

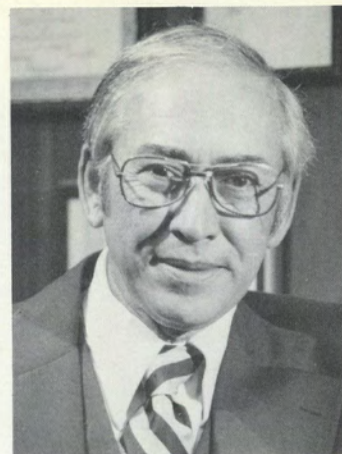
June-July 1983

TITLE NEWS



ALTA Officers and Mid-Winter Conference Guest Dignitaries

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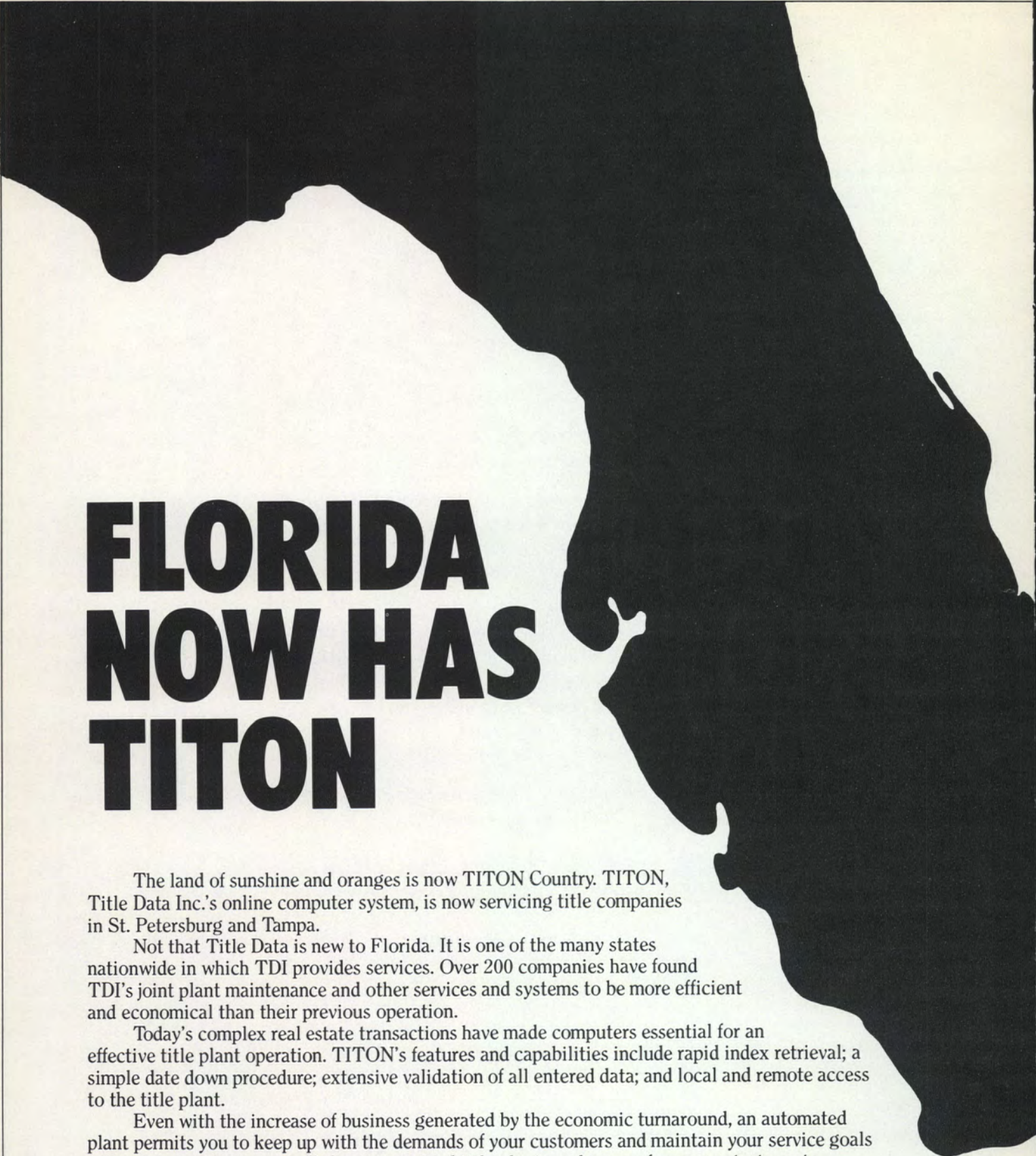
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Front Cover

ALTA officers visit with guest speakers during the 1983 Mid-Winter Conference of the Association. In the upper photograph, Association President Thomas S. McDonald, left, talks with Charles L. Marinaccio, Senate Banking Committee minority counsel. Shown in the other photograph are, from left, ALTA Abstracters and Title Insurance Agents Section Chairman Jack Rattikin, Jr.; National Association of Home Builders First Vice President Peter D. Herder; and ALTA President-Elect Donald P. Kennedy. Commentaries from the Conference are featured in this issue.



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A Message From The President-Elect

The last few weeks have been spent in traveling the country, attending state title conventions. At least two things have resulted from the experience:

- a) An increased awareness of the high caliber of people in our industry
- b) A sharp sensation of utter fatigue

There have been many opportunities for discussions and interchange of ideas.

I don't want to leave the impression, however, that these nice people are in full agreement on matters pertaining to religion, politics, the policies of ALTA or their competitors. On second thought, they do seem to be in general agreement on their feelings toward their competitors.

In any event, we appear to be living in an era of change—more so than in the past—and all the fine title people are asking the same type of questions, no matter what the locality:

- What's going to happen to the agents?
- What's going to happen to the insurers?
- When are we going to charge enough for our product?
- Is there going to be any end to the losses?
- Why does ALTA favor the abstracters?
- Why does ALTA favor the insurers?
- Why do they favor the agents?
- Why don't they favor the abstracters and agents more? They provide the bulk of the membership.
- Why don't they favor the insurers more? They provide the bulk of the funds.
- Why is the ALTA membership fee schedule so high?
- Why can't ALTA balance the budget?

- Why can't title practices be improved?
- Why can't my competitors improve their title practices?
- Why can't we do something about controlled business?
- On the other hand, why should we do anything about controlled business?
- What's the best form of title evidencing?
- Why do we need title insurance?
- Why do we need abstracts?
- Are computers the answer to everything?
- Are computers the answer to anything?
- What's your opinion of "one-stop" financial centers?
- Do you believe people will buy sox and title policies on the same trip to the same building?
- You agree, don't you, that banks should be deregulated?
- Why should banks be allowed to maximize their profits at the expense of safety?
- Are the big life companies going to inherit the title world—or will it be can companies and railroads?

You get the idea—good people asking good questions—important questions. The questions are easy. It's the answers that are difficult. The Association and all the good people in the industry will continue to wrestle with these and other questions during the coming year.

As my dear old uncle used to say: "What are the answers? Only time will tell."

D. P. Kennedy

United We Stand—Etc.

By Sam C. Sherwood, Jr.

First of all, remembering my legal training, let me present this disclaimer:

"All things contained in this article are personal observations and do not necessarily represent the opinions of any individuals, title associations or underwriters, living or dead."

When I was young—both in age and title experience—I recall with well-remembered awe the Annual Fall departure of a very select group. These honored few were going to the ATA Convention. That's what we called it then—the ATA. I believe we changed it one year when Jimmy Hoffa showed up thinking he was at the American Truckers Convention.

At any rate, this group would return in a week or so, red-eyed, tired and irritable. It was obvious to me that many sleepless nights were spent solving our industry problems. I always felt sorry for them. Being in some exotic place for a week and never having time to enjoy it.

For most of my early career, the ALTA seemed to have little impact on my business life. Once in a while someone from back east would request an ALTA policy form, but not often. Usually, some life counsel would demand a discontinued form and we would revive it for him—if we didn't, someone else would.

The most earth-shaking event in those days was when the California Form 100 slipped through customs and infested the nation. California has since received some idea of the consternation it caused

when the fruit fly invaded its turf—possibly smuggled in by a title underwriter.

Eventually, as with most of us, my time came to join the fall pilgrimage to the ALTA Convention. It was a momentous and never-to-be-forgotten experience. I won the attendance drawing—\$74.00 in cash! My wife got it but I had the thrill of victory.

I also came home red-eyed, tired and irritable—and with a somewhat altered view of the reason for this condition.

Conflicting Objectives

Many of you have a longer and more intimate experience with the inner workings of ALTA than I do. But I have a fairly long-term relationship with several state title associations and with the membership of those groups. There is quite often a conflict of objectives between the national and the state associations. Much of this may result from less-than-desirable communications between these groups.

It appears to some that ALTA is really



Sam C. Sherwood, Jr., is the current president of the Missouri Land Title Association. He is a vice president for Stewart Title Guaranty Company with offices in Kansas City, Missouri.

run by senior executives of major underwriters and by agents who are successful enough to devote considerable time and resources to their commitment. Most of the rest of the membership becomes involved occasionally when the convention can be combined with a vacation or when a relative lives near the convention city.

This doesn't mean that there is anything wrong with this arrangement. But it may mean that conclusions can be reached which reflect limited input. What is good for underwriters and big agents may or may not be desirable for the rest of the membership. Perhaps more involvement by the general membership might develop courses of action more responsive to the general problems.

How do we get all these diverse interests directed at solving specific problems? Obviously, it isn't easy.

For example, ALTA by its nature is nationally-oriented. This can create a devotion to national uniformity—uniform policies, uniform practices, uniform codes, etc. Even recognizing the merits of uniformity, the local agency or office doesn't profit from its uniformity or sameness. It profits from its differences. It doesn't necessarily want equality—it wants an edge!

We, as an industry, devote skill and resources in developing this uniformity—and then we hire underwriters to tell us how to get around it.

We profess to wanting state regulation as opposed to federal. Yet the resources of our TIPAC are generally restricted to federal involvement. Therefore, our ALTA political contributions are, for the most part, used for negative purposes. We need a positive side to this equation.

This "positive" effort requires emphasis at the local and state levels. We are facing many problems and time may be getting short. The "tools" are in place at the local level but we haven't fully used them.

Continually, among other things, we are concerned with the efforts of a large, national retailer—who shall go nameless—to include title insurance operations as a part of its many outlets. Our industry, with its membership in virtually every county seat, may have as many outlets nationally as does, for example, Sears. We must devote ourselves to using this network effectively.

ALTA in coordination with several state associations accomplished an

Continued on page 16

Claims—A Crisis— What We Can Do About It

William H. Little
Warren J. Eljenholm
Joseph D. Burke
Kurt G. Pahl
Richard L. Pollay

William H. Little

Dick Pollay, executive vice president of Chicago Title; Kurt Pahl, senior vice president who is in charge of claims for Ticor Title; Warren Eljenholm, executive vice president of SAFECO Title; and Joe Burke, executive vice president of Commonwealth Land Title, shortly will be discussing with you what their individual companies are doing to alleviate the claims situation in their particular company.

First, though, let me point out that we are not here to discuss in detail particularly interesting claims and how they were resolved. Instead, we wish to present to you the clear but dismal claims picture of what is presently confronting insurers and agents alike.

As you can see by Chart No. 1 (ALTA statistics), the operating revenues of this

industry since 1971, over a period of 12 years, have increased 178 per cent. But look at the expenses—without claims, a 253 per cent increase; with claims added in, the increase is 270 per cent.

As our problems in the industry have mounted due to the decline of available business caused by high interest rates and the ever increasing costs of doing business, we have always concentrated on attempting to deal with the need for reducing expenses by lowering personnel costs. An example of this is shown in Chart No. 2. As you can see, we are making very little headway. All but one year shows an increase, even though we have been dealing with a down market the past few years.

