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1979

Title News

a message from the President-Elect

American Land Title Association officers, in our speeches and writings, make much of the fact that the title industry has become an industry of action rather than of reaction and that we are now better able than at any time in our history to anticipate and shape events which affect us.

In substantiating such statements, we point with pride to the outstanding work of such ALTA committees as the Federal Legislative Action Committee, the Government Relations Committee, the Public Relations Committee, the Research Committee, the Title Insurance Accounting Committee, the Title Insurance Forms Committee, the Committee on Indian Land Claims and liaison committees with the Mortgage Bankers Association of America, the National Association of Realtors, the United States League of Savings Associations and the National Association of Insurance Commissioners. Each of these, in one way or another, plays a key part of the industry's dealing with its customers, its regulators, its adversaries or its special problems.

The existence of necessary committees and the specific orientation of each are not things which just happened. Rather they are the result of our association's looking ahead. And the major vehicle that the Association uses to look into the future is the Planning Committee.

For many years, members of the Planning Committee were appointed annually by the president. But in 1976, the Association's bylaws were amended to provide that the Planning Committee should consist of the president-elect, the chairman of each section, the chairman of the Finance Committee and the immediate past president.

The change was made for two reasons. First, the new make-up is consistent with the principal that planning is a function of a chief executive and should not be delegated. Secondly, continuity of planning and the effecting of the plan is insured by the very gradual change in committee membership.

Yearly, the Planning Committee reviews ALTA's course, recommends seemingly desirable adjustments and suggests to the Executive Committee and the Board of Governors intermediate and long-range goals.

For example, one very pragmatic result of Planning Committee considerations is the recently instituted and well received change in conference and convention scheduling which limits formal programming to morning hours. This change was a recommendation that emerged from the Planning Committee's January, 1979 meeting. Interestingly, the suggestion for the change came from a title person who was not a member of the committee and held no Association office.

It is important that ALTA members know how their Association works and, in this instance, particularly the place the Planning Committee occupies in the scheme of things. You should know, too, that the Planning Committee is a vehicle through which you can have input into the structure and direction of your Association.

The Planning Committee's next meeting is scheduled for Jan. 10 1980. The Executive Committee directed it to study the structure o ALTA's committees, including th question of whether or not the Education Committee, the Errors Omissions Liability Insurance Committee, the Organization and Claims Committee and the Land Systems Committee should conti to be designated as committees o Abstracters and Title Insurance A Section or should become standi committees of the Association as whole. In addition, the committe probably will take a look at the e organization of the Association in Title Insurance and Underwriters Section and an Abstracters and T Insurance Agents Section. It will consider possible new services benefiting members as well as ma other areas suggested by or *to* its members.

Won't you take advantage of the opportunity to be a part of chartin ALTA's future by offering me or ALTA Executive Vice President William J. McAuliffe Jr. your tho about these subjects, about what ALTA should seek to accomplish the years to come and how those goals should be reached?

Sincerely,

J.L. Boren Jr.

Editor: R. Maxine Stough

Editorial Assistant: Barbara J. Grady

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WILL 1980 BE ANOTHER 1974?

If you believe so, then you should be thinking hard about a LANDEX joint plant. (LANDEX is the on-line minicomputer system for plant automation.)

In recent months, 17 title companies have formed new joint plants around LANDEX systems.

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Automation and the Title Industry of the 1980s

By Edward Grskovich and Robert Scherer

After we cross the threshold of the 1980s and look back on the title industry of the 1970s, we will remember this decade as the period that the title industry joined the information revolution.

"Because of stepped-up activity that began in the early 1970s, computer automated processes are applicable today at all levels of the industry."

Significantly, during this time the industry witnessed the advent of highly versatile information handling systems and it began to harness the full power of the computer to speed processing and increase accuracy in the handling of title examinations and the issuing of title policies.

Chicago Title and Trust Co. has been at the vanguard of the industry march into computerization with sophisticated developments such as the computerized Automatic Production Examination system called APEX II which the company developed to speed title policy commitments and produce printed title policies in busy Cook County, Ill. Still other technological innovations developed over the past 10 years offer the potential to revolutionize the way title insurance orders are processed in the future by agents who write as many as 2,000 policies per month from offices that extend from Fairbanks, Alaska to Tampa, Fla.

Because of stepped-up activity that began in the early 1970s, computer automated processes are applicable today at all levels of the industry. One of the most compelling facts about this development is that each new technological advancement has been part of a process of evolution, with today's systems designed to avoid future obsolescence. As new technologies come on stream they can be effectively and easily integrated into what has gone before.

From a cost effectiveness standpoint, automated systems have become an increasing factor in the industry. In addition to accelerating speed and accuracy in the processing of title insurance orders, other major contributions include facilitating business growth into new areas as title needs cross county lines, and providing a measure of record security that was not possible before.

In addition to greatly expanded mass storage capabilities and better data collection and processing methods and techniques in the 1970s, we've seen many other advances in sophisticated computer peripheral equipment. For example, optical scanning equipment lets users feed information to a high-speed data processing center using a conventional electric typewriter. Microfilm has made it possible to store a title plant with as many as three million computerized records in a file that is only 4 inches high, 4 inches deep and 5 inches wide.

Other innovations include broad scale use of computer terminals at remote sites so that operators can electronically access data stored in a centralized system. Where volume merits, stand-alone minicomputers are also becoming cost effective.

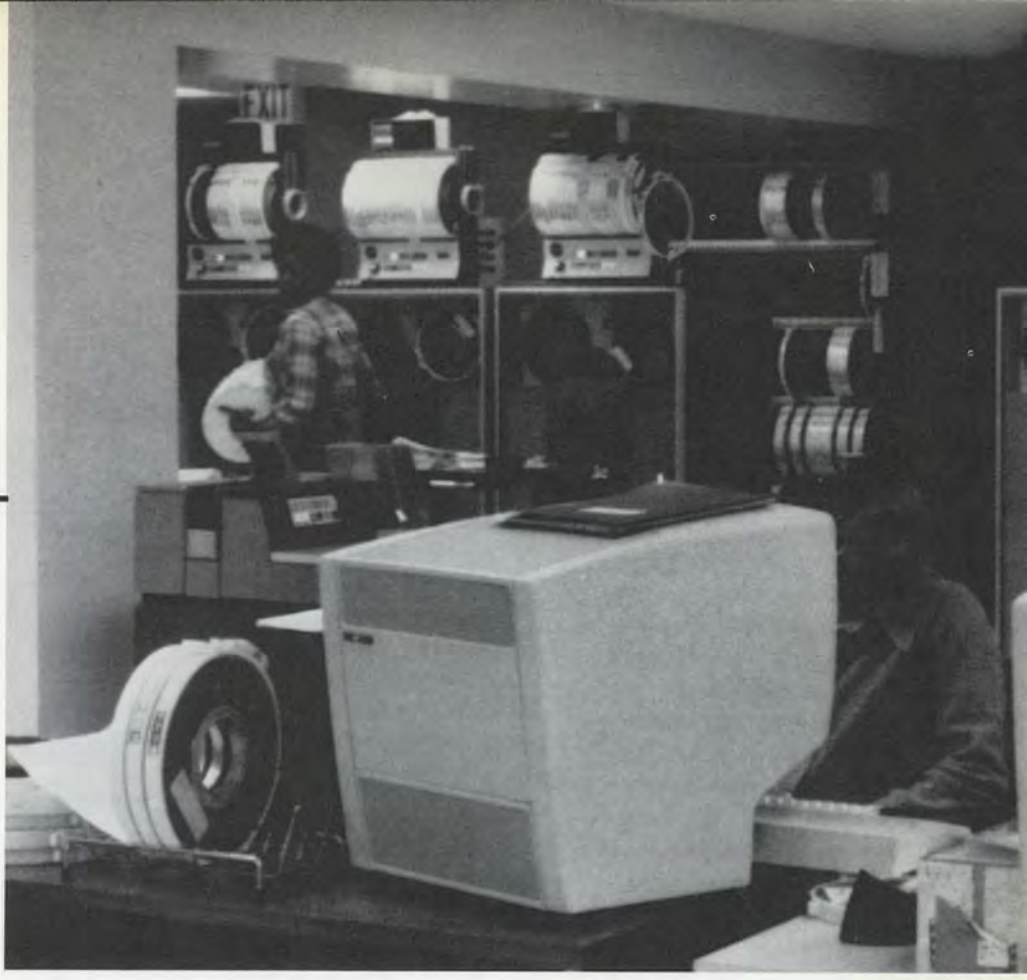
To understand where the title industry is going in terms of automated processes requires some understanding of where the industry has been, as well as some of the unique problems that have surfaced and been solved along the way.

In the title industry, we deal with a finite market that is tied to, and therefore limited by, the number of real estate transactions which occur. There are relatively few companies in the field, and the concept of a title insurance company doing business nationally developed only in the last 15 years.

Our product, a title insurance policy, differs in many ways from other forms of insurance. The most significant difference, from a data handling standpoint, is that in many forms of insurance most of the information necessary to the underwriting activity is supplied by the customer. Examples of customer-supplied information include his vital statistics, health records, the make of his automobile, the type and value of his house, and so forth. In title insurance, the information is not known to the customer. He doesn't know much about the legalities affecting ownership of his property, and the necessary information is buried in many different parts of the public record. The title insurer's job is to dig out this information for him, and to organize this information so that a clear understanding of the property's chain of title can be determined.

Complicating the national title insurer's job is the fact that the title search process differs in each geographic area. Municipal governments set up their own record-keeping systems to serve their own convenience, not the title company's. The lack of uniformity

Messrs. Grskovich and Scherer are Chicago Title Insurance Co. vice presidents. Mr. Grskovich is director of systems planning and development. Mr. Scherer is director of data processing.



in public record-keeping and legal requirements, even in neighboring jurisdictions, means that the title company must treat each county as a separate entity and maintain a separate set of records, or title plant for each.

In developing automated systems, the industry has had to superimpose new systems upon existing manual procedures that are totally lacking in standardization. Because of this, and because the industry is relatively small, little help has been available to us from outside sources via package systems developed by suppliers specifically for our needs. Instead, the title industry has been forced to work on the leading edge of technology, and to develop its own programs.

To improve accuracy and responsiveness, Chicago Title long ago began compiling its own indexes from public records in Cook County. We later committed these to a sophisticated information handling system as a time saving convenience.

For example, as part of its Cook County name (judgments and estates) index, the company computerized and stored on tapes one of the most extensive collections of given names and surnames ever designed specifically for use in the title insurance business, and routinely adds some 85,000 new judgments to the index each year. The total number of records in this index alone has grown to 1.5 million.

The company's name index for Cook County lists such items as money judgments, divorces, bankruptcy proceedings, U.S. revenue liens, Illinois sales tax liens, bond forfeitures and award and decisions in workmen's compensation cases. In addition, the index contains information on probated estates, adjudications of mental illnesses, change of name proceedings, inheritance tax applications and a host of other miscellaneous matters of public record gathered from more than 160 government offices. Other indexes enable the company to search real estate tax records and special assessments using a computer.

Having developed the techniques and technology which enabled us to do this, the next question involved how this technology could be expanded into our field operations. This resulted in developing computerized title plants for many other locations, and led to development of systems that would enable us to maintain and update these systems using our central data processing facilities.

OPTICOM I is the most widely used system developed by Chicago Title. The system allows the user to maintain a computerized title plant on microfiche or microfilm with a minimum amount of capital investment. The only equipment needed is an IBM Selectric typewriter and some kind of microfilm viewing apparatus.

