

**PUBLIC RELATIONS—  
THE GLITZ, THE  
SUPERFICIALITY, THE  
SEARCH FOR TRUTH  
IN AN IMAGE.**

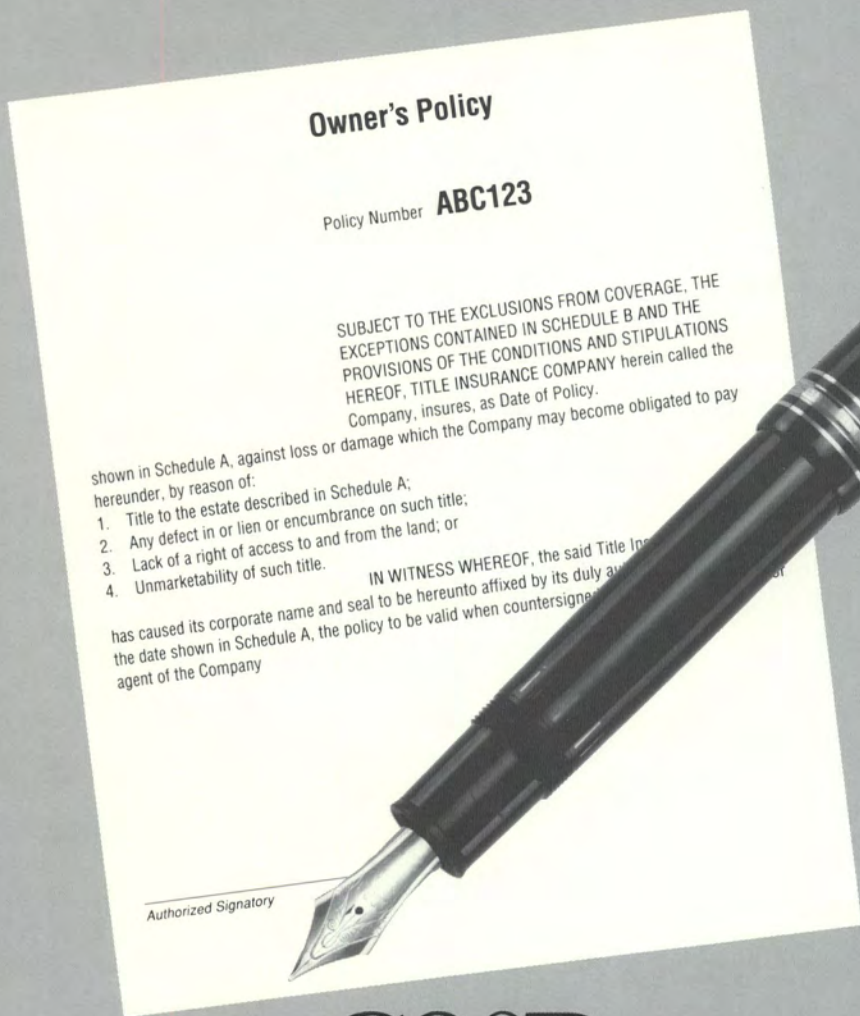
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Volume 70, Number 4

Editor: Adina Conn

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**Title News** is published bi-monthly by the American Land Title Association, 1828 L Street, N.W., Suite 705, Washington, DC 20036.

U.S. and Canadian subscription rates are: \$25 a year (member rate); \$30 a year (non-member rate). Single copies, \$5. For subscription information, call 1-800-787-ALTA. Send address changes to: **Title News**, circulation manager, at the above stated address.

Anyone is invited to contribute articles, reports and photographs concerning issues of the title industry. The Association, however, reserves the right to edit all material submitted. Editorials and articles are not statements of Association policy, and do not necessarily reflect the opinions of the editor or the Association.

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## A MESSAGE FROM THE PRESIDENT



**B**y the time you read this article, your Association's Planning and Finance Committees will have wrestled with and produced recommendations to submit to your Board of Governors regarding a new challenge confronting our Association.

As a result of the reduction in the number of dues-paying underwriter members that has occurred because of acquisitions over the past couple of years, we have a revenue shortfall. Under our existing dues structure, the total dues payable by any one family of companies is capped at \$190,000. As a result, when one company at the dues cap acquires another company at the dues cap, your Association is out \$190,000 in revenue.

One "easy" solution to the problem is to ask the acquiring company to pick up all of the shortfall. In my judgment, that is neither fair nor realistic. Membership in any association has a certain utility value. To stretch dues beyond that point could drive affected members to reconsider the value of continued membership.

Another "easy" solution is to spread the shortfall among the remaining members. That's also not entirely fair or realistic. They, understandably, fail to see the equity in such an arrangement.

A third "easy" solution is to take Draconian measures to reduce Association expenditures to equal reduced revenue projections and concurrently cut back drastically on the level of services provided to our membership. This solution is also not totally realistic in that some important services you have come to expect from your Association might be curtailed or eliminated.

So, your leadership will agonize over the issues and arrive at an equitable compromise between revisions to our methodology for calculating dues, which will hopefully generate some additional revenue, a reduction in some categories of expenses and a more aggressive posture regarding the sales of ALTA material and services.

It seems clear to me that if we are to continue to provide the full range of services presently being offered by our Association, we will need to consider an increase in dues for some underwriters and some agents as well. We will also need to carefully examine our expenses at all levels to determine which, if any, should be cut back or eliminated. During our deliberations we will consider and attempt to balance the needs and concerns of all segments of our membership.

Since it is fair to say that our industry may experience further consolidation and acquisitions in the coming years, the revenue shortfall situation we are dealing with today will, in all probability, come up again tomorrow.

With that in mind, I think it is appropriate for each of our members to spend some time reflecting on exactly what it is you want or expect from your national association and how much you are willing to pay for those services.

Perhaps we should gradually transition into an association where a greater percentage of our revenues come from the sale of services rather than having those services paid for by dues. In our Association, compared to other trade associations, a disproportionate amount of services are paid for out of dues revenue.

Should we be running our Association as a business or a club? If it's to be a business, then our Association management should be given the direction and authority to price services so as to make a profit. On the other hand, it is certainly acceptable to continue to run it as a club, wherein we pay dues for which we expect a certain level of services without additional costs. However, when revenues decrease, for whatever reasons, there is no alternative other than to reduce the level of services provided to our membership.

I would like you to give these issues some thought. I am certain your Association leadership will be asking for and be in serious need of your input and ideas in the coming years.

Dick Cecchetti

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## Preventive Public Relations for A Regional or State Title Association

By Gary L. Garrity

# PUBLIC RELATIONS

is frequently misrepresented by news media as glitz, superficiality, window dressing and even fibbing. When viewing public relations as practiced by ethical professionals, this characterization is a large helping of hooey.

In the fast-changing world of the 90s, leading managers know that effective public relations is an essential asset to business.

From government to market audiences to consumers, winning public support and understanding is an activity that requires careful planning and sound direction. Media blather to the contrary, public relations that works is based on the communication of accurate information to key audiences.



Professional and trade associations, like their individual members, find public relations planning an important strategy. Among those who will encounter a growing need for successful application of this management skill are regional and state title associations.

The potential for success in public relations activity of a title association at the regional or state level largely depends on an adequate understanding of the function and support of any program developed. Points for association members to consider along these lines are presented in the following commentary, which begins with a fable.



**Y**our year as state title association president is going well. Most of your primary objectives are being accomplished with support from an active and dedicated membership. Leading the organization has proved to be both challenging and rewarding.

Then the telephone rings. It is your legislative committee chairman and he is deeply upset.

He asks if you have read the story in the morning



paper about the state consumer organization news conference yesterday.

No.

Then you are unaware the consumer group has called in the press to denounce the title insurance industry for alleged “exorbitant profits on low losses”—and go on record in support of about-to-be-introduced state legislation that would bring your members a new and heavily burdensome regulatory scheme requiring unreasonable, massive reporting of business data. The story has moved on the state news wire, and is appearing simultaneously in leading papers.

Your presidency has just taken on the characteristics of Operation Desert Storm as experienced by the Iraqi army.

This type of nightmare can and does happen in the life of association leaders. Chances of encountering a crisis of similar nature may not be considered strong, which can increase the hazard by encouraging complacency. When there is a serious flare-up from negative public opinion, a lack of preparedness definitely will increase the probability of disaster.

Previous effort that appropriately structures public relations capability will be well justified the moment a crisis strikes.

In the above example, the problem leading to a surprise attack probably could be traced to negative attitudes based on misinformation among members of the consumer group. Difficulties of this nature can be detected in advance so action can be taken to reduce the damaging effects—through a dimension of public relations known as fact finding or public opinion research.

With appropriate guidance, fact finding capability can be well focused without becoming overly expensive. The following discussion of the subject will not provide all the answers—but offers a basis for framing constructive questions.

For those who have not enrolled for Public Relations 101, it would be appropriate to start with this long-standing definition:

“Public relations is the management function that evaluates public attitudes, identifies the policies and procedures of an organization with serving the public interest, and executes a program of action to earn public understanding and acceptance.”

At times, there is blurring of the distinction between public relations and advertising. It may be helpful to remember that, in advertising, air time or print space are



paid for and content of the message is assured. On the other hand, public relations activity involves the expenditure of time, money and effort but affords less control over the message.

Fact finding starts the process of public relations through *evaluation of public attitudes*, leading off as the first of four progressive steps:

- (1) Fact Finding
- (2) Planning
- (3) Communication
- (4) Evaluation

In the example at the beginning of this article, an association geared for fact finding might have been able to pick up advance signs of trouble through monitoring the consumer association newsletter or through having a representative attend meetings of the organization. If the early indicators warranted, more extensive opinion research could have been implemented to better define the problem.

An association's fact finding capability most often would be used in less volatile situations, under normal circumstances. Regardless of urgency, an application of opinion research can be an integral part of shaping all aspects of an association public relations program.

Among professionals who might be called upon to furnish guidance in the developmental stages would be an Accredited Member of Public Relations Society of America, a college faculty member with expertise in opinion sampling, a "volunteer" with market research experience, and so on. While the fact finding operation might logically be assigned to the association public relations committee, the organization officers should be involved in the formative process.

