

TITLE *News*

MARCH • APRIL 1989

Everyone's Pointing The Finger
But Who Will Be Ultimately Responsible
For Environmental Cleanup?



Make the smart choice... with products and services from TRW.

At TRW we continue to look ahead—to find new ways to apply our technology and expanding databases to better serve our customers. Our wide array of products and services gives you convenient access to the most comprehensive property information available anywhere.

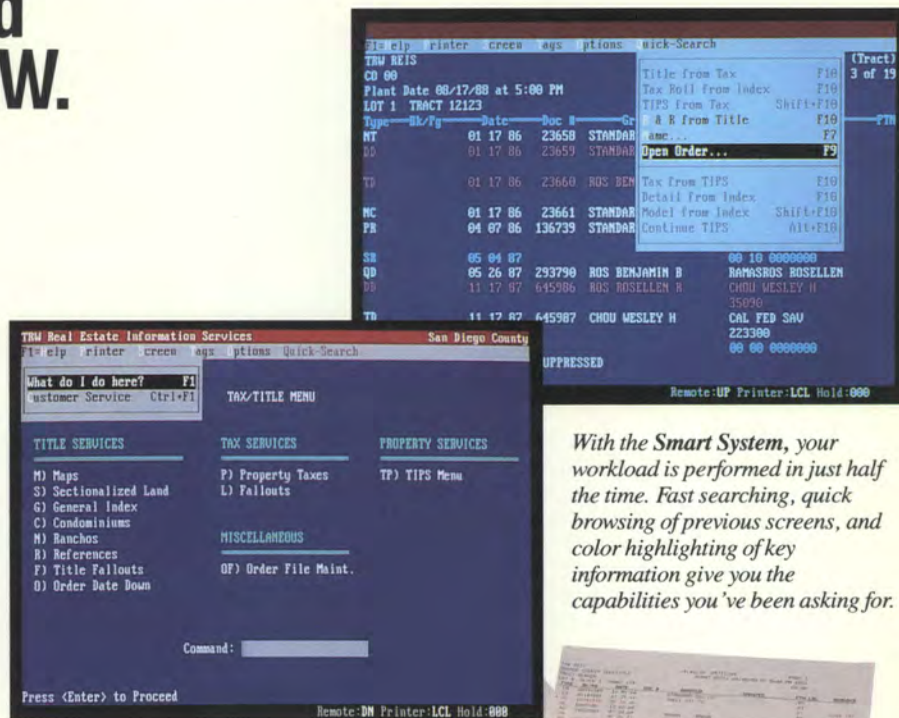
TRW Smart Title SystemSM

Our latest innovation, the TRW Smart Title System, is a major breakthrough in title information systems. Using advanced computer technology, the Smart System combines title, tax, and general property information into a single integrated system.

With the TRW Smart System, your workload is performed in just half the time. Fast searching, quick browsing of previous screens, and color highlighting of key information gives the title industry capabilities it's never had before.

Microfiche Property Information

You can have current, accurate property ownership information at your fingertips with TRW Microfiche Property Information. California county assessors' maps and land ownership records are filmed and put into microfiche form, giving you instant access to the most up-to-date assessment records. An entire county's records are contained in a 4-by-6-inch card file box on your desktop. And with a microfiche reader and printer, you can enlarge the copy for easy reading or print it out full size on paper.



With the Smart System, your workload is performed in just half the time. Fast searching, quick browsing of previous screens, and color highlighting of key information give you the capabilities you've been asking for.

Real Estate Market Information

The most accurate and comprehensive lender and title insurance market share information in the United States is now available from TRW. Information is compiled from the County Recorder's office and then analyzed by computer and presented as monthly statistical reports for each major region or county.

Real Estate Market Information includes:

- Lender's Market Share Report
- Real Estate Market Report
- Mortgage Deed Recording Report
- Total Turnkey Direct Mail Programs
- Lists: New Homeowners, Investors, Equity borrowers, Time-shares
- Title Insurance Activity Report

Call TRW and make the smart choice. We can help give you the competitive edge in providing superior service to your customers.

800.527.9663

TRW

**TRW Real Estate
Information Services**

Volume 68, Number 1

Editor: Adina Conn

Cover Art:

Everyone's pointing the finger, but who's to blame? Clockwise (from lower left): Mr. Property Owner, Mr. Manufacturer, Mr. Insurance Agent, and Uncle Sam—all characters caught in the midst of an environmental cleanup. See story on page 6.

Polychrome ceramic art illustrations by free-lance artist Carl Schoenberger. Mr. Schoenberger, a native Washingtonian, is on the Board of Directors of The Washington Illustrators Club. Photograph by Larry Chapman.

FEATURES

4 Mortgage Bankers Grapple With Transition

By Willard Gourley

The President of the Mortgage Bankers Association shares his thoughts with **Title News** readers, regarding past struggles, losses, and future predictions for the industry in the coming years.

6 Environmental Liens And Title Insurance

By Bob Bozarth

In this comprehensive article, Lawyers Title Insurance Corporation's counsel, presents an in-depth look at EPA problems which have major effects and implications upon the title industry.

12 Pierre Salinger: From A To Z

By Adina Conn

ALTA's 1988 Annual Convention speaker provides an insightful look into his life as a foreign correspondent, JFK's press secretary, and his struggles, as he rose to gain acceptance as a journalist.

14 "The World" Site For ALTA Seminar

By Patricia L. Berman

The latest update on everything you'd want to know about the upcoming educational seminar, in the heart of Florida's greatest resort area.

DEPARTMENTS

- 3 Message From The Abstracter And Agent Chairman
 - 18 Names In The News
 - 26 Calendar Of Meetings
 - 28 1989 Affiliated Association Conventions
 - 30 New ALTA Members
-

Maximize your profits!



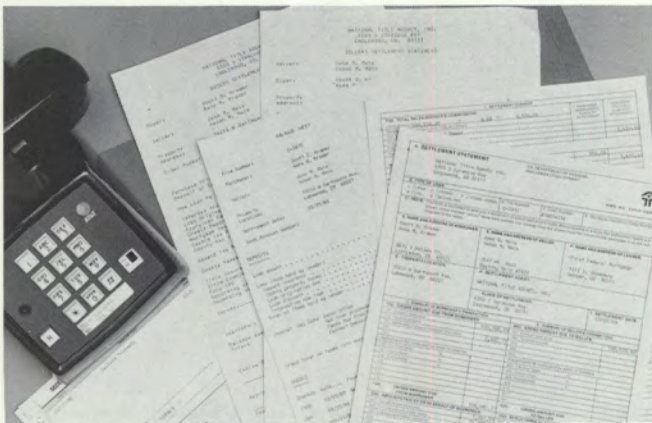
The bottom line says it all.

If your current computer system isn't making money for you in terms of reduced errors, expanded services and significantly increased output, you're wasting money.

Speed and accuracy give you the edge.

Today's technology is simply faster than it was a few years ago. Genesis lets you process information 2 to 4 times faster than systems just a few years old.

That means you can do twice the work in half the time. And that is why most Genesis systems are purchased to replace other computer systems.



Genesis is a product of TRW Real Estate Information Services.

Only Genesis can make it happen.

You can complete work in seconds that previously took hours. Genesis lets you search 400,000 records in 3 to 5 seconds — all cross referenced, all accurately filed. Genesis will transform your entire operation into a profit center with —

- 13 state-of-the-art title programs,
- Flexible forms generation,
- Automatic integration and transfer of data,
- User defined calculations,
- Integrated accounting,
- Guaranteed results, and much more.

Prove it to yourself.

Seeing is believing. Join us for a hands-on demonstration, and see how easy it is to put Genesis to work for you.

Call today for information or demonstration. In Colorado at (303) 220-8288 or outside Colorado at (800) 525-8526.

Genesis

An investment you can count on

TRW





ASSOCIATION OFFICERS

President

Charles O. Hon, III, The Title Guaranty & Trust Co. of Chattanooga, Chattanooga, Tennessee

President-Elect

Richard P. Toft, Chicago Title Insurance Company, Chicago, Illinois

Chairman, Finance Committee

David R. Porter, Transamerica Title Insurance Company, Los Angeles, California

Treasurer

Parker S. Kennedy, First American Title Insurance Company, Santa Ana, California

Chairman, Abstracters and Title Insurance Agents Section

Bill Thurman, Gracy Title Co., Austin, Texas

Chairman, Title Insurance

Underwriters Section

Richard A. Cecchetti, Title Insurance Co. of Minnesota, Minneapolis, Minnesota

Section Representatives,

Board of Governors

Thomas A. Griffin, Mid-South Title Insurance Corporation, Memphis, Tennessee

Richard J. Oliver, Smith Abstract & Title, Inc., Green Bay, Wisconsin

William T. Seitz, Tigor Title Insurance Co., Los Angeles, California

Herbert Wender, Commonwealth Land Title Insurance Company, Philadelphia, Pennsylvania

Immediate Past President

Marvin C. Bowling Jr., Lawyers Title Insurance Corporation, Richmond, Virginia

ASSOCIATION STAFF

Executive Vice President

James R. Maher

Vice President—Public Affairs

Gary L. Garrity

Director of Research

Richard W. McCarthy

General Counsel

Phyllis K. Slesinger

Director of Government Relations

Robin E. Keeney

Vice President—Administration

David R. McLaughlin

Director of Education

And Membership Services

Patricia L. Berman

Director of Meetings And Conferences

Lynn D. Wilkinson

Editor, Title News

Adina Conn

MESSAGE FROM THE ABSTRACTER AND AGENT CHAIRMAN



I have always been proud to be in the title business. Having been fortunate enough to represent the American Land Title Association at eight state Association conventions last year, made me even prouder. It was at these gatherings where I met many who have dedicated their energy and time; their life; to this profession. There was an overwhelming pride and enthusiasm for our industry which permeated throughout these conventions.

Why so many wonderful dedicated people in this profession? There certainly seems to be easier ways to make a living—occupations with fewer demands and pressures, and professions certainly better understood by the general public and regulators. After pondering this thought, I

concluded the explanation was attributable to the challenges, opportunities, and very uniqueness of our profession.

Our industry could only flourish in a democratic society. The prospect of land ownership has always been part of the "American Dream". Our industry and our Association has worked to help make that dream come true for thousands of Americans. We have given buyers a firm basis for confidence to purchase their most important and often the largest investment of their lives, their home. We have provided valuable protection to lenders, enabling them to safely invest in real estate throughout our nation which has, in turn, strengthened the entire economy. Many of us have wondered aloud, "What would happen to our nation's economy if every title company in the United States shut down completely?"

Although all of us experience such feelings of pride, how often do we stop and take the time to convey our enthusiasm? We are so busy, that we sometimes fail to communicate our feelings to associates, co-workers, and customers. Let's go on the offensive.

Let's communicate to our friends and customers this pride, how much a vital role we play. American Land Title Association has done an admirable job of educating the public about the title insurance business—especially through the efforts of the Public Relations Committee. With each of you giving your continued support, the Association can do even more to eradicate any misconceptions about our business and educate the public and legislators about the valuable services we provide. The history of our industry is bright with honor, and it is our responsibility to meet the challenges of the misconceptions held by today's public and regulators concerning the title industry. We must commit ourselves to a direct involvement in spreading the story of our industry on a person-to-person basis. We must have a sufficient number of our individual members actively involved in the affairs of our state and national Associations.

We must avail ourselves of the many resources such as films, brochures, articles and papers that the ALTA Public Relations Committee has developed. Let's let others know how and why we have so much pride in our business.

It's up to you.

Bill Thurman

Mortgage Bankers Grapple With Transition

by Willard Gourley

*The following article is reprinted from the February issue of **Lawyers Title News**.*

In this article the newly inaugurated President of the Mortgage Bankers Association highlights some of the losses, struggles, and predictions that will affect both the mortgage and title industry.

These past two years have been tough ones for mortgage bankers, and I expect 1989 to be a particularly challenging year.

In 1987, the average mortgage banking company just about broke even. Some maintained profitability, but many experienced substantial losses. Bottom line results for 1988 are not in at this writing, but they aren't likely to be much better.

For those struggling to keep their heads above water, improvement in the mortgage lending environment would certainly be welcome. A huge drop in mortgage interest rates would go a long way toward curing the industry's ills, at least temporarily.

Hopes for sharply lower mortgage interest rates seem to hinge on a marked decline in inflation or resolute steps by the federal government to balance the budget. Neither seems very likely. Inflation has worsened slightly over the past year, judging by wage and price increases (Chart 1), and may well increase somewhat further in 1989. And the two Presidential candidates essentially outdid one another in promising costly new programs and pledging never to raise taxes—no matter how much revenue is needed to balance the budget.

We mortgage bankers, therefore, are going to have to work out our own salvation in 1989, and perhaps it is better that way. We know what we have to do: ratchet down our staffs, close branch offices, bring expenses back into proper balance with income, and adjust to current market realities. Profits must be there if we are going to be there. As an industry accustomed to rapid change, we need to do our best in 1989 to adapt to today's new, more challenging environment. If we do, we will be

coming to grips with the industry's problems in a more fundamental, and I believe, more lasting way.

How did the mortgage banking industry get into the fix in which it presently finds itself? Let me begin by saying that the problem is partly of our own making.

