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Title News



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Technological Tiger*

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Front Cover

Pre-acquisition-related cost overruns and work product deficiencies brought a formidable challenge to First American Title Insurance Company in the automation conversion of its Seattle title plant. William L. Thiss, First American's assistant vice president-plant systems in Seattle, presents the story of his company's successful taming of this technological tiger beginning on page 9.



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A Message from the Chairman, Abstracters And Title Insurance Agents Section



This has been an exciting year for the American Land Title Association. Serious challenges have arisen for the title industry as usual, and we have met them successfully.

Through the efforts of the ALTA Executive Committee and staff, and each of you, we have established better lines of communication among our members than have existed for years. Differences certainly remain among the diverse sectors of our industry. But we have progressed substantially in seeking mutually acceptable solutions by reasoning together. Under the leadership of 1983-84 ALTA President Don Kennedy, the gains in unity and understanding between the underwriter and the abstractor-agent segments of the business have been truly remarkable.

After a tendency to link problems separately with either one side or the other in the past, it has been interesting this year to observe that most of our challenges have been characterized by Association leaders as affecting both underwriter and abstractor-agent members.

If past is prologue—and the history of ALTA extends back to 1907—the coming year will bring more problems with wide implications for the title business. Although the scenario promises to be familiar, there will be an important difference in the picture. ALTA members are closer in the ability to overcome what lies ahead—through teamwork among

underwriters, abstractors and agents—than has been the case in many years.

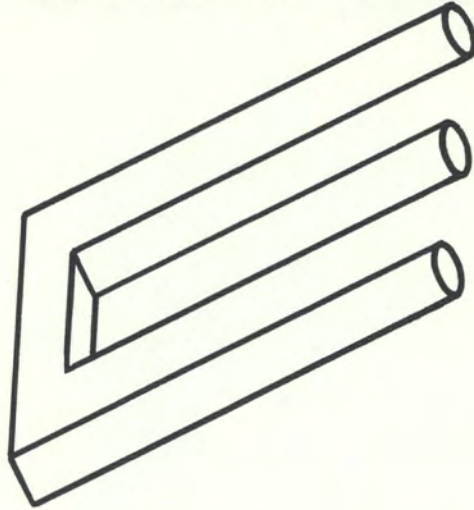
In unity, we have all grown stronger.

Best wishes for a happy and prosperous new year.

A handwritten signature in dark ink, appearing to read "John R. Cathey". The signature is fluid and cursive, with a large, sweeping flourish at the end.

John R. Cathey

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Governmental Challenges Concern For ALTA Governors

Concern over governmental challenges to the title business has been expressed by all five members of the ALTA Board of Governors profiled in this issue of *Title News*.

They are Mike Currier, president, Guaranty Title Company, Carlsbad, New Mexico; Cara L. Detring, vice president, St. Francois County Abstract Company, Farmington, Missouri; Malcolm S. Morris, vice president-operations, Stewart Title Guaranty Company, Houston, Texas; John A. Mueller, Jr., executive vice president and chief administrative officer, American Title Insurance Company, Miami, Florida; and Herbert Wender, chairman of the board and chief executive officer, Commonwealth Land Title Insurance Company, Philadelphia, Pennsylvania.

Following are the views expressed by these ALTA governors on the above and other matters.

Mike Currier



Currier

Governor Currier has followed his grandfather and father as a president of the New Mexico Land Title Association, and finds it especially troubling when personnel from a federal or state agency decide to investigate the title industry.

"I do not say this because we have anything to hide," he commented, "but I say it because of the almost total lack of knowledge these people have concerning the title industry. I believe ALTA should be ready to provide the best qualified members from our industry to work with these investigators when the need arises."

Governor Currier pointed out that a great deal of energy recently has been devoted within ALTA to working with all members of the Association—from the smallest agent to the largest underwriter—and urged that this approach be continued.

Malcolm S. Morris



Morris

Governor Morris, who previously served on the ALTA Title Insurance and Underwriters Section Executive Committee, feels strong emphasis should continue to be placed on the presentation of ALTA views to federal and state government. He also believes that ALTA needs to persist in objecting to the expansion of banking into the title business as a part of financial institutions deregulation.

"ALTA also needs to work to upgrade our membership, the involvement of our membership, and should stand for what is best for the general welfare of our membership," he said.

Cara L. Detring



Detring

Governor Detring, an attorney who has been a leader in education and young title people activity for both ALTA and the Missouri Land Title Association, believes ALTA faces a major challenge in educating the federal government concerning the title business.

"We must be successful in shaping any new legislation and regulations that directly affect

our industry," she added. We provide such a good product and such good service for the consumer that we must keep our industry from becoming crippled by either regulation or deregulation."

Governor Detring, who has served on MLTA's legislative committee charged with developing a proposed title insurance code for the state and who has chaired the state association's title agent legislative committee, believes that the upswing in emphasis on input from each ALTA member should be stressed even more.

John A. Mueller, Jr.

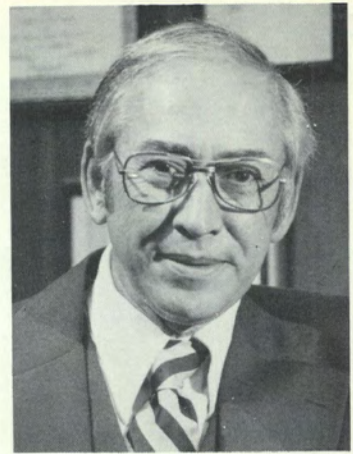


Mueller

Governor Mueller urged higher visibility to create more awareness of the title business in both federal and state governmental arenas. He called for reversal or appropriate modification of IRS Revenue Ruling 83-174, which holds that a title company may not treat amounts set aside in a reserve, required by state statute, as unearned premiums and mentioned as another major challenge the Federal Trade Commission investigation of the title industry centering on whether title searching and examination are part of the business of insurance.

Governor Mueller has served on the ALTA Title Insurance Accounting Committee since 1971 and listed as major items before that committee IRS Revenue Ruling 83-174, National Association of Insurance Commissioners Form 9 statutory filing revisions and rate

Continued on page 25



R. "Joe" Cantrell
"A title agent for title people"

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Taming the Technological Tiger



By William L. Thiss

Management at more than one title insurance company has learned first hand that a substantial information systems commitment often means grasping a technological tiger by the tail. Yet the hazard is unavoidable if a major title concern is to remain competitively viable.

First American Title Insurance Company has logged a memorable title plant automation safari among the evergreens of Seattle. Challenges remain but we have turned the corner after encountering serious cost overruns and work product deficiencies during conversion; these occurred before acquiring the plant from the predecessor company in 1976.

Eight years later, the tiger still roars but is much more well behaved. The plant and accompanying technology have improved substantially. Although Washington state law pro-

hibits jointly owned title plants, First American has been able to cost justify an impressive breakthrough in system development at the facility by selling title evidence



William L. Thiss is assistant vice president-plant systems for First American Title Insurance Company, Seattle, Washington. He began his title insurance career in 1962, advanced through various positions to branch manager, and was assigned responsibility for First American plant operations in Seattle in 1975. His experience includes design and/or installation of word processing, accounting, escrow, title searching and various other specialized systems for title insurance and related industries.

from the plant to our competitors. Management is pleased but far from complacent.

An important conclusion reached by management during the technological struggle that characterized the conversion is that the company—and the title industry—must safeguard the future by taking part in the development of software that will greatly influence our information management efficiency. First American has acted accordingly by moving to acquire an equity position in Document Data Corporation of Orlando, Florida, a concern producing title industry software capable of running on different computers. Document Data has pledged to make software available to interested title companies at prices more realistically related to what they can afford, and on terms that will allow them to pay as they earn.

Plant Dates to 1889

Reviewing the history of the Seattle plant—which was started by its predecessor owner nearly 16 years ago—presents a memorable picture of what can be encountered by title company management in taming the technological tiger so competitive cost effectiveness can be maintained. Because Washington state law requires a title plant to include all records dating back to statehood in 1889, the Seattle facility now contains over 16 million postings—making it what is believed to be the “deepest” plant in the nation in computer readable form.

Creation of the plant began in 1969, when a handful of keypunch operators started abstracting filmed documents onto 80-column punch cards in a Seattle garage. It soon was necessary to move the operation into a downtown office building and expand the key punch staff to the neighborhood of 120.

Those early keypunchers would be amazed if conducted on a tour of what the plant has become in 1984. Imagine back at the beginning, loading 13 million punch cards through a card reader, into the computer and out, just to put them on magnetic tape. Even so, the initial benefit was tremendous—condensing the content of a room full of tract books into microfilm that could be stored on top of a desk. And, those microfilmed tract books could be repeatedly duplicated.

The awkward nature of punch cards and their vulnerability to multilation and moisture

led to replacement of the key punch machines with key-to-tape machines in the early 1970s. The key-to-tape machines built by Singer served as our main data entry device until we began work to install a new system in 1978. Through the key-to-tape machines, it was possible to put more information into each posting than with punch cards. Prior to arrival of the key-to-tape machines, 80 characters were the maximum length of a posting before serious complications emerged.

By 1977, it was decided that the key-to-tape machines lacked adequate reliability and

work began to replace them with a very impressive, high speed, FourPhase system. After the cost overruns and deficiencies in plant quality encountered earlier, the recommendation to local senior management that we convert to a FourPhase was made with some trepidation. The realization that our information management commitment was being precariously extended brought a redoubled effort to scrutinize every available resource—money, time and personnel. This acutely careful management is the single greatest factor in the success realized.

Besides being a high powered data entry oriented machine, the FourPhase allowed us to write and load standard Cobol programs for our accounting system, bring up an excellent word processing system developed by FourPhase and still left the necessary power for future development of programs needed for plant cleanup.

