TITLE NEWS

COMPUTER THEFT

July 1981

LANDTECH II

COMPUTER CLOSING SYSTEM

How many computer people really understand the title insurance business? If you come across one, let us know. We might want to hire him. We haven't found any yet.

On the other hand we were title people long before we became computer people. In fact, we're still title people.

That's why we were able to develop the only computer closing system that really does a complete package for every closing — no matter how simple or how complex.

Ask anyone operating any other real estate closing computer to compare the one they are using to the LANDTECH II. Then you will see why we are setting the standards in real estate closing systems.

BELL DATA SYSTEMS

711 N. Dixie Highway
Suite 205
West Palm Beach, Florida 33401
PH: (305) 655-6210

TITLE NEWS

Volume 60, Number 7

Managing Editor: Maureen Whalen Stotland

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

ASSOCIATION OFFICERS

President
James L. Boren, Jr.
Mid-South Title Insurance Corporation
Memphis, Tennessee

President-Elect
Fred B. Fromhold
Commonwealth Land Title Insurance Company
Philadelphia, Pennsylvania

Chairman, Finance Committee
John E. Flood, Jr.
Title Insurance and Trust Company
Los Angeles, California

Treasurer
C.J. McConville
Title Insurance Company of Minnesota
Minneapolis, Minnesota

Chairman, Abstracters and Title Insurance Agents Section
Thomas S. McDonald
The Abstract Corporation
Sanford, Florida

Chairman, Title Insurance and Underwriters Section
Donald P. Kennedy
First American Title Insurance Company
Santa Ana, California

Immediate Past President
Robert C. Bates
Chicago Title Insurance Company
Chicago, Illinois

Executive Committee Members-At-Large
Robert D. Dorociak
USLIFE Title Insurance Company of Dallas
Dallas, Texas

Sam D. Mansfield
Marion Abstract and Title Company
Ocala, Florida

ASSOCIATION STAFF

Executive Vice President
William J. McAuliffe, Jr.

Vice President—Public Affairs
Gary L. Garrity

Vice President—Government Relations
Mark E. Winter

Director of Research
Richard W. McCarthy

Vice President—Administration
David R. McLaughlin

General Counsel
William T. Finley, Jr.
Pierson Semmes Crolius & Finley
Canal Square
1054 Thirty-First Street, N.W.
Washington, D.C. 20007

Features

Committees 7

Small Company Survival 12
James R. Suelzer

Computer Theft 16
Jack Rattikin, Jr., and John V. Roach

The Big Steal 19
Sean E. McCarthy

Legislation By Court Decree 23
Robert L. Reyburn

Departments

A Message From The President-Elect 5

Calendar Of Meetings Back Cover

Front Cover

The growing influence of computerization in the land title industry brings accompanying concern over loss from theft and fraud. In this issue, the problem is discussed by Jack Rattikin, Jr., president, Rattikin Title Co., and John V. Roach, president and chief executive officer, Tandy Corporation, who are neighbors in Fort Worth, Tex.

DO NOT REMOVE

When companies share . . .

it shows in the bottom line.

When you share a LANDEX® system, you cut your plant costs one-half, two-thirds, three-quarters — you name it.

LANDEX is our on-line minicomputer system for title-plant automation. It is designed to be shared. People in the sharing companies can use remote terminals without leaving their own offices.

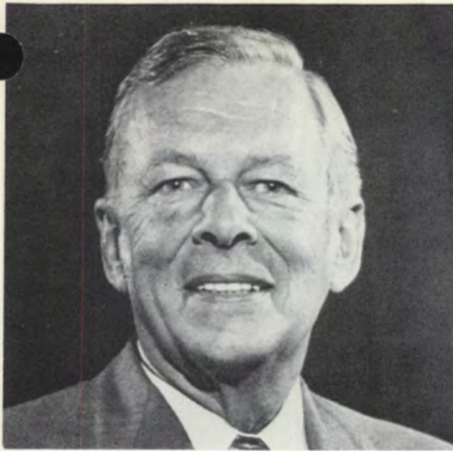
Some LANDEX owners keep their systems to themselves. Even then, LANDEX pays its way. That gives you an idea of the gains to be enjoyed by those who share!

May we tell you more? Just write or telephone —

Donald E. Henley, President
INFORMATA INC, *makers of LANDEX*

INFORMATA INC / 23241 VENTURA BOULEVARD, WOODLAND HILLS, CALIFORNIA 91364 / (213) 346-9203

EASTERN REGIONAL OFFICE / POST OFFICE BOX 271180, TAMPA, FLORIDA 33688 / (813) 961-5288



A Message From The President-Elect

At a time when it is difficult to find something positive to reflect upon, it is interesting to note that the title insurance industry's talent for responsiveness has been very apparent during the past year. As individual competitors and as an organized industry, our members seem to be able to react appropriately to a variety of issues and problems.

The industry has responded impressively to demands for new direction. Endorsements to provide coverage for variable rate mortgages, and consumer-oriented owner's policies are examples. In addition, the industry has been active and helpful in developing legislative recommendations intended to resolve a variety of problems.

This responsiveness is not limited to the activities of ALTA. During my travels, I have observed some of the work being done by state organizations and individual companies. Their record is equally impressive and further evidence of the ability of the industry to cope with changing times and conditions.

In itself, this observation should not come as a surprise to those who are familiar with the history of the industry. Many title insurers have maintained themselves as viable business entities notwithstanding radical changes in the practices, philosophy and economics of the real estate market. Few industries in this country can boast of that kind of performance.

The credit for our success belongs to those dedicated professionals in our industry who believe that good service requires a response to customer needs. Such an approach creates an attitude of flexibility and ingenuity which has become the hallmark of title underwriters.

While we have kept pace with the demands of the market, we have not always been able to obtain satisfactory recognition and compensation for our contributions. Primarily, this is the result of a general lack of comprehension, even among sophisticated professionals, of the nature of title insurance and the coverage it provides.

When lender groups and government agencies create alternative mortgage instruments to provide additional assistance for home buyers, the country applauds. Few realize that some of these techniques would be lost in legal uncertainty without the approval of and the words of comfort supplied by title insurers.

Although industry efforts and education, seminar sponsorship and an excellent public relations program have improved our image, there is still a lot of work to be done. We must continue to make the public, the legislators and our regulators aware of the significance of our role in real estate transactions. If there is to be an economic redevelopment, we want to be part of it as full partners. Our growth and success should be a function of the overall strength of the real estate market in parallel with those other professionals who provide services to investors in land.

Fred B. Fromhold

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

```
REPORT CE-03                    DATE: 03/22/79      SEARCH JUDGMENTS     TIME: 10:28:39        PAGE: 1
                                                    DIRECT INQUIRY
THE FOLLOWING JUDGMENTS HAVE BEEN FOUND:                                 TYPE: INDIVIDUAL
*** SEARCH SPECIFICATIONS *** RICH
     NAME: RIED
INDIVIDUAL NAME: R                      VOLUME: 1  READ  PAGE: 6   COMMENT: SAMPLE
DATE OF JUDGMENT: 01/01/79                                         AMOUNT: 1,000.00
   CREDITOR: PNTI
INDIVIDUAL NAME: RICHARD      FRANK     VOLUME: 1  READ  PAGE: 1   COMMENT: SAMPLE
DATE OF JUDGMENT: 01/01/79                                         AMOUNT: 1,000.00
   CREDITOR: PNTI
INDIVIDUAL NAME: RICHIE       F         VOLUME: 1  READ  PAGE: 9   COMMENT: SAMPLE
DATE OF JUDGMENT: 01/01/79                                         AMOUNT: 1,000.00
   CREDITOR: PNTI
INDIVIDUAL NAME: DICK         F         VOLUME: 1  REED  PAGE: 2   COMMENT: SAMPLE
DATE OF JUDGMENT: 01/01/79                                         AMOUNT: 1,000.00
   CREDITOR: PNTI
INDIVIDUAL NAME: R            F         VOLUME: 1  REED  PAGE: 5   COMMENT: SAMPLE
DATE OF JUDGMENT: 01/01/79                                         AMOUNT: 1,000.00
   CREDITOR: PNTI
INDIVIDUAL NAME: RICK                   VOLUME: 1  REID  PAGE: 3   COMMENT: SAMPLE
DATE OF JUDGMENT: 01/01/79                                         AMOUNT: 1,000.00
   CREDITOR: PNTI
INDIVIDUAL NAME: RICKY                  VOLUME: 1  REID  PAGE: 7   COMMENT: SAMPLE
DATE OF JUDGMENT: 01/01/79                                         AMOUNT: 1,000.00
   CREDITOR: PNTI
INDIVIDUAL NAME: RICH         FRANK     VOLUME: 1  RIED  PAGE: 4   COMMENT: SAMPLE
DATE OF JUDGMENT: 01/01/79                                         AMOUNT: 1,000.00
   CREDITOR: PNTI
INDIVIDUAL NAME: RICHARD                VOLUME: 1  RIED  PAGE: 8   COMMENT: SAMPLE
DATE OF JUDGMENT: 01/01/79                                         AMOUNT: 1,000.00
   CREDITOR: PNTI
*** NO MORE JUDGMENTS WITH GIVEN SPECIFICATION ***
END OF REPORT CE-01
```

Any computerized title company management system will include a tract index. **TRACT+** will include much more:

Allows you to accurately find current judgments against individuals or businesses by providing a complete list of first name equivalents and by recognizing phonetically similar last names.

Searches construction liens and recorded documents, whether the parcel is identified by subdivision, certified survey maps or metes and bounds.

Provides a complete in-house accounting system for all accounts payable and receivable, payroll, general ledger, invoices, title insurance premium calculations and escrow accounting.

All accurately and in seconds. Your data is immediately available for searching while reports are either printed or generated on a television-like screen. It can't be misindexed, misplaced or lost.

There's no need to hire special operators with computer training. You have complete control over your operation, which means increased productivity and greater profit for your company. **TRACT+** has been developed by title people, for title people.

Write us, or give us a call. We'll be happy to give you a demonstration, then let you decide.

TRACT+

**Developed by Madison Software, Inc.
A division of Preferred Title Service, Co.
25 West Main Street
Madison, WI 53703
(608) 251-2020**

Liaison Committee with the NAIC

Article VIII, Section 10, of the ALTA By-laws sets forth the duties and responsibilities of the Liaison Committee with the NAIC. The committee's responsibility is to work and cooperate with the NAIC and its committees to further a more complete understanding of the business of title insurance, to promote sound regulation and legislation, and to work toward averting unsound legislation. Any undertaking or agreement involving the Liaison Committee is subject to ratification by a majority of the ALTA Board of Governors or ALTA Executive Committee before it is approved.

The Liaison Committee with the NAIC currently is composed of nine members, including one from the Abstracters and Title Insurance Agents Section. Members represent a diversity of professional orientations, geographic locations, and corporate business philosophies. Under current Executive Committee authorization, three ALTA representatives attend each semiannual (June and December) plenary session of the NAIC; one liaison member, one accounting/financial member; and one ALTA staff member. At least one Liaison member attends each NAIC Zone meeting. Other NAIC committee, subcommittee, and task force meetings are attended if a matter of importance to the ALTA is on the agenda.

While the Liaison Committee with the NAIC comes into contact with individual state regulators and their staffs, its primary responsibility is to interface with them on only NAIC-related matters, and not on legislation or regulation related to a particular state. The ALTA Government Affairs Committee has broader responsibilities that include matters related to specific state or federal regulation and legislation.

The Liaison Committee is monitoring the activities of the NAIC Market Conduct and Consumer Affairs (EX3) Subcommittee, the Financial Condition (EX4) Subcommittee and its Task Forces, and the Special Insurance Issues (E) Committee and its Task Force on Title Insurance. The NAIC recently has placed a higher priority on developing recommendations on title insurance—now placing it seventh in importance in the third level of priority. The Liaison Committee chairman presented at the June, Western Zone, NAIC meeting in San Antonio, an ALTA-developed alternative to the Task Force's title insurance rate standard model section. Work on a comprehensive model title insurance code will occupy the Task Force's and Liaison Committee's attention during the next year.

