JUNE 1979

Title News

In This Issue: Business Promotionals Can Be Fun and Educational

a message from the Executive Vice President

Dealing with immediate challenges such as federal intervention and attempts by bar groups to unfairly monopolize settlement business can make it easy to overlook other important ALTA activities not currently defined as crises. There is no better example in point than the highly cost effective ALTA Public Relations Program.

Each year, the Association Public Relations Committee and staff develop and carry out communications activity that favorably identifies ALTA members and their services before an ever-changing national audience of consumers and opinion leaders. Most of this work is preventive in nature and success is measured in problems that are avoided. Better appreciation of what is being accomplished can be realized by imagining the effect of millions of misinformed and angry consumers, demanding legislative and regulatory action against the title industry at the federal and state levels.

Although communication professionals generally agree that ALTA enjoys one of the most effective public relations programs of any trade association regardless of size, the Public Relations Committee and staff typically carry on their activity with little internal fanfare. Perhaps their low key approach is consistent with the public service format applied in the Public Relations Program to win large amounts of free air time for ALTA messages from coast to coast.

Competition for free public service air time has greatly intensified in recent years but ALTA has proved more than equal to the challenge. To illustrate, the Association this spring sent a package of creative public service radio spots to stations throughout the country. These PSAs use an entertaining format to emphasize the need for home buyer precautions against land title hazards and suggest writing ALTA for free information on the subject.

The announcements were well received. The ALTA package was accepted for broadcast—in free air time—by the Mutual Broadcasting System (more than 800 affiliated stations), by the Associated Press Radio Network (665 affiliated stations), and by hundreds of additional local stations.

Feedback from radio personnel has been uncharacteristically enthusiastic. Comments to send more and keep up the good work have been coming in steadily. Several station personnel described the spots as some of the best public service material they have ever seen and reported good reaction from their listeners. One station executive said the ALTA spots are the only ones he can recall where listeners request that they be played on the air—just as with a popular recorded song. More details on this impressive radio campaign will be reported in the next issue of *Title News.*

The bottom line of this acceptance is repeated broadcast of the PSAs to millions nationwide during the spring and summer months.

Despite these and other achievements, the ALTA Public Relations Program—with its relatively limited financial resources—cannot by itself achieve the formidable objective of keeping millions of home buyers and opinion leaders adequately informed regarding land title protection. Public relations activity is needed, all year long, from affiliated title associations at the state level and individual title companies locally. There has been encouraging response from affiliates and members in recent years and this must continue if a favorable climate of public opinion is to continue for the benefit of the entire industry.
Sincerely,

William J. McAuliffe Jr.

William J. McAuliffe, Jr.

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Editor: R. Maxine Stough

Title News

VOLUME 58, NUMBER 6

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Board Game Promotes, Educates and Entertains

Any title person who has been accused of "ripping off the public" or who has been set upon by a malcontent complaining about his casualty insurance policy knows that the public needs a lesson in title insurance.

First American Title Insurance Co., Santa Ana, Calif., recently created a business development tool which, while promoting the company name, explains title insurance to consumers in an amusing way.

"Anything that the industry can come up with that explains title insurance and its value, and that's fun at the same time, is a valuable tool."

It is a board game called *The Search,* which reminds you of rainy afternoons spent as a kid in marathon Monopoly games. Not surprisingly, the game has enjoyed enthusiastic reception in First American's local offices and now is in distribution to the public.

The company's advertising director, Olive Marrical, reports that *The Search* has proved to be an excellent promotional and educational device.

"Anything that the industry can come up with that explains title insurance and its value, and that's fun at the same time, is a valuable tool," Marrical said. "The industry needs to do a better educational job. Previously, we have concentrated on educating builders, lenders and others connected with real estate, but overlooked consumers, legislators and state regulators.

After a player marches his playing piece through the "stumblingblocks and steppingstones to home ownership," represented by squares on the playing board, he will have a much clearer idea of what is involved in a title search and what role the title company plays in a real estate transaction.

Two to six players may take turns rolling the special, eagle-imprinted dice and compete for "The Nest" on "Happiness Hill." The eagle is First American's corporate symbol.

Stopping on a square marked "divorce check" or "court judgment affecting title" will cost a player one step backwards. He loses a turn if he lands on a spot marked "right of way encroachment" or "boundary dispute with neighboring home owner."

Arriving on a square signaling "improper legal description of property" will send the player reeling back to "Horrible Bog." But rolling a double eagle (eagle eyes) allows him to advance to the next eagle space, avoiding any title defects in his path.

When First American distributed the game to its local managers, it suggested they use it in real estate or escrow classes.

The San Diego office of the company ordered 1,200 of the initial 5,000 printed. The company's Massachusetts office took the game to a meeting and it proved to be a popular item with attorneys in attendance.

(Continued on page 14)

LANDEX®: Seven New Installations.

If you're looking into title-plant automation and wondering if it's time to computerize your own plant, you may find a clue in the current increase in LANDEX purchases by new owners and old.

LANDEX is the on-line minicomputer system for automating title plants. Five new systems are being installed in California. Two others are going into states new to LANDEX — Oregon and Washington.

Four of the seven will serve joint plants. One will serve three counties.

All told (counting new systems, old systems, and joint plants), 41 title firms in nine states have looked into automation and decided to purchase LANDEX.

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RESPA at Mid-Point

Following is a reprint of remarks made at the 1979 ALTA Mid-Winter Conference by Cynthia Lewis, director of the Department of Housing and Urban Development Real Estate Practices staff. Lewis made a progress report on Real Estate Settlement Procedures Act (RESPA) activity.

Because many of our current program activities involve a review of the knowledge and experience gained since the amended Real Estate Settlement Procedures Act (RESPA) went into effect in 1976, I'm going to entitle my address, "RESPA at the Mid-Point." It's also time for a look ahead, because we are planning for the congressionally mandated report to Congress in 1980.

As part of our review, last year we published an Advance Notice of Proposed Rulemaking. It was the first opportunity for the public to comment officially on the current RESPA regulations and procedures since they have been in actual use. We received 370 comments. Most of them were from financial institutions, although we did hear from some title companies, from lawyers and from other professionals in the field. And, of course, we received a detailed official comment from ALTA.

We have found the comments to be extremely valuable in identifying problem areas. As a matter of fact, we received some letters complaining about procedures we do not even require. For example, one lender in Texas complained that it is hard to make sure that the borrower receives the settlement statement in the mail at least one day in advance of settlement. We quickly let him know that he was being too zealous. All he need do is have the statement available for inspection in his office. I think he was a little surprised to get a call from Washington informing him that he *did not* have to do something.

Generally, the comments we received fall into several categories:

- The good faith estimate is considered to be a useful tool. It has been adopted by lenders as an integral part of the real estate loan application and settlement process. We are not contemplating any changes in the requirements.
- The Special Information Booklet which the lender is required to give to the borrower at the time of loan application is generally viewed as well written and useful to consumers who want detailed and technical information on the settlement process. However, many commentators note that the borrower receives the booklet too late in the process to take advantage of the information on shopping. While there were many suggestions on alternatives, this timing is prescribed in the legislation and we do not intend to recommend any amendments at the present time.

As far as the content of the booklet is concerned, we agree that it probably contains more technical information than is needed by most consumers. Although much of the content of the booklet is required by the legislation, we are planning to produce a simplified version of the booklet for dissemination and we will make the full version available to those who get in touch with us.

We received a strong call from the title industry for a clarification of Section 8 through the use of examples, hypotheticals, and official staff interpretations. We are exploring ways to disseminate more such information within the constraints set by the Department of Justice.

We asked, in the advance notice, for comments on Section 9 of the legislation, which deals with the selection of the title insurance company. You may be interested that the majority of the comments came from lending institutions. They expressed a misapprehension about the provisions of the legislation, by assuming that the borrower controls the selection of the title company. This, clearly, is a situation which can be remedied by an educational campaign and does not require any specific regulatory action.

We are now in the final stages of our evaluation of the comments. We are preparing recommendations for further action by the department. I think you have some idea of our approach from the examples I have just shared with you. Suffice it to say that because of the proximity of the congressional report, we will not recommend any actions which require an amendment to the legislation, nor do we anticipate any substantive changes in the regulations. But we may fine tune the regulations—particularly if we can clarify or simplify them. And, of course, we will give you plenty of notice and an opportunity to comment when any proposed changes are published in the *Federal Register.*

That brings me to the research. I know that the ALTA staff has done an excellent job of informing the membership on these projects, but let me refresh the memory of those who may not be tracking it so closely.

Section 13 of RESPA directs HUD to "establish and place in operation demonstrations of model title recordation systems. These systems will be designed to facilitate and simplify land transfers and mortgage transactions and reduce the cost thereof." In September 1977, the management consulting firm of Booz, Allen & Hamilton was awarded a contract to act as consultants to HUD on this project.

The products of Phase 1 are being prepared for publication. They include a state-of-the-art report, a report on legal constraints affecting land title recordation procedures, a report on legal and other constraints affecting registration or Torrens systems, and a report on the role of mapping and surveying in modernization of land title records. As you may know, ALTA is represented on the advisory board to the project. We have found Bill McAuliffe's comments on these publications most helpful.