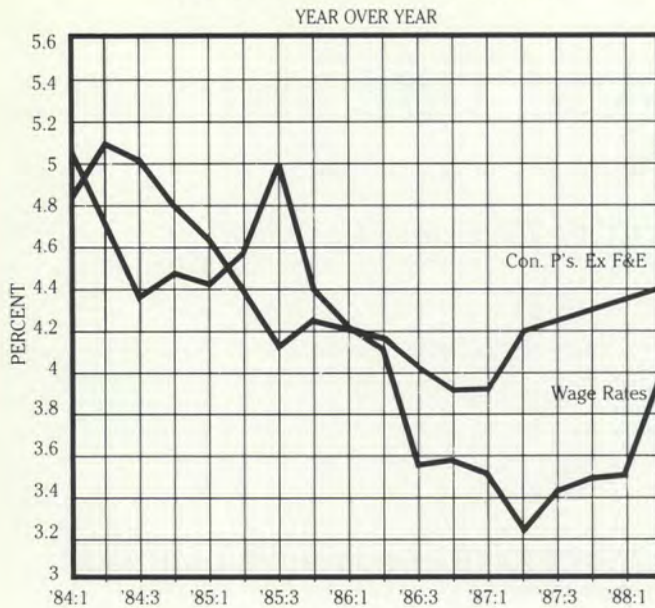
The years from 1983 to 1986 were great years for the mortgage banking industry. The annual rate of one- to four-family mortgage loan originations rose from less than \$100 billion in 1982 to almost \$300 billion by late 1985, and then shot up sharply further with the flood of refinancings in 1986 and early 1987 (Chart 2). For 1986 and 1987 as a whole, originations totaled \$450 billion—4.5 times the 1982 level. In this kind of environment, it is all too easy to lose the discipline needed to function at top efficiency.

A look at employment trends in mortgage banking suggests that this is what happened. Employment rose dramatically during this period—from less than 60,000 in 1982 to over 180,000 in the middle of 1987. We have since begun to cut back on employment levels, but not enough. If we had, there would be fewer complaints about lousy business in 1988—the third largest origination year in history! After two years at the \$450 billion level, the 1988 level of \$350 billion seems like the end of the world to an industry with significant amounts of excess capacity.

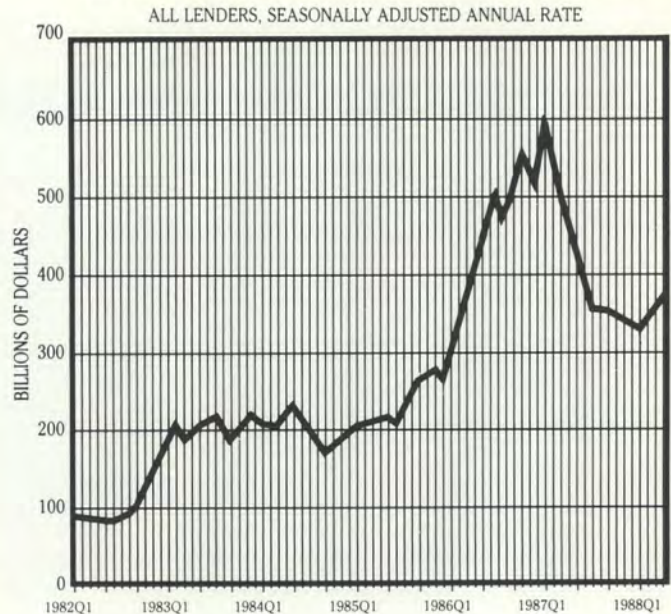
While we mortgage bankers enjoyed the good years from 1983 to 1986, the environment around us became increasingly hostile. New players entered the scene, increasing competition in both loan origination and servicing. Profit margins were therefore squeezed. Costs of delinquencies and foreclosures rose across the country, and skyrocketed in energy-producing regions when oil prices collapsed in 1986. Heavy reliance by the VA on the "no bid" option made foreclosures on these loans extremely costly.

More recently, the thrift industry has been aggressively merchandising its ARMs products at below-market rates and taking the loans into portfolio. Mortgage bankers, who sell their product in the secondary market, have been unable to compete, and thus have lost market share. Some major commercial banks have also stepped up their origination activity. And, the newest of the new, liberal interpretations of RESPA have been used by real estate brokers to skim off some of the profits in the mortgage origination function by demanding fees for the referral of business to mortgage originators.

INCREASE IN WAGES AND PRICES



1-TO-4 FAMILY MORTGAGE LOAN ORIGINATIONS



Problems were developing on the income property side of the mortgage banking business as well. Tax reform in 1986 eliminated building construction merely to generate tax losses. But earlier overbuilding had led to a surplus of certain types of investment properties, and the plunge in oil prices in 1986 increased greatly the severity of that problem in Houston, Denver, Dallas, and other energy-dependent economies. Mortgage bankers in these markets have had to become workout experts. Our income property lenders have also become experts in the securities field and in the placement of equities as well as mortgages. We have even added a new product, "Farmer Mac," to our stable of Freddie's, Fannies, and Ginnies.

Fortunately, the income property market has seen its worst days. Developers and investors whose plans were more tax driven than market driven have taken their lumps. Property values in some areas have dropped to more realistic levels, and the market is more attentive to the longer-run profitability of projects based on more realistic appraisals of risk.

Mortgage bankers in the single-family residential lending business are also taking steps to cope with today's market realities. As I mentioned earlier, staffs have been trimmed and branch offices closed. We will be intensifying our efforts to become "lean and mean" in 1989. New strategies are developing for coping with adversity. Some firms are diversifying within the financial services industry; others are moving toward

wholesale mortgage banking, buying loans from others rather than originating them in-house; still others are acquiring bulk servicing to "grow" their portfolios and enjoy the economies of a large-scale, heavily automated, servicing operation.

We are also improving the quality of our product. This year we expect to bring to fruition a streamlined mortgage loan origination process. We mortgage bankers are proud of our leadership role in this effort.

Borrowers will clearly benefit from a more streamlined loan application process. They are already benefiting from increased competition in mortgage banking, which has helped to keep down the costs of mortgage credit. Borrowers also have benefited tremendously from the development of the secondary market as a source of funds for residential lending. This has lowered mortgage interest rates and ended the feast or famine cycle of available mortgage credit that has plagued the home-building industry. Mortgage bankers are constantly redefining their role in the secondary market to maintain a leadership position, an effort that will continue in 1989.

I believe the trends underway at mortgage banking companies are beneficial to the long-run health of the real estate finance industry. I wish I could say the same, with equal enthusiasm, about thrift practices. Some of those institutions are offering ARMs at initial "teaser" rates that are below market levels, and with caps, such as the one percent per year, four percent life of the loan (1-4), that are very attractive to

borrowers. Mortgage bankers have lost market share because of the aggressive pricing policies of the thrifts, but that is not my principal concern. The major worry is that unless interest rates decline substantially, these types of loans are only going to worsen the problems of insolvency that are sweeping through the thrift industry. This threatens to undermine the health of the entire real estate financing industry, and that should be of concern to everyone.

In a market economy, aggressive competition is beneficial. Consumers benefit from lower prices, and businesses are forced to be efficient. But no business can survive long term without a profit. Sanity must ultimately prevail. We mortgage bankers are working to protect our bottom line, and will emerge from this transition a stronger and more viable industry.

Willard A. Gourley, recently inaugurated president of the Mortgage Bankers Association of America, is vice-chairman of Barclays-American Mortgage Corporation in Charlotte, North Carolina. His experience in mortgage banking and real estate spans more than 35 years. Prior to assuming his current position, Gourley was president of Northwestern Mortgage Corporation, which was purchased by Barclays American in 1985. In addition to his MBA activities, which include membership on the board of governors and the legislative committee, Gourley also serves on Fannie Mae's liaison and political action committees, the MBA legislative committee of the Carolinas, and the Charlotte Board of Realtors.

Environmental Liens And Title Insurance

by Bob Bozarth, counsel, Lawyers Title Insurance Corporation

The following two-part article is reprinted with permission from the Feb. 1989 issue of *Lawyers Title News*.

The Environmental Problem

The Environmental Protection Agency (EPA) has identified 27,000 sites across the country polluted with substantial toxic and hazardous materials and waste. Returning these sites to pristine conditions would cost more than our economy can afford. Just to project an estimate for cleanup, EPA officials must determine which sites will receive attention and compromise on standards of acceptable cleanup levels.

The EPA figures it might cost an average of \$25 million to clean up each polluted site, but for the most troublesome, the agency says the cost could reach \$100 million per site. The EPA has identified 27,000 sites—suggesting a total cleanup bill in the hundreds of billions. But EPA Assistant Administrator J. Winston Porter observes that “society won’t be willing to spend that kind of money.” He puts the ultimate cost of neutralizing the most hazardous sites at \$50 billion to \$100 billion.¹

The amount of \$100 billion dollars exceeds the surplus of the entire property/casualty insurance industry, of which the title industry comprises merely a fraction. Although it is manifest that the insurance industry alone has insufficient resources to remedy our environmental problem, policyholders facing correction of environmental damage are seeking contributions from their insurance carriers for cleanup.

The site owners are spending millions of dollars in a legal effort to lay off the cost on their insurers. If they succeed, “Crum & Forster will disappear,” says Leslie Cheek, senior vice-president of the casualty underwriter, a subsidiary of Xerox Corporation. Crum & Forster, with premiums of \$4.5 billion a year, is the country’s 13th largest property-casualty insurer. “most [insurance] companies view this exposure as the most serious economic problem in the 1990s,” Cheek says.

“If the insurance industry gets stuck with even a quarter of the estimated cleanup costs,” says Andre Maisonnier, president of the Reinsurance Association of America, it will cause “major insolvencies.”²

The big stage in these insurance claims is the contest between policyholders and their property-casualty carriers under Comprehensive General Liability (CGL) policies. For example, Shell Oil Company and the U. S. Army recently agreed with the EPA to share cleanup expenses for the site of a chemical warfare plant which was converted to a pesticide plant east of Denver, Colorado. Shell must pay \$320 million of the first \$700 million in cleanup expenses and 20 percent of the expenses above that. Shell is suing 300 insurers in the converted auditorium of an old high school building near San Francisco because the county court was too small for lawyers from 30 firms, their support staffs and equipment. “The cost of litigation itself, I’m confident, will exceed \$50 million,” says Thorn Rosenthal, a Shell attorney.³

Corporations facing environmental cleanup are investing in the reconstruction of their CGL policy histories to the beginning of their environmental problems in an effort to discover liability coverages in the old policies. Many of the policies involved in the Shell suit are older occurrence policies that expired years ago, but may cover parts of Shell’s cleanup liability.

Since environmental cleanups frequently involve pollution of soil and underground water aquifers (as well as water or air), title insurers should also expect policyholders to attempt to create environmental liabilities in

title policies. The risk to title insurers arises from federal and state statutes which (i) establish liens on real property to compensate a governmental body for money spent on correcting environmental damage and from (ii) customer requests for determinations of past ownership and use of land for evaluations of the likelihood of such damage.

CERCLA: The Federal “Superfund” Statute

The federal environmental cleanup statute entitled the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 *et seq.* (known as CERCLA or Superfund) is by far the most important federal environmental statute for title insurers because amendments to the Superfund Amendments and Reauthorization Act of 1986. Pub. L. No. 99-499, 100 Stat. 1613 (known as SARA) granted to the EPA the power to assert liens on lands where cleanup was financed with CERCLA funds. It also created a demand for chain of title searches as a requirement for establishing the “innocent party defense” to CERCLA liability.

CERCLA also provides for a National Priorities List (NPL) to be published in 40 C.F.R. § 300 which designates those properties that are so contaminated with pollutants that they merit cleanup with Superfund financing. Of the estimated 27,000 contaminated sites in the United States, it is thought that perhaps 1,500 to 2,000 eventually may be listed on the NPL; cleanup of the rest will be the responsibility of state environmental departments. Currently, the NPL lists hundreds of properties identified as contaminated by the EPA, but the property descriptions are generally vague—mere addresses with the names of the occupants. Any of these properties could appear in a filed lien at any time if the EPA finances the cleanup.

CERCLA Liability

CERCLA imposes strict, joint and several cleanup liability on the “owner or operator” of the facility without regard to fault. Liability falls on the current “owner or operator” as well as the “owner or operator” at the time the hazardous substances were discharged into the environment.⁴ Thus even a purchaser of contaminated property may be liable for the cleanup of pollution from a prior owner’s business. *New York v. Shore Realty Corp.*, 759 F.2d 1032 (2d Cir 1985).

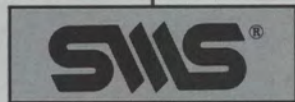
Liability for an environmental cleanup is a lender’s worst nightmare:

Bankers have inherited a number of sites—with liabilities attached—from improvident borrowers. Some are already getting stuck with cleanup bills, a matter of concern at the office of the Comptroller of the Currency. John Noonan, director of commercial activities for the office, has assigned bank examiners to assess the problem.