Here are some additional observations for consideration.

### **Fact Finding**

Various types of fact finding serve as an initial and continuing step in public relations programming. In addition, fact finding becomes the final step in evaluating what has been done. Referring back to the previously-mentioned example of a misinformed consumer group, it is easy to see the role of fact finding in first defining the problem—and in measuring public opinion to check progress with this group as different communications strategies are implemented. Interim fact finding is intended to provide an early reading on whether the activity is working as intended—so changes can be introduced in a timely fashion if warranted.

There are both informal and formal methods that can be used in fact finding. Examples of informal methods are personal contact, analysis of mail, and analysis of media coverage—especially newspaper editorials and broadcast commentary. Examples of formal techniques include a cross-sectional survey of a relatively small group of randomly-selected respondents, focus groups created in line with fact finding objectives, semantic surveys where respondents rate the strength of their opinions on specific subjects, and mail questionnaires.

Time and budget constraints can influence the application of fact finding, and flexibility should be maintained regardless of the approach selected. A principal consideration

should focus on what member companies of an association may be doing to reach a particular public. The association should strengthen—not compete with—the applicable activities of its individual members.

As an example of flexibility, recurring reports that residential real estate agents are misinformed about the need for individual owner's title policies to protect purchasers of condominium units may suggest initial visits with focus groups of sales agents to further explore the situation.

If the focus group visits so indicate, it may be worthwhile to prepare an in-depth public opinion survey for use among a random sample of agents. After the survey findings are analyzed, plans for action can be developed accordingly. When the action stage is reached, additional opinion surveying can be introduced at strategically-timed intervals to determine whether sales agent understanding is being improved—or whether a change in direction is needed.

On the other hand, there are situations that will not allow such extensive deliberation. If an editorial in the local newspaper inaccurately criticizes the title industry for opposition to a badly drawn regulatory proposal, it may be necessary to immediately visit with the editorial writer to point out mistakes in fact, publish a position summary for widespread distribution, seek supportive coverage from radio and television journalists, and so on.

### **Planning**

Once the problem/need is defined, an action plan can be developed and a budget established. Objectives, strategies, and rationale should be clearly stated in justifying the approach selected.

Coordination is important, meaning advance consultation with members having specific responsibility and expertise. If there is a decision to develop one-page printed backgrounders on specific legislation, advance input will be needed from the association legislative committee and/or lobbyist. If fact finding indicates a need to better educate lenders on title insurance aspects of packaging mortgages for the secondary market, association members with expertise in this area should be consulted.

### **Communication**

After planning, communication is implemented in the manner prescribed. If an activity requires advance preparation of material such as a brochure, videotape or speech, adequate lead time should be factored in so the desired item is available when called for by the plan.

Here are passing comments on some typical forms of communication that may be encountered in public relations activity on behalf of an association.

*Audio Tape.* Effective in presenting a desired message through an educational format, especially where the audience is accustomed to this type of learning medium. Can be used for radio public service announcements if there are high quality production values and useful information for the consumer. Before embarking on a PSA campaign, check with local broadcasters regarding their needs. Also can be used to supplement various types of broadcast and per-



sonal appearances.

**Video Tape.** Roughly parallels the use profile of audio tape—except for the important addition of a visual dimension that underscores the difference between the two formats. Before opting for videotape, careful consideration should be given to the higher cost and advantage of presenting a desired message visually. Can be used for television material (production standards are high). Cable stations should be considered along with network affiliates and others; study their demographics to determine who has the best potential audience for a particular set of association objectives.

**Brochures.** Frequently work best when focused on a particular audience. Avoid trying to accomplish too much with one piece of literature. If different brochures are needed and the budget is slim, try a single modular design for the entire group to save on art expense. Varying colors of ink, changes in heads, etc., and different texts can accommodate each subject need. Try to anticipate quantity required as far into the future as possible; printing several hundred more in the same press run may not increase total production cost appreciably. With postage rates climbing, it is worthwhile to produce a brochure that will mail at the one-ounce, first class rate.

**News Media Activity.** Includes three areas of concentration—backgrounding, placement and coverage. Besides improving prospects for positive, accurate reporting on the title industry, another main objective is developing long-range credibility for an association as a news source. So media will contact the association for input when an important story breaks. Different approaches are needed for metropolitan and suburban/rural newspapers, trade publications, radio and television. News media activity will be further discussed in a follow-up article.

## Evaluation

As previously indicated, evaluation is an ongoing process that will incorporate fact finding capability. After a problem/need involving public opinion is defined and communications activity implemented, periodic monitoring through fact finding will help determine whether defined objectives of an association are being met.

Even if an association is successful, say, in placing a series of explanatory newspaper articles and arranging broadcast talk show interviews, it will add considerable depth if there are repeated public opinion measurements to gauge the effectiveness of this activity. In other words, how much has the association activity *changed* the attitudes of key audiences—so public support and understanding are improved?

Criteria can be developed for each activity of an association public relations program as it is designed and implemented. These standards should recognize the difference between an interim success (persuading the consumer organization to distribute the explanatory folder on title insurance to its membership) and meeting critical objectives (determining through opinion research that the folder has helped improve the attitudes of consumer organ-

ization members).

## Charting The Course

Public relations programming has been used for years as a discipline by individual companies, associations, government and others. Activity on behalf of an association should be supportive of the objectives established by its management, or policy makers, and should be carried out with their prior approval and continuing support. It is essential for the association leadership to appoint a “live wire” public relations committee with appropriately oriented members who have well connected informational contacts among key publics.

If most or all of a public relations program is to be conducted by member volunteers of the association, care should be exercised in designating a scope of activity that is attainable with current resources including time and money. Assigning priorities can help an association avoid slipping into overload.

In the downsized nineties, improved performance on a tighter budget has become a fact of life for most organizations. Examining a proposed or existing public relations program from a cost/benefit viewpoint is a logical extension of this test of the times. Organizing public relations activity along the lines used by professionals can substantially improve cost effectiveness.

## Next in *Title News* December 1991: Strengthening Media Activity



*The author is vice president—public affairs for ALTA and works with the Association Public Relations Committee. He joined the ALTA staff in 1968, and previously was an account supervisor for a large advertising and public relations agency. A former daily newspaper reporter, he is an Accredited Member of Public Relations Society of America.*



# A Lender's Perspective on Creditors' Rights When the Workout Fails

*Introduction by Phyllis Slesinger  
ALTA general counsel*

The article below, by Steve Delaney, reprinted with permission from **Lawyers Title News**, addresses creditors' rights issues for lenders in the current economy—specifically, when a workout fails. Central to the article is owner's title insurance. The views expressed are those of the author. However, we at **Title News** thought that an introductory explanation of the development of the ALTA Creditors' Rights Exclusion might be helpful to readers. Ed.

On April 6, 1990, ALTA adopted a Creditors' Rights Exclusion for its basic policies. The exclusion in the ALTA Owner's Policy provides that the insurer will not indemnify the insured for loss or damage arising by reason of "[a]ny claim, which arises out of the transaction vesting in the insured the estate or interest insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws." By its terms, the exclusion is expressly limited to the specific transaction being insured and is not intended to cast doubt on earlier transactions in the chain of title.

*What are the reasons behind the exclusion?*

Bankruptcy and other creditors' rights laws are extremely complex as are most commercial, large-scale residential construction, and multifamily mortgage financings. In most of these real estate transactions, an attorney or lender will forward a set of documents to a local title agent or local branch office at or just before the loan closing. Little, if any, disclosure is routinely made to the agent or branch as to the nature of the transaction. Little, if any, time is available to the agent or branch to review the whole document package for side agreements and the like, or to refer the matter to the home office. Moreover, no information on the financial status of the parties is routinely provided.

The concept that title insurance does not protect against off-record creditors' rights risks is not new. For example, the ALTA Owner's Policy has long excluded coverage for "[d]efects, liens, encumbrances, adverse claims or other matters . . . not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and

not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy." In many instances, a creditors' rights problem arises from a post-policy event which also would not be covered under the Policy exclusions. However, because of the cost of litigation and the risk that a court might construe as "notice" of a fraudulent conveyance, the mere delivery of closing documents to the title insurer at closing, ALTA has opted to adopt a clarifying exclusion.

Prior to the adoption of the ALTA Creditors' Rights Exclusion, title insurers issued a variety of creditors' rights endorsements excluding coverage for such risks as fraudulent conveyances, preferences, recharacterization and the like. Title insurers also took and continue to take exception in Schedule B to certain earlier transactions, for example, if a preference period has not run on a transfer and the facts disclose other troublesome circumstances.

Two other points should be mentioned. First, it should be understood that lender counsel generally do not opine on the solvency of parties to a transaction and on the issue of whether a particular transaction structure poses a creditors' rights issue. Title insurers, with much more limited access to information necessary for analysis, are understandably reluctant to venture where those others fear to tread. Also, the use of an exclusion may often be perceived by all parties to a transaction to be preferable to a creditors' rights exception which might tarnish a transaction by identifying a creditors' rights risk. A specific exception arguably would put the parties on notice of a problem and could later jeopardize their status as BFPs or as having no "knowledge" of a fraudulent conveyance or as having "clean hands."

According to reports, some title insurers may delete the Creditors' Rights Exclusion if, after a request to do so, they can satisfy themselves, on the basis of required disclosures, as to the risks posed by the transactions and the parties. Whether a request to delete the exclusion will be entertained, is a matter of company discretion except in the States of Texas and New Mexico where regulations preclude deletion.



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## Beyond the workout: creditors' rights risks for lenders taking back and owning real estate

Steve Delaney

(This article has been edited for *Title News*)

As real estate markets in all areas of the country become increasingly distressed, lenders find themselves as the reluctant owners of more and more real estate projects. Restructures and "workouts" of many loans have simply not worked.

In their role of reluctant owners of real estate, lenders face many situations which are new to them. For example, lenders taking back unfinished real estate projects must become developers of those projects, dealing with zoning and development issues as well as general liability issues relating to the construction process. Even when a lender is not thrown into a construction situation, risks associated with land ownership must be addressed. In all situations, the lender must ensure that it receives good title to the real property by either a deed in lieu of foreclosure or foreclosure.