The FourPhase also featured impressive communications capability. When using the old key-to-tape machines, we sent magnetic tape over to our service bureau each day by messenger. Now, after dialing a phone number, the same information is transmitted electronically in just a few minutes.

Conversion Formidable Task

A critical point in conversion of the plant came when it was decided to simultaneously add a programmer to staff, change service bureaus because the one being used was not performing satisfactorily in running our data, update plant programs and change computer environments. It was a formidable undertaking but we had no choice. We were spending an enormous amount of time recovering from one plant update disaster after another.

Our staff programmer came aboard, and we engaged a high performance contract programmer to teach him what to do in a much larger computer environment than we had at the time—so our staff man could do what was necessary to convert, build and maintain the plant at the desired level.

The larger environment involved an awesome IBM application in the Seattle national headquarters of Unigard Insurance Company, which was second to none technically and supported a sophisticated national network. Within the installation were a huge IBM 370/168 water-cooled computer with row upon row of double stacked, high density disk drives. There were seven or eight high speed tape drives and three 2,000-line-per-minute printers attached. This system was so large and telephone lines connected to it so numerous that an attached smaller computer was necessary just to direct traffic for the telephone circuits.

Four or five people had to be assigned to work with communications because of the size of this computer operation. There were data scopes that could be patched into any of the phone lines in seconds to monitor transmitted data and detect line problems.

Tapes were housed in a large, fireproof vault and a full-time tape librarian was responsible for that mass of data. The owner company invited us to move our processing over to this operation for the transition, and provided some of their personnel to assist.

As it turned out, the original outside concern charged with developing the software system for the plant did not leave behind any plant software documentation. So our newly-



Re-creating undocumented title plant programs presented a formidable challenge for Robert Clemence, systems programmer shown above, during First American's Seattle plant conversion but the results were successful. In the other photograph, Steve Dillow, systems programmer, retrieves a document from the HP 3000/68 system printer in the ever changing First American computer room.

hired programmer and his mentor were faced with the seemingly impossible task of changing computer environments and re-creating most of our original programs without program documentation.

For those unfamiliar with programming, there are two kinds of program code involved in documentation. There is the source code, which can be created and read by human beings but which cannot be directly understood by the computer. And there is the object code, which can be understood by the computer but not by people. The object code is produced by running the source code through a compiler (a type of translator). Object code can be created from source code but not vice-versa. Trying to modify or update a computer system without source code was similar to exploring a huge, underground cavern without the benefit of light.

Plant System Re-created

During a period of less than three months, our intrepid programmer and his mentor, working "in the dark" without program documentation, succeeded in re-creating our plant system—complete with full documentation, new enhancements and tighter controls. Our service bureau environment had been converted from an IBM 360/40-50 EDOS to an IBM 370/168 OS/VS at the Unigard Insurance Company headquarters—definitely a move from a "tenement" to "Park Avenue on the Ritz."

In 1979, First American signed a master software license agreement with Informata, Inc., with intentions of installing Landex Systems in several of its branches where joint plants would make sense. We, in the Seattle office, were somewhat reluctant to accept a Landex System at first because we felt the amount of storage it had was too limited for the data we had available to load. The temptation to reduce the plant to two levels soon prevailed, however, and on May 1, 1981, Seattle went on-line. Unfortunately, a year later, Informata, Inc., went "off line."

In the latter stages of installing the Landex System, we became aware of a new system with substantially superior long-range potential—except for its price. Fortunately, interest by our competitors in purchasing a daily copy of the plant increased at that time and we were able as a result to cost justify the new system—the Titon developed by Title Data, Inc.—which was placed in operation in January, 1983. Titon came in on the most sophisticated and reliable piece of computing gear I had yet seen in plant operations—the Hewlett/Packard 3000/40 with two 404 megabyte disk drives, 1 megabyte of memory, a 1600 bpi tape drive and 16 terminals running from it with 16 more possible.

Progress was clearly evident at last. With the installation of the Hewlett/Packard, the



Diana Russ, First American data entry lead operator, puts the company's new high speed title plant data entry system through its paces as the results are observed by Assistant Vice President-Plant Systems William L. Thiss, left, and Regional Vice President Thomas J. Brusca.

chances of system breakdown were greatly diminished. I personally looked forward to the decrease in "crashes" requiring my personal attention, 30-hour weekend ordeals rebuilding the plant because of hardware or software failure, to updates that required 1½ hours instead of seven or eight, and, most importantly, to a system that could be used for more than one shift per day.

All this has come to pass but there also have been problems related to progress. For example, we wanted to allow each outside user of the new system to have as many terminals as he needed and could afford. When the computer is in your office, however, you must use phone lines to reach them and that adds to their cost.

It was necessary for our personnel to learn about new technological advancements such as Digital Data Service phone lines, statistical and time division multiplexing, short haul modems, protocol conversion between async

and synchronous computers, and so forth. Also, there is the pressure from users continually wanting to automate new things. Our previous Landex computer was single purpose; the Hewlett/Packard is capable of running hundreds of applications, many of them simultaneously. At First American in Seattle, we now feel the pent-up demand being released for bigger, better, newer, faster and more.

Since coming on line with Titon in January, 1983, the Seattle (King County) plant stays on line an average of 21.25 hours a day, seven days per week. Two more counties since have been added to the plant system, along with 11 more user offices.

The computer has been upgraded twice to the current Hewlett/Packard 3000/68. There are currently 42 terminals running, with that

Continued on page 27

Communication Far-Reaching Task For Vice President-Public Affairs

Effective communication remains essential in reaching numerous ALTA objectives and in building member strength through unity. Serving as the Association staff professional in a wide variety of communications endeavors is Vice President-Public Affairs Gary L. Garrity, who plans, develops and executes activity through various media to strengthen ALTA identity among priority audiences.

According to Association Executive Vice President Michael B. Goodin, "Gary's 16 years of experience in explaining to different publics the vital services provided by ALTA members are invaluable to the Association. It has been a pleasure to watch Gary write and edit as we have communicated with our members and other publics over the years."

Gary staffs four ALTA committees. His assignments include the Public Relations

Committee, newly designated work with the Liaison Committee with the National Association of Realtors, and continuing support for the Education Committee and Land Title Systems Committee. His work with the Education Committee includes the successful ALTA Regional Seminars. This year, these seminars attracted 100 paid attendees at Bridgeton, Missouri, and 110 paid attendees at Jantzen Beach, Oregon. His responsibilities include creative development and promotion, helping to identify emerging trends and problems and implementing the appropriate action at the most advantageous moment.

Continued on page 30



ALTA Vice President-Public Affairs Gary L. Garrity is interviewed by Jane Lehman, associate editor, Changing Times magazine, for an article on closing as a cameraman videotapes the activity for the Association's VCR membership recruiting presentation that will be available for showing at 1985 regional and state title association conventions. About one fourth of the article was devoted to title insurance. In the other photograph, ALTA Editorial Assistant Jennifer A. Phillips checks over proofs for an issue of Title News.



Begin with the best

Investing in a computer system is a critical decision. It's a decision that you, hopefully, will make only once. One that will have great impact on your clients, your employees, and the growth of your business.

It's important that the system be the very best, not only for today but for the future. It should handle all aspects of your business from title documents and closing packages through plant maintenance and amortizations.

You might want to start with a basic system, adding capabilities as your business grows. You'll want to be able to add programs, boost the power of the system and increase the

number of users. But it must be done economically and efficiently. And the single integrated system must allow all users to share information from the same data base simultaneously.

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continually updated records of your county. Your DMS/3000 can be installed in less than 90 days — a complete, totally affordable Document Management System you'll use hundreds of times a day!

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Your Search Is Over!

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ALTA Judiciary Committee Report: Part IV

Prescriptive Easement— Extent of Use

Weis v. Hovnanian Florida, Inc., 436 So.2d 258 (Fla. Fourth DCA 1983)

Appellants fenced two parcels of land and placed animals on the land. Over the years, the animals varied from chickens and rabbits to horses, and the nature of the use and length of time of each kind of use also changed over a period of approximately 20 years. The trial court granted a prescriptive easement for animal husbandry purposes in perpetuity, finding that the appellants had used the land for animal husbandry for over 20 years. An easement claimed by the plaintiffs as to another parcel was denied. The appellants appealed the denial of the easement on Parcel Two, and the defendant cross appealed the grant of the easement as to Parcel One.

The issue was whether the plaintiffs were entitled to a prescriptive easement for animal husbandry purposes to the exclusion of any use by the true owner.

The Fourth District Court of Appeals reversed the final judgment below as to Parcel One, concluding that the plaintiffs were not entitled to a prescriptive easement for animal husbandry purposes which was so broad as to totally exclude any use by the true owner. The court stated further that such rights are tantamount to title which can only be acquired through adverse possession which plaintiffs did not claim.