Using a special font on the typewriter and special forms, the user types information on the form and sends it to the data center. Here the typed information is converted to computer language using optical scanning equipment, and the computer checks and validates the information, or "input". As part of the scanning process, a laser beam reads the records and reproduces them on a computer tape which can be understood by the central processor. After the tape is processed and checked, information is converted to microfiche and returned to the user in an easy-to-use form.

The system is continuously updated as new information is entered. Each processing cycle produces a cumulative set of film indexes, so that the previous film is completely replaced.

Using this system, all relevant records needed for a county of considerable size can be kept on microfilm in a desk drawer. It is easier to teach a new employee how to find pertinent data kept on microfilm than it is to teach him or her how to shuffle through a manual system. The system also makes it considerably easier to move

These computer facilities are part of Chicago Title Insurance Co[illegible]new APEX II on-line computerized title insurance examination and production system. Without leaving the desk, the title examiner can use various display screens to call up information from previous examinations that have been entered in the computer, update title findings, make corrections and additions, enter new exceptions as needed and waive exceptions. The computer will, on command, then print within minutes title examinations and commitments.

into new business areas without having to create the space needed to accommodate cumbersome manual records.

The OPTICOM I system was designed for and works extremely well in smaller-size counties. A more advanced system, OPTICOM II, has been developed to accommodate counties with a larger daily recording volume. The primary difference is that this system utilizes a cluster of CRT display terminals, a printer and telecommunications equipment to feed information into the central data center for processing.

Information is electronically transmitted nightly to the Chicago data processing center where records are copied and edited, then merged into automated data files.

More and more frequently, we see this resource being pooled by a number of users as an economical cost-sharing alternative. Record safety is enhanced by the fact that duplicate files can quickly be made in the event of accident or fire.

A third generation of the OPTICOM system will utilize stand-alone minicomputers for greater on-site information storage and processing capacity. Such a system utilizing an IBM Series I computer is now operational in our Seattle, Wash., office and will be practical in other locations where volume and efficiency dictate this as the most economical approach.

The OPTICOM I system is popular for agents or offices writing anywhere from 500 to 1,000 policies per year. The OPTICOM II system becomes especially effective for firms issuing between 1,000 to 3,000 policies per year. OPTICOM III is more flexible in both the number of orders and file sizes that can be processed efficiently.

Still another computerized system introduced by Chicago Title called COMPUDOC, is gaining acceptance in the industry. This system utilizes a desk-top computer so that the user enters closing information only into the system. Retyping of items which appear on multiple documents is eliminated, typographical errors are reduced and all mathematical calculations are performed by the computer. Examples of such calculations are tax prorations, interest, mortgage insurance, commissions, loan discounts and per diem interest. The system also produces any document required for a closing such as checks, HUD-1, VA 1820, VA 1876, all notes and mortgages, truth-in-lending, and amortization schedules. Additional systems are being developed for escrow accounting.

To give some indication of how widespread the data processing revolution in the title industry has become, some 56 counties with computerized title plants are now utilizing the OPTICOM system in one variation or another in 24 states and COMPUDOC is being used in 20 locations. Some 14 million records are maintained and processed and the volume of activity has reached 400,000 records per month.

For its Cook County operations, Chicago Title's APEX II system takes the data processing revolution still another step forward. This system builds upon previous information-handling capacities and enables the title examiner to use a display terminal to call up information from previous examinations that have been entered in the computer, update title findings, make corrections and additions, enter new exceptions as needed, and waive exceptions. The computer, on command of the examiner, can then print title examinations and commitments. At the appropriate time, it also can print the title policy.

The unique feature of this system is that it is on line, meaning the examiner no longer must wait for information to be processed in batches. This is done in minutes while the information is displayed on the terminal screen.

(continued on page 13)

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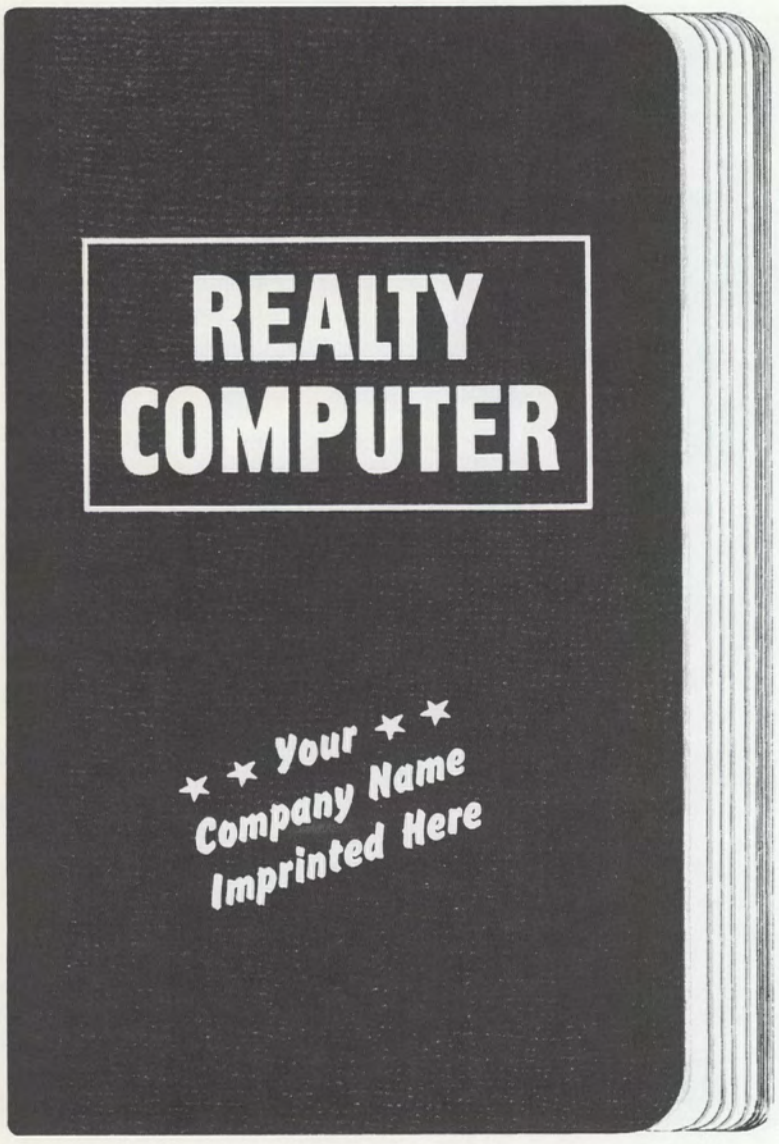

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ALTA Judiciary Committee Reports Court Decisions

Following is the third and last Judiciary Committee supplement to *Title News*, representing 29 cases of the 100 submitted this year for publication by ALTA Judiciary Committee Chairman Ray E. Sweat. The first and second supplements of the report appeared in the June and August issues of *Title News*, representing 40 and 31 cases respectively.

Names—Changes

Moskowitz v. Moskowitz and Bolduc v. Bolduc _____ N.H. _____, _____ A. 2d _____ (N.H. 1978)

In two divorce cases which came before different masters and judges, plaintiff husbands were granted divorces and defendant wives were granted custody of minor children but denied motions for restoration of their maiden names.

They appealed from these denials. The Supreme Court remanded with directions that the Superior Court grant the changes or hear evidence against the relief sought, stating that "mere speculation as to possible embarrassment" to the children was not sufficient ground for denial, and that "the burden of proof rests with either the court or interested parties to prove that there exists a lawful objection which overrides the . . . right to a name change."

The court said "Our conclusion is based on statutory grounds," but cited cases in other jurisdictions based both on statutes and the common law—including in the latter category *Secretary of the Commonwealth v. City Clerks,* decided in August 1978 in Massachusetts and promptly reported in *Title News,* approving, as the New Hampshire court says, an individual's change of "his name at will without resort to any legal proceedings if the change is not made for a fraudulent, criminal or wrongful purpose."

This is the latest of a series of cases encouraging effective changes of names without record available to a title examiner. Suggested legislative remedies include a requirement of recording, possibly with municipal clerks, but preferably in probate courts or registries of deeds. Another suggestion looks toward *bona fide* purchaser status for a buyer or mortgagee who takes title under an instrument using the latest name for the grantor appearing in the registry. An owner can die without fraudulent intent and make his estate under a new and unrecorded name even more difficult to follow in a chain of title than it is now.

Your reporter favors a national vital statistics headquarters to deal with this and other problems of identity which are exacerbated by the mobility of our society.

Navigable Waters

Leslie Salt Co. v. Froehlke (9th Cir. 1978) 578 F. 2d 742

Declaratory actions were filed to determine the jurisdiction of the Army Corps of Engineers, where the appellant had constructed diked evaporation ponds for salt production. The court held that under the Rivers and Harbors Act of 1899 the jurisdiction of the corps extended to the mean high water mark in its natural unobstructed state, rather than the mean higher high water mark, as had been argued by respondents. Recognizing that this act limited the jurisdiction of the corps to the navigable waters of the United States, the court said the mean high water line had consistently been accepted as the boundary of such navigable waters. The court refused to accept the contention of the corps that its previously promulgated regulations, which were based on a previous informal policy, were sufficient to bring the additional area within the jurisdiction of the corps.

However, under the Federal Water Pollution Control Act of 1972, the jurisdiction of the corps was broadened to encompass existing marshlands located above the lines of mean high water and higher high water, which are subject to tidal inundation. Indicating that the broadest possible interpretation of the term "navigable waters" is to be given under this act, the court held that the jurisdiction of the corps extended to waters which were no longer subject to tidal inundation because of appellant's dikes. The court said no regard need be given to the location of the historic tidal water lines in their natural state, and said there was no reason to suggest that the government may protect waters from pollution while they are outside of appellant's tide gates, but may no longer do so once they have passed the gates into the ponds.

Partnership

Farmers & Merchants Bank of Stuttgart v. Harris, 559 F.2d 466 (8th Cir. 1977)

On Feb. 4, 1970, Tyler (appellant), and Harris executed and delivered a promissory note to Farmers & Merchants Bank (appellee) in the sum of $30,000, payable on or before Feb. 4, 1971. After signing the note, Harris and Tyler terminated their partnership and in a dissolution agreement Tyler agreed to assume responsibility for the note. The bank was held to have had no notice of this agreement.

On Feb. 2, 1971, two days before the note was due, Tyler (as managing partner, acting on his own behalf) paid the interest on the note and signed an extension agreement, changing the due date to May 4, 1971. Harris did not sign the agreement. In May, 1971, Tyler again paid interest on the note and signed another extension agreement which moved the due date to Dec. 18, 1971. Again, Harris did not sign the agreement. A third such extension was signed on Jan. 24, 1972. No payments were made thereafter. The bank seeks to hold Harris jointly and severally liable on the note.

The district court concluded the bank was not bound by the dissolution agreement between Tyler and Harris since it had no knowledge and did not consent to the same. Harris appealed the judgment for the bank, contending that significant modification of the note without his (the co-maker's) consent discharged the co-maker from liability.

It was held that any agreement between partners as to the change in their business relationship without notice to or consent from the bank, in no way relieved a partner of his liability as a co-signer of the note. The note was a partnership obligation and Tyler (a partner) had authority to act for the partnership in regard to the note. Therefore, when Tyler modified the terms of the note he bound the Tyler-Harris partnership to the modified terms.

