

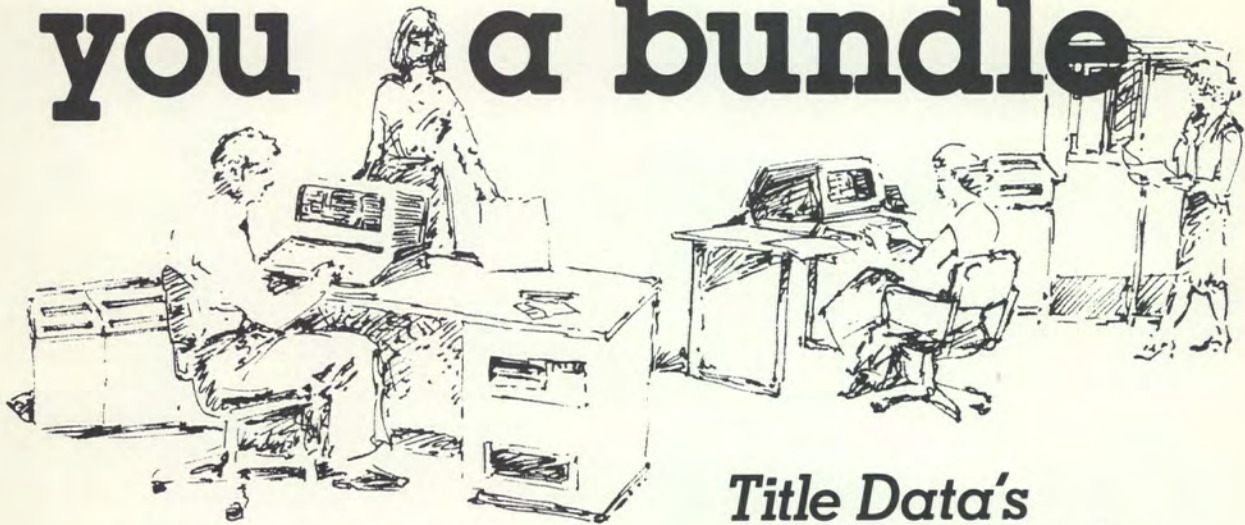
November 1980

TITLE NEWS

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TITLE NEWS

Volume 59, Number 11

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Title News is published monthly by the American Land Title Association, 1828 L Street, N.W., Washington, D.C. 20036. Telephone (202) 296-3671.

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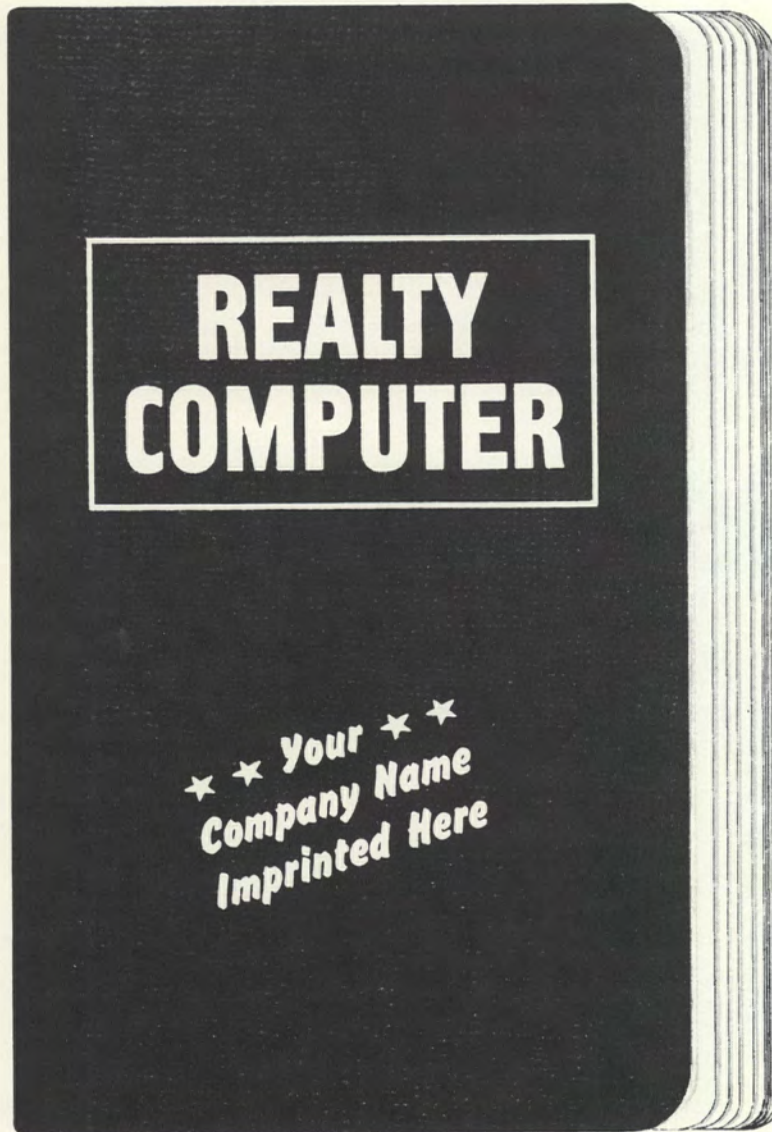
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A Message From The Chairman, Abstracters & Title Insurance Agents Section

"Man's need of land title assurance has been recognized since the days of the Medes and the Persians in the seventh and sixth centuries B.C. Clay boundary markers and other evidence of real estate ownership which are believed to have originated during the heyday of Babylonian civilization 3,000 years before Christ have recently been unearthed in the Euphrates Valley. There can be little doubt that some means of title assurance existed even in those early times.

"The earliest forms and mediums of title assurance were doubtless simple and unsophisticated. Title assurance, down through the centuries, has had an evolutionary growth and development. Step by step it has advanced with increasing utilization, rising values, and growing title complications which higher uses of real estate produce."

These words begin the introduction to the Advanced General Course offered by The Land Title Institute. Sept 1, 1980, will long be remembered as the beginning of the American Land Title Association's involvement in training its members' employees for greater effectiveness in the production of title evidence. That is the date which marks the official beginning of The Land Title Institute, a non-profit educational institute that will serve our Association in the educational area for many years to come.

