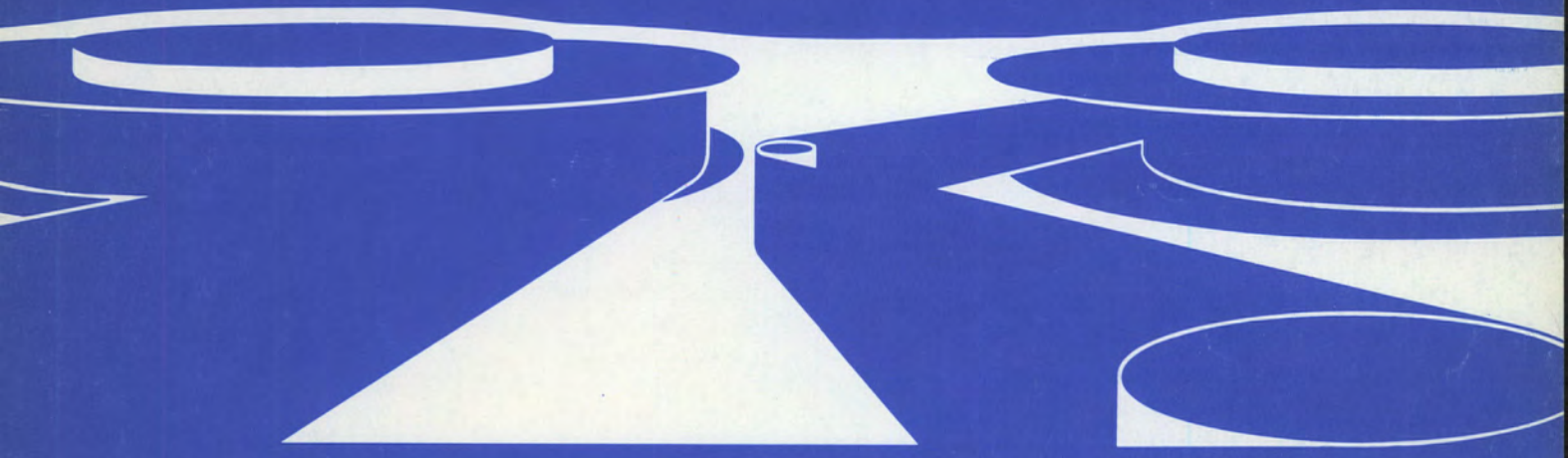
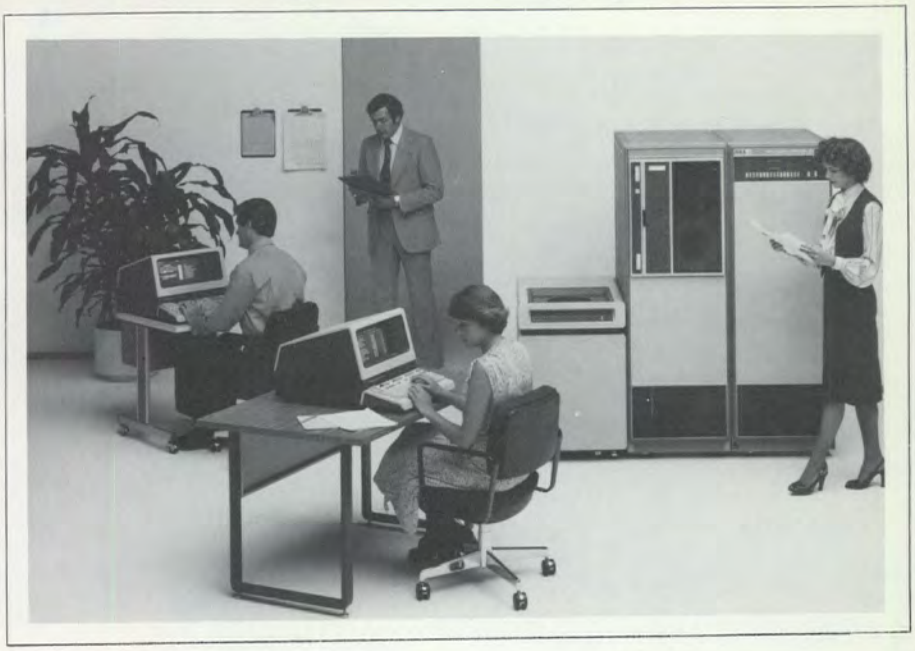
September 1982

TITLE NEWS



The Search—
see page 6

TITON: the system for the 1980's



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

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

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TITLE NEWS

Volume 61, Number 9

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

Features

The Search
Bruce S. Bobo 6

Judiciary Committee Report 10

Time, Money Awash in Eureka Tidelands—A Response
A. S. Kaufer 18

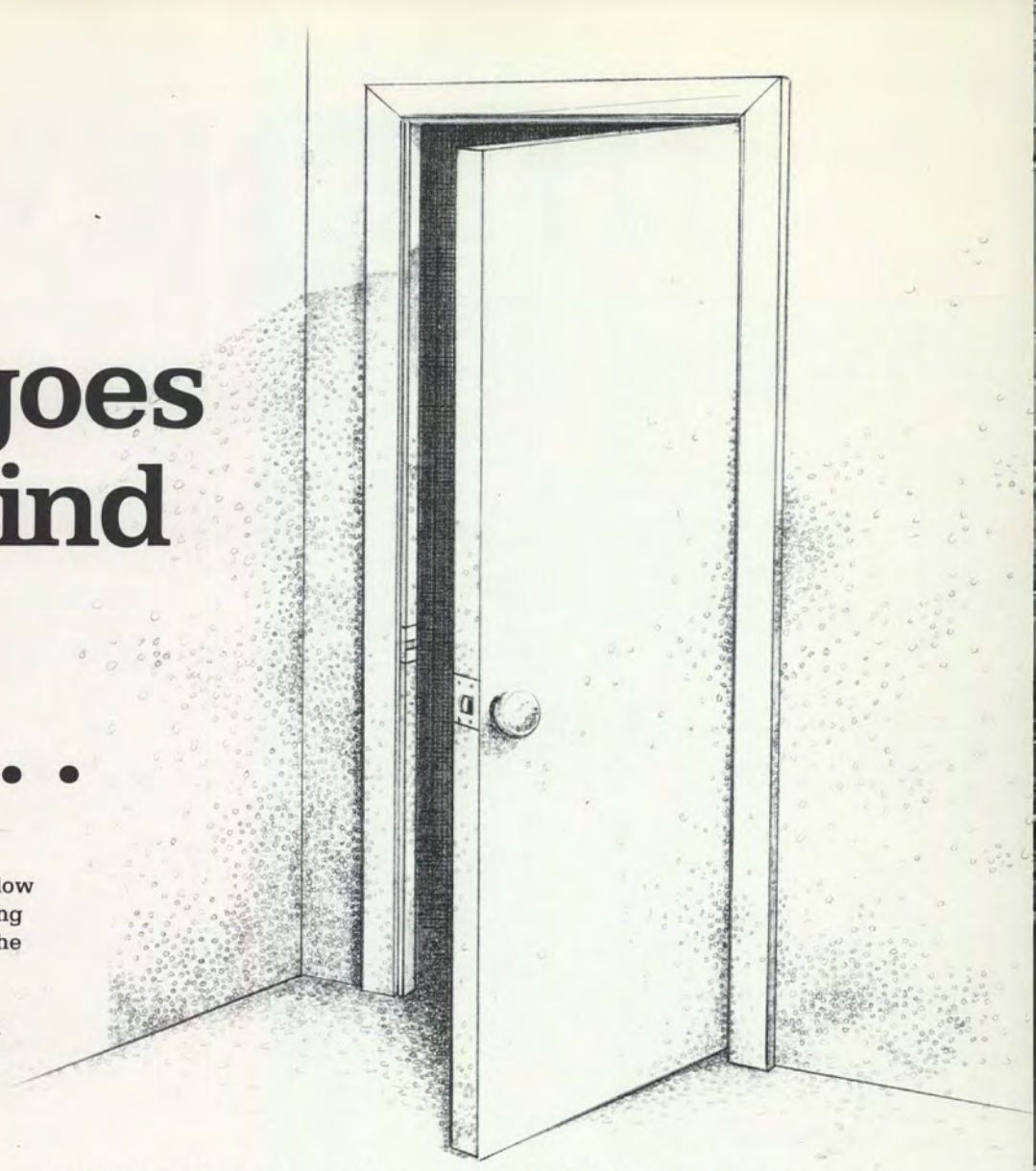
Departments

A Message from the President-Elect 5

Names in the News 20

Calendar of Meetings Back Cover

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

A Message From The President-Elect

I have heard more good comments about Don Kennedy's article in the May issue of *Title News* than about any other such article. All I can say is "I wish I had said that."

Since I didn't, here is what I say: "Read that article first (it's better)."

America has gone on a diet. There is a new diet soft drink practically every month. All popular beers now have a "lite" version. Even wines are getting into the act. Object: to size down Americans. Diet books nearly always lead the best-seller list. Again, to size down Americans.

The Supreme Court of Minnesota has handed down a ruling to require only 8½-by-11-inch documents, instead of the old 8½-by-14-inch legal size.

American cars are smaller and smaller. Senator Lawton Chiles's (D-Fla.) "Paper Act" is cutting down the size of paperwork.

Housing has not escaped this trend. In 1978, the average size of a house built in the United States was 1,528 square feet. Now, that too is down, with homes—and lot sizes—becoming smaller every year.

I feel that the title industry can learn a lesson from all this. The companies that will survive are the ones that size down—size down to fit the market.

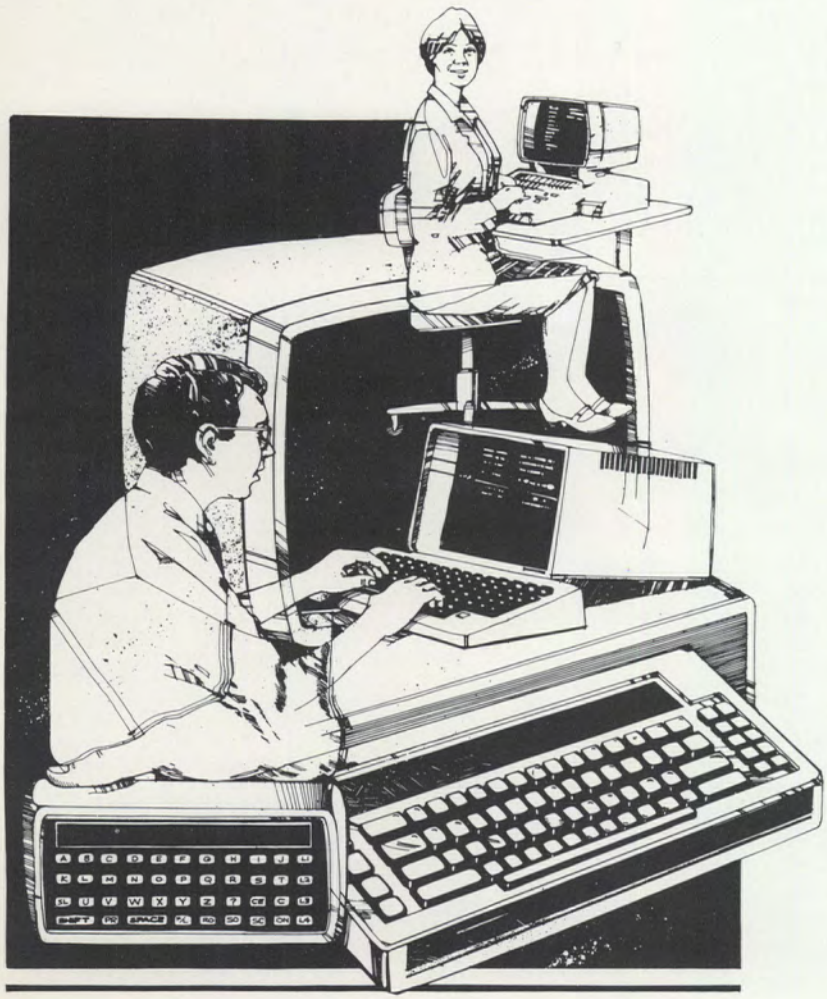
I believe I'll go on a diet—not today, but tomorrow.