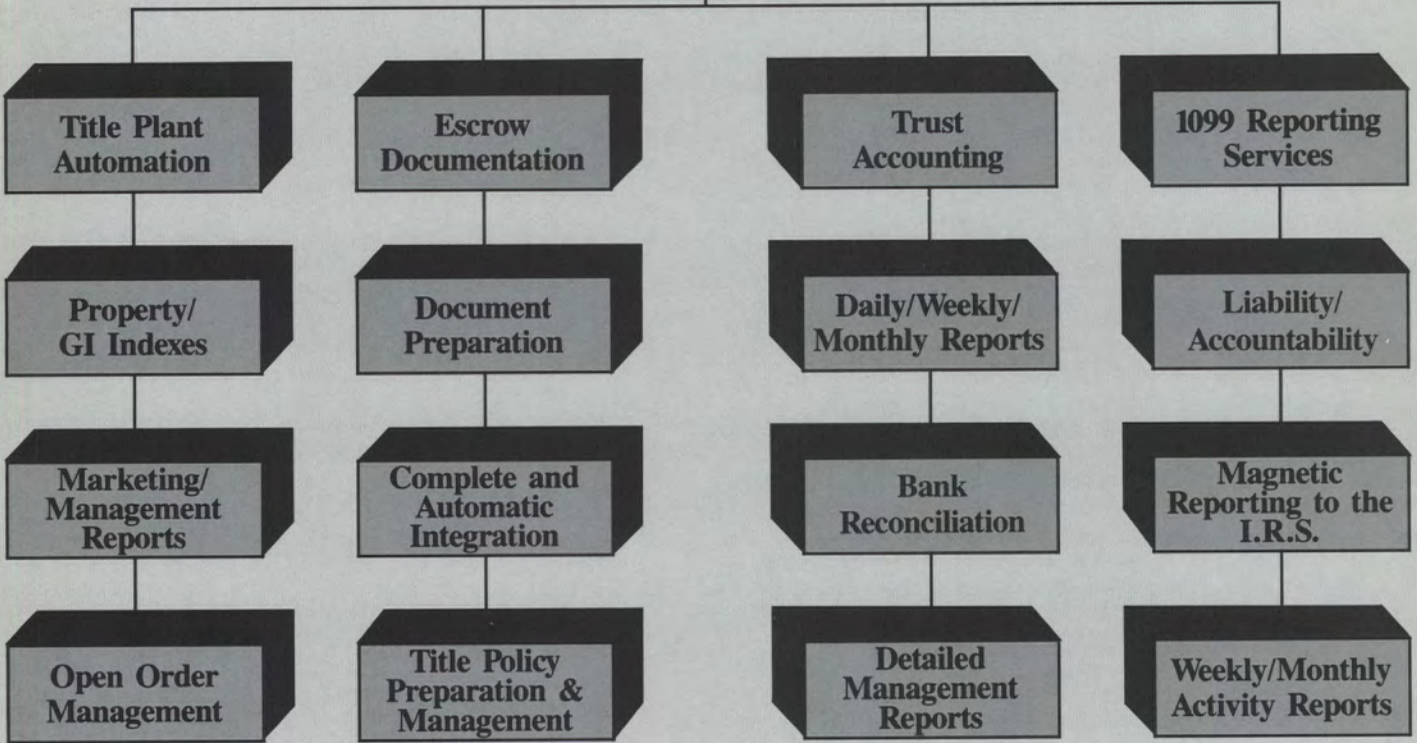
Mellon National Bank in Pittsburgh says it faced cleanup costs in 1985 in an undisclosed amount when it began to manage the affairs of a borrower in default, Turco Coatings, Inc., of Phoenixville, Pennsylvania. Midlantic National Bank of New Jersey, Landmark Bank of St. Louis and Maryland Bank and Trust Company report similar misadventures. Mellon says it now takes “environmental audits” of loan customers and foreclosable properties.



...YOUR CHART TO A BETTER ORGANIZATION



CUSTOMER SUPPORT



SIS Title Systems
 200 Crown Oak Centre
 Longwood, FL 32750
 (407) 339-1912

SIS TITLE SYSTEMS
METES & BOUNDS ABOVE
THE COMPETITION

1-800-622-1099 (In Florida)
1-800-372-3282 (National)

ORANGE COUNTY
 (Administration)
 7411 Lorge Circle
 Huntington Beach, CA 92647
 (714) 842-9111

PHOENIX
 11225 N. 28th Drive
 Suite D-107
 Phoenix, AZ 85029
 (602) 866-0909

SEATTLE
 35717 Pacific Highway South
 Federal Way, WA 98003
 (206) 952-3604

SAN DIEGO
 4275 Executive Square #800
 La Jolla, CA 92037
 (619) 546-2877

PORTLAND
 123 NE Third St., Ste. 503
 Portland, OR 97232
 (503) 234-8816

SAN JOSE
 2021 N. Capitol Ave. "B"
 San Jose, CA 95132
 (408) 946-5610

SACRAMENTO
 9718 Fair Oaks Blvd. "A"
 Fair Oaks, CA 95628
 (916) 961-4633

COSTA MESA
 (Computer Center)
 3160 Airway Avenue
 Costa Mesa, CA 92626
 (714) 549-5700

National Bank of Fredericksburg, Virginia, last year chose to forfeit \$200,000 it had lent a small firm; the company, in bankruptcy, faced a \$2.2 million cleanup bill. "We don't intend to foreclose such properties," says Nancy Embrey, a senior loan officer.⁵

The "Innocent Party Defense"

The definitions of "owner or operator" and "contractual relationship" found in CERCLA were drawn broadly and can include both unwary lenders and nominee title holders in imposing cleanup liability. The definition of "owner or operator" excludes "... a person, who, without participating in the management of a vessel or facility, holds indicia of ownership primarily to protect his security interest in the vessel or facility."⁶ This exclusion in the definition of "owner or operator" created the "innocent party defense" for lenders and nominee title holders.

The "third party defense" poses three problems for a lender. First, the lender must prove that it did not participate in the management of its borrower owner. *United States v. Mirabile*, Slip Opinion, No. 84-2280 (E.D. Pa. Sept. 4, 1985). In *Mirabile*, a CERCLA action against the owners of land formerly used by a paint company, Turco Coatings, Inc., one lender to Turco, American Bank and Trust Company, was able to establish the third party defense; the other lender, Mellon Bank, was not due to an employee with a "day-to-day hands-on involvement" in Turco.

Second, the exclusion is limited to indicia of ownership for the protection of a security interest. Thus the exclusion can be lost if the mortgage is no longer in force without a prompt resale of the foreclosed property. Both lender involvement, and holding title long after the security interest expired, created lender liability for an EPA cleanup in the opinion in *United States v. Maryland Bank and Trust Co.*, 632 F. Supp. 573 (D. Md. 1986). Maryland Bank and Trust had made some business loans to a husband and wife, the owners of a 117-acre Maryland farm, for a waste disposal business in operation on the farm during 1972 or 1973. In 1980 the bank loaned \$335,000 to their son, who purchased the farm, and who shortly afterward stopped making payments. The bank foreclosed in 1981, and purchased the farm in foreclosure in May 1982 with a bid of \$381,500. In 1983, the ousted borrower notified the EPA that hazardous wastes had been dumped on the farm. The EPA investigated, found hazardous substances and gave the bank until October 1983 to clean up the site. The bank refused, so the EPA used superfund financing to remove the drums and the contaminated soil found on the farm, at a cost of \$551,713.50.

The EPA then sued to recover the cleanup costs, and Maryland Bank defended on the "third party defense," claiming that it was merely "hold[ing] indicia of ownership primarily to protect [its] security interest."⁶ It argued that the wastes were dumped by the previous owners. The Court rejected this contention and found the bank to be an "owner or operator" under CERCLA. The involvement of Maryland Bank and Trust in its borrowers' affairs over the years was a factor which influenced the court's decision. The SARA amendment to CERCLA ratified this holding and removed any lingering doubt concerning the bank's liability.

Finally, under "third party defense," the innocent third party must prove that it investigated to determine existence of pollution arising from a past use.

Inquiry Into Previous Ownership

The definition of "contractual relationship" in 42 U.S.C. § 9601 (35) established an environmental standard of diligence for purchasers and lenders. Under this standard a lender could not take a security interest in a contaminated property without exposing itself to liability if it did not meet CERCLA standards:

- (i) At the time the defendant acquired the facility the defendant did not know, and had no reason to know, that any hazardous substance which is the subject of the release or threatened release [of hazardous or toxic material] was disposed of on, in or at the facility.⁷

Under the "third party defense," SARA clarified the lenders' duty by requiring lenders to take "... all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability."⁸ Lenders are not equipped to examine the chain of title on a property that will secure a loan,

so they request that title examiners and title companies provide them with abstracts of the chain of title to determine if the public records give notice of occupation of the site by an entity which may have polluted it.

This may seem the natural role of a title examiner, but it opens a vast new area of potential examiners' liability for which examiners are unprepared. For example, the public records a court may require searched to establish compliance with CERCLA may exceed the scope of the records customarily searched in a title examination. There may be latent information in otherwise routine parts of a document or indicators of waste disposal on adjacent land. A deed in the chain of title may contain a metes and bounds description that states a course is "... along and with the property now or formerly owned by CWD Ltd Partnership," which a fictitious name record indicates did business under the name of Chemical Waste Disposal Company. Of course, there is always the chance that an examiner could miss a recorded deed or lease.

The examiner's liability for accurately searching the record and preparing the report is crucial. The cost of a cleanup can be catastrophic (even to a large, secure lender) and there may be no limitation on liability in the agreement between the lender and the title examiner. Even where the title examiner attempts to set a limit on its liability, a court may find the limitation self-serving and unacceptable. The terms under which a title examiner agrees to provide such a chain of title may involve more risk than any other environmental issue facing the title industry.

Nevertheless, title insurers are exploring ways to satisfy this demand. Since January 1988, several title insurance companies have developed products designed to meet the demands of lenders for reports on the chain of title to the real estate which will secure their loans. These products take different forms, but a common feature provides for an order for the work or acknowledgment of the limitation of liability to limit the risk of the issuing company.

[Editor's Note: The ALTA Title Insurance Forms Committee is currently attempting to develop a form for this purpose. The problems discussed above point out the difficulties in this undertaking.]

Title insurance companies allow customers to name them as nominees in the title risk imposition of cleanup liability under CERCLA and similar state cleanup statutes, unless the title company can establish the innocent party defense and show that it entered into the relationship only after sufficient due diligence in evaluating the risk of environmental damage to the property. CERCLA liability is so broad it is conceivable that the EPA could seek to impose it on the trustee under a trust or even a deed of trust.

CERCLA Liens

CERCLA was only recently amended by SARA to provide for conventional liens against cleaned-up property.⁹ In a reaction to SARA, the American Land Title Association (ALTA) entered into an arrangement with the Environmental Protection Agency, which will now provide the ALTA with periodic lists of properties on which the CERCLA liens have been filed. Since the CERCLA liens were first authorized in the October 1986 enactment of SARA, the current list of filed liens is still relatively short and the lien amounts are modest.¹⁰ The EPA list provided to the ALTA is helpful, but there is a lag in time between the liens being recorded and receipt of the list by the local offices doing the title examinations.

The priorities of the CERCLA liens created by SARA are governed by 42 U.S.C. § 9607 (1)(3):

The lien imposed by this subsection shall be subject to the rights of any purchaser, holder of a security interest, or judgment lien creditor whose interest is perfected under applicable State law before notice of the lien has been filed in the appropriate office within the State (or county or other governmental subdivision), as designated by State law, in which the real property subject to the lien is located. *Any such purchaser, holder of a security interest, or judgment lien creditor shall be afforded the same protections against the lien imposed by this subsection as are afforded under State law against a judgment lien which arises out of an unsecured obligation and which arises as of the time of the filing of the notice of the lien imposed by this subsection.* If the State has not by law designated one office for the receipt of such notices of lien, the notice shall be filed in the office of the clerk of the United States District Court for the district in which the real property is located. (Emphasis added).

MAKE THE DISCOVERY!



**TITLE AGENTS
OF AMERICA**

TITLE AGENTS ABSTRACTERS ESCROW AGENTS

Errors & Omissions Insurance

- The proven program for the nations Title Industry
 - New rates
 - Guaranteed savings
- Excellent 'A' rated Best's Insurer
 - Limits up to \$1,000,000
 - Various deductibles
 - Full Prior Acts available
 - No capital contribution
- Quotes within five working days
 - Personal service with results

Call Toll Free 1-800-637-8979 and ask for Kathy Mercado
Title Agents of America (TAM), P.O. Box 218694, Houston, Texas 77218-8694

TITLE FAC

ERRORS AND OMISSIONS INSURANCE SPECIALISTS

Serving the Title and Insurance Professions Since 1948

- Title Searchers • Abstracters
- Title Insurance Agents
- Escrow Agents/Closers • Title Examiners • Settlement Clerks
- Premium cost reduced to reasonable levels
- Prior acts coverage available in most cases • Prompt premium indications
- Broad coverage • 35 years title expertise • Professional claim service

Representing

- Home Insurance Cos. • Lexington Co. • National Union Fire Co.
- Lloyd's of London • Evanston Insurance Co. • Landmark Insurance Co.

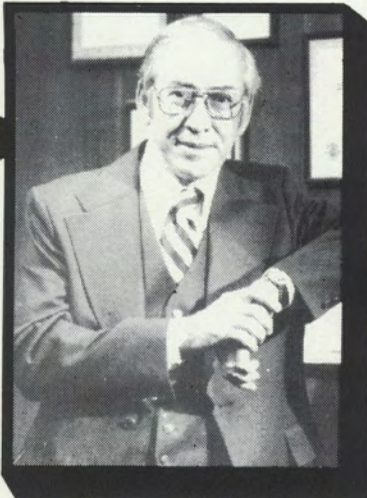
Contact us directly for prompt service

TOLL FREE NUMBER

1-800-331-9759

Except Oklahoma

FAX (918) 683-6842



R. "Joe" Cantrell, CPIA

**RC
CANTRELL
AGENCY**

P.O. Box 857
2108 N. Country Club Road
Muskogee, OK 74402
918/683-0166



"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)

"A title agent for title people"

Thus CERCLA liens have conventional priority, but may be filed either in: (i) the local land records or (ii) the office of the clerk of the U.S. District Court, depending on whether state law designates an office for filing general liens created under federal law. To find these liens in many states, a title examiner must determine first whether the local recorder's office or the U.S. District Court records must be searched. In states which have enacted the "Uniform Federal Lien Registration Act," or similar legislation, CERCLA liens must be filed in the designated land records.

Because there have been only 22 CERCLA liens filed nationwide in the first year following the enactment of SARA, District Court clerks have not rushed into developing elaborate indexing and filing systems for these liens. Thus, a title examiner may encounter difficulties in locating a CERCLA lien in a District Court, even if its existence is known or suspected.

Other Federal Statutes

CERCLA is not the only federal environmental statute having an impact on landowners. There are many others, notably:

1. Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.* (known as RCRA);
2. National Environmental Policy Act, 42 U.S.C. § 4231 *et seq.* (known as NEPA);
3. Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.* (known as TSCA)
4. The Safe Drinking Water Act, 42 U.S.C. § 300 (f) *et seq.* (known as SDWA);
5. The Refuse Act, 33 U.S.C. § 407 *et seq.*;
6. Clean Water Act, 33 U.S.C. § 1251 *et seq.*; and
7. Clean Air Act, 42 U.S.C. § 7901 *et seq.*

RCRA, NEPA, TSCA and the other federal statutes regulate land use and handling of hazardous materials and wastes. These statutes regulate the discharge, storage or transportation of potential pollutants. They impose new and troubling problems for owners, users and purchasers of real estate and have a significant impact on conveyancing. For example, NEPA may require an environmental impact statement to be filed if the use of land is to be changed. For the title insurer, the importance of the lien and title chain requirement imposed by CERCLA overshadows the effect of regulations in these statutes.

