

**TITLE** *News*

JULY • AUGUST 1989

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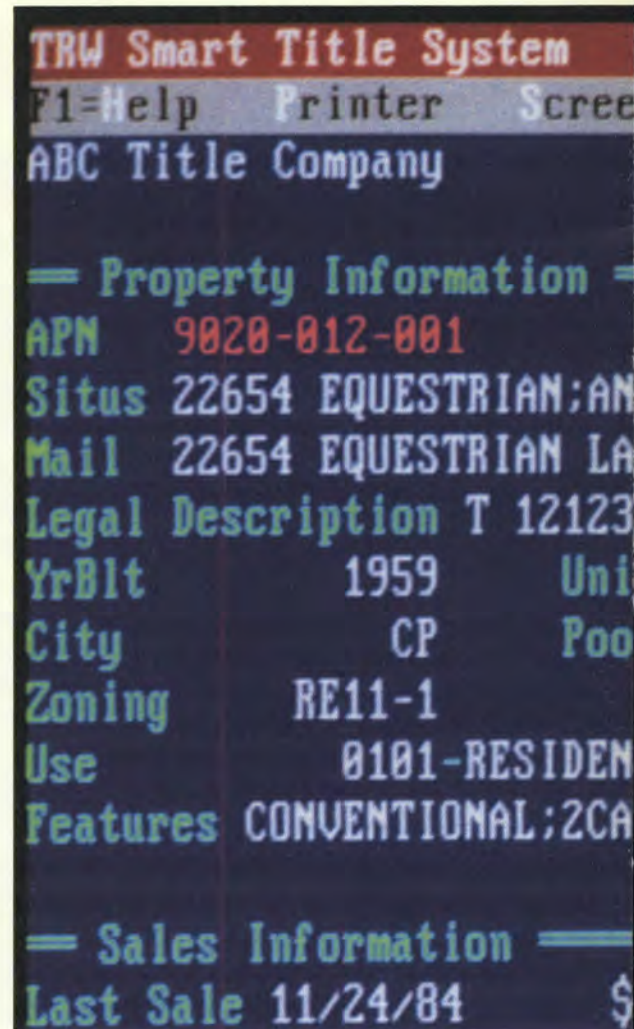
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Volume 68, Number 3

Editor: Adina Conn

**Cover Illustration: John Peter Halford.** Mr. Halford is a British artist and designer and longtime resident of the United States, with a broad spectrum of work in illustration, theatre, film, television and radio. An owner of his own graphic design company. Mr. Halford is a well-traveled experienced jack-of-all-trades.

## FEATURES

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### **4 San Francisco: The City of Everyone's Heart**

*By Lynn D. Wilkinson*

As October quickly approaches, **Title News** and the ALTA begin their preparations for the 1989 Annual Convention. Exciting tours, speakers and events are in store for visitors to the colorful city. Read all about the San Francisco Convention so you can begin making plans of your own.

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### **10 Dedication of An Honor**

*With Introduction By  
Adina Conn*

The Annual Convention brings with it three new ALTA Honorary Members. In a special dedication piece, the individuals are honored before the convention via a montage of letters written by fellow industry members, colleagues and friends.

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### **14 Banks, Bank Holding Companies and Title Insurance**

*By Sheldon Hochberg*

Written by an outside counsel to the ALTA, this article provides a primer on an issue of great importance to the title insurance industry—the establishment of title companies by banks and BHCs to capture the title insurance business generated by their mortgage lending activities.

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### **20 On The Road Again**

*By Charles DeWitt*

Ever taken a business trip and wished you stayed at home or in the office? Have you lodged in places with insects the size of SSTs, with roller coaster sloped beds, positioned under leaky air conditioners? In this piece, whimsical tales of road travel are recalled by a member of the industry.

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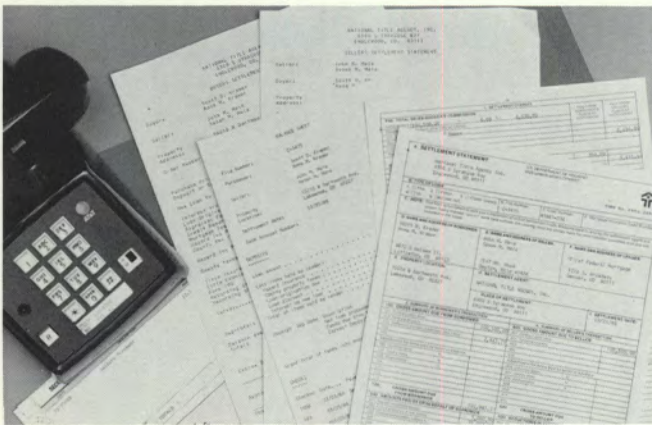
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## A MESSAGE FROM THE PRESIDENT



I have always had fond memories of my times in Colorado Springs at the June Board of Governors' meeting. Now, however, my memories of past Governor meetings in Colorado will be tempered with a certain sense of loss over the death of one of Chattanooga's most respected figures in the title industry. It was during my stay in Colorado, that I received a call from my office informing me of the death of S. P. "Shade" Hale, a Chattanooga title insurance agent, and a competitor of mine. "Shade" had been in the title insurance business for almost 50 years. During the past 20 years, I had come to know and respect "Shade" Hale as my father and grandfather did before me. "Shade" was a title insurance person in the truest sense.

He was an example of what our industry should be striving for: an independent agent and strong underwriter—full of substance rather than glitter, and an agent who knew the true meaning of the principal-agent relationship. "Shade" will be missed.

We should be proud of our performance in many facets of our industry. We have survived in the hardest of times, and we have bounced back. It is a natural phenomenon that the market place changes, and we have done an exceptional job in keeping up with the rapid changes by constantly revamping our product and the methods of its dissemination.

We must change our product only by careful and thoughtful study and not by unreasoned underwriting or expansion of coverage by employees or agents having no actual authority to do so.

As my term nears its close, I am happy to report many successes for our Association. Thus far, the Comptroller of the Currency has not approved Citibank's application to obtain title insurance underwriting authority. We are fortunate to have received much help from Rep. Gonzalez, chairman of the House Banking Committee.

Counsel for ALTA testified on April 7, 1989, before the Federal Reserve Board in favor of the Fed's proposed rescission of that portion of Regulation Y, allowing subsidiaries of state banks which are part of bank holding companies, to engage in insurance activities.

The Judge has yet to rule on the government's motion to dismiss in the suit that ALTA, in conjunction with the Texas Land Title Association, brought against the OCC regarding its interpretive letter stating that banks may write title insurance.

At both the federal and state levels, the issue of whether banks and bank holding companies may engage in title insurance activities surfaces almost daily. In light of this activity, we believe that it is very important that the membership be conversant not only with the policy arguments for and against banks having authority to underwrite and/or sell title insurance, but also with the legal framework that controls the policy debate. Given the complexity of this legal framework, I have commissioned outside counsel to ALTA Sheldon Hochberg, of the firm of Pierson Semmes and Finley, prepared a primer on the controlling statutes and regulations and on their interrelationships for publication in this issue of **Title News**. The article should serve as a reference for our members when they speak with their congressional representatives, state legislators, regulators, the press, and other parties whose support we desire.

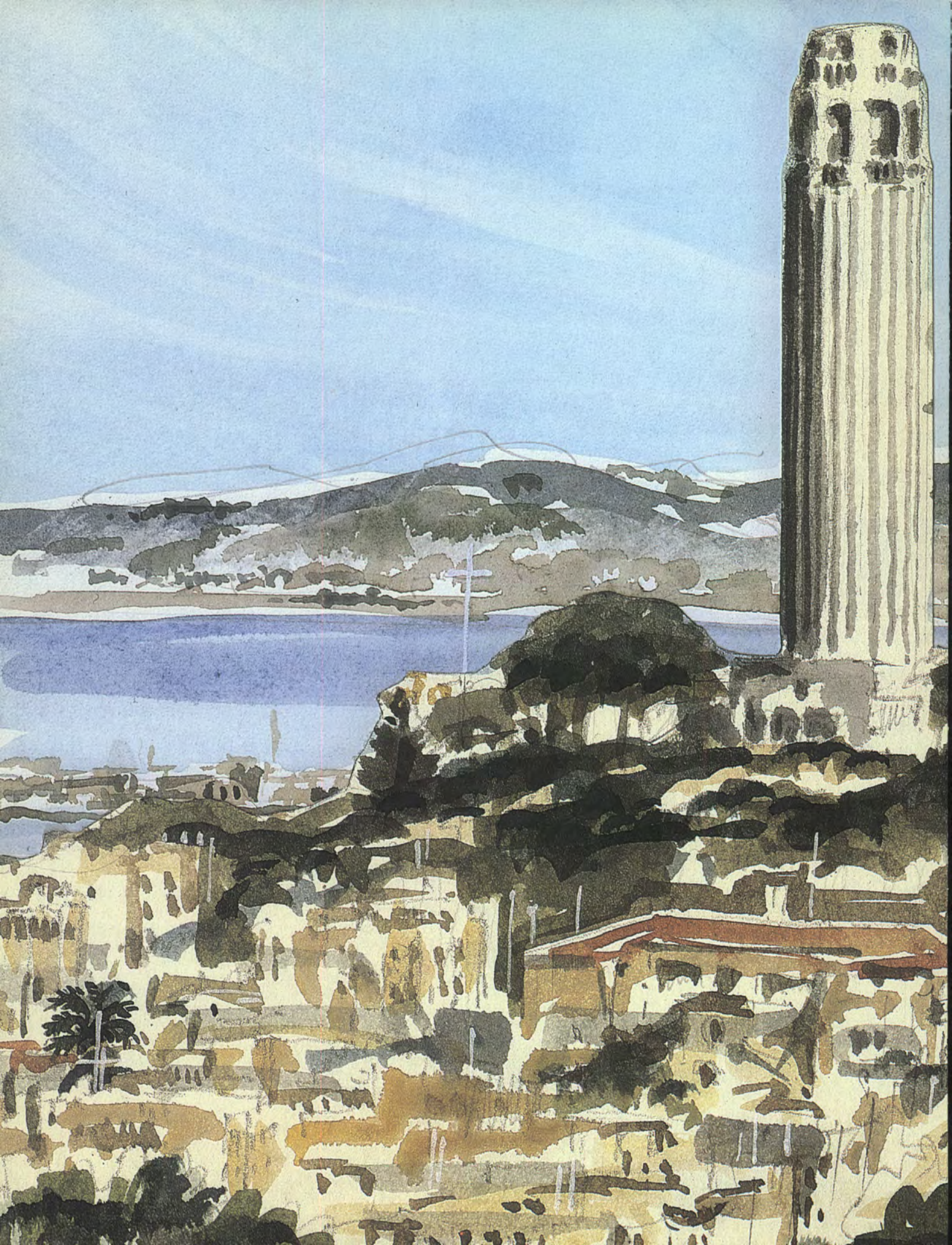
The Education Committee has been busy again this year, having recently held a highly successful Regional Seminar (jointly sponsored by the Florida Land Title Association). The Committee is currently planning three other seminars in New York City—September 7, 1989; Dallas/Ft. Worth—September 9, 1989; and in Minneapolis—October 6, 1989. The ALTA Education/Public Relations Videotape Subcommittee should have two educational videotapes ready for the Annual Convention in San Francisco.

I appreciate the work of all ALTA committees, staff, and the Board of Governors in their efforts to make this another in a long line of successful years for ALTA.

See you in San Francisco.

Charles O. Hon III







A watercolor illustration of San Francisco, showing rolling hills in shades of blue and green, a bay in the middle ground, and a detailed view of buildings and streets in the foreground. The style is soft and painterly.

# SAN FRANCISCO: The City of Everyone's Heart

*by Lynn D. Wilkinson*  
*ALTA director of meetings and conferences*

**“E**very man should be allowed to love two cities—his own and San Francisco,” said author Gene Fowler. And it is that quote which is most appropriate for the 1989 Annual Convention, “Leadership: Bridge to Progress,” to be held October 15-18 in San Francisco.

The Hyatt Regency Embarcadero, located in the Embarcadero Center, a bayside “city within a city,” will be the headquarters hotel for this Convention. The Embarcadero’s office buildings, restaurants and shops are easily accessible to San Francisco’s colorful attractions such as Fisherman’s Wharf, Ghirardelli Square, Union Square, Nob Hill, Chinatown, North Beach and Golden Gate Park. Many of these points of interest are all within walking distance from the hotel.

Throughout the city today, ALTA attendees will find a wealth of artistic and cultural attractions, ethnic communities, high quality entertainment, upscale shopping, wondrous sightseeing and more than 4,200 restaurants.

The discovery of gold in 1848 turned San Francisco from a sleepy Spanish pueblo into a business metropolis almost overnight. Today, San Francisco is a compact city (46.6 square miles) bordered by the Pacific Ocean on one side, San Francisco Bay on the other and the Golden Gate strait at the northern tip. The weather there remains constant, with no defined seasons. A temperate marine climate should keep temperature in October within the 55-65 degree range.

## **The Opening Agenda**

An exposition opening reception with complimentary ice-cream and refreshments will kick-off the Convention on Sunday, October 15, from 3:00 p.m. to 5:30 p.m. First time Convention attendees are invited to attend a mixer from 5:30 p.m. to 6:30 p.m.



to meet other new-comers. The Membership and Organization Committee will be on hand to provide all interested with a convention orientation.

Proceeding these festivities will be the traditional opening Ice-Breaker Reception, scheduled from 6:30 p.m. to 8:00 p.m. This reception will permit attendees to experience San Francisco's diverse local cuisine, one of the things visitors tend to enjoy most about the city.

### Seminars and Orientations

After a buffet lunch, officers and executives of affiliated regional and state title associations can strengthen their association management and programming skills in the Affiliated Officer-Executive Seminar, Saturday, October 14.

ALTA Board of Governors, members of the Section Executive Committees and committee chairmen will also participate in an orientation seminar on Saturday afternoon. Several ALTA past presidents will make the presentation. Issues covered will be the general structure of ALTA and a brief history, review of the policy statement, conventions of the association and committee meetings, attending state conventions, duties of officers and members of the Section Executive Committees and Board of Governors, review of the by-laws, ALTA committees and their functions, ALTA finances, dues structures and expenses, ALTA staff and its function, relationships with state associations, representation before congressional committees, public relations and policy changes and decisions.

### General Sessions

Monday's general session will open with a San Francisco historian enlightening the audience about this unique city's past and present. Also on Monday's lineup is Stan Strachan, editor of **National Thrift News**, who will present his analysis of the savings and loan crisis from the perspective of what the 1990s indicate and his views on the anticipated impact of the crisis on the traditional savings and loan role as a major source of funds for housing and how all of this might affect the secondary mortgage market. Eric Sevareid, formerly of **CBS** and recognized as one of the most distinguished commentators in broadcast journalism will also appear on Monday's program.

