surety Title Insurance Agency, Inc., v. Virginia State Bar,* 431 F. Supp. 298 (E.D. Va. 1977).

[4]*See, e.g.,* Balbach, *A New Approach to Unauthorized Practice: Bar-Related Title Assuring Organizations,* 41 N. Dame L. 192 (1965).

[5]The goal of bar-related and lawyer-controlled companies is ultimately to reserve to the legal profession a monopoly in real estate conveyancing and to exclude commercial title companies, Realtors and lawyers not engaged in the private practice of law. A forceful argument can be propounded that the organization of the bar-related company to effect this purpose results in combinations that violate Sections 1 and 2 of the Sherman Act (group boycotts and attempts to monopolize), a tying arrangement in violation of Section 1 of the Sherman Act, and illegal rebates that result in reverse competition. That the legal profession in general and bar associations in particular are amenable to antitrust scrutiny was established in *Goldfarb v. Virginia State Bar,* 421 U.S. 773 (1975), and was not denied in *Bates v. State Bar of Arizona,* 433 U.S. 350 (1977), at least to the extent that the anticompetitive activity was not compelled by the sovereign.

[6]The American Bar Association Standing Committee on Lawyers' Title Guaranty Funds has, within recent years, issued several pamphlets, among them one entitled *How-To-Do-It: Bar-Related Title Assuring Organizations* (1976) [hereinafter referred to as *How-To-Do-It*] and another entitled *Bar-Related Title Assuring Organizations* (1976). The former publication bemoans the circumstance that "[a] favorite attack upon the concept of bar-related title assurance is to charge the lawyer who provides title insurance, along with his legal opinion, with a conflict of interest." *Id.* at 2. It responds to this challenge with the assurance that "[l]awyers are professionals who are required to place their clients' interests before their own. Commercial title insurance companies often find this proposition difficult to comprehend." *Id.* Similarly, the latter publication also offers the palliative that "[t]he position of trust occupied by lawyers is not based upon the absence of a conflict of interest but rather upon the ability of lawyers to resolve such conflicts by invariably placing the clients' interest ahead of their own." *Bar-Related Title Assuring Organizations, supra* at 13. The numerous conflict of interest prosecutions and legal ethics opinions issued by various bar associations suggest that this often remains an aspiration, not an invariable practice. In many real estate settlements it is, indeed, difficult, if not impossible, to identify which of the parties is the lawyer's client.

[7]*State Bar of Arizona v. Arizona Land Title & Trust Co.,* 90 Ariz. 76, 366 P.2d 1, 9 (1961).

[8]Jimmy Carter, Remarks of the President at the 100th Anniversary Lunch of the Los Angeles Bar Association, in Los Angeles (May 4, 1978). President Carter's remarks were but an acknowledgment of a circumstance that has long been recognized. Professor Llewellyn remarked, as long ago as 1938, that, "A title company simply can more effectively gather records than the ordinary lawyer can; and over the years it *can* therefore organize to do a job both more quickly, more effectively and more cheaply; it can issue insurance which the ordinary lawyer cannot, against its own error or negligence. It offers a better social machinery for the job. In such a case, over the long haul, there is only one answer: acceptance of the better machinery, and revamping and regulating it to get rid of its peculiar abuses and defects."

Llewellyn, *The Bar's Trouble, and Poultices—and Cures?,* 5 Law & Contemp. Prob. 104, 111 (1938).

[9]Professor Morgan has concluded that the primary purpose underlying the present Code of Professional Responsibility and the concept of "unauthorized practice of law" is furthering the interests of lawyers by perpetuating a monopoly. Morgan, *The Evolving Concept of Professional Responsibility,* 90 Harv. L. Rev. 702, 707 (1977). The Antitrust Division of the Department of Justice has apparently adopted much the same view. *See* Reeves, *Unauthorized Practice of Law: The Lawyers' Monopoly Under Attack,* 51 Fla. B.J. 600 (1977).

[10]431 F. Supp. 298 (E.D. Va. 1977), *vacated pending resolution of state law question,* 571 F.2d 205 (4th Cir. 1978).

[11]431 F. Supp. at 308. *See also id.,* at 304 n. 7, where the court notes, "There are sufficient indications on the record . . . to question whether the [unauthorized practice of law opinions] concerning title insurance were based entirely on considerations of public interest." The court then catalogued various statements by members of the bar expressing concern about the endangered status of the real estate attorneys' practice.

[12]*Bar-Related Title Assuring Organizations, supra* note 6.

[13]*Id.,* at 2.

[14]*How-To-Do-It, supra* note 6.

[15]*Id.,* at 3.

[16]*See* Balbach, *supra* note 4, in which the author makes the following assertion in assessing the efficacy of bar-related title insurance companies in counteracting the "waning influence of the lawyer in title transactions."

"Nor can individual members of the bar directly combat the power and prestige of the commercial title companies and the incidental unauthorized practice which accompanies their services. The formation of bar-related title insurance companies is a necessity. Most bar associations do not adequately budget their unauthorized practice committees. Even with an adequate budget, these committees would not and have not refused the help of the bar-related companies. The battle against

unauthorized practice can be won only by an offensive effort."

Id. at 204. In developing his thesis, Balbach notes the consistency with which consumers, when offered the choice, "Who shall be the conveyancers—lawyers or laymen?" have chosen the latter. *Id.* at 197.

In a recent article, Professor Morgan argues that permitting the consumer to make this choice is in the best public interest. Professor Morgan, who views the unauthorized practice rules as a means of suppressing competition by those seeking to perform services at less cost, theorizes that, "[t]he interest of the individual clients clearly cannot justify the blanket prohibition on unauthorized practice. For client protection to be the basis for giving lawyers the exclusive right to perform given tasks, one would have to conclude that a client could not reasonably choose to have those tasks performed by a nonlawyer. . . . [E]ven in areas where . . . the lawyer might provide more sophisticated counsel, a client might still reasonably seek lay assistance."

Id. at 708-09. This section of the Morgan article closes with a cost-benefit analysis, resulting in a conclusion that the prohibition of unauthorized practice "is primarily for the benefit of lawyers." *Id.* at 712.

[17]292 Ala. 691, 299 A.2d 289 (1974).

[18]This same argument is propounded in Payne, *Title Insurance and the Unauthorized Practice of Law Controversy*, 53 Minn. L. Rev. 423, 439-40 (1969), in which Professor Payne ventures the rather bold opinion that the title policy itself "has no other purpose than to induce action by the person to whom it is issued."

[19]*Id.* at 291.

[20]*But see* Carter, *Proposed Legislation Further Regulating Title Insuring*, 39 Fla. B.J. 36, 41 (1965); Lewis, *Corporate Capacity to Practice Law—A Study in Legal Hocus Pocus*, 2 Md. L. Rev. 342, 348-49 (1938); discounting the "insurability"-"marketability" distinction.

[21]431 F. Supp. 298 (E.D. Va. 1977).

[22]91 N.M. 434, 575 P.2d 943 (1978). *See* text at notes 30-36 *infra*.

[23]It is uncontroverted that the plaintiff's business approach would result in the consumer receiving greater services than presently offered at a substantially lower cost. For example the affidavits and exhibits filed in this cause indicate that the consumer could save as much as $211 on the charges typically made in the Tidewater area for title insurance on a $30,000 home. The contemplated savings for such insurance on a $60,000 and $100,000 home are stated to be $491 and $871, respectively. 431 F. Supp. at 303.

[24]Plaintiff does not challenge either the definition of the practice of law as enunciated by the Supreme Court of Virginia nor the correctness of any particular ethical or unauthorized practice of law opinion. Rather, it is the method by which these opinions are issued that is alleged to be in violation of the federal antitrust laws. *Id.*, at 300.

[25]The defendant's opinions . . . raise the powerful spectre of disciplinary action to any attorney who participates in a real estate transaction wherein the title insurance is obtained without the services of a lawyer . . . The net effect, predictably, is that attorneys, who are essential to the plaintiff's business, refuse to prepare deeds in transactions where the plaintiff provides the title insurance under its proposed method of doing business. Indeed, only ten of the approximately 200 to 300 attorneys contacted by the plaintiff expressed any interest in performing services for it. *Id.*, at 303.

[26]*Id.*, at 308.

[27]*Id.*, at 308-09.

[28]According to the United States Supreme Court's opinion in *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977), which was rendered after the district court's decision in *Surety Title*, a restraint falls within the purview of the state-action exemption when it is the "affirmative command of the [state] Supreme Court under its Rules . . . and . . . is 'compelled by the direction of the State acting as a sovereign.' " *Id.* at 359-60 (quoting, in part, from *Goldfarb v. Virginia State Bar*, 421 U.S. 773, 791 (1975)). This state compulsion doctrine has resulted in the adoption of a new tact by the Virginia bar, which has had several recent encounters with the antitrust laws.

On July 27, 1978, the Unauthorized Practice of Law Committee of the Ethics Committee of the Virginia State Bar Association caused the issuance of a press release proscribing certain activities of title insurance companies as the unauthorized practice of law. The proposed rules included a finding that lawyers who own an abstract company that furnish opinions upon which title companies issue policies would be guilty of the unauthorized practice of law. The press release further provided that unless opposition to the proposed rules was received within 60 days of publication, the rules would be forwarded through the Virginia Bar Association to the Supreme Court of Virginia for adoption as rules of court.

This procedure is presumably a ploy to correct the flaw detected by Judge Merhige in the *Surety Title* case. It is difficult to reconcile this action, based upon a unilateral determination by the bar, with either the traditional American concept of fair play or the legal requirements of due process of law. Currently the American Land Title Association, through its counsel, Tom Jackson, is taking steps to arrest this outrageous attempt to fabricate a defensible concept of what constitutes the practice of law.

[29]The following order was entered by the district court: "For the reasons stated in the Memorandum of the Court this day filed and deeming it proper so to do, it is adjudged and ordered as follows:

(1) Defendant's motion for summary judgment be, and the same is hereby denied; and

(2) The motion of the plaintiff for summary judgment be, and the same is hereby, in part granted in the following respects: (a) the issuance by defendant of opinions of similar documents purporting to define the practice of law is unlawful and in the instant case is violative of Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§1 and 2; (b) the defendant, Virginia State Bar, its officers, agents and employees be, and they are hereby, enjoined from issuing any further opinions of documents purporting to define the practice of law and said defendant is directed to expunge from its records all such prior opinions; further, the defendant, Virginia State Bar, through its appropriate officer shall forthwith notify its membership of said expungement.

All other matters in issue are hereby continued.

571 F.2d 205, 206 (4th Cir. 1978). Although the Circuit Court of Appeals vacated the opinion and remanded the case on the basis that the relation between the state and the bar association had not been sufficiently defined to preclude the state action exemption, the appellate courts did not challenge the principles articulated by the district court. The state court proceeding initiated by the Attorney General of Virginia against Surety Title Insurance Agency, Inc., charging the unauthorized practice of law is still pending.

[30]91 N.M. 434, 575 P.2d 943 (1978).

[31]Brief for Appellants at 34-38, *State Bar of New Mexico v. Guardian Abstract & Title Co., Inc.*, 91 N.M. 434, 575 P.2d 943 (1978).

[32]*Id.*, at 948.

[33]A more precise definition of what activities a title company is prohibited to undertake is essential before prosecutions can be commenced or injunctions issued for engaging in the unauthorized practice of law. Otherwise, title insurers might be deprived of the right to engage in their chosen profession without due process of law. *See* Jackson, *New Developments in Unauthorized Practice Cases*, 57 *Title News* 11, 12(1978). Although a judicial definition would inject a greater measure of certainty than currently exists, a comprehensive definition would most appropriately be derived legislatively since it is a matter in which public interest must inevitably be considered by a body not exclusively constituted by attorneys.

Morgan, *supra* note 9, at 711 makes the interesting observation that the "practice of law" definition offered by the Code of Professional Responsibility is unjustifiably broad and ambiguous. In further discussing the chilling effect of this ambiguity, Professor Morgan notes, "Because the ambiguity tends to expand the scope of the lawyers' monopoly, it seems fair to view it as further confirmation of the fact that this prohibition of unauthorized practice is primarily for the benefit of lawyers." *Id.* at 712.

[34]91 N.M. at _____, 575 P.2d at 948.

[35]*Id.* at _____, 575 P.2d at 949.

[36]The court carefully noted that the abstention of legal practitioners created no prescriptive rights, but was a factor in the appraisal of whether the public had been injured.

[37]The Pennsylvania Insurance Department, however, demands that title insurers and agents charge for their activities in conjunction with the issuance of title policies. Title 31, Pa. Code §125.1.

[38]The value of education, as compared with compulsion, has not been lost on the representatives of the practicing bar. In a document entitled *The Proper Role of the Lawyer in Residential Real Estate Transactions* (Final Draft 1974), the Special Committee on Residential Real Estate Transactions of the American Bar Association adopts a more conciliatory attitude:

"Although high costs of title proof can be reduced by properly designed legislation a realistic effort to increase and reallocate legal services must come about primarily through education and persuasion. You can compel a public official to use a stipulated system of recording. Likewise you can say to the holder of an ancient claim against land that he must rerecord or be barred.

But it is not practicable to force legal services on unwilling recipients or to compel lenders to follow procedures so distasteful as to discourage them from entering the mortgage market. You can bring home to buyers and sellers knowledge of their legitimate needs for legal services and can make clear to lenders that these needs can be met without impairing the protection the lenders require. When this process of education has been brought to a certain point the law of the market place will take command and all parties will come to expect and demand the services they need. *Id.*, at 18.

[39]A somewhat similar situation has also developed in Oklahoma, where, as a result of a recent Attorney General's opinion interpreting pertinent statutory provisions, only an attorney at law is permitted to determine whether title insurance should issue.

[40]Conveyancing by itself is an art and has been referred to as a science. . . . From the earliest days in the Commonwealth, justices of the peace, aldermen and local magistrates have drawn and still continue to draw leases, deeds and mortgages without holding themselves out as lawyers or engaging the practice of law in the sense condemned by the statute.

LaBrum v. Commonwealth Title Co. of Philadelphia, 358 Pa. 239, 244, 56 A.2d 246 (1948). *See generally* the discussion of the distinction between attorneys (conveyancers) and barristers (consulting experts) in Plucknett, *A Concise History of the Common Law*, 226 (5th ed. 1955), *quoted in State Bar of Arizona v. Arizona Land Title & Trust Co.*, 90 Ariz. 76, 356 P.2d 1 (1961).

[41]*Id.*

[42]*Childs v. Smelzer*, 315 Pa. 9, 171 A. 883 (1934).

[43]*Id.*, at 14.

Report of the Liaison Committee with the Mortgage Bankers Association

Robert C. Bates, Chairman
Executive Vice President, Chicago Title Insurance Co.
Chicago, Illinois

During 1978, the ALTA-MBA Liaison Committee continued a very active relationship between our two organizations.

We had four meetings during the year. Two were full meetings between the members representing the MBA group and the members representing ALTA. Those were held Jan. 19 and June 26. Then we had two additional meetings of the ALTA group only, at the Mid-Winter Conference and at this meeting here in Boca Raton. Jim Murray, general counsel for FNMA, and frequently John Tolford, FNMA assistant general counsel, generally attend all meetings of the full liaison committee as well as those of the ALTA group only held during our Annual Convention and Mid-Winter Conference.

There are always a number of carry-over items on our agenda. For years we've discussed the problem of flood insurance. Still a problem, at the moment it's waiting in the wings. Consequently, at each meeting that subject is on the agenda to be sure we're keeping up to date.

RESPA problems are always on the agenda, as is the subject of lender pay. The latter is beginning to get more attention now that Section 14 of RESPA begins to be implemented by HUD.

The mortgage bankers, as you might guess, are very concerned about the problems of lender pay. It's a very complex subject. So the work that we're doing in ALTA with respect to this problem will be coordinated with MBA.

Various Torrens or registry system proposals are a matter that we continually discuss. Of course, since MBA members are heavy users of title insurance, they constantly are concerned about any impairment or change of direction which might affect their ability to effectively do their business. So they obviously are interested in following any developments which might have to do with the manner and speed with which they can conduct their business.

Title coverage matters are frequently something that we deal with. A number of the new forms of endorsements that we have adopted in the past eight years, including the condominium endorsement, originated with the ALTA-MBA Liaison Committee.

Although coverage is always on the agenda, it's one of the many items that we discuss.

FNMA problems are still with us. At the moment, the most serious one still is the problem of timely policy delivery. We had another discussion of this subject at our liaison committee meeting yesterday. I've written two articles about it in *Title News*. It was first called to our attention by Jim Murray at our annual meeting in Washington one year ago. It's still a problem.

As I have said many times before, we've talked a lot about regulatory problems; we've talked about the problems of dealing with the federal government; we've talked about state insurance department problems; we all have competitive problems and we have controlled business problems. All of those problems are real and must be dealt with. But if we see a major erosion in the use of title insurance because of our inability to deliver our mortgage title insurance policies when all of the requirements have been met, if we still can't deliver those policies to our customers who are entitled to them and who need them, we will have no one to blame for that erosion but ourselves.

At our meeting in January it became very apparent that there were new sources of mortgage money available to the mortgage-lending industry which could help keep the housing market functioning as it should, as well as help the title business avoid the extreme peaks and valleys of business volume that we've had over the past few years. That new source is the mortgage-backed and the mortgage pass-through security.

At our Jan. 19 meeting it became apparent that the mortgage bankers were not fully informed on this subject. It likewise was clear that our own industry was far less informed on this subject than we should be.

This resulted in a meeting in Chicago June 26 for the purpose of developing more reliable and complete information with respect to the mortgage-backed and the mortgage pass-through security concept. We all had some ideas of what it was all about, but in the final analysis we recognized that we really weren't fully informed as to what was involved in the issuance of these certificates.

Our meeting was attended by Walter Clark, executive vice president of the First Federal Savings and Loan Association of Chicago, who is an expert in this field. First Federal has sold at least one successful mortgage-backed issue and is considering another one. Neil Diver, executive vice president of TICOR Mortgage Insurance Co., was present. As you know, the private mortgage insurers are very much involved in the issuance of the conventional mortgage-backed and pass-through securities, so we felt it was important to have a representative of that industry present to give us an accurate picture of the role that private mortgage insurance plays. We learned much from Mr. Diver. John Tolford of FNMA was also there and was most helpful.

The most important result of that meeting was our recognition of the fact that the only "rater" of these kinds of securities to date has been Standard & Poor's Corp. Yet Standard & Poor's has been giving very little attention to the question of title evidence as they have rated previous conventional mortgage-backed and mortgage pass-through security issues.

This made it clear that we should spend some time with Standard & Poor's. The major result of the meeting in Chicago on June 26 was the sending of a delegation from ALTA to meet with the people from Standard & Poor's to explore their views with respect to title evidence and the issuance of mortgage-backed and mortgage pass-through securities. We need to be sure they understand the function of title insurance and the importance of title insurance with respect to this kind of transaction.

That meeting was attended by Bill McAuliffe of ALTA, Marv Bowling of Lawyers Title, Jim Pedowitz of Title Guarantee of New York, and Hugh Brodkey of Chicago Title. They had a very successful meeting. It was clear that Standard & Poor's did need to be further educated on this subject.

According to our representatives, we believe we successfully made points as follows:

Private mortgage insurance is conditioned on being able to deliver a valid mortgage to the insurer. How can the investor be sure this is accomplished? All of the issues rated by Standard & Poor's so far have involved pools in which all of the mortgages had title insurance. The people from Standard & Poor's thought that this might have been a requirement of the private insurer since it was not their own requirement. Because the pools often include a large portion of mortgages from the same immediate geographic area, there is a risk of many titles being affected by the same title claim because of a defect, lien or encumbrance affecting the land before it was subdivided.

Attorneys' opinions are written without uniformity, and any effort to review a large group of abstract opinions would be much more time-consuming and risky than reviewing title policies.

Standard & Poor's has been asked to rate an issue involving a pool as to which the mortgages are based on abstracts and opinions alone. We may have convinced them that it's easier and safer to deal with title insurance.

FNMA and GNMA title requirements must be considered if the trustees of the insurer ever expect to resell the mortgages. Bill McAuliffe gave Standard & Poor's a copy of Jim Murray's article in the August 1978 issue of *Mortgage Banker* magazine, which explains how title insurance is used. And while mortgage-backed securities are usually based on a pool of seasoned mortgages, the mortgages involved in the new issues of pass-through certificates are frequently on new construction, including new condominiums. It was pointed out that mechanic's liens and condominium documentation are important problems on new projects.

The recommendations of the group that visited Standard & Poor's were as follows.

Number one, that Bill McAuliffe give Standard & Poor's a list of all underwriters, with a notation of the ten largest. S&P probably will circularize those underwriters from that list for NAIC Form 9 information. That list has been furnished, so those of you who are underwriters can probably expect some sort of inquiry from S&P with respect to your financial responsibility.

Number two, we should contact the private mortgage insurers and see whether they would be willing to articulate to others in the transaction the problem of title evidencing. If we can get them to describe how they would be satisfied as to the conditions of title, it would be useful.

And three, we should determine exactly what has been done by the trustees on the prior issues to audit the availability and content of title evidence. The prospectus for each issue usually states that title evidence will

be available, and in some cases existing title policies are delivered to the trustee.

It would be useful to get comments from people involved as to the relative work involved in reviewing title policies against lawyers' opinions.

We think that the evolution of the situation will be such that all future issues will require title evidence in the form of title insurance.

The mortgage insurer who attended our meeting gave us a whole new picture of the function of the mortgage insurer and the mortgage pass-through situation. Where they normally insure the top 10 or 20 percent of an individual mortgage, on a $100 million mortgage-backed or mortgage pass-through issue the mortgage insurer normally provides five percent coverage on the aggregate of the issue. That would be $5 million. That in turn has to be reinsured by at least four other mortgage insurers, but the mortgage insurers then would pay the full loss on any single foreclosure up to an aggregate of $5 million. So on a $100 million issue, until $5 million of coverage is used up, each loss is insured 100 percent. But the mortgage insurer takes the same position as FHA does in connection with a defaulted mortgage. They will not accept responsibility in a default situation unless a good title is furnished. So it becomes very important to the purchasers of mortgage-backed or pass-through securities to be sure that if there are defaults a good title can be furnished to the private mortgage insurance company. Of course, the best way to achieve this is to use title insurance.

We still have a major education job to do. We have a good start in working with the mortgage bankers. And I think another responsibility of the ALTA-MBA Liaison Committee in the next few months will be to continue this dialogue, explore the matter further and come up with some additional recommendations as to what the function of ALTA might be in connection with this very important subject of mortgage-backed and mortgage pass-through securities.

We heard this morning a discussion by the MBA chief economist as to the part that this type of security can play in bringing money into the mortgage market. It's apparent that in the future this kind of device will be used extensively, and certainly title insurance, if we do our job, will have a major part to play.

I do want to say that I think the liaison committee has done an effective job since it was organized in 1970. It has maintained an excellent rapport with MBA and FNMA.

I think one of the best indications of that is the August issue of *Mortgage Banker* magazine, which some of you may have seen. For those of you who haven't, I recommend it.

As you know, for several years MBA has published an issue once a year dealing with title insurance. But in the August issue they have five different articles on title insurance. One was written by Don Waddick, vice president and senior title counsel of Title Insurance Company of Minnesota. As mentioned earlier, Jim Murray, senior vice president and general counsel of FNMA, contributed an excellent article which is sure to please you. Jim understands title insurance, and you'll see that he recognizes its value.

Ray Werner, assistant general counsel of Chicago Title, has an article. Billy Vaughn, senior vice president of Lawyers Title Insurance Corp., who will soon become chairman of this committee, has an excellent article entitled "Title Insurers Help Assure the Success of Mortgage Bankers." Hugh Brodkey, vice president and associate general counsel of our company, who has a good deal of background in the new type of mortgage instruments, has an article on the workable AMI (alternative mortgage instruments) and the role of title insurers in implementing them.

The MBA has been so pleased with this issue they already have us working on articles for next year. In addition, the MBA has prepared a number of press releases utilizing these articles on title insurance. What better friend could we have than our own customer group that is distributing press releases around the country utilizing articles on title insurance written by people in our own industry?

I close by saying this is my last official act as chairman of the ALTA-MBA Liaison Committee. I've served on it since it was organized in 1970. It's now time that the opportunity for this kind of involvement be passed on to someone else.

If we continue as we have in the past, and I'm sure that we will, there will always be a need for this committee. And if we do our job, we'll be useful and meaningful to both MBA and ALTA in the years to come.

RESPA Section 13 Update

Gilmer Blankespoor, Government Program Manager
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Last year when I spoke to you in Washington, we had just selected a contractor—Booz-Allen & Hamilton—to assist us in conducting the research and demonstrations required by Section 13 of RESPA. Since that time, a great deal has happened. A number of reports have been submitted to us by the contractor and last week we selected four local jurisdictions and one state government to receive grants to establish model systems of title recordation. I will give you more details on these grants later, after I have discussed other aspects of the Section 13 research.

RESPA was enacted in 1974 as a response to consumer complaints over high settlement costs. The Act includes both an operational and research component. The operational component involves a set of prescribed procedures and prohibitions which now govern the settlement process. I am referring to the Good Faith Estimates, the HUD-1 form and the prohibitions against kickbacks and other practices. The advance-disclosure procedures and the imposition of the HUD-1 form raised all sorts of objectives initially, even after the Act was amended, but they are now accepted widely and some settlement agents even claim the use of the HUD-1 has contributed to greater uniformity and understanding of the settlement process.

The research part of the Act, embodied in Sections 13 and 14, looks more to the future, addressing the issues of cost and the need for new legislation. Although I will not be discussing Section 14, I should explain that this section calls for a full-scale analysis of alternative ways of reducing closing costs, including use of a concept called lender-pay. We plan to select a contractor next month to assist us in conducting this study. Findings from both this study and the Section 13 demonstrations will be incorporated into a report to Congress in mid-1980.

Now I would like to discuss Section 13. Since some of you may not be familiar with this section, let me read it to you. It is one of HUD's shortest statutory authorities:

"Sec. 13. The Secretary shall establish and place in operation on a demonstration basis, in representative political subdivisions (selected by him) in various areas of the United States, a model system or systems for the recordation of land title information in a manner and form calculated to facilitate and simplify land transfers and mortgage transactions and reduce the cost thereof, with a view to the possible development (utilizing the information and experience gained under this section) of a nationally uniform system of land parcel recordation."

This section was based on testimony at the Congressional hearings and the 1972 HUD/VA Report on Settlement Costs. This report concluded that one of the factors contributing to high settlement costs was the archaic nature of land title recordation.

Before actually funding demonstrations, the Department felt it needed some prior studies and a contextual basis to determine what was truly innovative. For that reason we contracted with Booz-Allen to conduct a series of studies. We have now received draft copies of five separate reports which I would like to summarize briefly for you:

• *Land Title Recordation Systems: Legal Constraints and Reforms:* This report examines those laws and legal doctrines which inhibit or facilitate the determination of ownership. It also discusses reforms such as the Marketable Title Acts and curative legislation. For the most part, this report focuses on the Uniform Simplification of Land Transfers Act (USLTA). While the report does not agree with every aspect of USLTA, it generally endorses this model statute and urges its enactment by state legislatures. You are probably aware that the American Bar Association's House of Delegates approved USLTA by a squeaky one-vote margin this spring. Fortunately, ALTA's endorsement appears to be stronger and I sincerely hope that ALTA takes the lead in promoting this model statute at the state level. I am sure every one of you has a problem with one or more sections of USLTA, but it is important to remember that the Act represents a vast improvement over most current statutes. Without your energetic efforts, and the advocacy of progressive county recorders, state

legislatures are unlikely to enact this model statute.

• *Positive Title Registration Systems:* This report examines Torrens as a concept and analyzes several Torrens systems in this country. Primarily the report concentrates on ways in which registration systems can be improved, if a state or county chooses to go the Torrens route. Twelve specific issues are explored in this analysis, including such issues as boundary affirmation, and compulsory versus voluntary registration. This report will also include a draft statute which defines a model registration system, as perceived by the author of the report.

• *Eliminating Repetitive Title Searchers:* This report examines various ways of eliminating or curtailing what people feel is the ultimate waste in title assurance—repetitive title searching. Various alternatives are examined which would basically extend the practice of title companies in relying on "starters". One is a requirement that the purchaser file title evidence along with the recorded deed. Another proposal would make title policies assignable to subsequent purchasers. I should say that after discussing the benefits and problems of each of these alternatives, the author is not very optimistic that any of these alternatives is very workable.

• *Land Title Mapping and Surveying:* This report examines mapping and indexing standards, with particular emphasis on the type of mapping which is required to support a parcel index system. The level of mapping and surveying required to support other systems—such as multi-purpose land data system—is also described.

• *State-of-the-Art Report:* This report is based both on our experience with the applications for demonstration grants and on visits by our contractor to 20 different recordation and registration systems across the country. Included in the 20 systems examined were 11 public sector recordation systems, five registration systems and four title plants.

This report has not yet been submitted, but based on a reading of the first chapter I can summarize its contents. Not surprisingly, the report concludes that the emergence of the unique private sector role in conveyancing in this country has resulted in large part from the inefficiencies in the public sector. Further, the private sector through its title plants has developed modern and efficient record-keeping systems unmatched by even progressive public systems. However, many public sector systems are now also improving their operations, and are taking advantage of new technologies.

One critical problem which this report will address but probably not resolve is the redundancy and waste resulting from the existence of both public and private record systems. On one hand, taxpayers or users should not be required to pay for county title recording systems which are rarely used, and on the other hand, title companies are understandably hesistant to rely even on efficient public systems which might deteriorate in the future.

The report also defines a number of alternative model systems, both recordation and registration systems, and it describes certain features—such as parcel indexing—which are necessary elements of any model system.

I mentioned that these reports are in draft. Before they are finalized, all reports will be reviewed by our Advisory Committee, of which ALTA is a member. We have already received very extensive and helpful comments on three of the reports from Bill McAuliffe. The other two will be submitted to the Advisory Committee for comment within several weeks.

Let me now tell you about the demonstration grants we are making this week.

Last April, we contacted every state and county government to announce a nationwide competition for demonstrations of model and title systems. In response to this announcement, we received over 800 requests for the document which described the type of demonstrations we were interested in funding. This document—called the Request-For-Grant Applications (RFGA)—drew upon the findings of the State-of-the-Art report and laid out five types of model systems which we would consider funding. Further, the RFGA stipulated that each system had to incorporate as many as possible of the following features:

- Parcel indexing
- Standardized recording forms
- Common recording office
- Rapid instrument processing
- Micrographics.

In response to the RFGA, we received 64 applications from state and county governments. After a careful review of these proposals, including lengthy oral discussions with 11 semi-finalists, we selected five jurisdictions to receive grants. They are:

- Warren County, (Lebanon, Ohio)
- Pinal County, (Florence, Ariz.)
- Southern Middlesex Registry (Cambridge, Mass.)
- St. Louis, Mo.
- North Carolina

All of these systems substantially meet the criteria of the RFGA, in that they are centralized parcel index systems with user access to records through a micrographic system. Also, all but one are automated systems, primarily relying on minicomputers.

I will now describe each of these in more detail:

Warren County, Ohio, is a small rural county between Dayton and Cincinnati. The county is experiencing rapid spillover growth from the two urban areas and is thus in need of improved land records operations.

The county proposes developing an automated recordation system, closely paralleling the model in the RFGA. The county plans to utilize the services of Cott Indexing and Battelle Memorial Institute. These two firms have substantial related experience which complements the interest and ability of the county recorder.

The system to be developed will be modular and should be transferable to both smaller and larger counties. The utility of the system will be enhanced by the conversion of some historical data related to parcels.

Pinal County is a small, rural county in Arizona located between Phoenix and Tuscon. Settlement services are handled primarily by attorneys and title insurance companies. The county is experiencing moderate increases in real property transactions.

The real property conveyancing environment in Arizona reflects substantial legal reforms and curative legislative action. This environment provides a close parallel to the model legal environment documented in Phase I research and in the Uniform Simplification of Land Transfers Act (USLTA).

As with Warren County, the county recorder will serve as project manager, assisted in this case by Management Research Foundation, an organization familiar with land title recordation and data processing hardware.

Southern Middlesex Registry is the only demonstration involving a registration system. As ALTA and other critics of the Massachusetts system have pointed out, there are a number of features of that system which have made it unattractive to many potential users. The demonstration will involve improvement of procedures, the use of computers to store and access information on certificates, and the introduction of legislation to facilitate the registration system. It is not envisioned, however, that the demonstration will involve any change to a mandatory registration system.

St. Louis is an independent charter city in Missouri, performing the functions of a municipality and a county. It is, however, a large, urban jurisdiction, representative of major urban counties across the country. As a charter city, St. Louis has a unique relationship with the Missouri State Legislature which may facilitate the passage of model legislation.

The model system proposed by St. Louis includes all the features indentified in the RFGA. The system is being designed to operate on a minicomputer, interfacing with a mainframe, thereby providing two hardware options, and enhancing potential transfer. The system is being designed and implemented on a phased modular basis, allowing for interim review and demonstration periods. The city will be assisted in the demonstration by Alexander Grant and Co.

As the only grant to a state government, the North Carolina demonstration provides a unique test of state/local partnership in achieving a model system which can be replicated state-wide. The grant will go to the Department of Administration which in turn will select two demonstration counties in the eastern portion of the state. One county will operate an automated system and the other a manual system (the only manual system to be funded). Both systems will incorporate all features of the model system as defined in the RFGA.

The Department of Administration currently has responsibility to assist counties in establishing land data systems and in defining guidelines for parcel indexing.

Each of these grants is roughly in the range of $300,000 to $400,000, adding to a total of $1.8 million. In addition, we have reserved a total of $500,000 for a second round of competition in the next fiscal year to accommodate those demonstration ideas which could not be developed in the short time frame available this fiscal year.

The demonstrations funded this year and next year will be monitored closely by us and by our contractor, and their experience will be carefully documented. Another activity we are considering in the next two-year period is dissemination of the State-of-the-Art Report to county recorders as well as

(continued on page 70)

Washington Report

William J. McAuliffe Jr., ALTA Executive Vice President

Your Association has been very active over the past year with a number and variety of problems. One is Indian claims. This has involved Association contact with individuals at the White House, with members of Congress and their staff, with members of the executive branch of state governments, with counsel of party defendants and, even with counsel for the Indian plaintiffs. The legal and legislative advice we have received from our outside counsel has been outstanding. The committee work of ALTA members has been invaluable. Evidence of the significance and quality of ALTA's work is manifested in the *Congressional Record* of May 23, 1978, which reports the introduction of a bill to resolve the Maine Indian claims and also includes a letter from Maine Attorney General Brennan. This letter includes the following statement. "For a complete analysis of the constitutional basis for this approach—extinguishing Indian claims—I recommend you review the recent paper of the ALTA entitled, 'Indian Land Claims under the Non-Intercourse Act: The Constitutional Basis and Need for a Legislative Solution.' "

Another area of ALTA involvement concerns the Supreme Court of the United States. ALTA has filed two briefs with that court requesting review of adverse lower court decisions.

In one case the issue is: Does the federal government, when it makes land grants, retain an implied reservation of an easement or right of way of undefined description to provide access to its retained lands?

In the other case, the issue is the constitutionality of an 1834 statute which places the burden of proof on a white person in litigation over property rights when an Indian is on one side and a white person is on the other side, once the Indian makes out a presumption of title in himself from the fact of previous possession or ownership.

ALTA is involved in an unauthorized practice of law suit brought against one of our title insurance agents in Alabama. Our general counsel has worked with the title insurance agent's local counsel in an effort to make sure that the local court is cognizant of the harsh impact that this suit is having on the title insurance agent—and is aware of the potential impact of the decision on similar situations elsewhere in the country.

Your Association is watching, with concern, activities in certain states involving the right of title companies to fill out statutory forms and the right to determine insurability without necessarily involving a local member of the Bar.

