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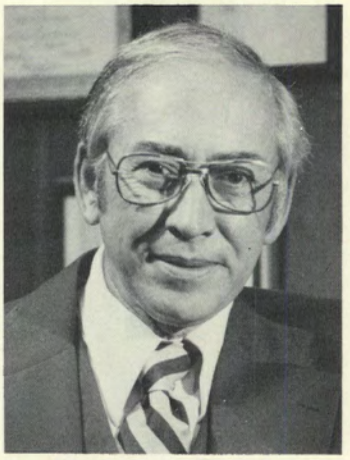

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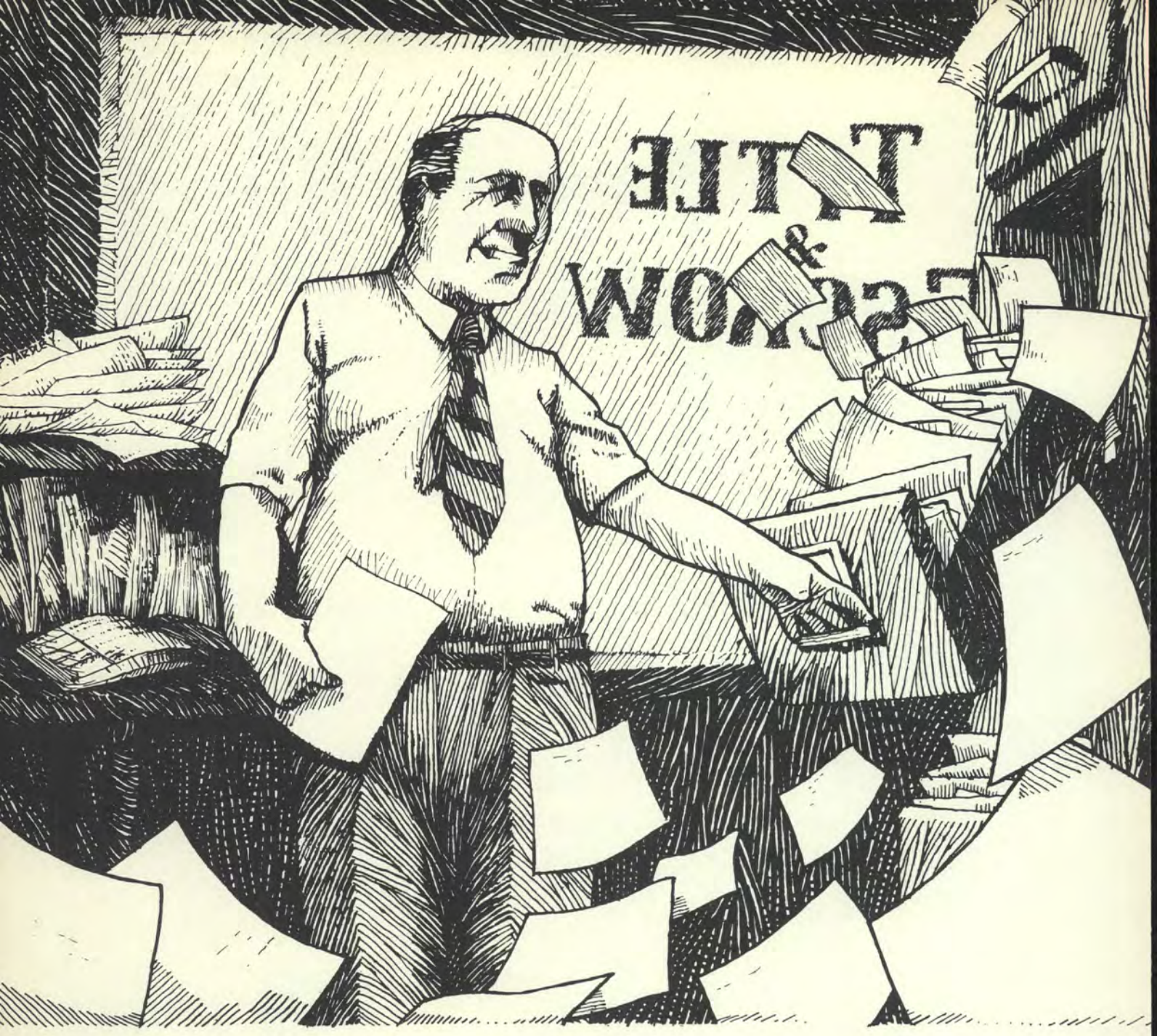

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Title News

Contents

Volume 64, Number 5

Front Cover

Gerald L. Ippel, second from right, president of Ticor Title Insurance Company, Los Angeles, California, is congratulated following his installation as 1985-86 ALTA president during the Association's Annual Convention in October by John R. Cathey, president of The Bryan County Abstract Company, Durant, Oklahoma, who was elected to the office of ALTA president-elect. Leading the two ALTA sections during the 1985-86 year are Marvin C. Bowling, Jr., left, executive vice president—law and corporate affairs, Lawyers Title Insurance Corporation, Richmond, Virginia, Title Insurance and Underwriters Section chairman, and Charles O. Hon, III, right, president, The Title Guaranty & Trust Company of Chattanooga, Tennessee, Abstracters and Title Insurance Agents Section chairman. Names of the ALTA officers and governors installed at the Convention are listed below on this page.

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A Message from the Immediate Past President

It is now the last of September, 1985, and I know that in about one week my term as president of the ALTA will be completed. This article will not reach your hands until after the Annual Convention, but in any event this will be my last official article in *Title News* as an officer (whether present or past).

Upon receipt of this message, Jerry Ippel will be your president, and I truly hope that you will give him the support and time that you so graciously gave me. You have all made me look good.

As my term of office draws to a close, what better sentiment can I use than one so beautifully expressed by fifty million Frenchmen, "Je vous aime—plus que hier, moins que demain!" Literally translated it means, "I love you—more than yesterday, less than tomorrow!"

F. D. Sherman has written a poem that pretty well expresses how I feel just now:

It is always a joy in life to find,
At every turn in the road,
A strong arm of the comrade kind,
To help me onward with my load.

Since I have no gold to give,
'Tis love must make amends;
It is my prayer that while I live,
God shall make me worthy of my friends.

In review, I cannot recall upon to make many earth-shaking decisions, or any sacrifices beyond the call of duty, but I want you all to know how very proud I have been to serve as your president for the year. This opportunity to serve, which you gave me four years ago, has meant more to me than anything else I have ever had. At times, the job was extremely demanding, and the out-of-office time was tremendous, but these times were far outweighed by the pleasures which I received in trying to do my small part to help improve the image of the land title industry in these United States.

It is my feeling that we have had an extremely active and successful year. My theme this year has been, "Unity Through Involvement." Once given the opportunity, you people happily volunteered to give of your time and energies to the work of our Association. Through your involvement, we now have an extremely unified Association, and I can see a tremendous increase in Association pride and morale. With your help, ALTA has initiated many new projects, some of which I hope will be carried on through the years to come. Many old projects were completed and, therefore, added to our list of accomplishments.

Another of my objectives this year was to help make the industry more knowledgeable through continuing title education and through an understanding of the problems which face our industry today. The ALTA Regional Seminars have been an outstanding success due to the fact that many of you agreed to send others within your company to these "roundtable discussions." The Land Title Institute was beefed up to some extent, and the word was passed around that this correspondence course was one of the finest means that a national association could have for helping educate the day-to-day title and abstract company employee. Many errors were made but, through these errors, I feel that we will adjust and improve through the years to come.

Your *Abstracter-Agent Newsletter, ALTA UpDate, Capital Comment* and *Title News* have constantly kept you up to date on our community activities, our Congressional and judicial involvement and the necessity for participation by all title people in the affairs of their regional or state associations and ALTA. I do not attempt to sum up these activities in this article, for to do so would be a complete news magazine of its own. I hope that each of you have kept abreast of our work this last year, because I am extremely proud of the work which the officers, board members and staff did. Without them, the year would have been a total loss, and I am not vain enough to think that the success that we enjoyed was totally due to my efforts. Your officers, directors and staff are dedicated men and women and, as long as ALTA has representatives such as these, our industry has nothing to fear.

I give up this office with great reluctance, but I have no fear for the future of ALTA. Your future presidents will be dedicated individuals who want only to do their best in behalf of our industry. Jerry Ippel is presently your elected president, and since you have asked him to serve you, it is my hope that you will give of your time and talents any time you should be called upon.

I can't thank you enough for this opportunity, for it has taught me to love my fellow title man and title woman, and the title industry as a whole. Your community and your profession needs you. Give them all you have, and you will never regret it.

Please continue to be involved, and let's all rally and strive to make the ALTA the most outstanding association in the U.S.

God bless you all!

Jack Rattikin Jr.

Jack Rattikin, Jr.

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The FTC Proceedings: A Review

By John C. Christie, Jr.

On a quiet afternoon late in the fall of 1983, I received an unexpected telephone call from Bill McAuliffe at the American Land Title Association. Bill informed me that he had just been contacted by a staff attorney from the Federal Trade Commission (FTC), who wanted to drop by his office to visit about the title insurance business and to look at any printed material that might exist on the subject. Bill simply promised to consider the request and called me to discuss what we ought to do.

With that phone call from the FTC, the land title industry first learned of the decision to once more investigate its business. Two previous Federal Trade Commission investigations in the 1970s had caused a number of title companies to search their files and produce vast numbers of documents but those fishing expeditions had ended without any further action. Now, for the third time in less than a decade, this agency was going to poke around and this time the cost and burden of their curiosity was going to be many times greater. A little more than one year later, the FTC formally filed an action and this complaint was followed within 24 hours by the first of 13 treble damage class action complaints. That litigation and the attendant financial burden which it has imposed continue to exist to the time of this convention.

There is an old adage frequently attributed to Abe Lincoln, the lawyer—when you don't have the law argue the facts, when you don't have the facts argue the law, and when you have neither yell and scream. In this case—I submit—*both* the law *and* the facts are on our side and we have yelled and screamed as well. And with good reason. For I believe that all of these legal proceedings have significant consequences far beyond the six underwriters who arbitrarily became the front men—far beyond those dozens of other title underwriters and agents who have had to open their files and be interviewed—and far beyond the land title industry itself.

This is the story of a federal agency on a self-appointed mission to try to narrow the ambit of a Congressional determination that the insurance business was best left to the regulation of the several states. This mission was driven by an institutional bias that state-authorized rating bureaus were bad and that state regulation was ineffective. Once determined to file a complaint, the agency appeared totally incapable of dealing with the issue in an equitable and sensible fashion. Once filed, the proceeding became a direct federal challenge to the legitimacy of state insurance regulation of this industry and the activities of these rating bureaus. This is my theme—and I believe you will understand why I feel this way as I return to the story in a chronological fashion from the beginning down to the present.

John C. Christie, Jr., is managing partner of the Washington, D.C., office of Bell, Boyd & Lloyd, having joined that law firm upon graduation from Brown University and Harvard Law School. Since that time, he has specialized in antitrust and other types of general corporate litigation. He has participated in every significant antitrust case involving the title industry since 1971. This article is based upon a commentary presented during the 1985 ALTA Annual Convention.

Focus in 13 States

As the early stages of the FTC investigation got under way, it became apparent that FTC staff lawyers were reviewing the activities of title insurance rating bureaus in 13 states—Arizona, Connecticut, Idaho, Louisiana, Montana, New Jersey, New Mexico, New York, Ohio, Oregon, Pennsylvania, Wisconsin and Wyoming. It was not all of the activities of those rating bureaus that was of interest to the FTC—only those activities that related to the filing of rates for search and examination activities and settlement activities performed by title insurers and their agents in the course of issuing a title insurance policy. Characterizing these activities as "price-fixing," the staff was contending that those bureaus and their members had violated the federal antitrust laws even though in admitted compliance with the insurance laws and regulations of each of the 13 states.

This challenge raises two principal issues involving well-known exceptions from the general application of the federal antitrust laws—the McCarran-Ferguson Act and the state action doctrine. The McCarran Act provides a statutory exemption from the federal antitrust laws generally when (1) the activity in issue constitutes the "business of insurance," and when (2) that activity is "regulated by state law."[1] In many cases, including a number involving the title industry, the federal courts have held that there is "regulation by state law" in McCarran Act terms when state insurance *legislation* generally proscribes, permits or otherwise regulates the conduct in question and authorizes enforcement through a program of administrative supervision.[2] The existence of this amount of "regulation by state law" was never questioned by the FTC staff.[3]

Instead, the staff's principal claim was that search and examination were not the "business of insurance" as that term is used in the

McCarran Act. At the time the investigation began through the filing of the complaint, this issue was the centerpiece of their focus.

In ascertaining whether any given activity constitutes the "business of insurance" in this context, you have to start with two well-established premises. First, the question is a matter of federal law for federal courts to decide—no state insurance statute or administrative judgment can alone be determinative.[4] Second, not all activities of an insurance company are necessarily the "business of insurance"—or, as the Supreme Court has said, it is the "business of insurance" that is potentially exempt, not "all the activities of insurance companies."[5]

The most recent Supreme Court decision to discuss this issue—*Union Labor Life Ins. Co.* v. *Pireno*[6]—articulated three criteria for ascertaining the meaning of the "business of insurance" in a McCarran Act context:

(1) whether the practice has the effect of transferring or spreading a policyholder's risk;
(2) whether the practice is an integral part of the policy relationship between the insurer and the insured;
(3) whether the practice is limited to entities in the insurance industry.[7]

In the *Pireno* case, the court found that none of these criteria was present and therefore did not discuss the significance of one or another of these criteria as among and between them, nor what would occur if one or more but less than all was present. Justice Brennan simply said "none of these criteria is necessarily determinative in itself. . . ."[8]

In capsule form, the FTC staff argued that search and examination activities of title insurers and their agents prior to the issuance of a title insurance policy met none of the *Pireno* criteria.[9] They claimed that search and examination "merely" identify title defects and do not act to spread any risk. It is asserted that this process occurs separate from the "insurer-insured relationship" because search and examination has "historically" been operated independently as a separate business and title insurers have only endeavored to save costs by doing it "in-house" through what economists call vertical integration. Finally, it was contended that the third *Pireno* criteria is absent because the title insurers have endeavored to keep noninsurance persons performing these services from their "price-fixing" activities. In making these arguments, the FTC staff relied heavily on *United States* v. *Title Insurance Rating Bureau of Arizona* ("TIRBA"), which determined that escrow services performed by title insurers in Arizona were not the "business of insurance."[10] They argued that this holding established the law with respect to settlement activity everywhere and logically extended applied to search and examination as well.

FTC Found Incorrect

We believe that the FTC staff is wrong on the facts as well as on the law. We believe that search and examination are a necessary prerequisite to the establishment of a title insurance relationship between an insurer and the insured and is the very essence of underwriting in a title insurance context. No title insurer can even begin to formulate, much less issue, a title policy without an appraisal of the risks to be insured. No such appraisal can occur without undertaking a search and examination of title-related records, inasmuch as there is no reliable way to determine on a strictly actuarial or statistical basis whether a proposed insured will have the interest in real estate that is to be insured under the policy. As a result, search and examination in this context determine what it is that the insurer is insuring and shape the terms of the policy. Every federal court that has considered the issue has determined that title search and examination performed by title insurers as a condition precedent to the issuance of a policy are the business of insurance and we do not believe that the *Pireno* case is inconsistent.[11] In *Commander Leasing Co.* v. *Transamerica Title Ins. Co.*, the Tenth Circuit expressly refused to "fragment" this process, concluding that "[e]xamination of evidence of title preparatory to the issuance of a title insurance policy would certainly seem to fall easily" into the "business of insurance" category.[12]

The second principal issue raised by the FTC investigation relates to the state action doctrine. This doctrine is a judicially created limitation on the scope of the federal antitrust laws premised on the assumption that Congress did not intend to extend those laws to prohibit all conduct which is proper under state law. In the *Midcal* case in 1980,[13] the Supreme Court articulated two tests for determining the application of this doctrine to the activities of private parties—first that the challenged restraint be one "clearly articulated and affirmatively expressed as state policy" and second that this policy be "actively supervised" by the state itself.[14]

At the time the FTC launched its investigation, a number of courts, including the *TIRBA* court, had held that the first *Midcal* test was not met unless a state *compelled* the conduct at issue.[15] Because the state title insurance rate legislation in these 13 states had only *authorized* participation in rate bureaus, the FTC staff considered the doctrine not to apply regardless of the degree of supervision that had occurred. However, during the early stage of their investigation, the Supreme Court granted certiorari on this very issue in a case involving rate bureaus of motor carriers and we urged that at a minimum the FTC should await the court's decision before filing any case against the title insurance industry. The motor carrier case—known as *Southern Motor Carriers*[16]—had been fully briefed and argued on the compulsion issue before the FTC acted in our case, and therefore a decision was imminent and any delay would presumably have been inconsequential.