This was made possible through the altruism of Hart McKillop, an honorary member of both the Florida Land Title Association and the American Land Title Association.

When Hart retired as a senior vice president of Lawyers Title Insurance Corp. he did not quit contributing to the land title industry. He not only believed "a well-instructed mind is priceless," but also wanted to make sure that people in the land title business had an opportunity for instruction. He devoted the next 10 years to the development of an instructional course available to all title company personnel from janitor to president, at a cost that all title companies could afford.

The officers and trustees of The Land Title Institute are committed to carrying on and expanding this important area of our Association's function.

If you would like to know more about these correspondence courses that your company can be involved with by becoming a member of the Institute, write to The Land Title Institute, Post Office Box 9125, Winter Haven, Florida, 33880.

My company was a member of the Institute during the early 1970s and is again joining in order for our employees to benefit from this fine program.

Thomas S. McDonald

Time, Money Awash In Eureka Tidelands

by J.N. Laichas



Humboldt Bay, Eureka, Calif.



In his article discussing litigation over California wetlands published in the December 1979 issue of Title News, Sean McCarthy, executive vice president of the California Land Title Association, briefly discussed the lawsuit* between the city of Eureka and the state of California on one side and the owners of 14 parcels of land fronting Humboldt Bay in northern California. Now, 12 years after the litigation was initiated in 1968, a settlement agreement has been reached and it is anticipated that by the time this article is published, judgment will have been entered pursuant to a stipulation.

It is the intent of this article to set forth some of the problems inherent in dealing with litigation of this sort and to highlight the factors giving rise to Mr. McCarthy's suggestion that Eureka "... offers a chilling example of three crucial points common to most wetlands litigation. They are time, money and economic waste."

*Fourteen separate lawsuits were filed in the Humboldt Superior Court, all of which were consolidated for trial.



The city contended that the state legislature had exceeded its authority in authorizing the conveyance of state-owned tidelands to private parties, thus rendering void the initial conveyances of these lands. The city also alleged fraud in the sale of various parcels. It reasoned that the purchasers were subject to conflicts of interest because they were also members of the board of trustees which was charged with conducting the sales. Furthermore, even if the sales were not void for the above reasons, the city contended that the lands conveyed were not free of the burden of the tidelands trust.

If all else failed and the court found that the sales did result in the transfer of the title free of the tidelands trust, the city contended that the lands described in those ancient deeds were now separated from the water by a strip of land which represented the filling in of the bay 100 feet farther seaward than was permitted by the conveyances.

The ancient deeds granted title out to a point in the water six feet deep at low tide. It was the city's contention that filling had taken place beyond that point. Therefore, even if title as described in their deeds was good, the city owned a 100-foot strip all along the waterfront. This would, of course, effectively give the city control of the waterfront and force the landowners to deal with the city over portions of their improvements extending onto the 100-foot strip as well as for access to the water.

The landowners contended that the deeds were valid, that the trust had been extinguished, that there had been no filling beyond the six-foot line, and that, in any event, the city was estopped by its own conduct over the past 100 years to now claim rights to any of those lands.

It is interesting to note that what precipitated the filing of the suit was the attempt by one of the landowners to improve his property by constructing a restaurant and motel. The waterfront was in a decaying condition and the city planned to develop it in conjunction with a large redevelopment of the downtown area. This redevelopment plan included forcing some of the businesses to lease back their property and improvements from the city; still others were slated for destruction—to be replaced by city parks and other ideas. In addition, the city contemplated constructing a wide esplanade

Mr. Laichas is a member of the ALTA Wetlands Committee and a vice president and senior associate counsel for SAFECO Title Insurance Co. in Panorama City, Calif.

"On top of the hundreds of hours spent by our own engineering staff, two independent engineering and surveying firms were retained to analyze information and to make new surveys for comparison purposes."

along the waterfront which would have had the effect of severing all waterfront businesses from waterfront access.

But, the city did not want to buy the land but rather sought either to prove up its own title or force the landowners to develop their properties in conformance to the city's plan.

Had the litigation not dragged on for the last 12 years, the improvements initially planned and no doubt others, would have been completed. This would have meant that by now the city, county and state would have realized large tax benefits from the development which, of course, have not materialized.

Title Companies Enlisted

The property owners lived with the city's suit for about a year before calling in SAFECO Title Insurance Co. and Western Title Insurance Co. All of the land involved in the controversy had been insured between the two companies.

The city had prepared a motion for summary judgment which was sent to each of the landowners together with a form of lease. The city suggested that if the owners gave in now, the city would permit them to lease their land on "favorable terms." Beneath this suggestion lay the unspoken threat that if the city had to proceed with its motion and take judgment, new and more onerous terms would then be offered. The title companies accepted the tender of defense.

There was, of course, an enormous amount of legal research to be done in preparation for trial. SAFECO's attorneys, both retained and in-house, spent hundreds of hours researching and analyzing the law.

We started with a development of the history of Eureka and Humboldt Bay during the latter half of the 19th century. Many questions had to be answered. What were the physical characteristics of the bay in the 1850s when settlement began and the waterfront lots were sold? How did the town and waterfront develop? Who were the occupants of the waterfront—occupants being those designated by the legislature as the parties to

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"We found records of a company that did oyster fishing in the bay, giving us such clues as what the bottom of the bay was like and how deep it was at certain times."

It was discovered that certain business records were available from long established firms on the waterfront. The local railroad also had records we found useful. We even found records of a company that did oyster fishing in the bay, giving us such clues as what the bottom of the bay was like and how deep it was at certain times. Records of dredging operations in the bay were most helpful—particularly in establishing the difference in the level of the bay over the years.

Photographs of the area and particularly of the shoreline over the years proved to be most helpful to us. The fine collection of historical photographs of Eureka that we accumulated includes aerial views which can be very illuminating in cases such as this. The availability of aerial photobanks should be kept in mind in any case involving investigation of long term physical changes in wide areas.

Our researcher reviewed every Superior Court case filed in Humboldt County in the last half of the century. Her efforts are particularly illustrative of the enormous amount of time and expense that went into this investigation. The files were located in the state archives in Sacramento. We looked for any lawsuit describing real property along the waterfront, such as quiet title actions, mechanic's lien foreclosure actions and partition actions. We were particularly interested in any case in which the city was a party.

