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Features

Departments

A Message From The Chairman, Title Insurance & Underwriters Section

As this message is being written, the year A.D. 1981 is mercifully drawing to a close, and because we all know we can learn from the past, we should probably be examining our 1981 activities. I for one am sick of 1981, and even if something could be learned by looking backward, I refuse to do so. My immediate concern is 1982 and the key word—*survival*. It doesn't make us feel any better that the automobile industry and the housing industry, to name a few, are in the same battle for survival. Long-term interest rates continue at record levels; thrift institutions suffer; builders don't build; lenders don't lend; and, above all, buyers don't buy.

I don't mean to imply that there is no hope for 1982. As a matter of fact, there is cause for cautious optimism. Even though the cure has been painful, inflation seems to be subsiding, and soon we will be experiencing the soothing effect of the tax cut. In short, there is some evidence that the country and the economy are moving toward better days—at least for the survivors.

In the midst of all the turbulence and change, it is clear that each individual and each company must decide on what action will result in survival. Not so clear, however, is the role that ALTA should play in the survival process.

In the recent past, the association has become very active and very effective in both monitoring and influencing the legislative process at the federal level. In the future, it seems that this role will become more important. Because of the possible long-range detrimental effect of controlled business on the title industry, ALTA, through its committees and staff, has attempted to deal with the problem, at both the congressional and the departmental levels. Through House hearings, Congress has given attention to the subject, as have HUD and the National Association of Insurance Commissioners. Within the ALTA membership, everyone seems to be opposed to controlled business, but with a wide variety of reservations, depending on how one defines controlled business and how it affects him personally—a natural and predictable reaction.

In line with the need for survival I am hopeful that the association will be able to broaden its focus to include matters now before Congress and the regulatory bodies that will vitally affect the future survival of our customers, including long-term real estate lenders (whoever they are), the savings banks, and the savings and loan institutions. After all, our own survival depends on the survival of our customers; however, we must be careful that the government in its wisdom does not succeed in destroying our industry in its desire to protect our customers.

It is clear we shall be dealing with a greatly changed economic structure in the coming years. I am confident that the association and its members can successfully meet the challenges and, above all, *survive*.

D. P. Kennedy

Donald P. Kennedy

The Title Insurance Industry: An Endangered Species?

by Wayne D. Wilson

I am going to speak to you today about some of my perceptions of the title insurance industry. Although some of you will recognize familiar refrains, especially those of you who have worked with me during the past two or three years, I hope that those who do not know me will not be too shocked by some of the things that I have to say.

I sometimes have the feeling, when I meet new individuals from the title insurance industry, that I have been described as a great white shark, following those waters out there, ready to take a bite out of your hide. I can assure you that that perception is inaccurate and incorrect. In fact, a more appropriate characterization of me may be an electric eel—basically toothless but absolutely shocking!

I know that some of my thoughts, comments, and actions have at times surprised or amazed, or even dismayed, some of your colleagues, and I am here today to provide a little dose of that medicine for all of you.

Before I proceed much further, I think it only appropriate for me to explain how I became involved in the regulation of the title insurance industry. In 1971, the National Association of Insurance Commissioners (NAIC) formed the Title Insurance Task Force, which was charged with drafting a model title insurance code and studying title insurance regulatory issues. You can see how much progress we have made in the past 10 years. We are still working on the same project. The reason for forming the Title Insurance Task Force was the federal interest in the title business and in some other industries.

After passage of the Real Estate Settlement Procedures Act in 1974, the Title Insurance Task Force was less active and went into hibernation in 1976. For about three years, the NAIC did nothing to rejuvenate the task force or to consider seriously some of the issues and problems confronting the title insurance industry. In January 1979, Don Heath became insurance commissioner for the state of Nevada, and he was asked to rejuvenate the task force and to draft a model title insurance code as expeditiously as possible.

My presentation will focus on some personal thoughts and observations that are based on my experience with the title business during the last three years. I know that many regulators share certain of my thoughts, but I think I should be careful to let you know that my statements should not be regarded as the official position of the NAIC or of any particular state regulator of title insurance.

I hope to conclude with a short description of some of the new regulatory proposals contained in a first draft of a NAIC model title insurance act upon which the task force is beginning to work. At this time, that draft has been circulated to the task force members only and runs some 45 pages; I think that there are probably other issues that could be included that would push the draft well past 50 pages.

As we all know, the title insurance industry has always been protected from federal regulation and the application of the antitrust laws by the McCarran-Ferguson Act. Usually, when that act is mentioned, it is because of the regulator's fear of the federal government's encroaching on his turf. I cannot deny that I am somewhat concerned about that prospect, not only for the consumers but also for the companies. I believe that the recent decisions of the United States Supreme Court, especially in the antitrust area, may well have an impact on your industry.

While the recent decisions do not apply directly to your industry—they construe the McCarran-Ferguson Act and a lower court's holding in *Lawyer's Realty Corporation* v. *Peninsula Title Insurance Company*—the area reserved to the states with regard to title insurance is determined not by its nature or importance, but by whether the states have chosen to occupy it. The recent decisions have made it clear that that is no longer the law. The McCarran-Ferguson Act applies to the business of insurance, not to the business of insurance companies.

As title insurers and abstracters, a significant portion of your income and activities, such as escrow and related services, is outside even the most liberal interpretation of the business of insurance. Your initial response to this revelation may be, "So what." The United States Department of Justice has already taken substantial notice of your industry, and the interest can well be heightened by the United States Supreme Court's recent interpretations. They are certainly not favorable to your interests.

In addition, these new interpretations of what constitutes the business of insurance may, in the future, be the foundation for lawsuits against title companies that are providing escrow services at a loss in connection with the title policy, presumably for the purpose of keeping independent escrow companies from competing in a given area.

Finally, I believe the question of whether abstracting and title searching, which are historically described as risk elimination, rather than risk assumption, are, in fact, the business of insurance as opposed to the business of an insurance company is still open to interpretation. I am sure this area will generate some interest from some of your adversaries.

Wayne D. Wilson, former deputy attorney general for the State of Nevada, is affiliated with General Consulting Company of Sacramento, California.

Although many of the results and consequences for your industry may well be in the future, your brethren in the property and casualty industry have learned the lesson well: There are plenty of plaintiffs' attorneys who are more than willing to undertake lawsuits against insurance companies. I suggest to you that this would be especially true in the case of a potential treble damage, antitrust award and that getting your house in order now, on an individual company and on an industry basis, is absolutely critical.

I would like to turn your attention now to a situation that Senator Boren referred to in his talk and that concerns all of you. I am referring to a practice that has been called *controlled business* or *directed business*. That practice poses many threats, as I see it, to the continued viability of title insurance companies. I think a short passage from an article in the *American Bar Association Journal*, written by Stanley Balbach, who is an attorney and a founder of a bar-related title company in Illinois, is of some interest to you. At least it is of some interest to me as a regulator who is confronted with the controlled business issue. Balbach had this to say:

> The bar-related title insurance company has the potential to become an important competitive force in the title insurance industry. This development would necessarily reduce the profitability of the large commercial title companies.
>
> Their response has been to assert pressure on legislatures and insurance commissioners to use state regulation, to restrict the growth of bar-related companies, or to prohibit their operation entirely.
>
> The arguments advanced in favor of that are generally lacking in merit. The exercise of restraint in government regulation of private industry is generally a good policy, and in the context of the title insurance industry, restraint will tend to promote competition and to benefit the purchaser of title insurance.

Now, I believe that Balbach probably states a position that is a little bit different from what is felt by the folks in this room. Should we accept Balbach's analysis and his further pronouncements that the reason that these bar-related title companies exist is solely to provide better service for the member attorney's clients?

Balbach is also of the opinion that lawyer-controlled agencies or companies are not inherently evil, since any profit that is eventually realized is minimal for each participating attorney and is usually distributed only many years after the policy is issued. Apparently, the bar-related title companies have become more active and interested in markets where they have historically been minor forces.

I know this from my own experience as a member of the San Diego Bar Association, which recently endorsed the concept, for the first time, of a bar-related title company. The sales pitch that was used on the bar of the Board of Governors was essentially the same as Balbach's analysis: Improve the service to your clients, but do not necessarily look for a profit.

"If the overriding purpose of bar-related title companies is truly to improve service to consumers, it is difficult for any regulator to be against that type of operation."

If the overriding purpose of bar-related title companies is truly to improve service to consumers, it is difficult for any regulator to be against that type of operation. And if real estate agents and mortgage lenders feel that the service they obtain from title companies, on behalf of their clients, is inferior, and if lawyers can form their title companies, why should real estate agents and mortgage lenders be barred from having the same advantage?

We all know that the countervailing argument asserts that service is not the primary purpose of these bar-related or controlled business entities. I would suggest to you, however, that it is difficult to believe the contention that controlled insurers, or agents, create a large profit for their member stockholders, when one compares the return for any one lawyer or realtor from the title agency with his earnings from his legal practice or his real estate business. There is some additional evidence indicating that the provision of several different services by one company tends to depress the prices of the services that are in price-competitive markets, the prices of the services in the noncompetitive markets being raised to compensate. There are substantial questions in the area of controlled business that have to be considered by the regulator. I can assure you that NAIC's Title Insurance Task Force will look at the bar-related companies' views, as well as those of the American Land Title Association.

But, assuming that a decision can be made on the merits concerning the potential evils of controlled or directed business, the most difficult problem still remains in this area. We have seen how actively and well HUD and the Justice Department have enforced the broad kickback in rebate provisions of RESPA. What tools would be sufficient for a state regulator to do a better job than the federal government has done? How do the regulators obtain the appropriate authority and staff to do a proper job of controlling abuses in this area?

I suspect that some of Balbach's appeal for regulatory restraint in the title industry has strong supporters among regulators, especially when they are faced with continuing prospects of ever-diminishing budgets, ever-increasing responsibilities, and the failure of the federal government to do an adequate job of controlling these allegedly predatory practices.

Although the draft model title insurance code being considered by the NAIC task force contains sections pertaining to controlled business, I believe that the title industry members of the NAIC Advisory Committee may have hard work ahead of them to convince regulators that regulating controlled business operations is both in the public interest and effective and workable.

Of course, concentrating on developing an innovative scheme to control any potential abuse is somewhat difficult, especially for an industry whose available resources are pinched by the hard times it is facing. Because resales of existing residences have slipped steadily from about 3.8 million units in 1978 to a projected 2.6 million units in 1981, I seriously doubt that anyone could envy an executive of a title insurance company who is expected to show profits when the high fixed cost of maintaining a title plant and the high salary cost necessary to keep qualified personnel must be spread over fewer total transactions.

The reduction in total volume of transactions, the necessarily reduced income from premiums, and adherence to rate schedules filed in the high-volume years have created one of the most serious problems facing your industry today. The problem would certainly not be so severe were it not for the limitation that prices, because of competitive factors, cannot be readily or dramatically adjusted upward to capture more premiums per transaction to help cover the overhead each insurer must bear. Most title companies have the resources to withstand these strains for short periods, but prolonged exposure to such conditions can result only in the eventual demise of all but the most hearty businesses.

Regulators realize that title companies face these problems and know that something must be done to prevent wholesale insolvency of title companies. I have yet to meet a regulator who believes that insolvency could best be prevented by unilaterally compelling all title companies doing business in his state to raise their rates. I know few, if any, regulators who have denied rate increase requests from individual title companies in the last two years. With one exception, our actuary has told me that he has yet to see statistics or evidence to convince him that title rates charged in our state are inadequate under our rating law. In part, we may well be remiss for not requiring

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The Economic Restoration Program—How It Will Work

by The Honorable David L. Boren

The following speech was delivered by Sen. David L. Boren (D-Oklahoma), a member of the Senate Finance Committee, as part of the ALTA Annual Convention General Session.

I am a little nervous about speaking to a group this large. You'll know that I'm telling you the truth when you notice that most of my speeches lately have been to the Senate Democratic caucus. That's a small, intimate group located in Washington, D.C. After the last election, we no longer have trouble fitting into our meeting room. We don't have that closed-in, smoke-filled-room atmosphere. It's very roomy, and there is plenty of time for discussion. We don't have to rush off to chair committee meetings as we once did.

I'm also a little nervous because there are so many Oklahomans in the audience. I think there are more than 60 persons at this convention from my home state. That makes it difficult for me to claim to be an expert. They all know me too well.

One of the things that occurs every August is that all the members of Congress go home for a month and find out what the people think of their service. That's always a very enlightening experience. My wife and I drove home last time. When we crossed the border from Arkansas to Oklahoma, I didn't even need the sign to tell me, because when I stopped at the first filling station, I could tell I was home. I pulled in to get gas, and the fellow pumping the gas immediately recognized me. He greeted me warmly, "So, you're back." He said, "How long have you been in Washington anyway?" I said, "Well, I've been up there now more than two years." He said to me, "Well, it doesn't seem to me like things have gotten much better."

So, you really do learn. Seriously, it is a very challenging and exciting time to be part of the political process. We're living through a period of time that's not just a normal political year, not just a time when we're confronted with the run-of-the-mill problems and the usual set of challenges. I think we're living through a year that is going to be written in the history books as one of the watershed years in the history of American government and American political life.

We have such a year in our country about every 50 years. If you study history, you will notice that political cycles in this country usually last for 40 or 50 years. I think that we are at the end of one cycle and at the beginning of another. Historians will write that in November 1980 a period that started in 1932 ended. Historians will place a period after that date and say, "It marks the end of the New Deal; something new is going to start—a new period in our history."

What that period will be, I think, is still up in the air. That's why this is an important time for each of us to become involved, to be heard from, because in the beginning years of this new period, I am convinced that we are molding and helping to direct where our country is going to go for the next several years—perhaps for the next half century.

So, it's an important time. The election really symbolized the great shift in our society. In this election, for the first time, the majority of voters had not been adults during the Great Depression and had not fought or played an active part in the armed forces during World War II. The election represented not only a change in generations but also a change in the central political experience for the people of the United States.

If we could pick one symbol of the period up to 1980, during which the government became increasingly involved in our daily lives, I think it would be the soup line of the Great Depression, which symbolized hope to people who were not able to help themselves and who had lost everything they had through no fault of their own; this symbol called forth more government activity in our daily lives.

And yet, to most voters in the last election, that symbol had been replaced by another symbol. If we wanted to choose the new symbol, we would probably pick the symbol of a person on line in a grocery store who sees a young, able-bodied person purchasing items—which perhaps the first person cannot really afford—and paying for them with food stamps paid for by taxpayers.

So, the new symbol stands for change. At this time, it seems that we're going to have to learn from both the old and new symbols. There is some truth in both.

We shall have to learn to curb the abuse of government going too far and at the same time meet the needs of the elderly and those persons who cannot help themselves.

I believe that we were trying to say something else in the last election. Obviously, I don't mean this in a partisan sense. I think we all felt this way without regard to political party. I think that we felt in our country something we couldn't articulate. I think we felt slipping through our fingers some of the greatness of this country that had been handed unto us. When we traveled overseas, we found that the United States wasn't really regarded quite so highly as in the past.

When we look at economic figures, we realize that in the past 10 years, we have lost 23 percent of our share of world markets. For example, 1980 was the first year in which the United States issued fewer new patents than during the preceding year.

There was no real growth in the productivity of our economy. We had serious problems with inflation and with the balance of payments. While we felt that our prestige was lessening throughout the world, while we sensed that our economy was going downhill, while we felt that the respect for the security provided by American forces in other countries was eroding, while we suffered indignities at the hands of second-rate and third-rate world powers and saw our diplomatic representatives held hostage and our ambassadors to Afghanistan murdered, voices all around us subtly kept saying, "You're just going to have to accept all that."

We were told that we Americans are going to have to accept what is happening to our economy and to our role in the world. We were told that we shall have to be prepared to leave less to our children than we inherited, because as a nation matures, we cannot expect it to be as economically, politically, and militarily preeminent as the United States was during the period right after World War II.

There was something in each of us that made us want to vigorously challenge those who were preaching that we should regard the decline of this country as inevitable. We were bombarded by the national news media and by other reports by people telling us that there was nothing we could do as individuals, that these problems were just too big, we were going to have to let the United States decline. I think that, as a people, we all wanted to stand up and say, "Enough of that kind of talk." We are not about to give up on this country, and we are not about to pass on to our children less than what was passed on to us. We have problems, but we can solve them. I think we all realized that it wasn't so much a matter of problems that overwhelmed us. It wasn't just a matter of policy decisions that had to be made that were beyond the limits of our understanding. We came to realize that it was a matter of having the courage and the will to do what we all know needs to be done. That is the spirit that needs to be adopted. It is a bipartisan spirit that I see developing in Washington, and that development gives me a lot of hope.

We all sat there watching what had happened to our prestige in the world. We realized why countries regarded us as irrelevant. For example, Middle Eastern countries treated us as irrelevant because they knew that we didn't have the military capacity to send a hundred thousand troops to protect the oil supplies in less than six or eight months, which was publicly admitted, while the Soviet Union could move troops in weeks.

We knew that there was nothing mysterious about our country's economic problems. How could we expect anything but runaway inflation when the U.S. government continued to live beyond its means? How could we say there was any mystery about the interest rates, which are having such a devastating impact on many segments of our society? We all know what's happened.

I sit on the Finance Committee. It was a terrible day for me when the committee had to decide to set a debt limit for the United States, effective October 1, of more than a trillion dollars. The annual interest payment alone on that debt will be staggering.

Now, is it a mystery why interest rates are so high? Why the inflation rate has gone sky high? It's not a mystery when you consider that our government, instead of borrowing only 3 percent of the available money in the country each day as it did only 15 years ago, is in the money market, borrowing about a third or more of all the money available for loans in this country every week, competing with a young couple who wants to buy a house, competing with a farmer who has to borrow to plant his crops, competing with the small businessman who wants to expand, competing with the industrialist who wants a new plant and equipment.

It's no mystery. We've been living beyond our means. We have been building our national debt to the point that even this great country is having difficulty in providing services.

Why we've been falling behind in productivity and competitiveness with other nations—that's not a mystery either.

With inflation rates and tax rates so high, people in this country are not going to be able to save anymore. We've been saving 3 or 4 percent of our national income each year and reinvesting it in new plants, new equipment, and new technology. The Japanese have been saving in excess of 20 percent of their national income each year and reinvesting it in new plants and equipment. The West Germans, 17 to 18 percent. The French, 14 percent.

The handwriting was on the wall. It wasn't a question of "Will those countries pass us by in technology and productivity if they are investing in new plants and equipment while ours are aging?" The question was "How soon would it happen?"

There are those persons, I know now, who are questioning the economic program that has been put in effect. There are some things that need to be done with it. It's not perfect yet, but let's not lose sight of the fact that this President and this Congress are absolutely moving in the right direction.

I hope we can move faster. We must move faster, and sooner, to bring government spending in line with the revenue and balance the federal budget.

There was a demonstration in Washington on Saturday, September 19, as I was leaving to come here. There was talk about the interest rates; I'm frustrated about them; I'm going to talk about them more in a minute. Some demonstrators were using other problems to justify a policy of stopping our efforts to cut government spending. That doesn't make sense, and I hope that no matter which frustrations we feel, we realize that it has taken 40 or 50 years to get us into the present situation. We're not going to be able to resolve the problem overnight, but we're moving in the right direction, so let's be determined enough to stay on this path until the job is done.

We have had a tax rate that was too high. We all know that you cannot have sufficient new investment if tax policies do not allow you to recapture the cost of a piece of equipment during its life.

Many other changes in this year's tax bill have been made to encourage savings. I think that we're on the way to a long-range cure, and I'm happy to say that there is a bipartisan consensus about that. For example, in the final Senate vote on the President's budget, 87 of 100

"We've been living beyond our means. We have been building our national debt to the point that even this great country is having difficulty in providing services."

senators approved the final budget, the strongest consensus that we have seen. Of all 100 senators voting, 81 approved the final tax bill. So, I think that there is a consensus building and there is movement.

As I told a group of Oklahomans last night, what makes me feel so good is that Senators—in their private conversations with one another in the cloak room and off the floor, when they are not speaking for the benefit of their constituents, their own reelections, or their party—are picking up the spirit that we are Americans, that we are going to deal with these problems honestly, that we are going to face them and see something happen.

The bad news is that 30, 40, and 50 years of neglect—for which political leaders across the spectrum must share responsibility—have created severe problems. But there are answers, if we only have the will and courage to carry them through. I think that we are beginning to do that, which is the good news. I think that is what is making us feel optimistic about our country's future.

What we have, I think, is a long-range cure for the problem. We must also remember that we have some severe short-term problems, and I think Congress and the administration will now turn our attention to them.

It's true that, in the long run, the only way to bring down interest rates is to get the federal government out of the money market and to balance the budget. While we are effecting a long-range cure, however, we cannot afford to let the patient die on the emergency room table.

For the past four months, I have been going to the Senate every day—kind of a vigil—and making remarks about the interest rates and their impact on various segments of our economy. I think that the federal government has been slow in realizing the severe nature of the threat. The signs are all around us. You are in a position to see them each day. You know from firsthand experience what the economic indicators mean in your communities. You know what has happened to housing.

I do not have to tell you that the average new house in our country costs about $68,000 today. By the time a person makes a 10 or 15 percent down payment and finances the balance with a mortgage at 17, 18, or 19 percent interest, the average monthly payment for a medium-priced new house, with taxes and insurance, is more than $1,000. These figures show that a family must have an annual income of at least $36,000 just to qualify for a mortgage loan, which means that only 4 percent of the families in our country who wish to purchase homes can qualify to buy the average new house.

That fact is a tragedy, and you all know what the impact is. You know what this situation is doing to you. You know what it is doing to real estate. You know what it is doing to builders of single-family homes. You know what it is doing to the people who cut the lumber, who manufacture the appliances, and who provide everything else for new housing. You see how the effects ripple across society.

Last year, the bankruptcy rate for small businesses was double that of the preceding year. The rate is already on its way to tripling or quadrupling again, because how can small businesses floor plan inventory at interest rates of 20 percent?

ALTA Executive Vice President William J. McAuliffe Jr., 1981–82 ALTA President Fred B. Fromhold, Sen. David L. Boren (D-Okla.), 1980–81 ALTA President James L. Boren Jr., and ALTA Vice President—Government Relations Mark E. Winter.

Those of you who live in agricultural areas are aware of the severe problems that 20 percent interest rates cause there. Thirty years ago, the United States' annual net farm income was $12 billion, almost equal to the total farm debt of approximately $12 billion. This year, however, net farm income is approximately $20 billion and total farm debt approximately $220 billion. So, instead of farm debt being equal to net farm income as it was 30 years ago, today's farm debt is more than 10 times net farm income. That is what has happened to the burden of debt in agriculture in just 30 years. When you put 20 percent interest rates on top of that enormous debt, you have a formula for potential disaster if something doesn't happen.

The savings and loan industry, with which you are familiar, also has serious problems. In January 1981, 110 savings and loan associations in the United States were in danger of being declared insolvent within 12 months. By June, that figure had increased to 360. The estimate is that those 360 S&Ls have more liabilities than assets and are being forced into insolvency of some $40 billion.

Think about these figures. There are $510 billion on deposit across the country in S&Ls. Do you know how much the Federal Savings and Loan Insurance Corporation has in its insurance fund?

It has only $4.5 billion in reserves backing these $510 billion in assets. So, when 360 institutions are on the danger list, you know that this country has serious problems.

While we are working on a long-range cure—and I think we have the right formula—we must seriously consider short-term actions to bring interest rates down to a reasonable level. The purpose of the President's economic recovery program is to encourage more private investment and to lower government spending. By adopting the appropriate tax policy, we can shift resources to the private sector and hope that it will reinvest funds from the tax cut in new equipment and plant to increase productivity and become competitive. We cannot afford to have a monetary policy with high interest rates choking us, or we shall undermine the program. Therefore, we must take short-term emergency action, even if we have to do something artificial.

You say this program will help. The program was designed to last only about a year and a half. I had hoped for a much longer program, because I felt that it would take at least five years before enough money from tax-exempt interest on certificates of deposit was invested primarily in housing, agriculture, and small businesses.

We must have a long-range permanent program, because thrift institutions and banks will not be able to make 20- or 30-year loans if they know that money will be available to them at reasonable rates for only a year. I hope that Congress will reexamine proposals and allow sufficient amounts of interest to be tax exempt for a realistic period so that the money can be invested in the long-term programs necessary to revitalize the economy. That is Congress's unfinished business. We in Congress have to improve on the plan that we started.

Congress also needs the President to sit down with Federal Reserve Board Chairman Volcker and explain that he, the President, was elected by the American people, who are suffering because of the policy being followed.

The Fed is not the whole cause of the present problems, but it is contributing to the short-range high interest rates that we have been experiencing. Some members of the Fed's Board of Governors have told me frankly that they do not believe in supply-side economics; therefore, they were not going to follow the theory behind it and would have to try to keep money in tight supply. I think these individuals must consider what their actions will do to the country.

For the past 40 or 50 years, interest rates were

2 or 3 points above inflation. The current annual inflation rate is less than 9 percent, so according to experience, interest rates should be approximately 11 or 12 percent. Instead, we have had an 8-, 9-, or 10-point gap between the rate of inflation and interest rates.

Deliberate Fed policy has partly led to this situation. I think such policy has to be changed, and I hope the President holds another economic summit on it. If we cannot receive voluntary cooperation, I think that Congress will soon be in the mood to seek mandatory cooperation from the Federal Reserve Board on policy.

I think that the President also has to meet with the leaders of the financial community in New York and elsewhere to discuss the amount of money that is no longer available for credit in this country because of large corporate acquisitions and corporate mergers. Such activities do not increase the productivity of this country. This year, perhaps $50 billion have been used for acquisitions and mergers that will not produce one piece of equipment to stimulate our economy. The interest rate problem is severe. We need some kind of short-term action. At the same time, we realize that a short-term program is still no substitute for the long-range solution of getting spending under control.

You also face challenges as an industry. Your staff in Washington, by the way, is doing a very fine job. Bill McAuliffe, Mark Winter, and others have been very effective in letting the Congress know about the problems facing you with controlled business—with those persons who are putting together title insurance packages and those persons who are providing mortgage funds and then referring title insurance business to organizations in which they have an interest. This practice will have a serious impact on both competitiveness in this country and the consumer who will suffer from the lack of competition.

There are a growing number of members in Congress, me included, who will work to resist the new proposal coming from HUD under Section 14—mandatory lender-packaging—which would make it even easier to have a controlled business situation. On September 15 and 16, Rep. Henry B. Gonzalez (D-Texas) held hearings on controlled business. An increasing number of members of Congress will be working hard to see some kind of action—be it in the antitrust area or elsewhere—to try to make sure that this country's title business is not forced into a noncompetitive, controlled business situation.

This is not the time for you to be idle or to feel down on the country because of the high interest rates or inflation. This is not the time for us to give up or to heed all those voices that say that the average individual cannot have an impact on events or that our problems are so great that no President, no Congress, and no group can have an impact on them. Far from it. This is not the time to give up.