Thus we note with concern the Opinion of the Oklahoma Attorney General—issued in response to an inquiry from a state senator—which states that a "title insurance company would be illegally practicing law if its title insurance policy is issued without an examination of the abstract by a duly licensed attorney."

These Alabama and Oklahoma developments are the latest to come to our attention in the unauthorized practice problem area, which was the subject of an excellent presentation by Moses Rosenberg this morning. There have been others elsewhere around the country and additional occurrences may well be ahead. If you are aware of an emerging unauthorized practice problem with national title industry implications in your community, please let me know about it.

We are also monitoring the investigation in the Fort Wayne area by The Anitrust Division of the Department of Justice. The division has issued a "Civil Investigative Demand-Documentary Material" to title companies and the Allen County Bar Association. The Antitrust Division seeks to determine "whether there is, has been, or may be a violation of Sections 1 and 2 of the Sherman Act . . . a combination or conspiracy to restrain trade in the sale of title insurance and a combination or a conspiracy to monopolize the business of certifying the marketability of title to real estate."

On May 17, 1978, the Allen County Bar Association of Fort Wayne, adopted an amendment to its standards of marketability to provide that: . . . "if title insurance is provided then said title insurance shall only be acceptable if it is issued based upon a written opinion by an attorney licensed to practice in the state of Indiana, which opinion is based on an examination of a current abstract of title, which current abstract shall be furnished to the buyer and thereafter shall be the property of the buyer."

The Department of Justice is demanding documents relating to the Allen County Bar Association resolution, standard, or statement of principle regarding title insurance or the marketability of title to real estate, and all documents which refer or relate in any way to any refusal by a lender to lend money for the purchase of real estate without an examination by an attorney of an abstract of title and any policy or practice of any person, firm or organization with regard to real estate transactions in which there has been no examination by an attorney of an abstract of title.

In connection with these developments, I call your attention to a recent article appearing in the *Wall Street Journal* by Charles Fried, a Harvard Law School teacher, in which he states: . . . "we need to smash the practices (like . . . restrictions on certain services by title companies . . .) which the legal profession previously claims are intended to protect the public but which serve primarily to protect the marginal lawyer's monopoly against lower-priced, more efficient competition."

In another area, the Association is assisting Florida title companies and the Florida Land Title Association in connection with a battle over the so-called "gap" period. A complaint has been brought that title companies are not permitted to insure the title transaction between the time of the closing and the time when the documents are recorded. It is argued that individuals who wish to be covered during that period should buy so-called "gap" insurance. This matter is before the insurance commissioner of Florida. ALTA President C.J. McConville testified on this matter in Miami May 31. ALTA General Counsel Thomas S. Jackson and his law partner have been involved in the development of materials submitted to the hearing officer in this case.

In still another area, ALTA submitted a statement and President McConville testified at the American Institute of Certified Public Accountants (AICPA) public hearing on July 17, in Los Angeles on the issue of accounting standards for title plants. Subsequently, ALTA employed outside tax counsel to render an opinion on the issue as to whether a title plant is a tangible or intangible asset. It is felt that such a determination could have a significant impact on the ultimate resolution of the title plant accounting issue. Regarding this issue, an accounting change proposed by AICPA called for amortization of title plants over a period not to exceed 40 years. This would have been financially adverse to title insurers and agents with plants.

On August 8, 1978, representatives of ALTA met with employees of Standard and Poor's at their office in New York for about three hours to discuss the role of title insurance in evaluating pools of mortgages which are the subject of mortgage pass-through certificates rated by Standard and Poor's.

The ALTA general counsel has submitted an article to *Docket Call,* published by the American Bar Association General Practice Section, entitled "Commercial Title Insurers v. Bar Funds." This article was written at the request of the editors of *Docket Call,* who wanted the commercial title industry to respond to an earlier article published by the bar funds entitled, "Bar-Related Title Insurers: Their Benefits to the Bar and the Public."

ALTA staff continues to work with the news media in developing articles on the industry. I trust that many of you saw the article on title insurance appearing in the August 14 issue of *U.S. News and World Report.* If not, you may wish to obtain a copy of it. This article appeared on page 73. It is entitled "Managing Your Money When You Buy a House." Let me read the first few paragraphs:

"A special type of insurance for home owners rarely gets much public attention, yet it can save householders a lot of mental anguish and sometimes substantial sums of cash as well.

That type of protection is homebuyer's title insurance, guaranteeing the ownership of a particular piece of real estate and specifying any limitations on the title."

And, the last paragraph reads, "Thus, a title policy to protect your investment in a home can be a worthwhile safeguard."

I am pleased to report that Gary L. Garrity of the ALTA staff worked closely with the author of this article while it was being developed.

Gary has also worked very closely with the senior staff of *Mortgage Banker* magazine in connection with the publication of articles on title insurance which appeared in the August, 1978, title insurance issue of *Mortgage Banker.* If you have not seen this issue of that publication, I urge you to obtain a copy of it. In my opinion, the title

insurance articles are excellent. The magazine editors report favorable reaction to the issue from the mortgage banking community. I would like to thank the authors, Don Waddick, Billy Vaughn, Raymond Werner and Hugh Brodkey of the title industry and James E. Murray of FNMA.

ALTA has been very active in the HUD RESPA Section 13 study of possible ways to improve land recordation and registration systems. Not only has the Association been represented on the advisory panel that was established to assist Booz-Allen & Hamilton, the contractor on this study, but we also have submitted detailed comments on the work done by Lane & Edson, a Washington law firm which has done some RESPA-related legal studies for Booz-Allen.

ALTA has solicited information from members concerning changes in title transfer procedures, practices and charges that may have come about as a result of RESPA. We are doing this, in part, because HUD is asking lenders and borrowers to evaluate RESPA's performance and to make suggestions for change. In addition, HUD under Section 14 of RESPA is required to report to Congress by mid-1980 on whether there is any necessity for further legislation in this area. In this connection, HUD is to include in its report recommendations on the desirability of lender payment of home buyer settlement costs. The Association, in anticipation of such a report, has commissioned a study of the impact of lender pay as well as seller pay on the title industry.

As the administrative officer of the Association, I wish to express my appreciation to both the officers and members of the Association for their support and encouragement of staff. In my opinion, the ALTA staff consistently works for the title industry in a highly professional manner.

If you have had the pleasure of hearing an ALTA representative at a regional or state title association convention, you no doubt have heard him urge your involvement in industry affairs. On the basis of the reports given at this convention by ALTA representatives, it should be clear that ALTA practices what it preaches. The Association is involved and will continue to provide the national leadership that our industry needs for a prosperous future. If you need help in areas that have national implications, contact ALTA.

By working together on industry matters, you—as title professionals—will continue to shape the title business in the best interests of all concerned.

Report of the ByLaws Committee

Philip D. McCulloch, Chairman
Executive Vice President, Rattikin Title Co.
Fort Worth, Texas

I trust that each of you has taken advantage of the opportunity to read the proposed changes as they were published in the July issue of *Title News*. Some of them are important changes. Some of them are simply housekeeping changes. But if you will bear with me, I will go through these changes one by one and then submit them to you for your approval or your rejection.

Well, the first amendment that is being proposed is to Article 3, Section 1, which deals with the classes of members. The first paragraph thereof has previously read that there shall be three classes of members designated as active members, associate members and honorary members. The changes that are recommended are, first of all, the deletion of the word "three" and the insertion of the word "four" and the dropping of the "and" between associate members and honorary members, and addition of the words "and members emeritus."

In connection with that change, there's also an amendment to Article 3, Section 1, subparagraph B. That is the members emeritus classification. It reads "When any individual holding membership in the association or an officer or employee of a member company shall retire from active participation in the title profession, then such individual shall be eligible to retain membership in the association under the classification of member emeritus."

In connection with the new membership classification there is an amendment of Article 3, Section 5, again dealing with the classifications of members. The first paragraph of Section 5 remains unchanged. The second paragraph of Section 5 reads at present "Associate members, honorary members, and delegates of affiliated associations may attend any meeting of this association or of its sections except closed sessions and may participate in the deliberations and discussions, but shall not have a right to vote."

As the amendment is proposed it would read "Associate members, honorary members, members emeritus and delegates of affiliated associations may attend any meeting of this association or of its sections except closed sessions and may participate in the deliberations and discussions, but shall not be authorized to vote except as provided by Article 7, Section 4 of these bylaws, such members shall not be eligible for elected office or committee appointments."

Following also the amendments in connection with the member emeritus status, there is a suggested change in Article 5 dealing with dues and it involves the deletion of words "active" and "each associate" from the first sentence. A deletion of the phrase "at each annual convention for the year next ensuing," and the deletion of the phrase "such ensuing." So that it would read as follows:

"Each member shall pay dues in accordance with a schedule to be fixed by the Board of Governors, payable on or before the last day of the third month of each year. Honorary members shall pay no dues."

There are some housekeeping changes dealing with meetings of your Board of Governors, meetings of your Executive Committee and those amendments are Section 6 of Article 4.

The first five sections remain unchanged. At present Section 6 remains unchanged in its present wording, except that there is to be added this language, as a second paragraph:

"When a matter appears to be purely formal, but requires the action of the Board of Governors shall arise between meetings of the Board of Governors and is of such a nature that the Executive Committee in its discretion cannot finally act upon, then a poll of the Board of Governors may be held by mail in the following manner.

The executive vice president, as secretary of the Executive Committee, shall prepare written minutes of the meeting of the Executive Committee, setting forth the recommendations of such committee and circulate the same by mail to each member of the board, and unless a sufficient number of governors, as required to defeat a quorum or to defeat the matter at hand, register objection thereto, within 30 days after the date of mailing, then upon certification by the executive vice president showing the response to such mailing, the minutes may be recorded as an official action of the board as if such meeting had been duly assembled."

There is an addition of a Section 7 to Article 4 dealing with meetings. It is entirely new and reads as follows.

"Regular meetings of the Executive Committee shall be held during each Annual Convention and each Mid-Winter Conference of the Association and at such other time or times and at such place or places as shall be designated by the president. Should the matter to be considered be of such urgency or should it be unnecessarily expensive to assemble the committee, then a meeting of the committee may be held by telephone conference provided that each member of the committee is given notice of the time when such telephone conference shall be held."

Housekeeping further with Article 7, dealing with the election or appointment of officers, Board of Governors and committees. In Section 4, paragraph (a), there is included the word "Planning" as one of the committees which the president may appoint. This word "Planning" is to be deleted at this point because the composition of the Planning Committee is set forth under another section of this particular article.

There is additional language added to Section 4, paragraph (a) which really moves it from one part of the article to its proper place.

This new language added to Section 4(a) of Article 7 is as follows:

"Committee appointments shall be limited to active members or staff members of affiliated associations. In the event an active member or a staff member of an affiliated association is not available to serve on a committee, the President, with the approval of two-thirds of the Executive Committee,

may appoint an associate member to fill the membership of the committee."

You may have noticed in the present writing of Article 7 that numerous paragraphs have no identification other than their contents. They're difficult to refer to. We currently have a paragraph (a) and we have a paragraph (b). After paragraph (b) there are numerous paragraphs which are not identified by any letter designation. So housekeeping has added the identifying letter "c" to the paragraph which reads "The Grievance Committee shall be composed of . . . ." The letter "d" shall be added to the paragraph dealing with the Title Insurance Forms Committee. The letter "e" has been added to the paragraph dealing with the Legislative Reporting Committee. The letter "f" has been added to the paragraph dealing with the Young Title People Committee. The letter "g" has been added to the paragraph which begins "The Title Insurance Accounting Committee . . . ." The letter "h" has been added to the paragraph which reads "Each section shall be represented on the Liaison Committee . . . ." The letter "i" is added to the paragraph reading "The chairman and members of the Federal Legislative Action Committee . . . ."

In paragraph "j" there is, first of all, that paragraph which deals with the Government Relations Committee, and at this point we dropped the language "in the event an active member is not available to serve on a committee, the president with the approval of two-thirds of the Executive Committee, may appoint an associate member to fill that membership on the committee."

And then the final lettered paragraph "k" dealing with the chairman and members of each of the committees.

In Section 6 of Article 8, dealing with the duties of officers and committees, there is language dropped and language added. So that this paragraph dealing with the Executive Committee shall read as follows:

"The Executive Committee shall be empowered to act for the Board of Governors and bind the Association in any situation or emergencies, when in the discretion of the committee, it is impractical to defer action awaiting the assembly of the Board of Governors. Minutes shall be kept of all meetings and any actions taken by the committee shall be reported in writing to the Board of Governors at or before its next meeting. The executive vice president of the association shall act as secretary at all meetings of the Executive Committee. A majority of the Committee shall constitute a quorum."

Under Section 21 of Article 8, we obviously had a misprint and a composite sentence inserted in our present printing, the language wherein it states, "All reports of the committee shall be submitted in order to qualify as practices or forms," obviously is an error. So that language is to be deleted from Section 21 of Article 8.

Now these are all of the amendments to the bylaws that are proposed, with the exception of Article 3 which deals with membership. The present paragraph (b) dealing with associate members to be deleted in its entirety and a new paragraph inserted as published in our July issue of *Title News* and now as amended by two-thirds of the Board of Governors in session on Sept. 24. The new paragraph (b) dealing with associate membership would read as follows:

"Associate members shall be limited to those not qualified for active membership as herein before provided. Subject to meeting the requirements of Section 3 of Article III, associate membership shall be available to any individual engaged in any of the following professions, trades or callings: real estate brokers, mortgage bankers, surveyors, lending institutions, developers, builders, or counsel to mortgage banking companies, life insurance companies and supervised institutions, which make loans secured by real property, and individuals engaged in the providing of services related to the land title industry."

Mr. President, those are the changes as put forth and as amended. *(Changes, as presented, were approved by a vote of active members in attendance.)*

Report of the Title Insurance Forms Committee

Marvin C. Bowling Jr., Chairman
Senior Vice President and General Counsel
Lawyers Title Insurance Corp., Richmond, Virginia

You will find in front of you two forms that I'm going to ask for your passage as American Land Title Association forms. First, I would simply say that the committee, beginning shortly, will meet and continue its work on a joint protection policy for homeowners.

As many of you know, there will be the necessity of complying with some state statutes. I think Massachusetts is the first one which requires insurance in simplified language. Other states are coming on line for that. Regulations are being adopted by insurance commissioners which will make it necessary to have so-called simplified forms and your association intends to be of some help in converting ALTA forms to simplified language.

We have been asked by groups to provide a joint protection form so that a lender, for example, could ask for this form and make sure that his borrower also has title insurance. So that's what the committee is going to do.

Now I'll talk to you about what the committee has done. The first form which I would like to recommend is the Notice for Availability of Owner's Title Insurance, which you have before you. This form was explained to the Title Insurance and Underwriters Section, but since the agents will also be asked to use this form, I'll give a very brief explanation. I think it's self-explanatory, but here is a little background as to why we're doing this.

I think title insurance companies and their agents have always tried to inform the homeowner of the fact that the mortgagee policy does not protect him, although he may be paying for it. And we have tried to sell owner's policies to homeowners. However, a committee of the American Bar Association feels that providers of settlement services, including attorneys and title insurance companies, need to be told to furnish an opportunity to home buyers and, therefore, the House of Delegates of the American Bar Association is recommending a model statute for all the states to adopt in addition to the six which are now requiring it. In each state, hopefully, they would like to have a law that requires you in each and every instance where you're closing a home loan to give the borrower an opportunity to say yea or nay to an owner's policy.

The ALTA Executive Committee felt that it was unnecessary to have a statutory mandate as far as our industry was concerned, so they asked the Forms Committee to come up with this type of form. You will be urged in the future to give an opportunity in any way that you see fit to sell owner's policies and advise the homeowner that he can get an owner's policy.

This is simply a form that you could use if you wish to at the closing. As you will see, it is a very formalized thing and it's not intended in any way to really explain title insurance, but simply to document in your file that the owner did have an opportunity to say yes or no. Are there any questions?

Mac suggested that I mention to you that there is a $100 penalty in the model code, the idea being that if the attorney or the title insurance company doesn't give a form similar to this to the borrower and he discovers later he wasn't given it, then the title insurance company must pay $100 to the borrower. Perhaps we'll all owe a debt of gratitude one of these days to Bill McAuliffe because he said, "$200 is too much. How about $100?"

And they said, "Well, okay." In a class action, for example, he may have saved a lot of money.

Mr. President, I move the adoption of this form as an American Land Title Association form. *(Motion was seconded and the form adopted by a vote of members in attendance.)*

The other form requires a little bit more explanation. I will not try to go over this condominium endorsement form word for word. I do think that those of you who are agents will find that it will be helpful to have a standard type of form for attachment to either owners or loan policies when you are insuring an individual unit and its common elements. I think we all recognize that condominiums are indeed a more difficult animal to insure than the ordinary lot in a subdivision. And they are becoming extremely popular to home buyers and will continue to be.

National lenders and purchasers of loans, particularly FNMA, had expressed some dismay at the various types of coverage they were getting all over the country and having to negotiate wording with various companies as to condominium coverage. It was at the request of FNMA and some other lenders

that my committee began to agonize over a proposed condominium endorsement which you have before you. It is designed, depending on your underwriting, to be attached to a regular ALTA owner's policy or an ALTA loan policy.

The theory is that companies will probably continue making an exception in Schedule B to the various documents, restrictive covenants, bylaws, declarations, etc. that create and encumber the condominium unit. But, as has previously been requested by customers, then to put back some assurances as to the condominium unit with relationship to all those various documents. It may be put back in by this endorsement, and hopefully it has received FNMA's acceptance. We were fortunate enough to have John Tolford, FNMA associate general counsel, to come down and meet with us. We talked to him yesterday and today. We feel that this will enable you to attach this to your forms fairly routinely and feel that they will have national acceptance.

Now it will require, as it does now, some work for you to give this type of coverage. I think that both our branches and our agents will have to continue making examinations of condominium documents and bylaws and other related documents in order to give this coverage.

I will not go over each and every sentence in detail. I think they're fairly self-explanatory. The one thing that I do want to have you decide today, however, is the following. You will notice that there are two Items 3. This form was presented to the Title Insurance and Underwriters Section. The form was approved without objection, except Item 3. I will attempt very briefly to explain to you the difference between the two Items 3 and then I will ask you to decide which you wish to adopt.

You will notice that the first Item 3 says "section recommendation," and the next Item 3 says "committee recommendation." The "committee recommendation," and this is the language suggested by the Title Insurance Forms Committee, insures against present violations, that is, at the time a policy is issued, of any restrictive covenants which restrict the use of the unit and its common elements and which are contained in the condominium documents. Both paragraphs have a second sentence which says that the restrictive covenants don't contain a provision of forfeiture or reversion of title. This is what we do with restrictive covenants on lots. The last sentences are the same in each one.

The committee recommendation is, in effect, to insure that there are no present violations of *use* restrictions. Now this includes not only whether you can keep dogs on the premises and what use you make of a unit, but would also cover the prohibitions on adding things to the walls or building on decks and this sort of thing. So use might include some physical improvements. But it would give coverage against use violations to, for example, FNMA as a lender.

Now at the meeting of the Title Insurance Section, a recommendation was made that Item 3 should only insure against present violations by existing improvements in the unit and its common elements of any restrictive covenants which are contained in the condominium documents. So the Item 3 recommended by the Section would speak to whether existing improvements at the time the policy was issued violated restrictive covenants which are contained in the condominium document.

I don't know whether I've made myself clear, but we do have a distinction here between insuring user of the premises and insuring existing improvements as violating restrictive covenants.

Now I think at that point there may be some discussion, so I would like to, Mr. President, first have the group choose between the two Items 3 and then we will adopt the form in its entirety. So I would like to ask if there is from the floor a motion that we adopt a new Item 3.

Robert Haines: I move that the form of Item 3 recommended by the committee be accepted as the paragraph to be included in and the document be approved by the Association as a whole and if that motion is seconded, I would like to make comment. *(The motion was seconded.)*

Yesterday afternoon, the Section in its action asked that the committee reconvene and consider making the suggested change by having the item address itself to present violations by existing improvements. The committee did so meet and had the benefit of discussion with Jim Pedowitz. Later on we had two sessions at which we had conversations with John Tolford of FNMA. We recognize that Jim's suggestion has merit and I suppose that it reflects the practice in the state of New York.

However, the committee is of the opinion that the committee recommendation set forth as the second Item 3 on this paper is preferable on the whole. You will note that in Item 6 the form addresses itself to any obligation to remove improvements by the virtue of encroachments by one unit onto the common elements or by the common elements onto a unit. It's not quite a complete statement of the section, but you can read it for yourself. And that was intended to be all of the protection that be given with respect to the physical situation of the improvements.

A condominium is, or at least a high rise condominium, is quite distinct from the ordinary residential subdivision where it has been customary to give assurance against violation of restrictive covenants quite broadly including the location of the improvements, as for instance the possibility that a house is across a setback line and something encroaches into an easement or a sideline area. But that's not quite appropriate to a condominium building, in our opinion. We don't think we intend to take on the question of the entire location of a building and the possibility of mal-locations of walls within the building, that we intend to cover or set forth in paragraph 6, and the committee thinks we should not go further.

I think a better reason, however, for adopting the committee recommendation is that the whole purpose of this form is to meet demands of customers, and particularly mortgage customers, and I might say particularly FNMA. The move toward condominium endorsements really was triggered by requests from FNMA. Various forms have been worked out with FNMA. They have tended to be broad in this respect and not restrictive. And in discussions with John Tolford, he indicated that the committee recommendation was satisfactory to FNMA and indeed the entire form with version is acceptable to FNMA. This is on the basis of his conversations with others. I don't know whether we can stick John. I'm not sure that he came down here as a minister plenipotentiary, but at least we do have his opinion that the committee recommendation does meet FNMA requests and requirements.

On the other hand, he felt that the failure to cover the use factor in the Section recommendation would leave this form unsatisfactory to FNMA, which might mean that this whole cooperation would be somewhat futile. That's the reason that I recommend this to the committee.

An unidentified speaker from the floor: I favor the committee proposal, but I would like to recommend that the committee consider limiting the use violation to the unit itself and limited common elements, so that you do not get into the question of the total complex, but you try to limit the use violations to the unit itself and its limited common elements.

Bowling: I'm not a condominium expert and can't give a dissertation on the difference between limited common elements and the common elements. But I do know that the committee discussed that question and found that endorsements that had been given to FNMA and others around the country didn't make that limitation. So we thought it was not time to start it. I have people on my committee who are condominium experts. If they would like to address that question, I wish they would.

An unidentified speaker from the floor: I am concerned that the committee recommendation of paragraph 3 in using this as an endorsement to an owner's policy is really going to open us up to a tremendous liability to cure any use violation for all the owners of the condominium even if we have not insured all the owners of the condominium. I agree with the committee's recommendation for paragraph 3 for FNMA and other loan policies, but I really believe it goes farther than we need to go now and I would prefer to see the Section recommendation be used for owner policies. I'd like to know if the committee has considered that?

Bowling: Of course, the question as to whether you would use this form for both your owners and your mortgagee policies is a matter of underwriting from company to company. Whether you give this type of coverage of violated restrictive covenants now in residential owner's policies to your homeowners while you are giving it to your mortgage lenders is also a question of underwriting. This form is designed for the use of both, but amendments, of course, may be made by any company.

But I think the point that Bob was bringing forth is that we feel that insuring violations of restrictive covenants by existing improvements may get you into more trouble than insuring use, because restrictive covenants is a fairly broad term and if your unit and the development is not properly constructed, the location of its improvements may violate restrictive covenants and we don't intend to insure that the contractor has followed the blueprints in the manner in which he constructed the development. So we think that language

(continued on page 71)

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The Purpose of the Government Relations Program: Federal and State Assistance

Richard H. Howlett, Government Relations Committee Chairman
President, TICOR, Los Angeles, California

It is no longer necessary for this Association or any other trade association to justify a government relations program. The extent of such a program is set by policy decisions and available funds. For many years this Association maintained a very low profile. In fact, it did little more than to monitor and report.

Upon occasions, a few of our members would join together and jointly present a view, but not as representatives of the industry.

In 1970, we found that this was not an effective way to take care of the problems of our Association and of our industry because it takes the coordinated efforts of your members as a whole to defeat or at least to postpone federal regulation affecting our industry.

Our coordinated efforts have been fairly successful. Three years ago we created within our organization the Government Relations Committee and started our program to plan and to execute an educational program targeted at public agencies, regulators, legislators and their staffs, in order to provide factual data relative to the title insurance industry and its place in the efficient transfer of ownership and interest in real property within the free enterprise system and to encourage and to maintain state regulation.

A stated program, regardless of how well intended, accomplishes nothing without the coordinated efforts of our entire membership. That is the purpose of the Government Relations Committee—to coordinate our efforts and direct the strength of our membership to meet the problems that face our industry.

Most of us feel that we have achieved a high measure of success in the three years of this program. But that is due in large part to the skilled efforts of Mark Winter, our first director.

I should also mention, however, Phil Branson, who served as the first chairman of our committee. He organized and planned well, contributing to the achievements we now recognize. I wish to thank him on your behalf for his services.

The committee is aware that the Association bylaws provide that the committee, at the request of an affiliated regional or state association, shall provide assistance in the development of programs targeted at consumers, state agencies, regulators, legislators and their staffs in support of the land title evidencing industry.

As a first step in this program, the committee has prepared and distributed the handbook, *You Can Tip the Scale,* a state legislative and regulatory action guide. Examine this book. Follow its general guidance. Establish a government relations program in your state. The committee is ready to help.

Today's program is designed to explain the how's, the why's and the what's of effective federal and state government relations programs. Mark Winter, our director of the national program, will lead this discussion and will introduce the participants.

Effective Federal and State Legislative and Regulatory Involvement

Mark E. Winter, ALTA Director of Government Relations

Today's workshop will serve as a primer to describe how you and your associates should go about your legislative and regulatory contact work. Two state lobbying professionals—Sean McCarthy, executive vice president and counsel, California Title Land Association, and Peter Guarisco, executive secretary-treasurer of the Florida Land Title Association—will join me in a couple of minutes to explain how they organize their legislative and lobbying activity.

In addition, a film produced by the U.S. League of Savings Associations, on how government decision-making can be influenced by business will be shown following their remarks.

What I'd like to do this afternoon is briefly discuss the development of federal legislative machinery, the development of a legislative program and some of ALTA's accomplishments over the last three years.

Let's take a look at the federal legislative scene. First, before you ever set foot on Capitol Hill, the legislative machinery must be in place. I think you can compare lobbying to a football game. The game doesn't really start with the kickoff. It goes back years earlier with the recruiting of players, the development of a coaching staff, the summer training, the studying of films, etc. Lobbying certainly has its origins far ahead of any congressional act on legislation.

The first thing you have to develop is your legislative department or committee to its appropriate high priority place within your organization. In a general purpose trade association, such as ALTA and its affiliated state associations, legislation is just one function set along side conventions, publications, technical services and public relations. If yours is a fairly old association, there was a time when your government relations department or legislative committee was very minor because there was a time when federal and state legislation was not a major item for most industries. However, as you well know, times have changed.

Now, how do you dramatize to your members the need to upgrade your legislative functions? Over the last couple of years, ALTA has become increasingly involved with housing, real estate and tax-related legislative issues. ALTA has made a commitment to its members to have their views expressed on important federal legislation measures. Whether we like it or not, we can no longer sit on the sidelines and hope anti-business legislation goes away. For our own salvation, we must tell our story to the decision-makers on Capitol Hill.

Just this year, ALTA submitted comments regarding the revenue act of 1978, extension of Regulation Q, legislation dealing with financial institution reform and, of course, the serious Indian claims problem.

In addition, ALTA has taken an active interest in the Department of Housing and Urban Development handling of RESPA legislation.

So, in order to upgrade your legislative function, it is necessary to become involved in legislative issues of interest to your industry.

Next, ALTA has expanded its coverage of the Capitol Hill scene through its monthly newsletter *Capital Comment,* which informs ALTA members on what is taking place in Washington and what its Association is doing with regard to these activities.

Also, the other ALTA publication *Title News* features interviews with congressional and agency officials from time to time.

Because of the increased communication between ALTA and its members, more legislative interest has been stimulated.

Another way ALTA has upgraded its legislative program is through the scheduling of annual federal receptions and federal seminars. Through these two events—particularly the federal receptions, ALTA enlists the participation of its members to come to Washington to meet with their representatives and discuss with them ALTA's legislative priorities. We have found that these activities have not only stimulated the necessary interest in ALTA members, but also has served as a necessary foundation for the title business to explain its real estate functions to members of Congress.

Earlier this year, as Mac mentioned this morning, 70 members of Congress attended our federal reception. Back in 1977 only 10 members attended.

Of a more substantive nature, ALTA has scheduled its third annual federal seminar for Oct. 19 in Washington, D.C. This year's subject will be the impact RESPA has had on the real estate and lending community since its inception in 1976. We expect many HUD and congressional staffers to attend.

In addition to federal seminars and receptions, ALTA annually requests information from its members regarding whom they know in Congress and the federal agencies. I am pleased to report that through this mechanism, a contact file of over 300 ALTA members has been developed. We have already used the file in dealing with Indian land claims legislation and an IRS federal tax lien indexing proposal. On both occasions, ALTA members contacted their representatives and successfully articulated our position.

ALTA should be proud of its federal legislative contact file. It gives the Association an excellent nationwide grassroots nucleus. Here are 300 persons ready, willing and able to contact their congressmen and actively work to support our legislative program.

Now, to compliment your involvement and commitment in the legislative program, ALTA leadership has set aside an adequate budget to accomplish these goals.

I mention this because an inadequate budget is the most common weakness in lobbying. Industry after industry with multi-million dollar issues at stake will try to skimp by with a poverty budget.

Relatively speaking, lobbying is not expensive. But the vast majority of trade associations have an inadequate budget. What a waste.

Now I would like to touch on the adoption of legislative goals. This is your legislative policy for the year. The object here is to make your legislative program reasonable, attainable and closely related to your specific needs. The worst thing that can happen is to get an overly ambitious or irresponsible legislative program.

For example, some trade association member gets up at an open meeting and makes a longwinded speech about the evils of the federal income tax and you end up with a plan calling for a complete repeal of the income tax law, or you come out with the U.S. withdrawal from the United Nations. If you have a few wild planks in your legislative program, the congressmen won't even listen to the rest of it.

Even when the objective is reasonable, you have to remember that your job is to represent your own business.

As reasonable citizens, we are all concerned about many issues. Like you, I am concerned about unemployment, crime, drugs and our environment, and I belong to organizations and support groups that are trying to do something about all these problems. However, I can't involve ALTA in the prevention of hoof and mouth disease. I've tried on occasion. Your federal legislative action committee sets the pace for ALTA's federal legislative and regulatory involvement. This year, for instance, the committee focused its attention on the Indian claims problem.

Two things were determined early on. Number one, any legislation dealing with Indian land claims must contain language that would clear title in the affected claims areas and would make such title marketable.

Number two, we devoted our lobbying energies towards educating members of Congress and their staffs on the fact that Indian claims problems do exist and the impact they could have on the real estate economy. Therefore, a policy decision was made by the Federal Legislative Action Committee to educate those on Capitol Hill regarding the Indian claims matter so that when the showdown takes place, Congress will not be surprised and will be able to cast a knowledgeable vote.

To complement our legislative objectives, ALTA's Government Relations Committee has focused its attention on developing material explaining the functions our business plays in the real estate transaction.

You are all familiar with the successful publication of the *White Papers*, Volumes I and II. These publications have been distributed on Capitol Hill to senators, representatives and key staff personnel. In addition, through the government relations committee, ALTA will shortly make available the Arthur D. Little Torrens study. Not only will ALTA members receive a complimentary copy of this study, but also HUD officials, federal trade commission personnel, and, of course, members of Congress will be given the Torrens analysis.

If effective lobby could be reduced to a formula, I think it would read something like legislative education plus trade association member commitment equals success.

Let me quickly review two basic points for your consideration. First, ALTA has developed effective legislative machinery by creating a government relations department and refining the Federal Legislative Action Committee to become a prestigious part of our operation. This, in turn, has given us the capability of developing a broad grassroots working force.

Second, ALTA has made sure its legislative program is reasonable. Our legislative concern and your state legislative concern should emphasize matters that impact on the land title industry rather than the world in general. Obviously in 15 minutes I can't exhaust even my limited expertise in lobbying. However, if you have any question regarding the ALTA legislative and government relations program, I'll be glad to visit with you after the program.

Political Action in California: How We Do It

Sean E. McCarthy, Executive Vice President and Counsel
California Land Title Association
Sacramento, California

Bismarck is credited with the statement that any person who loves the law and sausage should never see either of them being made. There is a great deal of wisdom in that statement. I do not know that much about sausage, but I have in my lifetime acquired a great deal of knowledge with respect to the making of laws.

In modern times whether or not we view the legislative process with disdain, persons involved in business generally throughout the United States can no longer afford, as Mark pointed out, not to be involved in that process. Persons in the title industry can never afford not to be involved in that process for the simple reason that we are not only in business, but we are in a regulated business. The power to give and take and do or not do lies, especially at the state level, in the hands of the elected officials in your legislature. It is absolutely necessary that you become a part of that process and an integral part of that process. We believe in California, and have believed for a number of years, that this is possibly the highest priority matter for our trade association.

This involvement is undertaken for purposes of self-interest, obviously. Without this involvement, the atmosphere for the conduct of our business in California, we believe, would be far different than the climate today. This is not to say it is the best of atmospheres, but it is the best we can make of it and we will constantly attempt to improve upon it.

Basically I want you to come away today with the feeling that come on in, the water's fine. If you are not involved in the legislative activities in your state, we would strongly urge you to become so involved.

There are highs and lows to any legislative involvement. There are the good times and the bad, but throughout it all the commitment has to be there. And again as a regulated industry, it is imperative that this involvement be there.

As an initial step in your involvement it is important that you understand the process that you are interjecting yourself into. While legislative systems vary from state to state, in California, we have a two-house Legislature. We have 80 assemblypersons, as they are now called, on the Assembly side, and 40 senators on the Senate side. The respective houses break down their business into standing committees. There are 17 standing committees in the Senate and 19 in the Assembly.

In California we also have a large group of paid professional staff members whose function is to respond to the needs of the elected members of both houses. They number well in excess of 500. In addition, California employs a legal counseling group composed of 55 attorneys, whose function is to advise the membership of both bodies on the law and its application to particular issues and to aid in the creation of new laws.

Simply put, California has a highly organized, well-staffed group of people who are paid to implement the desires of the elected officials of our state. What this translates to is a bill load in California that, in a two-year session, approximates 11,000 bills being introduced. During the course of any two-year session, and you can count on it, we end up with approximately 2,400 new laws, about 1,200 every year.

There is one other aspect of the California legislative climate that deserves comment. In our state we have what is known as Proposition 9, the Political Reform Act of 1974. This is an initiative measure which has as its purpose the regulation of virtually every aspect of political activity in which

business and individuals become involved. While the Act contains extensive provisions governing campaign financing and political campaigns generally, its application to business political involvement is primarily in the form of prohibitions against specified conduct and the implementation of detailed financial reporting requirements. Legislative advocates, or lobbyists, are prohibited from expending in excess of $10 per month per legislator. The Act also prohibits a lobbyist from making direct political contributions. They may, however, recommend that contributions be made to particular candidates. This latter ability was achieved through court action following the adoption of the Political Reform Act of 1974.

It is important to note that these reforms were enacted during the Watergate era and were founded on the belief that there exists in the legislative process the overbearing presence of self-serving interest groups; primarily from the business sector, whose purpose is to defeat the public will. Unfortunately this philosophy is present in many other states. It is, as a majority proposition, an erroneous philosophy. Notwithstanding this fact, it is part of the political environment in which we operate in California.

Given this rough background on the system, the question of how to react to it remains.