This article will describe the title risks that lenders must face in all land ownership situations. Some techniques to manage the attendant risks will be suggested.

### Title issues

#### Avoidance Risks

The paramount issue for a lender's becoming the owner of a project is to ensure that it has good title. Title risks are present for lenders even when title has been obtained by a properly conducted foreclosure sale. For example, title may be subject to attack in a subsequent bankruptcy of the debtor. Even absent a bankruptcy, conveyance by foreclosure or deed in lieu of foreclosure may be attacked as a fraudulent conveyance.

Under Section 548(a) of the Bankruptcy Code,<sup>1</sup> a trustee in bankruptcy may avoid a transfer of property if the transfer was made while the debtor was insolvent (or the debtor became insolvent as a result of the transfer) and the debtor received "less than a reasonably equivalent value" for the property.<sup>2</sup> In addition, Section 544(b)<sup>3</sup> permits a trustee to avoid transfers under applicable state fraudulent transfer laws. Under most state fraudulent conveyance laws, a transfer must be made for "valuable consideration" in order not to be subject to attack. State laws have various standards for determining whether a transfer was made for "valuable consideration." In some states, consideration sufficient to support a simple contract is enough. Others require something more akin to "reasonably equivalent value."

These avoidance powers have been held applicable to transfers of property made to lenders by deeds in lieu of foreclosure or even as a result of foreclosure sales.<sup>4</sup> Unfortunately, there is no simple rule to determine whether conveyance by foreclosure or deed in lieu of foreclosure will be subject to these avoidance powers.<sup>5</sup> As noted previously, standards vary among the state fraudulent conveyance laws as to what constitutes "valuable consideration" necessary for a transfer to withstand attack.

Federal courts have also disagreed about the method for determining whether a foreclosure sale is supported by "reasonably

equivalent value" in order to avoid attack under Section 548(a) of the Bankruptcy Code. For example, the landmark case of *Durrett v. Washington National Insurance Co.*<sup>6</sup> has been interpreted to require a foreclosure sale price of 70 percent of fair market value in order to insulate a foreclosure sale from attack under section 548(a). Other courts, most notably in *Madrid v. Lawyers Title Insurance Corporation* and *In Re Ristich*, have refused to use Section 548(a) to overturn foreclosure sales. The court in *Madrid* held that a "transfer" under section 548(a) with respect to foreclosure of a deed of trust occurred when the deed of trust was perfected and not upon foreclosure. Therefore, the court did not decide the question of whether "reasonably equivalent value" was received at foreclosure.

In *Ristich*, the court concluded that a foreclosure sale to a third party is presumably for reasonably equivalent value unless there is a showing that the foreclosure sale was conducted with actual fraud or collusion. According to the test applied in *Ristich*, consideration received at a non-collusive and regularly conducted foreclosure sale should be construed to be "reasonably equivalent value" without reference to fair market value. When the purchaser at foreclosure is the creditor, *Ristich* held that a court should also determine whether applicable state law requires a more detailed analysis of "reasonably equivalent value."

A middle position of a third line of cases is that the determination of whether a deed in lieu of foreclosure or foreclosure sale is subject to attack under Section 548(a) must be made in light of all the facts and circumstances of the particular transfer.<sup>10</sup> Courts in these cases go beyond determining whether there was a properly conducted non-collusive foreclosure sale but do not simply compare the sale price to the fair market value of the property.

While the case law does not provide any hard and fast rule with respect to when a sale price is sufficient to support a deed in lieu or foreclosure transaction, one thing is clear the risk of avoidance increases when the difference between the sale price supporting the deed in lieu or foreclosure transaction and the fair market value of property is significant. This is true whether avoidance is attempted under the "reasonable equivalent value" test of Section 548(a), or under the various standards of state fraudulent conveyance laws.<sup>11</sup>

#### Appraisals

It is critical for a lender taking back property to obtain a current appraisal to make sure the sale price supporting a deed in lieu of foreclosure or a foreclosure sale is not substantially less than the fair market value of the property. The appraisal should be obtained before consideration for a deed in lieu of foreclosure or a bid price for a foreclosure sale is determined. Foreclosure sale bid prices and the financial considerations for deeds in lieu of foreclosure transactions must be structured in light of the appraisals.

An adequate appraisal indicating that fair market value is less than the amount of either the debt forgiven in return for a deed in



**Jim Sarvela**  
President

## A TITLEPROFILE

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Dock Street Title Agency, Inc.

**Location:**

Ketchikan, Alaska

**Underwriter:**

Title Insurance Company of Minnesota

**Executive:** Jim Sarvela, President

**Education:** B.S., Oregon State University

**Favorites:**

Author—James Michener

Vacation spot—Hawaii

Recreation—Baseball and golf

**Family:** wife, Stephanie;


children, Erik and Beth

**Computer System:** TITLEPRO

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lieu or the bid price at foreclosure will give a lender some comfort that the conveyance will not be subject to successful avoidance. Another way to provide comfort to a lender is to obtain appropriate title insurance coverage. In order to obtain title insurance that the conveyance will not be subject to such avoidance, a lender must obtain an owner's title insurance policy without a "creditor's rights exception."

A typical "creditor's rights exception" excludes from coverage of a title policy the risks of avoidance under state fraudulent conveyance laws or under Section 544(b) or 548(a) of the Bankruptcy Code. An adequate appraisal indicating the appropriate relationship between the fair market value and the amount of debt forgiven or the bid priced at foreclosure is a critical part of the underwriting decision.

### **Owner's Title Insurance**

Many lenders seek to avoid the cost of additional title insurance when property is taken back. They believe that an existing loan policy will provide them with protection as to title matters. As discussed above, an appropriate owner's title policy must be issued in order to have insurance against attack on foreclosures and deeds in lieu based on bankruptcy and fraudulent conveyance laws. There are other reasons why it is important to advise a lender to obtain an owner's title insurance policy when the lender is taking back property by a deed in lieu of foreclosure or foreclosure.

Section 2(a) of the Conditions and Stipulations of the 1990 version of the ALTA loan policy provides that coverage of the loan policy continues in favor of

- (i) an insured who acquires all or any part of the estate or interest in the land by foreclosure, trustee's sale, conveyance in lieu of foreclosure, or other legal manner which discharges the lieu of the insured mortgages; (ii) a transferee of the estate or interest so acquired from an insured corporation, provided the transference is the parent or wholly owned subsidiary of the insured corporation, and their corporate successors by way of operation of law and not by purchase, subject to any rights or defenses the (title) company may have against any predecessor insureds . . .

The provision of insurance under this section only continues coverage as of the date of the loan policy. No coverage is provided for title matters arising after the date of the loan policy. Such matters include fraudulent conveyances and mechanic's liens, as well as leases, easements and restrictions to which the lender's deed of trust or mortgage has become subordinate.

An owner's title insurance policy will provide a lender with insurance that those types of intervening title matters will not impact a lender. Another benefit of owner's title insurance is that it insures that a foreclosure sale was properly conducted. An exami-

nation of the conduct of the sale is part of the title company's underwriting process.

Owner's title insurance is even more important with respect to a deed in lieu of foreclosure. When a properly conducted foreclosure sale will transfer title to a lender free of subordinate encumbrances, a transfer by deed in lieu subjects the lender to any encumbrances which may exist against the property at the time of the transfer, whether or not subordinate to the lender's deed of trust or mortgage. The lender takes title subject not only to liens, but any leases, judgments, restrictions, and other encumbrances which are of record as of the recording of the deed in lieu of foreclosure. A new owner's title insurance policy will provide a lender with insurance as to what those matters are.

### **Other Title Risk Management Techniques**

Another method for limiting a lender's risk with respect to title matters in the deed in lieu transaction is to transfer the title subject to the existing deed of trust or mortgage. In the event liens or other title matters subordinate to the lender's lien are discovered, the lender could foreclose on its lien subsequent to the deed in lieu of a transaction in order to extinguish the subordinate title matters.

In some states, a conveyance to a lender subject to the lender's own deed of trust or mortgage would result in the merger of the interests of the lender and a termination of the deed of trust or mortgage. In most states, this merger can be avoided by reciting in the deed that merger is not intended.

Another way to avoid the merger problem is for the lender to have the property conveyed to a subsidiary or affiliate. In this way, there will be separate entities owning the fee interest and the lien interest, and therefore, a merger will not occur. An ancillary benefit of a conveyance to a subsidiary or affiliate is the insulation of the lender from typical liabilities of an owner such as landlord liability and environmental liability.

### **Conclusion**

While lenders face myriad liability concerns in their new roles as owners and developers of real estate, in all cases lenders must address title risks associated with bankruptcy and fraudulent conveyance attacks.

There are a few simple and cost-effective ways to manage Creditors' Rights risks. It is essential that an appraisal be obtained before consideration for a deed in lieu of foreclosure or a bid price at a foreclosure sale is established. Other prudent risk management techniques include obtaining an owner's title insurance policy and maintaining a mortgage or deed of trust in place when accepting a deed in lieu of foreclosure.