I was in Britain not too long ago with a group of senators. We met with Lord Carrington, the British foreign minister. He is very astute. We asked him many questions about how the United States was perceived in Europe. After a lengthy discussion, he looked at us and said, "I hope you don't think I'm being too blunt, but it sounds to me like in so many ways, you're asking us if the people over here have confidence in the United States anymore." He said, "I want to answer the question. Certainly, we in Britain, and I think the rest of our allies, we do have confidence in the United States. What puzzles us is why in many ways, you people seem to have lost confidence in yourselves."

That's a question we need to address. While driving to the Capitol the other morning, I turned on the radio to hear a report by Charles Kuralt. He said, "Are you feeling down this morning? Do you feel like . . . the burden of the world is on your shoulders?" I was sitting in my car, nodding my head "Yes," and he said, "Well, whom would you like to change places with?" He said, "If you are saying, 'I'd hate to be a young person starting out in business today.' Whom do you want to change places with? If you think that our inflation rates are too high, do you want to go to certain places in Latin America, or Israel, or some place else where the rates are running 100 percent or more a year? Whom else in the world would you want to change places with?" And, he said, "Whom else would you want to change places with in American history? If you think we have problems now in terms of our military or economic insecurity, would you rather have been starting out in 1930; or would you rather have been starting out in 1941; or would you rather have been alive during the Civil War?" He said, "Let's think about it. The challenges and problems we have today are not so great as those faced by other people in the world. They're not even so great as the problems which we have overcome in our own history. There is only one reason we can fail at this point of time with all the immense resources we have. That's because we don't have the will and the spirit to try hard enough to make it work."

"An increasing number of members of Congress will be working hard to see some kind of action — be it in the antitrust area or elsewhere — to try to make sure that this country's title business is not forced into a noncompetitive, controlled business situation."

I thought about that statement very often. What right do we have, with all the resources available to us, more than any other people that have ever lived—what right do we have to give up on this society? We have economic problems in this country. That's true! But think about this fact: From the beginning of our economic history until 1776, the estimated hourly productivity of a working person only doubled or tripled. In the United States from 1776 until 1976, only 200 years, under our economic system, the hourly productivity of a person increased more than 40 times. How can we give up on a system like that? We are at the beginning of a new period.

Winston Churchill once made a speech to the students in his old school. He returned to Harrow as prime minister when he was almost 90. He was asked to share the wisdom of his entire life with these young people, and he struggled and thought, "How in the world am I going to say to them what I want to say?" He was scheduled to deliver a lengthy address, but, instead, his entire speech consisted of three words. He looked at the students and said, "Never give up." He sat down. People were stunned. He thought that perhaps he should say a few more words, so he got up and repeated, "Never give up. Never, never, never," and then he concluded. With all the eloquent speeches Churchill gave and looking at his life, what he contributed, and what he accomplished, I think perhaps that was the greatest speech he ever delivered.

Looking back at our country's history, and what we have accomplished, and what we have been through, and with the new spirit and determination on the part of people who are attempting to provide some leadership for this country, I hope that without regard to political party, place of origin, or profession or business group, we will say "Never" to those who say, "Get ready for less, pass on to your children something less, be realistic, accept it. . . ." We are not about to give up. We think the best is yet ahead. All that is required is our courage and determination. We have never given up in the past. We are not giving up now. We will "never give up." "Never, never, never!"

How to Improve Your Title Business and Improve Your Bottom Line

The following excerpts are from several group discussions held during the Abstracters and Title Insurance Agents Section Meeting at the ALTA Annual Convention. Group leaders were J. E. Barnes Jr., Hubbard Abstract Company, Versailles, Missouri; Alfred C. Vance, Vance Abstract Company, Russellville, Arkansas; Sam D. Mansfield, Marion Abstract & Title Company, Ocala, Florida; James R. Suelzer, First Land Title of Fort Wayne, Inc., Indiana; Charles O. Hon III, The Title Guaranty & Trust Company of Chattanooga, Tennessee; and Jack Rattikin Jr., Rattikin Title Company, Fort Worth, Texas.

VANCE: There's a little service for the real estate companies, banks, savings and loans, car dealers, boat dealers, whoever wants to subscribe to it, and those of you who do it probably do it in different ways, but it's something in the form of a monthly report that you can sell to these people showing the transfers, the deeds of trust, financing statements, and so on.

How many of you participate in something like that?

I have a little item that may be unique. In my area (I don't think it's all that different from some areas of the country), I charge the oil people or the gas people for the use of my books. I charge $15 an hour for the use of my books.

I let them come in and have a look. There are so many split mineral ownerships in Arkansas that this has been very profitable to me. I must tell you that I took in $6,500 last month on this. I've had as many as four people at a time using my books, and I feel this is just extra income. I anticipate taking in some $20,000 this year on this particular item.

Now if you have people in your area who need to see your books, who are not going into competition with you by using your indexes to make abstracts, or circumvent the abstracter title insurance process, I would suggest that you do this.

These people who are using these simply want to go out and lease from the person who reserved the minerals back in 1930, provided they can find out his ownership and, hopefully, where he is. So they're not necessarily trying to make abstracts; I wouldn't allow that, of course.

There's somebody else who does the same thing, except they do it for them. Of course, when you do it for somebody it does take up your time, and there's going to be a need to charge for that as well as for the information.

Now on some brittle pages I might mention this—pages of my books were getting to the age that we need to think about what we are going to do. Are we going to copy these books over or what? This is our 75th year, and while the pages themselves are not quite that old, they are getting quite brittle, although they were originally put on good paper. We had a company come to my office from Minneapolis, and they laminated these pages for me, and I have one book that must be so long, so high, and each page cost me $3.00 to be laminated. Then I have other pages that are about so big square, and these are $2.50, or were at that time. I spent $3,000 to $4,000 laminating these pages, and I'm really happy about this. The pages won't yellow, and

you can write on the lamination. I would want to utter one word of caution. Everybody who does this is not really qualified to do it, and some of the lamination will actually deteriorate a page, rather than help it over a span of 20 to 25 years that we think about.

We haven't brought up microcomputers. Is anybody doing that? Yes? I might mention at this point that. . . . Is Wes Ashcroft here? He's not in the room. He is at the meeting—Wes Ashcroft from Springfield, Missouri, is or was connected with a firm in Springfield that was writing title policies—commitments and policies—on a Radio Shack. What is that? Minicomputer? Microcomputer? Microcomputer. He's working on other programs, and since he's in the industry he knows what we're faced with. I agree that the software is one of the main things. I haven't gone into it for that reason. What do you think about it?

Bill, do you have any plans for the future of bringing this in or of doing other things with this? Do you think you'll get to the point where someday you can rent out time on it or do a service like this?

Bill, you said $20,000 was the price to get you in that? That includes your program. How much is each additional program if you added to that? You don't know what the cost would be.

I have just bought a Xerox reader-printer; it's a 740. I'm very happy with it. I had a 3M reader-printer that I was not all that happy with because it used special paper and it cost about $.25 a shot. You had to try a shot or two before you could figure out which one you really wanted. This Xerox 740 uses regular bond paper, and you can take a couple of shots on it and put it directly into the abstract.

We have almost quit typing our abstracts as a result of this. This eliminates error. For example, one of our employees . . . as I told you, they are drilling for natural gas, and they used to pay $.12 to $.15 a thousand at the wellhead for natural gas, and they're now paying $3.00 a thousand for natural gas, and as you see the price has gone up considerably. Therefore, it's much more valuable, and they try to be much more careful with things. So, in making an abstract one of my employees didn't see the necessity of typing the word *surface*, only a description. Well, this created quite a little problem. I am fortunate and happy to report to you that I got out of that one. At any rate, when you put this in there in a Xerox form, it simply eliminates the error. Incidentally, on that, and on the line of purchasing or leasing anything else—computers, typewriters, any type of machinery that you have—look for the service. That is A number one. If a company doesn't have a serviceman or some service arrangement in your area, you really ought to talk to somebody who does.

One time there was an IBM man who came by my office. I have 18 employees now, but I had about 10 at that time. He wanted to sell me IBM typewriters, and they are fine typewriters. He came to my office, and I sat there and talked to him about it, and he looked over my 8 or 10 typewriters and figured how he was going to take a pickup truck and unload that many IBM typewriters. I said, "How's your service?" He said, "Well, it's like this. We're 75 miles from Little Rock. They probably won't break down, but if they do, what you do is pick up the phone and you call and there will be a serviceman here in 24 hours." I said, "I wonder what that employee is supposed to do in 24 hours while the typewriter is broken down." This is before I had this copying machine, 10 years ago or so.

I said, "I'll tell you what you do. You sit here a minute; I want to show you something. I could have told him this but he wouldn't have understood. I walked out my door about 15 steps, and I walked through the Royal typewriter man's door and said, "Hey, Dale, get your bag and come here!" And I had my Royal typewriter serviceman in there in less time than it would take me to tell you about it. Now that's service! I could have told that to that IBM man, but he would never have believed it! But I bet you if he sells typewriters for a thousand years, he'll believe it!

But that's the type of service that you've got to have. I'd like to have IBM typewriters, but we don't have service in my town. I've got to stay where I can get service, and I think that's a very, very important thing.

The 740 prints from film. I have a copy of every record in my office. I was only across the street when I did this, and now I'm next to the courthouse, and I have saved thousands of hours of employees' time spent in going to the courthouse to see the record or something like that. Every desk that I have has a reader on it so that the employee can pull that film. Incidentally, on that Xerox, on that film, I have cut up the rolls, and I have about a dozen shots on a little card that's about the size of a timecard. About 36 to 40 of these cards fill a book, and I have found that when the employees take them out and put a red card in their place, as many as three or four employees can use the same book. If you leave your microfilm in a roll, you have about three books to a roll, and that roll will be tied up by one person. There will be four or five persons standing around saying, "When you get through with that roll, I'd like to use it." This eliminates a lot of that.

I found that as I've looked over this equipment, I'm very actively thinking about a computer. I'm glad to hear the story on the computer.

"... Century 21, Sears, Penney's, Merrill Lynch, and Coldwell Bankers are the people who are going to take over the real estate and title industries as we know them now."

I'm trying to improve my business. I find that they have made these machines for somebody. Then they show up in my office and tell me all about this fine machine they've got and can I use it. Nobody has shown up in the title industry as far as I know, whether it's in my office or somebody else's office, to ask us, "What do you need? What can we sell you? What can we sell this industry?" I think that they really ought to check with the industry to see what we can use. Yes?

As I recall, both printer-readers were priced give or take a few dollars alike. On 3M, I think I spent about $3,400 to $3,500 and just set it over to one side after I was able to spend that much money for the Xerox. Xerox is the one I'm using, and it also cost about $3,500. Now, I have to pay the Xerox serviceman a monthly fee to take care of it. I haven't had much trouble with it, but it's one of those things that I'm afraid not to do. By the same token if I don't do it, he charges $75 an hour.

Now that will get your attention. That will really get your attention, and that $75 includes travel time. You may have a $50 time bill before he even walks in the door. So I'm really afraid not to have a maintenance contract on the thing for that reason.

It only copies from microfilm. I have a Royal copier that my serviceman, who is practically across the street, can arrange repairs for by a simple phone call. I can get a serviceman in my office in five minutes.

You can come in my office right now and you don't hear typing as you used to. I will eventually have people working for me who don't have typewriters on their desks. I can foresee this now.

I'm thinking very much about buying another Xerox copier. If there's anything I would do it would be that.

I have a Xerox copier. I've asked the Xerox people about the Xerox printer, and that's not available in my area. They will not place it in an area unless they have a number of them that they can service within a 50-mile driving range because they're not sending a serviceman to service one machine.

I'm not familiar enough with the Xerox operation, but this is just the normal 740 machine with a reader-printer head on it, and it's not really that much different as far as training is concerned.

I agree with what you say 100 percent, yet it's a minor situation. This particular serviceman has two in his territory, so that's the situation there.

The gas companies and the oil companies who are drilling in my county, we have about .... At one time here in the summer we had 15 wells drilling at one time, so it's no really small operation. We do business for several companies. They want us to copy the records verbatim, and if there's an error on a record, show it on the page and underscore it. We can simply take this and punch the button and that whole page comes out ready to go into abstract, and we charge the same fee.

You can call that an abstract; you can call that a photocopy; you can call it what you want to. This is what the oil companies want, and they want to see the record. Verbatim abstracts!

Now for the individual out there in the sticks, you might take what would normally be a three-page mortgage and "brief it down" for him and charge $3.75 for it. I Xerox it and charge $3.75 a page. I'll have about $10.00 of his money, and you'll have $3.75. But that's your business if you want to do that. You can sell it or give it away!

All right. How do you charge for your abstract? What do you do in your area?

Is anyone here from Pennsylvania? I ran across a man from Pennsylvania who was making what he called title certificates or searches, and he gave me a copy of what he was doing. He had several copies of recent deeds, mortgages, and deeds of trust, and he went back several years. I'm not really sure how far back he did go, but he charged and tried to limit his liability to the valuation of the property. He asked the customers how much they wanted him to value it. In his certificate, he limited his liability to $100,000. If they wanted $200,000 worth of liability, he'd charge them more.

Now, when I sign a certificate in Arkansas, I suppose I'm accepting whatever it is. I fixed an abstract for the Ramada Inn and charged $100 and thought I was doing well, and this thing had more than a $1 million mortgage on it. It's just a little bit ridiculous, you know.

Somebody said he wouldn't have charged for this. Who was that? That's you, yes. I've had lawyers and I've had brokers come in my office. I remember one particular instance when a broker came in. He had sold 20 acres out in the country for $1,000 an acre, and he got $2,000 out of it. He sold it for $20,000, and he made his $2,000 commission.

My abstract bill was $75, and he said that was too high. He said, "You're robbing the man. You need to cut this." I said, "Friend, I'm just ready to cut it. Let's cut it. Would you say half?" He said, "Well, yes, that would be sort of fair. I think $37.50 is all that's worth."

I said, "I'll tell you what you do. You cut your commission, and I'll cut mine in half." "Oh, no," he said. "I've got to have my money!" I said, "Friend, don't ever come in my office with that story again. You cut yours and then tell me

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Watch Out!

Second Mortgages and Security Violations

by Burton S. Levinson

The subject of second mortgages and security violations is becoming quite interesting, and I am afraid it might lead to some additional pressure on the title insurance industry over a period of time. First, I am going to talk to you about some of the things that have been happening in California with which I am most familiar. Then, I shall discuss some of the securities implications that may be involved.

This particular problem has resulted from the ever-increasing second-trust deed market. Several years ago, California voters passed a proposition, valid from a constitutional standpoint, which allowed us to raise the usury limit. We had had a 10 percent usury law, and as you might imagine, we could not find many lenders who were willing to extend funds with that ceiling. Proposition 2 passed, and many people came into the market and discovered a unique way of getting into the lending business. We found that private lenders and mortage loan brokers were going out in the field, saying that they were able to place loans for 15 percent, then for 18 and 20 percent, and later this figure increased to 25 and 30 percent.

A bit of background about that business would be most relevant at this time. The mortgage loan brokers in these situations also act as a servicing agent. They collect money from borrowers and make sure that the lenders receive it. Mortgage loan brokers in California, and in most states, need only a real estate broker's license, which is in fact almost an endorsement and does not require any additional licensing. Mortgage loan brokers handle second-trust deed transactions in several ways.

Mortgage loan brokers act almost like marriage brokers in bringing together a willing lender and a willing borrower. In many recent California cases, mortgage loan brokers have made commitments to lenders before actually finding the borrowers. We found that mortgage brokers were then able to advertise in the media. This fact has some security implications. Through television, radio, and direct-mail advertising, these mortgage brokers would offer potential investors a 20 or 25 percent return on their investments. The brokers would get the funds and either put them in their own trust accounts or issue a promissory note. At a later point, I would like to return to the topic of issuing promissory notes, in view of the fact that the brokers thereby become an issuer under most state and federal securities laws.

Thus, the mortgage loan brokers would issue a note to the lender, which in many instances would be unsecured. At a later date, although sometimes it occurred immediately, a mortgage loan broker would find a borrower. There were many private homeowners who were anxious to tap into the equity in their homes as a way of obtaining tax-free funds. In California in 1980, $1 billion in funds were dispersed to private owners of residences with an average equity of approximately $34,000.

A mortgage loan broker making contacts with those owners would offer to introduce them to a lender. At that time, a traditional security arrangement would be entered into; that is, a mortgage, or, in California, a deed of trust, would be executed. Of course, the funds had already been forwarded from the lender to the mortgage loan broker. If the mortgage loan broker had already acquired a beneficial interest in the property, he would then assign said interest to the lender. If not, a new deed of trust would be generated, making the borrower the trustor and the lender the beneficiary.

I want to emphasize that the funds to pay off the promissory note and the accompanying deed of trust are to come from the homeowner and then go through the mortgage loan broker and into the hands of the lender. I recently received a letter illustrating this point, a portion of which I would like to read to you. The letter, dated September 3, 1981, is from National Security Mortgage Company, which is a member of the official Association of Independent Loan Brokers in California. The letter reads:

> Dear Mr. Levinson:
>
> When you see how others have personally benefited from this investment and how you can also benefit, I know that you will want some of your money in quality trust deeds. People who want to protect their families and enjoy peace of mind, come to the safety of trust deed investments. With at least 20% minimum equity, adequate fire insurance, policy of title insurance and all documents in the investor's name, a safe and secure investment is obtained.

In almost all the situations we have seen with mortgage loan brokers, the advertising pointed out that a title policy would be involved. The direct mailing I received had a list of testimonials from retired people, farmers, and pharmacists, many of whom mentioned the liquidity of that type of investment. Again, there are securities implications, which suggest that these investments can be turned to cash quickly if necessary.

Thus, an estimated 40,000 people invested $1 billion of private funds in second deeds of trust. Things went well for a while, until some of the homeowners got into financial troubles and were unable to make payments on their loans. At that time, the traditional position would be for the lenders to foreclose, but in many cases the mortgage loan brokers, in their effort to stimulate this business and because many of them had told their customers that the investments were guaranteed, decided that it would be more advantageous to borrow money from new lenders and use those funds to pay the old lenders. In many instances, the brokers seemed to have borrowed new funds with the expectation that the individual homeowners would

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later catch up on the defaulted payments and the funds would again be placed in trust accounts. Of course, the situation did not work out that way, and many of these brokers got in deeper and deeper. There was also a great deal of dishonesty; that is, some people did not just mismanage the funds entrusted to them—they were thieves. They took as much of the money as they could from their trust accounts and put it to their own personal use.

In California, the Department of Business Transportation and Housing, which oversees the Department of Real Estate and Corporations, issued a special news release in July 1981. It read:

> Business and Housing Agencies Secretary Lynn Shank announced today the top priority deployment of a second trust deed fraud strike force to combat the most devastating series of consumer investment frauds in California history with the state filing over 104 enforcement actions against mortgage loan brokers. So far this year with over 250 million dollars in jeopardy.

The release further pointed out that the core illegal conduct common for these schemes encompasses fraud, dishonest dealings and conversion, misrepresentation and soliciting and managing second-trust deed and related investments, including representing third-through ninth-trust deeds as firsts or seconds. The investigation also discovered that the fraud involves a "misappropriating of trust funds, fractionalizing notes and trust deeds so multiple investors are unknowingly pulled together." Any time you see situations in which there are fractionalized interests and beneficial interests in deeds of trust, in a number greater than five, you should be concerned. The bulletin also noted that the department had a call into its office the other day about 131 people who shared a $2 million beneficial interest in a deed of trust, not including the husbands and wives, which would probably raise that figure to 250 people in total. The misconduct involved included falsifying property appraisals' locations and/or ownerships and using investor funds for interest payments to prior investors rather than applying them to promised loans. In addition, there was a failure to disclose the true risks being faced by the investors.

This particular news bulletin also pointed out what the state was seeking at that time, which is the thrust of my discussion. The state sought a temporary restraining order and preliminary injunction against certain mortgage loan brokers preventing the defendants from acting as mortgage loan brokers or from disposing of any real property funds or assets controlled by them. The temporary restraining order applied not only to those funds the brokers had in their trust deed accounts but also to any funds that they controlled for the benefit of others. The state also asked for an order appointing a receiver with full powers to take custody and control of all monies, properties, and other assets of the defendants.

So what does this set the scene for? In many instances with which I am acquainted, an insured party and an owner of an ALTA policy has been informed by the Department of Real Estate or Corporations, the Securities and Exchange Commission, or some other state agency that he is not going to be allowed to foreclose on his property for at least the time being. The insured can call his title insurer and inform the latter that he holds a policy issued by that company and has just received the aforementioned information. The insured will often state that he believes that his title company is supposed to protect and assist him in such situations. The title company representative might say that perhaps the insured misunderstands the nature of the ALTA lender's policy, because, under terms, the title company is not responsible to the insured for something that may happen after the date that policy has been issued. When the title company issued that policy, the insured did have a good beneficial interest and a valid second or third deed of trust on that property. The title company representative will inform the insured that the company did not guarantee payments of funds, but only the priority of the insured's lien. The insured party will probably say that that approach seems logical, but an agency is telling him that he cannot now foreclose. He has asked the representative whether the company is supposed to help him to foreclose since he has notified it about his predicament.

"Can a title insurer state that anything that happens after a policy is issued is not its concern?"

The representative might explain to the insured that at the time his loan was insured, everything was fine; however, a subsequent situation developed in which the insured lender cannot seem to retrieve his investment. Perhaps the situation has developed because the mortgage loan broker is "a bad guy." This insured lender might, in his frustration, have called the homeowner who borrowed the money from him and discovered that he is still making payments, but said payments are not reaching the lender. The payments are most likely now being made to a receiver.

At this point in the conversation, the insured lender, frustrated because he can neither receive his money nor foreclose, tells the representative that he wishes to explain to the latter his understanding of the policy's terms. That policy states:

> Subject to the exclusions from coverage, the exceptions in Schedule B and the provisions of the conditions and stipulations hereof, [this] title insurance company . . . insures, as of the Date of Policy, . . . against loss or damage . . . sustained or incurred by the insured by reason of: . . .
>
> 5. The invalidity or unenforceability of the lien of the insured mortgage upon said estate or interest.

The insured will acknowledge that since he was told he cannot at this point in time foreclose, his lien and beneficial interest seem to be unenforceable. The policy goes on to say that the title company is not obligated under the policy when such invalidity or unenforceability, or claim thereof, arises out of the transaction evidenced by the insured mortgage and is based upon usury, or any consumer credit protection or truth-in-lending law.

Therefore, the insured is likely to conclude that the title company has insured the enforceability of the lien of his mortgage and the exclusion would relate only to usury, consumer credit protection, or truth in lending. I thus request that you go to court and get me the right to foreclose on the property.

The representative will likely ask if he can discuss this matter with other people in the company and get back to the insured. During the next conversation, the representative will probably conclude that the court has not invalidated the insured's lien and that the court, the Securities and Exchange Commission, or the Department of Real Estate has merely concluded that it needs time to study what is happening; as soon as said study is completed, the insured will request that the title insurer contact the receiver on his behalf to determine the status of the situation.

The title company will then find itself in an interesting situation as to whether it had better do so, because in California, unsophisticated courts have taken the position that they should pool the assets of certain lenders and, in effect, say to them that there is not enough in the pot to pay everyone 100 cents on the dollar, so we shall attempt to work out a situation in which each lender can receive 70 to 80 percent of his money back. The lenders then become concerned about what happens to the enforceability of the lien. It seems rather odd that as a result of a judicial action the lien might be invalid. The title company, on the other hand, is concerned about whether the invalidity relates back to the date on which the policy was issued. In other words, the title company is looking for anything that has occurred at the very beginning of the loan to link the title insurer to the current dilemma.

A title insurer may have seen various advertisements through direct mail, television, or radio involving multiple beneficiary schemes that may suggest that certain securities violations were occurring. The question arises as to whether an insurer, at the time it is reviewing and considering insuring deeds of trust involving multiple beneficiaries, has the obligation to look beyond the records of the state of title at the time the policy is issued. Can a title insurer state that anything that happens after a policy is issued is not its concern?

I suggest that you need to be concerned and that the ALTA look at the possibility of amending its lender's policy perhaps to exclude state and federal securities laws from coverage as well as usury and consumer regulations. I would also like to advise you that, in terms of securities implications, the Securities and Exchange Commission and the Department of

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Management by Commitment

by
Douglas H. Sullivan

First I would like to give you background on management theories that American industries have attempted to use during the last 50 years; next I would like to discuss the Z theory, which is the Japanese method; and then I shall discuss management by commitment. In my discussion of management by commitment, I shall give examples of how the approach worked for an airline company for which I was employed, which used the system for approximately nine years. I am not here to try to sell management by commitment but hope to give you some real insights into how it works and try to indicate some of the shortcomings of the system.

In the 1930s, management was faced with the dilemma of trying to improve motivation and productivity in organizations. There were two schools of thought on these topics. The first was the human relations approach, in which managers attempted to determine what motivated employees and to improve productivity. The human relations approach was based on the theory that people want to work and that if the negative aspects of the workplace—fear of working and fear of losing a job—are removed, employees will perform at a high level.

The human relations approach to improving motivation and productivity relied on the interpersonal relationships that develop in the work environment. The approach was widely used and somewhat successful. You have probably either been exposed to it in your own jobs or read about the Hawthorne "experiments" and other different techniques for improving work relationships. The problem with this approach was that users and researchers couldn't find positive factors to motivate employees.

At the same time, Frederick Taylor introduced his scientific management movement. What Taylor tried to do was look at the work and the worker and find ways to improve productivity. Taylor's method was to break a job down to its elements and try to improve each element. Examples of Taylor's method in practice are the factory assembly line and office efficiency studies, such as examining a secretary's job to see how long it takes a person to obtain and insert a piece of typing paper in a typewriter; in theory, reducing that time will improve productivity. Taylor's method worked and was measurable.

Taylor's approach was accepted by most organizations in the United States until the late 1950s or early 1960s, when Peter Drucker claimed that the individual who performs a job should be involved in the planning process because planning and doing are both part of the job.

Today, many industries are examining the Japanese method, which has most frequently been called the Z theory. The basic management approach in the United States is the X theory: A manager tells an employee what to do and when to do it, and the employee complies. The X theory is followed predominantly at the first-line supervisory level. The Y theory, a limited form of participatory management, uses the following approach: A manager tells an employee what has to be done and then lets the employee determine the best way to do it.

The Japanese, who have succeeded so far with their management approach, follow what is called the Z theory, probably the best form of participatory management used today. The Z theory uses a different approach. Management gives up some of its control of the decision-making process to groups of employees, who decide what has to be done and the best way of doing it.

I think that it is interesting that the Japanese rarely make a quick decision today. They rely on what they call quality circles. Quality circles are groups of employees who try to determine the best approach to a job or a problem and present it to management.

Industries in the United States have followed several different approaches of encouraging employee participation to gain better employee support. The most common approach has been management by objectives, MBO. To be frank, MBO has had mixed results. Some companies have been fairly successful with it, but others have had many difficulties for several reasons.

