SEPTEMBER-OCTOBER, 1985

Title News

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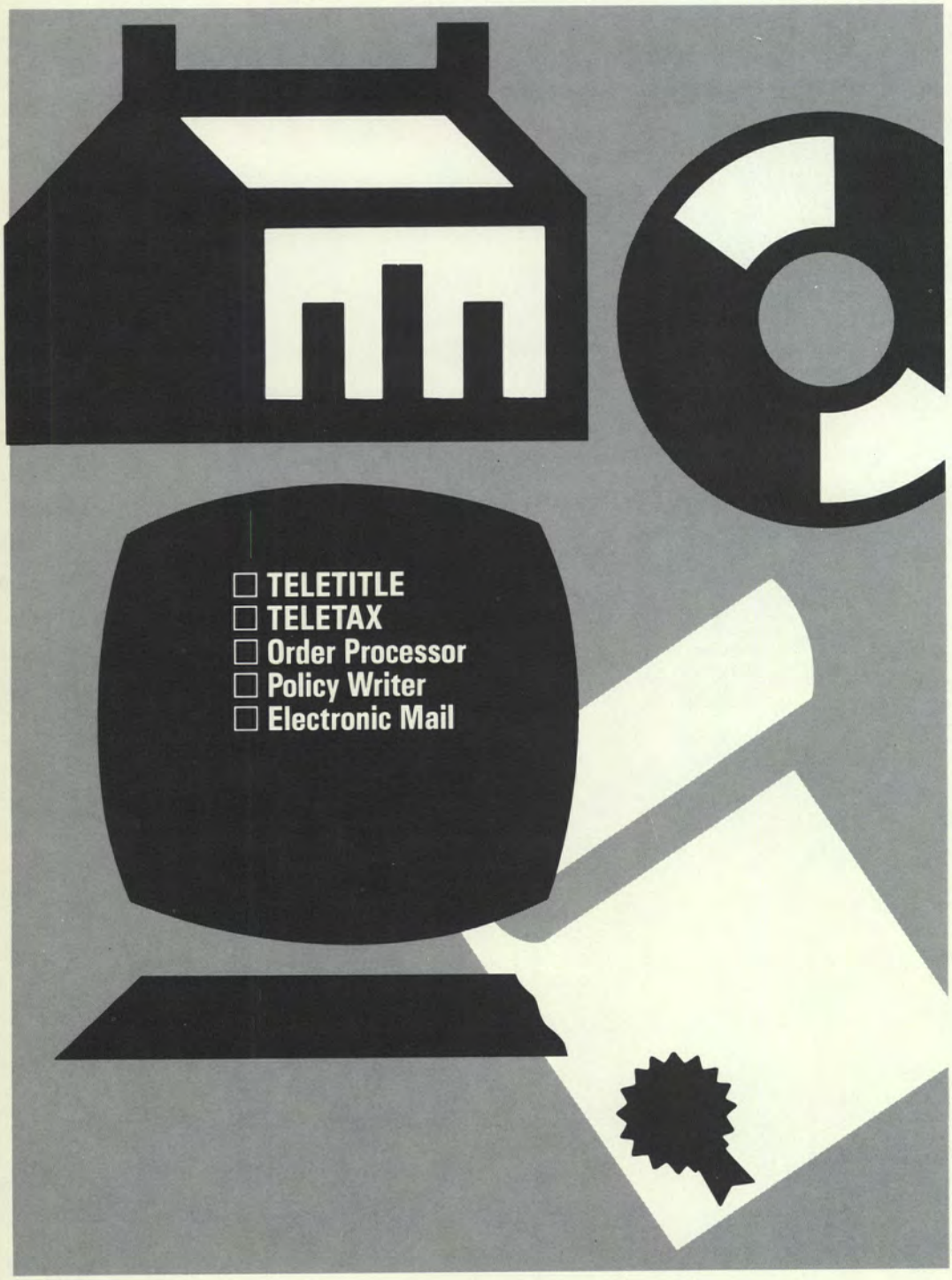

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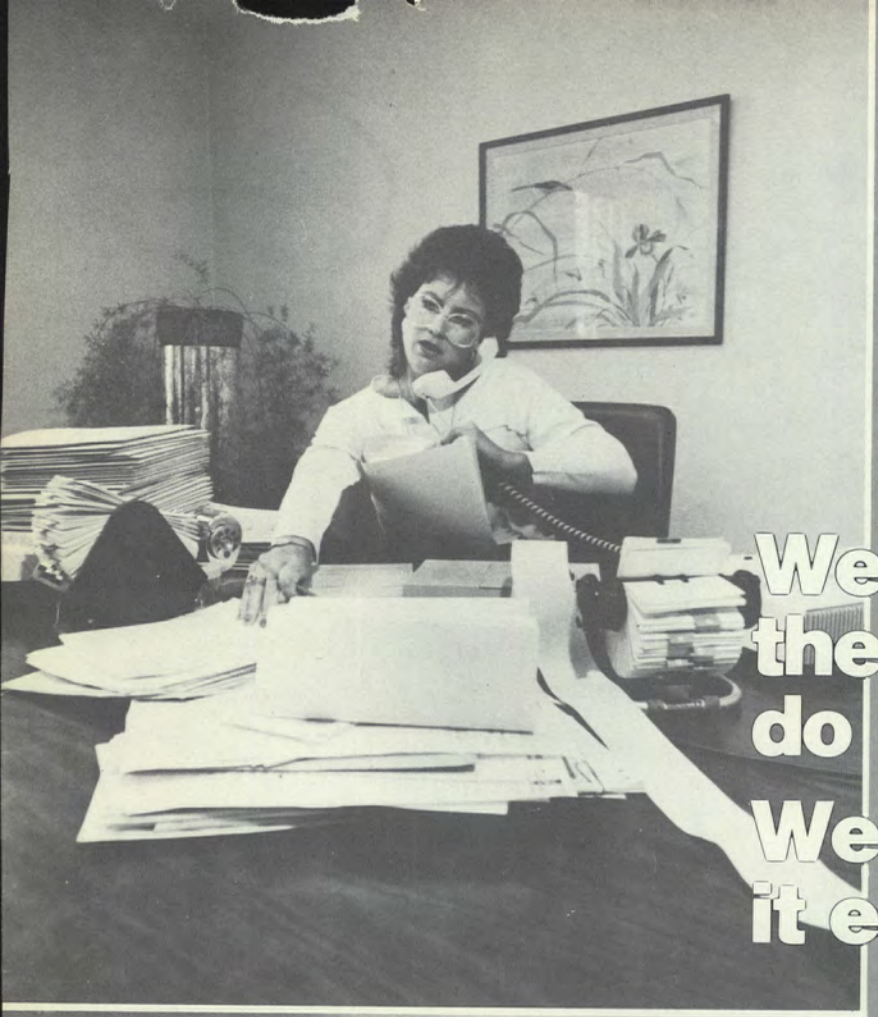

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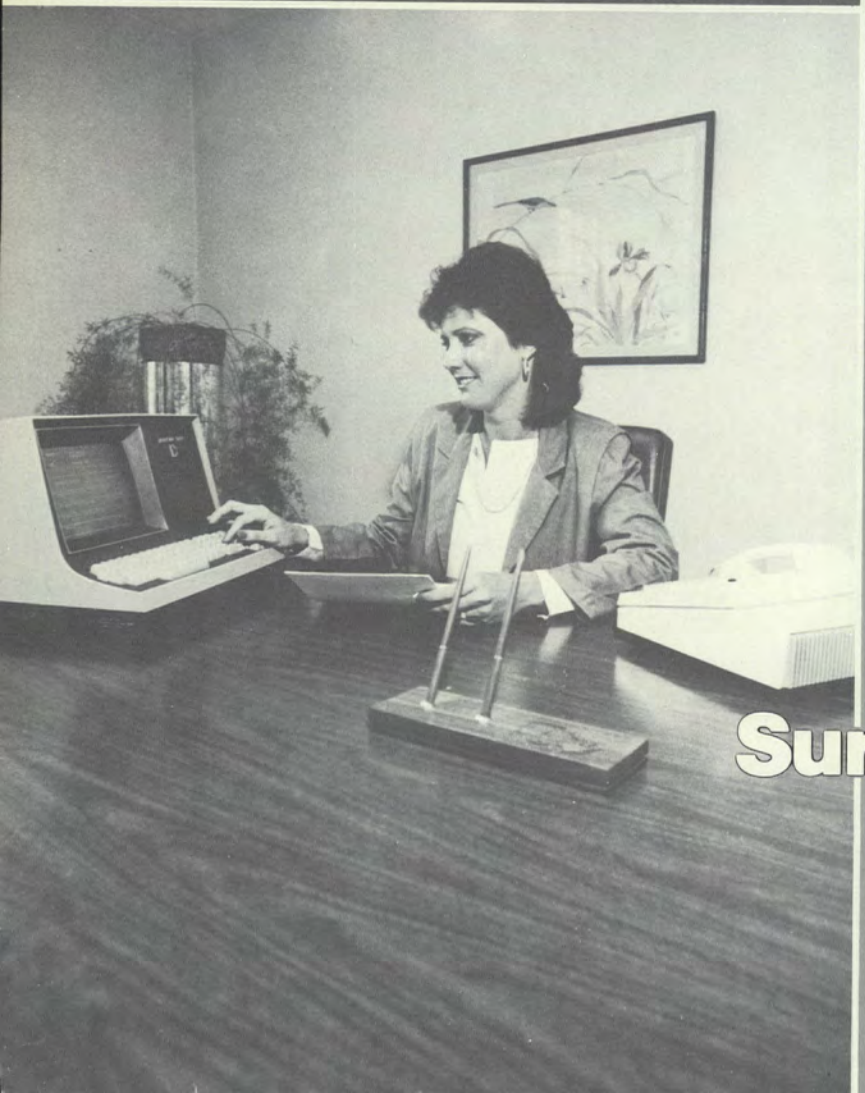

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We are affordable. The modular and multi-terminal Alpha Micro computer system costs less. And because our TitleSCAN, EsCLOSE, and FasTRAK software runs on a single computer, our package can be cost-justified by title and escrow companies of all sizes.

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Our software is flexible, complete and integrated. TitleSCAN is a powerful title plant system. EsCLOSE automates escrow closing and all document preparation. FasTRAK stores orders and policies with rapid and flexible retrieval.

And, the list goes on with full accounting, third-party collections, electronic spreadsheets, and more. It's more than complete and affordable; we think you'll agree that it's the best.

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Title News

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Front Cover

Robert E. Philo, Jr., president of Title Resources Guaranty Company, Plano, Texas, and a former Texas State Board of Insurance staff member, lectures on the function of that regulatory body during a session of the Texas Land Title Association Basic Land Title School held recently in Austin, capital of the Lone Star State. TLTA Past President Win Myers, senior vice president, Commonwealth Land Title Insurance Company, Dallas, who also served on the faculty for the basic school, presents his views on what is needed for successful education activity at the state level, in an article beginning on page 14.

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

There's a Titlewave Coming Your Way!

Introducing Titlewave, The Affordable Alternative in Title Automation.

Titlewave Software was originated by Thad H. Marsh for use in his own title company. It performed so well, he developed it further and made it available to other companies. Now, over 92 title companies utilize the Titlewave system in their offices. All this has happened since 1980.

The next logical step is to bring Titlewave to you, no matter where you're located in this great country. We've anticipated a few questions you might have about our system. These questions and their answers follow.

Q: What can the Titlewave Total Automation System do for me?

A: Well, let's just say it does all your hard work, easily. Titlewave automation includes:

Closing
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- Multiple escrow accounts
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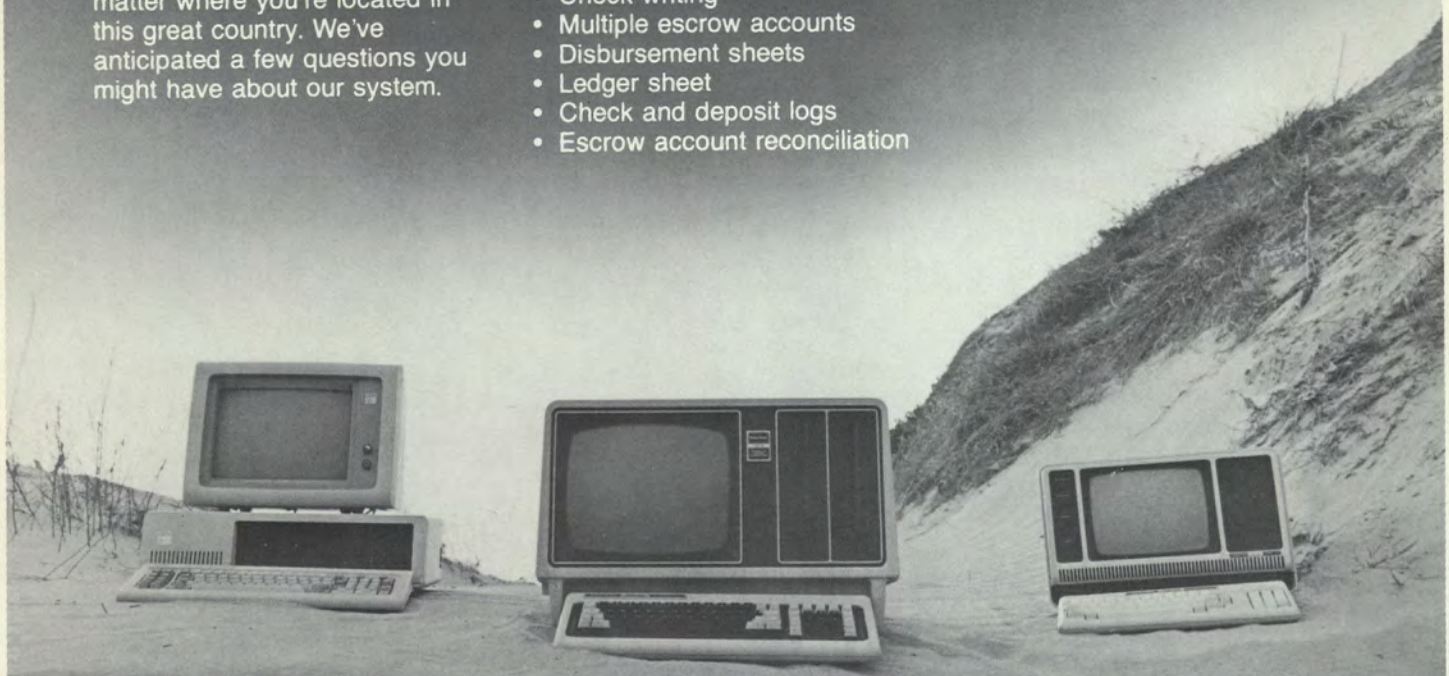
- Ledger sheet
- Check and deposit logs
- Escrow account reconciliation

Policy
- Commitments, Mortgagee and Owner policies (integrated with closing statement)
- Examiner's report
- Underwriter remittance report

Management
- Order entry and tracking with inquiry/report features



Q: What hardware is compatible with Titlewave Software?

A: Titlewave is compatible with the IBM PC-XT, Radio Shack Model 12 and Radio Shack Model 4p computers. Each is moderately priced.

Q: What is the total cost?

A: Under $16,200 for Titlewave Software and hardware. Also, a portable closing system with the Radio Shack Model 4P computer is available for under $9,000. Both software and hardware may be purchased from Titlewave, Inc. Software is sold separately if you already own a compatible computer.

For more answers to more questions about Titlewave, please contact a representative at the phone number or address listed below.

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A Message from the Chairman, Title Insurance and Underwriters Section

Sometimes the title insurance industry reminds me of that familiar figure, "Fiddler On The Roof." Here we are, like him, merrily pursuing our business, but often facing some catastrophe that may knock us off our perch!

We worry about Indian land claims, hazardous waste liens, the tax status of unearned premium reserves—all substantial problems. The biggest concern, and the most illogical and undeserved of all, is the threat posed by the Federal Trade Commission complaint and the piggyback private antitrust treble damage suits.

These actions are illogical because it is clear to anyone who knows anything about title insurance that title search and examination are absolutely essential to the issuance of a title policy and an integral part of the business of title insurance. Furthermore, existing federal case law (the Commander Leasing case) says it is and therefore is protected under McCarran-Ferguson.

In addition, the Keogh case and the recent Southern Motors Carriers case make it clear that the filing of rates through a rating bureau is "state action" and exempt from federal antitrust laws.

So, with all of this law on our side and with the demise of rating bureaus, one cannot help but ask, "What does the FTC want? Why does it persist in its complaint?" FTC watchers feel that our industry is being used as a pawn in the campaign by that agency to reduce the authority of state insurance regulators. Rather than proceed through legislative channels, it is attempting to change existing law by judicial decision.

The actions are undeserved because title insurers have joined rating bureaus and filed rates in reliance on state laws. Legislators and insurance commissioners believe it to be the best procedure for insurers, for consumers and for insurance departments in their states. If there is anything wrong with this procedure—and federal and state law says there is not—future methods can be changed. We should not have to pay damage awards based on our good faith actions in complying with state laws. In fact, we are required by law to use only these filed rates.

So, it comes down to this: title companies who are defendants in these suits have done no wrong—they have relied on and followed the law—and they and their fellow title companies, insurers and agents, should rally to their defense as a united industry.

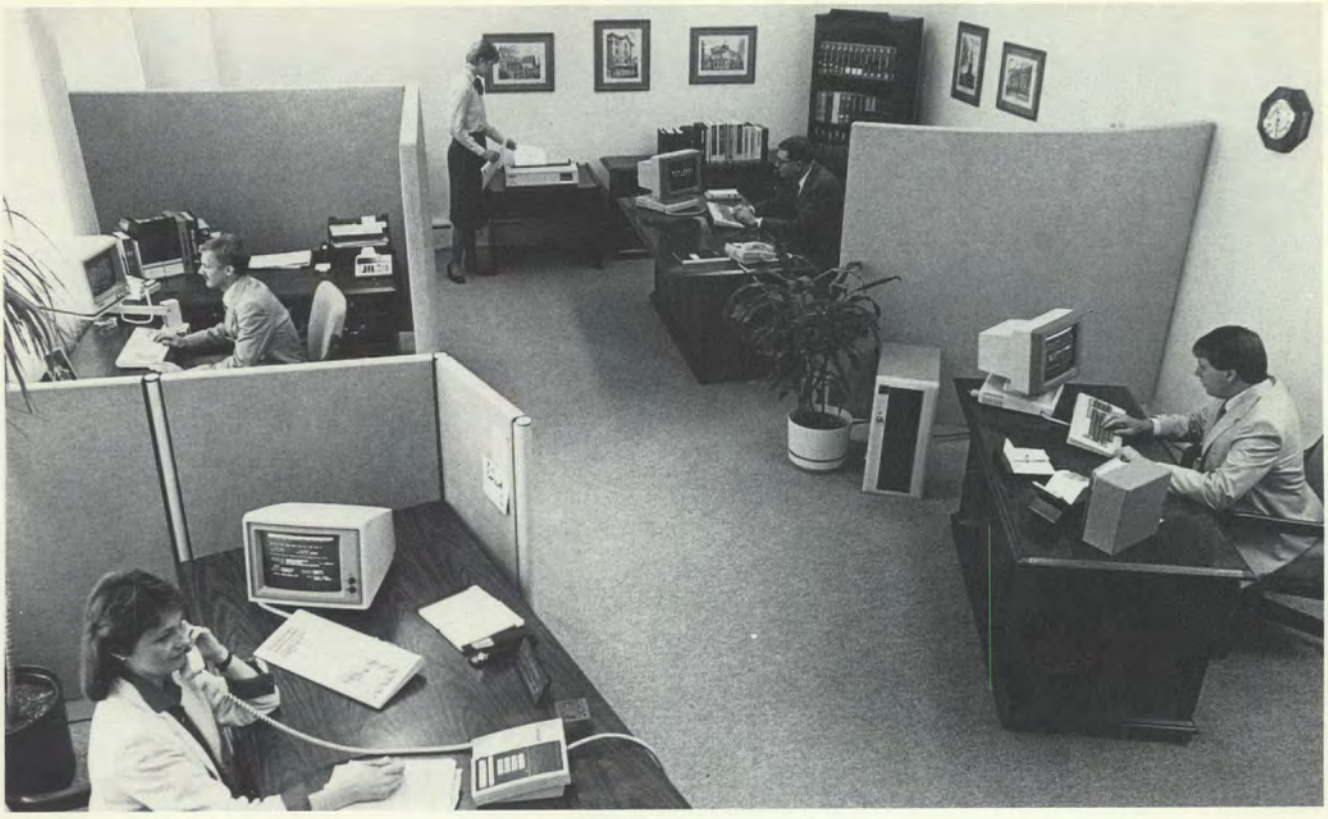
The rallying point is the introduction of H.R. 2684, which would legislatively clarify any doubts by establishing that, when an insurance rate is approved by a state insurance department, the insurer cannot later be sued over rates it charged pursuant to that approval. This statute would greatly facilitate the work of state regulators in that it would remove the reluctance to comply with rating orders because of the possibility of later damage suits.