The states also have enacted similar legislation, and in many cases, they have created remedies that surpass any available to the federal government.

State Environmental Legislation

There are six areas of concern to title insurers in the body of state law regulating the environment. First, there are state environmental cleanup statutes with conventional liens similar to CERCLA. Second, there are state statutes which require an inspection and clean bill of health before real property may be transferred. Third, there are statutes dealing with weed control, restoration and closure of mines and wells, regulation of hospitals, dry cleaners, gasoline stations, etc. which may include provisions for enforcement liens. Fourth, there are statutes providing for forfeiture of the polluted land or leaseholds. Fifth, there are "secret liens" which may attach to property without notice in the land records where the property is located. Finally, there are "superliens" providing that the lien for reimbursement of cleanup expenses has priority over all existing liens, even those recorded before any release of hazardous material.

State Environmental Cleanup Statutes

State environmental cleanup statutes are frequently modeled on CERCLA and each of the states having a state "superfund" statute may have an independent list of sites requiring cleanup. Of course, the state governments do not have the federal problem of securing state authorization for filing lien notices; thus the burden of determining where to look for notice imposed on the title examiner should be simplified. Because many of the state statutes apply only to cleanup of landfills or other facilities used for dumping or storing wastes, pollution caused by spills, leaking underground storage tanks, etc., might not trigger the statute unless the site is now a landfill.

State Environmental Transfer Requirement Statutes

The first statute requiring either (i) a "negative declaration" (indicating to the state that a property is clean), or (ii) an environmental inspection, for certain classes of real property before it may be transferred, was enacted in **New Jersey** and entitled "The Environmental Cleanup Responsibility Act" (ECRA).¹¹ If ECRA property is contaminated, New Jersey may order it to be cleaned up before it can be abandoned, sold or leased.

Among penalties included in ECRA is the power of the New Jersey Department of Environmental Protection, or an innocent purchaser, to rescind a sale or transfer of the property. Giving a purchaser title insurance which omits the exclusion for environmental protection laws risks total failure of title. Consequently, the New Jersey Insurance Department will not allow title insurers to insure against loss or damage as the result of noncompliance with ECRA.

With its rescission provisions, ECRA is easily the most comprehensive of these acts. Other states with similar, but less potent, statutes include **Connecticut**¹², **Illinois**¹³, **Minnesota**¹⁴, **Pennsylvania**¹⁵, and **West Virginia**¹⁶.

Collateral Regulation With Environmental Provisions

Many state environmental statutes involve regulation of conditions which are not serious enough to make CERCLA's NPL, but do require expenditures by state and local governments to correct them. These statutes might create liens for nuisance abatement, cutting weeds, removal of condemned structures, closing or reclamation of mines or wells, etc. Virtually every state in the union has examples of such laws.

State statutes designed to regulate various industries involving the use, transportation or disposal of hazardous or toxic substances, may include penalty provisions with liens for reimbursement of expenses incurred by the state in cleaning up a release of such materials. Examples would include dry cleaners, service stations, medical facilities, etc. The remedies afforded by these statutes do not differ materially from those provided in general cleanup statutes.

The greatest danger of such statutes lies in their obscurity; they may be scattered throughout a state's code in the most unlikely locations. If an ALTA 8 endorsement coverage is given, insuring against loss of damage sustained by reason of the lack of priority of the lien of the insured mortgage over any environmental protection lien, provision of such by the state may escape the notice of the title insurer who will then fail to take exception for it.

[Editor's Note: Approval of ALTA Endorsement 8 has been withdrawn and only the ALTA Endorsement 8.1 would provide the coverage discussed. For that endorsement, the ALTA Title Insurance Forms Committee is currently working on language designed to address this concern.]

Forfeitures

There are two forfeiture statutes—one providing for forfeiture to the state for cleanup reimbursement, the other for forfeiture to a landlord to protect it against a lien caused by a polluting tenant. The Maine "Uncontrolled Hazardous Substance Sites" law¹⁷ provides for two remedies: a forfeiture and a superlien. It defines an "uncontrolled hazardous substance site" as an "area or location . . . at which hazardous substances were handled or otherwise came to be located if . . . the site poses a threat or a hazard. . . ." Section 1370, which was part of the original statute enacted in 1983, provides that all real estate, appurtenances, improvements, etc., used in violation of Chapter 13-B shall be subject to forfeiture to the state. The superlien provision, § 1371, was not enacted until 1987 and it appears to make the forfeiture provision unnecessary. Perhaps it was intended that the superlien in § 1371 would replace those provisions, but when it was created, § 1370 was neither repealed nor amended.

To a title insurer, this kind of forfeiture provision raises the same risk potential for total failure of title as that of the New Jersey ECRA power of voiding a sale or transfer. The insurer can be liable to the owner or lessee for the loss or to a lender for the loss of its security under a mortgage or deed of trust, if the defenses in the Exclusions from Coverage are not otherwise applicable.

California¹⁹ permits a landlord to void a lease or rental agreement on

continued on page 31

Pierre Salinger: From A To Z

by Adina Conn

“ I can't recall a day since the death of JFK that somebody somewhere hasn't walked up to me at a dinner, or a party, and asked me about him. At the same time, the very difficult choice that came after the death of the two Kennedys, was whether to devote my entire life to just looking backwards in history, or to try and recreate my own career and move forward.

There's probably no one letter in the alphabet which wouldn't describe the illustrious career of the elfen-like man with the thick, bushy eyebrows, characterized by his cigar and trenchcoat.

He's the noted Pierre Salinger, and he's done everything ranging from **ABC News'** Paris Bureau Chief to press secretary to John F. Kennedy, concert pianist, editor of **Collier's** magazine, U.S. senator, vice president of Continental Airlines, president of Fox Overseas Theatre Corporation, to being arrested, and jailed for a brief period.

With respect to the type of stories covered, Salinger's reported such pieces as the Iran/Contra Affair, the Reagan Gorbachev Summit, the 40th Anniversary of D-Day, the hostage crisis, and the Klaus Barbie trials.

If that weren't impressive enough, Salinger's also earned himself the coveted: Peabody, Gold Hugo, DuPont, and Chevalier of Legion awards, creating both envy and respect among his colleagues.

In this **Title News** interview, Salinger talks about his life as a foreign correspondent, press secretary, the professional obstacles overcome after Kennedy's death, and more.

Thomas Jefferson once said, "Every man has two homes: France and the other." How do you feel about that?

I've always adopted that idea, and with my case, it's more realistic, because my mother's from France. I grew up with French as my first language. When I went to France to prepare JFK's trip, I had the impression I was entering into a country I already knew. I spoke the language, so when I eventually moved there in '68, my plan

was to go there for just one year. I ended up staying twenty.

You have enjoyed an illustrious and varied career—ranging from foreign correspondent, network bureau chief, columnist, senator, press secretary, to CEO of a major corporation. How would you describe yourself using only adjectives?

I've been very fortunate. First of all, journalism was my center piece in life—my mother was a journalist. So the fact that I entered into journalism at age 16, wasn't terribly surprising.

In my work, I got very lucky at an early point in my career. I'd written several major stories that earned me the reputation of a good journalist.

Politics was also something I was interested in when I was very young. I found the man that became president, and that man's reputation was such that it had a major impact upon my professional life. But after John F. Kennedy died, which was the most dramatic moment in my life, I pursued other avenues. The fact that I'd been Kennedy's press secretary was always a great asset. I've had a lot of opportunities. And when the opportunities arose, I had to prove I could do the job. So I think talent played a part too.

People today seem to glamorize and romanticize the role of a foreign correspondent, forgetting about the political upheavals in various danger zones. In past years especially, there have been many coups, and takeovers within foreign governments. How do

you feel today's role of a foreign correspondent has changed since you first began your career?

First of all, there are different kinds of foreign correspondents. For a long time, foreign correspondents were just "pen and ink" reporters who enjoyed a relatively exciting experience. You'd travel lightly with a pen and pad in your pocket, interview people, and take notes about your story. Television foreign correspondents are an entirely different breed. In that medium, you don't travel alone, but with a crew, and you carry 500 kilos of equipment. In certain third world countries, you have to figure out how to send your message back to the United States. This becomes very difficult, and sometimes, you find yourself in a situation where the need to send the story material is even more important than covering the story itself. That bothers me a lot. On the other hand, by creating an image or a picture, we can show Americans more of what a story is about.

How does a foreign correspondent function in a country that is so rigid about censorship?

In many instances, you enter a situation that is dangerous. You know this from the start, but you have to pursue your story. In 1979, after Lord Mountbatten was assassinated, I was sent in to Northern Ireland to do a series on the IRA. Well, you can't do a series on the IRA, unless you talk to someone in the organization.

So, while I was interviewing a political leader in the IRA, I was arrested by the British army. I spent almost 24 hours in prison, charged with dealing with terrorists. I wasn't dealing with the military end of the IRA, but the political end. That's an example of what can happen to you while pursuing a story. In this particular case, it turned out to be an asset, because the arrest got a lot of press around the world—stories were aired, and people knew what happened.

Is Glasnost and Perestroika here to stay? If so, how do you feel it's going to change the lives of journalists?

There's no question that Glasnost is having an affect upon journalists in the Soviet Union. There are newspapers and magazines in the Soviet Union today, that are publishing things that were never before published. Certainly a foreign correspondent there has much more access to information—to people and to interviews. Today, one is no longer constantly being guarded.

Last year when I was in the Soviet Union, I was able to see and interview whomever I

wanted. In the past, one had to send a telex to a specific agency, with a request list of who you wanted to meet before you went. You'd receive a telex back informing you of who you could see and who you couldn't. This time, the telex said, "Do it on your own." Now I didn't consider that an insult. Quite the opposite—I considered it a great plus, because it afforded me the flexibility of setting up my own appointments without limitations or restrictions. I was even able to interview Sakharov without any problems.

Could you have done all this if you were a Russian journalist?

Yes. In fact some Russian journalists are already doing things like that today.

Are the Soviet journalists who have access to such contacts and individuals the ones who are favored by the State, and will print only what the State wants them to print?

There's still the State influence, but because of the policy, they're publishing some very anti-State articles in which they criticize a lot of elements—including the government bureaucracy.

There's a very popular magazine in the USSR—the first to have published the events in Afghanistan. Journalists went to Afghanistan and reported the truth about what trouble the Soviet Union was in, the number of casualties there, etc. Never before would you have seen that in the Soviet press. This kind of reporting was unheard of at one time.

You covered the trial of Klaus Barbie—one of the most insidious Nazi war criminals. As a professional, you assume the role of the objective reporter. Yet, how do you deal with emotions that can overcome one's sense of reason and objectivity? How were you able to sit through the trials watching the victims and their families who endured so much pain and suffering from one individual?

Indeed it was a very emotional trial. But there was another factor that disturbed me even more. I feel the trial was narrowly fixed, so that the fundamentals of the case (i.e. France's collaboration with Barbie), were evaded. There were a number of French people who helped the Gestapo in dealing with the Jews in France. I would have felt much more comfortable with that trial if they had convicted Barbie—certainly he deserved to be convicted; and, if we had learned the truth about what happened during World War II. We didn't.



“ I think people who leave the White House and immediately reenter the world of journalism have their credibility questioned. ”

continued on page 24

"The World" Site For ALTA Spring Seminar

by *Patricia L. Berman*
ALTA director of education



Photos courtesy of Adina Conn



Members of the ALTA Education Committee have joined with the Florida Land Title Association in developing a one-day Regional Seminar targeted for land title owners and managers in abstractor, agency and underwriter operations.

This event will be held near the Disney World and Epcot Center grounds at the Orlando Marriott, International Drive, Orlando, Florida, on Friday, May 19, 1989.

The program will begin at 9:00 a.m. Various seminar topics and speakers include:

"ALTA Forms," Oscar H. Beasley, senior vice president and senior title counsel, First American Title Insurance Company, Santa Ana, California

"Wetlands," John S. Thornton, Jr., senior vice president, Ticor Title Insurance Company, St. Petersburg, Florida

"Bankruptcy," Kenneth R. Jannen, vice president and regional counsel, First American Title Insurance Company, Plantation, Florida

"Those Messed Up Legal Descriptions," R. James Knox, vice president/claims, Attorneys' Title Insurance Fund, Inc., Orlando, Florida

Additional topics are under consideration.

Application for approval of this seminar for CLE credit hours is being made to the bar associations in Florida, Alabama, Georgia, and South Carolina.

Registration for the seminar is \$100.00 for members and \$140.00 for non-members (price includes pre-meeting beverage and breakfast pastry, mid-morning and mid-afternoon beverages, and lunch—**but excludes lodging expenses**). Registration checks made payable to the Association may be sent to ALTA Director of Education and Membership Services Patricia Berman in the Association's office, 1828 L Street, N.W., Suite 705, Washington, D.C. 20036.

ALTA has reserved a block of sleeping rooms (\$85 single/double) for the nights of May 18, 19 and 20. Reservations may be confirmed and extended as desired by calling the Orlando Marriott at 407-351-2420, and identifying as part of the ALTA group. The Orlando Marriott will release all rooms not confirmed by April 27. Check-in time is 4:00 p.m.; check-out time is 11:00 a.m.

The Orlando Marriott is a 20 minute ride from the airport, 20 minutes from Disney and Epcot and only 5 minutes from Sea World. An airport limousine service is available. The roundtrip limo fee is \$17.00.

18 YEARS OF TITLE COMPANY BANKING SERVICES FROM COMMERCIAL CENTER BANK

- ◆ Strong financial institution with solid experience in the delivery of title services.
- ◆ Statewide California network staffed by informed and innovative teams.
- ◆ Cash management services to maximize efficiency of your title business.