The first reason is the lack of support for management to allow employees to set their own objectives. The second reason is that MBO requires good communication and feedback from management; many managers find it difficult to sit down and talk to an employee and make sure they both agree on objectives that are understandable and flexible. The third problem with management by objective is the inability to measure objectives. For example, improving customer service is a broad objective that is difficult to measure. At the end of a three-month or six-month review period, employees discover that no one has really understood what an objective meant.

Some companies—and they are certainly a minority—are using a takeoff on MBO called management by commitment. The basic difference with management by commitment is that managers don't look at just output or grand objectives but try to identify specific, measurable standards by which they can evaluate employee performance.

The company that I worked for before I took my present job was an airline. In 1971, the company implemented management by commitment. Up to that time, the airline had had 26 consecutive years of losing revenue. Since implementing management by commitment, the company has shown a profit every month. So management by commitment can work, but its success requires a great deal of support by management.

As I mentioned earlier, I am not really here

"A commitment is a promise by a subordinate to an employer to perform at a certain level; the employee either performs or he doesn't."

today to sell this program to you, but I would like to give you some insights on how management by commitment works in an organization.

A commitment is a promise by a subordinate to an employer to perform at a certain level; the employee either performs or he doesn't. If he doesn't fulfill his promise, there are negative consequences. Normally, the consequences are that the employee loses his job. Such severe consequences create some problems in an organization and don't lead to job security, but I think the advantage of this approach is that it shows an employee that unacceptable performance will not be tolerated and that he can't just make excuses for poor performance. No excuses will be accepted.

At first in an organization, the president or chief executive officer determines the overall objectives. He issues broad statements; making a profit and improving customer service are obvious objectives. These broad objectives are then passed to the second-highest level, and the vice president makes them narrower for his division. The objectives are passed through the organization's chain of command, down to the first-line supervisor.

The first-line supervisor takes the (by now) fairly narrow objectives and makes a commitment of performance against them. The passage through the chain of command starts again, this time from the bottom up. The first-line supervisor makes commitments, which are negotiated with the next level of management, which then becomes the next level of management's commitments, and so on up the line until the commitments reach the chief executive officer.

When the CEO looks at the answers he has received through these commitments, he decides whether they are acceptable. If they are acceptable, he will have a clear definition of the company's expected profits and the level of customer service.

Renegotiation can occur at any point during the commitment's passage through the management. The key to the success of management by commitment is that managers and employees trust one another. The first-line supervisor must trust second-level management, and so on, because all commitments have to be stated in a measurable and obtainable way. There is no advantage in a first-line supervisor's agreeing to a commitment that he can't achieve because then the second-line management level will miss, and so on.

Now I would like to relate some actual examples of using management by commitment. My experience with the airline was limited. I worked in the reservations department, so I would like to use some examples from my experiences there. One of the things that we had to "commit to" was the amount of time a customer had to wait on the telephone. When you call an airline reservations desk, you get a busy signal, a recording, or a reservations agent who books your flight. A "waiting time" objective that I would pass down to a first-line supervisor would be that no more than X percent of callers would hang up. When the supervisor filled in the blank with a number, that percentage became a commitment. I was responsible for 17 supervisors. Each of them made a commitment, and the total 17 commitments were my commitment. Then I gave my commitment to my boss, and so on up the line.

What happened in negotiation was that everyone was aware of the company's objectives and of how the employees would be evaluated as individuals in the organization. One problem you encounter when you are setting objectives in an organization is that unforeseen conditions can develop that will cause you problems in achieving commitments. These problems are affectionately referred to as "excuses."

In our organization, you had to state problem conditions in advance, such as computer downtime, weather problems that affect airline schedules, and so on. Once all the commitments were in writing and potential problems had been taken into consideration, you could renegotiate the commitments, unless you examined your internal controls and realized that you could improve the performance to which you had originally committed yourself. Then you could say that you could produce at a higher level, and the company would allow you to renegotiate commitments upward. But you could never renegotiate downward. If you renegotiated your commitments upward, then you would be evaluated on the new commitments at the usual time for performance reviews.

The key to utilizing management by commitment in an organization is the willingness to decentralize. If I were supervising a group of employees and I consistently interfered with their operation, they would not feel accountable for their performances; every time I showed up, they would blame me for any problems that occurred. So you must be willing to delegate control downward. I think that the Japanese have been effective at doing that. They place responsibility and authority in the lowest-level employees so that they can accept the objectives and the standards of measurement because they believe they are in control.

When you are in a situation in which you had stated specific commitments, you must develop effective internal controls to know where you are at any time. The advantage that management by commitment has over management by objectives is that the former requires ongoing tracking and feedback of where you stand. You establish your objectives at the planning stage, and at the control stage you determine how effective you have been in achieving them.

At the airline, we had to set up effective controls that could tell us daily where we stood with our commitments. To ensure decentralization and to discourage management interference in achieving objectives, the airline established a mandatory procedure called "reporting by exception," which meant that if an employee remained silent about where he stood with his commitments, it was assumed he was meeting them.

One of the positive aspects of management by commitment is that few formal reports are required. Silence indicates that everything is proceeding as planned. No one can expect to control objectives to the point that there will be no deviations from negotiated commitments, so the company requires employees to report deviations from goals and to indicate when (and, ideally, how) they expect to meet commitments. At the airline, missing a goal was not necessarily a condition for termination but not reporting it was. If a person admitted that he was not meeting his objectives today but would be within three weeks, that was an acceptable report, and a little star was placed by his name. If the person stated he knew how to get back on the track, then he received another star. But the key was he had to report missing his goals.

The airline for which I worked considered not reporting a missed goal or a commitment as a lie and grounds for termination—the employee was either deliberately trying to deceive his boss or didn't even know he was missing his goal.

When the airline introduced this program, it emphasized to employees that doing their best was not acceptable. Employees had to make all the commitments they had promised—if they were off by even 1 percent, they had missed their goals.

This program had an interesting effect on the airline management. During the first three years, there was a 95 percent turnover. Many people couldn't accept the new system, and others were simply incapable of planning that far in advance and of understanding that unknown deviations could occur. Most people who were replaced lost their jobs because they were unable to report their misses on a timely basis.

After the system had been in use for approximately two years, the turnover rate dropped to 3 percent; once management by commitment was accepted and understood by all employees, it was very effective. I am not here to sell the airline company, but it is one of only two airlines that has shown an annual profit during the last 10 years, despite all the problems the airlines have experienced. The company has been successful because every October the president knows exactly what the next year's profits will be. Every individual has made a commitment to produce at a certain level, and every employee will.

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My experiences with the company's system were that when things went wrong, I could not go to my boss and make an excuse because he would not accept it. I evaluated supervisors' goals and commitments because my job depended on their performance, and so we had to agree on their standards. At the airline, managers never discussed at what levels they felt an employee should be performing. If a manager rejected an employee's commitments, he did so because the employee hadn't prepared enough for his presentation. The manager would challenge the employee's figures but never suggest any figures of his own.

If a manager did not accept an employee's projected performance level and said that if the employee didn't perform at the manager's chosen level he would get someone who would, the airline referred to that as "jamming." Jamming was as unacceptable as forcing employees to lower their standards. If a supervisor jammed an employee, the employee had the right to appeal to the supervisor's boss.

Once a person signed his commitments, he could never claim that his boss forced him to do it. After commitments had been signed and were in effect, there were only three conditions under which management could change commitments or force an employee to change the standards he had set.

There were three elements to the commitment process: the scope, or what an employee hoped to accomplish with the commitment; the resources required; and the time element. If economic conditions were bad or profits low, the company might tell managers to reduce their budgets by 10 percent. Because the company was in effect changing the rules of the game by changing the resources, it had to allow employees to renegotiate their commitments.

As far as middle management is concerned, management by commitment was effective because it did not require filing reports. (I have some reading material here if any of you are interested in the activity traps people get into.) Much attention is being paid today to activity traps within organizations. An activity trap occurs when an employee starts out with clear-cut goals and objectives, but loses sight of them after a while, and works hard without accomplishing much.

With management by commitment, there are always defined objectives, and everyone knows exactly what is expected. Constant feedback between bosses and subordinates and a good communications system are necessary, because everyone depends on everybody else for success. If my supervisor was failing to meet goals, it was to my advantage to try to correct the problem, because my success depended on his.

One of the shortcomings of management by objectives—and I think that is why many companies are moving away from it—is that objectives are chosen, filed away, and at the end of six months or a year reviewed. Often it is too late—you have missed the objective, or it was misunderstood, or it wasn't measurable. You really haven't accomplished much that year.

At the airline, under management by commitment, we had to set up monthly milestones to keep track of each commitment. For example, if the reservations department set a standard of 3 percent "lost callers" for the year, I had to have a specific standard set for each month, as well as a year-to-date figure. The year-to-date figure was the key. At any time if my boss thought that I was not going to be able to achieve the 3 percent rate at the end of the year (based on the year-to-date figure), that's when he might have to decide to replace me, to help me, or to give me advice on dealing with this problem.

Are there any questions so far?

QUESTIONER: You said that during the first few years the supervisory-level turnover was 95 percent? What was the turnover or termination rate in later years?

SULLIVAN: It now averages approximately 2 percent, mainly because most of the people in the organization now have worked under the system for seven or eight years and understand and accept it. When it was first introduced, I think there was a lot of intimidation; people didn't really understand what it was or how to plan and accept these objectives, and they simply failed in the procedure. Many people just quit. Although I said 95 percent turnover, I don't mean that that many employees left the company; some people might have moved back into a nonmanagement position that they had held before.

QUESTIONER: Do you have problems with commitments being padded? How can you prevent that from happening in such a system? At commitment-setting time, I would see this system as stifling creativity or ambition. I guess my terminology for the system would be "management for mediocrity." I would like your comments.

SULLIVAN: To get back to the issue of trust, you had to trust that people in the organization weren't going to pad their commitments or "overcommit" and be "spiritual." You bring up what was a difficult problem; the airline relied on the discretion of the immediate boss to be sure that an employee wasn't trying to pad the commitments. At the airline, the problem was avoided in part by insisting on improved performances each year. Whatever an employee achieved this year in his commitments would not be an acceptable performance next year; an employee had to improve every year. The airline offered significant incentives to people who could improve the performance standards they had set. In such a situation over a period of time, however, managers may run out of new and creative ideas; people simply can't improve every year forever. As a result, there were many internal transfers within the organization.

The Japanese do not believe in specialists in an organization; they want employees in a company to have a broad background of experiences. The Japanese don't develop personnel specialists or engineers; they develop in-company employees. After a specific period of time under management by commitment, managers cannot improve their methods of operation. At that point, their superiors recognize that and move them into another area of the company.

QUESTIONER: It seems to me that an organization would need virtually omnipotent managers to look at their subordinate managers and commitments or objectives and determine whether each objective was achievable for each manager. If any objective were not achievable, then the manager is punished in that he does not receive an increase at the end of the year. I have not seen a manager who had that kind of perspective.

SULLIVAN: Well, I would say the typical manager in this organization averaged 20 to 25 commitments.

QUESTIONER: Per subordinate?

SULLIVAN: No, per manager. The supervisor might have six or seven. Based on those commitments, I might have six or seven, and then I would have additional commitments given to me by my boss. I was supposed to perform more functions at my level than a supervisor was. My director had more commitments than I had.

What is really required is historical data—track records—you had to know how you had performed in the past on these commitments before you could really come up with new commitments. If you didn't have the historical data, you would not make a commitment on that commitment until you had had time to develop some information to make a valid commitment.

QUESTIONER: With 15 to 30 percent increases, why did you leave the airline company?

SULLIVAN: My personal reason for leaving was that I wanted to teach. I left so I could pursue that, but there were other motivating factors involved. There was no job security; you could be there for 25 years and foul up during the 26th year, and you might be out. So I didn't see a burning loyalty of the employees toward the organization. Employees had a burning loyalty to their own survival, which depended on their making their commitments. In return for that, the only real incentives were financial rewards.

For many people, the stress level was incredibly high. If a manager couldn't perform and contribute, he was out. So there was a lot of stress, and I know that it was unusual not to work 10-hour days consistently for months. If the organization was having problems and you were missing your commitments and catching up meant working seven days a week, 14 hours a day, you worked that number of days and hours. On the other hand, when things were going well, you could work fewer hours a day and leave as long as goals were being accomplished.

Although a great deal of stress was placed on many people, I personally didn't feel much stress because I always knew exactly where I stood, which is one of the things I like about this system. One guarantee that the company gave to all its managers was that if you were achieving your commitments, you could not be fired, unless you committed a felony. The organization looked at only your performance, your results, and your contributions to the company. Those were the only things that mattered to the company.

The president of the company had a bottom-line approach: Motivation was defined by your paycheck. He really meant that; financial reward was the only reason you should be motivated in that organization.

QUESTIONER: I have two questions: What percentage of the airline company's overhead could be attributed to salary? Could management by commitment work in an industry whose market can fluctuate drastically within a few years?

SULLIVAN: As far as salaries are concerned, in the department I worked in they were 84 percent; overall, I would guess they were 60 percent of overhead, when all the equipment was taken into account. With regard to using management by commitment elsewhere, this approach is used not only by that airline but also by a large number—if still a minority—of companies nationwide. One indication of the system's effectiveness is that airline company's continued ability to generate profits during difficult times for airlines.

1980 was the worst year for airlines in the history of the industry. Only three airlines made money last year. One of them was the airline I worked for; another was an airline with a completely opposite management approach—human relations oriented—that has no unions and has an open-door policy—any employee can see the president, and all promotions are from within the company.

QUESTIONER: To change the subject a bit, many of us here are with companies that have from 3 to 100 employees, and I think in most cases we follow the management theory called *crisis management*. Some of us were desperately looking for a method to replace process management. Would you suggest that we change from that to management by objectives or to management by commitment? What are your thoughts in that regard?

SULLIVAN: If I were head of an organization, I would use the principles of management by commitment, but with some modification. Where it is used, it is used in a very hard-line way. Crisis management is the approach most of us use: We wait until a problem occurs and then try to figure out ways to remedy it.

With management by commitment or management by objective, try to define objectives and plans in advance and to review them periodically to overcome anticipated problems that you might be facing in the organization. Particularly in small organizations, employees should participate in planning so that they can understand the organization's goals and objectives.

lifelong employment, which is something I don't feel we will ever have in the United States.

In this country, the idea of guaranteeing jobs to employees for their total careers is difficult for most of us to accept. People are never laid off in Japan, and there are programs for retirees to learn new skills.

Another thing I don't see Americans accepting is the Japanese employers' custom of taking care of employees as if they were a family. Japanese companies provide bridal suites for marriages. Most of us regard ourselves as individuals first and not as members of groups.

"The key ingredient missing from management by commitment and from most organizations is management's inability to recognize the proper mixture of personal goals and corporate goals."

Management by objective is an effective approach that is not so cutthroat as management by commitment, but it doesn't work because there is no ongoing review of goals. You put the objectives away, and in six months when you look at them again, there may be misunderstanding of exactly what was meant by some commitments. At the airline under management by commitment, you couldn't have a commitment if you couldn't measure it. Broad statements or objectives were meaningless.

When employees set an organization's objectives, they feel as as though they are part of the company. The key ingredient missing from management by commitment and from most organizations is management's inability to recognize the proper mixture of personal goals and corporate goals. When you are setting objectives for your line people, you should look at their personal goals as well as the objectives for the organization. Try to mix what you want to do as manager this year with what the company hopes its revenue will be this year. If a company can express sincere interest in the development of its employees, it will be more effective in setting and achieving high standards and objectives.

Japanese companies do not recognize individual achievements and do not believe in quick promotions. They recognize groups that have performed well or poorly. This attitude might not be well received in the United States, where people stress individuality.

I think that the Japanese approach to management and the emphasis on group participation have some advantages. The first one is the lack of mobility of the Japanese work force. Very few people in the United States today really plan to retire from their current places of employment. Young people are taking jobs in organizations today with the idea of developing themselves so they can move on to something bigger and better.

The Japanese concept of the family has been very effective in their companies. People live in company housing and sing company songs; I can't imagine Americans getting up and singing a company song in the morning. Japanese employees travel and live together and have

The Japanese have been successful in implementing group decision making; once the employees understand what they are trying to accomplish, then they have total support and rarely run into a roadblock later. In our country today, people don't understand why they are doing what they are doing, and they are going to resist change. We have many individuals working in companies today.

QUESTIONER: From what you said, I gather that the basic concept is predicated on short-term goals. You must achieve your commitment within a year. Are any attempts being made to establish commitments beyond the one-year time frame?

SULLIVAN: That is a good question. If any of you read *Time*, it had an article on MBAs that interested me since I recently received an MBA. One of the problems addressed in the article is that companies are moving away from hiring MBAs because of their tendency to look only at the short term. Companies must have profits now. Whatever managers are doing now to generate profits is the key, not looking at long-term commitments.

I think the airline I worked for consistently made money every year for the last 10 years because there was a lot of long-range planning. The airline company broke commitments down into two areas: performance commitments, which were short term—a specific time period, usually a year—and project commitments, which were long range—employees promised to meet goals by a certain date.

At the airline, employees were measured on their short-range plans by periodic merit reviews. Employees' ability to meet long-range goals determined their promotionability within the organization.

QUESTIONER: Please explain one thing for me. We know that some people are overachievers. Each employee makes his commitments on an ongoing basis. Let's say someone was in a position for several years and improved productivity to the point that it couldn't be improved anymore. I assume that is when people would move to other departments. Did

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Are We Successfully Controlling Expenses and Title Losses?

The following excerpts are from a panel discussion held during the Workshops Session at the ALTA Annual Convention. The panel was moderated by Harold D. Pilskaln Jr., The Title Guarantee Company, New York, New York. Participants were Robert D. Dorociak, USLIFE Title Insurance Company of Dallas, Texas; Billy F. Vaughn, Lawyers Title Insurance Corporation, Richmond, Virginia; Robert C. Bates, Chicago Title Insurance Company, Chicago, Illinois; and Carloss Morris, Stewart Title Guaranty Company, Houston, Texas.

DOROCIAK: I want to make a couple of remarks and give you a short analysis of two CEOs who recently appeared here.

I think that to be successful in our endeavors, we have to use a combination of the management by commitment and the human relations approaches. Most of us use, I think, the commitment for profit planning and the management by objectives theories, both in regard to long-range plans and short-range plans.

One issue that we need to address is controlling expenses. I think we are doing a very poor job of this.

You know, we talked about two airlines and how they produced a continual record of profits. I would like to state for the record that USLIFE Title Insurance Company of Dallas has produced 39 continuous quarters of profits. The only reason we have had this is because management has made a commitment to produce. I know my tenure at USLIFE is dependent on making a profit every quarter. The first time I miss my goal there will be a new CEO at USLIFE Title Insurance Company of Dallas. I'm quite certain of that. So, my greatest incentives are to keep my job and to continue my present standard of living.

With regard to managing our business and profit plans and expense control, I wonder how many of you would plan a trip such as coming to this convention without making very detailed plans. I know you also made some contingency plans. You made arrangements for funds, clothes, and other things. Do you do the same thing with regard to your individual businesses? I don't care whether it is a 1-man operation or a 100-man operation. Your business is no different. It requires planning and the utilization of management by objectives theory.

I guess one of the reasons we have had some success at USLIFE is because we require our companies to involve all members of the staff in the profit-planning process. Where we have had a greater penetration of this concept, we have been very successful. Where our success has not been so good, I don't believe that our management team has involved enough staff members in the profit-planning process.

To give you an idea of how we go about this, each year our subsidiary companies are required to submit a profit plan for the succeeding year. They must have that plan in Dallas by September 1. Before they submit their plans, we give them some basic assumptions such as the effective prime rate annualized over the year or on a quarter-by-quarter basis, the effective housing rate, mortgage rate, housing starts, and resale of existing homes.

Once the subsidiary companies have the basic assumptions, they are to submit their financial data, including orders they expect to open during the course of the year on a month-by-month basis, closed orders, and the average fee per order. They are required to submit not only these financial data but also written commentaries on how they plan to achieve their expected results. These plans are reviewed by management in Dallas to make sure there aren't any obvious errors. We check the plans for too much optimism or too much pessimism. To eliminate management by mediocrity, we try to stress that we expect plans not only to be achieved but also to have a lot of "stretch" in them. Only then can we tell whether people are really producing what they are capable of performing.

We would be much more pleased with a plan that fell a little short of its expectation but had stretch in it, than with one that had little stretch and growth yet the end results exceeded planned objectives.

Once those plans are received and reviewed, we have a meeting of all our subpresidents. The plans are scrutinized by all managers attending. We stress marketing efforts. We stress expense control. We utilize some zero-base budgeting. After plans have been reviewed during our November meeting, we obtain commitments from managers that the plans will be attained.

Now we have some allowables for controllable versus noncontrollable items. Obviously, a manager can't be held responsible for noncontrollable items. If actual housing starts were 1,000,000 and we gave them an assumption that housing starts for 1982 would annualize at 1,800,000 and the plans were based on the volume that we had given to them during the previous year, we would consider this a noncontrollable item. But we would hold any manager's feet to the fire for controllable items that didn't live up to expectations.

We are very interested in market penetration, but we are not interested to the point of jeopardizing the profitability of our companies. We feel that our companies should maintain at least the market penetration they presently have, and we try to see that they increase their penetration each year, but not at the expense of profits.

All these plans are monitored during the course of the year by a simple one-page report that management receives in Dallas. This report tracks the actual versus the planned results with regard to revenues and expenses.

We have used employee ratios to some degree and have experimented with attendance and on-time incentives. I got quite a kick out of Mr. Sullivan when he was talking about the snow theory. We also have a snow program in Dallas. Hal Pilskaln is laughing, but it does snow in Dallas. When I went to Dallas, I wasn't used to the weather. I came from Phoenix, Arizona, where we don't worry about snow. The staff came to see me one day. They predicted it was going to snow that afternoon and wanted to know whether I was going to discharge everybody early. When we had a snowstorm threatening the city, the custom had been to tell everybody to go home at 2:30. That way they could get home to their families. I said, "O.K., we will follow custom this time. Everybody goes home at 2:30." Well, everybody left at 2:30. I left at 3:00 and didn't get to my home until about 7:00. Everybody else in Dallas followed the same custom and went home at 2:30. As a result, there was a hell of a traffic jam.

So I learned from that, and the next time snow was threatening the city and people were asking what time they could go home, I said, "5:00. That's closing time." They said, "Oh, we will never be able to get home," and I said, "Well, you are paid to be here from 8:30 to 5:00, and that's what we are going to do." So they stayed until 5:00 and they got home at 6:00. They were able to get home a lot quicker than they would have if they left at 2:30 or 3:00.

Then we had other snow problems. When it did snow or threatened to snow the night before, our employees never bothered to get up in the morning because the weather forecaster on T.V. said, "If you don't have to get out on the highway in the morning, don't." They took him at his word and stayed home. It was very strange. I came to the office. When the weatherman said, "Don't go out and about," I got up at 4:00 or 5:00 and was on the road at 5:30. I missed all the crazies on the road, was able to get to the office, and was down running the switchboard on time. Very few people showed up. It is surprising that the 65-year-old people in our organization were there. We had problems with the younger group. They are the ones who listen to the radio or T.V. and say, "We can't go to work because the weatherman said, 'Don't get out on the highway tomorrow if you don't have to.' "

So, we have instituted a snow program. We consider snow days vacation days. People take a vacation if they like when it snows, but it is charged against vacation time. We haven't had any more problems. The program has eliminated about 95 percent of the problems we had with people who violated the snow theory. So, there are all kinds of incentives you can use.

I am appalled by the lack of concern that some of our people have towards expenses. You know, some people think that expense control applies to everyone but themselves. I find the biggest violators are professionals. We have professional staff who seem to think that they have to send everything by telecopy here. I was surprised when I said to one of the professionals, "Do you realize that when you send that item by a telecopy, it costs money? Why can't you send it by U.S. mail?" He said, "I didn't know it cost any money. Why does it cost money? We have the telecopier and we paid for it." I said, "Yes, but it costs the same amount as a telephone call would because the document is transmitted by telephone equipment." You would be surprised to learn how many people don't realize that the telecopier shouldn't be used.

We have phone calls that come in after hours. When the telephone rings after 5:00, I answer it. I have people ask for various departments in our company, not realizing the difference in time zones. Just because it happens to be 4:00 in Phoenix or California doesn't mean that it's the same time in Dallas. All people think about is that it is 4:00 in Phoenix. They don't care that it is 6:00 in Dallas, so they waste the price of a telephone call.

Now, you might think those are little items, but little items add up to big amounts. It is this abuse of expense that really has to concern management. We use a lot of automobiles in our business. When the economy started going down, we froze our automobile use at its existing level and supplied no replacements. Before this time, our policy had been to replace company cars at 60,000 miles or three years. I found that automobiles run very well after 60,000 miles. One of the things that was happening was that people wouldn't turn their automobiles in. They wanted to buy them. We had the cars for sale at a reduced rate, and I thought if employees want to buy those automobiles for their own personal family use, they must still have some value. There is quite a difference in the rental rate of 1978 versus that of 1981.

We need to watch management for duplication of effort. You don't reinvent the wheel. We installed a program in our data processing center to gather statistics, inventory policies, and automatic pricing. We have a very nice program that is working very well.

We have a computer consultant who does some programming for us. He happened into my office one day just to say hello. I was visiting with him, and he said that he was working on a program. I said, "What program are you working on?" He said, "I am working on an automatic pricing program that is going to be installed in the Texas companies. We are already in the process of installing it in Austin." I really didn't say much to him, but I talked to our data processing people. I said, "I don't understand what is happening. We have a data processing center here that takes care of automatic pricing and various other things and I understand we are designing a program to install in the various minicomputers that we utilize in our subsidiary companies." They said, "Yes." I said, "Why are we doing this?" "We need to reduce the workload here because this can reduce the expenses of this company." I said, "I don't understand why we would reduce the expenses here in Dallas and force those same expenses on our subsidiary companies."

Just because I happened to be listening, I'm sure we saved many thousands of dollars by not loading our subsidiary companies with this duplication of effort.

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you lower the performance standards for the next person? If not, did you continuously increase and improve on something that was almost perfect in that particular job?

SULLIVAN: No, standards were never reduced. If I left and you took my job, you would have to perform at least at my level; before you took my job, you would know the performance level. We had achieved a certain performance level in the organization, and there was no reason to drop it.

In my department, which was reservations, one of the standards I had for measuring productivity was calls handled per employee. Every employee couldn't necessarily improve that every year, but employees could reduce costs or improve revenue production per call.

At the airline, employees always had to assume they could improve somewhat, and often the airline had to allocate more funds to my department so that I could improve productivity.

QUESTIONER: I don't understand that. If you are dealing with so many manhours in a day, there has to be one employee who can produce at a maximum level that perhaps 80 percent of the rest of the employees can't achieve unless they work 16 or 20 hours a day.

