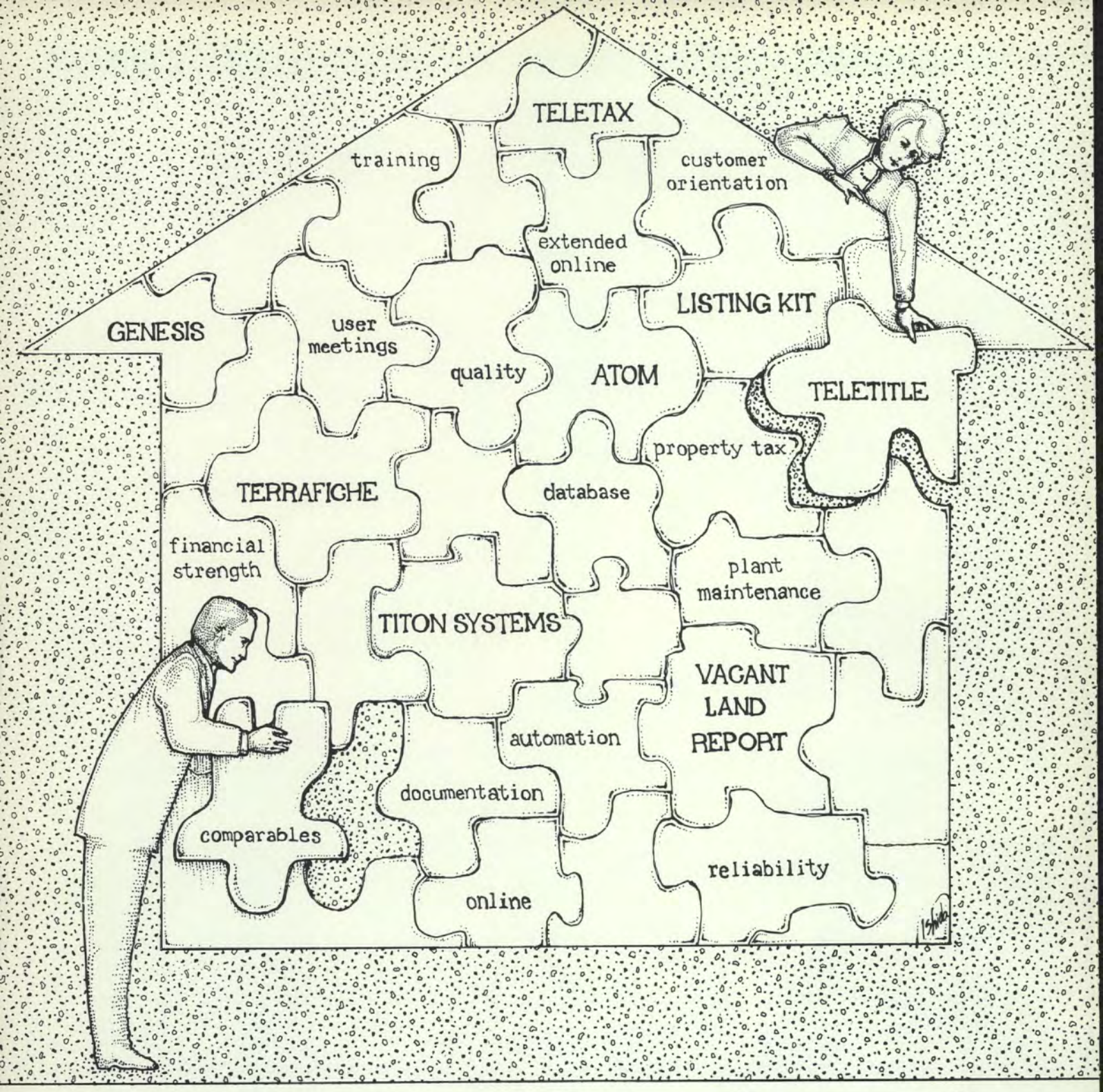
Title News

NOVEMBER/DECEMBER, 1986



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Title News

Contents

Volume 65, Number 5

A Message from the President-Elect	5
Best Customer: Your Closing Department (Jack Cameron)	9
ALTA/ACSM Standards Updated (Mary Feindt)	12
LTI Establishes Limited Sponsorship (Glenn Graff)	17
ALTA Judiciary Committee Report (Part I)	18
Around the Nation	34

Front Cover: Pulaski County Title Company Escrow Officer Rod Cameron, left, looks over a sales contract with Real Estate Agent Ron Burrow in Little Rock, Arkansas. Pulaski County Title President Jack Cameron tells how making the company escrow department its best customer has paid handsomely, in an article beginning on page 9.

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Editor: Gary L. Garrity

A TITLEPROFILE

Company: Guardian Title Services Corp.

Location: Fort Myers, Florida Southwestern Florida

Executive: Dick McKinlay

Favorites:

Author: Robert Ludlum

Music: Jazz

Film: Islands in the Stream (Hemingway)

Vacation spot: Colorado Springs (hiking)

Sport: Fox hunting

Automobile: Firenza

Family: Wife, Kathy; four sons

Computer System: **TITLEPRO**

Work stations: 12

Dick McKinlay, President of Guardian Title, with Linda Gregory, Director of Sales and Marketing, and Linda Brown, Director of Operations.

Comment: **"We compared a lot of systems. We chose Titlepro because the Titlepro people just thought it through better than the rest."**

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TITLEPRO

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A Message from the President-Elect

In my opinion, one of the most important services furnished by our Association is the promulgation for voluntary use by our underwriters of title insurance policy forms and endorsements. Certainly, our policy forms are a most important segment of our product, which we like to call service and protection. The success of our industry depends, in a large part, on our ability to furnish title insurance coverage that meets the needs of our customers while protecting us against unmanageable losses which can arise from coverages we do not intend to furnish.

Drafting policy forms that walk this tightrope requires many hours of difficult work by experienced title insurance lawyers. Fortunately, we are blessed by having such qualified people on our Title Insurance Forms Committee. The fruits of their labors were manifest at our recent Annual Convention in Los Angeles. After two and a half years of concentrated effort, which involved many meetings, the Forms Committee presented to the Association Convention revised forms of owner's, lender's, construction loan and leasehold policies of title insurance.

One of the programs presented at the Convention emphasized the need for these forms. We heard from two prominent insurance lawyers, who warned us that cases were beginning to abound which found title insurance companies liable for unexpected coverages and amounts of losses which could put us in the unfortunate position of property and casualty companies, which has led to the so-called liability crisis in those fields. The speakers made it clear that, although there are problems with extra-contractual liability, especially in the claims handling procedure, the provisions contained in the policy are all important in putting the coverage within the parameters intended.

While the Forms Committee must take into account many legal and insurance concepts including current case law, claims experience of member companies and clarification of existing language, it cannot modify forms in a vacuum and must take into account the wishes of Association members, who are issuing the policies, and customers, who rely upon them for protection. The committee understands that, as it progresses with its work and comes to the point of complete drafts, it must circulate these drafts among its members and customers.

For example, in connection with the preparation of the recently adopted forms, at least four distributions of drafts were made to Active members, Associate members and liaison customer groups. These included mailings, as well as circulation at Association conventions. Meetings were held with representatives of customer groups, such as life insurance counsel, mortgage lender counsel, the American College of Real Estate Attorneys and the Title Insurance Committee of the Real Property Section of the American Bar Association. These meetings provided an opportunity for attorneys, who counsel our insureds, to advise the Forms Committee on the language they would like to see used.

This process works to produce a reasonable form for all concerned, provided members and customers alike exercise their repeated opportunities to study the drafts as they are circulated and furnish their opinions to the committee, which may be done either by mail or by appearing at a committee meeting.

The major amendments to policy forms which were approved at the Los Angeles Convention will not become effective until June 1, 1987. This gives all of us an opportunity to study these forms and to be prepared to determine our underwriting procedures, and to explain their provisions to our own employees as well as to advise our customers of our adoption of the forms and to educate them in the coverage furnished.

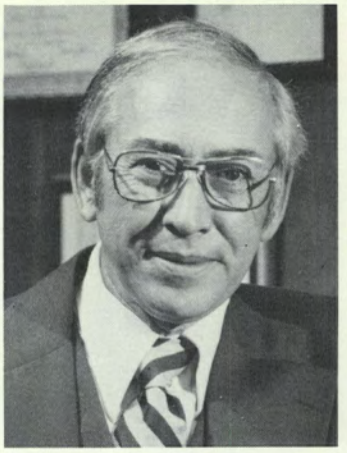
I hope we will all take advantage of this opportunity to prepare ourselves and our customers, looking forward to a smooth transition to these new and improved forms.

Marvin C. Bowling, Jr.

Marvin C. Bowling, Jr.

"There's hardly anything in the world that some men cannot make a little worse and sell a little cheaper, and the people who consider price only are this man's lawful prey."

John Ruskin (1819-1900)



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Sharing Ideas at Indianapolis Regional Seminar Event

Activity during the October 17-18 ALTA Indianapolis Regional Seminar included, left photograph, Steve Crawford, left, of Hall Abstract & Title Co., Inc., St. Joseph, Mo., presenting a question to ALTA Education Committee Member P. C. Templeton, fourth from left, First American Title Company of New Mexico, Albuquerque, who led a discussion on safe handling of funds at closing. In the other photograph, ALTA Governor and Education Committee Chairman Cara Detring, The St. Francois County Abstract Company, Farmington, Missouri, talks with the three members of a discussion panel on abstracter-agent liability and claims, who are, from left, Bert Rush, First American Title Insurance Company, Santa Ana, California; Jim McKinney, Lawyers Title Insurance Corporation, Indianapolis; and David Womer, Morgan & Associates, Inc., Noblesville, Indiana. Program details will be announced early in 1987 for the next ALTA Regional Seminar, which will be held Friday afternoon and Saturday morning, April 10 and 11, at the Kansas City Hilton Airport Plaza Inn.

Marcus, Cantrell Top Recruiters for 1986

Winners in the 1986 ALTA Membership Recruiting Contest were announced by Association Membership and Organization Committee Chairman Melvin H. John, Ticor Title Insurance Company, during the 1986 ALTA Annual Convention.

Richard Marcus, Commonwealth Land Title Insurance Company, won the contest drawing for those recruiting three or four new members and R. Joe Cantrell, Title Pac, won the drawing for recruiters of one or two new members.

Each winner received a gift certificate.

Former Governor W. H. Baker Dies

Word has been received of the death of William H. Baker, Jr., retired senior vice president and general counsel for Lawyers Title Insurance Corporation and formerly an ALTA governor and member of the Association Title Insurance Forms Committee, in Richmond, Virginia.

Prior to his retirement in 1975, he had been employed by Lawyers Title since 1934 with the exception of two and one half years spent as a Naval intelligence officer during World War II.

Survivors include his wife, Nancy Cottingham Baker, a son, a daughter and a sister.

New ALTA Members

Active

(Recruiters names in parentheses)

Alabama
Gulf Shores Title Co., Inc., Gulf Shores (Charles DeWitt, SAFECO Title Insurance Co., Memphis, TN)

Alaska
Land Title Co. of Alaska, Inc., Anchorage (Gerald L. Lawhun, Lawyers Title of Northern Nevada, Reno, NV)

Southeastern Title Agency, Inc., Sitka (Robert J. Whisman, Alaska Title Agency, Inc., Anchorage)

Pioneer Title Insurance Agency, Kenai (Mark Evans, Transamerica Title Insurance Agency, Anchorage)

Arkansas
Roy Pugh Abstract Co., Inc., West Memphis

Sharp County Abstract Co., Ash Flat (David E. Miller, John E. Miller Agency, Melbourne)

California
Continental Land Title Co., Universal City (Marvin C. Bowling, Jr., Lawyers Title Insurance Corp., Richmond, VA)

Founders Title Co., San Francisco (Joseph D. Gottwald, California Counties Title Co., Pasadena)

Glenn County Title Co., Willows (R. H. "Bob" Morton, Western Title Insurance Co., San Francisco)

Investors Title Co., Los Angeles (Joseph D. Gottwald, California Counties Title Co., Pasadena)

Lincoln Title Company, Glendale (John C. Collopy, Founders Title Co., San Francisco)

Western Title Colusa County, Colusa

World Title Co., Burbank (Conrad C. Byars, Cuesta Title Guaranty Co., San Luis Obispo)

Colorado
American Land Title Co., Inc., Grand Junction

Rio Grande-Mineral Abstract, Del Norte

Connecticut
Connecticut Attorneys' Title Insurance Co., Rocky Hill

Connecticut Document Search, Inc., W. Hartford (Dave Mudeen, Lawyers Title Insurance Co., Waterbury)

Florida
Arcadia Abstract & Title Co., Inc., Arcadia (Peter Guarisco, Florida Land Title Association, Tallahassee)

Associated Land Title Group, Inc., Tallahassee

Benevest Title Co., Maitland

Dependable Title Services, Inc., Daytona Beach (Robert B. Laseter, Jr., Commonwealth Land Title Insurance Co., Orlando)

Executive American Title Services, Plantation

First American Title Co. of Martin County, Inc., Stuart (Peter Guarisco, Florida Land Title Association, Tallahassee)

Heartland Title Co., New Port Richey (Wayne Levins, Commonwealth Land Title Insurance Co., Orlando)

Continued on page 36

Pulaski County Title Escrow Officer Rod Cameron, left, and Real Estate Agent Ron Burrow go over a sales contract.

Best Customer: Your Closing Department

By Jack Cameron

In an abstract company, the closing department should be your best customer.

Pulaski County Title Company is located in Little Rock, Arkansas, where abstracts were used in about half of all real estate transactions closed in 1976. It was clear at the time that the trend was away from abstracts and toward the use of title insurance policies.

Since all abstract companies in the local market could write title policies, and because competition among them was fierce, the incorporators of Pulaski County Title decided a dramatic change in management philosophy was needed if the company were to continue winning a fair share of available business.

The answer was to establish an excellent closing department, which would become the company's top source of title orders.

After the new service-oriented, customer-conscious department began operations, Pulaski County Title began to prosper. Title order volume in the years following the recent severe recession have increased an average of 35 per cent above typical annual order volume in the years immediately before the downturn. While general economic improvement in recent years obviously has contributed to the increase, management estimates that at least 60 per cent of the gain in earnings is attributable to the superior service offered by the closing department.

The author is president of Pulaski County Title Company, an abstracting concern and title insurance agency located in Little Rock, Arkansas.

It is the finding of management at Pulaski County Title that an escrow officer in the closing department—who is known as a pleasant person with good operational speed and efficiency, and as one who can bring solutions to the numerous problems arising in a real estate transaction—can generate more business than, for example, an executive who makes public relations calls on customers, a title policy writer or a title searcher.

While the searcher, for instance, may provide invaluable service in the elimination of judgments and bankruptcy problems, finding an error in a legal description, and may otherwise help resolve difficulties encountered in the course of the search—it is the escrow officer who calls the seller, buyer, real estate agent or attorney with questions leading to curative work that allows completion of the closing. At Pulaski County Title, the escrow officer in most cases is the only contact a customer has with the company.

Of the 46 persons employed by the com-

Escrow Officer Janice Clayton checks documents in preparation for a closing. In most cases, escrow officers are the only contact customers have with Pulaski County Title.

Escrow Officer Linda Smith answers a question for a Little Rock couple during a residential closing. Efficient, pleasant escrow personnel are a major company asset.

pany, seven are escrow officers. Four are located in the main office and one works at each of the three branch locations.

In a typical transaction handled by the company, the real estate broker delivers a copy of the sales contract to the closing department and expects settlement to take place within a few days. The escrow officer sees that the termite clearance letter, hazard insurance policy, survey, payoff statement, assumption statement, and the other necessary items are obtained. The escrow officer makes contact with any attorneys involved in the closing, in many instances furnishing copies of documents for approval.

After making various telephone calls to take care of the necessary details, the escrow officer conducts what then becomes a smooth and efficient closing.

Typically, the real estate agent will use an escrow officer who is best able to clear away problems and enhance the possibility of a completed closing—so the agent's commission check will arrive at the earliest possible time. Similarly, the lender is more likely to call upon an escrow officer who properly follows closing instructions, sees to preparation of documents, and arranges for title policies to be produced accurately and promptly. Use of these closing services by customers results in the escrow officer serving as contact and representative for the company.

Recently, an elderly widow selling her home thought she had fee simple title but learned abruptly that title had been in her husband, and that his four children had an interest in the property. At the time, she lacked addresses for all the children. The company escrow officer was able to locate the children, all of whom lived outside the state, and arrange for quitclaim deeds to convey their interests—which allowed a timely closing for all concerned.

In another instance, a commercial property transaction was under way involving the widow of the owner. The widow lived in Houston, Texas. Ancillary probate proceedings had been filed in Arkansas and the estate had been closed. It was determined through the title search that title was in the widow and their two adult children, all of whom lived in Texas. One of the children was in the process of a divorce, and his wife would not execute any documents. The escrow officer suggested that the attorney re-open the ancillary proceedings out of the probate estate in Texas. He then obtained probate court approval for an estate sale, and the transaction was closed with the proceeds being delivered to the estate of the deceased. Once again, the broker's commission was rescued.

And, the owner of a local condominium unit ran into difficulty when applying for refinancing because of a personal judgment against him. Initially, his request for title insurance was turned down by a competitor of Pulaski County Title. But the Pulaski County Title escrow officer contacted an attorney, who issued an opinion that the personal judgment

Continued on page 42

February Title School Scheduled by TLTA

Texas Land Title Association will hold a Land Title School of Texas February 9-13, 1987, at La Mansion Hotel, Austin, Texas.

Both Basic and Advanced sessions will be offered during the event. At least one year of experience in the title industry is suggested for those attending the Basic session. Registrants for the Advanced session must have either completed the school's Basic session and have at least two years closing experience—or have a minimum of five years closing experience.

Courses in the school are taught by Texas title professionals.

Registration is $335 for TLTA member companies and $370 for non-members, and covers four nights lodging on a double room basis, course instruction and materials, lunches and coffee breaks. A limited number of single rooms are available at an additional cost of $155. Registration is on a first come, first served basis with priority given to TLTA members.

Additional information is available from the TLTA office, 220 West Seventh, Austin, TX 78701 (telephone 512-472-6593).

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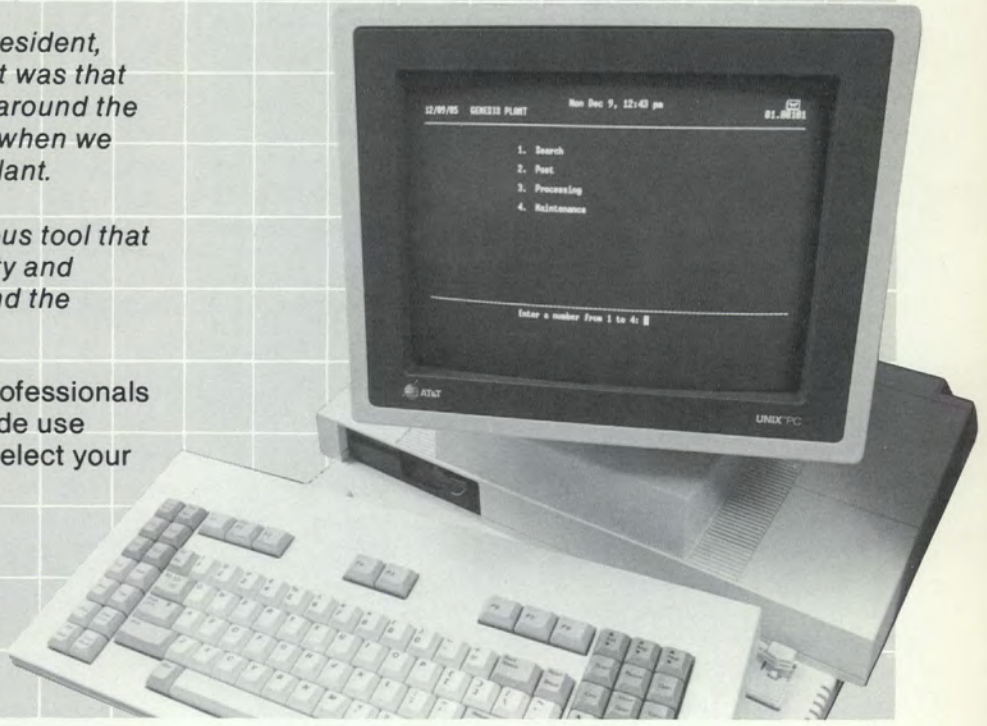

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ALTA/ACSM Survey Standards Updated

By Mary C. Feindt

It was in June of 1962 when ALTA and the American Congress on Surveying and Mapping collaborated in adopting the Minimum Standard Detail Requirements for Land Title Surveys. There was great pride in that triumph.