Power of Attorney for Conveyance of Land

Bloom v. Weiser, 348 So. 2d 651, (Fla. 3rd DCA 1977)

In 1972 a man purchased a condominium unit and placed title in his name and that of his intended bride. Shortly thereafter, he executed and forwarded to his son a general power of attorney. The power appointed his son as "my true and lawful attorney for me and in my place, name

and stead giving and granting unto my said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises as fully, to all intents and purposes, as I might or could do if personally present. . . . " A short time later, the son executed and delivered a deed purporting to convey a one-half interest in the unit to the daughter of the man granting the power. The court held that the deed was void. They found that the instrument contained no specific grant of power authorizing the son to convey real estate.

Citing authorities from other states, the court held that for a power of attorney to authorize conveyance of real estate, the authority of the agent to do so must be plainly stated.

Principal and Surety

Caito v. United California Bank 20 Cal. 3d 694 (1978)

Plaintiffs and the Caponis were tenants in common of a farm. As an accommodation to the Caponis and not intending to encumber their interest in the farm, plaintiffs, together with the Caponis, executed a $30,000 note in favor of Bank of America, secured by a deed of trust on the farm. The trust deed encumbered plaintiffs' interest. Years later, to enable the Caponis to again borrow money, the plaintiffs and Caponis executed a $40,000 note secured by a new deed of trust in favor of Bank of America. The Caponis used a portion of the loan proceeds to pay the balance then owing on the $30,000 note retaining the remainder of the proceeds. Again, the plaintiffs signed, intending only to accommodate the Caponis, but the documents again failed to limit them to an accommodation status. Subsequently, the plaintiffs loaned $6,000 to the Caponis enabling them to keep the Bank of America loan in a current status.

The Caponis were also indebted to defendant bank and as additional security the Caponis executed a second deed of trust on their interest on the farm to defendant. Plaintiffs later assumed management of the farm, collected $17,500 in rentals and paid that sum to the Bank of America to be applied on the $40,000 note pursuant to an assignment of rents, issues and profits

Plaintiffs commenced this action seeking partition, accounting, and a declaration of rights and priorities of all parties claiming an interest in the farm. Named as defendants were the Caponis, Bank of America, the trustee under the first deed of trust, the bank and the trustee under the second deed of trust. While the action was pending, Bank of America caused the farm to be sold for $130,000 pursuant to nonjudicial foreclosure of the first deed of trust resulting in surplus funds of $85,447.66 which it deposited in court and it and its trustee were dismissed as defendants. The issue in this case was who was entitled to the surplus funds as between the wiped out cotenant-owner and junior lien holder on the other cotenants' interest.

The court first determined that although the plaintiffs were accommodation parties, they were nevertheless bound on the instruments to the same extent as the comakers, the Caponis, where plaintiffs signed as makers of the note and trustor of the deed of trust. This is the rule with respect to persons who have acted on the faith of the accommodation party's apparent character of principal and not as surety. It was undisputed that the Bank of America was a *bona fide* encumbrancer for value in its acquisition of the beneficial right evidenced by the first deed of trust who had no notice of plaintiffs' accommodation status. The plaintiffs as well as the Caponis were therefore liable as principal obligors and the entire value of the farm was thus subject to the satisfaction of the note. Because the Bank of America note was satisfied equally out of the Caponis' and the plaintiffs' individual interests, the surplus remaining represented the combined interest equally allocable to the Caponis and plaintiffs or to lien claims against their respective share.

Both plaintiffs and defendant assert priority of lien against the surplus funds allocable to the Caponis. The question is whether the plaintiffs' *inter se* claim against the Caponis can be asserted against the Caponis' share of the surplus funds as an equitable lien with priority over defendant's lien on the deed of trust. At the time defendant bargained for the security of the second deed of trust it had neighter actual nor constructive notice that the plaintiffs had signed the Bank of America note and first deed of trust as an accommodation only. The fact that title was held in joint ownership was not in itself a circumstance sufficient to impose a duty on an encumbrancer or to inquire whether there are unrecorded agreements between joint owners. While it is manifest as between the accommodation and the accommodated parties equitable liens have been established, an encumbrancer in good faith for value without actual or constructive notice is entitled to protection against undisclosed liens and equities existing against unrecorded instruments. Defendant thus had a right to rely on the record which indicated the Bank of America note would be satisfied equally out of the respective shares of the cotenants. On that record defendant entered into its financing arrangements with the Caponis, giving value for the secured position it bargained for. Defendant is accordingly entitled to the benefits of a *bona fide* encumbrancer for value without notice of any prior claim other than that asserted by Bank of America.

Although plaintiffs are precluded from asserting lien priority against the Caponis' share of the surplus funds this does not necessarily foreclose them from asserting a senior lien on the theory of equitable subrogation on the basis of the funds advances to the Bank of America which, in turn, improved the security position of defendant, specifically, by the payment of $17,500.

One of the requirements of subrogation is that the debts paid must be one for which the subrogee was not primarily liable. The initial problem of equally obligated cotenants of land encumbered as security is who is primarily liable for the debt owed the senior creditor. If the record shows, for instance, that each contenant is personally obligated for but half of the debt, and if one cotenant is required to pay the full debt in order to protect his position, then it appears that he should be subrogated to the senior creditor's security position but only to the extent to the half payments made on behalf of the defaulting cotenant, assuming all other prerequisites for equitable subrogation are satisfied. He cannot be subrogated to the full amount of his payment as half thereof was made on his own account as the primary obligor, and the doctrine is inapplicable in that circumstance. In this case the record shows that each cotenant debtor is primarily obligated for the debt. Strict application of the rule would require

concluding that when the plaintiffs made payments to the Bank of America after the defendant's lien attached and before the foreclosure sale, they did so as persons primarily obligated and thus are not entitled to be subrogated. Equitable considerations however, might offset the fact that plaintiffs were primarily obligated to the Bank of America for the full amount of the debt. When two or more persons take as tenants in common under instruments silent as to their respective shares, a presumption arises that their shares are equal. Defendant accordingly had notice that plaintiffs and the Caponis were presumably equal owners and, as between themselves, presumably equally obligated on the debt to the Bank of America.

Defendant could not expect to benefit by an improved security position resulting from the Caponis' debt paid by the plaintiffs.

An examination of the $17,500 payment, discloses that it was made equally in behalf of the plaintiffs and the Caponis. The payment wasn't solely that of the plaintiffs. First, the rents, issues and profits of the farm were expressly assigned to the Bank of America and thus could not have been collected by the plaintiffs as their monies in offset of earlier collections benefiting the Caponis. The rents were thus collected by the plaintiffs as agents for the Bank of America. Next, if the plaintiffs could satisfy the claims against the Caponis in this manner, this would give effect to secret or undisclosed equities existing between cotenants, as against an innocent encumbrancer, contrary to established law. As the plaintiffs cannot be subrogated to the extent of payments made in their behalf as principal obligors and cannot be credited with the Caponi share of payment, they cannot claim a priority position as to any part of the $17,500 payment.

As to the $6,000 advanced by the plaintiffs prior to the attachment of the defendant's lien, such undisclosed claim cannot be given priority over a subsequent encumbrancer on an equitable subrogation doctrine. The doctrine of equitable subrogation was thus not applicable to any of plaintiffs' claims and defendant was entitled to the surplus.

United States Fidelity and Guaranty Co. v. N.J.B. Prime Investors (377 N.E. 2d 440)

Investors agreed to lend Deerfield $2,250,000 secured by a mortgage for construction of a motel to be erected by Bean and bonded by Fidelity.

Investors were added as obligee under the bond containing the following:
"7. Provided, however, that notwithstanding anything contained herein to the contrary, there shall be no liability on the part of the principal or surety under this bond to the obligees, or either of them, unless the obligess, or either of them, shall make payments to the principal, or to the surety in case it arranges for completion of the contract upon default of the principal, strictly in accordance wit (sic) the terms of said contract as to payments, and shall perform all the other obligations required to be performed under said contract at the time and in the manner therein set forth."

After investors disbursed approximately $2,000,000, Deerfield defaulted and investors refused to make further disbursements. Fidelity, at Bean's request, made payments to suppliers in order to maintain the progress of construction.

The question was whether or not Fidelity is entitled to receive reimbursement for these payments.

It was held that Fidelity was not legally obligated by the terms of the bond to make the payments for which it now seeks reimbursement. A volunteer has not rights of subrogation.

Public Lands

Neuhoff v. Secretary of the Interior of the United States (9th Cir. 1978) 578 F. 2d 810

The appellant held a power of attorney from a railroad which purported to enable him to select lieu lands for patented property reconveyed to the federal government by the railroad under the Forest Lieu Exchange Act of 1897. The power of attorney was being utilized because lieu selection rights are nonassignable.

Under the Transportation Act of 1940, the railroad surrendered all claims against the federal government to lands which had been granted to the railroad, and which had not been patented or sold to purchasers for value, thus enabling it to free itself of economic hardships imposed by special freight concessions imposed under the original land grant to the railroad.

The appellant contended that the right of selection of such lieu lands was not within such release, but the court disagreed, finding that the only lands excepted from the release were those patented or sold to purchasers for value.

The court found the lieu rights to be inchoate, and the fact that the rights were obtained in place of lands previously patented did not change the character of the rights, thus precluding the appellant's right to select lieu lands.

Public Trust

Van Ness v. Borough of Deal, 78 N.J. 174, 393A. 2d 571 (1978).

The public advocate brought an action against the Borough of Deal charging the borough with illegal and discriminatory practices in the operation and maintenance of its publicly owned beaches bordering the Atlantic Ocean. His contention is that the dry beach area is subject to the Public Trust Doctrine and should be available to the general public so that there may be a proper enjoyment of public trust rights. This doctrine derives from the principle of English law that land covered by tidal water belonged to the sovereign for the common use of all the people.

At issue was whether or not the Public Trust Doctrine is limited to the wet beach area between low and high water.

It was held that a proper application of the Public Trust Doctrine requires that municipally owned upland sand area adjacent to tidal water must be open to all on equal terms and without preference. All have the right to use and enjoy it and the municipality cannot frustrate the public right by limiting its dedication of use to residents. Whether natural, or man-made, the beach is an adjunct to ocean swimming and bathing and is subject to the Public Trust Doctrine.

In specifically limiting its holding to municipally owned open beaches, the court pointed out that it was not called upon to deal with beaches on which

permanent improvements have been built, or beaches as to which a claim of private ownership is asserted.

A dissenting opinion filed by two justices expressed uncertainty as to the extent of the Public Trust Doctrine and would not hold that it applied to municipally owned dry sand beaches.

Records

Alpena Title, Inc. v. County of Alpena, 269 N.W. 2d 578

Alpena County is one of 27 counties which maintains a tract index in Michigan. The Alpena County index was undertaken during the depression with federal funds but has been maintained with general county funds.

Alpena Title, Inc. began business in Alpena County in July, 1975 and sought permission from the register of deeds to photograph and obtain a photocopy of the tract index. The register of deeds refused permission on the ground that only the board of commissioners could authorize copying the tract index. The board of commissioners established a monthly fee of $600 to use the tract index.

The question was whether or not the county may charge for inspection of tract records maintained in the office of the register of deeds.

In *Burton v. Tuite,* 78 Mich. 363, 44 N.W. 282 (1889), the Michigan Supreme Court held that records in the office of register of deeds were public records open to the general public without charge.