LOOK TO US FOR FULL SERVICE TITLE BANKING
The Bank for title professionals.



Commercial Center Bank

Serving you from San Diego, San Jose, Santa Ana and Walnut Creek.
Call toll free 800-833-8638

NOW PLAYING ON YOUR

The Newest Versions of Your Long-Standing Favorites

...Livelier
...Faster
...Jazzier!

Sometimes when you consider the classics, you tend to think of sameness, forgetting what a fresh treatment can do.

Because Sulcus Land Title programs have been around so long — and playing so successfully — some people don't know that today's versions are a lot livelier than the originals.

Keeping in tune with the times keeps Sulcus programs in the forefront of meeting our customers' increasingly more complex, shifting, and growing needs.

For example, the recent changes in the HUD-1 form gave rise to several major enhancements in our Settlement/Disclosure program. It now features WYSIWYG



The Solution Professionals

We Turn Problems Into Profit™

COMPUTER OR OURS:

(What You See Is What You Get); you can view the actual, completed settlement form on screen exactly as it will print. We incorporated 1099 reporting and then developed a separate 1099 Reporting program for your *other* IRS accountability requirements.

But that's just one — by no means all — of the latest in our continual enhancement efforts (see the accompanying box). Each of our software application programs has undergone revisions of varying extent and degree to make them what they are today.

You Just Have to Push the Buttons.

If you can work a juke box, you can work any of Sulcus's land title programs. They're that easy. These programs work singly or in concert. At the touch of a button, you move information from one to another. At the touch of a button, you can view your completed form

on the screen. At the touch of a button, your paperwork will fairly sing from the printer. We call that ease Sulcusizing. Sulcusizing is simplifying.

It Plays on Your Machine or Ours.

Originally, Sulcus sold only turnkey systems in which the customer got everything from us. That's what it took in those days when people weren't familiar enough with the new technology. Many of our customers still prefer the turnkey approach. So we provide it all — hardware, software, training, and ongoing support.

But today, you can also get the software alone, to run on your existing computer. The only requirements are that your system runs PC DOS and, for some software programs, that you have a hard drive.

Here Are The Latest Renditions.

Changes in our programs fall into three categories: A minor adjustment or fine tuning, a more substantial operational improvement, and a major advance in capabilities.

Our version numbers reflect the changes: the first digit signifies major advances; the next, an operational improvement; the last set, fine tuning. For example, as you see in the chart, the sixth major revision of Settlement/Disclosure has had five operational improvements and eight fine tuning adjustments made to it.

This chart shows the current revisions of each of our land title programs.

Program	Revision Number
Settlement/Disclosure	6.5.08
Forms Generation	3.9.09
Escrow Accounting	6.1.01
Regulation Z	6.4.07
Indexing	3.6.06
1099 Reporting	1.0.01
Amortization	5.4.02
Turbotract	2.2.03
Word Processing	3.1.00
MIRS	6.2.00

For more information on any or all of these exciting programs, call The Solution Professionals toll-free 1-800-245-7900 (in Pennsylvania, 412-836-2000).



Sulcus Tower
Greensburg, PA 15601
412-836-2000

Publicly Traded on NASDAQ; Symbol: SULC

NAMES IN THE NEWS



Anderson



Beck



Grust



Hickman

The following people have received promotions at **Chicago Title**: **Edward Anderson**, appointed manager, Division IV, Governmental Division and Cook County Underwriting Division, and remains resident vice president and manager, Division II, Chicago, IL; **Nancy Beck**, appointed resident vice president and remains manager, C&I Sales/National Services, Chicago; **James Berry**, appointed assistant regional counsel, Akron, OH; **Steve Brown**, appointed assistant title officer, Chicago; **J. David Clossin**, appointed associate regional counsel, Indianapolis, IN; **Sally Dolphin**, appointed manager, Cook County Accounting Department, and remains assistant vice president and manager, Cook County Plant Operations, Chicago; **Corbett Q. Durnham**, appointed assistant regional counsel, Cincinnati, OH; **William Frapwell**, appointed senior title officer, Dayton, OH; **Jack Grust**, appointed manager, Cook County satellite operations, and remains vice president, Chicago; **James Hall**, appointed assistant regional counsel and remains vice president, Southfield, MI; **Joan Hickman**, appointed manager, Division I, and remains assistant vice president, Chicago; **Edward R. Horejs**, appointed associate regional counsel, Cleveland; **Everett G. Kuhns**, appointed assistant regional counsel, Indianapolis; **Donna LaMere**, appointed assistant claims counsel, Crown Point, IN; **Richard Lauber**, appointed associate regional counsel, Cleveland; **Kenneth Mills**, appointed title op-



Touhill



Farmer



Ward



VanBuskirk



Bozarth

erations officer and remains title plant manager, Crown Point; **Thomas Parrish**, appointed title officer, Akron; **William Radke**, appointed manager, Division III and Construction Projects, and remains resident vice president, Chicago; **William Touhill**, appointed manager, Division I, Lenders Division and Builders Division and remains resident vice president, Chicago; **Lawrence Vaughan**, appointed office counsel, Chicago; **Conrad Byars**, appointed vice president, San Luis Obispo, CA; **Peter J. Filler**, appointed assistant vice president, San Diego, CA; **Casey L. Jones**, appointed assistant vice president, Fresno, CA; and **Jim Reiser**, appointed vice president, San Diego.

Lawyers Title Insurance Corporation announces the following elections: **H. Randolph Farmer**, senior vice president—sales and marketing, Richmond, VA; **Fredrick H. Hemphill, Jr.**, senior vice president—administration and information systems, Richmond; **Charles W. Keith**, senior vice president—operations with responsibility for operations in New York, Pennsylvania and New Jersey; **Dana R. Ward**, vice president—chief of staff, operations, Richmond; and **Scott A. VanBuskirk**, vice president—corporate counsel, Richmond.

Lawyers Title also announces the following appointments: **Robert S. Bozarth**, counsel—major transactions, Richmond; **William Z. Fairbanks, Jr.**, assistant Southwestern/Rocky Mountain states counsel, Dallas, TX; **Robbie D. Hildebrand**,



Klag



Kling



Abrams



Constand



Harrington



Reese

assistant vice president—agencies, Lakeland, FL; **Lynn H. Hoff**, branch counsel, Birmingham, AL; **George Klag**, assistant vice president—sales, Pittsburgh, PA; **Nancy G. Kling**, Southwestern/Rocky Mountain states corporate counsel, Dallas; **Paul J. Lucas**, Maryland state sales manager, Rockville; **Kelly J. O'Brien**, Alabama state counsel, Birmingham; **Hugh D. Reams, Jr.**, counsel—underwriting, Richmond; **John Savoca**, branch counsel, White Plains, NY; **Alan G. Seims**, assistant counsel and assistant secretary, Universal City, CA; **John T. Updegraff, Jr.**, Southwestern/Rocky Mountain states claims counsel, Dallas; and **H.E. Walker, Jr.**, Southwestern/Rocky Mountain states counsel, Dallas.

Commonwealth Land Title Insurance Company has announced the following promotions: **Barbara E. Abrams**, closing officer, Philadelphia, PA; **Tony Carter**, assistant vice president, New York City; **Ray Constand**, vice president, Denver, CO; **M. Gordon Daniels**, counsel, Philadelphia; **Roderick J. Danish**, vice president, Orlando, FL; **Marietta J. Fogarty**, title officer, Riverhead, NY; **John J. Foster**, Midwest Regional counsel, Chicago, IL; **Theodore P. Gennett**, vice president and Philadelphia-area manager, Philadelphia; **J. Michael Harrington**, assistant controller, Philadelphia; **Raymond H. Ifill, Jr.**, marketing director, Philadelphia; **James E. Kilgallon**, senior national title service coordinator, Philadelphia; **Manuel Labra**, assistant vice president, Miami, FL; **Nanci**



Sternick

K. Reese, assistant vice president, Lancaster, PA; **Robert B. Siesholtz**, assistant vice president, Ft. Lauderdale, FL; **Gary Sternick**, closing officer, Philadelphia; and **Bruce A. Thornberry**, title officer, Louisville, KY.

Ticor Title Insurance has named **Geoffrey A. Temple** as major account executive for The National Title Service Division for the company, St. Louis, MO.

Paul D. DeFalco has been named president of **Fidelity National Title Agency, Inc.**, Tucson, AZ; **Sallie Jane Jensen**, named new executive vice president for operations, Tucson; **Stephen J. Scheffman**, named new executive vice president of operations for Fidelity National, Phoenix.

Title Insurance Company of Minnesota has announced the following elections: **Melissa Lyon Murphy**, New England manager, to the additional office of vice president, Boston, MA; **Robert G. Soule**, assistant vice president and New England States counsel, to the office of vice president and Northeast Region counsel. **Mary Ellen Grealy** has been appointed Massachusetts agency representative for Minnesota Title, Boston.

First American Title Insurance Company announces the following elections and promotions: **Julie A. Adams**, promoted to branch manager, ME; **Joseph J. Attura** has joined First American as state counsel, ME; **Robert L. Bailey**, promoted to vice president—state manager of Wyoming; **Virginia M. Ueberroth**, elected to the board of directors of The First American Financial



Finch

Corporation.

American Title Insurance Company has announced the promotions of: **Garrett G. Bickford**, Western regional manager, San Diego, CA; **Grace Cudahy**, assistant vice president, NY; **Frank T. Finch**, senior regional vice president for the company's southeast region, Deland, FL; **Nancy Fuller**, vice president, Miami, FL; **Jon Gundling**, vice president, Miami; and **Dean W. Maynard**, executive vice president chief financial officer and controller of the company, Hollywood, FL.

Meridian Bancorp, Inc. has announced **John W. Tagge**, president of its Miami-based subsidi-



Hankins



Ott

ary, **American Title Insurance Company**, has been named chairman of the company.

Continental Title Insurance Company has named **Lynne Clare Hankins**, regional manager Linwood, NJ; **Ann M. Ott**, account executive in the Haddonfield area, NJ; **Wendy M. Strang** appointed account executive; Linwood; and **Christopher James Walls** has been promoted to branch manager of the Vineland Office, NJ.

American Realty Title Assurance Company (ARTA) is pleased to announce the appointment of **Susan Crump**, assistant vice president, Florida branch operations,



Thornberry



Murphy



Soule



Adams



Ueberroth



Tagge

THE OPERATING ASSETS
of
Lawyers Title of Louisiana, Inc. (New Orleans)
and
Lawyers Title of Baton Rouge, Inc.
have been acquired by newly formed subsidiaries of
MID-SOUTH TITLE INSURANCE CORPORATION
a wholly-owned subsidiary of
LAWYERS TITLE INSURANCE CORPORATION

CORPORATE DEVELOPMENT SERVICES, INC.
Wayne, PA
assisted in structuring and negotiating this acquisition

DON'T BE ANOTHER NUMBER



At APD you're not just another number. At APD we pride ourselves on treating every one of our customers with valued respect. We don't just claim to give good customer support—It's a daily routine at APD.

APD assigns you a "personal" representative to make sure all of your problems are taken care of quickly and efficiently.

When you pay good money for escrow accounting services—make sure you're getting the best possible service and support. Call on the escrow accounting experts at APD at 1-800-354-5020 . . . You'll be glad you did.

APD

THE PERSONABLE APPROACH
TO ESCROW ACCOUNTING



ALTA Group Insurance Trust

Formed in 1957



Boyle

Dunedin, FL. ARTA has promoted **Holland Lee Stiles** to the position of senior vice president, agency division, Cana Winchester.

Landmark Title Inc., has named **Donald J. Boyle** as sales manager for Landata, Inc. of New England, Manchester, NH.



Riggs

Albert (Bud) R. Riggs has joined the staff of **Investors Title Insurance Company (IVT)**, as vice president, Chapel Hill, NC.

William L. Randol, Jr., has been named president of **National Title Insurance Company**, Miami, FL.

Robert A. Eckels, Texas state representative for the 133rd district, has joined **Title USA**. Eckels will be based in the firm's Memorial office and will be responsible for marketing in the Memorial and Sugar Land areas.

TRW announces the promotions of: **David Henry** to area general manager, Southern California; and **Edwin P. Setzer**, vice president and general manager of TRW's Information Services division.

Jerry Sjodahl's responsibilities as Area General Manager, Northern California, have expanded to include the Auburn and Pleasanton operations of TRW Real Estate Information Services. He is now responsible for all Title Information Services activity in Northern California.

James P. McAndrews, a partner in the Ohio law firm of **Benesch, Friedlander, Coplan & Aronoff**, has recently been admitted as a life member of The Fellows of the American Bar Foundation, Cleveland, OH.

Full Range of Plans

- Group Term Life
- Long Term Disability
- Comprehensive Medical Expense
- Dental Expense

Purchasing-Power Plus Stability

"Over 1,600 insured employees guarantee the resources to provide us with fair and competitive insurance rates."

"The stability of the rates has made budgeting much easier."

Well-informed Representation

"The 4-member board, composed of well-known, successful ALTA members, ensures the Trust is always working in my best interest."

"Whether my question involves billings, claims, or benefits, a group insurance specialist will work to give me the answer – fast, and to my complete satisfaction."

Toll-free Access

"When I need answers, I don't waste time; I call my ALTA Trust representative – direct."

"I can take as much time as I need to get the answer to my question using the toll-free number."

For More Information

1-800-346-ALTA

Illinois residents call 312-922-5000, collect

Trust Manager



MACK and PARKER, Inc.

Administrator



Underwriter



Washington National
INSURANCE COMPANY

ALTA Member Runs For Mayor

John Bell, ALTA long-time member, claimed the title of "front-runner" for mayor of Wichita, Kansas, after surprising even his supporters in winning the 16-candidate primary against second-place finisher Bob Knight.

Bell, executive vice president of Security Abstract & Title Co., finished ahead of City Council member Knight 41 to 31 percent in record voter turnout for a primary.