We did not find a case in which the city litigated ownership of the waterfront, the validity of the 1857 deeds or the existence of the tidelands trust. However, we uncovered nine cases in which the city had been named as a defendant in such actions as quiet title and had defaulted. While this evidence was at best negative, it proved that the city had nine opportunities in which to raise the issues set forth in its complaint and had failed to do so.

The Trials Begin

It took years to develop the facts from these investigations, tie them into the legal research and bring the case to trial. The numerous lawsuits were consolidated and then three separate trials were scheduled.

(continued on page 17)

whom the waterfront lots should be sold? What was the legislative history of the enabling act and how was it implemented? What did the property owners do to improve their land? What actions did the city and other governmental bodies take upon which the landowners would have relied in improving their properties?

We found that the federal government made a preliminary survey in 1851, completed a topographic survey in 1854 and a hydrographic survey in 1859. Copies of all of these surveys were obtained together with the field notes supporting them. Using these surveys as a base, we attempted to find and analyze every survey made thereafter by any governmental body and by private surveyors for individual landowners.

On top of the hundreds of hours spent by our own engineering staff, two independent engineering and surveying firms were retained to analyze information and to make new surveys for comparison purposes.

Geologists were retained to dig trenches in a number of areas along the waterfront and take core samples to determine exactly what filling had taken place and at what time. At the two subsequent trials, all of these experts testified at length and at great expense to SAFECO Title.

It also was necessary to review all state legislation relating to tidelands disposition. The result was not only an investigation of the history of Eureka and the reasons that the legislature authorized sale of the waterfront in 1857 but also how this fit into a general state-wide pattern

evident in other waterfront cities such as San Francisco, Oakland and Benicia.

This led to a detailed examination of newspapers published during the last half of the 19th century in not only Eureka but also in San Francisco. We found articles from as early as 1853 which we cited in the court.

Research Continues

We checked the county recorder's office for deeds, deeds of trust and numerous other records which would be of assistance such as mechanic's liens. These told us what improvements were built on the waterfront and when. A problem which added yet more time was the lack of indexing in city records. We found a room full of boxes of records which had to be sifted through for any relevant matters.

Historical societies, a nautical museum, diaries and journals of early settlers of Eureka, interviews with older residents whose parents and grandparents had lived there for many years all yielded valuable facts. We also examined records from over a period of years of the original board of trustees, the city council, the board of supervisors and the board of harbor commissioners.

We travelled to the National Archives in Washington, D.C., and to the National Ocean Survey in Maryland where we reviewed hydrographic surveys and the work done by the U.S. Army Corps of Engineers in establishing federal harbor lines. All these documents were inspected and abstracted.

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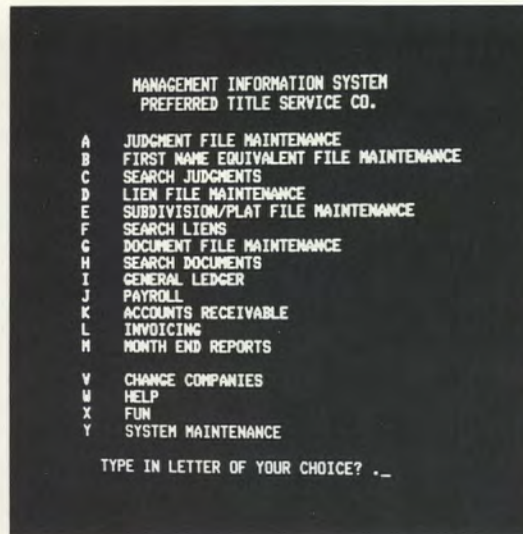
experience and may be shared by multiple title companies with protection for the proprietary data of each.

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by Gary L. Garrity

ALTA Polls Consumers

More consumers have a basic idea of what title insurance is than many title professionals may have supposed. But relatively few in the general public seem to understand that lender's title insurance must be accompanied by owner's coverage if the interests of the home buyer are to be protected.

These are among findings of an ALTA public opinion survey conducted this year in May to measure awareness and attitudes regarding title insurance. The first national study of its kind conducted at the industry level, the survey was handled by Opinion Research Corp. in conjunction with the ALTA Public Relations Committee and staff.

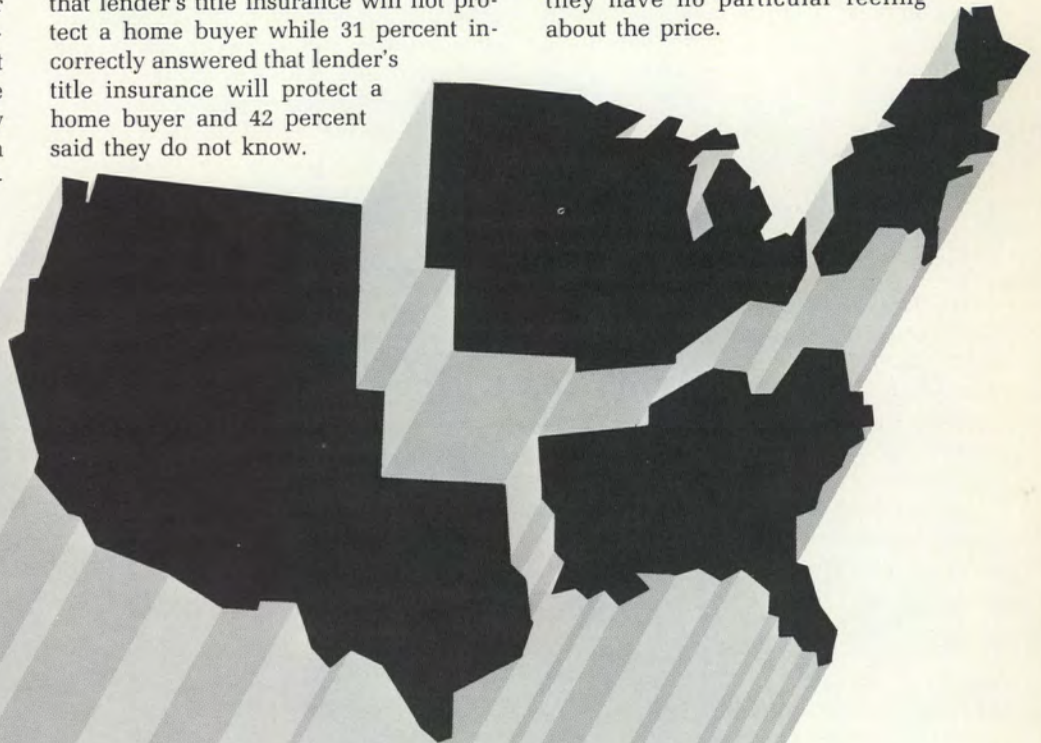
Interviews were conducted with a national probability sample of 2,025 persons divided as follows: Northeast—523; North Central—533; South—626, and West—343.