SULLIVAN: Yes, but you can alter the system within the organization. For example, in the reservations department, we could control the number of telephone lines and which employees answered which lines. Calls from some cities could be completed faster than calls from other locations. Techniques were always available to improve in some areas. The company could offer incentives to employees, such as $500 and a trip around the world to this month's top revenue producer. Managers had to introduce creative ideas to keep motivating employees. Improving attendance and reducing sick leave were ways to improve productivity. Because employees couldn't accept current standards as the best they could do—if they ever admitted that, they would have to leave—managers sometimes spent 80 percent of their time figuring out ways to improve productivity.

QUESTIONER: That 2 percent turnover you talked about—was that 2 percent of the management or of the total employees of the company?

SULLIVAN: Two percent of the management. Management was the only level involved with the management by commitment approach. In the unions, turnover was even lower, because airline employees make good money and have attractive benefits, such as free travel.

QUESTIONER: If the commitments you made today were, say, realized 150 percent, was that level next year's minimum acceptable commitment?

SULLIVAN: Right. The result of that has been that the airline company has increased profits every year for 10 consecutive years. Whatever profits were made last year will be improved on this year; the company's profits set records every year, despite fuel shortages, strikes, and deregulation.

QUESTIONER: Can you think of any way of combining management by objective and management by commitment? Or are the two approaches too divergent?

SULLIVAN: You can combine them. I think the only difference between management by commitment and management by objective is that the former emphasizes an employee's committing to perform at a certain level—if you don't, you are out. The latter approach tries to help the employee plan and set objectives. I think if you can remove negative motivative elements from on-line jobs, you can incorporate management by objective, which is very effective when supported by management.

The problem with management by commitment is that it is a cutthroat, bottom-line approach that "demotivates" management. Managers are motivated to make profits for the company but "demotivated" as far as employee loyalty goes.

QUESTIONER: How did the airlines handle outside influences, such as United Airlines' issuing discount coupons several years ago? Did they do as we do in our business if a competitor moves into a county and penetrates the market and is not concerned about the bottom line? We find that if we hold our people to their original commitments, we'll not do well against the competitors.

SULLIVAN: Each station manager in each city that we flew into was an independent businessman who operated on a profit margin. If an outside influence affected him, he had to come up with some ideas on how to overcome it.

The managers could use whatever resources were necessary to maintain that margin. So if United Airlines came into a city that was currently monopolized by us, the manager could spend unlimited money on improving the food service, adding foreign or domestic wines, or distributing coupons, discounts, and incentives to travel agencies to sell our company.

As long as the manager maintained the margin, he could use the additional expenses, and if the company recognized that it could not compete if it maintained the management by commitment philosophy, it would allow renegotiation, as long as performance stayed at a certain level. But managers weren't locked into a philosophy forever, and certainly airline strikes and reduced fares and the price wars have changed thinking in the airlines. Our company had to adjust to those changes to compete.

The key was to produce at a profit in a particular city, and the company provided you with whatever you needed. Then either you produced or you didn't, but losing money was not acceptable.

QUESTIONER: If a new competitor moved in and captured some of your market, how could you increase your services and still make your profit objective? If you had the bottom-line commitment and a profit objective and controlled your operations and outside influences and a new competitor or an existing competitor with a new approach reduced rates, how could you retain your share of the market and still return your profit objective?

SULLIVAN: To maintain the profit margin to which you were committed, you would have to develop new ideas to meet the competition. If you couldn't, then the initial approach was to cut costs.

But if you could say that if you give me X thousands of dollars more I can generate X thousand more dollars in revenue and get a 12 percent return, that was acceptable. The company would increase customer services or flight frequency. In some cases, the company would reroute flight structures so our airline could get better connections through that city. For instance, if a Dallas manager was in trouble, our company might add a Dallas-to-Las Vegas flight to increase passenger loads in that city.

I think the important thing to remember is that when these things happened, managers could not come back and say they couldn't make their commitments. They had to suggest ideas to maintain the commitment at a certain level, and if those suggestions required more money, that was acceptable to the company.

QUESTIONER: Do you have some suggestions on improving management by commitment? I would like to hear your ideas about how to improve it.

SULLIVAN: I think the key is to incorporate obtaining personal goals into setting company objectives. Instead of looking at profit as the sole objective of an organization, look at the personal goals of individuals in the organization and remove some of the negative aspects associated with management by commitment. If companies using management by commitment remove some of the negative motivative elements, deal with human relations, and link employees' personal goals to corporate goals, I think the approach would be effective. Companies need standards to measure their employees, and management by objective was introduced as a more effective way of evaluating performance in an organization.

The methods of appraising employee performance used in many organizations aren't effective because they are so subjective. Management by objective was an attempt to establish mutually agreed-on standards of evaluating performance that has been somewhat successful, although it has created some problems in situations in which results can't be measured.

QUESTIONER: Would you say that Delta's success is a combination of using management by commitment and more humanistic approaches in dealing with personnel?

SULLIVAN: Delta Airlines uses a decentralized, human relations approach with its employees; does not hire managers from outside the company; and has no unions because of the company's generous pay scales. Delta has an open-door policy and probably the best participatory management approach of any airline in the country today.

All managers at Delta have worked their way up through the organization. At Delta, the key is communication. To maintain close communications with its employees, Delta has initiated internal human relations activities, such as personnel development and training programs. I think Delta's attitude toward its employees is reflected in the service they give to their passengers.

How to Improve—
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about that, and I'll see if I decide to go along with you. Now you're making $2,000, and I'm making $75, and you want me to cut mine. Forget it!"

Now this is the day and age when you've got to stand up for yourself! Now you've got to do these things! It's a must! It's survival!

Many of you heard Bill Finley speak on controlled business. Well, let me give you another little story on controlled business. Jim and I were at a meeting in Washington back in July. There were about eight of us, and Bill Finley was there, and it probably won't happen to anybody in this room, but Century 21, Sears, Penney's, Merrill Lynch, and Coldwell Bankers are the people who are going to take over the real estate and title industries as we know them now. They're going to wipe out the people in larger cities, and when they get through with them, they're going to come to your town.

Now what's going to happen is this: Century 21 will hear about you moving from Denver to Los Angeles, and they'll go to you and say, "Look, what's your house worth? We'd like to handle this transaction for you." Of course, you're trying to sell your $100,000 house on which you have a $75,000 mortgage. They look this over and they say, "Fine. That sounds like a pretty good deal! We'll tell you what you do! If you buy from a Century 21 agent in Los Angeles, you can use $25,000 equity on your sale. You can use it any way you want to, but you've got your $25,000 to work with. We'll buy your house if you buy from us out there." "Now," you say, "that's just what I'm looking for. All I want to do is sell a house. I don't care who gets it as long as I can get moved. I'm ready to go. I want to go now."

So you take this deal, you go out to Los Angeles, and you find a house. You've got your $25,000 worth of equity, and you buy a house out there, and they say, "Oh, yes, you're going to need some title insurance." You say, "Sure." They're such fine folks, you know, and they've treated you so well, and so, you just say, "You take care of it." Then they say, "Well, you're going to need a survey." You say, "That's fine. Do you know whom I can get?" They say, "We have a survey company. How about termites? We have a termite company too, and we'll take care of that." They're going to take over the whole thing.

Now if you don't think it's coming, you'd better get up off it and figure it out! And they'll be in your town, and your town, and your town before it's over with unless you do something about it. Now this is the day that you're going to have to get up off it, and you're going to have to do something about your prices and your equipment. I guess in Arkansas we have about 125 abstract offices, and I've been in most of them. You would think you were going back to the 1890s to go in some of them.

In Arkansas we have a law that allows you to use the courthouse; the courthouse will provide a space for your use. I know one particular abstracter in Arkansas who has a room in the courthouse that is so full of file cabinets and various things that you have to go out in the hall to talk. The man is holding on to this space. He needs to get out where he can find his things, where he can entertain his customers, where he can sell his product, and where he can price it right.

This is the day and age to do it. If you were busy, you wouldn't have time to do it. If you want to go into the closing business, now—when there aren't any loans—is the time to get in the closing business. So you get one closing; now you can study it really well and you can get it right. What if you had 25? You wouldn't have time to study them, and you would be making some errors. Now's the time to go into it when you haven't any business.

Any questions?

O.K. We're going to wrap up here in a little bit. Before we do, does anyone have anything else he would like to bring before us?

I guess in Arkansas, we're a little bit naive. You know, I never heard of Coldwell Bankers. Why, I come to find out that's the biggest one in the whole outfit that's doing this right now, and you know why they're not moving right now? You know why Sears, which may buy St. Paul —do you know why Merrill Lynch is taking your money and paying you 17 percent for it? Do you know why these people aren't moving any faster than you are right now? It's because of the 20 percent interest.

You wait until this interest gets down to 10 percent, and look out! You know we got up there and we started talking about this controlled business, and I never thought much about controlled business. Did you know everybody in here is guilty of controlled business? Now think on this one!

You're going to have to get your own house straight. You just better figure on doing it. Are you guilty of controlled business? Maybe you're on the board at First National Bank, and they send their business over to you. Maybe you're on a savings and loan board and they send the business over to you. Maybe your abstract company is owned by lawyers, and you interchange business one way or the other.

They take this controlled business situation and they take the mother, the father, and the grandfather and the grandmother, and the uncles, and on down to the cousins. If your cousin is working for a bank over here in the loan department and he sends you business, that's controlled business.

I don't know what the answer to it is. Don't misunderstand me for a minute, but now when you start excepting things from the proposed law that we want to put into Congress, if you except banks or lawyers, you've left a loophole.

All of us are going to need to get our houses together, and while we're talking about the big businesses, let's don't overlook our own. It's a big problem.

I know of one situation in Arkansas that's along the same lines. There's only one abstract company in the county, and, frankly, there's only one attorney. Of course, the attorneys think that is a key to getting business, and it is in some areas of the country. I have people stop me on the street thinking that I'm a very important individual. I own an abstract company, and they think this is a key to the town. I'm the first man to figure out when the horse has been stolen, and I've never been able to sell that information, and I really would like to. I've never been able to see how the abstract company is the key to the town. All I've ever found is that it's like a shovel, and you can use it and work with it, or you can let it sit and it won't do a darn thing for you.

That's the only thing I've ever figured out about an abstract company, and attorneys own abstract companies so that they can control business, and this is back to what we were talking about. If we except this from the controlled business law, then we're in trouble trying to control the larger ones, which is really where the problem is.

McDONALD: Thank you all very much for your participation. What we're going to do now as the other groups come in is have a recap. Each speaker will give an outstanding way to improve your bottom line or improve your business and then answer one question.

At the 1981 Mid-Winter Meeting, we discovered that more people in our section from counties of 50,000 or less attended our meetings than people from larger counties.

I certainly encourage you to continue to attend these meetings. We need the help, support, and input from all people in our section. We need their voices to be heard. We need to work together with the other section to solve our problems, and we can do that.

MANSFIELD: We would like each panel leader to get one outstanding example of how to improve the business or improve the bottom line and then be in a position to have a question asked of you on that subject or on the general subject.

So one thing that I would like to do first, and I'm glad Jack Rattikin is the one who is going to do this for this simple reason: This morning you elected Jack as your new section chairman. Jack has served as vice chairman of the section, as a member-at-large on the ALTA Executive Committee, as membership chairman, and in so many ways that I really feel that he probably is the best prepared and will make the best chairman this section has ever seen.

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The Title Insurance Industry— from page 7

more frequent statistical filings from the members of the title industry. But, in our actuary's words, the aggregate reported income from premiums, charges, and investments at least covers the intended expenses and losses so far as we know.

In ascertaining that the rates are inadequate on the date they are reported to us, we have done our best, our share, to attempt to protect a title company's solvency. We do not mandate that any company make a profit, especially in an industry in which economies of scale play such a significant role and there are several competitors with radically different market shares. A mandated profit minimum would necessitate rate increases for some companies and no increases for others, and I think we all agree that it would make some companies noncompetitive in pricing. Such a requirement could only increase the profit rates for the bigger operators who enjoy the economies of scale, and we would see the smaller companies continue to suffer.

In an industry in which economies of scale are the recognized rule, I find it hard to believe that 16 companies can obtain enough business in a state the size of Nevada to cover their operating and overhead expenses. With a population of more than 800,000 people, we do not have enough real estate transactions to support that many companies. It seems to me that insurance is regulated primarily to protect the public, not the stockholders of an insurer or a title agency, from loss.

Regulators look to the management to make the business decisions that will achieve the goal properly and appropriately and preserve the stockholders' equity. If meeting that goal requires leaving some markets to competitors, applying new and different operating techniques, or furloughing skilled and qualified employees—especially in these troubled times—then those difficult decisions will have to be laid at the feet of management. If those actions improve profits, then regulators' feelings about the solvency of the title industry will improve.

Perhaps one solution to this problem lies in certain companies retracting from certain markets or changing their methods of operation. But most certainly, the solution rests in the control of corporate management and not with the regulators compelling all title insurance companies to raise their rates to an identical level, which would give even the most inefficient company an operating profit.

For those of you who are still with me, I would like to address what I consider to be the most critical problem now facing the title insurance industry. I suspect that a few of you are asking yourselves, "What could be worse?" Ladies and gentlemen, the title industry's biggest problem appears to me not to be any of the difficulties I have mentioned, but the way the industry presents itself—in general, but specifically to regulators.

I alluded earlier to my initial involvement with the title insurance industry. During the past three years, I have met many title people from all areas of the business in numerous settings. In many of those instances, I felt that I had been invited to a bearbaiting party as a guest of honor. I can assure you, after talking to many of my colleagues from other states' regulatory institutions, that the feelings and the occurrences that I am going to describe to you left them with essentially the same reactions.

After the Title Insurance Task Force had been rejuvenated, I attended a NAIC meeting, during which the American Land Title Association presented a seminar for regulators on the title insurance industry. While I believe the program was designed with the best intentions, it certainly left a different impression on the regulators who attended.

I can tell you as a person who came to the regulatory ranks with basically no knowledge of title insurance and has spent two or three years reading law review articles and insurance codes that it is difficult for a title insurance regulator to understand your industry. It is a different animal. Your premium volume, when compared with that of automobile insurance and homeowners' insurance, is small, usually less than 1 percent. Therefore, it is sometimes hard to commit time to study the title insurance industry and to understand what is happening in that industry.

Recently, regulators have been taking the time to study your industry. They were looking forward to the seminar given in connection with the NAIC meeting. It seemed like the perfect opportunity to hear some of the people in the industry explain what their business was all about. Well, the seminar opened with a harangue against the commissioner hosting the meeting because he had made a statement in the press the previous day pertaining to the title insurance industry. I can tell you that that opening certainly got the attention of every regulator in the room, but it did nothing to curry their favor.

What followed were several presentations, which I later found out could have been stolen from ALTA white papers and which I can best describe as several title insurance company executives patting themselves on the back about what a great job their industry was doing. I know people in the regulatory ranks with different philosophies and of different persuasions. I can tell you that the nicest thing I heard said about those presentations was that they were self-serving.

Following up on one of the speeches, I tried to obtain a copy of the list that had 55 coverages described on it, which are provided by a title insurance policy, the existence of which was emphasized by one of the speakers (I stress at this point that I was still a novice at understanding your business). In hopes of learning more about the title industry, and in hopes that I might be able to identify the repose of the insuring function in a title policy, I wrote the speaker for a copy of the list. When I received the list, it did not take me long to find out that the losses amounted to nothing in the title business compared with the expenses and that the losses related to the 55 occurrences on the list were extremely minimal. I can only say that the entire program left the regulators with whom I spoke with the feeling that title companies were not to be believed and that everything they postulated, theorized, or suggested should be subjected to the most thorough scrutiny and analysis. That perception must be overcome by the title industry if it wants the content of industry presentations to be accepted and valued by the regulatory community. In addition to what I perceive to be the regulators' awareness of the title industry's positions, numerous regulators have expressed to me—at least at the NAIC level—the apparent inability of company designees on the Advisory Committee to present boldly and aggressively divergent viewpoints.

The Advisory Committee to the NAIC Title Insurance Task Force originally had several members, the majority of whom were representatives of companies belonging to the American Land Title Association. When the task force proposed a model rating law in November 1980, the Advisory Committee members were given a copy shortly thereafter. The ensuing occurrences resulted in the task force members' blood being brought to a slow boil and eventually in the reconstitution of the Advisory Committee to the Title Insurance Task Force.

The task force decided at its December 1980 meeting to have the Advisory Committee prepare suggested amendments to the model rating law, including a narrative description of the reason for any language changes. With the promise that the advisory body would meet in January, the task force members went home and waited with bated breath for the product of the advisory committee. That wait finally ended in May 1981, some five months after the Advisory Committee had been given the task force's work product, which, incidentally, was only two sections and two double-spaced, typed pages long. The Title Insurance Task Force found out that its Advisory Committee apparently had no authority to speak on the issue addressed.

The Title Insurance Task Force members were disappointed that some of those people who had been working with us for two years—George Hursig, Erich Everbach, Bill McAuliffe, and Bob Swift—were now constrained to report back to a group of superiors, not within their own companies, but with the American Land Title Association.

The apparent cause for delay was that the Advisory Committee had accomplished its work and prepared its report for submission. The Advisory Committee's effort was subjected to the scrutiny and review of not only the Liaison Committee of the American Land Title Association but also the ALTA Executive Committee. The work product was not only reviewed and scrutinized but also dramatically amended.

"I would like to address what I consider to be the most critical problem now facing the title insurance industry. I suspect that a few of you are now asking yourselves, 'what could be worse?' Ladies and gentlemen, the title industry's biggest problem appears to me not to be any of the difficulties I have mentioned, but the way the industry presents itself."

I can say that I think the task force's response was angry, immediate, and predictable. The Advisory Committee was immediately reconstituted by a vote of the task force members to allow the American Land Title Association one participating member and to seek representation from numerous other organizations and disciplines.

We may have been remiss in originally constituting the Advisory Committee to have significant ALTA representation. I think the original number was five of seven members, but we have now sought representation from the mortgage bankers, the homebuilders, HUD, and other organizations that would be interested in what our task force is doing.

I can fairly state that the task force's opinion was that if ALTA wants to dally—and spend five months reviewing two pages—then that certainly is ALTA's choice, but the remainder of the Advisory Committee, as it is presently composed, will be charged by the task force with moving forward to review the task force's proposals and give it critical comments on additions or changes that are necessary or desirable in the proposed model title insurance act.

We have indicated to those Advisory Committee members who have served with us that they are welcome to stay as long as they represent the interests and views of their companies and are not beholden to the whims and wishes of the American Land Title Association Executive Committee.

I could continue on this particular theme by citing more examples of conduct by the title industry that have diminished its ability to communicate with regulators. I believe, however, that the matters that I have discussed with you adequately make the point.

Now that we have reviewed some of the problems facing your industry, perhaps we should turn our attention to some attempts to ameliorate the situations creating them. My comments concerning ALTA's relations with regulators are susceptible to regulatory solutions only by regulators being receptive to efforts by ALTA and its member companies to cooperate and assist regulators in solving, in an open manner, some of the problems that face your industry. I can assure you that my brethren in the regulatory ranks solicit and need your assistance to accomplish their goals and will welcome your frank comments.

If we then agree that we should do our best to establish effective communication and cooperation, what can we do about the interpretation of the business of insurance under the McCarran-Ferguson Act? Unfortunately, I would suggest to you that the prospects are dim for doing something about the interpretation. We could include escrow and related services in the insurance code definition of title insurance. The first task force draft does not include such a provision in its definition of title insurance. It seems to me that such a definition would be only a minor factor in any federal court's holding, since any decision would be interpreting federal statutory law, not the state insurance code. Perhaps we should not do that, for the same reason we have discussed earlier pertaining to controlled business. That reason is that many independent operators should be offered a better opportunity, through antitrust litigation or other methods, to compete in offering and providing escrow and closing services to the public in competition with title insurers and agents who are selling those products at apparently less than cost. In fact, the first draft of the model act may encourage independent competitors in related areas by its inclusion of a provision requiring that all charges, whether for escrow or other related services, not only be filed with the regulator but also be justified by the insurer or agent as at least covering the cost incurred.

That proposed provision is also included because of some of the points I raised earlier. It specifically touches on the rates and solvency issues. Even if your title rates are adequate, based on your title expenses and losses, a company could well go insolvent by giving services away free or for less than they cost. Of course, such a provision implies what I know many of you believe to be the unachievable and the unthinkable, namely, the allocation of expenses between escrow and related components and insurance components.

It is even possible that a little creativity and innovation might slip into the allocation formulas, allowing some competitors pricing advantages because of the expense allocations used. Although regulators have consistently heard the refrain that such a system is unworkable, I am unaware of a single cogent analysis that has been presented to show why such allocations would be improper. In fact, those allocations seem to be the rule in property and casualty operations and are an important management tool in controlling expenses in addition to their rate-making functions. One reason for these proposed provisions and their consequential implications is the hope that they will spark some active and heated debates so that the industry can better understand the concerns of the regulators and the regulators can be made aware of some of the practical limitations known to the title industry. The proposed act also contains sections on controlled business, patterned after the recently enacted Utah law. While I have discussed with you earlier some of my reservations about their viability, I am sure that they will certainly be thoroughly analyzed and debated on the issues of both desirability and effectiveness.

Although the proposed act contains numerous other provisions that may be of interest to you in its 45 pages of double-spaced, typewritten text, I don't believe that we could effectively analyze the reasons for many of the provisions in the short time we have together today. The NAIC Title Insurance Task Force and the various state regulators will be considering many diverse title insurance issues in the near future. In fact, the NAIC Title Insurance Task Force has pledged to do its best to have its model title insurance act ready for adoption by NAIC at the June 1982 meeting. In preparing that model act, the task force is considering innovative ways of regulating your industry. We do not have all the answers to the questions we will be asking and would hope that the title industry can help us in providing some of them. But regulators have heard too much of the lament that the title business has always been done in the same way and that it cannot be changed. If that were the fact, no business would ever change. For example, the securities industry, originally constituted under the Buttonwood Agreement of 1792, would still be charging fixed commissions. Fortunately for that enterprise, one of the large brokerage houses headed by our present Secretary of the Treasury, Donald Regan, turned its back on 180 years of tradition to create a system that is more in tune with today's market and economic conditions.

Perhaps my presentation will have been most valuable if I have convinced you that there is a need for creative thinking and innovation to deal with the new economic conditions that your industry is facing and the changing environment of state regulation. I can assure you that we, as regulators, will thoroughly consider the responsive and well-reasoned input that your industry is capable of generating.

Controlling Expenses—
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Donald P. Kennedy, chairman of the ALTA Title Insurance and Underwriters Section (right), introduces panel members Carloss Morris (left) and Robert C. Bates (center).

I think the management by objectives theory is a very good one, as long as management uses it. As a matter of fact, the use of the management by objectives theory and my participation in this program have caused me to review an objective I had set that had been sitting on the shelf. I dusted it off, and I know that the changes I made in it just within the last two weeks are going to produce good results for one of our companies. So, just participating in this program caused me to reevaluate an objective that had been sitting on the shelf for some time.

In Dallas, we don't believe in the management by fear theory. I think management has a responsibility to convince people that they are capable of doing more than they think they are capable of doing. Management by fear won't do that.

Personnel recognition is very important in our company. One of the things we have stressed is that we don't want an "all star" on our team. What we want is *all* stars. There is quite a difference. Just because you have an "all star" on a baseball team doesn't necessarily mean that team will finish first in the standings. But a team that is made up of a number of "all stars" certainly has the edge.

There seems to be a reluctance on the part of management to let employees know what the objectives are. In the economic conditions that we face, objectives have to be clearly defined and expenses have to be reviewed line by line in an effort to reduce those expenses and increase our profit ratios. I think if you keep the members of your staff informed, you will be surprised at the ideas they come up with and how much they can help.

We have gone through all kinds of theories at USLIFE, including one that is called the "opportunity for improvement" concept. That's where you create a tree with various branches, which symbolize opportunities for improvement. I am not so sure I would suggest using this concept, because many times you get into work projects where you have to create branches and opportunities for improvement that are really meaningless.

One of the most effective tools we have ever used is the "no surprise" theory; that is, don't surprise us with anything. If you know of something that is happening, and you are not making your commitment for some reason or another, let us know and perhaps we can help. I would be happy to discuss further some of the other theories that we have used at USLIFE. In some areas we have been successful, and in others we have been a total failure.

VAUGHN: First, let's set some guidelines. I don't particularly want you to agree with my observations this morning, but I would like you to think about what I have to say.

Every underwriter should pause and take a long, hard look at where we are, how we got here, and what we are going to do about the future.

We create our problems and we have to live with them. Until we accept and recognize some of these problems, we are not going to increase our earnings. Our industry problems should be related to growth, but that doesn't seem to be the case.

We talk about controlled business—controlled business is nothing new. The underwriters gave birth to it, fed it, expanded it, and now they say it's out of hand and we need federal legislation to do something about stopping it.

Some of you say, "Exclude the attorney from controlled business legislation." We say, "No." We want attorneys, realtors, builders, developers, and everybody included. We want it all inclusive, and we want it in a way it can be enforced.

Talk to people in Utah where they have controlled business legislation, which, we understand, their director of title insurance wanted. The legislation specifically excludes attorneys, and Utah has the biggest agency mess you have ever seen!

Even if you underwriters get good controlled business legislation, you'll try to figure out some way to get around it. That doesn't solve the problem. There's more to our business than gross income and market penetration.

Examine our relationships with the insurance departments. The very first time they ask us a question we don't want to answer or one to which the answer is not very good, we say, "Well, here we go again."

We don't meet with these regulators enough. We make a mistake by trying to educate them by sending statisticians to tell them about the title insurance business. We sit back and listen, and even we don't know what these statisticians are saying. We have articulate people who have been in this business forever, but we hire "outside experts" who receive big fees and who don't know the origin or the history of this business and never will. They come up with theories on returns on assets and ideas of that type. They are fabricating and theorizing, in my opinion, to come up with something that just doesn't make sense.

If you are an insurance commissioner and somebody comes in and explains the business to you, its problems, and what he wants to do, you are more likely to help him than you would if you listened to some numbers expert who talks with an eastern accent. In the Southwest, for example, the commissioner wouldn't understand what he was saying!

Somebody wants legislation, so a hearing is called. Whom do we send to that meeting? A new field person with a new company car who has been in the business 90 days. And what are we doing? Well, we are back in the office worrying about problems with the holding company or something else. We should send our best people to these meetings. These people ought to understand this business and know what it will take to pass some legislation and what that legislation is going to do after it is passed.

These are facts. As I said earlier, you don't have to agree with me, but listen to what I have to say.

Let's talk about the state title associations. They are very important. I don't think that the ALTA can ever be expected to do a complete job for the industry. I think we have to depend on the state title associations. In smaller states, some of them have a tough time making it. The underwriters have to help support them, both monetarily and with brain power based on experience.

Let me tell you something else that you should watch. Make sure that the officers of state associations are title people first and not lawyers. I feel strongly about this. Some people say attorneys are not really that big a threat to our business, but let me read from a letter dated August 10, 1981.