Bell and Knight will face off in the April 4 general election, with the winner becoming Wichita's first popularly elected mayor since 1916. Voters approved the change to popular elections in November.

Bell, after thanking more than 200 supporters, many wearing his emerald green campaign colors at a party in his Douglas Avenue headquarters, was asked whether his margin over Knight gave him front-runner status.

"Oh, I don't believe I'll turn that down," he said.

Knight, for his part, said he was pleased with his finish. During a campaign party in the Occidental Plaza Building, he said: "I think I'll win it. Nothing I've achieved in my life has ever been easy. I know adversity intimately, and I'm just not troubled by it."

After winning more than 18,000 of the 44,411 votes cast by Wichitans in the mayoral election, Bell, 58, accepted congratulatory phone calls from losing candidates Greg Ferris, who won 14 percent of the vote, and Bill Bushey, who received 4 percent.

Bell built his campaign around 200 billboards, thousands of yard signs and numerous television commercials.

He anticipates spending a total of \$80,000 to win the two-year term, but Knight said he wouldn't spend more than \$45,000.

"My objective," Knight said, "was to get through the primary and start really looking at the strengths and weaknesses of the candidates."

Bell turned aside queries about whether he would participate in four or five neighborhood debates.

"I see no purpose in it particularly," Bell said. "I don't think the issues are regional. . . I've been out talking directly to people for weeks, but he hasn't been campaigning."

Bell also declined to specify substantive issues of interest to him in the five weeks before the election. Asked what he had learned in his first run for city office, Bell said, "Mr. Knight doesn't need to know what I learned."

Bell's campaign workers said they sensed some voter excitement through their telephone contacts with more than 4,000 registered voters. Cyndra Ternes, Bell's campaign manager, said people supported Bell out of "a sense of leadership, (his) bringing a sense of community to City Hall."

Wichita Mayor

Candidate	Votes	%
John Bell	18,138	41
Bob Knight	13,806	31
Greg Ferris	6,309	14
Bill Bushey	1,823	4
Others	4,335	10



**WHAT ARE
YOU
DOING ABOUT
1099**

?

**1099 EXPRESSTM
SOFTWARE**

**PREPARE AND PRINT
REAL ESTATE 1099
ON DEMAND**

FILE 5¼" FLOPPY
DISK WITH I.R.S.
AS APPROVED
MAGNETIC MEDIA

\$129⁹⁵ plus **\$7⁰⁰** S/H

(FOR 1988)

MONEY BACK GUARANTEE

*For IBM PC and
all compatibles*

1-800-225-5669

© 1988 — 1099 EXPRESSTM Ltd.
creators of 1099 reporting systems
for personal computers

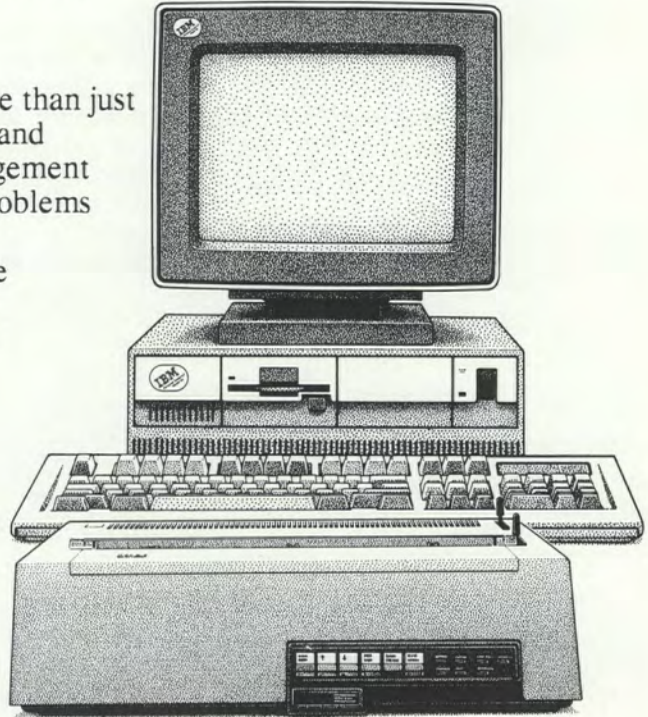
also available: 1099 EXPRESS-INT-DIV-MISC.

At First Data Systems, Inc.®, Our Solutions Work ... and Work ... and Work ...

Promises are easy. At First Data, we do more than just promise -- *we deliver*. From simple commitment and policy preparation systems to sophisticated management information systems, First Data can solve your problems easily, and affordably.

Since 1975, title professionals from across the country have selected First Data for one simple reason: our solutions *work*. Not just today -- but tomorrow, and next month, and next year. In fact, First Data has the best record in the industry for keeping clients satisfied.

Now here's one promise you can believe. For a limited time, First Data will make it easy for you to see our solutions for yourself. Between now and April 30, 1989, we are offering a complete title system featuring the IBM® Personal System/2™, along with the finest software available in the industry. And all at a price that won't break your budget. Here's what you get:



- IBM PS/2™ Model 30 286 System Unit with Color Graphics Monitor
- Industry Standard Letter Quality Printer
- Dataclose Express™ - Residential/Commercial Real Estate Closings
- Title-Rite™ - Title Insurance Commitments and Policies Preparation
- Real-Data Indexing™ - Back-Title Reference and IRS 1099-S Reporting
- Training and Installation
- One year's hardware/software maintenance

\$249 per month*

Call us today for more details. **1-800-626-5427**. Or, if you're planning on attending the mid-year American Land Title Association Convention April 5-7, 1989, come by our booths and see us (booths 4 & 5).

First Data Systems, Inc. Your first choice in office automation.



FIRST DATA SYSTEMS, INC.®

1187 VULTEE BOULEVARD □ NASHVILLE, TENNESSEE 37217

IBM is a registered trademark and Personal System/2 and PS/2 are trademarks, of IBM Corp. First Data Systems, Inc. is a registered trademark, and Title Rite, Dataclose Express, and Real-Data Indexing are trademarks of First Data Systems, Inc. * Price is based on 60-month closed-end lease with first month's payment and lease origination fee paid in advance. Taxes and freight not included.



How do you feel about the role American government played, in granting sanctuary to Barbie?

It wasn't only the American government. It's true that we helped him get out of Germany and sent him to South America. But every major power in Europe hired Gestapo people for a period—the British, the French, the Soviets, etc. There were a lot of highly intelligent people in the Gestapo payrolled by other nations. Toward the end of the war, there was an East-West con-

“Journalism was my center piece in life—my mother was a journalist. So the fact that I entered into journalism at age 16, wasn't terribly surprising.”

frontation, and these offenders were highly utilized in that confrontation. They became political experts on the communist countries—producing intelligence information that couldn't be gotten elsewhere. Their information appealed to countries like the United States, France, and Great Britain. Similarly, the Soviets recruited these people because of their abilities to produce information about the Western countries. So I don't like to focus *only* upon the role of the United States in this, because we weren't the only guilty party involved.

Is there any piece you consider to be your best, or your favorite story covered?

If we look back on television's high moments, I'd say the three hour documentary I did on the hostage crisis in 1980-81, was probably my best piece. My crew and I worked on this story for a full year, without putting a moment of it on the air. This was done so as not to endanger the lives of the hostages nor their ability to be released. All along we knew what was going on behind the scenes with the negotiations of the hostages. And, 48 hours after the hostages were freed, we were able to put together a documentary in which we explained to the American people how everything happened.

As a former press secretary, do you feel the president has an obligation to hold a certain number of press conferences a month?

I think a president *should* have an interest in holding more frequent press conferences. He certainly has more access to the press than any other individual. Kennedy was very successful in this area. I don't think a day passed while he was in office, without him speaking to a journalist. And at that time president/press relationships weren't shouting matches. People knew they could talk to the president. We held at least two press conferences a month.

A reduction around the number of press conferences, combined with this “fence” built around the president to keep the press out, has created this new “shouting journalism.” I hope the new president will be more open, because it's the only way to solve that problem.

Back in 1960, there was a greater feeling of respect for the presidency. The press and the president worked together. There was no hostility. But that all collapsed during Watergate. Today at White House press meetings, there's *always* hostility. The only way to rectify the problem is to go back to an openness, where journalists have access to the president himself.

Should a press secretary distort the facts to save the president, or should the press secretary be able to come out with the truth—even if it's detrimental to leadership?

With regard to the press, I think personal responsibilities of a press secretary and how one does his job, are totally linked to the attitude of the president. The more closed-mouthed a president is, the more structured the role of a press secretary becomes regarding certain things. I don't think I would enjoy that kind of work at all.

In my role as Kennedy's press secretary, *nobody* ever told me to distort information from the press. I just told them what I could. There were times when I withheld information, but that was during what I considered a national security crisis—the Cuban Missile Crisis. At that time, I didn't want to tell our adversaries of certain activities while preparing for this confrontation with the Soviet Union.

You were very close to the Kennedy family—a family that experienced so many personal tragedies. How has all that affected you?

It's certainly something that's never left my mind nor my heart. I can't recall a day since the death of John Kennedy that some-

body somewhere hasn't walked up to me at a dinner, a party, etc., and asked me about him. At the same time, the very difficult choice that came after the death of the two Kennedys, was whether to devote my entire life to just looking backwards in history, or to try and recreate my own career and move forward.

I was a journalist before I worked for the Kennedys. But after leaving the White House, I thought at that time, that it would be a mistake to reenter the realm of journalism so soon. I think people who leave the White House and immediately reenter the world of journalism have their credibility instantly questioned. Instead, I told myself I'd return to journalism in 10 years—it turned out to be 15. But I think that 15 years was long enough to allow me to earn new credibility. During that period, I did a vari-

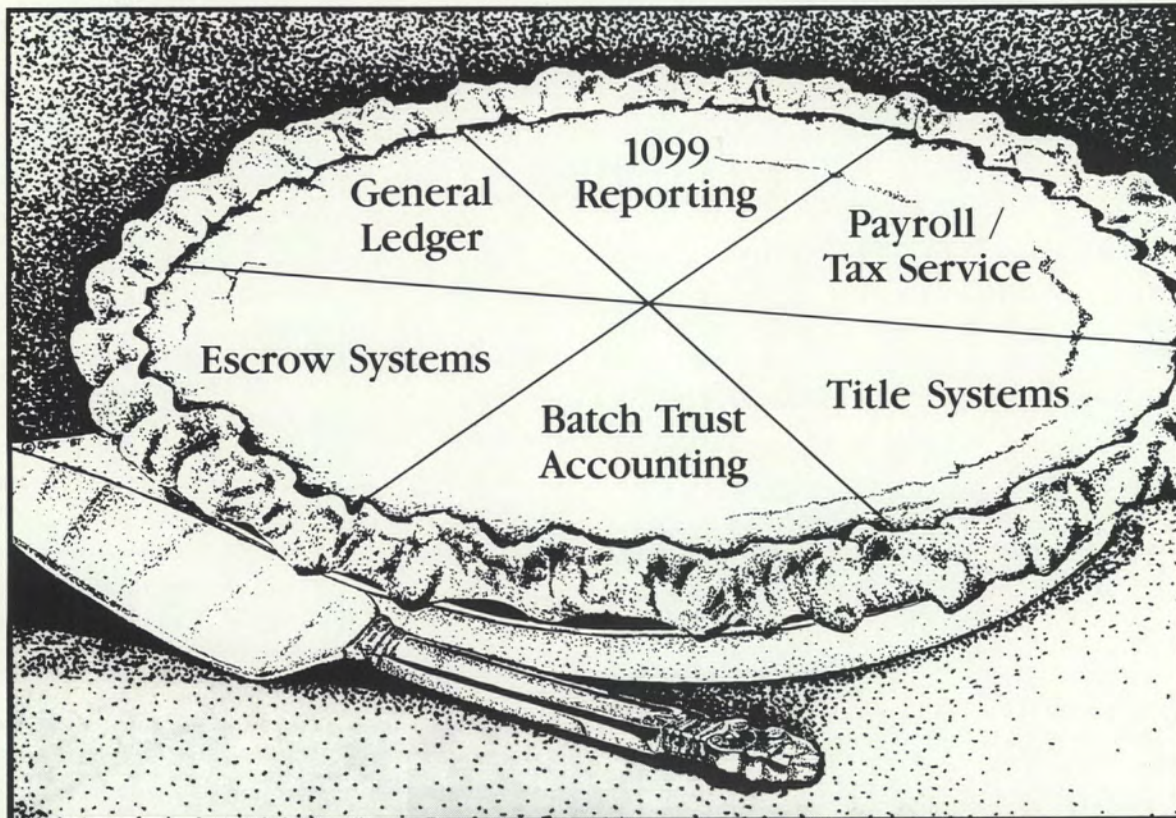
“In 1960, president/press relationships weren't shouting matches. People knew they could talk to the president.

A reduction around the number of press conferences, combined with this 'fence' built around the president to keep the press out, has created this new 'shouting journalism.'”

ety of things—ranging from Vice President of Continental Airlines, to working for a motion picture company. Many of the things I did had nothing to do with my perception of my own career. And so my real life's desire was to return to journalism.

Is there anything you feel you haven't done yet?

I started out my life as a pianist, and played my first concert in Toronto in 1931. I'd practice 5-6 hours a day. So when I was 12, my family wanted me to stop for a year and go out and play football or baseball, because I was becoming introverted. That killed my career. So now there are many times I find myself saying, “Maybe what I should really do is quit and go back to playing the piano.”



No Matter How You Slice It

Whether it's batch processing or stand alone fully integrated documentation systems, FPS knows how to do it. Call the leader in new technology and good old-fashioned Service.



The Full Service Company.

Financial Processing Systems
1801 Parkcourt Place, Building "A"
Santa Ana, California 92701
714/953-8681

CALENDAR OF MEETINGS

1989

April 5-7 ALTA Mid-Year Convention, The Mayflower-A Stouffer Hotel, Washington, D.C.