Tax Resale Proceedings— Sufficiency of Notice to Record Mortgagee

United States of America v. Malinka, Original Opinion 54 Okla. B.A.J. 2984 (Okla. App. 1983) *Petition for Rehearing granted—Original Opinion Withdrawn* 55 Okla. B.A.J. 392 (Okla. App. 1984)

Malinka purchased property at a tax resale. Malinka subsequently sought to quiet title to the property based upon the tax resale deed. The United States of America (mort-

gagee) was the holder of the record of a mortgage encumbering subject property. The mortgage was executed and recorded prior to the tax resale proceedings. In accordance with Oklahoma law, notice of the resale proceedings was given to the owner of the real property by mail, and general notice of the resale was given by publication. No actual notice was given to the mortgagee. The Oklahoma statutes did not require that actual notice be given to the mortgagee of record. The mortgagee challenged the sufficiency of the notice on the basis that constructive notice is not sufficient to comply with the due process of law requirements of the constitution. The trial court rejected the challenge and quieted title in Malinka. The issue on appeal was whether constructive notice to a mortgagee of a tax resale proceeding was sufficient to comply with due process of law. The court of appeals, in its original opinion rendered November 22, 1983, affirmed the trial court. On rehearing, the court of appeals considered the effect of the decision of the

Supreme Court of the United States in *Mennonite Board of Missions v. Adams*, U.S. _____, 103 5.Ct. 2706 (1983). The court noted that the Indiana statutes regarding tax sales in Mennonite and the Oklahoma statutes regarding such sales were strikingly similar. The court noted that the central difference between Mennonite and the case at bar was the fact that the tax deed in question derived from a tax resale directly from the county treasurer whereas in Mennonite, the deed derived from a certificate tax deed. (Under Oklahoma law, if there are no successful bidders at the original tax sale, the county treasurer can bid off the real property for the amount of taxes thereon in the name of the county. The Oklahoma statutes provide for a two-year redemption period by the owner following sale for taxes. If there is no purchaser at the sale, the county treasurer is authorized to hold a tax resale after the statutory two-year period of redemption has run.)

The court stated that the broad language in

Report Published in Installments

The accompanying cases and others published in additional issues of *Title News* constitute the most recent report of the ALTA Judiciary Committee. In addition to Chairman Ray E. Sweat, the following served as members of the committee during preparation.

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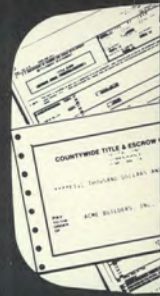
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	1,000.00	12.00		10.00	12.00	10.00	12.00	JAN 85
001	88.85	9.22	79.63	641.52	19.22	19.22	12.00	FEB 85
002	88.85	9.42	89.43	761.09	20.64	20.64	12.00	MAR 85
003	88.85	9.62	99.23	879.86	22.26	22.26	12.00	APR 85
004	88.85	9.82	109.03	997.85	24.08	24.08	12.00	MAY 85
005	88.85	10.02	118.83	1114.84	26.09	26.09	12.00	JUN 85
006	88.85	10.22	128.63	1230.83	28.29	28.29	12.00	JUL 85
007	88.85	10.42	138.43	1344.82	30.68	30.68	12.00	AUG 85
008	88.85	10.62	148.23	1456.81	33.26	33.26	12.00	SEP 85
009	88.85	10.82	158.03	1566.80	36.03	36.03	12.00	OCT 85
010	88.85	11.02	167.83	1674.79	39.08	39.08	12.00	NOV 85
011	88.85	11.22	177.63	1780.78	42.41	42.41	12.00	DEC 85
012	88.85	11.42	187.43	1884.77	46.02	46.02	12.00	JAN 86
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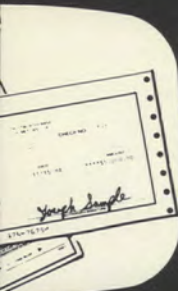
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- 6 - CHANGE
- 7 - EXIT SY

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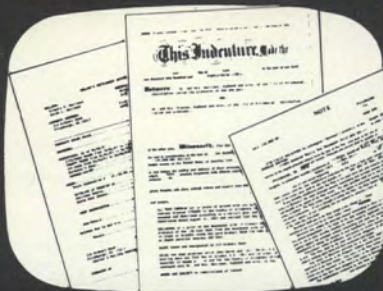
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- 2 - CLIENT FILE ENTRY PRINT
- 3 - TRANSFER BASE FILES
- 4 - TYPEWRITER MODE
- 5 - SELECT PRINTER
- 6 - CHANGE SYSTEM DISK
- 7 - EXIT FORMS SYSTEM

SELECT FUNCTION



RAGWARE INDEXING SYSTEM MASTER MENU

- 1 - STARTUP
- 2 - STORE CASES
- 3 - RETRIEVE/TRANSFER CASES
- 4 - ENTER/MODIFY CASES
- 5 - SELECT PRINTER
- 6 - CHANGE SYSTEM DISK
- 7 - EXIT INDEXING SYSTEM

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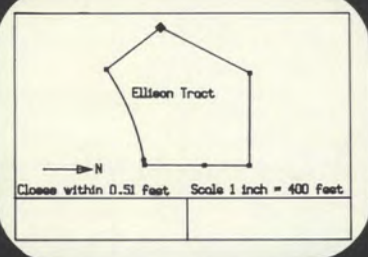
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- 3-TRANSACTIONS
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Mennonite requires that in either case (tax sale or tax resale), the mortgagee of real property subject to forfeiture for the owner's failure to pay real estate taxes is entitled to actual notice before its constitutionally protected interests in the real property can be terminated.

The court held that, under the guidelines set out in Mennonite, the Oklahoma tax sale and resale procedures as applied to the mortgagee in the case at bar, are unconstitutional and void.

Tax Sale—Right of Redemption

Devine v. Nantucket, 16 Mass.App.Ct. 548 (1983)

In this case it appeared that one George R. Stimpson was the owner of property in Nantucket in 1896 and that he failed to pay the taxes on that property. The town, through a tax sale, acquired title to this property in 1898. The plaintiff thereafter, nearly 100 years later, paid to Stimpson's heirs \$200 for a quitclaim deed of the property which had been the subject of the tax sale. The plaintiff then commenced action in the land court to redeem the property, asserting flaws in the tax sale. The plaintiff claimed that the two-year right of redemption as provided by statute was suspended due to the fact that the collector of taxes never sold the lots obtained under the tax title, and that until such sale occurred the right of redemption continued to exist.

The issue was whether a right of redemption still was in existence under these facts.

The court began that the law relating to the redemption of land from a tax sale is that law which is in effect at the time of the sale. The court then quoted the statute then in effect. It provided that:

The owner of real estate taken or sold for the payment of taxes . . . may within two years from the day of the taking or sale redeem the estate taken or sold by paying or tendering to the collector . . . the amount of the tax for which the property was taken [or by tendering to the purchaser of the property the amount he paid for it].

The court further noted that Stimpson made no efforts, during the two-year statutory period provided, to redeem the property from the tax sale. The court continued that under the law as it existed at the time of the sale "the right of redemption after a tax sale or taking was foreclosed by mere expiration of a certain period of time without notice to the parties."

The court concluded that:

The flaw in the [plaintiff's] position is that the collector, under [the statute], may not sell property until the redemption period has expired. . . . Whatever may be the consequence of his failure to dispose of tax title property, it cannot logically be to breathe life back in to the right of redemption because if that were so, the collector could not sell the property. That in turn would make nonsense of so much of (the statute) as permits the collector to sell the property "at such time as he deems best" or "upon demand."

Insight: The appeals court restated its proposition that "there is an interest in the stability of tax titles," and succinctly, the court made clear its position not to casually

overturn tax sales when the same are challenged.

Street Vacation—Easement—Ownership

Tanner v. Shirkey, 5 Ohio App. 3d 225 (1982)

Appellants and appellees are abutting property owners to alleyways, which were dedicated to the Village of Delta, Ohio, and subsequently vacated by the village. Appellees claim they are entitled to the entire width of the vacated alleyways. Appellants assert they are entitled to a one-half fee interest in the alleyways which abut their property, and further entitled to an easement with respect to those areas which are used as access to their residence and their agricultural fields. Appellants stipulate that they have alternate routes to their residence and agricultural fields.

The issue was ownership of the vacated alleys shall be vested.

Where a street is vacated by a city, the land of which it was comprised passes in equal halves to the abutting lot owners, *Taylor v. Carpenter, 45 Ohio St. 2d 137, 139*. This principle applies even though the abutting lot owners (landowners) no longer need the vacated street for ingress and egress.

Insight: A private easement in a vacated street is continued in favor of an abutting landowner only when the injury to the landowner is different both in degree and kind from that to the general public.

Tax Sale—Validity

Hilde v. Dixon, 16 Mass.App.Ct. 901 (1983)

In 1935, the collector of taxes for the Town of Kingston made a tax taking against property which had belonged to Marks F. Braunecker and, rather than foreclose the tax title in the land court, the collector decided to apply to the commissioner of corporations and taxation for an affidavit and authority to sell the property as land of low value. Those proceedings were completed on April 20, 1939, when the treasurer of the town conveyed the property to the Town of Kingston, which, in 1956, conveyed the property to Dixon.

Evidence showed that Marks F. Braunecker had died in 1932, and that the taxes for which the property had been taken were those that were assessed as of April 1, 1933. Additionally, the evidence indicated that at the time of the taking there was filed in the probate court a petition for the probate of the estate of Marks F. Braunecker.

The issue was whether the heirs of Braunecker can bring an action against the heirs of Dixon in an effort to upset the procedural integrity of the tax title.

The court noted that the collector of taxes in making his demand is charged with notice of the probate proceedings and that it was true, therefore, that at the time of the assessment, Marks F. Braunecker was not a "person appearing of record" to be the owner of property and that there may have been a technical non-compliance with G.L.c. §11.

The court noted, however, that, in making his demand, the collector of taxes had sent a

notice to Marks F. Braunecker and that said notice had never been returned. Moreover, there was evidence that the heirs of Braunecker received the notice and were aware of its contents. Accordingly, the court, in citing G.L.c. 60 §37, indicated that, although there was a technical error or irregularity in the procedure concerning the tax title, the same was "neither substantial nor misleading."

Insight: The court made clear its position concerning challenges to tax titles of this nature, especially where it appears that the challenge is the result of the efforts of others who should be minding their own business. "We have here another instance of prospecting among old tax titles for nuggets in the form of procedural flaws."