The two principal areas in which the Liaison Committee is working to promote sound legislation and to avert unsound legislation are: (1) the inability of title insurers to cost-justify rates except in the aggregate, and (2) the need to allow title insurers to use pricing which is inclusive of all provided services. These related areas indicate a real need on the part of regulators to understand the basic economics of the title insurance industry, how and why they differ from the economics of other insurance lines, and what consequences flow from those differences. Obtaining NAIC support for controlled business regulation also will have a high priority.

Erich E. Everbach, Chairman
Vice President and Regulatory Counsel
Pioneer National Title Insurance Co.
Los Angeles, Calif.

Title Counsel Committee

Williamsburg, Virginia is an inspiring fountainhead of American democratic government and law. The spirits of our founding fathers seem present in the historic halls of government, in the streets and at colonial dinners in candlelit taverns. Nothing more is really needed to attract people to Williamsburg, but the 35 lawyers attending the ALTA Title Counsel meeting there from May 3 to 5 had much more to do than savor eighteenth century history, architecture and cuisine.

The ALTA Title Counsel Committee was formed in the spring of 1979. The committee itself consists of only three people, currently Jerrel Guerino, John Goode and the author. The Board of Governors has charged the committee with sponsoring two conferences per year for general counsel and members of house counsel staff of members of the ALTA Underwriters Section.

The subject matter for consideration at such conferences is limited to legal problems involved in one of the following: identification, definition and control of title risks; title claims adjustment and administration; operating under title insurance regulatory authorities; judicial and legislative events significant in the title insurance business; and other topics appropriate for discussion by title counsel.

Within those categories, this spring's

meeting had an agenda of 23 substantive topics for discussion. Among them were cases on antitrust law, certain aspects of the new bankruptcy code, recent cases on wetlands and submerged lands, and extensive discussions on the several new alternative mortgage instruments.

The title counsel meetings now conducted under the auspices of the ALTA Title Counsel Committee are a continuation of a long series of similar meetings organized voluntarily, first by one company and then another. The purpose was to meet a strongly felt need by senior counsel of title insurance companies to confer with their peers on matters of law continually arising as major concerns in the title insurance business. By 1979, it was felt that the convening and conduct of the meetings should have a more definite structure, which was the reason for the formation of the ALTA Title Counsel Committee charged with the responsibility for holding such conferences.

The discussion agenda is developed in advance by soliciting suggestions from members, and the suggestions are edited somewhat to reduce duplication and give emphasis to those topics that seem to have more predominant interest.

The agenda is reviewed in advance by the ALTA general counsel to screen out any topics that might be inappropriate for discussion. On the other hand, the spontaneity and warmth of the meetings are enhanced by rotating the function of conference host from one member to another. The conference host selects a suitable site and plans the social activities, which usually include an opening cocktail reception, a pleasant conference dinner at the end of the first full day and luncheons each day. Activities for spouses are planned for the day fully occupied with meetings by title counsel, and more than half of the conferees do bring their spouses. At Williamsburg, there were 25 present.

The total costs for meeting rooms, meals, and social activities are divided per capita and billed to the participating companies. Therefore, the cost to ALTA for the program of title counsel is reduced to a minimal amount.

The title counsel meetings are intended for the benefit of counsel who have broad responsibility and substantial experience. Those who attend usually hold positions equivalent to general counsel, associate general counsel or regional counsel. Rank itself is of no consideration in welcoming persons designated by their companies to attend, but the conferences are not intended to be for training the less experienced.

Every company in the Title Underwriters Section of the ALTA is entitled to send one or more representatives to the title counsel meetings. Notices are sent to those who are recognized as having been designated by their companies to attend, and chief executive officers who have no such designated representative are also notified. It would be appropriate for the chief executive officer of any company at any time to advise ALTA headquarters of anyone they would like to have included in future title counsel meetings. The next meeting sponsored by the Title Counsel Committee will be held in the vicinity of Los Angeles in November of 1981. Exact time and place will be announced later.

Robert T. Haines, Chairman
President and General Underwriting Counsel
Chicago Title Insurance Co.
Chicago, Illinois

Membership and Organization Committee

The Membership and Organization Committee normally has five or six members. We try to have members from different parts of the United States so that, if a question comes up in one of our meetings regarding a particular part of the country, we will have someone familiar with that area.

We meet semi-annually, once at the ALTA Mid-Winter Conference and again at the ALTA Annual Convention. Our meetings normally last from one and a half to two hours. At each meeting we review from 25 to 40 applications for ALTA membership.

Most of the applications are for Active and Associate membership. Requirements for Active membership are a financial statement and five references, including one bank reference and two references from Active members of ALTA. The application form also asks whether or not the applicant is a member of his state title association. Some states require membership in the state association before the applicant is eligible for membership in ALTA, while other states require membership in ALTA before an applicant can be eligible for membership in the state association. These situations require that members of the membership committee be familiar with the bylaws of the state associations.

From time to time, we have requested the services of our general counsel to advise us of our legal position before we approve a particular applicant for membership.

Our job is made much easier by the help and assistance we receive from the ALTA staff. All applications for membership are sent to the ALTA office in Washington. The ALTA staff then writes to each of an applicant's references. After the references have replied, the applicant's name will be placed on the agenda for review at our next meeting.

Approximately two weeks before our meeting, each member of the committee receives a package containing copies of the applications to be reviewed. The package also contains a copy of each applicant's financial statement and a copy of each letter required from references. The committee thus has an opportunity to review the applications prior to the meeting.

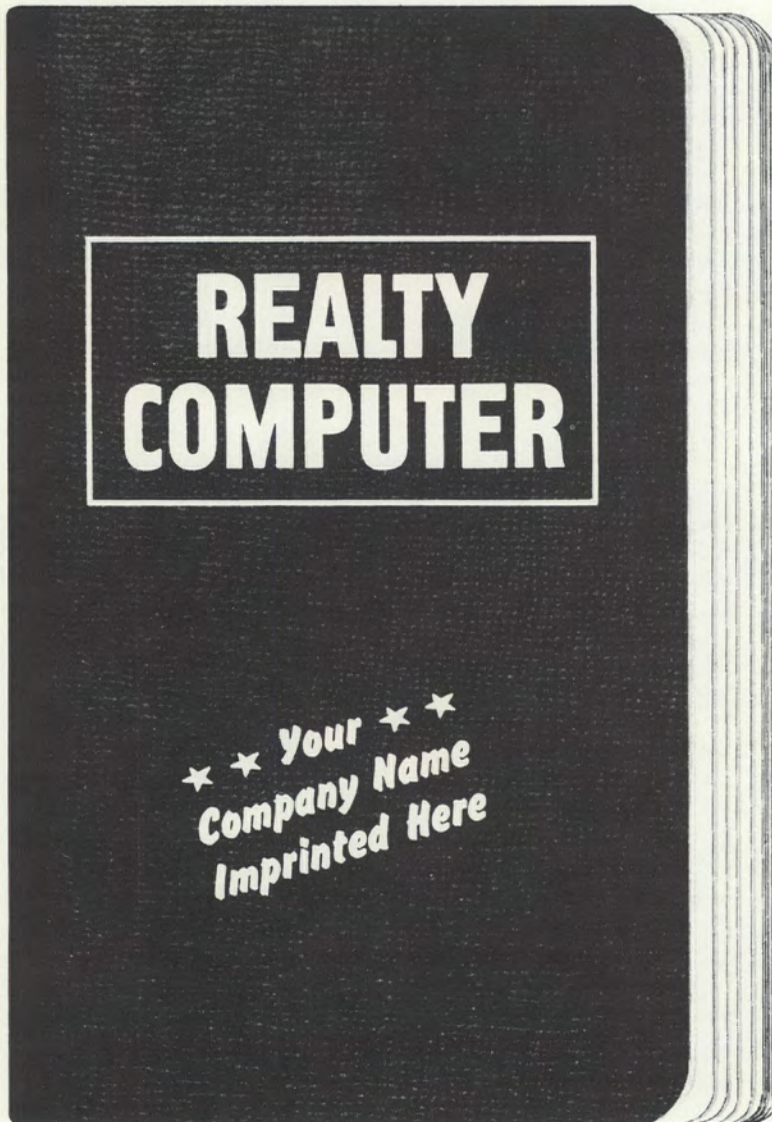
Sometimes we approve an application that lacks one reference letter or some other open item. These applications are approved subject to the receipt of the necessary requirements to complete the prospective member's file. Other times we will approve an application subject to the applicant's acceptance in his state association.

After the committee has acted on all of the applications, the chairman will give a report to the ALTA Board of Governors for consideration at the Board's meeting. The Board then acts upon the recommendations of the committee.

Our goals are to continue to maintain the standards of the ALTA and to increase membership in the Association.

The Membership and Organization Committee is an interesting committee to be a part of because of the opportunity to

PUT YOUR NAME IN EVERY REALTOR'S POCKET!



YOUR
Hard-Working

GIFT
FOR REALTORS!

Created by Realtors for Realtors

In addition to the conventional loan amortization payment tables, the latest 260-page *Realty Computer* provides over 30 real estate tables badly needed by real estate people in their daily transactions.

A quality edition that fits pocket or purse.

You owe yourself an appraisal of the *REALTY COMPUTER* — one of the finest professional fact-finders you have ever seen.

YOUR REAL ESTATE CLIENTELE WANTS IT!

Write today for your complimentary copy

(to Title Companies only)

PROFESSIONAL PUBLISHING CORPORATION

122 Paul Drive • San Rafael, California 94903 • (415) 472-1964

learn about the makeup and organization of the state associations.

John R. Cathey, Chairman
President
The Bryan County Abstract Co.
Durant, Oklahoma

Committee on Internal Auditing

The ALTA Committee on Internal Auditing was officially formed in 1978 as an outgrowth of an informal group of individuals responsible for managing internal audit functions for their respective title insurance companies. Since its inception, the committee has met approximately two times per year. The committee's principal purposes include:

—Promoting internal auditing professionalism within the title insurance industry,
—Sharing internal auditing techniques and methods,
—Developing meaningful internal controls information within the industry,
—Promoting the internal audit function within the industry.

Although any member of ALTA may send a representative to a meeting of the committee, the participation has averaged approximately 10 individuals per meeting. The largest attendance was approximately 20 individuals at a meeting in 1979. The meetings have been viewed as educational by the participants and have provided a forum for an exchange of ideas. The committee has encouraged greater participation by title insurance auditors through direct contact of various companies.

In 1979, the committee began drafting "Proposed Escrow Internal Control Guidelines for Title Insurance Companies and Agencies." A draft of the document was reviewed with the ALTA Title Insurance Accounting Committee in a 1979 joint meeting. During 1980, the Internal Auditing Committee met to finalize the escrow internal audit control guidelines draft and plans to present the draft to the ALTA Executive Committee for consideration in 1981. The development of escrow internal control guidelines should be beneficial to the industry.

The committee plans to meet at least annually and anticipates addressing the following issues in the near future:

—Cooperative audits of joint title plants
—Coordination with external auditors (CPAs)
—Allocation of internal audit resources to audit areas
—Continuing education opportunities and training programs for title insurance auditors
—Relationship with companies' audit committees
—Frequency and extent of branch auditing

John W. Uhlman, Chairman
Director of Internal Audit
Ticor
Los Angeles, Calif.

Committee on Improvement of Land Title Records

The Committee on Improvement of Land Title Records performs an important function in monitoring developments in its field. Both plant companies and those which use public records depend heavily on the methodology used by public offices in maintaining land records.

Since the initiation of the committee, there has been an increasing awareness on the part of public officials as well as private users of the importance of land records. Of course, not all land records are related to title—such as assessment and zoning, for example—but the high cost of maintaining separate records for different public offices has brought home the advantage of systematizing the processing and indexing of land records.