I believe we all must recognize that the one area we have not been addressing is the high cost of claims and how it has risen in the last 12 years. Refer to

William H. Little is president and Warren J. Eljenholm is executive vice president, SAFECO Title Insurance Company, Los Angeles, California. Joseph D. Burke is executive vice president, Commonwealth Land Title Insurance Company, Philadelphia, Pennsylvania; Kurt G. Pahl is senior vice president—claims, Ticor Title Insurance Company, Los Angeles, California; and Richard L. Pollay is executive vice president, Chicago Title Insurance Company, Chicago, Illinois. Little is Title Insurance and Underwriters Section member-at-large, ALTA Executive Committee, and Burke and Pollay are members, ALTA Board of Governors. Eljenholm is a member of the Underwriters Section Executive Committee. The commentaries are adapted from a panel presentation during the 1983 ALTA Mid-Winter Conference.

Chart No. 1

	Operating Revenue (Millions)	Per Cent of Operating Expenses to Operating Revenue (Excluding Losses)	Per Cent of Total Expenses to Operating Revenue (Including Losses)
1971	452.8	79.5	83.6
1972	555.5	79.0	83.1
1973	621.2	83.0	88.0
1974	581.8	90.6	97.6
1975	590.4	89.1	98.93
1976	775.6	85.1	92.17
1977	1018.8	83.46	89.42
1978	1205.2	87.01	93.11
1979	1335.1	90.53	96.6
1980	1211.2	98.01	105.24
1981	1285.3	99.79	108.54
1982*	1260.0	100.08	111.11

Operating Revenue Percentage of Change 1971-1982 178 Per Cent	Operating Expenses Percentage of Change 1971-1982 253 Per Cent	Total Expenses Percentage of Change 1971-1982 270 Per Cent
--	---	---

Chart No. 3. From 1971 through 1982 (1982 being estimated), the operating revenue is up 178 per cent, but the loss percentage change is 612 per cent. Chart No. 4 informs us that one of the heavy contributors to this loss situation is outside attorney expenses, which have increased 467 per cent since 1974, while at the same time new claims received were up 93 per cent and claim payments were up 193 per cent. As we all can see, our cost per claim is rising at an alarming rate.

We can no longer ignore or give passive attention to the claim side of the expense picture.

To quote from the *Title News* of recent date, the record year of losses in 1982 is rocking the entire industry, and should awaken every insurance carrier and agent to the devastating consequences of either ignoring quality control or over-emphasizing marketing and service at the expense of quality.

The staggering dollars involved in 1982 losses represent the greatest threat to the title insurance industry today, and unfortunately we must project continued heavy losses in the immediate future. There must be tremendous effort and emphasis with all intensity in the area of quality control if we are to alleviate the situation.

Historically, title insurance claims have been associated with the more sensational, often discussed cases of fraud, forgery and missing heirs, and a number of other so-called hidden hazards. Those are risks the title companies have always anticipated. But, in more recent years, claims of a preventable nature, those caused by carelessness and

“Agents must recognize that claims can hurt not only their reputation and their pocketbook, but can erode their very existence . . .”

poor judgment on the part of agents, approved attorneys, and insurer personnel have been playing an increasingly significant role in the mounting hundred-million dollar claims crisis that title insurance companies face today.

All of these claims, of course, are exacerbated by such distasteful approaches now being thrown at us that are labeled punitive damages, emotional distress and bad faith. Attorneys are holding seminars on “how to sue a title insurance company.”

Now let’s call on our panel members to share some of their ideas on this subject.

Warren J. Eljenholm

In order to understand the criteria by which we assess the title insurance industry, it is important for you to note that Bill Little and I have an accumulation of about 60 years experience in property and casualty insurance. We are relatively new to the title industry, joining SAFECO Title in 1973 and 1979, respectively.

As Bill has outlined in the preceding

commentary, our industry has a major illness in the area of claims which is eroding profitability and has the potential of destroying the future income of each of our companies—regardless of the anticipated increases in the volume of orders. Utilizing our combined perspectives, we would like to share a number of different approaches we are formulating to cure the economic ills we have been developing in the area of claims settlement.

When I had the privilege of moving to the title industry from the property and casualty business, it was rather a shock to see the coverage afforded by a title insurance policy for little or no premium. In the casualty business, or I should say, the surety business, we would charge 2 per cent of the gross contract price for coverage.

Here, in the form of loss of priority business, the title insurance industry has been giving the coverage away free. Many times when we requested that our people ask the contractor to obtain a surety bond, the retort would be, “The bonding company won’t issue the bond or assume the specific liability involved.”

In those instances where bonding was available, our people readily admitted that the contractor could not afford the cost. These risks were being denied or priced out of reason by independent companies structured to provide the coverage. SAFECO and our counterparts in the title insurance industry were absorbing these high liability risks with no increase in premium or financial incentive other than obtaining the basic title policy premium, which simply did not make good business sense.

In addition, we saw a continuing expansion of the coverages provided

Chart No. 2

	Personnel Costs (Salaries and Benefits) (Millions)	Percentage Change
1971	171.0	10.3
1972	201.5	17.8
1973	232.0	15.1
1974	241.3	4.1
1975	252.4	4.6
1976	298.2	18.15
1977	368.1	23.44
1978	438.7	19.18
1979	504.4	14.98
1980	480.9	(4.60)*
1981	503.5	4.7
1982**	500.0	.4

*Decrease
**Estimate

**Personnel Expenses
Percentage of
Change
1971-1982
192 Per Cent**

**Source:
American
Land Title
Association
NAIC Form
9 Reports**

Chart No. 3

	Operating Revenue (Millions)	Losses and Loss Adjustments (Millions)	Per Cent of Operating Revenue
1971	452.8	18.6	4.1
1972	555.5	22.8	4.1
1973	621.2	32.8	5.3
1974	581.8	42.3	7.3
1975	590.4	57.5	9.74
1976	775.6	54.8	7.07
1977	1018.8	60.8	5.96
1978	1205.2	73.4	6.10
1979	1335.1	75.1	5.63
1980	1211.2	87.6	7.23
1981	1285.3	112.5	8.75
1982*	1260.0	132.5	10.52

*Estimate

**Operating Revenue
Percentage of Change
1971-1982
178 Per Cent**

**Total Losses
Percentage of Change
1971-1982
612 Per Cent**

without corresponding increases in cost due primarily to the highly competitive proposals being made by underwriters and their agents to secure more of the commercial/industrial development market.

So, initially, it did not take a genius to see that this business was on a collision course with respect to profitability regardless of what the economy would do. Bill has provided figures regarding loss ratios and the marked increase in claims as well as the increase in litigation and settlement costs. It was obvious to us that the past luxury of a loss ratio figure in the 4 to 5 per cent range will not be common in the future.

In comparing casualty adjustment expense with title adjustment expense, we were appalled to see the spread. Not only was something wrong here but also, when you compare the title insurance industry's volume of business over the past few years with the volume of claims, we had to recognize and accept that something was out of sync.

In many instances, the cost of settlement on these claims has been more than or equal to the amount of the entire loss. Historically, what have we done in our business? When a claim came in, most times we assigned these losses to an outside legal firm. Immediately, the clock started running as far as costs were concerned. The claimant, in turn, would immediately contact an attorney and losses that *should* have been settled immediately took two to three years to negotiate and obtain a settlement agreement.

Compare the title industry's approach to claims with that of the casualty industry. In casualty, people are hired and trained within a six-month period to settle losses in the field. They handle liability losses and negotiate settlements directly with the claimants or their

“We can bring more highly qualified people into this industry . . . which will take us a long way toward reducing the number and severity of claims.”

attorneys. Many of these individuals handle losses that are far in excess of the average loss found in the title business. However, on the average loss, the claim is settled much more quickly in comparison to the title industry. If this procedure works in casualty, our thought is—why won't it work in our business?

SAFECO Title has now appointed claims settlement officers who are non-attorneys. These people are either new to the insurance business or have experience as adjusters in the property and casualty business. Their function is to immediately contact the claimants or their attorneys with the objective of set-

ting claims as soon as possible. Two to four claims settlement officers are assigned to the supervision of a staff attorney in the field. We feel these non-attorneys, based on experience in an allied field, can respond to claimants before the claimants have developed the desire or need to retain attorneys to pursue their claims. We then have a better chance of avoiding long settlement periods and costly legal fees involving our outside legal firms and claimant counsel.

Many times in the past, we found that, when our attorney's stationery arrived indicating SAFECO's "counsel would negotiate the claim," the claimant would feel the need to hire an attorney to respond to that first inquiry—and the fees would begin an ever-increasing spiral. We are confident that we can settle claims much more quickly in the field and that the new procedure which has been proved in a related industry, will successfully result in a major cost saving in the future.

Time limits this discussion on my part as to what additional steps we are taking in our own company. I will touch briefly on one more important area. As a com-

Continued on page 16

Chart No. 4

	Total Number of New Claims Received	Total Amount of Loss Payments Reported	Total Attorney Fees and Outside Expenses
1974	13,046	18,641,223	3,861,927
1975	14,086	28,453,024	6,910,189
1976	14,189	29,223,690	8,793,057
1977	14,948	30,061,848	9,239,895
1978	19,089	36,474,058	11,108,965
1979	19,751	35,358,397	12,410,427
1980	18,322	40,360,806	17,483,025
1981	17,953	48,442,498	18,333,777
1982	25,153	54,702,699	21,879,145
	1974-1982 93 Per Cent	1974-1982 193 Per Cent	1974-1982 467 Per Cent

Chart No. 5

	Percentage of Total Loss Payments							
	1974	1975	1976	1977	1978	1979	1980	1981
Basic Risks	8.64	13.03	13.08	16.25	16.53	20.57	17.79	21.99
Special Risks Authorized by Company Practice Plant, Searching, and Abstract Procedure	46.71	47.07	48.77	37.66	36.03	10.87	10.67	16.96
Examination and Opinion Error	9.68	8.39	10.65	10.55	15.10	19.18	26.53	20.99
Description Error	13.85	12.75	10.90	13.47	9.90	15.55	15.45	19.76
Closing or Escrow Procedure	4.04	2.27	3.37	3.76	3.49	3.62	4.70	3.40
Typing or Policy Review	12.05	11.84	7.78	11.18	12.59	19.14	19.68	12.66
Taxes and Special Assessment	0.21	0.43	0.08	0.48	0.51	0.44	0.50	0.60
All Others	4.54	4.23	5.49	6.65	5.68	5.10	4.68	3.57
	—	—	—	—	—	5.54	—	—

Total Attributable to Human Error: 69 Per Cent

The Future Of The Title Insurance Agent

Mike C. Currier

L. Kenneth Orthund

John J. Gehringer

Lawrence W. Hendrickson

One-Stop Shopping

Mike C. Currier

Let's imagine that you and your spouse are going to be known as Mr. and Mrs. Homebuyer. You have just left your home on a Saturday morning and have gone down to your local shopping center. While you are there, you go into this huge store that sells everything from tires to underwear. You have made your purchases and you are there at the checkout counter. Immediately adjacent to the checkout counter, you notice this booth, and the booth says, "XYZ Realty."

With you and your spouse being Mr. and Mrs. Homebuyer, you say, "Hey, we're in the mood to buy a house! Let's step over here and see what we've got going."

You go over and talk to the local sales representative of XYZ Realty and explain to him what you want. And, lo and behold, out of the computer comes the property that is exactly what you are looking for. Well, you are ecstatic. But wait a minute.

Can you qualify for this dream home? No problem. You step next door to the next booth, all in the same store, to L&M Mortgage Company. Sure enough, you qualify for a 90 per cent loan. Everything is absolutely perfect.