Tenancy by the Entirety—Insurance Proceeds

Regnante v. Baldassare, 15 Mass.App.Ct. 718 (1983)

Mr. and Mrs. Baldassare owned certain properties as tenants by the entirety. The property was insured against fire by Merrimack Mutual Fire Insurance Company, and the policy which was issued contained the following printed provision:

Death of insured. In the event of death of the named insured, the definition of "insured" is modified as follows: [and] the named insured shall mean: (1) the spouse, if a resident of the household at the time of such death; and (2) the legal representative but only with respect to the premises and property of the deceased covered under this policy at the time of such death.

The insured premises were damaged by fire, and the insurance company agreed to settle for \$23,000. This was acceptable to Mr. Baldassare but Mrs. Baldassare refused to sign the proof of loss, claiming that it was unsatisfactory. Mr. Baldassare died soon thereafter.

The issue was whether the settlement proceeds should be paid to Mrs. Baldassare alone or to her in conjunction with Mr. Regnante, Mr. Baldassare's special administrator.

The court, in interpreting the language of the insurance policy, held:

The quoted printed provision of the policy (concerning the definition of "named insured" in the event of his or her death) seems wholly inapposite and ambiguous when the named insureds are husband and wife holding by the entirety and one insured spouse is survived by the other. No evidence suggests that either insured spouse or the insurer intended to do more (or less) than to insure the estate by the entirety, in accordance with its usual 1953 incidents. We regard the printed provision as having no clear relevance to the distribution of the insurance proceeds and deal with the proceeds as so closely related to the estate by the entirety as to be essentially a substitute for the damaged property.

In 1953, the incidents of an estate by the entirety in real estate were well established. . . . The husband was entitled to possession and control of the premises during marriage and to any rents and profits, but upon the death of either spouse, the survivor would take the whole estate.

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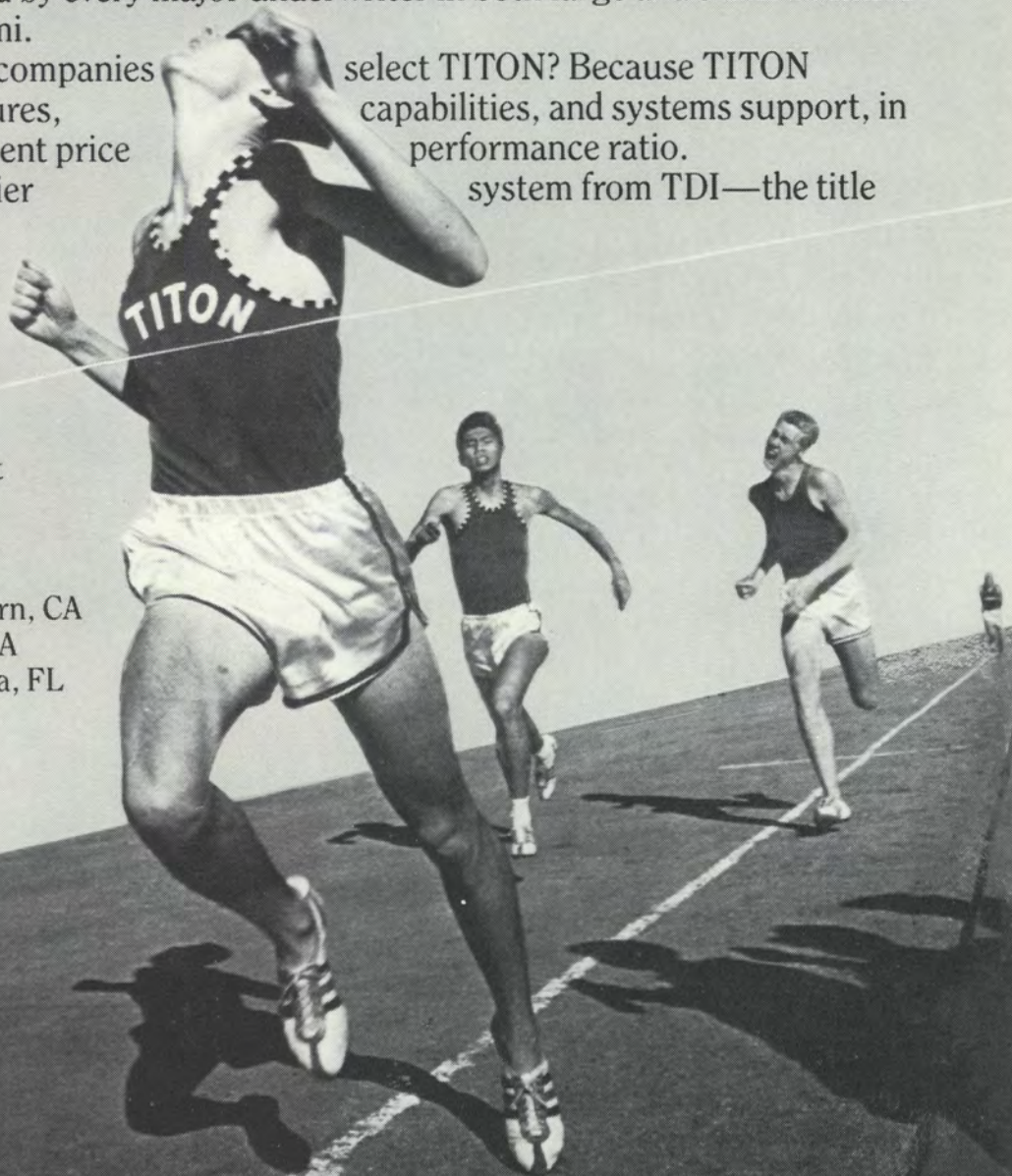
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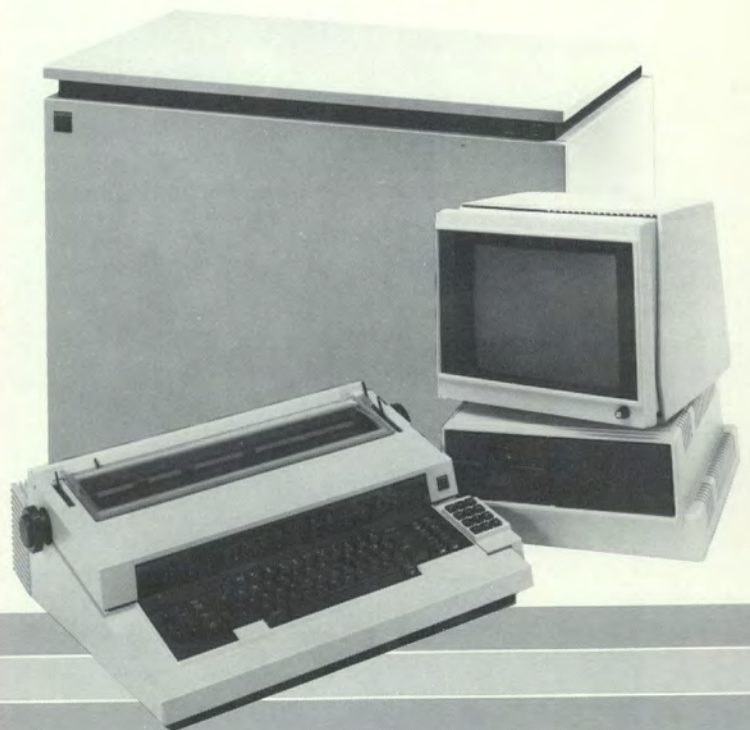
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tirety may exist in personal property. . . . We perceive no reason why insurance proceeds of the destruction of a building owned by the entirety should not remain an asset held by the entirety.

Accordingly, notwithstanding the language of the fire policy, the court held that the proceeds would be treated just as the real estate would be treated, and would be held by the entirety.

Title Insurance Agents—Property Rights in Policies

Pacific Title vs. Pioneer National Title 33 Wn App874 658 P 2d684 (1983) Petition for review denied 99Wn 2d1020

A 10-year agency agreement between title insurer and agent ended in 1974. Title insurer entered into agency relationship with another company and supplied new agent with copies of policies prepared by former agent. Old agent brought an action claiming the principal-agent relationship was reversed and that it had an exclusive property right in the information contained in the policies it prepared.

Held: The title insurer was the principal, and it could use the policies any way not forbidden in agency contract.

Title Insurance—Chain of Title—Sellers' Obligations

Security Title and Guaranty Company v. Mid-Cape Realty, Inc., United States Court of Appeals, First Circuit, 723 F² 2150 (1983)

Good title could be established in Susan Underwood in 1917. In that year, she conveyed the premises to Clarence Burgess but the deed, which did not correctly describe the lot because one of the courses was reversed, was not recorded until 1926. Ultimately, Burgess' title, through mesne conveyances, devolved to Elizabeth Marsh.

Notwithstanding Marsh's title, there appeared to be another chain of title. This chain of title began with the death of Susan Underwood. Upon her death (which apparently occurred before the recordation of the Burgess deed), Eleanor Underwood Mahoney, a residuary devisee under Susan Underwood's will, believed that she had succeeded to the title to the premises, although the same were not included in the inventory filed in the estate. Thereafter, Mahoney prepared a plan of locus, and this plan became a basis for a subsequent deed description which was correct.

Louis Handler, who abutted the locus, offered to pay Mahoney \$2,300 for the property. A title examination was completed, and the examining counsel determined that title was good in Mahoney for purposes of mortgage security, and thereupon title was conveyed to Handler. Thereafter, David Hoerle agreed to purchase the property from Handler, employed counsel to examine the title, and made arrangements to obtain a policy of title insurance thereon.