In 1921, the Michigan Legislature enacted the system of Abstracts of Title Bill which provided as follows: "Sec. 7. All books, records, indexes and memoranda of the systems hereby authorized shall at all reasonable hours be open for inspection by any person lawfully entitled to have access thereto under such reasonable rules and regulations and subject to such fees and charges as may be from time to time established by the abstracter, subject to such limitations and restrictions, if any, as may be from time to time made by the board of supervisors." M.C.L. Section 53.141, et seq.; M.S.A. Section 5.1001, et seq.

The legislature subsequently passed the Freedom of Information Act which became effective April 13, 1977. This act provides in part as follows: "(1) A public body may charge a fee for providing a copy of a public record. Subject to subsection (3), the fee shall be limited to actual mailing costs, and to the actual incremental cost of duplication or publication including labor, the cost of search, examination, review, and the deletion and separation of exempt from nonexempt information as provided in Section 14.

"(3) In calculating the costs under subsection (1), a public body may not attribute more than the hourly wage of the lowest paid, full-time, permanent clerical employee of the employing public body to the cost of labor incurred in duplication and mailing and to the cost of examination, review, separation, and deletion. A public body shall utilize the most economical means available for providing copies of public records."

The court stated the Freedom of Information Act did not apply to the tract indexes, nor did it modify or repeal the Abstract of Title Statute. The county could impose reasonable charges for access to and copying tract indexes.

Recording Acts

Palamarg Realty Company, et al. v. Joseph Rehac, et al. 387 A. 2d 1233, 159 N.J. Super. 287, Decided May 10, 1978.

This case involved two competing chains of title from a common source.

The effect of New Jersey Record-Notice Statute was at issue. It provides, "that every recordable instrument . . . shall, until duly recorded . . . be void and of no effect . . . against all subsequent *bona fide* purchasers . . . for valuable consideration, not having notice thereof, whose deed shall have been first duly recorded or registered. . . . "

The court held that the recording purchaser be favored with all presumptions as to law and fact and that he be charged with such notice from the records as can be ascertained by reasonable search of the records.

A reasonable search must be made in respect to each grantor in the title only for the period in time in which that grantor was in title before he conveyed out to the next grantee in the chain. A *bona fide* purchaser is one who has acquired title to the property and has paid a valuable consideration therefor.

Recording statutes must be strictly construed to protect title to real estate from chaotic interference and encourage the safe, orderly, secure and reliable transfer of land.

Restrictive Covenants

Friedberg v. Riverpoint Building Committee, 218 Va. 659, S.E. 2d 106 (1977)

The plaintiff property owners brought an action against their subdivision building committee seeking the right to resubdivide the property and to erect thereon certain types of dwellings.

The Supreme Court of Virginia held that the standard followed by the subdivision building committee which prohibited the construction of one story houses containing less than 3,000 square feet and no dormer windows, was not unreasonably applied to property owners where restrictive covenants called for approval "as to conformity, and harmony of external design, with existing structures in the subdivision."

Right of First Refusal

Atchison v. City of Englewood, 568 P 2d 13 (Colo., 1977)

Action against the City of Englewood (city) and the Martin-Marietta Corp. (Martin-Marietta) claiming violation of pre-emptive rights agreement.

In 1949, the city purchased a ranch from plaintiffs, the Atchisons, who received as a part of the consideration for the sale a pre-emptive rights agreement providing that the city would grant to them the right to repurchase or lease the property at the same price and on the same terms and conditions upon which the city was willing to sell or lease to any third party.

The agreement required the city to give the Atchisons 60 days written notice before any such sale or lease, during which time the Atchisons could exercise their option. The agreement contained a provision that the rights granted to the

Atchisons therein would be deemed to be held "in joint tenancy in them and in the survivor of them, their assigns, and the heirs, and assigns of such survivor." The Atchisons promptly recorded the agreement.

The city leased the property to third parties without giving notice to the Atchisons. In 1956, a lease was entered into by the city and Martin-Marietta for a term of 25 years, which included an option to purchase. Pursuant to this lease, Martin-Marietta in 1966 notified the city that it intended to exercise it's purchase option.

The Atchisons learned of the pending sale through newspaper publicity and demanded that the city offer the property to them in accord with the preemptive rights agreement. Notwithstanding this demand, the city conveyed the property to Martin-Marietta in 1967. Shortly thereafter, a portion of the property was condemned by the U.S. Government as part of a dam project.

At issue was what rights of enforcement the holder of a pre-emptive rights agreement has, the agreement having been properly recorded but on its face is in violation of the rule against perpetuities.

The Supreme Court upheld the trial court's reformation of the pre-emptive rights agreement so as to eliminate the perpetuities problem, finding that the evidence supported the conclusion that the clause in violation of the rule was added by the draftsman of the instrument at his own behest and did not express the true intention of the parties, which was found to be that the rights under the instrument would be exercisable only by the plaintiffs during their lives. Applying the rule that reformation is permitted where the evidence clearly and unequivocably shows that an instrument does not express the true intent of the parties, the court allowed the offending provision to be stricken and the agreement, as modified, was found to be enforceable.

Further, the court held that the recording of the instrument imparted knowledge of its terms to Martin-Marietta which was thereby prevented from attaining *bona fide* purchaser status. Although the agreement, as recorded, was defective on its face, the court ruled that it could not be disregarded as void by anyone taking a subsequent interest in the property, as such subsequent purchasers would be charged with knowledge of the likelihood of reformation by the court to render the agreement enforceable.

Having found that the instrument, as reformed, was valid and enforceable, the court ruled that while generally specific performance would be an appropriate remedy for breach of a land sale contract, in this case the condemnation of a substantial portion of the property rendered specific performance impractical. The proper measure of damages, in view of this intervening circumstance, was found to be the difference between the market value of the property at the time of the sale which constituted the breach, and the option price, which here was the amount Martin-Marietta paid, plus interest.

Rights of Parties in Possession

Cohen v. Thomas & Son Transfer Line, Inc. 586 P 2d 39, Colo. App. (1978)

Purchasers of property subject to lease appeal from judgment allowing lessees to exercise right of first refusal to purchase. Affirmed.

Lessee, Thomas, entered into a five-year lease of real property to use as a truck terminal. The lease contained a renewal option and a right of first refusal in the lessee to purchase the property in the event of an attempted sale. The lease was never recorded. Lessee retained possession upon the expiration of the lease's term in 1973, agreeing to an increase in the monthly rental, although there was no discussion of the exercise of the renewal option. The renewal option contained no requirement of notice to the lessor in the event lessee chose to exercise it.

Thereafter, in 1974, the Cohens entered into negotiations with the lessor regarding the purchase of the property. As a physical inspection of the premises revealed that the lessee was in possession, purchaser inquired of the lessor as to the rights of the lessee. The lessor/seller responded that Thomas was in possession as a hold-over tenant on a month-to-month basis under a lease which had expired. Satisfied with this explanation, Cohen did not request to see the expired lease or make any direct inquiry of the lessee as to the terms of his occupancy before proceeding to purchase the property. Upon learning of the sale, lessee protested and sought to exercise his purchase option under the lease.

At trial, it was found that the lease renewed automatically and in its entirety.

The issue was whether or not the purchaser of real property subject to a lease is bound by the terms of the lease when no inquiry was made of the lessee as to the terms of his possession.

The lessee's possession of the premises put the purchaser on constructive notice of the terms of the lessee's tenancy. Having failed to make inquiry of the lessee, or examine the lease, plaintiff took the property subject to any rights of the lessee which a reasonable inquiry would have revealed, including, the right of first refusal in the event of a sale. The court reached this conclusion on the basis of Sec. 38-35-109 C.R.S. (1973) which provides that an unrecorded instrument is not effective except between the parties thereto and those with notice of its terms. The court held that "notice" in this statute includes not only actual notice, but also constructive notice of the terms of an instrument which a reasonable inquiry would have revealed. Here, the purchaser's failure to inquire of the lessee was found not to be reasonable inquiry and he was bound by the terms of the instrument. Under the circumstances of this case, reasonable inquiry would have included inquiry of the lessee who was the sole tenant in possession.

The court noted that the rule it applied in this case that prospective purchasers must inquire of lessees in possession as to their rights is not of universal application. The court gave several examples to show that the parties and scope of the inquiry may vary according to the circumstances, as when the possession is consistant with record title, where the tenant is in possession of only a part of the premises, where the tenant's occupancy is not sufficiently visible to put the purchaser on inquiry notice, where certain equitable defenses exist or in a multiple tenant situation.

Right of Redemption

Coastal Bank of Georgia v. LeMaistre, 359 So.2d 781 (Ala. 1978)

A party named Hobbs defaulted on a mortgage to Pilot Life Insurance Co. Pilot Life thereupon foreclosed the mortgage and sold the property to Command Construction Co. Command conveyed the property to Underwood. Underwood later conveyed the property to defendant, LeMaistre.

Six months after the foreclosure, LeMaistre obtained the redemptive rights of Hobbs by a quit claim deed. Some five months later, plaintiff Coastal Bank filed a bill to redeem from LeMaistre, by virtue of its status as a judgment creditor of Hobbs. The trial court held that plaintiff's attempt to redeem from LeMaistre was contrary to Code of Alabama, Title 6-5-231 (C), and was therefore ineffective.

At issue was whether or not under the aforementioned facts and the relevant Code provision, the plaintiff's status as a judgment creditor gave it a priority of redemption superior to defendants status as the assignee of the debtor's statutory right of redemption.

Section 6-5-231 (C) of the Code of Alabama states, "where no redemption is made as provided in this section within six months from the day of sale, anyone entitled to redeem may do so thereafter without giving the notice provided for in this section, and the property may not be again redeemed from said redemptioner."

Here, the defendant, LeMaistre, had effected a redemption of the property by obtaining the legal title conveyed at the foreclosure sale and merging it with the equitable title of the debtor by obtaining from the debtor a quit claim of his statutory rights of redemption.

Six months had passed since the foreclosure sale and none of the parties mentioned in the redemption statute had given notice of their intent to redeem as provided by the statute. In such a case, the aforementioned code provision is determinative of the issue.

After the six-month period has run, senior and junior redemptioners stand in the same position. The court, however, went even further by stating at page 785, "... the judgment creditor stands in no higher position than the debtor who has the paramount right to redeem and the debtor may, as he has done in this case, convey his privilege position to his vendee, Mr. LeMaistre."

Thus, the court held in effect, that the vendee of the debtors rights of redemption stands in the position of a senior redemptioner but regardless of what his priority of redemption is under the statute, once the six-month period has run and no party has given notice of intent to redeem to the other parties as provided by the statute, all redemptioners stand in the same relative position, and once a junior redemptioner redeems even a senior redemptioner may not thereafter redeem the property from him.

Slander of Title by Ommission

Mills v. Standard Title Insurance Co., 577 P 2d 756___Colo.___(1978)

Plaintiff's appeal dismissal of slander of title action. Affirmed.

Mills and Crosby were involved in a dispute over the ownership of certain real property which had been the subject of a mortgage foreclosure sale. Both Mills and Crosby claimed redemption rights in the property.

In order to obtain a loan with which to finance his redemption of the property, Crosby requested that Standard Title Insurance Co. issue a title commitment in which Mills' right of redemption would not be reflected. Upon Crosby's execution of an agreement indemnifying Standard from any liability arising from the issuance of the commitment, the requested commitment was issued. Thereafter, the loan was made and Crosby redeemed the property.