Cadasters, which are systematic compilations of data related to land, have been in existence in Europe and South America for a long time. There is considerable interest in the United States and Canada in establishing similar systems in these two countries. Several organizations have been formed over the years which have expressed interest in pursuing this goal. Possibly the most prominent is the Institution For The Modernization of Land Data Systems (MOLDS), formerly known as the North American Institute for the Modernization of Land Data Systems. More recently, the Land Information Institute was formed in the United States and has solicited membership in foreign lands.

At the state and county level, we have watched, and occasionally assisted, the efforts to utilize the state of the art technology in innovative projects. CAMRAS[1] in Memphis and RMLR[2] in the Philadelphia area are two examples. The ALTA committee is vitally interested in the HUD demonstration projects as well.

The growing infusion of foreign capital into the United States in the last decade has given rise to concern on the part of the federal government in the ownership of land by aliens. A better system for detailing land ownership is considered by some as a necessity to monitor this development. Many others in and out of government feel that a proper inventory of natural resources cannot be made without some sort of cadastral system. The energy crisis has given added weight to this concern.

The committee maintains an association with many of the concerned orga-

Continued on page 14

[1]Computer Assisted Mapping and Records Activities Systems
[2]Regional Mapping and Land Records.

New Policy Offered

The R.J. Cantrell Agency now offers errors and omissions protection for escrow agents and closers in all states except Alaska. The coverage is under a separate policy from our TitlePac program and is available at rates and with deductibles that we believe you will find acceptable.

The new policy, which was three years in the making, is just another way that our company strives to provide better service to the title industry. Call us or write for details.

ERRORS AND OMISSIONS INSURANCE

FOR

- Abstracters
- Title Insurance Agents
- Title Searchers
- Title Opinions
- And Now for Escrow Agents and Closers

The R.J. Cantrell Agency

P.O. Box 857
2108 North Country Club Road
Muskogee, Oklahoma 74401
(918)-683-0166

"A Title Man for Title People"

James R. Suelzer

Small Company Survival

Carla Bombere

It would be pretentious to name this "Enhancing Profitability of the Small, Closely-Held Title Agency Through Judicious Cost Reduction Strategem," or similar pious goo. Let's keep it simple. . . .

In the final analysis, what really counts is not who wins or loses, but rather who *survives*. Rule one, then, goes: *Be There When Your Ship Comes In.*

Expect less than a lusty chorus of "huzzah" from your people, as you batten down the hatches and sail a course toward corporate and personal survival.

Only the best will intuitively grasp that what's good for you is also good for them. Identify them early because your fates are intertwined. You need each other.

As to the fresh-air types, you should remind yourself that, should Civilization As We Know It come to an end, they can all go out and get another job, while you will fly your life's investment into the ground and learn that the prospects are dim nowadays in the Used Chief market.

All of your people are making sacrifices in their personal lives, and they will be less than enamored at having to do this at work, too.

But if they can't or won't, best you find out now.

Turning Point Is Here

The future we are all building toward demands a solid foundation. Half measures will avail us nothing. We stand at the turning point. This is simply no time to fool around.

The way that will produce quickest results is *Eliminate People* which is rule two. The market has made the decision for you. Your customers are simply buying less of what you sell. So you don't need as many people as you used to.

We title people are haunted by the fear that as soon as we let go of somebody,

The author is a second generation titleman and is chief executive officer of First Land Title Company of Fort Wayne, Inc., Fort Wayne, Ind., where he has been an executive since 1961.

we're going to wish we had them back. Stifle that fear, that primitive instinct that says "keep them around and put them to work on projects we've never had the time to work on before."

Remember that customers don't pay you for mending fences. There's also fair play involved here. Once a decent person learns that he can get paid the same for make-work as for earning a profit for his employer, he's ruined forever as an old hunting dog. When the ship does come in, he will have forgotten how to scramble. You'll have to hire him an assistant, just to stay even with the new fast game, and you'll then have the ongoing problem of what to do with the old dog when the recently-added pup is running rings around him—complaining to you that he's being treated like an ignoramus.

Learn to believe that there are a lot of people out there who want to learn the title business—people who simply want what we've got and will go to considerable lengths to be part of it. If your old dog wanders down the street to your imitators, so much the better. Let *them* be the ones responsible for him. Enjoy watching your remaining staff take up the slack and pick up his former duties. He probably kept them a secret, so your people will be driven to finding new ways and parceling them out among themselves. This will happen naturally, since they will be working together and communicating.

Savor the new team-play spirit. Just don't *you* do the reassigning: if you find that you have to, you have just learned you underestimated the amount of dead wood.

Profit Orientation Will Help

I grant you that the best things in life are free. But if your people are doing them, there's a price tag on them. I suggest as rule three, then: *Charge For What You Used To Do For Nothing*. Your best guide here is to start watching what your market neighbors are doing, particularly your bank and your lawyer. Title people need to start acting more like profit-oriented businessmen. Where did we ever get that corporate inferiority complex that causes us to say we'll antagonize the customer if we charge a fair price for good service and expect to be paid promptly?

Rule Three is *Quit Buying Stuff*. When and if you really need stuff, a howl will go up from your people. Then's the time to go shopping. Meantime, you haven't spent anything. My theory is we title people learned a lot of bad habits in the postwar years, when we stockpiled stuff as a way to spend money and cut down taxable profit. These habits work against us now.

Suelzer

Start your own in-house office supply store. You'll be astounded if you gather up all the pencils and paper clips lying around in the drawers of desks that people used to sit at.

Close to rule three, yet different and important enough to stand on its own feet, is rule four: *Be Curt Yet Courteous With Salesmen*. Learn this: encouraging them can only cost you money, even though they will show you how they can save you money. Invariably this involves your paying them now in order to save in the future. If you do enough of this, you won't be around for the future. Your priority is survival, remember.

Rule five is *Do More Yourself*. It'll be more fun than ever before, and it will leave you less time to look worried, which really puts the kibosh on your good people who enjoy doing *their* jobs well. And you won't have time to encourage salesmen. And you'll find a way to charge for something that you just spent close to an hour doing, now that you see things in a different perspective.

Consolidation Beneficial

With less staff, the distinction between jobs will blur. If you had abstracters and title insurance searchers and examiners and typists who could only type abstracts and typists who could only type title insurance commitments, it stops making sense and starts looking like distinctions without differences. We combined the whole kit and caboodle into one group, aptly called our Production Group, whose responsibility is simply to produce whatever customers want to pay us to produce. We eliminated one officer who used to manage one of the blended groups. Since the group didn't exist anymore, we didn't need somebody to run it. And we picked the best leader out of the survivors and put him in charge of the whole bunch, with the mandate to run things as he saw fit and report to me. (It's working.)

Rule six is *Stop Buying Whatever Insurance Your Agent Thinks You Need*. He works on a commission, remember, and very likely he doesn't know much about your business. We stopped buying *agent's* errors and omissions coverage, and raised our deductibles on everything else. We do good work and don't make many mistakes. When we *have* been caught in a goof, it has always been paid out of our own pocket and not out of the casualty underwriter's, so why not make reality official? Our policy is, when we're wrong, admit it promptly and make it right with the person suffering the economic loss. We continue to buy *abstracter's* errors and omissions coverage (with a high deductible, remember) because we like the idea of having the insurance company defending a claim, and not us hiring counsel. We are working on incorporating a separate abstract company with low insurance limits and high deductible amounts and owning practically nothing but leasing everything from the main title company. Our abstracting business is shrinking and title insurance is expanding, so it stops making sense to pay abstracter's errors and omissions premiums based on our total volume of business done by the whole title company.

We considered but rejected trying to cut liability insurance premiums by limiting our liability under our certificate, since case law doesn't bear out that this will work. Not in this age of consumerism.

Eventually we will self-insure our abstracting operation, but it will take a while to get up the nerve!

Accounting Firm Changes

Rule seven is *Find An Accounting Firm*

"Once a decent person learns that he can get paid the same for make-work as for earning a profit for his employer, he's ruined forever as an old hunting dog. When the ship comes in, he will have forgotten how to scramble."

That Will Teach You To Do It Yourself. We fired a complacent CPA who was content to send his juniors in to take care of us. We hired an eager-beaver firm whose philosophy is, "You don't need to pay us to do stuff your own people can do after we show 'em how." First off, we hired a bank to do our payroll by computer with W-2s a freebie, for 60 cents a check, instead of paying an accounting firm to do it. We learned along the way that the accounting firm appeared to regard itself as a collecting agent for the federal government, and felt its first obligation was to make sure the IRS received the maximum possible tax from us.

Rule eight is *Go On A Thirty-Two Hour Week.* I consider this a last-ditch survival effort, maybe because it needs to be done across the board starting with the boss. If you do it, make sure it's on a week-at-a-time basis. Few of us will hold still for an accompanying indefinite 20 per cent pay cut.

An unpretentious article like this should close with an unpretentious yet pithy parable.

Mine deals with a farmer whose costs were rising alarmingly, to the extent that his future was a matter of grave concern. He became obsessed with the cost of the oats he fed his horse, how little return he was getting on his investment, and how that return was only in the form of manure.

He determined to cut costs by adding sawdust to the horse's oats.

The horse didn't seem to notice, and, as

"Half measures will avail us nothing. We stand at the turning point. This is simply no time to fool around."

the days wore on, the farmer nudged up the sawdust-to-oats ratio.

Finally, just when the farmer had succeeded in training the horse to eat pure sawdust, the horse died.

Rule nine is: *Eliminate Coffee Breaks And The Horse Will Die.*

Committees—
from page 10

nizations through its individual members. They have been active in the organization by these groups of various meetings and conferences held in the United States and Canada for the purpose of advancing the management of land records. Through committee effort, a number of speakers favorable to the industry have been invited to speak at these functions. Our presence in these organizations has enabled us to counteract and rebut spurious information concerning the title industry and our role in the transfer of land titles. Our active association with these parties keeps us attuned to the currents and personalities important to our industry. Our comments on proposed and pending legislation help present the industry's viewpoint at critical junctures.

As the interest and importance of land data systems develops, your committee will continue to contribute constructive ideas toward truly progressive movements and point out deficiencies in those which are inimical to the general welfare.

Thomas E. Horak, Chairman
Vice President
Commonwealth Land Title
Insurance Company
Philadelphia, Pa.

First American Completes Study

Detailed information about major industrial parks in Orange County, Calif., is contained in a special report issued by First American Title Insurance Company.

Data about rates, inventory and other phases of 63 projects comprising more than five acres each is contained in the study, designed to help in planning lending, building and selling programs.

Of 3,088 acres in the parks surveyed, 58 percent, or 1,793 acres, had been developed. Square footage totaled 12,301,757, of which 3,466,401 square feet were vacant.

This is an increase of 744,648 available square feet since First American's last study released in July 1980, according to Robert Patterson, director of commercial-industrial sales for the Santa Ana, Calif., based company.

Copies of the report may be obtained from First American's commercial-industrial relations department.

Legislative Reporting Committee

The By Laws of ALTA provide at Article VIII, Section 12, that "the Legislative Reporting Committee shall report with regard to legislation affecting or relating to the interest of members and the title business." This mandate gives a wide range to the possible legislation on which the committee can report.

The committee is composed of reporters for each of the states. Since this is a reporting committee, there is little necessity for regular meetings. Each committee member is asked to file a semiannual report with the chairman, describing legislation which has been passed into law by his particular state or states since his last report. The legislation being reported on should relate to substantive real property law or directly involve the title business, such as legislation dealing with premium taxes and reserves. The committee member is also asked to pass along information concerning the passage of new regulations governing the abstracting or title insurance business. Hopefully, this type of information would be of interest to many of the members of the Association.

In addition, committee members are asked to report on pending legislation or regulations that are brought to their attention, that in their judgment would significantly impact on our business. In either situation, it is necessary for each reporter to exercise sound judgment in reporting on those laws and regulations which are significant enough to be brought to the attention of the Association.