I encourage all of you to contact your representatives in Congress to urge their support of this bill. Our industry can be strong politically. We have "title people" in every county in the country and should be able to excel at "grass roots" politics.

These antitrust suits are potentially dangerous but we intend to meet this challenge with vigor. Our "Fiddler On The Roof" is still playing. In fact, if one listens closely, one may discern something of a martial air!

Marvin C. Bowling, Jr.

Marvin C. Bowling, Jr.



Titlepro introduces System II: The solution for your office

Those who run title companies know a thing or two about life's ups and downs. One month you look for work to keep the staff busy. The next month you look for staff to handle the work.

Titlepro is the solution. Titlepro is a multi-user, multi-processor computer system developed by title people for title people. Your Titlepro system may include a terminal for the desk of each production person. Titlepro equips them with the tools they need to produce twice as much work in the same amount of time; work that involves less stress; work that is error free; work that is of the highest quality.

In the new Titlepro System II, these tools include an automated title forms completion system, policy reporter, closing module, disbursement module, status and business source tracking programs, optional spread sheet and graphics, scheduler, word processor, speller, accounting package, telecommunications, and an indexing system second to none.

A title report, binder or commitment can be prepared in under ten minutes—soup to nuts; a policy in less than 5.

HUD-1's can be prepared and printed in 5 minutes; checks disbursed in under 12.

Party names, property location, purchase price, lender and other information are entered only once. Titlepro prints them on your forms where they belong.

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The Titlepro System II is so exceptional, we challenge any other company to match its features: IBM-PC/XT/AT compatibility; enormous disk storage capacity; linkage with IBM and other PCs; true multi-user software; integral tape backup for redundancy; reports, forms and calculations customized to your company's needs; installation, training, service and ongoing support without hidden ongoing costs.

We are proud of Titlepro System II. It's the best. And it's affordable, too.

Titlepro is available in the East and Midwest; other areas are opening soon. If you're in our territory, call to review your requirements with a Titlepro representative.

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Seattle Seminar Focuses on Forms

Members of the ALTA Abstracters and Title Insurance Agents Section Education Committee, working in conjunction with the Association Title Insurance Forms Committee and officers of the Oregon and Washington state land title associations, have developed an ALTA Regional Seminar on Title Insurance Forms and Coverage, which will be offered Friday afternoon and Saturday morning, October 18 and 19, at the Seattle-Tacoma Airport Hyatt.

Conducting the opening session of this program geared toward middle managers will be two members of the Forms Committee—Chairman Oscar H. Beasley, senior vice president and senior title counsel, First American Title Insurance Company, and Russell W. Jordan, III, assistant general counsel, Lawyers Title Insurance Corporation. After an opening commentary on the nature and history of title insurance forms, the remainder of Friday afternoon will be devoted to a comparison of forms—including the Owners Policy, Loan Policy, Leasehold Policy, Construction Loan Policy, Standard Coverage Policy, Residential Policy, California Land Title Association Forms, Endorsements and Special Forms of Coverage and Government Forms.

Besides their remarks on the existing forms, the two discussion leaders also will comment on changes in a number of ALTA forms being proposed by the Forms Committee.

Opening the Saturday morning session will be a discussion entitled, "The Nitty-Gritty of Underwriting," which will be led by Jerrel L. Guerino, vice president and chief title counsel, Transamerica Title Insurance Company, and Alan K. Brickley, vice president and Oregon state counsel, SAFECO Title Insurance Company.

Wrapping up the program on Saturday will be a panel, "Claims—Life in the Trenches," featuring J. N. Laichas, senior vice president and chief claims counsel, Ticor Title Insurance Company; Louis S. Sefick, vice president and associate general counsel, Chicago Title Insurance Company; and Albert Rush, assistant vice president and claims counsel, First American Title Insurance Company.

Space is limited and registrations will be accepted on a first come, first served basis.

Registration for the seminar is $70 for ALTA members and $110 for non-members, and does not include meal or lodging expense.

A block of sleeping rooms has been reserved at the hotel for Thursday and Friday nights, October 17 and 18, at $55 per night for both singles and doubles. Reservations may be confirmed or extended if desired by calling the Hyatt at 206-244-6000, and identifying as part of the ALTA group in order to receive the aforementioned rate.

The hotel will release all sleeping rooms not confirmed by Friday, September 27.

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ALTA Regional Seminar On Title Insurance Forms and Coverage

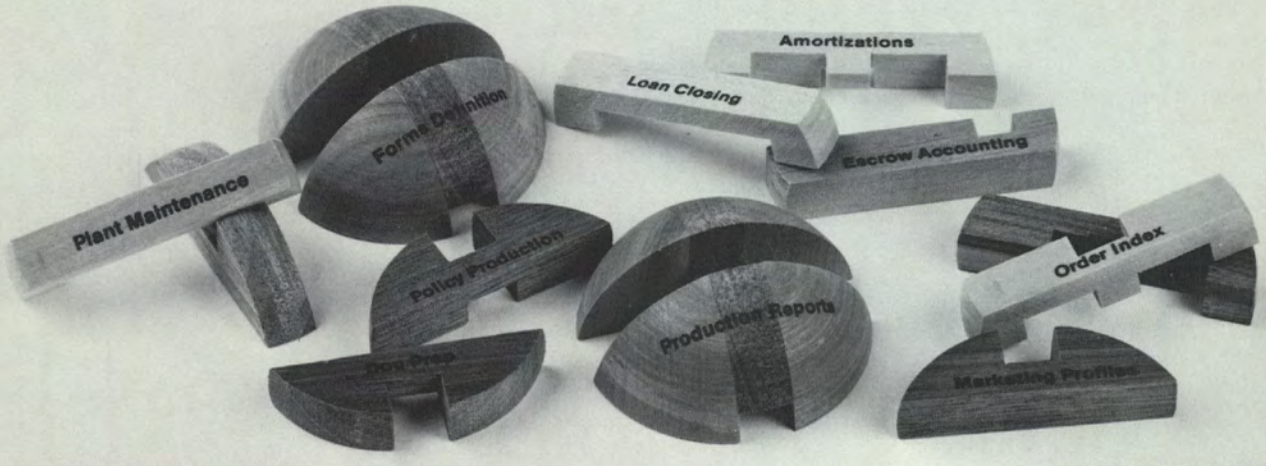
Friday, October 18

1:30 p.m.	Opening Remarks
1:45 p.m.	Nature and History of Title Insurance Forms (Russell W. Jordan, III)
2:00 p.m.	Comparison of Title Insurance Forms (Oscar H. Beasley, Russell W. Jordan, III) Owners Policy
3:00 p.m.	Break
3:15 p.m.	Comparison of Title Insurance Forms (continued) Loan Policy, Leasehold Policy, Construction Loan Policy, Standard Coverage Policy, Residential Policy, California Land Title Association Forms, Endorsements and Special Forms of Coverage, Government Forms
5:30 p.m.	Adjourn for Cash Bar Reception

Saturday, October 19

8:30 a.m.	The Nitty-Gritty of Underwriting (Jerrel L. Guerino, Alan K. Brickley)
10:00 a.m.	Break
10:15 a.m.	Claims—Life in the Trenches (J. N. Laichas, Louis S. Sefick, Albert Rush)
12:30 p.m.	Adjournment

PUZZLED ABOUT COMPUTERS?



Remember those puzzles you had when you were a kid? You'd sit for hours trying to put them together, but the pieces just didn't fit.

Some people do the same thing with computers. They buy some hardware and a piece of software. Then they go looking for additional software, terminals, modems, and printers. And after months of trying to put the pieces together, they still don't work.

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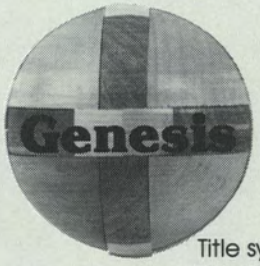

Title systems from Title Data Inc.

Put it together with Genesis

Beginning an Automated Title Operation

By M. Scott Stovall

There are no hard and fast rules for beginning an automated title operation. My approach is to first identify the parts of a company that can be made more productive by automation. In general, this can best be accomplished by studying three primary categories of an operation: office automation, escrow closing and collection, and title plant automation.

Office Automation

Typically, the word processing and accounting functions should be considered under office automation. The title industry is not unique in these other than, in word processing, our reports may be supplemented numerous times before the final product goes out the door in the the form of a title policy. Word processing can substantially reduce the amount of labor required to produce all the supplemental reports and commitments and is one of the best efficiency devices for any title company since the copy machine.

Also, as in any other kind of business, one of the major keys to title company profitability is current and meaningful financial reporting. Software packages are readily available from a variety of vendors for receivables, payables, general ledger, payroll and electronic spreadsheets. These are relatively inexpensive and run on hardware that virtually any title company can afford.

With the number of different system packages now available, it would be difficult not to justify the cost in terms of benefits. Look at a number of them and if one works for you in the way you run your business without requiring major modifications, and you are satisfied, buy it. Remember that most system packages are "hard wired" and are basically inflexible.

Escrow Closing and Collection

Although the basic facts of life in the business suggest that escrow closing and collection are ideal for automation, being labor intensive with few final closing statements ending up identical to their initial form, procedural variations from state to state—and even within a given jurisdiction—create numerous other problems.

From my experience, it's difficult to judge an escrow closing system from appearances alone. But asking questions of individual vendors at expositions such as the ALTA Convention AUTOMATION SYMBIOSIS will help determine which is best suited for your operation.

When talking to vendors during a demonstration, ask about adaptability of the system for applications as you want them handled. Keep in mind that there is no system capable of dealing with all situations for every type of escrow—and probably never will be. The system you buy must be able to handle enough repetitive calculations and forms to make it cost effective.

The key issue here is flexibility. Because of the aforementioned variations in customs and procedures, each individual installation is essentially a custom modification. If the internal software (the programs that run the programs) is inflexible, it is doubtful the system will be satisfactory in a locale where procedures are different from those in the area where the package initially was developed.

M. Scott Stovall is a member of the ALTA Abstracters and Title Insurance Agents Section Land Title Systems Committee and is president, Evergreen Land Title Co., Springfield, Oregon.

Collecting monthly payments and disbursing checks over a period of years during the term of a note is a logical function for automation. Computerizing would substantially reduce the staff time required for figuring principal, interest and taxes; posting the transaction and collecting a fee for doing so. In recent years, the emergence of "creative" real estate financing has significantly reduced the number of transactions that will readily fit this type of application. I have personally seen transactions that would require a programmer months to develop the appropriate software for just one collection.

Again, this type of software cannot be all things to all people. If you are purchasing a system for another purpose and a package for collection is available in addition, take a hard look at the type of collections you have before making a decision.

Title Plant Automation

It has been said that, within seven to 10 years, 80 per cent of all title plants will be automated. Plant automation probably is the most critical and emotional issue facing the industry because the "this is the way we've always done it and this is the way we're going to do it" attitude is relatively common. Being able to see and touch the physical records in a plant helps those of us who don't trust computers feel more secure.

My personal view is that, in 10 years, plant automation will not only be needed for efficiency. It will be required for survival.

Because of the huge volumes of different types of data involved, and numerous other technical reasons, only a few software companies have managed to develop plant systems

Continued on page 46

Valuation of a Title Business

By Lawrence E. Kirwin

Valuation, of course, underlies any acquisition or sale of a business, and is normally the primary consideration *after* buyers or sellers make a decision to proceed, based on other criteria. A seller seeks to sell for his reasons; a buyer wants to buy for his own reasons. The next step is valuation.

Using formulas to value a business is difficult to imagine. Formulas exist, the evidence is all around us. The question is: do they help? Notice that the formulas appear *after* the transaction takes place. "That company was valued at two times gross" or "four times pre-tax earnings" or "ten times net income." Look at Wall Street. Its famous "P/E" ratio is another kind of formula but it has little or anything to do with valuation and is calculated based on prices which already have been negotiated.

Price/earnings ratios tell what a company's stock is selling for in relation to its earnings, but not why! Philadelphia Electric's stock and that of Suburu of America both have the same P/E ratio. Why? The companies have no similarities to each other. On the other hand, it would seem perfectly reasonable that two title companies performing exactly the same functions, which may have identical gross income, and which may even have the same pre-tax earnings, should be valued identically. But they aren't! One may be located in a fast-growing market, the other not; one may have a young staff, the other a good distribution of youthful enthusiasm and seasoned wisdom; one may have just been fully computerized, the other may lag in the automation field.

Many factors affect valuation but may not have any impact on formulas which relate only to gross revenue, to earnings, or to book value.

What, then, really is the basis for valuation? The basis for all valuation is the buyer's objectives. What does the buyer seek to get from the transaction, and what is it worth to him? He may be seeking geographic expansion, qualified personnel, a title plant, representation in a state, position, underwriting capability, an agency or approved attorney network, or some piece in a puzzle which a seller may never understand. These objectives determine how much he will pay.

For example, if Company A needs commercial business to balance its activities in a given market, a commercial acquisition may be worth more to it than to Company B, which is already heavily dependent on the level of commercial activity. In fact, the value to Company B might be quite low because it would be exposing an even greater portion of itself to the ups and downs in that part of the business.

So, a buyer sets the value. The seller, of course, may determine what price would be acceptable to him but, unless the buyer sees a value as great as that price, no transaction will occur. This means that, for every seller, there may be more than one buyer, each with his own value. This isn't because the seller is seen differently by each buyer, but because each buyer has a different objective. Sellers should take great care revealing an acceptable price before learning the buyer's offer when faced with this situation.

Lawrence E. Kirwin is an attorney, and since 1981 has been president of Corporate Development Services, Wayne, Pennsylvania, providing appraisals, financial analysis and structuring for acquisitions and mergers. He is a member and past officer of the Association for Corporate Growth. Previously, he served for six years as vice president-corporate development for a national title insurance company and before that was a security analyst and manager of corporate development for a well known building materials concern. This article is based on a Pennsylvania Land Title Association convention address.

Buyer Definition

How does a buyer go about determining this value? First, the buyer must define what "success" means to him. Usually, this means attracting and keeping customers—a common definition of "success." Going beyond that, "success" means controlling or keeping the firm's capital base. It means attracting investors and lenders and then keeping them from selling out or calling their loans. That is, "success" means achieving the goals your investors and lenders have targeted *for themselves* based upon the returns which originally attracted them. They seek a specific return from their investment, regularly as in dividends, or at some designated future time whey they liquidate. If their expectation for achieving their objective is diminished, they are going to want to get out, to sell. When they sell, (given other investors are not readily available) the value of the company falls . . . you have been unsuccessful.

Of course, the investors may first throw out management and try other ways to maintain value!

For those who may not have investors, "success" is the achievement of sufficient earnings to keep you from deciding to look for another line of work.

By defining the rate of return that will keep investors happy and interested, the buyer knows how much the investments he makes will have to return. Next, the buyer has to determine *how* he is going to go about being "successful" . . . what strategies he must em-

Continued on page 47

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Successful

By Win Myers

When I was asked to write this article, I began to review my personal thoughts on what it takes to have a successful education endeavor on the state level. Education requires each person to do one of the following things: lead, follow or get out of the way. If you do not take one of these three stances, then you certainly have become a hindrance to those who wish to further the education level of your state association.

Members of each association, if they are interested in education, must be willing to commit. The members do not have to get involved themselves, but they must allow participation by those people in their organization who have the skills and desire. Maybe your commitment is simply allowing employees to assist in the educational endeavor. As an employer, you can quickly recognize those individuals who have a talent to develop an educational program. Allow them to use that opportunity and to take what knowledge they have gained from your organization and assist others.

People in many associations that I have visited over the last several years, ask, "How do you get so many people involved?"

I really cannot answer that, but I look at the people who are involved and I find they are normally your second-level managers or em-

Functions of the Texas State Board of Insurance are outlined by Robert E. Philo, Jr., former staff member with that official body and now president of Title Resources Guaranty Company, Plano, Texas, at a Texas Land Title Association Land Title School Basic Course session in Austin. The week-long course concluded with an examination for students and drew a capacity registration.

Land Title Education at the State Level

ployees who may not be in a management position at all. But, in any event, those individuals cannot participate unless the owners allow them the opportunity to helping their association develop the educational program.

Another area that always disturbs me when listening to people talk about educational value in the association is respect. It seems many individuals feel their way is the only correct way. They have not stepped back and looked to see what might have changed since the last time they were actively involved. It is paramount to respect other individuals' needs. Who knows, they may be very innovative and their ideas might work.

Determine What Is Needed

If you have accomplished what I have mentioned above concerning commitment, participation and respect, then you have the beginning ingredients to start an education endeavor. Once this is accomplished, then the best approach is to do research in your association and determine what type of training is needed. Always start with those subjects that can benefit the most individuals. A survey form can be constructed by your association, with the help of ALTA or a local college. Most colleges have marketing departments which can greatly benefit you and save a lot of time in designing a questionnaire. Also, colleges can provide you with good guidelines on how to incorporate testing and visual aids in your program.

Once you have all of the hard work done, do not forget education does not have to be restricted to the areas of abstracting, surveying and closing. Keep in mind that round table seminars concerning common problems with county clerks or recorders can be of great educational value. Asking several computer or software vendors to make a presentation also can be interesting and educational. Maybe your seminar should include changes in local state laws concerning real estate, homestead or lien type problems. Lenders also can be a good source of educational assistance. They will be happy to explain what types of closing instructions they use and why. Of course, education in the area of title insurance forms is always helpful.

Once you have determined what subjects you want to teach, you should always try for an instructor who can make a good presentation. Just because they have always been active in the association and paid their dues does not mean they are a natural-born speaker. One of the hardest things to do is to tell someone you would prefer for them not to speak. Obviously, things like this have to be handled very delicately, but keep in mind you are trying to benefit the entire association.

Now that we have completed our research, selected subjects and instructors, when and where do we get educated? Leaders of many state associations feel a one-day seminar during the week is what they need. This approach should be governed by how large your state is and the logistics of finding a common meeting place with adequate facilities. The best seminars normally are those with the largest participation. These will allow you to charge a little more for registration and possibly attract better guest lecturers. Some states have annual title schools. In these schools, there are courses which teach a specific subject—or they may have basic courses which will teach a small amount about a lot of subjects.

In the same vein of education, but not necessarily with meetings or schools, is the use of publications. A monthly publication which dedicates a part to education is always good. It never hurts to have a local attorney discuss mechanic's and materialman's liens, and so forth. ALTA is experimenting with video tapes. This allows you a great deal of flexibility when wishing to teach a small group on a particular subject.

Win Myers is a past president of the Texas Land Title Association and is senior vice president, Commonwealth Land Title Insurance Company, Dallas, Texas. He served on the committee that founded the TLTA Land Title School and continues to lecture at educational events of the association.

Basic Rules Listed

In summation, I feel education can work, and will work in all associations if a few basic rules are followed.

(1) The association itself must be willing to change or its members will stop participating. Then dues become more difficult to collect and the value of the entire association will decrease. Keep in mind, if the association does not change, new members will not be attracted.

(2) Respect for other association members' ideas will expand the association's appeal for participation. Remember, just because you have been there forever does not make you necessarily correct.

(3) When it comes to education, every member of the association should be treated equally. Abstracters, underwriters, attorneys and title insurance agents are all a part of your association and pay dues.

(4) Young people (Who knows what age group that is?) usually have the new ideas and want to learn the most.

(5) If your association does conduct an education endeavor, never lose sight of the fact employees who participate will tell their employers what happened. Always operate your educational seminar or school in such a manner that feedback to the employer, who pays the bill, is positive.

Continued on page 49

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Spilled Milk: The Case Of The Accommodating Banker

Seasoned loan officers with well-developed interpersonal skills many times go above and beyond to help a customer in difficulty and a friendship develops (better defined as a closeness). However, in the bank-customer relationship described in this story, a technical error was made by the loan officer who was accommodating the customer. When the situation deteriorated, the customer tried to upset the bank's position by claiming the assistance was, in fact, an attempt to secure the bank's position by misrepresenting facts.

The Scenario

The customer, a doctor, had an established relationship with the bank. He and his wife owned a very valuable piece of commercial property that was leased to another corporation owned by the doctor and another individual who ran the corporation on a day-to-day basis.

There was a small first mortgage on this property, and it was up-to-date and performing. An equity mortgage was granted to secure a loan to the operating company. In fact, the equity mortgage on the property and an equity mortgage on the doctor's home backed a standard unlimited guarantee of the doctor and wife.