But, wait just a minute. Mr. Homebuyer says, "I've been listening to the local radio station and I've had Sgt. Braxton and his lead dog, Zing, both retired of course, teach me that I need to know the status of the title prior to the purchase of that property because I

could lose the entire deal if the title were to fail."

No problem, Mr. and Mrs. Homebuyer, won't you step over here to the next booth and that will be RST Title Company. Well, that is well and good. So they go over there and they explain everything to the title person and everything is fed into the title company's computer and, before you can say anything, out comes the commitment. The title person is standing there explaining everything to Mr. and Mrs. Homebuyer and everything is fine.

So, sure enough, as our story ends, out of the great big store walk daddy carrying the tires, mom who's carrying the underwear, and Jack and Jill are walking along spilling their ice cream on the recorded deed, the title policy and the closing statement. A little bit too much? Let's go on to dream number two.

Let's say that you are living in a city with three quarters of a million people and you are in the title business, and the largest savings and loan in your town, actually the largest savings and loan in the entire state, has just bought out one of your competitors. This causes you a few sleepless nights. You finally get back up on your feet ready to go, and, lo and behold, you find out that the second largest savings and loan in your community has just bought out the franchise rights of a large real estate company in your town, and that the next plan is for them to go ahead and buy a title company also.

How about the fact that the giant in the real estate franchise business is going to expand into the selling of property insurance in their real estate offices? I wonder if these people have given any thought whatsoever to going into the ti-

Mike C. Currier is president, Guaranty Title Company, Carlsbad, New Mexico; L. Kenneth Orthund is president of Land Title Company of Pierce County, Tacoma, Washington; John J. Gehringer is president of Waukesha Title Co., Inc., Waukesha, Wisconsin; and Lawrence W. Hendrickson is president of Sentry Abstract Co., Reading, Pennsylvania. Currier, Orthund and Gehringer are members of the ALTA Abstracters and Title Insurance Agents Section Executive Committee. The commentaries are adapted from presentations during the 1983 ALTA Mid-Winter Conference.

the insurance business. Again, you are daydreaming, so I'll leave that to you.

I remember a matter that illustrates this franchise problem. In our local title office in Carlsbad, New Mexico, there was a problem due to creative financing on one of these franchise deals, and, being in the title business, we were fortunate enough to get to call the home office of this particular franchise. I can remember just as if it were this morning, talking to the staff attorney at that real estate franchise, and he said, "The title company in which we have ownership handles this particular problem in this manner."

We'll go on to another thought. You're living in a large western state. You have been in the title business for 30 years. You started with nothing. You built yourself all the way up to the very top of the heap. Your success amazes everybody. You have 300-400 people working for you. You are just doing an outstanding job when, out of the clear blue sky, the leading brokers in your area form their own title company. The 700-800 sales personnel who work for these brokers who used to be your customers now are dealing with the new title company. As a matter of fact, those sales personnel are told if they don't deal with the boss's title company, they're going to be fired.

So, you are sitting out there and you are still daydreaming, and you are saying, well, maybe this really doesn't have a whole lot to do with one-stop shopping. Well, folks, let me tell you, it's awfully close if it's not one-stop shopping.

Now then, here's the kicker to everything I've had to say.

The story about the big store that sells everything from tires to underwear—fabrication. I made that one up, but the deal about being in an area where the largest savings and loan purchased the title company, and in the same town where the second largest savings and loan bought the franchise rights to a real estate company and is looking to buy another title company; and the fact that the large franchise group is going to get into property insurance; and the fact that, in a large western state, the real estate brokers have gone into the title business in a big way—all of those are true stories!

I have talked to people on the phone personally and they have told me these stories. To go back to the story about the large store and the tires, 25-30 years ago there were two gentlemen who really ramrodded title insurance into the state of New Mexico. One of them was a very prominent title man from El Paso, Texas, a good man; we really miss him at

these conventions. But I can remember him coming to New Mexico and sitting down and talking to my father at his abstract company, and he said, "I'm telling you right now title insurance is an excellent product."

He'd really sell, because in those days everything was abstract, total abstract, whether it be mineral or residential or whatever. They would go out in the evenings and sometimes he would come to the house and have a drink, and this gentleman would say, "I'm telling you title insurance is a good product."

But he also said, "I'm going to tell you something. If the people that are in the title business don't pay attention to what they're doing, and they don't do their homework, some day we're going to see title insurance sold right over the counter at these big department stores just like we see life and health insurance being sold at those department stores today."

And he said, "I'll tell you what they'll do. They'll have a little application there at the counter and they'll ask you these questions: Has your name changed since the issuance of your original policy? Have you been divorced? Have you been sued? Have you mortgaged the property since the original mortgage?"

If the title person standing behind the counter feels in his own mind that those questions are fine, out will come the policy.

Now, I went to work for a large underwriter in 1966 and my father used to tell me the preceding story, and I used to laugh at him. And, when you get down to the real brass tacks, I think I still do laugh at him. But over the last five years, I have been very fortunate to go to all of our national conventions, and it is amazing to see the number of states that do not have protection, or plant laws, as we refer to it in New Mexico, for people who are getting into the title business. For those states who do not have any protection, the story that I just told you about selling title insurance over the counter—to me—is not all that unrealistic.

Daydream? Reality? I don't know. So how does the topic of one-stop shopping and its effect on the agent all tie in? You know, if you are in a small town and you have one competitor and that competitor is owned by the largest lender in town, you have a real problem. If you are living in a larger area and there are a lot of competitors, and just one of them is owned by your potential customers, maybe the problem is not so tough.

But I believe that our association, our

business, our profession, are in for some great challenges. I believe that, if the state associations and our national association do not continue to daily watch over these problems and work on them, we are going to see some unbelievable changes down the road. I have one way to look at the effect. It's like looking at the depression and the recession. All of you have heard that, if your neighbor is out of a job, we are in a recession; if you are out of a job, we are in a terrible depression. And it's the same way in our business. I am not taking sides but I want to leave this last thought with you.

You are in a community and your competitor sells to the savings and loan, the big lender, and that savings and loan is forcing every bit of that title business right into your old competitor's office. That's controlled business!

Think about this one. Your competitor did not sell; the savings and loan came to you and said, bring out your books and show us the best year you ever had in gross figures—not net, but gross figures—and, the savings and loan tells you, we will give you time and a half of your best year ever and you sell. Now, is that controlled business, or did you just make an excellent business deal?

I am not going to answer the question.

Insurer Spinoffs

L. Kenneth Orthund

I would like to say before I go on that, in my city, we have one of those supermarkets. But the only thing they lack is a title insurance company. They have a financial center where you can buy real estate; you can buy stock, bonds, you can buy life insurance, you can buy hazard insurance, and the only thing left is title insurance. There is a very strong rumor that that is just around the corner.

When we talk about title insurance spinoffs, we are talking about what seems to be a national trend among major underwriters in getting rid of their retail operations or branch offices if you will. I tried to get some numbers nationally, but they are a little hesitant to give out those kinds of figures. I can speak from experience in my own state where at least two major underwriters have sold about five offices each, and these are not in small counties. The state of Washington is not a very large state, but I am talking in terms of counties from

100,000 to 250,000. Those are sizeable offices.

The prices of these as I understood were at giveaway; they were, however, offered to their current management at very nice terms. So there would appear to be really no change in management as they separated from the home office and became agents.

The immediate effect of this, of course, we hope will be more new members for ALTA in the Abstracters and Title Insurance Agents Section. I know that our Washington staff already has applications for membership from agents that were previously members as underwriters. As far as I am concerned, that is good news. The agency system is certainly beginning to grow, and I think what it tells me at any rate is that it is clear that the very serious real estate market recession we have all struggled through and obviously survived has resulted in our doing a better job of running offices for obvious reasons.

We do not have, of course, the layers of management for decisions to come through. When you are an agent, an independent business man, you make the decision today or you aren't there tomorrow. I think this is why we find ourselves having gotten through this very tough period a little better than some of those other offices.

I happen to be in a county where there are five of us competing for business and I am the only agent. The other four were all branch offices of major underwriters. As I did what I thought I had to do to meet the reduction of business by reducing staff and all those other things, I wondered if I was being hasty because nobody else was doing the same thing. But, I heard from time to time that some of the local management were in trouble because things did not get done quickly enough.

I feel that, when it is your business, you just react to these kinds of things faster. It is my hope now that we can see the light at the end of the tunnel and that we will react in the opposite way and meet the challenge of what appears to be a better business climate.

To really talk about the effect of the spinoff, I think we do not have a great deal to discuss. I think what it really tells me is, as I said before, that this retail kind of business is one that we can handle better as owners and operators. I think there is some advantage to being associated in your own business community with the local businessman; if you are not, every effort should be made to establish that kind of image. I

feel that it is easier to become a part of the local housing industry through home builders and real estate boards, and I feel that in smaller communities that certainly has some advantage. In the large metropolitan areas, perhaps this is not a big thing. But, in the smaller areas, this is something that really has not been done very well in the title insurance industry.

I am not a long-term title insurance man. I was a title insurance customer for 24 years in the mortgage banking business, and the title insurance industry probably has been one of the quietest industries I have ever been around. Now is the time, and certainly it is easier to do now, to make ourselves known and become a part of our local housing industry.

As the agency family gets bigger, and certainly it is going to get bigger, we have more of the tools to accomplish this thing. I hope that, within your own states, when you see this sort of thing happening, let's get these people into the fold as ALTA member agents now.

Controlled Business

John J. Gehringer

Controlled business arrangements, if they go to their ultimate extremes, are going to be the demise of the independent title insurance agent as we know it. This is going to be true unless you operate in states where you have either substantial start-up costs required by statute, or the licensing requirements of the states are strict enough so that everybody who decides tomorrow he wants to be a title insurance agent is not going to be able to get into the business. I think if you are from a state that has those stricter requirements, your problems are not quite as great.

There are several different methods of structuring controlled business entities. The one that I am most familiar with, because it happened to me in my county, involves an underwriter spinning off, selling, or giving away a title insurance operation to a producer of title insurance business.

Now this arrangement can occur if there is a generator or a producer of title insurance business who controls what the underwriter perceives to be a worthwhile market share. The income that this would produce for the underwriter will be at little or no expense to the

underwriter because it no longer has payroll, rent—any of the other items of overhead that you and I have to pay. Therefore, the term “worthwhile” income might not be a very big feature, because he is getting it for nothing.

Once a controlled business arrangement, such as the one that I just described, where an underwriter has sold off or given away to a producer its operations, occurs, obviously, you are foreclosed from any of the business that the producer of title insurance generates. You cannot compete with them. They won't even talk to you.

If you are doing business in a county where there is a substantial producer of title insurance business, I think you are in deep trouble and vulnerable to a controlled business arrangement occurring. I think you are especially vulnerable if there is an underwriter with a direct operation in your county and its profitability is somewhat suspect.

We and several other agents in Wisconsin are currently involved in some litigation with the insurance commissioner of our state involving a controlled business situation that developed. The situation was of the type I just described. An underwriter which was not operating profitably sought to get rid of its direct operations and ended up “selling,” I use the word in quotation marks, or giving away its operation to a very substantial producer of title insurance business in the area.

In the lawsuit that is currently pending, an affidavit filed by one of the officers of the underwriter, states, “For the past ten years,” underwriter, and I'm using the word underwriter, he names his name, “has operated a branch office in these two counties. Because these operations were not as profitable as had hoped, I was instructed to attempt to sell them, or if a sale were not possible to withdraw from the title insurance industry.

“If the sale . . . were to be set aside (underwriter) would likely withdraw altogether from competition for the title insurance business in these particular counties.”