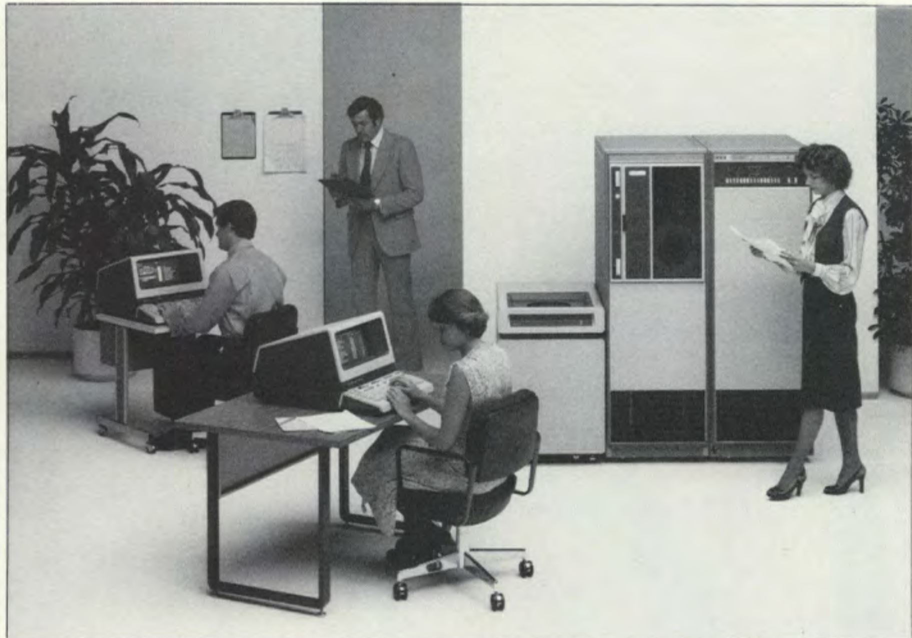
The material from the various reporters is compiled into a report which is forwarded by the chairman to the Executive Committee for submission to the Board of Governors of the Association prior to the ALTA Mid-Winter Conference and Annual Convention. In recent years, the volume of related legislative and regulatory activity in many of the states has been modest.

However, it is hoped that, by having each state monitored by a specific reporter, the Association will be kept apprised of current legislative activity that impacts on the title business.

Richard J. Pozdol, Chairman
Assistant General Counsel
Chicago Title Insurance Co.
Chicago, Ill.

• TITON: The system for the 1980's

It can improve your control of your business ...but you don't have to change your business to suit TITON



But a few things *will* change. The efficiency of your title plant will increase as posting becomes faster and errors are eliminated. And as efficiency goes up, maintenance costs go down.

TITON, TDI's on-line minicomputer system, offers you the advantages of state-of-the-art technology, with the security of a tested system. **TITON** is considerably faster, more efficient and easier to operate than many computer systems on the market today. This is because **TITON** was derived from years of continuous experience gained by TDI from contact with title personnel in building and maintaining title plants.

TITON's features and capabilities are:

- ***Rapid index retrieval***
- ***Ability to add, edit, and modify title plant information***
- ***Extensive validation of all entered data***
- ***Local and remote access to the title plant***
- ***Maintenance of system hardware by the manufacturer***
- ***Storage expansion capacity to over 10,000,000 postings***

This system has been designed to fit the needs of both single and multiple county users and can be shared by several companies.

If needed, TDI can help you to increase the effectiveness of your TITON System by building a computerized back plant for several years of past recordings.

You can either lease or buy the system, and the entire hardware package fits comfortably in only 100 square feet of office space. Terminals are about the size of a typewriter and can be located anywhere. And **TITON** will be operated and controlled by your own staff.

TITON, a system developed with the most up-to-date computer technology by professionals with over twelve years experience in the title insurance industry.

Main Office:
1835 Twenty-Fourth Street
Santa Monica, CA 90404
(213) 829-7425

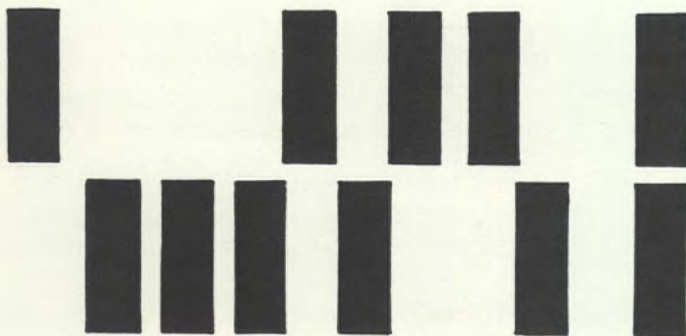
Branch Offices:
901 North 9th Street
Milwaukee, WI 53233
(414) 276-2128

448 East 4th Street South
Suite 210
Salt Lake City, UT 84111
(801) 521-9101

4647 East Evans
Denver, CO 80222
(303) 759-5344

Subsidiary:
Title Data Services
1839 Edgewood Rd.
Auburn, CA 95603
(916) 823-8620

Jack Rattikin, Jr., and John V. Roach



COMPUTER THEFT

During both good times and bad, members of the title insurance and abstracting industry are constantly searching for ways to improve efficiency, while cutting costs. Also, during this age of higher mobility, more and more employees are changing their vocations rapidly, thereby leading to greater personnel problems within our industry. For these reasons, our industry is becoming increasingly involved in computerization.

Already, a high percentage of members in ALTA have mini computers or access to computers in one form or another. Virtually all of those remaining are investigating the advantages of computers, or will do so within the near future. Therefore, I feel that it is safe to say that the title insurance industry has now become heavily involved in computers, and this involvement reaches down to even the smallest title insurance agent or abstracter.

Computers are being used to store entire title plants—as well as complete closing systems with complete tracking systems showing the status of each case, the drafting and printing of all policy forms including commitments and title policies, and the calculating of final closing statements.

Since virtually every title company in the United States will sooner or later own a computer of some kind, and since information stored in the computer memory might constitute the entire asset of a particular company, there naturally will arise great concern over the possibility of theft of not only the software program but also the memory itself. There is also concern about computer fraud due to the fact that policies guaranteeing millions of dollars in real estate are issued based upon the information contained in the memory bank. For this reason, I feel it would be advantageous for each ALTA member to know a little about the types of fraud and theft that exist within the industry and possible steps which might be taken to help prevent them.

Radio Shack, the computer subsidiary of Tandy Corporation of Fort Worth, Texas, is the leading producer of minicomputers for business use. Many title people already use Radio Shack equipment within their shops. For this reason, I contacted my close friend and neighbor, John V. Roach, president and chief executive officer of Tandy Corporation,

Mr. Rattikin is president of Rattikin Title Co. and Mr. Roach is president and chief executive officer of Tandy Corp. Both are in Fort Worth, Tex.

and asked him to prepare an article which would help those of us in the title industry become more aware of the possibilities of computer fraud and theft. Mr. Roach is given credit for the mini computer explosion within the small business community. He was kind enough to accept my challenge, and he and others working for Radio Shack have provided the following article. I truly hope that it will benefit other ***Title News*** *readers as much as it has me.*

—Jack Rattikin, Jr.

* * *

As we enter the decade of the 1980s, we shall experience an unprecedented growth of computers in our society. This accelerated growth will be caused largely by the rapid spread of minicomputers and microprocessors in business, schools and the home. With this growth, we also can expect an equally increased incidence of computer fraud and computer-related crime. As we become more dependent on computers, we must become more aware of the risks and exposures that computer processing presents. We must be alert to the proliferation of computer frauds; we must understand how to recognize them, and most importantly, we must apply controls to reveal and prevent them.

Of course, many of the potential computer crimes are no different from the white collar crimes of the past except they utilize the computer as an accessory to the crime. Just as with manual systems, the risk of loss is minimized by adequate internal controls. Proper checks and balances and separation of duties are just as important as they are in a manual record keeping system. Computers also introduce some new types of crime through tampering with software programs, data files, and as remote communications facilities increase someone can potentially commit a crime or even steal your computer time from outside your company. If you recognize the potential for this type of crime and give some thought to your internal security requirements, then the risks are quickly minimized and the likelihood of computer related crime or fraud is substantially diminished.

Microcomputers now being sold in the hundreds of thousands each year to businesses and individuals present new opportunities for security and new opportunities for computer related losses. Some functions such as accounts payable, management payrolls, budgets or other highly sensitive or vulnerable data now can be placed on a microcomputer and significantly reduce the number of people within the company that have access to the data. With this limited access comes the potential for undetected manipulation of the information if data files are not controlled or the individual utilizing the machines is not trustworthy. The microcomputer can be used as an intelligent terminal and thereby data accessed from a large data base can be encrypted more easily. This would prevent someone who did not know the encryption scheme from accessing data from a foreign computer easily. Microcomputers can be a new problem to on-line systems because anyone, particularly your employees, can conceivably access your computer data from their home. Proper passwords, password controls, limiting the number of wrong passwords a caller can give makes unauthorized access to your system several orders of magnitude more difficult.

Roach

Rattikin

The controls and protection afforded computer information, software time, and hardware must on a common sense basis be consistent with the value of those assets. Extremely valuable data or software should be locked-up, have good internal accounting controls, proper passwords, possibly be encrypted, and finally have all activity of the system monitored. An intelligent approach to handling computers in your business will make them just as secure as you make your other assets. The greatest vulnerability to theft or loss remains in your employees and poor business practices.

The remainder of this article is devoted to a more detailed discussion of computer fraud as viewed by the specialist in the business.

Computer Fraud

The term 'computer fraud' often is used to describe a very broad range of white collar criminal activity in computerized environments. This definition is not entirely accurate, since computers can play different roles in crime. These are identified as:

- *OBJECT*—A fraud that includes the destruction of computers or of data or programs contained in them, or the supportive facilities and resources such as air conditioning equipment and electrical power that allow them to function.
- *SUBJECT*—The computer can be the site or environment of a crime or the source of or reason for unique forms and kinds of assets.
- *INSTRUMENT*—Some types and

"While the use of a computer system increases productivity, speed and accuracy in performing the functions of a business, it also increases vulnerability to fraud by creating additional avenues by which to steal."

"Administrative and internal accounting controls, personnel hiring practices and ethical business conduct shall continue to play an important role in reducing the risks and exposures to computer fraud."

methods of crime are complex enough to require the use of a computer as a tool or instrument. A computer can be used actively, as in the automatic scanning of telephone codes to make unauthorized use of a telephone system. Also, it could be used passively to simulate a general ledger in the planning and control of a continuing financial embezzlement.

- *SYMBOL*—The computer can be used as a symbol for intimidation or deception. This could involve the false advertising of nonexistent services, such as in Dating Bureaus.[1]

The term "computer-related crime" should be used where the crime involves one or more of these four roles. "Computer-related fraud" (or "computer fraud" for short) more accurately describes a crime where the computer is used as an instrument. For purposes of this article, we can define computer fraud as "any defalcation or embezzlement accomplished by tampering with computer programs, data files, operations, equipment or media, and resulting in losses sustained by the organization whose computer system was manipulated. This would encompass all activities in the computer department as well as those departments that directly enter or prepare computer input."[2]

Greater Loss Potential

The traditional methods of committing business and white collar fraud have changed substantially with the spread of computers into the activities and environments in which these frauds occur. Computers have introduced a new form of crime that can result in much greater losses.

Several types of losses can occur including the theft of money, negotiable securities, inventory, services, data, software and computer time. The theft of money or cash is frequently the object of computer fraud because of the liquidity of these assets. The computer can also be used to print bogus documents such as warehouse receipts, bills of lading, and insurance policies. By manipulating data stored in the computer, stocks, bonds, pension fund holdings, and other investments can be stolen.

The loss of inventory and merchandise accounted for by computer systems can occur at any level, from raw materials stored in a warehouse to merchandise displayed in a retail store. Unauthorized computer manipulation can result in the theft of services a company provides, such as transportation, electric, water and telephone.