In an action concluded prior to the instant case, Mills sued Crosby. This first action by Mills resulted in a settlement, pursuant to which mutual releases were executed by Mills and the estate of Crosby, by then deceased. These releases were of a general nature, discharging each party and their successors from all claims arising against each other through any of the issues involved in the suit.

Following the settlement of the action against Crosby, Mills brought a slander of title action against Standard, alleging a disparagement of title from the issuance of the commitment and policy of title insurance without reference to Mill's interest. Standard brought in Crosby's estate, as a third party defendant, based on the indemnity agreement. At trial, the court found that Standard and Crosby were joint tortfeasors, having participated together in the slander of title. However, the complaint was ordered dismissed on the grounds that the release of Crosby's estate by Mills also operated as a release of the joint-tortfeasor, Standard. The Court of Appeals affirmed the dismissal on the basis of the release, specifically refusing to rule on whether a slander of title had been committed.

At issue was whether or not the release of the insured party by the plaintiff also operates as a release of the insuring company in a slander of title action brought against a title insurer by an individual whose interest in the subject property was omitted from a title policy.

While noting that as to releases executed after July 1, 1977, the result may differ due to statutory changes effective on that date, the Supreme Court upheld the trial court's finding that the release of the insured also operated to release the insurer. The court adhered to the rule that, absent a manifestation of a contrary intent, the release of one joint tortfeasor releases all.

From the perspective of the title examiner this case is of particular interest in that, while not ruling explicitly on the issue, the Supreme Court impliedly accepted the finding of the trial court that the title company's conduct in omitting the plaintiff's interest from its title insurance policy gave rise to an action in tort for slander of title by the plaintiff, a non-insured party. But for the operation of the release, Mills apparently would have had an action against Standard.

Specific Performance

Karas v. Brogan, 55 Ohio St. 2d 128, 378 N.E. 2d 470, Ohio Supreme Court (1978)

Vendor had offered to sell real estate "free and clear of all liens and encumbrances."

Vendee accepted the offer, adding "oil lease has to be cancelled."

In question was whether or not vendee can have specific performance on the contract.

The court ruled affirmatively. When an offer to sell real estate specifies a title free and clear of all encumbrances, an acceptance which states that oil lease has to be cancelled is not a significant modification of the offer or a counteroffer and the accepting party may have specific performance.

God v. Hurt, 241 S.E. 2d 800 (1978)

A purchaser of real estate brought an action for specific performance against the vendor when the husband of the vendor refused to release his contingent curtesy interest. The Supreme Court of Virginia held that the purchaser could not obtain specific performance of the contract together with an abatement of the purchase price.

Tax Sale

Marlea Corp. v. Willard Castee, 242 S.E. 923 (W.V. 1978)

In this suit to set aside tax deed, it was held that where a corporation attempted in good faith to redeem, but because of mistake of officer charged with effectuating redemptions, paid less than full amount necessary for total redemption, efforts of corporation to redeem, proven by redemption certificate and supported by notation in assessor's records that redemption was made were tantamount to redemption, and thus deputy commissioner of forfeited and delinquent lands had no jurisdiction to sell land in dispute.

Title Insurance

Walters v. Marler, (1978) 83 Cal. App. 3d

A residence had been constructed by the owner of six contiguous parcels of real property. The residence was on Parcel 1, with the driveway extending onto Parcel 4. A later tax assessment and survey erroneously showed the house to be on Parcel 4.

The sellers in this action purchased the entire property in 1971. Both the sellers and their purchase money lender, Columbus Savings and Loan, obtained title insurance policies, but no mention was made of the location of improvements. Columbus further agreed to make an advance for the construction of an addition to the house. A preliminary title report was issued and covered Parcels 1 through 6 but did not mention the improvements. The title insurer issued a policy to Columbus which erroneously covered only Parcel 4. Also, a foundation endorsement was issued to Columbus insuring them against loss if the improvements were not on Parcel 4.

The addition was built, and it extended to Parcel 4. The sellers then listed the property for sale with a broker, with the sellers and their broker believing the house to be on Parcel 4. Another broker, representing the buyer, contacted the listing broker for information about the property and was given a plot map with the improvements marked as being within Parcel 4. When showing the property to the buyer, the buyer's broker misread the map and was in error in pointing out the property to the buyer. In 1973, the sellers sold Parcel 4 to the buyer. A preliminary title report was issued by the title insurer and no improvements were noted therein. The title insurer issued a standard California Land Title Association policy to the buyer and an ALTA extended coverage policy to Wells Fargo, the buyer's lender. The policy to Wells Fargo included a 116 endorsement insuring that the house was located on Parcel 4 and a 100 endorsement insuring against any loss for any encroachment by the house onto adjoining lands.

After moving onto the property, the buyer discovered that only a small portion of the house was really on his property. He then instituted an action against the sellers, the sellers' brokers, the buyer's brokers and the title insurer. The sellers cross-complained against the buyer, both sets of brokers and the title insurer.

The jury verdict was in favor of the buyer against all defendants on the basis of negligent misrepresentation, and the measure of damages was determined to be the purchase price of the property. Punitive damages also were assessed against the title insurer and the sellers. The jury also found in favor of the cross-complainant sellers against the title insurer based on the breach of a third party beneficiary contract.

On appeal, the Court of Appeals affirmed in part, reversed in part and remanded for further proceedings. The Court of Appeals found that the buyer failed to prove the elements of cause of action for negligent misrepresentation against the title insurer. The court said that the title insurer had made no representation as to the location of improvements in the policy of title insurance that had been issued to the buyer. The policies issued to Columbus and to Wells Fargo did contain endorsements which insured them against damage which would result if the house encroached on or was located on another lot. The buyers argued that implicit in these assurances was a representation that these risks would not occur. The court, however, concluded that a title insurance policy does not represent that the contingencies insured against will not occur. Furthermore, the court said that even if there is a representation to the lender that such a contingency will not occur, the purchaser cannot recover as the title insurer is only liable to those persons to whom the representations were made. Even if others should become aware of the representations and act upon them, there would be no liability, even though the title insurer should have reasonably foreseen that possibility.

The court also found that the buyer was not entitled to recover attorney's fees from the title insurer. The buyer had argued that the title insurer had a duty to defend against the sellers' cross-complaint. The court said that an insurer's duty to defend is dependent upon facts known to the insurer at the inception of the suit against the insured, and is measured by the terms of the policy. Here, there was a standard exclusion in the CLTA policy, Schedule B, Part I, Item 4, which excluded from coverage "Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which are not shown by the public records," and the court held that the title insurer was not required to defend or prosecute any action because of misunderstandings about the location of the house.

The sellers as cross-complainant had filed a cause of action against the title insurer for breach of contract as third party beneficiaries, based on the representations made to Columbus Savings and Loan in the issuance of a foundation endorsement and to Wells

Fargo in the issuance of the 100 and 116 endorsements given in connection with the title insurance policies. The court discussed the questions of donee and creditor beneficiaries, and intended and intentional beneficiaries. Noting that an insurance policy is a contract and is to be construed in the same manner as other contracts, and further noting that title insurance policies are to be construed the same as other insurance policies, the court said that the basic principles of third party beneficiary law apply to title insurance policies. Finding that the buyers were, at most, incidental beneficiaries of the policies issued to Columbus and Wells Fargo, the court said that the sole purpose of those contracts was to protect the lenders as mortgagees against loss or impairment of their security.

The sellers and brokers argued that the buyer had acquired an easement by implication for the use of Parcel 1 to the extent necessary for the beneficial enjoyment of the property conveyed to him. The court discussed the elements of an easement by implication and said that the existence of an easement by implication was dependent upon the intent of the parties. For an easement by implication to be sustained, the intent of the parties to create such an easement must be clearly apparent. The court found the trial court's holding that there was not an easement by implication to be amply supported by the evidence, and implied that a mistake by the parties will not suffice to create the requisite intent for an easement by implication.

In discussing the measure of damages recoverable from the brokers, the court noted that the proper measure is ascertained by considering the relationship of the broker to the defrauded party. Here, the buyer's broker was found to stand in a fiduciary relationship to the buyer, and damages are to be measured pursuant to the proximate cause provisions governing compensation for torts in general. The measure of damages for the sellers' broker, who were not in a fiduciary position to the buyer, was the out-of-pocket loss of the defrauded party. The court further noted that subsequent expenditures made by the buyer for such items such as landscaping, property taxes, title and property insurance, maintenance and repair would not be recoverable under either measure of damages. Since these expenditures would have been made even if the property had been as it was represented to be, they were not made in reliance on the misrepresentations.

Bragman v. Commonwealth Land Title Insurance Co., 421 F. Supp. 99 (1976)

The plaintiff, a resident of Wisconsin, came to Philadelphia and purchased 1742-48 Market Street at the sheriff's sale pursuant to mortgage foreclosure on Dec. 4, 1972. On Dec. 28, 1972, the plaintiff obtained a commitment for an owner's title policy from the defendant.

The deed was delivered to the plaintiff on March 9, 1973, and recorded the same day. About 20 days later, the defendant delivered to the plaintiff a title insurance policy dated March 9 which contained no Schedule B exception as to taxes.

On Jan. 1, 1973, taxes were assessed and became a lien in the amount of $22,012.53.

The plaintiff paid the taxes after making a demand upon the defendant, which was denied. The plaintiff filed suit. Each party moved for summary judgment.

At question was whether or not the defendant was liable for the taxes.

The court held for the plaintiff. Under Pennsylvania law, the purchaser at a sheriff's sale is not the owner until he receives the deed. It is the owner of the property on the date the taxes are assessed who is liable for payment of the taxes for the entire year.

Ely v. Munshower, 4 District & County Reports 3d 430, Pennsylvania (1977)

Title company issued a title policy with the following Schedule B exception: "This policy does not insure against loss or damage by reason of the following: . . . 2. Any variation in location and dimensions, conflicts in boundary lines, encroachments, overlaps, easements not of record and any other objections which a survey made in accordance with 'Minimum Standard Detail Requirements for Land Title Surveys' as adopted by American Title Association and American Congress on Surveying and Mapping would disclose."

The question was whether or not the title company has liability for encroachments.

It is well recognized that a title insurance company can except from coverage such discrepancies by the terms and conditions of its policy. A title insurance company binds itself absolutely to indemnify the policyholder for any loss resulting from defect in title, no matter what the cost, unless the particular defect is exempt by the policy: *Keown v. West Jersey Title and Guaranty Co.,* 147 N.J. Super. 427, 371 A. 2d 370 (1977). While a title insurance policy is subject to the same rules of construction as are other insurance policies (*Hansen v. Western Title Insurance Co.,* 33 Cal. Rep. 668 (D.C.A. 1963)) and, therefore, is to be liberally construed in favor of the insured, a court is required to determine the intentions of the parties from the language in the policy, giving effect so as to give reasonable meaning to its terms: *Feldman v. Urban Commercial, Inc.,* 78 N.J. Super. 520, 527, 189 A. 2d 467 (1963).

The case of *Banas v. Heiney,* 66 District & County Reports 2d 286 (1973), is one point. The Banas suit was brought against a title insurer because a survey made after the issuance of the policy revealed that the realty purchased and insured contained only 16 acres, rather than 33 acres as represented by the seller. The title policy excepted from coverage such defect, by a provision similar to that found in the instant policy, the exception in Banas read as follows: "'Any variation in location or dimensions and any other objections and easements which a survey for conveyance made by an official surveyor should disclose, or which are visible on the ground or are known to the assured.'"