Tom McDonald

Thomas S. McDonald

The Search

by Bruce S. Bobo
Executive Vice-President
Lauderdale Abstract Company
Florence, Alabama



Since 1965, when Lauderdale Abstract Company converted its posting to an arbitrary tract book system, company personnel have searched for the proper equipment and programs to automate the system (at an affordable price).

Operating in Lauderdale County, which has a population of slightly less than 80,500, Lauderdale Abstract Company falls within the same category as 75 percent of the abstracter-agents in the United States (as reported in the March 1982 *Title News*).

Lauderdale Abstract Company tried to evaluate every new system as it was announced for ease of operation, storage, and price; however, all those systems that seemed to fit company needs were too expensive.

Near the end of 1980, Lauderdale had the opportunity to purchase a title company in an adjoining county with a population of more than 54,000. With this acquisition, Lauderdale gained a computer with a geographic index.

Employees at Lauderdale immediately reprogrammed the existing machine, which used magnetic tapes, to provide a more detailed search report. The old search report took too long to run, and the data retrieved were too general. Company employees made adjustments in the details of the reports, but could not improve on actual search time because of machine limitations.

Figure 1

82/08/31 16:19:00 Colbert Title Company invoice# 5903
Search Report

Invoice to ABC REALTY
NORTH PINE ST.
FLORENCE, AL 35630

Deliver to FIRST NATIONAL BANK Promised by 08/15/82

Search NW SW SW of Section 2 Township 4 Range 13 west

BEG 1040' S OF NW CORNER OF SEC 2 E 210' S 446' W 210' N 446' POB

Title insurance
Owner's $150,000
Mortgagee $150,000
Last certified 79/03/15 by YOUR TITLE CO. Title in JAMES L. & DORIS S. EADY

Outstanding liens ? _____

Taxes assessed to _____ Acct # _____ Paid _____ Due _____

Patent _____ Tax sale _____ Cards _____ Rollodex _____

Public Improvements _____

Wills / Estates _____ Misc _____ Deed Book _____ Mortgage book _____ Day book _____

Date and time - last end check _____ Abstractor _____

since 79/03/15

	Date	Inst	Book	Page	Grantor	Grantee	cart	entry
all of section 2								
ALL	80/04/11	D	385	833	A PRIDE ET AL	C THOMPSON	426	1283
			$0					
Entries in SW								
Entries in SW SW								
SW SW	82/04/14	RE	597	275	MERIT FINANCE CO	J L EADY SR		
19.53 ACRES (RELEASES BOOK 551 PAGE 468)			$					
Entries in NW SW SW								
NW SW SW	79/03/15	M	575	19	J L EADY	ALA FAMILY HOMES	323	19
BEG 1040 S OF NW COR SEC: E.210'; S.446'			$62337					
NW SW SW	79/03/15	AS	575	21	ALA FAMILY HOMES	COLONIAL FINANCIAL	323	21
ASSIGNS BOOK 575 PAGE 19			$					
end of search								
SEARCH OF RECENT ENTRIES								
all of section 2								
Entries in SW								
Entries in SW SW								
SW SW	82/08/06	WD	401	384	A WATKINS	E L WATKINS III		
6 ACRES: COM SW COR OF SW-SE SEC.2: N.488' etc $								

Figure 2

82/08/31 16:12:42 Colbert Title Co. Search Report invoice# 5904

Invoice to ABC REALTY
NORTH PINE STREET
FLORENCE, AL 35630

Deliver to JOHN SMITH Promised by ASAP

Search RIVERMONT SUB.(SHEF.) PLAT 12 Addition 12 Block 0 Map book 5 page 32

Lots 359

To date
Last certified 81/09/23 by YOUR TITLE CO. Title in PAUL W. & JANE P. ALEXANDER

Outstanding liens ? _____

Taxes assessed to _____ Acct # _____ Paid _____ Due _____

Patent _____ Tax sale _____ Cards _____ Rollodex _____

Public Improvements _____

Wills / Estates _____ Misc _____ Deed Book _____ Mortgage book _____ Day book _____

Date and time - last end check _____ Abstractor _____

since 67/01/01

	Date	Inst	Book	Page	Grantor	Grantee	film	entry
all of subdivision 0 through 0	78/05/17	RS	369	194	ASSOCIATED DEV INC			
AUTH TO EXECUTE DEEDS ETC	$							
addition 12 0 through 0	78/12/12	MP	5	32	ASSOCIATED DEV INC			
CERT OF PLAT & PRO COV	$							
Search for lots 359 through 359	80/10/02	WD	388	484	ASSOCIATED DEV INC	P W ALEXANDER	428	930
	$14500							
359 through 359	80/10/02	M	587	383	P W ALEXANDER	CENTRAL BANK	331	383
REL 9/22/81 J L SCOTT	$65000							
359 through 359	81/03/18	CD	392	189	ASSOCIATED DEV INC	P W ALEXANDER		
corrects deed 388 page 484	$							
359 through 359	81/03/18	M	590	778	P W ALEXANDER	VALLEY FEDERAL		
	$65000							
SEARCH OF RECENT ENTRIES all of subdivision addition 12 Search for lots 359 through 359	82/08/02	WD	401	306	P W ALEXANDER	V D TALLEY		
	$							

Searching C413 for J L EADY since 18:26:48 82/08/11

Date	Instrument	Town	Range	Sect	Qsect	Grantor	Grantee	Consideration
79/01/29	RE 574 654	4	13	2	32	COLONIAL FIN SERV	J L EADY	563 47
78/03/06	RE 566 66	4	13	2	32	COLONIAL FIN SERV	J L EADY, SR	0
77/12/01	RE 563 461	4	13	2	32	MERIT FINANCE CO	J L EADY,JR	0
77/12/01	RE 563 461	4	13	2	33	MERIT FINANCE CO	J L EADY,JR	0
79/01/29	RE 574 654	4	13	2	33	COLONIAL FIN SERV	J L EADY	563 47
78/03/06	RE 566 66	4	13	2	33	COLONIAL FIN SERV	J L EADY, SR	0
82/04/14	RE 597 275	4	13	2	32	MERIT FINANCE CO	J L EADY SR	
82/04/14	RE 597 275	4	13	2	33	MERIT FINANCE CO	J L EADY SR	

Total records found 8

Figure 3

At this point, IBM introduced a computer that would accept Lauderdale's programs and data through an intermediate machine. The price was acceptable, and business was slow (which gave the company an opportunity to spend much needed time for new programs, data organization, data input, and debugging of a new system).

During the past 18 months, the company has been posting, correcting, and searching its geographic index. At present, Lauderdale Abstract Company uses 24 disks that contain recorded subdivisions and 15 disks with metes-and-bounds descriptions for the remainder of the county. The disks are organized alphabetically by subdivisions and by section, township, and range for metes-and-bounds descriptions.

Twenty years of information is contained in approximately 195,000 computer records on 39 disks. The metes-and-bounds search shown in Figure 1 took 31 seconds, and a complete 20-year search of the same property takes 54 seconds. The subdivision search shown in Figure 2 took 18 seconds, and a complete 20-year search of the subdivision takes 21 seconds. The grantor-grantee search shown in Figure 3 took 3.5 minutes. Lauderdale is currently posting an average of 35 instruments per day, with an average of 1.5 minutes per entry.

These programs are designed by title people for the average title plant. Users do not need any computer training to operate this system; they need only the title experience they use in maintaining their manual title plants.

The search is over at last!

Judiciary Committee Report

The following case briefs are the first installment in the 1982 ALTA Judiciary Committee Report, which was compiled by Judiciary Committee Chairman Ray E. Sweat and regional reporters. Additional installments will appear in future issues of Title News.

Abandoned and Lost Property—Lost Goods Act—Rights of Landowners—Escheat

Willsmore v. *Township of Oceola*, 106 Mich. App. 671, 308 N.W. 2d 796 (1981)

While hunting on unposted, unoccupied property, the plaintiff found more than $380,000 buried in a watertight suitcase. He turned the money over to the state police. Careful examination of the money showed that it had been buried not more than a few months. Although the finder did not comply with the strict notice requirements of the Lost Goods Act, the trial court and the court of appeals on review found him in substantial compliance and let him proceed as though his claim had been timely made.

Claim to the money was made, in turn, by the finder of the money, by the state of Michigan under the doctrine of escheats, by the township under the Lost Goods Act, and by the owner of the property, a land-contract vendee. The owner of the property claimed to be the actual owner of the money as well, but, claiming Fifth Amendment privileges, he was unwilling to testify at trial and unwilling to be cross-examined on a variety of subjects concerning the money.

The court of appeals held that the doctrine of escheats did not apply on the basis, inter alia, that there had been no period of dormancy during which the owner might be presumed to have abandoned the money. The court then held that the owner of the property, as land-contract vendee, did not, by virtue of such ownership, establish any rights in the money. The court thereupon applied the Lost Goods Act and divided the property equally between the finder and the township.

Adverse Possession

Trappett v. *Davis*, 633 P.2d 592 (Idaho 1981)

The plaintiffs brought a quiet title action claiming they had acquired certain property lying adjacent to their deeded property by adverse possession. All elements of adverse possession were met, including the requirement of actual payment of taxes assessed to the disputed property. It so happened, however, that the record owner of the disputed property also had paid taxes on the property during the period of adverse possession. In resolving the issue of who should prevail, the Idaho Supreme Court stated that three different rationales are often given for the tax requirement: to require further evidence of good faith and intent on the part of the adverse claimant, to give further notice to the record owner of the existence of the adverse claim and of the time it would mature into title, and to insure that the taxing authority will receive its property tax. The court noted that those courts that favor the good-faith rationale generally hold for the adverse claimant and that under such an approach a court's inquiry is focused on the conduct of the adverse claimant. Finally, noting that the doctrine of adverse possession focuses primarily on the conduct and actions of the adverse claimant and that in past decisions it has placed greater importance on the good-faith rationale than on the notice rationale, the court held that the adverse claimant should prevail.