Of the persons interviewed, 57 percent correctly identified title insurance as protecting the right of title to land or property; 23 percent incorrectly identified title insurance as protecting title to an automobile; and 22 percent said they do not know what title insurance is.

In the total sample, 59 percent said they had previously purchased a house, condominium unit or other property alone or with someone else. Of those who previously bought real estate, 59 percent said they obtained title insurance to protect their rights of ownership while 22 percent said they do not know if this was done.

Only 26 percent correctly responded that lender's title insurance will not protect a home buyer while 31 percent incorrectly answered that lender's title insurance will protect a home buyer and 42 percent said they do not know.

When advised that—based on nationwide figures—the buyer of a \$60,000 property who purchases title insurance can expect to pay a one-time only charge of \$210 for the coverage, 42 percent said they feel this price is about right. Another 19 percent said they feel the price is somewhat high, 12 percent said they consider the price very high, and 21 percent said they have no particular feeling about the price.



Mr. Garrity is ALTA vice president—public affairs.

Of those interviewed, 81 percent said they do not plan to buy a home within the next three years—reflecting the condition of the real estate market and the level of mortgage interest rates in May. Another 14 percent said they do plan to buy and 5 percent said they do not know whether they will buy. Among those who plan to buy, 46 percent said it is definitely likely that they will purchase title insurance assuming they have to pay for it—while another 29 percent said it is somewhat likely and 13 percent said they do not know.

“Relatively few in the general public seem to understand that lender’s title insurance must be accompanied by owner’s coverage if the interests of the home buyer are to be protected.”

Among those now owning residences who plan to buy homes within the next three years, 51 percent said it is definitely likely they will purchase title insurance assuming they have to pay for it, 23 percent said it is somewhat likely, and 11 percent said they do not know. Among those planning to buy within the next three years, who do not presently own residences, 40 percent said it is definitely likely they will purchase title insurance assuming they have to pay for it, 34 percent said it is somewhat likely, and 15 percent said they do not know. Among those planning to buy within the next three years, the combined percentages of those definitely likely to purchase title insurance and those somewhat likely to purchase coverage are identical among current property owners and non-owners.

In the age breakout for the sample, 555 persons were between 18 and 29; 527 were 30 to 44; 432 were 45 to 59, and 511 were 60 and over.

Regarding income levels, 324 had family income of under \$7,000; 248 were \$7,000 to \$9,999; 317 were \$10,000 to \$14,999; 596 were \$15,000 to \$24,999, and 508 were \$25,000 and over.

Regarding education levels, 549 had not completed high school; 737 were high school graduates; 399 had completed some college, and 323 were college graduates.

Regarding occupation, 335 were executive-professional-managerial; 484 were white collar; 345 were blue collar skilled; 352 were blue collar semiskilled or unskilled, and 461 were retired.

By region, the percentage of respondents who correctly identified title insur-

ance is as follows: northeast—53; north central—56; south—51, and west—74.

In the total sample, 59 percent of those interviewed said they previously had purchased a home alone or with someone else—and 59 percent of the previous home buyers said they obtained title insurance to protect their interests.

Among those who obtained title insurance are 55 percent of the 18-29 age group; 64 percent of those 30 to 44; 58 percent of those 45 to 59, and 58 percent of those over 60.

Among those obtaining title insurance were 61 percent of individuals in the northeast; 53 percent of those in the north central region; 56 percent of those in the south, and 75 percent of those in the west.

Those obtaining title insurance include 52 percent of individuals with family income under \$7,000; 58 percent of those with family income \$7,000 to \$9,999; 60 percent, \$10,000 to \$14,999; 59 percent, \$15,000 to \$24,000, and 65 percent, \$25,000 and over.

Those obtaining title insurance include 52 percent of individuals not completing high school; 60 percent of the high school graduates; 61 percent of those completing some college, and 63 percent of the college graduates. And, 61 percent of those in the executive-professional-managerial category; 64 percent of white collar; 61 percent of blue collar skilled; 55 percent

of blue collar semiskilled or unskilled, and 55 percent of retired obtained title insurance.

Among those interviewed who are planning to buy a home within the next three years and said they are definitely likely to purchase title insurance are 43 percent of the sample in the Northeast, 42 percent in the North Central region, 43 percent in the South, and 53 percent in the West.

Of those planning to buy a home within the next three years who said they are somewhat likely to purchase title insurance, there are 28 percent of persons interviewed in the Northeast, 31 percent of those in the North Central region, 35 percent of those in the South, and 20 percent of those in the West.

Table 1 contains other “definitely likely” and “somewhat likely” demographics for the prospective home buyers covered in the survey.

Members of the Public Relations Committee and staff have reviewed the public opinion survey findings with regard to planning future activity of the ALTA Public Relations Program.

Members of the Public Relations Committee at the time of the survey included Chairman Jim Robinson, Vice Chairman LeNore Plotkin, Randy Farmer, Jim Kramer, Frank O’Connor and Bill Thurman.