Through the spring and summer of last year, these debates with the FTC staff continued. During that time, they requested a variety of documents from a large number of underwriters who were members of these bureaus—documents related to prices, pricing, marketing plans and financial reports and information. They wandered across the country interviewing employees of underwriters, agents, attorney agents, approved attorneys and state insurance departments.

Staff Recommendation Emerges

At mid-year of 1984, we were told that the staff intended to recommend to the director of the Bureau of Competition of the FTC—the ultimate staff boss—that an action be filed complaining of the activities of 13 rating bureaus and that it be filed against six underwriters—Ticor, Chicago, SAFECO, First American, Lawyers and Stewart. The only answer we have ever received as to why these six were chosen among all of the members of these rating bureaus was simply that it was "administratively convenient" to try the case against a small number of defendants.

Our attention then began to focus on the director of the Bureau of Competition—Tim Muris. In a series of meetings with him, representatives of the six underwriters advanced the legal arguments I have already referred to, together with a number of equitable considerations which further supported an administrative decision not to file a complaint. The equitable considerations included the fact that the rating bureau activity being challenged had been accepted for years as entirely proper, was authorized by state insurance laws, was approved by state insurance departments, was engaged in openly and in good faith and had been specifically upheld in the courts. Secondly, any commission action was certainly to be followed by private treble damage actions which would pose a particularly severe financial threat to this smaller line of insurance and its existing policyholders. Finally, during the course of the investigation all of the six companies—and a number of others—had withdrawn from the rating bureaus. This occurred not as any acknowledgment of wrongdoing but simply by a judgment that continued participation in these bureaus was not warranted if the commission's action could

be avoided. Having so withdrawn, we urged that the commission had accomplished its objective—and in a manner more cost-effective than litigation.

Although Muris has subsequently publicly conceded that our arguments had merit,[17] he nonetheless passed on the staff recommendations to the five Federal Trade Commissioners, who are the ultimate arbiters as to whether or not a complaint is to be issued. We made separate trips to the office of each of the five commissioners, advancing all of these legal and equitable arguments and again urging that they at least defer the vote pending the Supreme Court's decision in *Southern Motor Carriers* so that the scope of the state action doctrine would be more clearly resolved.

Not only were these arguments rejected but the commissioners, for reasons never explained, appeared determined to move the matter to an immediate vote. Within just a few weeks of the time the staff recommendation first crossed their desks, they voted unanimously to issue a complaint. On January 7, 1985, that complaint was issued, together with a barrage of propaganda obviously designed to try to sell their case in the media and in Congress. The complaint charged the six underwriters with having violated the FTC Act by participating in rate-making with respect to search and examination activity and settlement activity through rate bureaus. It asked for an injunction against such activity in the future.[18]

As we had predicted, within 24 hours the first treble damage case was filed parroting the commission complaint, and within a short period of time there were 12 more. These cases all claimed treble damages on behalf of classes alleged to consist of all of the purchasers of these services from the six companies in the 13 states. These cases were originally filed in federal courts in Pennsylvania, New York and California but were eventually consolidated for pretrial purposes before Judge Donald VanArtsdalen sitting in Philadelphia in the Eastern District of Pennsylvania.[19]

Court Decides in Southern Motor Carriers

These respective legal proceedings were barely under way when indeed on March 27—as we had also predicted—the Supreme Court decided the *Southern Motor Carriers* case.[20] In an opinion written by Justice Powell, the court held that the first prong of the *Midcal* state action test could be satisfied without compelling private parties to participate in the challenged conduct. If a state simply authorizes participation in rate bureaus, that alone is sufficient. In so ruling, Justice Powell made some very positive remarks about the public benefits that flow from rating bureau activity. He noted that rate bureaus facilitate the administration of the rate regulatory process since "by reducing the number of rate proposals, collective rate-making permits the regulatory agency to consider more carefully each submission."[21] By this decision, in effect, if state authorization exists, the only question left is whether the state has "actively supervised," an issue which had been conceded by the parties in the *Southern Motor Carriers* case itself.

We reacted to these decisions in several ways. In the *FTC* proceeding, we asked both formally and informally that the action be dropped or deferred pending review of the implications of the decision on our case.[22] Our formal request was denied by the administrative law judge to whom the matter was assigned[23] but the staff promised through pretrial discovery to conduct its own review and to consider dropping out some or all of the states. Indeed, since that time, the FTC staff has stated that the evidence to be offered at trial will suggest that the essential controversy between the parties remains in only six states: Arizona, Connecticut, Idaho, Montana, Ohio and Wisconsin.[24]

In the damage court, we urged that all matters, including the class certification issues, be deferred pending the court's resolution of the state action issues. As a result, all discovery has been limited to matters relevant to state action and has focused on the extent to which these states have reviewed the filings of the rating bureaus over these years. In so limiting the issues and structuring the litigation, Judge VanArtsdalen observed that his reading of *Southern Motor Carriers* suggested that it was "possibly dispositive" of the case.[25]

Through the summer of this year and up to the present, the litigation before both the FTC and the treble damage court has been principally taken up with discovery. The FTC subpoenaed all of the six respondents and numbers of third parties for more documents and more information. Our treble damage adversaries did the same, including the service of subpoenas on each of the 13 state rating bureaus and each of the 13 state insurance departments as well. They have announced an intention to take the depositions of representatives of each of the state insurance departments. By the litigation schedule as of the time of this convention, the summary judgment briefing schedule on state action in the damage court and the trial before the FTC's administrative law judge are scheduled to occur later this year.

Federal Legislation Introduced

In addition to the active defense of these legal proceedings, the title insurance industry has taken its case to Congress as well. With the support of ALTA and a number of its members and with the expert assistance of Mark Winter and two Washington lobbyist firms, Gray and Company and Gold & Liebengood, legislation was crafted to spare insurers now and in the future of the risk of treble damage proceedings for simply complying with state law. This legislation was successfully introduced in the House of Representatives on June 6, 1985, by the respected Congressman from New York, Hamilton Fish, who is ranking minority member of the House Judiciary Committee. As of the present, 20 members of the House have signed on as cosponsors and we expect it shortly to be introduced in the Senate with hearings to be scheduled later in the fall.

The legislation is known as H.R. 2684—the "Antitrust Damages Clarification Act of 1985." It provides that no treble damages shall be recoverable with respect to "the establishment or use of any rate . . . filed with a state insurance department or agency or authorized, approved or permitted to become effective pursuant to the insurance laws of that state."[26] The early success of this legislation is encouraging to all of us and deserves your enthusiastic support.

* * *

As of the time of this ALTA Convention, in short form, this is how it happened and where we have been. How is it all best summarized?

First of all, my own assessment is that in the commission and in the damage courts, we are doing very well. The parameters of the case before the FTC have been significantly narrowed and the damage judge has given us a message that he sees in *Southern Motor Carriers* the possible summary end of this case. The real issue remaining in both proceedings is what the proper legal standard for assessing "active supervision" is, and whether that standard has been met here. In effect, that places in issue the track record of the regulators of this industry in each of these states. The discovery developed to date demonstrates, in my opinion, the existence of regular and intensive insurance department scrutiny of the rates filed by the rate bureaus and an impressive, frequent dialogue between the bureaus and the departments concerning those proposed filings.

On the legislative front, as I mentioned, the results are encouraging as well. An increasing number of members of Congress appear to be distressed by the unfair position in which this industry has been left in the wake of the FTC complaint. Moreover, there appears to be widespread concern on Capitol Hill that the

Continued on page 39

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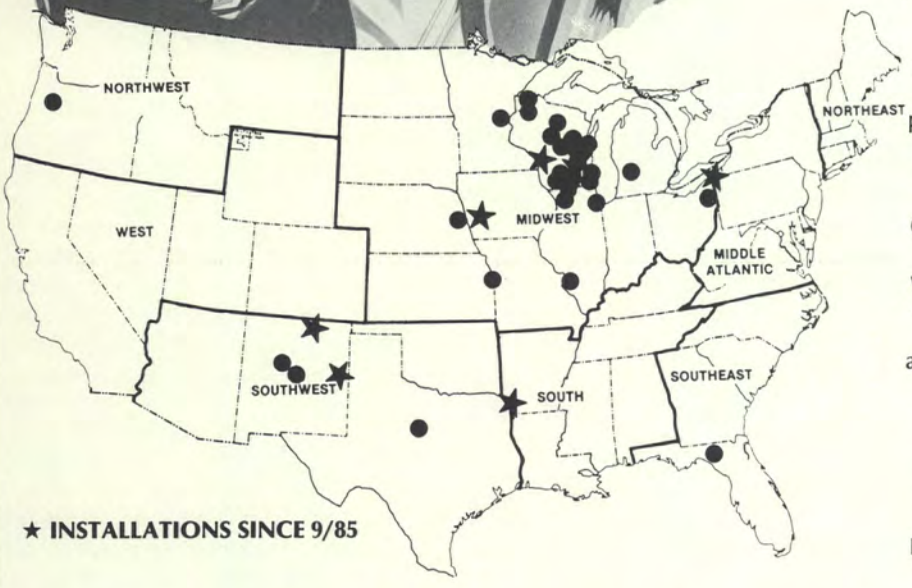

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ALTA Judiciary Committee Report: Part II

Joint Tenancy—Mortgage

Harms v. Sprague, 105 Ill. 2d 215; 473 N.E.² 930 (1983)

Facts: John and William Harms, two elderly brothers, owned their residence in joint tenancy. Charles Sprague contracted to buy another residential tract from Carl and Mary Simmons. The terms of the sale included a cash payment and a promissory note for the balance. John Harms co-signed the note and further secured it by executing a real estate mortgage in favor of the Simmons as to an undivided one-half interest in the property jointly owned with William. William was not advised. The transaction closed June 21, 1981. John Harms then moved to the Sprague home. He died testate on December 10, 1981, leaving his entire estate to Sprague. The Simmons recorded the mortgage December 29, 1981. Delivery was stipulated to have been June 21, 1981. The trial court held that the mortgage severed the joint tenancy, that the undivided one-half interest passed under John's will to Sprague, subject to the mortgage to Simmons. The appellate court reversed, finding that title passed to William free of the mortgage.

Issue: Whether the mortgage from John Harms to Carl and Mary Simmons was a conveyance of title so as to sever the joint tenancy between John and William.

Held: The Illinois Supreme Court has affirmed that the mortgage did not sever the joint tenancy. Illinois has heretofore been classified with respect to mortgages as a combination title/lien state. The court has now adopted a position that the "title" theory is obsolete; that Illinois is now a "lien" state. As a lien, the mortgage did not disturb the unities of time, title, interest and possession. Hence, the joint tenancy was intact and at John's death, William took by right of survivorship and free of liens against John, including Simmons mortgage.

Chairman's Comment: One has the impression that the same outcome might have been reached in this case had the issue been undue influence rather than the joint tenancy/mortgage issue. Mortgagees would be well advised to either require all joint tenants to join in the execution of their mortgages or to take such steps as are necessary to create a tenancy in common. This case may also be of concern in other situations, such as mineral leases or other contractual arrangements relating to the property.

Judgment Lien Vendor's Interest

Fulton v. Duro, 107 Idaho 240, 687 P.2d 1367 (1984)

Facts: Plaintiff obtained a money judgment against defendant which, pursuant to Idaho Code Section 10-1110, upon recordation became a lien upon all real property of the defendant located in the county, not exempt from execution. Defendant at the time was purchasing certain real property under a land sale contract which provided that title would remain in the vendor until the purchase price was paid in full, but the vendee would have the right to possession of the property. A notice containing the names of the contracting parties and the legal description of the property was of record.

Issue: Whether the recorded judgment imposed a lien against the vendee's interest in the contract.

Held: Although noting that at common law a vendee's equitable interest was not subject to execution or judgment liens, the Idaho Court of Appeals concluded that where the contract or notice of the contract is of record, the vendee's interest is included within the meaning of "all real property" in the context of Idaho Code Section 10-1110 against which a recorded judgment imposes a lien.

Judicial Vacation of a Dedicated Street—Constitutionality

*City of Choctaw v. Red Rock Petroleum Company, Inc. 689 P.2d 1286, 55 Okla. B.A.J. 2008 (Okla. App. 1984)*___

Facts: Red Rock Petroleum Co., Inc. (plaintiff) sought to vacate a dedicated street in the

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.

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city of Choctaw, Oklahoma (city). The trial court granted the vacation. City appealed alleging the statutes in Oklahoma allowing vacation of streets are unconstitutional. City contended such legislation is an impermissible delegation of legislative power to the judiciary. City argued that the power to vacate public streets should be exclusively vested in the municipality. City further contended that vacating a dedicated street is on the same order as other well recognized and established municipal legislative functions such as detachment of territory from the municipality, zoning and the general exercise of police power.

Issue: The issue on appeal is the constitutionality of the statutes of Oklahoma regarding vacation of dedicated streets.

Held: The appellate court cited the Oklahoma constitution which expressly vests and reserves superintending control of streets and public ways in the state. The court also emphasized the fact that the applicable statutes distinguishes between the authority to discontinue the use of dedicated streets, without affecting title, and the authority to terminate the property rights in a dedicated way, vesting title in private ownership. The court stated that the authority to discontinue use is vested with the municipality whereas the adjudication of title to real property has long been within the purview of the court's original jurisdiction. The court affirmed the trial court stating there is nothing clearly constitutionally repugnant in a statutory scheme which provides for judicial determination to settle title to a public way.

Jurisdiction Bankruptcy Court

In re Graham, 747 F 2d 1383 (11 CA 1984)

Facts: Chapter seven trustee filed action against debtor and wife to set aside conveyance as fraudulent. Petition filed 2/7/80, suit to set aside conveyance commenced 6/17/80, trial and final judgment setting conveyance aside 12/9/82. Northern Pipeline initially stayed until 10/4/82, continued through 12/31/82. Debtor contends Northern Pipeline stay only intended to apply "to those litigants who relied upon the acts vesting of jurisdiction in the bankruptcy courts." Debtor did not rely upon such jurisdiction, and promptly objected to jurisdiction when Northern Pipeline decision was published.

Issue: Did Supreme Court's stay of its decision in Northern Pipeline bar bankruptcy court from entertaining jurisdiction?

Held: Bankruptcy court's action affirmed. Quoted provision was reason for Northern Pipeline operating prospectively only. Reason for stay was to "afford Congress an opportunity to reconstitute the bankruptcy court . . . *without impairing the interim administration of the bankruptcy laws*." (court's emphasis). Necessity of determining parties' reliance on court's jurisdiction in every case would thwart objective of stay to insure uninterrupted operation.

Lessor—Lessee

Williams v. Reynolds 440 So. 2d 845 (La. App. 2nd C. 1984) March 26, 1984

Facts: Plaintiff leased to the defendant a small tract of land in Caldwell Parish for $35 per month. When defendant failed to pay rent for April and May, plaintiff filed suit seeking past due rent, recognition of his lessor's lien and privilege on defendant's mobile home and eviction of the defendant. The "Brown heirs" intervened claiming to be the true owners and alleged that they had entered into a written lease with the defendants. Browns were true owners and the court denied eviction.

Issue: Whether the trial court erred in allowing defendant to question the title of its lessors, in considering the outcome of a petitory action concerning the subject property.

Held: Under the principle of LSA CC Art. 2681 a person may lease property of which he is not the owner. And, as long as he is in undisturbed possession of the property, the lessee may not contest the lessor's title. Thus, since defendant didn't show any disturbance of their possession, the trial court erred in denying plaintiff's prayer for eviction.