Petersen v. *Port of Seattle*, 94 Wash. 2d 479, 618 P.2d 67 (1980)

The Port of Seattle constructed an airport near the plaintiff's property that was used exclusively by propeller-driven aircraft. Subsequently, jet-powered aircraft were used, which created a noisy environment that damaged the plaintiff's property. The Port of Seattle purchased land around that of the plaintiff, paying the "unimpacted value." The plaintiff brought an action for inverse condemnation, and the port asserted that it had acquired an avigation right by prescription, the value of which should be deducted from the damage award to the plaintiff.

The court held that the port's payment of the unimpacted value to surrounding landowners, the port's participation in studies designed to formulate alternate remedies, the parties' testimony that they considered the use of airspace as permissive, and the presumption that the use was permissive show that the port's use was not hostile, a necessary element for an adverse use.

The court does say, however, that in the state of Washington entities that have the power of eminent domain may nevertheless be permitted to acquire property of a private citizen by adverse possession and thus avoid payment of just compensation.

Hewes v. *Bruno*, 424 A.2d 1144 (N.H. 1981)

The plaintiff brought action to quiet title. The defendant, who held title to adjoining land under a recorded deed, claimed a portion of the property as his own on the basis of adverse possession. The defendant is entitled to prevail if his possession has been open, notorious, and adverse for the statutory period, notwithstanding the fact that he holds title under a recorded deed, which may have led him to believe that he owned the land at issue and could, therefore, not have intended to hold adversely to the true owner. The ad-

verse aspect of the possession is not so much a factor of the possessor's motive as it is an unauthorized use of the true owner's land by another.

Adverse Possession—Evidence

Lyman v. *Ferrari*, 66 Ohio App. 2d 72, 419 N.E. 2d 1112 (1979)

In an action based on adverse possession, anyone having personal knowledge of the ownership or use of real property is competent to testify on the issue of adverse use of that property regardless of whether he is in privity with the party claiming adverse possession.

Adverse Possession—Map Lot Owner May Not Gain Adverse Possession Over Street Shown on Map

Landon v. *City of Binghamton*, 79 A.D. 2d 810, 435 N.Y.S. 2d 91 (1980)

The plaintiffs, owners of a lot on a filed map, brought this R.P.A.P.L. Article 15 action against the defendant city for a declaration that the plaintiffs had title by adverse possession to portions of a street (shown on the map), onto which a garage encroached.

The court held that the defendant city was entitled to a summary judgment dismissing the complaint. When an owner of property sells lots in reference to a map, which lots abut a street as shown on the map, the grantees of the lots are entitled to have the land that is shown as a street left open forever as a street (*O'Hara* v. *Wallace*, 83 Misc. 2d 383, Mod. 52 A.D. 2d 622).

Further, the filing of a subdivision map constitutes an offer of dedication of the streets to a public use, which can be revoked only by the united action of all the parties having a legal interest in the dedicated property and not by an individual grantee's attempt to gain title to any portion of the land by adverse possession.

Antenuptial Agreement—Failure of Full Disclosure

In re Estate of John E. Hosmer, Deceased, Madalyne Hosmer, Appellant, v. *Thomas Robert Hosmer, et al.*, 611 S.W. 2d 26 (Mo. 1981)

This case was an appeal by a widow from order of probate court denying her application for exempt property (474.250), family allowance (474.260), and homestead allowance (474.290), all references to R.S. Mo. 1969, V.A.M.S., based on her execution of an antenuptial agreement.

The decedent, an attorney, died intestate in 1978, owning real estate valued at $105,500.00 and personal property valued at $18,443.04. He had previously been married for 29 years, and the children of that marriage opposed Madalyne Hosmer's (the second wife's) application. The antenuptial agreement provided that she would "claim nothing in the property or estate of John Edmund Hosmer, neither as support, child maintenance or otherwise, even marital rights, but in return therefore her children born and unborn will have a name. Both parties, regardless of any public policy, will never seek a Dissolution of Marriage."

The appellate court held that the antenuptial agreement was invalid under 474.120, wherein a waiver of rights of inheritance or any other statutory rights of a surviving spouse of an intestate decedent, wherein the statute requires a written contract to waive such rights; a prior full disclosure of the nature and extent of the rights, including the nature and extent of all property interests of the parties; a giving to the waiving party of a thing or promise that is fair consideration under all the circumstances.

None of these requirements was shown to have been met, and the agreement was not a valid one. The decision was reversed and remanded for further proceedings.

Brokers—Deceptive Trade Practices Act—Consumer

Cameron v. *Terrell & Garret, Inc.*, 599 S.W. 2d 680 (Texas 1981)

The purchasers of land sued a real estate agent for misrepresentation.

The jury found that the real estate agent had represented that the house was 2,400 square feet when, in fact, it contained 2,245 square feet. The house's purchase price was based on $22.06 per square foot.

The trial court rendered a take-nothing judgment non obstante veredicto for the defendant. The court of civil appeals affirmed, but held that the purchasers were not consumers under the Deceptive Trade Practices Act.

The supreme court reversed and rendered judgment for the plaintiffs. The court pointed out that it had held that a person must qualify as a consumer as defined in the act. The act defines a consumer as "an individual, partnership or corporation who seeks or acquires, by purchase or lease, any goods or services." The court pointed out that such goods or services must have been sought or acquired by purchase or lease and that such goods and services must form the basis of the complaint.

The defendants contended that the plaintiff in such case must seek or acquire goods or services furnished by the person that he is suing to qualify as a consumer under the act. The court pointed out that it had reserved this question in the writ refusing error in the case of *Delaney Realty Company* v. *Ozuna*, C.C.A. El Paso, 593 S.W. 2d 797 (1980). The court then reviewed the statute and held that the act defined *consumer* only in terms of a person's relationship to a transaction in goods or services and not on any grounds of privity. In many instances, a person need not seek or acquire goods or services furnished by a defendant to be a consumer under the act. That was not the situation here. The act does not alter the common law with respect to agents.

Brokers—Listing Agreements—Performance of Contract

Pearson-Cook Company, Inc., v. *Preferred Properties, Inc.*, 102 Mich. App. 168, 301 N.W. 2d 842 (1980)

A home owner had signed an exclusive listing agreement with a real estate broker. A cooperating broker brought in an offer less than the asking price, to which the home owner made a counteroffer. During the pendency of that counteroffer, a second cooperating broker brought in a full-price offer. The counteroffer was later accepted. The broker who brought in the full-price offer sued both other brokers and the home owner for payment of his share of the commission. He based his suit, inter alia, on breach of contract, conspiracy, unjust enrichment, contract implied in fact, breach of fiduciary duties, and violation of the code of ethics of the National Association of Realtors. The trial court granted summary judgment for the defendants on all the charges, and the court of appeals affirmed. Although the counteroffer was legally revocable at the time the second offer was made, the home owner was under no obligation, contractual or otherwise, to revoke it so he could accept the second offer.

Brokers—Listing Agreements—Right to Commissions

Wetting v. *McFeeters*, 104 Mich. App. 188, 304 N.W. 2d 525 (1981)

The question before the court was whether a real estate broker had brought in an offer substantially in conformance with an exclusive listing agreement, such that he was entitled to a commission. The listing agreement provided that the seller would agree to surrender possession of the premises at closing. The broker obtained a full-price offer for the property, which provided for possession of the land at the time the offer was accepted and possession of the buildings 30 days after closing. The home owner did not accept this offer. She thereupon canceled the listing agreement some two months before its expiration date and subsequently sold the property, within the period of the canceled listing agreement, through a different broker and to a different party. The first broker brought suit for his commission. The trial court denied the motion for summary judgment made by the seller.

The court of appeals held that the listing agreement did not, on its face, empower the broker to accept the offer on behalf of the seller. The power to receive money on behalf of the seller is not the same as the power to bind the sale. There was therefore no contract between the offerer and the home owner, and no action would lie against the eventual purchasers for tortious interference with contractual advantage.

The court then addressed the question of whether summary judgment should have been granted against the broker in his action for commission. It was held that the court was entitled to hear proofs on the question of whether an offer requiring early possession of part of the property

but offering delayed possession of another part of the property was more or less favorable to the seller than was required in the listing agreement.

A more compelling reason stated by the court for denying summary judgment against the broker is the holding that the listing agreement was not subject to cancelation by the seller where the broker was able to show substantial performance of the duties imposed on him by the contract, even though he had not produced a buyer. The broker was therefore entitled to present proofs in support of his claim for a commission.

Civil Rights—Use of Premises—Handicapped

Vidrich v. *Vic Tanny International, Inc.*, 102 Mich. App. 230, 301 N.W. 2d 482 (1980)

The plaintiff, a blind person, was denied access to a health and exercise club on the ground that he could not safely use the facilities. He filed suit under the Michigan Equal Accommodations Act, M.C.L.A. 750.146, M.S.A. 28.343. The trial court held that there was an implied safety exception in the act and found that a blind person's use of athletic facilities posed a danger to himself and to other patrons. The trial court therefore granted summary judgment for the defendant. The court of appeals reversed, holding that the club was a public accommodation under the terms of the act and that there is no implied safety exception in the act. The court reversed the trial court and directed that summary judgment be entered for the plaintiff.

Corporations—Forfeiture of Charter—Lack of Capacity to Sue

J. M. Morris Construction Co. v. *Mid-West Precote Co., et al.*, Mo. App., 613 S.W. 2d 177 (1981)

The plaintiff's petition for treble damages under the Missouri antitrust statutes (Chapter 416, R.S. Mo. 1978) was dismissed by the circuit court for failure to state a cause of action. The facts showed the case as filed by J. M. Morris Construction Co. on February 13, 1979. The plaintiff corporation had been incorporated in 1976 and its charter forfeited on January 1, 1979, for failure to file its annual registration report and corporate franchise taxes for 1978.

The plaintiff appealed the dismissal and this court affirmed, stating that the plaintiff ceased to be a corporation and a legal being with capacity to sue as of January 1, 1979, the date of forfeiture of its charter. Thereafter, until the forfeiture was rescinded pursuant to Section 351.540 R.S. Mo. 1978, any suit brought on its behalf could have been commenced only by and in the name of the defunct corporation's statutory trustees, that is, its directors and officers as of the time of the forfeiture.

Here the suit itself was a nullity, and dismissal thereof was the trial court's recognition of that fact.

Covenants, Conditions, and Restrictions

Malcolm v. *Shamie*, 95 Mich. App. 132, 290 N.W. 2d 101 (1980)

A subdivision restriction provided that no structure should be erected on a particular lot other than one detached single-family dwelling not to exceed two stories in height and a private garage for not more than two cars. The plaintiffs alleged that occupancy of the house on the premises as a permanent supervised residence for five mentally retarded women violated the restriction. The residence was being operated by a nonprofit corporation.