Here we have a situation where, by virtue of a controlled business arrangement, an underwriter has changed an unprofitable direct operation to a very profitable, or worthwhile, operation because the sale was to a producer or generator of title insurance business who did 40 per cent of the residential real

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Mortgage Investment By Union Pension Funds

By Dr. Ronald E. Müller

Two major points I want to cover are, first, the results of a study that I, along with ALTA Director of Research Richard McCarthy and others, have finished out of American University which shows the feasibility, under current regulations without change in statutes and laws, of union pension funds being used to subsidize mortgage lending and expand housing.

The second is a closely related study that deals with how we can bring about a major transfusion into thrifts and banks which are mortgage lenders in order to increase the amount of finance capital available to housing.

The purpose of both of these studies was rather obvious. It is: how do we go about to not only expand, but also to stabilize, housing and construction finance. You, better than I, know that the major reasons for the necessity of the expansion and the need of stabilization of the cost of financing are very obvious. The reason why it is so obvious is that everyone in the title industry understands the tremendous uncertainty that we face in the next 12 months in terms of the economy. I want to give you some examples of this uncertainty.

If you go out and you look through all of the different types of forecasting services available, the famous one, the less than famous ones, you look at the newsletters of the financial pundits, the Henry Kaufmans of the world, you will find that some people are saying we are going to have a strong recovery. But then

others are saying, no, this recovery is not going on; it's going to be weak and it's going to be very short lived.

On interest rates, some of these famous predictors are saying interest rates are going to be stable; others say they're going to rise and others are saying they're going to decline. So, what will happen in the next seven months, in the next eight months, in the next 12 months?

To deal with that kind of question, seven years ago we put together a research group that delivers to our institutional clients today in the U.S. and overseas what we call an early alert service. What we do is track 77 forecasting services, newsletters, financial pundits and other so-called distinguished predictors of where the economy is going, where housing is going, where interest rates are going, and where other leading market indicators for your sector and other sectors are going. We evaluate them quarterly. We monitor them. We mea-



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sure their accuracy. And many of you in the title business I'm sure are using or have used one or more of these types of services. Therefore, every one of you should be aware of just how unreliable these distinguished forecasting services and distinguished pundits have become.

Those of you who did well three years ago listening to a particular forecast got yourselves into hot trouble 18 months ago when interest rates skyrocketed and the bottom fell out of the economy and housing starts. But the prophets of doom whom you ignored three years ago, and then you picked up and started listening to 18 months ago, if you kept listening to them, you were in hot trouble eight to nine months ago. So, whom do you believe? That's a real major question.

Whom do you believe in this game of what has become, in the economic and interest rate and financial forecasting business, information roulette? The answer to that, to the clients we had on the early alert who did not get burned during the past three years, is that you don't believe anybody. Really, that's what the word "uncertainty" means in terms of what every newspaper you read these days talks about; there is more uncertainty in this economy than in any other time in the past 30 years.

You do not believe everybody. The problem these days is not that you have an economist who says, on the one hand we have this, and on the other hand we have this. You now have three economists who have only a right arm, and

three economists who have only a left arm, and you've got to decide which, if any, are going to be right.

Let me illustrate this. The early alert and tracking service that we just did and sent out to clients in February, looking at this whole array of available information on forecasting, shows that there's a 55 per cent likelihood that we will get a recovery that will last through the end of the year. There's a 45 per cent likelihood that we're not going to get a sustained recovery and we'll be back in stagnation by April.

You look at mortgage rates from these same types of services and others, the financial forecasters, there's a 75 per cent likelihood that we'll see 12 per cent mortgage rates by the end of the year. There's a 15 per cent likelihood that they'll go below 12 per cent by the end of the year, and there's a 10 per cent likelihood that they'll be back to 14 per cent by the end of the year.

Now what's the bottom line for you, for all of us? For all of us this confusion, this information roulette, and this absolute inability to get consensus among the famous forecasting people on where we're going. For the companies, the thrifts, the banks who are not caught short by the interest rate shocks 18 months ago and by the surprise of stagnation in the economy. In the housing sector, what we find they were doing is something called contingency planning.

In short, profitable businesses that are facing an external environment, which they can neither control nor predict—and which holds out very, very different contingencies than the general economy, each with some significant probability to occur—have developed early, on their own, business plan contingencies to deal with whichever of those different real world contingencies that may come on line.

Now, this brings me back to the core of my discussion. This is the need to create, I believe, through the help of your industry and our industries associated with housing, and rapidly develop further financing options for the housing industry. Options that will expand the amount of lending and keep interest rate costs down regardless of which contingency in the real economy comes on.

To sit here and be powerless and really not know what is going to happen, is not a very good position to be in, particularly when we see in the last 12 to 14 months an awful lot of innovations going on in the area of financing for housing. I want to address myself to two of these.

These innovations are not only the economic feasibility, the financing feasibility, but also the legal feasibility, and they have something in common. Neither requires a change in statute at either the federal or the state level, which is what we were trying to do. Indeed, taken together, these two kinds of innovations represent the nation's two largest sources of yet untapped housing and construction financing.

Union Pension Funds

The first is dealing with union pension funds, the so-called multi-employer union pension funds of the great unions of this country. The traditional view on pension funds has been that the investment that is made is the function of portfolio analysis done by the pension fund manager. If we look at their track

“ . . . this plan not only creates more jobs, creates more financing for housing, but it also yields back to the pension fund return that is on the average 30 per cent higher than what they would have earned had they invested in corporate bonds.”

record, their average track record over the past three years, this is what we find for the 15 largest union pension funds in this nation: Their average yield during a time when interest rates, you all know where they were, were 7.5 per cent. The range of those 15 union funds: The highest was 10 per cent; the lowest was a minus .13 of a percentage point.

Our view about union pension funds, and not only my view and that of my research, but other people now increasingly getting involved in this on the law side, is that the yield on the pension fund is not only a function of the return to the particular investment, let us say, in mortgages. It is also the function of the ability of that investment, let's call it a mortgage, to generate new contributions to the overall contribution base of

a pension fund.

And here we have to understand, and I am sure you are all familiar with this, that if a union is going through a period of high unemployment, such as among construction workers over the past two years, that there is a severe drain in contributions.

Now if we take a look at the following kind of schematic, the following kind of concept, and compare it to the average yield that union pension funds have been experiencing, we will take a case of subsidizing through a union pension fund a mortgage rate down from 12 per cent or 13 per cent down to 10 per cent or 11 per cent. For the sake of simplicity, let's keep it at 10 per cent.

If that same investment is those mortgages that is being subsidized by 2 percentage points or 3 from the union also increases jobs and increases the contribution base, we have found, under the rule of fiduciary prudence that governs the pension fund managers, that has to be taken into account in terms of the net return or the net overall yield on the investment.

With that in mind, look at the following results which we have worked through, not only with ourselves, but with the Department of Labor, which as you know regulates and implements the ERISA guidelines that govern the use of these large union pension funds.

Take a billion dollars that a union places through its portfolio into subsidized mortgages. That billion dollars will create about 15,000 new housing starts. From the 15,000 new housing starts will come 50,000 new jobs. That is a range figure but it is based on the estimate provided by the National Association of Home Builders, and it is the low end of that range; 50,000 new jobs are a lot.

What does that mean for a particular union pension fund involved directly and indirectly in the activity, the economic activity, that comes out of all those new housing starts? Depending on the union, and depending on a number of other factors, it means it will create anywhere from 4,000 to 10,000 new hires for that union. And those new hires in turn will generate a significant increase in the contributions base of the union.

In fact, the increase to the contributions base, after discounting for the future liabilities that those new hires have to be taken care of when they start earning their benefits at some time in the future, will yield somewhere between 1-2 percentage points in addition to the

10 per cent return on the subsidized mortgage.

The variation here is a function which is the hottest topic when you have to deal with the Department of Labor—what's called in the jargon of law and economics "additionality." How many people who receive those subsidized mortgage rates, and went out and got themselves a new house, would have gone out anyway and bought that new house even if they had paid 12 per cent or 13 per cent for a mortgage? Well, if, indeed, much of our subsidized mortgages go to people who would have bought anyway, we have not created very many additional new housing starts.

And that question of "additionality" is the major assumption that has to be dealt with in getting the ERISA guidelines currently interpreted so that they will allow \$600-700 billion in union pension funds to at least get some significant proportion of that amount of money into new housing starts in an industry that badly needs new sources of financing.

This impact from the billions of dollars translates into somewhere between \$10-\$25 million in increased contributions, depending on the "additionality" factor. In turn, the increased contributions base is the part of the total return to the pension fund. That much we have now documented, and now the pressure needs to come from organizations such as ALTA, such as labor itself, to show the absolute necessity of beginning to interpret the prudent man rule in the way that the law intended it to be.

I would like to point out one other thing in terms of these results. If you take the example that I just gave you, subsidizing a mortgage by 2 percentage points, and you go back and compare what the return would have been for the union pension fund that had put its money into subsidized mortgages compared to what they had been investing in, you find the following: That this plan not only creates more jobs, creates more financing for housing, but it also yields back to the pension fund return that is on the average 30 per cent higher than what they would have earned had they invested in corporate bonds. It is 40 per cent higher on the average than what they would have returned had they invested in the stock market over the past 10 years.

Now one other thing that I would like to stress is that what we are talking about is not a change in statute, not a change in regulation, but an innovation in understanding the numbers, the fi-

nanacial analysis, that goes into an interpretation of what the words "fiduciarily prudent" mean—or, what it means to be a prudent pension fund manager. We have not found anyone yet in Washington who basically disagrees with this type of interpretation.

It is an opportunity to do something quickly, to use government as a catalyst if you will. As Richard McCarthy loves to say, to use it as the yeast in making and vinting a fine wine; not to use it as either the blocker or the creator of a whole new program, but to begin to interpret things under the new situations of this economy that we face, and not to look at the words, "fiduciarily prudent," as if this time is the stable years of 1965, '66, '63, and so on.

If we can do this, if we can get this yeast just to begin to work, again like vinting a fine wine, we really are doing nothing more than what economists and lawyers, and people in the title business, have been telling us ever since the time

"The utilization of old mortgages as a collateral backing for tax-exempt issues is not new."

of Adam Smith. Let the private market work and it will.

Expanding Finance Capital

The second innovation option is in terms of expanding finance capital through the housing and construction industries, and what I want to address is another of the two largest sources of not yet utilized finance capital for your industries. Here, I refer to the \$700 billion of what are known as "underwater mortgages," that are now out there held by thrifts and by banks.

"Underwater mortgages," if you haven't heard that term yet, simply refers to those older mortgages that were made in 1963, '68, '70, that are now running a yield that is far below the current market yield. The impact dramatically reduces the net worth of the lending institution making the mortgages—a thrift or a bank in most cases. If we can somehow use what is good, honest collateral—back of that is real estate, as you know—in an active way so it comes

back into the system without putting the thrift or the bank out of business, then we have a second large untapped source for expansion of the housing sector.

Now, how does that work? To answer that question, for the past eight months my research group, the two law firms in Washington—Winston & Strawn based in Washington and Chicago, and Chapman, Paul & Duff out of D.C.—have been working with a number of state governors and a large number of thrifts and banks who are very interested in this concept that I am now going to explain to you.

I am happy to report that we do have the complete documentation to show that what I am now about to say is legally feasible, it is politically feasible, it is economically feasible, its financing is feasible, and it makes good business sense for the private market and for the state governments that would be involved.

Basically, the idea is simple. You take these "underwater" old mortgages and you use them as valid collateral for states and municipalities to issue tax-exempt bonds. The proceeds from that bond issue are then used by thrifts and by banks to expand their mortgage lending because of the increase that comes about in the net worth due to the transformation of a passive asset into an active asset that is the collateral backing, along with the ultimate collateral backing, of real estate for the tax-exempt bond issue.

You also use those proceeds to increase and expand your construction financing. And, finally, the mechanism that this is done through—which is part of a thrift, part of a bank, or a subsidiary that we like to call a community-business finance corporation—also begins to do another kind of lending. It does lending to small and medium businesses. Not only in the housing and construction-related sectors, such as large regional distributors, appliance makers who are still small and medium compared to the Fortune 500, but also to such sectors as the high-tech sector.