The title company's preliminary objections to the complaint were sustained by the Carbon County Court of Common Pleas and in doing so, the court noted: "Since plaintiff does not allege any facts to show that . . . the provisions set forth . . . excluding insurance coverage for inaccuracy of description and dimensions and any other objection, easements, or encumbrance . . . are not binding upon her, defendants are entitled to have the demurrer sustained." (Banas at page 289.)

We see no reason why we should not follow the holding in the Banas case, when dealing with the *assumpsit* aspect of plaintiffs' complaint.

Oliver D. Childs v. Mississippi Valley Title Insurance Co., 359 So. 2d 1146 (Ala. 1978)

Wilma B. Jones conveyed to plaintiffs in November, 1970, at which time plaintiffs obtained from defendant a guarantee of title insuring them against, among other things, "... any defect in or lien or encumbrance on the title to the estate or interest covered ... existing at the date hereof, not shown or referred to in Schedule B or excluded from coverage in Schedule B. ... "

In October, 1975, plaintiffs conveyed the subject property to their daughter-in-law. Plaintiff's grantee attempted to obtain a title policy from defendant, but was informed that there was a cloud or defect in the title due to the fact that Jones had conveyed the same property by warranty deed to Steve R. Jones and wife in June, 1973. Plaintiff's grantee was further advised that a deed executed in 1969 by Steve Jones purportedly conveying his interest in this property to Wilma B. Jones was invalid and was, in fact, a forgery.

Plaintiffs thereupon made a demand upon defendant to take affirmative action and initiate whatever legal action may be necessary to remove the cloud on and defect in plaintiff's title, resulting from the adverse claim made by Steve Jones. Defendant refused to take any affirmative action despite verbal and written demands by plaintiffs.

At issue was whether defendant's refusal to take affirmative action to establish plaintiff's title as insured, is actionable in tort theory as "outrageous conduct" for which recovery of punitive damages for mental anguish would lie."

Expressly stating on page 1152 that "... this court in the proper case, has not rejected first party bad faith tort actions against an insurer," the court nonetheless rejected plaintiff's claim and affirmed dismissal based on interpretation of the express provisions of the policy.

Defendant's policy, under Exclusions from Coverage, Section 3C, states "the company shall have the right, at its own cost, to institute and prosecute any action or proceeding or do any other act which, in its opinion, may be necessary or desirable to establish the title as insured." This provision, the court interpreted as giving defendants the right, but not imposing a *duty,* to establish the title as insured. In this sense, the case is distinguished from *Jarchow v. Transamerica Title Insurance Company,* 122 Cal. Rptr. 470 (1975) on which plaintiffs had relied.

In *Jarchow,* the defendant's behavior was found to be actionable in tort because the specific language of the policy imposed an affirmative duty on the insurer to establish the title as insured. The relevant portion of that policy states: "the company, at its own cost, and without undue delay shall provide ... for such action as might be appropriate to establish the title ... as insured, which litigation ... is founded upon an alleged defect, lien, or encumbrance insured against by this policy." The Alabama Supreme Court found that no such affirmative duty was required of defendant Mississippi Valley, despite the fact that another portion of the policy in question states: "The Company at its own cost and without undue delay, shall provide for the defense of the insured in all litigation consisting of actions or proceedings commenced against the insured, which litigation is founded upon defect, lien, or encumbrance insured against by this policy, and may pursue such litigation to final determination in the court of last resort."

Thus, although the Alabama Supreme Court, by way of dictum, may have created the tort of outrageous conduct, it nonetheless made it clear that it would first look to the express terms of the policy to determine whether the insurer's failure to act is actionable in tort.

Chicago Title Insurance Co., et al v. Sherred Village Assoc., 568 F.2d 217 (1st Cir. 1978)

A subcontractor on a housing project in Maine appealed from a decision that a mortgage assigned by a local bank to the Department of Housing and Urban Development had priority over its mechanic's lien concerning the profits from a foreclosure sale. Chicago Title had insured the bank on the mortgage.

According to Maine law, the mechanic's lien had priority over the mortgage, but federal courts have traditionally adopted the Federal Common Law principle that the "first in time is the first in right," to priority disputes involving federal liens.

With regard to non-federal liens, the Supreme Court has established a Federal Common Law rule to determine when they arose rather than using the dates the lien arose under state law. The federal rule first adopted by the Supreme Court for determining when a non-federal lien arose was the choateness doctrine, *i.e.,* that a lien's priority was measured from the time it became choate.

A lien becomes choate when the identity of the lienor, the property subject to the lien and the amount of the lien are all established, *United States v. New Britain,* 347 U.S. 81, 84.

Since the enactment of a 1966 Tax Reform Act, the circuits have split on the issue of whether the doctrine of choateness should continue to be applied in priority disputes involving non-tax federal liens. The second, fourth and 10th circuits have continued to apply the choateness doctrine. But the fifth and ninth circuits have not. The first circuit chose to continue to apply the choateness doctrine on the grounds that it might increase the chance of attracting the interest of Congress if there was a sustained demand for reform.

Because in this case the mechanic's lien had not become choate, the Court of Appeals affirmed the District Court's decision of this declaratory judgment that the mortgage had priority.

First National Bank of Minneapolis v. Fidelity National Title Insurance, 572 F. 2d155 (8th Cir. 1978)

In 1973 Dial Investment, Inc. held purchase options for a subdivision (Winchester Heights) then owned by the Klinkers. Karnes, the president of Dial Realty, Inc., a sister company, obtained a commitment for permanent financing of the development contingent upon completion of certain improvements. To finance these improvements an interim loan was necessary. First National agreed to make this interim loan, contingent on agreement of the form and substance of necessary loan documents.

October, 1973, Karnes, representing both Dial Realty and Dial Investment, proposed that First National's interim construction loan wrap-around a purchase money mortgage on the real estate. First National agreed to consider this proposal and in turn proposed Karnes obtain a title

insurance policy that excluded reference to the Klinker mortgage and gave it first lien on the development.

After some confusion, First National and Dial Investment agreed to abandon the wrap-around scheme. Some time after that, however, Karnes contacted Fidelity Title to determine if it would issue the clean title policy requested by First National. Fidelity Title agreed to do this but contingent upon First National's accepting the wrap-around scheme. Karnes stated that First National had accepted the deal. Fidelity then requested a copy of the loan agreement to verify that sufficient funds were reserved to discharge the three prior mortgages omitted from the policy. The agreement was never furnished.

On April 4, 1974, First National and Dial Investment signed the loan agreement authorizing the lender to discharge the Klinker mortgages but not obligating the lender to use the money for that purpose.

On April 5, 1974, the mortgage broker (Heitman Mtge. Co.) informed Fidelity Title it would be depositing $500,000 with Fidelity for disbursement at which time the insurer was to issue a policy securing First National as superior lienholder.

March 22, 1974, Dial Investment purchased Winchester Heights from the Klinkers, giving them a purchase money mortgage recorded May 13, 1974.

Fidelity then issued a title policy insuring First National against loss of the full amount of the interim loan sustained by reason of prior liens. The policy did not refer to the Klinker mortgages although another part of the policy excluded from coverage, defects, liens and encumbrances . . . created, suffered or assumed by the claimant.

On February 28, 1975, Dial Investment defaulted on its mortgage obligation. First National then began foreclosure proceedings. On April 26, 1976, the state court found the Klinker mortgages prior to First National's lien. First National then sought declaratory relief against Fidelity Title for the amount owed it. Fidelity now alleges the Klinker mortgages were excluded from coverage by reason of the exclusionary language and by agreement of the parties.

Issue: Did the title insurer assume the risk of the developer's failure by writing a clean policy when it knew of prior encumbrances, and by doing so also waive the exclusionary provisions of the policy?

Held: The evidence is such that summary judgment was improvidently granted. The court of appeals remanded the case with the note that the court should focus on First National's intent not on that of the title insurer. The title insurer must show by the preponderance of evidence that First National agreed to the prior encumbrance (a question of fact not law). First National's knowledge of the prior encumbrance will not absolve the insurer from liability unless the insurer establishes that the Bank agreed to a secondary position.

Hughley v. Caldwell, 559 S.W. 2d 877 (Court of Civil Appeals of Texas, 1977)

Vendor agreed to sell a tract of land to vendee free and clear of all encumbrances except those set out in Exhibit C, with closing date of Aug. 31, 1973. A commitment for title insurance was issued Aug. 3, 1973, containing a printed exception "Rights or claims of parties in possession not shown of record" an item not included in Exhibit C.

At issue was whether or not the vendee may raise this objection for the first time at closing or is he estopped by failure to make a more timely objection.

The title company was willing and able to delete the exception subject only to an on-site inspection. By failing to raise any objection to the exception until the closing date the vendee, as a matter of law, is estopped from raising the objection at closing. The doctrine of estoppel was invoked to protect the justified expectations of the parties.

Indians

Roy Tibbals Wilson et al v. Omaha Indian Tribe et al 78-160 and *State of Iowa et al v. Omaha Indian Tribe et al* 78-161 (On writs of certiorari to the U.S. Court of Appeals for the Eighth Circuit) June 1979

In 1854, Omaha Indian Tribe ceded most of its aboriginal lands by treaty to the United States in exchange for money and assistance to enable the tribe to cultivate the retained lands.

The retained lands proved unsatisfactory to the tribe and it exercised its option under the treaty to exchange those lands for a tract of 300,000 acres to be designated by the president and acceptable to the tribe.

The Blackbird Hills area, on the west bank of the Missouri River, all of which was then part of the territory of Nebraska, was selected.

The eastern boundary of the reservation was fixed as the center of the main channel of the Missouri River. This land, as modified by a subsequent treaty and statutes, has remained the home of the Omaha Indiana Tribe.

In 1867, a survey by T.H. Barrett of the General Land Office established that the reservation included a large peninsula jutting east toward the opposite (Iowa) side of the river, around which the river flowed in an oxbow curve known as Blackbird Bend.

During the next few decades, the river changed course several times, sometimes moving east, sometimes west.

Since 1927, the river has been west of its 1867 position, leaving most of the Barrett survey area on the Iowa side of the river, separated from the rest of the reservation.

As the area, now on the Iowa side, dried out, Iowa residents settled on, improved, and farmed it. These non-Indian owners and their successors in title occupied the land for many years prior to April 2, 1975, when they were dispossessed by the tribe, with the assistance of the Bureau of Indian Affairs.

Four lawsuits followed the seizure, three in federal court and one in state court.

Two principal issues were presented. First was the interpretation of 25 U.S.C.S. Sec. 194, a 145-year old, but seldom used statute providing: "In all trials about the right of property in which an Indian may be a party on one side, and a white person on the other, the burden of proof shall rest upon the white person, whenever the Indian shall make out a presumption of title in himself from the fact of previous possession or ownership."

The second issue was whether federal or state law determines whether the critical changes in the course of the Missouri River were accretive or avulsive.

The Federal District Court consolidated the three federal actions, severed claims to damages and lands outside the Barrett survey area, and issued a temporary injunction that permitted the tribe to continue possession.

The District Court concluded that state rather than federal law should be the basis of discussion.

Applying Nebraska law, which places the burden of proof on the party seeking quiet title, the court concluded that the key changes in the river had been accretive, and that the east bank riparians (petitioners) were thus the owners of the disputed area.

The Court of Appeals reversed with the rationale that the District Court should have applied federal rather than state law. The boundary of the reservation was coincidental with an interstate boundary at the time the river moved.