The court held for the defendants. The restriction was not being violated. The court distinguished this case from *Jayno Heights Landowners Association* v. *Preston*, 85 Mich. App. 443, 271 N.W. 2d 268 (1978), which reached a different result when the restriction required occupancy by a single-family unit and the home was commercially operated. For purposes of the particular restriction here involved, the five women constituted a family; and in view of the public policy of the state, as set forth in the Michigan Constitution of 1963, Article VIII, Section 8, that programs and services for the support of the mentally handicapped shall be fostered and supported, the restriction could not be applied so as to prevent their occupancy.

Covenants—Foster-Care Facilities

Leland Acres Homeowners Association, Inc., v. *R. T. Partnership*, 106 Mich. App. 790, 308 N.W. 2d 648 (1981)

The plaintiff, a subdivision home owner's association, brought suit to enforce building and use restrictions against the defendant, a partnership that had bought a residential home and was leasing it to a foster-care facility for developmentally disabled individuals. The restriction in question limited use of the property to residential purposes and occupation to a single, private family.

In a careful review and analysis of prior case law, the court of appeals singled out three common and relevant factors in deciding whether the use as an adult foster-care home comported with the restrictions. The first factor was the exact language of the restriction and whether it applied to the type of structure that was erected or the use that was to be made of the structure. The second factor was whether the operation of the home was commercial or nonprofit. The third was the basis of affiliation of a resident with the home, that is, whether the home was a substitute family as opposed to merely a group of unrelated adults coincidentally living under one roof. In this regard the court noted that the existence of a parent was not a focal question in the determination of family use.

Evaluating these factors in the case at bar, the court found that the covenant in question referred to the structure rather than to the use thereof. It found that the home was operated by a nonprofit, charitable corporation and that the home served as a substitute family for the residents. Based on these findings, the court held that the deed restriction was unenforceable against the foster-care facility.

Easements

Butzer v. *Johns*, 67 Ohio App. 2d 41, 425 N.E. 2d 932 (1979)

The Butzers built a garage in 1968 and used an alley as a driveway. In 1974, the village of Marshallville vacated the alley. As a result, the portion that the Johnses' land abutted reverted to the Johnses and the portion that the Butzers' land abutted reverted to the Butzers. Therefore, the Butzers had to drive over the Johnses' land to reach their garage. The court held that where an alley is vacated by a municipality and the land reverts to the abutting landowners, certain rights to an easement may inhere in property owners whose land abuts the vacated area, if access to their own property is affected. For an easement to arise, there must be either a direct physical connection between the obstructed property and the complainant's property or the part vacated must have furnished the only access to the complainant's property. A reasonable need standard is applied. Absolute necessity is not a requirement.

Easement Appurtenant Perfected Under Oral Agreement

Kohlleppel v. *Owens*, Mo. App., 613 S.W. 2d 168 (1981)

The plaintiff filed a multicount petition variously asserting actions to quiet title for trespass, ejectment, and damages. The defendants responded with an answer and a counterclaim seeking a declaration that they had an easement appurtenant in a 1.59-acre tract of land owned by the plaintiff for the defendants' use for construction, maintenance, and use of an access road, a fence, and a drainage ditch ancillary thereto.

The defendants Owens and their predecessors in title (having the dominant estate) acquired an easement appurtenant over the plaintiff's land for ingress and egress to a portion of the Owenses' land lying east of a creek and accessible only through the plaintiff's land. This meandering roadway was in use for more than 30 years.

In 1970, the defendants Owens and the plaintiff's predecessor in title, Cline, met and verbally agreed to relocate the meandering road so that the plaintiff's predecessors in title would not have to farm around it. The Owenses would construct a fence parallel to the new road and construct and maintain a drainage ditch, all at their own expense. Thereafter, when the plaintiff took title, he advised the defendants to cease trespassing on the plaintiff's land, and the Owenses honored the notice except to use the access road as a necessary means of ingress and egress to that portion of their land lying east of the creek.

The plaintiff claimed that the oral agreements fell within the statute of frauds and were, therefore, unenforceable.

The appeal court held that an oral agreement between the defendants' predecessors in title, coupled with performance thereunder by the defendants' predecessors in title, was enforceable in equity and the relocated road, the attendant fence, and the drainage ditch constituted an easement appurtenant benefiting the defendants' land and burdening the plaintiff's land notwithstanding the statute of frauds.

Easement by Necessity

Burley Brick and Sand Co. v. *Cofer*, 102 Idaho 333, 629 P.2d 166 (1981)

The defendants had conveyed to Burley Brick and Sand Co. a portion of their property that did not abut any public roadway and was surrounded by the defendants' remaining lands and the lands of third parties. The deed was silent as to any easement for access. For a number of years thereafter, Burley hauled clay from the property using a farm road that cut across the defendants' remaining land to a public highway. After the clay deposits were depleted, Burley leased the land to a third party who intended to farm it, and at this point the defendants denied the lessee access. The defendants argued that they had given Burley merely a license to use the farm road, but the Idaho Supreme Court held that the facts of the case gave rise to an easement by necessity. The court cited prior case law and Am.Jr. 2d Easements: "It is a universally established principle that where a tract of land is conveyed which is separated from the highway by other lands of the grantor or surrounded by his lands or by his and those of third persons, there arises, by implication, in favor of the grantee, a way of necessity across the premises of the grantor to the highway."

Easement by Prescription

Reed v. *Soltys*, 106 Mich. App. 341, 308 N.W. 2d 201 (1981)

The parties to the dispute, and their predecessors in title, had used a driveway as a joint drive for almost 50 years. A dispute arose between the parties, and the claim was made that the joint drive was established by prescriptive easement. The defense was that the joint use had been permissive. There was no testimony as to the status of the drive at the time it was created, although witnesses did testify that previous owners of the property had been good friends and used the drive with mutual permission.

The court of appeals held that there was no prescriptive easement established, since adverse use did not commence until the time of the dispute. The court held that the doctrine of acquiescence did not apply since the use was not hostile or adverse. One might compare, however, the recent decision in *Corrigan* v. *Miller*, 292 N.W. 2d 181 (1980), in which the court stated that the doctrine of acquiescence would apply even where there was no evidence of an actual prior dispute between the parties.

Easements—Prescriptive—Seasonal User of Road to a Summer Bungalow Held Adequate

Beutler v. *Maynard*, 80 A.D. 2d 982, 437 N.Y.S. 2d 463 (1981)

This action was brought to enjoin the defendants from interfering with the plaintiffs' access to their summer cabins over a right-of-way. Certain plaintiffs and their predecessors made regular summertime use of the right-of-way for the statutory period. In 1978, the defendants cut off use of the right-of-way.

The court stated that to establish a prescriptive easement one must prove by clear and convincing evidence that the use was "adverse, open and notorious, continuous and uninterrupted for the prescriptive period" (*Di Leo* v. *Pecksto Holding Corp.*, 304 N.Y. 505, 512). This gives rise to a presumption that the use was adverse and the burden is upon the servient landowner to prove that the use was by permission. Here the defendants offered no proof that the use was permissive.

In finding for these plaintiffs, it was held where such regular seasonal use was made for access to a summer cabin, the landowner could not reasonably believe that a hostile claim was not being asserted.

Easements—Cable TV as a Public Utility

White v. *Detroit Edison Company*, 406 Mich. 554, 281 N.W. 2d 283 (1979)

It was proposed to allow a cable-television franchisee to use the poles of the defendant, an electric-lighting company, located on property designated a public utility easement on a subdivision plat, to gain access to its subscribers in the subdivision. For purposes of the subdivision control act, which regulates platting, *public utility* includes gas, electricity, water, steam, telephone, sewer, or other services of a similar nature. The plaintiff, over whose property the easement extended, challenged the right of the franchisee to use the easement.

The court held for the defendants. The court thought that, despite the absence of two-way communication, cable TV was analogous to the telephone in providing communication service and transmission of intelligence.

Easements—A Reservation in a Deed Creating Easement Rights Held to Run to Strangers to the Deed If the Intent Is Clear

Jakobson v. *Chestnut Hill Properties, Inc.*, 106 Misc. 2d 918, 436 N.Y.S. 2d 806 (1981)

The plaintiffs owned lots abutting Dickerson Avenue, a private road running north and south, connecting with a public highway at its northern terminus. The defendant corporation owned subdivision property at the southern terminus of the road. An injunction was sought against the defendant's use of the road because its grantor was able to convey an easement over only the southern half of the road.

A deed from the common owner of the plaintiffs' parcels granting an easement over the road contained the following clause: "subject nevertheless to the use thereof as a roadbed by other property owners, owning lands abutting on said Dickerson Avenue."

In finding an easement in favor of the defendant, the court stated that a reservation or an exception in a deed creating easement rights can run to strangers to the deed if the grantor's intent is clear.

Eminent Domain—Constitutionality—Public and Private Use

Poletown Neighborhood Council v. *City of Detroit*, 410 Mich. 616, 304 N.W. 2d 455 (1981)

The city of Detroit sought condemnation of the so-called Poletown neighborhood for use by General Motors Corp. for a new auto assembly plant. A neighborhood council sought injunctive relief against that condemnation.

The supreme court, over the lengthy dissent of Justice Ryan, held that the condemnation was permitted. In a decision certain to have major impact on the economic redevelopment of the state, the court held:

1. Private property may be taken by condemnation for public purpose as well as for public use. The essential question is whether the primary benefit is to the public or to the private user.

2. The legislative determination that the acts of the Economic Development Corp. meet a public need are virtually conclusive and will not be overturned unless manifestly arbitrary and incorrect.

3. The fact that a private party will receive a significant benefit of the condemnation does not invalidate the condemnation.

4. The Michigan Environmental Protection Act does not encompass "social and cultural environment."

Eminent Domain—Value of Growing Trees

City of Muskegon v. *Bakale*, 103 Mich. App. 464, 303 N.W. 2d 29 (1980)

The issue on appeal was the method of valuing Christmas trees growing on the property at the time of condemnation. The city argued that the value should be determined by estimating the amount by which the trees increased the fair market value of the property. The property owner argued that the value should be determined by estimating the expected proceeds

upon the eventual sale of the trees and subtracting from that figure the cost of producing and marketing the trees. The first method is that used for determining the value of minerals in the land; the second is used in cases of tortious destruction of crops.

The court of appeals held that the proper method of valuing the trees was the increase in fair market value of the land, treating the growing trees in the same manner as minerals for valuation purposes. On balance, it was held that the sale price and profits on the sale of the trees were too speculative to use the theory of damages for the tortious destruction of crops.

Escrow

Central National Bank v. *Broadview Savings and Loan*, 64 Ohio App. 2d 133, 411 N.E. 2d 840 (1979)

The court ruled that where parties have established an escrow account in conjunction with the sale of a home, funds held in such account are not subject to a prejudgment attachment by creditors of the seller if all the terms of the escrow have not yet been performed.