As Mark pointed out earlier, we react by attempting to restrict our involvement to those issues that have a direct bearing upon matters affecting title to real property and the business of title insurance generally. We, however, often find ourselves expanding into areas that affect the overall business climate and the real estate industry specifically. No matter what the issue, it is crucial that your voice be heard and that you formulate a mechanism to accomplish this objective.

CLTA, in approaching legislative matters, has established a well-defined structure for introducing new concepts into the legislative process and for reacting to others that have been introduced. We do this through a committee system. The backbone of that system is our legislative committee. This is a committee comprised of 29 individuals having extensive background in our industry. They do the analysis and review the bills, make recommendations and establish legislative policy that will be that of the CLTA. Their recommendations on particular bills serve as the marching orders for the advocates, the paid legislative advocates for our Association.

We have a title industry committee that has as its purpose dealing with the regulator—in our state the Department of Insurance. They also make recommendations and establish policies when dealing with laws that regulate the business of title insurance in California. This is a committee of senior officers in the major companies operating in California, and it is from this body that we receive our direction relative to regulatory matters.

We often go to the board of governors and our executive committee with matters that, for lack of a better term, affect the overall business climate for the conduct of title insurance in the state of California. By this I mean such matters as taxation, statewide housing, and planning. We have a number of strong advocates for statewide planning in California. We have an ongoing controversy with respect to the future uses to which agricultural lands will be put in our state. These are matters that normally are referred to the board by the committees previously mentioned and CLTA positions are formulated by the board on those matters.

We also have a lobbying team of two individuals, of which I am one. It is our job to carry out, to the best of our ability, the directions that the Association policy-makers have established as being in the best interest of not the individual member companies but the entire industry in the state of California. Once that policy is developed, then it is time to go to work.

We employ a variety of approaches to accomplishing our objectives and basic to each approach is in depth preparation on the issues present in a given legislative proposal coupled with a thorough understanding of the background and philosophies of the legislators and staff people you will be talking with. You must also attempt to anticipate their reaction to your position and formulate, in advance, responses to their inquiries.

I cannot stress too strongly the fact that in any meeting of industry representatives and legislative officials that you come fully prepared on the subject matter, get to the point of your visit quickly, stick to the point and leave in their hands whatever documentation you have to support the position that you are articulating.

Hopefully you will come away from such meetings with a clear statement of support for your position or perhaps a clear statement of opposition to your position. These are ideal responses—either a yes or no from a legislator. You know where you stand.

The majority of times, however, you will find a noncommitment, a situation where there may be a tendency to go along, but what about this, what about that, or just a total reluctance to comment either way on a particular bill. These are responses that you have to become accustomed to. You have to appreciate this fact of life and work with it. Your continued reiteration of your position and backing that up with empirical data, whatever is necessary, is the key to a successful conclusion to a given position on a bill.

Now within our industry we look at approximately 600 bills a year. We take affirmative positions on approximately 150 of these bills a year and we have had a fair degree of success in coping with this large a volume of bill load.

It is made possible by the dedication and the freely provided expertise that sits out here in this room. There is no way that people in my position are able to in any way accomplish our job without outstanding cooperative backup from members of the industry.

In California it is unbelievable the cooperation that we get, and in any state where any successful operation is going to be in place, it is going to be founded upon the willingness of the members of the industry to respond, on a timely basis, to questions from the people in the legislature. This is an absolute must.

One other point that should be stressed is the cooperation with related industries. In California we are, on a daily basis, in communication with representatives of the bankers association, savings and loan association, the state bar, the real estate association, the builders association and others. It is through this mechanism that a lot of things that could impact adversely on our industry are put to rest before they even see the light of day. The cooperation and the mutual assistance that can be derived from this type of interaction is a very necessary foundation upon which to build any viable political action effort.

An example of how this interaction comes into play occurred during this legislative session. I am sure you are all aware by now of California's enactment of Proposition 13. I am equally sure that few of you are aware of the legislative efforts which were designed to defeat voter enactment of Proposition 13. This effort was focused on a measure known as Senate Bill 1 which was a bill that started its journey through the legislative process having a very innocuous purpose. It soon became the sole vehicle available to members of the California Legislature to prove to their constituents that they could provide a better approach to tax reductions than that contained in Proposition 13. This bill rapidly became a very hot item in Sacramento.

The touchstone of Senate Bill 1 was the imposition of a 5 percent transfer tax on all real property located in California. The CLTA Board of Governors adopted a position in opposition to this bill. Our basic argument against this new tax was that it was unnecessary and most likely would have a dampening effect on the California real estate market. Simply put, it is not difficult to comprehend that a 5 percent increase in the selling price of real property is going to reduce the number of potential buyers of real property in our state, with a corresponding reduction in the volume of title business available to our membership. While this might make sense in a business context, politically this reasoning will get you nowhere with the vast majority of elected officials. The position would be viewed as being very self-serving and totally lacking in suggestions designed to solve the problem at hand—the overtaxed property owner.

Bearing this in mind our opposition to Senate Bill 1 took a different tack. As passed by the Senate, the bill was devoid of any enforcement mechanism. At the bill's first hearing in the Assembly this mechanism was flushed out. The tax was to be collected by a prohibition against the recording of any document, affecting the piece of real property, absent that document or instrument being accompanied by a statement from the state Franchise Tax Board—the equivalent of the IRS in California—stating first, that the transfer was subject to a tax and the tax was paid, or that it was an exempt transaction and no tax was due.

Given this new information we were able to successfully oppose enactment of the bill, not only on the economic issue but most importantly on the impact the enforcement mechansim would have, if enacted. We were able to indicate to members of the legislature that if the bill were enacted they would not only be imposing a new tax, they would also foul up virtually every real estate transaction in California. The basic reason being that no transaction could close absent the bureaucracy making a termination that a tax was or was not due.

Now I cannot represent to you that we were able to defeat Senate Bill 1 on our efforts

alone. The fact of the matter is the California Association of Realtors was the most important factor in defeating the bill. But by coalescing with them, going after the broad brush of the bill itself and then narrowing down to our area of expertise and documenting the types of problems that would flow from its enactment, the bill was defeated.

We now have Proposition 13 and we are trying to figure out what it means and how to implement it in California.

Before turning the podium back to Mark, I would be remiss if I did not indicate to you our involvement in and the importance of political contributions.

The former speaker of the California State Assembly, one Jesse Unruh, is well-known for his statement, "Money is the mother's milk of politics." Applied to California this statement contains a great deal of truth and I would suspect it applies equally in other states. While I am not prepared to indicate to you that CLTA is a wet nurse in this regard, we do make political contributions and this is accomplished via a political action committee.

The committee is composed of three trustees who solicit voluntary contributions from member companies. The trustees carefully review the voting records and business attitudes of the various persons up for election. Based upon their assessment of the candidates, campaign contributions are made to selected candidates on behalf of Cal-Tipac.

This is an activity that is necessary and vital to the ongoing success of any active political involvement on the part of any trade association.

Your contributions serve to facilitate access to legislators and a means of demonstrating your support for persons who have been generally supportive of your legislative efforts. The one cause uppermost in the mind of virtually every legislator that I am familiar with is how to be re-elected. If an individual has been helpful to our industry it is incumbent that we assist that person to return to office.

Ladies and gentlemen, that concludes my remarks for today. I strongly urge each of you who is not already involved in legislative activities to become so involved. It is a fascinating field of endeavor—one that should be understood and enjoyed by as many people as possible. I might add that a drink now and then helps, and it should normally be taken at the conclusion and not the start of your legislative day. In this regard I am reminded of the statement made by a California legislator following his arrest and incarceration of driving under the influence of alcohol. When asked what it felt like he responded that it was the worst experience he had ever had. He would not wish it on his worst enemy. "It was so bad," he said, "that if I hadn't had a couple of drinks, I don't think I could have gone through it."

A little bit of levity, a drink now and then. That's the way it is in California. Thank you for your kind attention.

The Florida System: How Political Efforts Are Organized

Peter Guarisco, Executive Secretary-Treasurer
Florida Land Title Association
Tallahassee, Florida

In any legislation, whether it be in the state of Florida or any other state of the Union or whether it's Congress, the system is the same. The passage of legislation is the same. There is a little variation; for example, in Nebraska they have only one House. Perhaps the rules that apply to either the House or the Senate in each state may vary a little. But generally it's the same process. I want to show you this on the screen now.

The lack of understanding of how legislation flows does not give you the entire impact of what transpires in the legislatures.

There must be cooperation with your public relations people or your lobbyist. Now let's follow this diagram to see what happens to legislation.

In many cases, this doesn't happen overnight. It may take days or weeks, as in the case of the legislation that was discussed here earlier dealing with the natural gas. This piece of federal legislation has been floating around Congress 18 months and it's just about to get passed. But it takes a long time.

You'll follow here on the left at the top. Here is where a bill is introduced. Now, of course, you always have to find a legislator who will introduce it for you. You can't start legislation no matter how long you work on it and prepare it, unless someone in the House or the Senate is willing to introduce it.

So if the bill is introduced it is read for the first time in open assembly of the House where it was introduced. It then goes to committee. The committee will then set a hearing for it at some point during the session. It may go to more than one committee depending upon how friendly the speaker of the House or the president of the Senate is or what the subjects are that are contained in the bill.

The committee hearing is then held, and at that committee hearing, the bill may be amended to some degree. If it's passed, it is then reported back to that original house where it first was assigned to the committee. If, of course, the committee kills it, that's the end of the bill.

When it is reported favorably, with or without amendment, it goes back to the House where it's read a second time. It's put on the calendar and sometime in the calendar of that particular house it comes up for a second reading and it's then amended by any member of that house that wishes to put it on the floor.

It then goes to a third reading. It's actually read for a third time and a vote takes place on the bill as amended or as it was originally introduced.

If the vote is favorable, it then goes to the next house. If it isn't favorable, then, of course, the bill dies or a motion can be made to reconsider the vote by which the bill failed. In that case, another date will be set aside for the consideration of that bill and the number of days are of course determined by the rules of one house or the other.

Sometimes you count your votes. When you're lobbying you need to be on your toes at all times. You count your votes and if you don't have the votes to pass it and you know it ahead of time, you get one of your friends, the legislators, to vote against your bill because he must be on the prevailing side in order to make a motion to reconsider. And if he votes against the bill, he's on the prevailing side. If the bill fails, he makes a motion to reconsider and you still have a live bill for a few days or until you can convince others to vote in favor of the bill.

However, if the bill passes, it goes to the Senate in this case and it goes through the same procedure. Read for the first time, into committees, committee hearings, committee reports, second reading, amendments, third reading, and the bill goes for debate and final passage.

If it is voted on and it passes, it proceeds back to the original house. From there it is then sent to the governor for his signature.

If it fails again, it goes through the same process for possible reconsideration of the vote.

Now if the bill passes with amendments from the second house, then the bill must return to the house where it originated and that house will either accept the amendments as they were passed or reject them.

If they're rejected, then it's sent to a committee—a conference committee—which considers the amendments and tries to iron out the differences. If they're rejected and the committee can't solve the differences that's the end of the bill. If further amendments are placed on the bill by that conference committee, it goes back to the houses and if the houses accept those amendments, it will pass. If the houses reject them, it dies.

Now when it gets to the governor, he has in that case in Florida seven days from the day he receives that bill to either sign it into law or veto it. If he fails to do either, it becomes law without his signature.

This gives you an idea of what it takes to pass a bill. It's not easy. And all this time a lobbyist must keep track where that bill is, what the possible votes for and against it are, what the amendments might be, who the opponents are and forever keep that bill moving. You must prod the committee chairman to keep it on the calendar and have it heard. You first see the speaker or president of the Senate to see that it gets into as few and as friendly committees as possible, because you've got to go through the same routine every time the bill goes through a committee.

If you get it through one committee, then you've got to go through the same process in another. And the idea is to cut the time down and eliminate as many committees as possible.

In Florida, the land title association has a legislative committee that handles the legislation. It is responsible for drafting and arriving at legislation that is needed and making contacts with legislators, the speaker of the House, the president of the Senate and in some cases the governor's office to make sure that the legislation will be received on a friendly basis.

We monitor the bills on this committee and keep personal contact with the legislators. We find out who on that committee is a friend with some legislator. And we attempt to educate the members of the legislature individually and collectively as to our bills and what they propose to do.

Our main goal for any piece of legislation is to always have a compromise ready. No bill goes through the legislature, except on rare occasions, or any of these legislatures without having amendments, or a choice being given to accept a certain bill in lieu of the original bill, and compromises must always be ready. Know how far you can go or how far you're willing to go.

Always have ready intelligence, always have your feelers and monitors out. Cooperate with related industries. Make sure that some of them are willing to appear before a committee and substantiate the need for the bill and explain what the bill will do, the economic impact the bill will have on the state as a whole and the industry, Realtors, mortgage bankers and others.

Legislators always trust and rely on lobbyists, providing the lobbyist always tells the truth. Integrity is important in legislative halls. I've lost bills for telling the truth, when perhaps I could have gotten by without it. But if you're ever discovered not telling the truth, you have forever lost your usefulness in the halls of the legislature.

So those are the main goals: Compromise, intelligence and always telling the truth.

We have many rules that have to be learned and kept in mind because these are what control the passage of legislation. We always have to cooperate with legislators and we must always have to be willing to talk to them. Many times they're very unfriendly towards our cause and our particular bill. Our job is to try to turn them around and it's not always easy. But you can't ever give up the effort.

Our legislative committee makes a special effort to work beforehand with related industries. The Florida bar, and here in Florida we have the Lawyers Title Guarantee Fund, which is in the title business in a big way. And we must always contend with their views.

As a result, this past year, we have created what we call the joint legislative committee, which consists of members of the bar, our association, the Lawyers Title Guarantee Fund, and the insurance commissioner's office and on one occasion we had the staff of the Senate Commerce Committee which usually considers our bills.

We iron out our bill problems prior to having them introduced. In this state we have a system which we call pre-filing bills. This year we are a little behind because of elections. Immediately after the elections are over in November, bills will be pre-filed. We'll have a new speaker and a new president of the Senate. These bills will be considered well in advance of the legislature convening. We convene our legislature here in April and it is in action for 60 days every year.

"Always have ready intelligence, always have your feelers and monitors out."

So the sooner we get the bill pre-filed and all our problems ironed out with related industries, the better off we are when the legislature meets. Under normal non-election years, we would have had these bills all ready for pre-filing this month or next month rather than wait in late November or early December.

In addition to the association legislative committees being at work, we've organized what we call TIFPAC, the Title Industry of Florida Political Action Committee and for the first time we have made contributions to legislators, those of the executive branch which we deem have been of help to the title industry and to whom we can look forward to additional help in the future.

We've had good responses for contributions. And those to whom we've contributed, we have received letters indicating that they are appreciative and this goes a long way for friendly relations.

The climate is a little bit different when you show that you're willing to help them and seek their help.

Florida, too, has a system of highly complicated and sophisticated legislative activities. It used to be, when I first started out as the counsel for the commissioner's office, that I'd walk straight in and see a legislator, whether he was a member of the Senate or the House. We have now created layers upon layers of aids, statistical analysts and others. And you get to see these people before you ever get to the legislator. If you can convince them, the job is half done because they will in turn talk to their bosses, the elected officials. However, this doesn't always get you where you want to go, but that's the procedure that's been established and it's the one that we must follow.

It seems that California is having the same problem we do. This I'm afraid we inherited from Washington where usually all these evils are created. But we followed the Washington method of doing things in these states now and so we have the same problems. I worked with Rep. Gibbons, who was here this morning, when he was a member of the House and a member of the Senate in Florida. He was a legislator in Florida for ten years. Most legislators you'll find eventually work their way up to the U.S. Congress. The U.S. Congress is nothing but a composite of those people who have elevated themselves from state legislatures on up. They take the same attitude, the same tricks, the same ideas with them. Consequently, the reason for telling you, that basically legislation is handled the same no matter where you are, no matter which legislature it is, is that you just have to follow the rules, persevere, be patient and stay with them at all times in order to be a success.

Welcome and Introduction

Edward S. Schmidt, Chairman, Public Relations Committee
Consultant, Commonwealth Land Title Insurance Co.
Philadelphia, Pennsylvania

Welcome to our Workshop on Public Relations. A workshop is a congregation of people and ideas. It is our opportunity to exchange our thoughts and ideas and to be helpful to each other. It is a time for us to learn.

To start, I want to say I believe there is a popular misconception that public relations and business development are one and the same. That's wrong in my book. Public relations is so much more than business development and salesmanship. It's a constant effort in communications, at all levels, with all kinds of people, at all times. It serves to support all we stand for, all we have accomplished through our service and the protection of our policy. It's a powerful force to establish the credibility of our industry and the integrity of our people.

The primary objective of good public relations is to create good will as a basis for good business. That's an acceptable definition for an objective of management, and profits can only follow good management. So let's acknowledge that as managers and professionals we need this ingredient of public relations as an important function of management. Today we're simply asking you to be thoughtful about it—to warm up your interest and awareness of public relations.

To get started in our considerations we have asked a man of substantial experience to share his thoughts with us. I'm referring to Randy Farmer, assistant vice president and director of public relations and advertising, Lawyers Title Insurance Corp. He is also a long time member of the ALTA Public Relations Committee. His remarks are entitled, "Becoming A More Effective Manager through P/R Techniques."

Becoming a More Effective Manager Through P.R. Techniques

H. Randolph Farmer, Public Relations Committee Member
Assistant Vice President and Director of Public Relations and Advertising
Lawyers Title Insurance Corp., Richmond, Virginia

We live in an age of dependence in which people are increasingly reliant upon one another for satisfaction of their economic and social needs.

Today few people are able to accomplish their own aims without the help of others. Individuals depend on employers for work and wages; on merchants for food and clothing; on the government for utilities and protection; on clubs for social satisfaction, and on many other persons and institutions. The dependence of people at work and in their social lives has magnified the importance of human relationships in contemporary life.

Business, social and political institutions depend for their existence upon the goodwill of people. Business organizations rely on many people for the skills, materials, components and markets for their products. Social welfare organizations and business and professional associations rely upon their members and the public in general for voluntary services and financial aid. Government depends upon people for financial support, manpower and public approval.

The mutual dependence of people and business, government, and social organizations has created a philosophy and function of management called public relations.

As American business organizations have expanded, employing more people, serving more customers, buying from more suppliers and paying more dividends to more shareholders, management has recognized the necessity of good relations with its various publics: employees, shareholders, suppliers, distributors and dealers, community neighbors, consumers and government.

Business management recognizes the need for establishing public understanding of its policies and practices through public relations programs.

There are numerous definitions of the term "public relations." I first looked in Webster's and it defined public relations as "the activities of a corporation, union, government or other organization in building and maintaining sound and productive relations with special publics, such as customers, employees or stockholders and with the public at large, so as to adapt itself to its environment and interpret itself to society."

A more specific definition which emphasizes the social responsibility of public relations and favored by *Public Relations News* is: "Public relations is the management function which evaluates public attitudes, identifies the policies and procedures of an individual or an organization with the public interest and executes a program of action to earn public understanding and acceptance."

The public relations director of a large company defines public relations as "the planned effort of a business organization to integrate itself into the society in which it exists."

Another prefers this definition: "Public relations is a social philosophy of management, expressed in policies and practices which are communicated to the public to secure its understanding and good will."

Public relations is composed of four basic elements. First, it is a social management philosophy. Second, it is an expression of this philosophy in policy decisions. Third, it is action resulting from these policies. And, fourth, it is communications which explain, reveal, defend or promote these policies to the public to secure its understanding and goodwill.

The first basic element of a sound public relations program is a social philosophy of management which places the interest of people first in all matters pertaining to the conduct of the organization. This philosophy assumes an organization has a right to operate conferred by the public and this privilege may be withdrawn at any time. This philosophy assumes that an institution functions to serve the primary needs of the people dependent upon it for employment, wages, income, goods and services and social satisfaction. This principle of public relations is the foundation of the modern concept of public relations.

In fulfilling social responsibilities, corporations serve the interest of employees, neighbors, customers, shareholders, suppliers and dealers who comprise the corporation's publics. The interests of these groups of individuals are different.
Employees are interested in steady employment, fair wages, good working conditions, recognition, opportunity for advancement, and retirement and disability benefits.
Customers are primarily interested in quality products and services, fairly priced and in continuous supply.

Stockholders are concerned with a fair return on their investment and the caliber of management.

Suppliers of raw materials, parts, equipment and merchandise want an adequate profit, continuous relations and fair dealing.

The communities in which a company maintains offices are interested in its providing jobs, paying taxes, contributing to local charities, supporting schools and churches, and participating in community affairs.

A company that satisfies the interests of these several groups enjoys the understanding and goodwill of the public, which is a primary objective of public relations.

The second basic element of public relations is the expression of a social philosophy in policy decisions. Every institution has policies that state a settled course of action to be followed by management in dealing with the problems that arise in the conduct of the enterprise.

The third basic element is the action resulting from the administration of policies which reflect the social philosophy of management. Policy statements, even though they express the intent of management to serve the public interest, are not enough to earn the goodwill of the public. Policy decisions must be expressed in appropriate action or put into practice with relations to public.

The fourth basic element of public relations is communication, which reveals, explains, defends or promotes an organization's policies and acts to the public in order to secure its understanding and goodwill.

Public relations is not only a philosophy expressed in policies and actions; it is also the communication of this philosophy to the public. Communication of policies is

essential to make the public understand and appreciate what a company is doing.

It should not be assumed that the public understands and appreciates an organization's policies and deeds. Neither should it be taken for granted that the public is not interested in what an organization is doing. Unless management explains and justifies its policies and actions, it is likely to be misunderstood and criticized by the public.

People want to know what a business, social or political organization is doing to satisfy their interests. If an organization does not explain its actions, people supply their own explanations or through hearsay, gossip and rumor they acquire a false concept rather than the facts.

Employees want information about new policies, company progress or operational changes which affect their jobs. Stockholders are interested in the finances and progress of their company. Neighbors in a community are concerned about expansion or cutbacks of operations and their effect on government, wages and retail trade.

The opinion of these various publics is a direct reflection of their experiences with your company. What they observe, what they hear, or what they choose to believe about your company is derived from many differing points of view, depending upon the particular segment of the public which they represent.

I'd like to spend just a few minutes talking about the fourth element of public relations—communications. You can have the right philosophy, make the right policy decisions, and follow through with the right actions, but you have to let your publics know what you're doing. You have to communicate.

It's been said that effective public relations can be achieved by employees who are informed and motivated to serve as communicators of company policies and practices to their relatives, friends and neighbors.

According to a Gallup poll, the number one source of credible information about a business firm is that firm's employees. In private industry, Gallup's survey and others indicate that each employee influences some 50 persons in the community. The "horse's mouth," getting the lowdown from someone who works there, seems to have the greatest credibility.

Your company's story is being told and interpreted to the public by your employees. Employees are considered to be experts in your organization by the people they talk to. What your employees communicate about your company molds opinions and attitudes in the community. Therefore, one of your major public relations objectives should be to provide all employees with the information needed to build positive attitudes about your company in their communities.

Make each one of your employees feel that he or she has an important role to play in your company. You, as manager, must instill a public relations consciousness in every one of them. Your job is to get each employee in your company to work for you, think for you and use his creative energies for you.

To many people, the person answering the telephone, for example, is the company. Do callers get warm, friendly, helpful answers? Or a curt, "get out of my hair" kind of brush-off? The difference is vitally important.

Your public relations effort includes not only the manner in which your receptionist answers the phone but also the appearance of your stationery, the condition of your building—indeed every facet of your operation which might be heard or observed by any member of the public.

If it were possible for a member of your company to talk personally with every purchaser of your services, the matter of public relations and influencing public opinion might give us very little problem. Basically, the land title industry's public relations problem is one of education. If every home or property buyer knew all the facts, there are few who would not use our services.

We have a sound product to sell—one that performs an important and valuable public service. It gives home and property buyers peace of mind about one of the most important investments they'll ever make. Who would refuse to spend a little to protect so much?

Unfortunately, misinformation about the land title industry is widespread. Unfortunately, also, there are just too many people for one of us to speak personally with each buyer or prospective buyer of property, even if it were possible for us to know—as it's obviously not—when each person was in the market to buy real estate.

Since this is impossible, we must do the next best thing—try to reach opinion-molding people and prospective customers with advertising, news releases, speeches, articles in magazines and newspapers, radio and television programs, plant tours and active community involvement, for example.

Consumer education is the name of the game. The land title industry is a complex business and we are not trying to reach, to cite an example, an auditorium filled with people who are listening intently for information about us. We are talking to a parade. Each year people die, retire, forget, get out of the real estate market, and new people become adults, marry, buy homes, take new jobs and become prospects.

The young couple of last year, for instance, who were courting with stars in their eyes and couldn't care less about our services, may this year be about to buy a home—the very people we want to reach.

We are always dealing with a parade. We face a moving market and we have to gear our efforts to this. We must work to increase awareness among home buyers, investors, Realtors, builders and developers and government officials of our land title services.

We must increase awareness among those who purchase our services of the nature and value of the abstract and title insurance protection. We must increase public awareness of our business, of its contribution to the security of real estate investments and the stability it provides to citizens and the economy as a whole.

". . . effective public relations can be achieved by employees who are informed and motivated to serve as communicators. . . ."

What are some of the public relations opportunities that you can start to work on now? Here are just a few: personal contacts with customers, professional relationships with allied businesses, personnel motivation, speaking engagements, participation in community activities, advertising and publicity.

The last two, advertising and publicity, are two distinct avenues. In advertising you can say that you're good. The public would think you're very foolish if you didn't because you paid for the advertising space. Publicity, however, is getting your company's name before the public as part of newsworthy items read, seen and heard by the people of a community. Generally this is done by becoming associated with worthwhile projects in your area. News is to inform and not necessarily to impress. But if the information is good and you and your business affiliates are connected with it, the impression will be good, too.

Thus, the more that your name becomes mentioned in the affairs of your community, the more people will associate you and your company with leadership in those affairs, which after all are their affairs and something in which they are interested.

A natural result over a period of time is for the general public to think of your company in terms of leadership.

Speak up for your company and your industry. Civic clubs, business groups and other organizations often need speakers. Why not you? Why not tell the land title story? Speak up. It will help you become well and favorably known in your community.

Jim Boren, chairman of the Abstracters and Title Insurance Agents Section, in the July issue of *Title News* says in his message to ALTA members that the future of the title industry will be determined by one person—you. He writes, "These are times when the consumer is looking inquisitively at us, either directly or through the eyes of elected or self-appointed representatives.

"Although ALTA officers, committee and staff members are working diligently to create an awareness of the value of our industry and its services and of the fallacies of suggested alternative methods of title evidencing, ultimately our fate is dependent upon how each of these publics in each of our communities perceives us and the function we perform.

"Much has been said about selecting the right public officials, about educating regulators and about combatting the unwise proposals of some so-called reformers. The importance of those approaches cannot be over emphasized, but none can succeed unless the public knows it needs the title industry and is getting the best possible, most economical form of title evidencing available.

"The opportunities are virtually unlimited to all of us to make speeches, show films, take part in radio and television shows, develop newspaper stories, conduct tours of our shops, hold seminars, write letters to the editor, and using ALTA material or our own, otherwise let the local consumer know what we're doing for him.

"Once the facts are known, we need not fear the climate in which legislators and regulators will operate."

Let's get to work. Let's put public relations to work for us.

OLTA's Sound-Slide Presentation for Local Emphasis of Land Title Services

Stuart F. Wylde, President, Oregon Land Title Association
Vice President, The Abstract and Title Co., La Grande, Oregon

I appreciate the opportunity to appear here and to give you a little bit of the Oregon story.

The Oregon Land Title Association prepared a film which is really a sound slide presentation. We called it *Title Recital—A Plain Language Explanation of Title Insurance.*

This slide presentation is to use before small groups. When we view it, I'd like you to keep that in mind. It is not for mass media presentation.

Whereupon a sound slide presentation was made

Thank you for that applause. Credit for this presentation goes to Ben Mushaney of the Oregon City PNTI office, who was the chairman of our public relations committee last year. In fact, after this was produced, Dick Mohler of the Seattle regional office took him up to Seattle. That was kind of a dirty trick on us, but maybe we can find someone else to replace him.

The purpose of the whole project is to try to acquaint the public with what title insurance is and why title insurance is necessary.

The questions that were asked at the first part of the film—the doggy-do and the flooded basement, those sort of things—were actual questions that came to some of the Oregon offices. People call up and ask what the title company is going to do about them. But with that sort of knowledge on the part of the public, we knew we had to do something. This show as an attempt to do that.

Now the idea of presenting this was to make it available to members of the Oregon Land Title Association and also available to you people.

It can be easily presented. It's a cassette tape with a slide carousel in a little kit. It cost the Oregon Land Title Association approximately $7,500 to produce. I'm not here to try to peddle this to anybody, but it is available to anyone who wants one of these presentations. It comes postage paid. You can use it to show to service clubs, real estate meetings, developers, home builders, any group like that. In fact, some Oregon offices have used it in their own plant developments or they have plant tours and meetings of that type.

It's been quite successful. We hope that you might be able to use it. If you desire a copy of this, let me know.

What's Your P.R. Problem? A Question and Answer Panel

Interrogators on the public relations panel are Dean T. Lemley, regional vice president, Title Insurance Company of Minnesota, Cleveland, Ohio; W. Sherwood Norton, senior vice president, SAFECO Title Insurance Co., Seattle, Wash., and David F. Upton, president, Southwestern Michigan Abstract and Title Co., St. Joseph, Mich. The panel respondents are LeNore Plotkin, advertising manager, Title Insurance and Trust Co., Los Angeles, Calif.; James W. Robinson, senior vice president, American Title Insurance Co., Miami, Fla., and William Thurman, president, Gracy Title Co., Austin, Texas. All three of the respondents are members of the ALTA Public Relations Committee. The panel discussion was moderated by ALTA Public Relations Committee Chairman Edward S. Schmidt.

Schmidt: Gentlemen interrogators, would one of you care to ask a question? Dean, I introduced you first so why don't you take the first question.

Lemley: What does a local company title manager say in response to criticism from a consumer advocate charging that title insurance favors the lender over the borrower-purchaser by offering the lender more protection for less money?

Mr. Thurman: I'd be glad to answer that. I think, first of all, we need to point out that we can't compare apples with oranges. These two different policies do two different things. When this question arises, we need to take the time to discuss it a little bit. The owner's title policy issued in the amount of the sales price will protect the purchasers as long as the insured or their heirs retain an interest in the property.

The lender's title policy is issued in the amount of the loan guaranteeing the lender that he has a valid first lien. The amount of the policy coverage will decrease as the principal is paid down. When the loan is paid off, the policy will no longer exist, which could happen a lot sooner than the owner's title policy. Also, there are certain things that can affect the title to the property that would not affect the validity of the lien. We might have something in the owner's title policy such as an easement, or some other agreement that would grant rights to use or come across the property. The owner might have to go to court to determine somebody else's right to use this easement or as a result of a boundary dispute, he might lose a portion of his property, but the lender would still have a valid first lien on the remaining portion of the property.

Schmidt: Anyone else want to comment? How about the audience? Would you like to respond in any way beyond the comment of the people up here? If that's acceptable to you, then let's have another question. How about you, Mr. Upton?

Upton: What role can we as agents play in educating the public about the land title insurance business? How can we better educate the public as agents out in the field?

Plotkin: I don't think this is limited to just agents. It has to do with all of us. The first step in educating the public, I believe, has a great deal to do with educating your own people. Many of them are working at a single area of the business and many do not have a complete appreciation of the total process. So, start inside with your own people. Everyone they talk to becomes a carrier of exactly what you want known about the industry.

Robinson: I'd like to add this. When you get to be 100 years old, as I am, you begin to realize that Americans like everything in a nice, neat pigeonhole. We like to believe there is a perfect solution for every problem. When you get to my age you begin to realize there are some problems to which there are no solutions. One of them is educating the public. We can certainly try, but we're never going to educate the public to our business to our satisfaction for a lot of reasons. One reason, of course, is that the public isn't interested until that magic moment the public's going to buy a home or some real estate. Then, they're interested.

I sit at my desk day after day and receive beautiful literature explaining to me the services of the stockbroker. I throw it away because I don't have any money to invest. It isn't until that magic moment when my uncle dies and gives me a few hundred dollars and I have some money to invest, that I became interested in the services of a stockbroker. It's the same way with the general public. They are naturally indifferent to what we have to offer because they have no need for it except on those rare occasions when they're going to buy real property.

Thurman: I would like to point out that the Oregon Land Title Association presentation we've just seen, plus whatever materials that underwriters offer to us, make up interesting and effective tools for use locally. We urge and encourage our agents to use these educational tools as often as possible.

Interrogators:

Lemley

Norton

Upton

Respondents

Plotkin

Robinson

Thurman

Robinson: I'll tell you another thing from an underwriter's point of view. We can put the finger on a branch manager and say, "Here is some beautiful literature; distribute it." We can't say that to an agent. We have to hope that you will be on our side.

Schmidt: Does anyone in the audience care to respond to the question of what role the agent should play in educating the public? If not, we'll go to Mr. Norton. Would you like to pose a question?

Norton: I'd like to stay in that general area because I happen to represent a company that is very heavily agency oriented. I had raised the question in my thinking as to whether public relations was a different kind of a problem to an underwriter more heavily oriented to branch office operations. Is there a distinction? Does it make any difference really?

Robinson: Yes, I think it does. Our company is pretty equally divided between branch and agency operations and we take a quite different approach to supplying the tools for public relations to the agents as contrasted with our branches. I say, it's a question of control. We can control our branches. We can't control our agents. But we can supply them with as much material as we can afford to produce and hope that they will use it.

Schmidt: How about a response from the audience on that? Does anyone want to venture an answer? We've heard from our three interrogators here. Is there a question from the audience that we can field for you? If not, we'll ask Dean, if you want to take a turn around again?

Lemley: Yes, sir, I would, Ed. I'm always looking for the answer to this question and I've never been able to get it. Is there a single most effective public relations tool for aiding the marketing work of a local title company?

Robinson: May I answer that? The truth of the matter is that public relations is many things. Public relations is the quality of the letterhead. It's the tone of the receptionist's voice when she answers your telephone. It's the attitude of your employees. It's a great many things. If there is any one single ingredient that is more important than any other, that ingredient is a commitment on the part of management to support an intelligent and comprehensive and ongoing and continuing public relations program. If you have that, then you will use all the tools that we can supply you.

Schmidt: Does someone else want to add to that? I think you touched upon most everything. But really, when you take all of those ingredients, they all come back to the heart and mind of the man. You see the manager has to be motivated and then activated to put all of these tools to use. That's what we're saying in so many words. There are many opportunities in this industry to create good public relations, but first we have to recognize the opportunity. Then we have to get started and follow through to get the job done.

Norton: I was putting my thoughts together on this matter and I wanted to raise the question whether we really felt that the local management people really understand what public relations is all about. I think that probably has been raised many times over because we get public relations mixed up with marketing, sales, etc. I guess that's the problem, but what's the solution?

Schmidt: Part of the solution is what we're doing right now. This workshop is educational. I think we've enunciated a number of principles about public relations—that it's not just a part of the business, it's the heart of the business. It's a management prerogative. It's a management obligation. There are many ways in which we can express it. All kinds of people in management, in large and small business operations have many opportunities to express themselves—to more favorably represent themselves, their services and their products to their customers, and to the public at large.

I think we should have more workshops like this, more programs, speeches and talks like Randy Farmer gave to us. Title industry people should increase their use of the available public relations programs and materials. They should get as excited as Jim Robinson does and then do something about it in their own community. Ultimately the payoff is in personal performance. The Oregon Land Title Association did something about it when they produced the slide presentation for the membership. I think that's the answer.

Robinson: I would like to add something, if I may. I think those of us who sit in an ivory tower at the home office of a title underwriting company frequently fail to appreciate the fine public relations instincts that many of our branch people have. They wouldn't be successful if they didn't have the right kinds of instincts.