**TABLE 1
Likelihood of Purchasing Title Insurance**

		Percent Definitely Likely	Percent Somewhat Likely
Age	18-29	39	32
	30-44	53	27
	45-59	47	22
	60 and Over	53	21
Income	Under \$7,000	35	37
	\$7,000-\$9,999	42	32
	\$10,000-\$14,999	39	29
	\$15,000-\$24,999	45	29
	\$25,000 and Over	55	24
Education	Below High School	43	30
	High School Graduate	34	27
	Some College	44	34
	College Graduate	56	20
Employment	Executive-Professional- Managerial	52	23
	White Collar	51	31
	Blue Collar—Skilled	42	33
	Blue Collar—Semi and Unskilled	36	33
	Retired	44	15

Escrow E & O Coverage Offered

With a claims conscious public ready to seek financial redress at the smallest indication of a problem, escrow and closing officers are among the widening group of professionals seeking liability protection. Therefore, our company began offering a separate errors and omissions policy for them this year.

"We found that many such losses really were due to errors in the escrow or closing operations and therefore were not covered under the regular abstractor or agent liability policy."

The product of four years' research, the new policy is marketed as "Escrow Pac" and was developed to fill the coverage gap left by the exclusion in abstractor and agent errors and omissions policies which reads, "This policy does not apply to claims based upon or arising out of the handling or disbursement of funds." It does not replace or provide fidelity or other bond indemnifications.

The Cantrell Agency, in checking the origin of some of the claims reported under abstractor and agent policies, determined that in a significant number of instances there had been no "error or omission of a public record affecting real

property title." We found that many such losses really were due to errors in the escrow or closing operations and therefore were not covered under the regular abstractor or agent liability policy.

The limits of Escrow Pac's coverage vary from a minimum of \$100,000 and \$200,000 to a maximum of \$500,000 and \$1 million. Reinsurance has been obtained for this limit spread, and with favorable experience, it is expected that higher limits may soon be available.

Deductibles are offered at \$1,000, \$2,500, \$5,000 and \$10,000. Higher deductibles may be available upon request or arranged for an applicant with an unfavorable history of losses due to escrow or closing errors over a five-year time period.

After sufficient data is accumulated, we anticipate, at some time in the future, studying the feasibility of offering the Escrow Pac coverage on a group basis.



Mr. Cantrell is president of R.J. Cantrell Insurance Co., Inc., and Title Pac, Inc. as well as director of Muskogee Title Co., Muskogee, Okla.

Initial Growth

During the first two years, policies will be issued on a surplus lines basis in Evanston Insurance Co. or Mutual Fire, Marine and Inland Insurance Co. Both are approved, non-admitted companies. Shand, Morahan & Co., of Evanston, Ill., which also underwrites our Title Pac program, will provide the final underwriting and furnish in-house claims service.

At the end of the initial two-year period, any changes in policy and endorsement language will have been developed and incorporated. Accurate rating formulae and techniques also should be developed by the end of two years. At that time, the Escrow Pac will be filed in the 45 states now accepting filings for claims-made coverage and the surplus lines tax levied by state governments will be eliminated from the policy charge.

Another objective of the two-year initial period is to determine variables in the rates. For example, one question which will be examined will be whether or not an additional premium should be charged to firms which extend their liability by servicing long-term mortgages, sales contracts or contracts-for-deed which may add many years of exposure beyond the ordinary escrow closing.

The current opinion of Escrow Pac underwriters is that either an extra charge should be made in the premium for such a risk or such coverage should be excluded by endorsement, to be deleted only on payment of an additional premium.

(continued on page 17)

by Barbara J. Grady

Ash And Flooding Title

When 1,277 feet of mountain blasted from the summit of Mount St. Helens in southwestern Washington last May and hot lava and a vast cloud of volcanic debris spouted 63,000 feet in the air, the first worries that came to people's minds did not generally include the survivability of title records in area title plants. But the vicissitudes of nature affect even the seemingly invulnerable.

"One reason that Fidelity closed was the uncertainty of whether or not the ash would be corrosive to their title records which are on microfiche."

As the huge mushroom of ash and debris began to descend in an opaque curtain of darkness spreading scores of miles from the mountain, and as avalanches of rock and lava crashed down the mountain's sides creating floods and mudslides, the question of the safety of title records indeed became important. Title company records in Cowlitz, Grant and Yakima counties, chronicling the history of land ownership in these counties over the past century and a half, were vulnerable to destruction by ash corrosion or impending flooding of the Cowlitz River.

The local real estate economies depended on these title records. If the records were destroyed, real estate and settlement activities in three counties would come to a halt. Yet, for most of a

week, such a scenario threatened to unfold. Title company managers were compelled to plan wise contingency solutions and to watch patiently, as nature dictated the course of events.

On the sunny morning of May 18, the entire north face of Mount St. Helens was blasted away by the enormous heat pressure of molten rock in the peak's interior. The force of the explosion is reported to have been 500 times that of the atomic

bomb explosion in Hiroshima in 1945. One and a half cubic miles of the mountain disappeared into the air as dust, and the resulting cloud, moving eastward, covered most of three states with a rain of dark particles.

With visibility very low and ash congesting roads, airports and machinery, travel and business came to a standstill. In much of Washington, as well as parts of Idaho and Montana, life was disrupted.



Ms. Grady is Title News editorial assistant.

From Volcano Threatened Plants

Volcanic Ash Threatens Microfiche

Yakima County is 90 miles east of Mount St. Helens and directly under the route the ash cloud traveled. John Euteneier, vice president of Fidelity Title Co. in Yakima, said that ash fell solidly for a day and a half. "The whole town closed for four days following the blast" Euteneier said, as the town waited for the ash

fall-out to cease. Aside from the general difficulty of conducting any kind of business during those days, one reason that Fidelity closed was the uncertainty of whether or not the ash would be corrosive to their title records, which are on microfiche. Microfiche is sensitive to chemicals and records on microfiche depend on machinery to be read. To reduce the chances of their records coming in contact with the ash-laden air, Fidelity people turned

off all ventilating and air conditioning systems, closed windows and covered the microfiche machinery.

After the ash left the sky four days later, the office opened for business. But dust stirred by shuffling feet and auto traffic in the streets, and the risk of resulting damage to title records was incentive to close again.

The reclosing proved to be a wise decision. Nature bestowed another of its quirks on the town. A wind storm arose, which Euteneier described as "seasonal and typical for the time of year." The dust, which still lingered, was lifted from streets, roof tops and cars and whirled around the town for three days. Along with other businesses, Fidelity closed down until the wild wind stopped. When the air had cleared, Fidelity resumed business.