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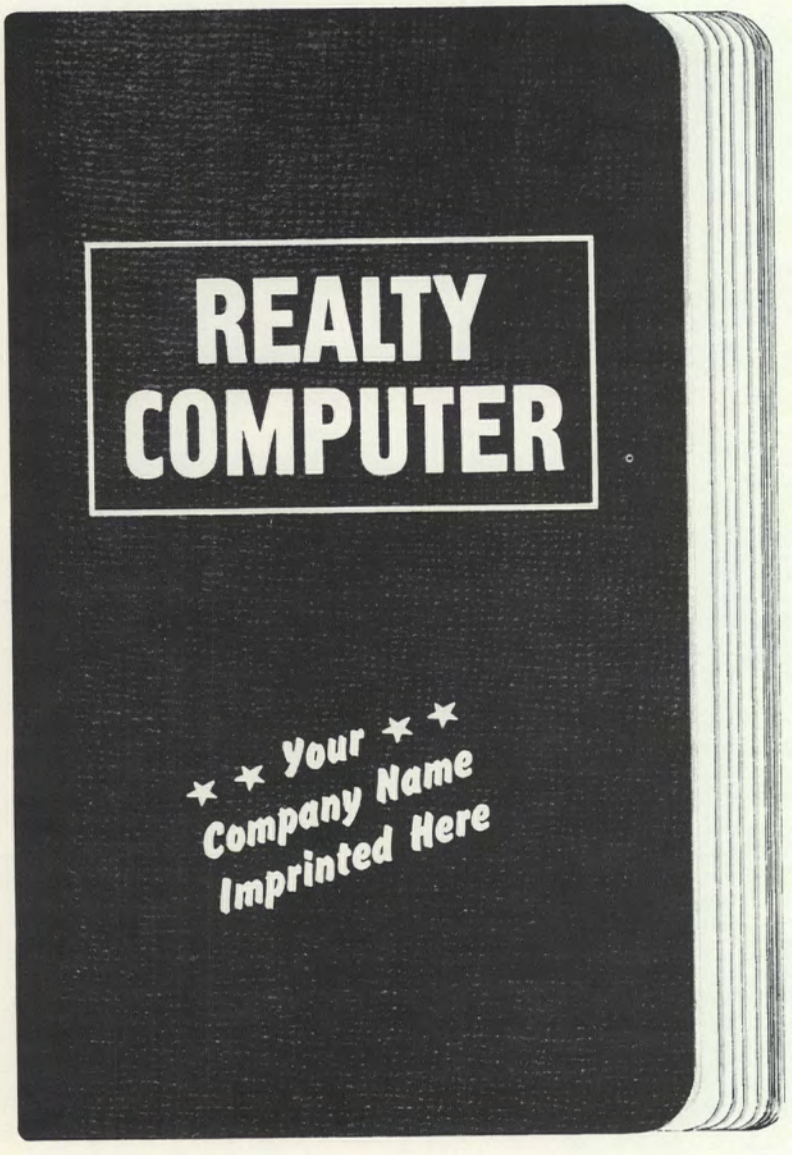

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Five jurisdictions have received grants totaling $1.8 million to demonstrate model systems of land title recordation and registration. With more than 60 jurisdictions applying, we tried to pick the most promising demonstrations and attain some geographic diversity. The sites are located in Ohio, Arizona, North Carolina, Missouri and Massachusetts. (The Massachusetts demonstration involves a Torrens system.)

As mentioned in the March *Capital Comment,* we recently issued a new Request for Grant Application (RFGA) in order to elicit an additional model Torrens or land title registration demonstration. Applications do not close until the middle of April so I don't know how many jurisdictions are interested in the project. We hope to fund one, two or three demonstrations. I'm sure you'll be hearing more about these in the near future.

As I mentioned before, Section 14 of RESPA mandates a report to Congress by 1980 that evaluates RESPA, and recommends further congressional action, if necessary. Congress also asked that certain specific items be included, such as an evaluation of the lender-pay concept and direct regulation. The consulting firm of Peat, Marwick & Mitchell has been selected to conduct this research. Data collection efforts already have begun.

In dealing with the first part, how well RESPA is working and how it can be improved, the contractor will describe and analyze the real estate settlement process as it now operates in different parts of the country. The questions to be answered include: What are the roles of the various providers of services? How are they selected? How do they interact? What is the relationship between the provider and the consumer?

The second task will be to look at the advance disclosure process. Is it helpful? Do consumers receive accurate information in a timely manner? Do they read and understand the booklet? Do they shop?

The contractor will, as far as possible, assess compliance with other sections of RESPA such as Section 8 which prohibits kickbacks and unearned fees; Section 9, which prohibits sellers from requiring that purchasers use a particular title company, and Section 10, which limits escrows.

The contractor will measure the impact of RESPA on the consumer and on the industries involved. For example, the study will compare current settlement costs with similar data from 1972. An attempt will be made to appraise the cost of compliance with RESPA to consumers and to settlement service providers.

Finally, under this section, the contractor will recommend alternative means of strengthening and improving RESPA. In order to do this, he will have to conduct an analysis of the incidence and effect of business tie-ins and controlled business relationships on settlement costs and practices. Also he will analyze the effect of current laws and regulations on these relationships.

Issue Number 2 deals with the potential benefits and problems of such alternatives to RESPA as lender-pay and direct regulation. This part of the study includes a legal and economic investigation and analysis of the competitiveness of the mortgage market and settlement service markets. It will identify any constraints which inhibit free competition. The contractor will assess the rates charged for various settlement services, how such charges are determined, and whether government or industry groups establish minimum or maximum prices, rates, fees or schedules. The roles, practices and degree of competitiveness of the four major settlement service providers— attorneys, lenders, title insurance companies and real estate brokers— will be studied in depth.

We don't, of course, have any idea what the results of the research on lender pay will be. But, let me assure you that those of us at HUD with responsibility for preparing the recommendations to Congress have no preconceived notion as to whether the concept would be workable or effective in reducing costs to the consumer. We were asked by Congress to explore this alternative and are doing so in our best way.

In terms of new initiatives in enforcement and compliance, I know that the title industry is particularly interested in interpretations of Section 8 of the statute, which deals with kickbacks, referral fees and controlled business relationships. In the past two years, we have referred quite a few cases to the Department of Justice for prosecution, but no indictments have been handed down so far. We are discussing with senior HUD officials ways to speed up the process and will shortly meet with Justice attorneys to ascertain the status of the pending cases. In the meantime, we are working with ALTA staff on some hypotheticals which we hope to get through Justice and out to the industry in the near future.

We also are reaching out to the states to aid us in achieving the RESPA goals. As some of you may know, the West Virginia attorney general's office has proposed a rule which would abolish the "required title examiner system" employed by some lenders in that state. The objective of the proposed rule is to afford borrowers the freedom to select the person or organization who will perform title work incident to their home purchases. It is anticipated that this rule will foster competition among title examiners and thereby reduce costs to borrowers.

The department submitted a favorable comment on the rule. We believe that its concept is consistent with RESPA. Both seek to reduce settlement costs by encouraging consumers to shop for settlement services. While the West Virginia proposal is not final, we believe that it is indicative of the type of action that progressive state officials can take to reduce settlement costs. We provided technical assistance to West Virginia and found it to be a very worthwhile expenditure of our staff time. We believe that, in many cases, state action is more effective and preferable to federal action.

If you are aware of any officials in your state who you believe may be interested in discussing settlement costs, we would like to hear from them. Please let them know that we are interested and receptive.

The final initiative I would like to discuss today is our consumer education program. We're very excited about this program since we firmly believe that a sophisticated consumer is the key to lowering settlement costs. I am pleased to say that the department agrees with us and the RESPA program is a priority for the office of public affairs for this fiscal year. We're presently in the planning stages, so I can't quote chapter and verse, but let me run through our needs list.

In addition to a simplified version of the information booklet we will produce a series of two-pagers which will include an explanation of the terms and procedures used in the settlement process, a short description of the program, and a checklist for buyers and sellers. When we have the materials ready for dissemination, we will mount a public awareness campaign which may include TV and radio spots, newspaper and magazine articles and other means of publicizing the program and informing people that these materials are available.

As part of this effort, we are compiling a bibliography of consumer education materials on real estate and settlement which are available at little or no cost. We will ultimately publish this listing which, of course, will include consumer publications by the title industry. We have asked ALTA Director of Government Relations Mark Winter to collect samples for us and if you have not already sent him yours, please do so or send them to us directly.

We also are planning an industry education campaign. All of you should have received a copy of our listing of common errors made in completing the Uniform Settlement Statement. These were collected from a small random sample of HUD-1 forms received in our office. It is clear from our review of these and other samples, from the questions we receive from professionals, and from the audits conducted by HUD and the bank regulatory agencies that many mistakes are made in filling out these forms. We believe that a good proportion of RESPA violations are committed because of a misapprehension as to the requirements of the statute. In order to alleviate this problem, we hope to publish a periodic bulletin for the industry which will disseminate information on interpretation of RESPA, court cases and decisions, status reports on the research, and other happenings of note. It may be a while in coming because I understand we must get clearance from the Office of

(Continued on page 14)

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ALTA Judiciary Committee Reports Court Decisions

Editor's note: Following is the first Judiciary Committee Supplement to *Title News*, representing 40 cases of the 100 submitted this year for publication by ALTA Judiciary Committee Chairman Ray E. Sweat. The balance of the cases will be presented in another supplement.

Abstracts and Abstracters

Williams v. American Title Insurance Co. 269 NW2 481 M9CH 1978

An abstracter certified an abstract of title as complete although it lacked reference to a recorded deed for a portion of the premises. The omitted instrument was a conveyance to a county road commission. Relying on the incomplete abstract, an attorney gave a "clean" title opinion upon which land contract vendees relied in purchasing the premises. Accompanying the title opinion was an attached sheet of "boiler plate" caveats including a warning to inquire whether street widening was contemplated. The land contract vendees formed a solely owned corporation to which they leased the premises for restaurant purposes. The road commission then evicted the corporation from the questioned part of the premises. The corporation and the land contract vendees sued the abstracter and recovered a judgment for money damages.

On appeal, the measure of damages was at issue. Also litigated was whether there was reasonable reliance on the abstracter's negligent misrepresentation in view of the vendees' failure to make the inquiries recommended by their attorney.

The Court of Appeals affirmed the trial court in establishing damages as "the difference between the actual value of the property at the time of the contract and the value it would have had if the representations had been true." For lack of a written lease, the corporation was deemed a tenant from month to month. Accordingly, lost rents and profits were limited to a single month. Lack of any attempt to mitigate damages by selling the restaurant equipment precluded recovery for loss of value of that equipment. Failure to inquire about street widening plans was not sufficient to defeat the claim of reasonable reliance, based on the constitutional guaranty of just compensation in condemnation proceedings. *Williams v. American Title Insurance Co.,* No. 77-1210 (MCA, June 5, 1978).

Kovaleski v. Tallahassee Title Co., 1st DCA No. 11-214, 1978

Appellant, successful bidder at a tax sale, relied on an abstract or title prepared by appellee for the tax collector. The abstracter negligently omitted third persons' interest in the property, so appellant sued appellee and the tax collector. Trial judge dismissed.

District Court of Appeals affirmed as to the tax collector but reversed as to appellee. "So long as one may reasonably foresee that the plaintiff would sustain an economic loss proximately caused by the negligent performance of a contractual duty of the abstracter, the plaintiff may bring an action in tort against the alleged negligent abstracter, notwithstanding the absence of privity." One dissent.

LVO Federal Credit Union v. Wolfe, 574 P.2d 293 (Okla., 1978)

LVO Federal Credit Union sued Wolfe on two promissory notes. In the text of the petition of this action, the plaintiff sought a writ of attachment to issue against the property of the defendant. The court file also contained an attachment affidavit and an order of attachment served upon Wolfe and an attachment bond. Judgment was rendered by the court against Wolfe but no journal entry of judgment was filed of record.

Later an abstract company issued and delivered an abstract certificate covering specific property on which a lender was about to take a mortgage to secure the payment of a note executed by Wolfe and her new husband. When the judgment creditor sought to enforce the judgment against the property, the subsequent mortgage lender was joined in a declaratory judgment action seeking to determine the priority between them. The mortgage lender joined the abstracter. The abstract company argued that the attachment was fatally defective in many respects.