The Wednesday general session will feature a panel of industry leaders with discussion of their views on what the title industry will be like in the 21st Century. Admiral Stansfield Turner is also slotted to speak at the Wednesday general session. Turner is former director of the Central Intelligence Agency (CIA). Prior to his appointment at the CIA, Turner was commander in chief of NATO's Southern Flank, headquartered in Naples, Italy. On completion of his duties as CIA director in 1981, he was presented the National Security Medal by President Jimmy Carter.

Three distinguished ALTA members, Gerald L. Ippel, ALTA past president and currently vice chairman of Ticor Title Insurance Company, Los Angeles, California; Robert C. Dawson, ALTA past president and currently chairman and chief executive officer, Lawyers Title Insurance Corporation, Richmond, Virginia; and Joseph D. Burke, former vice president and chief officer of Commonwealth Land Title Insurance Company, Philadelphia, Pennsylvania, will be presented Honorary Memberships at the conclusion of Wednesday's General Session.

### Educational Programs

Tuesday will be a day of education for convention attendees. Those interested in automation will want to participate in an Image Processing Mini-Seminar at 7:30 a.m. in the exhibit area,

preceded by a complimentary continental breakfast in the exposition hall. More education will follow with a panel on Creditors' Rights, moderated by Oscar Beasley, chairman of the ALTA Forms Committee and senior vice president and senior title counsel for First American Title Insurance in Santa Ana, California. This seminar will be offered once and extended to all convention attendees. At the conclusion of this seminar, attendees will have the opportunity to select one of two concurrent presentations, offered once. They are: "Win Or Lose—It's Your Office" and "Taking the Mystery Out of Promotion, Advertising, Media Relations."

"Win or Lose" will be a local operations-level discussion on how to effectively and profitably organize and supervise a local abstract and title office—from dealing with customers "on the job" to cross-training, improving work output and beyond. "What works for me" examples will be emphasized. Edward A. Blaty, chairman and chief executive officer of Continental Land Title Company, Los Angeles, California will serve as moderator. Discussion leaders include Edward H. Marsilje, chairman of the Land Title Systems Committee and president of Title Office, Inc., Holland, Michigan; and Jeff Lansdon, vice president, Western Pioneer Title Company of Lane County, Eugene, Oregon.

The promotion, advertising and media relations seminar will cover such topics as: "What works best for promoting title business in a competitive market?," "Can advertising help influence local customers?," "Major 'dos' and 'don'ts' for approaching your company," as well as a practical discussion for local managers including, "how to" pointers. Discussion leaders for this seminar include Public Relations Committee Chairman Randy Farmer, vice president and director of public relation and advertising, Lawyers Title Insurance Corporation, Richmond, Virginia; Public Relations Committee Member Barbara Harms, vice president and director, corporate communications and advertising, Chicago Title Insurance Co., Chicago, Illinois; and Sandra Bozutto, district manager, Stewart Title of Greater Washington, Inc., Vienna, Virginia.

Ending the educational sessions will be a Facsimile Systems Mini-Seminar in the exhibit area.

### Dance through Time at the Spouse/Guest Brunch

Spouses and guests will be caught up in a wonderfully witty show filled with lively, evocative dancing at the spouse/guest brunch on Tuesday morning. Those attending will experience the nostalgia of glorious period fashions and enjoy humorous dialogue.

Internationally known artistic director Carol Teten will vividly recapture the fascinating rhythms of the romantic 19th century and the all-time favorite American dance crazes of this century, complete with breathtaking antique fashions. The eight member dance troupe will transport the audience through time with the elegance of the Waltz, the spirit of the Fox Trot, the Castle Walk, and Valentino's Tango, from the sparkle of the Charleston and Flapper era, the sizzle of the Jitterbug, to the latest dances of today.

### TIPAC Lunch

Hodding Carter, columnist for the **Wall Street Journal**, will address those attending the Title Industry Political Action Committee luncheon scheduled for Wednesday afternoon. Carter was anchorman and chief correspondent for the Public Broadcasting System's "Inside Story," a regularly scheduled half-hour critique of press performance. The series won four Emmys, an Edward R. Murrow Award for best foreign affairs documentary, as well as a number of other coveted awards. Carter was also editor and chief



correspondent of **Capitol Journal**, a weekly PBS series on Congress. He is a regular participant on ABC's **This Week with David Brinkley**. The luncheon is open to all members and guests, however, TIPAC members will receive a discount.

### Banquet

Ending the convention will be "A Touch of the Orient," the theme for this year's 1989 Annual Banquet to be held on Wednesday evening. Preceding the banquet will be a cocktail reception. Attendees will have a choice of filet mignon or salmon for dinner, and will have the opportunity to dance the night away to "Judy Dennis and the Starlight Sound Orchestra."

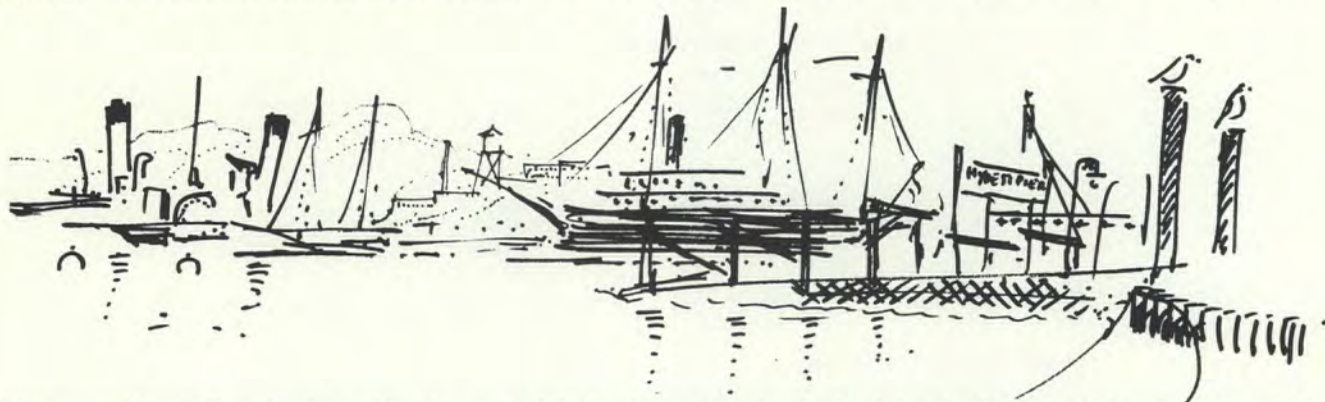
### Tours

Those arriving in San Francisco early may want to experience a trip beyond the Golden Gate Bridge to the wine country. This all day tour will be offered on Saturday and Sunday and will include

sweat shops is the sound that replaces the click of the Mah Jong tiles. Elegant pagoda topped buildings, street signs in Chinese, and dragon entwined lamp posts are reminders that this is an entirely different land. Finally, relax and enjoy tea and cookies in a traditional Chinese tea room.

Filoli—House and Gardens Tour will visit this 728 acre country estate, built in 1916 and the setting for scenes in the television series "Dynasty" and the movie "Heaven Can Wait." The modified Georgian-style mansion was designed by the well known California architect Willis Polk. After a guided tour of the main floor of the house, enjoy the 16 acres of gardens filled with a profusion of plants and flowers, laid out in separate areas, each with its own distinct character. It is suggested that tour guests wear comfortable shoes as many of the garden paths are gravel. Visitors to Filoli must be 12 years of age or older.

Some of the finest museums in the West are among the most popular attractions in the Golden Gate Park. A special exotic



visits to two Napa Valley wineries and lunch at one of the lovely restaurants that generates a true wine country feeling. Also on Sunday will be a city tour of San Francisco which will travel through the many and varied ethnic communities—from the Spanish settlements in the Mission to Chinatown, Italy's North Beach and Japantown. Then on to view the luxury of Nob Hill, Financial District and Pacific Ocean. A final ride through Golden Gate Park, a 1000 acre man made wonderland of trees, flowers, shrubs, and beautiful meadows and a stop at the exquisite Japanese Tea Garden.

Other tours on the agenda for the week include:

Muir Woods and Sausalito. Muir Woods is a 500 acre preserve of California coastal redwood trees which are hundreds of years old and hundreds of feet high. Leaving the forest, the guided minicoach will stop at Sausalito, fishing town and artists colony perched on the edge of San Francisco Bay. Those who wish to may take a ferry ride back to the city across the Bay.

Those interested in San Francisco's fascinating and colorful past will enjoy the Victorian Homes Tour. These "painted ladies" are meticulously maintained and beautifully refurbished and will provide insights into the lives of the many settlers who came to the area. These architectural treasures survived in the 1906 earthquake and fire, and their character still stands as an example of San Francisco's romantic past.

Move from the Western world into the largest Chinese settlement outside the Orient on the Chinatown Walking Tour. Motorized cable cars will stop at the Dragon Gate where the walking tour will begin. Explore the back alleys that are the lifelines of this community. With a guide visit Waverly Place, home of many of the Chinese Benevolent associations, and Ross Alley, the former gamblers' den where today the hum of the sewing machines in the

collection is the Asian Art Museum. This collection combines sculpture, architecture, paintings, bronzes, ceramics, jades, textiles and decorative objects illustrating major periods and stylistic developments of the arts of Asia. Of special interest is the internationally renowned Avery Brundage Collection devoted to the arts of the Orient.

All tours and special events are optional. Registration material for these events is included in the pre-convention mailings sent to all ALTA members.

### Travel arrangements

After researching the ALTA annual convention attendee profile, American Airlines has been appointed as the official airline. Though American will not satisfy all attendees travel needs, it will cover the most frequently used cities of departure.

If you, your travel agent, or ALTA's official travel agency, call the toll-free American Airlines number, you will receive 5% off super saver fares or 45% off full coach fares. This means, 5% off of the lowest fare you can find through any other means. Use the toll-free telephone number and special Star File number to save today.

For those who want to get away from the city and explore the California coast, Avis Car Rental is offering 150 free miles per day. Avis is conveniently located at the Hyatt Regency Embarcadero and the San Francisco Airport. Rates range from \$35-39 per day.

ALTA has engaged International Travel Advisors (ITA) as official travel agent for the meeting. ITA agents can assist with American or any other airlines flights. Avis or any other car rentals, pre and post-convention travel arrangements. The toll-free telephone number is 1-800-222-MEET.

Convention registration forms, hotel reservation cards and travel arrangement information are all included in a pre-convention mailing to be mailed to all ALTA members.



# ALTA CONVENTION CALENDAR

## **Saturday, October 14**

8:30 a.m.-4:30 p.m.	Wine Country Tour with lunch (optional)
9:00 a.m.-5:00 p.m.	Title Insurance Forms Committee Meeting
8:00 a.m.-4:00 p.m.	Convention Registration
12:00 noon-5:00 p.m.	Affiliated Association Officer-Executive Luncheon & Seminar
3:00 pm.-5:00 p.m.	ALTA Officer Orientation Program

## **Sunday, October 15**

8:00 a.m.-7:00 p.m.	Convention Registration
8:30 a.m.-5:00 p.m.	Title Insurance Forms Committee Meeting
8:30 a.m.-4:30 p.m.	Wine Country Tour with lunch (optional)
9:00 a.m.-10:30 a.m.	Abstracter-Agent Section Executive Committee Meeting
9:00 a.m.-10:30 a.m.	Underwriter Section Executive Committee Meeting
9:00 a.m.-5:00 p.m.	Lender Counsel Meeting
9:00 a.m.-5:00 p.m.	Life Counsel Meeting
12:00 noon-1:30 p.m.	Past Presidents Luncheon
1:30 p.m.-5:00 p.m.	Board of Governors Meeting
1:30 p.m.-5:00 p.m.	City Tour & Japanese Tea Garden (optional)
3:00 p.m.-6:00 p.m.	AUTOMATION SYMBIOSIS VI Exhibits Open
3:00 p.m.-5:30 p.m.	Exposition Opening Reception
5:30 p.m.-6:30 p.m.	First Time Convention Attendee Mixer
6:30 p.m.-8:00 p.m.	Ice-Breaker Reception

## **Monday, October 16**

7:00 a.m.-4:00 p.m.	Convention Registration
7:15 a.m.-8:15 p.m.	ALTA President's New Member Welcome Breakfast
7:30 a.m.-2:00 p.m.	AUTOMATION SYMBIOSIS VI EXHIBITS Open
8:30 a.m.-11:30 a.m.	General Session
11:35 a.m.-12:00 noon	Section Meetings for Nominating and Election of Officers
1:30 p.m.-5:30 p.m.	Muir Woods/Sausalito Tour with Ferry Return (optional)
1:45 p.m.-5:00 p.m.	Victorian Home Tour (optional)
2:15 p.m.-5:00 p.m.	Chinatown Walking Tour with Cable Car transportation (optional)

## **Tuesday, October 17**

7:00 a.m.-2:00 p.m.	Convention Registration
7:00 a.m.-2:00 p.m.	AUTOMATION SYMBIOSIS VI Exhibits Open
7:00 a.m.-7:30 a.m.	Automation Continental Breakfast
7:30 a.m.-8:30 a.m.	Image Processing Mini-Seminar
8:30 a.m.-11:15 a.m.	Title Management Workshops
9:30 a.m.-11:30 a.m.	Spouse/Guest Brunch
11:15 a.m.-12:30 p.m.	Facsimile Systems Mini-Seminar
12:00 noon-4:30 p.m.	Filoli—House & Gardens Tour (optional)
1:30 p.m.-5:30 p.m.	Muir Woods/Sausalito Tour with Ferry return (optional)
1:45 p.m.-5:00 p.m.	Victorian Home Tour (optional)
2:00 p.m.	Cut-off for Banquet Exchange

## **Wednesday, October 18**

7:30 a.m.-2:00 p.m.	Convention Registration
8:00 a.m.-12:00 noon	AUTOMATION SYMBIOSIS VI Exhibits Open
8:30 a.m.-11:25 a.m.	General Session
11:30 a.m.-12:00 noon	Executive Session
12:15 p.m.-2:00 p.m.	Title Industry Political Action Committee Luncheon
12:00 noon-4:30 p.m.	Filoli—House & Gardens Tour (optional)
1:00 p.m.-4:30 p.m.	Asian Art Museum Tour (optional)
2:15 p.m.-5:00 p.m.	Meeting of the 1989-90 ALTA Board of Governors
2:15 p.m.-5:00 p.m.	Chinatown Walking Tour with Cable Car transportation (optional)
6:15 p.m.-7:00 p.m.	Pre-Banquet Reception
7:00 p.m.-11:00 p.m.	Annual Banquet—"A Touch of the Orient"



# Sevareid & Turner To Highlight Convention



Sevareid

**B**efore Walter Cronkite and television emerged on the scene, millions of people tuned their radios nightly to hear Eric Sevareid report on world events that would change the lives of many. The 40-year veteran of broadcast news will be the key speaker at Monday's General Session.