Liability of Lender for Negligent FHA Inspection

Clark v. Grover, 132 Mich. App. 476, 347 NW^2 748 (1984)

Action was brought against a mortgage lender based on a death due to carbon monoxide poisoning. It was alleged that the death was the result of a defective furnace in a home bought with a mortgage guaranteed by FHA. As part of the mortgaging process, the lender had required an inspection of the home, and the inspection report had not noted any furnace defect. The court of appeals reviewed the federal statutes under which the inspection was required and found that the purpose of the inspection was to insure the marketability and value of the home and not to protect the safety of the homeowner. The court held, therefore, that no cause of action was stated against the lending institution. It should be noted that the court distinguished those cases in which the lender was an active participant in the construction of the residence.

Lis Pendens

Arrow Sand and Gravel, Inc. v. Superior Court 204 Cal.Rptr. 295; 157 Cal.App.^{3} 971 (1984)

Arrow secured an indebtedness to real party in interest, Sunburst, by a promissory note and deed of trust on Arrow's property. Arrow subsequently defaulted on the obligation and Sunburst commenced a judicial foreclosure. Arrow answered the complaint asserting certain affirmative defenses as set-offs against its debt. None of the defenses related directly to title or right to possession of the real property secured and Arrow filed no cross complaint. Arrow recorded a *lis pendens* which was sought to be expunged by Sunburst on the basis that the statute restricts entitlement to record the *lis pendens* to those who file complaints or defendants who file cross complaints. Arrow opposed the motion on the basis that the statute violates equal protection guarantees of the California and United States Constitutions.

The court held that to the extent that the statute allowed only defendants filing a cross complaint to record a *lis pendens* and denied that right to owners of real property who were defendants and whose title to the property was at issue in the action, but failed or were unable to file a cross complaint, such defendants were denied equal protection and the statute could not be constitutionally applied to deny the latter class the benefit afforded the former.

Lis Pendens

Burger v. Superior Court of Santa Clara County 199 Cal. Rptr. 277; 151 Cal.App.3d 1013

Facts: Burger acquired two parcels of real estate (the "Lodge" and the "Inn) and agreed in 1977 to sell both parcels to one Gus. In 1978 Gus transferred his interest in the Inn back to Burger, who then leased it back to Gus. In 1979, Gus agreed to lease the Inn to a church and gave the church an option to purchase the Inn, indicating to church that Gus held an option to purchase the Inn from Burger. The church advanced about $83,000 to Gus for repair and remodeling work on the Inn under the terms of the 1979 agreement. The church alleges that Gus diverted some of these funds to construct improvements on the Lodge, bringing an action to recover the funds against Gus, but not Burger, in 1980. The church recorded various *lis pendens* on both properties in 1981, and named Burger as an additional defendant, claiming a constructive trust. The *lis pendens* recited that the object of the action was "to obtain a judgment affecting the title and/or the right to possession of said real property", which are requirements of the California law on *lis pendens* (CCP 409).

Issue: Burger's motion to expunge the *lis pendens* in 1983 was denied, and Burger brought this writ of mandate.

Held: The appellate court ruled that calling an action for money for a constructive trust does not make it so when the elements of a constructive trust are not pleaded, or when present. The church was, in effect, only a lender and the action failed to show an issue of title to or possession of real property. The lis pendens was therefore ordered expunged.

Mechanic Lien—Priority of Lien for Survey Work Vis A Vis the Lien of a Construction Mortgage

Midland Mortgage Company v. Sanders England Investments 682 P.2d 748, 55 Okla. B.A.J. 654 (Okla. 1984)

Facts: Hammond Engineering Company (Hammond) performed surveying work pursuant to an oral agreement in conjunction with the development of realty owned by Sanders England Investments (Sanders). Hammond performed the work between May 14, 1971, and April 28, 1975. On January 15, 1974, the construction lender, Midland Mortgage Company (Midland), filed its mortgage of record. On that same date Midland requested an on-site inspection of the premises to be performed by Hammond. Hammond reported selected tree removal had occurred, grass strippings were being removed and stockpiled

on the property but further certified that no building materials were present and no construction had begun.

Upon subsequent default by Sanders, Midland instituted foreclosure proceedings naming Hammond as a party defendant. Hammond filed a mechanic's and materialman's lien and thereafter crossclaimed seeking to have their lien declared superior to the mortgage. The trial court found Hammond's lien to be superior. The court of appeals reversed, holding the mortgage to be superior.

Issue: The issue on appeal is whether the mechanic lien held by Hammond is superior to the lien of the construction mortgage.

Held: The Supreme Court stated that the applicable mechanic's and materialman's lien statute, 42, O.S. 1981 141, does not require that labor performed for the erection of any building be part of the permanent construction of the building, or that it be continuous or visible to constitute a lienable claim. The court noted that the statute does provide that the performance of labor or the furnishing of materials for the improvement of the land creates a lien which takes preference over all other liens which may attach upon the land after the date of the performance of the first labor on the land. The court vacated the court of appeals decision and affirmed the trial court, holding that the services performed by Hammond constituted an improvement of the realty, and that such services were lienable and the Hammond lien took priority over the mortgage because the first work done on the land preceded the filing of the mortgage.

Insight: This case was a question of first impression. The case expands the list of services which are considered to be lienable in Oklahoma to include surveying work preliminary to actual construction. However, because the surveying was done pursuant to a separate contract with the property owner and not pursuant to a subcontract under the general contract, the survey work, although lienable, apparently would not cause the work to be done under the general contract to prime the construction mortgage. Had the survey work been performed pursuant to a subcontract under the general contract, the lien claims of the general contractor and his subcontractors accrued and accruing could achieve priority over the mortgage lien. (See *American-First Title and Trust Co. v. Ewing, 403 P.2d 488 (Okla. 1965).*)

Mortgage—Counterletter

Succession of Tucker v. Poche 449 So. 2d 1020 (LA 1984) April 2, 1984

Facts: Defendant sold to the decedent property with a counterletter which stated "for convenience only" and that the property actually belonged to defendant. The counterletter was registered in the conveyance office on November 19, 1981 (15 years after letter was written and after the death of Tucker). Tucker and defendant had sold the property to a purchaser who immediately reconveyed the property to Tucker and defendant. Tucker named his widow as executrix of his estate. In his will, Tucker bequeathed "his interest" in the properties to his widow and daughter. Executrix sought a declaratory judgment recognizing the successions half interest in the property and declaring the counterletter null.

Issue: 1) Whether widow as executrix has a right and cause of action to set aside a counterletter made by the decedent; and

2) Whether, as a result of the sale and resale, decedent and defendant became coowners of the property making the counterletter ineffective.

Held: Executrix did have a right and cause of action to set aside the counterletter. The sale and resale effected no change in the ownership of the property and the counterletter was still valid and enforceable. Thus, as between Helen (defendant) and decedent's representatives, the counterletter is fully effective to show that Helen is the sole owner of the contested property even though the public records show title in defendant and deceased.

Mortgages—Due on Sale

Foreclosure of Ruepp 71 N.C. App 146 321 S.E.^{2} 517 (1984)

Facts: Special proceeding in which petitioner seeks to foreclose a deed of trust pursuant to a due-on-sale clause therein. The deed of trust was a standard FNMA/FHLMC instrument. Several months after the recording of the subject deed of trust, a second deed of trust was executed, which went into default and was foreclosed. The purchaser at second trust foreclosure received notice from petitioner that the foreclosure and conveyance to the respondent was an event of default under the first deed of trust and declared the balance due. Respondent refused to pay debt in full and petitioner began this proceeding.

Issue: Would court deny acceleration if due-on-sale clause did not expressly permit second deed of trust?

Held: The clerk and lower court denied the order of foreclosure. The appeals court affirmed stating that foreclosure of a subordinate deed of trust does not activate the due-on-sale clause of the standard FNMA/FHLMC uniform instrument. The clause expressly permitted the type of subordinate lien foreclosed, therefore, the court concluded that the lender impliedly waived the acceleration provisions upon the later exercise of the power of sale contained in the subordinate, second deed of trust.

Mortgage Foreclosure—Deficiency Judgment

Oregon Bank v. Hawkins, 693 P.2d 1321 (1985)

Facts: On November 27, 1981, Economy Self-Storage No. 3, a joint venture comprised of defendants, including appellant Hawkins, borrowed $560,000 from the Oregon Bank to construct a mini storage facility. The loan was evidenced by a note and trust deed. In addition to the storage facility, an apartment was constructed on the property. Hawkins lived in the apartment.

In December, 1982, the joint venture defaulted under the loan. The bank sought judicial foreclosure of the trust deed and asked for a deficiency judgment, claiming the trust deed was a "commercial trust deed" under ORS 86.770. Hawkins claimed that because he lived in the apartment, this was not a commercial trust deed.

Issue: Was the bank entitled to a deficiency judgment against defendant Hawkins?

Held: Under ORS 586.770(4), a commercial trust deed is defined as follows:

> As used in this section, "commercial trust deed" means a trust deed covering real property which, at the time of entry of the decree foreclosing the trust deed, is not occupied by the grantor, the grantor's spouse or the grantor's child as the primary residence of such person.

If a trust deed is a commercial trust deed and if it is foreclosed judicially, the lender is entitled to a deficiency judgment under ORS 86.7770(3).

The appellate court noted that the trial court had concluded that the trust deed was a commercial trust deed and that the residence was merely incidental to the business. The appeals court stated that this fact was not relevant under ORS 86.770(4), but did agree that the trust deed was a commercial trust deed.

The appeals court stated that, in this case, the grantor was a joint venture, and not an individual. The court stated that the legislature clearly intended to exempt *only* individuals from the effect of ORS 86.770(3). As a result, the trust deed was a commercial trust deed.

Mortgage Moratorium

Curry, et al, and Block, et al, v. Secretary of Agriculture, et al 738 F 2d 1556 (11 CA 1984)

The Consolidated Farm and Rural Development Act of 1982 (7 USC 1921 et seq) authorizes the Farmers Home Administration (FmHA) to make loans secured by real property for certain farming purposes.

Section 1981a provides in pertinent part: ". . . the Secretary *may* permit, at the request of the borrower, the deferral of principal and interest on any outstanding loan . . . , and *may* forego foreclosure of any such loan . . . " (emphasis added).

Despite the contention of FmHA that such provisions are discretionary, the court held:

1. The deferral program is mandatory, not optional, and must be implemented by the Department.
2. Existing regulations and practices of FmHA are insufficient.
3. Adequate rules must be formulated to give borrowers notice of the availability of the program at various stages on the loan, including when any delinquency or acceleration notices are given.
4. Substantive rules of eligibility criteria must be promulgated.
5. An opportunity to be heard, and adequate notice of such right, must be provided.

Mortgages—Reconveyances

Wutzke v. Bill Painting Service, Inc. 198 Cal.Rptr.418; 151 Cal.App.3d 36 (1984)

Plaintiff had sold a parcel of real property to Sterling Miller and Joan Miller (Miller) for $65,000, $57,000 of which was evidenced by a note and first deed of trust on the property. The deed of trust form was provided by Miller and, unknown to plaintiff, the designated trustee company was owned by Miller.

One month later, Miller caused a reconveyance to be recorded and, three months later, gave a purported first deed of trust on the

property to defendant, securing payment of a $47,000 note. Miller then defaulted on both notes.

Plaintiff then brought this action for judicial foreclosure, claiming that the reconveyance was a forgery and therefore void *ab initio*, and that defendant's deed of trust was a second. The trial court so found and was upheld on appeal.

Note: There is no indication of whether or not a policy of title insurance was issued on defendant's loan. An insurer should always question a reconveyance or release unrelated to any current transaction. An inquiry in this case would have uncovered the forgery prior to defendant's loan transaction.

Mortgage—Strict Foreclosure

Atlantic Oceanic Kampgrounds, Inc. v. Camden National Bank 473 A2d 884 (Me 1984)

Facts: Plaintiff executed note running in favor of defendant, granting a mortgage on certain property to secure the obligation.

Seven years later defendant commenced a strict foreclosure by serving notice of foreclosure. After the expiration of the one-year period of redemption, defendant sold the property to a third party and retained all proceeds from the sale, with defendant receiving proceeds in excess of the amount secured and the costs of foreclosure.

Issue: Does the mortgagee, upon a strict foreclosure of mortgage, owe to the mortgagor an accounting for the proceeds from the sale of the mortgaged property and any surplus resulting from the sale?

Held: Court holds that after the period of redemption had expired, title became vested in the mortgagee, consequently the mortgagee could retain any and all monies received for the sale of the property and owed an accounting to no one.

Mortgage—Due on Sale

United States Savings Bank vs. Zandol, 689 P.2d 335 (1984)

Facts: The case involved the enforcement of a due-on-sale clause contained in a mortgage. The holder of the first mortgage was United States Savings Bank and the holder of the second mortgage was U.S. Creditcorp. The Zandols, the borrowers, sold the property, which was an apartment house, on contract without obtaining the prior consent of U.S.B. A couple of months later, U.S.B. learned of the sale and asked for an increase in the interest, a service fee, and a change in the maturity date of its mortgage. The Zandols refused to agree to the proposed modification because the maturity date in the modification was 20 months shorter than the maturity of the contract. U.S.B. accelerated the full balance due under the mortgage and commenced the foreclosure proceeding. Subsequent to the commencement of the foreclosure proceeding, the Zandols rescinded the contract with their purchasers.

The due-on-sale clause of the mortgage provided that, upon sale, the mortgage could either declare the entire balance immediately due and payable, or consent to the sale and increase the interest rate of the loan not to exceed 2% per annum.

Issue: The underlying question on appeal was whether the quoted mortgage provision permitted the plaintiff (U.S.B.) to insist, as a condition for its consent to the sale, on a modification of the loan more onerous than that provided in the mortgage.

Held: The court of appeals held that based upon the provision contained in the mortgage, the plaintiff could either accelerate the loan, if there was a sale, or it may consent to the sale within the limitations expressed in the mortgage. If the mortgagee indicated its willingness to consent, the mortgagee could not impose more onerous terms than those stated in the mortgage agreement. Furthermore, if the mortgagors are willing to pay the maximum price expressed in the mortgage in order to obtain the consent, the mortgagee, having elected to consent, must accept those terms and may not then accelerate the loan. The court relied on Oregon Statute O.R.S. 42.230, and provisions of the *Garn-St. Germain Depository Institutions Act of 1982, Section 341 (b)2,* as amended, *12 USCA Section 1701J-3*. "In short, we see no reason why the mortgage should not be held strictly to the language it provided in its printed mortgage form, just as the mortgagor should be. Both the Garn Act and the common law require that result." *689 P.2d at 338*.

Options—Rule Against Perpetuities

Certified Corp. v. GTE Products Corp. 392 Mass. 821 467 N.E.² 1336 (1984)

Facts: The owner of certain property, GTE Products Corporation, leased certain property to a predecessor in title to the plaintiffs, and by a separate, but contemporaneously executed, document granted to the plaintiff an option to purchase the property, which option was based upon the plaintiff's guarantee of payment under the lease. The option documents were executed in 1964, and the option extended for a period of 25 years.

The plaintiff brought the present action seeking a declaration under G.L.c. 231A as to the validity of the option, and the defendant, on appeal, argued that the rule against perpetuity prevented the exercise of the option, and rendered the same *ab initio*. (It is interesting to note that the answers tendered by the defendant did not specifically assert a defense based upon the rule against perpetuities, but the court allowed the defense upon appeal, stating that the answers claimed that the option was invalid and unenforceable, and also included a statement that the complaint failed to state a claim on which relief could be granted).

The plaintiff insisted that the rule against perpetuities was not applicable, because the option did not create any interest in real property.

Issue: The issue was whether the rule against perpetuities would be applied to the option which extended for a period of 25 years, notwithstanding application to the rule in Massachusetts of the "wait and see" doctrine.