The issues presented to the court were whether the defects in the attachment could cause the subsequent mortgage to be prior and what damages the abstract company would be required to pay based on these facts.

The court found that even assuming there were defects in the instruments of attachment or in service of process, such defects were waived when Wolfe failed to appeal from the issuance of the order of attachment. The abstract company attack of the attachment proceedings was found to be inappropriate in a collateral proceeding. The court held that since the order of execution, the attachment bond and affidavit were on file, the attachment constituted a lien on the property, regardless of the fact that no journal entry of judgment on the merits of the case itself had been entered on the judgment docket.

In spite of the fact that the mortgagee did not pay a money judgment as a result of any negligence, the abstract company was found liable to the mortgagee based upon the loss of interest in the collateral. The court found that the mortgagee had no tenable method of making the bad debt good and that the abstract company should pay the debt to the mortgagee.

Access

Justus v. Dotson, 242 SE 2d 575 (W. Va. 1978)

Action was to obtain right-of-way across grantor's land. The Supreme Court held that summary judgment for defendants was precluded by existence of genuine issues of fact as to whether road leading to plaintiff's property was so bad as to be deemed an unreasonable means of access to the property and whether the plaintiff had a reasonable means of access.

Attorney's Lien

Joan Campanello and Larry Joseph Campanello v. Robert L. Mason 571 P.2d 449 (Okla., 1977)

Joan Campanello hired attorney Robert L. Mason to represent her as plaintiff in a divorce action. Mr. Mason prepared and filed a petition for divorce on behalf of Ms. Campanello. Attorney Mason was later informed that Mr. and Ms. Campanello, together with Mr. Campanello's attorney, had agreed to a property settlement and therefore Ms. Campanello was no longer in need of Mason's services. The attorney did not at that time, nor at any time, withdraw from the case, but indicated that he would withdraw once his fees were paid. The divorce came on for hearing and prior to the actual proceeding, attorney Mason

filed a document indicating that he claimed an attorney's lien in the proceeding in the sum of $500. The trial court granted the divorce, ordering that Ms. Campanello pay Mason a reasonable fee for his services. Mason moved the court to grant and recognize his lien in the property acquired by Ms. Campanello in the divorce proceeding. The trial court held that Mason had not perfected an attorney's lien because timely notice of the lien was not given to the adverse party.

The issue presented is first whether an attorney's lien can be created in a divorce proceeding against the property acquired by virtue of the property settlement, and second the proper method of perfection of such a lien.

The court reasoned that the theory of an attorney's lien is to allow the attorney to insure the payment of fees due for his services. The court held that an attorney's lien may attach to property rights acquired by a property division in a divorce proceeding. Construing 5 O.S. 1971 §6, the court held that an attorney's lien may be made effective in any one of three ways:

- By the endorsement of a claim upon a petition or other like pleading filed in the case
- By giving written notice to the adverse party
- By entering or causing to be entered a statement that a lien is claimed in the judgment docket opposite the entry of the judgment

The judgment of the trial court denying Mason an attorney's lien against the property acquired by Ms. Campanello in the divorce proceeding was reversed.

Bankruptcy

In the Matter of Bernard Bergman d/b/a Park Crescent Nursing Home, Debtor, Chase Manhattan Mortgage and Realty Trust, Plaintiff-Appellant, v. Bernard Bergman d/b/a Park Crescent Nursing Home, Defendant-Debtor-Appellee ___F.2d___ (2d Circ., Oct. 13, 1978)

Defendant owned a nursing home in Manhattan. Indicted by federal and state grand juries, a plea agreement provided for him to pay various sums owing to the state from other nursing homes controlled by him. On Sept. 14, 1976, he and his wife signed a confession of judgment for $2.5 million and an assignment of all right, title and interest in all their real and personal property to a special fund created by the state. The Supreme Court also appointed a receiver of defendant's assets. Plaintiff, mortgagee of a nursing home, in Manhattan, obtained summary judgment in its action to foreclose. The day prior to that set for the sale, defendant filed a petition in the bankruptcy court under Chapter XII. The court stayed the foreclosure and appointed a trustee to operate the nursing home. Plaintiff's motion to dismiss the bankruptcy proceeding was denied. On appeal to determine jurisdiction alone, the district court remanded for further proof. The receiver testified that the confession judgment would be satisfied by liquidation of defendant's assets and was almost certain that the mortgaged premises would be returned to defendant.

It was held that the bankruptcy proceedings can proceed. Federal, not state law, determines whether a debtor may invoke jurisdiction of the bankruptcy court. *Segal v. Rochelle,* 382 U.S. 375, 379-81 (1966); *In re Romano,* 426 F.Supp. 1123 (N.D. Ill. 1977); *Board of Trade of City of Chicago v. Johnson,* 264 U.S. 1, 10 (1924); but state law determines whether a particular interest qualifies a debtor as the "legal or equitable" owner of real property within the meaning of 11 U.S.C. 806 (6). Held, the "assignment" was ineffective under New York law to transfer the legal title to the real estate out of the debtor. Accordingly, there was a sufficient interest remaining in the debtor to support Chapter XII jurisdiction.

Hopewell v. Koser Supply Co., 577 F.2d 461 (8th Cir. 1978)

At a court approved sale in 1975 Richard Hopewell purchased real property owned by the Kerreys (bankrupts) that was subject to a mechanic's lien by Koser Supply Co. On Feb. 11, 1977, the bankruptcy judge filed an order agreed to by Hopewell and Koser that had been executed Oct. 18, 1976, stating that Koser would be permitted to file an unsecured proof of claim that would not be disallowed for lateness, and that the mechanic's lien would be cancelled.

On March 31, 1977, the bankruptcy judge executed an amended order correcting the property description in the February order. This later order was filed on April 4, 1977. Ten days later, Koser appealed the order, asserting the validity of the lien against the title owner of the real estate (Richfield Bank) at the time the mechanic's lien was filed.

On appeal, the district court sustained Koser's appeal, concluding that the bankruptcy court lacked jurisdiction to determine the validity of Koser's lien as against Richfield Bank and Trust Co. and that the amended order did not become final because Koser's appeal was filed within ten days of its filing.

At issue was when does the bankruptcy judge's order become final for purposes of appeal? (The court does not address the question of whether the court had jurisdiction to determine the validity of the lien as between Koser and the Richfield Bank.)

It was held that the order became final when first filed and must be appealed within 10 days thereafter. Amending the order did not extend the time for appeal. Judgment is vacated and appeal is dismissed as untimely.

In the Matter of PRS Products, Inc., 574 F.2d 414 (8th Cir. 1978)

PRS Products, a wholly-owned subsidiary of PRS Manufacturing Co., began operations (facilitating sales of snowmobiles and winter clothing manufactured by its parent company) in January 1973. During 1973, Mandan Security Bank made a number of unsecured loans to PRS Products pursuant to an agreement that PRS Products was to have a line of unsecured credit up to $25,000. On at least two occasions, the outstanding obligation exceeded $40,000. Mandan made its last loan of $10,000 on Dec. 14, 1973. At that time PRS Products' indebtedness to Mandan was $20,000. Less than two months later, the indebtedness was repaid in full by PRS Products. Shortly thereafter the subsidiary (PRS Products) and its parent (PRS Manufacturing) filed bankruptcy.

The trustee of PRS Products brought this suit against Mandan on June 24, 1974 claiming that payments to Mandan from Nov. 20, 1973 to Jan. 31, 1974 were preferential transfers. Judgment was granted to the trustee and Mandan appealed. The judgment was affirmed in district court and this appeal followed.

At issue was whether repayments of loans made by Mandan from November 1973 to January 1974 were preferential transfers?

The bank's records indicated that the bankrupt had exceeded its approved line of credit on numerous occasions. Its records further reflected a substantial decline in cash flow through the bankrupt's account during this period. Several requests for financial statements from Mandan were made by the bank's employee but never received. These factors taken as a whole would have incited a reasonable man to have made

further inquiry. The bank is thus charged with the information of PRS's insolvency during the period the loans were repaid.

The set-off provision of the Bankruptcy Act (11 U.S.C. §108) generally allows a bank to set off funds deposited in a general deposit account against a debt owed to the bank by the depositor. This applies, however, only to deposits made in good faith and in due course of the business, and subject to the withdrawal at will by the depositor. It does not apply to a deposit accepted by a bank with an intent to apply it to a pre-existing claim against the depositor.

During the period in question, deposits by PRS totalled approximately $30,000 and withdrawals by PRS totalled approximately the same amount, each withdrawal following quickly after a deposit. Although on occasion the bank paid checks out of the account, the evidence amply supports the conclusion that deposits were intended to be applied to the pre-existing claim. Accordingly, these deposits were recoverable preferences.

In the Matter of Gervich, 570 F.2d 247 (8th Cir. 1978)

This is an appeal by Dennis Gervich and his wife, Stella Gervich, from an order requiring certain monthly payments be made to the trustee in bankruptcy rather than to Prudential Savings and Loan Association.

Dennis Gervich (bankrupt) formed a partnership with John Shepard in two companies, each acquiring 50 percent of the stock. As a side business, they also invested in real estate. One unit, 7500 Hazelcrest, was acquired by general warranty deed in the names of Gervich and his wife. The down payment was provided by the partnership which also paid the monthly balance of the purchase price thereafter. In October 1973, Gervich sold his 50 percent interest in the companies to Shepard in exchange for Shepard's assuming payments of the mortgage on the Hazelcrest condominium. The purchase agreement also referred to restrictive covenants and the relinquishment of claims, which Gervich and his wife agreed to. Nov. 10, 1975, Gervich filed a petition for voluntary bankruptcy. His wife filed no petition. The trustee then filed a complaint seeking an order to require Shepard to make the monthly payments to the trustee rather than to the savings and loan association holding the deed of trust. The Gervichs objected to summary jurisdiction and claimed the asset was joint and indefeasible and therefore not subject to jurisdiction of the bankruptcy court.

At issue was whether monthly payments on trust deed agreed to in a transaction, whereby bankrupt transferred property to "himself and his wife" as tenants by the entirety, operated as a transfer in fraud of bankrupt's creditors.

The transfer is voidable. Since the mortgage payments were in consideration for the sale of bankrupt's business interests in which Mrs. Gervich (bankrupt's wife) had no interest, there was no adequate consideration provided by her for the transfer of property from the bankrupt. The transfer is presumed to be fraudulent. The trustee in bankruptcy does not generally suceed to property held as a tenancy by the entirety unless both husband and wife petition in bankruptcy, but something more than minimal consideration must be shown on part of transferee for the transfer to avoid being attacked as fraudulent.