Highlights from Sevareid's journalism career include the founding of the United Nations, his interviews with world leaders during the postwar years, coverage of at least six presidential campaigns and conventions, as well as providing regular analyses on the **CBS Evening News**.

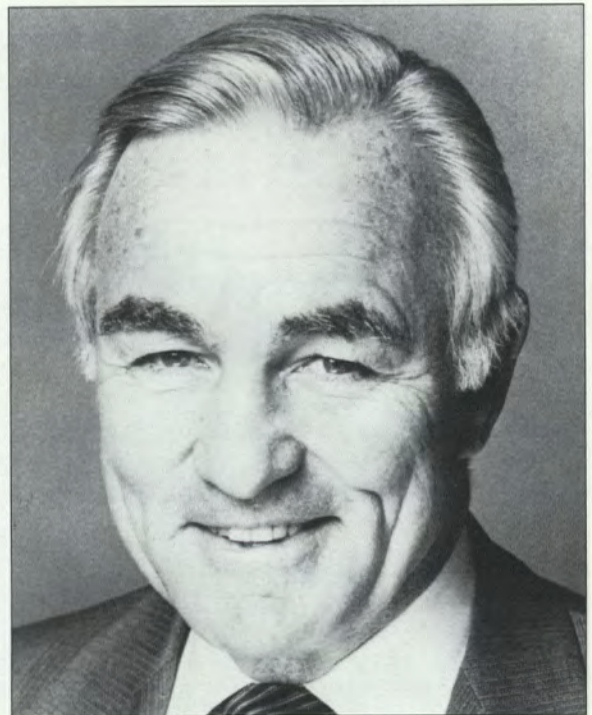
Sevareid is best known for his broadcast series, **Vietnam Perspective**.

Since his retirement from CBS News in 1977, he was best host-narrator on various TV series including: **Between the Wars**, **Enterprise**, and **Eric Sevareid's Chronicle**.

He is recipient of various Peabody, Emmy, Encyclopedia Britannica, Nieman Foundation, and Harry S Truman awards to name a few. Author of several books, the most well-known, **Not So Wild A Dream**, Sevareid also holds eight honorary degrees from American colleges and universities. In 1987, he was the third media personality to be presented with the TV Hall of Fame Award (previous recipients being Edward R. Murrow and Walter Cronkite).

Wednesday's General Session will be commanded by Admiral Stansfield Turner. An Oxford graduate and Rhodes Scholar, Admiral Turner became the 36th President of the Naval War College, Newport, Rhode Island, in 1972, with the rank of Rear Admiral. In 1974, Turner became commander of the United States Second Fleet and NATO Striking Fleet Atlantic. Former Director of the Central Intelligence Agency (CIA), Admiral Turner was presented the National Security Medal in 1981 by President Carter.

He is author of **Secrecy and Democracy**, and is presently working on a book, **Terrorism and Democracy**.



Admiral Turner



# The Dedication of an Honor

with introduction by  
Adina Conn

**O**nce again I am faced with my "Editor's Annual Nightmare," having a limited allotment of space to dedicate to three individuals who have contributed so much to this industry. Alone, their years in the industry must come close to totalling a century's worth of work and dedication. Together, their efforts and contributions provided to their peers and colleagues, friends, family, various committees as well as the ALTA itself, far exceed a millennium's worth of commitment and dedication.

At this year's Annual Convention, the American Land Title Association is proud to present Joe Burke, former ALTA Governor, and former vice president and chief officer of operations, Commonwealth Land Title Insurance Company; Robert Dawson, ALTA past president and current chairman and chief executive officer, Lawyers Title Corporation; and Gerald Ippel, ALTA past president and current vice chairman of Ticor Title Insurance Company, with this year's ALTA Honorary memberships.

"Fan mail" and tributes received on these men are filled with reverence, respect, and camaraderie for three men whose lives have touched the hearts of many. They are individuals who have in the truest sense, blazed the trails for others. They have dared to be different, bold, and sometimes, outspoken in their views, yet never have they been without a fierce passion that would benefit the industry.

And so, without further ado, it is with admiration and respect for the three new Honorary members that I let the following thoughts and quips speak for themselves.

Joe Burke is a man that will be hard to replace within our industry. Joe's ready smile, yet serious attention to the smallest detail as well as the larger picture, has made him a tremendous asset to our industry. All those who have served with Joe know what a positive impact he has had on our industry.

Margaret and Joe, we shall miss you.

Bob Dawson was the first ALTA President that I had the privilege to get to know on a first name basis. I was then, as I am now, a little awed by his mere presence. He is ever the gentleman, and Sally is ever the lady. Their attendance at ALTA conventions has made the event more enjoyable for everyone who knows them.

Bob has served our industry well. When he retires from it, he will be sorely missed.

I shall miss Gerry for many reasons, not the least of which is that he may be the only golfing Past President that I have a chance of beating. I shall also miss his expertise and leadership. Gerry knows when to have fun and when to work. One could always count on the Board of Governors under his chairmanship to adjourn on time. Gerry and Mary Lee will be missed.

**Charles O. Hon, III**  
ALTA President  
Title Guaranty and Trust Company  
Chattanooga, TN

I learned of the election of Bob Dawson, Jerry Ippel and Joe Burke to Honorary Membership in the ALTA with mixed emotions. Of course, I am happy that they are receiving this richly deserved honor from their peers, but sorry to realize that they are retiring from our industry.

Bob Dawson has been my boss, mentor and friend for many years. Like coaches we used to play harder for because we liked and respected them, Bob is the kind of

leader that made me want to "play harder" on the job. On any issue before us, I knew he would take the high road that was right for the long haul and that Bob would stick to his guns against lesser considerations. The ALTA and I will miss his sound advice on how the title insurance business should be conducted.

Jerry Ippel became my friend as we served in the trenches for the ALTA and defended our companies in the F.T.C. related cases. As I told him after we had fielded tough questions in a Congressional committee hearing, "Partner, you can 'side' me anytime in a show-down." Jerry knows as much about how the ALTA works and worked as hard for the ALTA as anyone I know.

Joe Burke has been recognized as a leader in the industry and as a very efficient and able worker for his company and the ALTA. Affable and interesting to talk to, I have enjoyed seeing him at our conventions.

I wish for these three outstanding leaders a long and happy retirement and hope they will continue to be involved in the ALTA including regular attendance at our conventions.

**Marvin C. Bowling, Jr.**  
ALTA Immediate Past President  
Lawyers Title  
Richmond, VA

I was pleased to hear that Jerry Ippel will be awarded an Honorary Membership in our Association. I have had the opportunity to know, work for and with Jerry for over 17 years. Throughout his career, Jerry has taken an active leadership role in ALTA and has been an articulate and knowledgeable advocate on the issues of importance to our membership. He has given freely of his time and energy to represent this Association before many legislative and regulatory bodies.

Jerry's willingness to confront issues that were not always "popular" and his unwavering commitment to

high standards of ethical behavior have earned him the respect of his peers.

**Richard A. Cecchetti**  
President and Chief Executive Officer  
Title Insurance Company of Minnesota  
Minneapolis, MN

As a member of the Board of Governors, I was delighted to participate in awarding an honorary membership in the American Land Title Association to Joseph D. Burke.

I have known Joe since 1975, and I have the highest respect for him not only as a skilled title professional but as a fine executive whose integrity and dedication have served as an example to all of our employees.

Joe's astute management and leadership, during his 30 years with Commonwealth Land Title Insurance Company, have been key elements in the company's growth and progress. His guidance and advice have been invaluable to me, as I know they have been to so many others in our industry.

At the same time, Joe remained dedicated to the improvement of the title insurance industry. He is a past president of the Pennsylvania Land Title Association, an organization which recently recognized him for his distinguished service to the industry. Over the years, Joe has been deeply involved with ALTA, having served as a trustee of TIPAC, and a long-term member of the Government Affairs Committee and the State Legislative & Regulatory Action Committee.

I am certain that his knowledge and experience will continue to be an asset to our industry in the years to come.

My heartiest congratulations to Joe for his years of dedication and service. He is certainly most deserving of this honor.

**Herbert Wender**  
Chairman of the Board and  
Chief Executive Officer  
Commonwealth Land Title Insurance Company  
Philadelphia, PA



Jerry Ippel is most deserving of nomination for an honorary membership in our association. I know of no individual member that has been a more willing or a more effective advocate on behalf of our industry's causes during the last two turbulent decades. I was closely associated with Jerry during most of those difficult years and bore witness to his dedication and devotion to the principles and ideals of the American Land Title Association and the industry it represents.

**David R. Porter**  
Chairman, ALTA Finance Committee  
President and Chief Executive Officer  
Transamerica Title Insurance Co.  
Los Angeles, CA

Bob Dawson has fit the image of a title insurance executive just about as well as any individual I have known. Having come up through the ranks and having served as a state manager, Bob is solid in the fundamentals and can converse on all aspects of the title business—marketing, underwriting, claims, and regulatory issues. He has always been available to handle the "tough decisions" with calmness and assurance and he can always add a note of optimism to difficult circumstances. I have especially admired the attentiveness which both Bob and Sally have shown to all Lawyers Title employees and their individual families.

Lawyers Title and the industry will surely miss this kind of a role model.

**Russell W. Jordan, III**  
Sr Vice President, General Counsel  
Lawyers Title Insurance Corporation  
Richmond, VA

I am delighted to learn of Bob Dawson's nomination as an honorary member of the American Land Title Association. By way of this letter, I am grateful for the opportunity to declare publicly my respect and appreciation for Bob's leadership and the contributions he has made to our company. On behalf of Lawyers Title, it is most gratifying to see industry recognition of the man for whom we have long served and have deeply respected.

Throughout his career Bob has stood on principles and a commitment to purpose that have served him and the industry well. After ten years of working for Bob I know that one of his most constant concerns is for the growth and well-being of this industry. He has demonstrated those qualities of character and leadership which serve us all best. Such recognition is well-deserved.

**Charles H. Foster, Jr.**  
Executive Vice President-Operations  
Lawyers Title Insurance Corporation  
Richmond, VA

Thank you for giving me this opportunity to congratulate Bob Dawson on the occasion of his being named an Honorary Life Member of A.L.T.A.

I first met Robert Calvin Dawson in the early sixties when we worked together on a home office committee.

At that time Bob was Florida State Manager for Lawyers Title and I was Michigan State Sales Manager. Fifteen years later, Bob, as President of Lawyers Title, asked me to transfer to Richmond to fill a senior position on his management team. I accepted.

I thought I knew Bob back then, but I really didn't. Over the next ten years, however, I got to know him well.

I found him to be all of the things a good CEO should be—a strong and forceful leader, a kind and considerate boss and a fair and an honest person; to sum it up a man of great warmth and personal integrity.

If I were to use one word to describe Bob, I would say that he is a gentleman. I am proud to have worked for him and I am pleased to call him "my friend."

Vera and I join with his many friends in wishing Bob and Sally peace and happiness in the years ahead.  
May he always shoot par or better!

**Charles E. Brodeur**  
Executive Vice President (Retired)  
Lawyers Title Insurance Corporation  
Troy, MI

Joe and I arrived at Commonwealth at about the same time. I was relatively inexperienced, having had some legal practice, but I knew nothing about title insurance. Joe was an experienced title attorney with a knowledge of the theory and practice of the business that was impressive to me.

After a training program, I wound up working with Joe Burke in the Company's national operation, then under Fred Fromhold, and Joe's experience and willingness to be of help made him one of my favorite colleagues. There was never an occasion when Joe Burke would not respond to a question, suggest a direction, or take time from his own work to help someone else. All of this he did with a cheerful and willing attitude. It was no surprise that Joe became Commonwealth's Chief Operating Officer.

In his tenure as President at Commonwealth, Joe Burke was not an aggressive "power" executive. He preferred to suggest rather than command, and to demonstrate by his own example rather than make difficult demands. Recognizing that operational managers in our business tend to be individual entrepreneurs, Joe's method of leadership brought out their best efforts without stifling their initiative.

But if Joe is to be remembered by Commonwealth and the industry for anything, it should be for his ability to operate as a businessman while maintaining as moral and ethical an environment as I have ever known. Joe Burke is an honest man. He never lied to me and, as far as I know, he never lied to anyone. I think that is a lot to say about a man who achieved his level of success.

While I don't believe in business eulogies, Joe Burke is a heck of a nice guy and it pleases me to see him recognized as such.

**Irving Morgenroth**  
Senior Vice President & Chief Counsel  
Commonwealth Land Title  
Insurance Company  
Philadelphia, PA

It gives me a great deal of pleasure to extend to Bob Dawson my heartiest congratulations upon his election as an Honorary Member of the American Land Title Association. I know that he has devoted a great deal of time and effort to the affairs of the Association and is

most deserving of this special honor and recognition.

As I consider this special time in Bob's life, I am reminded of several events in which he was the primary player—events that have remained important to me. Most notable was his 1978 presentation to me of Honorary Membership in the ALTA. I reiterate my thanks to him for the many nice things he said at that time. Also to be remembered was the wonderful party which he and Sallie hosted upon the occasion of my retirement from the title industry. In a lighter vein, there is also remembrance of a unique evening in Minneapolis, many years ago when I think we were en route to an ALTA convention, when Bob was able to persuade a Western Airlines hostess to give him several bottles of champagne. The drinks weren't consumed during the flight, but they did add much to our enjoyment of the evening in the hotel!

It is my hope and prayer that Bob will have many years to enjoy the honor bestowed upon him by the ALTA and to play again on the Masters Course in Augusta along with the many other great courses frequented by the best golfers in our nation.

**E. Gordon Smith**  
ALTA Honorary Member  
Dallas, TX

Fifteen years ago in Bal Harbour, Florida, we thanked Bob Dawson for a job well-done as he completed his year as president of the American Land Title Association. Today, we express our thanks and gratitude again by awarding him honorary membership in the Association.

Bob's contributions to the Association over the years have been significant. His dignified leadership and dedication of time and talents have helped the Association grow and become a major force in the real estate industry.

Having worked directly with Bob for the past twenty years, I refer to him as a gentleman, a loving husband, a devoted father, a strong leader and a friend. He inspired us to do our job a little better, a little smarter, and gave us room to make our decisions (and mistakes!). His door was always open; he always had time to listen. And he was forgiving. Several years ago, I mistakenly delivered his speech before introducing him to an audience of 350. And he didn't tell them!

We are proud of Bob and his lovely wife Sally. We are thankful for their contributions to our company and to our industry; and we cherish their friendship.