*continued on page 31*



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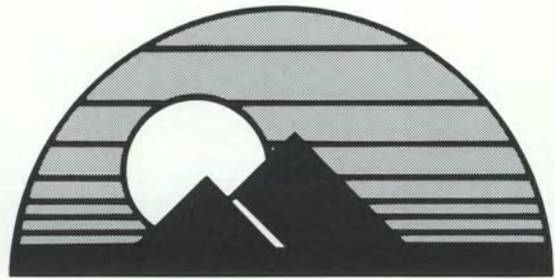
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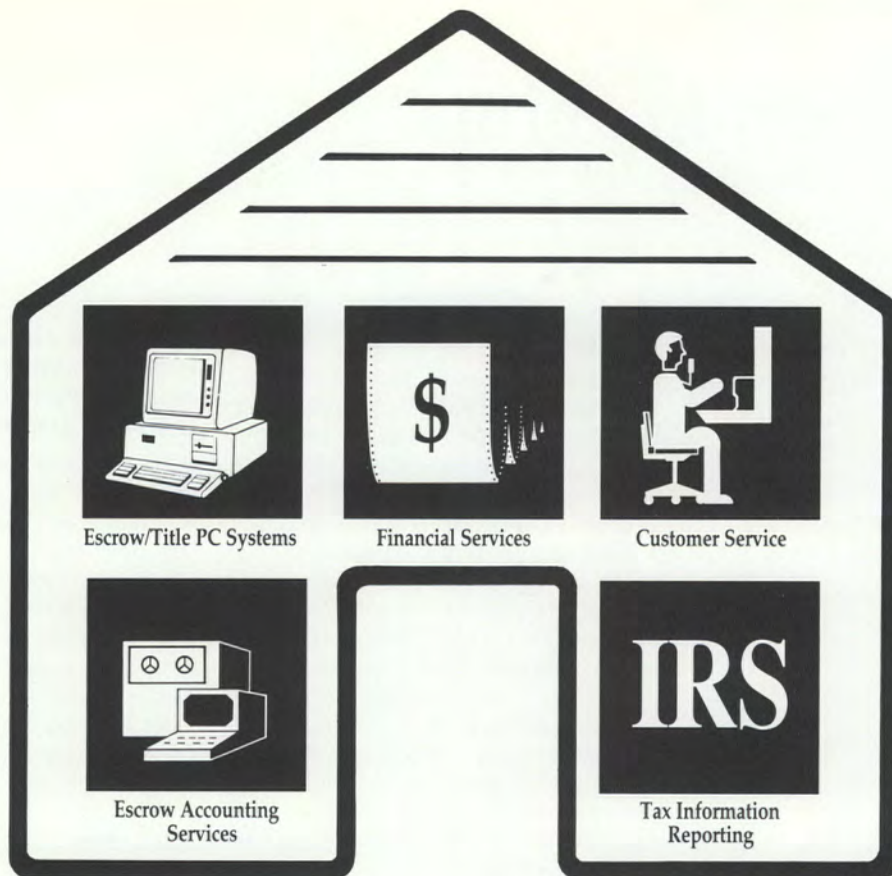
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# What's New in Forms?

by Oscar H. Beasley

*A new U.S. Policy and a win in an important environmental case are good news for the title industry.*

## Revision of U.S. Policy

It's been in the works for a long time. It's taken a lot of adjustment and editing, but by the time you read this, the Active members of the ALTA will have approved a complete revision of the 1963 U.S. Policy. The final result promises to be a significant improvement over the old policy.

The ALTA Forms Committee began work over two years ago to both revise and modernize the 1963 "Policy," which was in reality a commitment and a date-down endorsement. It has been used by various governmental agencies including the Government Services Agency, and Veterans Administration when they acquire property through condemnation, purchase or otherwise. The unique 1963 approach and procedure have confused title companies and federal agencies alike.

In drafting the new policy, the Forms Committee was ably assisted by Lewis Baylor, Chief of the Title Unit in the Department of Justice's Land Acquisition Section, who agreed with the Forms Committee that it would be better to have federal transactions follow standard industry procedures for issuing title insurance. The result is a newly fashioned title insurance policy for the U.S. Government that is a modified version of the 1987 Owner's Policy.

The new U.S. Policy modifies the standard owner's policy to the extent necessary to address the Government's special needs, which includes the assurance that it has served all necessary parties in condemnation proceedings. A fifth insuring clause will provide this assurance. The Justice Department also has special requirements in the event the policy assurances are incorrect and a claim is made against the United States. These requirements are set forth in Section 4(e). Other, minor modifications also are made.

In addition, the Forms Committee is currently working with Mr. Baylor on developing government guidelines for the use of the policy. It is planned that there will be a transition phase for the new policy during which both the 1963 and 1991 forms may be used.

## 1970 and 1984 Policies Don't Insure Against Environmental Cleanup Liability

The California Supreme Court in September gave the title industry something to be very happy about when it denied the Lick Mill Creek Apartments' petition for review. The denial made the insurer's win in the *Lick Mill* case final. The favorable intermediate appellate court decision, handed down in June, has been approved for publication and may be cited as precedent, *Lick Mill Creek Apartments v. Chicago Title Ins. Co. and First American Title Insurance Co.*, 283 Cal. Rptr. 231, 199 Cal. App. Lexis 787 (1991).

The decision focuses on the insuring clauses in the ALTA owner's policies in not finding liability and does not even reach the application of the exclusion in the 1984 policy. The court first considered the clause insuring marketability of title. It maintained the distinction between marketability of the title and marketability of the land itself and rejected plaintiff's claim that the presence of the hazardous materials on the property impaired the marketability of plaintiff's title.

The court also rejected plaintiff's claim that the contamination of the property constituted an "encumbrance" on the property within the meaning of the insuring clause providing coverage for losses caused by "any defect in or lien or encumbrance on title." Plaintiff had argued that because the responsibility for cleanup costs runs with the land, liability for the cleanup constitutes a covered "encumbrance." The court refused to expand the statutory and common law definition of "encumbrance" to encompass physical damage to property. Plaintiffs argued in favor of a definition of encumbrance that included a lien "as well as any other right or interest held by a third party that is not extinguished by the transfer of the estate and that diminishes the value of the property" [cite omitted].

Based on its analysis of the insuring clauses, the court also easily disposed of plaintiff's "reasonable expectations" argu-



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ment. This argument raised the issue of whether the amendment of the 1970 Policy in 1984 to provide an explicit environmental exclusion was an effort to delete pre-existing coverage for environmental matters. Noting that a court will interpret coverage to protect the objectively reasonable expectations of the insured only when an insurance policy is ambiguous, the court found the language of the insuring clauses in both the 1970 and 1984 policies to be unambiguous as to the lack of coverage for physical conditions of the land. The court refused to find that a specific environmental protection exclusion in the 1984 Policy could raise a reasonable expectation of coverage in the 1970 policy by finding that the 1984 amendment operates as a clarification of non-coverage. The same reasoning would apply to the 1990 ALTA policies with their similar environmental exclusion.

I believe that this decision is a major victory for the title industry. The issues were thoroughly briefed, and the court interpreted ours forms as they were intended.

#### **Withdrawal of Forms**

Pursuant to the vote of the Active members taken at ALTA's 1990 Annual Convention, ALTA is withdrawing its approval of pre-1990 basic policies, effective October 3, 1991. This action was a housekeeping measure. ALTA undertook a comprehensive overhaul of its policies in the 1980's. That effort culminated in the 1987 policies, which were amended in 1990 to include the Creditors' Rights Exclusion. These are the forms that ALTA promotes in its educational programs and in its Policy Forms Handbook. It has been decided to maintain a unitary set of ALTA-approved forms.

The ALTA action does *not* affect the use and availability of the pre-1990 basic policies. These still may be used to the extent permitted under state law and made available by member companies. A reminder when using the 1970 and 1984 policies: the Active members approved an amendment to these policies which included the Creditors' Rights Exclusion. Even though these policies no longer carry an ALTA designation, a company desiring to provide them to customers should furnish the policy with the Creditors' Rights Exclusion.

*Oscar H. Beasley is senior vice president and senior title counsel of First American Title Insurance Company, based in Santa Ana, Calif. The author also serves as chairman of the ALTA Forms Committee and is a member of the executive board of Western State University, where he is also a faculty member.*



## NAMES IN THE NEWS



Baum

**Lawyers Title Insurance Corporation** announces the election of **David A. Baum** as vice-president—corporate services at its national headquarters in Richmond, Virginia. **Baum** joined **Lawyers Title** in 1988 as risk administrator at Headquarters and was named assistant vice-president—operations support manager in 1990. He previously was a commercial loan officer with a local bank in Richmond. **Baum** is board president of Richmond's Ronald McDonald House. **G. Williams Evans** has been elected senior vice-president—treasurer and chief financial officer at its national headquarters in Richmond, Virginia. He previously was the company's vice-president and controller. **Evans** transferred to Richmond in 1988 from Universal City, California, where he was vice-president—chief financial officer for **Continental Lawyers Title Company, Lawyers Title's** West Coast subsidiary. Prior to that he worked for **Continental Financial Services Company** in Richmond and in Santa Ana, California. **Thomas M. Flynn** has been elected vice-president—area manager in the company's New England regional office in Boston, Massachusetts. **Flynn** joined **Lawyers Title** in 1983 as a sales representative in the Boston office, and was promoted to senior sales representative the following year. In 1985 he was named agency manager and in 1987, vice-president—agency manager. **Flynn** became Boston branch manager in 1988 and area manager earlier this year. **Flynn** is a member of the Massachusetts



Evans



Flynn



Kitover

Mortgage Bankers Association. **Karen L. Kitover** has been elected vice-president—operations manager in Chicago. **Kitover** will have responsibility for all Cook County residential and commercial operations, including Palos Heights and Schaumburg. She also will continue to manage the Chicago National Division office. **Kitover** has 15 years of management and sales experience in the Chicago title insurance market. She joined **Lawyers Title** in 1985 as manager of the Chicago National Division, and was named commercial operations manager last year. **Kitover** is a member of the American Marketing Association, the International Council of Shopping Centers, the American Corporate Counsel Association and the Illinois Bar Association. **Eugene F. Lanuzza** has been elected senior vice-president—regional manager. **Lanuzza** is assigned to the company's regional office in Columbus, Ohio. In his new position, he will be responsible for all agency and direct operations in Ohio, Indiana and Kentucky. **Lanuzza** joined **Lawyers Title** as a sales representative in Mt. Clemens, Michigan, in 1970, and transferred to the company's Pittsburgh, Pennsylvania, office in 1978 as state sales manager. He returned to Michigan in 1980 as branch manager in Saginaw. In 1984, he was elected vice-president—Ohio state manager and transferred to Columbus. **Mack J. Marsh** has been elected vice-president—area manager in the company's office in New Orleans, Louisiana. **Marsh** joined **Lawyers Title** in 1988, when he was