The advent of the computer has introduced exposures to the theft of computer data, software, and time. For example, data and software can be copied and sold to business competitors or can be used for blackmail. (This would include the theft of customer mailing lists, contract bidding data, product formulas, and proprietary software.) The theft of computer time is the use of a computer for personal gain instead of an authorized business purpose.

How does computer fraud differ from the traditional white collar crime? The answer is twofold: in the methods which are used to commit fraud and the occupations of the criminals.

A review of known computer fraud cases reveals that only a small number of methods or schemes are used with common frequency. These schemes involve the manipulation of transactions entering a computer system, the direct alternation of computer files through unauthorized computer programs, and unauthorized computer program modifications. The techniques used to perpetrate the schemes depend on the types of data storage, processing, and transmission, the position of the perpetrator within the organization, and his knowledge of the computer system.

The traditional occupations of the white collar criminal now include computer programmers and analysts, data entry clerks, tape librarians, and computer operators with the introduction of computer processing. Fraud no longer occurs only in an environment of manual human activity, but in an environment characterized by sophisticated equipment, technically trained individuals, invisible data, and complex, programmed procedures.

The nature of the computer fraud problem arises from the computer environment itself. Computer information systems centralize and integrate large data files, making it easier for a programmer or computer operator to obtain the necessary information to successfully perpetrate a fraud. Because data files are usually stored on magnetic tape or disk and are therefore not visible to manual scrutiny, the opportunity for concealment of fraudulent activity is enhanced. Also, the enormous size of some data files hinders the possibility of accidental detection. Data files and computer programs can be altered, leaving no evidence that a change has occurred. Such an act would be difficult to identify and almost impossible to trace to any one individual. To conceal the manipulation, the altered transactions (or the entire data file) can be erased from the computer system by an operator from a computer console or by a programmer from a computer terminal.

Complex computer systems typically contain a high level of automation with a minimal level of human intervention. Because the system consistently may produce accurate information over a long period of time, individuals using the system can become complacent and rely totally on its integrity. This environment is conducive to unauthorized computer manipulation.

Programmers and systems analysts are in a perfect position to perpetrate a fraud because their jobs require a thorough familiarity with the day-to-day operations of computer systems. By virtue of their knowledge, these individuals can circumvent key controls through program alterations. One of the areas of greatest exposure to fraud originates from the failure to build adequate controls into computer information systems during their design and development. Most computer analysts and programmers are not schooled in the principles of internal accounting control. As a result, no provision is made for adequate controls in the design of computer systems.

Controlling Operations

While the use of a computer system increases productivity, speed and accuracy in performing the functions of a business, it also increases vulnerability to fraud by creating additional avenues by which to steal. To reduce the exposure to computer

Continued on page 26

1. **Don B. Parker, *Computer Crime: Criminal Resource Manual*, SRI International, Menlo Park, California (1979).**

2. **Brandt Allen, "The Biggest Computer Frauds: Lessons for CPA's," "*The Journal of Accountancy*," May, 1977.**

Sean E. McCarthy

The Big Steal

The issue that I wish to address is that of "The Big Steal." This is a theme that was developed by Don Kennedy. When I first saw this title, I thought it really would be best called "The Attempted Big Steal."

That was true until Friday of last week, March 20, 1981. On that day, the Supreme Court of California announced a major decision dealing with inland waterways in California and, in fact, accomplished the "Big Steal." I will go into the details of that decision and the impact of the holding in the State of California and on title companies in general later in my address.

The issues that I would like to cover initially deal with any body of water that is found in the State of California and, while the problems are unique at this time to California, they are not necessarily unique in the sense that you will at one time or another be faced with similar problems in other states that border on oceans or states which have substantial inland bodies of water. You also may face such problems in states which have substantial private holdings of land which have as their source of title a swamp or overflow land patent.

All of these issues have been addressed in the recent past by the State of California. The basic theme is change, and the undercurrent that is pressing for these changes is basically one of a change in societal perception of wetlands—the question being how best to implement that new view regarding that scarce resource known as wetlands.

Historically, California was developed, for the most part, by the reclamation on its wetlands. These were the vast areas of the great central valley that in a natural state were swamp and overflow lands, marsh lands, mosquito infected swamps. These were the lands about which the United States government in 1850 said to the individual states: go out, identify these lands, and once you have identified them, we (the Federal Government) will issue a swamp and overflow land patent for these lands provided you (the State Government), in turn, convey them into private ownership on the condition that the private owner reclaim the lands and put them into productive use.

It was a desire to populate the West and to utilize the vast expanse of California, in our particular case, that led to a societal goal directing that these lands be placed into private ownership. It was the task of the private sector to make them useful, build harbors, bring in freight, reclaim the lands. Early Californians did this.

In the process of settlement, the state enacted a substantial number of laws which were designed to bring clarity and certainty to the ownership by private individuals who acquired title to these lands. Well, that was the goal of the 1800s and early 1900s in California. The goal of today is best enunciated as that of the new historian who finds fault in the conveyance of these lands, who finds public officials acting in excess of their authority.

Today, we find public officials alleged to have conveyed lands in violation of the Constitution of the State of California. Those public officials are known as the Senate and the Assembly of California. These constitutional prohibitions were enacted after the lands were conveyed. That fact, however, is not an impediment to our historians. We are lectured about a population problem in California. We are well in excess of 22 million people. We have wetlands that are scarce—at least observed to be such now. We are further informed that we have the inability, politically, to put forth those funds that would be necessary to condemn these lands, remove them from private ownership, and put them to use in terms of the new societal goal: recreation, open space, and other uses. The monies not being available, the political climate not being ripe for treating this announced change in goals as correct, the approach of the new historians has been through the courts. Until last Friday, their attempts were marginally successful.

Drastic Judicial Change

The decision of the California Supreme Court on that day signals a drastic change in judicial philosophy regarding wetlands that could prove devastating to an industry that relies heavily on a known quantity of law, a perceptible law, an understandable law, and a law that does not change when it comes to the issue of private rights and public rights in real property.

Let me give you a brief rundown on the types of issues that California is confronting and how the courts are addressing these issues.

Regarding tidelands, we have two cases I would like to bring to your attention. One I bring up basically to demonstrate the fact that these cases are complex, time consuming, expensive and economically wasteful.

In an article in ALTA's *Title News* last year, the city of Eureka, Calif., was discussed in some detail. Eureka is symbolic of what can happen in many other areas, in California as well as other states. The legislature of California in 1857 conveyed to the City of Eureka its tidelands. The purpose of this conveyance was to direct the City of Eureka to convey the tidelands into private ownership and develop a harbor. This goal was accomplished.

In 1968, when attempts were made to improve an existing structure in this area, the City, with the support of the State, took the position that the 1857 conveyance was unconstitutional. The City claimed the State owned the land, the private property owners did not, so if they would simply convey their title without a fight, the city and state would offer them a long-term lease on very favorable terms.

The private property owners declined this gracious offer and the battle was on. Now the dust has settled in Eureka. The numbers are in and the nature of the settlement is known. What we have is an 11-year history of litigation. Property that had an assessed value of approximately

Mr. McCarthy is executive vice president—counsel and secretary, California Land Title Association. This commentary was presented during the 1981 ALTA Mid-Winter Conference.

"The decision of the California Supreme Court on that day signals a drastic change in judicial philosophy regarding wetlands that could prove devastating to an industry that relies heavily on a known quantity of law . . ."

$900,000 in 1968, has been the focus of expenditures by the public entities conservatively estimated to be a minimum of $2 million. And, expenditures on the part of the private parties and their insurers amounted to approximately $1.5 million. These are solely litigation costs.

The settlement terms were that the individual property owners took fee title, free of the public trust for commerce, navigation and fisheries, to what is known as the pierhead line—essentially the extent of their holdings as they were known to exist in 1968.

The City received a two-acre parcel from one of the litigants on the condition that a convention facility be constructed on the site. That litigant plans to build a hotel immediately adjacent to the new convention center, so the city's goal in this is totally in agreement with that of the private owner.

Further, the City purchased at fair market value two additional parcels, and an easement was granted for a street along the frontage of the Eureka waterfront. In addition, there was payment of approximately $100,000 to assist in the purchase of these lands by the City.

That is the settlement. There has been nothing but economic stagnation in this particular area in Eureka for the past 11 years and the case serves as a strong example of the futility that often characterizes these types of controversy.

Berkeley Waterfront Case

The next tidelands case is one in which the California Supreme Court acted, and in a manner which showed an understanding of the economic and private interests, as well as public interests that are involved in tidelands disputes.

This case involved the San Francisco Bay. This was the Berkeley Waterfront case. To get a flavor of the claim of the state, you need to know there was a direction from the California State Legislature to form what was known as the Board of Tidelands Commissioners. The Board had as its function on the development of a comprehensive harbor development plan and was authorized to place conveyances of real property bordering on San Francisco Bay for an area of some five miles from the then jurisdiction of San Francisco.

This was accomplished in 1868 and 1870. In 1915, before the Supreme Court of the State of California in a case where Board-issued deeds were at issue, the question raised was whether tidelands were validly conveyed into private ownership, and if they were validly conveyed, were they conveyed free of the public trust.

The California Supreme Court in 1915 answered "yes" to both questions. In 1968, the holding of the *Knudson* case, which was the 1915 case, was upheld at the insistence of the then California Attorney General.

In 1971, in a landmark case known as *Marks* v. *Whitney*, the conveyances by the Board of Tidelands Commissioners were referred to by the California Supreme Court with favor and specifically cited by the court as an example of how tidelands, California tidelands, could lawfully be conveyed into private ownership.

In 1980 in the Berkeley waterfront case, the California Supreme Court did a turnaround and overruled its holding in the *Knudson* case. What was at issue here, and this was noted in our *amicus* brief that was filed with the court, was title to lands having an assessed value of approximately $3 billion in 1978.

The financial district of San Francisco from Montgomery Street out to the Bay, as a general rule, has as its course of title Board of Tidelands Commissioners deeds.

But the Supreme Court in 1980 established new law governing these conveyances. The new rule of law was that the Board conveyances were valid. The Court did not rely upon the *Knudson* case for this proposition. This was their new approach to tidelands problems.

So the private owners took in fee. Now, what about this public trust for commerce, navigation and fishery? Was the tidelands trust terminated over these lands?

The Court answered in the negative. They said "no", that's where *Knudson* was wrong. Putting on their practical caps, the court went on to rule that, with respect to lands that were found to be impressed with the trust, the tidelands trust was nonetheless terminated with respect to any of the lands that had been filled, whether or not they were improved, provided they were no longer subject to the ebb and flow of the tide.

By this crafty design, what the Court did was avoid a political upheaval in the state and extricate themselves from a claim that they were attempting to take without compensation, some $3 billion worth of improvements around the San Francisco Bay.

Swamp—Overflowed Land

Another issue of concern is that of swamp and overflowed land. In California, we have approximately 2.1 million acres of land which have as their source title swamp and overflowed land patents. These conveyances were made at the direction of the United States government via a grant from the president of the United States to the governor of California to private owners. These grants were conditioned upon payment of the established purchase price and fulfillment of the requirement that the lands be reclaimed.

We did not believe we had a problem in this area until approximately 1976. In that year, the State Lands Commission determined that a pending sale existed with respect to a 6,000-acre parcel of land some 55-60 miles inland from San Francisco Bay near the town of Stockton, and the state had an interest in this land.

The nature of the State's claim was this. The source title to these lands was swamp and overflowed. But there was an error made in the characterization of these lands in the 1800s because they could prove that these lands in their natural state in 1850, more specifically September 9, 1850, were not in fact swamp and overflowed lands. They were tidelands and we all know that tidelands are owned by the State in its sovereign capacity.

The State reasoned that if they owned them, no matter what the Federal government or the State government did, they could not lawfully convey these lands into private ownership. Therefore, we, the State said, own these lands in fee. Additionally the lands were said to be impressed with the tidelands trust for commerce, navigation and fishery.