But experiences with falling ash were only part of the legacy left by the temperamental Mount St. Helens. In many places, flooding and mudslides occurred.

Following the eruption, avalanches of lava and rock surged down the mountain at speeds of up to 80 miles per hour, ripping trees from their roots and melting glaciers. Millions of gallons of once-frozen water, tree trunks and tons of ash and mud descended into lakes and the Toutle River which drains the north and west slopes of Mount St. Helens. With its new cargo of mud, tree trunks and extra water, the Toutle River churned in a raging torrent down the mountain side, knocking down bridges and flooding its banks in many places. The Cowlitz and Columbia rivers, into which the Toutle flows, were raised to their bank edges.

Photo by Wes Guderian, *The Oregonian*



Mt. St. Helens



The Cowlitz River Swells To Flood Level.

Photo by Wes Guderian, *The Oregonian*

The valleys of the Cowlitz and Toutle rivers in Cowlitz County faced the threat of destructive flooding. The city of Longview in the Cowlitz River valley is below sea level. If it had not been for artificial dams created by accumulated ash and branches along the path of the Toutle River, Longview would have been inundated in several feet of water.

Indeed, a few days after the eruption, the odds that Longview would be flooded increased dramatically. A precarious artificial ash dam which held back the water of Spirit Lake on the slope of the mountain looked like it could give way any day. This lake had been all but destroyed by the eruption, but it still received large amounts of water from the melting ice upland. And, as the water rose in the lake, the dam became more and more tenuous.

People began preparing for the worst in Longview. If the dam broke, evacuation would be necessary.

Along with families finding it necessary to ready themselves for the impending flood, businesses did also. Among the most vulnerable of businesses were title companies because of their voluminous and very valuable records.

Longview has three title firms. When flooding looked possible, real estate people and lenders along with title workers became worried about the protection of unwieldy title records.

Luckily, title company managers in the area had their thinking caps on. Within

"The company's southwest regional manager thought of a plan which allowed the title office to be ready at all times to move to higher ground and therefore save records, copies of deeds and documents."

hours, contingency plans had been arranged.

The Plans Take Shape

At Transamerica Title Insurance Co. on Vandercook Way in Longview, they decided to put their title plant on temporary wheels. Dave Koshork, the company's southwest regional manager, thought of a plan which allowed the title office to be ready at all times to move to higher ground and therefore save records, copies of deeds and documents and machinery.

The firm rented a 16-foot van and placed in it all records of land transfers and property insured by the company, including 70,000 prior files. Employees arranged the records in an orderly and usable way. With the van parked right outside the rear entrance of the office each day, Trans people carried out what business there was from both the van and the office. In the evening, they carried office machinery and pending escrow files into the van for night storage, and county man-

ager Mel Nelson drove it to his home on higher ground. Nelson said the van was affectionately nicknamed the Transamerica Mobile Unit-1, and came to be recognized around town.

Though the company had a rough set of duplicate records, they were not organized in an immediately usable fashion.

Land Title of Cowlitz County, Inc. on 14th Avenue in Longview had a similar evacuation plan. Employees numbered all the title plant records, which are on microfilm and geographically organized. With the records numbered, they could be pulled quickly from drawers for transport out of the office and still be identifiable. The firm arranged for a rented truck which sat ready and waiting for title records and office materials to be loaded into it, should the need have arisen.

After a week of suspense, the river receded and both companies could return to normal methods of operation.

Though life and commerce in Washington have stabilized somewhat over the past few months as compared with late May, the legacies of the Mount St. Helens explosion have not disappeared. While title company offices are in full operating and organized order, their markets remain disrupted. Much of property east of the mountain is still under ash and does not attract buyers. Out-of-state investors, particularly, are unwilling to enter into ventures there. In all, the mountain's

(continued on page 17)

EscrowPac—(from page 13)

The rates of the new coverage are based on a combination of factors. These include the number of employees, number of escrows received and closed, amounts of money involved in the largest and average escrow closings and five-year claim history.

Defining An Escrow Agent

For the Escrow Pac policy, "escrow agent" is defined as "the profession of complying with escrow instructions contained in a written escrow agreement received, accepted and acknowledged in writing by the escrow agent."

The duties of the escrow agent are those prescribed in the particular escrow agreement and they include:

- drafting the escrow contract
- preparing the deed or conveyance
- preparing other documents necessary
- receiving of "good faith" or down-payment money
- ordering a survey
- ordering proper title evidence for purchaser and lender
- computing taxes
- obtaining lien waivers and other pre-closing documents
- assuring that adequate hazard insurance is provided
- receiving balances due on consideration and disbursement, and with proper payments to those so entitled, after seeing that all documents are prepared, signed and attested properly
- assuring that the title policy is issued promptly and correctly after closing documents have been recorded

Of course, there are many variations to the above theme, but the general operation remains very much the same, depending upon the degree of responsibility assigned the escrow agent by the instructions in the contract, or received from the lender and other parties to the transaction.

Exclusions

There is a specific exclusion for "willful or intentional failure, by the insured, to comply with the written escrow instructions." Title opinions also are excluded since they can be insured under lawyers' professional liability coverage or abstractor and agent coverage.

Mt. St. Helens—(from page 16)

eruption further impaired an already depressed real estate market.

The rainy season comes to Washington in late autumn. Considerable doubt exists about how much water the rivers are go-

ing to be able to hold. State and federal government engineers are busy dredging ash from rivers and constructing dams and flood walls before the rain sets in. But further flooding is possible.

The River Changes Course

Another potential problem which may result from the flooding is that boundaries of properties abutting the Toutle River may be obscured. The shape and the path of the Toutle River have changed and avulsion has taken place on properties bounded by the river. While the land surrounding the Toutle is little developed, a question of boundaries could surface as a title problem some time. A title executive from the region described the land as predominantly owned by timber companies and cabin owners.

Land Title of Cowlitz County said they would be hesitant to issue title reports on properties abutting the Toutle River during the next couple of months. Executives from Trans and Pioneer National Title Insurance Co., also with an office in the valley, agree that problems of uncertainty may arise; they plan to watch the situation carefully while the river stabilizes.