April 30-May 2 ALTA Eastern Regional Title Insurance Executives Meeting, Marriott's Griffin Gate Resort, Lexington, Kentucky

June 7 ALTA Board of Governors, The Broadmoor, Colorado Springs, Colorado

June 8-9 ALTA Western Regional Title Insurance Executives, The Broadmoor, Colorado Springs, Colorado

October 15-18 ALTA Annual Convention, Hyatt Regency Embarcadero Center, San Francisco, California

1990

January 15 ALTA Board of Governors, The Ritz-Carlton Hotel, Naples, Florida

April 4-6 ALTA Mid-Year Convention, Hotel Inter-Continental, New Orleans, Louisiana

April 29-May 1 ALTA Eastern Regional Title Insurance Executives Meeting, The Greenbrier, White Sulphur Springs, West Virginia

June 6 ALTA Board of Governors, The Broadmoor, Colorado Springs, Colorado

June 7-8 ALTA Western Regional Title Insurance Executives, The Broadmoor, Colorado Springs, Colorado

September 30-October 3 ALTA Annual Convention, Hyatt Regency, Chicago, Illinois

1991

January 14 ALTA Board of Governors, Quail Lodge, Carmel, California

April 10-12 ALTA Mid-Year Convention, San Diego Marriott Hotel and Marina, San Diego, California

September 25-28 ALTA Annual Convention, The Westin Copley Place, Boston, Massachusetts

1992

March 25-27 ALTA Mid-Year Convention, The Mayflower Hotel, Washington, DC

October 14-17 ALTA Annual Convention, Hyatt Regency and Maui Marriott, Maui, Hawaii

1993

March 24-26 ALTA Mid-Year Convention, The Westin Peachtree Plaza, Atlanta, Georgia

NEWLY-UPDATED: ALTA'S

Automation/ Information Library

For the latest on vendor capability, send \$5.00 for each of the following categories desired, with check made payable to American Land Title Association. If your category is not listed, please specify and you will be sent any available information or your money will be refunded.

- Title Plant Maintenance
- Preparing Title Policies
- General Accounting
- Closing Document Preparation

American Land Title
Association

Suite 705 1828 L Street, N.W.
Washington, DC 20036



**SPENCER
SYSTEMS**
OF NEW MEXICO

ATTENTION: Fische Plant Users

Convert your fische plant to an inexpensive, in-house, computer system. Choose your own brand of IBM compatible personal computer from your local dealer and avoid the high cost and monthly maintenance fees of a larger computer system.

You can either:

1. Use your old fische and start a day-forward system.

or

2. We can convert your fische records to our computer format. (We have done it over 1,200,000 times.)

For a FREE video demonstration, call or write:

Spencer Systems of New Mexico
P.O. Box 497
Alto, NM 88312 Ph. 505-336-4018

DON'T MISS THE BOAT



Abstracter-title insurance agent errors and omissions insurance needs to be there continuously at competitive rates. Whether the business climate is fair or stormy. E&O carriers who disappear or substantially increase prices when the market falls can leave you adrift at the worst possible time.

The American Land Title Association has responded to an industry-wide need for consistently available E&O insurance by launching Title Industry Assurance Company (TIAC), a single line risk retention group serving its Active and Associate members. TIAC coverage is designed to be there . . . in an up or down market . . . whether competitors sink or swim.

Abstracter-title agent E&O insurance is the *only product* at TIAC. There are no substantial rate increases made necessary by unfavorable loss experience with other risk groups in the same E&O family.

When a claim arises, TIAC assigns the handling to an expert in the title evidencing field. This makes it possible to better control costs and rates.

Call TIAC and discuss your E&O needs with our underwriting manager. It could mean smoother sailing—especially in troubled waters.



TITLE INDUSTRY ASSURANCE COMPANY
A Risk Retention Group

Two Wisconsin Circle
Chevy Chase, MD 20815-7003
Telephone 1-301-951-5470

1989 AFFILIATED ASSOCIATION CONVENTIONS

April

21-22 Oklahoma, Double Tree Inn, Tulsa, OK

30-2nd of May Iowa, University Park Holiday Inn, West Des Moines, IA

May

5-7 Palmetto, Omni, Charleston, SC

10-13 California, Fess Parker Red Lion, Santa Barbara, CA

11-12 Virginia, Kingsmill Resort & Conference Center, Williamsburg, VA

11-14 Texas, Stouffer Hotel, Austin, TX

18-20 Arkansas, Ramada Inn, Bentonville, Bentonville, AK

18-20 New Mexico, Hilltop House Hotel, Los Alamos, NM

21-23 Pennsylvania, Toft Trees, State College, PA

June

1-3 Tennessee, Opryland Hotel, Nashville, TN

8-9 South Dakota, Cross Roads Center, Huron, SD

11-13 New Jersey, Harrah's Marina Hotel Casino, Atlantic City, NJ

15-18 Colorado, Sheraton Steamboat Resort and Conference Center, Steamboat Springs, CO

15-18 Illinois, Oak Brook Hills Resort, Oak Brook, IL

15-18 New England, Newport Marriott, Newport, RI

18-20 Oregon/Washington, Salishan Lodge, Gleneden Beach, OR

July

13-15 Utah, Olympic, Park City, UT

16-18 Michigan, Shanty Creek Lodge, Bellaire, MI

20-22 Wyoming, Holiday Inn, Thermopolis, WY

August

3-5 Idaho, Sun Valley Resort, Sun Valley, ID

10-12 Montana, Holiday Parkside Inn, Missoula, MT

10-14 North Carolina, Seabrook Island Resort, Seabrook Island, SC

17-19 Minnesota, Kaehler Plaza Hotel, Rochester, MN

24-27 Kansas, Holiday Inn/Holidome, Manhattan, KS

September

8-10 Missouri, Lodge of The Four Seasons, Lake Ozark, MO

10-12 Ohio, TBA, Cincinnati, OH

10-13 New York, Castle Harbour Marriott, Bermuda

13-15 Dixie, Sheraton Savannah Resort & Country Club, Savannah, GA

14-16 Wisconsin, Grand Hotel, Mackinac Island, MI

14-16 North Dakota, Norway House Motel, Bottineau, ND

20-22 Nebraska, Old Mill Holiday Inn, Omaha, NE

21-22 Nevada, South Shore, Lake Tahoe, NV

23-26 Indiana, Westin, Indianapolis, IN

November

2-4 (tentative) Arizona, TBA, Tucson, AZ

15-18 Florida, Doral Resort & Country Club, Miami, FL

Louisiana—Not yet scheduled



**SPENCER
SYSTEMS**
OF NEW MEXICO

ATTENTION: Fische Plant Users

Convert your fische plant to an inexpensive, in-house, computer system. Choose your own brand of IBM compatible personal computer from your local dealer and avoid the high cost and monthly maintenance fees of a larger computer system.

You can either:

1. Use your old fische and start a day-forward system.

OR

2. We can convert your fische records to our computer format. (We have done it over 1,200,000 times.)

For a FREE video demonstration, call or write:

Spencer Systems of New Mexico
P.O. Box 497
Alto, NM 88312 Ph. 505-336-4018

*Now's The Time—
Order Your*

ALTA Promotional Folders

Designed for easy insertion in No. 10 envelopes . . .
concisely informative in attractive, two-color printing



Protecting Your Interest in Real Estate

Written at the home buyer level to reach the widest range of public interest. Explains why safeguarding against land title problems is essential, includes a basic discussion of how title insurance works, presents concise summaries of title hazards actually experienced, and points out that ALTA members are widely respected for their expertise. \$30.00 per 100 copies



The Importance of the Abstract in Your Community

Describes, in quick-read form, what an abstract is and tells about the role of abstracters in expediting real estate transactions. Points out that the skill and integrity of ALTA member abstracters represents an important asset to those who purchase and otherwise invest in real property. \$17.00 per 100 copies



Buying A House of Cards?

For those needing a lively, high-impact piece of promotional literature. In quick-read text, the folder makes it clear that title hazards are a sobering reality—and emphasizes the importance of owner's title insurance for home buyers. Reminds that home ownership is a major investment that can be protected by the services of ALTA member abstracters, agents and title insurers. \$14.00 per 100 copies

*Send checks made payable to the Association to
American Land Title Association, Suite 705, 1828 L
Street, N.W., Washington, DC 20036. You will be
billed later for postage.*

NEW ALTA MEMBERS

(The names listed in parentheses are recruiters who have now qualified for membership in the ALTA President's Club.)

ACTIVE

Florida

Riviera Title Company, Miami
Superior Title & Guaranty Corp., Deerfield Beach
(J.H. Boos, First American, Plantation, FL)
Title Services of Manatee, Inc., Bradenton

Maryland

Benchmark Title & Escrow Company, Inc., Silver Spring

Minnesota

Cygnature Title, Inc., Brainerd

New Hampshire

Tidewater Title Company, Inc., Portsmouth

New Jersey

Main Street Title Agency, Inc., Hackensack
(Charles Mucci Title USA/NY, Hackensack, NJ)

New York

Boulevard Land Abstract Corp., Elmhurst
Marvin Bowling (Lawyers Title, Richmond, VA)
Cattaraugus Abstract Corp., Little Valley
Macgregor Abstract Corp., Franklin Square
New World Title Agency, Inc., Brewster (Helen Power/Commonwealth, NY, NY)

Ohio

Mercantile Title Agency, Inc., Cincinnati

Puerto Rico

Property Insurance Agency, Inc., Hato Rey

ASSOCIATE

Colorado

Peter C. Dietze, Boulder, CO (Ronald J. Kent, Rio Blanco County Abstract Company)

Nebraska

Richard J. Butler, Lincoln
Richard Johnson (Nebraska Title Co., Lincoln, NE)

New York

James D. Fitzpatrick, Syracuse

Washington

Brian D. Lynch, Seattle (Paul Hanann, First American Title, Seattle)

Deaths of ALTA Past President and General Counsel

Services were held for John W. Warren, president of ALTA 1971-72, and Thomas S. Jackson, former ALTA general counsel and Washington lawyer.

For over 30 years, Warren worked with Albright Abstract & Title Guaranty Company, Newkirk, Okla., serving as president, senior vice president, secretary-treasurer, general counsel and manager of the guaranty department, and trust officer.

In 1979, he began work as executive vice president and senior trust officer at The First National Bank and Trust of Ponca City, OK. He also served as chairman to the bank's board of directors.

In addition to serving two terms on the ALTA Board of Governors, Warren was a past president of the Oklahoma Land Title Association and a past president of the Oklahoma Bankers Association Trust Division and the Kay County, OK, Bar Association.

Survivors include his wife, Rebecca; one daughter and three grandchildren. The family suggests memorial contributions to

First United Methodist Church, Ponca City, care of Carole Didlake, First National Bank and Trust, in that community.

Former General Counsel Jackson had practiced law in Washington for over 50 years. He was a founding partner in the law firm of Jackson and Parkinson, a prominent trial attorney, a founder of the National Institute for Trial Advocacy—and a Fellow of the American College of Trial Lawyers, a member of its Board of Regents, and president of its Foundation.

In addition, he served as a member of the American Bar Association Commission on Standards of Judicial Administration, and was a Life Member of the American Bar Foundation.

Jackson is survived by his wife of 53 years, Elizabeth (Betty) Jackson, and son, Judge Thomas Penfield Jackson of the United States District Court for the District of Columbia. The family suggests memorial contributions to the St. Barnabas Episcopal Church, Sykesville, MD.

THE RIGHT DECISION

The development of any company depends on management to make the right key decisions. However, managers running the day-to-day operations, frequently lack the time or background necessary for specialized projects. Which is why successful managers turn to outside specialists for effective solutions. *Corporate Development Services, Inc.* provides expertise for: valuations of title companies, performance reviews, financial planning and budgets, leadership advisement, and more. For prompt confidential service contact: **Lawrence E. Kirwin, Esq., President**

Members:
**American Land
Title Assoc.**

CORPORATE
DEVELOPMENT SERVICES INC.

**American
Society of
Appraisers**

996 Old Eagle School Rd., Suite 1112
Wayne, PA 19087
215-688-1540

*The title
industry
is our only
business!*



ENVIRONMENTAL LIENS

continued from page 11

real property if the lessee or renter fails to give notice to the owner of the presence of suspected presence of a hazardous substance on or beneath the real property. Health and Safety Code § 25359.7 does not apply to lessees and renters of property used exclusively for residential purposes.

"Secret" Liens

Some states have enacted environmental statutes which provide for a notice of lien to be recorded in the county where the contaminated land is located, but the lien also applies to all other real property of the party responsible for the cleanup located in the state. Needless to say, a title examination of the land records of another county will not reveal the lien unless the state records the lien in that county as well.

A secret lien, which affects all land of the owner of contaminated land, may upset subsequent conveyances or security interests in the land, despite careful investigation of the title and ground to preclude the possibility of environmental damage because of the lien imposed as a result of contamination of other land. To be safe, a purchaser or lender must examine all land owned by the seller.

One of the earliest examples of a secret lien continues in effect without amendment in **New Hampshire**. (Former secret liens in **Connecticut** and **Massachusetts** have been eliminated by amendments to the superlien statutes in those two states.) The statute provides for a lien in favor of the New Hampshire Division of Waste Management for reimbursement of amounts expended from its Hazardous Waste Cleanup Fund, but doesn't provide for (i) when the lien shall take effect, (ii) filing notice of the lien, or (iii) a lien confined to the contaminated property. This brief provision is an example of environmental legislation drafted without concern for its impact on real estate conveyancing:

III. The division of waste management shall be entitled to a lien upon business revenues and all real and personal property of any person causing expenditures from the fund for the amount expended from the fund because of that person's acts or omissions. This lien shall take precedence over all other claims.