However, changes have occurred. No longer is the surveyor plagued with errors induced by difficulties related to such things as expansion and contraction of the tape associated with temperature changes, catenary sag due to inadequate tension being placed on the tape, or lack of improper alignment and horizontal measurement.

Instead, the positional tolerance of any given measurement has become a factor of various other inconsistencies, such as instrument calibration, wave length in the distance meter, optical plummet errors.

The title industry had a different aspect in its scrutiny of the standards. What could comfortably be insured?

It was recognized that ALTA members have specific problems peculiar to title insurance matters—which require detailed, exact information when title underwriters are asked to insure title to land without exceptions, as to the many matters that might be discoverable from survey and inspection of the property, and not be evidenced by the public records.

Title insurers should be able to rely on evidence furnished them as being of appropriate quality in terms of completeness and accuracy, and the surveyor should be provided with reliable data for use in a survey.

Long gone was the consideration upon which the original standards were composed. New laws, new judgments, new opinions have emerged. Some have commingled with the past. Others have made it imperative that the antiquated, outmoded standards should be edited and reviewed.

In 1984, work on the revision was set in motion after both ALTA and ACSM readily agreed that the 1962 standards had become technically and functionally obsolete.

Representatives from each organization met in Texas and confirmed the necessity of such an endeavor. As a result of that meeting, it became apparent that there was some confrontation. The abstract-title folks did not understand the intricacies of surveying and the surveyors could not comprehend the legal implications or title issues, many of which could be created by lack of compliance with enduring principles, or by the manner of presentation of the existing evidence in the field. From this emerged the idea to select certain individuals from each group.

Besides being chosen for their outstanding abilities, those from ALTA and ACSM who joined in the effort also were named from diverse geographic areas of the nation. This distinction proved to be important since problems needing consideration included land description in states comprising the original 13 colonies as opposed to the rectangular description system used in a majority of states. What might have been a simple procedure in mapping Indian burial grounds in a metropolitan area became an unwieldy obstacle in areas with vast tracts such as those in Texas.

The author is chairman of the ALTA Liaison Committee with the American Congress on Surveying and Mapping. She is president of Charlevoix Abstract & Engineering Co., Charlevoix, Michigan, and is a registered land surveyor.

In the update, reference to precision standards was eliminated, incorporating by reference instead detailed standards which can be more readily changed as technology improves. A standard certification reflecting compliance with the joint standards also is included.

Credit for finalizing these standards belongs to many, many persons who contributed much time and effort. Major discussions were held both by ALTA members and ACSM members at their respective conventions. Numerous persons assembled, sometimes from one organization and sometimes in coalition. Step by step, the final product emerged.

There had to come a time to halt the procedure and get the product approved. Approval first came from ACSM. It is composed of three member bodies, namely: National Society of Professional Surveyors; American Association for Geodetic Surveying; and American Cartographic Association. Each of these bodies gave its approval. And, lastly, the American Land Title Association voted its approval at its Annual Convention in September, 1986.

In summation, the final Minimum Standard Detail Requirements for Land Title Surveys is the result of interfacing the work of two great industries. The highest quality professional persons have assembled from across the country. The monumental task has been accomplished. The resultant revised standards are comprehensive.

Let us hope that in the future, ALTA and ACSM will focus on the maintenance of such an important document.

Accompanying this article is the text of the updated standards. Copies may be obtained by writing ALTA at Suite 705, 1828 L Street, N.W., Washington, DC 20036, or by contacting ACSM at 210 Little Falls Street, Falls Church, Virginia 22046.

Minimum Standard Detail Requirements For ALTA/ACSM Land Title Surveys

The "Minimum Standards for Property Boundary Surveys," adopted by the American Congress on Surveying and Mapping (ACSM) in 1986, are recognized as clear and concise technical standards for property-line surveys, and are so recommended. However, it is also recognized that members of the American Land Title Association (ALTA) have specific problems, peculiar to title insurance matters, which require particular information in detail and exactness for acceptance by title insurance companies when said companies are asked to insure title to land without exceptions as to the many matters which might be discoverable from survey and inspection and not be evidenced by the public records. In the general interest of the public, the surveying profession, title insurers and abstracters, the American Land Title Association and the American Congress on Surveying and Mapping jointly promulgate and set forth such details and criteria for exactness. It is understood that local variations may require local adjustments to suit local situations, and often must be applied. It is recognized equally that title insurance companies are entitled to, and should be able to, rely on the evidence furnished to them being of the appropriate professional quality, both as to completeness and as to accuracy; that it is equally recognized that for the performance of a survey, the surveyor will be provided with appropriate data which can be relied upon in the preparation of the survey.

For a survey of real property and the plat or map of the survey to be acceptable to a title insurance company for purposes of insuring title to said real property free and clear of survey questions (except those questions disclosed by the survey and indicated on the plat or map), certain specific and pertinent information shall be presented for the distinct and clear understanding between the client (insured), the title insurance company (insurer), and the surveyor (the person professionally responsible for the survey). These requirements are:

(1) The client, at the time of ordering a survey, shall notify the surveyor that an "ALTA/ACSM LAND TITLE SURVEY" is required, meeting the accuracy requirements of a Class A, B, C, or D Survey as defined herein, and shall furnish to the surveyor the record description of the property and the record easements or servitudes and covenants affecting the property to which the "ALTA/ACSM LAND TITLE SURVEY" shall subsequently make reference. The names and deed data of all adjacent owners as available, and all pertinent information affecting the property being surveyed, shall be transmitted to the surveyor for notation on the plat or map of the survey. If the area of the parcel is required, the client shall so indicate to the surveyor. If the plat or map of survey is to include thereon a note as to zoning classification of the property, the client shall so clearly indicate to the surveyor. If applicable, the surveyor shall be informed by the client of any survey requirements of the Department of Housing and Urban Development, the Veterans Administration or any other government agency or entity.

(2) The plat or map of such survey shall bear the name, address, and signature of the professional land surveyor who made the survey, his or her official seal and registration number, the date of the survey, and the caption "ALTA/ACSM Land Title Survey" with the certification set forth in paragraph 8.

(3) An "ALTA/ACSM LAND TITLE SURVEY" shall be Class A, B, C, or D, in accordance with the "Classification and Specifications for Cadastral Surveys" as adopted by the American Congress on Surveying and Mapping on March 21, 1986, and attached hereto and incorporated herein. Should these above cited specifications be in conflict with state laws, rules or regulations, the more stringent requirements must be followed.

(4) On the plat or map of an "ALTA/ACSM LAND TITLE SURVEY," the survey boundary shall be drawn to a convenient scale, with that scale clearly indicated. A graphic scale, shown in feet or meters or both, will be included. When practicable, the plat or map of survey shall be oriented so that North is at the top of the drawing. If required, supplementary or exaggerated diagrams shall be presented accurately on the plat or map. No plat or map drawing less than the minimum size of 8½ by 11 inches will be acceptable.

(5) The plat or map of an "ALTA/ACSM LAND TITLE SURVEY" shall contain, in addition to the required items already specified above, the following applicable information:

(a) All data necessary to indicate the mathematical dimensions and relationships of the boundary represented, with angles given directly or by bearings, and with the length of each curve, together with its radius, chord, and chord bearing shown. A bearing base shall refer to some well-fixed bearing line, so that the bearings may be easily re-established. All bearings around the boundary shall read in a clockwise direction wherever possible. The North arrow shall be referenced to its bearing base and should that bearing base differ from record title, that difference shall be noted.

(b) When record bearings or angles or distances differ from measured bearings, angles or distances, both the record and measured bearings, angles, and distances shall be clearly indicated.

(c) Measured and record distances from corners of parcels surveyed to the nearest right-of-way lines of streets in urban or suburban areas, together with recovered lot corners and evidence of lot corners, shall be noted. The distances to the nearest intersecting street shall be indicated and verified. Names and widths of streets and highways and the widths of rights of way shall be given. Any use contrary to the above shall be noted.

(d) The identifying title of all record plats or filed maps which the survey represents, wholly or in part, shall be shown with their filing dates and map numbers, and the lot, block, and section numbers or letters of the surveyed premises. Names of adjoining owners and/or recorded lot or parcel numbers, recording information for last available conveyance, and similar information, where needed, shall be shown. The survey shall indicate set back or building restriction lines which have been platted and recorded in subdivision plats. Interior parcel lines shall clearly indicate contiguity, gores, and/or overlaps. Where only a part of a recorded lot or parcel is included in the survey, the balance of the lot or parcel shall be indicated.

(e) All evidence of monuments found or placed, shall be shown and noted to indicate which were found and which were placed. All evidence of monuments found beyond the surveyed premises, on which establishment of the corners of the surveyed premises are dependent, shall be indicated. The character of any and all evidence of possession shall be stated and the location of such evidence carefully given in relation to the surveyed boundary lines. An absence of notation on the survey shall be presumptive of no physical evidence of possession along the record line.

(f) The location of all buildings upon the plot or parcel shall be shown and their locations defined by measurements perpendicular to the boundaries. Proper street numbers shall be shown where available. Observable evidence of easements and/or servitudes of all kinds, such as those created by roads; rights-of-way; water courses; drains; telephone, telegraph, or electric lines; water, sewer, oil or gas pipelines on or across the surveyed property and on adjoining properties if they appear to affect the surveyed property, shall be located and noted. If the surveyor has knowledge of any such easements and/or servitudes, not observable at the time the present survey is made, such lack of observable evidence shall be noted. Surface indications, if any, of underground easements and/or servitudes shall also be shown. If there are no buildings erected on the property being surveyed, the plat or map shall bear the statement, "No buildings."

(g) The character and location of all walls, buildings, or fences within two feet of either side of the boundary lines shall be noted. Physical evidence of all en-

croaching structural appurtenances and projections, such as fire escapes, bay windows, windows and doors that open out, flue pipes, stoops, eaves, cornices, areaways, steps, trim, etc., by or on adjoining property or on abutting streets, shall be indicated with the extent of such encroachment or projection. If the client wishes to have additional information with regard to appurtenances such as whether or not such appurtenances are independent, division, or party walls and are plumb, the client will assume the responsibility of obtaining such permissions as are necessary for the surveyor to enter upon the properties to make such determinations.

(h) Driveways and alleys on or crossing the property must be shown. Where there is evidence of use by other than the occupants of the property, the surveyor must so indicate on his plan. Where driveways or alleys on adjoining properties encroach, in whole or in part, on the property being surveyed, the surveyor must so indicate on his plans with appropriate measurements.

(i) Cemeteries and burial grounds disclosed in the process of surveying or searching the title to the premises shall be shown by actual location if known. If the client wishes to have the survey reflect observable cemeteries and burial grounds, the surveyor shall be so advised.

(j) Ponds, lakes, springs, or rivers bordering on or running through the premises being surveyed shall be shown by actual location.

(k) Streets abutting the premises, which have been legally defined but not physically opened, shall be shown and so noted.

(6) As a minimum requirement, the surveyor shall furnish two sets of prints of the plat or map of survey to the title insurance company or the client. The prints shall be on durable and dimensionally stable material of a quality standard acceptable to the title insurance company. At least two copies of legal boundary descriptions prepared from the survey shall be similarly furnished by the surveyor. Reference to date of the "ALTA/ACSM LAND TITLE SURVEY," surveyor's file number (if any), political subdivision, section, township and range, along with appropriate aliquot parts thereof, and similar information shown on the plat or map of survey shall be included with the boundary description and incorporated for documentation.

(7) Water boundaries are subject to change due to erosion or accretion by tidal action or the flow of rivers and streams. A realignment of water bodies may also occur due to many reasons such as deliberate cutting and filling of bordering lands or by evulsion. Recorded surveys of natural water boundaries are not relied upon by title insurers for location of title.

When a property to be surveyed for title insurance purposes contains a natural water boundary, the surveyor shall measure the location of the boundary according to appropriate surveying methods and note on the plan the date of the measurement and the caveat that the boundary is subject to change due to natural causes and that it may or may not represent the actual location of the limit of title.

(8) When the surveyor has met all of the minimum standard detail requirements for an ALTA/ACSM Land Title Survey, he shall make the following certification on the plat:

To (*name of client*) and (*name of title insurance company, if known*):

This is to certify that this map or plat and the survey on which it is based were made in accordance with "Minimum Standard Detail requirements for ALTA/ACSM Land Title Surveys," jointly established and adopted by ALTA and ACSM in 1986; and meets the accuracy requirements of a Class ___ Survey, as defined therein.

(signed)_____(seal)

Registration No.

Adopted by the Board of Direction,
American Congress on Surveying and Mapping

March 21, 1986.

Adopted by the American Land Title Association

September 27, 1986

American Congress On Surveying and Mapping

Classification and Specifications For Cadastral Surveys

INTRODUCTION

The degree of precision necessary for a particular cadastral survey should be based on the intended use of the land parcel, without regard to its present use, provided the surveyor has knowledge of the intended use.

Four general survey classes are defined using various state regulations and accepted practices. These general classes are listed and defined in table 1 below.

The combined precision of a survey can be statistically assured by dictating a combination of survey closure and specified procedures for a particular survey class. Table 2 lists the closures and specified procedures to follow in order to assure the combined precision of a particular survey class. The statistical base for these specifications is on file at the ACSM and available for inspection.

TABLE 1

SURVEY CLASSES BY LAND USE

CLASS A—URBAN SURVEYS

Surveys of land lying within or adjoining a City or Town. This would also include the surveys of Commercial and Industrial properties, Condominiums, Townhouses, Apartments and other multiunit developments, regardless of geographic location.

CLASS B—SUBURBAN SURVEYS

Surveys of land lying outside urban areas. This land is used almost exclusively for single family residential use or residential subdivisions.

CLASS C—RURAL SURVEYS

Surveys of land such as farms and other undeveloped land outside the suburban areas which may have a potential for future development.

CLASS D—MOUNTAIN and MARSHLAND SURVEYS

Surveys of lands which normally lie in remote areas with difficult terrain and usually have limited potential for development.

AMERICAN CONGRESS on SURVEYING and MAPPING

TABLE 2
MINIMUM ANGLE, DISTANCE and CLOSURE REQUIREMENTS FOR CLASSES OF SURVEYS
(1)

SURVEY CLASS	DIR. READING OF INSTRUMENT (2)	INSTRUMENT READING ESTIMATED (3)	NUMBER OF OBSERVATIONS PER STATION (4)	SPREAD FROM MEAN OF D&R NOT TO EXCEED (5)	ANGLE CLOSURE WHERE N = NO. OF STATIONS NOT TO EXCEED	LINEAR CLOSURE (6)	DISTANCE MEASUREMENT (7)	MINIMUM LENGTH OF MEASUREMENTS (8), (9), (10)
A	20″ <1′> [10″]	5″ <0.1′> N.A.	2 D&R	5″ <0.1′> [5″]	10″ $\sqrt{N}$	1:15,000	EDM or Doubletape with steel tape	(8) 81m, (9) 153m (10) 20m
B	20″ <1′> [10″]	10″ <0.1′> N.A.	2 D&R	10″ <0.2′> [10″]	15″ $\sqrt{N}$	1:10,000	EDM or steel tape	(8) 54m, (9) 102m (10) 14m
C	(20″) <1′> [20″]	N.A.	1 D&R	(20″) <0.3′> [20″]	20″ $\sqrt{N}$	1:7,500	EDM or steel tape	(8) 40m, (9) 76m (10) 10m
D	(1″) <1′> [1′]	N.A.	1 D&R	(30″) <0.5′> [30″]	30″ $\sqrt{N}$	1:5,000	EDM or steel tape	(8) 27m, (9) 51m (10) 7m

Note (1) All requirements of each class must be satisfied in order to qualify for that particular class of survey. The use of a more precise instrument does not change the other requirements, such as number of angles turned, etc.

Note (2) Instrument must have a direct reading of at least the amount specified (not an estimated reading), i.e.; 10″ = Micrometer reading theodolite, <1′> = Scale reading theodolite, [10″] = Electronic reading theodolite, (20″) = Micrometer reading theodolite, or a vernier reading transit.

Note (3) Instrument must have the capability of allowing an estimated reading below the direct reading tot he specified reading.

Note (4) D & R means the Direct and Reverse positions of the instrument telescope, i.e., Class A requires that two angles in the direct and two angles in the reverse position be measured and meaned.

Note (5) Any angle measured that exceeds the specified amount from the mean must be rejected and the set of angles re-measured.

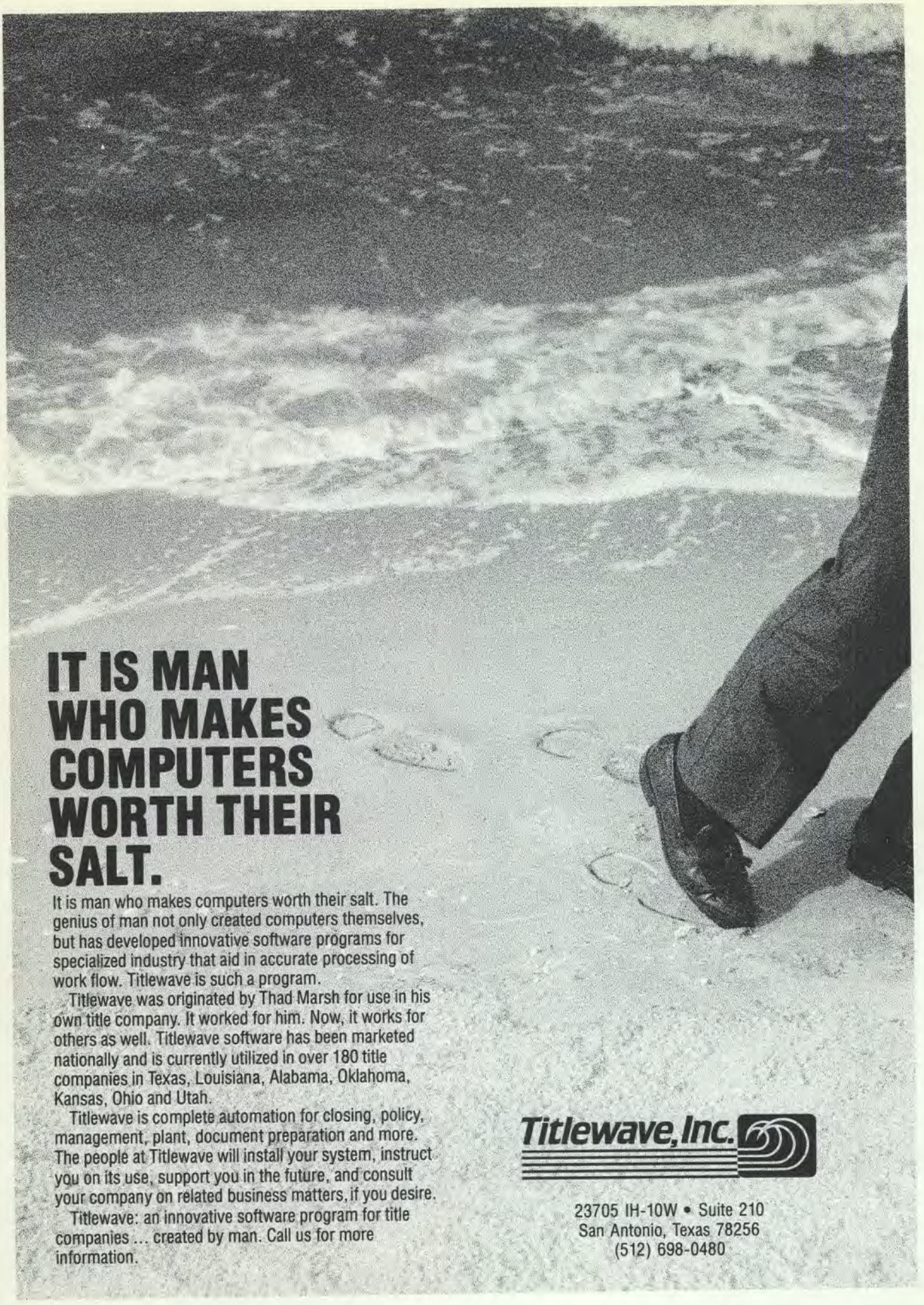
Note (6) Ratio of closure after angles are balanced and closure calculated.

