

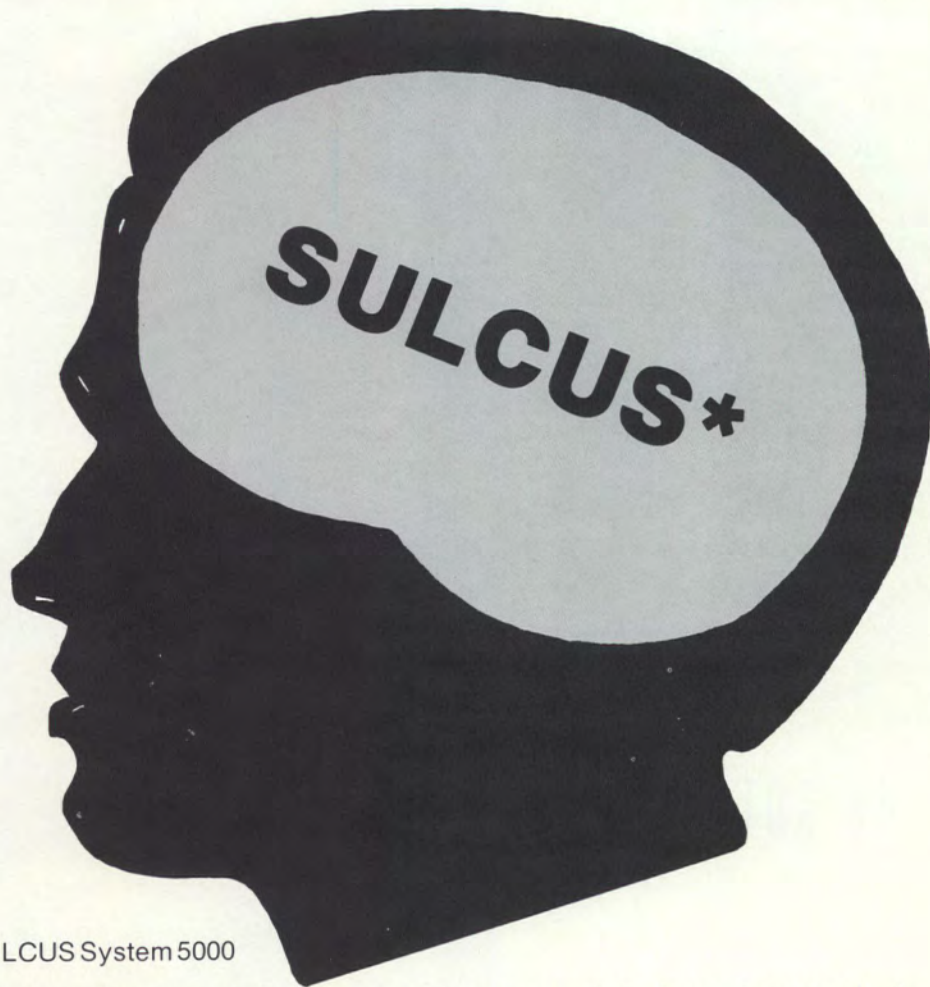
March 1983

TITLE NEWS

Congressional Outlook



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TITLE NEWS

Volume 62, Number 3

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

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Front Cover

As the 98th Congress begins work in Washington, there is a growing sense of independence in the legislative halls. ALTA Vice President—Government Relations Mark E. Winter discusses the issues in Congress that are of interest to the land title industry in an article beginning on page 9.

You've got enough to think about

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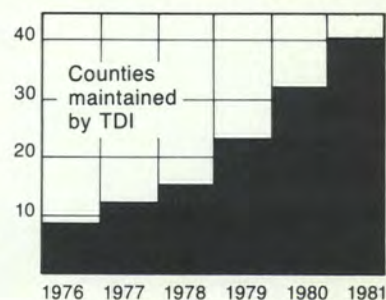
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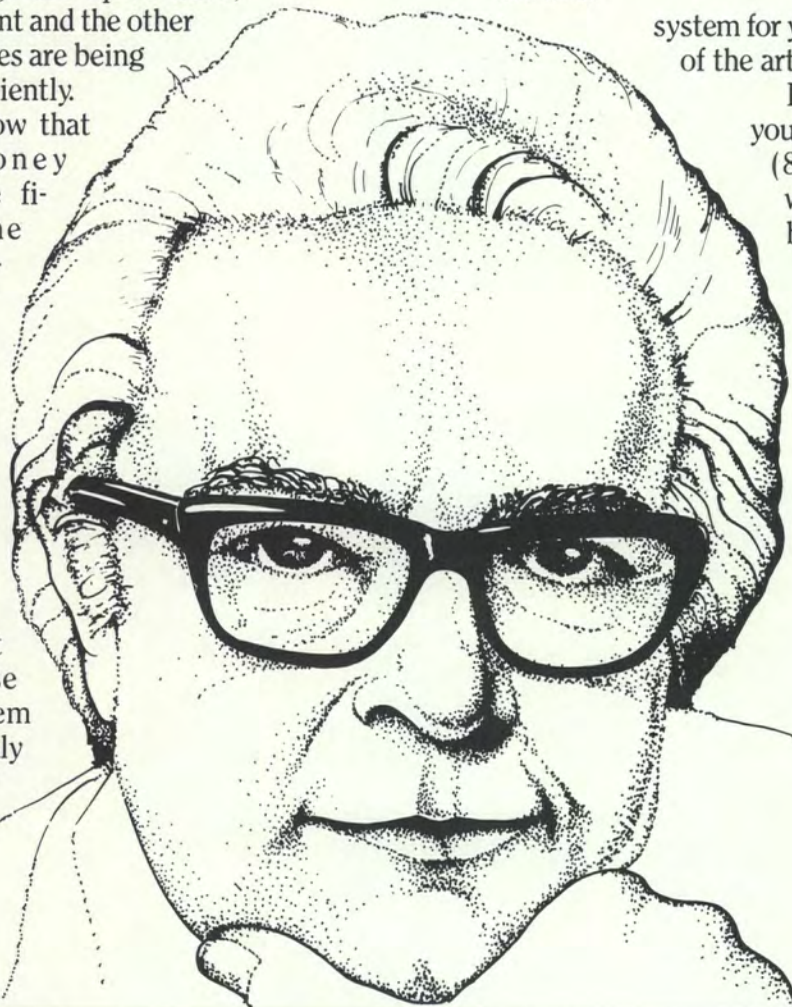
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A Message From The President-Elect

I'm not certain that I can adjust to the new phenomena. New orders are up—income seems to be rising—builders are stirring—and old houses are beginning to look attractive to starved buyers.

Sure, it may be just a temporary phase, and we may yet plunge back into a survival stance. After all, the good news didn't begin until about three months ago.

We can't deny, however, the apparent revival of the banks and the thrifts. As this is written, over \$30 billion has flowed out of the money market funds into insured financial institutions where it now can be used to finance real estate activity.

Back to the question initially posed: Can we at this late date adjust to what appears to be a more prosperous market? No more grumpy demeanor—even a smile during the day. Even hire instead of fire—raise instead of freeze.