Swenor v. Robertson (N.D. Cal. 1978) 452 F. Supp. 673

The bankrupts had incurred unsecured debts prior to the Jan. 1, 1977, amendment of California Civil Code §1260 which provides for an increase in the homestead exemption from $20,000 to $30,000.

The bankruptcy court had determined that the bankrupts were entitled to a $30,000 exemption at the time of the bankruptcy petition. The district court found that the bankrupts were entitled to an exemption of $30,000 less the aggregate of the pre-1977 claims, with the exemption not to be less than $20,000.

The decision is contra to the Ninth Circuit's holding in *England v. Sanderson* (9th Cir. 1956) 236 F.2d 641, which held that the increase in the homestead exemption was to be distributed among the general creditors, rather than merely the creditors whose claims had arisen prior to the amendment increasing the exemption.

In the Matter of Widdershoven (N.D. Cal. 1978) 452 F. Supp. 503

The bankrupts had sold their homesteaded property, and per California Civil Code §1265, such proceeds were exempt from the reach of creditors for six months following the sale. Two months after the sale, the bankruptcy petition was filed and the proceeds automatically came under constructive possession of the bankruptcy court. The trustee, who did not complete the report of exempt property until six months after filing of the petition and eight months after the sale, denied that the sale proceeds were exempt.

The court affirmed the bankruptcy court's order that the proceeds were exempt and held that the statutory period of exemption was deemed to have been tolled from the time of filing of the bankruptcy petition until the time the bankrupt regained control of the property, thus giving the bankrupts the opportunity to reinvest the proceeds in another home without losing the homestead exemption.

Boundaries

Stanley K. Florence and Barbara J. Florence, Plaintiffs and Respondants v. Hiline Equipment Co., James Saracino, Carol Saracino, Clinton C. Groll, Bonnie C. Groll, Paul L. Westbroek and Becky L. Westbroek, Defendants and Appellants Supreme Court of Utah, Opinion No. 15166, June 14, 1978

Defendants Saracino and plaintiffs owned adjoining land. Defendants owned the easterly tract and plaintiffs, the westerly tract. The dispute involved a fence which ran along the east side of plaintiff's property. The fence was from 10 to 29 feet west of the true boundary, running diagonally thereto. Plaintiffs claimed the strip of land between the fence and the true boundary by legal description and Saracino claimed it under the doctrine of boundary by acquiescence. It was undisputed that the fence had existed for many years, but two surveys showed it to be west of the legal description boundary. There were no facts to indicate that these parties or any of their predecessors in interest had acquiesed in treating the fence as their mutual boundary.

At issue was the question of whether the doctrine of boundary by acquiescence applies in this factual situation.

It was held that the doctrine of boundary by acquiescence arises only when the true boundary is either unknown, uncertain or in dispute—none of which was proved in this case. The parties must also have acquiesced in treating the fence as a mutual boundary. Thus, agreement to or acquiescence in the establishment of a fence, not as a line marking the boundary, but as a line for other purposes or acquiescence in the mere existence of the fence line as a mere barrier, does not preclude the parties from claiming up to the true boundary line. The court also noted, in conclusion, that there was an absence of any equitable argument that any of the parties relied upon the fence as being the true boundary.

Condominium

Franklin v. White Egret Condominium, Inc., 358 So. 2d, 1084, Florida Fourth DCA, 1978

A sale of a condominium apartment was made to one purchaser whose application had been approved by the condominium association and he conveyed half of his interest in the apartment to his brother. The condominium association asserted that sale to the brother had not been approved. The condominium declaration specifically allowed the transfer of an apartment to a member of the "immediate family," and no approval was needed for such transfer. The court ruled that the unapproved brother was a member of the immediate family of the brother who was approved, even though they both had families of their own. The court further ruled that since the brothers' use of the apartment was by alternating their stays on the premises, they did not violate a single-family residence prohibition.

The declaration also prohibited children under the age of 12 from residing on the condominium premises. This provision was the reason given by the plaintiffs for their disapproval of the brother's membership application. The court held that the age residency limitation was an unconstitutional violation of a person's right to marry and procreate.

Ritchey v. Villa Nueva Condominium Association (1978) 81 Cal. App. 3d 688

A condominium owner brought an action for damages, injunctive and declaratory relief against a condominium association and others, challenging the validity of an amendment to the bylaws of the condominium project that restricted occupancy in the high-rise portion of the project to persons 18 years of age and older.

As a result of the bylaw, plaintiff was prevented from leasing his condominium unit to a woman with two children. The appellate court affirmed the summary judgment in favor of defendants and held that while the bylaws in issue operated both as a restraint on plaintiff's right of alienation, and as a limitation on his right of occupancy, the amendment was reasonable under the facts of the case.

The court held the bylaw was a reasonable restriction on the owner's right to sell or lease his condominium unit to families with children in view of administrative regulations permitting restraints on alienation to be based on the age of the vendee or lessee, or his family, and which, in effect, merely converted such restriction into a right of first refusal. The court further held that the fact that the condominium project was, and was represented to be a multi-family project at the time plaintiff purchased his unit did not render the bylaws unreasonable in the absence of any claim that the representations were false or were made to mislead him, or that it was represented that the conditions of occupancy could not be changed. The court also rejected plaintiff's contention that the association exceeded the scope of its authority in enacting an age restriction on occupancy.

Conveyancing Titles

Assoulin v. Sugarman, 159 N.J. Super. 393, 388 A. 2d 260 (App. Div. 1978)

Title was acquired at a sheriff's sale of a realty under a writ of execution to satisfy a judgment. The court rule governing procedure in execution sales requires that at least ten days prior to the date set for sale, a notice must be mailed by registered or certified mail, return receipt requested, to the owner of the property. The rule also states that failure to mail such notice shall not affect the title to the property.

It was held that the failure to comply with the notice of sale provisions of the court rule requires voiding the sale to the judgment creditor. The provision of the rule that the failure to mail notice does not affect title to the property refers only to the rights of bona fide purchasers for value or innocent third parties. It does not impinge on the authority of a court of equity to void a sale to the judgment creditor.

Raniere v. I&M Investments Inc., 159 N.J. Super. 329, 387 A. 2d 1254 (Chan. Div. 1978)

Judgment in the sum of $1,370.33 was docketed in the Superior Court Feb. 24, 1977. The writ of execution was received by the sheriff at 10:30 a.m., March 7, 1977 and a levy on real property was made at 11:15 a.m. on the same day. The property, assessed at $40,000, was purchased at the execution sale for a bid of $1,410.37. Neither the judgment creditor nor the sheriff made an effort to ascertain the nature and value of any property owned by the judgment debtor and failed to levy and execute upon personal property before executing on the realty.

It was held that an execution sale against realty held without a prior, good faith attempt to locate, levy upon and execute against personalty of the judgment debtor located within the county is in direct violation of the positive command of the execution act and is therefore void. The vendee at such a sale, although a bona fide purchaser for value, acquires absolutely no title thereby.

Decedent's Estate

Gross v. Slye, 360 So. 2nd 333 (Ala.) 1978

Clara Gross, wife of the appellant, died in July 1974. After administration of her estate and distribution of the assets, the court entered a decree of final settlement Jan. 22, 1976, and discharged appellant as administrator in April 1976. The appellees, the Slyes, are brothers of Clara Gross and the distributees of her assets under the Alabama Intestacy Statute.

In June 1977, more than a year after he was discharged as administrator, the appellant petitioned the court to probate the last will and testament of Clara Gross. This petition was denied because the assets of the estate of Clara Gross had already been distributed.

The question was should a will, located within the statutory period for petitioning the court for letters testamentary, be denied probate because the estate has been fully administered and settled in accordance with the laws of intestacy in Alabama?

The case was disposed of in the following manner. Section 43-2-29, Code 1975, provides as follows: "If, after letters of administration have been granted as in case of intestacy, any will is proved and the executor therein named appears, claims letters testamentary and complies with the requisition of the law, the Probate Court having jurisdiction must revoke the letters of administration and grant letters testamentary to such executor." Section 43-1-37, Code 1975, sets a time limit of five years from the death of the testator for the probate of a will.

The Alabama Supreme Court, citing several cases where letters of administration had been revoked and letters testamentary granted, nonetheless, considered this a case of first impression. See, *E.G. Fields vs. Baker,* 259 Ala. 336, 67 So2d 10 (1953); *Sands, Administrator vs. Hickey* 135 Ala. 322, 33 So. 827 (1903); *Keith vs. Proctor,* 114 Ala. 676, 21 So. 502 (1897). Appellees argued that these cases were distinguishable because in none of them were the assets fully administered and distributed when an attempt was made to revoke the letters of administration and grant letters testamentary. The court stated that this distinction was of little import, saying at page 335, "the statute makes no exception for the situation where all the intestate property has been distributed." Holding that the problem was merely one of construction of the express provisions of the statute, the court reversed and remanded for a rehearing on the petition to probate the will of Clara Gross.

Deeds

Kanke v. Beckstead, 332 P2d, 933, 8 Utah 2d, 247

This involved a suit for reformation of a deed. The court held that wherever evidence clearly and convincingly showed that both parties at the time of the sale of realty intended that the tract of land should be of a specific dimension, and both parties were mutually mistaken in believing that the documents did convey such tract of land, there was no error in granting judgment reforming the deed to conform to the actual intent of the parties.

Child v. Child, 332 P2d, 981, 8 Utah, 261

This was an action to reform a deed to show that only a mortgage was intended or a trust. The court held that where the land was conveyed as security for a loan, a trust resulted in favor of the grantor. It further stated that clear and convincing evidence is necessary to justify a finding that a deed had a purpose other than that appearing on its face. Such evidence implies something more than the usual requirement of a preponderance or greater weight of the evidence and something less than proof beyond a reasonable doubt.

Fuller v. First Security Bank of Utah, 348 P2d, 930, 10 Utah 2d, 87

This case involved the effectiveness of the delivery of a deed. The court held that where the obtaining of a divorce was a condition precedent to the transfer of the husband's interest in an apartment house to his wife, and the divorce was not consummated before the death of the wife, a deed executed by the husband to his wife and left with her attorney was not effectively delivered and was void.

Desert Centers, Inc. v. Glen Canyon, Inc., 365 P2d, 286, 11 Utah 2d, 166

This involved an action to rescind a deed primarily on the basis of the failure of consideration. The court held that in the absence of fraud, duress, mistake or the like attributable to the grantee, a competent grantor will not be permitted to attack or impeach his own deed. Also, the failure of consideration does not render a deed void or subsequent conveyance by the grantor to another operative to pass any title. Even failure of consideration does not necessarily entitle the grantor to cancellation of the deed. Non-payment of the promised purchase price gives the grantor a lien on the land, but in the absence of fraud, does not entitle him to cancellation of the deed.