Sometime before the consummation of the sale from Handler to Hoerle, Marsh made claim to the property by notifying Handler,

his attorney and the broker. Notwithstanding the communications from Marsh, Handler never notified Hoerle of any difficulties with the title.

After Handler sold the property to Hoerle, Marsh continued to make claims, and the title insurance company had the title re-examined. Upon re-examination, it was determined that Marsh was the true owner of the property. Thereupon the title company settled with Marsh, and brought an action of subrogation against Hoerle, and others.

The issue was whether the seller owed a duty to the purchaser to divulge the alleged claim against the title.

The plaintiff relied on M.G.L.c. 184, Section 21, which stated:

If real property upon which an encumbrance exists is conveyed by deed or mortgage, the grantor, in whatever capacity he may act, shall, before the consideration is paid, by exception of the deed or otherwise make known to the grantee the existence and nature of such prior encumbrance so far as he has knowledge thereof.

In asserting that Marsh's claim was an encumbrance, however, plaintiff's counsel quoted *Prescot v. Truman*, 4 Mass. 627 (1808). That case holds that "every right to, or interest in land . . . (resulting in) the diminution of the value of the land, but consistent with the passing of the fee of the land by the conveyance, must be deemed by law an encumbrance. We say consistent with the passing of the fee of the land by conveyance, because if nothing passed by the deed, the grantee cannot hold the estate under the grantor."

The question of what is and what is not an encumbrance was recently addressed in *Triangle Center Inc. v. Department of Public Works*, 386 Mass. 858 (1982). That case concerned itself with registered land, but the discussion as to encumbrances is applicable to the facts of the present case. In the *Triangle* case, the court noted that the registration statute did not provide a definition for the word "encumbrance" but stated:

Black's Law Dictionary 473 (5th Ed. 1979) defines encumbrance as "(a)ny right to, or interest in land which may subsist in another in diminution of its value, or rights that can be removed from the bundle of rights traditionally associated with ownership of the land."

The *Security* Court therefore indicated that, since Marsh's claim was not in the nature of an encumbrance, but was a claim as to entire ownership of property, there was no obligation, under G.L.c. 184 section 21, for Handler, the seller, to advise Hoerle of the adverse matter. The court then went on to say:

We find no other authority for imposing on the seller or his attorney a duty to disclose in the circumstances revealed by this record. We might have concluded that consistently (sic) with the trend in related fields of law the Massachusetts court would impose a duty of full disclosure of known title problems if it were not for the recent case of *Nie v. Burley*, 388 Mass. 307 (1983). In that case, the supreme judicial court held that there was no obligation on the part of a seller to disclose the existence of a seasonal water course on the land, particularly when the information was discoverable by the exercise of due diligence on the part of the buyer.

This leads to the arguable anomalous result that the seller must disclose known en-

cumbrances under the statute (M.G.L.c. 184 Section 21) but need not disclose a known colorable claim that the seller has no title at all. On the other hand, the anomaly is minimized by Massachusetts' comprehensive title recording system, which we suppose would fully justify placing the risk of failure of record title squarely on the buyer. In any case, our duty as a federal court is to apply what we perceive as the Massachusetts law, not to rationalize it.

Title Insurance—Anti-Trust—Sherman Act—McCarran Ferguson

First American Title Company of South Dakota and First American Title Insurance Company of South Dakota v. South Dakota Land Title Association, South Dakota Abstracters Board of Examiners, et al. 714F2 1439 USCA 8 (1983)

Local agent for foreign title insurance company and domestic title insurance company brought action against association of land title abstracters, state agency regulating title abstracters, and individual licensed abstracters, alleging violations of the Sherman Act.

The district court, Bogue, chief Judge, held that: (1) allegation that defendants violated Sherman Act by enforcing and attempting to enforce statute requiring all title insurance policies issued in state to contain countersignature of abstractor was barred by the McCarran-Ferguson Act; (2) allegation that defendants violated Sherman Act by engaging in certain litigation and attempts to influence enactment of statutes governing the issuance of title insurance policies were barred by the First Amendment and the Noerr-Pennington doctrine; (3) allegation that defendants violated Sherman Act by enforcing and attempting to enforce certain statutes and regulations and by attempting to establish a fee schedule for countersignatures to be provided by abstractors on title insurance policies was barred by the state action doctrine.

Certiorari was denied by the U.S. Supreme Court.

Title Insurance Contracts—Collateral Estoppel Not Available as a Defense to Claim

Polsfoot et ux vs. Transamerica Title Insurance Company 47 OR APP. 261 614 P2d 1173 (1980)

Wanda Johnson and James Johnson, husband and wife, purchased property on a land sale contract from Foster. Thereafter, the Johnsons were divorced and the west half of the property was awarded to James Johnson under the marriage dissolution decree.

Wanda Johnson then sold her portion of the property to Polsfoot under a contract which erroneously included all of the property originally purchased by the Johnsons. In examining title, Transamerica overlooked the decree awarding the west half of the property to James Johnson and issued its policy to Polsfoot insuring the entire tract.

When the seller sued to reform the con-

tract description, Transamerica declined to defend the purchaser on the grounds that if a mutual mistake had been made no loss would be suffered. In the suit between buyer and purchaser, the court concluded that mutual mistake had in fact been made and reformed the contract.

The purchaser then sued Transamerica on their title insurance policy and Transamerica raised the defense of collateral estoppel.

It was held that the decree reforming the Johnson/Polsfoot Contract did not relieve Transamerica of its duty to provide a defense in that action, nor was the insured estopped, by that decree, from presenting a claim under the title insurance policy.

The majority opinion contains the following statement at page 269 of the reported case: "The parties 'mistake' in the land sale contract was in thinking the description was accurate. To give the title insurance company a collateral benefit from that mistake suggests that in every instance where there is a mistake between the parties to the property transaction which would support reformation, the insured can escape its contractual duties. Such a retrospective assessment of the insured's duties amounts to writing a new insurance contract and reflects an improper use of collateral estoppel."

The majority opinion appears to imply that Transamerica should have sued to reform their policy at which time the issues could have been re-litigated. A strongly-worded dissent criticizes the majority opinion for remanding the case, thus giving plaintiff an opportunity to recover damages for a defect of title created and known by the plaintiffs and excluded from coverage under the title policy. In the words of the dissenting justice, "The majority's error is compounded by their giving the plaintiffs a second bite at the apple."

Comment: It appears that title insurers should seriously consider reformation of their policies in cases of this nature.

Title Insurance Coverage

Second Benton Harbor Corporation v. St. Paul Title Insurance Corporation; Decided June 21, 1983, 337 NW 2nd 585 (Michigan Appeals Court 1983)

Insured under a title insurance policy conveyed property to third party. Third party sought to enforce insured's right of action under the policy for loss as a result of an existing easement which was not shown in the policy. The terms of the policy provided that its coverage remained in force as long as the insured retained an interest in the land or was liable by reasons of covenants of warranty made by the insured in any transfer or conveyance. The third party sought to recover the cost of purchasing the missed easement. Trial court granted summary judgment for the defendants, which was affirmed on appeal.

The issue was whether a third party, who acquired title by quit claim deed, has a right of action under a title insurance policy, which provided that coverage would cease upon conveyance by the insured without covenants of warranty.

The appeals court held that the trial court was correct in finding for the defendant, St. Paul Title Insurance Corporation, in ordering

a summary judgment. The court reasoned that the third party, in accepting a quit claim deed, had no cause of action against the insured, and furthermore the insured could not suffer any future damages by conveying the property without covenants of warranty. The quit claim deed terminated the insured's cause of action under the policy and the purchaser could not acquire any rights thereunder. The court pointed out that the insured had conveyed the property to the third party, purchaser prior to suffering any loss or receiving any acknowledgement or rejection of a claim from defendant, St. Paul Title Insurance Corporation. The court therefore upheld the terms and provisions of the policy which barred any claim by the purchaser.

Insight: We agree with the decision. Accepting title under a quit claim deed leaves the purchaser without recourse against his grantor and a reasonable, prudent purchaser would ordinarily insure his interest against his risk.

Title Insurance—Settlement of Claim

Holinda v. Title & Trust Co. of Florida, 438 So. 2d 56 (Fla. 5th DCA 1983)

Title & Trust Company, appellee, failed to except four liens in the title insurance policy issued to the Holindas, appellants. The appellants subsequently discovered and paid off the liens in order to consummate a re-sell of the property. Appellants sued Title & Trust for damages under their title policy. Appellee defended by claiming no liability because of paragraph 7 of the policy which provides:

LIMITATION OF LIABILITY

No claim shall arise or be maintainable under this policy . . .

- (c) for liability voluntarily assumed by an insured in settling any claim or suit without prior written consent of the company.

Summary judgment was entered for insurer, and insureds appealed.

The issue was whether parties to a title policy can contract to require notice and written consent prior to settling claims.

The Fifth District Court of Appeals found that the parties could validly contract to require such advance notice and written consent, in order to prevent insureds from settling a questionable claim and then demanding indemnification from the insurer. Although failure of the insured to give timely notice of loss in contravention of the policy may establish a legal basis for denial of liability, the court held that the insured may recover if he can show that the late notice did not prejudice the insurer. The circuit court summary judgment was reversed and remanded to determine the issue of prejudice to Title & Trust.

Trusts—Duty of Trustee to Inform Beneficiary of Sale and to Obtain Best Price

Allard vs. Pacific National Bank, 99 Wn2d 394 663 P 2d104 (1983)

Corporate testamentary trustee, with "full power to . . . manage, improve, sell, lease, mortgage, pledge, encumber, and exchange

the whole or any part of the assets of (the) trust estate" under the prudent man rule, sold the sole asset to assignee of lessee under a 99-year lease, which contained a right of refusal. Beneficiaries alleged that trustee breached its fiduciary duty because it failed to inform them of the pending sale and because it failed to get an independent appraisal of the property.