The court also held that a garnishee is not required to disclose funds in an escrow account when the debtor has no right to the funds.

Escrow—Deposits—Liabilities of Escrow Agent

Starboard Tack Corp. v. *Meister*, 103 Mich. App. 557, 303 N.W. 2d 38 (1980)

The purchaser of a business property paid $35,000 to an attorney-escrow agent as earnest money for the purchase. The check for the earnest money was returned for insufficient funds, and the purchaser defaulted on his agreement to purchase. The attorney-escrow agent had acknowledged that he had received the deposit and named the bank in which it was held. The seller received a default judgment against the purchaser and sought judgment against the attorney-escrow agent for the funds that were supposed to be on deposit. The attorney-escrow agent answered alleging that, notwithstanding the written statements in the escrow agreement, the parties knew at the time it was executed that the funds were not actually on deposit. The circuit court granted summary judgment against the attorney-escrow agent, whereupon he appealed.

Citing several out-of-state authorities on appeal, the plaintiffs argued that the attorney-escrow agent was estopped to deny that the funds were available for payment. The court of appeals distinguished these cases, holding that if the parties were in fact aware that the escrow deposit was in the form of a check they could not prove reliance and the claim of estoppel must fail. The court therefore held that, on the facts of the case, the use of the phrase *is on deposit* in the escrow agreement was not a guarantee by the attorney-escrow agent of the deposit check.

Fraud Predicated on Failure to Perform a Promise of Future Action

Schimmer v. *H. W. Freeman Construction Co., et al.*, Mo. App., 607 S.W. 2d 767 (1980)

Home purchasers brought action against a realty company, its salesman, and the builder of their new home for damages under the Missouri Merchandising Practices Act, Chapter 407, R.S. Mo. 1979; actual fraud; and constructive fraud.

When the home purchasers had signed a real estate contract for the home to be built, the salesman told them that the house would be ready no later than the middle of August 1977, although he placed an April 1978 closing date on the contract. The home purchasers sold their existing house on reliance of the oral promises, moved into an apartment, and closed on the new house on September 22, 1978.

The court held that the Missouri Merchandising Practices Act could not be broadened under merchandise defined as "any objects, wares, goods, commodities, intangibles, real estate, or services" to include a cause of action as to the purchase of real estate, so Count III of the home owners' second amended petition was properly dismissed. Count IV alleged actual fraud. The elements of actionable common law fraud are a representation, its falsity, its materiality, the speaker's knowledge of its falsity or ignorance of its truth, his interest that it should be acted on by the person and in the manner reasonably contemplated, the hearer's ignorance of its falsity, his reliance on its truth, his right to rely thereon, and his consequent and proximate injury.

The respondents contended that actual fraud must be predicated on a misrepresentation of a present or a pre-existing fact and cannot be predicated on a mere promise of future action even though accompanied by a present intention not to perform. This was the holding in earlier cases and was later narrowed. The supreme court has held that to the extent that *Reed* v. *Cooke*, 331 Mo. 407, 55 S.W. 2d 275, and *Riss and Co.* v. *Wallace*, 239 Mo. App. 979, 195 S.W. 2d 881, held not actual fraud cannot be predicated on unfilled promises or statements as to future events, they are no longer to be followed.

Homestead

Tremaine v. *Showalter*, 613 S.W. 2d 35 (Texas 1981)

This was a suit to enjoin a foreclosure of an alleged homestead.

The plaintiff purchased 243 acres and moved onto the land with Carolyn while he was still married to, but separated from, Jane. The plaintiff and Carolyn conveyed to the plaintiff's company, which executed a note and deed of trust to the bank. The company defaulted, and foreclosure proceedings ensued.

The court rejected the plaintiff's claim of homestead, stating that the evidence reflected that the property was the homestead neither of a single adult person nor of a family. The court held that a claim of homestead could not be maintained by a man and a woman living together in an unmarried state.

Homestead Property—Devise Must Be No Less Than Fee Simple

Estate of Finch, 401 So. 2d 1308 (Fla. 1981)

When John W. Finch died, he was survived by his spouse and two adult daughters. One of the daughters was the petitioner. Finch's will devised his condominium to Finch's wife, respondent, for life, with a vested remainder in petitioner. Both parties conceded that the real property in question was homestead.

The respondent moved to set aside the devise of homestead on the grounds that both the Florida Constitution and the Florida Statutes require a devise of homestead property to be no less than a fee simple. The trial court agreed, and it was affirmed on appeal. The petitioner appealed to the supreme court.

The supreme court held that where a testator dies leaving a surviving spouse and adult children, the homestead property may not be devised by leaving less than a fee simple to the surviving spouse. The supreme court also overruled the decision of the fifth circuit in *In re Estate of Ritz*, 385 So. 2d 1102 (Fla. 1980).

Husband and Wife—Antenuptial Agreement—Not a Bar to Alimony Without Disclosure of Assets

Weintraub v. *Weintraub*, 395 So. 2d 302 (Fla. 1981)

Before the parties were married in 1965, they executed an antenuptial agreement. Later, the wife filed for dissolution of the marriage and claimed alimony. The husband pleaded an affirmative defense to the claim for alimony, asserting that he had made a full and complete disclosure of assets and liabilities. The wife replied that there had been no disclosure at the time of execution of the agreement. The trial judge found the agreement to be invalid for lack of disclosure. The husband appealed.

The appellate court affirmed the trial court, holding that an antenuptial agreement will not bar an award of alimony where the husband did not disclose the nature and extent of his resources to his future wife before she executed the agreement and where she did not otherwise have knowledge of those resources.

The court also stated that Section 732.702(2), Florida Statutes (1977), which validates antenuptial agreements despite nondisclosure, applies only to the probate code. If a premarital agreement is not litigated until the death of one of the parties, however, Section 732.702(2) may validate a premarital agreement without disclosure even though the premarital agreement would have been invalidated if the party were living. Therefore, the appellate court certified the following question to the su-

preme court: "Does Section 732.702(2) validate premarital agreements otherwise invalid under *Del Vecchio* v. *Del Vecchio*, 143 So. 2d 17 (Fla. 1962), when the agreement is questioned on grounds of nondisclosure in a marriage dissolution or other proceedings affecting property during the lifetimes of the spouses?"

Husband and Wife—Conveyance Set Aside—Undue Influence

Marjorie E. Pike v. *Dorthea L. Pike*, Mo. Sup., 609 S.W. 397 (1980)

Marjorie and Estill Pike acquired a farm in 1950 as tenants by the entirety. In 1966, Marjorie underwent psychiatric care, was released from care, and returned to the family home. In 1970, she was served with divorce papers. Thereafter, without valid consideration, she executed a warranty deed to Estill, who later was granted an ex parte divorce and custody of the children. Thereafter, Estill married Dorthea and conveyed the farm to himself and Dorthea as husband and wife. Estill subsequently died, leaving Dorthea his widow.

The trial court held that the deed was void for lack of consideration and for lack of mental capacity.

The supreme court affirmed, basing its decision on the fact that the proof supporting the judgment was somewhat different from that pleaded on in the trial court's findings, but the deed was clearly obtained by undue influence and thus unnecessary to remand for a formal amendment to the pleadings. The evidence adduced from friends, relatives, and expert witnesses sustained the findings of undue influence.

Husband and Wife—Insurance—Fraud by Coinsured

Morgan v. *Cincinnati Insurance Co.*, 411 Mich. 267, 307 N.W. 2d 53 (1981)

The question before the court was whether the intentional burning of a home by one spouse would bar recovery under a statutory fire insurance policy. Both spouses were named in the policy as the insured. The husband and wife were living apart, and a divorce was pending. The policy provided that the entire policy would be void in the case of fraud or false swearing by the insured.

The court held that the language applied only to the insured person committing the fraud and not to any other person described in the policy as an insured. The wife was then permitted to recover under the policy. The court limited a rule previously stated by the supreme court in *Monaghan* v. *Agricultural Fire Ins. Co. of Watertown*, 53 Mich. 238, 18 N.W. 797 (1884) that intentional destruction was chargeable to both insureds and precluded recovery by the innocent joint insured.

In dissent, Justice Fitzgerald would have held that the innocent spouse could recover on the policy, but only to the extent of her interest in the property, which, as a tenant by the entireties, would amount to one-half the amount recoverable.

Husband and Wife—Marital Property—Attachment of Judgments After Dissolution

Holt v. *Boozel*, 394 So. 2d 226 (Fla. 1981)

In 1971, James and Sandra Boozel acquired real property as tenants by the entirety. In 1974, both signed a promissory note. A renewal note was signed only by the husband and an accommodation endorser, the appellant herein. There was a default on the note. The judgment was entered against the husband and the appellant. The appellant paid the judgment in 1977, and the judgment was assigned to the appellant.

In 1978, a final decree of dissolution was granted, terminating the marriage of James and Sandra Boozel. The court awarded a special equity in the property to Sandra, which was determined to be her sole and exclusive property. The court ordered James to convey his recorded one-half interest by quit claim deed to Sandra as part of the dissolution judgment.

The appellant attempted to levy on the interest of the husband, claiming the judgment lien attached to the husband's interest in the real property between the final decree of dissolution and the execution of the quit claim deed. The trial court disagreed and granted Sandra summary judgment in her suit to quiet title to the real property.

The appellate court affirmed the trial court on the basis that the special equity interest of the wife was acquired during the marriage and before the dissolution. Absent a showing that a conveyance of marital property pursuant to a final decree of dissolution is a fraud of creditors, a conveyance by the husband of his interest in an estate by the entirety to his wife allows the wife to take the entire estate free of judgments against the husband.

Husband and Wife—Surviving Spouse Support Allowance

In re Pauli's Estate: Pauli v. *The Boatmen's National Bank of St. Louis*, Mo. App., 613 S.W. 2d 467 (1981)

A surviving widow appealed an order of the probate division of the circuit court granting a one-year allowance of $30,000.00 instead of the $47,168.80 requested.

The decedent, husband and father of five children, died testate naming the defendant as executor with an estate valued at $625,000. The plaintiff's application for support in the amount requested was not objected to by the executor.

On appeal, the court stated that an application for a family allowance is in the nature of an equitable proceeding. There was no substantial evidence to support the probate division's decision to reduce the award. The statute, Section 474.260 R.S. Mo. 1978, provides that the surviving spouse is entitled to a reasonable allowance for the one-year period, according to the spouse's previous standard of living, taking into account the condition of the estate of the deceased spouse.

There is no impediment to the full allowance because of the size of the estate, and there is no showing that creditors or potential distributors will be adversely affected by the full allowance.

Husband and Wife—Marital Real Estate Allocated as Tenants in Common

Murray v. *Murray*, Mo. App., 614 S.W. 2d 554 (1981)

The husband appealed the trial court's decree dissolving his 11-year marriage and awarding the marital residence, three-fifths to the wife and two-fifths to the husband as tenants in common.