Lanuzza



Marsh



Martin



Pond

named president of **Lawyers Title of Louisiana, Inc.**, a former agency of the company which became a wholly owned subsidiary at that time. He became branch manager when the subsidiary began operating as a **Lawyers Title** branch early in 1990. **Marsh** was appointed Louisiana area manager last year. Prior to joining **Lawyers Title, Marsh** was executive vice-president of **Lawyers Title of Louisiana, Inc.**, when it was an independent title insurance agency. He is a former member of the Board of Governors of the Louisiana State Bar Association; a former member of the Louisiana House of Delegates; a member of the New Orleans Bar Association's Committee on Title Examination; and a 1990-91 director for the Louisiana Land Title Association. **Charles R. Martin** has been elected senior vice-president—regional manager in Troy, Michigan. **Martin** joined the company last year in Troy as vice-president—Michigan state manager with 20 years of experience in the title insurance industry. He previously was vice-president—midwest division manager for **Transamerica Title Insurance Company. Martin** is a member of the Michigan Land Title Association. **Kenneth W. Pond** has been elected vice-president—area manager in Phoenix, Arizona. **Pond** also serves as president of **Lawyers Title of Arizona**, a subsidiary of **Continental Lawyers Title Company, Lawyers Title's** West Coast subsidiary. **Pond** joined **Lawyers Title** in 1975 in Medford, Oregon, as a senior cartographer for **Jackson County Title**





Stopczynski



Vaughan

Company, which later became part of **Continental**. He was named **Jackson County** manager in 1978, and vice-president—Oregon operations in 1984. He is a member of the Arizona Mortgage Bankers Association, the Land Title Association of Arizona, and the Economic Club of Phoenix. **Pond** also served as 1986-87 president of the Oregon Land Title Association. **Richard A. Stopczynski** has been elected vice-president—area manager in Milwaukee, Wisconsin. **Stopczynski** joined **Lawyers Title** in 1973 as a sales representative in the Milwaukee office. He became area agency manager in 1977 and office manager in 1979. Two years later he was appointed Milwaukee branch manager, he became an area manager for the company in 1990. He is a member of Sales and Marketing Executives International, the Wisconsin Land Title Association, the Wisconsin Mortgage Bankers Association, and the Wisconsin Realtors Association. **Jeffrey D. Vaughan** has been elected senior vice-president—National Division at national headquarters in Richmond, Virginia. **Vaughan** joined **Lawyers Title** in 1981 as a sales representative in the Richmond National Division office. In 1983 he was promoted to senior sales representative, and in 1986 he was named manager of the Richmond National Division. **Vaughan** transferred to headquarters last year as vice-president—National Division manager. **Vaughan** is the current president of the James River Chapter of the International Association of



Walker

Corporate Real Estate Executives and is a member of the International Council of Shopping Centers and of the Employee Relocation Council. **Robert Walker** has been elected senior vice-president—regional manager in the company's Lakeland, Florida office. He will be responsible for all **Lawyers Title** operations in the state. **Walker** transferred to Lakeland earlier this year as vice-president—Florida state manager. Previously he was vice-president—marketing operations at **Lawyers Title's** national headquarters in Richmond, Virginia. **Walker** joined the company in 1975 as a sales representative in Newport News, Virginia. He was promoted to branch manager in Newport News in 1976. In 1978 he transferred to Richmond as manager of the Richmond branch, and in 1981 he transferred to Columbus, Ohio, as Ohio state manager. **Walker** was named vice-president—Ohio state manager in 1983, and in 1984 he transferred to Atlanta, Georgia, as vice-president—Georgia state manager. He returned to Richmond in 1985 as vice-president—Mid-eastern states manager. **Lawyers Title Insurance Corporation** announces the appointment of **Charles C. Albright** as manager of system development and support at the company's national headquarters in Richmond, Virginia. **Albright** joined the company after working as a senior data base consultant; he previously served as a data administrator for Tulane University in New Orleans, Louisiana. **Betty H. Ayers** has been appointed assistant vice-



Albright



Ayers

president—support services at national headquarters in Richmond, Virginia. **Ayers** joined **Lawyers Title** last year as office services manager. Prior to joining **Lawyers Title**, **Ayers** was a communications officer at Crestar Bank, in Richmond, and director of university services at the University of Richmond. **Theodore A. Breznal** has been appointed branch counsel in the company's Cleveland, Ohio, office. **Breznal** joins **Lawyers Title** with nine years of experience in the title insurance industry. He most recently was district manager of **Ticor Title Insurance Company**, in Cleveland. He is a member of the Cleveland Bar Association, the Ohio State Bar Association, the Mortgage Bankers Association of Greater Cleveland and the Building Industry Association of Cleveland. **Richard A. Holifield** has been appointed branch manager of its office in Merritt Island, Florida. **Holifield** has 30 years of experience in the title insurance industry. He joined **Lawyers Title** in 1964 in the Pensacola office and transferred to the Orlando office as district sales manager in 1978. In 1982 he became office manager of the Winter Park office, a sub-office of Orlando, and in 1985 he was named title examiner in Orlando. **Holifield** became office manager of the Merritt Island office in 1986, and assistant branch manager in Orlando in 1988. He was first runner-up in **Lawyers Title's** national competition for the company's Distinguished Sales Award in 1976. **Holifield** is a Certified Land Searcher for the state of Florida. He is a



Holifield





Holliman

member of the Merritt Island Chamber of Commerce and an associate member of the Cape Kennedy Board of Realtors. **Gary A. Holliman** has been appointed associate claims counsel in the company's Southwestern states regional claims office in Dallas, Texas.

**Holliman** joined **Lawyers Title**, in Dallas, as a senior claims attorney in 1988, and was named assistant claims counsel last year. He previously was an attorney for a former agency of **Lawyer Title**, in Denton, Texas, which was acquired as a subsidiary. He is a member of the State Bar of Texas and the Dallas Bar Association.

**Jennifer L. Lanzetta** has been appointed regional agency manager in the company's regional office in Troy, Michigan. Prior to joining **Lawyers Title**, **Lanzetta** was an associate regional counsel with **Transamerica Title Insurance Company**, in Livonia, Michigan. She also worked as a research attorney with a private law firm in Detroit. She is a member of the State Bar of Michigan where she serves on the Real Property Law Section's Committee on Condominiums, PUDs and Cooperatives. She is a member of the Real Estate Roundtable, Inc., and serves on the faculty of the American Institute for Paralegal Studies, Inc., where she teaches course in real estate and business law. **J. Scott McCall** has been appointed manager of the company's National Division office in Boston, Massachusetts. He previously was vice-president—product quality control at national headquarters, in Richmond, Virginia. **McCall** joined **Lawyers Title** in 1987 as



Lanzetta



McCall

state claims counsel in the Virginia state office in Richmond. He transferred to national headquarters in 1988 as senior claims attorney and was promoted to assistant counsel—claims later that year. Prior to joining **Lawyers Title**, **McCall** was employed by another title company in Ann Arbor, Michigan. He is a member of the National Association of Industrial and Office Parks and of the American, Michigan, and Virginia Bar Associations. **Sally A. Sherman** has been appointed assistant claims counsel in the company's regional claims office in Dallas, Texas.

**Sherman** joined **Lawyers Title** in 1989, in Dallas, as a senior claims attorney with three years' experience in the title insurance business. Prior to that she was employed in the insurance division of **Ford Motor Company**, in Dearborn, Michigan, where she was instrumental in procuring insurance for **Ford Aerospace Corporation's** satellites. She also worked as an attorney with a law firm in Farmington Hills, Michigan. **Sherman** is actively involved in **Lawyers Title's** regional seminars on "Quality and Prudence in the Title Insurance Industry," and recently co-authored an article in the **Michigan Bar Journal**.

**Ginny Hays Abiassi** has joined the **Stewart Title Guaranty Company** national legal department as vice president—underwriting counsel. Previously, **Abiassi** was assistant Southwest regional counsel for **Title Insurance Company of Minnesota**. Her accomplishments include past president of Title Underwriters of Texas Advisory Organization,



Sherman



Abiassi



S. Morris, Jr.



M. Morris



Bannon



O'Brien

Inc. and serving on the Texas Land Title Association (TLTA) Board of Directors. **Abiassi** has taught at TLTA seminars, the Texas State Bar, Texas Land Title School. **Stewart Information Services Corporation (SISCO)** Board of Directors have elected **Stewart Morris, Jr.** as president of **Stewart Title Company** and chairman of **Stewart Title Guaranty Company**; **Malcolm Morris** has been elected chairman of **Stewart Title Company** and president of **Stewart Title Guaranty Company**.

**Robert G. Bannon** has been named president and chief executive officer of **First American Title Insurance Company of New York**, a wholly owned subsidiary of **First American Title Insurance Company**. According to **Parker S. Kennedy**, president of **First American**, **Bannon** will also continue in his role as regional vice president of the Southern New England Region. **Bannon** joined **First American** in 1979 as vice president—state manager and legal counsel. He came to the company with 15 years of experience as a title insurance executive. He was elected the first president of the Connecticut Title Association in 1986 and is also a past president of the New England Land Title Association and the Connecticut Board of Title Underwriters. **Richard H. O'Brien**, regional vice president of the New York Region, has been elevated to the position of co-chairman of **First American Title Insurance Company of New York**, after serving for 13 years as president. **O'Brien** joined **First American** in 1974 as ac-



count executive. He came to the company with 18 years of experience as a title insurance executive. He was appointed regional vice president of **First American Title Insurance Company** in 1980.



Kieley

**John T. Kieley** has been named vice president and Maryland State manager at **Commonwealth Land Title Insurance Company** and its affiliated company, **Transamerica Title Insurance Company**. He is based in the companies' Baltimore office. **Kieley** has 15 years of related experience, most recently as branch manager and branch counsel for another national title insurer. In his new position, **Kieley** is responsible for overseeing company operations throughout Maryland, excluding the metropolitan Washington, D.C., counties of Prince Georges, Montgomery and Charles. He is a member of the Maryland State Bar Association, the Bar Association of Baltimore City and the Baltimore County Bar Association. He also is licensed to practice law in New Jersey. **Jean Pearson** has joined **Commonwealth Land Title** as assistant vice president of the company's National Title Services (NTS) office in San Francisco. She is responsible for handling high liability, commercial transactions nationwide.