Note (7) All distance measurements must be made with a properly calibrated EDM or Steel tape, applying atmospheric, temperature, sag, tension, slope, scale factor and sea level correcitons as necessary.

Note (8) EDM havuing an error of 5mm, independent of distance measured (Manufacturers specification)

Note (9) EDM having an error of 10mm, independent of distance measured (Manufacturers specifications)

Note (10) Calibrated steel tape.



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Announcing:

Seminar on Understanding The New ALTA Title Insurance Forms

January 23, 1987 — San Diego
January 26, 1987 — Dallas
January 28, 1987 — Atlanta

ALTA members receive 20% discount.

This program will focus on the recently adopted American Land Title Association Title Insurance Policy Forms.

The faculty will discuss:

- **Revised insuring provisions**
- **Modified Exclusions**
- **Changes to Schedules A and B**
- **Substantially revised Conditions and Stipulations**
- **General comparison of 1987 forms with 1970 policies.**
- **Arbitration.**

This program is designed for those with a basic understanding of existing ALTA title insurance policies.

Fee for course including Course Handbook: $275 ($220 for ALTA members)

A lunch will be provided for all Seminar registrants.

All registrants will receive this reference work at no additional charge at the program:

Understanding the New ALTA Title Insurance Policy Forms
(Regular Price: $35)
This handbook contains all ALTA Title Insurance Policy Forms, Title Insurance Arbitration Rules, side-by-side comparison of 1987 and 1970 Loan policies and outlines and other materials which supplement the lectures. It may also be ordered individually by those not attending the program. (Handbook available on first day of program.)

Program Schedule:

Registration is thirty minutes before the morning session. Coffee will be available at that time.

Morning Session: 9:30 a.m.—12:00 p.m.

Insuring Provisions
Mechanics lien coverage; right of access; treatment of assignments of mortgages; consumer protection and usury exclusions; defense obligations; marketability of title

Exclusions
Expanded coverage for governmental police power matters; treatment of environmental liens; eminent domain; mechanics liens; defense obligations; matters known to the insured

Schedules A and B
Conditions and Stipulations
Sections 1 and 2
Definitions of "insured," "public records," and "unmarketability of title"; terms of continuation of insurance after acquisition or conveyance of title

Afternoon Session: 2:00 p.m.—4:30 p.m.

Conditions and Stipulations
Sections 3-17 (Loan Policy)
Notice of claim; defense attorney selection, control and compensation; insured's duty to cooperate; proof of loss content; various procedural bases for liability termination for insured's failure to comply with policy terms; insurer's options to pay or otherwise settle claims; determination and extent of insurer's liability; limitations on insurer's liability; revised subrogation rights

Arbitration
Review of procedural rules developed under the auspices of the American Arbitration Association, including: initiation; scope; arbitrator selection; arbitrator panel composition; discovery; awards; appealability; enforceability

Owner's Policy
Co-insurance provision

Conclusion
Discussion of plans for implementation

Faculty:

Chairman:
Oscar H. Beasley, Senior Vice President and Senior Title Counsel
First American Title Insurance Company
Santa Ana, California

Bernard E. Rifkin
Exec. V.P. & Chief Counsel
The Ticor Title Guarantee Co.
New York, N.Y.

Robert G. Rove
Senior V.P. & General Counsel
Title Insurance Co. of Minnesota
Minneapolis, MN

Russell W. Jordan, III
V.P. & Associate General Counsel
Lawyers Title Insurance Corp.
Richmond, VA

Richard E. Lerner
Associate General Counsel
American Arbitration Association
New York, NY

INFORMATION:

Hotel Accommodations:
Course registrants are responsible for making their own hotel reservations. Rates are listed below for the ALTA block of rooms at each hotel. The number of rooms is limited and rooms will be held only until [four] weeks prior to the program. Correspond directly with the hotel as soon as possible and identify yourself as an ALTA registrant, naming the program you plan to attend. Hotels require a deposit or charge card number to guarantee a reservation, particularly when arrival is after 6:00 p.m. If you plan to spend the weekend, check with the hotel about the availability of rooms with special weekend rates.

San Diego, California
Sheraton Harbor Island East and Towers, 1380 Harbor Island Drive, San Diego, CA 92101, (619) 291-2900; Singles/Doubles $100. Hotel reservations cut-off date: January 9th.

Dallas, Texas
Sheraton Dallas Hotel and Towers, 400 N. Olive Street at Southland Center, Dallas TX 75201-4007, (214) 922-8000; Main hotel; Singles/Doubles $75; Towers; Singles $90, Doubles $95. Hotel reservation cut-off date: January 11th.

Atlanta, Georgia
The Westin Peachtree Plaza, Peachtree at International Blvd., Atlanta, GA 30343-9986, (404) 659-1400; Singles/Doubles $95. Hotel reservation cut-off date: January 14th.

Preregistration is encouraged to ensure adequate meeting space and advance notice to registrants in the event of limitation on enrollment or other program change. If you do not receive confirmation of registration at least three working days before the program, please contact Ms. Kelly Throckmorton of the ALTA Staff.

Full payment must be received no later than the start of the first session of each program. To register or cancel, please call (202) 296-3671 or complete the registration form below.

Education Course Credit can be arranged for this course. Please indicate whether you will be seeking CLE credit for this course on your registration form.

Tape Recording of this ALTA Seminar is Not Permitted.

Lunch *will* be served to all Seminar registrants. The Faculty will be available during this period to address individual questions. Questions will be taken in writing during the morning and early afternoon session.

REGISTRATION: To Expedite Order, Please Use Coupon

Please enroll me in **Understanding the New ALTA Title Insurance Forms** and reserve my complimentary copy of the Course Handbook, $275.

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San Diego, California

____ January 26, 1987, Sheraton Dallas Hotel and Towers
Dallas, Texas

____ January 28, 1987, The Westin Peachtree Plaza
Atlanta, Georgia

____ I cannot attend the program. Please send me on 10-day approval the **Understanding the New ALTA Title Insurance Forms** Course Handbook when it is available on or about January 29, 1987, $35.

____ Please Check if a member or employee of a member of the ALTA (If an employee, please indicate member's name and your position)

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Return this registration form or call ALTA at 202-296-3671 to reserve space.

LTI Establishes Limited Sponsor Plan

By Glenn Graff

The Land Title Institute, Inc., has established an optional tuition schedule for companies wishing to sponsor a limited number of students.

In its continuing effort to provide the most economical education courses to not only ALTA members, but also to related industry applicants, the board of directors of LTI has established an optional method of sponsorship.

Under the subscription plan, basic tuition is a flat fee, depending upon the total number of employees of the subscribing company. For this monthly tuition fee, the subscriber may enroll all or any number of its employees as desired. Also, new employees hired during the term of the agreement may be enrolled as long as the total number of the subscriber's employees does not exceed the maximum of that tuition bracket. The basis for this tuition structure was established as it exists because of an LTI desire to help upgrade personnel of the land title industry, through making courses available to all title company personnel from messenger to president.

The schedule of tuition fees under the subscription plan is as follows:

Total Number of Employees	*Per Month*
Less than 10	$ 35
10 - 40 inclusive	50
50 - 99 inclusive	85
100 - 199 inclusive	125
200 - 299 inclusive	175
300 - 399 inclusive	225
400 - 499 inclusive	275

Above 499 employees, the tuition continues to increase at the rate of $50 per 100 or fractional hundred employees up to 900. Over 900 employees, the maximum monthly tuition is $500.

Monthly tuition charges cover the hours involved in enrolling students, assembling and mailing lesson material, grading student answer sheets, and office overhead. Billing is done on the 25th of each month for tuition in advance and textbooks in arrears. A charge is made to cover the cost of printing and mailing the textbooks that each student receives. The charge is $3.50 per section. All material is sent via first class mail.

A second, alternate enrollment plan, designated as *Sponsorship*, is now available on an individual basis. Any individual, or any company on behalf of an individual employee, may enroll in either the Basic Course or the Advanced General Course. Under this plan, a "one time" fee, payable in full in advance by cashier's check or money order, is charged to cover both tuition and textbook materials. This "one time" fee for the Basic Course for one individual enrollee is $125 and the "one time" fee for the Advanced General Course for one individual enrollee is $150. If the individual or the sponsoring employer is a member of ALTA, the above fees are subject to a $25 discount per person.

Under the *Sponsorship* plan, the Basic Course (10 assignments covering 12 sections) should be completed in approximately eight months, with a maximum allowable time of 12 months. The Advanced General Course (16 assignments covering 18 sections) should be completed in approximately 12 months, with a maximum allowable time of 18 months. This rate of progress conforms to the recommendation of completing one section every three weeks.

The author is president of The Land Title Institute, Inc., and is vice president and state manager for Lawyers Title Insurance Corporation, Lakeland, Florida.

"Same day" service, all via first class mail, is rendered. Upon completion of a course the student is awarded a Certificate of Achievement suitable for framing. Each subscriber or sponsor receives quarterly reports on the progress of all enrollees under its plan.

For additional information, including necessary enrollment documents, please contact Ramona Chergoski, executive vice president, The Land Title Institute, Inc., P.O. Box 9125, Winter Haven, Florida, 33883, Telephone (813) 294-6424.

Chicago Title Purchase Of SAFECO Title Set

Chicago Title and Trust Company has entered into an agreement to purchase SAFECO Title Insurance Company for approximately $85 million, according to a joint announcement by Chicago Title and Trust and by SAFECO Corporation, parent of the latter named organization.

The sale is scheduled to close around the end of this year and the price is subject to post-closing adjustments. Consummation of the purchase is subject to review under federal and state authority.

SAFECO Title has assets of $143.3 million and reported 1985 revenues of $140 million, with reported 1985 net income of $7.5 million. Company headquarters are in Los Angeles.

Chicago Title and Trust is the parent of Chicago Title Insurance Company, and has assets of $570 million and reported 1985 revenues of $374 million.

ALTA Judiciary Committee Report: Part I

Adverse Possession

Walls v. Groham, 315 N.C. 239 (1985).

Plaintiff brought action to quiet title. The referee found record title was vested in the plaintiff. The district court found the referee had misapplied the law and held title vested in the plaintiffs. The court of appeals affirmed. Both plaintiff and defendant claimed title through A and husband. Referee found defendant had exercised actual, open, hostile, exclusive and continuous possession for more than 20 years. Therefore, title was vested in the defendant. The district court applied the old N.C. rule as to adverse possession that a conscious intention to claim title to the exclusion of the true owner is required to establish title by adverse possession.

If one possesses real estate under the mistaken notion that he is the true record owner, may he establish title to the subject property by way of adverse possession?

The supreme court reversed prior case law applied by the district court. N.C. joins the majority rule: where one, in ignorance of his actual boundaries, takes and holds possession by mistake up to a certain line beyond his limits, upon the claim and in belief that it is the true line, with intent to claim title; such possession, having the requisite duration and continuity, will ripen into title. Mistake as to the location of the true boundary will not prevent title by adverse possession.

Bankruptcy

Colegrove, 771 F2d 119 (OH)

Mortgagee holding first mortgages on Chapter 13, debtor's personal residence was entitled to receive interest on mortgage arrearage which were to be paid under Chapter 13 plan in absence of specific clause in loan agreement providing for interest on mortgage arrearages.

Bankruptcy Code, 11 USCA 1325(a), directs bankruptcy court to confirm a Chapter 13 plan only where creditor will receive present value of the amount due him.

Brokers

Capezzuto vs. John Hancock Mutual Life Insurance Co., Inc., 389 Mass. 399 (1985)

In the present case, John Hancock Mutual Life Insurance Company had employed a broker to find someone to purchase certain premises owned by the company. Apparently the broker found such a purchaser, but John Hancock had never signed a purchase and sale agreement, and therefore refused to pay the broker a commission. In fact, although John Hancock knew that the broker had found a buyer (who wished initially to make his offer subject to an unacceptable condition), John Hancock decided to list the property with another broker. Additionally, the transaction was never closed.

The broker brought an action against John Hancock to require the payment of the agreed amount.

The issue in the *Capezzuto* case is whether a broker is entitled to a commission if the seller rejects a buyer, presented by the broker, who is ready, willing and able to buy on the terms of the contract.

The trial court had found that the three requirements noted in the Tristram's case had not been met, and that, therefore, John Hancock would not be required to pay any commission. On initial appeal the appeals court acknowledged that "if the formulation in *Tristram's Landing* is to be applied literally, the judges' ruling was correct: the broker is there said to be entitled to a commission from the seller's only if the requirements stated above are met." But the court cautioned that "so to read the case, however, is to lose sight of the problem the case was dealing with and the wrong it was meant to correct."

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

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

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

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

Report Published in Installments

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

Samuel R. Gillman; Nicholas J. Lazos, Esquire; Bernard M. Rifkin; Michael J. Fromhold; Hugh D. Reams, Jr.; R. N. "Bob" Merritt; Gerard K. Knorr; James K. Weston; Donald P. Waddick; Abraham Resisa; Jerrel L. Guerino; John S. Thornton, Jr.; William M. Heard, Jr.; Robert J. Whisman; Frank P. Willey; E.A. Bowen, Jr.; Charles E. Riggs; Turalu Murdock; Steven H. Winkler; J. H. Boos.

Ted W. Morris, Jr.; Michael Pietsch; Robert C. Mitchell; James Weston; Jack C. Daw; E. W. Adams; Roy H. Worthington; Charles I. Tucker; Louis G. Shusan; Daniel Murray, Esquire; Timothy J. Whitsitt; Gary F. Casaly; Theodore C. Caris; D. P. Waddick; Bobby L. Covington; James W. Hicklin; Don Al Asay; Richard A. Johnson; Mark W. Vaughn; Louis C. Meyer, Jr.

P. C. Templeton; Harold A. Kleinfeld; Joseph Ritter; John H. MacMaster; Dale W. Griffin; Dale L. Astle; Michael G. Magnus; Philip M. Champagne; Carl E. Wallace, Jr.; Ernest G. Carlsen; Phil B. Gardner; Guy C. Jackson, III; Michael J. Jensen; Mark Schittina; Hugh D. Reams, Jr.; James E. Tompkins; Eugene J. Ouchie; Roy P. Hill, Jr.

Upon further appellate review to the Supreme Judicial Court, the appeals court decision was overturned, and the trial court's decision was reinstated.

The Supreme Judicial Court held that the three conditions of *Tristram's Landing* must be met in order for the broker to earn a commission. The court acknowledged, however, that there is an exception to the rule, as applied in *Lewis* v. *Emerson*, 391 Mass. 517 (1984), which provides that a commission will be earned by a broker, even if the transaction does not close, where the broker produced a buyer who was ready, willing and able to buy, and who had entered into a purchase and sale agreement with the seller, but the closing was prevented by the seller's default. The court noted, however, that the exception would not apply in the present case because no purchase and sale agreement was ever executed, even though the lack of such agreement was the result of the seller's failure to execute an agreement with an acceptable buyer:

> The rule we establish today, with respect to cases where the seller is responsible for "the failure of completion of the contract," *Tristram's Landing, supra*, is justified by the same consideration which motivated our holding in *Tristram's Landing*. "[O]rdinarily when an owner of property lists it with a broker for sale, his expectation is that money for the payment of commission will come out of the proceeds of the sale." *Id.* at 628, quoting *Ellsworth Dobbs, Inc.* vs. *Johnson, supra* at 547. Furthermore, a seller ordinarily expects that he is free to sell to whomever he chooses, until he has signed a purchase and sales agreement. In particular, even where a seller engages more than one broker, the seller expects to pay only a single commission, since only one broker will be successful in procuring the ultimate buyer. To protect these expectations we conclude that in situations where the seller is responsible for the failure to complete the transaction, no commission is owing unless the seller has signed a binding agreement with the broker's client.
>
> We acknowledge that brokers also have legitimate expectations, and that "if the broker brings the parties together on mutually acceptable terms he expects a commission for his labor." *Stanchek* v. *Cliffside Park Lodge No. 1527 Loyal Order of Moose, Inc.*, 116 N.J. Super. 471, 479, App. Div. 1971) "Nonetheless, we conclude that the broker is in a better position than the seller to protect these expectations by including, in the brokerage contract, a provision that the broker is entitled to its commission when it produces a ready, willing and able buyer whom the seller, for whatever reason, refuses to accept. In the absence of such a provision, the burden is rightfully placed on the broker, in light of the fact that "many sellers, unlike brokers, are involved in real estate transactions infrequently, perhaps only once in a lifetime, and are thus unfamiliar with their legal rights."

The court did recognize the fact, however, that the foregoing rule might not be applicable "where the seller has engaged in bad faith dealing or some other misconduct which prevents (the execution of) an agreement." The Supreme Judicial Court decision restates the law as it was previously believed to be under *Tristram's Landing*.

Graveline vs. BayBank Valley Trust Company, 19 Mass. App. Ct. 253 (1985)

The plaintiffs purchased a house in 1980 from the defendant who acted as executor under a will. In the "remarks" section of the broker's listing the defendant had described the roof as "approx. 8 yrs. old." In 1983, the roof leaked and when it was inspected, it was determined that the roof was at least 18 years old. The plaintiffs then filed a suit against the defendant based on Chapter 93A and under a common law count of deceit. The action was filed two years and seven months after the date of the sale.

The issue in the *Graveline* case was whether the statute of limitations could be applied to sellers or brokers of real estate in the instance of fraud.

The lower court had dismissed the action based on the short one-year statute of limitations which applies to actions against executors, G.L.c. 260 Sec. 11. The plaintiffs alleged that,

> [I]nformation concerning the roof was inherently unknowable and that, by application of *Friedman* vs. *Jablonski*, 371 Mass. 482, 485-486 (1976), the statute of limitations should be tolled until the time in 1983 when the plaintiffs became aware of the apparent age of the roof.

The appeals court also rejected the plaintiffs' argument. The court decided that since the age of the roof could be determined by an inspection in 1983, it stood to reason that an inspection in 1980 would have likewise shown the true age. Therefore, the age of the roof was not "inherently unknowable."

The court went on to state that the listing itself was "short of a warranty" and in fact contained a statement that "(e)ach item should be the subject of direct inquiry by buyers." The court continued, "in the circumstances, we think the plaintiffs had cause to investigate the age of the roof if that was a matter of importance to them. A physical inspection of real property by or on behalf of the buyer is not uncommon."

While this case was decided on the basis of the statute of limitations question, it is important to remember that the Massachusetts courts have been reluctant to extend provisions of Chapter 93A and liability for fraud to include the sellers and brokers of real estate (see *Nie* vs. *Burley*, 388 Mass. 307 (1983), *Latner* vs. *Carson*, 374 Mass. 606 (1978). This case continues this pattern.

Lundin, et. al. v. Shimanski, et. al., (124 Wis 2d 175 (1985) Supreme Court

Plaintiffs in this case contacted a real estate agency in Madison with the idea of purchasing a building which would both provide rental income and provide living quarters for their son while he attended the University of Wisconsin. The defendant in this case was the owner of the building who assigned his lease at the closing. The defendant was by occupation a real estate broker and owner of various investment properties. He advertised the property as a three to four bedroom house with "a possible rental unit in the lower level." He told the plaintiff's agent that the building was currently occupied by five female college students and that the basement could be occupied by the plaintiff's son upon acquiring a conditional use permit. He further represented that such permits were standard procedure and would be no problem to obtain. In fact, the defendant had been informed by city officials that converting the basement would require expenditures of $1,000.00 to $4,000.00 for improvements. No improvements had ever been made by defendant and he had never applied for a permit.