This letter was sent to every attorney in a Florida county. The name on the letterhead is really a title service company. It is affiliated with the Lawyers Title Guaranty Fund in Florida. If you think these people aren't your enemies, listen: "Our present goal is to aid attorneys in capturing 80 percent of the real estate title market in Palm Beach County." Now, if you are an agent in Palm Beach County I'm sure that really makes you happy!

The attorneys are your competitors and your enemies. There are more title insurance premiums being written through attorneys and attorney agencies than ever before. I'm not talking about the attorney who is a professional titleperson and complete agency. Wouldn't you all agree with me?

We all have been out working like little beavers to sign up these attorney agents. The push is for market share. There are companies here today that are worried about their future. We all are. But we went out and circumvented every state law we could to sign up every agent so that we could try to get a greater market penetration and more gross dollars. Now suddenly our gross dollars have increased along with the market penetration. But the bottom line is red—not black.

What have we done? We have given up a lot of the control of the business and have put the independent agents in a tough spot. We visit one of our good, loyal agents and say, "We know you are getting about 12 or 13 percent of the market but our company wants us to get about 25 percent. You have been a loyal agent over the years; however, what we want you to do is give up your exclusive and let us sign up every attorney in town and you do the abstract work or the title work for them." This is what we are doing, and it is not right.

What can be done about it? The independent agents should get together and take a look at what is happening. They can do something about it. They can go to the state legislature or to the regulatory authorities. I think this needs to be done.

Let me mention one thing about products. We are looking at all kinds of new coverages. You saw the endorsements that were brought out yesterday. We have to come up with new products.

Let me tell you what we did about the residential extra protection policy. In one state in the Southwest we wanted to introduce it through a rating bureau but were told that it didn't want us to broaden the coverages. We checked, and everyone in that state was already getting 99 percent of the coverages that were included in the new policy.

In regard to rating bureaus, I don't even know whether they will survive. We are talking about coverages and rates here in Colorado, where a rating bureau no longer exists. Did you ever try to sit down with one of Colorado's rate structure charts and figure out what a policy was going to cost the insured? We don't have to complicate this business. Don't make your rate structure so complicated that the consumer and the insurance departments don't understand it. Who is impressed by big words?

People don't understand that we have a terrific service to offer. It is something that is needed. It is generally underpriced. Don't underestimate the people's intelligence in the state insurance departments by trying to baffle them with all kinds of figures, statistics, and unusual statements. Just be honest with them.

Years ago, I learned something that I think is important. It is so basic. We need to pause, think, and look ahead.

When you leave this meeting and go back to your desk piled with work, don't forget that this industry put that work on your desk. Hopefully, there is enough work for you to make a living and take care of your family. If you don't take a serious look at where we are and where we are going, however, you may not have that work problem.

BATES: The subject assigned to me by our moderator was "Are we successfully controlling claims and claims-related expense?" While preparing my part of this program, I put this question to the top claims people of four companies, including my own. One company is based in the East, two in the Midwest, and one in the Far West. The substance of their answers ranged from "Not very" to "Probably not."

Since 1976, the total number of policies issued and liability assumed by all major underwriters has exploded. Although philosophically we are in the loss-avoidance business, the fact is we do assume many risks. When we write more policies it is logical to expect more claims—and we are getting them. Inflation, in turn, has caused an increase in the size of claims.

Another major factor in our increased claims expense is the significant increase in the length of the "claim tail." Most of us consider the "tail" to be the period between the policy year and the time when 95 percent of the claims arising from policies written in a given year will be known. Not many years ago, a claim tail of two years was considered normal. Today, the claim tail has stretched to six years or more.

Today, the coverages we furnish are more extensive because the transactions we insure are more complex. Mechanic's lien claims were our largest category of major losses not too many years ago. Today, although mechanic's liens are still very much with us, claims arising from complex transactions in which liabilities and defenses are not clear-cut are more and more frequent. This, of course, leads to expensive litigation and potentially large losses.

Yesterday, Burton Levinson discussed a potential claim situation that we would not even have imagined three years ago. As you may remember, he discussed a "creative financing" device that may have violated securities laws and regulations and can conceivably produce title insurance claims for consequential damages. This takes us a long way from the kinds of claims we have historically expected to arise from the issuance of title insurance policies.

Forgers have awoke to the long-standing opportunities to defraud title insurance companies. We have always operated on the premise that the parties to the transactions we insure are basically honest with us. Professional forgers have learned how to take advantage of the trust we place in our customers. Forgery claims in the last few years have grown from the case in which a son forges his father's name to a small mortgage or a husband forges his wife's name to a conveyance, to major cases of fraud involving commercial properties in the six-, seven-, and eight-figure range.

Claims that we once regarded as simple are now being made complicated and expensive by sophisticated claimants and claimant attorneys. Knowledgeable plaintiffs' lawyers are forcing us into more and costly litigation. We are now forced to litigate cases that would have been easily settled or would not even have become claims a few years ago.

Consequential damages have become a major concern and cost. The same is true regarding bad-faith claims based on a refusal to defend.

Looking to the future, it is difficult to see any relief. On the contrary, there is a clear consensus among claims people of the companies with whom I talked that both the number and dollar amount of claims will continue to rise. When real estate activity returns to more normal levels, the title companies are likely to have more business than their trained, but reduced, staffs can handle. Even though this will be a nice problem to have, it will result in adding untrained people. Overworked trained people plus new and untrained people will inevitably result in higher-than-average search and examination claims. The inherent complexity of the multitude of rights involved in title to land in itself compounds the problems and costs of defense.

During the current period, when our industry is faced with a large excess of capacity, we are all struggling to get every order we can. We are becoming very liberal underwriters. It is inevitable that we will take on some abnormally high risks, which will, in turn, result in serious claims in the next few years.

So, I see the trend toward more claims in terms of both absolute numbers and dollars continuing to climb. It will not level off in the foreseeable future, nor will it decline.

Now let's turn to another category of increasing claims cost—that is, the category of expenses incurred in the handling of claims and litigation. One of the most quickly increasing categories of cost is that of the practicing attorney employed by title insurers. Few attorneys charge as low as $75 per hour; many charge $150 per hour, and some even more. During this period of low business volume, our effort to control operating costs may cause us to have fewer and less qualified in-house claims personnel handling our claims than we should have. This may keep staff count down but also may result in increased overall claims cost through the use of more outside counsel.

Using outside counsel frequently involves the risk of additional cost for training before such counsel can know enough about title insurance claims to do an effective job. One major underwriter ran an experiment with a large outside firm in an effort to get a "ballpark" cost estimate for bringing a selected group of lawyers up to speed on how to handle major title insurance claims litigation. When the law firm, as part of the experiment, applied its usual hourly charges to the time spent by the group in training (including study time and re-

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Watch Out!—
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Corporations throughout the western United States have recommended that any time a transaction involves five or more beneficiaries, it will be deemed, under securities law, to be a violation if the mortgage brokers have not been qualified and permits have not been issued. If you were to ask me as one who is familiar with the subject of securities, I would tell you that the trusts in question are not really securities, but are deemed to be securities as a result of public policy because there are private citizens who have become lenders who cannot foreclose as a result of the actions of some promoters. While no one would suggest that a title company is a promoter, there are also parties who are secondarily because they are considered to have assisted in a securities fraud.

Most of the cases that we have had in the securities field have been those arising from corporate securities, stocks, and bonds. In these new cases that are arising from multiple beneficiaries under deeds of trust, title insurers have been brought in through accusations that they are secondarily responsible for the securities fraud. The industry cannot really look to past security cases and find comparable situations. As a title insurer, you may be brought into the situation, not only on the basis that the ALTA lender's policy requires you to tender or to take an offense but also as a party to some interesting litigation.

I shall read to you several portions of some complaints, omitting the names of the title companies.

> Defendant ________, title company, knew or had reasonable cause and recklessly failed to note or know that its participation with the other defendants was essential to the other defendant's scheme to violate the securities laws and defraud plaintiffs as herein alleged. In that said title company's name and reputation as a reputable and established title company were used by the other defendants to and in fact did convey to the members of the plaintiffs' class an aura of legitimacy and propriety concerning the security sold to them.

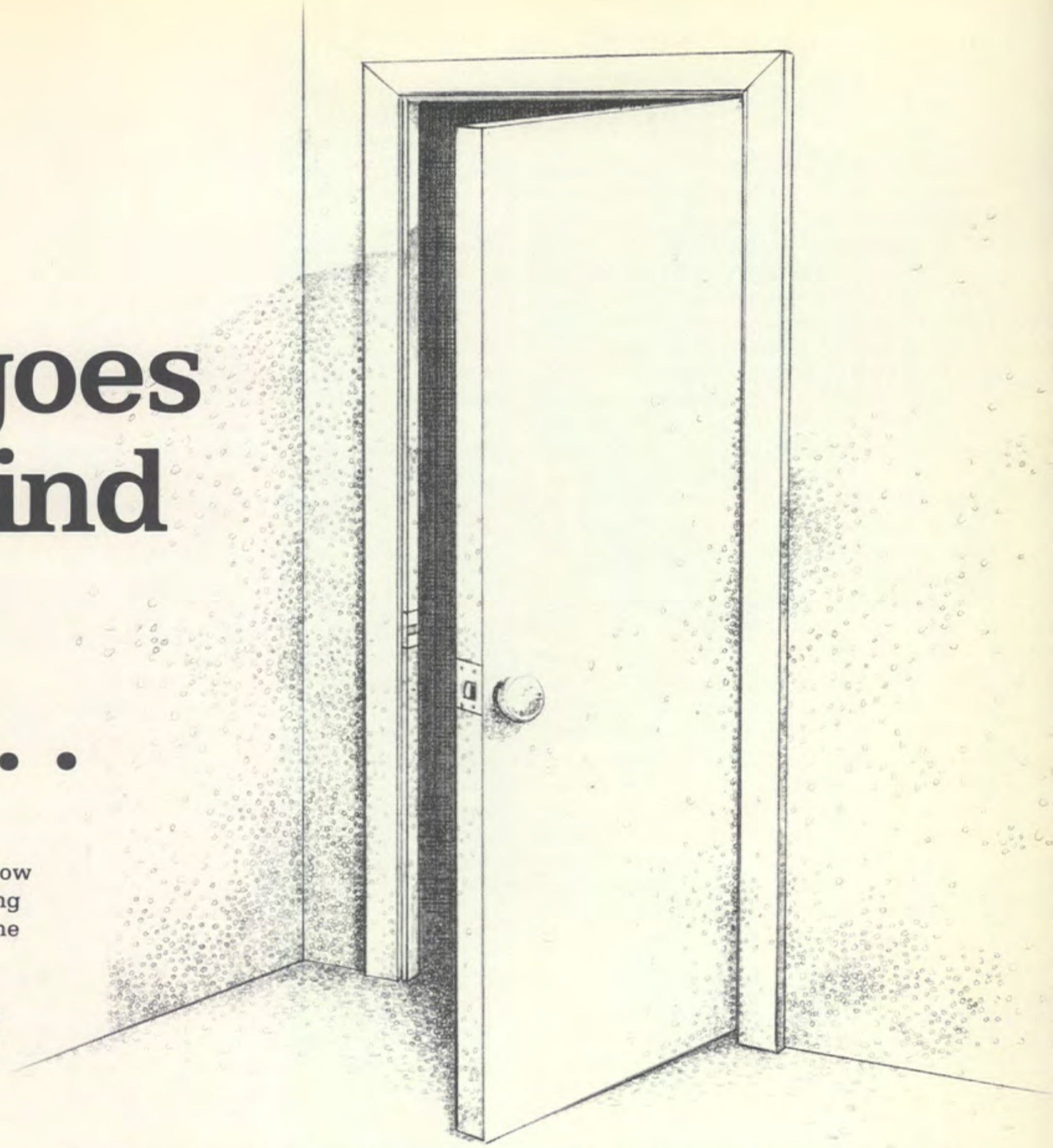
There are also allegations of aiding and abetting and that the title insurance policies were among the devices used to mislead, cheat, and defraud the plaintiffs in that the impression was thereby intended to be, and in fact was created, in the plaintiffs' minds that the investments they had been induced to make by certain defendants were not only legitimate and well-secured business ventures but also further secured by the title insurance policies.

A sample complaint continues:

> At all times said title company . . . knew or had ample notice of the illegal activities of certain other defendants and was aware or should have been aware that those other defendants were doing things that should not have been done.

Others alleged that certain title companies benefited financially from the illegal activities of the remaining defendants because they received premiums on title insurance policies issued by them, among other allegations of aiding and abetting.

What I am suggesting to you at this time is that the topic of second-trust deeds and security violations is rather interesting. This is my first ALTA annual meeting, and I have listened to the preceding sessions and have heard the litany of problems from high interest rates to regulatory difficulties. I have heard about the antitrust questions, and now I present another problem to you. As far as the public is concerned, it cannot really share those problems with you. It sees the title industry as a target defendant. It sees the title industry as a "deep pocket," and its title policies—be they owner's or lender's—as something that cannot really be read or understood. What each person wants to believe is that you, the insurer, guarantee the sanctity or security of his investment or ownership, which seems to be another problem that I am certain you will address.



What goes on behind closed doors . . .

in the title industry? Do your customers really know? The brochures and visual aids listed below can be a tremendous help in advising the public and your customers on the important and valuable services provided by the title industry.

These materials may be obtained by writing the American Land Title Association.

Brochures and booklets

*(per hundred copies/shipping and/or postage additional)

House of Cards.

This promotional folder emphasises the importance of owner's title insurance $17.00*

Protecting Your Home Ownership

A comprehensive booklet which traces the emergence of title evidencing and discusses home buyer need for owner's title insurance $24.00*

Land Title Insurance — Consumer Protection Since 1876

Tells the story of the origin in 1876 in Philadelphia. $15.00*

Closing Costs and Your Purchase of a Home

A guidebook for homebuyer use in learning about local closing costs. This booklet offers general pointers on purchasing a home and discusses typical settlement sheet items including land title services. $25.00*

Things You Should Know About Homebuying and Land Title Protection

This brochure includes a concise explanation of land title industry operational methods and why they are important to the public. $17.00*

The Importance of the Abstract in Your Community

An effectively illustrated booklet that uses art work from the award-winning ALTA film, "A Place Under the Sun" to tell about land title defects and the role of the abstract in land title protection. . . $30.00*

Blueprint for Homebuying

This illustrated booklet contains consumer guidelines on important aspects of homebuying. It explains the roles of various professionals including the broker, attorney and titleperson. $35.00*

ALTA full-length 16mm color sound films

A Place Under The Sun (21 minutes)

Animated film tells the story of land title evidencing $140.00

1429 Maple Street (13½ minutes)

Live footage film tells the story of a house, the families owning it, and the title problems they encounter. $130.00

The American Way (13½ minutes)

Live footage film emphasizes that this country has an effective land transfer system including land recordation and title insurance. $130.00

The Land We Love (13½ minutes)

Live footage documentary shows the work of diversely located title professionals and emphasizes that excellence in title services is available from coast to coast. $105.00

Miscellaneous

ALTA decals . . . . $ 3.00
ALTA plaque $2.75

How to Improve—
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RATTIKIN: I really appreciate that. Thank you all so much. I appreciate your confidence in me. In our group this morning, I did ask them one thing: What do you want to hear from us at these particular meetings? I don't know if the other two groups talked about that at all; it wasn't really in our program, but we got some very interesting returns, and you're going to be hearing from us this year directly.

For the first time, we're going to bring together a list of those members of our section. ALTA doesn't even have one, so you're going to get specific questions and letters from this section this year, and I hope that you all will respond to the things that we ask because we want to serve you all. I would appreciate your response.

Let's have some returns—Sam Mansfield, do you want to start?

MANSFIELD: Thank you. Basically, I found that we have a number of items that we could bring up to you this morning that our group discussed, but one of the things—which I perceive from what I was told—that concerns our group, as abstracters and title insurance agents, is regulated business, and I intend to talk with some of the people on the Executive Committee about that. I don't think we can focus on just one item. You want to say something about mailing costs? You want to say something about the production costs of turning out your product? We didn't get that deeply into it, but I think that probably if you summarized it, you would say that there are two ways that you can improve your title business. If you improve your title business, you're going to improve your bottom line. You first have to define what the bottom line is, whether it's a positive or a negative, and in most cases it seemed that everybody seems to be having a negative now.

But education of the public, education of the people that you deal with—such as realtors, lenders, and in some instances attorneys—and the service that you give to those people are going to do more to improve your bottom line than anything else.

We discussed numerous things. We got off the subject quite a bit, and I'm sure that the other groups did too. But there was a tremendous concern for what is happening between regulators and the American Land Title Association. We're going to pass this on to the association.

I don't think that you're going to do a better job than you're doing now unless you continue to improve your service and continue to educate the people. If you do those two things, you're going to have a better title service, and you're going to improve your bottom line.

RATTIKIN: Thank you, Sam. That was very well put and concise and you came up with a very excellent point. Al Vance, how about your group?

VANCE: I guess if we chose one subject that we discussed as much as any other it would be the use of computers. Of course, this is new to us, and as one gentleman brought out, why don't the different companies come to the convention and show us different items designed for the small abstract company?

The companies have different items outside there that would be good for San Francisco and Denver, but in my little town of 14,000 people, in a county of about 30,000, I couldn't use some of the stuff that they've got outside here. I agree that we should have more exhibits.

As far as computers are concerned, I've been thinking about this as long as some others apparently have, as we had quite a discussion on this. The consensus was that maybe the Radio Shack-type computer, an in-house computer that didn't go out over the telephone lines, would be good, because you would have full control over it in your own office. Some people who spoke were using this for ledger work, for amortization programs, and land searches. I don't believe anyone was using it for abstract books, but by the same token it can be used for that when we get some software for it.

Now, of course, if you get into computers very heavily, you'll find there's quite a cost involved, and someone asked how many employees the computer could replace. Well, it turned out it didn't take the place of any employees, but was doing a better job within the title plant.

I think that now while we're not doing so much work is a wonderful time to get our act together so that when the economy does turn around and we do have a lot of business, we can perform it more efficiently and give the customer better service as cheaply as possible; the bottom line is that we'll be making more money.

RATTIKIN: Thank you, Al. In our group of counties of 200,000 or higher we had a very good discussion too. I felt that I learned a great deal from it, and I hope that everybody else did. We have enjoyed this concept and this method of doing things during the last two meetings, and I think we've all gained a great deal from it.

To bring it down to one point that Tom asked for, I had some 14 points here that were important to us on improving the bottom line or making more money, but we all ultimately ended up with the one word: *personal* contact.

Personal contact is the best way to improve the bottom line by bringing in more business. It's amazing that so much of our discussion is not really on what we're going to cut or employees whom we were going to release. That has to be done in some areas, but that wasn't one of the major things.

The major point our group talked about was getting more business, or getting a bigger share of the market through improving our method and perhaps charging for areas we had not charged for in the past.

We did bring up one area and that's local associations in your particular county or counties or several counties combined joining together to produce advertising in those areas where you have to advertise for the realtors or whatever.

One other way to save money is to use part-time instead of full-time help. There are times when we don't need full-time help, and we highly recommended the use of high school students, who are economical and the best part-time employees. I won't go into detail, but if you haven't tried that, you can get a good employee who usually will stay with you after high school graduation. It's worked very well for many companies, and we all have enjoyed doing that.

McDONALD: I just want to do one thing, Jack. I think it's significant, Jack, that we have so many past presidents in our section who are attending this ALTA convention. I would just like to read their names, and if there are any whom I've missed, be sure to let me know:

Morton McDonald, Harold McLeran, Clem Silvers, Don Nichols, Alvin Robin, John Warren, Bob Jay, Philip McCulloch, and Roger Bell.

They are all from this section and attending. I think that's mighty good.

RATTIKIN: One thing before we adjourn—I think we certainly should not look past that, but for the last two years your chairman, Tom McDonald, has given almost 100 percent of his time to this association and this particular section. He has been on the road for ALTA, going to conventions, and going to meetings on the spur of the moment. This man has had very little actual praise as such, but he has been dedicated—he's as dedicated as anybody I have ever known personally—to this association and to each of you all in its growth. I'm proud that he's moving up to be president-elect.

Gerald L. Ippel, TIPAC Committee chairman (left), meets with journalist and TV commentator Martin Agronsky (right), the guest speaker at the 1981 TIPAC luncheon.

Controlling Expenses—
from page 27

search work done at home), the estimated cost of the training totaled $1.8 million!

In our effort to control overall expenses, we are all striving to hold our employee count as low as possible. This can result in an overloaded claims staff, which in turn exposes us to the substantial risk of a major claim "falling through the cracks." Failure to handle a claim expeditiously and professionally can produce a very expensive lawsuit and settlement.

What can we do to control these costs?

There are a number of steps we can take.

1. Strive to avoid search, examination, underwriting, and closing errors. If we do our work well, there will be a large number of claims that don't appear in the first place—and our customers will be better satisfied. This is probably the most effective method.

2. Strive to maintain a qualified claims staff in sufficient numbers to ensure expeditious and proficient handling of claims. Handling claims with full-time staff is usually far less expensive than employing outside counsel. I was furnished with one example of a company that paid an outside law firm $95,000 to handle a claim that was ultimately settled for $5,000. Of course, it may have been a dangerous claim exceptionally well handled, but if so, a qualified company lawyer would no doubt have been much less expensive.

3. Strive to make a quick, thorough investigation. Make an early decision as to whether the case should be settled or litigated after careful evaluation of probable litigation cost. Once we have the facts, failure to resolve the issue and passage of time usually increase cost.

4. Consider small to medium outside law firms. Hourly rates tend to be lower, and you don't get lost in a bureaucracy. Some large firms shift claims work to untrained associates. They are not always effective and usually charge more.

5. Avoid transferring the entire responsibility for handling claims to outside law firms. Use a monitoring system to coordinate and oversee activities of outside firms. Hourly charges tend to get out of control if monitoring process is not used.

6. Train operations staff to be especially careful during application, search, examination, and underwriting stages of production. Forgeries and other forms of fraud can frequently be recognized by experienced, alert people and stopped before they turn into a claim.

7. Use great care to avoid bad-faith claims based on refusal to defend. This is a growing risk that can produce very expensive litigation.

8. During the underwriting and claims-handling processes, be constantly aware of the potential for consequential damages. This problem seems to be getting more and more serious with the passage of time.

9. Consider extensive use of in-house legal staff for court appearances and trial work in locations where claims occur in large volume. All the companies with which I talked think that where claim volume justifies, using in-house lawyers for trial work is much less expensive.

10. Consider use of common outside counsel by various companies in certain locations. Doing so can reduce the education cost and probably keep hourly rates under better control. Exchange of information as to qualifications of outside law firms on some sort of organized basis could be helpful in controlling both the legal expense and the cost of the claim itself.

11. Consider paying an outside law firm on a retainer basis. It has been suggested that this can keep hourly rates under better control.

In the final analysis, I can probably best summarize my remarks by observing that with regard to claims and claims expense, as in any other phase of our business, there is no substitute for sound management through analysis, a large dose of common sense, and a lot of good luck.

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The New Tax Bill:
What Does It Do for Us?

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The Economic Recovery Tax Act of 1981, which was signed into law on August 13, has been referred to by some people as "Christmas in August for the American taxpayer." Those who feel that the act was delivered by Santa Claus point out that what began as a rather straightforward proposal by President Reagan first to cut taxes across the board and second to provide special incentives to aid capital formation has become one of the broadest, most dramatic pieces of tax legislation to be enacted in recent years.

Will the act be a major stimulus for economic recovery, as its name implies? Only time will tell. It clearly represents a step toward supply-side economics by lessening the tax burden on savings and investments. It has, however, not been received with unanimous acclaim.

Wall Street, as you know, is skeptical. Rep. Charles E. Bennett (D-Florida), the second-highest-ranking Democrat on the House Armed Services Committee, has stated that the bill was "rammed through Congress," and it placed the country in a posture "where our revenues are going to be reduced to the point where we can't afford what we need to defend our country."

Even such a staunchly conservative group as the National Association of Realtors has despaired and has asked President Reagan to defer the first 10 percent tax cut to reduce the deficit and thus help lower interest rates.

Although the act is estimated to decrease tax revenues by approximately $2 billion for fiscal year 1981, with decreases expanding to an aggregate of $750 billion by 1986, it will probably merely offset increases in individual and corporate taxes caused by a combination of inflation and progressive tax rates, the so-called bracket creep.

This morning I intend to discuss some of the provisions of the act that are most relevant to you and your industry. I should warn you that this material can be pretty dry. You might be interested to know that a study has been made at Johns Hopkins University on the attention span of people listening to technical material. That study has shown that the attention span of persons aged 15 to 25 is interrupted by an erotic fantasy every 5 minutes; of persons aged 25 to 40, every 10 minutes; of persons aged 40 to 55, every 30 minutes; and of persons older than 55, not more frequently than once an hour. I hope that those of you who are over 55 will find my discussion interesting and informative.

A major portion of the act deals with savings incentives. The theory behind including them is that savings incentives translate into mortgage money, which in turn translates into title insurance business. Right? Well, maybe!

The most heralded savings incentive is the All-Savers Certificate, or ASC. Rep. David Obey (D-Wisconsin) labeled the All-Savers Certificate the "All-Savers Joke." Now why is this? Let's analyze it.

As you know, the All-Savers Certificate will bear a yield equal to 70 percent of the average yield of a one-year Treasury bill. For those certificates issued on October 1 through October 3, the rate will be 12.61 percent. At a yield of 70 percent of the average yield of a one-year Treasury bill, only taxpayers whose marginal tax bracket is greater than 30 percent will benefit; that is, married taxpayers with a taxable income of more than $30,000 in 1982. With the ongoing general reduction in tax rates under the new bill, even fewer taxpayers will be in brackets high enough to make these certificates attractive.

The tax benefit is limited to $2,000: $1,000 of interest for a single person or $2,000 of interest on a joint return, which means a $16,000 investment for a married couple—not a very big commitment.

The initial rate of 12.61 percent doesn't compare very favorably with municipal bonds, which are yielding 13 percent or more. Persons looking for tax-exempt interest may find municipal bond funds more attractive, because the yield may be equal or greater and such funds will provide greater liquidity.

Investors in All-Savers Certificates are locked in to them for one year.

Finally, the Department of the Treasury was so frightened by the potential revenue loss represented by the All-Savers Certificates that it insisted that the existing $200 single-person interest exclusion and $400 joint-return interest exclusion be discontinued at the end of 1981 and that the $200 single-person dividend exclusion and $400 joint-return dividend exclusion be reduced to $100 and $200 respectively. So we lost something in the trade-off.

On the other hand, All-Savers Certificates will be more secure than tax-exempt bonds, and the interest will also be exempt in 33 states whose tax laws are linked to the federal tax system.

Furthermore, rollovers from six-month money market certificates in various savings institutions will be exempt from early withdrawal penalties if they are rolled over into All-Savers Certificates, which have been marketed strongly.