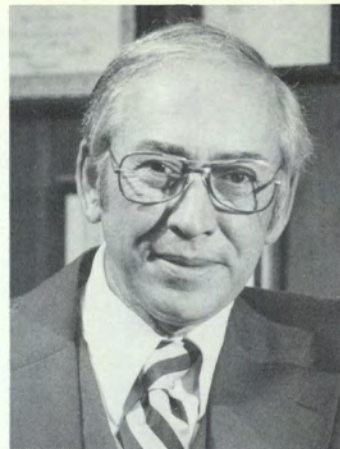
Don't misunderstand me. I don't mean to treat the subject lightly. For some three years now, however, our task has been relatively free of the

need for basic decisions save the important one—survival.

Remember, an emerging economy as opposed to a depression presents many more challenges for management at all levels. We all hope we won't return to the old, loose ways, and hope we will remember and profit by the lessons learned during the recent unpleasantness. If we can maintain our present productivity, we may learn to smile again.

D. P. Kennedy

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Title Insurance— An International Perspective

By Stanton S. Roller

Title insurance, in the form that we know it today, first became available internationally through U.S. title insurance companies which became licensed in Canada and Puerto Rico in the mid-1950s. Subsequently, title insurance spread to the U.S. Virgin Islands, the Bahamas, several Caribbean islands, Guam and Great Britain—also through licensing in these jurisdictions of U.S. title insurance companies or subsidiaries.

Although some title insurance is being written in Mexico, and possibly other foreign countries, this is only being done sporadically on the basis of an isolated, offshore-type transaction without benefit of license in the country where the property is located.

Puerto Rico

Only in the case of Puerto Rico, which is tied to the United States in a commonwealth status, has title insurance gained the general acceptance of professional and business people and thus shown steady growth over the years. Probably the most significant factor behind this progress was the rapid growth itself of the FHA/VA secondary mortgage market in the 1950s, '60s and '70s. Local builders in Puerto Rico, as well as many from the States, developed large residential housing projects containing thousands of units during this period. Construction lenders from the U.S. became heavily involved and required title insurance, the benefits of which they

were accustomed to having on their mainland properties. The permanent mortgage paper (mostly FHA/VA loans) was packaged and sold to investors in the U.S. with a title policy covering each mortgage.

Although Puerto Rico is now well built up, the market for title insurance continues to grow through its gain in acceptability by the local legal and business community. In addition to new construction, there is an active resale and refinance market into which title insurance also fits. There is an unusually strong desire by Puerto Rican property owners to improve their homes, sell, and then upgrade themselves by buying a new residence. The following figures provide a perspective on the growth of title insurance written by the nine title insurance companies presently licensed to write business in Puerto Rico.



Stanton S. Roller is vice president and New Jersey state manager for Tigor Title Insurance Company. He formerly served on the ALTA Board of Governors and has spent more than 20 years in the title industry—including work in developing title insurance markets in the United States, Canada, western Europe and Mexico.

Direct Premiums Written-Puerto Rico

1965 - \$1,350,000
1970 - \$1,748,000
1975 - \$3,594,000
1980 - \$3,214,000 *

* Estimated. (A major underwriter did not report 1980 premiums)

Canada

In contrast to Puerto Rico, the development of title insurance in Canada has been slow, and signs are that it will continue to be slow for some years to come unless an unusual marketing breakthrough occurs. Since the '50s, title insurance has been offered in most provinces mainly by two U.S. title companies. An indication of the total market is as follows:

Total Direct Premiums Written-Canada

1972 - \$146,919	1977 - \$115,902
1973 - \$141,945	1978 - \$129,572
1974 - \$188,799	1979 - \$ 76,645
1975 - \$215,400	1980 - \$180,505
1976 - \$151,668	1981 - \$181,909

Most of the title premiums written in Canada emanate from requests by counsel of stateside life insurance companies and commercial banks which, over the years, have made sizeable mortgage loans on commercial properties throughout the Dominion. To a degree, these life insurance companies are reinvesting in Canada the proceeds they

have earned through selling life insurance directly, or through their Canadian subsidiaries. The Canadian Federal Government and the Provincial Insurance Departments are constantly seeking increased investments in their respective jurisdictions from authorized foreign insurers.

In Canada, each of the provinces retains exclusive jurisdiction over real property, including mineral and petroleum rights. Each has its own title registration or recording system. The Atlantic provinces favor the same recording system prevalent in the northeastern United States—an alphabetical grantor/grantee type index.

In Quebec, where the French system prevails, the notary is an essential part of the property transfer or mortgage closing. As in many European and Latin American countries, the notary is a separately trained, qualified lawyer. He is usually appointed by the government to serve for life and maintains within his own possession the originals of all executed documents, copies of which are filed in the registry office. Civil code concepts such as privileges, servitudes and emphyteutic leases are roughly similar to mechanics liens, easements and ground leases, respectively.

From the province of Ontario and west, there are a variety of land title registration systems which combine the concepts of land registration in England with the Australian Torrens system. Generally, a certificate of title represents a guarantee of fee simple ownership subject to those items registered against and appearing on the certificate. However, as in England, there are still numerous matters for which the land registrar will not assume liability and, like most registration systems, the interpretation of those charges is still a matter for attorney concern. The fact remains that a land title certificate alone is a long way from the broad coverage of an ALTA policy.

England

In 1973, two U.S. title insurance companies introduced title insurance to England and opened offices in London. After a few years of activity, one of the two decided to pull out of the market and shortly thereafter was replaced by a third U.S. company which entered the scene. At present, these remaining companies each underwrite in England and are capable of doing so in Scotland and Wales as well. Both companies maintain an active presence in London

and are writing a steady, but modest, overall volume of title insurance.

In the English business world, it helps greatly to have your business fit in with the prevailing establishment or so-called "old boy" network.

Unfortunately, title insurance is not such a business. The major reason is that solicitors and barristers were granted a monopoly from Parliament over a hundred years ago that only they shall do conveyancing (the drafting of deeds and mortgages) for fee, gain or reward. "American style" title insurance, as it is called, is looked upon as a threat to the solicitor's main source of income. It is estimated that 60 per cent of the average practicing solicitor's earnings are derived from residential conveyancing.

The Law Society is the governing body over all of the 35,000 solicitors in England and Wales and has the power to admit a solicitor to practice as well as to strike him from the rolls. Similar governing bodies exist in Scotland and the Republic of Ireland. The Bar in England is a separate organization to educate and qualify lawyers to become barristers. Barristers are involved mainly in trial work and at higher court levels, generally above the municipal court level. Barristers may receive instructions only through solicitors, and may not deal directly with the public or business representatives.

I mentioned the term "American style" title insurance. The reason for this designation is that there has been in existence for many years in England a form of cover known as "defective title indemnity." Companies such as Sun Alliance, Commercial Union, Guardian Assurance and others have offered to solicitors and their clients this form of indemnity where a known defect in title exists.

An example would be where an old restrictive covenant in an early deed allows for one house per acre and there are presently three homes on the plot. The purchaser's solicitor cannot trace anyone who might enforce the covenant but usually obtains an indemnity of this type against the unlikely event that such a party will appear and cause difficulty at a later date. The indemnity will pay for loss or damage arising solely from the defect and not from problems in the chain of title generally. It is usually drawn to the purchaser's and/or the mortgagee's interest and runs with the land, enuring to the benefit of future successors in title, as of the original date of the indemnity.

Land records in England are under the Secrets Act and are not public information. It takes the owner's or his solicitor's approval to authorize a search of the title at the land registry office. The landed aristocracy in and around London (such as the Grosvenors, Eyres, Bedfords and the like) hardly ever allow their titles to be searched, and most of their property is on lease for 99-999 years. Consequently, a ground lessee (like the builder of a block of flats) will have little or no knowledge of any encumbrance which might affect the land and, therefore, his long-term leasehold interest.