The husband's appeal on this point states that the court had a statutory obligation to value and divide the marital property under Section 452.330 R.S. Mo. 1978 and *Davis* v. *Davis*, 544 S.W. 2d 259 (Mo. App. 1976).

Section 452.330 provides in part: "[T]he court shall set apart to each spouse his property and shall divide the marital property in such proportion as the court deems just after considering all relevant factors. . . . "

The issue on appeal was, Did the court err in its allocation of the marital home?

It was held that the court's order was reasonable. The court had the right to determine the allocation of the respective interests of each party since this is not prohibited by statute and the Davis case does not prevent an allocation in this manner, even though it strongly suggests that property should not be left as tenants in common if susceptible to division in kind. The court affirmed.

Indian Lands

Antoine v. *United States*, 637 F.2d 1177 (8th Cir. 1981)

In 1884, W. received a Sioux Land Certificate for a tract of land pursuant to Article 6 of the Sioux Treaty of 1868 (15 Stat. 635), which grant was certified and recorded. Grants were conditioned upon the grantee's cultivation of the land. W. died soon after enactment of the Sioux Allotment Act of 1889 (25 Stat. 888), by which allotments of land under the 1868 treaty were ratified and made valid, and each Indian was entitled to a patent. No patent was ever issued to W. or to his heirs.

In 1915, C. A. (a son of W.'s) inquired of the Rosebud Indian Agency about the land and was asked to send the supervisor information on his ancestry, which was done by affidavit. No further action was taken until 1977, when the plaintiff-appellant J. A., a great-grandson of W.'s, discovered evidence of the claim.

J. A. brought a suit to recover the land originally granted, or an allotment of other land of similar nature and value. He also requested damages for loss of use and income from the land. The case was submitted to the U.S. District Court for the District of South Dakota on stipulated documentary evidence.

The district court held that the 1868 treaty granted a defeasible title only and that the 1889 Allotment Act made the interest indefeasible if the requirement of cultivation had been satisfied. The court held that the burden of proving cultivation was on the plaintiff and dismissed the case. J. A. appealed, and the court of appeals reversed and remanded. The first issue was, Does the burden of proof of the cultivation issue fall on the claimant Indian? The statutes designed to safeguard the rights of Indians must be broadly interpreted to give the Indians the maximum protection possible under the statutory language. The government was held to bear the burden of proving breach of the cultivation condition for two reasons: The government had greater access to the records, and during the period of correspondence, the government never requested proof of cultivation from C. A. To require proof from J. A. would be grossly unfair. The second issue was, What is the proper relief in Indian land entitlement claims? Returning the allotted land is not permissible relief unless the parties in possession are given an opportunity to participate in the lawsuit. Here such parties had not been joined.

A substitute allotment is generally disfavored as a matter of policy, and Congress has prohibited further allotment of tribal lands. Laches may also bar specific performance in the absence of other impediments.

If the government wrongfully withheld a patent, the government may be held liable for damages, the measure of which is to be determined by the district court.

Insurance

Nationwide Life Insurance Company v. *Myers*, 67 Ohio App. 2d 29, 425 N.E. 2d 952 (1980)

The insurance company brought action against the estate of its insured and the estate of the insured's wife, the beneficiary, to recover the proceeds of a life insurance policy paid under a mistake of fact as to whether the insured or his wife was first deceased as a result of an automobile accident. In the absence of fraud, duress, compulsion, or mistake of fact, money voluntarily paid by one person to another on a claim of right to such payment cannot be recovered merely because the person (insurance company) who made the payment mistook the law as to his liability to pay.

The insurance company had to pay a second time.

Insurance—Contract Interpretation

Clark v. *St. Paul Property and Liability Insurance Co.*, 102 Idaho 756, 639 P.2d 454 (1981)

While hauling a truckload of fresh and frozen fish, one of the plaintiffs' drivers was abducted and held captive for eight days in the trunk of a car. During the driver's absence, the refrigeration unit ran out of fuel, causing the trailer to warm and the cargo to spoil. The defendant insurance company denied a claim submitted by the plaintiffs on the basis that this particular risk was not covered by the insurance policy. The lower court found that the policy was ambiguous, and since all ambiguities are to be resolved in favor of the insured, the court allowed recovery.

The plaintiffs argued that this determination of ambiguity should be respected on appeal. The Idaho Supreme Court, however, noted that the question of ambiguity in a contract is separate from the question concerning the interpretation of an ambiguous contract and that determination of whether a contract is ambiguous is a question of law for which the supreme court is free to draw its own conclusion from the evidence presented. The court then noted that the policy covered certain enumerated risks and that the loss sustained by the plaintiffs was not caused by any of those risks. Therefore, the court found that the policy was not ambiguous and reversed the lower court's decision with directions to enter judgment for the insurance company.

Judgment Debtor—Privilege Against Self-Incrimination

State of Missouri, ex rel., Joseph D. Newman v. *Honorable John Anderson, Judge*, Mo. App., 607 S.W. 2d 445 (1980)

Joseph Newman sought a writ of prohibition to prevent the judge from compelling him to answer certain questions in an examination of judgment debtor proceedings.

The State Bank of DeSoto obtained a money judgment against Newman and secured a court order for him to appear for an examination of judgment debtor. At the outset, Newman invoked his privilege against self-incrimination guaranteed by Section 19, Article I of the Missouri Constitution and by the Fifth Amendment of the United States Constitution and refused to answer the bank's questions. In particular, he refused to answer the question, "Is there any real property of record title in your name in the state of Missouri?"

The bank requested Judge Anderson to compel Newman to answer on the basis that the question did not require an answer whether he owned any real property but rather whether title to any property was recorded in his name and that such information would be public record and not incriminating. Newman's counsel indicated the answer might incriminate Newman because of possible fraud. The judge directed an answer or commitment to jail. Writ of prohibition was made absolute.

Missouri courts have long recognized that the privilege against self-incrimination is available to a judgment debtor in an examination of judgment debtor proceedings. The privilege extends not only to answers that would in themselves support a conviction of a crime, but likewise embraces those answers that would simply furnish a link in the chain of evidence needed to prosecute the debtor for a crime. The basic rule always must be "the court cannot compel the [debtor] to answer unless it would be impossible for the [debtor] to incriminate himself."

Landlord and Tenant

Ahmed v. *Scott*, 65 Ohio App. 2d 271, 418 N.E. 2d 406 (1979)

If a lease expressly requires written notice of the exercise of a renewal option, such notice must be given in order to renew the lease; holding over is insufficient to exercise the renewal option.

Landlord and Tenant—Anti-Eviction Act Not Applicable to Foreclosing Prior Mortgagee

Guttenberg Savings & Loan Association v. *Rivera*, 85 N.J. 617, 428 A.2d 1289 (1981)

The action was to foreclose the mortgage and to evict the tenants. The Anti-Eviction Act provides that no landlord may evict a tenant except for certain specified reasons. The issue is whether a foreclosing mortgagee of a residential apartment building may obtain a superior court order evicting tenants under leases subordinate to the mortgage without complying with the Anti-Eviction Act.

The court held that the act applies only to the traditional landlord-tenant relationship and not to that of a mortgagee holding a lien prior to the leasehold of a tenant in possession. The legislature did not intend that the act affect a mortgagee's rights. The act applies only when the mortgagee's relationship to the occupant becomes one of landlord-tenant.

Landlord and Tenant—Lease Prohibiting Unwed Couple in Apartment Upheld

Hudson View Properties v. *Weiss*, 109 Misc. 2d 589, 442 N.Y.S. 2d 367 (1981)

In a 2–1 decision, the Appellate Term, First Judicial Department, granted relief to the landlord in a holdover proceeding. After her husband died, the tenant began living with a man in her apartment in a "close and loving relationship."

The lease contained a restrictive covenant that "... the demised premises and any part thereof shall be occupied only by tenant and members of the immediate family of tenant...." After appropriate notice, this holdover proceeding was brought based on the breach of the restrictive covenant.

The tenant moved to dismiss the petition on the ground that it violated the state Human Rights Law, Exec. Law Section 296 (5) (a), and the city Human Rights Law Section B 1-7.0 (5a), which prohibit discrimination in housing on the basis of marital status.

In granting the petition, the majority held that a landlord "does have the right to limit a tenant's use of the premises ... and where covenants restricting the use of property are reasonable and not contrary to public policy, they will be enforced by the court."

Mechanics' Liens

Reliance Universal, Inc., v. *Deluth Construction Co.*, 67 Ohio St. 2d 56, 425 N.E. 2d 404 (1981)

A property owner who makes payment to a contractor without first securing the required certificates of materialmen and contractors' affidavits under R.C. 1311.04 does not obtain the protection of R.C. 1311.05, notwithstanding the fact that the property owner received no notice of errors in the certificate of materialmen as required under R.C. 1311.05. The court reviewed and reaffirmed the purpose of the Ohio mechanics' lien law, which is intended to secure the claims of creditors like Reliance. The purpose is to give the creditor (workman) the right, when the contractor refuses to pay, to be paid for his labor and material out of the fund that has been earned under the contract, and out of the structure, and the land. Reliance was not paid for its pipe.

Reviewer's comment: Ohio courts strictly construe laws limiting the right of a lienholder to be paid in full for his work and material. In the instant case, the owner did not follow the code and may not take shelter in the immunity of R.C. 1311.05.

Williams & Works, Inc., v. *Springfield Corporation*, 408 Mich. 732, 293 N.W. 2d 304 (1980); reversing 81 Mich. App. 355, 265 N.W. 2d 328 (1978)

In connection with the contemplated erection of an apartment building, certain engineering services were performed. The only on-site work involved was the boring of 12 holes in the ground, about six inches in diameter, in August 1972. Two mortgages were recorded in January 1973. Building operations were commenced the following month.

In this action for the foreclosure of mechanics' liens, the lien claimants contended that the commencement of actual construction was the boring of the holes. Since mechanics' liens relate back to the commencement of construction, this argument, if accepted, would give them priority over the mortgages recorded building operations were started. They further contended that by amending the mechanics' lien statute in 1955 so as to make engineering services a lienable item, the legislature intended to change then-existing case law holding that visible on-site construction was required for commencement of the improvement and, also, that the mortgagee's knowledge that the engineering services had been rendered when it made its loan operated to deprive it of priority.

The court held for the mortgagee. The court found that the requirement of visible on-site construction was well established in Michigan law and supported by the great weight of judicial authority elsewhere. It also found no legislative intent to change this rule in making engineering services lienable, noting that similar protection had been given to other services by several other amendments, but without anything therein indicating any intention to change previously existing requirements. So far as knowledge by the mortgagee was concerned, the court held that priorities between claimants and mortgagee were to be governed by the commencement of construction, and the matter of notice was not relevant.