The reason small business is one of the hottest topics going at the level of state government, and, hopefully, at the level of the federal government, is simply because one out of every two jobs in this country is the responsibility of the small and medium business sector. You get your biggest kick in terms of new job creation if you can solve the single big-

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outstanding feat with its modification efforts directed at the National Association of Insurance Commissioners and its proposed model title insurance act. In a last-minute, concentrated effort, the model act was revised to include certain provisions advocated by ALTA. This was a fine initial victory. However, the next battles will come in the local legislatures as this model act appears in the various states.

This is an example of the type of joint action between ALTA and state associations that will determine the future of our industry. We must preserve and promote this form of cooperative direction.

Greater Coordination Needed

We are all aware that the depressed economy has effected our industry and has impacted severely on resources available to ALTA. This, of course, is also true of the state associations. These conditions make it more imperative that we develop greater coordination of efforts and better utilization of our combined strengths.

Surely there are many objectives that we would like to attain in this area of cooperation and coordination.

Here are three:

- Greater membership involvement
- Better communication between the national and the state associations
- Coordination of effort

There are many ways of promoting these objectives and perhaps others will add to the suggestions in this article.

Though the three objectives are listed separately, they are inherently interrelated and interdependent. To get greater membership involvement, we must have better communication and we must follow through with carefully considered and coordinated actions.

We are a loose-knit industry, regionally oriented but beset with national problems which quickly become regional and local problems. Our state associations, by their nature, are periodically changing leadership. We need to develop a device on the local level which may survive the changing, elected leadership of these local associations.

As a start, therefore, consider the following two, initial steps:

- Each state association is asked to designate a member to be a liaison

“Perhaps more involvement by the general membership might develop courses of action more responsive to the general problems.”

with ALTA. Hopefully, this would be someone with considerable experience and expertise, and perhaps an individual who might survive the annual changes of administration.

- ALTA will designate comparable individuals from staff or membership who will serve as liaison counterparts to the state's appointees.

These liaisons can serve as a skeletal framework for informing and involving our membership in specific issues and in coordinating our efforts. Information could flow both ways and perhaps keep all parties better and more quickly informed.

No doubt there are logical groupings of states that can be developed, which will permit the national liaison to be responsible for a number of states. A regional type of thing.

Vaughn Resigns As LTIC President

Billy F. Vaughn, vice chairman of the ALTA Title Insurance and Underwriters Section and a former member of the Association Board of Governors, has resigned as president and chief operating officer of Lawyers Title Insurance Corporation to enter the mortgage banking business in Dallas, Texas.

According to Robert C. Dawson, Lawyers Title chairman and chief executive officer, the decision of Vaughn to resign was based on a desire to return to his native Texas. Vaughn had been assigned to Lawyers Title's Richmond, Virginia, headquarters for the past two years.

Vaughn also was serving as chairman of the ALTA Liaison Committee with the Mortgage Bankers Association of America.

The extent and usage of this proposed structure will depend on the problems and events which need industry involvement.

Like so many people, I can see the problems but have trouble with the answers. It seems certain that we must develop and utilize every strength we have if we are to survive and prosper in the coming years. Perhaps the suggestions in this article may not be the best method. If we agree that the objective is valid, then we can look to all the “problem-solvers” in our industry to come up with better answers.

Of course, it is always possible that when you are in panic and everyone else is calm—you may be neurotic. But, just because you are neurotic doesn't mean they aren't out to get you. And don't look back. They may be gaining.

CLAIMS—continued from page 9

pany, we self-audit 15 per cent of all escrow and title files that we produce in our direct operations. Our percentage of loss due to faulty workmanship compares closely to that experienced with other ALTA member companies.

I might add that many of our policy issuing agents have had loss problems and these loss percentages track very closely with our own. While implementing our own loss reduction programs, we have simultaneously discussed the problem of losses with our agents. I must say we have discussed this with many agents where their loss ratios have been exceptionally high. There have been loss patterns in some agencies where we, along with the agent's help, have been able to reduce these high loss trends within their organizations. Where we haven't, then SAFECO had to part company with the agent. Unfortunately, we have had to take this step many times in the past year or two, far more often than we would like.

This points out another problem. When we have had to take this approach and sever a relationship, the new underwriter has never called on SAFECO to determine why the agent is looking for a new underwriter. This lack of investigation or request for a reference is also true when we have had to cancel an agent for non-payment of premium. Sometimes we think we are the greatest sales people in the world but, as underwriters, we should be aware there may be other reasons why we make a sale. SAFECO makes a very specific effort to

go back and inquire of the previous underwriter as to why an agent is coming to us. It isn't always because we have a super program.

If you have any questions about our approach in the claims settlement area, please give us a call.

Joseph D. Burke

It seems but yesterday that the underwriters of our industry were the butt of skeptical questions and quizzical looks from insurance regulators and customers alike concerning what they considered to be our "low loss ratios." Those voices and looks have been noticeably constrained in recent years and with good reason. Title insurance underwriters have been taking it on the chin, suffering two and three times the normal loss experience. Loss ratios seen at 4 per cent of operating costs a few years ago are now at 10-11 per cent and all underwriters are feeling the effects.

What is causing this? The causes run the gamut, and touch many facets of our operations: Competitive market pressures, inexperienced help, poor supervision, casual attitudes in a business which cannot tolerate such, and let us not forget "time crunching"—1980s style. Some of these can be effectively dealt with, others defy correction.

At Commonwealth, we have felt that, first and foremost, it is essential that we identify the "real" causes of loss. The ALTA codes, when applied to the facts of a given case, will tell us—"what happened?"—perhaps a forgery, a fraud, or maybe mechanics lien gained priority or a searcher missed an item. But the ALTA codes necessarily stop there. However, we as underwriters must know "why" the happening occurred. There is real need to know whether or not we are faced with negligence, poor input, or even willful misconduct.

Accordingly, our claims division has developed its own set of causative codes as a supplement to the ALTA codes in order that we might know from the outset the basic reason for a claim. Incidentally, we seek this data early-on, while memories are fresh. Time delays may result in clouded pictures.

Secondly, we require as part of the claims reporting procedure that accountability be accommodated. In this approach, we want the claim reviewed by and with the party responsible. This is important whether or not the individual could have prevented the problem from arising. We see this as part of the educational process, and employees,

supervisors and managers alike must learn from our errors and focus on the prevention of reoccurrences.

Obviously, if the procedures in our system are found defective, this review gives us an opportunity to address and correct those deficiencies. I think it important to emphasize here that, while we insist that the party "responsible" be involved in this particular segment, the company is not looking for heads to scalp. The key here is corrective action—getting to the heart of the issue in order to be able to correct problem areas if they exist.

Thirdly, is that which we might designate as "assessment by an experienced claims executive." A regional claims executive, if you will, operating as a claims adjuster with authority to specified levels. The question most frequently posed at certain case exposure levels is whether to "pay or fight." Here economics and principle must meet and the issue be decided with intelligence and experience. In general, outside counsel are unfamiliar with our coverages and the defenses available to us, both of which are essential to a valued assessment of a case. Even in negotiation, this special background is necessary in order to effect fair and equitable results. Of course, if litigation is the course, then this senior claims counsel controls the case for the company.

Next, while I cannot speak of others' experience, historically, in our organization, the underwriting arm traveled in one direction while claims administration moved on its own without relation thereto. That has changed. Senior officer personnel of those two divisions have now been charged with the additional responsibility of interrelating one with the other in order to better control the company's philosophical approach to the conduct of our business. In other words, underwriting as a unit simply must be close to and identify with the experience being realized through the claims division.

Finally, we at Commonwealth are taking many steps designed to raise the conscious level of all personnel to the claims problems. Claims seminars for attorneys, for managers, for technical personnel, memoranda and other communiques all are programmed to bring to the attention of our personnel the real fact that their personal fortunes are intrinsically tied to the fortunes of the company, and that we must take to heart that maxim which Ben Franklin laid down in 1757 in his *Poor Richard's Almanac*:



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A little neglect may breed mischief
For want of a nail the shoe was lost
For want of a shoe the horse was lost
And for want of a horse the rider was lost.

Kurt G. Pahl

I also want to focus on a particular area of the claims function in our company, what we are doing in the management of claims, and how it differs from what we have done in the past.

Bill Little didn't mention my background, but I come from the financial side of the company, having a financial management background. I am also a non-attorney. I have spent a fair share of my time in almost the last nine months explaining why we have a lay person in charge of claims at Ticor.

The reason that we made this change was not to de-emphasize the legal side of claims. We have a number of fine counsel in the company who are handling this problem, but we felt that there was a great need to strengthen the business management aspects of claims.

As Bill has pointed out, the volume of claims has risen dramatically in recent years. We are finding more situations where there are complex, alternative strategies available, some of which involve asset purchases and other rather sophisticated transactions that cry out for heavy duty analysis and involvement of highly-skilled people with a lot of real estate and general business backgrounds.

Our existing organization did not have the expertise to handle these kinds of situations. One of the major approaches that we have been pursuing is to handle claims more along the lines of a casualty insurer, as Warren Eljenholm has just mentioned. We are in the process, and have been for some time, of making more of a separation between our underwriting and our claims activities. This certainly is not designed to reduce the communication and the interaction that are necessary between the groups, but merely a recognition that it is sometimes difficult to wear both hats and that different skills are involved in each area.

In order to describe where we are going, I would like to talk about what our claims organization looked like in the company, what it looks like now, and what it is going to look like in the future.

Until recently, all of our claims were handled basically by our state and local counsel in conjunction with state and

local management. They had certain limits of authority that, when reached, required them to contact the home office. The home office staff handling claims was a part of our general counsel's office and consisted of the chief claims counsel and an assistant, with very little administrative support.

In 1982, we made a major change which removed both our underwriting and our claims functions from the general counsel's office and made them operating functions in the company reporting directly to the president. At the same time, we substantially strengthened our home office claims staff. Legal staff was increased so that we could more intensively monitor what was going on at the state and local counsel levels.

We also added an asset management group. This formerly was in another part of the company, but it gave us the opportunity to attempt to increase the turnover of our assets. You are aware that, very frequently in the claims management process, the opportunity or desirability of acquiring notes or property presents itself and it is important that we take advantage of those opportunities if we are to minimize our claims expense. Our asset management group is geared toward not only doing that, but quickly turning over those assets so that we don't tie up a lot of company funds in such assets, and that funds are available to settle other claims as they come along.

We have also added an analytical and systems unit to our claims department. We believe that data processing should play a very important part in claims analysis and management. We have immediate access to our central main frame computer so that we can get current financial information as to where we stand on any particular claim. We have software packages available that enable us to do very complicated analyses on a very quick basis, for example, when we are in settlement negotiations, etc.

We are also beginning to utilize mini-computers for word processing and small applications that will give us good efficiency and good information. As one example, we manage about 200 or so mortgage loans. It's just not the kind of application where you can get a data processing department interested, or where you can afford to spend several hundred thousand dollars on computer systems. But we have the capability to do this ourselves, do it quickly, do it effectively and meet all of our needs very efficiently.

This is what we have done to date in our home office. Out in the field, we are moving to further implement the separation between underwriting and claims. We are going to be establishing claim centers initially in the state of California, which will handle all of the initial processing, investigation, administration, management and settlement of claims.

We plan to do some experimentation along the lines Warren Eljenholm mentioned with greater use of lay personnel, claims adjusters, investigators, or what have you, in these claim centers.

Also, in attempts to minimize litigation costs, we do have our own litigation staff in Los Angeles, which handles certain types of litigation for the company and for our insureds, and we intend to keep this function as appropriate.