The loan could be considered well secured. It performed well, sometimes going off the track—but by agreement. The customer's relationship with the bank and the loan officer was good. The loan officer was detached but was the type of individual who would go above and beyond the norm to be helpful.

The Doctor Diversifies

During the next year, the doctor felt a need to try the restaurant business. He purchased a closed establishment at auction that previously had enjoyed a fine reputation. He and his associate in the medical practice were going to revitalize this old landmark and make lots of money.

Because the doctor had an established track record and a good financial statement, the banker lent the money unsecured, endorsed on an interim basis until a mortgage or Small Business Administration financing could be put in place. The loan officer spent an inordinate amount of time trying to put a package together, but nothing permanent ever resulted.

No principal was paid for more than two years, and interest was constantly overdue. But after repeated checks were received, the doctor and his partner became disenchanted with the restaurant. They didn't like the hours. They couldn't find a decent financial package. And they couldn't find a person or group they could trust to run it.

Because of their financial strength, the bank officer continued to assist by renewing the note, collecting interest only. According to bank counsel, the mortgages backing the other guarantee collateralized this transaction because of the language in the guarantee.

First Fire, Then Default And Divorce

The restaurant was closed when a fire almost destroyed the complete structure. When the fire was under control, members of the fire marshal's office examined the property and stated emphatically that arson was involved; hence, insurance proceeds were held up pending a full examination.

Needless to say, the doctor and his partner were shocked. Why would somebody want to burn their lovely restaurant?

The banker was a great believer. He knew that the doctor would get paid by the insurance company. He, therefore, agreed to rewrite the loan on demand, interest only, provided the doctor and his wife executed a new guarantee backed by the property pledged on the other loan.

The doctor agreed, and again to be helpful, the banker agreed to meet the doctor and his wife at the medical building to execute the mortgages, the note, and the note and the new guarantee. The meeting took place. Everything was friendly. The doctor and wife signed all the forms, and the doctor and his associate signed the new note. There was a friendly conversation and appreciation expressed for the bank's understanding and willingness to cooperate. The banker, who was also a notary public, witnessed and notarized the forms.

Four months later the loan went into default; the insurance company wouldn't pay; the other loan also went into default. The bank foreclosed on the commercial property, applying the equity proceeds to both loans and was satisfied in full. The equity mortgage on the home was released.

The wife suspected wrongdoing and started divorce proceedings against the doctor to get what she felt was her share of the equity in the commercial property. She stated that the banker did not explain to her what she was signing on the second loan and misrepresented her liability. The doctor and his associate seized on this opportunity to upset the documentation on the second guarantee. In

Continued on page 49

This article originally appeared in the May, 1985, issue of The Journal of Commercial Bank Lending, *copyright 1985 by Robert Morris Associates, and is reprinted with permission. The article was called to the attention of* Title News *by R. Laird Sommerville, Jr., president and chief executive officer, Meridian Title Insurance Company, Reading, Pennsylvania.*

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ALTA Judiciary Committee Report: Part I

Acknowledgment—Constructive Notice

Matter of New Concept Realty & Development, 107 Idaho 711, 692 P.2d 355 (1984)

Facts: Plaintiff filed a complaint in bankruptcy court to foreclose a deed of trust which encumbered the debtor's property. The trustee contested and argued that the deed of trust did not impart constructive notice to the trustee since the certificate of acknowledgment did not substantially comply with the statutory form of acknowledgment and, specifically, did not adequately demonstrate that the notary knew the identities of the persons who appeared before him. The bankruptcy court ruled that the acknowledgment was insufficient as a matter of law, and that decision was affirmed by the U.S. District Court. The matter was appealed to the U.S. Court of Appeals which certified the question of law to the Idaho Supreme Court.

Issue: Whether the acknowledgment and recording of the deed of trust was sufficient to impart constructive notice to the trustee.

Held: The court noted the presumption that the deed of trust was validly acknowledged and that strict compliance with the statutory form is not required. Noting that the record disclosed that the notary did, in fact, know the persons who executed the deed of trust, the court held that under Idaho law, the acknowledgment was sufficient to impart constructive notice to the trustee.

Acquiescence—Prescriptive Easement

Geneja v. Ritter, 132 Mich. App. 206; 347 NW2d 207 (1984)

Plaintiff and defendant were adjoining property owners with the defendant's driveway encroaching over the plaintiff's property line. Suit was brought to quiet title to the driveway area. The plaintiff sought to enforce the legally described property line. The defendant argued that he was entitled to ownership of the encroaching land because the 15-year prescriptive period had passed since the driveway was paved. The trial judge found for the plaintiff and dismissed the claim of prescriptive easement, finding that the predecessors in interest of the plaintiff and defendant were good friends and the defendant's predecessor used and paved the drive with express permission.

On appeal, the court noted that the trial court had addressed only the issue of a prescriptive easement. Based on the proofs and briefs, the court of appeals observed that the more appropriate doctrine to apply would be that of acquiescence. The court followed the rule set down in *Renwick v. Noggle, 247 Mich. 150;255NW 535 (1929)*, quoting the following language from the opinion of that court:

> While acquiescence alone is not a defense, if acquiescence follows the resolving of a doubt as to where the line is or the settlement of a bona fide controversy, which settlement contemplates an agreed line, and the monuments of such line are fixed and maintained thereafter, such line so established and acquiesced in is the line, and the acquiescence need not continue for the statutory period; likewise, where the line is acquiesced in for the statutory period it is also fixed.

In that case *(Hanlon v. Tenhove, 235 Mich. 227 (1926))* it was held that the acquiescence of predecessors in title can be tacked on that of the parties, and if the whole period of acquiescence exceeds 15 years, the line becomes fixed, regardless of whether there had been a bona fide controversy as to the boundary.

In the case at bar, it was found that the plaintiff's predecessor in interest and the defendant had divided the property according to what they thought they owned. The defendant thereupon paved his driveway to the supposed property line. The face that the use was "permissive" was irrelevant because permissive use would not negate ownership claimed under the doctrine of acquiescence. The court of appeals therefore reversed the trial court and granted ownership of the subject property to the defendant.

Adverse Possession

Bickham, Inc. v. Graves, 457 So. 2d 1210 (La. App. 1st Cir. 1984)

Facts: Although plaintiff purchased tract from Graves family in a partition by licitation, two members of the Graves family remained on the tract. Plaintiff filed a petitory action where he was adjudged owner of all 39 acres. Defendant's appeal asking the court to recognize their title to a portion of the disputed property by virtue of 30-year acquisitive prescription.

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 committee members during preparation of the report.

Samuel R. Gillman; Nicholas J. Lazos, Esquire; Bernard M. Rifkin; Michael F. Fromhold; Hugh D. Reams, Jr.; R. N. "Bob" Merritt; Edward A. Blaty; James K. Weston; Donald P. Waddick; Abraham Resisa; Jerrel L. Guerino; John S. Thornton, Jr.

William M. Heard, Jr.; Robert J. Whisman; Frank P. Willey; E. A. Bowen, Jr.; Charles E. Riggs; Turalu Murdock; Steven H. Winkler; J. H. Boos; Ted W. Morris, Jr.; Michael Pietsch; Robert C. Mitchell; Jack C. Daw; E. W. Adams; Roy H. Worthington; Charles I. Tucker; Louis G. Shushan; Daniel Murray, Esquire; Timothy J. Whitsitt; Gary F. Casaly; Theodore C. Caris; Bobby L. Covington.

James W. Hicklin; Don Al Asay; Richard A. Johnson; Mark W. Vaughn; Louis C. Meyer, Jr.; P. C. Templeton; Harold A. Kleinfeld; Jack L. Donnell; John H. MacMaster; Dale W. Griffin; Dale L. Astle; Michael G. Magnus; Philip M. Champagne; Carl E. Wallace, Jr.; Ernest G. Carlsen; Phil B. Gardner; Guy C. Jackson III; Michael J. Jensen; Mark Schittina; James E. Tompkins; Eugene J. Ouchie; Roy P. Hill, Jr.

Issue: Whether trial court erred in failing to recognize defendants' claim of 30-year acquisitive prescription.

Held: Where the defendants lost their ownership interest in realty by a judicial sale, they could not acquire any ownership rights by possessing the property thereafter as mere trespassers. Also, where the defendants had inherited their small individual interest in realty from their father and their "possession" had been as part of a family unit existing primarily during their minority, it was doubtful whether they did more than possess precariously and such possession does not include right to prescribe.

Adverse Possession

Brown v. Wood, 451 So. 2d 569 (La. App. 2nd C. 1984) April 30, 1984

Facts: Record owners filed petitory action against adjacent landowners to establish ownership of tract of land. Defendant alleges that he and his ancestor in title exercised the requisite corporeal possession over tract eighteen (the disputed tract) so as to prescribe in 30 years.

Issue: Whether the defendant acquired ownership by acquisitive prescription (which would be superior to plaintiff's perfect title).

Held: Although defendant only possessed property since 1956, there was a juridical link (privity in contract or estate) with his ancestor in title so as to allow defendant to tack on the ancestor's possession to his and achieve the 30-year prescription. Because of this, defendant was awarded possession up to the highway on the disputed tract. However, as to the property north of the highway, the quitclaim deed which was confected after trial had commenced was suspicious and not capable of effectuating tacking for the requisite 30-year period. Therefore, plaintiffs are owners of that part of the disputed property which is north of the highway.

Adverse Possession

Trahan v. Broussard, 459 So. 2d L10 (La. App. 3rd C. 1984)

Facts: Landowner brought action claiming acquisitive prescription of strip of land due south of his tract and seeking to recover for damages to property allegedly caused by adjoining landowner.

Issue: Whether plaintiff's possession of land was adverse to record owner and that there was a positive intention to take and commence possession of the property as owner.

Held: Mere use of road on levee as a way for vehicles and farm equipment to reach back part of his property was not sufficiently adverse to entitle landowner to acquisitive prescription.

Adverse Possession

Rozmarek v. Plamondon, 417 Mich. 287; 351 NW² 558 (1984)

The plaintiff had been owner of a platted lot since 1946. The defendants had recently come into title of the adjacent lot. Until 1976 a railroad spur had crossed both lots. After that spur was abandoned, the plaintiff had attempted to purchase the lot. When negotiations failed, he brought suit, claiming title by adverse possession. The testimony at trial was contradictory. The plaintiff claimed to have stored possessions on the lot and to have cut trees from the lot between 1946 and 1949. He claimed to have gardened on the lot in 1952 and 1953. He claimed to have put up a birdhouse in 1951 and to have planted trees in the 1960's. He claimed to have cut the grass on the lot and to have excluded others from the use of it. The defendants testified that the lot was not landscaped in the 1950's, that there was no exclusion of others, and that there were no observable signs that the plaintiff was attempting to exert dominion over the lot.

After trial on the merits, the circuit court found that the plaintiff had used the lot openly, notoriously, visibly, exclusively and continuously for the required 15-year period. The court held that the plaintiff had attempted to purchase the property from the defendants, was not an action or admission which defeated his title. The court of appeals, in an unpublished and divided opinion, reversed the trial court, finding (1) that the defendants did not have actual or constructive notice of the claim during the period of adverse possession, (2) that since the plaintiff did not have actual notice of the exact location of the boundary between the two lots, any possession of the neighboring lot was not hostile, and (3) that since a railroad spur crossed both properties the plaintiff was unable to prove that he had made exclusive use of the defendant's lot.

The Michigan Supreme Court reversed the court of appeals and remanded the case to the trial court for further findings of fact. The court found that there was substantial evidence in support of the decision of the trial court and reversal by the court of appeals on issues of credibility was error. Inasmuch as the claim of adverse possession was not based on color of title, however, the court noted that title by adverse possession would not automatically extend to the entire lot. The adversely acquired title could extend no further than the land actually possessed, used, controlled and occupied. It was clear on the record that at least part of the land, the railroad spur was not so occupied. The Supreme Court therefore remanded the case to the trial court for further findings of fact in conformance with its opinion.

Adverse Possession Against the State

Mackinac Island Development Co., Ltd. v. Burton Abstract and Title Company and State of Michigan, 132 Mich. App. 504; 349 NW² 191 (1984)

The plaintiff was the owner of a 36.6-acre tract. The state had acquired 41/63 interest in the parcel between 1923 and 1927. The plaintiff claimed complete ownership of the land by right of adverse possession, commencing with the plaintiff's predecessors in title in 1959. It was undisputed that the plaintiff had paid taxes on a 100 percent ownership of the land and that it had used and maintained the land. At one point during the period of adverse possession the plaintiff had actually negotiated a sale to the state of easement rights for air traffic over the land without the state asserting its fractional ownership. After trial on the merits, the trial judge held that the plaintiff held full title to the land based on its adverse possession. The defendant, state of Michigan, appealed, arguing that adverse possession could not run against the state and that there was not sufficient proof of the elements of adverse possession.

The court of appeals affirmed the trial court. It held that it was possible to assert adverse possession against the state, but that hostility and notoriety of the possession had to be shown by stronger proofs than would normally be required. Where the plaintiff had required the state to pay for an easement during the period of possession, it was held that the burden was met.

Adverse Possession by Grantor

Seignious v. Metropolitan Atlanta Rapid Transit Authority, 252 Ga. 69; (311 SE2d 808)

Facts: In 1842 Samuel Mitchell conveyed to the state of Georgia property located in the city of Atlanta. Subsequently, the heirs of Samuel Mitchell sued the state over the effect of a reversionary clause contained in the 1842 deed. In conjunction with the litigation, a settlement agreement was entered into and deeds were executed by the parties to carry out the provisions of the settlement.

The present controversy involves ownership of a strip of land between the property conveyed to the state and that conveyed to the Mitchell heirs, and whether the state acquired prescriptive title to the disputed area.

Issue: Can a grantor acquire title through adverse possession against his grantee.

Held: Generally, by executing a deed, the grantor would be estopped from insisting that one who relies on his deed must take notice of the grantor's possession so as to make inquiry as to whether the deed spoke the truth. However, this premise conflicts with the principle that possession constitutes notice of the rights or title of the occupant, *OCGA § 44-5-169*.

The court resolved this conflict by holding that a grantor may adversely possess against his grantee, but that prescription will only commence from the time that the grantor, in addition to his actual possession, takes some additional action which gives unequivocal notice that he is claiming the property as his own.

In this case the Western and Atlantic Railroad (owned by the state) had maintained its tracts on the disputed property for a number of years, and the court determined that this clear adverse use was sufficient to establish the state's title.

Adverse Possession—Ejectment

Evans v. Dunn, 458 So. 2d 650 (La. App. 3rd Cir. 1984)

Facts: Landowner brought possessory action against adjoining landowner alleging that his possession of a strip of land had been

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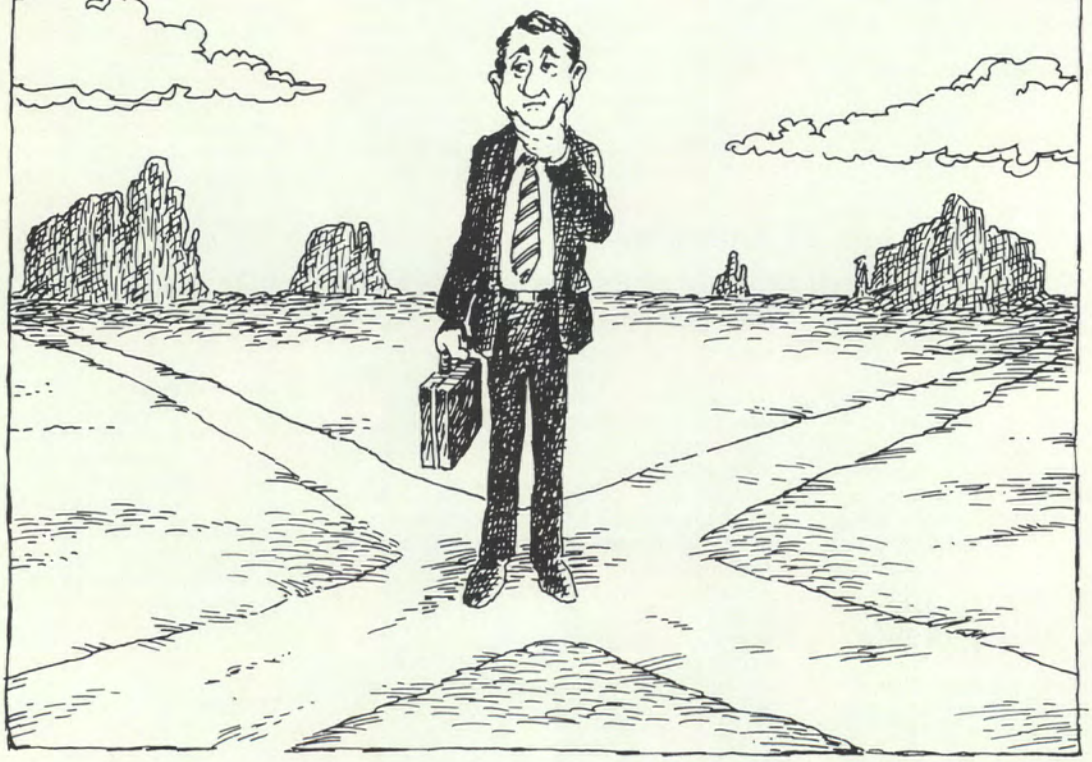

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wrongfully disturbed when defendant erected a fence which separated the land from his property. Plaintiff alleges he had been possessing since he purchased the property in 1957.

Issue: Whether the plaintiff had met all of the requirements for maintaining a possessory action.

Held: Since the fence was erected in May 1981 and the action wasn't filed until September 1982, the plaintiff lost the right to possess by not showing uninterrupted possession for one year prior to the disturbance.

Adverse Possession—Ejectment

Todd v. State through Department of Natural Resources, 456 So. 2d 1340(LA 1984)

Facts: Plaintiff brought possessory action against state with respect to property as to which their ancestors in title were alleged to have taken possession through various acts of corporeal possession for one year prior to disturbance. The property in question was that which was attached to Turnbull Island. This land, since it was either the former bed of the Mississippi River or formed by accretion, alluvion dereliction or rebition was deemed to be a private thing owned by the state.

Issue: Whether an individual may successfully maintain a possessory action vs. the state.

Held (on rehearing): No, an individual does not have a cause of action in bringing a possessory action against the state. The court determined that the purpose of the possessory action is to protect the accrual of acquisitive prescription by establishing the right to possess. Since, under the Louisiana Constitution, neither public *nor private* property of the state of Louisiana may be acquired through prescription, it follows that one does not have a cause of action to maintain a possessory action against the state because one can never acquire ownership of state lands simply through possession.

Note: Holding has since been reversed. The Supreme Court on April 1, 1985 held possessory action may be maintained against state where the object of the possessory action is private rather than public *465 So.² 712 (La. 1985).*

Adverse Possession—Requirement of Hostility

Connely v. Buckingham, 136 Mich. App. 462; 357 NW2d 70 (1984)

The question before the court was whether a party could establish ownership by adverse possession when he mistakenly held property of another believing himself to be holding to the true line. The court found that he could do so. It noted two lines of cases, holding on one hand that when a landowner takes possession of land of an adjacent owner with intent to hold to the true line, the possession is not hostile and adverse possession cannot be established. If, however, the landowner manifests an intent to hold claim to a visible, recognizable boundary, regardless of the true boundary, the possession is hostile and adverse possession may be established.

After Acquired Title—Estoppel

Robert R. White v. Fred H. Ford, Jr., 471 A2d 1176 (N.H. 1984)

Facts: Deceased granted by quitclaim deed dated March 30, 1962 certain properties to defendant. Outstanding mortgage on the property was also assigned to the defendant. Marginal reference on mortgage, showing payment in full on January 9, 1963. Property was also subject to tax taking by the local municipality and therefore at time of the original grant to defendant the title to the property was actually vested in the town under a tax collector's deed.

After all of the above events had transpired, the deceased purchased the property on May 3, 1963, from the town.

Issue: Whether a quitlcaim deed of specifically described property is effective, by virtue of the doctrine of estoppel by deed, to convey after acquired title.

Held: 1. Court holds that a quitclaim deed contains convenants from grantor to protect grantee against all actions affecting the title to the insured premises during grantor's term of ownership over the granted premises.

2. Court holds that in the presence of such convenants, the court agrees that decedent's after acquired title passed to defendant pursuant to the doctrine of estoppel by deed.

Attachment

Sinclair v. Anderson, 473 A2d 872 (Me 1984)

Facts: Plaintiff sued defendant for monies allegedly lent to defendant. Plaintiff obtained an attachment of defendant's real estate, which defendant had dissolved by the court due to a substitution of the attachment by a surety company.

Issue: Does the substitution of a surety company bond for a court ordered attachment moot an appeal from the order approving the attachment?