I think that many savers not previously attracted to the tax-exempt market will be lured in and once in will be locked in through the heavy marketing of All-Savers Certificates and the linkage of the certificates with retail purchase agreements or "repos," even though the mandatory conversion link between the repos and the ASCs has been disallowed by the Treasury Department. Most strong institutions believe that investors who have taken advantage of the attractive repo rates will maintain their money in the same institutions, at least to the extent of $16,000.

You may be interested in knowing that some institutions have taken repo deposits of $40,000 to $50,000 from single depositors. Obviously, that excess is going to be withdrawn when the repo ends.

Some American Bankers Association experts have estimated that more than $250 billion will be invested in ASCs. Other sources, however, in the savings and loan industry in California with whom I've spoken say this figure is too high, if it refers to new money. These sources say that most ASCs will simply replace existing savings deposits against other types of accounts. So, instead of representing new money, ASCs will represent cheaper money, which will benefit the earnings of savings institutions but will not create substantial new mortgage money.

When I asked these sources whether ASCs would spur new mortgage lending, one prominent individual asked rhetorically, "Would you make a 20-year loan on the basis of a 1-year certificate?" On the other hand, this person believes that ASCs are a forerunner of longer term, possibly permanent, tax subsidies for the home loan industry. If viewed as such, ASCs may provide the new mortgage money we all hope for, but not in 1981–82.

The next savings incentive that we should look at is the individual retirement account, or IRA. Starting in 1982, IRAs will be available to all employees; before they were restricted to employees who were not participants in employer-qualified plans. The annual contribution limit has been raised to the lesser of $2,000 or 100 percent of compensation, or $2,250 for a so-called spousal IRA. To ensure that amounts invested in IRAs go into savings, investments in collectibles—antiques, art, metal, gems, stamps, coins, liquor, and so forth—will now be treated as taxable distributions.

As a further savings incentive, the contribution limit on Keogh plans has been increased from $7,500 per year in any given year to $15,000. A similar increase in the level of benefits that can be funded through defined-benefit Keogh plans is provided by increasing from $50,000 to $100,000 the annual compensation that can be taken into account in computing future limits on benefit accruals. Investments in collectibles by individually directed Keogh accounts will be treated as taxable distributions to ensure that increased deposits go where they will most benefit the economy.

The final savings incentive we should examine is the interest exclusion. Starting in 1985, 15 percent, up to a maximum of $450 for a single return or $900 for a joint return, of the excess of interest income over interest expense can be excluded from gross income.

The IRA, Keogh, and interest exclusion savings incentives may provide the new mortgage money that we need in the future, but I don't think we will see any early increase in mortgage funds or reduction of interest rates from these new provisions.

When can we expect increased real estate construction and real estate activity? Another major part of the act was the so-called Accelerated Cost Recovery System, or ACRS.

With respect to real estate, possibly the most important aspect of ACRS was elimination of the distinction for depreciation purposes between new and existing buildings. Consequently, one effect of the new act will be to increase the demand for existing properties. All real property, whether new or used, except low-income housing, can be depreciated at 175 percent of straight line over a 15-year period. Low-income housing can be depreciated at 200 percent of straight line over 15 years.

With respect to nonresidential property, however, all depreciation will be recaptured as ordinary income upon the disposition of the property, if accelerated depreciation has been used. Most investors in nonresidential property will therefore use straight-line depreciation.

With residential property, however, even if accelerated depreciation is used, only the amount of accelerated depreciation in excess of the amount of depreciation allowable under the straight-line method will be recaptured as

"The . . . Act . . . has been referred to by some people as 'Christmas in August for the American taxpayer.' "

ordinary income upon disposition of the property.

Furthermore, Section 189 of the Internal Revenue Code, which provides that construction-period interest and taxes must be amortized by individuals, has been eliminated for low-income housing. With low-income housing, therefore, individual investors can currently deduct construction-period interest and taxes and, as previously mentioned, have faster depreciation under the 200 percent declining balance method.

Consequently, the act will have the greatest impact on existing residential properties, especially low-income housing projects. We will see resyndications of Section 221(d)(4) projects and 10-year-old Section 236 projects, in which the tax benefits have burned off, to provide a new round of tax benefits for new investors.

This all sounds good, but continuing high interest rates may make it all academic. High interest rates make putting new housing projects together almost impossible, which is another reason why we're going to see resyndications of existing housing.

The combination of tax write-offs and rate cuts will make nonresidential, commercial properties more attractive to investors who are not entirely tax-shelter oriented. There will be a greater aftertax cash flow and a larger net capital gain upon disposition.

As I mentioned, most commercial property owners will use 15-year straight-line depreciation to avoid depreciation recapture. They will receive an annual cost recovery deduction of 6.67 percent, or one-fifteenth, of the building's cost against income otherwise taxed at rates up to 50 percent. On subsequent sale, the resulting capital gains will be taxed at a maximum rate of 20 percent.

Let me give you an example. Mr. Smith acquires an interest in a $10 million office building, whose rental income is offset exactly by expenses, other than the cost-recovery deduction. Under straight-line depreciation over 15 years, the building will generate a tax loss of $667,000 per year, one-fifteenth of $10 million, of which Smith will get his pro rata share.

After three years, the building is sold for $10 million, that is, no value increase. Smith will now realize at capital-gain rates, at a maximum of 20 percent, his pro rata share of a $2 million taxable gain—the $2 million that were written off over the three years. The total $2 million loss over three years at a 50 percent rate results in a $1 million tax savings. The $2 million gain at a 20 percent rate results in $400,000 in long-term capital gains. Thus, the transaction results in a $600,000 net tax savings, even though, from an economic point of view, it was basically a break-even deal.

Also note that straight-line cost recovery avoids the add-on minimum tax, which would be present if accelerated depreciation, or accelerated cost recovery, were used instead. Some commercial property owners, however, especially those who are 60 or older, will probably take accelerated depreciation and will plan to hold the property until they die, or will use a tax-deferral mechanism such as a Section 1031 exchange to defer gain and recapture until they die (because after the owner dies, all recapture is eliminated to the estate and the beneficiaries of the deceased). Again, in the current interest climate, all this may be academic, because of the difficulty of putting any projects together.

I'd like to mention certified historic structures. These are going to be the new tax shelters. Investors can get up to a 25 percent rehabilitation tax credit in the first year, plus 15-year depreciation of both the building and the rehabilitation expenditures. This tax shelter of the future is going to produce a big bang in the first year through the combination of the tax credit and the first-year depreciation.

I'm afraid that the new tax act will have little direct tax benefit for title insurance companies. The corporate rate reductions that are part of the act are a joke. The corporate rate of tax on the first $25,000 of taxable income is reduced from 17 to 16 percent in 1982 and to 15 percent in 1983 and thereafter. From $25,000 to $50,000 of taxable income, the rate goes from 20 to 19 percent in 1982 and to 18 percent in 1983 and thereafter. There's no reduction in the higher brackets; the top rate continues at 46 percent, and the maximum long-term capital-gain rate remains at 28 percent.

Compared to 1981 tax rates then, the maximum tax savings for a corporation under the new act is $500 for taxable years beginning in 1982 and $1,000 for taxable years beginning in 1983 and thereafter. It was almost not even worth putting this change in the act.

How about ACRS? As you know, there is essentially no benefit for title companies because your "plant" is nondepreciable personal property. A title plant is not deemed to have a measurable useful life, because, according to the Internal Revenue Service, it never becomes obsolete. Because a title plant was not subject to depreciation under prior law, it's not eligible for ACRS under the new act.

Title companies may, however, receive some benefits under ACRS with respect to equipment, such as computers. In that regard, you should know that ACRS has been in place retroactively since January 1, 1981. Therefore, any equipment acquisitions that have been made in 1981 are already subject to the ACRS rules, which are mandatory. In that connection, amended federal income tax returns may be

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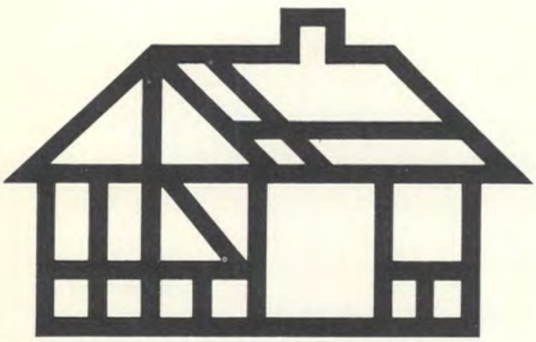
Housing Finance: *Evolution* or Extinction?



The following speeches, discussion, and question-and-answer session were held during the ALTA Annual Convention General Session. Participants were Stan Strachan, editor of National Thrift News, *New York, New York; Edward F. McKelvey, Chief of the Federal Reserve Board's Capital Market Section, Washington, D.C.; and Richard P. Toft, president and chief executive officer, Chicago Title Insurance Company, Chicago, Illinois.*

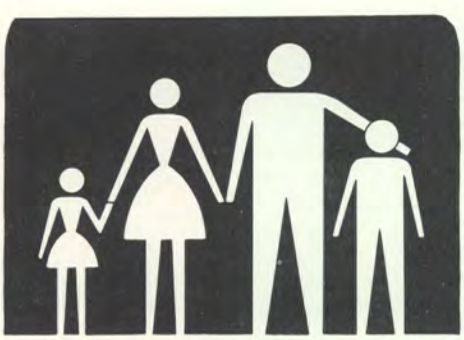
STRACHAN: The outlook for your customers, the housing lenders of this country, is pretty grim, and the assignment that I've been given to talk about, whether we're in a period of evolution or whether this industry is headed for extinction, really couldn't be more appropriate.

The events of even the past week can put into sharp focus for us just exactly how serious the problems are and how heavy the changes are going to be for the people who make up the majority of your customer base, the thrift institutions and mortgage lenders of this country.

A week ago yesterday in Chicago, the Secretary of the Treasury made a speech to a group of taxpayers in which he called for some changes—although they were unspecified—in the financial structure of this nation. Anybody who read that speech would have to assume automatically that mortgage lending no longer matters in this country.

The Secretary of the Treasury outlined, point after point, why specialized lending no longer has a place in this country's financial structure, why interstate banking is important and necessary in this country, and why local control of credit won't mean anything to anybody. You can be sure that Mr. Regan intends to work very hard to make those points with the Congress and to bring about the kinds of changes in the financial structure that he brought about in the structure of Merrill Lynch.

Merrill Lynch went from being a big brokerage house to becoming the country's most ambitious provider of financial services. Merrill Lynch is in every conceivable business. It's in the mortgage and insurance business but wants to get out because nobody wants to do business with its mortgage insurance affiliate, because it's a major competitor of the users of mortgage insurance.



Cash-management services have taken huge amounts of money out of savings institutions, but Mr. Regan is reshaping Merrill Lynch and this was within his prerogatives. He also wants to reshape the financial structure of this country, and I say to you that as he does this, you should be aware of what he wants to do and what's going to happen to the people who form your customer base. Because if Mr. Regan's program is adopted—and he's not the only one who wants to adopt it—then we are going to say to an entire generation of Americans, perhaps the largest generation, the baby-boom generation of the fifties, that there is no house for you as there was for your parents. To afford a home today is impossible for somebody who doesn't have a home to sell. Even those of us who have a house and have been in it for a while know that to move up to something that might be a little bigger would require a mortgage cost that our incomes can't support. Anybody who hasn't already entered the housing market today can't enter.

We've already seen signs of doubling up. Anybody who charts the average life of a mortgage is seeing extensions. A few years ago, the average life of a conventional mortgage was 7½ to 8 years in California; now we've passed the 10-year mark by most observers' guesses.

What else has happened lately? Yesterday, the Depository Institution's Deregulation Committee met. Congress created the Depository's Deregulation Committee a year ago. Its job was to give the saver a fair break and to effect changes in the way savings earn interest in this country over time so as not to damage the integrity of any segment of the financial industry.

That's what Congress wanted the committee to do. So the first thing the committee did was to do away with the differential enjoyed by thrift institutions; in that way, the committee figured it wouldn't damage anybody. Of course, as you all know, the differential on money market certificates had enabled thrift institutions to bring two-thirds of all the money market certificate deposits in, and that helped housing. Now thrift institutions get less than a third of money market certificate deposits.

Yesterday Mr. Regan, the same Secretary of the Treasury who wants to restructure the financial industry, suggested to the committee, of which he is chairman, that it raise the rate on passbook savings by a point and a half, 150 basis points.

The committee fortunately, and surprisingly, voted that down. It voted 3 to 2 not to accept that suggestion. Then it voted 3 to 2 to accept an increase in passbook savings of half a point, 50 basis points, and most of the votes on the Depository Institution's Deregulation Committee up until yesterday were by a vote of 4 to 1. The Secretary of the Treasury and the chairmen of the Federal Reserve Board, the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, and the National Credit Union Administration belong to that committee. Until yesterday, the only votes against increases in rates had come from the Federal Home Loan Bank Board—a solitary voice against these rapid changes in interest rates.

Yesterday Dick Pratt had an ally, and that ally, surprisingly, was Paul Volcker, chairman of the Federal Reserve. Now Mr. Volcker's reasons for voting against increases in passbook rates have not yet been revealed, but yesterday's action almost rates as idiotic, because as most of you know, anyone who keeps money in a passbook account today in a thrift institution does so only for convenience. Nobody is looking for rates in a passbook account today. Nobody's had money in an account at 5½ percent when he could go out and get 16, 17, or 18 percent in order for that money to bring in earnings. That money is there for convenience; it's usually household money.

So the difference to the average account holder is minimal. What the committee has done to the saver is going to be unnoticeable, but what it's done to the thrift industry with this one stroke is going to hurt even more. At least half the benefit of the All-Savers Certificate profits will be eaten up by yesterday's action of half a point increase in savings rates on passbook accounts. There will be at least a half billion dollars in extra cost to S&Ls in one year, and you know what that's going to mean in terms of getting these same S&Ls back in the mortgage market where they'll be generating business for your industry.

I think that you and others in the mortgage service industry, the people whose incomes depend upon the housing industry of this country, have to add your voice in Congress and at the regulatory level to those of the builders and the realtors and the thrifts and say that it's time that housing in this country regained its priorities.

Let's look at the kind of evolution that Mr. Regan and others want for the thrift industry. They want commercial lending powers; they want interstate banking. We got a taste of interstate banking over the Labor Day weekend when two failing institutions were merged into a healthy institution in California. No one can argue with that kind of action. It saved the FSLIC three-quarters of a billion dollars. It made a lot of sense. It restored public confidence in the industry.

With that kind of scenario, nobody can argue, but if Citizens Savings can operate in Miami and in New York, Citicorp will be able to operate in San Francisco and in Miami. The Continental Illinois Bank of Chicago will be in New York very soon, and the Bank of America will be in your backyard competing with your customers and further concentrating the financial resources of this country.

Now that may be a good idea, but I don't think it should come by the stroke of a pen from a regulator. It's got to come as a result of a national debate on what kind of financial structure we really want.

I'm a long-time believer in local control of credit. I think local business, local housing, and local people do better, and local economies do better when the guys who run the bank and who run the S&L live in town. When decisions are made by committees thousands of miles away, I don't think the local interests are going to be as well protected.

We're so busy keeping up with daily events in the financial markets today, with what's happening with interest rates day in and day out, that we lose sight of some of the things that are being put in place that are really dangerous and difficult.

Look at New York State: The New York State Superintendent of Banks has been before five different state legislatures during the past several months campaigning for those states to introduce reciprocal legislation allowing banks and other states to come in, as long as they allow the home-state bank, the branch in their area.

He hasn't been able to pass the same bill in New York State for 10 years, but he's out selling it in other areas of the country. But if that happens in Illinois—he made a presentation in Illinois last week—and if it happens in California and in Texas, we're going to have interstate banking by default, again without the benefit of a public debate.

In the S&L industry, your customers, we see signs of ways in which your customers are going to be even bigger competitors in your business unless we discuss the issues and unless the change is made in a rational way.

Last week the Congress held some hearings on what is called controlled business. For those of you who are ALTA members, I want to tell you how hard the people in your Washington office have worked on this issue over the years and how difficult it was for them to take such a complicated subject and convince people on the Hill that this has to be looked at and is a source of major concern to businessmen around this country. I think your Washington people really deserve your thanks for how much good they've been able to do for you on this issue, but let's look at a couple of things that have happened in the past month that will affect the controlled business question without any discussion by the Congress.

The Federal Home Loan Bank Board approved a national service corporation for savings and loan associations to be run by the people who run what is now called the Pennsylvania Mortgage Insurance Company, which is changing its name to PAMICO. It's a mortgage insurance company owned by some Pennsylvania S&Ls. In the past several years, it's sold stock in the mortgage insurance company to S&Ls in Texas and California, and in some states in the East—I think Virginia is one—and this mortgage insurance affiliate has been expanding into other states under ownership of S&Ls. Now it's going to be a national service corporation, and its powers will be limited only to what other service corporations can do. I can be certain that underwriting and selling title insurance is something that's going to appeal to it. It's going to be owned by big, strong, capable S&Ls.

About a month ago in Washington, the Perpetual Savings and Loan Association of Washington and the Coast Federal Savings of Sarasota announced they were going to get into the stock brokerage business, and that's a way of generating fee income. They're going to sell stock across the counter to their savings customers, and they're going to be competitors for the discount brokers across this country. That's a good business; it doesn't bother you; it shouldn't bother you, except if S&Ls can put together combines to sell stock, why can't they put together combines to sell title insurance?

So as you fight the battle of controlled business on the Hill, you've got to look closely at the question of other ways in which your customers are becoming your competitors and are being encouraged at the federal level to become your competitors. I don't think savings and loan associations belong in the title insurance industry, because we should have competition for every piece of that business; if the lender can tell you where to go, the lender controls the price.

Whether S&Ls belong in the business, they certainly don't belong without public debate, and that's the point I'm trying to get across. We are seeing the financial industry in this country change without any debate. We are seeing a revolution that is changing your business and the S&L business.

Do we really want to see savings and loan associations run like commercial banks? I listened to a talk at a mutual savings bank conference last week by Jim Coles. Jim used to be president of the Federal Home Loan Bank of Little Rock, and today he runs a savings association in Houston, Texas, that is well managed and creative. He said, "The commercial banking industry is not infinitely expandable. There isn't enough business there for everybody who thinks he wants to go into it." I think if the savings and loans find themselves in the commercial lending business, in the travel business, or in other businesses, they're going to get their brains beat out! Pure and simple!

But today they are being encouraged to look away from housing to other areas. They are being asked to look away from housing because it's their preservation, and, of course, one can't blame them and one can't blame the people who say, "Turn your back on housing," because who can make mortgages when rates are 19 and 18 percent for the money they have to borrow?

But the demand for housing in this country during the eighties is going to be so enormous; the opportunity for housing in the eighties is unlimited, and I think the traditional mortgage lender is being asked to leave the industry at a time when it finally makes sense. The ability to match maturities on their loans—I picked up off the table here an item about a rider that you're adding to your policies on variable rate mortgages.

This business is responding to the changes in the mortgage business in an intelligent and forward-looking manner. But, unfortunately, in Washington and elsewhere, we hear there's no room for S&Ls and other thrifts to be tied to housing. The chairman of the Federal Home Loan Bank Board said he didn't want to see the thrift industry as the handmaiden of any other industry, and yet the charter of the thrift industry has been housing, and unless the thrift industry remains in housing, you're going to see your kids and my kids with no place to live. They're going to be doubling up with Mom and Dad; they're going to be crowded into places that are not what the American dream really promised them.

We're not talking now about poverty families; we're not talking about underprivileged people; we're not talking about lower income people. I'm talking about the kid who goes to school, gets his degree, goes into business, and earns a good living. Today if a young couple make $50,000 a year, they can barely afford a three-bedroom or two-bedroom condo or a three-bedroom house. Most of them can't afford it.

I own a house in New York that I bought last year. To afford the payments on that house, the minimum I would have to earn would be almost one and a half times the national average. We see more and more lenders giving 35 and 38 percent for mortgage as a ratio of income. There's an S&L here in Colorado Springs that last year began a program under which it will lend somebody money on a mortgage and he can pay it back with up to 50 percent of his gross income. Now I don't know how that guy eats if he pays 50 percent of his gross income for his mortgage. I don't think he eats very well—I know that—and yet we see signs of this kind of strain.

We see balloon mortgages; balloon mortgages to me means the 1920s. The adjustable rate mortgage, the variable rate mortgage, the graduated payment mortgage, all of these mortgages have been made with a 25- and 30-year term. They all require the lender to renew. The balloon mortgage is a 5-year mortgage due and payable, and I don't want to bring back 50-year-old scare stories. Many people in this room remember more about the depression than I do. I don't remember very much about it; I only know what I read about it.

But I do know that five-year mortgages have to mean foreclosures. An article in the *Wall Street Journal* talks about people who made second mortgages two, three, and four years ago and are going to have to "pay the piper" in the next year. They made those mortgages at 13 percent or at 15 percent, and they were told, "Interest rates are coming down. Don't worry, when this second mortgage expires, you'll be able to refinance and get a full mortgage at 10 or 11 percent." Like hell they will! They're going to have to refinance those seconds at 22 and 23 and 24 percent, and most of them won't be able to afford it, because incomes haven't kept pace.

I don't think that this country is going to let an entire generation go without proper shelter. I just cannot believe it! Our traditions, what we think of ourselves, say to me that housing will remain important. Congress says housing is important, but Congress said 75 percent of the money that goes into All-Savers Certificates has to go into housing. Not a nickel!

FNMA has a new one-year note. FMCA has a new one-year note. The chairman of the Federal Home Loan Bank Board is telling S&Ls, "Buy a GNMA for spot delivery today, and then sell a GNMA one year down the road and match your maturities." That's a nice business, but it's not going to build one house, not one!

There may be some S&Ls in this country that will take that All-Savers money at 12.6 and try to make some 14 and 15 percent mortgages with it, but 14 and 15 percent aren't enough! We've got to have 12½ and 13 percent mortgage money maximum in this country, because at 13 percent most buyers can be qualified.

I think that it takes groups like ALTA, working through an experienced Washington staff, working individually back home talking to congressmen, and talking to state legislators who've got to impress upon Congress that housing has to remain a priority. You've got to write legislation that says housing has to get its share of the money, but write it in such a way that it doesn't benefit stockbrokers or FNMA or FMCA. Write it in a way that it benefits home-buyers.

Yes, the All-Savers Certificate was supposed to help S&Ls. It was supposed to help home-buyers as well, and I think the Congress can be shown how. I think the Depository Institution's Deregulation Committee needs to be slowed down. It was given a six-year assignment to bring interest rates to savers up to what interest rates to borrowers are. It has done in a year 80 percent of what it was supposed to do in six years. The time has come to slow that down, to give the thrift industry and the housing industry a chance to catch their breath and to work toward meeting the needs of 43 million Americans who will reach home-buying age in the 1980s. We're not talking about sending money overseas. We're not talking about building neutron bombs. We're talking about building houses for Americans to live in, and unless that becomes a priority again in this country, we're going to have a generation that's going to be very angry at us. Yes, housing finance will be

"I think that you and others in the mortgage service industry . . . have to add your voice in Congress and at the regulatory level . . . and say that it's time that housing in this country regained its priorities."

headed for extinction, and it will take this business along with it, because unless people can close on mortgages, you can't do anything.

There are other things that S&Ls can invest in. There are other things that savings banks can do. The builders can go out and get work somewhere; I don't know what the hell they do, but you guys are stuck. You've got to have mortgages.

It's time that you joined in and made your voice heard. You represent every community in this country, and you can do that job and you can keep housing finance from going into extinction.

". . . the opportunity for housing in the eighties is unlimited, and I think the traditional mortgage lender is being asked to leave the industry at a time when it finally makes sense."

McKELVEY: It's not clear exactly who on the Fed staff in his right mind would come to talk to a housing group on the subject of monetary policy in housing, when mortgage rates are 18¼ percent on a national average and housing starts have just fallen below a million units.

But here I am, and when people back at the Fed asked me why I'm doing this, I said, "Well, in a couple of weeks I have to give a presentation to the Board itself, and if I can get through this, I can probably get through that!"

I'm going to be fairly brief in my comments so that we can open the floor to discussion. Basically what I want to do is confine my remarks to three basic subjects. First, I want to discuss the current housing contraction and say a bit about its dimensions and something more about its causes. Second, I want to talk about monetary policy, what the basic approach in that policy is, what our recent experience has been, and how monetary policy interacts with fiscal policy and private credit demands in ways that affect housing. Third, I want to spend some time discussing the changing relationships between financial conditions and housing transactions. I want to highlight certain events that have taken place in the structural and regulatory areas and then talk about the adaptations that we currently are seeing in the housing market.

I don't think I have to spend much time convincing you that housing is in really bad shape. In fact, Stan Strachan has done a noble job in that respect and has already uncovered some of the issues that we'll want to talk about.

Let me just remind you very briefly about what's going on, so that I can then talk a little more extensively about the causes. Housing starts have fallen from 2 million units in 1978, the most recent peak, to 1.3 million last year and about a million now. As you know, last Thursday the Commerce Department announced that this rate had fallen still further to 937,000 units. It's been a rather striking slide. Permits, which are also at very low levels, don't suggest an early turnaround unless something dramatic happens fairly soon.

Sales of existing homes are down one-third from their 1978 level, and sales of new homes are at their second lowest level in the decade.

On the price side, we find that the increases in prices, both for new and existing homes, have slowed noticeably, from 19 percent in 1978 for existing units down to a 9½ percent annual rate of increase in the most recent 12 months. On new units the story is very similar.

In fact, if one takes adjustments for the creative financing techniques that we will talk about a little bit later, and the effects that those have had on the actual receipts to home sellers, I think that you will find that the story is even more dramatic.

It may surprise you, however, to find that in terms of the length of time that this contraction has been going on, to date the contraction is just about the same length as the one that occurred from late 1972 to early 1975. In fact, the depth of the trough as measured by the housing starts is really not quite so bad as it was in 1975, when we had three straight quarters of a million unit starts.

We really haven't had that low for as long a period yet, but, of course, as I indicated in the discussion of starts, the real question is, When is this going to turn around? We know when it turned around the last time, but we don't know exactly when it's going to turn around this time.

Well, that's my picture of the current situation. What's behind it? Well, I think it would not surprise most of you to list as the first basic reason the dramatic increase that has occurred in the purchase and carrying costs of homes. Monthly payments are up 175 percent in the last five years, and these have far outstripped growth in disposable income, which, in fact, has not been increasing very much during the last two or three years.

So in terms of the proportion of household expenditures that are going for housing, or that have to go for housing to maintain some quality standard, clearly we're talking about a very strong impact on household budgets, at the same time that rapidly rising energy costs have put still another crimp in household budgets for basic necessities.

Now what's behind these monthly payments? Certainly, interest-rate costs have been a significant factor, but it may surprise you to find that the movement in house prices has had a somewhat greater effect on average monthly mortgage payments. If you take a standard mortgage now and compare it to one 5 or 10 years ago, look at the part attributable to rate increases and the part attributable to price increases, you will find that the effect of the price increases is greater—not much, but some—because house prices have been rising consistently more rapidly than prices in general.