In addition, the upper unit of the building occupied by the five unrelated tenants was impermissible because the property was zoned R-4A and not R-4 as defendant stated to plaintiff. Therefore, it could not be legally occupied by more than one person.

After spending $3,000.00 to improve the basement the plaintiffs were informed that a zoning variance was also required before their son could occupy the basement. The variance was denied and they were unable to get the permit. This was in addition to the problem of the five unrelated tenants in the upper unit.

HELD: The defendant had prior knowledge of the difficulty of obtaining the permit (with respect to the basement) and misrepresented the zoning (with respect to the upper unit). The court rejected defendant's arguments that his statements were either nonactionable opinions or representations about future events. The rule being that statements of opinion are actionable if the speaker knows of facts incompatible with his opinion.

The trial court awarded compensatory and punitive damages. The court of appeals struck that part of the jury award which was in addition to the benefit of the bargain damages and punitive damages. The supreme court found that plaintiffs were entitled to a damage award under the benefit of the bargain rule (the difference between the value of the property as a single family unit and that as misrepresented) and an award of punitive damages based upon the defendant's full knowledge of the misrepresentations.

* * *

In 1981, plaintiff real estate broker showed a prospective purchaser a vacant parcel of land which defendant seller had listed with him. The broker subsequently drew up an agreement which stated, inter alia, that he would earn a commission for selling the parcel "as, if and when title passes, except for willful default on the part of the seller." Before closing of title and before any written agreement was entered into between the prospective purchaser and defendant, the latter decided to accept a better offer from someone else. The broker then commenced the instant action to recover his commission. He relied upon the rule that where the sale fails due to the seller's fault or default, a broker is entitled to the commission unless the parties clearly intend otherwise.

The court held that the rule is inapplicable where, as here, the brokerage agreement explicitly provides that the commission is due when "title passes," not merely when the broker has obtained a prospective buyer. In light of such a provision, the rule would apply only if the seller and the broker's prospective buyer had already entered a sales contract, and the seller's "fault" or "default," within the meaning of the rule, would have reference solely to a breach of that sales contract. (*Graff v. Billet*, 64 N.Y. 2d 899) (1985)

Contracts

This action was brought by the seller for the

difference between the price the defendant had offered and the price received on a subsequent sale.

The parties by an exchange of letters on the price left the terms of a mortgage for further negotiation. The court granted summary judgment in favor of the defendant purchaser. The terms of a mortgage subject to which the purchaser is to take title to real property constitutes a material element of the contract. (*Willmott v. Giarraputo*, 5 NY 2d 250).

Since the parties admittedly had not reached a meeting of the minds upon this essential element of the bargain, the writings in question failed to create a binding contract. (*Blakey v. McMurray*, 110 AD2d 998) (1985)

* * *

In this action for specific performance, the contract of sale gave plaintiff 45 days to obtain a firm mortgage commitment and gave the defendant the right to extend plaintiffs' time to 75 days if necessary. A copy of the firm mortgage commitment was to be delivered to defendant's attorney.

The court found from defendant's remarks about "accommodation to the purchaser," the fact that the down payment was not returned and that defendant never controverted the fact that a copy of the mortgage commitment was delivered to defendant's attorney within 75 days entitled plaintiff to a judgment of specific performance. (*Perrone v. Pascal*, 111 AD2d 377) (1985)

Salamon vs. Terra, 392 Mass. App. Ct. 857 (1985)

The facts in the case were that the defendant, the owner of certain property, was approached by the plaintiff, a builder, and an arrangement was worked out whereby the defendant contracted and agreed to sell certain lots to the builder for $9,000.00 each and that title would pass when the builder, who thereafter was to construct buildings on the lots, found third parties and was prepared to convey the properties, as improved, to them.

After the contract between the plaintiff and the defendant was forged, the builder began the construction of certain buildings on the lots to be conveyed. Due to bad economic conditions, it became evident to the plaintiff that he would be unable to sell the improved parcels to the purchasers. Construction was ceased and the plaintiff brought an action against the defendant to be compensated for the benefits conferred upon the defendant, namely the construction of $15,000.00 worth of partially completed buildings.

The issue in the *Salamon* case was whether a builder who has contracted with a land owner to buy certain property, would be entitled to be compensated for the improvements placed on the property when the builder thereafter was unable to take title to the property because of poor economic conditions.

The district court ruled that the plaintiff was entitled to be compensated on a theory of quasi contract, due to the fact, according to the district court, the defendant was unjustly enriched. The appellate div. reversed the district court judgment, holding that although the defendant may have been enriched, he was not unjustly enriched.

Appeal was taken to the Supreme Judicial Court, which affirmed the appellate division. The court recognized the fact that the premises which were subject of the purchase and sale agreement had, in fact, been increased in value due to the plaintiff's efforts. However, the court indicated that the increase in value would have benefitted the plaintiff in resales to purchasers had the plaintiff completed his part of the bargain and taken title to the lots and immediately sold them to such purchasers. Succinctly, the court noted that the plaintiff had defaulted.

The court noted that it was a reasonable expectation of the plaintiff that he would be paid for his labor, but the court was quick to note that the expectation of payment was with respect to payment to be made by third parties, namely purchasers to be found by the plaintiff. The court stated:

> Generally, if a land owner has requested that a person construct a structure on his or her property, it is reasonably expected that the land owner will pay for the services and benefit conferred, even if there was no express contract for the construction or if a contract has been violated. . . . The evidence in this case, however, does not support a conclusion that the defendant would pay for the value of partially completed houses or expenses incurred by the plaintiff in the building of partially completed houses on his property. The defendant did not request or even desire that houses be built on property which he intended to use or to retain. . . . The plaintiff would reasonably have expected that he would be paid for his labor, but both parties understood payment would be made by a third party purchaser of the houses; not by the defendant.

The court indicated that one cannot, merely by erecting houses on land of another, compel him to pay. In addition, because the transaction was of a commercial nature, the court noted that any enrichment that inured to the defendant was not unjust.

Lynch vs. Andrew, 20 Mass. App. Ct. 623

The facts in the case concern Lynch, buyer of certain property, who entered into a purchase and sale agreement with Andrew, seller. The financing clause read as follows:

> if despite diligent efforts, a commitment for . . . a loan is not obtained on or before April 26, 1982, the buyers may terminate this agreement by written notice to the seller . . . [and] all deposits made under this agreement shall be returned.

This agreement also contained a standard Boston Real Estate Board clause relating to damages. If the buyer breached the agreement, the seller could keep the deposit.

Lynch notified Andrew on April 26, 1982 that he was unable to find financing and requested that his deposit be returned. Andrew refused to return the money claiming that Lynch's efforts to find financing had not been diligent and that Lynch had breached the agreement. Originally, Lynch had applied to two banks for mortgage loans. He had withdrawn his application from one of the banks, because he felt he would be approved at the other bank. He was approved for a $130,000.00 loan which was the amount he had requested. There was an additional $98,600.00 needed in order to purchase Andrew's property. Lynch expected to raise that money through the sale of his present home. However, no purchase and sale agreement existed on that property. The bank suggested a bridge loan to the buyer to be secured by other property owned by Lynch in Chatham. The bank also suggested a blanket mortgage securing both the Chatham property and Lynch's present home. Lynch felt that these alternatives were "getting a little more complicated" and decided not to go through with the transaction. He requested that the bank send him a rejection letter.

The issue in the *Lynch* case was whether contingency clauses, binding the actions of buyers and sellers, in purchase and sale agreements are enforceable.

A lower court ruled that Lynch's efforts had not been diligent based on the fact that he had applied to one bank only for financing and awarded Andrew $8,400.00 in damages, a portion of the $25,400.00 deposit Lynch placed on the property.

The appeals court concurred that Lynch's search had not been diligent, but on a different basis. Lynch's failure to accept reasonable loan terms to facilitate the financing made his search lacking in diligence according to the court.

> Unless otherwise qualified by express language, a financing condition clause presupposes that the buyers will accept commercially reasonable loan terms. . . . It was reasonable for the bank to be concerned about and make some provision for the funds required above the mortgage. . . . In the instant case, a single bridge loan involving property which the buyers soon intended to sell, in any event, would not have been unduly onerous. . . . When the buyers, through their actions bring about a failure to satisfy a condition, they may not claim the benefit of that failure.

The other issue discussed in this case concerned the liquidated damages clause. Generally, most attorneys modify the damage clause of a purchase and sale agreement to provide for liquidated damages or damages which are calculated prior to any breach.

In the *Lynch* case a question rose as to whether the amount of liquidated damages, being the deposit of $25,400.00, was disproportionate to the losses actually sustained by the seller and thereby constituted a penalty. With respect to this question, the court stated:

> The option of the seller to retain the buyer's deposit as liquidated damages (as an alternative to performance) is, as buyer's counsel conceded, the common practice in Massachusetts conveyancing. . . . We are disinclined to tamper with a well established solution to the problems of expense and uncertainty in litigation of the precise damages in cases of this kind. It is appropriate to recall the observation of Justice Holmes, that, "so far as precedent permits the proper course is . . . not to undertake to be wiser than the parties."

Accordingly, the appeals court held that the liquidated damages clause would not be modified by the court. There could, however, be instances when liquidated damages would not be enforced if they were considered to be unreasonable or in the form of a penalty.

Merry vs. A.W. Perry, Inc., 18 Mass. App. Ct. 592 (1984)

Merry, a real estate investor, found out that the property owned by A.W. Perry, Inc. was of interest to another developer who had not yet contacted the corporation. Based on this information, Merry approached the corporation and was able to negotiate a purchase and sale

agreement calling for the sale by the corporation and the purchase by Merry of certain property in Duxbury. The purchase and sale agreement did not call for time being of the essence.

After the purchase and sale agreement was signed it appears that the transaction was left to linger, although on a number of occasions A.W. Perry, Inc. contacted Merry and asked as to when the closing could be scheduled. Merry had indicated to the corporation that a specific attorney was handling this transaction for him, and at one point, in reliance thereon, the corporation's lawyer wrote a letter to the attorney which concluded as follows: "My client is disposed to return Mr. Merry's deposit and then offer the property to other interested parties unless we receive some information acknowledging that he will be ready to perform shortly."

In fact, the attorney to whom the letter was sent knew nothing of the transaction, and, in addition, Merry never responded to the corporation's letter by firming up a date for closing. Thereafter, the president of the corporation wrote Merry directly and stated that "due to unreasonable delay in closing" the offer to sell was being withdrawn, that the property was being taken off the market and that the deposit was being returned."

After receiving this direct communication, Merry brought an action for specific performance against the corporation asking that the property be transferred upon payment of the consideration. Merry noted that the contract did not call for time being of the essence, and that therefore, the court should rule in his favor.

The issue in the *Merry* case was whether specific performance could be enforced under a purchase and sale agreement that did not specify time as being of the essence.

The court indicated that the closing date specified in the contract had passed and that no formal tender had been made by either party. The court noted that time not being of the essence, the contract remains enforceable by either party thereafter. However, the court stated:

> At this point (the specified date for performance at which time no performance was tendered), either party by notice to the other might have assigned a reasonable time for the completion of the transaction, thereby making performance within that time of the essence of the contract.

The court concluded that A.W. Perry, Inc. had, accordingly, set a time for closing by putting Merry on notice that performance was expected "shortly," and had therefore made time of the essence of the contract, and that Merry could not require performance by the corporation after the offer to sell was "withdrawn," where Merry had not performed within a reasonable time after the initial notice to him indicating an expectation of performance.

It is clear from the case, that a contract which does not specify time being of the essence can be made of the essence upon notification of one party to the other after the otherwise specified date of performance.

* * *

The main legal issue was whether a contract vendee of real property is entitled to have the proceeds of fire insurance policy, issued in the vendor's name only, and on which premiums were paid by vendee, held in trust by the vendor for reconstruction by the vendee of the destroyed property where the fire occurred while the vendee was in possession of the premises.

The court held that the contract vendee did not have such a right. A land contract vendee in possession has no common law right to require the vendor to hold the proceeds of the fire insurance policy in trust for the reconstruction of the destroyed property. In *Raplee v. Piper*, 3 NY2d, the court on similar facts held the vendee had the right to apply the insurance proceeds to the balance due on the contract. This was the extent of the vendee's rights.

A land contract is not the "equivalent" of a mortgage for the purposes of RPL §254(4) which imposes a trust on fire insurance proceeds received by the mortgagee. (*Upham v. Lowry*, 127 Misc 2d 316) (1985)

* * *

In this action by a purchaser for specific performance, a motion for summary judgment by defendant seller was denied on the ground that there were issues of fact.

The contract of sale did not make the closing date time of the essence. Thereafter, plaintiff requested a lengthy adjournment. Defendant countered with notice of closing with time of the essence—on a date which was claimed a reasonable time. Plaintiff's affidavits raised the issue of whether defendant agreed orally to waive that closing date.

The court held that a trial was necessary to determine whether the seller's notice set a reasonable time.

The amount of time that constitutes a "reasonable time" must be determined by the facts and circumstances of each case (see, *Green Point Sav. Bank v. Central Gardens Unit No. 1, Inc.*, 279 Appr. Div. 1078 (1985)

* * *

This summary is addressed to that part of the action which seeks the recovery of a vendee's down payment. Two days before the contract closing date plaintiff notified the sellers' attorney that he had been unable to sell his house and needed a reasonable adjournment. The parties could not agree on a date.

The contract of sale did not make the closing date time of the essence. The sellers' attempt to hold purchaser to that date was a nullity. When the parties were subsequently unable to agree on a closing, sellers sold the property to a third party.

The court ordered the return of the down payment to plaintiff. The sellers failed to serve proper notice to plaintiff to complete his obligation within a reasonable time to be specified in such notice. The mere designation of a date on which title is to be closed does not result in making time of the essence. "Proper notice" means that the party seeking to establish the firm closing date must serve "clear, unequivocal notice to that effect." (*Levine v. Sarbello*, 116 AD2nd 197) (1985)

* * *

In this action for specific performance of a contract of sale by former leasehold tenants, the issue was whether the contract vendees in possession were required to pay for the use and occupancy pendente lite. Since the contract was not necessarily to be performed with 90 days RPAP 713(9) is inapplicable.

Although the two relationships are not mutually exclusive, the general rule is that execution of a contract of sale between landlord and tenant serves to merge the landlord-tenant relationship into a vendor-vendee relationship and thus, effectively terminates the former, unless the parties clearly intend the contrary result.

An intention to deviate from the general rule and to avoid a merger may be directly expressed in the agreement or may be inferred from a medley of factors, such as the terms of the agreement, the circumstances of its making, and the subsequent behavior of the parties 2 Rasch, NY Landlord and Tenant §690 [2d ed]).

The case was remanded for further factual inquiry (*Barbarita v. Shilling*, 111 AD2d 200) (1985)

* * *

This action was brought by a purchaser for specific performance of a contract of sale of a residence. The contract of sale contained a mortgage contingency clause which provided "if a commitment for such a loan is not obtained within forty-five (45) days, then either party may cancel same, upon which cancellation the down payment deposited hereunder shall be returned to the purchaser."

Two months later defendant's attorney sent a letter to plaintiff electing to cancel the contract and returning the down payment. Thereafter, plaintiff offered to pay all cash.

A motion to dismiss the complaint was granted. While the mortgage contingency clause was primarily for the benefit of the purchaser and could be waived, the court held that it was also of benefit to the defendants. (*Lieberman v. Pettinato*, 126 Misc 2d 215) (1985)

* * *

In this action for specific performance or alternatively, damages stemming from defendants' failure to consummate a real estate purchase, defendants had interposed a defense of "unclean hands." This appellate court on a prior appeal granted summary judgment in favor of plaintiffs on the issue of liability. The lower court construed this as mandating the remedy of specific performance. This was held in error.

Specific performance is a discretionary remedy which is an alternative to the award of damages as a means of enforcing a contract. (*Hadcock Motors v. Metzger*, 92 AD2d 1). The party seeking equity must do equity, i.e., he must come into court with clean hands (*Grosch v. Kessler*, 256 N.Y. 2d 477). The court should have permitted defendants to present evidence as to why plaintiffs should be relegated to their remedy at law, i.e., damages.

If the court concludes that plaintiffs are not entitled to specific performance, then it will be necessary to proceed to trial to determine the proper amount of damages recoverable for the breach of contract, at which point claims of unclean hands shall have no bearing. (*Pecorella v. Greater Buffalo Press, Inc.*, 107 AD2d 1064.) (1985)

* * *

In this action by a purchaser for breach of contract of sale it was established that plaintiff's letter offer identified the parties to the contract and the property which was the subject of the transaction, set out the price and detailed the terms of payment. As such plaintiff's offer set out all of the essential terms of a contract with reasonable definiteness. Accordingly, a valid and enforceable contract was created when appellant accepted the offer.

A judgment for damages was affirmed. Although a down payment of $30,000 was due on execution of a formal contract, plaintiff's failure to pay that sum did not constitute a breach of contract since no formal contract was executed. (*Mattikow v. United Jersey Mortgage Co.*, 1104 AD2d 973) (1985)

Condominiums

The by-laws of a condominium gave its board the perpetual right to buy any unit on the same

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terms as a proposed outside purchaser. The court rejected a contention by buyers against whom the right was exercised that it violated the rule against perpetuities. It held that although an option to buy property is subject to the rule, the option here "does not present a significant restraint on the power of the property owner to convey a fee interest," nor, since the option was vested in the board, would problem arise in identifying the option holder. "[A] technical violation of the rule against perpetuities should not operate to void an otherwise reasonable restraint," the court concluded in denying plaintiffs' motion for an injunction against the condominium's sale. (*Anderson v. 50 East 72nd Street Condominium*, 129 Misc. 2d 295) (1985).

Cooperatives

Plaintiff, executor of the estate of a tenant of a rent stabilized apartment undergoing conversion brought this action seeking to exercise the right to purchase the subject apartment, and for related relief. The tenant had died prior acceptance by the Attorney General of the cooperative offering plan.

The complaint was dismissed. An estate does not have the right to buy cooperative shares allocated to the apartment of a tenant who died prior to acceptance for filing by the State Attorney-General of the cooperative offering plan, since an estate does not stand in the shoes of a deceased tenant for purposes of exercising a right to purchase his apartment which the decedent did not have when he died. (*Lominitz v. 61 East 86th Street Equities Group*, 129 Misc. 2d 157) (1985)

* * *

The plaintiff, owner of a cooperative apartment, commenced an action to enjoin the defendant corporation from terminating his proprietary lease. The defendants moved for summary judgment, directing that they have possession of the Manhattan apartment, and for other related damages because the plaintiff sublet his apartment without prior authorization. Under the plaintiff's lease, unauthorized subletting is a violation for which eviction is the remedy. The court found that if the plaintiff had waited for the defendants to commence holdover proceedings, he could have taken advantage of Real Property Actions and Proceedings, Section 753(4), which would have allowed the application of a ten-day post-judgment cure provision. The court found this provision was not applicable here in an ejectment action in the supreme court but only in holdover proceedings in civil court. Thus, the plaintiff was bound by the contractual terms of his lease, and the defendant's motion for summary judgment was granted. (*Greenbaum v. Madison Realty Corp.*, 129 Misc. 2d 862) (1985)

* * *

Plaintiff cooperative corporation sought to recover damages based upon fraudulent statements as to the condition of an apartment complex made by the former owners, defendants herein, as sponsors in a conversion plan filed by them with the Attorney General.

The lower court dismissed the complaint on the ground that since the plaintiff did not purchase any of the shares of stock, it was in no position to claim reliance upon the misrepresentations contained in the plan (Gen. Bus L §352-e) (subd 1, par b).

The appellate division, second department, reversed. The cooperative corporation, as the only entity that can fairly allocate recovery to the "investors" and "purchasers" who actually suffered the damages, has an interest which is "personal, real, direct and substantial," (*Matter of Whalen v. Lefkowitz*, 36 NY2d 75, 78) and thus has standing to sue. (*Scarsdale Manor Owners, Inc. v. Wolloch* 106 AD 2d 439) (1985)

* * *

In this action for the return of a "flip tax" paid under protest, the appellate term, first department held for the plaintiff.