The U.S. Supreme Court vacated the Court of Appeals' judgment and remanded the case for further proceedings with the reasoning that the Court of Appeals was partially correct in ruling that Sec. 194 was applicable in this case. By its terms, Sec. 194 applies to the private petitioners but not to petitioner State of Iowa.

The Supreme Court also agreed with the Court of Appeals' conclusion that federal law governed the substantive aspects of the dispute, but found it in error for arriving at a federal standard, independent of state law, to determine whether there had been an avulsion or an accretion. Instead the court should have incorporated the law of the state that otherwise would have been applicable (Nebraska law).

Railroads

Pollnow v. State Department of Natural Resources, 88 Wis. 2d 350, 276 N.W. 2d 738, Supreme Court of Wisconsin (1979)

One Jessee Russell patented the property in question on June 30, 1884. In 1887, the Chicago, Milwaukee and St. Paul Railway Co. built a railroad across the parcel pursuant to the Railroad Right-of-Way Act of 1875. In 1973, the railroad was abandoned. In 1975, the state of Wisconsin acquired the interest of the railroad.

Three principal issues were presented. Firstly, was the railroad granted a right-of-way by the Railroad Right-of-Way Act of 1875? Secondly, did the railroad acquire a fee simple absolute in the property occupied by its right-of-way by adverse possession or is its interest in the right-of-way merely an easement? Lastly, if the railroad acquired only an easement through adverse possession, can that easement be conveyed to the state?

The court ruled that if the railroad was granted a right-of-way by the Railroad Right-of-Way Act of 1875, it was granted only an easement. With respect to the second issue, the court held that under the majority rule a railroad acquires by a prescription or adverse possession only an easement in a right-of-way. The railroad cannot acquire an interest broader than its use of the land. Even in case of condemnation, the railroad would acquire only an easement. As concerns the third issue, the court cited the general rule that when a railroad takes an easement for railroad purposes and subsequently abandons it, the land goes back to the original owner or its grantee, that is the abutting landowners.

Zoning

Sun Oil Company of Pennsylvania v. City of Upper Arlington, 55 Ohio App. 2d 27, 379 N.E. 2d 266

The plaintiff operated filling stations in Upper Arlington, Ohio, and lawfully erected and maintained freestanding signs.

The issue was whether or not the city may, by ordinance, require removal of these signs.

The court held that aesthetic reasons alone, unrelated to requirements of public health, safety or welfare, will not justify exercise of police power. However, signs which would be in such gross contrast to the surrounding as to be patently offensive to the neighborhood may be prohibited. Nevertheless, these signs cannot be forbade under Section 713.15, Ohio Rev. Statute which prevents application of the ordinance to pre-existing valid nonconforming uses.

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

Despite the fact that a majority of the voters in a city approved a rezone of land inside the city, the rezone was set aside for the following two reasons.

Firstly, the city did not give sufficient consideration to the environmental effect of the rezone on neighboring jurisdictions. Secondly, one member of the planning commission was the executive director and another member was on the board of directors of the chamber of commerce which had endorsed the rezone.

David K. Roberts, et al. v. City of Woonsocket et al, 575 F. 2d 339 (1st Cir 1978)

Landowners brought an action alleging that the city's action in amending its zoning ordinance to restrict property of landowners to single family houses did not follow the city's comprehensive plan to deprive renters of property without due process of law.

The Rhode Island Federal Court held for defendants on the grounds that the zoning amendment was not required to conform with the master plan adopted by the planning board but only that the amendments bear a reasonable relationship to the public health, safety and welfare. The Court of Appeals affirmed, citing Rhode Island Supreme Court case of *Sweetman v. Town of Cumberland,* 364 A.2d 1277 (1976) on this point.

U.C.C. Financing Statements

Uniroyal, Inc. v. Universal Tire & Auto Supply Co., 557 F.2d 22 (1st Cir. 1977)

The court upheld the District Court's literal interpretation of Massachusetts General Laws, Chapter 106, Section 9-401(1)c which requires that one of the financing statements be filed "If the debtor has a place of business in any one town of this state . . . in the office of the clerk of such town."

In this case, the debtor corporation used 940 Commonwealth Ave. in Boston as its mailing address on its letterhead, billhead and on federal and state tax returns, but its actual place of business was located across the town line in Brookline.

The court held that the creditor had not protected its security interests by filing a statement in Boston even though "The debtor gave all but the most avid researcher or legal geographer good reason to suppose that its offices were in Boston."

Unauthorized Practice of Law

The State Bar of New Mexico, The San Juan County Bar Association, The Unauthorized Practice of Law Committee of the San Juan County Bar Association, John Cain, Joseph A. Palmer and C.C. Koogler v. Guardian Abstract and Title Co., Inc., and San Juan County Abstract and Title Co., Inc., 575 P.2d 943 (N.M. 1978)

On June 26, 1957, the New Mexico State Bar and the Realtors Association entered into a statement of principles which conceded that Realtors could fill in blanks in forms involved in real estate transactions.

The defendants, abstract and title companies, had also been filling in such forms for at least the past 16 years. These forms now include statutory forms for a warranty deed, special warranty deed, mortgage, release and partial release of mortgage; forms for right-of-way easement, promissory note, VA and FHA mortgages and notes, HUD disclosure-settlement, lender's mortgage and note, affidavit as to debts and liens, lien waiver and surveyor's affidavit.

The Bar Association contended that the filling in of these forms by the abstract or title companies constituted the unauthorized practice of law. The court held that the unauthorized practice of law was difficult of definition but that filling in the blanks in the legal instruments involved in this case, where the forms have been drafted by attorneys and where filling in the blanks required only the use of common knowledge regarding information to be inserted, does not constitute the practice of law. The court further held that when filling in the blanks affect substantial legal rights, and if the reasonable protection of such rights requires legal skills greater than that possessed by the average citizen, then such practice is restricted to the members of the legal profession.

Vendor and Purchaser

McDonald v. Mianecki, 159 N.J. Super. 1, 386 A.2d 1325 (App. Div. 1978)

Purchasers of a new residential home brought an action against the builder-vendor on grounds of a breach of an implied warranty of fitness for habitability. The claim was based upon the allegation that the water supply furnished by well water was not potable.

The court ruled that potable water is essential to habitability. Where a vendor-builder constructs a new house for the purpose of sale, the sale carries with it an implied warranty that it was constructed in a reasonably workmanlike manner and is fit for habitation. The implied warranty survives the deed, although not expressly provided therein. Thus, the doctrine of implied warranty is applicable to sales by a builder-vendor to his original purchaser.

The court held that the traditional doctrines of merger of covenants in a deed and *caveat emptor* have no present day utility and are no longer viable in the sale of a newly constructed house.

Wills

Engle v. Siegel, 74 N.J. 287, 377 A.2d 892 (1977)

Husband and wife lost their lives in a common disaster. Each left identical wills containing a common disaster clause. The husband's will provided that in case he and his wife die as a result of a common accident, his residuary estate would pass to his mother and his mother-in-law. The corresponding clause of the wife's will provided that her residuary estate would pass to her mother and her mother-in-law.

The husband's mother predeceased him and his wife. The surviving residuary beneficiary (the wife's mother) took the position that under these circumstances the anti-lapse statute (N.J.S.A. 3A:3-14) becomes operative to cause the entire residuary of each decedent to pass to her. This statute provides that when a residuary devise or bequest shall be made to two or more persons the share of any such devisee or legatee dying before the testator shall go to the remaining residuary devisee or legatee. The trial court found in favor of the surviving residuary legatee and the Appellate Division affirmed.

The holding was later reversed. Under prior decisions the court had announced what has come to be known as the doctrine of probable intent in the construction of wills. In applying the new rule, a court not only examines the entire will but also studies competent extrinsic evidence; it attributes to the testator common human impulses and seeks to find what he would subjectively have desired had he in fact actually addressed the contingency which has arisen. Within prescribed limits, guided primarily by the terms of the will, but also giving due weight to the other factors, a court should strive to construe a testamentary instrument to achieve the result most consonant with the testator's probable intent. Reaching the conclusion that the primary wish of each decedent, given the contingency that occurred, would have been to divide the property in their residuary estates between their respective families, the court directed the executor of the two wills to effect distribution of the assets of both estates accordingly. Not until a quest for probable intent has proven fruitless, will there be any occasion to resort to the anti-lapse statute.

Ziehl v. Maine National Bank, 383 A.2d 1364, Maine Supreme Court (1978)

The facts of the case are as follows: Devise "to the then living children of my daughter, Sylvia, in equal shares." The decedent knew that Sylvia had had a hysterectomy and was physiologically unable to have children.

The question was does the term "children" include adopted children.

Presumably people generally prefer to keep their bounty within their own blood lines and children by adoption are not included when the word children is used by a stranger to the adoption to designate beneficiaries of his bounty contrary to the meaning presumptively assigned when the testator makes his own children beneficiaries. However, in this case, evidence showed that the decedent intended to include adopted children.

Sgt. Braxton Scores Again

A mythical yet widely-heard advocate of land title protection, the retired Canadian Mountie Sgt. Braxton, has been recognized as the best radio public service announcement in the nation, winning the gold first place award in the 1979 national CINDY competition of the Information Film Producers of America (IFPA). ALTA Vice President-Public Affairs Gary L. Garrity, creator, writer and producer of the ALTA Sgt. Braxton public service announcements (PSAs), accepted the award at the 20th annual IFPA conference in San Diego, Calif.

The national competition, which received over 600 entries this year, is a contest among informational film and broadcast productions. The sponsor, IFPA, is a professional audio-visual association of filmmakers, producers, writers and directors. Its 1979 competition was divided into 28 categories of public communication messages in areas such as education, business, government, industry, health public relations and public service.

The ALTA home buyer information Sgt. Braxton spots won first place in the public service and information category of audio productions. The current year is the first that this category was part of the competition. Within each category, one first, second and third place awards are granted.

The winning ALTA PSAs are three, 60-second episodes which relate the home buying adventures of a retired Canadian mountie and his lead dog, Zing, also retired. Despite his characteristic competent nature, Braxton encounters a bewildering array of land title problems in an amusing manner. The messages of the radio skits are both entertaining and informative to home buyers.

Though a feather in the mountie's cap, the IFPA CINDY award is hardly the first indication of the quality of the ALTA Sgt. Braxton spots. The PSAs have proved to be very popular with broadcast personnel and have won ALTA free air time on two major national radio networks and hundreds of local stations. The frequent use of the ALTA spots on the air this year emphasizes their appeal but more important, it means the title insurance industry received widespread radio exposure in the face of intense competition for free air time.

The Braxton spots were co-produced with Bert Stamler of ADS Audio Visual Productions, Inc., Falls Church, Va.

ALTA's Sgt. Braxton answers a knock and in opening the door, admits trouble. The caller resembles Count Dracula and claims to be a previously undisclosed relative of the deceased former owner of Braxton's home. The ALTA radio public service announcement is distributed to stations with this picture as the cover.

ALTA Federal Reception

John B. Wilkie, president of Lawyers Title of Arizona, Tucson, (right) greets Rep. Morris K. Udall (D-Ariz.) who attended the reception.

Sen. Lawton Chiles (D-Fla.) is greeted by Thomas S. McDonald (right), president of The Abstract Corporation, Sanford, Fla., who is the newly elected chairman of the ALTA Abstracters and Title Insurance Agents Section.

1979-80 ALTA President Robert C. Bates (right) and Chairman of the ALTA Title Industry Political Action Committee Francis E. O'Connor (left) had an opportunity to speak with Representatives Frank Annunzio (D-Ill.) (center, left) and John G. Fary (D-Ill.) President Bates and Chairman O'Connor are executive vice presidents, Chicago Title and Trust Co., Chicago, Ill.