However, spokesmen from all three companies said they do not anticipate any immediate title problems because these properties will not be changing hands for some time. In fact, most of the land bordering the Toutle River is still labeled restricted, which means the government forbids people to even walk in the area.

Eureka—(from page 9)

The first trial took place in 1976 and dealt with the validity of the 1857 enabling legislation and the subsequent sales of the waterfront lots. The court sustained the position of the landowners on these issues.

In 1978, a second trial was held with regard to the question of filling in of the bay beyond the six-foot line.

A third trial was scheduled for 1979 to deal with the issue of estoppel. However, before the decision on the second trial came down, a settlement was reached.

To reach this point, SAFECO Title spent in excess of \$800,000 in attorney fees and expenses. Western Title spent almost \$200,000. The landowners incurred attorney fees in excess of \$100,000 and were deprived of the ability either to improve their property or sell it free of the city's claims.

The city of Eureka spent at least \$1.5 million in attorney fees and expenses. On top of it all, the title companies, officials of the city of Eureka such as the city engineer and city attorney and many em-

ployees of the state of California spent countless hours working on the issues.

What did the city and state get for their investment of time and money? SAFECO Title paid \$62,500 in cash in return for confirmation of the title of all of its insureds. Western Title paid approximately the same amount. Several of the landowners dedicated a small parcel of land to extend one street to the waterfront so as to provide public access.

The cash the two title companies paid represents quite a bit less than the sum we would have paid, had we been forced to continue the litigation to the bitter end. Essentially, the case finally was settled for nuisance value.

Epilogue

When the suit started, the land in question was valued by the Humboldt County Assessor at \$1.3 million. Now that it is free for development, its value can be expected to increase many times. Of course, taxes for the benefit of the public will increase accordingly. However, it is 12 years later and the cost of construction has increased enormously. Revenues that the landowners lost during that time will never be recovered.

The result of this litigation is satisfying to no one. It is not an isolated example. It is, instead, indicative of the average case of this kind. Based on experience of cases involving attacks by governmental bodies on titles long thought established and secure, in almost no case do the benefits to the public justify the enormous expense ultimately born by the taxpayer. Instead, many local and state employees are kept busy, a few select law firms are enriched at taxpayer expense and the landowners and title companies are forced to expend astronomical amounts of time and money in proving up titles that everyone thought were perfected decades ago.

It is no longer enough for the title industry to look at the question of whether or not the titles we are asked to insure are defensible. Instead, we must weigh the odds of whether or not it is likely that title will be attacked. If so, we must ask ourselves whether the expense of defense is worth the risk. Experiences such as Eureka make it more and more probable that those titles cannot be insured or will be insured subject to the most stringent exceptions.

Health Outlays

Americans spent more than \$212 billion on their health in 1979, or an average of \$943 per person, according to the Department of Health and Human Services.

THE TITLE SYSTEMS ADVISER

Dear Mr. Chairman:

I disagree with some of the comments and positions advanced in the Title Systems Adviser of the August 1980 *Title News*.

The writer seemed to reduce the entire problem facing an agent who wishes to automate his operation to a question of hardware. To do so, in my opinion, would be a mistake.

Minnesotans Elect Waddick As President

At the head of the slate of officers elected at this year's Minnesota Land Title Association convention in St. Cloud is Donald P. Waddick, president. He is vice president and chief title counsel of the Title Insurance Company of Minnesota.

Other new association officers are Louise Larson of Larson Abstract Co., Little Falls who was elected vice president and Larke Huntley of Itasca County Abstract Co., Grand Rapids, who was elected to a three-year term on the board of directors. A.L. Winczewski of Winona County Abstract Co., Inc., Winona, was re-elected secretary treasurer.

Featured speakers included 1979-80 ALTA President-Elect James L. Boren Jr. and Miriam Schneider, assistant counsel of Chicago Title Insurance Co.

Convention delegates approved rules and regulations for the *Association Directory* which is published annually.

Codling To Lead Nebraska

The Nebraska Land Title Association recently held its annual convention in Omaha and elected as its president John O. Codling. He is the secretary-treasurer of Weerts-Boettcher Co. in Columbus.

Newly elected to the board of directors were Mardy K. McCullough of Grant and Richard F. McGuire of Omaha.

The 1979-80 ALTA President Robert C. Bates spoke at the meeting.

Because computers that appear in today's market are some of the most sophisticated and dependable equipment ever introduced, the hardware is usually not the root of the problem if the system fails. The software is what will make a system work and consequently justify expenditures for a system in an agent's office.

As an officer of a large title insurance agency, I would like to see our forms remain the same long enough for our customers to become accustomed to finding information in the same place in two consecutive policies. With the proper system, we do not need to change the forms; we need only to implement an efficient system for producing them.

I also disagree with the comment, "The agent, however, should never take the approach that computers or word processing equipment will easily solve his problems." I believe that the agent has a right to expect performance from both his hardware and software purchases. All agents should go into automation expecting that the computer will easily solve most of their problems. As in everything else we do, if we are willing to accept mediocrity, then that is what we will get.

C. Wesley Ashcroft
Vice President
Hogan Land Title Co.
and
President
Real Property Information
Management Co.
Springfield, Mo.

The ALTA Title Systems Committee thanks Mr. Ashcroft for his views. The Title Systems Adviser is intended to provide a forum for the exchange of opinions, ideas or concepts relating to title systems. The committee actively solicits Title News readers to respond to letters appearing in the column and also to inform the committee of subjects or concerns which can be addressed in subsequent issues. Communications of this nature should be directed to Chairman Robert Meckfessel, St. Paul Title Insurance Corp., 15510 Olive, Suite 220, Chesterfield, Mo. 63017

Acquisition Is Announced

Security Land Title Co., Omaha, Neb., acquired the Wayne County Abstract Co. in Wayne, Neb. Security, whose president is Joseph W. McNamara Jr., also recently opened offices in Sarpy County, Lincoln and South Sioux City.

New Yorkers Pick Giuliano As Leader

President and Chief Executive Officer of USLIFE Title Insurance Company of New York Samuel J. Giuliano was elected president of the New York State Land Title Association at the group's 1980 convention in September.