The title to land in England, whether the interest be freehold or leasehold, will either be registered at Her Majesty's Land Registry or will be designated unregistered land. The two systems run side by side and are equally effective.

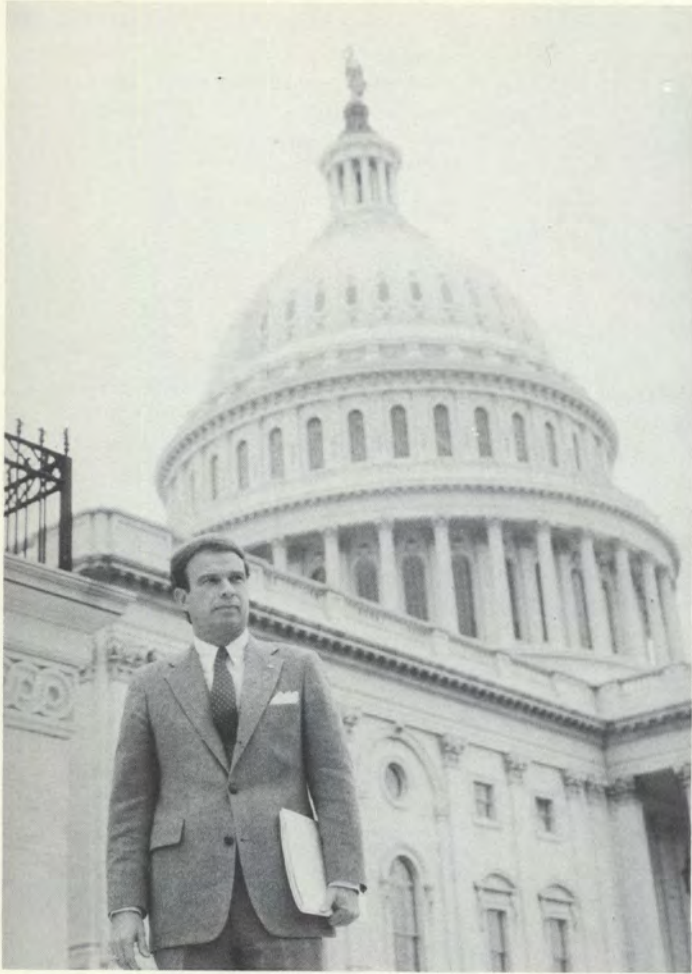
Conditional sales agreements in Great Britain are practically non-existent. Negotiations for the purchase of property proceed between the vendor and the prospective purchaser on a "subject to contract" basis. Even though the parties have reached a consensus as to what is being sold and purchased and at what cost, there is no legally binding agreement between them until a formal contract is entered into.

It is customary that searches and inquiries are made, and a mortgage appraisal and commitment obtained, all before the contract is signed. Since all negotiations are studiously made "subject to contract," either the seller or purchaser can walk away in the middle of the transaction. When the market is on the upswing, the seller frequently looks for a higher bidder prior to contract, a practice called "gazumping" the purchaser. The contract, when executed, is in duplicate and is signed and exchanged simultaneously by seller and buyer. Completion normally takes place within 28 days after the exchange of contracts.

Most permanent residential mortgage loans are made by building societies (savings banks) at interest rates similar to prevailing rates here. The borrower, however, is allowed to deduct approximately 3 per cent of this rate on his yearly income tax form, thus lowering the overall interest charge by that amount.

There is no secondary residential mortgage market in England. Short term

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Congressional Outlook

As federal lawmakers begin work, there is a growing sense of independence

By Mark E. Winter
ALTA Vice President—Government Relations

“The Congress doesn’t run—it waltzes.”

—Prince De Ligne
(Said of the Congress of Vienna)
1814

On December 21, 1982, at 9:56 p.m., the curtain came down on the 97th Congress. On January 3, 1983, the lights went up on the 98th Congress. Some new actors, a few different props, and a revised script were all part of the premiere performance of the new Congress.

Before discussing the 98th Congress, it is important to appreciate the waning days of last year’s Congress. During the second session, the 97th Congress began to shape its own legislative initiatives. This Congress became increasingly independent of the White House. Such a breach could and should intensify in the new Congress.

In 1982, Congress substantially re-wrote President Reagan’s fiscal 1982

budget and convinced the President to support a large tax increase only a year after passing the Administration’s program to cut taxes. For the first time, in September, Congress overrode the President’s veto of an appropriations bill—a measure described by Reagan as a “budget buster.”

The President’s problems with Congress seemed to increase after the November 2 elections when 26 incumbent House Republicans were defeated and some Republican senators found themselves in much closer races than they had anticipated. Political strains between the White House and Congress could become more pronounced in the 98th Congress, which will have 57 new House Democrats and a Senate still controlled by Republicans who are perhaps less inclined to take direction from the White House.

The 98th Congress will be filled with talk about initiatives to boost employment, place curbs on the growth of military spending, and develop policies to revitalize American industry in order to

make it more competitive. One of the highest priorities facing the new Congress will be the revision of the Social Security system. Also, another politically explosive issue will center around the controversy on the development of nuclear weapons.

However, after all is said and done, the great question for members of the 98th Congress will be whether they can address the serious problems of the economy any better than the previous Congress. It is incumbent on the new Congress and the Administration to work together in resolving the economic problems. The American public must sense a confidence in the legislative leadership in its ability to deal forthrightly with economic issues. But that, naturally, is easier said than done. With deficits getting larger, stagnation continuing, and unemployment at record levels, there is broad disagreement about how best to formulate a successful economic policy.

Nothing is on the horizon to make us think that it will be any easier for this

Congress to deal with the federal budget than last Congress. In fact, many members, in both the House and Senate, have stated publicly that President Reagan's budget for fiscal year 1984 would be rejected and rewritten by Congress. A majority of the Congress is clearly moving toward a reduction in the rate of growth of military expenditure. President Reagan argues that national security comes before deficits. The Administration is committed to a continued expansion of the defense sector. Hopefully, this problem can be addressed in a political setting consisting of compromise and conciliation.

Last Year's Leftovers

A wide range of issues was left unfinished by the 97th Congress. Although many of these will take time to move through the legislative process, some could see action relatively soon, either out of necessity or because of White House pressure.

Although President Reagan has opposed any public sector jobs bill, congressional leaders from both parties anticipate early action on such legislation. Also, Congress is likely to quickly extend supplemental unemployment benefits, a move the President supports.

With the fiscal 1984 deficit expected to be close to \$200 billion, Congress may consider tax increases beyond the stand-by measures the President has proposed. Democrats want to repeal the 10 per cent tax cut scheduled to go into effect this summer. President Reagan proposed such a tax cut in 1981 and Congress agreed to it. Another issue that may likely spark a controversy is the treatment of trade restraints. Although the Administration has adopted a free trade policy, many in Congress want to enact trade restrictions in the hope of protecting domestic jobs.

Another issue that is scheduled for consideration this spring will be the Administration's plan for deploying the MX missile. Last year Congress refused to give the President money to buy this nuclear weapon until he sends Congress a basing plan its members can accept. Also likely to come up for consideration this spring, at least in the House, is a resolution calling for a freeze on nuclear weapons production and testing.