**H. Randolph Farmer**  
Vice President and Director of Public Relations and Advertising  
Lawyers Title Insurance Corporation  
Richmond, VA

## EXHIBIT HOURS

*Exhibits will be housed in Pacific Concourse, lower level of the hotel*

### **Sunday, October 15**

3:00 p.m.-5:30 p.m.  
Exposition Opening Reception  
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3:00 p.m.-6:00 p.m.  
Exhibits Open

### **Monday, October 16**

7:30 a.m.-2:00 p.m.  
Exhibits Open

### **Tuesday, October 17**

7:00 a.m.-7:30 a.m.  
Continental Breakfast—Exposition Hall  
7:00 a.m.-2:00 p.m.  
Exhibits Open  
7:30 a.m.-8:30 a.m.  
Automation Mini Seminar—"Image Processing"  
11:25 a.m.-12:20 p.m.  
Automation Mini Seminar—"Facsimile Systems"

### **Wednesday, October 18**

7:30 a.m.-12:00 noon  
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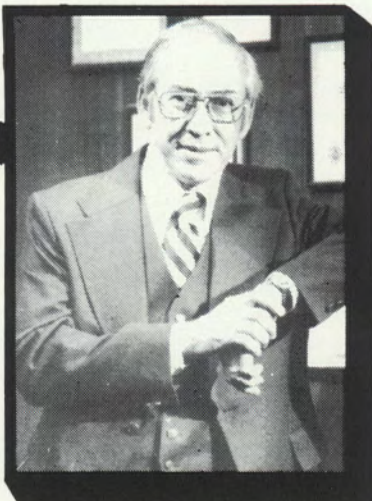
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— John Ruskin (1819-1900)

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# Banks, Bank Holding Companies And Title Insurance:

## A Non-Technical Guide Through The Labyrinth Of Applicable Law And Regulation

by Sheldon E. Hochberg, Esq.

In recent years there has been substantial activity by federal regulatory agencies, the courts, and the Congress regarding the ability of banks and bank holding companies (BHC's) to engage in insurance activities. This issue is being addressed with increasing frequency at the state level as well. The title insurance industry, primarily through the efforts of ALTA and state land title associations, has been actively involved in the federal and state forums in which this issue is being addressed.

Understanding the scope and interplay of the various legislative and regulatory regimes is not easy. The regimes are complex and overlapping. Consequently, ALTA members may find it difficult to sort out the various regimes or to appreciate the ramifications of particular regulatory, litigation or legislative developments. The purpose of this article is to provide ALTA members with a non-technical (and necessarily simplified and abbreviated) analysis of the law and regulation in this area to enhance their understanding of recent developments and the legal issues raised when banks or BHC's seek to enter the title insurance business.

### I. Banks, Bank Subsidiaries, and BHC's.

To understand the applicable regulatory regimes, one must first identify the banking-related entities to which the various regimes may apply.

In general, there are two types of banks, state banks and national banks. *State banks* are chartered by the various state banking departments and their powers are generally determined by state law. *National banks* are chartered by the Comptroller of the Currency (an agency located within the Department of the Treasury) and their powers are generally determined by federal law, primarily the National Bank Act.

In addition to engaging in activities directly, banks may also own stock in certain corporate entities. For present purposes, the most important of these entities are so-called operating subsidiaries ("op subs"). These subsidiaries are generally established by banks in order to engage in an activity through an entity whose liabilities would be insulated from the bank. Under federal law, the activity engaged in by an op sub of a national bank must be an activity permissible for the national bank itself. While this is frequently the case under state law for state bank op subs, some state laws permit state banks to own subsidiaries that engage in activities that are not permissible for the bank itself.

Most banks are owned by bank holding companies. These holding companies, whether they own a state bank, a national bank, or both, are regulated under the Bank Holding Company Act of 1956, as amended (12

U.S.C. §§ 1841 *et seq.*), which is administered by the Board of Governors of the Federal Reserve System (the "Board"). (A number of states also have laws regulating BHC's.) As of the end of 1987, BHC's controlled 9,316 banks that held 92 percent of the assets of all commercial banks in the United States.

Finally, the deposits of virtually all commercial banks are insured by the Federal Deposit Insurance Corporation (FDIC). While the FDIC cannot grant powers to insured banks that they do not otherwise possess under their chartering authority, in order to prevent unsafe or unsound practices by banks that might result in claims against the federal deposit insurance fund the FDIC may establish prohibitions or restrictions on the activities of insured banks that wish to be insured by the FDIC.

### II. The Regulatory Regime Applicable to BHC's and their Bank and Nonbank Subsidiaries.

Because so many banks are owned by BHC's, it is useful to begin the analysis by focusing on the federal regulatory regime applicable to BHC's and their subsidiaries. The chart on page 17 presents a paradigm structure of a BHC. As is evident, a BHC may own a state bank, which in turn may own an op sub; it may own a national bank, which in turn may own an op sub; and it may own a non-banking subsidiary, which in turn may own other non-banking subsidiaries.

#### A. The Bank Holding Company Act.

The BHC Act was enacted in 1956 to separate banking from commerce and to place limits on the non-banking activities of BHC's. Basically, the Act provides that any entity that owns or controls one or more banks must be registered with the Board and is subject to the provisions of the Act. (Prior to 1971 the Act only applied to holding companies owning two or more banks.) Section 4(a) of the Act (12 U.S.C. § 1843(a)) prohibits a BHC from acquiring or retaining *direct or indirect* ownership or control of the voting shares of any entity other than a bank or entities that engage in activities that are permissible under section 4(c). Section 4(c)(8) permits BHC's to engage in, or to own shares of a company that engages in, activities found by the Board to be "so closely related to banking . . . as to be a proper incident thereto." In the Garn-St Germain Depository Institutions Act of 1982, Congress amended section 4(c)(8) to provide that, with



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certain limited exceptions discussed below, it is not "closely related to banking" for a BHC to "provide insurance as a principal, agent, or broker." In March of 1986, the Board determined that title insurance was covered by these prohibitions on insurance activities.

An issue of obvious importance is which of the entities owned by a BHC are covered by the prohibitions on insurance activities. There is no question that the BHC itself and Non-Banking Subsidiaries A and B (shown on the chart) are subject to these prohibitions. Controversy does exist, however, with respect to whether the prohibitions apply to the other entities shown on the chart.

### **1. Applicability of the BHC Act to State Bank Op Subs.**

A state bank op sub is an indirect nonbank subsidiary of the BHC. Since the enactment of the BHC Act in 1956, the Board has maintained that such subsidiaries are subject to the restrictions of section 4. However, since 1971 a Board regulation (12 C.F.R. § 225.22(d)(2)(ii)) has permitted state banks owned by BHC's to acquire or retain *without Board approval* op subs that engage solely in activities (a) that the bank itself may conduct under state law, (b) that are conducted at locations at which the bank may conduct the activity, and (c) that are subject to whatever limitations would be applicable if the bank were conducting the activity. (If state law merely permits a state bank to own a company engaged in title insurance activities, but does not permit the state bank *itself* to engage in the activity, the Board regulation would *not* apply and ownership of the subsidiary by the BHC would be prohibited unless one of the exemptions contained in section 4(c)(8) is applicable.)

The Board adopted this regulation because it believed that such a policy fostered the equality of BHC-owned state banks with state banks that were not affiliated with BHC's and because at the time it had no evidence that state bank op subs owned by BHC-banks were evading the prohibitions of the BHC Act.

In recent years, two developments have caused the Board to reconsider its regulation. First, because states have recently been expanding the activities permitted for state banks, state bank op subs may now be engaged in activities (e.g., direct investment in real estate) that may not be permissible under the BHC Act. Second, a number of such op subs are engaged in insurance activities that are clearly prohibited under the 1982 Garn-St Germain Act.

As a consequence of these developments, in late 1988 the Board published a notice of proposed rulemaking in which it sought public comment on a proposal to rescind the regulation. The notice also sought comment on the desirability of "grandfathering" those state bank op subs that were acquired or held in compliance with the Board's regulation as of November 21, 1988. ALTA filed written comments and testified at a hearing held by the Board on April 7. ALTA's position was that, as a matter of law and sound policy, the Board must rescind the regulation insofar as it applies to insurance activities that are prohibited under the Garn-St Germain Act and that, under applicable judicial precedent, the Board may not grandfather insurance activities that have been proscribed by that Act.

The Board has indicated that it expects to take further action on this matter by October of 1989. Any final action taken by the Board is certain to be subject to federal appellate review. If the regulation is rescinded and the rescission is upheld in the courts, state bank op subs affiliated with BHC's would be prohibited from entering the title insurance business even if state law authorized such an activity.

### **2. Applicability of the BHC Act to State Banks.**

While the Board has long maintained that the nonbanking restrictions of the BHC Act apply to state bank op subs, it has also maintained that these restrictions do *not* apply to the activities conducted by state banks that are affiliated with BHC's. While it may appear anomalous that a federal law designed to separate banking from commerce prohibits state bank op subs from engaging in insurance activities while permitting such activities to be conducted by state banks themselves, the Board believes that the language and intent of the BHC Act necessitates this conclusion.

On March 3, 1989, the Board approved an application by Merchants

National Corporation, a registered BHC, to permit two state banks owned by that BHC to resume property and casualty insurance agency activities that the banks themselves had been engaging in prior to their acquisition by Merchants National. Judicial review of this order has been sought by insurance agency trade associations in the U.S. Court of Appeals for the Second Circuit. (*Independent Ins. Agents of America v. Board of Governors*, No. 89-4030 (2d Cir. filed March 10, 1989).) In early April the court stayed the Board's order pending judicial review. This case, when ultimately decided, should clarify whether the insurance prohibitions of section 4(c)(8) of the BHC Act apply to BHC-owned state banks.

### **3. Applicability of the BHC Act to National Bank Op Subs.**

In a parallel provision to its state bank op sub regulation, the Board has promulgated a regulation (12 C.F.R. § 225.22(d)(1)) that permits BHC-owned national banks to acquire or retain securities on the basis of section 4(c)(5) of the BHC Act and in accordance with regulations of the Comptroller of the Currency. Section 4(c)(5) permits BHC's to own shares of the kinds and amounts eligible for investment by national banks under 12 U.S.C. § 24. Under this regulation, the Board has not sought to apply the BHC Act's nonbanking prohibitions to an op sub established or acquired by a BHC-owned national bank where the activities of that op sub have been approved by the Comptroller of the Currency.

While the Board's current rulemaking proceeding to rescind its state bank op sub regulation does not directly involve rescission of the national bank op sub regulation, many of the legal and policy reasons justifying rescission of the Board's state bank op sub regulation equally justify rescission of the national bank op sub regulation.

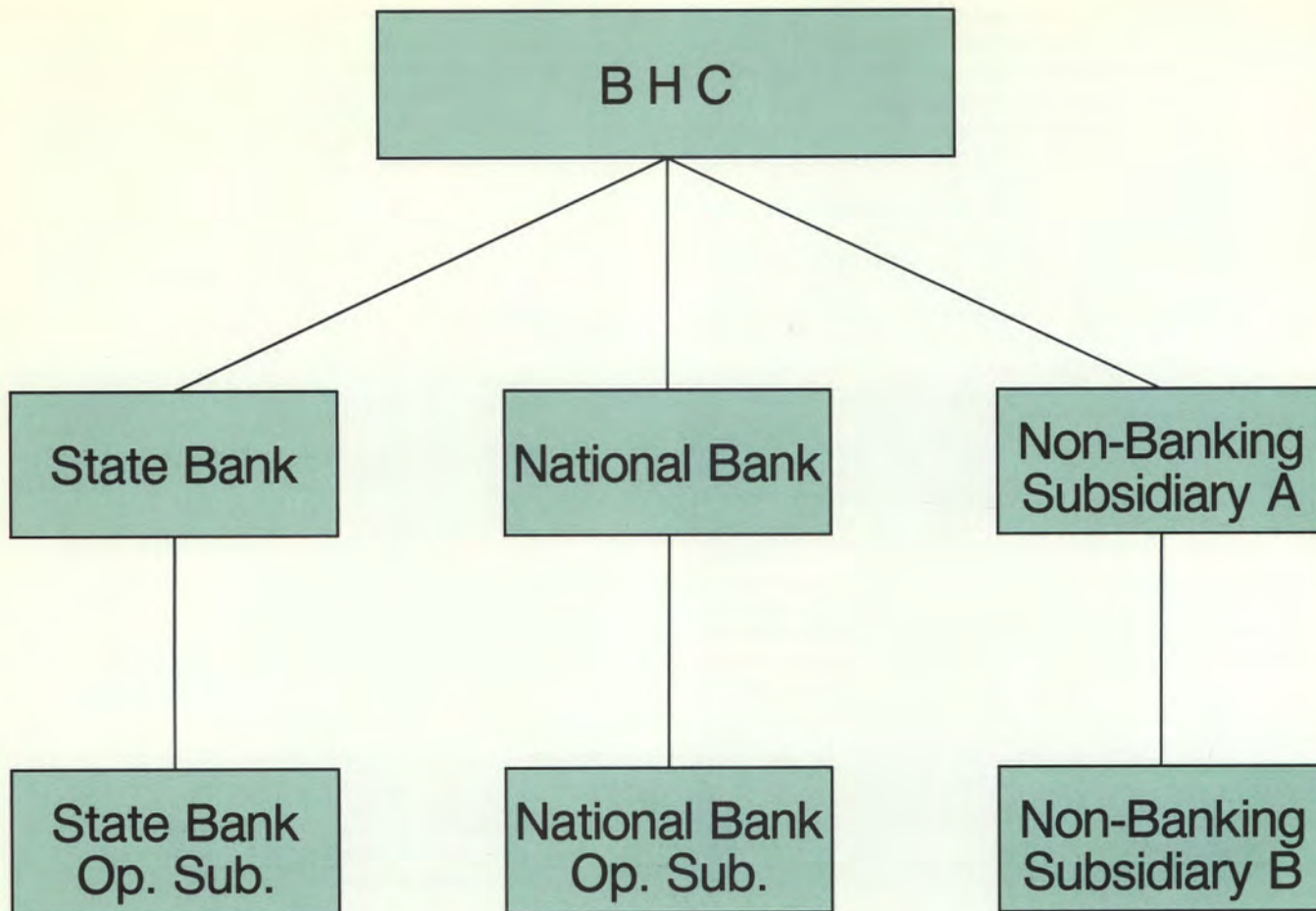
The Board's national bank op sub regulation was addressed in recent litigation challenging the Comptroller of the Currency's approval of Citibank's acquisition of the American Municipal Bond Assurance Corporation (AMBAC), a company engaged in the business of issuing municipal bond insurance in the form of stand-by letters of credit. The American Insurance Association (AIA) challenged that approval on the ground, *inter alia*, that the Comptroller should have deferred his approval of the AMBAC acquisition until the Board had determined whether the acquisition was permissible under the BHC Act, inasmuch as Citicorp, the BHC that owns Citibank, would be acquiring an indirect subsidiary, AMBAC, whose activities might be prohibited under the BHC Act.