To this day, the State has yet to produce one physical bit of evidence to support their contention that this 6,000-acre tract was formerly tidelands. Not one piece of evidence. Notwithstanding that, they are claiming now that in the San Joaquin Delta and in the Great Central Valley of California, some 170,000 acres of the approximately 1.4 million acres of swamp and overflowed land in the delta were, in their natural state, in fact, tidelands, and they own them.

We attempted to respond to this rather novel claim via legislation. We did this

through a bill—Senate Bill 664—which said the following. If real property has as its source of title a swamp and overflowed land patent which was issued by the Federal government, and, in turn, a patent was issued by the State of California, and the full purchase price was paid, and the lands were in fact reclaimed so as to no longer be subject to the ebb and flow of the tides—in other words, they are high and dry today and taxes have been paid on these lands for over 30 years—then, to the extent that it ever did exist, the public trust for commerce, navigation and fisheries was terminated.

Now interestingly enough this was a proposition that was totally consistent with the holding of the California Supreme Court in the Berkeley Waterfront case. The opposition to this measure came principally from the State Lands Division and an ungodly number of environmentalist groups.

Their concern was this. These are tidelands. These are public lands. We cannot let this giveaway take place. They conveniently forgot that these lands had been sold into private ownership. Their further concerns were articulated along these lines.

We, the State Lands Division continued, as defenders of the public and public officials, have a duty to insure that 11 questions regarding public rights in these lands be litigated, and if we do not, then we are derelict in our duty. We know (although they could not provide any evidence to substantiate this claim) that there are tidelands out there, we own them and therefore we oppose the bill. A concession was offered with respect to lands that were presently in an agricultural use. State Lands Division representatives stated that, "we will not assert our claim provided the landholders continue to keep the lands in an agricultural use."

Now, this magically transforms an issue of title to real property to one of statewide land use planning, and, who gets to do the planning? One does not have to speculate as to the answer.

Bill Vetoed

The short and long of the saga of Senate Bill 664 was that it passed both the Assembly and the Senate over vigorous opposition. Our good Governor stated that he wanted to preserve the environmental integrity of these lands and he vetoed SB 664.

The bill is being reintroduced and, if anything, the atmosphere in the legislature is such that the bill will most likely be passed again and Governor Brown will have the opportunity to reevaluate his views on this matter.

"This ruling is very interesting because it makes clear that if you have a prior judgment from a lower court as to low water mark, you are not able to use that fact in challenging the decision of the Supreme Court as it applies to your land."

On a much lesser scale, this type of argument regarding swamp and overflowed lands has just been raised again in a new context. This recent state claim is to property that is located in Redwood City. The land is owned by a gentleman who had the audacity to dredge out the interior portions of his holdings and develop a harbor. He has improvements on this land that are worth approximately $1.5 million. The State filed a claim contending that these lands in their natural state were tidelands and not swamp and overflowed.

The State contends they own the lands and, for the first time that I am aware of, the State went a bit further and claimed not only ownership of the land but ownership of all improvements upon the land.

This included the harbor, a store and a restaurant facility. Interestingly enough, in this particular case in 1968, there were exchanges of land made concerning some parcels that surrounded this particular piece of property, and the state at that time quit claimed out all right, title and interest to these surrounding lands.

Rancho, Lakes and Streams

This case is just starting to bubble, but the saga of ownership rights in swamps and overflowed lands will continue for time to come.

There exist two remaining types of wetland issues in the fore in California. These issues involve rancho lands and inland lakes and streams.

Rancho lands in California consist of hundreds of thousands of acres of property having as their source of title a confirmed rancho patent. In 1977, a trial court in Los Angeles found that, with respect to rancho lands, there existed a public trust for commerce, navigation and fishery. Now this public trust is something that one has to really understand because this is a little bit different. The reason you have to take a little longer to understand it is because there are major legal obstacles to be overcome before a public trust may be established in these lands.

One of the obstacles happens to be a treaty obligation of the United States. That would be the Treaty of Guadalupe Hidalgo under which California was ceded to the United States. Pursuant to the treaty, the United States was bound to honor the laws affecting the rights of Mexican landowners in California. The United States assumed that obligation and in pursuance of its obligations, established the Board of Land Commissioners. The Board had the responsibility of adjudicating conflicting claims of ownership to rancho lands.

The end product of this process was a confirmed ranch patent which conclusively established ownership of the affected lands. This patent serves as the base title to rancho lands.

Now the obstacle that our public rights friends have with respect to this treaty is that there is substantial case law, both from the California Supreme Court and the Supreme Court of the United States, to the effect that the State of Calilfornia took nothing with respect to rancho lands. No sovereign interest exists with respect to these lands. Any and all interests were determined at the confirmation hearings and the patent, once issued, is a conclusive determination of all right, title and interest in the affected land.

So, what do our public rights friends do to avoid this obstacle? Well, you will have to journey back with me to the year 300 A.D. and become a student of Roman law. We find recognized in Roman law the right of the public to be on navigable waters or to be upon the waters of the state. Also we find that this principle of Roman law was enshrined by the Spanish government in a document known as *Los Lietes Pentidas*.

This document reflects the concern of Roman law countries, Spain and, in turn, Mexico, for the public right to be on or near the navigable waters of the sovereign. This finding is interesting in itself but then we go one more step and we are told that indeed this trust right that was recognized in Roman law, by Spain and Mexico, is just happily the same thing as the common law public trust for commerce, navigation and fishery. We then are informed that, while in a confirmation proceeding the United States government may have addressed all other rights in the affected property, they certainly did not address this public trust right. The patent conveyed all other interests but it could not, under Mexican or Spanish law, convey out this public trust right. Therefore, the trust exists in these hands today.

Needless to say, there is pending litigation on this issue and it shows up in some

interesting areas. It appeared in the City of Oakland. Oakland is a city that is striving very hard to get some kind of decent economic development going on within its boundaries. It has an industrial park that has been coming along at a slow pace.

The source of title to the lands for this industrial park is a confirmed rancho patent. The City of Oakland almost lost a significant addition to its commercial infrastructure in the form of a $25 million office building to be constructed in the port area. All government permits were issued for the improvement, and transfer of ownership was imminent. Then someone had the bright idea that an inquiry to the State Lands Division should be made to determine whether the State had any interest in this land.

The land was located approximately two miles from any water. Land Division personnel got their maps out and found that there was a slough that used to cut through this particular parcel in approximately 1867. The slough had been felled some 50 years ago. The State nonetheless took the position that the slough was navigable. Under Mexican law there was a trust and, as keepers of the trust, they could not terminate it, unless of course the Port purchased other lands of equal value and conveyed them to the State.

Needless to say, the $25 million project almost collapsed. It is my understanding, in talking with the counsel for the Port last Tuesday, that a $31,000 check solved the problem.

Waterways—The Steal

Now we come to the inland waterways issue and this is the one that constitutes, in my judgment, the big steal in fact. In 1974, we received at the California Land Title Association a call from an individual who resided at Donner Lake in California. This person was intrigued by a request made to him by State Lands Division officials to enter into a lease agreement with the State to the high water mark of his property.

We inquired as to why the State was claiming to the high water mark. We were told that an individual in the Attorney General's Land Law section had opined orally that the State owned to the high water mark and they were simply giving effect to this oral opinion. We thought that was quite nice and then we pointed out to them that we have five written opinions of the Attorney General on this very same subject which say that the private property owner owns to the low water mark. We asked, "What are we supposed to rely on? Your office's written opinion on this new oral opinion?" The answer came back, "We think the issue is in doubt."

Shortly thereafter, litigation was commenced at Lake Tahoe and at Clear Lake. The trial court finds that the private property owner owns to the low water mark free and clear of any tideland trusts. I forgot to inform you, we are now in the area of where we drop the adjective. We are no longer talking about the common law tidelands trust. We are now talking about the common law public trust for commerce, navigation and fishery, heretofore never applied to non-tidal waters in the State of California.

Well, to make a long story short, the decision of the California Supreme Court came out and it went along these lines. Number one, CLTA and landowners were right. The private property owner owns to the low water mark. The Court said that in common law this result would be true, but California really did not adopt the common law in this area and it is really unclear whether this statutory language of Section 830 of the Civil Code is in fact a grant or is language that is for aid in construction. However, due to continuing and consistent administrative interpretation, we find that in 1872 the legislature of the State of California granted to property owners those lands between the high and low water marks along inland lakes and streams to the low water mark. Incidentally, there are some 4,000 lineal miles of these lakes and streams in California; they are located in 37 of the 58 counties of the State.

Then the Court got cute. They imposed the common law (again you have to understand in finding that the grant was to the low water mark, they specifically found that California did not adopt the common law of England with respect to these inland bodies of water) struck "tidelands," public trust for commerce, navigation and fishery between the high and low water marks and retroactively applied the trust to these lands 130 years following statehood.

The Court did a number of other cute things in their four to two decision. In the Tahoe case, they found that, in balancing the great public issues before them against the interest of the private landowners, the private parties lost again and were prohibited from using any argument along the line of equitable estoppel to challenge the imposition of the trust on their particular lands.

This ruling is very interesting because it makes clear that if you have a prior judgment from a lower court as to low water mark, you are not able to use that fact in challenging the decision of the Supreme Court as it applies to your land. If you have entered into a boundary line agreement with the state establishing the location of your ownership at the low water mark, that fact apparently cannot be used. If you have a lease agreement with the State, that cannot be used either. You are prohibited, under this ruling, from using evidence such as 100 years payment of taxes, government approval for the construction of piers and other improvements in an attempt to block the application of this ruling to a particular piece of property.

With respect to improvements on this land, the Court said do not worry about this issue because, to the extent that a pier or other improvements are found to be inconsistent with the trust and therefore ordered removed, the owner will not be jeopardized because we will require that just compensation be paid for improvements ordered removed.

Finally, the Court did another really cute thing. They said what we are talking about is not the natural low water mark or the natural high water mark, we are talking about the artificial low water mark and the artificial high water mark. Both of the lakes in issue were dammed and there is abundant authority and research to the effect that if the Court had ruled to the natural high and low water mark, the newly created public trust area would be much smaller than at the artificially created high and low water levels.

But this also then creates another new phenomenon in real property law in California. We now are able to understand that, in dealing with real property on inland waterways that are artificially controlled, the guy who holds the lever for the spillway also has the ability to withhold and in so doing raise the artificial high water level of that body of water, thus creating the existence of the public trust upon inundated lands.

There are a hundred unanswered questions with this decision. It will be opposed vehemently and most likely will end up in the United States Supreme Court.

That in brief is a summary of the wetlands issue in California.

You know, there is the old song, "How High's the Water, Mama?" and the reprise is "two feet high and rising."

Well, if you see a lot of people in California in scuba gear, you will understand that is not necessarily true.

Cheboygan Sold

Cheboygan Title Co., Cheboygan, Mich., has been acquired by Jerome A. Malloy, a veteran titleman. Cheboygan Title Co. formerly was owned by Lawyers Title Insurance Co.

Robert L. Reyburn

Legislation By Court Decree

In two recent decisions involving navigable non-tidal lakes and rivers, the California Supreme Court in a 4-2 decision continued in its role as creator of landmark land title decisions by establishing a tidelands trust for commerce, navigation and fisheries over vast quantities of non-sovereign owned lands; deciding that an artificially elevated level of Lake Tahoe instead of the last natural low water mark elevation shall be used to determine the boundary between sovereign and private ownership; and concluding that the defense of estoppel was not available to protect the vested rights of private parties from the imposition of the courts' impression of said public trust between the high and low water marks.

The State of California had been asserting sovereign ownership to the ordinary high water mark of navigable non-tidal rivers and lakes with varying degrees of intensity since the early 1970s, although an existing statute recognized by the state for a century prior to that time provided that the ordinary low water mark constituted the proper boundary between sovereign and private ownership. Recognizing this long acquiescence by the state, the supreme court also confirmed the ordinary low water mark as the proper boundary.