But most of the controversial and complex bills from last year will take time to move through the committee process, and may not see floor action until 1984, if then. These include a reauthorization of the nation's clean air

laws, reformation of the federal immigration laws, proposals to curb the FTC's anti-trust and consumer protection powers, a review of the Glass-Steagall Act of 1933 (the major law governing what banks can and cannot do), consideration of a tuition tax credit for parents of children attending private school, and continued discussion on President Reagan's "new federalism" plan.

Title Insurance Legislation—Unfinished Business

Over the last 12 months, ALTA has involved itself with legislation placing reasonable constraints on controlled business arrangements, financial restructuring legislation, Indian land claims proposals, bankruptcy amendments, and bills that would simplify pension fund requirements for investing in residential mortgages. A synopsis of ALTA federal legislative involvement during the second session of the 97th Congress follows:

Controlled Business

During the 97th Congress, President Reagan, Congress, HUD, and the National Association of Insurance Commissioners (NAIC) became involved in the controlled business debate.

- On March 29, President Reagan, in addressing a group of Realtors, stated that real estate brokers should be allowed to establish subsidiaries to provide "additional services, such as title insurance, that are necessary to complete the purchase of a home." Over 300 ALTA members wrote the President expressing their disagreement with his controlled business position. ALTA's letter to President Reagan stated, "We find it impossible to understand how opening up the floodgates to the payment of kickbacks or to tie-in relationships between brokers and title companies can have any possible impact on stimulating the housing market." ALTA officials and staff met with White House personnel to discuss the controlled business problem in greater depth.

- On May 5, 1982, the House Housing Subcommittee approved legislation entitled the, "Housing and Urban-Rural Recovery Act of 1982" (H.R. 6296), that included a section clarifying the application of RESPA Section 8 to controlled business arrangements in the title insurance industry, private mortgage insurance industry, and for escrow service companies. The language contained in the controlled business provision—

Section 518—represented a rebuff to the Administration's position. Section 518 limited controlled business arrangements to 20 per cent of the transactions from real estate professionals to their controlled title companies. Section 518 repealed the criminal penalty provision of RESPA and added a competitor's right of action to sue for damages for violations of RESPA Section 8.

- On May 11, 1982, the House Banking Committee favorably reported Section 518 as part of H.R. 6296.

- On October 4, 1982, Lance Wilson, executive assistant to the HUD Secretary, at the ALTA Annual Convention announced that HUD "is not actively seeking passage of RESPA amendments," the centerpiece of which would mandate a lender packaging scheme.

- During the week of November 29, the NAIC at its Winter Annual Meeting approved a Model Title Insurance Act limiting title insurance agents and underwriters to 20 per cent of their gross revenues in any calendar year from referrals by producers that have ownership interest in them. In addition, the NAIC Model Act requires producers of title insurance business to disclose their ownership interest in title companies to consumers and prohibits producers from requiring consumers to purchase title insurance from a particular company as a condition to selling or furnishing any service or loan. ALTA was the principal advocate on the need for the NAIC Model Act to embrace a meaningful controlled business provision.

- On December 20, 1982, the lame duck session of Congress approved a substitute for the original HUD authorization bill (H.R. 6296)—which contained Section 518, the controlled business provision, to comply with the congressional leadership's request to facilitate the processing of the assisted housing funding measure. Of particular importance to ALTA, House Banking Committee members agreed to set aside any and all extraneous provisions other than those dealing with subsidized housing programs. Therefore, Section 518 was not considered in the context of the assisted housing bill package. A House Banking Committee staff person stated that the tabling of the controlled business provision "in no way reflects any change in congressional attitude on the need to place reasonable restrictions on controlled business arrangements."

It is anticipated that the controlled business issue will receive additional consideration during the 98th Congress.

In fact, the first bill introduced in Congress this year, the "Housing and Urban-Rural Recovery Act of 1983" (H.R. 1), contains a controlled business provision designated as Section 518. Speaker of the House Tip O'Neill (D-Mass.) and other House Democratic leaders have termed housing legislation a "top priority" for consideration by the 98th Congress. Hearings on H.R. 1 are tentatively scheduled for March, with a committee mark-up anticipated immediately thereafter. The controlled business provision contained in H.R. 1 is identical to legislation approved by the House Housing Subcommittee and full Banking Committee last summer (H.R. 6296). The principal feature of the controlled business language as contained in Section 518 is that a title company, private mortgage insurance company, or escrow services company affiliated through an ownership interest with real estate professionals must obtain a predominant percentage of its business—80 per cent—from sources other than referrals by those persons.

The Senate Banking Committee has indicated that it will await the outcome of the House of Representatives controlled business deliberations prior to taking any action.

Financial Restructuring Legislation

A number of proposals to broaden powers for depository institutions, in particular thrift institutions, were considered by the House and Senate Banking Committees in the second session of the 97th Congress. ALTA worked closely with the banking committees in developing portions of this landmark legislation.

• On August 26, 1982, the Senate Banking Committee unanimously approved the "Depository Institutions Amendments of 1982." The legislation included broader lending and investment powers for federal thrift institutions and provided capital assistance for depositories suffering net worth erosion. ALTA lobbied vigorously with the Senate Banking Committee in three important areas:

A. Through the months of July and August, ALTA urged Senate Banking Committee staff to develop report language that would instruct the FHLBB to take no further action on proposed expansionary service corporation regulations. The Committee Report contained language that stated, "The Senate Banking Committee intends that henceforth the FHLBB should not approve in

the absence of clear and specific congressional authorization any new regulation expanding activities of service corporations. Of course, Congress reserves the right to review activities previously authorized by the Bank Board."

B. S. 2879 included a provision that would impose limitations on the insurance-related activities of bank holding companies. ALTA was in the vanguard in encouraging committee members to support such a provision. In addition, ALTA organized a lobbying group consisting of eight insurance trade associations to actively support such a provision.

C. ALTA supported the adoption of a provision that would authorize depository institutions to offer a new account comparable to money market mutual funds. Such a provision was ultimately adopted.

• On October 15, the Senate and House approved the Depository Institutions Act of 1982 (H.R. 6267). A provision restricting bank holding companies from engaging in the business of insurance and other provisions enabling

Continued on page 13

Among New Banking Committee Members, 98th Congress



*Sen. Chic Hecht
(R-Nev.)*



*Sen. Paula Hawkins
(R-Fla.)*



*Sen. Mack Mattingly
(R-Ga.)*



*Sen. Slade Gorton
(R-Wash.)*



*Rep. Buddy Roemer
(D-La.)*



*Rep. Thomas Carper
(D-Del.)*



*Sen. Frank Lautenberg
(D-N.J.)*



*Rep. Thomas Ridge
(R-Pa.)*



*Rep. John Hiler
(R-Ind.)*

Past President Robert Jay Dies

Funeral services were held in Grosse Pointe Farms, Michigan, for Robert J. Jay, 58, ALTA president in 1974-75, who died January 26 in a Detroit hospital after an extended illness.

He also was a past president of the Michigan Land Title Association.

ROLLER—continued from page 8

commercial real estate loans are made mostly by British clearing banks (Natwest, Lloyds, etc.) and merchant banks on an overdraft basis. These short-term loans are akin to credit loans. Permanent commercial mortgage loans, when utilized, are made primarily by life insurance companies and pension funds. Today, these same pension funds are investing heavily in U.S. properties as well.

Under the English conveyancing system, the first mortgagee retains possession of the title deeds for unregistered land, or the title certificate if registered, so as to control the owner's ability to further mortgage the property.