Held: Court held that the attachment is not moot because the defendant continues to bear the burden of maintaining the bond by keeping cash security deposited with the bonding company. Therefore, defendant is allowed to appeal the decision to attach.

Attorney Fees—Reciprocity

Stegman v. Bank of America, 203 Cal. Rptr. 103; 156 Cal. App.³ 843 (1984)

Plaintiff appeals from a judgment awarding him costs but not attorney fees in connection with his attempt to permanently enjoin foreclosure of a deed of trust. Plaintiff had purchased property subject to a deed of trust securing a promissory note executed by his sellers. The beneficiary subsequently recorded a notice of default and plaintiff brought an action to enjoin the foreclosure claiming the amounts claimed due on the notice of default were incorrect. Both the promissory note and the deed of trust contained language providing for attorney fees for the beneficiary or trustee in case an action was instituted. Plaintiff claimed a right to attorney fees under civil code section 1717, which makes unilateral attorney fees provisions in contracts reciprocal. The court of appeals affirmed the trial court's denial of attorney fees on the basis that plaintiff was a non-assuming grantee and therefore not personally liable under the note or deed of trust and likewise could not claim the benefits of them, including the provisions for attorney fees. The fact that a non-assuming grantee might have to pay the trustor's or beneficiary's attorney fees upon default is a result of a statutory right and not one arising from the contract, therefore civil code section 1717 did not apply.

Boundaries

Duane v. Saltaformaggio 455 So² 753, Miss. (1984)

RE: Property Deeds—Courses and distances of an official plat will prevail over monuments that are incorrectly located and conflict with other primary subdivision markers

Raymond and Alice Duane filed an action seeking a mandatory injunction requiring Robert and Joyce Saltaformaggio to remove improvements from the Duane property and for civil trespass. The claim arose from a boundary dispute. The Duanes argued that the boundary lines of each lot should be controlled by the official plat and not by monuments located on the property. The chancery court of the First Judicial District of Harrison County held that courses and distances are controlled by and must yield to monuments, whether natural or artificial. The trial court dismissed the case with prejudice.

On appeal, the Mississippi Supreme Court, citing *Welborn v. Henry, 252 So. 2d 779, 780 (Miss. 1971)*, noted that the intent of the parties should be the controlling consideration in applying rules for the construction of deeds. Citing *O'Herrin v. Brooks, 67 Miss. 266, 6 So. 844 (1889)*, the court added that when a lot is in a platted subdivision, the plat will control over an erroneous monument. The court concluded that courses and distances should prevail over monuments that are incorrectly located and in conflict with other primary subdivision markers. The case was reversed and remanded.

Broker's Commission

Capezzuto v. John Hancock Mutual Life Insurance Company 18 Mass. 46 462 N.E.² 131 (1984)

Facts: John Hancock Mutual Life Insurance Company had employed a broker to find a purchaser to purchase certain premises owned by the company. The broker found the purchaser, but John Hancock Mutual Life Insurance Company never signed a purchase and sale agreement, and therefore refused to pay the broker a commission. Although the case does not clearly indicate the same, it does not appear that the transaction ever was closed.

The broker brought an action against John Hancock Mutual Life Insurance Company to require the payment of the agreed commission. The trial court ruled that the commission was not due, basing its decision on a prior Massachusetts case, *Tristram's Landing, Inc. v. Wait, 367 Mass. 622 (1975)*, where the Supreme Judicial Court said that a broker

engaged by an owner to find a purchaser "earns his commission when (a) he produces a purchaser ready, willing and able to buy on terms fixed by the owner, (b) the purchaser enters into a binding contract with the owner to do so, and (c) the purchaser completes the transaction by closing the title in accordance with the provisions of the contract". The trial court found that the three requirements in *Tristram's* had not been met, and that, therefore, John Hancock Mutual Life Insurance Company would not be required to pay any commission.

Issue: The issue was when does a broker earn his commission, and whether the *Tristram* case had any effect on the traditional views previously held concerning this subject.

Held: The *Capezzuto* court acknowledged that "if the formulation in *Tristram's Landing* is to be applied literally, the judge's ruling was correct; the broker is there said to be entitled to a commission from the seller 'only if the requirements stated above are met.' " But the appellate court cautioned that "so to read the case, however, is to lose sight of the problem the case was dealing with and the wrong it was meant to correct".

The court then attempted to articulate what wrong *Tristram's Landing* was supposed to cure:

> Under the law in effect prior to *Tristram's Landing*, the seller's act of entering into a purchase and sale agreement with the customer produced by the broker foreclosed the seller from showing (in defense of the claim by the broker for a commission) that the customer was in fact unable or unwilling to complete the purchase at the appointed time. . . . The signing of a contract with the perspective buyer, however, was treated as a binding "acceptance" by the seller that the customer was in fact ready, willing and able to effect the purchase. . . . "Acceptance" came to function, in practice, as an exception: that the broker would be entitled to a commission if he found a customer who merely signed the purchase and sale agreement, regardless of the customers [sic] actual ability or willingness to complete the purchase in accordance with the terms that he agreed to.

The court indicated that it was the artificial legal effect of "acceptance" that arose by the execution of a purchase and sale agreement which was the focal point of the *Tristram's Landing* case. The court then indicated:

> It was not the purpose of the *Tristram's Landing* case to deprive the broker of his commission where he produces a customer ready, willing and able to buy on the precise terms set by the seller but the seller has a change of heart or otherwise defeats the transaction [by not entering into a purchase and sale agreement].

The *Capezzuto* case, therefore, has substantially changed what some attorneys believe the *Tristram's Landing* case stood for, namely that a broker's commission was not due unless a transaction was consummated. It is clear under the *Capezzuto* case that a broker's commission is still due and payable when the broker presents a customer who in fact is ready, willing and able to purchase. The failure of the seller to enter into a purchase and sale agreement with such a purchaser does not prevent the broker from being entitled to a commission. If in fact the purchaser is not ready, willing and able to purchase then, of course, a commission has not been earned. By the same token—and this is the thrust of the *Tristram's Landing* case—if a purchase and sale agreement in fact is executed, but it is later found that the purchaser was not ready, willing and able to purchase, no presumption of "acceptance" of the buyer arises.

Collateral Mortgages in Louisiana

Texas Bank of Beaumont v. Bozorg 457 So 2d 667 (LA 1984)

Facts: Bozorg executed a collateral mortgage and collateral mortgage note on August 12, 1975. He pledged the collateral mortgage note to First Met Bank of Jefferson Parish (FMB) to secure the indebtedness represented by the hand note. On September 11, 1978, Bozorg executed a completely different collateral mortgage note and mortgage and pledged the collateral mortgage note to Massey Ferguson (MFI) in the amount of $344,000 to secure payment of a hand note in the same amount. FMB transferred the rights to the 1975 collateral mortgage note to plaintiff, Texas Bank of Beaumont (TBB), for $88,025 which was the balance due on said note. On February 9, 1980, Bozorg executed a hand note in the amount of $200,000 and pledged the 1975 collateral mortgage note to TBB to secure the hand note. TBB sought to enforce the 1975 mortgage by having the property seized and sold. MFI intervened seeking to have its 1978 mortgage recognized and ranked as superior to TBB.

Issue: 1) Whether TBB proved that plaintiff succeeded to FMB's rights in the pledged collateral by virtue of the 1980 transaction; and 2) Whether TBB proved that plaintiff was entitled to a retroactive ranking, with an effective date vs. third parties of 1975, for the loan TBB made to Bozorg in 1980.

Held: As to the first issue the court concluded that whether the $88,000 paid by TBB to FMB was to purchase Bozorg's indebtedness or to lend Bozorg the money to pay his indebtedness, it remained at all times secured by the 1975 pledge of Bozorg's collateral mortgage note. Since there was no evidence regarding the 1975 pledge agreement, the court concluded that TBB could not be entitled to retroactive ranking. Thus, TBB was ahead of MFI but only as to $88,000.

Community Property

Shumway v. Shumway, 106 Idaho 415, 679 P.2d, 1133 (1984)

Facts: When dividing the marital property in divorce proceedings, the trial court determined that a certain parcel of real property acquired during marriage had been a gift to the husband from his parents and; therefore, held that it was the husband's separate property. The wife had joined in the execution of a mortgage and leases on the subject property in transactions which appeared to be subsequent and unrelated to the acquisition of the property.

Issue: Did the joinder of the wife in the execution of the mortgage and leases evidence or create community ownership of the subject property as asserted by the wife on appeal?

Held: The Idaho Supreme Court reaffirmed the applicable principle of law to be that the character of property vests at the time of acquisition and declared that the spouse's mere signing of a mortgage and leases upon the property neither evidenced community ownership of the property nor did it result in the creation of a community interest.

Constitutional Law—I. Tax Sale—Failure to Notify Mortgagee

First Pennsylvania Bank, N.A. v. Lancaster County Tax Claim Bureau ____ Pa. ____, 470 A.2d 938 (1983)

A tax sale was held in October of 1974 for delinquent 1972 real estate taxes. The tax sale divested, as a matter of law, appellant's mortgage which was recorded in 1973 and thus junior to the foreclosing tax lien.

Thereafter, appellant bank sought to set aside the tax sale and have its mortgage reinstated, arguing that the notice provision contained in the Pennsylvania Tax Sale statute was unconstitutional because it did not require personal or mailed notice to a record mortgagee.

Appellee, on the other hand, argues that since the Pennsylvania statute only discharges mortgages recorded after the tax lien attaches, that appellant had constructive notice which should be constitutionally sufficient and thereby distinguishing the Mennonite case (*Mennonite Board of Missions v. Adams, 462 U.S. 79, 103 S. Ct., 2706, 77 L. Ed.2d 180 (1983)*), wherein the Indiana statute discharged all mortgages whenever recorded.

Although it was admitted that appellant had actual knowledge of the tax lien, the court quoted with approval that passage of the Mennonite decision which stated, "a mortgagee's knowledge of the delinquency in the payment of taxes is not equivalent to notice that a tax sale is pending." And since the court found that the Mennonite decision unquestionably controlled the instant case, it followed the due process footpath by holding, "when the mortgagee is identified in a mortgage that is publicly recorded, constructive notice by publication must be supplemented by notice mailed to the mortgagee's last known available address, or by personal service."

Constitutional Law—II. Tax Sale—Failure to Notify Record Judgment Lienholder

Upset Sale, Tax Claim Bureau of Berks County v. Estate of Marie C. Schumo ____ Pa. ____, 479 A.2d 940, (1984)

Within six months of the First Pennsylvania Bank decision (*First Pennsylvania Bank, N.A. v. Lancaster County Tax Claim Bureau ____ Pa. ____, 470 A.2d 938 (1983)*), the Pennsylvania Supreme Court was called upon to decide whether a judgment creditor is also entitled to personal or mailed notice before being discharged by a tax sale, as a matter of law. Appellant had argued that a judgment creditor has no property right jeopardized by a tax sale and therefore no notice is due him.

The Court interpreted Mennonite (*Menno-*

nite Board of Missions v. Adams 462 U.S. 79, 103 S. Ct. 2706, 77 L.Ed.2d 180 (1983)) by stating, "due process requires protection of liens because they are property interest. It does not distinguish between general and specific liens. Mortgages are liens and hence property interest on specific assets. A judgment is also a lien and hence a property interest covering all real property of the debtor . . . therefore no less entitled to the due process protection set forth in Mennonite Board."

The court went on to reason that notice through publication which may be nothing "more than a squib in a local newspaper or county law journal buried between the automobile sales and want ads" is not likely to inform such individuals that their property interest will be affected and hence are likely to lose the security of their debts and hence their property. Finally, the court held, "when the judgment creditor is identified in a judgment that is publicly recorded, constructive notice by publication must be given and supplemented by notice mailed to the judgment creditor's last known available address, or personal service as is the case for mortgagees."

Competing Chains of Title

Security Title and Guaranty Company v. Mid-Cape Realty, Inc. 723 F² 150 USCA 1st. Circuit, Mass. (1983)

Facts: The Security case, although a federal case, revolves around Massachusetts law, as interpreted by the federal tribunal. The decision in the case is somewhat startling, but the federal court in making it insisted that it was just following what it believed the Massachusetts courts had indicated the law of that state was.

The facts were that a 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 Louis Handler. Thereafter, David Hoerle agreed to purchase the property from Handler, and employed counsel to examine the title thereto, and made arrangements to obtain a policy of title insurance thereon.

Sometime before the consummation of the sale from Handler to Hoerle, Elizabeth 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 based upon rights of subrogation against Hoerle, and others.

Issue: The issue was whether Handler owed a duty to Hoerle to give the additional information concerning the Marsh claim as to ownership.

Held: The court noted that the plaintiff had relied on the provisions of Massachusetts General Laws, Chapter 184, Section 21, which provides:

> If real property on 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 in the deed or otherwise make known to the grantee the existence and nature of such prior encumbrance so far as he has knowledge thereof.

The court noted that in asserting Marsh's claim as an encumbrance, however, plaintiff's counsel quoted from *Prescot v. Truman, 4 Mass. 627 (1808)*, which 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 federal court then looked to more current Massachusetts law, particularly the case of *Triangle Center, Inc. v. Department of Public Works, 386 Mass. 858 (1982)*, where the Massachusetts court similarly defined an "encumbrance" as "any 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 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.

In the *Nie* case, it will be recalled, certain property was the subject matter of repeated water damage, and the seller did not disclose this fact to the buyer. The buyer, however, had information available indicating that the premises were the subject of repeated floodings. The *Security* court likened the situations of the present with those of the *Nie* case.

This leads to the arguable anomolous result that the seller must disclose known encumbrances 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 anomoly 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.

Constructive Trust

Gaulin v. Jones, 471 A2d 166, Maine (1984)

Facts: A deceased had deeded the property to the defendant with an oral agreement that defendant was to hold title to the real estate, but was to ensure that the plaintiffs receive a share of the title to the property.

Issue: Will a constructive trust be imposed in circumstances where there is no written agreement nor a fiduciary relationship between the person holding the legal title to a parcel of real estate and the third party who is claiming title to the property?

Held: Where the grantor trusts the grantee to hold property for the benefit of the grantor as a third party and said grantee abuses the resulting fiduciary relationship by failing to perform, then the court will treat him as a constructive trustee for the beneficiary. The court requires clear and convincing evidence that such an agreement did exist.

Declaratory Judgment

County Insurance Company v. Agricultural Development, Inc., 695 P.2d 346 (1984)

Facts: Plaintiff insurance company brought an action seeking declaratory judgment against Agricultural Development, its policyholder, that it owed the latter neither an obligation to defend an action then pending against Agricultural Development nor to indemnify it for any judgment that might be rendered against it. Fourteen months earlier, plaintiff had undertaken the defense of the underlying lawsuit with reservation of rights, but that action had not substantially progressed. The trial court determined that as a matter of law, some of the damages sought in the underlying suit were not subject to indemnification under the policy, but it also found that there were genuine issues of material fact regarding negligence and proximate cause which would impact whether plaintiff had liability under the policy. These issues were tried to a jury and judgment was rendered in favor of the insured. Plaintiff appealed, contending that the trial court had committed prejudicial error in revising jury instructions without affording notice to counsel and giving them an opportunity to object.

Held: The Idaho Supreme Court ruled that there had been no error but then further indicated that it looked at the declaratory judgment proceedings below with a jaundiced

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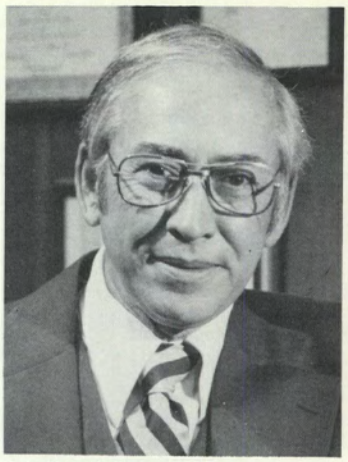

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eye. The court indicated that, had it reversed the judgment of the lower court, there would have been a strong inclination to direct a dismissal for lack of jurisdiction under the Declaratory Judgment Act since under consideration of good judicial administration, it highly questioned the propriety of trying factual issues in advance of those same issues being tried in the underlying action wherein the judgment would be dispositive and not moot.

Conveyances—Conveyance "By Entireties" to Unmarried Persons In the Matter of the Estate of Kappler

Baldwin v. Slone, 418 Mich. 237; 341 NW² 113 (1983)

The deed to the property in question identified the grantees as "Arthur Slone and Violet Slone, husband and wife, as tenants by the entireties". Arthur and Violet Slone were never married to each other. Ms. Slone died, devising her entire estate to her son. The question before the court was whether the conveyance created any right of survivorship in Arthur Slone. The probate court held that the conveyance created a tenancy in common and Arthur Slone had no rights in the property. A majority of the court of appeals reversed, holding that there was sufficient ambiguity to warrant introduction of extrinsic evidence at trial. The Michigan Supreme Court reversed in lieu of granting leave to appeal.

The Supreme Court, in a *per curiam* opinion, held that the statutory presumption in favor of a tenancy in common therefore would apply.

Deeds—After Acquired Title

Schwenn v. Kaye (Cal.App.2 Dist.) 155 Cal.App.3d 949; 202 Cal.Rptr.374 (1984)

Plaintiff Schwenn acquired title to real property in 1965. The property was subject to a royalty-paying oil and gas lease. In 1969, plaintiff deeded her royalties to her daughter and son-in-law by grant deed.

In 1974, plaintiff sold the property to the defendants. The offer to purchase, the original escrow instructions, nor the grant deed to defendants made any mention of the lease or the royalties.

During escrow, the title report indicated the existence of the lease, but failed to show the conveyance of royalties in 1969. The escrow instructions were then amended to show that the lease would be "assigned, if assignable" after the close of escrow.

Anticipating litigation, plaintiff had her daughter and son-in-law reconvey the royalities to her to avoid embroiling her daughter in the litigation.

The trial court held, in an action to quiet title to the royalties in defendants, that title to the royalties automatically vested in the defendants under the doctrine of after-acquired title. Plaintiff's intentions here were irrelevant, the purpose of the doctrine being exactly what occurred here. That is, to vest all of the title in the purchaser as per the original agreement.

Disclaimers—Effect Upon Statutory Forced Heir's Share as Surviving Spouse

Lasley v. Clem, 692 P.2d 552, Okla. (1984)

Ulis Clem (defendant in the immediate action) filed a petition seeking a divorce from Edna Clem. The divorce petition contained a provision whereby defendant disclaimed any interest in Edna Clem's separate property. Prior to the granting of the divorce, Edna Clem was killed in an automobile accident. Defendant thereafter dismissed the divorce action and subsequently, Mrs. Clem's adopted son commenced probate proceedings upon his mother's estate. The will, which predated the marriage to defendant, made no provision for defendant. Defendant thereafter filed an election in the estate proceedings to take a "forced heir's share". In Oklahoma, a "force heir's share" is the statutory right of the surviving spouse to receive that portion of the deceased spouse's estate which the surviving spouse would have been entitled to receive if the decedent had died intestate. The spouse's right to elect to receive a "forced heir's share" cannot be abrogated by any provision contained within the will. The trial court allowed the "forced heir's share" and the court of appeals reversed.

Issue: The issue on appeal to the Supreme Court was whether a general disclaimer provision in a divorce action which states "that neither party makes any claim to any real or personal property owned by the other" operates to disclaim any interest in property subsequently probated.

Held: The court held that it does not. The court stated that the disclaimer contained within the divorce action was neither made pursuant to nor was intended to be a disclaimer authorized by the statutes relating to wills and succession. Therefore, the disclaimer was ineffective to negate the defendant's right to receive his statutory portion of his deceased wife's estate.

Documentary Tax

Associates Commercial Corporation v. Sel-O-Rak Corporation, 746 F 2d 1441, USCA 11 (1984)

Facts: Bankruptcy court, in adversary proceeding, declared Secured Party of UCC1 Financing Statement had failed to perfect filing by not paying Florida documentary tax imposed on all written obligations to pay money and security agreements; declared the financing statement therefore unenforceable; relegated the secured party to status of an unsecured creditor.

Issue: Does failure to pay documentary stamp tax render UCC Financing Statement unenforceable?

Held: Failure to pay tax did not affect enforceability of financing statement. Florida Documentary Stamp Tax statute provided several sanctions for non-payment in the form of penalties, interest, and even criminal sanctions, but did not specifically condition enforcement upon payment. Absent express statutory prohibition, court determined "such a severe intrusion into the operation of UCC Article 9 cannot be justified", even though recognizing other courts have decided similar cases differently.

Easements

Bushnell v. Artis 445 So. 2d 153 (La. App. 3rd C. 1984) February 1, 1984

Facts: Property owners sought the demolition of or compensation for the house owned by the adjoining landowner which encroached onto plaintiff's property.