Pearson

**Commonwealth's** NTS division provides specialized title services for national real estate projects. **Pearson** has eight years of related experience with another national title insurer. She is a member of the American, California and San Francisco Bar Associations. **Carol Ann Martinelli** has joined



Martinelli


**Commonwealth** as counsel for the company's National Title Services (NTS) office in Detroit, MI. She is responsible for business development and underwriting for national commercial real estate accounts. **Commonwealth's** NTS division provides specialized title services for national real estate projects.

**Martinelli** has 12 years of experience in the title insurance industry. Most recently, she was responsible for national commercial real estate accounts for another national underwriter. She also has worked with major corporations, lenders and law firms throughout the country. **Martinelli** is chairperson of the Michigan Land Title Association's Legislative Committee. An active member of



Schneider

the State Bar of Michigan, she serves on the Council of the Michigan Real Property Law Section and is a member of the Section's Land Title Standards Committee. In 1990, she was elected to serve as a member of the State Bar's Representative Assembly for the 6th Judicial Circuit. **Martinelli** is also a member of the American Bar Association, the Woman's Lawyers Association of Michigan, and a member and past president of the Italian American Bar Association of Michigan. **Donald N. Schneider** has joined **Commonwealth** as assistant vice president and county manager. Based in the company's Vero Beach, FL, office, he is responsible for overseeing company operations in Indian River County, FL.



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**Schneider** has 18 years of experience in the title insurance industry, most recently as president and general manager of a Vero Beach title insurance agency that he co-founded. Before that, he was branch manager for **Title and Trust Company** of Florida, a domestic title insurer acquired by **Commonwealth** in 1984. He is a member of the American Land Title Association and the Florida Land Title Association and is an affiliate member and former orientation instructor for the Vero Beach Board of Realtors. He also is a member and past director and vice president of the Vero Beach/Indian River County Chamber of Commerce. **Commonwealth of Houston** has expanded its operations with the opening of a new office in Houston's Greenway Plaza office complex. **Marvin H. Zindler Jr.** has joined the company as vice president and Greenway branch manager. He is responsible for closing real estate transactions and overseeing Greenway office operations. During his more than 25 years of experience in the title insurance industry, **Zindler** has held the positions of title examiner, commercial escrow officer and marketing representative. He is an active member in the Texas Land Title Association and an appointee to the organization's Education Committee and Legislation Liaison Committee for 1991/1992.

**Caroline Carter**, Human Resources officer and director of Human Resources Operations, has been elected vice president, **Chicago Title and Trust Company**, announced **Richard P.**



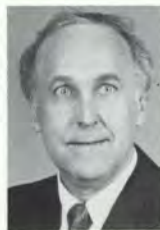
Zindler, Jr.



Cayez



Kulig



Meade

**Toft**, president of **CT & T. Carter** joined the company in 1970 and following a number of promotions became director of Human Resources Operations in 1985. In her new position as vice president, **Carter** will continue reporting in Chicago to **LaNette Zimmerman**, vice president, **Chicago Title and Trust Company**. **Paul G. Cayez**, assistant vice president and regional treasurer, has been elected vice president, **Chicago Title and Trust Company**. **Cayez** joined **CT & T** in 1976 as a staff accountant. He has been an assistant vice president since 1986. As vice president, **Cayez** will continue to report in Chicago to **Gilbert J. Touretz**, vice president and treasurer, **Chicago Title Insurance Company**. **Mary Ellen Kulig**, assistant vice president and regional treasurer, has been elected vice president, **Chicago Title and Trust Company**. **Kulig** joined **CT & T** while in college and became a full-time staff auditor in 1978. She has been assistant vice president and regional treasurer since 1986. **William E. Meade**, resident vice president, Great Lakes Region, has been elected vice president, **Chicago Title Insurance Company**, announced **Richard L. Pollay**, president of **CTIC**. **Meade** has been associated with **CTIC** since 1986 as president of **Meade Title Agency Incorporated** in Akron, Ohio. **CTIC** acquired the agency and merged it into its Akron office in 1990. He is active in a number of Akron-area business and professional organizations including the Summit County Land Title



Norris

Association, the Akron Area Board of Realtors, and the Homebuilders Association of Akron. In his new position as vice president, **Meade** will also serve as Akron Metro area manager. He will continue to report to **Paul T. Sands, Jr.**, vice president, **Chicago Title Insurance Company**. **Earle Norris**, vice president, senior title counsel, **Ticor Title Insurance Company**, has been elected vice president, **Chicago Title Insurance Company**. **Norris** has been with **Ticor** for 16 years, achieving the senior title counsel position in 1987. He is active in the American Bar Association and the Los Angeles County Bar Association. He served as vice chairman of the Forms and Practices Committee for the California Land Title Association and was appointed chairman of that committee for the 1990-91 term. Headquartered in Los Angeles, **Norris** will continue to report to **Joseph Bonita**, vice president, **Chicago Title Insurance Company**. **Richard L. Turley**, senior vice president, senior title counsel, **Ticor Title Insurance Company**, has been elected vice president, **Chicago Title Insurance Company**. **Turley**, who received his J.D. from Indiana University, joined **Ticor** in 1961 as staff counsel in Indianapolis. He is a member of the Indiana and American Bar Associations and is active as a lecturer in legal education. He is headquartered in Los Angeles. **Donald E. Walters**, senior vice president, senior title counsel, **Ticor Title Insurance Company** has been elected vice president, **Chicago Title Insurance**





Walters

**Company.** Throughout his more than 20 years with **Ticor, Walters** has served in various management and legal capacities. He is a member of the Oregon and American Bar Associations and the American College of Real Estate Attorneys. **Walters** is a well-known author of materials on legal and real estate practices. He is headquartered in Los Angeles. **Jacob M. Yonkman**, resident vice president, has been elected vice president, **Chicago Title Insurance Company.** **Yonkman** joined **CTIC** in 1972 as an examining attorney. He has been resident vice president since 1990. The branch manager of the Crown Point, Indiana office, **Yonkman** will continue to report to **James D. Aprile**, vice president, **Chicago Title Insurance Company.**

The following people have received promotions at **Chicago Title and Ticor Title. Chicago Title Insurance Company: Adoline Brown,**



Christiansen

appointed assistant vice president, from production manager, Seattle, WA; **Lisa Chappelle**, appointed escrow operations officer and remains escrow sales manager, Tampa, FL; **Susan Christiansen**, appointed resident vice president and remains branch manager, from assistant vice president, Ft. Myers, FL; **Corrine Collins**, appointed escrow operations officer and remains closing and direct sales manager, from escrow sales manager, Ft. Meyers; **Patric E. Copeland**, appointed assistant vice president and remains state agency manager, Fairfax, VA; **Victoria L. DiPasquale**, appointed resident vice president and remains branch manager, from assistant vice president, Miami, FL; **Vincenza Giannelli**, appointed office counsel and remains underwriter, Division II, from title officer, Chicago, IL; **Sharon Gilbertson**, appointed assistant vice president and remains unit man-



DiPasquale



Haynes

ager, from senior title officer, Seattle; **Thomas J. Haynes**, appointed resident vice president and remains branch manager, from assistant vice president, Tampa; **Lisa L. Hawkins**, appointed title operations officer and remains assistant branch manager, Nashville, TN; **James T. Hitson**, appointed assistant vice president and remains branch manager, Daytona Beach, FL; **Michael Hardecopf**, appointed assistant vice president and manager, Aurora and Sycamore, IL offices, from title operations officer and Aurora office manager; **Linda Jackson**, appointed assistant vice president, from senior title officer and unit manager, Seattle; **Linda V. Jones**, appointed escrow officer, from branch manager, Green Hills, Nashville; **Raymond D. Martin Jr.**, appointed manager, Jacksonville, FL; **Harvey A. Mitchell**, appointed resident vice president and remains branch manager, from assistant vice presi-



Hardecopf



Mitchell

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dent, Memphis, TN; **Sharon A. Morris**, appointed title operations officer and remains title production manager, Ft. Myers; **Scott C. Mundt**, appointed title operations officer and remains title production manager, Fairfax; **Colleen Ann Pence**, appointed title officer and remains C & I counsel, Fairfax; **Doug Pittman**, appointed assistant vice president, from senior title officer and unit manager, Seattle; **Fred Perlini**, appointed assistant title officer, from technical advisor, Division I, Chicago; **Jeff Rezwain**, appointed assistant title officer, from technical advisor, Division II, Chicago; **Barbara Sandifer**, appointed assistant vice president, from purchasing agent/reconveyance supervisor, Seattle; **Mark R. Turner**, appointed resident vice president and remains state manager, from assistant vice president, Nashville; **Susan Van Lindt**, appointed assistant vice president, and remains assistant regional accounting officer, Northeastern regional accounting, Carle Place, NY; **Don Wade**, appointed regional claims counsel, **Chicago Title/Ticor Title** Claims operation, Fairfax; and, **Donald C. Wells Jr.**, appointed assistant vice president and remains senior agency underwriter, Fairfax.

**Ticor Title Insurance Company of California** appoints **Kathryn L. Bork** assistant vice president and remains Commercial Escrow department manager, from advisory senior escrow officer, Portland, OR.

**Specialized Management Support, Inc. (SMS)** of Costa Mesa, California announced that it has expanded its opera-



Turner

tions by adding a Regional Sales Manager for California, **Marc Scholnick**, specializing in Financial Services for Property Management Companies. **Scholnick** brings to **SMS** 10 years of sales and sales management experience. Previously with a fortune 500 company, **Scholnick** served as a Regional sales manager, in addition to formulating and directing marketing and training programs, forecasting monthly sales activities, and developing business proposals.