Several other anomalies exist in English conveyancing, such as:

- There are no metes and bounds descriptions. Properties are described by plot plans or ordinance survey maps made aerially from a grid point. Boundaries to a great extent follow the land as it is—thus hedgerows, streams, roadways, etc., are typically important in locating and describing land. In addition, a government act declared some years ago that boundaries shall be general, which reduces haggling and litigation between neighbors over minor discrepancies;
- Real estate taxes are a personal obligation and do not constitute a lien against the property;
- There are no provisions for filing a mechanics lien, other than for unpaid wages.

Mexico

The land registration system in Mexico is basically the Spanish system, which is an effective means for registering deeds, mortgages and charges against the land. Recently, I had the opportunity to tour the registration office in Mexico City and found it to be in

excellent working order. The registrar and his staff at that time were embarking on a large and noble project to computerize their records and it was obvious that they had full governmental support and were taking great pride in their work.

There are, however, some serious pitfalls of which one should be aware when buying property or insuring title in Mexico. Most importantly, *no foreigner may own land in the so-called "forbidden zone,"* which is land within 100 kilometers of each border and 50 kilometers of the coast. A foreigner may only take a beneficial interest in land in this "forbidden zone" through a trust arrangement which allows for possessory use of the property for a period not to exceed 30 years. This type of trust is known as a "fideicomiso," under which it is necessary for one of the Mexican banks to act as trustee. The bank will charge an initial as well as an annual fee for acting in this capacity. When the trust runs out, the property must be sold to an unrelated Mexican national or to a Mexican company.

Another potential title problem can arise where so-called "ejido" lands exist. These are government owned agrarian lands, designated by the government for the use of farmers who usually form collectives and who are granted possessory use of the land for a specified period of time. The government has the right to expropriate land for "ejido" purposes, as well as land adjacent to it. Where there is any question that land might be under the Agrarian Reform Act, a certificate of non-effectability should be obtained from the appropriate government agency.

Future Potential

In the western world, for the most part, we have three basic systems for the historic memorialization and orderly reporting of deeds, mortgages and charges on real property: (1) a recording system, as in the U.S., stemming from common law concepts; (2) a government-supported land registry system, as in Great Britain, also based on common law principles; and (3) a notarial land registry system combining the precepts of the Napoleonic Civil Code and the Spanish land laws, with the notary acting as the important adjunct to the legalization of documents.

Personal experience gained from working with both the English and Spanish/French land registry systems reveals that both function effectively

and offer, in their own right, a form of governmental supervision which provides broad, but financially limited, assurance that the seller really does own the land being conveyed. These land registry systems, with particular limitations, indicate liens and charges to which the title is subject. However, no assurance is given as to the legal effect of such charges against the property. Generally speaking, those matters which would be revealed by an accurate survey of the land, and/or a personal inspection of the property, are not included as part of the title evidence produced under these systems of land registry.

The chief land registrar assumes a role similar to a judge, and it is up to him and his staff to decide whether or not a document presented for registration properly fits in the chain of title to the property. This necessitates an examination of title which frequently causes a significant time delay between the presentation of a deed or mortgage, and the final registration of same. In some countries this delay is abbreviated, but in others there can be a time lag of six months or longer between presentation and registration.

Title Insurance can expeditiously circumvent these time delay problems by insuring either at the time of completion or presentation. The result can mean more timely sales by builders and faster disbursement of the mortgage proceeds to borrowers.

By contrast, our recording systems in the U.S. are merely notice to the world that certain instruments have been lodged against the land. Therefore, recording clerks will accept most instruments, including so-called "wild deeds," without concern as to whether they fit into the chain of title or not. Their main function is to be certain that these instruments are properly drawn and in recordable form. We have learned through years of experience that these recording systems function very well and are commercially viable. However, overseas proponents of land registry systems argue that the very nature of recording systems is precisely the reason title insurance is needed.

Observations

My own experience is that, regardless of governmental guarantees and close examination of documents in the chain of title within land registry systems, the same type of defects in title occur with similar frequency under both the reg-

istry and recording systems. This is not as noticeable in foreign countries, however, where there is seemingly a closer bond among members of the legal profession. The result is a tendency there to solve title problems more amicably behind the scenes without the issues surfacing nearly as often as they do in our more litigious society.

Having been involved with some 2,000 transactions in England and Canada over a number of years, I have come face to face with the same type of title problems that arise in our daily business in the U.S. Typical examples fall in the range of: possible violations of old restrictive covenants, questionable easement rights, unclear rights of parties in possession, boundary problems, defalcation losses and the usual myriad of title defects which cause title companies to suffer loss.

Unfortunately, for a number of years there has been a feeling of antagonism toward "American style" title insurance on the part of solicitors and notaries in foreign countries. This antagonism has frequently been corroborated at meetings of law societies and the International Congress of Notaries.

Several years ago, the International Congress of Notaries met in Guatemala for their Annual Congress, and it was the consensus of the delegates from about 20 countries in attendance that their conveyancing systems (which stem mainly from the Spanish land registry system and the French Napoleonic Code) were superior to the recording type systems in the U.S. They did not feel that title insurance was necessary or justified for the added expense attached to it.

For reasons that I feel are not valid, notaries and solicitors live in fear that title insurance, should it gain acceptability, will take the bread from their mouths. Because of this, concerted efforts are constantly put forth by the governing bodies of solicitors and notaries to stem the tide of title insurance whenever it starts flowing.

In contrast in the U.S., counterpart real property lawyers frequently express appreciation for the services and commercial benefits provided by title companies. The American Bar Association has given high ratings to the industry on more than one occasion.

Conclusion

International trade, in my opinion, is as basic to our country's political and economic well-being as is the sale of

goods and services between our states. With this in mind, there can be great hope that title insurance will take hold and grow outside of the U.S. as international trade continues to develop. Certainly, it has proved to be a permanent incident to mortgage investment in Canada, and serves a genuine purpose for professional people who understand its importance in expediting the closing of real estate transactions.

In the U.K. where its roots are much younger and less defined, title insurance has still to prove itself even after 10 years of existence. However, there is still a good, long-term prospect for its future success, based on a fuller understanding by its users of the commercial advantages and guarantee factors inherent in the product.

It seems plausible in the future that there will be a significant breakthrough of title insurance development in foreign countries. However, it is almost certain that this will not occur until the marketer of the insurance comes up with a product that will fit an obvious need that the foreign professional and businessman recognize as viable as well as good value for money.

As successful as Henry Ford was in mass producing and selling autos in America, hardly a Ford would have been sold in England if the car had a left hand drive. Today, Ford is still the No. 1 English auto maker and, needless to say, English Fords still are made with right hand drives.

WINTER—continued from page 11

depository institutions to offer money market mutual fund types of accounts were approved. In addition, the final Conference Report language stated, "the conferees intend that the FHLBB shall withdraw and take no further action on the proposed regulations."

- On October 16, 1982, ALTA cited the passage of H.R. 6267 as "a great step towards curbing controlled business practices within the financial community. The comprehensive package is an extraordinary legislative achievement—good for competition, good for the consumer, and should breathe new life into an ailing thrift industry."

- On October 18, President Reagan signed the Depository Institutions Act (P.L. 97-320) into law. President Reagan characterized the bill as the "most important legislation for financial institu-

tions in the last 50 years. All in all, I think we hit the jackpot."