All in all, we feel that we are adding substantially to our capabilities in the claims management area, and we trust that even with this increase in our loss adjustment expenses, our overall results are going to be favorable.

We are doing a number of things in the quality assurance area, including a better identification of how claims are arising, to prevent future claims. We trust that all of these together will give us the opportunity to mitigate the adverse trends which Bill has previously illustrated.

Richard L. Pollay

Because of the enormity of the problem and the subject matter, I will deal with just a piece of it instead of an overview of all things we are doing at Chicago Title.

I have had a fair amount of experience in the past in handling claims directly and also supervising claims operations. That I feel makes me biased. I will leave it to others on the panel with more recent claims experience to expound on new approaches to more effectively and efficiently handle claims.

I would like to talk about the other aspect of the claims problem, and that is how to avoid claims, or at least reduce their number and severity. I will review our approach to this problem and some of the things we are doing at Chicago Title that I feel will reduce claims.

We have had difficulty at Chicago Title in getting a handle on this problem. We have a large organization, with numerous offices dispersed throughout the country. While we have much information in our management reporting sys-

tem and claims files, we have been challenged to array the information in a manner to reflect specific points of weakness in our operations.

Where are the weaknesses in your operation? How do you pinpoint them? And, once you have discovered them, what corrective steps do you take? How do you motivate your people? It is primarily a management problem, and not a technical one.

Let me first recite that our claims reserve methodology was established after a thorough statistical analysis of our claims. We utilized claims experience going back to 1971 to devise a formula to project claims that are likely to arise out of policies in a given year. That gives us the dollar amount that we need to set aside to handle future claims.

Based upon revenue for a given year, utilizing our formula, we determined what percentage of revenue is needed to adequately reserve for anticipated claims. In the past, each office would pay the same percentage of their revenue for the reserve. There was no distinction between offices that had no claims, or offices, if there were any, that had a claim on every title. We devised a means of factoring in actual claims experience.

We made an analysis by each state, both for our branch office operations and for agency operations, and starting January 1 of this year, our reserving formula has a built-in factor for actual experience. For each branch office, two-thirds of the reserve is based on what you may call an insurance factor. One-third is related to experience, heavily weighted to the last three years. Improvement in the operation will permit a reduction in succeeding years and therefore enhance the bottom line.

Prior to 1983, to gain awareness, we had been showing actual payment of claims below the contribution line for each branch office. We do not feel that this has generated the motivation necessary for us to make a full effort to increase the quality of our product and reduce our claims. A major element in any management reporting system is to motivate behavior at the firing line that is in the interest of the corporation.

We now have the managers attention. Questions from the field indicate a greater awareness of claims and the impact on the profitability of their offices. Inquiries and responses, though sometimes questioning the accuracy of the reserve formula for a specific office, are directed in the main toward what can be done to reduce claims, suggestions to

minimize cost of claims handling and how reducing claims will lower their costs.

We have analyzed our claims for the past several years to give us insight into problem areas. We started with summary statistics using the ALTA categories. When we looked at individual claims, we found they were telling us something different than would appear from the ALTA code.

There are a number of categories that deal with basic risks. When we examined the claims files, we concluded many would have been avoided if we had done our job properly. Even in the basic risk area, a large number of claims were the result of negligence or failure to follow standard operating procedures.

Our analysis reflected by and large that our underwriting policy is proper, and that our underwriters are exercising appropriate judgment. The clinker is, that, while we have good communication among our senior underwriting people throughout the country, who are

exercising sound judgment, we have forgotten the basics. We have not been as attentive to and communicated sufficiently with the people who actually search, examine and close titles. This is where our claims arise and where our attention must be more strongly directed.

We have formed in the past year an underwriting committee composed of our top administrators, claims and underwriting personnel in the home office, together with management, claims and underwriting representatives from the field.

We have reviewed every region. The regional manager with his senior claims and underwriting personnel have come in and presented formal reports before the committee on what they are doing both in the underwriting and claims areas. After the field reporting and reviewing the analysis of our claims, we agreed that extensive training is essential for the people who are actually doing the work. I would like to mention a couple

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of things on training programs. We have not in the past utilized the ALTA Land Title Institute. We will start to use that. The ALTA courses are more geared to what to do than how to do it. It is a good background but it takes considerable time to implement. We are preparing our own program directed to how to do it. Our people, together with an outside training firm, are in the process of preparing training material and programs for examiners, title officers, etc.

One of the important things we have done is develop a diagnostic tool; it is a test that we give to our people to evaluate their knowledge of their area of activity and what their training needs are.

In some areas, we need to upgrade the competency of personnel. Almost universally we must improve the training, supervision and communication with those who actually produce our product.

I will conclude with statements I made in a recent memo to our field managers concerning training. They are, one, each office will conduct formal tests of employees to determine the areas where training is needed; two, programs created must have a formal structure with specific objectives and formal testing to determine results; three, programs should be designed to have an ongoing character so that the formal training is done with regularity; four, programs must include employees involved in searching, examining, settlement services, exception clearance, underwriting and handling of claims.

And I conclude that quality does not come about by accident. It is achieved by training, testing the results of that training, and retraining on a regular and formal basis.

In reducing our expenses in difficult economic times, we cut back more than we should on formal training programs. We must resume them. Though the cost will be considerable, it will more than pay for itself in reduction of claims and improvement in the quality of our product.

William H. Little

After losses and loss adjustment expenses of \$111 million in 1982, you can see why every company is beginning to recognize the need for quality control and improved claims handling—and that we are indeed faced with a crisis.

We must accept and recognize the

responsibility we have as insurers to get this information to our agents. Agents (with the exception of small claims) often will go for a long period of time before having a claim. But their loss ratios are climbing and there is no reason to believe that any of us, agent, attorney or insurer, is immune to the increasing claims consciousness and claims vulnerability which never before have existed in this industry.

Agents must recognize that claims can hurt not only their reputation and their pocketbook, but can erode their very existence to the point that they can lose their underwriter—and they may have difficulty finding insurers who wish to assume the exposure created by an agent with a poor loss record.

It would seem imperative that companies provide agents with assistance on how to mitigate the situation in the hope that agents will embrace some of the concepts on how to reduce losses from their own operations.

Rates seem to be increasing across the country in various states, but they are only a partial answer. The only way to ameliorate the incidents of claims seems to lie within the dynamics of human performance.

To illustrate, Chart No. 5 shows ALTA statistics from 1974 through 1981, breaking down claims by the general codes. In looking at this chart, you can see that we analyzed the payments by classification code and concluded that 69 per cent of all claim dollars are caused by human error. How do these ALTA figures track with your company? How can we overcome this? By going back to the basics—better selection at the very beginning. Let's bring more qualified people into the industry, even at the entry level job categories. As an example, think how many posting errors we are paying for every year. Today a posting error can cause losses in the millions.

So, as we see it, it starts with the selection of people, having higher standards for people in every job classification, to increase our chances of improving on our techniques and execution. We can bring more highly qualified people into this industry if we bring them in on a proper basis, with proper training and supervision, and then communicate and motivate them with the need for better performance, which will take us a long way toward reducing the number and severity of claims.

The charts are telling us where the problems are, so most of our resources should be applied to the development of people and their efficient productivity.

What we honor will be cultivated.

Let's honor the fact that we have a claims crisis and that our employees and agents must be apprised of the situation—then directed, assisted and motivated to solve this staggering drain on our reserves.

AGENT—continued from page 12

estate business in the community.

Now that's the type of arrangement that I am most familiar with—where there is a sale or giveaway of a direct operation to a producer of business. The other one is with the licensing as title agents, the producers of business, and paying them kickbacks disguised in various and sundry terms.

But even in that type of situation, the independent agent is foreclosed from any of that business. What prompts the underwriters to foster this controlled business arrangement really is beyond me. I can only speculate that it is greed. Short term, it might produce a buck for them. But, eventually, it is my belief that each controlled business arrangement will become susceptible to a bidding war among the underwriters themselves. I think they will find that they have made the biggest mistake that they ever made in establishing a controlled business arrangement because I believe, in the long run, it will be devastating to them.

As I see it, unless there is legislation, either state or federal, to prevent controlled business arrangements, the days of the independent title insurance agent, or at least many of them, are numbered. I believe that the same holds true for a number of the underwriters because of this bidding that is going to come about when these controlled contract terms expire.

Soliciting Agents

Lawrence W. Hendrickson

In Pennsylvania, we have a mutant of controlled business called *soliciting agents*. Both soliciting agents and controlled business in the state are a reaction to our insurance commissioner. We have, without a doubt, the least active insurance commissioner with regard to title insurance on the face of the earth. One, the man doesn't respond to our pleadings for help; and two, when

we do get him close to court, he stone-walls us.

The big problem is that the underwriters at this point are merely reacting to a market situation that is uncontrolled by the insurance commission. I don't want to sit here and say the underwriters involved are great guys and do-gooders. They are not, but most are merely reacting to a competitive situation.

I would like to take a moment and review how we got into this situation. In June or July of 1982, somebody came up with the bright idea of soliciting agents. It's a very simple concept and *may be* allowed by the 1921 state law which governs all insurance. However, it has not been used for a long time because the rating bureau definition of agent called for only full service agents. Under the soliciting agents concept, a real estate broker passes the very simple Pennsylvania Title Insurance Agents Test. He is then appointed as a soliciting agent for a title company. The underwriter then pays him between 10 and 25 per cent of the all-inclusive fee (which includes all fees for the search, examination, settlement, and policy). This effectively eliminates any independent agent from competition.

In the Mainline area of Philadelphia, there are some real estate brokers that produce between 1,000 and 1,500 high quality applications every year and they have now all formed their own controlled agencies. Between the totally controlled agencies and the soliciting agents, some very fine *independent* agents have had a very substantial portion of their business eliminated. As an example, I know of one agent whose business went from 800 applications yearly to 200 in no time at all.

So, just to reiterate: If you think either of these concepts are a joke or that they are not going to impact on you, you are totally and completely wrong. If they are not on the doorstep of your state or county right now, they will be there shortly.

The soliciting agents concept in Pennsylvania will completely erode all competition. It is going the controlled agent concept one step further.

In the very near future, the independent agent will cease to exist because there is no incentive for either a producer of business or an underwriter to deal with him.

Think about that for just a second and you will see how devastating the situation is. The independent agent ceases to exist! Period! The soliciting agents con-

cept gets to the very heart of the problem, how best to kickback to the producers of title business.

I want to take a moment to tell you a true story. We had an agent who decided to react to this situation. He said, "If you write for me as a soliciting agent, I will give you up to 55 per cent of the all-inclusive rate in certain instances." When asked how he could possibly do this, he said that, because of controlled business, he now had almost zero business. If he gave 55 per cent to a soliciting agent and 20 per cent to his underwriter, he would have 25 per cent left, which is 25 per cent more than he had now. That type or rationalization of doing business is the old wheelbarrow theory, which states that if you're losing \$5 on a wheelbarrow you can make it up in volume. In reality, if you sell 1,000 wheelbarrows, all you will do is lose \$5,000.

I would like to review what the Pennsylvania Title Agents have done in Pennsylvania. We filed a petition of formal complaint with the insurance commissioner on October 15, 1982. From here, I will go over how the stonewalling occurred:

10/15/82 The Pennsylvania Title Agents filed a motion for a pre-trial conference.

10/25/82 One of the title companies entered an appearance. There also was an appointment of a presiding officer for a hearing.

10/27/83 We filed a motion to attached exhibits from some of the various underwriter soliciting agents. A pre-hearing order directed that all documents be served with usual court compliance with everything being due November 17, 1982. There was the usual signing of receipts.

11/08/82 A notice was published in the *Pennsylvania Bulletin* to the effect that there was going to be a scheduled hearing.