Easements

Buffalo River Conservation v. National Park, 558 F. 2d 1342 (8th Cir. 1977)

Congress in 1972 provided for the establishment of a park along the Buffalo River in Arkansas. The park, through donations by the state of Arkansas and the purchase from willing sellers, acquired approximately 60 percent of the acreage and then ran short of appropriations. Acquired and nonacquired land form a checkerboard pattern. Plaintiff Buffalo River Conservation and Recreation Council and its members are owners of nonacquired land. After an environmental impact statement was prepared, the acquired portion of the park was opened for public use. The park posted no trespassing signs on some land within the proposed boundaries of the park which had not been acquired and did not encourage use of this property by the public. Even so, public users trespassed upon the land of private owners.

Owners of land not yet acquired for park use asserted various causes of action. All were dismissed except the question of whether the public had acquired a prescriptive right to float down the river and the owners of contiguous nonacquired could fence off their shorelines but not obstruct the river. The court determined that if the plaintiff's property had been taken or purchased by the United States, plaintiffs were entitled to compensation for that portion of the stream bed encumbered by the easement.

At issue was whether plaintiffs were entitled to injunctive relief against the public use of a non-navigable stream where adjoining land has in part been acquired for park purposes?

It was held that under the Tucker Act (28 U.S.C. §1346 (a) (2) and 1491) plaintiff's remedy in a civil suit against the United States is limited to seeking just compensation. Plaintiffs failed to allege either an unlawful taking or damages. Furthermore, since canoeists have used the Buffalo River openly and adversely for many years a prescriptive public easement is deemed to have been established. Judgment for the United States is affirmed.

Alexander v. Buckeye Pipe Line Co., 374 N.E. 2d 146 Ohio Supreme Court (1978)

The defendants or its predecessors had acquired three right of way easements.

In 1907 a right of way was granted as follows: " . . . the right of way to lay, maintain, operate and remove a pipeline for the transportation of oil . . . " and " . . . at any time lay an additional line of pipe . . . upon the payment of a like consideration, and subject to the same conditions. . . ."

In 1911, the following easement was granted: " . . . the right of way to lay, maintain, operate and remove a pipeline for the transportation of oil or gas . . . " and ". . . the right from time to time to lay additional lines of pipe alongside of the first line. . . . "

A third right-of-way was granted in 1947 as follows: " . . . the right to lay, maintain, operate, repair and remove a pipeline and all necessary fixtures, equipment and appurtenances thereto," and " . . . the right, at any time or times, . . . to lay, maintain, operate, repair, replace and remove additional pipelines over and through said premises, provided that each additional pipeline is laid substantially parallel to and not more than one rod distance from the first pipeline installed hereunder."

Two, 8-inch lines were installed in 1907; one in 1911; one in 1937; one, 10-inch line in 1939; another 10-inch line in 1940; two, 22-inch lines in 1949, and one, 12-inch line in 1963. The two lines installed in 1907 transported only crude oil, the lines are used to transport crude oil, gasoline, fuel oil and gas.

The question was what the meaning is of the phrase "alongside of" and the words "oil" and "gas."

It was held that "alongside of" has a geographical connotation and does not contain a numerical limitation. Furthermore, "oil" and "gas" include product in both refined and natural states.

McCann v. City of Los Angeles, (1978) 79 Cal. App. 3d 112

A servient tenement owner sought reimbursement from a city for expenses incurred in constructing a building according to a special design that protected the city's sewer easement. Plaintiff contended that the agreement creating the easement provided for such reimbursement. The agreement provided that the easement would in no manner interfere with the use of the surface and that the surface owner would be reimbursed for actual damage to buildings or loss of use thereof or of their land caused by the city's entry thereon.

The appellate court reversed with directions to enter judgment for defendants, holding that the owner of the servient tenement is not permitted to do anything to the surface of the land that unreasonably interferes with a sewer easement and that the additional expenditure was part of the cost of fulfilling that duty. The court cited cases from other jurisdictions wherein similar agreements were interpreted as referring

only to the buildings on the land at the time the construction commenced. Further, the subject servient tenement had not been used more extensively than for horse stables and riding and it was plaintiff who desired a drastic change in the use of the property by construction of a manufacturing facility, warehouse and offices on it. Under the circumstances, the court would not interpret the agreement to mean that the defendant city must reimburse plaintiff for his expense of fulfilling his obligation not to interfere with the sewer easement.

City of Anaheim v. Metropolitan Water District of Southern California, (1978) 82 Cal. App. 3d 763

A dispute arose as to who should pay the costs of relocating respondent's pipelines when the appellant had constructed a railroad undercrossing requiring such relocation. The appellant was a successor in interest to reservations retained by the original owners for a road system, with such reservations covering a number of parcels in the area surrounding the property in question.

The court found the reservations to be an easement in gross, and that the intent of the original owner had been to benefit all parcels as a part of the community. In considering the question of the respondent's use of sub-surface easements which had been acquired from owners of the parcels, the court held that such sub-surface use must be consistent with the appellant's use of the surface as a street; if a conflict arose, the respondent must yield and pay the costs of relocation of the pipelines. The court further held that even though there was a time lapse of 13 years between the offer for dedication of the streets and the acceptance of such offer by appellant's predecessor the acceptance was timely because the intent to dedicate had not been withdrawn.

Ejectment

Summers v. Brown 236 S.E. 2nd 344 (W.Va. 1977)

The action was to eject occupant from property which she alleged she had occupied for 14 years and on which she had constructed a $12,000 house.

It was held that summary judgment cannot be granted in case where a genuine issue of material fact is raised. Reversed and remanded.

Eminent Domain

State v. Richley, 55 Ohio St. 2d 142, 378 N.E. 2d 472 Ohio Supreme Court (1978)

In 1854, the railroad condemned an easement, entered upon and wholly occupied the premises in the operation of the railroad.

In 1958, the state condemned the same property for highway compensating the railroad and thereafter wholly, and exclusively possessed and used the property as a public highway.

The question is whether the fee owner is entitled to compensation from the state.

It was held that the owner of a fee who has received compensation for a perpetual easement in the land is not entitled to additional compensation if there is a substituted use which discontinues the old and the new use is no more onerous than the old.

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

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

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

Jose Ortega Carbrera et al v. Municipality of Bayamon et al, 562 F. 2d 91 (1st Cir. 1977)

The owners of land adjacent to and near a municipal dump brought action against the municipality seeking injunctive and monetary relief because of the adverse effect of the dump on peaceful enjoyment of the property.

A three-judge U.S. District Court in 370 F. Supp. 859 granted injunctive relief but denied an award for damages, and plaintiffs appealed.

The Court of Appeals upheld the District Court's order that the municipality engage in construction at the dump that will minimize the damage to the plaintiffs' property and also held that since the property remains suitable for the use in which it had been brought prior to the establishment, the bad smells and health hazards created by the dump did not so impair use of the property as to constitute a Fifth Amendment taking. It also held there was no basis on which damages could be awarded under the Civil Rights Act of 1871. However, it did raise the possibility that there might have been a partial taking of the property where pollution had not only prevented any continuation of the recreational or other present uses of some of the land and had also converted it into such a danger to health that the landowners must fence off the area to prevent any use whatsoever of that land and remanded the case to the District Court for further proceeding on this issue.

Huntington Urban Renewal Authority v. Commercial Adjunct Co., 242 S.E. 2d 562 W.Va. (1978)

A parking lot was taken by eminent domain proceedings for urban renewal purposes. While action was pending, Urban Renewal acquired other large tracts of land in the same area, demolished a large building on adjoining lots and set up its own parking lots in competition with this parking lot owner, lessening the need for parking and causing the parking lot owner to lose business.

It was held that the general rule for valuation of property taken by Urban Renewal is the value at the date of taking. However, whereas the land owner is allowed additional compensation because the value of his land has increased due to the taking of other property in the same area, so he is also allowed compensation for the decreasing value of his residual property caused by taking of said other land.

Mr. Klean Car Wash, Inc., v. William S. Ritchie Jr., Commissioner, 244 S.E. 2d 553 (W. Va. 1978)

Mr. Klean Car Wash, Inc., leased two acres of land and erected business buildings thereon. The lease contained provision that upon termination of the lease, the lessee had a right to remove said buildings and that they remained the personal property of the lessee.

The West Virginia Department of Highways condemned a strip 75 feet wide along the front of said leased property and assigned a value of $61,400 for the property taken by eminent domain. Although the lessee claimed part of said funds for damages to his buildings and fixtures, the lower court held that only real property and not personal property was compensable under eminent domain proceedings and awarded the whole sum to the land owner.

There was an appeal to the Supreme Court of Appeals of West Virginia, challenging the act of the Circuit Court of Raleigh County, West Virginia, in granting

a mandamus in favor of the tenant requiring the state to institute condemnation proceedings to determine damages tenant allegedly sustained when the state enlarged a highway onto the property that the tenant leased.

It was held that in the event of eminent domain, the condemnor must treat buildings and fixtures as real estate in determining the total award, but in apportioning the award, in the absence of a special agreement between the landlord and tenant, they are treated as personal property and credited to the tenant.

Where the state, without objection, permitted the court in eminent domain proceedings to dismiss the tenant and find that award represented only value of land and did not include value of fixtures or building on the land, tenant was subsequently entitled to a writ of mandamus to require the state to institute condemnation proceedings against the tenant for damages done to the leasehold, fixtures and building.

Environmental Protection Act

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

The Washington State Environmental Protection Act, which is substantially the same as the National Environmental Policy Act of 1969, confers upon a city, acting through its superintendent of buildings, the discretion to deny a building permit application on the basis of adverse environmental impacts.

Such denial of a project which complies with existing zoning regulations is not a de facto rezone of the property because the denial is on environmental impacts, and the owner can develop his property under the zoning without environmental impacts. Neither is it an unconstitutional delegation of legislative power because there are adequate procedural safeguards.

Department of Housing and Urban Development

Jeannette Silva et al v. East Providence Housing Authority, 565 F. 2d 1217 (1st Cir. 1977)

Prospective tenants of low rent housing which would be built by contract with the Department of Housing and Urban Development brought a class action for declaratory and injunctive relief against the Secretary of HUD and others, seeking to reinstate the low rent housing project as to which federal participation had been terminated.

The Rhode Island District Court held that HUD's action in terminating the contract was beyond the Secretary's statutory authority. The Court of Appeals held that the Secretary has power to include in contracts for low rent housing a termination clause for failure of a legal agency to prosecute a project diligently, but remanded the case to the District Court for further proceedings on the question of whether HUD had considered such alternatives as suspension, federal takeover and a lawsuit or threat of lawsuit and that it was not an arbitrary decision on HUD's part.

Equitable Mortgage

Griffin v. United Bank of Denver, 580 P2d 818, ___Colo. App.___ (1978)

Action was brought for declaratory judgment that defendant's lien upon plaintiff's home was void. Defendant counterclaimed to foreclose the lien. The trial court's judgment in favor of the defendants was affirmed.