With the passage last year of P.L. 97-320, it is unlikely that Congress will address any major domestic banking legislation this year. However, both congressional banking committees will be monitoring the new financial institution activities and powers with an eye toward additional deregulation legislation in 1984. Senate Banking Committee Chairman Jake Garn (R-Utah) has said he plans to review the Glass-Steagall Act of 1933, the major law governing permissible banking activities, to determine if further deregulation of commercial banks is necessary. If interest rates turn back up, the two banking committees also could serve as forums for congressional debate with regard to the Administration's economic policies and the monetary programs established by the Federal Reserve Board.

Indian Land Claims Legislation

During the 97th Congress, ALTA involved itself with legislative proposals addressing a number of Indian land claims. A bill settling a claim in Florida was passed by Congress during the waning days of the lame duck session. Also, legislation extending the statute of limitations on the federal government's bringing tort damage suits on behalf of Indians was approved. Hearings on proposals to settle claims in New York and South Carolina were held, but no further action was taken.

- In late June, 1982, the House and Senate Interior Committees held hearings on H.R. 5494 and S. 2084, legislation that would resolve Indian land claims in New York and South Carolina. ALTA was instrumental in fashioning the provisions to provide for clear and marketable titles. No further action was taken on H.R. 5494 and S. 2084 during the 97th Congress.

- On December 16, 1982, Congress passed H.R. 7155, a bill that would approve settlement between the state of Florida and the Niccosukee tribe. The legislation provided for the extinguishing of all Niccosukee interest in or claims to land in Florida. In return, the state of Florida would lease 192,000 acres of state-owned swampland to the tribe, would pay \$975,000 to the tribe, and would agree to transfer the existing state-controlled Niccosukee Reservation to federal ownership. On December 31, President Reagan signed this legislation (P.L. 97-399) into law.

- On December 21, 1982, Congress ap-

proved legislation, H.R. 7356, that would extend the statute of limitations on the federal government's bringing tort damage suits on behalf of Indians. The one-year extension would commence when the Interior Department submits to Congress a final list citing Indian land claim tort damage suits that the federal government plans to pursue. The statute of limitations was to expire December 31, 1982. The extension was part of an Interior appropriations bill, which was signed by the President.

The 98th Congress plans to consider legislation addressing Indian land claim problems in states affecting title to privately held property, including New York, South Carolina, and Connecticut. ALTA will work closely with members of Congress to assure Indian land claims settlement language is consistent with the principles set forth by the Association.

Bankruptcy Legislation

Last year, the Senate and House Judiciary Committees held hearings on proposed amendments to the Bankruptcy Code of 1978. ALTA worked closely with the Senate Judiciary Committee to develop language to negate the impact of problems posed by the *Durrett* line of cases. Relying on the *Durrett* case, bankruptcy courts have been voiding foreclosures of real property that occurred as much as one year prior to the borrower's filing bankruptcy.

- On October 12 the Senate Judiciary Committee agreed to a package of provisions to amend present bankruptcy legislation. The package contained a provision that would protect a third-party purchaser who obtains title to an interest of the debtor's property so that "reasonably equivalent value" would be provided for. ALTA and other financial and insurance trade associations supported this provision.

- On December 10, ALTA sponsored a meeting of interested trade associations—including the U.S. Savings and Loan League, Mortgage Bankers Association, Mortgage Insurance Companies of America, and the American Council of Life Insurance—to discuss the *Durrett* case problem in the context of the pending bankruptcy revision legislation. The group agreed to actively support the inclusion of language that would negate the impact of the *Durrett* case.

One of the first issues to be addressed by the 98th Congress will be legislation to restructure the bankruptcy system. In June, 1982, the U.S. Supreme Court

invalidated the bankruptcy court system established by a 1978 law, holding that bankruptcy judges were given too much legal authority without sufficient independence from the executive and legislative branches of government. The Supreme Court gave Congress until December 24, 1982, to approve a new plan, but none was enacted. Since then, an interim rule promulgated by the U.S. Judicial Conference has been in effect to handle bankruptcy cases. House Judiciary Chairman Peter Rodino (D-New Jersey) has introduced a bill (H.R. 3) to create a separate bankruptcy court system staffed by 227 judges with lifetime appointments. In addition to the Rodino legislation, Senator Robert Dole (R-Kansas) plans to introduce legislation that would protect creditors in bankruptcy matters and would nullify the present impact of problems resulting from the *Durrett* line of cases. Legislation amending the present bankruptcy code is expected to receive prompt congressional consideration.

Pension Fund Legislation

In 1982, ALTA monitored legislative proposals that would provide pension funds with simplified and less burdensome standards for investments in residential mortgages.

- On February 17, 1982, ALTA submitted a statement to the Senate Subcommittee on Labor supporting S. 1678, a bill that would amend the Employee Retirement Income Security Act of 1974. S. 1678 would eliminate the prohibited transaction restrictions and quantify the application of the prudent man rule for investments by pension funds in residential mortgages. The ALTA statement endorsed the proposal since it would provide an additional source of housing credit. The ALTA submission cited the benefits to the housing market from an infusion of pension fund capital and "to a whole variety of real estate-related industries which are suffering a great deal as a result in a dramatic decline of homebuilding in this country."

- Over 200 members of the House of Representatives cosponsored legislation introduced in the 97th Congress to facilitate pension fund investments in residential mortgages.

This year's House Ways and Means Committee plans to review legislation that would encourage private pension fund investment in residential mortgages and mortgage-backed securities. The proposal has the support of the Rea-

gan Administration and would not require any federal subsidies. The legislation would enable private pension funds to participate either individually or in a pool in the purchase and selling of mortgages and mortgage-backed securities or in receiving fees from servicing mortgages. Investments would have to be for "qualified residential mortgages" defined as those considered to be a prudent investment. The Treasury Department would administer the law. Currently, pension funds invest only two per cent of their assets in mortgages. This is an insignificant portion committed to the housing sector in that private pension funds have assets totaling \$300 billion.

Conclusion

The 98th Congress is under way. Normally, a new Congress starts slowly with major legislation not coming to the floor of either chamber for many months. Nineteen eighty-three may be different.

President Reagan has requested that Congress conclude its deliberations on a plan to make the Social Security system solvent by the Easter recess. The troubled economy also will quicken the pace of congressional activity. The President's budget is expected to dominate the legislative agenda during most of the next few months.

Of particular interest to ALTA members, the Banking Committees are expected to move cautiously in considering additional financial institution deregulation measures. International banking problems and funding for the International Monetary Fund will take priority in early banking matters. A housing bill, an examination of the nation's fiscal and monetary policies, consideration of an over-ride of state usury laws, and oversight hearings on the role of the Depository Institutions Deregulation Committee are other priority matters. In addition, both the House and Senate Banking Committees will probably review the Glass-Steagall Act that restricts commercial banking activities. Also, the Administration plans to submit legislation that would amend the 1970 Bank Holding Company Act to enable subsidiaries of bank holding companies to engage in a variety of activities, including the business of insurance.

The 98th Congress faces a full plate—the entree being the troubled economy, garnished with unemployment, deficits, taxes, and a near bankrupt Social Security system.

Names In The News . . .

Robert C. Dawson has been elected chairman of the board and chief executive officer of Lawyers Title Insurance Corporation and **Billy F. Vaughn** has been elected president and chief operating officer of the company, it has been announced by Continental Group.

Dawson, a vice president of Continental Group, is executive vice president, real estate insurance division, of Continental's insurance division, Continental Financial Services Company. In addition, he is chairman and chief executive officer of Continental's Investors Mortgage Insurance Company.