Time, Money Awash in Eureka Tidelands—A Response

by A. S. Kaufer

The November 1980 issue of Title News *contained an account by J. N. Laichas of SAFECO Title Insurance Company, Panorama City, California, of the costly litigation surrounding a tidelands dispute between the city of Eureka and the state of California and the owners of 14 parcels of land fronting Humboldt Bay. A. S. Kaufer of Nossaman, Krueger & Knox, Los Angeles, was lead counsel for the city of Eureka in the case. In the following article, Kaufer offers another perspective on the benefits and losses to the public, the city and the state, the landowners, and the title insurers involved in resolving such claims.*

An 1857 statute authorized the city of Eureka to sell "occupied" tide and submerged lands out to a point where they were six feet deep at low tide. Between 1857 and 1881, the city of Eureka sold its entire waterfront, including both occupied and unoccupied lands (except for three street terminuses). Many of the sales conveyed property bayward of the six-foot line. More significant, approximately a third of the city's waterfront was sold after the adoption of the 1879 constitutional amendment that prohibited such sales.

Based on these facts, it was clear that the post-1879 grants, constituting approximately a third of a mile, were invalid. There was also reason to conclude (and the trial court subsequently held) that grants beyond the six-foot line were unauthorized and therefore invalid. In addition, there was a legal basis for believing that the conveyances of unoccupied parcels were unauthorized and that the public trust easement for commerce, navigation, and fishery [*People* v. *California Fish Co.*, 166 Cal. 576 (1913)] still existed over all the property.

All local title companies had previously refused both to insure title beyond the six-foot line and to insure against the tidelands trust on unfilled portions of the property. All waterfront owners in the litigation had purchased their property subject to those title exceptions. As to the post-1879 grants, some title insurance had been issued by one company, apparently overlooking the 1879 constitutional prohibition.

In 1968, a waterfront owner was unable to obtain financing without a "clean" title policy. The owner (not the city) then instituted litigation to quiet title. The title companies later insisted that all waterfront owners be involved in the litigation.

Under such circumstances, the city of Eureka and the state of California were confronted with three alternatives: not defend the public's interest, defend the public's interest, or conclude a reasonable settlement. The city and state chose to pursue the latter two courses of action.

One might believe that reasonable minds could settle litigation for less than the anticipated attorneys' fees, but, unfortunately, in this case settlement proved to be elusive. Although more than $1 million was ultimately spent for litigation expenses by the title companies involved, the only offer of settlement made by the companies, before the twelfth year of litigation, was for $50,000 even though

- It was relatively clear that the public would eventually recover a third of the city's waterfront that had been granted in violation of the 1879 constitutional prohibition
- The tidelands trust had never been relinquished; consequently, the title to all waterfront properties remained clouded
- It was obvious that litigation costs could go well into six figures

If the owners and title companies had been willing to settle in 1968 on the same basis as they settled in 1980, the entire case could have been resolved at the outset—and the public and the title companies could have saved substantial sums of money.*

With regard to the settlement that was reached, the author of the article lacked certain details. He dismisses the entire Eureka tidelands settlement with the following comments: "What did the city and state get for their investment of time and money? SAFECO Title paid $62,500 in cash in return for confirmation of the title of all of its insured. Western Title paid approximately the same amount. Several of the landowners dedicated a small parcel of land to extend one street to the waterfront so as to provide public access." ". . . essentially, the case finally was settled for nuisance value." Such a characterization of the settlement is both inaccurate and simplistic; for example, the author fails to refer to the acres of valuable waterfront land and waterfront access acquired by the city as a result of the litigation.†

Compare the Eureka waterfront of 1982 with the prelitigation waterfront of 1968. Before the litigation began, the city's original mile-long waterfront (between A and S streets) was occupied solely by private parties, except for 195 feet of public access at the terminuses of three public streets. Although upland owners used the tide and submerged lands along the city's waterfront, the city received no rent for such use.

Today, however, as a consequence of the settlements in the A to S streets area, the city of Eureka has acquired

- A 2+ acre parcel with 500 feet of water frontage that is proposed to be developed as a visitors' and convention center
- An additional half-acre waterfront parcel (with settlement fund proceeds) with water frontage of 350 feet and an appurtenant dock
- Upland pedestrian access along approximately 2,100 feet of the shoreline for a proposed esplanade
- A street right-of-way extending more than 2,800 feet through the waterfront area
- Rent of approximately $13,000 per year (subject to escalation clauses) from waterfront occupants of unfilled city-owned tide and submerged lands

Besides these acquisitions and as an integral part of the two settlement agreements resolving the litigation, the city of Eureka received an additional 1,500 feet of street right-of-way (to connect with the 2,800 feet of right-of-way mentioned earlier), 1,100 feet of shoreline pedestrian access (to connect with the 2,100 feet mentioned earlier for a proposed esplanade), perpendicular vehicular (560 feet) and pedestrian (400 feet) access to the street right-of-way and the proposed esplanade, a one-acre commercial parcel with more than 240 feet of water frontage, a 4.3-acre waterfront park, and a 20+ acre island in the waterfront areas outside of, but adjacent to, the area in litigation.

Under no circumstances could the Eureka tidelands settlement be called a "nuisance value" settlement.

The unfortunate aspect of the litigation, however, is that the same result could have been accomplished sooner and cheaper. All sides agree that an enormous sum of money was spent to litigate title to the Eureka tidelands. The most relevant question, however, is why the plaintiff private parties and title companies elected to spend more than $1 million in litigation expenses and 12 years in litigation to obtain a settlement that could have been obtained 12 years earlier and $1 million sooner. Only they can answer that question. The decision was obviously not based on economics nor could it have been a "forced" defense. The only conclusion I can reach is that the title companies wanted to "show" public entities that they should not enforce old tidelands claims.

I respectfully suggest that any defendant faced with a bona fide title dispute should assess the merits of the case at the earliest stage and devote all early efforts to settlement. Public and private parties frequently have different but consistent interests. For example, it may be important for a city to have strip access along the waterfront, and such access need not harm an upland owner. Similarly, if there are many properties involved and each has a cloud on title (such as in Eureka), a contribution from each parcel may enable the public to acquire one large parcel, or several smaller, but usable, parcels (by purchase), and to release all claims to remaining property. (This was an obvious solution in the Eureka case that was proposed by the city but rejected.) There are many ways to resolve a tidelands dispute if both sides want to settle.

Another settlement alternative was attempted in the Eureka case but seriously misunderstood by the author of the earlier article. At one point the author states: "The city had prepared a motion for summary judgment which was sent to each of the landowners together with a form of lease. The city suggested that if the owners gave in now, the city would permit them to lease their land on 'favorable terms.' Beneath this suggestion lay the unspoken threat that if the city had to proceed with its motion and take judgment, new and more onerous terms would then be offered." The author did not understand the proposed leases in question.

Under the lease proposal, the plaintiffs could have leased the properties in dispute from the city, paid rents into an escrow account, obtained loans, and developed the properties. Financing would have been available because the leases offered the long-term assurances necessary for a loan even if the plaintiffs had ultimately lost the litigation. At the same time, the litigation of the legal issues in dispute would have continued. Upon conclusion of the litigation, the court would have awarded the escrowed funds to the party entitled to them. If the city were determined to be the owner, then the leases would have continued as ordinary leases of tidelands. Such a proposal would have allowed the waterfront owners to develop their properties without surrendering, or requiring the city to surrender, any existing claims. Apparently, the waterfront owners and/or the title companies, however, believed that a hard-nosed approach was preferable.

Continued on page 22

* Various settlement proposals had been made by the city throughout the case, but as late as the pretrial conference before the second phase of the trial, plaintiffs were asked in open court if they had any settlement proposal to offer. They replied, in substance, that no settlement would be possible until after the second trial. Settlement would probably have been easier and less expensive during the earlier years of the litigation.

† In addition to the litigation covering the city's original waterfront, the two settlements covering the waterfront eventually included portions of tidelands surveys located east and west of the original waterfront area.

Names In The News . . .

Joseph F. Irish, associate counsel with Pioneer National Title Insurance Company for the past 34 years, retired August 1, 1982. Irish was responsible for the company's national title services.

Michael F. McFadden, vice president and manager for First American Title Insurance Company, was transferred from the company's Pocatello, Idaho, office to its Santa Cruz, California, operation. McFadden joined First American's Santa Ana office in 1971 as a title searcher and a relief title officer. In 1974, he was promoted to assistant manager of the firm's Colorado Springs office, and in 1977, he became vice president and manager of the Pocatello office.

Frank L. Fulton was named president of First American Title Company of San Francisco. He was also appointed vice president and regional counsel for the company's parent firm, First American Title Insurance Company. A 12-year veteran of the title insurance industry, Fulton joined First American in 1969 as a title searcher. Before assuming his new position, he was vice president and regional counsel for First American in Seattle, Washington.

Robert B. McLain, president of McLain Development Company, Newport Beach, California, was appointed to the executive committee of the First American Financial Corporation and its subsidiary, First American Title Insurance Company.

William K. Mitchell was named senior vice president—controller, planning and operations, of USLIFE Title Insurance Company of New York. Mitchell joined USLIFE in 1973 after serving as a senior accountant in 1978, vice president—controller in 1979, and senior vice president—controller in 1981, at which time he was also elected to the board of directors. In his new position, Mitchell oversees all New York State branch and agency operations as well as all company accounting, personnel, and purchasing functions.

Donald E. Partington was elected vice president, assistant general counsel, for Fidelity National Title Insurance Company, Phoenix, Arizona. Before joining Fidelity, Partington was an associate and branch counsel for another title company.

District-Realty Title Insurance Corporation announced the election of three new members to its board of directors: **Jeffrey N. Cohen**, chairman of the board of directors of JNC Enterprises, Inc., and chairman of the board of directors of National Bank of Commerce; **Jo V. Morgan**, senior partner of Whiteford, Hart, Carmody & Wilson; and **William F. Sinclair**, president and chief operating officer of Perpetual American Federal Savings and Loan Association.

Thomas A. Price was named resident general counsel for Chautauqua Abstract Company in Mayville, New York. Before joining Chautauqua, Price specialized in title work at Price, Miller, Evans and Flowers, a law firm in Jamestown, New York.

James Cooper-Hill was named senior vice president and general counsel for American Title. Before assuming his new position, Cooper-Hill was senior counsel for Coldwell Banker Commercial Real Estate Services. Before that, he was associated with the Houston law firm of Dabney & Garwood.

David Brandt was named vice president in charge of American Title's Champions, Conroe, and Woodlands, Texas, offices. Before assuming the new position, Brandt was escrow office manager at the company's Champions office. He has been with American Title for six years.

Richard Adams was named vice president to supervise operations at American Title's Post Oak, Sugarland, and Memorial-West, Texas, offices. An American Title employee for seven years, Adams most recently served as escrow manager for the company's Post Oak office.

Myron Woodruff was named vice president for title operations at American Title. Woodruff has 21 years experience in title operations.