The facts of the case are as follows. The plaintiffs signed a promissory note for a consolidation loan from defendant bank. In the section of the note describing the property given as security for the loan, the word "lein" appeared, followed by an asterisk connecting it to the legal description of the plaintiff's home which was typed at the bottom of the page in a section labelled "for bank use only." The note was recorded by the bank. Plaintiffs subsequently filed bankruptcy, and the bank filed a claim showing a lien on the property. The real estate was abandoned by the trustee and the debt discharged.

At issue was whether the note, as written, constituted a valid lien upon the real property which could be foreclosed upon by the bank despite the discharge of the underlying debt in bankruptcy.

It was held that whatever the form of the contract, if there is an intent to create a security interest in real property, the contract will give rise to an equitable mortgage. Thus, despite the irregularities on the face of the note, a lien was created upon the real estate which, having been recorded before bankruptcy, was subject to foreclosure notwithstanding the discharge of the underlying debt.

Estates in Land

Gauger v. Gauger, 73 N.J. 538, 376 A.2d 523 (1977).

In a divorce proceeding, the wife contended that certain real property was acquired by the husband during marriage and therefore was an asset subject to equitable distribution under N.J.S.A. 2A:34-23. This statute, granting the power to allocate marital assets between husband and wife incident to a divorce, became effective in 1971.

The property was acquired by the husband and his mother as joint tenants with right of survivorship prior to the marriage and the mother died before the divorce complaint was filed. The trial court held that the property was acquired by virtue of the deed to the husband and the mother and not upon the death of the mother. Therefore, it was not subject to equitable distribution. The appellate division affirmed.

Held: Reversed. Although the survivorship right was created when the joint tenancy was established, it did not become effective and meaningful until the mother's death at which time the defendant acquired an undivided fee ownership in the entire tract of land. A change occurred in the interest, ownership or right to possession. Upon the death of a joint tenant, the survivor acquires a substantive interest in the premises within the contemplation of the equitable distribution statute.

Federal Pre-emption

Carol S. Greenwald v. First Federal Savings and Loan Association of Boston, et al; First Federal Savings and Loan Association of Boston, et al v. Carol S. Greenwald, 446 F. Supp. 620 (D. Mass. 1978)

A declaratory and injunctive action, the court held that federal law and regulations requiring payment of interest on tax escrow accounts pre-empted the field of interest payments by federally chartered savings and loan associations so that application against federal associations of the Massachusetts law on the subject would contravene the supremacy clause of the U.S. Constitution. The court also held that the Real Estate Settlement Procedures Act did not apply.

Federal Procedure

Werner v. U.S. Department of Interior, (8th Cir. filed July 20, 1978, No. 77-1958)

North Dakota landowners entered into a wetland easement agreement with the U.S. Department of Interior's Fish and Wildlife Service upon oral representations to the effect that certain local farming practices would be permitted under the terms of the proposed easement. Their terms did not accord with terms in written easements which appellants signed.

Appellants allege reliance on the oral representations and seek injunctive relief against enforcement of the easements, rescission of the easements and damages.

At issue was whether or not the district court may afford equitable relief under the Tucker Act establishing jurisdiction for civil actions against the United States not exceeding $10,000.

It was held that the Tucker Act, 28 U.S.C. Section 1346, establishes jurisdiction to grant equitable relief only where it is in aid or incidental to a money judgment. Damages here are clearly incidental to the primary action which is for injunctive relief, rescission, and reformation of fraudulently procured waterfowl easements. Plaintiffs could claim under the Tucker Act, but the court's finding that the representations were made without authority must be accepted by this court unless clearly erroneous. Therefore, there can be no recovery.

Federal Tax Liens

Andrew Anselmo, Francis J. DiMento and James J. Sullivan Jr. v. Richard J. James and Dawn James, 449 F. Supp. 922 (D. Mass. 1978)

Undeveloped coastal land was sold at public auction to satisfy tax indebtedness, and after redemption was refused, defaulted taxpayers and mortgagors brought action for declaratory and injunctive relief asking the court to decide whether the great blizzard of 1978 extended the statutory period for redemption of real estate seized and sold by the Internal Revenue Service. The plaintiff claimed the blizzard had prevented him from traveling to the home of the purchaser at the auction to tender the amount paid by the purchaser.

The Massachusetts Federal Court held that federal courts do not have the power to extend time for the redemption of property under the Internal Revenue Law and where the taxpayer waited until the 118th day out of 120 days to redeem property, having waited so long and taken risk of the unforeseen consequences of his own delays, he could not be held now to complain of the great blizzard which prevented him from making timely redemption.

Fixtures

Wo Co. (Formerly NYTCO Leasing, Inc.) v. Benjamin Franklin Corp., 562 F. 2d 1339 (1st Cir. 1977)

In a diversity action for conversion of property claimed as collateral for a purchase price financing arrangement, plaintiff sought damages after the defendant sold property to itself at a foreclosure sale pursuant to a competing security interest.

The plaintiff appealed the judgment as being inadequate and specifically held that the portion of personal property of a bankrupt in which the plaintiff had a competing security interest with defendant did not become a fixture under New Hampshire law and part of the property that passed at the foreclosure sale. Hence, the plaintiff was not subject to being compensated for any fixtures on which it had a senior interest.

The court held that the parties had expressly agreed to treat the chattels as personalty by executing an agreement relative to the foreclosure sale and held that intent was the pre-eminent element in determining whether a chattel becomes a fixture.

Homestead

Wickes Corp. v. Moxley, 342 So2d 839 (DCA 2d 1977)

Moxley was the principal in a dealership selling mobile homes manufactured by Wickes. In 1974 Moxley sold several mobile homes but failed to pay Wickes the monies owed on these units. To placate Wickes, Moxley and his wife signed a promissory note for the indebtedness and gave Wickes a second mortgage on their home to secure the indebtedness. The property was held as tenants by the entirety and all parties agreed that the property was homestead for purposes of foreclosure proceedings. The note went into default and Wickes attempted to sue on the note and foreclose his mortgage. At trial the court declared the mortgage invalid because the mortgage was not properly witnessed.

There is no statute in Florida specifying that a mortage must be signed in the presence of two witnesses, and the Supreme Court held that there is no common law requirement for a mortgage of non-homestead property to be witnesses, *Teate v. Anderson,* 164 So. 849 (Fla. 1935). However, prior to the adoption of the 1968 Constitution, a mortgage of homestead property was deemed invalid unless it was executed in the presence of two witnesses, *McEwen v. Schenck,* 146 So. 839 (Fla. 1933) and *Hutchison v. Stone,* 84 So. 151 (Fla. 1920). The rationale for these decisions was predicated upon a construction of Article X, Section 4 of the Constitution which reads:

"Section 4. Homestead may be alienated by husband and wife.—Nothing in this Article shall be construed to prevent the holder of a homestead from alienating his or her homestead so exempted by deed or mortgage duly executed by himself or herself, and by husband and wife, if such relation exists; . . . the new constitution provision, Article X, Section 4(c) reads as follows:
'(c) . . . the owner of homestead real estate, joined by the spouse if married, may alienate the homestead by mortgage, sale or gift and, if married, may by deed transfer the title to an estate by the entirety with the spouse.' "

The court reasoned that the language of the new constitutional provision had been rephrased in the form of an authorization to alienate the homestead rather than as an exception to a restriction against alienation. The court refers to an earlier decision, *Reliable Finance Co. v. Axon,* 336 So2d 1271 (DCA 2d 1976) which determined that the omission of the words, "duly executed" casts substantial doubt upon the requirement on the validity of prior cases requiring two witnesses, so that the mortgage be "duly executed." The court subjudice proceeded to eliminate the requirement that two witnesses be required in the execution of a mortgage on homestead property, notwithstanding the fact that the court, in certain recent cases has held that two witnesses are required on an enforceable contract to sell homestead realty pursuant to Article X, Section 4. *Koplon v. Smith,* 271 So2d 762 (Fla. 1972); *Carroll v. Doughtery,* 302 So2d 439 (DCA 2d 1974); *Radabaugh v. Ware,* 241 So2d 738 (DCA 2d 1970). However, the court believed that these decisions were not controlling because they were not passing on the effect of the deletion of the words "duly executed" from Article X, Section 4 of the new Constitution; they were dealing with contracts to sell real estate rather than mortgages and there remains on the books a statute which requires two witnesses to a deed, F.S.A. Section 689.01, 1975 and, in the only Supreme Court case on the subject, Koplon, *supra,* the court simply upheld the ruling in *Radabaugh v. Ware.* While not clear from the Radabaugh opinion, the mortgage appears to have been executed before the effective date of the new Constitution.

The Florida Supreme Court affirmed the Second District Court of Appeal in this matter Jan. 26, 1978.

The conclusion is that two witnesses are not required in order to have a "duly executed" mortgage of homestead realty.

ALTA Seminar in Boston Is Successful

The ALTA seminar on the role of title insurance in New England conveyancing, presented in Boston in cooperation with the New England Land Title Association, has been termed a success. Final tabulation of attendance figures shows 222 persons, representing virtually every state in the New England area, participated at the day-long event.

Attorneys were most notably in attendance with 160, followed by title company employees and lenders. Also attending were government and life insurance company representatives.

The lead speaker of the six-person panel was Oscar H. Beasley, vice president and title counsel, First American Title Insurance Co., Santa Ana, Calif., who traced the history and growth of title insurance.

Marvin C. Bowling Jr., senior vice president and general counsel, Lawyers Title Insurance Corp., Richmond, Va., and Robert T. Haines, vice president and general underwriting counsel, Chicago Title Insurance Co., Chicago, Ill., discussed title insurance coverage. Their focus was on the basic theory of protection, policy forms in general use, the ALTA closing protection letter and types of affirmative coverage.

In his discussion of lender title insurance, Albert E. Saunders Jr., associate general counsel, Phoenix Mutual Life Insurance Co., Hartford, Conn., talked about construction lending, permanent loans and foreclosure of mortgages.

Attorney Phillip J. Nexon of the Boston law firm Goulston and Storrs discussed the use of title insurance by the practicing attorney. Included were the general reasons for recommending title insurance to clients and the function of the attorney in obtaining coverage.

The final speaker, Lawrence F. Scofield Jr., vice president and Eastern region claims counsel for Pioneer National Title Insurance Co. in Boston, focused on claims against title companies, including the steps to filing a claim and the responsibility to defend, and claims against attorneys.

The seminar was moderated by ALTA Executive Vice President William J. McAuliffe Jr.