These decisions, both filed March 20, 1981, which involve Clear Lake (Lyon) and Lake Tahoe (Fogerty) are entitled: *State of California v. Superior Court (Lyon)* S.F. 23981 and *State of California v. Superior Court (Fogerty)* S.F. 24035. Their potential impact upon private property interests could be devastating—4,000 miles of shoreline along 31 navigable rivers and 34 lakes are definitely affected by the decision. The courts' impact could go far beyond the subject matter of the litigation as it appears to have left the door open to extend the public trust for commerce, navigation and fisheries possibly to non-navigable bodies of water contrary to previously reported California decisions (*Bohn v. Albertson* 107 CAL App 2nd 738 (1951), *Hitchings v. Del Rio Woods Recreation and Park District*, 55 CAL App 3rd 560 (1976) and *People ex rel. Baker v. Mack* 19 CAL App 3rd 1040 (1971)); and limited the rules governing the application of estoppel against the sovereign established in the Mansell decision (3 CAL 3rd 462 (1970)) by failing to protect the legitimate interests of private property owners of filled land between high water mark and low water mark. They were not treated as well as the owners of filled lots acquired by grants from the Board of Tide Land Commissioners under the Berkeley holding whose titles were confirmed free of any public tide land trust. (*City of Berkeley v. Superior Court*, 26 CAL 3rd 515 (1980)).

In addition, as will be seen, the court in its decisions provided many more questions than answers on a number of vital matters, leaving the field ripe for a never ending period of expensive and protracted future litigation. To truly appreciate what this court has done and compare results, one must be familiar with California case law and statutes pre Lyon-Fogerty covering private ownership and sovereign ownership in non-tidal navigable rivers and lakes, the tidelands trust as related to such water bodies, and the navigational easement theory, estoppel against the sovereign, and the California law of accretion.

Following are the general positions taken by the litigants and the factors found to be of significance to the court in its decisions:

Title Question (Lyon Decision)

When California achieved statehood in 1850 it acquired title by reason of its sovereignty to all navigable bodies of water within its boundaries under the so-called equal footing doctrine as did other states upon admittance to the Union. At that point in time, California could have opted to claim sovereign ownership to navigable non-tidal rivers and lakes to the high water mark. Instead, in the same year, the state adopted the English common law as applicable in those situations and circumstances where not in conflict with state or federal law.

Under English common law, riparian property owners owned land under non-tidal waters to the middle of the lake or thread of the stream, and the king claimed no ownership in such lands. Only tidal waters were considered navigable under the English common law. It would thus appear (and the private parties took this position) that, between 1850 and 1872, the state made no claim to these bodies of water by affirmative action asserting ownership or by passage of laws.

In 1872, Section 830 Civil Code was adopted and modified by Stats 1873-1874 to its present form to provide that upland owners acquiring land bordering upon a navigable lake or stream where there is no

The author is vice president and manager, underwriting practices, for Title Insurance and Trust Co., Los Angeles.

"These cases reflect a growing trend established by the California Supreme Court to legislate by court decree. Longstanding rules of property and previous decisions of the court will be overturned if not in harmony with the social concerns and philosophies of the court's majority."

tide take title to the edge of the lake or stream at low water mark unless the grant indicates a different intent.[1] The general public and the title industry have placed great reliance upon this statute as a rule of property. They have also relied upon the appellate decisions such as *City of Los Angeles v. Aitken* (10 Cal App 2nd 460 (1935)) upholding it; California attorney general opinions confirming its clear meaning; and the concurrence of various state agencies in its meaning expressed by their boundary line agreements with private property owners, letters to property owners, contracts, legislative grants, administrative rulings, surveys and various internal memoranda in their files.

The cornerstone for the State of California's claim of ownership to ordinary high water mark was a Butte County superior court decision entitled *State of California v. Shasta Pipe and Supply Co.* (case No. 37390 Sp Ct) rendered in 1970, declaring the high water mark to be the proper boundary. In recent years, the staff of state lands commission and the attorney general's office have placed great reliance upon any superior court decision which would support a claim of ownership or other right in private property regardless of previous acts of or positions taken by its predecessors, and regardless of existing case and statutory law.

To bolster its position, the state also asserted that Section 830 was a rule of construction and not a rule of property. The state further asserted that since it acquired title to all navigable waters under the equal footing doctrine and had not granted the property between high and low water to anyone, the state still owned such property in its sovereign capacity. A further assertion was made to the effect that Section 830 violated the constitutional provision enacted in 1879 prohibiting it from giving away property without adequate compensation.

In rendering its decision that low water mark was the controlling boundary line between sovereign ownership and ownership of riparian landowners, the Lyon court rejected application of the English common law, holding that California acquired title to high water mark upon entry into the Union and relied heavily upon administrative interpretation of Section 830 to reach its ultimate conclusion. The huge volume of supporting evidence reflected an almost unbroken adherence by appropriate state officials including the attorney general to a claimed ownership limited to the low water mark until at least 1970. The fact that the two other states (Montana and South Dakota) which had adopted a provision similar to Section 830 have also recognized such acts as conveying title to riparian owners to low water mark and the further revelation that the state's legislative grant of Clear Lake to County of Lake recognized the low water mark (stats 1973 ch 639, 81, p. 1165) were also significant in the court's evaluation of evidence.

Public Tidelands Trust, Navigational Easement (Lyon Decision)

The public trust easement for commerce, navigation and fisheries exercisable by the State of California, sometimes referred to as the tidelands trust and the navigational servitude, is normally associated with sovereign ownership by the state of tide and submerged lands. Even when tidelands are sold into private ownership under the general acts established for that purpose, it has been held that the trust for commerce, navigation and fisheries remains (*People v. California Fish Co.* 166 Cal 576 (1913)).

This trust also would apply to the state's sovereign ownership in navigable nontidal rivers and lakes to low water mark, being the extent of the state's sovereign ownership. The land between low water mark and high water mark in private ownership was thought by the private party litigants to be subject to a "navigational easement" over the portion thereof covered by water at any particular time. Such easement expanded with rising waters and retracted as the elevation of the waters receded. (*Bohn v. Albertson* supra) it is much more limited in scope than the public trust easement, which in addition to navigation includes commerce, fisheries and has been expanded further to include many other uses (*Marks v. Whitney* (1971) 6 Cal 3rd 251, 259).[2]

The State of California's fallback position, if the land between high water mark and low water mark was held to be in private ownership, was that such lands whether covered by water or not were subject to the public tidelands trust. The court, discounting the private parties' legal arguments that the only public right was a navigational easement to the extent that such property was covered by water, affirmed the state's position that a public trust did in fact exist over all of such lands.

Woven like a thread throughout its opinion was the court's conclusion that tidelands conveyed to private persons unless the conveyance has been made to promote the tidelands trust remain subject to said trust, incorrectly citing *City of Berkeley v. Superior Court* (1980) 26 Cal 3rd 515. In that decision, the trust was terminated as to filled lands, (see July, 1980, article on the Berkeley decision in *Title News*). The Court had no problem equating navigable non-tidal waters with tidelands, finding that the necessity of preserving to the public the use of navigable tidal waters without private interference equally applicable to navigable fresh waters. *Illinois Central Railroad v. Illinois* (1892) 146 US 387 was, as in the City of Berkeley decision supra, the deciding factor in settling the legal issue.

Citing California Fish (supra) for the rule of law that a statute authorizing the conveyance of tidelands (held to be synonymous with navigable non-tidal waters) will not be interpreted to abandon the public trust unless no other interpretation was possible, the court concluded that Section 830 being silent on the issue did not clearly abandon the trust.

Lyon's final argument that imposing the

[1]Section 830 Civil Code provides in relevant part: "Except where the grant under which the land is held indicates a different intent the owner of the upland . . . when it borders upon a navigable lake or stream, where there is no tide, . . . takes to the edge of the lake or stream, at low water mark . . ."

[2]In *Marks v. Whitney*, Justice McComb stated that public trust easements have been held to include the right to fish, hunt, bathe, swim, to use for boating and general recreation purposes and to use the bottom of the navigable waters for anchoring, standing or other purposes. The trust was found to be sufficiently flexible to encompass changing public needs. After having laid this groundwork, he went on to state that there was a growing public recognition that one of the most important public uses of the tide lands ". . . is the preservation of those lands in their natural state, so that they may serve as ecological units for scientific study, as open space, and as environments which provide food and habitat for birds and marine life, and which favorably affect the scenery and climate of the area." He also stated that it was not necessary to define all public uses included within the trust.

trust upon his ownership of the lands between high water and low water marks would accomplish a taking of private property in violation of both state and federal constitutional provisions, was summarily rejected by the court which again cited Illinois Central; California Fish; and City of Berkeley supra as cases where the decisions at least in certain respects caused even greater interference with property rights. It was stated that in the other cases outright grants were received from the state, presumably without limitation, whereas Lyon's title was based upon administrative interpretations of an ambiguous statute. Lyon was also told that he was not deprived of the use of his lands between high and low water. He can use them for any purpose not inconsistent with the public's interest in his property! Such statements by the court do not provide much comfort to a landowner who has treated the land as his private property.

As a footnote in Lyon, the court concluded that the boundary between public and private ownership must be assessed in accordance with the lake's present shoreline as opposed to the "last natural" ordinary low water mark. That issue is more fully discussed in the Fogerty Case following.

"If these decisions are allowed to stand they will be cited, not only in California, but in briefs before courts throughout the land where it is the intention of proponents to further expand and liberalize the public trust."

Estoppel (Fogerty)

Section 623 of the California Evidence Code provides: "whenever a party has, by his own statement or conduct, intentionally and deliberately led another to believe a particular thing true and to act upon such belief, he is not, in any litigation arising out of such statement or conduct, permitted to contradict it."

In Mansell supra, the four elements needed to apply the doctrine of equitable estoppel were stated to be the following:

(1) The party to be estopped must be apprised of the facts;

(2) He must intend that his conduct be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended;

(3) The other party must be ignorant of the true state of facts; and

(4) He must rely upon the conduct to his injury.

It is well established law that estoppel will only be applied against the sovereign in those exceptional cases where doing so would not negate a strong rule of policy adopted for the benefit of the public.

The Mansell court, in applying estoppel to protect the property rights of thousands of homeowners whose property was located upon sovereign owned tidelands, concluded that the circumstances in that case were indeed exceptional and that great injustice would result from failure to uphold equitable estoppel against the State of California and the City of Long Beach.

The issue of estoppel was not technically before the court in Fogerty, but determining that "a massive expenditure of time and money" by the various parties should be avoided, the majority did decide the matter on the basis of the record before it which has been felt by some of the litigants to be wholly inadequate. With the facts that were before it, and utilizing a very strong ecologically-oriented premise for its decision, the court found that one requirement recited in Mansell was lacking in application of this doctrine—the end result would override a strong rule of public policy, and the public trust in favor of the people was of far greater importance overall than the interests of private property owners in 4,000 miles of shoreline along such navigable non-tidal rivers and lakes!

The court citing with approval, the briefs of environmental groups devoted several pages of its opinion to the need for protecting the fragile and complex shore zone—the plants, the birds, the fish and the public rights to use the land for all trust purposes which we have learned from *Marks v. Whitney* supra—includes leaving the land in its present natural state as open space etc. The court was convinced that current environmental laws and regulations were not sufficient to preserve and protect these lands and conferred upon the state flexibility in determining appropriate use of such land.

It is difficult to understand why the court would or could distinguish the present factual situation from Mansell. There must have been some knowledge available to the court that the result of not applying estoppel would be devastating to many owners who have substantial improvements and do not presently allow the public to use their land. Under this decision, the owners of the land between high and low water have the responsibility to pay the purchase price of the land for upkeep, maintenance costs, taxes and, in addition, probably have liability to the public at large for injury suffered while on the property. On the other hand, said owners have lost the right of exclusive possession and the right to use the land for purposes inconsistent with the public trust.