The **IVT Group** has announced the appointment of **Scott A. Holland** to executive vice president of **Industrial Valley Title Insurance Co. (IVT)**, said **David M. Boucher**, chairman, president and chief executive officer. **Holland** continues as president of **Continental Title Insurance Co. (CTI)**, an **IVT** subsidiary based in Marlton, N.J. **IVT's** Potomac Division, based in Washington, D.C., reports to **Holland**, as well as the Philadelphia-based sales and marketing services staff. **Holland** joined **IVT** in 1989 as senior vice president of finance. He was named president and chief operating officer of **Continental Title** in 1990. He is a member of the board of directors of **IVT** and **CTI**. Before joining **IVT**, **Holland** was vice president and chief financial officer of **Fidelity Bond and Mortgage Co.** and vice president of **Hansen Bancorp** in Blue Bell, PA.

**Midland Title Security, Inc.** has elected **James Stipanovich**, executive vice president and corporate operations manager, to its board of directors. **Stipanovich**

joined **Midland Title** in 1970. He was appointed managing officer of Ohio agency operations in 1983. An officer of **Midland Title**, **Stipanovich** in 1989 was named a vice president of **Midland's** parent company, **First American Title Insurance Company**, Santa Ana, CA. **Stipanovich** is a member of the American, the Ohio and the Lorain County Land Title Associations. He and his wife Marijana reside in Strongsville. **Midland** is a wholly-owned subsidiary of **First American Title Insurance Company**. **Penny Crittenden**, sales representative for the Medina office of **Midland Title Security, Inc.**, has been named Affiliate of the Year by the Medina County Board of Realtors. Prior to joining **Midland Title**, **Crittenden** was a Realtor for **Coldwell Banker** and then **Smythe, Cramer Co.** She is a member of the Board of Realtors of Medina County, the Women's Council of Realtors of Medina County, and the Realty Political Action Committee. She is division chairman for the Heart Fund drive and is active in the March of Dimes Walk-a-thon. **Midland Title Security, Inc.** has named **Laura C. Guidi** national accounts coordinator and assistant vice president in the firm's commercial department. **Guidi** has been with **Midland Title** since 1988 as a customer service representative/quality control. **Anne B. Ludwin** has joined **Midland Title** as a customer service/sales representative. Prior to joining **Midland Title**, **Ludwin** was a quality control supervisor with **Smythe, Cramer Co.** **Dawn R. Mitchell** has



joined **Midland Title** as an escrow secretary for the Home Builders department at the Independence office. Prior to joining **Midland**, **Mitchell** was a trust real estate assistant at **Star Bank** of Cincinnati. **Midland Title** has transferred vice president **Joanne R. Sullivan** to its newly-created department of internal auditing in Cleveland. She has been an escrow officer in the company's Painesville office since 1982. **Sullivan** joined **Midland Title** in 1962 as an escrow officer and ultimately became the Cleveland office service department manager, bookkeeping supervisor and corporate assistant treasurer. She was also instrumental in the opening



Selter

of **Midland's** first branch office in Painesville in 1965, where she most recently served as assistant manager as well as escrow officer.

**Lee C. Selter** has joined **World Title Co.** as senior vice president and regional manager in charge of sales and operations in San Bernardino, Riverside and San Diego Counties. **Selter** was president of **Stewart Title** of Riverside and San Bernardino Counties immediately prior to joining **World Title**, a Burbank-based company. He had been with **Stewart** for 10 years. In the newly created position, **Selter** will be headquartered in San Bernardino and be responsible for all sales and

operations activities in the tri-county region, reporting to **Michael C.**

**Lowther**, president and chief executive officer of **World Title**. **Selter** began his title insurance career in 1977, with what is now **Continental Lawyers Title Insurance Co.** He joined **Stewart** in 1981.

**United General Title Insurance Company** has moved its southwest regional office to larger quarters. The new address is: **United General Title Insurance Company**, Rayford Centre One, 24900 Pitkin Drive, Suite 210, Spring, Texas 77386; 800-488-7625; 713-292-3907 Fax; **J. Kent Altemus**, regional vice president.

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# Ford Receives ALTA Certificate of Recognition



Ford

**Ken Ford**, branch manager for the **Lawyers Title Insurance Corporation** office, Brewster, New York, is the recipient of the ALTA's Certificate of Recognition for Distinguished Achievement. Ford is honored for "exemplary marketing communication" in producing and hosting a local cable television show which featured title customers.

The show, which aired for 13 consecutive weeks on Wednesday evenings, was a great source of promotional and educational activity for the title industry in the Brewster area. Heading the list of impressive results was new business for the Lawyers Title office in Brewster—an attorney who appeared on the show as a guest expert, later brought an \$11 million shopping center transaction to the branch office. Local experts who appeared on the home buyer show included lender personnel and a land surveyor. One of the programs featured the ALTA educational film, **A Place Under the Sun**.

In presenting the award on behalf of the Association, ALTA Executive Vice President Jim Maher cited Ford's effective negotiation of rates, time slot and promotional support. Said Maher, "Ford's handling of this activity contributed substantially to the favorable cost-benefit result reported, and stands as an example worthy of consideration by title managers throughout the nation."

## Wanted! Your Achievements

Title people are leaders. And **Title News** would like to join in providing some well deserved recognition of their accomplishments.

If your company is headed for its 75th anniversary, if you have just been honored by the local Realtor board or lender group, if your teaching of paralegals has been formally acclaimed, or whatever professional recognition may have been bestowed, why not let us know about it?

If someone in your office is being so honored but is a bit shy, perhaps you can pass the word along for that person.

Just send the details to: **Title News**, American Land Title Association, Suite 705, 1828 L Street, N.W., Washington, DC 20036. Remember, we *want* to hear from you. Thanks.

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# Lawyers Title Goes Public

Universal Corporation (NYSE:UVV), Lawyers Title Insurance Corporation's parent company, also headquartered in Richmond, Virginia, has announced a tax-free spinoff of Lawyers Title, effective October 1, 1991.

Henry H. Harrell, president and chief executive officer of Universal, emphasized that "providing Lawyers Title with its own publicly traded common stock for use in acquisitions and for incentive compensation will significantly improve its competitiveness in the long term." In addition, Harrell pointed out, the "move is designed to enhance value for Universal Corporation shareholders by enabling us to concentrate our capital and management resources on our core tobacco, lumber and agri-products businesses. The transaction will allow investors to evaluate better the two separate companies, increasing the likelihood that the true value of each business will be properly reflected in the market."

Universal distributed all of the outstanding shares of a newly organized holding company for Lawyers Title to Universal shareholders on a tax-free basis of one share for every four shares of Universal common stock. Lawyers Title's stock is listed on the NASDAQ National Market System and began over-the-counter trad-

ing on October 1, 1991.

Charles H. Foster, Jr., continues in his position as chairman and chief executive officer of Lawyers Title and holds the same position with the new holding company.

Louis A. Balocca, senior vice-president and regional manager for Lawyers Title in Universal City, California, expresses the enthusiasm that Lawyers Title's management shares regarding the divestiture. "The concept of an independent Lawyers Title is extremely exciting," Balocca said, "particularly in conjunction with the new corporate culture, which is market and sales-driven." Marvin C. Bowling, Jr., president and chief operating officer, sees it as a "new day of progress and opportunity."

One of the biggest advantages for Lawyers Title is the chance for the company to use its own stock to acquire operations in those areas where the company hopes to increase market share—an option the company did not have as a subsidiary of Universal. The current real estate climate offers opportunities to make such acquisitions at reasonable prices.

The divestiture also gives Lawyers Title employees the chance to participate in company ownership. Shares of Lawyers Title stock will be distributed under the

company's 401 (k) plan each year as a company match for employee contributions. And those employees who already are Universal stockholders automatically become charter members of the new generation of employee-owners of Lawyers Title.

An additional plus is the ability to offer stock options and other incentives as part of compensation packages designed to attract and retain key executives for management level positions.

"Being owned by the public and our employees will motivate Lawyers Title to become an innovative, industrious, productive and service-driven organization," Bowling says. "We look forward to the freedom of being able to take advantage of the opportunities for growth—through the use of our stock."

Lawyers Title is now directing its energies toward increasing its visibility in new markets and selling potential investors on the advantages of becoming shareholders. Management is enthusiastic and optimistic about the new opportunities for the company and the positive long-term implications that exist for its future. As Foster emphasizes, "It puts us in control of our own destiny."

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## MERGERS & ACQUISITIONS

**Fidelity National Financial, Inc.** (AMEX:FNF), announced today that it has executed definitive agreements relating to the multi-step acquisition from **Meridian Bancorp, Inc.**, Reading Pennsylvania (NASDAQ:MRDN) of Meridian Bank's **Meridian Title Insurance Company (MTIC)** and its subsidiary, **American Title Insurance Company (ATIC)**. The acquisition will add title insurance direct operations and agency relationships in a number of key eastern and midwestern states, thereby enhancing **Fidelity's** national market presence. Under the Agreements, **Fidelity** acquired from **Meridian** approximately \$7.0 million of **MTIC's** preferred stock in exchange for \$1 million and 375,000 shares of **Fidelity's** common stock, representing 9.9% of **Fidelity's** outstanding common stock. Simultaneously with the execution of the Agreements, **Samuel A. McCullough**, chairman and chief executive officer of **Meridian Bancorp, Inc.**, has been appointed to the Board of Directors of **Fidelity National Financial, Inc.** **Fidelity** and **Meridian** have also entered into a fee-based consulting agreement whereby **Fidelity** will advise **MTIC** and **ATIC** on their daily operations.

**Specialized Management Support, Inc. (SMS)** of Costa Mesa, California has signed a 5-year agreement with **TRW Title Insurance Company** of Overland Park, Kansas to provide Title Systems Services to the **TRW Title Agent Network** nationwide. Under the terms of the agreement, **SMS** will provide specialized software, PC equipment, custom product development, and product support to all of **TRW Title** current and future agents. The specialized systems will include automated title policy production, escrow accounting, and closing document preparation. To house these activities, **SMS** is providing a dedicated facility in Nashville, Tennessee, where product development and support services will be located. Training and support will be provided at the agents' location. **David M. Connell**, chairman and chief executive officer for **SMS**, described the agreement as a realization of key strategic goals. **Rich Alexander**, president of **TRW Title Insurance Company**, stated that **TRW's** Title agents would benefit from this agreement by being able to take advantage of the benefits automation can provide.