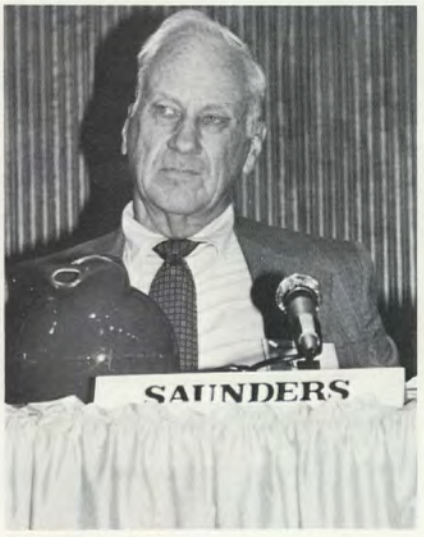
Seminar program participants are pictured on this page.

Phillip J. Nexon

Oscar H. Beasley

Marvin C. Bowling Jr.

William J. McAuliffe Jr.

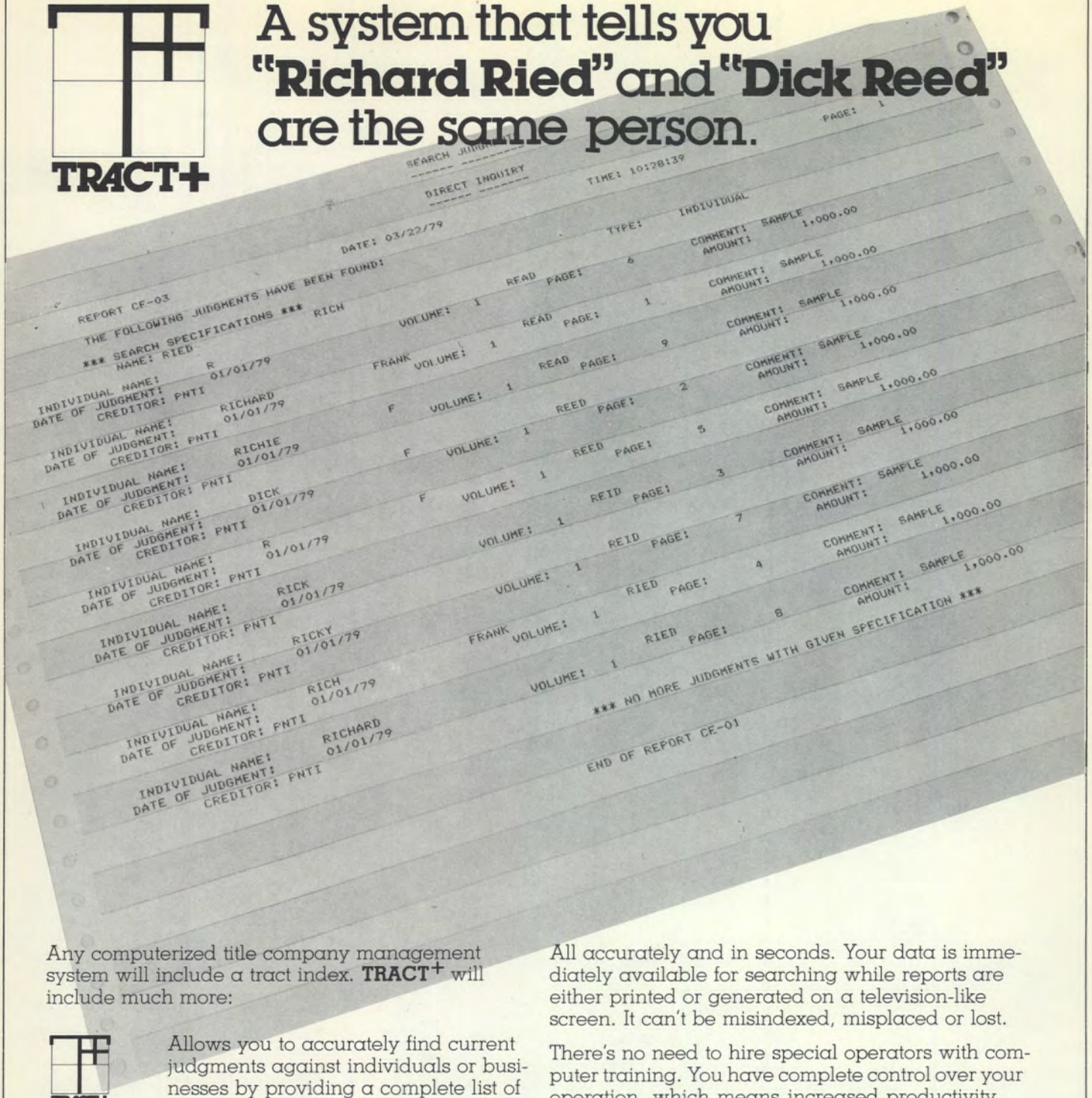


Albert E. Saunders Jr.

Robert T. Haines

Lawrence F. Scofield Jr.

A system that tells you "Richard Ried" and "Dick Reed" are the same person.



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Names in the News...

American Title Insurance Co., Miami, announced that **Edgar M. Lear** has joined the company as vice president of systems and procedures. A New Jersey native, Lear has extensive experience in data processing technology, most recently with American Title's parent company, The Continental Corp.

Fred Menichetti has been appointed corporate vice president and divisional president of Golden State Title Co., San Jose, Calif. The company is a division of Commonwealth Land Title Insurance Co. **James D. Castagnoli's** appointment as corporate vice president and executive vice president Golden State Title also was announced.

Lear

Menichetti

The Boise, Idaho, office of Commonwealth will be managed by **Stuart W. Roamneschi** who recently was appointed assistant vice president.

Other Commonwealth Title personnel announcements include the appointments of two assistant counsels. They are **Kenneth T. Ulrich,** who will work out of company headquarters in Philadelphia, and **Lawrence J. Farin,** whose office is in Englewood, Colo.

It also was announced that Director of Personnel and Assistant Secretary **Charles J. Neil** was elected president of the Philadelphia Chapter of the Administrative Management Society. The organization is an international society devoted to promotion of sound managerial and administrative techniques.

Clark

Sheppard

Five USLIFE Title Insurance Company of Dallas officers recently were promoted. Two of them—**Robert M. Clark** and **E.L. Sheppard**—were named senior vice presidents. In connection with his new status, Clark was designated general counsel and secretary. Sheppard will supervise all Texas agency operations.

Donna P. Comstock and **John H. Gray** were named vice presidents. As vice president, data operations, Comstock will direct the coordination of systems and systems analysis in the company as they relate to data processing. Gray's new title is vice president and controller. It also was announced that staff attorney **Glen White** was named an assistant vice president.

John C. Young has been appointed title officer for Chautauqua Abstract Co., Mayville, N.Y.

Barrett

Narr

Lawyers Title Insurance Corp., Richmond, Va., announced the election of two branch managers and one assistant branch manager.

Donald W. Barrett will manage the company's Freehold, N.J., office and **William E. Narr** will be the head of the Pittsburgh, Pa., office. In Atlanta, **John R. Johnson** will assume the duties of assistant branch manager.

Johnson

Hendrickson

Terry R. Hendrickson was promoted to the position of national title service area manager for Pioneer National Title Insurance Co.

In his new position, Hendrickson, a former PNTI national account manager, is responsible for coordinating all PNTI sales and service activities on interstate real property transactions originating in Illinois, Indiana, Wisconsin, Minnesota, North Dakota, South Dakota and metropolitan St. Louis. His office is in Chicago.

Ohio Seminar Attracts 475

The recent Ohio Land Title Association-sponsored seminar in Cleveland drew an attendance of 475 from Ohio and neighboring states.

The two-day meeting featured six prominent attorneys as speakers who addressed subjects ranging from title searches and examinations to Ohio's new condominium statutes.

The session also included a report from Washington by ALTA Director of Government Relations Mark E. Winter.

Lewis—*(concluded)*

Management and Budget for such an enterprise, so in the meantime, we are working with ALTA and other industry groups to get the word out for us.

We are developing training materials for the bank regulatory agencies and for professionals in the field. We already have had discussions on training with many of these groups and are in the process of reviewing their training materials to see if we can offer them any technical assistance in this area.

Well I've taken a good deal of your time this morning to tell you what our plans are and what we hope to accomplish. I really appreciate this opportunity since we will need the cooperation of the settlement service providers and other professionals in the field if we are to achieve our goals. If we can be of any help you, please don't hesitate to call upon us.

The Search—*(continued)*

Orders came from First American offices and agents in such diverse places as Houston, Texas; Bellingham and Seattle, Wash.; Boulder, Colo.; Fairfax, Va.; Jackson, Wyo.; Lakeport, Grass Valley, Sacramento and other California communities, and many others throughout the country.

Additionally, a copy of *The Search* was given to each of the employees in the company's San Diego office. Realtors and lenders in boom areas of the country were shown the game as well—and the initial supply now is almost depleted, Marrical reported.

Newspapers in Southern California carried stories about *The Search* which prompted requests for it from the public.

(Continued on page 19)

Prominent NYC Titleman, USLIFE Executive Dies

Vincent Pillitteri, senior regional vice president, USLIFE Title Insurance Company of New York, died April 28.

Mr. Pillitteri joined USLIFE Title as manager of the company's Bronx office in 1962 and progressed rapidly into the ranks of senior management. He served with distinction on various boards and committees of many industry associations related to New York real estate and mortgage banking.

He is survived by his wife, Anna, sons Thomas and John, and a daughter, Kathryn.

Commonwealth Acquires Texas Title Company

Guardian Title Co., Ft. Worth, Texas, has become a wholly owned subsidiary of Commonwealth Land Title Insurance Co.

The subsidiary, which employs more than 60 persons, will retain its name and management team, headed by Jack Collard who has been president of Guardian since 1961. Collard has been appointed to the position of corporate vice president for Commonwealth.

Guardian's association with Commonwealth started in an agency capacity more than 20 years ago. In addition to its main office, Guardian Title will continue to serve the Tarrant-Johnson counties area through its 12 branch offices.

SETTLEMENTOR s-m

A new industry standard in Automated Escrow Closing

Title plant systems have clearly demonstrated the time and cost saving potential that automation holds for the title industry. But the escrow closing process has proven far more difficult to automate effectively. At last, a definitive solution to this problem has emerged by bringing together the professional land title industry and computer expertise of Settlementor, Inc., with the worldwide time-sharing computer network of the Interactive Data Corporation.