Held: Under the trust agreement, the trustee was not required to secure consent of the beneficiaries before selling the property. However, it owes the beneficiaries the highest degree of good faith, care, loyalty and integrity. It should have given the beneficiaries the opportunity to outbid the lessee, and it should have either offered the property for sale on the open market or obtained an independent outside appraisal.

Vendor and Purchaser—Specific Performance

Bell vs. Alsip, 435 So.2d 840 (Fla. Fourth DCA 1983)

Buyer entered into a contract with the seller to purchase the seller's house. The contract provided for return of the buyer's deposit if the seller did not execute the contract or failed to close. Further, if the sale did not close because of the fault of the buyer, the broker and seller would split the buyer's deposit. Additionally, it provided "these directions as to disbursements of the deposit shall not affect the rights of the seller or buyer to pursue any action for enforcement of this contract or for damages because of non-performance by defaulting party." The buyer elected not to proceed with the closing of the transaction. The seller brought an action for specific performance of the real estate contract. The circuit court denied specific performance basing its finding on the purchaser's right to avoid the contract by forfeiting their deposit. The vendors appealed.

The issue was whether the purchaser has a right to avoid the contract by merely forfeiting the deposit.

Finding that the provision "shall not affect the rights of the parties to pursue any action for enforcement of this contract . . ." was clear and unambiguous, and that the parties agreed thereto, the Fourth District Court of Appeals held that the clause was not one for liquidated damages. Therefore, the court reversed the circuit court's judgment and held that the sellers were entitled to specific performance due to the uniqueness of real estate.

Water—Public Trust Doctrine—Private Beaches

Matthews v. Bay Head Improvement Association, 95 N.J. 306, 471 A.2d 355 (1984)

The defendant Bay Head Improvement Association controlled and supervised beach front property that it owned outright or leased from private owners. Membership in the association was limited to residents of the Borough of Bay Head and their guests. Except for fishermen, who were permitted to walk through the upper dry sand area to the foreshore, only members of the association and their guests were permitted to use the beach during the summer season. The plain-

tiffs brought the action, seeking to have the court issue a declaratory judgment prohibiting the practice of the defendants in denying and restricting access to the oceanfront and blocking the use of the upland dry sand area by the general public.

The plaintiffs contended that defendants denied the general public its right to access to beach lands held in the public trust for all the people.

The major issue was whether, ancillary to the public's right to enjoy tidal lands, the public has the right to gain access through and to use the dry sand area held in private ownership.

Under the public trust doctrine, the ownership, dominion and sovereignty over land flowed by tidal waters, which extend to the mean high water mark, is vested in the state in trust for the people. The public's right to use the tidal lands and water encompasses navigation, fishing and recreational uses, including bathing, swimming and other shore activities.

The court held that, in order to exercise the rights guaranteed by the public trust doctrine, the public must have access to tidal waters over the privately-owned dry sand areas. Without some means of access, the public's right to use the foreshore would be meaningless. The court further held that reasonable enjoyment of the foreshore and the tidal waters cannot be realized without the right of the public to sunbathe and generally enjoy recreational activities on the dry sand beach.

The court's decision was grounded upon the extension of the public trust doctrine and not upon any notions of prescription, dedication or local custom.

Notwithstanding that the court stated that the public does not have an unrestricted right to use all privately-owned beaches and that the extent of the public's rights will depend on the circumstances of each case, the decision will have a far-reaching impact on the ownership of privately-owned beach areas.

Water Rights

Anderson v. Bell, 433 So.2d 1202 (Fla. 1983)

Plaintiff, Anderson, purchased a tract of land in 1965. A small, non-navigable creek flowed through this property. Anderson owned all of the lands contiguous to the creek. Anderson dammed the creek to create a lake. The lake that was created flooded property owned by Lewis and Watson. Lewis and Watson sued Anderson for damages. A settlement agreement was reached whereby Lewis and Watson conveyed a flowage easement to Anderson for \$10,000.

Bell purchased the property owned by Lewis and Watson. Bell and his guests attempted to use all of the lake for boating and fishing. Anderson brought an action to enjoin Bell and his guests from using any portion of the surface waters that lie above the bottom land owned by Anderson. There was no dispute as to Bell's right to use the surface waters that lie above the bottom land owned by Bell.

The circuit court found Anderson did not have exclusive rights to use the surface waters over his bottom land and denied the injunction. The First District Court of Appeals affirmed. Anderson appealed the decision to

the supreme court, which accepted jurisdiction due to a conflict of decisions between the First and Second District Courts of Appeals.

The issue was whether an owner of lands that lie contiguous to or beneath a portion of a man-made lake has a right to the beneficial use of the entire lake merely by a virtue of the fact of ownership of the contiguous land.

The supreme court held that the owner of property that lies adjacent to or beneath a man-made, non-navigable water body is not entitled to the beneficial use of the surface waters of the entire water body by sole virtue of the fact that the owner owns contiguous lands. The court noted that this is the established rule in other jurisdictions as well as the common law.

The court noted that there were other principles which would allow the expansion of this holding depending upon the factual circumstances of each case. However, in this case where the owners had an opportunity to negotiate a settlement, where the damaged parties were compensated for their loss, and where no rights to use the whole lake were exchanged, the court saw no reason to expand this rule. Therefore, the supreme court reversed the First District Court of Appeal's decision.

Chairman's comments: There are cases to the contra. See Filling and Building of Small Lakes 45 Washington Law Review 27 (1970).

Water—Tidelands

Dickinson v. Fund for Support of Free Public Schools, 95 N.J. 65, ___A.2d___ (1983)

The New Jersey Constitution was amended on November 3, 1981, by providing that the state must specifically define and assert its claims to land that had not been tidally flowed for a period of 40 years. The state was required to act within the 40-year period or be barred from asserting its claims. However, the amendment afforded the state an additional one-year period ending November 3, 1982, within which to define and assert claims with respect to tidelands that had not been flowed for 40 or more years before November 3, 1981.

A 1968 statute delineated a methodology that was to be used to enable the state to determine and certify those lands which it finds are state-owned lands. In accordance with the mapping statute, the state proceeded to investigate all tidal property in which it might have an interest. Photomaps were prepared showing lands subject to investigation for areas now or formerly below mean high water together with scribed overlays of those maps depicting a line where it was alleged the water had tidally flowed.

It was with reference to delineation of the state's claims within the one-year period ending November 3, 1982, that the Tidelands Resource Council (the state's tidelands agent) on May 27, 1982, approved the publication of 713 maps; however, not all base photomaps had a corresponding claim overlay map.

A major issue was how the state might define and assert a claim under the amendment.

The court held that the determination and certification that lands are owned by the state calls for more stringent requisites than simply asserting a claim; the 1968 mapping statute does not prescribe an exclusive method

through which the state may specifically define and assert a claim to riparian lands pursuant to the constitutional amendment; the base photomaps supplemented by the claim overlays constitute a sufficient delineation of the state's claims to satisfy the constitutional amendment and the base photomaps without such overlays are not sufficient; the filing of the maps and overlays with the secretary of state and county and municipal authorities are notice to the public and the property owners of the land depicted on the maps; and the amendment is valid under the New Jersey and federal constitutions.

Zoning

Hull vs. Miami Shores Village, 435 So.2d 868 (Fla. Third DCA 1983)

Appellant/property owners commenced an action in the circuit court seeking a declaration that the use of certain property in Miami Shores Village for administrative offices of the archdiocese was in conflict with the zoning code and for an injunction prohibiting construction of the administrative building. The circuit court found that the administrative building was not inconsistent with the one-family dwelling characteristic of the village as a matter of law. Property owners appealed.

The issue was whether the archdiocese's administrative building is directly related to a place of worship and not inconsistent with the one-family dwelling characteristic of the Village.

Appellees relied upon a provision in the zoning schedule of regulations which permits use of the land for an ancillary purpose consistent with the "one-family dwelling" characteristic of the community: Churches, other places of worship, Sunday school buildings and uses directly related thereto. The district court reasoned that as a permitted ancillary use, these activities conducted at such facilities must be at least primarily for the benefit of those persons who attend or are members of the congregation using those facilities, such as the residents of nearby single-family homes.

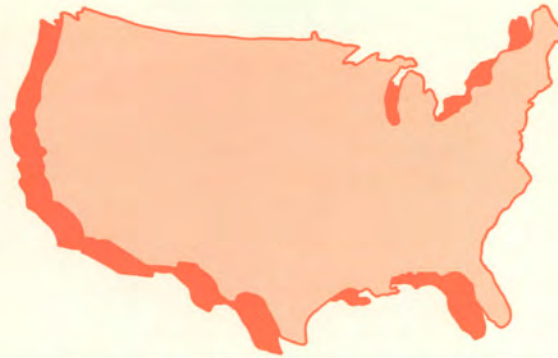
The district court of appeals held that the archdiocese's administrative building, 80 per cent of which was utilized for administrative services to the entire archdiocese, serving 135 parishes, and the remaining 20 per cent of which was utilized as a parish church for the village, violated the applicable zoning ordinance, and reversed the circuit court's decision.

Zoning, Restrictions—Single Family

Beres v. Hope Homes, Inc., 6 Ohio App. 3 d 71 (1982)

The palt restrictions of Hilltop Acres Allotment provide that only single-family residences shall be erected or maintained. Hope Homes, Inc., wishes to buy an existing house and install a residential care facility for six women with developmental disabilities ranging from moderate to severe mental retardation. A regular manager and weekend manager will be employed and proper licenses and heating, plumbing and electrical modifications will be made. The complaining

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Around the Nation

Seminar Format For WLTA Meeting

"Prophets and Profits" was the theme of the Washington Land Title Association convention in Tacoma. The program was structured in seminar form, with subject matter

including urban development, claims, escrow, bankruptcy, Indian matters, and regulation, according to WLTA Executive Secretary **Richard A. Hogan**.