## ACROSS THE HOMEFRONT

**John J. Roney, Jr.**, president of **Grand Traverse Title Company**, was presented with the Mary Feindt Award by the **Michigan Land Title Association** at its Annual Convention. This is the highest honor the Board of Directors can bestow upon a member. **Roney** is only the third recipient of this award. He has spent 40 years in the title business and is a past president of the **Michigan Land Title Association**.

The Bob Jay Award, named in honor of the late Robert J. Jay, former president of the ALTA, was presented to **J. Bushnell Nielsen** for his outstanding contributions to the legislative area for the **Michigan Land Title Association**. **Nielsen** is a past president of the Association and is now an associate with **Kluwin, Dumbay, Hinshaw and Culbertson** in Milwaukee, Wisconsin.

**Gerard K. Knorr**, vice president and regional counsel of **First American Title Insurance Company**, was elected president of the **Michigan Land Title Association**. **Knorr** is headquartered at the **First American** regional office in Troy, Michigan.

## NEW ARRIVALS

**TRW REDI Property Data**, a new joint venture company, was recently established by two leaders in the information industry, **TRW Inc.** and **Elsevier N.V.** The new company is a diversified and broadly-based supplier of real estate information services. Using data base technology and a nationwide network of offices and sales representatives, **TRW REDI Property Data** will provide real estate information in a variety of forms to title companies, appraisers, Realtors, brokers, lenders, and other users of property-based information. **TRW REDI Property Data** is a partnership between **TRW Inc.**, an international company prominent in advanced technology products and services for the space and defense, automotive, and information systems markets, and **Elsevier, N.V.**, a diversified Dutch-based publisher prominent in the professional, scientific, business, and academic publishing fields internationally. **TRW** is the majority partner. Based in Riverside, CA, **TRW REDI Property Data** will be led by President and General Manager **Edwin P. Setzer** and employ about 1,400 people in 29 offices and production facilities serving 35 states. The company will provide real estate information services to about 40,000 customers in most of the top 100 metropolitan areas of the United States. **TRW REDI Property Data** will use information currently available from public sources. The operating entities that comprise the new company are **TRW Real Estate Information Services**, Anaheim, CA; **REDI Real Estate Information Service**, Ft. Lauderdale, FL; **DAMAR Real Estate Information Service**, Los Angeles, CA; and **Sanborn Map Service**, Pelham, NY.

## 1991 AFFILIATED ASSOCIATION CONVENTIONS

### October

24-25 Wisconsin, Hyatt Hotel, Milwaukee, WI

### November

13-16 Florida, Marriott at Sawgrass Resort, Ponte Vedra Beach, FL

### December

5-6 Louisiana, Omni Royal Orleans, New Orleans, LA  
Arizona (has not been determined)  
Nevada (has not been determined)



## NEW ALTA MEMBERS

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

### ACTIVE

#### Colorado

Chicago Title of Colorado, Inc., Denver, CO (Greg Kosin, Greater Illinois Title, Chicago).

#### New Mexico

Sandoval County Title Co., Rio Rancho, NM.

#### Tennessee

Preferred Title Insurance Agency, Inc., Chattanooga, TN.

#### New York

Newell Title Agency, Staten Island, NY.

### ASSOCIATE

#### Virginia

Marsha A. Hymes, Federal Home Loan Mortgage Corp., McLean, VA (Joseph Bonita, Tigor Title Ins. Co., Los Angeles, CA).

#### Ohio

Indra Shah, Weltman, Weinberg & Associates Co., L.P.A., Cleveland, OH.

#### Massachusetts

Michael Maguire, Attorney at Law, Marblehead, MA.

### 1992

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

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

### 1993

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

**October 13-16** ALTA Annual Convention, Marriott's Desert Springs Resort and Spa, Palm Desert, California

### 1994

**April 11-13** ALTA Mid-Year Convention, Scottsdale Princess, Scottsdale, Arizona

**September 21-24** ALTA Annual Convention, Walt Disney World Dolphin, Orlando, Florida

## CALENDAR OF MEETINGS

### 1991

**October 27-29** Title Underwriter Counsel Meeting, Omni Royal Orleans, New Orleans, Louisiana

## A LENDER'S PERSPECTIVE

*continued from page 12*

### Endnotes

<sup>1</sup>11 U.S.C.548(a)

<sup>2</sup>11 U.S.C.548(a) states in part:

(a) The trustee may avoid any transfer of an interest of the debtor in property . . . that was made or incurred on or within one year before the date of the filing of the petition, if the debtor voluntarily or involuntarily . . .

(2)(A) received less than a reasonably equivalent value in exchange for such transfer or obligation; and

(B)(i) was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation;

(ii) was engaged in business or a transaction, or was about to engage in business or a transaction, for which any property remaining with the debtor was an unreasonably small capital; or (iii) intended to incur, or believed that the debtor would incur, debts that would be beyond the debtor's ability to pay as such debts matured.

<sup>3</sup>11 U.S.C.544(b)

<sup>4</sup>See *Durrett v. Washington National Insurance Co.*, 621 F.2d 201 (5th Cir. 1980); but see also *Madrid v. Lawyers Title Insurance Corporation*, 725 F.2d 1197 (9th Cir. 1984); cert. denied 469 U.S. 833 (1984)

<sup>5</sup>In addition to the avoidance powers discussed in the text, under Section 547(b) of the Bankruptcy Code, 11 U.S.C. 547(b), a transfer of property made within up to one year before a bankruptcy filing can be avoided as a preference in certain circumstances if

the transfer enabled a creditor to receive more than the creditor would have received in a bankruptcy proceeding had the transfer not been made.

<sup>6</sup>*Durrett, supra*

<sup>7</sup>*Madrid, supra*

<sup>8</sup>57 B.R. 568 (Bankr. N.D. Ill. 1986)

<sup>9</sup>*Id.* at 578

<sup>10</sup>See e.g., *In Re Lindsay* 98 B.R. 983 (Bankr. S.D. Cal. 1989), *In Re Ruebeck*, 55 B.R. 163 (Bankr. D. Mass, 1985), *Bundles v. Baker*, 856 F.2d 815 (7th Cir. 1988)

<sup>11</sup>This is also true if avoidance is attempted under the preference provisions of Section 547(b).

*Steven D. Delaney is an owner-director in the Richmond office of Hazel & Thomas, a professional corporation. The law firm has offices in Alexandria, Fairfax, Leesburg, Manassas, Winchester, and Richmond, Virginia, Washington, D.C. and Baltimore, Maryland. He heads the Richmond office's real estate and finance section and represents lenders and developers in real estate financings, workouts, foreclosures and bankruptcies. Delaney is chairman of the Loan Practices Subcommittee of the Lender Liability and Loan Practices Committee of the American Bar Association's Section on Real Property, Probate and Trust Law. He is a frequent lecturer on lender liability and creditors' rights issues and recently served as program chair and moderator for the ABA Satellite Seminar, "Strategies to Limit Lender Liability" which was broadcast nationally last winter. Delaney is a graduate of Tufts University and the University of Pennsylvania Law School.*



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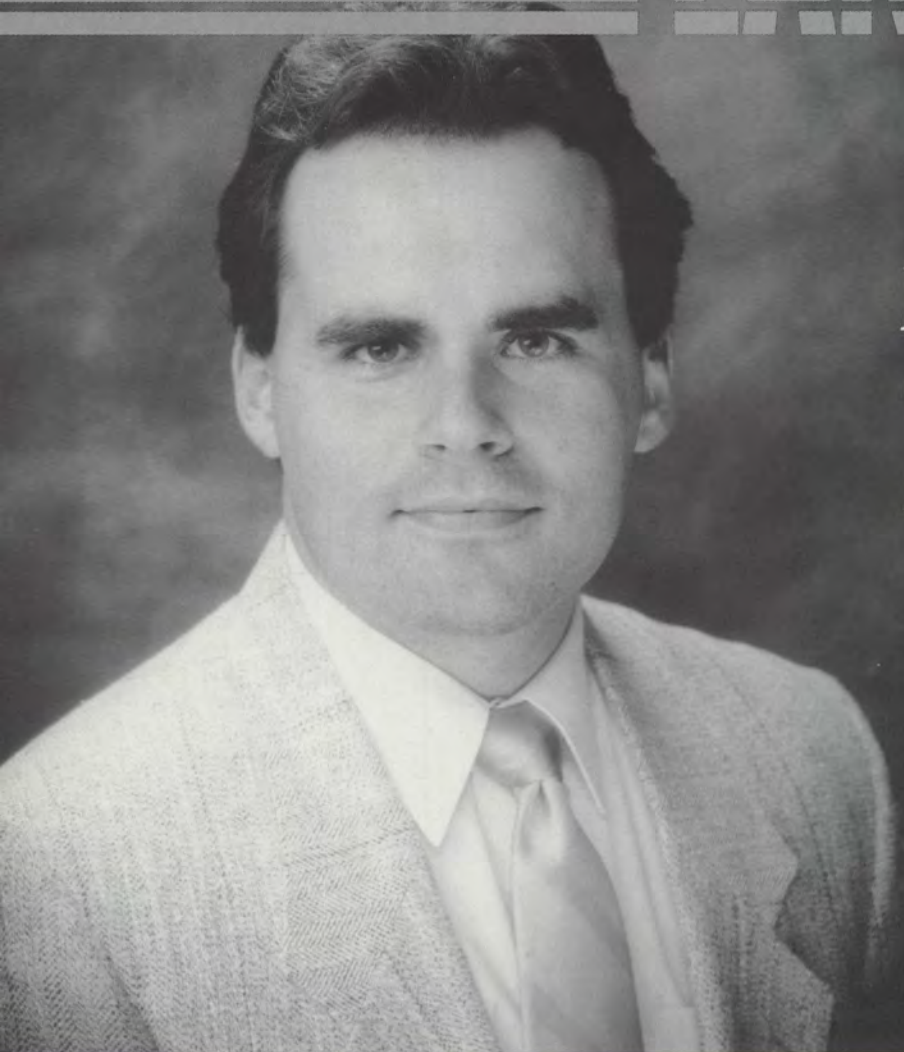


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