Issues: 1) Whether the trial court erred in granting a predial servitude under the authority of LS.A. C.C. Art. 670;

2) Whether the trial court erred in plaintiff's calculation of the amount of compensation plaintiffs are due for the predial servitude; and

3) Whether the trial court erred in denying plaintiff's damages for medical expenses and mental anguish.

Held: Since the encroaching landowner was in good faith, the trial court properly granted the predial servitude under Art. 670. Also, the award of $1,500 in compensation for the servitude was deemed reasonable for the 14-foot servitude. Finally, the trial court correctly denied damages for medical expenses and mental anguish. The trial judge found no evidence to support such an award.

Easement in Gross

Champaign National Bank v. Illinois Power Company, 125 Ill. App.3d 424, 465 N.E.² 1016 (1984)

Facts: In 1955, the Illinois Central Railroad granted Illinois Power Company a license for poles and power along its railroad right of way. In 1967, another almost identical license was issued to accommodate a new, larger use. In 1979, the railroad conveyed land to two trusts of which Champaign National Bank was trustee by means of four quitclaim deeds. The deeds reserved to the grantor the right to use, maintain and replace existing utility lines and easements, whether of record or not; and grantee agreed not to interfere with same. In late 1980, the railroad executed and delivered four additional quitclaim deeds (apparently to the same land) which contained the same language of reservation as the earlier deeds together with an additional easement for its poleline together with rights to replacement, repair and maintenance. Prior to the delivery of the last four deeds, the railroad granted a longitudinal easement, including existing line, which easement was approved by the Illinois Commerce Commission. The final payment for the easement and the recording of the easement document occurred subsequent to the delivery of the last four deeds. The trustee sued Illinois Power Company for ejectment (count I) and forcible entry and detainer (count II). The trial court entered a declaratory judgment in favor of Illinois Power Company that it had a perpetual easement for its lines and poles.

Issues: 1) Did the reservation by the railroad create an easement?

2) If an easement was created, could it be assigned?

Held: The language did create an easement in gross as opposed to a license which

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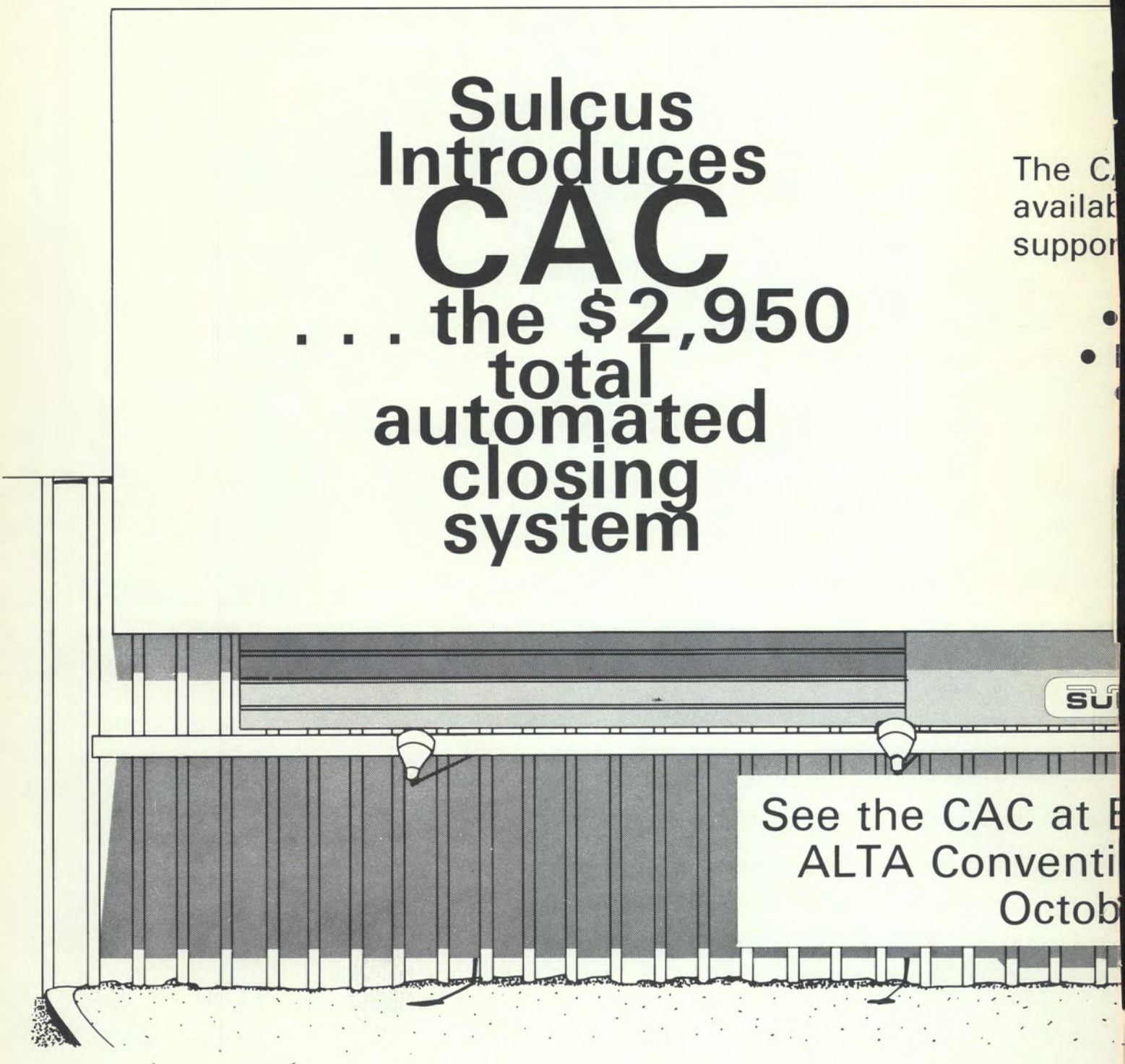

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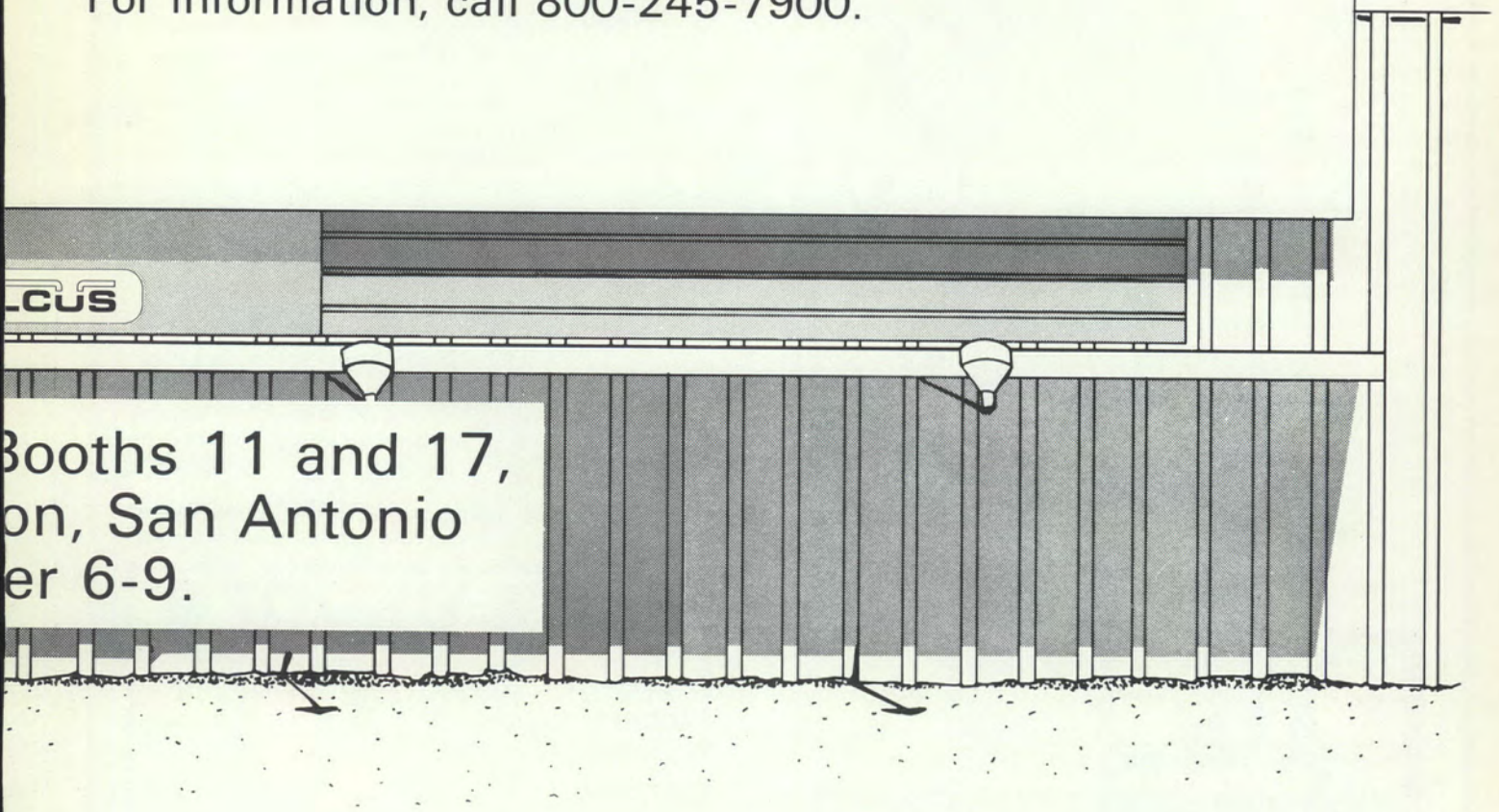

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was terminable. Notwithstanding a long line of cases and reference works providing that easements in gross are personal and non-assignable, the court citing a federal district court case and other works including the restatement, held that since this was a "commercial easement in gross", it was assignable.

Chairman's Comment: A dissenting opinion argued that the railroad should not have been permitted to change a license into an easement after having conveyed title to the trust. No exception was raised as to the assignability of a commercial easement in gross.

Ejectment—Waters and Water Courses

Verzwyvelt v. Armstrong-Ratterree, Inc., 463 So. 2d 979 (3rd Cir. 1985)

Facts: Landowners who owned property surrounded by Oxbow Lake which had formed when Red River changed its course brought possessory action against corporation which had pumped water from lake.

Issue: 1) Whether plaintiffs' actions in connection with the former channel of the Red River were sufficient to establish the possession required to bring a possessory action.

2) If it is determined that plaintiffs are in possession of the old channel does the defendant's act of pumping water out of the former channel (the Oxbow Lake) constitute a disturbance of plaintiffs' possession?

Held: 1) Evidence was sufficient to establish possession of the lake necessary to bring a possessory action since plaintiffs had title and their exercise of possession over a part of the property constituted the exercise of constructive possession of the whole;

2) Water in lake was not "running water" for the purposes of determining whether defendant had natural servitude over the water;

3) defendant's act of pumping water out of the lake constituted a disturbance of plaintiffs' possession.

4) Damage award of $1,250 for inconvenience, worry and concern was not abuse of discretion.

Estoppel

Covington County Board of Education v. Page, 456 So² 739, Miss. (1984)

RE: Property—Estoppel—Where a county has exacted taxes on the subject property for 70 years and has executed a quitclaim deed in favor of the appellee's predecessor in title 35 years earlier, the case is a "proper" one to estop the government entity from asserting its own title to the property.

Myrtle P. Page deraigned title to a 40-acre tract in Covington County from a 1912 tax deed. The Covington County Board of Supervisors, however, asserted title to the property through a 1913 foreclosure on a deed of trust. The record showed that in 1940 the board of supervisors entered an order to remove a cloud on the title and quitclaimed the property to Page's predecessor in title. In 1975, the county again asserted an interest in the property and executed an oil, gas and mineral lease on the property. Further, the county collected ad valorem taxes on the subject property from 1912 until the trial. At trial, the Chancery Court of Covington County confirmed title in Page. On appeal, the county argued that the quitclaim deed was void for lack of consideration because a county could not constitutionally donate state lands to individuals under Article IV, Section 95 of the Mississippi Constitution.

The Mississippi Supreme Court held that Section 95 was inapplicable to the case sub judice in that the county did not "donate" the land to Page's predecessor but merely denied that it had any right, title or interest in the property. The court, citing *Scotch Plywood Co. v. Gardner, No. 54,230, slip op. (Miss. Sup. Ct. May 16, 1984)*, and *PMZ Oil Co. v. Lucroy, 449 So. 2d 203 (Miss. 1984)*, determined that the elements of equitable estoppel were present to estop the county from asserting title to the property. The Supreme Court cited *State v. Stockett, 249 So. 2d 388 (Miss. 1971)*, as authority for the proposition that a government entity may be subject to estoppel in a "proper case". The Mississippi Supreme Curt found that where Covington County executed taxes for 70 years and executed a quitclaim deed 35 years earlier, the case was a "proper" one for estoppel. The case was affirmed.

Eminent Domain—Attorney Fees

Leaf v. City of San Mateo, 198 Cal.Rptr.447; 150 Cal.App.3d 1184 (1984)

The plaintiff, attorney appearing *in pro. per.*, and his wife brought an action in inverse condemnation against the city to recover subsidence damage to plaintiffs' real property caused by the city's sewer construction project, and to recover attorney fees as well. The trial court found for plaintiff, but denied the claim for attorney fees based on city's argument that there were no fees incurred in the *in pro. per.* action.

The court of appeals reversed and remanded, holding that an "*in pro. per.*" attorney is entitled to the reasonable value of his services, based on his time and effort, even though he was not out-of-pocket.

Foreclosure of Mechanic and Materialman's Lien—Necessity of Perfecting the Lien Prior to Filing Suit

Tulsa Excavation, Inc. v. Pinalto, 684 P.2d 571, 55 Okla. B.A.J. 1303 (Okla. App. 1984)

Facts: Tulsa Excavation, Inc. (plaintiff) performed excavation work pursuant to a contract with Pinalto (defendant). Subsequently, and within the time period allowed by law to file a mechanic's and materialman's lien, plaintiff commenced foreclosure of its lien. Plaintiff had not previously filed a lien statement in the office of the county clerk as provided by 42, O.S. 1981 §142. Defendant filed a demurrer to plaintiff's action. Trial court sustained the demurrer on the basis that plaintiff had not perfected its lien by filing in the office of the county clerk. Plaintiff appealed.

Issue: The issue on appeal is whether the act of filing a lien statement pursuant to statute to perfect a mechanic's and materialman's lien is a prerequisite to the commencement of foreclosure of the lien. The court noted that Oklahoma law prior to 1977 required lien statements to be filed in the office of the court clerk. The statute, as amended in 1977, required the filing in the office of the county clerk.

Held: The court cited *Key v. Hill, 219 P. 311*, which held that if a foreclosure is timely filed in the office of the court clerk, it is not necessary to file a lien statement in addition thereto. The court further noted that although the filing of a lien can no longer be done in the same office as the filing of the foreclosure, this was not a determinative factor regarding the necessity of filing the lien prior to foreclosure. The court stated that the referenced statute was intended to protect the mechanic, laborer or supplier, therefore, it would seem unjust to deny the lien when every requirement of the statute had been fulfilled, except the actual filing. The court pointed out that the purpose of filing is to give notice to others who may contract for liens upon the same property of the nature and extent of the lienor's claim. The court reversed and remanded, stating that notwithstanding the statute regarding filing of a lien statement, the filing of a petition to foreclose should be permitted as a method of perfecting a valid lien. The court noted, however, that a claimant who chose not to file a lien, prior to the filing of suit, could not claim priority over any other lien claimant who perfected his lien strictly according to the statutory requirements.

General Plan or Scheme of Development

Chase v. Burrell, 474 A2d 180, Maine (1984)

Facts: Plaintiffs owned lots in a subdivision and wished to enjoin defendants from building a mobile home retirement village. The deeds into plaintiffs and others contained a restrictive covenant that no mobile homes would be allowed and the developer gave oral assurances that all deeds would contain the same restrictive covenants. Defendants bought a parcel which was not shown as a lot for sale on the original subdivision plan and deed into them contained no such restrictive covenant.

Issue: Under what circumstances does the doctrine of negative reciprocal covenants control and restrict activities in a subdivision?

Held: Defendants' property was outside the general scheme and defendants could do as they wished. Court's doctrine of negative reciprocal covenants:

1. Common owner subdivides the property.
2. Subdivision must involve a general scheme of development in which the property will be restricted.
3. Vast majority of lots must contain restrictions reflecting a general scheme.
4. Property must be part of a general scheme of development.
5. Purchaser must have constructive or actual notice of the scheme.

Continued on page 49

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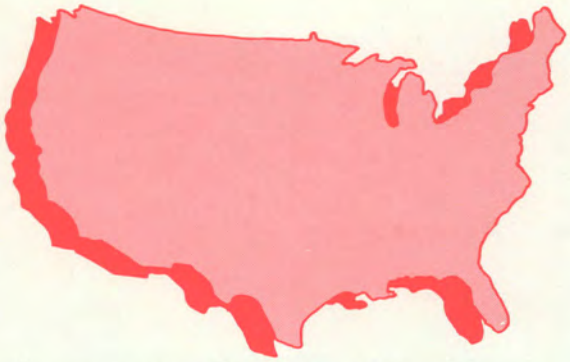

Around the Nation

Hubbard Colorado 'Title Person of Year'

An attendance of 135 (including nine past presidents) was reported at the Land Title Association of Colorado convention at Keystone, according to Executive Manager **Jesse Smith**.

Carleton L. Hubbard, Jr., Stewart Title of Glenwood Springs, was named "Colorado Title Person of the Year" at the convention, recognizing his many contributions including present service of the ALTA Abstracters and Title Insurance Agents Section Education Committee. He is a past president of LTAC.

ALTA Vice President-Public Affairs **Gary Garrity** discussed ALTA's role in dealing with title industry problems and presented the ALTA membership recruiting videotape, "Commitment to Excellence."

Mike Gorham, director of the Colorado Real Estate Commission, discussed the relationship among the real estate and the title industries and other associated industries.

The convention also featured two panels, "Escrows and Closing Problems, Pitfalls and Trends," presented by **Willis Carpenter**, attorney with Carpenter and Klatskin, P.C.; **Eleanor C. Foley**, Real Estate Closings, Inc., and **Cindy Rockett**, immediate past president of Certified Closers Association. The second panel was entitled "Automation and Computerization in the Title Industry," and was presented by **Warren Smith**, Landata; **James Jennings**, Title Data, Inc., and **William Hanschmidt**, Douglas County Title Company.

Other convention speakers included, **Harry Paulsen**, First American Title Insurance Company, retiring LTAC president; **Lois O'Leary**, Security Title Guaranty Company, and **Hubbard**.

Newly-installed LTAC officers are **Gail F. Bode**, Transamerica Title Insurance Company, president; **Jack L. Bowman**, The Guaranty Abstract Company, first vice presi-

Shown at left is Gail Bode, Transamerica Title Insurance Company, newly-elected Land Title Association of Colorado president. In the other photograph, Carleton Hubbard, Jr., Stewart Title of Glenwood Springs, Inc., center, and wife Miriam are congratulated by LTAC Immediate Past President Harry Paulsen, First American Title Insurance Company, on Hubbard's being designated "Colorado Title Person of the Year."

Burroughs Receives High PLTA Honor

Richard Burroughs, Title Insurance Corporation of Pennsylvania, Bryn Mawr, was selected as "Distinguished Titleman, 1985" by the Pennsylvania Land Title Association at its recent convention in Hershey. A past president of the PLTA, **Burroughs** was recognized for his accomplishments as an active and devoted member of the association.

PLTA newly-elected officers are: **Michael S. Frederick, Jr.**, First American Title Insurance Company, president; **Gerald Shelpman**, Commonwealth Land Title Insurance Company, vice president; **Richard J. Little** Title Insurance Corporation of Pennsylvania, treasurer; **Herbert R. Walton**, Ticor Title Insurance Company, secretary.

dent; **William M. Reed**, Transamerica Title Insurance Company, second vice president; **Howard J. Leino**, Security Title Guaranty Company, secretary-treasurer, and **Randy Yeager**, Ticor Title Insurance Company, director. LTAC Board members remaining in office are, **Charles F. Sis**, Moffat County Abstract Company; **Norman E. Larkins**, The Title & Abstract Company, and **Harry Paulsen**.

Palmetto Covers Variety of Topics

A variety of topics ranging from developments in South Carolina real property law to time sharing were covered at the Palmetto Land Title Association convention in Charleston, South Carolina.

ALTA Chairman, Title Insurance and Underwriters Section **Marvin C. Bowling, Jr.**, executive vice president-law and corporate affairs, Lawyers Title Insurance Corporation, Richmond, Virginia, discussed recent ALTA activities and regulatory developments. His commentary was followed by a presentation of the ALTA membership recruiting videotape, "Commitment to Excellence."