Where both the cooperative's bylaws and the proprietary lease provide with respect to the transfer of shares only that the board of directors may fix reasonable fees to cover legal and other expenses incident to an assignment, and no mention is made of a transfer tax or assessment, the imposition of such a tax does not come within the authority delegated to the board and amounts to a material modification of the proprietary lease which may not be effected absent shareholder approval. (*Berglund v. 411 East 57th Corporation*, 127 Misc 2d 58) (1985)

Covenants, Conditions and Restrictions

Perry v. Bridgetown Community Association, Inc., 486 So. 2d 1230 Miss (1986)

In determining whether property control may be enlarged by a homeowners association, the intent of the original declaration of covenants and notice to lot owners controls; where assessments are within the contemplation of the original covenants, members who derive benefits from the association impliedly consent to assessment; judicial review of a homeowners association is guided by the intent as stated in the declaration of covenants and judged by a test of reasonableness.

In September of 1970, 21 restrictive covenants for Lakewood Estates Subdivision were recorded in DeSoto County. The twenty-first covenant provided procedural guidelines for amending the covenants. In September of 1973, Lakewood Estates Association was incorporated as a nonprofit corporation. In July of 1975, the covenants were amended and the agreement to amend was signed, as required, by at least 65 per cent of the property owners in the subdivision, including William Carlock and John Nelson, appellants. Alex Perry, the other appellant, purchased his lot from a seller who had signed the agreement to amend the covenant. The amended covenants gave the association authority to collect assessments for maintenance of the common areas and to enforce collection both in law and in equity. In October of 1979, the name of the corporate charter of Lakewoods Estates Association was changed to Bridgetown Community Association, Inc., appellee. In December of the same year, the new association adopted new bylaws which included the same provisions for collection and enforcement of assessments and also required mandatory membership in the association. In May of 1980, Perry, Carlock, and Nelson, appellants, sued the association, its officers and directors, contesting the expansion of authority of the corporation through the amendments and new bylaws and the imposition of assessments. The complaint requested a temporary injunction to freeze the assets and enjoin the officers and directors from operating under the new bylaws. The chancellor dissolved the injunction and dismissed the suit, finding no issues of liability to warranty a hearing on proof of damages.

On appeal, the Mississippi Supreme Court addressed three issues. First, the court stated that enlargement of property control by a homeowners association is governed by the original declaration of covenants and notice to lot owners. The court held that in this case, the original covenants provided for enlargement of control, thereby giving property owners constructive notice. Further, the signature of the appellants or their predecessors in title to the amendments was actual notice. The court concluded that the original and amended covenants indicated a clear and unambiguous intent to enlarge property control. The second issue before the court was whether the amendment permitting assessments for maintenance exceeded the powers of the original covenants. The court held that where the original covenants contemplated assessments and where landowners benefit from membership in an association, they impliedly consent to assessment for reasonable maintenance. The court held that the requirement of assessment constituted an implied covenant by necessity. The third issue involved judicial review of an association's powers. The court stated that judicial review must be guided by the intent stated in the declaration of purpose and judged by a test of reasonableness. The court held that the declaration permitted review in law or in equity by any lot owner. The court affirmed the decision of the chancery court.

Edwards v. Bridgetown Community Association, 486 So. 2d 1235 Miss (1986)

A lien for homeowners dues created by modifications made after the deed of trust is not superior to a purchase money mortgage; dues owed to a homeowners association are not assessments; recording of lis pendens notices without filing suit is improper and could amount to slander to title.

James Flaherty and Glen Edwards, appellants, purchased lots in Lakewood Estates in 1972 and 1973, respectively, which were subject to 21 covenants, the twenty-first of which provided for amendment of the covenants. In July of 1975, Bridgetown, Inc., successor of Lakewood Estates Association, filed an agreement to amend the covenants. The modifications included a provision requiring all record owners of property in the subdivision to be members of the Bridgetown Community Association; a provision requiring maintenance assessments; and a provision providing for enforcement of the covenants by proceedings in law or equity. In October of 1979, the Bridgeport Community Association, appellee, filed lis pendens notices against both Flaherty and Edwards which stated that a suit would be filed to enforce a lien for nonpayment of maintenance

assessments. In April of 1980, Flaherty and Edwards received notices from their mortgage company which stated that nonpayment of the assessments constituted a breach of their deeds of trust, and, which warned that if the assessments were not paid, action would be taken by the mortgage company under the terms of the deeds of trust. After paying under protest the full amount owed to Bridgeport Community Association, Flaherty and Edwards filed suit for damages in chancery court against the association. In dismissing their complaint with prejudice, the court's opinion included findings that Flaherty and Edwards took title to their property subject to the right of amendment and were therefore subject to the amendments even though they were not parties to the agreement to amend; that their purchase money mortgages were subject to the original covenants and any subsequent amendments; and that they had failed to prove malice necessary for slander of title.

On appeal, the Mississippi Supreme Court stated that as a general rule, a restrictive covenants recorded in a deed creates a lien on land which is superior to a subsequent deed of trust. However, the court held that since the assessment lien was created and recorded by modifications made after the deed of trust, the purchase money mortgage was a superior lien and that the mortgage company therefore had no authority to require payment under the deeds of trust. The court also held that property dues to a homeowners association were technically not an assessment because they were not owed to a municipality and that therefore, the mortgage company could not force their payment under the deeds of trust. Finally, the court held that recording of a lis pendens notice without filing suit was improper and could amount to malicious slander of title. The court reversed the decision below and remanded the case for further proceedings.

Rosi v. McCoy, 79 N.C. App. 311 (1986)

Plaintiff filed action seeking injunction requiring defendant to move an existing house so that it would comply with certain restrictions. After the suit was filed, defendant obtained from the developer an amendment and waiver to the restrictions relative to the violation. The restrictions provided the developer could "amend, modify or vacate" any restriction in its sole discretion. Trial court granted a summary judgment in favor of the plaintiff's.

Does the provision providing the developer the right to amend the restrictions whenever in its discretion the circumstances so warrant affect the ability of lot owners to bring action to enforce the restrictions?

The court of appeals reversed the trial court. North Carolina law provides that restrictions placed on property by the developer-owner who then subdivides and sells the property thus constituting a general plan of development are enforceable by any grantee of any parcel affected thereby, under the theory of mutuality of covenant and consideration, or the theory of mutual negative equitable easements. However, where the developer may unilaterally act to modify, amend or vacate any of the restrictions whenever the developer thinks advisable, the restrictions are deemed personal to the developers. The plaintiff-lot owners had no power to bring an action to enforce the restrictions.

* * *

Defendants purchased their property subject to a restrictive covenant inter alia, prohibiting the erection of a fence or planting a hedge "along the existing current boundary line of the right of way."

The hedge, which is the subject of this injunction action, runs parallel to the boundary line but from one to two feet distant from it. Defendants urged that the word "along" be construed as "on."

Plaintiff's cause of action to enjoin the violation of the terms of the restrictive covenant and directing the removal of the hedge was sustained. "Along" as "on" is only one construction and is not acceptable here. The intent of the restrictive covenant, as expressed by the plain language employed, was to prevent the planting of a hedge parallel to the boundary line. (*Liebowitz v. Mandel*, 114 A.D. 2d 491) (1985)

* * *

Plaintiff brought this action to enforce a restrictive covenant in defendants' chain of title which prohibits the construction of two-family dwellings.

The lower court found that both parties had derived their titles from a common owner with covenants restricting the lots to single family dwelling but denied plaintiff relief for failure to show a common scheme or plan imposed by the common grantor.

The court of appeals held that this was not a necessary element of proof.

In order to establish the privity requisite to enforce a restrictive covenant, a party need only show that his property derives from the original grantor who imposed the covenant and whose property was benefitted thereby, and concomitantly, that the party to be burdened derives his property from the original grantee who took the property subject to the restrictive covenant. (See *Orange and Rockland Utilities v. Philwold Estate* 52 NY2d 253, 263). This "vertical privity" arises wherever the party seeking to enforce the covenant has derived his title through a continuous lawful succession from the original grantor. (*Malley v. Hanna*, 65 NY. 2d 289) (1985)

Due Process

Archon Oil Company, Inc. v. Clifford K. Cate, Jr., 695 P.2d 1352 56 Okla. B.A.J. 453 (Okla. 1985)

Clifford K. Cate, Jr., an attorney, sought execution upon a judgment for attorney's fee directing the sheriff to levy upon an oil and gas lease owned by defendant, Archon Oil Company, Inc. The property was advertised for sale by publication notice in accordance with Oklahoma law and sold to Cate for $500.00. The oil and gas lease had been appraised for $10,500.00 prior to sale. Archon filed objections to the sale based upon an assertion that an oil and gas lease is realty and must therefore be sold for at least two-thirds of the appraised value. The trial court confirmed the sale and Archon appealed. The issue on appeal as outlined by the Oklahoma Supreme Court was not whether the property sold was personalty or realty, but rather the issue was whether the sale procedure complies with fundamental requirements of due process. The appellate court noted that an oil and gas lease is an interest in realty, although not per se real estate.

The court cited the United States Supreme Court in *Mullane v. Central Hanover Bank and Trust Company*, 339 U.S. 306, 70 S. Ct. 652, 94 L.Ed. 865, (1949) in determining that the parties in interest should be provided a full opportunity to appear and be heard. The court stated that under the *Mullane* doctrine, "notice must be reasonably calculated to reach the interested parties." As a result, the court determined that, in those instances in which the names of the parties are available, publication notice alone is insufficient, noting that due process requires adequate notice, a realistic opportunity to be heard and the right to participate in a meaningful manner before one's rights are irretrievably altered. The court reversed the trial court and held that lack of notice reasonably calculated to reach the parties in interest constitutes a jurisdictional infirmity. The court stated that the holding shall apply prospectively to all sales previously governed by 12 O.S. 1981 §§757 and 764.

Reporter's Comment: This case has broader application than the facts before the court. Specifically, the decision appears to obligate a plaintiff in any foreclosure action or other sale by a sheriff pursuant to execution on a judgment to provide "personal notice" regarding the sale to the property owners and other parties in interest whose names are available. In such cases, the statutory requirement of publication notice as the sole means of notifying the parties is no longer sufficient. The court does not explicitly outline the method by which "personal notice" can be accomplished. However, the court mentions mail service as a possible means by which the necessary parties could be notified. A question remains as to whether "personal notice" as used in this case is equivalent to "actual notice." Specifically, the court cites *Mennonite Bd. of Missions v. Adams* 462 U.S. 791 (1983) in which it was determined that actual notice is a constitutional prerequisite to a proceeding which will affect the liberty or the property interests of any party.

Stephenson v. Row, 315 N.C. 330 (1986)

A devise provided for a specific number of acres out of a larger tract but not a metes and bounds description.

Is such description too vague to be valid?

Lower court followed prior case law that such a general devise failed for uncertainty. The supreme court overturned. Seeking to uphold the intent of the testator, the court noted that while both deeds and wills are to be liberally construed, a will is construed more liberally than a deed. After all, parties may correct an improperly drawn deed, while a testator cannot remedy technical mistakes. To give effect to the devise, three methods are available. First, look to circumstances which tend to fit the description of the specific tract within the bounds of the larger tract. Second, consider devisees of specific numbers of acres to be tenants in common of the entire larger tract in proportion to their devises. Third, borrowing from other jurisdictions, in appropriate circumstances allow the devisee to make a reason-

able selection from the entire tract to determine the property devised.

Descriptions

McCarthy v. Timberland Resources, Inc., 712 P.2d 1292 Mont. 85

A deed conveyed a 22¼-acre parcel lying in two sections and described in aliquot parts of a government section. The supreme court disagreed with a prior attorney general's opinion that such a description was not in compliance with 76-3-401 MCA. The court held. "The requirement of Section 76-3-401 MCA can be satisfied if the parcel contains not less than 20 acres and is an aliquot part of a government section or lot, and if it is divisible into aliquot parts of a government section or lot and the parcel is physically contiguous even though the aliquot parts may be located in more than one government section or lot." Although this particular issue was not raised in the case, the statement by the court is an indication of how it views this method of describing land.

Easements

Clearwater Realty v. Bouchard, 145 Vt 815 (1985)

Plaintiff sought to enjoin defendants' use of a "beach path" which extended from a road in a subdivision to the shore of Lake Champlain. Defendants owned a lot in the subdivision and deeds to defendants' predecessors in title contained specific references to a recorded plat. The "beach path" was depicted on the recorded plat.

Whether lot owner in a subdivision acquired rights to use of a beach path right of way depicted on the recorded subdivision plat when no specific conveyance of a right of way was ever included in the chain of title to the lot.

Lot owners acquire rights in all roads, streets, parks and other designated ways shown on a plat map unless a contrary intent is affirmatively shown.

In same case, plaintiffs also attempted to limit width of an undefined right of way for access to defendants' lot. Court held that when a deed merely recites a general right of way over the servient estate, the owners of the easement are entitled to a convenient, reasonable, and accessible way.

* * *

The parties owned adjoining recreational property along the shoreline of a river. Defendant owned a boathouse which encroached 8 to 9 feet in front of plaintiff's property. The appellate court agreed with the lower court that defendant bore the responsibility for removing this encroachment. However, it reversed the granting of an implied easement from pre-existing use of ingress and egress over a strip of plaintiff's property. Implied easements are not favored by the law and the burden of proof rests with defendant to prove such entitlement by clear and convincing evidence (see, *Buck v. Allied Chem. Corp.*, 77 AD 2d 782). The record does not support the trial court's finding that such an easement is reasonably necessary for defendant's beneficial enjoyment of her property. Defendant's use of the driveway in dispute is a mere convenience which is insufficient to justify the granting of an easement (*Hedden v. Bohling*, 112 AD 2d 23) (1985)

Boston Seaman's Friend Society, Inc. vs. Rifkin management, Inc., 19 Mass App. Ct. 248 (1985)

The plaintiff and the defendant owned buildings which were separated by a small triangular parking lot, the area in question. In 1956, title to this lot was vested in the plaintiff's predecessor in title, Sumner and Samuel Poorvu. Then, the Poorvu's leased their property to Columbia Pictures Corporation for a term of 20 years with nine successive options and an option to purchase at the end of the twentieth year. The lease contained clauses which allowed the lessee "to sublet the leased premises or any part thereof without the consent of lessors . . . " and "to make such alterations, additions, or improvements . . . as it (lessee) shall consider necessary." The lessors retained the right to "enter the leased premises for purposes of inspecting the same at reasonable times."

Around this same time, the division manager of Columbia made an agreement with the defendants to share the cost of paving and maintaining the lot so that it could be shared as a parking area. "Neither . . . knew where the boundary line between their properties lay, nor did either care." They continued to share this area for parking purposes through the 20-year term of Columbia's lease. Subsequently, Columbia exercised their option to purchase and title eventually came down to the plaintiff, who wished to prevent the defendant from using the parking area. The defendant claimed that he had acquired a prescriptive easement.

The issue in the *Boston Seaman's* case is whether a prescriptive easement can be acquired by adverse possession.

The court began its discussion by noting that,

> Under G.L.c. 187 Sec 2, one may acquire a prescriptive easement upon the land of another by use of that land in a manner which is open, notorious, adverse to the owner, and continuous for a period of at least twenty years. . . . The purpose of the various requirements of adverse possession . . . is to put . . . [the owner] on notice of the hostile activity of the possession so that . . . the owner may have an opportunity to take steps to vindicate his rights by legal action.

The plaintiff successfully argued that the defendant's use of the parking area during the period of Columbia's 20-year lease was not open or notorious enough to suffice for adverse possession or result in a prescriptive easement. The court restated its position that "[t]he extent of openness and notoriety necessary for the acquirement of title by adverse use varies with the character of the land." They found that under the present facts, the lessor (owner of the fee) could find nothing to distinguish any of the cars as belonging to the employees and invitees of Columbia or those to Rifkin."

The court then concluded that,

> We cannot infer from the recited undisputed facts, especially in view of the provisions of the lease agreement, that Rifkin's use of the lot was sufficiently remarkable that the Poorvus knew or should have known that such use was adverse to their rights to the locus.

Flax vs. Smith, 20 Mass App. Ct. 149 (1985)

The plaintiff in the instant case, being the owner of lot A, claimed an easement by implication for water and sewer under lot C. The court indicated that the history of the parcels of property was such that at all times prior to 1966 all parcels were in common ownership, and that while in common ownership the title to lot A was taken from the owner for nonpayment of taxes. Thereafter, the municipality sold the property to the plaintiff.

At the time of the tax taking there existed pipes for both water and sewer running under lot C. The owner of lot C, the defendant in the present action, claimed that no easement by implication, or otherwise, existed over or under lot C for the benefit of lot A, because there was no granted easement and because the facts, as claimed by the defendant, were not sufficient to raise an easement by implication.

The issue in the *Flax* case was whether a water and sewer easement could be created by implication.

The court acknowledged that no easement by grant existed, and commented on the defendant's position as to the lack of an easement by implication. The defendant had taken the position that an easement by implication is an easement arising by reason of intention of the parties, and suggested that the taxpayer who had lost the property to a tax taking would have had no intention of creating an easement over land retained (and thereafter sold to the defendant). The defendant had taken the view that this would be particularly true in the case of an involuntary conveyance, such as a tax taking, as opposed to a voluntary conveyance. The court stated:

> What is required, however, is not an actual subjective intent on the part of the grantor, but a presumed objective intent of the grantor and grantee based upon the circumstances of the conveyance. . . . One commentator has noted that "[t]hese fictional implications of 'intent' are genuinely rooted in considerations of public policy."
>
> In this case, there are circumstances to consider even apart from the way the respective pieces of property were being used at the time of the taking. The effectiveness of the tax title procedures as a means of producing municipal revenue would be hindered if members of the public bidding on the property at tax title auctions would receive fewer rights than ordinary grantees of the same property.

The court also indicated that implied easements arise in other involuntary conveyance situations, such as those concerning partition and levy of an execution.

The court indicated, as noted above, that matters of public policy weighed heavily in this decision. In this respect, it should be noted, that although intention is an important aspect as to whether an appurtenant right will be conveyed with a particular estate, that the intention required is one based on objectivity, and not actual subjective intent.

Stagman vs. Kyhos, 19 Mass App. Ct. 590 (1985)

In 1950, the Stagmans purchased property which had no frontage on a street along with an adjoining parking space. A right of way, of record, connected the parking space to the

street. This right of way was passable by foot but was inconvenient for vehicles due to a fence which blocked the way. The Stagmans habitually drove through a parking lot adjacent to their parking space in order to gain access to their property. The fee in this parking lot was held by the owners of 56-58 Greenough St. In 1971, when access to their property through this parking lot became obstructed, the Stagmans rented a parking space at 56-58 Greenough St. They were forced to give up the space in 1980 when the property was converted to condominiums. At that time, the Stagmans continued to use the parking lot for access to their property.

The issue in the *Stagman* case was whether a prescriptive easement can be established by adverse possession when there is a break in that possession.

The court in this case affirmed a lower court decision that an easement had been established based on open, uninterrupted and adverse use of the area for a period of not less than 20 years.

In affirming the lower court's decision, the court in this case "found that the essential prerequisites to a prescriptive easement—open, uninterrupted and adverse use for a period of not less than 20 years—had been established." First of all, there was no evidence that the Stagmans' use of the premises had been opposed.

> The owners of the Greenough Street premises . . . had [not] taken any steps prior to 1980 to bar use of the premises for access to the Stagmans' residence. . . . There was no evidence that the Stagmans' usual route was ever deliberately obstructed . . . and [therefore] the servient owners did not effectively block the easement.

The defendant argued that since the Stagmans had rented a parking space, they intended to abandon the easement. The court, however, found that the agreement to provide the Stagmans with parking spaces at 56-58 Greenough Street in 1971 did not interfere with the establishment of the easement.

> The fact that the Stagmans rented two parking spaces in the defendant's parking area from 1971 to 1980 is unavailing for the reason, if none other, that . . . by 1971 the plaintiffs had acquired a prescriptive right to use the passageway. . . . [T]here has been no showing that the Stagmans intended to surrender the prescriptive right of access.