Accretion (Fogerty)

It has long been recognized by the courts that, in order to find the boundary between public and private ownership in tidelands, the last natural position of the high water mark is determinative. It mattered not that the last natural location was difficult to ascertain (Mansell supra). Section 1014 of the California Civil Code enacted in 1872 provides that the owner of the bank of a river or stream, whether navigable or non-navigable, will acquire land formed by natural accretion or by recession of the stream. California does not follow the rule generally applicable in most states that the private owner also retains artificial accretion not created by his own act.

The state in its briefs had argued for a decision that the artificially elevated level of Lake Tahoe should be used in determining the boundary between sovereign and private ownership.

Although the court's majority was willing to settle the public trust principle upon an analysis of cases dealing with tidelands, it decided to embark on a new course on this issue and hold that the "monumental evidentiary problem" was sufficient justification for its rule that the current level of the lake shall be the standard. To make its decision sound more reasonable, the court philosophized that since the lake had been artificially elevated by a dam since 1870, the period for the state to acquire title by prescriptive rights was long past due. Not finding any California cases to support this conclusion, a 1918 Arkansas Case (*State v. Parker* 200 S.W. 1014, 1016) and a 1937 Iowa Case (*State v. Sorenson* 271 N.W. 234, 238-239) were cited.

The court once again emphasized that the owners could use the shore zone for any use not incompatible with the public trust. The court also concluded that *previously* constructed docks, piers, etc., being used by owners may continue in such use unless the state lawfully decides that such users are incompatible with present trust needs, in which event compensation

for improvements shall be paid to said owners.

Legislation by Court Decree

These cases reflect a growing trend established by the California Supreme Court to legislate by court decree. Longstanding rules of property and previous decisions of the court will be overturned if not in harmony with the social concerns and philosophies of the court's majority.

The establishment of a low water mark boundary between sovereign and private ownership has little meaning if the area between high and low water marks is established as public domain for the purpose of exercising the trust for commerce, navigation and fisheries. Indeed, the public is probably better off than the private property owner, being able to use the land without cost or obligation whereas the owner pays taxes, upkeep, maintenance and insurance, and has many other responsibilities inherent with ownership.

Under the Supreme Court's decision in Berkeley, supra, much of the land between high and low water mark should have been found to be no longer useful or necessary in the exercise of the public trust because of long-standing fill, or improvements and exclusive use by the owners. Yet the court summarily cast aside such considerations in Fogerty by attempting to foreclose completely the application of estoppel without consideration of relevant facts and without giving the private parties the opportunity to present their case.

The part of the court's ruling which creates the most uncertainty is its decision in Fogerty that the artificially created level of Lake Tahoe raised by a dam as opposed to the last natural level of the lake, is the proper boundary between public and private ownership. The decision is completely lacking in providing standards for applying this new rule. Since river elevations could also be affected in the same way, it would be nice to know what the court would decide as to river boundaries. If such water bodies are artificially lowered, do the same principles apply? Can the existing boundary be changed from year to year merely by raising or lowering a water level? How much time is required to acquire ownership by artificial elevation? How can a property owner protect himself from losing property by intentional raising of water levels by government agencies? Does the public trust also move with these changes in elevation? The questions are endless and the answers will not be determined for some time.

In the future, we can anticipate that the Lyon and Fogerty decisions will be considered as a base for further expansion of the public trust. Five days after these decisions, the California Court of Appeals/ Second Appellate District Division Two, rendered a decision related to a claimed public trust asserted by the City of Los Angeles and the State of California in lands acquired under a grant from Spain or Mexico duly confirmed pursuant to the Federal Act of March 3, 1851, by patent from the United States (*City of Los Angeles v. Venice Peninsula Properties* 2nd Civil No. 56383 (Carman-Ryles)). The Court held that no public trust existed in such lands. In a petition for rehearing (denied April 17, 1981), counsel for said city and state rightly cited Lyons and Fogerty as evidence of California's strong public policy of protecting public rights in tidelands and other navigable bodies of water, listing the monumental obstacles elsewhere mentioned in this article the court overcame in reaching its conclusion expanding the trust.

"The title industry must continue to vigorously oppose any efforts to diminish the laws and court decisions which promote the stability of land titles and protect ownership of land."

If these decisions are allowed to stand, they will be cited, not only in California, but in briefs before courts throughout the land where it is the intention of proponents to further expand and liberalize the public trust.

The California Supreme Court's decisions became final on April 30, 1981, upon its denial of petitions for rehearing filed on behalf of Lyon and Fogerty. It follows that the state may now implement these decisions and enforce its newly acquired trust. There are other legal avenues still available to the Lyon and Fogerty interests and others similarly situated. The issues involved are so important, not only in California but throughout the United States, that every legal means will be utilized to seek a solution less draconian in nature and more consistent with the reasonable expectations of the riparian owners. A petition for writ of certiorari would appear to be the next logical step.

At this point in time, it is impossible to predict the final outcome of this litigation. The private parties' opportunity for relief from these decisions is dependent upon many factors of both a legal and political nature.

Of one fact we can be certain. The title industry must continue to vigorously oppose any efforts to diminish the laws and court decisions which promote the stability of land titles and protect ownership of land. If the industry does not make this effort, we can anticipate the result: a continuing erosion of private property rights taken under the guise of benefits to the public—the current method employed by many government agencies and certain other groups on their behalf to acquire interests in privately owned land without paying for it.

Computer Theft—
from page 18

fraud, computer security control measures must be introduced. Adequate control of manual systems requires that traditional accounting procedural, reconciliation, and authorization controls exist to prevent fraud.

The risks and exposures of computer fraud require that attention be given not only to traditional accounting controls, but also to emerging computer security and control practices as well. The purposes of computer security and access controls are to protect against unauthorized modification of computer programs and data files, the theft of valuable data, and unauthorized access to computer facilities and resources.

Computer controls can be very effective in preventing computer fraud by reducing the opportunities for an individual to commit fraud and by increasing the possibilities that fraudulent activities will be detected. Control areas include physical access controls, segregation of duties, data and program security controls (password protection and data encryption) and backup controls. These are the most important controls in the mini and microcomputer environments.

Access to computer facilities must be strictly controlled. The purpose of physical access controls is to protect the resources of a computer department, which includes computer hardware, systems documentation, the tape library and supplies, by preventing unauthorized access to them. The areas protected should include the computer room, the programming offices, offices containing computer terminals, supply and computer tape storage rooms, and any other area directly related to the operation of the computer.

Minicomputers and microcomputers should be given the same physical se-

curity protection afforded larger computers although they may be much smaller in size. Physical access controls should be designed to allow access only to authorized personnel, denying access to all other individuals. If a potential perpetrator of fraud cannot gain physical access to computer facilities, his ability to carry out a fraudulent act is severely diminished.

The purpose of providing for a segregation of duties and responsibilities is to ensure that the perpetration of fraud requires the collusion of at least two individuals. This requires that the computer or data processing department be functionally independent of other departments within an organization. It also requires that duties within the data processing department be segregated to a narrow range of activities. For example, the duties of computer programming and computer operations should be separate and distinct. Also, the functions of program testing and program library management should be separate. The reasons for requiring a segregation of duties are:

- The prevention of fraudulent modification of data and computer programs
- The prevention of unauthorized use of programs, data, and other computer resources and
- The maintaining of integrity between existing computer programs and programs being designed, programmed, and tested

The introduction of microcomputers to the business office presents a major obstacle in implementing a policy of segregation of duties. In this environment, the functions of computer programming, testing, program library management, and computer operations are generally performed by one individual. This does not present a control problem when the individual performing these functions is the owner of the computer data and is also the proprietor of the business; however, when the owner must rely on employees to operate the computer, other control measures must be utilized to reduce the exposures to fraud.

For example, password controls can be used to prevent access to sensitive programs and data. An individual wishing to access a particular computer file would have to supply the appropriate password. As an additional level of control, each password could have access functions associated with it. In other words, one individual's password may allow that a file only be read, while another individual's password to the same file would allow both reading and updating. Such a password scheme should be carefully devised so that each person can be held accountable for the functions performed using his password.

The major disadvantage of password protection is the disclosure of passwords to unauthorized individuals. Passwords may be distributed verbally or in writing and thus are vulnerable to exposure. Also, highly technically trained individuals could "dump" the contents of computer files, including the password file, with specially written computer programs. To reduce these exposures, data encryption techniques can be used.

Encryption is the transformation of data and programs into an unintelligible form. The encryption process involves the use of an algorithm, or method by which the data is transformed, and a key. The key is a pre-defined set of characters that serve as a parameter in the algorithm during the encryption and decryption process. Access to the algorithm and key must be prohibited to ensure security of the encryption process. Data and programs stored on tape, disk, "floppy" disks or diskettes, or any other magnetic media, must be decrypted before they can be usable.

Encryption provides an excellent control mechanism for protecting data and programs from fraud on mini and microcomputer systems; however, encrypted data still can be stolen or destroyed. The loss of computer data, programs, and equipment can cause the cessation of normal business operations and the loss of new business opportunities. To avoid these risks, a backup copy of all important computer files should be made periodically and stored at a secured, off-site location. In large data processing installations, this procedure is generally restricted only to master files and other sensitive files because of the voluminous amount of data. With microcomputer systems, it is possible to have a copy of all diskettes and tapes stored off-premises. Another important control practice is to have all original diskettes and tapes stored in a locked fireproof safe during non-business hours. These security procedures will substantially reduce exposure to theft and destruction of data and programs.

Finally, computer fraud and embezzlement cannot be stopped through the implementation of computer controls alone. Administrative and internal accounting controls, personnel hiring practices, and ethical business conduct shall continue to play an important role in reducing the risks and exposures to computer fraud.

The United Way of Southeastern Pennsylvania presented its Gold Award to Commonwealth Land Title Insurance Co., in recognition of Commonwealth employees' contributions to the 1981 United Way fund drive. Above, Elvira Rogers of the United Way presents the award to Fred B. Fromhold, Commonwealth's chairman of the board and chief executive officer. At right is Bill Whitelaw, vice president of Commonwealth, who chaired the company's 1981 campaign. Commonwealth employees contributed more than 80 percent of their fair share potential. Awards traditionally go to companies contributing 60 percent or more of their fair share potentials.

Calendar of Meetings

July 16-18
Wyoming Land Title Association
Ramada Inn
Casper, Wyoming

July 30-August 2
Idaho Land Title Association
Shore Lodge
McCall, Idaho

August 6-8
Montana Land Title Association
Sheraton Hotel
Billings, Montana

August 6-9
Utah Land Title Association
Elkhorn Village
Sun Valley, Idaho

August 13-15
Minnesota Land Title Association
Holiday Inn
Grand Rapids, Minnesota

August 14-15
Kansas Land Title Association
Holidome
Dodge City, Kansas

August 20-23
Alaska Land Title Association
Juneau, Alaska

August 30-September 1
Ohio Land Title Association
Hyatt Regency
Columbus, Ohio

September 1-4
New York State Land Title Association
The Otesga
Cooperstown, New York

September 9-12
Washington Land Title Association
Thunderbird Motor Inn
Wenatchee, Washington

September 11-13
Missouri Land Title Association
Lodge of the Four Seasons
Lake Ozark, Missouri

September 13-15
Indiana Land Title Association
Merrillville Holiday Inn
Merrillville, Indiana

September 16-19
Dixie Land Title Association
Broadwater Beach Hotel
Biloxi, Mississippi

September 17-19
North Dakota Land Title Association
Kirkwood Motor Inn
Bismarck, North Dakota

September 20-23
American Land Title Association
The Broadmoor
Colorado Springs, Colorado

September 23-25
Nebraska Land Title Association
Holiday Inn
Kearney, Nebraska

October 2-4
South Carolina Land Title Association
Hilton Head Island, South Carolina

October 15-16
Wisconsin Land Title Association
Pioneer Inn of Lake Winnebago
Oshkosh, Wisconsin

November 11-14
Florida Land Title Association
Hotel Royal Plaza
Lake Buena Vista, Florida

American Land Title Association

1828 L Street, N.W.
Washington, D.C. 20036

BULK RATE
U.S. POSTAGE
PAID
Silver Spring, Md.
Permit No. 550