Held: The court, after noting that the option was highly integrated with the lease, concluded that the option in fact did create an equitable interest in real estate, and that since it applied by its terms to the successors and assigns of the parties, the rule against perpetuities would apply:

> An option to purchase property which binds the successors and assigns of each party and which includes mutual convenants involving the property, creates a contingent equitable interest in the option holder . . . The condition precedent to the vesting of this interest is the option holder's outstanding decision to exercise the option. . . . On giving proper notice of an election to exercise the option, the option holder or his assignee may compel a conveyance of the property by obtaining specific performance of the option contract. . . . The option thus "imposes an immediate restraint upon alienation of the owner" of the property, for the period during which the option may be exercised . . . Preventing unreasonable long restrictions on the alienability of land is still a viable policy of the rule against perpetuites and warrants its application to options such as the one before us.

The court noted that the option did in fact bind the successors and assigns, and also it provided for the guarantee of payments under a lease, thus showing that the option was highly integrated with the real estate of the defendant, and concluded:

> This is the type of option contract which concerned real estate and . . . is in the form of mutual convenants. It purports to create an absolute right to be exercised within 25 years and imposes an immediate restraint upon alienation by the owner for a like period.

The court, once determining that the option did involve real estate, turned to the question of the rule against perpetuities, and stated:

> Under the common law of this Commonwealth we adhere to the rule that a contingent future interest is void unless "it must vest, if at all, not later than 21 years after some life in being at the creation of the interest" . . . Additionally, the rule has been modified by statute. In relevant part G.L.c. 184A, modifies the rule so as to determine the validity of future interests at the termination of the applicable life estates or lives in being.

The court noted, that the option agreement made no provision for the duration of the interest created under the option to be measured by any life in being at the time of its creation, and concluded, therefore, that the period of perpetuities was 21 years from the execution of the option contract. (It is interesting to note that 21 years after the execution of the option contract would occur in the year 1985, and that the court did not apply a more strict "wait and see" rule in the event that the option was exercised before that year. Rather, the court affirmed the trial court, which had held the option void *ab initio*).

Prescriptive Rights—Permissive Use

Town of Manchester v. Augusta Country Club 477 A2d 1124 (Me 1984)

Facts: Defendant's property was located on a lake. Public began using a right of way in 1932 and also using a beach located on defendant's property. Defendant limited beach

use to its members and the residents of Manchester in 1957. The defendant country club maintained the beach and the town maintained the right of way. In 1981 the defendant banned the residents from using the beach. Plaintiff claimed that the use had ripened into one of a prescriptive right to use the beach.

Issue: Were certain adverse uses of defendant's property over a period of years of such a nature as to constitute prescriptive rights?

Held: The court agreed that the public at large has the right to acquire non-possessory interest in land after 20 years usage. Under Maine law the asserting party must prove 20 years under a claim of right adverse to the owner with said owner's knowledge and aquiescence or a use so open, notorious, visible and uninterrupted that knowledge will be presumed. Permissive use will not result in such a claim of right arising and the court sees use as permissive here.

Purchase Money Mortgage—Deficiency Judgment

Budget Realty, Inc. v. Hunter, 204 Cal.Rptr. 48; 157 Cal.App³ 511 (1984)

Buyer purchased commerical property subject to a first deed of trust giving the seller a junior deed of trust for the balance of the purchase price. The purchase money deed of trust contained a provision in which the seller agreed to subordinate to construction financing. The buyer never obtained construction financing and the subordination was never exercised. Subsequently, buyer defaulted on the senior deed of trust which foreclosed, extinguishing the purchase money deed of trust. When the seller brought suit against the buyer on the purchase money note, buyer asserted as a defense C.C.P 580b, which prohibits a deficiency judgment after a nonjudicial sale of real property under a deed of trust given to the seller to secure payment of the balance of the purchase price. The seller, however, contended that because the sale involved commercial property and the deed of trust contained language agreeing to subordinate to a construction loan, the transaction was a "variance from the standard purchase money situation" and therefore fell outside the purpose and protection of C.C.P. 580b.

Following a review of the history and purpose of C.C.P. 580b, the court held that no additional jeopardy to the seller's security was caused by the unexercised subordination agreement and therefore no need was shown to remove this transaction from the coverage of C.C.P. 580b.

Priorities—Mortgages—Mechanic's Liens

Santa Cruz Lumber Company v. Bank of America, 207 Cal.Rptr. 28; 160 Cal.App³ 858 (1984)

Western sold land to Wittenburg taking back a purchase money deed of trust. This deed of trust was subordinated to a construction loan by Bank of America which was recorded after construction had commenced and thus various mechanics liens had attached to the property. Only about one-half of the funds dispersed under the construction loan were expended on this particular project. The issue of priority was resolved adversely to the bank in an action to foreclose the mechanic's liens and the bank appealed.

The principle issue was priority of the various liens given the circuity of priority created by the subordination of the purchase money deed of trust to the construction loan which was in turn subject to the mechanic's lien which was junior to the purchase money deed of trust.

The court found that in California no fixed rule has been adopted to break the circuity problem but rather courts have considered the expectations, knowledge and intentions of the parties to arrive at an equitable solution. The court determined that under the facts of this particular case the first priority was to the mechanic's liens in equal priority; second, the bank's construction loan, but only to the extent that it was expended on this particular project; third, was Western's purchase money deed of trust and the remainder, if any, went to the remainder of bank's construction loan. The court explained that the bank was in the best position to protect itself since it knew work on the project had already begun and the mechanic's liens had attached. The court concluded that Western stood to benefit by the subordination to the extent the construction loan expended on the property enhanced its value. The court also found that Western was a sophisticated developer who knew of the commencement of the work when it executed the subordination agreement and therefore should be subject to the mechanic's liens.

Reformation of Deed

Freeman v. Williams 450 So. 2d 1030 (La. App. 1st C. 1984) May 30, 1984

Facts: Purchasers brought action against venders seeking to have the deed, which transferred the disputed property, reformed. The deed recited that the quantity transferred was 40 acres, but the measure in metes and bounds amounted to only four acres. Vendors reconvened seeking reformation to say four acres.

Issue: 1) Whether the plaintiffs met their burden of proving that the parties intended to convey 40 acres;

2) Whether the trial court erred in failing to declare the act of sale a nullity for lack of agreement on the object of the sale;

3) Whether trial court erred in concluding that the defendants did not acquire the disputed property by acquisitive prescription.

Held: The trial judge found *overwhelming* evidence that the defendants intended to convey 40 acres so that finding was not clearly erroneous. Also, vendors did not establish all of the requirements for acquisitive prescription.

Rescission—Tax Deed

Schultz v. County of Contra Costa 157 Cal.App 3d 242; 203 Cal.Rptr. 760 (1984)

Plaintiff, the successful bidder at a tax sale of what he had thought was a small buildable lot, learned shortly after the sale that the lot was in fact unbuildable. Plaintiff sought rescission based upon failure of consideration and mistake. The court distinguished other cases dealing with the invalidity of tax sales, rejected defendants' contention that the Revenue and Taxation Code provisions for invalid or irregular tax sales were the exclusive remedy, and found that the remedy of rescission under the contract was available to the plaintiff. The court met defendants' contention that a deed was not subject to rescission by finding that it was the contract of sale which was being rescinded and not the deed. The court also found there was no failure of consideration because there was not to be any performance by the grantee as a condition subsequent, the court, however, did find a basis for rescission in a material mistake in fact which was not caused by the neglect of the person making it and the equities were balanced in the plaintiff's favor.

A dissenting opinion expressed the view that the sole remedy for the purchaser at a tax sale had previously been those provided by the Revenue and Taxation Code and the rule of *caveat emptor* which had previously existed regarding tax sales should apply to this case as well.

Restricted Covenants

Kinchen v. Layton, 457 So.² (1984)

Kenneth and Veldron Layton installed a manufactured structure intended for use as a home on Lot 10 of the first addition of the Briarwood-West subdivision. Owners of neighboring property filed suit alleging that the structure violated a Briarwood-West protective covenant prohibiting "temporary structures." The Chancery Court of Harrison County, finding nothing in the convenant prohibiting the structure in question, dismissed the complaint with prejudice.

On appeal, the Mississippi Supreme Court, citing *Andrews v. Lake Serene Property Owners Association, Inc., 434 So. 2d 1328, 1331 (Miss. 1983),* held that it is Mississippi public policy that an owner use his property as he desires. Citing *Manley v. Draper, 44 Misc. 2d 613, 254 N.Y.S.2d 739, 742 (1963),* and *Hussey v. Ray, 462 S.W.2d 45, 48 (Tex. Civ. App. 1970),* the court found it to be the law of other states as well as Mississippi to favor the free and unobstructed use of real property. The court cited *Kemp v. Lake Serene Property Owners Association, Inc., 256 So. 2d 924 (Miss. 1971),* as support for the rule that restrictive covenants are construed strongly against the person seeking the restriction. Accordingly, the court construed the "temporary structures" convenant as being insufficient to proscribe the structure in question. The case was affirmed.

Restrictive Covenants—Enforcement by Mortgagee

Turner Advertising Company v. Garcia, 252 Ga. 101; 311 SE2d 466 (1984)

Facts: The appellee had obtained an injunction requiring appellant to remove an advertising sign which violated certain restrictive convenants that encumbered both appellee's property and the property on which the sign had been located. When the sign was not re-

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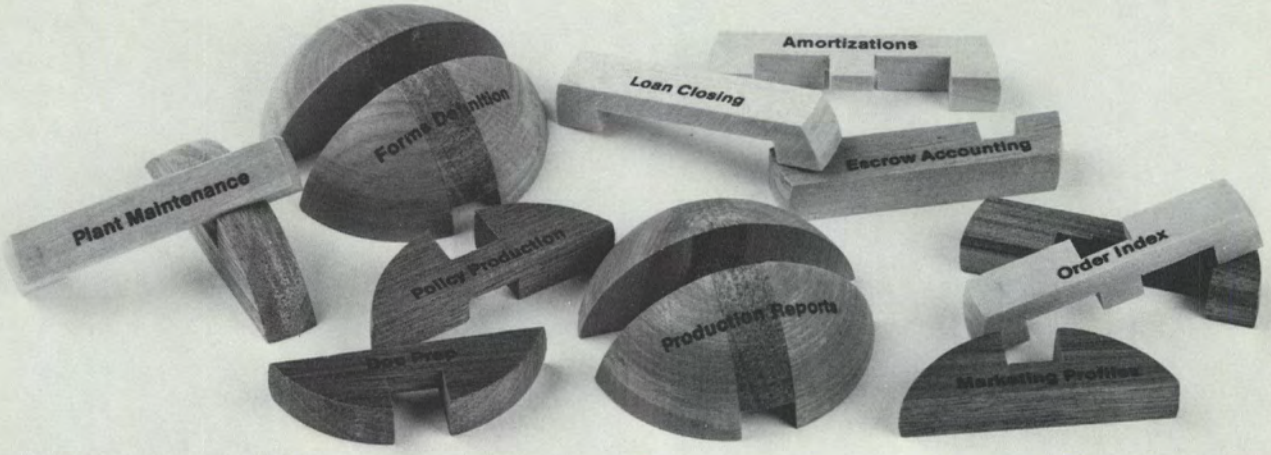

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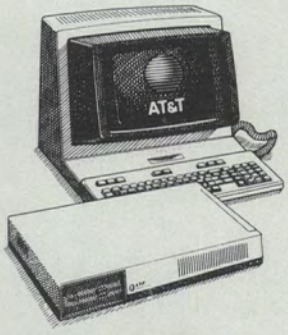

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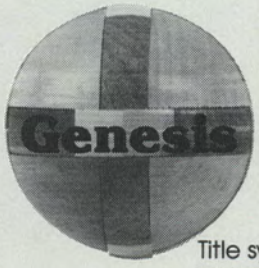

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moved in accordance with the provisions of the injunction, appellee filed a motion for contempt and the appellant appealed an adverse judgement in the trial court.

Appellant's argument is based upon the fact that appellee, subsequent to the issuance of the judgement and prior to the filing of this action, had sold its property and retained only a security interest in the property by virtue of a purchase money deed to secure debt taken in conjunction with the sale.

Issue: Does the grantee of a deed to secure debt have standing to enforce a restrictive convenant, and if so, can such action be maintained in the absence of actual loss or damage?

Held: The grantee of a security deed holds legal title to the land conveyed and all the privileges of ownership except possession, which along with the equity of redemption remains in the grantor, until the debt is paid. The court finds that the interest of the grantee in a deed to secure debt is sufficient to satisfy the requirement that a party seeking to enforce restrictive convenants must be the owner of or have a direct interest in the property.

The court points out that in such a case, ". . . it is not essential that the plaintiff should show any actual damage resulting from the breach of covenant of which he complains; and if a clear breach be shown, equity may interpose its preventive aid regardless of the question of damages, since the convenantee is entitled to the benefit of his covenant."

Restrictions

Nelson v. Konrad, 459 So. 2d 765 (La. App. 5th Cir. 1984)

Facts: Property owners in residential subdivision as individuals and as members of homeowners association brought action seeking injunctive relief to prevent construction of several houses they alleged to be in violation of subdivision's building restrictions.

Issue: Whether property owners could assert that resubdivision of the property was prohibited on appeal where they admitted that such resubdivision was not prohibited at trial.

Held: Because the plaintiff admitted at trial that the resubdivision at issue here did not violate the restrictions, they are now precluded from asserting that claim.

Restrictive Covenants—"View Lot"

Glover vs. Santangelo; 690 P.2d 1083 (1984)

Facts: Plaintiffs and defendants were the owners of adjacent lots in Klamath Falls, Oregon. Both of the lots were on a hillside overlooking Mt. Shasta, Lake Ewana and the downtown area. The defendant's lot was on the downhill side of plaintiff's lot and was encumbered by a restrictive covenant which benefited the plaintiff's property. The covenant was to enhance the value of the plaintiff's lot as a view lot and it provided in part: "(N)o second story shall ever be errected on any building of said Lot 10 except in the area which is within 51 feet of the front lot line (bordering on Huron Street) and that any one-story dwelling erected anywhere on said Lot 10 other than in said 51 foot area shall have a roof pitch of not to exceed 2:12. This covenant shall be appurtenant to and forever run with the land as a burden upon said Lot 10 for the benefit of said Lot 9."

The defendant constructed a house which consisted of a main level and a daylight basement. The house did in fact ruin the view of the plaintiff, who, during the course of construction, filed a law suit and asked for a temporary injunction. The judge denied the request for a temporary injunction but told the defendant that further construction was at his own peril.

After the completion of the defendant's house, the plaintiff asked for a permament injunction. The trial court concluded that the defendant's house violated the covenant and the court ordered that the house be torn down.

Issue: Did the defendant violate the covenant? If he did violate the covenant, what was the appropriate remedy, damages or demolition of the house?

Held: The court of appeals held that the covenant was intended to protect the plaintiffs' view in all directions. Although the defendant argued that his house was not a two-story house under the uniform building code, the court stated that the defendant's house as built was higher than one story and therefore it was a violation of the covenant.

The defendant then agreed that damages were a more appropriate remedy than the demolition of his house, the court responded:

> The view is a unique asset for which a monetary value is very difficult to determine. Plaintiffs testified that the view was a crucial factor in their decision to buy the house. . . . defendant's position is made weaker by the fact that he purchased with full knowledge of the covenant. He was, therefore, obligated to comply with it. (citation omitted). Furthermore, following the preliminary injunction hearing, he made no effort to modify the design of his house, even though he had been advised by the trial judge that he would finish construction at his peril.

However, the court believed that there was evidence that showed that the defendant's house might be modified to comply with the covenant. Therefore, the court remanded the case for further hearing with respect to whether the house could be modfied as opposed to demolished. However, if the trial court could not order the house modified to bring it into compliance with the covenant, then the trial court was at liberty to order the house torn down.

Riparian Rights—Public Use of Access

Thom v. Rasmussen, 136 Mich. App. 608; 358 NW2d 569 (1984)

The parties all owned waterfront lots on Devils Lake. The defendant owned back lots which front on platted drives and which give access to an alley. A dock had been maintained from the foot of the alley for at least 25 years. Problems arose in 1980 when the defendant extended the length of the dock and one of the plaintiffs purchased a sailboat. The plaintiff brought suit seeking injunction against maintaining the dock. The trial court denied the injunction but placed limits on the permissible length and width and intensity of use of the dock.