On review of a district court decision rejecting the AIA's position, the U.S. Court of Appeals for the District of Columbia Circuit issued an opinion in August of 1988 in which it determined that Citicorp had to obtain Board approval under section 4(c)(8) and that the Board's national bank op sub regulation, to the extent it permitted a national bank subsidiary of a BHC to acquire an entity (AMBAC) without Board examination under the BHC Act, was contrary to the BHC Act. (Although the Comptroller had concluded that AMBAC's stand-by letter of credit activities were not "insurance" activities that might be impermissible under the National Bank Act, the court concluded that only the Board could determine whether such activities constituted "insurance" activities as that term is used in the Garn-St Germain Act amendments to section 4(c)(8) of the BHC Act.)

The decision caused a great deal of consternation in the banking community, and the D. C. Circuit subsequently granted petitions for rehearing filed by the Comptroller and Citibank. On January 6, 1989, the court concluded that it had been inappropriate for it to have reached the BHC Act question in its August opinion since the Board had not taken any action reviewable under the BHC Act and the Comptroller's interpretation of the scope of the BHC Act was without precedential effect. Accordingly, the court vacated that portion of its earlier opinion that addressed the BHC Act issues. (*American Ins. Ass'n v. Clarke*, 865 F.2d 278 (D.C. Cir. 1989).) The AIA did not seek Supreme Court review of the decision.

Thus, whether the BHC Act applies to op subs owned by BHC-national banks is still an open question. Resolution of this issue might be undertaken by the Board either in the context of a petition to the Board challenging the Citicorp/Citibank acquisition of AMBAC (or in the context of a petition challenging some similar acquisition) or by the institution of a proposed rulemaking proceeding by the Board following the rescission of its state bank op sub regulation should such action be taken by the Board.





#### 4. Applicability of the BHC Act to National Banks.

Just as the Board has taken the position that the BHC Act's nonbanking prohibitions do not apply to BHC-owned state banks, it has also taken the position that the Act's restrictions do not apply to BHC-owned national banks. If the Board's order in the *Merchants National* case is reversed and the courts conclude that the BHC Act applies to BHC-owned state banks, it is possible that the Board might reconsider its position on the applicability of the Act to BHC-owned national banks.

#### 5. Statutory Exceptions to the BHC Act's Prohibitions on Insurance Activities.

While the Garn St Germain Act amendments to the BHC Act generally prohibit BHC's from engaging in insurance activities, those amendments contain exemptions to such prohibitions (12 U.S.C. § 1843(c)(8)(A) through (G)), several of which are of interest to the title insurance industry.

##### Exemption C, Insurance Agency Activities in Small Towns.

Under Exemption C, a BHC or its subsidiary may engage in insurance agency activities in places with a population of 5,000 or less or in places that have inadequate insurance agency facilities, as determined by the Board. Under the Board's regulations and policies, the BHC must have a lending office in the small town, and must limit its solicitation of insurance sales to that town and to other areas adjacent to the town that have a population of 5,000 or less.

##### Exemption D, Insurance Agency Activities Conducted as of May 1, 1982.

Exemption D grandfathers those insurance agency activities of BHC's that were being engaged in as of May 1, 1982. This exemption applies to

the specific subsidiary that was engaged in the insurance agency activities and not to the BHC itself or to any other subsidiary. Under the exemption, the BHC subsidiary may engage in the grandfathered insurance agency activities in the state where the BHC has its principal place of business or in immediately adjacent states, or in any state where such activities were conducted or approved to be conducted on May 1, 1982. In addition to selling the types of insurance it was selling on May 1, 1982, a grandfathered entity may sell new types of insurance coverages that become available after May 1, 1982, "so long as those coverages insure against the same types of risks as, or are otherwise functionally equivalent to, coverages sold on May 1, 1982."

The legislative history of this provision makes clear that the product line expansion permitted by this language is a narrow one. Both the Senate and House Committee reports utilized the same example to illustrate the type of product line expansion that would be permissible: if a BHC subsidiary was selling standard homeowner's insurance policies on May 1, 1982, it would be able to sell "volcano insurance" coverage if such coverage became available after that date.

In view of these limitations, Exemption D cannot be used by a BHC subsidiary that was engaged in selling life, homeowner's or automobile insurance (for example) as of May 1, 1982, to expand into title insurance agency activities. Title insurance is not a "new" form of insurance that became available after May 1, 1982, and does not insure against the same types of risks as, and is not "functionally equivalent" to, those other coverages.

##### Exemption F, Small BHC's.

This exemption permits a BHC with total consolidated assets of \$50 million or less to engage in any insurance agency activity. Such activities must be terminated within 90 days after the end of the quarterly reporting period in which the total assets of the BHC and its subsidiaries exceed \$50 million.



### **Exemption G, BHC's That Were Engaged in Insurance Agency Activities Prior to 1971.**

This exemption applies to those BHC's that were authorized to engage in insurance agency activities prior to January 1, 1971. Approximately 14 BHC's qualify for Exemption G rights. ALTA is currently engaged in litigation with the Board arising out of the Board's approval, over ALTA's objections, of an application by First Wisconsin Corporation (recently renamed Firststar Corporation), one of the grandfathered BHC's, to acquire an existing title insurance agency in Wisconsin pursuant to this exemption. (*ALTA v. Board of Governors*, No. 88-1872 (D.C. Cir. filed Dec. 13, 1988).)

The litigation involves two issues. The first is whether Exemption G permits a BHC covered by the exemption to engage in title insurance agency activities, which were never explicitly approved for any BHC prior to 1971. The second is whether the Board erred in concluding that the acquisition "can reasonably be expected to produce benefits to the public . . . that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." (The Board must make this determination in connection with all applications under section 4(c)(8).) Briefs in this case will be filed in the summer of 1989 and oral argument is scheduled for November 3, 1989.

### **III. The Powers of National Banks and Their Op Subs.**

Part II of this article has discussed the limitations that may be imposed by the BHC Act on the insurance activities of BHC's and their banking and nonbanking subsidiaries. Even if it should be conclusively determined that BHC-owned national banks, or the op subs of such national banks, are not subject to the prohibitions of section 4(c)(8) of the BHC Act, this would still not determine whether national banks or their op subs may lawfully engage in title insurance-related activities. The question remains whether such activities are authorized or prohibited for national banks under applicable federal law.

As previously noted, the Comptroller of the Currency is responsible for the chartering of national banks and is the primary regulator of their activities. While various provisions of the National Bank Act expressly authorize national banks to engage in certain activities (such as the taking of deposits or the making of mortgage loans), no statutory provision expressly authorizes national banks to engage in title insurance activities. The statutory provision generally cited by national banks and the Office of the Comptroller of the Currency (OCC) as authority for the expansion of the activities of such banks is the "incidental powers" provision of 12 U.S.C. § 24, Seventh. That provision states that, in addition to the powers that have been expressly granted, national banks may exercise "all such incidental powers as shall be necessary to carry on the business of banking."

Under OCC regulations (12 C.F.R. § 5.34), any activity permissible for a national bank may be engaged in by an op sub of the bank. If a national bank intends to engage in a new activity through an op sub, it must file a notification with the OCC. Even in the case of a new activity that a national bank intends to engage in directly, such banks will rarely engage in such activity without first obtaining approval from the OCC, which frequently comes in the form of an interpretive letter issued by the OCC staff.

As most ALTA members are aware, ALTA, together with the Texas Land Title Association, has instituted litigation challenging the OCC's determinations that title insurance agency activities are permissible for a national bank because such activities are "incidental" to the express power of a national bank to make mortgage loans. (*ALTA, et al., v. Clarke*, No. A-87-CA-408 (W.D. Tex. filed July 2, 1987).)

A principal legal contention of ALTA is that the OCC's determination that a national bank may engage in title insurance agency activities is in conflict with the statutory limitations contained in 12 U.S.C. § 92. That provision, which was enacted in 1916, authorizes a national bank located and doing business in a place the population of which does not exceed 5,000 to engage in insurance agency activities. The provision was adopted at the request of the Comptroller, after both the Comptroller and the Board had concluded that national banks had no "incidental power" to engage

in insurance agency activities. The Comptroller, in a letter to Congress, had urged the Congress to permit national banks to sell insurance in such small towns because the additional income would strengthen small-town banks and the amount of insurance written in such places frequently could not support the full time activities of an independent agent. The Comptroller's letter went on to characterize the conferring of insurance agency powers upon banks in large cities as "unwise" and "undesirable."

Although section 92 does not expressly prohibit national banks from engaging in the insurance agency business outside of small towns, the legislative history demonstrates that such a prohibition is necessarily implied from section 92. Indeed, the U.S. Court of Appeals for the Fifth Circuit reached this conclusion in the well-known case of *Saxon v. Georgia Ass'n of Ind. Ins. Agents*, 399 F.2d 1010 (5th Cir. 1968).

The scope of section 92 is also at issue in litigation instituted in 1986 by the Independent Insurance Agents of America, in which the IIAA is challenging a determination by the OCC that a national bank or branch thereof located in a place whose population is 5,000 or less may sell insurance to existing and potential customers located anywhere. (*IIAA v. Clarke*, No. 86-3045 (D.D.C. filed Nov. 5, 1986).) A decision has not yet been rendered by the district court in that case.

At the present time, the OCC has under consideration a notification filed by Citibank, N.A., in 1987 to establish an op sub that would act as a title insurance underwriter for the issuance of title insurance policies in connection with mortgage loans made by Citibank and its bank and nonbank subsidiaries. The OCC has informed Citibank that it may not take any action to establish such an op sub until approval is given by the OCC. If the notification is approved by the OCC, ALTA intends to challenge the approval.

### **IV. The Powers of State Banks and Their Op Subs.**

Whether a state bank or its op sub may engage in title insurance activities is, as an initial matter, determined by state law and *valid* regulations that may be issued thereunder by state banking authorities. If state law does not permit state banks or their op subs to engage in title insurance activities, then the provisions of the BHC Act or FDIC regulations do not come into play.

A review of state laws and state banking and insurance department regulations addressing the powers of state banks to engage in, or to own entities engaged in, title insurance activities is beyond the scope of this article. (To the author's knowledge, no comprehensive analysis of state laws and regulations on this issue has been published.) Some state statutes explicitly permit state banks to act as title insurance agents, while others prohibit such activities. Within the past year banking departments in at least two states, Missouri and Texas, considered approving title insurance activities for state banks. In Missouri, the state legislature rescinded regulations issued by the state banking department authorizing title insurance agency activities for banks, and the Texas banking department withdrew a similar proposal it had been considering. In California, with the adoption in 1988 of Proposition 103, certain statutory restrictions on the sale of insurance by banks in that state have been repealed, although the precise scope of that repeal and whether banks can be licensed as underwritten title companies are still open issues.

It is clear that banking trade associations will continue to seek the expansion of state bank insurance powers through legislation or regulatory action at the state level, while at the same time seeking to ward off federal legislation or regulatory action (such as the rescission of the Board's state bank op sub regulation) that would limit the exercise of such powers. State legislators and regulators are frequently unaware or ill-informed about the ways in which federal law (such as the BHC Act) may affect their decision-making, or may base their decisions on an erroneous view of federal law. For example, state law may permit a state banking commissioner to authorize for state banks activities that are permissible for national banks. While the Comptroller has sought to authorize national banks to act as title insurance agents, state insurance regulators may not be aware that this

*continued on page 33*



## A BRIEF CHRONOLOGY OF KEY DATES

- 1864** Enactment of the National Bank Act, which authorizes national banks to exercise "all such incidental powers as shall be necessary to carry on the business of banking." (12 U.S.C. § 24, Seventh)
- 1916** Enactment of 12 U.S.C. § 92, which authorizes national banks to engage in insurance agency activities in places that have a population of 5,000 or less.
- 1946** FDIC adopts regulation (12 C.F.R. § 332.1) specifying that it is inconsistent with the purposes of the federal deposit insurance law for a state nonmember bank to insure, guarantee, or certify titles to real estate.
- 1956** Enactment of the Bank Holding Company (BHC) Act.
- 1968** U.S. Court of Appeals for the Fifth Circuit decides *Saxon v. Georgia Ass'n of Ind. Ins. Agents*, holding that 12 U.S.C. § 92 prohibits national banks from engaging in insurance agency activities outside of places that have a population of 5,000 or less.
- 1970** Congress amends the BHC Act to make it applicable to one- bank holding companies.
- 1974** Enactment of RESPA, which, *inter alia*, prohibits the payment of kickbacks or referral fees by title companies to mortgage lenders who refer business in transactions involving federally related mortgage loans.
- 1982** Enactment of the Garn-St Germain Depository Institutions Act, which amends the BHC Act to prohibit BHC's (with certain limited exceptions) from engaging in insurance activities, whether as principal, agent, or broker.
- NAIC adopts Model Title Insurance Code, which includes provisions limiting the amount of "controlled business" that a licensed title insurance company may receive.
- 1983** Enactment of the "controlled business" amendments to RESPA.
- 1985** The FDIC proposes regulations that would prohibit any FDIC-insured bank from engaging in title insurance underwriting activities, but would permit such activities to be conducted by a *bona fide* subsidiary of the insured bank. This proposal is withdrawn in December 1987.
- Mar. 17, 1986** The Federal Reserve Board determines that title insurance is covered by the insurance prohibitions contained in the Garn-St Germain Act amendments to the BHC Act.
- July 11, 1986** The OCC issues an interpretive letter stating that a national bank may engage in title insurance agency activities as an "incidental power" to the bank's express power to make mortgage loans. This determination is subsequently challenged by ALTA in a federal district court in Texas.
- Aug. 18, 1986** The OCC determines that 12 U.S.C. § 92 permits a national bank or branch thereof located in a place with a population of 5,000 or less to sell insurance to custom-ers located anywhere. The Independent Insurance Agents of America (IIAA) files suit in federal district court challenging that determination. A decision has not yet been rendered in the case.
- Oct. 19, 1987** Citibank files a notification with the OCC indicating its intention to establish an op sub that would engage in title insurance underwriting in connection with mortgage loans made by the bank and its subsidiaries. The OCC subsequently informs Citibank that it may not establish such a subsidiary without OCC approval, which is still under consideration.
- Apr. 30, 1988** Senate passes S. 1886, the Proxmire Financial Modernization Act. The bill clarifies the limitations on insurance activities by national banks and by all bank and nonbank subsidiaries of BHC's. Companion legislation is subsequently approved by the House Banking and Commerce Committees, but no legislation is enacted before the expiration of the 100th Congress.
- May 16, 1988** HUD publishes proposed regulations that would implement the 1983 controlled business amendments to RESPA. No final action has been taken on the proposed regulations.
- Aug. 23, 1988** U.S. Court of Appeals for the D.C. Circuit decides *AMBAC* case and concludes that the nonbanking prohibitions of the BHC Act apply to op subs of BHC-owned national banks.
- Nov. 17, 1988** Federal Reserve Board approves application of First Wisconsin Corporation to acquire a title insurance agency in Milwaukee pursuant to Exemption G (12 U.S.C. § 1843(c)(8)(G)). ALTA subsequently seeks review of that approval in the U.S. Court of Appeals for the D.C. Circuit.
- Dec. 5, 1988** Federal Reserve Board proposes to rescind its existing regulation permitting BHC-owned state banks, without prior Board approval, to establish or acquire op subs that engage in activities permitted for the state bank under state law. ALTA files comments with the Board and testifies at the Board's informal hearing, held on April 7, 1989, on the proposed rescission.
- Jan. 6, 1989** The court of appeals, on rehearing in the *AMBAC* case, vacates the portion of its August 1988 opinion that addressed the applicability of the BHC Act. Effect of decision is to uphold the OCC's approval of Citibank's acquisition of a company engaged in the business of issuing municipal bond insurance in the form of stand-by letters of credit.
- Mar. 3, 1989** Federal Reserve Board approves application by Merchants National Corporation to permit state banks owned by that BHC to resume insurance activities. The Board's conclusion that the insurance prohibitions of the BHC Act do not apply to activities engaged in directly by state banks affiliated with BHC's is appealed to the U.S. Court of Appeals for the Second Circuit by the IIAA.