* * *

This was an action to establish an easement by prescription over a strip of land owned by the defendants. The use of this particular strip was in common with the general public.

The court declared that no easement was created in favor of the plaintiff. It is well settled that a prescriptive easement arises by the adverse open notorious and continuous use of another's land for the prescriptive period (*DiLeo v. Pecksto Holding Corp.*, 304 N.Y. 505). Generally, such use of a right of way is presumed to be adverse and casts the burden on the owner of the servient tenement to show that the use was by license (*Pirman v. Confer*, 273 N.Y. 357).

However, the presumption of adversity is inapplicable when the user by the plaintiff is not exclusive. Plaintiff must, in such a case, prove that its use was hostile to that of the owner of the servient tenement in order to be granted an easement by prescription.

This, plaintiff failed to do. *Susquehanna Realty Corp. v. Barth*, App. Div. 2nd Dept. 485 NYS 2d 795.

* * *

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Eminent Domain

Gordy v. Cobb County School District, 255 Ga. 26, 334 S.E. 2d 688 (1985)

Gordy conveyed land to the Mountain View Community Club by a deed containing a reversionary clause which would be triggered if the land ceased to be used for "community club improvement purposes." The school district planned to condemn part of the tract to be used as a site for a school building and filed a declaratory judgment action to determine the respective rights of the parties.

Would a partial taking trigger the reversionary interest of Gordy and terminate the present estate of the Community Club?

The court held the club continued to use its land within the parameters set forth in the conveyance and that, therefore, the whole estate did not cease. Generally, where it is speculative as to whether a reversion will occur, a partial condemnation which prevents further compliance, as to the part taken, with the conditions or limitations of a conveyance neither allows the grantor's successors to claim a present estate in the lands not condemned nor allows them to claim a share of the condemnation award relating to the part taken.

Welsh v. Department of Natural Resources, 501 A. 2d 1351 Md. (1986)

Department of Natural Resources condemned 1132.09 acres owned by Coffmans for use as a state park in 1966. Included in this tract was a 33-acre parcel which had been conveyed by Boors by deed recorded March 5, 1878 and finally to one Welsh. Coffmans derived title to the larger tract by mesne conveyances from Boors by deed recorded March 12, 1878.

Was the 33-acre tract acquired by virtue of the in rem proceedings condemning the 1132.09 acre tract despite the fact Welsh, then owner, received no notice?

Where a party in interest is not named in the petition for condemnation, the proceeding is not binding upon him unless the omitted party in some way waives the defect.

Equitable Liens

This action was brought to declare plaintiff had an equitable lien on the home of the wife of a deceased former partner. The claim was based on monies he lent his partner which were used to improve the real property.

The existence of an equitable lien requires an express or implied contract concerning specific property, wherein there is a clear intent between the parties that such property be held, given or transferred as security for an obligation (*James v. Alderton Dock Yards*, 256 NY 298, rearg denied 256 NY 681). At best, plaintiffs complaint and affidavit allege that defendant stated that her husband's debt would be paid from the proceeds of the sale of the home.

The court held for the defendant. An agreement to pay a debt out of a designated fund does not operate to create an equitable lien upon the fund. (*Datloff v. Turetsky*, 111 Ad 2d 364) (1985)

Homestead

Wolfe vs. Lipsy, 209 Cal. Rptr. 801, 1985

The owners of a single-family residence, Joseph and Irene Basurto, executed and recorded a declaration of homestead, thereon, in 1974. In 1976, Irene Basurto alone, encumbered the property with a third deed of trust which, in December 1978, was assigned to Richard and Mildred Davis, who then recorded a notice of default. In March of 1979, a final decree of dissolution of the marriage of Joseph and Irene Basurto was entered, awarding the real property to Irene as her separate property. In January of 1979, the real property was sold to Rodney and Joan Wolfe, who refused to cure the default, claiming that the deed of trust was void under Civil Code §1242 for lack of the signatures of both Joseph and Irene Basurto. The trustee's sale was held in November of 1979, with the property being sold to Manuel Lipsy, the high bidder. Also in that month, Joseph Basurto's motion to set aside the decree in the dissolution action was granted. In December of 1979, Wolfe brought this action for quiet title against Lipsy, et al. The trial court held the deed of trust void and quieted title in Wolfe as to the one-half interest of Irene only.

Although the law of homesteads is now changed, the statute in effect in 1974, when the homestead was recorded, voided the deed of trust ab initio, unless the debt was acknowledged by both parties, which didn't take place here.

For whatever reason, the quiet title action didn't name Joseph Basurto as a defendant, so no issue was raised as to his half interest.

Fraudulent Conveyances

Eliot Discount Corporation vs. Dame, 19 Mass App. Ct. 289 (1985)

Plaintiff held a note signed by the defendant

as co-guarantor and that subsequent to this, the defendant conveyed, for nominal consideration, the property to himself and another as trustees.

The issue in the *Eliot* case was who bears the burden of proof in an action to set aside a conveyance as a fraudulent transaction under the Uniform Fraudulent Conveyance Act, G.L.c. 109A which provides:

> Every conveyance made and every obligation incurred by a person who is or will be thereby rendered insolvent is fraudulent as to creditors without regard to his actual intent if the conveyance is made or the obligation is incurred without a fair consideration.

The trial court ruled that the plaintiff's burden had not been met and ruled for the defendant.

The appeals court noted that the 26 states which have adopted this Uniform Act are split on the issue of "on whom to place the burden of proving solvency or insolvency." While the court thought that there was "at least a plausible rationale" for the plaintiff's proposition that the burden to prove solvency should rest with the party who has more knowledge and access to the financial records in question, the court, however, agreed with the trial court that the burden rests with the plaintiff. It is, after all, the plaintiff who is "seeking to alter the status quo to another party's disadvantage" and he "usually has the burden of proving all of the elements of his claim."

Joint Tenancy

In re the Marriage of: William Lutzke v. Lutzke, 122 Wis 2d 24 (1985) Supreme Court

This case involved a dispute between the estate of the deceased and his divorced wife concerning the title to a homestead they had occupied prior to the entry of a judgment of divorce. The judgment directed a sale of the home with a division of the proceeds.

Prior to the husband's death, the couple had attempted to sell the property (both executed a listing contract) but were unable to find a satisfactory buyer.

The husband's personal representative brought this action in order to either find the wife in contempt for failure to join in the sale of the home or modify the divorce judgment to compel the wife to convey. The circuit court dismissed the action, holding that the title status was unaffected by the divorce decree because no severance of the joint tenancy would be effected until the sale. Therefore, it held that the wife became the sole owner of the homestead by right of survivorship.

At issue: Whether a judgment of divorce which directs the sale of a homestead held in joint tenancy severs the joint tenancy prior to the sale.

Whether a divorce judgment has the effect of termination of a joint tenancy is dependant upon either the expressed intent of the parties, i.e. a stipulation, or by the intent expressed in the decree of the judge. In *Nichols v. Nichols* 43 Wis 2d 346 (1969), the court stated that the unexercised power to sell did not sever the joint tenancy but a sale and conveyance did. However, in that case, the judgment expressly contemplated the continuation of the joint tenancy until sale. The circuit court erroneously applied *Nichols* to this case and held that, as a matter of law, a joint tenancy is not severed until sale.

No evidence of such an intent was found in the present case. The court, therefore, remanded the case for a determination of the intent of the divorce judge at the time of the divorce judgment.

* * *

This partition action was brought by the lawful widow of a decedent, who had taken title to a parcel in his name and that of a woman companion. The deed read to "Charlie Morgan and Patricia Morgan, his wife".

The petition was dismissed. EPTL 6-2.2(c) provides "a disposition of real property to persons who are not legally married to one another but who are described in the disposition as husband and wife creates in them a joint tenancy, unless expressly declared to be a tenancy in common." *Morgan v. Morgan,* 111 A.D. 2d 790 (1985)

Insurance

Murphy v. Cincinnati Insurance Company, 772 F2d 273 (MI)

Damages are recoverable in action for breach of contract when they arise naturally from the breach. Michigan recognizes contractual obligation on part of insured to act in good faith.

In action brought by insureds to recover under fire policy for destruction of their home and property, jury finding that insureds had not committed arson or fraud was supported by evidence including testimony that one insured was willing to undergo polygraph examination as to whether he was involved with setting of fire, and that investigator was unable to link fire to any culpable activity of insureds.

Evidence that investigator hired by insurer to investigate fire was unable to link fire to any culpable activity of insured and one insured was willing to submit to polygraph examination, but that insurer declined offer was sufficient to support jury's findings that insurer acted in bad faith in denying insureds' claim.

Michigan law permitted award of attorneys' fees as proper measure of damages arising out of insurers' breach of its implied contractual duty to act fairly and reasonably in investigating and refusing to pay insureds' claim; where insurers' breach of such duty caused insureds to incur expense of litigation to enforce their rights under fire policy.

Judgments

Bell v. Bingham, 484 N.E. 2d 624, Ind (1985)

Husband and wife were divorced in 1978. Husband was granted a judgment for $22,500 and the wife was set off a nursing home, all equipment, inventory, personal items, real estate, including the residence next door, as her sole property. The decree provided that husband had no further interest in the real estate.

Wife became deceased March 21, 1980, having made all the regular monthly payments of $185.00 to the husband on the alimony judgment.

Husband failed to file a claim in the wife's estate within allowable time. Two years later, husband filed suit against the purchasers of the former wife's real estate and former wife's sole distributee, claiming that he was a secured creditor of the estate as his alimony judgment was a lien against the real property and that the son, sole distributee, was responsible up to the amount he had received from the estate.

Was husband's alimony judgment secured?

Husband's award of alimony did not create a judgment lien against wife's real estate on data of decree of divorce.

Husband was general creditor of wife's estate and should have filed claim against the estate within five months of first published notice to creditors.

Keele vs. Reich, 215 Cal. Rptr. 756, 1985

Reich obtained a money judgment against Mr. Keele which was entered on May 4, 1981. Following the judgment, an abstract of judgment was recorded. Keele's social security number and driver's license number were marked "unknown" on the abstract of judgment even though Keele's social security number was contained in an exhibit to respondent's verified complaint which resulted in the judgment.

Subsequently, Keele conveyed his interest in the subject property to Mrs. Keele in divorce proceedings. Mrs. Keele filed suit for a declaration that Reich's lien against her property was invalid under CCP 674 because the abstract did not include Mr. Keele's social security number.

The trial court held that the abstract substantially complied with Section 674 and established a lien against Mrs. Keele's property. The issue on appeal was whether the abstract was adequate under Section 674 without containing the judgment debtor's (Mrs. Keele's) social security number.

The court of appeals held that it was not. Under CCP 674, which sets forth content requirements for abstracts of judgment, absence of judgment debtor's social security number when it is known to a judgment creditor does not impart constructive notice and thus renders the abstract void.

Will Rogers Bank & Trust Company v. First National Bank of Tahlequah et al, 710 P.2d 752, 56 Okla B.A.J. 2834 (Okla 1985)

Will Rogers Bank and Trust Company (plaintiff) obtained a joint and several money judgment against Omar J. Morgan (defendant), and other judgment debtors in the District Court of Oklahoma County. Plaintiff then submitted a certified copy of the judgment to the office of the county clerk of Cherokee County for filing as a public record in that county.

Oklahoma law requires filing in any county in which a lien is sought to be imposed upon real property of the judgment debtor located in that county (12. Okla. Stat. §706). The judgment was accepted for filing in Cherokee County but the county clerk failed to properly index the judgment under the name of each judgment debtor. As a result, the judgment was not indexed under the name of defendant.

Subsequently, defendant conveyed title to

subject property to First National Bank of Tahlequah which took title without knowledge of such judgment. Thereafter, the bank sold the property to Harris who also acquired title without knowledge of the judgment. Harris then mortgaged the property to Guaranty Bank & Trust Company.

Plaintiff thereafter instituted an action asserting a lien on the property, alleging the file stamp on the judgment by the Cherokee County clerk's office constituted proper filing of record required by statute to create a judgment lien. The trial court disagreed and granted summary judgment in favor of Harris and dismissed plaintiff's action.

The issue on appeal concerned the literal requirements of §706 to accomplish the creation of a judgment lien in a particular county. The appellate court stated the purpose of filing the judgment in the office of the county clerk is to give notice to the world. The court concluded this requires the county clerk to properly record or index the document as an incident of the statutory filing obligation.

The court affirmed the trial court, holding the rights in the realty of a bona fide purchaser for value and other third parties without notice are superior to the right of plaintiff.

Reporter's Comment: The terminology used by the court in this decision may prove to be the source of some confusion. Specifically, the court refers to the "perfection" of a judgment lien which implies the existence of an inchoate lien in the absence of filing. In fact, no lien exists in Oklahoma by virtue of an unfiled judgment. Moreover, the court analyzes the rights of the parties in terms of relative "superiority" which also implies an inchoate lien status for an unfiled judgment. In addition, the court's reference to the fact that neither of the purchasers possessed actual knowledge of the existence of the judgment erroneously implies that a purchaser could not acquire title free of any effect of an unfiled judgment in those instances in which the purchaser was aware of the existence of the judgment. Further, the court's decision that a filed judgment is not a lien until properly indexed creates a practical problem for both the abstracter and the title examiner due to the inability to readily determine when a judgment has been properly indexed.

* * *

The judgment creditor sought the sale of a $3 million residential apartment of a husband and wife to satisfy a judgment against the husband and another in the amount of $514,690.

The petition was denied without prejudice to renewal after discovery proceedings to locate other assets of the debtors. CPLR 5240 provides that a court may at any time, on its own initiative or the motion of any interested person, fashion an order "denying, limiting, conditioning, regulating, extending or modifying" the use of procedures used to enforce a judgment and to supervise disclosure in accordance with CPLR 3104 (*Tweedie Construction Co. v. Stoesser*, 65 AD 2d 657) to ameliorate its harsh effects on the debtor or persons connected to the debtor. *Manufacturers Hanover Trust Company v. Zimberg, 166 A.D. 2d 261 (1986)*

Lis Pendens

In order to avoid the N.Y.C. real property transfer tax, the parties agreed that rather than an outright transfer of the title by deed, the transaction was constructed in terms of a sale of the stock of the corporate owner of the parcel.

When the deal fell through, plaintiff-purchaser brought an action for specific performance of the transfer of the stock and filed a lis pendens.

The court of appeals reversed an order of the appellate division denying the motion of the defendant to cancel the lis pendens and granted the motion. To counterbalance the ease with which a party may hinder another's right to transfer property, this court has required strict compliance with the statutory procedural requirements.

A lone dissent opined that the majority elevated form over substance. *5303 Realty Corp. v. O. & Y. Equity Corp*, Court of Appeals, N.Y., 486 NYS 2d 877

* * *

Plaintiff tenant commenced an action seeking to recover damages for wrongful eviction and to recover possession of the apartment, following her eviction. She filed a notice of pendency to give notice that her rights to the apartment were superior over those of a subsequent occupant or purchaser. The defendant moved to cancel the notice of pendency, and the court granted the application, holding that the right of possession of an apartment is not an interest in real property. It noted that the determination of the action will not affect the title, use or occupancy of the realty, and concluded that the notice of pendency was improper. *Gyurek, v. 103 East 10th Owners Corp*, 490 NYS 2d 415 (1985)

Steven A. White v. Brent Wensauer, 702 P.2d 15, 56 Okla B.A.J. 858 (Okla 1985)

Seller and buyer entered into a contract to sell a condominium complex. Seller thereafter notified buyer that buyer had breached the terms of the contract and, as a result, the contract was terminated. Seller then contracted to sell to third parties. Buyer filed suit for specific performance and filed a lis pendens notice. Seller counterclaimed for slander of title and sought discharge of the lis pendens notice. The trial court declined to cancel the notice on the basis that the district court lacked authority to cancel a lis pendens notice. The question was certified to the Oklahoma Supreme Court which accepted original jurisdiction of the issue, recasting sellers petition to constitute a proceeding seeking a writ of mandamus.

The supreme court noted that some jurisdictions provide a statutory right to seek expungement of a lis pendens notice, however, Oklahoma does not provide a method to discharge such a notice. The court stated that lis pendens derives from common-law by which the mere pendency of the action constituted notice to the world. Therefore, statutes concerning lis pendens do not create the doctrine but actually limit its application. The court recognized that a court, by the exercise of equitable powers, could modify a common-law doctrine in circumstances in which equitable considerations are compelling.

The court held that a court in equity can cancel and expunge a lis pendens notice notwithstanding the absence of a statutory procedure for such expungement. The court noted that it must be considered whether the application of the doctrine of lis pendens in a particular case is harsh and arbitrary and whether the cancellation would result in prejudice to the non-petitioning party. The supreme court directed the trial court to entertain the application for discharge of the notice.

Reporter's Comment: The decision does not fully discuss the effect of cancellation of lis pendens notice in regard to the ability of a purchaser to acquire title totally free of the judgment ultimately rendered in the pending action. However, the inevitable inference to be drawn from the court's analysis is that a purchaser taking title subsequent to cancellation of lis pendens notice but prior to the ultimate judgment would acquire title free of any claim by the plaintiff in a pending action. Otherwise, the cancellation of the notice would serve no purpose and could be abrogated by the subsequent rendition of an adverse judgment in the action. However, the question remains as to whether a judicial cancellation of the notice would eliminate the need to require a dismissal of the action to achieve a marketable title.

In addition, the court does not discuss the effect of a judgment rendered prior to acquisition of title by a purchaser in those instances in which a lis pendens notice has been previously cancelled. It must be presumed, however, that the purchaser would take title subject to the judgment.

Editor's Comment: Lis pendens notice should be expunged only if suit does not affect possession or title. Once expunged, bona fide parties should be able to ignore the litigation until a certified copy of a judgment or decree issued on the litigation is perfected as provided by the state statute relative to decrees and judgments.

Hoyt v. American Traders, 76 Or. App. 253, 709 P.2d 1090 (1985)

Martha W. Hoyt and Edwin R. Hoyt held title to a Lot 1, Block 3, Rogue Valley Estates Subdivision, Jackson County, Oregon as tenants by the entirety. On March 20, 1980, Martha filed a petition for dissolution of the marriage. On April 26, 1980, Edwin was served with a complaint and summons by American Traders. American Traders received an award of $601,951.52 and caused it to be docketed in Jackson County, thereby creating a lien against all property of Edwin. On April 27, 1981, a decree was entered awarding the interest in the property to Martha.

Whether the doctrine of lis pendens applies in dissolution cases.

Court held: ". . . that the doctrine of lis pendens does apply in dissolution cases if the property is described with particularity in a pleading." 709 P.2d at 1091.

* * *

Service upon a real estate agent possessing the agency to sell the real property within 30 days of filing the notice of pendency was held insufficient to effectuate the notice of pendency.

Generally, unless the owners of property act in such a way as to thwart service upon them within 30 days, at least one owner must be served. *Schwartz v. Certified Mgt. Corp.* 78 AD 2d 823.

A motion to cancel the lis pendens was granted. *Vogel v. Meixner,* 127 Misc 2d 1011 (1985)

* * *

This action was brought to set aside a sat-

isfaction piece obtained through fraud. The lis pendens was filed after the closing but before the recording of the deed.

The appellate division held that mortgagee should prevail. The opinion stated the fault rested squarely on the shoulders of the title company which marked off the mortgage upon being presented with an unrecorded satisfaction. It should have held the mortgage money in escrow or delayed the closing until the satisfaction had been recorded or required the mortgagee to appear at the closing, all standard practices which are particularly important to follow when the original mortgagee is a private person as distinguished from an institutional lender.

The court of appeals affirmed *only* insofar as the opinion held that the defendant who purchased the property encumbered by the mortgage is bound by a notice of pendency filed prior to the recording of his deed and the satisfaction of mortgage. *Goldstein v. Gold*, 66 N.Y. 2d 624 (1985)

* * *

In order to avoid the N.Y.C. real property transfer tax, the parties agreed that rather than an outright transfer of the title by deed, the transaction was constructed in terms of a sale of the stock of the corporate owner of the parcel.