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Easy to Use

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- Does not alter your proven routines and methods

Settlementor s-m
Automated Escrow Closing System

Interactive Data Corporation
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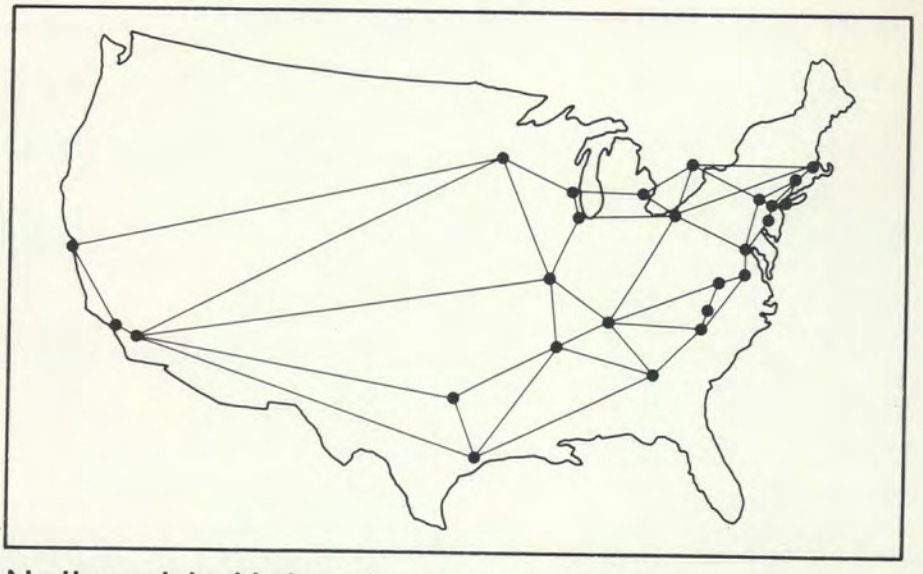

Nationwide Network—IDC's nationwide telecommunication and satellite network services users throughout the nation. The Interactive Data Corporation has its headquarters at Boston and Settlementor, Inc. has its headquarters at Washington, D.C.

The Judiciary Committee reports . . .

The following are recently decided court cases reported by members of the ALTA Judiciary Committee.

Bankruptcy

Butner v. United States, 440 U.S. _____, 59 L.Ed. 2d 136, 47 U.S.L.W. 4163

In 1973, Golden Enterprises filed a petition under Chapter XI of the Bankruptcy Act. In these proceedings plaintiff acquired a $360,000 second mortgage on North Carolina real estate. The arrangement plan was never confirmed and Golden was adjudged bankrupt in 1975 and the trustee was ordered to collect and retain the rents. Plaintiff foreclosed and acquired the property for $174,000. Plaintiff now seeks to have the rents applied to the deficiency.

The question was what law determines whether security interest in property extends to rents and profits.

It was held that state law should determine. There is a conflict between the Third and Seventh Circuits which have held that a federal rule of equity gives a mortgagee a secured interest in the rents even if state law would not recognize such interest and the Second, Fourth, Sixth, Eighth and Ninth Circuits which have held that the mortgagee's rights to rents and profits from property subject to administration under the bankruptcy law is determined by application of state law.

The constitutional grant of authority to Congress to establish uniform laws on the subject of bankruptcy would include a federal statute defining the mortgagee's interest in the rents and profits earned by property in a bankrupt estate, but Congress has not enacted such legislation. Property interests are created and defined by state law.

Since the plaintiff did not satisfy the state law requirements he is not entitled to the rents and profits.

Easements

Leo Sheep Company v. United States, 47 Law Week 4329 U.S. Supreme Court (1979)

The Union Pacific Act of 1862 granted odd-numbered sections to the railroad to encourage building a transcontinental railroad, while retaining the even-numbered sections as public lands creating a checkerboard effect. Petitioner succeeded in fee to lands in an odd-numbered section in Carbon County, Wyoming. The government built Seminole Reservoir on an even-numbered section inaccessible from the East or South without going over odd-numbered sections. The government unsuccessfully undertook to acquire rights over the petitioner's property and thereafter cleared a dirt road over the property and erected signs inviting the public to use the road to the reservoir. Petitioner filed an action to quiet title under 28 USC 2409a.

The question was whether or not the government has an easement across the petitioner's property.

The District Court granted petitioner's motion for summary judgment but was reversed by the Circuit Court of Appeals for the Tenth Circuit (570 F. 2d 881) on the basis that when Congress granted lands to the railroad, it implicitly reserved an easement over these lands for benefit of the retained lands.

The Supreme Court, speaking through Judge Rehnquist, examined among other things, the expressed reservations in the patents and held that the government did not have an implied easement to build a road across the petitioner's land. The court also found that an easement of necessity was not available to the sovereign since such right is inconsistent with the power of eminent domain which the sovereign has.

Liens—Priority

United States v. Kimbell Foods, Inc. and *United States v. Crittenden Tractor Co.,* United States Supreme Court, 47 Law Week 4342 (4-3-79)

These two cases, one under a Small Business Administration loan and the other under the Farmers Home Administration loan program, presented to the U.S. Supreme Court the question of whether state or federal law should be applied to loans made or granted by the United States and to settle a dispute in the Circuit Court of Appeals.

The court, speaking through Justice Marshall, unanimously held that the federal rule is to apply state law. The court found that the rules and regulations set out in the manuals of the Small Business Administration and Farmers Home Administration either adapted or incorporated state law. The court further stated that since there is no indication that variant state priority schemes would burden current methods of loan processing, the questions of administrative convenience does not warrant adoption of a uniform federal law in consensual lien type transactions.

ALTA President Gets Space in NYC Paper

Home buyers in areas where attorney examination and certification of title are customary should be aware that even the most knowledgeable lawyer will not be able to locate hidden land title hazards, ALTA President Roger Bell said in a recent New York City *Daily News* article.

President Bell suggested that buyers consider the protection of owner's title insurance, noting that an attorney's liability is restricted to negligence in his work and does not include responsibility for hidden title defects. The ALTA president said that an attorney's financial liability is limited to his ability to pay and to his life span. Without owner's title insurance, attorney fees related to a title defense may well be the buyer's responsibility, President Bell added.

The ALTA president's advice to buyers is contained in a news release developed and distributed as an activity of the Association Public Relations Program. In addition to the New York City newspaper, the release has been published by more than 20 dailies in a total of 10 states and the District of Columbia. Circulation of the *Daily News* alone is nearly 2 million.

In the release, President Bell cautioned buyers against mistakenly assuming that lender's title insurance will safeguard their real estate interests. Ownership problems may emerge for the buyer that do not seriously affect the security interest of the lender in residential real estate, he said, citing as an example an electrical utility granted an easement by a prior owner of a residence. If the utility decided to build a power line through the buyer's yard, this could impair the buyer's use and enjoyment of the property without jeopardizing the lender's investment, he added.

Iowa Elects New Officers

Walter G. Murphy of New Hampton was elected president of the Iowa Land Title Association at its recent convention. Frederick H. Leonard of Eldora was voted president-elect. The three regional vice presidents elected to two-year terms are Jack P. Carspecken of Burlington, Geraldine Christie of Ida Grove and Donald L. Conlon of Dubuque.

Goetzinger To Lead OLTA

John Goetzinger of Woodward was elected president of the Oklahoma Land Title Association at the 74th Annual Convention in Oklahoma City.

Among the speakers at the meeting were ALTA President Roger N. Bell and Oklahoma State Representative Charles Elder. President Bell discussed the implications of federal and state regulations for the title insurance industry. Rep. Elder fielded questions from the audience in lieu of delivering a prepared speech.

Other officers elected at the meeting were Harold Cox of Norman, president-elect; Kenneth Mitchell of Guthrie, vice president; Tony Foster of Claremore, treasurer, and Robert Mitchell of Lawton, secretary.

Among the 191 registrants were two distinguished out-of-state guests. They were J.E. Barnes Jr., president of the Missouri Land Title Association, and Diane Dietert, president of the Texas Land Title Association.

650 Attend Texas Convention

Speakers on the program of the Texas Land Title Association 69th convention last month included ALTA President Roger N. Bell (left). Pictured with him is outgoing TLTA President Diane Dietert. Also addressing the more than 650 persons attending the meeting in Austin was state Attorney General Mark White. Elected president was Bill Thurman of Austin. Other officers are George M. Ramsey of Dallas, president-elect; Bert V. Massey II of Brownwood, vice president; Faye Talley of Sequin, secretary, and Don Gill of Hurst, treasurer.

The Search—*(concluded)*

Ironically, the game was created by a salesman of home study educational courses who initially knew little about title insurance but who now knows a good bit about it.

A couple of years ago, Marrical's brother-in-law and next-door neighbor, John Roebke, suddenly began asking her numerous questions about title insurance. After all, his wife's sister has worked for First American for 22 years and should know the answers.

He began pencil doodlings in secret and not until he had completed a rough draft of his proposed title insurance game would he reveal to the curious Marrical what he was doing. Roebke even went so far as to make up rules for the game.

When presented with a refined version of Roebke's doodles, First American President D.P. Kennedy agreed it was a good idea for a business development tool, so Marrical contacted an artist and began work to eliminate any regionalizations in the game. Attorneys and other title people in the home office were especially helpful in making the game universal, Marrical said.

For example, one of the board spaces originally was labeled "mortgage reconveyance not recorded." Since that would have been meaningless in certain parts of the country, it was changed to "mortgage reconveyance (release) not recorded." Another space was marked "notice of completion not filed." It was changed to read "home not completed by builder."

Strangely enough, coming up with an appropriate name for the game was the most difficult part of the entire project. Dozens of possibilities were considered before Marrical hit upon the seemingly logical choice, *The Search.*

Marrical reported that First American absorbed some of the game's production costs. It sells for 85 cents to the company's local offices and $2 to the public.

The playing board was printed in First American's print shop and the playing tokens and dice were ordered from the outside.

A panel on the back of the fold-up playing board explains the rules of the game. A third panel explains title insurance and a fourth lists all of First American's state affiliates.

Lawyers Title Breaks Ground

Ground was broken recently for the new six-story, 132,000-square-foot headquarters building for Lawyers Title Insurance Corp. in Richmond, Va. Participants in the groundbreaking ceremony from Lawyers Title included, from left, Conrad J. Rebillot, vice president, who assisted in the planning stages for the new building; Joseph C. Hughes, senior vice president, administration; Robert C. Dawson, president and chief executive officer, and Charles E. Brodeur and William H. Goodwyn Jr., senior vice presidents. Completion of the project and occupancy is scheduled for late fall 1980.

Calendar of Meetings

July 19-21, 1979
Utah Land Title Association
Snowbird, Utah

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

September 26-29, 1979
Dixie Land Title Association
The De Soto Hilton
Savannah, Georgia

October 5-7, 1979
Palmetto Land Title Association
Palmetto Dunes Hyatt
Hilton Head Island, South Carolina

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

December 6-7, 1979
National Title Underwriters Association
Annual Meeting
Royal Orleans Hotel
New Orleans, Louisiana

American
Land Title
Association

1828 L Street, N.W.
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