Irish

McLain

McFadden

Fulton

American Title Company named **James P. Sibley** senior vice president, secretary/treasurer, and a director in charge of the company's daily operations. Before assuming this position, Sibley was president of American Information Services, an affiliate of American Title.

Debbie Fox was named vice president of American Title. She supervises the company's Alvin, Angleton, and Lake Jackson, Texas, offices. Fox, who has 19 years experience in the title business, has been with American Title for 9 years. She most recently served as escrow office manager of the company's Angleton office.

Marion Bourgue was promoted to vice president and senior escrow officer at American Title's Texas Commerce Tower office. Bourgue has been with American Title for 11 years and has 30 years title operations experience. Before assuming her new position, Bourgue was senior escrow officer at the company's Esperson, Texas, office.

Harold Howle was named vice president and residential sales manager at American Title. He has been with the company for seven years and most recently was director of residential sales and marketing.

Title Insurance and Trust Company announced that **Larry Vetter** was promoted to assistant vice president and area branch manager of the company's Quincy, California, office. Vetter assumes complete responsibility for Plumas County operations, which include the main office in Quincy and a branch office in Lake Almanor. Vetter joined the company's Susanville office in 1965 as a title officer and was named county offices manager in 1976.

Thomas R. Tieman was promoted to vice president and manager of Placer County, California, operations for Title Insurance and Trust. Tieman manages the company's entire Placer County operation, which includes four branches and

Cooper-Hill

Price

the main office. A Title Insurance and Trust employee since 1963, Tieman has worked as a title searcher, advisory trustee sale officer, escrow/title manager, and assistant county manager.

Joan C. Donnellan was promoted to associate title counsel at Title Insurance and Trust's Rosemead, California, office. Donnellan oversees all matters relating to title insurance and claims against title. Before her appointment, she was assistant title counsel.

James F. Brenner succeeds Donnellan as Rosemead assistant title counsel for Title Insurance and Trust. Brenner is a claims and litigation attorney for the company. Before assuming the new position, Brenner was associate counsel at Coldwell Banker—Forest E. Olson in Woodland Hills.

J. Earle Norris was named vice president and senior associate title counsel of Title Insurance and Trust's western region headquarters. Norris joined the company in 1974.

Thomas Joseph Paonessa was appointed employee benefit trust marketing representative for the trust department of Title Insurance and Trust. For the past five years, Paonessa has been an employee benefit plan consultant in the Los Angeles area. Before that, he was a self-employed life insurance agent.

Loyd E. Watje was promoted to underwriting analyst at the Los Angeles headquarters of Title Insurance and Trust. Watje oversees general underwriting assignments and also acts as a consultant and researcher. He joined the company in 1950 as a tax and lien searcher and subsequently was promoted to engineer, title engineer, title officer, and, most recently, advisory title officer.

Carol M. Stanley was appointed major account manager at Ticor Title Service's Encino, California, office. In her new position, Stanley markets Ticor's services and assists industrial, commercial, and investment customers in the Encino area. Before her appointment, Stanley was an account manager with the company's Woodland Hills office.

Susan Lynett Hardin was appointed commercial/industrial accounts manager of Ticor Title's San Francisco office. In her new position, Hardin oversees commercial, industrial, and special projects accounts. Before joining the company, Hardin was county manager for Chicago Title in San Francisco.

Patricia L. Swatt-Meshek was promoted to associate title counsel for Ticor Title's Century City, California, office. In her new position, Swatt-Meshek evaluates unusual or high-liability title and escrow transactions. She joined the company in 1981 as assistant title counsel in the Rosemead office.

Cleo Harper was promoted to vice president and major accounts manager at Ticor Title in Los Angeles. Harper acts as liaison to high-level corporate customers and business community representatives and promotes new business. He has been with the company for 15 years, most recently as an account manager. He has also served as supervisor, title officer, title engineer, and draftsman.

Charles C. Mette was named special title operations manager of Ticor Title's Santa Ana, California, office. Mette handles high-liability title transactions. Before his promotion, he was supervisor, special title operations. Mette joined Title Insurance and Trust in 1968 as a title searcher.

David S. Miller was appointed major account manager at Ticor Title's Century City office. Miller is responsible for business development and customer relations. Before joining Ticor Title, Miller was president of Mortgage Consultants Company.

Michael E. Martino was appointed major account manager at Ticor Title's Century City office. Martino is also responsible for business development and customer relations. Before his appointment, Martino worked as a loan manager at Continental Home Loan in Beverly Hills.

Donna H. Wilson was promoted to major account manager at Ticor Title in Houston, Texas. Wilson acts as liaison to high-level corporate customers and business community representatives and promotes new business. Before her promotion, Wilson was personnel director for 10 Ticor Title branch offices.

Ill. LTA Holds 75th

The Illinois Land Title Association held its 75th annual convention at the Sheraton-West Port Inn, St. Louis, Missouri, June 11–13.

Officers elected at the meeting were Michael R. Weber, president; Joseph Glick, first vice president; Joseph Tolson, second vice president; Duane L. Serck, treasurer; and Ann B. Mennenoh, secretary.

William J. McAuliffe Jr., ALTA executive vice president, represented the national association.

Tenn. Elects Meyer

The Tennessee Land Title Association elected Charles A. Meyer president during its 37th annual convention, which was held June 18–20 in Chattanooga.

Frank Perry was elected first vice president, and Robert R. Croley was chosen second vice president.

Jack Rattikin Jr., ALTA Abstracters and Title Insurance Agents Section chairman, was the ALTA representative.

Copeland Heads LTAC

The 62nd annual convention of the Land Title Association of Colorado was held July 8–10 at Tamarron, Durango.

Nicholas J. Copeland was elected president, and Ronald J. Cecil and Harry L. Paulsen were named first and second vice presidents respectively.

Thomas S. McDonald, ALTA president-elect, provided an update of the national association's activities.

Eureka—
from page 19

There are many constructive alternatives to consider when faced with a tidelands dispute. One alternative, however, is not constructive—offering an insignificant amount of cash or property and expecting the public entity to "knuckle under." Obviously, determining what is "significant" is a judgment question, but a look at Eureka is instructive:

- The only settlement offer (before the final settlement) was $50,000
- The final settlement was cash in the sum of $70,000; 6.5 acres of land with a net value of $640,000 in addition to one dock and severance savings on the right-of-way property; leases yielding approximately $13,000 per year; and settlement of tideland disputes on adjacent parcels, undoubtedly attributable to the A through S streets litigation, for which the city received an additional $59,500 in cash and 8.5 acres of land (plus a 20+ acre island) with a net value of an additional $482,000, not counting severance savings on the right-of-way property

The totals were cash—$129,500, land value—$1,122,000 (plus dock), and lease income—$13,000 per year.

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

I suggest that this conclusion is not necessarily correct. Titles in Eureka were insured subject to stringent exceptions. For example, one typical policy, issued in 1947 (to the owner who later began the tidelands litigation against the city), listed as exceptions:

2. Any rights or title of the United States or the State of California or the City of Eureka in any part of this property that is covered by the waters of Humboldt Bay, or below an authorized and constructed bulkhead line; which rights may exist notwithstanding the apparent grant into private ownership; also any matters relating to navigation or structures affecting navigation which are not shown by the County records of land ownership (but may be shown by records of State, Federal or City agencies having authority over those matters.)

3. Defects in title, or lack of title, to such portions (if any) as lie northward of either of the following different boundaries used in former documents for defining the north boundary of the property:

(b) Line of 6 feet depth of water at low tide, which was the north boundary of property authorized to be sold by the town in the act ceding the water front, Statutes 1857 page 76. There is no record showing position of line of 6 feet depth, either in 1857 or at any later time or now.

It was these issues, which were excepted from coverage, on which the city of Eureka prevailed at the first trial. The litigation consequently proved the defects in title that the title companies previously recognized. In light of such recognition, one can only question why the title companies involved chose to litigate for some elusive principle rather than attempt to settle the problem through negotiation.

The real decision confronting the title companies in the Eureka case, as in other cases involving public claims, was whether to try to resolve bona fide disputes or to litigate regardless of merit. When confronted with a bona fide title dispute (whether or not it involved tidelands), other title companies have been known to compromise and resolve such conflicts without expensive and protracted litigation. Although settlement may not satisfy those who believe that the public should surrender its tidelands claims, those claims exist as a matter of law, they cannot be legally surrendered, and a reasonable settlement of them is both preferable and less expensive to all concerned.

Sign Up Now for St. Louis Seminar

A regional title industry seminar will be held October 29–30 at the Henry VIII Inn and Lodge in St. Louis, Missouri.

Coordinated by ALTA Educational Committee Chairman Phillip B. Wert and the ALTA Research Department, the seminar for lower- and middle-level managers is aimed at title industry employees in a five-state area—Indiana, Missouri, Kansas, Iowa, and Illinois—within reasonable driving distance of St. Louis.

Topics for which speakers have been confirmed include closing procedures, unauthorized practice of law, computers in the title operation, state regulations, national real estate laws, ALTA policy forms, converting from abstracting to title insurance, conducting an educational seminar in your locale, and ALTA.

The St. Louis meeting is the first regional seminar to be held since the early 1970s, according to Wert. Ninety-three percent of the respondents to a recent ALTA Educational Committee survey expressed interest in attending conveniently located regional seminars in their geographic area.

The seminar registration fee is $60. For additional information, write or call Richard W. McCarthy, Research Department, American Land Title Association, 1828 L St., N.W.—Suite 705, Washington, D.C. 20036 (202/296-3671).

Oregon Holds 75th

Roy F. Ellison, Oregon operations manager for Lawyers Title Company of Oregon, Portland, was elected president at the 75th annual convention of the Oregon Land Title Association. The meeting was held at the Portland Marriott Hotel June 17–19.

James M. DeCourcey, executive vice president of Josephine County Title Company, Grants Pass, was elected vice president.

Convention speakers included ALTA Executive Vice President William J. McAuliffe Jr.; State of Oregon Commissioner, Insurance Division, Josephine M. Driscoll; and Oregon Governor Victor Atiyeh.

Ida M. Berg, Budd G. Burnie, Warren J. Pease, Elwood D. Bush, and Max F. de Sully were elected honorary members.

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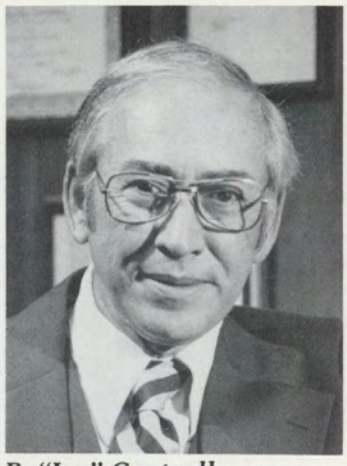

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Calendar of Meetings

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

October 15–17
Palmetto Land Title Association
Litchfield Inn
Litchfield Beach, South Carolina

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

October 21–23
Land Title Association of Arizona
Carefree Inn
Carefree, Arizona

November 10–14
Florida Land Title Association
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December 1
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