There were lengthy responses and complaints by the various litigants trying to get various items thrown out. One national underwriter joined in as a friend of the PTA to support our position. Two of the underwriters did not object to this; however, the third did.

As I originally mentioned, this all started October 15, 1982. At the end of January, the PTA counsel received a call from the three litigants involved requesting that we settle this out of

court and make a sound position for all of us to compete in an open market situation.

On February 2, 1983, we sat down to discuss our positions. There was a four-member committee of the PTA and our counsel. By conference call, we discussed each item with the lead counsel for the three litigants. At that time, we came to a mutual agreement, and one week later, the underwriters lead counsel produced the agreement for the other two underwriters.

As of this point, one of the three underwriters whom I shall call underwriter A and whose attorney is acting as lead counsel has sent out a draft of our agreement. Underwriter B responded within a week and a half. Underwriter C has not responded as yet. During the next several weeks, we made numerous phone calls to underwriter C's attorney, only to hear that his draft was at the typist; or it's in the mail; or we're working on it; or we've got revisions. It just went on and on!

Our counsel called me bright and early this morning to say that he had finally gotten in touch with underwriter C's counsel, who now said he had substantial problems with the proposal and that he was going to re-draft it. At this point, I don't know how many drafts he has written, but the number is substantial.

So, from October 15 until today, there has been no action by the insurance commissioner. There have been no hearings and, at this point, we are very much in the dark. We thought we had an agreement that would really foster open competition and eliminate controlled business along the various lines proposed by the ALTA. It would eliminate soliciting agents and in general get things back to the good old free-for-all, where you were kicking and gouging your competitors on a regular and timely basis just to make sure they knew you were around.

So, at this point, the bad news is that I have nothing to report. We are in exactly the same spot that we were in when we came to the 1982 ALTA Convention. All of this problem goes back to one thing: an inactive insurance commissioner who will not do anything with regard to the title industry. The agreement I alluded to was the discussed agreement, because we have never seen the formalized or written agreement that was passed among the three underwriters.

Continued on page 24

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 August 31, 1983—to Committee Member Richard Oliver, Smith Abstract & Title, Inc., Box 153, Green Bay, Wisconsin 54305. 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: tract system and general index

1. Approximate population of your county _____
2. Average number of recordings/day _____
3. What type of *TRACT SYSTEM* do you have? a. Manual _____ b. Automated _____
4. If automated,
 - a. Manufacturer of Hardware _____
 - b. Software designer or developer _____
 - c. Are you satisfied with its performance? (Comment on both hardware and software.)

5. If you employ a *MANUAL TRACT* system, please send in one of your posting sheets with your comments on the system.

6. What type of *GENERAL INDEX* do you have? a. Manual _____ b. Automated _____
7. If automated,
 - a. Manufacturer of Hardware _____
 - b. Software designer or developer _____
 - c. Are you satisfied with its performance? (Comment on both hardware and software.)

8. If you employ a manual *GENERAL INDEX*, briefly explain its operation including its size.

COMPANY NAME _____

YOUR NAME AND POSITION _____

LOCATION _____

Systems-Equipment Profile . . .

Tract System and General Index Selected As Next Subjects for User Survey

By Richard J. Oliver

The Land Title Systems Committee of the ALTA Abstracters and Title Insurance Agents Section has commenced an investigation of hardware and software available to us in this industry in an effort to remove some of the mystique that tends to surround our decision process. Your cooperation with the committee is much sought after and will, in turn, make our work efforts easier in the future.

This article, the third in a series, is presented as an outline of what one company, namely Smith Abstract & Title, Inc., Green Bay, Wisconsin, experienced when setting up its own title plant.

In 1980, we made a decision to start our own title plant on a "go-forward" basis after having used court house records for 91 years. No other title company in Brown County, Wisconsin, maintained its own plant. We did not want to duplicate the court house records system but to better it; nor did

we wish to build a monument to ourselves.

Our two-fold decision was to establish a manual tract system and an automated general index. Considerable debate, cost analysis, soul searching and pure "down-home" trust and instinct went into these decisions.

The Tract Index

Originally, we had contemplated a fully automated plant but later we decided on the manual tract. We were just not comfortable at that time with an automated tract. I realize that the debate continues to rage, even now, throughout our industry, but a decision had to be made then. I do not foreclose upon the possibility of converting our tract to an automated system at a later date and our manual system was set up with that possibility in mind.

Although the bulk of the lands within Brown County fall within the government section, town and range survey, we additionally have large areas of land commonly referred to as the French or private claims at Green Bay. These were large grants or farm lots patented to the heirs or claimants of the original French fur traders and principally fronting on the Fox River. These claims run at an angle of 64° NW by SE and were surveyed by the U.S. prior to the government survey. The subsequent government survey recognized these claims and merely abutted up to them.

As time passed, much of this French claim land was sold by metes and

bounds descriptions and continues to this day. As fortune (or misfortune) would have it, the greatest share of our metropolitan area falls within these French claims. I think this is the principal reason why all the title companies in our county shied away from maintaining their own tracts.

By establishing our own mapping system, both within the French claims and without, we set up our own arbitrary subdivisions of these claims. It should be noted that, within these claims, normal surveyed and platted subdivisions also exist. We feel comfortable that abstracting in this manner will ease our minds concerning overlaps which an automated or grantor/grantee system might not catch.

The government survey lands are posted to the quarter/quarter or government lot as the case may be. Platted lands are posted in their traditional lots and blocks. We acknowledge condominium units just as you would a plat. Additionally, we have lands which fall within the former Oneida Indian Reservation and certain areas of that land are surveyed into government lots and Indian claim lots which we post to.

Although we have a "go-forward" tract, we do have microfilm copies of all tract indices from the court house dovetailing into our tract along with microfilm and microfiche of all instruments.

Strangely enough, probably the hardest thing to decide upon was the form of our posting sheets. Since we wanted to better the court house system, we wanted to refrain from merely copying their style. My staff and I traveled extensively throughout our state, interviewing knowledgeable colleagues who maintain their own plants, and tried to take the best of the collective ideas discovered. I shall be forever thankful to

Richard J. Oliver is a member of the ALTA Abstracters and Title Insurance Agents Section Land Title Systems Committee and is president of Smith Abstract & Title, Inc., Green Bay, Wisconsin.

them for their advice and constructive criticism of their own systems; they furnished a warehouse of information.

The General Index

Prior to automating, we inventoried approximately 70,000 3-by-5-inch index cards for our general index. This index includes all judgments, liens, probate, articles of incorporation, and any other recorded or filed instrument not bearing a legal description with the exception of satisfactions and assignments of mortgages and land contracts.

Obviously, part of this index is permanent while liens and judgements are purgable due to their statute of limitation periods or having been satisfied. Any automated system had to guard against destroying permanent records, yet have the ability to cull out and purge those records no longer required to be maintained.

Although the minicomputer industry is just starting to flex its muscles, the hardware out there is amazing, powerful and strangely cheap. For some unknown reason, many of our colleagues at the underwriter level do not seem to think they exist or would not fit into their computer rooms. This I find unfortunate as they could be of enormous assistance to their agents and probably to themselves.

We chose the IBM System 23 which includes the 8-inch double density diskettes. We store all our records on 10 diskettes with plenty of room for growth. It is possible to store everything in one hard disk at a premium cost but we have not chosen to do that at this point. We maintain two security back-up sets of software, one on premises and one off premises. In the unlikely event of data loss, the most we would ever lose would be one day's work and that would be readily reconstructed.

We contracted for our own software (program) because we could not find a package program which fully satisfied our requirements. Unfortunately, talking to a programmer unfamiliar with the title industry can be an experience in itself. Trial and error and, above all, patience (which I found most difficult on my part) finally produced an extremely rapid, safe and operator friendly software system that our staff is comfortable working with.

This computer could be programmed to do additional labor such as accounting, word processing or closings; however, our thinking is to let it handle our general index alone. Should we move into computerization in those areas just

mentioned, we probably will purchase another computer in the personal computer category. Their inexpensive cost and forthcoming programs for our industry make them extremely attractive.

I would like to add some personal advice. The person who waits for the perfect program will probably wait forever. Also, don't send a boy to do a man's job. It is easy to skimp on hardware but you will really pay dearly in the long run if you do so. The rapidity with which the microcomputer industry is growing is simply mind boggling. You are the loser for not taking advantage of the available systems now on the market or coming rapidly.

As part of this "Systems-Equipment Profile" user investigation by ALTA, we ask that you fill out the accompanying questionnaire on tract system and general index in an effort to assist all of us in making constructive and profitable decisions. Kindly send your completed questionnaire—by August 31, 1983—to Richard Oliver, Smith Abstract & Title, Inc., Box 153, Green Bay, Wisconsin 54305. Results of this survey will be reported in a forthcoming *Title News*. Please be responsive.

AGENT—continued from page 21

One facet discussed was an 80-20 split on controlled business—the same as proposed by ALTA.

The second was a cessation of the licensing of soliciting agents. I do want to give credit to two of the underwriters involved in the suit. As of this date, they have not paid any commission to any of the so-called soliciting agents. The third underwriter has apparently continued paying commissions, causing some agents to react by also paying to stay in the market.

Why this is not a clear violation of RESPA, I do not know. The good news is how responsive the ALTA has been. We have gotten things moving, which to be totally honest, I wasn't too sure would happen.

As you all know, there is an ongoing problem. Each and every underwriter faces the problem of profitability; but we agents now are faced with the problem of survival. Someone mentioned that the underwriters are shooting themselves in the foot and that is quite true. Controlled business is self-defeating, but the real problem is that there is no sword hanging over everybody's head

that can really enforce restriction. That is our ongoing problem at this point.

If you don't think that it is going to happen to you and if you think that you are going to sit on the sidelines and that these problems will go by you—boy, will you be surprised when it goes by you! It will be just like a truck going 200 miles an hour and it will pull you right off your feet.

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gest problem of the small and medium business sector. And, what is that? Access to increased financing and the cost of financing.

It is also interesting that, whether you are lending into small or medium business, and construction-related or housing-related sectors, or you are lending into high-tech sectors, for example, under this concept you can provide lending at 1-2 percentage points below current market rates available to these organizations. And you can still have the bank or the thrift involved making the same rate of return on its lending operation as it did before the utilization of these "underwater" mortgages in the manner I just described.

The final advantage that comes out of this for the state, the municipalities, and the community at large, is a technique that is called "development financing." I find wherever I go in this country that the words, "development financing," say absolutely nothing to anybody.

All development financing says is that a private-owned bank, a private-owned mortgage company, a private-owned thrift—if it agrees to cooperate with a state, government or municipal government authority, as is happening all over the world in other industrial democracies of Europe and Japan and so on, and takes a small proportion of its lending and targets it to sectors that are of a priority to a state (for example, here in Arizona trying to attract high-tech, trying to attract foreign investments)—if it agrees to take some small proportion of its total lending and target it into a sector or region which needs an infusion, but at commercial rates, the state in return gives it a very, very effective way to capitalize, in this case through tax-exempt mortgages.

A final thing that then can be done is

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Names In The News . . .

Richard L. Pollay, executive vice president of Chicago Title Insurance Company, has been elected to the combined board of directors of Chicago Title and Trust Company and Chicago Title Insurance. **Pollay** has been with Chicago Title since 1956.

Chicago Title and Trust has elected **James F. Ott** as senior vice president and chief financial officer, and **Thomas V. Szymczyk** vice president in the land trust department.

Thomas M. Ferraro has been elected vice president and Connecticut state manager for Chicago Title Insurance and will be located in the Stamford, Connecticut, office.

Richard Pozdol, a Chicago Title Insurance vice president and associate general counsel, has been appointed director of underwriting compliance, Chicago, Illinois.

Howard L. Stillwell has been appointed resident vice president, Atlanta, Georgia, office, Chicago Title Insurance.