I think that our role is merely to guide them and supply them with things that they can use. They're pretty shrewd people and that includes those agents who are successful. They wouldn't be successful, if they didn't have pretty good public relations instincts. So I'd like to feel we can really help them by giving them ideas and tools.

Schmidt: The managers and agents can also help us. Every senior officer at headquarters works diligently at learning just how to operate most effectively in his own area. He thinks he knows. But if he would talk to his local managers and agents, he would find that there are local nuances that have to be considered. I think we have to open up our minds and take advantage of the help that we can get from all of the people who do a job for us. After all, he's the management man, he's the acting president of his own little branch office and we're depending upon him to act like the president because he's reflecting on the highest echelon of management.

Lemley: Ed, is there any kind of guideline an agent can have as far as money being spent on PR—what percentage of sales? Those of you who are experts in the field here, can kind of help us to have an idea of what we should spend in addition to all the material you give us?

Plotkin: I'd like to answer that because I think you have raised a very important question. If what you were turning out were sausages and every year you knew that there were going to be sausages sold, you can develop a reasonable percentage of your gross or net to be spent on advertising or public relations on an annual basis.

But in our industry, there are times when you have something to say that's truly worth saying. At that point in time you make an "investment." You may not have anything to say again for three or four years, but you judge the situation before you and decide whether it represents an investment opportunity rather than looking at that money as business development money or another kind of money. It's really an investment in the future of your company and of your industry.

How much is it worth? That's the real question. Perhaps you start with a high amount and if your throat goes dry, bring it down to what you can comfortably live with.

Upton: I'm going to agree with you because we've just gone through our company's 80th anniversary. So we are spending more money this year than we've ever spent before. I think we have the best public relations in the community. We've been on radio, in papers and so forth and people are calling to congratulate us. So we are spending money there.

Norton: Ed, may I raise a question? Lenore, I hear everything you're saying, but what are the best ways to spend it? What is the best media to get the story across? We're talking about TV, radio, newspapers, trade journals, etc.

Plotkin: I have to agree with Jim Robinson's prior remarks. I don't think there is a single best way. It has a lot to do with your local community. Sometimes your best media vehicle is to hire another salesman to get your message across. Sometimes you might consider direct mail, radio or whatever. I don't think there's ever one single best way. The personality and chemistry of your organization could very well dictate the best way for you to go.

Thurman: If you've got a new branch office or some new personnel, I think that direct mail promotions are most effective. If you've got the money and you're having your 80th anniversary, that's a good time to use the radio, TV, newspapers. But I can't say which is the best. That's a very difficult question to answer.

Lemley: I'd like to continue on your statement there, Bill. I'm far from a professional public relations man, salesman or advertiser, but I'm very keen on direct mail. Do you recommend it as one of the better mediums for local advertising of title companies?

Thurman: Yes, I do. In my business, in my city, even though it is difficult and expensive to keep up our mailing list, we do hit our target. You know your message is going to get to the people who are important to you. I like it very much and I think direct mail is worth the investment.

Lemley: I like it, too. I like it sent out first class mail. I like the direct contact with the individual. I like to work on the content of the ad or the piece in the envelope to say what I want it to say. I have found it to be a very successful medium at the local level.

Robinson: I certainly believe in direct mail. I believe it takes at least three mailings to achieve a particular objective. I've used it successfully in my business over and over again. I do think that with the amount of mail that comes across an executive's desk, it is foolish economy to stint on the quality of the mailing that you put out. I'm talking about the creativity. I'm talking about the quality of the paper, the envelope, and the whole package. If you're going to do it and you're going to try to compete with all of the other mail that comes cross my desk, then it had better be a pretty good piece. I firmly

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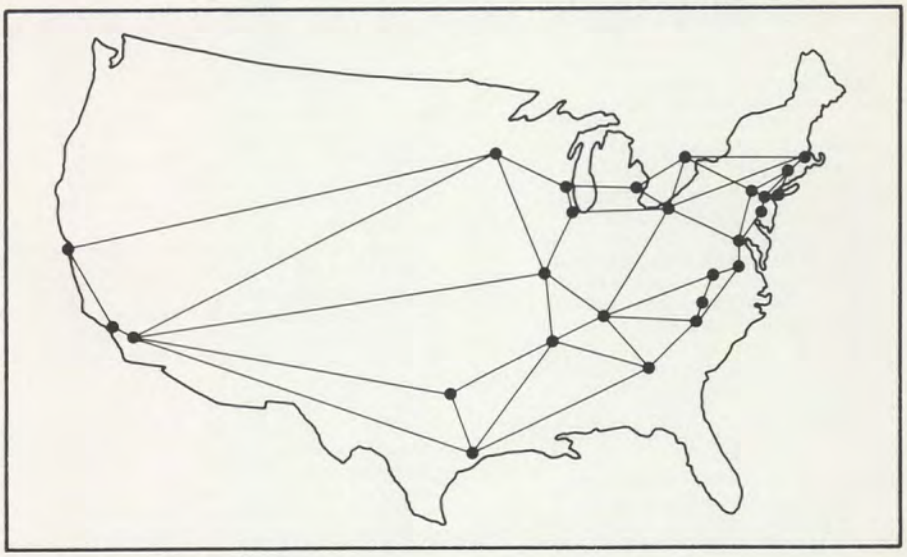

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believe in it. We do it at American Title all the time.

Thurman: I like the continuity of it, too. Besides, it keeps your customer list current if you're working at it properly.

Lemley: It's highly economical, I think, for what you get out of it.

Upton: I might say as an agent of several companies, the public relations that we get from the companies in the newsletters you send out, the more personal you can get about the region is certainly good public relations from the title companies. some companies have better letters than others, but I think when the agents do get mail from the headquarters or the branch offices, it should be succinct but attractive.

Schmidt: The ALTA Board of Governors has approved a budget for 1979. It's packed with a great many of the specialties that we have found successful in the past, but the one large ingredient that is new again this year after about a two year skip over is that we are planning a new film. A film customarily takes about two years from the development of the story line through to the production and the actual distribution. So $50,000 of that $166,500 will be for the 1979 development and production of the film which will take it reasonably through to completion.

Upton: Does your committee have any general purpose for showing the film? I think the last film was produced for the purpose of getting it on prime time television. I thought it came through with a pretty soft sell. Are you anticipating maybe a different objective with this film or a harder sell?

Schmidt: Our attitude and philosophy in this film is that it is to sell title insurance and the title search, which, to us, is an inseparable product relationship. We do have to realize though that we cannot get the television audience unless it is a public service film and we can't be too hard sell or commercial. We considered first producing a public service designed film to be followed by a hard sell, commercial version. The final decision was that it would be an extravagant additional expense and it was postponed, at least, for the present. After all, at this time, we don't know precisely how this new film will develop. But, to answer your question directly and simply, it is planned to promote the title search and the title protection.

Robinson: There are two things I'd like to say about that film. The first is, the most recent film was designed to support the work of the government relations committee. We called it *The American Way*. It was not intended really to be a sales tool.

The second point I'd like to make is that I don't believe you have to hit a person over the head in order to make him see the light.

I remember a film that I say that was all about boating. It was an 18-minute film and it was beautiful color photography. It showed a lovely way of life and as the boat, in the final frame, pulled away from the dock, there was a can of Gulf oil. I remember that can. It was the only reference to the sponsor of the film. I will never, consequently, forget Gulf Oil.

Schmidt: We've had a number of questions here. How about one from the audience? Isn't there someone who would like to go to the microphone or simply stand up and ask a question?

Thurman: Ed, I always hate to pass up the opportunity to say something when we're doing a program like this that of course we're stressing and I'm vitally concerned with public relations and hoping that the good public relations that we can develop will bring in more customers and more business. But if we spend all of our time on that and there's no reason or sense to bring in any new business if we don't have the training and personnel and capability of handling it, then we're wasting our efforts. So I just can't help but think of that whenever we go into something like this. Sometimes we go overboard.

Schmidt: Mr. Norton, do you have a question?

Norton: I'd like to raise a practical problem dealing in public relations. Local media typically will publish only the articles from our industry that their editorial people feel are sufficiently interesting and newsworthy. How can we make ourselves more attractive and acceptable to these editors?

Plotkin: We've had various experiences along those lines. A great many of the newspapers will take a very primer type article on the title insurance industry, describing exactly what it is. Most of the metropolitan newspapers of very large cities will not. To plant stories successfully, you need a hook. Something with a human interest angle or something that has to do with current news or a problem that is going on that you have overcome. A straight title insurance story won't sell for the most part. To continuously feed a newspaper stories that you know are going to be turned down, puts you in a position of the child who called wolf. One day you really will have a good story and they won't pay attention to you.

Have something newsworthy to say—something that's got something special to it. Then your chances are considerably improved.

Norton: That brings up another problem or question. This doesn't happen with direct mail or Oregon Land Title Association film clips or ALTA films, but how do you prevent a local newspaper reporter from misquoting you?

Plotkin: You can't. Except if you had kept a good steady relationship with a newspaper reporter, he will have more respect for you. When it comes time to write about title insurance, he will check back with you on certain ingredients of that story.

Schmidt: Let me add that letters to the editor are newsworthy copy and frequently you can get better exposure by a response then perhaps the original story. It has happened in Pennsylvania a number of times that the president of the state association, or some other person who represented the industry, prepared a rebuttal or a clarification of a question article.

And all this brings into focus something I want you all to know. The ALTA is your resource for all kinds of reference. Gary Garrity is loaded with experience gained from all of you over the years. A great part of his job is being sensitive to the reaction of editors and to directors in the electronic media. Gary understands very well how to make something marketable to the media. So if you have a situation that you would like to develop for a large or small audience, Gary is a professional communicator and he can help you. Many of you have state associations that have public relations committees. You'll find professionals in your own state who will be glad to give you a hand to turn a negative into a positive or to create a real value out of a potential value. I hope you will take this invitation seriously because I have seen it happen many, many times. If you have a good story, go to work on it and get some help to put it over.

Thurman: I think the Government Relations Committee today showed us how important it is to do more than write an occasional letter. Developing an actual friendship with your legislator is more meaningful. That's what you've got to get with your editors and newspapers. You've got to be able to call them when you need to and if you know them and have a rapport, then you've got a better chance of getting your story printed the way you want it to appear.

Upton: Do you feel RESPA creates any problems in our public relations thinking? I know we agents are asked to advertise in some Realtor magazine. And when it came out, perhaps we couldn't advertise in one Realtor magazine without advertising in the others because it might be called a kickback to the Realtor if we were advertising in his book. Are there problems that we don't see yet in RESPA that we ought to be thinking about in public relations?

Robinson: I don't feel that Section 8 of RESPA poses any unreasonable restraints on us as public relations people. I think it's kind of a slap in the face to the whole industry that we are not permitted to do things that other industries do, but that's beside the point.

I think in a few states, such as California, regulations are stringent and make it very difficult to do a job. But, no, I don't think that Section 8 of RESPA imposes unreasonable restraints on us. We can continue to do a public relations job for this industry.

Now you're asking about placing material in the newspapers. First of all, you've got to play the percentages. If you send out enough reasonably good material, some newspaper editors are hungry for it and will print it. Some of them will print it if it's the telephone directory. But if you really want good coverage, you have to get a good writer.

There are a dozen different ways to get good coverage. All it takes is talent and time.

Upton: If there are good stories coming out, maybe Gary or someone else could notify us agents, and being local we could go to the papers and say, "Look, this is a good article." Then maybe they would run it for us where they might not if it came from ALTA headquarters.

Schmidt: Ladies and gentlemen, my thanks to our panel members here and our grateful thanks to all of you for being present and listening and sharing this experience with us. We hope we have been informative and stimulating to you and that you have a few new ideas to take away with you.

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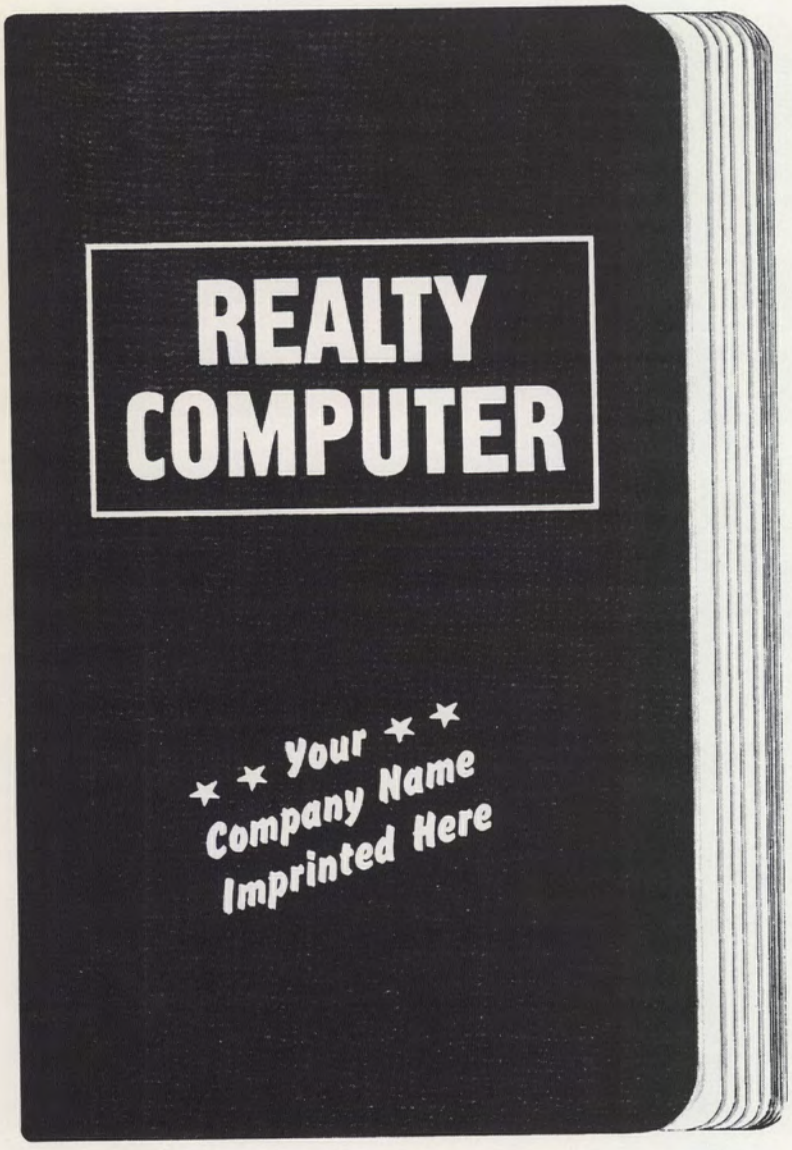

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Abstracters and Agents Section Meeting

Report of the Section Chairman

J.L. Boren Jr., Section Chairman
President, Mid-South Title Co., Inc., Memphis, Tennessee

The report of the chairman will be a brief one, both because of the fullness of the program and because, hopefully, the program of this Section and the program of this convention speak to you largely about what your Executive Committee has been doing during the past year and plans to continue to do during the next 12 months.

We have met at each convention. We have met at each conference. We have been in touch between these meetings by telephone and letter, attempting in our own minds to develop definitions of the Section and of its members and to develop goals which are appropriate in today's world to our Section—what we should be doing and what ALTA should be doing for its members.

To my mind, and hopefully to yours, the program which we have today, the workshops which we had yesterday and the general sessions are an answer to this and to your desires and needs.

Yesterday, President McConville referred to the ALTA member questionnaire which all of us received and to the generally positive reaction to ALTA evidenced by the responses. The dark side of the project was that there was an 11.5 percent response to the questionnaire. Hopefully that means that only those who were unhappy responded and those who were happy saw no reason to. Of those who responded, the marks were good. Particularly—and somewhat surprisingly—the rating given ALTA by the members of this Section were higher than the ratings given it by the members of the Title Insurance and Underwriters Section.

There has been an opportunity to speak out. We of this Section's Executive Committee have looked at those questionnaires. We have distorted the answers to some extent by pulling out only the critical ones which appear to come from this Section, hoping that we can address the problems in the future.

In a somewhat related matter, you were given, as you came in the door, a questionnaire which your Executive Committee and ALTA Research Director, Rich McCarthy, put together yesterday, asking, first, some questions which will tell us who is in attendance at this session by size of company and by geographic location.

Secondly, we ask you to rate some topics which we are considering for future convention programming. Finally, there's always that question "other", so that you can call to our attention those things which we have overlooked.

Please, although it may shorten your thinking time somewhat, complete the questionnaire during the session today. If you will leave it on the end of the table near the center aisle as you leave, Rich will collect and compile them to see if they give us some guidance in the future.

Rich also began working with us yesterday on the questionnaire which is sent out to our Section members every two years. In the past it's been largely a statistical compilation. This time we'll add some subjective questions—asking about your desires for Section programming and for ALTA in general.

You have been very good about responding to this in the past. Hopefully you will continue to be, because having this statistical information is increasingly vital when ALTA must deal with Congress, HUD and other entities just as you and your state associations must deal with state legislatures and state regulators. We need to be able to tell them what part of the economy we are and what part of the electorate we are.

Additionally, your answer to the subjective questions will make you a part of planning what we do in the future.

Errors and Omissions Liability Insurance Panel Discussion


Harper


Cantrell


Themmes


Van Cleave

Panel moderator F. Earl Harper is chairman of the ALTA Errors and Omissions Liability Insurance Committee and president of Southern Abstract Co., Bartlesville, Okla. Panelists are R. Joe Cantrell, president of the R.J. Cantrell Agency, Inc., Tahlequah, Okla.; Fred Themmes, underwriting officer, general liability insurance, St. Paul Fire and Marine Insurance Co., St. Paul, Minn., and John Van Cleave, president, INAX Underwriters Agency, Inc., Chicago, Ill.

Your committee has decided to try maybe not a new approach, but one that hasn't been used recently on this committee. Maybe it's time for us to look at another approach to protecting ourselves from errors and omissions losses.

The insurers tell us that they find errors and omissions coverage in our field necessarily very, very expensive. I no longer doubt that this is true. It certainly looks expensive from the insured's point of view.

Now suppose we look at some of the reasons for this expense. The first thing that comes to mind, of course, is losses. So perhaps we should analyze these losses and see if there's anything we can do to reduce them.

From personal experience I find that the cost of successfully defending is less expensive for a local title company, than for a large insurance company. There are at least two reasons for this. One, we are on top of the program locally. The attorney whom we hire is usually the same attorney with whom we have established a good working relationship in other matters. As a result of this relationship, the bill just might be a little less.

The expert witnesses such as Realtors, appraisers and engineers usually are people that we deal with every day. They, too, might remember some of their goofs which we caught and corrected before any damage was done.

In our case, we found our attorney assuring our expert witnesses that they should submit bills for their service as it wouldn't come out of our pocket. In spite of this pitch, three of the five witnesses still refused to submit bills, because they were aware that it might just raise the premium on the errors and omissions policy.

The second unnecessary expense is the fee for the legal firm which the errors and omissions company hires, which firm in turn hires local attorneys who do the work anyway.

I have it from a knowledgeable abstract friend that these firms sometimes charge over a dollar an hour and it's unbelievable how many hours it takes them just to make a phone call. It's even more fantastic the hours spent in writing a letter. I suspect that the cost billed to the errors and omissions company, which of course must be passed on to the insured, was at least as much as the cost of the local attorney who did all the work.

As a part of our different approach, we're asking for information from the insurance companies as to their cost breaking point which could be under $1,000, under $2,500, under $5,000, under $10,000 and so on. When we find the amount of deduction at which the policy could be written at the greatest profit to the insurance company, then we arrive at the self-insured portion of a potential loss.

In some cases, the IRS has permitted a reserve fund to be set up to cover the potential losses. To our knowledge they haven't given anyone any letters stating this to be their position, but they have performed

routine audits and passed over such a reserve.

I'm aware that in some areas of the country they have also refused to permit such a fund as a deduction.

To aid title people to have these reserves which would be permitted as a deduction, maybe the title insurance company could require the agent in the agency contract to set up such a reserve. Then I believe the IRS just might be convinced of the necessity for reserves and give us a favorable ruling.

I have brought these points to you for your consideration and also for the consideration of our guest panelists. Now I want to give those guest panelists an opportunity to bring their points to us. Time permitting, you will have an opportunity to ask them your pressing questions.

Since Fred Themmes has some almost direct answers to some of the questions I've raised here, we'll bring him to the podium first and let him make a few remarks. Then we'll follow with Joe Cantrell and then we'll have John Van Cleave tell us what might make us interesting to his company and induce them to get into our field.

Fred Themmes is an underwriting officer of St. Paul Fire and Marine Insurance Co. In his position, Themmes is responsible for the non-medical professional liability lines of insurance written by the company.

Themmes started his employment with St. Paul in 1956 on a part-time basis. He became a full-time employee in 1958 upon graduation from Macalester College. He completed the charter property and casualty underwriting program and obtained the CPCU designation in 1967. He holds an associate degree in management and an associate degree in risk management from the Insurance Institute of America.

He has been involved in various aspects of liability underwriting since 1958. He was promoted to his present position in October 1975. It's my pleasure to bring you now Fred Themmes, underwriting officer, general liability insurance, St. Paul Fire and Marine, St. Paul, Minn.

Themmes: A few weeks back when Earl and I first talked about the possibility of my attending your session today, we spent a little time discussing whether there would be a deductible level which would make it possible for the companies to reduce the premiums. I approached our data on this basis and stepping backwards for just a minute, a deductible is a very good risk management device when there is high frequency and low severity. That means there's a lot of small dollar losses.

In looking at our data, during 1977 for abstracters, we only had 96 losses reported. For title insurance agents, we only had 46 losses reported. The dollar value of the 96 losses reported during the 12 months of 1977 was $577,000. The value of the 46 title insurance losses reported was $655,000 in 1977.

During the first half of 1978, the corresponding numbers, the reported losses for abstracters was 62 with a value of $640,000. Title insurance agents is 20 with a value of $291,000.

Some of these numbers are paid losses; some are what our claim department has placed on them as value for which a reserve has been set up. And I ran out two averages. One is the paid and outstanding together and one is the paid only. For abstracters, the average paid loss in 1977 was $6,429 and those paid in the first six months of 1978 averaged $3,000. It looks like the average loss is coming down. But for some reason the small losses get paid quicker than the larger ones. By the time we get to the end of the year, I would think this average paid would be fairly consistent.

For the title insurance agents, the average paid during 1977 was $5,846. And for the title insurance agents during the first six months of 1978 it was $22,265. So we've got numbers that are jumping around and personally, Earl, I do not feel that increase in the deductibles is really going to solve the pricing problem.

If we issue a policy with a $100,000 limit and the abstracter or title agent has a $10,000 deductible, we still have $100,000 available for payment. While the deductible comes in first, that does not reduce the limit on the policy. So when we do hit the severity situation, the deductible is used, but we can still go through our policy limit.

During the first six months of 1978 I said we had 62 losses for abstracters and 20 for title insurance agents. Together between those two we have $931,000 reported, but in that number are just two losses which account for more than half of that. So back to the question, I do not think that deductibles are the answer where the severity potential is available.

Harper: Let's move on to Joe Cantrell. He served as a captain in the air corps during World War II. Then, in 1948 he bought half interest in the Tahlequah Abstract Co. in partnership with a local attorney.

He is the 1960-61 president of the Oklahoma Land Title Association and also served on the board of directors both before and after his presidency.

He was vice chairman of the ALTA Abstracter and Title Insurance Agents Section. In 1967 he purchased the remaining half of the Tahlequah Abstract Co. In 1974 he incorporated the R.J. Cantrell Agency, for errors and omissions nationwide.

Cantrell: As usual it's good to be back with title people from all over the country. And, it's always a pleasure to appear with Fred Themmes, a man whom I respect very, very much. His knowledge of the professional liability field is without peer in the United States. I'm happy to say that I believe that although we're competitors we're good friends.

To bring you up to date on our program—which is known as Title Pac—it has been approved for filing in 44 states now and is offered in the remaining six states on a non-filed Surplus-lines basis.

The filed plans are through the American Bankers Insurance Co. of Miami. In Illinois, we're using also the Evanston Insurance Co., a new company, which is quite solid financially. The Surplus-lines company is Mutual Fire, Marine and Inland Insurance Co. of Philadelphia, as before. Coverages and rates are the same in all three companies. In the states where we're required to use the Surplus-lines policy, there is a state tax.

We're still following St. Paul in our rate structure until we get five years of our own experience behind us. We lack a year and a half. At this point we look quite good. I don't have exact numbers as Fred Themmes has, but I do know that at the end of our first six months, we were showing a nice profit in both abstracter errors and omissions and in the title agency errors and omissions.

We still use a variety of rates, instead of one. We're using eight different base rates, selected regionally, based partly on my knowledge of the title industry as it is conducted in your area. The rates are lowest in states where Title Pac applicants have in-house indexes and title systems. We feel that where you maintain daily your own tract indexes or your own records and your own grantor or grantee indexes, you have a double-check as to accuracy. We believe that the statistics will bear this out.

We're happy to announce our first rate reduction. The reduction, in the form of a new classification, is now offered on an experimental basis in one-half of the states.

We're giving a special credit to the rates of a special category of title people—those with low incomes, low filings and low exposure. The basic criteria is that there must be no more than an average of 25 filings per day in the country recorder's office on an annual basis. Also, you have no more than five employees and your gross income is $50,000 or less from title work.

Now you'd be surprised, but we see a lot of applications with those numbers on them. We felt that those people, who were just barely getting along, were entitled to some credits because they just didn't have the exposure. They weren't crowded as to time, their indexing is much simpler, they're having fewer filings, and we thought they were entitled to the rate credit. After some gentle persuasion, our company finally agreed and we're offering this special credit in these cases.

Another announcement we'd like to make today is that as of Jan. 1, 1979, we will offer $1 million/$2 million limits. This will fulfill the requests of some members who wanted higher limits or an umbrella. It isn't an umbrella, but it's close to it. It does give more adequate protection.

Also we have had many, many requests, especially from the coastal areas, for escrow agents errors and ommissions coverage—an extremely difficult coverage to get moving. All the figures we've seen, and the statistics in the past, are bad. Of course, that's true with title agents, too. We thought we could make Title Pac work and we think we can make escrow agents and closers coverage work. We have now developed a system for rating it. This is a totally new concept.

Within the next six months, applications will be available for escrow agents and closers coverage. The reinsurance has been agreed upon. The policy forms are being developed and we'll let you know when it's ready.

Harper: We lured the next speaker to our convention to seduce. He is not presently in the abstracters errors and omissions insurance. He's in most other forms with the exception of medical. And it's a pleasure to bring John Van Cleave who's president of INAX. It's an INA subsidiary. He was a president of the Excess Underwriters, a Kemper Insurance subsidiary, and is a graduate of Northwestern University. He's presently based in Chicago, Ill.

Van Cleave: Thank you very much, Earl. Welcome, ladies and gentlemen. INAX is a new facility of the Insurance Company of North America Corp., which started in April of this year, specifically to underwrite insurance for professionals and handle what you know and what the rest of the

professions of the country know as a very complex insurance need.

The INA recognized this increasing exposure of the professional to liability and financial loss and decided to enter this limited field of insurance.

INAX then, emerges as the professional liability underwriting arm of INA, and all the professional liability that is written by an INA company will come through my office in Chicago. Soon, we will write coverage in 50 states, plus we will enter Canada very shortly.

Where do we see the problem with professional liability today? The attitude of the people, your clients, that the professional can do no wrong has been swept away by a change of public opinion. This change of public opinion is sometimes referred to as "social inflation." While this problem was first recognized in the 1960s in medicine, the liability problem has now spread to almost every other profession. The people who thought they were immune to such changes are finding themselves beset by errors and omissions claims at an alarming rate. Attorneys, accountants, insurance agents, abstracters, real estate agents, travel agents, all are experiencing the growing pressure generated by the public's conviction that the time has come to collect on a professional's alleged errors and omissions.

What has changed to create this increasing number of claims and losses? One reason is that the standards by which malpractice has been judged are changing and broadening. In the past, it took a blatant legal error or omission to produce a malpractice suit. That all has changed. In 1975, the California Supreme Court, in the case of *Smith v. Lewis,* established some explicit standards of professionalism for California attorneys and may have set a precedent for the professional community in general.

Other factors such as statute of limitation changes, the willingness of lawyers to bring suit against other professionals and the increased involvement of government in society have contributed to the problem.

While the doctors, lawyers, accountants and architects have made the most dramatic headlines, other professions are beginning to see similar patterns develop in their own field. What can we, the professional, and his errors and omissions insurance company, do about it?

We feel that loss control steps may be an answer or a partial answer and certainly a move in the right direction. The safety procedures— our loss prevention programs used by business and industry—can hardly be applied to the professional liability field. But INA, in cooperation with another national association of professionals, is exploring and researching the possibility of a loss control program which could reduce the frequency of claims against their members.

Loss control in the areas of some substantive practice appears to be very complex. In most professions, standards have not been developed and it would be a lengthy and difficult process to develop them.

Therefore, our initial thrust will be concentrated in loss control of faulty office procedures, which cause a high percentage of errors and omissions claims.

To give you some insight into the kinds of things that INA is suggesting, let me review with you a memo sent to the association as an initial suggestion of what our loss control could include.

Secure loss data from state associations and other insurance companies on types of losses, causes of losses and amounts of losses by type. Develop educational videotapes on the common causes and general controls of these types of losses.

Develop standards for use by individual firms in office procedures. Develop loss control kits utilizing texts, suggested forms and procedures and self-audit procedures. Utilize seminars for education and loss control purposes sponsored by state associations.

Hire and train qualified personnel in office procedure matters, loss control risk management to speak at seminars, conduct or assist office loss control. In cooperation with other insurance companies in the field, develop a common loss coding for reporting losses.

In cooperation with other insurance companies in the field, report all losses to a central source for use in loss control in risk management programs.

Secure cooperation of state associations in monitoring and auditing adherence to standards through peer review, sample auditing procedures, etc.

Our home office loss control department in Philadelphia is working with the staff of this national association to first determine what causes these losses, and then, what steps can be taken to reduce them, or even eliminate them.

INA feels that this kind of cooperation—professional and insurance company working together to reduce losses—is a positive step towards bringing the situation under control.

Our interest, of course, is to reduce dollars paid out in claims. The interest of the association and its members is to possibly reduce their skyrocketing insurance costs and minimize the embarrassment of errors and omissions claims.

INA does not write errors and omissions coverage for this group, but my assignment as president of INAX is to become a major factor in professional liability and certainly we will consider your specific needs in the near future.

A few weeks ago, I gave a report to my management and I told them about INA's commitment to insure professionals and set down for them these four criteria for success:

- Sound, intelligent underwriting philosophy which offers to the insured professional a policy form that covers his legal liabilities at a rate he can afford, while at the same time returning a profit to the underwriting company commensurate with the risk involved
- Qualified claims handling that pays all just and fair claims promptly and defends the insured with competence in case of legal action; further, claims personnel must be responsible to the underwriting company to handle and settle claims as economically possible to assure maximum underwriting profit and low cost of insurance
- A marketing program that will generate a desired volume of profitable business
- A loss prevention program to encourage and educate the policyholders—whatever their field—to perform their duties and run their businesses in a true professional manner

Harper: Fred, you indicated that St. Paul plans to take another look at the areas from which they had withdrawn. Can you give us a little information on that?

Themmes: Yes. We had taken the hard stand. We operate only on a filed basis. We do not have available a Surplus-lines facility such as Joe does. Where we could not get what we felt were needed rate increases approved through the insurance departments, we gave our local offices the alternative of either getting out of the market or using consent to rate. This consent to rate is where we would get the policyholder to agree to our using a rate that was not approved by the insurance department. We would file that form with the insurance department to get it approved. It got to be a hassle, handling the files four or five times through the consent to rate. This is what I would call a low premium, volume line for us. It's an important line. Together, we're talking about a million six in annual premium both in abstracters and agents. But it was not a critical factor to the well-being of any one office.

As a result, a couple of the offices did use consent to rate for a while and then just hung it up. So we are not a market in a number of states where we had difficulties with the insurance department.

Under our new program, we've come full circle where we are not going to abandon any more markets. As Earl indicated, there may be a possibility that we'll go back to base one and start over in some of these states.

Question from the Audience: You mentioned some dollar figures as a result of your average claim. Does that or does that not include the deductible?

Themmes: This did not include the deductible. The deductible would have been credited against these amounts. In the case of the abstracters I believe that our minimum deductible is $1,000 and on the title agents the minimum was $250. We attempted to use a minimum of $1,000 on both lines.

Question from the Audience: So these payments or these dollar figures would be reduced by the deductible?

Themmes: The deductible has already been taken out. I feel insurance requires spread of risk and I'm not certain that there are enough abstracters and title agents in the country to give that spread of risk. I'm not sure the numbers are there to work with. It's getting enough people to contribute a little bit to take care of their claims. When you look at our claim numbers, they'll small. We aren't flooded with claims.

For example, if you have two people each owning a $100,000 house and they agree if your house burns, we'll split it, and if only one house can burn in the year, they're going to each pay $50,000. But if you get five people involved, you've got it down to $20,000. You need large numbers to make the mechanism work. And when you don't have the large numbers, there's nobody to spread the cost to except those of you that are buying.

Harper: There really aren't that many potential policies in the country, are there?

Fred, what would you guess? Three or four thousand policies at the most?

Themmes: Some counties have just one abstracting office. It's not the same thing you're looking at when you're looking at personal auto or homeowners where every auto and homeowner is a potential customer. These are not what I would call spread of risk.

Van Cleave: Fred is right. You have to have premium volume in dollars in large numbers and spread geographically in order to come out with a profit. In accounting and statistical data, of course, we're going to keep separate data on each of the disciplines that are involved— abstracters, accountants, insurance agents, lawyers, etc. For overall purposes we're going to lump our professional liability coverage premiums and losses, just as most companies do in their general liability area.

In other words, a company, in putting up its statistics for general liability, doesn't differentiate between the retail shoe store or the retail grocery store. They may be that sophisticated, but for all intents and purposes it's lumped in. So we feel in doing that while we're not going to let any one discipline jeopardize the whole facility from the law standpoint, but our spread of risk will be overall in the overall professional liability field, rather than just in one specific area.

Granted, it doesn't make sense to go into a program that's not going to develop a meaningful production of premium volume. Just your marketing costs and acquisition costs, it will deter you from doing that. But it is true. You have to have premium volume and in this particular area—with abstracters—there are possibly only 3,000 insured in the country, that isn't a lot, spread among how many carriers already, Fred, two or three?

Cantrell: He was talking about lumping professional liability claims under one set of statistics. Frankly, I think that's part of the problem that's afflicted the title industry. I don't really think that our pure losses as title people are reflected by the figures that are being used for the current rate structure.

As you know, we've had a different concept all the way along. We know that claims have been paid for escrow and closing errors out of abstracters and title agents policies that shouldn't have been. We know that other professions are included with the title industry figures. We feel the title industry can stand on its own and that the claims and premiums should reflect the actual experience of the title industry, even though the figures are smaller. We've won that concession, that we are doing that. We're using in-house claims service now, with me as a consultant. They consult us regularly. A number of you who are present know that we're using local title-attorneys now to handle claims.

When we start our escrow and closers errors and omissions programs, we are not going to include those figures in with the abstracters and title agent figures. We're not going to contaminate the good records we have with what we think might happen there.

We're going to try to keep the title industry separate. This is one thing we believe to be different from the rest of the insurance industry. We know it's incongruous to try to work with small numbers, but we think it can be done.

We're not denying a person renewal because he's had a claim. Our underwriters still are casualty people. I haven't been able to make title people out of them yet. They try to look at the future in one or two ways—either increase the deductible, or the premium, for a period of three years, diminishing each year. At the end of the third year, we're back to ordinary rates again if there's been no subsequent claim. We do try to offer on some basis.

Harper: Getting back to this question that you and John are slightly out of phase on here— combining risk. Charlie Jones of Lebanon, Ind., has another approach. He has a "double-barrelled" umbrella. He has his company liability, then he has his personal liability. They're so comingled that gaps might occur between his personal liability and liability of his various comanies. I don't know how this affects his premium. But I do know it fills in any gaps, which he's more concerned about, and I would assume that this would make him a more desirable customer to some insurance companies. Is this possible?