When the deal fell through, plaintiff-purchaser brought an action for specific performance of the transfer of the stock and filed a lis pendens.

The court of appeals reversed an order of the appellate division denying the motion of the defendant to cancel the lis pendens and granted the motion. To counterbalance the ease with which a party may hinder another's right to transfer property, this court has required strict compliance with the statutory procedural requirements.

A lone dissent opined that the majority elevated form over substance. *5303 Realty Corp. v. O. & Y. Equity Corp*, 64 NY 2d 313 (1985)

Jurisdiction

In re the Estate of Alice Dullenty Thomas, Deceased, 699 P.2d 1046 Mont. 85

Alice Dullenty Thomas gave a power of attorney to her nephew who deeded certain properties to six Dullenty heirs, according to Alice's instructions, on the condition that they hold the properties in trust during the lifetimes of her and her husband. Alice died and these properties were not listed as part of her estate. Her husband's sister, as conservator of the husband, brought an action in the probate case to set aside the conveyances to the Dullenty heirs. The judge dismissed the action for lack of jurisdiction.

Does a district judge sitting in probate have jurisdiction to determine title?

No. "In Montana, title to real property, whether determined incidentally or intentionally, must be resolved in proper proceedings instituted for that purpose."

Landlord and Tenant

Charles D. Castle v. Double Time, Inc., 56 Okla B.A.J. 2451 (Okla 1985)

Plaintiff leased certain real property to Double Time, Inc. (tenant) which assigned the lease to R & R Foods (assignee). The lease allowed tenant to assign the lease and to renew the primary term for two additional five-year periods. The lease required that tenant remain obligated during any extended term if the lease is assigned. Tenant assigned the lease to assignee during the primary term.

At the end of the primary term, plaintiff brought suit against assignee in forcible entry and detainer. The trial court ruled against plaintiff on the basis the assignment was valid and allowed assignee to exercise the renewal covenants under the lease. The court of appeals affirmed, holding that since the lease was assignable, the renewable covenant was also assignable.

The issue on appeal was whether a renewal provision, in the absence of express authority in the lease, was assignable in those instances in which the primary lease was assignable.

The supreme court noted that tenant had not been relieved of his obligations under the lease by virtue of the assignment. The court stated that unless a novation has occurred, the tenant remained in privity of contract with plaintiff. The court stated that the power of renewal is based upon privity of contract and is non-transferrable unless specific provisions authorizing such assignment exist in the lease. The court determined that no privity of contract existed between plaintiff and assignee in this case. As a result, the court reversed the trial court and court of appeals, holding that judgment in forcible entry and detainer should be granted.

Ellis v. Department of Transportation, 175 Ga App. 123, 333 S.E. 2d 6 (1985)

Property was condemned by the Department of Transportation on March 9, 1982. Ellis was lessee in possession pursuant to lease expiring May 31, 1982, which lease contained an option for three 5-year renewal terms. Pursuant to the terms of the lease, Ellis gave notice of his intention to renew prior to the expiration of the original term but after the date of the taking. Ellis sought damages to his leasehold interest during the renewal terms. The trial court held that Ellis could not recover for damages suffered after the original expiration date.

Is a valid lease renewal option a compensable interest?

The correct measure of damages is the diminution of value of the leasehold during the remainder of the unexpired term of the lease, less any rents to be paid by the lessee. Here, the court agreed that the lease had not expired because the lessee had exercised his option in a timely manner and in accordance with the terms of a lease which antedated the condemnation. The lessee was entitled to recover as though the original lease had originally provided for both terms as one continuous term.

* * *

A 20-year lease entered into in 1972 provided that the landlord had the right to serve the tenant with a five-day notice to cure alleged breaches of the lease and upon the tenant's failure to cure the landlord was empowered to terminate the lease. The lease also set forth the name of the landlord's attorney. In 1982, the tenant received a five-day notice from an attorney other than the one named in the lease, with the notice setting forth that the attorney was authorized by the landlord to send the notice. A few days later, the tenant received a termination notice from the same attorney. The landlord instituted a summary proceeding to recover possession of the premises.

The appellate division second department with one dissenting opinion dismissed the petition. "The mere assertion of authority on the face of the notice by a total stranger to the transaction that he is the landlord's attorney and that he is authorized to act on the latter's behalf cannot be deemed to provide the tenant with the surety of notice to which he is entitled." *Siegel v. Kentucky Fried Chicken of Long Island Inc. 108 AD 2d 215 (1985)*

* * *

A cooperative proprietary lease provision that contains a conditional limitation operative upon respondent tenant's default for a period of two months in the payment of rent, thereby allowing recovery of the residential premises in a holdover summary proceeding, is void and unenforceable; such provision interferes with the tenant's right to cure a residential rent default that could be easily remedied and, therefore, is contrary to public policy and unconscionable. *520 East 86th Street, Inc. v. Leventritt, 127 Misc. 2d 566 (1985)*

* * *

In a landlord/tenant proceeding, an order of the appellate division, which reversed an order denying a motion by the tenant to vacate a default judgment of possession rendered in favor of the landlord, granted the motion and dismissed the petition, was affirmed. It was not error as a matter of law to find that the "reasonable application" requirement of RPAPL 735(1) had not been met by the landlord by his single attempt to make service on the tenant at noon on a weekday before affixing notice of petition and the petition to the apartment door and mailing a second copy by certified mail. *Eight Associates v. Hynes, 65 NY2d 739 (1985)*

* * *

The petition in a holdover proceeding commenced against the executor of the decedent, a rent-stabilized tenants who died in February 1983 while in possession of the subject premises under a lease which does not expire until September 1985 was dismissed as premature; petitioner commenced the proceeding upon learning that said executor had placed himself in possession following petitioner's denial of the executor's request to assign to himself. Although petitioner had the right to unreasonably withhold consent to the proposed assignment, pursuant to Real Property Law §236, it cannot be reasonably maintained that the estate risks losing the remainder of the leasehold interest to which it is otherwise entitled merely because its request to assign is not approved; a lease for a term of years is not terminated by the death of the lessee prior to the expiration of the term, but passes as personal property to the estate which remains liable for the rent. *Joint Properties Owners, Inc. v. Deri, 127 Misc 2d 26 (1985)*

* * *

The court of appeals reversed a lower court order granting the landlord possession because of his need of an apartment for his own necessary use.

Under recent amendments to the Administrative Code of the City of New York (§Y51-6.0, subd b, par [1]), the Emergency Housing

Rent Control Law (L1946, ch 274, §5, subd 2, par [a], as amd by L 1961, ch 337) and the Emergency Tenant Protection Act (L 1974, ch. 576, §4[§10, subd a] as amd by L 1983, ch 403), a landlord may no longer evict a tenant in good faith for his own necessary use or that of his immediate family where a member of the tenant's household is 62 years of age or older, has been a tenant for 20 years or more, or has a medically demonstrable impairment resulting from anatomical, physiological or psychological conditions which is expected to be permanent and prevents the tenant from engaging in substantial gainful employment (L 1984, ch 234). Respondent concedes that the newly enacted amendments are applicable to this proceeding (see id.) and that they prevent petitioners' eviction inasmuch as they were in possession of their apartment on the statute's effective date and they meet all three of the factors which now bar the eviction of rent controlled tenants. *Guerriera v. Joy, 64 N.Y. 2d 747 (1985)*

Lunsford v. Income Properties, Inc., 254 Ga 55, 325 S.E. 2d 590 (1985)

Plaintiff, Lunsford, held title to the property by virtue of a 1976 foreclosure deed obtained by exercising a power of sale contained in a 1973 security deed. Lunsford brought a dispossessory action against Income Properties, Inc. (Income), lessee under a 1972 lease. Income contends their right of possession is superior to Lunsford's because the lease predates the foreclosed security deed. Lunsford contends the 1973 security deed was a consolidation of prior loan deeds and therefore has priority over the lease.

Did the 1973 security deed extinguish the priority of the consolidated earlier deeds?

The general rule is that, whether the taking of a new mortgage in place of a prior one amounts to an extinguishment thereof is a question as to the intention of the parties, and that the acceptance by a mortgagee of a new mortgage, and his cancellation of the old one, does not amount to a payment or satisfaction and does not deprive him of his right to have the lien of the discharged mortgage continued as against an intervening lien, in the absence of an intention to give priority to the intervening lien and in the absence of paramount equities or acts or omissions of the intervening lienholder to his prejudice while relying on the apparent discharge of the senior lien. The court held the general rule was applicable to a lease in this situation, although it is not strictly speaking an "intervening lien."

Malpractice

Kirby v. Chester, 174 Ga App. 881, 331 S.E. 2d 915 (1985)

Borrower, Jones, asked Kirby to make a loan to him secured by two parcels of real property. Jones' attorney, Chester, certified to Kirby that Jones held title to both parcels. Based on this certificate, Kirby made the loan to Jones. Jones failed to pay the debt at maturity. Kirby foreclosed on the first parcel and then sought to foreclose on the second to make up the deficiency. He did not seek judicial confirmation of the first sale. Kirby then discovered that, despite Chester's title certification, Jones did not have any interest of record in the second parcel. Kirby sued Chester, alleging he was damaged as a result of

the negligence or omission. The trial court granted Chester's motion for summary judgment.

Was recovery against Chester barred by Kirby's failure to seek a judicial confirmation on the first sale?

Was recovery against Chester barred because Kirby was not his client?

The failure to seek confirmation would serve only to estop Kirby from suing Jones for a deficiency; it would not operate to extinguish the debt or prevent Kirby from pursuing such other contractual security as he might have. The gravamen of the instant suit was that Chester's alleged malpractice resulted in Kirby's not having other security to turn to. Legal duty is the basis of malpractice liability. Under certain circumstances, professionals owed a duty of reasonable care to parties who are not their clients. To establish such duty, the *intent* that the contract be for the third party's benefit must be shown. Here, the contract between attorney and client was clearly intended for the benefit of the third party lender. The certification was addressed to Kirby and was intended to assure Kirby of good collateral for his loan. The duty was thus clearly established, but the question of negligence was one for the trier of fact.

Marketable Title

In this action by a seller for specific performance or for damages because of defendant's inability to close, the contract for the conveyance of good and marketable title "except for utility easements and except none." One of the parcels was subject to a railroad switch easement.

The court rendered judgment to the defendant purchaser. The railroad easement rendered title unmarketable. Even with the grantee's knowledge of a railroad easement, his right to object to the unmarketability of title was not defeated. His knowledge of the easement prior to the date set for closing did not constitute a waiver. (*Tanners Realty Corporation v. Ruggerio,* 111 AD2d 974) 490 NYS2d 73

Mechanics' Liens

A single notice of lien was filed against eight parcels by a subcontractor. When the lienor began its work, four of the parcels had already been conveyed to other owners who were not named in the notice of lien. The other four parcels had been conveyed to a partnership of which the original owner is a general partner.

The motion to amend the notice of lien was denied and the lien foreclosure action was dismissed. A partner is not designated an "owner" by subdivision 3 of section 2, nor is its interest as a partner subject to execution for the partner's debts (Partnership Law, Sec. 51, subd 21, par[c]). Even though a partner is a "tenant in partnership" the partners are thus not an "owner" within the meaning of subdivision 3 of section 2 of the lien law.

In the absence of prejudice, it would seem appropriate to allow amendment where one of two general partners was named and served. As it appears that since the filing of the notice of lien all remaining parcels have been transferred, allowance of an amendment nunc pro tunc to list 23rd Associates, the owner, would prejudice the transferees. *Tech Heating and Mechanical Inc. v. First Downstream Service Corp.*, 126 Misc 2d 85 (481 N.Y.S. 2d 201)

Mortgage—Due on Sale

Santa Clara Savings and Loan Association vs. Pereira, 211 Cal. Rptr. 54 (1985)

This is another in a long line of California due-on-sale cases.

In August of 1979, Joseph and Kay Orlando refinanced their home with Santa Clara Savings and Loan Association for $105,000, secured by a first deed of trust. In December of 1979, the Orlandos sold their home to the Pereiras for $168,500, "subject to" the first deed of trust. Santa Clara on three occasions sent the Pereira's credit information forms to be filled and returned in order for Santa Clara to determine their creditworthiness leading to a potential assumption of the debt. The Pereiras refused to provide any information. Santa Clara then brought this action for declaratory relief, claiming that it had a right to accelerate payment for failure of Pereiras to provide adequate evidence of creditworthiness.

Under *Wellenkamp*, the lender is allowed to

accelerate if it can show an increased risk of default. In this case, Pereiras had every opportunity to provide the relevant information and refused to do so. When a buyer refuses, as here, the court held that it is reasonable for a lender to conclude that there exists an increased risk of default, and to accelerate the obligation.

Transamerica Units Acquired by Pioneer

Pioneer Title Company of California, Inc., has completed acquisition of the Transamerica Title Insurance Company branch operations in San Mateo, Santa Clara, Solano and Sonoma counties in that state, according to Dan R. Wentzel, president.

Pioneer simultaneously changed its name to North America Title Company, Inc., and has entered into a long-term underwriting agreement for issuing Transamerica Title policies in the four counties, Wentzel added.

Wentzel projected that annual gross revenues following the acquisition would rise to $35 million. North American Title is a wholly-owned subsidiary of Glendale Federal Savings and Loan Association and operates through a network of branch offices in northern California.

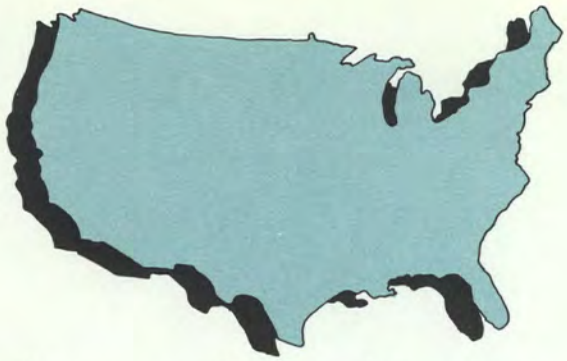
American Title Celebrates Fiftieth Anniversary

Jeanne Deuel, personnel assistant, and Frank B. Glove, president, are shown here at American Title Insurance Company's fiftieth anniversary celebration at the company's home office in Miami, Florida. Other branch offices throughout the country also celebrated the event. American Title operates in 45 states, the District of Columbia and the Caribbean.

OLTA Past President Began Career in 1929

Budd G. Burnie, a past president of the Oregon Land Title Association and the American Right of Way Association, recently has announced his retirement.

Burnie, chairman of the board, First American Title Insurance Company of Oregon, Portland, has been active in the title industry for over 50 years. He began his career in 1929 as a messenger for Union Abstract Company.



Around the Nation

Michigan Association Presidency to Upton

David F. Upton, Southwestern Michigan Abstract and Title Company, was elected president of the Michigan Land Title Association at its 85th annual convention. Gary L. Opper, Transamerica Title Insurance Company, was elected vice president; Sylvia Sanders, Otsego County Abstract Company, secretary; and J. Bushnell Nielsen, Ticor Title Insurance Company, treasurer.

Newly-elected directors are Philip F. Greco, Philip F. Greco Title Company; Carl E. Mason, Fidelity Abstract & Title Company, and Donald G. Sare, Chippewa Abstract & Title Company.

Immediate Past President E. Lee Wittmer, American Title Insurance Company, was honored for his service on the board of directors. An award also was presented posthumously to the late MLTA President Hugh A. Loree, Oceana Land Title Company, for his many years of MLTA service.

Featured speakers included John R. Cathey, the Bryan County Abstract Company, Durant, Oklahoma, 1985-86 ALTA President-Elect; James Barrett, president of the Michigan State Chamber of Commerce; Donald Wall, president of the Michigan League of Savings Institutions; and Dr. Eric Rabkin, University of Michigan.

Gonzales to Helm Of Idaho Association

John Cathey, the Bryan County Abstract Company, Durant, Oklahoma, and 1985-86 ALTA president-elect, was keynote speaker at the Idaho Land Title Association's annual convention and gave an informative update on ALTA activities.

Newly-elected officers of ILTA are: Terry Gonzales, First American Title Company, president; Richard Nyquist, Lawyers Title Insurance Corporation, vice president; Steve Porch, Rupert Abstract Company, vice president; Cathy Cable-Wagner, First American Title Insurance Company, vice president; Ivy Eiseman, First American Title Insurance Company, re-elected secretary/treasurer; and Nick Ihli, Owyhee County Title Company, immediate past president.

The topic for the convention's personal and professional development workshop was "Learning to unleash your potential, so you can have it all," and was presented by Judy McKella of Coeur d'Alene, Idaho.

During the Idaho Land Title Association Convention, outgoing President Nick Ihli, left, is presented a plaque in recognition of his outstanding leadership by Terry Gonzales, newly-elected president of the organization. In the other photograph, 1985-86 ALTA President-Elect John Cathey and wife Wynona enjoy a relaxed moment during the convention banquet.

New York Association Elects Bernard Rifkin

Newly-elected officers of the New York State Land Title Association elected at its convention are: Bernard M. Rifkin, Ticor Title Insurance Company, president; William A. Colavito, Chicago Title Insurance Company, vice president-southern section; Edward M. Norton, Title USA Insurance Corporation of N.Y., vice president-central section; Thomas F. Clark, Monroe Abstract and Title Corporation, vice president-western section; and Paul Holmes, Security Title and Guaranty Company, treasurer.

Also elected were Harold S. Schwartz, First American Title Insurance Company of New York, chairman-title insurance section; Marvin C. Baron, Carle Place Service Corporation, chairman-abstracters and title insurance agents section; Harold A. Kleinfeld, Nationwide Abstract Corporation, vice chairman-abstracters and title insurance agents section. John A. Albert remains executive vice president. Paul D. Moonan, Monroe Abstract and Title, is immediate past president.

Charles O. Hon, III, The Title Guaranty & Trust Co. of Chattanooga, Tennessee, and Chairman ALTA Abstracters and Title Insur-

ance Agents Section, reported on activities of the Association. Other speakers included Neal D. Madden, of Harter Secrest and Emery, who spoke on environmental conservation problems; Professor Ernest Roberts, Cornell Law School, "The Property Shop; One-Stop Home Buying"; Rifkin, who spoke on, "The Aftermath of the Demise of the New York Board of Title Underwriters—What's Your Policy?"; William L.K. Schwarz, Manufacturers Hanover Trust Company, "The Economic Outlook in Our Industry." "Anti-trust and the Title Insurance Industry" was the topic of Leonard C. Donohoe, Chicago Title Insurance Company; and Thomas P. Moonan, of Harris, Beach, Wilcox, Rubin and Levey, spoke on "Licensing of Mortgage Brokers and Mortgage Bankers—The State Takes a New Approach."

Danielson President Of Minnesota Group

Ken Danielson, Kandiyohi County Abstract & Title Company, was elected president of the Minnesota Land Title Association and Ron Gandrud, Title Insurance Company of Minnesota, was elected president-elect during the convention of that organization. Tony Winczewski, Jr., Chicago Title Insurance Company, was re-elected secretary-treasurer.

Re-elected as board member is Rudy Wahlsten, Universal Title Insurance Company (1-year term); and newly-elected board members are Dale Kutter, Carver County Abstract Company (2-year term); and Scott Danielson, Consolidated Title and Abstract Company (3-year term). Immediate past president is Charles Enger, Enger Abstract Company.

Dick Cecchettini, executive vice president, Title Insurance Company of Minnesota and ALTA governor, was a featured speaker. Among the topics that he discussed was work by ALTA to ease the abstracter-agent errors and omissions insurance availability/affordability problem.

Robin Keeney, ALTA director of government relations, reported on Association lobbying efforts in the areas of banking legislation and tax reform.

Jerry Anderson, chief Minnesota underwriter, United Fire & Casualty Co., Cedar Rapids, Iowa, spoke on abstracters liability insurance.

Other convention guests included Ernie Carlson, Don Cook and Roger Manley, respective presidents of the South Dakota, Iowa and Wisconsin land title associations.

An MLTA Honorary Membership was presented to recently-retired Joseph Machacek, Title Insurance Company of Minnesota, for his years of service to the Association. Tony Winczewski, Sr., Winona County Abstract, was presented with a gift for 30 years of MLTA service. Winczewski served the association for 27 years as secretary-treasurer, and also served as a director.