Indeed, if you look at the Consumer Price Index and compare the house-purchase component of that index—this is the part that excludes the interest rates—you find that that portion of the index has, for a period of about four years, been steadily expanding at one or two percentage points faster than the overall index. I don't have to remind you how fast that's been going up!

This leads me to the second underlying cause of the current housing downturn. This is the diminution of the investment motive for home purchase that goes along with the proposition that you cannot sustain for a long time an increase in the price of a single commodity, in this case housing, that is escalating more rapidly than the General Price Index.

For a number of years we have been used to very rapid increases in home prices, which in the late 1970s were a major factor in determining not only the demand for housing in terms of the number of people who wanted to buy a house but also the amount of house that these people wanted to buy. People were buying houses as investments as well as for places to live. This practice has started to slow. As price increases have proved unsustainable, people have dropped back in terms of the amount of house that they demand.

The dwindling supply of mortgage credit can be cited as a third cause underlying this downturn. You may be surprised to hear me mention that as third instead of as first. That is because during the last few years, until early 1981, the flow of mortgage credit through the thrift institutions to the housing market was holding up remarkably well in view of the kinds of rate increases we were having.

This year is a different story. Since January 1981, deposit flows into thrift institutions have essentially been flat; that is, withdrawals have been depleting accounts about as fast as deposits and interest crediting have been augmenting them. In terms of the resources available to the thrift institutions to make mortgage loans, the big slowdown has come this year, and, of course, it's had a profound effect.

Finally, there are a number of different effects that the overall price situation has on housing, and these interact as well with interest rates. What do I mean? Well, high financing costs that are the product of both inflation and interest rates are certainly limiting the amount of construction on speculation. These higher financing charges are translating into higher costs on permanent loans.

Inflation has added uncertainty to projects that are developed over long periods of time. We find that when prices increase more rapidly, the information in the price structure is less trustworthy. People have less of an idea of

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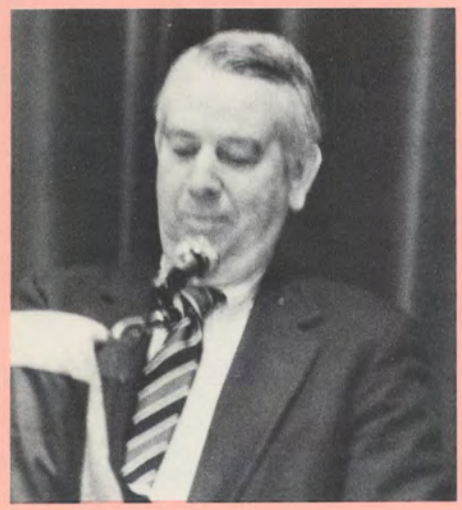
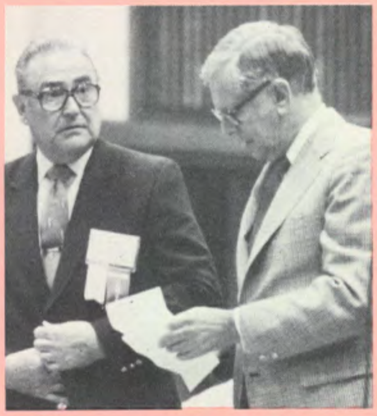
President's Report

by James L. Boren Jr.





About six weeks ago, we were very hopeful that 700 people would attend this convention. Yesterday afternoon, the count was 841 and rising. I'm not sure what that means, but I know certainly a part of it means that we picked the right place to have the convention. I hope that an even more important part of it is that there are many people in our industry who realize that much is going on and they need to know what is going on and be a part of it.

During the closing general session of the 1981 Mid-Winter Meeting at the Homestead, I attempted to update you on those things that had occurred since the previous annual convention.

Now it's time to update again. I'll try to do that without duplicating more than is necessary those things that you will hear from Bill McAuliffe and from other people.

At that Mid-Winter Meeting, the Executive Committee appointed a special task force chaired by Jim Tyson of Chicago Title to develop an ALTA version of a model title insurance rates standard section. Less than a month after that meeting, the Executive Committee met with Jim and with other members of the task force and approved an ALTA version of a rate standard section, directed the task force to present that to the NAIC Title Insurance Task Force, and empowered our task force to negotiate on behalf of the industry with the NAIC.

Two days ago you heard Wayne Wilson, a Nevada regulator, comment on, among other things, ALTA's approach to the NAIC Title Insurance Task Force's effort to develop a model rate standard section. Wayne Wilson was asked to address this convention for one purpose—to bring to the attention of many of our members the serious problems that we face in dealing with at least some of our regulators—and without question, based on the comments since that time, the purpose was achieved.

Therefore, we have modified slightly today's program so that there will be presented an appendix to the Wilson remarks, an appendix that has been prepared by the outgoing chairman of our Liaison Committee with the National Association of Insurance Commissioners, Erich Everbach. Erich will speak during the general session limited to active members. He will speak following the presentation of the report of the chairman of the Finance Committee. I know that you'll want to attend to hear Erich's remarks.

I hope that you all will be here until noon on Wednesday, when our new officers are installed. We're going to ask these officers to do a great deal for us in the next year, and I think we should help them by being here to show them our support.

As a result of an investigation conducted by some of our members, ALTA discovered that the NAIC has been having difficulty in collecting the data on which it produces its various analyses of the title insurance industry. Partly as a consequence of that difficulty, ALTA member companies have been experiencing rather high filing fees. In an effort both to increase the effectiveness of the NAIC effort and to decrease the filing fees paid by our members, your Executive Committee last Sunday agreed to propose to the NAIC that ALTA provide NAIC with a data base, underwriter by underwriter, in exchange for a lowering of the filing fees. If the plan is acceptable to NAIC, the only cost to our association will be copying and mailing, because the information has already been collected and distributed to our members.

Marvin Bowling, chairman of the Title Insurance Forms Committee, appeared before the Executive Committee on Sunday to update it on the action of the Forms Committee and to seek the approval, which he received, for the work that the Forms Committee is doing.

The Forms Committee proposes, after some study, to suggest no further amendments to ALTA Endorsement Form 6. During the general session limited to active members today, however, the Forms Committee will submit a suggested amendment to Endorsement Form 6.1. These forms, of course, are those dealing with variable-rate mortgages.

The Forms Committee also proposes to develop, primarily at the request of FNMA, a manufactured housing endorsement form, which it hopes will be ready for submission to the membership at the Mid-Winter Meeting in Las Vegas.

The Forms Committee is working on a plain-language commitment form.

The need for regulations by state insurance commissioners of escrow accounts, the so-called good-funds problem, with which we all must deal, was discussed by the Executive Committee on Sunday, and the matter was referred to our Liaison Committee with the NAIC with the direction that that committee study the matter and come back to the Executive Committee with its evaluation and any recommendations it may have.

In July 1981, the American Subcontractors Association approached ALTA about the possibility of establishing liaison between the two groups. The specific objective of the discussions is the possible role of title companies in helping the subcontractors in the timely collection of their bills. During the Executive Committee meeting, there was also some discussion of the possible reciprocation on the part of the subcontractors in helping the title industry manage its lien claims. The Executive Committee agreed that a small committee, probably one staff person and two members, would meet with the subcontractors to evaluate the possible benefits of a continuing liaison.

The Executive Committee recommended to the Board of Governors, and the Board of Governors approved, several actions regarding future conferences and conventions. The registration fees for the 1981 Mid-Winter Meeting at Caesars Palace in Las Vegas, on March 10–12, were set at $60 for members and their spouses and dependents and at $160 for nonmembers, as is the practice that is projected as the break-even point (we attempt neither to lose money nor to make money on our conventions and meetings).

The 1985 Annual Convention will be held October 6–9 at the Hyatt Regency, San Antonio, Texas. Selection of a site for the 1986 Mid-Winter Meeting, tentatively scheduled for Washington, D.C., will be deferred until ALTA Vice President—Administration David McLaughlin has an opportunity to fully investigate hotel availabilities in Washington.

The 1986 Annual Convention will be held September 28–October 1. The first choice is the Century Plaza in Los Angeles; however, we have only a second option on those facilities at this time, and so a second choice has been designated—the Washington Plaza in Seattle, Washington.

On Monday, the Board of Governors approved the application for affiliation with ALTA of the Virginia Land Title Association. The VLTA has not been an affiliate of ALTA for this reason: Our bylaws preclude the representation of the same area by more than one group, and the District of Columbia and Metropolitan Area Land Title Association has included northern Virginia in the past. That association has now ceded northern Virginia to the ALTA so that this affiliation is possible.

Some other reports were made to the Board of Governors on Monday afternoon. There are several items that I think merit pointing out. In keeping with the growing areas of activity of ALTA and the need for involvement of more of our members, both of our sections are becoming increasingly active, particularly in putting to work and making meaningful the jobs of the members of the Section Executive Committees.

A particular note, I think, is the fact that the Abstracters and Title Insurance Agents' Section has decided to launch a strong effort to bring more abstracters and more title insurance agents into the membership of ALTA. This is something that is needed; this is something that you and I can involve ourselves in.

The Land Title Institute, which was as you recall donated to ALTA by its founder and director, Honorary Member Hart McKillop, is moving forward very well. The president reports that it now has 544 enrollees, and it anticipates increasing that number, improving its program, and returning to ALTA the funds advanced in just a few more months.

We ask that all our members be alert to the possibilities of improving programs to make this

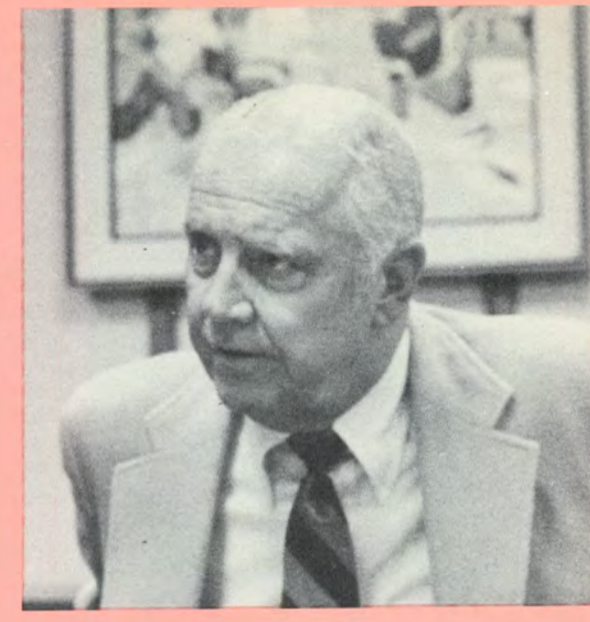
institute serve the industry as it was intended to do. It's our institute, and again we have an opportunity to help.

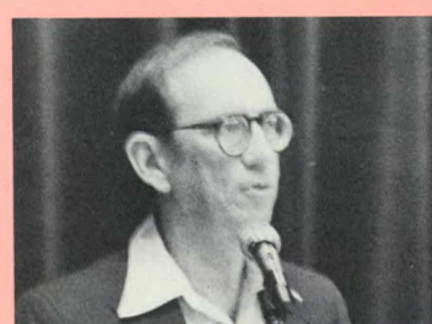
During this past year, the ALTA Government Affairs Committee, the Executive Committee, the staff, and the office of the general counsel have spent untold amounts of time and effort in dealing with what I have regarded, and what I certainly believe others regard based on my travels around the country, as the primary problem in our industry today—controlled business. Monday, Tom Finley delved into this considerably. He explained how the efforts with which we have been involved led us to two days of hearings before the House Housing Subcommittee. I would not say that is the culmination of our efforts; I would simply say that that has been the high point of our efforts to date.

I do want to add one or two comments to what Tom said. As president of this association, of necessity I was involved in both those hearings and the preparation for those hearings. One could not have been so involved without being very impressed with the job done by our staff and by the office of our general counsel in preparing not only our witnesses for their part in the hearing but also the members of the subcommittee and the staff of the subcommittee to understand what we were talking about.

I think the hearings and our getting them have made very clear the fact that although we are a small trade association, we make up in quality what we lack in quantity. Remember that it was just two and a half years ago at the Mid-Winter Meeting in New Orleans that this association adopted the policy that, henceforth, it would oppose controlled business in all its forms. Just last week, Tuesday and Wednesday, a congressional subcommittee devoted two days of hearings on that problem; our industry was accorded good time. Three federal agencies were involved; major national trade associations were involved. Questions from subcommittee members made it very evident that they had learned from us that controlled business is a problem. All of that has happened in only two and a half years; something for us to remember when we sometimes become impatient.

It should have been obvious to us from listening to Tom Finley and to Senator David Boren on Monday that ALTA is an effective association. It also should have been obvious to us from listening to Wayne Wilson on Monday that this association has a great many things with which it needs to be concerned, not controlled business alone. One would be very foolish at this point to predict unconditional ultimate success in any major effort that we have underway, but one would be even more foolish to give up without an attempt to succeed. We have proved that we have what it takes to fight the tough battles ahead. They're going to take determination on our part. They're going to require patience. They're going to require just plain guts, but, above all, they're going to require the involvement of you and me in both our time and our assets. I have no doubt that a year from now Fred Fromhold, when he makes his president's report, will be able to say to you that we have met those requirements.





Washington Report

by William J. McAuliffe Jr.
Executive Vice President,
ALTA

During the past year, the American Land Title Association has effectively met a wide variety of challenges—including controlled business, Indian claims, unauthorized practice of law, NAIC, research, public opinion, new forms, and model and uniform laws. These very different activities make up the fabric of an exceedingly busy association.

ALTA is fortunate that its members take an active role in addressing these problems—and that it has a seasoned and competent professional staff who team up with outside professionals to tackle problems.

Government affairs, in particular the problem of controlled business, remain a priority matter. Many members of the association have come to Washington and have joined with Mark E. Winter, vice president—government relations, who has been with the association for five and a half years, in alerting their congressmen to the industry's concern about the growing controlled business problem. Selected member title insurance agents also have responded to the association's request to meet in Washington and give us their views on a controlled business statute being drafted by our counsel. Last week, ALTA President James L. Boren Jr. and four title insurance agents appeared before the House Subcommittee on Housing and Community Development to describe the evils of controlled business and the need for comprehensive legislation to address this problem. Their presentations were aided by assistance from ALTA staff and the association's general counsel. The chairman of the House subcommittee, Rep. Henry B. Gonzalez (D-Texas), stated that his committee very much appreciated these title insurance agents journeying from across the country—from California, Montana, Illinois, and New York—to give their views on the impact of controlled business.

The association's public relations program continues to achieve exceptional results in keeping public opinion favorable for our industry. Again this year, ALTA has emphasized the importance of land title services before an ever-changing national audience of millions through our cost-effective public relations program. Public opinion research has shown that 57 percent of Americans understand the basic function of title insurance—and that our industry generally enjoys favorable public awareness. Our public relations program contributes substantially to this positive public attitude.

Members of the Public Relations Committee and staff remain hard at work to preserve this favorable awareness in order to secure benefits, including an informed public, when the market recovers and to counter misinformation from media attacks that can occur at any time. Examples of successful communications activity in 1981 include continuation of the award-winning Sgt. Braxton and "Home Buyer Alert" radio public service series, which are written and produced at the staff level by Gary L. Garrity, a 13-year veteran of the association. Both series have been aired nationwide by more than 3,000 radio stations, including those affiliated with the Mutual Broadcasting System and the Associated Press Radio Network—all in free air time for which ALTA makes no payment.

In the past year, the association's research activities have increased significantly. The association has started to publish and distribute to participating underwriters selected financial figures from our NAIC Form 9 study. This project will probably reduce the industry-wide duplication of effort that existed heretofore, as many underwriters were collecting these data themselves.

Using Schedule "T" of the NAIC Form 9, the ALTA Research Department this year published and distributed individual underwriter market share information on a state-by-state basis.

Also beginning this year, the department has taken over the job of compiling, publishing, and distributing selected quarterly financial data of participating member underwriters.

The Research Committee has recently decided on the data elements that should be contained in a new ALTA study of title insurance losses.

The Research Committee has begun the initial work on drawing up plans for an annual title industry fact book.

Working with the ALTA Organization and Claims Committee, our Research Department is assembling an annual loss study for abstracters and agents. It is planned that the first study will be for spring 1982.

To handle this activity, the association has turned to the computer. We have a computer time-sharing agreement with Boeing Computer Services and have just purchased an IBM microcomputer.

The people responsible for all this include an experienced Research Committee and Richard McCarthy, director of research, who has been with the association for six years.

Bar associations continue to try to suppress competition from title companies through unauthorized practice of law opinions and complaints.

The American Land Title Association is involved in unauthorized practice of law disputes in Virginia and Alabama.

In Virginia, in June 1981, ALTA, through counsel, appeared before the Virginia State Bar Association's governing board to present its view on proposed unauthorized practice of law opinions. It has taken the Virginia State Bar's Unauthorized Practice Committee three years to develop these opinions. The American Land Title Association had previously appeared before that committee many times.

Despite considerable opposition from the Virginia Bar Real Property Section and many Virginia attorneys, I am pleased to report that the latest Virginia opinions conform with settlement principles advocated by the ALTA—with one exception. That exception is that title companies in real estate transactions would still not be allowed to fill in blanks in statutory instruments or documents prepared by attorneys. We have submitted a brief to the Virginia Supreme Court urging, in part, that the opinions be amended to allow companies to do this.

In Alabama, the association has assisted the Coffee County Abstract and Title Company in its disputes with local attorneys involving an unauthorized practice of law suit by the Alabama Bar Association against this title company and in antitrust suits filed by the title company against individual attorneys, law firms, and the local bar association. The unauthorized practice of law suit has been tried, but no decision has been rendered. The antitrust suits may go to trial this year.

The association's business affairs are handled by David McLaughlin, vice president—administration. He has been with ALTA for 13 years. He makes the arangements for association meetings such as this one. Working with our treasurer, he handles the association's income and disbursements. In 1981, we expect the association to spend $1.5 million. TIPAC income and disbursements are also managed by him.

The association's magazine, *Title News*, has been upgraded substantially in recent years. This summer, our former editor, Maxine Stough, left after four and a half years to work for the State Department. We are fortunate to have Maureen Stotland, an experienced editor, as her replacement. She has been taking pictures for us at this meeting. As always, *Title News* welcomes articles and article ideas from members.

In addition, I am very pleased with the work of the newest member of our staff, Karen Gregory, in handling a myriad of administrative assignments with impressive efficiency. Karen is working at the registration desk at this convention, and I am sure many of you have already met her.

This year, as the challenges remain great, ALTA once again is proving to be among the most effective national associations, as we take continuing action on behalf of our members. Our achievements are admirable because the leadership of the title industry continues to join with a high-performance staff and excellent outside professionals in confronting various problems with critical implications for us all.

The battle has been joined and the stakes are high—preservation of title evidencing as a private, independent, financially sound, and competitive undertaking.

With your continued involvement and support, we shall prevail.

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New Tax Bill—
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required for fiscal years that have ended in early 1981 if there were any additions after December 31, 1980, to the depreciable property accounts.

Only property placed in service after December 31, 1980, is eligible for ACRS. You must continue to depreciate pre-1981 property under the old useful-life depreciation system. So for a while you're going to have to maintain two sets of depreciation records.

Equipment, such as computers, is classified as five-year property under the ACRS system. It cannot be depreciated over a shorter period, even if you could prove that a given piece of equipment has a shorter life in your business. But you may elect a straight-line recovery over 12 or 25 years instead of 5 years if you cannot use the larger deductions. For marginally profitable companies or companies that are incurring losses, electing the longer recovery periods, of course, makes sense.

If you don't elect those longer recovery periods, for property placed in service in 1981–84, you get 150 percent declining balance with a switch to straight line. For property placed in service in 1985, it goes up to a 175 percent declining balance with a switch to sum-of-the-year's digits. For property placed in service in 1986 and thereafter, you get a 200 percent declining balance with a switch to sum-of-the-year's digits.

Upon disposition of the equipment at a gain, all the gain will be taxed as ordinary income to the extent of the prior recovery allowance deductions. That's essentially the same depreciation recapture rule that we have at present.

Corresponding changes were made in the investment tax credit rules. For five-year property, you have a 10 percent credit rate, which applies to ACRS property placed in service after December 31, 1980. There's no recapture of the investment tax credit if the five-year property is held for at least five years.

A zinger that was thrown in but may not be a present concern to your industry is that the Treasury Department increased the amount of estimated tax payments that large corporations must make. By 1984, corporations with taxable income in excess of $1 million must make quarterly estimated tax payments totaling at least 80 percent of the tax due for the year, or face penalties. This requirement is going to be phased in; it starts at 60 percent in 1981 and phases in at 65 percent in 1982, 75 percent in 1983, and 80 percent in 1984.

The penalties for underpayment, under the new act, are adjusted annually to 100 percent of prime, so we're looking at a possible underpayment penalty in the neighborhood of 20 percent in early 1982, which will then be the penalty rate for the entire year. These provisions, taken together, place a premium on estimated tax planning for large corporations.

There are some other provisions that I should note with respect to net operating loss and tax credit carryovers. The carryover period has been extended from the existing 7 years to 15 years. So if you are sustaining losses, at least you'll have a better chance of using them in the future when things turn around.

With respect to smaller corporations, the accumulated-earnings credit has been increased from $150,000 to $250,000. Smaller corporations are also being given the right to expense certain personal property capital additions, so long as the property qualifies as cost recovery property. In 1982–83, a corporation can write off current expenditures up to $5,000 of new cost recovery property. In 1984–85, it goes to $7,500, and after 1985 you will be able to currently expense up to $10,000 of cost recovery property. For smaller corporations, this change will help clean up depreciation schedules and simplify accounting. If you do elect to currently expense your cost recovery property under these provisions, however, you will not be entitled to investment tax credit on the property that you expense, and you will have to recapture the expensed amount as ordinary income to the extent you dispose of the property at a gain.

One last matter that might interest some of you is the corporate charitable contribution limit. In case any of you have been making corporate charitable contributions and haven't been able to give away enough, the allowable amount has been increased from 5 percent of taxable income to 10 percent of taxable income beginning after December 31, 1981.

Let me talk briefly about equipment leasing. One of the really helpful parts of the new act is in the area of sale-leasebacks or leveraged leasing. The idea was to allow profitable companies to take advantage of the tax benefits under the ACRS system and at the same time help companies sustaining losses obtain their capital equipment at reduced costs. Under the new act, safe harbors are provided for classifying what under existing law before the new act would be treated as a sale or financing transaction rather than a lease.

If property is transferring from one taxpayer to another in a sale transaction, then, of course, the seller doesn't have the investment tax credit or depreciation because he doesn't own the property anymore. The buyer gets those benefits, and if the buyer happens to be Chrysler Motor Company, it can't use them.

So with that in mind, Congress said, "We will let you classify transactions as leases no matter what, if they satisfy certain reasonably simple safe-harbor tests." Then the profitable company, even though it has essentially sold the property to, say, Chrysler, can retain the investment tax credit and the depreciation benefits.

The "lease" can be nonrecourse so that, except for a 10 percent at-risk amount, there is no recourse liability. The profitable company, that is, the lessor in this transaction, must maintain 10 percent at risk during the entire lease period. But that amount could be offset by a "put" at the end of the lease, whereby the lessor can put the property to the lessee for an amount equal to the 10 percent that it had invested in the property. As long as the lessee is still solvent at the end of the lease period and can respond to the put, the lessor gets the investment back. Thus, the profitable company essentially has been at no risk during the period and has received a 10 percent investment tax credit at the front end, a depreciation deduction through the term of the lease, and at the same time been able to make a more attractive deal for the loss company because of the tax savings to the profitable company. Both parties benefit. I think we're going to see a great deal of these types of leasing transactions and sale-leasebacks taking place. If your company is profitable, you should consider establishing a leasing subsidiary and go into the leasing business. You can do it at no risk and enjoy some substantial tax benefits.

If you are a company sustaining losses, you should consider leasing, rather than purchasing, your capital equipment from a company that wants the tax benefits. Both parties should benefit through the transaction.

Just a quick word about individual rate reductions—the distinction between earned and unearned income has been eliminated. There's no longer such a thing as a 70 percent tax bracket; starting in 1982, the maximum bracket is 50 percent, which certainly is going to benefit the more wealthy taxpayers.

Furthermore, there are general rate reductions. For example, in 1981, a couple filing a joint return reaches the 50 percent bracket with $60,000 of taxable income. By 1984, the 50 percent threshold rises to $162,400 of taxable income. Beginning in 1985, brackets will be indexed based on the Consumer Price Index. These are definite benefits for the individual taxpayer.

A quick word about estate and gift taxes—terrific benefits have been given there. Unfortunately, you have to die to enjoy them. The unified credit will be phased into increased amounts translating into exemptions. We presently have an exemption of $175,625 for each person when he dies, which will be increased to $225,000 in 1982 and then phased up to $600,000 by 1987 and thereafter. So don't die before 1987. There's going to be an unlimited marital deduction commencing in January 1982, which means that property can pass from one spouse to the other entirely federal tax free. California already has the unlimited deduction; so starting in January 1982 in California there will no longer be any tax on property passing from one spouse to the other. The 70 percent maximum rate for federal gift and estate taxes is being phased down to 50 percent.

The annual gift tax exclusion will be increased beginning in January 1982 to $10,000 per year for an individual and $20,000 per year for a married couple, which means that it's going to be easier than it was to reduce the amount of a person's estate by making gifts to family members over a period of years. The previous level was $3,000 per year for an individual and $6,000 per year for a married couple.

In conclusion, I think it's fair to say that many parts of the new act have not yet demonstrated their worth as energizers of economic recovery. High interest rates are preventing the ACRS system from reviving the real estate construction industry and from spurring investment in plants and equipment.

The All-Savers Certificates will not, at least in the short run, cause mortgage rates to drop. You may have read in the *Wall Street Journal* that the electric utilities are complaining that the provisions of the act benefiting them the exemption from income on dividends reinvested in utility stocks are not giving them the benefit they hoped for because the amounts are not large enough. There are many complaints about and problems with the new act.

The tax-cut provisions and the rate reductions will operate as intended, but we all realize that absent further budget cuts, these rate reductions may be deferred or even rescinded, or may be rendered meaningless by runaway inflation or a deep recession. So the American taxpayer may find that his August Christmas present was only a tinsel-wrapped empty box.

Housing Finance—
from page 37

which prices are moving, how fast, and in which directions. This causes people to hold back from investing their capital in projects that will take a long time.

Rental rates have not increased as fast as the cost of building units for rental purposes, and in some areas rent control remains a prospect, and these are further factors behind the downturn.

Well, I don't mean to leave you with the impression that interest rates aren't a major factor in this scenario. They certainly are! Most of the various factors that I mentioned have as part of their explanation interest rates, and, of course, when everybody thinks about interest rates, the thought of monetary policy isn't far behind. So I thought I would tell you what I think is happening with monetary policy.