Van Cleave: You're talking about including the automobile and general liability along with the professional liability. You know it could be done. The problem is that many of the underwriters who are involved in writing professional liability are not writing general liability. With the INA or with St. Paul, for that matter—they being very big writers of that area—I suppose you could come up with a package policy. To my knowledge, it hasn't been done with the exception, I think, of a dental malpractice program, I think in California, which includes general liability, premises liability along with the professional, which puts a little icing on the cake. Theoretically, the general liability is a better exposure than the professional. And that's a question, too, because the rate level on premises liability is very low.

Cantrell: I might make one other point of interest here, too. It seems to affect a number of title agents who represent one or two of the companies that have come out with new agency contracts. I'm speaking of these revised contracts wherein the title insurance company is assuming the liability for errors and omissions, other than those of gross negligence.

First of all, we don't know what the definition of gross negligence is compared to ordinary negligence in the issuance of title insurance. I'm not going to try to determine that. Our company has agreed with me to allow lower premiums on the title insurance errors and omissions where that contract existed, assuming that the title insurance company itself is taking most of the liability. Where you have two companies or more, we reduce rates proportionately to the volume of business written in those companies.

We do think though that within two or three years of their absorbing claims they may be back with another contract. We don't know.

Report of the Education Committee

William A. Towler III, Chairman
President, American First Title & Trust Co.
Oklahoma City, Oklahoma

The action of the Education Committee to date has been mainly one of planning and trying to get our act together. I would like to report to you that we have already gotten a variety of things done. That would not be totally accurate.

Where we do stand at this time is that we are putting together a regionalization of all of the states, using the various committee members.

Now by that I mean that the underwriters have for years or perhaps more recently developed pretty good training programs that they use in-house. On some occasions, they have made those programs available for agents to send people to the underwriter to be trained—particularly in the areas of title examination and closing. But the best education for the abstracter agents and for their staff seems to exist at the state levels.

In Illinois, a new program has begun and they're using video cassettes as a part of an education training program. I'm not totally familiar with that program at this time. It's one that has started fairly recently.

Many of you are aware of the Texas education programs, two of which are new. They have five regional seminars yearly—educational seminars that are conducted on a Saturday. The attendance at those has been absolutely phenomenal. They are grassroots types of program which teach people basic things in the area of title examination, abstracting, closing, and basic managerial functions.

In Oklahoma, there is a two-day training seminar. This particular seminar is designed to again provide education in various problem areas. It has not been as much of a nuts and bolts type of thing as some of the other areas, but progress is being made in that direction.

Florida has an abstracters school and an abstracters test.

The programs I named are by no means the only ones in existence. They are merely examples to illustrate what's happening in certain areas of the country.

Our plan is to divide the United States into appropriate regions. It's very hard to tell now whether we will end up with six, seven or eight regions. In each of these regions, there is a committee member and that committee member will be responsible for the development and coordination of all educational activities in his particular region.

This is not to say we're regionalizing from the point of view that if you're on the east coast then Florida, Georgia, South Carolina, and Alabama are going to all be the same. We don't mean to imply that. But rather than in terms of somebody from one state getting to another state, it may be more convenient at this particular time.

Each of the regional individuals will coordinate with each other. That is to say the whole committee, so that we can make the country aware of what training is available, the levels of it, the applicability to various parts of the country, etc.

It would be difficult to make the case that an educational program on title law in Louisiana would be helpful to someone in the state of New York or even Texas. But by making the people aware, then you as an owner, manager, whatever the case may be, are in a position to determine whether or not such a program, school, seminar, whatever the case may be, would be applicable to your people and would be helpful to them.

To coordinate this, we hope to be able to make use of various state title association publications. The members of our committee could submit to that publication a synopsis, if you will, of what is taking place in the areas around you. And that when published, it would indicate the program, the individual or individuals to contact for determination as to whether or not members of your staff could attend, etc. This will provide you with the awareness of what's happening. Now there's no way that we can do anything that gets your staff to the school, but if we can make you aware of what's available, then you're in a position to make the determination of whether or not it is worthwhile attempting to send an individual or individuals in your company to the program, the school, the seminar or whatever the case may be.

In that regard, one of the problems that all of us have, and particularly the smaller agent abstracter, is where do we get trained people? I think the answer has to come from the fact that we've got to train them ourselves. And to do that, we can't always develop our own programs, or at least it's going to be very difficult. So the kind of formal programs that you'll be made aware of are for your decision as to whether or not they make sense for you or your staff.

One of the things which we desperately need that we do not have at this time is information of what is happening in your state in terms of education and training. In that regard, I urge all of you in attendance here to please write to me at American First Title & Trust Company in Oklahoma City and let me know what's going on in your state.

If you're not sure or you're concerned about writing a letter, please have your state executive secretary, president, or another officer write me. This is the only way that we can begin to develop the data. We will send a questionnaire to each of the state associations asking you what is taking place, but obviously the more feedback we get now, the better off we're going to be in terms of developing this dissemination of information.

Also, subject to space, time available and a variety of other factors, Maxine Stough and I have been talking about attempting to develop in *Title News*, the ALTA publication, on some reasonable basis, a series of informative articles on what is taking place educationally across the country. We would advise you of what educational programs are being developed, what the philosophies are, if you will, behind them, and how some of the programs came into being.

One of the problems which I have personally been made aware of by people that I've talked to in the industry, is the fact that a person tends to throw his hands up in the air and say—How do we develop an education program? We don't have the staff. We don't have the time. We don't have the number of people in our industry or in our particular state.

My answer to you is that, first of all, don't try to develop the most complex program you can. You can start with simple programs. An example would be what is taking place in Oklahoma. They have five regional meetings. Unlike the Texas meetings, these meetings are held at night. One program, approximately one hour long, is repeated in the five different regions. The people are able to attend this type of function. It makes sense for the number of people in the industry in Oklahoma at this time.

In Texas where you have over 10,000 people totally engaged in the title insurance abstracting industry, it's another ballgame and you have a different kind of program.

Hopefully between the articles, the coordination and the awareness through your state association *(and I emphasize that this awareness must take place through your state association, because that's the media that we have available to us)* we will be able to advise you of all the programs, seminars, training facilities, etc. that are available to you. From there, it's up to you. If they make sense. If they are the kind of thing that you believe your staff could profit by, then all we can do is urge you to please have your people involved and participate in these programs. If that, in fact, does take place, then we begin to solve two massive problems that we need solved in our segment of the industry—the agent-abstracter section. One, we begin to develop qualified people, and number two, you will have made the task of the Education Committee and the goals we have set achievable and we would like to achieve those goals.

Plants and Photography Committee Panel Discussion


Griffin


Machacek


Meckfessel


Mills


Stilla

The Plants and Photography Committee Panel Discussion was moderated by committee Chairman Thomas A. Griffin Jr. who is executive vice president and secretary, Mid-South Title Co., Inc., Memphis, Tenn. Panelists were Joseph F. Machacek, vice president, Title Insurance Company of Minnesota, Minneapolis, Minn.; Robert G. Meckfessel, director, title production systems, St. Paul Title Insurance Corp., St. Paul, Minn.; James W. Mills Jr., president, Lawyers Title of Louisiana, Inc., New Orleans, La., and John G. Stilla, systems officer, Chicago Title Insurance Co., Chicago, Ill. All panelists are members of the Plants and Photography Committee.

Griffin: We are happy to be able to present an update on the data which we presented at the last convention. It's with not too much emotion that I tell you this is the last time you'll see the Plants and Photography Committee before you. We hope to change that name to something more fitting and the ALTA Executive Committee has had some discussions about it. I'm sure Roger Bell will choose something that is more descriptive.

We believe the purpose of this committee is to disseminate as much information as we can in as broad a spectrum as we can to allow you to have reasonable alternatives for your decisions involving any type of equipment in your shop. I think you will see this from the variety of literature which we have for you to pick up after the meeting.

We have a mixture. We have everything from different storage devices for fiche, items which convert 35 to 16 mm film and some gadgets that you wouldn't believe existed for retrieval of data. Of course, we have our old faithfuls in the area of title plants and to some degree that applies to the closing packages. We have a large variety of reader printers from many of the major manufacturers for you to help yourself to. We have literature from approximately 60 sources, depending upon its availability to us.

What we're going to try to do this morning is shut the chairman up and let each of the panelists have about ten minutes to talk about certain items, the literature on which is on the tables behind us in almost every case.

We have our own questionnaire, which will be dealt with later. We ask your cooperation in that. There is one rule we had to impose and that is that in the panelists' discussions of approximately ten minutes each, they're going to limit themselves to items which are new or have been modified.

One other thing that I want to mention. There was no way to effectively deal with this as a handout. I frequently rely on a publication company known as Alltech, which publishes studies and analyses of many different things. I wrote to them for some information and literature that we could hand out. The order blanks for these various studies are in the miscellaneous category over here on my left.

I want to tell you some of the types of studies you may get from Alltech. Reports are available on microfilm reader printers, personal computing, copiers, facsimile equipment, word processing, optical scanning, printers and modems and acoustic couplers. Obviously, a lot of this is very technical. But if you are into a technical

field, you may not know of this source and therefore I mention it.

And with that I will turn it over to the panel. In doing so I would remind you of the August *Title News*. I hope that you have had a chance to read it or look through it and pick the articles of interest to you. In the event you haven't, we have 75 copies on the far end of this table to my left. If it doesn't interest you, but you have someone in your shop who is curious about types of plants, what is a joint or shared plant, when to automate or what types of microfilm systems are available, then take one home to this individual.

I'm finally getting to Bob Meckfessel. You know Bob did a little analysis about the honeycomb on the front of that August *Title News*. I don't know whether any of you realize it but the picture may look like a honeycomb. In reality, it's a super mass storage device and so Bob got his calculator out and with that I'm going to turn it over to Bob Meckfessel and let him tell you what he found.

Meckfessel: Thank you, Tom. On the front of the August *Title News* was IBM's largest mass storage device—a cartridge disk system. Since I am employed by a company that appreciates long range planning, I put my calculator to this equipment's capability with the figure that at 800 postings a day, this drive would store enough data to yield a title plant containing 6,752 years on line.

Along this line are two new announcements relating to the computer industry that came out just this month. First is a new disk drive that was announced by Control Data. It's called the 3350-2 and is twice the size of the largest disk drive yet introduced. It's an IBM type 3350 capable of storing 635 million characters of information. It's twice the size, half the price. It's two spindle drive which stores about 1.2 billion characters and has a price tag of about $59,000. A comparable IBM which took four drives has a cost of about $117,000.

Secondly, Texas Instruments, on Sept. 8, announced a new 64 K memory chip which stores 65,536 bits of data on a chip. This memory is the size of minicomputer in the early 1970's. My point in mentioning this is not that we're all going to rush out and buy these things, but hardware costs are still coming down rapidly as technology continues to explode.

On the other side of the coin, micro and minicomputers usually require more complex and difficult programming which, coupled with inflation and spiraling labor cost, is causing software or programming to rise rapidly.

We're still missing one thing in the computer industry and that's a computer that can count as well as spell. True word processing and computing have not yet effectively merged. We're getting close and I think in just another two or three years we should be there.

This morning I'd like to talk about several new items in the way of title plants and escrow closing systems. I'll start with closing systems.

Number one would be Nixdorf. Many of you may be familiar with Nixdorf which has been marketing a system probably longer than anybody. It was a small machine, really designed as a general ledger accounting machine and was hard wired. Nixdorf has just announced a new 8870 minicomputer with a 64 K memory, expandable to 128. The big difference is that this machine is software based as opposed to the old hardware. The basic system contains a 10 megabyte drive expandable to 40 megabyte. It has a forms generator which means you can design and print your own forms and custom tailor your forms yourself. The machine also has multiprocessing capabilities and handle nine terminals with options for a tape drive and a card reader. They also have an interesting package of general ledger and accounts payable that you can put on the system.

We have some literature on this new machine. They attempted to come down here and put on a display, but had a prior commitment.

Many of you probably have seen the Settlementor display out front. They are another newcomer to the closing market. They use an Applied Digital Data System computer. It's an intelligent terminal and it's linked to a large computer located on the East Coast. It generates the closing statements, forms, and computations. They also have the ability to print commitments and title policies.

Next on the list is Title Data's new system called Title Order Production System (TOPS). Title Data which was basically into plant building business has developed this system. It's designed to handle the complete order processing in the office. The system does the order form and requests the necessary information that you need at the time of order. It prints commitments, policies, and commitment due reports. The system utilizes a micro-data minicomputer. Future plans provide for adding escrow closing to the system.

One of the interesting features of this system is the way commitments and policies are produced. You simply call up the standard exception, fill in the blanks, variable insertion. It also has a standard abbreviation function where you can take some standard abbreviations you use quite often and use them and the machine will automatically explode it and print it out. An example of this would be like point of beginning in a legal description; instead of typing it each time, you just put POB, when it prints out on your legal description it would print out point of beginning.

Title Data is also working on a plant utilizing a NOVA 3 computer. They're in the final stages of completing development work on this.

H&W Systems, which is a large plant-building firm on the West Coast, best known, I guess, for Teletitle and some of their plant work, has also developed a commitment policy order production system. It prints commitments and policies. It also uses the standard paragraphs, variable insertion. It does the invoice and calculates your charges. This system utilizes a Hewlett-Packard minicomputer and also has the abbreviation function that you can use standard abbreviations which, when printed, such abbreviations explode on the commitment or policy.

Next on the list is Landex II. I think most of us all know Don Henley and Landex I. Landex II has been on the drawing board I would guess for about the last year and six months. It is now up and running in Haywood, Calif. Landex II is an expanded version of Landex I utilizing a NOVA 3 computer, which has multiprocessing so you can perform more than one function on the system simultaneously. Landex II uses the Trident 3230 type drives which is one of the large super disk drives. The Trident drives stores 300 million characters of information, as compared to the other Landex disks that store between 58 million and 116 million characters. What this gives to the Landex system is a 600 percent greater capacity per spindle or 300 percent capacity per drive.

The new system is four times faster than the Landex I. It's capable of over 10 million postings. They've added some improved searching techniques. It leaves off where Landex I stops for the larger user.

The last thing I want to mention is that Xerox has come out with a new reader-printer for microfiche called the 740. The interesting thing about this is that it is a Xerox machine. The cost per copy is about 2 cents as compared to a normal reader-printer which runs anywhere from 5 to 10 cents per copy. Right now it only handles microfiche. They're probably coming out with a reel to reel version very shortly.

A last minute item I found out when entering the room was Halifax—which has a display out front—has developed a closing system. I have not obtained the details on the system, however. If anybody is interested in closing systems, they might want to talk to Leonard Conner at the display.

I think I've said enough. I will now turn it over to John Stilla who will continue from here.

Stilla: I feel that one of the most interesting developments in the microfilm industry is the capability to convert 35 mm roll microfilm to 16 mm roll microfilm. I assume many of you use 35 mm roll film in your operations. Perhaps not by choice, but rather because that is all that is made available by the county recorder.

Thirty-five mm film is fairly cumbersome to work with. Sixteen mm film is easier to work with and requires much less space. In addition, many of the new developments in the industry have been geared towards 16 mm film. Examples are blip coding, self-threading capabilities, cartridges, magazines and cassettes.

In converting 35 mm roll microfilm to 16 mm roll microfilm, you can effect a 75 percent space savings. For example, two 100-foot rolls of 35 mm film convert to one, 100-foot roll of 16 mm film. Therefore, there's a 75 percent space savings.

In addition, in the process of converting this film, you can add blip codes onto the 16 mm film even though there were no blip codes on the 35 mm film. This is quite a unique feature.

Blip codes allow you the future option of using some of the sophisticated retrieval equipment that's available.

Another interesting development is the ability to convert aperture cards, such as these, to 35 mm roll microfilm. Aperture cards are cumbersome, easily lost, and easily misfiled. You could take it one step further and then take the 35 mm film which you created from your aperture cards and convert it to 16 mm possibly even blip code and load it into cartridges and you will then have gone from again what I refer to as a

rather cumbersome system to a very modern blip coded, cartridge loaded system.

Two firms that offer this service are Eastman Kodak and PFA. We have brochures on the table and I would appreciate it if you would pick up some of these on the way out.

Eastman Kodak developed brochures for us. They had none to begin with. They're very interesting because they have an example in there which shows the input film and the output film. This is a picture of what it looks like. So again please help yourself.

I'd like to mention Computer Output Microfilm (COM) which is becoming very popular. It's not microfilm in the sense of the word that we're used to. Typically, we think of a source document being placed in a camera and we press a button and take a picture. The source is a document. In COM, the source is a roll of computer tape. The tape is loaded on a COM recorder, settings are made, buttons are pushed, whistles blow, lights flash and out at the other end comes 105 mm microfiche. The most popular sizes of microfiche are 42X and 48X. the X means times the reduction of the original. The original in all cases is a full-size computer printout page.

A 42X piece of microfiche such as this, holds the equivalent of 208 computer printout pages. A 48X microfiche, which is the same size, holds the equivalent of 270 computer printout pages.

Just to give you a proper frame of reference, let us assume that on a computer printout page we have 100 records. A 48X piece of microfiche which holds 270 computer printout pages is now housing 27,000 records in this little bit of space.

It has become a very popular industry because it is eliminating tons of paper plus it drastically reduces mailing costs.

I would like to bring a few readers and reader-printers to your attention. Again, brochures are on the tables. Help yourself on the way out.

The Dukane Corp. has a microfilm reader on the market called a Model 27A25. It accommodates both 16 mm and 35 mm roll film. The manual version of this reader costs $490. The motorized version costs $680. There is an attachment that can be purchased for $80 which will allow you to view microfiche or jacketed film. Additional lenses for this unit cost $80. So it's relatively inexpensive. They also have another microfilm reader on the market called the MNR 16 + 35. This model also accommodates both 16 mm and 35 mm film. It is motorized and can also use cartridged film.

The Minolta Corp. has a new microfilm reader-printer on the market called the RP-407. It produces dry copies via the electrostatic process. It can make up to 20 copies continuously of one image. But I believe the most interesting feature of the RP-407 is the fact that it can accommodate six different types of microforms. On this unit you can use microfiche, jacketed microfilm, 16 mm rolls, 35 mm rolls, 3M cartridges and aperture cards.

Hall & McChesney, Syracuse, N.Y., has introduced a new machine appropriately named "The New Machine."

The forte of this machine is that it eliminates repetitive typing and reduces input labor by more than 50 percent. It has a typewriter keyboard and microprocessor circuitry housed in the drawer of the unit.

It probably has limited application in the title industry insofar as it is geared for entry of grantor-grantee records. The principal market for this machine is the county recorders across the country.

An interesting feature of this machine is that the typed output is in machine-readable form, ready for optical scanning and subsequent entry into the computer.

As I mentioned, it may not have many applications in our industry, but please help yourself to a brochure. If nothing else, it will give you a reason to call on your local friendly recorder and just say hello.

Finally, there's a very interesting booklet put out by Eastman Kodak. It's very informative and it's called "The Management of Information." This booklet describes the different uses of microfilm, the different types of microforms, different types of readers, reader-printers and cameras. It touches briefly on COM and on blip coding.

Once again, it's very informative and please help yourself on the way out.

That's about all I have so I'll turn it over to Joseph Machacek.

Machacek: Thank you, John. The first system that I'm going to talk about is the IBM office system-6 which is being demonstrated outside the door of this room. My initial exposure to this system was at the Wisconsin Land Title Association, approximately six weeks ago. Although it does have limited capacities, I was favorably impressed with the system. For this reason I would recommend it only for a smaller operation. The retrieval I am told takes approximately a minute and one-half in the event that the system has to research the diskette in its entirety.

Assuming that you are making an inquiry into your PI (property index), and GI (general index, name index), one inquiry for the track and six name inquiries—further assuming you're working a full eight hour day—I estimate the maximum number of orders you'd process in any given day would be approximately 40. You can judge from that whether you feel that's in your ballpark. Again, I encourage you to view the system.

The input into the system is via a mag card typewriter. The mag card is read directly into the system and the information is stored on diskettes. For example, subdivisions starting with letters A through D might be housed on one diskette, and second diskette, E through F, etc. Name searches are the same way. In your retrieval, you batch retrieve. Subdivisions in alpha A-D, you batch them together and retrieve.

It has the capabilities of issuing title commitments and final policies. Variable data is input, stored, updated and again in issuing the final policy following closing of the transaction.

It's an interesting system. Presently I am told that the system is installed at Island Title Co. in Walsworth County, Wisconsin. Another system is supposedly installed at Lake Abstract and Guarantee Co. in Florida. For the benefit of people that are in close proximity, you may want to view and visit with the end users. That way, you get the real input, rather than from a salesman's point of view.

The next system with which I am familiar is the Info-Key System. This is not presently used in the title industry. It was developed by Disley Research Corp. which is a subsidiary of Louisville Times Co. in Louisville, Ky. The system consists of a minicomputer for storing and retrieving the indexes and the Question Image Systems for storage and retrieval of the source data. The system is used only in the newspaper industry—a very interesting application. The system and software are available. I visited with the salesman over the phone. He told me there'd be no problem to adapt the system to our industry.

The next piece of equipment is called VISCO, which stands for Visual Systems Corp. The corporation is located in Southfield, Mich. The applicability of the equipment that they came out with lends itself well to our industry now that many of us are moving towards microfilming and computerization of our records. They developed a piece of equipment to automate the retrieval of converted tract books to microfilm. The key to the operation of this system is in the microfilming of your tract books. Therefore, if interested, a visit with the people at Visual Systems Corp. is recommended prior to filming.

The next system that I'm going to talk about is Kodak's intelligent micrographics terminal 100 and 150. Both are basically the same except one is a reader-printer, and the other strictly a reader. It's a relatively new piece of equipment. Many of you after returning to your respective cities may get in touch with your local Kodak representative and inquire about the equipment, only to find out that they have not been exposed to it. I saw a demo of this equipment in our Minneapolis Kodak representative's office a week before I left. It is an interesting piece of equipment. It can be tied in with your computer and as you make an inquiry on your CRT, it will download the info that is disclosed on your CRT into Kodak's IMT terminal and inform the operator to insert cartridge 15. The operator inserts the cartridge, depresses the search key and the viewer printer will go right to the page. If you want a copy you push the print button to get a copy of the document.

Many people on a computerized system who retrieve their copies of the document from cartridge microfilm tell me that when an operator gets proficient, he or she can go right to the page in need. I've watched many an individual retrieve from microfilm and I've yet to see one stop the printer right on the page in need. Maybe you have. The cost of the equipment is around $12,000.

The next system I'm going to talk about is not a new system. I talked about it last year, but there has been an improvement in the system and that is the Ragan system. A very interesting brochure was developed by Ragan for the land title industry. I recommend you review it.

The unique part of this system, unlike what Kodak has done, is that the Ragan system will, as you make your inquiry, reflect on the CRT what documents have been recorded versus a given piece of property, and then selectively you may retrieve any particular document by a mere push of the button and the system itself will seek out the reel of film and search to the respective page, reflect it on the screen. If you're in need of a copy, push a button and the copy is yours.

The one nice feature about this system is that all of the keying of the characters or

parameters needed for retrieval is done simultaneously with the filming of the documents. If this is an impossibility in your area the keying may be done later.

The improvement in the Ragan system is that you are now in a position to communicate with a filmless remote terminal remote location. In other words, the central processing unit and source data are located at Point A, Point B being located unlimited miles away, you can communicate with Point B, via CRT and if in need of a copy of a document, you depress print key. You need not have film at Point B which is a super step in the state of the art. If you can cost justify, a review of the system is strongly recommended.

The last system that I'm going to comment about is Bruning's micrographic retrieval viewer-printer terminal. It's basically designed for the retrieval of microfiche. The microfiche is housed in cartridges—30 to each cartridge. The cartridges are indexed on the oustide. Insert the cartridge and recall the respective microfiche that you want. It goes right to the index. You select the page number by depressing the buttons for the page you're interested in and it goes right to the page. If you need a copy, depress print key.

It's a very interesting piece of equipment. The turnaround time in retrieval from the system is approximately six seconds.

The capacity of the system is unlimited. You can load as many cartridges as you need.

Many people are on microfilm. With the floods that we've been having throughout the country, I wonder how many people have really given any thought to what they will do if the film gets flooded? It happened to us. I called my microfilm service bureau. They told us to submerge the film in water and bring it to them so they could dry it out. If you leave it till mold develops, forget it. It's too late. Therefore, some advance planning is advisable.

There are two pieces of literature that the NMA published. *Introductions to Micrographics and Microfilm Indexing and Retrieval Systems* is available from National Microfilm Association at 8728 Colesville Road, Silver Spring, Md. They may be helpful to anyone planning a microfilming project.

With that I will surrender the microphone to the gentleman on my left, Jim Mills.

Mills: I'd like to make two comments. Bob talked about this new piece of Xerox equipment and I've always wondered why Xerox didn't market a good reader printer for 16 mm film since they were in this business.

One thing I noticed at the Xerox demonstration we attended was that you could not use this printer sitting down. Somehow, to me, that detracted from it. So you might consider that when you look at the printer.

The second comment is about the Bruning 95 system. I saw this in a courthouse in Baton Rouge, La. It does an excellent job. And one thing that I think it might do is bridge a gap between you and your users who don't particularly like to use microfiche.

Tom had asked me to talk about input from two standpoints. A friend of mine put his keypunch operators on an incentive plan and the production really went up. He was particularly pleased with one operator and he boasted about how she had doubled her production and really had outstanding earnings.

I saw him at a meeting later and I inquired about his fantastic keypunch operator. He replied, "You know, you won't believe this. She left me and all at once we found we were missing a lot of records in our plant. About the same time the street in front of our office began to flood everytime it rained. The sewer department came out and I learned that what had happened was that when she couldn't finish verifying her cards, she would just slip them in her purse and throw them in the sewer on her way home. There were my missing records."

In my rounds over the country—and I've visited a number of title plants—it's interesting to note that most people seem to use their *newest* people to enter data into their title plants. The people who post your tract books are usually the young high school girls who work afternoons. Suddenly I realized how stupid that is—at least from my standpoint—that I was using the *least* experienced people to really do one of the most important jobs in this facility.

So I reversed that. And particularly in my case because we key in information from microfilms and it takes a pretty good operator to stand up under that hour after hour. So, instead of a new employee, I use women who've had at least eight years experience in the business.

I have two more short items. One is the selling of plant data. Years ago when we started a title plant, a mechanized plant, when I was carrying the burden myself, it was very tough. So we went out and started selling data from our title plants. It doesn't sound like much, but last month we hit $12,000 worth of miscellaneous data sold out of our title plants.

It's a direct ratio between efficiency of your county recorder or whatever you call your people. In New Orleans, for example, if you want to go into property management and look up various data, they're only open 2 p.m.-4 p.m. so that really isn't enough time. So we sell our information to certain people.

I was surprised at the number of people who simply want to know who it is that's moving into the house three doors down the street. That sounds like a silly situation. But believe me, people pay for that information.

Most newspapers publish lists of sales in their Sunday papers. I notice the Lauderdale edition does here. Somebody has to collect it. So with all these various possibilities, I would like to suggest that you look at your plants and see if it wouldn't give you some money to pay for some of this sophisticated equipment.

And, finally, you should use your committee. If you have questions, send those questions to Tom and let us take a whack at them. I believe that if the committee doesn't know the answer, we certainly can get it.

Griffin: Thank you, Jim. Thank you all. I have some comments and questions regarding the various presentations.

Joe told you earlier that your Kodak salesman may not know about the new sophisticated retrieval reader-printer. The Kodak sales managers for the southeastern district are meeting in Destin, Fla., right at this minute and they're learning about their equipment. So don't be surprised, again, if you ask and the man doesn't know anything about it. This piece of equipment has 18,000 bytes of storage. As Joe explained, it can load from the computer.

I'm not good at crystal balls, but the connection between the computer and the retrieval device is getting closer and closer. You heard Joe talk about the Ragan equipment. Last year we talked about Questicom. Both are sophisticated retrieval devices. The point being that the marriage of the two cannot be far away.

I don't intend to wait on it. I don't urge you to do it. But I think that it's probably forthcoming. I don't know in what form. And people have failed. Ten years ago there was a very sophisticated tape retrieval system that had a very good coding system and you actually recorded documents on the magnetic tape. I understand the company folded. It sold the system to the Southern Railroad. That is, as I understand it, still working. So I think we've got some things coming down the road that should interest us all.

One thing I wanted to mention about the film conversion that John Stilla discussed. I believe Infodectics has one which will convert from 35 mm to 16 mm and it will convert anything to anything. Let's just say that you need to look at the literature on it.

The one thing it will also do is to change the mode of your film from CINE to COMIC from COMIC to CINE. Now a lot of us have our tract books on 35 mm film. If we converted it to 16 mm and then stripped it up and made something resembling we'd have to have the documents go down like this in order to be sequential. What this does is change the images on the film, picture a comic strip going across. It will change that so the images are this way on the film or vice versa. And actually, literally the machine will do so many things that you really need to read the literature.

If you have film that you've been trying to convert, had problems with what's called the mode of the film, then there is the answer to your prayer.

Joe, I wanted to ask you one thing. When you did your calculations on the System 6 for 40 orders a day, you were counting on all input being done at off-hours.

Machacek: It could be done at off-hours, yes. The input is done on an IBM Selectric. The retrieval system is separate. You can retrieve and input simultaneously.

Griffin: The basic input unit for that, I've forgotten, that is a Mag Card typewriter and then they convert the Mag Card to floppy disk and use that as their storage means.

Machacek: Incidentally, the input is visually verified not key-verified. I prefer key verification as it is faster and more accurate. Some may disagree with that.

I have reason to believe that input direct onto a diskette via an IBM 3742 is forthcoming. If and when that becomes a reality, you will then be able to key and key verify the input.

Meckfessel: I have a comment on the Office Systems 6 (OS-6), too. IBM is honest about it if you look at its literature. It says it does all your closing documentation, the printing, but it says it cannot calculate your figures. So it's basically a word processor rather than a computer which will crunch numbers.

Griffin: One way around that, the representative explained to me, would be to buy the 5100, which is an IBM closing package type of computer and have it as a stand-along unit interfaced with this computer. We have a System 3 in our office

and I think this office systems computer can be plugged into the System 3, to do the computational work. Again, I'm sure it would take a lot of sophistication to do it, but I understand that it can be done.

Machacek: I strongly recommend that you review your security microfilm in storage periodically for resolution. You may find moisture or mold resulting in the loss of your resolution. Another point that I will mention concerns your valuable papers. Should they ever get soaked due to flood, or whatever, there is a process which restores paper through a freeze drying. I suggest, upon your return, that you research your local area to see if there is such a vendor, so that if something like that does happen, you have a means of restoring your paper.

Griffin: Everyone who has dealt with microfilm has cautioned to check it occasionally. I'm sure that you've heard the term residual hypo. If you don't know what that means, just talk to your local film salesman and tell him you want a hypo test. If you don't trust him, get some literature from the National Microfilm Association. If your film has residual hypo the image will just simply fade.

I want to caution you about film storage. Films are made from two or three basic types of chemicals. These bases have become more and more sophisticated of late and I have it on pretty good authority that if you have a particular type of microfilm and someone leaves an open can of polymer-based paint in a room with it, then you've got a big, solid mass—well, you can make a yo-yo out of it, but not much else. And I'm not sure that even the water bath would unstick it. The atoms seem to merge or something. So don't keep any microfilm stored in the paint room or vice versa.

PRC, which I thought at first meant Planning Research Corporation—but I'm not sure—has developed a microfiche facsimile system. That is to say, you can go from one remote location to another with the end-product as either a print or a duplicate fiche. You know with facsimile—assuming it is comparable to other types of facsimile—that means from city to city or from remote to downtown location to remote location, et cetera.

I'm sorry I can't give you any more information on it. It sounds very sophisticated and equipment like that is usually out of our price ranges when they first are introduced. I'm sure we'll know more about it as time develops.

We're ready for questions.

Stilla: Tom, I have another comment I'd like to make.

I mentioned earlier that if you were interested in converting a 35 mm film file to 16 mm, you could convert two rolls of 35 mm with the net result being one roll of 16 mm—75 percent savings. However, if you use the mylar thin based film, you can roll up 200 feet of film on one cartridge. In effect, you would then be able to convert four rolls of 35 mm film to one roll of 16 mm. So if space is a problem, just bear that in mind.

Question from the floor asking about the type of plant one would prefer in a small, new, start-up operation.

Griffin: I know there's some disagreement on this so we'll get some conversation. I would probably lean towards some type of floppy disk storage, provided that I was satisfied that the next step from the floppy disk did not require reprogramming and the computer cost wasn't ten times as much. So I'm hedging on the question, but I always think of the next step before making the first step and I would want to be completely satisfied that the next move—to the heavily loaded fixed disk, assuming that's what it was—was a reasonable one and whether there were some alternatives available. Then I would probably put in some type of floppy disk system.

Meckfessel: As I understand it, you're talking about 100 or fewer recordings a day for maintaining a title plant.

First of all, I think you have to look at the type of record you receive from the county, the type of county it is, what the growth potential for that county is, and what your share of the market is. If you're just coming in, you've got a small share of the market, you want to capture less data and take some shortcuts because you're only going to use whatever percent of that data is your share of the market.

I think that all too often some of us feel we're going to be left in the tracks if we don't join the rush for computerization with all the bells and whistles and lights. On a small volume plant I think it's hard to beat the old tract book system. It's been attacked as being archaic; however, it's been around since the beginning. It's proven. I think it's hard to go wrong.

Title Insurance and Underwriters Section

Report of the Section Chairman

Robert C. Bates, Section Chairman
Executive Vice President, Chicago Title Insurance Co.
Chicago, Illinois

This is my last appearance as chairman of the Title Insurance and Underwriters Section, having assumed that office just two years ago in Seattle. In that time, with help from Dick Howlett, who over the years has had a good deal of concern about the function and evolution of the Title Insurance and Underwriters Section, we have made some changes that I believe have been progressive and important.

During the first year, we asked the officers and members of the Section Executive Committee to participate actively in the affairs of the Association, particularly in the development of Mid-Winter Conference and Annual Convention programs.

Historically, the chairman of the Title Insurance and Underwriters Section may have corresponded or had a few phone calls with the other members of the Section, but for the most part assumed unto himself the responsibility for developing the programs with some advice and counsel of the ALTA Executive Committee.

Beginning two years ago, we seriously involved the members of the Section Executive Committee in the planning process. I think they enjoyed the involvement and in turn produced some useful results. Consequently, all of the programs that have been developed for this Section's sessions at the Mid-Winter Conference and at the Annual Convention have been developed by all of the officers and members of the Section Executive Committee during our all-day meetings—one each year—in Chicago and in Denver. A lot of things were talked about and many ideas were developed, resulting in some fine programs.

Not only were we able to develop programs to be utilized by the Title Insurance Section Workshops, but much of the subject matter that was developed at our meetings of the Title Insurance Section was ultimately used as the basis for programs for the general sessions.

Another thing that became apparent by the end of the first year was that by the time the officers and members of the Section Executive Committee had served one year and were ready to pass those offices on to someone else, they had only begun to get acquainted.

So after the first year Dick Howlett suggested, and I quickly agreed, that we recommend those people to serve another year. We did that last year, as you may remember, so the officers and members of the Section Executive Committee did serve for two years. I think it's been an excellent change. As a result, we are recommending that that precedent now be followed in future years.

We've had such great success with this approach that in addition to having the officers and members of the Section Executive Committee serve for two years, we have arranged to have at least two people carry over so that the new chairman coming in every two years will have at least two members who have had experience with the function of the Section for at least one year.

Those are two major changes that I think are important and have been very useful and productive in the function of the Title Insurance Section in the last two years.