Draws Large Group

The third annual ALTA federal reception held recently in Washington, D.C. on Capitol Hill attracted more than 400 guests, among them many government dignitaries. The event was planned by the ALTA Government Relations Committee as part of the Association's continuing efforts to strengthen the land title industry identity in congressional and federal agency circles.

Eighty-six members of Congress were greeted by President Robert C. Bates, Chicago Title and Trust Co., Chicago, Illinois; Immediate Past President Roger N. Bell, Security Abstract and Title Co., Inc., and ALTA Executive Vice President William J. McAuliffe Jr. In addition to the members of Congress, numerous congressional and committee staffs, federal agency personnel, trade association executives and the print media were present.

Among honored guests at the reception were: Senators William Armstrong (R-Colo.), Quentin Burdick (D-N.D.), Lawton Chiles (D-Fla.); Representatives Lud Ashley (D-Ohio), Michael Barnes (D-Md.), Jack Brooks (D-Texas), Butler Derrick (D-S.C.), James Hanley (D-N.Y.), Margaret Heckler (R-Mass.), James Jeffries (R-Kan.), Robert McClory (R-Ill.), Carlos Moorhead (R-Calif.), Floyd Spence (R-S.C.), Dave Stockman (R-Mich.), Morris Udall (D-Ariz.), Wes Watkins (D-Okla.), and Gus Yatron (D-Pa.).

In addition to the federal reception, ALTA members visited representatives in their offices to discuss title related matters. These subjects included the possible repeal of the McCarran-Ferguson Act, the Real Estate Settlement Procedures Act (RESPA) Section 14 study and analysis, the Torrens system, controlled business, and the need for a prompt and effective solution to the Indian land claims problem. Industry position papers on many of these important topics were made available to members of Congress and their staffs.

C.J. McConville, chairman of the ALTA Government Relations Committee and president, Title Insurance Company of Minnesota, urges ALTA members to remain committed to the need for continued educational efforts with Congress and the federal agencies. According to McConville, "the next few years will be critical for the industry in that a number of legislative initiatives affecting the land title business will be debated by Congress."

According to Mark E. Winter, ALTA's vice president-government relations, "the educational efforts of the Government Relations Committee coupled with active Title Industry Political Action Committee (TIPAC) participation will enable our industry to express its positions in a favorable atmosphere."

Rep. Jerry M. Patterson (D-Calif.) attended the reception and was greeted by D.P. Kennedy (right), President of First American Title Insurance Co., Santa Ana, Calif.

Nebraskan Celebrates 50 Years

Carroll J. (Tad) Reid of Albion, Neb., celebrated his 50 year anniversary in the abstract business this fall. At age 71, he is believed to be the oldest practicing abstracter in his area of the state.

Reid joined the abstract firm of William C. Weitzel in 1929. Since 1940, he has practiced both law and abstracting and acquired sole ownership of the abstract firm. Reid served on the ALTA Board of Governors and had a 15-year tenure as secretary of the Nebraska Land Title Association.

Names in the News

Robert Trudel

Robert Bannon

First American Title Insurance Co., Santa Ana, Calif., has announced that **Robert G. Bannon** and **Robert P. Trudel** have joined the company as vice president and assistant vice president, respectively.

Bannon, who will work out of the company's Hartford, Conn., office will also act as state manager and counsel. Bannon built his 15 years experience in the title industry in the state of Connecticut.

Trudel, who will manage the Stamford, Conn., office, also has extensive title experience in Connecticut.

In King of Prussia, Pa., it was announced that **Warren R. Strouse** has been named assistant vice president in charge of underwriting practices for First American's office there.

Ronald A. Antoine has been appointed title officer and transferred to Chicago Title Insurance Co.'s Wisconsin Agency Operations in Milwaukee. He has been with the company since 1972.

Mr. and Mrs. Wade Rice have assumed management of the Watonga Abstract Co., Inc., Watonga, Okla. Rice has been named president and his wife Deborah will be corporate secretary.

Lawyers Title Insurance Corp. announced the election of two Dallas titlemen to new positions. They are **J. Walter Chadwick** and **Tom E. Bryan** to the positions of assistant vice president—agencies and senior title attorney, respectively.

With the company since 1968, Chadwick managed the Columbus, Ohio branch office prior to becoming assistant vice president. During his 41 years in the title insurance industry, he was president of the Columbus Title Insurance Underwriters, director of the Columbus Mortgage Bankers Association and vice president of the Ohio Title Insurance Rating Bureau.

Bryan, the new senior title attorney, has been a title attorney with Lawyers Title since 1974 and spent 10 years in the industry. He is a member of the Dallas County Bar Association, the State Bar of Texas and the Texas Claims Committee.

Walter Chadwick

Tom Bryan

Commonwealth Land Title Insurance Co. announced the promotion of **James V. Setta,** Washington, D.C., to assistant vice president and title officer for the District of Columbia branch office. Setta joined the company in 1977, coming from private law practice in Fairfax, Va.

Other news from Commonwealth is the appointment of **Richard D. Grab** of St. Louis, Mo. to title processing officer at the St. Louis branch office. Grab has been involved in the land title industry for eight years.

Edward Coffey

Kent Loosemore

Edward L. Coffey, a Title Insurance and Trust Co. (TI) vice president, was appointed manager of TI's North Coast Division, headquartered in Concord, Calif. With this promotion, Coffey is responsible for the company's title insurance and escrow activities in 12 California counties between Sonoma County in the north down to Monterey County.

Coffey has been in the title business 15 years, most recently managing TI's Solano County operations. He was elected twice to the company's President's Club for his sales achievements.

J. Kent Loosemore, an assistant vice president of Pioneer National Title Insurance Co. (PNTI), has been appointed Indianapolis, Ind., area manager. With 24 years of title insurance experience behind him, Loosemore is now responsible for all PNTI title insurance sales and service activities in a six-county area and works out of the company's Indianapolis office. He is an elected member of PNTI's President's Club for 1979.

Russell to Lead North Carolinians

The North Carolina Land Title Association elected Alton Russell as association president at its annual convention in Charleston. Russell is a vice president for Lawyers Title of North Carolina, Inc., Raleigh. Ed Urban from AMI Title, Raleigh, was elected vice president of the association, and the new secretary-treasurer is Gene McElroy from N.C. Land Title Co., Winston-Salem.

Branch Office Opens

Industrial Valley Title Insurance Co. (IVT) announced the recent opening of a new branch office in Jenkintown, Pa. Located on Old York Road, the new office is managed by Charlotte Wagner.

First American Goes to London

First American Title Insurance Co. of Santa Ana, Calif., has opened offices in London, England to do business with foreigners investing in U.S. real estate and to promote title insurance in the United Kingdom. A major consideration in the company's decision was the level of foreign investment in real estate in this country which, in recent years, has soared to new highs.

Through its London operations, First American provides a variety of services for foreign businessmen who plan to invest their Eurodollars in U.S. real estate but who are unfamiliar with the practices involved in American property transactions.

Perceiving a need for an informational-liaison service prompted First American to open an overseas office. According to Byron D. Coney, manager of European operations for First American, "If an international market in real estate is to truly flourish in America, what is needed is a liaison office to introduce American property law and procedures to prospective investors, explain it and interpret it."

Included among the London office activities are seminars on American property law and real estate procedures, liaison services between prospective foreign buyers and qualified real estate appraisers, brokers and lawyers in the regions of interest in the U.S., and the traditional title services of legal description, search, escrow and insurance.

Taking time out from a two-day exploration of the Southern California real estate market were visitors from the United Kingdom who were in Santa Ana, Calif., recently to attend the first nationwide tour of the American property market sponsored by First American Title Insurance Co. Seated with First American President D.P. Kennedy (left) are J.J. Walker, March Real Estate N.D., and M. Haltrecht, Harpergate Ltd. Standing, left to right, are Dennis Dishaw, assistant vice president-marketing of First American; M. Riley, Edwards, Bigwood & Bewley, estate agents; J.E. Nadler of Compco Holdings Ltd.; G.H. Webster, Webster & Company, estate agents; P. Gemmill, solicitor; A. Faulkner, Artagen Properties Ltd.; M. Gross, the E. Alec Colman Group; C.E. Emms, estate agent; Mr. Bas, Bas & Company, developers; Barbara Thomas of First American's London office; G. Helsby, Burnett & Hallamshire Holdings Ltd.; and Joanna Bastin of First American's London office.

For home buyers in the United Kingdom, First American issues title insurance policies through the British firm Conveyancing and Legal Title, Ltd., managed by Leslie Kent. The package offered by the British firm and First American includes conveyancing services and title insurance. Title insurance is a new concept for the average British real estate owner.

Two specialized activities of the international operations office are an American property clearinghouse and tours of the U.S. property market for investors, agents and advisors. The clearinghouse allows buyers and sellers in the international market to meet and provides an index of all categories of income properties with high values, as supplied by American agents or principals. The tours bring participants to various cities and title plants across the country. Tour-goers pay their own travel and living expense.

The first U.S. property market tour was held Oct. 6-20, with 11 participants. The group convened in Santa Ana, Calif., where they attended seminars, listened to regional counsels explain real estate practices of the various regions and visited title plants and offices in the Los Angeles metropolitan area. Leaving Santa Ana, one-half of the participants visited a selection of cities in the north, including San Francisco, Seattle and Chicago. The others traveled a southern route to Houston, Miami and Atlanta. Both segments met in New York for the final tour and discussion. Investment managers and real estate executives from the United Kingdom, Belgium and Monte Carlo participated.

Computer—concluded

Information gathered from all Chicago Title indexes for Cook County, Illinois, is integrated continuously into the APEX system. When new title commitments are made this computerized data becomes part of the permanent system.

Long range, APEX is leading toward total automation of the examining and production functions involved in title search and policy delivery. The system now produces more than 40 percent of the company's land searches in Cook County. By 1986 virtually 100 percent of these searches will be on the automated system.

To handle its total data processing volume, of which about 70 percent is devoted to title insurance business and the rest to financial accounting and the administrative system, Chicago Title presently employs 165 persons at its data processing center. The center uses one of IBM's newest 370 series computers, Model 3032, and an IBM 370/158 central processing unit. Combined, these units have 15 billion characters of on-line storage.

What all this means is that data handling capacity has grown dramatically at Chicago Title during the decade of the 1970s. The future promises more of the same as the industry becomes more aware of the economies and efficiencies made possible by the computerized systems approach.

ABA Publishes Title Book

A primer on the uses of title insurance, the nature and extent of coverage, the rights and obligations of the insured and the role of the attorney recently was published by the American Bar Association.

The title of the new publication is *Title Insurance and You: What Every Lawyer Should Know*. It was developed as a supplement to the ABA's 1979 fall program on title insurance.

Copies are priced at $15 each and may be purchased by writing to the ABA, Order Billing 543, 1155 E. 60th St., Chicago, Ill. 60637. Handling charges are one dollar extra.

Long Designated UW Director

Alvin W. Long, an ALTA past president, has been elected to the Board of Directors of the United Way of Metropolitan Chicago, on which he will serve for three years.

Long is president and chief executive officer of Chicago Title and Trust Co., Chicago, Ill. He joined Chicago Title in 1945 and has held his present position during the past eight years. In addition to his service as president of ALTA, Long was chairman of the National Conference of the American Bar Association and ALTA.