Benton D. Williamson, attorney with Boyd, Knowlton, Tate & Finlay, Columbia, discussed recent developments in South Carolina real property law and **H. Dave Whitener, Jr., esquire**, Columbia, discussed commercial construction lending.

The convention featured two seminars entitled, "Condominiums, Condominium Conversion and Condominium Documents," led by **Cary S. Griffin**, attorney with Bethea, Jordan & Griffin, Hilton Head, and "Time Sharing," by **David E. Martin, esquire**, Lumpkin & Sherril, Myrtle Beach.

Due to a change in the convention date from fall to spring, PLTA officers elected in the fall of 1984 will serve until the spring of 1986. Continuing their 1½-year terms are **Anne D.**

Pennsylvania Land Title Association Selection Committee Chairman Richard Bennett, right, congratulates "PLTA Distinguished Titleman, 1985" Richard Burroughs, Title Insurance Corporation of Pennsylvania.

Palmetto Land Title Association officers are, from left, Charles Hedgepath, director; Marilyn Livingston, treasurer; Patricia Quattlebaum, president-elect; Laura Hulst, director; Joseph Roof, director; Joby Castine, secretary, and Anne D. Mixson, president.

Newly-elected PLTA officers are, from left, Michael Frederick, Jr., First American Title Insurance Company, president; Gerald Shelpman, Commonwealth Land Title Insurance Company, vice president; Richard Little, Title Insurance Corporation of Pennsylvania, treasurer; Herbert Walton, Ticor Title Insurance Company, secretary.

Mixson, Standard Title Services, Inc., president; **Patricia Quattlebaum**, South Carolina Title Insurance Company, president elect; **Marilyn Livingston**, Lawyers Title Insurance Corporation, treasurer; **Joby C. Castine**, Chicago Title Insurance Company, secretary; **Joseph Roof, Esquire**, director; **Charles Hedgepath**, Ticor Title Insurance Company, director; **Laura M. Hulst**, Title Insurance Company of Minnesota, director.

Attendance Record Posted in Arkansas

Attendance at the Arkansas Land Title Association convention in Hot Springs, Arkansas, totaled 140 registrants—largest in the history of the association.

Featured speakers at the convention were ALTA President-Elect **Gerald Ippel**, Ticor Title Insurance Company, Los Angeles; **Jim Burnett**, chairman of the National Transportation and Safety Board; **L. D. Estes**, Southwest Title Company, Texarkana, Texas; **Ted Brumfield**, USLIFE Title Insurance Company of Dallas, St. Louis, Missouri; **Kender Carroll**, Benton County Abstract Company, Bentonville; and **Hal Kemp**, attorney for Ticor Title Insurance Company, Little Rock, leading a panel entitled, "Marketing Your Product, Do You Sell Title Insurance?"

Newly-elected association officers are **Phil Bronson**, Bronson Abstract Company, Fayetteville, president; **Rod Cameron**, Pulaski County Title Company, Little Rock, vice president, and **Lucenia Whitehead**, White Abstract & Realty Company, Inc., Newport, secretary-treasurer. Directors for the 1985-1986 term are **Jim Pugh**, Roy Pugh Abstract Company, West Memphis; **Jerry Maleare**, Lakes Abstract Company, Mountain Home; Immediate Past President **David Tomlinson**, Cannaday Abstract Company, Clinton, and **Kender Carroll**.

Arkansas Land Title Association officers are, front row, from left, Lucenia Whitehead, secretary-treasurer; Rod Cameron, vice president, and Phil Bronson, president. Back row, from left, Kender Carroll, director; David Tomlinson, immediate past president and director, and Jerry Maleare, director.

ALTA Opposition Expressed to Bank Expansion into Title Insurance

ALTA Government Affairs Committee Chairman C. J. McConville, Title Insurance Company of Minnesota, right, presents testimony of the Association in Washington at July Federal Deposit Insurance Corporation hearings on proposed rules that would allow a member bank through its affiliate or "bona fide subsidiary" to engage in insurance and real estate activities provided that certain restrictions are observed. The proposed rules state that FDIC will review a potential conflict of interest problem separately. Chairman McConville reiterated the position stated earlier in a written response from Association President Jack Rattikin, Jr., Rattikin Title Company, to similar rules proposed by FDIC last November—that ALTA is "unalterably opposed to allowing bank holding companies or banks to offer title insurance services." More details are in the July issue of the ALTA Capital Comment *newsletter. In the other photograph are, from left, Chairman McConville, ALTA Vice President-Government Relations Mark Winter and FDIC General Counsel John Murphy, who chaired the hearings.*

Tennessee Launches Quarterly Newsletter

The Tennessee Land Title Association has announced plans at its convention to begin publication of a quarterly newsletter in order to aid communication among underwriter and agent members.

Held in Nashville, the convention highlighted speeches by **Martha Irwin** of the Tennessee Department of Revenue and **Bill Bruce**, the TLTA lobbyist who, according to TLTA Secretary and Treasurer **Charles DeWitt**, recently has been quite active representing TLTA in several matters that directly affect the association's interests.

Also in attendance at the TLTA convention were Title Insurance and Underwriters Section Chairman **Marvin C. Bowling, Jr.**, and executive Vice President **Michael B. Goodin**.

During the convention, newly-elected Vice President **Robert Brown**, Lawyers Title & Escrow, TLTA members and Tennessee Association of Realtors members were recognized for their success in organizing and implementing several joint TLTA-TAR seminars throughout the state. The seminars, which covered the basics of title insurance and closings, were reported to be well attended and well received.

Other TLTA officers elected for the 1985-1986 term are, **Lawrence H. "Buddy" Adams**, First American Title of Mid-America, Inc., president; **Charles DeWitt**, SAFECO Title Insurance Company, secretary-treasurer; and **Neil Givens**, Mid-South Title Insurance Company, and **Ben Davidson**, Tennessee Valley Title Insurance, board members.

Newly-elected Tennessee Land Title Association officers shown in the top photograph are, from left, Board Member Neil Givens, Mid-South Title Insurance Corporation, and President Lawrence H. Adams, First American Title of Mid-America, Inc.; Immediate Past President Joe Wootten, Ticor Title Insurance Company, is at right. In the lower photograph are three TLTA convention guest speakers who are, from left, ALTA Title Insurance and Underwriters Section Chairman Marvin C. Bowling, Jr., Lawyers Title Insurance Corporation; Martha Irwin, Tennessee Department of Revenue; and ALTA Executive Vice President Michael B. Goodin.

Rattikin Speaker At Oregon Convention

The Oregon Land Title Association convention held on the Warm Springs Indian Reservation included an opening commentary by ALTA President **Jack Rattikin, Jr.**, Rattikin Title Company, on ALTA activities. Oregon Real Estate Commissioner **Morella Larsen** spoke, followed by **Charles Stearn** with the state county clerk's association proposing formation of a joint legislative committee of OLTA and his organization.

The second day's activities proceeded on a legislative note featuring State Representative **Tom Throop**; OLTA Legislative Committee Chairman **Craig Chisolm**, Ticor Title Insurance Company,, and **Tom Donaca**, Associated Oregon Industries—professional lobbyist for various groups.

Newly-elected OLTA officers are **Larry Feagans**, First American Title Insurance Company of Oregon, president, and **Ken Pond**, Lawyers Title Insurance Corporation, vice president. Newly-elected agent's section officers are **Robert Maentz**, Crater Title Insurance Company, chairman; **Al Owen**, Yamhill County Title Company, vice chairman; **Mary Lou Dean**, Abstract & Title Company, secretary-treasurer. OLTA directors are **John A. Kelley**, Deschutes County Title Company, and **Dellis Rollins**, Title Guaranty Company of Oregon. **C.H. "Jack" McGirr**, who provided this report, continues as OLTA executive secretary.

Pictured here is newly-elected Oregon Land Title Association President Larry Feagans, president, First American Title Insurance Company of Oregon.

New Regulation Theme for NMLTA

State regulation and legislative activity were the focus of discussion during the New Mexico Land Title Association convention held in Taos. The theme of the convention, "R & R (Relaxation and Regulation)," was dedicated to the recent passing of SB52 by the New Mexico state legislature regulating the title industry of the state by promulgation of all forms, coverages, rates and commissions by the department of insurance.

Peter Mallery, NMLTA lobbyist, presented insights on the legislative process undergone—interspersed with anecdotes about the passing of this new law. Superintendent of Insurance **Vicente Jasso** outlined the department of insurance's plans for implementing and developing the new regulation and **George Snyder** of the attorney general's office commented on the impact of the new law on the department and the format of hearings for the new regulations.

At the national level, ALTA Chairman, Abstracters and Title Insurance Agents Section **John Cathey**, Bryan County Abstract Company, Durant, Oklahoma, reported on recent developments in congressional action and regulatory concerns of the title industry.

Further legislative discussion included **David White**, attorney with Jennings, Strouss & Salmon, Phoenix, Arizona, presenting antitrust guidelines for title associations in regulatory environments, and **Richard Virtue**, attorney with Sutin, Thayer & Browne, Santa Fe, providing a brief synopsis of other 1985 legislation affecting real estate and the title industry.

Newly-elected NMLTA officers are **Michael L. Smith**, Guardian Abstract & Title Company, president; **Walter S. Duran**, New Mexico Title Company, president-elect, and **James W. Cabbell**, Cabbell Abstract & Title Company, vice president. **Dave Lanier**, Lawyers Title Company, remains executive secretary. Newly-elected directors are **Olivia Gonzales**, Sterling Title & Abstract Company of Taos; **Randell Owensby**, Elliott & Waldron Title & Abstract Company; **Lowell Stephens**, Pioneer Abstract & Title Company, and **Nick Nail**, First American Title Company. **Eva Cornelius**, Torrance County Title Company, and **Charles F. Headen**, Gallup Title Company, continue as NMLTA directors.

Bowling Addresses Carolina Convention

ALTA Title Insurance and Underwriters Section Chairman **Marvin C. Bowling, Jr.**, Lawyers Title Insurance Corporation, appeared as a three-time speaker at the North Carolina Land Title Association convention held on Pawleys Island, South Carolina. **Bowling** presented an ALTA update followed by a commentary on "Modern Financial Techniques." His final program participation was in a panel discussion entitled, "Insured Closings."

Other convention discussion topics and

North Carolina Land Title Association 1985-1986 officers pictured above are, from left, Hunter Meacham, Jr., immediate past president; Joseph Parker, Jr., president; Patrick McNeely, vice president; John Noblitt, secretary; and Alfred Gardner, treasurer.

In the photograph at left, ALTA Chairman, Abstracters and Title Insurance Agents Section John Cathey, The Bryan County Abstract Company, congratulates incoming New Mexico Land Title Association President Michael L. Smith, Guardian Abstract & Title Company. As shown in the other photograph, officers of NMLTA are, from left, Kevin Peterman, Rio Grande Title Company, Inc., immediate past president; James W. Cabbell, Cabbell Abstract & Title Company, vice president; Walter S. Duran, New Mexico Title Company, president-elect, and Michael L. Smith.

speakers were: "Easements and Other Related Problems," **Monica Kalo**, professor, North Carolina Central University School of Law, and "Future Advances Lending in North Carolina and Title Insurance Coverage and Mechanics Liens," **Edmund T. Urban**, SAFECO Title Insurance Company.

Other participants in the "Insured Closings" panel discussion were, **Marshall Hartsfield**, Esquire, with Poyner, Geraghty, Hartsfield & Townsfield; **Jerry Miller**, First Union Corporation; and **William B. Pittman**, First Title Insurance Company and National Title Insurance Agency.

Newly-elected officers are, **Joseph M. Parker, Jr.**, Lawyers Title of North Carolina, Inc., president; **Patrick M. McNeely**, Jefferson-Pilot Title Insurance Company, vice president; **John H. Noblitt**, Chicago Title Insurance Company, secretary; and **T. Alfred Gardner**, National Title Insurance Agency, Inc., treasurer.

Illinois Land Title Association officers and members are, front row, from left, Joseph Tolson, immediate past president; Thomas Cooney, second vice president; Ann Mennenoh, secretary; John Howe, president; Herbert Schiller, first vice president, and Thaddeus Bond, treasurer. Second row, from left, Richard Babiarz, member; John Swiech, member; Judy Martin, member; Shirley Schiller, member; David Weaver, member; Stat Geer, member; Helen McFeron, director; James Weston, director; Philip Mangiaracina, director; Wylie Fox, director; and Dale Olafson, member.

Iowa Land Title Association officers are, front row, from left, Jack Brown, regional vice president; Wencl Kadrlik, treasurer; Ada Miller, president; Elsie Huber, regional vice president, and Don Conlon, immediate past president. Back row, from left, Don Cook, regional vice president; Tom Brennan, secretary; Mark Goulson, Carol Feller and Darwin Koele, regional vice presidents.

E&O Insurance Major ILTA Topic

The Illinois Land Title Association convention held a Delavan Lake, Wisconsin, included a full day of discussions on errors and omission insurance and claims. Topics and speakers were, "Errors and Omissions Insurance," **John McNutt**, Lawyers Title Insurance Corporation, and **R. J. Cantrell**, Title Pac, Inc.-Escrow Pac; "Claims-Judgments," **Michael C. Poper**, attorney, Michael C. Poper Law Office; "Claims-Forgeries," **James A. Campion**, attorney, Holmstrom & Green, and "Claims-Policy Liabilities," **Lawrence Sulzbacher**, Chicago Title Insurance Company. These speakers also participated in a panel discussion entitled, "E & O Insurance and Claims," moderated by **Herbert J. Schiller**, Northern Land Title Corporation.

The full-day business session included an "ALTA Report" by ALTA President **Jack Rattikin, Jr.**, Rattikin Title Company; three presentations entitled, "Foreign Interest Real Property Tax Act Withholding Statute and Regulations," by **Guerino J. Turano**, Chicago Title Insurance Company; "Marketing Your Product," by **Thomas J. Higgins**, retired title insurance agent, and "Pension and Retirement Plans for the Title Industry," by **Charles A. Ferris** of Dean, Witter & Reynolds.

Following the business session, newly-elected ILTA president, **John J. Howe**, Commonwealth Land Title Insurance Company, Chicago, presided as auctioneer for an ILTA auction.

Other newly-elected officers are, **Schiller**, first vice president, and **Thomas D. Cooney**, McHenry County Title Company, second vice president.

Thaddeus M. Bond, Mid America Title Company, was re-elected treasurer and **Ann B. Mennenoh**, H. B. Wilkinson Company, was re-elected to her sixth term as ILTA secretary.

Convention activities closed following the presentation of a lifetime honorary membership to ILTA past president **Joseph Glick**, Chicago Title.

Ada Miller New President in Iowa

ALTA President **Jack Rattikin, Jr.**, in his third consecutive appearance as ALTA representative, was leadoff speaker at the eighty-third Iowa Land Title Association convention in Williamsburg.

The afternoon of the opening day, ILTA abstracting and standards committee members presented an optional session dedicated to answering abstracting-related questions submitted prior to the convention.

The remainder of the program featured presentations entitled, "Liens Affecting Real Estate," by Chief District Judge **Richard J. Vipond,** and "Rights of Parties Having an Interest in a Foreclosure Proceeding," by **William Huemoeller,** extension management specialist, Dubuque, and **Charles W. McManigal,** attorney, Mason City. Also on the agenda were the annual reports of the treasurer, the secretary, the legislative committee and the planning and liaison committee.

Honorary ILTA memberships were presented to the following abstracter retirees: **Joyce Wiltse, Emma Gogelis, Austin Andrews, Elizabeth** and **Stewart A. Hall, William R. Scott,** and **Phillip J. Brennan.**

Officers for the 1985-1986 term are **Ada Miller,** Butler County Abstract Company, president, and **Don Cook,** Security Title & Abstract, Inc., president-elect. Newly elected regional vice presidents for the 1985-1987 term are **Elsie Huber,** Day Abstract Company; **Mark Goulson,** Winneshiek Title & Abstract Company, and **Darwin Koele,** The Sioux Abstract Company.

Regional vice presidents completing their 1984-1986 term are **Jack Brown,** Worth County Abstract Company, Inc.; **Sid Ramey,** People's Abstract Company, and **Carol L. Feller,** The Title Guaranty Company. **Thomas J. Brennan,** Sedgwick-Brennan Abstract Company, and **Wencl Kadrlik,** Butler County Abstract Company, continue as secretary and treasurer, respectively.

Also present at the convention as honored guests were neighboring state title association presidents, **James Hicklin,** Jaspar County Title Company Inc., Missouri; **Raymond Kintz,** Ziebach County Abstract Company, South Dakota, and **Steven Tierney,** Chicago Title Insurance Company, Minnesota.

ILTA Secretary **Thomas Brennan**'s evaluation of the three-day event: "It was the general consensus of all in attendance that this was one of the finest conventions ever held by the Iowa Land Title Association."

Papazickos Awarded Continental Scholarship

Frank B. Glover, president, American Title Insurance Company, Miami, Florida, presents George C. Papazickos, center, with a Continental Corporation scholarship from the parent company. American Title Senior Vice President and General Counsel Chris Papazickos, father of the scholarship winner, is pictured at right. The four-year scholarship is presented annually by the Continental Corporation to scholastically outstanding children of employees of the parent company and its affiliates. Selection is made by the National Merit Scholarship Corporation on a basis of test results nationwide. A 1985 high school graduate, George Papazickos is enrolled at Duke University in electrical engineering.

Alleghany Acquires Chicago Title

Alleghany Corporation and Lincoln National Corporation have jointly announced the $128 million purchase of Chicago Title and Trust Company and its principal subsidiary, Chicago Title Insurance Company, by Alleghany. Chicago Title has more than 160 offices and 3,600 policy-issuing agents throughout the nation and conducts a general trust business in Illinois. Lincoln National was the previous owner of the Chicago companies.

Chicago Title and Trust assets under management totaled approximately $2 billion as of December 31, 1984. The company owns assets of $610 million and reported 1984 revenues of $342.8 million, pre-tax operating income of $35.7 million and net income of $20.3 million.

Alleghany operations include fabricated steel products and asset management. Corporate headquarters are in New York City.

Commenting on the acquisition, Alleghany Chairman F. M. Kirby said, "We expect this fine, well-managed company, clearly one of the leaders in its industry, to realize a highly satisfactory return on Alleghany's investment for a long time to come."

Chicago Title and Trust President and Chicago Title Insurance Chairman Richard P. Toft remains in those positions. He said Alleghany has "emphasized management continuity and has given every indication that it wanted to acquire a company fully capable of being autonomous." He presently serves on the ALTA Executive Committee as Finance Committee chairman.

Richard L. Pollay continues as president of Chicago Title Insurance. He is an ALTA governor.

CTIC Officers Remain

Chicago Title Insurance President Richard L. Pollay, left, and Chicago Title & Trust President and Chicago Title Insurance Chairman Richard P. Toft retain their respective offices following acquisition of the company by Alleghany Corporation.

Members of Congress Meet Constituents From Title Industry at ALTA Reception

ALTA members talked with members of Congress and others at the Association's Federal Reception on Capitol Hill in June. Shown in the photographs on the opposite page are attendees identified as follows:

Top, left, enjoying the raw bar buffet are Congressmen Dean Gallo (R-New Jersey), left, and James Saxton (R-New Jersey). Top, right, are Congressmen Dan Schaefer (R-Colorado), left, and Ken Kramer (R-Colorado).

Middle, left, from left, ALTA Legislative Assistant Linda Purdue talks with Congressman Richard Shelby (D-Alabama) and his press secretary, Marsha Lefkovitz. Middle, right, from left, Title Industry Political Action Committee Chairman Roger Bell, The Security Abstract & Title Company; Earl Harper, Southern Abstract Company; LeRoy Jackson, administrative assistant to Representative Wes Watkins (D-Oklahoma); and 1984-85 Oklahoma Land Title Association President Owen Harper, Southern Abstract Company.

Bottom, left, from left, are Congressman Eldon Rudd (R-Arizona) being welcomed by ALTA Executive Vice President Mike Goodin and ALTA President Jack Rattikin, Rattikin Title Company. Bottom, right, from left, Representative Gus Yatron (D-Pennsylvania) with Goodin and Rattikin.

Deficit Opposed By ALTA, League

ALTA/U.S. League of Savings Institutions Liaison Committee members at their June meeting reviewed a national grassroots campaign designed to persuade Congress and the Administration that the American people want their elected officials to reduce governmental deficit spending.

The proposed campaign was developed by the U.S. League and would include newspaper ads, radio spots, point-of purchase materials, posters and a national student essay contest.