Appointed to the position of assistant vice president-sales for Chicago Title Insurance are **Berniece Guthrie**, Merritt Island, Florida; **Karen L. Kitover**, Chi-

cago, Illinois; **Michael Maddalena**, Union, New Jersey; and **Isabelle Pullis** to assistant vice president, commercial and industrial sales, New York, New York.

Appointed to the position of assistant vice president for Chicago Title Insurance are **Paul Maloney** and **Thomas Newell**, Cleveland Ohio, and **Carl Woods**, Seattle Washington.

The home office of Chicago Title Insurance announces the following appointments: Donna K. Ekstrom to title operations officer, **Kathleen V. Murray**, editor, the *Guarantor*; **Michael B. Ranz**, commercial and industrial underwriting officer; **Douglas M. Karlen**, tax counsel; and **Susan E. Woods**, assistant general counsel.

New appointments in the Denver, Colorado, branch of Chicago Title Insurance include **Brian R. Gray**, escrow branch manager and title operations officer, **Karen L. Kirschner**, title operations officer and title production manager and **Thomas L. Trenbeath**, officer and office counsel.

The Crown Point, Indiana, office of Chicago Title Insurance announces the appointment of **Joanne Forrester** to title operations officer and assistant manager and **Larry M. Matney** to title officer.

Other appointments announced by Chicago Title Insurance include **George Boehm** to office manager, Pittsburgh, Pennsylvania; **Jerry N. Jones** to title operations officer, Merritt Island, Florida; **James T. Straw** to associate regional counsel, San Francisco, California; and **William Zabkar** to claims/underwriting counsel, Cleveland, Ohio.

Donald A. Pins has been appointed

president of First American Title Company of Los Angeles. **Pins** has served as executive vice president and chief operating officer since 1981 and has been associated with the company since its founding in 1964.

Dennis Plank has been appointed vice president and manager of the newly-formed Southwest division of Transamerica Title Insurance Company. The new division is a consolidation of Transamerica's Southern California and Arizona divisions.

Transamerica also announces the promotion of **Richard Alexander** to vice president and manager, Northern California division, **Joe Enos** to escrow supervisor, Sacramento, California, and **Lawrence Lenderman** to county manager, Gila County, Arizona.

Coley W. Graves has been promoted to assistant manager, abstract department, of Mid-South Title Insurance Corporation and Don Bailey has succeeded him as manager, Shelby Oaks, Tennessee, office.

S. T. (Tom) Slovak, vice president of SAFECO Title Insurance Company, has been named director of quality control, a newly created position. **Dan A. Hanson** has succeeded **Slovak** as Los Angeles County operations manager.

American Title Insurance Company announces the following appointments: **Allan F. Montezon** to state manager, Wisconsin operations; **Leo W. Haymans** to regional counsel, Southeastern region; and **Robert P. Cianciulli** to vice president of systems and procedures.



Pollay



Szymczyk



Ferraro



Pozdol



Pullis



Plank



Alexander



Enos



Lenderman



Slovak



Hanson



Haymans

Richard C. Mohler has been appointed chairman and chief executive officer of Northwestern Title Company of Seattle, the first agency in the Pacific Northwest region for Title Insurance Company of Minnesota. **Dianne C. Sullivan** has been named national account executive for the company.

Jeanne H. Mahoney has been elected senior vice president and manager of the newly created national services management department of Ticor Title Insurance Company. **Nicholas C. Kane** has been named director of advertising for Ticor Title.

Robert M. Loera has been appointed examining supervisor, special title operations for Ticor Title Insurance of California, Rosemead, California, office. **E. Bradford Holbrook** has been named vice president and San Francisco county manager for Ticor Title, San Francisco, California, office. Ticor Title has appointed **Thomas J. Kohl** as subdivision consultant, Walnut Creek, California, office. **William D. Klimback** has been named executive vice president-Southern California operations and will be headquartered in the Los Angeles, California office of Ticor Title. **Vincent E. Burch** has been appointed advisory

title office for Ticor Title, Sacramento, California, and **Donald R. Moody** to senior advisory title officer, Concord, California, office.

Charles A. Bogle has been appointed assistant vice president of Commonwealth Land Title Insurance Company, Atlantic City, New Jersey, office. Appointed assistant counsel with Commonwealth are **William F. Hunter**, Beverly Hills, California, and **Davida S. Tussman**, San Jose, California, office.

Edwin G. Ditlow has joined Commonwealth as a sales representative, Philadelphia, Pennsylvania, office. Commonwealth has named **Mary Ann Moore**, Harrisburg, Pennsylvania, and **James E. Sindoni**, Drexel Hill, Pennsylvania, to the position of closing officer.

Lawyers Title Insurance Corporation has appointed **Kathleen M. O'Donnell** and **Kenneth F. Commette** to senior title attorney, Boston, Massachusetts.

Elected to the position of vice president and state manager of Lawyers Title are **Carl B. Hall**, Alabama; **J. Robert Walker**, Ohio; and **Oliver I. Crawford**, South Carolina. Crawford is a past president and director of the Palmetto Land

Title Association. **Kim Werner** has been appointed branch counsel, Toledo, Ohio and **Dean Williams** has been named assistant vice president—agency. **Gabriel A. Ivan** has been elected vice president and general corporate counsel, Richmond, Virginia. **A. Glenn Graff** has been appointed Lawyers Title Florida assistant state manager. Graff is also president of the Land Title Institute Inc., of the American Land Title Association. **Richard J. Dundon** has been appointed branch manager of Lawyers Title, Newark, New Jersey, office.

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that a small proportion of the profits made at the community-business finance corporation owned by a bank, or a thrift, or a number of banks or thrifts who pooled their old mortgages to capitalize this through the tax-exempt issue, a small proportion of the profits thus generated will be used to subsidize what is called the "soft window lending arm" of such an organization. And what does that do? It makes loans to municipalities, to state governments for sewers, for homes for the aged, or for community retraining programs so that, indeed, the state government, the community and the municipality, also get a return that way.

Development banks and development financing institutions run by the private sector exist in every industrial democracy throughout the world. The utilization of old mortgages as a collateral backing for tax-exempt issues is not new. It has been done since the end of World War II in those other nations. It is something that we should be thinking about.

Now, why are the individual states so interested? We are actively working now in three different states for implementation. One reason that you have to be aware of is that, while the new federalism called for by this Administration is good in the sense that it is trying to get more responsibility out of Washington down into the state level, the problem with it is that it took away all of the financial resources that states have been accustomed to utilizing. Therefore, while states have been given more and more of the responsibility for the next five, 10 years, the economic development of their communities, the federal government for lots of good reasons, and maybe a few bad reasons, had to take away their financing ability to do this, and this is the huge dilemma of this



Cenciulli



Klimback



Burch



Ditlow



O'Donnell



Commette



Hall



Walker



Crawford



Williams



Ivan



Graff

country in triggering a sustained recovery.

You take the case of Arizona. Arizona is like so many other states that I visit. In a particular region of Arizona, we are now running about 30 per cent unemployment in one of its major industries, mining. Therefore, Arizona, like other states, is out competing, competing hotly and heavily, to try to attract firms out of the Silicone Valley, to try to attract the firms away from Rt. 128 up in Massachusetts, those high-tech firms. It is also running around the world trying to bring in foreign investments. The United States with all of this uncertainty is still the most stable nation in the world, and foreign investment of companies coming over here is a major opportunity for states to attract, and they are competing hot and heavy with each other.

The biggest single problem in both the attraction of small and medium businesses into a given state, be it Arizona or otherwise, is the lack of sufficient finance capital for investment. It is not so much the cost as it is the lack of sufficient finance capital.

The program I have just outlined is nothing that involves new government laws either at the federal level or the state level. They are new interpretations of laws that nationally prominent law firms feel can be interpreted in the manner that these programs ask for, and, most of all, they are self-financing. They do not add to government's deficit, be it the federal deficit or your state government's deficit. They are retriggering, catalyzing the private sector to work in a

somewhat different fashion than during those beautiful, stable days of the 1960s and the early 1970s.

Here are some ideas of people, not only in my group but other groups elsewhere in this nation, who are beginning to look at housing as important for many reasons, not only because of all the jobs it creates, not only because of the construction-related activities, and so on.

You may recall that, unless you have a sustained and prolonged increase in the housing sector, since the end of World War II it has been impossible to have a

sustained and prolonged recovery. Unless you can stabilize and get a steady rate of expansion in available finance capital in the housing sector, it is not only you in this kind of business and people in other kinds of businesses who are going to suffer. The whole nation is going to suffer because the one thing these one-armed, to two-armed, economists agree on, the one thing and about the only thing that they agree on is that, without a sustained recovery of housing, the nation will not have a sustained overall general economic recovery.

Myers Elected TLTA President During Convention; McDonald Principal Speaker

Win Myers, resident vice president and agency administrator for the Gulf Central region of Chicago Title Insurance Company, has been elected president of the Texas Land Title Association at the 1983 convention of the organization.

Myers has served as a director of TLTA since 1978 and has also held the offices of association treasurer, secretary, vice president, and president-elect. He was named Title Man of the Year by the association in 1979.

Myers is a member of the New Mexico Land Title Rating Bureau and has served as its secretary-treasurer and vice president.

The TLTA convention was held May 12-15 in Houston, Texas. Tom McDonald, American Land Title Associ-

ation president, was a principal speaker at the meeting.



Win Myers

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Calendar of Meetings

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
Cleneden Beach, Oregon

June 16-18

Southwest Title Insurance Executives
The Broadmoor
Colorado Springs, Colorado

June 16-18

Tennessee Land Title Association
The Peabody
Memphis, Tennessee

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 14-16

Dixie Land Title Association
State of Alabama Convention Center
Gulf Shores, Alabama

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

October 14-16

Palmetto Land Title Association
Hilton Head Holiday Inn
Hilton Head Island, South Carolina

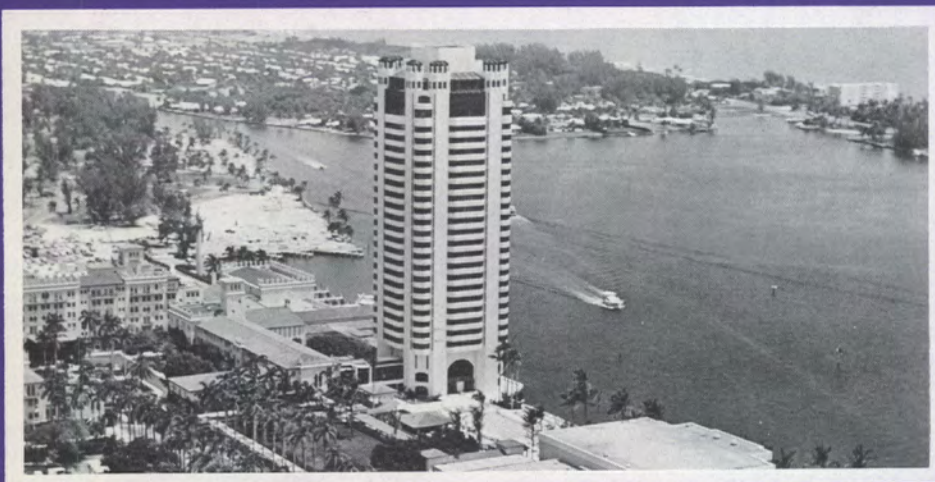
October 20-22

Land Title Association of Arizona
Sheraton Tucson El Conquistador
Tucson, Arizona

November 9-12

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

ALTA Convention Returns to Boca Raton Facility



ALTA members attending the Association's 1978 Annual Convention will remember its impressive site—the Boca Raton Hotel and Club combining old world elegance with modern comfort and convenience at Boca Raton, Florida. The facility proved so popular that ALTA is returning there for its 1983 Annual Convention September 21-24. Early registration is advised.