Let me remind you of the basic approach and underlying rationale of monetary policy. We have in this country a very rapid inflation rate. We have been sustaining that inflation rate for a period of several years now.

About two years ago, the Open Market Committee took action to try to bring more firmly under control the growth in the money supply and at the same time decided on a course of action that essentially was to reduce systematically the rate of growth in money. This was viewed as a preferred alternative to a sudden clampdown, which would have had sharp, distorting effects on product markets and would have led to a downturn in 1980 more severe than the one we had actually experienced.

What's been the experience with this policy? Events right now are very difficult to read, if you look at the statistics. The so-called narrow definition of money, M1B—adjusted to account for all the shifting of funds into NOW accounts and other transactional deposits—has been growing less than 2 percent at an annual rate, well under the 3½ to 6 percent rate of growth that was targeted last February.

You say, "Monetary policy is too restrictive," and indeed many are saying that, probably with good cause. On the other hand—as economists always have two hands—M2, which is a broader concept and includes most of the deposits at major depository institutions, is growing at the very upper bound of its 6 to 9 percent range.

Now that would suggest that, if anything, things were a little too loose. Why the discrepancy? Why are we so far up on one and so far down on the other? Well, I think the answer is that we have a great deal of financial innovation going on, and it is simply very difficult to know exactly how to measure these concepts of money. We have NOW accounts and other mixtures of transactions in savings vehicles. We have money market funds, which, I'm sure you are aware, have increased dramatically from about $75 billion at the end of 1980 to more than $150 billion now—doubling in less than a year.

We have most recently experienced this surge in so-called retail repurchase agreements. These are the instruments that have acquired so much notoriety through their linkage to the All-Savers Certificate, and they look to us to be very close to deposits in all their respects. The question is, "How do you measure that in money?" Just last week the Fed decided to put it into M3, which is even a broader concept of money. But as you can see, we're having difficulty discerning exactly what deposits belong where and therefore what movements in the various monetary aggregates mean.

Nevertheless, I think we can say one thing about monetary policy and interest rates that is useful to the discussion that will follow; that is, while monetary policy may in some respects be judged as too tight, interest rates and their current levels are not the product of monetary policy alone. To be sure, the Federal Reserve's supply of money, and indirectly its control of credit, are going to be having a restrictive effect on interest rates, which we have seen.

There are two sides to any market. This is the supply side. There's also a demand for credit, and the demand for credit is very strong at the present time.

Corporations have been financing quite a bit, most recently in short-term markets. But throughout the whole year, their financing demands have been exceptionally strong, even in spite of the current level of interest rates, and they're just looking for the opportunity to come into the long-term market when bond rates drop. In fact, several companies just this week have announced and sold offerings of corporate bonds, fulfilling plans that have been lying around for months just waiting for some decline in interest rates.

With respect to government financing, the financial markets have just recently expressed concern about the amount of Treasury borrow-

ing. This reflects the impacts of the tax law, and the budget cuts on the budget deficit, which, of course, will have to be financed through the financial markets.

I might also add that inflationary expectations play a role in interest rate determination. While the recent data on prices have been fairly encouraging, which might contribute to some decline in rates, we are still in a situation where I think most people distrust the price data until there has been more of a systematic reduction in the inflation rate. So lenders continue to add substantial inflation premiums to the amounts of money that they borrow, and borrowers are willing to pay these premiums because they feel that the purchasing power of what they're paying will be less in the long term.

Having tried to convince you that interest rates are not the product of monetary policy alone, I shall examine just how the relationship between monetary policy and housing and the financial environment in general has been changing. First I want to talk a bit about the structural and regulatory changes over the past few years. In the mid- to late 1970s, we saw a dramatic growth in the money market mutual fund industry. This industry had maybe $3 or $4 million as late as 1976 and early 1977, but as soon as interest rates went above the levels that depository institutions could pay, the money funds started growing very rapidly, as you well know.

In 1978, partially in response to that situation, the regulatory agencies instituted what has come to be known as the money market certificate. This, in my view, was a significant regulatory change, because it introduced for the first time flexibility in the amount of interest that these institutions could pay on their deposit accounts and allowed that interest rate to move with the market.

In a number of different areas, there were other removals or relaxations of restrictions on interest rates, notably usury laws in the various states. On the asset side of institutions' portfolios, we have had some liberalization of mortgage instruments. Outside the institutions, we've had considerable improvement in the secondary market for mortgages.

I think if you look at the various housing cycles that we have been through during the past 10 to 15 years, you will find that each one is characterized by more and more secondary market activity and supply of mortgage funds through nontraditional channels. As Stan Strachan mentioned, that's a matter that should receive attention and some debate as to whether it's useful and good and the kind of thing to encourage.

". . . If you look at the various housing cycles that we have been through during the past 10 to 15 years, you will find that each one is characterized by . . . secondary market activity and supply of mortgage funds through nontraditional channels."

For my purposes, I want to highlight these various changes as pieces in the puzzle that explain changes in the mortgage market; that is, most of them have had the effect of holding the amount of funds available in the mortgage market above what we probably would have seen had none of them occurred.

I hesitate to imagine what would have happened if we had had short-term rates in the 17 to 18 percent area with no money market certificates, with usury laws where they were before, and with the lack of a secondary market in mortgages.

I think that those regulatory changes that were undertaken in the late 1970s—and some changes were structural rather than regulatory—all have had the effect of making this market continue to function in ways that I don't believe we would have expected five years ago, given the kinds of interest rates we've seen.

Now we also see the market is adapting to the high-rate situation. How is it doing this? Well, there's been a variety of nonstandard mortgage instruments, and I think Stan mentioned most of them—the graduated payment, the variable rate mortgages, buy-downs by builders on mortgage transactions where the builder pays part of the initial cost of the mortgage. We don't really know how prevalent this is in quantitative terms, but we have reason to believe from the field reports that we have that there's quite a lot of activity in these innovative methods of financing.

We also have households adjusting in a variety of other ways. They're downgrading units that they buy. They're buying cheaper forms of housing, mobile homes, condominiums and cooperatives, instead of single-family houses. They're spending more on additions and alterations. Outlays for additions and alterations have been up more than a third between 1978 and 1980. There are a variety of ways that households are adapting to a situation in which the single-family house is, at least at present, out of the reach of more people than it has been in the last four or five years.

Now that's not to say that the situation is all very good. We have, for example, business failures in the construction industry up 160 percent since early 1978 in comparison to a much smaller increase in the previous cycle. Now many of these firms were undoubtedly the smaller builders, who were more dependent on their local markets for sales, subject to the vagaries of those markets. Their capital base is weaker, and their access to credit is more constrained. The Federal Reserve is involved at present in a study of the access of small business firms in general to credit.

Of course, nowhere do we see prospective earnings problems more clearly than we do in the thrift industry. Both the savings and loans and the mutual savings banks on an average lost money in the first half of 1981, and it does not appear that the situation will get better in the second half.

There have been highly publicized mergers. Perhaps we should take some comfort in that the mergers have been possible, but, nevertheless, it is a situation of grave concern that demands the attention of all the federal regulatory agencies.

I think that in spite of the adaptations that the housing and mortgage markets have been making, this sector will always be credit sensitive. I think that's because of the nature of the kinds of transactions involved.

We're talking about the sale of a long-lived asset, one that usually requires outside financing to complete the transaction, so that the credit conditions are very important in this industry. Sales are also postponable; people can live in an apartment a lot longer, or they can wait to buy that next house.

It's very difficult to measure whether the brunt of credit conditions has been borne by the housing industry as much this time around as it has in previous cycles. It's been traditional to think of the housing sector as the lever through which credit conditions restrict the economy. It's not so clear that that's true anymore, and I might say that in the kinds of correspondence that we receive about the conditions of firms in various sectors, we hear complaints about the effects of credit conditions on agriculture, on small business in general, and certainly on the auto industry.

My own belief is that with some of the adaptations that have occurred in the housing industry, the brunt is spread a little more evenly among other sectors, but that's of little comfort in a situation such as today's where there's a lot to spread around.

If I were to summarize my basic theme, I would say that we are looking at a situation in which an industry has been and is in the process of transformation and that that transformation is likely to continue. It's one that is going to make credit costs, as expressed by mortgage rates and by construction loan rates, more important in determining the flows of credit, and credit availability is going to be less important.

TOFT: Stan made the point that we, as an industry, and as individuals, need to speak out. I often wonder if the Fed's role is really understood by its various publics, and I wonder, Ed, what your thought is on that and what the most common misconceptions are as to the role of the Fed.

McKELVEY: I think we see a mixed picture. Certainly the kinds of correspondence we get, and we get quite a bit from various sectors, tend to be the less sympathetic kind of correspondence—You're doing this to us, and you're doing this and so on, but as I've talked to people here at this convention, as I've talked to the people elsewhere, I think the general objectives of Federal Reserve policy are better understood and sympathized with than one might otherwise believe.

STRACHAN: You talked about the trendlines in the various money supply measures, and I happened to see Mr. Volcker on a Sunday morning television program a couple of weeks ago, in which he brought along a chart. The chart showed the trendline for M1B with the 1½ to 2 percent annual increase and it showed what could have been the cardiogram of a long-distance runner with weekly changes. It seems to me that those weekly changes have created increased and, perhaps, unnecessary volatility in the financial markets and that the reactions of the financial markets to the weekly data may have increased your problems in terms of controlling the money supply and increased the impact of high rates on the economy in general.

I wonder if there are any thoughts about that, perhaps reducing the frequency of the data or trying to get the financial markets educated to the fact that they really even out over time.

McKELVEY: As a matter of fact, several months ago we put for public comment a series of proposals about reducing the frequency or smoothing in some fashion the weekly money supply figures.

I think you're right that those figures tend to have a much more profound impact on the markets for, at least, the next day or two than they probably should have. They contain a lot less information than the market wants to believe they do.

I don't believe the response to eliminating them, however, has been terribly supportive, and as far as I know, there are no plans to change the existing procedures. If we were simply to disguise the information, that would not do the trick. I mean there are lots of smart people on Wall Street as we can all see from the various things that have been happening, and I don't think they would be fooled if we produced moving averages or didn't seasonally adjust the numbers or something like that.

It does not necessarily follow that the publication of the money figures on such a frequent basis is a cause for high rates. It could be a cause for instability in rates from day to day, but I don't think it's a cause for higher rates than you might otherwise have.

I might mention one other thing and that is that I strongly suspect that if we eliminated the weekly publication of money supply, the market would find something else to focus on, given its natural appetite for a continuous flow of information.

TOFT: Ed, when we think about alternatives to the present situation, some form of credit controls comes to mind, and I'd like to have your perspective on the effectiveness of the measures taken in February or March 1980.

McKELVEY: Well, they certainly did have an effect. They exacerbated a downturn that was already in the making, and their removal in July may actually have bolstered the rebound in the early and late part of the summer.

The frustrating thing about the credit controls is that they had their effect in the areas that were supposed to be insulated. If you recall, the controls were supposed to exclude housing and auto-related activities. Credit extended for such purposes was included in the 6 to 9 percent bank credit limits, but exempted in some other respects.

Yet it seems fairly clear from the way events unfolded, certainly in the mortgage market, that lenders took the opportunity of the credit controls to raise interest rates and to tighten lending standards past what I think had been intended. As a result of the 1980 experience, I think it's safe to say that there's not much sympathy for credit controls within the walls of the Fed these days.

STRACHAN: In your comments you said that you were surprised at the resiliency of housing in terms of the money market certificate and other changes that have taken place in the last couple of years and that it has taken, perhaps, a stronger dose of monetary policy this time around to impact the housing market. Do you think that the advent of these changes, particularly the money market certificate, has made it necessary to go to a higher level of rates, and if we hadn't had the money market certificate we might have had a shorter, perhaps more painful, contraction much earlier and come out of it with a better system?

McKELVEY: The ability of thrifts to pay market yields may well have contributed to rate increases; however, I don't think that we would have seen in any case a cycle that would have been a replica of the 1974 or 1970 experiences.

The reason for that is basically twofold: One is that we had very sharp increases in energy prices going on and that caused a fillip to the rate of inflation that was translated into interest rates. In general, inflation expectations were more entrenched than before. Given these two factors, I think that we would have had a higher level of interest rates than would have been the case in previous cycles, though it may have been even higher by the money market certificates.

The thing I would point out though is that without the money market certificate, it's hard to imagine what would have happened to deposits at thrift institutions and commercial banks. Those accounts now are a significant fraction of depository liabilities. It's very difficult to imagine what would have happened if that money had instead gone to money market funds or some other market alternative.

TOFT: I wondered how the Fed can reconcile its tight money policy on one hand, that everyone faces, and on the other hand, we have a situation such as the Conoco acquisition that was going on and the billions of dollars of credit lines that were lined up by Dupont, Seagrams, and the others. What effect does that have on the rates that the mortgage seeker is encountering?

McKELVEY: My first response would be to say that if you judge the effects of the Conoco type of merger activity—there have been other large mergers besides Conoco—if you judge the effects of those from the statistics you read in the paper, I think you get a far overblown effect of what actually happens to bank credit.

Most of the figures that are cited there are loan commitments, many of which are competing offers that aren't taken down. Of course, quite a bit of the credit is coming from foreign banks rather than domestic banks. Ignoring these considerations, you would easily come to the conclusion that the effect is stronger than it really was. Nevertheless, there was an effect on bank credit in July and August because of the mergers. It may have contributed to slightly higher rates.

How any such effect would filter through the mortgage market is a very difficult analytical problem. You can probably assume that it would have had some effect, but it would be very difficult to say that it was an amount of so many quarters of a percentage point or something like that. It's very difficult to pin that one down.

STRACHAN: As you've probably gathered from my talk, I'm a believer in the political impact on the economy and the financial markets. I think it's a political process as well as an economic problem, and when the Congress went home for the summer they got yelled at, and a lot of them went back to Washington and started yelling at the Fed.

While everybody says that this kind of jawboning won't have a great deal of effect, right after it took place, we had the first downward trend in the bond market rates that we'd seen in six months.

How sensitive are Mr. Volcker and the rest of the members of the board to political pressure? How much consultation is going on right now between the makers of fiscal policy and the makers of monetary policy? Can we see any hope for greater coordination?

McKELVEY: Some parts of that question are ones that I can't answer very effectively. I think that the effect of the political process on the board is there. It's not a strong effect, but the Fed has not ignored what it has been hearing either.

What the Fed is trying to do, I think, is to proceed along a course that doesn't jump too much in any one direction and doesn't react too quickly to perceptions that monetary policy is too tight and interest rates are too high. In fact, I think, just yesterday market participants were quite surprised when they thought that we were moving in the other direction.

My own guess is that if there's going to be an easing of the pressure, it's going to be very gradual, with a great deal of focus on where the money supply is relative to the targets, apart from the political process. The political process exerts whatever influence it has indirectly.

As to coordination between monetary and fiscal policy, I'm really in a fairly poor position to tell you exactly how well that goes on and how well it doesn't. There have been stories, of course, of lack of coordination and strife between the Federal Reserve and the Treasury, which has been a big surprise to many since the philosophical bent of the two is probably closer than it has been in a long time.

But there is a regular process by which they do talk to each other. People from the Treasury and the Federal Reserve meet regularly at the policy-making level, and what transpires in those conversations I'm not privy to.

STEWART MORRIS: I'd like to ask Mr. McKelvey a question. I understand that the interest rates are affected by the demands for funds and that there are basically three groups —government, industry, and we the people. Each needs to spend less money, I would then deduct from what you have said.

I don't think that the individuals can spend

"What the Fed is trying to do . . . is to proceed along a course that doesn't jump too much in any one direction and doesn't react too quickly to perceptions that monetary policy is too tight and interest rates are too high."

less money, because we're spending all we've got. Industry is spending money, and I don't say it's bad because it creates what makes us go. Therefore, we find the government the biggest user of money, and we hear about the economy that is underway, yet I listen on T.V. that in the city of Detroit one billion in a year is given in relief. . . .

Therefore, I ask, What do you say can be done? I feel that the economy is being undertaken and government seems so small, how can we ever stop this demand for funds that is usurping everything we've got? I'll even take issue with Mr. Toft that the Conoco impact is so insignificant that our relief continues, and we do know that you have a lot of power in the Federal Reserve. We feel it. Your moves affect us in business quickly through our local bank. Is there any end in sight on this matter, or is this an actual thing about society that we can support?

McKELVEY: I think really you're asking two questions, or at least I would like to answer it in two parts. There's a general question of who's spending, and more important in this question, who's borrowing money to spend as between individuals, corporations, and government.

Actually in my remarks I didn't say much about the individuals, and I think the reason was because they're not borrowing as much as the other two are. I just wanted to make that point.

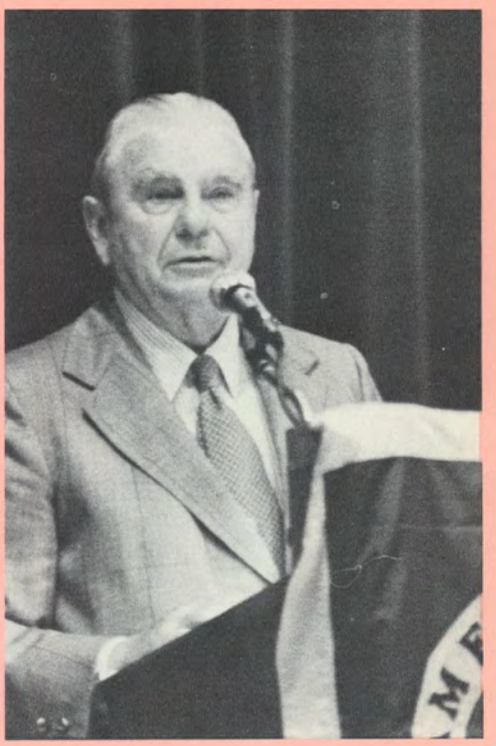
I didn't mean to imply that the heavy credit demands that we see from corporations are a bad thing. It's simply that they're there and it's a market that operates through the clearing of supply and demand, and if the demand for funds is going to be heavy, then the interest rates are going to be high.

I think it would be very detrimental to the economy, in fact, if corporations were pushed out of the credit markets to such an extent that business capital spending was cut back, and I think then we would be in a very protracted kind of downturn.

So I didn't mean to express a value judgment on that. With respect to the items the government spend its money on, I'm going to give you an answer that you may regard as a bit of a copout, that is to say, that the question of what the money is spent on by the federal, state, and local governments is really a question to be determined by the political process, rather than by economists working at the Federal Reserve Board or anywhere else in government. It's a matter of setting priorities and saying this is what we want to spend our money on, whether it be AWACS planes to Saudi Arabia or relief to Detroit, or whatever.

Those are political questions as to priorities and to how the money is spent. Those questions, it seems to me, ought to be addressed by the Congress and by the local and state governments.

I do think that the total volume of government borrowing, particularly federal government borrowing, is as with the corporate borrowing, another factor behind high interest rates, and I think the markets are telling us both directly in the levels of those rates and indirectly through the press.



HONORARY MEMBERS NAMED—At top left, Morton McDonald (left), ALTA past president and honorary member and chairman of the board of The Abstract Corporation, DeLand, Fla., presents the award to Clem H. Silvers, ALTA past president and consultant to F. S. Allen Abstract Company, El Dorado, Kans. At top right, Harold F. McLeran, ALTA past president and an attorney with McLeran and McLeran, Mt. Pleasant, Iowa, accepts his award. Above, James O. Hickman, ALTA past president and senior vice president—agency relations, Pioneer National Title Insurance Company, Los Angeles, Calif., presents the award to John W. Warren, ALTA past president and senior vice president and senior trust officer, First National Bank and Trust Company, Ponca City, Okla.

Names In The News . . .


Woodward


Benson


Dawson


Woods

David C. Woodward was elected president and chief executive officer of Commonwealth Land Title Insurance Company. Before assuming this position, Woodward served as Commonwealth's president and chief operating officer, a position he held since joining the company in 1980.

Fred B. Fromhold, formerly chairman and chief executive officer for Commonwealth, continues to serve as chairman. Fromhold was elected president of the American Land Title Association in September at the association's annual convention and now travels extensively throughout the United States as ALTA's chief spokesman.

Jerry A. Rimer was appointed assistant vice president for Commonwealth. A Commonwealth employee since 1967, Rimer works as agency representative and closing officer for the company's agency operations in eastern Pennsylvania, Maryland, and Delaware.

Commonwealth also announced the appointment of **Pat Dougher** to assistant vice president. Dougher, who works out of the company's Houston office, also serves as Commonwealth's state agency manager for Texas.

SAFECO Title Insurance Company recently honored **Warren Penniman Sr.** with its "Title Professional of the Year" award. Penniman, who entered the title business in 1936, is president of Penniman Title Company, Santa Cruz, California.

First American Title Insurance Company announced that **Robert F. Hoyt** was appointed vice president of the firm's national title service. In this newly created position, Hoyt services the company's national accounts, primarily working with financial institutions across the country.

Hoyt was a 28-year veteran of First American when he left the firm in 1978 to relocate in San Francisco. He returned to the company after spending time in real estate management.

Transamerica Title Insurance Company named **Pat Woods** manager of its Fairbanks County, Alaska, operation. Woods joined the company in 1977 as recorder for the Fairbanks office. Before assuming her new position, she served as examiner and title officer.

Todd R. Walker was named title examining supervisor A for Pioneer National Title Insurance Company's Multnomah County, Oregon, operation. Walker supervises the production, examination, and approval of title reports and policies. He has been with the company since 1973.

Michael J. Fromhold has joined Pioneer as senior associate title counsel for Pennsylvania. Fromhold is responsible for underwriting and claims. Before assuming this position, he was associated with Commonwealth Land Title Insurance Company.

Melvin H. John was named vice president, area manager for Pioneer's Dallas-Fort Worth, Texas, area. John is responsible for all sales, marketing, and administrative operations. Before assuming this position, John was assistant area manager for the company. He was elected vice president in 1979.

Pioneer also announced that **Raymond L. Bender** was named vice president, Chicago division manager. He is responsible for all direct and agency operations in Illinois, Wisconsin, Minnesota, North Dakota, South Dakota, and Iowa. Bender joined Pioneer in 1977 as major account manager of builder developer services. He was most recently San Francisco County manager for the company's national title service. He was elected vice president in 1978.

Nancy R. Anderson was named assistant vice president, area manager for Title Insurance and Trust Company's north Santa Clara County, California, operation. Anderson manages three TI offices in the Palo Alto and Los Altos areas. She also serves as an assistant training director and is responsible for technical staff training in escrow advisory work. In addition, Anderson organizes escrow seminars.

Before her promotion, Anderson was branch manager in TI's Palo Alto location. She also served as escrow officer there and as an escrow technician in the Burlingame area. Anderson has been with TI since 1971.

TI also announced that **Christopher J. Keller** was named vice president, area manager for the company's Inyo and Mono counties, California, operations. Keller coordinates all title insurance and marketing activities in his area. Before assuming this position, Keller worked for the Alaska Title Guaranty Company, a TI sister company, as an area manager. He has also been employed in title operations in TI's Nevada state activities.

Lawyers Title Insurance Corporation announced two appointments at its Painesville, Ohio, branch operation. **Susan E. Albert** was named branch manager, and **Herbert H. Davis Jr.** was named branch counsel.

Albert joined Lawyers Title's Cleveland branch office as a sales representative in 1978 and transferred to the Painesville office in 1980. She had previous experience in real estate sales.

Davis joined the company in 1979 as branch manager of the Painesville operation. He assumes his current position as branch counsel at his request.

Lawyers Title also announced the appointment of **Fred H. Benson** as Texas state manager. A 23-year veteran of the title industry, Benson had been president and chief executive officer of a national title insurance underwriter before joining Lawyers Title. He also has extensive management background in title insurance agency and branch operations.

Continental Group's Continental Financial Services Company announced that **Robert C. Dawson**, president of Lawyers Title, was elected executive vice president with responsibility for the CFS Real Estate Insurance Division. In addition, Dawson was elected chairman of the board and chief executive officer of Investors Mortgage Insurance Company. Dawson continues as president of Lawyers Title.

Calendar of Meetings

March 10–12
ALTA Mid-Winter Meeting
Caesars Palace
Las Vegas, Nevada

April 1–4
North Carolina Land Title Association
Mills House
Charleston, South Carolina

April 22–23
Virginia Land Title Association
Williamsburg, Virginia

April 22–24
Arkansas Land Title Association
Royal Vista Hotel
Hot Springs, Arkansas

April 25–27
Eastern Regional Title Insurance Executives
Seaview Country Club
Absecon, New Jersey

April 30–May 2
New Mexico Land Title Association
Four Seasons Hotel
Albuquerque, New Mexico

May 2–4
Iowa Land Title Association
Des Moines Hilton Inn
Des Moines, Iowa

May 6–9
Oklahoma Land Title Association
Williams Center
Tulsa, Oklahoma

May 13–15
Texas Land Title Association
Hilton and Marriott Hotels
Austin, Texas

May 20–21
California Land Title Association
Del Monte Hyatt House
Monterey, California

May 23–25
Pennsylvania Land Title Association
Pocono Manor Inn and Golf Club
Pocono Manor, Pennsylvania

June 4
South Dakota Land Title Association
Sioux Falls, South Dakota

June 6–8
New Jersey Land Title Insurance Association
Seaview Country Club
Absecon, New Jersey

June 9–13
Southwest Regional Title Insurance Executives
The Broadmoor
Colorado Springs, Colorado

June 11–13
Illinois Land Title Association
Sheraton-West Port Inn
St. Louis, Missouri

June 17–19
Oregon Land Title Association
Marriott Hotel
Portland, Oregon

June 17–19
Utah Land Title Association
Little America Hotel
Salt Lake City, Utah

June 17–20
New England Land Title Association
Tamiment Resort and Country Club
Tamiment, Pennsylvania

June 27–30
Michigan Land Title Association
Hidden Valley
Gaylord, Michigan

July 8–10
Land Title Association of Colorado
Tamarron Resort
Durango, Colorado

August 6–7
Kansas Land Title Association
Holidome
Lawrence, Kansas

August 12–14
Minnesota Land Title Association
Sheraton-Ritz
Minneapolis, Minnesota

August 12–14
Montana Land Title Association
Copper King Inn
Butte, Montana

September 10–12
Missouri Land Title Association
Sheraton Hotel
Springfield, Missouri

September 12–14
New York State Land Title Association
Concord Hotel
Kiamesha Lake, New York

September 13–15
Ohio Land Title Association
Sawmill Lodge
Huron, Ohio

September 16–17
Wisconsin Land Title Association
Civic Center Inn
Eau Claire, Wisconsin

September 19–21
Indiana Land Title Association
Marriott Hotel
Clarksville, Indiana

September 22–25
Washington Land Title Association
Seattle Marriott—SeaTac
Seattle, Washington

October 3–6
ALTA Annual Convention
Sheraton-Boston Hotel
Boston, Massachusetts

October 20–22
Nebraska Land Title Association
Lincoln Hilton
Lincoln, Nebraska

December 1
Louisiana Land Title Association
Royal Orleans
New Orleans, Louisiana

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