# On The Road Again

by Charles DeWitt

*For many in the title industry, traveling is a routine event. Here are some "less-than-perfect," tragically-funny tales of a closing attorney and his travels on the great American highways and bi-ways.*

**D**o you believe an agency representative does nothing but play golf all day and entertain clients at night? Do you think they sleep until noon, amble into the office at 3 PM to get their messages, and shoot the breeze with the hired help, only to leave at 4 PM for parts unknown? Are you under the impression that agency and marketing people do nothing but drop in and bother agents and clients, taking up valuable time talking about the weather and asking about business?

If you've answered "yes" to even one of these questions, let me enlighten you as to what *really* goes on behind the scenes. I spent almost ten years in agency work for a "major national underwriter" (as they would make you say on the **Wheel of Fortune**). And, while the unstructured workday is a real advantage, it is not without its drawbacks (i.e., the rigors of being on the road).

**PLANES.** Of all the airlines I have flown, I liked Air Atlanta the best. It went out of business.

I've had some air experiences that put grey hair in my temples in seconds. On one occasion, I had to fly to a meeting from Panama City to Tampa. There was only one flight that could get me there in time—a small commuter plane run by Donald Duck and his nephews.

Prior to this, I had been able to avoid the "puddle jumpers" by adjusting my schedule. This time, however, it was unavoidable. As luck would have it, when I got to the airport it was pouring down rain. I didn't know monsoons hit this far east. I boarded the plane, wondering if I would be wiser to rent a car and drive (or even walk). My bag was packed in a little compartment behind the engine—that really built my confidence. One little fire and I'm off to K-mart for new underwear!

They finally started the plane only to

have all 10 of us ascend into the gathering darkness. It was a nightmare! I felt like a paint can in a mixer. For an hour's eternity we tossed around the sky, rain pounding on the windows. It seemed like we flew every way except straight ahead. I wanted the pilot to announce over the speaker that everything was alright—that he flew through this everyday—or at least to tell us the location of the parachutes and life raft. But no such luck. Instead, his hands were gripping the wheel like an Indy 500 driver. Finally, near Tampa we broke through the clouds and rain, with a view of the airport lights straight ahead. I have expected this to be Oz, but realized I didn't have any ruby slippers on. When we landed, I made a mental note never to board anything that flies unless it exceeds the size of my toothbrush!

Later that month, a small fire occurred on board the plane as we were landing in Atlanta. I think someone had left the hand towels in the microwave too long. The manager came out later and assured everyone that the problem had been fixed.

**TRAINS.** I wish trains were used more for transportation than they are. I decided to take Amtrak north from New Orleans one day and it was one of the most relaxing trips I've ever made. We rattled along through the swamps, rolled into Mississippi, and stopped at every "junction" declared a "town." Rural Americana. Hadn't changed in 50 years—it was worth every dollar.

**AUTOMOBILES.** Rental cars and taxis are generally reliable. And, you can usually get the rental car companies to give you a free upgrade. Always ask for the cheapest and smallest possible car, and if they don't have it they'll usually give you the next upgrade they do have. Of course, if they don't you're stuck driving a Chevette 600 miles on a winding road through the Appalachians. Cars being cars, however, are all subject to mechanical breakdown.

One week, I had a meeting in Gulf Shores, Alabama, and had to fly there via Mobile. Northwest had a vintage World War II plane for this flight—one of the last  
*continued on page 30*

*The author is a closing attorney in Memphis, Tennessee, with the law firm of W. Terry Edwards, P.C. After graduation from The University of Southern California Law School in 1976, he worked for SAFECO and First American Title Insurance Companies prior to entering private practice in 1988. He was secretary-treasurer of the Tennessee Land Title Association from 1984-1988 and has remained an associate member of that organization. He is an assistant professor at Memphis State University and is the author of several articles and short stories.*

*The author travels as little as possible now.*





P. Steiner



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# Working Without A Net: A Fable

## Once

upon a time in a strange and wonderful land, there were some very capable bears. These bears had such good balance and were so reliable that the other animals relied upon them in order to cross the terrible chasm.

ALL of the animals feared the great chasm. It was a gorge of breathtaking dimensions. Although almost all of the animals needed to cross it at one time or another, the only way across was to walk on a long steel cable. Each steel cable was approximately four inches in diameter and had been stretched across the great divide at great risk. There were about twenty of these cables with each of them about a quarter of a mile from the other.

AS the other animals became more aware of their need for assistance in crossing the chasm the bears established businesses at most of the steel cable crossings.

WHEN an animal wished to cross, he or she would pay the bear on duty the requisite fee and the bear would carefully carry the animal across, walking on the narrow and dangerous cable. The bears were very competent and made very few mistakes, but everyone was acutely aware that a mistake could mean a catastrophe. The risks inherent in the bears' business gave rise to another business. A band of hyenas once approached the bears to offer to build a net beneath the cables. After negotiating the strength of the net, the distance of the net from the cable, and other relevant details, the bears agreed.

AND so for many years the hyenas were paid by the bears to maintain a safety net beneath the cables. When the customers of the bears became aware that safety nets were available, they began to demand that safety nets be in place before they would retain the bears. The hyenas determined their prices based on the amount of use the nets received. Since the bears were extremely careful and experienced, the price paid to the hyenas for the net was relatively low.

THEN one day a very strange thing happened. The hyenas informed the bears that the cost of the safety net would be increased tremendously. The bears were confused. They had not increased the use of the safety net to a degree that would justify such a tremendous increase.

AFTER some investigation, they found that several jackals had gotten into the business of crossing the chasm and that their desire for speedy profit had caused them to have a great many occasions to use the safety net. The hyenas reluctantly informed the bears that the cost for the safety net was based upon uses by *all* who crossed the chasm, not just the bears.

THE bears were distressed and found that they could not increase their prices enough to pay for the new safety net charge because the jackals had much lower prices. The jackals were often times quicker but were not as careful or as strong.

MANY bears made the difficult decision to work without a net. Fortunately there were very few problems for those bears who did work without a net. But working without a net was not an acceptable solution to the bears.

THEY soon organized and after a great deal of expense and effort, the bears prepared their own net. But before their net had been completed, the hyenas had returned explaining that the price for use of their nets had miraculously been lowered and that there was no longer a need for the bears to prepare their own net.

BUT many of the bears remained unconvinced, and continued to work on their own net. They were determined to never again be at the mercy of the hyenas. They were determined never again to be made to pay for the carelessness of the jackals.

THE moral to this story is that, at least as far as the bears were concerned, your balance can affect your net, just as much as your net can affect your balance.

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## NAMES IN THE NEWS



Kennedy

**Parker Kennedy** has been named president of **First American Title Insurance Company**, second largest title insurer in the country. He succeeds **D.P. Kennedy**, who stepped up to chairman of the board after serving 26 years as president. **D.P. Kennedy** will continue as president of the **First American Financial Corporation**, a general holding company and parent of **First American Title Insurance Company**. **Parker Kennedy** will retain his position as executive vice president of **First American Financial**.

**Jeffrey C. Lapotko** has joined **Commonwealth Land Title Insurance Company** as vice president and mid-west regional marketing director. Based in the company's Chicago office, **Lapotko** is responsible for opening new markets in **Commonwealth's** Midwest region, which covers Illinois, Indiana, Iowa, Michigan, Minnesota, North Dakota, Ohio, South Dakota and Wisconsin. **Charles E. Duke** will head the **Commercial Group**, based in **Commonwealth's** DC, office. **Duke**, a company vice president, has been with **Commonwealth** for 10 years. Joining **Duke** on the team is **Craig A. Johnson**, a company vice president who has been with **Commonwealth** for six years; and **Samuel R. Gillman**, an attorney and longtime veteran of the title insurance industry.

**J. Bruce Hale** has joined **Commonwealth** as vice president and Maryland State counsel. **Dennis J. Vendetti** has been named assistant vice president and agency manager at **Commonwealth**. Based in the company's DC of-



Vendetti

ice, **Vendetti** is responsible for supervising agency operations in the District of Columbia and the adjoining Maryland counties. **Henry R.**

**Kellermann** has joined **Commonwealth** as vice president and branch manager of the Washington, D.C. office.

**Kellermann** is responsible for overseeing company operations in the District of Columbia and adjoining Maryland counties. **Jeffrey C. Selby** has been promoted to Chesapeake division manager, Baltimore, MD.

**Howard L. Stillwell, Jr.**, has been elected vice president of **Chicago Title Insurance Co.** in Atlanta, GA. The appointment was announced by **Richard L. Pollay**, president. **Ronald Skraban**, **Chicago Title Insurance Company's** vice president and Southeast Atlantic Region manager, is pleased to announce that **Judith A. Paine** has been appointed to agency operations officer, Largo, FL.

**John McGinn** has been named senior vice president and major account executive of **Ticor Title Guarantee**, according to **John T. Harold**, president. **McGinn**, who has served over three decades in the banking industry, will handle contact of real estate lending institutions, NY. **David A. Huntley** has been named an assistant vice president for **Ticor Title Insurance Company of California**. **Todd C. Mericle** has been appointed assistant vice president for **Ticor Title Insurance Company of California**. **Mericle** will be responsible for the administration of the Arizona/Nevada zone, including budget preparation, purchasing,

personnel and office management. **Donald Partington** has been promoted to senior title counsel for **Ticor Title of California**.

**Partington** is also a vice president of **Ticor Title**. **Patricia A. Gitre** has been named assistant title counsel for **Ticor Title**, Phoenix, AZ. **Charles A. Reynolds**, vice president, has been named district manager, King County, Seattle, WA, for **Ticor Title**. **Brian S. Urquhart** was named major accounts manager for **Ticor's National Title Service** for commercial/industrial accounts, Cleveland, OH. **Susan J. Bane** was named district manager for **Ticor Title**. Headquartered in the company's Bremerton, WA, office, **Bane** will be responsible for the management of a county office and two escrow branches. **Curt Wastradowski** has been promoted to title production manager for **Ticor Title**, Phoenix, AZ.

**Lawyers Title Insurance Corporation** announces that **John A. Fries** has been appointed a senior title attorney, assigned to the company's Pittsburgh, PA branch; **Judith A. Rothrock** has been appointed assistant counsel, assigned to the company's office in Universal City, CA; **G. Mark Ailsworth** has been appointed manager of the company's branch in Newport News, VA; **M.W. "Moe" Faddis** has been appointed Arizona state counsel. He is also vice-president and counsel of **Lawyers Title of Arizona**, a wholly owned subsidiary of **Lawyers Title**, headquartered in Phoenix, AZ. **G. Avery Beckmann** has transferred to the company's



Lapotko



Duke



Johnson



Gillman



Hale



Kellermann



Stillwell, Jr.



Paine



McGinn



Reynolds



Urquhart



Fries



Faddis



Beckmann



## A TITLEPROFILE

**Jeffrey M. Dreifuss,**  
**Executive Vice President**

*Rosemary G. Hall*  
*Settlement Coordinator*  
*Linda O. Crawford*  
*Chief Processor*

**Company:** The Sentinel Title Corporation

**Location:** Columbia, Maryland Branch

**Executive:** Jeffrey M. Dreifuss

**Education:** J.D., University of Baltimore

**Favorites:**

**Author:** J.D. Salinger

**Sport:** Skiing and Golf

**Vacation:** Any ski resort in Colorado

**Family:** Wife, Susan, and children,  
Joshua, Daniel, and Sarah

**Hobby:** Camping

**Computer**

**System:** TITLEPRO

**Work Stations:** 5



**Jeffrey Dreifuss:**

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field, New Jersey office as branch manager. He was formerly manager of the Hackensack, NJ branch.

**Real Title Company, Inc.**, a subsidiary of **Lawyers Title Insurance Corporation** headquartered in Fairfax, VA, announces the appointment of **R. Eric Taylor** as vice-president-counsel, Arlington.

**Charles L. (Chuck) Grover** has become the first state director of marketing for **Lawyers Title of Arizona**. He will primarily be based in Tucson.

**Thomas F. Basile** and **Robert C. Hutchison** have been promoted to assistant vice presidents by **Fidelity National Title Agency of Maricopa County**. **Linda S. Barkyoub**, **Ramon L. Castillo** and **Joyce W. Schell** have been promoted to administrative vice presidents by **Fidelity National Title Agency of Maricopa County**. **Fred C. Shaylor** has accepted the position of vice president for sales and marketing with **Fidelity**.

**Thomas Hooker** and **Doug Howry** have been elected to new executive management posts at the Burbank-based firm of **World Title Company**. **Hooker** was promoted to senior vice president and manager of Los Angeles County Operations at the Burbank headquarters. He will retain his positions as general counsel and secretary of the company and remain on its Board of Directors. **Howry** has been named manager of operations for Orange, San Diego, Riverside and San Bernardino Counties. He will continue as senior vice president and manager of Kern and Fresno Counties, and is based in



Boucher



Andriole

Riverdale, CA.

**David M. Boucher** has been named president and chief executive officer of the **IVT Group**. He will be responsible for all operations of the Group's five subsidiaries. **Boucher** succeeds **James J. Mooney**, who resigned, Philadelphia, PA. **Janine Andriole** has been promoted to agency manager of **Industrial Valley Title Insurance Company** and **District-Realty Title Corporation**, a title insurance firm based in Washington, DC.