Dawson is a past president of ALTA and began his career with Lawyers Title in 1955.

Vaughn, who has been with Lawyers Title since 1959, moves into the position of president from his post as executive vice president—operations. His active participation in ALTA affairs has included service on the Association Board of Governors and he continues as chairman of the ALTA Liaison Committee with the Mortgage Bankers Association of America.

Also announced by Lawyers Title are the promotions of **Roland K. Foreman** to branch manager and **Mark W. Sinkhorn** to branch counsel, Dayton, Ohio, office. **Foreman** has been with Lawyers Title since 1976 and **Sinkhorn** joined the company in 1978.

Craig R. Dewart, previously of the Lawyers Title Dallas, Texas, office, has

been promoted to assistant counsel—claims, and transferred to national headquarters, Richmond, Virginia.

Lawyers Title also has promoted to branch manager **Charles Keith**, Pittsburgh, Pennsylvania; **Peter Keyes**, Ft. Lauderdale, Florida; **David Broach**, Indianapolis, Indiana; and **J. Paul Cullen**, Toms River, New Jersey.

Edward Beierle has been named Pacific states counsel for Lawyers Title, Universal City, California.

Roger K. McQuiston has been appointed vice president of SAFECO Title Insurance Company of Maryland. **McQuiston**, who joined SAFECO in 1977, has some 20 years experience in the title industry.

Russell Luedke, has been promoted to manager, Harris County, Texas, for Transamerica Title Insurance Company. **Luedke** has been with Transamerica since 1978.

Transamerica also announces the promotion of **Frank X. Salinas** to vice president and county manager, Cameron County, Texas.

Bill D. Loftin has been appointed division manager of First American Title Guaranty Company's Contra Costa County, California, office. **Loftin** has been in the title industry 15 years.

Sandi Foxx has joined Industrial Valley Title Insurance Company, Philadelphia, Pennsylvania, as center city sales representative.

John H. Roberts, Jr., chairman, president and chief executive officer of American Century Corporation, San Antonio, Texas, has been named to the boards of directors of the First American Financial Corporation and its principal subsidiary, First American Title Insurance Company.

Mark Meyerdirk was appointed senior vice president, law agency, of Columbian National Title Insurance Company. Before his appointment, Meyerdirk was executive vice president and general counsel at Columbian's Kansas City, Kansas, branch office.

Columbian also has announced that **Chris Mayer** has joined the company at its Overland Park Office as vice president, law. **Mayer** will handle the duties of general legal counsel in the six states Columbian currently serves.

Chicago Title Insurance Company announces the following promotions:

Barbara Blitz, Richmond, Virginia; **Charles Evans**, Daytona Beach, Florida; **Lawrence Fineberg**, East Orange, New Jersey; **Allen Gentry**, San Antonio, Texas; **R. Michael Loffi**, Nashville, Tennessee, to resident vice president in the respective offices.

Dale Lipke, Tacoma, Washington; **Jacob Yonkman**, Crown Point, Indiana;

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Branch Acquired By First American

First American Title Guaranty Company has acquired the assets of Lawyers Title Insurance Corporation's San Francisco branch, which will continue operations as Lawyers Title of San Francisco, underwritten by Lawyers Title.

First American Title Guaranty Company is based in Oakland, California, with 24 offices in Alameda, Santa Clara, Contra Costa and Solano counties, and is underwritten by First American Title Insurance Company, Santa Ana, California.

George Eastman, a 25-year veteran of the title industry, has been named manager of Lawyers Title of San Francisco.



Dawson



Vaughn



Foreman



Sinkhorn



Dewart



Keith

Title Systems—Equipment User Questionnaire

As a service to ALTA members, the Association Abstracter-Agent Section Land Title Systems Committee is compiling user information on different types of title industry systems and equipment. If you have user experience with the category listed below, please complete this questionnaire and return it—by May 16, 1983—to Committee Member Dennis R. Johnson, Suite 225, Stewart Title Guaranty Company Building, 2200 W. Loop South, Houston, Texas 77027. Use additional sheets as necessary. Please include copies of any products/system literature with your questionnaire. An analysis, based on user questionnaires that are returned, will be published in a future issue of *Title News*.

Category for this questionnaire: automated preparation of documents other than closing statements

1. Brand and model of equipment: _____
2. Vendor: _____
3. Cost of total system: \$5-10,000 _____ 10-15,000 _____ 15-20,000 _____ 20-25,000 _____
more _____
Cost of programming: \$1-5,000 _____ 5-10,000 _____ more _____
4. Check documents prepared: Commitment _____ Policies _____ Title Report _____
Other (Please list) _____
5. System is capable of being used for: Accounting _____ Closings _____ Reports _____
Other _____
6. Time required to train operator: One Day _____ 2 to 5 Days _____ Longer (specify) _____
7. Title insurance experience necessary to use system: Extensive _____ Moderate _____
Nominal _____
8. How many minutes does it take to prepare the following documents:
Commitment 0-5 _____ 5-10 _____ 10-15 _____ longer _____
Policy 0-5 _____ 5-10 _____ 10-15 _____ longer _____
Title Report 0-5 _____ 5-10 _____ 10-15 _____ longer _____
Other (Specify) _____
9. How many times must each item of information be entered, e.g., name of buyer:
Once for all documents _____
Once for each document _____
As many times as it appears in all documents _____
10. Will system "fill in the blanks" on pre-printed forms? (yes or no) _____
11. Is it fast and simple to format the automatic printing of pre printed forms (yes or no) _____
12. Must a programmer be called to make changes in any of the following (yes or no):
Fill in the blanks, pre-printed forms _____
Standard text stored in system (boilerplate) _____
Item names or sequences of input data _____
13. How many times _____ total days _____ of system down time last year?
14. I am highly _____ mostly _____ barely _____ not at all _____ satisfied with my system.
15. Having used my system for _____ years _____ months. _____ I would _____ would not _____ buy the same system again.
16. Comments _____

Systems-Equipment Profile . . .

Automated Document Preparation Except Closing Statements Next Topic

By Dennis R. Johnson

This is the second in a series of articles initiated by the ALTA Abstracters and Title Insurance Agents Section Land Title Systems Committee and deals with the automated preparation of documents other than closing statements (covered in November, 1982 *Title News* at page 18), such as commitments, title reports and find policies. In some states, title companies are permitted to also prepare the legal instruments necessary to closing a real estate transaction, such as deeds, mortgages or deeds of trust, and notes. Some computerized closing systems already provide for the preparation of at least some of these legal instruments.

The variety of equipment available to produce lengthy text documents ranges from memory typewriters and "mag card" machines to

dedicated word processors and small computers with word processing software.

On all of the above systems, the operator must individually create each document to be printed, although the process of creating a

document may be greatly simplified by using segments of standard text permanently stored on the system, and then "filling in the blanks" so to speak. While these systems are much more efficient than manually typing each document, they still require that the operator be skilled both in the operation of the particular system and in the legal or title insurance knowledge necessary to properly prepare the required docu-

Continued on page 18

PLEASE

Help your Errors and Omissions Committee
help you—We need to know:

What problems you have had
What successes in finding E&O coverage you have had
Whom you are insured with—Are you happy with
coverage and cost?

Write to Errors and Omissions Committee
Box 966
Bartlesville, Oklahoma 74005
Or phone 918/336-7528

Dennis R. Johnson is a member of the ALTA Abstracters and Title Insurance Agents Section Land Title Systems Committee.