Gerald L. Ippel, Ticor Title Insurance Company, was a featured speaker as ALTA Title Insurance and Underwriters Section Chairman. Other speakers were **Robert Statton**, SAFECO Title Insurance Company;

Richard Marquardt, Washington state insurance commissioner and **Elmer Husby**, editor of the WLTA Manual.

Newly-elected WLTA officers are, **Joseph F. Seabeck**, Land Title Company, Chelan-Douglas County, Inc., president and **John W. Tagge**, Chicago Title Insurance Company, vice president. **Hogan** remains executive secretary.



Shown here are new officers of Washington Land Title Association, from left, John W. Tagge, vice president; Joseph F. Seabeck, president and Thomas J. Brusca, immediate past president.



Missouri Land Title Association directors and officers, front row, from left, are Richard A. Mason, director; James E. Lewis, second vice president; Frances Morris, first vice president; Hugh B. Robinson, immediate past president; Robert Lutz, director and William Cobrs, director. Second row, from left, are J.E. Barnes, Jr., secretary-treasurer; James W. Hicklin, president and Charles Swisher, director.

MLTA Attendance Sets New Record

An attendance of over 200 was registered at the annual convention of the Missouri Land Title Association in Kansas City, making it the largest MLTA convention in the association's history, according to **J.E. Barnes, Jr.**, MLTA secretary-treasurer.

D.P. Kennedy, First American Title Insurance Company, presented a report of ALTA activities as the organization's president.

Newly-elected MLTA officers are **James W. Hicklin**, Jasper County Title Company, Inc., president; **Frances Morris**, Audrain County Abstract Company, first vice president; **James E. Lewis**, Pettis County Abstract & Title Company, second vice president and **Betty Quisenberry**, Central Missouri Abstract & Title Company, chairperson of the past president's committee. **Barnes**, of Hubbard-Kavanaugh Abstract & Title Company, remains secretary-treasurer.

Members of the board of directors are **Hugh B. Robinson**, Carroll County Abstract Company; **William H. Cohrs, Jr.**, Lafayette County Abstract Company; **Robert Lutz**, Commonwealth Land Title Insurance Company; **Steve Crawford**, Hall Abstract & Title

Company, Inc.; **Richard A. Mason**, Lawrence County Title Company, Inc.; **Karen Brown**, Central Missouri Abstract & Title Company and **Charles Swisher**, Swisher's.

Pam Hart, St. Francois County Abstract Company, was honored as MLTA "Young Title Person of the Year."

TLTA-Realtor Seminar Wins Wide Acclaim

The first Contracts and Closings Seminar offered as a joint effort of the Tennessee Land Title Association and the Tennessee Association of Realtors was an outstanding success, according to TLTA President **Joe Wooten**, Ticor Title Insurance Company, Nashville.

Some 1,800 Realtors attended in six cities, more than any recorded attendance at a previous Realtor educational function. Each attendee received a booklet containing 21 pages of exhibits illustrating various parts of a contract, and including key phrases and wording.

The seminar was offered free in Chattanooga, Knoxville, Kingsport, Jackson, Memphis and Nashville. **Robert Brown**, Lawyers Title and Escrow, Inc., Chattanooga, was in charge of the event for TLTA and **Robert J.**

Applebaum of Mid-South Title Insurance Corporation, Memphis, provided important assistance.

Objectives of the seminar were to better equip brokers and agents in contract preparation, explain title insurance, discuss good closing procedures, create better understanding of the problems of each profession and encourage suggestion of cooperative methods to better serve mutual clients.

Comments from Realtors attending the seminar include the following:

"Many fine points over and above the basics—especially helpful to even experienced brokers and agents.

"This concept is great. I would like to see such programs offered at least two times a year.

"We needed it.

"I will use the booklet as a reference tool.

"Reminder of specific points that are so easy to overlook.

"I appreciate the caliber of the speakers."

GOVERNORS—continued from page 7

justification and statistical development for nationwide application.

Governor Mueller called for revising title

insurance forms to serve what he described as current needs of customers, re-evaluating the cost of producing title evidence with the thought that no individual company can accomplish the research and development of time-saving devices that are needed, and national advertising to improve public awareness of the title industry and its services.

"As an industry, we need to be a trend setter and not a follower," he said. "Too often, we allow our customers to dictate our business practices."

Herbert Wender



Wender

Concerning the FTC investigation focused on whether title search and examination are part of the business of insurance, Governor Wender commented: "ALTA should give every support available in proving to the FTC that these func-

tions are inextricably woven into the concept of title insurance, and that the latter is not a pure risk-taking activity."

As another major challenge, Governor Wender mentioned uncertainty as to what

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We are in touch with parties seeking to acquire controlling interests in suitable title companies. Information regarding companies appropriate for consideration may be forwarded to Condell & Company in confidence.

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Systems-Equipment Profile

Library on Vendor Software Developed By ALTA Land Title Systems Committee

By Alfred J. Holland

After extensive preparatory work, the ALTA Land Title Systems Committee is making its vendor automation software library available to members of the Association.

Sections of the library contain vendor information and are categorized as follows: title plant maintenance, judgment searches, general accounting, preparing title policies, and closing document preparation. These sections will be sent to requesting members who enclose a check made payable to American Land

Title Association in the amount of \$5.00 for each section requested. Those desiring information not contained in the previously mentioned categories are asked to enclose \$5.00 for each additional category and specify what is desired. If no information is available in the category requested, money will be refunded.

Vendors have been asked to add information to the software library as changes are made in their products, and it is anticipated that other vendors will be added in the future. Those requesting the various sections will be

Are you interested in . . .

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sent additional information for the sections as it becomes available.

The Systems Committee has developed the software library as a supplement to the AUTOMATION SYMBIOSIS expositions held at ALTA Annual Conventions—where participating vendors demonstrate software that they can offer. Members requesting sections from the library can use the resulting information to determine the software in which they are interested, and concentrate on seeing it demonstrated at the next ALTA exposition. This should reduce the time that is typically spent in selecting an automation system.

When considering automation, you should first review your operation and decide which parts can be automated. Then order the applicable sections from the library and compare the information supplied by different vendors. You can then contact the vendors whose software suggests the most cost efficient performance for additional information. Also, visit with users—either by telephone or in person—to determine how their software performs in daily operation.

Remember that the systems you purchase today probably will be technologically obsolete in three years, and that this most likely will continue to be true. You will face an ongoing need to upgrade your automation.

Send your order for one or more library sections, and your check made payable to ALTA, to Alfred J. Holland, P.O. Box 335, Paragould, AR 72450. Be sure to include your name, company and mailing address.



Alfred J. Holland is a member of the ALTA Abstracters and Title Insurance Agents Section Land Title Systems Committee. He is an attorney and is the owner of Paragould Abstract Company, Paragould, Arkansas.

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number expected to approach 72 by the end of 1984.

The historical plant loaded onto the system back to 1969 since has caused the hardware to grow from 1 megabyte of memory to 4 megabytes; from two 404 megabyte disk drives to five; from a 1600 bpi tape drive to 6250 bpi; from 10 kilo volt/amps of electrical power in the computer room to 25 kilo volt/amps.

The plant operates the equivalent of nearly 150 telephone circuits spanning a geographical distance of over 60 miles. Phone circuits range from speeds of 1200 bps up to 56,000

bps and are of both the analogue and digital types. And, we operate a network of statistical multiplexors that lead to wires and cables that provide the overall appearance of a spaghetti factory after a windstorm passes through.

To all this hardware, we have added a data entry system, a word processing system, a financial system and an application that allows all authorized terminals to access the county IBM computer for tax information.

After beginning with a Seattle plant that was poorly organized and hard to search—and operated with out-of-date equipment and programs—First American has turned the corner. Without the leadership and foresight of

company President Don Kennedy, Operations Vice President Larry White and Regional Vice President Tom Brusca, the achievement would not have been possible. Moving into 1985, we are technologically ready to meet the challenges of the future and remain cost effective.

But the tiger is still hungry. Automation technology will continue its rapid change—and fully challenge the resourcefulness of land title managers.

There is another important change from 1976. First American management has become far more adept at taming wild beasts in the technological jungle.



Above, First American's William L. Thiss reprograms channel parameters in one of seven statistical multiplexors handling remote telephone circuits to remote users. Below, Don Rice of Unigard Insurance patches a data scope into one of numerous telephone circuits to monitor the line in First American's service bureau environment; at right is the minicomputer serving as "traffic cop" between the main computer and telephone circuits.

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Names in the News

Lawyers Title Insurance Corporation announced the appointment of **Eugene F. Lanuzza**, Saginaw, Michigan, and **J. Robert Walker**, Columbus, Ohio, to vice president and Ohio state manager and Georgia state manager, respectively. **Robert M. Wilson** was appointed senior title attorney, Pittsburgh, Pennsylvania and **Benjamin F. Ridolfi, Jr.**, Trenton, New Jersey, was named assistant state manager, New Jersey southern division.

Richard M. Marsh, Commonwealth Land Title Insurance Company, Los Angeles, was promoted to vice president and regional counsel.

Commonwealth also announced the following promotions: **Kaz Lojko**, Garden City, New York, vice president; **Duane H. Wunsch**, Milwaukee, Wisconsin, assistant vice president and assistant counsel and **Darvin H. Jaster**, Houston, Texas, assistant vice president and assistant secretary.