**American Realty Title Assurance Company (ARTA)** is proud to announce the appointment of **Michael J. Akin** as an account executive. **Akin** will be responsible for all sales and marketing efforts aimed at the residential builders in Franklin County, OH. **Dick Morrison** has been appointed branch manager for **ARTA's** Sarasota, FL branch.

**Allen Fine**, president of **Investors Title Company**, announced the appointment of **Val E. Heck** as assistant vice president of **Investors Title** assisting the Company in business development in the State of Florida, Jacksonville, FL.

**Title USA Insurance Corporation** announces the appointment of **Anthony "Tony" Nims** as president and chief executive officer of the company. **George F. Dillman** has been named chairman of the title company.

**Mike Currier** of **Guaranty Title Company of Albuquerque**, NM, was named "Citizen of the Year" at the Realtor of the Year Annual Board of Realtors meeting. **Virginia Lopez**, also of **Guaranty Title**, was named "Business Associate" of the Year.

## NEW ALTA MEMBERS

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

### ACTIVE

#### Colorado

Centennial Title Corp., Colorado Springs

#### Florida

Commercial Title Services, Inc., Vero Beach (Pat Ireland, First American Title Insurance Co., Plantation, FL)

Jefferson Title Co., Boca Raton

#### Illinois

Columbia Title Co., Inc., Columbia

#### Iowa

Elson & Fulton, Leon

#### Michigan

Devon Title Company, Birmingham (Mary Isham, Michigan Land Title Association, Lansing, MI)

#### New Jersey

Carroll Title Agency, Inc., Paterson

#### New York

Gill Abstract Corp., Goshen (Sue Cornwell, Transamerica, New York)

#### Oklahoma

Dewey County Abstract Co., Taloga

#### Oregon

Citizens Title & Escrow Service, Inc., Enterprise (Carlene Johnston, Intermountain Title, Oregon)

First American Title Company of Columbia County, St. Helens

#### Pennsylvania

Adams Abstract Associates, Gettysburg (William Rice, III, Great Valley Abstract Corp., Pennsylvania)

#### Tennessee

Cumberland Title Company, Nashville (Charles Niehoff, Transamerica, Jacksonville, FL)

#### Utah

Metro National Title, Salt Lake City

#### Virginia

Madison Title & Escrow, Inc., McLean

### ASSOCIATE

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Elliott L. Shelton, Esq., Los Angeles

#### District of Columbia

Robert L. Gorham (Albert L. Ledgard, Jr., Wilkes, Artis, Hedrick, Lane, Washington, D.C.)

#### Florida

John A. Ritter, Miami (Marvin Bowling, Lawyers Title, Richmond, VA)

#### Louisiana

Robert M. Steeg, New Orleans (John N. Casbon, First American, New Orleans)

#### Ohio

Bock & Clark, Akron (Albert P. Pickus, Squire, Sanders & Dempsey, Ohio)



Shaylor



Hooker

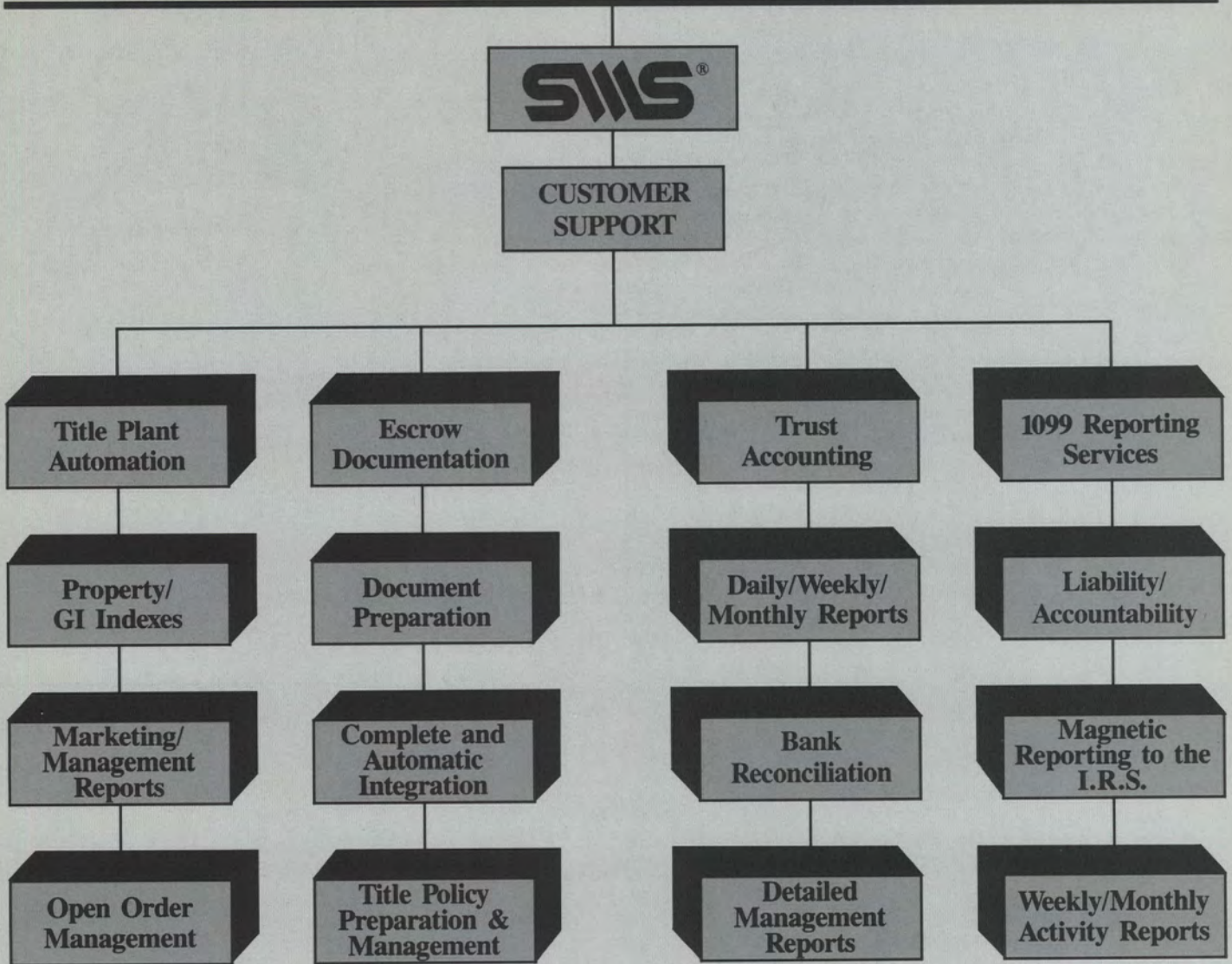


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## ACROSS THE HOMEFRONT

**Glena Yates**, president of **Central Texas Land Titles, Inc.**, Marble Falls and Kingsland, was installed as president of the **Texas Land Title Association (TLTA)**, during the Association's annual convention in Austin. **Phillip D. McCulloch**, who retired last year from **Rattikin Title Company** in Forth Worth, was named an "Honorary Member for Sustained Meritorious Service" by the TLTA. **R. C. (Chris) von Doenhoff**, president and owner of **Aldrich Abstract Company** in Crockett, TX, was named 1989 "Title Man of the Year" by the TLTA. **Gregory A. Lehrmann**, executive vice president of **Texas Title Company**, Fort Worth, received the TLTA's **E. Gordon Smith Scholarship Award** during the TLTA annual convention.

**Wynona Cathey** was elected president of the **Oklahoma Land Title Association** at the organization's convention in Tulsa. The new President of the **OLTA** is married to **John R. Cathey**, past president of the **ALTA**. Other new officers elected were: President-Elect **Linda Carpenter**, Clinton; Vice President **Dale L. Astle**, Tulsa; Secretary **Paula Chambers**, Lawton; and Treasurer **J. Herschel Beard**, Madill. Also serving is Past President **Bob Luttrull**, Muskogee.

At the recent annual convention of the **Iowa Land Title Association**, **Jay D. Stewart** of **American Abstract Company, Inc.** of Des Moines, was elected to the office of president of the Association.

The **Arkansas Land Title Association** is pleased to announce that **Debbie Waddle**, of **Benton County Abstract Company**, Bentonville, was selected as the Arkansas Land Title Association's "Young Title Person of the Year."

**Gary B. Beeny**, senior vice president and Los Angeles County manager for **Gateway Title Company**, Burbank, was elected 1989-90 president of the **California Land Title Association (CLTA)** at the group's 82nd annual convention. Other new CLTA officers are: First Vice President, **James D. Arnot**, **Humboldt Land Title Company**, Eureka; Second Vice President, **Roy Frank**, **Commonwealth Land Title Company**, Redwood City; and Treasurer, **Joseph D. Gottwald**, **California Counties Title Company**, South Pasadena.

**Douglas A. Nichols** has been elected secretary of the **Virginia Land Title Asso-**

**ciation. Nichols** is vice president and Fairfax, VA, branch manager for **Commonwealth Land Title Insurance Company**.

**Garvin Holland**, **First American Title Insurance Company** of the Mid-West, Memphis, was elected president of the **Tennessee Land Title Association** at their 44th annual convention in Nashville. **William D. Jones**, **Pioneer Title Agency, Inc.**, Chattanooga, was elected vice-president; and **Pamela L. Zimmerman**, **Commonwealth Land Title Insurance Company**, Nashville, was reappointed secretary/treasurer. New Directors elected for two-year terms were: **Nell Givens**, **Mid-South Title Insurance Corporation**, Memphis, and **Michael Bates**, **Realty Title & Escrow Company**, Brentwood. **William T. Bozeman**, immediate past president of the TLTA, will also serve as a director. In addition, a President's Award of Merit was presented posthumously to honor **Truman S. Wrenne**, **Ticor Title**.

## NEW ARRIVALS

**First American Title Insurance Company** recently purchased 100 percent of the stock of **Security Title & Trust Agency of Alaska, Inc.** The company was purchased from **Alaska Teamster-Employer Pension Trust** in exchange for stock in the parent company, **The First American Financial Corporation**, and assumption of debt.

**Zenith Abstract Company, Inc.**, a full-service title insurance agency, announced the acquisition of the **Pine Tree Agency, Inc.**, at 1308 West Moyamensing Avenue, Philadelphia, PA. The newly acquired agency will operate under the **Zenith** name at the same location.

**Fidelity Title and Guaranty Company** announces its move from downtown Orlando, FL, to its new building on Lee Road in Winter Park. The new address is 2233 Lee Road, Winter Park, FL 32789; (407) 740-7311.



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## 1989 AFFILIATED ASSOCIATION CONVENTIONS

### 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

15-17 Maryland, Sheraton Ocean City Resort and Conference Center, Ocean City, MD

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



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full-sized propeller planes Northwest flew. The trouble was, the front wheel had some major problems. Five hours later it was ready for the journey. We made it to Mobile safely, but when we got to the terminal it was after midnight and all the car rental agencies were closed. I called a cab (there were none in sight at that hour). Almost an hour later, one pulled up in front. It was an older cab that had been converted to propane. Half way to Gulf Shores it died. Luckily, we were near a 7-Eleven so it gave me something to do for an hour while waiting for a replacement cab to get there. At 4 AM, I wandered into the Holiday Inn. Needless to say, sleep didn't come easily due to all the coffee I had at the 7-Eleven.

**HOTELS.** Hotels and motels vary widely in quality. There were the Oprylands, the Grove Park Inns (Asheville, N.C.), the Martha Washington Inns (Abingdon, Va.), along with many other fine hotels. Often times, however, your budget is limited and you end up staying at a standard hotel just off the freeway.

Most hotels and motels are at least adequate. Tom Bodette is right about Motel-6. As long as you're going to be unconscious for about eight hours, a good bed and a color TV (one that you don't have to put quarters into) is about all you need.

Occasionally, you happen into motels that are just short of a five-star rating—these “habitats” are so bad they consistently receive the triple A rating from Cockroach International. The first one I experienced was in northern Mississippi.

I had been driving for several hours and it was getting late. The Southern Inn was the last place to stay for about a hundred miles, so I cautiously turned in. It was night and the place looked reasonably decent. I checked in, marveling that the room was only going to cost me \$15.00. I soon realized that at \$15.00 I was getting taken. Five spiders had taken up residence in the medicine cabinet. A family of crickets lived under the bed and had the 50-year-old carpet as their backyard. The place smelled like Lysol. I checked out and drove the extra hundred miles to a Sheraton.

Another motel in Tennessee severely tested my patience. I was recording documents in seven counties in western Tennessee and made it to a tiny county seat about 6 o'clock. Staying here was a necessity, not an option. Unfortunately, the chain motels had not made it this far, and I was given the choice of a hotel managed by a toothless proprietor who took great pride in showing

me the red lights in front of every room. The room assigned to me was the kind of room that you walk into and stand still for a few minutes to see if anything moves. I turned on the TV to find three channels—none of which worked. I stayed out as late as the town stayed open, and then returned to the hotel.

The bed was located underneath the air conditioner. I discovered that the air conditioner dripped on you unless you slept on the bed upside down. I tried to move the bed but found it was securely bolted to the floor. I tried turning off the air conditioner but it was about 100 degrees with 80% humidity. I was stuck. Damp if you do and damp if you don't.

The corker, however, came on the Gulf Coast where I had a reservation at a nice hotel. Everything went well until I got to my room. The desk clerk called and said my company credit card had been rejected (it was the time of the month just before they had received the payment). I carried no other card at the time and had to re-pack my bags and move out. Now I had a wonderful option—sleep in the car and bathe in the rain or find a motel that didn't call in my credit card. I drove around, and after several unsuccessful attempts, found the perfect place. It was probably the first motel built after the Spanish discovery of the Gulf Coast. The man at the desk ran the card through the machine that took an imprint. When he didn't call it in, I knew I was home free—until I got to the room.

The rooms were little cabins with porches. Weeds choked the boards on the front porch, making it useless. I unlocked the door, walked in and turned on the lights. I should have left them off. Apparently my “friends” in Mississippi had bought a motel down here. Since there was no other place to go, I sat on the bed realizing it was going to be another long night. It was then that I saw something on the wall that made my hair stand on end. It was a bug—the shape of a cockroach but the size of a small bird. It was staring at me menacingly. I had to kill it with a lamp as an ash tray wasn't big enough. After my victory, I sat down and watched TV and munched on peanut butter and crackers wondering how the back seat of the car would feel.

**AND ALL THE REST . . .** Agency representatives are exposed to other road hazards. Food that ranges from gourmet to garbage. Never eat at an “All You Can Eat” restaurant unless someone has recommended it. The local Union Mission usually sends their excess over to them . . . You see animals wandering by the side of the road, abandoned by unthinkably amoral owners.