On appeal, the court of appeals affirmed the trial court, noting first that the public could only have the riparian right of maintaining a dock off a portion of the waterfront which has been dedicated to the public. Whether that right existed or not was held to depend on the scope of the dedication. In the case at bar, it was held that the public did have the right to erect that dock, and the fact that a single individual maintained the dock did not defeat that right. So long as the dock was available for the use by the general public, it does not matter who erected it.

Suit to Reform—Parties

Jones v. Carrier 473 A2d 867 (Me 1984)

Facts: Involved in a dispute as to ownership of land. A parcel of land was allegedly included in a deed to the defendant's predecessor in interest, although all evidence showed that actual intent was to not include the parcel in that deed. Intent was clearly to convey the parcel to plaintiff's predecessor interest in a later deed.

Issue: Can persons who are not original parties to a deed reform said deed if a mutual mistake was made in instrument?

Held: Court held that litigants seeking to reform a deed must have been parties to that deed and a mistake of the deed will not flow through to subsequent innocent purchases for value with an unambiguous deed.

Title Insurance

Eureka Investment Corporation v. Chicago Title Insurance Company, 530 F. Supp. 1110 (1982)

Facts: Eureka Investment Corporation (Eureka) acquired an interest in a group of rental apartments and townhouses with the intention of converting the units into condominiums and selling them to the public.

Eureka got a policy of title insurance from Chicago Title Insurance Company (CTIC) which contained a special Note II which provided:

> The policy insures against loss or damage arising out of an enforcement or attempted enforcement of the rights, if any, of tenants in the property pursuant to the provisions of Section 602 of the Rental Housing Act of 1977 (District of Columbia Law 2-54) or the Emergency Multi-Family Rental Housing Purchase Act of 1979, as the same may be amended.

Shortly after Eureka announced its plan to convert the tenants, relying on statutory protection existing under the law of the District of Columbia, mounted a well organized campaign to block the conversion by litigation.

CTIC, on May 23, 1979, acknowledged that the tenants' action constituted a cloud on the title and agreed to pay Eureka's legal expenses opposing the tenants.

Fried, Frank, Harris, Shriver & Kampelman (Fried, Frank) who was counsel for CTIC and Eureka undertook the defense. The litigation continued for some time and eventually Eureka sued CTIC.

Issue: Attorney fees for which CTIC is responsible.

Held: The court found that between May 23, 1979, and February 4, 1980, CTIC had paid Fried, Frank more than $62,000 in fees relating to the tenants' action. Eureka is now claiming $67,656 in unreimbursed attorney fees. Fried, Frank brought in Price Waterhouse to establish that the sum claimed was for services rendered in connection with tenants' actions not reimbursed by CTIC.

The court of appeals sent the case back on the attorney fees issue to assess the attorney fees Eureka incurred in reaching a settlement with the tenants, but refused to award attorney fees incurred in its action against CTIC.

Tenancy by the Entirety—Retroactivity of G.L.c. 209 § I

Turner v. Greenaway, 391 Mass. 1002 495 N.E.² 821 (1984)

Facts: The defendants, husband and wife, bought their principal home in 1977. They took title as tenants by the entirety.

In 1981, the plaintiff obtained a judgment against the husband. Execution issued, and the plaintiff purchased the property as a sheriff's auction for the amount of the default judgment. The plaintiff sought possession of the property.

The defendants argued that Massachusetts General Laws, Chapter 209, Section 1, prevented the sheriff's sale from being effective, as the non-debtor spouse (the wife) was in possession of the premises as her principal residence. The aforementioned statute, which became effective in 1980 (after the defendants had taken title to their home, but before the sheriff's sale), provides:

> The interest of a debtor spouse in property held as tenants by the entirety shall not be subject to seizure or execution by a creditor of such debtor spouse so long as such property is the principal residence of the non-debtor spouse.

Issue: The issue was whether the provisions of G.L.c. 209 § 1 would be held to be retroactive and therefore apply to tenancies by the entirety existing prior to the enactment of the statute.

Held: The court held that the provisions of Massachusetts General Laws, Chapter 209, Section 1 were not retroactive, citing as authority its recent decision in *West v. First Agricultural Bank, 419 N.E.2d 262 (1981):*

> In *West*, we recognized that "retroactive alteration of a law is strongly contraindicated when the subject is settled rules of property", *West v. First Agricultural Bank*. . . . More recently, we have said that, "in the area of property law, the retroactive invalidation of an established principle is to be undertaken with great caution." *Sullivan v. Burkin, 390 Mass. 864 (1984).* We conclude that, in the area of property law, the Bars' reasonable reliance on a rule or statute in effect at the time of *transfer* precludes retroactive application of a new rule or a statute unless, of course, the legislature mandates that the statute apply retroactively.

The court thereupon concluded that tenancies by the entirety, created before February 11, 1980, are not the subject of G.L.c. 290 § 1, even if the creditor seizes the principal

Continued on page 44

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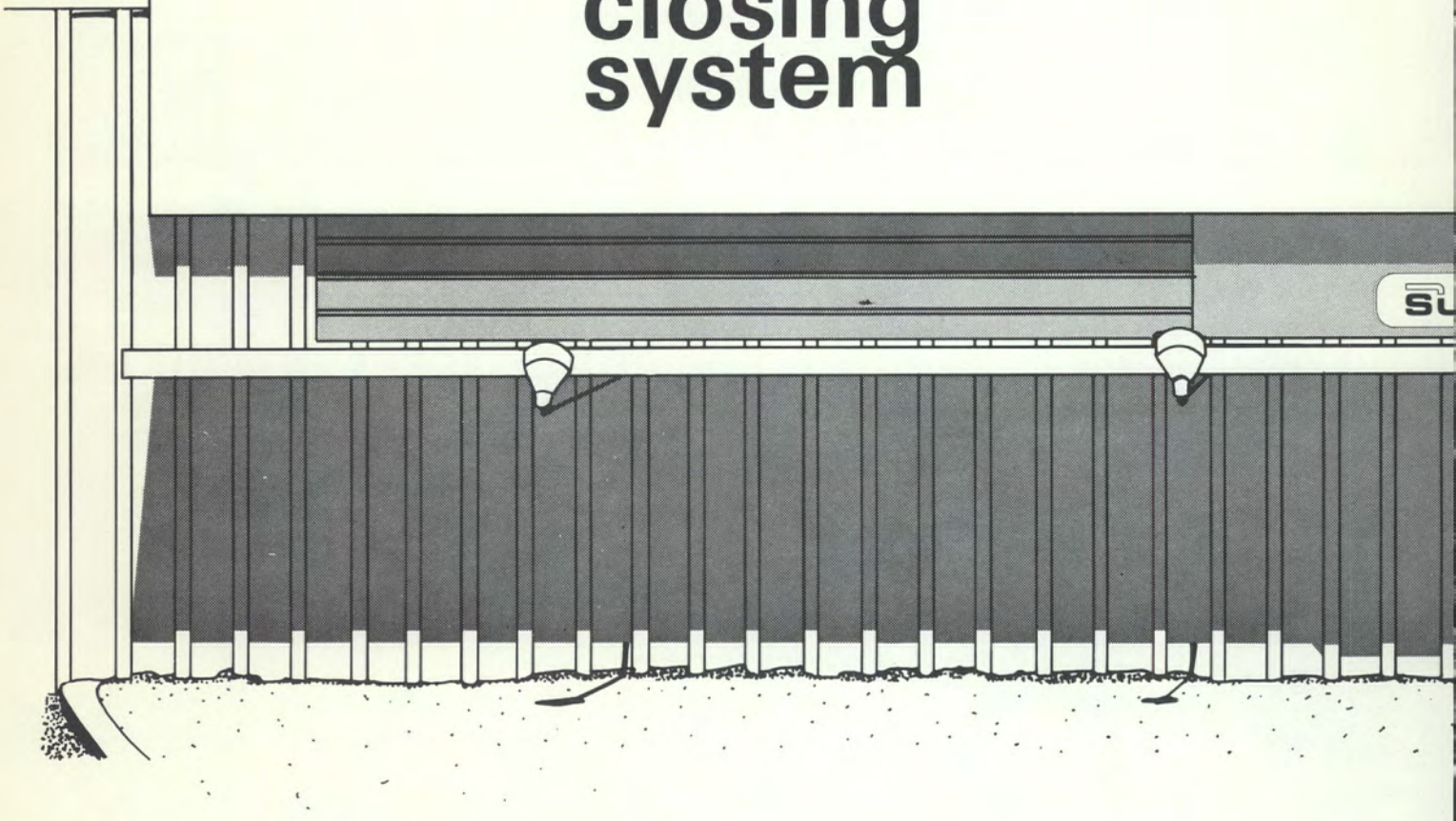

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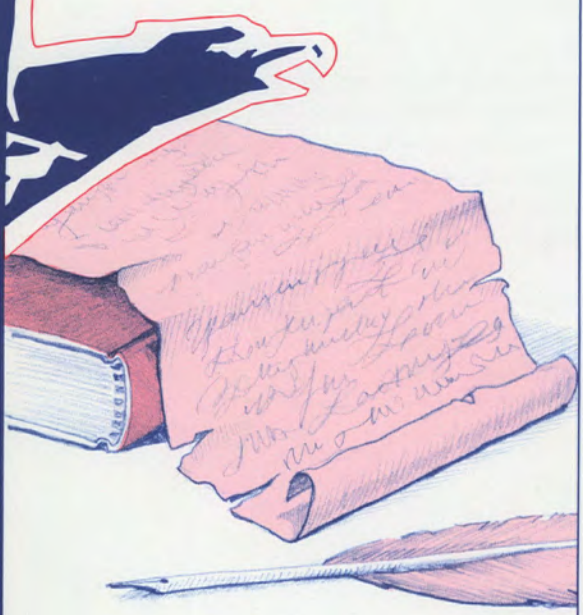

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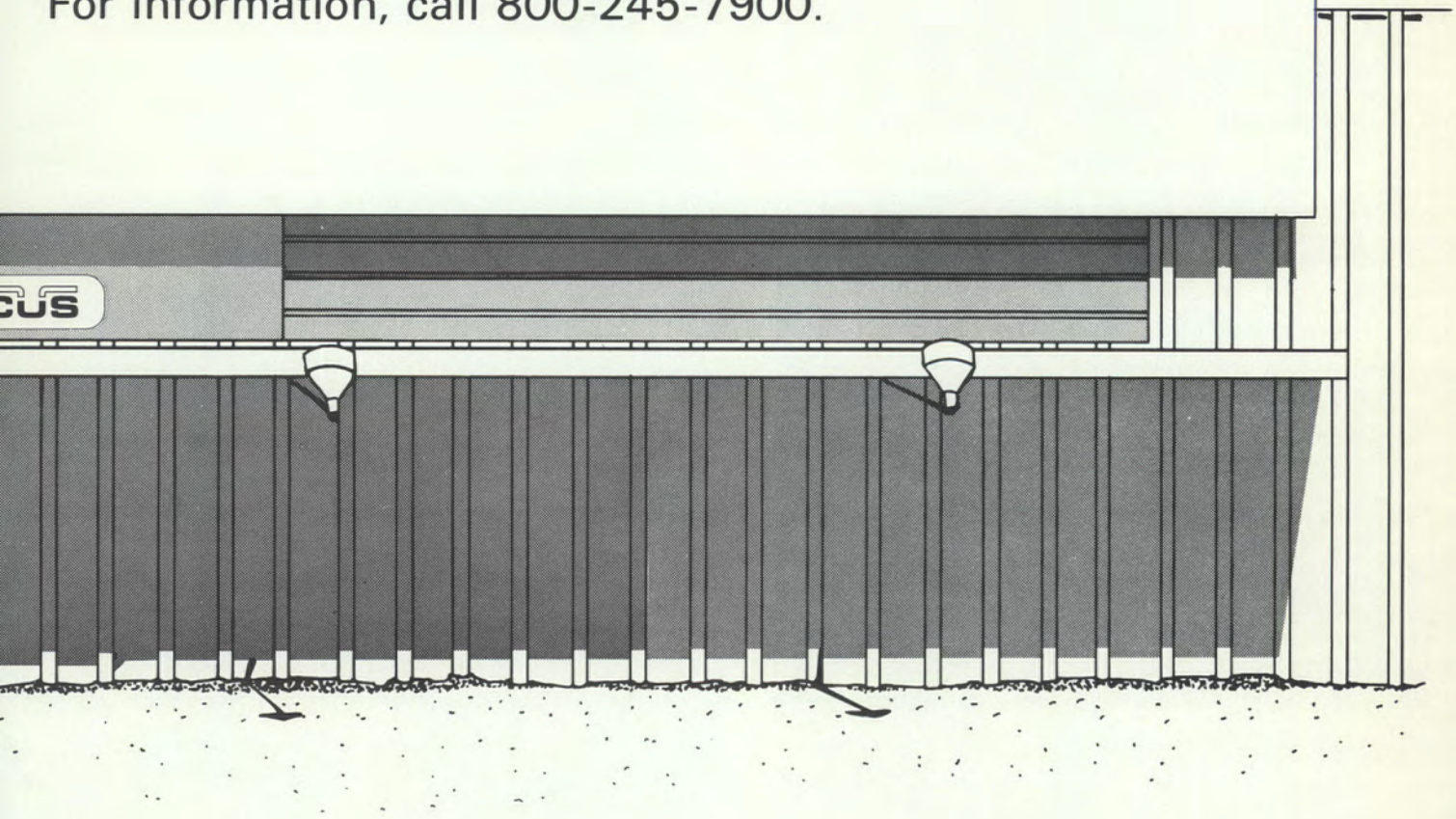


AFFILIATED ASSOCIATION EXCHANGE

Officers and executives of regional and state land title associations are invited to share association management and problem-solving experiences through submitting written reports for this department. Please send them to Gary Garrity, American Land Title Association, Suite 705, 1828 L Street, N.W., Washington, DC 20036.

New Mexico Member Total Effort Succeeds

"It worked because the members of the association worked," said New Mexico Land Title Association Secretary David K. Lanier of an innovative approach that was of substantial importance in securing enactment of state legislation providing for a new style of regulation desired by the industry.

Recognizing that organization, leadership and massive involvement by NMLTA members—far beyond the typical level—were essential if success were to be attained in a political climate that saw little legislation passed during the recent session, state association leaders implemented a greatly strengthened contact effort focused on lawmakers.

First, instead of having much of the necessary legislative contact work handled by the NMLTA legislative committee chairman and lobbyist, some 100 members in attendance *all* were sworn in as legislative committee members during the association convention—and were charged with contacting their respective constituent legislators regarding the issue at hand. Chairmen were designated for the north, central and southern parts of the state, and were assigned to make sure every state senator and representative was contacted by appropriate NMLTA members.

Then, a "key constituent" contact program was implemented, where NMLTA members actually represented by individual senators and representatives were targeted for contact with those particular legislators. Association members who did not know the identity of their respective senators and representatives were informed in this regard, and wrote or called to introduce themselves. Contact with all legislators proceeded under the NMLTA legislative committee leaders and lobbyist.

As a result, reports Secretary Lanier, immediate and influential contact was made when needed during the legislative process. All the planning and hard work were rewarded when the desired legislation was passed.

FLTA Committee Output Sweetened by 'Lemonade'

Florida Land Title Association's traditional Mid-Year Meeting has presented somewhat of a problem in stimulating member interest because of being scheduled a few months after the organization's Annual Convention. Now, as FLTA Executive Secretary-Treasurer Peter Guarisco puts it, FLTA has taken the lemon—and made lemonade!

For three years, the association has replaced the Mid-Year Meeting format with a committee workshop held in January, shortly after new committees are appointed for the year. The workshop is held in Tallahassee, the state capital, to allow participation by associations of allied industries with offices there and facilitate communication between FLTA liaison committees and their allied counterparts.