It's been both fun and meaningful to serve the Title Insurance Section as its chairman. I hope my successor enjoys it as much as I did.

Title Insurance Forms Committee Report

Marvin C. Bowling Jr., Committee Chairman
Senior Vice President and General Counsel
Lawyers Title Insurance Corp., Richmond, Virginia

I have two forms that we're going to introduce to the general session Wednesday. It is the practice of my committee to get an explanation out to as many of our customers and our members as we can regarding the form and we have done that. Back in May, we sent out two bulletins. One regarded the ALTA condominium endorsement and one had to do with a notice of availability of owners protection to all of the members and associate members of the Association, to our customer liaison groups, and to as many other customers as we could get names and addresses on. We have received some feedback, but not a great deal.

The practice is for this Section to recommend or not recommend new forms to the general session. So, what my committee is after this morning is to tell you something about the forms and answer any questions that you have and then ask that you recommend the adoption of these two forms by the general session.

Bear in mind that these are recommended forms. And if you have suggestions and comments, the committee will take those into account and may have another meeting and consider your suggestions. We're especially interested in suggestions from life insurance counsel or the lender's counsel group.

At this time then, you'll find in front of you a proposed ALTA condominium endorsement. As you well know, condominiums have become popular for some time, not only to unit owners, but also to mortgagees who make loans on individual units.

I don't need to tell you that condominium units are not like other interests in land and that our customer groups—especially lenders—have required special coverage regarding rights in condomium units. And as might have been expected, companies respond in different ways and customer groups ask for different things. So we thought and the Executive Committee thought that it would be very helpful to have some language which companies could use, if they wished to, and which customers could ask for, if they wanted to.

We have had some comments from customer groups. Most importantly our committee was visited the day before yesterday by John Tolford, an assistant general counsel for Federal National Mortgage Association (FNMA). He had some very fine comments on our form and I believe we have made some amendments which satisfy what FMNA was after. And, of course, that's important, not only to FNMA but to those lenders who intend to use FNMA's secondary mortgage market.

Let's turn very briefly to the endorsement and I will simply discuss very briefly each item and what it is supposed to do. As I finish that item, while we have it in mind, if anybody has any questions, comments or objections, please just stand up and let us have them.

As you know, condominiums are creatures of statute. In order to avoid problems, it is necessary to prepare the condominium documents in accordance with the condominium statutes. We now have a Uniform Condominium Act and hopefully, if that Act is adopted as a model Act around the country, it will make our jobs and that of the developers easier in making certain that those voluminous documents do create and implement the condominium so that it is a condominium under the laws of the state. Failure to create a condominium pursuant to the laws of a state may result in the loss of benefits to the project provided by the condominium statutes, local customs and regulations. So the first coverage, as you will see there, is to insure against loss or damage due to the failure of the unit and its common element to be part of a condominium within the meaning of the statute of the state in which it is located.

That, of course, requires the company to look into those statutes and look at the condominium declaration and the master deed and all of the various documents that go to create a condominium. Are there any questions on the first paragraph?

Not only is it necessary that a condominium be created, but that those documents required by the statutes comply with the requirements of the statutes to the extent that they affect the title to the unit.

Now there's no question but that failure to comply with those statutes may cause some problems regarding personal rights—what you can do in your condominium as a resident thereof. But the committee felt that our coverage should go to the effect that failure to comply with the statutes might have on your real estate title in that unit. So we have furnished the coverage under

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number two. Are there any questions on number two?

Condominium documents, whether recorded or unrecorded, contain restrictive covenants. These are distinct from those restrictions which might be in the statute. These are restrictive covenants regarding the use of the unit which are put in by the condominium developer. Just as in connection with lots in a subdivision, the owner or lender is concerned about whether those restrictions have or have not been violated at the date of our policy. So item three insures that there are no present violations of the restrictive covenants contained in the document. And then we state that they do not contain a forfeiture or aversionary clause, which is very much like some affirmative coverages that have been known to be furnished in subdivisions. I think item three is clear. Are there any questions?

Jim Pedowitz: Yes, Marv, I have a question. I'm Jim Pedowitz of New York. These endorsements, I assume, might be used in either a mortgage policy or in a fee policy. Does this endorsement mean, in effect, that we're insuring that if there is a restrictive covenant against leasing and the property is in fact leased; that is, the unit owner has leased it to somebody because they can't use it either because of physical infirmity or for some similar reason, and that they may have to sell the property while it is leased out that we're going to pay a loss on an inability to sell, even because of market conditions and so on?

Bowling: I think you have an interpretation there as to what use means. I think we're talking about the use that the unit owner can make of his property and whether that restrictive covenant has been violated at the date of the instrument. Now if you prohibit the right to lease, the fact that there is such a restriction, you would not be insuring against. If that restriction has been violated because he has leased it, then I think your question is, is that covenant relating to not being able to lease a restriction on the use of the premises by the unit owner?

Pedowitz: I would think so. I also have another question. Under some circumstances there might be restrictions with respect to the general use of the premises including the common elements. If you wanted to use your imagination, you might think in terms of a condominium in Atlantic City where they may have some slot machines in the washroom or some other violation of use such as having a little supermarket in the basement of the building. And if that use were enjoined it could serious affect the income flow to the condominium resulting in a degree of loss. Is that what we want to insure against under an endorsement like this?

In other words, I'm really questioning giving insurance with respect to use under restrictive covenants.

Bowling: Jim is right in saying that this endorsement is designed for both owners and mortgagees and may be attached to that policy. It may be attached to either the owner's policy, the unit owner or to the mortgage policy, to the mortgagees of the unit owner. Would any of the committee like to comment on Jim Pedowitz's concern of insuring against violations of use restriction? I think we have a matter of interpretation.

Speaker from the floor: My response to that is this. In many cases the subdivision restrictions also contain restrictions pertaining to use. But when we phrase our affirmative insurance with respect to compliance we usually limit it to the compliance by the existing improvements. We do not normally give insurance with respect to the use as well.

Bowling: Yes. There are numbers of different condominium documents including bylaws and agreements between the unit owner and the association which may not be placed of record. Perhaps somebody from the committee could add to that comment. What are some of the unrecorded documents and what do they try to do?

My thought is that one would wish to require an opportunity to examine all of the recorded and unrecorded documents. You would have to get the latest amendments to the bylaws.

Speaker from the floor: Marv, has your committee thought how an inquiry will have to be made? I can imagine a restrictive convenant that is used which will affect the interior use of the particular unit—things that could be fastened to the wall or not. I was just wondering if it would require an inspection of each unit by the underwriter or the agent.

Bowling: I think that's a question for each company to determine, but I would say that you must consider that what you're doing is "insuring against loss or damage by reason of." You would have to decide whether these things that you're talking about—whether too many pictures are hung on the wall—is really going to give any damage and do you need to make that kind of a check of each unit before you insure it. I believe that depends on what the restrictive convenants are and what you feel your risk is giving this kind of coverage.

Speaker from the floor: One thing I think we tend to ignore on this is the fact that it says the present violation. Generally we're talking about a new purchaser going into the unit. Therefore, if we're talking about a new person going into a unit, it's slightly different from someone who is not a new person. And it would obviously be a little different situation. I really don't think we have designed or can design the underwriting procedures to be used in individual matters.

Bowling: Jim, did you have any kind of motion that that sentence be changed to refer only to violations by existing improvements? I'm not asking you to write something in stone, but if you have a motion that the committee consider changing to reflect only violations by existing improvements, we can do that.

Pedowitz: I make a motion that we do try to limit ourselves to existing improvements.

Bowling: Is there a second to that suggestion? I hear a second. Do you recommend that the committee amend that coverage so that we insure only against present violations of any restrictive covenants contained in the condominium document by the existing improvements only?

Pedowitz: That's the way I would like to see it.

Bowling: I think we all have been furnishing different coverages regarding these things. This form can be amended by anyone who uses it.

Are there comments from anyone here from a customer group?

I think what Jim is getting at is the use that the occupant may be making which would cause a violation.

Speaker from the floor: It's got to be an existing improvement.

Bowling: It doesn't say that now.

Speaker from the floor: But you couldn't have a violation unless it was an existing improvement.

Bowling: In other words, the improvement can do the violating because of the way it's constructed or there can be a violation by the individual occupying the unit in the way that he uses it. And it is that coverage, as I understand him, that he's concerned about in that it's difficult to check to see whether the individual occupying the unit is using it in compliance with a restrictive covenant, whereas you can check the physical improvements to see if they violate. Jim, I don't want to put words in your mouth.

Pedowitz: You're entirely right.

Speaker from the floor: It seems to me if I were owner or insured and a neighbor, co-owner, were in violation as far as use is concerned on one of the restrictive covenants, I might ask the insurer to bring an injunctive action against the violator of the covenant.

Bowling: I think our coverage would relate only to the insured and his violations. I don't believe it could be interpreted to insure him that there are no violations by his neighbors in any of their units. If that kind of interpretation is there, we really do need to make sure that it doesn't say that.

Are there any other comments on whether this policy should insure against violated use provisions or simply insure against violation by the improvements as they exist?

Speaker from the floor: Let me just say one more thing. Looking at the wording of this paragraph, we're talking about a violation that may disappear with the owner or lender. Make it clear that the violations affect the use of this particular unit.

Bowling: I think we felt that this would be issued when the new unit owner was coming in to a condominium and that there would not be a problem with respect to the personal use of the premises made by the prior owner because he is gone. I suppose there is a possibility of a refinancing. You are insuring a mortgagee against violated use by the mortgagor and the mortgagor is violating the bylaws which say they can't keep a dog on the premises and he's got one hidden in his bedroom. You have insured the mortgagee that that provision has not been violated. Is that really a problem from the standpoint of loss and damage?

I'm sure that Mr. Pedowitz can think of a violation that might cause the mortgagee loss because of some personal misuse by the mortgagor. I believe that's the kind of thing he's concerned about.

Speaker from the floor: I've always taken the position that you can't really tell what use is being put to a unit. For the most part, you can't get into the unit or onto the property for the purpose of finding out what is being done within the premises, whether or not they're running a bordello there or whether they use it as a rehearsal hall for an orchestra, anything which may be significant to those particular people or making a nuisance to neighbors. All of these things

are outside our scope. And I think what this policy ought to do is limit liability to the type of thing that can be determined from documents and from inspections of structural improvements, rather than from the way people use the property.

Bowling: If there are no other comments, we'll take a vote on Jim Pedowitz's suggestion. If I may, Jim, say that you are recommending and it has been seconded that number three be amended to insure against loss or damage by reason of present violations by the existing improvements of any restrictive covenants which are contained in the condominium document.

The second sentence will stay as it is. Are you ready for a vote? All in favor of that amendment to the recommended form, please raise your right hand. All in favor of not so amending the form, please raise your right hand. I see an awful lot of abstentions, but I believe the motion has carried. Does anyone dispute that decision? If no one objects, I will consider the vote to be that the committee will change the concept so that this would insure only against violations by existing improvements of the restrictive convenants. Is there any objection to my understanding of the vote? It's carried.

We'll now go to item four. I think you are aware that the condominium documents provide for liens for charges and assessments which are in favor of the association which must keep up the common element and keep up the condominium. To get the money to do so, they have to assess the unit owners, usually in proportion to the evaluation or their percentage. These documents provide for liens.

In some states, as I understand it, the statute provides for priority of the mortgage on the unit over the lien for charges and assessments. In other states, there is no such statutory provision. The documents, as I understand it, might provide for subordination of the lien for maintenance to first mortgages or purchase money mortgages on the unit. Of course, mortgagees are concerned over whether they have priority over that lien or assessment on the particular unit.

I understand that the Uniform Condominium Act is going to provide for not more than six months back maintenance charge to have priority over the mortgage. So each state law must be looked at and the condominium documents to see whether or not item four may be given.

If such priority coverage may be given, we believe that this provides good language for furnishing that coverage and language that will satisfy mortgage lenders on the unit.

Are there any questions on item four? As you know, unless the taxing authorities are given statutory authority they are prone to tax the entire project, thereby penalizing a unit owner because the tax had never been paid on the project. Condominium statutes, I believe, in all of the states allow the tax assessor to tax individual units and their interest in the common element, so that a unit owner may pay his own taxes and not be concerned that someone else or the association or whoever didn't pay their taxes.

Item five assures the proposed purchaser or the proposed mortgagee that the laws of the state in which the unit and the common element, was situated are entitled by law to be separately taxed.

Of course, somewhere else in the policy would be the exception to unpaid taxes, indicating that the taxes had been paid through their particular taxing time. This would ensure that the laws are favorable. Are there any questions on number five?

Item six takes care of the fact that condominiums—units which are built according to blueprints and can be often described as blocks of space—are not always built exactly according to blueprints; also, the walls of the unit may shift. The common elements can shift over on units and units can shift over on common elements, but condominium documents generally provide easements for that.

Now this coverage, we are assuming, would be based on the fact that easements for shifting and encroachments are provided in the condominium document, so we are insuring here against an obligation to remove any improvements which exist at the date of the policy because of present encroachments or because of any future unintentional encroachment of existing improvements of common elements over on a unit, of unit over on the common element, or one unit over on another unit. Are there any questions about item six?

Many condominium instruments contain rights of first refusal so that if a unit owner has a sale for his unit, the association generally has the right to purchase that unit at the price which has been negotiated with the proposed individual purchaser.

Naturally when the purchase transaction has been made by the unit owner, that purchaser or his mortgagee wants to make sure that the right of first refusal has been waived by the association so that he can't get his new purchase taken away from him by the association. So it is often necessary to find out what the unit owner has gone to the association and said, "I want to sell." And they've said, "We've waived our rights to purchase, go ahead and sell." This insures the new purchaser and/or his mortgagee that that right of first refusal has been waived. Any questions on item seven?

I would move then that subject to the recommendation made earlier that this Section recommend the adoption by the Association of the ALTA Endorsement Form 4-Condominium as an ALTA form. If there a second to that motion? *(There was a second from the floor.)*

Bowling: All in favor, please say aye.

Bowling: We have a point of order that I'm doing Bob's work. I said subject to the recommendation previously given, will this Section recommend this form to the Association? Mr. Chairman, if that's correct, you should ask for the vote, not me.

Bates: I'd be happy to delegate the responsibility to you.

Bowling: All in favor say aye? The motion was carried. We have one more form which is much shorter and which is self-explanatory. The American Bar Association House of Delegates has recommended to the Commissioners on Uniform State Laws that there be a model act, which they have designed, which would require both title insurance companies and attorneys and other closers, that when they are furnishing settlement services to a home lender, they must also offer that service to the home borrower. If states begin to adopt that act, it means that you as an abstracter or as a title insurance issuer at the closing of a home loan must turn to the borrower and say, "Your mortgagee is getting a title insurance policy—a mortgagee policy. You may obtain an owner's policy for an additional X dollars."

The Executive Committee felt that it was unnecessary for state laws to require us to do that and we had always tried to sell owner's policies and educate home borrowers that they also needed title insurance. So the Executive Committee voted in favor of a voluntary program by the title insurance industry.

If this form is passed, we will urge members to make use of either this form or one similar to it so that we will be in a position of saying we are cooperating and doing what we can to make sure that homeowners get title insurance.

This is a rather formal form. There are many other ways of selling owners policies, but this is a form which we felt could be used, shall we say, at a closing, which would be put in your files as record evidence, so to speak, that you had made this offer and had told the borrower what the additional amount would be and he had indicated yes or no and signed it.

There are six states that require that now, either by regulation or statute.

The firm, I believe, is self-explanatory. Is there any discussion?

Speaker from the floor: Marvin, as you know, in the ALTA Model Title Insurance Code there is suggested a provision for statutory implementation of this idea and a suggested form for use. Is this to be a substitution of that or in addition to that?

Bowling: This is really neither. We're not trying to substitute what's in the model code or even add to it. It's certainly not an addition to the model code. I guess that's not what you meant by an addition. It is an additional form and we feel it's a better form than that which is in the model code. And I'm not sure that stayed in the model code.

Bates: I might help out there a little bit. I think when the ABA first presented this question to us, it was recommended that it be developed in statutory form. After the Executive Committee, and I think with the help of the forms committee, considered it, we felt that the voluntary approach actually was superior to the statutory approach to the extent that the Association was recommending to its members the use of a form.

Now a number of states do already have, as you know, statutes that require this. I don't think it's in lieu of, but I think it's later and now considered a superior approach to some statutory form it followed. If the ABA recommendation was followed, it would include a penalty of some sort for failure to use the form, which we thought was sort of silly, frankly.

So the Executive Committee then took the position that the voluntary approach was a superior approach and asked the forms committee to develop the form.

Bowling: Are there any other comments? Then I would move that this section recommend to the Association the adoption of the ALTA Notice of Availability of Owner's Title Insurance—1978 to be an association form. Second? (Motion was seconded from the floor.)

Bowling: All in favor say aye.

Our committee continues to work on a joint protection owners and mortgagee policy form which may be used in one- to four-

family residences. The Executive Committee has asked us to prepare an owners and mortgagee policy form in simplified language with broader coverage and which covers both the owner and the mortgagee and we continue to work on that form.

As you may know, various statutes and regulations around the country are beginning to require that our policies for homeowners contain a simplified language. I think the first one is Massachusetts by July 1, 1979 requires a form that has a certain rating on the Flesch test. That is a test Dr. Flesch put out to determine whether the language is simple, and readable and understandable. So we hope to have in your hands by that time, hopefully, a form which you may use to comply with those kinds of statutory requirements. We continue to work on that form.

Bates: Thank you very much, Marvin, for your usual fine report and your continuing superior overseeing of the affairs and activities of the forms committee.

What's Going On With State Insurance Departments

Everbach *King* *Hursig*

Panelists are Erich E. Everbach who, in addition to chairing the ALTA Committee to Establish Liaison with the National Association of Insurance Commissioners, is vice president and associate senior underwriting counsel for Pioneer National Title Insurance Co., Los Angeles, Calif.; LeRoy F. King, senior vice president and chief financial officer, Commonwealth Land Title Insurance Co., Philadelphia, Pa., and George E. Hursig, vice president and comptroller, Chicago Title Insurance Co., Chicago, Ill.

The topic under discussion today is what's going on with state insurance departments. I'm happy to tell you that they are doing their job. They are regulating us. We should not be surprised or shocked when we get a subpoena from a state insurance department or when a letter of inquiry comes in asking us what we're doing or asking us to justify what we're doing.

I often hear complaints that state regulators are interfering in our business again. Well, that's their job. It doesn't surprise me when they do it and I would urge you to rethink the attitude that you have toward your industry and your job. It shouldn't be surprising to you when state regulators come in and oversee how we're running our insurance companies.

The legislatures in almost every state, if not every state, have adopted laws based on the premise that if it were just left up to us—the people in this room—to run title insurance companies and if it were left up to the insurance company managers in general to operate their business without regulation, it would harm the public good. We would very likely harm our insureds by overcharging them or drive ourselves into bankruptcy. They assume we would skim all the cream off the top of the jar and leave only the whey for the claimants to drink when they have a claim.

When you consider the abuses that have occurred and could occur in the insurance industry, it shouldn't surprise you at all that we are closely regulated.

We really need to ask ourselves too, who is our customer? I've heard the statement made at this convention by more than one person that our most important customers are the Realtors or that the lenders are our best customers. Well, I can tell you, gentlemen, from the insurance department standpoint, those Realtors, lenders and developers are not our customers. Every time we get trapped into thinking of them as our customers because they're the ones who can refer the business to us or they're the ones who can increase our business or our market share, we start to fall into the trap that will lead us into more active state regulation.

If we can think of the consumers, the people that are paying the bills, the borrowers, the buyers of real estate as the ones who are our customers, and if we can at least learn to talk about them as our customers, instead of the lenders and the Realtors, we will have taken a long step toward thinking of our industry the way the state insurance departments think of us.

Your National Association of Insurance Commissioners (NAIC) Liaison Committee has been active, but this presentation is more on the activities of state insurance departments—not the NAIC itself.

LeRoy King is going to tell us about the activity in those states that are east of the Mississippi. George Hursig will touch on some of the statutory and accounting changes that are coming out of the NAIC and out of various insurance departments. I will take the states west of the Mississippi. The comment on each state will necessarily be very brief. We will have time for questions. If, due to inaccurate perceptions on our part, somebody finds that we've made a misstatement about what's going on in a particular state, please let us know.

King: The insurance departments are doing their job in regulating, but they're not doing it very rapidly. Most of the items that we have to report are continuations of unresolved issues which probably won't be resolved in the next year. But there are some significant developments that we can report this year.

I think that the most important regulatory item in the East was the New York rate proceeding, even though it did not come to a conclusion. It was important because New York is an important state in its influence with the NAIC and because it brought us one step closer to the development of an overall rate of return philosophy which will be acceptable to insurance departments and which will give us an adequate measurement of profitability.

It's necessary to look at the background of the New York rate problem. New York was saddled for many years with a regulation which indicated that an adequate rate of return was based on a 7½ percent operating margin, *i.e.*, that the measure of adequate profitability was met when the ratio pretax operating income to gross revenue was 7½ percent.

This was a re-doing of similar provisions for property, liability and casualty companies where traditionally a rate of return of about 5 percent margin is considered to be adequate. That won't work for title insurance for a couple of reasons. The volatility of income trended over a period of years in the title business is really substantial. Historically there are some years when we make hardly any profit, so that a low margin of 7½ percent in good years won't produce a profit at that level over the period of the trend.

More important, title insurance companies are not heavily leveraged as are property and liability companies. A property and liability or a casualty company can break even on operations and make enough money on its investments to make an adequate return. You can't do that in the title business, primarily because our reserves aren't developed as rapidly.

Four or five years ago, the title underwriters in New York decided that the operating results based on experience reports, were so bad that they had to do something about them. They employed Irving H. Plotkin of Arthur D. Little, who had done work in Pennsylvania and in Ohio in trying to determine a rate of return on capital concept for profitability reporting. They incorporated his study in a rate filing requesting a substantial increase. The New York Department conceded to an increase of about one-third of the amount requested, or the equivalent of an increased based on the 7½ percent operating margin benchmark.

The department wouldn't agree to a further hearing on the overall profitability question at that time. The board of insurance was forced into litigation, and finally this year we were able to get a judge to agree that the department had to hold a hearing on the basic issue of how profitability in the title insurance industry should be determined and what an adequate profit is.

After lengthy additional negotiations, the New York department finally agreed to allow an additional increase based on a raising of the margin benchmark from 7½ to 10 percent, an admission that this was about a 12 percent return on statutory net worth, and an agreement to hold a hearing on the basic issue later. The department claimed that

they didn't want to interfere with a legislative commission which is looking into the question of profitability in the auto insurance industry, but that they would convene a hearing to consider the suitability of the industry's return on total capital concept when the commission report is available. So we are waiting for a further hearing in New York. We have made substantial progress in New York on the important issue of profitability determination. It is important to establish a rating philosophy which considers the unique problems of the title industry in this area. Our Pennsylvania rate proceedings have developed some thinking along this line, and we have a rate hearing in Texas this year where the question of applicability of a return on capital will be considered.

In connection with that, Plotkin issued his monograph *On The Theory And Practice Of Rate Review And Profit Measurement In Title Insurance.* It's a blue book about 60 pages long, published by Arthur D. Little, Inc. If you are interested in rate determination and profitability in title insurance, you should take a look at it. There has been so little written on that subject and this is a significant contribution.

The rating situation in New Jersey in the past year requires a masochist to describe it. As you may know from previous reports, New Jersey had no rate regulation, nor any regulation of title insurance companies at all prior to the passage of the title insurance regulatory code in 1976. Companies operating in New Jersey's industry set up a rating bureau at that time, filed rates, and thought they had them approved by the commissioner in December of 1975 subsequent to the supposedly effective implementation of the title insurance rate act.

We then found that a number of groups, the New Jersey Builders, the New Jersey Bar, the New Jersey Realtors, the Public Advocate and a few other individual intervenors objected to having any rate regulation and particularly objected to our rates. We have been in one form of litigation or another since then and the department of insurance has conducted some proceedings, but basically has suspended the hearings.

This year an interim rate structure was suggested and after a number of surveys were taken by the department, it was approved. The commissioner issued an order June 15 setting the rates and putting them into effect. We printed the rate manual and again thought we were ready to go.

The New Jersey Builders and the bar association, however, got an injunction to stop the implementation of the rates and we are still in litigation and do not have filed rates in New Jersey after three years of dispute.

The proceeding will come up for oral argument in late 1978; resolution of this dispute is possible by early 1979.

In the interim, some of the builders have sponsored a deregulation bill for title insurance in New Jersey. We have managed to get that stayed this year, but it probably will come up in the next session of the legislature. Overall we've made no progress in New Jersey and are approximately in the same position we were a year ago.

Things look a little better in Ohio. There, we had a very complex statistical system put into effect after the 1967 title insurance code was passed. The rating bureau filed a manual in 1972, but the department demanded a statistical plan at that time which is similar to fire and casualty lines in complexity. We did get some modifications in it, but most of the companies considered the Ohio statistical reporting plan to be particularly onerous.

With the development of the ALTA Uniform Statistical System and Uniform Financial Plan, we were able this year to convince the Ohio department to accept that instead of its old policy vector system. This is a step in the right direction.

Of more importance in Ohio is the fact that the rating bureau made a filing in March of this year using the rate of return on capital theory and some of the statistics which were developed from the Ohio plan. The rate structure was substantially changed, allowing additional fees for record insurance policies. The insurance department approved the filing, it was made and it is in effect.

The Ohio filing should be a lesson to us. It should indicate that if we would ask for more rate increases, as we did in Ohio and in Pennsylvania a couple of years ago, we would develop a mechanism to bring our profitability in line with other industries.

In Pennsylvania there is little to report. The insurance department has been fooling around with a proposed regulation on controlled business for a couple of years. It is still negotiating with the companies and other parties on what is controlled business, on what is the role of an attorney agent so far as controlled business is concerned, and whether commissions to agents should be regulated.

Along this line, Philadelphia and surrounding areas had something of a problem in that after the abolition of payment of commissions to real estate brokers, some of the brokers have been appointed agents for title insurance companies. The insurance department has considered regulatory controlled business aspects of this and other practices, and has appointed a committee of title industry and other interested persons. We haven't really gotten anywhere as of yet in this area.

The Pennsylvania department has changed its statistical reporting plan a bit and proposes to change it more in the future and perhaps bring it closer in line with the uniform plan.

Both Connecticut and Michigan have had controlled business regulations proposed. In Connecticut, the insurance department is attempting to regulate the fees or commissions to attorneys and agents in the regulation of agents licensing.

In Michigan, brokers are the primary customers. As in Pennsylvania, they are being appointed as agents and the department issued a questionnaire to companies and as a result of that they put out a draft regulation. These items have not been determined.

We've had some activity in Florida with the question of the ability of companies to issue so-called gap insurance. Gap insurance is given by some independent companies in Florida. It constitutes insurance on the period between the issuance of a title insurance binder and the time of actual closing. The escrow disbursement companies here contend that this is not covered by title insurance policies and the title insurance companies which issue coverage from this and by insured closing letters are issuing casualty type insurance which is specifically prohibited by Florida statute. This issue has not been resolved. A hearing was held May 31, 1978, and quite a bit of testimony was taken, but no decision was made.

In Tennessee there was an abortive attempt to regulate agents' commissions. A ceiling was put on agents' commissions by the commissioner. A hearing was held at the request of the title industry, and a blue ribbon committee appointed. I don't believe it has met, and there has been no further activity.

Both Georgia and Alabama have had abortive attempts to put into effect title insurance regulations to put the companies there under an umbrella of rate regulation and to get a specific title insurance code. There's been some opposition from the Bar and regulatory bills have not been introduced in either place.

Wisconsin attempted to require the issuance of certified financial statements on a statutory basis by title insurance companies. A hearing was held. The title insurance industry along with other portions of the insurance industry objected substantially and the matter is in abeyance.

The Wisconsin statistical reporting plan and analysis of profitability is closer to acceptance. The rating bureau there has made a five-year study of the profitability and hopefully we are close to getting the department to accept the return on capital approach as a measurement of title insurance profitability.

This covers most of the important areas of regulatory activity in the East. We have made some progress, particularly in the area of rate regulation and statistical reporting. The regulatory process is, by its nature, very slow.

I should make one subjective comment. Perhaps the principal problem area in half a dozen states in the East and in other areas which will be reported on later is the problem of our relations with groups which operate between our ultimate customers, the consumer, and the title industry. These are principally the Realtors, the Bar, lenders, and builders.

We have substantial problems with the control of commissions and other payments to these groups and with the overall problem of controlled business. We cannot discuss the merits of that here. But it seems to me that unless the industry gets its act together and takes a definitive stand on this problem, we will be in the position of having these intervening groups determining our rating policies, our marketing policies and the method of regulating our business. They're trying to do that with the deregulation bills in New Jersey and Colorado and in attempting to subvert our requests for rate adjustments and rate regulation in many areas. I believe this is a significant problem.

Everbach: George will take the NAIC accounting changes and statutory reporting changes.

Hursig: Thank you, Erich. The most significant action of the NAIC that directly affects the title insurance industry was the change in the NAIC Form 9 that was accomplished this year.

As background on this, back in the summer of 1976 Bill McAuliffe and Mack Tarpley were successful in getting the NAIC to appoint an industry advisory committee to work with the NAIC subcommittee on the title blank, the plan being to tailor the Form 9 to be a little more reflective of the way we conduct our business within the title insurance industry.

As Roy said, working with regulators is indeed a slow process. It started in 1976 and was finally accomplished in June of this year.

You have in front of you copies of the revised pages that we were able to get changed. I will try to briefly cover what these changes are.

Page 4, the Operations and Investment Exhibit is changed by the eliminating of other income and deduction items and their inclusion elsewhere within the report.

Probably the most significant item in this category was the fact that bad debts were not considered an operating deduction. It was considered a non-operating item. We were successful in getting this changed to where they become an operating expense.

We attempted to eliminate Columns 1, 2 and 3 on Page 4, which gets many companies involved in making very arbitrary allocations of expenses, but due to the objections of the state of New York, we were unsuccessful with that change.

The other change that we were successful with was Page 7, Operations and Investment Exhibit, Part 4, Expenses. Formerly payroll taxes were buried down in "other taxes". We wanted to bring the payroll taxes up with salaries and employee relation and welfare costs, so that we could highlight our total staff cost since we're such a labor intensive industry. We were successful in doing this.

We also requested that the classification commissions be changed and the terminology "Amounts paid to or retained by title agents" be substituted in lieu of commissions. We were successful in this once again.

The primary reason for getting this change is the connotation that goes with commissions in the property and casualty field where it's construed to be a sales commission, which is not the case in title insurance.

The other change was the inclusion of the bad debt as an operating expense on Page 7. Those basically are the changes that we were successful in getting at this point in time.

It seems like you have to work with these people at a very slow pace and keep chipping away little by little. Our plan is to keep a constant review of the Form 9 and if we see an opportunity to make a change we try to get the change effected.

I think our experience has indicated that unless we keep our presence in front of the NAIC to let them know that we are there, we do have problems with our annual statement form, they will have a tendency to forget us and make it that much more difficult to obtain changes when we do want to effect a change.

I would also like to point out that the NAIC now has a new task force at work which is looking at all of the annual statement forms, the life, property casualty and the title blank. The objective of this task force is to simplify the form so that the report can be much simpler, easier to prepare and easier to examine by the various insurance departments.

We are keeping our foot in the door with this task force trying to be kept apprised of what they propose to do. It will be interesting to follow to see what changes they actually come up with.

Some of the other actions of the NAIC which, while they don't directly affect the title insurance industry today, could in the long run have an effect on it. Many times things they enact in the property and casualty or the life field ultimately find their way into our reporting documents.

One of the items that the NAIC is continuing to look at is upgrading or professionalization of the examiners. There's been a lot of discussion, a lot of work by the NAIC. They have developed testing programs, certification programs for the examiners. But, by and large, so far it has been more discussion, less real action. There is an awful lot of political interplay with trying to get these people upgraded to where they are a more professional group than what we have seen in the past. This is moving extremely slowly.

Another action that the NAIC is constantly reviewing, but has yet come to a conclusion is the necessity of establishing a deferred tax item on your unrealized capital gains. So far the property and casualty people have successfully fought this to a stalemate, primarily because of the impact it would have on their surplus. There is great concern about the capacity of the property and casualty field to underwrite the risk they are being asked to underwrite and they are normally gauged, as we are also by their surplus as regards policyholders. Should a deferred tax be established on unrealized gains, this would reduce their surplus and thus limit their underwriting ability.

Another subject that the NAIC is continuing to pursue is the establishment of a mandatory security evaluation reserve. This is referred to as an MSVR.

Once again the property and casualty people are fighting a good delaying action on this. An MSVR, for those of you who are not familiar with it, is a reserve that would be required to be established to help absorb the fluctuation in the valuation of your marketable securities.

Presently, the ups and downs of the market flow directly to your surplus as regards policyholders. The idea of an MSVR is to create a cushion so that these ups and downs are absorbed at that point and do not directly impact onto the surplus as regards policyholders.

Once again, the property and casualty people are concerned about the impact this would have on their surplus because it would require a large transfer from their surplus to this reserve and once again would hinder their underwriting capabilities in assuming some very large risks.

To date this is a matter that is continually studied by the NAIC. The property and casualty people are working with them. Basically I believe that they are trying to delay this as long as possible.

Another item which is quite an active subject of conversation in the title insurance industry is the matter of statistics. The various committees of the NAIC that work on profitability, statistics and early warning system have been quite active.

Currently the property and casualty and life insurance people are required to file copies of their annual statements with the NAIC. The NAIC feeds certain of these statistics into their computer system and produces what they call their early warning system. This is intended to identify companies that have problems so that the regulator can be advised at an early stage of companies they should give top priority to in their examinations.

The NAIC this year decided to expand this work. They also decided to make public this information so that anybody who would like to buy a copy of all these statistics may do so.

One of the things I learned at the NAIC convention is that Bob Bailey, who is in charge of this program for NAIC, has been getting copies of the title insurance blanks. He has been doing the same thing with the title insurance blanks and feeding them into the property and casualty mold of programs that they have and producing reports. He commented to me that he was getting some very peculiar results. I tried to explain some of the reasons why he could not do this and why he was getting some of the peculiar results he was getting.

This is a subject of which we were not aware until this past summer. I think it's very important to know what the NAIC has been doing with our annual statements.

The purpose of this early warning system, as I stated, was to provide a system whereby the regulator could be advised of companies that were in financial trouble. In addition, these statistics are being looked at from a profitability standpoint as to the profitability of a particular industry and in the property and casualty field by the various lines. In addition, these are also being used to determine the impact or competitive course various companies have in certain markets.

I believe Georgia and Wisconsin are test states. The NAIC is trying to utilize statistics from these states to determine just how competitive the various property and casualty companies are there. Ultimately they hope to expand this to all of the states to look at the competition between the various companies.

I would imagine ultimately they will be looking at the title insurance industry with the same view.

Another item in the statistical area is that the NAIC has been considering the expanding of the annual statement to include much more statistical data. At the June meeting, the NAIC concluded that this was impractical and their plan now is to develop a second annual statement which will be strictly a statistical annual statement with various statistical data. The exact content of this is not known yet. Once it's developed, I'm sure that it will probably fall to the title insurance industry to provide similar statistics as property and casualty and life companies do.

So if we think we have problems with statistics now, I think our life is only going to become more complicated in the future.

Another item with which the NAIC has been dealing is the redlining problem in the property and casualty field. In trying to get a handle on this problem, they have promulgated regulations and a number of states have adopted this whereby the property and casualty companies are now required to report their premium revenue by zip code within each state. The property and

casualty people feel this is a horrendous problem for them. But when I tried to relate this to what would happen if we in the title industry were required to report our revenue by zip code of the property insured (the location of property insured being the zip code required) and the impact this would have on statistical gathering, I just kind of shudder, because it would be a tremendous burden. Once again, this is one of the items that could ultimately pass to the title insurance industry after the regulators see its implementation in the property and casualty.