"Superliens"

Connecticut²⁰, **Massachusetts**²¹ and **New Jersey**²² enacted the first environmental "superlien" statutes from 1983 to 1985. These statutes provided liens to secure repayment of the states' expenses for cleanup of pollution, spills or concentrations of hazardous wastes. The superliens were accorded priority over any transfers or encumbrances created or filed after the superlien laws were enacted. Thus superliens take priority over all transfers and encumbrances on the property recorded after the effective date of the statute, an unprecedented priority. Real estate taxes also enjoy a super priority, but current and delinquent tax liabilities are easier to discover in title examinations and total tax delinquency rarely exceeds a fraction of the value of the property.

The first generation of these statutes was very broad, having no exemptions for residential property and encumbering any other unpolluted property of the owner as well as the polluted property. The Federal National Mortgage Association (FNMA) threatened to suspend purchasing residential loans from these states unless an exemption for residential property was included in the statutes. There was also a furor about superlien application to uncontaminated property because an innocent purchaser of clean property could lose it (even after a careful environmental site assessment) if property in another county of the state owned by the same seller was found to be contaminated after the sale.

Superliens affecting residential property are not yet extinct. On August 31, 1988 the State of Illinois enacted a superlien providing in relevant part:

(c) An environmental reclamation lien shall be effective upon the filing by the Agency of a Notice of Environmental Reclamation Lien with the county office in which the real property lies and which has responsibility under State or local law for the recording of judgments against real property. . . . *An environmental reclamation lien shall be superior to all other liens and encumbrances other than real estate*

tax liens, except that it shall not be valid as to any subsequent bona fide purchaser, mortgagee or other lienor whose rights in the real property arose prior to the filing of notice of the lien.

The statutes in **Connecticut**, **Massachusetts** and **New Jersey** have been amended to cure these objections, but later enactment of superliens in **New Hampshire**²³ and **Illinois** still follow the first generation approach. **Maine**²⁴ has followed with a "second generation" superlien statute and **Pennsylvania**²⁵ is considering an environmental bill with second generation language. Efforts to create superliens in **Kansas** and **New York** have been defeated.

Arkansas²⁶, **Michigan**²⁷ and **Tennessee**²⁸ have enacted statutes providing for environmental liens having a priority second only to real estate tax liens (effectively making them superliens). **Idaho**²⁹ appears to have created a "superlien" in its Hazardous Waste Management Act of 1983 which provides for the collection of hazardous waste disposal fees in the form of a tax assessed on the hazardous waste disposal instead of reimbursement for cleanup. Collection of the fee is governed by provisions of the income tax act which may give the fees priority over other lienholders.³⁰

Title Insurance Superlien Coverages

Title insurance superlien coverage in loan policies was available in Connecticut, Massachusetts and New Hampshire until 1987, but only insured the lender that the lien of its mortgage would not lose its priority to a superlien as the result of a cleanup of hazardous waste released, spilled or discharged onto the insured premises on the Date of Policy. Title insurers generally required an environmental site assessment indicating a relatively clean site before issuing coverage. Limited to the priority issue, coverage expressly excluded (i) insurance against other consequences resulting from a discharge of hazardous waste on the insured premises at the Date of Policy, and (ii) loss of priority of the insured mortgage to a superlien as the result of a discharge after the Date of Policy.

Since a superlien filed for a spill of hazardous waste in the future can upset the priority of security interests filed earlier and insured by title insurance, neither the title examination nor an environmental site assessment could eliminate the risk of an environmental loss. Indeed, even environmental risks limited to damage from pollution existing on the property at the Date of Policy were beyond the skills of title professionals. Title insurers realized that their personnel were ill-equipped to evaluate technical engineering reports on the sites indicating the presence of chemicals in trace amounts measured in parts per million or billion.

The engineering reports rarely indicated in laymen's terms whether the chemicals found were harmful or not, and even when an obvious pollutant was listed, e.g., asbestos, PCBs, or mercury compounds, it was not always possible to tell if the concentrations found were dangerous. With constant advances in technology, some chemicals once considered harmless might be found dangerous at a later time. Asbestos, PCBs and chlorofluorocarbons once were considered beneficial but are now known to be toxic.

Finally, no site survey can locate all concentrations of contamination without churning up all of the soil down to bedrock. Test wells can miss hazardous substances contained in rusting drums until the corrosion of the drums releases the contents into the soil and water aquifers. A pattern of test wells can also miss a small plume of spreading contamination underground. Ironically, the test wells used to search for the contamination may provide a route for quicker spreading of the contamination once it reaches the well. For the reasons stated later, these are casualty risks inappropriate for title insurers.

The **New Jersey** Insurance Department has consistently refused to approve any endorsements insuring against loss of priority resulting from enforcement of the New Jersey superlien. The coverage was also ruled in violation of the **Connecticut** "single-line restriction" for title insurance companies contained in C.G.S.A. § 38-29 by a Declaratory Ruling issued by the Insurance Commissioner.³¹

By January 1987 most title insurers had independently decided the risk was too great and withdrew superlien coverage from the market. Now they not only refuse to extend coverage against superliens, but they also refuse to reinsure policies with the coverage.

Only one decided case has construed a title insurance superlien cover-

age and it is an unpublished Memorandum of Decision, *South Shore Bank v. Stewart Title Guaranty Company*, U.S. Dist Ct. Mass., Civil Action No. 87-2173-Z (June 16, 1988). Stewart Title issued a policy for \$2.8 million to South Shore Bank in 1985 insuring a lien on property located in Connecticut; the policy included superlien coverage. After default on the loan, but before foreclosure, an environmental assessment revealed the presence of hazardous waste on the premises. At foreclosure South Shore Bank was the successful bidder, and shortly thereafter it brought this suit for a declaratory judgment against Stewart Title.

Stewart Title defended on the ground that no lien had been filed under the Connecticut superlien statute, CGS § 22a-452a, so the coverage had not been triggered. On Stewart Title's motion for summary judgment the district court agreed that South Shore Bank failed to allege the existence of a lien and that the possibility that a lien might be filed does not trigger the insurance coverage.

It is manifest that the risk of loss for environmental damage can be breathtaking. Superlien coverage entails the risk of a total loss under the loan policy if the expense of cleanup exceeds the value of the property securing the insured mortgage, and it often does. However, the risk to a lender of losing its security for a loan is not the most troublesome problem posed by environmental laws. Lenders are more concerned about direct liability for the cleanup under CERCLA and similar state cleanup statutes than loss of security for a lien because cleanup liability can exceed the amount lost when the priority of their lien is upset.

Case on Bankruptcy

To fully understand the impact of these environmental statutes on the lending community, it is necessary to examine some of the pitfalls involved when bankruptcy becomes a part of the problem.

The Effect Of A Borrower's Bankruptcy On A Lender

In re Quanta Resources Corp., 739 F.2d 912 (3d Cir. 1985), *Aff'd sub nom.*, *Midlantic National Bank v. New Jersey Department of Environmental Protection*, 474 U.S. 494, S. Ct. 755, 88 L. Ed. 2d 859 (1986), addressed whether a trustee in bankruptcy could abandon a contaminated site, or whether the trustee was obligated to clean it up. After Quanta Resources Corporation filed for bankruptcy, the trustee appointed by the court sought permission to abandon a waste oil processing and storage facility housing 70,000 gallons of contaminated oil.

The trustee claimed that compliance with state and federal environmental regulations would drain the estate of funds making the property burdensome and of no value. The Third Circuit and Supreme Courts overturned rulings in favor of the trustee in two lower decisions, holding that the trustee could not abandon property in contravention of laws or regulations designed to protect the public health or safety from identified hazards. The Supreme Court ruled:

The Bankruptcy Court does not have the power to authorize an abandonment without formulating conditions that would adequately protect the public's health and safety. . . . [W]e hold that a trustee may not abandon property in contravention of a state statute or regulation that is reasonably designed to protect the public health or safety from identified hazards.³²

Timing is critical to discharge of the environmental obligation. In *Ohio v. Kovacs*, 469 U.S. 274, 105 S. Ct. 705, 83 L. Ed. 2d 649 (1985), the court held expenses of cleanup, incurred before the petition in bankruptcy was filed, to be dischargeable because the state's claim against the estate was reduced to a claim for money before the bankruptcy began. Cleanup expenses incurred after the proceeding has been filed, however, must be paid out of estate funds.

Unlike the *Maryland Bank* case, *Quanta Resources* has had very little impact on lenders' procedures because no lender aware of the *Maryland Bank* holding would consider foreclosing on real property abandoned by a trustee in bankruptcy who wished to avoid environmental cleanup expenses. *Quanta Resources*, however, may open a door for title insurers' liability arising from the lender's loss of security if a loan policy has carelessly drafted affirmative coverages.

A Bankruptcy Superlien?

In re Stevens, 68 Bankr. Rptr. (D. Me. 1987) and *In re Peerless Plating Company*, 70 Bankr. Rptr. 943 (W.D. Mich. 1987) involved claims for reimbursement of cleanup expenses by a state (the Maine DEP) and the federal government (EPA under CERCLA) respectively as administrative expenses in bankruptcy. In both cases, the courts held the expenses to be administrative expenses in bankruptcy. Possibly these holdings can give conventional environmental liens a superpriority as administrative expenses may not generally be charged against specific collateral unless they were incurred primarily for the benefit of the secured creditor to protect and preserve the collateral. *In re Cascade Hydraulics and Utility Service, Inc.*, 815 F.2d 546 (9th Cir. 1987).

When drafting affirmative coverages title insurers must take extreme care to avoid liability for loss of priority of the insured mortgage as a result of administrative expenses for an environmental cleanup that cause a deficiency of proceeds from a sale of the property securing the loan. Recently an insurer offered the following coverage to its insured to protect against the risk of mechanics' or materialmen's liens:

This policy affirmatively insures against any loss or damage (not exceeding the amount of insurance) arising because of any superior lien arising from or out of a prior use of the subject property pursuant to any law in effect at the date of this policy.

This endorsement was intended to cover mechanics' liens, but as it is not specific, it probably covers similar risks, i.e., the creation of a super priority environmental cleanup lien should the borrower go bankrupt.

With such an endorsement, a lender might avoid similar risks if it can shift the risk of loss of its security to its title insurer by (i) pushing its defaulting borrower into bankruptcy, (ii) allowing the state environmental protection agency to clean up the pollution, (iii) allowing the bankruptcy court to sell the property to reimburse the state, and (iv) making a claim against the title policy for loss of the priority of its security.

¹ Wall St. Journal, May 11 1988, page 1, col. 6

² *Id.*, page 11, cols. 1 & 2.

³ *Id.*

⁴ 42 U.S.C. § 9607.

⁵ Wall St. Journal, May 11 1988, page 11, cols. 2 & 3.

⁶ 42 U.S.C. § 9601(20)(A).

⁷ 42 U.S.C. § 9601(35)(a).

⁸ 42 U.S.C. § 9601(35)(B).

⁹ For an example of a CERCLA lien, see Appendix I in unabridged article.

¹⁰ The current list received from the EPA is attached as Appendix II in unabridged article.

¹¹ N.J.S.A. 13:1K-6 *et seq.*

¹² C.G.S.A. § 22a-134 *et seq.*

¹³ Ill. Stat. Ann. Ch. 111½, §§ 1021(n) and 1039(g).

¹⁴ M.S.A. § 115B.16.

¹⁵ 35 P.S.A. § 6018.405.

¹⁶ W. Va. Code § 20-5E-20.

¹⁷ 38 M.R.S.A. Chapter 13-b.

¹⁸ 38 M.R.S.A. § 1362.

¹⁹ Health and Safety Code § 25359.7.

²⁰ C.G.S.A. § 22a-452a.

²¹ M.G.L.A. Chap. 21E.

²² N.J.S.A. § 58:10-23.11.

²³ N.H.R.S.A. Chap. 147-B.

²⁴ 38 M.R.S.A. § 1371.

²⁵ The Pennsylvania Hazardous Sites Cleanup Act, H.B. 1852 & 1853.

²⁶ Ark. Code § 8-7-516.

²⁷ M.S.A. § 13.30(42).

²⁸ T.C.A. § 68-46-209.

²⁹ I.C. § 39-4431.

³⁰ See, I.C. § 63-3051.

³¹ *In Re: Lauyers Title Insurance Corporation*, Ct. Ins. Dept., Docket No. RD86-22 (January 8, 1987).

³² *Midlantic National Bank v. New Jersey Department of Environmental Protection*, 474 U.S. at 507, 106 S. Ct. at ____, 88 L. Ed. 2d at 869.

Landata, the best automation solution... at the right price

Landata has been the leader in automating title companies for over a decade. We offer complete, integrated automation solutions that make you more efficient...resulting in greater profits.

Your employees can process more work in less time, with greater accuracy.

Start with a single workstation and as your company grows, add more terminals, storage, and outside networking capabilities easily and affordably. From DOS-based PCs to large DEC VAX™ systems, we have the most efficient solution for your automation needs.

In addition, you can become a Real Estate Information Center, giving better service to your clients and providing you with non-traditional sources of revenue.

Landata's software is proven: developed from what growing companies have told us they need. We've built our company on it. Over 250 companies in 26 states rely on Landata for dependable, cost-effective automation solutions. Plus, we offer an unparalleled customer support and education system.

So take a closer look at Landata. Compare our features and customer support dollar for dollar. You'll find that Landata is the best solution for your company at the right price.

Call for your free, no obligation demonstration at 1(800)551-3220 or 1(713)871-9222.

Landata offers...

AIM—Automated Information Management

- Order Entry
- Document Preparation
- Escrow Accounting
- Escrow Closing

as well as...

- Title Plant
- Deed Mapping
- Amortization/Depreciation
- 1099B Reporting
- Real Estate Information (REI)
- Geographic Information Systems (GIS)

DEC VAX™ is a registered trademark of Digital Equipment Corporation.



LANDATA, INC.

The Source for Real Estate Information

2200 West Loop South
Houston, Texas 77027

713-871-9222

800-551-3220

Portland • Los Angeles • Houston • San Antonio • Tampa • West Palm Beach • Manchester, NH

**American
Land Title
Association**
1828 L Street, N.W.
Washington, D.C. 20036

BULK RATE
U.S. POSTAGE
PAID
Rockville, Md.
Permit No. 800