Also concerning deficit spending, ALTA and the U.S. League are members of the Bi-Partisan Budget Coalition, which has contacted each member of Congress requesting prompt legislative action regarding the federal deficit. Following up on this effort, both groups agreed to urge members of their respective associations to write their congressional delegations concerning deficit spending.

ALTA representatives at the meeting also expressed the position in the financial services deregulation issue that banks, bank holding companies and savings and loan service corporations should not be permitted to own a title insurance agency or underwriter. Such an arrangement would be anti-competitive and would not serve the consumer well, the ALTA group said.

U.S. representatives expressed their position on this issue, stating that many savings and loans would prefer to remain home mortgage specialists and that such expansionary ventures were dictated by the marketplace.

Also on the agenda was the U.S. League's report on the status of the savings and loan business, described as in sound condition—particularly the federally chartered institutions. Based on mid-year statistics, the League projected record 1985 earnings for savings and loan institutions.

In other developments, the U.S. League representatives expressed appreciation to ALTA for its support in providing title insurance on adjustable rate mortgages. The League estimates that more than half the mortgages committed in 1985 will be ARMs.

The committee also expressed a favorable view on legislation to clarify the ambiguous language of the bank bribery provisions of the Crime Control Act.

ALTA Liaison Committee members are, Chairman Connie Wimer, president, Iowa Title Company, Des Moines; Hugh A. Brodkey, vice president and associate general counsel, Chicago Title Insurance Company, Chicago, Illinois; William D. Klimback, executive vice president, southern California operations, Ticor Title Insurance Company of California, Los Angeles; James W. Robinson, consultant, American Title Insurance Company, Miami, Florida; and Stuart Wylde, president, The Abstract and Title Company, La Grande, Oregon.

ALTA Governor Albert Riggs, president, SAFECO Title Insurance Company of Maryland, Baltimore, is ALTA Board advisor to the committee.


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ALTA Members Talk with Dignitaries at Federal Reception

Additional photographs from the ALTA Federal Reception held in June on Capitol Hill show the following dignitaries.

Top, left, from left, Congresswoman Bobbi Fiedler (R-California); Peter Miller, Ticor Title Insurance Company; Joseph Mascari, SAFECO Title Insurance Company; and Erich Everbach, Ticor Title. Top, right, Federal Election Commissioner Joan Aikens (left) is welcomed by ALTA President Jack Rattikin, Jr., Rattikin Title Company.

Middle, left, from left, ALTA Title Insurance and Underwriters Section Chairman Marvin Bowling, Lawyers Title Insurance Corporation and Don Massey, Gray & Company, confer with Congressman Hamilton Fish (R-New York). Middle, right, at left, Congressman Robert Borski (D-Pennsylvania) is greeted by Joseph Burke, Commonwealth Land Title Insurance Company.

Bottom, left, ALTA Government Affairs Committee Chairman C. J. McConville, Title Insurance Company of Minnesota, left, talks with Congressman Bruce Vento (D-Minnesota). Bottom, right, from left, District of Columbia Land Title Association President Ann Bridges, Chicago Title Insurance Company; Congressman Steny Hoyer (D-Maryland); ALTA Executive Vice President Mike Goodin, and ALTA President Rattikin.

Recruiters Sign Up New ALTA Members

Published in this issue of *Title News* are the names of new members of ALTA, who are welcomed into the Association, and the existing members who recruited them in the 1985 ALTA Membership Round-Up.

All the new arrivals have become members since the 1984 ALTA Annual Convention.

Each new member and an employee, or a new member and spouse, will receive a $50 credit on their registration fees for the 1985 ALTA Annual Convention and will be invited to the Convention ALTA President's Breakfast on October 7.

Recruiters identified on the back of a member's application as recommending membership to that person, and spouse, also will be invited to the President's Breakfast.

A recruiter also will become a member of the ALTA President's Club and will be eligible, depending on number of new members signed up, for one of three Convention prize drawings.

Additional new members and recruiters will be listed in future issues of the magazine. Questions about Membership Round-Up may be directed to Senior Vice President William J. McAuliffe, Jr., in the ALTA Washington office.

New ALTA Members

Active

Alabama
Autauga Abstract Co., Inc., Prattville, (Bruce S. Bobo, Lauderdale Abstract Company, Florence)

Arkansas
Forrest City Abstract Co., Inc., Forrest City

Connecticut
Colonial Title Company, Inc., Easton, (Thomas Pearson, Security Title and Guaranty Co., Stamford)

Indiana
Action Title, Inc., Martinsville

Iowa
Delaware County Abstract Company, Inc., Manchester, (Joyce L. Wiltse, former owner)

Security Abstract Company, Iowa City, (F.H. Leonard, Hardin County Abstract Co., Eldora)

Fremont County Title Co., Sidney, (Stewart A. Hall, Hall Abstract Co., Sidney)

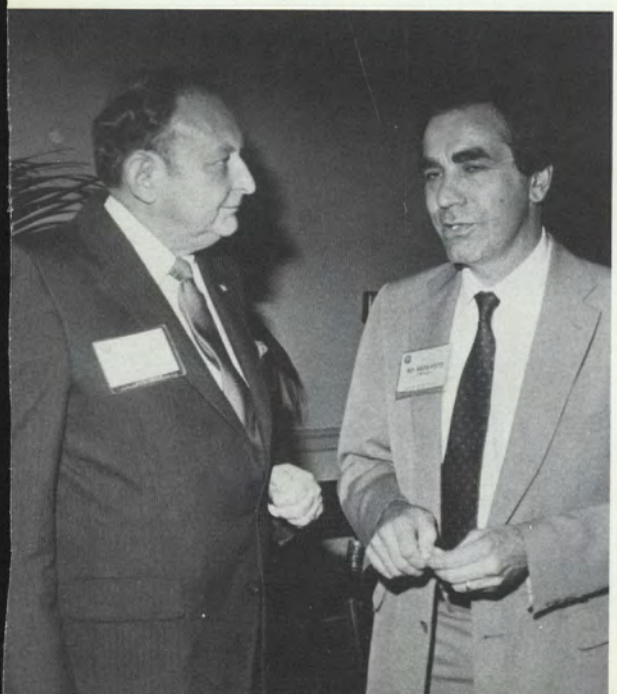
Louisiana
Greater Louisiana Title Insurance Co., Monroe, (Claudius Mayo, Mayo Land Title Co. Inc., Lake Charles)

James K. McCay, A Professional Law Corporation, Baton Rouge, (J.H. Boos, First American Title Insurance Co., Plantation, FL)

Michigan
St. Joseph County Abstract Office, Inc., Centreville, (Joseph W. Yogus, Sr., former owner)

Minnesota
Wright Title Guarantee Co., Buffalo, (A.L. Winczewski, Jr., Chicago Title Insurance Co., Edina)


ERICH
EVERBACH



Missouri
Arcadia Valley Abstract Co., Inc., Ironton

Lawrence County Title Company, Inc., Mt. Vernon

Nebraska
Platte Valley Abstract Title Co., Scottsbluff

New Hampshire
Accurate Title Corp. (ATCO), Bedford

Landmark Title, Inc., Manchester, (Malcolm Morris, Stewart Title Guaranty Company, Houston, TX)

New Jersey
James V. Loughman, Morristown, (Richard J. Lutz, Rockaway)

New Mexico
Dona Ana Title Company, Las Cruces, (Robert Flores, Las Cruces Abstract & Title Co., Las Cruces)

New York
LTIC Assoc., Inc., New York

Lex Terrae Ltd., New York

North Carolina
SAFECO Title of North Carolina, Inc., Charlotte

Ohio
Olde Reliable Title Agency, Inc., Cleveland, (Jack Rattikin, Jr., Rattikin Title Co., Fort Worth, TX)

Oklahoma
Albright Abstract & Title Guaranty Company, Newkirk

Oregon
Rogue Land Title Company, Medford, (Jack McGirr, Oregon Land Title Association)

Title Insurance & Escrow Services, Inc., Eugene, (Jack McGirr, Oregon Land Title Association)

Pennsylvania
Chelsea Title & Abstract Co. of Pennsylvania, Inc., Trevose, (William J. McAuliffe, Jr., American Land Title Association, Washington, DC)

County Abstract Co., Ridley Park

D.J. Malatesta Associates, Inc., Philadelphia, (William Funk, Chelsea Title & Abstract Co. of Pennsylvania, Inc., Trevose)

PAMICO Abstract Co., Blue Bell, (William J. McAuliffe, Jr., American Land Title Association, Washington, DC)

Pennsylvania Abstract Co., Morrisville

Texas
(All were recruited by ALTA President Jack Rattikin, Jr., Rattikin Title Company, Fort Worth)

USLIFE Title Agency, Decatur

Southwest Abstract Company, Inc., Del Rio

Tarrant Title Co., Fort Worth

Reliance Title Company, Houston

Flowers-McDowell Abstract Co., Lockhart

Title Escrow Services, Inc., Plano

Pacific Title Company, Plano

Plano Title Company, Plano

Utah
Professional Title Services, Price

Washington
MacDougall Title Company, Spokane, (George A. Finney, Title Insurance Co. of Minnesota, Seattle)

Skamania County Title Company, Inc., Stevenson, (Steve D. Matthews, Land Title of Cowlitz County, Inc., Longview)

Wisconsin
St. Croix Valley Title Services, Inc., River Falls, (Roger Bevers, St. Croix Abstract Co., Hudson)

Wyoming
Sagebrush Land Title Services, Douglas

Security Title Agency, Inc., Casper, (Marcia Case, Sagebrush Land Title, Douglas)

Associate Members

California
Gary York, Los Angeles, (Ray E. Sweat, Ticor Title Insurance Co., Los Angeles)

David W. Cartwright, Los Angeles, (Robert J. Irvin, Steel Hector & Davis, Miami, FL)

Illinois
Robert E. Ellis, Chicago, (Robert C. Bates, Chicago Title Insurance Company, Kansas City, MO)

Maryland
I. John Ritterpusch, Silver Spring

Massachusetts
Harold Pilskaln, Jr., Edgartown

Michigan
John G. Cameron, Jr., Grand Rapids

Benham R. Wrigley, Jr., Grand Rapids, (Gerard Knorr, First American Title Insurance Co., Troy)

Missouri
Edward E. Sterling, Kansas City

New Hampshire
Mark W. Vaughn, Manchester, (Steven Johnson, Ticor Title Insurance Company, Boston, MA)

New Jersey
Guy C. Bosetti, Newark, (John McVey, Esq., Lancy, Scult and Ryan, Phoenix, AZ)

Pennsylvania
Carol A. Eckert, Philadelphia

Texas
Roland M. Chamberlin, Houston

Billie J. Ellis, Jr., Fort Worth, (Robert Irvin, Steel Hector & Davis, Miami, FL)

Mark Fehrs Haukohl, Houston

M.C. McLain, Austin, (James P. McAndrews, Benesch, Friedlander, Coplan & Aronoff, Cleveland, OH)

René Pilcher, Plano, (Bob Philo, Title Resources Guaranty Company, Plano)

Charles R. Snakard, Dallas, (Earl A. Berry, Jr., Locke, Purnell, Boren, Laney & Neely, Dallas)

Virginia
Stephen R. Romine, Richmond

Washington
Stephen A. Crary, Seattle, (Richard D. Bonesteel, Seafirst Mortgage Corp., Seattle)

Wisconsin
William L. McCown, Milwaukee

Member Emeritus

Stephen D. Daley, Glen Ellyn, IL

NAIC Committee Chairman Swift Dies

Robert E. Swift, chairman of the ALTA Liaison Committee with the National Association of Insurance Commissioners and vice president-government regulations for Title Insurance Company of Minnesota, died July 26 after suffering a heart attack. He was 58.

A graduate of the University of Minnesota Law School, he joined Minnesota Title in 1954 as an examiner and escrow officer. Before being promoted to vice president-government regulations, he was regional vice president for the company's midwest region.

Survivors include his wife, Jeanne; three sons and two daughters.

SEMINAR—continued from page 9

Registration checks made payable to American Land Title Association may be sent to ALTA Vice President-Pubic Affairs Gary L. Garrity in the organization's office, Suite 705, 1828 L Street, N.W., Washington, D.C. 20036.

Complimentary shuttle van service is available between the hotel and the airport.

Education Committee members assigned to a subcommittee responsible for developing the October meeting and other ALTA regional seminars in the western part of the nation are Subcommittee Chairman Wallace E. Buchanan, president, Western States Title Company of Summitt; Charles E. Luczynski, vice president, Nebraska Title and Abstract Company; Timothy J. McFarlane, vice president and manager, Nebraska Land Title and Abstract Company; and P. C. Templeton, president, First American Title Company of New Mexico.

Other committee members are Chairman Carleton L. Hubbard, Jr., president, Stewart Title of Glenwood Springs, Inc.; Vice Chairman Mary C. Feindt, president, Charlevoix Abstract & Engineering Co.; Bill Thurman, president, Gracy Title Company; and Philip B. Wert, manager, Johnson Abstract Company.

ALTA Governor Cara L. Detring, vice president, St. Francois County Abstract Company, serves as Board of Governors advisor to the committee.

AUTOMATION—continued from page 11

that work successfully. This means fewer vendors to talk with but intensive consideration because of available software, hardware configurations and cost.

I have been asked why those on ALTA workshop programs keep repeating that software always should be considered before hardware. In response, let me urge you to never purchase a system for the sole reason that you are familiar with the name of the hardware manufacturer. If the software doesn't work properly, the hardware won't either. It's as simple as that. So, please, *always* look at the software first. This point cannot be overemphasized.

Basically, the principle for operating title plants around the country is the same—searching the property and general (individual name) indices and producing our reports. This simple assumption becomes very complex when considering the variations in how this is done.

In the property index, for example:

- Can the system accommodate an unplatted piece of property by the same method you now use, or will you need to drastically alter your plant to meet the requirements of the software developer?
- Can you search for a plat without knowing the exact spelling?
- Can you search a range of lots?
- Does the software contain editing features to determine if the parcel actually exists?
- Can a document be posted to a range of lots and blocks, or even to an entire plat, without having to make an individual entry to each lot affected by the document?

In the general index:

- Is it strictly alphabetic, Soundex (phoenetic), or both?
- Can a summary of name matches or "hits" be made so you initially don't have to look at each one?
- Can the same information be posted to different names with relative ease?
- Can you enter and search a name as an individual or company?
- Will it do a nickname search?

And, in general:

- Can the data be verified and, if so, is it done before or during the posting to the database?
- Can you selectively verify certain fields and not others?
- Do the operators virtually have to be programmers in order to be able to operate the equipment?
- Can you search either the property or general index for specific document types?
- Can you search either index back to a specific date?

- Are there security features that allow only certain operators access to certain functions?
- How fast does it retrieve information when the database grows?
- Can the terminal perform other functions while printing takes place?
- Is the printout understandable?
- What is the expected life of the disk drive until it is full, given the projected volume of data to be entered?
- Can other software—such as word processing, accounting and escrow—be run at the same time on the same hardware?
- And on . . . and on . . . and on.

The result from these never-ending questions must be a net saving or a net profit. Typically, title company managers think in terms of reduced personnel time, which usually is the largest cost item, and this saving alone often justifies the price of the system. But there are other benefits.

A system certainly will slow down, if not virtually stop, the increase in office space needed to store records.

If data is entered and verified, it eliminates mis-postings and—if searchers can rapidly cross check information retrieved for a report—some potential for claims will be eliminated.

By "backing up" the system properly and storing the tapes off site, a complete copy of the information is on hand; when this is done, only the equipment needs to be insured.

Reports can be sent to branches and remote sites by telephone, improving efficiency and reducing delivery costs.

An automated title plant generally creates an impression of speed, efficiency and accuracy in the minds of customers, providing a marketing asset for title insurance and abstracts.

By having information instantly accessible, it is possible to develop special reports for sale to lenders, brokers, appraisers, attorneys and even competitors.

Once you have decided to "kick some tires," there is no better place to start than the Vendors Automation Library developed by the ALTA Abstracter-Agent Section Land Title Systems Committee. For the nominal sum of $5.00 per category, you can receive vendor information in the areas of title plant maintenance, preparing title policies, general accounting and closing document preparation.

Your order entitles you to one year of any update material received for the category or categories requested. Address orders to Vendor Information Library, American Land Title Association, Suite 705, 1828 L Street, N.W., Washington, D.C. 20036.

VALUATION—continued from page 12

ploy. To learn this, he looks at his own organization: what strengths can he use, and what weakness must he overcome? One strategy may be to use his strengths in another area through acquisition; a second strategy may be to close a gap or overcome a weakness through the purchase of another organization that may possess what is needed.

A buyer may determine that he needs a more balanced market position or a bigger market share. He may be looking to reduce certain risks within his organization. He may need production expertise or automation know-how. These goals are normally translatable into expected bottom line dollars and, when the buyer divides those dollars by his required rate of return, he has calculated a value for the investment he is prepared to make.

The required rate of return will vary with the risk-taking tendencies of those that control the decision to invest. They will determine both the value of the investment to the buyer, and the offering price, based on their perceptions of what their investors demand of them.

Self-Test for Your Risk-Taking Tendencies

Imagine for a moment that Uncle Sam stands before you with this huge carnival wheel, a wheel of chance. There are numbers all around the wheel. The numbers run from 1000 to 1200. Uncle Sam promises to pay the winner whatever amount comes up after a spin of the wheel.

To receive the amount that comes up on the wheel, you must outbid all your competitors for this right. It is a blind auction, you have to submit your one and only offer in writing:

*MY BID IS $*_____

The standard measure of the return is net income before interest and taxes. This figure can be compared from investment to investment quite easily without being complicated by different amounts of borrowing or different tax categories. The depreciation deduction is often eliminated in comparative reviews in an attempt to isolate cash production (assuming no significant year-to-year variations in the balance sheet). Using this method permits true comparison, for example, of the return on cash investment produced by treasury bills with the return on cash investment from a title agency.

For those businessmen who struggle with Uncle Sam, this figure, "net earnings before interest and taxes," must be adjusted to reflect the expense levels that might be found in a nonowner-operated business.

Let's assume that, last year, Title Company A showed net income before interest and taxes of $50,000. What might such a business be worth? If Company B, a buyer, wanted to earn nine per cent (just like a treasury bill), then the business might be said to be worth $555,555 (50,000/.09). But the title business is riskier than the Treasury, so Company B will be looking for a higher return as a reward for taking higher risk. The level of return Company B seeks is determined by what they need, how badly they need it, and by the risk assumption tendencies of its decision makers. Perhaps it will be 15, 20, or even 30 per cent.

If we were considering a high tech business where incredible profits may be possible, perhaps a return less than nine per cent could be accepted. We have several "high-flyers" on Wall Street to prove that happens. But, in the title business where rewards are not dramatic and risk growing from noncontrollable issues such as national interest rates, demographic trends, unemployment, etc., is high, value is normally lower. Unless the investment in the title entity fills some very specific and special need, the return demanded from such investment is quite high.

The big wheel mentioned in the preceding test (see box) is a representation of any range of possibilities with which we may be faced. For example, the range of numbers may be the projected earnings of your own company or those projected for an acquisition candidate.

Looked at another way, imagine the earnings estimate you are looking at does not range between 1000 and 1200 but between 800 and 1400. In both cases the midpoint is identical at 1100, but the spread is greater in the latter. This wider spread reflects uncertainty or risk, and the price bid, probably would be lower because of it.

Although the concept for measuring risk-taking tendencies may appear simple, developing the best approach for this measurement is complicated by several factors. The decision makers not necessarily spending their own money may be more conservative or more liberal with other people's money. The projected returns are not always well prepared or clear cut. The decision makers may not fully trust the abilities of the researchers to have gathered the correct data. The decision makers may also be influenced by irrelevant facts and fears, etc.

Central Tendency for Test

There can be no "correct" solution to the self-test, but there is a central tendency. Most tested will bid around 1050. That is, they will risk up to 25 per cent of the possible range of outcomes. Those who bid around 1200 are taking a 200 to 1 risk and either are acting ignorantly or highly irrationally. Of course, there may be pressures to win or other factors which cause such a bid, but such a high offer is very unusual. Those who offer around 1000 or lower exhibit extreme conservatism. If their offer is successful, they will win regardless of where the wheel stops. They have ignored competition and will not take a risk. As managers, they usually don't grow with their organizations.

When valuing a title company, understanding risk-taking tendencies of all the parties is vitally important information.

This same phenomenon is displayed every day on Wall Street. Some say, "I think IBM's prospects aren't so good so I'll sell."

At that same moment someone is saying, "Gee, I think IBM's prospects are bright, so I'll buy."

No one can explain when that is to happen. Despite all the investment research and all the analysis, nobody can forecast the phenomenon of someone saying "that's enough risk for me" and someone else saying "that's an attractive investment for me." It happens every day; new prices are being set every few minutes. What this does show, is that buyer objectives really control prices.