Carolyn Ziemba, Stuart, Florida, have been appointed assistant vice president in the respective offices.

Appointed to the position of assistant regional counsel are, **Dana Bowie**, Orlando, Florida, and **Stuart Gluck**, Palm Beach, Florida.

Appointed to the position of title operations officer are, **Timothy Boze**, Seattle, Washington; **Grover Ellis**, Miami, Florida; **Charlotte LaJoie**, Fort Pierce, Florida; **Jeffrey Lange**, Melbourne, Florida; **John Rudy**, Delray Beach, Florida; **Stephen Thompson**, New York, New York.

Linda Ellis has been appointed escrow officer, Miami, Florida, and **Jeanne LaBelle** to title officer, Boston, Massachusetts.

Employees Pictured

In the November, 1982, *Title News* "Names in the News," photographs of the following employees promoted at Lawyers Title of El Paso (Texas) were omitted: **Deborah Hanson**, assistant vice president; **Sandy Swift**, assistant vice president; **Cynthia Bilbe**, corporate secretary, and **Lana Woten**, assistant treasurer.



Cullen



Beierle



Keyes



Broach



Foxx



Roberts



Yonkman



Hanson



Swift



Bilbe



Woten

ment. A considerable amount of decision making is required on the part of the operator. Every operator decision and input is an opportunity

Latest Cadastre Report Published

National Academy Press announces publication of the latest Committee on Geodesy report, "Procedures and Standards for a Multipurpose Cadastre." In its earlier 1980 report, "Need for a Multipurpose Cadastre," the committee identified problems of current land information systems. The most recent report explores building a framework for improved collection, maintenance and dissemination of land information by governments.

The report explores developing a system through the use of federal and local government grants, and additional funding by the system users.

This report is focused toward local administrators, legislators, state and federal government personnel and private business representatives interested in cadastre development. More information on the report is available from National Academy Press, 2101 Constitution Avenue, N.W., Washington, D.C. 20418.

for error.

The ideal system should have all of the five characteristics described below.

Easy To Use

1. System must be simple to use—no complicated computer operating skills necessary, except knowing how to turn the system on and off.
2. Little or no legal or title insurance knowledge necessary—the system should request information from the operator in simple everyday language.

Fast To Operate

1. System must be fast to use. Input only variable information such as names, etc. All "boilerplate" or standard text should be permanently stored in the system.
2. Input information only once and use it to create all necessary documents, instead of re-entering for each document.

Accurate

1. There should be automatic creation of all documents by the computer, leaving little or no decision-making to the operator. The only decision to be left to the operator is "Do I have an answer for the question on the screen?"

Flexible

1. System must be capable of printing all documents, including "fill in the blanks" pre-printed forms. A fast, simple and easy method of formatting printed output must be available on the system.
2. User access to boilerplate text and printer formats should be fast and simple so that changes can be made quickly and easily without calling a programmer (and paying for one) every time something needs to be changed, or a new form needs to be added.
3. Other uses—the system (hardware) should also be capable of being used for closing programs, policy and commitment inventory control, underwriter reports, accounting functions, mailing lists, etc. Given the current state of the art in small computers, and the enormous number of pre-

packaged programs available, there is no reason whatever to buy six different computers to perform six different functions.

Inexpensive

Cost—the cost of the system (computer and the programming) should be less than \$10,000, so as to be affordable by even very small title agencies.

Less than 10 years ago, 4K of memory with a CRT screen display, keyboard and a cassette tape deck capable of storing 40,000 characters of data cost \$6,800.00. The same capacity today costs about \$500.00. The price of printers has dropped about 50% in just the last 3 or 4 years, and the price of disk storage capacity is lower by at least that much. Except for setting up a computerized title plant in a very populous county, there is literally no title company

application which could not be handled easily, quickly and accurately on a small business computer or even on a home computer. Why spend \$20,000.00 or more when \$10,000.00 or less will do the job just as well?

Again, we sincerely request your participation and response, as users of automated systems, in comparing your existing system with the "ideal system" outlined above. Please take just a few minutes to complete the questionnaire about document preparation and put it in the mail, sending by May 16, 1983, to:

Dennis R. Johnson

Suite 225, Stewart Title
Guaranty Company Building

2200 W. Loop South

Houston, Texas 77027

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Learn more. Write or call (412-836-2000) for the name of your nearest dealer. Let him demonstrate how you really cure your backlogs.

Calendar of Meetings

March 16-18

ALTA Mid-Winter Conference
The Pointe
Phoenix, Arizona

April 21-23

Arkansas Land Title Association
Little Rock Excelsior
Little Rock, Arkansas

April 24-26

Eastern Regional Title Insurance Executives
Maryland Inn
Annapolis, Maryland

April 28-30

Oklahoma Land Title Association
Lincoln Plaza Inn
Oklahoma City, Oklahoma

May 1-3

Iowa Land Title Association
The Red Fox Inn
Waverly, Iowa

May 11-13

Virginia Land Title Association
Tides Lodge
Irvington, Virginia

May 12-15

Texas Land Title Association
Westin Oaks Hotel
Houston, Texas

May 19-21

New Mexico Land Title Association
The Inn of the Mountain Gods
Ruidoso, New Mexico

May 19-21

North Carolina Land Title Association
Williamsburg, Virginia

May 22-24

Pennsylvania Land Title Association
Hotel Hershey
Hershey, Pennsylvania

June 1-3

California Land Title Association
Mariott Hotel
Newport Beach, California

June 5-7

New Jersey Land Title Insurance Association
Seaview Country Club
Absecon, New Jersey

June 12-14

Oregon Land Title Association
Salishan Lodge
Gleneden Beach, Oregon

June 16-18

Southwest Title Insurance Executives
The Broadmoor
Colorado Springs, Colorado

June 16-19

New England Land Title Association
Lake Morey Inn
Fairlee, Vermont

June 23-25

Land Title Association of Colorado
Keystone Resort
Keystone, Colorado

June 24-26

Illinois Land Title Association
The Westin Hotel
Chicago, Illinois

July 13-16

Wyoming Land Title Association
Hotel Washakie
Worland, Wyoming

July 14-16

Utah Land Title Association
Snowbird Ski and Summer Resort
Salt Lake City, Utah

July 31-August 2

Michigan Land Title Association
Bay Valley Inn
Saginaw, Michigan

August 4-7

Idaho Land Title Association
Elkhorn Village Inn
Sun Valley, Idaho

August 11-13

Kansas Land Title Association
The Holidome
Topeka, Kansas

August 11-13

Montana Land Title Association
Ramada Inn
Bozeman, Montana

August 18-20

Minnesota Land Title Association
Holiday Inn
New Ulm, Minnesota

September 9-11

Missouri Land Title Association
Sheraton Westport Hotel
St. Louis, Missouri

September 10-13

Indiana Land Title Association
Sheraton-West (Airport)
Indianapolis, Indiana

September 15-17

North Dakota Land Title Association
Town House
Grand Forks, North Dakota

September 21-24

ALTA Annual Convention
Boca Raton Hotel and Club
Boca Raton, Florida

September 28-October 1

Washington Land Title Association
Thunderbird Motor Inn
Yakima, Washington

October 2-5

New York State Land Title Association
Sky Top Lodge
Sky Top, Pennsylvania

October 6-8

Wisconsin Land Title Association
Paper Valley Hotel and Conference Center
Appleton, Wisconsin

November 9-12

Florida Land Title Association
Hyatt Palm Beaches
West Palm Beach, Florida