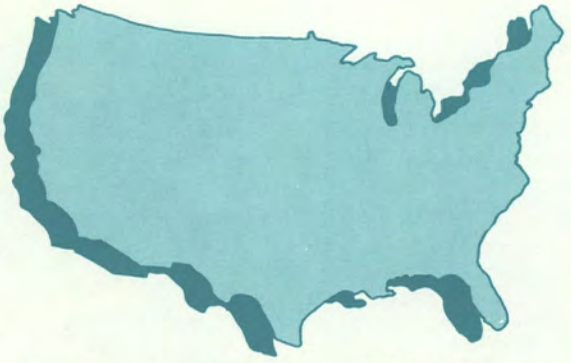
The association provides handout materials for each committee member, which outline the basics of a productive committee. During the workshop, committees first meet separately to become acquainted, set goals and develop plans. Then, all FLTA committees gather together in a general session to share ideas and goals, and coordinate joint committee activity. According to Executive Secretary-Treasurer Guarisco, the workshop has helped FLTA committees remain active and enthusiastic. Committee members are better aware of the importance of their role in FLTA and employer interest in allowing employees to participate in committee and other activities is described as excellent.

Bottom line: Attendance at the FLTA Annual Convention has increased since the workshop was introduced and committees of the association have become more creative and productive.

Two Workshops Score Effectively for Palmetto

Members of the South Carolina Bar Real Estate Section, Palmetto Land Title Association, licensed title agents and paralegals were invited to Palmetto's Fall Seminar and Business Meeting this year, according to PLTA Legal Education Committee Chairman Linda C. Wilson, legal assistant with the firm of Sinclair, Gibbs & Simmons, Charleston, South Carolina. Two workshops were featured: "How to Draw A Plat from A Deed Description" and "How to Properly Prepare A Legal Description from A Survey." Attendees were asked to submit written questions for the speakers.

A membership folder explaining the function of PLTA accompanied the invitational mailing; membership application forms were available at the seminar and recipients were advised that forms also can be obtained by writing the association.



Around the Nation

Record Attendance For Idaho Convention

The Idaho Land Title Association convention, held in Sun Valley, recorded a record turnout with attendees—including several neighboring Montana title people, according to ILTA Secretary-Treasurer **Ivy Eiseman**.

ALTA General Counsel **Jim Maher** discussed title industry concerns and the role of the Association in addressing these national issues. **Nancy Kling**, vice president and the Western states claims counsel, Lawyers Title Insurance Corporation, Dallas, Texas, discussed emerging trends in tort liability and **Wayne Soward**, director of the Idaho Department of Insurance, presented views on current matters.

ILTA 1985-86 officers are: **Nick Ihli**, Owyhee County Title Company, president; **Terry Gonzales**, First American Title Company, vice president-panhandle district; **Richard Nyquist**, Lawyers Title Insurance Corporation, vice president-southwest district; **Steve Porch**, Rupert Abstract Company, vice president-southeast district; **Ivy Eiseman**, First American Title Company, continuing as secretary-treasurer; and **Kelly Mann**, American Land Title Company, immediate past president.

Insurance Official Addresses MLTA

Legislation, legal matters and regulation were central topics of discussion for approximately 100 attendees at the Montana Land Title Association convention held in Lewistown, according to MLTA Secretary-Treasurer Robert J. Field.

ALTA Senior Vice President **William J. McAuliffe, Jr.**, was present to discuss developments in the FTC and financial institutions deregulation issues, as well as proposed amendments to the ALTA ByLaws.

Speakers at the Idaho Land Title Association convention held in Sun Valley, in the photograph at left, are, from left, Wayne Soward, director, Idaho Department of Insurance; Nancy Kling, Dallas, Texas; and Jim Maher, ALTA general counsel. In the other photograph, 1985-1986 ILTA officers are, from left, Kelly Mann, immediate past president; Steve Porch, vice president-southeast district; Richard Nyquist, vice president-southwest district; Ivy Eiseman, secretary-treasurer; Terry Gonzales, vice president-panhandle district; and Nick Ihli, president. Registration for the event set a new record.

Also on the general session agenda was Deputy Insurance Commissioner **John Bebee**, who covered the draft rules for HB 338—the Montana Title Insurance Act—introduced to implement a general revision of laws relating to title insurance. Also discussing HB 338 and other actions of the 1985 Montana Legislature was **Loren Solberg**, chairman of the Montana Legislature and Insurance Commissioner Liaison Committee.

Jerry Ford, special agent from the Internal Revenue Service, began the second day of general session activities with an explanation of the report of cash payments over $10,000 received in a trade or business in Form 8300. And, Attorney and MLTA representative **Jim Sewell** presented an update on the MLTA lawsuit against the state department of revenue on the taxing of title and abstract plants.

The second day of meetings concluded with individual agency meetings among underwriters and their agents.

MLTA officers for the 1985-1986 term are, **William F. Gowen**, Helena Abstract & Title Company, president; **Richard J. Zanto**, Chouteau County Abstract Company, vice president; **Robert J. Field**, First Montana Title Company of Billings, continuing as secretary-treasurer; and **Loren Solberg**, County Guaranty Title Company, member at large.

One of the highlights of the closing banquet was the awards presentation. The following individuals were recipients of service awards presented in recognition of MLTA service and dedication: 35 years, **J. L. Cady, Jr.**, Ticor Title Insurance Company and **Russell L. Culver**, Fallon County Abstract Company; 30 years, **Marjorie A. Droste**, SAFECO Title Insurance Company; 20 years, **Dan Broadbrooks**, Phillips County Abstract Company, and **Evelyn M. Smail**, Madison Abstract & Title Company; 15 years, **Terry Ward** and **Shari Gray**, Helena Abstract & Title Company, and **Patricia K. Carlson**, First Montana Title Company of Great Falls; and, 10 years, **John T. Betts** and **Betsi Conrady**, First Montana Title Company of Helena; **Rita Gowen**, Helena Abstract & Title Company; **James A. Noe**, Carbon County Abstract and Title Company; **Carol A. Billadeau**, First American Title Company; **Lucie Sonderer**, Madison Abstract & Title Company; **Betty J. Griffith**, **Carol A. Ketchum** and **Steve Edwards**, SAFECO Title Insurance Company; **Deborah M. Robidou**, Citizens Title & Escrow, and **Patricia L. Bolog**, Flathead County Title Company.

Two new awards at this year's convention were "Title Executive of the Year" and "Title Employee of the Year," presented to **Loren Solberg** and **Robert J. Field**, respectively.

Above, left, Chairman of the Montana Land Title Association Legislature and Insurance Commissioner Liaison Committee Lauren Solberg discusses recent state legislative developments. Solberg received the newly-established MLTA "Title Executive of the Year Award." In the other photograph, MLTA Secretary-Treasurer Robert J. Field, left, is the recipient of the newly-established "Title Employee of the Year" award, shown being presented by Ruby Willard.

Pictured above, Montana Land Title Association officers are, from left, William F. Gowen, president; Loren Solberg, member at large; Robert J. Field, secretary-treasurer; and Richard J. Zanto, vice president.

Patti Jo Barber Joins ALTA Staff

Patti Jo Barber is a recent addition to ALTA staff, assisting Senior Vice President William J. McAuliffe, Jr., and General Counsel James R. Maher.

In her position as membership assistant and assistant to the general counsel, Patti Jo aids

Patti Jo Barber

processing of membership applications, helps coordinate recruiting travel and campaigning, works with subscriptions to the new ALTA member *Federal Register* Digest and types correspondence.

Patti Jo is a 1983 graduate of Seneca Valley High School in Germantown, Maryland, and resides in Gaithersburg, Maryland. Prior to joining ALTA, she worked as receptionist for a law firm in Bethesda, Maryland.

John Bell Receives High KLTA Award

ALTA Governor and incumbent Kansas Land Title Association Secretary-Treasurer **John Bell**, Security Abstract & Title Company, Inc., Wichita, was named "Title Person of the Year" at the KLTA annual convention held in Manhattan.

Featured convention speakers were 1985 ALTA President **Jack Rattikin, Jr.**, and real estate developer and publisher of the *Kansas City Business Journal* **Mike Russell**, who analyzed the present state of the economy and future trends.

Other convention topics included bankruptcy, stress management and new title standards adopted by the Kansas Bar Association.

Another feature of the convention was concurrent panels covering the problems of metropolitan area agents and the problems of small county agents. According to **Bell**, this was the second consecutive year for the panels and both sessions proved helpful to attendees.

Other 1985-86 KLTA officers are **Barbara Gould**, Ford County Title Company, Inc., president, and **Roger Hannaford**, Hannaford Abstract Company, vice president.

Washington Association Elects Tagge President

John Tagge, Chicago Title Insurance Company, was elected president of the Washington Land Title Association at the association's convention held in Spokane, Washington. Other newly-elected WLTA officers include, **Gary Kidd**, Transamerica Title Insurance Company, vice president, and **Vern Arnold**, executive secretary.

The convention program focused on law and recent legislation and featured **David Rockwell**, attorney with Jones, Grey & Bayley, discussing legislation concerning contract forfeitures. Another highlight was a panel on various laws as they pertain to the title insurance industry, moderated by **Betty Schall**, Chicago Title Insurance Company, and including, **Rockwell, Warren Olson**, Transamerica Title Insurance Company, and **Ned Barnes**, attorney at law.

Also featured at the convention was **Darrel Truby**, SAFECO Title Insurance Company, discussing employee productivity.

Pictured above, Washington Land Title Association past and present officers are, from left, Richard A. Hogan, immediate past executive secretary; Joseph F. Seabeck, immediate past president; John W. Tagge, president; and Gary C. Kidd, vice president.

In the photograph at left, outgoing Kansas Land Title Association President Roy Worthington, left, congratulates incoming President Barbara Gould. In the other photograph, center, 1985 ALTA President Jack Rattikin, Jr., addresses attendees at a general session. At right, ALTA Governor and Kansas Land Title Association Secretary-Treasurer John M. Bell is the recipient of the 1985 KLTA "Title Person of the Year" award.

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ARTA Licensed For Florida Business

American Realty Title Assurance Company recently has announced its licensing in Florida. ARTA has opened a Florida office in Clearwater.

Based in Columbus, Ohio, ARTA has over 125 agents and branch offices throughout Ohio, according to Lawrence H. Edger, president.

Mortgage Questions Answered in Book

Questions and Answers for FHA, VA and Convention Loans is the title of a new paperback book by Albert Santi that is designed for attorneys, real estate professionals and home buyers. Emphasis is on answering the questions in the shortest and simplest manner possible.

Copies may be ordered at $14.95 each (add $2.00 handling charge per order) by sending check, or Master Card or VISA billing authorization, to Mortgage Techniques, P.O. Box 17214, Memphis, TN 38187-0214. Telephone orders may be directed toll free 1-800-523-1307 (Tennessee) or 1-800-468-1225 (rest of United States).

TIPAC Supportive

Congressman John E. Grotberg (R-Illinois), left, accepts a Title Industry Political Action Committee contribution from Chicago Title Insurance Company Vice President and Manager Bruce Johnson, Geneva, Illinois, as part of the ongoing TIPAC effort to support the campaigns of federal legislators with views compatible to those of the title industry.

NAREE Contest Judges Work at ALTA Office

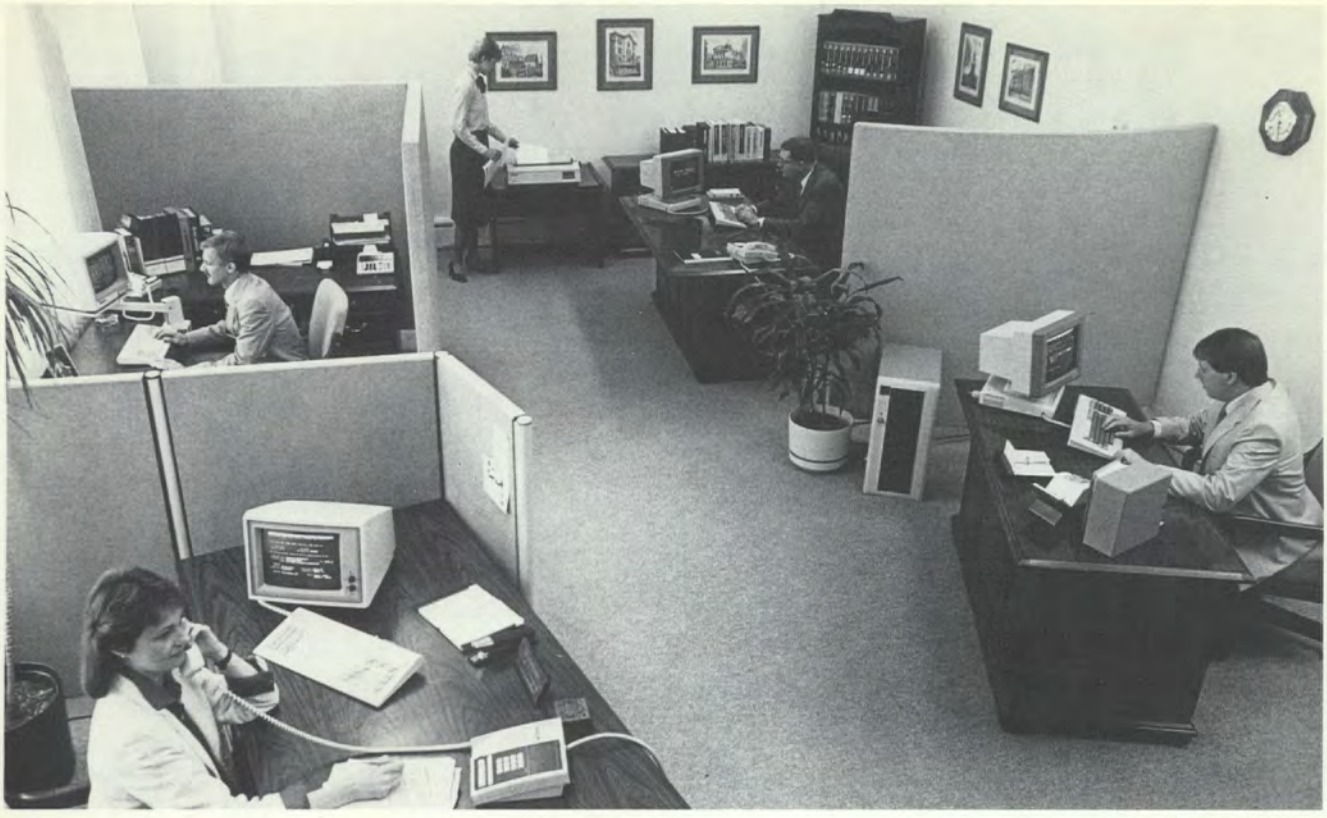
Judges for the 1985 National Association of Real Estate Editors Journalism Contest confer with ALTA Vice President-Public Affairs Gary Garrity, standing, second from right, NAREE member who served as chairman in the competition, before beginning their evaluation of entries during a work session in the ALTA Washington office. Standing from left are Maxine Stough, editor, International Monetary Fund, and former editor of ALTA Title News; *Ripley Hotch, senior editor,* Nation's Business; *and James Limbach, business editor, Associated Press Broadcast. Seated, from left, are Leon Wynter, staff reporter,* Wall Street Journal; *Joanne Miller, managing Editor,* Realtor *magazine; and Lorraine Cichowski, assignment editor,* USA Today.

Ohio Speaker Roster Headed by Cathey

Ohio Land Title Association Secretary-Treasurer **Thomas W. Connor**, Buckeye Abstract & Title Agency, Inc., reported an attendance of 165 members at the association's recent convention held in Akron. ALTA Chairman, Abstracters and Title Insurance Agents Section, **John R. Cathey** was a featured speaker at the convention.

Newly-elected OLTA officers are, **Dale Griffin**, Lawyers Title of Cincinnati, Inc., president; **Tari Pekar**, president-elect; **Deborah Hummel**, trustee; and **Richard E. Meredith**, Meredith, Meredith, Tait & Basinger, L.P.A., immediate past president. **Connor** remains OLTA secretary-treasurer.

Shown here are 1985-1986 Ohio Land Title Association officers who are, from left, Dale Griffin, president; Deborah Hummel, trustee; Richard E. Meredith, immediate past president; Tari Pekar, president-elect; and Thomas W. Connor, secretary-treasurer.



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

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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.

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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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ALTA Information Publications Ready

Three ALTA public information publications have been redesigned and updated through the Association Public Relations Committee and now are available for purchase by members.

They are (prices per 100 copies listed for each) *Protecting Your Real Estate Investment* ($30.00), a condensed history of the title industry and description of the work of ALTA members; *Buying A House of Cards?* ($14.00), a quick-read promotional folder for owner's title insurance; and *The Importance of the Abstract in Your Community* ($17.00), an extensively revised and expanded text version that discusses the work of abstracters at the local level.