Check New President Of Indiana Association

"Don't Miss the Boat" was the theme of the 1986 annual convention of the Indiana Land Title Association.

Informative presentations were given on the Uniform Marital Property Act (UMPA), by Thomas Dinwiddie, ILTA lobbyist; ALTA activity, by Charles O. Hon, III, the Title Guaranty & Trust Co. of Chattanooga, Tennessee, and chairman, ALTA Abstracters and Title Insurance Agents Section; the economic state of Indiana, by Morton Marcus, econo-

Scenes from the Indiana Land Title Association banquet show ALTA Abstracters and Title Insurance Agents Section Chairman Charles O. Hon, III, addressing those assembled at the President's Banquet (left photograph). Newly-elected governors shown being installed in the other photograph are, from left, Susan Jones, Carl Ferguson, Robert Ewbank, Secretary-Tresurer David Clossin, Second Vice President David Womer, First Vice President Richard Moore and President Merrill Check.

mist, Indiana University; Errors and Omissions Insurance, by Harrison H. Jones, Commonwealth Land Title Insurance Company, and member of the ALTA Errors and Omissions Committee; and title insurance regulation in Indiana, subject of a commentary by Erich Everbach, Ticor Title Insurance Company.

The 1986-87 officers of ILTA are: president, Merrill A. Check, Johnson County Land Title; first vice president, Richard B. Moore, Anderson Abstract Co., Inc.; second vice president, David W. Womer, Morgan & Associates; and secretary-treasurer, David Clossin, Chicago Title Insurance Company. Robert Ewbank, Ewbank Land Title, Inc., is immediate past president.

NEW MEMBERS—continued from page 7

Home State Title Co., Winter Park (J. H. "Skip" Boos, First American Title Insurance Co., Plantation)

Inlet Title Co., Jupiter

Owner's Title Insurance Co., Plantation

Precise Title, Inc., Indialantic (Wayne L. Levins, Commonwealth Land Title Insurance Co., Orlando)

Rowell Title Company, Inc., Crawfordville (Peter Guarisco, Florida Land Title Association)

Southeast Title Insurance Agency, Inc., Spring Hill (Peter Guarisco, Florida Land Title Association, Tallahassee)

Treasure Coast Abstract & Title Ins. Co., Ft. Pierce (Stanley F. Religa, Ticor Title Insurance Co., Winter Park)

Georgia
Gate City Title Agency, Atlanta

Idaho
Central Idaho Title, Inc., McCall (Michael L. Bideganeta, First American Title Co. of Idaho, Boise)

Clearwater City Land Title Co., Orofino (Tom L. Ditter, SAFECO Title Insurance Co., Boise)

Weiser Valley Title, Inc., Weiser (Tom L. Ditter, SAFECO Title Insurance Co., Boise)

Illinois
American Abstract & Title Co., Pekin (Joseph

Tolson, Court House Title Services, Kankakee)

Attorneys' Title Guaranty Fund, Inc., Champaign (Donald P. Kennedy, First American Title Insurance Co., Santa Ana, CA)

Greater Illinois Title Co., Inc., Chicago (John J. Howe, Commonwealth Land Title Insurance Co., Chicago)

Landmark Title Co., Mattoon

Land Title Co. of America, Inc., Chicago (Harrison H. Jones, Commonwealth Land Title Insurance Co., Louisville)

Madison County Title Co., Inc., Edwardsville

Northern Land Title Corp., Woodstock

Indiana
Brown Abstract Co., Inc., Sullivan (G. Elwood Steckler, Ticor Title Insurance Co., Indianapolis)

Crouse Abstract Co., Anderson

Fretz Abstract Co., Rochester (Phillip B. Wert, Johnson Abstract Co., Kokomo)

Hamilton Title Security, Inc., Noblesville (G. Elwood Steckler, Ticor Title Insurance Co., Indianapolis)

National Attorneys' Title Assurance Fund, Inc., Vevay

Iowa
Cyclone Abstract & Title Co., Ames

Henry County Abstract Co., Mt. Pleasant (Harold F. McLeran, Mt. Pleasant)

Kansas
Mid America Title Co., Inc., Olathe

Louisiana
Baton Rouge Title Co., Inc., Baton Rouge (Billy Vaughn, Ticor Title Insurance Co., Dallas)

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

Maryland
Diversified Title Corp., Baltimore City

Foote Title Insurance Agency, Fort Washington

Massachusetts
William A. Elander, Worcester

Marshall D. Shapiro, Hull

Michigan
American Title Co. of Lenawee, Adrian

American Title Co. of Livingston, Howell

American Title Co. of Washtenaw, Ann Arbor

Bell Title Co., Lansing (Earl Cowells, American Title Insurance Co., Southfield)

Centennial Title & Abstract Co., Inc., Flint

Crawford County Abstract & Title, Grayling (Donald G. Sare, Chippewa Abstract & Title Co., Sault Ste. Marie)

First Fidelity Title Co., Inc., Warren (Earl Cowells, American Title Insurance Co., Southfield)

First Metropolitan Title Co., Warren

Philip R. Seaver Title Co., Inc., Bloomfield Hills

Wolverine Title Co., Ann Arbor

Minnesota
Abstract Service Co., Grand Rapids

Equity Title Co., Edina (Steven Tierney, Chicago Title Insurance Co., Bloomington)

Patricia Larson, Glenwood (Floyd H. Folkens, Realty Abstract & Title, Ortonville)

Virginia Mahoney, Morris (Floyd H. Folkens, Realty Abstract & Title, Ortonville)

Missouri
Asbury Land Titles, Inc., Independence (Arthur N. Nystrom, Commonwealth Land Title Insurance Co., Kansas City)

WTN Service Co., St. Charles

Montana
First American Title & Escrow, Polson (Dwain H. Stufflebeam, First American Title Insurance Co., Blackfoot)

Hearron Title & Escrow, Roundup (Robert Field, First Montana Title Co., Billings)

Park Title Co., Livingston (Loren Solberg, County Guaranty Title Co., Kalispell)

Nebraska
State Title Services, Inc., Lincoln

New Hampshire
Best Title Corp., Windham (Carole A. Moore, Accurate Title Corp., Bedford)

New Mexico
Curry County Abstract & Title Co., Inc., Clovis

Los Alamos Title, Inc., Los Alamos (David K. Lanier, Lawyers Title Insurance Co., Albuquerque, & Joe Bob Cave, Ticor Title Insurance Co., Albuquerque)

Roosevelt County Abstract Co., Portales

New York
Aegean Abstract Company, Inc., Bayside (Harold S. Schwartz, First American Title Insurance Co. of New York, Garden City)

Community Title Agency, Inc., Glen Falls (Harold S. Schwartz, First American Title Insurance Co. of New York, Garden City)

Counsel Abstract, Inc., Great Neck

County Abstract Company, Monticello

Eljay Abstract Co., Inc., Syracuse

Grover Title Services, Inc., Syracuse

Guardian Land Abstract Co., Elmont

Harry W. Hawley, Delhi

Millennium Abstract Corp., White Plains

Realty Reports, Inc., Garden City

Summit Associates, New York (Harold S. Schwartz, First American Title Insurance Co. of New York, Garden City)

Three D Abstract Corp., Hauppauge (Helen Powell, Commonwealth Land Title Insurance Co., New York)

Trio Abstract Corp., New Hyde Park (Richard Marcus, Commonwealth Land Title Insurance Co., New York)

United Services Abstract Corp., Garden City (Michael A. Lewis, Chicago Title Insurance Co., New York)

Walton Abstract Corp., Walton (Richard Marcus, Commonwealth Land Title Insurance Co., New York)

Ohio
Provident Title Agencies, Columbus

Siculan Title Agency, Columbus

Superior Title Associates, Inc., Cleveland

Surety Title Agency, Inc., Cleveland

Oklahoma
AAA Abstract Co., Inc., Stilwell (Gary Boatright, Vinita Title Co., Vinita)

Beaver County Abstract Co., Beaver (John H. Goetzinger, Goetzinger Abstract & Title Co., Woodward)

Marshall County Abstract Co., Madill (Gary Boatright, Vinita Title Co., Vinita)

Warranty Title & Abstract, Inc., El Reno

Pennsylvania
Central Montgomery Abstract Co., Norristown (William W. Rice, III, Great Valley Abstract Corp.)

Revere Abstract Co., Lafayette Hill (Alexander Hannah, Commonwealth Land Title Insurance Co., Philadelphia)

South Carolina
Carolina Title Co. of Greenville, Greenville

Firm Title, Inc., Columbia

Tennessee
Mountain Title, Inc., Sevierville

Plateau Title & Escrow Co., Inc., Brentwood

Texas
Federal Title Co., Houston (Glenn H. Clements, Stewart Title Guaranty Co., Houston)

First American Title Resources, Plano

Marion County Abstract Co., Marshall (Haywood W. Moseley, III, Moseley Abstract Co., Marshall)

Nueces Title Co., Corpus Christi (Lloyd R. Draper, Commonwealth Land Title Insurance Co., Dallas)

Rogers Abstract Co., Vernon

Sam Houston Landmark Title Co., Huntsville (R. N. Merritt, Houston Title Co., Houston)

Washington County Abstract Co., Brenham

Wheat Abstract/Tyler County Title, Woodville

Utah
Reliance Title Co., Provo

Virginia
Clotzman Title Insurance Agency, Berryville

Pioneer Virginia Title Agency, Virginia Beach

Washington
Mt. Adams Title Co., White Salmon

Wisconsin
Dunn County Abstract & Title, Inc., Menomonie

Wyoming
Capitol Title Insurance, Cheyenne (Millie Hawkins,

Commonwealth Land Title Insurance Co., Colorado Springs)

Associate

California
William M. Burke, Newport Beach

Charles P. Conner, Orange (R. Joe Cantrell, Title Pac, Inc.-Escro Pac, Muskogee, OK)

Frank E. Feder, Los Angeles (Robert G. Rove, Title Insurance Co. of Minnesota, Minneapolis, MN)

William H. Kohl, Los Angeles

Ernest L. Messner, Los Angeles (Oscar H. Beasley, First American Title Insurance Co., Santa Ana)

Colorado
Robert L. Bartholic, Esq., Littleton

Connecticut
James H. Kimenker, Hartford (Shannon J. Skinner, Preston, Throgrimson, Eillis & Holman, Seattle, WA)

C. Lawrence Paine, Greenwich

James H. Talcott, Litchfield

Delaware
Richard H. May, Wilmington (Daniel Herron, Commonwealth Land Title Insurance Co., Philadelphia, PA)

Florida
William H. Bartlett, St. Petersburg

Michael A. Berke, Miami

Charles R. Dunlap, Longwood

Kansas
Don A. Cashman, Hiawatha

Kentucky
Ray B. Buckberry, Jr., Bowling Green

Keith M. Carvell, Bowling Green (Charles I. Tucker, Commonwealth Land Title Insurance Co., Louisville)

James R. Williamson, Louisville

Illinois
Raymond Werner, Chicago (Richard P. Toft, Chicago Title Insurance Co., Chicago)

Massachusetts
Donald H. Carvin, Braintree

Carol M. Johnson, Springfield (Dean A. Rogeness, Massachusetts Mutual Life Insurance Co., Springfield)

Robert S. Marcus, Boston

William P. Shack, Methuen (Frank L. Morris, Ticor Title Insurance Co., Boston)

Harry H. Thayer, Boston

Michigan
William B. Dunn, Detroit (James P. McAndrews, Benesch, Fiedlander, Coplan & Aronoff, Cleveland, OH)

Mississippi
Jim B. Tohill, Jackson

Missouri
James A. Polsinelli, Kansas City (Russell E. Schrage, Mumford, Schrage, Merrimer & Zureck, Des Moines, IA)

Montana
Robert T. Brown, Billings

William E. Witcher, Billings

New Jersey
William A. Bonn, Newark (Alfred W. Toennies, The Prudential Insurance Co., Newark)

New York
Harry G. Meyer, Buffalo (Owen E. Mangan, Ticor Title Insurance Co., Buffalo)

Chad Robinson, Rochester

Debra Smith, New York

Bruce Smyk, Binghamton (Richard Marcus, Commonwealth Land Title Insurance Co., New York)

Jo-Ann Whitehorn, New York

Pennsylvania
Leroy D. Schoch, Philadelphia

South Carolina
Henry B. Fishburne, Jr., Charleston

Tennessee
William B. Drescher, Nashville (Charles D. Murrell, Ticor Title Insurance Co., Nashville, TN)

Texas
Nalick & Associates, Houston

Richard L. Petty, Jr., Houston

Washington
Kristine A. Chrey, Seattle

Wisconsin
Eugene A. Ranney, Milwaukee (George M. Higbee, The Northwestern Mutual Life Insurance Co., Milwaukee)

Member Emeritus

Pennsylvania
Richard Burroughs, Bryn Mawr
Moses Rosenberg, Harrisburg

Calendar of Meetings

November 13-15
Land Title Association of Arizona
Doubletree Inn
Tucson, Arizona

November 19-22
Florida Land Title Association
Sandpiper Bay Resort
Port St. Lucie, Florida

December 2
Nevada Land Title Association
Alexis Park Hotel
Las Vegas, Nevada

December 3
Louisiana Land Title Association
Iberville Hotel
New Orleans, Louisiana

1987

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

April 26-28
Eastern Regional Title Insurance Executives
Hotel Hershey
Hershey, Pennsylvania

June 11-12
Western Regional Title Insurance Executives
The Broadmoor
Colorado Springs, Colorado

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

1988

March 11-13
ALTA Mid-Year Convention
Westin La Paloma Resort
Tucson, Arizona

October 16-19
ALTA Annual Convention
Toronto Hilton Harbor Castle
Toronto, Canada

Names in the News

The following appointments are announced by Ticor Title Insurance Company, Birmingham, Michigan: **J. Bushnell Nielsen**, vice president; **Carol Martinelli**, assistant vice president; **Rosemary Fedorow**, national residential services area manager; **Dennis Hagerty**, assistant secretary.

National Attorney's Title Insurance Company has announced the promotion of **Mario A. Scalafani** to vice president and national underwriting counsel, White Plains, New York.

Industrial Valley Title Insurance Company has announced the appointment of **James T. Bodkin** as vice president–Mid-Atlantic Division, Philadelphia, Pennsylvania.

Commonwealth Land Title Insurance Company has announced the opening of a Tennessee State Agency in Nashville, Tennessee. **Pamela L. Zimmerman** has been appointed manager.

Commonwealth also has announced the appointment of **Samuel R. Gillman** as consultant, Washington, D.C., office.

John Carty-Campbell has been promoted to director of marketing–southwest region, for American Title Insurance Company, Altamonta Springs, Florida.

The following promotions are announced by Chicago Title Insurance Company: **Maria Gaidosz**, assistant vice president–sales, New Haven, Connecticut; **Gerry Grady**, responsible for Chicago metropolitan systems, and remains assistant vice president, Chicago; **Edward D. Hayman**, assistant vice president and title operations manager, Cleveland, Ohio; **Tony Carter**, director of Chicago metro marketing, Chicago; **Nancy Beck**, manager, national services division, Chicago; **F. Larry Joseph**, resident vice president and Virginia state manager, Fairfax, Virginia; **Jeanne LaBelle**, associate regional counsel, Boston, Massachusetts; **Stuart D. Finkle**, associate general counsel, Chicago; **Elizabeth C. McGinnity**, assistant general counsel, Chicago; **Dianne L. Afanador**, title services officer, and remains service manager, Crown Point, Indiana; **Roland Smith**, construction escrow officer, Chicago; **Jane Cox**, assistant escrow officer, Chicago.

American Realty Title Assurance Company has announced the appointment of **Douglas E. Radabaugh** as Florida state representative, Tampa, Florida.

Nancy Lansford has been promoted to Alameda County director of marketing for Western Title Insurance Company, Hayward, California.

Betty Shelley Honored By Colorado Realtors

Shelley

The Colorado Springs Board of Realtors has selected Betty Shelley of Commonwealth Land Title Insurance Company as "Public Service Member of the Year."

Shelley is a sales representative with the Colorado Springs Branch of Commonwealth and has been with the company since 1984. She has served on several committees and councils within the Board of Realtors and Home Builders associations.

The following appointments are made by Lawyers Title Insurance Corporation: **Richard A. Phillips**, vice president and Oklahoma state manager, Oklahoma City; **Robert W. Morris**, vice president, Chicago; **Michael F. Power, Jr.**, branch manager, Portland, Maine; **David L. Schoolcraft**, branch manager, Las Vegas, Nevada; **William C. Perrine**, branch counsel, Richmond, Virginia; **Janice E. Carpi**, assistant counsel, Richmond, Virginia; **William R. Wickham**, assistant branch counsel, Atlanta, Georgia.

Donald Grabski has joined Mid-South Title Insurance Corporation of Memphis, Tennessee, as vice president.

Fidelity National Title Insurance Company has announced the following appointments:

Nielson

Martinelli

Fedorow

Hagerty

Scalafani

Bodkin

Zimmerman

Gillman

Carty-Campbell

Cox

Lansford

Phillips

Terry L. Ray, vice president and director of marketing, Phoenix, Arizona; **Glyn Nelson**, vice president and sales manager, San Jose, California; **Karen Matsunago**, vice president and manager of special projects, San Jose, California.

Fidelity National Title Agency, a subsidiary of Fidelity National Title Insurance Company, announces these promotions: **Charles L. Grover**, Pima County sales manager, Tucson, Arizona; **Cindy Moriarty**, supervisor of customer service, Tucson.

Morris

Schoolcraft

Perrine

Carpi

Nelson

Matsunago

CLOSING—continued from page 19

was not effective against the owner's real estate interest because of the Arkansas homestead statute. Mortgagee title insurance then was issued and the refinancing was approved.

In the experience of Pulaski County Title, establishing an effective closing department provides an abstract company with an "online" service arm, where escrow offices make highly-important direct impressions on customers. As brokers, lenders and others continue to rely on the capabilities of those in the department, it becomes increasingly clear that—in a very impressive sense—the company's best customer is located within its own walls.

Finch Named Chicago Leadership Fellow

Finch

G.A. Finch has been named a fellow of Leadership Greater Chicago for 1986-1987. He is assistant counsel in the litigation/claims unit of Chicago Title Insurance Company.

Finch is on loan from Chicago Title to the City of Chicago's Department of Planning, where he is deputy commissioner in charge of development of the North Loop development project.

Look to Landata for the *right* system to automate your title insurance company

Landata has, quite simply, what you need: the most flexible, accurate and efficient computer systems to *fully automate* all the ways in which your title insurance company uses real estate information.

Just ask any of the customers among our user base spanning 30 states. They looked over the competition carefully before selecting Landata.

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- ☐ Only experienced title industry professionals handle our systems installation and training.
- ☐ Landata title systems are *continually updated* to meet the changing requirements of our users.
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And there's one more thing our customers find with Landata automated title services . . . increased productivity and profits.

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Real Estate Information

For additional information, phone or write the office nearest you.

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LANDATA, INC.
2200 West Loop South, Suite 500
Houston, Texas 77027
(713) 871-9222
(800) 551-3220

DENVER
LANDATA SALES OFFICE
7400 East Caley Avenue
Englewood, Colorado 80111
(303) 741-5540

HOUSTON
LANDATA, INC. OF HOUSTON
9720 Beechnut
Houston, Texas 77036
(713) 271-0241

LOS ANGELES
LANDATA, INC. OF LOS ANGELES
412 West Broadway, Suite 211
Glendale, California 91204
(818) 244-8100

PALM BEACH
LANDATA, INC. OF W. PALM BEACH
2001 Broadway
Riviera Beach, Florida 33404
(305) 863-8001

PORTLAND
LANDATA, INC. OF PORTLAND
200 SW Market, Suite 110
Portland, Oregon 97201
(503) 226-7169

SAN ANTONIO
LANDATA, INC. OF SAN ANTONIO
5409 Jackwood Drive
San Antonio, Texas 78238
(512) 680-4060

TAMPA
LANDATA, INC. OF TAMPA
6304 Benjamin Road, Suite 503
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