I carried bags of dog food in the trunk of my car for eight years for such occasions . . . You get sick when you're 400 miles from home and have to toilet hop to get back . . . You wake up at 3 AM after a few days out and can't remember where you are.

But I guess the beginning of the end of my road days came when I found myself at a beautiful old hotel in Charleston on a Thursday night. I was sitting up in bed watching bowling on ESPN, keeping score on the back of a Delta air sickness bag. After about the fifth game I looked around, sighed, and decided that it was finally time to quit the “good life” and settle down.

In the years since, I am now a closing attorney. Life is not as exciting without the tales of terror from Mississippi or Tennessee but my life is indeed more stable. You are tirelessly working out problems on a closing when you spy someone putting up a sign on the front of the business you have just closed with a picture of a giant toilet that says “ABC Plumbing: for the best seat in the house.”

So, the next time you see your agency or marketing representative, remember the long hours they endure. Remember the way they keep you currently updated on the market. Remember the specialized knowledge that they had to acquire to get them where they are.

And remember that last night, Tom just might have forgotten to leave the light on for them.

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## CALENDAR OF MEETINGS

### 1989

**July 19-21** Forms Committee Meeting  
waiting

**July 26** Finance Committee Meeting,  
Hyatt Regency,  
Dallas/Ft. Worth, Texas

**August 17-18** Reinsurance Group,  
The Westin Hotel,  
Boston, Massachusetts

**August 19-23** Accounting Committee,  
San Diego Marriott,  
San Diego, California

**September 7** ALTA Regional Seminar,  
Le Parker Meridien,  
New York City, New York

**September 8** ALTA Group Insurance Trust,  
Grand Hotel,  
Mackinac Island, Michigan

**September 9** ALTA Regional Seminar,  
Hyatt Regency,  
Dallas/Ft. Worth, Texas

**October 6** ALTA Regional Seminar,  
Radisson Hotel South,  
Bloomington, Minnesota

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

**November 12-14** Title Counsel Group,  
New York Helmsley Hotel,  
New York City, New York

**December 5** Planning Committee,  
Hyatt Regency,  
Dallas/Ft. Worth, Texas

### 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 22-24** Title Counsel Group,  
Washington Duke Inn,  
Durham, North Carolina

**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 Southwest 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

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Let's ask the accountant.

What does the accountant know  
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He's been working with  
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The value of our company comes  
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Like what?

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**BANKS AND TITLE INSURANCE**

*continued from page 18*

authorization is being challenged by ALTA in federal court or that there are strong legal and policy reasons why banks (national or state) should not be permitted to engage in title insurance activities, particularly in connection with their own mortgage loans.

For these reasons, state land title associations should monitor and review proposed legislation or regulatory proposals in their states that would permit banks or their subsidiaries to engage in insurance activities generally and title insurance activities in particular. Successfully opposing such proposals requires the marshalling of both the strongest legal arguments (which may be based on state or federal law, or both) and the best policy arguments as to why it is anti-competitive and contrary to the interests of consumers, and contrary to the interests of the banking community itself, for banks to be affiliated with title insurance entities that insure the banks' own loans.

**V. Other Regulatory Regimes That May Be Applicable To Banks and Their Affiliates.**

**A. The FDIC.**

In general there are three types of banks whose deposits are insured by the FDIC: national banks, state banks that are members of the Federal Reserve System (state member banks), and state banks that are not members of the Federal Reserve System (state nonmember banks). National banks and state member banks are required to be part of the federal deposit insurance system. State nonmember banks may apply for deposit insurance, but are not required to have their deposits insured by FDIC. Virtually all state nonmember banks are, however, insured by the FDIC. As of year-end 1988, there were 4,357 insured national banks, 1,060 insured state member banks, and 7,721 insured state nonmember banks.

While *all* insured banks are subject to certain statutory and regulatory limitations (such as prohibitions on their engaging in unsafe or unsound

practices in conducting their business), the current regulations of the FDIC regarding title insurance activities apply only to state nonmember banks. (Limitations on the activities of state member banks are basically established by the Board in its role as supervisor of the Federal Reserve System; limitations on the activities of national banks are basically established by the OCC.) Since 1935 the FDIC has had a policy that has prohibited insured state nonmember banks from "insuring, guaranteeing or certifying titles to real estate." Since 1946, this policy has been reflected in an FDIC regulation, currently codified at 12 C.F.R. § 332, which is entitled "Powers Inconsistent With Purposes of Federal Deposit Insurance Law."

Beginning in 1983 and continuing through 1987, the FDIC considered amendments to Part 332 of its regulations that would have addressed whether direct investment in real estate and insurance underwriting activities, including title insurance underwriting, could be engaged in by an insured bank, irrespective of whether the insured bank was a national bank, a state member bank, or a state nonmember bank. After several opportunities for public comment, the FDIC published a revised proposal on this issue on June 7, 1985 (50 Fed. Reg. 23963). The FDIC's conclusions at that time were that such activities should not be engaged in by an insured bank even if the chartering authority for that bank (the OCC in the case of national banks or state authorities in the case of state banks) authorized the activity. The FDIC asserted that it had an independent responsibility to protect the safety and solvency of the federal deposit insurance fund and was required to make its own determination whether such activities posed an undue risk to the fund if they were engaged in directly by an insured bank. While the regulatory changes that were proposed by the FDIC would have prohibited such activities by insured banks, they would have permitted the activities to be undertaken by a *bona fide* subsidiary of an insured bank that was established and operated in a manner that ensured that there was no possibility that the subsidiary's "corporate veil" could be pierced to impose the liabilities of the subsidiary on the parent bank.

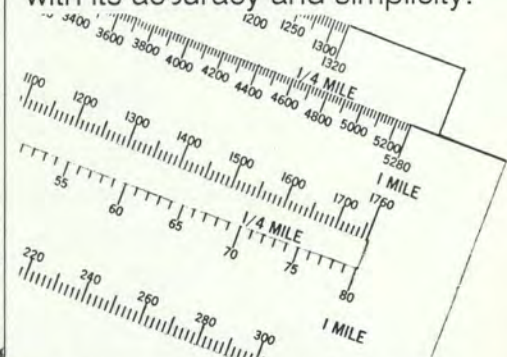
During this period, the FDIC was attempting to develop a coordinated approach on these matters with the OCC and the Board. The Board's

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position was that these activities, if permitted at all, should only be permitted through a nonbanking subsidiary directly owned by a BHC and not through a subsidiary of an insured bank. The Board's position would have meant that the Board had jurisdiction under the BHC Act to regulate such activities. The FDIC and the OCC did not want to lose jurisdiction over these matters to the Board and preferred to see these activities conducted in subsidiaries of banks. This "turf" battle could not be resolved and for this reason, among others, the FDIC ultimately terminated its proposed rulemaking in December of 1987. The FDIC has recently indicated, however, that it is considering requiring all insured banks to provide 30 days written notice of their intention to engage, directly or through a subsidiary, in certain "nontraditional" activities, including insurance underwriting.

## B. The Real Estate Settlement Procedures Act.

In 1983, Congress amended RESPA to clarify the circumstances in which "controlled business arrangements" would not be subject to the anti-kickback provisions of section 8 of RESPA. The statutory definition of "controlled business arrangement" includes the referral of title insurance business by banks to title insurance entities they own or are affiliated with.

The 1983 amendments provide that section 8 shall not be applicable to controlled business arrangements if (a) at or prior to the time of the referral the consumer is informed of the existence of the controlled business arrangement (i.e., the bank's ownership relationship with the title insurance entity), (b) the consumer is provided with a written estimate of the charges or range of charges generally made by the affiliated title company, (c) the consumer is not required to use the services of the affiliated title company, and (d) no thing of value is given or received under the arrangement other than a return on the ownership interest that the bank (or its holding company) may have in the title company. If any of

these conditions are not met, the arrangement is not exempted from the provisions of section 8.

Proposed regulations implementing the 1983 amendments were published by HUD in May 1988; final regulations have not yet been published. Banks or BHC's that establish or acquire title companies as a means of capturing business that the banks are in a position to refer may be subject to the criminal sanctions or, as is more likely, the civil remedies of section 8 if they are do not comply with the conditions referred to above. Section 8 provides that consumers whose business has been referred in violation of section 8 may recover three times the amount paid for the settlement service involved.

## C. Controlled Business Provisions of State Insurance Law.

Several states, such as California, have insurance regulations or laws that limit the amount of controlled business that title insurance agencies or underwriters licensed in those states may receive. In 1982, the National Association of Insurance Commissioners approved a Model Title Insurance Code for recommendation to the various state legislatures that contains provisions limiting a licensed title company's controlled business to no more than 20 percent of its gross operating revenues. Since 1982, several states, including Utah, Nebraska and, most recently, Kansas, have adopted controlled business laws or regulations patterned after the NAIC model code.

Controlled business limitations adopted at the state level may have a significant impact on the operations of bank-affiliated title insurance agencies. Such agencies, to the extent they are established primarily or exclusively to handle the business of their affiliated banks, may be unable to comply with such limitations and thus may be unable to obtain or retain their licenses.

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of the Mid-West

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We've just celebrated the 6-month anniversary of our Production Enhancing Title Insurance System (PETIS) and what a fine work-saver it has turned out to be!

A year ago when I was given the responsibility for upgrading our automated processing, I was frankly scared to death. My speciality was Title Insurance -- not computers!

But I went ahead and looked at 8 or 10 systems, and listened to 8-10 sales people who know all about computers and very little about title insurance, and all that did was reduce my confidence level even further.

Then I met you -- reviewed your system -- and found out you knew my business almost as well as you knew your own! But what really sold me on PETIS was your promise to service our office "round the clock."

Well, service us you have -- and has it paid off! I know of companies with systems two years old who are still trying to figure out what-goes-where. Thanks to PETIS (and you personally), we were "up to speed" in nothing flat.

I don't know where our office would be today had we tried to make do with some other system. Frankly, I don't want to know.

Sincerely,

*John J. Howe*  
John J. Howe  
DuPage County Manager



John J. Howe

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## VI. Federal Legislation Clarifying the Insurance Powers of Banks and BHC's.

In 1988, major banking legislation was actively considered by the Congress. S. 1886 (the "Proxmire Financial Modernization Act of 1988") was passed by the Senate in April of 1988. In July, the House Banking Committee approved its version of a banking bill (H.R. 5094, the "Depository Institutions Act of 1988"), which was subsequently referred to the House Energy and Commerce Committee. That Committee approved an amended version of H.R. 5094 in late September. The 100th Congress adjourned, however, before the House could approve the legislation.

Although there were many differences among the Senate bill and the two House bills, on a number of issues relating to the insurance powers of banks and BHC's the three bills were in substantial agreement. These common features, discussed briefly below, may foretell the approaches that are likely to be taken in any major banking legislation considered by the current Congress.

### A. Provisions Applicable to BHC's

All three bills would have made clear that the BHC Act's prohibitions and restrictions on insurance activities apply to *all* banking and nonbanking subsidiaries of a BHC, including nonbanking subsidiaries of BHC-owned banks.

The bills, however, did provide an exception to the insurance prohibitions for certain state banks (and their subsidiaries) affiliated with BHC's. All three bills would have permitted BHC-owned state banks and their subsidiaries to engage in insurance *agency* activities (including title insurance agency activities) so long as (1) such activities were authorized by state law, (2) the activities were limited to the *one* state where the largest amount of deposits of all the BHC's banking subsidiaries was held on May 9, 1956, or on the date the company became a BHC, whichever is later, and (3) the insurance was sold only to individuals who are residents of, employed in, or otherwise present in, that state, or to corporations that are incorporated, licensed to do business, or have an office, in that state. (There were minor variations among the provisions of the three bills. The most significant variations were that S. 1886 would also have permitted state banks or their subsidiaries to engage in insurance underwriting, subject to the limitations discussed above, and the House Energy and Commerce Committee bill would have required that state laws authorizing insurance activities contain express language to that effect.)

### B. Provisions Applicable to National Banks

All three bills would have prohibited national banks from engaging in insurance activities, with two exceptions relevant to the title insurance industry.

The first exception was for any national bank that was "lawfully" engaged in title insurance activities as of March 2, 1988, provided that (1) such bank continued to limit its title insurance activities to the state in which the bank was located, and, (2) the bank was not acquired after March 2, 1988, by an out-of-state BHC. This exception was added to S. 1886 on the Senate floor by an amendment offered by Sen. Nickles of Oklahoma to grandfather an Oklahoma national bank that had begun title insurance agency activities on the basis of the OCC's determination (that is being challenged in *ALTA v. Clarke*) that national banks may engage in such activities. The requirement that the bank be "lawfully" engaged in title insurance activities was intended to proscribe the applicability of this grandfather provision if the courts should determine that such activities were not lawful under existing law.

The second exception would permit insurance sales by national banks "located" in a town with a population of 5,000 or less. This provision would have clarified the "small town" exception for national bank insurance agency activities currently contained in 12 U.S.C. § 92. S. 1886 and the House Banking Committee version of H. R. 5094 imposed similar restrictions on national banks seeking to utilize this "small-town" exception: the bank had to have a branch or lending office in the small town; the insurance activities had to be "confined" to that small town and directed towards the people or business located in the town and its immediate environs; and insurance could only be sold to individuals who are residents of or employed in the state, and to business entities incorporated,

licensed to do business, or having an office, in the state.

The House Energy and Commerce Committee version of H. R. 5096 contained somewhat different limitations: the principal place of business of the national bank had to be in a small town, and insurance sales could only be made to individuals who are residents in or employed in a small town in the state, to businesses for the insurance needs of their operations in a small town in the state, or on properties located in a small town in the state.

From the standpoint of the title insurance industry, the insurance-related provisions of the bills became more effective as the legislation went from the Senate, to the House Banking Committee, and then to the House Energy and Commerce Committee. Nevertheless, even the Senate bill, if it had been enacted, would have produced a significant and helpful clarification of existing law.

### Conclusion

As any reader who has reached this point can tell, the federal and state regulatory regimes applicable to bank and BHC insurance activities are complex and many questions regarding their scope and applicability are still in the process of resolution. Hopefully, this article will provide ALTA members with a better understanding of those regimes and of the issues that may affect the ability of banks and BHC's to engage in title insurance activities, issues that will be of continuing interest to the title insurance industry and to its state and national associations.

*The author is a partner in the Washington, D.C., law firm of Pierson Semmes and Finley, which has represented ALTA and the title insurance industry during the past 16 years in connection with a wide variety of federal and state matters, including matters relating to RESPA and controlled business, Indian land claims, antitrust, forfeiture and bankruptcy issues, and state regulation of title insurance.*

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