Valuation of a title company is being set by these same "rules." The buyer says "IBM title company is worth so much to me. I'll take a risk at this price level." The buyer sets the price.

Establishing Value

What does the buyer look for when establishing a value for a company that meets his basic needs? His process can be compared to the valuing of a piece of jewelry. First, he makes certain that he is dealing with a reputable outfit. Is he in the right store? In comparison with a title company, the market served is of primary importance. Is it sound, stable, growing, or is it an environment endangered by poor demographics, ecology problems, or inexplicable conduct by competition? Where does that market stand among the alternatives he faces?

Next, he examines the piece of jewelry to the best of his ability. He looks for its size, shape and glitter. In comparison with a title company, a buyer looks at its marketing, production and administrative activities, at its financial history, and at the chemistry between managements.

Finally, before making an offer on an expensive piece of jewelry, a buyer may seek an independent appraisal. So, too, with a title operation. The judgment of a professional specialist is normally sought to provide an independent and objective valuation.

In each examination a buyer carries out, tests and methods derived from his individual experience are employed. In a review of marketing, he may need to understand how the title company gets and keeps clients. He needs to evaluate the transferability of the accounts in order to understand the risks connected with that key aspect of the business. In his review of production, he may want to get a feel for the competence of searchers and examiners, he may need to know how work flows and at what rate. Automation will be discussed. As he looks at management, he may need to know how employees are motivated, how they are compensated and about their benefits in order to determine whether his policies will be acceptable without costly modifications.

Buyers will look at historical financial statements with keen interest. They want to see the results of the seller's management, the past "success" of this firm. Obviously, they will have to pay more for good trends and strong position than if the trend was poor and the position weak. But, the basis upon which they determine the value of the seller's firm is not what the seller has done, but what they expect *they* can do, given the risks and opportunities they see. A buyer will establish a value for a seller's firm and also will set negotiating strategies including beginning prices, concessions, and final targets. The seller's objective is to wind up with a fair price as close as possible to the value the buyer sees in the firm.

There has been no discussion here regarding what should be sold; how value should be translated into a payment program; contingent payouts; tax traps; representations to the buyer; employment agreements, or any other of the myriad details that accompany a well thought-through acquisition transaction. These are all important to every transaction, but valuation is the first step in the process of selling a company, a primary issue which must be resolved and not mingled with or confused by other issues.

The sale of a business may be the most important transaction in the careers of both buyer and seller. The work demands the utmost care and attention be given to each facet of the process.

EDUCATION—continued from page 15

(6) Education must have a value to the attendees or they will not return and negative feedback will prevent others from attending.
(7) Cliques inside an association will do more to destroy education then anything else. Remember, lead, follow or get out of the way.
(8) The willingness of owners and managers to serve on committees and not necessarily be the chairperson becomes a very critical issue in education. Younger people need your guidance, but do not stymie them with the fact that you have done it all.
(9) No one gets paid for their endeavors and, therefore, everyone feels they have given up something for the association.
(10) The association itself must market and sell the educational product. Your educational endeavor should always be mentioned in your association publications or newsletter.
(11) Education is a very good way for the membership to see their dues dollars at work.

Not all of the things that I have mentioned will work for everyone. But, over the years, I have seen many associations try and fail. Maybe this will save you some of the failures.

SPILLED MILK—continued from page 17

deposition, they claimed that she was coerced, given wrong facts, and more or less threatened into signing the new documentation. Accusations were made that the banker was trying to secure a credit after the fact.

Where the Error Was And the Results

The banker believed he had an excellent working relationship with his customer and that his efforts were appreciated. Clearly, he was too accommodating. He witnessed and notarized documents regarding his own problem loan. Another loan officer should have been present to witness and notarize. Better still, the signing should have taken place at the office of the bank's attorney.

The bank got paid at the foreclosure. But after four and a half years of depositions, discoveries, and legal maneuvering, the case was settled out of court for an amount about equal to that of the restaurant loan.

The bank would have been better off had it charged off the restaurant loan because out-of-pocket legal expenses exceeded the original credit. Sometimes, spilled milk is not a credit loss but legal costs plus untold unproductive and costly hours spent by bank personnel.

JUDICIARY—continued from page 31

Granting of Option—Governmental Authority

Silver v. City of Rossville, 253 Ga. 13; 315 SE2d 898 (1984)

Facts: The City of Rossville granted Silver a lease and option to purchase property which the city owned. It was provided that the property was to be used exclusively for manufacturing and/or commercial purposes. The property was operated for business purposes by Silver and his lessee, but had been vacant for several years prior to Silver's attempt to exercise the option. The city refused the tender of the option price and Silver sued for specific performance. Silver now appeals from the grant of the city's motion for summary judgment in the trial court.

Issue: Does the granting of an option to purchase by one city council, binding a later one, interfere with free legislation by municipal government?

Held: The city relies on OCGA § 36-30-3 which provides that, "one council may not, by an ordinance, bind itself or its successors so as to prevent free legislation in matters of municipal government". The city also cites the holding in *Aven v. Steiner Cancer Hospital, 189 Ga. 126 (5 SE2d 356) (1939)*, which held that a 35-year lease given by the city, where the rental payments were an agreement by the lessee to furnish medical treatment to the poor, was void as interfering with the functions of the municipal government.

Silver argues that the lease and option are authorized by OCGA § 36-30-2 which provides that, "The council or other governing body of a municipal corporation has discretion in the management and disposition of its property. Where such discretion is exercised in good faith, equity will not interfere therewith." The court agrees with Silver's position and questions whether *Aven* is still good law. They are also able to distinguish *Aven* on its facts from the present case on the ground that in *Aven* the municipality had bargained away its municipal charter function of providing medical care to the poor.

The court did remand the case back to the lower court on the issue of consideration due to the failure to use the property continuously for manufacturing and/or commercial purposes.

Irregular Trust Deed Sale—Full Tender

Arnolds Management Corporation v. Eischen, 205 Cal.Rptr. 15; 158 Cal. App.3 575 (1984)

Beneficiaries under a second deed of trust brought an action to set aside a trustee's deed following foreclosure of a senior deed of trust based on alleged defects in the notice of sale. Defendants demurrer to the complaint, based on plaintiff's failure to allege that they were prepared to tender a full amount of the senior obligation, was sustained without leave to amend even though it was alleged that plaintiff's had offered to reinstate the senior on terms more favorable to the senior beneficiaries.

Plaintiff contended that the rule requiring an offer to pay the full amount of the obligation as a prerequisite to setting aside a trustee's sale for irregularities in the sale notice or procedure was applicable only to trustors and not to junior beneficiaries who were not personally responsible for the senior obligation. The court, after reviewing the statutory scheme allowing juniors to cure defaults in senior obligations and add the amount to the amount owed the junior, concluded that juniors must also allege full tender of the senior

obligation as an essential element of a cause of action based upon irregularities in the sale procedure.

The court further found that the tender must be one of full performance and must be unconditional to be valid. Thus, plaintiff's offer of terms more favorable to the senior beneficiaries did not meet the amount due under the senior obligation.

Inverse Condemnation—Nuisance

Androwski v. Ole McDonald's Farms, Inc., 447 So. 2d 1121 (La. App. 1st. C. 1984)

Facts: Adjoining landowners brought suit against corporation alleging that sewage oxidation ponds constructed on corporation property constituted an inverse servitude of usage on plaintiff's adjacent property because of regulations which prohibited the construction of oxidation ponds within 200 feet of any residence.

Issue: Whether the owners of property contiguous to an estate on which oxidation ponds were constructed have proven their property thereby suffered a reduction in fair market value or that the pond constitutes a nuisance for which an award should be made.

Held: Since the plaintiff failed to sustain their burden of proving damages from existence of sewage oxidation ponds, the trial court was correct in finding that such ponds did not create an inverse servitude on the adjoining landowner's property.

Joint Tenancy—Guardianship—Right to Partition Ward's Property

Prickett v. Moore, 684 P.2d 1191, 55 Okla. B.A.J. 1629 (Okla. 1984)

Facts: Guardian filed action to partition real estate held in joint tenancy by his mother (ward) and her granddaughter. Trial court granted judgment allowing partition. Court of appeals reversed.

Issue: Where a joint tenancy estate is held by an incompetent ward with one who is competent, may the authority to sever the estate by partition and sale be conferred on the guardian in the guardianship case without giving advance notice to the competent tenant and affording her an opportunity to oppose the termination of the joint ownership regime.

Held: In the guardianship proceedings, the guardian sought authority to bring suit to partition the joint tenancy estate on the basis that the house on the premises was vacant and deteriorating. An *ex parte* order was issued, on the same day as the application, authorizing the initiation of a partition suit. No notice was given to the granddaughter regarding the application and order. The guardian then brought suit to partition and the trial court granted a partition decree on the pleadings and ordered the joint estate severed by sale. The granddaughter appealed, contending the guardian handled the estate to serve his own personal interest and not that of the ward. The court of appeals reversed the trial court on the basis that the guardian cannot vary or change the form of ownership in which the ward's property is held so as to effect an alteration in the legal succession thereto where the guardian is an heir of the ward and would stand to inherit as a result of the change, unless partition is necessary for the maintenance of an incompetent ward. The appellate court also held that the decision to seek partition is an exercise of personal discretion which the guardian may not make in the absence of a showing of necessity for maintenance of the ward.

The Supreme Court vacated the court of appeals decision on the basis that that court's reasoning was too narrow. The Supreme Court stated that the granddaughter

Continued on page 53

Names in the News

Robert H. Morton has been elected chairman and chief executive officer of Western Title Insurance Company. He succeeds his father, the late **Thomas G. Morton.**

An active member of ALTA, **Morton** has served on the Board of Governors and the Title Insurance and Underwriters Section Executive Committee.

He also is active in the California Land Title Association, and is the 1985 recipient of the newly established "CLTA Title Person of the Year" award in recognition of his 39 years of outstanding service to the industry.

Also in the Hayward office of Western Title, **John W. Goings** and **Bruce G. Sergent** have been promoted to the newly created position of executive vice president; and, **Heather Walker** and **Joseph C. Creamer, Jr.**, have been elected secretary and treasurer, respectively.

Billy F. Vaughn has been elected president, western and southern division, Ticor Title Insurance Company and Ticor Title Insurance Company of California. His offices are in Dallas, Texas. A former ALTA governor, **Vaughn** is an active member of ALTA and the Texas Land Title Association.

Bernard M. Rifkin has been elected senior vice president for Ticor Title Insurance and continues as senior counsel for Ticor Title Insurance and first vice president of Ticor Title Guarantee, New York. **Rifkin** is a member of the ALTA Judiciary and Title Insurance Forms Committees. Also with Ticor Title Insurance, **Wayne G. Cave**, San Francisco, California, and **James N. Laichas**, Los Angeles, California, have been elected senior vice president. **Cave** is a member of the California Land Title Association Forms and Practices Committee.

Lawyers Title Insurance Corporation announces the election of **James L. Boren, Jr.**, as senior vice president and mid-south states manager and **Thomas A. Griffin, Jr.**, as vice president and mid-south states assistant manager, Memphis, Tennessee. **Boren** is a past president of ALTA and the Tennessee Land Title Association, and serves as chairman of the ALTA ByLaws Committee. **Griffin** is a past president of TLTA and has served as chairman of the ALTA Land Title Systems Committee.

Lawyers Title also announced the following appointments: **Carl F. Ferguson**, senior vice president-operations, Indianapolis, Indiana;

Morton

Goings

Sergent

Walker

Creamer

Vaughn

Rifkin

Cave

Laichas

Boren

Griffin

Grabski

Donald E. Grabski, vice president and multi-states manager, Chicago; **Robert D. Dacey**, vice president and New York state manager, White Plains, New York; **Lynda A. Cooke**, assistant vice president-administration, Richmond, Virginia; **Susan E. Reid**, senior title attorney, Atlanta, Georgia; **Alexander E. Conlyn**, associate counsel-claims, Richmond; **Sheila M. Hurley**, branch counsel, Boston; and **Ronald S. Critzer**, branch manager, Roanoke, Virginia.

Edward A. Blaty has been elected chairman of the board and chief executive officer and **Louis A. Balocca** has been elected president of Continental Land Title Company, Universal City, California, a subsidiary of Lawyers Title. **Blaty** is a past president of the Michigan Land Title Association. Continental Title also announces the retirement of **Stephen F. Birch**, president and chief executive officer, and **Edgar A. Lawton**, executive vice president.

Lawrence M. White, regional vice president of First American Title Insurance Company, Irvine, California, has been elected to the concern's board of directors. Also with First American, **Robert W. Duff** has been promoted to senior vice president, Santa Ana, California; **George M. Cooley** has been appointed executive vice president, Houston, Texas; and **Gary A. Wangberg** has been named president and county manager, San Francisco, California.

Other First American appointments include **Daniel C. Barber**, vice president and northern California three-county (Alpine, Amador and Calaveras) manager; **John F. Prenovost**, vice president and Tulare County manager, Visalia, California; and **Rick Wilson**, vice president and Monterey County manager, Salinas, California.

First American Trust Company (an affiliate of First American Title) has announced the appointments of **G. Andrew Bailard**, vice president of marketing and sales, Santa Ana, California; and **Wayne A. Condict**, vice president-counsel, Irvine, California.

Michael S. Charles, has been promoted to vice president and branch manager, White Plains, New York and **Jonathan A. Richards** has been promoted to assistant regional counsel of First American Title Insurance Company of New York.

Robert B. Scherer, a trustee of the ALTA Group Insurance Trust, has been elected senior vice president and chief financial officer of Chicago Title and Trust Company and Chicago Title Insurance Company, Chicago. Also in the Chicago office, **Daniel R. Joyce** has been elected vice president, institutional marketing and sales; and **Frederick W. Engimann** has been elected vice president, trust investment division.

James William Bray has been appointed resident vice president in the Fort Lauderdale, Florida, office of CTIC and **Mark G. Moroney**, Waukegan, Illinois, and **Bruce N. Johnson**, Geneva, Illinois, have been elected vice president.

The following individuals have been promoted at Chicago Title Insurance Company: **Harry "Stat" Geer**, resident vice president and manager-Illinois agency operations, Champaign, Illinois; **Dale S. Lipke**, resident vice president, Tacoma, Washington; **Robert J. Johnson**, assistant vice president and county manager, Champaign, Illinois; **Mark E. Waninger**, assistant vice president, Peoria, Illinois; **Lawrence J. Fineberg**, associate regional counsel, Roseland, New Jersey; **Nancy Newman Brown**, assistant regional counsel-claims, Philadelphia, Pennsylvania; **Lindley A. Braiser**, assistant regional counsel and regional underwriter, Dallas, Texas; **Robert W. Cook**, eastern Pennsylvania area manager, Philadelphia; **Larry A. Green**, branch manager, Roseland, New Jersey; **Sharon A. Sbordon**, title operations officer and residential production manager, Boston; **John P. Douds**, title officer, Arlington Heights, Illinois; and **Kathy Wilkinson**, assistant title officer, Chicago.

The board of directors of the Title Insurance Company of Minnesota announced the election of **John B. Stoltzfus** to vice president and associate counsel, Minneapolis, Minnesota. **Barbara H. Aiken**, Atlanta, Georgia; **Tari M. Pekar**, Cleveland, Ohio; and **Dean**


Dacey


Cooke


Conlyn


Critzer


Blaty


Balocca


White


Duff


Cooley


Wangberg


Barber


Prenovost


Wilson


Bailard


Condict


Scherer

R. Youngberg, Anoka County, have been elected vice president in their respective offices.

Other TICM appointments include **William L. Robinson, Jr.**, Chicago, and **Catherine E. Bailey**, Hennepin/Ramsey, Illinois, as associate counsel and assistant vice president; **Linda F. Hawthorne**, Conroe, Texas; **William L. Rohrbaugh**, Las Vegas, Nevada; **Marion L. Engberg**, Twin Cities, Minnesota; **Kenneth F. Holt**, Dallas, Texas; **Dan G. Vance**, Indianapolis, Indiana; and **Lyle Tollefsrud**, Minneapolis, Minnesota, assistant vice president; **Christa L. Fallin**, southeast regional national accounts executive, Atlanta, Georgia; and **Donna L. Moore**, Houston national accounts executive, Houston, Texas.

Stephen Emery, Jr., has been named vice president and assistant counsel in the Pittsburgh, Pennsylvania, office of Commonwealth Land Title Insurance Company. Also with Commonwealth, **Andrea Rive** has been named vice president, Riverhead, New York; and **Larry P. Deal**, Orlando, Florida; **Peter A. Campbell**, Philadelphia, Pennsylvania; and **Nathaniel D. Yingling, Jr.**, Pittsburgh, Pennsylvania, have been named assistant vice president.

David J. Holl and **Carla Mark** have been appointed counsel-region I north and assistant counsel, respectively, in Commonwealth's Philadelphia, Pennsylvania, office. **Mark** serves on the legislative and judicial committee of the Pennsylvania Land Title Association. **Annette M. Mollick** has been named account executive for the company's Orlando, Florida, operation.

Fidelity National Title Insurance Company announced the following appointments in its California offices: **Anthony D. Payne**, county manager and vice president, Riverside; **Mark Stipkovich**, Ventura, and **Ken Johnson**, Santa Ana, account manager; **Bill Boll**, manager-sales and marketing, Riverside; **Joan Pierce**, manager-escrow department, Redwood City; **Sherry Tinquist**, San Bernardino; **Julie Dickman** and **Roberta Gehre**, Redwood City; and **Bill Thomsen**, Riverside, sales representative; **Dena Mirante**, escrow officer, Walnut Creek; **Roxanne Danielson**, Ventura; and **Dave Turnbow**, San Diego, title officer; **Cheryl Rossi**, title searcher-examiner, San Bernardino; and **Dina Ross**, title secretary, Ventura.

Wayne Sauls has joined Fidelity National Title Insurance Company's Lender Insurance Network (LINK) as Orange County, California, director. Also with LINK, **Kristi Lucas** has been promoted to escrow technician in the Walnut Creek, California, office.

JUDICIARY—continued from page 50

was clearly a necessary party to the proceeding due to the fact her status as a joint tenant with right of survivorship was sought to be adversely affected. The court also stated that a guardian who seeks authority to sell a joint-tenancy asset of his ward is required by the minimum standards of due process to give due notice to the other joint tenant whose interest is to be affected and the court must afford that party a hearing. The court noted that any election by an incompetent ward to sever the joint-tenancy estate is void. Therefore, a guardian cannot exercise that election on behalf of the ward via partition in the absence of judicial authority validly given. The court reversed and remanded the case holding that (1) unlike a competent joint tenant, neither an incompetent joint tenant nor his guardian may effectively elect to partition a joint estate; (2) the trial court, sitting in guardianship, (a) may authorize the guardian to bring suit to partition upon a showing of necessity therefore and, if partition be authorized, the court (b) may then determine, whether, upon sale, the joint tenancy should be terminated or ordered continued in the proceeds of the sale; and (3) due process commands that before the guardian is given authority to bring a suit either to partition in kind or by sale, or otherwise to terminate the joint estate in the land or in the proceeds, the other tenant or tenants be afforded both adequate notice and meaningful opportunity to oppose the proposed action and the severance of their interest in the property.

(To be continued in the November-December, 1985, *Title News*)

Joyce

Engimann

Bray

Moroney

Johnson

Geer

Lipke

Fineberg

Stoltzfus

Aiken

Pekar

Youngberg

Emery

Rive

Deal

Mollick

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TICOR TITLE

Calendar of Meetings

September 7-10
Indiana Land Title Association
Holiday Inn North
Indianapolis, Indiana

September 8-10
Ohio Land Title Association
Quaker Square Hilton
Akron, Ohio

September 8-11
New York Land Title Association
Sands Hotel & Casino
Atlantic City, New Jersey

September 11-13
Dixie Land Title Association
J. Wheeler State Park
Rogersville, Alabama

September 12-14
North Dakota Land Title Association
Radisson Hotel
Fargo, North Dakota

September 12-14
Wisconsin Land Title Association
The Abbey
Lake Geneva, Wisconsin

September 12-15
Missouri Land Title Association
University Plaza
Springfield, Missouri

September 18-20
Nebraska Land Title Association
Cornhusker Hotel
Lincoln, Nebraska

September 18-21
Washington Land Title Association
Cavanaugh's Inn
Spokane, Washington

October 6-9
ALTA Annual Convention
Hyatt Regency
San Antonio, Texas

November 7-9
Arizona Land Title Association
Radisson Resort Hotel
Scottsdale, Arizona

November 20-24
Florida Land Title Association
Don CeSar Beach Resort
St. Petersburg, Florida

December 4
Louisiana Land Title Association
Iberville Hotel
New Orleans, Louisiana

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

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