I believe that about sums up the events at NAIC at this point in time.

Everbach: Thank you, George. There is one other item of interest to title people on the NAIC agenda. An NAIC subcommittee is working on a proposed model statute to require insurance agents to take certain hours of instruction annually. Title insurance agents are not exempted. If this statute is passed—and I understand a similar statute in fact has been passed in Wisconsin—title insurance agents will have to take a minimum number of hours of instruction perhaps in the first two or three years of their agency and thereafter keep up an annual hourly continuing education program.

This was discussed at the NAIC Liaison Committee's meeting earlier in this convention. Bill McAuliffe was there and we have started to consider how the ALTA could help the continuing education program for agents. Perhaps ALTA could provide videotapes and other materials so that it will not be so burdensome for every title insurance agent to continue to compile 25 hours a year of continuing education instruction.

Commissioner Richard Barnes of Colorado, who is in charge of the subcommittee that is considering that model bill, said, "Some guys in the insurance business for 25 years, don't have 25 years experience. They've just got one year of experience 25 times." Well, we don't want that to be true in the title insurance industry and ALTA can help.

As so often happens, the activities of one or two people or the indiscretion of one company in a particular market can bring us very quickly to the attention of the regulator.

You are all familiar with how Martin Lobel, formerly of Senator Proxmire's staff, brought our industry to the Senator's attention and the resulting inconvenience and difficulty. Dick Rottman, the former commissioner in Nevada, had a member of his staff who was irritated by a title company practice and who contributed to Rottman's inquiry into the title insurance business. We also have a problem in the state of Washington.

I'll cover the western states very quickly and we'll see where we stand and what the insurance departments are doing.

The Federal Trade Commission (FTC), as you may know, has announced in Washington, D.C., that it have terminated its investigation of the title insurance industry begun some years ago. But that hasn't stopped the regional director of the FTC in Washington state, who has written to the Washington state insurance commissioner saying, "We think you're not doing enough to regulate the title insurance companies. We think there hasn't been enough rate change activity and you haven't had enough oversight in the rate area. How do you know whether the rates that title companies are charging now are adequate or excessive?"

The commissioner has decided to respond to that challenge and to gather data. He has asked for the help of the Washington Land Title Association. He expects them to help defend the activities of the title insurance industry. The Washington Land Title Association (WLTA) has hired Dr. Plotkin to help it assemble the data necessary and the call for that data has gone out. Mike Cohen, an associate of Dr. Plotkin will be working on that project as will, of course, George Finney, the president of WLTA.

The hearing will be expected to come up either late in October or early November. It has not yet been set.

Oregon has had some problems. They have, I suppose, been generated in part by our own desire not to compete with each other until we destroy each other or our industry. We have gone to the Oregon insurance commissioner with some complaints on our competitor's practice and requested that he control destructive competition. He has responded with a request that the Oregon Land Title Association (OLTA) tell him what are all the bad practices in the title insurance industry in Oregon.

OLTA wisely suggested to him that he appoint an industry advisory committee. The industry advisory committee which he appointed will serve as an arm of the insurance department and that committee will undertake some investigation on behalf of the commissioner and make a report on practices. We can expect some regulation out of that.

We also have regulation by the real estate commissioner in Oregon who has promulgated regulations on escrow practices and charges and that will have some impact upon our business. Unfortunately, we are not exempt from that type of regulation, also.

In Alaska, as some of you may know, Director Richard Block became interested in the title insurance industry, particularly because we went to him with some of our problems. Again, we excited his interest and initiated it but we could not control the extent of his regulatory response. He has proposed a set of complex regulations to change the way our industry operates in Alaska. I will give him credit. He did send his proposed regulations to the industry and other interested parties, and held hearings in Fairbanks and Anchorage. They were well attended. The title insurance industry can be commended for its input to Director Block.

The title industry can be commended for its effort, but not for its success. Director Block's regulations, as they have been revised, still include things such as the first Standards of Conduct for title insurance companies. We will be required on our general book of business to issue a commitment within five days after we receive an order and this is in a territory and climate where often you can't get to the courthouse for five days. We will have difficulty complying with these regulations. We will be required to issue the policy within ten days after the transaction is closed, whether you closed it or not, whether you recorded the papers or not, or whether you've even been informed that it has been closed. Some of these regulations are unworkable, but the director has changed them so that compliance will be judged on the general book of business and he is serious about enforcement.

Perhaps we will have to start keeping records so we can determine our degree of compliance to prove to him that we have met his overall standards.

In California, some of you are familiar with the Guardian title problem. An underwritten title company or agent formed by Coldwell Banker, a major real estate company, sought a license from the insurance department. The department denied their license because Guardian conceded they did not intend to seek outside source of business. They intended to handle only their own business created by their real estate companies.

The denial has now been reversed and the courts have said that the department can't refuse a license on the basis of an anticipated controlled business objection. The department must grant Guardian Title a license to act as an underwritten title company. The department may monitor Guardian's activities and suspend or revoke its license if there is a violation of controlled business laws, but they can begin operations just as an independent title company could.

California, as you heard Sean McCarthy say yesterday, has been active. The commissioner has fined some underwritten title companies for activities that violate the state laws and regulations, such as making loans out of the escrow float. I understand that there will be some fines or at least some regulatory activity on Realtor farm packages. I don't know what you call them in your particular area, but they are the packages given without charge to real estate agents and brokers to enable them to locate and obtain listings or to enable them to be better prepared to sell the listings that they are able to get.

We can expect continued activity out of the California department.

In Utah, one state legislator proposed a resolution in the legislature there that required a study of the title insurance industry. The insurance commissioner was required to conduct that study and hearings were held in this past year. Much testimony was taken. I regret to say that most of the meetings of the committee and the subcommittee were just one underwriter or one agent grinding his own ax, looking out for his best interests. There must be a better understanding by us all of the problems faced by the industry as a whole. We must avoid selfish interests for the good of the private land title assurance system. Some of us have developed the attitude that what is beneficial for our particular company is best for the industry. I think we have to get more sophisticated than that.

A report was made by the Utah Insurance Commissioner to a joint senate-house committee. As of yet no legislation has resulted from that report. However, the whole investigation could have been forestalled if we had just gotten to the root of the problem sooner, by listening to the complaints within the state and acting on and responding to them in a responsible manner.

The underwriters that are doing business in Wyoming have been subjected to the toughest kind of adversary regulation. We hope that we're getting to the end of it. There may be some fines that will come out of it, but for a state with a small amount of title business they certainly have some personnel in the insurance department with

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Discrimination: Age-Sex-Race—Management Still Has Some Rights



Baum Braden James

Panel participants are Richard W. Baum, vice president and human resources officer, Chicago Title and Trust Co., Chicago, Ill.; Peggy L. Braden, Esquire, of the New York City law firm Jackson, Lewis, Schnitzler & Krupman, and Robert M. James Jr., benefits consulting services director, Hay Associates, Chicago, Ill.

It was our thought this morning that I would make a few backdrop comments and then have the panelists speak to specific areas of discrimination in employment, reviewing with you if you have questions or are puzzled on how to answer our ALTA quiz on how to avoid charges of discrimination. And then to take any questions that would come from the floor.

I think I'll cut my comments very short this morning and merely move along quickly to get into the panelists' presentations. Peggy Braden will take care of the discussion of discrimination in race, sex and religion. Bob James will speak primarily to the discrimination in age and the new regulations that will affect our method of doing business after Jan. 1, 1979.

We're all aware of the many, many pages of rules and regulations and laws that govern us in business. Many of you ask me from time to time, whether or not I believe that things are getting better. I don't see a great deal of change coming. We do see a change in the degree of regulations. We do see considerable change in the methods of operation and thinking, for equal employment opportunity—providing equal chance for everyone of all race, sex and religion to move upward in society—brings about a great deal of need for behavior modification.

We're seeing more and more today the situation of, let's say, the male accountant working for the female manager. Some people who feel the boss should be a man are really affronted. Of we see the case of a black attorney counseling with a white client and this can bring about some racial antagonisms.

But man is a variable, not a constant, and as we change our world we will also change our mores and methods and attitudes toward these kinds of problems. I have no fear that we'll continue to move forward very effectively in implementing the various discrimination regulations.

Big brother's here. We've got to put up with him. We've got to deal with him. Even after 10 years—more than a decade since the provisions of the 1964 Civil Rights Act became effective we still see the fact that females are badly under-utilized as a class in a principally male-oriented business society.

I'm convinced, for instance, that the great secretarial shortage of 1978 is due very simply to the change in mores and the change in opportunities for women. Instead of going into a secretarial job a lot of these talented women are going into more responsible, higher paying positions. So we see a change there.

About 63 percent, at last count, of our staff at Chicago Title is female. As I look over the industry, roughly 60 percent—give or take a few percentage points—are women. If 60 percent of our staff is women, let me ask a couple of questions of you. What percentage of your executive team is women? What percentage of your sales staff is composed of females? What percentage of your professional staff? Do any of your answers to any of these questions come anywhere near 60 percent? Perhaps that, in itself, suggests the need for regulations and laws which encourage the employment, promotion and upward mobility of people from all walks of society.

A few companies in our industry are under formal audit review by agencies of the federal government, namely the insurance compliance staff. Others of you are not so affected.

The Furnco Construction case, I think has caused a lot of confusion in this area because I am constantly being asked doesn't that eliminate the need for equal employment opportunities or do I have to continue to develop an affirmative action program? Most of us are still affected and very much covered by the discrimination in employment regulations. It behooves all of us to not discriminate on the basis of race, sex, religion or age.

We developed the ALTA quiz as a little fun worksheet for you and I notice a number of you picked it up and a couple of you asked me about the right answers as you met me in the lobby last evening or yesterday afternoon.

A couple of the questions have a specific answer. Several of them have several alternate courses that are rather suitable. But let's hear first from our other panelists who will give you considerable detail on the various areas of discrimination. After that, we will try to come back to you and present you with an opportunity to question us on how we should handle the case of let's say Alma who wants a six-month maternity leave at full pay and the guarantee of her job back when she returns.

So speaking first to the area of discrimination and employment from the viewpoint of race, sex, religion, we welcome Peggy Braden.

Braden: What I'd like to do is follow up for a few minutes the previous discussion you had about regulators, except I'm not going to talk about the insurance commissioner. I'd like to talk about some of your other friends and neighbors called the Equal Employment Opportunity Commission and the Office of Federal Contract Compliance Programs.

President Carter decided that he wanted to make his mark in life in much the same way that President Johnson, President Nixon and President Kennedy did, so he signed his own version of an executive order which was called the Equal Employment Opportunity Reorganization Plan. What he decided to do was consolidate all these agencies. Previous to this time we had the Equal Employment Opportunity Commission and then we had the Office of Federal Compliance in the Department of Labor. And then each cabinet office had a certain number of regulatory commissions within its auspices and each of these commissions went around and audited people.

Everyone in the insurance industry was fortunate to be audited by the Health, Education and Welfare Department. There are certain people in this audience who have been regularly audited by that group, who do not consider themselves fortunate. I think they should remain anonymous. I won't even identify them.

Under President Carter's reorganization plan, what he intends to do is to consolidate about 5,000 employees together in the Department of Labor, all in the Office of Federal Contract Compliance Programs. Then he's going to give the new super-bureaucracy about 18 months to operate starting Oct. 1 of this year. At the end of that 18-month period, they're going to re-evaluate their efficiency and if he doesn't think they're doing a good job, he's going to send them over to the Equal Employment Opportunity Commission (EEOC) and make EEOC the super-government agency for discrimination.

Meantime, to make sure the Department of Labor isn't too busy, he's going to turn over investigation of these equal pay claims under the Department of Labor to EEOC. So that now when your employees—mostly your female employees—complain that they're not being paid equal pay for equal work, they will no longer be required to go to the Department of Labor, which most of them cannot find. They will instead be able to go to EEOC which is very easy to find.

EEOC advertises on the radio, television and in magazines. If you go to the bus station at 42nd Street in New York City, on every post you can see a great big sign that says "discrimination is unlawful." EEOC spends quite a lot of money to advertise what a terrific job it does.

Just recently EEOC decided if it was going to get all this new responsibility that it better reorganize. They have about 100,000 cases lying around in the files all over the country that haven't been taken care of. That means that I conceivably could have filed a charge in about 1974 and nobody's investigated it yet.

So when the new commissioner took over, she decided that the government agency was losing face and she reorganized it and set up different systems. One which I think is going to be most interesting, as far as large employers are concerned, is what they call the Systemic Charge Division. That's a fancy way of saying they're going to investigate whole companies. Instead of waiting for your employee to file a charge against you, the commission itself is going to investigate you. Recently they announced their standards for how they're going to investigate on a systemic charge basis.

Primarily all the standards have to do with employment statistics. Their basic standards are going to be employers whose practices result in low utilization of available minorities. That means you don't have enough as compared to what's out there in the world.

They're going to look at employers who have a lower rate than their competitors. For example, Chicago Title has 42 percent of something and you're located across the street and you only have 22 percent. They're going to figure that you must be going something wrong.

They're going to look at employers who employ substantial numbers of minorities and women, but they happen to be at significantly lower rates in terms of salary and in terms of job classification. So all of you employers with female ghettos in your secretarial staff and in your file room and in your cleaning area are going to find yourselves possibly subject to systemic charges.

Employers who have policies that have what they call adverse impact. In other words, you have all these wonderful neutral policies. We don't hire anybody who doesn't have a college education. The only trouble is everybody in your community who is college educated is a white, Anglo-Saxon Protestant male, age 27. Put into practice, the policy works against practically everybody's suitability for employment. And you can show no business necessity for having it. In other words, you can't prove that if people don't have a college education, they can't do the work, which probably goes for about 87 percent of all the job descriptions anybody in this room has. Most of those job descriptions are based upon old, gut-level reactions to what it takes to do this job, and not too much real life study.

EEOC is going to look at employers who have practices which effectively restrict minorities and women from getting into significant employment opportunities.

Going back to the statistics that Dick mentioned at the beginning, you have 60 percent women in your company, but only 2 percent women in your management ranks. Therefore, you must be doing something. You must effectively be restricting these people from significant opportunities.

Also EEOC is going to look at employers who have expanding employment opportunities, who have significant turnover and don't seem to offer substantial numbers of employment opportunities to minorities.

I have a client, for example, that turns over his clerical staff about 57 percent every year. Amazingly enough in the center of downtown Chicago, this clerical staff remains predominantly white female.

The EEOC in the future will examine this phenomenon and find that the employer who manages to do this on a regular basis is probably engaging in some form of discrimination.

To help EEOC make these decisions, the U.S. Supreme Court has issued a couple of decisions recently which will have a big impact on your ability to combat these kinds of EEOC decisions which, in effect, will help EEOC decide that employers are not doing their work properly.

I would like to talk about two cases—one of which Dick mentioned—without getting too technical, but which will illustrate the point of how it is that employers get themselves in trouble and how it is that you can't always get out.

Basically, if I'm going to file a charge—whether it's race discrimination or sex or religion—I'm going to have to claim one of two things. Either that I've been subjected to disparate treatment—which means that you do something bad to me personally—or that you have some policy which has a disparate impact—such as the policy about the college graduates that I mentioned earlier.

If I claim the disparate treatment theory—even if you can show that you have a racially balanced work force—for example, if I'm a black and I claim I can't get a job, and you can show that your work force is a perfect image of your community—I can still win because I can still show that even though you're terrific out there in the vague somewhere, you hire blacks on a percentage basis, as to me a discriminatory act was committed.

In that case, it's the employer's objective and his responsibility to show that there was some other reason besides my race for making the decision.

In Furnco Construction Co., the company had a policy of hiring people to be bricklayers whom the foreman already knew. He didn't go down to the union hall or run an ad in the papers. He used word of mouth. So word was put out that he was interested in bricklayers and he hired only bricklayers that he already knew.

The company was really kind of nervous about all this affirmative action business so they told him to go ahead but that he better make sure that about 7 or 8 percent of the bricklayers that he already knew were black. They ended up hiring and allowing black bricklayers to work in their plant at a higher percentage than they are even available for work in the industry in general.

But there were some blacks who showed up at the construction site whom the foreman never heard of, who didn't get the job. No white ever showed up at the construction site to apply for a job. So these blacks filed a charge which, in effect, said, "Look, we don't care about this wonderful neutral policy they had about hiring just people that they knew. We don't care that 13.3 percent of all the working hours were done by blacks. All we care about is that we didn't get a job. We suffered from disparate treatment. This guy's using some kind of old-fashioned procedure, which only continues to justify what happened in the past. If everyone in the past was a white bricklayer, and this guy's been a bricklayer supervisor for over 20 years, the only ones he's going to know are white people."

Generally speaking, the court said that if employers don't end up with an employee complement that looks like their community, they're probably discriminating. However, they should have an opportunity to show legitimate reason for not hiring people.

If they can't show legitimate reason for not hiring people, the court's going to assume that employers act rationally; therefore, the court's going to assume your reason must be race or sex or national origin or whatever. Some people who read that case say, "That's terrific, all I do is come up with a reason—any old reason—and I'm out of the box. I win."

Well, you don't. You have to come up with legitimate business reason, which makes it a little more difficult.

The other possibility, which people in Furnco tried to show, is that even assuming that this was a racially neutral policy—hiring people that the bricklayer supervisor knew—it had a disparate impact. The actual fact was not many blacks got hired; mostly whites got hired.

And the most interesting thing that happens when you have those kinds of situations is now that fact that you tried to show before when the three guys claimed they couldn't get a job—you had a racially well balanced work force—which the court said ten minutes ago was irrelevant; now you bring up that same fact again and the court says, "Oh, that's tremendous."

Obviously if you have a racially well balanced group, then there's no such thing as disparate impact. This policy must really work, even if it works by accident. It doesn't work to shield out people. It doesn't work to keep them from getting a job. So you can end up in being in the interesting position of taking the same fact and at one point having the court tell you we're not interested in that and then 15 or 20 minutes later, they'll think it's wonderful!

You can see why it is that it's so frequent that employers find it very difficult to demonstrate that they didn't do anything wrong. It depends on what they're trying to show. One time they're trying to show they didn't do anything wrong to one person in general and the next time they're turning around with the same information and trying to show they didn't do anything wrong to a group of people. You never really know for sure where you're going.

What you usually end up trying to do is take a statistical approach and use it to your advantage in both cases—to prove that statistically you have a well balanced work force. And, in addition to that, the only reason you reject people is for legitimate business reasons, all of which you can demonstrate.

I can't really talk about race discrimination without mentioning our most favorite case of the Supreme Court of its entire recent history. Anybody who watched the Today Show this morning learned that Allen Bakke entered medical school yesterday to the loud accompaniment of pickets saying, "Get him off the campus." About 42 cameras followed him to his biology class.

There has been a tremendous amount of publicity about the Bakke decision—about what the case means and what it's for and what it says to all employers, especially employers that have affirmative action programs. A lot of the publicity says that the case means you don't have to have affirmative action anymore. We can all go back to doing our own thing. We can all go

back to hiring for whatever non-job related, non-business reason we used to use in the 1920's.

The written opinion is approximately 150 pages long. It isn't one opinion, it's nine opinions. In fact, what happened was all the judges had so much to say that they couldn't agree with each other, so everyone wrote his own opinion.

Judge Powell ended up being the swing vote because the case went half one way in favor of Bakke and half the other way against him. At one point Justice Powell said Bakke should win. On the other hand, he said that the University of California ought to have some kind of system which considers race. At no time did the court say in that decision that there's no such thing as affirmative action. What they did say was the way the University of California did it wasn't very smart.

The University of California said, we have 116 seats in our medical school. We think there ought to be more black doctors, more women doctors and more Chinese doctors and more Spanish doctors, so what we're going to do is we're going to let everybody compete for 100 seats, all the applicants no matter what they are.

In addition to that, we're going to make 16 extra seats which only minorities can compete for. Mr. Bakke couldn't make it into medical school. He applied three times and he couldn't get admitted. So he finally brought a lawsuit saying that it wasn't fair. He was as good as any of the people that they admitted and he was better than most of the people that got those 16 seats.

The court agreed with him that it was not proper to set aside for preference a certain number of places in the school based on race. The court did say, however, that race could be a consideration along with other factors like economic background and variety of job experience and educational attainment, traveling, where you grew up in the country; whatever they wanted to consider could be a consideration because the university had "compelling interest" in having a well diversified student body. If you have a well diversified student body, supposedly you get a quality education.

On that basis they allowed the university to give race consideration. The average employer cannot show such a compelling need. It's very difficult for the average employer to show that he must have a racially diversified employee group in order to make a good product.

Generally he can show 30 or 50 or 100 years of making a terrific product with an all white work force, so obviously he doesn't have the same compelling interest.

In speaking about private employers, the judge said, probably the only compelling interest that the employer would have for having affirmative action is when some regulatory agency or some court has declared that you discriminate. That then becomes your compelling interest. Now that you're in violation of the law, you can have affirmative action.

There is a case now pending before the Supreme Court, which should be decided sometime next year, in which the question and the only question in front of the court is, "Can you have a voluntary affirmative action program? Must I be an office of Federal Contract Compliance Program employer?"

And the court will be forced to finally make that decision, which is what they tried to avoid doing in the Bakke case. And they'll be finally trying to decide absolutely can you have it. Or can you not have it.

So I think by next year maybe we will have a little more clarification on that issue, provided of course the court doesn't decide to write nine opinions again which are 150 pages long. Then all we're going to have is about 10 or 15 years debate on the issue with everybody choosing up sides, depending upon which side they think serves them best.

Dick said that I was going to talk about sex discrimination, too. I always hesitate to talk about sex discrimination in public groups—especially groups where I'm the only other woman on the program for four days, and where almost everybody in the audience is a man. People think you have sort of a personal interest in the topic. So I'm going to talk about two parts of sex discrimination that I have never been personally affected by, but are pretty hot issues today. They have to do with pregnancy.

When the Supreme Court decided that under Title VII you didn't have to pay people who were pregnant while they were off from work, everybody breathed a heavy sigh of relief, thinking that was the end of that issue.

It turned out that wasn't true. All that's happened now is that every other possible thing that could happen to you when you're pregnant is now becoming an issue before the court. Do you have to take me back? Can I accumulate seniority while I'm gone? Do you have to take me back at the same job? How long do you have to let me be gone? Do you have to pay me for the whole time or do you only pay me for half the time? At what rate do you have to pay me? Are the insurance benefits that I get for being pregnant the same as the insurance benefits I would get if I had appendicitis? All of these issues are now pending before the court.

I'm afraid to say that this issue of what to do about the pregnant employee is going to continue for some extensive period of time. The question of pregnancy and benefits is going to take probably two different areas. One is the issue of hospitalization benefits. For example, most policies provide a flat $300 or $600 or whatever. If I break a leg, I can be in a hospital and I'll get paid 80 percent for up to 16 weeks or whatever. And those questions are going to come up, too. Interestingly enough, the court is beginning to consider the whole question of benefits, the stereotypes upon which benefits are based and whether or not those stereotypes ought to continue to be in effect. It may be that as these issues come more and more before the Supreme Court, employers—especially insurance companies who operate as providers of these benefits to outside companies as well as employers—are going to find themselves in a very anomalous position.

The court is beginning to say that stereotypes—even if they're true—are not appropriate for making decisions about employees. For example, even if it's true that women live longer than men, it's not appropriate to make them pay a higher rate into a pension plan so that they can receive benefits equal to what the man receives at the end of the plan, because maybe I won't live that long, or maybe this gentleman here will live longer than the lady sitting in the back of the room. So as an individual I won't fit the stereotype, although as a class the stereotype will continue to be true.

I think that it's very true to say that most issues which have not been confronted by the courts are unfortunately many of the complicated ones that are now beginning to come up because the easy ones are all finished. All the easy ones such as I can't get a job; I can't get promoted, and I don't receive equal pay, seem to have been decided. There are enough court cases now that you can, with some degree of accuracy, predict where you are.

All the hard ones are now coming up and the Supreme Court is being confronted with a lot of decisions that it hoped it would never have to make in areas where there's no good answer as in the Bakke case. There's really no good answer to that question. The court believed everything the university said about how they needed more black doctors, but at the same time they felt it was not right for this one guy not to be able to go to medical school because he was white.

To the extent that the Supreme Court gets into these areas, you may find that it begins to make a lot of very strange decisions. Because the Supreme Court generally tends to be reflective of the political feeling of the people at the time, it hardly ever makes a decision which is really out of step with the majority opinion of the public. So that you may find that one day they'll say, oh, yes, these stereotypes about women living longer are really bad. And the next semester when the court's in session it's going to say, on the other hand, all those actuarial tables predicated on women as a class are really good. Meanwhile the employer is going to be left out there in no man's land trying to figure out what to do with everybody shooting at him. No matter what he does it's always going to be wrong.

One final thing. I recently came across a case which I thought I couldn't possibly come here and not tell you about. The federal court in the Northern District of California—and everybody knows that California is a very radical state—just recently declared that a corporate officer can be held personally liable for job discrimination. Now how does that grab you? All you guys who were corporate officers and think, "Thank God, I'm protected by the corporate veil; they can't get me" may be in trouble.

A lady filed a claim of discrimination against her company and she said, "I'm not only claiming that my company nailed me to the wall, but the company president personally did this to me. He recruited me for this job and sold me with a lot of nonsense about what a terrific company this was. I believed it all and, boy, I'm getting the shaft here. It's got to be partly his fault, because that company has got to be following his policy. Everybody knows how important company presidents are. They monitor everything."

The court believed it. The court said that in this particular case the firm's president was instrumental in initiating and maintaining the employment relationship between the company and its employees. On that basis, he satisfied the definition of an "employer" under the law and he should have to be personally liable.

Now the court allowed as how probably the corporation should pick up the tab if the corporation and the president lost, but there's a possibility that there might be

situations under which the corporations say, no, the corporation shouldn't have to pay for the fact that this company president has this strange policy, although it's well known that the corporation president guides the corporation and tells it what to do. On the other hand, if the corporation is really smart and doesn't always follow his policies, let him pay for it out of his own pocket.

I thought that was an interesting final note—talking about what's happening and how many rights employers still have left. I notice that was the title of our program. Employers absolutely do have rights. You especially have the right to be personally responsible for what your company does.

Baum: Thanks, Peg. Bob James has some red hot information, not on what has been happening, but what will be the game rules, how we will have to do it after January 1, 1979, insofar as dealing with the near elimination of mandatory retirement at age 65.

James: If you're looking for a definitive statement on mandatory retirement, this will not be it. Our firm did a seven-hour seminar on this about three weeks ago and I have 20 minutes. What you are going to see is 22 view graphs that give you some highlights of the legislation and some practical ideas of how to identify your problem, if any. It gives you some defensive thoughts about what you can do about it. And we got lucky about three days ago. We happened to get an advance copy of the proposed regulations about what you do for benefits for somebody who works after 65. I built that in, too.

I do not have copies of all this material. When we break, however, if you want to come up and put your business card in this envelope, I'll send you a copy of all these view graphs. I'll also send you a copy of a bulletin we've got coming off the press on an interpretation of the new regulations. I'll be honest with you and I'll also stick you with about a two-page letter telling you all the neat things that my company does in the benefit area. Beyond that, you call me if something turns you on.

The big thing a lot of people forget is that mandatory retirement is simply an amendment to the 1967 Age Discrimination in Employment Act. That's where the bugaboo comes in. What that did was establish a protective class of workers starting at age 40, basically ending at age 65, because that's when you used to retire people. For regulatory authority they used the interstate commerce bit that they've been using from time immemorial. What it does is prohibit employment discrimination based on age. It includes all terms and conditions of employment—salary, promotion, benefits, hiring—all that good stuff.

The amendment of 1978 simply extends the protection to age 70. It says thou shalt not retire somebody for age alone at 65. So whatever problems you've had from 40 to 65, now you've got them from 40 to 70.

The big exclusion in mandatory retirement is if you've got somebody in an executive or policy-making position, and that person will receive $27,000 a year—not counting social security from your corporate pension plan—then you can retire him at 65.

Many states have similar and very often broader laws. In some states the protection starts when you hire somebody and there's no upper age limit. If that's true in the state where you do business, you've been had. You've got to follow the state law. Enforcement moves from the Department of Labor to EEOC July 1, 1979. As far as I'm concerned that stands for "t" and it rhymes with trouble.

Now EEOC can't change the law, but they can sure inspire people to test it in courts. We've got regulations coming out, you see some pieces of it now. We're going to have many regulations and revised regulations and court cases that change the regulations. But for now you'll have to live with the proposed regulations until somebody changes them on you.

We feel that there is a high probability that "age 70"—the age limit for the protected class—will become "any age."

What are the major impacts? Obviously you've got some key problems in manpower planning. First of all, will your people actually work beyond age 65? What promotion opportunities are going to be blocked? How can I protect against inefficient and nonproductive employees at advanced ages? Can I live with that double standard and otherwise exclude an executive? Do I want to retire you anyway because you're going to get $27,000? Or is it better to treat everybody the same?

Obviously benefit issues exist. Mandatory retirement legislation is silent on benefits. That's what the regs are all about. Obviously the original law that says that thou shalt not discriminate hits you there. Now employees over age 65 are like everybody else. The cost and design of all plans will certainly have to be reviewed.

Proposed regs—we've got an advanced copy—are coming out shortly. You will have a right to comment for 60 days. Exercise that right if there's something in there that bothers you. It probably won't do any good, but exercise your rights anyway. Here are some proposed regulations. There are two ways to avoid prohibitive discrimination as far as benefits are concerned when an employee works beyond 65. You can either have equal benefits or equal cost. Frankly, we were frightened that they were going to end up with equal benefits period, and I'm not at all convinced that may not be where it ends up eventually. But as of right now, it's equal benefits or equal cost.

If you're looking at equal benefits, you can use any combination of plans if the benefits *are* equal *and* you can prove it. We're going to look at an example of that a little bit later.

If you're using equal cost, the regulations say you must judge that equal cost on a plan-by-plan basis and you must do it for every year of age. In other words, your life insurance is the only thing you can look at when you're talking about death benefits—plan-by-plan, life insurance only. You can't say, "But he's got this over here and I'm going to use that overage over here."

This doesn't apply on an equal cost concept. Plan by plan. The overall cost of the package cannot be used.

Any plan where age is not a factor such as vacations and holidays and so forth, simply has to be identical. The courts may decide that equal benefits are the sole test eventually. That's certainly the thinking in EEOC, as you all know.

Some specifics. What about a pension plan, defined benefit plan? What do the regs say about that? What's the effect on a post-65 employee? I'm not talking about after retirement, that doesn't count. I'm talking about somebody who's actively employed and works beyond 65.

The regulations say you do not have to give credit for service or earnings after age 65. You may freeze both of those at 65. It also says that no actuarial benefit increase is needed. You don't have to give him 105 percent when he retires at 66, for example.

For profit-sharing and savings kinds of plans, defined contribution plans, if the retirement/termination benefits are the *only* thing you provide, if it's totally impossible under your plan for cash pay-outs, or withdrawal ahead of time; then you do not have to make contributions after age 65.

If, however, there is some way you can get your money out of there early, like going to the committee and saying, I've got a hardship, blah, blah, then the regulations say that's a "supplemental" plan and you've been had. Contributions must continue after age 65. Frankly, I think you'd want to do that anyway. The regulations say you don't have to, however, as long as it's not a "supplemental" plan.

In the medical and dental area, identical benefits must continue. You may offset for Medicare. You do not have to make Medicare premium payments.

LTD is one of the hot issues that we worry about. What they said is the pension plan can take over even if it provides a lesser amount, but only after a specified period of long term disability benefits.

If an employee is disabled *prior* to age 60, then you must provide long term disability until age 65, at which point it would stop and pension would begin.

If an employee's disabled *after* 60, for example, then they have to receive LTD for five years or until age 70, whichever occurs first. If he's 69, he'll get it for one year. If he's 64, he'll get it for five years because you can stop after five years. Final regulations may require LTD until age 70 for everyone regardless of when the age disability begins.

In the life insurance area, benefits must continue, but may be reduced to reflect the additional cost. The proposed regulations say 8 percent per year reduction in a benefit from age 65 to 70 is an acceptable guideline. You can have a larger reduction if you can prove it. The key thing here is once the employee retires, none of this applies. It refers only to people actually working after age 65.

Let's look at some other things. First of all, will any of your people actually work after age 65? If none of them do, go back to sleep. But if some of them do, maybe you've got some problems. Many things are going to contribute to somebody wanting to work. Here are the key ones, it seems to us.

First of all, the employee is a second wage earner and the spouse is not ready to retire. You've got a female working for you at 65, for example, but the old man's only 61 and he's not ready to go yet.

Secondly, college age children need support. Thirdly, your employee is 65 and looking at an inadequate pension income from you. Fourth, the fear of an inflationary impact on his fixed income. It's a very big item right now, obviously. Others are fearful of retirement itself and the loss of the human contact provided by retirement. For a lot of

your people, about the only time they talk to anyone—other than their spouse—is at work.

Finally, the loss of group benefit protection from medical, dental, life insurance, disability income, etc. It's a problem if the minute I retire I lose all those goodies.

Let's look at a few individual plans now and what impact that mandatory retirement has on these plans.

You've got to understand a few key facts about pension before you can start. The true cost of a pension plan is simply that benefits paid plus the administrative costs minus the fund earnings. The annual contribution you make and the actuary dreams up is an intelligent guess. The real cost is the goodies you pay out at the end.

Male life expectancy at age 65 is about 15 years. The reasoning is that if you're 65, you've missed 65 chances to die, so your life expectancy is about 15 years. Social security benefits increase after age 65. If you've got some kind of an offset plan, you get a bigger offset. The result is that unless you actually increase the pension benefits under your plan for a post-65 retirement, you're going to save money the longer retirement is delayed beyond age 65. That's true even if you let them accumulate earnings and service under your plan. Frankly, I personally think you should do so even though you don't have to. The savings are because an age 70 retirement has effectively lost 60 months of benefits—almost a third.

What about adequacy of pension income? One of the key concerns of everybody is that they can't afford to retire.

We do an annual survey on benefits. In 1977 we surveyed about 468 companies. What was the practice of those companies in the pension area? Ninety-two percent had a defined benefit pension plan—almost all of them non-contributory. About one-half also had a profit-sharing or savings plan. And over three-quarters of the pension plans were a final average salary (FAS) kind of plan, integrated with social security—the kind that says when you retire you get 50 percent of your final average pay minus one-half of social security.

Here are just a few figures about what the total retirement income of these plans plus social security as a percentage of final average salary were.

In our survey, the average practice for somebody with a final average salary of $10,000 was 69 percent of that $10,000 as the total benefit he was getting from the plan and social security. Average practice with an FAS of $30,000 was 59 percent; and at $80,000, 52 percent. You can read the rest of those numbers, and you should know that about 44 percent of these companies provide pensioner increases to employees after retirement. You should also realize that Social Security alone provides about 44 percent at $10,000 but only 7 percent out there at $80,000.

I would highly recommend to you that you look at the adequacy of the pension income from your own plan. Are you forcing people not to leave because they can't afford it?

The other side of the coin is, "Can I afford to improve my pension plan?" Now, however, you've got another condition that you've never had before. Not just the cost of that plan. What kind of manpower planning considerations do you have? Maybe it's worth spending a few dollars on the pension plan to unblock some of those promotion problems. It's worth thinking about.

What about other benefits? What's going to be the general cost effect? Life insurance cost is clearly much higher at older ages. The regulations recognize that and say you can knock it down 8 percent per year after age 65.

The use of short term disability or sick leave kind of benefits, which you have to give them, is unquestionably going to be greater.

Long term disability costs may be higher.

Medical costs are certainly going to be lower, because suddenly you have a Medicare offset.

A drastic reduction in benefits for retirees may discourage retirement. As I mentioned before, the additional cost of benefits could well be justified from an overall corporate standpoint.