Checks should be made payable to American Land Title Association and sent to the attention of Vice President-Administration David R. McLaughlin in the Association office, Suite 705, 1828 L Street, N.W., Washington, DC 20036. Prices do not include postage; those ordering will be billed for postal charges.

Members of the Public Relations Committee include Chairman Lawrence H. Edger, president, American Realty Title Assurance Company, Columbus, Ohio; H. Randolph Farmer, vice president and director of public relations and advertising, Lawyers Title Insurance Corporation, Richmond, Virginia; Barbara J. Harms, vice president and manager, advertising and public relations, Chicago Title Insurance Company, Chicago, Illinois; Carl A. Hasselwander, president and chief executive officer, First American Title Insurance Company of Mid-America, Troy, Michigan; Carrie Hoyer, secretary-treasurer, Wisconsin Title Services Company, Waukesha, Wisconsin; and Dennis F. Peters, president, Chicago Title Insurance Agency, Inc., Fort Lauderdale, Florida.

Laurence Ptak Dead After Long Illness

Laurence J. Ptak, 81, honorary ALTA member and past ALTA treasurer (1966-69), died September 4, in Fort Lauderdale, Florida, after an extended illness.

A 47-year veteran of the title industry and a graduate of Cleveland Law School of Baldwin-Wallace College, he joined Cuyahoga Abstract Title & Trust Company as a clerk and attended Cleveland Law School at night.

He became president of Cuyahoga Abstract in 1951 and was later named vice president-research and development of its successor company, Lawyers Title Insurance Corporation. He retired from the title industry in 1968.

Survivors include his wife, Dorothy, three daughters and a son.

ALTA Past President Tom Holstein Dies

Alta Past President Thomas J. Holstein, 75, longtime owner and former president of the LaCrosse County Title Company, LaCrosse, Wisconsin, died September 27 at a hospital there after an extended illness.

A longtime active leader in the title industry he served as ALTA president in 1969-70 and also was a past president of the Wisconsin Land Title Association, Inc.

Prior to his purchase of LaCrosse County Title in 1949, he was an employee of the Dane County Title Company in Madison, Wisconsin, where he was born. He was president of LaCrosse County Title until June, 1985, when he was succeeded by his son, William, also a past president of WLTA. He was a veteran of World War II, serving as a lieutenant colonel in the Corps of Engineers.

Other survivors include his wife, Nora, and a daughter, Alice Mack of Denver, Colorado.

The family suggests memorial contributions to the LaCrosse Public Library, 800 Main, LaCrosse, WI 54601.

ALTA Top Recruiters Receive Awards

Winners in the 1985 ALTA Membership Recruiting Contest were announced by Association Membership and Organization Committee Chairman James W. Mills, Jr., president, Lawyers Title of Louisiana, Inc., New Orleans, during the ALTA President's New Member Welcome Breakfast held at the Association's Annual Convention in October.

Jack Rattikin, Jr., 1984-85 ALTA president, was the top winner in the five new members and more category; he declined to accept the contest prize. He is president of Rattikin Title Company, Fort Worth, Texas.

Thomas J. Holstein as photographed during his ALTA presidency.

Glen Schwerin, office manager, Chicago Title Insurance Company, Albuquerque, New Mexico, won in the 3-4 new members category and George Finney, vice president and agency manager—northwest opertions, Title Insurance Company of Minnesota, Seattle, Washington, won the prize drawing for those recruiting one or two new members.

Floyd Cerini Dies; Former CLTA Officer

Floyd B. Cerini, past president and former executive secretary of the California Land Title Association, died August 31 at a Pasadena, California, hospital.

He also was a CLTA honorary member.

The family suggests memorial contributions to Huntington Memorial Hospital-Intensive Care Unit Fund, 100 Congress Street, Pasadena, CA 91105.

Butterworth Receives High Realtor Honor

Hughes Butterworth, Jr., chairman of the ALTA Research Committee Abstracter-Agent Subcommittee and a member of the ALTA Land Title Systems Committee, recently received the prestigious Outstanding

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Citizen of the Year Award from the El Paso, Texas, Board of Realtors.

He is a past president of the Texas Land Title Association and is president of Lawyers Title of El Paso, Inc.

Besides his numerous ALTA and TLTA activities, the award cited his service on the boards of directors of El Paso Services for Children, Hospice of El Paso, American Cancer Society, and El Paso Symphony Orchestra. Other activities mentioned include the University of Texas at El Paso Alumni Association, El Paso Rotary Club, United Way, El Paso Chamber of Commerce and YWCA.

Butterworth

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Tuscaloosa Title Company, Inc., Tuscaloosa, (Bruce S. Bobo, Lauderdale Abstract Company, Florence)

Arkansas
George and Richison, Abstracters, Danville, (W. S. Bronson, Bronson Abstract Company, Fayetteville)

Independence County Abstract Company, Batesville, (W. S. Bronson, Bronson Abstract Company, Fayetteville)

Arizona
Fidelity National Title Insurance Agency, Tucson

First Service Title Agency, Inc., Phoenix, (John B. Wilke, Lawyers Title Company of Arizona, Tucson)

Pioneer Title Company, Sierra Vista, (Robert Beck, Title Guaranty Agency, Tucson)

California
American Title Company, Orange, (J. D. Gottwald, Calif. Counties Title Company, S. Pasadena)

Pioneer Title Company of California, Inc., Walnut Creek

Valley Title Company, San Jose, (William Little, SAFECO Title Insurance Company, Panorama City)

Colorado
Centennial Title Corp., Colorado Springs

Gunnison County Abstract Company, Gunnison, (Glenn Schwerin, Chicago Title Insurance Company, Albuquerque, NM)

High County Title Insurance Agency, Durango, (Glenn Schwerin, Chicago Title Insurance Company, Albuquerque, NM)

High County Title Insurance of Pagosa Springs, Inc., Pagosa Springs, (Glenn Schwerin, Chicago Title Insurance Company, Albuquerque, NM)

Stewart Title of Colorado Springs, Inc., Colorado Springs

Florida
Attorneys' Title Insurance Fund, Orlando

Federal Title Guaranty Corp., Sarasota, (Joe Dennison & Jim Russick, USLife of New York, Tampa)

Southland Title Company, Tampa, (Joe Dennison, USLife of New York, Tampa)

Idaho
Blaine County Title, Inc., Ketchum, (Thomas S. Jensen, Western States Title, Salt Lake City, UT)

Indiana
Abstract & Title Services of Clinton County, Inc., Frankfort, (Harry Finch, Grany County Abstract Company, Marion)

Louisiana
Louisiana Title Company, Shreveport, (James W. Mills, Jr., Lawyers Title of Louisiana, Inc., New Orleans)

Massachusetts
Taylor Abstract Company, Worcester

Missouri
Land Title Company of the Ozarks, Osage Beach

Nebraska
Dodge County Abstract & Title Company, Fremont

Ralph M. Anderson d/b/a A. M. Anderson Abstract Company, Tekamah

Nevada
Land Title of Nevada, Inc., Las Vegas, (J. D. Gottwald, Calif. Counties Title Company, S. Pasadena, CA)

New Jersey
Stewart Title Agency of Bergen County, Inc., Hackensack, (H. David Lasseter, Stewart Title Guar-

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anty Company, Belle Mead, and Gerald Peck, Continental Abstract Corp., Carle Place, NY)

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Portales Abstract Company, Portales

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North Shore Abstract, LTD, Great Neck, (Gerald Peck, Continental Abstract Corp., Carle Place)

Southern Tier Abstract Company of Endicott, Inc., Endicott

Ohio
Olympic Title Insurance Company, Dayton

Oklahoma
American Abstract Company, Purcell, (John Cathey, The Bryan County Abstract Company, Durant)

South Dakota
Abstracts & Title Insurance, Inc., Mitchell

Texas
Central Texas Land Titles, Inc., Marble Falls, (Becky Henderson, Commonwealth Land Title Insurance Company, Dallas)

Vanguard Title Company, Houston

Utah
Cache Title Company, Inc., Logan, (Louis Hickman, Hickman Land Title, Logan)

Cundick Land Title Company, Inc., Ogden, (William J. McAuliffe, Jr., ALTA)

Emery County Abstract & Title, Castle Dale

Meridian Title Company, Salt Lake City

Merrill Title Company, Salt Lake City, (Harley Brown, Transamerica Title, Denver, CO)

Provo Abstract Company, Inc., Provo City, (William J. McAuliffe, Jr., ALTA)

Wisconsin
Ozaukee Title Company, Inc., Port Washington, (Carrie Hoyer, Executive Secretary, Wisconsin Land Title Association, Inc., Waukesha)

Shawano Abstract and Title Company, Shawano

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FTC—continued from page 11

FTC is spending its resources on the insurance industry when Congress has repeatedly told it—beginning with the McCarran Act—that insurance matters are to be best left to state law and state regulation.

That is the good news. The bad news is principally economic, namely, the incredible cost of this entire undertaking. Members of this industry have been employing lawyers to deal with this matter since the fall of 1983 and will continue to have to do so as long as the litigation continues. The discovery process has yielded hundreds of thousands of documents from the files of underwriters, agents, rate bureaus and state insurance departments. The document pile is so extraordinarily voluminous the defense has been forced to lease office space in Washington simply to house them all. We have had as well to index these documents by a sophisticated computer system so that they may be efficiently organized and retrieved as briefing and depositions go forward. And then, on top of all of this, is the indirect cost to the companies concerned for the thousands of hours of internal company time and revenue that have been spent on these proceedings. The staggering cumulative financial impact of all of these costs can quickly lead to the conclusion that, in effect, "even if you win, you lose."

And so, with all of this, I trust you have a better understanding of the anger and frustration which I and others share over these events and the agency that has brought it upon us. We are all convinced that this case would never have been brought as it was had the FTC simply waited a few weeks for the outcome of the *Southern Motor Carriers* case. Given the intricacy of the legal issues, the bona fide activity of the members of those bureaus in full compliance with state law, and the extraordinary cost and risk of treble damage actions which were certain to follow, such forbearance would clearly have been a more equitable path to have chosen.

[1] 15 U.S.C. §§ 1011-15 (1982).
[2] *See, e.g. Crawford* v. *American Title Ins. Co.*, 518 F.2d 217 (5th Cir. 1975); *Harrison* v. *Chicago Title Ins. Co.*, 1974-2 Trade Cas. (CCH) ¶ 75,321; *Mitgang* v. *Western Title Ins. Co.*, 1974-2 Trade Cas. (CCH) ¶ 75,322; *Commander Leasing Co.* v. *Transamerica Title Ins. Co.*, 477 F.2d 77 (10th Cir. 1973); *Schwartz* v. *Commonwealth Land Title Ins. Co.*, 374 F. Supp. 564 (E.D. Pa. 1974); *McIlhenney* v. *American Title Ins. Co.*, 418 F. Supp. 364 (E.D. Pa. 1976).
[3] *Complaint Counsel's Summary of the Theory of the Case*, Docket No. 9190 (Mar. 1, 1985), 14.
[4] *Schwartz* v. *Commonwealth Land Title Ins. Co.*, 374 F. Supp. 564, 575 (E.D. Pa. 1974).
[5] *Securities and Exchange Commission* v. *National Securities, Inc.*, 393 U.S. 453, 459-60 (1969).
[6] 458 U.S. 119 (1982).
[7] *Id.* at 129.
[8] *Id.*
[9] *Complaint Counsel's Summary of the Theory of the Case*, Docket No. 9190 (Mar. 1, 1985) and *Complaint Counsel's Trial Brief*, Docket No. 9190 (Sept. 16, 1985).
[10] *United States* v. *Title Ins. Rating Bureau of Arizona*, 517 F. Supp. 1053 (D. Ariz. 1981), *aff'd*, 700 F.2d 1247, 1252 (9th Cir. 1983), *cert. denied*, 104 S.Ct. 3509 (1984).
[11] *Commander Leasing Co.* v. *Transamerica Title Ins. Co.*, 477 F.2d 77 (10th Cir. 1973); *see also, Schwartz* v. *Commonwealth Land Title Ins. Co.*, 374 F. Supp. 564 (E.D. Pa. 1974); *McIlhenney* v. *American Title Ins. Co.*, 418 F. Supp. 364 (E.D. Pa. 1976).
[12] *Commander Leasing Co., supra*, 477 F.2d at 83; *see also, McIlhenney, supra*, 418 F. Supp. at 369 ("[m]atters of rate, extent of coverage, and policy provisions go to the very heart of the relationship between the insurance company and the policyholder and therefore clearly fall within the . . . definition of the business of insurance."); *Schwartz, supra*, 374 F. Supp. at 574 ("it would be in our view unrealistic, indeed ostrich-like, to separate the title search process from the pure insurance aspect of the title companies' activities and, as plaintiffs urge, to call only the latter 'the business of insurance.' ")
[13] *Cal. Retail Liquor Dealer Ass'n* v. *Midcal Aluminum, Inc.*, 445 U.S. 97 (1980).
[14] *Id.* at 105.
[15] *See*, for example, *United States* v. *Title Ins. Rating Bureau of Arizona*, 700 F.2d 1247 (9th Cir. 1983), *cert. denied* 104 S.Ct. 3509 (1984) and *United States* v. *Southern Motor Carriers Rate Conference, Inc.*, 702 F.2d 532 (5th Cir. 1983).
[16] *Southern Motor Carriers Rate Conference, Inc.* v. *United States, cert. granted*, 104 S.Ct. 3508 (June 11, 1984); argued November 26, 1984; decided March 27, 1985).
[17] Muris, "Antitrust Enforcement in the Insurance Industry," 31, June 8, 1985.
[18] *In The Matter of Ticor Title Insurance Company, et al.*, Docket No. 9190.

Mid-South Scholar

ALTA Past President James L. Boren, Jr., chairman and chief executive officer of Mid-South Title Insurance Corporation, has announced that David M. Rudolph of Memphis, Tennessee, shown here, is the twenty-fifth recipient of Mid-South's annual Vanderbilt Law School scholarship. The scholarship is funded by Mid-South and is awarded in the name of the Memphis and Shelby County (Tennessee) Bar Association. Scholarship eligibility is confined to first year law students in the Memphis area. Rudolph, a four-year Harold Stirling Vanderbilt Scholar, is a 1985 summa cum laude graduate of Vanderbilt University, and is a member of Phi Beta Kappa.

Continued on page 44

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Names in the News

Subsequent to its acquisition by Alleghany Corporation, Chicago Title and Trust Company and Chicago Title Insurance Company announced the election of three new members to the companies' combined board of directors. The new directors are, **F.M. Kirby**, chairman of Alleghany Corp., New York; **John J. Burns, Jr.**, president and chief operating officer of Alleghany Corp., New York; and **Dana Gibson Leavitt**, president of Leavitt Management Company, San Francisco.

John P. Lewis has been elected senior vice president and **Gilbert J. Touretz** vice president and treasurer of Chicago Title Insurance Company in Chicago.

Also in the Chicago office of Chicago Title and Trust Company, **A. Larry Sisk** has been elected vice president and treasurer and **Jerold L. Stodden** vice president and senior portfolio manager, institutional investment department.

Thomas A. Klemens has been named vice president and controller in the Santa Ana, California, office of First American Title Insurance Company and **Frank L. Fulton** has been named county manager in the Seattle, Washington, office. **Fulton** is an active member of the Washington Land Title Association, serving as chairman of the judiciary committee, member of the executive committee advisory panel and member of the Indian affairs and claims counsel committees.

Ticor Title Insurance Company announced the election of **Timothy J. Reardon** to vice president and senior claims counsel in the Los Angeles office. **Reardon** is a member of the California Land Title Association and serves on the association's legislative committee. In the Chicago office of Ticor Title, **Richard Lucchesi** has been appointed national ac-


Kirby


Burns


Leavitt


Lewis


Touretz


Stodden


Klemens


Fulton


Reardon


Goodman

counts manager, commercial-industrial department. **Vonnie Byrd** has joined the Houston, Texas, office of Ticor Title as commercial account executive.