The following were promoted to assistant vice president of Commonwealth: **William DeSimone**, Philadelphia, Pennsylvania; **Robert B. Siesholtz**, Miami, Florida; **Marvelyn Santiago-Rocha**, Santa Clara, California, Golden State Title Division and **Ursula Benter**, Orange County, California. **Alfred W. Mackler** was promoted to title officer of the company's Cherry Hill, New Jersey office.

Kenneth Holt, Dallas, Texas, has joined

Title Insurance Company of Minnesota as Dallas national accounts executive.

Fidelity National Title Insurance Company announced the following appointments: **Kenneth W. David**, San Diego, California, title officer, vice president, and manager; **Anthony D. Payne**, San Bernardino County, California, county manager and vice president and **Berni Rapp**, Palo Alto, California, branch manager.

David R. Bueche, Oakland, Michigan,

was named director of marketing, Alameda County, First American Title Guaranty Company.

Mark G. Moroney, Lake County, Illinois, has been named resident vice president and manager of the Lake County, Illinois, office of Chicago Title Insurance Company, replacing **Paul L. Bartolain**, who is retiring after 45 years with Chicago Title.

First American Title Insurance Company announced the promotion of **Michael J.**



Lanuzza



Walker



Wilson



Ridolfi



Wunsch



Jaster



DeSimone



Siesholtz



Santiago-Rocha



Holt



Payne



Bueche



Moroney



Kelly

Kelly, Garden City, New York, to vice president and area counsel.

Alexander J. Tarasca, Chester County, Pennsylvania, was appointed manager of operations of Industrial Valley Title Insurance Company.

COMMUNICATION—continued from page 12

Working with the Land Title Systems Committee, Gary is responsible for the automation workshops and expositions that recently have attracted growing attention at ALTA Annual Conventions.

In his staff assistance to the Public Relations Committee, Gary is responsible for a variety of public relations activities. Recently, the Public Relations Committee has focused on direct support of functions within the Association such as recruiting and localized community assistance to ALTA members in home communities. Gary's work includes activity in these areas. He also serves as the editor of *Title News* and handles the development, content and production of new ALTA publications, current examples of which are a membership recruiting folder, the abstractor-agent newsletter, and a title manager newsletter to be introduced in the upcoming year.

Gary handles ALTA news media contact, backgrounding and placement and serves as a producer-writer for ALTA audio visual material. He participated in the recent creation and production of an ALTA membership recruiting videocassette presentation that will be avail-

WANT TO PURCHASE: Expanding midwest title insurance company interested in acquiring small title insurance company or large title insurance agency located in the midwest or southeastern United States. Send information to Lawrence Edger, American Realty Title Assurance Company, 223 East Town Street, P.O. Box 2440, Columbus, Ohio 43216.

FOR SALE: Abstract and title plant in Wisconsin with UNCHANGED records. Including but not limited to copies of abstracts, title policies, logs showing delivery time elements, copies of documents as received from lending institutions and attorneys, insurance policies and bonds. For information, contact Richard O. (Dick) Anderson, president and trustee, Home Title & Abstract Company, Inc. (National Division), P.O. Box 1121, Oklahoma City, Oklahoma 73101.

able for showing at regional and state title association conventions in 1985.

Gary furnishes public relations assistance to affiliated title associations as the situation warrants. He has staff responsibility for the affiliate officer-executive association management seminars at the ALTA Mid-Winter Conference and Annual Convention. Also, he serves as senior editor and writer in a wide variety of activities including the writing of speeches.

Gary is a member of the National Association of Real Estate Editors and recently was designated by the president of that organization to serve as chairman of the prestigious NAREE national editorial competition for real estate journalists. His other affiliations include Accredited Membership in the Public Relations Society of America and membership in the United States Senate Press Secretaries Association.

"Effective communication means a great deal in all activities of ALTA, and making it happen is challenging and enjoyable," Gary said. "Accomplishing what needs to be done keeps us more than busy, and would not be possible without the support and cooperation of ALTA members and my assistant, Jennifer Phillips. Together, we make a great team."

GOVERNORS—continued from page 25

form deregulation of the title industry will take and the impact on present underwriters, agents and abstractors.

"ALTA should take an active role in formulating an approach to attempt to guide the 'deregulation process' so it will create minimum disruption of business activity coincident with the public interest," he said.

Still another important challenge, in the view of Governor Wender, is expansion of the membership base of the Association.

"Too many agents and abstractors choose to remain outside the Association," he said.

FOR LEASE: Sovereignty title plant in west Texas. Contact J. Collier, Adams Guarantee Abstract & Title Company, 1320 Texas Avenue, Lubbock, Texas 79401 (Telephone 806-763-4613).

FOR SALE: Abstract and title corporation serving southwest Wisconsin. Excellent growth record and potential. Shares office with small law firm. Asking \$75,000. Send inquiries to M. Windrem, Route 1, Lone Rock, WI 53556.

"ALTA should progressively pursue a program to achieve a '100 percent membership' in order to have a more effective organization speaking for the interests of the title industry, as the National Association of Realtors and American Medical Association have done for their respective 'industries.'"

JUDICIARY—continued from page 23

parties state that their own properties will decrease in value and that the proposed group of people are not a family. Zoning is single-family residential, R-3.

The issue was whether the proposed use violates zoning ordinances and plat restrictions.

A single family unit can exist in the absence of consanguinity. As long as the structure in question is maintained, physically, as a private residence and, as long as it is used or occupied by a group of persons living together as a single household unit, it is not in violation of restrictions running with the land upon which it is located which seek to maintain the neighborhood as a single-family, private residential area.

Insight: A good result in a state where it has been difficult, due to opposition of the surrounding homeowners, to install or build group homes for the physically or mentally handicapped. In our culture, a "family" does not mean what it once did.

Zoning—Mobile Homes

Waxler v. City of Portland, 454 A2d 345 (ME 1983)

Plaintiffs wished to place mobile home in an area zoned for single-family dwellings. City refused to allow the permit to issue.

The supreme court affirmed the superior court's holding that a mobile home was included in the single-family detached building definition.

Berks Title Changes Name to Meridian

Effective December 3, 1984, Berks Title Insurance Company changes its name to Meridian Title Insurance Company, according to R. Laird Sommerville, Jr., president and chief executive officer of the Reading, Pennsylvania, based concern.

Meridian Title is a wholly owned subsidiary of American Bank and Trust Co. of Pa., whose parent is Meridian Bancorp, Inc., the sixth largest multi-bank holding company in that state. Meridian Title was formed as Berks Title in 1923.

Meridian Title has assets reported at in excess of \$12 million and is licensed to operate in Delaware, Florida, Kentucky, Maryland, New Jersey, North Carolina, Ohio, Pennsylvania, Utah, Virginia, West Virginia and the District of Columbia.

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Over 2500 cases are on line at all times, accessible in seconds to you and each of your staff.

Price? The computer expert for one of the largest underwriters concludes "Titlepro has the lowest price per work station of any title system available." On a lease-purchase plan, Titlepro costs less than a part-time typist just out of high school. And that includes installation, training, support, and three user stations.

*CP/M is a trademark of Digital Research Corp. Titlepro is available now in the Northeast and Midwest.

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6408 Chagrin River Road
Chagrin Falls, OH 44022

Calendar of Meetings

December 8

Louisiana Land Title Association
Royal Orleans
New Orleans, Louisiana

1985

January 7

ALTA Executive Committee
Hotel Del Coronado
Coronado, California

March 13-15

ALTA Mid-Winter Conference
Walt Disney World
Lake Buena Vista, Florida

April 18-20

Oklahoma Land Title Association
Excelsior Hotel
Tulsa, Oklahoma

April 25-27

Arkansas Land Title Association
Holiday Inn
Hot Springs, Arkansas

April 26-28

Palmetto Land Title Association
Mills House Hotel
Charleston, South Carolina

May 1-4

California Land Title Association
Americana Canyon Hotel
Palm Springs, California

May 5-7

Iowa Land Title Association
Holiday Inn
Williamsburg, Iowa

May 9-12

Texas Land Title Association
Hyatt Regency
Fort Worth, Texas

May 16-18

New Mexico Land Title Association
Sagebrush Inn
Taos, New Mexico

May 16-18

North Carolina Land Title Association
Litchfield Inn
Pawleys Island, South Carolina

May 29

ALTA Executive Committee
Broadmoor
Colorado Springs, Colorado

June 2-4

Pennsylvania Land Title Association
Bedford Springs Hotel
Bedford Springs, Pennsylvania

June 6-8

Tennessee Land Title Association
Opryland Hotel
Nashville, Tennessee

June 9-11

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

June 13-14

South Dakota Land Title Association
Convention Center
Aberdeen, South Dakota

June 13-15

Colorado Land Title Association
Keystone Resort
Keystone, Colorado

June 20-22

Utah Land Title Association
Provo, Utah

June 20-23

New England Land Title Association
Lake Morey Inn
Fairlee, Vermont

June 21-23

Illinois Land Title Association
Lake Lawn Lodge
Delavan, Wisconsin

June 24-26

Oregon Land Title Association
Warm Springs Reservation
Mt. Hood, Oregon

July 14-16

Michigan Land Title Association
Hilton Shanty Creek
Bellaire, Michigan

October 6-9

ALTA Annual Convention
Hyatt Regency San Antonio
San Antonio, Texas

1986

March 5-7

ALTA Mid-Winter Conference
Washington Hilton
Washington, D.C.

September 24-27

ALTA Annual Convention
Century Plaza
Los Angeles, California

1987

March 25-27

ALTA Mid-Winter Conference
Albuquerque Hilton Inn
Albuquerque, New Mexico

October 18-21

ALTA Annual Convention
Westin Hotel
Seattle, Washington

American Land Title Association

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