Other life insurance considerations exist. You might want to consider some amount of post-retirement life insurance. You might want to consider revising the eligibility requirements for pre-retirement survivor benefits under the pension plan. You have to provide them in some way. You might consider making them fully company paid. It's really much simpler administratively. You might also consider expanding the pension plan pre-retirement survivor benefits to unmarried people so everybody's covered, not just surviving spouses.

If you do all that, then you may be able to reduce your pre-retirement life insurance and not meet the equal cost test, but meet the equal benefits test.

It might look something like this. In the top example, the company is providing some kind of life insurance—let's say two times salary—till somebody's 65. Then the life insurance plan quits. Now, at age 55 the pension plan's coming in with its survivor benefit, but it's fully *employee* paid. They're saying if you want that protection fine, but when you eventually retire, I'm going to reduce your benefit by X amount. So you can't count that employee-paid benefit against say a reduction in life insurance which is company paid.

This first example won't work under the new law. If somebody retires at 65, there's no problem. But if they continue to work after 65, you're going to have to continue some life insurance. They'll let you go down 8 percent a year, but that's about it.

What you can do is go after the equal benefits test and do something like this. I know the pension survivor benefit is coming in at age 55, so what I'm going to do is make it company paid, and because it's here, I'm going to knock the life insurance down. As the pension benefit grows, because the person's getting older and there's less early retirement discount plus more service and so forth; I'm going to have a corresponding reduction in life insurance. So all the way out to age 70 I've got a nice coordinated package and I'm not doubling up. I'm saving a ton of money in life insurance. You've got to be careful and prove the benefits are equal. There's no reason you can't combine them if you can prove that.

Here are a few other ideas for self-defense. How many of my people are going to work beyond age 65? Looking at your past practice for age 65 retirement will give you a clue. Also, go into those health statistics you've got. You've got a list of everybody's dependents and their birthdays on file. Try to identify second wage earners who have a younger spouse; or a single wage earner with children under age 25 when the employee is 65. It will give you a clue whether they're going to stay or not.

Then review the adequacy of your pension income. Do you provide a periodic pension increase? Are early retirement benefits attractive? Are you letting people retire, comfortably, earlier than age 65? If not, do you want to?

Review the after-retirement coverage in the health and life insurance areas. Provide formal, useful pre-retirement counseling. Some people aren't interested. A lot of people are. I would suggest to you that you use some outside experts. Somebody that knows about senior citizen activities in your area; or who knows about what living in Arizona's like; or what senior citizen housing is like; or some doctor that knows what medical and health considerations are and so forth.

Consider a one-time bonus for early retirement. You can look at your statistics and you can guess, gee, about 7 years from now I'm going to have a lot of folks in some pretty key spots that are going to be 65 and I'm afraid they're not going to go yet. Maybe for the next 18 months or so I say anybody that will retire early in this period, I'll give them an extra $50-100 a month for life or ten years or something like that. It's a temporary thing. Outside of the plan, paid out of your pocket. Expensive, but it might clear up a potential problem.

Consider gradually increasing employee time off, extra vacation, leaves. These get people thinking about being home a little bit more.

I've often heard retirement defined by wives as twice as much husband and half as much income. Let's sneak up on that a little bit.

Start a procedure for formal performance review with documented job standards and documented performance reviews. There are no substitutes. If you want that person to leave at 65, the only way you can do it is say he's not efficient anymore and you'd better be able to prove it. Not last week, but for the last five or ten years.

Consider a skill bank for retirees. That's another possible idea. The kind of thing we're thinking about, which may make sense in some companies, has three elements. First, the company sets up a central skills bank office somewhere in corporate headquarters. That office sets administrative procedures, such as hourly rates by skill level; works up the language of the employment contract; sets up the limits on hours, earnings and so forth; and, finally, communicates the program both within the company and to people as they retire. It then matches needs, skills and availability. It maintains records and, of course, alerts retirees.

The second element is each department within the company. The department sends a request into the central office and says, hey, I need this kind of talent for six weeks. The central office then pulls out the files of all the retirees registered, sends a list of qualified people to the department and they pick one. They contact the retiree direct.

The third element is the retiree himself. The retiree signs up for the program; responds to the request; has direct contact with the department; and signs the contract.

What do you get out of this? It serves a couple of purposes. It may assist the retiree

in accepting retirement in the first place. There is going to be some supplementation to his fixed income since if he wants to work a little bit, he can do it. It's an avenue where he can supplement income, dealing with people he knows in an environment he likes, presumably. It's some extra income, if he feels he needs it, and he obviously maintains some human contact in a useful activity.

As far as you're concerned, you're using trained, known personnel. You know what those folks can do and not take a chance. Plus you know you're only going to have them for six weeks. If you guessed wrong, you just don't invite them back again.

Another advantage is utilization of valuable human resources. Come the 1980's, if the demographics are to be believed, we're going to have an awful shortage of a lot of talent in many, many areas, including general management and staff functions. You may be looking for help and this may be one way to get it.

It also reduces the possibility of prolonged fulltime employment. In summary, for employees this is a way to get out gracefully and the employer doesn't totally lose their talents.

There are additional considerations here. Obviously you're going to use employment contracts. You do have some administrative effort. Excess earnings of a retiree would reduce his social security benefits till age 72. You have to watch that. Excess hours are another potential problem. If they work too much, they may end up being eligible for one of your pension plans. You're going to have to watch that. You've also got a potential age discrimination issue, if a registered, qualified retiree keeps applying and you never hire him.

A couple of final thoughts. Watch for the regulations. You've got a 60-day period to comment. Do it.

Watch for the emerging court cases. That's how this thing's going to be hammered out. Don't panic. Probable effects are going to be minimal. A lot of you don't have anybody that's going to be 65—let alone work after 65 for several years.

You may actually benefit. Needed skills might be scarce in the 1980's. In 1984 you may be delighted somebody wants to stay on for another three years because you can't replace them.

Think long range. Age 70 is probably going to become any age, and the "same benefits" test is probably going to be required—that's your educated guess.

Develop documented performance standards and review procedure which has multiple, favorable offshoots. You can use that kind of thing for merit increases, transfers and everything else. It's not just for mandatory retirement.

Make it easy for the employee to retire. Develop empathy for the problem. You're going to be 65 someday too. It's hard to believe, but it seems the older I get, the quicker I'm getting there.

Develop an "all-benefit" vision to produce the coordinated results of costs and employee manpower planning considerations. Think big. It may be better for you to spend a few dollars on this side of the street in benefits to save all kinds of problems in the manpower planning area over here. Get all the key people together and figure it out.

Election of National Officers

By proper nomination and second, the following officers were unanimously elected for 1978-79:

President—**Roger N. Bell,** president, The Security Abstract & Title Co., Inc., 434 N. Main St., Wichita, Kan. 67202

President-Elect—**Robert C. Bates,** executive vice president, Chicago Title Insurance Co., 111 W. Washington St., Chicago, Ill. 60602

Treasurer—**John E. Flood Jr.,** president, Title Insurance & Trust Co., 6300 Wilshire Blvd., Los Angeles, Calif. 90048

Chairman, Finance Committee—**Robert C. Dawson,** president, Lawyers Title Insurance Corp., 3800 Cutshaw Ave., Richmond, Va. 23230

Board of Governors (Term expiring 1981)

John R. Cathey, president, The Bryan County Abstract Co., 114 N. Third Ave., Durant, Okla. 74701

Richard A. Cecchettini, senior vice president, Pioneer National Title Insurance Co., 130 E. Randolph St., Suite 2310, Chicago, Ill. 60602

John J. Gehringer, president, Waukesha Title Co., Inc., 615 West Moreland Blvd., Waukesha, Wis. 53186

Glenn Graff, president, Florida Southern Abstract & Title Co., 245 W. Central Ave., Winter Haven, Fla. 33880

Richard J. Shramm, senior vice president, Chicago Title Insurance Co., 3255 Wilshire Blvd., Los Angeles, Calif. 90010

Election of Title Insurance and Underwriters Section Officers

By proper nomination and second, the following officers were unanimously elected for 1978-79:

Chairman—**Fred B. Fromhold,** president, Commonwealth Land Title Insurance Co., 1510 Walnut St., Philadelphia, Pa. 19102

Vice Chairman—**Richard C. Mohler,** senior vice president, Pioneer National Title Insurance Co., 719 Second Ave., Seattle, Wash. 98104

Secretary—**Morris E. Knouse,** vice president, Berks Title Insurance Co., 101 N. Sixth St., Reading, Pa. 19603

Executive Committee

Gerald L. Lawhun, vice president, Lawyers Title Insurance Corp., 3435 Wilshire Blvd., Los Angeles, Calif. 90010

Richard Mendler, first vice president, Security Title & Guaranty Co., 630 Fifth Ave., New York, N.Y. 10020

James W. Robinson, senior vice president, American Title Insurance Co., 1101 Brickell Ave., Miami, Fla. 33101

LeRoy D. Sanders, senior vice president, Chicago Title Insurance Co., Tower Place, 3340 Peachtree Rd., N.E., Atlanta, Ga. 30326

Member-At-Large, Executive Committee

Donald P. Kennedy, president, First American Title Insurance Co., 114 E. Fifth St., Santa Ana, Calif. 92701

Election of Abstracters and Title Insurance Agents Section Officers

By proper nomination and second, the following officers were unanimously elected for 1978-79:

Chairman—**J.L. Boren Jr.,** president, Mid-South Title Insurance Corp., 12 S. Main St., Box 432, Memphis, Tenn. 38101

Vice Chairman—**Glenn F. Kenney,** president, Surety Title Co., 2021 Eleventh Ave., Helena, Mont. 59601

Secretary—**Elizabeth Linker,** owner, Trenton Abstract Co., 910 Main St., Trenton, Mo. 64683

Executive Committee

Joseph W. McNamara Jr., president, Security Land Title Co., 1901 Harney St., Omaha, Neb. 68102

John D. Mennenoh, president, H.B. Wilkinson Co., 500 N. Cherry St., Morrison, Ill. 61270

Glenn Nichols, president, Abstract & Guaranty Co., 812 Manuel Ave., Chandler, Okla. 74834

Phillip B. Wert, manager, Johnson Abstract Co., 109 N. Buckeye St., Kokomo, Ind. 46901

Member-At-Large, Executive Committee

Floyd B. Jensen, president, Western States Title Co., 370 E. Fifth South St., Salt Lake City, Utah 84111

Firm Purchased

Lawyers Title Insurance Corp., Richmond, Va., recently acquired New Mexico Title Co., Albuquerque. New Mexico Title was a Lawyers Title agent. Charles S. Lanier and Frank J. Morrato will continue as New Mexico Title president and senior vice president/title officer, respectively.

State Insurance Depts—*(concluded)*

unshakable novel ideas of how our business should be run. There will be hearings Oct. 11 on the use of the comprehensive CLTA 100 Endorsement, especially Paragraph 3 of that endorsement. FNMA is interested in the protections that are given by that endorsement and we should have some assistance from them in trying to maintain the uniform use of a comprehensive endorsement in the title insurance industry. We are trying to avoid an endorsement that is drafted for Wyoming alone.

I am delighted to hear that the Standard Title Insurance Forms Committee is working on a joint protection readable policy. That would be delightful because the Wyoming department has said they will require a joint protection policy form even if it is not a uniform ALTA form. The department has given us the choice of using a joint protection policy or stopping the use of the simultaneous issue fee. Our only other alternative is to be put out of business in Wyoming. They can't see justification for our charge of $20-25 for just issuing another policy when they believe we could issue a loss payable endorsement to the owner policy. They will get more sophisticated as we continue to educate them. November elections aren't very far away and, perhaps we will see some new faces in the Wyoming department.

As I said, Dick Rottman is no longer the Commissioner in Nevada. Jim Waddhams, whom some of you may remember from the Nebraska department, went to Nevada several years ago, and is now the commissioner. Jim is also the chairman of the NAIC Title Insurance Task Force. He plans to call a meeting of the Task Force in Phoenix at the Zone VI NAIC meeting Oct. 26-27. Your NAIC Liaison Committee will be there and if any of you want to attend and see what really goes on in the Title Insurance Task Force, you would be welcome.

Friday I received a subpoena for Pioneer to provide someone to give testimony on controlled business in Arizona. I believe that hearing will be coming up Nov. 13.

I don't know the background of the inquiry because we just got the subpoena but, as Roy King said, controlled business is a hot item and it's going to hurt us everywhere the commissioner sees that it may be affecting our rates and our performance from a reverse competition standpoint.

I expect that we will soon have some problems in Montana. We've already been asked to justify the rates that we charge there. The regulator there has expressed interest in learning more about our industry. One of our problems will be with controlled business agencies there. We have heard reports that some agencies have been organized where only real estate brokers and agents are allowed to buy stock. The stock investment is a nominal $100, but the dividends are in proportion to business referred to the agency. I have been told that one investor in this agency, who perhaps invested $100, got a $28,000 return on his investment the first year. Gentlemen, if that is true, that's not investment. That's highway robbery and I think it will be seen as that by the insurance commissioner and will be harmful to us all.

The Colorado bureau filed for a rate increase and it was denied, even though we had some statistics and Dr. Plotkin had written a very persuasive report. The bureau decided not to appeal that denial or ask for a hearing, but rather to go back and gather more statistics and perhaps file for an increase next year.

As Roy said, if you don't ever ask for an increase, you're not ever going to get a chance to get one. We should not be upset when we ask for a rate increase and occasionally one is denied. We just have to go back, do our homework better and try again. I understand that Commissioner Barnes in Colorado has accepted the rate of return on total capital concept. He had told Irving Plotkin that he is delighted with the work Plotkin has done. In the future, where title insurance rating is concerned, the Colorado department will look at the rate of return on total capital concept as a measure of our profitability.

I did want to mention something that's coming up in Colorado because I don't think everybody knows about it and I think we should be aware of it.

The escrow rates changed by title companies in Colorado have not been regulated by the insurance commissioner. There has been some discussion of asking the insurance commissioner to take control of escrow rates because competition has driven down rates to the point where some of the independent escrow companies have said that we are using predatory pricing. In some cases, our competition with each other on escrow rates has driven the price down to zero. And, of course, the independent escrow companies, can't compete at that rate. That's the only fee they get to charge and they cannot make, operate and pay expenses on zero fees. I found out recently something very interesting. Under the regulations of the Colorado Real Estate Commissioner, the real estate agents are required to pay the escrow fees out of their commissions they handle. Well, whom do we direct our marketing to in Colorado? We're trying to get the business of our good customer, the real estate agent. Because he has to pay the fee, we lower the unregulated escrow fee until we are giving away our services. Gentlemen, that kind of activity is viewed by some observers of our industry as evidence that lender-pay will lower settlement costs.

If the person who is paying the bill and controlling the referral of business can drive the price down to zero, if we're going to be that self-destructive, then we can expect lender-pay to be tried. I suggest to you that we all need to consider these aspects of our industry when we determine what our practices are and we'd better keep a wary eye out for the regulator and the people in Washington, D.C., who enact laws affecting our business.

We're coming up to an annual rate review in Texas. Roy King told you that there is a movement afoot to get Texas to consider a rate of return on investment concept. We may be in for another small or medium sized rate decrease in Texas, unless we can convince the state board to accept rate of return on total capital as the measure.

In Oklahoma, the commissioner is attempting to gather information to see whether or not he needs to enforce an attorney general's opinion holding that title companies can't write a title insurance policy in Oklahoma unless they have an abstract prepared by a licensed Oklahoma abstracter and an attorney's opinion prepared by a licensed Oklahoma attorney. I don't want to comment on whether that's good or bad, but I can expect that we will see some regulatory activity along those lines.

In Louisiana, the problems have not been created as much by the regulator as by underwriters' fears that competition will bring the spotlight of attention on the rating bureau's activities. The rating bureau is working on the adoption of some kind of statistical system for use for rate justification when the question comes up in the future.

The Nebraska department has told us that they also will require a statistical plan. They have asked us to propose one; and the ALTA model plans in a simplified form have been prepared. The commissioner appointed an industry advisory committee and it hired Nelson Lipshutz's Regulatory Research Corp. to work with the department on the development of a statistical and financial plan.

The one thing Nebraska seems hell bent to do is to require an allocation of all of our operating expenses and loss and loss adjustment expenses to search and abstract, to title and to other. Gentlemen, if you can tell me how to allocate a salesman's car expense to those areas, I would be grateful. It can only be on some arbitrary basis. Lipshutz is working hard to try to get that arbitrary allocation written out of the proposed plan, but we may have to allocate for a while to show how ridiculous it is.

The last state I will discuss is one perhaps I shouldn't discuss because no title insurance company is qualified to do business there. That is Iowa. I do think everybody should be aware that in Iowa the criminal code has been changed and doing an unauthorized insurance business in Iowa may now be tantamount to a felony. That means if an underwriter enters the state by mail, telehone or physically to solicit Bankers Life for a shopping center that you know they're financing in Champagne, Ill., or in Boca Raton, Fla., he may be doing business in Iowa and he may get arrested and fined and imprisoned.

Regulation for our industry is active across the country. We've got to look at it responsibly. We have to expect it. We have to anticipate it. Your NAIC Liaison Committee is watching the directions regulation is taking and will keep you informed.

Blankespoor—*(concluded)*

training sessions on improvement of county recordation functions.

Overall, I think you will agree we have taken the Section 13 mandate very seriously by conducting a comprehensive research program. Implicit in this broad undertaking is the recognition that we are dealing with a complex problem which has no single solution. Not only does the problem have legal, institutional and political components, but also the wide array of state and local environments requires multiple remedies. I can assure you that we have no intention of imposing a federal solution. Rather we intend to help develop and suggest innovations of various types to benefit whatever recordation system is chosen at the local level. If we have any preference, it will be for those systems offering taxpayers and consumers the greatest potential cost savings with the least reduction in benefits.

On that truism I will conclude my remarks. Thank you very much for inviting me to speak to you today. I will now be happy to answer any questions you have.

Forms—*(concluded)*

could be interpreted that way and it could be pretty dangerous.

An unidentified speaker from the floor: Marvin, may I ask you, is it implicit in the committee recommendation that, like the zoning endorsement that was approved by ALTA, these numbered paragraphs may be included or deleted as the company's underwriting standards require and still be able to call it ALTA Endorsement Form 4?

Bowling: I don't believe so. I don't think you could delete or change anything and call it ALTA Endorsement Form 4.

An unidentified speaker from the floor: So it is different from the zoning endorsement which, when passed, allowed for some changes in the affirmative insurances as to square footage or parking spaces.

Bowling: I don't believe it did. It has some blanks to fill in that you would copy from the zoning endorsement, but as far as the coverage in a completed building was concerned, there were no choices.

McConville: Are there any other questions? You've heard the motion and the second which is that the American Land Title Association select the second paragraph 3 being the committee's recommendation as part of this condominium endorsement. *(The second paragraph 3 was approved by a vote of the active members in attendance.)*

McConville: We will now vote on the condominium endorsement with the second paragraph 3 in it. Is there a motion to adopt? *(Whereupon a motion to adopt was made and seconded.)*

McConville: Any discussion on the endorsement as a whole?

An unidentified speaker: It says insures against loss or damages by . . . Shouldn't that be "by reason of"?

McConville: Yes. We'll make that typo change as we print these. Are there any other questions or comments? *(A vote of the active members in attendance was taken and the condominium endorsement approved.)*

Federal Legis. Action—*(concluded)*

So the pitcher wound up again, and that ball came in and smacked that glove, and the umpire called, "Two."

The batter turned around and said, "Two what?"

The catcher stood up and said, "Two what?"

The umpire said, "Too close to call."

Some of these legislative efforts appear to be too close to call, but if we'll support the legislative efforts and program of our industry through this Association, if we'll support TIPAC and every member will give his and her individual support, then I think we can call them our way.

Energy—*(concluded)*

Since then, for nearly 18 months, Congress has been struggling with this legislative issue. Whatever the form of the legislation that emerges, we must recognize that it will not be final, but rather the first step in an evolutionary process. The speed of this process will be in proportion to the growth in public understanding of the realities of energy.

An understanding grows, needed steps that can't be achieved now may become feasible. The legislative and regulatory climate may become more conductive to finding and developing new energy supplies from a wide variety of sources. The obstacles that now stand in our way can be overcome if we as a nation are willing to make the tough choices in the short-term to promote the long-term economic health and security of our country.

By so doing, we can reduce our heavy dependence on imports, which is the Crisis Present, and overcome obstacles which may retard our needed energy transition, thus averting the Crisis Future.

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Consultant Traces RESPA Research Picture . . . . . May
Executive Committee Meeting Recap . . . . May
First American Offers New Limited Policy . . . . . February
FNMA's Murray Discusses the Title Industry and FNMA's New Programs . . . . . May
Form 9 Study Shows Industry Broke Bleak Streak in 1976 . . . . . March
Former Minnesota President Dies in Florida . . . . . February
Government Relations Committee Report . . . . . January
Housing Outlook Remains Bright . . . February
HUD Will Issue RESPA Section 13 Request for Grant Applications . . . . . May
Indian Claims Are Congress' Responsibility . . . . . May
In-house Printing Offers Savings With Some Worries . . . . . April
James Macneil, Ticor Officer, Dies at 58 . . . . . August
Joint/Shared Plants: A Checklist of Basic Guidelines . . . . . August
Journalists Receive ALTA-Realtor Recognition . . . . . December
Knowing One's Operation Is First Rule in Settlement Automation . . . . . August
Land Title Institute Incorporated . . . . . August
Mashpee in Retrospect: Whose Responsibility? . . . . . May
McConville Featured in Network Interviews . . . . . March
Members to Vote on ByLaws Change . . . . . May
Members to Vote on Proposed ByLaws Amendments at Convention . . . . . July
Memphis Television Show Focuses on Title Insurance . . . . . July
Microfilm—An Answer to Record-keeping Woes? . . . . . August
Mid-Winter Conference to Meet in Crescent City . . . . . December
Minicomputer Loan Closing: A Case Study in Efficiency . . . . . August
NELTA Joins ALTA to Sponsor Spring Seminar . . . . . December
New ALTA Leaders Sworn in at Convention . . . . . October
New Developments in Unauthorized Practice Cases . . . . . January
Ohioans Offer Title Technology . . . . . August
PACs—Force in a Collective Voice . . . . . May
Perspective on the Value of Title Insurance . . . . . March
Plant Types: A Narrowing Field . . . . . August
Potential Benefits of Plant Automation Assessed . . . . . August
President's Report . . . . . January
Problems—Title Plant Evaluation, Expense and Capitalization; Unearned Premium Reserve and Tax Deductibility . . . . . January
Proposal to Automate Requires Advance Study . . . . . August
Pros and Cons of Building a Title Plant are Numerous . . . . . August
Public Relations Committee Report . . January
Question of Automation Has No Pat Answers . . . . . August
Railroad Claim Problems . . . . . January
Recent Court Rulings Reported . . . . . October
Reinsurance Committee Report . . . . . January
Research Committee Report . . . . January
RESPA Dissected at ALTA Seminar . . . . . November
RESPA Section 8 As Seen By Justice . . . . May
Rhodes Points the Path into the Political Vineyards . . . . . May

Smoothing the Cyclical Bumps in the Housing Market . . . . . May
Speakers Emphasize Participation in Government . . . . . May
State Association Conventions
Arkansas . . . . . September
California . . . . . September
Colorado . . . . . September
Florida . . . . . February
Idaho . . . . . September
Iowa . . . . . August
Michigan . . . . . September
Minnesota . . . . . October
Nebraska . . . . . December
Nevada . . . . . January
New England . . . . . August
North Carolina . . . . . July
Oklahoma . . . . . July
Oregon . . . . . September
Pennsylvania . . . . . September
Texas . . . . . June
Utah . . . . . October
Washington . . . . . September
Wyoming . . . . . September
State Association Presents a "Title Recital" . . . . . September
Success Sets Tone of 1978 ALTA Annual Convention . . . . . November
The Federal Government's Role in the Land Title Industry . . . . . January
The Federal Insurance Act of 1977 . . . January
The Great Indian Uprising . . . . . January
The Title Industry: White Papers, Volume II
Chapter 1—Indian Land Claims: A Profile . . . . . March
Three Possible Automation Levels Explored . . . . . August
Ticor Title Insurers Enter Home Protection . . . . . December
TI Donates Photo Collection to California Historical Society . . . . . July
TIPAC Report . . . . . January
Title Industry Breaks Billion Dollar Barrier . . . . . December
Title Insurance Forms Committee Report . . . . . January
Update: RESPA Section 13 Activity . . . January
USLTA—ULTA Perspective . . . . . January
Washington Profile: An Interview with Rep. Edward W. Pattison (D-N.Y.) . . . . . April
Washington Report . . . . . January

Stillwell tops Dixie Roster

The new officer roster for the Dixie Land Title Association is headed by Howard L. Stillwell Jr. of Pioneer National Title Insurance Co., Atlanta, Ga., who was elected president at the annual convention in Callaway Gardens, Ga. David E. Wicker, Title Insurance Company of Minnesota, Atlanta, Ga., was elected vice president.

Representing ALTA at the meeting was J.L. Boren Jr., who is chairman of the ALTA Abstracters and Title Insurance Agents Section.

Indiana Elects Officers

Indiana Land Title Association Immediate Past President Betty Rutan presents the Presidential gavel to H.R. Caniff Jr., newly elected ILTA president. Lenore Huls Stemply and John E. Monahan were elected first and second vice president, respectively. Other officers include William S. VanBuskirk, secretary-treasurer and Julie A. Detterman and Keith H. Lyons as members of the board of directors.

Mid-South Awards Scholarship

James L. Boren Jr., president and chief executive officer of Mid-South Title Co., Inc., Memphis, Tenn., (right), converses in his office with Robert E. Orians, who is this year's recipient of the $4,000 Vanderbilt University Law School scholarship awarded annually by Mid-South Title. The company established the scholarship in 1960 to cover the first-year tuition costs at Vanderbilt for students chosen from the Memphis area. Orians, a 1976 recipient of the National Football Foundation and Hall of Fame Scholar Athlete Award, maintained a 3.6 (out of a possible 4.0) grade point average while playing as a star defensive back for the Memphis State Tigers. He is a 1977 graduate of Memphis State University.

Crandall Is Nevada's President

Newly elected president of the Nevada Land Title Association is Harold W. Crandall Jr., Transamerica Title Insurance Co., Reno. John Woods, Title Insurance and Trust Co., Las Vegas, and Robert M. Bowen, First American Title Co., Reno, will serve as vice president and second vice president, respectively. Terry Wright, Chicago Title Insurance Co., Las Vegas, is secretary-treasurer.

Among the speakers at this year's convention held in Incline Village were James L. Wadhams, Nevada Insurance Commissioner; Oscar H. Beasley, vice president and chief title counsel, First American Title Insurance Co.; Erich E. Everbach, vice president and associate senior underwriting counsel, Pioneer National Title Insurance Co., and Gary L. Garrity, ALTA director of public affairs.

The Role of Title Insurance In New England Conveyancing

A Title Insurance Seminar Sponsored by the American Land Title Association
In Cooperation with the New England Land Title Association
9 a.m. to 5 p.m., April 21, 1979, Dorothy Quincy Suite, John Hancock Hall, Boston, Mass.

Topics and speakers:

History and Growth of Title Insurance—*Oscar H. Beasley*
Vice President and Title Counsel
First American Title Insurance Co.
Santa Ana, California

Title Insurance Coverage—*Marvin C. Bowling Jr.*
Senior Vice President and General Counsel
Lawyers Title Insurance Corp.
Richmond, Virginia

Robert T. Haines
Vice President and General Underwriting Counsel
Chicago Title Insurance Co.
Chicago, Illinois

Use of Title Insurance by the Lender—*Albert E. Saunders Jr.*
Associate General Counsel
Phoenix Mutual Life Insurance Co.
Hartford, Connecticut

Use of Title Insurance by the Practicing Attorney—*Phillip J. Nexon*
Attorney at Law
Goulston and Storrs
Boston, Massachusetts

Title Claims—*Lawrence F. Scofield Jr.*
Eastern Claims Counsel
Pioneer National Title Insurance Co.
Boston, Massachusetts

Registration fee of $65 per attendee covers meeting costs, handbook and lunch.
Send names and addresses of registrants and remittance, made payable to American Land Title Association, to:
American Land Title Association
Suite 705, 1828 L Street, N.W.
Washington, D.C. 20036

Construction of Lawyers Facility Begins in Spring

Ground will be broken this spring for the new Lawyers Title Insurance Corp. headquarters facility in Richmond. Va. Completion of the six-story, 132,000 square feet building is anticipated in the late fall of 1980.

The building will be constructed in Brookfield, a Richmond office and hotel complex, where it will be situated on a 6.5-acre site.

Robert C. Dawson, president and chief executive officer, said, "The continued expansion and growth of our business placed increasing demands on our staff and facilities. Studies of the expansion of our existing building indicated that it would crowd the site and compromise the architectural design and scope of our present facilities."

Lawyers Title will occupy more than one-half of the new building with the remainder available for tenant occupancy.

Lawyers Title is the fifth affiliate of Continental Financial Services Co. to locate in Brookfield—the location of the holding company.

Stanley Elected President of Palmetto Group

Ernest H. Stanley Jr. of Lawyers Title Insurance Corp., Columbia, was elected president of the Palmetto Land Title Association (South Carolina) at its recent convention on Hilton Head Island. Other officers elected were Carroll M. Pitts, vice president; P. King Holmes, treasurer, and Henry B. Fishburne, secretary. Pitts is with the law firm of Roddey, Carpenter and White in Rock Hill and Fishburne is with the Charleston law firm of Sinkler, Gibbs and Simons. Holmes is vice president of South Carolina Title Insurance Co., Columbia.

WLTA Officers Elected at Meeting

Wisconsin Land Title Association officers and Board of Directors members for 1978-79 were elected at the WLTA annual convention in Green Bay recently. Pictured bottom row, left to right: Walter Ekum, Monroe, president-elect; David Duchac, Antigo, president, and Willis Foster, Eau Claire, to the board. Top row, left to right: John Duffy, Hayward, to the board: Roger Ernst, Rhinelander, regional board member, Theodore W. Schneider, Kenosha, secretary-treasurer, and Gerald Ostreng, LaCrosse, regional board member. Not pictured are board members Leonard Donohoe, Milwaukee, and William Abraham, Wausau, and Arnold Vogel, West Bend, regional board member.

D.C. Title Officers Sworn In

Newly elected District of Columbia and Metropolitan Area Land Title Association officers sworn in by ALTA Executive Vice President William J. McAuliffe Jr. (at podium) are left to right: Douglas A. Dykas, Columbia Real Estate Title Insurance Co., Washington, D.C., secretary; Ronald G. Maurice, Chicago Title Insurance Co., Waldorf, Md., treasurer; William Murdock, Columbia Real Estate Title Insurance Co., Washington, D.C., vice president; Bernard F. Goldberg Jr., Lawyers Title Insurance Corp., Bethesda, Md., assistant secretary, and John P. Cooney, Chicago Title Insurance Co., Washington, D.C., president.

Names in the News...


John Goode


Russell Jordan

James K. Merrihew Jr. has been promoted to vice president and **Michael L. Stephens** has been elected assistant secretary for Title Insurance Co., Mobile, Ala. Merrihew is the firm's underwriting and agency representative for Alabama and Stephens supervises the research department.

James E. O'Keefe has been promoted to vice president-personnel director for First American Title Insurance Co., Santa Ana, Calif. O'Keefe also is responsible for company relations with state insurance commissioners and will continue as vice president-pricing.

Frederick M. Clark and **Frank W. Feoranz** have been appointed vice presidents and branch managers for Commonwealth Land Title Insurance Co.'s Providence, R.I., and Summit, N.J., offices, respectively.

Commonwealth also announced two appointments for its Morristown, N.J., office. They are **Edward J. Angelica,** assistant vice president and manager, and **Thomas Mulligan,** title officer.

Donald R. Connaway has been appointed vice president and Texas state manager for American Title Insurance Co., Miami, Fla. He also will direct the operations of Texas Title Guaranty Co., Inc., an American Title subsidiary.


John Heithaus


Donald Connaway


Conrad Rebillot


Joseph Allison

USLIFE Title Insurance Company of New York recently announced promotions of two officers and the appointment of a customer representative for its Westchester County office in White Plains, N.Y. They are **Caroline Pagnott** to assistant vice president and assistant office manager; **Paula Glauber** to assistant vice president and sales manager, and **John Heithaus** as customer representative.

John H. Gray has joined USLIFE Title Insurance Company of Dallas as controller.

Lawyers Title Insurance Corp., Richmond, Va., has announced the following promotions. They are **John Goode** to vice president and assistant general counsel; **Conrad J. Rebillot** to vice president and director of research and development; **Russell W. Jordon III** to counsel, and **John R. Blanchard** to assistant controller.

Joseph M. Allison has been elected assistant vice president-sales and **Donald S. Allen** has been named manager for the Lawyers Title Reno branch office. Allison, a past president of the Nevada Land Title Association, has been in the title industry 42 years.

Roy L. Stover, assistant vice president, has been appointed subdivision sales manager for Title Insurance and Trust Co.'s special title operations. In his new position, Stover will be responsible for all TI subdivision sales and marketing activities throughout Los Angeles County. He has been with TI 32 years.


Roy Stover


Paula Glauber


John Blanchard


Caroline Pagnott

Fidelity's Omaha Office Purchased

Security Land Title Co. has purchased the Omaha, Neb., office of Fidelity National Title Insurance Co., Denver, Colo.

According to Joseph McNamara, owner of Security, the resulting combination will be the area's largest firm specializing in title insurance, abstracting, escrow and real estate closing.

Security will be an agent for Fidelity in the Omaha, Neb., area as well as continuing as agent for First American Title Insurance Co., Santa Ana, Calif.

New Mexico Elects Officers

Newly elected president of the New Mexico Land Title Association is P.C. Templeton, First American Title Co., Albuquerque. Jane H. Gragg, National Title Co., Albuquerque, and Charles F. Headen, Security Title Co., Socorro, were elected first and second vice presidents, respectively. Glenn F. Schwerin, Chicago Title, Albuquerque, was appointed secretary-treasurer.

Calendar of Meetings

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

May 3-5, 1979
Texas Land Title Association
Hilton Inn
Austin, Texas

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

May 17-19, 1979
Arkansas Land Title Association
The Inn of the Ozarks Convention Center
Eureka Springs, Arkansas

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

May 18-19, 1979
New Mexico Land Title Association
The Inn at Loretto
Santa Fe, New Mexico

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

June 7-9, 1979
Tennessee Land Title Association
Holiday Inn Rivermont
West Memphis, Tennessee

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 14-17, 1979
Illinois Land Title Association
Playboy Resort
Lake Geneva, Wisconsin

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
Michigan Land Title Association
Boyne Highlands
Harbor Springs, Michigan

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 9-11, 1979
Montana Land Title Association
Sheraton Inn
Great Falls, Montana

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 7-9, 1979
Missouri Land Title Association
Sheraton St. Louis Hotel
910 North Seventh Street
St. Louis, Missouri

September 8-11, 1979
Indiana Land Title Association
Sheraton West
Indianapolis, Indiana

September 9-11, 1979
Ohio Land Title Association
Sawmill Lodge
Huron, Ohio

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

September 13-15, 1979
North Dakota Title Association
Jamestown, North Dakota

September 19-21, 1979
Nebraska Land Title Association
Holiday Inn
Columbus, Nebraska

September 25-28, 1979
New York State Land Title Association
Kutsher's Country Club
Monticello, New York

September 26-28, 1979
Wisconsin Land Title Association
Pfister Hotel
Milwaukee, Wisconsin

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 19, 1979
Nevada Land Title Association
Hyatt Lake Tahoe
Incline Village, Nevada

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

November 15-17, 1979
Florida Land Title Association
Bahia Mar Hotel & Yachting Club
Ft. Lauderdale, Florida

December 5, 1979
Louisiana Land Title Association
Royal Orleans
New Orleans, Louisiana

American Land Title Association

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