Commonwealth Land Title Insurance Company announced the appointments of **William H. Reetz** as vice president and counsel, Tacoma, Washington; and **Cliff Collins** to Los Angeles County manager.

Title Insurance Company, Mobile, Alabama, a subsidiary of Commonwealth Land Title, has announced the election of **Roberdeau D. Geist, Jr.**, and **James W. Merrihew, Jr.**, to senior vice president.


Hellewell


Toerck


Wilson


Kitover

Verda Smith has been promoted to senior vice president-operations and **Pamela K. Allen** has been elected vice president-sales and marketing-direct operations, in the Columbus, Ohio, office of American Realty Title Assurance Company. **Gail M. Urban** has joined ARTA as branch manager of the newly-established Clearwater, Florida, office. Also with ARTA, **Crystal Davis** has been named office manager-escrow officer, Columbus.

Title Insurance Company of Minnesota announced the promotion of **James C. Uecker** to vice president and associate counsel in the Minneapolis, Minnesota, office of that con-

cern. **Russell B. Goodman**, president of TICM's subsidiary company, Attorneys Title Company, Inc., Nashville, Tennessee, has been elected to the additional office of vice president of the parent company.

TICM also announced the election of **Michael A. Altes** to associate counsel and assistant vice president, Jacksonville, Florida; and the appointment of the following individuals to assistant vice president in their respective offices: **James A. Gatlin**, Tuscon, Arizona; **Karen L. Butler**, Minneapolis; **Thomas F. Simmons**, Jacksonville, Florida; and **Kent Altemus**, southwest region.

Toni Mitchell Eaton has been named senior title attorney of the Boston national division office of Lawyers Title Insurance Corporation. Also with Lawyers Title, **Thomas W. Rutledge** has been named Pacific states claims counsel, based in Universal City, California; **Edward D. Hellewell** and **P. Darlene Toerck** have been named assistant southwest states counsel and assistant counsel-claims, respectively, in the Dallas, Texas, office; **Robert M. Wilson** has been appointed assistant branch counsel in the Pittsburgh, Pennsylvania, office; and **Karen L. Kitover** has joined the company as manager of the Chicago national division office.

Deborah J. Thoms has been appointed assistant vice president in the Scottsdale, Arizona, office of Fidelity National Title Insurance Company. Fidelity also announced the


Kelly


Widger


Diemer


Iannetta

promotions of the following individuals in their respective California offices: **Linda Villareal**, lender insurance network (LINK) representative, San Bernardino; **Linda Miller**, LINK title officer, Santa Ana; **Helen Schappert**, Orange County title officer, Santa Ana; **Ginny Halverson** and **Connie Gabel**, sales representative, Riverside; and **Patty Bettencourt**, sales representative, Redwood City.

Timothy F. McLoughin has joined Fidelity National Title Agency of Maricopa County, Inc., Phoenix, Arizona, as senior vice president and marketing director. In the same office, **Ernest W. Durrant** has been appointed vice president.

USLIFE Title Insurance Company of Dallas has announced the following appointments: **Philip J. Shea**, senior vice president and director of marketing; **Catherine Gray**, senior vice president, personnel; and **Bobbie Houchins**, **Merlene Chaudoin**, and **Joe Stoutt**, assistant vice president.

Susan Peters Cornwell has joined USLIFE Title Insurance Company of New York in the home office as senior vice president-national marketing.

Jefferson-Pilot Title Insurance Company, Greensboro, North Carolina, has announced the retirement of **Jack L. Donnell. Joseph M. Ritter** succeeds **Donnell** as president and treasurer of that concern.

Industrial Valley Title Insurance Company announced the appointments of **Annette I. Kelly** and **Denise C. Flannery** to account manager and marketing assistant, respectively, Philadelphia, Pennsylvania; and **Patricia A. Widger** and **Susan S. Diemer**, branch manager of IVT's Exton and Media, Pennsylvania, offices, respectively.

Vera

Barry

Ginny Rieck Barry has joined Bay State Title Company, Maryland, as vice president.

John B. Iannetta has been named senior vice president and New Jersey state manager of Continental Title Insurance Company, wholly-owned subsidiary of Industrial Valley Title Insurance Company.

Western Title Insurance Company has announced the following appointments in its California offices: **Irvin J. Kibodeaux**, vice president and Napa County manager; **Michael L. Vera**, Alameda County manager, Hayward; **Patrick Fountaine**, vice president and Amador County manager, Jackson; **Erika Gower**, branch manager, Fremont; **Ellen Kane**, marketing representative, Hayward; and **Judy Kirschner**, manager, San Rafael.

Ervin Brandt Dies; Founded Title Concern

Brandt

Word has been received of the death of Ervin J. Brandt, lifelong member of the title industry and founder of Western Title Company, Lubbock, Texas, after an extended illness. Before founding that concern, he was affiliated with a number of prominent title companies in the southwest and southeast. His memberships included the Texas Association of Abstracters and Title Agents, the Lubbock Board of Realtors, the West Texas Home Builders Association and the South Plains Mortgage Bankers.

FTC—continued from page 39

[19] *In re Real Estate Title and Settlement Services Antitrust Litigation*, M.D.L. Docket No. 633, May 20, 1985.

[20] *Southern Motor Carriers Rate Conference, Inc.* v. *United States*, ——— U.S. ———, 105 S.Ct. 1721 (1984).

[21] *Id.* at 1724.

[22] *Respondents' Motion to Dismiss the Complaint*, Docket No. 9190 (Apr. 15, 1985).

[23] *Prehearing Order No. 5: Denying Respondents' Motion to Dismiss the Complaint and Ordering Prehearing Preparation to Continue Apace*, Docket No. 9190 (Apr. 24, 1985).

[24] *Complaint Counsel's Trial Brief*, Docket No. 9190 (Sept. 16, 1985).

[25] Memorandum Opinion and Order No. 1, *In re Real Estate Title and Settlement Services Antitrust Litigation*, M.D.L. Docket No. 633, May 20, 1985.

[26] H.R. 2684, 99th Cong., 1st Sess. § 1, 131 Cong. Rec. 4105 (1985). The complete text of the legislation is as follows:

To clarify the application of the Clayton Act with respect to rates, charges or premiums filed with State insurance departments or agencies.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act shall be entitled the "Antitrust Damages Clarification Act of 1985".

SECTION 1. No damages, costs, or attorney's fees shall be awarded under section 15, 15A, or 15C of title 15, United States Code, with respect to the establishment or use of any rate, charge, or premium filed with a State insurance department or agency; or authorized, approved or permitted to become effective pursuant to the insurance laws of that State.

SEC. 2. Nothing contained in Section 1 of this Act is intended to alter or affect the ability of any person or any governmental agency to obtain injunctive relief, with respect to the establishment or use of any such rate, charge, or premium.

SEC. 3. Section 1 shall apply to all cases pending on the effective date of this Act.

JUDICIARY—continued from page 22

home of the non-debtor spouse after the effective date of the statute.

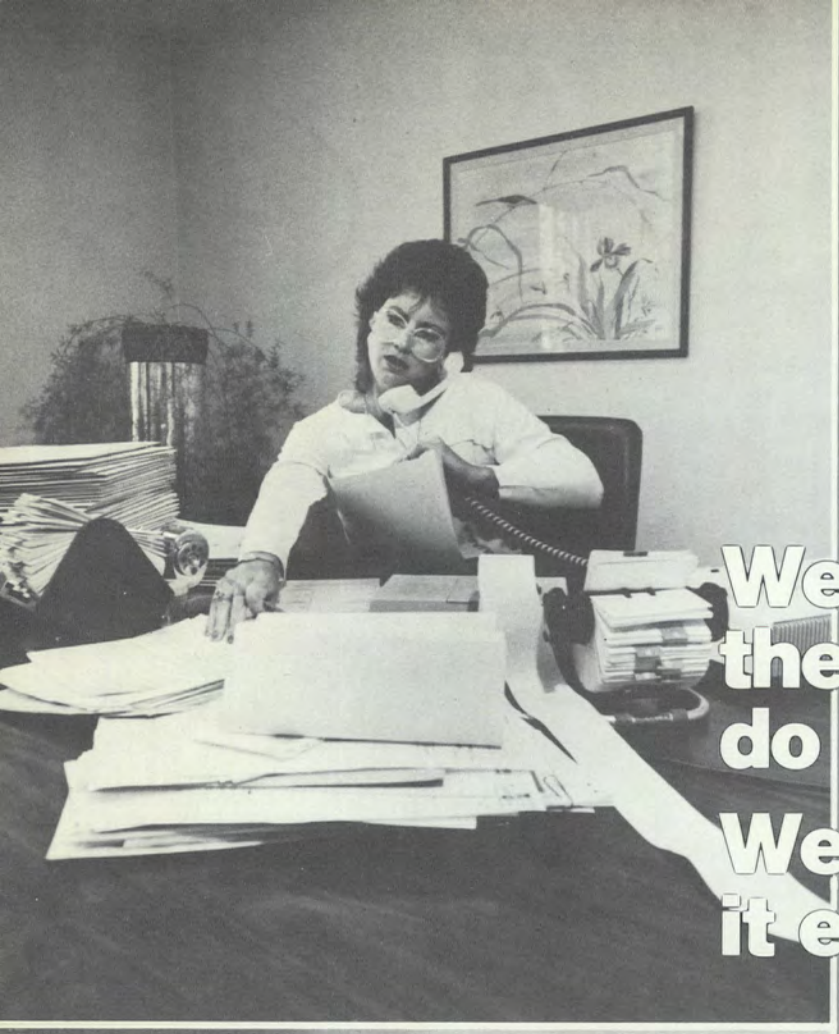
Title Insurance

Stansel v. Commonwealth Land Title Insurance Company, 484 A. 2d 535 D.C. App. (1983)

Facts: Appellate Stansel, who had extensive experience with real estate transactions, owned property in fee and subsequently entered into a joint venture with the Jaffe Group, licensed home improvement contractors, to renovate the property for profit and sale. Commonwealth closed the transaction in which, among other things, Jaffe loaned Stansel $20,000 to satisfy her previous existing obligations on the property. One of the documents which Stansel signed at the closing purported to convey a one-third interest to the property to Mr. Singer, one of the principals and signatories in the joint venture. Stansel claims she had no knowledge of the document and that transfer of the property interest was not part of the joint venture agreement.

Issue: Stansel's claim that Commonwealth engaged in the unauthorized practice of law.

Held: All of the closing documents were prepared by an attorney or were completed under his supervision. Commonwealth was engaged in its authorized business and it did not overstep permissible bounds. The court quoted with approval, *Paterson v. Reeves, 113 U.S. App. D.C. 74, 75, 304 F. 2d 950, 951 (1962).* See *Hollywood Credit Clothing Co. v. Gibson, 188 A. 2d 384, 349 (D.C. 1963)*, which said, "One who signs a contract which he had an opportunity to read and understand is bound by its provisions".



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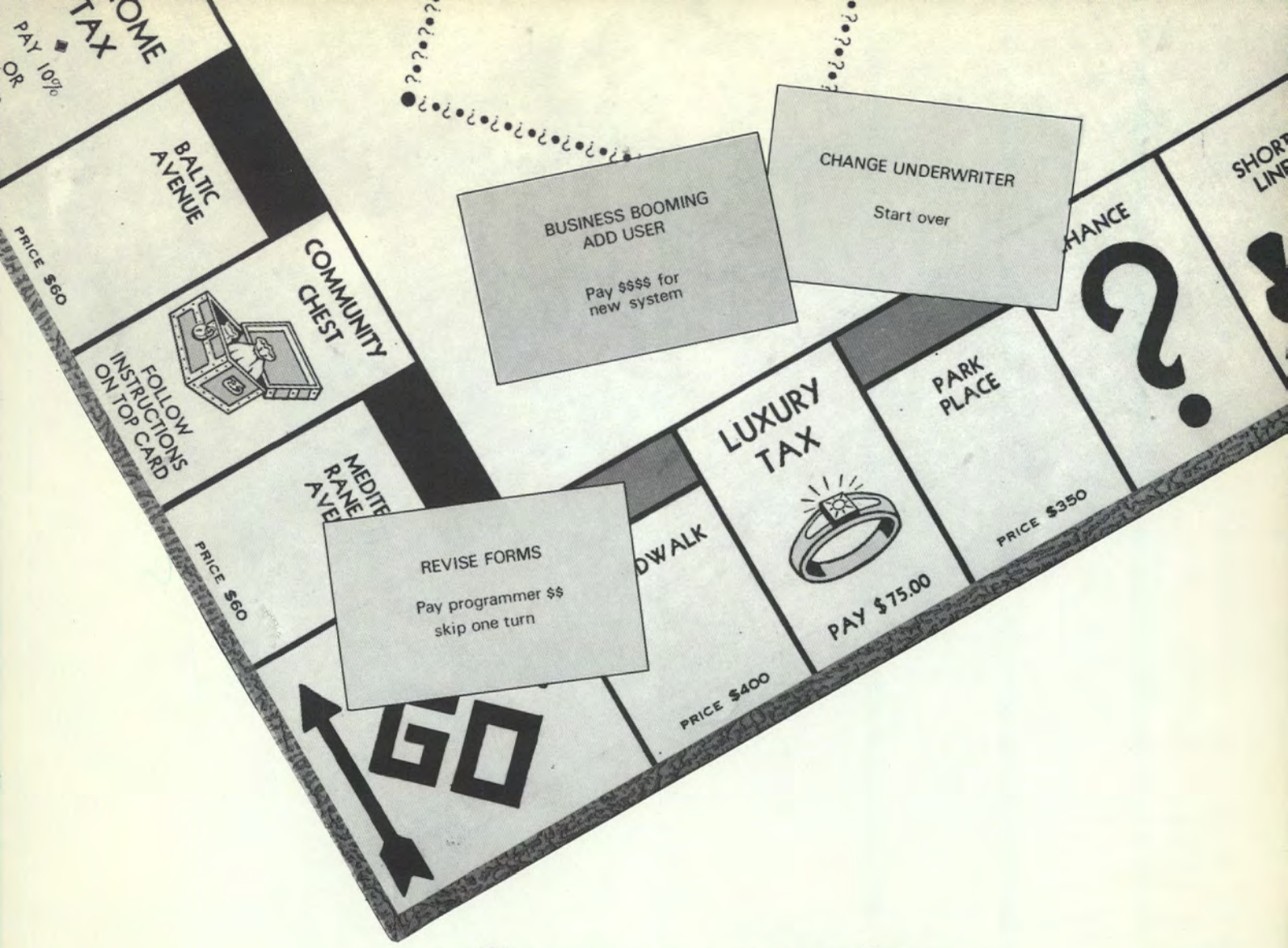

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Scottsdale, Arizona

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-Year Convention
Washington Hilton
Washington, D.C.

May 4-6
Iowa Land Title Association
Gateway Center
Ames, Iowa

May 8-10
New Mexico Land Title Association
Inn of the Mountain Gods
Mescalero, New Mexico

May 15-18
Texas Land Title Association
Hyatt Regency
Austin, Texas

May 21-23
Arkansas Land Title Association
Hilton Hotel
Fayetteville, Arkansas

June 1-3
Pennsylvania Land Title Association
Pocono Hershey
White Haven, Pennsylvania

June 5-7
Tennessee Land Title Association
Holiday Inn Crown Plaza
Memphis, Tennessee

June 8-10
New Jersey Land Title Association
Seaview Country Club
Absecon, New Jersey

June 12-13
South Dakota Land Title Association
Holiday Inn
Brookings, South Dakota

June 19-21
Colorado Land Title Association
Keystone Resort
Keystone, Colorado

June 19-22
Illinois Land Title Association
Sheraton-West Port
St. Louis, South Dakota

June 26-30
New England Land Title Association
Samoset Resort Inn
Rockport, Maine

July 13-15
Michigan Land Title Association
Schuss Mountain Lodge
Moncelona, Michigan

1987

March 25-27
ALTA Mid-Year Convention
Albuquerque Hilton Inn
Albuquerque, New Mexico

October 18-21
ALTA Annual Convention
Westin Hotel
Seattle, Washington

1988

March 11-13
ALTA Mid-Year Convention
Marriott's Desert Springs Resort
Palm Springs, California

October 16-19
ALTA Annual Convention
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Toronto, Canada

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