Vice presidents elected from the southern, central and western sections of the state are respectively Richard T. Mendler, vice president, Security Title and Guaranty Co.; John C. McGuire, executive vice president, Monroe Abstract and Title Corp., and Owen Mangan, vice president and counsel, The Title Guarantee Co.

THE TITLE READER

TITLE INSURANCE: SPECIAL PROBLEMS

654 pages, \$25 (soft-cover), published by the Practising Law Institute, 810 Seventh Ave., New York, N.Y. 10019

Prepared and published as a handbook for a Practising Law Institute seminar by the same title held early this year, this book should be useful as a reference manual for attorneys and related professionals. It is composed of 14 chapters, one of which is a collection of sample forms.

Authors contributing to the handbook are title professionals and attorneys. They address such timely topics as special title problems relating to condominiums, cooperatives and time-sharing properties; alien ownership and escheats; land under water and riparian interest; air space; development rights, and solar easements.

Two sections are devoted to bankruptcy and the Bankruptcy Reform Act of 1978 as well as to the topics of reinsurance and co-insurance. One chapter focuses on mechanic's lien coverage for construction loans; and, another, a reprint from *The National Law Journal*, discusses key factors that a developer's attorney should consider.

Names In The News . . .



Henry Ritz



James Roffe

Henry P. Ritz was elected a vice president of Transamerica Title Insurance Co., in Portland, Ore. Earlier this year, Ritz had been appointed assistant vice president and manager of Oregon operations for Transamerica.

He is the president of the Oregon Rating Bureau for title insurance companies and vice president of the Oregon Land Title Association.

Another recently elected vice president, **James L. Roffe**, is manager of Colorado operations. Roffe has been with Transamerica 34 years. Prior to his job as manager of Colorado operations, he was a regional manager of company operations in Colorado. He is a past president of both the Land Title Association of Colorado and the Denver Realty Board.

Richard A. Yeager was elected president of Houston Title Co., Houston, Texas. Houston Title is a wholly owned subsidiary of Title Insurance Company of Minnesota. Yeager formerly was the company's Louisiana manager.

Frank O. Knoeller Jr. was elected assistant vice president—information systems development for Lawyers Title Insurance Corp. He works from the company's headquarters in Richmond, Va.

Lawyers Title also announced the election of three branch managers for the Philadelphia, Ann Arbor, Mich., and Saginaw, Mich., offices.

Stephen Linden is branch manager in Philadelphia. He is a 13-year veteran of the title insurance industry.

Alice Davidson is manager of the Ann Arbor office, transferred from the company's Troy, Mich., office where she was assistant vice president and manager of escrow services. She has worked in the title industry since 1945.



Edward Taylor



Richard Yeager

In Saginaw, the branch manager is **Eugene Lanuzza**. He formerly was Lawyers Title's Pennsylvania sales manager, having joined the company in 1970.

Also new at Lawyers Title is the election of **J. Edward Taylor Jr.** as branch counsel for the Wichita, Kans., office. Taylor has been with Lawyers Title since 1978, formerly an attorney in private practice.

Susan B. Bowers was elected senior title attorney for Lawyers Title's Roanoke, Va., branch office. Bowers had been a title attorney with the company since 1978.

Barbara D. Milnarcik was named assistant vice president of Commonwealth Land Title Insurance Co. for the company's Pittsburgh, Pa., office. She joined Commonwealth in 1971.

And, in eastern Pennsylvania, **Robert J. Hassel** was named assistant branch manager and closing officer for the West Philadelphia office of Commonwealth.

Lawrence H. Edger was elected vice president—direct operations of the American Realty Title Assurance Co., Columbus, Ohio. Edger comes to his position as a result of the merger of American Realty and the Suburban Title Agency of Grove City of which Edger was president. The new organization offers title services throughout Ohio.

American Realty also announced that **Deborah Hummel** was appointed assistant vice president—branch operations. Hummel had been vice president of Suburban Title Agency of Grove City.

Richard A. Leonard was named vice president and general counsel of AMI Title Insurance Co., Raleigh, N.C. He formerly was vice president and assistant counsel at Cameron-Brown Co., also in Raleigh. Leonard is a member of the North Carolina State Bar and the North Carolina Bar Association.

AMI Title is a subsidiary of the American Mortgage Insurance Co., Raleigh.

Title Insurance and Trust Co. (TI), headquartered in Los Angeles, announced seven new appointments and promotions in offices throughout Southern California.

In Los Angeles, **D. John Cesario** was made major accounts manager for the company's western region and elected vice president. The western region includes California, Nevada and Arizona. Cesario is responsible for monitoring, evaluating and consulting on the company's major account sales activities and has personal sales accountability for high liability accounts.



John Cesario



Lynne Emile

Lynne L. Emile was made sales and marketing manager for TI's central Los Angeles operation and elected assistant vice president. Emile now coordinates and develops TI sales activities in the region and is responsible for the training and direction of TI account managers. She previously was a senior account manager.

Bruce F. Williams was appointed a trust representative for TI, in which position he is responsible for business development and estate planning in the San Diego area.

Larry Escalera was made manager of TI's Imperial County operation. He coordinates the company's escrow and title operation activities in the county.

Bill Reese was appointed Kern County title operations manager, which makes him responsible for coordinating TI's title-related technical functions in the county. Also he is responsible for customer service and new business development.

In Orange County, **Gerald W. Imboden** was appointed sales manager for TI's operations in this county and elected vice president. He coordinates the sales training and marketing direction of TI's resale and subdivision sales personnel in Orange county.

David L. Tibbet was made plant services supervisor for TI's Fresno operation. He supervises the production of locators, keypunch operators, draftsmen and data entry operators.

Tax Cut Cure

"In five of the six recessions since World War II, a tax cut was needed to support the recovery, and it appears this will be necessary again."—*Dr. Richard W. Rahn, vice president and chief economist, U.S. Chamber of Commerce*

Calendar of Meetings

November 5-8

Florida Land Title Association
Don Cesar Hotel
St. Petersburg Beach, Florida

November 7-13

National Association of Realtors
Anaheim, California

November 16-21

U.S. League of Savings Associations
San Francisco, California

December 3

Louisiana Land Title Association
Royal Orleans
New Orleans, Louisiana

American
Land Title
Association

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